

§ 86.1849-01

40 CFR Ch. I (7-1-12 Edition)

(9) For 2012 and later model year LDVs, LDTs, and MDPVs, all certificates of conformity issued are conditional upon compliance with all provisions of §§ 86.1818-12 and 86.1865-12 both during and after model year production. The manufacturer bears the burden of establishing to the satisfaction of the Administrator that the terms and conditions upon which the certificate(s) was (were) issued were satisfied. For recall and warranty purposes, vehicles not covered by a certificate of conformity will continue to be held to the standards stated or referenced in the certificate that otherwise would have applied to the vehicles.

(i) Failure to meet the fleet average CO₂ requirements will be considered a failure to satisfy the terms and conditions upon which the certificate(s) was (were) issued and the vehicles sold in violation of the fleet average CO₂ standard will not be covered by the certificate(s). The vehicles sold in violation will be determined according to § 86.1865-12(k)(8).

(ii) Failure to comply fully with the prohibition against selling credits that are not generated or that are not available, as specified in § 86.1865-12, will be considered a failure to satisfy the terms and conditions upon which the certificate(s) was (were) issued and the vehicles sold in violation of this prohibition will not be covered by the certificate(s).

(d)-(i) [Reserved]. For guidance see § 86.1848-01.

[72 FR 8567, Feb. 26, 2007, as amended at 75 FR 25690, May 7, 2010; 76 FR 39522, July 6, 2011]

§ 86.1849-01 Right of entry.

(a) Any manufacturer who has applied for certification of a new motor vehicle subject to testing under this subpart, or any manufacturer or entity who conducts or causes to be conducted in-use verification or in-use confirmatory testing under this subpart, shall admit or cause to be admitted any EPA Enforcement Officer or any EPA authorized representative during operating hours on presentation of credentials to any of the following:

(1) Any facility where any such certification or in-use verification or in-use confirmatory testing or any proce-

dures or activities connected with such testing are or were performed.

(2) Any facility where any new motor vehicle or test vehicle used for certification, in-use verification or in-use confirmatory testing which is being, was, or is to be tested is present.

(3) Any facility where any construction process or assembly process used in the modification or build up of such a vehicle into a certification vehicle is taking place or has taken place.

(4) Any facility where any record or other document relating to § 86.1849-01(a) (1), (2), and/or (3) is located.

(b) Upon admission to any facility referred to in paragraph (a) of this section, any EPA official or EPA authorized representative shall be allowed:

(1) To inspect and monitor any part or aspect of such procedures, activities, and testing facilities, including, but not limited to, monitoring vehicle preconditioning, emissions tests and mileage (or service) accumulation, bench aging, maintenance, and vehicle soak and storage procedures, and to verify correlation or calibration of test equipment.

(2) To inspect and make copies of any such records, designs, or other documents, including those records specified in §§ 86.1843-01, 86.1844-01, and 86.1847-01.

(c) In order to allow the Administrator to determine whether or not production motor vehicles conform to the conditions upon which a certificate of conformity has been issued, or conform in all material respects to the design specifications which applied to those vehicles described in the certification application for which a certificate of conformity has been issued to standards prescribed under section 202 of the Act, any manufacturer shall admit any EPA Enforcement Officer or EPA authorized representative on presentation of credentials to:

(1) Any facility where any document, design, or procedure relating to the translation of the design and construction of engines and emission-related components described in the compliance application or used for certification testing into production vehicles is located or carried on; and

Environmental Protection Agency

§ 86.1850-01

(2) Any facility where any motor vehicles to be introduced into commerce are manufactured or assembled.

(d) Upon admission to any facility referred to in paragraph (c) of this section, any EPA Enforcement Officer or EPA authorized representative shall be allowed:

(1) To inspect and monitor any aspects of such manufacture or assembly and other procedures;

(2) To inspect and make copies of any such records, documents or designs; and

(3) To inspect and photograph any part or aspect of any such new motor vehicles and any component used in the assembly thereof that are reasonably related to the purpose of the entry.

(e) Any EPA official or EPA authorized representative shall be furnished by those in charge of a facility being inspected with such reasonable assistance as he may request to help him discharge any function set forth in this paragraph. Each applicant for or recipient of certification is required to cause those in charge of a facility operated for its benefit to furnish such reasonable assistance without charge to EPA whether or not the applicant controls the facility.

(f) The duty to admit or cause to be admitted any EPA Enforcement Officer or EPA authorized representative applies whether or not the applicant owns or controls the facility in question and applies both to domestic and to foreign manufacturers and facilities. EPA will not attempt to make any inspections which it has been informed that local law forbids. However, if local law makes it impossible to what is necessary to insure the accuracy of data generated at a facility, no informed judgment that a vehicle is certifiable or is covered by a certificate can properly be based on those 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 or EPA authorized representative.

(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, mileage (or 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 (or engine) 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 upon request of personnel of the facility being inspected during their working hours to inform the EPA Enforcement Officer or EPA authorized representative 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 or in-use verification or confirmatory testing. Such tests shall be nondestructive, but may require appropriate mileage (or service) accumulation. A manufacturer may be compelled to cause the personal appearance of any employee at such a facility before an EPA Enforcement Officer or EPA authorized representative by written request for his appearance, signed by the Assistant Administrator for Air and Radiation or the Assistant Administrator for Enforcement and Compliance Assurance, served on the manufacturer. Any such employee who has been instructed by the manufacturer to appear will be entitled to be accompanied, represented, and advised by counsel.

§ 86.1850-01 Denial, suspension or revocation of certificate of conformity.

(a) If, after review of the manufacturer's application, request for certification, information obtained from any