

§ 86.612-97

40 CFR Ch. I (7-1-12 Edition)

particular pollutant associated with a particular test procedure pursuant to § 86.608-98(a), the number of vehicles whose final deteriorated test results exceed the emission standard for that pollutant may not be considered any further for purposes of the audit.

(2) CST criteria only. For CST testing pursuant to subpart O, a pass or fail decision is determined according to the pass/fail criteria described in paragraph (c)(1) of this section, except that for each vehicle, the CST in its entirety is considered one pollutant.

(d) Passing or failing of an SEA audit occurs when the decision is made on the last vehicle required to make a decision under paragraph (c) of this section.

(e) The Administrator may terminate testing earlier than required in paragraph (c) of this section.

[59 FR 16304, Apr. 6, 1994]

§ 86.612-97 Suspension and revocation of certificates of conformity.

(a) The certificate of conformity is immediately suspended with respect to any vehicle failing pursuant to § 86.610(b) effective from the time that testing of that vehicle is completed.

(b)(1) *Selective enforcement audits.* The Administrator may suspend the certificate of conformity for a configuration that does not pass a selective enforcement audit pursuant to § 86.610-98(c) based on the first test, or all tests, conducted on each vehicle. This suspension will not occur before ten days after failure to pass the audit.

(2) *California assembly-line quality audit testing.* The Administrator may suspend the certificate of conformity for a 50-state family or configuration tested in accordance with procedures prescribed under § 86.608 that the Executive Officer has determined to be in non-compliance with one or more applicable pollutants based on the requirements specified in Chapter 1 or Chapter 2 of the California Regulatory Requirements Applicable to the National Low Emission Vehicle Program (October, 1996), if the results of vehicle testing conducted by the manufacturer do not meet the acceptable quality level criteria pursuant to § 86.610. The California Regulatory Requirements Applicable to the National Low Emis-

sion Vehicle Program (October, 1996) are incorporated by reference (see § 86.1). A vehicle that is tested by the manufacturer pursuant to California Assembly-Line Quality Audit Test Procedures, in accordance with procedures prescribed under § 86.608, and determined to be a failing vehicle will be treated as a failed vehicle described in § 86.610(b), unless the manufacturer can show that the vehicle would not be considered a failed vehicle using the test procedures specified in § 86.608. This suspension will not occur before ten days after the manufacturer receives written notification that the Administrator has determined the 50-state family or configuration exceeds one or more applicable federal standards.

(c)(1) *Selective enforcement audits.* If the results of vehicle testing pursuant to the requirements of this subpart indicate the vehicles of a particular configuration produced at more than one plant 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 configuration for vehicles manufactured by the manufacturer in other plants of the manufacturer.

(2) *California Assembly-Line Quality Audit Testing.* If the Administrator determines that the results of vehicle testing pursuant to the requirements specified in Chapter 1 or Chapter 2 of the California Regulatory Requirements Applicable to the National Low Emission Vehicle Program (October, 1996) and the procedures prescribed in § 86.608 indicate the vehicles of a particular 50-state engine family or configuration produced at more than one plant do not conform to applicable federal regulations with respect to which a certificate of conformity was issued, the Administrator may suspend, pursuant to paragraph (b)(2) of this section, the certificate of conformity with respect to that engine family or configuration for vehicles manufactured in other plants of the manufacturer. The California Regulatory Requirements Applicable to the National Low Emission Vehicle Program (October, 1996) are incorporated by reference (see § 86.1).

(d) The Administrator will notify the manufacturer in writing of any suspension or revocation of a certificate of conformity in whole or in part: Except, that the certificate of conformity is immediately suspended with respect to any vehicle failing pursuant to § 86.610(b) and as provided for in paragraph (a) of this section.

(e)(1) *Selective Enforcement Audits.* The Administrator may revoke a certificate of conformity for a configuration when the certificate has been suspended pursuant to paragraph (b)(1) or (c)(1) of this section if the proposed remedy for the nonconformity, as reported by the manufacturer to the Administrator, is one requiring a design change(s) to the engine and/or emission control system as described in the Application for Certification of the affected configuration.

(2) *California Assembly-Line Quality Audit Testing.* The Administrator may revoke a certificate of conformity for an engine family or configuration when the certificate has been suspended pursuant to paragraph (b)(2) or (c)(2) of this section if the proposed remedy for the nonconformity, as reported by the manufacturer to the Executive Officer and/or the Administrator, is one requiring a design change(s) to the engine and/or emission control system as described in the Application for Certification of the affected engine family or configuration.

(f) Once a certificate has been suspended for a failed vehicle as provided for in paragraph (a) of this section, the manufacturer must take the following actions:

(1) Before the certificate is reinstated for that failed vehicle—

(i) Remedy the nonconformity; and

(ii) Demonstrate that the vehicle's final deteriorated test results conform to the applicable emission standards or family particulate emission limits, as defined in this part 86 by retesting the vehicle in accordance with the requirements of this subpart.

(2) Submit a written report to the Administrator within thirty days after successful completion of testing on the failed vehicle, which contains a description of the remedy and test results for the vehicle in addition to other in-

formation that may be required by this subpart.

(g) Once a certificate has been suspended pursuant to paragraph (b) or (c) of this section, the manufacturer must take the following actions before the Administrator will consider reinstating such certificate:

(1) Submit a written report to the Administrator which identifies the reason for the noncompliance of the vehicles, describes the proposed remedy, including a description of any proposed quality control and/or quality assurance measures to be taken by the manufacturer to prevent the future occurrence of the problem, and states the date on which the remedies will be implemented.

(2) Demonstrate that the engine family or configuration for which the certificate of conformity has been suspended does in fact comply with the requirements of this subpart by testing vehicles selected from normal production runs of that engine family or configuration at the plant(s) or the facilities specified by the Administrator, in accordance with:

(i) The conditions specified in the initial test order pursuant to § 86.603 for a configuration suspended pursuant to paragraph (b)(1) or (c)(1) of this section; or

(ii) The conditions specified in a test order pursuant to § 86.603 for an engine family or configuration suspended pursuant to paragraph (b)(2) or (c)(2) of this section.

(3) If the Administrator has not revoked the certificate pursuant to paragraph (e) of this section and if the manufacturer elects to continue testing individual vehicles after suspension of a certificate, the certificate is reinstated for any vehicle actually determined to have its final deteriorated test results in conformance with the applicable standards through testing in accordance with the applicable test procedures.

(4) In cases where the Administrator has suspended a certificate of conformity for a 50-state engine family or configuration pursuant to paragraph (b)(2) or (c)(2) of this section, manufacturers may request in writing that the Administrator reinstate the certificate of an engine family or configuration

when, in lieu of the actions described in paragraphs (g) (1) and (2) of this section, the manufacturer has agreed to comply with Chapter 3 of the California Regulatory Requirements Applicable to the National Low Emission Vehicle Program (October, 1996), provided an Executive Order is in place for the engine family or configuration. The California Regulatory Requirements Applicable to the National Low Emission Vehicle Program (October, 1996) are incorporated by reference (see §86.1).

(h) Once a certificate for a failed engine family or configuration has been revoked under paragraph (e) (1) or (2) of this section and the manufacturer desires to introduce into commerce a modified version of that engine family or configuration, the following actions will be taken before the Administrator may issue a certificate for the new engine family or configuration:

(1) If the Administrator determines that the proposed change(s) in vehicle design may have an effect on emission performance deterioration and/or fuel economy, he/she shall notify the manufacturer within five working days after receipt of the report in paragraph (g)(1) of this section or after receipt of information pursuant to paragraph (g)(4) of this section whether subsequent testing under this subpart will be sufficient to evaluate the proposed change(s) or whether additional testing will be required.

(2) After implementing the change(s) intended to remedy the nonconformity, the manufacturer shall demonstrate:

(i) If the certificate was revoked pursuant to paragraph (e)(1) of this section, that the modified vehicle configuration does in fact conform with the requirements of this subpart by testing vehicles selected from normal production runs of that modified vehicle configuration in accordance with the conditions specified in the initial test order pursuant to §86.603. The Administrator shall consider this testing to satisfy the testing requirements of §86.079-32 or §86.079-33 if the Administrator had so notified the manufacturer. If the subsequent testing results in a pass decision pursuant to the criteria in §86.610-96(c), the Administrator shall reissue or amend the certificate, if necessary, to include that configura-

tion: *Provided*, that the manufacturer has satisfied the testing requirements specified in paragraph (h)(1) of this section. If the subsequent audit results in a fail decision pursuant to the criteria in §86.610(c), the revocation remains in effect. Any design change approvals under this subpart are limited to the modification of the configuration specified by the test order.

(ii) If the certificate was revoked pursuant to paragraph (e)(2) of this section, that the modified engine family or configuration does in fact conform with the requirements of this subpart by testing vehicles selected from normal production runs of that modified engine family or configuration in accordance with the conditions specified in a test order pursuant to §86.603. The Administrator shall consider this testing to satisfy the testing requirements of §86.079-32 or §86.079-33 if the Administrator had so notified the manufacturer. If the subsequent testing results in a pass decision pursuant to §86.610(c), the Administrator shall reissue or amend the certificate as necessary: *Provided*, That the manufacturer has satisfied the testing requirements specified in paragraph (h)(1) of this section. If the subsequent testing results in a fail decision pursuant to §86.610(c), the revocation remains in effect. Any design change approvals under this subpart are limited to the modification of engine family or configuration specified by the test order.

(3) In cases where the Administrator has revoked a certificate of conformity for a 50-state engine family or configuration pursuant to paragraph (e)(2) of this section, manufacturers may request in writing that the Administrator reissue the certificate of an engine family or configuration when, in lieu of the actions described in paragraphs (h) (1) and (2) of this section, the manufacturer has complied with Chapter 3 of the California Regulatory Requirements Applicable to the National Low Emission Vehicle Program (October, 1996), provided an Executive Order is in place for the engine family or configuration. The California Regulatory Requirements Applicable to the National Low Emission Vehicle Program (October, 1996) are incorporated by reference (see §86.1).

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(i) A manufacturer may at any time subsequent to an initial suspension of a certificate of conformity with respect to a test vehicle pursuant to paragraph (a) of this section, but not later than fifteen (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 paragraph (b), (c) or (e) of this section, request that the Administrator grant such manufacturer a hearing as to whether the tests have been properly conducted or any sampling methods have been properly applied.

(j) After the Administrator suspends or revokes a certificate of conformity pursuant to this section or notifies a manufacturer of his intent to suspend, revoke or void a certificate of conformity under § 86.084–30(d), and prior to the commencement of a hearing under § 86.614, 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.

(k) To permit a manufacturer to avoid storing non-test vehicles when conducting testing of an engine family or configuration subsequent to suspension or revocation of the certificate of conformity for that engine family or configuration pursuant to paragraph (b), (c), or (e) of this section, the manufacturer may request that the Administrator conditionally reinstate the certificate for that engine family or configuration. The Administrator may reinstate the certificate subject to the condition that the manufacturer consents to recall all vehicles of that engine family or configuration produced from the time the certificate is conditionally reinstated if the engine family or configuration fails the subsequent testing and to remedy any nonconformity at no expense to the owner.

[62 FR 31236, June 6, 1997]

§ 86.614–84 Hearings on suspension, revocation, and voiding of certificates of conformity.

(a) *Applicability.* The procedures prescribed by this section apply whenever

a manufacturer requests a hearing under § 86.084–30(d)(6)(i), § 86.084–30(d)(7), or § 86.612(i).

(b) *Definitions.* The following definitions shall be applicable to this section:

(1) *Hearing Clerk* shall mean the Hearing Clerk of the Environmental Protection Agency.

(2) *Manufacturer* refers to a manufacturer contesting a suspension or revocation order directed at the manufacturer.

(3) *Party* shall include the Agency and the manufacturer.

(4) *Presiding Officer* shall mean an Administrative Law Judge appointed pursuant to 5 U.S.C. 3105 (see also 5 CFR part 930 as amended).

(5) *Environmental Appeals Board* shall mean the Board within the Agency described in section 1.25 of this title. The Administrator delegates to the Environmental Appeals Board authority to issue final decisions in appeals filed under this subpart. Appeals directed by the Administrator, rather than to the Environmental Appeals Board, will not be considered. This delegation of authority to the Environmental Appeals Board does not preclude the Environmental Appeals Board from referring an appeal or a motion filed under this subpart to the Administrator for decision when the Environmental Appeals Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator, all parties shall be so notified and the rules in this part referring to the Environmental Appeals Board shall be interpreted as referring to the Administrator.

(c) *Request for public hearing.* (1) If the manufacturer disagrees with the Administrator's decision to suspend, revoke, or void a certificate or disputes the basis for an automatic suspension under § 86.612(a), it may request a public hearing as described in this section. Requests for such a hearing shall be filed with the Administrator not later than 15 days after the Administrator's notification of his decision to suspend or revoke unless otherwise specified by the Administrator. Two copies of such request shall simultaneously be served upon the Director of the Manufacturers Operations Division and two copies