

May 14, 2003, without further notice unless we receive adverse comment by May 12, 2003, or receive a request for a public hearing by April 28, 2003. We may address all adverse comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period.

II. Summary of Rule

The change to the definition of nonroad engine is intended to encourage agricultural operations in the State of California to reduce emission from their existing stationary diesel-powered¹ engines by replacing them with engines certified to the emission standards for nonroad engines, thereby greatly reducing NO_x emissions from these engines. The rule does not require the replacement of existing engines with certified engines. However, as explained below, EPA believes that owners of engines will choose to replace them voluntarily.

The Clean Air Act divides internal combustion engines into three categories: Stationary internal combustion engines, engines used in highway motor vehicles, and nonroad engines. The last category includes virtually all mobile engines that are not used in motor vehicles. Nonroad engines are considered mobile sources under the Act and are regulated by EPA under section 213 of the Act. However, the boundaries between these three categories of engines is not well delineated in the Act, so EPA promulgated a rule defining "nonroad engine," exercising its authority to clarify these boundaries (59 FR 31306, June 17, 1994). See 40 CFR 89.2. The current definition of nonroad engine requires that the engine meet one of several criteria primarily based on how it is used. For example, the engine is defined as a nonroad engine if it is used to propel a piece of mobile equipment such as a bulldozer or farm tractor or if it is used in equipment that is propelled while performing its function such as a lawn mower. In addition, the engine is considered a nonroad engine if it is used in a piece of equipment that is portable or transportable. Such equipment could include a pump mounted on a trailer or on a set of skids for the purpose of moving the equipment from one location to another for operation in multiple locations. However, such an

engine would not be considered a nonroad engine if the engine or the equipment in which it is located is actually used in one fixed location for more than 12 consecutive months. If an engine is located in one place and operated more than 12 consecutive months or otherwise does not meet the definition of nonroad engine (for example, if it is permanently attached to one location), the engine is not considered a nonroad engine and is not subject to EPA's emission standards for nonroad engines. Instead, it is generally considered stationary and is subject to regulation under Titles I and V of the Clean Air Act.

In the case of agricultural pump engines used in the State of California, EPA estimates that approximately half of these fall under the definition of nonroad engines due to their portability while the rest are considered stationary. Other than portability, both sets of engines perform basically the same set of functions and operate similarly. Thus, a farming operation could have engines of the same horsepower and even the same manufacturer performing the same basic function of powering a pump, but one would be considered a mobile source nonroad engine subject to the requirements established under Title II of the Clean Air Act while its counterpart is treated as stationary and subject to the provisions of Titles I and V of the Clean Air Act.

In California, stationary agricultural pump engines have historically not been required to reduce their emission levels.² In contrast, nonroad engines have emission standards in place which have substantially improved their emission performance. Thus, using the example case from the previous paragraph, an agricultural operation could have two pump engines identical in function except the one considered a nonroad engine could have significantly better emission performance than its counterpart stationary pump engine. Clearly, from an emission performance standpoint, it would be preferable to have both engines meeting the lower emission levels of the nonroad engine.

Due to the substantial number of agricultural pump engines in use in California, particularly concentrated in the major agricultural areas such as the San Joaquin Valley, and due to the fact that the portion of these engines

installed in stationary pumps have not been previously controlled (except perhaps by voluntary action of the owner³), we believe it would be environmentally beneficial to encourage agricultural operations to replace relatively high emitting stationary pump engines with engines meeting the nonroad emission standards. The State of California has in fact acted since 1999 to reduce the emissions from these stationary engines by replacing these stationary engines through its Carl Moyer program which has provided funding for the purchase of new engines certified to meet the emission standards applicable to new nonroad engines.

EPA is changing the definition of nonroad engine to include diesel engines used in agricultural operations in the State of California that are certified by the engine manufacturer to meet the nonroad emission standards for that engine, where the engine is part of an engine family that contains engines that otherwise meet the definition of nonroad engine. Such engines will no longer be stationary internal combustion engines. Thus, farmers would not include the emissions from such nonroad engines when they determine whether their agricultural operation is a major source for purposes of Title V permitting or other requirements. We believe that this change will encourage the use of engines certified to nonroad standards, which will result in a reduction in emissions from uncontrolled levels. We believe that farmers will prefer to obtain new engines regulated as nonroad engines, rather than to continue using engines that will be regulated under stationary source permitting requirements including Title V and New Source Review (NSR). Regulations promulgated under Title II focus primarily on compliance by manufacturers rather than users, whereas Title V and NSR focuses compliance requirements on users.

Of course, replacing current engines with new nonroad engines comes at some cost. However, the State of California through its Carl Moyer program has been providing funds to help farmers replace existing engines with newer cleaner engines. Additionally, the U.S. Department of Agriculture, through programs administered by its Natural Resources

¹ In this preamble, references to diesel-powered engines or diesel engines denotes engines operating over what is commonly referred to as the diesel engine cycle, also known as the compression ignition cycle. It is not limited to engines running on diesel fuel. For example, engines fueled with diesel fuel, compressed natural gas (CNG), or other fuel, may be diesel-powered engines.

² California state law presently exempts these engines from all New Source Review and Title V permitting requirements as well as any local operating permit requirements. As a result of this exemption, EPA recently proposed to find that the California State Implementation Plan is substantially inadequate. 68 FR 7327 (February 13, 2003)

³ Some pieces of stationary agricultural equipment use engines that are certified to nonroad engine standards, or that are identical to certified engines. Internal combustion engines can be manufactured for many uses, and some engines manufactured to meet the nonroad engine standards may end up in stationary equipment. Farmers may choose to purchase such equipment.