

Environmental Protection Agency

§ 86.1853-01

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.

(c) Any waiver granted under paragraph (a) of this section would be limited in duration to a period of one model year, unless extended by the Administrator as a result of continued demonstrations of good in-use emission performance.

(d) The Administrator reserves the right to deny or revoke a waiver which may have been granted if he/she determines that the manufacturer no longer qualifies for the waiver.

§ 86.1853-01 Certification hearings.

(a)(1) After granting a request for a hearing under this subpart, the Administrator shall designate a Presiding Officer for the hearing.

(2) The hearing shall be held as soon as practicable at a time and place fixed by the Administrator or by the Presiding Officer.

(3) In the case of any hearing requested pursuant to § 86.1850-01(e), the Administrator may in his discretion direct that all argument and presentation of evidence be concluded within such fixed period not less than 30 days as he may establish from the date that the first written offer of a hearing is made to the manufacturer. To expedite proceedings, the Administrator may direct that the decision of the Presiding

Officer (who may, but need not be the Administrator) shall be the final EPA decision.

(b)(1) Upon appointment pursuant to paragraph (a) of this section, the Presiding Officer will establish a hearing file. The file shall consist of the notice issued by the Administrator together with any accompanying material, the request for a hearing and the supporting data submitted therewith, and all documents relating to the request for certification and all documents submitted therewith, and correspondence and other data material to the hearing.

(2) The hearing file will be available for inspection by the applicant at the office of the Presiding Officer.

(c) An applicant may appear in person, or may be represented by counsel or by any other duly authorized representative.

(d)(1) The Presiding Officer upon the request of any party, or in his discretion, may arrange for a prehearing conference at a time and place specified by him to consider the following:

- (i) Simplification of the issues;
- (ii) Stipulations, admissions of fact, and the introduction of documents;
- (iii) Limitation of the number of expert witnesses;
- (iv) Possibility of agreement disposing of all or any of the issues in dispute;
- (v) Such other matters as may aid in the disposition of the hearing, including such additional tests as may be agreed upon by the parties.

(2) The results of the conference shall be reduced to writing by the Presiding Officer and made part of the record.

(e)(1) Hearings shall be conducted by the Presiding Officer in an informal but orderly and expeditious manner. The parties may offer oral or written evidence, subject to the exclusion by the Presiding Officer of irrelevant, immaterial and repetitious evidence.

(2) Witnesses will not be required to testify under oath. However, the Presiding Officer shall call to the attention of witnesses that their statements may be subject to the provisions of title 18 U.S.C. 1001 which imposes penalties for knowingly making false statements or representations, or using false documents in any matter within

the jurisdiction of any department or agency of the United States.

(3) Any witness may be examined or cross-examined by the Presiding Officer, the parties, or their representatives.

(4) Hearings shall be reported verbatim. Copies of transcripts of proceedings may be purchased by the applicant from the reporter.

(5) All written statements, charts, tabulations, and similar data offered in evidence at the hearings shall, upon a showing satisfactory to the Presiding Officer of their authenticity, relevancy, and materiality, be received in evidence and shall constitute a part of the record.

(6) Oral argument may be permitted in the discretion of the Presiding Officer and shall be reported as part of the record unless otherwise ordered by the Presiding Officer.

(f)(1) The Presiding Officer shall make an initial decision which 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 record. The findings, conclusions, and written decision shall be provided to the parties and made a part of the record. The initial decision shall become the decision of the Administrator without further proceedings unless there is an appeal to the Administrator or motion for review by the Administrator within 20 days of the date the initial decision was filed.

(2) On appeal from or review of the initial decision the Administrator shall have all the powers which he would have in making the initial 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 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.

§§ 86.1854–86.1859 [Reserved]

§ 86.1860–04 How to comply with the Tier 2 and interim non-Tier 2 fleet average NO_x standards.

(a) The fleet average standards referred to in this section are the corporate fleet average standards for FTP exhaust NO_x emissions set forth in: § 86.1811–04(d) for Tier 2 LDV/Ts and MDPVs (0.07 g/mi); § 86.1811–04(1)(3) for interim non-Tier 2 LDV/LLDTs (0.30 g/mi); and, § 86.1811–04(1)(3) for interim non-Tier 2 HLDT/MDPVs (0.20 g/mi). Unless otherwise indicated in this section, the provisions of this section apply to all three corporate fleet average standards, except that the interim non-Tier 2 fleet average NO_x standards do not apply to a manufacturer whose U.S. LDV/T and MDPV sales are 100% Tier 2 LDV/Ts and MDPVs.

(b)(1) Each manufacturer must comply with the applicable fleet average NO_x standard, or standards, on a sales weighted average basis, at the end of each model year, using the procedure described in this section.

(2) During a phase-in year, the manufacturer must comply with the applicable fleet average NO_x standard for the required phase-in percentage for that year as specified in § 86.1811–04(k)(1), or for the alternate phase-in percentage as permitted under § 86.1811–04(k)(6).

(c)(1)(i) Each manufacturer must separately compute the sales weighted averages of the individual NO_x emission standards to which it certified all its Tier 2 vehicles, interim non-Tier 2 LDV/LLDTs, and interim non-Tier 2 HLDT/MDPVs of a given model year as described in § 86.1804(1)(2).

(ii) For model years up to and including 2008, manufacturers must compute separate NO_x fleet averages for Tier 2 LDV/LLDTs and Tier 2 HLDT/MDPVs.

(2)(i) For model years up to and including 2008, if a manufacturer certifies its entire U.S. sales of Tier 2 or interim non-Tier 2 LDV/LLDTs or interim non-Tier 2 HLDT/MDPVs, to full useful life bins having NO_x standards at or below the applicable fleet average NO_x standard, that manufacturer may elect not to compute a fleet average NO_x level for that category of vehicles. A manufacturer making such an election must