

series such that the original hydrocarbon storage device is situated between the fuel tank and the new hydrocarbon storage device. The original hydrocarbon storage device shall be sealed such that vapors cannot reach the atmosphere. The elevation of the original hydrocarbon storage device shall be equal to or lower than the new hydrocarbon storage device.

(v) Submit a written statement to the Administrator that paragraphs (g)(2)(i) through (g)(2)(iv) of this section have been complied with.

(3) If applicable, the Administrator will send a return letter verifying the receipt of the written statement required in paragraph (g)(2)(v) of this section.

(h) *Notification of nonconformance penalty.* (1) Light-duty trucks and heavy-duty vehicles and engines for which nonconformance penalties are to be paid in accordance with § 86.1113-87(b) shall have the following information printed on the label required in paragraph (a) of this section. The manufacturer shall begin labeling production engines or vehicles within 10 days after the completion of the production compliance audit (PCA).

(i) The statement: "The manufacturer of this engine/vehicle will pay a nonconformance penalty to be allowed to introduce it into commerce at an emission level higher than the applicable emission standard. The compliance level (or new emission standard) for this engine/vehicle is XXX." (The manufacturer shall insert the applicable pollutant and compliance level calculated in accordance with § 86.1112-87(a).)

(ii) [Reserved]

(2) If a manufacturer introduces an engine or vehicle into commerce prior to the compliance level determination of § 86.1112-87(a), it shall provide the engine or vehicle owner with a label as described above to be affixed in a location in proximity to the label required in paragraph (a) of this section within 30 days of the completion of the PCA.

(i) All light-duty vehicles and light-duty trucks shall comply with SAE Recommended Practices J1877 "Recommended Practice for Bar-Coded Vehicle Identification Number Label," (MAY88), and J1892 "Recommended

Practice for Bar-Coded Vehicle Emission Configuration Label," (MAY88) except that label characters 3 through 7 as specified in J1892 shall be consistent with the standardized engine family name as revised by EPA for the application model year. SAE J1877 and J1892 are incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096-0001. Copies may be inspected at Docket No. A-90-35 at EPA's Air Docket (LE-131), room 1500M, 1st Floor, Waterside Mall, 401 M St., SW., Washington, DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

[56 FR 25750, June 5, 1991, as amended at 57 FR 31907, July 17, 1992; 58 FR 4035, Jan. 12, 1993; 58 FR 9487, Feb. 19, 1993; 58 FR 15799, Mar. 24, 1993; 58 FR 33209, June 16, 1993]

#### § 86.094-38 Maintenance instructions.

Section 86.094-38 includes text that specifies requirements that differ from those specified in § 86.087-38. Where a paragraph in § 86.087-38 is identical and applicable to § 86.094-38, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.087-38."

(a)-(f) [Reserved]. For guidance see § 86.087-38.

(g) Emission control diagnostic service information:

(1) Manufacturers shall furnish or cause to be furnished to any person engaged in the repairing or servicing of motor vehicles or motor vehicle engines, or the Administrator upon request, any and all information needed to make use of the on-board diagnostic system and such other information, including instructions for making emission-related diagnosis and repairs, including, but not limited to, service manuals, technical service bulletins, recall service information, data stream

information, bi-directional control information, and training information, unless such information is protected by section 208(c) as a trade secret. No such information may be withheld under section 208(c) of the Act if that information is provided (directly or indirectly) by the manufacturer to franchised dealers or other persons engaged in the repair, diagnosing, or servicing of motor vehicles or motor vehicle engines.

(2) Emission-related information includes, but is not limited to:

(i) Information regarding any system, component or part of a vehicle that controls emissions and any system, components and/or parts associated with the powertrain system, including, but not limited to, the fuel system and ignition system;

(ii) Information for any system, component, or part that is likely to impact emissions, such as transmission systems; and

(iii) Any other information specified by the Administrator to be relevant for the diagnosis and repair of an emission failure found through the Inspection and Maintenance program, after such finding has been communicated to the affected manufacturer(s).

(3) All information required to be made available by this section shall be made available to persons referred to in this section at a fair and reasonable price, as determined by the Administrator. In reaching a decision, the Administrator shall consider all relevant factors, including, but not limited to, the cost to the manufacturer of preparing and/or providing the information, the type of information, the format in which it is provided, the price charged by other manufacturers for similar information, the differences that exist among manufacturers (e.g., the size of the manufacturer), the quantity of material contained in a publication, the detail of the information, the cost of the information prior to the effective date of this section, volume discounts, and inflation.

(4) Any information which is not provided at a fair and reasonable price shall be considered unavailable.

(5) By December 7, 1995, each manufacturer shall provide in a manner specified in paragraph (g)(9) of this sec-

tion an index of the information required to be made available by this section for 1994 and later model year vehicles which have been offered for sale; this requirement does not apply to indirect information, including the information specified in paragraph (g)(10) of this section. This index shall:

(i) Be updated on the first and third Monday of each month;

(ii) Provide titles that either adequately describes the contents of the document to which it refers or provides a brief description of the information contained in that document; and

(iii) Provide the cost of information and where it can be obtained.

(6) For vehicle models introduced more than four months after the effective date of this section, manufacturers shall make the information required under this section available to persons specified in paragraph (g)(1) of this section at the same time it is made available to dealerships, except as otherwise specified in this section.

(7) Each manufacturer shall maintain the index of information specified in paragraph (g)(5) of this section on FedWorld or other database designated by the Administrator. Manufacturers shall inform persons specified in paragraph (g)(1) of this section about the availability of the index in a manner prescribed by the Administrator.

(8) Each manufacturer shall be responsible for paying its pro rata share of any costs associated with establishing and maintaining the index of emission-related service and repair information provided for in paragraphs (g)(5) and (g)(7) of this section.

(9) Manufacturers or their designated distributors must mail requested information within one business day of receiving an order, and shall provide overnight delivery if the ordering party requests it and assumes the cost of delivery.

(10) All emission-related data stream information made available to manufacturers' franchised dealerships (or others in the service industry) shall be made available to the persons indicated in paragraph (g)(1) of this section either through provision of manufacturer equipment and tools or through provision of such information to equipment and tool manufacturers.

(11) Effective January 1, 1997, a manufacturer shall only provide bi-directional control to its franchised dealerships if it provides equipment and tool manufacturers with information to make diagnostic equipment with the same bi-directional control capabilities available to the dealerships, or if it provides such capabilities directly to persons specified in paragraph (g)(1) of this section by offering for sale at a reasonable cost through manufacturer tools.

(12) Manufacturers shall make data stream information and bi-directional control information available for all model years beginning with model year 1994 as specified in paragraphs (g)(10) and (g)(11) of this section. If a manufacturer can demonstrate, to the satisfaction of the Administrator, that safeguards for bi-directional controls are only installed in tools, not in vehicle on-board computers, then that manufacturer may receive a waiver from producing bi-directional controls for vehicles prior to the 1997 model year.

(13) Effective December 1, 1997, manufacturers shall make available in the manner described in paragraph (g)(16) of this section to persons specified in paragraph (g)(1) of this section reprogramming capability for all emission-related reprogramming events (including driveability reprogramming events that may affect emissions) that were issued prior to December 1, 1997 by manufacturers and that were made available to any manufacturer dealerships for model years 1994 through 1997; and manufacturers shall make available to persons indicated in paragraph (g)(1) of this section in the manner described in paragraph (g)(16) of this section reprogramming capability for all emission-related reprogramming events (including driveability reprogramming events that may affect emissions) that are issued by manufacturers on or after December 1, 1997, for 1994 and later model years at the same time they are made available to dealerships.

(14) For all vehicles, reprogramming need not be provided for any recalibrations performed prior to vehicles entering the stream of commerce (i.e., sale to first purchaser).

(15) If a manufacturer can demonstrate, to the satisfaction of the Administrator, that hardware would have to be retroactively installed on vehicles to meet security measures implemented by the manufacturer, the manufacturer may receive a waiver from the requirements of paragraph (g)(13) of this section for model years 1994 through 1996.

(16) Manufacturers shall either offer for sale at a competitive market price a reprogramming tool that interfaces with a substantial majority of generic portable computers or make available to aftermarket tool and equipment companies information that would enable them to manufacture such a tool. Any method adopted by a manufacturer by which reprogramming is made available to persons specified in paragraph (g)(1) of this section shall not impose a significant burden on such providers beyond that experienced by dealerships.

(17) Manufacturers shall be responsible for ensuring that persons specified in paragraph (g)(1) of this section shall have access to reprogramming services at a reasonable cost and in a timely manner.

(18) Manufacturers shall provide persons specified in paragraph (g)(1) of this section with an efficient and cost-effective method for identifying whether the calibrations on vehicles are the latest to be issued.

(19) Manufacturers shall either make available to aftermarket tool and equipment companies no later than the date of model introduction any and all information, except calibrations and recalibrations, needed to develop and manufacture generic tools that can be used by persons specified in paragraph (g)(1) of this section to diagnose, service and repair emission-related parts, components and systems or manufacturers may sell their own diagnostic tools and equipment to persons specified in paragraph (g)(1) of this section if the price of such tools is reasonable.

(20) A manufacturer is subject to a penalty of up to \$25,000 per day per violation for failure to make available the information required by this section.

(21) Beginning December 24, 2003, rather than meeting the requirements of paragraphs (g)(5) through (g)(9) of

this section, a manufacturer must upload the required information in full text on its manufacturer-specific Web site as required in § 86.096–38 (g)(3), except that for models not covered by § 86.096–38 but covered by § 86.094–38, a manufacturer may upload an index of the required information on its Web site consistent with paragraphs (g)(5), (g)(6), and (g)(9) of this section. Manufacturers who upload an index must allow parties identified in paragraph (g)(1) of this section to obtain information listed in the index either directly from the Web site, or from an alternate source whose telephone number is listed on the manufacturer Web site, or from a Web site hyperlinked to the manufacturer Web site. Manufacturers must also provide the price of each item listed, as well as the price of items ordered on a subscription basis. To the extent that any additional information is added or changed for these model years, manufacturers shall update the index as appropriate. Manufacturers will be responsible for ensuring that all requested information, whether requested directly from the manufacturer or the manufacturer's information distributors shall be distributed within one regular business day of receiving the order. Items that are less than 20 pages (*e.g.* technical service bulletins) shall be faxed, if requested, to the requestor and manufacturers are required to deliver the information overnight if requested and paid for by the ordering party.

[60 FR 40496, Aug. 9, 1995, as amended at 62 FR 31233, June 6, 1997; 68 FR 38449, June 27, 2003]

**§ 86.095–14 Small-volume manufacturers certification procedures.**

Section 86.095–14 includes text that specifies requirements that differ from § 86.094–14. Where a paragraph in § 86.094–14 is identical and applicable to § 86.095–14, this may be indicated by specifying the corresponding paragraph and the statement “[Reserved]. For guidance see § 86.094–14.” Where a corresponding paragraph of § 86.094–14 is not applicable, this is indicated by the statement “[Reserved].”

(a)–(c)(11)(ii)(B)(15) [Reserved]. For guidance see § 86.094–14.

(c)(11)(ii)(B)(16) A description of vehicle adjustments or modifications required by §§ 86.094–8(j) and 86.094–9(j), if any, to assure that light-duty vehicles and light-duty trucks covered by a certificate of conformity conform to the regulations while being operated at any altitude locations, and a statement of the altitude at which the adjustments or modifications apply.

(17) A description of the light-duty vehicles and light-duty trucks which are exempted from the high altitude emission standards.

(18) Proof that the manufacturer has obtained or entered an agreement to purchase, when applicable, the insurance policy required by the § 85.1510(b) of this chapter. The manufacturer may submit a copy of the insurance policy or purchase agreement as proof that the manufacturer has obtained or entered an agreement to purchase the insurance policy.

(C) The results of all emission tests the manufacturer performs to demonstrate compliance with the applicable standards.

(D)(1) The following statement signed by the authorized representative of the manufacturer: “The vehicles (or engines) described herein have been tested in accordance with (list of the applicable subparts A, B, D, I, M, N, or P) of part 86, title 40, Code of Federal Regulations, and on the basis of those tests are in conformance with that subpart. All of the data and records required by that subpart are on file and are available for inspection by the EPA Administrator. We project the total U.S. sales of vehicles (engines) subject to this subpart (including all vehicles and engines imported under the provisions of 40 CFR 85.1505 and 40 CFR 85.1509) to be fewer than 10,000 units.”

(2) A statement as required by and contained in § 86.094–14(c)(5) signed by the authorized representative of the manufacturer.

(3) A statement that the vehicles or engines described in the manufacturer's application for certification are not equipped with auxiliary emission control devices which can be classified as a defeat device as defined in § 86.092–2.