

(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 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>

On August 8, 2008, CARB requested that EPA authorize California to enforce 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. Based on this request EPA noticed and conducted a public hearing on October 27, 2008, and provided an opportunity to submit written comment through December 19, 2008.<sup>6</sup>

On February 11, 2010 CARB requested that EPA grant California authorization to enforce its In-Use Off-Road Diesel-Fueled Fleets regulation as amended in: December 2008 (and formally adopted in California on October 19, 2009); January 2009 (and formally adopted in California on December 31, 2009); and, a certain subset of amendments adopted by the CARB Board in July 2009 in response to California Assembly Bill 8 2X (and formally adopted on December 3, 2009). In CARB's February 11, 2010 request letter to EPA it also notes additional amendments adopted in July 2009 and not yet formally adopted by California's Office of Administrative Law. Once this last subset of amendments is formally adopted CARB plans to submit them to EPA for subsequent consideration.

Based on CARB's February 11, 2010 request and its In-Use Off-Road Diesel-Fueled Fleets regulation, EPA invites comment on 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.

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 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.

Dated: March 5, 2010.

**Margo Tsigiotis Oge,**

*Director, Office of Transportation and Air Quality, Office of Air and Radiation.*

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## ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-8988-8]

### Environmental Impacts Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564-1399 or <http://www.epa.gov/compliance/nepa/>.

<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.

<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).

<sup>6</sup> 73 FR 58585 (October 7, 2008) and 73 FR 67509 (November 14, 2008).

Weekly receipt of Environmental Impact Statements.  
Filed 03/01/2010 through 03/05/2010.  
Pursuant to 40 CFR 1506.9.

#### Notice

In accordance with Section 309(a) of the Clean Air Act, EPA is required to make its comments on EISs issued by other Federal agencies public. Historically, EPA has met this mandate by publishing weekly notices of availability of EPA comments, which includes a brief summary of EPA's comment letters, in the **Federal Register**. Since February 2008, EPA has been including its comment letters on EISs on its Web site at: <http://www.epa.gov/compliance/nepa/eisdata.html>. Including the entire EIS comment letters on the Web site satisfies the Section 309(a) requirement to make EPA's comments on EISs available to the public. Accordingly, after March 31, 2010, EPA will discontinue the publication of this notice of availability of EPA comments in the **Federal Register**.

*EIS No. 20100062, Final EIS, USFWS, AK, Yukon Flats National Wildlife Refuge Project, Proposed Federal and Public Land Exchange, Right-of-Way Grant, Anchorage, AK, Wait Period Ends: 04/12/2010, Contact: Laura Greffenius 907-786-3872.*

*EIS No. 20100063, Draft EIS, USFS, NE, Allotment Management Planning in the McKelvie Geographic Area Project, Livestock Grazing on 21 Allotments, Bessey Ranger District, Samuel R. McKelvie National Forest, Cherry County, NE, Comment Period Ends: 04/26/2010, Contact: Mark A. Lane 308-432-0328.*

*EIS No. 20100064, Final EIS, USFS, CA, Freds Fire Reforestation Project, Implementation, EL Dorado National Forest, Placerville and Pacific Ranger Districts, El Dorado County, CA, Wait Period Ends: 04/12/2010, Contact: Robert Carroll 530-647-5386.*

*EIS No. 20100065, Draft EIS, USFWS, CA, San Diego County Water Authority Natural Community Conservation Plan/Habitat Conservation Plan, Issuing of an Incidental Take Permit, San Diego and Riverside Counties, CA, Comment Period Ends: 06/10/2010, Contact: Karen Goebel 760-431-9440.*

*EIS No. 20100066, Final EIS, FHWA, FL, Interstate 395 (I-395) Development and Environment Study Project, From I-95 to West Channel Bridges of the MacArthur Causeway at Biscayne Bay, City of Miami, Miami-Dade County, FL, Wait Period Ends: 04/12/2010, Contact: Linda K. Anderson 850-942-9650 Ext. 3053.*

*EIS No. 20100067, Draft EIS, TVA, TN, Douglas and Nolichucky Tributary Reservoirs Land Management Plan, Implementation, Cocke, Greene, Hamblen, Jefferson and Sevier Counties, TN, Comment Period Ends: 04/26/2010, Contact: Amy Henry 865-632-4045.*

*EIS No. 20100068, Final EIS, TVA, 00, Northeastern Tributary Reservoirs Land Management Plan, Implementation, Beaver Creek, Clear Creek, Boone, Fort Patrick Henry, South Holston, Watauga, and Wilbur Reservoirs, Carter, Johnson, Sullivan, and Washington Counties, TN and Washington County, VA, Wait Period Ends: 04/12/2010, Contact: Amy Henry 865-632-4045.*

*EIS No. 20100069, Draft EIS, BLM, WY, Buckskin Mine Hay Creek II Project, Coal Lease Application WYW-172684, Wyoming Powder River Basin, Campbell County, WY, Comment Period Ends: 05/10/2010, Contact: Teresa Johnson 307-361-7510.*

*EIS No. 20100070, Final EIS, USFS, OR, Upper Beaver Creek Vegetation Management Project, Proposes to Implement Multiple Resource Management Actions, Pauline Ranger District, Ochoco National Forest, Crook County, OR, Wait Period Ends: 04/12/2010, Contact: Janis Bouma 541-477-6902.*

*EIS No. 20100071, Draft EIS, FERC, ID, Swan Falls Hydroelectric Project, Application for a New License for the 25-megawatt Hydroelectric Facility (FERC Project No. 503-048), Snake River, Ada and Owyhee Counties, ID, Comment Period Ends: 04/26/2010, Contact: Julia Bovey 1-866-208-3372.*

*EIS No. 20100072, Draft EIS, NPS, NC, Cape Hatteras National Seashore Off-Road Vehicle Management Plan, Implementation, NC, Comment Period Ends: 05/11/2010, Contact: Mike Murray 252-473-2111 Ext 148.*

*EIS No. 20100073, Draft EIS, USA, AK, Resumption of Year-Round Firing Opportunities at Fort Richardson, Proposal to Strengthen Unit Preparedness and Improve Soldier and Family Quality of Life by Maximizing Live-Fire Training, Fort Richardson, AK, Comment Period Ends: 05/10/2010, Contact: Robert Hall 907-384-2546.*

#### Amended Notices

*EIS No. 20100050, Draft EIS, BLM, CA, Stirling Energy Systems (SES) Solar 2 Project, Construct and Operate, Electric-Generating Facility, Imperial Valley, Imperial County, CA, Comment Period Ends: 05/26/2010, Contact: Erin Dreyfuss 916-978-4642.*

Revision to FR Notice Published 02/26/2010: Comment Period will end on 05/26/2010.

*EIS No. 20100051, Draft EIS, USFS, UT, South Unit Oil and Gas Development Project, Master Development Plan, Implementation, Duchesne/Roosevelt Ranger District, Ashley National Forest, Duchesne County, UT, Comment Period Ends: 04/26/2010, Contact: David Herron 435-781-5218. Revision to FR Notice Published 02/26/2010: Correction to Comment Period from 04/12/2010 to 04/26/2010.*

*EIS No. 20100054, Draft EIS, NASA, VA, Wallops Flight Facility, Shoreline Restoration and Infrastructure Protection Program, Implementation, Wallops Island, VA, Comment Period Ends: 04/12/2010, Contact: Joshua A. Bundick 757-824-2319. Revision to FR Notice Published 02/26/2010: Correction to Document Agency from NOAA to NASA.*

Dated: March 9, 2010.

**Robert W. Hargrove,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

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## ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-8988-9]

### Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202-564-7146 or <http://www.epa.gov/compliance/nepa/>. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated July 17, 2009 (74 FR 34754).

#### Notice

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