

**Emission Standards for Locomotives and Locomotive Engines:  
Proposed Regulations**

**January 31, 1997**

For the reasons set forth in the preamble, parts 85 and 89 of chapter I of title 40 of the Code of Federal Regulations are proposed to be revised, and a new part 92 is proposed to be added to chapter I of title 40 of the Code of Federal Regulations, as set forth below:

**PART 85 - [AMENDED]**

1. The authority citation for part 85 is proposed to be revised to read as follows:

Authority: Sections 203, 205, 207, 208, 209, 213 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7522, 7524, 7541, 7542, 7543, 7547 and 7601(a)).

2. Section 85.1602 of subpart Q is proposed to be amended by revising the definition of "locomotive," and adding a new definition for "new locomotive or new locomotive engine," to read as follows:

§ 85.1602 Definitions.

\* \* \* \* \*

*Locomotive* means a self-propelled piece of on-track equipment designed for moving or propelling cars designed to carry freight, passengers or other equipment, but which itself is not designed or intended to carry freight, passengers (other than those operating the locomotive) or other equipment. Other equipment which is designed for operation both on highways and rails; specialized railroad equipment for maintenance, construction, post accident recovery of equipment, and repairs; other similar equipment; and vehicles propelled by engines with rated horsepower of less than 750 kW are not locomotives.

*New locomotive or new locomotive engine* means:

(1) a locomotive or locomotive engine the equitable or legal title to which has never been transferred to an ultimate purchaser; or

(2) a locomotive or locomotive engine which has been remanufactured or upgraded, but has not been placed back into service.

(3) Where the equitable or legal title to a locomotive or locomotive engine is not transferred prior to its being placed into service, the locomotive or locomotive engine ceases to be new when it is placed into service.

(4) With respect to imported locomotives or locomotive engines, the term "new locomotive or new locomotive engine" means a locomotive or locomotive engine that is not covered by a certificate of conformity under this part at the time of importation, and that is manufactured or remanufactured after the effective date of a regulation issued under this part which is applicable to such locomotive or engine (or which would be applicable to such locomotive or engine had it been manufactured for importation into the United States).

(5) Notwithstanding paragraphs (1) through (4) of this definition, locomotives and locomotive engines which were originally manufactured before January 1, 1973 and which have not been upgraded are not new.

\* \* \* \* \*

3. Section 85.1603 is proposed to be amended by revising paragraph (c) to read as follows:

§ 85.1603 Application of definitions; scope of preemption.

\* \* \* \* \*

(c) States and any political subdivisions thereof are preempted from adopting or enforcing standards or other requirements relating to the control of emissions from new locomotives and new engines used in locomotives.

(1) During a period equivalent to 125 percent of the useful life, those standards or other requirements which are preempted include, but are not limited to, the following: emission standards, mandatory fleet average standards, certification requirements, aftermarket equipment requirements, and nonfederal in-use testing requirements. The standards and other requirements specified in the preceding sentence are preempted whether applicable to new or other locomotives or locomotive engines.

\* \* \* \* \*

**PART 89 - [AMENDED]**

4. The authority citation for part 89 continues to read as follows:

Authority: Sections 202, 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a)).

5. Section 89.1 of subpart A is proposed to be amended by revising paragraph (b)(3) to read as follows:

§ 89.1 Applicability

(a) \* \* \* \* \*

(b) \* \* \*

(3) Engines ~~used to propel a locomotive~~ **subject to the standards of part 92 of this chapter;** and

6. Section 89.2 of subpart A is proposed to be amended by removing the definition of "locomotive":

§ 89.2 Definitions.

\* \* \* \* \*

~~Locomotive means a self-propelled piece of on-track equipment (other than equipment designed for operation both on highways and rails, specialized maintenance equipment, and other similar equipment) designed for moving other equipment, freight, or passenger traffic.~~

\* \* \* \* \*

**PART 92 - [ADDED]**

7. A new part 92 is proposed to be added to Chapter I of title 40, to read as follows:

**PART 92 - CONTROL OF AIR POLLUTION FROM LOCOMOTIVES AND LOCOMOTIVE ENGINES**

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- 92.005 General standards
- 92.006 Emission standards
- 92.007 Compliance with emission standards
- 92.008 Application for certification.
- 92.009 Approval of application for certification
- 92.010 Designation of engine families.
- 92.011 Required information.
- 92.012 Maintenance instructions for purchasers.
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- 92.014 Maintenance of records; submittal of information; right of entry.
- 92.015 Certification.
- 92.016 Hearings on certification.
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- 92.019 Submission of locomotive numbers.
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- 92.022 Certification of remanufactured locomotives and engines.
- 92.023 Prohibited controls.
- 92.024 Defeat devices.
- 92.025 Adjustable parameters, requirements.
- 92.026 Special test procedures.

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- 92.102 Definitions.
- 92.103 Abbreviations.
- 92.104 Construction.
- 92.105 Equipment required; overview.
- 92.106 Equipment specifications; general.
- 92.107 Equipment for loading the engine.
- 92.108 Fuel flow and air flow measurement.
- 92.109 Analyzer specifications.



- 92.110 Weighing chamber and micro-balance.
- 92.111 Smoke measurement system.
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- 92.119 Gas meter or flow instrumentation calibration, particulate measurement.
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- 92.123 [Reserved]
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- 92.125 Test procedure; overview.
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- 92.127 Pre-test preparation.
- 92.128 Test run.
- 92.129 Emission measurement accuracy.
- 92.130 Particulate handling and weighing.
- 92.131 Exhaust sample analysis.
- 92.132 Smoke, data analysis.
- 92.133 Calculations.
- 92.134 Required information.
- 92.135 Determination of steady-state concentrations

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- 92.201 Applicability.
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- 92.203 Abbreviations.
- 92.204 Construction.
- 92.205 General provisions.
- 92.206 Averaging.
- 92.207 Banking.
- 92.208 Trading.
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- 92.210 Labeling.
- 92.211 Certification.
- 92.212 Maintenance of records.
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- 92.1105 Prohibited acts.
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**APPENDICES TO PART 92**

- Appendix I - EPA Test Sequence for Locomotives and Locomotive Engines. Passenger (Traction Power Only); Freight; and Switch Operations. (Time vs Engine Operational Setting and Emission Measurements).
- Appendix II - EPA Test Sequence for Locomotives and Locomotive Engines. Passenger, Hotel Power Operations. (Time vs Engine Operational Setting and Emission Measurements)
- Appendix III - Reserved
- Appendix IV - Locomotive and Engine Parameters and Specifications
- Appendix V - Interpretive Ruling for § 92.506 -- Remedial Plans

Authority: Sections 203, 204, 205, 206, 207, 208, 209, 211, 213, 215, 216 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7545, 7547, 7549, 7550 and 7601(a)).

**Subpart A - General Provisions for Emission Regulations for Locomotives and Locomotive Engines**

**92.001 Applicability.**

(a) Except as noted in paragraph (b), the provisions of this part apply to manufacturers, remanufacturers and operators of:

(1) Freshly manufactured locomotives and locomotive engines manufactured on or after January 1, 2000, and

(2) Remanufactured locomotives and locomotive engines manufactured on or after January 1, 1973 and remanufactured on or after January 1, 2000, and

(3) Locomotives and locomotive engines manufactured prior to January 1, 1973, and upgraded on or after January 1, 2000, and

(4) Locomotives and locomotive engines upgraded prior to January 1, 1973, and remanufactured on or after January 1, 2000.

(b) The provisions of this part do not apply with respect to:

(1) Locomotives that are not powered by internal combustion engines; or

(2) Locomotive engines which provide only hotel power.

## 92.002 Definitions.

(a) The definitions of this section apply to this subpart and also to all subparts of this part.

(b) As used in this subpart, all terms not defined herein shall have the meaning given them in the Act:

"Accuracy" means the difference between the measured value and the true value.

"Act" means the Clean Air Act as amended (42 U.S.C. 7401 et seq).

"Administrator" means the Administrator of the Environmental Protection Agency or his/her authorized representative.

"Aftertreatment system or component or technology" means any system or component or technology mounted downstream of the exhaust valve or exhaust port whose design function is to reduce exhaust emissions.

"Air aspiration" means the method whereby air for fuel combustion enters the engine, e.g., natural or turbocharged.

"Alcohol fuel" means a fuel consisting primarily (more than 50 percent by weight) of one or more alcohols: e.g., methyl alcohol, ethyl alcohol.

"Aromatic content" is the aromatic hydrocarbon content in volume percent as determined by ASTM standard test method D 1319-88, entitled "Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption". ASTM test method D 1319-88 is incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy may be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103. A copy may be inspected at the Air and Radiation Docket, Docket No. A-94-31, room M-1500, U.S. Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460 or at the Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, DC 20005.

"Auxiliary emission control device" (AECD) means any element of design which senses temperature, locomotive speed, engine RPM, atmospheric pressure, manifold pressure or vacuum, or any other parameter for the purpose of activating, modulating, delaying, or deactivating the operation of any part of the emission control system.

"Auxiliary power" means the power provided by an engine on a

locomotive to operate equipment on passenger cars of a train; e.g., heating and air conditioning, lights, etc. Can be used interchangeably with "hotel power".

"Averaging" for locomotives and locomotive engines means the exchange of emission credits among engine families within a given manufacturer's, or remanufacturer's, product line.

"Banking" means the retention of locomotive and locomotive engine emission credits by a manufacturer, or remanufacturer, for use in future calendar year averaging or trading as permitted by these regulations.

"Bottom end of an engine" means those components which define the longitudinal motion of the pistons in the cylinder and convert linear motion of the pistons into rotary motion and constrain the loads involved.

"Brake horsepower" of an engine means the power produced by the engine which is externally available for propulsion, braking and operation of the locomotive or train. Brake horsepower output power consists of the power delivered to the traction alternator/generator, plus any power used for the following, unless derived from the traction generator: braking, operation of engine and charge air cooling fans, operation of traction motor cooling fans, charging of batteries, and/or heating/air conditioning of the locomotive cab (i.e. auxiliary generator output). Power to circulate engine coolant, engine lubricant, and/or to supply fuel to the engine from the fuel tank (even if derived from the traction generator, the external nose of the crankshaft or any other component of the engine from which power may be extracted) shall not be counted in the brake horsepower output of the engine.

"Calibration gas" means a gas of known concentration which is used to establish the response curve of an analyzer.

"Calibration" means the set of specifications, including tolerances, unique to a particular design, version, or application of a component, or components, or assembly capable of functionally describing its operation over its working range.

"Certificate holder" means that company, organization, individual or other group that has been issued a certificate of conformity by EPA for a locomotive engine family or emission control kit.

"Certificate of conformity". The document issued by the Administrator, as prescribed by the Act, which certifies that the holder has demonstrated the ability to meet the applicable emission standards and allows the certificate holder to sell or offer for sale locomotives, locomotive engines, or emission

control kits covered by the certificate.

"Class I railroad" means a railroad that has been classified as a Class I railroad by the Surface Transportation Board.

"Crankcase emissions" means emissions to the atmosphere from any portion of the crankcase ventilation or engine lubrication systems.

"Defeat device" means an AECD or other control feature that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal locomotive operation and use, unless:

- (1) such conditions are substantially included in the federal emission test procedure,
- (2) the need for the AECD is justified in terms of protecting the locomotive or locomotive engine against damage or accident, or
- (3) the AECD does not go beyond the requirements of engine starting.

"Deterioration factor" means the difference between exhaust emissions at the end of useful life and exhaust emissions at the low mileage test point. For exhaust emissions other than smoke for locomotives or locomotive engines utilizing aftertreatment technologies, "deterioration factor" means the ratio of exhaust emissions at the end of useful life to exhaust emissions at the low mileage test point.

"Diesel fuel" means any fuel sold in any state and suitable for use in diesel motor vehicles, diesel motor vehicle engines, locomotives and locomotive engines and which is commonly or commercially known or sold as diesel fuel.

"Emission control kit" means that group of components, and the specifications for their incorporation into a locomotive or locomotive engine (e.g., for adjustment or calibration) that, when incorporated into a locomotive or locomotive engine, is intended to result in emissions performance which complies with applicable requirements of this part.



"Emission control system" means those devices, systems or elements of design which control or reduce the emission of substances from an engine. This includes both mechanical and electronic components and controls.

"Emission credits" represent the amount of emission reduction or exceedance, by a locomotive engine family, below or above the emission standard, respectively. Emission reductions below the standard are considered as "positive credits," while emission exceedances above the standard are considered as "negative credits." In addition, "projected credits" refer to emission credits based on the projected applicable production/sales volume of the engine family. "Reserved credits" are emission credits generated within a calendar year waiting to be reported to EPA at the end of the calendar year. "Actual credits" refer to emission credits based on actual applicable production/sales volume as contained in the end-of-year reports submitted to EPA. Some or all of these credits may be revoked if EPA review of the end-of-year reports or any subsequent audit action(s) uncovers problems or errors.

"Emission-data engine" means an engine which is tested for purposes of emission certification or production line testing.

"Emission-data locomotive" means a locomotive which is tested for purposes of emission certification or production line testing.

"Emission-related defect" means a defect in design, materials, or workmanship in a device, system, or assembly described in the approved Application for Certification which affects any parameter or specification enumerated in Appendix IV.

"Emission-related maintenance" means that maintenance which substantially affects emissions or which is likely to affect the deterioration of the locomotive or engine with respect to emissions.

"Engine family" means a group of locomotives or locomotive engines which is expected to have similar emission characteristics throughout the useful lives of the locomotives or engines (see §92.010).

"EPA Enforcement Officer" means any officer or employee of the Environmental Protection Agency so designated in writing by the Administrator or his/her designee.

"Ethanol" means a fuel that contains at least 50 percent ethanol (ethyl alcohol, (C<sub>2</sub>H<sub>5</sub>OH)) by volume.

"Exemption" means exemption from the prohibitions of this part.

"Exhaust emissions" means substances emitted to the atmosphere from any opening downstream from the exhaust port or exhaust valve of a locomotive engine.

"Export exemption" means an exemption granted under §92.711 for the purpose of exporting locomotives and locomotive engines.

"Family Emission Limit" means an emission level declared by the manufacturer or remanufacturer to serve in lieu of an emission standard for certification and compliance purposes in the averaging, banking and trading program. FELs are expressed to the same number of decimal places as the applicable emission standard.

"Freshly manufactured locomotive" means a locomotive which is powered by a freshly manufactured engine. This generally means a locomotive that was manufactured using only components which have not been used previously.

"Freshly manufactured locomotive engine" means a new locomotive engine which has not been remanufactured. This generally means a locomotive engine that was manufactured using only components which have not been used previously.

"Fuel system" means the combination of fuel tank(s), fuel pump(s), fuel lines and filters, pressure regulator(s), and fuel injection components (or pressure regulator(s) and carburetor(s) if fuel injection is not employed), fuel system vents, and any other component involved in the delivery of fuel to the engine.

"Gaseous fuel" means a fuel which is a gas at standard temperature and pressure. This includes both natural gas and liquified petroleum gas.

"Green engine factor" means a factor that is applied to emission measurements from a locomotive or locomotive engine that has had little or no use to adjust them to be equivalent to emission measurements from a locomotive or locomotive engine that has had approximately 200 hours of use.

"Hang-up" refers to the process of hydrocarbon molecules being adsorbed, condensed, or by any other method removed from the sample flow prior to reaching the instrument detector. It also refers to any subsequent desorption of the molecules into the sample flow when they are assumed to be absent.

"High-altitude" means any elevation up to 7000 feet (2135 meters).

"High-altitude conditions" means a test altitude greater than 4000 feet (1220 meters) and less than 7000 feet (2135 meters), or equivalent observed barometric test conditions of 25.7 to 22.7

inch Hg (88.5 to 78.1 kilopascals).

"Hotel idle" means idle operation while a locomotive is generating hotel power.

"Hotel power" means the power provided by an engine on a locomotive to operate equipment on passenger cars of a train; e.g., heating and air conditioning, lights, etc. Can be used interchangeably with "auxiliary power".

"Idle speed" means that speed, expressed as the number of revolutions of the crankshaft per unit of time, at which the engine is set to operate when not under load for purposes of propelling either the locomotive or a train.

"Importer" means a person who imports locomotives or locomotive engines from a foreign country into the United States (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands).

"Inspect and qualify" means to determine that a component or system meets all applicable criteria listed in a certificate of conformity for remanufacturing.

"Installer" means an individual or entity which remanufactures locomotives or locomotive engines by installing remanufacture kits.

"Internal combustion engine" means an engine powered by combustion which occurs within the engine itself, and not within an external furnace. This includes, but is not limited to all Diesel-cycle and Otto-cycle engines. Steam engines used to power historic locomotives are not internal combustion engines.

"Liquefied petroleum gas" means the commercial product marketed as liquefied petroleum gas or propane and whose primary constituent is propane.

"Line-haul locomotive" means a locomotive designed and constructed for the primary purpose of propelling freight trains. Switch locomotives are not line-haul locomotives. The power rating of engines used in line-haul locomotives is typically greater than 2000 hp.

"Locomotive" means a self-propelled piece of on-track equipment designed for moving or propelling cars that are designed to carry freight, passengers or other equipment, but which itself is not designed or intended to carry freight, passengers (other than those operating the locomotive) or other equipment. Other equipment which is designed for operation both on highways and rails; specialized railroad equipment for maintenance, construction, post accident recovery of equipment,

and repairs; and other similar equipment; and vehicles propelled by engines with rated horsepower of less than 750 kW are not locomotives.

"Locomotive engine" means an engine incorporated into a locomotive or intended for incorporation into a locomotive.

"Low hour(s) engine" means an engine during the interval between the time that normal assembly operations and adjustments are completed and the time that two hundred (200) additional operating hours have been accumulated (including hours accumulated during emission testing if performed).

"Low idle speed" means a speed which is less than normal idle speed, expressed as the number of revolutions of the crankshaft per unit of time, at which an engine can be set when not under load for purposes of propelling of either the locomotive or a train.

"Low mileage locomotive" means a locomotive during the interval between the time that normal assembly operations and adjustments are completed and the time that either 6000 miles of locomotive operation or two hundred (200) additional operating hours have been accumulated (including emission testing if performed).

"Malfunction" means a condition in which the operation of a component in a locomotive or locomotive engine occurs in a manner other than that specified by the manufacturer (e.g., as specified in the application for certification), or the operation of the locomotive or locomotive engine in that condition.

"Manufacturer" means an individual or entity engaged in the manufacturing or assembling of freshly manufactured locomotives or freshly manufactured locomotive engines; or the importing of locomotives or locomotive engines originally manufactured on or after January 1, 1973 and not remanufactured.

"Manufacturer, or remanufacturer, owned locomotive or locomotive engine" means an uncertified locomotive or locomotive engine owned and controlled by a locomotive or locomotive engine manufacturer, or remanufacturer, and used in a manner not involving lease or sale by itself or in a piece of equipment employed from year to year in the ordinary course of business for product development, production method assessment, and market promotion purposes.

"Maximum rated horsepower" means the maximum brake horsepower output of an engine, as specified in the certificate of conformity.

"Methanol" means a fuel that contains at least 50 percent

methanol (methyl alcohol, (CH<sub>3</sub>OH)) by volume.

"Model year" means a manufacturer's or remanufacturer's annual production period (as determined by the Administrator) which includes January 1 of such calendar year. Generally, model year shall mean calendar year.

"National security exemption" means an exemption which may be granted under §92.710 for the purpose of national security.

"Natural gas" means the commercial product marketed as natural gas whose primary constituent is methane.

"New locomotive or new locomotive engine" means:

(1) a locomotive or locomotive engine the equitable or legal title to which has never been transferred to an ultimate purchaser; or

(2) a locomotive or locomotive engine which has been remanufactured or upgraded, but has not been placed back into service.

(3) Where the equitable or legal title to a locomotive or locomotive engine is not transferred prior to its being placed into service, the locomotive or locomotive engine ceases to be new when it is placed into service.

(4) With respect to imported locomotives or locomotive engines, the term "new locomotive or new locomotive engine" means a locomotive or locomotive engine that is not covered by a certificate of conformity under this part at the time of importation, and that is manufactured or remanufactured after the effective date of a regulation issued under this part which is applicable to such locomotive or engine (or which would be applicable to such locomotive or engine had it been manufactured for importation into the United States).

(5) Notwithstanding paragraphs (1) through (4) of this definition, locomotives and locomotive engines which were originally manufactured before January 1, 1973 and which have not been upgraded are not new.

"Nominal fuel tank capacity" means the volume of the fuel tank(s), specified by the manufacturer to the nearest U.S. gallon, which may be filled with fuel from the fuel tank filler inlet.

"Nonconforming locomotive or locomotive engine" means:

(1) A locomotive or locomotive engine which is not covered by a certificate of conformity prior to importation or being offered for importation (or for which such coverage has not been adequately

demonstrated to EPA); or

(2) A locomotive or locomotive engine which was originally covered by a certificate of conformity, but which is not in a certified configuration, or otherwise does not comply with the conditions of that certificate of conformity.

"Non-emission related maintenance" means maintenance which does not substantially affect emissions and which does not have a lasting effect on the deterioration of the engine with respect to emissions.

"Opacity" means the fraction of a beam of light, expressed in percent, which fails to penetrate a plume of smoke under the test conditions specified in §92.128.

"Original manufacture" means the event of freshly manufacturing a locomotive or locomotive engine. The date of original manufacture is the date of final assembly.

"Oxides of nitrogen" means nitric oxide and nitrogen dioxide. Oxides of nitrogen are expressed quantitatively as if the nitric oxide were in the form of nitrogen dioxide (oxides of nitrogen are assumed to have a molecular weight equivalent to nitrogen dioxide).

"Passenger locomotive" means a locomotive designed and constructed for the primary purpose of propelling passenger trains, and providing power to the passenger cars of the train for such functions as heating, lighting and air conditioning.

"Petroleum fuel" means a fuel primarily derived from crude oil: e.g., gasoline or diesel.

"Power assembly" means that component of an engine in which combustion of fuel occurs, and consists of the cylinder, piston and piston rings, valves and ports for admission of charge air and discharge of exhaust gases, fuel injection components and controls, cylinder head, and camshaft and associated components.

"Precision" means the standard deviation of replicated measurements, except where explicitly noted otherwise.

"Primary fuel" means that type of fuel (e.g., diesel) that is consumed in the greatest quantity (mass basis) when the locomotive or locomotive engine is operated in use.

"Railroad" means a commercial entity that operates locomotives to transport passengers or freight.

"Rated horsepower" means the maximum horsepower output of an locomotive engine in use.

"Rated speed" means the engine speed, expressed as the number of

revolutions of the crankshaft per unit of time, at which the manufacturer specifies the rated horsepower of an engine.

"Remanufacture" means to replace, or inspect and qualify, each and every power assembly of a locomotive or locomotive engine, whether during a single maintenance event or cumulatively within a five year period; or to upgrade a locomotive or locomotive engine; or to convert a locomotive or locomotive engine to enable it to operate using a fuel other than it was originally manufactured to use. Remanufacture also means the act of remanufacturing.

"Remanufacture kit" means all components (or specifications for components) and instructions necessary to remanufacture a locomotive or locomotive engine in accordance with applicable requirements of this part.

"Remanufactured locomotive" means a locomotive which is powered by a remanufactured locomotive engine.

"Remanufactured locomotive engine" means a locomotive engine which has been remanufactured.

"Remanufacturer" means an individual or entity that is engaged in the manufacture or assembly of remanufactured locomotives or locomotive engines, including (1) entities that design or produce the emission-related parts used in remanufacturing, (2) entities that install parts in an existing locomotive or locomotive engine to remanufacture it, and (3) entities that own or operate the locomotive or locomotive engine, where such entity provides specifications as to how an engine is to be remanufactured (i.e., specifying who will perform the work, when the work is to be performed, what parts are to be used, or how to calibrate the adjustable parameters of the engine); or an importer of remanufactured locomotives or locomotive engines. Individuals or entities which install certified remanufactured engines into freshly manufactured or used locomotives, or install certified freshly manufactured engines into previously used locomotives, are not considered remanufacturers.

"Repower" means replacement of the engine in a locomotive with a freshly manufactured locomotive engine from a different original manufacturer, or with a freshly manufactured locomotive engine which is of a different design (e.g., power assemblies are larger or smaller, air aspiration is changed, number of cylinders is not the same). Replacing a locomotive engine with a freshly manufactured locomotive engine in a locomotive that has a refurbished or reconditioned chassis for the purpose of resale is not repowering.

"Scheduled maintenance" means any adjustment, repair, removal, disassembly, cleaning, or replacement of locomotive or locomotive engine components or systems which is performed on a periodic basis

to prevent part failure or locomotive or locomotive engine malfunction, or is anticipated as necessary to correct an overt indication of malfunction or failure for which periodic maintenance is not appropriate.

"Service life" means the total life of a locomotive or locomotive engine. Service life begins either when the locomotive or locomotive engine is first manufactured or remanufactured and continues until the locomotive or locomotive engine is permanently removed from service.

"Small railroad" means a railroad that has 500 or fewer employees and is not owned by any other company that has more than 500 employees.

"Smoke" means the matter in the engine exhaust which obscures the transmission of light.

"Span gas" means a gas of known concentration which is used routinely to set the output level of an analyzer.

"Specified adjustable range" means the range of allowable settings for an adjustable component specified by a certificate of conformity.

"Sulfur percentage" is the percentage of sulfur as determined by ASTM standard test method D 2622-87, entitled "Standard Test Method for Sulfur in Petroleum Products by X-Ray Spectrometry". ASTM test method D 2622-87 is incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy may be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103. A copy may be inspected at the Air and Radiation Docket, Docket No. A-94-31, Room M-1500, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460 or at the Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, DC 20005.

"Switch locomotive" means a locomotive designed and constructed for the primary purpose of propelling railroad cars a short distance, either within a switchyard (i.e., facility where trains are assembled and disassembled) or an industrial facility not involving the commercial transportation of freight. Line-haul locomotives are not switch locomotives. The power rating of engines used in switch locomotives is typically 2000 hp or less.

"Tier 0" means relating to emission standards applicable to locomotives and locomotive engines manufactured before January 1, 2000.

"Tier 1" or "Tier I" means relating to emission standards applicable to locomotives and locomotive engines manufactured on or



after January 1, 2000 and before January 1, 2005.

"Tier 2" or "Tier II" means relating to emission standards applicable to locomotives and locomotive engines manufactured on or after January 1, 2005.

"Testing exemption" means an exemption granted under §92.707 for the purpose of research investigations, studies, demonstrations or training, but not including national security.

"Throttle" means the component, or components, which either directly or indirectly controls the fuel flow to the engine.

"Throttle notch" means a discrete throttle position for a locomotive with a limited number of throttle positions.

"Throttle notch horsepower" means the brake horsepower output of an engine corresponding to each throttle notch position, including dynamic-brake settings, as specified in the certificate of conformity.

"Throttle notch speed" means the speed of the engine, expressed as the number of revolutions of the crankshaft per unit of time, corresponding to each throttle notch position, including dynamic-brake, and hotel power settings.

"Total Hydrocarbon Equivalent" means the sum of the carbon mass contributions of non-oxygenated hydrocarbons, alcohols and aldehydes, or other organic compounds that are measured separately as contained in a gas sample, expressed as gasoline-fueled vehicle hydrocarbons. The hydrogen-to-carbon ratio of the equivalent hydrocarbon is 1.85:1.

"Trading" means the exchange of locomotive or locomotive engine emission credits between manufacturers.

"Traction alternator/generator efficiency" means the ratio of the power output from the alternator/generator to the power input to the alternator/generator at the operating point.

"United States". United States includes the customs territory of the United States as defined in 19 U.S.C. 1202, and the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

"Unscheduled maintenance" means any adjustment, repair, removal disassembly, cleaning, or replacement of locomotive or locomotive engine components or systems which is performed to correct a part failure or locomotive or locomotive engine malfunction.

"Upgrade" means to modify a locomotive or locomotive engine that was originally manufactured prior to January 1, 1973, such that the

number of cylinders, the design specification of engine power assemblies, the air aspiration, and the fuel injection system are functionally equivalent to those which are used on locomotives and locomotive engines originally manufactured on or after January 1, 1973. Upgrading is a type of remanufacturing.

"Useful life" means the period during which the locomotive engine is designed to properly function in terms of reliability and fuel consumption, without being remanufactured, specified as work output or miles. It is the period during which a new locomotive or locomotive engine is required to comply with all applicable emission standards.

(a) Specifically, the minimum useful life (in MW-hr) is equal to the product of the rated horsepower multiplied by: 7.50 for Tier 0 locomotives and locomotive engines; 8.00 for Tier I locomotives and locomotive engines; and 9.00 for Tier II locomotives and locomotive engines. For locomotives or locomotive engines originally manufactured before January 1, 2000 and not equipped with MW-hr meters, the minimum useful life (in miles) is equal to 750,000.

(b) A manufacturer shall specify a longer useful life if the locomotive engine is designed to last significantly longer than the applicable minimum useful life. A manufacturer's recommended time to rebuild which is longer than the minimum useful life is one indicator of a longer design life.

(c) Manufacturers may petition the Administrator prior to certification to allow a shorter useful life for a particular engine family. This petition must include the full rationale behind the request together with any other supporting evidence. Based on this or other information, the Administrator may allow a shorter useful life.

"Volatile liquid fuel" means any liquid fuel other than diesel or bio-diesel.

"Voluntary emission recall" means a repair, adjustment, or modification program voluntarily initiated and conducted by a manufacturer or remanufacturer to remedy any emission-related defect for which notification of locomotive or locomotive engine owners has been provided.

### **92.003 Abbreviations.**

(a) The abbreviations of this section apply to all subparts of this part and have the following meanings:

API	-	American Petroleum Institute
ASTM	-	American Society for Testing and Materials
BHP	-	Brake horsepower

BSCO - Brake specific carbon monoxide  
 BSHC - Brake specific hydrocarbons  
 BSNO<sub>x</sub> - Brake specific oxides of nitrogen  
 °C - Celsius  
 cfh - cubic feet per hour  
 CFV - Critical flow venturi  
 CFV-CVS - Critical flow venturi - constant volume sampler  
 CL - Chemiluminescence  
 CO<sub>2</sub> - Carbon dioxide  
 CO - Carbon monoxide  
 conc - concentration  
 cfm - cubic feet per minute  
 cu in - cubic inch(es)  
 CVS - Constant volume sampler  
 EP - End point  
 °F - Fahrenheit  
 FEL - Family emission limit  
 FID - Flame ionization detector  
 ft - foot or feet  
 g - gram(s)  
 gal - U.S. gallon  
 GC - Gas Chromatograph  
 h - hour(s)  
 H<sub>2</sub>O - water  
 HC - hydrocarbon  
 HFID - Heated flame ionization detector  
 Hg - Mercury  
 hp - horsepower  
 IBP - Initial boiling point  
 in - inch(es)  
 K - Kelvin  
 kg - kilogram(s)  
 km - kilometer(s)  
 kPa - kilopascal(s)  
 lb - pound(s)  
 LPG - Liquefied Petroleum Gas  
 m - meter(s)  
 max - maximum  
 mg - milligram(s)  
 mi - mile(s)  
 min - minute  
 ml - milliliter(s)  
 mm - millimeter  
 mph - miles per hour  
 mv - millivolt(s)  
 N<sub>2</sub> - nitrogen  
 NDIR - Nondispersive infrared  
 NO - nitric oxide  
 NMHC - Non-methane hydrocarbons  
 NO<sub>2</sub> - nitrogen dioxide  
 NO<sub>x</sub> - oxides of nitrogen  
 No. - number

O <sub>2</sub>	-	oxygen
pct	-	percent
PDP-CVS	-	Positive displacement pump - constant volume sampler
ppm	-	parts per million by volume
ppm C	-	parts per million, carbon
psi	-	pounds per square inch
psig	-	pounds per square inch gauge
°R	-	Rankin
rpm	-	revolutions per minute
s	-	second(s)
SAE	-	Society of Automotive Engineers
SI	-	International system of units
THCE	-	Total hydrocarbon equivalent
V	-	volt(s)
vs	-	versus
W	-	watt(s)
wt	-	weight

**92.004 Construction.**

(a) The language in this subpart applies to both locomotives and to locomotive engines. When a new provision is to be added to this subpart, or a provision of this subpart is to be changed, a new paragraph will be added to the appropriate section(s) of this subpart specifying the new or changed requirements together with the date at which the new or changed requirement(s) become effective.

**92.005 General standards.**

(a) Every new locomotive and new locomotive engine manufactured for sale, remanufactured, sold, offered for sale, introduced or delivered for introduction to commerce, or imported into the United States for sale or resale which is subject to any of the standards prescribed in this subpart shall be covered by a certificate of conformity issued pursuant to §§ 92.008, 92.009, 92.011 and 92.015.

(b) Any system installed on, or incorporated in, a new locomotive or new locomotive engine to enable such locomotive or locomotive engine to conform to standards contained in this subpart:

(1) shall not in its operation or function cause the emission into the ambient air of any noxious or toxic substance that would not be emitted in the operation of such locomotive, or locomotive engine, without such system, except as specifically permitted by regulation; and

(2) shall not in its operation, function or malfunction result in any unsafe condition endangering the locomotive, its operators, riders or property on a train, or persons or property in close proximity to the locomotive.

(c) In specifying the adjustable range of each adjustable parameter on a new locomotive or new locomotive engine, the manufacturer or remanufacturer, shall:

(1) Ensure that safe locomotive operating characteristics are available within that range, as required by section 202(a)(4) of the Clean Air Act, taking into consideration the production tolerances; and

(2) To the maximum extent practicable, limit the range of adjustability to that which is necessary for proper operation of the locomotive or locomotive engine.

(d) New locomotives and new locomotive engines may not be equipped with defeat devices.

(e) New locomotives fueled with a volatile fuel shall be designed to minimize evaporative emissions during normal operation, including periods when the engine is shut down.

(f)(1) Locomotive hardware for refueling locomotives fueled with a volatile fuel shall be designed so as to minimize the escape of fuel vapors.

(2) Hoses used to refuel gaseous-fueled locomotives shall not be designed to be bled or vented to the atmosphere under normal operating conditions.

(3) No valves or pressure relief vents shall be used on gaseous-fueled locomotives except as emergency safety devices, and these shall not operate at normal system operating flows and pressures.

(g) Every manufacturer or remanufacturer of new locomotives or new locomotive engines subject to any of the standards imposed by this subpart shall, prior to selling, introducing into service, or returning to service, test or cause to be tested locomotives or locomotive engines in accordance with good engineering practice as is necessary to ascertain that the locomotives or locomotive engines covered by a certificate of conformity will meet the requirements of this section for the useful life of the locomotive or engine.

#### **92.006 Emission standards.**

(a) Exhaust emissions from locomotives and locomotive engines (excluding engines that do not provide propulsion and which are covered by a 40 CFR 89 certificate of conformity), when measured in accordance with the provisions of Subpart B of this part, shall not exceed either the line-haul duty-cycle standards, the switch duty-cycle standards, or the throttle notch standards (i.e., notch caps) of paragraphs (a)(1) or (a)(3) of this section, as applicable, or the smoke standards of paragraph (a)(2) of this section. Locomotives and locomotive engines which are capable of providing both propulsion and hotel power from the same engine (i.e., not using an auxiliary engine for hotel power) must comply with the applicable standards when operating in both pure traction mode, and in traction plus hotel power mode.

(1) Gaseous and particulate emission standards are expressed as gram per brake horsepower hour (g/bhp-hr). Non-methane hydrocarbon standards apply to locomotives and locomotive engines fueled with natural gas, and any combination of natural gas and other fuels where natural gas is the primary fuel; total hydrocarbon equivalent and aldehyde standards apply to locomotives and locomotive engines fueled with an alcohol, and any combination of alcohol and other fuels where alcohol is the primary fuel. Total hydrocarbon standards apply to all other locomotives and

locomotive engines; that is, those not fueled by natural gas or alcohol. The line-haul duty-cycle standards and switch duty-cycle standards apply to cycle-weighted emission rates as calculated in subpart B of this part. The throttle notch standards apply to steady-state emission rates for throttle notches four through eight, as calculated in subpart B of this part.

(i) The following locomotives and locomotive engines are subject to the Tier 0 emission standards listed in Table A006-1: locomotives and locomotive engines manufactured or upgraded on, or after, January 1, 1973, and before January 1, 2000; and locomotives and locomotive engines manufactured prior to January 1, 1973, and upgraded on, or after, January 1, 2000. The standards apply when such a locomotive or locomotive engine is remanufactured, or imported on or after January 1, 2000; except where the locomotive or locomotive engine was previously certified to one or more FELs under subpart C of this part instead of the applicable standard, in which case, the standards are replaced by the FELs at each subsequent remanufacture.

(ii) Locomotives and locomotive engines manufactured on, or after, January 1, 2000, and before January 1, 2005 are subject to the Tier I standards listed in Table A006-2. The standards apply when such a locomotive or locomotive engine is freshly manufactured or imported, and each time it is remanufactured.

(iii) Locomotives and locomotive engines manufactured on, or after, January 1, 2005 are subject to the Tier II standards listed in Table A006-3. The standards apply when such a locomotive or locomotive engine is freshly manufactured or imported, and each time it is remanufactured.

(2) The smoke opacity standards listed in Table A006-4 apply to all locomotives and locomotive engines subject to the Tier 0, Tier I, or Tier II standards. Smoke emissions, when measured perpendicular to the direction of flow of the exhaust along the longest axis of the exhaust stack, which is not a diagonal of a rectangular exhaust stack, shall not exceed the standards of Table A006-4.

(3) In lieu of the CO and PM standards specified in paragraph (a)(1) of this section, manufacturers, remanufacturers and upgraders may elect to comply with the alternate CO and PM standards listed in Table A006-5. Manufacturers or remanufacturers electing to comply with these alternate standards must comply with both the CO and PM standards listed in Table A006-5.

(4) In lieu of the NO<sub>x</sub> and PM standards specified in paragraph (a)(1) of this section, manufacturers and remanufacturers may elect to include engine families in the averaging, banking, and trading program, the provisions of which are specified in Subpart C of this Part. The manufacturer or remanufacturer must set family

emission limits (FEL) for the applicable duty-cycle not to exceed 1.25 times applicable duty-cycle standard values in paragraph (a)(1) of this section. This FEL serves as the standard for that family. The applicable individual throttle notch standards shall be adjusted by multiplying by the ratio of the FEL to the line-haul duty-cycle standard. (Example: For a Tier 0 engine family with a PM FEL of 0.72 g/bhp-hr, the applicable PM throttle notch standard would be 0.75 (unadjusted throttle notch cap) times 0.72 (FEL) divided by 0.60 (line-haul duty-cycle standard), or 0.90 g/bhp-hr.)

(5) In lieu of the NOx standards specified in paragraph (a)(1)(i) of this section, remanufacturers may elect to demonstrate that the NOx emission rate from the remanufactured locomotive or locomotive engine is at least 33 percent below the baseline NOx emission rate, where the the baseline NOx emission rate shall be the average NOx emission rate from testing of 5 uncontrolled locomotives in that engine family. Remanufacturers electing this option must comply with all other applicable standards (other than the NOx standards) listed in Table A006-1.



Table A006-1 Tier 0 Standards (g/bhp-hr)			
	Line-Haul Cycle Standard	Switch Cycle Standard	Throttle Notch Standard
NOx	9.5	14.0	11.9
PM	0.60	0.72	0.75
CO	5.0	8.0	none
THC	1.00	2.10	none
NMHC	1.00	2.10	none
THCE	1.00	2.10	none
Aldehydes	0.100	0.200	none

Table A006-2 Tier I Standards (g/bhp-hr)			
	Line-Haul Cycle Standard	Switch Cycle Standard	Throttle Notch Standard
NOx	7.4	11.0	9.3
PM	0.45	0.54	0.57
CO	2.2	2.5	none
THC	0.55	1.20	none
NMHC	0.55	1.20	none
THCE	0.55	1.20	none
Aldehydes	0.035	0.076	none

Table A006-3 Tier II Standards (g/bhp-hr)			
	Line-Haul Cycle Standard	Switch Cycle Standard	Throttle Notch Standard
NOx	5.5	8.1	6.9
PM	0.20	0.24	0.25
CO	1.5	2.4	none
THC	0.30	0.60	none
NMHC	0.30	0.60	none
THCE	0.30	0.60	none
Aldehydes	0.018	0.036	none

TABLE A006-4					
SMOKE (% OPACITY) STANDARDS					
NUMBER OF STACKS	EXHAUST DIAMETER	EXAMINED PLUME SECTION	STEADY- STATE	30-SEC PEAK	3-SEC PEAK
SINGLE EXHAUST STACK	12" OR LESS	TOTAL	20	35	50
	MORE THAN 12"	EACH 6" SEGMENT, OR	10	15	20
		TOTAL <sup>1</sup>	30	40	55
MULTIPLE EXHAUST STACKS	12" OR LESS	ANY ONE	20	35	50
		SUM OF STACKS	30	40	55
	MORE THAN 12"	EACH 6" SEGMENT, OR	10	15	20
		TOTAL FOR ANY ONE	30	40	55
		SUM OF STACKS	40	50	60

1. Sum of each 6" segment or the total, whichever is lower.

Table A006-5 Alternate CO and PM Standards (g/bhp-hr)				
	Line-haul Cycle		Switch Cycle	
	CO	PM	CO	PM
Tier 0	10.0	0.30	12.0	0.36
Tier I	10.0	0.22	12.0	0.27
Tier II	5.0	0.10	6.0	0.12

(b) No crankcase emissions shall be discharged directly into the ambient atmosphere from any new locomotive or new locomotive engine originally manufactured on or after January 1, 2000. Discharge of crankcase emissions into the engine exhaust complies with this prohibition, provided crankcase emissions are measured and included with exhaust emissions. Compliance with this standard is required throughout the entire service life of the locomotive or locomotive engine.

**92.007 Compliance with emission standards.**

(a) The general standards in §92.005 and the emission standards in §92.006 apply to the emissions from new locomotives and new locomotive engines for their useful life.

(b) Certification. Certification is the process by which manufacturers and remanufacturers apply for and obtain certificates of conformity from EPA that allow manufacturers to manufacture locomotives or locomotive engines for sale or use in the U.S., and allow remanufacturers to engage in remanufacturing of locomotives or locomotive engines for sale or use in the U.S..

(1)(i) Compliance with the applicable emission standards by an engine family must be demonstrated by the manufacturer or remanufacturer before a certificate of conformity may be issued under §92.015.

(A) Manufacturers shall demonstrate compliance by collecting emission data from a low mileage locomotive, or development engine, or other low hour engine. Data collection requirements are specified in Subpart B of this part.

(B) Remanufacturers shall demonstrate compliance by collecting emission data from a low mileage remanufactured locomotive or low hour remanufactured engine that was remanufactured in the manner specified in the application for

certification. Data collection requirements are specified in Subpart B of this part.

(ii) The emission values to compare with the standards shall be the emission values of a low mileage locomotive, or development engine, or low hour locomotive engine, adjusted by the deterioration factors developed in accordance with the provisions of paragraph (b)(2) of this section. Before any emission value is compared with the standard, it shall be rounded, in accordance with ASTM E 29-67, to the same number of significant figures as contained in the applicable standard.

(2) Exhaust emission deterioration factors shall be determined by the manufacturer or remanufacturer for each engine family. The manufacturer's or remanufacturer's determination are subject to the requirements of paragraph (b)(2)(iv) of this section. The deterioration factor relates emissions from low mileage or low hour data to emissions at the end of useful life. If certification data is obtained from a development engine, and the emissions performance of that engine is significantly different from a low hour engine, then the deterioration factors may be adjusted for the purpose of certification.

(i) A separate exhaust emission deterioration factor shall be established, as required, for compliance with applicable emission standards for exhaust HC, exhaust THCE, exhaust NMHC, exhaust aldehydes, exhaust CO, exhaust NOx, exhaust particulate and exhaust smoke for each engine family.

(ii)(A) For locomotives or locomotive engines not utilizing aftertreatment technology (e.g., catalyst). For HC, THCE, NMHC, aldehydes, CO, NOx, and PM, additive deterioration factors shall be used; that is, a deterioration factor that when added to the low mileage emission rate equals the emission rate at the end of useful life. However, if the deterioration factor supplied by the manufacturer is less than zero, it shall be zero for the purposes of this section.

(B) For locomotives or locomotive engines utilizing aftertreatment technology (e.g., catalyst). For HC, THCE, NMHC, aldehydes, CO, NOx, and PM, multiplicative deterioration factors shall be used; that is a deterioration factor that when multiplied by the low mileage emission rate equals the emission rate at the end of useful life. However, if the deterioration factor supplied by the manufacturer is less than one, it shall be one for the purposes of this paragraph.

(C) For all locomotives and locomotive engines. For smoke, additive deterioration factors shall be used. However, if the deterioration factor supplied by the manufacturer is less than zero, it shall be zero for the purposes of this paragraph.

(iii) In the case of a multiplicative exhaust emission deterioration factor, the factor shall be rounded to three places to the right of the decimal point in accordance with ASTM E 29-67. In the case of an additive exhaust emission deterioration factor, the factor shall be established to a minimum of two places to the right of the decimal in accordance with ASTM E 29-67.

(iv) Every deterioration factor must be, in the Administrator's judgement, consistent with emissions increases observed in-use from emission testing of similar locomotives or locomotive engines. Deterioration factors that predict emission increases over the useful life of a locomotive or locomotive engine that are significantly less than the emission increases over the useful life observed from in-use testing of similar locomotives or locomotives engines shall not be accepted.

#### **92.008 Application for certification.**

(a) For each engine family that complies with all applicable standards and requirements, the engine manufacturer must submit to the Administrator a completed application for a certificate of conformity.

(b) The application must be approved and signed by the authorized representative of the manufacturer.

(c) The application will be updated and corrected by amendment as provided for in § 92.017 to accurately reflect the manufacturer's production.

(d) Required content. Each application must include the following information:

(1) A description of the basic engine design including, but not limited to, the engine family specifications, the provisions of which are contained in § 92.010;

(2) An explanation of how the emission control system operates, including a detailed description of all emission control system components, each auxiliary emission control device (AECD), and all fuel system components to be installed on any production or test engine(s);

(3) Proposed test fleet selection and the rationale for the test fleet selection;

(4) Special or alternate test procedures, if applicable;

(5) The description of the operating cycle and the period of operation necessary to accumulate service hours on test engines and stabilize emission levels;

(6) A description of all adjustable operating parameters (including, but not limited to, injection timing and fuel rate), including the following:

(i) the nominal or recommended setting and the associated production tolerances;

(ii) the intended physically adjustable range;

(iii) the limits or stops used to establish adjustable ranges;

(iv) production tolerances of the limits or stops used to establish each physically adjustable range; and

(v) information relating to why the physical limits or stops

used to establish the physically adjustable range of each parameter, or any other means used to inhibit adjustment, are effective in preventing adjustment of parameters to settings outside the manufacturer's intended physically adjustable ranges on in-use engines;

(7) For families participating in the averaging, banking, and trading program, the information specified in subpart C of this part;

(8) Projected U.S. production information.

(9) A description of the test equipment and fuel proposed to be used;

(10) All test data obtained by the manufacturer on each test engine;

(11) An unconditional statement certifying that all engines in the engine family comply with all requirements of this part and the Clean Air Act.

(e) At the Administrator's request, the manufacturer must supply such additional information as may be required to evaluate the application including, but not limited to, projected nonroad engine production.

(f) If a manufacturer or remanufacturer is uncertain of whether any part of the application meets the requirements of this section, it may be submitted in advance of the full application for certification. The Administrator shall review the information and make an initial determination as to whether it complies with the applicable requirements of this section.

(g)(1) The Administrator may modify the information submission requirements of paragraph (b) of this section, provided that all of the information specified therein is maintained by the engine manufacturer as required by § 92.014, and amended, updated, or corrected as necessary.

(2) For the purposes of this paragraph, § 92.014 includes all information specified in paragraph (b) of this section whether or not such information is actually submitted to the Administrator for any particular model year.

(3) The Administrator may review an engine manufacturer's records at any time. At the Administrator's discretion, this review may take place either at the manufacturer's facility or at another facility designated by the Administrator.

#### **92.009 Approval of application for certification.**

(a) If, after a review of the application for certification and any other information which the Administrator may require, the Administrator determines that the application meets all applicable requirements of this subpart, he/she shall approve

the application and issue a certificate on conformity.

(b) The Administrator may disapprove in whole or in part an application for certification for reasons including incompleteness, inaccuracy, test equipment, or fuel, and incorporation of defeat devices in locomotives, or on locomotive engines, described by the application.

(c) Where any part of an application is rejected, the Administrator shall notify the manufacturer or remanufacturer as applicable, in writing and set forth the reasons for such rejection. Within 30 days following receipt of such notification, the manufacturer or remanufacturer as applicable, may request a hearing on the Administrator's determination. 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 the review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, he/she shall provide the manufacturer or remanufacturer as applicable, a hearing in accordance with §92.016 with respect to such issue.

(d) In approving an application for certification, the Administrator may determine a broader range of adjustability than recommended by the manufacturer 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.

(e)(1) If the manufacturer or remanufacturer, submits the some or all of information specified in §92.008 in advance of its full application for certification, the Administrator shall review the information and make the determinations required in paragraph (d) of this section within 90 days of the manufacturer's or remanufacturer's submittal.

(2) The 90-day decision period is exclusive of any elapsed time during which EPA is waiting for additional information requested from a manufacturer or remanufacturer regarding an adjustable parameter (the 90-day period resumes upon receipt of the manufacturer's or remanufacturer's response). For example, if EPA requests additional information 30 days after the manufacturer or remanufacturer submits information under paragraph (e)(1) of this section, then the Administrator would make a determination within 60 days of the receipt of the requested information from the manufacturer or remanufacturer.

(f) 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 §92.016 with respect to such issue.

#### **92.010 Designation of engine families.**

Engine family. This section specifies the procedure and requirements for grouping of engines into engine families.

(a) Manufacturers and remanufacturers shall divide their locomotives or locomotive engines into groupings of locomotives or locomotive engines which are expected to have similar emission characteristics throughout their useful life. Each group shall be defined as a separate engine family.

(b) For Tier I and Tier II locomotives and locomotive engines (*i.e.*, locomotives and locomotive engines manufactured on or after January 1, 2000) to be classed in the same engine family, the engines must have identical design and production tolerance specifications in all of the following respects:

- (1) the combustion cycle,
- (2) the type of engine cooling employed (air cooled or water cooled), and procedure(s) employed to maintain engine temperature within desired limits (thermostat, on-off radiator fan(s), radiator shutters, etc.),
- (3) the bore and stroke dimensions,
- (4) the intake and exhaust event timing and duration (valve or port),
- (5) the location of the intake and exhaust valves (or ports),
- (6) the size of the intake and exhaust valves (or ports),



(7) the injection, or as appropriate ignition, timing characteristics,

(8) the combustion chamber configuration and the surface-to-volume ratio of the combustion chamber when the piston is at top dead center position, using nominal combustion chamber dimensions,

(9) the location of the piston rings on the piston,

(10) the method of air aspiration (turbocharged, supercharged, naturally aspirated, Roots blown),

(11) the turbocharger or supercharger performance characteristics (boost pressure, response time, size relative to engine displacement, etc.),

(12) the type of air inlet cooler (air to air, air to liquid, degree to which inlet air is cooled),

(13) the intake manifold induction port size and configuration,

(14) the type of fuel and fuel system configuration,

(15) the configuration of the fuel injectors and injection pressure,

(16) the fuel injection system controls,

(17) the fueling rate at each throttle notch position, or if discrete throttle notches are not employed the fueling rate curve along which the engine can be operated,

(18) the smoke control system,

(19) the exhaust manifold port size and configuration, and

(20) the type of exhaust aftertreatment system (oxidation catalyst, particulate trap), and characteristics of the aftertreatment system (catalyst loading, converter size vs engine size).

(c) For Tier 0 locomotives and locomotive engines (*i.e.*, locomotives and locomotive engines manufactured before January 1, 2000) to be classed in the same engine family, the engines must have identical design and production tolerance specifications in all of the following respects:

- (1) the combustion cycle,
- (2) the type of engine cooling employed (air cooled or water cooled), and procedure(s) employed to maintain engine temperature within desired limits (thermostat, on-off radiator fan(s), radiator shutters, etc.),
- (3) the bore and stroke dimensions (approximate),
- (4) the location of the intake and exhaust valves (or ports),
- (5) the combustion chamber configuration and the surface-to-volume ratio of the combustion chamber when the piston is at top dead center position, using nominal combustion chamber dimensions,
- (6) the method of air aspiration (turbocharged, supercharged, naturally aspirated, Roots blown),
- (7) the type of air inlet cooler (air to air, air to liquid, degree to which inlet air is cooled),
- (8) the type of fuel and fuel system configuration,
- (9) the configuration of the fuel injectors and injection pressure,
- (10) the fuel injection system control type (electronic or mechanical),

(d) Upon request by the manufacturer or remanufacturer, locomotives or locomotive engines that are eligible to be included in the same engine family based on the criteria in paragraph (b) or (c) of this section may be divided into different engine families. This request must be accompanied by information the manufacturer or remanufacturer believes supports the addition of these different engine families. For the purposes of determining whether an engine family is a small engine family (and therefore exempted from the requirements of Subpart G of this part), EPA will consider the number of locomotives or locomotive engines that could have been classed together under paragraph (b) or (c) of this section, instead of the number of locomotives or locomotive engines that are included in a subdivision allowed by this paragraph.

(e) Upon request by the manufacturer or remanufacturer, the Administrator may allow locomotives or locomotive engines that would be required to be grouped into separate engine families based on the criteria in paragraph (b) or (c) of this section to be

grouped into a single engine family if the manufacturer or remanufacturer expects that similar emission characteristics will occur. This request must be accompanied by information supporting the appropriateness of such combined engine families.

**92.011 Required information.**

(a) The manufacturer or remanufacturer, as applicable, shall perform the tests required by the applicable test procedures, and submit to the Administrator the information required by this section: *Provided*, however, that if requested by the manufacturer or remanufacturer, as applicable, the Administrator may waive any requirement of this section for testing of locomotives, or locomotive engines, for which the required emission data are otherwise available.

(b) Exhaust emission deterioration factors, with supporting data. The determination of the deterioration factors shall be conducted in accordance with good engineering practice to assure that the locomotives or locomotive engines covered by a certificate issued under §92.015 will meet the emission standards in §92.006, in actual use for the useful life of the locomotive or locomotive engine.

(c) Emission data. Emission data, including exhaust methane data in the case of locomotives or locomotive engines subject to a non-methane hydrocarbon standard, on such locomotives or locomotive engines tested in accordance with applicable test procedures of Subpart B of this part. These data shall include zero hour data, if generated. In lieu of providing emission data, 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 §92.006.

(d) A statement that the locomotives, or engines, for which certification is requested conform to the requirements in §92.005, and that the descriptions of tests performed to ascertain compliance with the general standards in §92.005, 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, are 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 withhold, suspend, or revoke the certificate of conformity under §92.015 (c)(3)(i).

**92.012 Maintenance instructions for purchasers.**

(a) The manufacturer or remanufacturer as applicable, shall furnish or cause to be furnished to the ultimate purchaser of each new locomotive, or new locomotive engine, subject to the standards prescribed in §92.006, written instructions for the proper maintenance and use of the locomotive, or locomotive engine, as may be reasonable and necessary to assure the proper functioning of the emissions control system, consistent with the applicable provisions of paragraph (b).

(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 purchaser had complied with the instructions.

(b)(1) For diesel-cycle locomotives and locomotive engines, emission-related maintenance at intervals shorter than, or in addition to, the following will not be accepted as technologically necessary emission-related maintenance, except with advance approval of the Administrator.

(i) Exhaust gas recirculation system (including all related filters and control valves). Cleaning or replacement at 150,000 miles of use.

(ii) Fuel injectors. Cleaning or replacement at 150,000 miles of use.

(iii) Turbocharger. Cleaning at 150,000 miles of use.

Emission-related maintenance may not include scheduled replacement of the turbocharger during useful life, unless the manufacturer or remanufacturer can demonstrate that such maintenance is also necessary to maintain performance with respect to fuel economy or power output.

(iv) Injection timing. Checking and resetting at 150,000 miles of use.

(v) Air Filters. Cleaning or replacement at 50,000 miles of use (under normal operating conditions).

(vi) Exhaust aftertreatment systems. Cleaning or replacement at 300,000 miles of use.

(2) For Otto-cycle locomotives or locomotive engines, emission-related maintenance at intervals shorter than, or in addition to, the following will not be accepted as technologically necessary emission-related maintenance, except with advance approval of the Administrator.

(i) Spark plugs. The cleaning or replacement at 150,000 miles of use.

(ii) Ignition wires. Replacement at 300,000 miles of use.

(iii) Exhaust gas recirculation system (including all related filters and control valves). Cleaning or replacement at 150,000 miles of use.

(iv) Carburetor. Adjustment at 150,000 miles of use.

(v) Fuel injectors. Cleaning or replacement at 150,000 miles of use.

(vi) Oxygen sensor. Replacement at 200,000 miles of use.

(vii) Air Filters. Cleaning or replacement at 50,000 miles of use (under normal operating conditions).

(viii) Exhaust aftertreatment systems. Cleaning or replacement at 300,000 miles of use.

(3) For engine-types other than those covered by paragraphs (b)(1) or (b)(2) of this section, the manufacturer or remanufacturer shall obtain the advance approval of the maintenance instructions by the Administrator, prior to certification.

#### **92.013 Submission of maintenance instructions.**

(a) The manufacturer or remanufacturer as applicable, shall provide to the Administrator, no later than the time of the submission required by §92.011, a copy of emission-related the maintenance instructions which the manufacturer or remanufacturer proposes to supply to the ultimate purchaser in accordance with §92.012. 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.

(b) 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 unless the Administrator consents to a lesser period of time.

**92.014 Maintenance of records; submittal of information; right of entry.**

(a) Any manufacturer or remanufacturer subject to any of the standards or procedures prescribed in this subpart shall establish, maintain and retain the following adequately organized and indexed records.

(1) General records. (i) The records required to be maintained by this paragraph shall consist of:

(A) Identification and description of all certification locomotives or certification locomotive engines for which testing is required under this subpart.

(B) A description of all emission control systems which are installed on or incorporated in each certification locomotive or certification locomotive engine.

(C) A description of all procedures used to test each such certification locomotive or certification locomotive engine.

(D) A copy of all applications for certification, filed by the Administrator.

(2) Individual records. (i) A brief history of each locomotive or locomotive engine used for certification under this subpart including:

(A) In the case where a current production engine is modified for use as a certification engine or in a certification locomotive, a description of the process by which the engine was selected and of the modifications made. In the case where the certification locomotive or the engine for a certification locomotive is not derived from a current production engine, a general description of the buildup of the engine (e.g., whether experimental heads were cast and machined according to supplied drawings). In both cases above, a description of the origin and selection process for fuel system components (carburetor, fuel injection components), ignition system components, intake air pressurization and cooling system components, cylinders, pistons and piston rings, exhaust smoke control system components, and exhaust aftertreatment devices as applicable, shall be included. The required descriptions shall specify the steps taken to assure that the certification locomotive or certification locomotive engine, with respect to its engine, drivetrain, fuel system, emission control system components, exhaust aftertreatment devices, exhaust smoke control system components or any other devices or components as applicable, that can reasonably be expected to influence exhaust emissions will be representative of production locomotives or locomotive engines and that either: all components and/or locomotive or engine, construction processes, component inspection and selection techniques, and assembly techniques employed in constructing such locomotives or engines are reasonably likely to be implemented for production locomotives or engines; or that they are as close as practicable to planned construction and assembly processed.

(B) A complete record of all emission tests performed (except tests performed by EPA directly), including test results, the date and purpose of each test, and the number of miles or megawatt-hours accumulated on the locomotive or the number of megawatt-hours accumulated on the engine.

(C) A record and description of all maintenance and other servicing performed, giving the date of the maintenance or service and the reason for it.

(D) A record and description of each test performed to diagnose engine or emission control system performance, giving the date and time of the test and the reason for it.

(E) A brief description of any significant events affecting the locomotive or engine during the period covered by the history and not described by an entry under one of the previous headings, including such extraordinary events as locomotive accidents or accidents involving the engine or dynamometer runaway.

(ii) Each such history shall be started on the date that the first of any of the selection or buildup activities in paragraph (a)(2)(i)(A) of this section occurred with respect to the certification locomotive or engine and shall be kept in a designated location.

(3) All records, other than routine emission test records, required to be maintained under this subpart shall be retained by the manufacturer or remanufacturer as applicable, for a period of twelve (12) years after issuance of all certificates of conformity to which they relate. Routine emission test records shall be retained by the manufacturer or remanufacturer as applicable, for a period of one (1) year after issuance of all certificates of conformity to which they relate. Records may be retained as hard copy or reduced to computer disks, etc., depending on the record retention procedures of the manufacturer or remanufacturer as applicable: *Provided*, that in every case all the information contained in the hard copy shall be retained.

(4) Nothing in this section limits the Administrator's discretion in requiring the manufacturer or remanufacturer to retain additional records or submit information not specifically required by this section.

(5) Pursuant to a request made by the Administrator, the manufacturer or remanufacturer shall submit to him/her the information that is required to be retained.

(6) EPA may void a certificate of conformity *ab initio* for a locomotive or engine family for which the manufacturer or remanufacturer fails to retain the records required in this section or to provide such information to the Administrator upon request.

(b) The manufacturer or remanufacturer of any locomotive or locomotive engine subject to any of the standards prescribed in this subpart shall submit to the Administrator, at the time of issuance by the manufacturer or remanufacturer, copies of all instructions or explanations regarding the use, repair, adjustment, maintenance, or testing of such locomotive or engine, relevant to the control of crankcase, or exhaust emissions issued by the manufacturer or remanufacturer, for use by other manufacturers or remanufacturers, assembly plants, distributors, dealers, and ultimate purchasers. Any material not translated into the English language need not be submitted unless specifically requested by the Administrator.

(c) Any manufacturer or remanufacturer participating in averaging, banking and trading program of subpart C of this part 92



must comply with the maintenance of records requirements of §92.212.

(d)(1) Any manufacturer or remanufacturer who has applied for certification of a new locomotive or new locomotive engine subject to certification test under this subpart shall admit or cause to be admitted any EPA Enforcement Officer during operating hours on presentation of credentials to any of the following:

(i) Any facility where any such tests or any procedures or activities connected with such test are or were performed;

(ii) Any facility where any locomotive or locomotive engine which is being tested (or was tested, or is to be tested) is present;

(iii) Any facility where any construction process or assembly process used in the modification or buildup of such a locomotive or engine into a certification locomotive or certification engine is taking place or has taken place; or

(iv) Any facility where any record or other document relating to any of the above is located.

(2) Upon admission to any facility referred to in paragraph (d)(1) of this section, any EPA Enforcement Officer shall be allowed:

(i) To inspect and monitor any part or aspect of such procedures, activities and testing facilities including, but not limited to, monitoring locomotive or engine preconditioning, emissions tests, mileage (or service) accumulation, maintenance, and locomotive or engine storage procedures, and to verify correlation or calibration of test equipment;

(ii) To inspect and make copies of any such records, designs, or other documents, including those records specified in Subpart C of this part; and

(iii) To inspect and/or photograph any part or aspect of any such certification locomotive, or certification locomotive engine and any components to be used in the construction thereof.

(3) In order to allow the Administrator to determine whether or not production locomotives, or production locomotive engines, conform to the conditions upon which a certificate of conformity has been issued, or conform in all material respects to the design specifications applicable to those locomotives, or engines, as described in the application for certification for

which a certificate of conformity has been issued, any manufacturer or remanufacturer shall admit any EPA Enforcement Officer on presentation of credentials to:

(i) Any facility where any document, design or procedure relating to the translation of the design and construction of engines and emission related components described in the application for certification or used for certification testing into production locomotives or production engines is located or carried on;

(ii) Any facility where any locomotives or locomotive engines, to be introduced into commerce are manufactured or remanufactured; and

(iii) Any facility where records specified this section are located.

(4) On admission to any such facility referred to in paragraph (d)(3) of this section, any EPA Enforcement Officer shall be allowed:

(i) to inspect and monitor any aspects of such manufacture or remanufacture and other procedures;

(ii) to inspect and make copies of any such records, documents or designs;

(iii) to inspect and photograph any part or aspect of any such locomotive(s) or locomotive engine(s) and any component used in the assembly thereof that are reasonably related to the purpose of his/her entry; and

(iv) to inspect and make copies of any records and documents specified this section.

(5) Any EPA Enforcement Officer shall be furnished by those in charge of a facility being inspected with such reasonable assistance as he/she may request to help him/her discharge any function listed in this paragraph. Each applicant for or recipient of certification is required to cause those in charge of a facility operated for its benefit to furnish such reasonable assistance without charge to EPA whether or not the applicant controls the facility.

(6) The duty to admit or cause to be admitted any EPA Enforcement Officer applies whether or not the applicant owns or controls the facility in question and applies both to domestic and to foreign manufacturers or remanufacturers and facilities. EPA

will not attempt to make any inspections which it has been informed that local law forbids. However, if local law makes it impossible to do what is necessary to insure the accuracy of data generated at a facility, no informed judgment that a locomotive or locomotive engine is certifiable or is covered by a certificate can properly be based on those data. It is the responsibility of the manufacturer or remanufacturer to locate its testing and manufacturing, remanufacturing or upgrading facilities in jurisdictions where this situation will not arise.

(7) For purposes of this section:

(i) "presentation of credentials" shall mean display of the document designating a person as an EPA Enforcement Officer.

(ii) where locomotive, component or engine storage areas or facilities are concerned, "operating hours" shall mean all times during which personnel other than custodial personnel are at work in the vicinity of the area or facility and have access to it.

(iii) where facilities or areas other than those covered by paragraph (d)(7)(ii) of this section are concerned, "operating hours" shall mean all times during which an assembly line is in operation or all times during which testing, maintenance, mileage (or service) accumulation, production or compilation of records, or any other procedure or activity related to certification testing, to translation of designs from the test stage to the production stage, or to locomotive (or engine) manufacture, remanufacture or upgrade, or assembly is being carried out in a facility.

(iv) "reasonable assistance" includes, but is not limited to, clerical, copying, interpretation and translation services, the making available on request of personnel of the facility being inspected during their working hours to inform the EPA Enforcement Officer of how the facility operates and to answer his questions, and the performance on request of emissions tests on any locomotive (or engine) which is being, has been, or will be used for certification testing. Such tests shall be nondestructive, but may require appropriate mileage (or service) accumulation. A manufacturer or remanufacturer may be compelled to cause the personal appearance of any employee at such a facility before an EPA Enforcement Officer by written request for his appearance, signed by the Assistant Administrator for Air and Radiation, served on the manufacturer or remanufacturer. Any such employee who has been instructed by the manufacturer or remanufacturer to appear will be entitled to be accompanied, represented and advised by counsel.

(v) any entry without 24 hour prior written or oral

notification to the affected manufacturer or remanufacturer shall be authorized in writing by the Assistant Administrator for Air and Radiation.

(8) EPA may void a certificate of conformity *ab initio* for locomotives or locomotive engines introduced into commerce if the manufacturer or remanufacturer (or contractor for the manufacturer or remanufacturer, if applicable) fails to comply with any provision of this section.

(e) EPA Enforcement Officers are authorized to seek a warrant or court order authorizing the EPA Enforcement Officers to conduct activities related to entry and access as authorized in this section, as appropriate, to execute the functions specified in this section. EPA Enforcement Officers may proceed *ex parte* to obtain a warrant whether or not the Enforcement Officers first attempted to seek permission of the manufacturer or remanufacturer, or the party in charge of the facilities in question to conduct activities related to entry and access as authorized in this section.

(f) A manufacturer or remanufacturer shall permit EPA Enforcement Officers who present a warrant or court order as described in paragraph (e) of this section to conduct activities related to entry and access as authorized in this section and as described in the warrant or court order. The manufacturer or remanufacturer shall cause those in charge of its facility, or facility operated for its benefit, to permit EPA Enforcement Officers to conduct activities related to entry and access as authorized in this section pursuant to a warrant or court order whether or not the manufacturer or remanufacturer controls the facility. In the absence of such a warrant or court order, EPA Enforcement Officers may conduct activities related to entry and access as authorized in this section only upon the consent of the manufacturer or remanufacturer, or the party in charge of the facilities in question.

(g) It is not a violation of the Clean Air Act for any person to refuse to permit EPA Enforcement Officers to conduct activities related to entry and access as authorized in this section without a warrant or court order.

#### **92.015 Certification.**

(a) Paragraph (a) of this section 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 40 CFR 92, he/she will issue a certificate of conformity with respect to such engine family except in cases covered 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 which it is issued and upon such terms 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.

(b) Paragraph (b) of this section 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, 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 in cases covered 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 which it is issued and upon such terms 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) Paragraph (c) of this section applies to manufacturers and remanufacturers of locomotives and locomotive engines.

(1) The manufacturer or remanufacturer as applicable, 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 information 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 §92.014 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; or

(E) any records, documents, reports or histories required by this part to be kept concerning any of the above.

(iv) Any EPA Enforcement Officer is denied "reasonable assistance" (as defined in §92.014).

(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 proposed 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 §92.014 in fact occurred, the manufacturer or remanufacturer, if he 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 §92.016 hereof; 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 as 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 §92.016. 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.

#### **92.016 Hearing procedures.**

(a)(1) After granting a request for a hearing under §92.009 or §92.015, the Administrator shall designate a Presiding Officer for the hearing.

(2) The General Counsel will represent the Environmental Protection Agency in any hearing under this section.

(3) The hearing shall be held as soon as practicable at a time and place fixed by the Administrator or by the Presiding Officer.

(4) In the case of any hearing requested pursuant to

§92.015, the Administrator may in his/her discretion direct that all argument and presentation of evidence be concluded within such fixed period not less than 30 days as he/she may establish from the date that the first written offer of a hearing is made to the manufacturer. To expedite proceedings, the Administrator may direct that the decision of the Presiding Officer (who may, but need not be the Administrator) shall be the final EPA decision.

(b)(1) Upon his/her appointment pursuant to paragraph (a) of this section, the Presiding Officer will establish a hearing file. The file shall consist of the notice issued by the Administrator under §92.009 or §92.015 together with any accompanying material, the request for a hearing and the supporting data submitted therewith, and all documents relating to the request for certification and all documents submitted therewith, and correspondence and other data material to the hearing.

(2) The hearing file will be available for inspection by the applicant at the office of the Presiding Officer.

(c) An applicant may appear in person, or may be represented by counsel or by any other duly authorized representative.

(d)(1) The Presiding Officer, upon the request of any party, or in his/her discretion, may arrange for a prehearing conference at a time and place specified by him/her to consider the following:

(i) simplification of the issues;

(ii) stipulations, admissions of fact, and the introduction of documents;

(iii) limitation of the number of expert witnesses;

(iv) possibility of agreement disposing of all or any of the issues in dispute;

(v) such other matters as may aid in the disposition of the hearing, including such additional tests as may be agreed upon by the parties.

(2) The results of the conference shall be reduced to writing by the Presiding Officer and made part of the record.

(e)(1) Hearings shall be conducted by the Presiding Officer in an informal but orderly and expeditious manner. The parties may offer oral or written evidence, subject to the exclusion by the Presiding Officer of irrelevant, immaterial and repetitious



evidence.

(2) Witnesses will not be required to testify under oath. However, the Presiding Officer shall call to the attention of witnesses that their statements may be subject to the provisions of title 18 U.S.C. 1001 which imposes penalties for knowingly making false statements or representations, or using false documents in any matter within the jurisdiction of any department or agency of the United States.

(3) Any witness may be examined or cross-examined by the Presiding Officer, the parties, or their representatives.

(4) Hearings shall be reported verbatim. Copies of transcripts of proceedings may be purchased by the applicant from the reporter.

(5) All written statements, charts, tabulations, and similar data offered in evidence at the hearings shall, upon a showing satisfactory to the Presiding Officer of their authenticity, relevancy, and materiality, be received in evidence and shall constitute a part of the record.

(6) Oral argument may be permitted in the discretion of the Presiding Officer and shall be reported as part of the record unless otherwise ordered by him.

(f)(1) The Presiding Officer shall make an initial decision which shall include written findings and conclusions and the reasons or basis therefor on all the material issues of fact, law, or discretion presented on the record. The findings, conclusions, and written decision shall be provided to the parties and made a part of the record. The initial decision shall become the decision of the Administrator without further proceedings unless there is an appeal to the Administrator or motion for review by the Administrator within 30 days of the date the initial decision was filed.

(2) On appeal from or review of the initial decision the Administrator shall have all the powers which he/she would have in making the initial decision including the discretion to require or allow briefs, oral argument, the taking of additional evidence or the remanding to the Presiding Officer for additional proceedings. The decision by the Administrator shall include written findings and conclusions and the reasons or basis therefor on all the material issues of fact, law, or discretion presented on the appeal or considered in the review.

**92.017 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), the manufacturer shall not make said changes or produce said engines prior to receiving approval from EPA.

(b) A manufacturer'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 engine to be added;

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

(3) a determination whether the manufacturer's original test fleet selection is still appropriate, and if the original test fleet selection is determined not to be appropriate, proposed test fleet selection(s) representing the engines changed or added which would have been required if the engines had been included in the original application for certification.

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

(d) Decision by Administrator. (1) Based on the description of the proposed amendment and data derived from such testing as the Administrator may require or conduct, the Administrator will determine whether the proposed 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 engine(s) meets the requirements of this subpart and the Act, the appropriate certificate of conformity is amended.

(3) If the Administrator determines that the changed or new engine(s) does not meet the requirements of this subpart and the Act, the certificate of conformity will not be amended. The Administrator shall provide a written explanation to the manufacturer of the decision not to amend the certificate. The manufacturer may request a hearing on a denial.

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

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

(2) If, after a review, the Administrator determines additional testing is required, the manufacturer must provide

required test data within 30 days or cease production of the affected engines.

(3) If the Administrator determines that the affected engines do not meet applicable requirements, the Administrator will notify the manufacturer to cease production of the affected engines and to recall and correct at no expense to the owner all affected engines previously produced.

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

#### **92.018 Labeling.**

(a) The manufacturer or remanufacturer of any new locomotive or new locomotive engine, subject to the emission standards of this part and covered by a certificate of conformity under §92.015, shall, at the time of manufacture, remanufacture or upgrade, affix a permanent legible label to each locomotive or locomotive engine of the type and in the manner described below, containing the information hereinafter provided.

(1) For engine-only manufacturers and remanufacturers:

(i) A permanent legible label shall be affixed to the engine in a position in which it will be readily visible after installation of the engine in the locomotive.

(ii) The label shall be attached to an engine part necessary for normal engine operation and not normally requiring replacement during the life of the engine.

(iii) (A) For manufacturers, the label shall be attached to an engine part necessary for normal operation of the engine and not normally requiring replacement during the service life of the engine.

(B) For remanufacturers, the label shall be attached to an engine part necessary for normal operation of the engine and not normally requiring replacement during the useful life of the engine.

(2) For locomotive manufacturers and remanufacturers:

(i) A permanent legible label shall be affixed to either the engine or the locomotive in the engine compartment, in a position in which it will be readily visible during periods of engine service or maintenance.

(ii) (A) For manufacturers, the label shall be attached to an engine or locomotive part necessary for normal operation of the engine and locomotive and not normally requiring replacement during the service life of the engine or locomotive.

(B) For remanufacturers, the label shall be attached to an engine or locomotive part necessary for normal operation of the engine and locomotive and not normally requiring replacement during the useful life of the engine or locomotive.

(3) The label shall be affixed by the manufacturer or remanufacturer who has been issued the certificate of conformity for such locomotive or locomotive engine (or their designees), in such manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such locomotive or locomotive engine.

(4) The label shall contain the following information lettered in the English language in block letters and numerals, which shall be of a color that contrasts with the background of the label:

(i) The label heading, either:

(A) In the case where the manufacturer or remanufacturer certifies the locomotive: Locomotive Emission Control Information.

(B) In the case where the manufacturer or remanufacturer certifies the engine: Locomotive Engine Emission Control Information.

(ii) Full corporate name and trademark of the manufacturer or remanufacturer.

(iii) Cylinder displacement (in cubic inches or liters) and number of cylinders, engine family identification.

(iv) Engine tune-up specifications and adjustments, as recommended by the manufacturer or remanufacturer, in accordance with the applicable emission standards, including but not limited to idle speeds(s), injection timing or ignition timing (as applicable), the idle air-fuel mixture setting procedure and value (as applicable), high idle speed (as applicable), valve lash (as applicable), as well as other parameters deemed necessary by the manufacturer or remanufacturer.

(v) A prominent unconditional statement of compliance with U.S. Environmental Protection Agency regulations which apply to

locomotives and locomotive engines, as applicable;

(A) This Locomotive (Locomotive Engine) conforms to U. S. EPA regulations applicable to Locomotives (Locomotive Engines) manufactured on or after January 1, 2005, or

(B) This Locomotive (Locomotive Engine) conforms to U. S. EPA regulations applicable to Locomotives (Locomotive Engines) manufactured on or after January 1, 2005, and remanufactured after January 1, 2000, or

(C) This Locomotive (Locomotive Engine) conforms to U. S. EPA regulations applicable to Locomotives (Locomotive Engines) manufactured on or after January 1, 2000, or

(D) This Locomotive (Locomotive Engine) conforms to U. S. EPA regulations applicable to Locomotives (Locomotive Engines) manufactured on or after January 1, 2000, and remanufactured after January 1, 2000, or

(E) This Locomotive (Locomotive Engine) conforms to U. S. EPA regulations applicable to Locomotives (Locomotive Engines) manufactured after January 1, 1973, and before January 1, 2000, and remanufactured after January 1, 2000, or

(F) This Locomotive (Locomotive Engine) conforms to U. S. EPA regulations applicable to Locomotives (Locomotive Engines) manufactured prior to January 1, 1973, and upgraded after January 1, 2000, or

(G) This Locomotive (Locomotive Engine) conforms to U. S. EPA regulations applicable to Locomotives (Locomotive Engines) manufactured prior to January 1, 1973, and upgraded on or after January 1, 1973, and remanufactured after January 1, 2000,

(vi) Date of locomotive or engine, manufacture, remanufacture or upgrade (month and year).

(vii) The useful life of the locomotive or locomotive engine.

(viii) The label may be made up of more than one piece, provided that all pieces are permanently attached to the same engine or locomotive part as applicable.

(b) The provisions of this section shall not prevent a manufacturer or remanufacturer from also providing on the label any other information that such manufacturer or remanufacturer deems necessary for, or useful to, the proper operation and satisfactory

maintenance of the locomotive or engine.

**92.019 Submission of locomotive numbers.**

(a) Upon request of the Administrator, the manufacturer or remanufacturer of any locomotive or locomotive engine, covered by a certificate of conformity shall, within 30 days, identify by locomotive or engine identification number, the locomotives or engines covered by the certificate of conformity.

(b) The manufacturer or remanufacturer of any locomotives or locomotive engines covered by a certificate of conformity shall provide to the Administrator, within 60 days of the issuance of a certificate of conformity, an explanation of the elements in any locomotive or engine identification coding system in sufficient detail to enable the Administrator to identify those locomotives or engines which are covered by a certificate of conformity.

**92.020 Production locomotives and engines.**

(a) Any manufacturer or remanufacturer obtaining certification under this part shall supply to the Administrator, upon his/her request, a reasonable number of production locomotives or engines, as specified by the Administrator. The locomotives or locomotive engines shall be representative of the engines, emission control systems, and fuel systems offered and typical of production locomotives or engines available for sale, or use by railroads, under the certificate. These locomotives or engines shall be supplied for testing at such time and place and for such reasonable periods as the Administrator may require.

**92.021 Treatment of confidential information.**

(a) Any manufacturer or remanufacturer may assert that some or all of the information submitted pursuant to this subpart is entitled to confidential treatment as provided by 40 CFR part 2, subpart B.

(b) Any claim of confidentiality must accompany the information at the time it is submitted to EPA.

(c) To assert that information submitted pursuant to this subpart is confidential, a person or manufacturer or remanufacturer must indicate clearly the items of information claimed confidential by marking, circling, bracketing, stamping, or otherwise specifying the confidential information. Furthermore, EPA requests, but does not require, that the submitter also provide a second copy of its submittal from which all confidential information has been deleted.

If a need arises to publicly release nonconfidential information, EPA will assume that the submitter has accurately deleted the confidential information from this second copy.

(d) If a claim is made that some or all of the information submitted pursuant to this subpart is entitled to confidential treatment, the information covered by that confidentiality claim will be disclosed by EPA only to the extent and by means of the procedures set forth in part 2, subpart B, of this chapter.

(e) Information provided without a claim of confidentiality at the time of submission may be made available to the public by EPA without further notice to the submitter, in accordance with 40 CFR 2.204(c)(2)(i)(A).

#### **92.022 Certification of remanufactured locomotives and engines.**

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

#### **92.023 Prohibited controls.**

(a) A locomotive or locomotive engine may not be equipped with an emission control system for the purpose of complying with emission standards if such system will cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function.

(b) A locomotive or locomotive engine with an emission control system may not emit any noxious or toxic substance which would not be emitted in the operation of such engine in the absence of such system except as specifically permitted by regulation.

#### **92.024 Defeat devices.**

(a) A locomotive or locomotive engine may not be equipped with a defeat device.

(b) For purposes of this section, "defeat device" means any device, system, or element of design which senses operation outside normal emission test conditions and reduces emission control effectiveness.

(1) Defeat device includes any auxiliary emission control device (AECD) that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal operation and use unless such conditions are included in the test procedure.

(2) Defeat device does not include such items which either operate only during engine starting or are necessary to protect

the engine (or equipment in which it is installed) against damage or accident during its operation.

**92.025 Adjustable parameters, requirements.**

(a) Locomotive or locomotive engines equipped with adjustable parameters must comply with all requirements of this subpart for any adjustment within the range specified in the certificate of conformity.

(b) An operating parameter is not considered adjustable if it is permanently sealed.

(c) The Administrator may require that adjustable parameters be set to any specification within the range specified in the certificate of conformity for certification testing, production line testing, or in-use testing to determine compliance with the requirements of this subpart.

**92.026 Special test procedures.**

(a) Use 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 yields equivalent results to the specified procedures, its use is approved in advance by the Administrator, and the basis for equivalent results with the specified test procedures is fully described in the manufacturer's application.

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



Subpart B in separate document

## **Subpart C - Averaging, Banking, and Trading Provisions**

### **92.201 Applicability.**

Locomotives and locomotive engines subject to the provisions of subpart A of part 92 are eligible to participate in the averaging, banking, and trading program described in this subpart.

### **92.202 Definitions.**

The definitions of Subpart A apply to this subpart.

### **92.203 Abbreviations.**

The abbreviations of Subpart A apply to this subpart.

### **92.204 Construction.**

(a) The language in this subpart applies to both locomotives and to locomotive engines. When a new provision is to be added to this subpart or a provision of this subpart is to be changed, a new paragraph will be added to the appropriate section(s) of this subpart specifying the new or changed requirements together with the date at which the new or changed requirement(s) become effective.

### **92.205 General provisions.**

(a) The averaging, banking, and trading program that is described in this subpart for NO<sub>x</sub> and PM emissions from locomotives and locomotive engines is intended to allow manufacturers and remanufacturers flexibility for compliance. Participation in this program is voluntary. This subpart includes separate programs for compliance with each of the cycle-weighted standards in §92.006.

(b) A locomotive engine family is eligible to participate in the averaging, banking, and trading program for NO<sub>x</sub> and PM emissions if it is subject to regulation under this part with certain exceptions specified in paragraph (c) of this section. No averaging, banking, and trading program is available for meeting the HC, CO, or smoke emission standards specified in subpart A of this part.

(c) Locomotives and locomotive engines may not participate in the averaging, banking, and trading program if they are exported.

(d) A manufacturer or remanufacturer may certify one or more locomotive engine families at family emission limits (FELs) above or below the applicable emission standard, provided the summation of the manufacturer's or remanufacturer's projected balance of all credit transactions in a given calendar year is greater than or equal to zero, as determined under §92.209.

(1) FELs for NO<sub>x</sub> and PM may not exceed 1.25 times the applicable standard.

(2) An engine family certified to an FEL is subject to all provisions specified in this part, except that the applicable FEL replaces the NO<sub>x</sub> and PM emission standard for the family participating in the averaging, banking, and trading program.

(3) A manufacturer or remanufacturer of an engine family with an FEL exceeding the applicable emission standard must obtain emission credits sufficient to address the associated credit shortfall via averaging, banking, or trading.

(4) An engine family with an FEL below the applicable standard may generate emission credits for averaging, banking, trading, or a combination thereof. Emission credits may not be used to offset an engine family's emissions that exceed its applicable FEL. Credits may not be used to remedy nonconformity determined by production line testing or by in-use testing. However, in the case of a failure, credits may be used to allow subsequent production of engines for the family in question if the manufacturer or remanufacturer elects to recertify to a higher FEL.

(5) Credits must be generated and used relative to the same set of standards.

(i) Credits generated over the line-haul duty-cycle may not be used for compliance with the switch duty-cycle, and credits generated over the switch duty-cycle may not be used for compliance with the line-haul duty-cycle.

(ii) Credits generated relative to one Tier of standards may only be used for compliance with that same Tier of standards. For example, credits generated relative to the Tier 0 standards cannot be used for compliance with the Tier II standards.

(e) Remanufacturers electing to certify to the optional NO<sub>x</sub> standards of paragraph (a)(5) of section 92.006 (i.e., standards requiring a 33 percent reduction in NO<sub>x</sub> emissions from measured baseline levels for a specific engine family) are not eligible to participate in the averaging, banking, and trading program.

(f) Credits generated in a given calendar year may be used in the following three calendar years. Credits not used by the end of the third calendar year after being generated are forfeited.

(g) Compliance under averaging, banking, and trading is determined at the end of the calendar year. Engine families without an adequate amount of emission credits will violate the conditions of the certificate of conformity. The certificates of conformity may be voided ab initio for those engine families.

#### **92.206 Averaging.**

(a) A manufacturer or a remanufacturer may use averaging to offset an emission exceedance of a locomotive engine family caused by an FEL above the applicable emission standard. Credits used in averaging may be obtained from credits generated by another engine family in the same calendar year, credits banked in the three previous calendar years, or credits obtained through trading.

(b) Credits scheduled to expire in the earliest calendar year must be used first, before using other available credits.

#### **92.207 Banking.**

(a) A manufacturer or a remanufacturer of a locomotive engine family with an FEL below the applicable standard for a given calendar year may bank credits in that calendar year for use in averaging and trading in the following three calendar years. Credits not withdrawn within the three calendar years after they are banked are forfeited.

(b) A manufacturer or a remanufacturer of a locomotive engine family may bank credits up to one calendar year prior to the effective date of mandatory certification. Such engines must meet the applicable requirements of this part.

(c) A manufacturer or a remanufacturer may bank actual credits only after the end of the calendar year and after EPA has reviewed the manufacturer's or remanufacturer's end-of-year reports. During the calendar year and before submittal of the end-of-year report, credits originally designated in the certification process for banking will be considered reserved and may be redesignated for trading or averaging in the end-of-year report and final report.

(d) Credits declared for banking from the previous calendar

year that have not been reviewed by EPA may be used in averaging or trading transactions. However, such credits may be revoked at a later time following EPA review of the end-of-year report or any subsequent audit actions.

#### **92.208 Trading.**

(a) A locomotive or locomotive engine manufacturer may exchange emission credits with other locomotive or locomotive engine manufacturers, and a locomotive or locomotive engine remanufacturer may exchange emission credits with other locomotive or locomotive engine remanufacturers in trading.

(b) Credits for trading can be obtained from credits banked in the three previous calendar years or credits generated during the calendar year of the trading transaction. Traded credits expire if they are not used in averaging within three calendar years following the calendar year in which they were generated.

(c) Traded credits can be used for averaging, banking, or further trading transactions.

(d) In the event of a negative credit balance resulting from a transaction, both the buyer and the seller are liable, except in cases involving fraud. Certificates of all engine families participating in a negative trade may be voided ab initio.

#### **92.209 Credit calculation.**

(a) For each participating engine family, emission credits (positive or negative) are to be calculated according to one of the following equations.

(1) When useful life is expressed in terms of miles;

(i) Credits for each engine family are calculated as:  
Emission credits = (Std - FEL) X (UL) X (Volume) X (PR) X (10<sup>-6</sup> Mg/g)

(ii) Credits shall be rounded, in accordance with ASTM E29-93a, to the nearest whole megagram-mile per hour (Mg-mi/hr).

(2) When useful life is expressed in terms of megawatt-hrs;

(i) Credits for each engine family are calculated as:  
Emission credits = (Std - FEL) X (UL) X (Volume) X (10<sup>-3</sup> kW-Mg/MW-g)

(ii) Credits shall be rounded, in accordance with ASTM E29-93a, to the nearest megagram (Mg).

(3) Where:

(i) Std = the applicable locomotive and locomotive engine emission standard in grams per brake horsepower-hour (for paragraph (a)(1)) or grams per kilowatt-hour (for paragraph (a)(2)).

(ii) FEL = the family emission limit for the engine family in grams per brake horsepower hour (for paragraph (a)(1)) or grams per kilowatt-hour (for paragraph (a)(2)).

(iii)UL = the useful life in miles or megawatt-hours, as defined in §92.002.

(iv) Volume = the number of locomotives or locomotive engines eligible to participate in the averaging, banking, and trading program within the given engine family during the calendar year. Quarterly production projections are used for initial certification. Actual applicable production/sales volumes is used for end-of-year compliance determination.

(v) PR = the power rating of the configuration within an engine family.

#### **92.210 Labeling.**

For all locomotives and locomotive engines included in the averaging, banking, and trading program, the family emission limit to which the locomotive or locomotive engine is certified must be included on the label required in §92.020.

#### **92.211 Certification.**

(a) In the application for certification a manufacturer or remanufacturer as applicable must:

(1) Declare its intent to include specific engine families in the averaging, banking, and trading program.

(2) Submit a statement that the locomotives or locomotive engines for which certification is requested will not, to the best of the manufacturer's or remanufacturer's belief, cause the manufacturer or remanufacturer to have a negative credit balance when all credits are calculated for all the manufacturer's or remanufacturer's engine families participating in the averaging, banking, and trading program.

(3) Declare duty-cycle FELs for each engine family participating in averaging, banking, and trading.

(i) The FELs must be to the same number of significant digits as the emission standard.

(ii) In no case may the FELs exceed the upper limit prescribed in §92.205(d).

(4) Indicate the projected number of credits generated/needed for this family; the projected applicable production/sales volume, by quarter; and the values required to calculate credits as given in §92.209.

(5) Submit calculations in accordance with §92.209 of projected emission credits (positive or negative) based on quarterly production projections for each participating family.

(6)(i) If the engine family is projected to have negative emission credits, state specifically the source (manufacturer/engine family or remanufacturer/engine family or reserved) of the credits necessary to offset the credit deficit according to quarterly projected production.

(ii) If the engine family is projected to generate credits, state specifically (manufacturer/engine family or remanufacturer/engine family or reserved) where the quarterly projected credits will be applied.

(b) All certificates issued are conditional upon compliance by the manufacturer or remanufacturer with the provisions of this subpart both during and after the calendar year of production.

(c) Failure to comply with all provisions of this subpart will be considered to be a failure to satisfy the conditions upon which the certificate was issued, and the certificate may be deemed void ab initio.

(d) The manufacturer or remanufacturer (as applicable) bears the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied or waived.

(e) Projected credits based on information supplied in the certification application may be used to obtain a certificate of conformity. However, any such credits may be revoked based on review of end-of-year reports, follow-up audits, and any other verification steps deemed appropriate by the Administrator.

#### **92.212 Maintenance of records.**

(a) The manufacturer or remanufacturer of any locomotive or

locomotive engine that is certified under the averaging, banking, and trading program must establish, maintain, and retain the following adequately organized and indexed records for each such locomotive or locomotive engine produced:

- (1) EPA engine family,
- (2) Engine identification number,
- (3) Engine calendar year and build date,
- (4) Power rating,
- (5) Purchaser and destination, and
- (6) Assembly plant.

(b) The manufacturer or remanufacturer of any locomotive engine family that is certified under the averaging, banking, and trading program must establish, maintain, and retain the following adequately organized and indexed records for each such family:

- (1) EPA engine family,
- (2) Family Emission Limit (FEL),
- (3) Power rating for each configuration,
- (4) Projected applicable production/sales volume for the calendar year,
- (5) Actual applicable production/sales volume for the calendar year, and
- (6) Useful life.

(c) Any manufacturer or remanufacturer producing an engine family participating in trading reserved credits must maintain the following records on a quarterly basis for each engine family in the trading program:

- (1) The engine family,
- (2) The actual quarterly and cumulative applicable production/sales volume,
- (3) The value required to calculate credits as given in §92.209,



(4) The resulting type and number of credits generated/required,

(5) How and where credit surpluses are dispersed, and

(6) How and through what means credit deficits are met.

(d) The manufacturer or remanufacturer must retain all records required to be maintained under this section for a period of 12 years from the due date for the end-of-calendar year report. Records may be retained as hard copy or reduced to microfilm, ADP diskettes, and so forth, depending on the manufacturer's or remanufacturer's record retention procedure; provided, that in every case all information contained in the hard copy is retained.

(e) Nothing in this section limits the Administrator's discretion in requiring the manufacturer or remanufacturer to retain additional records or submit information not specifically required by this section.

(f) Pursuant to a request made by the Administrator, the manufacturer or remanufacturer must submit to the Administrator the information that the manufacturer or remanufacturer is required to retain.

(g) EPA may void ab initio a certificate of conformity for an engine family for which the manufacturer or remanufacturer fails to retain the records required in this section or to provide such information to the Administrator upon request.

#### **92.213 End-of-year and final reports.**

(a) End-of-year and final reports must indicate the engine family, the actual applicable production/sales volume, the values required to calculate credits as given in §92.209, and the number of credits generated/required. Manufacturers and remanufacturers must also submit how and where credit surpluses were dispersed (or are to be banked) and/or how and through what means credit deficits were met. Copies of contracts related to credit trading must be included or supplied by the broker, if applicable. The report shall include a calculation of credit balances to show that the summation of the manufacturer's or remanufacturer's use of credits results in a credit balance equal to or greater than zero.

(b) The applicable production/sales volume for end-of-year and final reports must be based on the location of either the point of first retail sale (for example, retail customer, dealer,

secondary manufacturer) or the point at which the locomotive is placed into service, whichever occurs first. This is called the final product purchase location.

(c)(1) End-of-year reports must be submitted within 90 days of the end of the calendar year to: Group Manager, Engine Compliance Programs Group, Engine Programs and Compliance Division U.S. Environmental Protection Agency, 6403-J, 401 M St., S.W., Washington, D.C. 20460.

(2) Final reports must be submitted within 270 days of the end of the calendar year to: Group Manager, Engine Compliance Programs Group, Engine Programs and Compliance Division U.S. Environmental Protection Agency, 6403-J, 401 M St., S.W., Washington, D.C. 20460.

(d) Failure by a manufacturer or a remanufacturer participating in the averaging, banking, or trading program to submit any end-of-year or final reports in the specified time for all engines is a violation of sections 203(a)(1) and 213(a)(3) and (d) of the Clean Air Act for each locomotive or locomotive engine.

(e) A manufacturer or remanufacturer generating credits for deposit only who fails to submit end-of-year reports in the applicable specified time period (90 days after the end of the calendar year) may not use the credits until such reports are received and reviewed by EPA. Use of projected credits pending EPA review is not permitted in these circumstances.

(f) Errors discovered by EPA or the manufacturer or the remanufacturer as applicable in the end-of-year report, including errors in credit calculation, may be corrected in the final report up to 180-days subsequent to submission of the end-of-year report. Errors discovered by EPA after 180-days shall be correctable if, as a result of the correction, the manufacturer's or remanufacturer's credits are reduced. Errors in the manufacturer's or remanufacturer's favor are not corrected if discovered after the 180-day correction period allowed.

(g) If EPA or the manufacturer or remanufacturer as applicable determines that a reporting error occurred on an end-of-year or final report previously submitted to EPA under this section, the manufacturer's or remanufacturer's credits and credit calculations will be recalculated. Erroneous positive credits will be void. Erroneous negative credit balances may be adjusted by EPA.

(h) If within 180 days of receipt of the manufacturer's or

remanufacturer's end-of-year report, EPA review determines a reporting error in the manufacturer's or remanufacturer's favor (that is, resulting in an increased credit balance) or if the manufacturer or remanufacturer discovers such an error within 180 days of EPA receipt of the end-of-year report, the credits are restored for use by the manufacturer or remanufacturer.

**92.214 Notice of opportunity for hearing.**

Any voiding of the certificate under §§ 92.205(f), 92.208(d), 92.211(c) and 92.212(g) will be made only after the manufacturer or remanufacturer concerned has been offered an opportunity for a hearing conducted in accordance with §92.018 and, if a manufacturer or remanufacturer requests such a hearing, will be made only after an initial decision by the Presiding Officer.

**Subpart D - Emission Warranty and Maintenance Instructions**

**92.301 Applicability.**

The requirements of subpart D are applicable to all locomotives and locomotive engines subject to the provisions of subpart A of part 92.

**92.302 Definitions.**

The definitions of subpart A of this part apply to this subpart.

**92.303 Abbreviations.**

The abbreviations of subpart A of this part apply to this subpart.

**92.304 Construction.**

(a) The language in this subpart applies to both locomotives and to locomotive engines. When a new provision is to be added to this subpart or a provision of this subpart is to be changed, a new paragraph will be added to the appropriate section(s) of this subpart specifying the new or changed requirements together with the date at which the new or changed requirement(s) become effective.

**92.305 Emission warranty, warranty period.**

(a) Warranties imposed by this subpart shall be for the full useful life of the locomotive or locomotive engine.

(b) The manufacturer or remanufacturer of each new locomotive or locomotive engine must warrant to the ultimate purchaser and each subsequent purchaser that the locomotive or locomotive engine is designed, built, and equipped so as to conform at the time of sale with applicable regulations under section 213 of the Act, and the locomotive or locomotive engine is free from defects in materials and workmanship which cause such locomotive or locomotive engine to fail to conform with applicable regulations for its warranty period.

(c) In the case of a locomotive or locomotive engine part, the manufacturer of the part may certify that use of the part will not result in a failure of the engine to comply with emission standards promulgated in this part, using procedures consistent with the aftermarket part provisions of 40 CFR 85,

with the approval of the Administrator.

(d) For the purposes of this section, the owner of any locomotive or locomotive engine warranted under this part is responsible for the proper maintenance of the locomotive or locomotive engine as stated in the manufacturer's written instructions. Proper maintenance includes replacement and/or service, as needed, at the owner's expense at a service establishment or facility of the owner's choosing, of all parts, items, or devices which affect emissions, and which were in general use with locomotives or locomotive engines prior to 1999. For diesel engines, this would generally include replacement or cleaning of the fuel delivery and injection system.

**92.306      Furnishing of maintenance instructions to ultimate purchaser.**

(a) The manufacturer or remanufacturer must furnish or cause to be furnished to the ultimate purchaser of each new locomotive or locomotive engine written instructions for the maintenance needed to assure proper functioning of the emission control system.

(b) 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.

(c) The instructions under paragraph (b) of this section will not include any condition on the ultimate purchaser'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 the franchised dealers of such manufacturer or remanufacturer or 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.

(d) The prohibition of paragraph (c) 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.

**Subpart E - Emission-related Defect Reporting Requirements,  
Voluntary Emission Recall Program**

**92.401 Applicability.**

The requirements of subpart E are applicable to all locomotives and locomotive engines subject to the provisions of subpart A of part 92. The requirement to report emission-related defects affecting a given class or category of locomotives or locomotive engines will remain applicable for eight years from the end of the year in which such locomotives or locomotive engines were manufactured, remanufactured, or upgraded, as applicable.

**92.402 Definitions.**

The definitions of subpart A of this part 92 apply to this subpart.

**92.403 Abbreviations.**

The abbreviations of subpart A of this part 92 apply to this subpart.

**92.404 Construction.**

(a) The language in this subpart applies to both locomotives and to locomotive engines. When a new provision is to be added to this subpart or a provision of this subpart is to be changed, a new paragraph will be added to the appropriate section(s) of this subpart specifying the new or changed requirements together with the date at which the new or changed requirement(s) become effective.

**92.405 Emission defect information report.**

(a) A manufacturer or remanufacturer must file a defect information report whenever:

(1) The manufacturer or remanufacturer determines, in accordance with procedures established by the manufacturer or remanufacturer to identify either safety-related or performance defects, that a specific emission-related defect exists. No report must be filed under this paragraph for any emission-related defect corrected prior to the sale of the affected locomotives or locomotive engines to an ultimate purchaser.

(b) Defect information reports required under paragraph (a) of this section must be submitted not more than 15 working days after an emission-related defect is found in a locomotive or locomotive engine. Information required by paragraph (c) of this section that is either not available within 15 working days or is significantly revised must be submitted as it becomes available.

(c) Except as provided in paragraph (b) of this section, each defect report must contain the following information in substantially the format outlined below:

(1) The manufacturer's or remanufacturer's corporate name.

(2) A description of the defect.

(3) A description of each class or category of locomotives or locomotive engines potentially affected by the defect including make, model, calendar year produced, purchaser and any other information as may be required to identify the locomotives or locomotive engines affected.

(4) For each class or category of locomotives or locomotive engines described in response to paragraph (c)(3) of this section, the following shall also be provided:

(i) The number of locomotives or locomotive engines known or estimated to have the defect and an explanation of the means by which this number was determined.

(ii) The address of the plant(s) at which the potentially defective locomotives or locomotive engines were produced.

(5) An evaluation of the emissions impact of the defect and a description of any operational or performance problems which a defective locomotive or locomotive engine might exhibit.

(6) Available emissions data which relate to the defect.

(7) An indication of any anticipated manufacturer or remanufacturer follow-up.

#### **92.406 Voluntary emissions recall reporting.**

(a) When any manufacturer or remanufacturer initiates a voluntary emissions recall campaign involving a locomotive or locomotive engine, the manufacturer or remanufacturer shall submit to EPA a report describing the manufacturer's or remanufacturer's voluntary emissions recall plan as prescribed by this section within 15 working days of the date owner



notification was begun. The report shall contain the following:

(1) A description of each class or category of locomotives or locomotive engines recalled including the number of locomotives or locomotive engines to be recalled, the calendar year if applicable, the make, the model, and such other information as may be required to identify the locomotives or locomotive engines recalled.

(2) A description of the specific modifications, alterations, repairs, corrections, adjustments, or other changes to be made to correct the locomotives or locomotive engines affected by the emission-related defect.

(3) A description of the method by which the manufacturer or remanufacturer will determine the names and addresses of locomotive or locomotive-engine owners and the method by which they will be notified.

(4) A description of the proper maintenance or use, if any, upon which the manufacturer or remanufacturer conditions eligibility for repair under the remedial plan, an explanation of the manufacturer's or remanufacturer's reasons for imposing any such condition, and a description of the proof to be required of a locomotive or locomotive-engine owner to demonstrate compliance with any such condition.

(5) A description of the procedure to be followed by locomotive or locomotive-engine owners to obtain correction of the nonconformity. This shall include designation of the date on or after which the owner can have the nonconformity remedied, the time reasonably necessary to perform the labor to remedy the defect, and the designation of facilities at which the defect can be remedied.

(6) If some or all the nonconforming locomotives or locomotive engines are to be remedied by persons other than dealers or authorized warranty agents of the manufacturer or remanufacturer, a description of the class of persons other than dealers and authorized warranty agents of the manufacturer or remanufacturer who will remedy the defect.

(7) A copy of the letters of notification sent to locomotive or locomotive-engine owners.

(8) A description of the system by which the manufacturer or remanufacturer will assure that an adequate supply of parts will be available to perform the repair under the remedial plan including the date by which an adequate supply of parts will be

available to initiate the repair campaign, the percentage of the total parts requirement of each person who is to perform the repair under the remedial plan to be shipped to initiate the campaign, and the method to be used to assure the supply remains both adequate and responsive to owner demand.

(9) Three copies of all necessary instructions to be sent to those persons who are to perform the repair under the remedial plan.

(10) A description of the impact of the proposed changes on fuel consumption, operation or performance problems, and safety of each class or category of locomotives or locomotive engines to be recalled.

(11) A sample of any label to be applied to locomotives or locomotive engines which participate in the voluntary recall campaign.

(b) Unless otherwise specified by the Administrator, the manufacturer or remanufacturer shall report on the progress of the recall campaign by submitting subsequent reports for six consecutive quarters, or until proven that remedial action has been adequately taken on all affected locomotives or locomotive engines, whichever occurs first, commencing with the quarter after the voluntary emissions recall campaign actually begins. Such reports shall be submitted no later than 25 working days after the close of each calendar quarter. For each class or category of locomotive or locomotive engine subject to the voluntary emissions recall campaign, the quarterly report shall contain the:

(1) Emission recall campaign number, if any, designated by the manufacturer or remanufacturer.

(2) Date owner notification was begun, and date completed.

(3) Number of locomotives or locomotive engines involved in the voluntary emissions recall campaign.

(4) Number of locomotives or locomotive engines known or estimated to be affected by the emission-related defect and an explanation of the means by which this number was determined.

(5) Number of locomotives or locomotive engines inspected pursuant to voluntary emission recall plan.

(6) Number of inspected locomotives or locomotive engines found to be affected by the emissions-related defect.

(7) Number of locomotives or locomotive engines actually receiving repair under the remedial plan.

(8) Number of locomotives or locomotive engines determined to be unavailable for inspection or repair under the remedial plan due to exportation, scrappage, or for other reasons (specify).

(9) Number of locomotives or locomotive engines determined to be ineligible for remedial action due to a failure to properly maintain or use such locomotives or locomotive engines.

(10) Three copies of any service bulletins transmitted to dealers which relate to the defect to be corrected and which have not previously been reported.

(11) Three copies of all communications transmitted to locomotive or locomotive-engine owners which relate to the defect to be corrected and which have not previously been submitted.

(c) If the manufacturer or remanufacturer determines that any of the information requested in paragraph (b) of this section has changed or was incorrect, revised information and an explanatory note shall be submitted. Answers to paragraphs (b), (5), (6), (7), (8), and (9) of this section shall be cumulative totals.

(d) The manufacturer or remanufacturer shall maintain in a form suitable for inspection, such as computer information storage devices or card files, the names and addresses of locomotive and locomotive-engine owners:

(1) To whom notification was given;

(2) Who received remedial repair or inspection under the remedial plan; and

(3) Who were determined not to qualify for such remedial action when eligibility is conditioned on proper maintenance or use.

(e) The records described in paragraph (d) of this section shall be made available to the Administrator upon request.

#### **92.407 Alternative report formats.**

(a) Any manufacturer or remanufacturer may submit a plan for making either of the reports required by §§ 92.405 and 92.406 on computer diskettes, magnetic tape or other machine readable

format. The proposed plan shall be accompanied by sufficient technical detail to allow a determination that data requirements of these sections will be met and that the data in such format will be usable by EPA.

(b) Upon approval by the Administrator of the proposed reporting system, the manufacturer or remanufacturer may use such system until otherwise notified by the Administrator.

**92.408 Reports filing: Record retention.**

(a) The reports required by §§ 92.405 and 92.406 shall be sent to: Group Manager, Engine Compliance Programs Group, Engine Programs and Compliance Division U.S. Environmental Protection Agency, 6403-J, 401 M St., S.W., Washington, D.C. 20460.

(b) The information gathered by the manufacturer or remanufacturer to compile the reports required by §§ 92.405 and 92.406 shall be retained for not less than 12 years from the date of the manufacture of the locomotives or locomotive engines and shall be made available to duly authorized officials of the EPA upon request.

**92.409 Responsibility under other legal provisions preserved.**

The filing of any report under the provisions of this subpart shall not affect a manufacturer's or a remanufacturer's responsibility to file reports or applications, obtain approval, or give notice under any provision of law.

**92.410 Disclaimer of production warranty applicability.**

(a) The act of filing an Emission Defect Information Report pursuant to §92.405 is inconclusive as to the existence of a defect subject to the warranty provided by section 207(a) of the Act.

(b) A manufacturer or a remanufacturer may include on each page of its Emission Defect Information Report a disclaimer stating that the filing of a Defect Information Report pursuant to these regulations is not conclusive as to the applicability of the Production Warranty provided by section 207(a) of the Act.

**92.411 Treatment of confidential information.**

The provisions for treatment of confidential information as described in § 92.021 apply.

## **Subpart F - Manufacturer Production Line Testing Program**

### **92.501 Applicability.**

The requirements of subpart F are applicable to all locomotives and locomotive engines subject to the provisions of subpart A of part 92.

### **92.502 Definitions.**

The definitions in subpart A of this part apply to this subpart. The following definitions also apply to this subpart.

Configuration means any subclassification of an engine family which can be described on the basis of gross power, emission control system, governed speed, injector size, engine calibration, and other parameters as designated by the Administrator.

Test locomotive or locomotive engine means an engine in a test sample.

Test sample means the collection of locomotives or locomotive engines selected from the population of an engine family for emission testing.

### **92.503 Abbreviations.**

The abbreviations of subpart A of this part 92 apply to this subpart.

### **92.504 Construction.**

(a) The language in this subpart applies to both locomotives and to locomotive engines. When a new provision is to be added to this subpart or a provision of this subpart is to be changed, a new paragraph will be added to the appropriate section(s) of this subpart specifying the new or changed requirements together with the date at which the new or changed requirement(s) become effective.

### **92.505 General Requirements.**

(a) Production line locomotives or locomotive engines shall be tested using the test procedures outlined in subpart B of this part. The test procedures used for production line testing shall be consistent with the test procedures used for certification, except for cases in which certification testing was conducted with a development engine. In such cases, the Administrator shall require deviations from the certification test procedures as appropriate, including requiring that the test be conducted on a locomotive, except in cases where the manufacturer produces only the engine. The Administrator may allow or require other alternate procedures, as described in section 92.511 of this subpart.

(i) Any adjustable locomotive or locomotive engine

parameter must be set to values or positions that are within the range recommended to the ultimate purchaser. The manufacturer will set these parameters to values specified by the Administrator if so directed.

**92.506 Maintenance of records; submittal of information.**

(a) The manufacturer or remanufacturer of any new locomotive or locomotive engine subject to any of the provisions of this subpart must establish, maintain, and retain the following adequately organized and indexed records:

(1) General records. A description of all equipment used to test engines in accordance with § 92.505. The equipment requirements in §§ 92.106, 92.107, 92.109, and 92.111 apply to tests performed under this subpart.

(2) Individual records. These records pertain to each production line test conducted pursuant to this subpart and include:

(i) The date, time, and location of each test;

(ii) The method by which the green engine factor was calculated or the number of hours of service accumulated on the test engine when the test began and ended;

(iii) The names of all supervisory personnel involved in the conduct of the production line test;

(iv) A record and description of any adjustment, repair, preparation or modification performed prior to and/or subsequent to approval by the Administrator pursuant to § 92.509(b)(1), giving the date, associated time, justification, name(s) of the authorizing personnel, and names of all supervisory personnel responsible for the conduct of the action;

(v) If applicable, the date the locomotive or locomotive engine was shipped from the assembly plant, associated storage facility or port facility, and the date the locomotive or locomotive engine was received at the testing facility;

(vi) A complete record of all emission tests performed pursuant to this subpart (except tests performed directly by EPA), including all individual worksheets and/or other documentation relating to each test, or exact copies thereof, in accordance with the record requirements specified in subpart B of this part.

(vii) A brief description of any significant events during testing not otherwise described under this paragraph (a)(2), commencing with the test locomotive or locomotive engine selection process and including such extraordinary events as engine damage during shipment.

(3) The manufacturer or remanufacturer must establish, maintain and retain general records, pursuant to paragraph (a)(1) of this section, for each test cell that can be used to perform emission testing under this subpart.

(b) The manufacturer or remanufacturer must retain all

records required to be maintained under this subpart for a period of 12 years after completion of all testing. Records may be retained as hard copy (i.e., on paper) or reduced to microfilm, floppy disk, or some other method of data storage, depending upon the manufacturer's record retention procedure; provided, that in every case, all the information contained in the hard copy is retained.

(c) The manufacturer must, upon request by the Administrator, submit the following information with regard to locomotive or locomotive engine production:

(1) projected production for each engine configuration within each engine family for which certification has been requested and/or approved,

(2) number of engines, by configuration and assembly plant, scheduled for production.

(d) Nothing in this section limits the Administrator's discretion to require a manufacturer or remanufacturer to establish, maintain, retain or submit to EPA information not specified by this section.

(e) All reports, submissions, notifications, and requests for approval made under this subpart must be addressed to: Group Manager, Engine Compliance Programs Group, Engine Programs and Compliance Division 6403-J, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

(f) The manufacturer must electronically submit the results of its production line testing using an EPA information format.

#### **92.507 Right of entry and access.**

(a) To allow the Administrator to determine whether a manufacturer or remanufacturer is complying with the provisions of this subpart, one or more EPA enforcement officers may enter during operating hours and upon presentation of credentials any of the following places:

(1) Any facility, including ports of entry, where any locomotive or locomotive engine is to be introduced into commerce or any emission-related component is manufactured, assembled, or stored;

(2) Any facility where any test conducted pursuant to a manufacturer's or remanufacturer's production line testing program or any procedure or activity connected with such test is or was performed;

(3) Any facility where any test locomotive or locomotive engine is present; and

(4) Any facility where any record required under § 92.506 or other document relating to this subpart is located.

(b) Upon admission to any facility referred to in paragraph (a) of this section, EPA enforcement officers are authorized to perform the following inspection-related activities:

(1) To inspect and monitor any aspect of locomotive or

locomotive engine manufacture, assembly, storage, testing and other procedures, and to inspect and monitor the facilities in which these procedures are conducted;

(2) To inspect and monitor any aspect of locomotive or locomotive engine test procedures or activities, including test engine selection, preparation and service accumulation, emission test cycles, and maintenance and verification of test equipment calibration;

(3) To inspect and make copies of any records or documents related to the assembly, storage, selection, and testing of a locomotive or locomotive engine; and

(4) To inspect and photograph any part or aspect of any locomotive or locomotive engine and any component used in the assembly thereof that is reasonably related to the purpose of the entry.

(c) EPA enforcement officers are authorized to obtain reasonable assistance without cost from those in charge of a facility to help the officers perform any function listed in this subpart and they are authorized to request the manufacturer or remanufacturer to make arrangements with those in charge of a facility operated for the manufacturer's or remanufacturer's benefit to furnish reasonable assistance without cost to EPA.

(1) Reasonable assistance includes, but is not limited to, clerical, copying, interpretation and translation services; the making available on an EPA enforcement officer's request of personnel of the facility being inspected during their working hours to inform the EPA enforcement officer of how the facility operates and to answer the officer's questions; and the performance on request of emission tests on any engine which is being, has been, or will be used for production line testing.

(2) By written request, signed by the Assistant Administrator for Air and Radiation, and served on the manufacturer or remanufacturer, a manufacturer or remanufacturer may be compelled to cause the personal appearance of any employee at such a facility before an EPA enforcement officer. Any such employee who has been instructed by the manufacturer to appear will be entitled to be accompanied, represented, and advised by counsel.

(d) EPA enforcement officers are authorized to seek a warrant or court order authorizing the EPA enforcement officers to conduct the activities authorized in this section, as appropriate, to execute the functions specified in this section. EPA enforcement officers may proceed *ex parte* to obtain a warrant or court order whether or not the EPA enforcement officers first attempted to seek permission from the manufacturer or remanufacturer or the party in charge of the facility(ies) in question to conduct the activities authorized in this section.

(e) A manufacturer or remanufacturer must permit an EPA enforcement officer(s) who presents a warrant or court order to



conduct the activities authorized in this section as described in the warrant or court order. The manufacturer or remanufacturer must also cause those in charge of its facility or a facility operated for its benefit to permit entry and access as authorized in this section pursuant to a warrant or court order whether or not the manufacturer or remanufacturer controls the facility. In the absence of a warrant or court order, an EPA enforcement officer(s) may conduct the activities authorized in this section only upon the consent of the manufacturer or remanufacturer or the party in charge of the facility(ies) in question.

(f) It is not a violation of this part or the Clean Air Act for any person to refuse to permit an EPA enforcement officer(s) to conduct the activities authorized in this section if the officer(s) appears without a warrant or court order.

(g) A manufacturer or remanufacturer is responsible for locating its foreign testing and manufacturing facilities in jurisdictions where local law does not prohibit an EPA enforcement officer(s) from conducting the activities specified in this section. EPA will not attempt to make any inspections which it has been informed local foreign law prohibits.

#### **92.508 Sample selection.**

(a) At the start of each model year, the locomotive or locomotive engine manufacturer will begin to randomly select locomotives or locomotive engines from each engine family for production line testing at a rate of one percent. Each locomotive or locomotive engine will be selected from the end of the production line.

(1) The required sample size for an engine family is the lesser of five tests per model year or one percent of projected annual production, with a minimum sample size for an engine family of one test per model year.

(2) Manufacturers may elect to test additional locomotives or locomotive engines. All additional locomotives or locomotive engines must be tested in accordance with the applicable test procedures of this part.

(b) The manufacturer must assemble the test locomotives or locomotive engines using its normal mass production process for locomotives or locomotive engines to be distributed into commerce.

(c) No quality control, testing, or assembly procedures will be used on any test locomotive or locomotive engine or any portion thereof, including parts and subassemblies, that have not been or will not be used during the production and assembly of all other locomotives or locomotive engines of that family, unless the Administrator approves the modification in assembly procedures.

### **92.509 Test procedures.**

(a)(1) For locomotives and locomotive engines subject to the provisions of this subpart, the prescribed test procedures are those procedures described in subpart B of this part.

(2) The Administrator may, on the basis of a written application by a manufacturer, prescribe test procedures other than those specified in paragraph (a)(1) of this section for any locomotive or locomotive engine he or she determines is not susceptible to satisfactory testing using procedures specified in paragraph (a)(1) of this section.

(b)(1) The manufacturer may not adjust, repair, prepare, modify, or perform any emission test on, any test locomotive or locomotive engine unless this adjustment, repair, preparation, modification and/or test is documented in the manufacturer's engine assembly and inspection procedures and is actually performed by the manufacturer or unless this adjustment, repair, preparation, modification and/or test is required or permitted under this subpart or is approved in advance by the Administrator.

(2) The Administrator may adjust or require to be adjusted any engine parameter which the Administrator has determined to be subject to adjustment for certification and production line testing, to any setting within the specified adjustable range of that parameter, as determined by the Administrator, prior to the performance of any test.

(c) Green Engine Factor. The manufacturer may establish a green engine factor for each regulated pollutant for each engine family acceptable to the Administrator to be used in calculating emission test results. This green engine factor must replace any service accumulation that the manufacturer may apply to production locomotives or engines.

(d) The manufacturer may not perform any maintenance on test locomotives or locomotive engines after selection for testing.

(e) If a locomotive or locomotive engine is shipped to a remote facility for production line testing, and an adjustment or repair is necessary because of shipment, the locomotive or locomotive engine manufacturer must perform the necessary adjustment or repair only after the initial test of the locomotive or locomotive engine, except in cases where the Administrator has determined that the test would be impossible to perform or would permanently damage the locomotive engine. Locomotive or locomotive engine manufacturers must report to the Administrator, in the quarterly report required by § 92.511(e), all adjustments or repairs performed on test locomotives or locomotive engines prior to each test.

(f) If a locomotive or locomotive engine cannot complete the service accumulation or an emission test because of a malfunction, the manufacturer may request that the Administrator authorize either the repair of that locomotive or locomotive

engine or its deletion from the test sequence.

(g) Testing. A manufacturer must test locomotives or locomotive engines with the test procedure specified in subpart B of this part to demonstrate compliance with the applicable exhaust emission standards (or applicable FEL(s)). If alternate procedures (other than those necessary for testing of a development engine instead of a locomotive) were used in certification, then those alternate procedures must be used in production line testing.

(h) Retesting. (1) If a locomotive or locomotive engine manufacturer determines that an emission test of a locomotive or locomotive engine is invalid, the locomotive or locomotive engine must be retested. Emission results from all tests must be reported to EPA. The locomotive or locomotive engine manufacturer must also include a detailed explanation of the reasons for invalidating any test in the quarterly report required in §92.511(e). In the event a retest is performed, a request may be made to the Administrator, within ten days of the end of the production quarter, for permission to substitute the after-repair test results for the original test results. The Administrator will either affirm or deny the request by the locomotive or locomotive engine manufacturer within ten working days from receipt of the request.

#### **92.510 Testing Sequence.**

If a locomotive or locomotive engine fails a test, then the manufacturer must test two additional locomotives or locomotive engines from the next fifteen produced.

#### **92.511 Calculation and reporting of test results.**

(a) Initial test results are calculated following the applicable test procedure specified in paragraph (a) of § 92.509. These results must also include the green engine factor, if applicable. The manufacturer rounds these results, in accordance with ASTM E29-93a, to the number of decimal places contained in the applicable emission standard expressed to one additional significant figure.

(b) Final test results are calculated by summing the initial test results derived in paragraph (a) of this section for each test locomotive or locomotive engine, dividing by the number of tests conducted on the locomotive or locomotive engine, and rounding in accordance with ASTM E29-93a to the same number of decimal places contained in the applicable standard expressed to one additional significant figure.

(c) The final deteriorated test results for each test locomotive or locomotive engine are calculated by applying the appropriate deterioration factors, derived in the certification process for the engine family, to the final test results, and

rounding in accordance with ASTM E29-93a to the same number of decimal places contained in the applicable standard expressed to one additional significant figure.

(d) If, subsequent to an initial locomotive or locomotive engine failure, the average of that failed locomotive or locomotive engine and the two additional locomotives or locomotive engines tested, is greater than the standard for any pollutant, the engine family is determined to be in non-compliance and the manufacturer must notify EPA within 2 working days of such noncompliance.

(e) Within 30 calendar days of the end of each quarter, each locomotive or locomotive engine manufacturer must submit to the Administrator a report which includes the following information:

(1) The location and description of the manufacturer's exhaust emission test facilities which were utilized to conduct testing reported pursuant to this section;

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

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

(4) A description of the test locomotives or locomotive engines;

(5) For each test conducted,

(i) A description of the test locomotive or locomotive engine, including:

(A) Configuration and engine family identification,

(B) Year, make, and build date,

(C) Engine identification number, and

(D) Number of megawatt-hours or miles (as applicable) of service accumulated on locomotive or locomotive engine prior to testing;

(E) Description of green engine factor; how it is determined and how it is applied.

(ii) Location where service accumulation was conducted and description of accumulation procedure and schedule;

(iii) Test number, date, test procedure used, initial test results before and after rounding, and final test results for all exhaust emission tests, whether valid or invalid, and the reason for invalidation, if applicable;

(iv) A complete description of any adjustment, modification, repair, preparation, maintenance, and/or testing which was performed on the test locomotive or locomotive engine, has not been reported pursuant to any other paragraph of this subpart, and will not be performed on all other production locomotive or locomotive engines;

(v) Any other information the Administrator may request relevant to the determination whether the new locomotives or locomotive engines being manufactured by the manufacturer do in fact conform with the regulations with respect to which the certificate of conformity was issued;

(6) For each failed locomotive or locomotive engine as defined in § 92.512(a), a description of the remedy and test results for all retests as required by §92.514(g);

(7) The date of the end of the locomotive or locomotive engine manufacturer's model year production for each engine family; and

(8) The following signed statement and endorsement by an authorized representative of the manufacturer:

This report is submitted pursuant to Sections 213 and 208 of the Clean Air Act. This production line testing program was conducted in complete conformance with all applicable regulations under 40 CFR part 92 et seq. No emission-related changes to production processes or quality control procedures for the engine family tested have been made during this production line testing program that affect locomotives or locomotive engines from the production line. All data and information reported herein is, to the best of (Company Name) knowledge, true and accurate. I am aware of the penalties associated with violations of the Clean Air Act and the regulations thereunder. (Authorized Company Representative.)

#### **92.512 Compliance with criteria for production line testing.**

(a) A failed locomotive or locomotive engine is one whose final deteriorated test results pursuant to § 92.511(c), for one or more of the applicable pollutants, exceed the applicable emission standard or FEL.

(b) An engine family is determined to be in noncompliance, if at any time throughout the model year, the average of an initial failed locomotive or locomotive engine and the two additional locomotives or locomotive engines tested, is greater than the standard or FEL for any pollutant.

#### **92.513 Remanufactured locomotives: Kit installation audit scheme**

(a) At the start of each model year, the locomotive remanufacturer will begin to audit the installation of its remanufacture kits for proper components, component settings and component installations on randomly chosen locomotives.

(1) The remanufacturer must ensure that the components specified in the remanufacture kit are properly installed on the locomotive.

(2) The remanufacturer must ensure that the components specified in the remanufacture kit are set to the proper specification as indicated in the remanufacture kit instructions.

(b) The required sample size for each remanufacturer is five percent of the remanufacturer's annual kit sales per model year. If a remanufacturer sells remanufacture kits to more than one

installer, the sample size must include audits from each installer.

(c) The remanufactured locomotive may accumulate up to 10,000 miles prior to an audit.

(d) A failed remanufactured locomotive is one on which any remanufacture components are found to be misinstalled, misadjusted or incorrect.

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

(f) An engine family is determined to have had an audit failure, if at any time throughout the model year, the remanufacturer determines that the three locomotives audited are found to have had any misinstalled, misadjusted or incorrect components and the remanufacturer must notify EPA within 2 working days of such noncompliance.

#### **92.514 Suspension and revocation of certificates of conformity.**

(a) The certificate of conformity is suspended with respect to any locomotive or locomotive engine failing pursuant to paragraph (a) of § 92.512 effective from the time that testing of that locomotive or locomotive engine is completed.

(b) The Administrator may suspend the certificate of conformity for an engine family which is determined to be in noncompliance pursuant to paragraph § 90.512(b). This suspension will not occur before fifteen days after failure of the production line testing.

(c) If the results of testing pursuant to these regulations indicate that engines of a particular family produced at one plant of a manufacturer do not conform to the regulations with respect to which the certificate of conformity was issued, the Administrator may suspend the certificate of conformity with respect to that family for locomotives or locomotive engines manufactured by the manufacturer at all other plants.

(d) Notwithstanding the fact that locomotives or locomotive engines described in the application for certification may be covered by a certificate of conformity, the Administrator may suspend such certificate immediately in whole or in part if the Administrator finds any one of the following infractions to be substantial:

(1) The manufacturer refuses to comply with any of the requirements of this subpart.

(2) The manufacturer submits false or incomplete information in any report or information provided to the Administrator under this subpart.

(3) The manufacturer renders inaccurate any test data

submitted under this subpart.

(4) An EPA enforcement officer is denied the opportunity to conduct activities authorized in this subpart and a warrant or court order is presented to the manufacturer or remanufacturer or the party in charge of the facility in question.

(5) An EPA enforcement officer is unable to conduct activities authorized in § 92.507 because a manufacturer has located its facility in a foreign jurisdiction where local law prohibits those activities.

(e) The Administrator must notify the manufacturer 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 the notification or fifteen days from the time a determination of noncompliance is made, whichever is earlier, except that the certificate is immediately suspended with respect to any failed locomotives or locomotive engines as provided for in paragraph (a) of this section.

(f) The Administrator may revoke a certificate of conformity for an engine family when the certificate has been suspended pursuant to paragraph (b) or (c) of this section if the proposed remedy for the nonconformity, as reported by the manufacturer to the Administrator, is one requiring a design change or changes to the 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 or locomotive engine, as provided for in paragraph (a) of this section, the manufacturer must take the following actions before the certificate is reinstated for that failed locomotive or locomotive engine:

(1) Remedy the nonconformity;

(2) Demonstrate that the locomotive or locomotive engine conforms to applicable standards or family emission limits by retesting the locomotive or locomotive engine in accordance with these regulations; and

(3) Submit a written report to the Administrator, after successful completion of testing on the failed locomotive or locomotive engine, which contains a description of the remedy and test results for each engine 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, the manufacturer must take the following actions before the Administrator will consider reinstating the certificate:

(1) Submit a written report to the Administrator which identifies the reason for the noncompliance of the locomotives or locomotive engines, describes the proposed remedy, including a description of any proposed quality control and/or quality assurance measures to be taken by the manufacturer to prevent future occurrences of the problem, and states 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 engines selected from normal production runs of that engine family. Such testing must comply with the provisions of this Part. If the manufacturer elects to continue testing individual engines after suspension of a certificate, the certificate is reinstated for any engine actually determined to be in conformance with the applicable standards or family emission limits through testing in accordance with the applicable test procedures, provided that the Administrator has not revoked the certificate pursuant to paragraph (f) of this section.

(i) Once the certificate has been revoked for an engine family, if the manufacturer desires to continue introduction into commerce of a modified version of that family, the following actions must be taken before the Administrator may issue a certificate for that modified family:

(1) If the Administrator determines that the proposed change(s) in engine design may have an effect on emission performance deterioration, the Administrator shall notify the manufacturer, within five working days after receipt of the report in paragraph (g) of this section, whether subsequent testing under this subpart will be sufficient to evaluate the proposed change or changes or whether additional testing will be required; and

(2) After implementing the change or changes intended to remedy the nonconformity, the manufacturer must demonstrate that the modified engine family does in fact conform with the regulations of this part by testing engines selected from normal production runs of that engine family.

When both of these requirements are met, the Administrator shall reissue the certificate or issue a new certificate, as the case may be, to include that family. If this subsequent testing 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 engine pursuant to paragraph (a) of this section, but not later than 15 days (or such other period as may be allowed by the Administrator) after notification of the Administrator's decision to suspend or revoke a certificate of conformity in whole or in part pursuant to paragraphs (b), (c), or (f) of this section, a manufacturer may request a hearing as to whether the tests have been properly conducted or any sampling methods have been properly applied.

(k) Any suspension of a certificate of conformity under paragraph (d) of this section:

(1) shall be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with §§ 92.515, 92.516, and 92.517 and



(2) need not apply to engines no longer in the possession of the manufacturer.

(1) After the Administrator suspends or revokes a certificate of conformity pursuant to this section or voids a certificate of conformity under paragraph § 92.014, and prior to the commencement of a hearing under § 92.515, if the manufacturer demonstrates to the Administrator's satisfaction that the decision to suspend, revoke, or void the certificate was based on erroneous information, the Administrator shall reinstate the certificate.

(m) To permit a manufacturer to avoid storing non-test locomotives or locomotive engines while conducting subsequent testing of the noncomplying family, a manufacturer may request that the Administrator conditionally reinstate the certificate for that family. The Administrator may reinstate the certificate subject to the following condition: the manufacturer must commit to recall all locomotives or locomotive engines of that family produced from the time the certificate is conditionally reinstated if the family fails subsequent testing and must commit to remedy any nonconformity at no expense to the owner.

#### **92.515 Request for public hearing.**

(a) If the manufacturer disagrees with the Administrator's decision to suspend or revoke a certificate or disputes the basis for an automatic suspension pursuant to § 92.514(a), the manufacturer may request a public hearing.

(b) The manufacturer's request shall be filed with the Administrator not later than 15 days after the Administrator's notification of his or her decision to suspend or revoke, unless otherwise specified by the Administrator. The manufacturer shall simultaneously serve two copies of this request upon the Director of the Engine Programs and Compliance Division and file two copies with the Hearing Clerk of the Agency. Failure of the manufacturer to request a hearing within the time provided constitutes a waiver of the right to a hearing. Subsequent to the expiration of the period for requesting a hearing as of right, the Administrator may, in his or her discretion and for good cause shown, grant the manufacturer a hearing to contest the suspension or revocation.

(c) A manufacturer shall include in the request for a public hearing:

(1) A statement as to which engine configuration(s) within a family is to be the subject of the hearing;

(2) A concise statement of the issues to be raised by the manufacturer at the hearing, except that in the case of the hearing requested under § 92.514(j), the hearing is restricted to the following issues:

(i) Whether tests have been properly conducted (specifically, whether the tests were conducted in accordance

with applicable regulations under this Part and whether test equipment was properly calibrated and functioning);

(ii) Whether sampling plans have been properly applied specifically, whether sampling procedures specified in this subpart were followed and whether there exists a basis for distinguishing locomotives or locomotive engines produced at plants other than the one from which locomotives or locomotive engines were selected for testing which would invalidate the Administrator's decision under § 92.514(c));

(3) A statement specifying reasons why the manufacturer believes it will prevail on the merits of each of the issues raised; and

(4) A summary of the evidence which supports the manufacturer's position on each of the issues raised.

(d) A copy of all requests for public hearings will be kept on file in the Office of the Hearing Clerk and will be made available to the public during Agency business hours.

#### **92.516 Administrative procedures for public hearing.**

(a) The Presiding Officer shall be an Administrative Law Judge appointed pursuant to 5 U.S.C. 3105 (see also 5 CFR Part 930 as amended).

(b) The Judicial Officer shall be an officer or employee of the Agency appointed as a Judicial Officer by the Administrator, pursuant to this section, who shall meet the qualifications and perform functions as follows:

(1) Qualifications. A Judicial Officer may be a permanent or temporary employee of the Agency who performs other duties for the Agency. The Judicial Officer shall not be employed by the Office of Enforcement or have any connection with the preparation or presentation of evidence for a hearing held pursuant to this subpart. The Judicial Officer shall be a graduate of an accredited law school and a member in good standing of a recognized Bar Association of any state or the District of Columbia.

(2) Functions. The Administrator may consult with the Judicial Officer or delegate all or part of the Administrator's authority to act in a given case under this section to a Judicial Officer, provided that this delegation does not preclude the Judicial Officer from referring any motion or case to the Administrator when the Judicial Officer determines such referral to be appropriate.

(c) For the purposes of this section, one or more Judicial Officers may be designated by the Administrator. As work requires, a Judicial Officer may be designated to act for the purposes of a particular case.

(d) Summary decision. (1) In the case of a hearing requested under § 92.514(j), when it clearly appears from the data and other information contained in the request for a hearing

that no genuine and substantial question of fact or law exists with respect to the issues specified in § 92.515(c)(2), the Administrator may enter an order denying the request for a hearing and reaffirming the original decision to suspend or revoke a certificate of conformity.

(2) In the case of a hearing requested under § 92.515 to challenge a suspension of a certificate of conformity for the reason(s) specified in § 92.514(d), when it clearly appears from the data and other information contained in the request for the hearing that no genuine and substantial question of fact or law exists with respect to the issue of whether the refusal to comply with this subpart was caused by conditions and circumstances outside the control of the manufacturer, the Administrator may enter an order denying the request for a hearing and suspending the certificate of conformity.

(3) Any order issued under paragraph (d)(1) or (d)(2) of this section has the force and effect of a final decision of the Administrator, as issued pursuant to § 92.518.

(4) If the Administrator determines that a genuine and substantial question of fact or law does exist with respect to any of the issues referred to in paragraphs (d)(1) and (d)(2) of this section, the Administrator shall grant the request for a hearing and publish a notice of public hearing in the Federal Register or by such other means as the Administrator finds appropriate to provide notice to the public.

(e) Filing and service. (1) An original and two copies of all documents or papers required or permitted to be filed pursuant to this section and § 92.515(c) must be filed with the Hearing Clerk of the Agency. Filing is considered timely if mailed, as determined by the postmark, to the Hearing Clerk within the time allowed by this section and § 92.515(b). If filing is to be accomplished by mailing, the documents must be sent to the address set forth in the notice of public hearing referred to in paragraph (d)(4) of this section.

(2) To the maximum extent possible, testimony will be presented in written form. Copies of written testimony will be served upon all parties as soon as practicable prior to the start of the hearing. A certificate of service will be provided on or accompany each document or paper filed with the Hearing Clerk. Documents to be served upon the Director of the Engine Programs and Compliance Division must be sent by registered mail to: Director, Engine Programs and Compliance Division 6403-J, U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460. Service by registered mail is complete upon mailing.

(f) Computation of Time. (1) In computing any period of time prescribed or allowed by this section, except as otherwise provided, the day of the act or event from which the designated period of time begins to run is not included. Saturdays, Sundays, and federal legal holidays are included in computing the period

allowed for the filing of any document or paper, except that when the period expires on a Saturday, Sunday, or federal legal holiday, the period is extended to include the next following business day.

(2) A prescribed period of time within which a party is required or permitted to do an act is computed from the time of service, except that when service is accomplished by mail, three days will be added to the prescribed period.

(g) Consolidation. The Administrator or the Presiding Officer in his or her discretion may consolidate two or more proceedings to be held under this section for the purpose of resolving one or more issues whenever it appears that consolidation will expedite or simplify consideration of these issues. Consolidation does not affect the right of any party to raise issues that could have been raised if consolidation had not occurred.

(h) Hearing Date. To the extent possible hearings under § 92.515 will be scheduled to commence within 14 days of receipt of the request for a hearing.

**92.517 Hearing procedures.**

The procedures provided in § 86.1014-84(i) to (s) apply for hearings requested pursuant to § 92.515 regarding suspension, revocation, or voiding of a certificate of conformity.

**92.518 Appeal of hearing decision.**

The procedures provided in § 86.1014-84(t) to (aa) apply for appeals filed with respect to hearings held pursuant to § 92.517.

**92.519 Treatment of confidential information.**

Except for information required by § 92.511(e)(2) and quarterly emission test results described in § 92.511(e), information submitted pursuant to this subpart shall be made available to the public by EPA notwithstanding any claim of confidentiality made by the submitter. The provisions for treatment of confidential information described in § 92.021 apply to the information required by § 92.511(e)(2) and all other information submitted pursuant to this subpart.

## **Subpart G - In-Use Testing Program**

### **92.601 Applicability.**

The requirements of subpart G are applicable to all locomotives and locomotive engines subject to the provisions of subpart A of part 92.

### **92.602 Definitions.**

Except as otherwise provided, the definitions in subpart A of this part apply to this subpart.

### **92.603 Abbreviations.**

The abbreviations of subpart A of this part 92 apply to this subpart.

### **92.604 Construction.**

(a) The language in this subpart applies to both locomotives and to locomotive engines. When a new provision is to be added to this subpart or a provision of this subpart is to be changed, a new paragraph will be added to the appropriate section(s) of this subpart specifying the new or changed requirements together with the date at which the new or changed requirement(s) become effective.

### **92.605 In-use Test Procedure.**

(a) Locomotives tested under this subpart shall be tested using the test procedures outlined in subpart B of this part. The test procedures used for in-use testing shall be consistent with the test procedures used for certification, except for cases in which certification testing was conducted with a development engine, or other low hour engine. In such cases, the Administrator shall require deviations from the certification test procedures as appropriate, including requiring that the test be conducted on a locomotive. The Administrator may allow or require other alternate procedures, with advance approval.

(i) Any adjustable locomotive or locomotive engine parameter must be set to values or positions that are within the range recommended to the ultimate purchaser. If so directed by the Administrator, the manufacturer or remanufacturer will set these parameters to values specified by the Administrator.

### **92.606 Locomotive Sample Selection.**

(a) EPA shall annually identify engine families and sub-families within families which the manufacturer or remanufacturer must then subject to in-use testing as described below.

(1) The maximum number of engine families required to be in-use tested by a manufacturer or a remanufacturer is one per model year. The Administrator may require that more than one engine family be in-use tested per model year if he/she has significant reason to believe that more than one engine family per model year is not complying with the applicable emission standards in use.

(2) Manufacturers or remanufacturers may elect to test additional engine families. All additional locomotives must be tested in accordance with the applicable federal testing procedures for locomotives. Results from these additional tests will be considered in the same manner as results from tests performed under paragraph (c) of this section.

(b) Locomotive manufacturers or remanufacturers shall perform emission testing of an appropriate sample of in-use locomotives from an engine family. Manufacturers or remanufacturers shall submit data from this in-use testing to EPA. EPA will use these data, and any data available from EPA in-use testing, to determine if classes of locomotives are in noncompliance and remedial action is, therefore, appropriate. (Note: EPA retains the right to use these data for other purposes, as appropriate.)

(c) Number of locomotives to be tested. A locomotive manufacturer or remanufacturer shall test in-use locomotives, from an engine family selected by EPA, which have accumulated approximately three-quarters of the engine family's useful life. The number of locomotives to be tested by a manufacturer or remanufacturer will be determined by the following method:

(1) A minimum of two (2) locomotives per family per year for each family that reaches the minimum age specified above provided that no locomotive fails any standard. For each failing locomotive, two more locomotives shall be tested until the total number of locomotives equals ten (10).

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

(3) If an engine family has not changed from one year to the next and has certified using carry over emission data and has

been previously tested under 1 above (and EPA has not ordered or begun to negotiate remedial action of that family), then only one locomotive per family per year must be tested. If such locomotive fails any pollutant, testing for that family must be conducted as outlined under 1 above.

(d) At the discretion of the Administrator, a locomotive manufacturer or remanufacturer may test more locomotives than the minima described above or may concede failure before locomotive number ten (10).

(e) The Administrator will consider failure rates, average emission levels and the existence of any defects among other factors in determining whether to pursue remedial action. The Administrator may order a recall pursuant to regulations at §§ 92.705-92.711 before testing reaches the tenth locomotive.

(f) The Administrator may approve alternate proposals for assuring in-use engine family compliance in cases where compelling circumstances are associated with the structure of the industry and uniqueness of locomotive applications.

(g) Collection of in-use locomotives. The locomotive manufacturer or remanufacturer shall procure in-use locomotives which have been operated for approximately three-quarters of the locomotive's useful life. Although the testing of one model year's production might have to be spread over several calendar years because different engine families may have different usage patterns, the manufacturer or remanufacturer shall complete testing of an engine family before three quarters of that engine family's useful life passes.

**92.605 Maintenance, procurement and testing of in-use locomotives.**

(a) A test locomotive must have a maintenance history representative of actual in-use conditions.

(1) To comply with this requirement a manufacturer or remanufacturer must question the end users regarding the accumulated usage, maintenance, operating conditions, and storage of the test locomotives.

(2) Documents used in the procurement process must be maintained as required in § 92.014.

(b) The manufacturer or remanufacturer may perform minimal set-to-spec maintenance on a test locomotive. Maintenance may

include only that which is listed in the owner's instructions for locomotives with the amount of service and age of the acquired test locomotive. Documentation of all maintenance and adjustments shall be maintained and retained as required by § 92.014.

(c) One valid emission test using the test procedure outlined in subpart B of this part is required for each in-use locomotive.

(d) The Administrator may waive portions or requirements of the test procedure, if any, that are not necessary to determine in-use compliance.

(e) If a selected in-use locomotive fails to comply with any applicable certification emission standards, the manufacturer or remanufacturer shall determine the reason for noncompliance. The manufacturer or remanufacturer must report all determinations for noncompliance in its quarterly in-use test result report as described below.

#### **92.606 In-use test program reporting requirements.**

(a) The manufacturer or remanufacturer shall electronically submit to the Administrator within three (3) months of completion of testing all emission testing results generated from the in-use testing program. The following information must be reported for each test engine:

- (1) engine family,
- (2) model,
- (3) engine serial number,
- (4) date of manufacture, remanufacture, or upgrade, as applicable,
- (5) estimated megawatt-hours or miles of use, as applicable
- (6) date and time of each test attempt,
- (7) results (if any) of each test attempt,
- (8) results of all emission testing,
- (9) summary of all maintenance and/or adjustments performed,
- (10) summary of all modifications and/or repairs,
- (11) determinations of noncompliance.

(b) The manufacturer or remanufacturer must electronically submit the results of its in-use testing using a pre-approved information heading. The Administrator may exempt manufacturers or remanufacturers from this requirement upon written request with supporting justification.

(c) All testing reports and requests for approvals made



under this subpart shall be addressed to: Group Manager, Engine Compliance Programs Group, Engine Programs and Compliance Division, U.S. Environmental Protection Agency, 6403-J, 401 M Street S.W., Washington, D.C. 20460.

(d) The Administrator may approve and/or require modifications to a manufacturer's or remanufacturer's in-use testing programs.

**Subpart H - Recall Regulations**

**92.701 Applicability.**

The requirements of subpart H are applicable to all locomotives and locomotive engines subject to the provisions of subpart A of part 92.

**92.702 Definitions.**

The definitions of subpart A of this part apply to this subpart.

**92.703 Abbreviations.**

The abbreviations of subpart A of this part apply to this subpart.

**92.704 Construction.**

(a) The language in this subpart applies to both locomotives and to locomotive engines. When a new provision is to be added to this subpart or a provision of this subpart is to be changed, a new paragraph will be added to the appropriate section(s) of this subpart specifying the new or changed requirements together with the date at which the new or changed requirement(s) become effective.

**92.705 Voluntary emissions recall.**

(a) Prior to an EPA ordered recall, the manufacturer or remanufacturer may perform (without petition) a voluntary emissions recall pursuant to regulations in subpart E of this part. Such manufacturer or remanufacturer is subject to the reporting requirements in subpart E of this part.

(b) If a determination of nonconformity with the requirements of section 213 of the Act is made (i.e. if EPA orders a recall under the provisions of section 207(c)), the manufacturer or remanufacturer will not have the option of an alternate remedial action and an actual recall would be required.

**92.706 Notice to manufacturer or remanufacturer of nonconformity; submission of Remedial Plan.**

(a) The manufacturer or remanufacturer will be notified whenever the Administrator has determined that a substantial

number of a class or category of locomotives or locomotive engines produced by that manufacturer or remanufacturer, although properly maintained and used, do not conform to the regulations prescribed under the Act in effect during, and applicable to the model year of such locomotives or locomotive engines. The notification will include a description of each class or category of locomotives or locomotive engines encompassed by the determination of nonconformity, will give the factual basis for the determination of nonconformity (except information previously provided the manufacturer or remanufacturer by the Agency), and will designate a date, no sooner than 45 days from the date of receipt of such notification, by which the manufacturer or remanufacturer shall have submitted a plan to remedy the nonconformity.

(b) Unless a hearing is requested pursuant to §92.711, the remedial plan shall be submitted to the Administrator within the time limit specified in the Administrator's notification, provided that the Administrator may grant the manufacturer or remanufacturer an extension upon good cause shown.

(c) If a manufacturer or remanufacturer requests a public hearing pursuant to §92.711, unless as a result of such hearing the Administrator withdraws his determination of nonconformity, the manufacturer or remanufacturer shall submit the remedial plan within 30 days of the end of such hearing.

#### **92.707 Remedial Plan.**

(a) When any manufacturer or any remanufacturer is notified by the Administrator that a substantial number of any class or category of locomotives or locomotive engines, although properly maintained and used, do not conform to the applicable regulations of this part (including emission standards or family emission limits), the manufacturer or remanufacturer shall submit a plan to the Administrator to remedy such nonconformity. The plan shall contain the following:

(1) A description of each class or category of locomotive or locomotive engine to be recalled including the year(s) of manufacture or remanufacture, the make, the model, the calendar year and such other information as may be required to identify the locomotives or locomotive engines to be recalled.

(2) A description of the specific modifications, alterations, repairs, corrections, adjustments or other changes to be made to bring the locomotives or locomotive engines into conformity including a brief summary of the data and technical studies which support the manufacturer's or remanufacturer's

decision as to the particular remedial changes to be used in correcting the nonconformity.

(3) A description of the method by which the manufacturer or remanufacturer will determine the names and addresses of locomotive or locomotive engine owners.

(4) A description of the proper maintenance or use, if any, upon which the manufacturer or remanufacturer conditions eligibility for repair under the remedial plan, an explanation of the manufacturer's or remanufacturer's reasons for imposing any such condition, and a description of the proof to be required of a locomotive or locomotive engine owner to demonstrate compliance with any such condition. Eligibility may not be denied solely on the basis that the locomotive or locomotive engine owner used parts not manufactured or remanufactured by the original locomotive or locomotive engine manufacturer or remanufacturer, or had repairs not performed by the manufacturer or remanufacturer. No maintenance or use condition may be imposed unless it is, in the judgement of the Administrator, demonstrably related to preventing the nonconformity.

(5) A description of the procedure to be followed by locomotive or locomotive engine owners to obtain correction of the nonconformity. This shall include designation of the date on or after which the owner can have the nonconformity remedied, the time reasonably necessary to perform the labor required to correct the nonconformity, and the designation of facilities at which the nonconformity can be remedied: *Provided*, That repair shall be completed within a reasonable time designated by the Administrator from the date the owner first tenders his locomotive or locomotive engine after the date designated by the manufacturer or remanufacturer as the date on or after which the owner can have the nonconformity remedied.

(6) If some or all of the nonconforming locomotives or locomotive engines are to be remedied by persons other than authorized warranty agents of the manufacturer or remanufacturer, a description of the class of persons other than authorized warranty agents of the manufacturer or remanufacturer who will remedy the nonconformity, and a statement indicating that the participating members of the class will be properly equipped to perform such remedial action.

(7) Three copies of the letters of notification to be sent to locomotive or locomotive engine owners.

(8) A description of the system by which the manufacturer or remanufacturer will assure that an adequate supply of parts

will be available to perform the repair under the remedial plan including the date by which an adequate supply of parts will be available to initiate the repair campaign, the percentage of the total parts requirement of each person who is to perform the repair under the remedial plan to be shipped to initiate the campaign, and the method to be used to assure the supply remains both adequate and responsive to owner demand.

(9) Three copies of all necessary instructions to be sent to those persons who are to perform the repair under the remedial plan.

(10) A description of the impact of the proposed changes on fuel consumption, operability, and safety of each class or category of locomotives or locomotive engines to be recalled and a brief summary of the data, technical studies, or engineering evaluations which support these conclusions.

(11) Any other information, reports or data which the Administrator may reasonably determine is necessary to evaluate the remedial plan.

(b)(1) Notification to locomotive or locomotive engine owners shall be made by certified mail or by such means as approved by the Administrator.

(2) The manufacturer or remanufacturer shall use all reasonable means necessary to locate locomotive or locomotive engine owners.

(3) The Administrator reserves the right to require the manufacturer or remanufacturer to send by certified mail or other reasonable means subsequent notification to locomotive or locomotive engine owners.

(c)(1) The manufacturer or remanufacturer shall require those who perform the repair under the remedial plan to affix a label to each locomotive or locomotive engine repaired or, when required, inspected under the remedial plan.

(2) The label shall be placed in such location as approved by the Administrator consistent with Federal Railroad Administration regulations and shall be fabricated of a material suitable for the location in which it is installed and which is not readily removable intact.

(3) The label shall contain:

(i) The recall campaign number; and

(ii) A code designating the campaign facility at which the repair, or inspection for repair was performed.

(4) The Administrator reserves the right to waive any or all of the requirements of this paragraph if he determines that they constitute an unwarranted burden to the manufacturer or remanufacturer.

(d) The Administrator may require the manufacturer or remanufacturer to conduct tests on components and locomotives or locomotive engines incorporating a proposed change, repair, or modification reasonably designed and necessary to demonstrate the effectiveness of the change, repair, or modification.

Note: An interpretive ruling regarding §92.707 is published in Appendix V to part 92.

#### **92.708 Approval of Plan: Implementation.**

(a) If the Administrator finds that the remedial plan is designed and effective to correct the nonconformity, he/she will so notify the manufacturer or remanufacturer in writing. If the remedial plan is not approved, the Administrator will provide the manufacturer or remanufacturer notice of the disapproval and the reasons for the disapproval in writing.

(b) Upon receipt of notice from the Administrator that the remedial plan has been approved, the manufacturer or remanufacturer shall commence implementation of the approved plan. Notification of locomotive or locomotive engine owners shall be in accordance with requirements of this subpart and shall proceed as follows:

(1) When no public hearing as described in §92.711 is requested by the manufacturer or remanufacturer, notification of locomotive or locomotive engine owners shall commence within 15 working days of the receipt by the manufacturer or remanufacturer of the Administrator's approval unless otherwise specified by the Administrator.

(2) When a public hearing as described in §92.711 is held, unless as a result of such hearing the Administrator withdraws the determination of nonconformity, the Administrator shall, within 60 days after the completion of such hearing, order the manufacturer or remanufacturer to provide prompt notification of such nonconformity.

#### **92.709 Notification to locomotive or locomotive engine**

**owners.**

(a) The notification of locomotive or locomotive engine owners shall contain the following:

(1) The statement: "The Administrator of the U.S. Environmental Protection Agency has determined that your locomotive or locomotive engine may be emitting pollutants in excess of the Federal emission standards or family emission limits, as defined in 40 CFR Part 92. These standards or family emission limits, as defined in 40 CFR Part 92 were established to protect the public health or welfare from the dangers of air pollution."

(2) A statement that the nonconformity of any such locomotives or locomotive engines which have been, if required by the remedial plan, properly maintained and used, will be remedied at the expense of the manufacturer or remanufacturer.

(3) A description of the proper maintenance or use, if any, upon which the manufacturer or remanufacturer conditions eligibility for repair under the remedial plan and a description of the proof to be required of a locomotive or locomotive engine owner to demonstrate compliance with such condition. Eligibility may not be denied solely on the basis that the locomotive or locomotive engine owner used parts not manufactured or remanufactured by the original locomotive manufacturer or remanufacturer, or had repairs not performed by the manufacturer or remanufacturer.

(4) A clear description of the components which will be affected by the remedy and a general statement of the measures to be taken to correct the nonconformity.

(5) A description of the adverse affects, if any, that an uncorrected nonconformity would have on the performance or operability of the locomotive or locomotive engine.

(6) A description of the adverse affects, if any, that such nonconformity would have on the performance or operability of the locomotive or locomotive engine.

(7) A description of the average effects, if any, that such nonconformity would have on the functions of other locomotive or locomotive engine components.

(8) A description of the procedure which the locomotive or locomotive engine owner should follow to obtain correction of the nonconformity. This shall include designation of the date on or

after which the owner can have the nonconformity remedied, the time reasonably necessary to perform the labor required to correct the nonconformity, and the designation of facilities at which the nonconformity can be remedied.

(9) A telephone number provided by the manufacturer or remanufacturer, which may be used to report difficulty in obtaining recall repairs.

(10) The statement: "In order to ensure your full protection under the emission warranty made applicable to your (locomotive or locomotive engine) by Federal law, and your right to participate in future recalls, it is recommended that you have (locomotive or locomotive engine) serviced as soon as possible. Failure to do so could legally be determined to be a lack of proper maintenance of your (locomotive or locomotive engine)."

(b) No notice sent pursuant to paragraph (a) of this section nor any other contemporaneous communication sent to locomotive or locomotive engine owners or dealers shall contain any statement or implication that the nonconformity does not exist or that the nonconformity will not degrade air quality.

(c) The manufacturer or remanufacturer shall be informed of any other requirements pertaining to the notification under this section which the Administrator has determined are reasonable and necessary to ensure the effectiveness of the recall campaign.

#### **92.710      Records and reports.**

(a) The manufacturer or remanufacturer shall provide to the Administrator a copy of all communications which relate to the remedial plan directed to persons who are to perform the repair under the remedial plan. Such copies shall be mailed to the Administrator contemporaneously with their transmission to persons who are to perform the repair under the remedial plan.

(b) The manufacturer or remanufacturer shall provide for the establishment and maintenance of records to enable the Administrator to conduct a continuing analysis of the adequacy of the recall campaign. The records shall include, for each class or category of locomotive or locomotive engine, but need not be limited to, the following:

(1) Recall campaign number as designated by the manufacturer or remanufacturer.

(2) Date owner notification was begun, and date completed.



(3) Number of locomotives or locomotive engines involved in the recall campaign.

(4) Number of locomotives or locomotive engines known or estimated to be affected by the nonconformity.

(5) Number of locomotives or locomotive engines inspected pursuant to the remedial plan.

(6) Number of inspected locomotives or locomotive engines found to be affected by the nonconformity.

(7) Number of locomotives or locomotive engines actually receiving repair under the remedial plan.

(8) Number of locomotives or locomotive engines determined to be unavailable for inspection or repair under the remedial plan due to exportation, scrapping or for other reasons (specify).

(9) Number of locomotives or locomotive engines determined to be ineligible for remedial action due to a failure to properly maintain or use such locomotives or locomotive engines.

(c) If the manufacturer or remanufacturer determines that the original answers for paragraphs (b)(3) and (b)(4) of this section are incorrect, revised figures and an explanatory note shall be submitted. Answers to paragraphs (b)(5), (b)(6), (b)(7), (b)(8), and (b)(9) of this section shall be cumulative totals.

(d) Unless otherwise directed by the Administrator, the information specified in paragraph (b) of this section shall be included in quarterly reports, with respect to each recall campaign, for six consecutive quarters beginning with the quarter in which the notification of owners was initiated, or until all nonconforming locomotives or locomotive engines involved in the campaign have been remedied, whichever occurs sooner. Such reports shall be submitted no later than 25 working days after the close of each calendar quarter.

(e) The manufacturer or remanufacturer shall maintain in a form suitable for inspection, such as computer information storage devices or card files, lists of the names and addresses of locomotive or locomotive engine owners:

(1) To whom notification was given;

(2) Who received remedial repair or inspection under the

remedial plan; and

(3) When eligibility for repair is conditioned on proper maintenance or use, that were determined not to qualify for such remedial action.

(f) The records described in paragraph (e) of this section shall be made available to the Administrator upon request.

(g) The records and reports required by this section shall be retained for not less than 12 years.

**92.711 Public hearings.**

(a) Definitions. The following definitions shall be applicable to this section:

(1) "Hearing Clerk" shall mean the Hearing Clerk of the Environmental Protection Agency.

(2) "Intervenor" shall mean a person who files a petition to be made an intervener pursuant to paragraph (g) of this section and whose petition is approved.

(3) "Manufacturer or remanufacturer" refers to a manufacturer or remanufacturer contesting a recall order directed at that manufacturer or remanufacturer.

(4) "Party" shall include the Environmental Protection Agency, the manufacturer or remanufacturer, and any interveners.

(5) "Presiding Officer" shall mean an Administrative Law Judge appointed pursuant to 5 U.S.C. 3105 (see also 5 CFR part 930 as amended).

(6) "Environmental Appeals Board" shall mean the Board within the Agency described in §1.25 of this title. The Administrator delegates authority to the Environmental Appeals Board to issue final decisions in appeals filed under this subpart. Appeals directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered. This delegation of authority to the Environmental Appeals Board does not preclude the Environmental Appeals Board from referring an appeal or a motion filed under this subpart to the Administrator for decision when the Environmental Appeals Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator, all parties shall be so notified and the rules in this part referring to the Environmental Appeals Board shall be interpreted as referring to

the Administrator.

(b) Request for public hearing. (1)(i) If the manufacturer or remanufacturer disagrees with the Administrator's finding of nonconformity he may request a public hearing as described in this section. Requests for such a hearing shall be filed with the Administrator not later than 45 days after the receipt of the Administrator's notification of nonconformity unless otherwise specified by the Administrator. Two copies of such request shall simultaneously be served upon the Director of the Engine Programs and Compliance Division and two copies filed with the Hearing Clerk. Failure of the manufacturer or remanufacturer to request a hearing within the time provided shall constitute a waiver of his right to such a hearing. In such a case, the manufacturer or remanufacturer shall carry out the recall order as required by §92.707.

(ii) Subsequent to the expiration of the period for requesting a hearing as of right, the Administrator may, in his discretion and for good cause shown, grant the manufacturer or remanufacturer a hearing to contest the nonconformity.

(2) The request for a public hearing shall contain:

(i) A statement as to which classes or categories of locomotives or locomotive engines are to be the subject of the hearing;

(ii) A concise statement of the issues to be raised by the manufacturer or remanufacturer at the hearing for each class or category of locomotive or locomotive engine for which the manufacturer or remanufacturer has requested the hearing; and

(iii) A statement as to reasons the manufacturer or remanufacturer believes he will prevail on the merits on each of the issues so raised.

(3) A copy of all requests for public hearings shall be kept on file in the Office of the Hearing Clerk and shall be made available to the public during Agency business hours.

(c) Filing and service. (1) An original and two copies of all documents or papers required or permitted to be filed pursuant to this section shall be filed with the Hearing Clerk. Filing shall be deemed timely if mailed, as determined by the postmark, to the Hearing Clerk within the time allowed by this section. If filing is to be accomplished by mailing, the documents shall be sent to the address set forth in the notice of public hearing as described in paragraph (f) of this section.

(2) Except for requests to commence a hearing, at the same time a party files with the Hearing Clerk any additional issues for consideration at the hearing or any written testimony, documents, papers, exhibits, or materials, proposed to be introduced into evidence or papers filed in connection with any appeal, it shall serve upon all other parties copies thereof. A certificate of service shall be provided on or accompany each document or paper filed with the Hearing Clerk. Documents to be served upon the Director of the Engine Programs and Compliance Division shall be mailed to: Director, Engine Programs and Compliance Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI, 48105. Service by mail is complete upon mailing.

(d) Time. (1) In computing any period of time prescribed or allowed by this section, except as otherwise provided, the day of the act or event from which the designated period of time begins to run shall not be included. Saturdays, Sundays, and Federal legal holidays shall be included in computing any such period allowed for the filing of any document or paper, except that when such period expires on a Saturday, Sunday, or Federal legal holiday, such period shall be extended to include the next following business day.

(2) A prescribed period of time within which a party is required or permitted to do an act shall be computed from the time of service, except that when service is accomplished by mail, three days shall be added to the prescribed period.

(e) Consolidation. The Administrator or the Presiding Officer in his discretion may consolidate two or more proceedings to be held under this section for the purpose of resolving one or more issues whenever it appears that such consolidation will expedite or simplify consideration of such issues. Consolidation shall not affect the right of any party to raise issues that could have been raised if consolidation had not occurred.

(f) Notice of public hearings. (1) Notice of a public hearing under this section shall be given by publication in the Federal Register. Notice will be given at least 30 days prior to the commencement of such hearings.

(2) The notice of a public hearing shall include the following information:

(i) The purpose of the hearing and the legal authority under which the hearing is to be held;

(ii) A brief summary of the Administrator's determination of

nonconformity;

(iii) A brief summary of the manufacturer's or remanufacturer's basis for contesting the Administrator's determination of nonconformity;

(iv) Information regarding the time and location of the hearing and the address to which all documents required or permitted to be filed should be sent;

(v) The address of the Hearing Clerk to whom all inquiries should be directed and with whom documents are required to be filed;

(vi) A statement that all petitions to be made an intervenor must be filed with the Hearing Clerk within 25 days from the date of the notice of public hearing and must conform to the requirements of paragraph (g) of this section.

(3) The notice of public hearing shall be issued by the General Counsel.

(g) Intervenors. (1) Any person desiring to intervene in a hearing to be held under section 207(c)(1) of the Act shall file a petition setting forth the facts and reasons why he/she thinks he should be permitted to intervene.

(2) In passing upon a petition to intervene, the following factors, among other things, shall be considered by the Presiding Officer:

(i) The nature of the petitioner's interest including the nature and the extent of the property, financial, environmental protection, or other interest of the petitioner;

(ii) The effect of the order which may be entered in the proceeding on petitioner's interest;

(iii) The extent to which the petitioner's interest will be represented by existing parties or may be protected by other means;

(iv) The extent to which petitioner's participation may reasonably be expected to assist materially in the development of a complete record;

(v) The effect of the intervention on the Agency's statutory mandate.

(3) A petition to intervene must be filed within 25 days following the notice of public hearing under section 207(c)(1) of the Act and shall be served on all parties. Any opposition to such petition must be filed within five days of such service.

(4) All petitions to be made an intervener shall be reviewed by the Presiding Officer using the criteria set forth in paragraph (g)(2) of this section and considering any oppositions to such petition. Where the petition demonstrates that the petitioner's interest is limited to particular issues, the Presiding Officer may, in granting such petition, limit petitioner's participation to those particular issues only.

(5) If the Presiding Officer grants the petition with respect to any or all issues, he/she shall so notify, or direct the Hearing Clerk to notify, the petitioner and all parties. If the Presiding Officer denies the petition he/she shall so notify, or direct the Hearing Clerk to notify, the petitioner and all parties and shall briefly state the reasons why the petition was denied.

(6) All petitions to be made an intervener shall include an agreement by the petitioner, and any person represented by the petitioner, to be subject to examination and cross-examination and to make any supporting and relevant records available at its own expense upon the request of the Presiding Officer, on his/her own motion or the motion of any party or other intervener. If the intervener fails to comply with any such request, the Presiding Officer may in his/her discretion, terminate his/her status as an intervener.

(h) Intervention by motion. Following the expiration of the time prescribed in paragraph (g) of this section for the submission of petitions to intervene in a hearing, any person may file a motion with the Presiding Officer to intervene in a hearing. Such a motion must contain the information and commitments required by paragraphs (g)(2) and (g)(6) of this section, and, in addition, must show that there is good cause for granting the motion and must contain a statement that the intervener shall be bound by agreements, arrangements, and other determinations which may have been made in the proceeding.

(i) Amicus Curiae. Persons not parties to the proceedings wishing to file briefs may do so by leave of the Presiding Officer granted on motion. A motion for leave shall identify the interest of the applicant and shall state the reasons why the proposed amicus brief is desirable.

(j) Presiding Officer. The Presiding Officer shall have

the duty to conduct a fair and impartial hearing in accordance with 5 U.S.C. 554, 556 and 557, to take all necessary action to avoid delay in the disposition of the proceedings and to maintain order. He shall have all power consistent with Agency rule and with the Administrative Procedure Act necessary to this end, including the following:

- (1) To administer oaths and affirmations;
  - (2) To rule upon offers of proof and receive relevant evidence;
  - (3) To regulate the course of the hearings and the conduct of the parties and their counsel therein;
  - (4) To hold conferences for simplification of the issues or any other proper purpose;
  - (5) To consider and rule upon all procedural and other motions appropriate in such proceedings;
  - (6) To require the submission of direct testimony in written form with or without affidavit whenever, in the opinion of the Presiding Officer, oral testimony is not necessary for full and true disclosure of the facts. Testimony concerning the conduct and results of tests and inspections may be submitted in written form.
  - (7) To enforce agreements and orders requiring access as authorized by law;
  - (8) To require the filing of briefs on any matter on which he/she is required to rule;
  - (9) To require any party or any witness, during the course of the hearing, to state his position on any issue;
  - (10) To take or cause depositions to be taken whenever the ends of justice would be served thereby;
  - (11) To make decisions or recommend decisions to resolve the disputed issues of the record of the hearing.
  - (12) To issue, upon good cause shown, protective orders as described in paragraph (n) of this section.
- (k) Conferences. (1) At the discretion of the Presiding Officer, conferences may be held prior to or during any hearing. The Presiding Officer shall direct the Hearing Clerk to notify

all parties and interveners of the time and location of any such conference. At the discretion of the Presiding Officer, persons other than parties may attend. At a conference the Presiding Officer may:

(i) Obtain stipulations and admissions, receive requests and order depositions to be taken, identify disputed issues of fact and law, and require or allow the submission of written testimony from any witness or party;

(ii) Set a hearing schedule for as many of the following as are deemed necessary by the Presiding Officer:

(A) Oral and written statements;

(B) Submission of written direct testimony as required or authorized by the Presiding Officer;

(C) Oral direct and cross-examination of a witness where necessary as prescribed in paragraph (p) of this section;

(D) Oral argument, if appropriate.

(iii) Identify matters of which official notice may be taken;

(iv) Consider limitation of the number of expert and other witnesses;

(v) Consider the procedure to be followed at the hearing; and

(vi) Consider any other matter that may expedite the hearing or aid in the disposition of the issue.

(2) The results of any conference including all stipulations shall, if not transcribed, be summarized in writing by the Presiding Officer and made part of the record.

(1) Primary discovery (exchange of witness lists and documents). (1) At a prehearing conference or within some reasonable time set by the Presiding Officer prior to the hearing, each party shall make available to the other parties the names of the expert and other witnesses the party expects to call, together with a brief summary of their expected testimony and a list of all documents and exhibits which the party expects to introduce into evidence. Thereafter, witnesses, documents, or exhibits may be added and summaries of expected testimony amended upon motion by a party.



(2) The Presiding Officer, may, upon motion by a party or other person, and for good cause shown, by order (i) restrict or defer disclosure by a party of the name of a witness or a narrative summary of the expected testimony of a witness, and (ii) prescribe other appropriate measures to protect a witness. Any party affected by any such action shall have an adequate opportunity, once he learns the name of a witness and obtains the narrative summary of his expected testimony, to prepare for the presentation of his case.

(m) Other discovery. (1) Except as so provided by paragraph (1) of this section, further discovery, under this paragraph, shall be permitted only upon determination by the Presiding Officer:

(i) That such discovery will not in any way unreasonably delay the proceeding;

(ii) That the information to be obtained is not obtainable voluntarily; and

(iii) That such information has significant probative value. The Presiding Officer shall be guided by the procedures set forth in the Federal Rules of Civil Procedure, where practicable, and the precedents thereunder, except that no discovery shall be undertaken except upon order of the Presiding Officer or upon agreement of the parties.

(2) The Presiding Officer shall order depositions upon oral questions only upon a showing of good cause and upon a finding that:

(i) The information sought cannot be obtained by alternative methods; or

(ii) There is a substantial reason to believe that relevant and probative evidence may otherwise not be preserved for presentation by a witness at the hearing.

(3) Any party to the proceeding desiring an order of discovery shall make a motion or motions therefor. Such a motion shall set forth:

(i) The circumstances warranting the taking of the discovery;

(ii) The nature of the information expected to be discovered; and

(iii) The proposed time and place where it will be taken. If the Presiding Officer determines the motion should be granted, he shall issue an order for the taking of such discovery together with the conditions and terms thereof.

(4) Failure to comply with an order issued pursuant to this paragraph may lead to the inference that the information to be discovered would be adverse to the person or party from whom the information was sought.

(n) Protective orders: in camera proceedings. (1) Upon motion by a party or by the person from whom discovery is sought, and upon a showing by the movant that the disclosure of the information to be discovered, or a particular part thereof, (other than emission data) would result in methods or processes entitled to protection as trade secrets of such person being divulged, the Presiding Officer may enter a protective order with respect to such material. Any protective order shall contain such terms governing the treatment of the information as may be appropriate under the circumstances to prevent disclosure outside the hearing: *Provided*, That the order shall state that the material shall be filed separately from other evidence and exhibits in the hearing. Disclosure shall be limited to parties to the hearing, their counsel and relevant technical consultants, and authorized representatives of the United States concerned with carrying out the Act. Except in the case of the government, disclosure may be limited to counsel to parties who shall not disclose such information to the parties themselves. Except in the case of the government, disclosure to a party or his counsel shall be conditioned on execution of a sworn statement that no disclosure of the information will be made to persons not entitled to receive it under the terms of the protective order. (No such provision is necessary where government employees are concerned because disclosure by them is subject to the terms of 18 U.S.C. 1905.)

(2)(i) A party or person seeking a protective order may be permitted to make all or part of the required showing in camera. A record shall be made of such in camera proceedings. If the Presiding Officer enters a protective order following a showing in camera, the record of such showing shall be sealed and preserved and made available to the Agency or court in the event of appeal.

(ii) Attendance at any in camera proceeding may be limited to the Presiding Officer, the Agency, and the person or party seeking the protective order.

(3) Any party, subject to the terms and conditions of any

protective order issued pursuant to paragraph (n)(1) of this section, desiring for the presentation of his/her case to make use of any in camera documents or testimony shall make application to the Presiding Officer by motion setting forth the justification therefor. The Presiding Officer, in granting any such motion, shall enter an order protecting the rights of the affected persons and parties and preventing unnecessary disclosure of such information, including the presentation of such information and oral testimony and cross-examination concerning it in executive session, as in his/her discretion is necessary and practicable.

(4) In the submittal of proposed findings, briefs, or other papers, counsel for all parties shall make a good faith attempt to refrain from disclosing the specific details of in camera documents and testimony. This shall not preclude references in such proposed findings, briefs, or other papers to such documents or testimony including generalized statements based on their contents. To the extent that counsel consider it necessary to include specific details in their presentations, such data shall be incorporated in separate proposed findings, briefs, or other papers marked "confidential", which shall become part of the in camera record.

(o) Motions. (1) All motions, except those made orally during the course of the hearing, shall be in writing and shall state with particularity the grounds therefor, shall set forth the relief or order sought, and shall be filed with the Hearing Clerk and served upon all parties.

(2) Within ten days after service of any motion filed pursuant to this section, or within such other time as may be fixed by the Environmental Appeals Board or the Presiding Officer, as appropriate, any party may serve and file an answer to the motion. The movant shall, if requested by the Environmental Appeals Board or the Presiding Officer, as appropriate, serve and file reply papers within the time set by the request.

(3) The Presiding Officer shall rule upon all motions filed or made prior to the filing of his decision or accelerated decision, as appropriate. The Environmental Appeals Board shall rule upon all motions filed prior to the appointment of a Presiding Officer and all motions filed after the filing of the decision of the Presiding Officer or accelerated decision. Oral argument of motions will be permitted only if the Presiding Officer or the Environmental Appeals Board, as appropriate, deems it necessary.

(p) Evidence. (1) The official transcripts and exhibits, together with all papers and requests filed in the proceeding, shall constitute the record. Immaterial or irrelevant parts of an admissible document shall be segregated and excluded so far as practicable. Documents or parts thereof subject to a protective order under paragraph (n) of this section shall be segregated. Evidence may be received at the hearing even though inadmissible under the rules of evidence applicable to judicial proceedings. The weight to be given evidence shall be determined by its reliability and probative value.

(2) The Presiding Officer shall allow the parties to examine and to cross-examine a witness to the extent that such examination and cross-examination is necessary for a full and true disclosure of the facts.

(3) Rulings of the Presiding Officer on the admissibility of evidence, the propriety of examination and cross-examination and other procedural matters shall appear in the record.

(4) Parties shall automatically be presumed to have taken exception to an adverse ruling.

(q) Interlocutory appeal. (1) An interlocutory appeal may be taken to the Environmental Appeals Board either (i) with the consent of the Presiding Officer and where he certifies on the record or in writing that the allowance of an interlocutory appeal is clearly necessary to prevent exceptional delay, expense or prejudice to any party or substantial detriment to the public interest, or (ii) absent the consent of the Presiding Officer, by permission of the Environmental Appeals Board.

(2) Applications for interlocutory appeal of any ruling or order of the Presiding Officer may be filed with the Presiding Officer within 5 days of the issuance of the ruling or order being appealed. Answers thereto by other parties may be filed within 5 days of the service of such applications.

(3) The Presiding Officer shall rule on such applications within 5 days of the filing of such application or answers thereto.

(4) Applications to file such appeals absent consent of the Presiding Officer shall be filed with the Environmental Appeals Board within 5 days of the denial of any appeal by the Presiding Officer.

(5) The Environmental Appeals Board will consider the merits of the appeal on the application and any answers thereto.

No oral argument will be heard nor other briefs filed unless the Environmental Appeals Board directs otherwise.

(6) Except under extraordinary circumstances as determined by the Presiding Officer, the taking of an interlocutory appeal will not stay the hearing.

(r) Record. (1) Hearings shall be stenographically reported and transcribed, and the original transcript shall be part of the record and the sole official transcript. Copies of the record shall be filed with the Hearing Clerk and made available during Agency business hours for public inspection. Any person desiring a copy of the record of the hearing or any part thereof shall be entitled to the same upon payment of the cost thereof.

(2) The official transcripts and exhibits, together with all papers and requests filed in the proceeding, shall constitute the record.

(s) Proposed findings, conclusions. (1) Within 20 days of the close of the reception of evidence, or within such longer time as may be fixed by the Presiding Officer, any party may submit for the consideration of the Presiding Officer proposed findings of fact, conclusions of law, and a proposed rule or order, together with reasons therefor and briefs in support thereof. Such proposals shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied on.

(2) The record shall show the Presiding Officer's ruling on the proposed findings and conclusions except when his/her order disposing of the proceeding otherwise informs the parties of the action taken by him/her thereon.

(t) Decision of the Presiding Officer. (1) Unless extended by the Environmental Appeals Board, the Presiding Officer shall issue and file with the Hearing Clerk his decision within 30 days after the period for filing proposed findings as provided for in paragraph(s) of this section has expired.

(2) The Presiding Officer's decision shall become the opinion of the Environmental Appeals Board (i) when no notice of intention to appeal as described in paragraph (u) of this section is filed, 30 days after the issuance thereof, unless in the interim the Environmental Appeals Board shall have taken action to review or stay the effective date of the decision; or (ii) when a notice of intention to appeal is filed but the appeal is not perfected as required by paragraph (u) of this section, 5

days after the period allowed for perfection of an appeal has expired unless within that 5 day period, the Environmental Appeals Board shall have taken action to review or stay the effective date of the decision.

(3) The Presiding Officer's decision shall include a statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact or law presented on the record and an appropriate rule or order. Such decision shall be supported by substantial evidence and based upon a consideration of the whole record.

(4) At any time prior to the issuance of his decision, the Presiding Officer may reopen the proceeding for the reception of further evidence. Except for the correction of clerical errors, the jurisdiction of the Presiding Officer is terminated upon the issuance of his/her decision.

(u) Appeal from the Decision of the Presiding Officer. (1) Any party to a proceeding may appeal the Presiding Officer's decision to the Environmental Appeals Board, Provided, That within 10 days after issuance of the Presiding Officer's decision such party files a notice of intention to appeal and an appeal brief within 30 days of such decision.

(2) When an appeal is taken from the decision of the Presiding Officer, any party may file a brief with respect to such appeal. The brief shall be filed within 20 days of the date of the filing of the appellant's brief.

(3) Any brief filed pursuant to this paragraph shall contain in the order indicated, the following:

(i) A subject index of the matter in the brief, with page references, and a table of cases (alphabetically arranged), textbooks, statutes, and other material cited, with page references thereto;

(ii) A specification of the issues intended to be urged;

(iii) The argument presenting clearly the points of fact and law relied upon in support of the position taken on each issue, with specific page references to the record and the legal or other material relied upon; and

(iv) A proposed form of rule or order for the Environmental Appeals Board's consideration if different from the rule or order contained in the Presiding Officer's decision.

(4) No brief in excess of 40 pages shall be filed without leave of the Environmental Appeals Board.

(5) Oral argument will be allowed in the discretion of the Environmental Appeals Board.

(v) Review of the Presiding Officer's Decision in Absence of Appeal. (1) If, after the expiration of the period for taking an appeal as provided for by paragraph (u) of this section, no notice of intention to appeal the decision of the Presiding Officer has been filed, or if filed, not perfected, the Hearing Clerk shall so notify the Environmental Appeals Board.

(2) The Environmental Appeals Board, upon receipt of notice from the Hearing Clerk that no notice of intention to appeal has been filed, or if filed, not perfected pursuant to paragraph (u) of this section, may, on its own motion, within the time limits specified in paragraph (t)(2) of this section, review the decision of the Presiding Officer. Notice of the intention of the Environmental Appeals Board to review the decision of the Presiding Officer shall be given to all parties and shall set forth the scope of such review and the issue which shall be considered and shall make provision for filing of briefs.

(w) Decision on appeal or review. (1) Upon appeal from or review of the Presiding Officer's decision, the Environmental Appeals Board shall consider such parts of the record as are cited or as may be necessary to resolve the issues presented and, in addition shall to the extent necessary or desirable exercise all the powers which it could have exercised if it had presided at the hearing.

(2) In rendering its decision, the Environmental Appeals Board shall adopt, modify, or set aside the findings, conclusions, and rule or order contained in the decision of the Presiding Officer and shall set forth in its decision a statement of the reasons or bases for its action.

(3) In those cases where the Environmental Appeals Board determines that it should have further information or additional views of the parties as to the form and content of the rule or order to be issued, the Environmental Appeals Board, in its discretion, may withhold final action pending the receipt of such additional information or views, or may remand the case to the Presiding Officer.

(x) Reconsideration. Within twenty (20) days after issuance of the Environmental Appeals Board's decision, any party may file with the Environmental Appeals Board a petition for

reconsideration of such decision, setting forth the relief desired and the grounds in support thereof. Any petition filed under this subsection must be confined to new questions raised by the decision or the final order and upon which the petitioner had no opportunity to argue before the Presiding Officer or the Environmental Appeals Board. Any party desiring to oppose such a petition shall file and answer thereto within ten (10) days after the filing of the petition. The filing of a petition for reconsideration shall not operate to stay the effective date of the decision or order or to toll the running of any statutory time period affecting such decision or order unless specifically so ordered by the Environmental Appeals Board.

(y) Accelerated decision: Dismissal. (1) The Presiding Officer, upon motion of any party or sua sponte, may at any time render an accelerated decision in favor of the Agency or the manufacturer as to all or any part of the proceeding, without further hearing or upon such limited additional evidence such as affidavits as he/she may require, or dismiss any party with prejudice, under any of the following conditions:

(i) Failure to state a claim upon which relief can be granted, or direct or collateral estoppel;

(ii) There is no genuine issue of material fact and a party is entitled to judgment as a matter of law; or

(iii) Such other and further reasons as are just, including specifically failure to obey a procedural order of the Presiding Officer.

(2) If under this paragraph an accelerated decision is issued as to all the issues and claims joined in the proceeding, the decision shall be treated for the purposes of these procedures as the decision of the Presiding Officer as provided in paragraph (p) of this section.

(3) If under this paragraph, judgment is rendered on less than all issues or claims in the proceeding, the Presiding Officer shall determine what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. He/she shall thereupon issue an order specifying the facts which appear without substantial controversy, and the issues and claims upon which the hearing will proceed.

(z) Conclusion of hearing. (1) If, after the expiration of the period for taking an appeal as provided for by paragraph (u) of this section, no appeal has been taken from the Presiding



Officer's decision, and, after the expiration of the period for review by the Environmental Appeals Board on its own motion as provided for by paragraph (v) of this section, the Environmental Appeals Board does not move to review such decision, the hearing will be deemed to have ended at the expiration of all periods allowed for such appeal and review.

(2) If an appeal of the Presiding Officer's decision is taken pursuant to paragraph (u) of this section, or if, in the absence of such appeal, the Environmental Appeals Board moves to review the decision of the Presiding Officer pursuant to paragraph (v) of this section, the hearing will be deemed to have ended upon the rendering of a final decision by the Environmental Appeals Board.

(aa) Judicial Review. (1) The Administrator hereby designates the Deputy General Counsel, Environmental Protection Agency as the officer upon whom copy of any petition for judicial review shall be served. Such officer shall be responsible for filing in the court the record on which the order of the Environmental Appeals Board is based.

(2) Before forwarding the record to the court, the Agency shall advise the petitioner of costs of preparing it and as soon as payment to cover fees is made shall forward the record to the court.

**92.712 Treatment of confidential information.**

The provisions for treatment of confidential information as described in § 92.021 apply.

**Subpart I - Importation of Nonconforming Locomotives and Locomotive Engines**

**92.801 Applicability.**

(a) Except where otherwise indicated, this subpart I is applicable to locomotives and locomotive engines for which the Administrator has promulgated regulations under this part prescribing emission standards, that are offered for importation or imported into the United States, but which locomotives or locomotive engines, at the time of importation or being offered for importation, are not covered by certificates of conformity issued under section 213 and section 206(a) of the Clean Air Act (that is, which are nonconforming locomotives or locomotive engines as defined in §92.002), and this part. Compliance with regulations under this subpart does not relieve any person or entity from compliance with other applicable provisions of the Clean Air Act.

(b) Regulations prescribing further procedures for the importation of locomotives and locomotive engines into the Customs territory of the United States, as defined in 19 U.S.C. 1202, are set forth in U.S. Customs Service regulations.

**92.802 Definitions.**

The definitions of subpart A of this part apply to this subpart.

**92.803 Abbreviations.**

The abbreviations of subpart A of this part apply to this subpart.

**92.804 Construction.**

(a) The language in this subpart applies to both locomotives and to locomotive engines. When a new provision is to be added to this subpart or a provision of this subpart is to be changed, a new paragraph will be added to the appropriate section(s) of this subpart specifying the new or changed requirements together with the date at which the new or changed requirement(s) become effective.

**92.805 Admission.**

(a) A nonconforming locomotive or locomotive engine offered for importation may be admitted into the United States pursuant

to the provisions of this subpart. In order to obtain admission the importer must submit to the Administrator a written request for approval containing the following:

(1) Identification of the importer of the locomotive or locomotive engine and the importer's address, telephone number, and taxpayer identification number;

(2) Identification of the locomotive's or locomotive engine's owner, the owner's address, telephone number, and taxpayer identification number;

(3) Identification of the locomotive and/or locomotive engine including make, model, identification number, and original production year;

(4) Information indicating under what provision of these regulations the locomotive or locomotive engine is to be imported;

(5) Identification of the place(s) where the subject locomotive or locomotive engine is to be stored until EPA approval of the importer's application to the Administrator for final admission;

(6) Authorization for EPA enforcement officers to conduct inspections or testing otherwise permitted by the Act or regulations thereunder; and

(7) Such other information as is deemed necessary by the Administrator.

#### **92.806 Exemptions and exclusions.**

(a) Unless otherwise specified, any person may apply for the exemptions and exclusions allowed by this section.

(b) Notwithstanding other requirements of this subpart, a nonconforming locomotive or locomotive engine that qualifies for a temporary exemption under this paragraph may be conditionally admitted into the United States if prior written approval for the conditional admission is obtained from the Administrator. Conditional admission is to be under bond. The Administrator may request that the U.S. Customs Service require a specific bond amount to ensure compliance with the requirements of the Act and this subpart. A written request for approval from the Administrator is to contain the identification required in §92.805 and information that demonstrates that the importer is entitled to the exemption. Noncompliance with provisions of this

section may result in the forfeiture of the total amount of the bond or exportation of the locomotive or locomotive engine. The following temporary exemptions are permitted by this paragraph:

(1) Exemption for repairs or alterations. Upon written approval by EPA, a person may conditionally import under bond a nonconforming locomotive or locomotive engine solely for purpose of repair(s) or alteration(s). The locomotive or locomotive engine may not be operated in the United States other than for the sole purpose of repair or alteration or shipment to the point of repair or alteration and to the port of export. It may not be sold or leased in the United States and is to be exported upon completion of the repair(s) or alteration(s).

(2) Testing exemption. A nonconforming test locomotive or locomotive engine may be conditionally imported under bond by a person subject to the requirements of §92.907. A test locomotive or locomotive engine may be operated in the United States provided that the operation is an integral part of the test. This exemption is limited to a period not exceeding one year from the date of importation unless a request is made by the appropriate importer, and subsequently granted by EPA, concerning the locomotive or locomotive engine in accordance with §92.907 for a subsequent one-year period.

(3) Display exemptions.

(i) A nonconforming locomotive or locomotive engine intended solely for display may be conditionally imported under bond subject to the requirements of §92.909.

(ii) A display locomotive or locomotive engine may be imported by any person for purposes related to a business or the public interest. Such purposes do not include collections normally inaccessible or unavailable to the public on a daily basis, display of a locomotive or locomotive engine at a dealership, private use, or other purpose that the Administrator determines is not appropriate for display exemptions. A display locomotive or locomotive engine may not be sold or leased in the United States and may not be operated in the United States except for the operation incident and necessary to the display purpose.

(iii) A display exemption is granted for 12 months or for the duration of the display purpose, whichever is shorter. Extensions of up to 12 months each are available upon approval by the Administrator. In no circumstances, however, may the total period of exemption exceed 36 months.

(c) Notwithstanding any other requirement of this subpart,

a locomotive or locomotive engine may be permanently imported into the United States under this paragraph if prior written approval for such permanent importation is obtained from the Administrator. A request for approval is to contain the identification information required in §92.805 and information that demonstrates that the importer is entitled to the exemption. The following exemptions are permitted by this paragraph:

(1) National security exemption. A nonconforming locomotive or locomotive engine may be imported under the national security exemption found at §92.910.

(2) Exemption for locomotives or locomotive engines identical to United States certified versions.

(i) Any person may import a nonconforming locomotive or locomotive engine into the United States under the provisions of this paragraph. An exemption will be granted if the locomotive or locomotive engine:

(A) is owned by the importer;

(B) is not offered for importation for the purpose of resale; and

(C) is proven to be identical, in all material respects, to a locomotive or locomotive engine certified by the Original Manufacturer (OM) or Original Remanufacturer (ORM) for sale in the United States or is proven to have been modified to be identical, in all material respects, to a locomotive or locomotive engine certified by the OM or ORM for sale in the United States according to complete written instructions provided by the OM's or ORM's United States representative, or his/her designee.

(ii) Proof of Conformity.

(A) Documentation submitted pursuant to this section for the purpose of proving conformity of individual locomotive or locomotive engines is to contain sufficiently organized data or evidence demonstrating that the locomotive or locomotive engine identified pursuant to §92.805 is identical, in all material respects, to a locomotive or locomotive engine identified in an OM's or ORM's application for certification.

(B) If the documentation does not contain all the information required by this part, or is not sufficiently organized, EPA will notify the importer of any areas of inadequacy. The documentation will not receive further

consideration until the required information or organization is provided.

(C) If EPA determines that the documentation does not clearly or sufficiently demonstrate that a locomotive or locomotive engine is eligible for importation, EPA will notify the importer in writing.

(D) If EPA determines that the documentation clearly and sufficiently demonstrates that a locomotive or locomotive engine is eligible for importation, EPA will grant approval for importation in writing.

(d) Combat exclusion. A nonconforming locomotive or locomotive engine may be imported by any person provided the importer demonstrates to the Administrator that the locomotive, locomotive engine or locomotive the engine will be installed in exhibits features ordinarily associated with military combat such as armor and/or weaponry and obtains prior written approval from the Administrator. A nonconforming locomotive or locomotive engine imported pursuant to this paragraph may not be operated in the United States except for that operation incident and necessary for the combat purpose, unless subsequently brought into conformity with United States emission requirements in accordance with § 92.806(c)(2).

(e) An application for exemption and exclusion provided for in paragraphs (b), and (c) of this section shall be mailed to: Group Manager, Engine Compliance Programs Group, Engine Programs and Compliance Division U.S. Environmental Protection Agency, 6403-J, 401 M St., S.W., Washington, D.C. 20460, Attention: Imports.

#### **92.807 Prohibited acts; penalties.**

(a) The importation of a locomotive or locomotive engine which is not covered by a certificate of conformity other than in accordance with this subpart and the entry regulations of the U.S. Customs Service is prohibited. Failure to comply with this section is a violation of section 213(d) and section 203 of the Act.

(b) Unless otherwise permitted by this subpart, during a period of conditional admission, the importer of a locomotive or locomotive engine may not:

(1) operate the locomotive or locomotive engine in the United States;

(2) sell or lease or offer the locomotive or locomotive engine for sale or lease;

(c) A locomotive or locomotive engine conditionally admitted pursuant to §92.806 and not otherwise permanently exempted or excluded by the end of the period of conditional admission, or within such additional time as the Administrator and the U.S. Customs Service may allow, is deemed to be unlawfully imported into the United States in violation of section 213(d) and section 203 of the Act, unless the locomotive or locomotive engine has been delivered to the U.S. Customs Service for export or other disposition under applicable Customs laws and regulations by the end of the period of conditional admission. A locomotive or locomotive engine not so delivered is subject to seizure by the U.S. Customs Service.

(d) An importer who violates section 213(d) and section 203 of the Act is subject to the provisions of section 209 of the Act and is also subject to a civil penalty under section 205 of the Act of not more than \$25,000 for each locomotive or locomotive engine subject to the violation. In addition to the penalty provided in the Act, where applicable, a person or entity who imports an engine under the exemption provisions of §92.806 and, who fails to deliver the locomotive or locomotive engine to the U.S. Customs Service by the end of the period of conditional admission is liable for liquidated damages in the amount of the bond required by applicable Customs laws and regulations.

**92.808 Treatment of confidential information.**

The provisions for treatment of confidential information as described in § 92.021 apply.

## **Subpart J - Exclusion and Exemption Provisions**

### **92.901 Purpose and Applicability.**

The provisions of subpart J identify excluded locomotives (i.e., locomotives not covered by the Act) and allow for the exemption of locomotives and locomotive engines from the provisions of subpart A of part 92. The applicability of the exclusions is described in §92.905, and the applicability of the exemption allowances is described in §§92.906 - 92.911.

### **92.902 Definitions.**

The definitions of subpart A of this part apply to this subpart.

### **92.903 Abbreviations.**

The abbreviations of subpart A of this part apply to this subpart.

### **92.904 Construction.**

(a) The language in this subpart applies to both locomotives and to locomotive engines. When a new provision is to be added to this subpart or a provision of this subpart is to be changed, a new paragraph will be added to the appropriate section(s) of this subpart specifying the new or changed requirements together with the date at which the new or changed requirement(s) become effective.

### **92.905 Exclusions.**

(a) For the purpose of compliance with these regulations, locomotives with substantial features ordinarily associated with military combat such as armor and/or permanently affixed weaponry are excluded from coverage under this part. Manufacturers of such locomotives must request confirmation of exclusion by written application to : Group Manager, Engine Compliance Programs Group, Engine Programs and Compliance Division U.S. Environmental Protection Agency, 6403-J, 401 M St., S.W., Washington, D.C. 20460.

(b) EPA will maintain a list of models of locomotives that have been determined to be excluded because they are used for combat, or determined to be excluded for other reasons. This list will be available to the public and may be obtained by writing to the address in (a) above.



(c) Upon written request with supporting documentation, EPA will make written determinations as to whether certain locomotives are excluded from applicability of this part. Any locomotives that are determined to be excluded are not subject to the regulations under this part.

**92.906 Who may request an exemption.**

(a) Any person may request a testing exemption under §92.907.

(b) Any locomotive or locomotive engine manufacturer or remanufacturer may request a national security exemption under §92.910.

(c) For locomotive or locomotive engine manufacturers and remanufacturers, locomotive or locomotive engines manufactured or remanufactured for export purposes are exempt without application, subject to the provisions of §92.911.

(d) For eligible manufacturers and remanufacturers, as determined by §92.908, manufacturer-owned and remanufacturer-owned locomotive or locomotive engines are exempt without application, subject to the provisions of §92.908.

(e) For any person, display locomotive or locomotive engines are exempt without application, subject to the provisions of §92.909.

(f) For small railroads, locomotives which have never been covered by a certificate of conformity are exempt without application.

(g) For manufacturers selling 10 or fewer engines per year for repowering, engines sold for repowering are exempt without application, provided that they are covered by a certificate of conformity issued under 40 CFR 89.

**92.907 Testing exemption.**

(a) Any person requesting an exemption for the purpose of conducting a test program must demonstrate the following:

(1) That the proposed test program has a purpose which constitutes an appropriate basis for an exemption in accordance this section;

(2) That the proposed test program necessitates the

granting of an exemption;

(3) That the proposed test program exhibits reasonableness in scope; and

(4) That the proposed test program exhibits a degree of control consonant with the purpose of the test program and EPA's monitoring requirements.

(5) Paragraphs (b), (c), (d), and (e) of this section describe what constitutes a sufficient demonstration for each of the four identified elements.

(b) With respect to the purpose of the proposed test program, an appropriate purpose would be research, investigations, studies, demonstrations, or training, but not national security. A concise statement of purpose is a required item of information.

(c) With respect to the necessity that an exemption be granted, necessity arises from an inability to achieve the stated purpose in a practicable manner without performing or causing to be performed one or more of the prohibited acts under §92.1105. In appropriate circumstances, time constraints may be a sufficient basis for necessity, but the cost of certification alone, in the absence of extraordinary circumstances, is not a basis for necessity.

(d) With respect to reasonableness, a test program must exhibit a duration of reasonable length and affect a reasonable number of engines. In this regard, required items of information include:

(1) An estimate of the program's duration, and

(2) The maximum number of locomotives or locomotive engines involved.

(e) With respect to control, the test program must incorporate procedures consistent with the purpose of the test and be capable of affording EPA monitoring capability. As a minimum, required items of information include:

(1) The technical nature of the test;

(2) The site of the test;

(3) The time, work, or mileage duration of the test;

(4) The ownership arrangement with regard to the engines involved in the test;

(5) The intended final disposition of the engines;

(6) The manner in which the engine identification numbers will be identified, recorded, and made available; and

(7) The means or procedure whereby test results will be recorded.

(f) A manufacturer or remanufacturer of new locomotives or locomotive engines may request a testing exemption to cover locomotives or locomotive engines intended for use in test programs planned or anticipated over the course of a subsequent one-year period. Unless otherwise required by the Director, Engine Programs and Compliance Division, a manufacturer or remanufacturer requesting such an exemption need only furnish the information required by paragraphs (a)(1) and (d)(2) of this section along with a description of the recordkeeping and control procedures that will be employed to assure that the locomotives or locomotive engines are used for purposes consistent with paragraph (a) of this section.

**92.908      Manufacturer-owned, remanufacturer-owned exemption and precertification exemption.**

(a) Any manufacturer-owned or remanufacturer-owned locomotive or locomotive engine, as defined by §92.002, is exempt from §92.1105, without application, if the manufacturer complies with the following terms and conditions:

(1) The manufacturer or remanufacturer must establish, maintain, and retain the following adequately organized and indexed information on each exempted locomotive or locomotive engine:

(i) engine identification number,

(ii) use of the engine on exempt status and

(iii) final disposition of any engine removed from exempt status; and

(2) The manufacturer or remanufacturer must provide right of entry and access to these records to EPA Enforcement Officers as outlined in §92.015.

(3) The manufacturer or remanufacturer must permanently affix a label to each locomotive or locomotive engine on exempt status, unless the requirement is waived or an alternate procedure is approved by the Director, Engine Programs and Compliance Division. This label should

(i) be affixed in a readily visible portion of the locomotive or locomotive engine,

(ii) be attached in such a manner that cannot be removed without destruction or defacement,

(iii) state in the English language and in block letters and numerals of a color that contrasts with the background of the label, the following information:

(A) The label heading "Emission Control Information;"

(B) Full corporate name and trademark of manufacturer;

(C) Engine displacement, engine family identification, and model year of engine; or person of office to be contacted for further information about the engine;

(D) The statement "This locomotive or locomotive engine is exempt from the prohibitions of 40 CFR §92.1105."

(4) No provision of paragraph (a)(3) of this section prevents a manufacturer from including any other information it desires on the label.

#### **92.909 Display exemption.**

Where an uncertified locomotive or locomotive engine is a display engine to be used solely for display purposes, will only be operated incident and necessary to the display purpose, and will not be sold unless an applicable certificate of conformity has been received or the engine has been finally admitted pursuant to subpart I of this part 92, no request for exemption of the locomotive or locomotive engine is necessary.

#### **92.910 National security exemption.**

A manufacturer requesting a national security exemption must state the purpose for which the exemption is required and the request must be endorsed by an agency of the federal government charged with responsibility for national defense.

#### **92.911      Export exemptions.**

(a) A new locomotive or locomotive engine intended solely for export, and so labeled or tagged on the outside of any container, the locomotive and on the engine itself, is subject to the provisions of §92.1105, unless the importing country has new locomotive or new locomotive engine emission standards which differ from EPA standards.

(b) For the purpose of paragraph (a) of this section, a country having no standards whatsoever is deemed to be a country having emission standards which differ from EPA standards.

(c) It is a condition of any exemption for the purpose of export under paragraph (a) of this section, that such exemption is void *ab initio* with respect to a new locomotive or locomotive engine intended solely for export, where such locomotive or locomotive engine is sold, or offered for sale, to an ultimate purchaser or otherwise distributed or introduced into commerce in the United States for purposes other than export.

#### **92.912      Granting of exemptions.**

(a) If upon completion of the review of an exemption request made pursuant to §92.907 or §92.910, EPA determines it is appropriate to grant such an exemption, a memorandum of exemption is to be prepared and submitted to the person requesting the exemption. The memorandum is to set forth the basis for the exemption, its scope, and such terms and conditions as are deemed necessary. Such terms and conditions generally include, but are not limited to, agreements by the applicant to conduct the exempt activity in the manner described to EPA, create and maintain adequate records accessible to EPA at reasonable times, employ labels for the exempt engines setting forth the nature of the exemption, take appropriate measures to assure that the terms of the exemption are met, and advise EPA of the termination of the activity and the ultimate disposition of the engines.

(b) Any exemption granted pursuant to paragraph (a) of this section is deemed to cover any subject engine only to the extent that the specified terms and conditions are complied with. A breach of any term or condition causes the exemption to be void *ab initio* with respect to any engine. Consequently, the causing or the performing of an act prohibited under §92.1105(a)(1) or (a)(3), other than in strict conformity with all terms and conditions of this exemption, renders the person to whom the exemption is granted, and any other person to whom the provisions of §92.1105(a) are applicable, liable to suit under sections 204

and 205 of the Act.

**92.913 Submission of exemption requests.**

Requests for exemption or further information concerning exemptions and/or the exemption request review procedure should be addressed to: Group Manager, Engine Compliance Programs Group, Engine Programs and Compliance Division U.S. Environmental Protection Agency, 6403-J, 401 M St., S.W., Washington, D.C. 20460.

**92.914 Treatment of confidential information.**

The provisions for treatment of confidential information as described in § 92.021 apply.

**Subpart K - Requirements Applicable to Railroads and Other Operators of Locomotives and Locomotive Engines**

**92.1001 Applicability.**

The requirements of this subpart are applicable to railroads and all other operators of locomotives and locomotive engines subject to the provisions of subpart A of this part, except as otherwise specified.

**92.1002 Definitions.**

The definitions of subpart A of this part apply to this subpart.

**92.1003 Abbreviations.**

The abbreviations of subpart A of this part apply to this subpart.

**92.1004 Construction.**

The language in this subpart applies to both locomotives and to locomotive engines. When a new provision is to be added to this subpart or a provision of this subpart is to be changed, a new paragraph will be added to the appropriate section(s) of this subpart specifying the new or changed requirements together with the date at which the new or changed requirement(s) become effective.

**92.1005 In-use testing program.**

(a) *Applicability.* This section applies to all Class I railroads.

(b) Each railroad subject to the provisions of this section shall annually test ten percent (as described in paragraph (c) of this section) of that fraction of its locomotive fleet which is operating after the end of useful life.

(1) Testing may be done in conjunction with a Federal Railroad Administration safety inspection.

(2) Testing shall be performed according to the test procedures in § 92.135.

(c) *Test locomotive selection.* (1) A random sample of locomotives shall be selected for testing. Unless otherwise

specified by the Administrator, the selection shall be made by the railroad.

(2) The number of locomotives in the sample shall no smaller than the number of locomotives in a railroad's fleet that meet the criteria of paragraph (d) at the beginning of the calendar year.

(d) All locomotives selected for testing according to the provisions of this section shall:

(1) Have been certified in compliance with requirements in subpart A of this part, and

(2) Shall have been operated for at least 100 percent of their useful lives.

(e) All testing done in compliance with the provisions of this section shall be reported to EPA within thirty calendar days of the close of each quarter. At a minimum, each report shall contain the following:

(1) Full corporate name and address of the railroad providing the report.

(2) For each locomotive tested, the following:

(i) Corporate name of the manufacturer of the locomotive, and the corporate name of the manufacturer of the engine(s) if different than that of the manufacturer of the locomotive,

(ii) Year, and if known month of original manufacture of the locomotive and the engine(s), and the manufacturer's model designation of the locomotive and manufacturer's model designation of the engine(s), and the locomotive identification number,

(iii) Year, and if known month that the engine last underwent remanufacture, and the engine manufacturer's designation which either reflects, or most closely reflects, the engine after the last remanufacture, and the engine family identification,

(iv) The number of MW-hrs or miles (as appropriate, depending on its useful life definition) it has been operated since its last remanufacture, and

(v) The emission test results for all measured pollutants.

(f) Any railroad that performed no emission testing during



a given quarter is exempt from the reporting requirements described in paragraph (e) of this section for that quarter.

(g) All reports submitted to EPA in compliance with the provisions of this subpart must be addressed to: Group Manager, Engine Compliance Programs Group, Engine Programs and Compliance Division 6403-J, Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460.

#### **92.1006 Maintenance and repair.**

(a) Unless otherwise approved by the Administrator, all railroads and other operators of locomotives subject to the provisions of this part shall perform all emission-related maintenance specified in the maintenance instructions provided by the manufacturer or remanufacturer in compliance with § 92.012 of this part.

(b) All repairs to any locomotive or locomotive engine which is subject to the provisions of subpart A of this part shall be performed, using good engineering judgement, in such a manner that the locomotive or locomotive engine continues to the meet the emission standards or family emission limits (as applicable) it was certified as meeting prior to the need for repair.

#### **92.1007 In-use locomotives.**

(a) Any railroad or other entity subject to the provisions of this subpart shall supply to the Administrator, upon request, a reasonable number of in-use locomotives or engines certified in compliance with the provisions of subpart A of this part, selected by the Administrator. These locomotives or engines shall be supplied for testing at such time and place and for such reasonable periods as the Administrator may require.

(b) Any railroad or other entity subject to the provisions of this subpart shall make reasonable efforts to supply manufacturers and remanufacturers of locomotives and locomotive engines with the test locomotives and locomotive engines needed to fulfill the in-use testing requirements contained in subpart G of this part.

#### **92.1008 Refueling Requirements**

(a) Refueling equipment for locomotives fueled with a volatile fuel shall be designed so as to minimize the escape of fuel vapors.

(b) Hoses used to refuel gaseous-fueled locomotives shall not be designed to be bled or vented to the atmosphere under normal operating conditions.

**Subpart L - General Enforcement Provisions and Prohibited Acts**

**92.1101 Applicability.**

The requirements of subpart L are applicable to all locomotives and locomotive engines subject to the provisions of subpart A of this part.

**92.1102 Definitions.**

The definitions of subpart A of this part apply to this subpart.

**92.1103 Abbreviations.**

The abbreviations of subpart A of this part apply to this subpart.

**92.1104 Construction.**

(a) The language in this subpart applies to both locomotives and to locomotive engines. When a new provision is to be added to this subpart or a provision of this subpart is to be changed, a new paragraph will be added to the appropriate section(s) of this subpart specifying the new or changed requirements together with the date at which the new or changed requirement(s) become effective.

**92.1105 Prohibited acts.**

(a) The following acts and the causing thereof are prohibited:

(1)(i) In the case of a manufacturer or a remanufacturer of new locomotives or new locomotive engines, the sale, the offering for sale, the introduction into commerce, the delivery for introduction into commerce, or the distribution in commerce of any new locomotive or new locomotive engine manufactured or remanufactured after the applicable effective date under this part, unless such locomotive or locomotive engine is covered by a certificate of conformity issued (and in effect) under regulations found in this part. Introduction into commerce includes placement of a new locomotive or new locomotive engine back into service following remanufacturing.

(ii) In the case of any person, except as provided in subpart I of this part, the importation into the United States of any locomotive or locomotive engine manufactured or

remanufactured after the effective date under this part, unless such locomotive or locomotive engine is covered by a certificate of conformity issued (and in effect) under regulations found in this part.

(2)(i) For a person to fail or refuse to permit access to or copying of records or to fail to make reports or provide information required under §92.1106.

(ii) For a person to fail or refuse to permit entry, testing, or inspection authorized under §§ 92.014 or 92.1106.

(iii) For a person to fail or refuse to perform tests, or to have tests performed as required by this part.

(iv) For a person to fail to establish or maintain records as required under §92.1106.

(3)(i) For a person to remove or render inoperative a device or element of design installed on or in a locomotive or locomotive engine in compliance with regulations under this part, 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; or

(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.

(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 §92.1109.

(ii) To sell, offer for sale, or introduce or deliver for introduction into commerce, a new locomotive or new locomotive engine unless a label or tag is affixed to the engine in accordance with §92.018.

(iii) To fail or refuse to comply with the requirements of §92.1110.

(iv) Except as provided in §92.012, 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 §92.1109.

(5) For a manufacturer or remanufacturer of locomotives to distribute in commerce, sell, offer for sale, or deliver for introduction into commerce 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 manufacturer or remanufacturer 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 §92.1105(a)(3)(i) 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 §92.1105(a)(3)(i) if the new remanufactured locomotive is covered by a certificate of conformity and complies with all applicable requirements of subpart A of this part.

#### **92.1106 General enforcement provisions.**

(a) Information collection provisions.

(1) Every manufacturer or remanufacturer of new locomotives and 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.

(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

(2) 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 locomotive engine from §92.1105 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.

(c) Importation provision.

(1) A new locomotive or locomotive engine, offered for importation or imported by a person in violation of §92.1105 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, 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 §92.1105, 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.

#### **92.1107 Injunction proceedings for prohibited acts.**

(a) The district courts of the United States have jurisdiction to restrain violations of §92.1105(a).

(b) Actions to restrain violations of §92.1105(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.

#### **92.1108 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, and is subject to the penalty provisions thereunder.

(1) A person who violates §92.1105(a)(1), (a)(4), or (a)(6), or a manufacturer, remanufacturer, dealer or railroad who violates §92.1105(a)(3)(i) is subject to a civil penalty of not more than \$25,000 for each violation.

(2) A person other than a manufacturer, remanufacturer, dealer, or railroad who violates §92.1105(a)(3)(i) or any person who violates §92.1105(a)(3)(ii) is subject to a civil penalty of not more than \$2,500 for each violation.

(3) A violation with respect to §92.1105(a)(1), (a)(3)(i),

(a)(4), or (a)(6) constitutes a separate offense with respect to each locomotive or locomotive engine.

(4) A violation with respect to §92.1105(a)(3)(ii) constitutes a separate offense with respect to each part or component. Each day of a violation with respect to §92.1105(a)(5) constitutes a separate offense.

(5) A person who violates §92.1105(a)(2) or (a)(5) is subject to a civil penalty of not more than \$25,000 per day of violation.

(b) Civil actions. The Administrator may commence a civil action to assess and recover any civil penalty under paragraph (a) of this section.

(1) An action under this paragraph may be brought in the district court of the United States for the district in which the defendant resides or has the Administrator's principal place of business, and the court has jurisdiction to assess a civil penalty.

(2) In determining the amount of a civil penalty to be assessed under this paragraph, the court is to take into account the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator's business, the violator's history of compliance with Title II of the Act, action taken to remedy the violation, the effect of the penalty on the violator's ability to continue in business, and such other matters as justice may require.

(3) In any such action, subpoenas for witnesses who are required to attend a district court in any district may run into any other district.

(c) Administrative assessment of certain penalties.

(1) Administrative penalty authority. In lieu of commencing a civil action under paragraph (b) of this section, the Administrator may assess any civil penalty prescribed in paragraph (a) of this section, except that the maximum amount of penalty sought against each violator in a penalty assessment proceeding shall not exceed \$200,000, unless the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount is appropriate for administrative penalty assessment. Any such determination by the Administrator and the Attorney General is not subject to judicial review. Assessment of a civil penalty shall be by an order made on the record after opportunity for a hearing held in accordance with the procedures found at part 22 of this chapter. The



Administrator may compromise, or remit, with or without conditions, any administrative penalty which may be imposed under this section.

(2) Determining amount. In determining the amount of any civil penalty assessed under this paragraph, the Administrator shall take into account the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator's business, the violator's history of compliance with Title II of the Act, action taken to remedy the violation, the effect of the penalty on the violator's ability to continue in business, and such other matters as justice may require.

(3) Effect of administrator's action.

(i) Action by the Administrator under this paragraph does not affect or limit the Administrator's authority to enforce any provisions of the Act; except that any violation with respect to which the Administrator has commenced and is diligently prosecuting an action under this paragraph, or for which the Administrator has issued a final order not subject to further judicial review and for which the violator has paid a penalty assessment under this paragraph shall not be the subject of a civil penalty action under paragraph (b) of this section.

(ii) No action by the Administrator under this paragraph shall affect a person's obligation to comply with a section of this part.

(4) Finality of order. An order issued under this subsection is to become final 30 days after its issuance unless a petition for judicial review is filed under paragraph (c)(5) of this section.

(5) Judicial review. A person against whom a civil penalty is assessed in accordance with this subsection may seek review of the assessment in the United States District Court for the District of Columbia or for the district in which the violation is alleged to have occurred, in which such person resides, or where the person's principal place of business is located, within the 30-day period beginning on the date a civil penalty order is issued. The person shall simultaneously send a copy of the filing by certified mail to the Administrator and the Attorney General. The Administrator shall file in the court within 30 days a certified copy, or certified index, as appropriate, of the record on which the order was issued. The court is not to set aside or remand any order issued in accordance with the requirements of this paragraph unless substantial evidence does

not exist in the record, taken as a whole, to support the finding of a violation or unless the Administrator's assessment of the penalty constitutes an abuse of discretion, and the court is not to impose additional civil penalties unless the Administrator's assessment of the penalty constitutes an abuse of discretion. In any proceedings, the United States may seek to recover civil penalties assessed under this section.

(6) Collection.

(i) If any person fails to pay an assessment of a civil penalty imposed by the Administrator as provided in this part after the order making the assessment has become final or after a court in an action brought under paragraph (c)(5) of this section has entered a final judgment in favor of the Administrator, the Administrator shall request that the Attorney General bring a civil action in an appropriate district court to recover the amount assessed (plus interest at rates established pursuant to section 6621(a)(2) of the Internal Revenue Code of 1986 from the date of the final order or the date of final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of the penalty is not subject to review.

(ii) A person who fails to pay on a timely basis the amount of an assessment of a civil penalty as described in paragraph (c)(6)(i) of this section shall be required to pay, in addition to that amount and interest, the United States' enforcement expenses, including attorney's fees and costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which the failure to pay persists. The nonpayment penalty is an amount equal to ten percent of the aggregate amount of that person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

**92.1109 Warranty provisions.**

(a) The manufacturer or remanufacturer of each locomotive or locomotive engine must warrant to the ultimate purchaser and each subsequent purchaser that the locomotive or locomotive engine is designed, built, and equipped so as to conform at the time of sale or time of return to service following remanufacture with applicable regulations under section 213 of the Act, and is free from defects in materials and workmanship which cause such locomotive or locomotive engine to fail to conform with applicable regulations for its warranty period (as determined under §92.002(a)(102)).

(b) In the case of a locomotive or locomotive engine part, the manufacturer or remanufacturer or rebuilder of the part may

certify according to §85.2112 that use of the part will not result in a failure of the engine to comply with emission standards promulgated in this part.

(c) For the purposes of this section, the owner of any locomotive or locomotive engine warranted under this part is responsible for the proper maintenance of the locomotive and the locomotive engine. Proper maintenance includes replacement and/or service, as needed, at the owner's expense at a service establishment or facility of the owner's choosing, of all parts, items, or devices which were in general use with locomotives or locomotive engines prior to 1999. For diesel engines, this would generally include replacement or cleaning of the fuel delivery and injection system.

**92.1110 In-use compliance provisions.**

(a) Effective with respect to locomotives and locomotive engines subject to the requirements of this part:

(1) If the Administrator determines that a substantial number of any class or category of locomotives or locomotive engines, although properly maintained and used, do not conform to the regulations prescribed under section 213 of the Act when in actual use throughout their useful life period (as defined under §92.002), the Administrator shall immediately notify the manufacturer or remanufacturer of such nonconformity and require the manufacturer or remanufacturer to submit a plan for remedying the nonconformity of the locomotives or locomotive engines with respect to which such notification is given.

(i) The manufacturer's or remanufacturer's plan shall provide that the nonconformity of any such locomotives or locomotive engines which are properly used and maintained will be remedied at the expense of the manufacturer or remanufacturer.

(ii) If the manufacturer or remanufacturer disagrees with such determination of nonconformity and so advises the Administrator, the Administrator shall afford the manufacturer or remanufacturer and other interested persons an opportunity to present their views and evidence in support thereof at a public hearing. Unless, as a result of such hearing, the Administrator withdraws such determination of nonconformity, the Administrator shall, within 60 days after the completion of such hearing, order the manufacturer or remanufacturer to provide prompt notification of such nonconformity in accordance with paragraph (a)(2) of this section. The manufacturer or remanufacturer shall comply in all respects with the requirements of subpart G of this part.

(2) Any notification required to be given by the manufacturer or remanufacturer under paragraph (a)(1) of this section with respect to any class or category of locomotives or locomotive engines shall be given to ultimate purchasers, subsequent purchasers (if known), and dealers (as applicable) in such manner and containing such information as required in subparts E and H of this part.

(3)(i) The manufacturer or remanufacturer shall furnish with each new locomotive or locomotive engine written instructions for the proper maintenance and use of the engine by the ultimate purchaser as required under §92.012. The manufacturer or remanufacturer shall 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 using any locomotive or locomotive engine part which has been certified as provided in §92.1109(b).

(ii) The instruction under paragraph (3)(i) of this section must not include any condition on the ultimate purchaser'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 must not directly or indirectly distinguish between service performed by the franchised dealers of such manufacturer or remanufacturer, or 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 with which such manufacturer or remanufacturer has no commercial relationship.

(iii) The prohibition of paragraph (a)(3)(ii) of this section may be waived by the Administrator if:

(A) 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 engine, and

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

(iv) In addition, the manufacturer or remanufacturer shall indicate by means of a label or tag permanently affixed to the locomotive and to the engine that the locomotive and/or the locomotive engine is covered by a certificate of conformity

issued for the purpose of assuring achievement of emission standards prescribed under section 213 of the Act. This label or tag shall also contain information relating to control of emissions as prescribed under §92.018.

(b) The manufacturer or remanufacturer bears all cost obligation any dealer incurs as a result of a requirement imposed by paragraph (a) of this section. The transfer of any such cost obligation from a manufacturer or remanufacturer to a dealer through franchise or other agreement is prohibited.

(c) If a manufacturer or remanufacturer includes in an advertisement a statement respecting the cost or value of emission control devices or systems, the manufacturer or remanufacturer shall set forth in the statement the cost or value attributed to these devices or systems by the Secretary of Labor (through the Bureau of Labor Statistics). The Secretary of Labor, and his or her representatives, has the same access for this purpose to the books, documents, papers, and records of a manufacturer or remanufacturer as the Comptroller General has to those of a recipient of assistance for purposes of section 311 of the Act.

(d) Any inspection of a locomotive or locomotive engine for purposes of paragraph (a)(1) of this section, after its sale to the ultimate purchaser, is to be made only if the owner of such locomotive or locomotive engine voluntarily permits such inspection to be made.

APPENDICES TO PART 92

NOTE. The EPA Test Sequence for Locomotives and Locomotive Engines is performed once, if raw exhaust sampling is performed, with gaseous, particulate and smoke measurements performed simultaneously. The EPA Test Sequence for Locomotives and Locomotive Engines is performed twice, if dilute exhaust sampling is performed, with gaseous, and particulate measurements performed during one test sequence and smoke measurements performed during the other test sequence.

**Appendix I - EPA Test Sequence for Locomotives and Locomotive Engines. Passenger (Traction Power Only); Freight; and Switch Operations. (Time vs Engine Operational Setting and Emission Measurements).**

Engine Operational Setting Expressed as Throttle Notch Position, or Engine Power if Discrete Throttle Notch Positions Are Not Used.

Time (min and sec)	Throttle Notch Setting	Throttle Notch or Power Setting (Mode):	% Rated Power Setting			Emissions Measured		
			HC	CO	NOx	PM	Smoke	
0	Low Idle (omit if not equipped)	Actual	-	-	-	-	-	X
0 min, 10 sec	Low Idle (omit if not equipped)	Low	X	X	X	X	X	X
1	Low Idle (omit if not equipped)	Idle	X	X	X	X	X	X
2	Low Idle (omit if not equipped)	Value	X	X	X	X	X	X
3	Low Idle (omit if not equipped)	"	X	X	X	X	X	X
4	Low Idle (omit if not equipped)	"	X	X	X	X	X	X
5	Low Idle (omit if not equipped)	"	X	X	X	X	X	X
5 min, 50 sec	Low Idle (omit if not equipped)	"	X	X	X	X	X	X
6	Normal Idle	Actual	-	-	-	-	-	X
6 min, 10 sec	Normal Idle	Normal	X	X	X	X	X	X
7	Normal Idle	Idle	X	X	X	X	X	X
8	Normal Idle	Value	X	X	X	X	X	X
9	Normal Idle	"	X	X	X	X	X	X
10	Normal Idle	"	X	X	X	X	X	X
11	Normal Idle	"	X	X	X	X	X	X
11 min, 50 sec	Normal Idle	"	X	X	X	X	X	X
12	Dynamic Brake (omit if not equipped)	80% of	-	-	-	-	-	X
12 min, 10 sec	Dynamic Brake (omit if not equipped)	Maximum	X	X	X	X	X	X
13	Dynamic Brake (omit if not equipped)	Dynamic	X	X	X	X	X	X
14	Dynamic Brake (omit if not equipped)	Brake	X	X	X	X	X	X
15	Dynamic Brake (omit if not equipped)	Value	X	X	X	X	X	X
16	Dynamic Brake (omit if not equipped)	"	X	X	X	X	X	X
17	Dynamic Brake (omit if not equipped)	"	X	X	X	X	X	X
17 min, 50 sec	Dynamic Brake (omit if not equipped)	"	X	X	X	X	X	X

Appendix I (cont.) - EPA Test Sequence for Locomotives and Locomotive Engines. Passenger (Traction Power Only); Freight; and Switch Operations. (Time vs Engine Operational Setting and Emission Measurements).

Engine Operational Setting Expressed as Throttle Notch Position, or Engine Power if Discrete Throttle Notch Positions Are Not Used.

Time	Throttle Notch or Power Setting (Mode):		Emissions Measured			
	Throttle Notch Setting	% Rated Power Setting	HC, CO, NOx	PM	Smoke	
18	Notch 1	4.5 ± 1.5	-	-	X	
18 min, 10 sec	Notch 1	4.5 ± 1.5	X	X	X	
19	Notch 1	4.5 ± 1.5	X	X	X	
20	Notch 1	4.5 ± 1.5	X	X	X	
21	Notch 1	4.5 ± 1.5	X	X	X	
22	Notch 1	4.5 ± 1.5	X	X	X	
23	Notch 1	4.5 ± 1.5	X	X	X	
23 min, 50 sec	Notch 1	4.5 ± 1.5	X	X	X	
24	Notch 2	11.5 ± 2.0	-	-	X	
24 min, 10 sec	Notch 2	11.5 ± 2.0	X	X	X	
25	Notch 2	11.5 ± 2.0	X	X	X	
26	Notch 2	11.5 ± 2.0	X	X	X	
27	Notch 2	11.5 ± 2.0	X	X	X	
28	Notch 2	11.5 ± 2.0	X	X	X	
29	Notch 2	11.5 ± 2.0	X	X	X	
29 min, 50 sec	Notch 2	11.5 ± 2.0	X	X	X	
30	Notch 3	23.5 ± 3.0	-	-	X	
30 min, 10 sec	Notch 3	23.5 ± 3.0	X	X	X	
31	Notch 3	23.5 ± 3.0	X	X	X	
32	Notch 3	23.5 ± 3.0	X	X	X	
33	Notch 3	23.5 ± 3.0	X	X	X	
34	Notch 3	23.5 ± 3.0	X	X	X	
35	Notch 3	23.5 ± 3.0	X	X	X	
35 min, 50 sec	Notch 3	23.5 ± 3.0	X	X	X	
36	Notch 4	35.0 ± 3.0	-	-	X	
36 min, 10 sec	Notch 4	35.0 ± 3.0	X	X	X	
37	Notch 4	35.0 ± 3.0	X	X	X	
38	Notch 4	35.0 ± 3.0	X	X	X	
39	Notch 4	35.0 ± 3.0	X	X	X	
40	Notch 4	35.0 ± 3.0	X	X	X	
41	Notch 4	35.0 ± 3.0	X	X	X	
41 min, 50 sec	Notch 4	35.0 ± 3.0	X	X	X	

Appendix I (cont.) - EPA Test Sequence for Locomotives and Locomotive Engines. Passenger (Traction Power Only); Freight; and Switch Operations. (Time vs Engine Operational Setting and Emission Measurements).

Engine Operational Setting Expressed as Throttle Notch Position, or Engine Power if Discrete Throttle Notch Positions Are Not Used.

Time	Throttle Notch or Power Setting (Mode):		HC, CO, NOx	Emissions Measured
	Throttle Notch Setting	% Rated Power Setting		
42	Notch 5	48.5 ± 3.5	-	X
42 min, 10 sec	Notch 5	48.5 ± 3.5	X	X
43	Notch 5	48.5 ± 3.5	X	X
44	Notch 5	48.5 ± 3.5	X	X
45	Notch 5	48.5 ± 3.5	X	X
46	Notch 5	48.5 ± 3.5	X	X
47	Notch 5	48.5 ± 3.5	X	X
47 min, 50 sec	Notch 5	48.5 ± 3.5	X	X
48	Notch 6	64.0 ± 4.0	-	X
48 min, 10 sec	Notch 6	64.0 ± 4.0	X	X
49	Notch 6	64.0 ± 4.0	X	X
50	Notch 6	64.0 ± 4.0	X	X
51	Notch 6	64.0 ± 4.0	X	X
52	Notch 6	64.0 ± 4.0	X	X
53	Notch 6	64.0 ± 4.0	X	X
53 min, 50 sec	Notch 6	64.0 ± 4.0	X	X
54	Notch 7	85.0 ± 4.0	-	X
54 min, 10 sec	Notch 7	85.0 ± 4.0	X	X
55	Notch 7	85.0 ± 4.0	X	X
56	Notch 7	85.0 ± 4.0	X	X
57	Notch 7	85.0 ± 4.0	X	X
58	Notch 7	85.0 ± 4.0	X	X
59	Notch 7	85.0 ± 4.0	X	X
59 min, 50 sec	Notch 7	85.0 ± 4.0	X	X



Appendix I (cont.) - EPA Test Sequence for Locomotives and Locomotive Engines. Passenger (Traction Power Only); Freight; and Switch Operations. (Time vs Engine Operational Setting and Emission Measurements).

Engine Operational Setting Expressed as Throttle Notch Position, or Engine Power if Discrete Throttle Notch Positions Are Not Used.

<u>PM</u>	<u>(min and sec)</u>	<u>Throttle Notch Setting</u>	<u>Throttle Notch or Power Setting (Mode):</u>		<u>Emissions Measured</u>	
			<u>% Rated Power Setting</u>	<u>HC, CO, NOx</u>	<u>HC, CO, NOx</u>	<u>HC, CO, NOx</u>
60		Notch 8	100.0	-	-	X
60 min, 10 sec		Notch 8	100.0	X	X	X
61		Notch 8	100.0	X	X	X
62		Notch 8	100.0	X	X	X
63		Notch 8	100.0	X	X	X
64		Notch 8	100.0	X	X	X
65		Notch 8	100.0	X	X	X
66		Notch 8	100.0	X	X	X
67		Notch 8	100.0	X	X	X
68		Notch 8	100.0	X	X	X
69		Notch 8	100.0	X	X	X
70		Notch 8	100.0	X	X	X
71		Notch 8	100.0	X	X	X
72		Notch 8	100.0	X	X	X
73		Notch 8	100.0	X	X	X
74		Notch 8	100.0	X	X	X
75 min, 50 sec		Notch 8	100.0	X	X	X

Appendix I (cont.) - EPA Test Sequence for Locomotives and Locomotive Engines. Passenger (Traction Power Only); Freight; and Switch Operations. (Time vs Engine Operational Setting and Emission Measurements).

Engine Operational Setting Expressed as Throttle Notch Position, or Engine Power if Discrete Throttle Notch Positions Are Not Used.

<u>(min and sec)</u>	<u>Throttle Notch Setting</u>	<u>Throttle Notch or Power Setting (Mode):</u>			<u>Emissions Measured</u>		
		<u>% Rated Power Setting</u>	<u>HC, CO, NOx</u>	<u>PM</u>	<u>Smoke</u>		
76	Notch 7	85.0 ± 4.0	X				
76 min, 59 sec	Notch 7	85.0 ± 4.0	X				
77	Notch 6	64.0 ± 4.0	X				
77 min, 59 sec	Notch 6	64.0 ± 4.0	X				
78	Notch 5	48.5 ± 3.5	X				
78 min, 59 sec	Notch 5	48.5 ± 3.5	X				
79	Notch 4	35.0 ± 3.0	X				
79 min, 59 sec	Notch 4	35.0 ± 3.0	X				
80	Notch 3	23.5 ± 3.0	X				
80 min, 59 sec	Notch 3	23.5 ± 3.0	X				
81	Notch 2	11.5 ± 2.0	X				
81 min, 59 sec	Notch 2	11.5 ± 2.0	X				
82	Notch 1	4.5 ± 1.5	X				
82 min, 59 sec	Notch 1	4.5 ± 1.5	X				
83	Normal Idle	Actual	X				
83 min, 59 sec	Normal Idle	Value	X				

End

NOTE: Tolerance on start and end times for modes and for sample collection or emission measurement is ±5 seconds.

**Appendix II - EPA Test Sequence for Locomotives and Locomotive Engines. Passenger, Hotel Power Operations. (Time vs Engine Operational Setting and Emission Measurements)**

Engine Operational Setting Expressed as Throttle Notch Position, or Engine Power if Discrete Throttle Notch Positions Are Not Used.

(min and sec)	Throttle Notch Setting		Throttle Notch or Power Setting (Mode):		Emissions Measured		
	Throttle Notch Setting	% Rated Power Setting	HC, CO, NOx	PM	Smoke		
0	Hotel Idle	80% of Maximum Hotel Power	-	-	X		X
0 min, 10 sec	Hotel Idle	"	X	X	X		X
1	Hotel Idle	"	X	X	X		X
2	Hotel Idle	"	X	X	X		X
3	Hotel Idle	"	X	X	X		X
4	Hotel Idle	"	X	X	X		X
5	Hotel Idle	"	X	X	X		X
5 min, 50 sec	Hotel Idle	"	X	X	X		X
6	Hotel Dynamic Brake	80% of Maximum Hotel Power Plus 80% of Maximum Dynamic Brake Power	-	-	X		X
6 min, 10 sec	Hotel Dynamic Brake	"	X	X	X		X
7	Hotel Dynamic Brake	"	X	X	X		X
8	Hotel Dynamic Brake	"	X	X	X		X
9	Hotel Dynamic Brake	"	X	X	X		X
10	Hotel Dynamic Brake	"	X	X	X		X
11	Hotel Dynamic Brake	"	X	X	X		X
11 min, 50 sec	Hotel Dynamic Brake	"	X	X	X		X
12	Hotel Notch 1	80% of Maximum Hotel Power Plus 4.5 ± 1.5% of (Rated Power Minus 80% of Maximum Hotel Power)	-	-	X		X
12 min, 10 sec	Hotel Notch 1	"	X	X	X		X
13	Hotel Notch 1	"	X	X	X		X
14	Hotel Notch 1	"	X	X	X		X
15	Hotel Notch 1	"	X	X	X		X
16	Hotel Notch 1	"	X	X	X		X
17	Hotel Notch 1	"	X	X	X		X
17 min, 50 sec	Hotel Notch 1	"	X	X	X		X
18	Hotel Notch 2	80% of Maximum Hotel Power Plus 11.5 ± 2.0% of (Rated Power Minus 80% of Maximum Hotel Power)	-	-	X		X
18 min, 10 sec	Hotel Notch 2	"	X	X	X		X
19	Hotel Notch 2	"	X	X	X		X
20	Hotel Notch 2	"	X	X	X		X
21	Hotel Notch 2	"	X	X	X		X
22	Hotel Notch 2	"	X	X	X		X
23	Hotel Notch 2	"	X	X	X		X
23 min, 50 sec	Hotel Notch 2	"	X	X	X		X

Appendix II (cont.) - EPA Test Sequence for Locomotives and Locomotive Engines. Passenger, Hotel Power Operations. (Time vs Engine Operational Setting and Emission Measurements)

Engine Operational Setting Expressed as Throttle Notch Position, or Engine Power if Discrete Throttle Notch Positions Are Not Used.

Time	Throttle Notch or Power Setting (Mode):	Throttle Notch Setting	% Rated Power Setting	Emissions Measured		
				HC, CO, NOx	PM	Smoke
24	Hotel Notch 3	Hotel Notch 3	80% of Maximum Hotel Power Plus 23.5 ± 3.0% of (Rated Power Minus Power)	-	-	X
24 min, 10 sec	Hotel Notch 3	Hotel Notch 3		X	X	X
25	Hotel Notch 3	Hotel Notch 3		X	X	X
26	Hotel Notch 3	Hotel Notch 3		X	X	X
27	Hotel Notch 3	Hotel Notch 3		X	X	X
28	Hotel Notch 3	Hotel Notch 3		X	X	X
29	Hotel Notch 3	Hotel Notch 3		X	X	X
29 min, 50 sec	Hotel Notch 3	Hotel Notch 3		X	X	X
30	Hotel Notch 4	Hotel Notch 4	80% of Maximum Hotel Power Plus 35.0 ± 3.0% of (Rated Power Minus Power)	-	-	X
30 min, 10 sec	Hotel Notch 4	Hotel Notch 4		X	X	X
31	Hotel Notch 4	Hotel Notch 4		X	X	X
32	Hotel Notch 4	Hotel Notch 4		X	X	X
33	Hotel Notch 4	Hotel Notch 4		X	X	X
34	Hotel Notch 4	Hotel Notch 4		X	X	X
35	Hotel Notch 4	Hotel Notch 4		X	X	X
35 min, 50 sec	Hotel Notch 4	Hotel Notch 4		X	X	X
36	Hotel Notch 5	Hotel Notch 5	80% of Maximum Hotel Power Plus 48.5 ± 3.5% of (Rated Power Minus Power)	-	-	X
36 min, 10 sec	Hotel Notch 5	Hotel Notch 5		X	X	X
37	Hotel Notch 5	Hotel Notch 5		X	X	X
38	Hotel Notch 5	Hotel Notch 5		X	X	X
39	Hotel Notch 5	Hotel Notch 5		X	X	X
40	Hotel Notch 5	Hotel Notch 5		X	X	X
41	Hotel Notch 5	Hotel Notch 5		X	X	X
41 min, 50 sec	Hotel Notch 5	Hotel Notch 5		X	X	X
42	Hotel Notch 6	Hotel Notch 6	80% of Maximum Hotel Power Plus 64.0 ± 4.0% of (Rated Power Minus Power)	-	-	X
42 min, 10 sec	Hotel Notch 6	Hotel Notch 6		X	X	X
43	Hotel Notch 6	Hotel Notch 6		X	X	X
44	Hotel Notch 6	Hotel Notch 6		X	X	X
45	Hotel Notch 6	Hotel Notch 6		X	X	X
46	Hotel Notch 6	Hotel Notch 6		X	X	X
47	Hotel Notch 6	Hotel Notch 6		X	X	X
47 min, 50 sec	Hotel Notch 6	Hotel Notch 6		X	X	X

Appendix II (cont.) - EPA Test Sequence for Locomotives and Locomotive Engines. Passenger, Hotel Power Operations. (Time vs Engine Operational Setting and Emission Measurements)

Engine Operational Setting Expressed as Throttle Notch Position, or Engine Power if Discrete Throttle Notch Positions Are Not Used.

Time	Throttle Notch Setting	Throttle Notch or Power Setting (Mode):	% Rated Power Setting	Emissions Measured		
				HC, CO, NOx	PM	Smoke
48	Hotel Notch 7		80% of Maximum Hotel Power Plus 85.0 ± 4.0% of (Rated Power Minus 80% of Maximum Hotel Power)	-	-	X
48 min, 10 sec	Hotel Notch 7			X	X	X
49	Hotel Notch 7			X	X	X
50	Hotel Notch 7			X	X	X
51	Hotel Notch 7			X	X	X
52	Hotel Notch 7			X	X	X
53	Hotel Notch 7			X	X	X
53 min, 50 sec	Hotel Notch 7			X	X	X
54	Hotel Notch 8		100.0	-	-	X
54 min, 10 sec	Hotel Notch 8			X	X	X
55	Hotel Notch 8		100.0	X	X	X
56	Hotel Notch 8		100.0	X	X	X
57	Hotel Notch 8		100.0	X	X	X
58	Hotel Notch 8		100.0	X	X	X
59	Hotel Notch 8		100.0	X	X	X
60	Hotel Notch 8		100.0	X	X	X
61	Hotel Notch 8		100.0	X	X	X
62	Hotel Notch 8		100.0	X	X	X
63	Hotel Notch 8		100.0	X	X	X
64	Hotel Notch 8		100.0	X	X	X
65	Hotel Notch 8		100.0	X	X	X
66	Hotel Notch 8		100.0	X	X	X
67	Hotel Notch 8		100.0	X	X	X
68	Hotel Notch 8		100.0	X	X	X
68 min, 50 sec	Hotel Notch 8			X	X	X
69	Hotel Notch 7		80% Max. Htl.+85.0±4.0% (Rated-80% Max. Htl.)	X	X	X
69 min, 59 sec	Hotel Notch 7			X	X	X
70	Hotel Notch 6		80% Max. Htl.+64.0±4.0% (Rated-80% Max. Htl.)	X	X	X
70 min, 59 sec	Hotel Notch 6			X	X	X
71	Hotel Notch 5		80% Max. Htl.+48.5±3.5% (Rated-80% Max. Htl.)	X	X	X
71 min, 59 sec	Hotel Notch 5			X	X	X
72	Hotel Notch 4		80% Max. Htl.+35.0±3.0% (Rated-80% Max. Htl.)	X	X	X
72 min, 59 sec	Hotel Notch 4			X	X	X

73                      Hotel Notch 3  
73 min, 59 sec      Hotel Notch 3

80% Max. Htl. +23.5±3.05 X  
(Rated-80% Max. Htl.)      X

Appendix II (cont.) -

EPA Test Sequence for Locomotives and Locomotive Engines. Passenger, Hotel Power Operations. (Time vs Engine Operational Setting and Emission Measurements)

Engine Operational Setting Expressed as Throttle Notch Position, or Engine Power if Discrete Throttle Notch Positions Are Not Used.

<u>Time</u>	<u>(min and sec)</u>	<u>Throttle Notch Setting</u>	<u>Throttle Notch or Power Setting (Mode):</u>	<u>Emissions Measured</u>		
				<u>HC, CO, NOx</u>	<u>PM</u>	<u>Smoke</u>
74		Hotel Notch 2	80% Max. Ht1.+11.5±2.0% (Rated-80% Max. Ht1.)	X		
74 min, 59 sec		Hotel Notch 2		X		
75		Hotel Notch 1	80% Max. Ht1.+4.5±1.5% (Rated-80% Max. Ht1.)	X		
75 min, 59 sec		Hotel Notch 1		X		
76		Hotel Idle	80% Max. Hotel Power	X		
76 min, 59 sec		Hotel Idle	"	X		

End

NOTE: Tolerance on start and end times for modes and for sample collection or emission measurement is ±5 seconds.

**Appendix III - Reserved**



## Appendix IV - Locomotive and Engine Parameters and Specifications

### I. Basic Engine Parameters -- Reciprocating Engines.

1. Compression ratio.
2. Type of air aspiration (natural, Roots blown, supercharged, turbocharged).
3. Valves (intake and exhaust).
  - a. Head diameter dimension.
  - b. Valve lifter or actuator type and valve lash dimension.
4. Camshaft timing.
  - a. Valve opening - intake exhaust (degrees from TDC or BDC).
  - b. Valve closing - intake exhaust (degrees from TDC or BDC).
  - c. Valve overlap (degrees).
5. Ports -- two stroke engines (intake and/or exhaust).
  - a. Flow area.
  - b. Opening timing (degrees from TDC or BDC).
  - c. Closing timing (degrees from TDC or BDC).

### II. Intake Air System.

1. Roots blower/supercharger/turbocharger calibration.
2. Charge air cooling.
  - a. Type (air-to-air; air-to-liquid).
  - b. Type of liquid cooling (engine coolant, dedicated cooling system).
  - c. Performance (charge air delivery temperature (°F) at rated power and one other power level under ambient conditions of 80°F and 110°F, and 3 minutes and 15 minutes after selecting rated power, and 3 minutes and 5 minutes after selecting other power level).
3. Temperature control system calibration.
4. Maximum allowable inlet air restriction.

### III. Fuel System.

1. General.
  - a. Engine idle speed.
2. Carburetion.
  - a. Air-fuel flow calibration.
  - b. Idle mixture.
  - c. Transient enrichment system calibration.
  - d. Starting enrichment system calibration.
  - e. Altitude compensation system calibration.

- f. Hot idle compensation system calibration.
  - 3. Fuel injection -- non-compression ignition engines.
    - a. Control parameters and calibrations.
    - b. Idle mixture.
    - c. Fuel shutoff system calibration.
    - c. Starting enrichment system calibration.
    - d. Transient enrichment system calibration.
    - e. Air-fuel flow calibration.
    - f. Altitude compensation system calibration.
    - g. Operating pressure(s).
    - h. Injector timing calibration.
  - 4. Fuel injection -- compression ignition engines.
    - a. Control parameters and calibrations.
    - b. Transient enrichment system calibration.
    - c. Air-fuel flow calibration.
    - d. Altitude compensation system calibration.
    - e. Operating pressure(s).
    - f. Injector timing calibration.
- IV. Ignition System -- non-compression ignition engines.
  - 1. Control parameters and calibration.
  - 2. Initial timing setting.
  - 3. Dwell setting.
  - 4. Altitude compensation system calibration.
  - 5. Spark plug voltage.
- V. Engine Cooling System.
  - 1. Thermostat calibration.
- VI. Exhaust System.
  - 1. Maximum allowable back pressure.
- VII. Exhaust Emission Control System.
  - 1. Air injection system.
    - a. Control parameters and calibrations.
    - b. Pump flow rate.
  - 2. EGR system.
    - a. Control parameters and calibrations.
    - b. EGR valve flow calibration.
  - 3. Catalytic converter system.
    - a. Active surface area.
    - b. Volume of catalyst.
    - c. Conversion efficiency.

4. Backpressure.

VIII. Crankcase Emission Control System.

1. Control parameters and calibrations.
2. Valve calibrations.

IX. Auxiliary Emission Control Devices (AECD).

1. Control parameters and calibrations.
2. Component calibration(s).

X. Evaporative Emission Control System.

1. Control parameters and calibrations.
2. Fuel tank.
  - a. Volume.
  - b. Pressure and vacuum relief settings.

## **Appendix V - Interpretive Ruling for § 92.506 -- Remedial Plans**

The purpose of this rule is to set forth EPA's interpretation regarding one aspect of a motor vehicle or motor vehicle engine manufacturer's recall liability under section 207(c)(1) of the Clean Air Act, 42 U.S.C. 7641(c)(1). This rule will provide guidance to vehicle and engine manufacturers to better enable them to submit acceptable remedial plans.

Section 207(c)(1) requires the Administrator to base a recall order on a determination that a substantial number of in-use vehicles or engines within a given class or category of vehicles or engines, although properly maintained and used, fail to conform to the regulations prescribed under section 202 when in actual use throughout their useful lives. After making such a determination, he shall require the manufacturer to submit a plan to remedy the nonconformity of any such vehicles or engines. The plan shall provide that the manufacturer will remedy, at the manufacturer's expense, all properly maintained and used vehicles which experienced the nonconformity during their useful lives regardless of their age or mileage at the time of repair.