

permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time, or (2) the Federal and state testing procedures impose inconsistent certification requirements.

If California amends regulations that were previously granted an authorization, EPA can confirm that the amended regulations are within the scope of the previously granted authorization. Such within-the-scope amendments are permissible without a full authorization review if three conditions are met. First, the amended regulations must not undermine California's determination that its standards, in the aggregate, are as protective of public health and welfare as applicable Federal standards. Second, the amended regulations must not affect consistency with section 202(a) of the Act. Third, the amended regulations must not raise any "new issues" affecting EPA's prior authorizations.

### III. Procedures for Public Participation

As stated above, EPA is offering the opportunity for a public hearing, and requesting written comment on issues relevant to the CARB request. First, CARB has requested EPA confirm that parts of the voluntary PERP for portable engines and equipment fall within the scope of previously issued authorizations or submitted authorization requests. Within the context of a within-the-scope analysis, EPA invites comment on whether California's PERP requirements (1) undermine California's previous determination that its standards, in the aggregate, are at least as protective of public health and welfare as comparable Federal standards, (2) affect the consistency of California's requirements with section 202(a) of the Act, and (3) raise any other new issues affecting EPA's previous waiver or authorization determinations.

Second, CARB has requested that the Administrator grant a new authorization for those emission standards that are not otherwise not covered by the within-the-scope confirmation. For this full authorization analysis, we request comment on: (a) Whether CARB's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious, (b) whether California needs such standards to meet compelling and extraordinary conditions, and (c) whether California's standards and accompanying enforcement procedures are consistent with section 209 of the Act.

If a hearing is held, the Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. Regardless of whether a public hearing is held, EPA will keep the record open until March 24, 2011. Upon expiration of the comment period, the Administrator will render a decision on CARB's request based on the record from the public hearing, if any, all relevant written submissions, and other information that she deems pertinent. All information will be available for inspection at the EPA Air Docket No. EPA-HQ-OAR-2011-0102.

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest extent possible and label it as "Confidential Business Information" (CBI). If a person making comments wants EPA to base its decision on a submission labeled as CBI, then a non-confidential version of the document that summarizes the key data or information should be submitted to the public docket. To ensure that proprietary information is not inadvertently placed in the public docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed, and according to the procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

Dated: February 3, 2011.

**Lori Stewart,**

*Acting Director, Office of Transportation and Air Quality, Office of Air and Radiation.*

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**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9264-4]

### California State Nonroad Engine Pollution Control Standards; Request for Authorization of Airborne Toxic Control Measure for In-Use Portable Diesel Engines 50 Horsepower and Greater; Opportunity for Public Hearing and Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of opportunity for public hearing and comment.

**SUMMARY:** The California Air Resources Board (CARB) has notified EPA that it has adopted regulations for the control of diesel particulate matter in the exhaust from in-use portable diesel-fueled compression-ignition engines 50 horsepower and greater. CARB has requested that EPA issue a new authorization for the emission standards established by these regulations. This notice announces that EPA has tentatively scheduled a public hearing to consider California's In-Use Portable Diesel Equipment Airborne Toxic Control Measure authorization request and that EPA is now accepting written comment on the request.

**DATES:** EPA has tentatively scheduled a public hearing concerning CARB's request on February 24, 2011, at 9:30 a.m. EST. EPA will hold a hearing only if any party notifies EPA by February 17, 2011, expressing its interest in presenting oral testimony. By February 18, 2011, any person who plans to attend the hearing may call Robert Doyle at (202) 343-9258, to learn if a hearing will be held or may check the following webpage for an update: <http://www.epa.gov/otaq/cafr.htm>.

Parties wishing to present oral testimony at the public hearing should provide written notice to Robert Doyle at the e-mail address noted below. If EPA receives a request for a public hearing, that hearing will be held at 1310 L Street, NW., Washington, DC 20005.

If EPA does not receive a request for a public hearing, then EPA will not hold a hearing, and instead consider CARB's request based on written submissions to the docket. Any party may submit written comments until March 24, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2011-0101, by one of the following methods:

- On-Line at <http://www.regulations.gov>: Follow the On-Line Instructions for Submitting Comments.

- *E-mail:* [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov).
- *Fax:* (202) 566-1741.
- *Mail:* Air and Radiation Docket, Docket ID No. EPA-HQ-OAR-2011-0101, U.S. Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies.

- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements

should be made for deliveries of boxed information.

**On-Line Instructions for Submitting Comments:** Direct your comments to Docket ID No. EPA-HQ-OAR-2011-0101. EPA's policy is that all comments we receive will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will automatically be captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

EPA will make available for public inspection materials submitted by CARB, written comments received from any interested parties, and any testimony given at the public hearing. Materials relevant to this proceeding are contained in the Air and Radiation Docket and Information Center, maintained in Docket ID No. EPA-HQ-OAR-2011-0101. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Air and Radiation Docket in the EPA Headquarters Library, EPA West Building, Room 3334, located at 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open to the public on all Federal government work days from 8:30 a.m. to 4:30 p.m.; generally, it is open Monday through Friday, excluding holidays. The

telephone number for the Reading Room is (202) 566-1744. The Air and Radiation Docket and Information Center's Web site is <http://www.epa.gov/oar/docket.html>. The electronic mail (e-mail) address for the Air and Radiation Docket is: [a-and-r-Docket@epa.gov](mailto:a-and-r-Docket@epa.gov), the telephone number is (202) 566-1742, and the fax number is (202) 566-9744. An electronic version of the public docket is available through the Federal government's electronic public docket and comment system. You may access EPA dockets at <http://www.regulations.gov>. After opening the <http://www.regulations.gov> website, enter EPA-HQ-OAR-2010-XXXX, in the "Enter Keyword or ID" fill-in box to view documents in the record. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

EPA's Office of Transportation and Air Quality also maintains a webpage that contains general information on its review of California waiver requests. Included on that page are links to prior waiver and authorization **Federal Register** notices; the page can be accessed at <http://www.epa.gov/otaq/cafr.htm>.

**FOR FURTHER INFORMATION CONTACT:** Robert M. Doyle, Attorney-Advisor, Compliance and Innovative Strategies Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue (6405J), NW., Washington, DC 20460. Telephone: (202) 343-9258. Fax: (202) 343-2804. E-mail: [doyle.robert@epa.gov](mailto:doyle.robert@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. California's ATCM for In-Use Portable Diesel Engines 50 Horsepower and Greater**

In a letter dated December 5, 2006, CARB submitted to EPA its request pursuant to section 209 of the Clean Air Act ("CAA" or "the Act"), regarding its regulations to enforce its airborne toxic control measure (ATCM) for in-use portable diesel-fueled engines 50 brake-horsepower (hp) and greater (portable engines).<sup>1</sup> The authorization request covers four primary substantive requirements: (1) Starting January 1, 2010, all portable engines in the state must be certified to meet a Federal or California standard for newly manufactured nonroad engines, subject

<sup>1</sup> Portable engines are engines that may be moved easily from location to location. The engines are used to power a variety of equipment, including pumps, ground support equipment at airports, cranes, oil-well drilling and workover rigs, power generators, dredging equipment rock crushing and screening equipment, welding equipment, woodchippers and compressors.

to specified exceptions; (2) Starting January 1, 2020, all portable engines in California must be either (a) certified to meet Tier 4 emission standards, (b) equipped with a properly functioning Level-3 verified technology,<sup>2</sup> or (c) equipped with a combination of control strategies that have been verified together to achieve at least an 85% reduction in diesel particulate matter (PM) emissions, subject to specified exceptions; (3) All portable engines that prior to January 1, 2006 have not been either registered in CARB's Portable Equipment Registration Program (PERP) or permitted under the permit program of an air quality management district or air pollution control district must meet the most stringent of the Federal or California emission standards for non-road engines at the time the engine is either registered in the PERP or registered for a permit, subject to specified exceptions; and (4) Each fleet of portable engines must comply with increasingly more stringent weighted PM emission fleet averages that apply on three different deadlines, (January 1, 2013, January 1, 2017 and January 1, 2020), subject to specified exceptions.<sup>3</sup>

Owners of in-use equipment will have options available to meet the CARB requirements. These include: purchasing new equipment with cleaner engines, repowering existing equipment with cleaner engines, using verified add-on control devices on existing equipment and engines, switching to alternative diesel fuels or alternative fuels, or electrifying some or all of the in-use fleet and receiving emission credits.

**II. Clean Air Act Nonroad Engine and Vehicle Authorizations**

Section 209(e)(1) of the Act permanently preempts any State, or political subdivision thereof, from adopting or attempting to enforce any standard or other requirement relating to the control of emissions for certain new nonroad engines or vehicles.

Section 209(e)(2) requires the Administrator, after notice and opportunity for public hearing, to authorize California to enforce standards and other requirements

<sup>2</sup> Level 3 PM control technology refers to a control technology that has been verified to achieve PM reductions of at least 85 percent under the CARB "Verification Procedure, Warranty and In-Use Compliance Requirements for In-Use Strategies to Control Emissions from Diesel Engines," 13 California Code of Regulations (CCR) sections 2700-2710.

<sup>3</sup> The ATCM contains a fifth substantive requirement that pertains to the fuels that may be used in in-use portable equipment engines, but this fuels requirement is not preempted by CAA section 209(e) and does not require an authorization.

relating to the control of emissions from new engines not listed under section 209(e)(1), if certain criteria are met. EPA has promulgated regulations implementing these provisions at 40 CFR part 1074. These regulations set forth the criteria that EPA must consider before granting California authorization to enforce its new nonroad emission standards.<sup>4</sup>

As stated in the preamble to the section 209(e) rule, EPA has historically interpreted the section 209(e)(2)(iii) "consistency" inquiry to require, at minimum, that California standards and enforcement procedures be consistent with section 209(a), section 209(e)(1), and section 209(b)(1)(C) (as EPA has interpreted that subsection in the context of section 209(b) motor vehicle waivers).<sup>5</sup>

In order to be consistent with section 209(a), California's nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. To be consistent with section 209(e)(1), California's nonroad standards and enforcement procedures must not attempt to regulate engine categories that are permanently preempted from state regulation. To determine consistency with section 209(b)(1)(C), EPA typically reviews nonroad authorization requests under the same "consistency" criteria that are applied to motor vehicle waiver requests. Pursuant to section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if she finds that California "standards and accompanying enforcement procedures are not consistent with section 202(a)" of the Act. Previous decisions granting waivers and authorizations have noted that state

standards and enforcement procedures are inconsistent with section 202(a) if: (1) There is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time, or (2) the Federal and state testing procedures impose inconsistent certification requirements.

### III. Procedures for Public Participation

As stated above, EPA is offering the opportunity for a public hearing, and requesting written comment on issues relevant to a full authorization analysis. Specifically, we request comment on: (a) Whether CARB's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious, (b) whether California needs such standards to meet compelling and extraordinary conditions, and (c) whether California's standards and accompanying enforcement procedures are consistent with section 209 of the Act.

If a hearing is held, the Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. Regardless of whether a public hearing is held, EPA will keep the record open until March 24, 2011. Upon expiration of the comment period, the Administrator will render a decision on CARB's request based on the record from the public hearing, if any, all relevant written submissions, and other information that she deems pertinent. All information will be available for inspection at the EPA Air Docket No. EPA-HQ-OAR-2011-0101.

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to the public without further notice to the person making comments.

Dated: February 3, 2011.

**Lori Stewart,**

*Acting Director, Office of Transportation and Air Quality, Office of Air and Radiation.*

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9264-6]

### Science Advisory Board Staff Office; Notification of a Public Meeting of a Science Advisory Board Work Group

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The EPA Science Advisory Board (SAB) Staff Office announces a public meeting of a work group of the Chartered Science Advisory Board to discuss the President's FY 2012 Budget Request for the EPA Office of Research and Development.

**DATES:** The meeting dates are March 3, 2011 from 1 p.m. to 6 p.m. and March 4, 2011 from 8 a.m. to 4 p.m. (Eastern Time).

**ADDRESSES:** The meeting will be held at the Four Points by Sheraton, 1201 K Street, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public wishing to obtain general information concerning this public meeting should contact Dr. Angela Nugent, Designated Federal Officer (DFO), EPA Science Advisory Board (1400R), 1200 Pennsylvania Ave., NW., Washington, DC 20460; *via telephone/voice mail:* (202) 564-2218; *fax:* (202) 565-2098; or e-mail at [nugent.angela@epa.gov](mailto:nugent.angela@epa.gov). General information concerning the EPA Science Advisory Board can be found on the SAB Web site at <http://www.epa.gov/sab>.

**SUPPLEMENTARY INFORMATION:** The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. Pursuant to FACA and EPA policy, notice is hereby given that a work group of the chartered SAB will hold a public meeting to discuss the President's requested Fiscal

<sup>4</sup> Title 40 of the Code of Federal Regulations, part 1074.105 provides:

(a) The Administrator will grant the authorization if California determines that its standards will be, in the aggregate, at least as protective of public health and welfare as otherwise applicable Federal standards.

(b) The authorization will not be granted if the Administrator finds that any of the following are true:

(1) California's determination is arbitrary and capricious.

(2) California does not need such standards to meet compelling and extraordinary conditions.

(3) The California standards and accompanying enforcement procedures are not consistent with section 209 of the Act.

(c) In considering any request from California to authorize the state to adopt or enforce standards or other requirements relating to the control of emissions from new nonroad spark-ignition engines smaller than 50 horsepower, the Administrator will give appropriate consideration to safety factors (including the potential increased risk of burn or fire) associated with compliance with the California standard.

<sup>5</sup> See 59 FR 36969 (July 20, 1994).