



## **MASTER CUSTOMS SPECIALIST (MCS) COURSE**

### **Part 5: Admissibility Requirements |**

### **Module 18: Environmental Protection Agency (EPA)**

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#### **INTRODUCTION**

The Environmental Protection Agency (EPA) has two primary goals – to conserve and protect the natural environment and improve human health by mandating limits on the use of pollutants.

The EPA regulates the manufacturing, processing, distribution, and use of chemicals and other pollutants. The EPA also determines safe tolerance levels for chemicals and other pollutants in food, animal feed, and water.

At this time, the efforts of the EPA overlap with other agency authority as you will see throughout this module.

#### **Lesson 1: TSCA and Chemical Substances**

EPA's creation was fueled by pollution concerns so it's not surprising that they were given the authority to regulate the manufacturing and importation of chemical substances through the Toxic Substances Control Act (TSCA, 15 U.S.C. § 2601 *et seq.*).

Chemical substances are defined as any organic or inorganic substance of a particular molecular identity, any combination of such substances occurring in whole or in part as a result of a chemical reaction or occurring in nature, and any element or uncombined radical [(15 U.S.C. § 2602 (2)(A)(i)].

The definition does not include the following classes of chemical substances which are not regulated under TSCA:



- Pesticides
- Drugs
- Cosmetics
- Tobacco or any tobacco product
- Nuclear materials
- Munitions

Mixtures are not included in the definition of chemical substance. A mixture is a combination of two or more chemical substances which does not occur in nature, and is not, in whole or in part, the result of a chemical reaction. Although certification is not required for mixtures, the chemical substance components of the mixture must be certified.

### **TSCA Statements**

TSCA Section 13 (19 U.S.C § 2612) prohibits entry into the United States of a chemical substance, mixture, or article if it does not comply with rules in effect under TSCA, or if it is offered for entry in violation of TSCA or rules or orders under TSCA.

The Customs and Border Protection (CBP) regulations 19 CFR §§ 12.118 – 12.127 cover the requirements of TSCA Section 13. Importers or their authorized agents are required to certify that a chemical shipment either complies with all applicable rules and orders under TSCA, or that the chemical shipment is not subject to TSCA, by signing and filing with CBP one of the following statements (see 12.121):

- *I certify that all chemical substances in this shipment comply with all applicable rules or orders under TSCA and that I am not offering a chemical substance for entry in violation of TSCA or any applicable rule or order thereunder.*
- *I certify that all chemical substances in this shipment are not subject to TSCA.*

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*I certify that all chemical substances in this shipment comply with all applicable rules or orders under TSCA and that I am not offering a chemical substance for entry in violation of TSCA or any applicable rule or order thereunder.*

This certification statement is called a **positive** TSCA certification. That means that the chemical substance in a shipment complies with the following provisions of TSCA:

- Section 5 Premanufacture notification rules
- Section 5 Significant new use rules
- Section 5(e) Orders
- Section 5(f) Protection against unreasonable risks
- Section 6 Import and export requirements for specific chemicals
- Section 7 Judicial actions



*I certify that all chemical substances in this shipment are not subject to TSCA.*

This certification statement is called a **negative** TSCA certification. This one is self-explanatory in that the importer must state that the chemical substances in a shipment are not subject to TSCA.

No certification is required for a chemical substance that is imported as part of an article, provided that the substance is not intended to be released from the article and it has no end use or commercial purpose separate from the article of which it is a part. No certification is required for tobacco or tobacco products.

A TSCA statement must be filed prior to the release of the shipment. Filing can occur:

- In ACE (Automated Commercial Environment);
- In any other CBP-authorized EDI system; or
- In writing
  - Written certifications must appear as a typed or stamped statement:
    - On an appropriate entry document, commercial invoice or on an attachment to that entry document or invoice; or
    - If the entry is released under a special permit for an immediate delivery (19 CFR 142.21) or if the entry is made under 19 CFR 142.3, the certification must be on the commercial invoice or as an attachment to the invoice.

For each entry subject to certification, the name, phone number, and email address of the certifier (either the importer or its authorized agent) must be included.

### **Detentions**

Shipments will be detained at the port of arrival of any products subject to TSCA under the following scenarios:

- The commodity has been banned from U.S. Customs territory under a rule or order issued under TSCA Section 5 or 6 (15 U.S.C. 2604 or 2605); or
- The commodity has been ordered seized because of imminent hazards as prescribed in TSCA Section 7 (15 U.S.C. 2606); or
- The EPA Administrator (Administrator) has reasonable grounds to believe the shipment doesn't comply with TSCA and notifies the port director to detain the shipment; or
- Whenever the port director has reasonable grounds to believe the shipment doesn't comply with TSCA; or
- Whenever the importer fails to provide a TSCA statement as required in 19 CFR 12.121.



Upon detention, the port director will provide notice of the detention and its reasons to the Administrator and the importer.

A detained shipment will not be held in CBP custody more than **48 hours** after the date of detention.

Shipments may be released to the importer under bond if the port director has reason to believe it will be able to be brought into compliance (19 CFR 12.123(b)).

After 48 hours, the shipment will be promptly turned over to the Administrator for storage and disposition (see 19 CFR 12.127 and 127.28(i)).

When a shipment is detained, the importer has three options:

1. Bring the detained shipment into compliance with TSCA; or
2. Export the shipment from the U.S. Customs territory; or
3. File a notice of intent to abandon the shipment.

An importer must bring the shipment into compliance or export it within 90 days of the detention notice or 30 days after demand for redelivery, whichever comes first.

An extension of not more than **30 days** may be granted if due to delays caused by the EPA or CBP:

- The importer is unable to bring the shipment into compliance within the required time period. The importer must show good cause; or
- The importer is unable to export the shipment from U.S. Customs territory within the required time period.

### **Detentions - Export**

When the importer chooses to export a non-complying shipment, it must submit notice of the export via ACE, other CBP-approved EDI system or in writing to the port director.

The following information must be included in the notice of exportation:

- The name and address of the exporter or his agent;
- A description of the commodity exported;
- The destination (country);
- The destination port of arrival;
- The carrier;
- The date of exportation; and
- The bill of lading or the air way bill number.



### **Detentions - Abandonment**

If the importer decides to abandon the shipment after receiving the notice of refusal of entry, the importer must present a notice of intent to abandon via ACE, other CBP-approved EDI system, or in writing to the port director.

- When an importer notifies CBP of its intent to abandon, it also waives any right to export the merchandise.
- The importer remains liable for all expenses incurred in storing and disposing of the abandoned merchandise.
- The notice will constitute a waiver of all time periods specified in 19 CFR 12 and 19 CFR 127.

### **Detentions – Storage and Disposal**

When a detained shipment is turned over to the Administrator for storage and disposal, it will be considered unclaimed or abandoned.

The importer remains liable for all expenses incurred in storing and disposing of the merchandise by the Administrator.

### **TSCA Chemical Substances Control Inventory**

The TSCA Chemical Substances Control Inventory (“the inventory”) lists each chemical that is manufactured or processed in the United States. The inventory has both a public portion and a confidential portion.

The public inventory will list both confidential chemicals and non-confidential ones. Those that are not confidential will be listed by a specific chemical name and a Chemical Abstracts Service (CAS) Registry Number. You will find the CAS Registry Number referenced in CBP binding rulings. For example, NY 895279 dated April 7, 1994 contains the classifications for six chemicals by CAS number. Chemicals with confidential identities will only be listed with a TSCA Accession Number and a generic chemical name that masks the specific substance identity.

The confidential portion of the inventory will list the specific chemical name of chemical substances with confidential identities.

EPA offers several options for accessing the inventory, including a Microsoft Access file and a Comma Separated Values (CSV) text version at <http://www.epa.gov/tsca-inventory/how-access-tsca-inventory>.

A person who intends to manufacture or import a chemical substance not listed by specific chemical name in the public inventory may ask EPA whether the substance is included in the



confidential inventory. EPA will answer such inquiries only if EPA determines that the person has a *bona fide* intent to manufacture or import the chemical substance for commercial purposes.

### **TSCA Requirements Section 5, 6 and 7**

Most of TSCA's other sections apply to manufacturers and importers but are listed above as reasons a shipment may be detained at time of import. For awareness, we will highlight a few of the reasons for detention.

Please note: The term **"manufacture"** includes importing into the United States.

The inventory will be flagged to show a chemical is subject to specific requirements.

### **TSCA Requirements - Section 5**

Among proposed rulemaking and other authorities, Section 5 requires a Premanufacture Notice (PMN) for new chemical substances not listed in the inventory (Section 5). A number of exemptions exist.

Exemptions from the PMN requirement exist for:

- Chemical substances manufactured in small quantities solely for research and development (40 CFR § 720.36)
- Chemical substances for test marketing (40 CFR § 720.38)
- Chemical substances manufactured in quantities of 10,000 kilograms or less per year (40 CFR § 723.50)
- Chemical substances with low environmental releases and human exposures [(40 CFR § 723.50 (c)(2)]

Consent Orders may be issued under Section 5(e) when the EPA can determine that use under certain specific conditions and with appropriate precautions would not pose an unreasonable risk, but that use under other conditions may pose an unreasonable risk. These orders are negotiated with the submitter and flagged in the inventory.

A consent order may require measures such as:

- Testing for toxicity
- Use of worker personal protective equipment
- Hazard communication language
- Distribution and use restrictions
- Restrictions on environmental releases
- Recordkeeping



### **TSCA Requirements - Section 6**

Section 6 authorizes the following requirements be placed on chemicals subject to TSCA:

- Prohibitions or limits for a particular use of a chemical substance, or for a particular use in a concentration in excess of a level specified in the rule
- A requirement that a substance be marked with or accompanied by adequate warnings and instructions with respect to its use
- A requirement for recordkeeping and testing for compliance with the requirements for any rule
- A requirement regulating any manner or method of commercial use
- A requirement regulating any manner or method of disposal

### **TSCA Requirements - Section 7**

Section 7 authorizes civil actions including seizure of an imminently hazardous chemical substance, or for one or more of the following:

- Notice to purchasers of an imminently hazardous chemical substance or the risks associated with that chemical substance
- Public notice of such risk
- Recall
- Replacement or repurchase of such substance

An imminently hazardous chemical substance is one that presents an imminent and unreasonable risk of serious or widespread injury to health or the environment [(19 U.S.C. 2606(f)]. If the risk is likely to take place before the rule-making process in Section 6 can protect against it, Section 7 can be employed.

As of June 1, 2018, all composite wood products must be compliant with the TSCA Title VI regulation. The EPA established Title VI of TSCA to regulate the chemical emissions produced by three important composite wood products:

- Hardwood plywood
- Medium-density fiberboard (MDF)
- Particle board
- All products made with the above material such as furniture

Rigorous testing and third-party certification is required under Title VI.

### **Examples of Banned Products**

Polychlorinated Biphenyls (PCBs) and PCB Items are subject to numerous prohibitions (40 CFR Part 761). PCBs have been used in electrical equipment such as:

- Capacitors
- Transformers



- Electric motors
- Hydraulic fluids
- Heat transfer fluids
- Lubricants
- Plasticizers

Per 40 CFR § 761.93, PCBs and PCB Items may not be imported for disposal without an exemption issued under the authority of TSCA section 6(e)(3).

Certain asbestos-containing products are subject to the prohibitions of 40 CFR Part 763. An asbestos-containing product is any product to which asbestos is deliberately added in any concentration or which contains more than 1.0 percent asbestos by weight or area. Asbestos has been used in a variety of building materials for insulation and as a fire retardant. The manufacture or import of the following asbestos-containing products has been banned:

- Flooring felt
- New uses of asbestos
- Commercial paper
- Corrugated paper
- Rollboard,
- Specialty paper

The ban does not apply to purchases of small quantities of products made outside the customs territory of the United States for personal use in the United States.

## Lesson 2: Pesticides and Devices

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C § 136 *et seq.*) regulates pesticides and devices. Pesticides or devices that are adulterated, misbranded, injurious to health or the environment, or otherwise violates the provisions of FIFRA are refused admission to the U.S.

The Administrator has the authority to declare as a pest any form of plant or animal life (other than man and other than bacteria, virus, and other micro-organisms on or in living man or other living animals) which is injurious to health or the environment [(7 U.S.C. § 136w(c)(1)].

The definition of pests includes any plant growing where not wanted, including moss and alga, and any fungus, bacterium, virus, prion, or other microorganism, except for those on or in living man or other living animals and those on or in processed food or processed animal feed (40 CFR § 152.5).





Pesticides are defined as:

- Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest
- Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant
- Any nitrogen stabilizer

Pesticides are not limited to insecticides, herbicides, rodenticides, and fungicides. Other items that fall into this category include:

- Disinfectants and sanitizers to kill or inactivate disease-producing microorganisms.
- Algaecides to kill algae in lakes, canals, swimming pools, and water tanks.
- Attractants to lure pests to bait or a trap.
- Pheromones to disrupt the mating behavior of insects.
- Ovicides to kill the eggs of insects and mites.
- Fumigants to produce gas or vapor intended to destroy pests in soil or in buildings.

Devices are defined as any instrument or contrivance (other than a firearm) that is intended for trapping, destroying, repelling, or mitigating pests. Devices work by physical means such as electricity, light, or mechanics, and do not contain a substance to perform its pesticidal purpose.

For example:

- Ultraviolet light units kill, inactivate, or suppress growth of fungi, bacteria, or viruses.
- Sound generators repel pests such as birds and mice.
- Insect traps such as bug zappers and glue boards kill or entrap pests.
- Water treatment units reduce or eliminate microorganisms from water.
- Air filters reduce or eliminate microorganisms or allergens.

### **FIFRA Registration**

FIFRA requires all pesticides that are sold or distributed in the United States to be registered with EPA. Highlights of FIFRA are:

- Registrants must obtain a company number prior to the first registration.
- Registrants who are producers of pesticides must also obtain an establishment number.
- Foreign companies must designate a U.S. agent.
- Registration is not required for devices.

A company that wishes to sell a product that is already registered may become a supplemental registrant. The supplemental registration process requires that the original registrant and the supplemental registrant enter into an agreement with one another. The label language on the supplemental product must be identical to the language on the original product label, except for the product name and name and address of the distributor.



Certain substances are excluded from regulation because they are not for use against pests (40 CFR § 152.8). Examples are fertilizer products not containing a pesticide, or products intended to force bees from hives for the collection of honey crops.

### **Exemptions**

Certain products that are not intended for a pesticidal purpose are excluded from regulation unless a pesticidal claim is made on their labeling or in connection with their sale and distribution (40 CFR § 152.10).

Examples are deodorizers, bleaches, and products that are intended to exclude pests only by providing a physical barrier against pest access, and which contain no toxicants, such as pruning paint for trees.

Other exemptions include the following (40 CFR Part 152, Subpart B):

- Articles or substances treated with, or containing, a pesticide to protect the article or substance itself, such as a wood product treated to protect the wood against insect or fungus infestation.
- Pheromones and pheromone traps in which a pheromone compound is the only active ingredient.
- Products used to preserve the integrity of milk, urine, blood, or other bodily fluids for laboratory analysis.
- Products consisting of foods and containing no active ingredients, which are used to attract pests.
- Minimum risk pesticides, including cedar oil, cottonseed oil, garlic and garlic oil, lemongrass oil, malic acid, and soybean oil.

### **FDA**

Human drugs that are intended or labeled for use against fungi, bacteria, viruses, or other microorganisms in or on living man are subject to regulation by FDA.

For pesticide products that result, directly or indirectly, in residue on food, a tolerance or an exemption from the requirement of a tolerance must be established by EPA under section 408 of the Federal Food, Drug, and Cosmetic Act. [(40 CFR § 152.50(i)].

Although the use of pesticides in foreign countries is not subject to EPA registration requirements under FIFRA, pesticide residues in imported food products must conform to a tolerance or an exemption.



### **Labeling**

Pesticides and devices are subject to the labeling requirements of 40 CFR Part 156. Labels are legally enforceable. They must bear the statement: “It is a violation of Federal law to use this product in a manner inconsistent with its labeling.” Labels for registered pesticide products must bear the registration number. Labels provide information on use and storage, first aid, and where to call for help or more information.

### **Notice of Arrival (NOA)**

CBP requires the presentation of NOA data prior to the arrival of shipments of pesticides or devices (19 CFR § 12.112).

The NOA data indicates:

- The identity and the amount of the product
- The arrival date
- Where the product can be inspected.

The NOA can be submitted to CBP in one of three ways:

- File a NOA in ACE
- File an EPA-signed NOA in the Document Image System (DIS)
- File an EPA-signed NOA on paper.

The necessary data elements can be seen on EPA Form 3540-01 and brokers will often request this form as it contains the necessary information, but all filings are electronic.

## **Lesson 3: Ozone-Depleting Substances**

EPA regulates the importation of ozone-depleting substances (ODS) under the Clean Air Act (42 U.S.C. § 7401 *et seq.*). Ozone-depleting substances are compounds, such as chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs) that release chlorine or bromine atoms when they are exposed to intense ultraviolet light in the stratosphere. These compounds have been used in refrigeration, air conditioning, foam manufacturing, fire extinguishing, and as solvents.

The United Nations treaty known as The Montreal Protocol on Substances that Deplete the Ozone Layer was signed by the United States in 1987 and ratified in 1988.

The treaty bans production and consumption, with certain exemptions, of CFCs and calls for phasing out the production and consumption of HCFCs.



The Clean Air Act Amendments of 1990 added Title VI, Stratospheric Ozone Protection. Ozone-depleting substances regulated by the EPA are listed in 42 U.S.C. § 7671a. CFCs are a Class I substance. Effective January 1, 2000, it became unlawful for any person to produce any amount of a class I substance (except for methyl chloroform, January 1, 2002) unless the substance qualifies for one of the exemptions in 42 U.S.C. § 7971c(d).

One of the exemptions is the use of methyl bromide to fumigate commodities entering the United States for purposes of compliance with requirements of the Animal and Plant Health Inspection Service (APHIS).

Virgin class I substances may not be imported unless they qualify for an exemption. Used, recycled, or reclaimed class I substances may be imported upon approval by the EPA Administrator of a petition that meets the requirements of 40 CFR § 82.13(g)(2). The petition process enables EPA to verify that the substances are used, recycled, or reclaimed. Petitions must be submitted at least **40 working days** before the shipment is to leave the foreign port of export. The following information is required:

- From what type of equipment was it removed?
- Who removed it?
- When was it removed?
- How much was removed?
- What chemical was used to replace the class I ODS?
- If new equipment was installed, what type of equipment is it?

HCFCs are in Class II. HCFCs have less ozone depleting potential than chlorofluorocarbons, and are being used during their phase-out period as a substitute for CFCs.

Effective January 1, 2015, it is unlawful to introduce into commerce or use any Class II substance unless such substance:

- Has been used, recovered, or recycled
- Is used and entirely consumed in the production of other chemicals
- Is used as a refrigerant in appliances manufactured prior to January 1, 2020
- Is listed as acceptable for use as a fire suppression agent for nonresidential applications in accordance with 42 U.S.C. § 7671k(c)
- Importation of used, recovered, or recycled substances requires the submission of a petition to EPA.



## Lesson 4: Vehicles and Engines

EPA regulates the importation of motor vehicles and motor vehicle engines under the Clean Air Act (42 U.S.C. § 7401 *et seq.*). To be admissible, vehicles and engines must comply with the Federal emissions testing requirements, unless they qualify for an exemption or an exclusion.

The Federal emissions testing requirements are based on complex laboratory testing requirements specified in 40 CFR Part 86. The emissions measured include hydrocarbons, carbon monoxide, nitrogen oxides, particulates, and evaporative emissions. EPA issues a Certificate of Conformity to a manufacturer or to an Independent Commercial Importer for motor vehicles or motor vehicle engines that comply with the Federal emissions standards.

The certificate of conformity is valid only for the model year for which it is issued. Certificates of conformity for model year 2003 and later can be obtained on the Advanced Search Page of EPA's Transportation and Air Quality Index document System (<https://iaspub.epa.gov/otaqpub/pubadvsearch.jsp>).

Certificates of conformity for earlier model years can be requested from EPA's Imports Hotline (Imports@epa.gov).

### **U.S.-Certified Vehicles**

U.S. certified vehicles are covered by a certificate of conformity and bear a U.S. EPA emission control label in the engine compartment. The label is attached to the frame of motorcycles. A vehicle not bearing an emission control label will not be considered a U.S. certified version.

As an alternative, a letter from the U.S. representative of the manufacturer, stating that the vehicle was originally manufactured to be a U.S.-certified version, can be presented. Many vehicles manufactured for sale in Canada are identical to their U.S.-certified versions with respect to emission requirements. Canadian vehicles that bear a U.S. EPA emission control may be imported as a U.S.-certified version.

### **Original Equipment Manufacturers**

Original Equipment Manufacturers (OEM) are not required to transmit EPA Form 3520-1 (Importation of Motor Vehicles and Motor Vehicle Engines Subject to Federal Air Pollution Standards) for importations of new certified vehicles or new certified engines.

However, for importation of vehicles not covered by a certificate of conformity, for research, development, or testing purposes, they must transmit Form 3520-1 using code H, OEM Imports. This is a temporary exemption without time limit. If the vehicle is subsequently covered by an EPA certificate of conformity, it will be released from the restrictions of the exemption.



### **Identical to U.S.-Certified Vehicles**

Vehicles that are identical in all material respects to a U.S. certified version are admissible for purposes other than resale or lease.

Code EE on Form 3520-1 will be used and a letter from the manufacturer's U.S. representative stating that the vehicle is identical to a U.S. certified version with respect to emissions is required. Canadian vehicles that are identical can also be imported for the purpose of resale or lease, using code FF on Form 3520-1.

### **Export where unleaded gasoline may be unavailable**

Prior to exporting a U.S. certified vehicle for temporary use in a country where unleaded gasoline may be unavailable, authorization may be obtained from the EPA Air Enforcement Division, to remove the catalyst, oxygen sensors, and fuel filler neck restrictor prior to export, to prevent them from contamination from leaded gasoline.

When returning the vehicle to the U.S., the importer will use code F – U.S. certified, catalyst restoration on EPA Form 3520-1. The importer must demonstrate to EPA that the previously installed components have been replaced and are functioning in accordance with the certificate of conformity applicable at the time of manufacture. If leaded gasoline was used, the importer must, after importation, drain the fuel tank. If the catalyst, oxygen sensors, and fuel filler neck restrictor were not removed prior to export, they must be replaced.

### **EPA-exempt Vehicles**

Vehicles manufactured 21 calendar years prior to the year of importation, and are in original unmodified condition are exempted from EPA emissions requirements. The importer must be able to demonstrate that the vehicle is at least 21 years old upon request by EPA or CBP. Code E on Form 3520-1 is used.

Canadian citizens who emigrate to the U.S. or who will reside in the U.S. for greater than one year under a worker or student visa are exempted from the EPA requirements. U.S. residents may import a Canadian vehicle that is received through inheritance. Code M on Form 3520-1 is used. Canadian vehicles that are identical to U.S. certified versions are to be imported under the provisions of code B or code EE.

EPA may exempt on a case-by-case basis certain vehicles from Federal emission requirements to accommodate unforeseen cases of extreme hardship or extraordinary circumstances [40 CFR § 85.1511(c)(2)].

A hardship exemption can be used by disabled individuals who need a vehicle in a certain configuration that is not available in the U.S. The hardship exemption can also apply to



individuals who are emigrating to the U.S. under circumstances of severe hardship. Importers must obtain a letter of approval from EPA prior to importation of the vehicle. Code M on Form 3520-1 is used.

### **Excluded Vehicles and Engines**

Racing vehicles which may not be registered or licensed for use on public roads or highways are excluded from EPA emissions requirements [49 CFR § 85.1511(e)]. Code L on Form 3520-1 is used and the importer must obtain an EPA letter of approval prior to importation.

Non-chassis-mounted engines that are to be used in light-duty vehicles are excluded from EPA emissions requirements when they are imported for use in a vehicle which is currently covered by an EPA certificate or will be covered by an EPA certificate prior to introduction into commerce. Code W on form 3520-1 is used.

### **Temporary Imports**

A vehicle may be imported temporarily under bond for repair or alteration [40 CFR § 85.1511(b)(1)]. The vehicle may not be registered or licensed for use on public roads, or sold or leased. This exemption may not be used for the purpose of converting vehicles to comply with EPA emissions requirements. The vehicle must be exported after the repair or alteration, or upon expiration of the exemption, whichever comes first. EPA approval must be obtained prior to importation. Code G on Form 3520-1 is used.

A vehicle may be imported temporarily under bond for testing purposes involving research, investigations, studies, demonstrations or training [40 CFR § 85.1511(b)(2)]. The vehicle may not be operated on public roads, except for operation that is an integral part of the testing program. The vehicle or engine may not be sold or leased. The vehicle must be exported, destroyed, or brought into compliance at the end of the test, or at the expiration of the exemption, whichever comes first. EPA approval must be obtained prior to importation. Code I on Form 3520-1 is used.

A vehicle may be imported temporarily under bond for display purposes that are in the interest of the general public, such as display in a public museum or display at a charity event. This exemption is not for private purposes. The vehicle may not be driven on public roads, except for operation that is necessary for the display purpose, such as filming a movie or a commercial. The vehicle must be transported to the display location without being driven on public roads. The vehicle may not be sold or leased. The vehicle must be exported, destroyed, or brought into compliance at the end of the display, or at the expiration of the exemption, whichever comes first. EPA approval must be obtained prior to importation. Code K on Form 3520-1 is used.





Diplomats or members of armed forces of foreign governments on assignment to the U.S. may temporarily import a non-conforming vehicle, without customs bond or EPA approval, for use during the duration of their assignment in the U.S. Diplomats must present a copy of the Department of State authorization. Members of armed forces must present a copy of the order for duty in the U.S. The vehicle may not be sold, unless the new owner also has Department of State authorization or orders for duty in the U.S. The vehicle must be exported at the end of the authorizing assignment or brought into compliance with the EPA emissions requirements. Code N is used on Form 3520-1.

Nonresidents can temporarily import a non-conforming vehicle for personal use for a period of up to a year. The vehicle must be used primarily for personal use of the importer. There is no requirement for a customs bond. EPA approval is required prior to importation. The vehicle must be exported after one year, or upon departure of the foreign resident whichever comes first. Code O on Form 3520-1 is used.

#### **Imports by Independent Commercial Importer**

Nonconforming vehicles that do not qualify for an exemption or an exclusion must be imported by an Independent Commercial Importer [40 CFR § 85.1503 (a)].

An Independent Commercial Importer (ICI) is an entity that is authorized by EPA to import nonconforming vehicles for the purpose of modification to comply with EPA emissions requirements. An ICI must hold a current, valid certificate of conformity for at least one vehicle model. ICI's are contracted by individuals who wish to import nonconforming vehicles. Modification of a vehicle is a costly process.

Before purchasing or shipping a nonconforming vehicle, the buyer should be sure that there is an ICI that is eligible and willing to import the vehicle. The price and the terms of the contract should be agreed to prior to importation. A list of ICI's can be found on the EPA website.

Vehicles that are six original production years or older may be imported by an ICI that has any certificate of conformity. The certificate of conformity does not have to be for the specific model that is being imported (40 CFR § 85.1509). Neither prior EPA permission nor a customs bond is required.

The ICI must bring the vehicle into compliance with EPA emissions standards and conduct testing to demonstrate compliance. After completing modification and testing, the ICI will apply to EPA for final admission. The vehicle must be held for **15 days** pending inspection by EPA. After final admission, the vehicle can be released to the buyer. Code C on Form 3520-1 is used.





For vehicles that are less than six original production years old, the ICI must have a certificate of conformity for the specific make, model, and model year of the vehicle being imported (40 CFR § 85.1505). Neither prior permission of EPA nor a customs bond is required. Testing is required on every third vehicle imported under a certificate of conformity. After completing modification and any necessary testing, the ICI will apply to EPA for final admission. Code A on Form 3520-1 is used.

When an ICI does not have a certificate of conformity for a specific vehicle that is less than six original production years old, they may import the vehicle temporarily under bond for the purpose of pre-certification testing in order to obtain a certificate of authority. EPA approval is not required. The ICI will have **180 days** to obtain a certificate of authority or export the vehicle [40 CFR § 85.1511(b)(3)]. Code J on Form 3520-1 is used.

### **Vehicle Imports by Independent Commercial Importer**

EPA allows ICI's to import vehicles for the purpose of modification to be identical to an OEM certified version in accordance with written instructions from the OEM that are specific to the vehicle being imported. Neither EPA approval nor a customs bond is required.

The ICI must obtain the written instructions prior to importation. After modifying the vehicle in accordance with the OEM instructions, the ICI will apply to EPA for final admission of the vehicle. Code Z on Form 3520-1 is used.

### **Heavy-Duty Highway Engines and Nonroad Engines**

Heavy duty highway engines are for use in motor vehicles with a gross vehicle weight rating of more than 8,500 pounds.

Nonroad engines are used in the following types of vehicles and machinery:

- Locomotives
- Boats and ships
- Snowmobiles, off-highway motorcycles, and all-terrain vehicles
- Agricultural equipment, construction equipment, and gardening equipment

Nonroad engines are also used in stationary applications, such as powering generators, pumps, or factory equipment.

Entries of heavy-duty highway engines and nonroad engines require transmission of two different codes. The first code indicates the type of engine. The second code indicates either that the engine is certified or that it qualifies for an exemption or exclusion. For example, Code



A on EPA Form 3520-21 indicates that the engine is a heavy-duty highway engine, and code 1 indicates that the engine is a U.S. certified version that is covered by a certificate of conformity.

### **Permanent Exemptions for Nonconforming Engines**

A manufacturer-owned engine that does not conform to EPA emissions requirements may be imported by the manufacturer [40 CFR § 1068.315(b)]. Engines imported under this exemption must not be operated for purposes other than product development, assessment of production methods, promotion in the marketplace, or other purposes that are approved by EPA.

An engine manufacturer holding a current certificate of conformity may import a replacement engine specifically built to correspond to an earlier model year that was subject to less stringent standards than those that apply for current production[(40 CFR 1068.315(b)]. The engine must be used only to replace an engine that is currently in service. The engine must bear a label indicating that it is not to be used except as a replacement for that engine. This exemption does not apply to locomotive engines.

An individual may import an engine of identical configuration to a certified engine, provided that they have owned the engine for at least six months [40 CFR § 1068.315(h)]. Data or evidence must be presented to show that the engine is identical in all material respects to the U.S. certified version. EPA approval is required. The importer must agree not to transfer ownership of the engine for at least five years. During this period the only way to dispose of the engine is exportation or destruction. This exemption does not apply to locomotives or to stationary, highway, or marine compression-ignition engines.

An importer other than the original engine manufacturer may import an engine that was first manufactured at least 21 years earlier that is still in its original configuration [40 CFR 1068.315(i)]. This exemption does not apply locomotives or to stationary, highway, or marine compression-ignition engines.

An individual may import three or fewer used nonroad spark-ignition engines at or below 19 kW for personal-use, other than resale, if the importer has not used the exemption in the previous five years (40 CFR 1054.630). The provisions of this exemption may not be used to circumvent emissions standards that apply to new engines. For example, new engines that are purchased outside of the United States and used in a trivial manner are not admissible under the exemption.

### **Temporary Exemptions for Nonconforming Engines**

The delegated assembly exemption [(40 CFR § 1068.325(b)] allows holders of a certificate of conformity to import an engine that is missing certain emission-related components if those components will be installed by an equipment manufacturer.



A partially complete engine may be imported if another company already has a certificate of conformity and that company will be modifying the engine to be in its final certified configuration or a final exempt configuration [(40 CFR § 1068.325(g))]. A certificate holder may also import a partially complete engine from its foreign facility to its U.S. facility.

The following temporary exemptions which are applicable to light-duty vehicles on Form 3520-1 are also provided for on Form 3520-21:

- Repairs or alterations
- Testing
- Display
- Export
- Diplomatic or military

### **Importation of Engines Excluded from U.S. EPA Emission Standards**

A competition engine may be imported solely for the purpose of competition [(40 CFR § 1068.310(a))]. EPA approval is required prior to importation. The engine must bear a permanent label indicating the exclusion under which it was imported.

Stationary compression-ignition engines with displacement at or above 30 liters per cylinder or stationary spark-ignition engines that are not designed to run on gasoline or, if rich-burn, on liquefied petroleum gas do not require certification. However, they are subject to other EPA regulations. Stationary engines must comply with the labeling requirement in 40 CFR § 1039.20.

Compression-ignition engines used in underground mining operations and engines that are regulated by the Mining Safety and Health Administration are excluded from regulation by EPA (40 CFR § 1039.5).

A hobby engine that is used to power a reduced-scale model of a vehicle not capable of transporting a person is excluded [(40 CFR § 1068.310(c))].

### **Engine Imports by Independent Commercial Importer**

Form 3520-21 provides exemptions for engines imported by an Independent Commercial Importer (40 CFR §1039.660).

The conditions under which an ICI can import nonconforming engines with respect to certificates of conformity are the same as the conditions for importation of light-duty vehicles. However, on Form 3520-21, the exemption applies only to heavy-duty highway engines and nonroad compression-ignition engines.