

Service by the end of the period of conditional admission is liable for liquidated damages in the amount of the bond required by applicable Customs laws and regulations. The maximum penalty value listed in this paragraph (d) is shown for calendar year 2004. Maximum penalty limits for later years may be adjusted based on the Consumer Price Index. The specific regulatory provisions for changing the maximum penalties, published in 40 CFR part 19, reference the applicable U.S. Code citation on which the prohibited action is based.

[61 FR 52102, Oct. 4, 1996, as amended at 70 FR 40452, July 13, 2005]

**§91.706 Treatment of confidential information.**

The provisions for treatment of confidential information as described in §91.7 apply.

**Subpart I—In-Use Testing and Recall Regulations**

**§91.801 Applicability.**

The requirements of subpart I are applicable to all marine SI engines subject to the provisions of subpart A of part 91.

(a) Marine engines subject to provisions of subpart B of this part are subject to recall regulations specified in 40 CFR part 85, subpart S, except for the items set forth in this subsection.

(b) Reference to section 214 of the Clean Air Act in 40 CFR 85.1801(a) does not apply. Reference to section 216 of the Clean Air Act does apply.

(c) Reference to section 202 of the Act in 40 CFR 85.1802(a) does not apply. Reference to section 213 of the Act does apply.

(d) Reference to “family particulate emission limits as defined in Part 86 promulgated under section 202 of the Act” in 40 CFR 85.1803(a) and 85.1805(a)(1) does not apply. Family emission limits as defined in 40 CFR part 89 promulgated under section 213 of the Act does apply.

(e) Add the following paragraph to 40 CFR 85.1805 (a)(9): A telephone number provided by the manufacturer, which may be used to report difficulty in obtaining recall repairs.

(f) The requirements of the Manufacturer In-use testing program set forth in §§91.803 through 91.805 are waived for existing technology OB/PWC as defined in §91.3 through model year 2003.

(1) The Administrator has the discretion to waive the requirements of the Manufacturer In-use testing program set forth in sections 91.803 through 91.805 for existing technology OB/PWC for a specific engine family up to model year 2005 if, upon the request of the manufacturer, the Administrator determines that the engine family will be phased out of U.S. production by model year 2005. As a condition to receiving such a waiver for either model year 2004 or 2005 or both, the manufacturer must discontinue U.S. production according to the schedule upon which the Administrator based the waiver. Failure to do so by the manufacturer will void *ab initio* the certificate of conformity.

(2) A manufacturer request under paragraph (f)(1) of this section must be in writing and must apply to a specific engine family. The request must identify the engine family designation, the schedule for phasing the engine family out of U.S. production, and any other information the Administrator may require.

**§91.802 Definitions.**

(a) For the purposes of this subpart, except as otherwise provided, the definitions in subpart A of this part apply to this subpart.

(b) The definitions of 40 CFR Part 85, subpart S, §85.1801 also apply to this Part.

**§91.803 Manufacturer in-use testing program.**

(a) EPA shall annually identify engine families and those configurations within families which the manufacturers must then subject to in-use testing. For each model year, EPA may identify the following number of engine families for testing, based on the number of the manufacturer’s engine families to which this subpart is applicable produced in that model year:

(1) For manufactures with three or fewer engine families, EPA may identify a single engine family.

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(2) For manufacturers with four or more engine families, EPA may identify a number of engine families that is no greater than twenty-five percent of the number of engine families to which this subpart is applicable that are produced by the manufacturer in that model year.

(b) For each engine family identified by EPA, engine manufacturers shall perform emission testing of an appropriate sample of in-use engines from each engine family. Manufacturers shall submit data from this in-use testing to EPA.

(c) *Number of engines to be tested.* An engine manufacturer shall test in-use engines from each engine family identified by EPA. Engines to be tested shall have accumulated between half and three-quarters of the family's useful life. The number of engines to be tested by a manufacturer will be determined by the following method:

(1) A minimum of four (4) engines per family provided that no engine fails any standard. For each failing engine, two more engines shall be tested until the total number of engines equals ten (10).

(2) For engine families of less than 500 engines for the identified model year or for engine manufacturers who make less than or equal to 2,000 for that model year, a minimum of two (2) engines per family provided that no engine fails any standard. For each failing engine, two more engines shall be tested until the total number of engines equals ten (10).

(3) If an engine family was certified using carry over emission data and has been previously tested under paragraph (c) (1) or (2) of this section (and EPA has not ordered a recall for that family), then only one engine for that family must be tested. If that one engine fails any pollutant, testing must be conducted as outlined at paragraph (c) (1) or (2) of this section, whichever is appropriate.

(d) At the discretion of the Administrator, an engine manufacturer may test more engines than the minima described in paragraph (c) of this section or may concede failure before testing a total of ten (10) engines.

(e) The Administrator will consider failure rates, average emission levels

and the existence of any defects among other factors in determining whether to pursue remedial action under this subpart. The Administrator may order a recall pursuant to §§ 91.807-91.814 before testing reaches the tenth engine.

(f) The Administrator may approve an alternative to manufacturer in-use testing, where:

(1) Engine family production is less than or equal to 200 per year; or

(2) Engines cannot be obtained for testing because they are used substantially in craft which are not conducive to engine removal such as large vessels where the engine can not be removed without dismantling either the engine or the vessel; or

(3) Other compelling circumstances associated with the structure of the industry and uniqueness of marine engine applications. Such alternatives shall be designed to determine whether the engine family is in compliance in-use.

(g) *Collection of in-use engines.* The engine manufacturer shall procure in-use engines which have been operated for between half and three-quarters of the engine's useful life. The engine manufacturer may test engines from more than one model year in a given year. The manufacturer shall begin testing within twelve calendar months after receiving notice that EPA has identified a particular engine family for testing and shall complete testing of such engine family within twelve calendar months from the start of such testing. Test engines may be procured from sources associated with the engine manufacturer (i.e., manufacturer established fleet engines, etc.) or from sources not associated with the manufacturer (i.e., consumer-owned engines, independently-owned fleet engines, etc.).

[61 FR 52102, Oct. 4, 1996, as amended at 67 FR 68340, Nov. 8, 2002]

### **§ 91.804 Maintenance, procurement and testing of in-use engines.**

(a) A test engine must have a maintenance and use history representative of actual in-use conditions.

(1) To comply with this requirement a manufacturer must obtain information from the end users regarding the