Dated: October 31, 1997.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved:

James E. Johnson,

Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 97–33840 Filed 12–23–97; 10:46 am]

BILLING CODE 4810–25–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 85 and 89

[AMS–FRL–5939–5]

Control of Air Pollution: Emission Standards for New Nonroad Compression-Ignition Engines at or Above 37 Kilowatts; Preemption of State Regulation for Nonroad Engine and Vehicle Standards; Amendments to Rules

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: This direct final rulemaking, consistent with an order and opinion from the U.S. Court of Appeals for the District of Columbia Circuit, amends EPA's regulations setting emission standards for large (at or above 37 kilowatts) nonroad compression ignition engines, and EPA's regulations establishing procedures for EPA authorization of California nonroad emission standards. Specifically, EPA is withdrawing portions of an interpretive rule which set forth the Agency's position on the Clean Air Act (Act) regarding the status of certain internal combustion engines manufactured before the effective date of the final rulemaking promulgating EPA's definition of nonroad engine. Additionally, consistent with the D.C. Circuit opinion, EPA also is amending the remaining text of this interpretive rule, as well as EPA's regulations issued under section 209(e) of the Act regarding the Agency's California nonroad standards authorization process, to clarify that California must seek authorization from EPA prior to enforcing standards and other requirements relating to emissions from any nonroad vehicles or engines, and not just new nonroad vehicles and engines, which was the original language used in these regulations.

DATES: This direct final rule is effective on March 2, 1998 unless notice is received by January 29, 1998 that any person wishes to submit adverse comments and/or request a hearing. Should EPA receive such notice, EPA will publish a timely document in the **Federal Register** withdrawing this direct final rule. Any party who sends EPA notice of intent to submit adverse comments must in turn submit the adverse comments by March 2, 1998, unless a hearing is requested. Any party objecting to this direct final rule, at the time it notifies EPA of its intent to submit adverse comments, can request EPA to hold a public hearing on this action. If a hearing is requested, it will take place on March 2, 1998, and interested parties will have an additional 30 days after the hearing (until March 30, 1998) to submit comments on any information presented at the hearing. Because no hearing will occur absent a request for one, interested parties should contact Robert M. Doyle at the number listed below after January 29, 1998 to determine whether a hearing will take place.

ADDRESSES: Written comments should be submitted (in duplicate if possible) to: Air Docket Section (6102), Attention: Docket No. A–91–24, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, or hand-delivered to the Air Docket at the above address, in Room M–1500, Waterside Mall. A copy of written comments should also be submitted to Robert M. Doyle at the address below.

FOR FURTHER INFORMATION CONTACT: Robert M. Doyle, Attorney/Advisor, Engine Programs and Compliance Division (6403J), U.S. Environmental Protection Agency, 401 M. Street, S.W., Washington, D.C. 20560, (202) 564–9258, FAX (202) 233–9596, E-Mail, Doyle.Robert@EPAMAIL.EPA.GOV.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

Entities potentially regulated by this direct final rule are the California Air Resources Board and other state air quality agencies. Regulated categories and entities include:

Category	Examples of regulated entities
State and local government.	California Air Resources Board. State and local air quality agencies.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this action to a particular product, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Obtaining Electronic Copies of Documents

Electronic copies of the preamble and the regulatory text of this direct final rule are available via the Internet on the Office of Mobile Sources (OMS) Home Page (http://www.epa.gov/OMSWWW/). Users can find these documents and other nonroad engine and vehicle related information and documents by accessing the OMS Home Page and looking at the path entitled ''Nonroad engines and vehicles.'' This service is free of charge, except for any cost you already incur for Internet connectivity. The official **Federal Register** version is made available on the day of publication on the primary Web site (http://www.epa.gov/docs/fedrgstr/EPA–AIR/).

Please note that due to differences between the software used to develop the documents and the software into which the documents may be downloaded, changes in format, page length, etc., may occur.

III. Legal Authority and Background

Authority for the actions set forth in this direct final rule is granted to EPA by sections 209, 213, and 301 of the Clean Air Act as amended (42 U.S.C. 7543, 7547, and 7601).

A. Amendments and Redesignation of Appendix Containing Interpretive Rule on Date and Scope of Nonroad Preemption

On May 17, 1993, EPA proposed rules setting standards for emissions from nonroad compression ignition engines at or above 37 kilowatts (approximately 50 horsepower) in power (large nonroad engine rule).[1] In this NPRM, EPA was faced with the question (among many issues) of the manner and the extent to which states could regulate nonroad engines, which some states and localities previously had regulated as stationary sources. EPA noted that while emissions from nonroad engines are excluded from the Act's section 302(z) definition of stationary source,[2] the exclusion would apply only to those nonroad internal combustion engines that are manufactured after the effective

[1] 58 FR 28809 (May 17, 1993).

[2] Section 302(z) states that the ''term 'stationary source' means generally any source of an air pollutant except those emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 216.''

date of the large nonroad engine rule. EPA also noted that nonroad engines may be subject to state-imposed in-use restrictions such as limits on hours of use and may be subject to state regulation under section 209(e)(2).[3]

During the rulemaking, EPA received comments from several parties objecting to its interpretation of the correct effective date. These parties generally asserted that the language in section 302(z) applied to all nonroad engines in existence on or after November 15, 1990, the date of the enactment of the Clean Air Act Amendments of 1990 (CAAA). The effect of this assertion would be that states would be preempted from promulgating emission standards or other requirements for nonroad engines produced after that date.

On June 17, 1994, EPA published a final rule[4] setting the standards for the large nonroad compression ignition engines; the effective date for this rule was July 18, 1994, 30 days after its **Federal Register** publication. In that rule, EPA finalized the definition of ''nonroad engine,'' which determined whether certain engines should be considered ''nonroad engines'' or ''stationary sources.'' After careful consideration of the comments on the rule's preemption date briefly summarized above, EPA added an interpretive rule in the form of an appendix (Appendix A) to the regulations summarizing EPA's decisions on these preemption issues. In Appendix A, EPA noted basically that it interprets the Act as not precluding state regulation of internal combustion engines manufactured prior to July 18, 1994, except that state regulation of such engines that are used in motor vehicles or vehicles used solely for competition is precluded. Additionally, EPA noted that it believes that states are not precluded under section 209 of the Act from regulating the use and operation of nonroad engines. Appendix A has been codified as part of the large nonroad engine rule and appears in the current volume of 40 CFR part 89 (July 1, 1996).

On or before August 16, 1994, nine parties timely filed petitions with the United States Court of Appeals for the D.C. Circuit for review of the large nonroad engine rule, and of the related rule establishing the scope of preemption of state or local standards regulating nonroad engines and the procedures that California must follow when seeking EPA authorization to adopt and enforce California-specific nonroad engine standards under section 209(e) of the Act. These nine petitions were consolidated as *Engine Manufacturers Association, et. al.,* v. *EPA,* Docket No. 94–1558, (*EMA* v. *EPA*). The petitioners challenged several aspects of these rules, including the EPA interpretation contained in Appendix A. After preliminary discussions with petitioners, EPA decided that it was appropriate to review its interpretation that preemption of state and local regulations did not effect engines manufactured prior to July 18, 1994. Therefore, on September 19, 1995, EPA filed with the Court a Motion for Vacatur and Remand of its interpretation. The consolidated petitioners did not oppose EPA's Motion.

On October 20, 1995, the Court granted EPA's Motion and ordered that paragraphs 1 and 2 of Appendix A be vacated and remanded to the Agency for further consideration. Today's direct final rule implements the order of the Court by removing paragraphs 1 and 2 from Appendix A, and retitling Appendix A to be descriptive of its revised content.

EPA notes that although paragraphs 1 and 2 of Appendix A are now vacated, paragraph 3 remains effective, though this rule revises that paragraph. This paragraph, which appears in the revised text of Appendix A, contains EPA's determination that states are not precluded from regulating the use of nonroad engines. On July 12, 1996, the Court handed down its decision in *EMA* v. *EPA,* and held that EPA had made a reasonable interpretation of the Act in finding that the preemption of state regulations did not extend to restrictions on the use of nonroad engines.[5] EPA, however, has deleted the last two sentences of paragraph 3 and added a new sentence consistent with the Court's ruling on the scope of implied preemption of state standards, discussed in detail in Section B. below.

B. Scope of Implied Preemption of State Standards

Under section 209(e) of the Act as amended, EPA was required to ''issue regulations to implement'' subsection (e), which addressed the ability of states to adopt emission standards and other requirements for nonroad engines and vehicles. Under section 209(e): (1) All states are preempted from adopting emission standards and other requirements for new nonroad engines used in construction or farm equipment or vehicles which are smaller than 175 horsepower and for new locomotives and new engines used in locomotives; (2) California may adopt and enforce standards and other requirements for nonroad engines other than the specifically preempted categories listed directly above, after receiving authorization to do so from EPA; and (3) other states may adopt California's nonroad emission standards and other requirements after EPA has authorized the standards and other requirements and the adopting state has allowed the statutorily required two-year leadtime.

On July 20, 1994, EPA promulgated regulations which established the process under which the Agency would authorize California nonroad emission standards and other requirements (section 209(e) regulations). During the rulemaking, EPA addressed the issue of the scope of the Act's preemption on state regulation of nonroad engines and vehicles. Section 209(e)(2) directs EPA to authorize, when all conditions are met, California emission standards for ''*any* nonroad vehicles or engines other than [the new under 175 hp farm and construction equipment engines and the new locomotive engines] * * * (emphasis added).'' EPA interpreted the implied preemption of state standards in section 209(e) to apply only to *new* nonroad engines rather than any nonroad engines, which could include both new and used engines. In the Preamble to these regulations, EPA stated clearly that it believed ''that the requirements of section 209(e)(2) apply only to new nonroad engines and vehicles (emphasis added).''[6] Accordingly, the regulations required California to seek EPA authorization only for ''standards and other requirements relating to the control of emissions from new nonroad vehicles or engines that are otherwise not preempted.''[7]

As discussed above, petitions to the D.C. Circuit for review of the section 209(e) regulations and the large nonroad engine rule were filed and consolidated as *EMA* v. *EPA*. In this litigation, the petitioners agreed with EPA that section 209(e)(2) implied preemption of state regulation of nonroad engines and vehicles, but argued that the preemption applied to standards for all nonroad

[3] Section 209(e)(2)(A) directs EPA to authorize California to adopt and enforce standards and other requirements for nonroad engines and nonroad vehicles (with some categorical exceptions) if California's regulations meet the criteria set forth in the Act. Other states may adopt EPA-authorized California nonroad engine or vehicle standards if the states comply with the criteria listed in section 209(e)(2)(B).

[4] 59 FR 31306 (June 17, 1994).

[5] *EMA* v. *EPA,* 88 F.3d 1075, 1093–94 (D.C. Cir. 1996).

[6] 59 FR 36969, 36973 (July 20, 1994).

[7] 40 CFR 86.1604(a) (July 1, 1996).

sources, both new and non-new, because the statute did not include the word ''new'' in specifying what nonroad vehicles and engines for which California and other states could promulgate standards,[8] and for other reasons. In its opinion in this case handed down July 12, 1996, the Court agreed with the petitioners on this particular point, and granted the EMA petition ''insofar as they challenge the limitation of the implied section 209(e)(2) preemption to new nonroad sources.'' [9]

Today's direct final rule implements the opinion of the Court regarding the scope of preemption of section 209(e)(2) by amending the language of the implementing regulations to reflect that California must request authorization for its emission standards and other related requirements for all nonroad vehicles and engines.[10] EPA has also deleted the final two sentences of Appendix A, dealing with the ability of states to require retrofit technologies, as the language as currently written is inconsistent with the opinion of the Court, and added a sentence which reflects the Court's holding by noting that states may adopt only those retrofit requirements for nonroad engines identical to California requirements which have been authorized by EPA under section 209 of the Act. EPA has also modified the language of Appendix A to state more simply and clearly that state regulation of the use and operation of nonroad engines can occur when the engines are no longer new.

C. Public Participation and Effective Date

EPA is publishing this rule without prior proposal because EPA views these amendments as noncontroversial and anticipates no adverse comments. However, in the event that adverse or critical comments are filed, EPA has prepared a Notice of Proposed Rulemaking (NPRM) proposing the same amendments. This NPRM is contained in a separate document in this **Federal Register** publication. The direct final action will be effective March 2, 1998 unless adverse or critical comments are received by January 29, 1998. If EPA receives adverse or critical comments on the revisions discussed in this section, the revisions receiving adverse comment will be withdrawn before the effective date. In case of the withdrawal of all or part of this action, the withdrawal will be announced by a subsequent **Federal Register** document. All public comments will then be addressed in a subsequent final rule based on the accompanying proposed rule. EPA will not implement a second comment period on this action. Any parties interested in commenting on this rule should do so at this time. If no adverse comments are received, the public is advised that the rule will be effective March 2, 1998.

EPA is continuing to review its policy concerns and options regarding the date of preemption for the nonroad engine rules. EPA may in the future determine that it is appropriate to issue a new interpretation to address this issue.

IV. Administrative Requirements

A. Administrative Designation

Under Executive Order 12866 (58 FR 51735 (October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Reporting and Recordkeeping Requirements

This rule does not change the information collection requirements submitted to and approved by OMB in association with the large nonroad engine final rulemaking (59 FR 31306, June 17, 1994).

C. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. This rule will not have a significant adverse economic impact on a substantial number of small businesses. The only revisions EPA is making in this final rule are pursuant to the decision of the Court. These changes are directed at state and local governments and are expected to affect few, if any, existing or future local or state regulations.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

List of Subjects

40 CFR Part 85

Environmental protection, Administrative practice and procedure, Air pollution control, Federal preemption, Motor vehicle pollution, Nonroad engine and vehicle pollution,

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[8] Section 209(e)(2)(A) states ''(I)n the case of any nonroad vehicles or engines other than those referred to in subparagraph (A) or (B) of paragraph (1), * * *''

[9] *EMA* v. *EPA*, 88 F.3d at 1094.

[10] EPA has also amended the text of the implementing regulations in appropriate places by changing ''states'' to ''states and any political subdivision thereof'' to make this language fully consistent with the applicable language of section 209(e) of the Act. Additionally, EPA has revised the Title of Part 85 to reflect that this Part contains regulations covering both onroad vehicles and engines and nonroad vehicles and engines. These amendments were not directed by the Court, but are being done as part of today's direct final rule for editorial efficiency.

Reporting and recordkeeping requirements, State controls.

40 CFR Part 89

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Incorporation by reference, Labeling, Nonroad source pollution, Reporting and recordkeeping requirements.

Dated: December 17, 1997.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, parts 85 and 89 of title 40 of the Code of Federal Regulations are amended as follows:

PART 85—CONTROL OF AIR POLLUTION FROM MOBILE SOURCES

1. The heading for part 85 is revised to read as set forth above.

Subpart Q—Preemption of State Standards and Waiver Procedures for Nonroad Engines and Nonroad Vehicles

2. The authority citation for part 85 is revised to read as follows:

Authority: 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7543, 7547, and 7601(a).

3. Section 85.1603 is amended by revising paragraphs (b), (c) and (d) to read as follows:

§ 85.1603 Application of definitions; scope of preemption.

* * * * *

(b) States and any political subdivisions thereof are preempted from adopting or enforcing standards or other requirements from new engines smaller than 175 horsepower, that are primarily used in farm or construction equipment or vehicles, as defined in this subpart.

(c) States and any political subdivisions thereof are preempted from adopting or enforcing standards or other requirements relating to the control of emissions from new locomotives or new engines used in locomotives.

(d) No state or any political subdivisions thereof shall enforce any standards or other requirements relating to the control of emissions from nonroad engines or vehicles except as provided for in this subpart.

4. Section 85.1604 is amended by revising paragraph (a) to read as follows:

§ 85.1604 Procedures for California nonroad authorization requests.

(a) California shall request authorization to enforce its adopted standards and other requirements relating to the control of emissions from nonroad vehicles or engines that are otherwise not preempted by § 85.1603(b) or § 85.1603(c) from the Administrator of EPA and provide the record on which the state rulemaking was based.

* * * * *

5. Section 85.1606 is amended by revising the introductory text to read as follows:

§ 85.1606 Adoption of California standards by other states.

Any state other than California which has plan provisions approved under Part D of Title I of the Clean Air Act may adopt and enforce emission standards for any period, for nonroad vehicles and engines subject to the following requirements:

* * * * *

PART 89—CONTROL OF EMISSIONS FROM NEW AND IN-USE NONROAD ENGINES

1. The authority citation for part 89 continues to read as follows:

Authority: Sections 202, 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a)).

2. Appendix A to Subpart A is revised including the appendix heading to read as follows:

Appendix A to Subpart A—State Regulation of Nonroad Internal Combustion Engines

This appendix sets forth the Environmental Protection Agency's (EPA's) interpretation of the Clean Air Act regarding the authority of states to regulate the use and operation of nonroad engines.

EPA believes that states are not precluded under section 209 from regulating the use and operation of nonroad engines, such as regulations on hours of usage, daily mass emission limits, or sulfur limits on fuel; nor are permits regulating such operations precluded, once the engine is no longer new. EPA believes that states are precluded from requiring retrofitting of used nonroad engines except that states are permitted to adopt and enforce any such retrofitting requirements identical to California requirements which have been authorized by EPA under section 209 of the Clean Air Act.

[FR Doc. 97–33769 Filed 12–29–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 260

[FRL 5942–5]

Withdrawal of Direct Final Rule for Project XL Site-Specific Rulemaking for Molex, Inc., 700 Kingbird Road Facility, Lincoln, NE

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to adverse comment, EPA is withdrawing the direct final rule for the Project XL Site-Specific Rulemaking for Molex, Inc., 700 Kingbird Road Facility, Lincoln, NE. EPA published the direct final rule on November 3, 1997 at 62 FR 59287–59290. As stated in the **Federal Register** document, if adverse or critical comments were received by December 3, 1997 the effective date would be delayed and notice would be published in the **Federal Register**. EPA subsequently received adverse comments on that direct final rule.

EPA will address the comments received in the companion proposal which was published in the November 3, 1997 **Federal Register** at 62 FR 59332–59334. EPA will not institute a second comment period.

DATES: The direct final rule published at 62 FR 59287–59290 is withdrawn as of December 30, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. David Doyle, U.S. Environmental Protection Agency, Region VII, Air, RCRA & Toxics Division, 726 Minnesota Avenue, Kansas City, KS 66101, (913) 551–7667.

List of Subjects in 40 CFR Part 260

Environmental protection, Hazardous waste, Treatment storage and disposal facility, Waste determination.

Dated: December 19, 1997.

Carol M. Browner,

Administrator.

[FR Doc. 97–33967 Filed 12–29–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5941–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.