coverage under a group health plan during FMLA leave or declines coverage under a group health plan during FMLA leave, does this affect the determination of whether or when the employee has experienced a qualifying event?

A–3: No. Any lapse of coverage under a group health plan during FMLA leave is irrelevant in determining whether a set of circumstances constitutes a qualifying event under Q&A–1 of this section or when such a qualifying event occurs under Q&A–2 of this section.

Q–4: Is the application of the rules in Q&A–1 through Q&A–3 of this section affected by a requirement of state or local law to provide a period of coverage longer than that required under FMLA?

A–4: No. Any state or local law that requires coverage under a group health plan to be maintained during a leave of absence for a period longer than that required under FMLA (for example, for 16 weeks of leave rather than for the 12 weeks required under FMLA) is disregarded for purposes of determining when a qualifying event occurs under Q&A–1 through Q&A–3 of this section.

Q–5: May COBRA continuation coverage be conditioned upon reimbursement of the premiums paid by the employer for coverage under a group health plan during FMLA leave?

A–5: No. The U.S. Department of Labor has published rules describing the circumstances in which an employer may recover premiums it pays to maintain coverage, including family coverage, under a group health plan during FMLA leave from an employee who fails to return from leave. See 29 CFR 825.213. Even if recovery of premiums is permitted under 29 CFR 825.213, the right to COBRA continuation coverage cannot be conditioned upon the employee's reimbursement of the employer for premiums the employer paid to maintain coverage under a group health plan during FMLA leave.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99–1519 Filed 2–2–99; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 63

[FRL–6230–1]

Section 112(l) Approval of the State of Florida's Construction Permitting Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule: Clarification.

SUMMARY: On February 1, 1996 (61 FR 3572), the Environmental Protection Agency published in the **Federal Register** a direct final rule for State Implementation Plan (SIP) and section 112(l) approval of the State of Florida's minor source operating permit program so that Florida could begin to issue federally-enforceable operating permits on a source's potential emissions and thereby avoid major source applicability. Today's action is taken to clarify that EPA's section 112(l) approval of the Florida minor source operating permit program extended to the State's minor source preconstruction permitting program as well as the operating permit program to allow Florida to issue both Federally-enforceable construction permits and Federally-enforceable operating permits pursuant to section 112 of the Clean Air Act (CAA) as amended in 1990. In the Final Rules Section of this **Federal Register**, the EPA is clarifying that the section 112(l) approval of the Florida minor source operating permit program extended to the State's minor source preconstruction permitting program as well as the operating permit program as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before March 5, 1999.

ADDRESSES: All comments should be addressed to: Lee Page, U.S. Environmental Protection Agency, Region 4, Air and Radiation Technology Branch, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303; page.lee@epamail.epa.gov. Copies of Florida's original submittal and accompanying documentation are available for public review during normal business hours, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Lee Page, U.S. Environmental Protection Agency, Region 4, Air and Radiation Technology Branch, Atlanta Federal Center, 61 Forsyth Street SW, Atlanta, GA 30303, Phone: (404) 562–9131; page.lee@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: November 13, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99–2556 Filed 2–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 90 and 91

[FRL–6229–3]

Control of Air Pollution: Minor Amendments to Emission Requirements Applicable to Small Nonroad Spark Ignition Engines and Marine Spark Ignition Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend provisions of two existing rules applicable to nonroad engines. This document proposes amendments to regulations applicable to small spark-ignition (Small SI) engines under 19 kilowatts (kW) and proposes specifically to revise the applicability of that rule to certain engines used in recreational applications and to revise the applicability of the handheld emission standards to accommodate cleaner but heavier four stroke engines. This document also proposes to amend regulations applicable to marine spark ignition (Marine SI) engines to provide compliance flexibility for small volume engine manufacturers during the standards phase in period. Lastly, this proposal contains a minor revision to the existing replacement engine provisions for Small SI and Marine SI engines to address issues that may arise concerning the importation of such engines. No significant air quality impact is expected from these amendments.

DATES: Written comments on this NPRM must be submitted on or before April 5, 1999. EPA will hold a public hearing on March 5, 1999 starting at 10:00 am; requests to present oral testimony must be received on or before March 1, 1999. The Agency will cancel this hearing if no one requests to testify. Members of the public should call the contact person indicated below to notify EPA of their interest in testifying at the hearing.

Interested persons may call the contact person after March 1, 1999 to determine whether and where the hearing will be held.

ADDRESSES: Written comments should be submitted (in duplicate, if possible) to: EPA Air and Radiation Docket, Attention Docket No. A–98–16, Room M–1500, (mail code 6102), 401 M Street, SW, Washington, DC 20460. Materials relevant to this rulemaking are contained in this docket and may be viewed from 8:00 a.m. to 5:30 p.m. weekdays. The docket may be reached by telephone at 202–260–7548. As provided in 40 CFR part 2, a reasonable fee may be charged by EPA for photocopying. The public hearing will be held in Washington, DC at a location to be determined; call 202–564–9276 for further information.

FOR FURTHER INFORMATION CONTACT: Beverly Brennan, Office of Mobile Sources, Engine Programs and Compliance Division. 202–564–9302. FAX 202–565–2057. E-mail: *brennan.beverly@epamail.epa.gov*

SUPPLEMENTARY INFORMATION:

Obtaining Electronic Copies of This Document

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''.

Table of Contents

I. Regulated Entities

Entities potentially affected by this action are those that manufacture or introduce into commerce new small spark-ignition nonroad engines or equipment, new marine spark ignition engines or equipment, and new large compression ignition engines or equipment. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Manufacturers, importers and users of nonroad small (at or below 19 kW) spark ignition engines and equipment.
	Manufacturers, importers and users of marine spark ignition outboard, personal watercraft and jetboat 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 company 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 entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Legal Authority and Background

A. Statutory Authority

Authority for the actions in this document 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

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 took effect with model year 1997 for the majority of covered engines and in 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]

Provisions to allow engine manufacturers to produce replacement engines that were not certified to current standards were added to each of the two rules described above by a direct final rule issued August 7, 1997 (62 FR 42638).

A Notice of Proposed Rulemaking (NPRMs) to adopt Phase 2 standards for Small SI engines has been published (63 FR 3950, January 27, 1998). No Phase 2 program is contemplated at this time for the Marine SI rule. The amendments proposed below would apply to the Phase 1 programs of both rules and be carried forward into the future program for Small SI engines.

III. Description of Proposed Revisions

A. Revision to the Definition of Handheld To Accommodate Four Stroke Engines

The Small SI rule contains separate sets of exhaust emission standards for handheld and nonhandheld engines. The handheld standards were set at levels considerably less stringent than the nonhandheld standards to accommodate the lightweight, but high emission, two stroke engines that have

[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 uncertified Small SI engines and Marine SI engines manufactured after the applicable implementation date for the engine. The 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)).

historically been used in handheld equipment.

To limit the use of two stroke engines to that equipment that really require the weight advantage and multipositional capability afforded by two stroke technology, the criteria under which a piece of equipment may be deemed ''handheld'' are strictly defined by § 90.103(a)(2). Equipment must meet at least one of the following to be considered ''handheld'':

(i) The engine must be used in a piece of equipment that is carried by the operator throughout the performance of its intended function(s);

(ii) The engine must be used in a piece of equipment that must operate multipositionally, such as upside down or sideways, to complete its intended function(s);

(iii) The engine must be used in a piece of equipment for which the combined engine and equipment dry weight is under 14 kilograms, no more than two wheels are present on the equipment and at least one of the following attributes is also present:

(A) The operator must alternately provide support or carry the equipment throughout the performance of its intended function(s); (B) The operator must provide support or attitudinal control for the equipment throughout the performance of its intended function(s); and (C) The engine must be used in a generator or pump;

(iv) The engine must be used to power one-person augers, with a combined engine and equipment dry weight under 20 kilograms.

Since the Small SI rule was finalized, a few manufacturers have introduced lightweight four stroke engines that have multipositional capabilities and that have begun to be used in certain handheld products. These engines are somewhat heavier than two stroke engines but have exhaust emission levels that are much lower. One manufacturer of lightweight equipment, has proposed a portable pump, historically powered by a two stroke engine, that would exceed the 14 kilogram weight limit at 40 CFR 90.103(a)(2)(iii) because it would be built with a small, lightweight four stroke engine. The engine would be much cleaner than the alternative two stroke, but because of the weight limitation, the equipment could not be considered ''handheld''. The lightweight four stroke engines, while much cleaner than required by the handheld standards, can not yet meet the nonhandheld standards which were set based on the capabilities of other four stroke engines. In theory, a heavier four stroke engine certified to nonhandheld standards, could be used in these applications. However, EPA believes that the added weight would be a marketing problem and would cause the manufacturers to stick with higher emitting two stroke engines. To avoid the undesirable situation where the regulations encourage an equipment manufacturer to use a higher emitting engine, we are today proposing an amendment to both weight limits described above (14 kilograms in (iii) and 20 kilograms in (iv)) that would permit an equipment manufacturer to exceed the weight limits in cases where the manufacturer could demonstrate that the extra weight was the result of using a four stroke engine or other technology cleaner than the otherwise allowed two stroke.

EPA considered whether to simply raise the weight limits across the board, but believes that they are appropriate as promulgated, needing only to be raised where needed to cover the incremental weight of cleaner technologies. Further, raising the weight limits across the board could, in the long run, encourage manufacturers to convert four stroke nonhandheld equipment to two stroke power. EPA requests comment on whether there are other facets to the criteria surrounding the term ''handheld'' that could impede adoption of cleaner technology engines on these tools.

B. Applicability of the Small SI Rule to Engines Used in Certain Recreational Applications

The Small SI rule as currently written covers all nonroad spark ignition engines at or below 19 kW ''used for any purpose'', subject to certain exclusions. Specific exclusions are provided for certain engines used in underground mining, for engines used in motorcycles that are subject to emission regulation under 40 CFR Part 86, for engines used in passenger aircraft, and for engines used in recreational vehicles which meet certain prescribed criteria.

Those criteria which serve to define an engine as an engine used in a recreational vehicle are: (i) The engine's rated speed is greater than or equal to 5,000 rpm; (ii) the engine has no installed speed governor; (iii) the engine is not used for the propulsion of a marine ''vessel'' as that term is defined by the U.S. Coast Guard; and (iv) the engine does not meet the criteria cited above in Section A of this preamble to be categorized as a Class III, IV or V engine (i.e., the criteria by which an engine is determined to be ''handheld''). Criteria (i) and (ii) reflect the Agency's belief that engines used to operate recreational vehicles will operate at high rated speeds and will differ significantly in design and operation from those used to power nonhandheld equipment such as lawn, garden and construction equipment. Recreational vehicles also typically have a variable throttle that is held open by the operator to achieve speeds above idle and returns to idle when released. These vehicles experience extremely transient operation. Further, these vehicles do not have the types of governors commonly present on nonhandheld lawn and garden type engines which serve to automatically open the throttle farther when the engine experiences increased loading as is encountered when, for example, moving a lawnmower from an area of short grass into an area of long grass. Finally, EPA stated that the steady-state test procedures being adopted for the Small SI rule would not be appropriate for these more transient applications.

The criteria which serve to define an engine as ''handheld'' were established to restrict the use of the more lenient Class III, IV or V standards to engines in equipment that needed to be extremely light in weight so that it may be easily carried or easily supported during its operation, and/or which needed to be able to operate multipositionally. The need for very low weight has historically been addressed through the use of two stroke technology, which produces greater power for a given weight and size (but higher emissions) than a four stroke engine and does so without the need for a sump full of oil at the bottom of the engine.

The Small SI rule was written without the knowledge that approximately 8,000 Small SI engines per year are built by a variety of companies (including a number of very small entities) for specific application in model boats, aircraft and cars. These engines were not included in any calculations of emission inventories, nor were reductions from these engines or costs of compliance considered in the development of the Phase 1 Small SI rule or the Phase 2 NPRM. EPA has no emission data from these engines and does not have data appropriate to determine whether the test cycle used for handheld (or nonhandheld) engines is appropriate for these engines. These vehicles are predominantly radio controlled model airplanes and as such are clearly ''recreational'' in nature as that term is generally understood. However, according to the definition of that term in the Small SI rule, such engines could be considered handheld because of their multi positional capabilities and therefore fall outside of

coverage under the term ''recreational''.[3] EPA believes that these engines would be better addressed by a future rulemaking intended specifically to address recreational engines. EPA is therefore proposing in this rulemaking to amend the existing regulations to consider these vehicles and engines as recreational and therefore excluded from coverage under the Small SI rule. Thus, engines used to propel vehicles in flight through air provided those engines meet the other existing criteria to be categorized as recreational, would be excluded from the scope of the rule. EPA believes that model cars and boats are not required to operate ''multipositionally'' to complete their intended function so that the spark ignition engines used in model cars and boats are therefore considered ''recreational'' by the existing regulatory text and are already excluded from the Small SI rule. EPA requests comment on all aspects of this proposed change.

C. The Addition of Provisions to the Marine SI Rule To Provide Phase-In Flexibility for Small Volume Manufacturers

The emission requirements for Marine SI engines were promulgated on October 4, 1996 and took effect with the 1998 model year for outboard engines and the 1999 model year for personal watercraft and jetboats. The Marine SI rule was written with considerable input from large volume marine engine manufacturers and their association, the National Marine Manufacturers Association. This rule results in a 75% reduction in exhaust hydrocarbons when calculated from uncontrolled engines. The standards phase in via incremental reductions each year through 2006. The standards will result in considerable shifts in technology away from high emitting two stroke technology to cleaner four stroke or direct injection two stroke designs.

The standards are ''averaging standards'' in that some engine families are expected to be below the standards and generate emission credits while some are expected to be above the standards and use credits. Similar to other mobile source programs, these credits may be banked for future use or traded between manufacturers.

The phase in of the standards was designed to permit marine engine manufacturers to introduce new technology engines and phase out old technology engines in an orderly and cost effective fashion. In addition, flexible certification testing requirements and exemptions from production line and in-use testing requirements were implemented for old technology engines to reduce the compliance costs of the rule for engines destined for phase out.

The development of the Marine SI rule took several years and involved numerous meetings with manufacturers. Both an NPRM (59 FR 55930, November 9, 1994) and SNPRM (Supplemental Notice of Proposed Rulemaking, 61 FR 4600, February 7, 1996) were published. Both EPA and NMMA did considerable outreach to marine engine manufacturers during this period to inform them of progress and likely requirements of various proposals. Despite this process, there was no input from small volume outboard and personal watercraft engine manufacturers until after the closing date of the comment period for the SNPRM. In this one comment,[4] Tanaka expressed concerns about the appropriateness of the averaging standards on an engine manufacturer with likely only one engine family. Tanaka also expressed doubts that credits would be available in the marketplace and whether, even if available, they would be affordable to a manufacturer with a very small annual sales volume. EPA's Response to Comments[5] document addresses small volume concerns by pointing out that the final rule provided reduced production line and in-use testing requirements, simplified certification procedures and administrative flexibilities for existing technology engines [the likely products of small volume manufacturers]. Beyond those flexibilities, the Response to Comments document explains that:

> For smaller volume manufacturers the final regulation allows these manufacturers to purchase emission credits from the market place as an alternative to employing control technologies to meet the standard.

Since implementation of the Marine SI rule began, EPA has received further correspondence from Tanaka petitioning EPA to amend the rule[6] on the basis that the rule's fleet averaging concept provides benefits to manufacturers with diverse product lines but not to a company like Tanaka, which has only one engine family—a very low production, low powered engine. Tanaka argues that its competitors could sell similar engines with higher emissions because they could offset those emissions with credits from larger engines. Tanaka desires flexibility to continue production of its engine until the final phase-in of the standards at which time it will exit the market. Tanaka believes it can comply with the Marine SI requirements through about the 2002 model year through engine improvement and credits it plans to generate in earlier years. After that, it desires flexibility to stage an orderly exit from the market. It does not wish to commit the funds necessary to meet the final phase in standards for its low level of U.S. sales.

EPA has also been contacted by Inboard Marine Corporation, a low volume manufacturer of personal watercraft engines. This company maintains that it is dependent upon ''off-the-shelf'' technology to reduce its emissions. Like Tanaka, it has a narrow product line and argues that the averaging, banking and trading program in the Marine SI rule can not be counted on to provide credits through trading, nor to provide them at a reasonable price. Inboard Marine believes it can comply in the early years of the Marine SI rule but may need relief in the late years of the standard phase-in. It intends to discontinue its current engine by the final phase-in year (2005) and meet the ultimate standards of 2006 with a redesigned engine.

EPA recognizes that the Marine SI standards are technology forcing. Thus, it was appropriate to include averaging, banking and trading (ABT) provisions to facilitate their economical implementation. However, ABT is most useful to manufacturers with diverse product offerings. The two companies mentioned above appear to be at a disadvantage to their competitors because of their limited offerings. Further, EPA can not provide any certainty that credits will be available to them. EPA notes that in the on-highway heavy-duty engine program, there were no credit transactions between manufacturers until approximately seven years after the ABT provisions were added to the rules.

In rules proposed since the Marine SI rule was promulgated, EPA has gone to considerable lengths to provide mechanisms to ease the implementation of new standards and requirements for low volume producers. Both the Small SI Phase 2 NPRM and the Nonroad CI Phase 2 and 3 NPRM contain numerous

[3] A few of these vehicles may be controlled by flexible tether lines, but in any case they are not held in hand during operation.

[4] Letter of May 13, 1996 from Randy W. Haslam, Vice-President, Tanaka International Sales and Marketing. Contained in the docket for this rulemaking. (Docket No. A–98–16.)

[5] EPA's Response To Comments document prepared for the final Marine SI rule can be found in the docket for this rulemaking. (Docket No. A–98–16.)

[6] Letter of June 30, 1997 from Randy W. Haslam, Vice-President, Tanaka International Sales and Marketing. Contained in the docket for this rulemaking. (Docket No. A–98–16.)

special provisions to delay or otherwise ease the impact of the standards on low volume engine families, low volume equipment manufacturers or low volume engine manufacturers. By contrast, the Marine SI rule contains no such provisions.

In this document, EPA proposes to add provisions to the Marine SI rule to permit small volume engine manufacturers to have family emission limits (FELs) in excess of applicable standards where credits are not available to cover such excess. This provision would be limited to one period of four consecutive model years which could not begin until the 2000 model year. EPA believes that the affected manufacturers can likely make changes to the affected engines to achieve compliance with standards in the early years and even bank a few credits, but may have more difficulty as the standards tighten later in the phase-in. This flexibility would expire at the end of the 2009 model year. EPA believes this expiration date will provide adequate time for small volume engine manufacturers to adapt off the shelf technology to their engines, if available, or to redesign their engines to comply with the final standards. EPA believes that the inclusion of this provision is consistent with its approach in other rules, and that it will meet the needs of small volume manufacturers without creating adverse impacts on air quality or adverse competitive situations. Further, EPA believes that the way this provision is structured may lead the affected manufacturers to clean up their engines more in the early years than their competitors. EPA proposes that the applicability of this provision be limited to engine manufacturers who sell no more than 1000 marine outboards and personal watercraft engines per year in the United States.

Based on the technological limitations that these small volume manufacturers have, and their limited abilities to use flexibilities offered by averaging, banking, and trading to avoid increased costs, EPA believes additional flexibility is appropriate. The implementation of this additional flexibility does not change EPA's overall conclusion that the category of Marine SI engines will allow the greatest achievable emission reduction considering technology and cost. EPA requests comment on the appropriate quantitative limit for this provision and on all other aspects of this proposal.

D. Revisions of Rules Involving Replacement Engines To Address Issues Related to Imported Engines

In a recent direct final rule, EPA modified its regulations applicable to Small SI and Marine SI engines (62 FR 42638, August 7, 1997) to permit the sale of uncertified engines for replacement purposes. The direct final rule addressed limited instances involving equipment built before EPA regulations went into effect where engine replacement is a more economical alternative than engine repair and certified engines are not available to fit.

Under the direct final rule, the engine manufacturer being approached to sell an uncertified engine for replacement purposes is required to first ascertain that no certified engine produced by itself or the manufacturer of the original engine (if different) is available with suitable physical or performance characteristics to repower the equipment. When the manufacturer ascertains that no certified engine is available that will fit or perform adequately, it can sell an uncertified engine subject to certain controls, e.g. it must take the old engine in exchange and the new engine must be clearly labeled for replacement purposes only.

EPA's Small SI and Marine SI engines regulations adopt the Clean Air Act definition for the term ''manufacturer.'' EPA has become concerned that the term ''manufacturer'' by definition in the Clean Air Act can include an importer who may have had nothing to do with the actual production of the engine.[7] In such a case the requirement to ascertain whether a certified engine produced by itself has suitable physical or performance characteristics could lead to abuse. EPA is concerned that importers could misinterpret this provision to permit, for example, an equipment operator to import an uncertified engine and determine, since the importer does not make engines, that no certified engines are available from itself to appropriately power the vehicle. EPA proposes to amend the replacement engine provisions in both rules to require that, in cases where a replacement engine might be imported, the determination be made by the manufacturer's U.S. representative that holds a current certificate of conformity from EPA for the make of engine requiring replacement. As an alternative and especially if no such entity exists, such as may happen in a piece of imported equipment built prior to the effective date of EPA's regulations whose engine manufacturer has not certified, the equipment operator could approach other engine manufacturers to obtain a suitable replacement engine under the existing replacement engine provisions. EPA requests comment on this proposed amendment.

[7] Section 216(1) of the Clean Air Act defines *manufacturer* as ''any person engaged in the manufacturing or assembling of new * * * nonroad engines or importing such * * * engines for resale * * * but shall not include any dealer with respect to * * * new nonroad engines received by him in commerce''.

IV. Environmental Benefit Assessment

This rule is being proposed to reduce the burden or prevent abuse of various provisions of several existing rules. No significant air quality impacts one way or the other are expected. The provisions applicable to Small SI handheld engines to accommodate cleaner but heavier engines remove a barrier to the incorporation of cleaner engine technology in handheld equipment. The provisions applicable to recreational engines will have no significant impact on air quality. The subject engines were not included in Small SI inventory calculations or in benefits attributed to the Small SI rule. The revisions to provide phase-in flexibility to very small marine engine manufacturers will also have no impact on air quality. The marine rule revisions are designed to encourage these companies to clean up their engines as much as possible in the early phase-in years and may actually result in the production of small quantities of engines that are cleaner than those of similar power built by larger competitors using credits. Lastly, the revisions to replacement engine provisions will reduce the likelihood of abuse in cases where older design engines may be desired for replacement needs.

V. Economic Impacts

The revisions contained in this rulemaking are not expected to increase costs for any entity. In fact, the revisions to the recreational provisions in the Small SI rule will eliminate potential costs under the Small SI rule for affected manufacturers. The revisions affecting the weight of handheld equipment provide greater flexibility in engine choice to handheld equipment manufacturers. The revisions to the Marine SI rule are intended to reduce adverse economic impacts of that rule on small entities. The revisions to replacement engine provisions serve only to remove a potential unintended benefit that would accrue only to importers of replacement engines who were not also engine producers. Therefore, because this notice proposes to alter existing provisions, and that

alteration provides regulatory relief, there are no additional costs to original equipment manufacturers associated with this specific proposal.

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. Costs for future programs for Small SI engines were developed for the proposal of January 27, 1998. We do not believe the changes being implemented today affect the costs and emission reductions published as part of those rulemakings.

VI. Public Participation

This rulemaking action is being prepared largely as a result of letters that have been received from engine manufacturers concerning the various nonroad rules that are addressed by these revisions. Copies of all such letters are available in the docket. EPA expects to provide copies of this NPRM to trade groups representing Small SI and Marine SI engine and equipment manufacturers as well as to environmental groups and state organizations. EPA welcomes written comment on any aspect of the revisions and issues discussed in this document. EPA will hold a public hearing on this rulemaking if anyone requests to speak at such a forum.

EPA welcomes comment on any aspect of these revisions and will consider all comments presented at a public hearing (if one occurs) as well as all written comments received before the deadline described above.

VII. 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. The Paperwork Reduction Act

This action does not add any new requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Office of Management and Budget (OMB) has approved the information collection requirements that apply to the Small SI final rulemaking or the Small SI Phase 2 NPRM (60 FR 34582, July 3, 1995 and 63 FR 3950, January 27, 1998, respectively) or submitted to OMB in association with the Marine SI final rulemaking (61 FR 52088, October 4, 1996).

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 are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

C. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements 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 not-for-profit enterprises, and small governmental jurisdictions. This rule will not have a significant adverse economic impact on a substantial number of small entities. This is because today's document will provide regulatory relief to both large and small volume engine and equipment manufacturers by excluding them from regulation or by permitting greater flexibility in engine choices in equipment or by providing additional time to comply. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform 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 document. Moreover, no small governments will be significantly or uniquely impacted by this rule.

E. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal

governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule changes do not create a mandate on State, local or tribal governments. The rule changes do not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

F. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments or EPA consults with those governments. If EPA complied by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule changes do not significantly or uniquely affect the communities of Indian tribal governments. Today's proposed rule changes do not create a mandate for any tribal governments. The rule changes do not impose any enforceable duties on these entities. Today's proposed rule changes will affect only those small spark-ignition (Small SI) engines under 19 kilowatts (kW) used in recreational applications, cleaner four stroke small SI engines, existing replacement engine provisions for Small SI and marine spark ignition (Marine SI) engines, and Marine SI small volume engine manufacturers during the standards phase in period. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

G. National Technology Transfer and Advancement Act of 1995 (NTTAA)

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub L. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

H. Children's Health Protection

This proposed rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

List of Subjects in 40 CFR Parts 90 and 91

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

Dated: January 27, 1999.

Carol M. Browner,

Administrator.

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

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

1. The authority citation of part 90 is revised to read as follows:

Authority: 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).)

2. Section 90.1(b)(5)(iv) is revised to read as follows:

§ 90.1 Applicability.

* * * * *

(b) * * *

(5) * * *

(iv) The engine does not meet the criteria to be categorized as a Class III, IV or V engine, as indicated in § 90.103, except for cases where the engine will be used only to propel a flying vehicle forward, sideways, up, down or backward through air.

* * * * *

3. Section 90.3 is amended by revising the definition of Handheld equipment engine to read as follows:

§ 90.3 Definitions.

* * * * *

Handheld equipment engine means a nonroad engine that meets the requirements specified in § 90.103(a)(2)(i) through (v).

* * * * *

4. Section 90.103 is amended by adding paragraph (a)(2)(v) to read as follows:

§ 90.103 Exhaust emission standards.

(a) * * *

(2) * * *

(v) Where a piece of equipment otherwise meeting the requirements of paragraphs (a)(2)(iii) or (a)(2)(iv) of this section exceeds the applicable weight limit, emission standards for class III, IV or V, as applicable, may still apply if the equipment exceeds the weight limit by no more than the extent necessary to allow for the incremental weight of a four stroke engine or the incremental weight of a two stroke engine having enhanced emission control acceptable to the Administrator. Any manufacturer utilizing this provision to exceed the subject weight limitations shall maintain and make available to the Administrator upon request, documentation to substantiate that the exceedence of either weight limitation is a direct result of application of a four stroke or enhanced two stroke engine having the same, less or very similar power to two stroke engines that could otherwise be used to power the equipment and remain within the weight limitations.

* * * * *

5. Section 90.1003 is amended by adding and reserving paragraphs (b)(5)(iv) through (b)(5)(vii) and adding paragraph (b)(5)(viii) to read as follows:

§ 90.1003 Prohibited acts.

* * * * *

(b) * * *

(5) * * *

(iv) [Reserved].

(v) [Reserved].

(vi) [Reserved].

(vii) [Reserved].

(viii) In cases where an engine is to be imported for replacement purposes

under the provisions of this paragraph (b), the term ''engine manufacturer'' shall not apply to an individual or other entity that does not possess a current Certificate of Conformity issued by EPA under this part.

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

6. The authority citation of part 91 is revised to read as follows:

Authority: Secs. 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).)

7. Section 91.207 is amended by adding paragraph (e) to read as follows:

§ 91.207 Credit calculation and manufacturer compliance with emission standards.

* * * * *

(e) Notwithstanding other provisions of this part, for model years beginning with MY 2000, a manufacturer having a negative credit balance during one period of up to four consecutive model years will not be considered to be in noncompliance in a model year up through and including model year 2009 where:

(1) The manufacturer has a total annual production of engines subject to regulation under this part of 1000 or less; and

(2) The manufacturer has not had a negative credit balance other than in three immediately preceding model years, except as permitted under paragraph (c) of this section; and

(3) The FEL (FELs) of the family or families produced by the manufacturer are no higher than those of the corresponding family or families in the previous model year, except as allowed by the Administrator; and

(4) The manufacturer submits a plan acceptable to the Administrator for coming into compliance with future model year standards including projected dates for the introduction or increased sales of engine families having FELs below standard and projected dates for discontinuing or reducing sales of engines having FELs above standard; and

(5)(i) The manufacturer has set its FEL using emission testing as prescribed in subpart E of this part; or

(ii) The manufacturer has set its FEL based on the equation and provisions of § 91.118(h)(1)(i) and the manufacturer has submitted appropriate test data and revised its FEL(s) and recalculated its credits pursuant to the provisions of § 91.118(h)(1); or

(iii) The manufacturer has set its FEL using good engineering judgement, pursuant to the provisions of § 91.118(h)(1)(ii) and (h)(2).

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

§ 91.1103 Prohibited acts.

* * * * *

(b) * * *

(4) * * *

(v) In cases where an engine is to be imported for replacement purposes under the provisions of this paragraph (b), the term ''engine manufacturer'' shall not apply to an individual or other entity that does not possess a current Certificate of Conformity issued by EPA under this part.

[FR Doc. 99–2450 Filed 2–2–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[OPPTS–62156G; FRL–6060–9]

RIN 2070–AC63

Lead; Identification of Dangerous Levels of Lead; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of public meeting.

SUMMARY: EPA will be holding a public meeting on a proposed rule for managing lead in paint, dust, and soil in residences and child-occupied facilities. This public meeting is in response to requests from various parties to provide for additional participation by the environmental justice community in the development of the proposed rule.

DATES: The public meeting will be held on February 16, 1999, from 9 a.m. to 12 noon. Written comments on the proposed rule must be received on or before March 1, 1999.

ADDRESSES: The meeting will be held at the Hyatt Regency Washington—Capitol Hill, 400 New Jersey Ave., NW., Washington D.C.

Each written comment must bear the docket control number OPPTS–62156G. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. G–099, East Tower, Washington, DC 20460.

Written comments and data may also be submitted electronically to: oppt.ncic@epa.gov. Follow the instructions in Unit II. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

All written comments which contain information claimed as CBI must be clearly marked as such. Three copies, sanitized of any comments containing information claimed as CBI, must also be submitted and will be placed in the public record for this rulemaking. Persons submitting information, any portion of which they believe is entitled to treatment as CBI by EPA, must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: *For general information:* National Lead Information Center's Clearinghouse, 1–800–424–LEAD (5323). *For technical and policy questions*: Jonathan Jacobson; telephone: (202) 260–3779; e-mail address: jacobson.jonathan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 3, 1998 (63 FR 30302) (FRL–5791–9), EPA published a proposed rule under section 403 of TSCA (15 U.S.C. 2683). This proposed rule identifies lead-based paint hazards, lead-contaminated dust, and lead-contaminated soil in residences and child-occupied facilities. Section 402 of TSCA (15 U.S.C. 2682) directs EPA to promulgate regulations governing lead-based paint activities. Section 404 of TSCA (15 U.S.C. 2684) requires that any State that seeks to administer and enforce the requirements established by the Agency under section 402 of TSCA must submit to the Administrator a request for authorization of such a program.

On October 1 and November 5, 1998, EPA announced in the **Federal Register** two extensions to the comment period for this proposed rule (63 FR 52662 (FRL–6037–7) and 63 FR 59754 (FRL–6044–9), respectively). The latest extension was until December 31, 1998. EPA has received additional comments from various parties involved with environmental justice to extend the comment period and to provide additional participation by this community in the development of the