

than 2.0 times the NTE thresholds calculated according to paragraph (a) of this section for all pollutants, except that engines certified to a NO_x FEL at or below 0.50 g/bhp-hr may meet the vehicle-pass criteria for NO_x if measured NO_x emissions from every valid NTE sample are less than either 2.0 times the NTE threshold for NO_x or 2.0 g/bhp-hr, whichever is greater.

[70 FR 34619, June 14, 2005, as amended at 73 FR 13450, Mar. 13, 2008; 75 FR 68460, Nov. 8, 2010]

§ 86.1915 What are the requirements for Phase 1 and Phase 2 testing?

For all selected engine families, you must do the following:

(a) To determine the number of engines you must test from each selected engine family under Phase 1 testing, use the following criteria:

(1) Start by measuring emissions from five engines using the procedures described in § 86.1375. If all five engines comply fully with the vehicle-pass criteria in § 86.1912 for all pollutants, you may stop testing. This completes your testing requirements under this subpart for the applicable calendar year for that engine family.

(2) If one of the engines tested under paragraph (a)(1) of this section fails to comply fully with the vehicle-pass criteria in § 86.1912 for one or more pollutants, test one more engine. If this additional engine complies fully with the vehicle-pass criteria in § 86.1912 for all pollutants, you may stop testing. This completes your testing requirements under this subpart for the applicable calendar year for that engine family.

(3) If your testing results under paragraphs (a)(1) and (2) of this section do not satisfy the criteria for completing your testing requirements under those paragraphs for all pollutants, test four additional engines so you have tested a total of ten engines.

(4) An engine that fails to fully comply with the vehicle-pass criteria in § 86.1912 for any pollutant does not comply with the vehicle-pass criteria in § 86.1912 for the purposes of determining the number of engines to test from each selected engine family under this paragraph.

(b) For situations where a total of ten engines must be tested under para-

graph (a)(3) of this section, the results of Phase 1 testing lead to the following outcomes:

(1) If at least eight of the ten engines comply fully with the vehicle-pass criteria in § 86.1912 for all pollutants, you may stop testing. This completes your testing requirements under this subpart for the applicable calendar year for that engine family.

(2) If six or seven vehicles from the Phase 1 sample of test vehicles comply fully with the vehicle-pass criteria in § 86.1912 for all pollutants, then you must engage in follow-up discussions with us to determine whether any further testing (including Phase 2 testing), data submissions, or other actions may be warranted.

(3) If fewer than six of the ten engines tested under paragraph (a) of this section comply fully with the vehicle-pass criteria in § 86.1912 for all pollutants, we may require you to initiate Phase 2 testing, as described in paragraph (c) of this section.

(4) You may under any circumstances elect to conduct Phase 2 testing following the completion of Phase 1 testing. All the provisions of paragraph (c) of this section apply to this Phase 2 testing.

(c) If you perform Phase 2 testing for any reason, test your engines as follows:

(1) You must test ten additional engines using the test procedures described in § 86.1375, unless we require you to test fewer vehicles.

(2) We may give you any of the following additional directions in selecting and testing engines:

(i) We may require you to select a certain subset of your engine family. This may include, for example, engines within a specific power range, engines used in particular applications, or engines installed in vehicles from a particular manufacturer.

(ii) We may direct you to test engines in a way that simulates the type of driving and ambient conditions associated with high emissions experienced during Phase 1 testing.

(iii) We may direct you to test engines in a specific state or any number of contiguous states.

(iv) We may direct you to select engines from the same sources used for

previous testing, or from different sources.

(v) We may require that you complete your testing and reporting under Phase 2 within a certain period. This period may not be shorter than three months and must allow a reasonable amount of time to identify and test enough vehicles. We would generally expect this testing to be completed within the overall time period specified in § 86.1905(d).

§ 86.1917 How does in-use testing under this subpart relate to the emission-related warranty in Section 207(a)(1) of the Clean Air Act?

(a) An exceedance of the NTE found through the in-use testing program under this subpart is not by itself sufficient to show a breach of warranty under Clean Air Act section 207(a)(1) (42 U.S.C. 7541(a)(1)). A breach of warranty would also require one of the following things:

(1) That, at the time of sale, the engine or vehicle was designed, built, and equipped in a manner that does not conform in all material respects reasonably related to emission controls to the engine as described in the application for certification and covered by the certificate; or

(2) A defect in materials or workmanship of a component causes the vehicle or engine to fail to conform to the applicable regulations for its useful life.

(b) To the extent that in-use NTE testing does not reveal such a material deficiency at the time of sale in the design or manufacture of an engine compared with the certified engine, or a defect in the materials and workmanship of a component or part, test results showing an exceedance of the NTE by itself would not show a breach of the warranty under 42 U.S.C. 7541(a)(1).

§ 86.1920 What in-use testing information must I report to EPA?

(a) Send us electronic reports at *inuse@epa.gov* using an approved information format. If you want to use a different format, send us a written request with justification.

(b) Within 30 days after the end of each calendar quarter, send us reports containing the test data from each engine for which testing was completed

during the calendar quarter. Alternatively, you may separately send us the test data within 30 days after you complete testing for an engine. Once you send us information under this section, you need not send that information again in later reports. Prepare your test reports as follows:

(1) For each engine family, describe how you recruited vehicles. Describe how you used any criteria or thresholds to narrow your search or to screen individual vehicles.

(2) Include a summary of the candidate vehicles you have rejected and the reasons you rejected them, whether you base the rejection on the criteria in § 86.1908(a) or anything else. If you rejected a candidate vehicle due to misfueling, included the results of any fuel sample tests.

(3) For the test vehicle, include the following background information:

(i) The EPA engine-family designation, and the engine's model number, total displacement, and power rating.

(ii) The applicable test phase (Phase 1 or Phase 2).

(iii) The date EPA selected the engine family for testing.

(iv) The vehicle's make and model and the year it was built.

(v) The vehicle identification number and engine serial number.

(vi) The vehicle's type or application (such as delivery, line haul, or dump truck). Also, identify the type of trailer, if applicable.

(vii) The vehicle's maintenance and use history.

(viii) The known status history of the vehicle's OBD system and any actions the owner or operator took to address OBD trouble codes or MIL illumination over the vehicle's lifetime.

(ix) Any OBD codes or MIL illumination that occur after you accept the vehicle for in-use testing under this subpart.

(x) Any steps you take to maintain, adjust, modify, or repair the vehicle or its engine to prepare for or continue testing, including actions to address OBD trouble codes or MIL illumination. Include any steps you took to drain and refill the vehicle's fuel tank(s) to correct misfueling, and the results of any fuel test conducted to identify misfueling.