

component will be documented in a revision to this rate schedule.

*For Character and Conditions of Service:* Customers who receive deliveries at transmission voltage may in some instances be eligible to receive a 5-percent discount on demand and energy charges when facilities are provided by the customer that results in a sufficient savings to Western to justify the discount. The determination of eligibility for receipt of the voltage discount shall be exclusively vested in Western.

*For Billing of Unauthorized Overruns:* For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual firm power and/or energy obligations, such overrun shall be billed at 10 times the above rate.

*For Power Factor:* None. The customer will be required to maintain a power factor at the point of delivery between 95 percent lagging and 95 percent leading.  
Rate Schedule P-SED-FP10

(Supersedes Schedule P-SED-FP9)  
Effective February 1, 2009

**United States Department of Energy,  
Western Area Power Administration**

**Pick-Sloan Missouri Basin Program—  
Eastern Division Montana, North  
Dakota, South Dakota, Minnesota,  
Iowa, Nebraska;**

*Schedule of Rates for Firm Peaking  
Power Service*

*(Approved Under Rate Order No.  
WAPA-140)*

*Effective:* The first day of the first full billing period beginning on or after February 1, 2009, through December 31, 2013.

*Available:* Within the marketing area served by the Eastern Division of the Pick-Sloan Missouri Basin Program, to customers with generating resources enabling them to use firm peaking power service.

*Applicable:* To the power sold to customers as firm peaking power service.

*Character:* Alternating current, 60 hertz, three phase, delivered and metered at the voltages and points established by contract.

*Monthly Rates*

*Demand Charge:* \$6.20 for each kilowatt per month (kWmonth) of the effective contract rate of delivery for peaking power or the maximum amount scheduled, whichever is greater.

*Energy Charge:* 16.71 mills for each kilowatthour (kWh) for all energy scheduled for delivery without return.

*Charge Components*

*Base:* A fixed revenue requirement that includes operation and maintenance expense, investment and replacements, normal timing purchase power costs (purchases due to operational constraints, not associated with drought), and transmission costs. The Base peaking revenue requirement is \$14.5 million.

$$\text{Base Demand} = \frac{\text{Base Peaking Demand Revenue Requirement}}{\text{Peaking CROD Billing Units}} = \$3.40/\text{kW month}$$

Energy<sup>1</sup> = 9.27 mills/kWh

*Drought Adder:* A formula-based revenue requirement that includes future purchase power above timing

purchases, previous purchase power drought deficits, and interest on the purchase power drought deficits. For

the period beginning February 1, 2009, the Drought Adder peaking revenue requirement is \$12.0 million.

$$\text{Drought Adder Demand} = \frac{\text{Drought Adder Peaking Demand Revenue Requirement}}{\text{Peaking CROD Billing Units}} = \$2.80/\text{kW month}$$

Energy<sup>1</sup> = 7.44 mills/kWh

*Process:*

Any proposed change to the Base component will require a public process. The Drought Adder component may be adjusted annually using the above formula for any costs attributed to drought of less than or equal to the equivalent of 2 mills/kWh to the Power Repayment Study (PRS) composite rate. Any planned incremental adjustment to the Drought Adder component greater than the equivalent of 2 mills/kWh to the PRS composite rate will require a public process.

*Billing Demand:* The billing demand will be the greater of: (1) The highest 30-minute integrated demand measured during the month up to, but not in excess of, the delivery obligation under

the power sales contract, or (2) the contract rate of delivery.

*Adjustments*

*For Drought Adder:* Adjustments pursuant to the Drought Adder component will be documented in a revision to this rate schedule.

*Billing for Unauthorized Overruns:* For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual obligation for peaking demand and/or energy, such overrun shall be billed at 10 times the above rate.

[FR Doc. E9-892 Filed 1-15-09; 8:45 am]

**BILLING CODE 6450-01-P**

**ENVIRONMENTAL PROTECTION  
AGENCY**

[AMS-FRL-8762-9]

**California State Nonroad Engine and  
Vehicle Pollution Control Standards;  
Authorization of Transport  
Refrigeration Unit Engine Standards,  
Notice of Decision**

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

**ACTION:** Notice of Decision for Authorization of California Transport Refrigeration Unit In-use Engine Emission Standards.

**SUMMARY:** EPA today, pursuant to section 209(e) of the Clean Air Act (Act), 42 U.S.C. 7543(e), is granting California its request for authorization to enforce its Airborne Toxic Control measure (ATCM) establishing in-use emission performance standards for engines in

<sup>1</sup> Firm peaking energy is normally returned. This rate will be assessed in the event firm peaking energy is not returned.

transport refrigeration units (TRUs) and TRU generator sets that will be phased-in commencing in December 31, 2008.

**ADDRESSES:** The Agency's Decision Document, containing an explanation of the Assistant Administrator's decision, as well as all documents relied upon in making that decision, including those submitted to EPA by California, are available for public inspection in EPA Air and Radiation Docket and Information Center (Air Docket). Materials relevant to this decision are contained in Docket OAR-2005-0123 at the following location: EPA Air Docket, Room 3334, 1301 Constitution Avenue, NW., Washington, DC, 20460. The EPA Docket Center Public Reading Room is open from 8 a.m. to 5:30 p.m. Monday through Friday, except on government holidays. The Air Docket telephone number is (202) 566-1742, and the facsimile number is (202) 566-1741. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

Additionally, 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> Web site, select "Environmental Protection Agency" from the pull-down Agency list, then scroll to "Keyword or ID" and enter EPA-HQ-OAR-2005-0123 to view documents in the record of this TRU Authorization Request docket. 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 makes available an electronic copy of this Notice via the Internet on the Office of Transportation and Air Quality (OTAQ) homepage (<http://www.epa.gov/OTAQ>). Users can find this document by accessing the OTAQ homepage and looking at the path entitled "Federal Register Notices." This service is free of charge, except any cost you already incur for Internet connectivity. Users can also get the official **Federal Register** version of the Notice on the day of publication on the primary Web site: (<http://www.epa.gov/docs/fedrgstr/EPA-AIR>) Please note that due to differences between the software used to develop the documents and the software into which the documents may be downloaded, changes in format, page length, etc., may occur.

**FOR FURTHER INFORMATION CONTACT:** Robert M. Doyle, Attorney-Advisor, Office of Transportation and Air Quality, (64033), U.S. Environmental

Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (U.S. mail), 1310 L Street, NW., Washington, DC 20005 (courier mail). Telephone: (202) 343-9258, Fax: (202) 343-2804, E-Mail: [doyle.robert@epa.gov](mailto:doyle.robert@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*A. Nonroad Authorizations*

Section 209(e)(1) of the Act addresses the permanent preemption of 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.<sup>1</sup> Section 209(e)(2) of the Act requires the Administrator, after notice and opportunity for public hearing, to grant California authorization to enforce state standards for new nonroad engines or vehicles which are not listed under section 209(e)(1), subject to certain restrictions. On July 20, 1994, EPA promulgated a regulation that sets forth, among other things, the criteria, as found in section 209(e)(2), by which EPA must consider any California authorization requests for new nonroad engines or vehicle emission standards (section 209(e) rules).<sup>2</sup> This regulation, previously codified at 40 CFR Part 85, Subpart Q, and, effective December 8, 2008, codified at 40 CFR Part 1074, provides:

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

(b) The authorization shall not be granted if the Administrator finds that:

(1) The determination of California is arbitrary and capricious;

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

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

<sup>1</sup> Section 209(e)(1) of the Act provides:

No State or any political subdivision thereof shall adopt or attempt to enforce any standard or other requirement relating to the control of emissions from either of the following new nonroad engines or nonroad vehicles subject to regulation under this Act—

(A) New engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower.

(B) New locomotives or new engines used in locomotives. Subsection (b) shall not apply for purposes of this paragraph.

<sup>2</sup> See 59 FR 36969 (July 20, 1994), and regulations set forth therein, 40 CFR Part 85, Subpart Q, §§ 85.1601-85.1606. EPA recently moved these regulations, without changing their substance to 40 CFR Part 1074. See 73 FR 59033, 59279 (October 8, 2008).

As stated in the preamble to the section 209(e) rule, EPA has interpreted the requirement regarding whether "California standards and accompanying enforcement procedures are not consistent with section 209" to mean that California standards and accompanying enforcement procedures must 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 motor vehicle waivers.<sup>3</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. Secondly, California's nonroad standards and enforcement procedures must be consistent with section 209(e)(1), which identifies the categories permanently preempted from state regulation.<sup>4</sup> California's nonroad standards and enforcement procedures would be considered inconsistent with section 209 if they applied to the categories of engines or vehicles identified and preempted from State regulation in section 209(e)(1).

Finally, because California's nonroad standards and enforcement procedures must be consistent with section 209(b)(1)(C), EPA will review nonroad authorization requests under the same "consistency" criteria that are applied to motor vehicle waiver requests. Under section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if he finds that California "standards and accompanying enforcement procedures are not consistent with section 202(a)" of the

<sup>3</sup> See 59 FR 36969, 36983 (July 20, 1994).

<sup>4</sup> Section 209(e)(1) of the Act has been implemented See 40 CFR Part 85, Subpart Q, §§ 85.1602, 85.1603 and, effective December 8, 2008, 40 CFR Part 1074, §§ 1074.10, 1074.12.

§ 1074.10 provides in applicable part:

(a) States are preempted from adopting or enforcing standards or other requirements relating to the control of emissions from new engines smaller than 175 horsepower that are primarily used in farm or construction equipment or vehicles, as defined in this part. For equipment that is used in applications in addition to farming or construction activities, if the equipment is primarily used as farm and/or construction equipment or vehicles (as defined in this part), it is considered farm or construction equipment or vehicles.

§ 1074.5 provides definitions of terms used in § 1074.10 and states in applicable part:

*Construction equipment or vehicle* means any internal combustion engine-powered machine primarily used in construction and located on commercial construction sites.

*Farm Equipment or Vehicle* means any internal combustion engine-powered machine primarily used in the commercial production and/or commercial harvesting of food, fiber, wood, or commercial organic products or for the processing of such products for further use on the farm.

*Primarily used* means used 51 percent or more.

Act. Previous decisions granting waivers of Federal preemption for motor vehicles have stated that State standards are inconsistent with section 202(a) if there is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time period or if the Federal and State test procedures impose inconsistent certification requirements.<sup>5</sup>

With regard to enforcement procedures accompanying standards, EPA must grant the requested authorization unless it finds that these procedures may cause the California standards, in the aggregate, to be less protective of public health and welfare than the applicable Federal standards promulgated pursuant to section 213(a), or unless the Federal and California certification test procedures are inconsistent.<sup>6</sup>

Once California has received an authorization for its standards and enforcement procedures for a certain group or class of nonroad equipment engines or vehicles, it may adopt other conditions precedent to the initial retail sale, titling or registration of these engines or vehicles without the necessity of receiving an additional authorization.<sup>7</sup>

If California acts to amend a previously authorized standard or accompanying enforcement procedure, the amendment may be considered within the scope of a previously granted authorization provided that it does not undermine California's determination that its standards in the aggregate are as protective of public health and welfare as applicable Federal standards, does not affect the consistency with section 209 of the Act, and raises no new issues affecting EPA's previous authorization determination.<sup>8</sup>

<sup>5</sup> To be consistent, the California certification procedures need not be identical to the Federal certification procedures. California procedures would be inconsistent, however, if manufacturers would be unable to meet both the state and the Federal requirement with the same test vehicle in the course of the same test. *See, e.g.*, 43 FR 32182 (July 25, 1978).

<sup>6</sup> *See, e.g., Motor and Equipment Manufacturers Association, Inc. v. EPA*, 627 F.2d 1095, 1111-14 (D.C. Cir. 1979), *cert. denied*, 446 U.S. 952 (1980) (*MEMA I*); 43 FR 25729 (June 14, 1978). While inconsistency with section 202(a) includes technological feasibility, lead time, and cost, these aspects are typically relevant only with regard to standards. The aspect of consistency with 202(a) which is of primary applicability to enforcement procedures (especially test procedures) is test procedure consistency.

<sup>7</sup> *See* 43 FR 36679, 36680 (August 18, 1978).

<sup>8</sup> Decision Document, Dockets A-2000-05 to 08, entry V-B-1, p. 10.

### B. CARB's Authorization Request

CARB, by letter dated March 28, 2005, requested that EPA grant California an authorization to adopt and enforce new regulations which establish in-use performance standards for diesel-fueled TRUs and TRU generator sets which operate in California, and facilities where TRUs operate. The TRU regulations are contained in an Airborne Toxic Control Measure (ATCM) adopted by CARB to reduce the general public's exposure to diesel particulate matter (PM), other toxic airborne contaminants (TACs) and air pollutants generated by TRUs and reduce near source risk at facilities where TRUs congregate. TRUs are refrigeration systems powered by internal combustion engines (almost always diesel-powered) which control the environment of temperature-sensitive products (perishable food and commodities) that are transported in semi-trailer vans, truck vans, "reefer" railcars or shipping containers. The engines in TRUs do not propel the vehicle, but are used strictly to power the refrigeration system. TRU generator sets are designed and used to provide electric power to electrically driven refrigeration units of any kind. These TRU engines are nonroad engines; they do not propel the vehicle, but are used strictly to power the refrigeration system. TRU engines vary in horsepower generally from 7 hp to 36 hp, with the most common size being 35 hp.<sup>9</sup>

Owners/operators of TRUs that operate in California must comply with the in-use performance standards; this applies to TRUs registered in California and outside of California, even if the in-California use is minimal. Most of the engines used in TRUs are already subject to Federal and California emission standards as new engines. New TRU engines less than 25 hp became subject to CARB standards in 1995 and EPA standards in 2000, and engines equal to or greater than 25 hp but less than 50 hp became subject to EPA standards in 1999 and to CARB standards in 2000.

These new CARB regulations will affect in-use TRU engines by requiring the in-use TRU engines to meet specific performance standards that vary by HP range, and have two levels of stringency that are phased in over time—the Low Emission TRU (LETRU) Standards, beginning in 2008, and the Ultra-Low Emission TRU (ULETRU) Performance Standard beginning in 2010. The ATCM requires owners of TRUs to meet more

stringent performance standards at 7-year intervals until the TRU meets the Ultra-Low emission performance standards, and the timing depends on the original Model Year of the engine. The TRU in-use standards correlate to the EPA Tier 4 Nonroad CI standards; the LETRU standards are the EPA Interim standards and the ULETRU standards are the EPA long-term standards.

The TRU regulations offer several ways that owners/operators can comply. The owner/operator may:

- (1) Elect to show that the existing TRU is equipped with an engine that meets the EPA Tier IV certification standard for new non-road engines;
- (2) Repower the TRU system by replacing the existing TRU engine with an engine that meets the EPA Tier IV standard for new engines;
- (3) Replace an existing TRU with a newer TRU that is equipped with an engine that meets the EPA tier IV certificate standard for new engines;
- (4) Retrofit an existing TRU engine using a CARB approved verified diesel emission control strategy (VDECS);
- (5) Use an Alternative Technology approved by CARB.<sup>10</sup>

Owners/Operators of TRU engines 25 hp and over can choose any of the compliance options listed above. Owners/Operators of TRU engines under 25 hp will need to choose either the retrofit option, or the alternative technology option to meet the ULETRU requirement. This is because currently there is no Tier-4 aligned (i.e. after treatment-forcing) EPA standard for engines under 25 hp, so there is no Tier-4 aligned engine certification compliance option available to meet the ULETRU in-use standard.<sup>11</sup>

As required by the Act, EPA offered the opportunity for a public hearing and requested public comments on these new standards by publication of a **Federal Register** notice to such effect on November 21, 2005.<sup>12</sup> EPA received a request for a hearing from the American Trucking Association, and from the

<sup>10</sup> CARB identifies these "Alternative technologies" as including but not limited to the use of electric standby, cryogenic temperature control systems, alternative fuel, alternative diesel fuel, fuel cell power, or any other system approved by the CARB Executive Officer to not emit diesel PM or increase public health risk while at a facility. Alternative technologies only qualify toward compliance with the ULETRU in-use performance standard requirement if they eliminate diesel operation at facilities. CARB TRU Authorization Request, Initial Statement of Reasons, Docket Entry OAR-2005-0123-0005, p. VII-7.

<sup>11</sup> CARB Request Letter and Support Document, Docket Entry OAR-2005-0123-0002, p. 6.

<sup>12</sup> 70 FR 70075 (November 21, 2005), Docket Entry OAR-2005-0123-0001.

Truck Rental and Leasing Association,<sup>13</sup> and a hearing was held on January 23, 2006.<sup>14</sup> In addition, EPA received written comments for the Docket of this proceeding from several commenters, including additional submissions from CARB and some of the parties who testified at the public hearing, submissions from the Owner-Operators Independent Drivers Association, the Truckload Carriers Association, the California Trucking Association, the Pacific Merchant Shipping Association, and the Agricultural and Food Transporters Conference of American Trucking Associations, and a supplemental submission from CARB responding to matters raised by some industry parties in their written comments.<sup>15</sup> Accordingly, EPA has made this authorization decision based on the information submitted by CARB in its requests, and the information presented to the Agency at the public hearing and in the comments received after the hearing.

### C. Authorization Decision

EPA received hearing testimony and written comments from industry parties who opposed the CARB request for authorization request on various grounds. After review of the information submitted by CARB and other parties to the record of this Docket, however, EPA finds that those opposing the authorization request have not met the burden of demonstrating that California's regulations do not satisfy the statutory criteria of section 209(e). For this reason, EPA is granting California authorization to enforce its TRU ATCM regulations. A full explanation of EPA's decision, including our review of comments received, is contained in our Decision Document, which may be obtained as

<sup>13</sup> Letter from Glenn P. Kedzie, American Trucking Association to Robert M. Doyle, USEPA, dated January 27, 2005, Docket Entry 2005-0123-0014, and letter from Thomas James, Truck Rental and Leasing Association to Robert M. Doyle, USEPA, dated December 1, 2005, Docket entry OAR-2005-0123-0015.

<sup>14</sup> EPA received testimony from: Michael Terris, Anthony Andreoni and Rod Hill, California Air Resources Board; Robert Digges, American Trucking Association; Corey England, C.R. England Co.; James Lyons, Sierra Research; Thomas James, Truck Rental and Leasing Association, Andrew Stopka, National Lease Company; Thomas Richichi, Beveridge & Diamond Law Firm, on behalf of the American Trucking Association, and John Kaburick, Earl L. Henderson Trucking Company and on behalf of the Truckload Carriers Association. Written statements presented at this hearing and the hearing transcript appear in the Docket as Docket Entries OAR-2005-0123-0013 and OAR-2005-0123-0017 through OAR-2005-0123-0023.

<sup>15</sup> These comments can be found in the Docket as Docket entries OAR-2005-0123-0024 through OAR-2005-0123-0031.

explained above in the "Addresses" section of this Notice.

My decision will affect not only persons in California but also persons outside the State who would need to comply with California's TRU ATCM regulations to enter California with such engines. For this reason, I hereby determine and find that this is a final action of national applicability.

Under section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by March 17, 2009. Under section 307(b)(2) of the Act, judicial review of this final action may not be obtained in subsequent enforcement proceedings.

As with past authorization decisions, this action is not a rule as defined by Executive Order 12866. Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12866.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3).

Finally, the Administrator has delegated the authority to make determinations regarding authorizations under section 209(e) of the Act to the Assistant Administrator for Air and Radiation.

Dated: January 9, 2009.

**Robert J. Meyers,**

*Principal Deputy Assistant Administrator for Air and Radiation.*

[FR Doc. E9-907 Filed 1-15-09; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-8589-6]

### Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for

copies of EPA comments can be directed to the Office of Federal Activities at 202-564-7146. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 6, 2008 (73 FR 19833).

### Draft EISs

*EIS No. 20080445, ERP No. D-FTA-K59008-CA, Berkeley/Albany Ferry Terminal Study, Proposing to Implement New Ferry Service between Berkeley/Albany and the San Francisco Ferry Building, Funding, San Francisco Water Transit Authority (WETA), Berkeley/Albany, CA.*

Summary: EPA expressed environmental concerns about biological resource and dredging impacts. Rating EC2.

### Final EISs

*EIS No. 20080438, ERP No. F-FHW-K50014-CA, Doyle Drive Project, South Access to the Golden Gate Bridge, Propose to Improve Seismic, Structural, and Traffic Safety, Presidio of San Francisco, San Francisco County Transportation Authority, Marin and San Francisco Counties, CA.*

Summary: EPA continues to have environmental concerns about traffic and localized air quality impacts due to the scale and duration of construction activities.

*EIS No. 20080476, ERP No. F-COE-G39047-00, White River Minimum Flow Study, To Provide an Improved Minimum Flow for the Benefit of the Tail Water Fishery, White River Basin Lakes: Bull Shoal Lakes on the White River; Norfork Lake on the North Fork White River, AR.*

Summary: No formal comment letter was sent to the preparing agency.

*EIS No. 20080482, ERP No. F-DOE-A09800-00, PROGRAMMATIC—Designation of Energy Corridors in 11 Western States, Preferred Location of Future Oil, Gas, and Hydrogen Pipelines and Electricity Transmission and Distribution Facilities on Federal Land, AZ, CA, CO, ID, MT, NV, NM, UT, WA, and WY.*

Summary: While the final Programmatic EIS provided additional information on the interagency operating procedures (IOPs) and impacts to visual resources areas, EPA continues to have environmental concerns about the potential impacts to wetlands in the designated corridors.

*EIS No. 20080483, ERP No. F-FHW-D40184-MO, MO-34 Improvement,*