

statement as required in § 86.094-23(b)(4)(ii) shall include, in accordance with good engineering practice, consideration of control system deterioration.

(4) The evaporative emission test results, if any, shall be adjusted by the addition of the appropriate deterioration factor, provided that if the deterioration factor as computed in paragraph (d)(3) of this section is less than zero, that deterioration factor shall be zero for the purposes of this paragraph.

(5) The emission level to compare with the standard shall be the adjusted emission level of paragraph (d)(4) of this section. Before any emission value is compared with the standard, it shall be rounded, in accordance with ASTM E 29-67 (reapproved 1980) (as referenced in paragraph (a)(4)(i)(B)(2)(ii) of this section), to two significant figures. The rounded emission values may not exceed the standard.

(6) Every test vehicle of an evaporative emission family must comply with the evaporative emission standard, as determined in paragraph (d)(5) of this section, before any vehicle in that family may be certified.

[58 FR 4025, Jan. 12, 1993]

EDITORIAL NOTE: At 65 FR 47325, Aug. 2, 2000, § 86.094-28 was amended in paragraph (a)(4)(i)(B)(2)(ii) by revising the phrase "401 M Street SW" to read "401 M St., SW."; however this exact phrase does not appear in this paragraph in the 2000 edition of this volume.

#### § 86.094-30 Certification.

(a)(1)(i) If, after a review of the test reports and data submitted by the manufacturer, data derived from any inspection carried out under § 86.091-7(c) and any other pertinent data or information, the Administrator determines that a test vehicle(s) (or test engine(s)) meets the requirements of the Act and of this subpart, he will issue a certificate of conformity with respect to such vehicle(s) (or engine(s)) except in cases covered by paragraphs (a)(1)(ii) and (c) of this section.

(ii) *Gasoline-fueled and methanol-fueled heavy-duty vehicles.* If, after a review of the statement(s) of compliance submitted by the manufacturer under § 86.094-23(b)(4) and any other pertinent data or information, the Administrator determines that the requirements of the Act and this subpart have been

met, he will issue one certificate of conformity per manufacturer with respect to the evaporative emission family(ies) covered by paragraph (c) of this section.

(2) Such certificate will be issued for such period not to exceed one model year as the Administrator may determine and upon such terms as he may deem necessary or appropriate to assure that any new motor vehicle (or new motor vehicle engine) covered by the certificate will meet the requirements of the Act and of this part.

(3)(i) One such certificate will be issued for each engine family. For gasoline-fueled and methanol-fueled light-duty vehicles and light-duty trucks, one such certificate will be issued for each engine family evaporative emission family combination.

(A) *Light-duty vehicles.* Each certificate will certify compliance with no more than one set of in-use and certification standards (or family emission limits, as appropriate).

(B) *Light-duty trucks.* Each certificate will certify compliance with no more than one set of in-use and certification standards (or family emission limits, as appropriate), except where there are both low-altitude standards and high altitude standards applicable. The certificate shall state that it covers vehicles sold or delivered to an ultimate purchaser for principal use at a designated high-altitude location only if the vehicle conforms in all material respects to the design specifications that apply to those vehicles described in the application for certification at high altitude.

(ii) For gasoline-fueled and methanol-fueled heavy-duty vehicles, one such certificate will be issued for each manufacturer and will certify compliance for those vehicles previously identified in that manufacturer's statement(s) of compliance as required in § 86.094-23(b)(4)(i) and (ii).

(iii) For diesel-cycle light-duty vehicles and light-duty trucks, or diesel-cycle heavy-duty engines, included in the applicable particulate averaging program, the manufacturer may at any time during production elect to change the level of any family particulate emission limit by demonstrating compliance with the new limit as described

## Environmental Protection Agency

## § 86.094-30

in §§ 86.094-28(a)(6) and 86.094-28(b)(5)(i). New certificates issued under this paragraph will be applicable only for vehicles (or engines) produced subsequent to the date of issuance.

(iv) For light-duty trucks or heavy-duty engines included in the applicable NO<sub>x</sub> averaging program, the manufacturer may at any time during production elect to change the level of any family NO<sub>x</sub> emission limit by demonstrating compliance with the new limit as described in § 86.094-28(b)(5)(ii). New certificates issued under this paragraph will be applicable only for vehicles (or engines) produced subsequent to the day of issue.

(4)(i) The adjustment or modification of any light-duty truck in accordance with instructions provided by the manufacturer for the altitude where the vehicle is principally used will not be considered a violation of section 203(a)(3) of the Clean Air Act (42 U.S.C. 7522 (a)(3)).

(ii) A violation of section 203(a)(1) of the Clean Air Act (42 U.S.C. 7522(a)(1)) occurs when a manufacturer sells or delivers to an ultimate purchaser any light-duty vehicle or light-duty truck, subject to the regulations under the Act, under any of the conditions specified in the remainder of this paragraph.

(A) When a light-duty vehicle or light-duty truck is not configured to meet high-altitude requirements:

(1) At a designated high-altitude location, unless such manufacturer has reason to believe that such vehicle will not be sold to an ultimate purchaser for principal use at a designated high-altitude location; or

(2) At a location other than a designated high-altitude location, when such manufacturer has reason to believe that such motor vehicle will be sold to an ultimate purchaser for principal use at a designated high-altitude location.

(B) When a light-duty vehicle is not configured to meet low-altitude requirements, as provided in § 86.094-8(i) :

(1) At a designated low-altitude location, unless such manufacturer has reason to believe that such vehicle will not be sold to an ultimate purchaser for principal use at a designated low-altitude location; or

(2) At a location other than a designated low-altitude location, when such manufacturer has reason to believe that such motor vehicle will be sold to an ultimate purchaser for principal use at a designated low-altitude location.

(iii) A manufacturer shall be deemed to have reason to believe that a light-duty vehicle that has been exempted from compliance with emission standards at high-altitude, or a light-duty truck which is not configured to meet high-altitude requirements, will not be sold to an ultimate purchaser for principal use at a designated high-altitude location if the manufacturer has informed its dealers and field representatives about the terms of these high-altitude regulations, has not caused the improper sale itself, and has taken reasonable action which shall include, but not be limited to, either paragraph (a)(4)(iii) (A) or (B), and paragraph (a)(4)(iii)(C) of this section:

(A) Requiring dealers in designated high-altitude locations to submit written statements to the manufacturer signed by the ultimate purchaser that a vehicle which is not configured to meet high-altitude requirements will not be used principally at a designated high-altitude location; requiring dealers in counties contiguous to designated high-altitude locations to submit written statements to the manufacturer, signed by the ultimate purchaser who represents to the dealer in the normal course of business that he or she resides in a designated high-altitude location, that a vehicle which is not configured to meet high-altitude requirements will not be used principally at a designated high-altitude location; and for each sale or delivery of fleets of ten or more such vehicles in a high-altitude location or in counties contiguous to high-altitude locations, requiring either the selling dealer or the delivering dealer to submit written statements to the manufacturer, signed by the ultimate purchaser who represents to the dealer in the normal course of business that he or she resides in a designated high-altitude location, that a vehicle which is not configured to meet high-altitude requirements will not be used principally at a designated high-altitude location. In

addition, the manufacturer will make available to EPA, upon reasonable written request (but not more frequently than quarterly, unless EPA has demonstrated that it has substantial reason to believe that an improperly configured vehicle has been sold), sales, warranty, or other information pertaining to sales of vehicles by the dealers described above maintained by the manufacturer in the normal course of business relating to the altitude configuration of vehicles and the locations of ultimate purchasers; or

(B) Implementing a system which monitors factory orders of low-altitude vehicles by high-altitude dealers, or through other means, identifies dealers that may have sold or delivered a vehicle not configured to meet the high-altitude requirements to an ultimate purchaser for principal use at a designated high-altitude location; and making such information available to EPA upon reasonable written request (but not more frequently than quarterly, unless EPA has demonstrated that it has substantial reason to believe that an improperly configured vehicle has been sold); and

(C) Within a reasonable time after receiving written notice from EPA or a State or local government agency that a dealer may have improperly sold or delivered a vehicle not configured to meet the high-altitude requirements to an ultimate purchaser residing in a designated high-altitude location, or based on information obtained pursuant to paragraph (a)(4)(iii) of this section that a dealer may have improperly sold or delivered a significant number of such vehicles to ultimate purchasers so residing, reminding the dealer in writing of the requirements of these regulations, and, where appropriate, warning the dealer that sale by the dealer of vehicles not configured to meet high-altitude requirements may be contrary to the terms of its franchise agreement with the manufacturer and the dealer certification requirements of § 85.2108 of this chapter.

(iv) A manufacturer shall be deemed to have reason to believe that a light-duty vehicle which has been exempted from compliance with emission standards at low-altitude, as provided in § 86.094-8(i), will not be sold to an ultimate purchaser for principal use at a

designated low-altitude location if the manufacturer has informed its dealers and field representatives about the terms of the high-altitude regulations, has not caused the improper sale itself, and has taken reasonable action which shall include, but not be limited to, either paragraph (a)(4)(iv) (A) or (B), and (a)(4)(iv)(C) of this section:

(A) Requiring dealers in designated low-altitude locations to submit written statements to the manufacturer signed by the ultimate purchaser that a vehicle which is not configured to meet low-altitude requirements will not be used principally at a designated low-altitude location; requiring dealers in counties contiguous to designated low-altitude locations to submit written statements to the manufacturer, signed by the ultimate purchaser who represents to the dealer in the normal course of business that he or she resides in a designated low-altitude location, that a vehicle which is not configured to meet low-altitude requirements will not be used principally at a designated low-altitude location; and for each sale or delivery of fleets of ten or more such vehicles in a low-altitude location or in counties contiguous to low-altitude locations, requiring either the selling dealer or the delivering dealer to submit written statements to the manufacturer, signed by the ultimate purchaser who represents to the dealer in the normal course of business that he or she resides in a designated low-altitude location, that a vehicle which is not configured to meet low-altitude requirements will not be used principally at a designated high-altitude location. In addition, the manufacturer will make available to EPA, upon reasonable written request (but not more frequently than quarterly, unless EPA has demonstrated that it has substantial reason to believe that an improperly configured vehicle has been sold), sales, warranty, or other information pertaining to sales of vehicles by the dealers described above maintained by the manufacturer in the normal course of business relating to the altitude configuration of vehicles and the locations of ultimate purchasers; or

**Environmental Protection Agency**

**§ 86.094-30**

(B) Implementing a system which monitors factory orders of high-altitude vehicles by low-altitude dealers, or through other means, identifies dealers that may have sold or delivered a vehicle not configured to meet the low-altitude requirements to an ultimate purchaser for principal use at a designated low-altitude location; and making such information available to EPA upon reasonable written request (but not more frequently than quarterly, unless EPA has demonstrated that it has substantial reason to believe that an improperly configured vehicle has been sold); and

(C) Within a reasonable time after receiving written notice from EPA or a state or local government agency that a dealer may have improperly sold or delivered a vehicle not configured to meet the low-altitude requirements to an ultimate purchaser residing in a designated low-altitude location, or based on information obtained pursuant to paragraph (a)(4)(iv) of this section that a dealer may have improperly sold or delivered a significant number of such vehicles to ultimate purchasers so residing, reminding the dealer in writing of the requirements of these regulations, and, where appropriate, warning the dealer that sale by the dealer of vehicles not configured to meet low-altitude requirements may be contrary to the terms of its franchise agreement with the manufacturer and the dealer certification requirements of § 85.2108 of this chapter.

(5)(i) For the purpose of paragraph (a) of this section, a “designated high-altitude location” is any county which has substantially all of its area located above 1,219 meters (4,000 feet) and:

(A) Requested and extension past the attainment date of December 31, 1982, for compliance with either the National Ambient Air Quality Standards for carbon monoxide or ozone, as indicated in part 52 (Approval and Promulgation of Implementation Plans) of this title; or

(B) Is in the same state as a county designated as a high-altitude location according to paragraph (a)(5)(i)(A) of this section.

(ii) The designated high-altitude locations defined in paragraph (a)(5)(i) of this section are listed below:

STATE OF COLORADO	
Adams	Kit Carson
Alamosa	Lake
Arapahoe	La Plata
Archuleta	Larimer
Boulder	Las Animas
Chaffee	Lincoln
Cheyenne	Mesa
Clear Creek	Mineral
Conejos	Moffat
Costilla	Montezuma
Crowley	Montrose
Custer	Morgan
Delta	Otero
Denver	Ouray
Dolores	Park
Douglas	Pitkin
Eagle	Pueblo
Elbert	Rio Blanco
El Paso	Rio Grande
Fremont	Routt
Garfield	Saguache
Gilpin	San Juan
Grand	San Miguel
Gunnison	Summit
Hinsdale	Teller
Huerfano	Washington
Jackson	Weld
Jefferson	

STATE OF NEVADA	
Carson City	Lyon
Douglas	Mineral
Elko	Nye
Esmeralda	Pershing
Eureka	Storey
Humboldt	Washoe
Lander	White Pine
Lincoln	

STATE OF NEW MEXICO	
Bernalillo	Otero
Catron	Rio Arriba
Colfax	Roosevelt
Curry	Sandoval
De Baca	San Juan
Grant	San Miguel
Guadalupe	Santa Fe
Harding	Sierra
Hidalgo	Socorro
Lincoln	Taos
Los Alamos	Torrance
Luna	Union
McKinley	Valencia
Mora	

STATE OF UTAH	
Beaver	Garfield
Box Elder	Grand
Cache	Iron
Carbon	Juab
Daggett	Kane
Davis	Millard
Duchesne	Morgan
Emery	Piute

**§ 86.094-30**

**40 CFR Ch. I (7-1-04 Edition)**

Rich	Tooele
Salt Lake	Uintah
San Juan	Utah
Sanpete	Wasatch
Sevier	Wayne
Summit	Weber

Park	Teton
Platte	Uinta
Sublette	Washakie
Sweetwater	Weston

(iii) For the purpose of paragraph (a) of this section, a “designated low-altitude location” is any county which has substantially all of its area located below 1,219 meters (4,000 feet).

(iv) The designated low-altitude locations so defined include all counties in the United States which are not listed in either paragraph (a)(5)(ii) of this section or in the list below:

STATE OF ARIZONA	
Apache	Navajo
Cochise	Yavapai
Coconino	
STATE OF IDAHO	
Bannock	Franklin
Bear Lake	Fremont
Bingham	Jefferson
Blaine	Lemhi
Bonneville	Madison
Butte	Minidoka
Camas	Oneida
Caribou	Power
Cassia	Treton
Clark	Valley
Custer	
STATE OF MONTANA	
Beaverhead	Meagher
Deer Lodge	Park
Gallatin	Powell
Jefferson	Silver Bow
Judith Basin	Wheatland
Madison	
STATE OF NEBRASKA	
Banner	Kimball
Cheyenne	Sioux
STATE OF OREGON	
Harney	Lake
Klamath	
STATE OF TEXAS	
Jeff Davis	Parmer
Hudspeth	
STATE OF WYOMING	
Albany	Hot Springs
Campbell	Johnson
Carbon	Laramie
Converse	Lincoln
Fremont	Natrona
Goshen	Niobrara

(6) Catalyst-equipped vehicles, otherwise covered by a certificate, which are driven outside the United States, Canada, and Mexico will be presumed to have been operated on leaded gasoline resulting in deactivation of the catalysts. If these vehicles are imported or offered for importation without retrofit of the catalyst, they will be considered not to be within the coverage of the certificate unless included in a catalyst control program operated by a manufacturer or a United States Government agency and approved by the Administrator.

(7) For incomplete light-duty trucks, a certificate covers only those new motor vehicles which, when completed by having the primary load-carrying device or container attached, conform to the maximum curb weight and frontal area limitations described in the application for certification as required in § 86.094-21(d).

(8) For heavy-duty engines, a certificate covers only those new motor vehicle engines installed in heavy-duty vehicles which conform to the minimum gross vehicle weight rating, curb weight, or frontal area limitations for heavy-duty vehicles described in § 86.082-2.

(9) For incomplete gasoline-fueled and methanol-fueled heavy-duty vehicles a certificate covers only those new motor vehicles which, when completed, conform to the nominal maximum fuel tank capacity limitations as described in the application for certification as required in § 86.094-21(e).

(10)(i) For diesel-cycle light-duty vehicle and diesel-cycle light-duty truck families which are included in a particulate averaging program, the manufacturer’s production-weighted average of the particulate emission limits of all engine families in a participating class or classes shall not exceed the applicable diesel-cycle particulate standard, or the composite particulate standard defined in § 86.090-2 as appropriate, at the end of the model year, as determined in accordance with this part. The certificate shall be void ab initio

## Environmental Protection Agency

## § 86.094-30

for those vehicles causing the production-weighted FEL to exceed the particulate standard.

(ii) For all heavy-duty diesel-cycle engines which are included in the particulate averaging, trading, or banking programs under §86.094-15, the provisions of paragraphs (a)(10)(ii) (A) through (C) of this section apply.

(A) All certificates issued are conditional upon the manufacturer complying with the provisions of §86.094-15 and the averaging, trading, and banking related provision of other applicable sections, both during and after the model year production.

(B) Failure to comply with all provisions of §86.094-15 will be considered to be a failure to satisfy the conditions upon which the certificate was issued, and the certificate may be deemed void ab initio.

(C) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied or excused.

(11)(i) For light-duty truck families which are included in a NO<sub>x</sub> averaging program, the manufacturer's production-weighted average of the NO<sub>x</sub> emission limits of all such engine families shall not exceed the applicable NO<sub>x</sub> emission standard, or the composite NO<sub>x</sub> emission standard defined in §86.088-2, as appropriate, at the end of the model year, as determined in accordance with this part. The certificate shall be void ab initio for those vehicles causing the production-weighted FEL to exceed the NO<sub>x</sub> standard.

(ii) For all heavy duty engines which are included in the NO<sub>x</sub> averaging, trading, or banking programs under §86.091-15, the provisions of paragraphs (a)(11)(ii) (A) through (C) of this section apply.

(A) All certificates issued are conditional upon the manufacturer complying with the provisions of §86.094-15 and the averaging, trading, and banking related provision of other applicable sections, both during and after the model year production.

(B) Failure to comply with all provisions of §86.094-15 will be considered to be a failure to satisfy the conditions upon which the certificate was issued,

and the certificate may be deemed void ab initio.

(C) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the "conditions upon which the certificate was issued were satisfied or excused.

(12) For all light-duty vehicles certified to standards under §86.094-8 or to which standards under §86.708-94 are applicable, the provisions of paragraphs (a)(12) (i) through (iii) of this section apply.

(i) All certificates issued are conditional upon the manufacturer complying with all provisions of §§86.094-8 and 86.708-94 both during and after model year production.

(ii) Failure to meet the required implementation schedule sales percentages as specified in §§86.094-8 and §86.708-94 will be considered to be a failure to satisfy the conditions upon which the certificate(s) was issued and the vehicles sold in violation of the implementation schedule shall not be covered by the certificate.

(iii) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied.

(13) For all light-duty trucks certified to standards under §86.094-9 and to which standards under §86.709-94 are applicable, the provisions of paragraphs (a)(13) (i) through (iii) this section apply.

(i) All certificates issued are conditional upon the manufacturer complying with all provisions of §§86.094-9 and 86.709-94 both during and after model year production.

(ii) Failure to meet the required implementation schedule sales percentages as specified in §§86.094-9 and 86.709-94 will be considered to be a failure to satisfy the conditions upon which the certificate(s) was issued and the individual vehicles sold in violation of the implementation schedule shall not be covered by the certificate.

(iii) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied.

(14) For all light-duty vehicles and light-duty trucks certified with an Alternative Service Accumulation Durability Program under §86.094–13(e), paragraphs (a)(14) (i) through (iii) of this section apply.

(i) All certificates issued are conditional upon the manufacturer performing the in-use verification program pursuant to the agreement described in §86.094–13(e)(8).

(ii) Failure to fully comply with all the terms of the in-use verification program pursuant to the agreement described in §86.094–13(e)(8) will be considered a failure to satisfy the conditions upon which the certificate was issued. A vehicle or truck will be considered to be covered by the certificate only if the manufacturer fulfills the conditions upon which the certificate is issued.

(iii) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied.

(b)(1) The Administrator will determine whether a vehicle (or engine) covered by the application complies with applicable standards (or family emission limits, as appropriate) by observing the following relationships: in paragraphs (b)(1) (i) through (iv) of this section:

(i) *Light-duty vehicles.* (A) The durability data vehicle(s) selected under §86.094–24(c)(1)(i) shall represent all vehicles of the same engine system combination.

(B) The emission data vehicle(s) selected under §86.094–24(b)(1) (ii) through (iv) shall represent all vehicles of the same engine-system combination as applicable.

(C) The emission data vehicle(s) selected under §86.094–24(b)(1)(vii) (A) and (B) shall represent all vehicles of the same evaporative control system within the evaporative family.

(ii) *Light-duty trucks.* (A) The emission data vehicle(s) selected under §86.094–24(b)(1)(ii), shall represent all vehicles of the same engine-system combination as applicable.

(B) The emission data vehicle(s) selected under §86.094–24 (b)(I)(vii) (A) and (B) shall represent all vehicles of the same evaporative control system within the evaporative family.

(C) The emission data vehicle(s) selected under §86.09424(b) (1) (v) shall represent all vehicles of the same enginesystem combination as applicable.

(D) The emission data vehicle(s) selected under §86.094–24(b)(1)(viii) shall represent all vehicles of the same evaporative control system within the evaporative emission family, as applicable.

(iii) *Heavy-duty engines.* (A) An Otto-cycle emission data test engine selected under §86.094–24(b)(2)(iv) shall represent all engines in the same family of the same engine displacement-exhaust emission control system combination.

(B) An Otto-cycle emission data test engine selected under §86.094–24(b)(2)(iii) shall represent all engines in the same engine family of the same engine displacement-exhaust emission control system combination.

(C) A diesel emission data test engine selected under §86.094–24(b)(3)(ii) shall represent all engines in the same engine-system combination.

(D) A diesel emission data test engine selected under §86.094–24(b)(3)(iii) shall represent all engines of that emission control system at the rated fuel delivery of the test engine.

(iv) Gasoline-fueled and methanol-fueled heavy-duty vehicles. A statement of compliance submitted under §86.094–23(b)(4) (i) or (ii) shall represent all vehicles in the same evaporative emission family-evaporative emission control system combination.

(2) The Administrator will proceed as in paragraph (a) of this section with respect to the vehicles (or engines) belonging to an engine family or engine family-evaporative emission family combination (as applicable), all of which comply with all applicable standards (or family emission limits, as appropriate).

(3) If after a review of the test reports and data submitted by the manufacturer, data derived from any additional testing conducted pursuant to §86.091–29, data or information derived from any inspection carried out under §86.094–7(d) or any other pertinent data or information, the Administrator determines that one or more test vehicles (or test engines) of the certification

test fleet do not meet applicable standards (or family emission limits, as appropriate), he will notify the manufacturer in writing, setting forth the basis for his determination. Within 30 days following receipt of the notification, the manufacturer may request a hearing on the Administrator's determination. 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 determination and data in support of such objections. If, after a review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, he shall provide the manufacturer a hearing in accordance with § 86.078-6 with respect to such issue.

(4) For light-duty vehicles and light-duty trucks the manufacturer may, at its option, proceed with any of the following alternatives with respect to an emission data vehicle determined not in compliance with all applicable standards (or family emission limits, as appropriate) for which it was tested:

(i) Request a hearing under § 86.078-6; or

(ii) Remove the vehicle configuration (or evaporative vehicle configuration, as applicable) which failed, from his application:

(A) If the failed vehicle was tested for compliance with exhaust emission standards (or family emission limits, as appropriate) only: The Administrator may select, in place of the failed vehicle, in accordance with the selection criteria employed in selecting the failed vehicle, a new emission data vehicle to be tested for exhaust emission compliance only; or

(B) If the failed vehicle was tested for compliance with both exhaust and evaporative emission standards: The Administrator may select, in place of the failed vehicle, in accordance with the selection criteria employed in selecting the failed vehicle, a new emission data vehicle which will be tested for compliance with both exhaust and evaporative emission standards. If one vehicle cannot be selected in accordance with the selection criteria employed in selecting the failed vehicle, then two vehicles may be selected (i.e.,

one vehicle to satisfy the exhaust emission vehicle selection criteria and one vehicle to satisfy the evaporative emission vehicle selection criteria). The vehicle selected to satisfy the exhaust emission vehicle selection criteria will be tested for compliance with exhaust emission standards (or family emission limits, as appropriate) only. The vehicle selected to satisfy the evaporative emission vehicle selection criteria will be tested for compliance with both exhaust and evaporative emission standards; or

(iii) Remove the vehicle configuration (or evaporative vehicle configuration, as applicable) which failed from the application and add a vehicle configuration(s) (or evaporative vehicle configuration(s), as applicable) not previously listed. The Administrator may require, if applicable, that the failed vehicle be modified to the new engine code (or evaporative emission code, as applicable) and demonstrate by testing that it meets applicable standards (or family emission limits, as appropriate) for which it was originally tested. In addition, the Administrator may select, in accordance with the vehicle selection criteria given in § 86.094-24(b), a new emission data vehicle or vehicles. The vehicles selected to satisfy the exhaust emission vehicle selection criteria will be tested for compliance with exhaust emission standards (or family emission limits, as appropriate) only. The vehicles selected to satisfy the evaporative emission vehicle selection criteria will be tested for compliance with both exhaust and evaporative emission standards (or family emission limits, as appropriate); or

(iv) Correct a component or system malfunction and show that with a correctly functioning system or component the failed vehicle meets applicable standards (or family emission limits, as appropriate) for which it was originally tested. The Administrator may require a new emission data vehicle, of identical vehicle configuration (or evaporative vehicle configuration, as applicable) to the failed vehicle, to be operated and tested for compliance with the applicable standards (or family emission limits, as appropriate) for which the failed vehicle was originally tested.



(5) For heavy-duty engines the manufacturer may, at his option, proceed with any of the following alternatives with respect to any engine family represented by a test engine (s) determined not in compliance with applicable standards (or family emission limit, as appropriate):

(i) Request a hearing under § 86.078-6; or

(ii) Delete from the application for certification the engines represented by the failing test engine. (Engines so deleted may be included in a later request for certification under § 86.079-32.) The Administrator may then select in place of each failing engine an alternate engine chosen in accordance with selection criteria employed in selecting the engine that failed; or

(iii) Modify the test engine and demonstrate by testing that it meets applicable standards. Another engine which is in all material respect the same as the first engine, as modified, may then be operated and tested in accordance with applicable test procedures.

(6) If the manufacturer does not request a hearing or present the required data under paragraphs (b) (4) or (5) of this section (as applicable) of this section, the Administrator will deny certification.

(c)(1) Notwithstanding the fact that any certification vehicle(s) (or certification engine(s)) may comply with other provisions of this subpart, the Administrator may withhold or deny the issuance of a certificate of conformity (or suspend or revoke any such certificate which has been issued) with respect to any such vehicle(s) (or engine(s)) if:

(i) The manufacturer submits false or incomplete information in his application for certification thereof;

(ii) The manufacturer renders inaccurate any test data which he submits pertaining thereto or otherwise circumvents the intent of the Act, or of this part with respect to such vehicle (or engine);

(iii) Any EPA Enforcement Officer is denied access on the terms specified in § 86.091-7(d) to any facility or portion thereof which contains any of the following:

(A) The vehicle (or engine);

(B) Any components used or considered for use in its modification or buildup into a certification vehicle (or certification engine);

(C) Any production vehicle (or production engine) which is or will be claimed by the manufacturer to be covered by the certificate;

(D) Any step in the construction of a vehicle (or engine) described in paragraph (c)(iii)(C) of this section;

(E) Any records, documents, reports, or histories required by this part to be kept concerning any of the above; or

(iv) Any EPA Enforcement Officer is denied "reasonable assistance" (as defined in § 86.091-7(d) in examining any of the items listed in paragraph (c)(1)(iii) of this section.

(2) The sanctions of withholding, denying, revoking, or suspending of a certificate may be imposed for the reasons in paragraphs (c)(1) (i), (ii), (iii), or (iv) of this section only when the infraction is substantial.

(3) In any case in which a manufacturer knowingly submits false or inaccurate information or knowingly renders inaccurate or invalid any test data or commits any other fraudulent acts and such acts contribute substantially to the Administrator's decision to issue a certificate of conformity, the Administrator may deem such certificate void ab initio.

(4) In any case in which certification of a vehicle (or engine) is proposed to be withheld, denied, revoked, or suspended under paragraph (c)(1) (iii) or (iv) of this section, and in which the Administrator has presented to the manufacturer involved reasonable evidence that a violation of § 86.091-7(d) in fact occurred, the manufacturer, if he wishes to contend that, even though the violation occurred, the vehicle (or engine) in question was not involved in the violation to a degree that would warrant withholding, denial, revocation, or suspension of certification under either paragraph (c)(1) (iii) or (iv) of this section, shall have the burden of establishing that contention to the satisfaction of the Administrator.

(5) Any revocation or suspension of certification under paragraph (c)(1) of this section shall:

(i) Be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.078-6 hereof; and

(ii) Extend no further than to forbid the introduction into commerce of vehicles (or engines) previously covered by the certification which are still in the hands of the manufacturer, except in cases of such fraud or other misconduct as makes the certification invalid *ab initio*.

(6) The manufacturer may request in the form and manner specified in paragraph (b)(3) of this section that any determination made by the Administrator under paragraph (c)(1) of this section to withhold or deny certification be reviewed in a hearing conducted in accordance with § 86.078-6. If the Administrator finds, after a review of the request and supporting data, that the request raises a substantial factual issue, he will grant the request with respect to such issue.

(d)(1) For light-duty vehicles. Notwithstanding the fact that any vehicle configuration or engine family may be covered by a valid outstanding certificate of conformity, the Administrator may suspend such outstanding certificate of conformity in whole or in part with respect to such vehicle configuration or engine family if:

(i) The manufacturer refuses to comply with the provisions of a test order issued by the Administrator pursuant to § 86.603; or

(ii) The manufacturer refuses to comply with any of the requirements of § 86.603; or

(iii) The manufacturer submits false or incomplete information in any report or information provided pursuant to the requirements of § 86.609; or

(iv) The manufacturer renders inaccurate any test data which he submits pursuant to § 86.609; or

(v) Any EPA Enforcement Officer is denied the opportunity to conduct activities related to entry and access as authorized in § 86.606 of this part and in a warrant or court order presented to the manufacturer or the party in charge of a facility in question; or

(vi) EPA Enforcement Officers are unable to conduct activities related to entry and access or to obtain "reasonable assistance" as authorized in § 86.606

of this part because a manufacturer has located its facility in a foreign jurisdiction where local law prohibits those activities; or

(vii) The manufacturer refuses to or in fact does not comply with § 86.604(a), § 86.605, § 86.607, § 86.608, or § 86.610.

(2) The sanction of suspending a certificate may not be imposed for the reasons in paragraph (d)(1) (i), (ii), or (vii) of this section where the refusal is caused by conditions and circumstances outside the control of the manufacturer which render it impossible to comply with those requirements.

(3) The sanction of suspending a certificate may be imposed for the reasons in paragraph (d)(1) (iii), (iv), or (v) of this section only when the infraction is substantial.

(4) In any case in which a manufacturer knowingly submitted false or inaccurate information or knowingly rendered inaccurate any test data or committed any other fraudulent acts, and such acts contributed substantially to the Administrator's original decision not to suspend or revoke a certificate of conformity in whole or in part, the Administrator may deem such certificate void from the date of such fraudulent act.

(5) In any case in which certification of a vehicle is proposed to be suspended under paragraph (d)(1)(v) of this section and in which the Administrator has presented to the manufacturer involved reasonable evidence that a violation of § 86.606 in fact occurred, if the manufacturer wishes to contend that, although the violation occurred, the vehicle configuration or engine family in question was not involved in the violation to a degree that would warrant suspension of certification under paragraph (d)(1)(v) of this section, the manufacturer shall have the burden of establishing the contention to the satisfaction of the Administrator.

(6) Any suspension of certification under paragraph (d)(1) of this section shall:

(i) Be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.614; and

(ii) Not apply to vehicles no longer in the hands of the manufacturer.

(7) Any voiding of a certificate of conformity under paragraph (d)(4) of this section will be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.614.

(8) Any voiding of the certificate under § 86.091-30(a)(10) will be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.614.

(e) *For light-duty trucks and heavy-duty engines.* (1) Notwithstanding the fact that any vehicle configuration or engine family may be covered by a valid outstanding certificate of conformity, the Administrator may suspend such outstanding certificate of conformity in whole or in part with respect to such vehicle or engine configuration or engine family if:

(i) The manufacturer refuses to comply with the provisions of a test order issued by the Administrator pursuant to § 86.1003; or

(ii) The manufacturer refuses to comply with any of the requirements of § 86.1003; or

(iii) The manufacturer submits false or incomplete information in any report or information provided pursuant to the requirements of § 86.1009; or

(iv) The manufacturer renders inaccurate any test data submitted pursuant to § 86.1009; or

(v) Any EPA Enforcement Officer is denied the opportunity to conduct activities related to entry and access as authorized in § 86.1006 of this part and in a warrant or court order presented to the manufacturer or the party in charge of a facility in question; or

(vi) EPA Enforcement Officers are unable to conduct activities related to entry and access as authorized in § 86.1006 of this part because a manufacturer has located a facility in a foreign jurisdiction where local law prohibits those activities; or

(vii) The manufacturer refuses to or in fact does not comply with the requirements of §§ 86.1004(a), 86.1005, 86.1007, 86.1008, 86.1010, 86.1011, or 86.1013.

(2) The sanction of suspending a certificate may not be imposed for the reasons in paragraph (e)(1) (i), (ii), or (vii) of this section where such refusal

or denial is caused by conditions and circumstances outside the control of the manufacturer which renders it impossible to comply with those requirements. Such conditions and circumstances shall include, but are not limited to, any uncontrollable factors which result in the temporary unavailability of equipment and personnel needed to conduct the required tests, such as equipment breakdown or failure or illness of personnel, but shall not include failure of the manufacturers to adequately plan for and provide the equipment and personnel needed to conduct the tests. The manufacturer will bear the burden of establishing the presence of the conditions and circumstances required by this paragraph.

(3) The sanction of suspending a certificate may be imposed for the reasons outlined in paragraph (e)(1) (iii), (iv), or (v) of this section only when the infraction is substantial.

(4) In any case in which a manufacturer knowingly submitted false or inaccurate information or knowingly rendered inaccurate any test data or committed any other fraudulent acts, and such acts contributed substantially to the Administrator's original decision not to suspend or revoke a certificate of conformity in whole or in part, the Administrator may deem such certificate void from the date of such fraudulent act.

(5) In any case in which certification of a light-duty truck or heavy-duty engine is proposed to be suspended under paragraph (e)(1)(v) of this section and in which the Administrator has presented to the manufacturer involved reasonable evidence that a violation of § 86.1006 in fact occurred, if the manufacturer wishes to contend that, although the violation occurred, the vehicle or engine configuration or engine family in question was not involved in the violation to a degree that would warrant suspension of certification under paragraph (e)(1)(v) of this section, he shall have the burden of establishing that contention to the satisfaction of the Administrator.

(6) Any suspension of certification under paragraph (e)(1) of this section shall:

## Environmental Protection Agency

## § 86.094-35

(i) Be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.1014; and

(ii) Not apply to vehicles or engines no longer in the hands of the manufacturer.

(7) Any voiding of a certificate of conformity under paragraph (e)(4) of this section shall be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.1014.

(8) Any voiding of the certificate under paragraph (a) (10) or (11) of this section will be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.1014.

(f) For engine families required to have an emission control diagnostic system, certification will not be granted if, for any emission data vehicle or other test vehicle approved by the Administrator, the malfunction indicator light does not illuminate under any of the following circumstances, or if, for any assembly line vehicle, the malfunction indicator light does not illuminate under the circumstances described in paragraph (f)(4) of this section. Only paragraph (f)(4) of this section applies for diesel cycle vehicles.

(1) A catalyst is replaced with a deteriorated or defective catalyst or electronic simulation of such resulting in both an exhaust emission exceedance of 0.6 g/mi HC and an exhaust emission increase of 0.4 g/mi HC on a normal temperature (20 to 30 °C) emission certification test.

(2) A misfire condition is induced resulting in an increase in emissions of greater than 0.4 g/mi HC or 3.4 g/mi CO or 1.0 g/mi NO<sub>x</sub> on a normal temperature (20 to 30 °C) emission certification test.

(3) Any oxygen sensor is replaced with a deteriorated or defective oxygen sensor, or the operation of such a sensor is simulated, resulting in an increase in emissions of 0.2 g/mi HC or 1.7 g/mi CO or 0.5 g/mi NO<sub>x</sub> on a normal temperature (20 to 30 °C) emission certification test.

(4) The electronic evaporative purge control device (if equipped) is disconnected or the operation of any emission-related powertrain component

connected to a computer results in an increase in emissions of 0.2 g/mi HC or 1.7 g/mi CO or 0.5 g/mi NO<sub>x</sub> on a normal temperature (20 to 30 °C) emission certification test.

[58 FR 4028, Jan. 12, 1993, as amended at 58 FR 9487, Feb. 19, 1993; 60 FR 15247, Mar. 23, 1995]

### § 86.094-35 Labeling.

Section 86.094-35 includes text that specifies requirements that differ from § 86.092-35. Where a paragraph in § 86.092-35 is identical and applicable to § 86.094-35, this may be indicated by specifying the corresponding paragraph and the statement “[Reserved]. For guidance see § 86.092-35.” Where a corresponding paragraph of § 86.092-35 is not applicable, this is indicated by the statement “[Reserved].”

(a) The manufacturer of any motor vehicle (or motor vehicle engine) subject to the applicable emission standards (and family emission limits, as appropriate) of this subpart, shall, at the time of manufacture, affix a permanent legible label, of the type and in the manner described below, containing the information hereinafter provided, to all production models of such vehicles (or engines) available for sale to the public and covered by a Certificate of Conformity under § 86.091-30(a).

(1) *Light-duty vehicles.* (i) A permanent, legible label shall be affixed in a readily visible position in the engine compartment.

(ii) The label shall be affixed by the vehicle manufacturer who has been issued the certificate of conformity for such vehicle, in such manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such vehicle.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals, which shall be of a color that contrasts with the background of the label:

(A) The label heading: Vehicle Emission Control Information;

(B) Full corporate name and trademark of manufacturer;