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and EGR to reduce emissions, then retarding timing the same number of degrees (relative to optimal engine performance) and using the same rate of EGR at the different conditions would be considered to be equivalent.

[64 FR 73331, Dec. 29, 1999, as amended at 68 FR 9785, Feb. 28, 2003]

§ 94.206 Required information.

(a) The manufacturer shall perform the tests required by the applicable test procedures, and submit to the Administrator the information required by this section: *Provided*, that if requested by the manufacturer, the Administrator may waive any requirement of this section for testing of engines for which the required emission data are otherwise available.

(b) The manufacturer shall submit exhaust emission deterioration factors, with supporting data. The determination of the deterioration factors shall be conducted in accordance with § 94.218 to ensure that the engines covered by a certificate issued under § 94.208 will meet all of the emission standards in § 94.8 in use for the useful life of the engine.

(c) The manufacturer shall submit emission data on such engines tested in accordance with the applicable test procedures of Subpart B of this part. These data shall include zero hour data, if generated. In lieu of providing the emission data required by paragraph (a) of this section, the Administrator may, upon request by the manufacturer, allow the manufacturer to demonstrate (on the basis of previous emission tests, development tests, or other testing information) that the engine will conform with the applicable emission standards of § 94.8.

(d) The manufacturer shall submit a statement that the engines for which certification is requested conform to the requirements in § 94.7 and that the descriptions of tests performed to ascertain compliance with the general standards in § 94.7, and the data derived from such tests, are available to the Administrator upon request.

(e) The manufacturer shall submit a statement that the emission data engine used to demonstrate compliance with the applicable standards of this part is in all material respects as de-

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scribed in the manufacturer's application for certification; that it has been tested in accordance with the applicable test procedures utilizing the fuels and equipment described in the application for certification; and that on the basis of such tests, the engine family conforms to the requirements of this part. If, on the basis of the data supplied and any additional data as required by the Administrator, the Administrator determines that the test engine was not as described in the application for certification or was not tested in accordance with the applicable test procedures utilizing the fuels and equipment as described in the application for certification, the Administrator may make the determination that the engine does not meet the applicable standards. If the Administrator makes such a determination, he/she may withhold, suspend, or revoke the certificate of conformity under § 94.208 (c)(3)(i).

§ 94.207 Special test procedures.

(a) *Establishment of special test procedures by EPA.* The Administrator may, on the basis of written application by a manufacturer, establish special test procedures other than those set forth in this part, for any engine that the Administrator determines is not susceptible to satisfactory testing under the specified test procedures set forth in Subpart B of this part.

(b) *Use of alternate test procedures by a manufacturer.* (1) A manufacturer may elect to use an alternate test procedure, provided that it is equivalent to the specified procedures with respect to the demonstration of compliance, its use is approved in advance by the Administrator, and the basis for the equivalence with the specified test procedures is fully described in the manufacturer's application.

(2) The Administrator may reject data generated under alternate test procedures if the data do not correlate with data generated under the specified procedures.

§ 94.208 Certification.

(a) If, after a review of the application for certification, test reports and data acquired from an engine or from a development data engine, and any

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other information required or obtained by EPA, the Administrator determines that the application is complete and that the engine family meets the requirements of the Act and this part, he/she will issue a certificate of conformity with respect to such engine family, except as provided by paragraph (c)(3) of this section. The certificate of conformity is valid for each engine family from the date of issuance by EPA until 31 December of the model year or calendar year for which it is issued and upon such terms and conditions as the Administrator deems necessary or appropriate to ensure that the production engines covered by the certificate will meet the requirements of the Act and of this part.

(b) [Reserved]

(c)(1) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificates were issued were satisfied or excused.

(2) The Administrator will determine whether the test data included in the application represents all engines of the engine family.

(3) Notwithstanding the fact that any engine(s) may comply with other provisions of this subpart, the Administrator may withhold or deny the issuance of any certificate of conformity, or suspend or revoke any such certificate(s) which has (have) been issued with respect to any such engine(s) if:

(i) The manufacturer submits false or incomplete information in its application for certification thereof;

(ii) The manufacturer renders inaccurate any test data which it submits pertaining thereto or otherwise circumvents the intent of the Act, or of this part with respect to such engine;

(iii) Any EPA Enforcement Officer is denied access on the terms specified in § 94.215 to any facility or portion thereof which contains any of the following:

(A) An engine which is scheduled to undergo emissions testing, or which is undergoing emissions testing, or which has undergone emissions testing; or

(B) Any components used or considered for use in the construction, modification or buildup of any engine which is scheduled to undergo emissions testing, or which is undergoing emissions

testing, or which has undergone emissions testing for purposes of emissions certification; or

(C) Any production engine which is or will be claimed by the manufacturer to be covered by the certificate; or

(D) Any step in the construction of the engine; or

(E) Any records, documents, reports or histories required by this part to be kept concerning any of the items listed in paragraphs (c)(3)(iii)(A) through (D) of this section; or

(iv) Any EPA Enforcement Officer is denied "reasonable assistance" (as defined in § 94.215).

(4) In any case in which a manufacturer knowingly submits false or inaccurate information or knowingly renders inaccurate or invalid any test data or commits any other fraudulent acts and such acts contribute substantially to the Administrator's decision to issue a certificate of conformity, the Administrator may deem such certificate void ab initio.

(5) In any case in which certification of an engine is to be withheld, denied, revoked or suspended under paragraph (c)(3) of this section, and in which the Administrator has presented to the manufacturer involved reasonable evidence that a violation of § 94.215 in fact occurred, the manufacturer, if it wishes to contend that, even though the violation occurred, the engine in question was not involved in the violation to a degree that would warrant withholding, denial, revocation or suspension of certification under paragraph (c)(3) of this section, shall have the burden of establishing that contention to the satisfaction of the Administrator.

(6) Any revocation, suspension, or voiding of certification under paragraph (c)(3) of this section shall:

(i) Be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 94.216; and

(ii) Extend no further than to forbid the introduction into commerce of engines previously covered by the certification which are still in the hands of the manufacturer, except in cases of such fraud or other misconduct that makes the certification invalid ab initio.

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(7) The manufacturer may request, within 30 days of receiving notification, that any determination made by the Administrator under paragraph (c)(3) of this section to withhold or deny certification be reviewed in a hearing conducted in accordance with §94.216. The request shall be in writing, signed by an authorized representative of the manufacturer and shall include a statement specifying the manufacturer's objections to the Administrator's determinations, and data in support of such objections. If the Administrator finds, after a review of the request and supporting data, that the request raises a substantial factual issue, he/she will grant the request with respect to such issue.

(d) In approving an application for certification, the Administrator may specify or require the manufacturer to specify:

(1) A broader range of adjustability than recommended by the manufacturer for those engine parameters which are subject to adjustment, if the Administrator determines that it is not reasonable to expect the parameter to be kept adjusted within the recommended range in use;

(2) A longer useful life period, if the Administrator determines that the useful life of the engines in the engine family, as defined in §94.2, is longer than the period specified by the manufacturer;

(3) Larger deterioration factors, if the Administrator determines that the deterioration factors specified by the manufacturer do not meet the requirements of §94.218; and/or

(4) A broader Not to Exceed Zone subject to the provisions of §94.106(b).

(e) Within 30 days following receipt of notification of the Administrator's determinations made under paragraph (d) of this section, the manufacturer may request a hearing on the Administrator's determinations. The request shall be in writing, signed by an authorized representative of the manufacturer and shall include a statement specifying the manufacturer's objections to the Administrator's determinations and data in support of such objections. If, after review of the request and supporting data, the Administrator finds that the request raises a

substantial factual issue, the manufacturer shall be provided with a hearing in accordance with §94.216 with respect to such issue.

§94.209 Special provisions for post-manufacture marinizers and small-volume manufacturers.

The provisions of this section apply for Category 1 and Category 2 engines, but not for Category 3 engines.

(a) *Broader engine families.* Instead of the requirements of §94.204, an engine family may consist of any engines subject to the same emission standards. This does not change any of the requirements of this part for showing that an engine family meets emission standards. To be eligible to use the provisions of this paragraph (a), the manufacturer must demonstrate one of the following:

(1) It is a post-manufacture marinizer and that the base engines used for modification have a valid certificate of conformity issued under 40 CFR part 89 or 40 CFR part 92 or the heavy-duty engine provisions of 40 CFR part 86.

(2) It is a small-volume manufacturer.

(b) *Hardship relief.* Post-manufacture marinizers, small-volume manufacturers, and small-volume boat builders may take any of the otherwise prohibited actions identified in §94.1103(a)(1) if approved in advance by the Administrator, subject to the following requirements:

(1) Application for relief must be submitted to the Designated Officer in writing prior to the earliest date in which the applying manufacturer would be in violation of §94.1103. The manufacturer must submit evidence showing that the requirements for approval have been met.

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

(3) The conditions causing the impending violation must jeopardize the solvency of the applying manufacturer if relief is not granted.

(4) The applying manufacturer must demonstrate that no other allowances under this part will be available to avoid the impending violation.