

## Environmental Protection Agency

## § 86.444-78

issue a certificate of conformity, the Administrator may deem such certificate void ab initio.

(d) In any case in which certification of a vehicle is proposed to be withheld, denied, revoked, or suspended under paragraph (a) (3) or (4) of this section, and in which the Administrator has presented to the manufacturer involved reasonable evidence that a violation of § 86.441 in fact occurred, the manufacturer, if he wishes to contend that, even though the violation occurred, the vehicle in question was not involved in the violation to a degree that would warrant withholding, denial, revocation, or suspension of certification under either paragraph (a) (3) or (4) of this section, shall have the burden of establishing that contention to the satisfaction of the Administrator.

(e) Any revocation or suspension of certification under paragraph (a) of this section shall:

(1) Be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.444 hereof.

(2) Extend no further than to forbid the introduction into commerce of vehicles previously covered by the certification which are still in the hands of the manufacturer, except in cases of such fraud or other misconduct as makes the certification invalid ab initio.

(f) The manufacturer may request in the form and manner specified in § 86.443 that any determination made by the Administrator under paragraph (a) of this section to withhold or deny certification be reviewed in a hearing conducted in accordance with § 86.444. If the Administrator finds, after a review of the request and supporting data, that the request raises a substantial factual issue, he will grant the request with respect to such issue.

[42 FR 1126, Jan. 5, 1977, as amended at 42 FR 56738, Oct. 28, 1977]

### § 86.443-78 Request for hearing.

Within 30 days following receipt of notification that an application has been rejected or that certification has been denied, the manufacturer may request a hearing on the Administrator's determination. The request shall be in writing, signed by an authorized rep-

resentative of the manufacturer and shall include a statement specifying the manufacturer's objections to the Administrator's determinations, and data in support of such objections. If, after the review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, he shall provide the manufacturer a hearing with respect to such issue.

### § 86.444-78 Hearings on certification.

(a)(1) After granting a request for a hearing under § 86.443 the Administrator will designate a Presiding Officer for the hearing.

(2) The General Counsel will represent the Environmental Protection Agency in any hearing under this section.

(3) If a time and place for the hearing have not been fixed by the Administrator under § 86.443, 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 § 86.437, the Administrator may in his discretion direct that all argument and presentation of evidence be concluded within such fixed period not less than 30 days as he 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 himself) shall be the final EPA decision.

(b)(1) Upon his appointment pursuant to paragraph (a) of this section, the Presiding Officer will establish a hearing file. The file shall consist of the notice issue by the Administrator under 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 appeal 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.