

**§92.216**

**40 CFR Ch. I (7-1-07 Edition)**

(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 or the Assistant Administrator for Enforcement and Compliance Assurance.

(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.

[63 FR 18998, Apr. 16, 1998, as amended at 70 FR 40456, July 13, 2005]

**§92.216 Hearing procedures.**

(a)(1) After granting a request for a hearing under §92.210 or §92.208, the Administrator shall designate a Presiding Officer for the hearing.

(2) [Reserved]

(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 §92.208, 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 §92.210 or §92.208 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 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.

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(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/her.

(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.

[63 FR 18998, Apr. 16, 1998, as amended at 70 FR 40456, July 13, 2005]

EFFECTIVE DATE NOTE: At 63 FR 19053, Apr. 16, 1998, § 92.216 was added. This section contains information collection and record-keeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

### Subpart D—Certification Averaging, Banking, and Trading Provisions

#### § 92.301 Applicability.

Locomotive engine families subject to the provisions of subpart A of this part are eligible to participate in the certification averaging, banking, and trading program described in this subpart. The provisions of this subpart apply to manufacturers and remanufacturers of new locomotives and new locomotive engines manufactured or re-

manufactured in the 1999 model year or later.

#### § 92.302 Definitions.

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

*Applicable standard* means a standard that would have otherwise been applicable had the locomotive or locomotive engine not been certified under this subpart to an FEL different than that standard.

*Broker* means any entity that facilitates a trade between a buyer and seller.

*Buyer* means the entity that receives credits as a result of trade or transfer.

*Reserved credits* means credits that have been generated but have not yet been reviewed by EPA or used to demonstrate compliance under the averaging provisions of this subpart.

*Seller* means the entity that provides credits during a trade or transfer.

*Transfer* means to convey control of credits generated from an individual locomotive to the purchaser, owner or operator of the locomotive at the time of manufacture or remanufacture; or to convey control of previously generated credits from the purchaser, owner or operator of an individual locomotive to the manufacturer or remanufacturer at the time of manufacture or remanufacture.

#### § 92.303 General provisions.

(a) Participation in the averaging, banking and trading program is voluntary. A manufacturer or remanufacturer may choose to involve some or all of its families in any or all aspects of the program.

(b) An engine family is eligible to participate in the certification 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 of this part.

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