for a test group which has not completed the Administrator testing required under paragraph (a) of this section. Such a certificate will be issued based upon the condition that the confirmatory testing be completed in an expedited manner and that the results of the testing be in compliance with all standards and procedures.

(1) If, based on this testing or any other information, the Administrator later determines that the vehicles included in this test group do not meet the applicable standards, the Administrator will notify the manufacturer that the certificate is suspended. The certificate may be suspended in whole or in part as determined by the Administrator. Upon such a notification, the manufacturer must immediately cease the introduction of the affected vehicles into commerce. The manufacturer may request a hearing to appeal the Administrators decision using the provisions of § 86.1853–01.

(2) Production of vehicles by a manufacturer under the terms of this paragraph (d) will be deemed to be a consent to recall all vehicles in the test group which the Administrator determines do not meet applicable standards, and to cause such nonconformity to be remedied at no expense to the owner.

[64 FR 23925, May 4, 1999, as amended at 65 FR 59976, Oct. 6, 2000; 66 FR 19310, Apr. 13, 2001; 75 FR 25689, May 7, 2010]

§ 86.1836–01 Manufacturer-supplied production vehicles for testing.

Any manufacturer obtaining certification under this subpart shall supply to the Administrator, upon request, a reasonable number of production vehicles selected by the Administrator which are representative of the engines, emission control systems, fuel systems, and transmission offered and typical of production models available for sale under the certificate. These vehicles shall be supplied for testing at such time and place and for such reasonable periods as the Administrator may require.

§ 86.1837–01 Rounding of emission measurements.

(a) Unless otherwise specified, the results of all emission tests shall be rounded to the number of places to the right of the decimal point indicated by expressing the applicable emission standard of this subpart to one additional significant figure, in accordance with the Rounding-Off Method specified in ASTM E29–93a, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications (incorporated by reference; see § 86.1).

(b) Fleet average NO_X value calculations, where applicable, must be rounded before comparing with the applicable fleet average standard and calculating credits generated or needed as follows: manufacturers must round to the same number of significant figures that are contained in the quantity of vehicles in the denominator of the equation used to compute the fleet average NO_X emissions, but to no less than one more decimal place than that of the applicable fleet average standard.

[64 FR 23925, May 4, 1999, as amended at 65 FR 6864, Feb. 10, 2000]

§ 86.1838–01 Small volume manufacturer certification procedures.

(a) The small-volume manufacturers certification procedures described in paragraphs (b) and (c) of this section are optional. Small-volume manufacturers may use these optional procedures to demonstrate compliance with the general standards and specific emission requirements contained in this subpart.

(b) *Eligibility requirements*—(1) *Small volume manufacturers.* (i) The optional small-volume manufacturers certification procedures apply to LDV/Ts and MDPVs produced by manufacturers with sales in all states and territories of the United States, including all vehicles and engines imported under provisions of 40 CFR 85.1505 and 85.1509 (for the model year in which certification is sought) of fewer than 15,000 units (LDV/Ts, MDPVs, heavy-duty vehicles and heavy-duty engines combined).

(ii) If the aggregated sales in all states and territories of the United States of the manufacturer, as determined in paragraph (b)(3) of this section are fewer than 15,000 units, the manufacturer (or each manufacturer in

the case of manufacturers in an aggregated relationship) may certify under the provisions of paragraph (c) of this section.

(2) *Small volume test groups.* (i) If the aggregated sales in all states and territories of the United States, as determined in paragraph (b)(3) of this section are equal to or greater than 15,000 units, then the manufacturer (or each manufacturer in the case of manufacturers in an aggregated relationship) will be allowed to certify a number of units under the small volume test group certification procedures in accordance with the criteria identified in paragraphs (b)(2)(ii) through (iv) of this section.

(ii) If there are no additional manufacturers in an aggregated relationship meeting the provisions of paragraph (b)(3) of this section, then the manufacturer may certify whole test groups whose total aggregated sales (including heavy-duty engines) are less than 15,000 units using the small volume provisions of paragraph (c) of this section.

(iii) If there is an aggregated relationship with another manufacturer which satisfies the provisions of paragraph (b)(3) of this section, then the following provisions shall apply:

(A) If none of the manufacturers own 50 percent or more of another manufacturer in the aggregated relationship, then each manufacturer may certify whole test groups whose total aggregated sales (including heavy-duty engines) are less than 15,000 units using the small volume provisions of paragraph (c) of this section.

(B) If any of the manufacturers own 50 percent or more of another manufacturer in the aggregated relationship, then the limit of 14,999 units must be shared among the manufacturers in such a relationship. In total for all the manufacturers involved in such a relationship, aggregated sales (including heavy-duty engines) of up to 14,999 units may be certified using the small volume provisions of paragraph (c) of this section. Only whole test groups shall be eligible for small volume status under paragraph (c) of this section.

(iv) In the case of a joint venture arrangement (50/50 ownership) between two manufacturers, each manufacturer retains its eligibility for 14,999 units under the small-volume test group certification procedures, but the joint venture must draw its maximum 14,999 units from the units allocated to its parent manufacturers. Only whole test groups shall be eligible for small volume status under paragraph (c) of this section.

(3) *Sales aggregation for related manufacturers.* The projected or actual sales from different firms shall be aggregated in the following situations:

(i) Vehicles and/or engines produced by two or more firms, one of which is 10 percent or greater part owned by another;

(ii) Vehicles and/or engines produced by any two or more firms if a third party has equity ownership of 10 percent or more in each of the firms;

(iii) Vehicles and/or engines produced by two or more firms having a common corporate officer(s) who is (are) responsible for the overall direction of the companies;

(iv) Vehicles and/or engines imported or distributed by all firms where the vehicles and/or engines are manufactured by the same entity and the importer or distributor is an authorized agent of the entity.

(c) Small-volume manufacturers and/or small volume test groups shall demonstrate compliance with the all applicable sections of this subpart except as provided in paragraphs (c)(1) and (2) of this section. Small volume manufacturers and/or test groups may optionally meet the following requirements:

(1) Durability demonstration. Use the provisions of §86.1826–01 rather than the requirements of §§86.1823, 86.1824, and/or 86.1825.

(2) *In-use verification testing.* See §86.1845–01 for applicability of in-use verification testing to small volume manufacturers and small volume test groups except as noted in this paragraph (c)(2).

(i) Small volume in-use verification test vehicles may be procured from customers or may be owned by, or under the control of the manufacturer, provided that the vehicle has accumulated mileage in typical operation on public streets and has received typical maintenance.

(ii) In lieu of procuring small volume in-use verification test vehicles that

have a minimum odometer reading of 50,000 miles, a manufacturer may demonstrate to the satisfaction of the Agency that, based on owner survey data, the average mileage accumulated after 4 years for a given test group is less than 50,000 miles. The Agency may approve a lower minimum odometer reading based on such data.

(iii) The provisions of §§ 86.1845–01(c)(2) and 86.1845–04(c)(2) that require one vehicle of each test group during high mileage in-use verification testing to have a minimum odometer mileage of 75 percent of the full useful life mileage for Tier 1 and NLEV LDV/Ts, or 90,000 (or 105,000) miles for Tier 2 and interim non-Tier 2 vehicles, do not apply.

(iv) Manufacturers intending to use the provisions of paragraphs (c)(2)(i) or (ii) of this section shall submit to the Agency, prior to the certification of the subject vehicles, a plan detailing how these provisions will be met.

(d) *Operationally independent manufacturers.* Manufacturers may submit an application to EPA requesting treatment as an operationally independent manufacturer. A manufacturer that is granted operationally independent status may qualify for certain specified regulatory provisions on the basis of its own vehicle production and/or sales volumes, and would not require aggregation with related manufacturers. In this paragraph (d), the term ''related manufacturer(s)'' means manufacturers that would qualify for aggregation under the requirements of paragraph (b)(3) of this section.

(1) To request consideration for operationally independent status, the manufacturer must submit an application demonstrating that the following criteria are met, and have been continuously met for at least two years prior to submitting the application to EPA. The application must be signed by the president or the chief executive officer of the manufacturer.

(i) The applicant does not receive any financial or other means of support of economic value from any related manufacturers for purposes of vehicle design, vehicle parts procurement, research and development, and production facilities and operation. Any transactions with related manufacturers must be conducted under normal commercial arrangements like those conducted with other external parties. Any such transactions with related manufacturers shall be demonstrated to have been at competitive pricing rates to the applicant.

(ii) The applicant maintains wholly separate and independent research and development, testing, and vehicle manufacturing and production facilities.

(iii) The applicant does not use any vehicle engines, powertrains, or platforms developed or produced by related manufacturers.

(iv) The applicant does not hold any patents jointly with related manufacturers.

(v) The applicant maintains separate business administration, legal, purchasing, sales, and marketing departments as well as wholly autonomous decision making on all commercial matters.

(vi) The Board of Directors of the applicant may not share more than 25 percent of its membership with any related manufacturer. No top operational management of the applicant may be shared with any related manufacturer, including the president, the chief executive officer (CEO), the chief financial officer (CFO), and the chief operating officer (COO). No individual director or combination of directors that is shared with a related manufacturer may exercise exclusive management control over either or both companies.

(vii) Parts or components supply agreements between the applicant and related companies must be established through open market processes. An applicant that sells or otherwise provides parts and/or vehicle components to a manufacturer that is not a related manufacturer must do so through the open market at competitive pricing rates.

(2) Manufacturers that have been granted operationally independent status must report any material changes to the information provided in the application within 60 days of the occurrence of the change. If such a change occurs that results in the manufacturer no longer meeting the requirements of the application, the manufacturer will lose the eligibility to be considered operationally independent. The

EPA will confirm that the manufacturer no longer meets one or more of the criteria and thus is no longer considered operationally independent, and will notify the manufacturer of the change in status. A manufacturer who loses the eligibility for operationally independent status must transition to the appropriate emission standards no later than the third model year after the model year in which the loss of eligibility occurred. For example, a manufacturer that loses eligibility in their 2018 model year would be required to meet appropriate standards in the 2021 model year. A manufacturer that loses eligibility must meet the applicable criteria for three consecutive model years before they are allowed to apply for a reinstatement of their operationally independent status.

(3) The manufacturer applying for operational independence shall engage an independent certified public accountant, or firm of such accountants (hereinafter referred to as ''CPA''), to perform an agreed-upon procedures attestation engagement of the underlying documentation that forms the basis of the application as required in this paragraph (d).

(i) The CPA shall perform the attestation engagements in accordance with the Statements on Standards for Attestation Engagements established by the American Institute of Certified Public Accountants.

(ii) The CPA may complete the requirements of this paragraph with the assistance of internal auditors who are employees or agents of the applicant, so long as such assistance is in accordance with the Statements on Standards for Attestation Engagements established by the American Institute of Certified Public Accountants.

(iii) Notwithstanding the requirements of paragraph (d)(2)(ii) of this section, an applicant may satisfy the requirements of this paragraph (d)(2) if the requirements of this paragraph (d)(2) are completed by an auditor who is an employee of the applicant, provided that such employee:

(A) Is an internal auditor certified by the Institute of Internal Auditors, Inc. (hereinafter referred to as ''CIA''); and

(B) Completes the internal audits in accordance with the standards for internal auditing established by the Institute of Internal Auditors.

(iv) Use of a CPA or CIA who is debarred, suspended, or proposed for debarment pursuant to the Governmentwide Debarment and Suspension Regulations, 2 CFR part 1532, or the Debarment, Suspension, and Ineligibility Provisions of the Federal Acquisition Regulations, 48 CFR part 9, subpart 9.4, shall be deemed in noncompliance with the requirements of this section.

[64 FR 23925, May 4, 1999, as amended at 65 FR 6864, Feb. 10, 2000; 67 FR 72826, Dec. 6, 2002; 71 FR 2836, Jan. 17, 2006; 77 FR 63162, Oct. 15, 2012]

§ 86.1839–01 Carryover of certification data.

(a) In lieu of testing an emission-data or durability vehicle selected under § 86.1822–01, § 86.1828–01, or § 86.1829–01, and submitting data therefrom, a manufacturer may submit exhaust emission data, evaporative emission data and/or refueling emission data, as applicable, on a similar vehicle for which certification has been obtained or for which all applicable data required under § 86.1845–01 has previously been submitted. To be eligible for this provision, the manufacturer must use good engineering judgment and meet the following criteria:

(1) In the case of durability data, the manufacturer must determine that the previously generated durability data represent a worst case or equivalent rate of deterioration for all applicable emission constituents compared to the configuration selected for durability demonstration.

(i) Prior to certification, the Administrator may require the manufacturer to provide data showing that the distribution of catalyst temperatures of the selected durability configuration is effectively equivalent or lower than the distribution of catalyst temperatures of the vehicle configuration which is the source of the previously generated data.

(ii) For the 2001, 2002, and 2003 model years only, paragraph (a)(1) of this section does not apply to the use of exhaust emission deterioration factors meeting the requirements of § 86.1823–01(c)(2).