

including a description of any proposed quality control and/or quality assurance measures to be taken by the manufacturer 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 these regulations by testing engines selected from normal production runs of that engine family, at the plant(s), port facility(ies) or associated storage facility(ies) specified by the Administrator, in accordance with the conditions specified in the initial test order. If the manufacturer elects to continue testing individual engines after suspension of a certificate, the certificate is reinstated for an engine actually determined to be in conformance with the applicable standards through testing 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(i) Once the certificate has been revoked for a family and the manufacturer desires to continue introduction into commerce of a modified version of that family, the following actions shall be taken before the Administrator may consider issuing a certificate for that modified family:

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

(2) After implementing the change or changes intended to remedy the nonconformity, the manufacturer shall demonstrate that the modified engine family does in fact conform with these regulations by testing engines selected from normal production runs of that modified engine family in accordance with the conditions specified in the initial test order. If the subsequent audit results in passing of the audit, the Administrator shall reissue the certificate or issue a new certificate, as the case may be, to include that family, provided that the manufacturer has satisfied the testing requirements of paragraph (i)(1) of this section. If the subsequent audit is failed, the revocation remains in effect. Any design change approvals under this subpart are

limited to the family affected by the test order.

(j) At any time subsequent to an initial suspension of a certificate of conformity for a test engine pursuant to paragraph (a) of this section, but not later than 15 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 may request a hearing as to whether the tests have been properly conducted or any sampling methods have been properly applied.

(k) Any suspension of a certificate of conformity under paragraph (d) of this section shall:

(1) Be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with §§ 90.512, 90.513, and 90.514 and

(2) Not apply to engines no longer in the possession of the manufacturer.

(l) After the Administrator suspends or revokes a certificate of conformity pursuant to this section and prior to the commencement of a hearing under § 90.512, if the manufacturer 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 to avoid storing non-test engines when conducting an audit of a family subsequent to a failure of an SEA and while reauditing the failed family it may request that the Administrator conditionally reinstate the certificate for that family. The Administrator may reinstate the certificate subject to the condition that the manufacturer commits to recall all engines of that family produced from the time the certificate is conditionally reinstated if the family fails the subsequent audit at the level of the standard and to remedy any nonconformity at no expense to the owner.

#### **§ 90.512 Request for public hearing.**

(a) If the manufacturer disagrees with the Administrator's decision to suspend, revoke or void a certificate or disputes the basis for an automatic suspension pursuant to § 90.511(a), the manufacturer may request a public hearing.

(b) The manufacturer's request shall be filed with the Administrator not later than 15 days after the Administrator's notification of his or her decision to suspend or revoke, unless otherwise

specified by the Administrator. The manufacturer shall simultaneously serve two copies of this request upon the Director of the Manufacturers Operations Division and file two copies with the Hearing Clerk of the Agency. Failure of the manufacturer 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 a hearing to contest the suspension or revocation.

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

(1) A statement as to which engine 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 at the hearing, except that in the case of the hearing requested under § 90.511(j), the hearing is restricted to the following issues:

(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.

#### **§ 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: