

## § 90.513

## 40 CFR Ch. I (7–1–07 Edition)

(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 Appendix A of this subpart were followed and whether there exists a basis for distinguishing engines produced at plants other than the one from which engines were selected for testing which would invalidate the Administrator's decision under § 90.511(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.

[60 FR 34598, July 3, 1995, as amended at 64 FR 15245, Mar. 30, 1999]

### § 90.513 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. 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 § 90.511(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 exists with respect to the issues specified in § 90.512(c)(2), the Administrator shall enter an order denying the request for a hearing and reaffirming the original decision to suspend or revoke a certificate of conformity, if this decision has been made pursuant to § 90.511(e) at any time prior to the decision to deny the request for a hearing.

(2) In the case of a hearing requested under § 90.512 to challenge a proposed suspension of a certificate of conformity for the reasons specified in § 90.511(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 exists with respect to the issue of whether the refusal to comply with the provisions of a test order or any other requirement of § 90.503 was caused by conditions and circumstances outside the control of the manufacturer, the Administrator shall 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 § 90.515.

(4) If the Administrator determines that a genuine and substantial question of fact 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

**Environmental Protection Agency**

**Pt. 90, Subpt. F, App. A**

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 §90.512(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 §90.512(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 Manufacturers Operations Division must be sent by registered mail to: Director, Manufacturers Operations Division, U.S. Environmental Protection Agency, 6405-J, 401 M St., SW., 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 §90.512 will be scheduled to commence within 14 days of receipt of the application in §90.512.

**§90.514 Hearing procedures.**

The procedures provided in §86.1014-84 (i) to (s) apply for hearings requested pursuant to §90.512, suspension, revocation, or voiding of a certificate of conformity.

**§90.515 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 §90.514.

**§90.516 Treatment of confidential information.**

The provisions for treatment of confidential information described in §90.4 apply to this subpart.

**APPENDIX A TO SUBPART F OF PART 90—  
SAMPLING PLANS FOR SELECTIVE ENFORCEMENT AUDITING OF SMALL  
NONROAD ENGINES**

**TABLE 1—SAMPLING PLAN CODE LETTER**

Annual engine family sales	Code letter
50-99 .....	A
100-299 .....	B
300-499 .....	C
500 or greater .....	D

**TABLE 2—SAMPLE PLAN FOR CODE LETTER "A"  
[Sample inspection criteria]**

Stage	Pass No.	Fail No.	Stage	Pass No.	Fail No.1
1 .....	(1)	(2)	16	6	11
2 .....	(1)	(2)	17	7	12
3 .....	(1)	(2)	18	7	12
4 .....	0	(2)	19	8	13
5 .....	0	(2)	20	8	13
6 .....	1	6	21	9	14
7 .....	1	7	22	10	14
8 .....	2	7	23	10	15
9 .....	2	8	24	11	15
10 .....	3	8	25	11	16
11 .....	3	8	26	12	16
12 .....	4	9	27	12	17