

## Environmental Protection Agency

## § 86.441-78

procedures of the manufacturer: *Provided* That, in every case, all the information contained in the hard copy shall be retained.

[42 FR 1126, Jan. 5, 1977, as amended at 42 FR 56738, Oct. 28, 1977; 49 FR 48140, Dec. 10, 1984]

### § 86.441-78 Right of entry.

(a) Any manufacturer who has applied for certification of a new motorcycle subject to certification tests under this subpart shall admit or cause to be admitted any EPA Enforcement Officer during operating hours on presentation of any credentials to any of the following:

(1) Any facility where any such tests or any procedures or activities connected with such tests are or were performed.

(2) Any facility where any new motorcycle which is being, was or is to be tested is present.

(3) Any facility where any construction process or assembly process used in the modification or build-up of such a vehicle into a certification vehicle is taking place or has taken place.

(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 (c)(1) of this section, any EPA Enforcement Officer shall be allowed:

(1) To inspect and monitor any part or aspect of such procedures, activities, and testing facilities, including, but not limited to, monitoring vehicle preconditioning, emissions tests and service accumulation, maintenance, and vehicle soak and storage procedures; and to verify correlation or calibration of test equipment;

(2) To inspect and make copies of any such records, designs, or other documents; and

(3) To inspect and/or photograph any part or aspect of any such certification vehicle and any components to be used in the construction thereof.

(c) In order to allow the Administrator to determine whether or not production motorcycles conform in all material respects to the design specifications which applied to those vehicles described in the application for certification for which a certificate of conformity has been issued and to

standards prescribed under section 202 of the Act, any manufacturer shall admit any EPA Enforcement Officer on presentation of credentials to both:

(1) Any facility where any document design, or procedure relating to the translation of the design and construction of engines and emission related components described in the application for certification or used for certification testing into production vehicles is located or carried on; and

(2) Any facility where any motorcycles to be introduced into commerce are manufactured or assembled.

(d) On admission to any such facility referred to in paragraph (c)(3) of this section, any EPA Enforcement Officer shall be allowed:

(1) To inspect and monitor any aspects of such manufacture or assembly and other procedures;

(2) To inspect and make copies of any such records, documents or designs; and

(3) To inspect and photograph any part or aspect of any such new motorcycles and any component used in the assembly thereof that are reasonably related to the purpose of his entry.

(e) Any EPA Enforcement Officer shall be furnished by those in charge of a facility being inspected with such reasonable assistance as he may request to help him discharge any function listed in this paragraph. Each applicant for or recipient of certification is required to cause those in charge of a facility operated for its benefit to furnish such reasonable assistance without charge to EPA whether or not the applicant controls the facility.

(f) The duty to admit or cause to be admitted any EPA Enforcement Officer applies whether or not the applicant owns or controls the facility in question and applies both to domestic and to foreign manufacturers and facilities. EPA will not attempt to make any inspections which it has been informed that local law forbids. However, if local law makes it impossible to do what is necessary to insure the accuracy of data generated at a facility, no informed judgment that a vehicle or engine is certifiable or is covered by a certificate can properly be based on that data. It is the responsibility of the manufacturer to locate its testing and

manufacturing facilities in jurisdictions where this situation will not arise.

(g) For purposes of this section:

(1) *Presentation of credentials* shall mean display of the document designating a person as an EPA Enforcement Officer.

(2) Where vehicle, component, or engine storage areas or facilities are concerned, *operating hours* shall mean all times during which personnel other than custodial personnel are at work in the vicinity of the area or facility and have access to it.

(3) Where facilities or areas other than those covered by paragraph (g)(2) of this section are concerned, *operating hours* shall mean all times during which an assembly line is in operation or all times during which testing, maintenance, service accumulation, production or compilation of records, or any other procedure or activity related to certification testing, to translation of designs from the test stage to the production stage, or to vehicle manufacture or assembly is being carried out in a facility.

(4) *Reasonable assistance* includes, but is not limited to, clerical, copying, interpretation and translation services, the making available on request of personnel of the facility being inspected during their working hours to inform the EPA Enforcement Officer of how the facility operates and to answer his questions, and the performance on request of emissions tests on any vehicle which is being, has been, or will be used for certification testing. Such tests shall be nondestructive, but may require appropriate service accumulation. A manufacturer may be compelled to cause the personal appearance of any employee at such a facility before an EPA Enforcement Officer by written request for his appearance, signed by the Assistant Administrator for Enforcement, served on the manufacturer. Any such employee who has been instructed by the manufacturer to appear will be entitled to be accompanied, represented, and advised by counsel. No counsel who accompanies, represents, or advises an employee compelled to appear may accompany, represent, or advise any other person in the investigation.

(5) Any entry without 24 hours prior written or oral notification to the affected manufacturer shall be authorized in writing by the Assistant Administrator for Enforcement.

**§ 86.442-78 Denial, revocation, or suspension of certification.**

(a) Notwithstanding the fact that any certification vehicle(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) if:

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

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

(3) Any EPA Enforcement Officer is denied access on the terms specified in § 86.441 to any facility or portion thereof which contains any of the following:

(i) The vehicle, or

(ii) Any components used or considered for use in its modification or build-up into a certification vehicle, or

(iii) Any production vehicle which is or will be claimed by the manufacturer to be covered by the certificate, or

(iv) Any step in the construction of a vehicle described in paragraph (c) of this section, or

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

(4) Any EPA Enforcement Officer is denied "reasonable assistance" (as defined in § 86.444) in examining any of the items listed in paragraph (a)(1)(iii) of this section.

(b) The sanctions of withholding, denying, revoking, or suspending of a certificate may be imposed for the reasons in paragraph (a) of this section only when the infraction is substantial.

(c) 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 fraudulent acts and such acts contribute substantially to the Administrator's decision to