

pulmonary disease, and methyl chloroform for use in manufacturing solid rocket motors.

The timing of this process is typically such that in any given year the Parties review nominations for essential use exemptions from the production and consumption phaseout intended for the following year and subsequent years. This means that, if nominated, applications submitted in response to today's notice for an exemption in 2007 and 2008 may be considered by the Parties in 2006 for final action. The quantities of controlled ODSs that are requested in response to this notice, if approved by the Parties to the Montreal Protocol, will then be allocated as essential use allowances (EUAs) to the specific U.S. companies through notice and comment rulemaking, to the extent that such allocations are consistent with the CAA.

## II. Information Required for Essential Use Applications for Production or Importation of Class I Substances in 2007 and 2008

Through this action, EPA requests applications for essential use exemptions for all class I substances, except methyl bromide, for calendar years 2007 and 2008. This notice is the last opportunity to submit new or revised applications for 2007. This notice is also the first opportunity to submit requests for 2008. Companies will have an opportunity to submit new, supplemental, or amended applications for 2008 next year. All requests for exemptions submitted to EPA must present information as prescribed in the current version of the TEAP "Handbook on Essential Use Nominations" (or "handbook"), which was published in June 2001. The handbook is available electronically on the Web at <http://www.teap.org> or at <http://www.epa.gov/ozone>.

In brief, the TEAP Handbook states that applicants must present information on:

- Role of use in society;
- Alternatives to use;
- Steps to minimize use;
- Steps to minimize emissions;
- Recycling and stockpiling;
- Quantity of controlled substances requested; and
- Approval date and indications (for MDIs).

First, in order to obtain complete information from essential use applicants for CFC MDIs, EPA requires that entities (such as the International Pharmaceutical Aerosol Consortium) who request CFCs for multiple pharmaceutical companies make clear the amount of CFCs requested for each

member company. Second, all essential use applications for CFCs must provide a breakdown of the quantity of CFCs necessary for each MDI product to be produced. This detailed breakdown of EUAs will allow EPA and the Food and Drug Administration to make informed decisions on the amount of CFC to be nominated by the U.S. Government for the years 2007 and 2008. Third, all new drug application (NDA) holders for CFC MDI products produced in the United States must submit a complete application for essential use allowances either on their own or in conjunction with their contract filler. In the case where a contract filler produces a portion of an NDA holder's CFC MDIs, the contract filler and the NDA holder must determine the total amount of CFCs necessary to produce the NDA holder's entire product line of CFC MDIs. The NDA holder must provide an estimate of how the CFCs would be split between the contract filler and the NDA holder in the allocation year. This estimate will be used only as a basis for determining the nomination amount, and may be adjusted prior to allocation of EUAs. Since the U.S. Government does not forward incomplete or inadequate nominations to the Ozone Secretariat, it is important for applicants to provide all information requested in the Handbook, including the information specified in the supplemental research and development form (page 45).

The accounting framework matrix in the handbook entitled "Table IV: Reporting Accounting Framework for Essential Uses Other Than Laboratory and Analytical" requests data for the year 2005 on the amount of ODS exempted for an essential use, the amount acquired by production, the amount acquired by import, the amount on hand at the start of the year, the amount available for use in 2005, the amount used for the essential use, the quantity contained in exported products, the amount destroyed, and the amount on hand at the end of 2005. Because all data necessary for applicants to complete Table IV will not be available until after January 1, 2006, companies should not include this chart with their EUA applications in response to this action. Instead, companies should provide the required data as specified in 40 CFR 82.13(u)(2). EPA will compile companies' responses to complete the U.S. CFC Accounting Framework for submission to the Parties to the Montreal Protocol by the end of January.

EPA anticipates that the Parties' review of MDI essential use requests will focus extensively on the United

States' progress in developing alternatives to CFC MDIs, including education programs to inform patients and health care providers of the CFC phaseout and the transition to alternatives, particularly in the case of albuterol MDIs where a phaseout date has been set by the FDA. Accordingly, applicants are strongly advised to present detailed information on these points, including the scope and cost of such efforts and the medical and patient organizations involved in the work. Applicants should submit their exemption requests to EPA as noted in the **ADDRESSES** section at the beginning of today's document.

Dated: November 14, 2005.

**Edward Callahan,**

*Acting Director, Office of Air and Radiation.*

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## ENVIRONMENTAL PROTECTION AGENCY

[AMS-FRL-7998-9]

### California State Motor Vehicle Pollution Control Standards; Within the Scope Requests; Opportunity for Public Hearing and Comment

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

**ACTION:** Notice of opportunity for public hearing and public comment.

**SUMMARY:** The California Air Resources Board (CARB) has notified EPA that it has approved amendments to its on-highway motorcycle and motorcycle engine for 2004 and subsequent model years. CARB requests that EPA confirm CARB's findings that its amendments are within-the-scope of previous waivers issued by EPA under section 209(b) of the Clean Air Act (Act), 42 U.S.C. 7543(b).

**DATES:** EPA has tentatively scheduled a public hearing for December 27, 2005, 2005 beginning at 10 a.m. EPA will hold a hearing only if a party notifies EPA by December 12, 2005, expressing its interest in presenting oral testimony regarding CARB's requests or other issues noted in this notice. By December 16, 2005, any person who plans to attend the hearing should call David Dickinson of EPA's Compliance and Innovative Strategies Division at (202) 343-9256 to learn if a hearing will be held. Any party may submit written comments by January 30, 2006.

**ADDRESSES:** EPA will make available for public inspection at the Air and Radiation Docket written comments received from interested parties, in

addition to any testimony given at the public hearing. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 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 Air and Radiation Docket is (202) 566-1743. The reference number for this docket is OAR-2004-0486. Parties wishing to present oral testimony at the public hearing(s) should provide written notice to David Dickinson at the address noted below; parties should also submit any written comments to David Dickinson. If EPA receives a request for a public hearing, EPA will hold the public hearing at 1310 L St, NW., Washington, DC 20005.

*For Obtaining and Submitting Electronic Copies of Documents, or For Further Information:* 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). EPA will make available an electronic copy of this Notice on the Office of Transportation and Air Quality's (OTAQ's) homepage (<http://www.epa.gov/otaq/>). Users can find this document by accessing the OTAQ homepage and looking at the path entitled "Regulations." This service is free of charge, except any cost you already incur for Internet connectivity. Users can also get the official **Federal Register** version of the Notice on the day of publication on the primary website: (<http://www.epa.gov/docs/fedrgrstr/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. Parties wishing to present oral testimony at the public hearing should provide written notice to David Dickinson at: U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., (6405J), Washington, DC 20460. Telephone: (202) 343-9256.

*Docket:* An electronic version of the public docket is available through EPA's electronic public docket and comment system. You may use EPA dockets at <http://www.epa.gov/edocket/> to submit or view the public comments, access the

index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. 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. Once in the edocket system, select "search," then key in the appropriate docket ID number.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 209(a) of the Clean Air Act, as amended ("Act"), 42 U.S.C. 7543(a), provides:

No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No state shall require certification, inspection or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

Section 209(b)(1) of the Act requires the Administrator, after notice and opportunity for public hearing, to waive application of the prohibitions of section 209(a) for any state that has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, if the state determines that the state standards will be, in the aggregate, at least as protective of public health and welfare as applicable federal standards. The Administrator must grant a waiver unless he finds that (A) the determination of the state is arbitrary and capricious, (B) the state does not need the state standards to meet compelling and extraordinary conditions, or (C) the state standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act.

CARB submitted a June 18, 2003, letter to the Administrator notifying EPA that it had adopted amendments, on October 22, 1999, to its on-highway motorcycle regulations and requesting that EPA confirm that its amendments are within the scope of previously granted waivers of federal preemption. The new amendments provide, among other requirements:

(1) A combined level of hydrocarbon (HC) and oxides of nitrogen (NO<sub>x</sub>) emissions as HC + NO<sub>x</sub> for 2004 and subsequent model years (in comparison to the preexisting on-highway Class III motorcycle HC-only standard);

(2) Two tiers of standard (Tier-1 and -2), with a Tier-1 standard of 1.4 g/km for HC + NO<sub>x</sub> for model years 2004 through 2007 and a Tier-2 standard of 0.08 for HC + NO<sub>x</sub> for model year 2008 and beyond;

(3) Retention of corporate averaging for Class III engine families but an addition of a not-to-exceed cap limit for each emission level from each engine family; and

(4) A new definition of "small volume manufacturer" that applies in model year 2008 and beyond and clarification of the definition for "motorcycle engine."

CARB asserts, and requests that the Administrator confirm, that its on-highway motorcycle amendments fall within the scope of EPA's previously granted waivers, and thereby may be deemed to meet the requirements of section 209(b) of the Act set forth above.

EPA has decided in the past that when California's amendments: (1) Do not undermine the previous determination that California's standards, in the aggregate, are at least as protective of public health and welfare as comparable Federal standards; (2) do not affect the consistency of California's requirements with section 202(a) of the Act; and (3) raise no new issues affecting EPA's previous waiver determinations, then EPA's concurrence that the amendments are within the scope of a previous waiver determination is merited.

When EPA receives new waiver requests from CARB, EPA publishes a notice of opportunity for public hearing and comment and then publishes a decision in the **Federal Register** following the public comment period. In contrast, when EPA receives within the scope waiver requests from CARB, EPA traditionally publishes a decision in the **Federal Register** and concurrently invites public comment if an interested party is opposed to EPA's decision.

Because of the many new elements of CARB's on-highway motorcycle rule, EPA invites comment on the following issues before making a determination for CARB's within the scope request: (1) Should EPA consider CARB's requests as within the scope of a previous waiver request or should they be considered and examined as new waiver requests? (2) If EPA were to consider CARB's request as a within the scope request then do California's amendments (a) undermine California's previous determinations that its standards, in the aggregate, are at least as protective of public health and welfare as comparable Federal standards, (b) affect the consistency of California's requirements with section 202(a) of the Act, and (c)

raise new issues affecting EPA's previous waiver determinations? (3) If EPA were to consider CARB's requests as a new waiver request, then provide comment on (a) whether California's determination that its standards are at least as protective of public health and welfare as applicable federal standards is arbitrary and capricious, (b) whether California needs separate standards to meet compelling and extraordinary conditions, and (c) whether California's standards and accompanying enforcement procedures are consistent with section 202(a) of the Act.

## II. Procedures for Public Participation

If a public hearing is held, any party desiring to make an oral statement on the record should file ten (10) copies of its proposed testimony and other relevant material with David Dickinson at the address listed above no later than December 23, 2005. In addition, the party should submit 25 copies, if feasible, of the planned statement to the presiding officer at the time of the hearing.

In recognition that a public hearing is designed to give interested parties an opportunity to participate in this proceeding, there are no 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 January 25, 2006. Upon 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 greatest 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 nonconfidential 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.

Dated: November 3, 2005.

**Elizabeth Craig,**

*Acting Assistant Administrator, for Air and Radiation.*

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## ENVIRONMENTAL PROTECTION AGENCY

[AMS-FRL-7994-9]

### California State Nonroad Engine and Vehicle Pollution Control Standards; Opportunity for Public Hearing and Request for Public Comment

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

**ACTION:** Notice of opportunity for public hearing and comment.

**SUMMARY:** The California Air Resources Board (CARB) has notified EPA that it has adopted an Airborne Toxic Control Measure (ATCM) establishing in-use performance standards for transport refrigeration units (TRU) and TRU generator sets that will be phased-in commencing on December 31, 2008. By letter dated March 28, 2005, CARB requested that EPA grant California authorization for such standards under section 209(e)(2) of the Clean Air Act (CAA), 42 U.S.C. 7543(b) (EPA frequently calls such authorizations "waivers of preemption"). 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 January 3, 2006 beginning at 10 a.m. EPA will hold a hearing only if a party notifies EPA by December 16, 2005, expressing its interest in presenting oral testimony. By December 21, 2005, any person who plans to attend the hearing should call Robert M. Doyle at (202) 343-9258 to learn if a hearing will be held. 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 February 6, 2006.

**ADDRESSES:** EPA will make available for public inspection at the Air and Radiation Docket and Information Center written comments received from interested parties, in addition to any testimony given at the public hearing. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 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 Air and Radiation Docket is (202) 566-1743. The reference number for this docket is OAR-2005-0123. Parties wishing to present oral testimony at the public hearing should provide written notice to Robert M. Doyle 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.

#### FOR FURTHER INFORMATION CONTACT:

Robert M. Doyle, Compliance and Innovative Strategies Division (6405J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Telephone: (202) 343-9258, Fax: (202) 343-2804, e-mail address: [Doyle.Robert@EPA.GOV](mailto:Doyle.Robert@EPA.GOV). EPA will make available an electronic copy of this Notice on the Office of Transportation and Air Quality's (OTAQ's) homepage (<http://www.epa.gov/otaq/>). Users can find this document by accessing the OTAQ homepage and looking at the path entitled "Regulations." This service is free of charge, except any cost you already incur for Internet connectivity. Users can also get the official **Federal Register** version of the Notice on the day of publication on the primary Web site: (<http://www.epa.gov/docs/fedrgstr/EPA-AIR/>).

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