

Best Achievable Control Technology (BACT)<sup>6</sup> in attainment areas. For internal combustion engines similar to the diesel agricultural engines affected by this rule, no single industry-wide technology has been generally determined to be LAER or BACT, but some recent local decisions regarding LAER and BACT in California indicate that diesel engines have not generally had to meet NO<sub>x</sub> emission standards more stringent than current Title II standards.

In addition, the Clean Air Act requires Reasonably Available Control Technology (RACT) for major NO<sub>x</sub> stationary sources in most ozone nonattainment areas.<sup>7</sup> We have defined RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. 44 FR 53762 (September 17, 1979). RACT may require technology that has been applied to similar, but not necessarily identical, source categories. 57 FR 55620 (November 25, 1992). There has been no source category-wide RACT determination for these engines, but we believe it is unlikely that RACT requirements for these engines would be more stringent, and in some cases they may be less stringent, than the applicable nonroad engine standards.

Finally, any emission reductions under the stationary source provisions

the implementation plan of any State for such class or category of source; or (2) the most stringent emission limitation achieved in practice by such class or category of source. CAA Section 171(3)

<sup>6</sup> The BACT requirement is defined as: "An emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each pollutant subject to regulation under the Clean Air Act which would be emitted from any proposed major stationary source or major modification which the Administrator, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR parts 60 and 61. If the Administrator determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results." 40 CFR 52.21(b)(12)

<sup>7</sup> There are similar RACM requirements in PM-10 nonattainment areas.

would likely occur later than anticipated via this rule change. While NSR and other Title I requirements may at some point in the near future begin to be applied to agricultural sources, implementation of such requirements would have to allow for the lead time needed to take regulatory and/or legislative action to promulgate such regulations and the lead time needed to implement such regulations.

There are some restrictions on state and local ability to regulate nonroad engines. See Clean Air Act section 209(e). States and local jurisdictions may not promulgate their own emission standards for nonroad engines. However, the State of California may promulgate and enforce standards for all nonroad agricultural engines, except new engines under 175 horsepower, if the state receives authorization from EPA to do so. Though California must make certain showings to receive this authorization, the Clean Air Act provides considerable deference to California to promulgate its own standards. Even for engines below 175 horsepower, California can receive authorization to promulgate standards for such engines if they are not standards affecting new (*i.e.*, "showroom new") engines.

In addition, states and localities may promulgate use restrictions for such engines, such as time-of-use restrictions and fuel restrictions. These requirements, as well as the state standards discussed in the paragraph above, may be enacted by state and local entities to help areas meet the attainment requirements under the Act by achieving even greater NO<sub>x</sub> and PM reductions.

**Why Are Only Agricultural Engines in the State of California Covered by This Rule Change?**

This rule represents a small deviation from the general manner in which EPA has delineated the boundary between nonroad engines and stationary internal combustion engines. EPA has in the past based the definition on whether the engine will be used in a mobile or stationary manner, not on other characteristics such as engine size or the type of work, or industrial category of work, in which the engine was engaged. EPA believes that the particular circumstances of these California agricultural engines make it appropriate for EPA to use a somewhat different approach in this targeted rule.<sup>8</sup> First, the engines being reclassified in this rule

are doing work that is indistinguishable from work done by engines already classified as nonroad engines—in fact, as noted above agricultural operations often have a combination of nonroad and stationary engines performing the same function, such as pumping water for crop irrigation or livestock watering. Moreover, the certified engines that would be defined as nonroad engines by this regulatory change are engines that are part of engine families that have been certified for use and are used in other mobile applications. Therefore, many of the certified engines affected by this rule are in fact indistinguishable from other certified nonroad engines.

More importantly, the unique circumstances in California make this revision appropriate for these engines. As noted above, unlike other stationary sources that are already subject to stationary source emission controls, farm engines have not historically been subject to stationary source emission control regulations. The approach we use in this rule basically allows a farm to voluntarily reduce emissions from its engines in a manner that will result in definite emission reductions that are likely greater and more rapid than would be achieved under the previous approach. This rule will thus not disturb existing regulatory programs in a way that a broader rule would.

This revision is particularly appropriate for California. California is uniquely positioned as the only state that may promulgate its own standards for nonroad engines under section 209(b). Other states may only promulgate standards identical to any California chooses to adopt. Since California is in a unique position to continue promulgating standards regulating these engines as nonroad engines, it can implement effective emission control programs for these engines. Also, given the particular air quality concerns and the need for reductions of NO<sub>x</sub> in California as well as the opportunity to significantly reduce emissions from agricultural pump engines (the opportunity benefitted by the potential funding through the Carl Moyer program and the U.S. Department of Agriculture), farms in California are uniquely situated to take advantage of this regulatory provision.

This rule is in many ways an extension of the policy behind California's existing Carl Moyer program to provide new certified engines to these farmers. That program provided funding for farmers that purchased engines meeting nonroad standards, whereas this revision provides regulatory changes that encourage the use of

<sup>8</sup> The use of targeted rules of limited scope, especially in the context of a voluntary program, is similar to other projects in which EPA has engaged.