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representative the opportunity to conduct authorized inspections as required under §86.1849–01.

(3) The manufacturer renders inaccurate any test data which it submits, or fails to make a good engineering judgment in accordance with §86.1851–01(c)(1).

(4) The manufacturer denies an EPA enforcement officer or EPA authorized representative reasonable assistance as required in §86.1849–01.

(5) The manufacturer fails to provide the records required in §86.1844–01 to the Administrator within the deadline set forth in the request for such information.

(6) The manufacturer fails to comply with all conditions under which the certificate of conformity was granted as specified in §86.1848–01.

(7) The manufacturer otherwise circumvents the intent of the Act or of this part.

(c) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied, or that any failure to satisfy a condition is not substantial.

(d) If a manufacturer knowingly commits an infraction specified in paragraphs (b)(1) through (b)(7) of this section, knowingly commits any fraudulent act which results in the issuance of a certificate of conformity, or fails to comply with the conditions specified in §86.1849–01, the Administrator may deem such certificate void ab initio.

(e) When the Administrator denies, suspends, revokes, or voids ab initio a certificate, EPA will provide the manufacturer a written determination. The manufacturer may request a hearing under §86.1853–01 on the Administrator’s decision.

(f) Any suspension or revocation of a certificate of conformity shall extend no further than to forbid the introduction into commerce of vehicles previously covered by the certificate which are still in the possession of the manufacturer, except in cases of such fraud or other misconduct that makes the certification void ab initio.

§ 86.1851–01. Application of good engineering judgment to manufacturers’ decisions.

(a) The manufacturer shall exercise good engineering judgment in making all decisions called for under this subpart, including but not limited to selections, categorizations, determinations, and applications of the requirements of the subpart.

(b) Upon written request by the Administrator, the manufacturer shall provide within 15 working days (or such longer period as may be allowed by the Administrator) a written description of the engineering judgment in question.

(c) The Administrator may reject any such decision by a manufacturer if it is not based on good engineering judgment, or is otherwise inconsistent with the requirements of this subpart.

(d) If the Administrator rejects a decision by a manufacturer with respect to the exercise of good engineering judgment, the following provisions shall apply:

(1) If the Administrator determines that incorrect information was deliberately used in the decision process, that important information was deliberately overlooked, that the decision was not made in good faith, or that the decision was not made with a rational basis, the Administrator may suspend or void ab initio a certificate of conformity.

(2) If the Administrator determines that the manufacturer’s decision does not meet the provisions of paragraph (d)(1) of this section, but that a different decision would reflect a better exercise of good engineering judgment, then the Administrator will notify the manufacturer of this concern and the basis thereof.

(i) The manufacturer shall have at least 30 days to respond to this notice. The Administrator may extend this response period upon request from the manufacturer if it is necessary to generate additional data for the manufacturer’s response.

(ii) The Administrator shall make the final ruling after considering the information provided by the manufacturer during the response period. If the Administrator determines that the manufacturer’s decision was not made
using good engineering judgment, he/she may reject that decision and apply
the new ruling to future corresponding
decisions as soon as practicable.

(e) The Administrator shall notify
the manufacturer in writing regarding
any decision reached under paragraph
(d)(1) or (2) of this section. The Admin-
istrator shall include in this notification
the basis for reaching the determin-
ation.

(f) Within 30 working days following
receipt of notification of the Adminis-
trator’s determinations made under
paragraph (d) of this section, the manu-
facturer may request a hearing on
those determinations. The request
shall be in writing, signed by an au-
thorized representative of the manu-
facturer, and shall include a statement
specifying the manufacturer’s objec-
tions to the Administrator’s deter-
minations, and data or other analysis
in support of such objections. If, after
review of the request and supporting
data or analysis, the Administrator
finds that the request raises a substan-
tial factual issue, he/she shall provide
the manufacturer a hearing in accord-
ance with §86.1853-01 with respect to
such issue.

§ 86.1852–01 Waivers for good in-use
emission performance.

(a) The Administrator may waive re-
quirements of this subpart relating to
development of emission-related infor-
mation or test data if the Adminis-
trator determines with confidence that
the in-use emission test verification
data required in §86.1845–01 are below
the applicable emission standards for
an appropriate period of time, and that
such performance is likely to continue
in subsequent model years.

(b) Any waiver granted under para-
graph (a) of this section will be granted
only if the Administrator determines
that the waived requirement is not
needed to assure continued emission
compliance and the Administrator will
have sufficient testing and other infor-
mation in order to make certification
decisions.

(c) Any waiver granted under para-
graph (a) of this section would be lim-
lited in duration to a period of one
model year, unless extended by the Ad-
ministrator as a result of continued
demonstrations of good in-use emission
performance.

(d) The Administrator reserves the
right to deny or revoke a waiver which
may have been granted if he/she deter-
mines that the manufacturer no longer
qualifies for the waiver.

§ 86.1853–01 Certification hearings.

(a)(1) After granting a request for a
hearing under this subpart, the Adminis-
trator shall designate a Presiding Of-
ficer for the hearing.

(2) The hearing shall be held as soon
as practicable at a time and place fixed
by the Administrator or by the Pre-
siding Officer.

(3) In the case of any hearing re-
quested pursuant to §86.1850–01(e), the
Administrator may in his discretion di-
rect that all argument and present-
ation 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 di-
rect that the decision of the Presiding
Officer (who may, but need not be the
Administrator) shall be the final EPA
decision.

(b)(1) Upon appointment pursuant to
paragraph (a) of this section, the Pre-
siding Officer will establish a hearing
file. The file shall consist of the notice
issued by the Administrator together
with any accompanying material, the
request for a hearing and the sup-
porting data submitted therewith, and
all documents relating to the request
for certification and all documents
submitted therewith, and correspond-
ence and other data material to the
hearing.

(2) The hearing file will be available
for inspection by the applicant at the
office of the Presiding Officer.

(c) An applicant may appear in per-
son, or may be represented by counsel
or by any other duly authorized rep-
resentative.

(d)(1) The Presiding Officer upon the
request of any party, or in his discre-
tion, may arrange for a prehearing con-
ference 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;