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(3) The applicable standards and/or FELs against which each engine family was audited;

(4) For each audit conducted:

(i) A description of the audit locomotive or locomotive engine, including:

(A) Configuration and engine family identification;

(B) Year, make, build date, and remanufacturer date; and

(C) Engine identification number;

(ii) Any other information the Administrator may request relevant to the determination whether the new locomotives or locomotive engines being manufactured or remanufactured by the remanufacturer do in fact conform with the regulations in this part with respect to which the certificate of conformity was issued;

(5) For each failed locomotive or locomotive engine as defined in paragraph (d) of this section, a description of the remedy as required by §92.512(g);

(6) The following signed statement and endorsement by an authorized representative of the remanufacturer:

This report is submitted pursuant to Sections 213 and 208 of the Clean Air Act. This production line auditing program was conducted in complete conformance with all applicable regulations under 40 CFR part 92. No emission-related changes to production processes or quality control procedures for the engine family audited have been made during this production line auditing program that affect locomotives or locomotive engines from the production line. All data and information reported herein is, to the best of (Company Name) knowledge, true and accurate. I am aware of the penalties associated with violations of the Clean Air Act and the regulations thereunder. (Authorized Company Representative.)

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

§92.512 Suspension and revocation of certificates of conformity.

(a)(1) The certificate of conformity is suspended with respect to any locomotive or locomotive engine that fails a production line test pursuant to §92.510(a), effective from the time the testing of that locomotive or locomotive engine is completed.

(2) The certificate of conformity is suspended with respect to any locomotive or locomotive engine that fails

an audit pursuant to §92.511(d), effective from the time that auditing of that locomotive or locomotive engine is completed.

(b)(1) The Administrator may suspend the certificate of conformity for an engine family which is in non-compliance pursuant to §92.510(b), thirty days after the engine family is deemed to be in noncompliance.

(2) The Administrator may suspend the certificate of conformity for an engine family which is determined to have failed an audit pursuant to §92.511(f). This suspension will not occur before thirty days after the engine family is deemed to be in non-compliance.

(c) If the results of testing or auditing pursuant to these regulations indicate that locomotives or engines of a particular family produced at one plant of a manufacturer or remanufacturer do not conform to the regulations with respect to which the certificate of conformity was issued, the Administrator may suspend the certificate of conformity with respect to that family for locomotives or locomotive engines manufactured or remanufactured by the manufacturer or remanufacturer at all other plants.

(d) The Administrator may suspend a certificate of conformity for any locomotive or locomotive engine family in whole or in part if:

(1) The manufacturer or remanufacturer fails to comply with any of the requirements of this subpart.

(2) The manufacturer or remanufacturer submits false or incomplete information in any report or information provided to the Administrator under this subpart.

(3) The manufacturer or remanufacturer renders inaccurate any test data submitted under this subpart.

(4) An EPA enforcement officer is denied the opportunity to conduct activities authorized in this subpart.

(5) An EPA enforcement officer is unable to conduct activities authorized in §92.504 for any reason.

(e) The Administrator shall notify the manufacturer or remanufacturer in writing of any suspension or revocation of a certificate of conformity in whole or in part; a suspension or revocation

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is effective upon receipt of such notification or thirty days from the time an engine family is deemed to be in non-compliance under §§ 92.508(d), 92.510(a), 92.510(b) or 92.511(f), whichever is earlier, except that the certificate is immediately suspended with respect to any failed locomotives or locomotive engines as provided for in paragraph (a) of this section.

(f) The Administrator may revoke a certificate of conformity for an engine family when the certificate has been suspended pursuant to paragraph (b) or (c) of this section if the remedy is one requiring a design change or changes to the locomotive, engine and/or emission control system as described in the application for certification of the affected engine family.

(g) Once a certificate has been suspended for a failed locomotive or locomotive engine, as provided for in paragraph (a) of this section, the manufacturer or remanufacturer must take the following actions before the certificate is reinstated for that failed locomotive or locomotive engine:

(1) Remedy the nonconformity;

(2) Demonstrate that the locomotive or locomotive engine conforms to applicable standards or family emission limits by retesting, or reauditing if applicable, the locomotive or locomotive engine in accordance with this part; and

(3) Submit a written report to the Administrator, after successful completion of testing, or auditing if applicable, on the failed locomotive or locomotive engine, which contains a description of the remedy and test (or audit) results for each locomotive or engine in addition to other information that may be required by this part.

(h) Once a certificate for a failed engine family has been suspended pursuant to paragraph (b) or (c) of this section, the manufacturer or remanufacturer must take the following actions before the Administrator will consider reinstating the certificate:

(1) Submit a written report to the Administrator which identifies the reason for the noncompliance of the locomotives or locomotive engines, describes the remedy, including a description of any quality control and/or quality assurance measures to be taken

by the manufacturer or remanufacturer to prevent future occurrences of the problem, and states the date on which the remedies will be implemented.

(2) Demonstrate that the engine family for which the certificate of conformity has been suspended does in fact comply with the regulations of this part by testing, or auditing if applicable, locomotives or engines selected from normal production runs of that engine family. Such testing (or auditing) must comply with the provisions of this subpart. If the manufacturer or remanufacturer elects to continue testing, or auditing if applicable, individual locomotives or engines after suspension of a certificate, the certificate is reinstated for any locomotive or engine actually determined to be in conformance with the applicable standards or family emission limits through testing, or auditing if applicable, in accordance with the applicable test procedures, provided that the Administrator has not revoked the certificate pursuant to paragraph (f) of this section.

(i) Once the certificate has been revoked for an engine family, if the manufacturer or remanufacturer desires to continue introduction into commerce of a modified version of that family, the following actions must be taken before the Administrator may issue a certificate for that modified family:

(1) If the Administrator determines that the change(s) in locomotive or engine design may have an effect on emission performance deterioration, the Administrator shall notify the manufacturer or remanufacturer, within five working days after receipt of the report in paragraph (g) of this section, whether subsequent testing or auditing if applicable, under this subpart will be sufficient to evaluate the change or changes or whether additional testing or auditing will be required; and

(2) After implementing the change or changes intended to remedy the nonconformity, the manufacturer or remanufacturer must demonstrate that the modified engine family does in fact conform with the regulations of this part by testing, or auditing if applicable, locomotives or engines selected

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from normal production runs of that engine family. When both of these requirements are met, the Administrator shall reissue the certificate or issue a new certificate, as the case may be, to include that family. If this subsequent testing, or auditing if applicable, reveals failing data the revocation remains in effect.

(j) At any time subsequent to an initial suspension of a certificate of conformity for a test or audit locomotive or engine pursuant to paragraph (a) of this section, but not later than 30 days (or such other period as may be allowed by the Administrator) after notification of the Administrator's decision to suspend or revoke a certificate of conformity in whole or in part pursuant to paragraphs (b), (c), or (f) of this section, a manufacturer or remanufacturer may request a hearing as to whether the tests or audits have been properly conducted or any sampling methods have been properly applied.

(k) Any suspension of a certificate of conformity under paragraphs (a), (b), (c) and (d) of this section:

(1) Shall be made only after the manufacturer or remanufacturer concerned has been offered an opportunity for a hearing conducted in accordance with §§92.513, 92.514, and 92.515 and

(2) Need not apply to locomotives or engines no longer in the possession of the manufacturer or remanufacturer.

(l) After the Administrator suspends or revokes a certificate of conformity pursuant to this section or voids a certificate of conformity under §92.215, and prior to the commencement of a hearing under §92.513, if the manufacturer or remanufacturer demonstrates to the Administrator's satisfaction that the decision to suspend, revoke, or void the certificate was based on erroneous information, the Administrator shall reinstate the certificate.

(m) To permit a manufacturer or remanufacturer to avoid storing non-test locomotives or locomotive engines while conducting subsequent testing or auditing of the noncomplying family, a manufacturer or remanufacturer may request that the Administrator conditionally reinstate the certificate for that family. The Administrator may reinstate the certificate subject to the following condition: the manufacturer

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.

[63 FR 18998, Apr. 16, 1998, as amended at 70 FR 40457, July 13, 2005]

§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