

### Subpart K—Exclusion and Exemption of Marine SI Engines

#### § 91.1001 Applicability.

The requirements of this subpart K are applicable to all marine spark-ignition propulsion engines subject to the provisions of subpart A of this part 91.

#### § 91.1002 Definitions.

The definitions in subpart A of this part apply to this subpart. The following definitions also apply to this subpart:

*Exemption* means exemption from the prohibitions of § 91.1103.

*Export exemption* means an exemption granted under § 91.1104(b) for the purpose of exporting new marine SI engines.

*National security exemption* means an exemption which may be granted under § 91.1104(b) for the purpose of national security.

*Manufacturer-owned marine engine* means an uncertified marine SI engine owned and controlled by a marine SI engine manufacturer and used in a manner not involving lease or sale by itself or in a marine vessel or piece of equipment employed from year to year in the ordinary course of business for product development, production method assessment, or market promotion purposes.

*Testing exemption* means an exemption which may be granted under § 91.1104(b) for the purpose of research, investigations, studies, demonstrations or training, but not including national security.

#### § 91.1003 Exclusions based on section 216(10) of the Act.

(a) For the purpose of determining the applicability of section 216(10) of the Act, any marine SI engine as that term is defined in subpart A of this part, is deemed a nonroad engine.

(b) EPA will maintain a list of models of marine SI engines, and the marine vessels which use such engines, that have been determined to be excluded because they are used solely for competition. This list will be available to the public and may be obtained by writing to the following address: Group Manager, Engine Compliance Programs Group, Engine Programs and Compli-

ance Division (6403J), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

(c) Upon written request with supporting documentation, EPA will make written determinations as to whether certain engines are or are not marine SI engines. Engines that are determined not to be marine SI engines are excluded from regulations under this part but may be subject to regulations under another part.

#### § 91.1004 Who may request an exemption.

(a) Any person may request a testing exemption under § 91.1005.

(b) Any marine SI engine manufacturer may request a national security exemption under § 91.1008.

(c) For marine SI engine manufacturers, marine SI engines for export purposes are exempt without application, subject to the provisions of § 91.1009.

(d) For eligible manufacturers, as determined by § 91.1006, manufacturer-owned marine SI engines are exempt without application, subject to the provisions of § 91.1006.

(e) For any person, display marine SI engines are exempt without application, subject to the provisions of § 91.1007.

#### § 91.1005 Testing exemption.

(a) Any person requesting a testing exemption must demonstrate the following:

(1) That the proposed test program has a purpose which constitutes an appropriate basis for an exemption in accordance with § 91.1104(b);

(2) That the proposed test program necessitates the granting of an exemption;

(3) That the proposed test program is reasonable in scope; and

(4) That the proposed test program exhibits a degree of control consonant with the purpose of the program and the EPA's monitoring requirements.

(5) Paragraphs (b), (c), (d), and (e) of this section describe what constitutes a sufficient demonstration for each of the four identified elements.

(b) With respect to the purpose of the proposed test program, an appropriate purpose would be research, investigations, studies, demonstrations, or

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training, but not national security. A concise statement of purpose is a required item of information.

(c) With respect to the necessity that an exemption be granted, necessity arises from an inability to achieve the stated purpose in a practicable manner without performing or causing to be performed one or more of the prohibited acts under §91.1103. In appropriate circumstances, time constraints may be a sufficient basis for necessity, but the cost of certification alone, in the absence of extraordinary circumstances, is not a basis for necessity.

(d) With respect to reasonableness, a test program must exhibit a duration of reasonable length and affect a reasonable number of engines. In this regard, required items of information include:

- (1) An estimate of the program's duration.
- (2) The maximum number of marine engines involved.

(e) With respect to control, the test program must incorporate procedures consistent with the purpose of the test and be capable of affording EPA monitoring capability. As a minimum, required items of information include:

- (1) The technical nature of the test;
- (2) The site of the test;
- (3) The duration and accumulated engine operation associated with the test;
- (4) The ownership arrangement with regard to the engines involved in the test;
- (5) The intended final disposition of the engines;
- (6) The manner in which the engine identification numbers will be identified, recorded, and made available; and
- (7) The means or procedure whereby test results will be recorded.

(f) A manufacturer of new marine SI engines may request a testing exemption to cover marine SI engines intended for use in test programs planned or anticipated over the course of a subsequent one-year period. Unless otherwise required by the Manager, Engine Compliance Programs Group, a manufacturer requesting such an exemption need only furnish the information required by paragraphs (a)(1) and (d)(2) of this section along with a description of the recordkeeping and control proce-

dures that will be employed to assure that the engines are used for purposes consistent with section 91.1104(b).

**§91.1006 Manufacturer-owned exemption and precertification exemption.**

(a) Except as provided in paragraph (b) of this section, any manufacturer-owned marine SI engine, as defined by §91.1002, is exempt from compliance with §91.1103, without application, if the manufacturer complies with the following terms and conditions:

(1) The manufacturer must establish, maintain, and retain the following adequately organized and indexed information on each exempted engine:

- (i) Engine identification number,
- (ii) Use of the engine on exempt status and
- (iii) Final disposition of any engine removed from exempt status.

(2) The manufacturer must provide right of entry and access to these records to EPA authorized representatives as outlined in §91.505.

(3) Unless the requirement is waived or an alternative procedure is approved by the Director, Engine Programs & Compliance Division, the manufacturer must permanently affix a label to each marine engine on exempt status. This label should:

- (i) Be affixed in a readily visible portion of the engine,
- (ii) Be attached in such a manner that it cannot be removed without destruction or defacement,
- (iii) State in the English language/ and in block letters and numerals of a color that contrasts with the background of the label, the following information:

(A) The label heading "Emission Control Information;"

(B) Full corporate name and trademark of manufacturer;

(C) Engine displacement, engine family identification, and model year of engine; or person or office to be contacted for further information about the engine;

(D) The statement "This marine SI engine is exempt from the prohibitions of 40 CFR 91.1103."

(4) No provision of paragraph (a)(3) of this section prevents a manufacturer

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from including any other information it desires on the label.

### §91.1007 Display exemption.

An uncertified marine SI engine is a display engine when it is to be used solely for display purposes, will only be operated incident and necessary to the display purpose, and will not be sold unless an applicable certificate of conformity has been received or the engine has been finally admitted pursuant to subpart H of this part. A display engine is exempt without application.

### §91.1008 National security exemption.

(a)(1) Any marine SI engine, otherwise subject to this part, which is used in a vessel that exhibits substantial features ordinarily associated with military combat such as armor and/or permanently affixed weaponry and which will be owned and/or used by an agency of the Federal government with responsibility for national defense, will be exempt from these regulations for purposes of national security. No request for exemption is necessary.

(2) Manufacturers may request a national security exemption for any marine SI engine, otherwise subject to this part, which does not meet the conditions described in paragraph (a)(1) of this section. A manufacturer requesting a national security exemption must state the purpose for which the exemption is required and the request must be endorsed by an agency of the federal government charged with responsibility for national defense.

(b) EPA will maintain a list of models of marine SI engines (and the vessels which use them) that have been granted a national security exemption under paragraph (a)(2) of this section. This list will be available to the public and may be obtained by writing to the following address: Manager, Engine Compliance Programs Group 6403-J, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

### §91.1009 Export exemptions.

(a) A new marine SI engine intended solely for export, and so labeled or tagged on the outside of the container and on the engine itself, is subject to the provisions of §91.1103, unless the importing country has emission stand-

ards for new marine engines which differ from EPA standards.

(b) For the purpose of paragraph (a) of this section, a country having no standards, whatsoever, is deemed to be a country having emission standards which differ from EPA standards.

(c) EPA will maintain a list of foreign countries that have in force marine SI emission standards identical to U.S. EPA standards and have so notified EPA. This list may be obtained by writing to the following address: Manager, Engine Compliance Programs Group 6403-J, Environmental Protection Agency, 401 M Street, SW., Washington, DC. 20460. New marine SI engines exported to such countries must comply with EPA certification regulations.

(d) It is a condition of any exemption for the purpose of export under §91.1004(b) that such exemption be void *ab initio* with respect to a new marine SI engine intended solely for export if such marine SI engine is sold, or offered for sale, to an ultimate purchaser in the United States for purposes other than export.

### §91.1010 Granting of exemptions.

(a) If upon completion of the review of an exemption request made pursuant to §91.1005 or §91.1008, EPA determines it is appropriate to grant such an exemption, a memorandum of exemption will be prepared and submitted to the person requesting the exemption. The memorandum shall set forth the basis for the exemption, its scope, and such terms and conditions as are deemed necessary. Such terms and conditions shall generally include, but are not limited to, agreements by the applicant to conduct the exempt activity in the manner described to EPA, create and maintain adequate records accessible to EPA at reasonable times, employ labels for the exempt engines setting forth the nature of the exemption, take appropriate measures to assure that the terms of the exemption are met, and advise EPA of the termination of the activity and the ultimate disposition of the engines.

(b) Any exemption granted pursuant to paragraph (a) of this section is deemed to cover any subject engine only to the extent that the specified

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terms and conditions are complied with. A breach of any term or condition causes the exemption to be void *ab initio* with respect to any engine. Consequently, the causing or the performing of an act prohibited under §91.1103(a) (1) or (3), other than in strict conformity with all terms and conditions of this exemption renders the person to whom the exemption is granted, and any other person to whom the provisions of §91.1103 are applicable, liable under sections 204 and 205 of the Act.

### §91.1011 Submission of exemption requests.

Requests for exemption or further information concerning exemptions and/or the exemption request review procedure should be addressed to: Manager, Engine Compliance Programs Group 6403J, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

### §91.1012 Treatment of confidential information.

The provisions for treatment of confidential information described in §91.7 apply to this subpart.

## Subpart L—Prohibited Acts and General Enforcement Provisions

### §91.1101 Applicability.

The requirements of subpart L are applicable to all marine engines and vessels subject to the provisions of subpart A of this part 91.

### §91.1102 Definitions.

The definitions in subpart A of this part apply to this subpart. All terms not defined herein or in subpart A have the meaning given them in the Act.

### §91.1103 Prohibited acts.

(a) The following acts and the causing thereof are prohibited:

(1)(i) In the case of a manufacturer of new marine SI engines or vessels for distribution in commerce, the sale, the offering for sale, or the introduction, or delivery for introduction, into commerce, of any new marine SI engine manufactured after the applicable effective date under this part unless such engine is covered by a certificate of

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conformity issued (and in effect) under regulations found in this part.

(ii) In the case of any person, except as provided by regulation of the Administrator, the importation into the United States of any new marine SI engine manufactured after the applicable effective date under this part unless such engine is covered by a certificate of conformity issued (and in effect) under regulations found in this part.

(2)(i) For a person to fail or refuse to permit access to or copying of records or to fail to make reports or provide information required under §91.1104.

(ii) For a person to fail or refuse to permit entry, testing or inspection authorized under §91.118, 91.505 or 91.1104.

(iii) For a person to fail or refuse to perform tests, or to have tests performed as required under §91.118 or §91.1104.

(iv) For a person to fail to establish or maintain records as required under §91.1104.

(3)(i) For a person to remove or render inoperative a device or element of design installed on or in a marine engine in compliance with regulations under this part prior to its sale and delivery to the ultimate purchaser, or for a person knowingly to remove or render inoperative such a device or element of design after the sale and delivery to the ultimate purchaser; or

(ii) For a person to manufacture, sell or offer to sell, or install, a part or component intended for use with, or as part of, a marine SI engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative a device or element of design installed on or in a marine SI engine in compliance with regulations issued under this part, and where the person knows or should know that the part or component is being offered for sale or installed for this use or put to such use.

(4) For a manufacturer of a new marine SI engine subject to standards prescribed under this part:

(i) To sell, offer for sale, or introduce or deliver into commerce, a marine SI engine unless the manufacturer has complied with the requirements of §91.1203.