

**§ 86.1004-84**

**40 CFR Ch. I (7-1-07 Edition)**

the manufacturer's preferred plant, order testing at such other plant where vehicles of the configuration specified in the test order are assembled.

(e) Upon receipt of a test order, a manufacturer shall proceed in accordance with the provisions of this subpart.

(f)(1) During a given model year, the Administrator shall not issue to a manufacturer more Selective Enforcement Auditing (SEA) test orders than the annual limit determined by the following:

(i) For manufacturers of heavy-duty engines or vehicles, either gasoline-fueled or diesel, the number determined by dividing the projected sales bound for the United States market for that year, as made by the manufacturer in its Application for Certification, by 30,000 and rounded to the nearest whole number, unless the projected sales are less than 15,000, in which case the number is one;

(f)(1)(ii) through (f)(3) [Reserved]. For guidance see § 86.1003-88.

(g) In the event evidence exists indicating an engine family is in non-compliance, the Administrator may, in addition to other powers provided by this section, issue a test order specifying the engine family the manufacturer is required to test.

[59 FR 16305, Apr. 6, 1994, as amended at 62 FR 31238, June 6, 1997]

**§ 86.1004-84 Testing by the Administrator.**

(a) The Administrator may require by test order that engines or vehicles of a specified configuration be selected in a manner consistent with the requirements of § 86.1007-84 and submitted to him at such place as he may designate for the purpose of conducting emission tests. These tests will be conducted in accordance with § 86.1008-84 of these regulations to determine whether engines or vehicles manufactured by the manufacturer conform with the regulations with respect to which the certificate of conformity was issued.

(b)(1) Whenever the Administrator conducts a test on a test engine or vehicle or the Administrator and manufacturer each conduct a test on the same test engine or vehicle, the results of the Administrator's test will com-

prise the official data for that engine or vehicle.

(2) Whenever the manufacturer conducts all tests on a test engine or vehicle, the manufacturer's test data will be accepted as the official data: *Provided*, That if the Administrator makes a determination based on testing under paragraph (a) of this section that there is a substantial lack of agreement between the manufacturer's test results and the Administrator's test results, no manufacturer's test data from the manufacturer's test facility will be accepted for purposes of this subpart.

(c) If testing conducted under paragraph (a) of this section demonstrates a lack of agreement under paragraph (b)(2) of this section, the Administrator shall:

(1) Notify the manufacturer in writing of his determination that the test facility is inappropriate for conducting the tests required by this subpart and the reasons therefor; and

(2) Reinstate any manufacturer's data upon a showing by the manufacturer that the data acquired under paragraph (a) of this section was erroneous and the manufacturer's data was correct.

(d) The manufacturer may request in writing that the Administrator reconsider his determination in paragraph (b)(2) of this section based on data or information which indicates that changes have been made to the test facility and these changes have resolved the reasons for disqualification.

**§ 86.1005-90 Maintenance of records; submittal of information.**

(a) The manufacturer of any new petroleum-fueled or methanol-fueled heavy-duty engine or light-duty truck subject to any of the provisions of this subpart shall establish, maintain, and retain the following adequately organized and indexed records:

(1) *General records.* A description of all equipment used to test engines or vehicles in accordance with § 86.1008 pursuant to a test order issued under this subpart, specifically:

(i) If testing heavy-duty gasoline-fueled or methanol-fueled Otto-cycle engines, the equipment requirements specified in 40 CFR part 1065, subparts B and C;

(ii) If testing heavy-duty petroleum-fueled or methanol-fueled diesel engines, the equipment requirements specified in 40 CFR part 1065, subparts B and C;

(iii) If testing gasoline-fueled or methanol-fueled Ottocycle light-duty trucks, the equipment requirements specified in §86.106 (excluding all references to evaporative and particulate emission testing), §86.206, and §86.1506-84 of this subpart; and

(iv) If testing petroleum-fueled or methanol-fueled diesel light-duty trucks, the equipment requirements specified in §§86.106 (excluding all references to evaporative emission testing) and 86.1506-83 of this part.

(2) *Individual records.* These records pertain to each audit conducted pursuant to this subpart.

(i) The date, time, and location of each test;

(ii) The number of hours of service accumulated on each engine or the number of miles on the vehicle when the test began and ended;

(iii) The names of all supervisory personnel involved in the conduct of the audit;

(iv) A record and description of any repairs performed prior to and/or subsequent to approval by the Administrator, giving the date and time of the repair, the reason for it, the person authorizing it, and the names of all supervisory personnel responsible for the conduct of the repair;

(v) The date when the engine or vehicle was shipped from the assembly plant or associated storage facility and when it was received at the testing facility;

(vi) A complete record of all emission tests performed pursuant to this subpart (except tests performed by EPA directly), including all individual worksheets and/or other documentation relating to each test, or exact copies thereof, specifically

(A) If testing gasoline-fueled or methanol-fueled Otto-cycle heavy-duty engines, the record requirements specified in 40 CFR 1065.695;

(B) If testing petroleum-fueled or methanol-fueled diesel heavy-duty engines, the record requirements specified in 40 CFR 1065.695;

(C) If testing gasoline-fueled or methanol-fueled Ottocycle light-duty trucks, the record requirements specified in §86.142 (excluding all references to diesel vehicles), §86.242, and §86.1542; and

(D) If testing petroleum-fueled or methanol-fueled diesel light-duty trucks, the record requirements specified in §86.142; and

(vii) A brief description of any significant audit events commencing with the test engine or vehicle selection process, but not described by any subparagraph under paragraph (a)(2) of this section, including such extraordinary events as engine damage during shipment or vehicle accident.

(viii) A paper copy of the driver's trace for each test.

(3) The manufacturer shall record test equipment description, pursuant to paragraph (a)(1) of this section, for each test cell that can be used to perform emission testing under this subpart.

(b) The manufacturer shall retain all records required to be maintained under this subpart for a period of one (1) year after completion of all testing in response to a test order. Records may be retained as hard copy or reduced to microfilm, punch cards, etc., depending upon the manufacturer's record retention procedure: *Provided*, that in every case all information contained in the hard copy is retained.

(c) Pursuant to a request made by the Administrator, the manufacturer shall submit to him the following information with regard to engine or vehicle production:

(1) Number of engines or vehicles, by configuration and assembly plant, scheduled for production for the time period designated in the request.

(2) Number of engines or vehicles, by configuration and assembly plan, produced during the time period designated in the request which are complete form introduction into commerce.

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

(e) The manufacturer shall address all reports, submissions, notifications,

and requests for approvals made under this subpart to: Director, Manufacturers Operations Division, U.S. Environmental Protection Agency, EN-340, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

[54 FR 14560, Apr. 11, 1989, as amended at 57 FR 31922, July 17, 1992; 70 FR 40437, July 13, 2005]

**§ 86.1006-84 Entry and access.**

(a) To allow the Administrator to determine whether a manufacturer is complying with the provisions of this subpart and a test order issued thereunder, EPA Enforcement Officers are authorized to enter during operating hours and upon presentation of credentials any of the following:

(1) Any facility where any engine or vehicle to be introduced into commerce or any emission related component is manufactured, assembled, or stored;

(2) Any facility where any tests conducted pursuant to a test order or any procedures or activities connected with these tests are or were performed;

(3) Any facility where any engine or vehicle which is being tested, was tested, or will be tested is present; 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) of this section, EPA Enforcement Officers are authorized to perform the following inspection-related activities:

(1) To inspect and monitor any aspects of engine or vehicle manufacture, assembly, storage, testing and other procedures, and the facilities in which these procedures are conducted;

(2) To inspect and monitor any aspect of engine or vehicle test procedures or activities, including, but not limited to, monitoring engine or vehicle selection, preparation, service or mileage accumulation, preconditioning, emission test cycles, and maintenance; and to verify calibration of test equipment;

(3) To inspect and make copies of any records or documents related to the assembly, storage, selection and testing of an engine or vehicle in compliance with a test order; and

(4) To inspect and photograph any part or aspect of any engine or vehicle and any component used in the assem-

bly thereof that is reasonably related to the purpose of the entry.

(c) EPA Enforcement Officers are authorized to obtain reasonable assistance without cost from those in charge of a facility to help them perform any function listed in this subpart and are authorized to request the recipient of a test order to make arrangements with those in charge of a facility operated for its benefit to furnish reasonable assistance without cost to EPA whether or not the recipient controls the facility.

(d) EPA Enforcement Officers are authorized to seek a warrant or court order authorizing the EPA Enforcement Officers to conduct activities related to entry and access as authorized in this section, as appropriate, to execute the functions specified in this section. EPA Enforcement Officers may proceed *ex parte* to obtain a warrant whether or not the Enforcement Officers first attempted to seek permission of the recipient of the test order or the party in charge of the facilities in question to conduct activities related to entry and access as authorized in this section.

(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. The recipient shall cause those in charge of its facility or a facility operated for its benefit to permit EPA Enforcement Officers to conduct activities related to entry and access as authorized in this section 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 activities related to entry and access as authorized in this section only upon the consent of 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.