



ENVIRONMENTAL PROTECTION AGENCY

[FRL-10891-01-OAR]

**California State Nonroad Engine Pollution Control Standards; In-Use Diesel-Fueled Transport Refrigeration Units (TRU) and TRU Generator Sets and In-Use Off-Road Diesel Fueled Fleets; 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 amendments to its In-Use Diesel-Fueled Transport Refrigeration Units (TRU) and TRU Generator Sets (collectively, "TRU") regulations. By letter dated December 29, 2022, CARB requested that the EPA authorize the amendments pursuant to section 209(e) of the Clean Air Act (CAA). CARB has also notified EPA that it has adopted amendments to its In-Use Off-Road Diesel-Fueled Fleets ("Offroad Fleets") regulations. By letter dated November 2, 2023, CARB requested that the EPA authorize the amendments pursuant to section 209(e) of the CAA. This notice announces that the EPA will hold a public hearing to consider California's authorization requests and that the EPA is now accepting written comments on the requests.

**DATES:** *Comments:* Written comments must be received on or before June 19, 2024.

*Public Hearing:* The EPA will hold public hearings on May 16, 2024, regarding each of CARB's authorization requests. See **SUPPLEMENTARY INFORMATION** for further information on the virtual public hearings, the specific time of day associated with each authorization request, and registration. Additional information regarding the virtual public hearing and the TRU action can be found at: <https://www.epa.gov/regulations-emissions-vehicles-and-engines/virtual-public-hearing-californias-tru>. Additional information regarding the virtual public hearing and the Offroad Fleets action can be

found at: <https://www.epa.gov/regulations-emissions-vehicles-and-engines/virtual-public-hearing-californias-use-road-diesel>.

**ADDRESSES:**

*Comments:* You may submit your comments, identified by Docket ID No. EPA–HQ–OAR–2024–0030 (for the TRU action) and by Docket ID. No. EPA-HQ-OAR-2023-0581 (for the Offroad Fleets action) 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–2024–0030 (for the TRU action) or Docket EPA-HQ-OAR-2023-0581 (for the Offroad Fleets action), 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 one or both of these actions. 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 these actions, 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 hearings will be held on May 16, 2024. The hearing for the TRU authorization request will begin at 10:00 a.m. Eastern Daylight Time and will end approximately at 1:00 p.m. or when all parties who wish to speak have had an opportunity to do so. The hearing for the Offroad Fleets authorization request will begin at 2:00 p.m. Eastern Daylight Time and will end when all parties who wish to speak have had an opportunity to do so. All hearing attendees, for those wishing to attend either the morning hearing or afternoon hearing for the TRU or Offroad Fleets authorization request, respectively (including even those who do not intend to provide testimony), should register for the respective public hearing(s) by May 9, 2024. Information on how to register for the virtual public hearing regarding the TRU authorization request can be found at: <https://www.epa.gov/regulations-emissions-vehicles-and-engines/virtual-public-hearing-californias-tru>. Information on how to register for the virtual public hearing regarding the Offroad Fleets authorization request can be found at: <https://www.epa.gov/regulations-emissions-vehicles-and-engines/virtual-public-hearing-californias-use-road-diesel>.

**FOR FURTHER INFORMATION CONTACT:** Mark Coryell, Office of Transportation and Air Quality, U.S. Environmental Protection Agency; Telephone number: (734) 214-4446; Email address: [coryell.mark@epa.gov](mailto:coryell.mark@epa.gov). Jeremy O’Kelly, Office of Transportation and Air Quality, U.S. Environmental Protection Agency; Telephone number: (202) 250-8884; Email address: [okelly.jeremy@epa.gov](mailto:okelly.jeremy@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. CARB’s TRU Authorization Request**

CARB’s December 29, 2022, letter to the EPA Administrator notified the EPA that CARB had amended its In-Use Diesel-Fueled Transport Refrigeration Units (TRU)

and TRU Generator Sets (collectively, “TRU”) regulations (the TRU Amendments).<sup>1</sup> The TRU Amendments, adopted by the Board on February 24, 2022, contain several provisions including, but not limited to, a requirement that certain TRUs manufactured after a certain date use a refrigerant less than or equal to a specified global warming potential (GWP), a requirement that non-truck TRUs meet specified particulate matter (PM) standards, a requirement that TRU owners transition a percentage of their truck fleet TRUs to zero-emission technology, and a requirement that owners of certain facilities are subject to registration and reporting requirements.<sup>2</sup>

## **II. CARB’s Offroad Fleets Authorization Request**

CARB’s November 2, 2023, letter to the EPA Administrator notified the EPA that CARB had amended its In-Use Off-Road Diesel-Fueled Fleets regulations (Offroad Fleets Amendments).<sup>3</sup> The Offroad Fleets Amendments, adopted by the Board on December 8, 2022, primarily require fleets of in-use off-road diesel-fueled vehicles to phase out the operation of their oldest and highest-emitting diesel vehicles and prohibit such fleets from acquiring high-emitting vehicles. The Offroad Fleets Amendments also require fleets to fuel their vehicles with specified renewable diesel. Further, the Amendments establish administrative requirements for prime contractors and public works awarding bodies.<sup>4</sup>

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

---

<sup>1</sup> Title 13, California Code of Regulations, section 2477. EPA granted an authorization for California’s initial set of TRU regulations on January 16, 2009. EPA also granted a within-the-scope authorization for amendments to the TRU regulations, adopted in 2010, on June 28, 2013 (78 FR 38970).

<sup>2</sup> CARB’s Authorization Support Document at 4-9 (EPA Docket: EPA-HQ-OAR-2024-0030). A description of CARB’s 2022 TRU Amendments 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> Title 13, California Code of Regulations, sections 2449, 2449.1, and 2449.2. In 2013, EPA issued an authorization for CARB’s initial Offroad Fleets adopted in 2007 and amended in 2009 and 2010 (78 FR 58090 (Sept. 20, 2013)).

<sup>4</sup> CARB’s Authorization Support Document at 4-10 (EPA Docket: EPA-HQ-OAR-2023-0581). A description of CARB’s Offroad Fleets Amendments 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.

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>5</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>6</sup>

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>7</sup> The EPA revised these regulations in 1997.<sup>8</sup> The criteria for granting California authorization requests, as reflected in section 209(e)(2)(A), can be found at 40 CFR section 1074.105.

---

<sup>5</sup> 42 U.S.C 7543(e)(1).

<sup>6</sup> 42 U.S.C. 7543(e)(2)(A).

<sup>7</sup> 59 FR 36969 (July 20, 1994).

<sup>8</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).

As stated in the preamble to the 1994 rule, the EPA has historically interpreted the section 209(e)(2)(A)(iii) “consistency” inquiry (see 40 CFR 1074.105(b)(3)) 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>9</sup>

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 (such as “...any standard or other requirement relating to the control of emissions from ... (A) New engines which are used in construction equipments or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower. (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 he 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>10</sup>

---

<sup>9</sup> 59 FR 36969 (July 20, 1994).

<sup>10</sup> 78 FR 58090, 58092 (September 20, 2013).

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

We request comment on whether the TRU Amendments meet 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.

We also request comment on whether the Offroad Fleets Amendments meet 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**

The virtual public hearings will be held on May 16, 2024. The hearing for the TRU authorization request will begin at 10:00 a.m. Eastern Daylight Time and will end approximately at 1:00 p.m. or when all parties who wish to speak have had an opportunity to do so. The hearing for the Offroad Fleets authorization request will begin at 2:00 p.m. Eastern Daylight Time and will end when all parties who wish to speak have had an opportunity to do so.

All hearing attendees, for those wishing to attend either the morning or afternoon hearings for TRU or Offroad Fleets, respectively (including even those who do not intend to provide testimony,) should register for the respective public hearing(s) by May 9, 2024. Information on how to register for the virtual public hearing regarding the TRU authorization request can be found at: <https://www.epa.gov/regulations-emissions-vehicles-and-engines/virtual-public-hearing-californias-tru>. Information on how to register for the virtual public hearing regarding the Offroad Fleets authorization request can be found at: <https://www.epa.gov/regulations-emissions-vehicles-and-engines/virtual-public-hearing-californias-use-road-diesel>.

Those seeking to register should do so by May 9, 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 May 9, 2024. The EPA may not be able to arrange accommodations without advance notice. Please note that any updates made to any aspect of the TRU authorization hearing will be posted online at: <https://www.epa.gov/regulations-emissions-vehicles-and-engines/virtual-public-hearing-californias-tru>. Please also note that any updates to any aspect of the Offroad Fleets authorization hearing will be posted online at: <https://www.epa.gov/regulations-emissions-vehicles-and-engines/virtual-public-hearing-californias-use-road-diesel>. While the EPA expects the hearings to go forward as set forth above, please monitor the respective hearing websites 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 the respective authorization request. 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 for the respective authorization request. The Agency will make a verbatim record of the proceedings at each hearing that will be placed in the respective TRU and Offroad Fleets dockets. The EPA will keep the record open until June 19, 2024, for each authorization request. After expiration of the comment period, the Administrator will render decisions on CARB's requests based on the record of the public hearing, relevant written submissions, and other information that he deems pertinent.

**William Charmley,**

*Director,*

*Assessment and Standards Division,*

*Office of Transportation and Air Quality.*

[FR Doc. 2024-08927 Filed: 4/25/2024 8:45 am; Publication Date: 4/26/2024]