

## Environmental Protection Agency

## § 91.202

conditions specified in §§ 91.203(f), 91.206(d), 91.208(c) or 91.209(g), the Administrator may void such certificate *ab initio*.

(d) When the Administrator denies, revokes, or voids *ab initio* a certificate of conformity, the engine manufacturer will be provided a written determination. The manufacturer may request a hearing on the Administrator's decision.

(e) Any revocation of a certificate of conformity extends no further than to forbid the introduction into commerce of those engines previously covered by the certificate which are still in the possession of the engine manufacturer, except in cases of such fraud or other misconduct that makes the certificate void *ab initio*.

### § 91.124 Request for hearing.

(a) An engine manufacturer may request a hearing on the Administrator's denial or revocation or voiding *ab initio* of a certificate of conformity.

(b) The engine manufacturer's request must be filed within 30 days of the Administrator's decision, be in writing, and set forth the manufacturer's objections to the Administrator's decision and data to support the objections.

(c) If, after review of the request and supporting data, the Administrator finds that the request raises a substantial and factual issue, the Administrator will grant the engine manufacturer's request for a hearing.

### § 91.125 Hearing procedures.

The hearing procedures set forth in §§ 91.513, 91.514, and 91.515 apply to this subpart.

### § 91.126 Right of entry and access.

Any engine manufacturer who has applied for certification of a new engine or engine family subject to certification testing under this subpart must admit or cause to be admitted to any applicable facilities during operating hours any EPA enforcement officer or EPA authorized representative as provided in § 91.505.

## Subpart C—Averaging, Banking, and Trading Provisions

### § 91.201 Applicability.

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

### § 91.202 Definitions.

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

*Averaging* for marine SI engines means the exchange of emission credits among engine families within a given manufacturer's product line.

*Banking* means the retention of marine SI engine emission credits by the manufacturer generating the emission credits for use in future model year averaging or trading as permitted by these regulations.

*Eligible sales* means marine SI engines sold for purposes of being used in the United States and include any engine introduced into commerce in the U.S. to be sold for use in the U.S.

*Emission credits* represent the amount of emission reduction or exceedance, by a marine SI engine family, below or above the applicable emission standard, respectively. Emission reductions below the standard are considered as "positive credits," while emission exceedances above the standard are considered as "negative credits." In addition, "projected credits" refer to emission credits based on the projected applicable production/sales volume of the engine family. "Reserved credits" are emission credits generated within a model year waiting to be reported to EPA at the end of the model year. "Actual credits" refer to emission credits based on actual applicable production/sales volume as contained in the end-of-year reports submitted to EPA. Some or all of these credits may be revoked if EPA review of the end-of-year reports or any subsequent audit action(s) uncovers problems or errors.

*Point of first retail sale* means the point at which the engine is first sold directly to an end user. Generally, this point is the retail boat or engine dealer. If the engine is sold first to a boat or vessel manufacturer for installation

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in a boat or vessel, the boat or vessel manufacturer may be the point of first retail sale if the boat or vessel manufacturer can determine if the engine is or is not exported once they have sold the boat or vessel. If the boat or vessel manufacturer cannot determine if the engine is or is not exported once they have sold the boat or vessel, the engine is presumed to not be exported, unless the engine manufacturer can demonstrate otherwise. Engine manufacturers must include engines in their average if the engine is exported and subsequently imported into the United States installed in a boat or vessel and introduced into United States commerce.

*Trading* means the exchange of marine engine emission credits between manufacturers.

#### §91.203 General provisions.

(a) The certification averaging, banking, and trading provisions for hydrocarbon plus oxides of nitrogen emissions from eligible marine SI engines are described in this subpart.

(b) A marine SI engine family must use the averaging provisions and may use the banking and trading provisions for hydrocarbon plus oxides of nitrogen emissions if it is subject to regulation under subpart B of this part with certain exceptions specified in paragraph (c) of this section.

(c) Manufacturers of marine SI engines may not use the banking and trading provisions for new marine SI engines:

(1) Which are exported, or

(2) Which are subject to state engine emission standards unless the manufacturer demonstrates to the Administrator that inclusion of these engines in banking and trading is appropriate.

(d) A manufacturer may certify marine SI engine families at Family Emission Limits (FELs) above or below the applicable emission standard, provided the summation of the manufacturer's projected balance of all credit transactions in a given model year is greater than or equal to zero, as determined under §91.207.

(1) A manufacturer of an engine family with an FEL exceeding the applicable emission standard must obtain positive emission credits sufficient to

address the associated credit shortfall via averaging, banking, or trading.

(2) An engine family with an FEL below the applicable emission standard may generate positive emission credits for averaging, banking, or trading, or a combination thereof. Emission credits may not be used to offset an engine family's emissions that exceed its applicable FEL. Credits may not be used to remedy nonconformity determined by a production line testing, a Selective Enforcement Audit (SEA) or by recall (in-use) testing. However, in the case of a manufacturer production line testing or SEA failure, credits may be used to allow subsequent production of engines for the family in question if the manufacturer elects to recertify to a higher FEL. In the case of production line testing a manufacturer may revise the FEL based upon production line testing results obtained under subpart F and upon Administrator approval pursuant to §91.122(d).

(e) Credits generated in a given model year may be used in the following three model years. Credits not used by the end of the third model year after being generated are forfeited. Credits generated in one model year may not be used for prior model years, unless allowed under §91.207.

(f) Manufacturers must demonstrate compliance under the averaging, banking, and trading provisions for a particular model year by 270 days after the model year. An engine family generating negative credits for which the manufacturer does not obtain or generate an adequate number of positive credits from the same or previous model years will violate the conditions of the certificate of conformity. The certificate of conformity may be voided *ab initio* pursuant to §91.123 for this engine family.

#### §91.204 Averaging.

(a) Negative credits from engine families with FELs above the applicable emission standard must be offset by positive credits from engine families below the applicable emission standard, as allowed under the provisions of this subpart. Averaging of credits in this manner is used to determine compliance under §91.207(b).