

significantly or uniquely affect small governments.

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Gasoline, Reformulated gasoline, Conventional gasoline, Motor vehicle pollution.

Dated: June 26, 1996.

Carol M. Browner, Administrator.

For the reasons set forth in the preamble, 40 CFR part 80 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

Section 80.46 is amended by revising the paragraphs under (f)(F)(3)(i) and (g)(G)(9)(i) to read as follows:

§ 80.46 Measurement of reformulated gasoline fuel parameters.

* * * * *

(f) * * *

(3) Alternative Test Method. (i) Prior to September 1, 1998, any refiner or importer may determine aromatics content using ASTM standard method D-1319-93, entitled "Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption." For purposes of meeting any testing requirement involving aromatic content, provided that

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(g) * * *

(9)(i) Prior to September 1, 1998, and when the oxygenates present are limited to MTBE, ETBE, TAME, DIPE, tertiary-amyl alcohol, and C1 to C4 alcohols, any refiner, importer, or oxygenate blender may determine oxygen and oxygenate content using ASTM standard method D-4815-93, entitled "Standard Test Method for Determination of MTBE, ETBE, TAME, DIPE, tertiary-Amyl Alcohol and C1 to C4 Alcohols in Gasoline by Gas Chromatography," for purposes of meeting any testing requirement; provided that

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40 CFR Part 90

[FRL-5530-8]

Revised Carbon Monoxide (CO) Standard for Class I and II Nonhandheld New Nonroad Phase 1 Small Spark-Ignition Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: Today EPA is proposing a revision of the Phase 1 carbon monoxide (CO) emission standard for Class I and II new nonroad spark-ignition (SI) engines at or below 19 kilowatts. Today's action would increase the standard from 469 grams per kilowatt-hour (g/kW-hr) to 519 g/kW-hr. This proposed action is necessary to address the CO emission difference between oxygenated and nonoxygenated fuels that was not reflected when the Agency previously set the CO standard for these nonhandheld engines in a final rule published July 3, 1995. This correction of the nonhandheld engine CO standard would ensure that the CO standard for manufacturers of Class I and II small SI engines used to power equipment such as lawnmowers is achievable and otherwise appropriate under the Clean Air Act and that it is technically feasible for manufacturers to certify their engine models to the Phase 1 emission standards and make them commercially available for the 1997 model year.

In addition, today's action proposes to give the Administrator the option to permit the use of open crankcases in engines used exclusively to power snowthrowers. This proposed change will give EPA the flexibility to allow certain engine manufacturers to certify engines to be used in snowthrowers without making technological changes that would severely impair the ability of the engine to function or that would be economically prohibitive.

DATES: Written comments on this NPRM must be submitted by August 2, 1996. EPA will hold a public hearing on this NPRM sometime between [Insert date 15 days from date of publication] and August 2, 1996. If one is requested by July 15, 1996.

ADDRESSES: Written comments should be submitted (in duplicate, if possible) to: EPA Air and Radiation Docket, Attention Docket No. A-96-02, room M-1500 (mail code 6102), 401 M St., SW, Washington, D.C. 20460. Materials relevant to this rulemaking are contained in docket no. A-93-25 and docket no. A-96-02, and may be viewed from 8:00 a.m. until 5:30 p.m. weekdays. The docket may also 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. Members of the public may call the contact person indicated below to find out whether a hearing will be held and if so, the exact location. Requests for a public hearing should be directed to the person indicated below. The hearing, if requested, will be held in Michigan.

FOR FURTHER INFORMATION CONTACT: Laurel Horne, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone: (313) 741-7803. FAX: (313) 741-7816.

Electronic mail: horne.laurel@epamail.epa.gov

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are those which manufacture engines used in nonhandheld applications, such as lawnmowers, and those which manufacture engines used exclusively to power snowthrowers. Regulated categories and entities include:

Table with 2 columns: Category, Examples of regulated entities. Rows include Industry and Do.

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 section 90.1 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. Obtaining Electronic Copies of Documents

Electronic copies of the preamble and the regulatory text of this notice of proposed rulemaking are available electronically from the EPA Internet site and via dial-up modem on the Technology Transfer Network (TTN), which is an electronic bulletin board system (BBS) operated by EPA's Office

of Air Quality Planning and Standards. Both services are free of charge, except for your existing cost of Internet connectivity or the cost of the phone call to TTN. Users are able to access and download files on their first call using a personal computer and modem per the following information.

Internet:

World Wide Web:

<http://www.epa.gov/OMSWWW>

Gopher:

<gopher://gopher.epa.gov/> Follow menus for: Offices/Air/OMS

FTP:

<ftp://ftp.epa.gov/> Change Directory to <pub/gopher/OMS> TTN BBS: 919-541-5742

(1200-14400 bps, no parity, 8 data bits, 1 stop bit) Voice Help line: 919-541-5384.

Off-line: Mondays from 8:00 AM to 12:00 noon EST.

A user who has not called TTN previously first will be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following menu choices from the Top Menu to access information on this rulemaking.

<T> GATEWAY TO TTN TECHNICAL AREAS (Bulletin Boards)
 <M> OMS—Mobile Sources Information
 <K> Rulemaking and Reporting
 <6> Non-Road
 <2> Non-road Engines

At this point, the system will list all available files in the chosen category in reverse chronological order with brief descriptions. To download a file, select a transfer protocol that is supported by the terminal software on your own computer, then set your own software to receive the file using that same protocol.

If unfamiliar with handling compressed (i.e. ZIP^{ed}) files, go to the TTN top menu, 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 the TTN BBS with the <G>oodbye command.

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

III. Legal Authority

Authority for the actions set forth in this rule is granted to EPA by sections 213 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7547 and 7601(a)).

IV. The Carbon Monoxide Standard and Fuel Specification Issue

On March 4, 1996, Briggs and Stratton Corporation submitted to EPA a petition requesting reconsideration and revision of the certification fuel requirements and carbon monoxide (CO) emission standard for nonhandheld engines. The petition asks the Agency to amend its July 3, 1995 final rule, Emission Standards for New Nonroad Spark-ignition (SI) Engines At or Below 19 Kilowatts, hereafter referred to as the Phase 1 small SI engine regulations.¹ Specifically, the petition requests that the Agency amend the Phase 1 small SI engine rule to either: (1) permit the use of appropriate oxygenated gasolines for emissions certification testing as a direct alternative to Indolene² under the current CO standard, or (2) revise the CO standard for nonhandheld small engines from 469 grams per kilowatt-hour (g/kW-hr) to 536 g/kW-hr, in order to reflect the emission characteristics of these engines when tested on nonoxygenated gasolines. Nonhandheld engines are intended for use in nonhandheld applications and fall under one of two classes based on engine displacement.³ Class I engines are less than 225 cubic centimeters (cc) displacement, and Class II engines are greater than or equal to 225 cc displacement.⁴ In response to the Briggs and Stratton petition, EPA is revising the Phase 1 small SI engine regulation by increasing the CO standard for Class I and II nonhandheld small SI engines from 469 g/kW-hr to 519 g/kW-hr.

To help the reader understand EPA's response to the petitioner's request, the following text provides background on prior actions taken by the State of California's Air Resources Board (CARB), EPA, and industry relating to the fuel requirements and the CO

¹ 60 FR 34582, July 3, 1995, codified at 40 C.F.R. part 90. The docket for the Phase 1 small SI engine rulemaking, EPA Air Docket #A-93-25, is incorporated by reference.

² See section 90.308(b) and page 34589 of the preamble for the certification fuel specification for the Phase 1 small SI engine rulemaking. Indolene is one possible federal certification fuel. Indolene is not the only eligible fuel, but it is within the eligible range specified in part 86 (section 86.1313-94(a)) to which the Phase 1 small SI engine rule refers. The Phase 1 small SI engine rulemaking provides for a range and based on experience with the on-highway program, EPA expects that engine manufacturers will use Indolene. California Phase II Reformulated Gasoline and other oxygenated fuels are not within the range specified in the Phase 1 small SI engine rule.

³ For additional discussion of engine classes and handheld engine qualifications, see 60 FR 34585, July 3, 1995.

⁴ Class I engines are predominantly found in lawnmowers. Class II engines primarily include engines used in generator sets, garden tractors, and commercial lawn and garden equipment.

standard for nonhandheld small SI engines.

Both EPA and CARB have regulations that pertain to nonhandheld small SI engines. Nonhandheld small SI engines manufactured for sale in the United States must meet EPA emission regulations starting with the 1997 model year. Engines produced for sale in California must also meet regulatory requirements specified by CARB. The small engine industry and other stakeholders have been actively involved in the development of EPA and CARB nonroad engine regulations.

CARB's CO Standard and Fuel Specifications

CARB began the process of developing emission regulations for small nonroad engines under the authority of the California Clean Air Act of 1988. In December 1990, the California Regulations for 1995 and Later Utility and Lawn and Garden Equipment Engines (hereafter referred to as the utility engine regulations) were initially approved. Among other requirements, CARB's Tier 1 utility engine regulations, as formally adopted in March 1992, specified that Class I and Class II engines produced from January 1, 1995, through December 31, 1998, must certify to a 300 gram per brake horsepower-hour (g/bhp-hr) carbon monoxide exhaust emission standard.⁵

In regard to certification fuel specifications, CARB's utility engine regulations referenced CARB on-road vehicle certification fuel specifications, which were adopted in 1987 and amended in July 1991. Consequently, engine manufacturers could select to certify their engines using either Indolene Clear or California Phase 1 Reformulated Gasoline. A later amendment to the utility engine regulations revised the certification fuel specifications to incorporate the most recent on-road motor vehicle fuel specification, California Phase II Reformulated Gasoline. In a related mail-out, CARB stated that it had intended for engine test fuel specifications to be consistent with the on-road motor vehicle fuel specifications⁶; in the future, approved amendments to the CARB on-road vehicle fuel specifications will be immediately

⁵ Throughout its utility engine regulations, CARB uses horsepower (hp) measurements, while in its small SI engine regulations, EPA refers to kilowatts (kW). To convert kilowatts to horsepower multiply kW by 1.34 and round to the same number of significant digits. In this case, 300 g/bhp-hr = 402 g/kW-hr.

⁶ See CARB Mail-out #94-20, May 4, 1994, Utility and Lawn and Garden Equipment Engine Test Fuel Specifications.

applicable to engine certification test fuels.

In July, 1995, Briggs and Stratton Corporation petitioned CARB to amend its 300 g/bhp-hr CO standard for Class I and II engines to 350 g/bhp-hr. The company argued that it was not technically feasible to meet the 300 g/bhp-hr CO standard. After consideration of Briggs and Stratton's petition, CARB prepared a notice of public hearing and an accompanying staff report.⁷ While expressing several concerns about the petition in the staff report, CARB staff recommended that the Board approve Briggs and Stratton's request. At a public hearing on January 25, 1996, the Board granted Briggs and Stratton's request, and adopted the recommended amendment to raise the Class I and II CO exhaust emission standard to 350 g/bhp-hr (equivalent to 469 g/kw-hr).⁸

EPA's CO Standard and Fuel Specifications

Not long after CARB began developing its utility engine regulations, EPA decided to adopt a phased approach for regulating emissions from small SI engines under the authority of section 213(a) of the Clean Air Act. For the first phase, EPA determined that the regulations would be similar to the CARB's Regulation for 1995 and Later Utility and Lawn and Garden Equipment Engines. EPA published its proposed rules on May 16, 1994. One provision of the proposal was that nonhandheld engines would be required to certify to a CO standard set at 402 g/kw-hr—equivalent to CARB's original CO standard of 300 g/bhp-hr. However, the certification test fuel specified in the Phase 1 proposal was different from CARB's. In its notice of proposed rulemaking (NPRM), EPA specified a fuel referred to as Clean Air Act Baseline (CAAB).⁹ EPA noted in its preamble that although oxygenated and reformulated gasoline fuel was available in different areas around the United States, the availability varied widely.¹⁰ Reformulated or oxygenated gasoline was therefore not specified as a certification test fuel for the Phase 1 NPRM.

Following publication of the Phase 1 NPRM, Briggs and Stratton submitted proprietary engine development data and analysis to EPA. The company argued that the data established a need for an increase to the nonhandheld CO

standard from the proposed level of 402 g/kw-hr. The Engine Manufacturers Association (EMA) also provided comments in support of increasing the CO emission standard for Class I and II nonhandheld engines from the proposed 402 g/kw-hr to 469 g/kw-hr. EMA argued that it is not technically feasible for a significant percentage of the market to meet the more stringent proposed standard.

On July 3, 1995, EPA published its Phase 1 small SI engine final rulemaking.¹¹ The final provisions for both the nonhandheld CO emission standard and the certification fuel specifications differed from the proposed provisions. Based on its own review and analysis of the data submitted by Briggs and Stratton following publication of the NPRM, EPA decided to raise the CO standard for nonhandheld engines from the proposed level of 402 g/kw-hr to 469 g/kw-hr. The rationale for the increase of the nonhandheld CO standard is discussed in further detail in the final rule response to comments document.¹²

In the preamble to its final Phase 1 small SI engine rule, EPA discussed the provisions for the type of fuel to be used for certification and confirmatory testing. In response to comments received on the NPRM, the Agency decided to expand the range of specifications for certification fuels such that the fuel commonly referred to as Indolene Clear, in addition to the Clean Air Act Baseline (CAAB) fuel that was discussed in the proposal, would be allowed.¹³ Indolene is the trade name for the gasoline fuel specified at 40 CFR 86.113 and 40 CFR 86.1313 for most on-highway federal compliance test procedures. Since the CARB regulation allows the use of either Indolene or Phase 2 fuel, a test performed using Indolene could be used to satisfy both federal and CARB requirements for small SI engines. Unknown by the Agency at the time EPA finalized the rule, Briggs and Stratton's data supporting the increased standard was based on testing conducted with oxygenated fuels, rather than the federal fuel specified in the NPRM.

In sum, while EPA had hoped its allowance of Indolene as a test fuel would facilitate consistency with CARB's program and allow manufacturers to conduct a single test for both the federal and CARB program, the Agency in fact set a standard that only engines tested on oxygenated fuel

had been demonstrated to meet. In conjunction with a test fuel like Indolene the 469 g/kw-hr nonhandheld CO emission standard set in the Phase 1 small SI engine regulations is more stringent than the Agency intended because it did not take into account the effect of the oxygenated fuel used in the test data on which EPA based the standard.

Again, at the time EPA set the standard, the Agency did not know Briggs and Stratton's data had been generated through testing with oxygenated fuels. In addition, when CARB decided to relax its CO standard to 350 g/bhp-hr (469 g/kw-hr) in January 1996, it noted that the standard would be less stringent than federal regulations due to CARB's allowance of oxygenated, reformulated gasoline for certification. Although the CARB 350 g/bhp-hr CO standard and the federal 469 g/kw-hr CO standard are numerically equivalent, the latter does not allow for the use of oxygenated fuels such as Phase II reformulated gasoline, and is therefore more stringent than EPA believes is appropriate in light of the factors EPA is directed to consider in CAA section 213(a)(3). The Agency believes it is important to correct its nonhandheld CO emission standard to align with CARB's new standard, and more importantly, to ensure that the federal standard is technologically achievable and otherwise appropriate under section 213(a) by accounting for the CO emission offset between nonoxygenated and oxygenated fuels.

Following publication of the Phase 1 small SI engine final rule, Briggs and Stratton raised concerns in meetings with EPA that the Class I and II 469 g/kw-hr CO emission standard was not technologically feasible given the finalized certification fuel provisions. The Agency indicated in a letter to the EMA on November 3, 1995, that any change to the CO standard necessary to reflect differences in fuel effects would require that the Agency initiate a notice and comment rulemaking process.¹⁴ Additionally, EPA stated in correspondence on January 24, 1996, that if Briggs and Stratton submitted an adequately supported petition to reconsider the final rule on this issue, EPA would initiate a rulemaking to raise the Phase 1 CO standard for nonhandheld engines by the amount of the emission offset.¹⁵ On March 4, 1996, Briggs and Stratton formally petitioned

⁷ See CARB Mail-out #95-43, Notice of January 25, 1996 Public Hearing.

⁸ CARB Resolution 96-1, January 25, 1996.

⁹ See Table 3 in Appendix A to Subpart D of Part 90 of the proposed Phase 1 regulations, available in EPA Air Docket #A-93-25, item III-A-2.

¹⁰ 59 FR 25419, May 16, 1994.

¹¹ 60 FR 34584, July 3, 1995.

¹² See Response to Comments on the NPRM, in EPA Air Docket #A-93-25, item V-C-01.

¹³ See 40 CFR 90.308(b)(1).

¹⁴ Letter from Chester France, EPA to Jed Mandel, EMA, November 3, 1995. A copy of this letter is included in the docket for this rulemaking.

¹⁵ Letter from Paul Machiele, EPA to Addresses, January 24, 1996. A copy of this letter is included in the docket for this rulemaking.

the Agency to amend the Phase 1 small SI engine regulations in one of two ways: To permit the use of oxygenated fuels for certification while maintaining the 469 g/kW-hr CO standard, or to raise the CO standard for nonhandheld engines to 536 g/kW-hr.

Basis for the Briggs and Stratton Petition

In its petition, Briggs and Stratton describes the grounds on which it believes the Agency should grant its petition. The company argues that the Clean Air Act requires EPA to grant the petition and that granting the petition will further the primary purposes of the Phase 1 small SI engine regulations by enhancing the in-use control of NO_x emissions in small engine exhaust.

Briggs and Stratton states in its petition that the Agency is compelled by statute and by its prior findings to grant the petition. The company points out that the Clean Air Act specifies that the emission standards must be achievable giving appropriate consideration to the cost of applying available technology within the period of time available to manufacturers. EPA decided in its Phase 1 small SI engine final rule, states Briggs and Stratton, that the 469 g/kW-hr CO standard was the most stringent achievable CO standard for Class I and II nonhandheld engines when taking into account cost and leadtime concerns. Briggs and Stratton additionally argues that the law requires that the feasibility and stringency of federal emission standards depend upon the test procedures used to measure compliance. Because the data supplied by Briggs and Stratton and used by EPA to set the 469 g/kW-hr CO standard for nonhandheld engines was data collected using oxygenated fuels, while EPA's final rule does not allow for the use of an oxygenated certification test fuel, Briggs and Stratton argues that the rule must be revised to allow for the effect of the fuel difference.

In general, EPA agrees with Briggs and Stratton's argument that a change to the nonhandheld Phase 1 CO emission standard is necessary based on the Clean Air Act's requirement that the standard reflect the greatest degree of emission reduction achievable through the application of technology which EPA determines will be available for the regulated engines, giving appropriate consideration to the cost of applying such technology and other factors.¹⁶ The Agency did determine that the 469 g/kW-hr CO standard for nonhandheld engines was appropriate based in part on test data supplied by Briggs and Stratton. Prior to publication of the final

rule it was never indicated to EPA that the fuel these tests were conducted on was something other than what EPA had proposed in its NPRM. Absent any indication to the contrary, EPA had assumed that Briggs and Stratton had used a nonoxygenated fuel such as Clean Air Act Baseline when conducting the tests that generated the data the Agency used to set its nonhandheld CO emission standard. Had EPA been made aware of the fact that Briggs and Stratton had in fact used oxygenated fuel as the test fuel, the Agency would have taken the difference in the effect of the fuel into account when setting its final CO standard for nonhandheld engines. Analysis of data recently supplied by Briggs and Stratton of comparison testing using oxygenated and nonoxygenated fuels substantiates the company's claim that the fuel type affects CO emissions. EPA's analysis of Briggs and Stratton's data and of data collected in testing conducted by the Agency after publication of the Phase 1 small SI engine final rule indicates that nonhandheld engine CO emissions are indeed lower when run on oxygenated fuels than they are when run on nonoxygenated fuels.

Briggs and Stratton also argues, as grounds for EPA granting its petition, that allowing the use of oxygenated fuel would improve in-use control of NO_x in small engine exhaust. However, Briggs and Stratton's argument is theoretical, and not supported by any data analysis. As shown in the Regulatory Support Document (RSD) for this rule, the Agency's analysis of the test data recently supplied by Briggs and Stratton and of EPA's own test data indicate that the differences of changes in NO_x and HC depending on the use of oxygenated or nonoxygenated fuels are minimal.

V. Snowthrower Open Crankcase Issue

Specific engine manufacturers and the Engine Manufacturers Association (EMA) have raised concerns about the closed crankcase certification requirement specified in the Phase 1 small SI engine final rule at section 90.109. The Agency specified in its Phase 1 small SI proposal that crankcases must be closed as a requirement of certification in order to eliminate emissions that would otherwise occur when a crankcase is vented to the atmosphere. It was EPA's understanding that since most currently produced engines do have closed crankcases, this requirement would impact relatively few manufacturers. No comments were submitted in response to EPA's NPRM on this issue, and EPA finalized the provision requiring closed crankcases. Subsequent to publication

of the Phase 1 small SI engine final rule, however, the Agency has been made aware of concerns specific to manufacturers of engines used exclusively in snowthrowers. These manufacturers have indicated that it is necessary to maintain an open crankcase in order to prevent the freeze up of the intake which would likely occur if a crankcase breather hose was required. Additionally, these manufacturers have provided evidence that the cost to close these crankcases and prevent freeze up would be prohibitively expensive—possibly in excess of the cost of the engine. Furthermore, they have argued that the emissions benefit does not justify the cost. HC + NO_x emissions resulting from having the crankcase open for snowthrower equipment will have no impact on summer ozone concentrations. Manufacturers claim that the CO emission impact on CO nonattainment will also be minor due to the limited numbers of these pieces of equipment and the small impact opening the crankcase has on overall CO emissions from this small number of engines. The Agency seeks additional and more detailed comment on the cost and emission impacts of open crankcases on engines used exclusively to power snowthrowers.

At this time the Agency has not received notification from any other parties regarding similar difficulties. The Agency seeks comment on whether there are engines used in other equipment types that face similar difficulties in meeting the closed crankcase requirement. The Agency requests that if such situations are identified, commenters submit documentation regarding the technical and economic need for utilizing an open crankcase.

The Agency is convinced by the arguments presented by the manufacturers of engines used exclusively in snowthrowers that a change to the closed crankcase requirement is appropriate. Therefore, EPA proposes that the Administrator be given the flexibility to allow open crankcases in certain circumstances for engines used exclusively in snowthrowers. The Administrator would consider allowing open crankcases for these engines if adequate demonstrations are made by the manufacturers that the applicable emission standards would be met and that the cost of abating emissions from an open crankcase would be prohibitive. The Agency seeks comment on this proposed provision and on what criteria the Administrator might apply in

¹⁶ See 42 U.S.C. 7547(a)(3).

determining whether costs are prohibitive.

VI. Provisions of This Rulemaking

In response to the petition submitted by Briggs and Stratton Corporation, EPA has decided to propose revising the CO emission standard for Class I and II nonhandheld small SI engines from 469 g/kW-hr to 519 g/kW-hr. The underlying technical analysis and a description of the data on which it is based is presented in the Regulatory Support Document, a copy of which is in the public docket for this rulemaking.

Given that the Agency had it known that Briggs and Stratton had used an oxygenated test fuel to generate the test data which EPA used to set the Class I and II nonhandheld standard, would have taken fuel effects into account when determining the CO standard, the Agency believes that it is appropriate, now knowing about the fuel differences, to revise the Phase 1 final rule to reflect the fuel effect on CO emissions.

Briggs and Stratton suggested two options that the Agency might take to revise the Phase 1 rule in a way that would address the company's concerns. The first suggested option was for the Agency to permit the use of appropriate oxygenated gasolines for emissions certification testing as a direct alternative to Indolene under the current CO standard. The Agency has decided not to take this approach for several reasons. While the Agency based its nonhandheld Class I and II emission standards on Briggs and Stratton test data, which it now knows was run on oxygenated fuels, the same cannot be said for the data EPA used to set its standards for Classes III, IV, and V engines. The Agency's greatest concern regarding the allowance of oxygenated fuels generally is the effect on the stringency of the emission standards. If the Agency were to allow certification testing on oxygenated fuels but maintain its current standards, it would not be certain of the benefits of HC and NO_x emission reductions described in the final rule when the engines are run on nonoxygenated fuels in the field. In addition, the Agency has concerns about the nationwide availability of oxygenated fuel. While it is required in certain nonattainment areas, those areas of the country that are in attainment may not have reformulated or oxygenated fuels commercially available. Correcting the CO standard is also the simplest and least complicated solution to address the problem presented by Briggs and Stratton's petition in a timely manner, which is critical so that engine manufacturers will be able to certify their model year

1997 production engines. Therefore, the Agency has decided to address the issue of the appropriateness of the nonhandheld CO emission standard by proposing to revise the CO standard for Class I and II engines while retaining the specified certification test fuel.

To determine the amount by which to propose a revision to the standard, EPA analyzed the comparative test data recently supplied by Briggs and Stratton. When Briggs and Stratton submitted the data, the company noted in a cover letter that the use of oxygenated fuels reduced CO emissions by up to 47 g/kW-hr. However, Briggs and Stratton requested in its petition that the Agency revise its CO standard upward by 67 g/kW-hr, which would mean a new standard of 536 g/kW-hr. No additional data was supplied to the Agency to support such an increase. The rationale given by Briggs and Stratton for requesting an additional 20 g/kW-hr is that the test data supplied represents a limited number of engine tests, and does not account for production variability. EPA's response to the petitioner's argument is that the Agency took production variability into account when setting the original 469 g/kW-hr standard for the Phase 1 final rule. Any change to the CO emission standard should thus be based solely on differences in fuel type.

Analysis of Briggs and Stratton data and of EPA test data indicates that indeed there are cases where the effects of fuel differences on the CO standard may be as much as 50 g/kW-hr. Given the limited quantity of data, EPA considered quantifying the difference in fuel types and the resultant change in CO emission standard by comparing the two means from sample data using the two fuel types. As explained in the RSD, statistical tests comparing the means of the two populations (oxygenated fuel and nonoxygenated fuel) indicate an average difference of 30.6 g/kW-hr for Class I engines, and 26.6 g/kW-hr for Class II engines. However, EPA determined that it is most appropriate, and in keeping with its approach for establishing the 469 g/kW-hr standard in the final rule,¹⁷ to adjust the standard to take into account the largest offsets observed in the Briggs and Stratton and EPA data, and to ensure harmonization with CARB. The Agency thus concludes that in order for engine manufacturers to achieve the greatest CO emission reduction with the technology available within the given time limits of the Phase 1 small SI engine regulation that it is appropriate to increase the

nonhandheld CO standard by 50 g/kW-hr to 519 g/kW-hr. In reaching this conclusion, EPA has attempted to determine an appropriate offset attributable to the effect of oxygenated fuel, while preserving to the greatest extent possible the balance made by the final Phase 1 rule of various factors such as technical feasibility, cost, lead time, and harmonization with CARB.

This proposed action will further harmonize the Class I and II CO standard with California's analogous standard, considering CARB's recent action to increase its CO standard to 350 g/bhp-hr (469 g/kW-hr). The Agency considers a nonhandheld CO emission standard of 519 g/kW-hr with the use of a nonoxygenated fuel such as Indolene to be roughly equivalent to CARB's Class I and II CO standard of 350 g/bhp-hr with the use of an oxygenated fuel such as California Phase II.

As indicated in EPA's November 3, 1995, letter to EMA, the Agency already provides a mechanism for those manufacturers who certify in California using oxygenated fuel and wish to use those test results for certification with EPA. Manufacturers may apply to EPA under the alternative test procedures provision contained in the Phase 1 small SI engine final rule (section 90.120(b)). If a manufacturer's submitted data indicates that its test engine would comply with the applicable federal emission standard using federal fuel, EPA would determine that the engine family meets the requirements of Phase 1 and issue a certificate of conformity. EPA has stated¹⁸ that it will work with manufacturers to assist them in making the required technical demonstrations under the alternative certification procedures.

This proposed action would also provide the Administrator with the option of permitting open crankcases on engines used exclusively to power snowthrowers, provided that the affected engine complies with applicable standards and the manufacturer demonstrates that the cost of closing the crankcase is prohibitive.

VII. Environmental Benefit Assessment

Although the change in the nonhandheld CO standard results in a change from the 7% reduction in CO estimated in the final rule to a 2% reduction in the CO inventory, the Agency has concluded that this rule has no effect on the HC + NO_x inventory and minimal effect on the CO inventory in nonattainment areas. The majority of equipment powered by the Class I and

¹⁷ See the Response to Comments document in EPA Air Docket # A-93-25.

¹⁸ Letter from Chester France, EPA to Jed Mandel, EMA, November 3, 1995.

II nonhandheld engines subject to this rule is used during the summer months, when CO nonattainment is generally not a concern. Many nonhandheld engine models are expected to have CO emission levels well below the standard since CO levels are controlled in meeting the HC + NO_x emission standards which are not affected by this action.

The provision to provide the Administrator with the option of permitting open crankcases in engines used exclusively to power snowthrowers will require manufacturers seeking to demonstrate the need for open crankcases to show compliance with applicable standards. The Agency expects, therefore, that the proposed open crankcase option will not affect the emission inventory or the emission reductions to be achieved by the Phase 1 small SI engine final rule.

VIII. Economic Effects

The Agency anticipates that this rule will have minimal, if any, affect on the costs or benefits of the Phase 1 small SI engine final rule. Industry costs are unlikely to change because engine manufacturers will not need to make additional modifications to meet the relaxed CO standard. As there will be no additional cost for industry to pass on to the consumer as a result of this rulemaking, EPA is convinced that consumer cost impacts will remain unchanged. The Agency therefore concludes that the economic effects of this rulemaking are negligible.

IX. Effective Date

EPA is proposing to make these regulations effective upon signature of the final rule because these regulations will not require any lead time for compliance.

X. Public Participation

A. Comments and the Public Docket

The Agency welcomes comments on all aspects of this proposed rulemaking. All comments (preferably in duplicate), with the exception of proprietary information, should be directed to the EPA Air Docket Section, Docket No. A-96-02 (see ADDRESSES). Commenters who wish to submit proprietary information for consideration should clearly separate such information from other comments by:

- labeling proprietary information "Confidential Business Information" and
- sending proprietary information directly to the contact person listed (see FOR FURTHER INFORMATION CONTACT) and not to the public docket.

This will help ensure that proprietary information is not inadvertently placed in the docket. If a commenter wants EPA to use a submission labeled as confidential business information as part of the basis for the final rule, then a nonconfidential version of the document, which summarizes the key data or information, should be sent to the docket.

Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, the submission may be made available to the public without notifying the commenters.

B. Public Hearing

Anyone wishing to present testimony about this proposal at the public hearing, should one be requested, (see DATES) should, if possible, notify the contact person (see FOR FURTHER INFORMATION CONTACT) at least two business days prior to the day of the hearing. The contact person should be given an estimate of the time required for the presentation of testimony and notification of any need for audio/visual equipment. A sign-up sheet will be available at the registration table the morning of the hearing for scheduling those who have not notified the contact earlier. This testimony will be scheduled on a first-come, first-served basis, and will follow the testimony that is arranged in advance.

The Agency recommends that approximately 50 copies of the statement or material to be presented be brought to the hearing for distribution to the audience. In addition, EPA would find it helpful to receive an advance copy of any statement or material to be presented at the hearing at least two business days before the scheduled hearing date. This is to give EPA staff adequate time to review such material before the hearing. Such advance copies should be submitted to the contact person listed.

XI. Administrative Requirements

A. Administrative Designation

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), EPA must determine whether a 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 entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof;

- (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the order.

EPA has 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. Paperwork Reduction Act

This rule does not contain any new information requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., nor does it change the information collection requirements the Office of Management and Budget (OMB) has previously approved. OMB has previously assigned OMB control number 2060-0338 to the requirements associated with the nonroad small SI engine certification information collection request (ICR); this action does not change those requirements in any way.

C. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (signed into law on March 22, 1995) requires that EPA prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year. Section 203 of the Unfunded Mandates Reform Act requires EPA to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, EPA must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. EPA must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless EPA explains why this alternative is not selected or the

selection of this alternative is inconsistent with law.

Because the rule proposed here is expected to result in the expenditure by state, local, and tribal governments or the private sector of less than \$100 million in any one year, EPA has not prepared a budgetary impact statement or specifically addressed selection of the least costly, most cost-effective or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, EPA is not required to develop a plan with regard to small governments.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601) requires EPA to consider potential impacts of proposed regulations on small business. If a preliminary analysis indicates that a proposed regulation would have a significant adverse economic impact on a substantial number of small business entities, a regulatory flexibility analysis must be prepared.

This rule decreases the stringency of the CO exhaust emission standard for Class I and II nonhandheld engines, thereby potentially creating beneficial effects on small businesses by easing one provision required of small engine manufacturers by the Phase 1 small SI engine regulations. As a result, EPA certifies that this rulemaking will not have a significant adverse effect on a substantial number of small entities. Consequently, EPA has not prepared a regulatory flexibility analysis for this rule.

List of Subjects in 40 CFR Part 90

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

Dated: June 26, 1996.
Carol M. Browner,
Administrator.

For the reasons set out in the preamble, part 90 of title 40 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)).

Subpart B—[Amended]

2. Section 90.103 is amended by revising the table in paragraph (a) introductory text to read as follows:

§ 90.103 Exhaust emission standards.
(a) * * *

EXHAUST EMISSION STANDARDS
[Grams per kilowatt-hour]

Engine displacement class	Hydro-carbon plus oxides of nitrogen	Hydro-carbon	Carbon monoxide	Oxides of nitrogen
I	16.1	.....	519	.....
II	13.4	.....	519	.....
III .....	.....	295	805	5.36
IV .....	.....	241	805	5.36
V .....	.....	161	603	5.36

* * * * *

3. Section 90.109 is amended by adding new paragraph (c) to read as follows:

§ 90.109 Requirement of certification—closed crankcase.

* * * * *

(c) Notwithstanding paragraph (a) of this section, the Administrator may exercise the option to permit open crankcases for engines used exclusively to power snowthrowers based upon a manufacturer's demonstration, approved in advance by the Administrator, that all applicable emission standards will be met by the engine and that the cost of closing the crankcase is prohibitive.

[FR Doc. 96-16856 Filed 7-02-96; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95-119; RM-8667]

Radio Broadcasting Services; Dafter, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This document dismisses a petition filed by Dafter Community Broadcasters proposing the allotment of Channel 293A to Dafter, Michigan. See FR 38539, July 27, 1995. Petitioner failed to provide sufficient information to establish community status for Dafter. Therefore, in keeping with Commission policy to refrain from allotting channels to communities lacking community status, we have dismissed the petition for Dafter. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MM Docket No. 95-119, adopted May 8, 1996, and released June 21, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857-3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.