

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 94**

[AMS-FRL-7561-3]

**Control of Emissions From New Marine Diesel Engines**

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule restores certain regulatory text that was adopted for recreational marine diesel engines on November 8, 2002 and corrects several typographical errors that do not affect the substance of the regulations. On February 28, 2003, we promulgated a final rule for Category 3 marine diesel engines. In doing so, we inadvertently supplanted some sections of the regulatory text that were adopted in the November 8, 2002 final rule for recreational marine diesel engines. This notice proposes to restore that regulatory text.

We are publishing in the "Rules and Regulations" section of today's **Federal Register** a direct final rule that will replace the recreational marine diesel text and correct the typographical errors without further EPA action unless we

receive adverse comment. We have explained our reasons for today's action in detail in the preamble to the direct final rule. If we receive adverse comment, we will withdraw the direct final rule prior to its effective date, and will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

**DATES:** Written comments must be received by October 20, 2003. Request for a public hearing must be received by October 6, 2003. If we receive a request for a public hearing, we will publish information related to the timing and location of the hearing and the timing of a new deadline for public comments.

**ADDRESSES:** Comments: All comments and materials relevant to this action should be submitted to Public Docket No. A-2001-11 by the date indicated under **DATES** above. Materials relevant to this rulemaking are in Public Dockets A-2000-01 and A-2001-11 at the following address: EPA Docket Center (EPA/DC), Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to

4:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 566-1742 and by facsimile at (202) 566-1741. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

Comments may also be submitted electronically, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Alan Stout, Assessment and Standards Division, e-mail [stout.alan@epa.gov](mailto:stout.alan@epa.gov), voice-mail (734) 214-4636.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Regulated Entities*

This action will affect companies and persons that manufacture, sell, or import into the United States new marine compression-ignition engines for use on vessels flagged or registered in the United States; companies and persons that make vessels that will be flagged or registered in the United States and that use such engines; and the owners or operators of such U.S. vessels. Affected categories and entities include the following:

Category	NAICS Code <sup>a</sup>	Examples of potentially affected entities
Industry .....	333618	Manufacturers of new marine diesel engines.
Industry .....	336611	Manufacturers of marine vessels.

<sup>a</sup>North American Industry Classification System (NAICS)

This list is not intended to be exhaustive, but rather provides a guide regarding entities likely to be affected 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**.

*B. How Can I Get Copies of This Document and Send Comments?*

See the direct final rule EPA has published in the "Rules and Regulations" section of today's **Federal Register** for information about accessing these documents. The direct final rule also includes detailed instructions for sending comments to EPA.

**II. Summary of Rule**

This rule merely restores previously adopted regulatory text in 40 CFR part 94, related to the regulation of recreational marine diesel engines, that

was inadvertently supplanted by a subsequent rule. It also corrects several typographical errors, related to the regulation of recreational marine diesel and Category 3 marine diesel engines, that do not affect the substance of the regulations. For additional discussion of these changes, 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.

**III. Statutory and Executive Order Reviews**

*A. Executive Order 12866: Regulatory Planning and Review*

Because this rule merely restores previously adopted regulatory text that was inadvertently supplanted by a subsequent rule and corrects several typographical errors that do not affect the substance of the regulations, it is not a significant regulatory action and is not

subject to the requirements of Executive Order 12866. There are no new costs associated with this rule. A Final Regulatory Support Document was prepared in connection with the original regulations for recreational marine diesel engines as promulgated on November 8, 2002 (67 FR 68242) and we have no reason to believe that our analysis in the original rulemaking is inadequate. The relevant analysis is available in the docket for the November 8, 2002 rulemaking (A-2000-01) and at the following internet address: <http://www.epa.gov/otaq/marine.htm>. The original action was submitted to the Office of Management and Budget for review under Executive Order 12866. 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 12866.

### B. Paperwork Reduction Act

This rule does not include any new collection requirements, as it merely restores previously adopted regulatory text that was inadvertently supplanted by a subsequent rule and corrects several typographical errors that do not affect the substance of the regulations. The information collection requirements (ICR) for the original recreational marine diesel rulemaking (67 FR 68242, November 8, 2002) were approved on January 31, 2003 by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* We published notice of OMB's approval on February 28, 2003 (68 FR 9778).

### C. Regulatory Flexibility Act

The 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 rule on small entities, a small entity is defined as: (1) A small business with fewer than 1,000 employees, consistent with the definition for business based on SBA size standards; (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. This proposed rule will not impose any new requirements on small entities. This rule merely restores previously adopted regulatory text that was inadvertently supplanted by a subsequent rule and corrects several typographical errors that do not affect the substance of the regulations. 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 EPA's compliance with the Regulatory Flexibility Act.

### D. Unfunded Mandates Reform Act

This rule contains no federal mandates for state, local, or tribal

governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the rule would significantly or uniquely affect small governments. EPA has determined that this rule contains no federal mandates that may result in expenditures of more than \$100 million to the private sector in any single year. This rule merely restores previously adopted regulatory text that was inadvertently supplanted by a subsequent rule and corrects several typographical errors that do not affect the substance of the regulations. The requirements of UMRA therefore do not apply to this action. 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 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 rule merely restores previously adopted regulatory text that was inadvertently supplanted by a subsequent rule and corrects several typographical errors that do not affect the substance of the regulations. Although Section 6 of Executive Order 13132 did not apply to the original recreational marine diesel rule (67 FR 68242, November 8, 2002), EPA did consult with representatives of various State and local governments in developing that rule. EPA has also consulted representatives from STAPPA/ALAPCO, which represents state and local air pollution officials. 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 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 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 rule merely restores previously adopted regulatory text that was inadvertently supplanted by a subsequent rule and corrects several typographical errors that do not affect the substance of the regulations. 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 13175.

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

This 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 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 rule merely restores previously adopted regulatory text that was inadvertently supplanted by a subsequent rule and corrects several typographical errors that do not affect the substance of the regulations.

### I. National Technology Transfer and Advancement Act

This rule does not involve technical standards. It merely restores previously adopted regulatory text that was inadvertently supplanted by a subsequent rule and corrects several typographical errors that do not affect the substance of the regulations. 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. Statutory Authority*

The statutory authority for this action comes from sections 114, 213, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7547, and 7601(a)). This action is a rulemaking subject to the provisions of Clean Air Act section 307(d). *See* 42 U.S.C. 7606(d)(1).

**List of Subjects in 40 CFR Part 94**

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

Dated: September 12, 2003.

**Marianne Lamont Horinko,**

*Acting Administrator.*

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