

Federal Register

Wednesday
February 14, 1996

Part II

**Environmental
Protection Agency**

40 CFR Part 85

**Air Pollution Control: Amendments to
Regulations Governing the Importation of
Nonconforming Vehicles; Final Rule**

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 85**

[FRL-5419-8]

RIN 2060-AC58

Air Pollution Control: Amendments to Regulations Governing the Importation of Nonconforming Vehicles**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: With this action, EPA is amending 40 CFR part 85, subpart P to modify the emissions standards applicable to imported nonconforming light duty vehicles and light duty trucks. Such vehicles will now have to meet emission standards that were in effect in the year the vehicle was originally produced, using currently applicable testing methods. The Notice of Proposed Rulemaking (NPRM) for this rule proposed a number of other changes to the imported nonconforming vehicle program. EPA will address these additional issues in a subsequent final rulemaking.

EFFECTIVE DATE: This final rule is effective on February 1, 1996.

ADDRESSES: Materials relevant to this rule are contained in the EPA Air Docket LE-131, Attention: Docket No. A-89-20, located at the Air Docket Section, U.S. Environmental Protection Agency, Room M-1500, 401 M Street, S.W. Washington, DC 20460. Telephone (202) 260-7548. The docket may be reviewed on weekdays between the hours of 8:00 a.m. to 5:30 p.m. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard D. Lazarus, Vehicle Programs and Compliance Division (6405J), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460. Telephone (202) 233-9240.

SUPPLEMENTARY INFORMATION:**I. Introduction and Background**

The imports program of the U.S. Environmental Protection Agency ensures that imported motor vehicles and motor vehicle engines comply with U.S. emission requirements to protect air quality and public health. In a Federal Register Notice of Proposed Rulemaking (NPRM) published on March 24, 1994 (57 FR 13912), EPA proposed a number of amendments to the imports program regulations. These proposed changes were intended to respond to new information about

imports of nonconforming vehicles and changes in the Part 86 motor vehicle certification standards, which necessitate compensating adjustments in the imports program. EPA proposed additional amendments to clarify the imports program requirements and to ensure that the regulations clearly reflect current program implementation policies.

EPA intends to address the bulk of the proposed amendments to the imports regulations in a subsequent rulemaking, as the Agency is not ready at this time to take the final action on these aspects of the NPRM. However, EPA is finalizing one portion of the proposal today because the standards for imports of nonconforming light duty vehicles and light duty trucks need to be modified without delay, in order to avoid detrimental effects on independent commercial importers' (ICI) ability to continue to import such vehicles. The Administrator has determined that this is a § 307(d)(1) rulemaking.

Sections 203(a)(1) and 203(b)(2) of the Clean Air Act (CAA or the Act) provide the statutory authority for regulations relating to the importation of new motor vehicles and motor vehicle engines that are not covered by a certificate of conformity. Section 203(a)(1) prohibits any person from importing vehicles not covered by a certificate of conformity, except as provided by regulation of the Administrator. The exception for regulations of the Administrator in section 203(a)(1) refers to the grant of authority in section 203(b)(2). Section 203(b)(2) states that a vehicle not covered by a certificate of conformity and offered for importation shall be refused admission into the United States unless the Administrator, by regulation, provides for deferring final determination regarding admission and authorizing delivery of the vehicle upon such terms and conditions as may appear appropriate to insure that any imported vehicle will be brought into conformity with applicable standards, requirements and limitations. Additional detail regarding the authority for this regulatory action is provided in the NPRM. See 57 FR 13912 (March 24, 1994).

A. Emission Standards

As proposed, EPA is eliminating the requirement that nonconforming light-duty vehicles and light-duty trucks imported pursuant to 40 CFR 85.1505 or 85.1509 meet the part 86 emission standards in effect at the time of modification. These vehicles, with a few exceptions, will instead be required to meet emission standards (with

applicable deterioration factors applied) that were in effect at the time of original vehicle production, using currently applicable testing procedures.

The specific standards applicable to these vehicles are contained in a new § 85.1515. Vehicles originally produced prior to the 1975 model year shall meet the 1975 model year exhaust emission standards. Vehicles produced in model year 1975 or subsequent model years shall meet the exhaust emission standards in effect during the corresponding production year. Gasoline-fueled vehicles produced prior to the 1978 model year must also meet the 1978 model year evaporative emission standard. Finally, every vehicle originally produced in the 1978 model year or subsequent model years shall meet all applicable emission standards that were in effect for that model year as specified in part 86. For vehicles with original production years up through 1993, the full set of applicable emissions standards is laid out in the tables in § 85.1515. For vehicles with original production years of 1994 and later, all emissions standards specified in Part 86 effective in that production year will apply, including standards for any requirements not listed in the section 85.1515 tables, such as standards for cold CO and the certification short test. The vehicles must meet all applicable current model year fuel economy requirements. Vehicles greater than 20 original production (OP) years old will continue to be exempted from the emission requirements and do not have to be tested.

As discussed in the proposal (Supplementary Document pp. 27-28, Docket No. A-89-20), when EPA promulgated the prior requirement to meet standards applicable at the time of modification, the Agency had no data or evidence suggesting that older vehicles could not be modified to meet current year emission standards. Since that rulemaking, EPA has obtained evidence indicating that many older vehicles cannot be modified to meet current year emission standards without extraordinary cost, which makes the conversion financially unfeasible for many owners of such vehicles. Today's rule would give owners of older vehicles a way to import their vehicles. In addition, it would have been significantly more difficult and costly for importers to modify vehicles to comply with the current model year standards beginning in January, 1996, when the standards applicable to small volume manufacturers became substantially more stringent. EPA agrees with the statements submitted by ICIs

after the close of the comment period that the expense of such modifications would have a serious deleterious effect on their businesses and would not justify the costs.¹

Certain commenters appear to request that EPA change the testing requirements as well as the standards to apply the testing procedures and requirements in effect in the year of original production.² However, these commenters provided no analysis of the effects of retaining the current testing requirements or justification for the change. EPA disagrees with the suggestion because applying the test procedures applicable in the year of original production would impose an obligation for EPA to maintain a separate certification facility in order to validate ICI testing using obsolete hardware and outdated procedures. Moreover, EPA does not believe that the existing requirement to use currently applicable testing requirements and procedures imposes costs on the ICIs that they are unable to meet or that outweigh the benefits in terms of practical ability to conduct the tests and improved accuracy of test results.

EPA has determined that the new emission standards in this rule will not have a substantial adverse impact on air quality. This determination is made, in large part, due to the relatively small number of vehicles subject to these requirements, which is not expected to increase significantly, if at all. For example, the numbers of vehicles imported pursuant to 40 CFR 85.1505 and 85.1509 have ranged from approximately 400 vehicles in 1989 to less than 200 vehicles in 1991. More importantly, only a small percentage of these vehicles would be affected by this change in the standards. Most of these vehicles were less than three years old at the time of importation, and the standards for most original production years would not have changed as of three years later.

B. Definition of FCT

EPA is also finalizing the proposed definition of Federal Compliance Testing (FCT), which is defined as the testing sequence that incorporates all of the testing requirements of part 86 applicable at the time of an emissions test conducted pursuant to subpart P. EPA has added this definition solely to make the imports regulations easier to read and understand. The reference to the FCT in section 85.1515 does not change any of the substantive

requirements on importers. Prior to this final rule, ICIs had to meet Part 86 motor vehicle emissions standards and testing requirements applicable at the time of import. While this rule amends the emissions standards applicable to importers, it has no effect on the testing requirements. Thus, importers will still have to conduct any testing according to the currently applicable testing requirements. The imports regulations will refer to these applicable testing requirements under the concise term FCT. This rule incorporates the term "FCT" only in section 85.1515. The subsequent rulemaking will update and clarify the remaining references to testing in the imports regulations by substituting the term FCT where applicable.

C. Additional Information on the Effective Date

This rule will be effective upon signature, and EPA will make the rule available to interested parties at that time. Although EPA generally makes rules effective 30 days after the date of publication, it is not bound to do so. See section 307(d)(1) of the Clean Air Act, 42 U.S.C. 7607(d), and the Administrative Procedure Act, 5 U.S.C. 553(d).

EPA believes that there is good cause not to delay the effective date until 30 days after publication. This rule relieves regulatory burden, and hence affected parties will have no need of prior notice to allow them time to comply. In addition, as explained above, importers need this rule to become effective without delay, to avoid a substantial increase in the difficulty of meeting standards for imported nonconforming vehicles after that date. Any delay in the effectiveness of the rule could impose significant costs on these small businesses.

II. Public Participation and Discussion of Comments

No public hearing was requested on the proposed changes, and no hearing was held. During the comment period EPA received no comments relating to the narrow issues addressed in this final rule. After the close of the comment period, EPA received a number of comments supportive of this rulemaking as discussed above. EPA will address all of the other comments on the NPRM in the subsequent final rule.

III. Administrative Requirements

A. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management

and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and have been assigned control number 2060-0095 (ICR No. 10.07). This rule does not add any additional information collection requirements to those approved by OMB.

B. Economic Impact

Little or no effect on the national economy will result from this rulemaking as the only effect of the amendments is to relieve the compliance burden on automobile importers. Additionally, imported nonconforming vehicles subject to these regulations represent only a very small number of the total number of vehicles sold in the United States.

C. Administrative Designation and Regulatory Analysis

Under Executive Order 12866, [58 F.R. 51,735 (October 4, 1993)] the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

D. Impact on Small Entities

The Regulatory Flexibility Act of 1980 requires federal agencies to identify potentially adverse impacts of federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis.

There will not be a significant impact on a substantial number of small business entities because the proposed

¹ See comments in docket, category III. D. Number IV-D-4 through IV-D-9.

² See letter from Les Weaver, December 4, 1995.

rule benefits the small businesses that import nonconforming vehicles into the United States, by reducing the stringency of the applicable standards for importing these vehicles and thereby reducing importers' costs.

Therefore, as required under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Administrator certifies that this regulation does not have a significant impact on a substantial number of small entities.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This rule reduces the stringency of applicable standards for importation of nonconforming vehicles and thereby reduces costs to automobile importers. This rule will have no effect on State, local and tribal governments. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments, because small governments are not ordinarily involved in importations covered by this rule.

IV. Statutory Authority

Sec. 203, Clean Air Act, as amended (42 U.S.C. 7522).

V. Judicial Review

Under section 307(b) of the Clean Air Act, EPA hereby finds that these regulations are of national applicability. Accordingly, judicial review of this action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of publication. Under section 307(b)(2) of the Act, the requirements that are the subject of today's notice may not be challenged later in judicial proceedings brought by EPA to enforce these requirements.

List of Subjects in 40 CFR Part 85

Environmental protection, Motor vehicle pollution, Reporting and recordkeeping requirements, Research.

Dated: February 1, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble part 85, subpart P, of title 40 of the Code of Federal Regulations is revised to read as follows:

PART 85—[AMENDED]

Subpart P—[Amended]

1. The authority citation for subpart P is revised to read as follows:

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

2. Section 85.1502 is amended by designating the introductory text as paragraph (a), by redesignating paragraphs (a)(5) through (15) as (a)(6) through (16) and adding a new paragraph (a)(5) to read as set forth below. Paragraph (b) is reserved.

§ 85.1502 Definitions.

(a) * * *

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

* * * * *

3. Section 85.1515 is revised to read as follows:

§ 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) 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 part 86 for the model year in which the motor vehicle or motor vehicle engine is modified. The useful life specified in part 86 for the model year in which the motor vehicle or motor vehicle engine is modified is applicable where useful life is not designated in this subpart.

(d) ICIs may not participate in emission-related programs for emissions averaging, banking and trading, or noncompliance 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	

TABLE 1 TO § 85.1515.—EMISSION STANDARDS APPLICABLE TO IMPORTED LIGHT-DUTY MOTOR VEHICLES^{1 2 3}—
Continued

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