

decision, including the discretion to require or allow briefs, oral argument, the taking of additional evidence, or the remanding to the Presiding Officer for additional proceedings. The decision by the Administrator may adopt the original decision or shall include written findings and conclusions and the reasons or basis therefor on all the material issues of fact, law, or discretion presented on the appeal or considered in the review.

[59 FR 31335, June 17, 1994. Redesignated at 63 FR 56995, Oct. 23, 1998]

**§ 89.129 Right of entry.**

(a) Any manufacturer who has applied for certification of a new engine or engine family subject to certification testing under this subpart shall admit or cause to be admitted to any of the following facilities during operating hours any EPA enforcement officer or EPA authorized representative on presentation of credentials.

(1) Any facility where any such certification testing or any procedures or activities connected with such certification testing are or were performed;

(2) Any facility where any new engine 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 buildup of such an engine into a certification engine is taking place or has taken place; and

(4) Any facility where any record or other document relating to any of the above is located.

(b) Upon admission to any facility referred to in paragraph (a)(1) of this section, any EPA enforcement officer 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 engine pre-conditioning, emission tests and service accumulation, maintenance, and engine 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; and

(3) To inspect and photograph any part or aspect of any such certification

engine and any components to be used in the construction thereof.

(c) To allow the Administrator to determine whether production engines conform in all material respects to the design specifications applicable to those engines, as described in the application for certification for which a certificate of conformity has been issued, 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 application for certification or used for certification testing into production engines is located or carried on; and

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

(d) On admission to any such 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 engines and any component used in the assembly thereof that are reasonably related to the purpose of his or her entry.

(e) Any EPA enforcement officer or EPA authorized representative shall be furnished by those in charge of a facility being inspected with such reasonable assistance as he or she may request to help the enforcement officer or authorized representative discharge any function listed 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.

(1) 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 or EPA authorized representative of how the facility operates and to answer the officer's questions; and the performance on request of emission tests on any engine which is being, has been, or will be used for certification testing. Such tests shall be nondestructive, but may require appropriate service accumulation.

(2) A manufacturer may be compelled to cause any employee at a facility being inspected to appear before an EPA enforcement officer or EPA authorized representative. The request for the employee's appearance shall be in writing, signed by the Assistant Administrator for Air and Radiation, and served on the manufacturer. Any employee who has been instructed by the manufacturer to appear will be entitled to be accompanied, represented, and advised by counsel.

(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 do what is necessary to ensure the accuracy of data generated at a facility, no informed judgment that an engine 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) 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.

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**§ 89.130 Rebuild practices.**

(a) The provisions of this section are applicable to engines subject to the standards prescribed in § 89.112 and are applicable to the process of engine re-

building (or rebuilding a portion of an engine or engine system). This section does not apply to Tier 1 engines rated at or above 37 kW. The process of engine rebuilding generally includes disassembly, replacement of multiple parts due to wear, and reassembly, and also may include the removal of the engine from the vehicle and other acts associated with rebuilding an engine.

(b) When rebuilding an engine, portions of an engine, or an engine system, there must be a reasonable technical basis for knowing that the resultant engine is equivalent, from an emissions standpoint, to a certified configuration (i.e., tolerances, calibrations, specifications), and the model year(s) of the resulting engine configuration must be identified. A reasonable basis would exist if:

(1) Parts installed, whether the parts are new, used, or rebuilt, are such that a person familiar with the design and function of motor vehicle engines would reasonably believe that the parts perform the same function with respect to emission control as the original parts; and

(2) Any parameter adjustment or design element change is made only:

(i) In accordance with the original engine manufacturer's instructions; or

(ii) Where data or other reasonable technical basis exists that such parameter adjustment or design element change, when performed on the engine or similar engines, is not expected to adversely affect in-use emissions.

(c) When an engine is being rebuilt and remains installed or is reinstalled in the same equipment, it must be rebuilt to a configuration of the same or later model year as the original engine. When an engine is being replaced, the replacement engine must be an engine of (or rebuilt to) a certified configuration that is equivalent, from an emissions standpoint, to the engine being replaced.

(d) At time of rebuild, emission-related codes or signals from on-board monitoring systems may not be erased or reset without diagnosing and responding appropriately to the diagnostic codes, regardless of whether the