

§ 1039.225 How do I amend my application for certification to include new or modified engines or to change an FEL?

Before we issue you a certificate of conformity, you may amend your application to include new or modified engine configurations, subject to the provisions of this section. After we have issued your certificate of conformity, you may send us an amended application requesting that we include new or modified engine configurations within the scope of the certificate, subject to the provisions of this section. You must amend your application if any changes occur with respect to any information included in your application.

(a) You must amend your application before you take either of the following actions:

(1) Add an engine (that is, an additional engine configuration) to an engine family. In this case, the engine added must be consistent with other engines in the engine family with respect to the criteria listed in §1039.230.

(2) Change an engine already included in an engine family in a way that may affect emissions, or change any of the components you described in your application for certification. This includes production and design changes that may affect emissions any time during the engine's lifetime.

(3) Modify an FEL for an engine family, as described in paragraph (f) of this section.

(b) To amend your application for certification, send the Designated Compliance Officer the following information:

(1) Describe in detail the addition or change in the engine model or configuration you intend to make.

(2) Include engineering evaluations or data showing that the amended engine family complies with all applicable requirements. You may do this by showing that the original emission-data engine is still appropriate with respect to showing compliance of the amended family with all applicable requirements.

(3) If the original emission-data engine for the engine family is not appropriate to show compliance for the new or modified nonroad engine, include

new test data showing that the new or modified nonroad engine meets the requirements of this part.

(c) We may ask for more test data or engineering evaluations. You must give us these within 30 days after we request them.

(d) For engine families already covered by a certificate of conformity, we will determine whether the existing certificate of conformity covers your new or modified nonroad engine. You may ask for a hearing if we deny your request (see §1039.820).

(e) For engine families already covered by a certificate of conformity, you may start producing the new or modified nonroad engine anytime after you send us your amended application, before we make a decision under paragraph (d) of this section. However, if we determine that the affected engines do not meet applicable requirements, we will notify you to cease production of the engines and may require you to recall the engines at no expense to the owner. Choosing to produce engines under this paragraph (e) is deemed to be consent to recall all engines that we determine do not meet applicable emission standards or other requirements and to remedy the nonconformity at no expense to the owner. If you do not provide information required under paragraph (c) of this section within 30 days, you must stop producing the new or modified nonroad engines.

(f) You may ask to change your FEL in the following cases:

(1) You may ask to raise your FEL after the start of production. You may not apply the higher FEL to engines you have already introduced into commerce. Use the appropriate FELs with corresponding sales volumes to calculate your average emission level, as described in subpart H of this part. In your request, you must demonstrate that you will still be able to comply with the applicable average emission standards as specified in subparts B and H of this part.

(2) You may ask to lower the FEL for your engine family after the start of production only when you have test data from production engines indicating that your engines comply with the lower FEL. You may create a separate subfamily with the lower FEL.

§ 1039.230

Otherwise, you must use the higher FEL for the family to calculate your average emission level under subpart H of this part.

(3) If you change the FEL during production, you must include the new FEL on the emission control information label for all engines produced after the change.

[69 FR 39213, June 29, 2004, as amended at 70 FR 40463, July 13, 2005]

§ 1039.230 How do I select engine families?

(a) Divide your product line into families of engines that are expected to have similar emission characteristics throughout the useful life. Your engine family is limited to a single model year.

(b) Group engines in the same engine family if they are the same in all the following aspects:

- (1) The combustion cycle and fuel.
 - (2) The cooling system (water-cooled vs. air-cooled).
 - (3) Method of air aspiration.
 - (4) Method of exhaust aftertreatment (for example, catalytic converter or particulate trap).
 - (5) Combustion chamber design.
 - (6) Bore and stroke.
 - (7) Number of cylinders (for engines with aftertreatment devices only).
 - (8) Cylinder arrangement (for engines with aftertreatment devices only).
 - (9) Method of control for engine operation other than governing (*i.e.*, mechanical or electronic).
 - (10) Power category.
 - (11) Numerical level of the emission standards that apply to the engine.
- (c) You may subdivide a group of engines that is identical under paragraph (b) of this section into different engine families if you show the expected emission characteristics are different during the useful life.
- (d) You may group engines that are not identical with respect to the things listed in paragraph (b) of this section in the same engine family if you show that their emission characteristics during the useful life will be similar.
- (e) If you combine engines from different power categories into a single engine family under paragraph (d) of this section, you must certify the engine family to the more stringent set

40 CFR Ch. I (7–1–06 Edition)

of standards from the two power categories in that model year.

§ 1039.235 What emission testing must I perform for my application for a certificate of conformity?

This section describes the emission testing you must perform to show compliance with the emission standards in § 1039.101(a) and (b) or § 1039.102(a) and (b). See § 1039.205(p) regarding emission testing related to the NTE standards. See § 1039.240, § 1039.245, and 40 CFR part 1065, subpart E, regarding service accumulation before emission testing.

(a) Test your emission-data engines using the procedures and equipment specified in subpart F of this part.

(b) Select an emission-data engine from each engine family for testing. Select the engine configuration with the highest volume of fuel injected per cylinder per combustion cycle at the point of maximum torque—unless good engineering judgment indicates that a different engine configuration is more likely to exceed (or have emissions nearer to) an applicable emission standard or FEL. If two or more engines have the same fueling rate at maximum torque, select the one with the highest fueling rate at rated speed. In making this selection, consider all factors expected to affect emission-control performance and compliance with the standards, including emission levels of all exhaust constituents, especially NO_x and PM.

(c) We may measure emissions from any of your test engines or other engines from the engine family, as follows:

(1) We may decide to do the testing at your plant or any other facility. If we do this, you must deliver the test engine to a test facility we designate. The test engine you provide must include appropriate manifolds, aftertreatment devices, electronic control units, and other emission-related components not normally attached directly to the engine block. If we do the testing at your plant, you must schedule it as soon as possible and make available the instruments, personnel, and equipment we need.

(2) If we measure emissions on one of your test engines, the results of that