

Environmental Protection Agency

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(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 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 the following:

(i) Applicability. The procedures prescribed by this section shall apply whenever a certificate holder requests a hearing pursuant to subsection (e)(3)(iii).

(ii) Hearing under paragraph (e)(3)(iii) of this section shall be held in accordance with the procedures outlined in § 88.613, where applicable, provided that where § 86.612 is referred to in § 86.613; Section 86.612(a) is replaced by § 85.1513(d)(2); and § 86.612(i) is replaced by § 85.1513(d)(3)(iii).

(5) When a hearing is requested under this paragraph and it clearly appears from the data or other information contained in the request for a hearing, or submitted at the hearing, that there is no genuine and substantial question of fact with respect to the issue of whether the certificate holder failed to comply with this subpart, the Administrator will enter an order denying the request for a hearing, or terminating the hearing, and suspending or revoking the certificate of conformity or the certificate holder's eligibility to perform modification/testing under § 85.1509.

(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]

§ 85.1514 Treatment of confidential information.

(a) Any importer may assert that some or all of the information submitted pursuant to this subpart is entitled to confidential treatment as provided by 40 CFR part 2, subpart B.

(b) Any claim of confidentiality must accompany the information at the time it is submitted to EPA.

(c) To assert that information submitted pursuant to this subpart is confidential, an importer must indicate clearly the items of information claimed confidential by marking, circling, bracketing, stamping, or otherwise specifying the confidential information. Furthermore, EPA requests, but does not require, that the submitter also provide a second copy of its submittal from which all confidential information has been deleted. If a need arises to publicly release nonconfidential information, EPA will assume that the submitter has accurately deleted the confidential information from this second copy.

(d) If a claim is made that some or all of the information submitted pursuant to this subpart is entitled to confidential treatment, the information covered by that confidentiality claim will be disclosed by the Administrator only to the extent and by means of the procedures set forth in part 2, subpart B, of this chapter.

(e) Information provided without a claim of confidentiality at the time of submission may be made available to the public by EPA without further notice to the submitter.

§ 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.

(b) The emission standards applicable to nonconforming light-duty vehicles and light-duty trucks imported pursuant to this subpart are outlined in tables 1 and 2 of this section, respectively. The useful life as specified in tables 1 and 2 of this section is applicable to imported light-duty vehicles and light-duty trucks, respectively.

(c)(1) Nonconforming motor vehicles or motor vehicle engines of 1994 OP model year and later conditionally imported pursuant to §85.1505 or §85.1509 shall meet all of the emission standards specified in 40 CFR part 86 for the OP year of the vehicle or motor vehicle engine. At the option of the ICI, the nonconforming motor vehicle may comply with the emissions standards in 40 CFR 86.1708-99 or 86.1709-99, as applicable to a light-duty vehicle or light-duty truck, in lieu of the otherwise applicable emissions standards specified in 40 CFR part 86 for the OP year of the vehicle. The provisions of 40 CFR 86.1710-99 do not apply to imported nonconforming motor vehicles. The useful life specified in 40 CFR part 86 for the OP year of the motor vehicle or motor vehicle engine 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 of 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 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/LDTs originally manufactured in OP years 2007 and later and nonconforming HLDTs and MDPVs originally manufactured in OP years 2009 and later 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(e)(1) through (e)(4).

(v) ICIs are exempt from the Tier 2 and the interim non-Tier2 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 and later 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 and later 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).

(3)(i) As an option to the requirements of paragraph (c)(2) 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 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_x 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.

(4) [Reserved]

(5) Except for the situation where an ICI desires to bank, sell or use NO_x credits as described in paragraph (c)(3) of this section, the requirements of 40 CFR 86.1811-04 related to fleet average NO_x standards and requirements to comply with such standards do not

apply to vehicles modified under this subpart.

(6) 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).

(7) The Administrator may condition the certificates of conformity issued to ICIs as necessary to ensure that vehicles subject to paragraph (c) of this section comply with the appropriate average NO_x standard for each model year.

(8)(i) Nonconforming LDV/LLDTs originally manufactured in OP years 2010 and later must meet the cold temperature NMHC emission standards in Table S10-1 in 40 CFR 86.1811-10(g).

(ii) Nonconforming HLDTs and MDPVs originally manufactured in OP years 2012 and later must meet the cold temperature NMHC emission standards in Table S10-1 in 40 CFR 86.1811-10(g).

(iii) ICIs, which qualify as small volume manufacturers, are exempt from the cold temperature NMHC phase-in intermediate percentage requirements described in 40 CFR 86.1811-10(g)(3). See 40 CFR 86.1811-04(k)(5)(vi) and (vii).

(iv) As an alternative to the requirements of paragraphs (c)(8)(i) and (ii) 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 as specified in paragraphs (c)(8)(i) and (ii) of this section, 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

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address other vehicles as permitted in 40 CFR 86.1864-10.

(v) Where an ICI desires to obtain a certificate of conformity using a higher cold temperature NMHC family emission level than specified in paragraphs (c)(8)(i) and (ii) 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 paragraphs (c)(8)(i) and (ii) 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.

(vi) ICIs using cold temperature NMHC family emission levels higher

than the cold temperature NMHC fleet average standards specified in paragraphs (c)(8)(i) and (ii) 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.

(vii) The Administrator may condition the certificates of conformity issued to ICIs as necessary to ensure that vehicles subject to this paragraph (c)(8) comply with the applicable cold temperature NMHC fleet average standard for each model year.

(d) Except as provided in paragraph (c) of this section, ICIs must not participate in emission-related programs for emissions averaging, banking and trading, or nonconformance penalties.

TABLE 1 TO § 85.1515—EMISSION STANDARDS APPLICABLE TO IMPORTED LIGHT-DUTY MOTOR VEHICLES 1,2,3

OP Year	Hydrocarbon	Carbon monoxide	Oxides of nitrogen	Particulate	Diesel hydrocarbon	Evaporative (years/miles)	Useful life
1968-76	1.5 gpm	15 gpm	3.1 gpm		6.0 g/test	5/50,000	
1977-79	1.5 gpm	15 gpm	2.0 gpm		6.0 g/test	5/50,000	
1980	0.41 gpm	7.0 gpm	2.0 gpm		6.0 g/test	5/50,000	
1981	0.41 gpm	3.4 gpm	1.0 gpm		2.0 g/test	5/50,000	
1982-86	0.41 gpm	3.4 gpm	1.0 gpm	0.60 gpm	2.0 g/test	5/50,000	
1987-93	0.41 gpm	3.4 gpm	1.0 gpm	0.20 gpm	2.0 g/test	5/50,000	
1994 and later	(4)	(4)	(4)	(4)	(4)	(4)	

¹ Diesel particulate standards apply only to diesel fueled light-duty vehicles. Evaporative hydrocarbon standards apply only to non-diesel fueled light-duty vehicles. For alternative fueled light-duty vehicles, the evaporative hydrocarbon standard is interpreted as organic material hydrocarbon equivalent grams carbon per test, as applicable.

² No crankcase emissions shall be discharged into the ambient atmosphere from any non-diesel fueled light-duty vehicle.

³ All light-duty vehicles shall meet the applicable emission standards at both low and high-altitudes according to the procedures specified in 40 CFR part 86 for current model year motor vehicles at the time of testing.

⁴ Specified in 40 CFR part 86 for the OP year of the vehicle, per 85.1515(c).

TABLE 2—EMISSION STANDARDS APPLICABLE TO IMPORTED LIGHT-DUTY TRUCKS 1,2,3,4,5

OP year	Hydrocarbon	Carbon monoxide	Oxides of nitrogen	Particulate	Diesel hydrocarbon	Evaporative (years/miles)	Useful life
1968-78	2.0 gpm	20 gpm	3.1 gpm		6.0 g/test	5/50,000	
1979-80	1.7 gpm	18 gpm	2.3 gpm		6.0 g/test	5/50,000	
1981	1.7 gpm	18 gpm	2.3 gpm		2.0 g/test	5/50,000	
1982-83	1.7 gpm	18 gpm	2.3 gpm	0.60 gpm	2.0 g/test	5/50,000	
	(2.0)	(26)	(2.3)	(0.60)	(2.6)		
1984	0.80 gpm	10 gpm	2.3 gpm	0.60 gpm	2.0 g/test	5/50,000	
	(1.0)	(14)	(2.3)	(0.60)	(2.6)		
1985-86	0.80 gpm	10 gpm	2.3 gpm	0.60 gpm	2.0 g/test	11/120,000	
	(1.0)	(14)	(2.3)	(0.60)	(2.6)		
1987	0.80 gpm	10 gpm	2.3 gpm	0.26 gpm	2.0 g/test	11/120,000	
	(1.0)	(14)	(2.3)	(0.26)	(2.6)		
1988-89	0.80 gpm	10 gpm	1.2 gpm ⁶	0.26 gpm ⁷	2.0 g/test	11/120,000	
	(1.0)	(14)	(1.2)	(2.0)	(2.6)		
	0.80 gpm	10 gpm	1.7 gpm ⁶	0.45 gpm ⁷	2.0 g/test	11/120,000	
	(1.0)	(14)	(1.7)	(0.26)	(2.6)		

TABLE 2—EMISSION STANDARDS APPLICABLE TO IMPORTED LIGHT-DUTY TRUCKS ^{1,2,3,4,5}—Continued

OP year	Hydrocarbon	Carbon monoxide	Oxides of nitrogen	Particulate	Diesel hydrocarbon	Evaporative (years/miles)	Useful life
1990–93	0.80 gpm (1.0)	10 gpm (14)	2.3 gpm ⁶ (2.3)	0.45 gpm ⁷ (0.26)	2.0 g/test (2.6)	11/120,000	
	0.80 gpm (1.0)	10 gpm (14)	1.2 gpm ⁸ (1.2)	0.26 gpm ⁷ (0.26)	2.0 g/test (2.6)	11/120,000	
	0.80 gpm (1.0)	10 gpm (14)	1.7 gpm ⁸ (1.7)	0.45 gpm ⁷ (0.26)	2.0 g/test (2.6)	11/120,000	
1994 and later	(⁹)	(⁹)	(⁹)	(⁹)	(⁹)	(⁹)	

¹ Diesel particulate standards apply only to diesel fueled light-duty trucks. Evaporative hydrocarbon standards apply only to non-diesel fueled light-duty trucks. For alternative fueled light-duty trucks, the evaporative hydrocarbon standard is interpreted as organic material hydrocarbon equivalent grams carbon per test, as applicable.

² No crankcase emissions shall be discharged into the ambient atmosphere from any non-diesel fueled light-duty truck.

³ A carbon monoxide standard of 0.50% of exhaust flow at curb idle is applicable to all 1984 and later model year light-duty trucks sold to, or owned by, an importer for principal use at other than a designated high-altitude location. This requirement is effective for light-duty trucks sold to, or owned by an importer for principal use at a designated high-altitude location beginning with the 1988 model year.

⁴ All 1982 OP year and later light-duty trucks sold to, or owned by, an importer for principal use at a designated high-altitude location shall meet high-altitude emission standards according to the requirements specified in 40 CFR part 86 for current model year light-duty trucks at the time of testing.

⁵ Standards in parentheses apply to motor vehicles sold to, or owned by, an importer for principal use at a designated high-altitude location. These standards must be met at high-altitude according to the procedures specified in 40 CFR part 86 for current model year motor vehicles at the time of testing.

⁶ The oxides of nitrogen standard of 1.2 gpm applies to light-duty trucks up to and including 3,750 pounds loaded vehicle weight and 6,000 pounds or less gross vehicle weight the 1.7 gpm standard applies to light-duty trucks greater than 3,750 pound loaded vehicle weight and 6,000 pounds or less gross vehicle weight; the 2.3 gpm standard applies to light-duty trucks 6,001 pounds gross vehicle weight and greater.

⁷ The diesel particulate standard of 0.26 gpm applies to light-duty trucks up to and including 3,750 pounds loaded vehicle weight; the 0.45 gpm standard applies to light-duty trucks 3,751 pounds and greater loaded vehicle weight.

⁸ The oxides of nitrogen standard of 1.2 gpm applies to light-duty trucks up to and including 3,750 pounds loaded vehicle weight; the 1.7 gpm standard applies to light-duty trucks 3,751 pounds and greater loaded vehicle weight.

⁹ Specified in 40 CFR part 86 for the OP year of the vehicle, per 85.1515(c).

[61 FR 5842, Feb. 14, 1996, as amended at 62 FR 31232, June 6, 1997; 63 FR 964, Jan. 7, 1998; 65 FR 6847, Feb. 10, 2000; 70 FR 40430, July 13, 2005; 72 FR 8560, Apr. 27, 2007]

Subpart Q—Preemption of State Standards and Waiver Procedures for Nonroad Engines and Nonroad Vehicles

SOURCE: 59 FR 36987, July 20, 1994, unless otherwise noted.

§ 85.1601 Applicability.

The requirements of this subpart are applicable to nonroad engines and nonroad vehicles.

§ 85.1602 Definitions.

As used in this subpart, all terms not defined shall have the meaning given them in the Clean Air Act, as amended.

Commercial means an activity engaged in as a vocation.

Construction equipment or vehicle means any internal combustion engine-powered machine primarily used in construction and located on commercial construction sites.

Engine used in a locomotive means either an engine placed in the locomotive to move other equipment, freight, or passenger traffic, or an en-

gine mounted on the locomotive to provide auxiliary power.

Farm equipment or vehicle means any internal combustion engine-powered machine primarily used in the commercial production and/or commercial harvesting of food, fiber, wood, or commercial organic products or for the processing of such products for further use on the farm.

Locomotive. The definition of *locomotive* specified in 40 CFR 92.2 applies to this subpart.

New means a domestic or imported nonroad vehicle or nonroad engine the equitable or legal title to which has never been transferred to an ultimate purchaser. Where the equitable or legal title to an engine or vehicle is not transferred to an ultimate purchaser until after the engine or vehicle is placed into service, then the engine or vehicle will no longer be new after it is placed into service. A nonroad engine or vehicle is placed into service when it is used for its functional purposes. The term *ultimate purchaser* means, with respect to any new nonroad vehicle or new nonroad engine, the first person