

### § 89.103

by the Administrator, and subject to the following requirements:

(1) Application for relief must be submitted to the Engine Programs and Compliance Division of the EPA in writing prior to the earliest date in which the applying manufacturer would be in violation of § 89.1003. The manufacturer must submit evidence showing that the requirements for approval have been met.

(2) The applying manufacturer must not be the manufacturer of the engines used in the equipment for which relief is sought. This requirement does not apply to post-manufacture marinizers.

(3) The conditions causing the impending violation must not be substantially the fault of the applying manufacturer.

(4) The conditions causing the impending violation must be such that the applying manufacturer will experience serious economic hardship if relief is not granted.

(5) The applying manufacturer must demonstrate that no allowances under paragraph (d) of this section will be available to avoid the impending violation.

(6) Any relief granted must begin within one year after the implementation date of the standard applying to the engines being used in the equipment, or to the marine diesel engines, for which relief is requested, and may not exceed one year in duration.

(7) The Administrator may impose other conditions on the granting of relief including provisions to recover the lost environmental benefit.

(g) *Allowance for the production of engines.* Engine manufacturers may take any of the otherwise prohibited actions identified in § 89.1003(a)(1) with regard to uncertified engines or Tier 1 engines, as appropriate, if the engine manufacturer has received written assurance from the equipment manufacturer that the engine is required to meet the demand for engines created under paragraph (d), (f), or (h) of this section.

(h) *Alternative Flexibility for Post-Manufacture Marinizers.* Post-manufacture marinizers may elect to delay the effective date of the Tier 1 standards in § 89.112 for marine diesel engines rated under 37 kW by one year, instead of

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using the provisions of paragraphs (d) and (f) of this section. Post-manufacture marinizers wishing to take advantage of this provision must inform the Director of the Engine Programs and Compliance Division of their intent to do so in writing before the date that the standards would otherwise take effect.

[59 FR 31335, June 17, 1994. Redesignated and amended at 63 FR 56995, 56997, Oct. 23, 1998]

### § 89.103 Definitions.

The definitions in subpart A of part 89 apply to this subpart. All terms not defined herein or in subpart A have the meaning given them in the Act.

[59 FR 31335, June 17, 1994. Redesignated at 63 FR 56995, Oct. 23, 1998]

### § 89.104 Useful life, recall, and warranty periods.

(a) The useful life is based on the rated power and rated speed of the engine.

(1) For all engines rated under 19 kW, and for constant speed engines rated under 37 kW with rated speeds greater than or equal to 3,000 rpm, the useful life is a period of 3,000 hours or five years of use, whichever first occurs.

(2) For all other engines rated at or above 19 kW and under 37 kW, the useful life is a period of 5,000 hours or seven years of use, whichever first occurs.

(3) For all engines rated at or above 37 kW, the useful life is a period of 8,000 hours of operation or ten years of use, whichever first occurs.

(b) Engines are subject to recall testing for a period based on the rated power and rated speed of the engines. However, in a recall, engines in the subject class or category would be subject to recall regardless of actual years or hours of operation.

(1) For all engines rated under 19 kW, and for constant speed engines rated under 37 kW with rated speeds greater than or equal to 3,000 rpm, the engines are subject to recall testing for a period of 2,250 hours or four years of use, whichever first occurs.

(2) For all other engines rated at or above 19 kW and under 37 kW, the engines are subject to recall for a period

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of 3,750 hours or five years of use, whichever first occurs.

(3) For all engines rated at or above 37 kW, the engines are subject to recall for a period of 6,000 hours of operation or seven years of use, whichever first occurs.

(c) The warranty periods for warranties imposed by the Clean Air Act and § 89.1007 for all engines rated under 19 kW, and for constant speed engines rated under 37 kW with rated speeds greater than or equal to 3,000 rpm, are 1,500 hours of operation or two years of use, whichever first occurs. For all other engines, the warranty periods for warranties imposed by the Clean Air Act and § 89.1007 are 3,000 hours of operation or five years of use, whichever first occurs.

(d) Manufacturers may apply to the Administrator for approval for a shorter useful life period for engines that are subject to severe service in seasonal equipment, or are designed specifically for lower useful life hours to match equipment life. Such an application must be made prior to certification.

[59 FR 31335, June 17, 1994. Redesignated and amended at 63 FR 56995, 56998, Oct. 23, 1998]

### § 89.105 Certificate of conformity.

Every manufacturer of a new nonroad compression-ignition engine must obtain a certificate of conformity covering the engine family, as described in § 89.116. The certificate of conformity must be obtained from the Administrator prior to selling, offering for sale, introducing into commerce, or importing into the United States the new nonroad compression-ignition engine for each model year.

[59 FR 31335, June 17, 1994. Redesignated at 63 FR 56995, Oct. 23, 1998]

### § 89.106 Prohibited controls.

(a) An engine may not be equipped with an emission control system for the purpose of complying with emission standards if such system will cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function.

(b) You may not design your engines with emission-control devices, systems, or elements of design that cause

or contribute to an unreasonable risk to public health, welfare, or safety while operating. For example, this would apply if the engine emits a noxious or toxic substance it would otherwise not emit that contributes to such an unreasonable risk.

[59 FR 31335, June 17, 1994. Redesignated at 63 FR 56995, Oct. 23, 1998; 67 FR 68339, Nov. 8, 2002]

### § 89.107 Defeat devices.

(a) An engine may not be equipped with a defeat device.

(b) For purposes of this section, “defeat device” means any device, system, or element of design which senses operation outside normal emission test conditions and reduces emission control effectiveness.

(1) Defeat device includes any auxiliary emission control device (AECD) that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal operation and use unless such conditions are included in the test procedure.

(2) Defeat device does not include such items which either operate only during engine starting or are necessary to protect the engine (or equipment in which it is installed) against damage or accident during its operation.

[59 FR 31335, June 17, 1994. Redesignated at 63 FR 56995, Oct. 23, 1998]

### § 89.108 Adjustable parameters, requirements.

(a) Nonroad engines equipped with adjustable parameters must comply with all requirements of this subpart for any adjustment in the physically adjustable range.

(b) An operating parameter is not considered adjustable if it is permanently sealed or otherwise not normally accessible using ordinary tools.

(c) The Administrator may require that adjustable parameters be set to any specification within its adjustable range for certification, selective enforcement audit, or in-use testing to determine compliance with the requirements of this subpart.

[59 FR 31335, June 17, 1994. Redesignated at 63 FR 56995, Oct. 23, 1998]