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constant-speed auxiliary, variable-speed propulsion engines used with fixed-pitch propellers, recreational, etc.)

(c) The provisions of this section shall not prevent a manufacturer from also providing on the label any other information that such manufacturer deems necessary for, or useful to, the proper operation and satisfactory maintenance of the vessel or engine.

(d) Engines certified under the voluntary standards described in §94.8(f) to be designated as Blue Sky Series engines must contain the statement on the label: "Blue Sky Series".

(e) If an engine can be modified to operate on residual fuel, but has not been certified to meet the standards on such a fuel, it must contain the statement on the label: "THIS ENGINE IS CERTIFIED FOR OPERATION ONLY WITH DISTILLATE DIESEL FUEL. MODIFYING THE ENGINE TO OPERATE ON RESIDUAL FUEL MAY BE A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTIES." The Administrator may approve alternate language.

[64 FR 73331, Dec. 29, 1999, as amended at 67 FR 68346, Nov. 8, 2002]

§ 94.213 Submission of engine identification numbers.

(a) Upon request of the Administrator, the manufacturer of any engine covered by a certificate of conformity shall, within 30 days of receipt of such request, identify by engine identification number, the engines covered by the certificate of conformity.

(b) The manufacturer of any engines covered by a certificate of conformity shall provide to the Administrator, within 60 days of the issuance of a certificate of conformity, an explanation of the elements in any engine identification coding system in sufficient detail to enable the Administrator to identify those engines which are covered by a certificate of conformity.

§ 94.214 Production engines.

Any manufacturer obtaining certification under this part shall supply to the Administrator, upon his/her request, a reasonable number of production engines, as specified by the Administrator. The engines shall be representative of the engines, emission

control systems, and fuel systems offered and typical of production engines available for sale or use under the certificate. These engines shall be supplied for testing at such time and place and for such reasonable periods as the Administrator may require. This requirement does not apply for Category 3 engines. Manufacturers of Category 3 engines, however, must allow EPA access to test engines and development engines to the extent necessary to determine that the engine family is in full compliance with the applicable requirements of this part.

[68 FR 9786, Feb. 28, 2003]

§ 94.215 Maintenance of records; submittal of information; right of entry.

(a) Any manufacturer subject to any of the standards or procedures prescribed in this subpart shall establish, maintain and retain the following adequately organized and indexed records:

(1) General records. The records required to be maintained by this paragraph (a) shall consist of:

(i) Identification and description of all certification engines for which testing is required under this subpart.

(ii) A description of all emission control systems which are installed on or incorporated in each certification engine.

(iii) A description of all procedures used to test each such certification engine.

(iv) A copy of all applications for certification, filed with the Administrator.

(2) Individual records. (i) A brief history of each engine used for certification under this subpart including:

(A) In the case where a current production engine is modified for use as a certification engine, a description of the process by which the engine was selected and of the modifications made. In the case where the certification engine is not derived from a current production engine, a general description of the buildup of the engine (*e.g.*, whether experimental heads were cast and machined according to supplied drawings). In the cases in the previous two sentences, a description of the origin and selection process for fuel system components, ignition system components

(as applicable), intake air pressurization and cooling system components, cylinders, pistons and piston rings, exhaust smoke control system components, and exhaust aftertreatment devices as applicable, shall be included. The required descriptions shall specify the steps taken to assure that the certification engine, with respect to its engine, drivetrain, fuel system, emission control system components, exhaust aftertreatment devices, or any other devices or components as applicable, that can reasonably be expected to influence exhaust emissions will be representative of production engines and that either: all components and/or engine, construction processes, component inspection and selection techniques, and assembly techniques employed in constructing such engines are reasonably likely to be implemented for production engines; or that they are as close as practicable to planned construction and assembly process.

(B) A complete record of all emission tests performed (except tests performed by EPA directly), including test results, the date and purpose of each test, and the number of hours accumulated on the engine.

(C) A record and description of all maintenance and other servicing performed, giving the date of the maintenance or service and the reason for it.

(D) A record and description of each test performed to diagnose engine or emission control system performance, giving the date and time of the test and the reason for it.

(E) A brief description of any significant events affecting the engine during the period covered by the history and not described by an entry under one of the previous headings, including such extraordinary events as accidents involving the engine or dynamometer runaway.

(ii) Each such history shall be started on the date that the first of any of the selection or buildup activities in paragraph (a)(2)(i)(A) of this section occurred with respect to the certification engine and shall be kept in a designated location.

(3) All records, other than routine emission test records, required to be maintained under this subpart shall be retained by the manufacturer for a pe-

riod of 8 years after issuance of all certificates of conformity to which they relate. Routine emission test records shall be retained by the manufacturer for a period of one (1) year after issuance of all certificates of conformity to which they relate. Records may be retained as hard copy or reduced to computer disks, etc., depending on the record retention procedures of the manufacturer: *Provided*, that in every case all the information contained in the hard copy shall be retained.

(4) Nothing in this section limits the Administrator's discretion in requiring the manufacturer to retain additional records or submit information not specifically required by this section.

(5) Pursuant to a request made by the Administrator, the manufacturer shall submit to him/her the information that is required to be retained.

(6) EPA may void a certificate of conformity *ab initio* for an engine family for which the manufacturer fails to retain the records required in this section or to provide such information to the Administrator upon request.

(b) The manufacturer of engines subject to any of the standards prescribed in this part shall submit to the Administrator, at the time of issuance by the manufacturer, copies of all instructions or explanations regarding the use, repair, adjustment, maintenance, or testing of such engine, relevant to the control of crankcase, or exhaust emissions issued by the manufacturer, for use by other manufacturers, assembly plants, distributors, dealers, owners and operators. Any material not translated into the English language need not be submitted unless specifically requested by the Administrator.

(c) Any manufacturer participating in averaging, banking and trading program of subpart D of this part must comply with the maintenance of records requirements of §94.308.

(d)(1) Any manufacturer who has applied for certification of a new engine subject to certification testing under this subpart shall admit or cause to be admitted any EPA Enforcement Officer during operating hours on presentation of credentials to any of the following:

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(i) Any facility where any such tests or any procedures or activities connected with such test are or were performed;

(ii) Any facility where any engine which is being tested (or was tested, or is to be tested) is present;

(iii) Any facility where any construction process or assembly process used in the modification or buildup of such an engine into a certification engine is taking place or has taken place; or

(iv) Any facility where any record or other document relating to any of the activities listed in this paragraph (d)(1).

(2) Upon admission to any facility referred to in paragraph (d)(1) of this section, any EPA Enforcement Officer shall be allowed:

(i) To inspect and monitor any part or aspect of such procedures, activities and testing facilities including, but not limited to, monitoring engine pre-conditioning, emissions tests, service accumulation, maintenance, and engine storage procedures, and to verify correlation or calibration of test equipment;

(ii) To inspect and make copies of any such records, designs, or other documents, including those records specified in Subpart D of this part; and

(iii) To inspect and/or photograph any part or aspect of any such certification engine and any components to be used in the construction thereof.

(3) In order to allow the Administrator to determine whether or not production engines, conform to the conditions upon which a certificate of conformity has been issued, or conform in all material respects to the design specifications applicable to those engines, as described in the application for certification for which a certificate of conformity has been issued, any manufacturer shall admit any EPA Enforcement Officer on presentation of credentials to:

(i) Any facility where any document, design or procedure relating to the translation of the design and construction of engines and emission related components described in the application for certification or used for certification testing into production engines is located or carried on;

(ii) Any facility where any engines to be introduced into commerce are manufactured; and

(iii) Any facility where records specified this section are located.

(4) On admission to any such facility referred to in paragraph (d)(3) of this section, any EPA Enforcement Officer shall be allowed:

(i) To inspect and monitor any aspects of such manufacture and other procedures;

(ii) To inspect and make copies of any such records, documents or designs;

(iii) To inspect and photograph any part or aspect of any such engine(s) and any component used in the assembly thereof that are reasonably related to the purpose of his/her entry; and

(iv) To inspect and make copies of any records and documents specified in this section.

(5) Any EPA Enforcement Officer shall be furnished by those in charge of a facility being inspected with such reasonable assistance as he/she may request to help him/her discharge any function listed in this part. Each applicant for or recipient of certification is required to cause those in charge of a facility operated for its benefit to furnish such reasonable assistance without charge to EPA whether or not the applicant controls the facility.

(6) The duty to admit or cause to be admitted any EPA Enforcement Officer applies to any facility involved in the manufacturing or assembling of engines, whether or not the manufacturer owns or controls the facility in question and applies both to domestic and to foreign manufacturers and facilities. EPA will not attempt to make any inspections which it has been informed that local law forbids. However, if local law makes it impossible to do what is necessary to insure the accuracy of data generated at a facility, no informed judgment that an engine is certifiable or is covered by a certificate can properly be based on those data. It is the responsibility of the manufacturer to locate its testing and manufacturing facilities in jurisdictions where this situation will not arise.

(7) For purposes of this section:

(i) "Presentation of credentials" shall mean display of the document

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designating a person as an EPA Enforcement Officer.

(ii) Where component or engine storage areas or facilities are concerned, "operating hours" shall mean all times during which personnel other than custodial personnel are at work in the vicinity of the area or facility and have access to it.

(iii) Where facilities or areas other than those covered by paragraph (d)(7)(ii) of this section are concerned, "operating hours" shall mean all times during which an assembly line is in operation or all times during which testing, maintenance, service accumulation, production or compilation of records, or any other procedure or activity related to certification testing, to translation of designs from the test stage to the production stage, or to engine manufacture, or assembly is being carried out in a facility.

(iv) "Reasonable assistance" includes, but is not limited to, clerical, copying, interpretation and translation services, the making available on request of personnel of the facility being inspected during their working hours to inform the EPA Enforcement Officer of how the facility operates and to answer his questions, and the performance on request of emissions tests on any engine which is being, has been, or will be used for certification testing. Such tests shall be nondestructive, but may require appropriate service accumulation. A manufacturer may be compelled to cause the personal appearance of any employee at such a facility before an EPA Enforcement Officer by written request for his appearance, signed by the Assistant Administrator for Air and Radiation or the Assistant Administrator for Enforcement and Compliance Assurance, served on the manufacturer. Any such employee who has been instructed by the manufacturer to appear will be entitled to be accompanied, represented and advised by counsel.

(v) Any entry without 24 hour prior written or oral notification to the affected manufacturer shall be authorized in writing by the Assistant Administrator for Air and Radiation or the Assistant Administrator for Enforcement and Compliance Assurance.

(8) EPA may void a certificate of conformity *ab initio* for engines introduced into commerce if the manufacturer (or contractor for the manufacturer, if applicable) fails to comply with any provision of this section.

§ 94.216 Hearing procedures.

(a)(1) After granting a request for a hearing under § 94.210 or § 94.208, the Administrator shall designate a Presiding Officer for the hearing.

(2) The hearing shall be held as soon as practicable at a time and place fixed by the Administrator or by the Presiding Officer.

(3) In the case of any hearing requested pursuant to § 94.208, the Administrator may in his/her discretion direct that all argument and presentation of evidence be concluded within such fixed period not less than 30 days as he/she may establish from the date that the first written offer of a hearing is made to the manufacturer. To expedite proceedings, the Administrator may direct that the decision of the Presiding Officer (who may, but need not be the Administrator) shall be the final EPA decision.

(b)(1) Upon his/her appointment pursuant to paragraph (a) of this section, the Presiding Officer will establish a hearing file. The file shall consist of the notice issued by the Administrator under § 94.210 or § 94.208 together with any accompanying material, the request for a hearing and the supporting data submitted therewith, and all documents relating to the request for certification and all documents submitted therewith, and correspondence and other data material to the hearing.

(2) The hearing file will be available for inspection by the applicant at the office of the Presiding Officer.

(c) An applicant may appear in person, or may be represented by counsel or by any other duly authorized representative.

(d)(1) The Presiding Officer, upon the request of any party, or in his/her discretion, may arrange for a prehearing conference at a time and place specified by him/her to consider the following:

- (i) Simplification of the issues;
- (ii) Stipulations, admissions of fact, and the introduction of documents;