

offer for sale, or deliver for introduction into commerce a new vessel containing an engine not covered by a certificate of conformity applicable for an engine model year the same as or later than the calendar year in which the manufacture of the new vessel is initiated. (Note: For the purpose of this paragraph (a)(5), the manufacture of a vessel is initiated when the keel is laid, or the vessel is at a similar stage of construction.)

(6) For any person to install a recreational marine engine in a vessel that is manufactured on or after the implementation date of the applicable standards and that is not a recreational vessel.

(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 parts in maintaining or repairing an engine.

(2)(i) 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.

(ii) Actions for emergency purposes are not considered prohibited acts under paragraph (a)(3)(i) of this section if the action is a necessary and temporary procedure and the device or element is replaced such that the proper functioning of the device or element of design is restored as soon as possible.

(3) Where the Administrator determines that no engine that is certified to the requirements of this part is produced by any manufacturer with the appropriate physical or performance characteristics to repower a vessel, the Administrator may allow an engine manufacturer to introduce into commerce a replacement engine without complying with all of the otherwise applicable requirements of this part. Such engine shall not be subject to the prohibitions of paragraph (a)(1) of this section, provided that:

(i) The engine requiring replacement is not certified or is certified to emis-

sion standards that are less stringent than those in effect when the replacement engine is built; and

(ii) The engine manufacturer or its agent takes ownership and possession of the engine being replaced in partial exchange for the replacement engine; and

(iii) The replacement engine is clearly labeled with the following language, or similar alternate language approved by the Administrator: "THIS ENGINE DOES NOT COMPLY WITH FEDERAL MARINE ENGINE EMISSION REQUIREMENTS. SALE OR INSTALLATION OF THIS ENGINE FOR ANY PURPOSE OTHER THAN AS A REPLACEMENT ENGINE FOR AN ENGINE MANUFACTURED PRIOR TO JANUARY 1 [INSERT APPROPRIATE YEAR] IS A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY"; and

(iv) In cases where an engine is to be imported for replacement purposes under the provisions of this paragraph (b)(3) of this section, the term "engine manufacturer" shall not apply to an individual or other entity that does not possess a current Certificate of Conformity issued by EPA under this part; and

(v) Where the replacement engine is intended to replace an engine that is certified to emission standards that are less stringent than those in effect when the replacement engine is built, the replacement engine shall be identical in all material respects to a certified configuration of the same or later model year as the engine being replaced; and

(vi) Engines sold pursuant to the provisions of this paragraph will neither generate nor use emission credits and will not be part of any accounting under the averaging, banking and trading program.

§ 94.1104 General enforcement provisions.

(a) *Information collection provisions.*
 (1)(i) Every manufacturer of new 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 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 shall comply in all respects with the requirements of subpart E of this part.

(ii) Every manufacturer or owner of 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 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 of any person whom the manufacturer 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 by a person whom the manufacturer engaged to perform the activity.

(b) *Exemption provision.* The Administrator may exempt a new engine from §94.1103 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 engine, offered for importation or imported by a person in violation of §94.1103 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 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 engine will be brought into conformity with the standards, requirements, and limitations applicable to it under this part.

(2) If a 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 Treasury 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 engine that fails to comply with applicable standards of the Administrator under this part.

(d) *Export provision.* A new 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 §94.1103, except that if the country that is to receive the engine has emission standards that differ from the standards prescribed under subpart A of this part, then the engine must comply with the standards of the country that is to receive the engine.

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

§94.1105 Injunction proceedings for prohibited acts.

(a) The district courts of the United States have jurisdiction to restrain violations of §94.1103(a).

(b) Actions to restrain violations of §94.1103(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.

§94.1106 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,