

material for determining compliance under these regulations; and (3) that I have read and understand the information being Certified or submitted, and this information is true, complete and correct to the best of my knowledge and belief after I have taken reasonable and appropriate steps to verify the accuracy thereof. I affirm that I have read and understand the provisions of 40 CFR part 80, subpart L, including 40 CFR 80.1420 apply to [insert name of foreign refiner]. Pursuant to Clean Air Act section 113(c) and 18 U.S.C. 1001, the penalty for furnishing false, incomplete or misleading information in this certification or submission is a fine of up to \$10,000 U.S., and/or imprisonment for up to five years.

PART 85—CONTROL OF AIR POLLUTION FROM MOBILE SOURCES

10. The authority citation for part 85 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart P—[Amended]

11. Section 85.1515 is amended by adding paragraphs (c)(2)(vii), (c)(2)(viii), and (c)(8) to read as follows.

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

* * * * *

(c) * * *
(2) * * *

(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).

* * * * *

(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 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.

* * * * *

PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

12. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart H—[Amended]

13. Section 86.701–94 is amended by revising paragraph (a) to read as follows:

§ 86.701–94 General applicability.

(a) The provisions of this subpart apply to: 1994 through 2003 model year Otto-cycle and diesel light-duty vehicles; 1994 through 2003 model year Otto-cycle and diesel light-duty trucks; and 1994 and later model year Otto-cycle and diesel heavy-duty engines; and 2001 and later model year Otto-cycle heavy-duty vehicles and engines certified under the provisions of subpart S of this part. The provisions of subpart B of this part apply to this subpart. The provisions of § 86.1811–04(a)(5) and (p) apply to 2004 and later model year light-duty vehicles, light-duty trucks, and medium duty passenger vehicles.

* * * * *

Subpart S—[Amended]

14. Section 86.1803–01 is amended by revising the definition of “Banking” and adding the definition for “Fleet average cold temperature NMHC standard” to read as follows:

§ 86.1803–01 Definitions.

* * * * *

Banking means one of the following:

(1) The retention of NO_x emission credits for complete heavy-duty vehicles by the manufacturer generating the emission credits, for use in future model year certification programs as permitted by regulation.

(2) The retention of cold temperature non-methane hydrocarbon (NMHC) emission credits for light-duty vehicles, light-duty trucks, and medium-duty passenger vehicles by the manufacturer generating the emission credits, for use in future model year certification programs as permitted by regulation.

* * * * *

Fleet average cold temperature NMHC standard means, for light-duty vehicles, light-duty trucks and medium-duty passenger vehicles, an NMHC cold temperature standard imposed over an individual manufacturer's total 50-State U.S. sales (or a fraction of total U.S. sales during phase-in years), as "U.S. sales" is defined to include all national sales, including points-of-first sale in California, of a given model year. Manufacturers determine their compliance with such a standard by averaging, on a sales-weighted basis, the individual NMHC "Family Emission Limits" (FEL—as defined in this subpart) to which light-duty vehicles, light-duty trucks and medium-duty passenger vehicles were certified and sold for that model year.

* * * * *

15. Section 86.1805–04 is amended by adding paragraph (g) to read as follows:

§ 86.1805–04 Useful life.

* * * * *

(g) Where cold temperature NMHC standards are applicable, the useful life requirement for compliance with the cold temperature NMHC standard only is as follows:

(1) For LDV/LLDTs, 10 years or 120,000 miles, whichever occurs first.

(2) For HLDT/MDPVs, 11 years or 120,000 miles, whichever occurs first.

16. A new § 86.1809–10 is added to Subpart S to read as follows:

§ 86.1809–10 Prohibition of defeat devices.

(a) No new light-duty vehicle, light-duty truck, medium-duty passenger vehicle, or complete heavy-duty vehicle shall be equipped with a defeat device.

(b) The Administrator may test or require testing on any vehicle at a designated location, using driving cycles and conditions which may reasonably be expected to be encountered in normal operation and use, for the purposes of investigating a potential defeat device.

(c) For cold temperature CO and cold temperature NMHC emission control, the Administrator will use a guideline to determine the appropriateness of the CO and NMHC emission control at ambient temperatures between 25 °F (4 °C) (the upper bound of the cold test range) and 68 °F (20 °C) (the lower bound of the FTP range). The guideline

for CO emission congruity across the intermediate temperature range is the linear interpolation between the CO standard applicable at 25 °F (4 °C) and the CO standard applicable at 68 °F (20 °C). The guideline for NMHC emission congruity across the intermediate temperature range is the linear interpolation between the NMHC FEL applicable at 25 °F (4 °C) and the Tier 2 NMOG standard to which the vehicle was certified at 68 °F (20 °C), where the intermediate temperature NMHC level is rounded to the nearest hundredth for comparison to the interpolated line. For vehicles that exceed this CO emissions guideline or this NMHC emissions guideline upon intermediate temperature cold testing:

(1) If the CO emission level is greater than the 20 °F (7 °C) emission standard, the vehicle will automatically be considered to be equipped with a defeat device without further investigation. If the intermediate temperature NMHC emission level, rounded to the nearest hundredth, is greater than the 20 °F (7 °C) FEL, the vehicle will automatically be considered to be equipped with a defeat device without further investigation.

(2) If the CO emission level does not exceed the 20 °F emission standard, the Administrator may investigate the vehicle design for the presence of a defeat device under paragraph (d) of this section. If the intermediate temperature NMHC emission level, rounded to the nearest hundredth, does not exceed the 20 °F FEL, the Administrator may investigate the vehicle design for the presence of a defeat device under paragraph (d) of this section.

(d) For vehicle designs designated by the Administrator to be investigated for possible defeat devices:

(1) The manufacturer must show to the satisfaction of the Administrator that the vehicle design does not incorporate strategies that unnecessarily reduce emission control effectiveness exhibited during the Federal or Supplemental Federal emissions test procedures (FTP or SFTP) when the vehicle is operated under conditions which may reasonably be expected to be encountered in normal operation and use.

(2) The following information requirements apply:

(i) Upon request by the Administrator, the manufacturer will provide an explanation containing detailed information regarding test programs, engineering evaluations, design specifications, calibrations, on-board computer algorithms, and design strategies incorporated for operation both during and outside of the Federal emission test procedure.

(ii) For purposes of investigations of possible cold temperature CO or cold temperature NMHC defeat devices under this paragraph (d), the manufacturer shall provide an explanation which must show, to the satisfaction of the Administrator, that CO emissions and NMHC emissions are reasonably controlled in reference to the linear guideline across the intermediate temperature range.

(e) For each test group of Tier 2 LDV/LLDTs and HLDT/MDPVs and interim non-Tier 2 LDV/LLDTs and HLDT/MDPVs the manufacturer must submit, with the Part II certification application, an engineering evaluation demonstrating to the satisfaction of the Administrator that a discontinuity in emissions of non-methane organic gases, carbon monoxide, oxides of nitrogen and formaldehyde measured on the Federal Test Procedure (subpart B of this part) does not occur in the temperature range of 20 to 86 degrees F. For diesel vehicles, the engineering evaluation must also include particulate emissions.

17. A new § 86.1810–09 is added to Subpart S to read as follows:

§ 86.1810–09 General standards; increase in emissions; unsafe condition; waivers.

Section 86.1810–09 includes text that specifies requirements that differ from § 86.1810–01. Where a paragraph in § 86.1810–01 is identical and applicable to § 86.1810–09, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]". For guidance see § 86.1810–01." Where a corresponding paragraph of § 86.1810–01 is not applicable, this is indicated by the statement "[Reserved]." This section applies to model year 2009 and later light-duty vehicles and light-duty trucks fueled by gasoline, diesel, methanol, ethanol, natural gas and liquefied petroleum gas fuels. This section also applies to MDPVs and complete heavy-duty vehicles certified according to the provisions of this subpart. Multi-fueled vehicles (including dual-fueled and flexible-fueled vehicles) shall comply with all requirements established for each consumed fuel (or blend of fuels in the case of flexible fueled vehicles). The standards of this subpart apply to both certification and in-use vehicles unless otherwise indicated. This section also applies to hybrid electric vehicles and zero emission vehicles. Unless otherwise specified, requirements and provisions of this subpart applicable to methanol fueled vehicles are also applicable to Tier 2 and interim non-Tier 2 ethanol fueled vehicles.

(a) through (e) [Reserved]. For guidance see § 86.1810–01.

(f) *Altitude requirements.* (1) All emission standards apply at low altitude conditions and at high altitude conditions, except for supplemental exhaust emission standards, cold temperature NMHC emission standards, and the evaporative emission standards as described in § 86.1811–09(e). Supplemental exhaust emission standards, as described in § 86.1811–04(f), apply only at low altitude conditions. Cold temperature NMHC emission standards, as described in § 86.1811–10(g), apply only at low altitude conditions. Tier 2 evaporative emission standards apply at high altitude conditions as specified in § 86.1810–01(f) and (j), and § 86.1811–04(e).

(2) For vehicles that comply with the cold temperature NMHC standards, manufacturers shall submit an engineering evaluation indicating that common calibration approaches are utilized at high altitudes. Any deviation from low altitude emission control practices shall be included in the auxiliary emission control device (AEC) descriptions submitted at certification. Any AEC specific to high altitude shall require engineering emission data for EPA evaluation to quantify any emission impact and validity of the AEC.

(g) through (p) [Reserved]. For guidance see § 86.1810–01.

18. Section 86.1811–04 is amended by adding paragraphs (k)(5)(iv) through (vii) and (q)(1)(vi) through (ix) to read as follows:

§ 86.1811–04 Emission standards for light-duty vehicles, light-duty trucks and medium-duty passenger vehicles.

* * * * *

(k) * * *

(5) * * *

(iv) Vehicles produced by small volume manufacturers, as defined in § 86.1838–01, are exempt from the LDV/LLDT evaporative emissions standards in Table S09–1 of § 86.1811–09(e) for model years 2009 and 2010, but must comply with the Tier 2 evaporative emission standards in Table S04–3 in paragraph (e)(1) of this section for model years 2009 and 2010.

(v) Vehicles produced by small volume manufacturers, as defined in § 86.1838–01, are exempt from the HLDT/MDPV evaporative emissions standards in Table S09–1 of § 86.1811–09(e) for model years 2010 and 2011, but must comply with the Tier 2

evaporative emission standards in Table S04–3 in paragraph (e)(1) of this section for model years 2010 and 2011.

(vi) Small volume manufacturers, as defined in § 86.1838–01, are exempt from the LDV/LLDT cold temperature NMHC phase-in requirements in Table S10–1 of § 86.1811–10(g) for model years 2010, 2011, and 2012, but must comply with the 100% requirement for 2013 and later model years for cold temperature NMHC standards

(vii) Small volume manufacturers, as defined in § 86.1838–01, are exempt from the HLDT/MDPV cold temperature NMHC phase-in requirements in Table S10–1 of § 86.1811–10(g) for model years 2012, 2013, and 2014, but must comply with the 100% requirement for 2015 and later model years for cold temperature NMHC standards.

* * * * *

(q) * * *

(1) * * *

(vi) Defer compliance with the LDV/LLDT evaporative emissions standards in Table S09–1 of § 86.1811–09(e) until 2013, and defer compliance with the LDV/LLDT evaporative emissions standards in Table S09–2 of § 86.1811–09(e) until 2014. (The hardship relief may be extended one additional model year—2 model years total.)

(vii) Defer compliance with the HLDT/MDPV evaporative emissions standards in Table S09–1 of § 86.1811–09(e) until 2014, and defer compliance with the HLDT/MDPV evaporative emissions standards in Table S09–2 of § 86.1811–09(e) until 2015. (The hardship relief may be extended one additional model year—2 model years total.)

(viii) Defer 100% compliance with the LDV/LLDT cold temperature NMHC standards in Table S10–X of § 86.1811–10(g) until 2015. (The hardship relief may be extended one additional model year—2 model years total.)

(ix) Defer 100% compliance with the HLDT/MDPV cold temperature NMHC standards in Table S10–X of § 86.1811–10(g) until 2017. (The hardship relief may be extended one additional model year—2 model years total.)

* * * * *

19. A new § 86.1811–09 is added to Subpart S to read as follows:

§ 86.1811–09 Emission standards for light-duty vehicles, light-duty trucks and medium-duty passenger vehicles.

Section 86.1811–09 includes text that specifies requirements that differ from § 86.1811–04. Where a paragraph in § 86.1811–04 is identical and applicable

to § 86.1811–09, this may be indicated by specifying the corresponding paragraph and the statement “[Reserved]. For guidance see § 86.1811–04.” Where a corresponding paragraph of § 86.1811–04 is not applicable, this is indicated by the statement “[Reserved].”

(a) *Applicability.* (1) This section contains regulations implementing emission standards for all LDVs, LDTs and MDPVs. This section applies to 2009 and later model year LDVs, LDTs and MDPVs fueled by gasoline, diesel, methanol, ethanol, natural gas and liquefied petroleum gas fuels, except as noted. Additionally, this section applies to hybrid electric vehicles (HEVs) and zero emission vehicles (ZEVs). Unless otherwise specified, multi-fueled vehicles must comply with all requirements established for each consumed fuel.

(2) through (4) [Reserved]. For guidance see § 86.1811–04.

(5) The exhaust emission standards and evaporative emission standards of this section apply equally to certification and in-use LDVs, LDTs and MDPVs, unless otherwise specified. See paragraph (t) of this section for interim evaporative emission in-use standards that are different than the certification evaporative emission standards specified in paragraph (e) of this section.

(b) through (d) [Reserved]. For guidance see § 86.1811–04.

(e) *Evaporative emission standards.* Evaporative emissions from gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled, ethanol-fueled and methanol-fueled vehicles must not exceed the standards in this paragraph (e). The standards apply equally to certification and in-use vehicles.

(1) *Diurnal-plus-hot soak evaporative hydrocarbon standards.* (i)

Hydrocarbons for LDV/LLDTs, HLDTs and MDPVs that are gasoline-fueled, dedicated natural gas-fueled, dedicated liquefied petroleum gas-fueled, dedicated ethanol-fueled, dedicated methanol-fueled and multi-fueled vehicles when operating on gasoline must not exceed the diurnal plus hot soak standards shown in Table S09–1 for the full three diurnal test sequence and for the supplemental two diurnal test sequence. The standards apply equally to certification and in-use vehicles, except as otherwise specified in paragraph (t) of this section. Table S09–1 follows:

TABLE S09-1.—LIGHT-DUTY DIURNAL PLUS HOT SOAK EVAPORATIVE EMISSION STANDARDS
[Grams per test]

Vehicle category	Model year	3 day diurnal+hot soak	Supplemental 2 day diurnal+hot soak
LDVs	2009	0.50	0.65
LLDTs	2009	0.65	0.85
HLDTs	2010	0.90	1.15
MDPVs	2010	1.00	1.25

(ii) Hydrocarbons for LDV/LLDTs, HLDTs and MDPVs that are multi-fueled vehicles operating on non-gasoline fuel must not exceed the diurnal plus hot

soak standards shown in Table S09-2 for the full three diurnal test sequence and for the supplemental two diurnal test sequence. The standards apply

equally to certification and in-use vehicles except as otherwise specified in paragraph (t) of this section. Table S09-2 follows:

TABLE S09-2.—LIGHT-DUTY DIURNAL PLUS HOT SOAK EVAPORATIVE EMISSION STANDARDS: NON-GASOLINE PORTION OF MULTI-FUELED VEHICLES
[Grams per test]

Vehicle category	Model year	3 day diurnal+hot soak	Supplemental 2 day diurnal+hot soak
LDVs	2012	0.50	0.65
LLDTs	2012	0.65	0.85
HLDTs	2013	0.90	1.15
MDPVs	2013	1.00	1.25

(2) through (6) [Reserved]. For guidance see § 86.1811-04.

(f) through (s) [Reserved]. For guidance see § 86.1811-04.

(t) *Evaporative emission in-use standards.* (1) For LDVs and LLDTs certified prior to the 2012 model year, the Tier 2 LDV/LLDT evaporative emissions standards in Table S04-3 of § 86.1811-04(e) shall apply to in-use vehicles for only the first three model years after an evaporative family is first certified to the LDV/LLDT evaporative emission standards in Table S09-1 of paragraph (e) of this section. For example, evaporative families first certified to the LDV/LLDT standards in Table S09-1 in the 2011 model year shall meet the Tier 2 LDV/LLDT evaporative emission standards (Table S04-3) in-use for 2011, 2012, and 2013 model year vehicles (applying Tier 2 standards in-use is limited to the first three years after introduction of a vehicle).

(2) For HLDTs and MDPVs certified prior to the 2013 model year, the Tier 2 HLDT/MDPV evaporative emissions standards in Table S04-3 of § 86.1811-04(e) shall apply to in-use vehicles for only the first three model years after an evaporative family is first certified to the HLDT/MDPV evaporative emission standards in Table S09-1 of paragraph (e) of this section. For example, evaporative families first certified to the

HLDT/MDPV standards in Table S09-1 in the 2012 model year shall meet the Tier 2 HLDT/MDPV evaporative emission standards (Table S04-3) in-use for 2012, 2013, and 2014 model year vehicles (applying Tier 2 standards in-use is limited to the first three years after introduction of a vehicle).

20. A new § 86.1811-10 is added to Subpart S to read as follows:

§ 86.1811-10 Emission standards for light-duty vehicles, light-duty trucks and medium-duty passenger vehicles.

Section 86.1811-10 includes text that specifies requirements that differ from § 86.1811-04 and § 86.1811-09. Where a paragraph in § 86.1811-04 or § 86.1811-09 is identical and applicable to § 86.1811-10, this may be indicated by specifying the corresponding paragraph and the statement “[Reserved]. For guidance see § 86.1811-04” or “[Reserved]. For guidance see § 86.1811-09.” Where a corresponding paragraph of § 86.1811-04 or § 86.1811-09 is not applicable, this is indicated by the statement “[Reserved].”

(a) [Reserved]. For guidance see § 86.1811-09.

(b) through (d) [Reserved]. For guidance see § 86.1811-04.

(e) [Reserved]. For guidance see § 86.1811-09.

(f) [Reserved]. For guidance see § 86.1811-04.

(g) *Cold temperature exhaust emission standards.* (1) Cold temperature CO standards. These cold temperature CO standards are applicable only to gasoline fueled LDV/Ts and MDPVs. For the following cold temperature CO exhaust emission standards, a useful life of 50,000 miles or 5 years (whichever occurs first) applies:

(i) For LDVs and LDT1s, the standard is 10.0 grams per mile CO.

(ii) For LDT2s, LDT3s and LDT4s, and MDPVs the standard is 12.5 grams per mile CO.

(iii) These standards do not apply to interim non-Tier 2 MDPVs.

(2) *Cold temperature NMHC standards.* Full useful life fleet average cold temperature NMHC standards are applicable only to gasoline fueled LDV/LLDTs and HLDT/MDPVs, and apply equally to certification and in-use except as otherwise specified in paragraph (u) of this section for in-use standards for applicable phase-in models. Testing with other fuels such as E85, or testing on diesel vehicles, is not required. Multi-fuel, bi-fuel or dual-fuel vehicles must comply with requirements using gasoline only. For LDV/LLDTs, the useful life is 120,000 miles or 10 years, whichever comes first. For HLDT/MDPVs, the useful life is 120,000 miles or 11 years, whichever comes first. There is not an intermediate

useful life standard for cold temperature NMHC standards.

(i) The standards are shown in Table S10-1, which follows:

TABLE S10-1.—FLEET AVERAGE COLD TEMPERATURE NMHC FULL USEFUL LIFE EXHAUST EMISSION STANDARDS

Vehicle weight category	Cold temperature NMHC sales-weighted fleet average standard (grams/mile)
LDVs & LLDTs (≤ 6,000 lbs GVWR)	0.3
HLDTs (>6,000–8,500 lbs GVWR) &	0.5
MDPVs (>8,500 10,000 lbs GVWR)

(ii) The manufacturer must calculate its fleet average cold temperature NMHC emission level(s) as described in § 86.1864-10(m).

(iii) During a phase-in year, the manufacturer must comply with the fleet average standards for the required phase-in percentage for that year as specified in paragraph (g)(3) of this section, or for the alternate phase-in percentage as permitted under paragraph (g)(4) of this section.

(iv) For model years prior to 2010 (LDV/LLDTs) and 2012 (HLDT/MDPVs), where the manufacturer desires to bank early NMHC credits as permitted under § 86.1864-10(o)(5), the manufacturer must achieve a fleet average standard below 0.3 grams per mile for LDV/LLDTs and below 0.5 grams per mile for HLDT/MDPVs. Manufacturers must determine compliance with the cold temperature NMHC fleet average standard according to § 86.1864-10(o).

(3) *Phase-in of the cold temperature NMHC standards.* Except as permitted in § 86.1811-04(k)(5)(vi) and (vii) regarding small volume manufacturers, manufacturers must comply with the phase-in requirements in Tables S10-2 and S10-3 of this paragraph. Separate phase-in schedules are provided for LDV/LLDTs and for HLDT/MDPVs. These requirements specify the minimum percentage of the manufacturer's LDV/LLDT and HLDT/MDPV 50-State sales, by model year, that must meet the fleet average cold temperature NMHC standard for their full useful lives. LDVs and LLDTs must be grouped together to determine compliance with these phase-in requirements, and HLDTs and MDPVs must also be grouped together to determine compliance with these phase-in requirements. Tables S10-2 and S10-3 follow:

TABLE S10-2.—PHASE-IN PERCENTAGES FOR LDV/LLDT COLD TEMPERATURE NMHC REQUIREMENTS

Model year	Percentage of LDV/LLDTs that must meet requirement
2010	25
2011	50
2012	75
2013 and subsequent	100

TABLE S10-3.—PHASE-IN PERCENTAGES FOR HLDT/MDPV COLD TEMPERATURE NMHC REQUIREMENTS

Model year	Percentage of HLDT/MDPVs that must meet requirement
2012	25
2013	50
2014	75
2015 and subsequent	100

(4) *Alternate phase-in schedules for cold temperature NMHC standards.* (i) Manufacturers may apply for alternative phase-in schedules that would still result in 100% phase-in by 2013 and 2015, respectively, for LDV/LLDTs and HLDT/MDPVs. An alternate phase-in schedule submitted by a manufacturer is subject to EPA approval. The alternative phase-in will not be used to delay full implementation past the last year of the primary phase-in schedule (2013 for LDV/LLDTs, 2015 for HLDT/MDPVs). An alternative phase-in schedule will be acceptable if it satisfies the following equations:

LDV/LLDTs:
 $(6 \times API_{2008}) + (5 \times API_{2009}) + (4 \times API_{2010}) + (3 \times API_{2011}) + (2 \times API_{2012}) + (1 \times API_{2013}) \geq 500\%$

HLDT/MDPVs:
 $(6 \times API_{2010}) + (5 \times API_{2011}) + (4 \times API_{2012}) + (3 \times API_{2013}) + (2 \times API_{2014}) + (1 \times API_{2015}) \geq 500\%$

Where:
 API = anticipated phase-in percentage for the referenced model year

(ii) If the sum of products is greater than or equal to 500%, which is the sum of products from the primary phase-in schedule ($4 \times 25\% + 3 \times 50\% + 2 \times 75\% + 1 \times 100\% = 500\%$), then the alternative phase-in schedule is acceptable, except as prohibited in paragraphs (g)(4)(i) and (iii) of this section. In addition, manufacturers electing to use an alternate phase-in schedule for compliance with the cold temperature NMHC exhaust emission standards must ensure that the sum of

products is at least 100% for model years 2010 and earlier for LDV/LLDTs, and 2012 and earlier for HLDT/MDPVs. For example, a phase-in schedule for LDV/LLDTs of 5/10/10/45/80/100 that begins in 2008 would calculate as $(6 \times 5\%) + (5 \times 10\%) + (4 \times 10\%) = 120\%$ and would be acceptable for 2008–2010. The full phase-in would calculate as $(6 \times 5\%) + (5 \times 10\%) + (4 \times 10\%) + (3 \times 45\%) + (2 \times 80\%) + (1 \times 100\%) = 515\%$ and would be acceptable for 2008–2013.

(iii) Under an alternate phase-in schedule, the projected phase-in percentage is not binding for a given model year, provided the sums of the actual phase-in percentages that occur meet the appropriate total sums as required in the equations of paragraph (g)(4)(i) of this section, and provided that 100% actual compliance is reached for the appropriate model year, either 2013 for LDV/LLDTs or 2015 for HLDT/MDPVs.

(5) Manufacturers must determine compliance with required phase-in schedules as follows:

(i) Manufacturers must submit information showing compliance with all phase-in requirements of this section with their Part I applications as required by § 86.1844(d)(13).

(ii) A manufacturer electing to use any alternate phase-in schedule permitted under this section must provide in its Application for Certification for the first year in which it intends to use such a schedule, and in each succeeding year during the phase-in, the intended phase-in percentages for that model year and the remaining phase-in years along with the intended final sum of those percentages as described in paragraph (g)(4)(i) of this section. This information may be included with the information required under § 86.1844-01(d)(13). In its year end annual reports, as required under § 86.1844-01(e)(4), the manufacturer must include sufficient information so that the Administrator can verify compliance with the alternative phase-in schedule established under paragraph (g)(4)(i) of this section.

(6)(i) Sales percentages for the purpose of determining compliance with the phase-in of the cold temperature NMHC requirements must be based upon projected 50-State sales of LDV/LLDTs and HLDT/MDPVs of the applicable model year by the manufacturer to the point of first sale. Such sales percentages must be rounded to the nearest one tenth of a percent.

(ii) Alternatively, the manufacturer may petition the Administrator to allow actual volume produced for U.S. sales to be used in lieu of projected U.S. sales for purposes of determining compliance

with the phase-in percentage requirements under this section. The manufacturer must submit its petition within 30 days of the end of the model year to the Compliance and Innovative Strategies Division. For EPA to approve the use of actual volume produced for U.S. sales, the manufacturer must establish to the satisfaction of the Administrator, that actual production volume is functionally equivalent to

actual sales volume of LDV/LLDTs and HLDT/MDPVs sold in all 50 U.S. States.
 (f) through (s) [Reserved]. For guidance see § 86.1811-04.
 (t) [Reserved]. For guidance see § 86.1811-09.
 (u) *Cold temperature NMHC exhaust emission in-use standards for applicable phase-in models.* An interim full useful life in-use compliance standard is calculated by adding 0.1 g/mi to the FEL

to which each test group is newly certified, and applies to that test group only for the model years shown in Tables S10-4 and S10-5. Otherwise, the in-use standard is the certification standard from paragraph (g)(2) of this section. The standards apply for purposes of in-use testing only and does not apply to certification or Selective Enforcement Auditing. Tables S10-4 and S10-5 follow:

TABLE S10-4.—IN-USE STANDARD FOR APPLICABLE PHASE-IN LDV/LLDTs

Model year of introduction	2008	2009	2010	2011	2012	2013
Models years that the interim in-use standard is available	2008	2009	2010	2011	2012	2013
	2009	2010	2011	2012	2013	2014
	2010	2011	2012	2013	2014	
	2011	2012	2013			

TABLE S10-5.—IN-USE STANDARDS FOR APPLICABLE PHASE-IN HLDT/MDPVs

Model year of introduction	2010	2011	2012	2013	2014	2015
Models years that the interim in-use standard is available	2010	2011	2012	2013	2014	2015
	2011	2012	2013	2014	2015	2016
	2012	2013	2014	2015	2016	
	2013	2014	2015			

21. Section 86.1823-01 is amended by revising paragraph (a)(3)(i)(C) to read as follows:

§ 86.1823-01 Durability demonstration procedures for exhaust emissions.

- * * * * *
- (a) * * *
- (3) * * *
- (i) * * *

(C) The DF calculated by these procedures will be used for determining compliance with FTP exhaust emission standards, SFTP exhaust emission standards, cold temperature NMHC emission standards, and cold CO emission standards. At the manufacturer's option and using procedures approved by the Administrator, a separate DF may be calculated exclusively using cold CO test data to determine compliance with cold CO emission standards. Similarly, at the manufacturer's option and using procedures approved by the Administrator, a separate DF may be calculated exclusively using cold temperature NMHC test data to determine compliance with cold temperature NMHC emission standards. For determining compliance with full useful life cold NMHC emission standards, the 68-86 degree F 120,000 mile full useful life NMOG DF may be used. Also at the manufacturer's option and using procedures approved by the Administrator, a separate DF may be calculated exclusively using US06 and/

or air conditioning (SC03) test data to determine compliance with the SFTP emission standards.

* * * * *

22. Section 86.1827-01 is amended by revising paragraph (a)(5) to read as follows:

§ 86.1827-01 Test group determination.

- * * * * *
- (a) * * *

(5) Subject to the same emission standards (or FEL in the case of cold temperature NMHC standards), except that a manufacturer may request to group vehicles into the same test group as vehicles subject to more stringent standards, so long as all the vehicles within the test group are certified to the most stringent standards applicable to any vehicle within that test group. Light-duty trucks which are subject to the same emission standards as light-duty vehicles with the exception of the light-duty truck idle CO standard and/or total HC standard may be included in the same test group.

* * * * *

23. A new § 86.1828-10 is added to Subpart S to read as follows:

§ 86.1828-10 Emission data vehicle selection.

Section 86.1828-10 includes text that specifies requirements that differ from § 86.1828-01. Where a paragraph in § 86.1828-01 is identical and applicable to § 86.1828-10, this may be indicated

by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.1828-01." Where a corresponding paragraph of § 86.1828-01 is not applicable, this is indicated by the statement "[Reserved]."

(a) through (f) [Reserved]. For guidance see § 86.1828-01.

(g) *Cold temperature NMHC testing.* For cold temperature NMHC exhaust emission compliance for each durability group, the vehicle expected to emit the highest NMHC emissions at 20 degrees F on candidate in-use vehicles shall be selected from the test vehicles specified in § 86.1828-01(a). When the expected worst-case cold temperature NMHC vehicle is also the expected worst-case cold CO vehicle as selected in paragraph (c) of this section, then cold testing is required only for that vehicle; otherwise, testing is required for both the worst-case cold CO vehicle and the worst-case cold temperature NMHC vehicle.

24. Section 86.1829-01 is amended by revising paragraph (b)(3) to read as follows:

§ 86.1829-01 Durability and emission testing requirements; waivers.

- * * * * *
- (b) * * *

(3) *Cold temperature CO and cold temperature NMHC Testing.* One EDV in each durability group shall be tested for cold temperature CO and cold

temperature NMHC exhaust emission compliance in accordance with the test procedures in subpart C of this part or with alternative procedures requested by the manufacturer and approved in advance by the Administrator. The selection of which EDV and test group within the durability group will be tested for cold temperature CO and cold temperature NMHC compliance will be determined under the provisions of § 86.1828–10(c) and (g).

* * * * *

25. Section 86.1844–01 is amended by revising paragraph (d)(11) to read as follows:

§ 86.1844–01 Information requirements: Application for certification and submittal of information upon request.

* * * * *

(d) * * *

(11) A list of all auxiliary emission control devices (AECD) installed on any applicable vehicles, including a justification for each AECD, the parameters they sense and control, a detailed justification of each AECD which results in a reduction in effectiveness of the emission control system, and rationale for why the AECD is not a defeat device as defined under §§ 86.1809–01 and 86.1809–10. For any AECD uniquely used at high altitudes, EPA may request engineering emission data to quantify any emission impact and validity of the AECD. For any AECD uniquely used on multi-fuel vehicles when operated on fuels other than gasoline, EPA may request engineering emission data to quantify any emission impact and validity of the AECD.

* * * * *

26. A new § 86.1848–10 is added to Subpart S to read as follows:

§ 86.1848–10 Certification.

Section 86.1848–10 includes text that specifies requirements that differ from § 86.1848–01. Where a paragraph in § 86.1848–01 is identical and applicable to § 86.1848–10, this may be indicated by specifying the corresponding paragraph and the statement “[Reserved]. For guidance see § 86.1848–01.” Where a corresponding paragraph of § 86.1848–01 is not applicable, this is indicated by the statement “[Reserved].”

(a) through (b) [Reserved]. For guidance see § 86.1848–01.

(c) All certificates are conditional upon the following conditions being met:

(1) The manufacturer must supply all required information according to the provisions of §§ 86.1843–01 and 86.1844–01.

(2) The manufacturer must comply with all certification and in-use emission standards contained in subparts S and H of this part both during and after model year production.

(3) The manufacturer must comply with all implementation schedules sales percentages as required in § 86.1810 or elsewhere in this part. Failure to meet a required implementation schedule sales percentage will be considered to be a failure to satisfy a condition upon which the certificate was issued and any vehicles or trucks sold in violation of the implementation schedule shall not be covered by the certificate.

(4) For incomplete light-duty trucks and incomplete heavy-duty vehicles, a certificate covers only those new motor vehicles which, when completed by having the primary load-carrying device or container attached, conform to the maximum curb weight and frontal area limitations described in the application for certification as required in § 86.1844–01.

(5) The manufacturer must meet the in-use testing and reporting requirements contained in §§ 86.1845–01, 86.1846–01, and 86.1847–01, as applicable. Failure to meet the in-use testing or reporting requirements shall be considered a failure to satisfy a condition upon which the certificate was issued. A vehicle or truck will be considered to be covered by the certificate only if the manufacturer fulfills this condition upon which the certificate was issued.

(6) Vehicles are covered by a certificate of conformity only if they are in all material respects as described in the manufacturer’s application for certification (Part I and Part II).

(7) For Tier 2 and interim non-Tier 2 vehicles, all certificates of conformity issued are conditional upon compliance with all provisions of §§ 86.1811–04, 86.1860–04, 86.1861–04 and 86.1862–04 both during and after model year production.

(i) Failure to meet the fleet average NO_x requirements of 0.07g/mi, 0.30 g/mi or 0.20 g/mi, as applicable, will be considered to be a failure to satisfy the terms and conditions upon which the certificate(s) was (were) issued and the vehicles sold in violation of the fleet average NO_x standard will not be covered by the certificate(s).

(ii) Failure to comply fully with the prohibition against selling credits that it has not generated or that are not available, as specified in § 86.1861–04, will be considered to be a failure to satisfy the terms and conditions upon which the certificate(s) was (were) issued and the vehicles sold in violation

of this prohibition will not be covered by the certificate(s).

(iii) Failure to comply fully with the phase-in requirements of § 86.1811–04, will be considered to be a failure to satisfy the terms and conditions upon which the certificate(s) was (were) issued and the vehicles sold which do not comply with Tier 2 or interim non-Tier 2 requirements, up to the number needed to comply, will not be covered by the certificate(s).

(iv) For paragraphs (c)(7)(i) through (iii) of this section:

(A) The manufacturer must bear the burden of establishing to the satisfaction of the Administrator that the terms and conditions upon which the certificate(s) was (were) issued were satisfied.

(B) For recall and warranty purposes, vehicles not covered by a certificate of conformity will continue to be held to the standards stated or referenced in the certificate that otherwise would have applied to the vehicles.

(8) For LDV/LLDTs and HLDT/MDPVs, all certificates of conformity issued are conditional upon compliance with all provisions of §§ 86.1811–10 and 86.1864–10 both during and after model year production.

(i) Failure to meet the fleet average cold temperature NMHC requirements will be considered a failure to satisfy the terms and conditions upon which the certificate(s) was (were) issued and the vehicles sold in violation of the fleet average NMHC standard will not be covered by the certificate(s).

(ii) Failure to comply fully with the prohibition against selling credits that are not generated or that are not available, as specified in § 86.1864–10, will be considered a failure to satisfy the terms and conditions upon which the certificate(s) was (were) issued and the vehicles sold in violation of this prohibition will not be covered by the certificate(s).

(iii) Failure to comply fully with the phase-in requirements of § 86.1811–10 will be considered a failure to satisfy the terms and conditions upon which the certificate(s) was (were) issued and the vehicles sold that do not comply with cold temperature NMHC requirements, up to the number needed to comply, will not be covered by the certificate(s).

(iv) For paragraphs (c)(8)(i) through (iii) of this section:

(A) The manufacturer bears the burden of establishing to the satisfaction of the Administrator that the terms and conditions upon which the certificate(s) was (were) issued were satisfied.

(B) For recall and warranty purposes, vehicles not covered by a certificate of conformity will continue to be held to the standards stated or referenced in the

certificate that otherwise would have applied to the vehicles.

(d) through (i) [Reserved]. For guidance see § 86.1848–01.

27. A new § 86.1864–10 is added to Subpart S to read as follows:

§ 86.1864–10 How to comply with the fleet average cold temperature NMHC standards.

(a) *Applicability.* Cold temperature NMHC exhaust emission standards apply to the following vehicles, subject to the phase-in requirements in § 86.1811–10(g)(3) and (4):

(1) 2010 and later model year LDV/LLDTs.

(2) 2012 and later model year HLDT/MDPVs.

(3) Aftermarket conversion systems as defined in 40 CFR 85.502, including conversion of MDPVs.

(4) Vehicles imported by ICIs as defined in 40 CFR 85.1502.

(b) *Useful life requirements.* Full useful life requirements for cold temperature NMHC standards are defined in § 86.1805–04(g). There is not an intermediate useful life standard for cold temperature NMHC standards.

(c) *Altitude.* Altitude requirements for cold temperature NMHC standards are provided in § 86.1810–09(f).

(d) *Small volume manufacturer certification procedures.* Certification procedures for small volume manufacturers are provided in § 86.1838–01.

(e) *Cold temperature NMHC standards.* Fleet average cold temperature NMHC standards are provided in § 86.1811–10(g)(2).

(f) *Phase-in.* Phase-in of the cold temperature NMHC standards are provided in § 86.1811–10(g)(3) and (4).

(g) *Phase-in flexibilities for small volume manufacturers.* Phase-in flexibilities for small volume manufacturer compliance with the cold temperature NMHC standards are provided in § 86.1811–04(k)(5).

(h) *Hardship provisions for small volume manufacturers.* Hardship provisions for small volume manufacturers related to the cold temperature NMHC standards are provided in § 86.1811–04(q)(1).

(i) *In-use standards for applicable phase-in models.* In-use cold temperature NMHC standards for applicable phase-in models are provided in § 86.1811–10(u).

(j) *Durability procedures and method of determining deterioration factors (DFs).* The durability data vehicle selection procedures of § 86.1822–01 and the durability demonstration procedures of § 86.1823–06 apply for cold NMHC standards. For determining compliance with full useful life cold

temperature NMHC emission standards, the 68–86 degree F, 120,000 mile full useful life NMOG DF may be used.

(k) *Vehicle test procedure.* (1) The test procedure for demonstrating compliance with cold temperature NMHC standards is contained in subpart C of this part. With prior EPA approval, alternative testing procedures may be used, as specified in § 86.106–96(a), provided cold temperature NMHC emissions do not decrease as a result of an alternative testing procedure.

(2) Testing of all LDVs, LDTs and MDPVs to determine compliance with cold temperature NMHC exhaust emission standards set forth in this section must be on a loaded vehicle weight (LVW) basis, as defined in § 86.1803–01.

(3) Testing for the purpose of providing certification data is required only at low altitude conditions and only for vehicles that can operate on gasoline, except as requested in §§ 86.1810–09(f) and 86.1844–01(d)(11). If hardware and software emission control strategies used during low altitude condition testing are not used similarly in-use across all altitudes, the manufacturer will include a statement in the application for certification, in accordance with §§ 86.1844–01(d)(11) and § 86.1810–09(f), stating what the different strategies are and why they are used. If hardware and software emission control strategies used during testing with gasoline are not used similarly with all fuels that can be used in multi-fuel vehicles, the manufacturer will include a statement in the application for certification, in accordance with §§ 86.1844–01(d)(11) and 86.1810–09(f), stating what the different strategies are and why they are used. For example, unless a manufacturer states otherwise, air pumps used to control emissions on dedicated gasoline vehicles or multi-fuel vehicles during low altitude conditions must also be used to control emissions at high altitude conditions, and software used to control emissions or closed loop operation must also operate similarly at low and high altitude conditions and similarly when multi-fueled vehicles are operated on gasoline and alternate fuels. These examples are for illustrative purposes only; similar strategies would apply to other currently used emission control technologies and/or emerging or future technologies.

(l) *Emission data vehicle (EDV) selection.* Provisions for selecting the appropriate EDV for the cold temperature NMHC standards are provided in §§ 86.1828–10(g) and 86.1829–01(b)(3).

(m) *Calculating the fleet average cold temperature NMHC standard.*

Manufacturers will compute separate sales-weighted fleet average cold temperature NMHC emissions at the end of the model year for LDV/LLDTs and HLDT/MDPVs, using actual sales, and certifying test groups to FELs, as defined in § 86.1803–01. The FEL becomes the standard for each test group, and every test group can have a different FEL. The certification resolution for the FEL will be one decimal point. LDVs and LLDTs must be grouped together when calculating the fleet average, and HLDTs and MDPVs must also be grouped together to determine the fleet average. Manufacturers must compute the sales-weighted cold temperature NMHC fleet averages using the following equation, rounded to the nearest tenth:

$$\text{Fleet average cold temperature NMHC exhaust emissions} = \frac{\sum(N \times \text{FEL})}{\text{Total number of vehicles sold of the applicable weight category (i.e., either LDV + LLDTs, or HLDT + MDPVs)}}$$

Where:

N = The number of LDVs and LLDTs, or HLDTs and MDPVs, sold within the applicable FEL, based on vehicles counted to the point of first sale.

FEL = Family Emission Limit.

(n) *Certification compliance and enforcement requirements for cold temperature NMHC standards.* (1) In addition to the compliance and enforcement requirements provided throughout § 86.1864–10, additional conditions are included in the provisions of § 86.1848–10(c)(8).

(2) The certificate issued for each test group requires all vehicles within that test group to meet the emission standard or FEL to which the vehicles were certified.

(3) Each manufacturer must comply with the applicable cold temperature NMHC fleet average standard on a sales-weighted average basis, at the end of each model year, using the procedure described in paragraph (m) of this section.

(4) During a phase-in year, the manufacturer must comply with the applicable cold temperature NMHC fleet average standard for the required phase-in percentage for that year as specified in § 86.1811–10(g)(3) or (4).

(5) Manufacturers must compute separate cold temperature NMHC fleet averages for LDV/LLDTs and HLDT/MDPVs. The sales-weighted cold temperature NMHC fleet averages must be compared with the applicable fleet average standard.

(6) Each manufacturer must comply on an annual basis with the fleet average standards as follows:

(i) Manufacturers must report in their annual reports to the Agency that they met the relevant corporate average standard by showing that their sales-weighted average cold temperature NMHC emissions of LDV/LLDTs and HLDT/MDPVs, as applicable, are at or below the applicable fleet average standard;

(ii) If the sales-weighted average is above the applicable fleet average standard, manufacturers must obtain and apply sufficient NMHC credits, as appropriate, and as permitted under paragraph (o)(8) of this section. A manufacturer must show via the use of credits that they have offset any exceedence of the corporate average standard. Manufacturers shall also report their credit balances or deficits.

(iii) If a manufacturer fails to meet the corporate average cold temperature NMHC standard for two consecutive years, as required in paragraph (o)(8) of this section, the vehicles causing the corporate average exceedence will be considered not covered by the certificate of conformity. A manufacturer will be subject to penalties on an individual-vehicle basis for sale of vehicles not covered by a certificate.

(iv) EPA will review each manufacturer's sales to designate the vehicles that caused the exceedence of the corporate average standard. EPA will designate as nonconforming those vehicles in test groups with the highest certification emission values first, continuing until a number of vehicles equal to the calculated number of noncomplying vehicles as determined above is reached. In a group where only a portion of vehicles would be deemed nonconforming, EPA will determine the actual nonconforming vehicles by counting backwards from the last vehicle produced in that test group. Manufacturers will be liable for penalties for each vehicle sold that is not covered by a certificate.

(o) *How does the cold temperature NMHC averaging, banking and trading (ABT) program work?* (1) Manufacturers shall average the cold temperature NMHC emissions of their vehicles and comply with the cold temperature NMHC fleet average corporate standard. Credits may be generated during and after the phase-in period. Credits may also be generated prior to the phase-in periods as described in paragraph (5) of this section. A manufacturer whose cold temperature NMHC fleet average emissions exceed the 0.3 g/mile standard for LDV/LLDTs, or 0.5 g/mi for HLDT/MDPVs, must complete the

calculation in paragraph (o)(4) of this section to determine the size of its NMHC credit deficit. A manufacturer whose cold temperature NMHC fleet average emissions are less than the 0.3 g/mile standard for LDV/LLDTs, or less than 0.5 g/mi for HLDT/MDPVs, must complete the calculation in paragraph (o)(4) of this section if it desires to generate NMHC credits.

(2) There are no property rights associated with NMHC credits generated under this subpart. Credits are a limited authorization to emit the designated amount of emissions. Nothing in this part or any other provision of law should be construed to limit EPA's authority to terminate or limit this authorization through a rulemaking.

(3) Each manufacturer must comply with the reporting and recordkeeping requirements of paragraph (p) of this section for NMHC credits, including early credits. The averaging, banking and trading program shall be enforced through the certificate of conformity that allows the manufacturer to introduce any regulated vehicles into commerce.

(4) Credits are earned on the last day of the model year. Manufacturers must calculate, for a given model year, the number of credits or debits it has generated according to the following equation, rounded to the nearest tenth:

$$\text{NMHC Credits or Debits} = (\text{Cold Temperature NMHC Standard} - \text{Manufacturer's Sales-Weighted Fleet Average Cold Temperature NMHC Emissions}) \times (\text{Total Number of Vehicles Sold})$$

Where:

$$\text{Cold Temperature NMHC Standard} = 0.3 \text{ g/mi for LDV/LLDTs or } 0.5 \text{ g/mi for HLDT/MDPV, per } \S 86.1811-10(g)(2).$$

$$\text{Manufacturer's Sales-Weighted Fleet Average Cold Temperature NMHC Emissions} = \text{average calculated according to paragraph (m) of this section.}$$

$$\text{Total Number of Vehicles Sold} = \text{Total 50-State sales based on the point of first sale.}$$

(5) The following provisions apply for early banking:

(i) Manufacturers may certify LDV/LLDTs to the cold temperature NMHC exhaust standards in § 86.1811–10(g)(2) for model years 2008–2009 in order to bank credits for use in the 2010 and later model years. Manufacturers may certify HLDT/MDPVs to the cold temperature NMHC exhaust standards in § 86.1811–10(g)(2) for model years 2010–2011 in order to bank credits for use in the 2012 and later model years.

(ii) This process is referred to as “early banking” and the resultant credits are referred to as “early credits.” In order to bank early credits, a manufacturer must comply with all exhaust emission standards and requirements applicable to LDV/LLDTs and/or HLDT/MDPVs. To generate early credits, a manufacturer must separately compute the sales-weighted cold temperature NMHC average of the LDV/LLDTs and HLDT/MDPVs it certifies to the exhaust requirements and separately compute credits using the calculations in paragraph (o)(4) of this section. Early HLDT/MDPV credits may not be applied to LDV/LLDTs before the 2010 model year. Early LDV/LLDT credits may not be applied to HLDT/MDPV before the 2012 model year.

(6) NMHC credits are not subject to any discount or expiration date except as required under the deficit carryforward provisions of paragraph (o)(8) of this section. There shall be no discounting of unused credits. NMHC credits shall have unlimited lives, subject to the limitations of paragraph (o)(2) of this section.

(7) Credits may be used as follows:

(i) Credits generated and calculated according to the method in paragraph (o)(4) of this section may only be used to offset deficits accrued with respect to the standard in § 86.1811–10(g)(2). Credits may be banked and used in a future model year in which a manufacturer's average cold temperature NMHC level exceeds the 0.3 or 0.5 g/mi standard for LDV/LLDTs and HLDT/MDPVs, respectively. Credits may be exchanged between the LDV/LLDT and HLDT/MDPV fleets of a given manufacturer. Credits may also be traded to another manufacturer according to the provisions in paragraph (o)(9) of this section. Before trading or carrying over credits to the next model year, a manufacturer must apply available credits to offset any credit deficit, where the deadline to offset that credit deficit has not yet passed.

(ii) The use of credits shall not be permitted to address Selective Enforcement Auditing or in-use testing failures. The enforcement of the averaging standard shall occur through the vehicle's certificate of conformity. A manufacturer's certificate of conformity shall be conditioned upon compliance with the averaging provisions. The certificate shall be void ab initio if a manufacturer fails to meet the corporate average standard and does not obtain appropriate credits to cover its shortfalls in that model year or in the subsequent model year (see deficit carryforward provision in paragraph (o)(8) of this section). Manufacturers shall track their

certification levels and sales unless they produce only vehicles certified to cold temperature NMHC levels below the standard and do not plan to bank credits.

(8) The following provisions apply if debits are accrued:

(i) If a manufacturer calculates that it has negative credits (also called "debits" or a "credit deficit") for a given model year, it shall be allowed to carry that deficit forward into the next model year. Such a carry-forward may only occur after the manufacturer exhausts any supply of banked credits. At the end of that next model year, the deficit must be covered with an appropriate number of credits that the manufacturer generates or purchases. Any remaining deficit shall be subject to an enforcement action, as described in this paragraph (o)(8). Manufacturers are not permitted to run a deficit for two consecutive years.

(ii) If debits are not offset within the specified time period, the number of vehicles not meeting the fleet average cold temperature NMHC standards and not covered by the certificate must be calculated by dividing the total amount of debits for the model year by the fleet average cold temperature NMHC standard applicable for the model year in which the debits were first incurred.

(iii) EPA will determine the number of vehicles for which the condition on the certificate was not satisfied by designating vehicles in those test groups with the highest certification cold temperature NMHC emission values first and continuing until a number of vehicles equal to the calculated number of noncomplying vehicles as determined above is reached. If this calculation determines that only a portion of vehicles in a test group contribute to the debit situation, then EPA will designate actual vehicles in that test group as not covered by the certificate, starting with the last vehicle produced and counting backwards.

(iv)(A) If a manufacturer ceases production of LDV/LLDTs and HLDT/MDPVs, the manufacturer continues to be responsible for offsetting any debits outstanding within the required time period. Any failure to offset the debits will be considered a violation of paragraph (o)(8)(i) of this section and may subject the manufacturer to an enforcement action for sale of vehicles not covered by a certificate, pursuant to paragraphs (o)(8)(ii) and (iii) of this section.

(B) If a manufacturer is purchased by, merges with, or otherwise combines with another manufacturer, the controlling entity is responsible for offsetting any debits outstanding within

the required time period. Any failure to offset the debits will be considered a violation of paragraph (o)(8)(i) of this section and may subject the manufacturer to an enforcement action for sale of vehicles not covered by a certificate, pursuant to paragraphs (o)(8)(ii) and (iii) of this section.

(v) For purposes of calculating the statute of limitations, a violation of the requirements of paragraph (o)(8)(i) of this section, a failure to satisfy the conditions upon which a certificate(s) was issued and hence a sale of vehicles not covered by the certificate, all occur upon the expiration of the deadline for offsetting debits specified in paragraph (o)(8)(i) of this section.

(9) The following provisions apply to NMHC credit trading:

(i) EPA may reject NMHC credit trades if the involved manufacturers fail to submit the credit trade notification in the annual report. A manufacturer may not sell credits that are not available for sale pursuant to the provisions in paragraphs (o)(7)(i) of this section.

(ii) In the event of a negative credit balance resulting from a transaction that a manufacturer could not cover by the reporting deadline for the model year in which the trade occurred, both the buyer and seller are liable, except in cases involving fraud. EPA may void ab initio the certificates of conformity of all engine families participating in such a trade.

(iii) A manufacturer may only trade credits that it has generated pursuant to paragraph (o)(4) of this section or acquired from another party.

(p) *Maintenance of records and submittal of information relevant to compliance with fleet average cold temperature NMHC standards—(1) Maintenance of records.* (i) Manufacturers producing any light-duty vehicles, light-duty trucks, or medium-duty passenger vehicles subject to the provisions in this subpart must establish, maintain, and retain all the following information in adequately organized and indexed records for each model year:

(A) Model year.

(B) Applicable fleet average cold temperature NMHC standard: 0.3g/mi for LDV/LLDTs; 0.5 g/mi for HLDT/MDPVs.

(C) Fleet average cold temperature NMHC value achieved.

(D) All values used in calculating the fleet average cold temperature NMHC value achieved.

(ii) Manufacturers producing any light-duty vehicles, light-duty trucks, or medium-duty passenger vehicles subject to the provisions in this subpart must establish, maintain, and retain all the

following information in adequately organized and indexed records for each LDV/T or MDPV subject to this subpart:

(A) Model year.

(B) Applicable fleet average cold temperature NMHC standard.

(C) EPA test group.

(D) Assembly plant.

(E) Vehicle identification number.

(F) Cold temperature NMHC FEL to which the LDV/T or MDPV is certified.

(G) Information on the point of first sale, including the purchaser, city, and state.

(iii) Manufacturers must retain all records required to be maintained under this section for a period of eight years from the due date for the annual report. Records may be stored in any format and on any media, as long as manufacturers can promptly send EPA organized, written records in English if we ask for them. Manufacturers must keep records readily available as EPA may review them at any time.

(iv) Nothing in this section limits the Administrator's discretion to require the manufacturer to retain additional records or submit information not specifically required by this section.

(v) Pursuant to a request made by the Administrator, the manufacturer must submit to the Administrator the information that the manufacturer is required to retain.

(vi) EPA may void ab initio a certificate of conformity for vehicles certified to emission standards as set forth or otherwise referenced in this subpart for which the manufacturer fails to retain the records required in this section or to provide such information to the Administrator upon request.

(2) *Reporting.* (i) Each covered manufacturer must submit an annual report. The annual report must contain for each applicable cold temperature NMHC standard, the fleet average cold temperature NMHC value achieved, all values required to calculate the cold temperature NMHC emissions value, the number of credits generated or debits incurred, all the values required to calculate the credits or debits, the resulting balance of credits or debits, and sufficient information to show compliance with all phase-in or alternative phase-in requirements.

(ii) For each applicable fleet average cold temperature NMHC standard, the annual report must also include documentation on all credit transactions the manufacturer has engaged in since those included in the last report.

Information for each transaction must include all of the following:

(A) Name of credit provider.

(B) Name of credit recipient.

(C) Date the trade occurred.

(D) Quantity of credits traded.

(E) Model year in which the credits were earned.

(iii) Unless a manufacturer reports the data required by this section in the annual production report required under § 86.1844–01(e), a manufacturer must submit an annual report for each model year after production ends for all affected vehicles produced by the manufacturer subject to the provisions of this subpart and no later than May 1 of the calendar year following the given model year. Annual reports must be submitted to: Director, Compliance and Innovative Strategies Division, U.S. Environmental Protection Agency, 2000

Traverwood, Ann Arbor, Michigan 48105.

(iv) Failure by a manufacturer to submit the annual report in the specified time period for all vehicles subject to the provisions in this section is a violation of section 203(a)(1) of the Clean Air Act (42 U.S.C. 7522) for each applicable vehicle produced by that manufacturer.

(v) If EPA or the manufacturer determines that a reporting error occurred on an annual report previously submitted to EPA, the manufacturer's credit or debit calculations will be recalculated. EPA may void erroneous credits, unless traded, and must adjust erroneous debits. In the case of traded

erroneous credits, EPA must adjust the selling manufacturer's credit or debit balance to reflect the sale of such credits and any resulting generation of debits.

(3) *Notice of opportunity for hearing.* Any voiding of the certificate under paragraph (p)(1)(vi) of this section will be made only after EPA has offered the affected manufacturer an opportunity for a hearing conducted in accordance with § 86.614–84 for light-duty vehicles or § 86.1014–84 for light-duty trucks and, if a manufacturer requests such a hearing, will be made only after an initial decision by the Presiding Officer.

[FR Doc. 06–2315 Filed 3–28–06; 8:45 am]

BILLING CODE 6560–50–P