

§ 92.207

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hour data, if generated. In lieu of providing the emission data required by paragraph (a) of this section, the Administrator may, upon request of the manufacturer or remanufacturer, allow the manufacturer or remanufacturer to demonstrate (on the basis of previous emission tests, development tests, or other testing information) that the engine or locomotive will conform with the applicable emission standards of § 92.8. The requirement to measure smoke emissions is waived for certification and production line testing of Tier 2 locomotives, except where there is reason to believe the locomotives do not meet the applicable smoke standards.

(d) A statement that the locomotives and locomotive engines, for which certification is requested conform to the requirements in § 92.7, and that the descriptions of tests performed to ascertain compliance with the general standards in § 92.7, and the data derived from such tests, are available to the Administrator upon request.

(e) A statement that the locomotive, or locomotive engine, with respect to which data are submitted to demonstrate compliance with the applicable standards of this subpart, is in all material respects as described in the manufacturer's or remanufacturer's application for certification; that it has been tested in accordance with the applicable test procedures utilizing the fuels and equipment described in the application for certification; and that on the basis of such tests, the engine family conforms to the requirements of this part. If, on the basis of the data supplied and any additional data as required by the Administrator, the Administrator determines that the test locomotive, or test engine, was not as described in the application for certification or was not tested in accordance with the applicable test procedures utilizing the fuels and equipment as described in the application for certification, the Administrator may make the determination that the locomotive, or engine, does not meet the applicable standards. If the Administrator makes such a determination, he/she may with-

hold, suspend, or revoke the certificate of conformity under § 92.208(c)(3)(i).

[63 FR 18998, Apr. 16, 1998, as amended at 73 FR 37195, June 30, 2008]

§ 92.207 Special test procedures.

(a) *Establishment of special test procedures by EPA.* The Administrator may, on the basis of written application by a manufacturer or remanufacturer, establish special test procedures other than those set forth in this part, for any locomotive or locomotive engine that the Administrator determines is not susceptible to satisfactory testing under the specified test procedures set forth in subpart B of this part.

(b) *Use of alternate test procedures by manufacturer or remanufacturer.* (1) A manufacturer or remanufacturer may elect to use an alternate test procedure provided that it is equivalent to the specified procedures with respect to the demonstration of compliance, its use is approved in advance by the Administrator, and the basis for the equivalence with the specified test procedures is fully described in the manufacturer's or remanufacturer's application.

(2) The Administrator may reject data generated under alternate test procedures which do not correlate with data generated under the specified procedures.

§ 92.208 Certification.

(a) This paragraph (a) applies to manufacturers of new locomotives and new locomotive engines. If, after a review of the application for certification, test reports and data acquired from a freshly manufactured locomotive or locomotive engine or from a development data engine, and any other information required or obtained by EPA, the Administrator determines that the application is complete and that the engine family meets the requirements of the Act and this part, he/she will issue a certificate of conformity with respect to such engine family except as provided by paragraph (c)(3) of this section. The certificate of conformity is valid for each engine family starting with the indicated effective date, but it is not valid for any production after December 31 of the model year for which it is issued (except as specified in § 92.12). The certificate of conformity

is valid upon such terms and conditions as the Administrator deems necessary or appropriate to ensure that the production engines covered by the certificate will meet the requirements of the Act and of this part.

(b) This paragraph (b) applies to remanufacturers of locomotives and locomotive engines. If, after a review of the application for certification, test reports and data acquired from a remanufactured locomotive or locomotive engine or from a development data engine, and any other information required or obtained by EPA, the Administrator determines that the engine family meets the requirements of the Act and of this subpart, he/she will issue a certificate of conformity with respect to such engine family except as provided by paragraph (c)(3) of this section. The certificate of conformity is valid for each engine family from the date of issuance by EPA until 31 December of the model year or calendar year for which it is issued and upon such terms and conditions as the Administrator deems necessary or appropriate to assure that the production locomotives or engines covered by the certificate will meet the requirements of the Act and of this part.

(c) This paragraph (c) applies to manufacturers and remanufacturers of locomotives and locomotive engines.

(1) The manufacturer or remanufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificates were issued were satisfied or excused.

(2) The Administrator will determine whether the test data included in the application represents all locomotives or locomotive engines of the engine family.

(3) Notwithstanding the fact that any locomotive(s) or locomotive engine(s) may comply with other provisions of this subpart, the Administrator may withhold or deny the issuance of any certificate of conformity, or suspend or revoke any such certificate(s) which has (have) been issued with respect to any such locomotive(s) or locomotive engine(s) if:

(i) The manufacturer or remanufacturer submits false or incomplete in-

formation in its application for certification thereof;

(ii) The manufacturer or remanufacturer renders inaccurate any test data which it submits pertaining thereto or otherwise circumvents the intent of the Act, or of this part with respect to such locomotive or locomotive engine;

(iii) Any EPA Enforcement Officer is denied access on the terms specified in § 92.215 to any facility or portion thereof which contains any of the following:

(A) A locomotive or locomotive engine which is scheduled to undergo emissions testing, or which is undergoing emissions testing, or which has undergone emissions testing; or

(B) Any components used or considered for use in the construction, modification or buildup of any locomotive or locomotive engine which is scheduled to undergo emissions testing, or which is undergoing emissions testing, or which has undergone emissions testing for purposes of emissions certification; or

(C) Any production locomotive or production locomotive engine which is or will be claimed by the manufacturer or remanufacturer to be covered by the certificate; or

(D) Any step in the construction of a locomotive or locomotive engine, where such step may reasonably be expected to have an effect on emissions; or

(E) Any records, documents, reports or histories required by this part to be kept concerning any of the items listed in paragraphs (c)(3)(iii)(A) through (D).

(iv) Any EPA Enforcement Officer is denied "reasonable assistance" (as defined in § 92.215).

(4) In any case in which a manufacturer or remanufacturer knowingly submits false or inaccurate information or knowingly renders inaccurate or invalid any test data or commits any other fraudulent acts and such acts contribute substantially to the Administrator's decision to issue a certificate of conformity, the Administrator may deem such certificate void *ab initio*.

(5) In any case in which certification of a locomotive or locomotive engine is to be withheld, denied, revoked or suspended under paragraph (c)(3) of this

section, and in which the Administrator has presented to the manufacturer or remanufacturer involved reasonable evidence that a violation of § 92.215 in fact occurred, the manufacturer or remanufacturer, if it wishes to contend that, even though the violation occurred, the locomotive or locomotive engine in question was not involved in the violation to a degree that would warrant withholding, denial, revocation or suspension of certification under paragraph (c)(3) of this section, shall have the burden of establishing that contention to the satisfaction of the Administrator.

(6) Any revocation, suspension, or voiding of certification under paragraph (c)(3) of this section shall:

(i) Be made only after the manufacturer or remanufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 92.216; and

(ii) Extend no further than to forbid the introduction into commerce of locomotives or locomotive engines previously covered by the certification which are still in the hands of the manufacturer or remanufacturer, except in cases of such fraud or other misconduct that makes the certification invalid *ab initio*.

(7) The manufacturer or remanufacturer may request, within 30 days of receiving notification, that any determination made by the Administrator under paragraph (c)(3) of this section to withhold or deny certification be reviewed in a hearing conducted in accordance with § 92.216. The request shall be in writing, signed by an authorized representative of the manufacturer or remanufacturer as applicable, and shall include a statement specifying the manufacturer's or remanufacturer's objections to the Administrator's determinations, and data in support of such objections. If the Administrator finds, after a review of the request and supporting data, that the request raises a substantial factual issue, he/she will grant the request with respect to such issue.

(d) In approving an application for certification, the Administrator may specify:

(1) A broader range of adjustability than recommended by the manufac-

turer or remanufacturer for those locomotive or engine parameters which are to be subject to adjustment, if the Administrator determines that it will not be practical to keep the parameter adjusted within the recommended range in use;

(2) A longer useful life period, if the Administrator determines that the useful life of the locomotives and locomotive engines in the engine family, as defined in § 92.2, is longer than the period specified by the manufacturer or remanufacturer; and/or

(3) Larger deterioration factors, if the Administrator determines that the deterioration factors specified by the manufacturer or remanufacturer do not meet the requirements of § 92.9(b)(2)(iv).

(e) Within 30 days following receipt of notification of the Administrator's determinations made under paragraph (d) of this section, the manufacturer or remanufacturer may request a hearing on the Administrator's determinations. The request shall be in writing, signed by an authorized representative of the manufacturer or remanufacturer as applicable, and shall include a statement specifying the manufacturer's or remanufacturer's objections to the Administrator's determinations, and data in support of such objections. If, after review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, the manufacturer or remanufacturer shall be provided with a hearing in accordance with § 92.216 with respect to such issue.

[63 FR 18998, Apr. 16, 1998, as amended at 70 FR 40455, July 13, 2005; 73 FR 37195, June 30, 2008]

§ 92.209 Certification with multiple manufacturers or remanufacturers.

(a) Where there are multiple persons meeting the definition of manufacturer or remanufacturer, each such person must comply with the requirements of this part that apply to manufacturers or remanufacturers. However, if one person complies with a requirement, then all such persons will be deemed to have complied with that specific requirement.

(b) Where more than one entity meets the definition of manufacturer