

Environmental Protection Agency

§ 86.1114-87

dates, as determined under § 86.1113-87(g)(1), which have elapsed throughout the duration of a hearing request, or alternate payment schedule.

(iv) The interest rate applicable to a quarter for purposes of this paragraph shall be the rate published by the Secretary of the Treasury pursuant to the Debt Collection Act of 1982 and effective on the date on which the NCP payment was originally due.

(6) A manufacturer will be refunded an overpayment, or be permitted to offset an overpayment by withholding a future payment, if approved in advance by the Administrator. The government shall pay no interest on overpayments.

(h) A manufacturer that certifies as a replacement for the nonconforming configuration, a configuration that is in conformance with applicable standards, and that performs a production compliance audit (PCA) in accordance with § 86.1112-87(a) that results in a compliance level below the applicable standard, will be eligible to receive a refund of a portion of the engineering and development component of the penalty. The engineering and development component will be determined by multiplying the base penalty amount by the engineering and development factor for the appropriate subclass and pollutant in § 86.1105-87. The amount refunded will depend on the model year in which the certification and PCA take place. In cases where payment of penalties have been waived by EPA in accordance with paragraph (g)(1)(iii) of this section, EPA will refund a portion of the engineering and development component. The proportionate refund to be paid by EPA will be based on the proportion of vehicles or engines of the nonconforming configuration for which NCPs were paid to EPA. The refund is calculated as follows:

$$R_{tot} = D_n \times F_{E\&D} \times NCP_1 \times Prod_{tot}$$

$$R_{Cal} = (Prod_{Cal} / Prod_{tot}) \times (R_{tot})$$

$$R_{EPA} = R_{tot} - R_{Cal}$$

Where:

n=index representing the number of model years for which the NCP has been available for an engine or vehicle subclass (i.e., n=1 for the first year that NCPs are available, . . . , n=n for the nth year the NCPs are available; same as "n" in paragraph (a)(4)).
 D_n=discount factor depending on the number of model years (n) for which NCPs were

available at the time of certification and PCA of the replacement configuration, and its value is as follows:

- D₁=0.90
- D₂=0.79
- D₃=0.67
- D₄=0.54
- D₅=0.39
- D₆=0.23
- D₇=0.05
- D_n=0.00 for n=8 or larger

F_{E&D}=the engineering and development factor specified in section 86.1105-87 for the appropriate subclass and pollutant

NCP₁=the penalty for each engine or vehicle during the first (base) year the NCP is available as calculated in paragraph (a)

Prod_{tot}=total number of engines or vehicles produced in the subclass for which NCPs were paid to EPA or to the State of California

Prod_{Cal}=number of engines or vehicles in the subclass demonstrated to have been titled, registered or principally used in the State of California and for which NCPs were paid to the State of California under paragraph (g)(1)

R_{tot}=Total refund due to the manufacturer for the engineering and development component of the NCP

R_{Cal}=Refund due to the manufacturer from the State of California for the engineering and development component of the NCP

R_{EPA}=Refund due to the manufacturer from EPA for the engineering and development component of the NCP.

[50 FR 35388, Aug. 30, 1985, as amended at 50 FR 53467, Dec. 31, 1985; 53 FR 19134, May 26, 1988; 55 FR 46629, Nov. 5, 1990; 61 FR 51366, Oct. 2, 1996]

§ 86.1114-87 Suspension and voiding of certificates of conformity.

(a) The certificate of conformity is suspended with respect to any engine or vehicle failing pursuant to paragraph (f) of § 86.1112-87 effective from the time that a fail decision is made for that engine or vehicle.

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

(1) Before the certificate is reinstated for that failed engine or vehicle,

- (i) Remedy the nonconformity, and
- (ii) Demonstrate that the engine or vehicle conforms to the applicable standards or compliance levels by re-testing the engine or vehicle in accordance with these regulations; and

(2) Submit a written report to the Administrator within five working days after successful completion of testing on the failed engine or vehicle, which contains a description of the remedy and test results for each engine or vehicle in addition to other information that may be required by this regulation.

(c) The Administrator may suspend the certificate of conformity if the manufacturer, after electing to conduct a PCA, fails to adhere to the requirements stated in § 86.1106-87(b)(3), (b)(6)(iii), (c)(2), or (c)(5)(iii).

(d) The Administrator may suspend the qualified certificate of conformity issued under the conditions specified in § 86.1106-87 if the manufacturer fails to adhere to the requirements stated in § 86.1106-87(a)(3), (a)(4)(iii), (d)(2)(iii), or (d)(3).

(e) The Administrator may suspend the certificate of conformity or the qualified certificate of conformity if the compliance level as determined in § 86.1112-87(a) is in excess of the upper limit.

(f) The Administrator may void the certificate of conformity if the compliance level as determined in § 86.1112-87(a) is in excess of the upper limit and the manufacturer fails to recall any engines or vehicles introduced into commerce pursuant to § 86.1106-87(a)(4)(ii), (b)(6)(ii), (c)(5)(ii) or (d)(2)(ii).

(g) The Administrator may void the certificate of conformity for those engines or vehicles for which the manufacturer fails to meet the requirements of § 86.1106-87(a)(4)(i), (b)(6)(i), (c)(5)(i), or (d)(2)(i).

(h) The Administrator shall notify the manufacturer in writing of any suspension or voiding of a certificate of conformity in whole or in part, except as provided for in paragraph (a) of this section.

(i) A certificate of conformity suspended or voided under paragraph (c), (d), (e), (f) or (g) of this section may be reinstated after a written request by the manufacturer and under such terms and conditions as the Administrator may require and after the manufacturer demonstrates compliance with applicable requirements.

(j) After the Administrator suspends or voids a certificate of conformity

pursuant to this section or notifies a manufacturer of his intent to suspend or void a certificate of conformity under § 86.087-30(e), and prior to the commencement of a hearing, if any, under § 86.1115-87, if the manufacturer demonstrates to the Administrator's satisfaction that the decision to suspend or void the certificate was based on erroneous information, the Administrator shall reinstate the certificate.

§ 86.1115-87 Hearing procedures for nonconformance determinations and penalties.

(a) *Applicability.* The procedures prescribed by this section shall apply whenever a manufacturer requests a hearing pursuant to § 86.087-30(e)(6)(i), § 86.087-30(e)(7), or § 86.1113-87(f).

(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* means a manufacturer contesting a compliance level or penalty determination sent to the manufacturer.

(3) *Party* means 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 § 1.25 of this title. The Administrator delegates authority to the Environmental Appeals Board to issue final decisions in appeals filed under this subpart. Appeals 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 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