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**Subpart P—Importation of Motor Vehicles and Motor Vehicle Engines**

AUTHORITY: 42 U.S.C. 7522, 7525, 7541, 7542(a) and 7601(a).

SOURCE: 52 FR 36156, Sept. 25, 1987, unless otherwise noted.

**§ 85.1501 Applicability.**

(a) Except where otherwise indicated, this subpart is applicable to motor vehicles offered for importation or imported into the United States for which the Administrator has promulgated regulations under 40 CFR part 86, subpart D or S, prescribing emission standards, but which are not covered by certificates of conformity issued under section 206(a) of the Clean Air Act (*i.e.*, which are nonconforming vehicles as defined in § 85.1502), as amended, and part 86 at the time of conditional importation. Compliance with regulations under this subpart shall not relieve any person or entity from compliance with other applicable provisions of the Clean Air Act. This subpart no longer applies for heavy-duty engines certified under 40 CFR part 86, subpart A, or 40 CFR part 1036; references in this subpart to “engines” therefore apply only for replacement engines intended for installation in motor vehicles that are subject to this subpart.

(b) Regulations prescribing further procedures for importation of motor vehicles and motor vehicle engines into the Customs territory of the United States, as defined in 19 U.S.C. 1202, are set forth at 19 CFR 12.73.

(c) References in this subpart to engine families and emission control systems shall be deemed to apply to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles, light-duty trucks, and Otto-cycle complete heavy-duty vehicles under the provisions of 40 CFR part 86, subpart S.

[52 FR 36156, Sept. 25, 1987, as amended at 64 FR 23919, May 4, 1999; 65 FR 59943, Oct. 6, 2000; 86 FR 34363, June 29, 2021; 88 FR 4471, Jan. 24, 2023]

**§ 85.1502 Definitions.**

(a) As used in this subpart, all terms not defined herein have the meanings given them in 19 CFR 12.73, in the Clean Air Act, as amended, and elsewhere in parts 85 and 86 of this chapter.

(1) *Act*. The Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*).

(2) *Administrator*. The Administrator of the Environmental Protection Agency.

(3) *Certificate of conformity*. The document issued by the Administrator under section 206(a) of the Act.

(4) *Certificate holder*. The entity in whose name the certificate of conformity for a class of motor vehicles or motor vehicle engines has been issued.

(5) *The Federal Compliance Testing sequence (FCT)*. The testing sequence that incorporates all of the testing requirements of part 86 applicable at the time of an emissions test conducted pursuant to this subpart.

(6) *FTP*. The Federal Test Procedure at part 86.

(7) *Independent commercial importer (ICI)*. An importer who is not an original equipment manufacturer (OEM) (see definition below) or does not have a contractual agreement with an OEM to act as its authorized representative for the distribution of motor vehicles or motor vehicle engines in the U.S. market.

(8) *Model year*. The manufacturer’s annual production period (as determined by the Administrator) which includes January 1 of such calendar year; *Provided*, That if the manufacturer has no annual production period, the term “model year” shall mean the calendar year in which a vehicle is modified. A certificate holder shall be deemed to have produced a vehicle or engine when the certificate holder has modified the nonconforming vehicle or engine.

(9) *Nonconforming vehicle or engine*. A motor vehicle or motor vehicle engine which is not covered by a certificate of conformity prior to final or conditional importation and which has not been finally admitted into the United States under the provisions of § 85.1505, § 85.1509 or the applicable provisions of § 85.1512. Excluded from this definition are vehicles admitted under provisions of § 85.1512 covering EPA approved manufacturer and U.S. Government Agency

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catalyst and O<sub>2</sub> sensor control programs.

(10) *Original equipment manufacturer (OEM)*. The entity which originally manufactured the motor vehicle or motor vehicle engine prior to conditional importation.

(11) *Original production (OP) year*. The calendar year in which the motor vehicle or motor vehicle engine was originally produced by the OEM.

(12) *Original production (OP) years old*. The age of a vehicle as determined by subtracting the original production year of the vehicle from the calendar year of importation.

(13) *Running changes*. Those changes in vehicle or engine configuration, equipment or calibration which are made by an OEM or ICI in the course of motor vehicle or motor vehicle engine production.

(14) *United States*. United States includes the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, and the U.S. Virgin Islands.

(15) *Useful life*. A period of time/mileage as specified in part 86 for a nonconforming vehicle which begins at the time of resale (for a motor vehicle or motor vehicle engine owned by the ICI at the time of importation) or release to the owner (for a motor vehicle or motor vehicle engine not owned by the ICI at the time of importation) of the motor vehicle or motor vehicle engine by the ICI after modification and/or test pursuant to § 85.1505 or § 85.1509.

(16) *Working day*. Any day on which Federal government offices are open for normal business. Saturdays, Sundays, and official Federal holidays are not working days.

(b) [Reserved]

[52 FR 36156, Sept. 25, 1987, as amended at 61 FR 5842, Feb. 14, 1996; 70 FR 40430, July 13, 2005]

### § 85.1503 General requirements for importation of nonconforming vehicles and engines.

(a) A nonconforming vehicle or engine offered for importation into the United States must be imported by an ICI who is a current holder of a valid certificate of conformity unless an exemption or exclusion is granted by the

Administrator under § 85.1511 or the vehicle is eligible for entry under § 85.1512.

(b) Final admission shall not be granted unless:

(1) The vehicle or engine is covered by a certificate of conformity issued in the name of the importer under part 86 and the certificate holder has complied with all requirements of § 85.1505; or

(2) The vehicle or engine is modified and emissions tested in accordance with the provisions of § 85.1509 and the certificate holder has complied with all other requirements of § 85.1509; or

(3) The vehicle or engine is exempted or excluded under § 85.1511; or

(4) The vehicle was covered originally by a certificate of conformity and is otherwise eligible for entry under § 85.1512.

(c) In any one certificate year (*e.g.*, the current model year), an ICI may finally admit no more than the following numbers of nonconforming vehicles into the United States under the provisions of §§ 85.1505 and 85.1509, except as allowed by paragraph (e) of this section:

(1) [Reserved]

(2) A total of 25 light-duty vehicles, light-duty trucks, and medium-duty passenger vehicles. This limit applies for vehicles with engines, including plug-in hybrid electric vehicles. This limit does not apply for electric vehicles.

(3) 50 highway motorcycles.

(d) For ICIs owned by a parent company, the importation limits in paragraph (c) of this section include importation by the parent company and all its subsidiaries.

(e) An ICI may exceed the limits outlined paragraphs (c) and (d) of this section, provided that any vehicles/engines in excess of the limits meet the emission standards and other requirements outlined in the provisions of § 85.1515 for the model year in which the motor vehicle/engine is modified (instead of the emission standards and other requirements applicable for the OP year of the vehicle/engine).

[52 FR 36156, Sept. 25, 1987, as amended at 70 FR 40430, July 13, 2005; 89 FR 28149, Apr. 18, 2024]

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**§ 85.1504 Conditional admission.**

(a) A motor vehicle or motor vehicle engine offered for importation under § 85.1505, § 85.1509 or § 85.1512 may be conditionally admitted into the United States, but shall be refused final admission unless:

(1) At the time of conditional admission, the importer has submitted to the Administrator a written report that the subject vehicle or engine has been permitted conditional admission pending EPA approval of its application for final admission under § 85.1505, § 85.1509, or § 85.1512. This written report shall contain the following:

- (i) Identification of the importer of the vehicle or engine and the importer's address and telephone number;
- (ii) Identification of the vehicle or engine owner and the vehicle or engine owner's address, telephone number and taxpayer identification number;
- (iii) Identification of the vehicle or engine;
- (iv) Information indicating under what provision of these regulations the vehicle or engine is to be imported;
- (v) Identification of the place where the subject vehicle or engine will be stored until EPA approval of the importer's application to the Administrator for final admission;
- (vi) Authorization for EPA Enforcement Officers to conduct inspections or testing otherwise permitted by the Act or regulations thereunder;
- (vii) Identification, where applicable, of the certificate by means of which the vehicle is being imported;
- (viii) The original production year of the vehicle; and
- (ix) Such other information as is deemed necessary by the Administrator.

(b) Such conditional admission shall not be under bond for a vehicle or engine which is imported under § 85.1505 or § 85.1509. A bond will be required for a vehicle or engine imported under applicable provisions of § 85.1512. The period of conditional admission shall not exceed 120 days. During this period, the importer shall store the vehicle or engine at a location where the Administrator will have reasonable access to the vehicle or engine for his/her inspection.

**§ 85.1505 Final admission of certified vehicles.**

(a) A motor vehicle or engine may be finally admitted into the United States upon approval of the certificate holder's application to the Administrator. Such application shall be made either by completing EPA forms or by submitting the data electronically to EPA's computer, in accordance with EPA instructions. Such application shall contain:

(1) The information required in § 85.1504(a);

(2) Information demonstrating that the vehicle or engine has been modified in accordance with a valid certificate of conformity. Such demonstration shall be made in one of the following ways:

(i) Through an attestation by the certificate holder that the vehicle or engine has been modified in accordance with the provisions of the certificate holder's certificate, and presentation to EPA of a statement by the appropriate OEM that the OEM will provide to the certificate holder and to EPA information concerning running changes to the vehicle or engine described in the certificate holder's application for certification, and actual receipt by EPA of notification by the certificate holder of any running changes already implemented by the OEM at the time of application and their effect on emissions; or

(ii) Through an attestation by the certificate holder that the vehicle or engine has been modified in accordance with the provisions of the certificate holder's certificate of conformity and that the certificate holder has conducted an FTP test, at a laboratory within the United States, that demonstrates compliance with Federal emission requirements on every third vehicle or third engine imported under that certificate within 120 days of entry, with sequencing of the tests to be determined by the date of importation of each vehicle or engine. Should the certificate holder have exceeded a threshold of 300 vehicles or engines imported under the certificate without adjustments or other changes in accordance with paragraph (a)(3) of this section, the amount of required FTP testing may be reduced to every fifth

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vehicle or engine. In order to make a demonstration under paragraph (a)(2)(i) of this section, a certificate holder must have received permission from the Administrator to do so;

(3) The results of every FTP test which the certificate holder conducted on the vehicle or engine. Should a subject vehicle or engine have failed an FTP at any time, the following procedures are applicable:

(i) The certificate holder may either:

(A) Conduct one FTP retest that involves no adjustment of the vehicle or engine from the previous test (e.g., adjusting the RPM, timing, air-to-fuel ratio, etc.) other than adjustments to adjustable parameters that, upon inspection, were found to be out of tolerance. When such an allowable adjustment is made, the parameter may be reset only to the specified (i.e., nominal) value (and not any other value within the tolerance band); or

(B) Initiate a change in production (running change) under the provisions of 40 CFR 86.084-14(c)(13) or 86.1842-01, as applicable, that causes the vehicle to meet Federal emission requirements.

(ii) If the certificate holder chooses to retest in accordance with paragraph (a)(3)(i)(A) of this section:

(A) Such retests must be completed no later than five working days subsequent to the first FTP test;

(B) Should the subject vehicle or engine fail the second FTP, then the certificate holder must initiate a change in production (a running change) under the provisions of 40 CFR 86.084-14(c)(13) or 86.1842-01, as applicable, that causes the vehicle to meet Federal emission requirements.

(iii) If the certificate holder chooses to initiate a change in production (a running change) under the provisions of 40 CFR 86.084-14(c)(13) or 86.1842-01 as applicable, that causes the vehicle to meet Federal requirements, changes involving adjustments of adjustable vehicle parameters (e.g., adjusting the RPM, timing, air/fuel ratio) must be changes in the specified (i.e., nominal) values to be deemed acceptable by EPA.

(iv) Production changes made in accordance with this section must be implemented on all subsequent vehicles

or engines imported under the certificate after the date of importation of the vehicle or engine which gave rise to the production change.

(v) Commencing with the first vehicle or engine receiving the running change, every third vehicle or engine imported under the certificate must be FTP tested to demonstrate compliance with Federal emission requirements until, as in paragraph (a)(2)(ii) of this section, a threshold of 300 vehicles or engines imported under the certificate is exceeded, at which time the amount of required FTP testing may be reduced to every fifth vehicle or engine.

(vi) Reports concerning these running changes shall be made to both the Manufacturers Operations and Certification Divisions of EPA within ten working days of initiation of the running change. The cause of any failure of an FTP shall be identified, if known;

(4) The applicable deterioration factor;

(5) The FTP results adjusted by the deterioration factor;

(6) Such other information that may be specified by applicable regulations or on the certificate under which the vehicle or engine has been modified in order to assure compliance with requirements of the Act;

(7) All information required under § 85.1510;

(8) An attestation by the certificate holder that the certificate holder is responsible for the vehicle's or engine's compliance with Federal emission requirements, regardless of whether the certificate holder owns the vehicle or engine imported under this section;

(9) The name, address and telephone number of the person who the certificate holder prefers to receive EPA notification under § 85.1505(c); and

(10) Such other information as is deemed necessary by the Administrator.

(b) EPA approval for final admission of a vehicle or engine under this section shall be presumed not to have been granted if a vehicle has not been properly modified to be in conformity in all material respects with the description in the application for certification or has not complied with the provisions of § 85.1505(a)(2) or its final

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FTP results, adjusted by the deterioration factor, if applicable, do not comply with applicable emission standards.

(c) Except as provided in §85.1505(b), EPA approval for final admission of a vehicle or engine under this section shall be presumed to have been granted should the certificate holder not have received oral or written notice from EPA to the contrary within 15 working days of the date of EPA's receipt of the certificate holder's application under §85.1505(a). Such EPA notice shall be made to an employee of the certificate holder. If application is made on EPA forms, the date on a certified mail receipt shall be deemed to be the official date of notification to EPA. If application is made by submitting the data electronically, the date of acceptance by EPA's computer shall be deemed to be the official date of notification to EPA. During this 15 working day period, the vehicle or engine must be stored at a location where the Administrator will have reasonable access to the vehicle or engine for his/her inspection.

[52 FR 36156, Sept. 25, 1987, as amended at 64 FR 23919, May 4, 1999]

**§ 85.1506 Inspection and testing of imported motor vehicles and engines.**

(a) In order to allow the Administrator to determine whether a certificate holder's production vehicles or engines comply with applicable emission requirements or requirements of this subpart, EPA Enforcement Officers are authorized to conduct inspections and/or tests of vehicles or engines imported by the certificate holder. EPA Enforcement Officers shall be admitted during operating hours upon demand and upon presentation of credentials to any of the following:

(1) Any facility where any vehicle or engine imported by the certificate holder under this subpart was or is being modified, tested or stored; and

(2) Any facility where any record or other document relating to modification, testing or storage of the vehicles or engines, or required to be kept by §85.1507, is located.

EPA may require inspection or retesting of vehicles or engines at the test facility used by the certificate

holder or at an EPA-designated testing facility, with transportation and/or testing costs to be borne by the certificate holder.

(b) Upon admission to any facility referred to in paragraph (a) of this section, any EPA Enforcement Officer shall be allowed during operating hours:

(1) To inspect and monitor any part or aspect of activities relating to the certificate holder's modification, testing and/or storage of vehicles or engines imported under this subpart;

(2) To inspect and make copies of any records or documents related to modification, testing and storage of a vehicle or engine, or required by §85.1507; and

(3) To inspect and photograph any part or aspect of any such vehicle or engine and any component used in the assembly thereof.

(c) Any EPA Enforcement Officer shall be furnished, by those in charge of a facility being inspected, with such reasonable assistance as he/she may request to help him/her discharge any function listed in this subpart. A certificate holder shall cause those in charge of a facility operated for its benefit to furnish such reasonable assistance without charge to EPA (whether or not the certificate holder controls the facility).

(d) The requirements of paragraphs (a), (b) and (c) of this section apply whether or not the certificate holder owns or controls the facility in question. Noncompliance with the requirements of paragraphs (a), (b) and (c) may preclude an informed judgment that vehicles or engines which have been or are being imported under this subpart by the certificate holder comply with applicable emission requirements or requirements of this subpart. It is the certificate holder's responsibility to make such arrangements as may be necessary to assure compliance with paragraphs (a), (b) and (c) of this section. Failure to do so, or other failure to comply with paragraphs (a), (b) and (c), may result in sanctions as provided for in the Act or §85.1513(e).

(e) Duly designated Enforcement Officers are authorized to proceed ex parte to seek warrants authorizing the

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inspection or testing of the motor vehicles or motor vehicle engines described in paragraph (a) of this section whether or not the Enforcement Officer first attempted to seek permission from the certificate holder or facility owner to inspect such motor vehicles or motor vehicle engines.

(f) The results of the Administrator's test under this section shall comprise the official test data for the vehicle or engine for purposes of determining whether the vehicle or engine should be permitted final entry under § 85.1505 or § 85.1509.

(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 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 specified in paragraph (g)(2) of this section are concerned, "operating hours" shall mean all times during which the facility is in operation.

(4) "Reasonable assistance" includes, but is not limited to, clerical, copying, interpreting and translating services, and 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/her questions.

### **§ 85.1507 Maintenance of certificate holder's records.**

(a) The certificate holder subject to any of the provisions of this subpart shall establish, maintain and retain for six years from the date of entry of a nonconforming vehicle or engine imported by the certificate holder, adequately organized and indexed records, correspondence and other documents relating to the certification, modification, test, purchase, sale, storage, registration and importation of that vehicle or engine, including but not limited to:

(1) The declaration required by 19 CFR 12.73;

(2) Any documents or other written information required by a Federal government agency to be submitted or retained in conjunction with the certification, importation or emission testing of motor vehicles or motor vehicle engines;

(3) All bills of sale, invoices, purchase agreements, purchase orders, principal or agent agreements and correspondence between the certificate holder and the purchaser, of each vehicle or engine, and any agents of the above parties;

(4) Documents providing parts identification data associated with the emission control system installed on each vehicle or engine demonstrating that such emission control system was properly installed on such vehicle or engine;

(5) Documents demonstrating that, where appropriate, each vehicle or engine was emissions tested in accordance with the Federal Test Procedure.

(6) Documents providing evidence that the requirements of § 85.1510 have been met.

(7) Documents providing evidence of compliance with all relevant requirements of the Clean Air Act, the Energy Tax Act of 1978, and the Energy Policy and Conservation Act;

(8) Documents providing evidence of the initiation of the "15 day hold" period for each vehicle or engine imported pursuant to § 85.1505 or § 85.1509;

(9) For vehicles owned by the ICI at the time of importation, documents providing evidence of the date of sale subsequent to importation, together with the name, address and telephone number of the purchaser, for each vehicle or engine imported pursuant to § 85.1505 or § 85.1509;

(10) For vehicles not owned by the ICI at the time of importation, documents providing evidence of the release to the owner subsequent to importation for each vehicle or engine imported pursuant to § 85.1505 or § 85.1509; and

(11) Documents providing evidence of the date of original manufacture of the vehicle or engine.

(b) The certificate holder is responsible for ensuring the maintenance of records required by this section, regardless of whether facilities used by the certificate holder to comply with

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requirements of this subpart are under the control of the certificate holder.

**§ 85.1508 “In Use” inspections and recall requirements.**

(a) Vehicles or engines which have been imported, modified and/or FTP tested by a certificate holder pursuant to § 85.1505 or § 85.1509 may be inspected and emission tested by EPA throughout the useful lives of the vehicles or engines.

(b) Certificate holders shall maintain for six years, and provide to EPA upon request, a list of owners of all vehicles or engines imported by the certificate holder under this subpart.

(c) A certificate holder will be notified whenever the Administrator has determined that a substantial number of a class or category of the certificate holder’s vehicles or engines, although properly maintained and used, do not conform to the regulations prescribed under section 202 when in actual use throughout their useful lives (as determined under section 202(d)). After such notification, the Recall Regulations at 40 CFR part 1068, subpart G, shall govern the certificate holder’s responsibilities and references to a manufacturer in the Recall Regulations shall apply to the certificate holder.

[52 FR 36156, Sept. 25, 1987, as amended at 81 FR 73972, Oct. 25, 2016]

**§ 85.1509 Final admission of modification and test vehicles.**

(a) A motor vehicle or motor vehicle engine may be imported under this section by a certificate holder possessing a currently valid certificate of conformity only if—

(1)(i) The vehicle or engine is six OP years old or older; or

(ii) The vehicle was owned, purchased and used overseas by military or civilian employees of the U.S. Government and

(A) An ICI does not hold a currently valid certificate for that particular vehicle; and

(B) The Federal agency employing the owner of such vehicle determines that such owner is stationed in an overseas area which either prohibits the importation of U.S.-certified vehicles or which does not have adequate

repair facilities for U.S.-certified vehicles; and

(C) The Federal agency employing the personnel owning such vehicles determines that such vehicles are eligible for shipment to the United States at U.S. Government expense; and

(2) The certificate holder’s name has not been placed on a currently effective EPA list of certificate holders ineligible to import such modification/test vehicles, as described in paragraph (j) of this section.

(b)–(f) [Reserved]

(g) A motor vehicle or motor vehicle engine conditionally imported under this section may be finally admitted into the United States upon approval of the certificate holder’s application to the Administrator. Such application shall be made either by completing EPA forms or, if the applicant chooses, by submitting the data electronically to EPA’s computer, in accordance with EPA instructions. Such application shall contain:

(1) The identification information required in § 85.1504;

(2) An attestation by the certificate holder that the vehicle or engine has been modified and/emission tested in accordance with the FTP at a laboratory within the United States;

(3) The results of any FTP;

(4) The deterioration factor assigned by EPA;

(5) The FTP results adjusted by the deterioration factor;

(6) An attestation by the certificate holder that emission testing and development of fuel economy data as required by § 85.1510 was performed after the vehicle or engine had been modified to conform to Department of Transportation safety standards;

(7) All information required under § 85.1510;

(8) An attestation by the certificate holder that the certificate holder is responsible for the vehicle’s or engine’s compliance with Federal emission requirements, regardless of whether the certificate holder owns the vehicle or engine imported under this section.

(9) The name, address and telephone number of the person who the certification holder prefers to receive EPA notification under § 85.1509(i).

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(10) For any vehicle imported in accordance with paragraphs (b) through (f) of this section, an attestation by the certificate holder that the vehicle is of the same make and fuel type as the vehicle covered by a qualifying certificate as described in paragraphs (b) through (f) of this section, as applicable.

(11) Such other information as is deemed necessary by the Administrator.

(h) EPA approval for final admission of a vehicle or engine under this section shall be presumed not to have been granted if a vehicle's final FTP results, adjusted by the deterioration factor, if applicable, do not comply with applicable emission standards.

(i) Except as provided in § 85.1509(h), EPA approval for final admission of a vehicle or engine under this section shall be presumed to have been granted should the certificate holder not have received oral or written notice from EPA to the contrary within 15 working days of the date of EPA's receipt of the certificate holder's application under § 85.1509(g). Such EPA notice shall be made to an employee of the certificate holder. If application is made on EPA form, the date of a certified mail receipt shall be deemed to be the official date of notification to EPA. If application is made by submitting the data electronically, the date of acceptance by EPA's computer shall be deemed to be the official date of notification to EPA. During this 15 working day period, the vehicle or engine must be stored at a location where the Administrator will have reasonable access to inspect the vehicle or engine.

(j) EPA shall maintain a current list of certificate holders who have been determined to be ineligible to import vehicles or engines under this section. Such determinations shall be made in accordance with the criteria and procedures in § 85.1513(e) of this subpart.

(k) Prior to final entry, vehicles or engines imported under this section are subject to special inspections as described in § 85.1506 with these additional provisions:

(1) If a significant number of vehicles imported by a certificate holder fail to comply, in the judgment of the Administrator, with emission requirements

upon inspection or retest, or if the certificate holder fails to comply with any provision of these regulations that pertain to vehicles imported pursuant to § 85.1509, the certificate holder may be placed on the EPA list of certificate holders ineligible to import vehicles under this section as specified in paragraph (j) of this section and § 85.1513(e);

(2) Individual vehicles or engines which fail an FTP retest or inspection must be repaired and retested, as applicable, to demonstrate compliance with emission requirements before final admission.

(3) Unless otherwise specified by EPA, the costs of all retesting under this subsection, including transportation, shall be borne by the certificate holder.

(1) Vehicles or engines imported under this section may be tested or inspected by EPA at any time during the vehicle's or engine's useful life in accordance with § 85.1508 (a) and (b). If, in the judgment of the Administrator, a significant number of properly maintained and used vehicles or engines imported by the certificate holder fail to meet emission requirements, the name of the certificate holder may be placed on the EPA list of certificate holders ineligible to import vehicles under the modification/test provision as specified in paragraph (j) of this section and § 85.1513(e).

[52 FR 36156, Sept. 25, 1987, as amended at 89 FR 28149, Apr. 18, 2024]

### **§ 85.1510 Maintenance instructions, warranties, emission labeling and fuel economy requirements.**

The provisions of this section are applicable to all vehicles or engines imported under the provisions of §§ 85.1505 and 85.1509.

(a) *Maintenance instructions.* (1) The certificate holder shall furnish to the purchaser or to the owner of each vehicle or engine imported under § 85.1505 or § 85.1509 of this section, written instructions for the maintenance and use of the vehicle or engine by the purchaser or owner. Each application for final admission of a vehicle or engine shall provide an attestation that such instructions have been or will be (if the ultimate producer is unknown) furnished to the purchaser or owner of

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such vehicle or engine at the time of sale or redelivery. The certificate holder shall maintain a record of having furnished such instructions.

(2) For each vehicle or engine imported under § 85.1509, the maintenance and use instructions shall be maintained in a file containing the records for that vehicle or engine.

(3) Such instructions shall not contain requirements more restrictive than those set forth in 40 CFR part 86, subpart A or subpart S, as applicable (Maintenance Instructions), and shall be in sufficient detail and clarity that an automotive mechanic of average training and ability can maintain or repair the vehicle or engine.

(4) Certificate holders shall furnish with each vehicle or engine a list of the emission control parts, and emission-related parts added by the certificate holder and the emission control and emission related parts furnished by the OEM.

(b) *Warranties.* (1) Certificate holders shall provide to vehicle or engine owners emission warranties identical to those required by sections 207 (a) and (b) of the Act and 40 CFR part 85, subpart V. The warranty period for each vehicle or engine shall commence on the date the vehicle or engine is delivered by the certificate holder to the ultimate purchaser or owner.

(2) Certificate holders shall ensure that these warranties:

(i) Are insured by a prepaid mandatory service insurance policy underwritten by an independent insurance company;

(ii) Are transferable to each successive owner for the periods specified in sections 207 (a) and (b); and

(iii) Provide that in the absence of a certificate holder's facility being reasonably available (i.e., within 50 miles) for performance of warranty repairs, such warranty repairs may be performed anywhere.

(3) Certificate holders shall attest in each application for final admission that such warranties will be or have been provided. Copies of such warranties shall be maintained in a file containing the records for that vehicle or engine.

(c) *Emission labeling.* (1) The certificate holder shall affix a permanent leg-

ible label in a readily visible position in the engine compartment. The label shall meet all the requirements of part 86 and shall contain the following statement "This vehicle or engine was originally produced in (month and year of original production). It has been imported and modified by (certificate holder's name, address and telephone number) to conform to U.S. emission regulations applicable to the (year) model year." If the vehicle or engine is owned by the certificate holder at the time of importation, the label shall also state "this vehicle or engine is warranted for five years or 50,000 miles from the date of purchase, whichever comes first." If the vehicle or engine is not owned by the certificate holder at the time of importation, the label shall state "this vehicle or engine is warranted for five years or 50,000 miles from the date of release to the owner, whichever comes first." For vehicles imported under § 85.1509, the label shall clearly state in bold letters that "this vehicle has not been manufactured under a certificate of conformity but meets EPA air pollution control requirements under a modification/test program." In addition, for all vehicles, the label shall contain the vacuum hose routing diagram applicable to the vehicles.

(2) As part of the application to the Administrator for final admission of each individual vehicle or engine under § 85.1509, the certificate holder shall maintain a copy of such label for each vehicle or engine in a file containing the records for that vehicle or engine. Certificate holders importing under § 85.1505 or § 85.1509 shall attest to compliance with the above labeling requirements in each application for final admission.

(d) *Fuel economy labeling.* (1) The certificate holder shall affix a fuel economy label that complies with the requirements of 40 CFR part 600, subpart D. The requirement for fuel economy labels does not apply for electric vehicles.

(2) For purposes of generating the fuel economy data to be incorporated on such label, each vehicle imported under § 85.1509 shall be considered to be a separate model type.

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(3) As part of the application to the Administrator for final admission of each individual vehicle or engine imported under § 85.1509, the certificate holder shall maintain a copy of such label for each vehicle or engine in a file containing the records for that vehicle or engine. In each application for final admission of a vehicle or engine under § 85.1505 or § 85.1509, the certificate holder shall attest to compliance with the above labeling requirements.

(e) *Gas guzzler tax.* (1) Certificate holders shall comply with any applicable provisions of the Energy Tax Act of 1978, 26 U.S.C. 4064, for every vehicle imported under §§ 85.1505 and 85.1509.

(2) For vehicles not owned by the certificate holder, the certificate holder shall furnish to the vehicle owner applicable IRS forms (currently numbered 720 (Quarterly Federal Excise Tax) and 6197 (Fuel Economy Tax Computation Form)) which relate to the collection of the gas guzzler tax under the Energy Tax Act of 1978, 26 U.S.C. 4064.

(3) As part of the certificate holder's application to EPA for final admission of each vehicle imported under § 85.1509, the certificate holder shall furnish any fuel economy data required by the Energy Tax Act of 1978, 15 U.S.C. 4064.

(f) *Corporate Average Fuel Economy (CAFE).* Certificate holders shall comply with any applicable CAFE requirements of the Energy Policy and Conservation Act, 15 U.S.C. 2001 *et seq.*, and 40 CFR part 600, for all vehicles imported under §§ 85.1505 and 85.1509.

[52 FR 36156, Sept. 25, 1987, as amended at 64 FR 23919, May 4, 1999; 89 FR 28149, Apr. 18, 2024]

### § 85.1511 Exemptions and exclusions.

The exemption provisions of 40 CFR part 1068, subpart D, apply instead of the provisions of this section for heavy-duty motor vehicles and heavy-duty motor vehicle engines regulated under 40 CFR part 86, subpart A, and 40 CFR parts 1036 and 1037. The following provisions apply for other motor vehicles and motor vehicle engines:

(a) Individuals, as well as certificate holders, shall be eligible for importing vehicles into the United States under the provisions of this section, unless otherwise specified.

(b) Notwithstanding any other requirements of this subpart, a motor vehicle or motor vehicle engine entitled to a temporary exemption under this paragraph (b) may be conditionally admitted into the United States if prior written approval for such conditional admission is obtained from the Administrator. Conditional admission shall be under bond. A written request for approval from the Administrator shall contain the identification required in § 85.1504(a)(1) (except for § 85.1504(a)(1)(v)) and information that indicates that the importer is entitled to the exemption. Noncompliance with provisions of this section may result in the forfeiture of the total amount of the bond or exportation of the vehicle or engine. The following temporary exemptions apply:

(1) *Exemption for repairs or alterations.* Vehicles and engines may qualify for a temporary exemption under the provisions of 40 CFR 1068.325(a). Such vehicles or engines may not be registered or licensed in the United States for use on public roads and highways.

(2) *Testing exemption.* Vehicles and engines may qualify for a temporary exemption under the provisions of 40 CFR 1068.325(b). Test vehicles or engines may be operated on and registered for use on public roads or highways provided that the operation is an integral part of the test.

(3) *Precertification exemption.* Prototype vehicles for use in applying to EPA for certification may be imported by independent commercial importers subject to applicable provisions of § 85.1706 and the following requirements:

(i) No more than one prototype vehicle for each engine family for which an independent commercial importer is seeking certification shall be imported by each independent commercial importer.

(ii) Unless a certificate of conformity is issued for the prototype vehicle, the total amount of the bond shall be forfeited or the vehicle must be exported within 180 days from the date of entry.

(4) *Display exemptions.* Vehicles and engines may qualify for a temporary exemption under the provisions of 40 CFR 1068.325(c). Display vehicles or engines may not be registered or licensed

for use or operated on public roads or highways in the United States, unless an applicable certificate of conformity has been received.

(5) *Export exemption.* Vehicles may qualify for a temporary exemption under the provisions of 40 CFR 1068.325(d).

(c) Notwithstanding any other requirements of this subpart, a motor vehicle or motor vehicle engine may be finally admitted into the United States under this paragraph (c) if prior written approval for such final admission is obtained from the Administrator. Conditional admission of these vehicles is not permitted for the purpose of obtaining written approval from the Administrator. A request for approval shall contain the identification information required in § 85.1504(a)(1) (except for § 85.1504(a)(1)(v)) and information that indicates that the importer is entitled to the exemption or exclusion. The following exemptions or exclusions apply:

(1) *National security exemption.* Vehicles may be imported under the national security exemption found at 40 CFR 1068.315(a). Only persons who are manufacturers may import a vehicle under a national security exemption.

(2) *Hardship exemption.* The Administrator may exempt on a case-by-case basis certain motor vehicles from Federal emission requirements to accommodate unforeseen cases of extreme hardship or extraordinary circumstances. Some examples are as follows:

(i) Handicapped individuals who need a special vehicle unavailable in a certified configuration;

(ii) Individuals who purchase a vehicle in a foreign country where resale is prohibited upon the departure of such an individual;

(iii) Individuals emigrating from a foreign country to the U.S. in circumstances of severe hardship.

(d) Foreign diplomatic and military personnel may import nonconforming vehicles without bond. At the time of admission, the importer shall submit to the Administrator the written report required in § 85.1504(a)(1) (except for information required by § 85.1504(a)(1)(v)). Such vehicles may not be sold in the United States.

(e) Racing vehicles may be imported by any person provided the vehicles meet one or more of the exclusion criteria specified in § 85.1703. Racing vehicles may not be registered or licensed for use on or operated on public roads and highways in the United States.

(f) The following exclusions and exemptions apply based on date of original manufacture:

(1) Notwithstanding any other requirements of this subpart, the following motor vehicles or motor vehicle engines are excluded from the requirements of the Act in accordance with section 216(3) of the Act and may be imported by any person:

(i) Gasoline-fueled light-duty vehicles and light-duty trucks originally manufactured prior to January 1, 1968.

(ii) Diesel-fueled light-duty vehicles originally manufactured prior to January 1, 1975.

(iii) Diesel-fueled light-duty trucks originally manufactured prior to January 1, 1976.

(iv) Motorcycles originally manufactured prior to January 1, 1978.

(v) Gasoline-fueled and diesel-fueled heavy-duty engines originally manufactured prior to January 1, 1970.

(2) Notwithstanding any other requirements of this subpart, a motor vehicle or motor vehicle engine not subject to an exclusion under paragraph (f)(1) of this section but greater than twenty OP years old is entitled to an exemption from the requirements of the Act, provided that it is imported into the United States by a certificate holder. At the time of admission, the certificate holder shall submit to the Administrator the written report required in § 85.1504(a)(1) (except for information required by § 85.1504(a)(1)(v)).

(g) Applications for exemptions and exclusions provided for in paragraphs (b) and (c) of this section shall be mailed to the Designated Compliance Officer (see 40 CFR 1068.30).

(h) Vehicles conditionally or finally admitted under this section must still comply with all applicable requirements, if any, of the Energy Tax Act of 1978, the Energy Policy and Conservation Act and any other Federal or state requirements.

[76 FR 57373, Sept. 15, 2011, as amended at 86 FR 34363, June 29, 2021]

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### § 85.1512 Admission of catalyst and O<sub>2</sub> sensor-equipped vehicles.

(a)(1) Notwithstanding other provisions of this subpart, any person may conditionally import a vehicle which:

(i) Was covered by a certificate of conformity at the time of original manufacture or had previously been admitted into the United States under § 85.1505 or § 85.1509 (after June 30, 1988).

(ii) Was certified, or previously admitted under § 85.1505 or § 85.1509 (after June 30, 1988), with a catalyst emission control system and/or O<sub>2</sub> sensor;

(iii) Is labeled in accordance with 40 CFR part 86, subpart A or subpart S, or, where applicable, § 85.1510(c); and

(iv) Has been driven outside the United States, Canada and Mexico or such other countries as EPA may designate.

(2) Such vehicle must be entered under bond pursuant to 19 CFR 12.73 unless it is included in a catalyst and O<sub>2</sub> sensor control program approved by the Administrator upon such terms as may be deemed appropriate. Catalyst and O<sub>2</sub> sensor programs conducted by manufacturers may be approved each model year.

(b) For the purpose of this section, "catalyst and O<sub>2</sub> sensor control program" means a program instituted and maintained by a manufacturer, or any U.S. Government Agency for the purpose of preservation, replacement, or initial installation of catalytic converters and cleaning and/or replacement of O<sub>2</sub> sensors and, if applicable, restricted fuel filler inlets.

(c) For the purpose of this section, "driven outside the United States, Canada and Mexico" does not include mileage accumulated on vehicles solely under the control of manufacturers of new motor vehicles or engines for the purpose of vehicle testing and adjustment, and preparation for shipment to the United States.

(d) Vehicles conditionally imported pursuant to this section and under bond must be modified in accordance with the certificate of conformity applicable at the time of manufacture. In the case of vehicles previously imported under § 85.1509 or § 85.1504 (prior to July 1, 1988), the replacement catalyst and O<sub>2</sub> sensor, if applicable, must be equivalent (in terms of emission re-

duction) to the original catalyst and O<sub>2</sub> sensor. Such vehicles may be granted final admission upon application to the Administrator, on forms specified by the Administrator. Such application shall contain the information required in § 85.1504(a)(1) (i) through (v) and shall contain both an attestation by a qualified mechanic that the catalyst has been replaced and the O<sub>2</sub> sensor has been replaced, if necessary, and that both parts are functioning properly, and a copy of the invoice for parts and labor.

[52 FR 36156, Sept. 25, 1987, as amended at 64 FR 23919, May 4, 1999]

### § 85.1513 Prohibited acts; penalties.

(a) The importation of a motor vehicle or motor vehicle engine which is not covered by a certificate of conformity other than in accordance with this subpart and the entry regulations of the U.S. Customs Service at 19 CFR 12.73 is prohibited. Failure to comply with this section is a violation of section 203(a)(1) of the Act.

(b) Unless otherwise permitted by this subpart, during a period of conditional admission, the importer of a vehicle shall not:

(1) Operate the vehicle on streets or highways.

(2) Sell or offer the vehicle or engine for sale, or

(3) Store the vehicle on the premises of a dealer.

(c) Any vehicle or engine conditionally admitted pursuant to § 85.1504, § 85.1511 or § 85.1512, and not granted final admission within 120 days of such conditional admission, or within such additional time as the U.S. Customs Service may allow, shall be deemed to be unlawfully imported into the United States in violation of section 203(a)(1) of the Act, unless such vehicle or engine shall have been delivered to the U.S. Customs Service for export or other disposition under applicable Customs laws and regulations. Any vehicles or engines not so delivered shall be subject to seizure by the U.S. Customs Service.

(d) Any importer who violates section 203(a)(1) of the Act is subject to a civil penalty under section 205 of the Act of not more than \$32,500 for each

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vehicle or engine subject to the violation. In addition to the penalty provided in the Act, where applicable, under the exemption provisions of § 85.1511(b), or under § 85.1512, any person or entity who fails to deliver such vehicle or engine to the U.S. Customs Service is liable for liquidated damages in the amount of the bond required by applicable Customs laws and regulations.

(e)(1) A certificate holder whose vehicles or engines imported under § 85.1505 or § 85.1509 fail to conform to Federal emission requirements after modification and/or testing under the Federal Test Procedure (FTP) or who fails to comply with applicable provisions of this subpart, may, in addition to any other applicable sanctions and penalties, be subject to any, or all, of the following sanctions:

(i) The certificate holder's currently held certificates of conformity may be revoked or suspended;

(ii) The certificate holder may be deemed ineligible to apply for new certificates for up to 3 years; and

(iii) The certificate holder may be deemed ineligible to import vehicles or engines under § 85.1509 in the future and be placed on a list of certificate holders ineligible to import vehicles or engines under the provisions of § 85.1509.

(2) Grounds for the actions described in paragraph (e)(1) of this section shall include, but not be limited to, the following:

(i) Action or inaction by the certificate holder or the laboratory performing the FTP on behalf of the certificate holder which results in fraudulent, deceitful or grossly inaccurate representation of any fact or condition which affects a vehicle's or engine's eligibility for admission to the U.S. under this subpart;

(ii) Failure of a significant number of vehicles or engines imported to comply with Federal emission requirements upon EPA inspection or retest; or

(iii) Failure by a certificate holder to comply with requirements of this subpart.

(3) The following procedures govern any decision to suspend, revoke, or refuse to issue certificates under this subpart:

(i) When grounds appear to exist for the actions described in paragraph (e)(1) of this section, the Administrator shall notify the certificate holder in writing of any intended suspension or revocation of a certificate, proposed ineligibility to apply for new certificates, or intended suspension of eligibility to conduct modification/testing under § 85.1509, and the grounds for such action.

(ii) Except as provided by paragraph (e)(3)(iv) of this section, the certificate holder must take the following actions before the Administrator will consider withdrawing notice of intent to suspend or revoke the certificate holder's certificate or the certificate holder's eligibility to perform modification/testing under § 85.1509:

(A) Submit a written report to the Administrator which identifies the reason for the noncompliance of the vehicle or engines, describes the proposed remedy, including a description of any proposed quality control and/or quality assurance measures to be taken by the certificate holder to prevent the future occurrence of the problem, and states the date on which the remedies will be implemented; or

(B) Demonstrate that the vehicles or engines do in fact comply with applicable regulations in this chapter by retesting such vehicles or engines in accordance with the FTP.

(iii) A certificate holder may request within 15 calendar days of the Administrator's notice of intent to suspend or revoke a certificate holder's eligibility to perform modification/testing or certificate that the Administrator grant such certificate holder a hearing:

(A) As to whether the tests have been properly conducted,

(B) As to any substantial factual issue raised by the Administrator's proposed action.

(iv) If, after the Administrator notifies a certificate holder of his/her intent to suspend or revoke a certificate holder's certificate of conformity or its eligibility to perform modification/testing under § 85.1509 and prior to any final suspension or revocation, the certificate holder demonstrates to the Administrator's satisfaction that the decision to initiate suspension or revocation of the certificate or eligibility to

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perform modification/testing under § 85.1509 was based on erroneous information, the Administrator will withdraw the notice of intent.

(4) Hearings on suspensions and revocations of certificates of conformity or of eligibility to perform modification/testing under § 85.1509 shall be held in accordance with 40 CFR part 1068, subpart G.

(5) [Reserved]

(6) In lieu of requesting a hearing under paragraph (e)(3)(iii) of this section, a certificate holder may respond in writing to EPA's charges in the notice of intent to suspend or revoke. Such a written response must be received by EPA within 30 days of the date of EPA's notice of intent. No final decision to suspend or revoke will be made before that time.

[52 FR 36156, Sept. 25, 1987, as amended at 70 FR 40430, July 13, 2005; 81 FR 73972, Oct. 25, 2016; 88 FR 4472, Jan. 24, 2023]

### § 85.1514 Treatment of confidential information.

The provisions of 40 CFR 1068.10 and 1068.11 apply for information you submit under this subpart.

[88 FR 4472, Jan. 24, 2023]

### § 85.1515 Emission standards and test procedures applicable to imported nonconforming motor vehicles and motor vehicle engines.

(a) Notwithstanding any other requirements of this subpart, any motor vehicle or motor vehicle engine conditionally imported pursuant to § 85.1505 or § 85.1509 and required to be emission tested shall be tested using the FCT at 40 CFR part 86 applicable to current model year motor vehicles and motor vehicle engines at the time of testing or reduced testing requirements as follows:

(1) ICIs are eligible for reduced testing under this paragraph (a) subject to the following conditions:

(i) The OEM must have a valid certificate of conformity covering the vehicle.

(ii) The vehicle must be in its original configuration as certified by the OEM. This applies for all emission-related components, including the electronic control module, engine calibrations, and all evaporative/refueling

control hardware. It also applies for OBD software and hardware, including all sensors and actuators.

(iii) The vehicle modified as described in paragraph (a)(1)(ii) of this section must fully comply with all applicable emission standards and requirements.

(iv) Vehicles must have the proper OBD systems installed and operating. When faults are present, the ICI must test and verify the system's ability to find the faults (such as disconnected components), set codes, and illuminate the light, and set readiness codes as appropriate for each vehicle. When no fault is present, the ICI must verify that after sufficient prep driving (typically one FTP test cycle), all OBD readiness codes are set and the OBD system does not indicate a malfunction (*i.e.*, no codes set and no light illuminated).

(v) The ICI may not modify more than 300 vehicles in any given model year using reduced testing provisions in this paragraph (a).

(vi) The ICI must state in the application for certification that it will meet all the conditions in this paragraph (a)(1).

(2) The following provisions allow for ICIs to certify vehicles with reduced testing:

(i) In addition to the test waivers specified in 40 CFR 86.1829, you may provide a statement in the application for certification, supported by engineering analysis, that vehicles comply with any of the following standards that apply instead of submitting test data:

(A) Cold temperature CO, NMHC, NMOG+NO<sub>x</sub>, and PM emission standards specified in 40 CFR 86.1811.

(B) SFTP emission standards specified in 40 CFR 86.1811 and 86.1816 for all pollutants, and separate emission standards that apply for US06 and SC03 duty cycles.

(C) For anything other than diesel-fueled vehicles, PM emission standards specified in 40 CFR 86.1811 and 86.1816.

(D) Any running loss, refueling, spitback, bleed emissions, and leak standards specified in 40 CFR part 86, subparts A and S.

(ii) You must perform testing and submit test data as follows to demonstrate compliance with emission standards:

(A) *Exhaust and fuel economy tests.* You must measure emissions over the FTP driving cycle and the highway fuel economy driving cycle as specified in 40 CFR 1066.801 to meet the fuel economy requirements in 40 CFR part 600 and demonstrate compliance with the exhaust emission standards in 40 CFR part 86 (other than PM). Measure exhaust emissions and fuel economy with the same test procedures used by the original manufacturer to test the vehicle for certification. However, you must use an electric dynamometer meeting the requirements of 40 CFR part 1066, subpart B, unless we approve a different dynamometer based on excessive compliance costs. If you certify based on testing with a different dynamometer, you must state in the application for certification that all vehicles in the emission family will comply with emission standards if tested on an electric dynamometer.

(B) *Evaporative emission test.* You may measure evaporative emissions as specified in this paragraph (a)(2)(ii)(B) to demonstrate compliance with the evaporative emission standards in 40 CFR part 86 instead of the otherwise specified procedures. Use measurement equipment for evaporative measurements specified in 40 CFR part 86, subpart B, except that the evaporative emission enclosure does not need to accommodate varying ambient temperatures. The evaporative measurement procedure is integral to the procedure for measuring exhaust emissions over the FTP driving cycle as described in paragraph (a)(ii)(2)(A) of this section. Perform canister preconditioning using the same procedure used by the original manufacturer to certify the vehicle; perform this canister loading before the initial preconditioning drive. Perform a diurnal emission test at the end of the stabilization period before the exhaust emission test by heating the fuel from 60 to 84°F, either by exposing the vehicle to increasing ambient temperatures or by applying heat directly to the fuel tank. Measure hot soak emissions as described in 40 CFR 86.138–96(k). We may approve alter-

native measurement procedures that are equivalent to or more stringent than the specified procedures if the specified procedures are impractical for particular vehicle models or measurement facilities. The sum of the measured diurnal and hot soak values must meet the appropriate emission standard as specified in this section.

(b) [Reserved]

(c) Nonconforming motor vehicles conditionally imported pursuant to § 85.1505 or § 85.1509 must meet all the emission standards specified in 40 CFR part 86 for the OP year of the vehicle, with the following exceptions and clarifications:

(1) The useful life specified in 40 CFR part 86 for the OP year of the motor vehicle is applicable where useful life is not designated in this subpart.

(2)(i) Nonconforming light-duty vehicles and light light-duty trucks (LDV/LLDTs) originally manufactured in OP years 2004, 2005 or 2006 must meet the FTP exhaust emission standards of bin 9 in Tables S04–1 and S04–2 in 40 CFR 86.1811–04 and the evaporative emission standards for light-duty vehicles and light light-duty trucks specified in 40 CFR 86.1811–01(e)(5).

(ii) Nonconforming LDT3s and LDT4s (HLDTs) and medium-duty passenger vehicles (MDPVs) originally manufactured in OP years 2004 through 2006 must meet the FTP exhaust emission standards of bin 10 in Tables S04–1 and S04–2 in 40 CFR 86.1811–04 and the applicable evaporative emission standards specified in 40 CFR 86.1811–04(e)(5). For 2004 OP year HLDTs and MDPVs where modifications commence on the first vehicle of a test group before December 21, 2003, this requirement does not apply to the 2004 OP year. ICIs opting to bring all their 2004 OP year HLDTs and MDPVs into compliance with the exhaust emission standards of bin 10 in Tables S04–1 and S04–2 in 40 CFR 86.1811–04, may use the optional higher NMOG values for their 2004–2006 OP year LDT2s and 2004–2008 LDT4s.

(iii) Nonconforming LDT3s and LDT4s (HLDTs) and medium-duty passenger vehicles (MDPVs) originally manufactured in OP years 2007 and 2008 must meet the FTP exhaust emission standards of bin 8 in Tables S04–1 and

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S04-2 in 40 CFR 86.1811-04 and the applicable evaporative standards specified in 40 CFR 86.1811-04(e)(5).

(iv) Nonconforming LDV/LLDTs originally manufactured in OP years 2007 through 2021 and nonconforming HLDTs and MDPVs originally manufactured in OP year 2009 through 2021 must meet the FTP exhaust emission standards of bin 5 in Tables S04-1 and S04-2 in 40 CFR 86.1811-04, and the evaporative standards specified in 40 CFR 86.1811-04(e)(1) through (4).

(v) ICIs are exempt from the Tier 2 and the interim non-Tier 2 phase-in intermediate percentage requirements for exhaust, evaporative, and refueling emissions described in 40 CFR 86.1811-04.

(vi) In cases where multiple standards exist in a given model year in 40 CFR part 86 due to phase-in requirements of new standards, the applicable standards for motor vehicle engines required to be certified to engine-based standards are the least stringent standards applicable to the engine type for the OP year.

(vii) Nonconforming LDV/LLDTs originally manufactured in OP years 2009 through 2021 must meet the evaporative emission standards in Table S09-1 in 40 CFR 86.1811-09(e). However, LDV/LLDTs originally manufactured in OP years 2009 and 2010 and imported by ICIs who qualify as small-volume manufacturers as defined in 40 CFR 86.1838-01 are exempt from the LDV/LLDT evaporative emission standards in Table S09-1 in 40 CFR 86.1811-09(e), but must comply with the Tier 2 evaporative emission standards in Table S04-3 in 40 CFR 86.1811-04(e).

(viii) Nonconforming HLDTs and MDPVs originally manufactured in OP years 2010 through 2021 must meet the evaporative emission standards in Table S09-1 in 40 CFR 86.1811-09(e). However, HLDTs and MDPVs originally manufactured in OP years 2010 and 2011 and imported by ICIs, who qualify as small-volume manufacturers as defined in 40 CFR 86.1838-01, are exempt from the HLDTs and MDPVs evaporative emission standards in Table S09-1 in 40 CFR 86.1811-09(e), but must comply with the Tier 2 evaporative emission standards in Table S04-3 in 40 CFR 86.1811-04(e).

(ix) Nonconforming LDV/LLDTs originally manufactured in OP years 2013 through 2021 must meet the cold temperature NMHC emission standards in Table S10-1 in 40 CFR 86.1811-10(g). Nonconforming HLDTs and MDPVs originally manufactured in OP years 2015 through 2021 must meet the cold temperature NMHC emission standards in Table S10-1 in 40 CFR 86.1811-10(g).

(x) Nonconforming vehicles subject to the provisions of 40 CFR part 86, subpart S, originally manufactured in OP years 2022 through 2031 must meet the Tier 3 and related exhaust emission standards in 40 CFR 86.1811-17 and 86.1816-18, the Tier 3 evaporative emission standards in 40 CFR 86.1813-17, and the refueling emission standards in 40 CFR 86.1813-17(b) and have an OBD system meeting the requirements of 40 CFR 86.1806-17. In cases where the standard allows or requires demonstrating compliance using emission credits, each vehicle imported under this paragraph (c) is subject to the specified fleet average standard.

(xi) Nonconforming vehicles subject to the provisions of 40 CFR part 86, subpart S, originally manufactured in OP years 2032 and later must meet the Tier 4 exhaust emission standards in 40 CFR 86.1811-27, the Tier 3 evaporative emission standards in 86.1813-17, and the refueling emission standards in 40 CFR 86.1813-17(b) and have an OBD system meeting the requirements of 40 CFR 86.1806-27. In cases where the standard allows or requires demonstrating compliance using emission credits, each vehicle imported under this paragraph (c) is subject to the specified fleet average standard.

(3) The following provisions apply for demonstrating compliance with the Tier 2 fleet average NO<sub>x</sub> standard in 40 CFR 86.1811-04:

(i) As an option to the requirements of paragraph (c)(2)(i) through (viii) of this section, independent commercial importers may elect to meet lower bins in Tables S04-1 and S04-2 of 40 CFR 86.1811-04 than specified in paragraph (c)(2) of this section and bank or sell NO<sub>x</sub> credits as permitted in 40 CFR 86.1860-04 and 40 CFR 86.1861-04. An ICI may not meet higher bins in Tables S04-1 and S04-2 of 40 CFR 86.1811-04 than specified in paragraph (c)(2) of

this section unless it demonstrates to the Administrator at the time of certification that it has obtained appropriate and sufficient NO<sub>x</sub> credits from another manufacturer, or has generated them in a previous model year or in the current model year and not transferred them to another manufacturer or used them to address other vehicles as permitted in 40 CFR 86.1860–04 and 40 CFR 86.1861–04.

(ii) Where an ICI desires to obtain a certificate of conformity using a bin higher than specified in paragraph (c)(2) of this section, but does not have sufficient credits to cover vehicles produced under such certificate, the Administrator may issue such certificate if the ICI has also obtained a certificate of conformity for vehicles certified using a bin lower than that required under paragraph (c)(2) of this section. The ICI may then produce vehicles to the higher bin only to the extent that it has generated sufficient credits from vehicles certified to the lower bin during the same model year.

(iii) Except for the situation where an ICI desires to bank, sell or use NO<sub>x</sub> credits as described in this paragraph (c)(3), the requirements of 40 CFR 86.1811–04 related to fleet average NO<sub>x</sub> standards and requirements to comply with such standards do not apply to vehicles modified under this subpart.

(iv) ICIs using bins higher than those specified in paragraph (c)(2) of this section must monitor their production so that they do not produce more vehicles certified to the standards of such bins than their available credits can cover. ICIs must not have a credit deficit at the end of a model year and are not permitted to use the deficit carryforward provisions provided in 40 CFR 86.1860–04(e).

(v) The Administrator may condition the certificates of conformity issued to ICIs as necessary to ensure that vehicles subject to this paragraph (c) comply with the appropriate average NO<sub>x</sub> standard for each model year.

(4) The following provisions apply for demonstrating compliance with the cold temperature NMHC fleet average standards in 40 CFR 86.1811–10 through 2021:

(i) As an alternative to the requirements of paragraphs (c)(2)(ix) of this

section, ICIs may elect to meet a cold temperature NMHC family emission level below the cold temperature NMHC fleet average standards specified in Table S10–1 of 40 CFR 86.1811–10 and bank or sell credits as permitted in 40 CFR 86.1864–10. An ICI may not meet a higher cold temperature NMHC family emission level than the fleet average standards in Table S10–1 of 40 CFR 86.1811–10, unless it demonstrates to the Administrator at the time of certification that it has obtained appropriate and sufficient NMHC credits from another manufacturer, or has generated them in a previous model year or in the current model year and not traded them to another manufacturer or used them to address other vehicles as permitted in 40 CFR 86.1864–10.

(ii) Where an ICI desires to obtain a certificate of conformity using a higher cold temperature NMHC family emission level than specified in paragraph (c)(2)(ix) of this section, but does not have sufficient credits to cover vehicles imported under such certificate, the Administrator may issue such certificate if the ICI has also obtained a certificate of conformity for vehicles certified using a cold temperature NMHC family emission level lower than that required under paragraph (c)(2)(ix) of this section. The ICI may then import vehicles to the higher cold temperature NMHC family emission level only to the extent that it has generated sufficient credits from vehicles certified to a family emission level lower than the cold temperature NMHC fleet average standard during the same model year.

(iii) ICIs using cold temperature NMHC family emission levels higher than the cold temperature NMHC fleet average standards specified in paragraph (c)(2)(ix) of this section must monitor their imports so that they do not import more vehicles certified to such family emission levels than their available credits can cover. ICIs must not have a credit deficit at the end of a model year and are not permitted to use the deficit carryforward provisions provided in 40 CFR 86.1864–10.

(iv) The Administrator may condition the certificates of conformity issued to ICIs as necessary to ensure that vehicles subject to this paragraph

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(c)(8) comply with the applicable cold temperature NMHC fleet average standard for each model year.

(5) In cases where a vehicle is subject to a Tier 3 or Tier 4 credit-based standard as described in paragraphs (c)(2)(x) and (xi) of this section, an ICI may import a vehicle with emissions higher than the applicable standard if it first arranges to purchase appropriate and sufficient emission credits from a manufacturer that has generated the emission credits as specified in 40 CFR part 86, subpart S. A vehicle's emissions may not exceed the specified values for the highest available NMOG + NO<sub>x</sub> bin or the evaporative emissions FEL cap. Vehicles subject to this paragraph (c)(5) may not generate emission credits.

(6) An ICI may comply with the cold temperature PM standard in 40 CFR 86.1811–27(c) based on an engineering evaluation.

(d) An ICI may not certify using non-conformance penalties and may not participate in the averaging, banking, and trading program for GHG emissions.

[89 FR 28149, Apr. 18, 2024]

### Subpart Q [Reserved]

### Subpart R—Exclusion and Exemption of Motor Vehicles and Motor Vehicle Engines

AUTHORITY: Secs. 208(b)(1), 216(2), and 301, Clean Air Act (42 U.S.C. 7522, 7550, and 7061).

SOURCE: 39 FR 32611, Sept. 10, 1974, unless otherwise noted.

#### § 85.1701 General applicability.

(a) The provisions of this subpart regarding exemptions are applicable to new and in-use motor vehicles and motor vehicle engines, except as follows:

(1) Beginning January 1, 2014, the exemption provisions of 40 CFR part 1068, subpart C, apply instead of the provisions of this subpart for heavy-duty motor vehicle engines and heavy-duty motor vehicles regulated under 40 CFR part 86, subpart A, 40 CFR part 1036, or 40 CFR part 1037, except that the nonroad competition exemption of 40 CFR 1068.235 and the nonroad hardship

exemption provisions of 40 CFR 1068.245, 1068.250, and 1068.255 do not apply for motor vehicle engines. Note that the provisions for emergency vehicle field modifications in § 85.1716 continue to apply for heavy-duty engines.

(2) Prior to January 1, 2014, the provisions of §§ 85.1706 through 85.1709 apply for heavy-duty motor vehicle engines.

(b) The provisions of 40 CFR 1068.10 and 1068.11 apply for information you submit under this subpart.

(c) References to engine families and emission control systems in this subpart or in 40 CFR part 1068 apply to durability groups and test groups as applicable for manufacturers certifying vehicles under the provisions of 40 CFR part 86, subpart S.

(d) In a given model year, manufacturers of motor vehicles and motor vehicle engines may ask us to approve the use of administrative or compliance procedures specified in 40 CFR part 1068 instead of the comparable procedures that apply for vehicles or engines certified under this part or 40 CFR part 86.

[76 FR 57374, Sept. 15, 2011, as amended at 81 FR 73972, Oct. 25, 2016; 86 FR 34363, June 29, 2021; 88 FR 4472, Jan. 24, 2023]

#### § 85.1702 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act:

*Certificate holder* has the meaning given in 40 CFR 1068.30.

*Export exemption* means an exemption granted by statute under 42 U.S.C. 7522(b)(3) for the purpose of exporting new motor vehicles or new motor vehicle engines.

*National security exemption* means an exemption which may be granted under 42 U.S.C. 7522(b)(1) of the Act for the purpose of national security.

*Pre-certification vehicle* means an uncertified vehicle that a certificate holder employs in fleets from year to year in the ordinary course of business for product development, production method assessment, and market promotion, but not involving lease or sale.

*Pre-certification vehicle engine* means an uncertified heavy-duty engine owned by a manufacturer and used in a manner not involving lease or sale in a vehicle employed from year to year in