

## § 92.806

applicable Customs laws and regulations by the end of the period of conditional admission. A locomotive or locomotive engine not so delivered is subject to seizure by the U.S. Customs Service.

(d) An importer who violates section 213(d) and section 203 of the Act is subject to a civil penalty under section 205 of the Act and § 92.1106. In addition to the penalty provided in the Act and § 92.1106, where applicable, a person or entity who imports an engine under the exemption provisions of § 92.804 and, who fails to deliver the locomotive or locomotive engine to the U.S. Customs 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.

### § 92.806 Importation of partially complete engines.

The provisions of 40 CFR 1068.330 apply for importation of partially complete engines, or engines that will be modified for applications other than those covered by this part 92.

[70 FR 40457, July 13, 2005]

## Subpart J—Exclusion and Exemption Provisions

### § 92.901 Purpose and applicability.

The provisions of this subpart identify excluded locomotives (i.e., locomotives not covered by the Act) and allow for the exemption of locomotives and locomotive engines from certain provisions of this part. The applicability of the exclusions is described in § 92.903, and the applicability of the exemption allowances is described in §§ 92.904 through 92.909.

### § 92.902 Definitions.

The definitions of subpart A of this part apply to this subpart.

### § 92.903 Exclusions.

(a) Upon written request with supporting documentation, EPA will make written determinations as to whether certain locomotives are excluded from applicability of this part. Any locomotives that are determined to be excluded are not subject to the regula-

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tions under this part. Requests to determine whether certain locomotives are excluded should be sent to: Group Manager, Engine Compliance Programs Group, Engine Programs and Compliance Division U.S. Environmental Protection Agency, 6403–J, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

(b) EPA will maintain a list of models of locomotives that have been determined to be excluded from coverage under this part. This list will be available to the public and may be obtained by writing to the address in paragraph (a) of this section.

(c) In addition to the locomotives excluded in paragraph (a) of this section, certain vehicles are not subject to the requirements and prohibitions of this part because they are excluded from the definitions of “locomotive” and/or “new locomotive” in § 92.2.

### § 92.904 Exemptions.

(a) Except as specified otherwise in this subpart, the provisions of §§ 92.904 through 92.911 exempt certain new locomotives and new locomotive engines from the standards, other requirements, and prohibitions of this part, except for the requirements of this subpart and the requirements of § 92.1104.

(b)(1) Any person may request a testing exemption subject to the provisions of § 92.905.

(2) Any locomotive or locomotive engine manufacturer or remanufacturer may request a national security exemption subject to the provisions of § 92.908.

(3) Locomotive or locomotive engines manufactured or remanufactured for export purposes are exempt without application, subject to the provisions of § 92.909, except as otherwise specified by § 92.909.

(4) Manufacturer-owned and remanufacturer-owned locomotive or locomotive engines are exempt without application, subject to the provisions of § 92.906(a).

(5) Display locomotive or locomotive engines are exempt without application, subject to the provisions of § 92.906(b).

(6) Locomotive propulsion engines that are identical to engines that are covered by a certificate of conformity

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issued under 40 CFR part 89, and the locomotives in which they are used, are exempt, subject to the provisions of § 92.907.

### § 92.905 Testing exemption.

(a)(1) The Administrator may exempt from the standards and/or other requirements and prohibitions of this part new locomotives or new locomotive engines that are being used solely for the purpose of conducting a test program. Any person requesting an exemption for the purpose of conducting a test program must demonstrate the following:

(i) That the test program has a purpose which constitutes an appropriate basis for an exemption in accordance this section;

(ii) That the proposed test program necessitates the granting of an exemption;

(iii) That the proposed test program exhibits reasonableness in scope; and

(iv) That the proposed test program exhibits a degree of oversight and control consonant with the purpose of the test program and EPA's monitoring requirements.

(2) Paragraphs (b), (c), (d), and (e) of this section describe what constitutes a sufficient demonstration for each of the four elements identified in paragraphs (a)(1)(i) through (iv) of this section.

(b) With respect to the purpose of the proposed test program, an appropriate purpose would be research, investigations, studies, demonstrations, technology development, or training, but not national security. A concise statement of purpose is a required item of information.

(c) With respect to the necessity that an exemption be granted, necessity arises from an inability to achieve the stated purpose in a practicable manner without performing or causing to be performed one or more of the prohibited acts under § 92.1103. In appropriate circumstances, time constraints may be a sufficient basis for necessity, but the cost of certification alone, in the absence of extraordinary circumstances, is not a basis for necessity.

(d) With respect to reasonableness, a test program must exhibit a duration

of reasonable length and affect a reasonable number of engines. In this regard, required items of information include:

(1) An estimate of the program's duration; and

(2) The maximum number of locomotives or locomotive engines involved.

(e) With respect to control, the test program must incorporate procedures consistent with the purpose of the test and be capable of affording EPA monitoring capability. As a minimum, required items of information include:

(1) The technical nature of the testing;

(2) The location(s) of the testing;

(3) The time, work, or mileage duration of the testing;

(4) The ownership arrangement with regard to the locomotives and engines involved in the testing;

(5) The intended final disposition of the locomotives and engines;

(6) The manner in which the locomotive or engine identification numbers will be identified, recorded, and made available; and

(7) The means or procedure whereby test results will be recorded.

(f) A manufacturer or remanufacturer of new locomotives or locomotive engines may request a testing exemption to cover locomotives or locomotive engines intended for use in test programs planned or anticipated over the course of a subsequent two-year period. Unless otherwise required by the Director, Engine Programs and Compliance Division, a manufacturer or remanufacturer requesting such an exemption need only furnish the information required by paragraphs (a)(1) and (d)(2) of this section along with a description of the recordkeeping and control procedures that will be employed to assure that the locomotives or locomotive engines are used for purposes consistent with paragraph (a) of this section.

(g) For locomotives being used for the purpose of developing a fundamentally new emission control technology related either to an alternative fuel or an aftertreatment device, the Administrator may exempt the locomotive from some or all of the applicable