

determine progress each NEP is making in implementing its CCMP and achieving environmental results. In addition to evaluating progress, the results are used to identify areas of weakness each NEP should address for long-term success in protecting and restoring their estuaries. EPA will also compile successful tools and approaches as well as lessons learned from all implementation reviews to transfer to the NEPs and other watershed programs. For this ICR cycle, implementation reviews will be required for seven programs in FY2006, 12 programs in FY2007, and nine programs in 2008.

#### *Government Performance Results Act*

EPA requests that each of the 28 NEPs receiving section 320 funds report information that can be used in the GPRA reporting process. This reporting is done on an annual basis and is used to show environmental results that are being achieved within the overall NEP Program. This information is ultimately submitted to Congress along with GPRA information from other EPA programs.

**Burden Statement:** The annual public reporting and recordkeeping burden for this collection of information is estimated to average 218 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

*Estimated total number of potential respondents:* 28.

*Frequency of response:* Annual.

*Estimated total average number of responses for each respondent:* 2.

*Estimated total annual burden hours:* 6,113.

*Estimated total annual costs:* \$409,349.

#### **Are There Changes in the Estimates From the Last Approval?**

There are no changes in burden from the last approval.

#### **What is the Next Step in the Process for This ICR?**

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** Notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: May 17, 2006.

**Diane C. Regas,**

*Director, Office of Wetlands, Oceans and Watersheds.*

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#### **ENVIRONMENTAL PROTECTION AGENCY**

**[AMS-FRL-8173-3]**

#### **California State Nonroad Engine and Vehicle Pollution Control Standards; Authorization of Large Off-Road Spark-Ignition Engine Standards, Notice of Decision**

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

**ACTION:** Notice of decision for authorization of Large Off-Road Spark-Ignition Engine Standards.

**SUMMARY:** EPA today, pursuant to section 209(e) of the Clean Air Act (Act), 42 U.S.C. 7543(b), is authorizing California to enforce its regulations setting emission standards and other requirements for large off-road spark-ignition engines.

**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 CARB, are available for public inspection in EPA Air Docket OATR-2004-0404 at the following address: EPA Docket Center (EPA/DC), Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Monday through Friday,

except on government holidays. The Air Docket telephone number is (202) 566-1744, 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.

#### **FOR FURTHER INFORMATION CONTACT:**

Robert M. Doyle, Attorney-Advisor, Office of Transportation and Air Quality, (6403), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, D.C. 20460 (U.S. mail), 501 3rd Street NW., Washington, DC 20005 (courier mail). Telephone: (202) 343-9258, Fax: (202) 343-2804, E-Mail: [doyle.robert@epe.gov](mailto:doyle.robert@epe.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Obtaining Electronic Copies of Documents**

EPA makes available an electronic copy of this Notice 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.

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 Docket ID EPA-HQ-OAR-2004-0404 to view documents in the record of the large offroad spark ignition engine authorization request. 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.

##### **II. 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 allows the Administrator 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>

Section 209(e)(2) requires the Administrator, after notice and opportunity for public hearing, to authorize California to enforce standards and other requirements relating to emissions control of new engines not listed under section 209(e)(1).<sup>3</sup> The section 209(e) rule and its codified regulations<sup>4</sup> formally set forth the criteria, located in section 209(e)(2) of the Act, by which EPA must grant California authorization to enforce its new nonroad emission standards:

40 CFR part 85, subpart Q, § 85.1605 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.

As stated in the preamble to the section 209(e) rule, EPA has interpreted the requirement that EPA cannot find "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>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. 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>6</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 she finds that California "standards and accompanying enforcement procedures are not consistent with section 202(a)" of the 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>7</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>8</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>9</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>10</sup>

#### *(B) The Off-Road Large Spark Ignition Engines Regulations Request*

By letter dated February 15, 2000, CARB requested EPA authorization to enforce California's Off-Road Large Spark Ignition Engine (LSI)

<sup>7</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>8</sup> *See, e.g., Motor and Equipment Manufacturers Association, Inc. v. EPA*, 627 F.2d 1095, 1111-14 (DC 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>9</sup> *See* 43 FR 36679, 36680 (August 18, 1978).

<sup>10</sup> Decision Document for California Nonroad Engine Regulations Amendments, Dockets A-2000-05 to 08, entry V-B, p. 28.

<sup>5</sup> *See* 59 FR 36969, 36983 (July 20, 1994).

<sup>6</sup> Section 209(e)(1) of the Act has been implemented. *See* 40 CFR part 85, subpart Q, §§ 85.1602, 85.1603.

§ 85.1603 provides in applicable part:

(a) 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 subpart, it is considered farm or construction equipment or vehicles. (b) 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 subpart.

§ 85.1602 provides definitions of terms used in § 85.1603 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.

<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.

<sup>3</sup> As discussed above, states are permanently preempted from adopting or enforcing standards relating to the control of emissions from new engines listed in section 209(e)(1).

<sup>4</sup> *See* 40 CFR part 85, subpart Q, § 85.1605.

regulations.<sup>11</sup> The CARB regulations set emission standards for these engines commencing with model year 2001 for certification and with model year 2004 for in-use compliance. There are two sets of standards depending on the size of the engine; one set for LSI engines less than or equal to 1.0 liters displacement, and the other for LSI engines greater than 1.0 liters displacement. For the smaller LSI engines, CARB set standards for HC plus Nox and for CO at static levels for model year 2002 and beyond, and 100% of a manufacturer's sales must meet the standards each year. For the larger LSI engines, CARB approved two tiers of emission levels. For Tier 1, manufacturers are able to phase-in compliance at certification with 25% of the sales for 2001, 50% for 2003, and 75% for 2003, and manufacturers have no in-use compliance requirement. For Tier 2, beginning with the 2004 model year, manufacturers have to meet the standards at certification with 100% of sales, and are subject to in-use compliance with a less stringent standards for model years 2004 through 2006 (with an engine durability period of 3500 hours or 5 years) and full in-use standards for model years 2007 and beyond (with a durability period of 5000 hours or 7 years).

To accompany the new standards, CARB also adopted regulations requiring manufacturer production line testing (along with CARB authority to conduct Selective Enforcement Audits), manufacturer required in-use testing, an in-use emission credit program, permanent emission labels, and emission warranties. CARB also adopted provisions to provide relief to small volume manufacturers (annual production under 2000 engines) basically by delaying the time when they must comply with in-use standards until 2004.

EPA offered the opportunity for a public hearing, and requested public comments, on the CARB authorization request, as the Act requires us to do, by publication of a **Federal Register** notice to such effect on January 12, 2005.<sup>12</sup> There was no request for a public hearing, nor were any comments received on the CARB authorization

request. Therefore, EPA has made this determination based on the information submitted by CARB in its request.

### (C) Authorization Decision

EPA has decided to grant California authorization to enforce its regulations setting emission standards and other requirements for large off-road spark-ignition engines. In its request letter, CARB stated that these LSI regulations will not cause the California nonroad standards, in the aggregate, to be less protective of public health and welfare than the applicable Federal standards. CARB also stated that California's need for the emission reductions expected from the LSI regulations remains compelling. Finally, regarding consistency with section 209, CARB stated that the LSI regulations (1) apply only to nonroad engines and vehicles and not to motor vehicles or engines, (2) apply only to those nonroad engines and vehicles which are not included in the preempted categories, and (3) do not raise any concerns of inadequate leadtime or technological feasibility or impose any certification requirements inconsistent with Federal requirements.

EPA agrees with all CARB findings with regard to the provisions listed. Additionally, no information was presented to EPA by any party which would demonstrate that California did not meet the burden of satisfying the statutory criteria of section 209(e). For these reasons, EPA authorizes California to enforce these LSI regulations.

My decision will affect not only persons in California but also the manufacturers outside the State who must comply with California's requirements in order to produce nonroad engines and vehicles for sale in California. 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 July 24, 2006. 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: May 15, 2006.

**William L. Wehrum,**

*Acting Assistant Administrator for Air and Radiation.*

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-8173-5; Docket I.D. No. EPA-HQ-ORD-0116]

### Harmonization in Interspecies Extrapolation: Use of BW<sup>3/4</sup> as Default Method in Derivation of the Oral RfD

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

**ACTION:** Notice of Peer-Review Teleconference with opportunity for public comment.

**SUMMARY:** EPA is announcing that Versar, Inc., an EPA contractor for external scientific peer review, plans to convene an independent panel of experts and organize and conduct an external peer review meeting to review the draft document titled, "Harmonization in Interspecies Extrapolation: Use of BW<sup>3/4</sup> as Default Method in Derivation of the Oral RfD" (EPA/630/R-06/001). The peer review meeting is planned to take place by teleconference. On February 15, 2006, EPA announced a 60-day public comment period for the draft document (71 FR 7958). The draft document was prepared by the Agency's Risk Assessment Forum.

The public comment period and the external peer review are separate processes that provide opportunities for all interested parties to comment on the document. In addition to considering public comments submitted in accordance with the February 15, 2006, announcement of a public comment period, EPA intends to forward those comments to Versar, Inc. for the external peer review panel prior to the teleconference.

<sup>11</sup> These engines are often derived from automobile engines, although they have less sophisticated fuel and emission control systems, and are fueled usually by either gasoline or liquefied petroleum gas (LPG). Typical applications for these LSI engines are forklifts, portable generators, large turf care equipment, irrigation pumps, welders, air compressors, scrubber/sweepers, and airport service vehicles. CARB Initial Staff Report, Docket Entry OAR-2004-0404-0008, p1.

<sup>12</sup> 70 FR 2151 (January 12, 2005).