

Subpart Q [Reserved]**Subpart R—Exclusion and Exemption of Motor Vehicles and Motor Vehicle Engines**

AUTHORITY: Secs. 208(b)(1), 216(2), and 301, Clean Air Act (42 U.S.C. 7522, 7550, and 7061).

SOURCE: 39 FR 32611, Sept. 10, 1974, unless otherwise noted.

§ 85.1701 General applicability.

(a) The provisions of this subpart regarding exemptions are applicable to new and in-use motor vehicles and motor vehicle engines, except as follows:

(1) Beginning January 1, 2014, the exemption provisions of 40 CFR part 1068, subpart C, apply instead of the provisions of this subpart for heavy-duty motor vehicle engines and heavy-duty motor vehicles regulated under 40 CFR part 86, subpart A, 40 CFR part 1036, or 40 CFR part 1037, except that the nonroad competition exemption of 40 CFR 1068.235 and the nonroad hardship exemption provisions of 40 CFR 1068.245, 1068.250, and 1068.255 do not apply for motor vehicle engines. Note that the provisions for emergency vehicle field modifications in § 85.1716 continue to apply for heavy-duty engines.

(2) Prior to January 1, 2014, the provisions of §§ 85.1706 through 85.1709 apply for heavy-duty motor vehicle engines.

(b) The provisions of 40 CFR 1068.10 and 1068.11 apply for information you submit under this subpart.

(c) References to engine families and emission control systems in this subpart or in 40 CFR part 1068 apply to durability groups and test groups as applicable for manufacturers certifying vehicles under the provisions of 40 CFR part 86, subpart S.

(d) In a given model year, manufacturers of motor vehicles and motor vehicle engines may ask us to approve the use of administrative or compliance procedures specified in 40 CFR part 1068 instead of the comparable procedures that apply for vehicles or engines certified under this part or 40 CFR part 86.

[76 FR 57374, Sept. 15, 2011, as amended at 81 FR 73972, Oct. 25, 2016; 86 FR 34363, June 29, 2021; 88 FR 4472, Jan. 24, 2023]

§ 85.1702 Definitions.

(a) As used in this subpart, all terms not defined herein shall have the meaning given them in the Act:

(1) *Export exemption* means an exemption granted by statute under section 203(b)(3) of the Act for the purpose of exporting new motor vehicles or new motor vehicle engines.

(2) *National security exemption* means an exemption which may be granted under section 203(b)(1) of the Act for the purpose of national security.

(3) *Pre-certification vehicle* means an uncertified vehicle which a manufacturer employs in fleets from year to year in the ordinary course of business for product development, production method assessment, and market promotion purposes, but in a manner not involving lease or sale.

(4) *Pre-certification vehicle engine* means an uncertified heavy-duty engine owned by a manufacturer and used in a manner not involving lease or sale in a vehicle employed from year to year in the ordinary course of business for product development, production method assessment and market promotion purposes.

(5) *Testing exemption* means an exemption which may be granted under section 203(b)(1) for the purpose of research investigations, studies, demonstrations or training, but not including national security.

[39 FR 32611, Sept. 10, 1974, as amended at 45 FR 13733, Mar. 3, 1980; 47 FR 30484, July 14, 1982]

§ 85.1703 Definition of motor vehicle.

(a) For the purpose of determining the applicability of section 216(2), a vehicle which is self-propelled and capable of transporting a person or persons or any material or any permanently or temporarily affixed apparatus shall be deemed a motor vehicle, unless any one or more of the criteria set forth below are met, in which case the vehicle shall be deemed not a motor vehicle:

(1) The vehicle cannot exceed a maximum speed of 25 miles per hour over level, paved surfaces; or

(2) The vehicle lacks features customarily associated with safe and practical street or highway use, such features including, but not being limited

to, a reverse gear (except in the case of motorcycles), a differential, or safety features required by state and/or federal law; or

(3) The vehicle exhibits features which render its use on a street or highway unsafe, impractical, or highly unlikely, such features including, but not being limited to, tracked road contact means, an inordinate size, or features ordinarily associated with military combat or tactical vehicles such as armor and/or weaponry.

(b) Note that, in applying the criterion in paragraph (a)(2) of this section, vehicles that are clearly intended for operation on highways are motor vehicles. Absence of a particular safety feature is relevant only when absence of that feature would prevent operation on highways.

[39 FR 32611, Sept. 10, 1974, as amended at 45 FR 13733, Mar. 3, 1980; 73 FR 59178, Oct. 8, 2008; 75 FR 22977, Apr. 30, 2010; 81 FR 73972, Oct. 25, 2016]

§ 85.1704 Who may request an exemption.

(a) Any person may request a testing exemption.

(b) Any manufacturer may request a national security exemption under § 85.1708.

(c) For manufacturers, vehicles or engines for export purposes are exempt without application, subject to the provisions of § 85.1709. For eligible manufacturers, as determined by § 85.1706, vehicles or engines for pre-certification purposes are exempt without application, subject to the provisions of § 85.1706(a).

[45 FR 13733, Mar. 3, 1980, as amended at 47 FR 30484, July 14, 1982]

§ 85.1705 Testing exemption.

(a) Any person requesting a testing exemption must demonstrate the following:

(1) That the proposed test program has a purpose which constitutes an appropriate basis for an exemption in accordance with section 203(b)(1);

(2) That the proposed test program necessitates the granting of an exemption;

(3) That the proposed test program exhibits reasonableness in scope; and

(4) That the proposed test program exhibits a degree of control consonant with the purpose of the program and the Environmental Protection Agency's (hereafter EPA) monitoring requirements. Paragraphs (b), (c), (d), and (e) of this section describe what constitutes a sufficient demonstration for each of the four above identified elements.

(b) With respect to the purpose of the proposed test program, an appropriate purpose is one which is consistent with one or more of the bases for exemption set forth under section 203(b)(1), namely, research, investigations, studies, demonstrations, or training, but not including national security. A concise statement of purpose is a required item of information.

(c) With respect to the necessity that an exemption be granted, necessity arises from an inability to achieve the stated purpose in a practicable manner without performing or causing to be performed one or more of the prohibited acts under section 203(a). In appropriate circumstances time constraints may be a sufficient basis for necessity, but the cost of certification alone, in the absence of extraordinary circumstances, is not a basis for necessity.

(d) With respect to reasonableness, a test program must exhibit a duration of reasonable length and affect a reasonable number of vehicles or engines. In this regard, required items of information include:

(1) An estimate of the program's duration;

(2) The maximum number of vehicles or engines involved; and

(e) With respect to control, the test program must incorporate procedures consistent with the purpose of the test and be capable of affording EPA monitoring capability. As a minimum, required items of information include:

(1) The technical nature of the test;

(2) The site of the test;

(3) The time or mileage duration of the test;

(4) The ownership arrangement with regard to the vehicles or engines involved in the test;

(5) The intended final disposition of the vehicles or engines;