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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 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, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

§91.1012 Treatment of confidential information.

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

§91.1013 Exemption for certified Small SI engines.

The provisions of 40 CFR 1045.605 and 1045.610 apply for engines subject to the standards of this part 91. This generally allows manufacturers to use marine engines that have been certified to emission standards for nonroad spark-ignition engines below 19 kW without recertifying those engines under this part 91.

[73 FR 59183, Oct. 8, 2008]

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 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.

(ii) To sell, offer for sale, or introduce or deliver into commerce, a marine SI engine unless a label or tag is affixed to the engine in accordance with regulations under this part.

(iii) To provide directly or indirectly in any communication to the ultimate purchaser or a subsequent purchaser that the coverage of a warranty under the Act is conditioned upon use of a part, component, or system manufactured by the manufacturer or a person acting for the manufacturer or under its control, or conditioned upon service performed by such persons, except as provided in subpart M of this part.

(iv) To fail or refuse to comply with the terms and conditions of the warranty under subpart M of this part.

(5) For a manufacturer of new marine vessels or equipment to distribute in commerce, sell, offer for sale, or introduce into commerce, marine vessels or equipment which contain an engine not covered by a certificate of conformity.

(b) For the purposes of enforcement of this part, the following apply:

(1) Nothing in paragraph (a) of this section is to be construed to require the use of manufacturer parts in maintaining or repairing a marine SI engine.

(2) Actions for the purpose of repair or replacement of a device or element of design or any other item are not considered prohibited acts under § 91.1103(a) if the actions are a necessary and temporary procedure, the device or element is replaced upon completion of the procedure, and the action results in the proper functioning of the device or element of design.

(3) The following provisions apply for converting marine SI engines to use alternative fuels:

(i) Until December 31, 2009, converting an engine to use a clean alternative fuel (as defined in Title II of the Act) is not considered a prohibited act under paragraph (a) of this section if the engine complies with the applicable standard when operating on the alternative fuel. Also, in the case of engines converted to dual fuel or flexible use, the action must result in the proper functioning of the engine when it operates on conventional fuel.

(ii) The provisions of 40 CFR 1045.645 apply starting January 1, 2010.

(4) A new marine spark-ignition engine intended solely to replace an engine in an outboard engine, or other engine to which this part is applicable as determined by §§ 91.1, 91.101, 91.106 that was originally produced with an engine manufactured prior to the applicable implementation date as described in §§ 91.2, and 91.106 and 91.205(a)(1), or that was originally produced in a model year in which less stringent emission standards under this part were in effect shall not be subject to the requirements of § 91.106 or the prohibitions of paragraph (a)(1) 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 outboard, personal watercraft or jetboat; and

(ii) Unless an alternative control mechanism is approved in advance by the Administrator, the engine manufacturer or its agent takes ownership and possession of the engine being replaced; and

(iii) The replacement engine is clearly labeled with the following language, or similar alternate language approved in advance 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 marine vessel whose original engine was not certified, or was certified to less stringent emission standards than those that apply to the year of manufacture of this engine, is a violation of Federal law subject to civil penalty; and

(iv) Where the replacement engine is intended to replace an engine built after the applicable implementation date as described in §§91.2, 91.106 and 91.205(a)(1), but built to less stringent emission standards than are currently applicable, the replacement engine shall be identical in all material respects to a certified configuration of the same or later model year as the engine being replaced; and

(v) In cases where an engine is to be imported for replacement purposes under the provisions of this paragraph (b)(4), the term ''engine manufacturer'' does not apply to an individual or other entity that does not possess a current Certificate of Conformity issued by EPA under this part.

[61 FR 52102, Oct. 4, 1996, as amended at 62 FR 42644, Aug. 7, 1997; 65 FR 24314, Apr. 25, 2000; 73 FR 59183, Oct. 8, 2008]

§91.1104 General enforcement provisions.

(a) *Information collection provisions.* (1) Every manufacturer of new marine SI engines and other persons subject to the requirements of this part must establish and maintain records, perform tests where such testing is not otherwise reasonably available under this part, make reports and provide information the Administrator may reasonably require to determine whether the manufacturer or other person has acted or is acting in compliance with this part or to otherwise carry out the provisions of this part, and must, upon request of an officer or employee duly designated by the Administrator, permit the officer or employee at reasonable times to have access to and copy such records.

(2) For purposes of enforcement of this part, an officer or employee duly designated by the Administrator, upon presenting appropriate credentials, is authorized:

(i) To enter, at reasonable times, any establishment of the manufacturer, or of any person whom the manufacturer engaged to perform any activity required under paragraph (a)(1) of this section, for the purposes of inspecting or observing any activity conducted pursuant to paragraph (a)(1) of this section, and

(ii) To inspect records, files, papers, processes, controls, and facilities used in performing an activity required by paragraph (a)(1) of this section, by the manufacturer or by a person whom the manufacturer engaged to perform the activity.

(b) *Exemption provision.* The Administrator may exempt a new marine engine from compliance with §91.1103 upon such terms and conditions as the Administrator may find necessary for the purpose of export, research, investigations, studies, demonstrations, or training, or for reasons of national security.

(c) *Importation provision.* (1) A new marine SI engine, or vessel offered for importation or imported by a person in violation of §91.1103 shall be refused admission into the United States, but the Secretary of the Treasury and the Administrator may, by joint regulation, provide for deferring a final determination as to admission and authorizing the delivery of such a marine SI engine offered for import to the owner or consignee thereof upon such terms and conditions (including the furnishing of a bond) as may appear to them appropriate to insure that the marine SI engine will be brought into conformity