

§ 86.1711-99

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§ 86.1707, the manufacturer continues to be responsible for offsetting any debits outstanding on the effective date of the opt-out within the required time period. Any failure to offset the debits will be considered to be a violation of paragraph (d)(1) of this section and may subject the manufacturer to an enforcement action for sale of vehicles not covered by a certificate, pursuant to paragraph (d)(2) of this section.

(5) For purposes of calculating tolling of the statute of limitations, a violation of the requirements of paragraph (d)(1) of this section, a failure to satisfy the conditions upon which a certificate(s) was issued and hence a sale of vehicles not covered by the certificate, all occur upon the expiration of the deadline for offsetting debits specified in paragraph (d)(1) of this section.

(e) *NMOG credit transfers.* (1) EPA may reject NMOG credit transfers if the involved manufacturers fail to submit the credit transfer notification in the annual report.

(2) A manufacturer may not sell credits that are not available for sale pursuant to the provisions in paragraphs (c)(2) or (d)(2) of this section.

(3) Except in instances of fraud on the part of the credit recipient, where a manufacturer sells credits that were not available for sale, the credits shall be treated as valid, and the manufacturer that sold the credits shall be liable for any resulting shortfall.

(4)(i) If a manufacturer transfers a credit that it has not generated pursuant to paragraph (b) of this section or acquired from another party, the manufacturer will be considered to have generated a debit in the model year that the manufacturer transferred the credit. The manufacturer must offset such debits by the deadline for the annual report for that same model year.

(ii) Failure to offset the debits within the required time period will be considered a failure to satisfy the conditions upon which the certificate(s) was issued and will be addressed pursuant to paragraph (d)(3) of this section.

[62 FR 31242, June 6, 1997. Redesignated and amended at 63 FR 983, Jan. 7, 1998]

EFFECTIVE DATE NOTE: At 62 FR 31242, June 6, 1997, subpart R was added, effective Aug. 5, 1997. Section 86.1710-99(a) contains information collection and recordkeeping require-

ments and will not become effective until approval has been given by the Office of Management and Budget.

§ 86.1711-99 Limitations on sale of Tier 1 vehicles and TLEVs; five percent cap.

(a) In the 2001 and subsequent model years, manufacturers may sell Tier 1 vehicles and TLEVs in the NTR only if vehicles with the same engine families are certified and offered for sale in California in the same model year, except as provided under § 86.1705(e)(4).

(b) [Reserved]

[62 FR 31242, June 6, 1997. Redesignated and amended at 63 FR 985, Jan. 7, 1998]

§ 86.1712-99 Maintenance of records; submittal of information.

(a) *Maintenance of records.* (1) The manufacturer producing any light-duty vehicles and/or light light-duty trucks subject to the provisions in this subpart shall establish, maintain, and retain the following information in adequately organized and indexed records for each averaging set of each model year:

- (i) Model year;
- (ii) Averaging set;
- (iii) Fleet average NMOG value achieved; and
- (iv) All values used in calculating the fleet average NMOG value achieved.

(2) The manufacturer producing any light-duty vehicles and/or light light-duty trucks subject to the provisions in this subpart shall establish, maintain, and retain the following information in adequately organized and indexed records for each vehicle or truck subject to this subpart:

- (i) Model year;
- (ii) Averaging set;
- (iii) EPA engine family, or if applicable for model year 1999 or 2000, the California engine family;
- (iv) Assembly plant;
- (v) Vehicle identification number;
- (vi) NMOG standard to which the vehicle or truck is certified; and
- (vii) Information on the point of first sale, including the purchaser, city, and state.

(3) The manufacturer shall retain all records required to be maintained under this section for a period of eight years from the due date for the annual

report. Records may be retained as hard copy or reduced to microfilm, ADP diskettes, and so forth, depending on the manufacturer's record retention procedure; provided, that in every case all information contained in the hard copy is retained.

(4) Nothing in this section limits the Administrator's discretion to require the manufacturer to retain additional records or submit information not specifically required by this section.

(5) Pursuant to a request made by the Administrator, the manufacturer shall submit to the Administrator the information that the manufacturer is required to retain.

(6) EPA may void *ab initio* a certificate of conformity for a vehicle certified to National LEV certification standards as set forth or otherwise referenced in § 86.1708 or § 86.1709 for which the manufacturer fails to retain the records required in this section or to provide such information to the Administrator upon request.

(b) *Reporting.* (1) Each covered manufacturer shall submit an annual report. Except as provided in paragraph (b)(2) of this section, the annual report shall contain, for each averaging set, the fleet average NMOG value achieved, all values required to calculate the NMOG value, the number of credits generated or debits incurred, and all the values required to calculate the credits or debits. For each applicable region (NTR and ASTR), the annual report shall contain the resulting balance of credits or debits.

(2) When a manufacturer calculates compliance with the fleet average NMOG standards using the provisions in § 86.1710(a)(3)(iii) or § 86.1710(a)(4)(iii), then the annual report shall state that the manufacturer has elected to use such provision and shall contain, for each averaging set, the fleet average NMOG values as specified in § 86.1710(a)(3)(iii) or § 86.1710(a)(4)(iii).

(3) The annual report shall also include documentation on all credit transactions the manufacturer has engaged in since those included in the last report. Information for each transaction shall include:

- (i) Name of credit provider;
- (ii) Name of credit recipient;
- (iii) Date the transfer occurred;

(iv) Quantity of credits transferred;

(v) Model year in which the credits were earned; and

(vi) Region (NTR or ASTR) to which the credits belong.

(4) Unless a manufacturer reports the data required by this section in the annual production report required under § 86.085-37(b) and subsequent model year provisions, a manufacturer shall submit an annual report for each model year after production ends for all affected vehicles and trucks produced by the manufacturer subject to the provisions of this subpart and no later than May 1 of the calendar year following the given model year. Annual reports shall be submitted to: Director, Vehicle Programs and Compliance Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan, 48105.

(5) Failure by a manufacturer to submit the annual report in the specified time period for all vehicles and trucks subject to the provisions in this section is a violation of section 203(a)(1) of the Clean Air Act for each subject vehicle and truck produced by that manufacturer.

(6) If EPA or the manufacturer determines that a reporting error occurred on an annual report previously submitted to EPA, the manufacturer's credit or debit calculations will be recalculated. EPA may void erroneous credits, unless transferred, and shall adjust erroneous debits. In the case of transferred erroneous credits, EPA shall adjust the manufacturer's credit or debit balance to reflect the sale of such credits and any resulting generation of debits.

(c) *Notice of opportunity for hearing.* Any voiding of the certificate under paragraph (a)(6) of this section will be made only after EPA has offered the manufacturer concerned an opportunity for a hearing conducted in accordance with § 86.614 for light-duty vehicles or § 86.1014 for light-duty trucks and, if a manufacturer requests such a hearing, will be made only after an initial decision by the Presiding Officer.

[62 FR 31242, June 6, 1997. Redesignated and amended at 63 FR 985, Jan. 7, 1998]

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collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 86.1713-01 [Reserved]

§ 86.1713-99 Light-duty exhaust durability programs.

The provisions of § 86.094-13 and subsequent model year provisions apply to this subpart, except that: Section 86.094-13(f) and subsequent model year provisions does not apply to this subpart.

[62 FR 31242, June 6, 1997. Redesignated at 63 FR 986, Jan. 7, 1998]

§ 86.1714-01 [Reserved]

§ 86.1714-99 Small volume manufacturers certification procedures.

The provisions of § 86.096-14 and subsequent model year provisions apply to this subpart, except that: Section 86.096-14(c)(7)(i)(A) and subsequent model year provisions does not apply to this subpart.

[62 FR 31242, June 6, 1997. Redesignated at 63 FR 986, Jan. 7, 1998]

§ 86.1715-01 [Reserved]

§ 86.1715-99 [Reserved]

§ 86.1716-01 [Reserved]

§ 86.1716-99 Prohibition of defeat devices.

(a) The provisions of § 86.094-16 and subsequent model year provisions apply to this subpart.

(b) [Reserved]

[62 FR 31242, June 6, 1997. Redesignated and amended at 63 FR 986, Jan. 7, 1998]

§ 86.1717-01 Emission control diagnostic system for 1999 and later light-duty vehicles and light-duty trucks.

(a) The provisions of § 86.1806-01 and subsequent model year provisions do not apply to this subpart.

(b) The requirements in Chapter 6 of the California Regulatory Requirements Applicable to the National Low Emission Vehicle Program (October, 1996) (these requirements are incorporated by reference; see § 86.1) apply to this subpart.

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(c) No vehicle shall be certified under the provisions of this subpart unless such vehicle complies with the requirements of section 202(m) (1), (2), (4), and (5) of the Clean Air Act (42 U.S.C. 7521(m) (1), (2), (4) and (5)).

[64 FR 23923, May 4, 1999]

§ 86.1717-99 Emission control diagnostic system for 1999 and later light-duty vehicles and light-duty trucks.

(a) The provisions of § 86.094-17 and subsequent model year provisions do not apply to this subpart.

(b) The requirements in Chapter 6 of the California Regulatory Requirements Applicable to the National Low Emission Vehicle Program (October, 1996) (these requirements are incorporated by reference; see § 86.1) apply to this subpart.

(c) No vehicle shall be certified under the provisions of this subpart unless such vehicle complies with the requirements of section 202(m)(1), (2), (4), and (5) of the Clean Air Act (42 U.S.C. 7521(m)(1), (2), (4) and (5)).

[62 FR 31242, June 6, 1997. Redesignated at 63 FR 986, Jan. 7, 1998]

§§ 86.1718-99—86.1720-99 [Reserved]

§ 86.1721-01 Application for certification.

The provisions of § 86.1844-01 and subsequent model year provisions apply to this subpart, with the following additions to the part 1 and part 2 applications:

(a) For TLEVs, LEVs, and ULEVs not certified exclusively on gasoline, projected U.S. sales data and fuel economy data 19 months prior to January 1 of the calendar year with the same numerical designation as the model year for which the vehicles are certified, and projected U.S. sales data for all vehicles, regardless of operating fuel or vehicle emission category, sufficient to enable the Administrator to select a test fleet representative of the vehicles (or engines) for which certification is requested at the time of certification.

(b) For ZEVs and hybrid electric vehicles, the certification part 1 application shall include the following: