

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;

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(6) The manner in which vehicle identification numbers or the engine serial numbers will be identified, recorded, and made available; and

(7) The means or procedure whereby test results will be recorded.

(f) A manufacturer of new motor vehicles or new motor vehicle engines may request a testing exemption to cover any vehicles and/or engines intended for use in test programs planned or anticipated over the course of a subsequent one-year period. Unless otherwise required by the Director, Manufacturers Operations Division, a manufacturer requesting such an exemption need only furnish the information required by paragraphs (a)(1) and (d)(2) of this section along with a description of the recordkeeping and control procedures that will be employed to assure that the vehicles and/or engines are used for purposes consistent with section 203(b)(1).

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

### § 85.1706 Pre-certification exemption.

(a) Except as provided in paragraph (b) of this section, any pre-certification vehicle or pre-certification vehicle engine, as defined by § 85.1702(a) (3) or (4), is exempt from section 203(a), without application, if the manufacturer complies with the following terms and conditions:

(1) The manufacturer shall create, maintain, and make available at reasonable times for review or copying by appropriate EPA employees records which provide each vehicle identification or engine serial number, indicate the use of the vehicle or engine on exempt status and indicate the final disposition of any vehicle or engine removed from exempt status; and

(2) Unless the requirement is waived or an alternative procedure is approved by the Director, Manufacturers Operations Division, the manufacturer shall permanently affix to each vehicle or engine on exempt status in a readily visible portion of the engine compartment (on a readily visible portion of a heavy-duty engine or in a readily accessible position on a motorcycle) a label which cannot be removed without destruction or defacement and which

states in the English language, in block letters and numerals of a color that contrasts with the background of the label, the following information:

(i) The label heading: Emission Control Information;

(ii) Full corporate name and trademark of manufacturer;

(iii) Engine displacement, engine family identification and model year of vehicle or engine; or person or office to be contacted for further information about the vehicle or engine;

(iv) The statement: THIS VEHICLE OR ENGINE IS EXEMPT FROM THE PROHIBITIONS OF SECTIONS 203(a)(1), (3) and (4) OF THE CLEAN AIR ACT, AS AMENDED.

(3) No provision of paragraph (a)(2) of this section shall prevent a manufacturer from including any other information it desires on the label.

(b) Any manufacturer that desires a pre-certification exemption and is in the business of importing, modifying or testing uncertified vehicles for resale under the provisions of 40 CFR 85.1501 through 85.1515, must send the request to the Designated Compliance Officer as specified in 40 CFR 1068.30. The Designated Compliance Officer may require such manufacturers to submit information regarding the general nature of the fleet activities, the number of vehicles involved, and a demonstration that adequate record-keeping procedures for control purposes will be employed.

[47 FR 30484, July 14, 1982, as amended at 81 FR 73972, Oct. 25, 2016]

### § 85.1707 Display exemption.

Where an uncertified vehicle or engine is a display vehicle or engine to be used solely for display purposes, will not be operated on the public streets or highways except for that operation incident and necessary to the display purpose, and will not be sold unless an applicable certificate of conformity has been received, no request for exemption of the vehicle or engine is necessary.

[39 FR 32611, Sept. 10, 1974. Redesignated and amended at 47 FR 30484, July 14, 1982]