

Environmental Protection Agency

§ 94.504

§ 94.408 Disclaimer of production warranty applicability.

(a) The act of filing an Emission Defect Information Report pursuant to § 94.403 is inconclusive as to the existence of a defect subject to the warranty provided by section 207(a) of the Act.

(b) A manufacturer may include on each page of its Emission Defect Information Report a disclaimer stating that the filing of a Defect Information Report pursuant to this subpart is not conclusive as to the applicability of the Production Warranty provided by section 207(a) of the Act.

Subpart F—Manufacturer Production Line Testing Programs

§ 94.501 Applicability.

(a) The requirements of this subpart are applicable to manufacturers of engines subject to the provisions of Subpart A of this part, excluding small-volume manufacturers.

(b) The provisions of Subpart F of 40 CFR Part 89 (Selective Enforcement Audit) apply to engines subject to the provisions of Subpart A of this part.

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

§ 94.502 Definitions.

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

§ 94.503 General requirements.

(a) For Tier 2 and later Category 1 and Category 2 engines, manufacturers shall test production line engines in accordance with sampling procedures specified in § 94.505 and the test procedures specified in § 94.506. The production-line testing requirements of this part do not apply for other engines.

(b) Upon request, the Administrator may also allow manufacturers to conduct alternate production line testing programs for Category 1 and Category 2 engines, provided the Administrator determines that the alternate production line testing program provides equivalent assurance that the engines that are being produced conform to the provisions of this part. As part of this allowance or for other reasons, the Ad-

ministrator may waive some or all of the requirements of this subpart.

(c) The requirements of this subpart apply with respect to all applicable standards and FELs of Subpart A of this part, including the supplemental standards of § 94.8(e).

(d) If you certify an engine family with carryover emission data, as described in § 94.206(c), and these equivalent engine families consistently pass the production-line testing requirements over the preceding two-year period, you may ask for a reduced testing rate for further production-line testing for that family. The minimum testing rate is one engine per engine family. If we reduce your testing rate, we may limit our approval to any number of model years. In determining whether to approve your request, we may consider the number of engines that have failed the emission tests.

[64 FR 73331, Dec. 29, 1999, as amended at 67 FR 68341, Nov. 8, 2002; 68 FR 9787, Feb. 28, 2003]

§ 94.504 Right of entry and access.

(a) To allow the Administrator to determine whether a manufacturer is complying with the provisions of this part, one or more EPA enforcement officers may enter during operating hours and upon presentation of credentials any of the following places:

(1) Any facility, including ports of entry, where any engine is to be introduced into commerce or any emission-related component is manufactured, assembled, or stored;

(2) Any facility where any test conducted pursuant to a manufacturer's production line testing program or any procedure or activity connected with such test is or was performed;

(3) Any facility where any test engine is present; and

(4) Any facility where any record required under § 94.509 or other document relating to this subpart is located.

(b) Upon admission to any facility referred to in paragraph (a) of this section, EPA enforcement officers are authorized to perform the following inspection-related activities:

(1) To inspect and monitor any aspect of engine manufacture, assembly, storage, testing and other procedures, and

§ 94.505

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

to inspect and monitor the facilities in which these procedures are conducted;

(2) To inspect and monitor any aspect of engine test procedures or activities, including test engine selection, preparation and service accumulation, emission duty cycles, and maintenance and verification of test equipment calibration;

(3) To inspect and make copies of any records or documents related to the assembly, storage, selection, and testing of an engine; and

(4) To inspect and photograph any part or aspect of any engine and any component used in the assembly thereof that is reasonably related to the purpose of the entry.

(c) EPA enforcement officers are authorized to obtain reasonable assistance without cost from those in charge of a facility to help the officers perform any function listed in this subpart and they are authorized to request the manufacturer to make arrangements with those in charge of a facility operated for the manufacturer benefit to furnish reasonable assistance without cost to EPA.

(1) Reasonable assistance includes, but is not limited to, clerical, copying, interpretation and translation services; the making available on an EPA enforcement officer's 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 the officer's questions; and the performance on request of emission tests on any engine which is being, has been, or will be used for production line testing.

(2) By written request, signed by the Assistant Administrator for Air and Radiation or the Assistant Administrator for Enforcement and Compliance Assurance, and served on the manufacturer, a manufacturer may be compelled to cause the personal appearance of any employee at such a facility before an EPA enforcement officer. Any such employee who has been instructed by the manufacturer to appear will be entitled to be accompanied, represented, and advised by counsel.

(d) EPA enforcement officers are authorized to seek a warrant or court order authorizing the EPA enforcement officers to conduct the activities au-

thorized in this section, as appropriate, to execute the functions specified in this section. EPA enforcement officers may proceed *ex parte* to obtain a warrant or court order whether or not the EPA enforcement officers first attempted to seek permission from the manufacturer or the party in charge of the facility(ies) in question to conduct the activities authorized in this section.

(e) A manufacturer is responsible for locating its foreign testing and manufacturing facilities in jurisdictions where local law does not prohibit an EPA enforcement officer(s) from conducting the activities specified in this section. EPA will not attempt to make any inspections which it has been informed local foreign law prohibits.

§ 94.505 Sample selection for testing.

(a) At the start of each model year, the manufacturer will begin to select engines from each Category 1 and Category 2 engine family for production line testing. Each engine will be selected from the end of the production line. Testing shall be performed throughout the entire model year to the extent possible. Engines selected shall cover the broadest range of production possible.

(1)(i) The required sample size for Category 1 engine manufacturers is one percent of projected annual U.S.-directed production for all Category 1 engine families, provided that no engine tested fails to meet applicable emission standards. Test engines shall include a proportional sample from each engine family. The required sample size is zero if a manufacturer's projected annual production for all Category 1 engine families is less than 100.

(ii) The required sample size for a Category 2 engine family is one percent of projected annual U.S.-directed production for that engine family, with a minimum sample size of one test per model year provided that no engine tested fails to meet applicable emission standards.

(2) Manufacturers may elect to test additional engines. All additional engines must be tested in accordance with the applicable test procedures of this part.