

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 90 and 91**

[FRL-5871-1]

Control of Air Pollution; Amendments to Emission Requirements Applicable to New Nonroad Spark Ignition Engines At or Below 19 Kilowatts and New Marine Spark Ignition Engines: Provisions for Replacement Engines and the Use of Two Stroke Engines on Certain Nonhandheld Equipment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This final rule amends the regulations applicable to spark-ignition nonroad engines at or below 19 kilowatts (kW) and spark-ignition marine engines to address situations that have arisen regarding the implementation of regulations applicable to these nonroad engines. No

significant air quality impact is expected from these amendments.

These amendments will allow engine manufacturers to provide uncertified engines to replace older engines when major engine failures occur and no suitable certified engine is available that will fit in the nonroad equipment or marine outboard or personal watercraft. These amendments will also broaden a provision in the existing regulations which permits the use of two stroke engines to power lawnmowers, subject to a phase-out schedule described in the regulations. The amendments will extend this provision to other types of nonhandheld equipment subject to appropriate constraints.

DATES: This final rule is effective October 6, 1997 unless adverse or critical comments are received by September 8, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: EPA Air Docket (LE-131), Attention: Docket Number A-97-25, room M-1500, 401 M Street, SW.,

Washington, DC 20460 (telephone 202-260-7548, fax 202-260-4400). Please contact the individual listed below before submitting comments. Materials relevant to this rulemaking are contained in the docket listed above and may be reviewed at that location from 8:00 a.m. until 5:30 p.m. Monday through Friday. As provided in 40 CFR part 2, a reasonable fee may be charged by EPA for photocopying.

FOR FURTHER INFORMATION CONTACT: John Guy, Office of Mobile Sources, Engine Programs and Compliance Division (6403J), 401 M Street SW., Washington, DC 20460, 202-233-9276.

SUPPLEMENTARY INFORMATION:**I. Regulated Entities**

Entities potentially regulated by this action are those which manufacture and use spark-ignition marine outboard or personal watercraft (including jetboat) engines and spark-ignition small nonroad engines of 19 kW or less. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Manufacturers and users of spark ignition engines of 19 kW or less. Manufacturers and users of marine spark ignition outboard or personal watercraft engines.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your product is regulated by this action, you should carefully examine the applicability criteria in §§ 90.1 and 91.1 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular product, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Obtaining Copies of the Regulatory Language*Electronic Copies of Rulemaking Documents*

Electronic copies of the preamble and the regulatory text of this rulemaking are available via the Internet on the Office of Mobile Sources (OMS) Home Page (<http://www.epa.gov/OMSWWW/>). Users can find Nonroad Engines and Vehicles information and documents through the following path once they have accessed the OMS Home Page: "Nonroad Engines and Vehicles,"

"Equipment" or "Marine". Electronic copies of the preamble and the regulatory text of this rulemaking are also available on the Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network Bulletin Board System (TTN BBS). Users are able to access and download TTN BBS files on their first call. After logging onto TTN BBS, to navigate through the BBS to the files of interest, the user must enter the appropriate command at each of a series of menus. The steps required to access information on this rulemaking are listed below. The service is free, except for the cost of the phone call. TTN BBS: 919-541-5742 (1,200-14,400 bps, no parity, eight data bits, one stop bit). Voice help: 919-541-5384; Internet address: TELNET ttnbbs.rtpnc.epa.gov; Off-line: Mondays from 8:00-12:00 Noon ET.

1. Technology Transfer Network Top Menu: Gateway to TTN Technical Areas (Bulletin Boards)

2. TTN Technical Information Areas: OMS—Mobile Sources Information

3. OMS BBS===Main Menu File Transfers: Rulemaking & Reporting

4. Rulemaking Packages: Nonroad

5. Nonroad Rulemaking Area: File Area #2 . . . Nonroad Engines

6. Nonroad engines

At this stage, the system will list all available nonroad engine files. To download a file, select a transfer protocol which will match the terminal software on your computer, then set your own software to receive the file using that same protocol. If unfamiliar with handling compressed (i.e., ZIP'd) files, go to the TTN topmenu, System Utilities (Command: 1) for information and the necessary program to download in order to unzip the files of interest after downloading to your computer. After getting the files you want onto your computer, you can quit TTN BBS with the <G>oodbye command.

III. Table of Contents**IV. Statutory Authority and Background****A. Statutory Authority****B. Background****V. Use of Uncertified Engines for Replacement of Failed Engines in Older Equipment and Marine Outboard Engines and Personal Watercraft (Including Jetboats)****A. Discussion****B. Regulatory Approach****VI. Use of Two Stroke Engines in Nonhandheld Equipment****A. Discussion****B. Regulatory Approach**

VII. Final Action

VIII. Cost Effectiveness

IX. Administrative Requirements

A. Administrative Designation

B. Reporting and Recordkeeping Requirements

C. Regulatory Flexibility

D. Submission to Congress and the General Accounting Office

E. Unfunded Mandates Act

IV. Statutory Authority and Background*A. Statutory Authority*

Authority for the actions in this notice is granted to EPA by 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)).

B. Background*(1) Replacement Engines*

EPA promulgated final regulations applicable to spark-ignition nonroad engines at or below 19kW (Small SI engines) on July 3, 1995 (60 FR 34582, codified at 40 CFR part 90) and final regulations applicable to spark-ignition marine outboard and personal watercraft (including jetboat) engines (Marine SI engines) on October 4, 1996 (61 FR 52088, codified at 40 CFR part 91)¹. The Small SI regulations take effect with model year 1997 for the majority of covered engines but not until the 1998 model year for certain higher displacement handheld engines. The Marine SI rule takes effect with 1998 or 1999 engines, depending upon their usage, and involves a corporate average standard which tightens each year through 2006. Both rules prohibit engine manufacturers from introducing into commerce any engine not covered by a certificate of conformity issued by EPA under the regulations (40 CFR 90.1003(a)(1)(i); 40 CFR 91.1103(a)(1)(i)). The rules also prohibit equipment and vessel manufacturers from introducing new nonroad equipment and vessels into commerce unless the engine in the equipment or vessel is certified to comply with the applicable nonroad emission requirements (40 CFR 90.1003(a)(5); 40 CFR 91.1103(a)(5))².

¹ The preamble to the final Marine SI rule (61 FR 52090) explains that for purposes of the Marine SI rule, jetboats are considered as personal watercraft, except where their engines are derived from sterndrive or inboard type marinized automotive blocks.

² The regulations also prohibit, in the case of any person, the importation of Small SI engines and Marine SI engines manufactured after the applicable implementation date for the engine. The

These prohibitions have caused or will cause engine manufacturers to be unable, in the event of a major engine failure, to provide uncertified replacement engines to repower pre-regulation nonroad equipment and outboards and personal watercraft (including jetboats), as well as outboards and personal watercraft (including jetboats) certified to an earlier standard³. Equipment and engine manufacturers have indicated that for many items of older equipment, older outboards and older personal watercraft (PWCs), no certified engine is, or will be, available that will fit. Amendments in this package will alleviate this unintended side effect of the current regulations for users of Marine SI and Small SI engines.

While this rulemaking addresses the needs of both the Marine SI and Small SI engine manufacturers for a replacement engine provision together, there are differences in the products and structure of the industries that should be noted here. The majority of the engines subject to the Marine SI rule are outboard engines where the engine manufacturer produces the complete outboard engine containing both the powerhead (engine) and the drive unit (the lower part of an outboard engine which contains the drive shaft and exhaust system and holds the propeller). Outboard engines are sold to consumers and vessel manufacturers who affix them to the outside rear of boats. With respect to replacement engine provisions for Marine SI engines in this rulemaking, the term "engine" refers to the powerhead of an outboard engine or the analogous power unit of a personal watercraft or jet boat.

Small SI engines can be split into two factions. Nonhandheld engines are produced by engine manufacturers and sold to equipment manufacturers that produce lawnmowers, tillers, garden tractors, commercial mowing, farm and construction equipment, small generators and other such equipment.

regulations also prohibit the importation of equipment containing Small SI engines unless the engine is covered by a certificate of conformity. (40 CFR 90.1003(a)(1)(ii) and 40 CFR 91.1103(a)(1)(ii)).

³ The Marine SI standards take effect with the 1998 or 1999 model year, depending upon application, and then become progressively tighter each year through 2006. Some engines certified early in the program will be discontinued as the standards tighten down. Consequently, Marine SI engine manufacturers may need to provide uncertified replacement engines for pre-regulatory engines as well as for engines built to meet an earlier standard. The Phase 1 Small SI standards take effect with the 1997 or 1998 model year, depending upon application, and remain the same throughout Phase 1. At least during Phase 1, the Small SI manufacturers will only need to provide uncertified engines for pre-regulatory equipment.

Some of this equipment can be extremely expensive relative to the cost of a new engine. When engine failures occur, equipment operators may desire to replace the engine. Handheld engines are generally produced by companies that make chainsaws, string trimmers, hedge trimmers, backpack blowers and cut off saws. The handheld industries are generally integrated, producing the entire consumer product, while the nonhandheld industries are not. For handheld products, the engine comprises a substantial portion of the value of the equipment, and most equipment is of low value relative to engine repair or replacement costs. Consequently, handheld engine replacement is expected to be extremely rare even in high end, professional usage products.

(2) Use of Two Stroke Engines in Nonhandheld Equipment

The Small SI final rule provides for separate categories for handheld and nonhandheld engines. Within each category are different displacement classes with different emission standards. Handheld engines use predominantly two stroke combustion technology because of the need for light-weight engines that can be used multipositionally, including upside down and sideways, in handheld equipment. Nonhandheld engines, which are not so constrained by weight and generally operate in limited positions, are nearly all four stroke combustion technology. Because of their operating characteristics and design, two stroke engines have much greater hydrocarbon (HC) emissions than four stroke engines.⁴ The standards for two stroke and four stroke engines reflect these differences—the nonhandheld hydrocarbon plus oxides of nitrogen standards are designed around four stroke engines and are significantly more stringent than the corresponding handheld engine standards.

⁴ A two stroke or two cycle engine produces power strokes twice as often as a four stroke or four cycle engine, and therefore produces greater power for a given weight. Also, two stroke engines are lubricated by oil which is added to the fuel, while four stroke engines require a crankcase full of oil that must remain at the bottom of the engine. Consequently, two stroke engines can be operated multipositionally, but burn oil with their gasoline. Four stroke engines can not typically be operated multipositionally, but do not burn oil with their fuel. The two additional strokes used by a four stroke engine serve to push the exhaust gases out of the cylinder before any fresh fuel and air is admitted. In a two stroke engine, these extra strokes do not occur and there is considerable mixing of fresh fuel and air with the exhaust stream. The presence of this unburned fuel along with the byproducts of oil combustion cause two stroke engines to exhibit high HC emissions.

While nearly all nonhandheld equipment is powered by four stroke engines, some lawnmowers have historically used two stroke engines. A special provision was incorporated into the final rule to ease the transition to four stroke engines for the affected manufacturers. See, 40 CFR 90.103(a)(3). This provision allows certain manufacturers of lawnmowers to continue to use two stroke engines, subject to a declining production cap, up through model year 2002, provided the engines are certified to meet the handheld standards. This provision is discussed in greater detail in the preamble to the final rule (60 FR 34582, 34593-34594 (July 3, 1995)).

Recently, EPA has learned that some very low volume, specialized nonhandheld equipment has also historically been produced with two stroke engines. This equipment would require substantial modification and redesign to utilize four stroke engines. An amendment in this package will extend the flexibility provided for manufacturers of two stroke lawnmowers to manufacturers of other nonhandheld equipment, provided the equipment manufacturer can demonstrate to EPA its inability to readily convert to four stroke engines. If EPA approval is granted, this provision would then allow those equipment manufacturers to have the same opportunities to modify their equipment to use four stroke engines that the two stroke lawnmower manufacturers have. This provision is expected to affect a very small number of low volume, specialty equipment manufacturers.

V. Use of Uncertified Engines for Replacement of Failed Engines in Older Equipment and Marine Outboard Engines and Personal Watercraft (Including Jetboats)

A. Discussion

As indicated above, the Marine SI and the Small SI rules prohibit the introduction into commerce of any new nonroad engines subject to those regulations unless the engines are covered by a certificate of conformity issued by EPA. According to letters received from Small SI and Marine SI engine manufacturers, the Engine Manufacturers Association and a number of nonroad equipment manufacturers, these prohibitions pose a hardship to engine manufacturers and their customers when equipment produced before the applicable effective date of the rules, and therefore equipped with uncertified engines, or marine equipment with engines certified to an earlier standard, experiences

catastrophic engine failures.^{5, 6} In such cases, particularly for newer equipment still under warranty, engine manufacturers desire to be able to provide an entire new engine. However, certified engines that will fit in pre-regulatory equipment or equipment subject to an earlier standard will not always be available for reasons discussed below.

Under current regulations, an equipment owner who experiences a major engine failure with an uncertified engine or a marine engine certified to an earlier standard is limited to the following options. It can:

(1) Obtain a new, uncertified engine or a marine engine certified to an earlier standard from a manufacturer's or distributor's inventory. Engine manufacturers have informed us that because of the many variations of engines they produce, inventorying quantities of older marine engines or uncertified engines produced before the effective date of the regulations for anticipated replacement purposes would be impractical and prohibitively expensive. The Small SI regulations at 40 CFR 90.1003(b)(4) specifically provide

* * * Nonroad vehicle manufacturers may continue to use noncertified nonroad engines built prior to the effective date until noncertified engine inventories are depleted; however, stockpiling (i.e. build up of an inventory of engines outside of normal business practices) of noncertified nonroad engines will be considered a violation of this section.⁷

EPA does not regard engines inventoried beyond the end of a model year for reasonable anticipated warranty needs to be "stockpiled". However, because of the manufacturers' understandable desire to avoid inventory costs, this option would not likely be able to supply significant numbers of replacement engines.

(2) Obtain a used or remanufactured engine. EPA has no restrictions on the

installation of used or remanufactured engines in equipment that predates the relevant effective date of the Marine SI or Small SI rule. Further, marine engines certified to an earlier standard may be remanufactured to be identical to a certified configuration of the same or later model year and used for replacement applications. However, engine and equipment manufacturers have informed us that there is no significant rebuilding industry for Small SI engines as there is for categories of larger engines. Rebuilding of marine engines is more common, however marine engine manufacturers have informed us that rebuilt engines are not commonly available to replace engines that are less than approximately five years old and even then may not be widely available for some configurations.

(3) Repair the individual engine using a "short block". In this case, a new cylinder block with pistons, connecting rods, crankshaft and timing gear (a "short block") serves as a repair part. EPA has a long standing policy that a short block is not a new engine and will not result in a new engine when combined with the used components from the original engine.⁸

(4) Replace the failed engine with a new, certified engine. In this case, a new certified engine is installed in place of the uncertified engine or older marine engine. This is the most desirable option from the Agency's point of view, however in many cases certified engines will not fit in equipment that may have been designed around uncertified engines or older marine engines. Engines certified to the latest standards may be equipped with additional or different components which impact the external dimensions of or connections to the engines and therefore limit their abilities to fit in engine compartments of older equipment.

From the engine and equipment manufacturers' point of view, all of the current options described above have limitations. The manufacturers point to long standing industry practices of being able to provide complete, new replacement engines expeditiously when catastrophic engine failures occur, particularly when those failures affect equipment in the first few years of use, and even more particularly when it may still be under warranty. Many of the Small SI engines are used in specialized agricultural or construction equipment. Timely repairs can be crucial when the broken engine is in a piece of

⁵ For simplicity, from this point on in this preamble discussion, unless otherwise specified, the term "equipment" refers to both nonroad equipment using handheld or nonhandheld engines and to marine propulsion units including outboard and jet engines and their drive units. Therefore, the term "engine" as it pertains to marine engines will mean the powerhead of an outboard engine or the analogous power unit of a jet engine used in a personal watercraft or jet boat.

⁶ Copies of these letters are available in the docket for today's rulemaking.

⁷ No corresponding provision is found in the Marine SI rule, however this regulation is essentially a codification of longstanding EPA policies implementing the prohibitions of section 203(a) of the Act. These policies are similarly applicable to marine engines. See, for example, EPA's letter of November 22, 1989 to the Public Transportation Division of the City of High Point, North Carolina. Copy in docket.

⁸ Letters of December 11, 1989 and April 6, 1990 from Charles N. Freed, EPA to Mitsubishi Motors America, Inc. Copies located in docket.

construction equipment and a construction project sequence is being held up. Many Marine SI engines are used in commercial fishing or tourist vessels where downtime means loss of income to the operator. Also, many users of Small SI powered equipment and Marine SI engines are small businesses who can not afford the additional downtime and expense that may be associated with waiting for an engine overhaul. Further, because of the diversity of nonroad products using Small SI engines, suitable replacement or rental nonroad equipment is not always readily available. The equipment and engine manufacturers have also explained that the need to repair an engine using a short block leads to delays and extra costs that would not occur if the old, broken engine could simply be exchanged for a new uncertified engine. They argue that the short block option requires greater skills and facilities and more time to complete than an engine swap and produces an engine that is not a factory-tested and adjusted unit. From an air quality standpoint, they argue that an entire new uncertified engine might be better than an old engine repaired with a new short block or replaced with a remanufactured engine.

The two major U.S. manufacturers of outboard marine engines have indicated to EPA that replacement powerheads comprise less than one percent of annual U.S. sales. Engine replacement is rare in walk-behind lawnmowers which is the most common application of nonhandheld Small SI engines. Further, the two major manufacturers of walk-behind mower engines have indicated that their certified configurations will fit older mower applications. One of these companies has told EPA that replacement engines are less than one percent of its business. Another Small SI engine manufacturer has indicated to EPA that only about two percent of its annual sales are for replacement purposes, and that many of these will be certified engines. This particular manufacturer pointed out that its sales of replacement engines are probably higher than the industry average, because it produces mostly larger, more expensive nonhandheld engines used in "high end" equipment where the value of the equipment drives the decision toward replacing the engine rather than the entire piece of equipment.

Engine manufacturers are still producing uncertified complete engines for export, or are sometimes willing to produce small quantities for domestic replacement purposes, and desire to be able to sell them (or provide them under warranty) for replacement purposes.

EPA notes that the California Air Resources Board, in its regulation of both Small SI engines and large nonroad compression ignition engines, permits the introduction into commerce of uncertified engines for replacement purposes up through January 1, 1999 and January 1, 2000 respectively. (California does not regulate Marine SI engines.) In a direct final rulemaking very similar to today's rulemaking that was published on November 12, 1996 (61 FR 58102), EPA established provisions to permit the sale of uncertified large compression ignition (Large CI) nonroad engines for replacement purposes in pre-regulation equipment based on considerations consistent with those described above.

The Agency is amending the Small SI and Marine SI regulations to permit the sale of uncertified replacement engines in those cases where a new, certified engine is not available with appropriate physical or performance characteristics to repower the equipment, as a reasonable way to balance achieving the air quality benefits of the Small SI and Marine SI programs with the desire to minimize disruption to equipment owners accustomed to using replacement engines. However, if a certified engine is available with sufficient torque and horsepower that will fit in the equipment, then the certified engine should be used so that the goals of the Clean Air Act to convert the fleet of Small SI and Marine SI engines to certified status are promptly fulfilled. The amended Small SI regulations will permit a nonroad engine in a piece of equipment that predates the applicable implementation date of the Small SI rule to be replaced with a new, uncertified engine. Similarly, the amended Marine SI regulations will permit the powerhead in an outboard or PWC (including a jetboat) that predates the applicable implementation date of the Marine SI rule to be replaced with a new, uncertified engine. The amended Marine SI regulation will also permit powerheads certified in an earlier year of the phase in, but not certified in the then current model year to be replaced with a new, uncertified powerhead provided the powerhead is of a configuration identical in all material respects to that of the failed powerhead or a later model year powerhead.

Given the small percentage of engines that will likely require replacement, the fact that some of those will get replaced with certified engines and the likelihood that a new replacement engine will be at least as clean as a remanufactured engine or an engine repaired with a short block, EPA

concludes that permitting the use of uncertified replacement engines in these situations will not pose an environmental threat or reduce the environmental benefit of the Small SI or Marine SI rules. Further, EPA concludes that it would be unreasonable to impose upon equipment operators, the costs associated with having to replace failed engines with certified engines, where appropriate certified engines are not available for pre-regulatory equipment or for marine engines built to less stringent standards.

B. Regulatory Approach

EPA is implementing this provision through amendments to the Prohibited Acts sections at 40 CFR 90.1003 and 91.1103. To ensure that the replacement engine provision is properly used, these amendments will include controls nearly identical to those adopted in the direct final rule for Large CI engines referenced above. EPA is requiring that any uncertified Small SI engine produced for replacement purposes be clearly labeled as such and that such label include a warning that any use of the engine in post-regulation nonroad equipment constitutes a violation of the Act subject to civil penalty. EPA is adopting these same provisions for replacement marine engines except that the labeling requirement will be different to reflect the phase in of the marine standards. In this case the label must reflect that the engine may be used to replace only pre-regulation engines or engines certified for a model year that is no later than the last year in which the replacement engine was certified. For both Marine SI and Small SI engines, EPA is requiring that the manufacturer ascertain that no certified engine with appropriate characteristics is available that will fit in the equipment and that the manufacturer or its agent takes possession of the old engine. Requiring the equipment owner to "turn in" an old engine provides the manufacturer or its agent with a clear opportunity to confirm the existence of an old engine, evaluate its configuration and make sure the appropriate replacement engine is supplied. Unlike in the Large CI replacement engine rule, we are providing that EPA may approve alternative control measures to the requirement that the manufacturer or its agent take possession of the old engine when selling an uncertified replacement engine. We believe this flexibility may be necessary to accommodate some distribution channels through which small engines and marine engines may be sold if these channels are shown to be unable to accommodate old engines. EPA would approve alternate

approaches if persuaded that the approach provides equivalent control to the requirement to turn in the old engine to the manufacturer or its agent.

VI. Use of Two Stroke Engines in Nonhandheld Equipment

A. Discussion

Presently, the Small SI rule contains provisions at 40 CFR 90.103(a)(3) and 90.107(e)(1) through (5) to permit manufacturers of two stroke lawnmower engines to continue to sell those engines through model year 2002 provided they can certify them to the handheld standards appropriate for their displacement. These provisions require the engine manufacturer to establish a baseline annual sales number based on their 1992 through 1994 sales of such engines and then comply with a declining production cap through the 2002 model year. In 2003, the engines would have to meet the appropriate nonhandheld standards, either those contained in the current rule or in any superseding rule.

As discussed in the preamble to the final Phase 1 rule, these provisions were established to minimize the economic hardship of the small engine rule on two stroke lawnmower engine and equipment manufacturers and to provide adequate lead time for compliance with the nonhandheld standards. See 60 FR 34593–34594. EPA incorporates that discussion by reference. Recently, EPA has become aware of a very small manufacturer (less than 100 units per year) of specialty lawn care equipment who has historically used two stroke engines on its products, was unaware of the promulgation of the Phase 1 rule until recently, and would face severe lead time problems and economic hardship if it had to quickly switch over to four stroke engines to power its equipment. Its equipment will require substantial redesign to use four stroke engines for which additional lead time is necessary. EPA believes there may be other small entities with similar situations but does not believe there are any that produce substantial volumes of equipment. In the case of small volume manufacturers, the per unit cost of forcing equipment redesign to accommodate four stroke engines is especially high. EPA has concluded that it is equitable and appropriate to treat such companies in the same manner as the two stroke lawnmower engine manufacturers are being treated and has determined it is appropriate to expand the provisions providing relief for lawnmowers to encompass any nonhandheld equipment that has historically been produced with

two stroke engines, provided that the manufacturer can demonstrate to EPA that no suitable four stroke engine is available and that substantial redesign of the equipment requiring additional lead time to avoid economic hardship would be necessary to accommodate a four stroke engine. Without providing relief to address these situations, the cost of compliance with the nonhandheld standards would be unreasonably high. In order to avoid this result, EPA has determined that it is more reasonable to provide a relaxation of standards in these situations.

With regard to the declining annual cap imposed in § 90.107(e) upon the lawnmower engine manufacturers, EPA believes that a declining cap may not be appropriate or necessary for specialty equipment whose production is already very low, and could serve to eliminate any benefit that the provision may offer to a small equipment manufacturer, because it might force them to produce both two and four stroke versions at the same time to maintain sales levels. Therefore, EPA is adding a provision at § 90.107(g) that would allow the cap to be waived by EPA upon a demonstration by the engine or specialty equipment manufacturer that compliance with the cap would not be economically feasible. This waiver authority would not be extended to the high volume lawnmower manufacturers currently covered under § 90.107(e), nor would it be extended to any other high-volume nonhandheld engine manufacturer, in the unlikely event that one might come forward and seek relief to enable it to use a two stroke engine.

B. Regulatory Approach

The regulatory change will be implemented by modifications to sections on Exhaust Emission Standards (§ 90.103) and the Application for Certification (§ 90.107). The relevant provision at § 90.103(a)(3) previously applied only to manufacturers of two stroke lawnmowers and will now be expanded to include “lawnmowers or other nonhandheld equipment”. In § 90.107, a new paragraph will be added to provide the criteria by which EPA can approve the use of two stroke engines in nonhandheld equipment other than lawnmowers. Because the provision for two stroke engines in lawnmowers was based on substantial information about the impact of the Small SI nonhandheld standards on certain manufacturers and because EPA desires nonhandheld equipment manufacturers to use engines certified to nonhandheld standards whenever possible, EPA is including a

requirement, applicable to manufacturers of nonhandheld equipment other than lawnmowers, that the equipment manufacturer must demonstrate that a suitable engine meeting nonhandheld standards is not available to fit the existing equipment design and that the equipment can not be converted to accept an engine meeting the nonhandheld standards without substantial and costly redesign for which additional lead time is necessary.

The original regulation included a declining production cap at § 90.107 to provide for the phase out of two stroke equipped lawnmowers. The declining cap approach was designed to address relatively high-volume two stroke lawnmower manufacturers who would be able to gradually shift their production to four stroke mowers. Nonhandheld equipment other than lawnmowers that may qualify to use two stroke engines is expected to be produced only in very small quantities and EPA believes that a declining production cap may be unnecessary for such equipment. Consequently, a provision has been added to permit EPA to waive the declining cap for equipment other than lawnmowers, if the equipment manufacturer can make a demonstration that complying with the cap would be economically infeasible.

VII. Final Action

EPA is publishing this rule without prior proposal because EPA views these amendments as noncontroversial and anticipates no adverse comments. However, in the event that adverse or critical comments are filed, EPA has prepared a Notice of Proposed Rulemaking (NPRM) proposing the same amendments. This NPRM is contained in a separate document in this **Federal Register** publication. The direct final action will be effective October 6, 1997, unless adverse or critical comments are received by September 8, 1997. If EPA receives adverse or critical comments on either the relevant revisions discussed in Section V or those discussed in Section VI, the revisions described in that section will be withdrawn. If adverse or critical comments are received on the revisions described in both sections, then both sections will be withdrawn before the effective date. In case of the withdrawal of all or part of this action, the withdrawal will be announced by a subsequent **Federal Register** document. All public comments will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not provide a second comment period on this action. Any parties

interested in commenting on this rule should do so at this time. If no adverse comments are received, the public is advised that the rule will be effective October 6, 1997.

VIII. Cost Effectiveness

This rulemaking alters an existing provision by allowing nonroad equipment manufacturers to have greater flexibility in their choice of engines under certain circumstances. It also permits nonroad engine manufacturers to sell engines that the original rule would not permit. Therefore, because this rulemaking alters existing provisions, and that alteration provides regulatory relief, there are no additional costs to original equipment manufacturers associated with this specific final action.

The costs and emission reductions associated with the Small SI rule were developed for the July 3, 1995 final rulemaking. The costs and emission reductions associated with the Marine SI rule were developed for the October 4, 1996 rulemaking. We do not believe the changes being implemented today affect the costs and emission reductions published as part of those rulemakings.

IX. Administrative Requirements

A. Administrative Designation

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or, (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Reporting and Recordkeeping Requirements

This final rulemaking does not change the information collection requirements submitted to and approved by OMB in association with the Small SI final rulemaking (60 FR 34582, July 3, 1995) or submitted to OMB in association with the Marine SI final rulemaking (61 FR 52088, October 4, 1996). 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 are listed in 40 CFR part 9 and 48 CFR Chapter 15.

C. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant adverse economic impact on a substantial number of small entities. This is because today's rulemaking will provide regulatory relief to both large and small volume engine and equipment manufacturers by permitting greater flexibility in engine choices in equipment. Moreover, the provisions in this rulemaking simply permit long-standing business practices to continue.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Unfunded Mandates Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of \$100 million or more. Under Section 205, EPA must select the most cost effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly

or uniquely impacted by the rule. EPA has determined that the action proposed today does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Therefore, EPA has not prepared a budgetary impact statement for this rule.

List of Subjects in 40 CFR Parts 90 and 91

Environmental protection, Air pollution control, Confidential business information, Imports, Labeling, Nonroad source pollution, Reporting and recordkeeping requirements, Research, Warranties.

Dated: July 30, 1997.

Carol M. Browner,
Administrator.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations, is amended as follows:

PART 90—CONTROL OF EMISSIONS FROM NONROAD SPARK-IGNITION ENGINES

1. The authority citation for part 90 continues to read as follows:

Authority: Sections 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a)).

2. Section 90.103 is amended by revising paragraph (a)(3) to read as follows:

§ 90.103 Exhaust emission standards.

(a) * * *

(3) Notwithstanding paragraph (a)(2) of this section, two stroke engines used to power lawnmowers or other nonhandheld equipment as allowed in § 90.107 (e), (f) and (h) may meet class III, IV, or V standards until model year 2003.

* * * * *

3. Section 90.107 is amended by adding a new paragraph (h) to read as follows:

§ 90.107 Application for certification.

* * * * *

(h)(1) The Administrator may, upon receipt of a written request from an equipment manufacturer, accompanied by sufficient documentation, permit two stroke engines produced for nonhandheld equipment other than lawnmowers to meet the standards specified in § 90.103(a)(3) under the schedule outlined in paragraph (e) of this section. The equipment manufacturer must demonstrate to the satisfaction of the Administrator that:

(i) Four stroke engines for such equipment are not available with suitable physical or performance characteristics; and

(ii) The equipment can not be converted to use four stroke engines without substantial redesign for which additional lead time is necessary to avoid economic hardship.

(2) The Administrator may waive the phase-in percentages of paragraphs (e)(3) and (e)(4) of this section for engines used in low volume nonhandheld equipment other than lawnmowers where the equipment manufacturer demonstrates to the satisfaction of the Administrator that compliance with the production cap is not economically feasible.

4. Section 90.1003 is amended by adding paragraph (b)(5) to read as follows:

§ 90.1003 Prohibited acts.

* * * * *

(b) * * *

(5) A new nonroad engine, intended solely to replace an engine in a piece of nonroad equipment that was originally produced with an engine manufactured prior to the applicable implementation date as described in § 90.2, § 90.103 and § 90.106, shall not be subject to the requirements of § 90.106 or prohibitions of paragraphs (a)(1) and (b)(4) of this section provided that:

(i) The engine manufacturer has ascertained that no engine produced by itself or the manufacturer of the engine that is being replaced, if different, and certified to the requirements of this subpart, is available with the appropriate physical or performance characteristics to repower the equipment; and

(ii) Unless an alternative control mechanism is approved in advance by

the Administrator, the engine manufacturer or its agent takes ownership and possession of the engine being replaced; and

(iii) The replacement engine is clearly labeled with the following language, or similar alternate language approved in advance by the Administrator:

This engine does not comply with federal nonroad or on-highway emission requirements. Sale or installation of this engine for any purpose other than as a replacement engine in a nonroad vehicle or piece of nonroad equipment whose original engine was not certified is a violation of Federal law subject to civil penalty.

PART 91—CONTROL OF EMISSIONS FROM MARINE SPARK-IGNITION ENGINES

5. The authority citation for part 91 continues to read as follows:

Authority: Sections 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a)).

6. Section 91.1103 is amended by adding paragraph (b)(4) to read as follows:

§ 91.1103 Prohibited acts.

* * * * *

(b) * * *

(4) A new marine spark-ignition engine intended solely to replace an engine in an outboard engine, or other engine to which this Part is applicable as determined by §§ 91.1, 91.101, 91.106 that was originally produced with an engine manufactured prior to the applicable implementation date as described in §§ 91.2, and 91.106 and 91.205(a)(1), or that was originally produced in a model year in which less stringent emission standards under this part were in effect shall not be subject

to the requirements of § 91.106 or the prohibitions of paragraph (a)(1) of this section provided that:

(i) The engine manufacturer has ascertained that no engine produced by itself or the manufacturer of the engine that is being replaced, if different, and certified to the requirements of this subpart, is available with the appropriate physical or performance characteristics to repower the outboard, personal watercraft or jetboat; and

(ii) Unless an alternative control mechanism is approved in advance by the Administrator, the engine manufacturer or its agent takes ownership and possession of the engine being replaced; and

(iii) The replacement engine is clearly labeled with the following language, or similar alternate language approved in advance by the Administrator:

This engine does not comply with Federal nonroad or on-highway emission requirements. Sale or installation of this engine for any purpose other than as a replacement engine in a marine vessel whose original engine was not certified, or was certified to less stringent emission standards than those that apply to the year of manufacture of this engine, is a violation of Federal law subject to civil penalty; and

(iv) Where the replacement engine is intended to replace an engine built after the applicable implementation date as described in §§ 91.2, 91.106 and 91.205(a)(1), but built to less stringent emission standards than are currently applicable, the replacement engine shall be identical in all material respects to a certified configuration of the same or later model year as the engine being replaced.

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