

EFFECT OF PROVISION ON STATES' AUTHORITY TO REGULATE DIESEL AND GASOLINE NONROAD EQUIPMENT

- Section 209 of the Clean Air Act currently prevents any state from promulgating standards for new engines used in farm and construction equipment under 175 hp. California and other states may promulgate standards for all other new and used engines with EPA authorization
- This provision would revise section 209 to prevent any state from regulating "any engine covered by a certificate of conformity that also covers any engine used in farm or construction equipment under 175 hp"
- This in effect would prevent the adoption or enforcement of any state emission standards for any engine that belongs to an "engine family" that has been certified by EPA for sale in the U.S. if such family includes one or more engines less than 175 hp that are used in farm or construction equipment.
- The provision would effectively prevent states from setting emission standards for all nonroad engines under 175 horsepower (e.g. lawn and garden equipment, generators, forklifts, airport service equipment, mining equipment and some marine engines) because engines within an engine family are generally used for multiple applications.
- Also, because EPA engine families sometimes include engines both above and below 175 hp, the provision would also prevent states from regulating engines above 175 hp, if they were certified in the same engine family as an engine below 175 hp that is used in any piece of farm or construction equipment.
- The language is not limited to new engines. It can be interpreted as preventing states from regulating all existing nonroad engines below 175 hp (as well as those in the same engine family as ones below 175 hp).
- Because the federal government cannot regulate nonroad engines once they are no longer new (i.e. once they have been sold), this would effectively leave all nonroad engines free from any attempt at regulation once they are sold. Therefore, states that may consider mandatory retrofit programs to clean up existing diesel engines would be preempted from doing so.
- The provision would, immediately upon enactment, prevent any state from enforcing emission standards or requirements already in place for almost any type of nonroad equipment. California in particular has emission requirements that have been very successful in reducing emissions from various nonroad categories over the past decade. These requirements would no longer be enforceable by the state.