

The Administrator signed the following rule on May 21, 2008 and we are submitting it for publication in the *Federal Register*. While we have taken steps to ensure the accuracy of this Internet version of the rule, it is not the official version of the rule for purposes of public comment. Please refer to the official version in a forthcoming *Federal Register* publication or on GPO's Web Site. You can access the *Federal Register* at: www.gpoaccess.gov/fr/index.html. When using this site, note that "text" files may be incomplete because they don't include graphics. Instead, select "Adobe Portable Document File" (PDF) files.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 1051

[EPA-HQ-OAR-2008-0124; FRL_XXXX-X]

RIN 2060-A088

Exhaust Emission Standards for 2012 and Later Model Year Snowmobiles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In a November 2002 final rule, we established the first US emission standards for new snowmobiles. Subsequent litigation regarding that final rule resulted in a court decision which requires us to: remove the oxides of nitrogen (NO_x) component from the Phase 3 snowmobile standards set to take effect in 2012, and; clarify the evidence and analysis upon which the Phase 3 carbon monoxide (CO) and hydrocarbon (HC) standards were based. In accordance with the court decision, we are proposing to remove the NO_x component from the Phase 3 emission standard calculation. We are deferring action on the 2012 CO and HC

emission standards portion of the court’s remand to a separate rulemaking action. In the “Rules and Regulations” section of this Federal Register, we are making this revision as a direct final rule without a prior proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule.

DATES: Written comments must be received by [Insert date 30 days from date of publication in the Federal Register], unless a public hearing is requested. If a public hearing is requested no later than [Insert date 20 days after date of publication in the Federal Register], it will be held at a time and place to be published in the Federal Register and a new deadline for comments will be provided.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2008-0124, by mail to Environmental Protection Agency, Mail Code: 6102T, 1200 Pennsylvania Ave., NW, Washington, DC, 20460. Please include two copies. Comments may also be submitted electronically or through hand delivery/courier, or a public hearing may be requested, by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this Federal Register.

FOR FURTHER INFORMATION CONTACT: John Mueller, Assessment and Standards Division, Office of Transportation and Air Quality, 2000 Traverwood Drive, Ann Arbor, MI, 48105; telephone number: (734) 214-4275; fax number: (734) 214-4050; email address: mueller.john@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Why is EPA Issuing This Proposed Rule?

This document proposes to remove the NO_x component from the Phase 3 snowmobile emission standard equation as required by the court decision in *Bluewater Network v. EPA*, 370 F. 3d 1 (D.C.Cir 2004). We have published a direct final rule making this revision in the “Rules and Regulations” section of this Federal Register because we view this as a relatively noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment or a request for a public hearing, we will not take further action on this proposed rule. Otherwise, we will withdraw the direct final rule and it will not take effect. We would address all public comments in any subsequent final rule based on this proposed rule.

We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

II. Does This Action Apply to Me?

This action will affect companies that manufacture, sell, or import into the United States

new snowmobiles and new spark-ignition engines for use in snowmobiles. This action may also affect companies and persons that rebuild or maintain these engines. Affected categories and entities include the following:

Category	NAICS Code ^a	Examples of potentially affected entities
Industry	333618	Manufacturers of new nonroad spark-ignition engines.
Industry	336999	Snowmobile manufacturers.
Industry	811310	Engine repair and maintenance.
Industry	421110	Independent commercial importers of vehicles and parts.

^a North American Industry Classification System (NAICS)

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether particular activities may be affected by this action, you should carefully examine the regulations. You may direct questions regarding the applicability of this action as noted in **FOR FURTHER INFORMATION CONTACT**.

III. Summary of Rule

This proposed rule would make a revision to the regulations to implement the following amendment:

- Remove the NO_x component from the Phase 3 snowmobile emission standard equation.

For additional discussion of the proposed rule change, see the direct final rule EPA has published in the “Rules and Regulations” section of today’s Federal Register. This proposal incorporates by reference all the reasoning, explanation, and regulatory text from the direct final rule. Furthermore, elsewhere in today’s Federal Register, EPA is publishing an Advance Notice of Proposed Rulemaking which describes EPA’s current thinking with regard to potential new requirements for C3 marine engines and identifies and discusses a number of important issues upon which EPA is seeking comment.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This proposed rule is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO. This proposed rule merely removes the NO_x component from the snowmobile Phase 3 emission standards equation, as directed by the court’s ruling. There are no new costs associated with this proposed rule.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This proposed rule

merely removes the NO_x component from the snowmobile Phase 3 emission standards equation, as directed by the court's ruling. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations [40 CFR 1051] under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2060-0388, EPA ICR number 1695. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW, Washington, DC 20460 or by calling (202) 566-1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed rule on small entities, a small entity is defined as: (1) A small business that meet the definition for business based on SBA size standards at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves

regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This proposed rule merely removes the NOx component from the snowmobile Phase 3 emission standards equation, as directed by the court's ruling. We have therefore concluded that today's proposed rule will not affect regulatory burden for all affected small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This proposed rule contains no federal mandates for state, local, tribal governments, or the private sector as defined by the provisions of Title II of the UMRA. The proposed rule imposes no enforceable duties on any of these governmental entities. This proposed rule contains no regulatory requirements that would significantly or uniquely affect small governments. EPA has determined that this proposed rule contains no federal mandates that may result in expenditures of more than \$100 million to the private sector in any single year. This proposed rule merely removes the NOx component from the snowmobile Phase 3 emission standards equation, as directed by the court's ruling. See the direct final rule EPA has published in the "Rules and Regulations" section of today's Federal Register for a more extensive discussion of UMRA policy.

E. Executive Order 13132: Federalism

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule merely removes the NO_x component from the snowmobile Phase 3 emission standards equation, as directed by the court's ruling. See the direct final rule EPA has published in the "Rules and Regulations" section of today's Federal Register for a more extensive discussion of Executive Order 13132.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This proposed rule does not uniquely affect the communities of Indian Tribal Governments. Further, no circumstances specific to such communities exist that would cause an impact on these communities beyond those discussed in the other sections of this rule. This proposed rule merely removes the NO_x component from the snowmobile Phase 3 emission standards equation, as directed by the court's ruling. Thus, Executive Order 13175 does not apply to this rule. See the direct final rule EPA has published in the "Rules and Regulations" section of today's Federal Register for a more extensive discussion of Executive Order 13132.

G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

This proposed rule is not subject to the Executive Order because it is not economically significant, and does not involve decisions on environmental health or safety risks that may disproportionately affect children. See the direct final rule EPA has published in the “Rules and Regulations” section of today’s Federal Register for a more extensive discussion of Executive Order 13045.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not a “significant energy action” as defined in Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. This proposed rule merely removes the NO_x component from the snowmobile Phase 3 emission standards equation, as directed by the court’s ruling.

I. National Technology Transfer and Advancement Act

This proposed rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. This proposed rule merely removes the NO_x component from the snowmobile Phase 3 emission standards equation, as directed by the court’s ruling. Thus, we have determined that the requirements of the NTTAA do not apply.

See the direct final rule EPA has published in the “Rules and Regulations” section of today’s Federal Register for a more extensive discussion of NTTAA policy.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. See the direct final rule EPA has published in the “Rules and Regulations” section of today’s Federal Register for a more extensive discussion of Executive Order 13045.

K. Statutory Authority

The statutory authority for this action comes from section 213 of the Clean Air Act as amended (42 U.S.C. 7547). This action is a notice of proposed rulemaking subject to the provisions of Clean Air Act section 307(d). See 42 U.S.C. 7607(d).

List of Subjects in 40 CFR Part 1051

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Penalties, Reporting and recordkeeping requirements, Warranties.

Dated:

Stephen L. Johnson,

Administrator.