

SORE Rule, which applies to all gasoline, diesel, and other fueled utility and lawn and garden equipment engines 25 horsepower and under, with certain exceptions established two "tiers" of exhaust emission standards for these engines (Tier 1 from 1995 through 1998 model years, and Tier 2 for model year 1999 and beyond), as well as numerous other requirements. By letter dated October 4, 1999, CARB notified EPA that it had adopted numerous amendments to its SORE Regulations which were first approved at a public hearing on March 26, 1998. These amendments are the product of CARB's continuing reviews of industry efforts to comply with the requirements of the CARB nonroad program. The Board directed the CARB staff to review the industry progress in developing the technology required to comply with the Tier 2 standards, and to consider issues raised by the industry in this process. The staff recommended to the Board that the SORE regulations "be modified to reflect the realities of the small engine market and the technological capabilities of the industry."¹² These recommended amendments which CARB adopted consequently reduce compliance burdens on manufacturers while also "preserving most of the emission reductions—including most reductions in excess of comparable federal program—that U.S.E.P.A. previously authorized."¹³

In its request letter, CARB asked EPA to confirm the CARB determination that the amendments to the SORE regulations set forth in its request package are within the scope of the 209(e) authorization of the original authorization granted by EPA for the SORE Rule in July 1995. EPA has made such a determination for most of the regulation amendments included in the CARB request.¹⁴ EPA also determined, on the other hand, that one set of regulation amendments in this request cannot be considered within the scope of the previous authorization because these particular amendments set brand new, more stringent standards and therefore properly should be reviewed as a new authorization request. These amendments set useful life standards for covered engines (where before there were none). Accordingly, EPA offered the opportunity for a public hearing,

and requested public comments, on these new standards, as the Act requires us to do, by publication of a **Federal Register** notice to such effect on November 20, 2000.¹⁵ There was no request for a public hearing, nor were any comments received on the CARB standards at issue. Therefore, EPA has made this determination based on the information submitted by CARB in its request.

C. Authorization Decision

EPA has decided to authorize California to enforce amendments to its SORE regulations that set durability standards for engines covered by the Rule. In its request letter, CARB stated that the various amendments will not cause the California nonroad standards, in the aggregate, to be less protective of public health and welfare than the applicable Federal standards. CARB also stated that California's need for the emission reductions retained from the SORE regulations obviously remains compelling. Finally, regarding consistency with section 209, CARB stated that the amendments (1) apply only to nonroad engines and vehicles and not to motor vehicles or engines, (2) apply only to those nonroad engines and vehicles which are not included in the preempted categories, and (3) do not raise any concerns of inadequate leadtime or technological feasibility or impose any inconsistent certification requirements (compared to the Federal requirements).

EPA agrees with all CARB findings with regard to the provisions listed. Additionally, no information was presented to EPA by any party which would demonstrate that California did not meet the burden of satisfying the statutory criteria of section 209(e). For these reasons, EPA authorizes California to enforce these durability standards.

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 engines and vehicles for sale in California. For this reason, I hereby determine and find that this is a final action of national applicability.

Under section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by January 20, 2004. Under section 307(b)(2) of the Act, judicial review of this final action may not be obtained in subsequent enforcement proceedings.

As with past authorization decisions, this action is not a rule as defined by Executive Order 12866. Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12866.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3).

Finally, the Administrator has delegated the authority to make determinations regarding authorizations under section 209(e) of the Act to the Assistant Administrator for Air and Radiation.

Dated: November 10, 2003.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

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ENVIRONMENTAL PROTECTION AGENCY

(ER–FRL–6645–7)

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 04, 2003 (68 FR 16511).

Draft EISs

ERP No. D–AFS–L65429–WA Rating EC2, Gotchen Risk Reduction and Restoration Project, Implementation, Mount Adams Ranger District, Gifford Pinchot National Forest, Skamania and Yakima Counties, WA.

Summary: EPA expressed environmental concerns regarding potential adverse impacts to water quality and designated critical habitat and endangered species from proposed

¹² CARB Notice of Public Hearing with attached Staff Report, Docket A–2000–09, entry II–B–2, p. 2.

¹³ Letter from CARB to EPA requesting within the scope confirmation for amendments to SORE Rule, dated October 4, 1999, Docket A–2000–09, entry II–B–1, p. 3.

¹⁴ Decision Document for California Nonroad Engine Regulations Amendments, Dockets A–2000–05 to 08, entry V–B.

¹⁵ 65 FR 69763 (November 20, 2000).