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ENVIRONMENTAL PROTECTION AGENCY

[FRL-9260-5]

California State Motor Vehicle and Nonroad Engine Pollution
Control Standards; Mobile Cargo Handling Equipment Regulation at Ports
and Intermodal Rail Yards; Opportunity for Public Hearing and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of opportunity for public hearing and comment.

SUMMARY: The California Air Resources Board (CARB) has notified EPA
that it has adopted regulations for mobile cargo handling equipment at
ports and intermodal rail yards (Mobile Cargo

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Handling Equipment). CARB's Mobile Cargo Handling Equipment
requirements are designed to use best available control technologies to
reduce public exposure to emissions of diesel particulate matter and
nitrogen oxides. The requirements apply to any motorized vehicle used
to handle cargo, including yard trucks, top handlers, side handlers,
rubber-tired gantry cranes, forklifts, dozers, and loaders. By letter
dated January 29, 2007, CARB has requested that EPA confirm that
certain requirements are within-the-scope of previously granted EPA
waivers and authorizations under the Clean Air Act, and grant a new
full authorization pursuant to the Clean Air Act for other requirements
that are applicable to nonroad engines. This notice announces that EPA
has tentatively scheduled a public hearing to consider California's
Mobile Cargo Handling Equipment 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 Thursday, February 17, 2011, at 1 p.m. EPA will hold a
hearing only if any party notifies EPA by February 7, 2011, expressing
its interest in presenting oral testimony. By February 11, 2011, any
person who plans to attend the hearing may call David Alexander at

(202) 343-9540, to learn if a hearing will be held or may check the following webpage for an update: <http://www.epa.gov/otag/cafr.htm>.

Parties wishing to present oral testimony at the public hearing should provide written notice to David Alexander at the e-mail address noted below. If EPA receives a request for a public hearing, that hearing will be held in Room 1332A of the Ariel Rios North Building, which is located at 1200 Pennsylvania Avenue, NW., Washington, DC 20004.

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 17, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2010-0862, by one of the following methods:

On-Line at <http://www.regulations.gov>: Follow the On-Line Instructions for Submitting Comments.

E-mail: a-and-r-docket@epa.gov.

Fax: (202) 566-1741.

Mail: Air and Radiation Docket, Docket ID No. EPA-HQ-OAR-2010-0862, 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-2010-0862. 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://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 e-mail. 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 e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail 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-2010-0862. 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 (e-mail) 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-2010-0862, 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 webpage 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/otag/cafr.htm>.

FOR FURTHER INFORMATION CONTACT: David Alexander, Compliance and Innovative Strategies Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue (6405J), NW., Washington, DC 20460. Telephone: (202) 343-9540. Fax: (202) 343-2800. E-mail: alexander.david@epa.gov.

SUPPLEMENTARY INFORMATION:

I. California's Mobile Cargo Handling Requirements for Equipment at Ports and Intermodal Rail Yards

In a letter dated January 29, 2007, CARB submitted to EPA its request pursuant to section 209 of the Clean Air Act (``CAA'' or ``the Act''), regarding its regulations for Mobile Cargo Handling Equipment at Ports and Intermodal Rail Yards (``Mobile Cargo Handling Equipment'' or ``CHE''). CARB's Mobile Cargo Handling Equipment regulations were adopted at CARB's December 8, 2005 public hearing (by Resolution 05-62) and were subsequently modified

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after making the regulation available for supplemental public comment by CARB's Executive Officer in Executive Order R-06-007 on June 2, 2006. The Mobile Cargo Handling Equipment regulations are codified at title 12, California Code of Regulations section 2479.

CARB's Mobile Cargo Handling Equipment regulations establish best available control technology (BACT) requirements that affect the sellers, renters, lessors, owners, and operators of mobile cargo handling equipment that are used at California's ports or intermodal rail yards. For newly purchased, leased, or rented equipment, certified on-road engines would be required if available for the specific equipment type and application. Otherwise, the highest level certified off-road engine would be required, along with installation of the highest level verified diesel emission control strategy (VDECS) within one year of purchase, lease, or rent, or within six months of becoming available, if after a year. The regulations require in-use yard trucks to meet BACT performance standards primarily through accelerated turnover of older yard trucks to those equipped with cleaner, on-road engines (2007 model year or later). Owners or operators who have installed VDECS prior to the end of 2006, or who are already using certified on-road engines, are given additional time to comply. In addition, compliance is phased in for owners or operators who have more than three yard trucks in their fleet.

Equipment other than yard trucks (non-yard trucks) would also be required to meet BACT, constituting replacement by cleaner on-road or off-road engines and/or the use of retrofits. When retrofits are used, replacement with Tier 4 off-road engines or installation of a Level 3 VDECS (which achieves an eighty-five percent reduction of emissions of diesel particulate matter) is required for some equipment. The Mobile Cargo Handling Equipment regulations also include recordkeeping and reporting requirements for owners and operators of mobile cargo handling equipment.

II. Clean Air Act New Motor Vehicle and Engine 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.

Through operation of section 209(b) of the Act, California is able to seek and receive a waiver of section 209(a)'s preemption. If certain criteria are met, section 209(b)(1) of the Act requires the Administrator, after notice and opportunity for public hearing, to

waive application of the prohibitions of section 209(a). Section 209(b)(1) only allows 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, 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 (i.e., if such State makes a ``protectiveness determination``). 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.\1\ The Administrator must grant a waiver unless she finds that: (A) California's above-noted ``protectiveness determination`` is arbitrary and capricious; \2\ (B) California does not need such State standards to meet compelling and extraordinary conditions; \3\ or (C) California's standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act.\4\ EPA has previously stated that consistency with section 202(a) requires that California's standards must be technologically feasible within the lead time provided, giving due consideration of costs, and that California and applicable Federal test procedures be consistent.\5\

\1\ See S.Rep. No. 90-403 at 632 (1967).

\2\ Clean Air Act (CAA) section 209(b)(1)(A).

\3\ CAA section 209(b)(1)(B).

\4\ CAA section 209(b)(1)(C).

\5\ See, e.g., 74 FR 32767 (July 8, 2009); see also Motor and Equipment Manufacturers Association v. EPA (MEMA I), 627 F.2d 1095, 1126 (D.C.Cir. 1979).

III. 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.

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 the control of emissions from new engines not listed under section 209(e)(1), if certain criteria are met. EPA has promulgated regulations implementing these provisions at 40 CFR part 1074. These regulations set forth the criteria that EPA must consider before granting California authorization to enforce its new nonroad emission standards. Title 40 of the Code of Federal Regulations, part 1074.105 provides:

(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 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.

As stated in the preamble to the section 209(e) 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).\6\

\6\ See 59 FR 36969 (July 20, 1994).

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

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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.

IV. Within-the-Scope Determinations

If California amends regulations that were previously granted a waiver of preemption or authorization, EPA can confirm that the amended

regulations are within-the-scope of the previously granted waiver or authorization. Such within-the-scope amendments are permissible without a full waiver 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 must not raise any ``new issues'' affecting EPA's prior waivers or authorizations.

V. EPA's Request for Public Comment

When EPA receives a new waiver or authorization request from CARB, EPA traditionally publishes a notice of opportunity for public hearing and comment, and then publishes a decision in the Federal Register following the conclusion of the comment period. In contrast, when EPA receives a request from CARB for a within-the-scope confirmation, EPA may publish a decision in the Federal Register and concurrently invite public comment if an interested party is opposed to EPA's decision.

Because CARB's request regarding its Mobile Cargo Handling Equipment regulations includes both within-the-scope confirmation requests and a request for a full authorization, EPA is inviting comment on several issues. First, we request comment on which criteria we should apply to the various provisions included within CARB's Mobile Cargo Handling Equipment regulations. More specifically, we are requesting comment on whether any of the particular regulatory provisions included in CARB's request should be considered as within-the-scope of previous EPA waivers or authorizations, and which particular regulatory provisions should be so considered, or whether EPA should consider all of the regulatory provisions as requiring a full waiver or authorization. Next, we seek comment on application of the appropriate criteria. To the extent that a commenter believes a regulatory provision is within-the-scope, they should also comment on how EPA should apply its within-the-scope criteria; alternatively, should a commenter believe that a particular regulatory provision requires a full waiver or authorization, we request comment on whether California has met the criteria for receipt of a full waiver or authorization.

Within the context of a within-the-scope analysis, EPA invites comment on whether California's Mobile Cargo Handling Equipment requirements: (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 202(a) of the Act, and (3) raise any other new issues affecting EPA's previous waiver or authorization determinations.

As stated above, EPA is also requesting comment on issues relevant to a full waiver and authorization analyses, in the event that EPA determines that any of California's standards should not be considered within-the-scope of CARB's previous waivers and authorizations, and instead require a full waiver or authorization analysis. 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.

VI. 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 17, 2011. 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-2010-0862.

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: January 25, 2011.

Margo T. Oge,
Director, Office of Transportation and Air Quality, Office of Air and Radiation.

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