

subchapter C instead of the prohibitions of §1068.101 (see for example, 40 CFR 89.1003).

[73 59344, Oct. 8, 2008, as amended at 75 FR 23064, Apr. 30, 2010]

§1068.261 What provisions apply for selling or shipping certified engines that are not yet in the certified configuration?

This section describes an exemption that allows certificate holders to sell or ship engines that are missing certain emission-related components if those components will be installed by an equipment manufacturer. This section does not apply to equipment subject to equipment-based standards. See the standard-setting part to determine whether and how the provisions of this section apply. (Note: See §1068.262 for provisions related to manufacturers introducing into U.S. commerce partially complete engines for which someone else holds the certificate of conformity.) This exemption is temporary as described in paragraph (f) of this section.

(a) Shipping an engine separately from an aftertreatment component that you have specified as part of its certified configuration will not be a violation of the prohibitions in §1068.101(a)(1) subject to the provisions in this section.

(b) If you manufacture engines and install them in equipment you also produce, you must take steps to ensure that your facilities, procedures, and production records are set up to ensure that equipment and engines are assembled in their proper certified configurations. For example, you may demonstrate compliance with the requirements of this section by maintaining a database showing how you pair aftertreatment components with the appropriate engines such that the final product is in its certified configuration.

(c) If you include the price of all aftertreatment components in the price of the engine and ship the aftertreatment components directly to the equipment manufacturer, or arrange for separate shipment by the component manufacturer to the equipment manufacturer, all the following conditions apply:

(1) Apply for and receive a certificate of conformity for the engine and its emission control system before shipment as described in the standard-setting part. For an existing certificate of conformity, amend the application for certification by describing your plans to use the provisions of this section as described in paragraph (c)(8) of this section.

(2) Provide installation instructions in enough detail to ensure that the engine will be in its certified configuration if someone follows these instructions. Provide the installation instructions in a timely manner, generally directly after you receive an order for shipping engines or earlier. If you apply removable labels as described in paragraph (c)(7)(i) of this section, include an instruction for the equipment manufacturer to remove the label after installing the appropriate aftertreatment component.

(3) Have a contractual agreement with the equipment manufacturer obligating the equipment manufacturer to complete the final assembly of the engine so it is in its certified configuration when final assembly is complete. This agreement must also obligate the equipment manufacturer to provide the affidavits required under paragraph (c)(4) of this section.

(4) Take appropriate additional steps to ensure that all engines will be in a certified configuration when installed by the equipment manufacturer. At a minimum, you must obtain annual affidavits from every equipment manufacturer to which you sell engines under this section. Include engines that you sell to distributors or dealers. The affidavits must list the part numbers of the aftertreatment devices that equipment manufacturers install on each engine they purchase from you under this section and include confirmation that the number of aftertreatment devices received were sufficient for the number of engines involved.

(5) [Reserved]

(6) Keep records to document how many engines you produce under this exemption. Also, keep records to document your contractual agreements under paragraph (c)(3) of this section. Keep all these records for five years after the end of the applicable model

year and make them available to us upon request.

(7) Make sure the engine has the emission control information label we require under the standard-setting part. Include additional labeling using one of the following approaches:

(i) Apply an additional removable label in a way that makes it unlikely that the engine will be installed in equipment other than in its certified configuration. The label must identify the engine as incomplete and include a clear statement that failing to install the aftertreatment device, or otherwise failing to bring the engine into its certified configuration, is a violation of federal law subject to civil penalty.

(ii) Add the statement "DELETED ASSEMBLY" to the permanent emission control information label. You may alternatively add the abbreviated statement "DEL ASSY" if there is not enough room on the label.

(8) Describe the following things in your application for certification:

(i) How you plan to use the provisions of this section.

(ii) A detailed plan for auditing equipment manufacturers, as described in paragraph (d)(3) of this section, if applicable.

(iii) All other steps you plan to take under paragraph (c)(4) of this section.

(9) If one of your engines produced under this section is selected for production-line testing or a selective enforcement audit, you must arrange to get a randomly selected aftertreatment component from either the equipment manufacturer or the equipment manufacturer's supplier. You may keep an inventory of these randomly selected parts, consistent with good engineering judgment and the intent of this section. You may obtain such aftertreatment components from any point in the normal distribution from the aftertreatment component manufacturer to the equipment manufacturer. Keep records describing how you randomly selected these aftertreatment components, consistent with the requirements specified in the standard-setting part.

(10) Note that for purposes of importation, you may itemize your invoice to identify separate costs for engines and aftertreatment components that

will be shipped separately. A copy of your invoice from the aftertreatment manufacturer may be needed to avoid payment of importation duties for the engine that also include the value of aftertreatment components.

(d) If you do not include the price of all aftertreatment components in the price of the engine, you must meet all the conditions described in paragraphs (c)(1) through (9) of this section, with the following additional provisions:

(1) The contractual agreement described in paragraph (c)(3) of this section must include a commitment that the equipment manufacturer will do the following things:

(i) Purchase the aftertreatment components you have specified in your application for certification and keep records to document these purchases.

(ii) Cooperate with the audits described in paragraph (d)(3) of this section.

(2) You must have written confirmation that the equipment manufacturer has ordered the appropriate type of aftertreatment components for an initial shipment of engines under this section. For the purpose of this paragraph (d)(2), initial shipment means the first shipment of engines that are subject to new or more stringent emissions standard (or the first shipment of engines using the provisions of this section) to a given equipment manufacturer for a given engine family. For the purpose of this paragraph (d)(2), you may treat as a single engine family those engine families from different model years that differ only with respect to model year or other characteristics unrelated to emissions. You must receive the written confirmation within 30 days after shipment. If you do not receive written confirmation within 30 days, you may not ship any more engines from that engine family to that equipment manufacturer until you have the written confirmation. Note that it may be appropriate to obtain subsequent written confirmations to ensure compliance with this section, as described in paragraph (c)(4) of this section.

(3) You must perform or arrange for audits of equipment manufacturers as follows:

(i) If you sell engines to 16 or more equipment manufacturers under the

provisions of this section, you must annually perform or arrange for audits of four equipment manufacturers to whom you sell engines under this section. To select individual equipment manufacturers, divide all the affected equipment manufacturers into quartiles based on the number of engines they buy from you; select a single equipment manufacturer from each quartile each model year. Vary the equipment manufacturers selected for auditing from year to year, though you may repeat an audit in a later model year if you find or suspect that a particular equipment manufacturer is not properly installing aftertreatment devices.

(ii) If you sell engines to fewer than 16 equipment manufacturers under the provisions of this section, set up a plan to perform or arrange for audits of each equipment manufacturer on average once every four model years.

(iii) Starting with the 2019 model year, if you sell engines to fewer than 40 equipment manufacturers under the provisions of this section, you may ask us to approve a reduced auditing rate. We may approve an alternate plan that involves audits of each equipment manufacturer on average once every ten model years as long as you show that you have met the auditing requirements in preceding years without finding noncompliance or improper procedures.

(iv) To meet these audit requirements, you or your agent must at a minimum inspect the assembling companies' procedures and production records to monitor their compliance with your instructions, investigate some assembled engines, and confirm that the number of aftertreatment devices shipped were sufficient for the number of engines produced.

(v) You must keep records of these audits for five years after the end of the applicable model year.

(e) The following provisions apply if you ship engines without air filters or other portions of the air intake system that are specifically identified by part number (or other specific part reference) in the application for certification such that the shipped engine is not in its certified configuration. You do not need an exemption under this

section to ship engines without air intake system components if you instead describe in your installation instructions how equipment manufacturers should use components meeting certain functional specifications.

(1) If you are using the provisions of this section to ship an engine without aftertreatment, apply all the provisions of this section to ensure that each engine, including its intake system, is in its certified configuration before it reaches the ultimate purchaser.

(2) If you are not using the provisions of this section to ship an engine without aftertreatment, shipping an engine without air-intake components that you have specified as part of its certified configuration will not be a violation of the prohibitions in §1068.101(a) if you follow the provisions specified in paragraph (b) or paragraphs (c)(1) through (9) of this section. If we find there is a problem, we may require you to perform audits as specified in paragraph (d)(3) of this section.

(f) Once the equipment manufacturer takes possession of an engine exempted under this section and the engine reaches the point of final equipment assembly, the exemption expires and the engine is subject to all the prohibitions in §1068.101. Note that the engine's model year does not change based on the date the equipment manufacturer adds the aftertreatment device and/or air filter under this section.

(g) You may use the provisions of this section for engines you sell to a distributor as described in this paragraph (g) using one of the following approaches:

(1) You may sell engines through a distributor if you comply with the provisions of paragraph (d) of this section with respect to the equipment manufacturer.

(2) You may treat the distributor as the equipment manufacturer as described in this paragraph (g)(2) for all applicable requirements and prohibitions. Such distributors must bring engines into their final certified configuration. This may include shipping the engine with the appropriate aftertreatment device and/or air filter, but without completing the assembly

with all the components. The exemptions expire for such engines when the distributor no longer has control of them.

(h) You must notify us within 15 days if you find from an audit or another source that engines produced under this section are not in a certified configuration at the point of final assembly or that an equipment manufacturer has otherwise failed to meet its obligations under this section. If this occurs, send us a report describing the circumstances related to the noncompliance within 75 days after you notify us.

(i) We may suspend, revoke, or void an exemption under this section, as follows:

(1) We may suspend or revoke your exemption for a specific equipment manufacturer if any of the engines are not in a certified configuration after installation in that manufacturer's equipment, or if we determine that the equipment manufacturer has otherwise failed to comply with the requirements of this section. We may also suspend or revoke your exemption for other engine families with respect to the equipment manufacturer unless you demonstrate that the noncompliance is limited to a specific engine family. You may not use this exemption for future shipments to the affected equipment manufacturer without taking action beyond the minimum steps specified in this section, such as performing on-site audits. We will approve further use of this exemption only if you convince us that you have adequately addressed the factors causing the noncompliance.

(2) We may suspend or revoke your exemption for the entire engine family if we determine that you have failed to comply with the requirements of this section. If we make an adverse decision with respect to the exemption for any of your engine families under this paragraph (i), this exemption will not apply for future certificates unless you convince us that the factors causing the noncompliance do not apply to the other engine families. We may also set additional conditions beyond the provisions specified in this section.

(3) We may void your exemption for the entire engine family if you intentionally submit false or incomplete information or fail to keep and provide

to EPA the records required by this section. Note that all records and reports required under this section (whether generated by the engine manufacturer, equipment manufacturer, or others) are subject to the prohibition in §1068.101(a)(2), which prohibits the submission of false or incomplete information. For example, the affidavits required by this section are considered a submission.

(j) You are liable for the in-use compliance of any engine that is exempt under this section.

(k) It is a violation of §1068.101(a)(1) for any person to introduce into U.S. commerce a previously exempted engine, including as part of a piece of equipment, without complying fully with the installation instructions.

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§ 1068.262 What are the provisions for temporarily exempting engines for shipment to secondary engine manufacturers?

This section specifies when manufacturers may introduce into U.S. commerce partially complete engines that have an exemption or a certificate of conformity held by a secondary engine manufacturer and are not yet in a certified configuration. See the standard-setting part to determine whether and how the provisions of this section apply. (Note: See §1068.261 for provisions related to manufacturers introducing into U.S. commerce partially complete engines for which they hold the certificate of conformity.) This exemption is temporary as described in paragraph (g) of this section.

(a) The provisions of this section generally apply where the secondary engine manufacturer has substantial control over the design and assembly of emission controls. In determining whether a manufacturer has substantial control over the design and assembly of emission controls, we would consider the degree to which the secondary engine manufacturer would be able to ensure that the engine will conform to the regulations in its final configuration. Such secondary engine manufacturers may finish assembly of partially complete engines in the following cases: