

engines that are subject to severe service in seasonal equipment and are likely to run their full useful life hours in less than two years. Such an application must be made prior to certification. Alternatively, manufacturers of handheld engines subject to Phase 2 standards may apply to the Administrator for approval for a warranty period equal to the useful life of the engine or two years, whichever is less, if the equipment in which the engine is placed is equipped with a meter for measuring hours of use. Such an application must be made prior to certification.

(b) The manufacturer of each new nonroad engine must warrant to the ultimate purchaser and each subsequent purchaser that the engine is designed, built and equipped so as to conform at the time of sale with applicable regulations under section 213 of the Act, and the engine is free from defects in materials and workmanship which cause such engine to fail to conform with applicable regulations for its warranty period.

(c) In the case of a nonroad engine part, the manufacturer or rebuilder of the part may certify according to § 85.2112 of this chapter that use of the part will not result in a failure of the engine to comply with emission standards promulgated in this part.

(d) For the purposes of this section, the owner of any nonroad engine warranted under this part is responsible for the proper maintenance of the engine as stated in the manufacturer's written instructions. Proper maintenance generally includes replacement and service, at the owner's expense at a service establishment or facility of the owner's choosing, such items as spark plugs, points, condensers, and any other part, item, or device related to emission control (but not designed for emission control) under the terms of the last sentence of section 207(a)(3) of the Act, unless such part, item, or device is covered by any warranty not mandated by this Act.

[60 FR 34598, July 3, 1995, as amended at 64 FR 15253, Mar. 30, 1999; 65 FR 24314, Apr. 25, 2000]

§ 90.1104 Furnishing of maintenance instructions to ultimate purchaser.

(a) The manufacturer must furnish or cause to be furnished to the ultimate purchaser of each new nonroad engine written instructions for the maintenance needed to assure proper functioning of the emission control system.

(b) The manufacturer must provide in boldface type on the first page of the written maintenance instructions notice that maintenance, replacement, or repair of the emission control devices and systems may be performed by any nonroad engine repair establishment or individual.

(c) The instructions under paragraph (b) of this section will not include any condition on the ultimate purchaser's using, in connection with such engine, any component or service (other than a component or service provided without charge under the terms of the purchase agreement) which is identified by brand, trade, or corporate name. Such instructions also will not directly or indirectly distinguish between service performed by the franchised dealers of such manufacturer or any other service establishments with which such manufacturer has a commercial relationship and service performed by independent nonroad engine repair facilities with which such manufacturer has no commercial relationship.

(d) The prohibition of paragraph (c) of this section may be waived by the Administrator if:

(1) The manufacturer satisfies the Administrator that the engine will function properly only if the component or service so identified is used in connection with such engine; and

(2) The Administrator finds that such a waiver is in the public interest.

(e) If a manufacturer includes in an advertisement a statement respecting the cost or value of emission control devices or systems, the manufacturer shall set forth in the statement the cost or value attributed to these devices or systems by the Secretary of Labor (through the Bureau of Labor Statistics). The Secretary of Labor, and his or her representatives, has the same access for this purpose to the books, documents, papers, and records of a manufacturer as the Comptroller General has to those of a recipient of

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assistance for purposes of section 311 of the Act.

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Subpart M—Voluntary In-Use Testing

SOURCE: 64 FR 15254, Mar. 30, 1999, unless otherwise noted.

§ 90.1201 Applicability.

The provisions of this subpart from § 90.1201 through § 90.1249 are applicable to all handheld and nonhandheld Phase 2 engines subject to the provisions of subpart A of this part.

[64 FR 15254, Mar. 30, 1999, as amended at 65 FR 24314, Apr. 25, 2000]

§ 90.1202 Definitions.

For the purposes of this subpart, except as otherwise provided, the definitions in subparts A and C of this part apply to this subpart.

§ 90.1203 Voluntary Manufacturer In-Use Testing Program.

(a) Manufacturers may elect to participate in the voluntary in-use testing program by notifying the Administrator in writing of their intent to conduct emissions testing on in-use engines prior to the beginning of each model year. The notification must include a list of engine families the manufacturer has selected to include in the testing program.

(b) Each engine family included in the voluntary in-use testing program is exempted from the Production Line Testing requirements according to § 90.701(c) for two model years, the current model year and the subsequent model year. Manufacturers may only include up to twenty percent of their eligible engine families in this in-use testing program each model year.

(c) The manufacturer must randomly select or procure a minimum of three engines, from each family included in the voluntary program, for emissions testing. These three engines may be selected or procured from:

- (1) Existing consumer or independently owned fleets,
- (2) Existing manufacturer owned fleets, or

(3) The production line and placed into either manufacturer or consumer owned fleets. Although a minimum of three engines must be emissions tested from each engine family in this testing program, a manufacturer may elect to emissions test more than three engines per family.

(d) The manufacturer or the manufacturer's designee must:

(1) Age the selected engines in equipment representing the top 50 percent, by production, of available equipment for the engine family.

(2) Age the selected engines to at least 75 percent of each engines' useful life as determined pursuant to § 90.105.

(3) Age the engine/equipment combination in actual field conditions encountered with typical use of the equipment as described in the owner's manual or other literature sold with the equipment or engine.

(e) Documents obtained in the procurement or aging process must be maintained as required in § 90.121.

(f) The manufacturer must complete testing within three calendar years from the time they notified the Administrator of their intent to participate in the voluntary in-use testing program, unless otherwise approved by the Administrator; the Administrator will give such approval upon acceptance of documentation demonstrating that appropriate in-use testing will take a longer period of time.

§ 90.1204 Maintenance, aging and testing of engines.

(a) Prior to aging the engines and after appropriate stabilization, manufacturers may optionally conduct emissions testing on the engines, according to the test procedures described in subpart E of this part. These tests to serve as baseline references.

(b) Manufacturers must obtain information regarding the accumulated usage, maintenance, operating conditions, and storage of the test engines.

(1) The manufacturer may take reasonable measures to assure that the engines and equipment were properly used and maintained during the field aging process, but additional maintenance to that indicated in the owners manual or other literature sold with the equipment or engine is prohibited.