

Environmental Protection Agency

§ 92.1104

or to set any adjustable parameter to a setting outside of the range specified by the manufacturer or remanufacturer, as approved in the application for certification by the Administrator.

(ii) For a person to manufacture, remanufacture, sell or offer to sell, or install, a part or component intended for use with, or as part of, a locomotive or locomotive engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative a device or element of design installed on or in a locomotive or locomotive engine in compliance with regulations issued under this part, and where the person knows or should know that the part or component is being offered for sale or installed for this use or put to such use.

(iii) For a locomotive owner or operator to fail to comply with the maintenance and repair requirements of § 92.1004.

(4) For a manufacturer or a remanufacturer of a new locomotive or locomotive engine subject to standards prescribed under this part:

(i) To sell, offer for sale, or introduce or deliver for introduction into commerce, a new locomotive or new locomotive engine unless the manufacturer or remanufacturer has complied with the requirements of § 92.1107.

(ii) To sell, offer for sale, or introduce or deliver for introduction into commerce, a new locomotive or new locomotive engine unless all required labels and tags are affixed to the engine in accordance with § 92.212.

(iii) To fail or refuse to comply with the requirements of § 92.1108.

(iv) Except as provided in § 92.211, to provide directly or indirectly in any communication to the ultimate purchaser or a subsequent purchaser that the coverage of a warranty under the Act is conditioned upon use of a part, component, or system manufactured by the manufacturer or remanufacturer or a person acting for the manufacturer or remanufacturer or under its control, or conditioned upon service performed by such persons.

(v) To fail or refuse to comply with the terms and conditions of the warranty under § 92.1107.

(5) For a manufacturer or remanufacturer of locomotives to distribute in

commerce, sell, offer for sale, or deliver for introduction into commerce new locomotives (including all locomotives which contain a new engine) not covered by a certificate of conformity.

(b) For the purposes of enforcement of this part, the following apply:

(1) Nothing in paragraph (a)(3) of this section is to be construed to require the use of any manufacturer's or remanufacturer's parts in maintaining or repairing a locomotive or locomotive engine.

(2) Actions for the purpose of repair or replacement of a device or element of design or any other item are not considered prohibited acts under paragraph (a)(3)(i) of this section if the action is a necessary and temporary procedure, the device or element is replaced upon completion of the procedure, and the action results in the proper functioning of the device or element of design.

(3) Actions for the purpose of remanufacturing a locomotive are not considered prohibited acts under paragraph (a)(3)(i) of this section if the new remanufactured locomotive is covered by a certificate of conformity and complies with all applicable requirements of this part.

§ 92.1104 General enforcement provisions.

(a) *Information collection provisions.*

(1)(i) Every manufacturer or remanufacturer of new locomotives and/or new locomotive engines and other persons subject to the requirements of this part must establish and maintain records, perform tests, make reports and provide information the Administrator may reasonably require to determine whether the manufacturer or remanufacturer or other person has acted or is acting in compliance with this part or to otherwise carry out the provisions of this part, and must, upon request of an officer or employee duly designated by the Administrator, permit the officer or employee at reasonable times to have access to and copy such records. The manufacturer or remanufacturer shall comply in all respects with the requirements of subpart E of this part.

(ii) Every manufacturer, remanufacturer, owner, or operator of locomotives or locomotive engines exempted from the standards or requirements of this part must establish and maintain records, perform tests, make reports and provide information the Administrator may reasonably require regarding the emissions of such locomotives or locomotive engines.

(2) For purposes of enforcement of this part, an officer or employee duly designated by the Administrator, upon presenting appropriate credentials, is authorized:

(i) To enter, at reasonable times, any establishment of the manufacturer or remanufacturer, or of any person whom the manufacturer or remanufacturer engaged to perform any activity required under paragraph (a)(1) of this section, for the purposes of inspecting or observing any activity conducted pursuant to paragraph (a)(1) of this section; and

(ii) To inspect records, files, papers, processes, controls, and facilities used in performing an activity required by paragraph (a)(1) of this section, by the manufacturer or remanufacturer or by a person whom the manufacturer or remanufacturer engaged to perform the activity.

(b) *Exemption provision.* The Administrator may exempt a new locomotive or new locomotive engine from §92.1103 upon such terms and conditions as the Administrator may find necessary for the purpose of export, research, investigations, studies, demonstrations, or training, or for reasons of national security, or for other purposes allowed by subpart J of this part.

(c) *Importation provision.* (1) A new locomotive or locomotive engine, offered for importation or imported by a person in violation of §92.1103 is to be refused admission into the United States, but the Secretary of the Treasury and the Administrator may, by joint regulation, provide for deferring a final determination as to admission and authorizing the delivery of such a locomotive or locomotive engine offered for import to the owner or consignee thereof upon such terms and conditions (including the furnishing of a bond) as may appear to them appropriate to insure that the locomotive or locomotive

engine will be brought into conformity with the standards, requirements, and limitations applicable to it under this part.

(2) If a locomotive or locomotive engine is finally refused admission under this paragraph (c), the Secretary of the Treasury shall cause disposition thereof in accordance with the customs laws unless it is exported, under regulations prescribed by the Secretary, within 90 days of the date of notice of the refusal or additional time as may be permitted pursuant to the regulations.

(3) Disposition in accordance with the customs laws may not be made in such manner as may result, directly or indirectly, in the sale, to the ultimate consumer, of a new locomotive or locomotive engine that fails to comply with applicable standards of the Administrator under this part.

(d) *Export provision.* A new locomotive or locomotive engine intended solely for export, and so labeled or tagged on the outside of the container if used and on the engine, shall be subject to the provisions of §92.1103, except that if the country that is to receive the locomotive or locomotive engine has emission standards that differ from the standards prescribed under subpart A of this part, then the locomotive or locomotive engine must comply with the standards of the country that is to receive the locomotive or locomotive engine.

(e) *Recordkeeping.* Except where specified otherwise, records required by this part must be kept for eight (8) years.

§92.1105 Injunction proceedings for prohibited acts.

(a) The district courts of the United States have jurisdiction to restrain violations of §92.1103(a).

(b) Actions to restrain violations of §92.1103(a) must be brought by and in the name of the United States. In an action, subpoenas for witnesses who are required to attend a district court in any district may run into any other district.

§92.1106 Penalties.

(a) *Violations.* A violation of the requirements of this subpart is a violation of the applicable provisions of the Act, including sections 213(d) and 203,