

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 90**

[AMS-FRL-7605-9]

RIN 2060-AL88

**Amendments to the Phase 2 Requirements for Spark-Ignition Nonroad Engines at or Below 19 Kilowatts**

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** EPA adopted Phase 2 requirements for spark-ignition nonroad handheld engines at or below 19 kilowatts in April 2000. The Phase 2 requirements are being phased-in between 2002 and 2007. Based on initial experience with the Phase 2 program for handheld engines, we are proposing several amendments intended to provide additional compliance flexibility to engine manufacturers to smooth the transition to the Phase 2 requirements. The proposed amendments contain two revisions intended to increase flexibility in the averaging, banking, and trading program as it applies to handheld engines. First, the credit discounts and credit bonuses would be eliminated from the program. Second, manufacturers would be allowed to carry limited credit deficits during the phase-in period (through 2007) provided the deficits are made up within a set period of time. The proposed amendments also contain minor changes to the certification requirements intended to help manufacturers respond in a more efficient manner to unexpected variations in emission levels from production engines while still achieving the required emission objectives.

We are publishing in the "Rules and Regulations" section of today's **Federal Register** a direct final rule that will amend the Phase 2 requirements as noted above 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. The interested reader is encouraged to review that document for a full explanation of all provisions and an explanation of the data and rationale supporting these changes. If we receive adverse comment, we will withdraw the pertinent amendments, sections, or paragraphs of 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:** Comments must be received by February 11, 2004. Request for a public hearing must be received by January 27, 2004. 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 deadline for the submission of rebuttal and supplementary information.

**ADDRESSES:** Comments: All comments and materials relevant to this action should be submitted to Public Docket No. OAR-2003-0195 at the following address by the date indicated under **DATES** above. Materials relevant to this rulemaking are in Public Dockets A-96-55 and OAR-2003-0195 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:** Philip Carlson, Assessment and Standards Division, e-mail [carlson.philip@epa.gov](mailto:carlson.philip@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 spark-ignition nonroad handheld engines at or below 19 kilowatts. Affected categories and entities include the following:

Category	NAICS Code <sup>a</sup>	Examples of potentially affected entities
Industry ...	333112	Lawn & Garden Equipment Manufacturers.
Industry ...	336618	Other Engine Equipment Manufacturers.

<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 proposed rule contains amendments to the Phase 2 requirements for spark-ignition nonroad engines at or below 19 kilowatts. The amendments have arisen from initial experience with the Phase 2 requirements for handheld engines that began in 2002 and are intended to provide additional compliance flexibility to manufacturers as they complete the transition to Phase 2 technologies over the next few years. For additional discussion of these amendments, see the direct final rule EPA has published in the "Rules and Regulations" section of today's **Federal Register**. This proposed rule 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*

This proposed rule is not a significant regulatory action as it merely amends previously adopted requirements for handheld engines to provide additional compliance flexibility to manufacturers in meeting the Phase 2 requirements. There are no new costs associated with this proposed rule. A Final Regulatory Support Document was prepared in connection with the original Phase 2 regulations for handheld engines as promulgated on April 25, 2000 (65 FR 24268) 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 Phase 2 rulemaking (A-96-55) and at the following internet address: <http://www.epa.gov/otaq/equip-ld.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 proposed rule does not include any new collection requirements. The information collection requirements (ICR) for the original Phase 2 rulemaking (65 FR 24268, April 25, 2000) were approved on September 21, 2001 by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

#### *C. Regulatory Flexibility Analysis*

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 proposed rule merely amends the previously adopted Phase 2 requirements for handheld engines to provide additional compliance flexibility to engine manufacturers, including small entities, and would relieve regulatory burden.

#### *D. Unfunded Mandates Reform Act*

This proposed 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 proposed rule merely amends the previously adopted Phase 2 requirements for handheld engines to provide additional compliance flexibility to engine manufacturers. 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 proposed rule merely amends the previously adopted Phase 2 requirements for handheld engines to provide additional compliance flexibility to engine manufacturers. 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 proposed rule merely amends the previously adopted Phase 2 requirements for handheld engines to provide additional compliance flexibility to engine manufacturers. 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 proposed rule merely amends the previously adopted Phase 2 requirements for handheld engines to provide additional compliance flexibility to engine manufacturers.

#### *I. National Technology Transfer and Advancement Act*

This rule does not involve technical standards. This proposed rule merely amends the previously adopted Phase 2 requirements for handheld engines to provide additional compliance flexibility to engine manufacturers. 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 202, 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, 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 90**

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

Dated: December 23, 2003.

**Michael O. Leavitt,**  
Administrator.

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