

SUPPLEMENTARY INFORMATION: I have decided to authorize California to enforce regulations for standards and test procedures for nonroad engines pursuant to section 209(e) of the Clean Air Act, as amended (Act), 42 U.S.C. 7543. These regulations establish exhaust emission standards and test procedures for 1995 and later new utility and lawn and garden equipment engines 25 horsepower and below, including a second tier of standards for engines produced on or after January 1, 1999. A comprehensive description of these California regulations can be found in the decision document for this authorization and in materials submitted by CARB.

On the basis of the record before me, I cannot make the findings required to deny authorization under section 209(e)(2) of the Act. Therefore, I am authorizing California to enforce these regulations.

On September 6, 1991 EPA published a "Proposed Decision of the Administrator; Opportunity for Public Comment" for the California Air Resources Board's (CARB) authorization request.¹ On July 20, 1994 EPA published its final rule under section 209(e) entitled "Air Pollution Control; Preemption of State Regulation for Nonroad Engine and Vehicle Standards" (section 209(e) rule).² On November 8, 1994 EPA published a notice of opportunity for a public hearing and a request for written comments concerning a revised authorization request received from CARB.³ EPA held its public hearing on December 6, 1994 and received oral comments from the California Air Resources Board (CARB), the Portable Power Equipment Manufacturers Association (PPEMA), the Engine Manufacturers Association (EMA) and Outdoor Power Equipment Institute (OPEI), and Kohler. EPA received written comments from the American Pulpwood Association, the Associated California Loggers, the Illinois Farm Bureau, CARB, the American Forest & Paper Association, the Manufacturers of Emission Controls Association, the North American Equipment Dealers Association, PPEMA, EMA and OPEI, and Toro. Consequently, this determination is based on the oral and written submissions by CARB, the oral comments delivered at the December 6, 1994 hearing, and the written comments submitted in response to the above-

mentioned notice and all other relevant information.⁴

Section 209(e) of the Act as amended, 42 U.S.C. 7543(e), addresses state regulation of nonroad engines and vehicles. EPA issued on July 20, 1994 a final regulation to implement section 209(e).⁵ Section 209(e)(1) preempts states from regulating 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 new locomotives or new engines used in locomotives. The section 209(e) rule sets forth definitions for these preempted categories of engines.

For those new pieces of equipment or new vehicles other than those a State is permanently preempted from regulating under section 209(e)(1), the State of California may promulgate standards regulating such new equipment or new vehicles provided California complies with Section 209(e)(2). The section 209(e) rule provides that if certain criteria are met, the Administrator shall authorize California to adopt and enforce standards and other requirements relating to the control of emissions from such vehicles or engines. The criteria include consideration of whether California arbitrarily and capriciously determined that its standards are, in the aggregate, at least as protective of public health and welfare as applicable Federal standards; whether California needs state standards to meet compelling and extraordinary conditions; and whether California's standards and accompanying enforcement procedures are consistent with section 209.

California determined that its standards and test procedures would not cause California emission standards, in the aggregate, to be less protective of public health and welfare as the applicable Federal standards. Information presented to me by parties opposing California's authorization request did not demonstrate that California arbitrarily or capriciously reached this protectiveness determination. Therefore, I cannot find California's determination to be arbitrary or capricious.

CARB has continually demonstrated the existence of compelling and extraordinary conditions justifying the need for its own motor vehicle pollution

control program. In addition, CARB provided information regarding actions taken by the California Legislature in an effort to address the current air quality conditions in California, directing CARB to consider adopting regulations for off-road engines. Information presented to me by parties opposing California's authorization request did not demonstrate that California no longer has a compelling and extraordinary need for its own program. Based on previous showings by California in the context of motor vehicle waivers and CARB's submission to the record regarding the status of air quality in the state, I agree that California continues to have compelling and extraordinary conditions for its own program. Thus, I cannot deny the waiver on the basis of the lack of compelling and extraordinary conditions.

CARB has submitted information that the requirements of its emission standards and test procedures do not violate the permanent preemption provisions of section 209(e)(1), do not violate the motor vehicle preemption provisions of section 209(a), and are technologically feasible and present no inconsistency with Federal requirements and are, therefore, consistent with section 209 of the Act.

No information has been submitted to demonstrate that California did not satisfy its burden of demonstrating that its emission standards and test procedures do not violate section 209(e)(1). No information has been submitted to demonstrate that California's emission standards and test procedures violate section 209(a). Information submitted to me by parties opposing California's authorization request did not satisfy the burden of persuading EPA that the standards are not technologically feasible within the available lead time, considering costs. In addition, no information has been submitted to demonstrate that California's certification test procedures are inconsistent with Federal certification test procedures. Accordingly, I cannot make the determinations required for a denial of this authorization under section 209(e) of the Act, and therefore, I authorize the State of California to enforce these regulations.

My decision will affect not only persons in California but also the manufacturers outside the State who must comply with California's requirements in order to produce nonroad equipment engines for sale in California. For this reason, I hereby determine and find that this is a final action of national applicability.

⁴This information is contained in Docket A-91-01.

⁵ See 59 FR 36969, July 20, 1994 (to be codified at 40 CFR Part 85, Subpart Q, §§ 85.1601-85.1606). This final rule titled "Air Pollution Control; Preemption of State Regulation for Nonroad Engine and Vehicle Standards" was proposed at 56 FR 45866, Sept. 6, 1991.

¹ 56 FR 45873 (September 6, 1991). No final EPA decision was made on this proposal until today's authorization determination.

² 59 FR 36969 (July 20, 1994).

³ 59 FR 55658 (November 8, 1994).