

(b) 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 marine SI engine repair establishment or individual.

(c) The instructions under paragraph (a) of this section will not include any condition on the ultimate purchaser'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 the franchised dealers of such manufacturer or any other service establishments with which such manufacturer has a commercial relationship and service performed by independent marine engine repair facilities which such manufacturer has no commercial relationship.

(d) The prohibition of paragraph (c) of this section may be waived by the Administrator if:

(1) The manufacturer satisfies the Administrator that the engine will function properly only if the component or service so identified is used in connection with such engine, and

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

Subpart N—In-Use Credit Program for New Marine Engines

§ 91.1301 Applicability.

Marine SI engines subject to the provisions of subpart A of this part 91 are eligible to participate in the in-use credit program described in this subpart.

§ 91.1302 Definitions.

The definitions in subpart A of this part apply to this subpart. The following definitions shall also apply to this subpart:

Averaging means the exchange of marine engine in-use emission credits among engine families within a given manufacturer's product line.

Banking means the retention of marine engine in-use emission credits by

the manufacturer generating the emission credits for use in future model year averaging or trading as permitted by these regulations.

Carry-over engine family means an engine family which undergoes certification using carryover test data from previous model years. See § 91.118(c).

Emission credits or in-use credits represent the amount of emission reduction or exceedance, for each regulated pollutant, by a marine engine family below or above, respectively, the applicable certification family emission limit (FEL) to which the engine family is certified. Emission reductions below the FEL are considered "positive credits," while emission exceedances above the FEL are considered "negative or required credits."

Banked credits refer to positive emission credits based on actual applicable production/sales volume as contained in the end of model year in-use testing reports submitted to EPA. Some or all of these banked credits may be revoked if EPA review of the end of model year in-use testing reports or any subsequent audit action(s) uncovers problems or errors.

Trading means the exchange of marine SI engine in-use emission credits between manufacturers and/or brokers.

Compliance level for an engine family is determined by averaging the in-use test results from each engine.

§ 91.1303 General provisions.

(a) The in-use credit program for eligible marine engines is described in this subpart. Participation in this program is voluntary.

(b) A marine SI engine family is eligible to participate in the in-use credit program if it is subject to regulation under subpart B of this part with certain exceptions specified in paragraph (c) of this section.

(c) Marine SI engines may not participate in the in-use averaging, banking, and trading program if they are delivered to a "point of first retail sale" outside of the U.S., as defined in § 91.202.

(d) Credits generated and used in the marine engine certification averaging, banking, and trading program pursuant to the provisions of subpart C of this

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part are not interchangeable with credits generated and used in the marine engine in-use credit program.

(e) An engine family with a compliance level, as determined by in-use testing pursuant to subpart I of this part and paragraph (h) of this section, below the applicable FEL to which the engine family is certified may generate emission credits for averaging, banking, or trading in the in-use credit program.

(f) Positive credits generated in a given model year may be used in that model year and/or in any subsequent model year.

(g) A manufacturer of an engine family with a compliance level exceeding the applicable FEL to which the engine family is certified, may, prior to the date of the report required under paragraph (j) of this section use previously banked credits, purchase credits from another manufacturer, or perform additional testing pursuant to paragraph (i) of this section to address (as calculated elsewhere in this subpart) the associated credit deficit (negative credits or a need for credits).

(h) A manufacturer may carry-over an in-use credit deficit up to and including model year 2003. Beginning with model year 2004, all manufacturers must have a zero or positive credit balance.

(i) A manufacturer must notify EPA of plans to test additional engine families beyond the maximum 25 percent required in subpart I of this part for the in-use testing program. Such notice must be submitted 30 days prior to initiation of service accumulation. EPA may approve, with adequate justification, the use of an existing fleet for additional testing. If the additional testing discovers an engine family to be in noncompliance with the applicable FEL, the testing must be treated as if it were a failure of the normal in-use testing requirement of an engine family.

(j) Manufacturers must demonstrate a zero or positive credit balance under the in-use credit program for a particular model year within 90 days of the end of the in-use testing of that model year's engine families, or at the same time as the final certification

AB&T report (required under §91.210), whichever is later.

§91.1304 Averaging.

(a) A manufacturer may use averaging across engine families to demonstrate a zero or positive credit balance for a model year. Positive credits to be used in averaging may be obtained from credits generated by another engine family of the same model year, credits banked in previous model years, or credits obtained through trading.

(b) Beginning in model year 2004, credits used to demonstrate a zero or positive credit balance must be used at a rate of 1.1 to 1.

§91.1305 Banking.

(a) A manufacturer of a marine SI engine family with an in-use compliance level below the applicable FEL to which the engine family is certified for a given model year may bank positive in-use credits for that model year for use in in-use averaging and trading.

(b) A manufacturer may consider credits banked 30 days after the submission of the report required by §91.1309(a). During the 30 day period EPA will work with the manufacturer to correct any error in calculating banked credits, if necessary.

§91.1306 Trading.

(a) A marine engine manufacturer may exchange positive in-use emission credits with other marine engine manufacturers through trading.

(b) In-use credits for trading can be obtained from credits banked for model years prior to the model year of the engine family requiring in-use credits.

(c) Traded in-use credits can be used for averaging, banking, or further trading transactions.

(d) Unless otherwise approved by EPA, a manufacturer that generates positive in-use credits must wait 30 days after it has both completed in-use testing for the model year for which the credits were generated and submitted the report required by §91.1309(a) before it may transfer credits to another manufacturer or broker.

(e) In the event of a negative credit balance resulting from a transaction, both the buyer and the seller are liable,