

§ 85.2103

40 CFR Ch. I (7-1-00 Edition)

(16) *Valid Emission Performance Warranty Claim* means a claim in which there is no evidence that the vehicle had not been properly maintained and operated in accordance with manufacturer instructions, the vehicle failed to conform to applicable emission standards as measured by an Office Director-approved type of emission warranty test during its useful life and the owner is subject to sanction as a result of the test failure.

(17) *Reasonable Expense* means any expense incurred due to repair of a warranty failure caused by a non-original equipment certified part, including, but not limited to, all charges in any expense categories that would be considered payable by the involved vehicle manufacturer to its authorized dealer under a similar warranty situation where an original equipment part was the cause of the failure. Included in "reasonable expense" are any additional costs incurred specifically due to the processing of a claim involving a certified aftermarket part or parts as covered in these regulations. The direct parts and labor expenses of carrying out repairs is immediately chargeable to the part manufacturer. All charges beyond the actual parts and labor repair expenses must be amortized over the number of claims and/or over a number of years in a manner that would be considered consistent with generally accepted accounting principles. These expense categories shall include but are not limited to the cost of labor, materials, record keeping, special handling, and billing as a result of replacement of a certified aftermarket part.

(18) *MOD Director* means Director of Manufacturers Operations Division, Office of Mobile Sources—Office of Air and Radiation of the Environmental Protection Agency.

[45 FR 34839, May 22, 1980, as amended at 54 FR 32587, Aug. 8, 1989; 64 FR 23919, May 4, 1999]

§ 85.2103 Emission performance warranty.

(a) The manufacturer of each vehicle to which this subpart applies shall warrant in writing that if:

(1) The vehicle is maintained and operated in accordance with the written

instructions for proper maintenance and use and

(2) The vehicle fails to conform at any time during its useful life to the applicable emission standards or family emission limits as determined by an EPA-approved emission test, and

(3) Such nonconformity results or will result in the vehicle owner having to bear any penalty or other sanction (including the denial of the right to use the vehicle) under local, State or Federal law, then the manufacturer shall remedy the nonconformity at no cost to the owner; *except that*, if the vehicle has been in operation for more than 24 months or 24,000 miles, the manufacturer shall be required to remedy only those nonconformities resulting from the failure of components which have been installed in or on the vehicle for the sole or primary purpose of reducing vehicle emissions and that were not in general use prior to model year 1968.

(b) The warranty period shall begin on the date the vehicle is delivered to its ultimate purchaser, or if the vehicle is first placed in service as a "demonstrator" or "company" car prior to delivery, on the date it is first placed in service.

[45 FR 34839, May 22, 1980, as amended at 54 FR 32587, Aug. 8, 1989]

§ 85.2104 Owners' compliance with instructions for proper maintenance and use.

(a) An emission performance warranty claim may be denied on the basis of noncompliance by a vehicle owner with the written instructions for proper maintenance and use.

(b) When determining whether an owner has complied with the written instructions for proper maintenance and use, a vehicle manufacturer may require an owner to submit evidence of compliance only with those written maintenance instructions for which the manufacturer has an objective reason for believing:

(1) Were not performed; and

(2) If not performed could be the cause of the particular vehicle's exceeding applicable emission standards.

(c) Evidence of compliance with a maintenance instruction may consist of: