

Environmental Protection Agency

§ 60.539

(c), (e), (f)(1), (f)(3), (g)(1) or (g)(2). No person shall advertise for sale, offer for sale, or sell an affected facility labeled under § 60.536(f)(1) except for export.

(d)(1) No commercial owner shall advertise for sale, offer for sale or sell an affected facility permanently labeled under § 60.536 (b) or (c) unless:

(i) The affected facility has affixed to it a removable label pursuant to § 60.536 of this subpart,

(ii) He provides any purchaser or transferee with an owner's manual pursuant to § 60.536(k) of this subpart, and

(iii) He provides any purchaser or transferee with a copy of the catalytic combustor warranty (for affected facilities with catalytic combustors).

(2) No commercial owner shall advertise for sale, offer for sale, or sell an affected facility permanently labeled under § 60.536 (e), (f)(3), or (g), unless the affected facility has affixed to it a removable label pursuant to § 60.536 of this subpart. This prohibition does not apply to wood heaters affected by this subpart that have been previously owned and operated by a noncommercial owner.

(3) A commercial owner other than a manufacturer complies with the requirements of paragraph (d) of this section if he—

(i) Receives the required documentation from the manufacturer or a previous commercial owner and

(ii) Provides that documentation unaltered to any person to whom the wood heater that it covers is sold or transferred.

(e)(1) In any case in which the Administrator revokes a certificate of compliance either for the knowing submission of false or inaccurate information or other fraudulent acts, or based on a finding under § 60.533(l)(1)(ii) that the certification test was not valid, he may give notice of that revocation and the grounds for it to all commercial owners.

(2) From and after the date of receipt of the notice given under paragraph (e)(1) of this section, no commercial owner may sell any wood heater covered by the revoked certificate (other than to the manufacturer) unless

(i) The wood heater has been tested as required by § 60.533(n) and labeled as required by § 60.536(g) or

(ii) The model line has been recertified in accordance with this subpart.

(f) No person shall install or operate an affected facility except in a manner consistent with the instructions on its permanent label and in the owner's manual pursuant to § 60.536(l) of this subpart.

(g) No person shall operate an affected facility which was originally equipped with a catalytic combustor if the catalytic element is deactivated or removed.

(h) No person shall operate an affected facility that has been physically altered to exceed the tolerance limits of its certificate of compliance.

(i) No person shall alter, deface, or remove any permanent label required to be affixed pursuant to § 60.536 of this subpart.

[53 FR 5873, Feb. 26, 1988; 53 FR 14889, Apr. 26, 1988, as amended at 63 FR 64874, Nov. 24, 1998]

§ 60.539 Hearing and appeal procedures.

(a)(1) In any case where the Administrator—

(i) Denies an application under § 60.530(c) or § 60.533(e),

(ii) Issues a notice of revocation of certification under § 60.533(l),

(iii) Denies an application for laboratory accreditation under § 60.535, or

(iv) Issues a notice of revocation of laboratory accreditation under § 60.535(e), the manufacturer or laboratory affected may request a hearing under this section within 30 days following receipt of the required notification of the action in question.

(2) In any case where the Administrator issues a notice of revocation under § 60.533(p), the manufacturer may request a hearing under this section with the time limits set out in § 60.533(p)(5).

(b) Any hearing request shall be in writing, shall be signed by an authorized representative of the petitioning manufacturer or laboratory, and shall include a statement setting forth with particularity the petitioner's objection to the Administrator's determination or proposed determination.

(c)(1) Upon receipt of a request for a hearing under paragraph (a) of this section, the Administrator shall request the Chief Administrative Law Judge to

designate an Administrative Law Judge as Presiding Officer for the hearing. If the Chief Administrative Law Judge replies that no Administrative Law Judge is available to perform this function, the Administrator shall designate a Presiding Officer who has not had any prior responsibility for the matter under review, and who is not subject to the direct control or supervision of someone who has had such responsibility.

(2) The hearing shall commence as soon as practicable at a time and place fixed by the Presiding Officer.

(3)(i) A motion for leave to intervene in any proceeding conducted under this section must set forth the grounds for the proposed intervention, the position and interest of the movant and the likely impact that intervention will have on the expeditious progress of the proceeding. Any person already a party to the proceeding may file an answer to a motion to intervene, making specific reference to the factors set forth in the foregoing sentence and paragraph (c)(3)(iii) of this section within ten (10) days after service of the motion for leave to intervene.

(ii) A motion for leave to intervene in a proceeding must ordinarily be filed before the first prehearing conference or, in the absence of a prehearing conference, prior to the setting of a time and place for a hearing. Any motion filed after that time must include, in addition to the information set forth in paragraph (c)(3)(i) of this section, a statement of good cause for the failure to file in a timely manner. The intervenor shall be bound by any agreements, arrangements and other matters previously made in the proceeding.

(iii) A motion for leave to intervene may be granted only if the movant demonstrates that his presence in the proceeding would not unduly prolong or otherwise prejudice the adjudication of the rights of the original parties, and that movant may be adversely affected by a final order. The intervenor shall become a full party to the proceeding upon the granting of leave to intervene.

(iv) Persons not parties to the proceeding may move for leave to file amicus curiae briefs. The movant shall state his interest and the reasons why

the proposed amicus brief is desirable. If the motion is granted, the Presiding Officer or Administrator shall issue an order setting the time for filing such brief. An amicus curiae may participate in any briefing after his motion is granted, and shall be served with all briefs, reply briefs, motions, and orders relating to issues to be briefed.

(4) In computing any period of time prescribed or allowed in this subpart, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and Federal legal holidays shall be included. When a stated time expires on a Saturday, Sunday or legal holiday, the stated time period shall be extended to include the next business day.

(d)(1) Upon his appointment the Presiding Officer shall establish a hearing file. The file shall consist of the notice issued by the Administrator under § 60.530(c), § 60.533(e), § 60.533(l), § 60.533(p), § 60.535(a), or § 60.535(e), 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 or accreditation, or the proposed revocation of either.

(2) The hearing file shall be available for inspection by any party, to the extent authorized by law, at the office of the Presiding Officer, or other place designated by him.

(e) Any party may appear in person, or may be represented by counsel or by any other duly authorized representative.

(f)(1) The Presiding Officer upon the request of any party, or at his discretion, may order a prehearing conference at a time and place specified by him 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.

Environmental Protection Agency

§ 60.539a

(2) The results of the conference shall be reduced to writing by the Presiding Officer and made part of the record.

(g)(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 penalties under title 18, U.S.C. 1001 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 recorded 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.

(h)(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 Environmental Appeals Board without further proceedings unless there is an appeal to the Environmental Appeals Board or motion for review by the Environmental Appeals Board. Except as provided in paragraph (h)(3) of this section, any such appeal shall be taken within 20 days of the date the initial decision was filed.

(2) The Administrator delegates authority to the Environmental Appeals Board to issue final decisions in appeals filed under this section. An ap-

peal directed to 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 part 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 section referring to the Environmental Appeals Board shall be interpreted as referring to the Administrator. On appeal from or review of the initial decision, the Environmental Appeals Board shall have all the powers that it 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 Environmental Appeals Board 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.

(3) In any hearing requested under paragraph (a)(2) of this section the Presiding Officer shall render his initial decision within 60 days of that request. Any appeal to the Environmental Appeals Board shall be taken within 10 days of the initial decision, and the Environmental Appeals Board shall render its decision in the appeal within 30 days of the filing of the appeal.

[53 FR 5873, Feb. 26, 1988, as amended at 57 FR 5328, Feb. 13, 1992]

§ 60.539a Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 111(c) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities that shall not be delegated to states:

(1) [Reserved]

(2) Section 60.531, Definitions,

(3) Section 60.533, Compliance and certification,