

November 15, 2003.⁵ The 2004 rulemaking added optional exhaust emission standards for diesel-fueled hybrid-electric urban bus engines for authorized transit agencies with NO_x mitigation plans for the 2004–2006 model years. The 2004 rulemaking was formally adopted by CARB on June 24, 2004,⁶ and became operative under California law on January 31, 2004.⁷ The February 2005 rulemaking clarified the optional standards for hybrid-electric buses that were allowed in the 2004 rulemaking. The February 2005 rulemaking was formally adopted by CARB on February 24, 2005,⁸ and became operative under California law on January 31, 2006.⁹ The October 2005 rulemaking amended the urban bus standards to align with California's existing exhaust emission standards for heavy-duty diesel engines. The October 2005 rulemaking was formally adopted by CARB on July 28, 2006,¹⁰ and became operative under California law on October 7, 2006.¹¹ The revisions to emission standards and test procedures resulting from these five sets of amendments were codified at title 13, California Code of Regulations, section 1952.2 et seq., which was later renumbered to section 2023 et seq.¹²

CARB seeks a waiver of preemption pursuant to section 209(b) of the Clean Air Act for the emission standards and related test procedures contained in its urban bus regulations, as amended through 2000 and 2005.

II. Clean Air Act Waivers of Preemption

Section 209(a) of the Clean Air Act preempts states and local governments from setting emission standards for new motor vehicles and engines. It provides:

No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No state shall require certification, inspection or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

⁵ CARB, "Secretary of State Face Sheet and Final Regulation Order," effective November 15, 2003.

⁶ CARB, "Resolution 04–19," June 24, 2004.

⁷ CARB, "Secretary of State Face Sheet and Final Regulation Order," effective January 31, 2004.

⁸ CARB, "Resolution 05–15," February 24, 2005.

⁹ CARB, "Secretary of State Face Sheet and Final Regulation Order," effective January 31, 2006.

¹⁰ CARB, "Resolution 05–47," September 15, 2005; CARB, "Resolution 05–53," October 20, 2005; CARB Resolution 05–61," October 27, 2005; CARB, "Executive Order R–05–007," July 28, 2006.

¹¹ CARB, "Secretary of State Face Sheet and Final Regulation Order," effective October 7, 2006.

¹² See *supra* notes 3, 5, 7, 9, and 11.

Through operation of section 209(b) of the Act, California is able to seek and receive a waiver of section 209(a)'s preemption. Section 209(b)(1) requires a waiver to be granted for any State that had adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966,¹³ if the State determines that its standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards (this is known as California's "protectiveness determination"). However, no waiver is to be granted if EPA finds that: (A) California's above-noted "protectiveness determination" is arbitrary and capricious;¹⁴ (B) California does not need such State standards to meet compelling and extraordinary conditions;¹⁵ or (C) California's standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act.¹⁶ Regarding consistency with section 202(a), EPA reviews California's standards for technological feasibility and evaluates testing and enforcement procedures to determine whether they would be inconsistent with federal test procedures (e.g., if manufacturers would be unable to meet both California and federal test requirements using the same test vehicle).¹⁷

III. EPA's Request for Comments

EPA is offering the opportunity for a public hearing, and requesting written comment on issues relevant to section 209(b) of the Clean Air Act. Specifically, we request comment on whether: (a) California's determination that its motor vehicle emission standards are, in the aggregate, at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious, (b) California needs such standards to meet compelling and extraordinary conditions, and (c) California's standards and accompanying enforcement procedures are consistent with section 202(a) of the Clean Air Act.

IV. Procedures for Public Participation

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 1, 2013. 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–2012–0745.

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: December 26, 2012.

Christopher Grundler,

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

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BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

California State Nonroad Engine Pollution Control Standards; Transport Refrigeration Units; Request for Authorization; Opportunity for Public Hearing and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has adopted amendments to California's "Airborne Toxic Control Measure for In-Use Diesel-Fueled Transport Refrigeration Units (TRU) and TRU Generator Sets and Facilities Where TRUs Operate." CARB has asked that

¹³ Because California was the only state to have adopted standards prior to 1966, it is the only state that is qualified to seek and receive a waiver. See S.Rep. No. 90–403 at 632 (1967).

¹⁴ CAA section 209(b)(1)(A).

¹⁵ CAA section 209(b)(1)(B).

¹⁶ CAA section 209(b)(1)(C).

¹⁷ See, e.g., 74 FR at 32767 (July 8, 2009); see also *MEMA I*, 627 F.2d at 1126.

EPA confirm that the TRU amendments either fall within the scope of the authorization EPA granted on January 9, 2009, pursuant to section 209(e) of the Clean Air Act, or are not subject to Clean Air Act preemption. This notice announces that EPA has tentatively scheduled a public hearing to consider California's TRU amendments, and that EPA is now accepting written comment on the request.

DATES: EPA has tentatively scheduled a public hearing concerning CARB's request on January 30, 2013, at 10:00 a.m. ET. EPA will hold a hearing only if any party notifies EPA by January 17, 2013, expressing interest in presenting the agency with oral testimony. Parties wishing to present oral testimony at the public hearing should provide written notice to Kristien Knapp at the email 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 1, 2013.

By January 25, 2013, any person who plans to attend the hearing may call Kristien Knapp at (202) 343-9949, to learn if a hearing will be held.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2012-0741, by one of the following methods:

- *On-Line at <http://www.regulations.gov>:* Follow the On-Line Instructions for Submitting Comments.
- *Email: a-and-r-docket@epa.gov.*
- *Fax: (202) 566-1741.*
- *Mail: Air and Radiation Docket, Docket ID No. EPA-HQ-OAR-2012-0741, 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-2012-0741. 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://](http://www.regulations.gov)

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 email. 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 email comment directly to EPA without going through <http://www.regulations.gov>, your email 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-2012-0741. 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 (email) address for the Air and Radiation Docket is: *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> Web site, enter EPA-HQ-OAR-2012-0741, 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 Web page 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: Kristien G. Knapp, Attorney-Advisor, Compliance Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue (6405), NW., Washington, DC 20460. Telephone: (202) 343-9949. Fax: (202) 343-2804. Email: knapp.kristien@epa.gov.

SUPPLEMENTARY INFORMATION:

I. California's TRU Regulations

By letter dated May 13, 2011, CARB submitted to EPA its request pursuant to section 209(e) of the Clean Air Act ("CAA" or "the Act"), regarding its "Airborne Toxic Control Measure for In-Use Diesel-Fueled Transport Refrigeration Units (TRU) and TRU Generator Sets and Facilities Where TRUs Operate" (hereinafter "CARB's TRU Amendments").¹ CARB's TRU Amendments accomplish three main objectives: (1) Relax the TRU in-use compliance requirements for all 2003 and some 2004 model year TRUs and TRU generator sets (collectively referred to as "TRUs"), (2) clarify the operational useful life of TRU flexibility engines, and (3) establish new reporting and recordkeeping requirements for TRU original equipment manufacturers (OEMs). CARB formally adopted the TRU Amendments on February 4, 2011,² and they became operative under California law on March 7, 2011. The TRU amendments are codified at title

¹ California Air Resources Board ("CARB"), "Request for Authorization," May 13, 2011.

² CARB, "Resolution 10-39," November 18, 2010; CARB, "Executive Order R-11-001," February 2, 2011.

13, California Code of Regulations, section 2477.³

EPA granted an authorization for California's initial set of TRU regulations on January 9, 2009, notice of which was published in the **Federal Register** on January 16, 2009.⁴ CARB seeks EPA's confirmation that the TRU Amendments either fall within the scope of that previous authorization, pursuant to section 209(e) of the Clean Air Act, or are not subject to Clean Air Act preemption.

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. States are also preempted from adopting and enforcing standards and other requirements related to the control of emissions from non-new nonroad engines or vehicles. Section 209(e)(2) requires the Administrator, after notice and opportunity for public hearing, to authorize California to enforce such standards and other requirements, unless EPA makes one of three findings. In addition, other states with attainment plans may adopt and enforce such regulations if the standards, and implementation and enforcement procedures, are identical to California's standards. On July 20, 1994, EPA promulgated a rule that sets forth, among other things, regulations providing the criteria, as found in section 209(e)(2), which EPA must consider before granting any California authorization request for new nonroad engine or vehicle emission standards.⁵ EPA later revised these regulations in 1997.⁶ As stated in the preamble to the

1994 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).⁷

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.

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

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.

⁷ 59 FR 36969 (July 20, 1994).

must not raise any "new issues" affecting EPA's prior authorizations.

III. EPA's Request for Comments

As stated above, EPA is offering the opportunity for a public hearing, and requesting written comment on issues relevant to a within-the-scope analysis. Specifically, we request comment on: whether California's TRU Amendments (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 209 of the Act, and (3) raise any other new issues affecting EPA's previous waiver or authorization determinations.

Should any party believe that the TRU amendments are not within the scope of the previous TRU authorization, EPA also requests comment on whether the California TRU Amendments meet the criteria for a full authorization. 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.

IV. Procedures for Public Participation

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 1, 2013. 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-2012-0741.

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

³ CARB, "Final Regulation Order for title 13, California Code of Regulations, section 2477."

⁴ 74 FR 3030 (January 16, 2009).

⁵ 59 FR 36969 (July 20, 1994).

⁶ 62 FR 67733 (December 30, 1997). The applicable regulations, now in 40 CFR part 1074, subpart B, § 1074.105, provide:

(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

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: December 26, 2012.

Christopher Grundler,

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-9766-2]

California State Nonroad Engine Pollution Control Standards; Off-Highway Recreational Vehicles and Engines; Request for Authorization; Opportunity for Public Hearing and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has adopted regulations to amend its Off-Highway Recreational Vehicle and Engines ("OHRV") Regulations. By letter dated March 24, 2010, CARB submitted a request that EPA authorize these regulations under section 209(e) of the Clean Air Act (CAA), 42 U.S.C. 7543(b). CARB seeks confirmation that certain of the amendments are within the scope of a prior authorization issued by EPA, and that certain of the amendments require and merit a new authorization. This notice announces that EPA has tentatively scheduled a public hearing to consider California's 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 January 30, 2013, at 10:00 a.m. at EPA's offices at 1310 L Street NW., Washington, DC 20005. EPA will hold a hearing only if anyone notifies EPA that it will present oral testimony at the hearing. Parties wishing to present oral testimony at the public hearing must provide written notice by January 17, 2013 to Suzanne Bessette at

the email address noted below. If EPA does not receive a request for a public hearing, it will not hold a hearing and instead will consider CARB's request based on written submissions to the docket. Any party may submit written comments by March 1, 2013.

By January 25, 2013, any person who plans to attend the hearing may check the following Web page for an update, <http://www.epa.gov/otaq/cafr.htm>, or may call Suzanne Bessette at (734) 214-4703 to learn if a hearing will be held.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2012-0742, by one of the following methods:

- *On-Line at <http://www.regulations.gov>:* Follow the On-Line Instructions for Submitting Comments.
- *Email:* a-and-r-docket@epa.gov.
- *Fax:* (202) 566-1741.
- *Mail:* Air and Radiation Docket, Docket ID No. EPA-HQ-OAR-2012-0742, 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-2012-0742. EPA's policy is that all comments received 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 email. 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 email comment directly to EPA without going through <http://www.regulations.gov>, your email 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-2012-0742. 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 (email) address for the Air and Radiation Docket is: 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> Web site, enter EPA-HQ-OAR-2012-0742 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 Web page that contains general information on its review of California waiver and authorization requests. Included on that page are links to several of the prior **Federal Register** notices which are cited