

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 86 and 89**

[FRL-5645-4]

RIN 2060-AG78

**Control of Air Pollution; Amendments to Emission Requirements Applicable to New Nonroad Compression-Ignition Engines at or Above 37 Kilowatts; Provisions for Replacement Compression-Ignition Engines and the Use of On-Highway Compression-Ignition Engines in Nonroad Vehicles****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

**SUMMARY:** This rulemaking amends the regulations applicable to compression-ignition nonroad engines at or above 37 kilowatts (kW) to address two disruptive situations that have arisen regarding the implementation of regulations applicable to these nonroad engines. No air quality impact is expected from these amendments.

These amendments will allow nonroad vehicle manufacturers to use certified on-highway engines in nonroad vehicles that are constructed from on-highway vehicles or that must use public roads between job sites. These amendments also will allow engine manufacturers to provide uncertified replacement engines to repower pre-regulation nonroad equipment when that equipment experiences major engine failure.

**DATES:** This final rule is effective January 13, 1997 unless adverse or critical comments are received by December 12, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

**ADDRESSES:** Written comments should be addressed to: EPA Air Docket (LE-131), Attention: Docket Number A-96-37, room M-1500, 401 M Street, SW., Washington, DC 20460 (telephone 202-260-7548, fax 202-260-4400). Please contact the individual listed below before submitting comments.

Materials relevant to this rulemaking are contained in the docket listed above and may be reviewed at that location from 8:00 a.m. until 5:30 p.m. Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged by EPA for photocopying.

**FOR FURTHER INFORMATION CONTACT:** John Guy, Office of Mobile Sources, Engine Programs and Compliance Division (6403J), 401 M Street SW., Washington, DC 20460, 202-233-9276.

**SUPPLEMENTARY INFORMATION:****I. Regulated Entities**

Entities potentially regulated by this action are those which manufacture and use compression ignition engines of 37 kW or greater. Regulated categories and entities include:

Category	Examples of regulated entities
Industry ....	Manufacturers and users of compression ignition engines of 37 kW or greater.

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 product is regulated by this action, you should carefully examine the applicability criteria in § 89.1 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular product, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

**II. Obtaining Copies of the Regulatory Language***Electronic Copies of Rulemaking Documents*

Electronic copies of the preamble and the regulatory text of this rulemaking are available via the Internet on the Office of Mobile Sources (OMS) Home Page (<http://www.epa.gov/OMSWWW/>). Users can find Nonroad Engines and Vehicles information and documents through the following path once they have accessed the OMS Home Page: "Nonroad Engines and Vehicles," "Large Engines". Electronic copies of the preamble and the regulatory text of this rulemaking are also available on the Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network Bulletin Board System (TTN BBS). Users are able to access and download TTN BBS files on their first call. After logging onto TTN BBS, to navigate through the BBS to the files of interest, the user must enter the appropriate command at each of a series of menus. The steps required to access information on this rulemaking are listed below. The service is free, except for the cost of the phone call.

TTN BBS: 919-541-5742 (1,200-14,400 bps, no parity, eight data bits, one stop bit). Voice help: 919-541-5384  
Internet address: TELNET

ttnbbs.rtpnc.epa.gov Off-line: Mondays from 8:00-12:00 Noon ET.

1. Technology Transfer Network Top Menu: GATEWAY TO TTN TECHNICAL AREAS (Bulletin Boards)
2. TTN TECHNICAL INFORMATION AREAS: OMS—Mobile Sources Information
3. OMS BBS===MAIN MENU FILE TRANSFERS: Rulemaking & Reporting
4. RULEMAKING PACKAGES: Nonroad
5. Nonroad Rulemaking Area: File Area #2 . . . Nonroad Engines
6. Nonroad engines

At this stage, the system will list all available nonroad engine files. To download a file, select a transfer protocol which will match the terminal software on your computer, then set your own software to receive the file using that same protocol.

If unfamiliar with handling compressed (i.e., ZIP'd) files, go to the TTN topmenu, 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 TTN BBS with the <G>oodbye command.

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**IV. Statutory Authority and Background***A. Statutory Authority*

Authority for the actions in this notice is granted to EPA by sections 202, 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301 of the Clean Air Act as amended (42 U.S.C. 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a)).

## B. Background

EPA promulgated final regulations applicable to nonroad compression-ignition engines at or above 37 kilowatts (kW) (large CI engines) on June 17, 1994 (59 FR 31306). These regulations are being phased in based on engine power. New engines greater than or equal to 130 kW and less than or equal to 560 kW were subject to the requirements beginning on January 1, 1996. The other implementation dates are January 1, 1997 for new engines greater than or equal to 75 kW and less than 130 kW; January 1, 1998 for new engines greater than or equal to 37 kW and less than 75 kW; and January 1, 2000 for new engines greater than 560 kW.

The rule, at 40 CFR 89.1003(a)(1)(i), prohibits nonroad engine manufacturers from introducing into commerce any nonroad engine to which emission requirements are applicable unless the engine is covered by a certificate of conformity issued by EPA under the regulations for nonroad engines. The rule also prohibits vehicle or equipment manufacturers from introducing into commerce any nonroad vehicle or equipment unless the engine in the vehicle or equipment is certified to the applicable nonroad emission requirements.<sup>1</sup> (40 CFR 89.1003(a)(6) and (b)(4)).

Since the first implementation date, two unintended side effects of the rule's prohibitions have become evident which pose hardships for vehicle and/or engine manufacturers. The first concerns some nonroad vehicle manufacturers that have indicated a need to use certified on-highway engines in nonroad vehicles. This includes those vehicles that must use public roads between job sites and nonroad vehicles built from on-highway trucks that can not be obtained with certified nonroad engines. The second side effect involves the inability of engine manufacturers to provide replacement engines to repower pre-regulation nonroad equipment when that equipment experiences major engine failure. The amendments in this package will alleviate both problems.

## V. Use of On-highway Engines in Nonroad Vehicles

### A. Discussion

As the phase-in date for each category of large CI engines passes, the existing regulations take effect to prohibit engine

manufacturers from introducing into commerce uncertified nonroad large CI engines of that category. The regulations also prohibit nonroad vehicle manufacturers from installing engines to which regulations are applicable in their vehicles unless the engines have been certified by EPA to meet the nonroad emission standards. The rationale for the prohibition applicable to vehicle manufacturers is given in the preamble to the final rule:

Without a requirement that certified engines be used, nonroad vehicle and equipment manufacturers would be free to use uncertified engines thus undermining the environmental and public health benefits of the nonroad \* \* \* engine \* \* \* program. 59 FR 31324.

Several manufacturers of mobile construction equipment, such as mobile excavators and cranes, have written EPA individually for permission to use certified on-highway engines to propel vehicles that are, by definition, nonroad vehicles but nevertheless must travel significant mileage on public roads between job sites. One applicant indicated that some purchasers of its equipment drive as much as 30,000 miles per year. Based on the submittals of these manufacturers, these vehicles benefit from certain performance and/or safety features, notably engine braking devices, which are available on on-highway engines, but are not typically available on non-road engines.

Another firm, which converts on-highway trucks into dedicated nonroad agricultural chemical applicators has asked for relief from the requirement to install certified non-road engines so that it does not have to remove and dispose of the certified on-highway engines that come with the base trucks it purchases and then replace them with certified nonroad engines.

In separate letters to each applicant, EPA's Office of Mobile Sources and Office of Enforcement and Compliance Assurance stated that EPA would exercise enforcement discretion and granted permission to use on-highway engines through December 31, 1997 subject to certain specific conditions. EPA is incorporating those conditions in this rulemaking. EPA's permission letters indicated EPA's intention to amend the rules and explained that:

\* \* \* your company, although not using a certified nonroad engine as required, would still be using a certified engine, albeit a certified on-highway engine. We do not believe that the environmental and public health benefits of the nonroad engine program would be undermined by your use of certified on-highway engines which require greater technological innovation to meet applicable standards.

The incoming letters and EPA's responses are available in the docket.

The Agency believes that nonroad vehicles should be equipped with nonroad engines but believes flexibility is appropriate for vehicles that: (1) must frequently operate on-highway in cases where suitable non-road engines are not available; or (2) are derived from on-highway vehicles which are not available with suitable nonroad engines. Therefore, we are amending the rule to permit the use of on-highway engines in cases like those above, provided that certified nonroad engines with appropriate performance or safety characteristics are not available or are not available in the base on-highway vehicle (for vehicle conversions).

In the Notice of Proposed Rulemaking for the large CI rule (58 FR 28809, May 17, 1993), EPA proposed that engine manufacturers be allowed to use the transient on-highway test as an alternative test procedure to certify nonroad engines. This would have allowed certified on-highway engines to also obtain nonroad certification and would effectively have eliminated the problems faced by the specialty vehicle manufacturers described above. However, comments and data received from industry during the comment period indicated that the ability of the on-highway test cycle to predict nonroad NO<sub>x</sub> emissions was uncertain. Therefore, the provision was not finalized.

Today's action does not attempt to make assertions about the ability of the on-highway engine test procedure to yield comparable NO<sub>x</sub> results to the nonroad test procedure. Nor does it provide any sort of automatic nonroad certification for on-highway engines. What it does do is establish provisions to use on-highway engines in situations where nonroad vehicles are either derived from motor vehicles or are operated like motor vehicles and therefore require features associated with motor vehicle engines. Many of the vehicles, such as cranes and excavators, covered under the permission letters mentioned above are designed to be driven on public roads but are considered nonroad vehicles because their size or weight exceeds the thresholds that EPA uses to separate motor vehicles from nonroad vehicles. They often have smaller "sibling" vehicles that fit within EPA's motor vehicle criteria and are *required* to use motor vehicle engines. Because of the way these nonroad vehicles are operated, it seems appropriate that they be allowed to have engines that were tested on the on-highway cycle and meet the on-highway standards. Many

<sup>1</sup> The regulations also prohibit, in the case of any person, the importation of engines after the applicable implementation date for the engine, or vehicles or equipment containing such engine, unless the engine is covered by a certificate of conformity. 40 CFR 89.1003(a)(1)(ii).

of these vehicles are equipped with two engines, one for propulsion around and between job sites and one to power the craning or excavating features of the vehicle. The propulsion engine is generally shut off once the vehicle is positioned at the job site. In such vehicles, it is only the propulsion engine which would be permitted to be an on-highway engine.

EPA does not believe that allowing these vehicles to use certified on-highway engines will have a detrimental effect on emissions. Although EPA is not asserting that engines tested using the on-highway test would meet the same level of emissions if tested using the nonroad test, EPA believes that, given the current standards for on-highway heavy duty engines which require substantially greater technological innovation than current nonroad standards, and given the general uses of the engines, discussed above, emissions of such engines are unlikely to be higher for such equipment in-use than they would be if certified nonroad engines were used.

#### B. Regulatory Approach

The Agency is implementing the desired changes by amending the existing Prohibited Acts section at 40 CFR 89.1003. The amendments alter the strict language which prohibits the use of engines other than certified nonroad engines in nonroad vehicles to permit the use of certified on-highway engines under the circumstances outlined above. Although EPA believes that nonroad equipment manufacturers are generally required to use engines certified to nonroad standards pursuant to Section 213 of the Act, EPA believes that the Act does give EPA the flexibility to permit nonroad equipment manufacturers to use certified on-highway engines in this instance.

To facilitate the conversion of on-highway vehicles to nonroad vehicles having nonroad engines, we are providing that nonroad engines may be installed in on-highway vehicles where the original vehicle manufacturer obtains a written statement from a secondary manufacturer that such vehicles will be converted to nonroad vehicles before title is transferred to an ultimate purchaser. We are also providing that on-highway engines may be used in nonroad vehicles in the event that a state requires their use under a waiver granted by EPA pursuant to section 209(e) of the Clean Air Act.

#### VI. Use of Uncertified Engines for Replacement of Failed Engines in Older Equipment

##### A. Discussion

As indicated above, the Large CI rule prohibits the introduction into commerce of any new nonroad engines subject to these regulations unless the engines are certified by EPA. According to a letter received from the Engine Manufacturers Association, this prohibition poses a hardship to engine manufacturers and their customers when equipment produced before the applicable effective date of the Large CI rule, and therefore equipped with uncertified engines, experiences catastrophic engine failures.<sup>2</sup> In such cases, particularly for newer pieces of equipment still under warranty, engine manufacturers desire to be able to provide an entire new engine. However, certified engines that will fit are often not available for reasons discussed below.

Under current regulations, an equipment owner who experiences a major engine failure with an uncertified engine is limited to the following options. It can:

(1) Obtain a new, uncertified engine from a manufacturer's or distributor's inventory. Regulations at 40 CFR 89.1003(b)(4) provide that:

Nonroad vehicle and engine manufacturers may continue to use noncertified nonroad engines built prior to the effective date until noncertified engine inventories are depleted; however, stockpiling of noncertified nonroad engines will be considered a violation of this section.

EPA does not regard engines inventoried beyond the end of a model year for reasonable anticipated warranty needs to be "stockpiled". However, because of the manufacturers' understandable desire to avoid inventory costs, this option would not likely be able to supply significant numbers of replacement engines. Manufacturers have indicated to EPA that their supplies of pre-regulation engines to which the January 1, 1996 phase-in date is applicable, are virtually all gone.

(2) Obtain a used or remanufactured engine.

There are numerous entities engaged in remanufacturing nonroad engines in the U.S. The larger remanufacturers have distributors located around the country and have told EPA that they can sometimes provide next day service of certain of the more common nonroad engines. EPA has no restrictions on the

installation of used or remanufactured engines in equipment that predates the relevant effective date of the Large CI rule.

(3) Repair the individual engine using a "short block."

In this case, a new cylinder block with pistons, connecting rods, crankshaft and timing gear (a "short block") serves as a repair part. EPA has a long standing policy, well known to industry, that a short block is not a new engine and will not result in a new engine when combined with the used components from the original engine.<sup>3</sup>

(4) Replace with a new, certified engine.

In this case, a new certified engine is installed in place of the uncertified engine. This is the most desirable option from the Agency's point of view, however in many cases certified engines will not fit in equipment that may have been designed around uncertified engines. Many engines certified to meet the nonroad standards are equipped with additional or different components which impact the external dimensions of or connections to the engines and therefore limit their abilities to fit in engine compartments of older equipment.

From the manufacturers' point of view, all of the current options described above have limitations. The manufacturers point to a long standing industry practice of being able to provide complete, new replacement engines expeditiously when catastrophic engine failures occur, particularly when those failures affect equipment in the first few years of use and even more particularly when it may still be under warranty. Many of these engines are used in highly specialized agricultural or construction equipment. Timely repairs can be crucial when the broken engine is in an agricultural combine and crops are waiting to be harvested. Because of the diversity of nonroad products using large CI engines, replacement or rental nonroad equipment is generally not as readily available as it is with on-highway equipment.

As manufacturers have exhausted their supply of preregulation engines they have begun to furnish short blocks for engine repairs. They have indicated to EPA that the need to repair an engine using a short block leads to delays and extra costs that would not occur if the old, broken engine could simply be exchanged for a new uncertified engine. They argue that the short block option

<sup>2</sup> Letter from EMA to Mr. Chester J. France of EPA dated February 13, 1996. Available in the docket.

<sup>3</sup> Letters of December 11, 1989 and April 6, 1990 from Charles N. Freed, EPA to Mitsubishi Motors America, Inc. Copies located in docket.

requires greater skills and facilities and more time to complete than an engine swap and produces an engine that is not a factory-tested and adjusted unit. From an air quality standpoint, they argue that an entire new uncertified engine might be better than an old engine repaired with a new short block or replaced with a remanufactured engine.

Manufacturers have indicated that the number of nonroad engines that would be subject to replacement each year is far less than one percent of annual production. Manufacturers are often still producing uncertified complete engines for export, are willing to produce small quantities for replacement purposes, and desire to be able to sell them (or provide them under warranty) for replacement purposes. We note that the California Air Resources Board, in its regulation of large nonroad diesel engines permits the introduction into commerce of uncertified engines for replacement purposes up through January 1, 2000.

To address industry's concerns and minimize disruption to equipment operators accustomed to replacement engines, the Agency is amending the regulations to permit the sale of uncertified replacement engines in those cases where a new, certified engine is not available with appropriate physical or performance characteristics to repower the vehicle. The Agency believes that if a certified engine is available with sufficient torque and horsepower that will fit in the vehicle, then the certified engine should be used.

The amended regulations will permit a nonroad engine in a piece of equipment that predates the applicable implementation date of the Large CI rule to be replaced with a new, uncertified engine.

Given the small percentage of uncertified engines that will likely require replacement, the fact that some of those will get replaced with certified engines and the issue that a new replacement engine is likely to be at least as clean as a remanufactured engine or an engine repaired with a short block as currently allowed, we do not believe that permitting the use of uncertified replacement engines will pose an environmental threat or reduce the environmental benefit of the Large CI rule.

#### *B. Regulatory Approach*

As with the use of on-highway engines in nonroad vehicles, the Agency is implementing this provision through amendments to the Prohibited Acts section at 40 CFR 89.1003. As suggested by the Engine Manufacturers

Association, EPA is requiring that any uncertified large C.I. engine produced for replacement purposes be clearly labeled as such and that such label include a warning that any use of the engine in a motor vehicle or post-regulation nonroad vehicle constitutes a violation of the Act subject to civil penalty. As further suggested by EMA, EPA is requiring that the manufacturer retain documentation that it took a failed engine from the customer in exchange for each uncertified replacement engine that was sold.

#### *VII. Final Action*

EPA is publishing this rule without prior proposal because EPA views these amendments as noncontroversial and anticipates no adverse comments. However, in the event that adverse or critical comments are filed, EPA has prepared a Notice of Proposed Rulemaking (NPRM) proposing the same amendments. This NPRM is contained in a separate document in this Federal Register publication. The direct final action will be effective January 13, 1997 unless adverse or critical comments are received by December 12, 1996. If EPA receives adverse or critical comments on either the revisions discussed in Section V or those discussed in Section VI, the revisions described in that section will be withdrawn. If adverse or critical comments are received on the revisions described in both sections, then both sections will be withdrawn before the effective date. In case of the withdrawal of all or part of this action, the withdrawal will be announced by a subsequent Federal Register document. All public comments will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not implement a second comment period on this action. Any parties interested in commenting on this rule should do so at this time. If no adverse comments are received, the public is advised that the rule will be effective January 13, 1997.

#### *VIII. Cost Effectiveness*

This rulemaking alters an existing provision by allowing nonroad vehicle manufacturers to have greater flexibility in their choice of engines under certain circumstances. It also permits nonroad engine manufacturers to sell engines that the original rule would not permit. Therefore, because this rulemaking alters an existing provision, and that alteration provides regulatory relief, there are no additional costs to original equipment manufacturers associated with this specific final action.

The costs and emission reductions associated with the Large CI rule were

developed for the June 17, 1994 final rulemaking. We do not believe the change being implemented today affects the costs and emission reductions published as part of that rulemaking.

#### *IX. Administrative Requirements*

##### *A. Administrative Designation*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the 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 entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been 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. Reporting and Recordkeeping Requirements*

This proposed rulemaking does not change the information collection requirements submitted to and approved by OMB in association with the Large CI final rulemaking (59 FR 31306, June 17, 1994).

##### *C. Impact on Small Entities*

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. This rule will not have a significant adverse economic impact on a substantial number of small businesses. This rulemaking will provide regulatory relief to both large and small volume engine and equipment manufacturers by permitting greater flexibility in engine choices in vehicles. It will not have a substantial impact on such entities. The provisions in this rulemaking will not have a significant impact on businesses that manufacture, rebuild, distribute, or sell

automotive parts, nor those involved in automotive service and repair, as the revisions simply permit a long-standing business practice to continue.

*D. Submission to Congress and the General Accounting Office*

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

*E. Unfunded Mandates Act*

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, or \$100 million or more. Under Section 205, EPA must select the most cost effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the action proposed today does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

List of Subjects

*40 CFR Part 86*

Environmental protection, Administrative practice and procedure, Confidential business information, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

*40 CFR Part 89*

Environmental protection, Administrative practice and procedure, Confidential business information, Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

Dated: October 28, 1996.

Carol M. Browner,  
*Administrator.*

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations, is amended as set forth below.

**PART 86—CONTROL OF AIR POLLUTION FROM NEW AND IN-USE MOTOR VEHICLES AND NEW AND IN-USE MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES**

1. The authority citation for part 86 continues to read as follows:

Authority: Secs. 202, 203, 205, 206, 207, 208, 215, 216, 217, and 301(a), Clean Air Act, as amended (42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, 7552, and 7601(a)).

2. Section 86.090-5 is amended by adding paragraph (a)(3) to read as follows:

**§ 86.090-5 General standards; increase in emissions; unsafe conditions.**

(a) \* \* \*

(3) Notwithstanding paragraphs (a) (1) and (2) of this section, a light or heavy duty motor vehicle equipped with an engine certified to the nonroad provision of 40 CFR part 89 may be sold, offered for sale or otherwise introduced into commerce by a motor vehicle manufacturer to a secondary manufacturer if the motor vehicle manufacturer obtains written assurance from the secondary manufacturer that such vehicle will be converted to a nonroad vehicle or to a piece of nonroad equipment, as defined in 40 CFR part 89, before title is transferred to an ultimate purchaser. Failure of the secondary manufacturer to convert such vehicles to nonroad vehicles or equipment prior to transfer to an ultimate purchaser shall be considered a violation of section 203(a) (1) and (3) of the Clean Air Act.

\* \* \* \* \*

**PART 89—CONTROL OF EMISSIONS FROM NEW AND IN-USE NONROAD ENGINES**

1. The authority citation for part 89 continues to read as follows:

Authority: Sections 202, 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a)).

2. Section 89.1003 is amended by revising paragraphs (a)(6) and (b)(4) and adding paragraphs (b)(5), (b)(6), and (b)(7) to read as follows:

**§ 89.1003 Prohibited acts.**

(a) \* \* \*

(6) For a manufacturer of nonroad vehicles or equipment to distribute in commerce, sell, offer for sale, or introduce into commerce a nonroad vehicle or piece of equipment, manufactured on or after the implementation date applicable to engines in such vehicle or equipment under § 89.102-96(a), which contains an engine not covered by a certificate of conformity.

(b) \* \* \*

(4) Certified nonroad engines shall be used in all vehicles and equipment manufactured on or after the applicable dates in § 89.102-96(a) that are self-propelled, portable, transportable, or are intended to be propelled while performing their function unless the manufacturer of the vehicle or equipment can prove that the vehicle or equipment will be used in a manner consistent with paragraph (2) of the definition of nonroad engine in § 89.2. Nonroad vehicle and equipment manufacturers may continue to use noncertified nonroad engines built prior to the effective date until noncertified engine inventories are depleted; however, stockpiling of noncertified nonroad engines will be considered a violation of this section.

(5) A manufacturer of nonroad vehicles may install an engine certified to the motor vehicle requirements of 40 CFR part 86 in a nonroad vehicle or equipment where:

(i) The subject nonroad vehicle or equipment is designed for travel on public streets and highways to get from one job site to another; and

(ii) The engine serves to propel the vehicle or equipment when it is operated on public roads; and

(iii) There is no adjustment outside of the manufacturer's specifications or removal or rendering inoperative of devices or elements of design installed on or in the engine by the original engine manufacturer for purposes of emission control or any other action that may be considered tampering under section 203 of the Clean Air Act or paragraph (a)(3) of this section; and

(iv) A certified nonroad engine is not available with appropriate physical or performance characteristics; or

(v) A state requires the use of an on-highway engine pursuant to a waiver granted by EPA under section 209(e) of the Clean Air Act.

(6) A manufacturer that produces nonroad vehicles or equipment by performing modifications to complete or incomplete motor vehicles may retain the motor vehicle engine in such vehicle or equipment provided that:

(i) The engine is certified to the motor vehicle requirements of 40 CFR part 86; and

(ii) The on-highway vehicle is not available from its manufacturer with a certified nonroad engine having appropriate performance characteristics; and

(iii) There is no adjustment outside of the manufacturer's specifications or removal or rendering inoperative of devices or elements of design installed on or in the engine or vehicle by the original engine or vehicle manufacturer for purposes of emission control, or any other action that may be considered tampering under section 203 of the Clean Air Act or paragraph (a)(3) of this section.

(7) A new nonroad engine, intended solely to replace an engine in a piece of nonroad equipment manufactured prior to the applicable implementation date in § 89.102-96(a), shall not be subject to the prohibitions of paragraph (a)(1) of this section or the requirements of § 89.105-96 and paragraph (b)(4) of this section provided that:

(i) The engine manufacturer has ascertained that no engine produced by itself or the manufacturer of the engine that is being replaced, if different, and certified to the requirements of this subpart, is available with the appropriate physical or performance characteristics to repower the equipment; and

(ii) The engine manufacturer or its agent takes ownership and possession of

the old engine in partial exchange for the replacement engine; and

(iii) The replacement engine is clearly labeled with 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 IN A NONROAD VEHICLE OR PIECE OF NONROAD EQUIPMENT BUILT BEFORE JANUARY 1, [INSERT APPROPRIATE YEAR] IS A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY.

[FR Doc. 96-28545 Filed 11-8-96; 8:45 am]

BILLING CODE: 6560-50-P