

testify on the nonroad emission amendments, then no hearing will be held and EPA will consider CARB's request based on written submissions to the record.

DATES: EPA has tentatively scheduled a public hearing for March 1, 1995 beginning at 9:00 a.m., if any party notifies EPA by February 21, 1995 that it wishes to present oral testimony regarding CARB's request. Any party may submit written comments regarding CARB's requests by March 31, 1995. After February 21, 1995, any person who plans to attend the hearing may call Janice Raburn of EPA's Manufacturers Operations Division at (202) 233-9294 to determine if a hearing will be held.

ADDRESSES: If a request is received, EPA will hold the public hearing announced in this notice at the Channel Inn (Captain's Room), 650 Water Street SW., Washington, DC 20024. Parties wishing to present oral testimony at the public hearing should notify in writing, and if possible, submit ten (10) copies of the planned testimony to: Charles N. Freed, Director, Manufacturers Operations Division (6405J), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. In addition, any written comments regarding the waiver request should be sent, in duplicate, to Charles N. Freed at the same address to the attention of Docket A-94-44. Copies of material relevant to the waiver request (Docket A-94-44) will be available for public inspection during normal working hours of 8 a.m. to 5:30 p.m. Monday through Friday, including all non-government holidays, at the U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center, 401 M Street SW., Washington, DC 20460. Telephone: (202) 260-7548. FAX Number: (202) 260-4400.

FOR FURTHER INFORMATION CONTACT: Janice Raburn, Attorney/Advisor, Manufacturers Operations Division (6405J), U.S. Environmental Protection Agency, Washington, DC 20460. Telephone: (202) 233-9294.

SUPPLEMENTARY INFORMATION:

I. Background

Section 209(e)(1) of the Act as amended, 42 U.S.C. 7543(e)(1), provides in part: "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, and (B) new locomotives or new engines used in locomotives."

For those new pieces of equipment or new vehicles other than those a State is not permanently preempted from regulating under section 209(e)(1), the State of California may promulgate standards regulating such new equipment or new vehicles provided California complies with Section 209(e)(2). Section 209(e)(2) provides in part that the Administrator shall, after notice and opportunity for public hearing, authorize California to adopt and enforce standards and other requirements relating to the control of emissions from such vehicles or engines "[i]f California determines that California standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. No such authorization shall be granted if the Administrator finds that: (i) The determination of California is arbitrary and capricious, (ii) California does not need such California standards to meet compelling and extraordinary conditions, or (iii) California standards and accompanying enforcement procedures are not consistent with this section."

EPA interpreted the preceding criterion regarding consistency in the final regulation it issued to implement section 209(e) entitled "Air Pollution Control; Preemption of State Regulation for Nonroad Engine and Vehicle Standards" (section 209(e) rule). This rule sets forth several definitions and the authorization criteria EPA must consider before granting California an authorization to enforce any of its nonroad engine standards.¹ As described in the section 209(e) rule, in order to be deemed "consistent with this section", California standards and enforcement procedures must be consistent with section 209. In order to be consistent with section 209, California standards and enforcement procedures must reflect the requirements of sections 209(a), 209(e)(1), and 209(b). Section 209(a) prohibits states from adopting or enforcing emission standards for new motor vehicles or new motor vehicle engines. Section 209(e)(1) identifies the categories preempted from state regulation. As stated above, the preempted categories are (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, and (b) new locomotives or new engines used in locomotives. The section 209(e) rule includes definitions for farm equipment or vehicles and construction equipment or vehicles. California's proposed regulations would be considered inconsistent with section 209 if they applied to these permanently preempted categories. Additionally, the section 209(e) rule requires EPA to review nonroad authorization requests under the same "consistency" criterion that it reviews motor vehicle waiver requests. Under 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. California's nonroad standards would not be consistent with section 202(a) if there were inadequate lead time to permit the development of technology necessary to meet those standards, giving appropriate consideration to the cost of compliance within that time frame. Additionally, California's nonroad accompanying enforcement procedures would be inconsistent with section 202(a) if the Federal and California test procedures were inconsistent, that is, manufacturers would be unable to meet both the State and Federal test requirements with one test vehicle or engine.

Once California has been granted an authorization, under section 209(e)(2), for its standards and accompanying enforcement procedures for a category or categories of equipment, it may adopt other conditions precedent to initial retail sale, titling or registration of the subject category or categories of equipment without the necessity of receiving further EPA authorization.

By letter dated August 24, 1993, CARB submitted to EPA a request that EPA authorize California to adopt regulations for 1996 and later model heavy-duty off-road diesel cycle engines. By letter dated July 26, 1994, EPA informed CARB that in light of two final rules issued by EPA, it would be necessary for CARB to revise its waiver request before EPA could begin the waiver process. First, EPA had not been able to process the nonroad waiver request until it issued a final section 209(e) rule (discussed above). In addition, EPA issued a rulemaking setting federal nonroad standards under section 213 of the Act.² One of the waiver requirements under section 209 is that CARB make a determination that its standards and test procedures are, in

¹ See 59 FR 36969, July 20, 1994 (to be codified at 40 CFR Part 85, Subpart Q, §§ 85.1601-85.1606). This final rule titled "Air Pollution Control; Preemption of State Regulation for Nonroad Engine and Vehicle Standards" was proposed at 56 FR 45866, Sept. 6, 1991.

² 59 FR 31306 (June 17, 1994).