

§92.513

or remanufacturer 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, or auditing if applicable, and must commit to remedy any nonconformity at no expense to the owner.

§92.513 Request for public hearing.

(a) If the manufacturer or remanufacturer disagrees with the Administrator's decision to suspend or revoke a certificate or disputes the basis for an automatic suspension pursuant to §92.512(a), the manufacturer or remanufacturer may request a public hearing.

(b) The manufacturer's or remanufacturer's request shall be filed with the Administrator not later than 30 days after the Administrator's notification of his or her decision to suspend or revoke, unless otherwise specified by the Administrator. The manufacturer or remanufacturer shall simultaneously serve two copies of this request upon the Director of the Engine Programs and Compliance Division, Office of Mobile Sources and file two copies with the Hearing Clerk of the Agency. Failure of the manufacturer or remanufacturer 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 or remanufacturer a hearing to contest the suspension or revocation.

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

(1) A statement as to which 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 or remanufacturer at the hearing, except that in the case of the hearing requested under §92.512(j), the hearing is restricted to the following issues:

(i) Whether tests or audits have been properly conducted (specifically, whether the tests were conducted in accordance with applicable regulations under this part and whether test equip-

40 CFR Ch. I (7-1-04 Edition)

ment was properly calibrated and functioning);

(ii) 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 or auditing which would invalidate the Administrator's decision under §92.512(c);

(3) A statement specifying reasons why the manufacturer or remanufacturer 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 or remanufacturer'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.

§92.514 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).

(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 § 92.512(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 § 92.513(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 § 92.513 to challenge a suspension of a certificate of conformity for the reason(s) specified in § 92.512(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 or remanufacturer, 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 § 92.516.

(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 § 92.513(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 § 92.513(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, 1200 Pennsylvania Ave., NW., Washington, DC 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 § 92.513 will be

§92.515

scheduled to commence within 14 days of receipt of the request for a hearing.

§92.515 Hearing procedures.

The procedures provided in §86.1014-84(i) through (s) of this chapter apply for hearings requested pursuant to §92.513 regarding suspension, revocation, or voiding of a certificate of conformity.

§92.516 Appeal of hearing decision.

The procedures provided in §86.1014-84(t) through (aa) of this chapter apply for appeals filed with respect to hearings held pursuant to §92.515.

§92.517 Treatment of confidential information.

Except for information required by §92.508(e)(2) and quarterly emission test results described in §92.508(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 §92.4 apply to the information required by §92.508(e)(2) and all other information submitted pursuant to this subpart.

Subpart G—In-Use Testing Program

§92.601 Applicability.

The requirements of this subpart are applicable to all manufacturers and remanufacturers of locomotives subject to the provisions of subpart A of this part, including all locomotives powered by any locomotive engines subject to the provisions of subpart A of this part.

§92.602 Definitions.

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

§92.603 General provisions.

(a) EPA shall annually identify engine families and configurations within families on which the manufacturer or remanufacturer must conduct in-use emissions testing pursuant to the requirements of this section.

40 CFR Ch. I (7-1-04 Edition)

(1) Manufacturers and remanufacturers shall test one locomotive engine family each year for which it has received a certificate of conformity from EPA. Where a manufacturer holds certificates of conformity for both freshly manufactured and remanufactured locomotive engine families, the Administrator may require the manufacturer to test one freshly manufactured engine family and one remanufactured engine family. The Administrator may require a manufacturer or remanufacturer to test additional engine families if he/she has reason to believe that locomotives in an engine family do not comply with emission standards in use.

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

(b) Locomotive manufacturers or remanufacturers shall perform emission testing of a sample of in-use locomotives from an engine family, as specified in §92.605. Manufacturers or remanufacturers shall submit data from this in-use testing to EPA. EPA will use these data, and any other data available to EPA, to determine the compliance status of classes of locomotives, including for purposes of subpart H of this part, and whether remedial action is appropriate.

§92.604 In-use test procedure.

(a) Testing conducted under this subpart shall be conducted on locomotives; testing under this subpart shall not be conducted using an engine that is not installed in a locomotive at the time of testing.

(b) Locomotives tested under this subpart shall be tested using the locomotive test procedures outlined in subpart B of this part, except as provided in this section.

(c) 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 not conducted with locomotive, but with a development engine, or other engine. In such cases, the Administrator shall require deviations from the certification test procedures