

EPA-HQ-OGC-2016-0719) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

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You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

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ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

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Dated: January 6, 2017.

**Lorie J. Schmidt,**

*Associate General Counsel.*

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## **ENVIRONMENTAL PROTECTION AGENCY**

**[EPA-HQ-OAR-2016-0017; FRL9958-38-OAR]**

### **California State Motor Vehicle Pollution Control Standards; Amendments to On-Highway Heavy-Duty Vehicle In-Use Compliance Program, Amendments to 2007 and Subsequent Model Year On-Highway Heavy-Duty Engines and Vehicles, and Amendments to Truck Requirements; Notice of Decision**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of decision.

**SUMMARY:** The Environmental Protection Agency ("EPA") is granting the California Air Resources Board's ("CARB's") request for a waiver of Clean Air Act preemption for its On-Highway Heavy-Duty Vehicle In-Use Compliance

program ("In-Use Regulation"). EPA is also confirming that CARB's amendments to its 2007 and Subsequent Model Year On-Highway Heavy-Duty Engines and Vehicles regulation ("2007 Amendments") and CARB's amendments to its Truck Idling requirements ("Truck Idling Amendments") are within the scope of previous waivers issued by EPA. The In-Use Regulation establishes a manufacturer-run in-use compliance program using portable emission measurement systems ("PEMS"). The 2007 Amendments specify the NO<sub>x</sub> emission standard for heavy- and medium-duty diesel engines to two significant figures and provide manufacturers the option to certify chassis-certified diesel vehicles within the phase-in compliance provisions of the 2007 and Subsequent Model Year On-Highway Heavy-Duty Engines and Vehicles regulation. The Truck Idling Amendments exempt armored cars and workover rigs (a mobile self-propelled rig used to perform remedial operations on producing oil or gas wells to restore or increase well production) from the new engine requirements of the preexisting California Truck Idling regulation. This decision is issued under the authority of the Clean Air Act ("CAA" or "the Act").

**DATES:** Petitions for review must be filed by March 20, 2017.

**ADDRESSES:** EPA has established a docket for this action under Docket ID EPA-HQ-OAR-2016-0017. All documents relied upon in making this decision, including those submitted to EPA by CARB, are contained in the public docket. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air and Radiation Docket in the EPA Headquarters Library, EPA West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The Public Reading Room is open to the public on all federal government working days from 8:30 a.m. to 4:30 p.m.; generally, it is open Monday through Friday, excluding holidays. The telephone number for the Reading Room is (202) 566-1744. The Air and Radiation Docket and Information Center's Web site is <http://www.epa.gov/oar/docket.html>. The email address for the Air and Radiation Docket is: [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov), the telephone number is (202) 566-1742, and the fax number is (202) 566-9744. An electronic version of the public docket is available through the federal government's electronic public docket and comment system at <http://www.regulations.gov>.

[www.regulations.gov](http://www.regulations.gov). After opening the [www.regulations.gov](http://www.regulations.gov) Web site, enter EPA-HQ-OAR-2016-0017 in the “Enter Keyword or ID” fill-in box to view documents in the record. Although a part of the official docket, the public docket does not include Confidential Business Information (“CBI”) or other information whose disclosure is restricted by statute.

EPA’s Office of Transportation and Air Quality (“OTAQ”) maintains a Web page that contains general information on its review of California waiver and authorization requests. Included on that page are links to prior waiver **Federal Register** notices, some of which are cited in today’s notice; the page can be accessed at <http://www.epa.gov/otaq/cafr.htm>.

#### FOR FURTHER INFORMATION CONTACT:

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#### SUPPLEMENTARY INFORMATION:

##### I. Background

On August 19, 2005, EPA granted California a waiver of preemption pursuant to section 209(b) of the CAA, 42 U.S.C. 7543(b), for CARB’s amendments to its heavy-duty diesel engine standards for 2007 and subsequent model year (MY) vehicles and engines and related test procedures, including not-to-exceed (“NTE”) and supplemental steady-state tests to determine compliance with applicable standards (“2007 California HDDE standards”).<sup>1</sup> Those standards apply to all heavy-duty diesel engines, and align California’s standards and test procedures with corresponding federal standards and test procedures. In 2010 EPA granted California a waiver of preemption for CARB’s adoption of amendments applicable to 2008 and subsequent MY heavy-duty Otto-cycle engines.<sup>2</sup> In 2005, CARB adopted truck idling requirements, including an element whereby new California-certified 2008 and subsequent MY on-road diesel engines in trucks with a gross vehicle weight rating (“GVWR”) greater than 14,000 pounds were required to be equipped with a system that automatically shuts down the engine after five minutes of continuous idling (“Truck Idling regulation”). In lieu of the automatic engine shutdown systems, manufacturers are allowed to optionally certify engines to a NO<sub>x</sub>

idling emission standard. EPA granted a waiver for the Truck Idling regulation in 2012.<sup>3</sup>

CARB’s In-Use Regulation establishes a manufacturer-run in-use compliance program that is largely identical to EPA’s previously adopted heavy-duty in-use testing program (“HDIUT program”) originally adopted in 2005.<sup>4</sup> The regulation applies to 2007 and subsequent MY engine-dynamometer certified heavy-duty diesel engines installed in a motor vehicle with GVWR greater than 8,500 pounds. CARB’s initial In-Use Regulation, adopted in 2006, included requirements for manufacturers screening test vehicles with portable emission measurement systems (PEMS) and testing the vehicles by operating them over typical driving routes, and under the same vehicle loads and environmental conditions that the vehicles routinely encounter. The in-use compliance program is comprised of two phases. The first phase, Phase 1, involves testing a designated engine family for conformity with the applicable NTE requirements. In the second phase, if the engine family does not pass the Phase 1 requirements then testing, under more narrowly defined test conditions, may be required to target specific noncomplying operating conditions. The initial regulation incorporated temporary measurement allowances when testing for compliance using PEMS. In 2007, CARB amended the In-Use Regulation to set forth new measurement allowances for gaseous emissions.<sup>5</sup> In 2011, CARB approved additional amendments to the In-Use Requirements to establish a new particulate matter (“PM”) measurement allowance. EPA similarly amended its federal HDIUT program in 2010 to incorporate this same measurement allowance.<sup>6</sup>

CARB initially adopted the 2007 California HDDE standards in 2001 to fully align California’s NO<sub>x</sub> emission standards for 2007 and subsequent MY HDDEs and medium-duty diesel engines (“MDDEs”) certified to ultra-low-emission vehicle (“ULEV”) standards to the corresponding federal NO<sub>x</sub> emission standard of 0.20 gram per brake-horsepower hour (g/bhp-hr) (two significant figures). CARB also established a more stringent NO<sub>x</sub> standard for MDDEs certified to optional ultra-low-emission vehicle (“SULEV”)

emission standards of 0.10 g/bhp-hr). CARB’s 2007 Amendments clarify that the NO<sub>x</sub> ULEV emission standard for HDDEs is the same as the federal NO<sub>x</sub> emission standard of 0.20 g/bhp-hr and amended the NO<sub>x</sub> SULEV standard to 0.10 g/bhp-hr (CARB had inadvertently specified these NO<sub>x</sub> emission standards to only one significant figure (0.2 and 0.1 g/bhp-hr, respectively)). CARB had also inadvertently failed to include a provision that provided manufacturers the option to include chassis-certified 2007 through 2009 MY heavy-duty diesel vehicles under 14,000 pounds GVWR within the phase-in compliance provision of the 2007 HDDE standards. The 2007 Amendments incorporate this optional provision. In addition, the 2007 Amendments incorporate the flexibility provided by EPA in 2006, whereby manufacturers may apply multiplicative deterioration factors if, based on good engineering judgment, multiplicative deterioration factors are more appropriate for a particular engine family (as opposed to an adjustment by the addition of appropriate deterioration factors).<sup>7</sup>

In 2008 CARB adopted amendments to the new engine requirements within the Truck Idling regulation to address specific issues regarding armored cars and workover rigs. Specifically, the Truck Idling Amendments provide that new 2008 and subsequent MY heavy-duty diesel engines used in armored cars and workover rigs are exempt from the new engine idling requirements. In addition, in 2011 CARB provided additional regulatory clarification of the exemption.<sup>8</sup>

By letter dated January 27, 2016, CARB submitted to EPA a request for a waiver of the preemption found at section 209(a) of Clean Air Act, 42 U.S.C. 7543(a), for the In-Use Regulation. CARB’s submission provided analysis and evidence to support its finding that the In-Use Regulation satisfies the CAA section 209(b) criteria and that a waiver of preemption should be granted. CARB’s request also sought confirmation that its 2007 Amendments and the Truck Idling Amendments are within the scope of waivers of preemption previously granted by EPA.<sup>9</sup>

##### II. Principles Governing This Review

###### A. Scope of Review

Section 209(a) of the CAA provides:

No State or any political subdivision thereof shall adopt or attempt to enforce any

<sup>1</sup> 70 FR 50322 (August 26, 2005).

<sup>2</sup> 75 FR 70237 (November 17, 2010).

<sup>3</sup> 77 FR 9239 (February 16, 2012).

<sup>4</sup> 70 FR 34594 (June 14, 2005).

<sup>5</sup> See the California Air Resources Board’s Waiver Request Support Document (“Waiver Support Document”), dated December 31, 2015 at EPA-HQ-OAR-2016-0017-0018, at 7–8.

<sup>6</sup> Waiver Support Document at 9, citing 75 FR 68448 (November 8, 2010).

<sup>7</sup> *Id.* at 11, citing 71 FR 51481 (August 30, 2006).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

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.<sup>10</sup>

Section 209(b)(1) of the Act requires the Administrator, after an 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 its state standards will be, in the aggregate, at least as protective of public health and welfare as applicable federal standards.<sup>11</sup> However, no such waiver shall be granted if the Administrator finds that: (A) The protectiveness determination of the state is arbitrary and capricious; (B) the state does not need such state standards to meet compelling and extraordinary conditions; or (C) such state standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act.<sup>12</sup>

Key principles governing this review are that EPA should limit its inquiry to the specific findings identified in section 209(b)(1) of the Clean Air Act, and that EPA will give substantial deference to the policy judgments California has made in adopting its regulations. In previous waiver decisions, EPA has stated that Congress intended the Agency's review of California's decision-making to be narrow. EPA has rejected arguments that are not specified in the statute as grounds for denying a waiver:

The law makes it clear that the waiver requests cannot be denied unless the specific findings designated in the statute can properly be made. The issue of whether a proposed California requirement is likely to result in only marginal improvement in California air quality not commensurate with its costs or is otherwise an arguably unwise exercise of regulatory power is not legally pertinent to my decision under section 209, so long as the California requirement is consistent with section 202(a) and is more stringent than applicable Federal requirements in the sense that it may result

in some further reduction in air pollution in California.<sup>13</sup>

This principle of narrow EPA review has been upheld by the U.S. Court of Appeals for the District of Columbia Circuit.<sup>14</sup> “[T]he statute does not provide for any probing substantive review of the California standards by federal officials.” *Ford Motor Co. v. EPA*, 606 F.2d 1293, 1300 (D.C. Cir. 1979). Thus, EPA's consideration of all the evidence submitted concerning a waiver decision is circumscribed by its relevance to those questions that may be considered under section 209(b)(1).

#### B. Within-the-Scope Determinations

If California amends regulations that have been previously authorized by EPA, California may ask EPA to determine that the amendments are within the scope of the earlier authorization. A within-the-scope determination for such amendments is permissible without a full authorization review if three conditions are met. First, the amended regulations must not undermine California's previous determination that its standards, in the aggregate, are as protective of public health and welfare as applicable federal standards. Second, the amended regulations must not affect consistency with section 209 of the Act, following the same criteria discussed above in the context of full authorizations. Third, the amended regulations must not raise any new issues affecting EPA's prior waiver or authorization decisions.<sup>15</sup>

#### C. Burden and Standard of Proof

As the U.S. Court of Appeals for the D.C. Circuit has made clear in *MEMA I*, opponents of a waiver request by California bear the burden of showing that the statutory criteria for a denial of the request have been met:

[T]he language of the statute and its legislative history indicate that California's regulations, and California's determinations that they must 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. California must present its regulations and findings at the hearing and thereafter the parties opposing

the waiver request bear the burden of persuading the Administrator that the waiver request should be denied.<sup>16</sup>

The Administrator's burden, on the other hand, is to make a reasonable evaluation of the information in the record in coming to the waiver decision. As the court in *MEMA I* stated: “here, too, if the Administrator ignores evidence demonstrating that the waiver should not be granted, or if he seeks to overcome that evidence with unsupported assumptions of his own, he runs the risk of having his waiver decision set aside as ‘arbitrary and capricious.’”<sup>17</sup> Therefore, the Administrator's burden is to act “reasonably.”<sup>18</sup>

With regard to the standard of proof, the court in *MEMA I* explained that the Administrator's role in a section 209 proceeding is to:

[. . .] consider all evidence that passes the threshold test of materiality and . . . thereafter assess such material evidence against a standard of proof to determine whether the parties favoring a denial of the waiver have shown that the factual circumstances exist in which Congress intended a denial of the waiver.<sup>19</sup>

In that decision, the court considered the standards of proof under section 209 for the two findings related to granting a waiver for an “accompanying enforcement procedure.” Those findings involve: (1) Whether the enforcement procedures impact California's prior protectiveness determination for the associated standards, and (2) whether the procedures are consistent with section 202(a). The principles set forth by the court are similarly applicable to an EPA review of a request for a waiver of preemption for a standard. The court instructed that “the standard of proof must take account of the nature of the risk of error involved in any given decision, and it therefore varies with the finding involved. We need not decide how this standard operates in every waiver decision.”<sup>20</sup>

With regard to the protectiveness finding, the court upheld the Administrator's position that, to deny a waiver, there must be “clear and compelling evidence” to show that proposed enforcement procedures undermine the protectiveness of California's standards.<sup>21</sup> The court noted that this standard of proof also accords with the congressional intent to provide California with the broadest

<sup>10</sup> CAA § 209(a). 42 U.S.C. 7543(a).

<sup>11</sup> CAA § 209(b)(1). 42 U.S.C. 7543(b)(1). California is the only state that meets section 209(b)(1)'s requirement for obtaining a waiver. See S. Rep. No. 90–403 at 632 (1967).

<sup>12</sup> CAA § 209(b)(1). 42 U.S.C. 7543(b)(1).

<sup>13</sup> “Waiver of Application of Clean Air Act to California State Standards,” 36 FR 17458 (Aug. 31, 1971). Note that the more stringent standard expressed here, in 1971, was superseded by the 1977 amendments to section 209, which established that California must determine that its standards are, in the aggregate, at least as protective of public health and welfare as applicable federal standards.

<sup>14</sup> See, e.g., *Motor and Equip. Mfrs Assoc. v. EPA*, 627 F.2d 1095 (D.C. Cir. 1979) (“*MEMA I*”).

<sup>15</sup> See “California State Motor Vehicle Pollution Control Standards; Amendments Within the Scope of Previous Waiver of Federal Preemption,” 46 FR 36742 (July 15, 1981).

<sup>16</sup> *MEMA I*, note 19, at 1121.

<sup>17</sup> *Id.* at 1126.

<sup>18</sup> *Id.* at 1126.

<sup>19</sup> *Id.* at 1122.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

possible discretion in setting regulations it finds protective of the public health and welfare.<sup>22</sup>

With respect to the consistency finding, the court did not articulate a standard of proof applicable to all proceedings, but found that the opponents of the waiver were unable to meet their burden of proof even if the standard were a mere preponderance of the evidence. Although *MEMA I* did not explicitly consider the standards of proof under section 209 concerning a waiver request for “standards,” as compared to a waiver request for accompanying enforcement procedures, there is nothing in the opinion to suggest that the court’s analysis would not apply with equal force to such determinations. EPA’s past waiver decisions have consistently made clear that: “[E]ven in the two areas concededly reserved for Federal judgment by this legislation—the existence of ‘compelling and extraordinary’ conditions and whether the standards are technologically feasible—Congress intended that the standards of EPA review of the State decision to be a narrow one.”<sup>23</sup>

#### D. Deference to California

In previous waiver decisions, EPA has recognized that the intent of Congress in creating a limited review based on specifically listed criteria was to ensure that the federal government did not second-guess state policy choices. As the Agency explained in one prior waiver decision:

It is worth noting . . . I would feel constrained to approve a California approach to the problem which I might also feel unable to adopt at the federal level in my own capacity as a regulator. . . . Since a balancing of risks and costs against the potential benefits from reduced emissions is a central policy decision for any regulatory agency under the statutory scheme outlined above, I believe I am required to give very substantial deference to California’s judgments on this score.<sup>24</sup>

Similarly, EPA has stated that the text, structure, and history of the California waiver provision clearly indicate both a congressional intent and appropriate EPA practice of leaving the decision on “ambiguous and controversial matters of public policy” to California’s judgment.<sup>25</sup> This interpretation is supported by relevant discussion in the House Committee

Report for the 1977 amendments to the CAA. Congress had the opportunity through the 1977 amendments to restrict the preexisting waiver provision, but elected instead to expand California’s flexibility to adopt a complete program of motor vehicle emission controls. The report explains that the amendment is intended to ratify and strengthen the preexisting California waiver provision and to affirm the underlying intent of that provision, that is, to afford California the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare.<sup>26</sup>

#### E. EPA’s Administrative Process in Consideration of California’s Request

On August 9, 2016, EPA published a notice of opportunity for public hearing and comment on California’s waiver request.<sup>27</sup> In that notice, EPA requested comments on whether the 2007 Amendments and the Truck Idling Amendments, each individually assessed, should be considered under the within-the-scope analysis or whether they should be considered under the full waiver criteria. For the In-Use Regulation, and to the degree the 2007 Amendments or the Truck Idling Amendments should not be considered under the within-the-scope criteria, EPA sought comment under the following three criteria: Whether (a) California’s determination that its motor vehicle emissions 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 State 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.

EPA received no comments and no requests for a public hearing. Consequently, EPA did not hold a public hearing.

### III. Discussion

#### A. Within-the-Scope Analysis

EPA initially evaluates California’s 2007 Amendments and Truck Idling Amendments by application of our traditional within-the-scope analysis, as CARB requested. If we determine that CARB’s request does not meet the requirements for a within-the-scope determination, we then evaluate the request based on a full authorization analysis. In determining whether amendments can be viewed as within

the scope of previous waivers, EPA looks at whether CARB’s revision is either limited to minor technical amendments to previously waived regulations or modifying regulations in order to provide additional compliance flexibility without significantly reducing the overall stringency of previously waived regulations. The amendments at issue in this request provide regulatory clarity and corrections, and provide limited exemptions in order to provide for compliance flexibility.

EPA sought comment on a range of issues, including those applicable to a within-the-scope analysis as well as those applicable to a full authorization analysis. No party submitted a comment that California’s 2007 Amendments or Truck Idling Amendments require a full authorization analysis. Given the lack of comments on this issue, and EPA’s assessment of the nature of the amendments, I will evaluate California’s 2007 amendments and Truck Idling Amendments by application of the traditional within-the-scope analysis, as CARB requested.

As noted above, EPA can confirm that the amended regulations are within the scope of a previously granted waiver of preemption if three conditions are met. First, the amended regulations do not undermine California’s determination that its standards, in the aggregate, are as protective of public health and welfare as applicable federal standards. Second, the amended regulations do not affect consistency with section 202(a) of the Act. Third, the amended regulations do not raise any “new issues” affecting EPA’s prior authorizations.

#### B. Full Authorization Analysis

CARB’s waiver request also included the In-Use Regulation. EPA must grant a waiver for the In-Use Regulation unless the Administrator finds: (1) California’s determination that its standards will be, in the aggregate, as protective of public health and welfare as applicable federal standards is arbitrary and capricious; (2) California does not need such California standards to meet compelling and extraordinary conditions; or (3) California’s standards and accompanying enforcement procedures are not consistent with this section.

EPA’s evaluation of the 2007 Amendments, the Truck Idling Amendments, and the In-use Regulation is set forth below. Because of the similarity of the within-the-scope criteria and the full waiver criteria, a discussion of all three sets of respective amendments take place within each waiver criterion. To the extent that the

<sup>22</sup> *Id.*

<sup>23</sup> See, e.g., “California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption,” 40 FR 23102 (May 28, 1975), at 23103.

<sup>24</sup> 40 FR 23102, 23103–04 (May 28, 1975).

<sup>25</sup> 40 FR 23102, 23104 (May 28, 1975); 58 FR 4166 (January 13, 1993).

<sup>26</sup> *MEMA I*, 627 F.2d at 1110 (citing H.R. Rep. No. 294, 95th Cong., 1st Sess. 301–02 (1977)).

<sup>27</sup> 81 FR 52678 (August 9, 2016).

criteria are applied uniquely, or that additional criteria apply under either the within-the-scope analysis or the full waiver analysis, such application is also addressed below.

*C. Whether California's Protectiveness Determination Was Arbitrary and Capricious*

As stated in the background, section 209(b)(1)(A) of the Act sets forth the first of the three criteria governing a new waiver request—whether California was arbitrary and capricious in its determination that its motor vehicle emissions standards will be, in the aggregate, at least as protective of public health and welfare as applicable federal standards. Section 209(b)(1)(A) of the CAA requires EPA to deny a waiver if the Administrator finds that California's protectiveness determination was arbitrary and capricious. However, a finding that California's determination was arbitrary and capricious must be based upon clear and convincing evidence that California's finding was unreasonable.<sup>28</sup>

CARB notes that in its initial adoption and amendments to the In-Use Regulation in 2006, 2007, and 2011, the CARB Board approved Resolutions 06–27, 07–56 and 11–19 in which it declared:

*Be it further resolved* that the Board hereby determines that the regulations adopted herein will not cause California motor vehicle emission standards, in the aggregate, to be less protective of the public health and welfare than applicable federal standards.<sup>29</sup>

CARB also notes that EPA has previously granted California a waiver for California's 2007 California HDDE standards (which included the NTE test procedures), and the addition of the In-Use Regulation will help ensure that the emission control systems on HDDEs are properly designed and sufficiently durable to ensure compliance with the emission requirements during their useful life. CARB further noted that the In-Use Regulation provisions are “essentially identical to the requirements of EPA's corresponding HDIUT program.”<sup>30</sup> CARB also notes that the 2007 Amendments in no way undermine the stringency of the underlying exhaust emission standards or the associated test procedures (which is the criterion under the within-the-

scope analysis), but instead ensure that California's standards remain as, or more protective than, applicable federal standards.<sup>31</sup> Similarly, CARB notes that with regard to the Truck Idling Amendments that EPA's regulations do not require new heavy-duty diesel engines to be equipped with idling shutdown systems or to optionally comply with NO<sub>x</sub> idling emission standards.<sup>32</sup>

As it is clear that California's standards are at least as protective of public health and welfare as applicable federal standards, and that no evidence is in the record suggesting otherwise (and EPA is not otherwise aware of any information), I find that California's respective protectiveness determinations are not arbitrary and capricious for purposes of the In-Use Regulation, the 2007 Amendments, and the Truck Idling Amendments.

*D. Whether the Standards Are Necessary To Meet Compelling and Extraordinary Conditions*

Section 209(b)(1)(B) instructs that EPA cannot grant a waiver if the Agency finds that California “does not need such State standards to meet compelling and extraordinary conditions.” EPA's inquiry under this second criterion has traditionally been to determine whether California needs its own motor vehicle emission control program (*i.e.*, set of standards) to meet compelling and extraordinary conditions, and not whether the specific standards that are the subject of the waiver request are necessary to meet such conditions.<sup>33</sup> In recent waiver actions, EPA again examined the language of section 209(b)(1)(B) and reiterated this longstanding traditional interpretation as the better approach for analyzing the need for “such State standards” to meet “compelling and extraordinary conditions.”<sup>34</sup>

<sup>31</sup> *Id.* at 21.

<sup>32</sup> *Id.* at 24, citing Resolution 11–19.

<sup>33</sup> See California State Motor Vehicle Pollution Control Standards; Notice of Decision Granting a Waiver of Clean Air Act Preemption for California's 2009 and Subsequent Model Year Greenhouse Gas Emission Standards for New Motor Vehicles,” 74 FR 32744 (July 8, 2009), at 32761; *see also* “California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption Notice of Decision,” 49 FR 18887 (May 3, 1984), at 18889–18890.

<sup>34</sup> See 78 FR 2112, at 2125–26 (Jan. 9, 2013) (“EPA does not look at whether the specific standards at issue are needed to meet compelling and extraordinary conditions related to that air pollutant.”; *see also* EPA's July 9, 2009 GHG Waiver Decision wherein EPA rejected the suggested interpretation of section 209(b)(1)(B) as requiring a review of the specific need for California's new motor vehicle greenhouse gas emission standards as opposed to the traditional interpretation (need for the motor vehicle emission program as a whole) applied to local or regional air pollution problems. *See also* 79 FR 46256, 46261 (August 7, 2014).

In conjunction with the initial adoption and subsequent amendments of the In-Use Regulation in 2006, 2007, and 2011, respectively (see Resolutions 06–27, 07–56, and 11–19 noted above), the CARB's Board confirmed California's longstanding position that California continues to need its own motor vehicle emission program to meet serious air pollution problems. CARB notes that the geographical and climatic conditions and the tremendous growth in vehicle population and use that moved Congress to authorize California to establish separate vehicle standards in 1967 still exist today.<sup>35</sup> “Nothing in these conditions has changed to warrant a change in EPA's confirmation, and therefore there can be no doubt of the continuing existence of compelling and extraordinary conditions justifying California's need for its own motor vehicle emissions control program.”<sup>36</sup>

There has been no evidence submitted to indicate that California's compelling and extraordinary conditions do not continue to exist. California, particularly in the South Coast and San Joaquin Valley air basins, continues to experience some of the worst air quality in the nation, and many areas in California continue to be in non-attainment with national ambient air quality standards for fine particulate matter and ozone.<sup>37</sup> As California has previously stated, “nothing in [California's unique geographic and climatic] conditions has changed to warrant a change in this determination.”<sup>38</sup>

Based on the record before us, including EPA's prior waiver decisions, I am unable to identify any change in circumstances or evidence to suggest that the conditions that Congress identified as giving rise to serious air quality problems in California no longer exist. Therefore, EPA cannot find that California does not need its state standards, including its In-Use

<sup>35</sup> Waiver Support Request Support Document at 18.

<sup>36</sup> *Id.*

<sup>37</sup> 74 FR 32744, 32762–63 (July 8, 2009), 76 FR 77515, 77518 (December 13, 2011), 81 FR 95982 (December 29, 2016). EPA continually evaluates the air quality conditions in the United States, including California. California continues to experience some of the worst air quality in the country and continues to be in nonattainment with National Ambient Air Quality Standards for fine particulate matter and ozone, *see* “Notice of Availability of the Environmental Protection Agency's Preliminary Interstate Ozone Transport Modeling Data for the 2015 Ozone National Ambient Air Quality Standard (NAAQS)” at EPA–HQ–OAR–2016–0751.

<sup>38</sup> *Id.*

<sup>28</sup> *MEMA I*, 627 F.2d at 1122, 1124 (“Once California has come forward with a finding that the procedures it seeks to adopt will not undermine the protectiveness of its standards, parties opposing the waiver request must show that this finding is unreasonable.”); *see also* 78 FR 2112, at 2121 (January 9, 2013).

<sup>29</sup> Waiver Support Document at 17. *See* EPA–HQ–OAR–2016–0017–0027, EPA–HQ–OAR–2016–0017–0047, and EPA–HQ–OAR–2016–0017–0056.

<sup>30</sup> *Id.*

Regulation, to meet compelling and extraordinary conditions in California.

#### *E. Consistency With Section 202(a)*

For the third and final criterion, EPA evaluates the program for consistency with section 202(a) of the CAA. Under section 209(b)(1)(C) of the CAA, EPA must deny California's waiver request if EPA finds that California's standards and accompanying enforcement procedures are not consistent with section 202(a). Section 202(a) requires that regulations "shall take effect after such period as the Administrator finds necessary to permit the development and application of the relevant technology, considering the cost of compliance within that time."

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 In-Use Amendments, the 2007 Amendments, or the Truck Idling Amendments that are the subject of the waiver request, giving appropriate consideration to the cost of compliance within that time.<sup>39</sup> California's accompanying enforcement procedures would also be inconsistent with section 202(a) if the federal and California test procedures conflicted, *i.e.*, if manufacturers would be unable to meet both the California and federal test requirements with the same test vehicle.<sup>40</sup>

Regarding test procedure conflict, CARB notes both EPA and CARB utilize essentially identical test procedures in certifying 2007 and subsequent MY heavy-duty engines and that the 2007 Amendments also do not preclude manufacturers from conducting one set of tests on a heavy-duty engine or vehicle to determine compliance with both the California and federal requirements.<sup>41</sup> For the reasons set forth above, and because there is no evidence in the record or other information that EPA is aware of, I cannot find that CARB's In-Use Compliance Regulation, 2007 Amendments, and Truck Idling Amendments are inconsistent with

section 202(a) based upon test procedure inconsistency.

In addition, EPA did not receive any comments arguing that the CARB's In-Use Regulation, 2007 Amendments, and Truck Idling Amendments were technologically infeasible or that the cost of compliance would be excessive, such that California's standards might be inconsistent with section 202(a).<sup>42</sup> In EPA's review of CARB's In-Use Regulation, I find that CARB's statements about the capability of PEMS technology to measure gaseous pollutants as well as PM emissions is accurate.<sup>43</sup> With regard to the 2007 Amendments, I find that the amendments do not raise any new issues regarding technological feasibility given that the amendments regarding how the NO<sub>x</sub> standard is expressed is a regulatory clarification and the amendment regarding the new option for certain chassis-certified 2007 through 2009 model year heavy-duty vehicles provides additional compliance flexibility. Similarly, the Truck Idling Amendments merely provide compliance flexibility to a previously waived program by setting forth limited compliance exemptions (*i.e.*, the exemptions for armored vehicles and workover rigs).

I therefore cannot find that California standards, which include the CARB's In-Use Regulation, 2007 Amendments, and Truck Idling Amendments are inconsistent with section 202(a).

#### *F. New Issues*

EPA has stated in the past that if California promulgates amendments that raise new issues affecting previously granted waivers, we would not confirm that those amendments are within the scope of previous waivers.<sup>44</sup> I do not believe that either the 2007 Amendments or the Truck Idling Amendments raise any new issues with respect to our prior waivers governing their underlying regulations. Moreover, EPA did not receive any comments that CARB's 2007 Amendments or Truck Idling Amendments raised new issues affecting the previously granted waivers. Therefore, I cannot find that CARB's 2007 Amendments and Truck Idling

Amendments raise new issues and consequently, cannot deny CARB's within-the-scope requests based on this criterion.

#### **IV. Decision**

After evaluating CARB's In-Use Regulation and CARB's submissions for EPA review, I am hereby granting a waiver for the In-Use Regulation. After evaluating CARB's 2007 Amendments and Truck Idling Amendments and CARB's submissions for EPA review, I am hereby confirming that such amendments are within the scope of prior EPA waivers.

This decision will affect persons in California and those manufacturers and/or owners/operators nationwide who must comply with California's requirements. In addition, because other states may adopt California's standards for which a section 209(b) waiver has been granted under section 177 of the Act if certain criteria are met, this decision would also affect those states and those persons in such states. For these reasons, EPA determines and finds that this is a final action of national applicability, and also a final action of nationwide scope or effect for purposes of section 307(b)(1) of the Act. Pursuant to 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 March 20, 2017. Judicial review of this final action may not be obtained in subsequent enforcement proceedings, pursuant to section 307(b)(2) of the Act.

#### **V. Statutory and Executive Order Reviews**

As with past waiver and 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.

Further, 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).

<sup>39</sup> See, *e.g.*, 38 FR 30136 (November 1, 1973) and 40 FR 30311 (July 18, 1975).

<sup>40</sup> See, *e.g.*, 43 FR 32182 (July 25, 1978).

<sup>41</sup> *Id.* at 20, 22.

<sup>42</sup> See, *e.g.*, 78 FR 2134 (January 9, 2013), 47 FR 7306, 7309 (February 18, 1982), 43 FR 25735 (June 17, 1978), and 46 FR 26371, 26373 (May 12, 1981).

<sup>43</sup> Waiver Support Document at 19 (CARB explains that several PEMS capable of measuring gaseous emissions are commercially available and that the further development needed (at the time of CARB's initial adoption of the In-Use Regulation) for PM emissions monitoring by PEMS has been resolved).

<sup>44</sup> See, *e.g.*, 78 FR 38970 (June 28, 2013), 75 FR 8056 (February 23, 2010), and 70 FR 22034 (April 28, 2005).

Dated: January 9, 2017.

**Gina McCarthy,**  
Administrator.

[FR Doc. 2017-00940 Filed 1-13-17; 8:45 am]

BILLING CODE 6560-50-P

## FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-0989]

### Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written PRA comments should be submitted on or before March 20, 2017. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicole Ongele, FCC, via email to [PRA@fcc.gov](mailto:PRA@fcc.gov) and to [Nicole.Ongele@fcc.gov](mailto:Nicole.Ongele@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Nicole Ongele at (202) 418-2991.

#### SUPPLEMENTARY INFORMATION:

*OMB Control Number:* 3060-0989.

*Title:* Sections 63.01, 63.03, 63.04, Procedures for Applicants Requiring Section 214 Authorization for Domestic Interstate Transmission Lines Acquired Through Corporate Control.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents of Responses:* 92 respondents; 92 responses.

*Estimated Time per Response:* 1.5-10 hours.

*Frequency of Response:* On occasion reporting requirement.

*Obligation to Respond:* Mandatory. Statutory authority for this collection is contained in 47 U.S.C. 152, 154(i)-(j), 201, 214, and 303(r).

*Total Annual Burden:* 861 hours.

*Annual Cost Burden:* \$98,175.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* There is no need for confidentiality. The FCC is not requiring applicants to submit confidential information to the Commission. If applicants want to request confidential treatment of the documents they submit to Commission, they may do so under 47 CFR 0.459 of the Commission's rules.

*Needs and Uses:* A Report and Order, FCC 02-78, adopted and released in March 2002 (Order), set forth the procedures for common carriers requiring authorization under section 214 of the Communications Act of 1934, as amended, to acquire domestic interstate transmission lines through a transfer of control. Under section 214 of the Act, carriers must obtain FCC approval before constructing, acquiring, or operating an interstate transmission line. Acquisitions involving interstate common carriers require affirmative action by the Commission before the acquisition can occur. This information collection contains filing procedures for domestic transfer of control applications under sections 63.03 and 63.04. The FCC filing fee amount for section 214 applications is currently \$1,155 per application, which reflects an increase of the previous fee of \$1,050 per application. (a) Sections 63.03 and 63.04 require domestic section 214 applications involving domestic transfers of control, at a minimum, should specify: (1) The name, address and telephone number of each

applicant; (2) the government, state, or territory under the laws of which each corporate or partnership applicant is organized; (3) the name, title, post office address, and telephone number of the officer or contact point, such as legal counsel, to whom correspondence concerning the application is to be addressed; (4) the name, address, citizenship and principal business of any person or entity that directly or indirectly owns at least ten percent of the equity of the applicant, and the percentage of equity owned by each of those entities (to the nearest one percent); (5) certification pursuant to 47 CFR 1.2001 that no party to the application is subject to a denial of Federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988; (6) a description of the transaction; (7) a description of the geographic areas in which the transferor and transferee (and their affiliates) offer domestic telecommunications services, and what services are provided in each area; (8) a statement as to how the application fits into one or more of the presumptive streamlined categories in section 63.03 or why it is otherwise appropriate for streamlined treatment; (9) identification of all other Commission applications related to the same transaction; (10) a statement of whether the applicants are requesting special consideration because either party to the transaction is facing imminent business failure; (11) identification of any separately filed waiver request being sought in conjunction with the transaction; and (12) a statement showing how grant of the application will serve the public interest, convenience, and necessity, including any additional information that may be necessary to show the effect of the proposed transaction on competition in domestic markets. Where an applicant wishes to file a joint international section 214 transfer of control application and domestic section 214 transfer of control application, the applicant must submit information that satisfies the requirements of 47 CFR 63.18. In the attachment to the international application, the applicant must submit information described in 47 CFR 63.04(a)(6). When the Commission, acting through the Wireline Competition Bureau, determines that applicants have submitted a complete application qualifying for streamlined treatment, it shall issue a public notice commencing a 30-day review period to consider whether the transaction serves the public interest, convenience and necessity. Parties will have 14 days to