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(f) In-use enforcement. (1) As a condition of certification, the equipment certifier agrees to notify operators who have installed this equipment and repair the equipment without cost to the operator when the Agency determines that a substantial number of the equipment kits, when properly maintained and used, and in actual use throughout the in-use compliance period, do not meet emission requirements.

(2) If the equipment certifier disagrees with such determination of non-conformity and so advises the MOD Director, the MOD Director shall afford the equipment certifier and other interested persons an opportunity to present their views and evidence in support thereof at a public hearing conducted in accordance with procedures found in § 85.1807. For purposes of this section, substitute the word "equipment" in place of the phrase "motor vehicles and engines."

§ 85.1407 Notification of intent to certify.

(a) Prior to the sale of any certified retrofit/rebuild equipment, notification of the intent to certify must be approved by the MOD Director.

(1) All notifications shall include:

(i) Identification of the candidate retrofit/rebuild equipment to be certified, including a list of parts and part numbers;

(ii) Identification of all engine configurations for which the equipment is being certified including make(s), engine model(s), model year(s), engine size(s) and all other specific configuration characteristics necessary to assure that the equipment will not be installed in any configuration for which it has not been certified;

(iii) All results and documentation of tests and procedures used by the equipment certifier as evidence of compliance with the emission requirements specified in § 85.1406;

(iv) A description of the test equipment selection criteria used, and a statement that the test equipment used for certification testing is representative production equipment consistent with § 85.1406(c);

(v) A description of the test engine selection criteria used, and rationale that supports the technical judgment

of the equipment certifier that the engine configuration used for certification testing represents worst case with respect to particulate matter emissions of all those configurations for which the retrofit/rebuild equipment is being certified, and all data that supports that conclusion;

(vi) A copy of the written instructions for proper maintenance and use of the equipment, including instructions as to whether the engine must be rebuilt to its original configuration before installing the equipment;

(vii) The scheduled maintenance required for the equipment over the in-use compliance period, including service intervals of the retrofit/rebuild equipment which detail the maintenance and replacement intervals in months and/or miles, as applicable;

(viii) A copy of the warranty language to be provided to the operator pursuant to both §§ 85.1409(a) and 85.1409(b);

(ix) A statement of commitment and willingness to comply with all the relevant terms and conditions of this subpart;

(x) A statement by the equipment certifier that use of its certified equipment will not cause a substantial increase to urban bus engine emissions in any normal driving mode not represented during certification testing; and

(xi) The office or officer of the equipment certifier authorized to receive correspondence regarding certification requirements pursuant to this subpart.

(2) If an equipment certifier wishes to certify equipment for use under § 85.1403(b) for all affected urban bus operators as specified in § 85.1401, the notification shall also contain all data and documentation used by the equipment certifier as evidence of compliance with the life cycle cost requirements specified in §§ 85.1403(b)(1)(ii) or 85.1403(b)(2)(ii); including:

(i) The price to be charged to an urban bus operator for the equipment, excluding shipping and handling costs and taxes;

(ii) A detailed breakout of the total number of hours necessary to install the equipment, and the number of

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hours necessary to install the equipment, incremental to a standard rebuild;

(iii) For equipment not requiring a change from on road diesel fuel, the percent change in fuel economy for an urban bus engine retrofitted with the equipment compared to the original engine based on testing performed over the heavy-duty engine Federal test procedure or an approved alternative test procedure prescribed under §85.1414, including all test data supporting the reported change in fuel economy;

(iv) For alternatively-fueled equipment, the fuel economy of the retrofitted engine based on testing performed over an approved test procedure prescribed under §85.1414, including all test data supporting the reported fuel economy, and the unit price of the alternative fuel that will be charged to all affected urban bus operators;

(v) For equipment requiring a fuel additive, the amount of fuel additive required per gallon of fuel and the unit price of the fuel additive that will be charged to all affected urban bus operators; and

(vi) A list of the scheduled maintenance for an engine with the retrofit, and a detailed breakdown of the cost of the parts necessary to perform scheduled maintenance, incremental to the cost of the parts necessary for maintenance typically performed on an engine without the equipment.

(3) If an equipment certifier wishes to certify equipment for use under §85.1403(b), but not for use by all affected urban bus operators as specified in §85.1401, the notification shall, in addition to the data and documentation specified in paragraph (a)(1) of this section, also contain data and documentation that demonstrate compliance with the life cycle cost requirements specified in §85.1403(b)(1)(ii) or §85.1403(b)(2)(ii) including:

(i) A detailed breakout of the total number of hours necessary to install the equipment, and the number of hours necessary to install the equipment, incremental to a standard rebuild;

(ii) The percent change in fuel economy for an urban bus engine retrofitted with the equipment compared to

the original engine based on testing performed over the heavy-duty engine Federal test procedure or an approved alternative test procedure prescribed under §85.1414, including all test data supporting the reported change in fuel economy;

(iii) A list of the scheduled maintenance for an engine with the retrofit, and a detailed breakdown of the cost of the scheduled maintenance, incremental to the cost of maintenance typically performed on an engine without the equipment;

(iv) For alternatively-fueled equipment, the fuel economy of the retrofitted engine based on testing performed over an approved test procedure prescribed under §85.1414, including all test data supporting the reported fuel economy;

(v) For equipment requiring a fuel additive, the amount of fuel additive required per gallon of fuel; and

(vi) A description of the type of urban bus operator to which the equipment certifier expects to sell the equipment for less than the life cycle cost requirements specified in §85.1403(b)(1)(ii) or §85.1403(b)(2)(ii).

(4) The notification shall be signed by an officer of the equipment certifier attesting to the accuracy and completeness of the information supplied in the notification.

(5) Notification to the Agency shall be by certified mail or another method by which date of receipt can be established.

(6) Two complete and identical copies of the notification and any subsequent industry comments on any such notification shall be submitted by the equipment certifier to: MOD Director, MOD (6405J), Attention: Retrofit/Rebuild Equipment, 401 "M" Street SW., Washington, DC 20460.

(7) A copy of the notification submitted under paragraph (a)(6) of this section will be placed in a public docket and a summary will be published in the FEDERAL REGISTER. Any party interested in the outcome of the decision as to whether retrofit/rebuild equipment may be certified, may submit comments to the MOD Director on any notice in the public docket for 45 days after the summary of the notification

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of intent to certify has been published in the FEDERAL REGISTER.

(b)(1) For an urban bus operator to take credit for additional particulate emission reductions for use of a clean diesel fuel under § 85.1403(c)(2)(iii)(E), the following information must be submitted to the Agency:

(i) The additional percent reduction in particulate emissions for engines operated on the clean diesel fuel.

(A) The additional percent reduction in particulate emissions shall be calculated based on the results of emission tests performed on urban bus engines using federally required low sulfur fuel and the fuel for which the certifier is demonstrating addition emission reductions.

(B) The additional percent reduction in particulate emissions shall be calculated based on the following equation:

Percent reduction of particulate emissions

$$= \frac{\left(\begin{array}{c} \text{Particulate emissions} \\ \text{for engines operated} \\ \text{on Federally required} \\ \text{low sulfur fuel} \end{array} \right) - \left(\begin{array}{c} \text{Particulate emissions} \\ \text{for engines operated} \\ \text{on clean diesel fuel} \end{array} \right)}{\left(\begin{array}{c} \text{Particulate emissions} \\ \text{for engines operated} \\ \text{on Federally required} \\ \text{low sulfur fuel} \end{array} \right)}$$

(ii) The emission testing results for hydrocarbons, carbon monoxide, and oxides of nitrogen. The results must show that use of the clean diesel fuel does not lead to increases in any of these emissions.

(2) Emission test results must be submitted for all of the engine models for which an urban bus operator wishes to claim additional particulate emission reductions.

(3) Emissions test results shall be measured over the heavy-duty engine Federal test procedure or an approved alternative test procedure prescribed under § 85.1414.

(c) The MOD Director reserves the right to review an application to determine if the submitted documents adequately meet all the requirements for certification specified in §§ 85.1406 and 85.1407. The MOD Director shall determine and will publish in the FEDERAL REGISTER the effective date of certification of the candidate equipment. Equipment may be sold as certified after the effective date of certification.

EFFECTIVE DATE NOTE: Information collection requirements in § 85.1407 have not been approved by the Office of Management and

Budget (OMB) and are not effective until OMB has approved them.

§ 85.1408 Objections to certification.

(a) At any time prior to certification, the MOD Director may notify the equipment certifier that such equipment shall not be certified pending further investigation. The basis upon which this notification shall be made may include, but not be limited to, information or test results submitted by the equipment certifier, or public comments submitted on the equipment which indicate:

(1) The test procedure used to demonstrate compliance with the particulate matter emission standard or percent reduction of § 85.1403 was not in compliance with the heavy-duty engine Federal Test Procedure of 40 CFR part 86 or an alternative test procedure approved by the Agency under § 85.1414; or

(2) Use of the candidate equipment may cause an urban bus engine to exceed any applicable emission requirements; or

(3) Use of the candidate equipment could cause or contribute to an unreasonable risk to public health, welfare