

§ 1033.340

40 CFR Ch. I (7–1–10 Edition)

for audits performed by owners/operators.

(b) Audit at least five percent of your annual production per model year per installer or ten per engine family per installer, whichever is less. You must perform more audits if there are any failures. Randomly select the locomotives to be audited after the remanufacture is complete. We may allow you to select locomotives prior to the completion of the remanufacture, if the preselection would not have the potential to affect the manner in which the locomotive was remanufactured (e.g., where the installer is not aware of the selection prior to the completion of the remanufacture). Unless we specify otherwise, you are not required to audit installers that remanufacture fewer than 10 locomotives per year under your certificates (combined for all of your engine families).

(c) The audit should be completed as soon as is practical after the remanufacture is complete. In no case may the remanufactured locomotive accumulate more than 45,000 miles prior to an audit.

(d) A locomotive fails if any emission related components are found to be improperly installed, improperly adjusted or incorrectly used.

(e) If a remanufactured locomotive fails an audit, then you must audit two additional locomotives from the next ten remanufactured in that engine family by that installer.

(f) An engine family is determined to have failed an audit, if at any time during the model year, you determine that the three locomotives audited are found to have had any improperly installed, improperly adjusted or incorrectly used components. You must notify us within 2 working days of a determination of an engine family audit failure.

(g) Within 45 calendar days of the end of each quarter, the remanufacturer must send the Designated Compliance Officer a report which includes the following information:

(1) The location and description of your audit facilities which were utilized to conduct auditing reported pursuant to this section;

(2) Total production and sample size for each engine family;

(3) The applicable standards and/or FELs against which each engine family was audited;

(4) For each audit conducted:

(i) A description of the audited locomotive, including:

(A) Configuration and engine family identification;

(B) Year, make, build date, and remanufacture date; and

(C) Locomotive and engine identification numbers;

(ii) Any other information we request relevant to the determination whether the new locomotives being remanufactured do in fact conform with the regulations with respect to which the certificate of conformity was issued;

(5) For each failed locomotive as defined in paragraph (d) of this section, a description of the remedy as required by §1033.340(g);

(6) The following signed statement and endorsement by your authorized representative:

We submit this report under sections 208 and 213 of the Clean Air Act. Our production-line auditing conformed completely with the requirements of 40 CFR part 1033. We have not changed production processes or quality-control procedures for the audited locomotives in a way that might affect emission controls. All the information in this report is true and accurate to the best of my knowledge. I know of the penalties for violating the Clean Air Act and the regulations. (Authorized Company Representative)

[73 FR 37197, June 30, 2008, as amended at 73 FR 59190, Oct. 8, 2008]

§1033.340 Suspension and revocation of certificates of conformity.

(a) A certificate can be suspended for an individual locomotive as follows:

(1) The certificate of conformity is automatically suspended for any locomotive that fails a production line test pursuant to §1033.330(a), effective from the time the testing of that locomotive is completed.

(2) The certificate of conformity is automatically suspended for any locomotive that fails an audit pursuant to §1033.335(d), effective from the time that auditing of that locomotive is completed.

(b) A certificate can be suspended for an engine family as follows:

(1) We may suspend the certificate of conformity for an engine family that is

Environmental Protection Agency

§ 1033.340

in noncompliance pursuant to § 1033.330(b), thirty days after the engine family is deemed to be in noncompliance.

(2) We may suspend the certificate of conformity for an engine family that is determined to have failed an audit pursuant to § 1033.335(f). This suspension will not occur before thirty days after the engine family is deemed to be in noncompliance.

(c) If we suspend your certificate of conformity for an engine family, the suspension may apply to all facilities producing engines from an engine family, even if you find noncompliant engines only at one facility.

(d) We may revoke a certificate of conformity for any engine family in whole or in part if:

(1) You fail to comply with any of the requirements of this subpart.

(2) You submit false or incomplete information in any report or information provided to us under this subpart.

(3) You render inaccurate any test data submitted under this subpart.

(4) An EPA enforcement officer is denied the opportunity to conduct activities authorized in this subpart.

(5) An EPA enforcement officer is unable to conduct authorized activities for any reason.

(e) We will notify you in writing of any suspension or revocation of a certificate of conformity in whole or in part; a suspension or revocation is effective upon receipt of such notification or thirty days from the time a locomotive or engine family is deemed to be in noncompliance under §§ 1033.320(d), 1033.330(a), 1033.330(b), or 1033.335(f) is made, whichever is earlier, except that the certificate is immediately suspended with respect to any failed locomotives as provided for in paragraph (a) of this section.

(f) We may revoke a certificate of conformity for an engine family when the certificate has been suspended under paragraph (b) or (c) of this section if the remedy is one requiring a design change or changes to the locomotive, engine and/or emission control system as described in the application for certification of the affected engine family.

(g) Once a certificate has been suspended for a failed locomotive, as pro-

vided for in paragraph (a) of this section, you must take all the following actions before the certificate is reinstated for that failed locomotive:

(1) Remedy the nonconformity.

(2) Demonstrate that the locomotive conforms to applicable standards or family emission limits by retesting, or reauditing if applicable, the locomotive in accordance with this part.

(3) Submit a written report to us after successful completion of testing (or auditing, if applicable) on the failed locomotive, which contains a description of the remedy and testing (or auditing) results for each locomotive in addition to other information that may be required by this part.

(h) Once a certificate for a failed engine family has been suspended pursuant to paragraph (b) or (c) of this section, you must take the following actions before we will consider reinstating the certificate:

(1) Submit a written report to us identifying the reason for the noncompliance of the locomotives, describing the remedy, including a description of any quality control measures you will use to prevent future occurrences of the problem, and stating the date on which the remedies will be implemented.

(2) Demonstrate that the engine family for which the certificate of conformity has been suspended does in fact comply with the regulations of this part by testing (or auditing) locomotives selected from normal production runs of that engine family. Such testing (or auditing) must comply with the provisions of this subpart. If you elect to continue testing (or auditing) individual locomotives after suspension of a certificate, the certificate is reinstated for any locomotive actually determined to be in conformance with the applicable standards or family emission limits through testing (or auditing) in accordance with the applicable test procedures, provided that we have not revoked the certificate under paragraph (f) of this section.

(i) If the certificate has been revoked for an engine family, you must take the following actions before we will issue a certificate that would allow you

§ 1033.401

40 CFR Ch. I (7–1–10 Edition)

to continue introduction into commerce of a modified version of that family:

(1) If we determine that the change(s) in locomotive design may have an effect on emission deterioration, we will notify you within five working days after receipt of the report in paragraph (h) of this section, whether subsequent testing/auditing under this subpart will be sufficient to evaluate the change(s) or whether additional testing (or auditing) will be required.

(2) After implementing the change or changes intended to remedy the nonconformity, you must demonstrate that the modified engine family does in fact conform with the regulations of this part by testing locomotives (or auditing for remanufactured locomotives) selected from normal production runs of that engine family. When both of these requirements are met, we will re-issue the certificate or issue a new certificate. If this subsequent testing (or auditing) reveals failing data the revocation remains in effect.

(j) At any time subsequent to an initial suspension of a certificate of conformity for a test or audit locomotive pursuant to paragraph (a) of this section, but not later than 30 days (or such other period as may we allow) after the notification our decision to suspend or revoke a certificate of conformity in whole or in part pursuant to this section, you may request a hearing as to whether the tests or audits have been properly conducted or any sampling methods have been properly applied. (See § 1033.920.)

(k) Any suspension of a certificate of conformity under paragraphs (a) through (d) of this section will be made only after you have been offered an opportunity for a hearing conducted in accordance with § 1033.920. It will not apply to locomotives no longer in your possession.

(1) If we suspend, revoke, or void a certificate of conformity, and you believe that our decision was based on erroneous information, you may ask us to reconsider our decision before requesting a hearing. If you demonstrate to our satisfaction that our decision was based on erroneous information, we will reinstate the certificate.

(m) We may conditionally reinstate the certificate for that family so that you do not have to store non-test locomotives while conducting subsequent testing or auditing of the noncomplying family subject to the following condition: you must commit to recall all locomotives of that family produced from the time the certificate is conditionally reinstated if the family fails subsequent testing, or auditing if applicable, and must commit to remedy any nonconformity at no expense to the owner.

Subpart E—In-use Testing

§ 1033.401 Applicability.

The requirements of this subpart are applicable to certificate holders for locomotives subject to the provisions of this part. These requirements may also be applied to other manufacturers/re-manufacturers as specified in § 1033.1(d).

§ 1033.405 General provisions.

(a) Each year, we will identify engine families and configurations within families that you must test according to the requirements of this section.

(1) We may require you to test one engine family each year for which you have received a certificate of conformity. If you are a manufacturer that holds certificates of conformity for both freshly manufactured and remanufactured locomotive engine families, we may require you to test one freshly manufactured engine family and one remanufactured engine family. We may require you to test additional engine families if we have reason to believe that locomotives in such families do not comply with emission standards in use.

(2) For engine families of less than 10 locomotives per year, no in-use testing will be required, unless we have reason to believe that those engine families are not complying with the applicable emission standards in use.

(b) Test a sample of in-use locomotives from an engine family, as specified in § 1033.415. We will use these data, and any other data available to us, to determine the compliance status of classes of locomotives, including for purposes of recall under 40 CFR part