

Environmental Protection Agency

§ 86.442-78

data generated at a facility, no informed judgment that a vehicle or engine is certifiable or is covered by a certificate can properly be based on that data. It is the responsibility of the manufacturer to locate its testing and manufacturing facilities in jurisdictions where this situation will not arise.

(g) For purposes of this section:

(1) *Presentation of credentials* shall mean display of the document designating a person as an EPA Enforcement Officer.

(2) Where vehicle, component, or engine storage areas or facilities are concerned, *operating hours* shall mean all times during which personnel other than custodial personnel are at work in the vicinity of the area or facility and have access to it.

(3) Where facilities or areas other than those covered by paragraph (g)(2) of this section are concerned, *operating hours* shall mean all times during which an assembly line is in operation or all times during which testing, maintenance, service accumulation, production or compilation of records, or any other procedure or activity related to certification testing, to translation of designs from the test stage to the production stage, or to vehicle manufacture or assembly is being carried out in a facility.

(4) *Reasonable assistance* includes, but is not limited to, clerical, copying, interpretation and translation services, the making available on request of personnel of the facility being inspected during their working hours to inform the EPA Enforcement Officer of how the facility operates and to answer his questions, and the performance on request of emissions tests on any vehicle which is being, has been, or will be used for certification testing. Such tests shall be nondestructive, but may require appropriate service accumulation. A manufacturer may be compelled to cause the personal appearance of any employee at such a facility before an EPA Enforcement Officer by written request for his appearance, signed by the Assistant Administrator for Enforcement, served on the manufacturer. Any such employee who has been instructed by the manufacturer to appear will be entitled to be accom-

panied, represented, and advised by counsel. No counsel who accompanies, represents, or advises an employee compelled to appear may accompany, represent, or advise any other person in the investigation.

(5) Any entry without 24 hours prior written or oral notification to the affected manufacturer shall be authorized in writing by the Assistant Administrator for Enforcement.

§ 86.442-78 Denial, revocation, or suspension of certification.

(a) Notwithstanding the fact that any certification vehicle(s) may comply with other provisions of this subpart, the Administrator may withhold or deny the issuance of a certificate of conformity (or suspend or revoke any such certificate which has been issued) with respect to any such vehicle(s) if:

(1) The manufacturer submits false or incomplete information in his application for certification thereof; or

(2) The manufacturer renders inaccurate or invalid any test data which he submits pertaining thereto or otherwise circumvents the intent of the Act or of this subpart with respect to such vehicle; or

(3) Any EPA Enforcement Officer is denied access on the terms specified in § 86.441 to any facility or portion thereof which contains any of the following:

(i) The vehicle, or

(ii) Any components used or considered for use in its modification or build-up into a certification vehicle, or

(iii) Any production vehicle which is or will be claimed by the manufacturer to be covered by the certificate, or

(iv) Any step in the construction of a vehicle described in paragraph (c) of this section, or

(v) Any records, documents, reports, or histories required by this part to be kept concerning any of the above.

(4) Any EPA Enforcement Officer is denied "reasonable assistance" (as defined in § 86.444) in examining any of the items listed in paragraph (a)(1)(iii) of this section.

(b) The sanctions of withholding, denying, revoking, or suspending of a certificate may be imposed for the reasons in paragraph (a) of this section only when the infraction is substantial.

(c) In any case in which a manufacturer knowingly submits false or inaccurate information, or knowingly renders inaccurate or invalid any test data, or commits any fraudulent acts and such acts contribute substantially to the Administrator's decision to 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 representative 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