

public hearing, authorize California to adopt and enforce standards and other requirements relating to the control of emissions from such vehicles or engines "[i]f California determines that California standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. No such authorization shall be granted if the Administrator finds that—(i) the determination of California is arbitrary and capricious, (ii) California does not need such California standards to meet compelling and extraordinary conditions, or (iii) California standards and accompanying enforcement procedures are not consistent with this section."

EPA has issued a final regulation titled "Air Pollution Control; Preemption of State Regulation for Nonroad Engine and Vehicle Standards" (section 209(e) Rule) that sets forth several definitions, as explained below, and the authorization criteria EPA must consider before granting California an authorization to enforce any of its nonroad engine standards.<sup>1</sup> As described in the section 209(e) Rule, in order to be deemed "consistent with this section", California standards and enforcement procedures must be consistent with section 209. In order to be consistent with section 209 California standards and enforcement procedures must reflect the requirements of sections 209(a), 209(e)(1), and 209(b). Section 209(a) prohibits states from adopting or enforcing emission standards for new motor vehicles or new motor vehicle engines.<sup>2</sup> Section 209(e)(1) identifies the categories preempted from state regulation. As stated above, the preempted categories are (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, and (b) new locomotives or new engines used in locomotives. The section 209(e) Rule defines construction equipment or vehicle to mean "any internal combustion engine-powered machine primarily used in construction and

located on commercial construction sites. The section 209(e) Rule defines farm equipment or vehicle to mean "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. The section 209(e) rule defines "primarily used" to mean "used 51 percent or more."<sup>3</sup> Therefore, California's proposed emission regulations would be considered inconsistent with section 209 if they applied to these permanently preempted categories. Additionally, the section 209(e) Rule requires EPA to review nonroad authorization requests under the same "consistency" criterion that it reviews 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. California's nonroad standards are not consistent with section 202(a) if there is inadequate lead time to permit the development of technology necessary to meet those standards, giving appropriate consideration to the cost of compliance within that time frame. Additionally, California's nonroad accompanying enforcement procedures would be inconsistent with section 202(a) if the Federal and California test procedures were inconsistent, that is, manufacturers would be unable to meet both the State and Federal test requirements with one test vehicle or engine.

Once California has been granted an authorization, under section 209(e)(2), for its standards and accompanying enforcement procedures for a category or categories of equipment, it may adopt other conditions precedent to initial retail sale, titling or registration of the subject category or categories of equipment without the necessity of receiving further EPA authorization.

By letter dated March 6, 1995, CARB submitted to EPA a request that EPA authorize California to enforce regulations for standards and test procedures for 1997 and subsequent calendar year recreational vehicles. These regulations, which apply to off-road motorcycles, all-terrain vehicles (ATVs), golf carts, go-karts, and specialty vehicles:

a. Establish an exhaust emission standard for off-road motorcycles and ATV engines produced after December

31, 1996, measured in grams-per-kilometer.

b. Establish a zero-emission requirement for golf carts produced after December 31, 1996.

c. Require that specialty vehicles less than 25 horsepower comply with the exhaust emission standards applicable to utility equipment engines as set forth in Title 13, California Code of Regulation, Section 2403.

d. Establish an exhaust emission standard for specialty vehicles 25 horsepower and greater produced after December 31, 1996 that is equivalent to the 1999 utility exhaust emission standards.

e. Require that no new engines produced for sale to replace pre-controlled off-road motorcycle, ATV, go-kart (25 horsepower and greater), golf cart, and specialty vehicle engines after the implementation of the exhaust emission standards, unless those new replacement engines comply with the applicable exhaust emission standards.

f. Adopt the current federal on-road motorcycle test procedures for off-road motorcycles and ATVs, with an option for ATVs to certify using CARB's utility engine test procedure. For go-karts 25 horsepower and above and specialty vehicles CARB's current utility engine testing procedures will apply. Require certification of engines including compliance and assembly-line quality audit test procedures.

g. Establish a labeling requirement for off-road motorcycles, ATVs, go-karts, and specialty vehicles.

h. Require that CARB's on-road vehicle recall procedures and program apply to off-road motorcycles and ATVs.

i. Establish a requirement that off-road motorcycles and ATVs be encoded with a vehicle identification number in order that such vehicles may be properly registered with California's Department of Motor Vehicles.

j. Require manufactures of specialty vehicles and go-karts 25 horsepower and above to comply with the two year warranty regulations that are part of California's utility engine regulations.

California states in its March 6, 1995 letter that it has determined that its standards for recreational vehicles are, in the aggregate, at least as protective of the public health and welfare as the applicable Federal standards. Further, California states that it needs separate standards to meet compelling and extraordinary conditions. Finally, California states that its standards and test procedures are consistent with section 209 of the Act. California's request will be considered according to the criteria for an authorization request as set forth in the section 209(e)

<sup>1</sup> See 59 FR 36969, July 20, 1994 (to be codified at 40 C.F.R. Part 85, Subpart Q, §§ 85.1601–85.1606). § 85.1604(a) states "California shall request authorization to enforce its adopted standards and other requirements relating to the control of emissions from new nonroad vehicles \* \* \*". As explained in the preamble to the 209(e) rule, California may first adopt a nonroad exhaust emission standard and then seek an authorization from EPA to enforce such standard.

<sup>2</sup> EPA believes CARB's authorization request for recreational vehicles does not raise an issue with regard to whether such vehicles are motor vehicles. EPA anticipates that it will utilize both its definitions of motor vehicles and nonroad engines to resolve this issue.

<sup>3</sup> See 40 CFR part 85, subpart Q, § 85.1602.