

the aggregate, at least as protective of public health and welfare as applicable federal standards. At the time CARB made the analysis for its August 23, 1993, waiver request, EPA had proposed but not finalized federal standards for nonroad engines at or above 37kW. Thus, CARB made a determination based upon a comparison between its standards and the standards EPA was proposing at that time. EPA made a few changes to its final rule, thus making it necessary for CARB to revise its finding and determination so as to have compared its standards with the final federal standards. By letter dated August 17, 1994, CARB submitted to EPA a supplement to its request of August 24, 1993, with the updated comparison that EPA requested.

California's regulations apply to all new heavy-duty off-road diesel cycle engines, 175 horsepower or greater, including alternate-fueled engines, produced on or after January 1, 1996. These regulations:

a. Establish tier 1 smoke and exhaust emission standards for engines 175 to 750 horsepower produced on or after January 1, 1996.

b. Establish smoke and exhaust emission standards for engines greater than 750 horsepower produced on or after January 1, 2000. (These engines are low sales volume, so longer development time is allowed.)

c. Establish tier 2 smoke and exhaust emission standards for engines 175 to 750 horsepower produced on or after January 1, 2001.

d. Require that crankcase emissions be controlled for 1996 and later alternate-fueled engines derived from diesel cycle engines and naturally aspirated diesel-fueled engines used in heavy-duty off-road applications.

e. Require that commencing in the year 2000, replacement engines for pre-1996 equipment comply with the 1996 emission regulations. Replacement engines for 1996 and later equipment are required to comply with the emissions standards applicable to the original engine.

f. Establish an 8-mode steady state emissions test for certification testing.

g. Require certification compliance testing, quality audit assembly line testing, and new engine compliance testing.

h. Establish a labeling requirement.

i. Require manufacturers to provide a five year or 3000 hour emissions warranty.

EPA issued a final rule (referenced above) for nonroad engines of similar horsepower on June 17, 1994.³ EPA set

standards for engines at or greater than 130 to 560 kW (175 horsepower to 750 horsepower) identical to the CARB standards and effective January 1, 1996, the same date as the CARB standards. Also, EPA set standards for engines greater than 560 kW (750 horsepower) identical to CARB standards and effective January 1, 2000, the same date as the CARB standards. EPA did not promulgate tier 2 standards for the 175—750 horsepower category, so beginning in 2001 CARB standards would be more stringent than EPA standards.

California states in its August 17, 1994 letter that it has determined that its standards and test procedures for 1996 and later model heavy-duty off-road diesel cycle engines would not cause California emission standards, in the aggregate, to be less protective of public health and welfare as the applicable Federal standards. Further, California references its August 24, 1993 letter, which explained why compelling and extraordinary conditions warrant the need in California for separate standards for heavy-duty off-road diesel cycle engines. Finally, California states that its standards and test procedures are consistent with section 209 of the Act. California's request will be considered according to the criteria for an authorization request as set forth in the section 209(e) regulation.⁴ Any party wishing to present testimony at the hearing or by written comment should address, as explained in the section 209(e) rule, the following issues:

(1) Whether California's determination that its standards are at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious;

(2) Whether California needs separate standards to meet compelling and extraordinary conditions; and,

(3) Whether California's standards and accompanying enforcement procedures are consistent with (i) section 209(a), which prohibits states from adopting or enforcing emission standards for new motor vehicles or engines, (ii) section 209(e)(1), which identifies the categories preempted from state regulation, and (iii) section 202(a) of the Act.

II. Public Participation

If the scheduled hearing takes place, it will provide an opportunity for interested parties to state orally their views or arguments or to provide

pertinent information regarding the issues as noted above and further explained in the section 209(e) rule. Any party desiring to make an oral statement on the record should file ten (10) copies of its proposed testimony and other relevant material along with its request for a hearing with the Director of EPA's Manufacturers Operations Division at the Director's address listed above not later than February 21, 1995. In addition, the party should submit 50 copies, if possible, of the proposed statement to the presiding officer at the time of the hearing.

In recognition that a public hearing is designed to give interested parties an opportunity to participate in this proceeding, there are no adverse parties as such. Statements by participants will not be subject to cross-examination by other participants without special approval by the presiding officer. The presiding officer is authorized to strike from the record statements which he deems irrelevant or repetitious and to impose reasonable limits on the duration of the statement of any participant.

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 31, 1995.

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." To ensure that proprietary information is not inadvertently placed in the docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. If a person making comments wants EPA to base its final decision in part on a submission labeled as confidential business information, then a non-confidential version of the document which summarizes the key data or information should be placed in the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the person making comments.

⁴ "Air Pollution Control; Preemption of State Regulation for Nonroad Engine and Vehicle Standards" at 59 FR 36969, July 20, 1994 (to be codified at 40 CFR Part 85, Subpart Q, §§ 85.1601-85.1606).

³ 59 FR 31306 (June 17, 1994).