

(k) *Question 11:* May I submit my own statement to the Commission responding to the company's arguments?

Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.

(l) *Question 12:* If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?

(1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.

(2) The company is not responsible for the contents of your proposal or supporting statement.

(m) *Question 13:* What can I do if the company includes in its proxy statement reasons why it believes shareholders should not vote in favor of my proposal, and I disagree with some of its statements?

(1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.

(2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, § 240.142-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

(3) We require the company to send you a copy of its statements opposing your proposal before it mails its proxy materials, so that you may bring to our attention any materially false or

misleading statements, under the following timeframes:

(i) If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or

(ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under § 240.14a-6.

Dated: May 21, 1998.

By the Commission.

Margaret McFarland,

Deputy Secretary.

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

[T.D. 98-50]

RIN 1515-AC28

Emissions Standards for Imported Nonroad Engines

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations, in conformance with regulations of the U.S. Environmental Protection Agency (EPA), in order to include marine spark-ignition engines among those imported nonroad engines that are subject to compliance with applicable EPA emissions standards required by law. In addition, the Customs Regulations in this regard are further amended by eliminating the unnecessary, extensive replication of the particular admission requirements for subject nonroad engines that are already contained in the EPA regulations.

EFFECTIVE DATE: May 28, 1998.

FOR FURTHER INFORMATION CONTACT: Brad Lund, Office of Field Operations, (202-927-0192).

SUPPLEMENTARY INFORMATION:

Background

The Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*), which has long authorized the Environmental

Protection Agency (EPA) to regulate on-highway motor vehicle and engine emissions, was amended in 1990 to extend EPA's regulatory authority to include as well nonroad engines and related vehicles and equipment (see 42 U.S.C. 7521-7525, 7541-7543, 7547, 7549, 7550, 7601(a)).

In brief, EPA was given authority, *inter alia*, to regulate those classes or categories of new nonroad engines and associated vehicles and equipment that contribute to air pollution, if such nonroad emissions were determined to be significant.

To this end, the EPA issued regulations in 40 CFR parts 89 and 90 that established emissions standards for new nonroad compression-ignition engines at or above 50 horsepower (37 kilowatts) as well as new nonroad spark-ignition engines at or below 25 horsepower (19 kilowatts) (see 59 FR 31306 (June 17, 1994) and 60 FR 34582 (July 3, 1995), respectively, for the background and development of these EPA regulations).

By a final rule document published in the **Federal Register** on August 27, 1996 (61 FR 43960), Customs amended its regulations to add a new § 12.74 (19 CFR 12.74) that conformed to the regulations adopted by the EPA in order to ensure the compliance of the aforementioned imported nonroad engines with applicable EPA emissions standards required by law.

The EPA has now issued regulations in 40 CFR part 91, establishing emissions standards as well for new marine spark-ignition engines (see 61 FR 52088 (October 4, 1996) for the background and development of the EPA regulations).

Accordingly, § 12.74 is hereby amended to include marine spark-ignition engines among those imported nonroad engines that are subject to applicable EPA emissions standards. Furthermore, Customs has determined to abbreviate significantly § 12.74 by simply referencing the EPA regulations concerned, and eliminating the unnecessary, extensive replication of the particular admission requirements for subject nonroad engines that are already contained in the EPA regulations.

Inapplicability of Public Notice and Comment and Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12866

Inasmuch as these amendments merely conform the Customs Regulations to existing law and regulation as noted above, pursuant to 5 U.S.C. 553(b)(B), notice and public

procedure thereon are unnecessary and pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required. Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Nor do these amendments meet the criteria for a "significant regulatory action" under E.O. 12866.

List of Subjects in 19 CFR Part 12

Customs duties and inspection, Entry of merchandise, Imports, Prohibited merchandise, Restricted merchandise, Reporting and recordkeeping requirements, Vehicles.

Amendments to the Regulations

Part 12, Customs Regulations (19 CFR part 12), is amended as set forth below.

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for part 12, and the specific authority citation for § 12.74, continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *
Sections 12.73 and 12.74 also issued under 19 U.S.C. 1484, 42 U.S.C. 7522, 7601;

* * * * *

2. Section 12.74 is revised to read as follows:

§ 12.74 Nonroad engine compliance with Federal antipollution emission requirements.

(a) *Applicability of EPA regulations.* The requirements governing the importation of nonroad engines subject to conformance with applicable emissions standards of the U.S. Environmental Protection Agency (EPA) are contained in EPA regulations, issued under the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*). These EPA regulations should be consulted for detailed information as to the admission requirements for subject nonroad engines, as follows:

(1) For nonroad compression-ignition engines at or above 37 kilowatts, see 40 CFR part 89, subpart G;

(2) For nonroad spark-ignition engines at or below 19 kilowatts, see 40 CFR part 90, subpart G; and

(3) For marine spark-ignition engines, see 40 CFR part 91, subpart H.

(b) *Admission of nonconforming nonroad engines.* (1) *EPA declaration required.* EPA Form 3520-21, "Importation of Nonroad Engines and Nonroad Engines Incorporated Into

Nonroad Equipment or Vehicles, Subject to Federal Air Pollution Regulations", must be completed by the importer and retained on file by him before making a customs entry for such nonroad engines/equipment/vehicles.

(2) *Retention and submission of records to Customs.* Documents supporting the information required in the EPA declaration must be retained by the importer for a period of at least 5 years in accordance with § 162.1c of this chapter and shall be provided to Customs upon request.

(c) *Release under bond.* (1) *Conditional admission.* If the EPA declaration states that the entry for a nonconforming nonroad engine is being filed under one of the exemptions described in paragraphs (c)(3)(i) through (c)(3)(iv) of this section, under which the engine must be conditionally admitted under bond, the entry for such engine shall be accepted only if a bond is given on Customs Form 301 containing the conditions set forth in § 113.62 of this chapter for the presentation of an EPA statement that the engine has been brought into conformity with Federal emissions requirements.

(2) *Final admission.* Should final admission be sought and granted pursuant to EPA regulations for an engine conditionally admitted initially under one of the exemptions described in paragraphs (c)(3)(i) through (c)(3)(iv) of this section, the importer or consignee shall deliver to the port director the prescribed statement. The statement shall be delivered within the period authorized by EPA for the specific exemption, or such additional period as the port director of Customs may allow for good cause shown. Otherwise, the importer or consignee shall deliver or cause to be delivered to the port director the subject engine, either for export or other disposition under applicable Customs laws and regulations (see paragraph (e) of this section). If such engine is not redelivered within 5 days following the allotted period, liquidated damages shall be assessed in the full amount of the bond, if a single entry bond, or if a continuous bond, the amount that would have been taken under a single entry bond (see 40 CFR 89.612-96(d), 90.613(c) & (d), 91.705(c) & (d)).

(3) *Exemptions.* The specific exemptions under which a nonconforming nonroad engine may be conditionally admitted, and for which a Customs bond is required, are as follows:

(i) Repairs or alterations (see 40 CFR 89.611-96(b)(1), 90.612(b)(1), 91.704(b)(1));

(ii) Testing (see 40 CFR 89.611-96(b)(2), 90.612(b)(2), 91.704(b)(2));

(iii) Precertification (see 40 CFR 89.611-96(b)(3), 89.906); and

(iv) Display (see 40 CFR 89.611-96(b)(4), 90.612(b)(3), 91.704(b)(3)).

(d) *Notice of inadmissibility or detention.* If an engine is found to be inadmissible either before or after release from Customs custody, the importer or consignee shall be notified in writing of the inadmissibility determination and/or redelivery requirement. However, an engine which cannot be released merely due to a failure to furnish with the entry any documentary information as required by EPA shall be held in detention by the port director for a period not to exceed 30 days after filing of the entry at the risk and expense of the importer pending submission of the missing information. An additional 30-day extension may be granted by the port director upon application for good cause shown. If at the expiration of a period not over 60 days the required documentation has not been filed, a notice of inadmissibility will be issued.

(e) *Disposal of engines not entitled to admission; prohibited importations.* A nonroad engine denied admission under EPA regulations shall be disposed of consistent with such EPA regulations and in accordance with applicable Customs laws and regulations. The importation of nonroad engines otherwise than as prescribed under EPA regulations is prohibited.

Douglas M. Browning,

Acting Commissioner of Customs.

Approved: May 6, 1998.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 24

[T.D. 98-51]

RIN 1515-AC26

Automated Clearinghouse Credit

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim rule; solicitation of comments.

SUMMARY: This document amends the Customs Regulations on an interim basis to provide for payments of funds to Customs by Automated Clearinghouse (ACH) credit. Under ACH credit, a payer