

relevant written submissions, and other information that he deems pertinent.

Persons with comments containing proprietary information must distinguish such information from other comments to the great possible extent and label it as "Confidential Business Information" (CBI). If a person making comments want EPA to base its decision in part on a submission labeled CBI, then a non-confidential version of the document that summarizes the key data or information should be submitted for the public docket. To ensure that proprietary information is not inadvertently place in the docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

Dated: October 1, 2008.

**Robert J. Meyers,**

*Principal Deputy Assistant Administrator,  
Office of Air and Radiation.*

[FR Doc. E8-23671 Filed 10-6-08; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-8726-6]

### California State Nonroad Engine Pollution Control Standards; California Nonroad Compression Ignition Engines—In-Use Fleets; Authorization Request; Opportunity for Public Hearing

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Opportunity for Public Hearing and Comment.

**SUMMARY:** The California Air Resources Board (CARB) has notified EPA that it has adopted emission standards for fleets that operate nonroad, diesel fueled equipment with engines 25 horsepower (hp) and greater. By letter dated August 12, 2008, CARB submitted a request seeking EPA authorization, pursuant to section 209(e) of the Clean Air Act (CAA), 42 U.S.C. 7543(e), of its regulation requiring such fleets to meet fleet average emissions standards for oxides of nitrogen and particulate matter, or, alternatively, to comply with best available control technology

requirements for the vehicles in those fleets. This notice announces that EPA has tentatively scheduled a public hearing concerning California's request and that EPA is accepting written comment on the request.

**DATES:** EPA has tentatively scheduled a public hearing concerning CARB's request on October 27, 2008, beginning at 10 a.m. EPA will hold a hearing only if a party notifies EPA by October 20, 2007 expressing its interest in presenting oral testimony. If EPA does not receive a request for a public hearing, then EPA will not hold a hearing, and, instead, consider CARB's request based on written submissions to the docket. Any party may submit written comments by November 28, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2008-0691, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- *E-mail:* [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov).
- *Fax:* (202) 566-1741.
- *Mail:* Air and Radiation Docket, Docket ID No. EPA-HQ-OAR-2008-0691, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-HQ-OAR-2008-0691. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail

address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. 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. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Parties wishing to present oral testimony at the public hearing should provide written notice to David Dickinson at the address noted below. If EPA receives a request for a public hearing, EPA will hold the public hearing at 1310 L St, NW., Washington, DC 20005 at 10 a.m.

#### FOR FURTHER INFORMATION CONTACT:

David Dickinson, Compliance and Innovative Strategies Division (6405J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460. *Telephone:* (202) 343-9256, *Fax:* (202) 343-2804, *e-mail address:*

[Dickinson.David@EPA.GOV](mailto:Dickinson.David@EPA.GOV).

#### SUPPLEMENTARY INFORMATION:

**Background and Discussion:** Section 209(e)(1) of the Act addresses the permanent preemption of any State, or political subdivision thereof, from adopting or attempting to enforce any standard or other requirement relating to the control of emissions for certain new nonroad engines or vehicles. Section 209(e)(2) of the Act requires the Administrator to grant California authorization to enforce state standards for new nonroad engines or vehicles which are not listed under section 209(e)(1), subject to certain restrictions. On July 20, 1994, EPA promulgated a regulation that sets forth, among other things, the criteria, as found in section 209(e)(2), by which EPA must consider any California authorization requests for new nonroad engines or vehicle emission standards (section 209(e) rules).<sup>1</sup>

<sup>1</sup> Section 209(e)(1) states, in part: No State or any political subdivision thereof shall adopt or attempt to enforce any standard or other requirement relating to the control of emissions from either of the following new nonroad engines or nonroad vehicles subject to regulation under this Act—

(A) New engines which are used in construction equipment or vehicles or used in farm equipment

Section 209(e)(2) requires the Administrator, after notice and opportunity for public hearing, to authorize California to enforce standards and other requirements relating to emissions control of new engines not listed under section 209(e)(1). The section 209(e) rule and its codified regulations<sup>2</sup> formally set forth the criteria, located in section 209(e)(2) of the Act, by which EPA must grant California authorization to enforce its new nonroad emission standards and they are as follows:

(a) The Administrator shall grant the authorization if California determines that California standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards.

(b) The authorization shall not be granted if the Administrator 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 section 209.

As stated in the preamble to the section 209(e) rule, EPA has interpreted the requirement "California standards and accompanying enforcement procedures are not consistent with section 209" to mean that California standards and accompanying enforcement procedures must be consistent with section 209(a), section 209(e)(1), and section 209(b)(1)(C), as EPA has interpreted that subsection in the context of motor vehicle waivers.<sup>3</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. Secondly, California's nonroad standards and enforcement procedures must be consistent with section 209(e)(1), which identifies the categories permanently preempted from state regulation.<sup>4</sup> California's nonroad standards and enforcement procedures would be

or vehicles and which are smaller than 175 horsepower.

(B) New locomotives or new engines used in locomotives.

EPA's regulation was published at 59 FR 36969 (July 20, 1994), and regulations set forth therein, 40 CFR Part 85, Subpart Q, §§ 85.1601 *et seq.* A new rule, signed on September 4, 2008, moves these provisions to 40 CFR Part 1074.

<sup>2</sup> See 40 CFR Part 85, Subpart Q, § 85.1605. Upon effectiveness of the new rule, these criteria will be codified at 40 CFR 1074.105.

<sup>3</sup> See 59 FR 36969, 36983 (July 20, 1994).

<sup>4</sup> Section 209(e)(1) of the Act has been codified at 40 CFR Part 85, Subpart Q §§ 85.1602, 85.1603. Upon effectiveness of the new rule noted above, these permanently preempted categories will be codified at 40 CFR 1074.10, 1074.12.

considered inconsistent with section 209 if they applied to the categories of engines or vehicles identified and preempted from State regulation in section 209(e)(1).

Finally, because California's nonroad standards and enforcement procedures must be consistent with section 209(b)(1)(C), EPA reviews nonroad authorization requests under the same "consistency" criteria that are applied to motor vehicle waiver requests. Under 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 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 consideration to the cost of compliance within that time period or if the Federal and State test procedures impose inconsistent certification procedures.<sup>5</sup>

CARB has submitted to EPA its In-Use Off-Road Diesel-Fueled Fleets regulation adopted at its July 26, 2007 public hearing (by Resolution 07-19) and subsequently modified after supplemental public comment by CARB's Executive Officer by the In-Use Regulation in Executive Order R-08-002 on April 4, 2008 (these regulations are codified at title 13, California Code of Regulations sections 2449 through 2449.3). CARB's regulations require fleets that operate nonroad, diesel-fueled equipment with engines 25 hp and greater to meet fleet average emission standards for oxides of nitrogen and particulate matter. Alternatively, the regulations require the vehicles in those fleets to comply with best available control technology requirements. Compliance for the largest fleets (fleets with a total maximum power greater than 5000 hp) is required beginning March 1, 2010, for medium-sized fleets (greater than 2500 hp through 5000 hp) beginning March 1, 2013, and for small fleets (up to 2500 hp) beginning March 1, 2015.

Please provide comment whether (a) 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) California needs separate standards to meet compelling and extraordinary conditions, and (c) California's standards and accompanying enforcement procedures are consistent with section 209 of the Act.

### Procedures for Public Participation

In recognition that public hearings are designed to give interested parties an opportunity to participate in this proceeding, there are not adverse parties as such. Statements by participants will not be subject to cross-examination by other participants without special approval by the presiding officer. The presiding officer is authorized to strike from the record statements that he or she deems irrelevant or repetitious and to impose reasonable time limits on the duration of the statement of any participant.

If a hearing is held, the Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. Regardless of whether a public hearing is held, EPA will keep the record open until November 28, 2008. Following the expiration of the comment period, the Administrator will render a decision on CARB's request based on the record of the public hearing, if any, relevant written submissions, and other information that he deems pertinent.

Persons with comments containing proprietary information must distinguish such information from other comments to the great possible extent and label it as Confidential Business Information (CBI). If a person making comments wants EPA to base its decision in part on a submission labeled CBI, then a non-confidential version of the document that summarizes the key data or information should be submitted for the public docket. To ensure that proprietary information is not inadvertently placed in the docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

<sup>5</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 both the state and the Federal requirement with the same test vehicle in the course of the same test. See, e.g., 43 FR 32182 (July 25, 1978).

Dated: October 1, 2008.

**Robert J. Meyers,**

*Principal Deputy Assistant Administrator,  
Office of Air and Radiation.*

[FR Doc. E8-23682 Filed 10-6-08; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-8726-4]

### Cross-Media Electronic Reporting Rule State Authorized/Approved Program Modification/Revision Approval: State of Oklahoma

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This action announces EPA's approval, under regulations for Cross-Media Electronic Reporting, of the State of Oklahoma's request for modifications/revisions to their authorized programs to allow electronic reporting for certain of their authorized programs under title 40 and specific reports.

**DATES:** EPA's approval is effective October 7, 2008.

**FOR FURTHER INFORMATION CONTACT:** Evi Huffer, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 566-1697, [huffer.evi@epa.gov](mailto:huffer.evi@epa.gov), or David Schwarz, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 566-1704, [schwarz.david@epa.gov](mailto:schwarz.david@epa.gov).

**SUPPLEMENTARY INFORMATION:** On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as Part 3 of Title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribe, or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and get EPA approval. Subpart D also provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government

will use to implement the electronic reporting. Additionally, in § 3.1000 (b) through (e) of 40 CFR Part 3, Subpart D provides for special procedures for program revisions and modifications that provide for electronic reporting, to be used at the option of the state, tribe, or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the Subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting component of its authorized programs covered by the application and will use electronic document receiving systems that meet the applicable Subpart D requirements.

On September 7, 2007, the State of Oklahoma Department of Environmental Quality (OKDEQ) submitted a consolidated application for their Electronic Document Receiving System (ERDS) addressing revisions or modifications to multiple authorized/approved programs under air, water, and waste.

EPA has reviewed OKDEQ's request to revise or modify multiple authorized/approved programs and, based on this review, EPA has determined that portions of the application relating to the programs and specific reports identified in this Notice, when compared to the federal regulations, meet the standards for approval of authorized program revisions set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve OKDEQ's request for modifications/revisions to certain of their authorized programs under title 40 to allow electronic reporting for specific reports under those programs is being published in the **Federal Register**.

EPA has approved OKDEQ's request for modifications/revisions to following of their authorized programs to allow electronic reporting for the specified reports:

- *Program:* Part 60 Standards of Performance for New Stationary Sources; *Reports:* New Source Performance Standards Reports under § 60.7, and Continuous Emissions Monitors/Continuous Opacity Monitors under § 60.7(c) and (d);
- *Program:* Part 61 National Emission Standards For Hazardous Air Pollutants (NESHAP); *Report:* NESHAP Reports Notification of Start Up under § 61.09;
- *Program:* Part 63 NESHAP for Source Categories; *Reports:* Continuous Emissions Monitors/Continuous Opacity Monitors under § 63.10(e)(3),

and Maximum Achievable Control Technology Reports under § 63.9;

- *Program:* Part 70 State Operating Permit Programs; *Reports:* Annual Compliance Certifications under § 70.6, and Semi-Annual Monitoring and Deviation Reports (SAR) under § 70.6;

- *Program:* Part 122 EPA Administered Permit Programs: The National Pollutant Discharge Elimination System (NPDES); *Reports:* Stormwater Notice of Intent/Notice of Termination under § 122.26, and Wastewater Daily Monitoring Reports (NPDES) under § 122.41;

- *Programs:* Parts 144 through 148 Underground Injection Control (UIC) Program, State UIC Program Requirements, UIC Program: Criteria and Standards, State UIC Programs, and Hazardous Waste Injection Restrictions; *Report:* UIC Permit Applications;

- *Program:* Part 261 Identification And Listing Of Hazardous Waste; *Report:* Regulated Waste Activity Notification;

- *Program:* Part 270 EPA Administered Permit Programs: The Hazardous Waste Permit Program; *Report:* EPA Hazardous Waste Permit Application Part A Form (EPA Form 8700-23).

OKDEQ was notified of EPA's determination to approve its application relating to the authorized programs and specific reports listed above in a letter dated September 26, 2008.

Dated: September 26, 2008.

**Molly A. O'Neill,**

*Assistant Administrator and Chief Information Officer.*

[FR Doc. E8-23693 Filed 10-6-08; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-8725-6]

### Notice of Availability of Final NPDES General Permits MAG07000 and NHG07000 for Discharges From Dewatering Activities in the Commonwealth of Massachusetts (Including Both Commonwealth and Indian Country Lands) and the State of New Hampshire: the Dewatering General Permit (DGP)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability of Final NPDES General Permits MAG07000 and NHG07000.

**SUMMARY:** The Director of the Office of Ecosystem Protection, EPA-New England, is providing a notice of