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**DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection**

DEPARTMENT OF THE TREASURY

19 CFR Part 12

USCBP-2016-0011

RIN 1515-AE11

**Importations of Certain Vehicles and Engines
Subject to Federal Antipollution Emission Standards**

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes amendments to the U.S Customs and Border Protection (CBP) regulations relating to the importation into the United States of certain vehicles and engines subject to federal antipollution emission standards under the Clean Air Act (CAA). Compliance with these emission standards must be demonstrated to CBP by either filing, or retaining and producing upon request, the appropriate U.S. Environmental Protection Agency (EPA) declaration form or by establishing that the subject imports are exempt from this requirement. CBP is proposing to amend its regulations to harmonize the documentation requirements applicable to different classes of vehicles and engines that are subject to the CAA's emission standards. This document also proposes to permit the required EPA emission compliance forms to be filed with

CBP electronically. CBP is proposing other non-substantive amendments to update regulatory citations and delete obsolete provisions. The proposed changes set forth in this document support consistency in the administration of CBP's vehicle and engine imports program. In addition, electronic filing of EPA declaration forms will support key modernization initiatives, expedite the entry and clearance process, enhance targeting and enforcement objectives, and connect CBP with partner government agencies and the trade community through a single window access point.

DATES: Comments on the proposed rule must be received on or before [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP 2016-0011.
- Mail: Trade and Commercial Regulations Branch, Office of Trade, Regulations and Rulings, U.S. Customs and Border Protection, 90 K Street, N.E., 10th Floor, Washington, D.C. 20229-1177.

Instructions: All submissions received must include the agency name and docket number for this proposed rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the proposed rulemaking process, see the "Public Participation" heading of the SUPPLEMENTARY INFORMATION section of this document.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Office of Trade, Regulations and Rulings, U.S. Customs and Border Protection, 90 K Street, N.E., 10th Floor, Washington, D.C. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: For questions related to the filing of EPA forms with CBP, please contact William Scopa, Partner Government Agencies Interagency Collaboration Division, Office of Trade, Customs and Border Protection, at William.R.Scopa@cbp.dhs.gov. For questions related to EPA's vehicle and engine imports program, please contact Holly Pugliese at pugliese.holly@epa.gov.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. If appropriate to a specific comment, the commenter should reference the specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that supports such recommended change.

Background

The Clean Air Act (CAA), as amended (42 U.S.C. 7401 et. seq.), is the comprehensive federal law that regulates air emissions from stationary and mobile sources. Section 203(a) of the CAA, 42 U.S.C. 7522, prohibits, inter alia, importation into the United States of new motor vehicles and new motor vehicle engines unless they are covered by a certificate of conformity as prescribed by regulation authorized by the CAA. Section 203(b)(2) of the CAA provides that a new motor vehicle or new motor vehicle engine offered for importation in violation of section 203(a) will be refused admission into the United States. In this situation, however, the Secretary of the Treasury and the Administrator of the U.S. Environmental Protection Agency (EPA) may, by joint regulation, provide for a deferred final determination as to admission and authorize delivery of the goods to the importer or consignee upon such conditions (including the furnishing of a bond) as may be deemed appropriate. Section 208 of the CAA, 42 U.S.C. 7542, provides that the Administrator of the EPA may require a manufacturer to produce, among other items, all records, files, and papers necessary to demonstrate compliance with applicable CAA provisions. Section 213(d) of the CAA, 42 U.S.C. 7547, requires that nonroad vehicle and engine standards be enforced in the same manner as those applicable to onroad vehicles and engines.

These statutory provisions are implemented in the CBP regulations at §§ 12.73 and 12.74 of title 19 of the Code of Federal Regulations (19 CFR 12.73 and 12.74). Section 12.73 provides for “[M]otor vehicle and engine compliance with Federal

antipollution emission requirements.” Corresponding EPA regulations for motor vehicles and engines are promulgated at 40 CFR parts 85 and 86. Section 12.74 provides for “[N]onroad and stationary engine compliance with Federal antipollution emission requirements.” Corresponding EPA regulations for nonroad and stationary engine compliance are promulgated at 40 CFR parts 1033 through 1068.

EPA requires the submission of certain documents for purposes of compliance with the CAA. EPA makes available EPA Declaration Form 3520-1 for the importation of passenger vehicles, highway motorcycles, and their corresponding engines into the United States, and EPA Declaration Form 3520-21 for the importation of heavy-duty highway engines and nonroad engines (gas, diesel, marine, stationary) into the United States, including engines already installed in vehicles or equipment. Both forms can be found in fillable .pdf format on EPA’s “Imports Program” website at <http://www.epa.gov/otaq/imports/forms-resources.htm>.

Current CBP Filing Requirements for Importations of Certain Vehicles and Engines Subject to Federal Antipollution Emission Standards

I. 19 CFR 12.73/EPA Declaration Form 3520-1

For importations that are covered by EPA Declaration Form 3520-1, existing § 12.73(i) of the CBP regulations (19 CFR 12.73(i)) requires importers to file the requisite information with CBP at the time of entry. An exemption from this requirement exists for motor vehicle imports that are covered by an EPA Certificate of Conformity (COC) which are labeled accordingly (see 19 CFR 12.73(b)(1)); for these vehicles, an importer does not have to file the EPA Declaration Form 3520-1 with CBP at the time of

entry, nor is the importer required to prepare and retain the form as part of its recordkeeping obligations. Section 12.73(g) also exempts motor vehicles imported by diplomats, foreign military personnel, and nonresidents from applicable emission requirements on the condition that the vehicles are not to be resold in the United States, and provided diplomats and foreign military personnel meet applicable documentation requirements set forth in paragraph (i)(4) of this section. In all other instances, the form is required to be completed and filed with CBP at the time of entry.

II. 19 CFR 12.74/EPA Declaration Form 3520-21

For importations that are covered by EPA Declaration Form 3520-21, existing § 12.74(b) (19 CFR 12.74(b)) requires importers to prepare the form and keep it on file for a period of at least five years from the date of entry in accordance with § 163.4 (19 CFR 163.4). The form must be made available upon request by CBP. Unlike motor vehicle manufacturers subject to § 12.73 (19 CFR 12.73), manufacturers that import products covered by EPA Declaration Form 3520-21 are not exempt from preparing this form even if the subject goods are covered by an EPA COC; they are required to prepare EPA Declaration Form 3520-21 and keep it on file for a period of at least five years from the date of entry.

Explanation of Proposed Amendments to CBP Regulations

III. Harmonization of Filing Requirements Applicable to EPA Declaration Forms 3520-1 and 3520-21

In an effort to provide consistency in the administration of CBP's vehicle and engine imports program so that importers of both road vehicles and engines, as well as stationary and nonroad engines (including engines incorporated into vehicles or equipment), are subject to the same filing and recordkeeping requirements, CBP is

proposing to conform the entry filing requirements applicable to the EPA Declaration Form 3520-21 to those that currently exist for EPA Declaration Form 3520-1.

Specifically, CBP is proposing to amend 19 CFR 12.74(b) to require that importers of stationary, nonroad or heavy-duty highway engines (including engines incorporated into vehicles or equipment) file EPA Declaration Form 3520-21 at the time of entry, unless exempt. CBP is proposing to exempt an importer that manufactures nonroad or stationary engines, including engines incorporated into vehicles and equipment, from the requirement to file an EPA Declaration Form 3520-21 at the time of entry if that importer holds a valid EPA COC for those engines and the engines are labeled to show compliance with applicable emission requirements.

IV. Electronic Filing of EPA Declaration Forms 3520-1 and 3520-21

This document proposes to amend §§ 12.73 and 12.74 to permit the electronic filing of EPA Declaration Forms 3520-1 and 3520-21 to CBP in the Automated Commercial Environment (ACE) or to any other CBP-authorized electronic data interchange system. The EPA declaration forms may also still be filed with CBP in paper with a paper entry filing at the time of entry.

The electronic filing of these forms will support key modernization and compliance initiatives of the International Trade Data System, as established by section 405 of the Security and Accountability for Every (SAFE) Port Act of 2006, Public Law 109-347, 120 Stat. 1884, by utilizing a single portal system (ACE) for the collection and distribution of standard electronic import and export data required by participating Federal agencies. The electronic transmission to CBP of EPA declaration forms will

automate and enhance the interaction between the EPA and CBP by facilitating electronic collection, processing, sharing, and review of requisite trade data and documents during the cargo import and export process. Electronic filing of these EPA declaration forms at the time of entry will provide for a quicker and more efficient clearance process and enhance CBP's ability to conduct targeting and enforcement of importation requirements. Electronic filing will also permit CBP to analyze and flag problems immediately, whereas paper filings result in an ad-hoc process that requires a physical inspection by a CBP or EPA inspector. CBP is of the view that requiring EPA Declaration Forms 3520-1 and 3520-21 to be filed with every appropriate entry (with the exception of certain importing manufacturers, as described above) will expedite the clearing of vehicles and engines that are compliant with applicable emissions requirements.

V. Other Proposed Changes

CBP is proposing other changes to §§ 12.73 and 12.74 to update regulatory citations, delete provisions that are no longer relevant, and provide non-substantive re-statements of existing regulatory text to enhance readability. CBP is also updating regulatory language to ensure that electronic filing can be accommodated. The proposed changes are described below:

- CBP is proposing to amend § 12.73(a) to reflect updated EPA regulatory citations and to provide a non-substantive re-statement of the existing regulatory text to enhance readability.

- This document proposes to remove § 12.73(c)(3) from the CBP regulations.

Paragraph (c)(3) sets forth requirements for vehicles participating in EPA-approved catalytic converter or oxygen sensor control programs. EPA no longer has such programs.

- This document proposes to remove § 12.73(c)(4) from the CBP regulations.

Paragraph (c)(4) pertains to vehicles of United States or foreign origin manufactured with a catalytic converter or oxygen sensor, or any previously imported vehicle subsequently modified with a catalytic converter or oxygen sensor. Under this provision, these vehicles are not considered to be in compliance with applicable emission requirements if used outside of the United States, Canada, Mexico, or other countries as EPA may designate, until the catalytic converter and/or oxygen sensor is replaced. This provision was intended to address vehicles that may have traveled to countries where only leaded fuel was available, which could have a detrimental effect on catalytic converters and/or oxygen sensors. Since leaded fuel is no longer available in most countries, it is proposed to delete this provision.

- CBP is proposing amendments to § 12.73(d) that further clarify the role of an Independent Commercial Importer, re-designate “working” days as “business” days, and provide a re-statement of existing regulatory text for enhanced readability.

- CBP is proposing amendments to § 12.73(e), in the introductory paragraph and paragraph (e)(4), that enhance readability and clarify that motorcycles are “highway” vehicles.

- CBP is proposing to amend § 12.73(f) by requiring that the designated motor vehicles be “new” in order to conform to the EPA regulatory requirements set forth in 40 CFR 85.1709. CBP also proposes editorial changes to enhance readability.
- In § 12.73(g)(2), CBP is proposing to change the existing reference to paragraph “(i)(4)” to “(i)(6)” to reflect that provision’s proposed redesignation.
- The proposed amendments to § 12.73(h) enhance readability, reflect updated regulatory citations, and remove the word “motor” from the introductory text and from the regulatory text in paragraph (h)(5) pertaining to racing cars.
- CBP is proposing to amend § 12.73(i) by adding new paragraphs that prescribe methods of filing the EPA declaration forms and set forth applicable recordkeeping requirements, and by redesignating existing paragraph (i)(4) as new paragraph (i)(6).
- CBP is proposing to amend existing § 12.73(i)(4), redesignated in this proposed rule as paragraph (i)(6), by removing the requirement that diplomats and foreign military personnel must submit the emission declarations specified in existing 19 CFR 12.73(i)(2) (redesignated as 19 CFR 12.73(i)(3) in this proposed rule) with their entry, a copy of the motor vehicle importer's official orders or the name of the embassy to which the importer is accredited, if applicable. Pursuant to 19 CFR 148.82, the baggage and effects of diplomatic, consular, and other privileged personnel representing foreign governments are admitted free of duty without the filing of an entry upon the request of the Department of State. As State Department policy is to require that importation occur through the DS-1504 (“Request for Customs Clearance of Merchandise”) process and not through the entry process, it is proposed to amend existing § 12.73(i)(4) -- redesignated

as proposed 19 CFR 12.73(i)(6) -- to no longer require the submission of emission documentation, official orders, or embassy information. Instead, it is proposed that a claim by diplomats and foreign military personnel for exemption from § 12.73(g)(2) emission requirements must be supported by a Department of State-approved form DS-1504 or its electronic equivalent.

- Section 12.73(m) is proposed to be amended to reflect updated EPA regulatory citations.
- CBP is proposing to amend §§ 12.73(j) and 12.74(c)(1) by adding language stating that bonds may be submitted to CBP electronically and may be filed by a surety.
- This document proposes to remove § 12.74(a)(1)-(3) from the CBP regulations as these paragraphs refer to obsolete EPA regulatory sections, and to add language clarifying the scope of the applicable EPA emission regulations.
- This document proposes to remove § 12.74(c)(3)(iv) from the CBP regulations. Paragraph (c)(3)(iv) prescribes precertification for vehicles, engines and equipment. This provision refers to obsolete requirements found in EPA regulation 40 CFR 89.611(b)(3) regarding Independent Commercial Importers. EPA will make conforming amendments to its regulations to delete this provision.
- CBP is proposing to amend § 12.74(c)(3) to add exemptions that conditionally allow for the importation of nonconforming vehicles, engines, and equipment. Exemptions for diplomatic and military personnel (40 CFR 1068.325(e)), partially complete engines (40 CFR 1068.325(f)), and delegated assembly (40 CFR 1068.325(g)) were codified in EPA regulations since changes were last made to 19 CFR

12.74(c)(3) and are being proposed to be added to 19 CFR 12.74(c)(3) to ensure consistency with EPA regulations.

- CBP is proposing editorial amendments to § 12.74(d) to enhance readability.

VI. Conforming Changes to EPA Regulations

EPA regulations at 40 CFR parts 85 and 1068 also contain provisions related to the importation of vehicles, engines, and equipment. To the extent necessary to reflect the changes to the CBP regulations proposed in this document, EPA will make conforming amendments to its regulations in a separate action.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a “significant regulatory action,” under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has not reviewed this regulation.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et. seq.), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires agencies to assess the impact of regulations on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit

organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

This rule proposes modifications to the requirements for the submission of EPA Declaration Form 3520-21. Currently, importers are required to fill out the form, but are only required to submit it to CBP upon request. This proposed rule, if finalized, would require importers to file EPA Declaration Form 3520-21 with CBP at the time of entry, unless the importer is a manufacturer of nonroad or stationary engines, including engines incorporated into vehicles and equipment, and holds a valid EPA certificate of conformity for those engines and the engines are labeled to show compliance with applicable emission requirements. As this form is already complete at the time of entry, the cost of submitting it to CBP is negligible. This rule would also explicitly add electronic filing as an accepted method of form submission. Importers will still be able to file the form by paper if they so choose. This change will affect all importers who are covered by EPA Declaration Form 3520-21, including small importers. Therefore, it is likely to have an impact on a substantial number of small entities. However, the only costs to the public are the negligible costs of submitting the already completed form to CBP along with other required entry documents. These costs do not rise to the level of significance. Therefore, CBP certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collection of information contained in this proposed rule was previously reviewed and approved by OMB in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control numbers OMB 2060-0104 (EPA

Declaration Form 3520-1, “Importation of Motor Vehicles and Motor Vehicle Engines Subject to Federal Air Pollution Standards”), OMB 2060-0320 (EPA Declaration Form 3520-21, “Importation of Engines, Vehicles and Equipment Subject to Federal Air Pollution Standards”), and OMB 1405-0105 (Department of State form DS-1504, “Request for Customs Clearance of Merchandise”). As importers are already required under existing regulations to complete the EPA declaration forms and either submit them to CBP or retain them in their records, and the burden estimates in the above-identified OMB approved information collection requests presume the forms are submitted to CBP, there are no new collections of information proposed in this document. In this regard, it is noted that although existing 19 CFR 12.73 does not expressly require the submission of the EPA Declaration Form 3520-1, it does require that the same information captured by that form be submitted to CBP. Similarly, shipments sent from abroad to foreign diplomatic or consular missions in the U.S., or their personnel, currently must be cleared by respondents submitting to CBP a Department of State-approved form DS-1504; therefore, this document does not impose any new collections of information by requiring the DS-1504 to be presented to CBP for purposes of claiming an exemption from emission documentation requirements.

Signing Authority

This proposed regulation is being issued in accordance with 19 CFR 0.1(a)(1) pertaining to the Secretary of the Treasury’s authority (or that of his delegate) to approve regulations related to certain customs revenue functions.

List of Subjects in 19 CFR Part 12 Air pollution control, Customs duties and inspection, Entry of merchandise, Imports, Labeling, Reporting and recordkeeping requirements, Restricted merchandise, Vehicles.

Proposed Amendments to Part 12 of the CBP Regulations

For the reasons set forth in the preamble, CBP proposes to amend 19 CFR part 12 as set forth below:

PART 12 – SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for part 12, and the specific authority citation for sections 12.73 and 12.74, continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624.

* * * * *

Sections 12.73 and 12.74 also issued under 19 U.S.C. 1484, 42 U.S.C. 7522, 7601;

* * * * *

2. Revise the undesignated center heading preceding § 12.73 to read as follows:

**Entry of Motor Vehicles, Engines, and Equipment Containing Engines Under the
Clean Air Act, as Amended**

3. Section 12.73 is amended by:

a. Revising the section heading;

b. Revising paragraph (a);

c. Removing in paragraph (b)(1) the word “shall” and adding in its place the word “will”; removing the word “Customs” and adding in its place the term “CBP”, and;

removing the term “ICI’s” and adding in its place the words, “Independent Commercial Importers”;

d. Removing in paragraph (b)(2) the word “Customs” and adding in its place the term “CBP”;

e. Removing paragraphs (c)(3) and (4);

f. Revising paragraphs (d), (e) introductory text, (e)(4), and (f) ;

g. Removing in paragraph (g)(2) the reference “(i)(4)” and adding in its place the reference “(i)(6)”;

h. Removing in paragraph (h) introductory text the word “motor”;

i. Removing in the first sentence of paragraph (h)(1) the word “Any” and adding in its place the words “A motor vehicle imported for repairs is any”;

j. Removing in the first sentence of paragraph (h)(2) the word “Any” and adding in its place the words, “A test vehicle is any”;

k. Removing in the first sentence of paragraph (h)(3) the word “Any” and adding in its place the words, “A prototype vehicle is any”, in the second sentence, removing the word “shall” and adding in its place the word “will”, and removing the words “paragraph (1)” and adding in its place the words “paragraph (l)”;

l. Removing in the first sentence of paragraph (h)(4) the word “Any” and adding in its place the following words, “A display vehicle is any”;

m. Revising paragraphs (h)(5) through (7);

n. Revising paragraphs (i) through (k);

o. Removing in paragraph (l) the word “shall” and adding in its place the word “will”, and; removing the word “Customs” and adding in its place the word “CBP”; and

p. Revising paragraph (m).

The revisions read as follows:

§ 12.73 Importation of motor vehicles and motor vehicle engines.

(a) Applicability of EPA requirements. This section is ancillary to the regulations of the U.S. Environmental Protection Agency (EPA) issued under the Clean Air Act, as amended (42 U.S.C. 7401 et seq.), and found in 40 CFR parts 85, 86, 1036, 1037, and 1068. The EPA regulations should be consulted for more detailed information concerning EPA emission requirements. This section applies to imported motor vehicles; this section also applies to separately imported engines only if they will be installed in heavy-duty motor vehicles. All references in this section to “motor vehicles” include these heavy-duty engines. Nothing in this section should be construed as limiting or changing in any way the applicability of the EPA regulations.

* * * * *

(d) Importation of vehicles by an Independent Commercial Importer (ICI). An ICI is generally an importer that does not have a contract with a foreign or domestic motor vehicle manufacturer for distributing products into the United States market (see 40 CFR 85.1502). ICIs act independently of motor vehicle manufacturers, but are required to bring motor vehicles into compliance with all applicable emissions requirements found in 40 CFR part 86 and any other applicable requirements of the Clean Air Act. Before the vehicle is deemed to be in compliance with applicable emission requirements and finally admitted into the United States, the ICI must keep the vehicle in storage for a 15-business day period. This period follows notice to EPA of completion of the compliance work to

give EPA the opportunity to conduct confirmatory testing and inspect the vehicle and records. The 15-business day period is part of the 120-day period in which an ICI must bring the vehicle into compliance with applicable emission requirements. A motor vehicle may also be conditionally admitted by an ICI if it meets the requirements in 40 CFR 85.1505 or 85.1509. Individuals and businesses not entitled to enter nonconforming motor vehicles may arrange for their importation through an ICI certificate holder. In these circumstances, the ICI will not act as an agent or broker for CBP transaction purposes unless it is otherwise licensed or authorized to do so.

(e) Exemptions and exclusions from emission requirements based on age of vehicle.

The following motor vehicles may be imported by any person and do not have to be shown to be in compliance with emission requirements before they are entitled to admissibility:

* * * * *

(4) Highway motorcycles manufactured before January 1, 1978;

* * * * *

(f) Exemption for exports. A new motor vehicle intended solely for export to a country not having the same emission standards applicable in the United States is not required to be covered by an EPA certificate of conformity if both the vehicle and its container bear a label or tag indicating that it is intended solely for export. 40 CFR 85.1709.

* * * * *

(h) * * *

(5) Racing cars. A racing car is any vehicle that meets one or more of the criteria found at 40 CFR 85.1703(a), and that will not be registered or licensed for use on or operated on public roads or highways in the United States. See also 40 CFR 85.1511(e).

(6) National security importations. A national security importation includes any motor vehicle imported for purposes of national security by a manufacturer. 40 CFR 85.1511(c)(1), 85.1702(a)(2) and 85.1708; and

(7) Hardship exemption. A hardship exemption includes any motor vehicle imported by anyone qualifying for a hardship exemption. 40 CFR 85.1511(c)(2).

(i) Documentation requirements—(1) Exception for certain companies that manufacture and import motor vehicles. The special documentation requirements of this paragraph (i) do not apply to the importation of motor vehicles by the company that

manufactures the motor vehicles if the motor vehicles are covered by a valid EPA Certificate of Conformity (COC) held by the manufacturer and the motor vehicles are labeled to show compliance with applicable emission requirements pursuant to paragraph (b)(1) of this section.

(2) Release. CBP will not release a motor vehicle from custody unless the importer has submitted all documents necessary to demonstrate compliance with all applicable laws and regulations.

(3) Required EPA documentation. Unless otherwise exempt, importers of motor vehicles must submit one of the following EPA declaration forms to CBP at the time of entry:

(i) For heavy-duty motor vehicle engines, whether they are installed in a vehicle or separately imported as loose engines, submit EPA Declaration Form 3520-21, “Importation of Engines, Vehicles, and Equipment Subject to Federal Air Pollution Regulations;”

(ii) For all other motor vehicles, submit EPA Declaration Form 3520-1, “Importation of Motor Vehicles and Motor Vehicle Engines Subject to Federal Air Pollution Regulations.”

(4) Filing method. The EPA declaration forms required to be submitted to CBP pursuant to paragraph (i)(3) of this section may be filed with CBP electronically in the Automated Commercial Environment (ACE) or via any other CBP-authorized electronic data interchange system, or as a paper filing at the time of entry.

(5) Recordkeeping. Documents supporting the information required in EPA Declaration Form 3520-1 must be retained by the importer for a period of at least five (5) years in accordance with § 163.4 of this chapter and must be provided to CBP upon request.

(6) Documentation for diplomatic or foreign military personnel exemption. In order for a diplomat or foreign military personnel to claim an exemption pursuant to paragraph (g)(2) of this section, CBP must receive a Department of State-approved form DS-1504 (“Request for Customs Clearance of Merchandise”) or its electronic equivalent.

(j) Release under bond. If an EPA declaration form filed in accordance with paragraph (i)(3) of this section states that the entry is being filed under circumstances described in either paragraphs (h)(1), (2), (3) or (4) of this section, the entry will be accepted only if the importer, consignee, or surety, as appropriate, files a bond containing the bond conditions set forth in §113.62 of this chapter, or files a bond electronically in ACE or via any other CBP-authorized electronic data interchange system, for the production of an EPA document stating that the vehicle or engine is in conformity with Federal emission requirements. The importer or consignee must deliver to the port director documentation of EPA approval before the exemption expires, or before some later deadline specified by the port director based on good cause. If the EPA statement is not delivered to the port director within the specified period, the importer or consignee must deliver or cause to be delivered to the port director those vehicles which were released under a bond required by this paragraph. In the event that the vehicle or engine is not redelivered within five (5) days following the date the exemption expires or any later deadline specified by the port director, whichever is later, liquidated damages

will be assessed in the full amount of the bond, if it is a single entry bond, or if a continuous bond is used, in the amount that would have been assessed under a single entry bond.

(k) Notices of inadmissibility or detention. If a motor vehicle is determined to be inadmissible before or after release from CBP custody, the importer or consignee will be notified in writing of the inadmissibility determination and/or redelivery requirement. However, if a motor vehicle cannot be released from CBP custody merely because the importer has failed to attach to the entry the documentation required by paragraph (i) of this section, the vehicle will be held in detention by the port director for a period not to exceed 30-calendar days after filing of the entry at the risk and expense of the importer pending submission of the missing documentation. An additional 30-calendar day extension may be granted by the port director upon application for good cause shown. If the requisite EPA declaration form required pursuant to paragraph (i)(3) of this section has not been filed within this deadline, which must not exceed 60 days from the date of entry, CBP will issue a notice of inadmissibility.

* * * * *

(m) Prohibited importations. The importation of motor vehicles other than in accordance with this section and the EPA regulations in 40 CFR parts 85, 86, 600, 1036, 1037, and 1068 is prohibited.

4. Section 12.74 amended by:

- a. Revising the section heading and paragraphs (a) through (d); and
- b. In paragraph (e) removing the word “shall” and adding in its place the word “must”.

The revisions read as follows:

§ 12.74 Importation of nonroad and stationary engines, vehicles, and equipment.

(a) Applicability of EPA regulations. The requirements governing the importation of nonroad and stationary engines subject to conformance with applicable emission standards of the U.S. Environmental Protection Agency (EPA) are contained in 40 CFR Parts 1033 through 1068. These EPA regulations should be consulted for detailed information as to the admission requirements for subject nonroad and stationary engines. EPA emission regulations also apply to vehicles and equipment with installed engines and all references in this section to nonroad or stationary engines include the vehicles and equipment in which the engines are installed. Nothing in this section may be construed as limiting or changing in any way the applicability of the EPA regulations.

(b) Documentation requirements--(1) Exception for certain companies that manufacture and import nonroad or stationary engines, including engines incorporated into vehicles and equipment. The special documentation requirements of this paragraph (b) do not apply to the importation of nonroad or stationary engines, including engines incorporated into vehicles or equipment, by the company that manufactures the engines, provided that the engines are covered by a valid EPA Certificate of Conformity (COC) held by the importing manufacturer and bear the manufacturer's label showing such conformity and other EPA-required information.

(2) Release. CBP will not release engines, vehicles, or equipment from custody unless the importer has submitted all required documents to demonstrate that the engines, vehicles, or equipment meet all applicable requirements.

(3) Required EPA documentation. Importers of nonroad or stationary engines, including engines incorporated into vehicles and equipment, must submit EPA

Declaration Form 3520-21, "Importation of Engines, Vehicles, and Equipment Subject to Federal Air Pollution Regulations," to CBP at the time of entry.

(4) Filing method. EPA Declaration Form 3520-21 may be filed with CBP electronically in the Automated Commercial Environment (ACE) or via any other CBP-authorized electronic data interchange system, or as a paper filing at the time of entry.

(5) Recordkeeping. Documents supporting the information required in EPA Declaration Form 3520-21 must be retained by the importer for a period of at least five (5) years in accordance with § 163.4 of this chapter and must be provided to CBP upon request.

(c) Release under bond-- (1) Conditional admission. If the EPA declaration form states that the entry for a nonconforming nonroad engine is being filed under one of the exemptions described in paragraph (c)(3) of this section, under which the engine may be conditionally admitted under bond, the entry will be accepted only if the importer, consignee, or surety, as appropriate, files a bond containing the bond conditions set forth in § 113.62(c) of this chapter, or files a bond electronically in ACE or via any other CBP-authorized electronic data interchange system, for the production of an EPA statement that the vehicle or engine is in conformity with Federal emission requirements.

(2) Final admission. Should final admission be sought and granted pursuant to EPA regulations for an engine conditionally admitted initially under one of the exemptions described in paragraph (c)(3) of this section, the importer or consignee must deliver to the port director the prescribed statement. The statement must be delivered within the period authorized by EPA for the specific exemption, or such additional period as the port director of CBP may allow for good cause shown. Otherwise, the importer or

consignee must deliver or cause to be delivered to the port director the subject engine, either for export or other disposition under applicable CBP laws and regulations (see paragraph (e) of this section). If such engine is not redelivered within five (5) days following the allotted period, liquidated damages will be assessed in the full amount of the bond, if a single entry bond, or if a continuous bond, the amount that would have been assessed under a single entry bond (see 40 CFR 1068.335).

(3) Exemptions. The specific exemptions under which a nonconforming nonroad engine may be conditionally admitted, and for which a CBP bond is required, are as follows:

- (i) Repairs or alterations (see 40 CFR 1068.325(a)).
- (ii) Testing (see 40 CFR 1068.325(b)).
- (iii) Display (see 40 CFR 1068.325(c)).
- (iv) Export (see 40 CFR 1068.325(d)).
- (v) Diplomatic or military (see 40 CFR 1068.325(e)).
- (vi) Delegated assembly (see 40 CFR 1068.325(f)).
- (vii) Partially complete engines, vehicles, or equipment (see 40 CFR 1068.325(g)).

(d) Notice of inadmissibility or detention. If an engine is found to be inadmissible either before or after release from CBP custody, the importer or consignee will be notified in writing of the inadmissibility determination and/or redelivery requirement. If the inadmissibility is due to the fact that the importer or consignee did not file the EPA Declaration Form 3520-21 at the time of entry, the port director may hold the subject engine in detention at the importer's risk and expense for up to 30 days from the entry filing date. The port director may grant the importer's request for a 30-day extension for good cause. The port director will issue a notice of inadmissibility if documentation is still incomplete after this deadline, which must not exceed 60 days from the filing date for importation.

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R. Gil Kerlikowske
Commissioner

Approved: August 3, 2016

Timothy E. Skud
Deputy Assistant Secretary of the Treasury

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