

## Environmental Protection Agency

## § 92.210

or remanufacturer for a particular locomotive or locomotive engine, and any one of the manufacturers or remanufacturers obtains a certificate of conformity covering such locomotive or locomotive engine, the requirements of subparts C, D, F, and G of this part shall apply to the manufacturer or remanufacturer that obtains the certificate of conformity. Other manufacturers or remanufacturers are required to comply with the requirements of subparts C, D, F, and G of this part only when notified by the Administrator. Such notification by the Administrator shall specify a reasonable time period in which the manufacturer or remanufacturer shall comply with the requirements identified in the notice.

### § 92.210 Amending the application and certificate of conformity.

(a) The manufacturer or remanufacturer of locomotives or locomotive engines must 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 must include a request to amend the application or the existing certificate of conformity. Except as provided in paragraph (e) of this section, no manufacturer or remanufacturer shall make said changes or produce said locomotives or engines prior to receiving approval from EPA.

(b) A manufacturer's or remanufacturer'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 locomotives or engines to be added;

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

(3) A determination whether the manufacturer's or remanufacturer'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 locomotives or engines changed or added which would have been required if the locomotives or en-

gines had been included in the original application for certification.

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

(d) *Decision by Administrator.* (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 locomotive(s) or 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 or new locomotive(s) or engine(s) does not 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 or remanufacturer of the decision not to amend the certificate. The manufacturer or remanufacturer may request a hearing on a denial.

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

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

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

(3) If the Administrator determines that the affected locomotives or engines do not meet applicable requirements, the Administrator will notify

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the manufacturer or remanufacturer to cease production of the affected locomotives or engines and to recall and correct at no expense to the owner all affected locomotives or engines previously produced.

(4) Election to produce locomotives or engines under this paragraph will be deemed to be a consent to recall all locomotives or engines which the Administrator determines do not meet applicable standards and to cause such non-conformity to be remedied at no expense to the owner.

[63 FR 18998, Apr. 16, 1998, as amended at 70 FR 40455, July 13, 2005]

### §92.211 Emission-related maintenance instructions for purchasers.

(a) The manufacturer or remanufacturer shall furnish or cause to be furnished to the ultimate purchaser or owner of each new locomotive, or new locomotive engine, subject to the standards prescribed in §92.8, written instructions for the proper maintenance and use of the locomotive, or locomotive 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 which would demonstrate that the ultimate purchaser or any subsequent owner had complied with the instructions.

(b)(1) The manufacturer or remanufacturer 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 locomotive or locomotive 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 locomotive or locomotive 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 or remanufacturer has a commercial relationship and service performed by independent locomotive or locomotive engine repair facilities which such manufacturer or remanufacturer has no commercial relationship.

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

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

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

(c) The manufacturer or remanufacturer shall provide to the Administrator, no later than the time of the submission required by §92.203, a copy of the emission-related maintenance instructions which the manufacturer or remanufacturer proposes to supply to the ultimate purchaser or owner in accordance with this section. The Administrator will review such instructions to determine whether they are reasonable and necessary to assure the proper functioning of the locomotive's, or locomotive engine's emission control systems. If the Administrator determines that such instructions are not reasonable and necessary to assure the proper functioning of the emission control systems, he/she may disapprove the application for certification, or may require that the manufacturer or remanufacturer modify the instructions.

(d) Any revision to the maintenance instructions which will affect emissions shall be supplied to the Administrator at least 30 days before being supplied to the ultimate purchaser or owner unless the Administrator consents to a lesser period of time, and is subject to the provisions of §92.210.