

The Division Director of EPA's Office of Transportation and Air Quality Assessment and Standards Division, William Charmley, signed the following notice and EPA is submitting it for publication in the *Federal Register* (FR). While we have taken steps to ensure the accuracy of this Internet version, it is not the official version of the notice. Please refer to the official version in a forthcoming FR publication, which will appear on the Government Printing Office's FDSys website ([www.gpo.gov/fdsys/search/home.action](http://www.gpo.gov/fdsys/search/home.action)) and on Regulations.gov ([www.regulations.gov](http://www.regulations.gov)) in the Docket Number listed below. Once the official version of this document is published in the FR, this version will be removed from the Internet and replaced with a link to the official version.

6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

**[EPA-HQ-OAR-2023-0589; FRL-12042-01-OAR]**

### **California State Motor Vehicle Pollution Control Standards; Advanced Clean Fleets**

### **Regulation; Request for Waiver of Preemption and Authorization; Opportunity for Public Hearing and Public 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 Environmental Protection Agency (EPA) that it has adopted Advanced Clean Fleets (ACF) regulations, applicable to affected state and local government fleets, drayage truck fleets, federal agency fleets, and large commercial fleets that own, lease, or operate on-road medium-duty and heavy-duty vehicles, and light-duty package delivery vehicles, to incorporate zero-emitting vehicles beginning in 2024. The ACF regulations also require that all new California-certified medium- and heavy-duty vehicle sales be zero-emitting vehicles starting in 2036. Elements of the ACF regulation apply to off-road engines and equipment, specifically off-road yard tractors. By letter dated November 15, 2023, CARB submitted a request that EPA grant a waiver of preemption under section 209(b) of the Clean Air Act (CAA) for the ACF on-road regulations and an authorization under section 209(e) of the CAA for the ACF off-road regulations. This notice announces that EPA has scheduled a public hearing concerning California's request and that EPA is accepting written comment on the request.

**DATES:**

*Comments:* Written comments must be received on or before September 16, 2024.

*Public Hearing:* EPA plans to hold a virtual public hearing on August 14, 2024, regarding CARB’s waiver and authorization request. 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-advanced-clean-fleet>.*

**ADDRESSES:**

*Comments:* You may submit your comments, identified by Docket ID No. EPA-HQ-OAR-2023-0589, by any of the following methods:

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

Follow the on-line 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-2023-0589, Mail Cod 28221T, 1200 Pennsylvania Ave. NW, Washington, D.C. 20460. Please include a total of two copies.
- *Hand Delivery or Courier (by scheduled appointment only):* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW., Washington, D.C. 20004. The Docket Center’s hours of operation are 8:30 a.m. – 4:30 p.m., Monday through 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 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 <https://www.epa.gov/dockets/commenting-epa-dockets>.

*Public Hearing:* The virtual public hearing will be held on August 14, 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, for those wishing to attend the hearing (including even those who do not intend to provide testimony), should register by August 7, 2024. Information on how to register for the virtual public hearing regarding the ACF waiver and authorization request can be found at: <https://www.epa.gov/regulations-emissions-vehicles-and-engines/virtual-public-hearing-californias-advanced-clean-fleet>.

**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 Waiver and Authorization Request**

CARB’s November 15, 2023, letter to the Administrator notified EPA that CARB had finalized its ACF regulations. The ACF regulations, adopted by the Board on April 28, 2023 (approved by California’s Office of Administrative Law (OAL) on September 29, 2023, and

becoming effective October 1, 2023).<sup>1</sup> Detailed descriptions of the ACF regulatory provisions are provided in CARB’s request to EPA, CARB’s “Staff Report: Initial Statement of Reasons” (Staff Report), the Notices of Public Availability of Modified Text and Additional Documents and Information (Notices of Public Availability), and the Final Statement of Reasons (FSOR).<sup>2</sup>

CARB requests that EPA grant a new waiver for the ACF on-road regulatory program. CARB’s request and waiver analysis includes “a description of California’s rulemaking action, a review of the criteria governing EPA’s evaluation of California’s request for waiver and authorization action, [CARB’s] analysis and rationale supporting [its] request, and supporting documents.”<sup>3</sup> CARB’s waiver analysis, set forth in its ACF Waiver and Authorization Support Document, addresses how the ACF on-road regulations and CARB’s waiver request meet each of the three waiver criteria in section 209(b)(1) of the CAA.<sup>4</sup> For example, CARB explains how the ACF on-road regulations will not cause California motor vehicle emission standards, in the aggregate, to be less protective of public health and welfare than applicable Federal standards and that no basis exists for the Administrator of EPA to find that CARB’s determination is arbitrary and capricious under section 209(b)(1)(A) of the CAA.<sup>5</sup> CARB also explains how it continues to demonstrate California’s need for a separate motor vehicle emission program, including the ACF on-road regulations contained in its waiver request, under section

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<sup>1</sup> The Advanced Clean Fleets regulations are comprised of new title 13, California Code of Regulations (Cal. Code Regs.) sections 2013 through 2013.4, sections 2014 through 2014.3, sections 2015 through 2015.6, and section 2016.

<sup>2</sup> CARB’s Waiver and Authorization Support Document at 6-15 (EPA Docket: EPA-HQ-OAR-2023-0589). The Staff Report, Notices of Public Availability, and FSOR are also located in EPA’s docket.

<sup>3</sup> Letter from Steven S. Cliff, CARB, dated November 15, 2023, EPA-HQ-OAR-2023-0589. The ACF Waiver and Authorization Support Document, attached to the letter from Mr. Cliff, are both available at EPA-HQ-OAR-2023-0589.

<sup>4</sup> The ACF Waiver and Authorization Support Document provides a summary of the adopted regulations, a brief history of similar regulations, and an analysis of the adopted regulations under the waiver criteria in section 209(b)(1) of the CAA.

<sup>5</sup> ACF Waiver and Authorization Support Document at 21-24.

209(b)(1)(B) of the CAA.<sup>6</sup> Finally, CARB explains how the ACF on-road regulations in its waiver request meet the requirement in section 209(b)(1)(C), which requires California's regulations to be consistent with section 202(a) of the CAA.<sup>7</sup>

CARB also requests that EPA grant a new authorization for the ACF off-road regulatory program. CARB's authorization analysis, set forth in its ACF Waiver and Authorization Support Document, addresses how the ACF off-road regulations and CARB's authorization request meet each of the three authorization criteria in section 209(e)(2)(A) of the CAA.<sup>8</sup> For example, CARB explains how the ACF off-road regulations will not cause California off-road vehicle and equipment emission standards, in the aggregate, to be less protective of public health and welfare than applicable Federal standards and that no basis exists for the Administrator of EPA to find that CARB's determination is arbitrary and capricious under section 209(e)(2)(A)(1) of the CAA.<sup>9</sup> CARB also explains how it continues to demonstrate California's need for a separate off-road vehicle and equipment emission program, including the ACF off-road regulations contained in its authorization request, under section 209(e)(2)(A)(2) of the CAA.<sup>10</sup> Finally, CARB explains how the ACF off-road regulations in its authorization request meet the requirement in section 209(e)(2)(A)(3), which requires California's regulations to be consistent with section 209 of the CAA.<sup>11</sup>

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<sup>6</sup> *Id.* at 32-30.

<sup>7</sup> *Id.* at 30-45.

<sup>8</sup> The ACF Waiver and Authorization Support Document provides a summary of the adopted ACF off-road regulations and an analysis of the adopted regulation under the authorization criteria in section 209(e)(2)(A) of the CAA.

<sup>9</sup> ACF Waiver and Authorization Support Document at 45.

<sup>10</sup> *Id.* at 46-47.

<sup>11</sup> *Id.* at 47-49.

## II. Scope of Preemption and Criteria for a Waiver and Authorization under the Clean Air Act

Section 209(a) of the Clean Air Act, as amended (“Act”), 42 U.S.C. 7543(a), 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 shall require certification, inspection or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

Section 209(b) of the Act requires the Administrator, after notice and opportunity for public hearing, to waive application of the prohibitions of section 209(a) for any state that has 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 the state standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. California is the only state that is qualified to seek and receive a waiver under section 209(b).<sup>12</sup> Section 209(b)(1) requires the Administrator to grant a waiver unless he finds that (A) the determination of the state is arbitrary and capricious, (B) the state does not need the state standards to meet compelling and extraordinary conditions, or (C) the state standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act. Previous decisions granting waivers of Federal preemption for motor vehicles have stated that State standards are inconsistent with section 202(a) if there is inadequate lead time to permit the development of the necessary technology giving appropriate

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<sup>12</sup> “The language of the statute and its legislative history indicate that California's regulations, and California's determination that they comply with the statute, when presented to the Administrator are presumed to satisfy the waiver requirements and that the burden of proving otherwise is on whoever attacks them.” *Motor and Equipment Mfrs. Ass'n v. EPA*, 627 F.2d 1095, 1121 (D.C. Cir. 1979).

consideration to the cost of compliance within that time period or if the Federal and State test procedures impose inconsistent certification procedures.<sup>13</sup>

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>14</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>15</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

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<sup>13</sup> To be consistent, the California certification procedures need not be identical to the Federal certification procedures. California procedures would be inconsistent, however, if manufacturers would be unable to meet the State and the Federal requirements with the same test vehicle in the course of the same test. *See, e.g.*, 43 FR 32182 (July 25, 1978).

<sup>14</sup> 42 U.S.C. 7543(e)(1).

<sup>15</sup> 42 U.S.C. 7543(e)(2)(A).

standards.<sup>16</sup> The EPA revised these regulations in 1997.<sup>17</sup> The criteria for granting California authorization requests, as reflected in section 209(e)(2)(A), can be found at 40 CFR 1074.105.

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>18</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 equipment 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

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<sup>16</sup> 59 FR 36969 (July 20, 1994).

<sup>17</sup> 62 FR 67733 (December 30, 1997). The preemption regulations were later transcribed at 40 CFR part 1074; see 73 FR 59034 (October 8, 2008).

<sup>18</sup> 59 FR 36969 (July 20, 1994).



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>19</sup>

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

When EPA receives new waiver or authorization requests from CARB, EPA traditionally publishes a notice of opportunity for public hearing and comment and then, after the comment period has closed, publishes a notice of its decision in the *Federal Register*.

EPA invites comment on the following three waiver criteria as applicable to CARB's ACF on-road regulations: 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.

With regard to section 209(b)(1)(B), EPA must grant a waiver request unless the Agency finds that California "does not need such State standards to meet compelling and extraordinary conditions." EPA has interpreted the phrase "need[s] such State standards to meet compelling and extraordinary conditions" to mean that California needs a separate motor vehicle program as a whole in order to address environmental problems caused by conditions specific to California

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<sup>19</sup> 78 FR 58090, 58092 (September 20, 2013).

and/or effects unique to California (the “traditional” interpretation).<sup>20</sup> EPA intends to use this traditional interpretation in evaluating California’s need for the ACF regulations under section 209(b)(1)(B).

With regard to section 209(b)(1)(C), EPA must grant a waiver request unless the Agency finds that California’s standards are not consistent with section 202(a). EPA has previously stated that consistency with section 202(a) requires that California’s standards must be technologically feasible within the lead time provided, giving due consideration to costs, and that California and applicable Federal test procedures be consistent.<sup>21</sup>

We also request comment on whether the ACF off-road regulations 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.

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<sup>20</sup> See, e.g., 81 FR 78149, 78153 (November 7, 2016); 81 FR 95982 95985–86 (December 29, 2016). EPA recently found and confirmed, in the Agency’s reconsideration of a previous withdrawal of a waiver of preemption for CARB’s Advanced Clean Car program, that the traditional interpretation of section 209(b)(1)(B) was appropriate and continues to be a better interpretation. 87 FR 14332, 14367 (March 14, 2022). CARB’s November 15, 2023, waiver request addresses both the traditional and an alternative interpretation wherein the need for the specific standards in the waiver request would be evaluated.

<sup>21</sup> See, e.g., 81 FR 78149, 78153–54 (November 7, 2016) (“EPA has previously stated that the determination is limited to whether those opposed to the waiver have met their burden of establishing that California’s standards are technologically infeasible, or that California’s test procedures impose requirements inconsistent with the federal test procedure. Infeasibility would be shown here by demonstrating that there is inadequate lead time to permit the development of technology necessary to meet the 2013 HD OBD New or Stricter Requirements that are subject to the waiver request, giving appropriate consideration to the cost of compliance within that time.” (citing 38 FR 30136 (November 1, 1973) and 40 FR 30311 (July 18, 1975)); 81 FR 95982, 95986 (December 29, 2016); 70 FR 50322 (August 26, 2005).

#### IV. Procedures for Public Participation

The virtual public hearing will be held on August 14, 2024. The hearing will begin at 10:00 a.m. Eastern Daylight Time (EDT) and 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 by August 7, 2024. Information on how to register for the virtual public hearing regarding the ACF waiver and authorization request can be found at: <https://www.epa.gov/regulations-emissions-vehicles-and-engines/virtual-public-hearing-californias-advanced-clean-fleet>. 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 August 7, 2024. The EPA may not be able to arrange accommodations without advance notice.

Please note that any updates made to any aspect of the ACF waiver and authorization hearing will be posted online at: <https://www.epa.gov/regulations-emissions-vehicles-and-engines/virtual-public-hearing-californias-advanced-clean-fleet>. While the EPA expects the hearing to go forward as set forth above, please monitor the hearing 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. 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 the hearing that will be placed in the docket. The EPA will keep the record open until September 16, 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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**William Charmley,**

*Director,  
Assessment and Standards Division,  
Office of Transportation and Air Quality.*