

Environmental Protection Agency

§ 86.1852-01

manufacturer, except in cases of such fraud or other misconduct that makes the certification void *ab initio*.

§ 86.1851-01 Application of good engineering judgment to manufacturers' decisions.

(a) The manufacturer shall exercise good engineering judgment in making all decisions called for under this subpart, including but not limited to selections, categorizations, determinations, and applications of the requirements of the subpart.

(b) Upon written request by the Administrator, the manufacturer shall provide within 15 working days (or such longer period as may be allowed by the Administrator) a written description of the engineering judgment in question.

(c) The Administrator may reject any such decision by a manufacturer if it is not based on good engineering judgment, or is otherwise inconsistent with the requirements of this subpart.

(d) If the Administrator rejects a decision by a manufacturer with respect to the exercise of good engineering judgment, the following provisions shall apply:

(1) If the Administrator determines that incorrect information was deliberately used in the decision process, that important information was deliberately overlooked, that the decision was not made in good faith, or that the decision was not made with a rational basis, the Administrator may suspend or void *ab initio* a certificate of conformity.

(2) If the Administrator determines that the manufacturer's decision does not meet the provisions of paragraph(d)(1) of this section, but that a different decision would reflect a better exercise of good engineering judgment, then the Administrator will notify the manufacturer of this concern and the basis thereof.

(i) The manufacturer shall have at least 30 days to respond to this notice. The Administrator may extend this response period upon request from the manufacturer if it is necessary to generate additional data for the manufacturer's response.

(ii) The Administrator shall make the final ruling after considering the

information provided by the manufacturer during the response period. If the Administrator determines that the manufacturer's decision was not made using good engineering judgment, he/she may reject that decision and apply the new ruling to future corresponding decisions as soon as practicable.

(e) The Administrator shall notify the manufacturer in writing regarding any decision reached under paragraph (d)(1) or (2) of this section. The Administrator shall include in this notification the basis for reaching the determination.

(f) Within 30 working days following receipt of notification of the Administrator's determinations made under paragraph (d) of this section, the manufacturer may request a hearing on those determinations. 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 or other analysis in support of such objections. If, after review of the request and supporting data or analysis, the Administrator finds that the request raises a substantial factual issue, he/she shall provide the manufacturer a hearing in accordance with § 86.1853-01 with respect to such issue.

§ 86.1852-01 Waivers for good in-use emission performance.

(a) The Administrator may waive requirements of this subpart relating to development of emission-related information or test data if the Administrator determines with confidence that the in-use emission test verification data required in § 86.1845-01 are below the applicable emission standards for an appropriate period of time, and that such performance is likely to continue in subsequent model years.

(b) Any waiver granted under paragraph (a) of this section will be granted only if the Administrator determines that the waived requirement is not needed to assure continued emission compliance and the Administrator will have sufficient testing and other information in order to make certification decisions.