

conduct activities related to entry and access as authorized in this section. EPA Enforcement Officers may proceed *ex parte* to obtain a warrant whether or not the Enforcement Officers first sought permission from the recipient of the test order or the party in charge of the facilities in question to conduct those activities related to entry and access.

(e) A recipient of a test order shall permit EPA Enforcement Officers who present a warrant or court order as described in paragraph (d) of this section to conduct activities related to entry and access as authorized in this section and as described in the warrant or court order. A recipient of a test order shall cause those in charge of its facility or a facility operated for its benefit to permit EPA Enforcement Officers to conduct these activities related to entry and access pursuant to a warrant or court order whether or not the recipient controls the facility. In the absence of such a warrant or court order, EPA Enforcement Officers may conduct those activities related to entry and access only upon the consent of either the recipient of the test order or the party in charge of the facilities in question.

(f) It is not a violation of this part or the Clean Air Act for any person to refuse to permit EPA Enforcement Officers to conduct activities related to entry and access as authorized in this section without a warrant or court order.

(g) A manufacturer is responsible for locating its foreign testing and manufacturing facilities in jurisdictions in which local foreign law does not prohibit EPA Enforcement Officers from conducting the entry and access activities specified in this section. EPA will not attempt to make any inspections which it has been informed that local foreign law prohibits.

(h) For purposes of this section:

(1) *Presentation of Credentials* means display of the document designating a person as an EPA Enforcement Officer.

(2) Where vehicle storage areas or facilities are concerned, *operating hours* means 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 (h)(2) of this section are concerned, *operating hours* means all times during which an assembly line is in operation, vehicle assembly is occurring, or testing, repair, mileage accumulation, production or compilation of records, or any other procedure or activity related to testing, or to vehicle manufacture or assembly, is being conducted in a facility.

(4) *Reasonable assistance* includes, but is not limited to, providing clerical, copying, interpreting and translating services and, at the request of an EPA Enforcement Officer, making available personnel of the facility being inspected during their working hours to provide information relevant to the Enforcement Officer's activities authorized in this section. Any employee whom a manufacturer has instructed to appear at the request of an Enforcement Officer may be accompanied, represented, and advised by counsel.

[41 FR 31483, July 28, 1976, as amended at 49 FR 48481, Dec. 12, 1984. Redesignated at 54 FR 2123, Jan. 19, 1989]

#### § 86.607-84 Sample selection.

(a) Vehicles comprising a test sample which are required to be tested, pursuant to a test order issued in accordance with this subpart, will be selected at the location and in the manner specified in the test order. If a manufacturer determines that the test vehicles cannot be selected in the manner specified in the test order, an alternative selection procedure may be employed: *Provided*, That the manufacturer requests approval of the alternative procedure in advance of the start of test sample selection and that the Administrator approves the procedure. Special order vehicles are exempt from sample selection unless a test sample cannot be completed otherwise.

(b) The manufacturer shall have assembled the test vehicles of the configuration selected for testing using its normal mass production processes for vehicles to be distributed into commerce. During the audit, the manufacturer shall inform the Administrator of any change(s) implemented in its production processes, including quality

control, which may be reasonably expected to affect the emissions of the vehicles selected, between the time the manufacturer received the test order and the time the manufacturer finished selecting test vehicles.

(c) No quality control, testing, or assembly procedures will be used on the completed test vehicles or any portion thereof, including parts and subassemblies, that has not been or will not be used during the production and assembly of all other vehicles of that configuration.

(d) The test order may specify that EPA Enforcement Officers, rather than the manufacturer, will select the test vehicles according to the method described in paragraph (a) of this section.

(e) The order in which test vehicles are selected determines the order in which test results are to be used in applying the sampling plan in accordance with § 86.610.

(f) The manufacturer shall keep on hand all untested vehicles, if any, comprising the test sample until a pass or fail decision is reached in accordance with paragraph (d) of § 86.610. The manufacturer may ship any tested vehicle which has not failed in accordance with paragraph (a) of § 86.610. However, once a manufacturer ships any vehicle from the test sample, it relinquishes the prerogative to conduct retests provided in paragraph (i) of § 86.608.

[49 FR 48482, Dec. 12, 1984. Redesignated at 54 FR 2123, Jan. 19, 1989]

**§ 86.608-88 Test procedures.**

(a) The prescribed test procedures are contained in subpart B of this part 86. For purposes of Selective Enforcement Audit testing, the manufacturer shall not perform any of the test procedures in subpart B of this part relating to evaporative emission testing, except as specified in paragraph (a)(2) of this section.

(1) The Administrator may, on the basis of a written application by a manufacturer, prescribe test procedures other than those in subpart B of this part for any motor vehicle which he determines is not susceptible to satisfactory testing using the procedures in subpart B of this part.

(2) The following exceptions to the test procedures in subpart B of this

part are applicable to Selective Enforcement Audit testing:

(i) The manufacturer may use test fuel meeting the specifications of paragraph (a)(1) or (b)(2) of § 86.113-82 for mileage accumulation. Otherwise, the manufacturer may use fuels other than those specified in this section only with advance approval of the Administrator.

(ii) The manufacturer may measure the temperature of the test fuel at other than the approximate mid-volume of the fuel tank, as specified in § 86.131(a), and may drain the test fuel from other than the lowest point of the tank, as specified in § 86.131(b), provided an equivalent method is used. Equivalency documentation shall be maintained by the manufacturer and shall be made available to the Administrator upon request.

(iii) The manufacturer may perform additional preconditioning on SEA test vehicles other than the preconditioning specified in § 86.132 only if the additional preconditioning had been performed on certification test vehicles of the same configuration.

(iv) The manufacturer shall perform the heat build procedure 11 to 34 hours following vehicle preconditioning rather than according to the time period specified in paragraph § 86.133(a). All references in § 86.133 to an evaporative emission enclosure (SHED) and analyzing for HC during the heat build can be ignored.

(v) The manufacturer may substitute slave tires for the drive wheel tires on the vehicle as specified in paragraph § 86.135(e): *Provided*, That the slave tires are the same size.

(vi) The cold start exhaust emission test described in § 86.137 shall follow the heat build procedure described in § 86.133 by not more than one hour.

(vii) In performing exhaust sample analysis under § 86.140.

(A) When testing diesel vehicles, the manufacturer shall allow a minimum of 20 minutes warm-up for the HC analyzer, and a minimum of 2 hours warm-up for the CO, CO<sub>2</sub> and NO<sub>x</sub> analyzers. (Power is normally left on infrared and chemiluminescent analyzers. When not in use, the chopper motors of the infrared analyzers are turned off and the phototube high voltage supply to the