

your corporate name and trademark and the following language, or similar alternate language approved by the Administrator: THIS ENGINE DOES NOT COMPLY WITH FEDERAL NONROAD OR ON-HIGHWAY EMISSION REQUIREMENTS. SALE OR INSTALLATION OF THIS ENGINE FOR ANY PURPOSE OTHER THAN AS A REPLACEMENT ENGINE FOR AN ENGINE MANUFACTURED PRIOR TO JANUARY 1 [INSERT APPROPRIATE YEAR] IS A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY.

(iv) If the engine being replaced was certified to emission standards less stringent than those in effect when you produce the replacement engine, the replacement engine must have a permanent label with your corporate name and trademark and the following language, or similar alternate language approved by the Administrator: THIS ENGINE COMPLIES WITH U.S. EPA NONROAD EMISSION REQUIREMENTS FOR [Insert appropriate year reflecting when the Tier 1 or Tier 2 standards for the replaced engine began to apply] ENGINES UNDER 40 CFR 89.1003(b)(7). SELLING OR INSTALLING THIS ENGINE FOR ANY PURPOSE OTHER THAN TO REPLACE A NONROAD ENGINE BUILT BEFORE JANUARY 1, [Insert appropriate year reflecting when the next tier of emission standards began to apply] MAY BE A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY.

(v) Where the replacement engine is intended to replace an engine that is certified to emission standards that are less stringent than those in effect when the replacement engine is built, the replacement engine shall be identical in all material respects to a certified configuration of the same or later model year as the engine being replaced; and

(vi) Engines sold pursuant to the provisions of this paragraph (b)(7) will neither generate nor use emission credits and will not be part of any accounting under the averaging, banking and trading program.

(vii) In cases where an engine is to be imported for replacement purposes under the provisions of this paragraph (b)(7), 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; and

(viii) The provisions of this section may not be used to circumvent emission standards that apply to new engines under this part.

[59 FR 31335, June 17, 1994, as amended at 61 FR 58106, Nov. 12, 1996; 63 FR 57022, Oct. 23, 1998; 70 FR 40447, July 13, 2005]

§ 89.1004 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 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 § 89.1003 upon such terms and conditions as the Administrator may

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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, vehicle, or equipment offered for importation or imported by a person in violation of § 89.1003 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 additional 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 consumer, 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 § 89.1003, 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.

§ 89.1005 Injunction proceedings for prohibited acts.

(a) The district courts of the United States have jurisdiction to restrain violations of § 89.1003(a).

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(b) Actions to restrain violations of § 89.1003(a) 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.

§ 89.1006 Penalties.

(a) *Violations.* A violation of the requirements of this subpart is a violation of the applicable provisions of the Act, including sections 213(d) and 203, and is subject to the penalty provisions thereunder.

(1) A person who violates § 89.1003(a)(1), (a)(4), or (a)(6), or a manufacturer or dealer who violates § 89.1003(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 § 89.1003(a)(3)(i) or any person who violates § 89.1003(a)(3)(ii) is subject to a civil penalty of not more than \$2,750 for each violation.

(3) A violation with respect to § 89.1003 (a)(1), (a)(3)(i), (a)(4), or (a)(6) constitutes a separate offense with respect to each nonroad engine.

(4) A violation with respect to § 89.1003(a)(3)(ii) constitutes a separate offense with respect to each part or component. Each day of a violation with respect to § 89.1003(a)(5) constitutes a separate offense.

(5) A person who violates § 89.1003(a)(2) or (a)(5) is subject to a civil penalty of not more than \$32,500 per day of violation.

(6) The maximum penalty values listed in this section are shown for calendar year 2004. Maximum penalty limits for later years may be adjusted based on the Consumer Price Index. The specific regulatory provisions for changing the maximum penalties, published in 40 CFR part 19, reference the applicable U.S. Code citation on which the prohibited action is based.

(b) *Civil actions.* The Administrator may commence a civil action to assess and recover any civil penalty under paragraph (a) of this section.

(1) An action under this paragraph may be brought in the district court of the United States for the district in which the defendant resides or has the