

small volume equipment models, as defined in this part, for a Class I model in production prior to August 1, 2007, or a Class II model in production prior to the 2001 model year, or a Class III or Class IV model in production prior to the 2002 model year, or a Class V model in production prior to the 2004 model year, may continue to use in that small volume equipment model, and engine manufacturers may continue to supply, engines certified to Phase 1 requirements (or identified and labeled by their manufacturer to be identical to engines previously certified under Phase 1 standards). To be eligible for this provision, the equipment manufacturer must have demonstrated to the satisfaction of the Administrator that no certified Phase 2 engine is available with suitable physical or performance characteristics to power the small volume equipment model. The equipment manufacturer must also certify to the Administrator that the equipment model has not undergone any redesign which could have facilitated conversion of the equipment to accommodate a Phase 2 engine. These provisions do not apply to Class I-A and Class I-B engines.

(iii) An equipment manufacturer which is unable to obtain suitable Phase 2 engines and which can not obtain relief under any other provision of this part, may, prior to the date on which the manufacturer would become in noncompliance with the requirement to use Phase 2 engines, apply to the Administrator to be allowed to continue using Phase 1 engines, through August 1, 2008 for Class I engines, through the 2006 model year for Class II engines, through the 2006 model year for Class III and Class IV engines, and through the 2008 model year for Class V engines, subject to the following criteria (These provisions do not apply to Class I-A and Class I-B engines.):

(A) The inability to obtain Phase 2 engines is despite the manufacturer's best efforts and is the result of an extraordinary action on the part of the engine manufacturer that was outside the control of and could not be reasonably foreseen by the equipment manufacturer; such as canceled production or shipment, last minute certification failure, unforeseen engine cancellation,

plant closing, work stoppage or other such circumstance; and

(B) the inability to market the particular equipment will bring substantial economic hardship to the equipment manufacturer resulting in a major impact on the equipment manufacturer's solvency.

(iv) The written permission from the Administrator to the equipment manufacturer shall serve as permission for the engine manufacturer to provide such Phase 1 engines required by the equipment manufacturers under this paragraph (b)(6) of this section. As Phase 1 engines, these engines are exempt from Production Line Testing requirements under subpart H of this part and in-use testing provisions under subpart M of this part, and are excluded from the certification averaging, banking and trading program of subpart C of this part.

(7) Actions for the purpose of installing or removing altitude kits and performing other changes to compensate for altitude change as described in the application for certification pursuant to § 90.107(d) and approved at the time of certification pursuant to § 90.108(a) are not considered prohibited acts under paragraph (a) of this section.

[60 FR 34598, July 3, 1995, as amended at 62 FR 42644, Aug. 7, 1997; 64 FR 15252, Mar. 30, 1999; 65 FR 24313, Apr. 25, 2000; 73 FR 59182, Oct. 8, 2008]

**§ 90.1004 General enforcement provisions.**

(a) *Information collection provisions.* (1) Every manufacturer of new nonroad engines and other persons subject to the requirements of this part must establish and maintain records, perform tests where such testing is not otherwise reasonably available under this part, make reports and provide information the Administrator may reasonably require to determine whether the manufacturer or other person has acted or is acting in compliance with this part or to otherwise carry out the provisions of this part, and must, upon request of an officer or employee duly designated by the Administrator, permit the officer or employee at reasonable times to have access to and copy such records. The manufacturer shall

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comply in all respects with the requirements of subpart I of this part.

(2) For purposes of enforcement of this part, an officer or employee duly designated by the Administrator, upon presenting appropriate credentials, is authorized:

(i) To enter, at reasonable times, any establishment of the manufacturer, or of any person whom the manufacturer engaged to perform any activity required under paragraph (a)(1) of this section, for the purposes of inspecting or observing any activity conducted pursuant to paragraph (a)(1) of this section; and

(ii) To inspect records, files, papers, processes, controls, and facilities used in performing an activity required by paragraph (a)(1) of this section, by the manufacturer or by a person whom the manufacturer engaged to perform the activity.

(b) *Exemption provision.* The Administrator may exempt a new nonroad engine from § 90.1003 upon such terms and conditions as the Administrator may find necessary for the purpose of export, research, investigations, studies, demonstrations, or training, or for reasons of national security.

(c) *Importation provision.* (1) A new nonroad engine or vehicle offered for importation or imported by a person in violation of § 90.1003 is to be refused admission into the United States, but the Secretary of the Treasury and the Administrator may, by joint regulation, provide for deferring a final determination as to admission and authorizing the delivery of such a nonroad engine offered for import to the owner or consignee thereof upon such terms and conditions (including the furnishing of a bond) as may appear to them appropriate to insure that the nonroad engine will be brought into conformity with the standards, requirements, and limitations applicable to it under this part.

(2) If a nonroad engine is finally refused admission under this paragraph, the Secretary of the Treasury shall cause disposition thereof in accordance with the customs laws unless it is exported, under regulations prescribed by the Secretary, within 90 days of the date of notice of the refusal or addi-

tional time as may be permitted pursuant to the regulations.

(3) Disposition in accordance with the customs laws may not be made in such manner as may result, directly or indirectly, in the sale, to the ultimate purchaser, of a new nonroad engine that fails to comply with applicable standards of the Administrator under this part.

(d) *Export provision.* A new nonroad engine intended solely for export, and so labeled or tagged on the outside of the container and on the engine itself, shall be subject to the provisions of § 90.1003, except that if the country that is to receive the engine has emission standards that differ from the standards prescribed under subpart B of this part, then the engine must comply with the standards of the country that is to receive the engine.

### § 90.1005 Injunction proceedings for prohibited acts.

(a) The district courts of the United States have jurisdiction to restrain violations of § 90.1003.

(b) Actions to restrain such violations must be brought by and in the name of the United States. In an action, subpoenas for witnesses who are required to attend a district court in any district may run into any other district.

### § 90.1006 Penalties.

(a) *Violations.* A violation of the requirements of this subpart is a violation of the applicable provisions of the Act and is subject to the penalty provisions thereunder.

(1) A person who violates § 90.1003(a)(1), (a)(4), or (a)(5), or a manufacturer or dealer who violates § 90.1003(a)(3)(i), is subject to a civil penalty of not more than \$32,500 for each violation.

(2) A person other than a manufacturer or dealer who violates § 90.1003(a)(3)(i) or any person who violates § 90.1003(a)(3)(ii) is subject to a civil penalty of not more than \$2,750 for each violation.

(3) A violation with respect to § 90.1003(a)(1), (a)(3)(i), (a)(4), or (a)(5) constitutes a separate offense with respect to each nonroad engine.