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Dated: April 14, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–08354 Filed 4–19–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2021–0327; FRL–8869–02–OAR]

California State Nonroad Engine Pollution Control Standards; Large Spark-Ignition (LSI) Engines; Notice of Decision

AGENCY: Environmental Protection Agency.

ACTION: Notice of decision.

SUMMARY: The Environmental Protection Agency (''EPA'') is granting the California Air Resources Board's (''CARB's'') request for authorization of California's 2016 Large Spark Ignition (''LSI'') Fleet Amendments to its large spark-ignition engines fleets regulation (''2016 LSI Fleet Amendments''). This decision is granted under the authority of the Clean Air Act (''CAA'').

DATES: Petitions for review must be filed by June 20, 2023.

ADDRESSES: EPA has established a docket for this action under Docket ID EPA–HQ–OAR–2021–0327. All documents relied upon in making this decision, including those submitted to EPA by CARB, are contained in the public docket. Publicly available docket materials are available electronically through *www.regulations.gov.* After opening the website, enter ''EPA–HQ–OAR–2021–0327'' 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 (OTAQ) maintains a web page that contains general information on its review of California waiver and authorization requests. Included on that page are links to prior waiver and authorization **Federal Register** notices, some of which are cited in this notice; the page can be accessed at: *https://www.epa.gov/state-and-local-transportation/vehicle-emissions-california-waivers-and-authorizations.*

FOR FURTHER INFORMATION CONTACT: Julian M. Davis, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 2565 Plymouth Rd., Ann Arbor, MI 48105, Telephone: (734) 214–4029. Email: *davis.julian@epa.gov;* or Kayla Steinberg, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW. Telephone: (202) 564–7658. Email: *steinberg.kayla@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The California Air Resources Board (CARB) promulgated its first Large Spark-Ignition (LSI) regulations, applicable to new LSI engines, in 1999 and they remained unchanged until CARB's 2008 Amendments.[1] EPA authorized these first LSI regulations on May 15, 2006.[2] CARB adopted the initial LSI Fleet Requirements (LSI Fleet Requirements), applicable to fleet operators on March 2, 2007. EPA granted California an authorization for the initial LSI Fleet Requirements in 2012.[3] The LSI Fleet Requirements were designed to address hydrocarbon (HC) and nitrogen oxide (NO_X) emissions from existing LSI engines operating in California and required fleets to meet certain fleet average emission level (FAEL) standards. CARB adopted its 2008 LSI Amendments on November 21, 2008. The 2008 LSI Amendments created two new engine categories below one-liter displacement, with new, more stringent exhaust and evaporative emission standards applicable to new engines. These amendments also provided clarification as to when CARB's off-road sport or utility regulations apply to certain LSI engines.[4] CARB adopted its 2010 LSI Amendments on December 17, 2010. EPA issued an authorization decision for the 2008 and 2010 amendments in 2015.[5] The 2010 LSI Amendments expanded the ''Limited Hours of Use Provision'' to encompass equipment operated not more than 200 hours per year subsequent to January 1, 2011, and extended the preexisting compliance extension period if CARB has not verified a retrofit emission control system, or if one is not commercially available, from one year to two years.[6] At its July 21, 2016, public hearing, the CARB Board approved for adoption the 2016 LSI Fleet Amendments. By letter dated March 15, 2021, CARB submitted a request to EPA for an authorization to enforce the 2016 LSI Fleet Amendments and asked that EPA consider its amendments as accompanying enforcement procedures for standards already authorized in EPA's 2015 decision.[7] The 2016 LSI Fleet Amendments include reporting requirements (*e.g.,* initial and annual reports, equipment transfer and sales reports, and an extension of existing reporting requirements for fleet operators subject to FAEL). The 2016 LSI Fleet Amendments also include new labeling requirements wherein, based on operator provided information, CARB will issue the operators a unique Equipment Identification Number (EIN) for each item of equipment reported, and the EIN will become the basis for a manufacturer's equipment labels with a number of associated requirements.[8]

On August 16, 2021, EPA issued a notice seeking comment on CARB's 2016 LSI Fleet Amendments as accompanying enforcement procedures.[9]

II. Principles Governing This Review

A. Clean Air Act Nonroad Engine and Vehicle Authorizations

CAA section 209(e)(1) prohibits states and local governments from adopting or attempting to enforce any standard or requirement relating to the control of emissions from certain new nonroad

[1] Title 13, California Code of Regulations (Cal. Code Regs.), sections 2430 through 2439.

[2] 71 FR 29621, 29623 (May 15, 2006).

[3] EPA granted an authorization for these regulations at 77 FR 20388 (April 4, 2012).

[4] Clean Air Act section 209(e)(2) Authorization Support Document (Authorization Support Document), EPA–HQ–OAR–2021–0327–0003, at 1. Note, ''off-road'' is the term California uses in the Health and Safety Code and in Title 13, California Code of Regulations, and is intended to be synonymous and interchangeable with the term ''nonroad'' as used in the CAA and Federal regulations.'' *Id.* at 1, note 1. In the rest of this decision, the term ''nonroad'' will be used.

[5] EPA granted a full authorization for the 2008 LSI Amendments and a within-the-scope confirmation for the 2010 LSI Amendments at 80 FR 76468 (Dec. 9, 2015).

[6] *See* Authorization Support Document, at 2–3.

[7] *See* Authorization Support Document, at 1. *See also* 80 FR 76468 for the full authorization of CARB 2008 LSI Amendments and within the scope of CARB's 2010 LSI Amendments.

[8] *See* Title 13, Cal. Code Regs., section 2775, for all large spark-ignition engine fleet requirements.

[9] 86 FR 45724 (Aug. 16, 2021).

vehicles or engines.[10] The CAA also preempts states from adopting and enforcing standards and other requirements related to the control of emissions from all other nonroad engines or vehicles.[11] CAA section 209(e)(2)(A), however, requires the Administrator, after notice and opportunity for public hearing, to authorize California to adopt and enforce standards and other requirements relating to the control of emissions from such vehicles or engines not preempted by CAA section 209(e)(1) if California determines that California standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. However, EPA shall not grant such authorization if it finds that: (1) The protectiveness determination of California is arbitrary and capricious; (2) California does not need such standards to meet compelling and extraordinary conditions; or (3) California standards and accompanying enforcement procedures are not consistent with CAA section 209.[12] On July 20, 1994, EPA promulgated a rule (''the 1994 rule'') that sets forth, among other things, regulations providing the criteria, as found in CAA section 209(e)(2), which EPA must consider before granting any California authorization request for new nonroad engine or vehicle emission standards.[13] EPA revised these regulations in 1997.[14]

As stated in the preamble to the 1994 rule, EPA has historically interpreted CAA section 209(e)(2)(iii) ''consistency'' inquiry to require that California standards and enforcement procedures be consistent with CAA sections 209(a), 209(e)(1), and 209(b)(1)(C) (as EPA has interpreted that subsection in the context of CAA section 209(b) motor vehicle waivers).[15] In order to be consistent with CAA 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 CAA 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 CAA 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 CAA section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if he finds that California ''standards and accompanying enforcement procedures are not consistent with section 202(a)'' of the CAA. Previous decisions granting waivers and authorizations have noted that state standards and enforcement procedures are inconsistent with CAA 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.[16] When considering whether to grant authorizations for accompanying enforcement procedures tied to standards (such as record keeping and labeling requirements) for which an authorization has already been granted, EPA has evaluated: (1) Whether the enforcement procedures are so lax that they threaten the validity of California's determination that its standards are as protective of public health and welfare as applicable Federal standards, and (2) whether the Federal and California enforcement procedures are consistent.[17]

B. Burden of Proof

In *MEMA* the Court stated that the Administrator's role in a CAA section 209 proceeding is to ''consider all evidence that passes the threshold test of materiality and . . . thereafter assess such material evidence against a standard of proof to determine whether the parties favoring a denial of the waiver have shown that the factual circumstances exist in which Congress intended a denial of the waiver.'' [18] The court in *MEMA I* considered the standard of proof under CAA section 209 for the two findings related to granting a waiver for an ''accompanying enforcement procedure'' (as opposed to the standards themselves): (1) Protectiveness in the aggregate and (2) consistency with section 202(a) findings. The Court instructed that ''the standard of proof must take account of the nature of the risk of error involved in any given decision, and it therefore varies with the finding involved. We need not decide how this standard operates in every waiver decision.'' [19] The Court upheld the Administrator's position that, to deny a waiver, there must be 'clear and compelling evidence' to show that proposed procedures undermine the protectiveness of California's standards.[20] The Court noted that this standard of proof also accords with the Congressional intent to provide California with the broadest possible discretion in setting regulations it finds protective of the public health and welfare.[21] With respect to the consistency finding, the Court did not articulate a standard of proof applicable to all proceedings but found that the opponents of the waiver were unable to meet their burden of proof even if the standard were a mere preponderance of the evidence.

Although *MEMA I* did not explicitly consider the standard of proof under CAA section 209 concerning a waiver request for ''standards,'' as compared to accompanying enforcement procedures, there is nothing in the opinion to

[10] CAA section 209(e)(1) prohibits states or any political subdivision from adopting or enforcing any standard or other requirement relating to the control of emissions from new engines which are used in construction equipment or vehicles or used in farm equipment or vehicles, and which are smaller than 175 horsepower, or new locomotives or new engines used in locomotives. *See* 40 CFR 1074.10(a).

[11] *See* CAA section 209(e)(2), 42 U.S.C. 7543(e). *See* 40 CFR 1074.10 (b). Therefore, States and localities are categorically prohibited from regulating the control of emissions from new nonroad vehicles and engines set forth in section 209(e)(1) of the CAA, but for ''all other'' nonroad vehicles and engines (including non-new engines and vehicles otherwise noted in 209(e)(1) and all other new and non-new nonroad engines and vehicles) are only preempted.

[12] *See* 40 CFR 1074.105.

[13] 59 FR 36969 (July 20, 1994).

[14] 40 CFR 1074.105:

(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 (42 U.S.C. 7543).

(c) In considering any request to authorize California 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.

[15] 59 FR at 36982–83.

[16] *Id. See also* 78 FR 58090, 58092 (Sept. 20, 2013).

[17] *See Motor & Equipment Manufacturers Association* v. *Environmental Protection Agency* (*MEMA I*), 627 F.2d 1095, 1112 (D.C. Cir. 1979). California certification test procedures need not be identical to the Federal test procedures to be ''consistent.'' California procedures would be inconsistent, however, if manufacturers would be unable to meet both the state and Federal test requirements with the same test vehicle in the course of the same test. *See, e.g.,* 43 FR 32182, (July 25, 1978).

[18] *MEMA I,* 627 F.2d at 1122.

[19] *Id.*

[20] *Id.*

[21] *Id.*

suggest that the Court's analysis would not apply with equal force to such determinations. EPA's past waiver decisions have consistently made clear that: ''[E]ven in the two areas concededly reserved for Federal judgment by this legislation—the existence of 'compelling and extraordinary' conditions and whether the standards are technologically feasible—Congress intended that the standards of EPA review of the State decision to be a narrow one.'' [22] Opponents of the waiver or authorization bear the burden of showing that the criteria for a denial of California's waiver or authorization request have been met. As found in *MEMA I,* this obligation rests firmly with opponents of the waiver or authorization in a CAA section 209 proceeding:

> The language of the statute and its legislative history indicate that California's regulations, and California's determinations that they comply with the statute, when presented to the Administrator are presumed to satisfy the waiver requirements and that the burden of proving otherwise is on whoever attacks them. California must present its regulations and findings at the hearing and thereafter the parties opposing the waiver request bear the burden of persuading the Administrator that the waiver request should be denied.[23]

The Administrator's burden, on the other hand, is to make a reasonable evaluation of the information in the record in coming to the waiver or authorization decision. As the Court in *MEMA I* stated: ''here, too, if the Administrator ignores evidence demonstrating that the waiver should not be granted, or if he seeks to overcome that evidence with unsupported assumptions of his own, he runs the risk of having his waiver decision set aside as 'arbitrary and capricious.' '' [24] Therefore, the Administrator's burden is to act ''reasonably.'' [25]

C. Deference to California

In previous waiver and authorization decisions, EPA has recognized that the intent of Congress in creating a limited review based on specifically listed criteria was to ensure that the Federal government did not second-guess state policy choices. As the Agency explained in one prior waiver decision: ''It is worth noting . . . I would feel constrained to approve a California approach to the problem which I might also feel unable to adopt at the federal level in my own capacity as a regulator . . . Since a balancing of risks and costs against the potential benefits from reduced emissions is a central policy decision for any regulatory agency under the statutory scheme outlined above, I believe I am required to give very substantial deference to California's judgments on this score.'' [26] Similarly, EPA has stated that the text, structure, and history of the California waiver provision clearly indicate both a Congressional intent and appropriate EPA practice of leaving the decision on ''ambiguous and controversial matters of public policy'' to California's judgment.[27] This interpretation is supported by relevant discussion in the House Committee Report for the 1977 Amendments to the CAA. Congress had the opportunity through the 1977 Amendments to restrict the preexisting waiver provision but elected instead to expand California's flexibility to adopt a complete program of motor vehicle emission controls. The report explains that the amendment is intended to ratify and strengthen the preexisting California waiver provision and to affirm the underlying intent of that provision, that is, to afford California the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare.[28]

D. EPA's Administrative Process in Consideration of California's Request

On August 16, 2021, EPA issued a notice for comment regarding CARB's 2016 LSI Fleet Amendments. The notice requested the public provide EPA with comment on issues relevant to EPA's consideration of the accompanying enforcement procedures established within the 2016 LSI Fleet Amendments, specifically whether California's 2016 LSI Fleet Amendments: (a) 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; (b) affect the consistency of California's requirements with CAA section 209; or (c) raise any other new issues relating to the three authorization criteria affecting EPA's previous waiver or authorization determinations.[29]

EPA did not receive a request for a public hearing. As a consequence, EPA did not hold a public hearing on this matter. EPA did receive one comment, from the Outdoor Power Equipment Institute (OPEI), which asked EPA to deny California's authorization request and to revise the Agency's 1994 rule implementing CAA section 209(e) to prevent California from both adopting and enforcing its state regulations until after EPA has waived preemption under CAA section 209. The commenter requested that EPA deny California's request because it believes the State is enforcing its nonroad emissions regulations prior to an EPA authorization. OPEI states that California's position is inconsistent with the due process protections intended under CAA section 209, including safeguards for the public such as California's requiring a waiver or authorization to be granted in order to enforce the state's emission standards. In addition to denying California this authorization, OPEI requested EPA: (1) Revisit its 1994 rule and change its interpretation to bar California from adopting and enforcing its regulations prior to EPA issuing a waiver or authorization; (2) clarify adoption dates, implementation dates and lead times, and enforcement terms; and (3) establish that the effective dates and lead times for CARB rules requiring an EPA waiver or authorization must consider the timing of the waiver submission and approval process.

III. Discussion

Our analysis of the 2008 LSI Amendments in the context of the full authorization criteria is set forth below.

A. California's Protectiveness Determination

CAA section 209(e)(2)(A)(i) of the CAA instructs that EPA cannot grant an authorization if the Agency finds that California was arbitrary and capricious in its determination that its amendments are, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. In adopting the 2016 LSI Fleet Amendments, CARB's Board approved Resolution 16–10, in which it expressly declared, '' 'the Board hereby determines, in accordance with the CAA, section 209(e)(2), that the amendments adopted herein do not undermine the Board's previous determination that the regulation's emission standards, other emission related requirements, and associated enforcement procedures are, in the aggregate, at least as protective of the public health and welfare as applicable

[22] 80 FR 76468, 76471 (December 9, 2015).

[23] *Id.* at 1121.

[24] *Id.* at 1126.

[25] *Id.*

[26] *See,* ''California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption,'' 40 FR 23102, 23103 (May 28, 1975).

[27] *Id.* at 23103–04.

[28] *MEMA I,* 627 F.2d at 1110 (citing H.R. Rep. No. 294, 95th Cong., 1st Sess. 301–02 (1977)).

[29] 86 FR 45724 (Aug. 16, 2021).

federal standards.' '' [30] CARB further stated that the 2016 LSI Fleet Amendments ''do not reduce the stringency of the FAEL standards established by the initial LSI Fleet Requirements but will instead *enable* CARB to more effectively enforce the LSI Fleet Requirements.'' [31] CARB also pointed out that there are no Federal standards to regulate engines that have been placed into service, such as regulations applicable to fleet operators, under the CAA and, therefore, there is no question that California's standards are at least as protective as Federal standards.

EPA requested but did not receive any comment on whether the 2016 LSI Fleet Amendment undermine California's previous protectiveness determination. We cannot find that California's 2016 LSI Fleet Amendments undermine California's previous determination that its standards and accompanying enforcement procedures, in the aggregate, are at least as protective of public health and welfare as applicable Federal standards. Thus, we cannot deny CARB's request for authorization of its amendments based on this criterion.

B. Consistency With CAA Section 209

Section 209(e)(2)(A)(iii) of the Act instructs that EPA cannot grant an authorization if California's standards and enforcement procedures are not consistent with ''this section.'' The 1994 rule 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. 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).[32] EPA has interpreted this last subsection in the context of motor vehicle waivers. Thus, this can be viewed as a three-pronged test as evaluated below.

1. Consistency With CAA Section 209(a)

To be consistent with CAA section 209(a), California's 2016 LSI Amendments must not apply to new motor vehicles or new motor vehicle engines. California's 2016 LSI Fleet Amendments expressly apply only to nonroad engines and do not apply to engines used in motor vehicles as defined by CAA section 216(2). We did not receive any comments on California's consistency with CAA section 209(a). Therefore, EPA cannot deny California's request on the basis that California's 2016 LSI Fleet Amendments are not consistent with CAA section 209(a).

2. Consistency With CAA Section 209(e)(1)

To be consistent with CAA section 209(e)(1), California's 2016 LSI Fleet Amendments must not affect new farm or construction equipment or vehicles that are below 175 horsepower, or new locomotives or new engines used in locomotives. CARB notes that its 2016 LSI Fleet Amendments do not affect such permanently preempted vehicles or engines. EPA did not receive any comments regarding California's consistency with section 209(e)(1). Therefore, EPA cannot deny California's request on the basis that California's 2016 LSI Fleet Amendments are not consistent with section 209(e)(1).

3. Consistency With CAA Section 209(b)(1)(C)

The requirement that California's standards be consistent with CAA section 209(b)(1)(C) effectively requires consistency with section 202(a). EPA has interpreted consistency with section 202(a) using a two-pronged test: (1) Whether there is sufficient lead time to permit the development of technology necessary to meet the standards and other requirements, giving appropriate consideration to the cost of compliance in the time frame provided, and (2) whether the California and Federal test procedures are sufficiently compatible to permit manufacturers to meet both the state and Federal test requirements with one test vehicle or engine.[33] The scope of EPA's review of whether California's action is consistent with CAA section 202(a) is narrow. The determination is limited to whether those opposed to the authorization have met their burden of establishing that California's standards are technologically infeasible, or that California's test procedures impose requirements inconsistent with the Federal test procedures.[34]

a. Technological Feasibility

Congress has stated that the consistency requirement of section 202(a) relates to technological feasibility.[35] CAA section 202(a)(2) states, in part, that any regulation promulgated under its authority ''shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.'' Section 202(a) thus requires the Administrator to first determine whether adequate technology already exists; or if it does not, whether there is adequate time to develop and apply the technology before the standards go into effect. The latter scenario also requires the Administrator to decide whether the cost of developing and applying the technology within that time is feasible.

The 2016 LSI Fleet Amendments include reporting requirements (*e.g.,* initial and annual reports, equipment transfer and sales reports, and an extension of existing reporting requirements for fleet operators subject to fleet average emission limits). The 2016 LSI Fleet Amendments also include new labeling requirements wherein, based on operator provided information, CARB will issue the operators a unique EIN for each item of equipment reported and become the basis of a manufacturer's equipment labels with a number of associated requirements. EPA did not receive any comments suggesting that CARB's accompanying enforcement procedures are technologically infeasible. Consequently, based on the record, EPA cannot deny California authorization of its 2016 LSI Fleet Amendments based on technological infeasibility.

b. Consistency With Federal Test Procedures

California's 2016 LSI Amendments do not alter the testing required under the previously granted LSI Fleet authorization. California states in its authorization support document, ''[t]he 2016 LSI Fleet Amendments also do not raise any issue regarding incompatibility between California and Federal test procedures because EPA has no comparable requirements.[36] We did not receive any comment regarding inconsistency with Federal test procedures that would provide EPA a basis to deny this authorization. Consequently, based on the record, EPA cannot deny California an authorization on the basis of inconsistency with Federal test procedures.

[30] CARB, Resolution 16–10 (quoted in Authorization Support Document, at 7–8).

[31] *Id.* at 8.

[32] 59 FR at 36982–83.

[33] *See* 61 FR 53371, 53372 (Oct. 11, 1996).

[34] *MEMA I,* 627, F.2d at 1126.

[35] H.R. Rep. No. 95–294, 95th Cong., 1st Sess. 301 (1977).

[36] Authorization Support Document, at 9.

C. Other Issues Affecting EPA's Evaluation of CAA Section 209(e) Criteria

EPA has received comment outside the scope of the three authorization criteria in section 209(e)(1) of the CAA. A summary of OPEI's comment is set forth above. EPA does not believe OPEI has provided comments directly related to the applicable criteria EPA may consider when reviewing a request from California for a waiver or authorization. OPEI has not met its burden of proof to demonstrate that the basis for denying an authorization under section 209(e)(1) has been met.

In previous decisions on waivers and authorizations, EPA has stated that Congress intended EPA's review of California's decision-making to be narrow. This has led EPA to reject arguments that are not specified in the statute as grounds for denying a waiver:

> The law makes it clear that the waiver requests cannot be denied unless the specific findings designated in the statute can properly be made. The issue of whether a proposed California requirement is likely to result in only marginal improvement in air quality not commensurate with its cost or is otherwise an arguably unwise exercise of regulatory power is not legally pertinent to my decision under section 209, so long as the California requirement is consistent with section 202(a) and is more stringent than applicable Federal requirements in the sense that it may result in some further reduction in air pollution in California.[37]

EPA has noted that the statute lists three specific grounds for rejecting an authorization request.[38] This has led EPA to reject arguments that are outside the scope of the three statutory criteria when considering whether to grant or deny a waiver request.[39]

EPA believes OPEI's challenge to California's exercise of California's enforcement procedures is misplaced in this request for an authorization. Consideration of a request for authorization is limited to the criteria outlined in CAA section 209(e)(2)(A), *i.e.,* whether: (1) California's determination is arbitrary and capricious, (2) California does not need such standards to meet compelling and extraordinary conditions,[40] or (3) California standards and accompanying enforcement procedures are not consistent with section 209 of the CAA. OPEI does not argue that the 2016 LSI Fleet Amendments and its accompanying enforcement procedures affect EPA's prior authorization decision or alters California's previous grant of an EPA authorization. An evaluation of the issues related to whether California is improperly enforcing its regulations before a waiver or authorization is issued by EPA is not among the criteria listed under CAA section 209(e)(1). EPA may only deny an authorization based on the criteria in CAA section 209(e)(1) and any issues raised regarding the improper enforcement by California of its regulations prior to receiving a waiver or authorization is not one of those criteria. Therefore, given OPEI does not raise new issues affecting EPA's evaluation of CAA section 209(e)(1) criteria, and the issues raised by OPEI in its comments may not be used as a basis of denying California this authorization.

Similarly, OPEI's comments seeking revision of EPA's authorization regulations are misplaced. EPA did not reopen those regulations in this proceeding, and therefore those comments are beyond the scope of this action.

EPA notes, without reopening our regulations, that the regulations implementing CAA section 209(e)(2) are at 40 CFR part 1074, subpart B.[41] We also note that the ''lead time'' associated with the evaluation of California's regulations under CAA section 209(e)(2)(A)(iii) is measured from when California adopts its regulations.[42] Once EPA authorizes CARB's authorization request, which includes an assessment of CAA section 209(e)(2)(A)(iii), then CARB is no longer subject to the preemption in CAA section 209 and may enforce its regulations under its state law authorities.

IV. Decision

After evaluating California's 2016 LSI Fleet Amendments, CARB's submissions, and the lack of any relevant adverse comment, EPA is granting an authorization to California for its 2016 LSI Fleet Amendments.

V. Judicial Review

Section 307(b)(1) of the CAA governs judicial review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the United States Court of Appeals for the District of Columbia Circuit: (i) when the agency action consists of ''nationally applicable regulations promulgated, or final actions taken, by the Administrator,'' or (ii) when such action is locally or regionally applicable, but ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.'' For locally or regionally applicable final actions, the CAA reserves to the EPA complete discretion whether to invoke the exception in (ii).

To the extent a court finds this final action to be locally or regionally applicable, the Administrator is exercising the complete discretion afforded to him under the CAA to make and publish a finding that this action is based on a determination of ''nationwide scope or effect'' within the meaning of CAA section 307(b)(1) for several reasons.[43] This final action grants an authorization for amendments to California's LSI Fleet regulations that were previously authorized by EPA. As such, this final action will affect fleet operators located within and outside California that are subject to the reporting and labeling requirements in those regulations while operating their equipment within California.

Furthermore, the LSI Fleet regulations, and the amendments to those regulations that are the subject of today's action, the 2016 LSI Fleet Amendments, are part of California's nonroad emissions program that, together with its on-highway emissions program, are regulatory programs that EPA may waive under CAA section 209. As required by statute, in evaluating the authorization criteria in this action, EPA considers not only the 2016 LSI Fleet Amendments in isolation, but in the context of the entire California program. *See* CAA section 209(e)(2)(A) (requiring that the protectiveness finding be made for California's standards ''in the aggregate''). Moreover, EPA generally applies a consistent statutory interpretation and analytical framework

[37] 78 FR 2111, 2115 (Jan. 9, 2013). *See also* 36 FR 17458 (Aug. 31, 1971). Note that the more stringent standard expressed here, in 1971, was superseded by the 1977 Amendments to CAA section 209, which established that California must determine that its standards are, in the aggregate, at least as protective of public health and welfare as applicable Federal standards.

[38] *Id.*

[39] 87 FR 14342 (March 14, 2022).

[40] As noted above, EPA's review of waiver requests for accompanying enforcement procedures does not include a review of the second waiver prong. In any event, no adverse comment was submitted to suggest CARB's regulations did not meet this criterion and EPA cannot deny the waiver request on this basis.

[41] 40 CFR 1074.101(a) provides that California must request authorization from the Administrator of EPA to enforce its adopted standards. *See also* 95 FR 3699 (July 20, 1994).

[42] 59 FR 3969, 36981–36983 (July 20, 1994).

[43] In deciding whether to invoke the exception by making and publishing a finding that this final action is based on a determination of nationwide scope or effect, the Administrator has also taken into account a number of policy considerations, including his judgment balancing the benefit of obtaining the D.C. Circuit's authoritative centralized review versus allowing development of the issue in other contexts and the best use of Agency resources.

in evaluating and deciding various authorization and waiver requests under CAA section 209. EPA also relies on the extensive body of D.C. Circuit case law developed by that court since 1979 as it has reviewed and decided judicial challenges to these actions. As such, judicial review of any challenge to this action in the D.C. Circuit will centralize review of national issues in that court and advance other Congressional principles underlying this CAA provision of avoiding piecemeal litigation, furthering judicial economy, and eliminating the risk of inconsistent judgments.

For these reasons, the Administrator is exercising the complete discretion afforded to him by the CAA and hereby finds that this final action is based on a determination of nationwide scope or effect for purposes of CAA section 307(b)(1) and is hereby publishing that finding in the **Federal Register**. Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit by June 20, 2023.

VI. Statutory and Executive Order Reviews

As with past authorization and waiver 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. Further, 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).

Michael S. Regan,

Administrator.

[FR Doc. 2023–08296 Filed 4–19–23; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2023–0061; FRL–10581–03–OCSPP]

Certain New Chemicals; Receipt and Status Information for March 2023

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is required under the Toxic Substances Control Act (TSCA), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, to make information publicly available and to publish information in the **Federal Register** pertaining to submissions under TSCA Section 5, including notice of receipt of a Premanufacture notice (PMN), Significant New Use Notice (SNUN), or Microbial Commercial Activity Notice (MCAN), including an amended notice or test information; an exemption application (Biotech exemption); an application for a test marketing exemption (TME), both pending and/or concluded; a notice of commencement (NOC) of manufacture (including import) for new chemical substances; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review. This document covers the period from 3/1/2023 to 3/31/2023.

DATES: Comments identified by the specific case number provided in this document must be received on or before May 22, 2023.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2023–0061, through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Jim Rahai, Project Management and Operations Division (MC 7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8593; email address: *rahai.jim@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. What action is the Agency taking?

This document provides the receipt and status reports for the period from 3/01/2023 to 3/31/2023. The Agency is providing notice of receipt of PMNs, SNUNs, and MCANs (including amended notices and test information); an exemption application under 40 CFR part 725 (Biotech exemption); TMEs, both pending and/or concluded; NOCs to manufacture a new chemical substance; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review.

EPA is also providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices.* This information is updated on a weekly basis.

B. What is the Agency's authority for taking this action?

Under the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.,* a chemical substance may be either an ''existing'' chemical substance or a ''new'' chemical substance. Any chemical substance that is not on EPA's TSCA Inventory of Chemical Substances (TSCA Inventory) is classified as a ''new chemical substance,'' while a chemical substance that is listed on the TSCA Inventory is classified as an ''existing chemical substance.'' (See TSCA section 3(11).) For more information about the TSCA Inventory please go to: *https://www.epa.gov/inventory.*

Any person who intends to manufacture (including import) a new chemical substance for a non-exempt commercial purpose, or to manufacture or process a chemical substance in a non-exempt manner for a use that EPA has determined is a significant new use, is required by TSCA section 5 to provide EPA with a PMN, MCAN, or SNUN, as appropriate, before initiating the activity. EPA will review the notice, make a risk determination on the chemical substance or significant new use, and take appropriate action as described in TSCA section 5(a)(3).

TSCA section 5(h)(1) authorizes EPA to allow persons, upon application and under appropriate restrictions, to manufacture or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a)(2), for ''test marketing'' purposes, upon a showing that the manufacture, processing, distribution in commerce,