

## Environmental Protection Agency

## § 92.707

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 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 first class 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 (c) if he/she determines that they constitute an un-

warranted 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 change, repair, or modification reasonably designed and necessary to demonstrate the effectiveness of the change, repair, or modification.

NOTE TO §92.705: An interpretive ruling regarding §92.705 is published in Appendix II to this part.

### § 92.706 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 §92.709 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 §92.709 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.

### § 92.707 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 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 effects, 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 effects, 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 of

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.

**§ 92.708 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