



## ENVIRONMENTAL PROTECTION AGENCY

[FRL-11737-01-OAR]

### **California State Nonroad Engine Pollution Control Standards; In-Use Locomotive Regulation; Requests for Authorization; Opportunity for Public Hearing and Comment**

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

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

**SUMMARY:** The California Air Resources Board (CARB) has notified the EPA that it has adopted its In-Use Locomotive Regulation. By letter dated November 7, 2023, CARB requested that the EPA authorize the In-Use Locomotive Regulation pursuant to section 209(e) of the Clean Air Act (CAA). This notice announces that the EPA will hold a public hearing to consider California's authorization request and that the EPA is now accepting written comments on the request.

**DATES:** *Comments:* Written comments must be received on or before April 22, 2024.

*Public Hearing:* The EPA will hold a public hearing on March 20, 2024. See

**SUPPLEMENTARY INFORMATION** for further information on the virtual public hearing and registration. Additional information regarding the virtual public hearing and this action can be found at: <https://www.epa.gov/regulations-emissions-vehicles-and-engines/virtual-public-hearing-californias-use-locomotive>.

#### **ADDRESSES:**

*Comments:* You may submit your comments, identified by Docket ID No. EPA-HQ-OAR-2023-0574 by any of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov> (our preferred method).

Follow the online instructions for submitting comments.

- Email: [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov).

- Mail: U.S. Environmental Protection Agency, EPA Docket Center, OAR, Docket EPA–HQ–OAR–2023–0574, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

- Hand Delivery or Courier (by scheduled appointment only): EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center’s hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except federal holidays).

*Instructions:* All submissions received must include the Docket ID No. for this action. Comments received may be posted without change to <https://www.regulations.gov>, including any personal information provided. For detailed instructions on sending comments and additional information on the process for this action, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document. For the full EPA public comment policy, information about confidential business information (CBI) or multimedia submissions, and general guidance on making effective comments, please visit: <http://www.epa.gov/dockets/commenting-epa-dockets>.

*Public Hearing:* The virtual public hearing will be held on March 20, 2024. The hearing will begin at 10 a.m. eastern daylight time and will end when all parties who wish to speak have had an opportunity to do so. All hearing attendees (including even those who do not intend to provide testimony) should register for the public hearing March 13, 2024. Information on how to register for the virtual hearing can be found at <https://www.epa.gov/regulations-emissions-vehicles-and-engines/virtual-public-hearing-californias-use-locomotive>.

**FOR FURTHER INFORMATION CONTACT:** David Dickinson, Office of Transportation and Air Quality, U.S. Environmental Protection Agency; Telephone number: (202) 343–9256; Email address: [dickinson.david@epa.gov](mailto:dickinson.david@epa.gov).

**SUPPLEMENTARY INFORMATION:**

## **I. CARB's Authorization Request**

CARB's November 7, 2023, letter to the EPA Administrator notified the EPA that CARB had finalized its In-Use Locomotive Regulation.<sup>1</sup> The In-Use Locomotive Regulation, adopted by the Board on April 27, 2023, (approved by California's Office of Administrative Law (OAL) on October 27, 2023, and becoming effective on January 1, 2024) contains several provisions that apply to any locomotive operator that operates a locomotive in the State of California or to a delegate of that operator and applies only to locomotives and locomotive engines placed into service in California and only to an operator or delegate's operations inside California.<sup>2</sup> The explanation of the In-Use Locomotive Regulation provided below is based on CARB's description of its regulation and is not an exhaustive list of the requirements (interested parties are encouraged to review CARB's rulemaking record contained in its authorization request and found in the EPA's docket associated with the review of the authorization request).

The In-Use Locomotive Regulation includes a "Spending Account" provision, whereby annually, for each locomotive operated in California, locomotive operators are required to deposit funds into a Spending Account. The account operates as a restricted trust, held by the locomotive operator, with the funds able to be withdrawn for specific uses described within the regulation.<sup>3</sup>

The In-Use Locomotive Regulation also includes an "In-Use Locomotive Operational Requirement" that according to CARB starts January 1, 2030, and allows only locomotives with an original engine build date less than 23 years old to operate in California excepting locomotives that meet the current cleanest EPA Tier (currently Tier 4) of emission standards for a locomotive of its type, that are operated in a Zero Emission

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<sup>1</sup> Title 13, California Code of Regulations, section 2478.

<sup>2</sup> CARB's Authorization Support Document at 3-4 (EPA Docket: EPA-HQ-OAR-2023-0574). A full description of CARB's In-Use Locomotive Regulation can be found in the Authorization Support Document submitted by CARB along with associated attachments that can be found in the EPA docket for this matter.

<sup>3</sup> CARB's Authorization Support Document at 4-5.

(ZE) configuration while in California,<sup>4</sup> or that satisfy other specified conditions.

CARB's authorization request notes that if a locomotive has been remanufactured or repowered to a Tier 4 or cleaner emissions standard prior to January 1, 2030, the original engine build date will be based on the first year the locomotive was remanufactured to the Tier 4 or cleaner standard.<sup>5</sup>

As an alternative to the spending account and the operational requirements, the In-Use Locomotive Regulation includes an "Alternative Compliance Plan (ACP)" provision that allows regulated locomotive operators to comply with the Spending Account and/or In-Use Operational Requirements using a project or projects that achieve equivalent emissions reductions within three miles of the operators' locomotive activities within California.<sup>6</sup>

The In-Use Locomotive Regulation includes an idling requirement. According to CARB, locomotive "operators must ensure that an Automatic Engine Stop Start (AESS) equipped locomotive is shut off no more than 30 minutes after the locomotive becomes stationary. A locomotive may only exceed 30 minutes of idling for the following reasons: to prevent engine damage such as to prevent the engine coolant from freezing; to maintain air pressure for brakes or starter system, or to recharge the locomotive battery; to perform necessary maintenance; or to otherwise comply with federal or state regulations."<sup>7</sup>

CARB's regulation also imposes registration, reporting and recordkeeping requirements on locomotive operators for all locomotive activity in California.

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<sup>4</sup> CARB explains the ZE Configuration concept in its Authorization Support Document at 4 ("an operational configuration for the locomotive that emits no pollution, regardless of whether the locomotive might emit pollution when operated differently").

<sup>5</sup> CARB Authorization Support Document at 5-6.

<sup>6</sup> *Id.* at 6.

<sup>7</sup> *Id.* at 7.

Locomotive operators are required to register all locomotives operating within the State by July 1, 2026.<sup>8</sup>

CARB's authorization request also includes a description of compliance exemptions and extensions that are provided to locomotive operators for enhanced flexibility to comply with the Spending Account and In-Use Operational Requirements.<sup>9</sup>

## **II. Scope of Preemption and Criteria for an Authorization Under the Clean Air Act**

Section 209(e)(1) of the CAA prohibits all states and local governments from adopting or attempting to enforce any standard or other requirement relating to the control of emissions from certain types of new nonroad engines or nonroad vehicles, including both “(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.”<sup>10</sup> Section 209(e)(2)(A) of the CAA, 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 nonroad engines and vehicles otherwise not prohibited under 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 are applicable Federal standards. However, the EPA shall not grant such authorization if it finds that (1) the determination of California is arbitrary and capricious; (2) California does not need such California standards to meet compelling and extraordinary conditions; or (3) California standards and accompanying enforcement procedures are not consistent with [CAA section 209].<sup>11</sup>

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 8.

<sup>10</sup> 42 U.S.C 7543(e)(1).

<sup>11</sup> 42 U.S.C. 7543(e)(2)(A).

On July 20, 1994, the EPA promulgated a rule that sets forth, among other things, regulations providing the criteria, as found in section 209(e)(2)(A), that the EPA must consider before granting any California authorization request for nonroad engine or vehicle emission standards.<sup>12</sup> The EPA revised these regulations in 1997.<sup>13</sup> As stated in the preamble to the 1994 rule, the EPA has historically interpreted the section 209(e)(2)(A)(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 the EPA has interpreted that subsection in the context of section 209(b) motor vehicle waivers).<sup>14</sup> In addition, on November 8, 2023, the EPA revised the regulatory language regarding the scope of preemption pertaining to locomotives within section 209(e)(1)(B).<sup>15</sup> The action taken in the rulemaking was to align the scope of preemption applicable to new locomotives and new engines used in locomotives to be the same as the scope of preemption for other new nonroad engines and vehicles preempted within section 209(e)(1)(A). The scope of preemption applicable to new locomotives can be found at 40 CFR section 1074.10, and the criteria for granting California authorization requests can be found at 40 CFR section 1074.105. Provisions pertaining to the adoption of California nonroad standards by other states can be found at 40 CFR section 1074.110.

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

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<sup>12</sup> 59 FR 36969 (July 20, 1994).

<sup>13</sup> 62 FR 67733 (December 30, 1997). The preemption regulations were later transcribed at 40 CFR part 1074; see 73 FR 59034 (Oct. 8, 2008).

<sup>14</sup> 59 FR 36969 (July 20, 1994).

<sup>15</sup> 88 FR 77004 (November 8, 2023). In this authorization action, the EPA is not reopening the locomotive preemption rulemaking from November 8, 2023. Any public comments on the rulemaking that are not germane to this authorization action may not be addressed in the EPA’s final decision regarding CARB’s authorization request.

permanently preempted from state regulation (such as “...any standard or other requirement relation to the control of emissions from ... (B) New locomotives or new engines used in locomotives.”). 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.<sup>16</sup>

### **III. EPA’s Request for Comments**

We request comment on whether California’s In-Use Locomotive Regulation meets the criteria for an EPA 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. As explained above, the EPA considers several provisions with regard to the consistency with section 209 of the Act criterion.

### **IV. Procedures for Public Participation**

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<sup>16</sup> 78 FR 58090, 58092 (September 20, 2013).

The virtual public hearing will be held on March 20, 2024. The hearing will begin at 10 a.m. eastern daylight time. All hearing attendees (including those who do not intend to provide testimony and merely listen) should register for the public hearing at: <https://www.epa.gov/regulations-emissions-vehicles-and-engines/virtual-public-hearing-californias-use-locomotive>.

Those seeking to register should do so by March 13, 2024. If you require the services of a translator or special accommodations such as American Sign Language, please pre-register for the hearing and describe your needs by March 13, 2024. The EPA may not be able to arrange accommodations without advance notice. Please note that any updates made to any aspect of the hearing will be posted online at: <https://www.epa.gov/regulations-emissions-vehicles-and-engines/virtual-public-hearing-californias-use-locomotive>. While the EPA expects the hearing to go forward as set forth above, please monitor the website or contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to determine if there are any updates. The EPA does not intend to publish a document in the Federal Register announcing updates.

Each commenter will have 3 minutes to provide oral testimony. The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. The EPA recommends submitting the text of your oral comments as written comments to the docket for this action. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing. The Agency will make a verbatim record of the proceedings at the hearing that will be placed in the docket. The EPA will keep the record open until April 22, 2024. After expiration of the comment period, the Administrator will render a decision on CARB's request based on the record of the public hearing, relevant written submissions, and other information that he deems pertinent.

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