November 15, 2003. The 2004 rulemaking added optional exhaust emission standards for diesel-fueled hybrid-electric urban bus engines for authorized transit agencies with NOX mitigation plans for the 2004–2006 model years. The 2004 rulemaking was formally adopted by CARB on June 24, 2004, and became operative under California law on January 31, 2004. The February 2005 rulemaking clarified the optional standards for hybrid-electric buses that were allowed in the 2004 rulemaking. The February 2005 rulemaking was formally adopted by CARB on February 24, 2005, and became operative under California law on January 31, 2006. The October 2005 rulemaking amended the urban bus standards to align with California’s existing exhaust emission standards for heavy-duty diesel engines. The October 2005 rulemaking was formally adopted by CARB on July 28, 2006, and became operative under California law on October 7, 2006. The revisions to emission standards and test procedures resulting from these five sets of amendments were codified at title 13, California Code of Regulations, section 1952.2 et seq., which was later renumbered to section 2023 et seq.

CARB seeks a waiver of preemption pursuant to section 209(b) of the Clean Air Act for the emission standards and related test procedures contained in its urban bus regulations, as amended through 2000 and 2005.

II. Clean Air Act 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 or political subdivision shall approve or revoke any such standard at any time. No State or any political subdivision thereof shall impose any regulation that would impose, or cause to be imposed, any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines, or equipment, or any 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. Section 209(b)(1) requires 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 (this is known as California’s “protectiveness determination”). However, no waiver is to be granted if EPA finds that: (A) California’s above-noted “protectiveness determination” is arbitrary and capricious; (B) California does not need such State standards to meet compelling and extraordinary conditions; or (C) California’s standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act.

Regarding consistency with section 202(a), EPA reviews California’s standards for technological feasibility and evaluates testing and enforcement procedures to determine whether they would be inconsistent with federal test procedures (e.g., if manufacturers would be unable to meet both California and federal test requirements using the same test vehicle).

III. EPA’s Request for Comments

EPA is offering the opportunity for a public hearing, and requesting written comment on issues relevant to section 209(b) of the Clean Air Act. Specifically, we request comment on whether: (a) California’s determination that its motor vehicle emission standards are, in the aggregate, at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious, (b) California needs such standards to meet compelling and extraordinary conditions, and (c) California’s standards and accompanying enforcement procedures are consistent with section 202(a) of the Clean Air Act.

IV. 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 1, 2013. 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–2012–0745.

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.


Christopher Grundler,
Director, Office of Transportation and Air Quality, Office of Air and Radiation.

[FR Doc. 2012–31717 Filed 1–3–13; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

California State Nonroad Engine Pollution Control Standards; Transport Refrigeration Units; Request for Authorization; Opportunity for Public Hearing and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has adopted amendments to California’s Airborne Toxic Control Measure for In-Use Diesel-Fueled Transport Refrigeration Units (TRU) and TRU Generator Sets and Facilities Where TRUs Operate.” CARB has asked that

13 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. See S.Rep. No. 90–403 at 643 (1967).
14 CAA section 209(b)(1)(A).
15 CAA section 209(b)(1)(B).
16 CAA section 209(b)(1)(C).
17 See, e.g., 74 FR at 32767 (July 8, 2009); see also M2M I, 627 F.2d at 1126.
EPA confirm that the TRU amendments either fall within the scope of the authorization EPA granted on January 9, 2009, pursuant to section 209(e) of the Clean Air Act, or are not subject to Clean Air Act preemption. This notice announces that EPA has tentatively scheduled a public hearing to consider California’s TRU amendments, and that EPA is now accepting written comment on the request.

DATES: EPA has tentatively scheduled a public hearing concerning CARB’s request on January 30, 2013, at 10:00 a.m. ET. EPA will hold a hearing only if any party notifies EPA by January 17, 2013, expressing interest in presenting the agency with oral testimony. Parties wishing to present oral testimony at the public hearing should provide written notice to Kristien Knapp at the email address noted below. If EPA receives a request for a public hearing, that hearing will be held at 1310 L Street NW., Washington, DC 20005. 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 1, 2013.

By January 25, 2013, any person who plans to attend the hearing may call Kristien Knapp at (202) 343–9949, to learn if a hearing will be held.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2012–0741, by one of the following methods:

- **Email**: a-and-r-docket@epa.gov.
- **Fax**: (202) 566–1741.
- **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–2012–0741. 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](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](http://www.regulations.gov) or email. The [http://www.regulations.gov](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 email comment directly to EPA without going through [http://www.regulations.gov](http://www.regulations.gov), your email 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](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–2012–0741. Publicly available docket materials are available either electronically through [http://www.regulations.gov](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](http://www.epa.gov/oar/docket.html). The electronic mail (email) 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](http://www.regulations.gov). After opening the [http://www.regulations.gov](http://www.regulations.gov) Web site, enter EPA–HQ–OAR–2012–0741, 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 Web page that contains general information on its review of California waiver requests. Included on that page are links to prior waiver and authorization [Federal Register](http://www.epa.gov/oar/cafr.htm) notices. The page can be accessed at [http://www.epa.gov/oar/cafr.htm](http://www.epa.gov/oar/cafr.htm).

**FOR FURTHER INFORMATION CONTACT:**

**SUPPLEMENTARY INFORMATION:**

I. California’s TRU Regulations

By letter dated May 13, 2011, CARB submitted to EPA its request pursuant to section 209(e) of the Clean Air Act (“CAA” or “the Act”), regarding its “Airborne Toxic Control Measure for In-Use Diesel-Fueled Transport Refrigeration Units (TRU) and TRU Generator Sets and Facilities Where TRUs Operate” (hereinafter “CARB’s TRU Amendments”). CARB’s TRU Amendments accomplish three main objectives: (1) Relax the TRU in-use compliance requirements for all 2003 and some 2004 model year TRUs and TRU generator sets (collectively referred to as “TRUs”), (2) clarify the operational useful life of TRU flexibility engines, and (3) establish new reporting and recordkeeping requirements for TRU original equipment manufacturers (OEMs). CARB formally adopted the TRU Amendments on February 21, 2011, and they became operative under California law on March 7, 2011. The TRU amendments are codified at title

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1 California Air Resources Board (“CARB”).
13. California Code of Regulations, section 2477.3
EPA granted an authorization for California’s initial set of TRU
regulations on January 9, 2009, notice of
which was published in the Federal
Register on January 16, 2009.4 CARB
seeks EPA’s confirmation that the TRU
Amendments either fall within the
scope of that previous authorization,
pursuant to section 209(e) of the Clean
Air Act, or are not subject to Clean Air
Act preemption.

II. 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
nonroad engines or vehicles. States
are also preempted from adopting and
enforcing standards and other
requirements related to the control of
emissions from non-nonroad
engines or vehicles. Section 209(e)(2)
requires the Administrator, after notice
and opportunity for public hearing, to
authorize California to enforce such
standards and other requirements,
unless EPA makes one of three findings.
In addition, other states with attainment
plans may adopt and enforce such
regulations if the standards, and
implementation and enforcement
procedures, are identical to California’s
standards. On July 20, 1994, EPA
promulgated a rule that 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.5
EPA later revised these regulations in
1997.6 As stated in the preamble to the

47 CFR 3030 (January 16, 2009).
5 59 FR 36969 (July 20, 1994).
6 62 FR 67733 (December 30, 1997). The
applicable regulations, now in 40 CFR part 1074,
subpart B, § 1074.165, provide:
(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
1994 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).7

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
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.

If California amends regulations that
were previously granted an
authorization, EPA can confirm that the
amended regulations are within the
scope of the previously granted
authorization. Such within-the-scope
amendments are permissible without a
full authorization 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 authorizations.

III. EPA’s Request for Comments

As stated above, EPA is offering the
opportunity for a public hearing, and
requesting written comment on issues
relevant to a within-the-scope analysis.
Specifically, we request comment on:
whether California’s TRU Amendments
(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 209 of the Act, and (3) raise
any other new issues affecting EPA’s
previous waiver or authorization
determinations.

Should any party believe that the TRU
amendments are not within the scope of
the previous TRU authorization, EPA
also requests comment on whether the
California TRU Amendments meet the
criteria for a full authorization.
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.

IV. 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 1, 2013.

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.

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

7 59 FR 36969 (July 20, 1994).
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
If no claim of confidentiality
accompanied the submission when EPA
receives it, EPA will make it available
to the public without further notice to
the person making comments.

Christopher Grundler,
Director, Office of Transportation and Air
Quality, Office of Air and Radiation.
[FR Doc. 2012–31720 Filed 1–3–13; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION
AGENCY
[FRL–9766–2]
California State Nonroad Engine
Pollution Control Standards; Off-
Highway Recreational Vehicles and
Engines; Request for Authorization;
Opportunity for Public Hearing and
Comment
AGENCY: Environmental Protection
Agency (EPA).
ACTION: Notice.
SUMMARY: The California Air Resources
Board (CARB) has notified EPA that it
has adopted regulations to amend its
Off-Highway Recreational Vehicle and
Engines (“OHRV”) Regulations. By
letter dated March 24, 2010, CARB
submitted a request that EPA authorize
these regulations under section 209(e) of
the Clean Air Act (CAA), 42 U.S.C.
7543(b). CARB seeks confirmation that
certain of the amendments are within
the scope of a prior authorization issued
by EPA, and that certain of the
amendments require and merit a new
authorization. This notice announces
that EPA has tentatively scheduled a
public hearing to consider California’s
request, and that EPA is now accepting
written comments on the request.
DATES: EPA has tentatively scheduled a
public hearing concerning CARB’s
request on January 30, 2013, at 10:00
a.m. at EPA’s offices at 1310 L Street
NW., Washington, DC 20005. EPA will
hold a hearing only if anyone notified
EPA that it will present oral testimony
at the hearing. Parties wishing to
present oral testimony at the public
hearing must provide written notice by
January 17, 2013 to Suzanne Bessette at
the email address noted below. If EPA
does not receive a request for a public
hearing, it will not hold a hearing and
instead will consider CARB’s request
based on written submissions to the
docket. Any party may submit written
comments by March 1, 2013.
By January 25, 2013, any person who
plans to attend the hearing may check
the following Web page for an update,
http://www.epa.gov/otaq/cafr.htm, or
may call Suzanne Bessette at (734) 214–
4703 to learn if a hearing will be held.
ADDRESSES: Submit your comments,
identified by Docket ID No. EPA–HQ–
OAR–2012–0742, by one of the
following methods:
• On-Line at http://
www.regulations.gov: Follow the On-
Line Instructions for Submitting
Comments.
• Email: a-and-r@docket.epa.gov.
• Fax: (202) 566–1741.
• Mail: Air and Radiation Docket,
Docket ID No. EPA–HQ–OAR–2012–
0742, 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–2012–
0742. EPA’s policy is that all comments
received 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 email. 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 email comment directly
to EPA without going through http://
www.regulations.gov, your email
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://
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–2012–0742. 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/
haar/docket.html. The electronic mail
(email) 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–2012–0742 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 Web page
that contains general information on its
review of California waiver and
authorization requests. Included on that
page are links to several of the prior
Federal Register notices which are cited.