

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 issue a certificate of conformity, the Administrator may deem such certificate void ab initio.

(d) In any case in which certification of a vehicle is proposed to be withheld, denied, revoked, or suspended under paragraph (a) (3) or (4) of this section, and in which the Administrator has presented to the manufacturer involved reasonable evidence that a violation of § 86.441 in fact occurred, the manufacturer, if he wishes to contend that, even though the violation occurred, the vehicle in question was not involved in the violation to a degree that would warrant withholding, denial, revocation, or suspension of certification under either paragraph (a) (3) or (4) of this section, shall have the burden of establishing that contention to the satisfaction of the Administrator.

(e) Any revocation or suspension of certification under paragraph (a) of this section shall:

(1) Be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.444 hereof.

(2) Extend no further than to forbid the introduction into commerce of vehicles 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.

(f) The manufacturer may request in the form and manner specified in § 86.443 that any determination made by the Administrator under paragraph (a) of this section to withhold or deny certification be reviewed in a hearing conducted in accordance with § 86.444. 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.

[42 FR 1126, Jan. 5, 1977, as amended at 42 FR 56738, Oct. 28, 1977]

§ 86.443-78 Request for hearing.

Within 30 days following receipt of notification that an application has been rejected or that certification has been denied, 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 determinations, and data in support of such objections. If, after the 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 with respect to such issue.

§ 86.444-78 Hearings on certification.

(a)(1) After granting a request for a hearing under § 86.443 the Administrator will designate a Presiding Officer for the hearing.

(2) The General Counsel will represent the Environmental Protection Agency in any hearing under this section.

(3) If a time and place for the hearing have not been fixed by the Administrator under § 86.443, the hearing shall be held as soon as practicable at a time and place fixed by the Administrator or by the Presiding Officer.

(4) In the case of any hearing requested pursuant to § 86.437, 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 himself) shall be the final EPA decision.

(b)(1) Upon his appointment pursuant to paragraph (a) of this section, the Presiding Officer will establish a hearing file. The file shall consist of the notice issue by the Administrator under 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 appeal 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 hearing 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