

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: November 9, 2000.

**Robert Perciasepe,**

*Assistant Administrator for Air and Radiation.*

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## ENVIRONMENTAL PROTECTION AGENCY

[AMS-FRL-6903-3]

### California State Nonroad Engine and Vehicle Pollution Control Standards; Notice of Within the Scope Determinations for Amendments to California's Small Off-Road Engine Regulations

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice Regarding Within the Scope Determinations.

**SUMMARY:** The California Air Resources Board (CARB), by letter dated October 4, 1999, requested that EPA confirm CARB's finding that amendments to its Small Off-Road Engine (SORE) Regulations are within-the-scope of a prior authorization under section 209(e) of the Clean Air Act (Act), 42 U.S.C. 7543(b), granted by EPA for CARB's original SORE Regulations in July 1995. EPA in this notice has made the requested confirmation for many of the amendments in the CARB request. EPA has also determined that other amendments in this CARB request were not within the scope of the prior authorization because these amendments are new standards, and will announce the opportunity for a public hearing on these specific amendments.

**DATES:** Any objections to the findings in this notice regarding EPA's determination that California's amendments to its regulations for test procedures for nonroad engines and vehicles are within the scope of previous authorizations must be filed by December 20, 2000. Otherwise, at the end of this 30-day period, these findings will become final. Upon receipt of any timely objection, EPA will consider scheduling a public hearing to reconsider these findings in a subsequent **Federal Register** notice.

**ADDRESSES:** Any objections to the within the scope findings in this notice should be filed with Robert Doyle at the address noted below. The Agency's decisions as well as all documents relied upon in reaching these decisions, including those submitted by the California Air Resources Board (CARB), are available for public inspection in the Air and Radiation Docket and Information Center during the working hours of 8:00 a.m. to 4:00 p.m. at the Environmental Protection Agency, Air Docket (6102), Room M-1500, Waterside Mall, 401 M Street, SW., Washington, DC 20460. The Docket for this matter is Docket A-2000-09. Copies of the Decision Document for these determinations can be obtained by contacting Robert Doyle as noted below, or can be accessed on the EPA Office of Mobile Sources Internet Home Page, also noted below.

#### FOR FURTHER INFORMATION CONTACT:

Robert M. Doyle, Attorney-Advisor, Certification and Compliance Division, (6403J), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Telephone: (202) 564-9258, FAX: (202) 565-2057, E-Mail: [Doyle.Robert@EPA.GOV](mailto:Doyle.Robert@EPA.GOV).

#### SUPPLEMENTARY INFORMATION:

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

Electronic copies of this Notice and the accompanying Decision Document are available via the Internet on the Office of Transportation and Air Quality (OTAQ) Home Page (<http://www.epa.gov/OTAQ>). Users can find these documents by accessing the OTAQ Home Page and looking at the path entitled "Chronological List of All OTAQ Regulations." This service is free of charge, except for any cost you already incur for Internet connectivity. The official **Federal Register** version of the Notice is made available 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.

##### II. Amendments to the SORE Regulations

We have determined that certain amendments to the CARB SORE <sup>1</sup>

<sup>1</sup> These amendments, among other things, renamed the regulations from the Utility, Lawn and Garden Engine Regulations (ULGE Rule) to the Small Off-Road Engine Regulations (SORE Rule).

Regulations are within the scope of a prior authorization under section 209(e) of the Clean Air Act (Act), 42 U.S.C. 7543(b), granted by EPA to CARB's original SORE Regulations by decision of the Administrator dated July 5, 1995.<sup>2</sup> The SORE regulations apply to all gasoline, diesel, and other fueled utility and lawn and garden equipment engines 25 horsepower and under, with certain exceptions. Under the original authorization, the SORE regulations established two "tiers" of exhaust emission standards for these engines (Tier 1 from 1995 through 1998 model years, and Tier 2 for model year 1999 and beyond), as well as numerous other requirements. The amendments to the regulations, outlined in CARB's request letter,<sup>3</sup> and fully described CARB's submissions, accomplish the following:

- The descriptive terms "handheld" and nonhandheld" have been dropped in favor of describing covered engines by engine displacement categories. The former handheld engines are now called "less than or equal to 65 cubic centimeters (cc)," or "0-65cc," and the former nonhandheld engines are now called "greater than 65 cc." CARB stated that the former categories were picked to ensure that multi-positional equipment supported solely by the operator could use the lighter (but dirtier) handheld engines, which are usually two-stroke engines. Because of manufacturer difficulty with the engine definitions, CARB chose engine displacement to define category choices.

- CARB has changed both the previously authorized Tier 2 standards and the authorized implementation dates for those standards. For the 0-65cc engines, CARB extended the Tier 1 standards for one more year, through model year 1999, so Tier 2 standards do not begin for these engines until the model year 2000. CARB also changed the Tier 2 standards, by relaxing the CO and PM standards, and changing the format of the HC and NO<sub>x</sub> standards to allow manufacturers more flexibility. For the Over 65 cc engines, CARB extended the Tier 1 standards two additional years, through calendar year 2001 for most engines in this category. The extension is longer in some special cases: through 2002 for engines equal to or greater than 225cc and horizontal

<sup>2</sup> 60 FR 37440 (July 20, 1995). The CARB small engine emission regulations were then called the Utility, Lawn and Garden Engine (ULGE) regulations. The new amendments, among other things, renamed the ULGE regulations as the SORE regulations.

<sup>3</sup> Letter from Michael P. Kenney, Executive Officer, CARB, to Carol M. Browner, Administrator, EPA, dated October 4, 1999, Docket A-2000-09, entry II-B-1.

shaft engines below 225 cc, and through 2006 for vertical shaft engines below 225 cc. Additionally, manufacturers who produce more than 40,000 spark-ignited engines per year between 65 and 225cc for sale in California's extreme nonattainment areas are responsible for additional emission standards to obtain the emission reductions that would have occurred under the original CARB staff proposal for these amendments.

- For small compression ignition engines, CARB extended the coverage of the Tier 1 standards one additional year, through model year 1999. For model year 2000 and later, CARB amended the SORE regulations to implement the emission standards for small nonroad compression ignition engines in the Statement of Principles agreed upon by CARB, EPA and various industry members in 1996. The effect of these standards is a relaxation of the Tier 1 standards; the CARB staff acknowledged that it did not believe the 3.2 g/bhp-hr HC + NO<sub>x</sub> standard was attainable in the prescribed time period of the CARB Tier 2 standards. CARB notes, however, that the amended small compression engine standards will provide good SIP benefits while also providing California/Federal harmonization of the regulations.<sup>4</sup>

- CARB has expanded the applicability of the SORE Rule to include speciality vehicles and golf carts; these vehicles previously were regulated under the CARB Nonroad Recreational Vehicle Rule. This change results in all engines less than 25 hp used in mobile applications now being covered by the same Rule. CARB also modified the applicability of the Rule to remove the provision that includes engines that produce a rated power greater than 25hp but are governed to produce actual power of under 25hp. CARB had found that a small number of engines of that type were built on an automotive base. The manufacturer expected the engine would not be subject to the SORE standards, but because the manufacturer's customer installed a governor downrating the engine, it became subject to these standards. CARB states that engines in this grouping will be regulated in an upcoming rulemaking to levels appropriate to their automotive origins.<sup>5</sup>

- Manufacturers will have the option of demonstrating compliance with the

PM standard through an engineering evaluation rather than through direct testing measurement, the only method allowed in the original rule. CARB staff recommended this change after learning that a simple formula could produce a valid PM measurement value, and thus save manufacturers the cost of the expensive sampling equipment required to measure PM. CARB devised this formula based on information from an industry group showing that PM emissions from two-stroke engines will be no greater than the tested HC emissions divided by the fuel to oil ratio used in the engine.<sup>6</sup>

- CARB has established a program of averaging, banking and trading (ABT) of emission credits for manufacturers of these engines. Manufacturers will be able to use a corporate average to show compliance with the HC + NO<sub>x</sub> standard. For any one engine family, the manufacturer can establish a "Family Emission Limit (FEL)" which will be the emission standard for that family, and the FEL can be above the standard (subject only to a set upper limit), so long as the average of all the manufacturer's families met the standard. This corporate average would weight individual engine families by power, load factor, sales and durability period. CARB notes that this credit program is designed to provide industry the flexibility to address problems such as low sales volume engines for which emission reductions are relatively costly by allowing manufacturers to focus efforts first on the higher sales volume engines. The manufacturer averaging program also includes an emission reduction credits mechanism. CARB will allow manufacturers to generate Production Emission Reduction Credits when the final HC + NO<sub>x</sub> sample mean (from the production line testing) of an engine family is below the FEL. These credits earned can be used for certification and as a remedy for noncompliance of another engine family.<sup>7</sup>

- CARB amended its "quality audit" requirements. In the original program, manufacturers were required to test 1% of total production for compliance in end of production line tests ("green" engines). In the new requirements, manufacturers now have an option to follow a procedure similar to the Federal "Cumulative Sum ("Cum Sum") procedure. Under Cum Sum,

manufacturers can complete the production line testing with a small number of engines when the family is clean, and thus not have to meet the 1% of production requirement. CARB's amendments alter the Cum Sum requirements by requiring a minimum testing rate of 2 engines from each family per quarter to ensure continued sampling. Manufacturers of small volume families can minimize their tests by retaining the 1% testing number. With the exception of the quarterly minimum, CARB's program is similar to that adopted for the Federal nonhandheld program and proposed for the Federal handheld program.<sup>8</sup>

- CARB amended its emission warranty regulations by expanding the list of covered emission-related parts to include air filters and pressure regulators.

In an October 4, 1999 letter to EPA, CARB notified EPA of the above-described amendments to its SORE regulations and asked EPA to confirm that these amendments are within the scope of previous authorizations.<sup>9</sup> EPA can make such a confirmation if certain conditions are present. Specifically, if California acts to amend a previously authorized standard or accompanying enforcement procedure, the amendments 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,<sup>10</sup> and raises no new

<sup>8</sup> CARB Staff Report, Docket A-2000-09, entry II-B-2, p. 8-9, and Final Statement of Reasons, Docket A-2000-09, entry II-B-7, p.44-45.

<sup>9</sup> The CARB request also included amendments which established brand new durability standards for covered engines (where before there were none). EPA has determined that these two sets of regulation amendments in this request cannot be considered within the scope of the previous authorization because these particular amendments set new and/or more stringent standards and therefore properly should be reviewed as a new authorization request. Accordingly, EPA will offer the opportunity for a public hearing on these new standards.

<sup>10</sup> EPA has interpreted the requirement regarding whether "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. 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. California's nonroad standards and enforcement

<sup>4</sup> Staff Report, Docket A-2000-09, entry II-B-2, p. 32-33, Final Regulation Order—Exhaust Standards and Test Procedures, Docket A-2000-09, entry II-B-8, part VI, p. 98. CARB adopted by reference, with some modifications, 40 CFR Part 89 as that Part relates to the small compression engines.

<sup>5</sup> CARB Staff Report, Docket A-2000-09, entry II-B-2, pp. 10-11.

<sup>6</sup> CARB Staff Report, Docket A-2000-09, entry II-B-2, p. 21.

<sup>7</sup> CARB Staff Report, Docket A-2000-09, entry II-B-2, p. 8-9, and p. 35, Final Regulation Order, Exhaust Standards and Test Procedures, Docket A-2000-09, entry II-B-8, pp. 53-63 (emission reduction credits) and p. 110 (upper limit).

issues affecting EPA's previous authorization determination.<sup>11</sup>

In its request letter, CARB stated that the various amendments will not cause the California nonroad standards, in the aggregate, to be less protective of public health and welfare than the applicable Federal standards. Regarding consistency with section 209, CARB stated that the amendments (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 inconsistent certification requirements (compared to the Federal requirements). Finally, CARB stated that the amendments raise no new issues affecting the prior EPA authorization determinations.

EPA agrees with all CARB findings with regard to the provisions listed. Thus, EPA finds that these amendments are within the scope of previous authorizations. A full explanation of EPA's decision is contained in a Decision Document which may be obtained from EPA as noted above.

Because these amendments are within the scope of previous authorizations, a public hearing to consider them is not necessary. However, if any party asserts an objection to these findings by December 20, 2000, EPA will consider holding a public hearing to provide interested parties an opportunity to present testimony and evidence to show that there are issues to be addressed through a section 209(e) authorization determination and that EPA should reconsider its findings. Otherwise, these

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, and most importantly in terms of application to nonroad within the scope requests such as these, 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. As previous decisions granting waivers of Federal preemption for motor vehicles have explained, 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>11</sup> Decision Document for California Nonroad Engine Regulations Amendments, Dockets A-2000-05 to 08, entry V-B, p. 28.

findings shall become final on December 20, 2000.

Our 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, we 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 January 19, 2001. Under section 307(b)(2) of the Act, judicial review of this final action may not be obtained in subsequent enforcement proceedings.

EPA's determination that these California regulations are within the scope of prior authorizations by EPA does not constitute a significant regulatory action under the terms of Executive Order 12866 and this action is therefore not subject to Office of Management and Budget review.

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: November 9, 2000.

**Robert Perciasepe,**

*Assistant Administrator for Air and Radiation.*

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## ENVIRONMENTAL PROTECTION AGENCY

[AMS-FRL-6903-4]

### California State Nonroad Engine and Vehicle Pollution Control Standards; Opportunity for Public Hearing and Request for Public Comment

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

**ACTION:** Notice of opportunity for public hearing and request for public comment.

**SUMMARY:** The California Air Resources Board (CARB), by letter dated October 4, 1999, requested that EPA confirm CARB's finding that amendments to its Small Off-Road Engine (SORE) Regulations are within-the-scope of a prior authorization under section 209(e) of the Clean Air Act (Act), 42 U.S.C. 7543(b), granted by EPA to CARB's original SORE Regulations in July 1995. EPA has made the requested confirmation for many of the amendments in the CARB request and published this determination in an earlier FR notice. EPA also determined that other amendments in this CARB request were not within the scope of the prior authorization because these amendments are brand new standards. For this reason, EPA is announcing the opportunity for a public hearing on these specific amendments.

**DATES:** EPA has tentatively scheduled a public hearing for December 8, 2000, commencing at 9:30 am. Any person who wishes to testify on the record at the hearing must notify EPA in writing by December 1, 2000 that he or she will attend the hearing to present oral testimony regarding EPA's determination. If EPA receives one or more requests to testify, this hearing will be held. If EPA does not receive any requests to testify, this hearing will be canceled. Anyone who plans to attend the hearing should contact Robert Doyle by telephone or E-Mail (number and address below) to determine if this hearing will be held. Regardless of whether or not a hearing is held, any party may submit written comments regarding EPA's determination by or before December 22, 2000.

**ADDRESSES:** Parties wishing to present oral testimony at the public hearing should provide written notice to John Guy, Acting Manager, Engine Compliance Programs Group, (6403J), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. If EPA receives a request for a public hearing, EPA will hold the public hearing in the first floor conference room at 501 3rd Street, NW., Washington, DC. Parties wishing to send written comments should provide them to Mr. Guy at the above address. EPA will make available for public inspection at the Air and Radiation Docket and Information Center written comments received from interested parties, in addition to any testimony given at the public hearing. The Air Docket is open during working hours from 8:00 a.m. to 4:00 p.m. at EPA, Air