

## Environmental Protection Agency

## § 85.1806

Such card should be addressed to the manufacturer and shall provide a space in which the owner may indicate the name and address of the person to whom the vehicle or engine was sold.

(10) The statement: "In order to ensure your full protection under the emission warranty made applicable to your (vehicle or engine) by Federal law, and your right to participate in future recalls, it is recommended that you have (vehicle or engine) serviced as soon as possible. Failure to do so could legally be determined to be a lack of proper maintenance of your (vehicle or engine)."

(b) No notice sent pursuant to paragraph (a) of this section nor any other contemporaneous communication sent to vehicle or engine owners or dealers shall contain any statement or implication that the nonconformity does not exist or that the nonconformity will not degrade air quality.

(c) The manufacturer shall be informed of any other requirements pertaining to the notification under this section which the Administrator has determined are reasonable and necessary to ensure the effectiveness of the recall campaign.

[39 FR 44375, Dec. 23, 1974, as amended at 48 FR 33462, July 21, 1983]

### § 85.1806 Records and reports.

(a) The manufacturer shall provide to the Administrator a copy of all communications which relate to the remedial plan directed to dealers and other persons who are to perform the repair under the remedial plan. Such copies shall be mailed to the Administrator contemporaneously with their transmission to dealers and other persons who are to perform the repair under the remedial plan.

(b) The manufacturer shall provide for the establishment and maintenance of records to enable the Administrator to conduct a continuing analysis of the adequacy of the recall campaign. The records shall include, for each class or category of vehicle or engine, but need not be limited to, the following:

(1) Recall campaign number as designated by the manufacturer.

(2) Date owner notification was begun, and date completed.

(3) Number of vehicles or engines involved in the recall campaign.

(4) Number of vehicles or engines known or estimated to be affected by the nonconformity.

(5) Number of vehicles or engines inspected pursuant to the remedial plan.

(6) Number of inspected vehicles found to be affected by the nonconformity.

(7) Number of vehicles actually receiving repair under the remedial plan.

(8) Number of vehicles determined to be unavailable for inspection or repair under the remedial plan due to exportation, theft, scrapping or for other reasons (specify).

(9) Number of vehicles or engines determined to be ineligible for remedial action due to a failure to properly maintain or use such vehicles or engines.

(c) If the manufacturer determines that the original answers for paragraphs (b) (3) and (4) of this section are incorrect, revised figures and an explanatory note shall be submitted. Answers to paragraphs (b) (5), (6), (7), and (8), and (9) of this section shall be cumulative totals.

(d) Unless otherwise directed by the Administrator, the information specified in paragraph (b) of this section shall be included in quarterly reports, with respect to each recall campaign, for six consecutive quarters beginning with the quarter in which the notification of owners was initiated, or until all nonconforming vehicles or engines involved in the campaign have been remedied, whichever occurs sooner. Such reports shall be submitted no later than 25 working days after the close of each calendar quarter.

(e) The manufacturer shall maintain in a form suitable for inspection, such as computer information storage devices or card files, lists of the names and addresses of vehicles or engine owners.

(1) To whom notification was given;

(2) Who received remedial repair or inspection under the remedial plan; and

(3) When eligibility for repair is conditioned on proper maintenance or use, that were determined not to qualify for such remedial action.

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(f) The records described in paragraph (e) of this section shall be made available to the Administrator upon request.

(g) The records and reports required by this section shall be retained for not less than 5 years.

[39 FR 44375, Dec. 23, 1974; 40 FR 3447, Jan. 22, 1975]

**§ 85.1807 Public hearings.**

(a) *Definitions.* The following definitions shall be applicable to this section:

(1) "Hearing Clerk" shall mean the Hearing Clerk of the Environmental Protection Agency.

(2) "Intervener" shall mean a person who files a petition to be made an intervener pursuant to paragraph (g) of this section and whose petition is approved.

(3) "Manufacturer" refers to a manufacturer contesting a recall order directed at that manufacturer.

(4) "Party" shall include the Environmental Protection Agency, the manufacturer, and any interveners.

(5) "Presiding Officer" shall mean an Administrative Law Judge appointed pursuant to 5 U.S.C. 3105 (see also 5 CFR part 930 as amended).

(6) "Environmental Appeals Board" shall mean the Board within the Agency described in § 1.25 of this title. The Administrator delegates authority to the Environmental Appeals Board to issue final decisions in appeals filed under this subpart. Appeals directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered. This delegation of authority to the Environmental Appeals Board does not preclude the Environmental Appeals Board from referring an appeal or a motion filed under this subpart to the Administrator for decision when the Environmental Appeals Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator, all parties shall be so notified and the rules in this part referring to the Environmental Appeals Board shall be interpreted as referring to the Administrator.

(b) *Request for public hearing.* (1)(i) If the manufacturer disagrees with the Administrator's finding of noncon-

formity he may request a public hearing as described in this section. Requests for such a hearing shall be filed with the Administrator not later than 45 days after the receipt of the Administrator's notification of nonconformity unless otherwise specified by the Administrator. Two copies of such request shall simultaneously be served upon the Director of the Manufacturers Operations Division and two copies filed with the Hearing Clerk. Failure of the manufacturer to request a hearing within the time provided shall constitute a waiver of his right to such a hearing. In such a case, the manufacturer shall carry out the recall order as required by § 85.1803-6.

(ii) Subsequent to the expiration of the period for requesting a hearing as of right, the Administrator may, in his discretion and for good cause shown, grant the manufacturer a hearing to contest the nonconformity.

(2) The request for a public hearing shall contain:

(i) A statement as to which classes or categories of vehicles or engines are to be the subject of the hearing;

(ii) A concise statement of the issues to be raised by the manufacturer at the hearing for each class or category of engine or vehicle for which the manufacturer has requested the hearing; and

(iii) A statement as to reasons the manufacturer believes he will prevail on the merits on each of the issues so raised.

(3) A copy of all requests for public hearings shall be kept on file in the Office of the Hearing Clerk and shall be made available to the public during Agency business hours.

(c) *Filing and service.* (1) An original and two copies of all documents or papers required or permitted to be filed pursuant to this section shall be filed with the Hearing Clerk. Filing shall be deemed timely if mailed, as determined by the postmark, to the Hearing Clerk within the time allowed by this section. If filing is to be accomplished by mailing, the documents shall be sent to the address set forth in the notice of public hearing as described in paragraph (f) of this section.

(2) Except for requests to commence a hearing, at the same time a party