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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

CBP Dec. 16 -29

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: Final rule.

SUMMARY: This document amends the U.S. Customs and Border Protection (CBP) regulations relating to the importation into the United States of certain vehicles and engines under the Clean Air Act (CAA) in order to harmonize the documentation requirements applicable to different classes of vehicles and engines that are subject to the CAA's emission standards. This document further amends the regulations to permit importers to file the required U.S. Environmental Protection Agency (EPA) Declaration Forms with CBP electronically, and amends non-substantive provisions to update regulatory citations and delete obsolete provisions.

DATES: Effective [INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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:

Background

On August 17, 2016, U.S. Customs and Border Protection (CBP) published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (81 FR 54763) proposing to amend title 19 of the Code of Federal Regulations (19 CFR) in order to harmonize the documentation requirements applicable to different classes of vehicles and engines that are subject to the Clean Air Act's (CAA's) emission standards.

Sections 203(a) and (b)(2) of the CAA, 42 U.S.C 7522, deal with the importation of new motor vehicles and new motor engines and the requirement of a Certificate of Conformity (COC) as prescribed by regulation authorized by the CAA. Without a valid COC, the admission of new motor vehicles and new motor engines into the United States will be denied. Section 208 of the CAA, 42 U.S.C. 7542, provides that the Administrator of the U.S. Environmental Protection Agency (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 vehicles 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 “Motor vehicle and engine compliance with Federal antipollution emission requirements,” and section 12.74 provides for “Nonroad and stationary engine compliance with Federal antipollution emission requirements.” EPA makes available Declaration Forms 3520-1 (for the importation of passenger vehicles, highway motorcycles and their corresponding engines) and 3520-21 (for the importation of heavy-duty engines and nonroad engines, including engines already installed in vehicles or equipment) for purposes of compliance with the CAA.

The final rule conforms the entry filing requirements applicable to EPA Declaration Form 3520-21 to those that are currently applicable to EPA Declaration Form 3520-1. Sections 12.73(i) and 12.74(b) and (d) are amended to require importers of stationary, nonroad or heavy-duty highway engines (including engines incorporated into vehicles or equipment) to file EPA Declaration Form 3520-21 at the time of entry, except when filing a weekly entry from a foreign trade zone (FTZ) in accordance with 19 CFR §146.63(c)(1). An importer of engines is exempt from the requirement to file an EPA Declaration Form 3520-21 if the importer holds a valid EPA COC and the engines are labeled to show compliance with applicable emission requirements.

Further, the final rule permits importers to file the required EPA Declaration Forms with CBP electronically. The electronic transmission of EPA Declaration Forms 3520-1 and 3520-21 to CBP 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. Lastly, this rule updates regulatory citations and deletes obsolete provisions.

The NPRM solicited for public comments on the proposed rulemaking. The public comment period closed on September 16, 2016.

Discussion of Comments

Four commenters responded to the solicitation of comments to the proposed rule. A description of the comments received, together with CBP's analysis, is set forth below.

Comment:

Two commenters expressed a concern with regard to EPA's handling of Type 06 (FTZ) "weekly estimate" entry filings. According to the proposed rule, EPA is requiring all filers to demonstrate compliance with all applicable laws and regulations at the time of cargo release, in particular the filing of EPA Declaration Forms 3520-1 and 3520-21. (19 CFR 12.73(i)(2)). The commenters stated that many vehicle and engine importers would not be able to provide accurate information, such as VIN or engine serial numbers, at the time of entry. When the weekly estimated entry is prepared and filed, the identity of the vehicles and/or engines is many times unknown since the vehicle/engine has not gone into production or has not been ordered for

distribution. Both commenters propose to implement the “dual option” system that is being used by other Partner Government Agencies (PGAs), separating the “regular” Type 06 entry filers, which are required to present PGA data at time of entry/cargo release, from the “weekly” Type 06 entry filers, which are required to present PGA data at the time of entry summary.

CBP Response:

CBP reviewed the concerns raised by the commenters and is in agreement with the commenters’ proposal. When a Type 06 (FTZ) entry is filed, the vehicle and engine data used by EPA is required at time of entry/ACE cargo release. When a “weekly estimate” Type 06 entry is filed, the vehicle and engine data used by EPA is required at time of entry summary.

Comment:

One of the commenters asked CBP to extend the exemption from filing EPA Declaration Form 3520-21 to any engines and equipment that are exempt from filing that form under the provisions of 40 CFR §1068.201 (test engines and equipment) and 40 CFR 1068.230 (engines and equipment for export). The commenter stated that 40 CFR Part 1068, subpart C, provides for the exemption of certain engines and equipment from “some or all of the prohibited acts” of 40 CFR 1068.101(a)(1). The commenter further stated that EPA has deemed such engines and equipment as appropriate for entry into the U.S. commerce and as such are substantively no different from engines and equipment that are covered by a valid COC that is issued under the standard-setting part (e.g. 40 CFR Part 1033).

CBP Response:

CBP does not agree that the exemption for filing EPA Declaration Form 3520-21 should be extended to engines and equipment for testing and export covered by 40 CFR 1068, subpart C. CBP also does not agree that such engines and equipment are “substantively no different” from engines produced under a valid COC. If engines and equipment are produced under an exemption for testing or export, the exemption is needed because these engines and equipment are different than the certified engines and equipment. It is therefore not correct to consider any exemption under Part 1068 as a basis for determining engines and equipment to be “appropriate for entry into the U.S. commerce.” Exempted engines and equipment are permitted to enter the U.S. commerce subject to certain terms and conditions to ensure compliance with the regulations. Filing import information such as that prescribed by EPA Declaration Form 3520-21 assists with compliance oversight.

Comment:

Another commenter expressed a concern with the proposed regulatory language at 19 CFR 12.74(c)(3) which references temporary exemptions, including the partially complete engine exemption under 40 CFR 1068.325(g). The commenter stated that the proposed language requires a CBP bond, whereas the underlying EPA regulation at 40 CFR 1068.325 states that EPA “may ask” CBP to require a specific bond amount. It is the opinion of the commenter that the proposed language in 19 CFR 12.74(c)(3) would go beyond the EPA requirements and increase the burden on users of the partially complete engine exemption by making the bond and

associated administrative process an absolute requirement. The commenter suggested to use “may be required” instead of the proposed “is required” language. The commenter further noted that a similar change would be needed at the beginning of 12.74(c) to harmonize the proposed language in the NPRM with the conditional language in 40 CFR 1068.325.

CBP Response:

CBP believes that there is a no conflict between the EPA regulation and the proposed rule regarding the bond requirements and that the proposed rule does not need to be harmonized with the EPA regulation. The proposed rule does not change the substantive bond requirement for conditional entry for nonconforming nonroad engines claiming exemption under the EPA regulations, it only allows for conditional release in conjunction with a bond filed in the Automated Commercial Environment (ACE).

The commenter potentially confuses the different contexts of import bond requirements. The confusion stems from the use of the term “bond” in EPA regulations and CBP regulations. Under 19 CFR 127.74(c)(3) and 19 CFR 113.62, CBP requires a single entry or a continuous bond, to be applied for the conditional release of imported engines as required in all cases (“Basic Import Entry” bond). In contrast, the “bond” referenced in 40 CFR 1068.325, which “may be required,” is addressing situations where EPA “may” want to secure compliance with relevant EPA regulations and have CBP require additional bonding.

Lastly, the substance of 19 CFR 12.74(c) is unchanged by the proposed rule, and has been in place since published in 1998. The only change is to provide for the use of Basic Import Entry bonds submitted through ACE.

Comment:

The same commenter requested that the proposed language in 19 CFR 12.74 include permanent exemptions listed in 40 CFR 1068.315(a)-(h), including the manufacturer-owned exemption in 40 CFR 1068.315(b), to make it clear that permanent exemptions also present a valid basis for admission. According to the commenter, CBP and EPA regulations will have apparent inconsistencies and it will be easy for users of those regulations to be confused if no clarifying section is added.

CBP Response:

CBP agrees with the inclusion of the permanent exemptions listed in 40 CFR 1068.315 with the exemptions listed in 19 CFR 12.74(c)(3). As such, the regulatory language for 19 CFR 12.74(c)(3) will be amended accordingly below. In addition, the introductory text in section 19 CFR 12.73(h) will be amended by adding reference to 40 CFR parts 85, 86 and 1068 to fully cover the current list of both permanent and temporary exemptions and exclusions found in all applicable EPA regulatory parts.

Comment:

The commenter also requested clarification as to whether an imported on-highway motorcycle engine that is separate from, and not installed in, an on-highway motorcycle is subject to 19 CFR 12.73. The commenter pointed out that the EPA Declaration Form 3520-1, recognized by CBP, includes a Code W = “Non-chassis mounted engine to be used in ... a motorcycle ... which will be covered by an EPA COC prior to the introduction into commerce.”

Unlike other codes on the form, there is no listed underlying regulation associated with the use of Code W.

CBP Response:

CBP agrees that a clarification is appropriate as suggested by the commenter. The regulatory text in 19 CFR 12.73(a) will be amended to include separately-imported on-highway motorcycle engines.

Comment:

The same commenter requested clarification of a passage in the Preamble in the NPRM which says “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.” Specifically, the commenter asked whether the EPA exemption policy for certificate-holding manufacturers (OEMs) to import new motor vehicles and engines without filing Declaration Forms 3520-1 or 3520-21 still applied under 19 CFR 12.73. The commenter expressed concern that if this exemption did no longer apply, it would be inconsistent with both current EPA and CBP requirements, as well as guidance issued by EPA that summarizes the filing exemptions for OEMs.

CBP Response:

The statement in the NPRM simply pointed out that the current regulations at 19 CFR 12.73 do not specifically refer to EPA Declaration Form 3520-1, but require all the data elements listed in that form. 19 CFR 12.73(i)(3) (A)-(K) currently provides a list of the information that

must be included in an importer's declaration. This information mirrors the information that is required to be filled in the EPA Declaration Form 3520-1 itself. CBP is only updating the regulations to specifically reference EPA Declaration Form 3520-1 and is not changing the provision that exempts OEMs who import products for which they hold a valid EPA COC from filing the form.

Comment:

A commenter stated that it supported CBP's plan to harmonize the filing requirements. However, it pointed out that EPA must update the existing EPA guidance document titled "Procedures for Importing Vehicles and Engines into the U.S." which states the following on Page 3, related to importers currently subject to the requirements of EPA Declaration Form 3520-21: "As with vehicles, OEMs importing new certified engines do not need to submit EPA Declaration Form 3520-21 to U.S. Customs." The commenter further noted that EPA must also update Declaration Form 3520-21 to reflect the change of the filing requirements.

CBP Response:

CBP agrees that certain statements in certain EPA guidance documents contradict each other regarding when OEMs currently need to file EPA Declaration Form 3520-21. In consultation with CBP, EPA will ensure that all of EPA's documentation regarding the amended regulations accurately reflects that OEMs importing their own certified engines do not need to file EPA Declaration Form 3520-21.

Comment:

The fourth commenter wrote that she had no objection to the proposed changes as long as the compliance with anti-pollution emission standards was not compromised for the sake of efficiency. The commenter further stated that accurate records for vehicle and engine imports must be maintained in order to ensure compliance with the CAA.

CBP Response:

CBP believes that 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 PGAs and the trade community through a single-window access point.

Conclusion

After review of the comments, CBP has decided to adopt as final the proposed rule published in the Federal Register on August 17, 2016 with the changes described above.

Executive Orders 12866 and 13563

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if a 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 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 final rule would modify 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 final rule would require importers to file EPA Declaration Form 3520–21 with CBP with the filing of entry information, and no later than the filing of entry summary, 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 has already been completed by the filer by the time the filing is required under this rule, the cost of actually 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 incurred 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 final 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 final 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-11504, “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 stated in this document. In this regard, it is noted that although existing 19 CFR 12.73 does not expressly require the submission of EPA Declaration Form 3520-1 by name, 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 document 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

19 CFR Part 12

Customs duties and inspection, Reporting and recordkeeping requirements.

Amendments to the CBP Regulations

For the reasons set forth above, part 12 of title 19 of the Code of Federal Regulations (19 CFR part 12) is amended 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. The undesignated center heading preceding § 12.73 is revised to read as follows:

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

3. In § 12.73:

- a. The section heading is revised;
- b. Paragraph (a) is revised;
- c. Paragraph (b)(1) is amended by removing 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 language, “Independent Commercial Importers”;
- d. Paragraph (b)(2) is amended by removing the word “Customs” and adding in its place the term “CBP”;
- e. Paragraphs (c)(3) and (4) are removed;
- f. Paragraphs (d), (e) introductory text, (e)(4), and (f) are revised;
- g. Paragraph (g)(2) is amended by removing the reference to “(i)(4)” and adding in its place a reference to “(i)(6)”;
- h. Paragraph (h) introductory text is revised;
- i. Paragraph (h)(1) is amended, in the first sentence, by removing the word “Any” and adding in its place the following language, “A motor vehicle imported for repairs is any”;

j. Paragraph (h)(2) is amended, in the first sentence, by removing the word “Any” and adding in its place the following language, “A test vehicle is any”;

k. Paragraph (h)(3) is amended, in the first sentence, by removing the word “Any” and adding in its place the following language, “A prototype vehicle is any”, and in the second sentence, by removing the word “shall” and adding in its place the word “will”, and by removing the parenthetical reference “(1)” and adding in its place the parenthetical reference “(l)”;

l. Paragraph (h)(4) is amended, in the first sentence, by removing the word “Any” and adding in its place the following language, “A display vehicle is any”;

m. Paragraphs (h)(5) through (7) are revised;

n. Paragraphs (i) through (k) are revised;

o. Paragraph (l) is amended by removing the word “shall” and adding in its place the word “will” and removing the word “Customs” and adding in its place the term “CBP”; and

p. Paragraph (m) is revised.

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 highway motorcycles or heavy-duty motor vehicles. All references in this section to “motor vehicles” include these highway motorcycles and 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) Other exemptions and exclusions. EPA regulations in 40 CFR parts 85, 86 and 1068 allow for exempting or excluding vehicles from certification requirements. The following scenarios illustrate several examples of exemptions or exclusions that apply only if prior approval has been obtained in writing from EPA:

* * * * *

(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 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, or when filing a weekly entry from an FTZ in accordance with § 146.63(c)(1) of this chapter at the time of entry summary:

(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 must 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, or when filing a weekly entry from an FTZ in accordance with §146.63(c)(1) of this chapter at the time of entry summary.

(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 one or more of the exemptions and

exclusions identified in paragraph (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 basic importation and entry bond containing the bond conditions set forth in §113.62 of this chapter, or files electronically in ACE or via any other CBP-authorized electronic data interchange system. The importer or consignee must deliver to CBP, either at the port of entry or electronically, documentation of EPA approval before the exemption or exclusion indicated on the EPA declaration form expires, or before some later deadline specified by the Center director based on good cause. If the EPA approval 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 or exclusion indicated on the EPA declaration form 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. In 12.74:

a. The section heading and paragraphs (a) through (d) are revised; and

b. Paragraph (e) is amended by 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, or when filing a weekly entry from an FTZ in accordance with §146.63(c)(1) of this chapter at the time of entry summary.

(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, or when filing a weekly entry from an FTZ in accordance with §146.63(c)(1) of this chapter at the time of entry summary.

(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 basic importation and entry bond containing the bond conditions set forth in § 113.62(c) of this chapter, or files electronically in ACE or via any other CBP-authorized electronic data interchange system.

(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. EPA regulations in 40 CFR parts 60 and 1033 through 1068 allow for exempting or excluding imported engines from certification requirements (see especially 40 CFR part 1068, subpart D). 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, or when filing a weekly entry from an FTZ in accordance with §146.63(c)(1) of this chapter at the time of entry summary, 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

U.S. Customs and Border Protection

Approved: December 20, 2016

Timothy E. Skud

Deputy Assistant Secretary of the Treasury

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