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40 CFR Ch. I (7-1-07 Edition)

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.

(5) Any relief may not exceed one year beyond the date relief is granted.

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

(7) The manufacturer must add a permanent, legible label, written in block letters in English, to a readily visible part of each engine exempted under this paragraph (b).

This label must include at least the following items:

(i) The label heading "EMISSION CONTROL INFORMATION".

(ii) Your corporate name and trademark.

(iii) Engine displacement (in liters), rated power, and model year of the engine or whom to contact for further information.

(iv) The statement "THIS ENGINE IS EXEMPT UNDER 40 CFR 94.209(b) FROM EMISSION STANDARDS AND RELATED REQUIREMENTS."

(c) *Extension of deadlines.* Small-volume manufacturers may use the provisions of 40 CFR 1068.250 to ask for an extension of a deadline to meet emission standards. We may require that you use available base engines that have been certified to emission standards for land-based engines until you

are able to produce engines certified to the requirements of this part.

[67 FR 68346, Nov. 8, 2002, as amended at 68 FR 9786, Feb. 28, 2003]

§ 94.210 Amending the application and certificate of conformity.

(a) The manufacturer shall notify the Administrator when changes to information required to be described in the application for certification are to be made to a product line covered by a certificate of conformity. This notification shall include a request to amend the application or the existing certificate of conformity. Except as provided in paragraph (e) of this section, no manufacturer shall make said changes or produce said engines prior to receiving approval from the Administrator.

(b) A manufacturer's request to amend the application or the existing certificate of conformity shall include the following information:

(1) A full description of the change to be made in production, or of the engines to be added;

(2) Engineering evaluations or data showing that the engines as modified or added will comply with all applicable emission standards; and

(3) A determination whether the manufacturer's original test fleet selection is still appropriate, and if the original test fleet selection is determined not to be appropriate, test fleet selection(s) representing the engines changed or added which would have been required if the engines had been included in the original application for certification.

(c) The Administrator may require the manufacturer to perform tests on the engine representing the engine to be added or changed.

(d)(1) Based on the description of the amendment and data derived from such testing as the Administrator may require or conduct, the Administrator will determine whether the change or addition would still be covered by the certificate of conformity then in effect.

(2) If the Administrator determines that the change or new engine(s) meets the requirements of this part and the Act, the appropriate certificate of conformity shall be amended.

(3) If the Administrator determines that the changed engine(s) does not

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meet the requirements of this part and the Act, the certificate of conformity will not be amended. The Administrator shall provide a written explanation to the manufacturer of the decision not to amend the certificate. The manufacturer may request a hearing on a denial.

(e) A manufacturer may make changes in or additions to production engines concurrently with the notification to the Administrator, as required by paragraph (a) of this section, if the manufacturer complies with the following requirements:

(1) In addition to the information required in paragraph (b) of this section, the manufacturer shall supply supporting documentation, test data, and engineering evaluations as appropriate to demonstrate that all affected engines will still meet applicable emission standards.

(2) If, after a review, the Administrator determines additional testing is required, the manufacturer shall provide the required test data within 30 days or cease production of the affected engines.

(3) If the Administrator determines that the affected engines do not meet applicable requirements, the Administrator will notify the manufacturer to cease production of the affected engines and to recall and correct at no expense to the owner all affected engines previously produced.

(4) Election to produce engines under this paragraph (e) will be deemed to be a consent to recall all engines that the Administrator determines do not meet applicable standards and to cause such nonconformity to be remedied at no expense to the owner.

§ 94.211 Emission-related maintenance instructions for purchasers.

(a) The manufacturer shall furnish or cause to be furnished to the ultimate purchaser of each new engine, subject to the standards prescribed in § 94.8, written instructions for the proper maintenance and use of the engine as are reasonable and necessary to assure the proper functioning of the emissions control system, consistent with the applicable provisions of paragraph (b) of this section.

(1) The maintenance and use instructions required by this section shall be clear and easily understandable.

(2) The maintenance instructions required by this section shall contain a general description of the documentation that would demonstrate for warranty purposes that the ultimate purchaser or any subsequent owner had complied with the instructions.

(3) For Category 3 engines, the manufacturer must provide in boldface type on the first page of the written maintenance instructions notice that § 94.1004 requires that the emissions-related maintenance be performed as specified in the instructions (or equivalent).

(b)(1) The manufacturer must provide in boldface type on the first page of the written maintenance instructions notice that maintenance, replacement, or repair of the emission control devices and systems may be performed by any engine repair establishment or individual.

(2) The instructions under paragraph (b)(1) of this section will not include any condition on the ultimate purchaser's or owner's using, in connection with such engine, any component or service (other than a component or service provided without charge under the terms of the purchase agreement) which is identified by brand, trade, or corporate name. Such instructions also will not directly or indirectly distinguish between service performed by any other service establishments with which such manufacturer has a commercial relationship and service performed by independent vessel or engine repair facilities with which such manufacturer has no commercial relationship.

(3) The prohibition of paragraph (b)(2) of this section may be waived by the Administrator if:

(i) The manufacturer demonstrates to the Administrator's satisfaction that the engine will function properly only if the component or service so identified is used in connection with such engine; and

(ii) The Administrator finds that such a waiver is in the public interest.

(c) The manufacturer shall provide to the Administrator, no later than the time of the submission required by § 94.203, a copy of the emission-related