TEST EQUIPMENT AND CALCULATIONS FOR EVAPORATIVE AND REFUELING EMISSIONS

§ 1066.910 SHED enclosure specifications.

Enclosures for evaporative and refueling emissions must meet the specifications described in 40 CFR 86.106–96, 86.107–96(a), and 86.107–98(a).

§ 1066.915 Enclosures; auxiliary systems and equipment.

Enclosures for evaporative and refueling emissions must be equipped with fans, blowers, and measurement and data recording equipment as described in 40 CFR 86.107–98(b) through (h) and (j).

§ 1066.920 Enclosure calibrations.

Enclosures for evaporative and refueling emissions must meet the calibration specifications described in 40 CFR 86.116–94 and 86.117–96.

§ 1066.925 Enclosure calculations for evaporative and refueling emissions.

Calculate emissions for evaporative emissions as described in 40 CFR 86.143–96. Calculate emissions for refueling emissions as described in 40 CFR 86.143–96 and 86.156–98.

§ 1066.930 Equipment for point-source measurement of running losses.

For point-source measurement of running loss emissions, use equipment meeting the specifications in 40 CFR 86.107–96(i).

[86 FR 34585, June 29, 2021]

EVAPORATIVE AND REFUELING EMISSION TEST PROCEDURES FOR MOTOR VEHICLES

§ 1066.950 Fuel temperature profile.

Develop fuel temperature profiles for running loss testing as described in 40 CFR 86.129–94(d).

§ 1066.955 Diurnal emission test.

Test vehicles for diurnal emissions as described in 40 CFR 86.133–96.

§ 1066.960 Running loss test.

Test vehicles for running loss emissions as described in 40 CFR 86.134–96.

§ 1066.965 Hot soak test.

Test vehicles for hot soak emissions as described in 40 CFR 86.138–96.

§ 1066.970 Refueling test for liquid fuels.

Except as described in § 1066.975, test vehicles for refueling emissions as described in 40 CFR 86.150–98, 86.151–98, 86.152–98, and 86.154–98. Keep records as described in 40 CFR 86.155–98.

§ 1066.971 Vehicle and canister preconditioning for the refueling test.

Precondition vehicles for the refueling emission test as described in 40 CFR 86.153–98.

§ 1066.975 Refueling test for LPG.

For vehicles designed to operate on liquefied petroleum gas, measure refueling emissions as described in 40 CFR 86.157–98.

§ 1066.980 Fuel dispensing spitback procedure.

Test vehicles for spitback emissions as described in 40 CFR 86.146–96.

§ 1066.985 Fuel storage system leak test procedure.

(a) *Scope.* Perform this test as required in the standard-setting part to verify that there are no significant leaks in your fuel storage system.

(b) *Measurement principles.* Leaks are detected by measuring pressure, temperature, and flow to calculate an equivalent orifice diameter for the system. Use good engineering judgment to develop and implement leak test equipment. You may not tighten fittings or connections in the vehicle's fuel system to prepare the vehicle for testing.

(c) *Measurement equipment.* Your leak test equipment must meet the following requirements:

(1) Pressure, temperature, and flow sensors must be calibrated with NIST-traceable standards.

(2) Correct flow measurements to standard reference conditions.

(3) Leak test equipment must have the ability to pressurize fuel storage systems to at least 4.1 kPa and have an internal leak rate of less than 0.20 standard liters per minute.

(4) You must be able to attach the test equipment to the vehicle without

permanent alteration of the fuel storage or evaporative emission control systems. For any testing that involves pressurizing the fuel system and detecting leaks at access points away from the fuel fill pipe, the gas cap must be installed in the production configuration. For the test point at or near the fuel fill pipe, attaching the test equipment may involve adding an extension to the fuel fill pipe that incorporates the access point to the fuel system. If the extension apparatus has a fixed cap, the vehicle's gas cap must be tested separately as described in paragraph (d)(9) of this section. This separate testing is not required if the extension apparatus incorporates the vehicle's gas cap.

(5) The point of attachment to the fuel storage system must allow pressurization to test system integrity of the fuel tank and of fuel lines and vapor lines reaching up to and including the gas cap and the evaporative canister. The evaporative system test port available on some vehicles is an example of an effective attachment point.

(d) *Leak test procedure.* Test a vehicle's fuel storage system for leaks as follows:

(1) Refuel vehicle to 40% of its nominal fuel tank capacity.

(2) Soak the vehicle for 6 to 24 hours at a temperature between (20 and 30) °C; record this setpoint temperature and maintain temperatures throughout the leak test at this setpoint temperature within a tolerance ±2 °C.

(3) Before performing the test, purge the fuel storage system of any residual pressure, bringing the system into equilibrium with ambient pressure.

(4) Seal the evaporative canister's vent to atmosphere and ensure that the vehicle's purge valve is closed.

(5) Attach the leak test equipment to the vehicle.

(6) Pressurize the fuel storage system with N_2 or another inert gas 9392.....to at least 2.4 kPa. Use good engineering judgment to avoid overpressurizing the system.

(7) Maintain gas flow through the system for at least 180 seconds, ensuring that the flow reading is stable for an effective leak diameter of ±0.002 inches.

(8) Use the following equation, or a different equation you develop based on good engineering judgment, to calculate the effective leak diameter, d_{eff}:

$$d_{eff} = 7.844 \cdot \left(\frac{\dot{Q}_{N2}}{\sqrt{\frac{(p_{in} - p_{atmos}) \cdot (p_{in} + p_{atmos})}{SG_{N_2} \cdot T}}} \right)^{0.5057}$$

Eq. 1066.985-1

Where:

d_{eff} = effective leak diameter, in inches, expressed to at least two decimal places.

$\dot{Q}_{N2}$= volumetric flow of nitrogen, in m^3/s.

p_{in} = inlet pressure to orifice, in kPa.

p_{atmos} = atmospheric pressure, in kPa.

SG_{N2} = specific gravity of N_2 relative to air at 101.325 kPa and 15.5 °C = 0.967.

T = temperature of flowing medium, in K.

Example:

$\dot{Q}_{N2}$= $0.8 \cdot 10^{-5}$ m^3/s

p_{in} = 104.294 kPa

p_{atmos} = 101.332 kPa

SG_{N2} = 0.967

T = 298.15 K

$$d_{\text{eff}} = 7.844 \cdot \left(\frac{0.8 \cdot 10^{-5}}{\sqrt{\frac{(104.294 - 101.332) \cdot (104.294 + 101.332)}{0.967 \cdot 298.15}}} \right)^{0.5057}$$

d_{eff} = 0.017 inches

(9) Repeat the test described in this paragraph (d) for each access point described in the application for certification. Use each test result (without averaging) to determine whether the vehicle passes the leak standard.

(10) Gas caps may need to be tested separately for leaks as described in paragraph (c)(4) of this section. Test the gas caps using commercially available flow equipment such as that used for inspection-and-maintenance programs for motor vehicles to determine a leak rate in cubic centimeters per minute resulting from a sustained tank pressure of 7.5 kPa. Correct the leak rate to standard reference conditions, based on the measured leak rate corresponding to atmospheric pressure. The corrected leak value may not exceed 60 cubic centimeters per minute.

(11) You may use special or alternative test procedures as described in 40 CFR 1065.10(c).

(e) *Equipment calibration*. Use good engineering judgment to calibrate the leak check device.

[79 FR 23823, Apr. 28, 2014, as amended at 80 FR 9124, Feb. 19, 2015; 81 FR 74215, Oct. 25, 2016]

Subpart K—Definitions and Other Reference Material

§ 1066.1001 Definitions.

The definitions in this section apply to this part. The definitions apply to all subparts unless we note otherwise. Other terms have the meaning given in 40 CFR part 1065. The definitions follow:

Average means the arithmetic mean of a sample.

Bag 1 means relating to the first 505 seconds of the FTP cold-start test interval. Note that the term bag 1 may also apply to measurement of constituents that are not collected in a bag, such as PM and continuously measured THC.

Bag 2 means relating to the last 867 seconds of the FTP cold-start test interval.

Bag 3 means relating to the first 505 seconds of the FTP hot-start test interval.

Bag 4 means relating to the last 867 seconds of the FTP hot-start test interval, if run. Note that bag 2 is generally used in place of bag 4.

Base inertia means a value expressed in mass units to represent the rotational inertia of the rotating dynamometer components between the vehicle driving tires and the dynamometer torque-measuring device, as specified in §1066.250.

C_1-equivalent means a convention of expressing HC concentrations based on the total number of carbon atoms present, such that the C_1-equivalent of an HC concentration equals the concentration multiplied by the mean number of carbon atoms in each HC molecule. For example, the C_1-equivalent of 10 ppm of propane (C_3H_8) is 30 ppm. C_1-equivalent concentration values may be denoted as ''ppmC'' in the standard-setting part. Densities may also be expressed on a C_1 basis. Note that calculating HC masses from concentrations and densities is only valid where they are each expressed on the same carbon basis.

Charge-depleting means relating to the test interval of a plug-in hybrid engine or powertrain in which the engine or powertrain consumes electric energy from the RESS that has been charged from an external power source until the RESS is depleted to the point that a test interval qualifies as charge-sustaining. The engine might consume fuel to produce power during a charge-depleting test interval.

Charge-sustaining means relating to the test interval of a plug-in hybrid engine or powertrain in which the engine or powertrain consumes fuel to produce power such that the battery's net-energy change meets the end-of-test criterion of SAE J1711 or SAE J2711, as applicable (incorporated by reference in §1066.1010).

Driving schedule means a series of vehicle speeds that a vehicle must follow during a test. Driving schedules are specified in the standard-setting part. A driving schedule may consist of multiple test intervals.

Duty cycle means a set of weighting factors and the corresponding test cycles, where the weighting factors are used to combine the results of multiple test intervals into a composite result.

FTP means one of the following:

(1) The test cycle consisting of one UDDS as specified in paragraph (a) of Appendix I of 40 CFR part 86, followed by a 10-minute soak with the engine off and repeat driving through the first 505 seconds of the UDDS. See §1066.801(c)(1).

(2) The entire test procedure for measuring exhaust and/or evaporative emissions as described in §1066.801(c).

Footprint has the meaning given in the standard-setting part.

HFET means the test cycle specified in Appendix I of 40 CFR part 600.

Hot LA–92 means the first 1435 seconds of the LA–92 driving schedule.

LA–92 means the test cycle specified in Appendix I, paragraph (c), of 40 CFR part 86.

Nonmethane organic gas (NMOG) means the combination of organic gases other than methane as calculated in §1066.635. Note that for this part, the organic gases are summed on a mass basis without any adjustment for photochemical reactivity.

Parts-per-million (ppm) means ppm on a molar basis. For hydrocarbon concentrations including HC, THC, NMHC, and NMOG, ppm means ppm on a C_1-equivalent molar basis.

Road-load coefficients means sets of A, B, and C road-load force coefficients that are used in the dynamometer road-load simulation, where road-load force at speed v equals $A + B \cdot v + C \cdot v^2$.

SC03 means the test cycle specified in Appendix I, paragraph (h), of 40 CFR part 86.

Standard reference conditions means the following:

(1) *Standard pressure* is 101.325 kPa.

(2) *Standard temperature* is 293.15 K.

Supplemental FTP (SFTP) means the collection of test cycles as given in §1066.830.

Test interval means a period over which a vehicle's emission rates are determined separately. For many standards, compliance with the standard is based on a weighted average of the mass emissions from multiple test intervals. For example, the standard-setting part may specify a complete duty cycle as a cold-start test interval and a hot-start test interval. In cases where multiple test intervals occur over a duty cycle, the standard-setting part may specify additional calculations that weight and combine results to arrive at composite values for comparison against the applicable standards in this chapter.

Test weight has the meaning given in §§1066.410(b) or 1066.805.

UDDS means the test cycle specified in Appendix I, paragraph (a), of 40 CFR part 86.

US06 means the test cycle specified in Appendix I, paragraph (g), of 40 CFR part 86.

Unloaded coastdown means a dynamometer coastdown run with the vehicle wheels removed from the roll surface.

We (us, our) means the Administrator of the Environmental Protection Agency and any authorized representatives.

[79 FR 23823, Apr. 28, 2014, as amended at 80 FR 9124, Feb. 19, 2015; 88 FR 4710, Jan. 24, 2023; 89 FR 28215, Apr. 18, 2024]

§1066.1005 Symbols, abbreviations, acronyms, and units of measure.

The procedures in this part generally follow either the International System of Units (SI) or the United States customary units, as detailed in NIST Special Publication 811, which we incorporate by reference in §1066.1010. See 40 CFR 1065.20 for specific provisions related to these conventions. This section summarizes the way we use symbols, units of measure, and other abbreviations.

(a) *Symbols for quantities.* This part uses the following symbols and units of measure for various quantities:

TABLE 1 OF § 1066.1005—SYMBOLS FOR QUANTITIES

Symbol	Quantity	Unit	Unit symbol	Unit in terms of SI base units
α	atomic hydrogen to carbon ratio	mole per mole	mol/mol	1.
A	area	square meter	m^2	m^2.
A	vehicle frictional load	pound force or newton	lbf or N	$m \cdot kg \cdot s^{-2}$.
a_g	acceleration of Earth's gravity	meters per second squared	m/s^2	$m \cdot s^{-2}$.
A_m	calculated vehicle frictional load	pound force or newton	lbf or N	$m \cdot kg \cdot s^{-2}$.
a_0	intercept of least squares regression.			
a_1	slope of least squares regression.			
a	acceleration	feet per second squared or meters per second squared.	ft/s^2 or m/s^2	$m \cdot s^{-2}$.
B	vehicle load from drag and rolling resistance.	pound force per mile per hour or newton second per meter.	lbf/(mi/hr) or N·s/m	$kg \cdot s^{-1}$.
β	ratio of diameters	meter per meter	m/m	1.
β	atomic oxygen to carbon ratio	mole per mole	mol/mol	1.
c	conversion factor.			
C	vehicle-specific aerodynamic effects.	pound force per mile per hour squared or newton-second squared per meter squared.	$lbf/(mi/hr)^2$ or $N \cdot s^2/m^2$	$m^{-1} \cdot kg$.
$C\#$	number of carbon atoms in a molecule.	$C\#$	number of carbon atoms in a molecule.	$C\#$.
C_d	discharge coefficient.			
C_dA	drag area	meter squared	m^2	m^2.
C_f	flow coefficient.			
C_p	heat capacity at constant pressure.	joule per kelvin	J/K	$m^2 \cdot kg \cdot s^{-2} \cdot K^{-1}$.
C_v	heat capacity at constant volume	joule per kelvin	J/K	$m^2 \cdot kg \cdot s^{-2} \cdot K^{-1}$.
d	diameter	meters	m	m.
D	distance	miles or meters	mi or m	m.
D	slope correlation	pound force per mile per hour squared or newton second squared per meter squared.	$lbf/(mi/hr)^2$ or $N \cdot s^2/m^2$	$m^{-2} \cdot kg$.
DF	dilution factor.			1.
e	mass weighted emission result	grams/mile	g/mi.	
F	force	pound force or newton	lbf or N	$kg \cdot s^{-2}$.
f	frequency	hertz	Hz	s^{-1}.
fn	angular speed (shaft)	revolutions per minute	r/min	$\pi \cdot 30 \cdot s^{-1}$.
FC	friction compensation error	horsepower or watt	W	$m^2 \cdot kg \cdot s^{-3}$.
FR	road-load force	pound force or newton	lbf or N	$kg \cdot s^{-2}$.
γ	ratio of specific heats	(joule per kilogram kelvin) per (joule per kilogram kelvin).	(J/(kg·K))/(J/(kg·K))	1.
H	ambient humidity	grams water vapor per kilogram dry air.	g H_2O vapor/kg dry air	g H_2O vapor/kg dry air.
Δh	change in height	meters	m	m.
I	inertia	pound mass or kilogram	lbm or kg	kg.
I	current	ampere	A	A.
i	indexing variable.			
IR	inertia work rating.			
K	correction factor			1.
K_v	calibration coefficient		$m^4 \cdot s \cdot K^{0.5}/kg$	$m^4 \cdot kg^{-1} \cdot s \cdot K^{0.5}$.
μ	viscosity, dynamic	pascal second	Pa·s	$m^{-1} \cdot kg \cdot s^{-1}$.
M	molar mass	gram per mole	g/mol	$10–3 \cdot kg \cdot mol^{-1}$.
M_e	effective mass	kilogram	kg	kg.
m	mass	pound mass or kilogram	lbm or kg	kg.
N	total number in series.			
n	total number of pulses in a series.			
p	pressure	pascal	Pa	$m^{-1} \cdot kg \cdot s^{-2}$.
Δp	differential static pressure	pascal	Pa	$m^{-1} \cdot kg \cdot s^{-2}$.
p_d	saturated vapor pressure at ambient dry bulb temperature.	kilopascal	kPa	$m^{-1} \cdot kg \cdot s^{-1}$.
PF	penetration fraction.			
ρ	mass density	kilogram per cubic meter	kg/m^3	$m^{-3} \cdot kg$.
R	dynamometer roll revolutions	revolutions per minute	rpm	$\pi \cdot 30^{-1} \cdot s^{-1}$.
r	ratio of pressures	pascal per pascal	Pa/Pa	1.
r^2	coefficient of determination.			
$Re\#$	Reynolds number.			
RF	response factor.			
RH	relative humidity.			

TABLE 1 OF § 1066.1005—SYMBOLS FOR QUANTITIES—Continued

Symbol	Quantity	Unit	Unit symbol	Unit in terms of SI base units
S	Sutherland constant	kelvin	K	K.
SEE	standard error of the estimate.			
SG	specific gravity.			
Δs	distance traveled during measurement interval.	meters	m	m.
T	absolute temperature	kelvin	K	K.
T	Celsius temperature	degree Celsius	°C	K − 273.15.
T	torque (moment of force)	newton meter	N·m	$m^2 \cdot kg \cdot s^{-2}$.
t	time	hour or second	hr or s	s.
Δt	time interval, period, 1/frequency	second	s	s.
U	voltage	volt	V	$m^2 \cdot kg \cdot s^{-3} \cdot A^{-1}$.
v	speed	miles per hour or meters per second.	mi/hr or m/s	$m \cdot s^{-1}$.
V	volume	cubic meter	m^3	m^3.
$\dot{V}$	flow volume rate	cubic feet per minute or cubic meter per second.	ft^3/min or m^3/s	m^3/s^{-1}.
VP	volume percent.			
x	concentration of emission over a test interval.	part per million	ppm.	
y	generic variable.			
Z	compressibility factor.			

(b) *Symbols for chemical species.* This part uses the following symbols for chemical species and exhaust constituents:

TABLE 2 TO PARAGRAPH (b) OF § 1066.1005—SYMBOLS FOR CHEMICAL SPECIES AND EXHAUST CONSTITUENTS

Symbol	Species
CH_4	methane.
CH_3OH	methanol.
CH_2O	formaldehyde.
C_2H_4O	acetaldehyde.
C_2H_5OH	ethanol.
C_2H_6	ethane.
C_3H_7OH	propanol.
C_3H_8	propane.
C_4H_{10}	butane.
C_5H_{12}	pentane.
CO	carbon monoxide.
CO_2	carbon dioxide.
H_2O	water.
HC	hydrocarbon.
N_2	molecular nitrogen.
NMHC	nonmethane hydrocarbon.
NMHCE	nonmethane hydrocarbon equivalent.
NMOG	nonmethane organic gas.
NO	nitric oxide.

TABLE 2 TO PARAGRAPH (b) OF § 1066.1005—SYMBOLS FOR CHEMICAL SPECIES AND EXHAUST CONSTITUENTS—Continued

Symbol	Species
NO_2	nitrogen dioxide.
NO_X	oxides of nitrogen.
N_2O	nitrous oxide.
O_2	molecular oxygen.
OHC	oxygenated hydrocarbon.
PM	particulate matter.
THC	total hydrocarbon.
THCE	total hydrocarbon equivalent.

(c) *Superscripts.* This part uses the following superscripts for modifying quantity symbols:

TABLE 3 OF § 1066.1005—SUPERSCRIPTS

Superscript	Meaning
overbar (such as $\bar{y}$)	arithmetic mean.
overdot (such as $\dot{y}$)	quantity per unit time.

(d) *Subscripts.* This part uses the following subscripts for modifying quantity symbols:

TABLE 4 OF § 1066.1005—SUBSCRIPTS

Subscript	Meaning
0	reference.
abs	absolute quantity.
AC17	air conditioning 2017 test interval.
act	actual or measured condition.
actint	actual or measured condition over the speed interval.
adj	adjusted.
air	air, dry.
atmos	atmospheric.
b	base.

TABLE 4 OF § 1066.1005—SUBSCRIPTS—Continued

Subscript	Meaning
bkgnd	background.
c	cold.
comp	composite.
cor	corrected.
cs	cold stabilized.
ct	cold transient.
cUDDS	cold-start UDDS.
D	driven.
dew	dewpoint.
dexh	dilute exhaust quantity.
dil	dilute.
e	effective.
emission	emission specie.
error	error.
EtOH	ethanol.
exh	raw exhaust quantity.
exp	expected quantity.
fil	filter.
final	final.
flow	flow measurement device type.
gas	gaseous.
h	hot.
HFET	highway fuel economy test.
hs	hot stabilized.
ht	hot transient.
hUDDS	hot-start UDDS.
i	an individual of a series.
ID	driven inertia.
in	inlet.
int	intake.
init	initial quantity, typically before an emission test.
IT	target inertia.
liq	liquid.
max	the maximum (*i.e.,* peak) value expected at the standard over a test interval; not the maximum of an instrument range.
meas	measured quantity.
mix	dilute exhaust gas mixture.
out	outlet.
PM	particulate matter.
record	record.
ref	reference quantity.
rev	revolution.
roll	dynamometer roll.
s	settling.
s	slip.
s	stabilized.
sat	saturated condition.
SC03	air conditioning driving schedule.
span	span quantity.
sda	secondary dilution air.
std	standard conditions.
T	target.
t	throat.
test	test quantity.
uncor	uncorrected quantity.
w	weighted.
zero	zero quantity.

(d) *Subscripts.* This part uses the following subscripts to define a quantity:

Subscript	Quantity
0	reference.
abs	absolute quantity.
AC17	air conditioning 2017 test interval.
act	actual or measured condition.
actint	actual or measured condition over the speed interval.
adj	adjusted.
air	air, dry.
atmos	atmospheric.
b	base.
bkgnd	background.
c	cold.
comp	composite.
cor	corrected.
cs	cold stabilized.

Subscript	Quantity
ct	cold transient.
cUDDS	cold-start UDDS.
D	driven.
dew	dewpoint.
dexh	dilute exhaust quantity.
dil	dilute.
e	effective.
emission	emission specie.
error	error.
EtOH	ethanol.
exh	raw exhaust quantity.
exp	expected quantity.
fil	filter.
final	final.
flow	flow measurement device type.
gas	gaseous.
h	hot.
HFET	highway fuel economy test.
hs	hot stabilized.
ht	hot transient.
hUDDS	hot-start UDDS.
i	an individual of a series.
ID	driven inertia.
in	inlet.
int	intake.
init	initial quantity, typically before an emission test.
IT	target inertia.
liq	liquid.
max	the maximum (i.e. peak) value expected at the standard over a test interval; not the maximum of an instrument range.
meas	measured quantity.
mix	dilute exhaust gas mixture.
out	outlet.
PM	particulate matter.
record	record.
ref	reference quantity.
rev	revolution.
roll	dynamometer roll.
s	settling.
s	slip.
s	stabilized.
sat	saturated condition.
SC03	air conditioning driving schedule.
span	span quantity.
sda	secondary dilution air.
std	standard conditions.
T	target.
t	throat.
test	test quantity.
uncor	uncorrected quantity.
w	weighted.
zero	zero quantity.

(e) *Other acronyms and abbreviations.* This part uses the following additional abbreviations and acronyms:

TABLE 5 OF § 1066.1005—OTHER ACRONYMS AND ABBREVIATIONS

Acronym	Meaning
A/C	air conditioning.
AC17	air conditioning 2017 test interval.
ALVW	adjusted loaded vehicle weight.
ASME	American Society of Mechanical Engineers.
CFR	Code of Federal Regulations.
CFV	critical-flow venturi.
CNG	compressed natural gas.
CVS	constant-volume sampler.
EPA	Environmental Protection Agency.
ETW	equivalent test weight.
EV	electric vehicle.
FID	flame-ionization detector.
FTP	Federal test procedure.
GC	gas chromatograph.
GEM	greenhouse gas emissions model.
GHG	greenhouse gas (including CO_2, N_2O, and CH_4).
GPS	global positioning system.
GVWR	gross vehicle weight rating.
HEV	hybrid electric vehicle, including plug-in hybrid electric vehicles.
HFET	highway fuel economy test.
HLDT	heavy light-duty truck.
HPLC	high pressure liquid chromatography.
IBR	incorporated by reference.
LA–92	Los Angeles 1992 driving schedule.
MDPV	medium-duty passenger vehicle.
NIST	National Institute for Standards and Technology.
NMC	nonmethane cutter.
PDP	positive-displacement pump.
PHEV	plug-in hybrid electric vehicle.
PM	particulate matter.
RESS	rechargeable energy storage system.
ppm	parts per million.
SAE	Society of Automotive Engineers.
SC03	air conditioning driving schedule.
SEA	selective enforcement audit.
SFTP	Supplemental Federal Test Procedure.
SI	International System of Units.
SSV	subsonic venturi.
UDDS	urban dynamometer driving schedule.
US06	aggressive driving schedule.
U.S.C.	United States Code.
WWV	NIST radio station call sign.

(f) *Densities of chemical species.* This part uses the following densities of chemical species:

TABLE 6 OF § 1066.1005—DENSITIES OF CHEMICAL SPECIES

Symbol	Quantity [a] [b]	g/m³	g/ft³
ρ_{CH4}	density of methane	666.905	18.8847
ρ_{CH3OH}	density of methanol	1332.02	37.7185
ρ_{C2H5OH}	C_1-equivalent density of ethanol	957.559	27.1151
ρ_{C2H4O}	C_1-equivalent density of acetaldehyde	915.658	25.9285
ρ_{C3H8}	density of propane	611.035	17.3026
ρ_{C3H7OH}	C_1-equivalent density of propanol	832.74	23.5806
ρ_{CO}	density of carbon monoxide	1164.41	32.9725
ρ_{CO2}	density of carbon dioxide	1829.53	51.8064
$\rho_{HC\text{-}gas}$	effective density of hydrocarbon—gaseous fuel [c]	(see 3)	(see 3)

TABLE 6 OF § 1066.1005—DENSITIES OF CHEMICAL SPECIES—Continued

Symbol	Quantity [a] [b]	g/m³	g/ft³
ρ_{CH2O}	density of formaldehyde	1248.21	35.3455
$\rho_{HC\text{-}liq}$	effective density of hydrocarbon—liquid fuel [d]	576.816	16.3336
$\rho_{NMHC\text{-}gas}$	effective density of nonmethane hydrocarbon—gaseous fuel [c].	(see 3)	(see 3)
$\rho_{NMHC\text{-}liq}$	effective density of nonmethane hydrocarbon—liquid fuel [d]	576.816	16.3336
$\rho_{NMHCE\text{-}gas}$	effective density of nonmethane equivalent hydrocarbon—gaseous fuel [c].	(see 3)	(see 3)
$\rho_{NMHCE\text{-}liq}$	effective density of nonmethane equivalent hydrocarbon—liquid fuel [d].	576.816	16.3336
ρ_{NOx}	effective density of oxides of nitrogen [e]	1912.5	54.156
ρ_{N2O}	density of nitrous oxide	1829.66	51.8103
$\rho_{THC\text{-}liq}$	effective density of total hydrocarbon—liquid fuel [d]	576.816	16.3336
$\rho_{THCE\text{-}liq}$	effective density of total equivalent hydrocarbon—liquid fuel [d]	576.816	16.3336

[a] Densities are given at 20 °C and 101.325 kPa.
[b] Densities for all hydrocarbon containing quantities are given in g/m³-carbon atom and g/ft³-carbon atom.
[c] The effective density for natural gas fuel and liquefied petroleum gas fuel are defined by an atomic hydrogen-to-carbon ratio, α, of the hydrocarbon components of the test fuel. $\rho_{HCgas} = 41.57 \cdot (12.011 + (\alpha \cdot 1.008))$.
[d] The effective density for gasoline and diesel fuel are defined by an atomic hydrogen-to-carbon ratio, α, of 1.85.
[e] The effective density of NO_X is defined by the molar mass of nitrogen dioxide, NO_2.

(g) *Constants.* (1) This part uses the following constants for the composition of dry air:

TABLE 7 TO PARAGRAPH (g)(1) OF § 1066.1005—CONSTANTS FOR THE COMPOSITION OF DRY AIR

Symbol	Quantity	mol/mol
x_{Arair}	amount of argon in dry air	0.00934
x_{CO2air}	amount of carbon dioxide in dry air	0.000375
x_{N2air}	amount of nitrogen in dry air	0.78084
x_{O2air}	amount of oxygen in dry air	0.209445

(2) This part uses the following molar masses or effective molar masses of chemical species:

TABLE 8 TO PARAGRAPH (g)(2) OF § 1066.1005—MOLAR MASSES OR EFFECTIVE MOLAR MASSES OF CHEMICAL SPECIES

Symbol	Quantity	g/mol (10^{-3}·kg·mol^{-1})
M_{air}	molar mass of dry air [1].	28.96559

TABLE 8 TO PARAGRAPH (g)(2) OF § 1066.1005—MOLAR MASSES OR EFFECTIVE MOLAR MASSES OF CHEMICAL SPECIES—Continued

Symbol	Quantity	g/mol (10^{-3}·kg·mol^{-1})
M_{H2O}	molar mass of water.	18.01528

[1] See paragraph (g)(1) of this section for the composition of dry air.

(3) This part uses the following molar gas constant for ideal gases:

TABLE 9 TO PARAGRAPH (g)(3) OF § 1066.1005—MOLAR GAS CONSTANT FOR IDEAL GASES

Symbol	Quantity	J/(mol·K) (m^2·kg·s^{-2}·mol^{-1}·K^{-1})
R	molar gas constant	8.314472

(h) *Prefixes.* This part uses the following prefixes to define a quantity:

TABLE 10 TO PARAGRAPH (h) OF § 1066.1005—PREFIXES TO DEFINE A QUANTITY

Symbol	Quantity	Value
n	nano	10^{-9}
μ	micro	10^{-6}
m	milli	10^{-3}

TABLE 10 TO PARAGRAPH (h) OF § 1066.1005—PREFIXES TO DEFINE A QUANTITY—Continued

Symbol	Quantity	Value
c	centi	10^{-2}
k	kilo	10^{3}

TABLE 10 TO PARAGRAPH (h) OF § 1066.1005—PREFIXES TO DEFINE A QUANTITY—Continued

Symbol	Quantity	Value
M	mega	10^6

[79 FR 23823, Apr. 28, 2014, as amended at 80 FR 9124, Feb. 19, 2015; 81 FR 74215, Oct. 25, 2016; 86 FR 34585, June 29, 2021; 87 FR 64866, Oct. 26, 2022; 88 FR 4710, Jan. 24, 2023]

§ 1066.1010 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, EPA must publish a document in the FEDERAL REGISTER and the material must be available to the public. All approved incorporation by reference (IBR) material is available for inspection at EPA and at the National Archives and Records Administration (NARA). Contact EPA at: U.S. EPA, Air and Radiation Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20004; *www.epa.gov/dockets*; (202) 202–1744. For information on inspecting this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov*. The material may be obtained from the following sources:

(a) National Institute of Standards and Technology (NIST), 100 Bureau Drive, Stop 1070, Gaithersburg, MD 20899–1070; (301) 975–6478; *www.nist.gov*.

(1) NIST Special Publication 811, 2008 Edition, Guide for the Use of the International System of Units (SI), Physics Laboratory, March 2008; IBR approved for §§ 1066.20(a); 1066.1005.

(2) [Reserved]

(b) SAE International, 400 Commonwealth Dr., Warrendale, PA 15096–0001; (877) 606–7323 (U.S. and Canada) or (724) 776–4970 (outside the U.S. and Canada); *www.sae.org*.

(1) SAE J1263 MAR2010, Road Load Measurement and Dynamometer Simulation Using Coastdown Techniques, Revised March 2010, (''SAE J1263''); IBR approved for §§ 1066.301(b); 1066.305(a); 1066.310(b).

(2) SAE J1634 JUL2017, Battery Electric Vehicle Energy Consumption and Range Test Procedure, Revised July 2017, (''SAE J1634''); IBR approved for § 1066.501(a).

(3) SAE J1711 FEB2023, Recommended Practice for Measuring the Exhaust Emissions and Fuel Economy of Hybrid-Electric Vehicles, Including Plug-In Hybrid Vehicles; Revised February 2023, (''SAE J1711''); IBR approved for §§ 1066.501(a); 1066.1001.

(4) SAE J2263 DEC2008, Road Load Measurement Using Onboard Anemometry and Coastdown Techniques, Revised December 2008; IBR approved for §§ 1066.301(b); 1066.305; 1066.310(b).

(5) SAE J2263 MAY2020, (R) Road Load Measurement Using Onboard Anemometry and Coastdown Techniques, Revised May 2020, (''SAE J2263''); IBR approved for §§ 1066.301(b); 1066.305; 1066.310(b).

(6) SAE J2264 JAN2014, Chassis Dynamometer Simulation of Road Load Using Coastdown Techniques, Revised January 2014, (''SAE J2264''); IBR approved for § 1066.315.

(7) SAE J2711 MAY2020, (R) Recommended Practice for Measuring Fuel Economy and Emissions of Hybrid-Electric and Conventional Heavy-Duty Vehicles, Revised May 2020, (''SAE J2711''); IBR approved for §§ 1066.501(a); 1066.1001.

(8) SAE J2951 JAN2014, Drive Quality Evaluation for Chassis Dynamometer Testing, Revised January 2014, (''SAE J2951''); IBR approved for § 1066.425(j).

(c) *California Air Resources Board (California ARB)*. California Air Resources Board, 1001 I Street, Sacramento, CA 95812; (916) 322–2884; *www.arb.ca.gov:*

(1) California 2026 and Subsequent Model Year Criteria Pollutant Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, And Medium-Duty Vehicles (''California ARB's LMDV Test Procedures''); Adopted August 25, 2022; IBR approved for § 1066.801(c).

(2) California Test Procedures for 2026 and Subsequent Model Year Zero-Emission Vehicles and Plug-In Hybrid Electric Vehicles, in the Passenger Car, Light-Duty Truck and Medium-Duty Vehicle Classes (''California ARB's

PHEV Test Procedures''); Adopted August 25, 2022; IBR approved for §1066.801(c).

[88 FR 4711, Jan. 24, 2023, as amended at 89 FR 28215, Apr. 18, 2024]

PART 1068—GENERAL COMPLIANCE PROVISIONS FOR HIGHWAY, STATIONARY, AND NONROAD PROGRAMS

Subpart A—Applicability and Miscellaneous Provisions

Subpart B—Prohibited Actions and Related Requirements

Subpart C—Exemptions and Exclusions

Subpart D—Imports

Subpart E—Selective Enforcement Auditing

AUTHORITY: 42 U.S.C. 7401–7671q.

SOURCE: 73 FR 59344, Oct. 8, 2008, unless otherwise noted.

Subpart A—Applicability and Miscellaneous Provisions

§ 1068.1 Does this part apply to me?

(a) The provisions of this part apply to everyone with respect to the engine and equipment categories as described in this paragraph (a). The provisions of this part apply to everyone, including owners, operators, parts manufacturers, and persons performing maintenance. Where we identify an engine category, the provisions of this part also apply with respect to the equipment using such engines. This part applies to different engine and equipment categories as follows:

(1) This part applies to motor vehicles we regulate under 40 CFR part 86, subpart S, to the extent and in the manner specified in 40 CFR parts 85 and 86.

(2) This part 1068 applies for heavy-duty motor vehicles and motor vehicle engines we regulate under 40 CFR parts 1036 and 1037. This includes trailers. This part 1068 applies to heavy-duty motor vehicles and motor vehicle engines certified under 40 CFR part 86 to the extent and in the manner specified in 40 CFR parts 85, 86, and 1036.

(3) This part applies to highway motorcycles we regulate under 40 CFR part 86, subparts E and F, to the extent and in the manner specified in 40 CFR parts 85 and 86.

(4) This part applies to aircraft and aircraft engines we regulate under 40 CFR parts 1030 and 1031 to the extent and in the manner specified in 40 CFR parts 1030 and 1031.

(5) This part 1068 applies for locomotives that are subject to the provisions of 40 CFR part 1033.

(6) This part 1068 applies for land-based nonroad compression-ignition engines that are subject to the provisions of 40 CFR part 1039. This part 1068 applies for engines certified under 40 CFR part 89 to the extent and in the manner specified in 40 CFR part 1039.

(7) This part applies for stationary compression-ignition engines certified using the provisions of 40 CFR parts 1039 and 1042 as described in 40 CFR part 60, subpart IIII.

(8) This part 1068 applies for marine compression-ignition engines that are subject to the provisions of 40 CFR part 1042. This part 1068 applies for marine compression-ignition engines certified under 40 CFR part 94 to the extent and in the manner specified in 40 CFR part 1042.

(9) This part 1068 applies for marine spark-ignition engines that are subject to the provisions of 40 CFR part 1045. This part 1068 applies for marine spark-ignition engines certified under 40 CFR part 91 to the extent and in the manner specified in 40 CFR part 1045.

(10) This part applies for large nonroad spark-ignition engines that are subject to the provisions of 40 CFR part 1048.

(11) This part applies for stationary spark-ignition engines certified using the provisions of 40 CFR part 1048 or 1054, as described in 40 CFR part 60, subpart JJJJ.

(12) This part applies for recreational engines and vehicles, including snowmobiles, off-highway motorcycles, and all-terrain vehicles that are subject to the provisions of 40 CFR part 1051.

(13) This part applies for small nonroad spark-ignition engines that are subject to the provisions of 40 CFR part 1054. This part 1068 applies for nonroad spark-ignition engines certified under 40 CFR part 90 to the extent and in the manner specified in 40 CFR part 1054.

(14) This part applies for fuel-system components installed in nonroad equipment powered by volatile liquid fuels that are subject to the provisions of 40 CFR part 1060.

(15) This part 1068 applies to portable fuel containers we regulate under 40 CFR part 59 to the extent and in the manner specified in 40 CFR part 59, subpart F.

(b) [Reserved]

(c) Paragraph (a) of this section identifies the parts of the CFR that define emission standards and other requirements for particular types of engines and equipment. This part 1068 refers to each of these other parts generically as the ''standard-setting part.'' For example, 40 CFR part 1051 is always the standard-setting part for snowmobiles. Follow the provisions of the standard-setting part if they are different than any of the provisions in this part.

(d) Specific provisions in this part 1068 start to apply separate from the schedule for certifying engines/equipment to new emission standards, as follows:

(1) The provisions of §§ 1068.30 and 1068.310 apply for stationary spark-ignition engines built on or after January 1, 2004, and for stationary compression-ignition engines built on or after January 1, 2006.

(2) [Reserved]

(3) The standard-setting part may specify how the provisions of this part 1068 apply for uncertified engines/equipment.

[81 FR 74217, Oct. 25, 2016, as amended at 86 FR 34588, June 29, 2021; 88 FR 4712, Jan. 24, 2023]

§ 1068.2 How does this part apply for engines and how does it apply for equipment?

(a) See the standard-setting part to determine if engine-based and/or equipment-based standards apply. (Note: Some equipment is subject to engine-based standards for exhaust emission and equipment-based standards for evaporative emissions.)

(b) The provisions of this part apply differently depending on whether the engine or equipment is required to be certified.

(1) Subpart A and subpart B of this part apply to engines and equipment, without regard to which is subject to certification requirements in the standard-setting part.

(2) Subparts C, D, and E of this part apply to the engines or to the equipment, whichever is subject to certification requirements in the standard-setting part.

(3) Subpart F of this part generally applies to the engines or to the equipment, whichever is subject to standards under the standard-setting part. However, since subpart F of this part addresses in-use engines and equipment (in which the engine is installed in the equipment), the requirements do not always distinguish between engines and equipment.

(c) For issues related to testing, read the term ''engines/equipment'' to mean engines for engines subject to engine-based testing and equipment for equipment subject to equipment-based testing; otherwise, read the term ''engines/equipment'' to mean engines for sources subject to engine-based standards and equipment for sources subject to equipment-based standards.

(d) When we use the term engines (rather than engines/equipment), read

it to mean engines without regard to whether the source is subject to engine-based standards or testing. When we use the term equipment (rather than engines/equipment), read it to mean equipment without regard to whether the source is subject to equipment-based standards or testing. (Note: The definition of ''equipment'' in §1068.30 includes the engine.)

(e) The terminology convention described in this section is not intended to limit our authority or your obligations under the Clean Air Act.

§1068.5 How must manufacturers apply good engineering judgment?

(a) You must use good engineering judgment for decisions related to any requirements under this chapter. This includes your applications for certification, any testing you do to show that your certification, production-line, and in-use engines/equipment comply with requirements that apply to them, and how you select, categorize, determine, and apply these requirements.

(b) If we send you a written request, you must give us a written description of the engineering judgment in question. Respond within 15 working days of receiving our request unless we allow more time.

(c) We may reject your decision if it is not based on good engineering judgment or is otherwise inconsistent with the requirements that apply, based on the following provisions:

(1) We may suspend, revoke, or void a certificate of conformity if we determine you deliberately used incorrect information or overlooked important information, that you did not decide in good faith, or that your decision was not rational.

(2) If we believe a different decision would better reflect good engineering judgment, but none of the provisions of paragraph (c)(1) of this section apply, we will tell you of our concern (and its basis). You will have 30 days to respond to our concerns, or more time if we agree that you need it to generate more information. After considering your information, we will give you a final ruling. If we conclude that you did not use good engineering judgment, we may reject your decision and apply the new ruling to similar situations as soon as possible.

(d) We will tell you in writing of the conclusions we reach under paragraph (c) of this section and explain our reasons for them.

(e) If you disagree with our conclusions, you may file a request for a hearing with the Designated Compliance Officer as described in subpart G of this part. In your request, specify your objections, include data or supporting analysis, and get your authorized representative's signature. If we agree that your request raises a substantial factual issue, we will hold the hearing according to subpart F of this part.

§1068.10 Practices for handling confidential business information.

The provisions of this section apply both to any information you send us and to any information we collect from inspections, audits, or other site visits.

(a) When you submit information to us, if you claim any of that information as confidential, you may identify what you claim to be confidential by marking, circling, bracketing, stamping, or some other method; however, we will not consider any claims of confidentiality over information we have determined to be not entitled to confidential treatment under §1068.11 or other applicable provisions.

(b) If you send us information without claiming it is confidential, we may make it available to the public without further notice to you, as described in 40 CFR 2.301(j).

(c) For submissions that include information that may be entitled to confidential treatment, we may require that you send a ''public'' copy of the report that does not include the confidential information. We may require that you substantiate your claim to confidential treatment for any items not contained in the public version. We will release additional information from the complete version of such a submission only as allowed under 40 CFR 2.301(j) and as described in this subpart and the standard-setting part.

(d) We will safeguard your confidential business information (CBI) as described in 40 CFR 2.301(j). Also, we will

treat certain information as confidential and will only disclose this information if it has been determined to be not entitled to confidential treatment as specified in §1068.11(c). The following general provisions describe how we will process requests for making information publicly available:

(1) *Certification information.* We will treat information submitted in an application for certification as confidential until the introduction-into-commerce date you identify in your application for certification consistent with 40 CFR 2.301(a)(2)(ii)(B). If you do not identify an introduction-into-commerce date or if we issue the certificate after your specified date, we will treat information submitted in an application for certification as described in §1068.11 after the date we issue the certificate.

(2) *Preliminary and superseded information.* Preliminary and superseded versions of information you submit are covered by confidentiality determinations in the same manner as final documents. However, we will generally not disclose preliminary or superseded information unless we receive a request under 5 U.S.C. 552 that specifically asks for all versions of a document, including preliminary and superseded versions. We will consider a document preliminary if we have not reviewed it to verify its accuracy or if the reporting deadline has not yet passed. We will consider information superseded if you submit a new document or a revised application for certification to replace the earlier version.

(3) *Authorizing CBI disclosure.* The provisions of this section do not prevent us from disclosing protected information if you specifically authorize it.

(4) *Relationship to the standard-setting part.* The standard-setting part may identify additional provisions related to confidentiality determinations. Note that the standard-setting part identifies information requirements that apply for each type of engine/equipment. If this section identifies information that is not required for a given engine, that does not create a requirement to submit the information.

(5) *Changes in law.* The confidentiality determinations in this section and in the standard-setting parts may be changed through the processes described in 40 CFR 2.301(j)(4).

[88 FR 4712, Jan. 24, 2023]

§1068.11 Confidentiality determinations and related procedures.

This section characterizes various categories of information for purposes of making confidentiality determinations, as follows:

(a) This paragraph (a) applies the definition of ''Emission data'' in 40 CFR 2.301(a) for information related to engines/equipment subject to this part. ''Emission data'' cannot be treated as confidential business information and shall be available to be disclosed to the public except as specified in §1068.10(d)(1). The following categories of information qualify as emission data, except as specified in paragraph (c) of this section:

(1) Certification and compliance information, including information submitted in an application for a certificate of conformity that is used to assess compliance.

(2) Fleet value information, including information submitted for compliance with fleet average emission standards and emissions related ABT credit information, including the information used to generate credits.

(3) Source family information. For example, engine family information or test group information would identify the regulated emission source.

(4) Test information and results, including emission test results and other data from emission testing that are submitted in an application for a certificate of conformity, test results from in-use testing, production-line testing, and any other testing to demonstrate emissions. The information in this category includes all related information to characterize test results, document the measurement procedure, and modeling inputs and outputs where the compliance demonstration is based on computer modeling.

(5) ABT credit information, including information submitted for current and future compliance demonstrations using credits under an ABT program.

(6) Production volume, including information submitted for compliance with fleet average emission standards, compliance with requirements to test

production engines/equipment, or compliance through ABT programs.

(7) Defect and recall information, including all information submitted in relation to a defect or recall except the remedial steps you identify in §1068.510(a)(2).

(8) Selective enforcement audit compliance information.

(b) The following categories of information are not eligible for confidential treatment, except as specified in §1068.10(d)(1):

(1) Published information, including information that is made available in annual and quarterly filings submitted to the U.S. Securities and Exchanges Commission, on company websites, or otherwise made publicly available by the information submitter.

(2) Observable information available to the public after the introduction to commerce date.

(c) The following categories of information are subject to the process for confidentiality determinations in 40 CFR part 2 as described in 40 CFR 2.301(j)(5):

(1) Projected sales volume and projected production volume.

(2) Production start and end dates.

(3) Detailed description of emission control operation and function.

(4) Design specifications related to aftertreatment devices.

(5) Description of auxiliary emission control devices (AECDs).

(6) Plans for meeting regulatory requirements. For example, this applies for any projections of emission credits for the coming model year or determinations of the number of required repair facilities that are based on projected production volumes.

(7) The following information related to deterioration factors and other adjustment factors:

(i) Procedures to determine deterioration factors and other emission adjustment factors.

(ii) Any information used to justify those procedures.

(iii) Emission measurements you use to compare procedures or demonstrate that the procedures are appropriate.

(8) Financial information related to the following items:

(i) ABT credit transactions, including dollar amount, identity of parties, and contract information.

(ii) Meeting bond requirements, including aggregate U.S. asset holdings, financial details regarding specific assets, whether the manufacturer or importer obtains a bond, and copies of bond policies.

(9) Serial numbers or other information to identify specific engines or equipment selected for testing.

(10) Procedures that apply based on your request to test engines/equipment differently than we specify in the regulation. This applies for special and alternative test procedures. This also applies, for example, if we approve a broader or narrower zone of engine operation for not-to-exceed testing.

(11) Information related to testing vanadium catalysts in 40 CFR part 1065, subpart L.

(12) GPS data identifying the location for in-use emission measurements.

(13) Information related to possible defects that are subject to further investigation (not confirmed defects).

(14) Information submitted in support of a requested exemption.

(d) If you submit information that is not addressed in paragraphs (a) through (c) of this section, you may claim the information as confidential. We may require you to provide us with information to substantiate your claims. If claimed, we may consider this substantiating information to be confidential to the same degree as the information for which you are requesting confidential treatment. We will make our determination based on your statements to us, the supporting information you send us, and any other available information. However, we may determine that your information is not subject to confidential treatment consistent with 40 CFR part 2 and 5 U.S.C. 552(b)(4).

(e) Applications for certification and submitted reports typically rely on software or templates to identify specific categories of information. If you submit information in a comment field designated for users to add general information, we will respond to requests

for disclosing that information consistent with paragraphs (a) through (d) of this section.

[88 FR 4713, Jan. 24, 2023]

§ 1068.15 General provisions for EPA decision-making.

(a) Not all EPA employees may represent the Agency with respect to EPA decisions under this part or the standard-setting part. Only the Administrator of the Environmental Protection Agency or an official to whom the Administrator has delegated specific authority may represent the Agency. For more information, ask for a copy of the relevant sections of the EPA Delegations Manual from the Designated Compliance Officer.

(b) The regulations in this part and in the standard-setting part have specific requirements describing how to get EPA approval before you take specific actions. These regulations also allow us to waive some specific requirements. For provisions or flexibilities that we address frequently, we may choose to provide detailed guidance in supplemental compliance instructions for manufacturers. Such instructions will generally state how they relate to the need for pre-approval. Unless we explicitly state so, you should not consider full compliance with the instructions to be equivalent to EPA approval.

[73 FR 59344, Oct. 8, 2008, as amended at 81 FR 74217, Oct. 25, 2016]

§ 1068.20 May EPA enter my facilities for inspections?

(a) We may inspect your testing, manufacturing processes, storage facilities (including port facilities for imported engines and equipment or other relevant facilities), or records, as authorized by the Clean Air Act, to enforce the provisions of this chapter. Inspectors will have authorizing credentials and will limit inspections to reasonable times—usually, normal operating hours.

(b) We may select any facility to do any of the following:

(1) Inspect and monitor any aspect of engine or equipment manufacturing, assembly, storage, or other procedures, and any facilities where you do them.

(2) Inspect and monitor any aspect of engine or equipment test procedures or test-related activities, including test engine/equipment selection, preparation, service accumulation, emission duty cycles, and maintenance and verification of your test equipment's calibration.

(3) Inspect and copy records or documents related to assembling, storing, selecting, and testing an engine or piece of equipment.

(4) Inspect and photograph any part or aspect of engines or equipment and components you use for assembly.

(c) You must give us reasonable help without charge during an inspection authorized by the Clean Air Act. For example, you may need to help us arrange an inspection with the facility's managers, including clerical support, copying, and translation. You may also need to show us how the facility operates and answer other questions. If we ask in writing to see a particular employee at the inspection, you must ensure that he or she is present (legal counsel may accompany the employee).

(d) If you have facilities in other countries, we expect you to locate them in places where local law does not keep us from inspecting as described in this section. We will not try to inspect if we learn that local law prohibits it, but we may suspend your certificate if we are not allowed to inspect.

[73 FR 59344, Oct. 8, 2008, as amended at 81 FR 74217, Oct. 25, 2016]

§ 1068.25 What information must I give to EPA?

If you are subject to the requirements of this part, we may require you to give us information to evaluate your compliance with any regulations that apply, as authorized by the Clean Air Act. This includes the following things:

(a) You must provide the information we require in this chapter. We may require an authorized representative of your company to approve and sign any submission of information to us, and to certify that the information is accurate and complete.

(b) You must establish and maintain records, perform tests, make reports and provide additional information that we may reasonably require under section 208 of the Clean Air Act (42

U.S.C. 7542). This also applies to engines/equipment we exempt from emission standards or prohibited acts. Unless we specify otherwise, you must keep required records for eight years.

(c) You are responsible for statements and information in your applications for certification or any other requests or reports. If you provide statements or information to someone for submission to EPA, you are responsible for these statements and information as if you had submitted them to EPA yourself. For example, knowingly submitting false information to someone else for inclusion in an application for certification would be deemed to be a submission of false information to the U.S. government in violation of 18 U.S.C. 1001.

[73 FR 59344, Oct. 8, 2008, as amended at 75 FR 23058, Apr. 30, 2010]

§ 1068.27 May EPA conduct testing with my engines/equipment?

(a) As described in the standard-setting part, we may perform testing on your engines/equipment before we issue a certificate of conformity. This is generally known as confirmatory testing.

(b) If we request it, you must make a reasonable number of production-line engines or pieces of production-line equipment available for a reasonable time so we can test or inspect them for compliance with the requirements of this chapter.

(c) If your emission-data engine/equipment or production engine/equipment requires special components for proper testing, you must promptly provide any such components to us if we ask for them.

[81 FR 74217, Oct. 25, 2016]

§ 1068.30 Definitions.

The following definitions apply to this part. The definitions apply to all subparts unless we note otherwise. All undefined terms have the meaning the Clean Air Act gives to them. The definitions follow:

Affiliated companies or *affiliates* means one of the following:

(1) For determinations related to small manufacturer allowances or other small business provisions, these terms mean all entities considered to be affiliates with your entity under the Small Business Administration's regulations in 13 CFR 121.103.

(2) For all other provisions, these terms mean all of the following:

(i) Parent companies (as defined in this section).

(ii) Subsidiaries (as defined in this section).

(iii) Subsidiaries of your parent company.

Aftertreatment means relating to a catalytic converter, particulate filter, or any other system, component, or technology mounted downstream of the exhaust valve (or exhaust port) whose design function is to reduce emissions in the engine exhaust before it is exhausted to the environment. Exhaust gas recirculation (EGR) is not aftertreatment.

Aircraft means any vehicle capable of sustained air travel more than 100 feet above the ground.

Certificate holder means a manufacturer (including importers) with a valid certificate of conformity for at least one family in a given model year, or the preceding model year. Note that only manufacturers may hold certificates. Your applying for or accepting a certificate is deemed to be your agreement that you are a manufacturer.

Clean Air Act means the Clean Air Act, as amended, 42 U.S.C. 7401– 7671q.

Critical emission-related component means a part or system whose primary purpose is to reduce emissions or whose failure would commonly increase emissions without significantly degrading engine/equipment performance.

Date of manufacture means one of the following:

(1) For engines, the date on which the crankshaft is installed in an engine block, with the following exceptions:

(i) For engines produced by secondary engine manufacturers under § 1068.262, date of manufacture means the date the engine is received from the original engine manufacturer. You may assign an earlier date up to 30 days before you received the engine, but not before the crankshaft was installed. You may not assign an earlier date if you cannot demonstrate the date the crankshaft was installed.

(ii) Manufacturers may assign a date of manufacture at a point in the assembly process later than the date otherwise specified under this definition. For example, a manufacturer may use the build date printed on the label or stamped on the engine as the date of manufacture.

(2) For equipment, the date on which the engine is installed, unless otherwise specified in the standard-setting part. Manufacturers may alternatively assign a date of manufacture later in the assembly process.

Days means calendar days, including weekends and holidays.

Defeat device has the meaning given in the standard-setting part.

Designated Compliance Officer means one of the following:

(1) For motor vehicles regulated under 40 CFR part 86, subpart S: Director, Light-Duty Vehicle Center, U.S. Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; *complianceinfo@epa.gov*; *www.epa.gov/ve-certification*.

(2) For compression-ignition engines used in heavy-duty highway vehicles regulated under 40 CFR part 86, subpart A, and 40 CFR parts 1036 and 1037, and for nonroad and stationary compression-ignition engines or equipment regulated under 40 CFR parts 60, 1033, 1039, and 1042: Director, Diesel Engine Compliance Center, U.S. Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; *complianceinfo@epa.gov*; *www.epa.gov/ve-certification*.

(3) Director, Gasoline Engine Compliance Center, U.S. Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; *complianceinfo@epa.gov*; *www.epa.gov/ve-certification*, for all the following engines and vehicles:

(i) For spark-ignition engines used in heavy-duty highway vehicles regulated under 40 CFR part 86, subpart A, and 40 CFR parts 1036 and 1037,

(ii) For highway motorcycles regulated under 40 CFR part 86, subpart E.

(iii) For nonroad and stationary spark-ignition engines or equipment regulated under 40 CFR parts 60, 1045, 1048, 1051, 1054, and 1060.

Engine means an engine block with an installed crankshaft, or a gas turbine engine. The term engine does not include engine blocks without an installed crankshaft, nor does it include any assembly of reciprocating engine components that does not include the engine block. (NOTE: For purposes of this definition, any component that is the primary means of converting an engine's energy into usable work is considered a crankshaft, whether or not it is known commercially as a crankshaft.) This includes complete and partially complete engines as follows:

(1) A complete engine is a fully assembled engine in its final configuration. In the case of equipment-based standards, an engine is not considered complete until it is installed in the equipment, even if the engine itself is fully assembled.

(2) A partially complete engine is an engine that is not fully assembled or is not in its final configuration. Except where we specify otherwise in this part or the standard-setting part, partially complete engines are subject to the same standards and requirements as complete engines. The following would be considered examples of partially complete engines:

(i) An engine that is missing certain emission-related components.

(ii) A new engine that was originally assembled as a motor-vehicle engine that will be recalibrated for use as a nonroad engine.

(iii) A new engine that was originally assembled as a land-based engine that will be modified for use as a marine propulsion engine.

(iv) A short block consisting of a crankshaft and other engine components connected to the engine block, but missing the head assembly.

(v) A long block consisting of all engine components except the fuel system and an intake manifold.

(vi) In the case of equipment-based standards, a fully functioning engine that is not yet installed in the equipment. For example, a fully functioning engine that will be installed in an off-highway motorcycle or a locomotive is considered partially complete until it is installed in the equipment.

Engine-based standard means an emission standard expressed in units of grams of pollutant per kilowatt-hour (or grams of pollutant per horsepower-

hour) that applies to the engine. Emission standards are either engine-based or equipment-based. Note that engines may be subject to additional standards such as smoke standards.

Engine-based test means an emission test intended to measure emissions in units of grams of pollutant per kilowatt-hour (or grams of pollutant per horsepower-hour), without regard to whether the standard applies to the engine or equipment. Note that some products that are subject to engine-based testing are subject to additional test requirements such as for smoke.

Engine configuration means a unique combination of engine hardware and calibration within an engine family. Engines within a single engine configuration differ only with respect to normal production variability or factors unrelated to emissions.

Engine/equipment and *engines/equipment* mean engine(s) and/or equipment depending on the context. Specifically these terms mean the following:

(1) Engine(s) when only engine-based standards apply.

(2) Engine(s) for testing issues when engine-based testing applies.

(3) Engine(s) and equipment when both engine-based and equipment-based standards apply.

(4) Equipment when only equipment-based standards apply.

(5) Equipment for testing issues when equipment-based testing applies.

Equipment means one of the following things:

(1) Any vehicle, vessel, or other type of equipment that is subject to the requirements of this part or that uses an engine that is subject to the requirements of this part. An installed engine is part of the equipment. Motor vehicle trailers are a type of equipment that is subject to the requirements of this part.

(2) Fuel-system components that are subject to an equipment-based standard under this chapter. Installed fuel-system components are also considered part of the engine/equipment to which they are attached.

Equipment-based standard means an emission standard that applies to the equipment in which an engine is used or to fuel-system components associated with an engine, without regard to how the emissions are measured. If equipment-based standards apply, we require that the equipment or fuel-system components be certified rather than just the engine. Emission standards are either engine-based or equipment-based. For example, recreational vehicles we regulate under 40 CFR part 1051 are subject to equipment-based standards even if emission measurements are based on engine operation alone.

Excluded means relating to engines/equipment that are not subject to emission standards or other requirements because they do not meet the definitions or other regulatory provisions that define applicability. For example, a non-stationary engine that is used solely for off-highway competition is excluded from the requirements of this part because it meets neither the definition of ''motor vehicle engine'' nor ''nonroad engine'' under section 216 of the Clean Air Act.

Exempted means relating to engines/equipment that are subject to certain standards or other requirements, but are not required to meet those standards or requirements, subject to one or more qualifying conditions. Exempted engines/equipment must conform to regulatory conditions specified for an exemption in this part 1068 or in the standard-setting part. Engines/equipment exempted with respect to a certain tier of standards may be required to comply with an earlier tier of standards as a condition of the exemption; for example, engines exempted with respect to Tier 3 standards may be required to comply with Tier 1 or Tier 2 standards.

Family means engine family, emission family, or test group, as applicable, under the standard-setting part.

Final deteriorated test result has the meaning given in the standard-setting part. If it is not defined in the standard-setting part, it means the emission level that results from applying all appropriate adjustments (such as deterioration factors) to the measured emission result of the emission-data engine.

Gas turbine engine means anything commercially known as a gas turbine engine or any collection of assembled engine components that is substantially similar to engines commercially

known as gas turbine engines. For example, a jet engine is a gas turbine engine. Gas turbine engines may be complete or partially complete. Turbines that rely on external combustion such as steam engines are not gas turbine engines.

Good engineering judgment means judgments made consistent with generally accepted scientific and engineering principles and all available relevant information. See §1068.5.

Manufacturer has the meaning given in section 216(1) of the Clean Air Act (42 U.S.C. 7550(1)). In general, this term includes any person who manufactures or assembles an engine or piece of equipment for sale in the United States or otherwise introduces a new engine or piece of equipment into U.S. commerce. This includes importers that import new engines or new equipment into the United States for resale. It also includes secondary engine manufacturers.

Model year has the meaning given in the standard-setting part. Unless the standard-setting part specifies otherwise, model year for individual engines/equipment is based on the date of manufacture or a later stage in the assembly process determined by the manufacturer, subject to the limitations described in §§1068.103 and 1068.360. The model year of a new engine that is neither certified nor exempt is deemed to be the calendar year in which it is sold, offered for sale, imported, or delivered or otherwise introduced into U.S. commerce.

Motor vehicle has the meaning given in 40 CFR 85.1703.

New has the meaning we give it in the standard-setting part. Note that in certain cases, used and remanufactured engines/equipment may be ''new'' engines/equipment.

Nonroad engine means:

(1) Except as discussed in paragraph (2) of this definition, a nonroad engine is an internal combustion engine that meets any of the following criteria:

(i) It is (or will be) used in or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers).

(ii) It is (or will be) used in or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers).

(iii) By itself or in or on a piece of equipment, it is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

(2) An internal combustion engine is not a nonroad engine if it meets any of the following criteria:

(i) The engine is used to propel a motor vehicle, an aircraft, or equipment used solely for competition.

(ii) The engine is regulated under 40 CFR part 60, (or otherwise regulated by a federal New Source Performance Standard promulgated under section 111 of the Clean Air Act (42 U.S.C. 7411)). Note that this criterion does not apply for engines meeting any of the criteria of paragraph (1) of this definition that are voluntarily certified under 40 CFR part 60.

(iii) The engine otherwise included in paragraph (1)(iii) of this definition remains or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. For any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced, include the time period of both engines in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (*i.e.*, at least two years) and that operates at that single location approximately three months (or more) each year. See §1068.31 for provisions that apply if the engine is removed from the location.

Operating hours means:

(1) For engine and equipment storage areas or facilities, times during which

people other than custodians and security personnel are at work near, and can access, a storage area or facility.

(2) For other areas or facilities, times during which an assembly line operates or any of the following activities occurs:

(i) Testing, maintenance, or service accumulation.

(ii) Production or compilation of records.

(iii) Certification testing.

(iv) Translation of designs from the test stage to the production stage.

(v) Engine or equipment manufacture or assembly.

Parent company means any entity that has a controlling ownership of another company. Note that the standard-setting part may treat a partial owner as a parent company even if it does not have controlling ownership of a company.

Piece of equipment means any vehicle, vessel, locomotive, aircraft, or other type of equipment equipped with engines to which this part applies.

Placed into service means used for its intended purpose. Engines/equipment do not qualify as being ''placed into service'' based on incidental use by a manufacturer or dealer.

Reasonable technical basis means information that would lead a person familiar with engine design and function to reasonably believe a conclusion related to compliance with the requirements of this part. For example, it would be reasonable to believe that parts performing the same function as the original parts (and to the same degree) would control emissions to the same degree as the original parts. Note that what is a reasonable basis for a person without technical training might not qualify as a reasonable technical basis.

Relating to as used in this section means relating to something in a specific, direct manner. This expression is used in this section only to define terms as adjectives and not to broaden the meaning of the terms. Note that ''relating to'' is used in the same manner as in the standard-setting parts.

Replacement engine means an engine exempted as a replacement engine under § 1068.240.

Revoke means to terminate the certificate or an exemption for a family. If we revoke a certificate or exemption, you must apply for a new certificate or exemption before continuing to introduce the affected engines/equipment into U.S. commerce. This does not apply to engines/equipment you no longer possess.

Secondary engine manufacturer means anyone who produces a new engine by modifying a complete or partially complete engine that was made by a different company. For the purpose of this definition, ''modifying'' does not include making changes that do not remove an engine from its original certified configuration. Secondary engine manufacturing includes, for example, converting automotive engines for use in industrial applications, or land-based engines for use in marine applications. This applies whether it involves a complete or partially complete engine and whether the engine was previously certified to emission standards or not.

(1) Manufacturers controlled by the manufacturer of the base engine (or by an entity that also controls the manufacturer of the base engine) are not secondary engine manufacturers; rather, both entities are considered to be one manufacturer for purposes of this part.

(2) This definition applies equally to equipment manufacturers that modify engines. Also, equipment manufacturers that certify to equipment-based standards using engines produced by another company are deemed to be secondary engine manufacturers.

(3) Except as specified in paragraph (2) of this definition, companies importing complete engines into the United States are not secondary engine manufacturers regardless of the procedures and relationships between companies for assembling the engines.

Small business means either of the following:

(1) A company that qualifies under the standard-setting part for special provisions for small businesses or small-volume manufacturers.

(2) A company that qualifies as a small business under the regulations

adopted by the Small Business Administration at 13 CFR 121.201 if the standard-setting part does not establish such qualifying criteria.

Standard-setting part means a part in the Code of Federal Regulations that defines emission standards for a particular engine and/or piece of equipment (see §1068.1(a)). For example, the standard-setting part for marine spark-ignition engines is 40 CFR part 1045. For provisions related to evaporative emissions, the standard-setting part may be 40 CFR part 1060, as specified in 40 CFR 1060.1.

Subsidiary means an entity that is owned or controlled by a parent company.

Sulfur-sensitive technology means an emission control technology that experiences a significant drop in emission control performance or emission-system durability when an engine is operated on low-sulfur diesel fuel (*i.e.*, fuel with a sulfur concentration of 300 to 500 ppm) as compared to when it is operated on ultra low-sulfur diesel fuel (*i.e.*, fuel with a sulfur concentration less than 15 ppm). Exhaust gas recirculation is not a sulfur-sensitive technology.

Suspend means to temporarily discontinue the certificate or an exemption for a family. If we suspend a certificate, you may not sell, offer for sale, or introduce or deliver into commerce in the United States or import into the United States engines/equipment from that family unless we reinstate the certificate or approve a new one. This also applies if we suspend an exemption, unless we reinstate the exemption.

Ultimate purchaser means the first person who in good faith purchases a new engine or new piece of equipment for purposes other than resale.

United States, in a geographic sense, means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, and the U.S. Virgin Islands.

U.S.-directed production volume has the meaning given in the standard-setting part.

Void means, with respect to a certificate of conformity or an exemption, to invalidate the certificate or the exemption ab initio (''from the beginning''). If we void a certificate, all the engines/equipment introduced into U.S. commerce under that family for that model year are considered uncertified (or nonconforming) and are therefore not covered by a certificate of conformity, and you are liable for all engines/equipment introduced into U.S. commerce under the certificate and may face civil or criminal penalties or both. This applies equally to all engines/equipment in the family, including engines/equipment introduced into U.S. commerce before we voided the certificate. If we void an exemption, all the engines/equipment introduced into U.S. commerce under that exemption are considered uncertified (or nonconforming), and you are liable for engines/equipment introduced into U.S. commerce under the exemption and may face civil or criminal penalties or both. You may not sell, offer for sale, or introduce or deliver into commerce in the United States or import into the United States any additional engines/equipment using the voided exemption.

Voluntary emission recall means a repair, adjustment, or modification program voluntarily initiated and conducted by a manufacturer to remedy any emission-related defect for which engine owners have been notified.

We (us, our) means the Administrator of the Environmental Protection Agency and any authorized representatives.

[81 FR 74218, Oct. 25, 2016, as amended at 88 FR 4714, Jan. 24, 2023; 89 FR 28215, Apr. 18, 2024]

§1068.31 Changing the status of nonroad or stationary engines under the definition of "nonroad engine".

This section specifies the provisions that apply when an engine previously used in a nonroad application is subsequently used in an application other than a nonroad application, or when an engine previously used in a stationary application (*i.e.*, an engine that was not used as a nonroad engine and that was not used to propel a motor vehicle, an aircraft, or equipment used solely for competition) is moved.

(a) Changing the status of a stationary engine to be a new nonroad engine as described in paragraph (b) of

this section is a violation of §1068.101(a)(1) or (b)(3) unless the engine has been certified to be compliant with all requirements of this chapter that apply to new nonroad engines of the same type (for example, a compression-ignition engine rated at 40 kW) and model year, and is in its certified configuration. Note that the definitions of ''model year'' in the standard-setting parts generally identify the engine's original date of manufacture as the basis for determining which standards apply if it becomes a nonroad engine after it is no longer new. For example, see 40 CFR 1039.801 and 1048.801.

(b) A stationary engine becomes a new nonroad engine if—

(1) It is used in an application that meets the criteria specified in paragraphs (1)(i) or (ii) in the definition of ''nonroad engine'' in §1068.30.

(2) It meets the criteria specified in paragraph (1)(iii) of the definition of ''nonroad engine'' in §1068.30 and is moved so that it fails to meet (or no longer meets) the criteria specified in paragraph (2)(iii) in the definition of ''nonroad engine'' in §1068.30.

(c) A stationary engine does not become a new nonroad engine if it is moved but continues to meet the criteria specified in paragraph (2)(iii) in the definition of ''nonroad engine'' in §1068.30 in its new location. For example, a transportable engine that is used in a single specific location for 18 months and is later moved to a second specific location where it will remain for at least 12 months is considered to be a stationary engine in both locations. Note that for stationary engines that are neither portable nor transportable in actual use, the residence-time restrictions in the definition of ''nonroad engine'' generally do not apply.

(d) Changing the status of a nonroad engine to be a new stationary engine as described in paragraph (e) of this section is a violation of §1068.101(a)(1) unless the engine complies with all the requirements of this chapter for new stationary engines of the same type (for example, a compression-ignition engine rated at 40 kW) and model year. For a new stationary engine that is required to be certified under 40 CFR part 60, the engine must have been certified to be compliant with all the requirements that apply to new stationary engines of the same type and model year, and must be in its certified configuration. Note that the definitions of ''model year'' in the standard-setting parts generally identify the engine's original date of manufacture as the basis for determining which standards apply if it becomes a stationary engine after it is no longer new. For example, *see* 40 CFR 60.4219 and 60.4248.

(e) A nonroad engine ceases to be a nonroad engine and becomes a new stationary engine if—

(1) At any time, it meets the criteria specified in paragraph (2)(iii) in the definition of ''nonroad engine'' in §1068.30. For example, a portable generator engine ceases to be a nonroad engine if it is used or will be used in a single specific location for 12 months or longer. If we determine that an engine will be or has been used in a single specific location for 12 months or longer, it ceased to be a nonroad engine when it was placed in that location.

(2) It is otherwise regulated by a federal New Source Performance Standard promulgated under section 111 of the Clean Air Act (42 U.S.C. 7411).

(f) A nonroad engine ceases to be a nonroad engine if it is used to propel a motor vehicle, an aircraft, or equipment used solely for competition. See 40 CFR part 86 for requirements applicable to motor vehicles and motor vehicle engines. See 40 CFR part 87 for requirements applicable to aircraft and aircraft engines. See §1068.235 for requirements applicable to equipment used solely for competition.

[73 FR 59344, Oct. 8, 2008, as amended at 75 FR 23059, Apr. 30, 2010; 81 FR 74221, Oct. 25, 2016]

§1068.32 Explanatory terms.

This section explains how certain phrases and terms are used in 40 CFR parts 1000 through 1099, especially those used to clarify and explain regulatory provisions.

(a) *Types of provisions.* The term ''provision'' includes all aspects of the regulations in this subchapter U. As described in this section, regulatory provisions include standards, requirements, prohibitions, and allowances, along with a variety of other types of provisions. In certain cases, we may

use these terms to apply to some but not all of the provisions of a part or section. For example, we may apply the allowances of a section for certain engines, but not the requirements. We may also apply all provisions except the requirements and prohibitions.

(1) A standard is a requirement established by regulation that limits the emissions of air pollutants. Examples of standards include numerical emission standards (such as 0.01 g/kW-hr) and design standards (such as a closed crankcase standard). Compliance with or conformance to a standard is a specific type of requirement, and in some cases a standard may be discussed as a requirement. Thus, a statement about the requirements of a part or section also applies with respect to the standards of the part or section.

(2) The regulations in subchapter U of this chapter apply other requirements in addition to standards. For example, manufacturers are required to keep records and provide reports to EPA.

(3) While requirements state what someone must do, prohibitions state what someone may not do. Prohibitions are often referred to as prohibited acts or prohibited actions. Most penalties apply for violations of prohibitions. A list of prohibitions may therefore include the failure to meet a requirement as a prohibited action.

(4) Allowances provide some form of relief from requirements. This may include provisions delaying implementation, establishing exemptions or test waivers, or creating alternative compliance options. Allowances may be conditional. For example, we may exempt you from certain requirements on the condition that you meet certain other requirements.

(5) The regulations in subchapter U of this chapter also include important provisions that are not standards, requirements, prohibitions, or allowances, such as definitions.

(6) Engines/equipment are generally considered ''*subject to*'' a specific provision if that provision applies, or if it does not apply because of an exemption authorized under the regulation. For example, locomotives are subject to the provisions of 40 CFR part 1033 even if they are exempted from the standards of part 1033.

(b) *Singular and plural.* Unless stated otherwise or unless it is clear from the regulatory context, provisions written in singular form include the plural form and provisions written in plural form include the singular form. For example, the statement ''The manufacturer must keep this report for three years'' is equivalent to ''The manufacturers must keep these reports for three years.''

(c) *Inclusive lists.* Lists in the regulations in subchapter U of this chapter prefaced by ''including'' or ''this includes'' are not exhaustive. The terms ''including'' and ''this includes'' should be read to mean ''including but not limited to'' and ''this includes but is not limited to''. For example, the phrase ''including small manufacturers'' does not exclude large manufacturers. However, prescriptive statements to ''include'' specific items (such as those related to recordkeeping and reporting requirements) may be exhaustive.

(d) *Notes.* Statements that begin with ''Note:'' or ''Note that'' are intended to clarify specific regulatory provisions stated elsewhere in the regulations in subchapter U of this chapter. By themselves, such statements are not intended to specify regulatory requirements. Such statements are typically used for regulatory text that, while legally sufficient to specify a requirement, may be misunderstood by some readers. For example, the regulations might note that a word is defined elsewhere in the regulations to have a specific meaning that may be either narrower or broader than some readers might assume.

(e) *Examples.* Examples provided in the regulations in subchapter U of this chapter are typically introduced by either ''for example'' or ''such as''. Specific examples given in the regulations do not necessarily represent the most common examples. The regulations may specify examples conditionally (that is, specifying that they are applicable only if certain criteria or conditions are met). Lists of examples cannot be presumed to be exhaustive lists.

(f) *Generally and typically.* Statements that begin with ''generally'', ''in

general'', or ''typically'' should not be read to apply universally or absolutely. Rather they are intended to apply for the most common circumstances. ''Generally'' and ''typically'' statements may be identified as notes as described in paragraph (d) of this section.

(g) *Unusual circumstances.* The regulations in subchapter U of this chapter specify certain allowances that apply ''in unusual circumstances''. While it is difficult to precisely define what ''unusual circumstances'' means, this generally refers to specific circumstances that are both rare and unforeseeable. For example, a severe hurricane in the northeastern United States may be considered to be an unusual circumstance, while a less severe hurricane in the southeastern United States may not be. Where the regulations limit an allowance to unusual circumstances, manufacturers and others should not presume that such an allowance will be available to them. Provisions related to unusual circumstances may be described using the phrase ''normal circumstances'', which are those circumstances that are not unusual circumstances.

(h) *Exceptions and other specifications.* Regulatory provisions may be expressed as a general prohibition, requirement, or allowance that is modified by other regulatory text. Such provisions may include phrases such as ''unless specified otherwise'', ''except as specified'', or ''as specified in this section''. It is important that the exceptions and the more general statement be considered together. This regulatory construct is intended to allow the core requirement or allowance to be stated in simple, clear sentences, rather than more precise and comprehensive sentences that may be misread. For example, where an action is prohibited in most but not all circumstances, the provision may state that you may not take the action, ''except as specified in this section.'' The exceptions could then be stated in subsequent regulatory text.

[81 FR 74221, Oct. 25, 2016]

1068.35 Symbols, acronyms, and abbreviations.

The following symbols, acronyms, and abbreviations apply to this part:

$ U.S. dollars.
CFR Code of Federal Regulations.
disp engine displacement.
EPA Environmental Protection Agency.
kW kilowatt.
L/cyl liters per cylinder.
NARA National Archives and Records Administration.
NO_x Oxides of nitrogen.
SAE Society of Automotive Engineers.
SEA selective enforcement audit.
U.S. United States.
U.S.C. United States Code.

§ 1068.40 Special provisions for implementing changes in the regulations in this part.

(a) During the 12 months following the effective date of any change in the provisions of this part, you may ask to apply the previously applicable provisions. Note that the effective date is generally 30 or 60 days after publication in the FEDERAL REGISTER, as noted in the final rule. We will generally approve your request if you can demonstrate that it would be impractical to comply with the new requirements. We may consider the potential for adverse environmental impacts in our decision. Similarly, in unusual circumstances, you may ask for relief under this paragraph (a) from new requirements that apply under the standard-setting part.

(b) During the 60 days following the effective date of any change in the provisions of this part, you may use the previously applicable provisions without request if they meet either of the following criteria:

(1) The new provisions require you to redesign your engines/equipment, modify your engine/equipment labels, or change your production procedures.

(2) The new provisions change what you must include in an application for certification that you submit before the end of this 60-day period. You are not required to amend such applications to comply with the new provisions for that model year; however, this allowance does not apply for later model years, even if you certify an engine family using carryover emission data. This allowance does not affect your obligation to provide information

that we request separate from an application for certification.

[75 FR 23059, Apr. 30, 2010, as amended at 81 FR 74222, Oct. 25, 2016]

§ 1068.45 General labeling provisions.

The provisions of this part and the standard-setting part include a variety of labeling requirements. The following general provisions apply:

(a) *Permanent labels.* Where we specify that you apply a permanent label, you must meet the following requirements unless the standard-setting part includes other specific label requirements:

(1) Attach the label so no one can remove it without destroying or defacing it.

(2) Make sure it is durable and readable for the engine/equipment's entire life.

(3) Secure it to a part of the engine/equipment needed for normal operation and not normally requiring replacement.

(4) Write it in English.

(5) Make the labels readily visible to the average person after all installation and assembly are complete.

(b) *Removable labels.* Where we specify that you apply a removable label, it must meet the following conditions:

(1) You must attach the label in a way that does not allow it to be separated from the engine/equipment without a deliberate effort. Note that for exemptions requiring removable labels, the exemption no longer applies once the label is separated from the engine/equipment.

(2) The label must be durable and readable throughout the period of its intended purpose. This period generally includes all distribution in U.S. commerce during which the exemption applies.

(3) Except as specified in paragraph (c) of this section, the label must be attached directly to the engine/equipment in a visible location. We consider a tag that meets the specified requirements to be an attached label.

(c) *Labels on packaging.* Unless we specify otherwise, where we require engine/equipment labels that may be removable, you may instead label the packaging if the engines/equipment are packaged together as described in this paragraph (c). For example, this may involve packaging engines together by attaching them to a rack, binding them together on a pallet, or enclosing them in a box. The provisions of this paragraph (c) also apply for engines/equipment boxed individually where you do not apply labels directly to the engines/equipment. The following provisions apply if you label the packaging instead of labeling engines/equipment individually:

(1) You may use the provisions of this paragraph (c) only if all the engines/equipment packaged together need the same label.

(2) You must place the label on the package in a readily visible location. This may require labeling the package in multiple locations.

(3) You must package the engines/equipment such that the labels will not be separated from the engines/equipment or otherwise become unreadable throughout the period that the label applies. For example, labels required for shipping engines to a secondary engine manufacturer under §1068.262 must remain attached and readable until they reach the secondary engine manufacturer. Similarly, removable labels specified in §1068.240 for replacement engines must remain attached and readable until they reach the point of final installation.

(4) You are in violation of §1068.101(a)(1) if such engines/equipment are removed from the package or are otherwise separated from the label before reaching the point at which the label is no longer needed.

(d) *Temporary consumer labels.* Where we specify that you apply temporary consumer labels (including tags), each label must meet the following conditions:

(1) You must attach the label in a way that does not allow it to be separated from the engine/equipment without a deliberate effort.

(2) The label must be sufficiently durable to be readable until it reaches the ultimate purchaser.

(3) The label must be attached directly to the engine/equipment in a visible location.

(e) *Prohibitions against removing labels.* As specified in §1068.101(b)(7), removing permanent labels is prohibited except

for certain circumstances. Removing temporary or removable labels prematurely is also prohibited by §1068.101(b)(7).

(f) *Identifying emission control systems.* If the standard-setting part specifies that you use standardized terms and abbreviations to identify emission control systems, use terms and abbreviations consistent with SAE J1930 (incorporated by reference in §1068.95).

(g) *Date format.* If you use a coded approach to identify the engine/equipment's date of manufacture, describe or interpret the code in your application for certification.

(h) *Branding.* The following provisions apply if you identify the name and trademark of another company instead of your own on your emission control information label, as provided in the standard-setting part:

(1) You must have a contractual agreement with the other company that obligates that company to take the following steps:

(i) Meet the emission warranty requirements that apply under the standard-setting part. This may involve a separate agreement involving reimbursement of warranty-related expenses.

(ii) Report all warranty-related information to the certificate holder.

(2) In your application for certification, identify the company whose trademark you will use.

(3) You remain responsible for meeting all the requirements of this chapter, including warranty and defect-reporting provisions.

[73 FR 59344, Oct. 8, 2008, as amended at 75 FR 23059, Apr. 30, 2010; 81 FR 74222, Oct. 25, 2016]

§1068.50 Adjustable parameters.

(a) The standard-setting part requires as a condition of certification that engines with adjustable parameters meet all the requirements of the standard-setting part for any setting in the practically adjustable range. This section defines these terms and describes general provisions that apply broadly across sectors. This section refers to engines, because most adjustable parameters are integral to the engine even in the case of equipment-based standards; this section also applies for equipment-based adjustable parameters. The provisions of this section apply starting with model year 2027 and are optional for earlier model years.

(b) You must use good engineering judgment for all decisions related to adjustable parameters. We recommend that you ask for preliminary approval for decisions related to new technologies, substantially changed engine designs, or new methods for limiting adjustability. The standard-setting part describes the information you must include in the application for certification related to adjustable parameters. Decisions related to adjustable parameters include the following:

(1) Determining which engine operating parameters qualify as adjustable parameters.

(2) Establishing the adequacy of the limits, stops, seals, programming limits, inducements, or other means used to limit adjustment, limit reprogramming, or ensure replenishment.

(3) Defining the practically adjustable range for each such parameter.

(c) For purposes of this section, ''operating parameter'' means any feature that can, by the nature of its design, be adjusted to affect engine performance. For example, while bolts used to assemble the engine are practically adjustable (can be loosened or tightened), they are not adjustable parameters because they are not operating parameters. Consider all programmable parameters not involving user-selectable controls to be a single, collective operating parameter.

(d) Operating parameters are considered adjustable parameters if they are practically adjustable by a user or other person by physical adjustment, programmable adjustment, or regular replenishment of a fluid or other consumable material. However, an operating parameter is not an adjustable parameter if—

(1) We determine it is permanently sealed or it is not practically adjustable using available tools, as described in paragraph (e) of this section; or

(2) We determine that engine operation over the full range of adjustment does not affect emissions without also degrading engine performance to the extent that operators will be aware of the problem.

(e) An operating parameter is considered practically adjustable as follows:

(1) Physically adjustable parameters are considered practically adjustable if the adjustment is accessible and can be performed by an experienced mechanic using appropriate tools within the following time and cost thresholds, excluding extraordinary measures:

(i) For engines at or below 30 kW, physically adjustable parameters are considered practically adjustable if a typical user can make adjustments with ordinary tools within 15 minutes using service parts that cost no more than $30.

(ii) For 30–560 kW engines, physically adjustable parameters are considered practically adjustable if a qualified mechanic can make adjustments with ordinary tools within 60 minutes using service parts that cost no more than $60.

(iii) For engines above 560 kW, physically adjustable parameters are considered practically adjustable if a qualified mechanic can make adjustments with any available supplies and tools within 60 minutes.

(iv) Cost thresholds in this section are expressed in 2020 dollars. Adjust these values for certification by comparing most recently available Consumer Price Index for All Urban Consumers (CPI–U) value published by the Bureau of Labor Statistics at *www.bls.gov/data/inflation_calculator.htm*.

(v) Cost thresholds do not include the cost of labor or the cost of any necessary tools or nonconsumable supplies. Time thresholds refer to the time required to access and adjust the parameter, excluding any time necessary to purchase parts, tools, or supplies, or to perform testing.

(vi) The term ''ordinary tools'' has the following meanings for different sizes of engines:

(A) Ordinary tools consist of slotted and Phillips head screwdrivers, pliers, hammers, awls, wrenches, electric screwdrivers, electric drills, and any tools supplied by the manufacturer, where those tools are used for their intended purpose.

(B) For 30–560 kW engines, ordinary tools includes the tools identified in paragraph (e)(1)(vi)(A) of this section and any other hand tools, solvents, or other supplies sold at hardware stores, automotive parts supply stores or on the internet.

(vii) The following extraordinary measures are not included when determining whether a physically adjustable parameter is considered ''practically adjustable'' according to the specified time and cost thresholds:

(A) Removing the cylinder head(s) from the engine block.

(B) Fully or partially removing a carburetor.

(C) Drilling or grinding through caps or plugs.

(D) Causing damage to engine or equipment if the associated repair would exceed the time or cost thresholds in this paragraph (e)(1).

(E) Making special tools to override design features that prevent adjustment. Note that extraordinary measures do not include purchase of such special tools if they become available as described in paragraph (e)(1)(vi)(B) of this section.

(2) A programmable operating parameter is considered ''practically adjustable'' if an experienced mechanic can adjust the parameter using any available tools (including devices that are used to alter computer code). Conversely, such parameters are not practically adjustable if you limit access to electronic control modules with password or encryption protection. You must have adequate protections in place to prevent distribution and use of passwords or encryption keys. This paragraph (e)(2) applies for engines with any degree of programmable control. Programmable settings are considered practically adjustable if any of the following apply:

(i) The user can make the adjustment by following instructions in the owners manual.

(ii) An experienced mechanic can make the adjustment using ordinary digital interface tools for selecting available settings or options as described in this paragraph (e)(2).

(f) The practically adjustable range for physically adjustable operating parameters is based on design features to create physical limits or stops to limit adjustment. A physical limit or stop is adequate for defining the limits of the

practically adjustable range if it has the following characteristics:

(1) In the case of a threaded adjustment, the head is sheared off after adjustment at the factory or the threads are terminated, pinned, or crimped to prevent additional travel without causing damage for which the repair would exceed the time or cost thresholds in paragraph (e)(1) of this section.

(2) In the case of fasteners, bimetal springs, or other mechanical devices used to limit adjustment, those devices are recessed within a larger, permanent body and sealed with a plug, cap, or cover plate that limits access to the device consistent with the time and cost thresholds in paragraph (e)(1) of this section.

(3) Operators cannot exceed the travel or rotation limits using appropriate tools without causing damage for which the repairs would exceed the time or cost thresholds specified in paragraph (e)(1) of this section. For example, if a vehicle has a shim, bushing, or other device to limit flow rates, range of travel, or other parameters to prevent operating outside of a specified range of engine or vehicle speeds, you must take steps to prevent operators or mechanics from removing, replacing, or altering those parts to operate at a wider range of engine or vehicle speeds.

(g) Apply the following provisions to determine the practically adjustable range for programmable parameters that can be adjusted by changing software or operating parameters (''reflashed''):

(1) If an engine includes multiple operating modes or other algorithms that can be selected or are easily accessible, consider each of the selectable or accessible modes or settings to be within the practically adjustable range.

(2) If you sell or offer to sell software or other tools that an experienced mechanic not affiliated with the manufacturer could use to reflash or otherwise modify the electronic control module, consider all those settings to be within the practically adjustable range.

(3) The following systems and features illustrate examples of the types of programmable settings for which this paragraph (g) applies:

(i) Air-fuel setpoints for closed-loop fuel systems.

(ii) Reductant flow systems.

(iii) Base maps for fuel injection or spark timing.

(iv) Exhaust gas recirculation maps.

(h) The following provisions apply for adjustable parameters related to elements of design involving consumption and replenishment, such as DEF tank fill level and hybrid battery state of charge:

(1) We will determine the range of adjustability based on the likelihood of in-use operation at a given point in the physically adjustable range. We may determine that operation in certain subranges within the physically adjustable range is sufficiently unlikely that the subranges should be excluded from the allowable adjustable range for testing. In such cases, the engines/equipment are not required to meet the emission standards for operation in an excluded subrange.

(2) Shipping new engines/equipment in a state or configuration requiring replenishment to be within the range of adjustability for a certified configuration does not cause a violation of the prohibition in §1068.101(a)(1).

(i) We will make determinations regarding in-use adjustments of adjustable parameters under this section for certifying engines as follows:

(1) Our determinations will depend on in-use maintenance practices conforming to the maintenance and service information you provide. For example, if your published maintenance instructions describe routine procedures for adjusting engines or if you or your dealers make specialized tools available to operators, we will conclude that such adjustments are likely to occur. Also, your maintenance and service information may not specify adjustable ranges that are broader than those that you specify in your application for certification.

(2) We may review manufacturer statements under this section for certifying engines for a later model year if we learn from observation of in-use engines or other information that a parameter was in fact practically adjustable or that the specified operating range was in fact not correct. We may require you to include a new adjustable

parameter or to revise your specified operating range for an adjustable parameter.

(j) We may inspect your engines at any time to determine whether they meet the specifications of this section. We may purchase engines for testing, or we may ask you to supply engines for such inspections. We will inspect using appropriate tools and time limits and using any available devices that alter computer code, as specified in paragraph (e)(2) of this section. The inspection will determine the following:

(1) If the adjustable parameter is limited to the adjustable range specified in the manufacturer's certification application.

(2) If physical stops for physically adjustable parameters can be bypassed using methods outlined in paragraph (f) of this section.

(k) Except as provided in the standard-setting part and this paragraph (k), engines are not in the certified configuration if you produce them with adjustable parameters set outside the range specified in your application for certification. Similarly, engines are not in the certified configuration if you produce them with other operating parameters that do not conform to the certified configuration. Where we determine that you failed to identify something that should be considered an adjustable parameter, we may require you to treat the parameter as defective under § 1068.501. If we determine you deliberately misrepresented the accessibility of the parameter or that you did not act in good faith, we may take action regarding your certificate as described in the standard-setting part (see, for example, 40 CFR 1054.255).

(l) Nothing in this section limits the tampering prohibition of § 1068.101(b)(1) or the defeat device prohibition of § 1068.101(b)(2).

[87 FR 4714, Jan. 24, 2023]

§ 1068.95 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Environmental Protection Agency must publish a document in the FEDERAL REGISTER and the material must be available to the public. All approved materials are available for inspection at the Air and Radiation Docket and Information Center (Air Docket) in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742. These approved materials are also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. In addition, these materials are available from the sources listed below.

(b) SAE International, 400 Commonwealth Dr., Warrendale, PA 15096–0001, (724) 776–4841, or *http://www.sae.org*:

(1) SAE J1930, Electrical/Electronic Systems Diagnostic Terms, Definitions, Abbreviations, and Acronyms, revised October 2008 (''SAE J1930''), IBR approved for § 1068.45(f).

(2) [Reserved]

[81 FR 74222, Oct. 25, 2016]

Subpart B—Prohibited Actions and Related Requirements

§ 1068.101 What general actions does this regulation prohibit?

This section specifies actions that are prohibited and the maximum civil penalties that we can assess for each violation in accordance with 42 U.S.C. 7522 and 7524. The maximum penalty values listed in paragraphs (a) and (b) of this section and in § 1068.125 apply as of August 1, 2016. As described in paragraph (h) of this section, these maximum penalty limits are different for earlier violations and they may be adjusted as set forth in 40 CFR part 19.

(a) The following prohibitions and requirements apply to manufacturers of

new engines, manufacturers of equipment containing these engines, manufacturers of new equipment, and other persons as provided by §1068.1(a), except as described in subparts C and D of this part:

(1) *Introduction into commerce.* You may not sell, offer for sale, or introduce or deliver into commerce in the United States or import into the United States any new engine/equipment after emission standards take effect for the engine/equipment, unless it is covered by a valid certificate of conformity for its model year and has the required label or tag. You also may not take any of the actions listed in the previous sentence with respect to any equipment containing an engine subject to this part's provisions unless the engine is covered by a valid certificate of conformity for its model year and has the required engine label or tag. We may assess a civil penalty up to $44,539 for each engine or piece of equipment in violation.

(i) For purposes of this paragraph (a)(1), a valid certificate of conformity is one that applies for the same model year as the model year of the equipment (except as allowed by §1068.105(a)), covers the appropriate category or subcategory of engines/equipment (such as locomotive or sterndrive/inboard Marine SI or nonhandheld Small SI), and conforms to all requirements specified for equipment in the standard-setting part. Engines/equipment are considered not covered by a certificate unless they are in a configuration described in the application for certification.

(ii) The prohibitions of this paragraph (a)(1) also apply for new engines you produce to replace an older engine in a piece of equipment, except that the engines may qualify for the replacement-engine exemption in §1068.240.

(iii) The prohibitions of this paragraph (a)(1) also apply for new engines that will be installed in equipment subject to equipment-based standards, except that the engines may qualify for an exemption under §1068.260(c) or §1068.262.

(iv) Where the regulations specify that you are allowed to introduce engines/equipment into U.S. commerce without a certificate of conformity, you may take any of the otherwise prohibited actions specified in this paragraph (a)(1) with respect to those engines/equipment.

(2) *Reporting and recordkeeping.* This chapter requires you to record certain types of information to show that you meet our standards. You must comply with these requirements to make and maintain required records (including those described in §1068.501). You may not deny us access to your records or the ability to copy your records if we have the authority to see or copy them. Also, you must give us complete and accurate reports and information without delay as required under this chapter. Failure to comply with the requirements of this paragraph is prohibited. We may assess a civil penalty up to $44,539 for each day you are in violation. In addition, knowingly submitting false information is a violation of 18 U.S.C. 1001, which may involve criminal penalties and up to five years imprisonment.

(3) *Testing and access to facilities.* You may not keep us from entering your facility to test engines/equipment or inspect if we are authorized to do so. Also, you must perform the tests we require (or have the tests done for you). Failure to perform this testing is prohibited. We may assess a civil penalty up to $44,539 for each day you are in violation.

(b) The following prohibitions apply to everyone with respect to the engines and equipment to which this part applies:

(1) *Tampering.* You may not remove or render inoperative any device or element of design installed on or in engines/equipment in compliance with the regulations prior to its sale and delivery to the ultimate purchaser. You also may not knowingly remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser. This includes, for example, operating an engine without a supply of appropriate quality urea if the emission control system relies on urea to reduce NO_X emissions or the use of incorrect fuel or engine oil that renders the emission control system inoperative.

Section 1068.120 describes how this applies to rebuilding engines. See the standard-setting part, which may include additional provisions regarding actions prohibited by this requirement. For a manufacturer or dealer, we may assess a civil penalty up to $44,539 for each engine or piece of equipment in violation. For anyone else, we may assess a civil penalty up to $4,454 for each engine or piece of equipment in violation. This prohibition does not apply in any of the following situations:

(i) You need to repair the engine/equipment and you restore it to proper functioning when the repair is complete.

(ii) You need to modify the engine/equipment to respond to a temporary emergency and you restore it to proper functioning as soon as possible.

(iii) You modify new engines/equipment that another manufacturer has already certified to meet emission standards and recertify them under your own family. In this case you must tell the original manufacturer not to include the modified engines/equipment in the original family.

(2) *Defeat devices.* You may not knowingly manufacture, sell, offer to sell, or install, any component that bypasses, impairs, defeats, or disables the control of emissions of any regulated pollutant, except as explicitly allowed by the standard-setting part. We may assess a civil penalty up to $4,454 for each component in violation.

(3) *Stationary engines.* For an engine that is excluded from any requirements of this chapter because it is a stationary engine, you may not move it or install it in any mobile equipment except as allowed by the provisions of this chapter. You may not circumvent or attempt to circumvent the residence-time requirements of paragraph (2)(iii) of the nonroad engine definition in §1068.30. Anyone violating this paragraph (b)(3) is deemed to be a manufacturer in violation of paragraph (a)(1) of this section. We may assess a civil penalty up to $44,539 for each engine or piece of equipment in violation.

(4) *Competition engines/equipment.* (i) For uncertified engines/equipment that are excluded or exempted as new engines/equipment from any requirements of this chapter because they are to be used solely for competition, you may not use any of them in a manner that is inconsistent with use solely for competition. Anyone violating this paragraph (b)(4)(i) is deemed to be a manufacturer in violation of paragraph (a)(1) of this section. We may assess a civil penalty up to $44,539 for each engine or piece of equipment in violation.

(ii) For certified nonroad engines/equipment that qualify for exemption from the tampering prohibition as described in §1068.235 because they are to be used solely for competition, you may not use any of them in a manner that is inconsistent with use solely for competition. Anyone violating this paragraph (b)(4)(ii) is in violation of paragraph (b)(1) or (2) of this section.

(5) *Importation.* You may not import an uncertified engine or piece of equipment if it is defined to be new in the standard-setting part with a model year for which emission standards applied. Anyone violating this paragraph (b)(5) is deemed to be a manufacturer in violation of paragraph (a)(1) of this section. We may assess a civil penalty up to $44,539 for each engine or piece of equipment in violation. Note the following:is excluded

(i) The definition of new is broad for imported engines/equipment; uncertified engines and equipment (including used engines and equipment) are generally considered to be new when imported.

(ii) Used engines/equipment that were originally manufactured before applicable EPA standards were in effect are generally not subject to emission standards.

(6) *Warranty, recall, and maintenance instructions.* You must meet your obligation to honor your emission-related warranty under §1068.115, including any commitments you identify in your application for certification. You must also fulfill all applicable requirements under subpart F of this part related to emission-related defects and recalls. You must also provide emission-related installation and maintenance instructions as described in the standard-setting part. Failure to meet these obligations is prohibited. Also, except as specifically provided by regulation, you are prohibited from directly or indirectly communicating to the ultimate

purchaser or a later purchaser that the emission-related warranty is valid only if the owner has service performed at authorized facilities or only if the owner uses authorized parts, components, or systems. We may assess a civil penalty up to $44,539 for each engine or piece of equipment in violation.

(7) *Labeling.* (i) You may not remove or alter an emission control information label or other required permanent label except as specified in this paragraph (b)(7) or otherwise allowed by this chapter. Removing or altering an emission control information label is a violation of paragraph (b)(1) of this section. However, it is not a violation to remove a label in the following circumstances:

(A) The engine is destroyed, is permanently disassembled, or otherwise loses its identity such that the original title to the engine is no longer valid.

(B) The regulations specifically direct you to remove the label. For example, *see* §1068.235.

(C) The part on which the label is mounted needs to be replaced. In this case, you must have a replacement part with a duplicate of the original label installed by the certifying manufacturer or an authorized agent, except that the replacement label may omit the date of manufacture if applicable. We generally require labels to be permanently attached to parts that will not normally be replaced, but this provision allows for replacements in unusual circumstances, such as damage in a collision or other accident.

(D) The original label is incorrect, provided that it is replaced with the correct label from the certifying manufacturer or an authorized agent. This allowance to replace incorrect labels does not affect whether the application of an incorrect original label is a violation.

(ii) Removing or altering a temporary or removable label contrary to the provisions of this paragraph (b)(7)(ii) is a violation of paragraph (b)(1) of this section.

(A) For labels identifying temporary exemptions, you may not remove or alter the label while the engine/equipment is in an exempt status. The exemption is automatically revoked for each engine/equipment for which the label has been removed.

(B) For temporary or removable consumer information labels, only the ultimate purchaser may remove the label.

(iii) You may not apply a false emission control information label. You also may not manufacture, sell, or offer to sell false labels. The application, manufacture, sale, or offer for sale of false labels is a violation of this section (such as paragraph (a)(1) or (b)(2) of this section). Note that applying an otherwise valid emission control information label to the wrong engine is considered to be applying a false label.

(c) If you cause someone to commit a prohibited act in paragraph (a) or (b) of this section, you are in violation of that prohibition.

(d) Exemptions from these prohibitions are described in subparts C and D of this part and in the standard-setting part.

(e) The standard-setting parts describe more requirements and prohibitions that apply to manufacturers (including importers) and others under this chapter.

(f) The specification of prohibitions and penalties in this part does not limit the prohibitions and penalties described in the Clean Air Act. Additionally, a single act may trigger multiple violations under this section and the Act. We may pursue all available administrative, civil, or criminal remedies for those violations even if the regulation references only a single prohibited act in this section.

(g) [Reserved]

(h) The maximum penalty values listed in paragraphs (a) and (b) of this section and in §1068.125 apply as of August 1, 2016. Maximum penalty values for earlier violations are published in 40 CFR part 19. Maximum penalty limits may be adjusted after August 1, 2016 based on the Consumer Price Index. The specific regulatory provisions for changing the maximum penalties, published in 40 CFR part 19, reference the applicable U.S. Code citation on which the prohibited action is based. The following table is shown here for informational purposes:

TABLE 1 OF § 1068.101—LEGAL CITATION FOR SPECIFIC PROHIBITIONS FOR DETERMINING MAXIMUM PENALTY AMOUNTS

Part 1068 regulatory citation of prohibited action	General description of prohibition	U.S. Code citation for Clean Air Act authority
§ 1068.101(a)(1)	Introduction into U.S. commerce of an uncertified source.	42 U.S.C. 7522(a)(1) and (a)(4).
§ 1068.101(a)(2)	Failure to provide information	42 U.S.C. 7522(a)(2).
§ 1068.101(a)(3)	Denying access to facilities	42 U.S.C. 7522(a)(2).
§ 1068.101(b)(1)	Tampering with emission controls by a manufacturer or dealer.	42 U.S.C. 7522(a)(3).
	Tampering with emission controls by someone other than a manufacturer or dealer.	
§ 1068.101(b)(2)	Sale or use of a defeat device	42 U.S.C. 7522(a)(3).
§ 1068.101(b)(3)	Mobile use of a stationary engine	42 U.S.C. 7522(a)(1) and (a)(4).
§ 1068.101(b)(4)	Noncompetitive use of uncertified engines/equipment that is exempted for competition.	42 U.S.C. 7522(a)(1) and (a)(4).
§ 1068.101(b)(5)	Importation of an uncertified source	42 U.S.C. 7522(a)(1) and (a)(4).
§ 1068.101(b)(6)	Recall and warranty	42 U.S.C. 7522(a)(4).
§ 1068.101(b)(7)	Removing labels	42 U.S.C. 7522(a)(3).

[75 FR 23059, Apr. 30, 2010; 81 FR 74222, Oct. 25, 2016; 88 FR 4716, Jan. 24, 2023]

§ 1068.103 Provisions related to the duration and applicability of certificates of conformity.

(a) Engines/equipment covered by a certificate of conformity are limited to those that are produced during the period specified in the certificate and conform to the specifications described in the certificate and the associated application for certification. For the purposes of this paragraph (a), ''specifications'' includes the emission control information label and any conditions or limitations identified by the manufacturer or EPA. For example, if the application for certification specifies certain engine configurations, the certificate does not cover any configurations that are not specified. We may ignore any information provided in the application that we determine is not relevant to a demonstration of compliance with applicable regulations, such as your projected production volumes in many cases.

(b) Unless the standard-setting part specifies otherwise, determine the production period corresponding to each certificate of conformity as specified in this paragraph (b). In general, the production period is the manufacturer's annual production period identified as a model year.

(1) For engines/equipment subject to emission standards based on model years, the first day of the annual production period can be no earlier than January 2 of the calendar year preceding the year for which the model year is named, or the earliest date of manufacture for any engine/equipment in the engine family, whichever is later. The last day of the annual production period can be no later than December 31 of the calendar year for which the model year is named or the latest date of manufacture for any engine/equipment in the engine family, whichever is sooner. Note that this approach limits how you can designate a model year for your engines/equipment; however, it does not limit your ability to meet more stringent emission standards early where this is permitted in the regulation.

(2) For fuel-system components certified to evaporative emission standards based on production periods rather than model years, the production period is either the calendar year or a longer period we specify consistent with the manufacturer's normal production practices.

(c) A certificate of conformity will not cover engines/equipment you produce with a date of manufacture earlier than the date you submit the application for certification for the family. You may start to produce engines/equipment after you submit an application for certification and before the effective date of a certificate of conformity, subject to the following conditions:

(1) The engines/equipment must conform in all material respects to the engines/equipment described in your application. Note that if we require you to modify your application, you must ensure that all engines/equipment conform to the specifications of the modified application.

(2) The engines/equipment may not be sold, offered for sale, introduced into U.S. commerce, or delivered for introduction into U.S. commerce before the effective date of the certificate of conformity.

(3) You must notify us in your application for certification that you plan to use the provisions of this paragraph (c) and when you intend to start production. If the standard-setting part specifies mandatory testing for production-line engines, you must start testing as directed in the standard-setting part based on your actual start of production, even if that occurs before we approve your certification. You must also agree to give us full opportunity to inspect and/or test the engines/equipment during and after production. For example, we must have the opportunity to specify selective enforcement audits as allowed by the standard-setting part and the Clean Air Act as if the engines/equipment were produced after the effective date of the certificate.

(4) See §1068.262 for special provisions that apply for secondary engine manufacturers receiving shipment of partially complete engines before the effective date of a certificate.

(d) The prohibition in §1068.101(a)(1) against offering to sell engines/equipment without a valid certificate of conformity generally does not apply for engines/equipment that have not yet been produced. You may contractually agree to produce engines/equipment before obtaining the required certificate of conformity. This is intended to allow manufacturers of low-volume products to establish a sufficient market for engines/equipment before going through the effort to certify.

(e) Engines/equipment with a date of manufacture after December 31 of the calendar year for which a model year is named are not covered by the certificate of conformity for that model year. You must submit an application for a new certificate of conformity demonstrating compliance with applicable standards even if the engines/equipment are identical to those with a date of manufacture before December 31.

(f) The flexible approach to naming the annual production period described in paragraph (b)(1) of this section is intended to allow you to introduce new products at any point during the year. This is based on the expectation that production periods generally run on consistent schedules from year to year. You may not use this flexibility to arrange your production periods such that you can avoid annual certification.

(g) An engine is generally assigned a model year based on its date of manufacture, which is typically based on the date the crankshaft is installed in the engine (see §1068.30). You may not circumvent the provisions of §1068.101(a)(1) by stockpiling engines with a date of manufacture before new or changed emission standards take effect by deviating from your normal production and inventory practices. (For purposes of this paragraph (g), normal production and inventory practices means those practices you typically use for similar families in years in which emission standards do not change. We may require you to provide us routine production and inventory records that document your normal practices for the preceding eight years.) For most engines you should plan to complete the assembly of an engine of a given model year into its certified configuration within the first week after the end of the model year if new emission standards start to apply in that model year. For special circumstances it may be appropriate for your normal business practice to involve more time. For engines with per-cylinder displacement below 2.5 liters, if new emission standards start to apply in a given year, we would consider an engine not to be covered by a certificate of conformity for the preceding model year if the engine is not assembled in a compliant configuration within 30 days after the end of the model year for that engine family. (NOTE: an engine is considered ''in a compliant configuration'' without being fully assembled if §1068.260(a) or

(b) authorizes shipment of the engine without certain components.) For example, in the case where new standards apply in the 2010 model year, and your normal production period is based on the calendar year, you must complete the assembly of all your 2009 model year engines before January 31, 2010, or an earlier date consistent with your normal production and inventory practices. For engines with per-cylinder displacement at or above 2.5 liters, this time may not exceed 60 days. Note that for the purposes of this paragraph (g), an engine shipped under §1068.261 is deemed to be a complete engine. Note also that §1068.245 allows flexibility for additional time in unusual circumstances. Note finally that disassembly of complete engines and reassembly (such as for shipment) does not affect the determination of model year; the provisions of this paragraph (g) apply based on the date on which initial assembly is complete.

(h) This paragraph (h) describes the effect of suspending, revoking, or voiding a certificate of conformity. See the definitions of ''suspend,'' ''revoke,'' and ''void'' in §1068.30. Engines/equipment produced at a time when the otherwise applicable certificate of conformity has been suspended or revoked are not covered by a certificate of conformity. Where a certificate of conformity is void, all engines/equipment produced under that certificate of conformity are not and were not covered by a certificate of conformity. In cases of suspension, engines/equipment will be covered by a certificate only if they are produced after the certificate is reinstated or a new certificate is issued. In cases of revocation and voiding, engines/equipment will be covered by a certificate only if they are produced after we issue a new certificate. 42 U.S.C. 7522(a)(1) and §1068.101(a)(1) prohibit selling, offering for sale, introducing into commerce, delivering for introduction into commerce, and importing engines/equipment that are not covered by a certificate of conformity, and they prohibit anyone from causing another to violate these prohibitions.

(i) You may transfer a certificate to another entity only in the following cases:

(1) You may transfer a certificate to a parent company, including a parent company that purchases your company after we have issued your certificate.

(2) You may transfer a certificate to a subsidiary including a subsidiary you purchase after we have issued your certificate.

(3) You may transfer a certificate to a subsidiary of your parent company.

[81 FR 74224, Oct. 25, 2016]

§1068.105 What other provisions apply to me specifically if I manufacture equipment needing certified engines?

This section describes general provisions that apply to equipment manufacturers for sources subject to engine-based standards. See the standard-setting part for any requirements that apply for certain applications. See §1068.101 for penalties associated with violations under this section and for other prohibitions related to your equipment.

(a) *Transitioning to new engine-based standards.* If new engine-based emission standards apply in a given model year, your equipment produced in that calendar year (or later) must have engines that are certified to the new standards, except that you may continue to use up normal inventories of engines that were built before the date of the new or changed standards. For purposes of this paragraph (a), normal inventory applies for engines you possess and engines from your engine supplier's normal inventory. (NOTE: this paragraph (a) does not apply in the case of new remanufacturing standards.) We may require you and your engine suppliers to provide us routine production and/or inventory records that document your normal practices for the preceding eight years. For example, if you have records documenting that your normal inventory practice is to keep on hand a one-month supply of engines based on your upcoming production schedules, and a new tier of standards starts to apply for the 2015 model year, you may order engines consistent with your normal inventory requirements late in the engine manufacturer's 2014 model year and install those engines in your equipment consistent with your normal production schedule. Also, if your model

year starts before the end of the calendar year preceding new standards, you may use engines from the previous model year for those units you completely assemble before January 1 of the year that new standards apply. If emission standards for the engine do not change in a given model year, you may continue to install engines from the previous model year without restriction (or any earlier model year for which the same standards apply). You may not circumvent the provisions of §1068.101(a)(1) by stockpiling engines that were built before new or changed standards take effect. Similarly, you may not circumvent the provisions of §1068.101(a)(1) by knowingly installing engines that were stockpiled by engine suppliers in violation of §1068.103(f). Note that this allowance does not apply for equipment subject to equipment-based standards. See 40 CFR 1060.601 for similar provisions that apply for equipment subject to evaporative emission standards. Note that the standard-setting part may impose further restrictions on using up inventories of engines from an earlier model year under this paragraph (a).

(b) *Installing engines or certified components.* The provisions in §1068.101(a)(1) generally prohibit you from introducing into U.S. commerce any new equipment that includes engines not covered by a certificate of conformity. In addition, you must follow the engine manufacturer's emission-related installation instructions. For example, you may need to constrain where you place an exhaust aftertreatment device or integrate into your equipment models a device for sending visual or audible signals to the operator. Similarly, you must follow the emission-related installation instructions from the manufacturer of a component that has been certified for controlling evaporative emissions under 40 CFR part 1060. Not meeting the manufacturer's emission-related installation instructions is a violation of one or more of the prohibitions of §1068.101. See §1068.261 for special provisions that apply when the engine manufacturer delegates final assembly of emission controls to you.

(c) *Attaching a duplicate label.* If you obscure the engine's label, you must do four things to avoid violating §1068.101(a)(1):

(1) Send a request for duplicate labels in writing on your company's letterhead to the engine manufacturer. Include the following information in your request:

(i) Identify the type of equipment and the specific engine and equipment models needing duplicate labels.

(ii) Identify the family (from the original engine label).

(iii) State the reason that you need a duplicate label for each equipment model.

(iv) Identify the number of duplicate labels you will need.

(2) Permanently attach the duplicate label to your equipment by securing it to a part needed for normal operation and not normally requiring replacement. Make sure an average person can easily read it. Note that attaching an inaccurate duplicate label may be a violation of §1068.101(b)(7).

(3) Destroy any unused duplicate labels if you find that you will not need them.

(4) Keep the following records for at least eight years after the end of the model year identified on the engine label:

(i) Keep a copy of your written request.

(ii) Keep drawings or descriptions that show how you apply the duplicate labels to your equipment.

(iii) Maintain a count of those duplicate labels you use and those you destroy.

[73 FR 59344, Oct. 8, 2008, as amended at 75 FR 23062, Apr. 30, 2010; 81 FR 74225, Oct. 25, 2016]

§1068.110 Other provisions for engines/equipment in service.

(a) *Aftermarket parts and service.* As the certifying manufacturer, you may not require anyone to use your parts or service to maintain or repair an engine or piece of equipment, unless we approve this in your application for certification. It is a violation of the Clean Air Act for anyone to manufacture any part if one of its main effects is to reduce the effectiveness of the emission controls. See §1068.101(b)(2).

(b) *Certifying aftermarket parts.* As the manufacturer or rebuilder of an aftermarket engine or equipment part,

you may—but are not required to—certify according to 40 CFR part 85, subpart V, that using the part will not cause engines/equipment to fail to meet emission standards. Whether you certify or not, you must keep any information showing how your parts or service affect emissions.

(c) *Compliance with standards.* We may test engines and equipment to investigate compliance with emission standards and other requirements. We may also require the manufacturer to do this testing.

(d) *Defeat devices.* We may test components, engines, and equipment to investigate potential defeat devices. We may also require the manufacturer to do this testing. If we choose to investigate one of your designs, we may require you to show us that a component is not a defeat device, and that an engine/equipment does not have a defeat device. To do this, you may have to share with us information regarding test programs, engineering evaluations, design specifications, calibrations, on-board computer algorithms, and design strategies. It is a violation of the Clean Air Act for anyone to make, install or use defeat devices as described in §1068.101(b)(2) and the standard-setting part.

(e) *Warranty and maintenance.* Owners are responsible for properly maintaining their engines/equipment; however, owners may make warranty claims against the manufacturer for all expenses related to diagnosing and repairing or replacing emission-related parts, as described in §1068.115. Manufacturers may ask to limit diagnosis and repair to authorized service facilities, provided this does not limit their ability to meet their warranty obligations under §1068.115. The warranty period begins when the equipment is first placed into service. See the standard-setting part for specific requirements. It is a violation of the Clean Air Act for anyone to disable emission controls; see §1068.101(b)(1) and the standard-setting part.

[73 FR 59344, Oct. 8, 2008, as amended at 81 FR 74225, Oct. 25, 2016]

§1068.115 What are manufacturers' emission-related warranty requirements?

Section 207(a) of the Clean Air Act (42 U.S.C. 7541(a)) requires certifying manufacturers to warrant to purchasers that their engines/equipment are designed, built, and equipped to conform at the time of sale to the applicable regulations for their full useful life, including a warranty that the engines/equipment are free from defects in materials and workmanship that would cause any engine/equipment to fail to conform to the applicable regulations during the specified warranty period. This section codifies the warranty requirements of section 207(a) without intending to limit these requirements.

(a) As a certifying manufacturer, you may deny warranty claims only for failures that have been caused by the owner's or operator's improper maintenance or use, by accidents for which you have no responsibility, or by acts of God. For example, you would not need to honor warranty claims for failures that have been directly caused by the operator's abuse of the engine/equipment or the operator's use of the engine/equipment in a manner for which it was not designed and are not attributable to you in any way.

(b) As a certifying manufacturer, you may not deny emission-related warranty claims based on any of the following:

(1) Maintenance or other service you or your authorized facilities performed.

(2) Engine/equipment repair work that an operator performed to correct an unsafe, emergency condition attributable to you as long as the operator tries to restore the engine/equipment to its proper configuration as soon as possible.

(3) Any action or inaction by the operator unrelated to the warranty claim.

(4) Maintenance that was performed more frequently than you specify.

(5) Anything that is your fault or responsibility.

(6) The use of any fuel that is commonly available where the equipment operates unless your written maintenance instructions state that this fuel would harm the equipment's emission

control system and operators can readily find the proper fuel.

§ 1068.120 Requirements for rebuilding engines.

(a) This section describes the steps to take when rebuilding engines to avoid violating the tampering prohibition in § 1068.101(b)(1). These requirements apply to anyone rebuilding an engine subject to this part, but the recordkeeping requirements in paragraphs (j) and (k) of this section apply only to businesses. For maintenance or service that is not rebuilding, including any maintenance related to evaporative emission controls, you may not make changes that might increase emissions of any regulated pollutant, but you do not need to keep any records.

(b) The term ''rebuilding'' refers to a rebuild of an engine or engine system, including a major overhaul in which you replace the engine's pistons or power assemblies or make other changes that significantly increase the service life of the engine. It also includes replacing or rebuilding an engine's turbocharger or aftercooler or the engine's systems for fuel metering or electronic control so that it significantly increases the service life of the engine. For these provisions, rebuilding may or may not involve removing the engine from the equipment. Rebuilding does not normally include the following:

(1) Scheduled emission-related maintenance that the standard-setting part allows during the useful life period (such as replacing fuel injectors).

(2) Unscheduled maintenance that occurs commonly within the useful life period. For example, replacing a water pump is not rebuilding an engine.

(c) [Reserved]

(d) If you rebuild an engine or engine system, you must have a reasonable technical basis for knowing that the rebuilt engine's emission control system performs as well as, or better than, it performs in its certified configuration. Identify the model year of the resulting engine configuration. You have a reasonable basis if you meet two main conditions:

(1) Install parts—new, used, or rebuilt—so a person familiar with engine design and function would reasonably believe that the engine with those parts will control emissions of all pollutants at least to the same degree as with the original parts. For example, it would be reasonable to believe that parts performing the same function as the original parts (and to the same degree) would control emissions to the same degree as the original parts.

(2) Adjust parameters or change design elements only according to the original engine manufacturer's instructions. Or, if you differ from these instructions, you must have data or some other technical basis to show you should not expect in-use emissions to increase.

(e) If the rebuilt engine remains installed or is reinstalled in the same piece of equipment, you must rebuild it to the original configuration, except as allowed by this paragraph (e). You may rebuild it to a different certified configuration of the same or later model year. You may also rebuild it to a certified configuration from an earlier model year as long as the earlier configuration is as clean or cleaner than the original configuration. For purposes of this paragraph (e), ''as clean or cleaner'' means one of the following:

(1) For engines not certified with a Family Emission Limit for calculating credits for a particular pollutant, this means that the same emission standard applied for both model years. This includes supplemental standards such as Not-to-Exceed standards.

(2) For engines certified with a Family Emission Limit for a particular pollutant, this means that the configuration to which the engine is being rebuilt has a Family Emission Limit for that pollutant that is at or below the standard that applied to the engine originally, and is at or below the original Family Emission Limit.

(f) A rebuilt engine or other used engine may replace a certified engine in a piece of equipment only if the engine was built and/or rebuilt to a certified configuration meeting equivalent or more stringent emission standards. Note that a certified configuration would generally include more than one model year. A rebuilt engine being installed that is from the same model year or a newer model year than the

engine being replaced meets this requirement. The following examples illustrate the provisions of this paragraph (f):

(1) In most cases, you may use a rebuilt Tier 2 engine to replace a Tier 1 engine or another Tier 2 engine.

(2) You may use a rebuilt Tier 1 engine to replace a Tier 2 engine if the two engines differ only with respect to model year or other characteristics unrelated to emissions since such engines would be considered to be in the same configuration. This may occur if the Tier 1 engine had emission levels below the Tier 2 standards or if the Tier 2 engine was certified with a Family Emission Limit for calculating emission credits.

(3) You may use a rebuilt engine that originally met the Tier 1 standards without certification, as provided under §1068.265, to replace a certified Tier 1 engine. This may occur for engines produced under a Transition Program for Equipment Manufacturers such as that described in 40 CFR 1039.625.

(4) You may never replace a certified engine with an engine rebuilt to a configuration that does not meet EPA emission standards. Note that, for purposes of this paragraph (f)(4), a configuration is considered to meet EPA emission standards if it was previously certified or was otherwise shown to meet emission standards (see §1068.265).

(5) The standard-setting part may apply further restrictions to situations involving installation of used engines to repower equipment. For example, see 40 CFR part 1037 for provisions that apply for glider vehicles.

(g) Do not erase or reset emission-related codes or signals from onboard monitoring systems without diagnosing and responding appropriately to any diagnostic codes. This requirement applies regardless of the manufacturer's reason for installing the monitoring system and regardless of its form or interface. Clear any codes from diagnostic systems when you return the rebuilt engine to service. Do not disable a diagnostic signal without addressing its cause.

(h) When you rebuild an engine, check, clean, adjust, repair, or replace all emission-related components (listed in Appendix I of this part) as needed according to the original manufacturer's recommended practice. In particular, replace oxygen sensors, replace the catalyst if there is evidence of malfunction, clean gaseous fuel-system components, and replace fuel injectors (if applicable), unless you have a reasonable technical basis for believing any of these components do not need replacement.

(i) If you are installing an engine that someone else has rebuilt, check all emission-related components listed in Appendix I of this part as needed according to the original manufacturer's recommended practice.

(j) Keep at least the following records for all engines except spark-ignition engines with total displacement below 225 cc:

(1) Identify the hours of operation (or mileage, as appropriate) at the time of rebuild. These may be noted as approximate values if the engine has no hour meter (or odometer).

(2) Identify the work done on the engine or any emission-related control components, including a listing of parts and components you used.

(3) Describe any engine parameter adjustments.

(4) Identify any emission-related codes or signals you responded to and reset.

(k) You must show us or send us your records if we ask for them. Keep records for at least two years after rebuilding an engine. Keep them in any format that allows us to readily review them.

(1) You do not need to keep information that is not reasonably available through normal business practices. We do not expect you to have information that you cannot reasonably access.

(2) You do not need to keep records of what other companies do.

(3) You may keep records based on families rather than individual engines if that is the way you normally do business.

[73 FR 59344, Oct. 8, 2008, as amended at 75 FR 23062, Apr. 30, 2010; 81 FR 74225, Oct. 25, 2016]

§1068.125 What happens if I violate the regulations?

(a) *Civil penalties and injunctions.* We may bring a civil action to assess and

recover civil penalties and/or enjoin and restrain violations in the United States District Court for the district where you allegedly violated a requirement, or the district where you live or have your main place of business. Actions to assess civil penalties or restrain violations of §1068.101 must be brought by and in the name of the United States. The selected court has jurisdiction to restrain violations and assess civil penalties.

(1) To determine the amount of a civil penalty and reach a just conclusion, the court considers these factors:

(i) The seriousness of your violation.

(ii) How much you benefited or saved because of the violation.

(iii) The size of your business.

(iv) Your history of compliance with Title II of the Clean Air Act (42 U.S.C. 7401–7590).

(v) What you did to remedy the violation.

(vi) How the penalty will affect your ability to continue in business.

(vii) Such other matters as justice may require.

(2) Subpoenas for witnesses who must attend a district court in any district may apply to any other district.

(b) *Administrative penalties.* Instead of bringing a civil action, we may assess administrative penalties if the total is less than $356,312 against you individually. This maximum penalty may be greater if the Administrator and the Attorney General jointly determine that a greater administrative penalty assessment is appropriate, or if the limit is adjusted under 40 CFR part 19. No court may review this determination. Before we assess an administrative penalty, you may ask for a hearing as described in subpart G of this part. The Administrator may compromise or remit, with or without conditions, any administrative penalty that may be imposed under this section.

(1) To determine the amount of an administrative penalty, we will consider the factors described in paragraph (a)(1) of this section.

(2) An administrative order we issue under this paragraph (b) becomes final 30 days after we issue it unless you ask for judicial review by that time (see paragraph (c) of this section). You may ask for review by any of the district courts listed in paragraph (a) of this section. Send the Administrator a copy of the filing by certified mail.

(3) We will not pursue an administrative penalty for a particular violation if either of the following two conditions is true:

(i) We are separately prosecuting the violation under this subpart.

(ii) We have issued a final order for a violation, no longer subject to judicial review, for which you have already paid a penalty.

(c) *Judicial review.* If you ask a court to review a civil or administrative penalty, we will file in the appropriate court within 30 days of your request a certified copy or certified index of the record on which the court or the Administrator issued the order.

(1) The judge may set aside or remand any order issued under this section only if one of the following is true:

(i) Substantial evidence does not exist in the record, taken as a whole, to support finding a violation.

(ii) The Administrator's assessment of the penalty is an abuse of discretion.

(2) The judge may not add civil penalties unless our penalty is an abuse of discretion that favors you.

(d) *Effect of enforcement actions on other requirements.* Our pursuit of civil or administrative penalties does not affect or limit our authority to enforce any provisions of this chapter.

(e) *Penalties.* In any proceedings, the United States government may seek to collect civil penalties assessed under this section.

(1) Once a penalty assessment is final, if you do not pay it, the Administrator will ask the Attorney General to bring a civil action in an appropriate district court to recover the money. We may collect interest from the date of the final order or final judgment at rates established by the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)). In this action to collect overdue penalties, the court will not review the validity, amount, and appropriateness of the penalty.

(2) In addition, if you do not pay the full amount of a penalty on time, you must then pay more to cover interest, enforcement expenses (including attorney's fees and costs for collection), and a quarterly nonpayment penalty for

each quarter you do not pay. The quarterly nonpayment penalty is 10 percent of your total penalties plus any unpaid nonpayment penalties from previous quarters.

[73 FR 59344, Oct. 8, 2008, as amended at 75 FR 23062, Apr. 30, 2010; 81 FR 74226, Oct. 25, 2016]

Subpart C—Exemptions and Exclusions

§ 1068.201 General exemption and exclusion provisions.

We may exempt new engines/equipment from some or all of the prohibited acts or requirements of this part under provisions described in this subpart. We may exempt nonroad engines/equipment already placed in service in the United States from the prohibition in §1068.101(b)(1) if the exemption for nonroad engines/equipment used solely for competition applies (see §1068.235). In addition, see §1068.1 and the standard-setting parts to determine if other engines/equipment are excluded from some or all of the regulations in this chapter.

(a) This subpart identifies which engines/equipment qualify for exemptions and what information we need. We may require more information.

(b) If you violate any of the terms, conditions, instructions, or requirements to qualify for an exemption, we may void, revoke, or suspend the exemption.

(c) If you use an exemption under this subpart, we may require you to add a permanent or removable label to your exempted engines/equipment. You may ask us to modify these labeling requirements if it is appropriate for your engine/equipment.

(d) If you produce engines/equipment we exempt under this subpart, we may require you to make and keep records, perform tests, make reports and provide information as needed to reasonably evaluate the validity of the exemption.

(e) If you own or operate engines/equipment we exempt under this subpart, we may require you to provide information as needed to reasonably evaluate the validity of the exemption.

(f) Subpart D of this part describes how we apply these exemptions to engines/equipment you import (or intend to import).

(g) If you want to ask for an exemption or need more information, write to the Designated Compliance Officer.

(h) You may ask us to modify the administrative requirements for the exemptions described in this subpart or in subpart D of this part. We may approve your request if we determine that such approval is consistent with the intent of this part. For example, waivable administrative requirements might include some reporting requirements, but would not include any eligibility requirements or use restrictions.

(i) If you want to take an action with respect to an exempted or excluded engine/equipment that is prohibited by the exemption or exclusion, such as selling it, you need to certify the engine/equipment. We will issue a certificate of conformity if you send us an application for certification showing that you meet all the applicable requirements from the standard-setting part and pay the appropriate fee. Alternatively, we may allow you to include in an existing certified engine family those engines/equipment you modify (or otherwise demonstrate) to be identical to engines/equipment already covered by the certificate. We would base such an approval on our review of any appropriate documentation. These engines/equipment must have emission control information labels that accurately describe their status.

[73 FR 59344, Oct. 8, 2008, as amended at 74 FR 8428, Feb. 24, 2009; 81 FR 74226, Oct. 25, 2016]

§ 1068.210 Exempting test engines/equipment.

(a) We may exempt engines/equipment that you will use for research, investigations, studies, demonstrations, or training. Note that you are not required to get an exemption under this section for engines that are exempted under other provisions of this part, such as the manufacturer-owned exemption in §1068.215.

(b) Anyone may ask for a testing exemption.

(c) If you are a certificate holder, you may request an exemption for engines/equipment you intend to include in a test program.

(1) In your request, tell us the maximum number of engines/equipment involved and describe how you will make sure exempted engines/equipment are used only for this testing. For example, if the exemption will involve other companies using your engines/equipment, describe your plans to track individual units so you can properly report on their final disposition.

(2) Give us the information described in paragraph (d) of this section if we ask for it.

(d) If you are not a certificate holder, do all the following things:

(1) Show that the proposed test program has a valid purpose under paragraph (a) of this section.

(2) Show you need an exemption to achieve the purpose of the test program (time constraints may be a basis for needing an exemption, but the cost of certification alone is not).

(3) Estimate the duration of the proposed test program and the number of engines/equipment involved.

(4) Allow us to monitor the testing.

(5) Describe how you will ensure that you stay within this exemption's purposes. Address at least the following things:

(i) The technical nature of the test.

(ii) The test site.

(iii) The duration and accumulated engine/equipment operation associated with the test.

(iv) Ownership and control of the engines/equipment involved in the test.

(v) The intended final disposition of the engines/equipment.

(vi) How you will identify, record, and make available the engine/equipment identification numbers.

(vii) The means or procedure for recording test results.

(e) If we approve your request for a testing exemption, we will send you a letter or a memorandum describing the basis and scope of the exemption. It will also include any necessary terms and conditions, which normally require you to do the following:

(1) Stay within the scope of the exemption.

(2) Create and maintain adequate records that we may inspect.

(3) Add a permanent label to all engines/equipment exempted under this section, consistent with §1068.45, with at least the following items:

(i) The label heading ''EMISSION CONTROL INFORMATION''.

(ii) Your corporate name and trademark.

(iii) Engine displacement, family identification, and model year of the engine/equipment (as applicable), or whom to contact for further information.

(iv) The statement: ''THIS [engine, equipment, vehicle, etc.] IS EXEMPT UNDER 40 CFR 1068.210 OR 1068.215 FROM EMISSION STANDARDS AND RELATED REQUIREMENTS.''

(4) Tell us when the test program is finished.

(5) Tell us the final disposition of the engines/equipment.

[76 FR 57488, Sept. 15, 2011, as amended at 81 FR 74226, Oct. 25, 2016; 88 FR 4716, Jan. 24, 2023]

§1068.215 Exempting manufacturer-owned engines/equipment.

(a) You are eligible for this exemption for manufacturer-owned engines/equipment only if you are a certificate holder. Any engine for which you meet all applicable requirements under this section is exempt without request.

(b) Engines/equipment may be exempt without a request if they are nonconforming engines/equipment under your ownership, possession, and control and you do not operate them for purposes other than to develop products, assess production methods, or promote your engines/equipment in the marketplace, or other purposes we approve. You may not loan, lease, sell, or use the engine/equipment to generate revenue, either by itself or for an engine installed in a piece of equipment, except as allowed by §1068.201(i). Note that this paragraph (b) does not prevent the sale or shipment of a partially complete engine to a secondary engine manufacturer that will meet the requirements of this paragraph (b). *See* §1068.262 for provisions related to shipping partially complete engines to secondary engine manufacturers.

(c) To use this exemption, you must do three things:

(1) Establish, maintain, and keep adequately organized and indexed information on all exempted engines/equipment, including the engine/equipment identification number, the use of the engine/equipment on exempt status, and the final disposition of any engine/equipment removed from exempt status.

(2) Let us access these records, as described in §1068.20.

(3) Add a permanent label to all engines/equipment exempted under this section, consistent with §1068.45, with at least the following items:

(i) The label heading ''EMISSION CONTROL INFORMATION''.

(ii) Your corporate name and trademark.

(iii) Family identification and model year of the engine/equipment (as applicable), or whom to contact for further information.

(iv) The statement: ''THIS [engine, equipment, vehicle, etc.] IS EXEMPT UNDER 40 CFR 1068.210 OR 1068.215 FROM EMISSION STANDARDS AND RELATED REQUIREMENTS.''

[73 FR 59344, Oct. 8, 2008, as amended at 75 FR 23062, Apr. 30, 2010; 81 FR 74226, Oct. 25, 2016]

§1068.220 Exempting display engines/equipment.

(a) Anyone may request an exemption for display engines/equipment.

(b) Nonconforming display engines/equipment will be exempted if they are used for displays in the interest of a business or the general public. The exemption in this section does not apply to engines/equipment displayed for any purpose we determine is inappropriate for a display exemption.

(c) You may operate the exempted engine/equipment, but only if we approve specific operation that is part of the display, or is necessary for the display (possibly including operation that is indirectly necessary for the display). We may consider any relevant factor in our approval process, including the extent of the operation, the overall emission impact, and whether the engine/equipment meets emission requirements of another country.

(d) You may sell or lease the exempted engine/equipment only with our advance approval.

(e) To use this exemption, you must add a permanent label to all engines/equipment exempted under this section, consistent with §1068.45, with at least the following items:

(1) The label heading ''EMISSION CONTROL INFORMATION''.

(2) Your corporate name and trademark.

(3) Engine displacement, family identification, and model year of the engine/equipment (as applicable), or whom to contact for further information.

(4) The statement: ''THIS [engine, equipment, vehicle, etc.] IS EXEMPT UNDER 40 CFR 1068.220 FROM EMISSION STANDARDS AND RELATED REQUIREMENTS.''

(f) We may set other conditions for approval of this exemption.

[81 FR 74226, Oct. 25, 2016, as amended at 88 FR 4716, Jan. 24, 2023]

§1068.225 Exempting engines/equipment for national security.

The standards and requirements of the standard-setting part and the prohibitions in §1068.101(a)(1) and (b) do not apply to engines exempted under this section.

(a) An engine/equipment is exempt without a request if it will be owned by an agency of the Federal Government responsible for national defense and it meets at least one of the following criteria:

(1) An engine is automatically exempt in cases where the equipment in which it will be installed has armor, permanently attached weaponry, or other substantial features typical of military combat. Similarly, equipment subject to equipment-based standards is automatically exempt if it has any of these same features.

(2) In the case of marine vessels with compression-ignition engines, an engine is automatically exempt if the vessel in which it will be installed has specialized electronic warfare systems, unique stealth performance requirements, or unique combat maneuverability requirements.

(3) Gas turbine engines installed in marine vessels are automatically exempt.

(4) An engine/equipment is automatically exempt if it would need sulfur-

sensitive technology to comply with emission standards, and it is intended to be used in areas outside the United States where ultra low-sulfur fuel is unavailable.

(b) For the circumstances described in paragraphs (a)(1) and (2) of this section, an engine/equipment is also exempt without a request if it will be used, but not owned, by an agency of the Federal Government responsible for national defense.

(c) Manufacturers may produce and ship engines/equipment under an automatic exemption as described in paragraph (a) or (b) of this section if they receive a written request for such engines/equipment from the appropriate federal agency.

(d) Manufacturers may request a national security exemption for engines/equipment not meeting the conditions of paragraphs (a) and (b) of this section as long as the request is endorsed by an agency of the Federal Government responsible for national defense. In your request, explain why you need the exemption.

(e) Add a permanent label to all engines/equipment exempted under this section, consistent with §1068.45, with at least the following items:

(1) The label heading ''EMISSION CONTROL INFORMATION''.

(2) Your corporate name and trademark.

(3) Engine displacement, family identification, and model year of the engine/equipment (as applicable), or whom to contact for further information.

(4) The statement: ''THIS [engine, equipment, vehicle, etc.] HAS AN EXEMPTION FOR NATIONAL SECURITY UNDER 40 CFR 1068.225.''

[81 FR 74227, Oct. 25, 2016]

§1068.230 Exempting engines/equipment for export.

The provisions of this section apply differently depending on the country to which the engines/equipment are being exported.

(a) We will not exempt new engines/equipment if you export them to a country with emission standards identical to ours, in which case they must be covered by a certificate of conformity. Where we determine that such engines/equipment will not be placed into service in the United States, the following provisions apply for special export-only certification:

(1) The engines/equipment must be covered by a certificate of conformity or equivalent approval issued by the destination country.

(2) To get an export-only certificate of conformity, send the Designated Compliance Officer a request. We may require you to provide information such as documentation of the foreign certification and related test data.

(3) No fees apply for export-only certification.

(4) The engines/equipment must be labeled as specified in paragraph (d) of this section.

(5) This export-only certificate is not considered a valid certificate of conformity with respect to the prohibition in §1068.101(a)(1) for sale to ultimate purchasers in the United States. These engines/equipment also may not reenter the United States unless the regulations of this chapter otherwise allow it.

(b) Engines/equipment exported to a country not covered by paragraph (a) of this section are exempt from the prohibited acts in this part without a request. If you produce exempt engines/equipment for export and any of them are sold or offered for sale to an ultimate purchaser in the United States, the exemption is automatically void for those engines/equipment, except as specified in §1068.201(i). You may operate engines/equipment in the United States only as needed to prepare and deliver them for export.

(c) Except as specified in paragraph (d) of this section, label exempted engines/equipment (including shipping containers if the label on the engine/equipment will be obscured by the container) with a label showing that they are not certified for sale or use in the United States. This label may be permanent or removable. See §1068.45 for provisions related to the use of removable labels and applying labels to containers without labeling individual engines/equipment. The label must include your corporate name and trademark and the following statement: ''THIS [engine, equipment, vehicle, etc.] IS SOLELY FOR EXPORT AND

IS THEREFORE EXEMPT UNDER 40 CFR 1068.230 FROM U.S. EMISSION STANDARDS AND RELATED REQUIREMENTS.''

(d) You must apply a permanent label as specified in this paragraph (d) for engines/equipment certified under paragraph (a) of this section. You may apply a permanent label as specified in this paragraph (d) instead of the label specified in paragraph (c) of this section for exempted engines/equipment. Add a permanent label meeting the requirements of the destination country and include in the bill of lading a statement that the engines/equipment must be exported to avoid violating EPA regulations. We may modify applicable labeling requirements to align with the labeling requirements that apply for the destination country.

(e) We may set other reasonable conditions to ensure that engines/equipment exempted under this section are not placed into service in the United States.

(f) Exemptions under this section expire once engines are no longer in the United States. Therefore exemptions under this section do not allow engines to be imported back into the United States.

[73 FR 59344, Oct. 8, 2008, as amended at 81 FR 74227, Oct. 25, 2016]

§ 1068.235 Exempting nonroad engines/equipment used solely for competition.

The following provisions apply for nonroad engines/equipment, but not for motor vehicles or for stationary applications:

(a) New nonroad engines/equipment you produce that are used solely for competition are excluded from emission standards. We may exempt (rather than exclude) new nonroad engines/equipment you produce that you intend to be used solely for competition, where we determine that such engines/equipment are unlikely to be used contrary to your intent. See the standard-setting parts for specific provisions where applicable. Note that the definitions in the standard-setting part may deem uncertified engines/equipment to be new upon importation.

(b) If you modify any nonroad engines/equipment after they have been placed into service in the United States so they will be used solely for competition, they are exempt without request. This exemption applies only to the prohibitions in §1068.101(b)(1) and (2) and are valid only as long as the engine/equipment is used solely for competition. You may not use the provisions of this paragraph (b) to circumvent the requirements that apply to the sale of new competition engines under the standard-setting part.

(c) If you modify any nonroad engines/equipment under paragraph (b) of this section, you must destroy the original emission labels. If you loan, lease, sell, or give any of these engines/equipment to someone else, you must tell the new owner (or operator, if applicable) in writing that they may be used only for competition.

[81 FR 74227, Oct. 25, 2016]

§ 1068.240 Exempting new replacement engines.

The prohibitions in §1068.101(a)(1) do not apply to a new engine if it is exempt under this section as a replacement engine. For purposes of this section, a replacement engine is a new engine that is used to replace an engine that has already been placed into service (whether the previous engine is replaced in whole or in part with a new engine).

(a) *General provisions.* You are eligible for the exemption for new replacement engines only if you are a certificate holder. Note that this exemption does not apply for locomotives (40 CFR 1033.601) and that unique provisions apply to marine compression-ignition engines (40 CFR 1042.615).

(1) Paragraphs (b) and (c) of this section describe different approaches for exempting new replacement engines where the engines are specially built to correspond to an engine model from an earlier model year that was subject to less stringent standards than those that apply for current production (or is no longer covered by a certificate of conformity). You must comply with the requirements of paragraph (b) of this section for any number of replacement engines you produce in excess of what we allow under paragraph (c) of this section. You must designate engines you produce under this section as

tracked engines under paragraph (b) of this section or untracked engines under paragraph (c) of this section by the deadline for the report specified in paragraph (c)(3) of this section.

(2) Paragraph (e) of this section describes a simpler approach for exempting partially complete new replacement engines that are built under a certificate of conformity that is valid for producing engines for the current model year.

(3) For all the different approaches described in paragraphs (b) through (e) of this section, the exemption applies only for equipment that is 40 years old or less at the time of installation.

(b) *Previous-tier replacement engines with tracking.* You may produce any number of new engines to replace an engine already placed into service in a piece of equipment, as follows:

(1) The engine being replaced must have been either not originally subject to emission standards or originally subject to less stringent emission standards than those that apply to a new engine meeting current standards. The provisions of this paragraph (b) also apply for engines that were originally certified to the same standards that apply for the current model year if you no longer have a certificate of conformity to continue producing that engine configuration.

(2) The following requirements and conditions apply for engines exempted under this paragraph (b):

(i) You must determine that you do not produce an engine certified to meet current requirements that has the appropriate physical or performance characteristics to repower the equipment. If the engine being replaced was made by a different company, you must make this determination also for engines produced by this other company.

(ii) In the case of premature engine failure, if the old engine was subject to emission standards, you must make the new replacement engine in a configuration identical in all material respects to the old engine and meet the requirements of §1068.265. You may alternatively make the new replacement engine in a configuration identical in all material respects to another certified engine of the same or later model year as long as the engine is not certified with a family emission limit higher than that of the old engine.

(iii) For cases not involving premature engine failure, you must make a separate determination for your own product line addressing every tier of emission standards that is more stringent than the emission standards for the engine being replaced. For example, if the engine being replaced was built before the Tier 1 standards started to apply and engines of that power category are currently subject to Tier 3 standards, you must also consider whether any Tier 1 or Tier 2 engines that you produce have the appropriate physical and performance characteristics for replacing the old engine; if you produce a Tier 2 engine with the appropriate physical and performance characteristics, you must use it as the replacement engine.

(iv) You must keep records to document your basis for making the determinations in paragraphs (b)(2)(i) and (iii) of this section.

(3) An old engine block replaced by a new engine exempted under this paragraph (b) may be reintroduced into U.S. commerce as part of an engine that meets either the current standards for new engines, the provisions for new replacement engines in this section, or another valid exemption. Otherwise, you must destroy the old engine block (or confirm that it has been destroyed), or export the engine block without its emission label. Note that this paragraph (b)(3) does not require engine manufacturers to take possession of the engine being replaced. Owners may arrange to keep the old engine if they demonstrate that the engine block has been destroyed. An engine block is destroyed under this paragraph (b)(3) if it can never be restored to a running configuration.

(4) If the old engine was subject to emission standards, the replacement engine must meet the appropriate emission standards as specified in §1068.265. This generally means you must make the new replacement engine in a previously certified configuration.

(5) Except as specified in paragraph (d) of this section, you must add a permanent label, consistent with §1068.45,

with your corporate name and trademark and the following additional information:

(i) Add the following statement if the new engine may only be used to replace an engine that was not subject to any emission standards under this chapter:

THIS REPLACEMENT ENGINE IS EXEMPT UNDER 40 CFR 1068.240. SELLING OR INSTALLING THIS ENGINE FOR ANY PURPOSE OTHER THAN TO REPLACE AN UNREGULATED ENGINE MAY BE A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY. THIS ENGINE MAY NOT BE INSTALLED IN EQUIPMENT THAT IS MORE THAN 40 YEARS OLD AT THE TIME OF INSTALLATION.

(ii) Add the following statement if the new engine may replace an engine that was subject to emission standards:

THIS ENGINE COMPLIES WITH U.S. EPA EMISSION REQUIREMENTS FOR [Identify the appropriate emission standards (by model year, tier, or emission levels) for the replaced engine] ENGINES UNDER 40 CFR 1068.240. SELLING OR INSTALLING THIS ENGINE FOR ANY PURPOSE OTHER THAN TO REPLACE A [Identify the appropriate emission standards for the replaced engine, by model year(s), tier(s), or emission levels)] ENGINE MAY BE A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY. THIS ENGINE MAY NOT BE INSTALLED IN EQUIPMENT THAT IS MORE THAN 40 YEARS OLD AT THE TIME OF INSTALLATION.

(6) Engines exempt under this paragraph (b) may not be introduced into U.S. commerce before you make the determinations under paragraph (b)(2) of this section, except as specified in this paragraph (b)(6). We may waive the restriction in this paragraph (b)(6) for engines identified under paragraph (c)(5) of this section that you ship to a distributor. Where we waive the restriction in this paragraph (b)(6), you must take steps to ensure that the engine is installed consistent with the requirements of this paragraph (b). For example, at a minimum you must report to us annually whether engines we allowed you to ship to a distributor under this paragraph (b)(6) have been placed into service or remain in inventory. After an engine is placed into service, your report must describe how the engine was installed consistent with the requirements of this paragraph (b). Send these reports to the Designated Compliance Officer by the deadlines we specify.

(c) *Previous-tier replacement engines without tracking.* You may produce a limited number of new replacement engines that are not from a currently certified engine family under the provisions of this paragraph (c). If you produce new engines under this paragraph (c) to replace engines subject to emission standards, the new replacement engine must be in a configuration identical in all material respects to the old engine and meet the requirements of §1068.265. You may make the new replacement engine in a configuration identical in all material respects to another certified engine of the same or later model year as long as the engine is not certified with a family emission limit higher than that of the old engine. The provisions of this paragraph (c) also apply for engines that were originally certified to the same standards that apply for the current model year if you no longer have a certificate of conformity to continue producing that engine configuration. This would apply, for example, for engine configurations that were certified in an earlier model year but are no longer covered by a certificate of conformity. The following provisions apply to engines exempted under this paragraph (c):

(1) You may produce a limited number of replacement engines under this paragraph (c) representing 0.5 percent of your annual production volumes for each category and subcategory of engines identified in Table 1 to this section or five engines for each category and subcategory, whichever is greater. Calculate this number by multiplying your annual U.S.-directed production volume by 0.005 (or 0.01 through 2013) and rounding to the nearest whole number. Determine the appropriate production volume by identifying the highest total annual U.S.-directed production volume of engines from the previous three model years for all your certified engines from each category or subcategory identified in Table 1 to this section, as applicable. In unusual circumstances, you may ask us to base your production limits on U.S.-directed production volume for a model year more than three years prior. You may

include stationary engines and exempted engines as part of your U.S.-directed production volume. Include U.S.-directed engines produced by any affiliated companies and those from any other companies you license to produce engines for you.

(2) Count every exempted new replacement engine from your total U.S.-directed production volume that you produce in a given calendar year under this paragraph (c), including partially complete engines, except for the following:

(i) Engines built to specifications for an earlier model year under paragraph (b) of this section.

(ii) Partially complete engines exempted under paragraph (e) of this section.

(3) Send the Designated Compliance Officer a report by September 30 of the year following any year in which you produced exempted replacement engines under this paragraph (c).

(i) In your report include the total number of replacement engines you produce under this paragraph (c) for each category or subcategory, as appropriate, and the corresponding total production volumes determined under paragraph (c)(1) of this section. If you send us a report under this paragraph (c)(3), you must also include the total number of complete and partially complete replacement engines you produced under paragraphs (b) and (e) of this section (including any replacement marine engines subject to reporting under 40 CFR 1042.615).

(ii) Count exempt engines as tracked under paragraph (b) of this section only if you meet all the requirements and conditions that apply under paragraph (b)(2) of this section by the due date for the annual report. In the annual report you must identify any replaced engines from the previous year whose final disposition is not resolved by the due date for the annual report. Continue to report those engines in later reports until the final disposition is resolved. If the final disposition of any replaced engine is not resolved for the fifth annual report following the production report, treat this as an untracked replacement in the fifth annual report for the preceding year.

(iii) You may include the information required under this paragraph (c)(3) in production reports required under the standard-setting part.

(4) Add a permanent label as specified in paragraph (b)(5) of this section. For partially complete engines, you may alternatively add a permanent or removable label as specified in paragraph (d) of this section.

(5) You may not use the provisions of this paragraph (c) for any engines in the following engine categories or subcategories:

(i) Land-based nonroad compression-ignition engines we regulate under 40 CFR part 1039 with a per-cylinder displacement at or above 7.0 liters.

(ii) Marine compression-ignition engines we regulate under 40 CFR part 1042 with a per-cylinder displacement at or above 7.0 liters.

(iii) Locomotive engines we regulate under 40 CFR part 1033.

(d) *Partially complete engines.* The following requirements apply if you ship a partially complete replacement engine under this section:

(1) Provide instructions specifying how to complete the engine assembly such that the resulting engine conforms to the applicable certificate of conformity or the specifications of §1068.265. Where a partially complete engine can be built into multiple different configurations, you must be able to identify all the engine models and model years for which the partially complete engine may properly be used for replacement purposes. Your instructions must make clear how the final assembler can determine which configurations are appropriate for the engine they receive.

(2) You must label the engine as follows:

(i) If you have a reasonable basis to believe that the fully assembled engine will include the original emission control information label, you may add a removable label to the engine with your corporate name and trademark and the statement: ''This replacement engine is exempt under 40 CFR 1068.240.'' This would generally apply if all the engine models that are compatible with the replacement engine were covered by a certificate of conformity and they were labeled in a position on

the engine or equipment that is not included as part of the partially complete engine being shipped for replacement purposes. Removable labels must meet the requirements specified in § 1068.45.

(ii) If you do not qualify for using a removable label in paragraph (d)(2)(i) of this section, you must add a permanent label in a readily visible location, though it may be obscured after installation in a piece of equipment. Include on the permanent label your corporate name and trademark, the engine's part number (or other identifying information), and the statement: ''THIS REPLACEMENT ENGINE IS EXEMPT UNDER 40 CFR 1068.240. THIS ENGINE MAY NOT BE INSTALLED IN EQUIPMENT THAT IS MORE THAN 40 YEARS OLD AT THE TIME OF INSTALLATION.'' If there is not enough space for this statement, you may alternatively add: ''REPLACEMENT'' or ''SERVICE ENGINE.'' For purposes of this paragraph (d)(2), engine part numbers permanently stamped or engraved on the engine are considered to be included on the label.

(e) *Partially complete current-tier replacement engines.* The provisions of paragraph (d) of this section apply for engines you produce from a current line of certified engines or vehicles if you ship them as partially complete engines for replacement purposes. This applies for engine-based and equipment-based standards as follows:

(1) Where engine-based standards apply, you may introduce into U.S. commerce short blocks or other partially complete engines from a currently certified engine family as replacement components for in-use equipment powered by engines you originally produced. You must be able to identify all the engine models and model years for which the partially complete engine may properly be used for replacement purposes.

(2) Where equipment-based standards apply, you may introduce into U.S. commerce engines that are identical to engines covered by a current certificate of conformity by demonstrating compliance with currently applicable standards where the engines will be installed as replacement engines. These engines might be fully assembled, but we would consider them to be partially complete engines because they are not yet installed in the equipment.

(f) *Emission credits.* Replacement engines exempted under this section may not generate or use emission credits under the standard-setting part nor be part of any associated credit calculations.

TABLE 1 TO § 1068.240—ENGINE CATEGORIES AND SUBCATEGORIES FOR NEW REPLACEMENT ENGINES EXEMPTED WITHOUT TRACKING

Engine category	Standard-setting part [1]	Engine subcategories
Highway CI	40 CFR part 86	disp. < 0.6 L/cyl. 0.6 ≤ disp. < 1.2 L/cyl. disp. ≥ 1.2 L/cyl.
Nonroad CI, Stationary CI, and Marine CI	40 CFR part 1039, or 40 CFR part 1042	disp. < 0.6 L/cyl. 0.6 ≤ disp. < 1.2 L/cyl. 1.2 ≤ disp. < 2.5 L/cyl. 2.5 ≤ disp. < 7.0 L/cyl.
Marine SI	40 CFR part 1045	outboard. personal watercraft.
Large SI, Stationary SI, and Marine SI (sterndrive/inboard only).	40 CFR part 1048 or 40 CFR part 1045	all engines.
Recreational vehicles	40 CFR part 1051	off-highway motorcycle. all-terrain vehicle. snowmobile.
Small SI and Stationary SI	40 CFR part 1054	handheld. Class I. Class II.

[1] Include an engine as being subject to the identified standard-setting part if it will eventually be subject to emission standards under that part. For example, if you certify marine compression-ignition engines under part 94, count those as if they were already subject to part 1042.

[79 FR 7085, Feb. 6, 2014, as amended at 81 FR 74227, Oct. 25, 2016; 86 FR 34589, June 29, 2021; 88 FR 4716, Jan. 24, 2023]

§ 1068.245 Temporary provisions addressing hardship due to unusual circumstances.

(a) After considering the circumstances, we may permit you to introduce into U.S. commerce engines/equipment that do not comply with emission-related requirements for a limited time if all the following conditions apply:

(1) Unusual circumstances that are clearly outside your control prevent you from meeting requirements from this chapter.

(2) You exercised prudent planning and were not able to avoid the violation; you have taken all reasonable steps to minimize the extent of the nonconformity.

(3) No other allowances are available under the regulations in this chapter to avoid the impending violation, including the provisions of §1068.250.

(4) Not having the exemption will jeopardize the solvency of your company.

(b) If your unusual circumstances are only related to compliance with the model-year provisions of §1068.103(f), we may grant hardship under this section without a demonstration that the solvency of your company is in jeopardy as follows:

(1) You must demonstrate that the conditions specified in paragraphs (a)(1) through (3) of this section apply.

(2) Your engines/equipment must comply with standards and other requirements that would have applied if assembly were completed on schedule.

(3) You may generally request this exemption only for engines/equipment for which assembly has been substantially completed; you may not begin assembly of any additional engines/equipment under this exemption after the cause for delay has occurred. We may make an exception to this general restriction for secondary engine manufacturers.

(4) As an example, if your normal production process involves purchase of partially complete engines and a supplier fails to deliver all the ordered engines in time for your assembly according to your previously established schedule as a result of a fire at its factory, you may request that we treat those engine as if they had been completed on the original schedule. Note that we would grant relief only for those engines where you had a reasonable basis for expecting the engines to be delivered on time based on past performance and terms of purchase.

(c) To apply for an exemption, you must send the Designated Compliance Officer a written request as soon as possible before you are in violation. In your request, show that you meet all the conditions and requirements in paragraph (a) of this section.

(d) Include in your request a plan showing how you will meet all the applicable requirements as quickly as possible.

(e) You must give us other relevant information if we ask for it.

(f) We may include reasonable additional conditions on an approval granted under this section, including provisions to recover or otherwise address the lost environmental benefit or paying fees to offset any economic gain resulting from the exemption. For example, in the case of multiple tiers of emission standards, we may require that you meet the standards from the previous tier whether or not your hardship is granted under paragraph (b) of this section.

(g) Add a permanent label to all engines/equipment exempted under this section, consistent with §1068.45, with at least the following items:

(1) The label heading ''EMISSION CONTROL INFORMATION''.

(2) Your corporate name and trademark.

(3) Engine displacement (in liters or cubic centimeters), and model year of the engine/equipment, (as applicable); or whom to contact for further information. We may also require that you include maximum engine power.

(4) A statement describing the engine's status as an exempted engine:

(i) If the engine/equipment does not meet any emission standards, add the following statement: ''THIS [engine, equipment, vehicle, etc.] IS EXEMPT UNDER 40 CFR 1068.245 FROM EMISSION STANDARDS AND RELATED REQUIREMENTS.''

(ii) If the engines/equipment meet alternate emission standards as a condition of an exemption under this section, we may specify a different statement to identify the alternate emission standards.

[73 FR 59344, Oct. 8, 2008, as amended at 81 FR 74228, Oct. 25, 2016]

§ 1068.250 Extending compliance deadlines for small businesses under hardship.

(a) After considering the circumstances, we may extend the compliance deadline for you to meet new or revised emission standards as long as you meet all the conditions and requirements in this section.

(b) You must be a small business to be eligible for this exemption.

(c) Send the Designated Compliance Officer a written request for an extension as soon as possible before you are in violation. In your request, show that all the following conditions and requirements apply:

(1) You have taken all possible business, technical, and economic steps to comply.

(i) In the case of importers of engines/equipment produced by other companies, show that you attempted to find a manufacturer capable of supplying complying products as soon as you became aware of the applicable requirements but were unable to do so.

(ii) For all other manufacturers, show that the burden of compliance costs prevents you from meeting the requirements of this chapter.

(2) Not having the exemption will jeopardize the solvency of your company.

(3) No other allowances are available under the regulations in this chapter to avoid the impending violation.

(d) In describing the steps you have taken to comply under paragraph (c)(1) of this section, include at least the following information:

(1) Describe your business plan, showing the range of projects active or under consideration.

(2) Describe your current and projected financial status, with and without the burden of complying fully with the applicable regulations in this chapter.

(3) Describe your efforts to raise capital to comply with regulations in this chapter (this may not apply for importers).

(4) Identify the engineering and technical steps you have taken or those you plan to take to comply with regulations in this chapter.

(5) Identify the level of compliance you can achieve. For example, you may be able to produce engines/equipment that meet a somewhat less stringent emission standard than the regulations in this chapter require.

(e) Include in your request a plan showing how you will meet all the applicable requirements as quickly as possible.

(f) You must give us other relevant information if we ask for it.

(g) An authorized representative of your company must sign the request and include the statement: ''All the information in this request is true and accurate to the best of my knowledge.''

(h) [Reserved]

(i) We may include reasonable requirements on an approval granted under this section, including provisions to recover or otherwise address the lost environmental benefit. For example, we may require that you meet a less stringent emission standard or buy and use available emission credits.

(j) We may approve extensions of the compliance deadlines as reasonable under the circumstances up to one model year at a time, and up to three years total.

(k) Add a permanent label to all engines/equipment exempted under this section, consistent with §1068.45, with at least the following items:

(1) The label heading ''EMISSION CONTROL INFORMATION''.

(2) Your corporate name and trademark.

(3) Engine displacement (in liters or cubic centimeters), and model year of the engine/equipment (as applicable); or whom to contact for further information. We may also require that you include maximum engine power.

(4) A statement describing the engine's status as an exempted engine:

(i) If the engine/equipment does not meet any emission standards, add the following statement:''THIS [engine, equipment, vehicle, etc.] IS EXEMPT

UNDER 40 CFR 1068.250 FROM EMISSION STANDARDS AND RELATED REQUIREMENTS.''

(ii) If the engine/equipment meets alternate emission standards as a condition of an exemption under this section, we may specify a different statement to identify the alternate emission standards.

[73 FR 59344, Oct. 8, 2008, as amended at 81 FR 74228, Oct. 25, 2016]

§ 1068.255 Exempting engines and fuel-system components for hardship for equipment manufacturers and secondary engine manufacturers.

This section describes how, in unusual circumstances, we may approve an exemption to prevent hardship to an equipment manufacturer or a secondary engine manufacturer. This section does not apply to products that are subject to equipment-based exhaust emission standards.

(a) *Equipment exemption.* As an equipment manufacturer, you may ask for approval to produce exempted equipment for up to 12 months. We will generally limit this to a single interval up to 12 months in the first year that new or revised emission standards apply. Exemptions under this section are not limited to small businesses. Send the Designated Compliance Officer a written request for an exemption before you are in violation. In your request, you must show you are not at fault for the impending violation and that you would face serious economic hardship if we do not grant the exemption. This exemption is not available under this paragraph (a) if you manufacture the engine or fuel-system components you need for your own equipment, or if complying engines or fuel-system components are available from other manufacturers that could be used in your equipment, unless we allow it elsewhere in this chapter. We may impose other conditions, including provisions to use products meeting less stringent emission standards or to recover the lost environmental benefit. In determining whether to grant the exemptions, we will consider all relevant factors, including the following:

(1) The number of engines or fuel-system components involved.

(2) The size of your company and your ability to endure the hardship.

(3) The amount of time you had to redesign your equipment to accommodate complying products.

(4) Whether there was any breach of contract by a supplier.

(5) The potential for market disruption.

(b) *Engine and fuel-system component exemption.* As an engine manufacturer or fuel-system component manufacturer, you may produce nonconforming products for the equipment we exempt in paragraph (a) of this section. You do not have to request this exemption but you must have written assurance from equipment manufacturers that they need a certain number of exempted products under this section. Label engines or fuel-system components as follows, consistent with § 1068.45:

(1) *Engines.* Add a permanent label to all engines/equipment exempted under this section with at least the following items:

(i) The label heading ''EMISSION CONTROL INFORMATION''.

(ii) Your corporate name and trademark.

(iii) Engine displacement (in liters or cubic centimeters) and model year of the engine, or whom to contact for further information. We may also require that you include maximum engine power.

(iv) If the engine does not meet any emission standards: ''THIS ENGINE IS EXEMPT UNDER 40 CFR 1068.255 FROM EMISSION STANDARDS AND RELATED REQUIREMENTS.'' If the engine meets alternate emission standards as a condition of an exemption under this section, we may specify a different statement to identify the alternate emission standards.

(2) *Fuel-system components.* Add a permanent label to all engines/equipment exempted under this section with at least the following items:

(i) Your corporate name and trademark.

(ii) The statement ''EXEMPT UNDER 40 CFR 1068.255''.

(c) *Secondary engine manufacturers.* As a secondary engine manufacturer, you may ask for approval to produce exempted engines under this section for up to 12 months. We may require you

to certify your engines to compliance levels above the emission standards that apply. For example, in the case of multiple tiers of emission standards, we may require you to meet the standards from the previous tier.

(1) The provisions in paragraph (a) of this section that apply to equipment manufacturers requesting an exemption apply equally to you except that you may manufacture the engines. Before we approve an exemption under this section, we will generally require that you commit to a plan to make up the lost environmental benefit.

(i) If you produce uncertified engines under this exemption, we will calculate the lost environmental benefit based on our best estimate of uncontrolled emission rates for your engines.

(ii) If you produce engines under this exemption that are certified to a compliance level less stringent than the emission standards that would otherwise apply, we will calculate the lost environmental benefit based on the compliance level you select for your engines.

(2) The labeling requirements in paragraph (b) of this section apply to your exempted engines; however, if you certify engines to specific compliance levels, state on the label the compliance levels that apply to each engine.

[73 FR 59344, Oct. 8, 2008, as amended at 81 FR 74228, Oct. 25, 2016]

§ 1068.260 General provisions for selling or shipping engines that are not yet in their certified configuration.

Except as specified in paragraph (e) of this section, all new engines in the United States are presumed to be subject to the prohibitions of §1068.101, which generally require that all new engines be in a certified configuration before being sold, offered for sale, or introduced or delivered into commerce in the United States or imported into the United States. All emission-related components generally need to be installed on an engine for such an engine to be in its certified configuration. This section specifies clarifications and exemptions related to these requirements for engines. Except for paragraph (c) of this section, the provisions of this section generally apply for engine-based standards but not for equipment-based exhaust emission standards.

(a) The provisions of this paragraph (a) apply for emission-related components that cannot practically be assembled before shipment because they depend on equipment design parameters.

(1) You do not need an exemption to ship an engine that does not include installation or assembly of certain emission-related components if those components are shipped along with the engine. For example, you may generally ship aftertreatment devices along with engines rather than installing them on the engine before shipment. We may require you to describe how you plan to use this provision.

(2) You may ask us at the time of certification for an exemption to allow you to ship your engines without emission-related components. If we allow this, we may specify conditions that we determine are needed to ensure that shipping the engine without such components will not result in the engine being operated outside of its certified configuration. You must identify unshipped parts by specific part numbers if they cannot be properly characterized by performance specification. For example, electronic control units, turbochargers, and EGR coolers must generally be identified by part number. Parts that we believe can be properly characterized by performance specification include air filters, noncatalyzed mufflers, and charge air coolers. See paragraph (d) of this section for additional provisions that apply in certain circumstances.

(b) You do not need an exemption to ship engines without specific components if they are not emission-related components identified in Appendix I of this part. For example, you may generally ship engines without the following parts:

(1) Radiators needed to cool the engine.

(2) Exhaust piping between the engine and an aftertreatment device, between two aftertreatment devices, or downstream of the last aftertreatment device.

(c) If you are a certificate holder, partially complete engines/equipment shipped between two of your facilities

are exempt, subject to the provisions of this paragraph (c), as long as you maintain ownership and control of the engines/equipment until they reach their destination. We may also allow this where you do not maintain actual ownership and control of the engines/equipment (such as hiring a shipping company to transport the engines) but only if you demonstrate that the engines/equipment will be transported only according to your specifications. See §1068.261(b) for the provisions that apply instead of this paragraph (c) for the special case of integrated manufacturers using the delegated-assembly exemption. Notify us of your intent to use this exemption in your application for certification, if applicable. Your exemption is effective when we grant your certificate. You may alternatively request an exemption in a separate submission; for example, this would be necessary if you will not be the certificate holder for the engines in question. We may require you to take specific steps to ensure that such engines/equipment are in a certified configuration before reaching the ultimate purchaser. Note that since this is a temporary exemption, it does not allow you to sell or otherwise distribute to ultimate purchasers an engine/equipment in an uncertified configuration with respect to exhaust emissions. Note also that the exempted engine/equipment remains new and subject to emission standards (see definition of ''exempted'' in §1068.30) until its title is transferred to the ultimate purchaser or it otherwise ceases to be new.

(d) See §1068.261 for delegated-assembly provisions in which certificate-holding manufacturers ship engines that are not yet equipped with certain emission-related components. See §1068.262 for provisions related to manufacturers shipping partially complete engines for which a secondary engine manufacturer holds the certificate of conformity.

(e) Engines used in hobby vehicles are not presumed to be engines subject to the prohibitions of §1068.101. Hobby vehicles are reduced-scale models of vehicles that are not capable of transporting a person. Some gas turbine engines are subject to the prohibitions of §1068.101, but we do not presume that all gas turbine engines are subject to these prohibitions. Other engines that do not have a valid certificate of conformity or exemption when sold, offered for sale, or introduced or delivered into commerce in the United States or imported into the United States are presumed to be engines subject to the prohibitions of §1068.101 unless we determine that such engines are excluded from the prohibitions of §1068.101.

(f) While we presume that new nonhobby engines are subject to the prohibitions of §1068.101, we may determine that a specific engine is not subject to these prohibitions based on information you provide or other information that is available to us. For example, the provisions of this part 1068 and the standard-setting parts provide for exemptions in certain circumstances. Also, some engines may be subject to separate prohibitions under subchapter C instead of the prohibitions of §1068.101.

[81 FR 74228, Oct. 25, 2016]

§1068.261 Delegated assembly and other provisions related to engines 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. We may also require

that you apply some or all of the provisions of this section for other components if we determine it is necessary to ensure that shipping the engine without such components will not result in the engine being operated outside of its certified configuration. In making this determination, we will consider the importance of the component for controlling emissions and the likelihood that equipment manufacturers will have an incentive to disregard your emission-related installation instructions based on any relevant factors, such as the cost of the component and any real or perceived expectation of a negative impact on engine or equipment performance.

(b) If you manufacture engines and install them in equipment you or an affiliated company 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 manufacture engines and ship them to an unaffiliated company for installation in equipment and you include the price of all aftertreatment components in the price of the engine (whether or not you ship the aftertreatment components directly 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 ''DELEGATED 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 manufacture engines and ship them to an unaffiliated company for installation in equipment, but 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.

[73 FR 59344, Oct. 8, 2008, as amended at 75 FR 23064, Apr. 30, 2010; 81 FR 74229, Oct. 25, 2016; 88 FR 4716, Jan. 24, 2023]

§1068.262 Shipment of engines to secondary engine manufacturers.

This section specifies how 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 unusual circumstances we may allow other secondary engine manufacturers to use these provisions. 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:

(1) You obtain an engine that is not fully assembled with the intent to manufacture a complete engine.

(2) You obtain an engine with the intent to modify it before it reaches the ultimate purchaser.

(3) You obtain an engine with the intent to install it in equipment that will

be subject to equipment-based standards.

(b) Manufacturers may introduce into U.S. commerce partially complete engines as described in this section if they have a written request for such engines from a secondary engine manufacturer that has certified the engine and will finish the engine assembly. The written request must include a statement that the secondary engine manufacturer has a certificate of conformity for the engine and identify a valid engine family name associated with each engine model ordered (or the basis for an exemption if applicable, as specified in paragraph (e) of this section). The original engine manufacturer must apply a removable label meeting the requirements of §1068.45 that identifies the corporate name of the original manufacturer and states that the engine is exempt under the provisions of §1068.262. The name of the certifying manufacturer must also be on the label or, alternatively, on the bill of lading that accompanies the engines during shipment. The original engine manufacturer may not apply a permanent emission control information label identifying the engine's eventual status as a certified engine.

(c) If you are the secondary engine manufacturer and you will hold the certificate, you must include the following information in your application for certification:

(1) Identify the original engine manufacturer of the partially complete engine or of the complete engine you will modify.

(2) Describe briefly how and where final assembly will be completed. Specify how you have the ability to ensure that the engines will conform to the regulations in their final configuration. (Note: Paragraph (a) of this section prohibits using the provisions of this section unless you have substantial control over the design and assembly of emission controls.)

(3) State unconditionally that you will not distribute the engines without conforming to all applicable regulations.

(d) If you are a secondary engine manufacturer and you are already a certificate holder for other families, you may receive shipment of partially complete engines after you apply for a certificate of conformity but before the certificate's effective date. In this case, all the provisions of §1068.103(c)(1) through (3) apply. This exemption allows the original manufacturer to ship engines after you have applied for a certificate of conformity. Manufacturers may introduce into U.S. commerce partially complete engines as described in this paragraph (d) if they have a written request for such engines from a secondary engine manufacturer stating that the application for certification has been submitted (instead of the information we specify in paragraph (b) of this section). We may set additional conditions under this paragraph (d) to prevent circumvention of regulatory requirements. Consistent with §1068.103(c), we may also revoke an exemption under this paragraph (d) if we have reason to believe that the application for certification will not be approved or that the engines will otherwise not reach a certified configuration before reaching the ultimate purchaser. This may require that you export the engines.

(e) The provisions of this section also apply for shipping partially complete engines if the engine is covered by a valid exemption and there is no valid engine family name that could be used to represent the engine model. Unless we approve otherwise in advance, you may do this only when shipping engines to secondary engine manufacturers that are certificate holders. In this case, the secondary engine manufacturer must identify the regulatory cite identifying the applicable exemption instead of a valid engine family name when ordering engines from the original engine manufacturer.

(f) If secondary engine manufacturers determine after receiving an engine under this section that the engine will not be covered by a certificate or exemption as planned, they may ask us to allow for shipment of the engines back to the original engine manufacturer or to another secondary engine manufacturer. This might occur in the case of an incorrect shipment or excess inventory. We may modify the provisions of this section as appropriate to address these cases.

(g) Both original and secondary engine manufacturers must keep the records described in this section for at least five years, including the written request for engines and the bill of lading for each shipment (if applicable). The written request is deemed to be a submission to EPA and is thus subject to the reporting requirements of § 1068.101(a)(2).

(h) These provisions are intended only to allow secondary engine manufacturers to obtain or transport engines in the specific circumstances identified in this section so any exemption under this section expires when the engine reaches the point of final assembly identified in paragraph (c)(2) of this section.

(i) For purposes of this section, an allowance to introduce partially complete engines into U.S. commerce includes a conditional allowance to sell, introduce, or deliver such engines into commerce in the United States or import them into the United States. It does not include a general allowance to offer such partially complete engines for sale because this exemption is intended to apply only for cases in which the certificate holder already has an arrangement to purchase the engines from the original engine manufacturer. This exemption does not allow the original engine manufacturer to subsequently offer the engines for sale to a different manufacturer who will hold the certificate unless that second manufacturer has also complied with the requirements of this part. The exemption does not apply for any individual engines that are not labeled as specified in this section or which are shipped to someone who is not a certificate holder.

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

(1) We may suspend or revoke your exemption if you fail to meet the requirements of this section. We may suspend or revoke an exemption related to a specific secondary engine manufacturer if that manufacturer sells engines that are in not in a certified configuration in violation of the regulations. We may disallow this exemption for future shipments to the affected secondary engine manufacturer or set additional conditions to ensure that engines will be assembled in the certified configuration.

(2) We may void an exemption for all the affected engines if you intentionally submit false or incomplete information or fail to keep and provide to EPA the records required by this section.

(3) The exemption is void for an engine that is shipped to a company that is not a certificate holder or for an engine that is shipped to a secondary engine manufacturer that is not in compliance with the requirements of this section.

(4) The secondary engine manufacturer may be liable for causing a prohibited act if voiding the exemption is due to its own actions.

(k) No exemption is needed to import equipment that does not include an engine. No exemption from exhaust emission standards is available under this section for equipment subject to equipment-based standards if the engine has been installed.

[81 FR 74229, Oct. 25, 2016]

§ 1068.265 Provisions for engines/equipment conditionally exempted from certification.

In some cases, exempted engines may need to meet alternate emission standards as a condition of the exemption. For example, replacement engines exempted under § 1068.240 in many cases need to meet the same standards as the engines they are replacing. The standard-setting part may similarly exempt engines/equipment from all certification requirements, or allow us to exempt engines/equipment from all certification requirements for certain cases, but require the engines/equipment to meet alternate standards. In these cases, all the following provisions apply:

(a) Your engines/equipment must meet the alternate standards we specify in (or pursuant to) the exemption section, and all other requirements applicable to engines/equipment that are subject to such standards.

(b) You need not apply for and receive a certificate for the exempt engines/equipment. However, you must comply with all the requirements and

obligations that would apply to the engines/equipment if you had received a certificate of conformity for them unless we specifically waive certain requirements.

(c) You must have emission data from test engines/equipment using the appropriate procedures that demonstrate compliance with the alternate standards unless the engines/equipment are identical in all material respects to engines/equipment that you have previously certified to standards that are the same as, or more stringent than, the alternate standards. Note that ''engines/equipment that you have previously certified'' does not include any engines/equipment initially covered by a certificate that was later voided or otherwise invalidated, or engines/equipment that we have determined did not fully conform to the regulations.

(d) See the provisions of the applicable exemption for labeling instructions, including those related to the compliance statement and other modifications to the label otherwise required in the standard-setting part. If we do not identify specific labeling requirements for an exempted engine, you must meet the labeling requirements in the standard-setting part, with the following exceptions:

(1) Modify the family designation by eliminating the character that identifies the model year.

(2) We may also specify alternative language to replace the compliance statement otherwise required in the standard-setting part.

(e) You may not generate emission credits for averaging, banking, or trading with engines/equipment meeting requirements under the provisions of this section.

(f) Keep records to show that you meet the alternate standards as follows:

(1) If your exempted engines/equipment are identical to previously certified engines/equipment, keep your most recent application for certification for the certified family.

(2) If you previously certified a similar family, but have modified the exempted engines/equipment in a way that changes them from their previously certified configuration, keep your most recent application for certification for the certified family, a description of the relevant changes, and any test data or engineering evaluations that support your conclusions.

(3) If you have not previously certified a similar family, keep all the records we specify for the application for certification and any additional records the standard-setting part requires you to keep.

(g) We may require you to send us an annual report of the engines/equipment you produce under this section.

Subpart D—Imports

§ 1068.301 General provisions for importing engines/equipment.

(a) This subpart applies to you if you import into the United States engines or equipment subject to EPA emission standards or equipment containing engines subject to EPA emission standards.

(b) In general, engines/equipment that you import must be covered by a certificate of conformity unless they were built before emission standards started to apply. This subpart describes the limited cases where we allow importation of exempt or excluded engines/equipment. If an engine has an exemption from exhaust emission standards, you may import the equipment under the same exemption. Imported engines/equipment that are exempt or excluded must have a label as described in the specific exemption or exclusion. If the regulation does not include specific labeling requirements, apply a label meeting the requirements of §1068.45 that identifies your corporate name and describes the basis for the exemption or exclusion.

(c) U.S. Customs and Border Protection may prevent you from importing engines or equipment if you do not meet the requirements of this subpart. In addition, U.S. Customs and Border Protection regulations may contain other requirements for engines/equipment imported into the United States (see 19 CFR Chapter I).

(d) Complete the appropriate EPA declaration before importing any engines or equipment. These forms may be submitted and stored electronically and are available on the Internet at *http://www.epa.gov/OTAQ/imports/* or by

phone at 734–214–4100. Importers must keep these records for five years and make them available promptly upon request.

(e) The standard-setting part may define uncertified engines/equipment to be ''new'' upon importation, whether or not they have already been placed into service. This may affect how the provisions of this subpart apply for your engines/equipment. (See the definition of ''new'' and other relevant terms in the standard-setting part.)

[73 FR 59344, Oct. 8, 2008, as amended at 81 FR 74231, Oct. 25, 2016; 88 FR 4716, Jan. 24, 2023]

§ 1068.305 How do I get an exemption or exclusion for imported engines/equipment?

(a) You must meet the requirements of the specific exemption or exclusion you intend to use, including any labeling requirements that apply, and complete the appropriate declaration form described in § 1068.301(d).

(b) If we ask for it, prepare a written request in which you do the following:

(1) Give your name, address, and telephone number.

(2) Give the engine/equipment owner's name, address, and telephone number.

(3) Identify the make, model, identification number, and original production year of all engines/equipment.

(4) Identify which exemption or exclusion in this subpart allows you to import nonconforming engines/equipment and describe how your engine/equipment qualifies.

(5) Tell us where you will keep your engines/equipment if you might need to store them until we approve your request.

(6) Authorize us to inspect or test your engines/equipment as the Clean Air Act allows.

(c) We may ask for more information.

(d) You may import the nonconforming engines/equipment you identify in your request if you get prior written approval from us. U.S. Customs and Border Protection may require you to present the approval letter. We may temporarily or permanently approve the exemptions or exclusions, as described in this subpart.

[73 FR 59344, Oct. 8, 2008, as amended at 81 FR 74231, Oct. 25, 2016]

§ 1068.310 Exclusions for imported engines/equipment.

If you show us that your engines/equipment qualify under one of the paragraphs of this section, we will approve your request to import such excluded engines/equipment. You must have our approval before importing engines/equipment under paragraph (a) of this section. You may, but are not required, to request our approval to import the engines/equipment under paragraph (b) through (d) of this section. Qualifying engines/equipment are excluded as follows:

(a) *Nonroad engines/equipment used solely for competition.* Nonroad engines/equipment that you demonstrate will be used solely for competition are excluded from the restrictions on imports in § 1068.301(b), but only if they are properly labeled. See the standard-setting part for provisions related to this demonstration that may apply. Section 1068.101(b)(4) prohibits anyone from using these excluded engines/equipment for purposes other than competition. We may waive the labeling requirement or allow a removable label for engines/equipment that are being temporarily imported for one or more specific competition events.

(b) *Stationary engines.* The definition of nonroad engine in § 1068.30 does not include certain engines used in stationary applications. Such engines (and equipment containing such engines) may be subject to the standards of 40 CFR part 60. Engines that are excluded from the definition of nonroad engine in this part and are not required to be certified to standards under 40 CFR part 60 are not subject to the restrictions on imports in § 1068.301(b), but only if they are properly labeled and there is clear and convincing evidence that each engine will be used in a stationary application (see paragraph (2)(iii) of the definition of ''Nonroad engine''). Section 1068.101 restricts the use of stationary engines for non-stationary purposes unless they are certified under 40 CFR part 60 to the same standards that would apply to nonroad engines for the same model year.

(c) *Hobby engines.* The standard-setting parts exclude engines used in reduced-scale models of vehicles that are not capable of transporting a person.

(d) *Other engines/equipment.* The standard-setting parts may exclude engines/equipment used in certain applications. For example, engines used in aircraft are generally excluded. Engines/equipment used in underground mining are excluded if they are regulated by the Mine Safety and Health Administration.

(e) *Labeling.* For engines/equipment imported under paragraph (a) or (b) of this section, you must add a permanent label, consistent with §1068.45, with at least the following items unless the standard-setting part includes other specific labeling requirements or we approve alternate label language that is more accurate for your engine/equipment:

(1) Include the heading ''EMISSION CONTROL INFORMATION''.

(2) Include your full corporate name and trademark.

(3) State the engine displacement (in liters or cubic centimeters). We may also require that you include maximum engine power. If the engine's power is not established, state the approximate power.

(4) State: ''THIS ENGINE IS EXEMPT FROM THE REQUIREMENTS OF [identify the part referenced in §1068.1(a) that would otherwise apply], AS PROVIDED IN [identify the paragraph authorizing the exemption (for example, ''40 CFR 1068.310(a)'')]. INSTALLING THIS ENGINE IN ANY DIFFERENT APPLICATION MAY BE A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY.''

[73 FR 59344, Oct. 8, 2008, as amended at 81 FR 74231, Oct. 25, 2016; 87 FR 4717, Jan. 24, 2023]

§1068.315 Permanent exemptions for imported engines/equipment.

We may approve a permanent exemption from the restrictions on imports under §1068.301(b) under the following conditions:

(a) *National security exemption.* You may import an engine or piece of equipment under the national security exemption in §1068.225.

(b) *Manufacturer-owned engine/equipment exemption.* You may import manufacturer-owned engines/equipment, as described in §1068.215.

(c) *Replacement engine exemption.* You may import a nonconforming replacement engine as described in §1068.240. To use this exemption, you must be a certificate holder for a family we regulate under the same part as the replacement engine.

(d) *Extraordinary circumstances exemption.* You may import a nonconforming engine or piece of equipment if we grant hardship relief as described in §1068.245.

(e) *Small-volume manufacturer exemption.* You may import a nonconforming engine or piece of equipment if we grant hardship relief for a small-volume manufacturer, as described in §1068.250.

(f) *Equipment-manufacturer hardship exemption.* You may import a nonconforming engine if we grant an exemption for the transition to new or revised emission standards, as described in §1068.255.

(g) [Reserved]

(h) *Identical configuration exemption.* Unless specified otherwise in the standard-setting part, you may import nonconforming engines/equipment if they are identical in all material respects to certified engines/equipment produced by the same manufacturer, subject to the following provisions:

(1) You must meet all the following criteria:

(i) You have owned the engines/equipment for at least six months.

(ii) You agree not to sell, lease, donate, trade, or otherwise transfer ownership of the engines/equipment for at least five years. The only acceptable way to dispose of the engines/equipment during this five-year period is to destroy or export them.

(iii) You use data or evidence sufficient to show that the engines/equipment are in a configuration that is identical in all material respects to engines/equipment the original manufacturer has certified to meet emission standards that apply at the time the manufacturer finished assembling or modifying the engines/equipment in question. If you modify the engines/equipment to make them identical, you must completely follow the original manufacturer's written instructions.

(2) We will tell you in writing if we find the information insufficient to show that the engines/equipment are

eligible for the identical configuration exemption. We will then not consider your request further until you address our concerns.

[73 FR 59344, Oct. 8, 2008, as amended at 81 FR 74231, Oct. 25, 2016; 88 FR 4717, Jan. 24, 2023]

§ 1068.325 Temporary exemptions for imported engines/equipment.

You may import engines/equipment under certain temporary exemptions, subject to the conditions in this section. We may ask U.S. Customs and Border Protection to require a specific bond amount to make sure you comply with the requirements of this subpart. You may not sell or lease one of these exempted engines/equipment while it is in the United States except as specified in this section or §1068.201(i). You must eventually export the engine/equipment as we describe in this section unless it conforms to a certificate of conformity or it qualifies for one of the permanent exemptions in §1068.315 or the standard-setting part.

(a) *Exemption for repairs or alterations.* You may temporarily import nonconforming engines/equipment solely for repair or alteration, subject to our advance approval as described in paragraph (j) of this section. You may operate the engine/equipment in the United States only as necessary to repair it, alter it, or ship it to or from the service location. Export the engine/equipment directly after servicing is complete, or confirm that it has been destroyed.

(b) *Testing exemption.* You may temporarily import nonconforming engines/equipment for testing if you follow the requirements of §1068.210, subject to our advance approval as described in paragraph (j) of this section. You may operate the engines/equipment in the United States only as needed to perform tests. The testing exemption expires one year after you import the engine/equipment unless we approve an extension. The engine/equipment must be exported before the exemption expires. You may sell or lease the engines/equipment consistent with the provisions of §1068.210.

(c) *Display exemption.* You may temporarily import nonconforming engines/equipment for display if you follow the requirements of §1068.220, subject to our advance approval as described in paragraph (j) of this section. The display exemption expires one year after you import the engine/equipment, unless we approve your request for an extension. The engine/equipment must be exported (or destroyed) by the time the exemption expires or directly after the display concludes, whichever comes first.

(d) *Export exemption.* You may temporarily import nonconforming engines/equipment to export them, as described in §1068.230. Label the engine/equipment as described in §1068.230. You may sell or lease the engines/equipment for operation outside the United States consistent with the provisions of §1068.230.

(e) *Diplomatic or military exemption.* You may temporarily import nonconforming engines/equipment if you represent a foreign government in a diplomatic or military capacity. U.S Customs and Border Protection may require that you show your written confirmation from the U.S. State Department that you qualify for the diplomatic or military exemption or a copy of your orders for military duty in the United States. We will rely on the State Department or your military orders to determine when your diplomatic or military status expires, at which time you must export your exempt engines/equipment.

(f) *Delegated-assembly exemption.* You may import a nonconforming engine for final assembly under the provisions of §1068.261. You may sell or lease the engines/equipment consistent with the provisions of §1068.261.

(g) *Exemption for partially complete engines.* The following provisions apply for importing partially complete engines and used engines that become new as a result of importation:

(1) You may import a partially complete engine by shipping it from one of your facilities to another under the provisions of §1068.260(c) if you also apply a removable label meeting the requirements of §1068.45 that identifies your corporate name and states that the engine is exempt under the provisions of §1068.325(g).

(2) You may import an engine if another company already has a certificate of conformity and will be modifying the engine to be in its final certified configuration or a final exempt configuration if you meet the labeling and other requirements of §1068.262. If you are importing a used engine that becomes new as a result of importation, you must meet all the requirements that apply to original engine manufacturers under §1068.262. You may sell or lease the engines consistent with the provisions of §1068.262.

(h)–(i) [Reserved]

(j) *Approvals.* For the exemptions in this section requiring our approval, you must send a request to the Designated Compliance Officer before importing the engines/equipment. We will approve your request if you meet all the applicable requirements and conditions. If another section separately requires that you request approval for the exemption, you may combine the information requirements in a single request. Include the following information in your request:

(1) Identify the importer of the engine/equipment and the applicable postal address, e-mail address, and telephone number.

(2) Identify the engine/equipment owner and the applicable postal address, e-mail address, and telephone number.

(3) Identify the engine/equipment by model number (or name), serial number, and original production year.

(4) Identify the specific regulatory provision under which you are seeking an exemption.

(5) Acknowledge that EPA enforcement officers may conduct inspect 88ions or testing as allowed under the Clean Air Act.

(6) Include any additional information we specify for demonstrating that you qualify for the exemption.

[76 FR 57489, Sept. 15, 2011; 81 FR 74231, Oct. 25, 2016; 88 FR 4717, Jan. 24, 2023]

§1068.335 Penalties for violations.

(a) *All imported engines/equipment.* Unless you comply with the provisions of this subpart, importation of nonconforming engines/equipment violates sections 203 and 213(d) of the Clean Air Act (42 U.S.C. 7522 and 7547(d)). You may then have to export the engines/equipment, pay civil penalties, or both. U.S. Customs and Border Protection may seize unlawfully imported engines and equipment.

(b) *Temporarily imported engines/equipment.* If you do not comply with the provisions of this subpart for a temporary exemption under §1068.325, you may forfeit the total amount of the bond in addition to the sanctions we identify in paragraph (a) of this section. We will consider an engine or piece of equipment to be exported if it has been destroyed or delivered to U.S. Customs and Border Protection for export or other disposition under applicable Customs laws and regulations. EPA or U.S. Customs and Border Protection may offer you a grace period to allow you to export temporarily exempted engines/equipment without penalty after the exemption expires.

§1068.360 Restrictions for assigning a model year to imported engines and equipment.

This section includes limitations on assigning a model year to engines and equipment that are imported in a year later than the model year in which they were manufactured, except as specified in paragraph (e) of this section.

(a) The term ''model year'' is defined in each of the standard-setting parts. These definitions may vary slightly to address the different categories of engines and equipment. Except as specified in paragraphs (b) and (c) of this section, the emission standards and other emission-related requirements that apply for an imported engine or piece of equipment are determined by the model year as defined in the applicable standard-setting part and the provisions of 40 CFR 1068.105(a).

(b) This paragraph (b) applies for the importation of engines and equipment that have not been placed into service, where the importation occurs in any calendar year that is more than one year after the named model year of the engine or equipment when emission control requirements applying to current engines are different than for engines or equipment in the named model year, unless they are imported under special provisions for Independent

Commercial Importers as allowed under the standard-setting part. Regardless of what other provisions of this subchapter U specify for the model year of the engine or equipment, such engines and equipment are deemed to have an applicable model year no more than one year earlier than the calendar year in which they are imported. For example, a new engine identified as a 2007 model-year product that is imported on January 31, 2010 will be treated as a 2009 model-year engine; the same engine will be treated as a 2010 model-year engine if it is imported any time in calendar year 2011.

(c) If you claim that an engine or piece of equipment is not subject to standards—or is subject to standards less stringent than those currently in place—based on its original manufacture date because it has already been placed into service, you must provide clear and convincing evidence that it has already been placed into service. Such evidence must generally include, but not be limited to, documentary evidence of purchase and maintenance history and visible wear that is consistent with the reported manufacture date. Importing products for resale or importing more than one engine or piece of equipment at a time would generally require a greater degree of evidence under this paragraph (c). If you do not satisfactorily demonstrate that the engine or equipment has already been placed into service, the provisions of paragraph (b) of this section apply.

(d) Nothing in this section should be interpreted to allow circumvention of the requirements of this part by misstating or mis-labeling the model year of engines or equipment. For example, this section does not permit engines imported in the same year that they are manufactured to be treated as an engine manufactured in the previous year. To verify compliance with the provisions of this section, we may require you to verify the original manufacture date of the engine or equipment based on manufacturing records, title-transfer documents, service records, or other documentation.

(e) If all the current emission control requirements are the same as in the named model year, the provisions of this section do not apply.

[73 FR 59344, Oct. 8, 2008, as amended at 81 FR 74232, Oct. 25, 2016]

Subpart E—Selective Enforcement Auditing

§ 1068.401 What is a selective enforcement audit?

(a) We may conduct or require you as a certificate holder to conduct emission tests on production engines/equipment in a selective enforcement audit. This requirement is independent of any requirement for you to routinely test production-line engines/equipment. Where there are multiple entities meeting the definition of manufacturer, we may require manufacturers other than the certificate holder to conduct or participate in the audit as necessary. For products subject to equipment-based standards, but tested using engine-based test procedures, this subpart applies to the engines and/or the equipment, as applicable. Otherwise this subpart applies to engines for products subject to engine-based standards and to equipment for products subject to equipment-based standards.

(b) If we send you a signed test order, you must follow its directions and the provisions of this subpart. We may tell you where to test the engines/equipment. This may be where you produce the engines/equipment or any other emission testing facility. You are responsible for all testing costs whether the testing is conducted at your facility or another facility.

(c) If we select one or more of your families for a selective enforcement audit, we will send the test order to the person who signed the application for certification or we will deliver it in person.

(d) If we do not select a testing facility, notify the Designated Compliance Officer within one working day of receiving the test order where you will test your engines/equipment.

(e) You must do everything we require in the audit without delay. We may suspend or revoke your certificate of conformity for the affected engine

families if you do not fulfill your obligations under this subpart.

[81 FR 74232, Oct. 25, 2016]

§ 1068.405 What is in a test order?

(a) In the test order, we will specify the following things:

(1) The family we have identified for testing. We may also specify individual configurations.

(2) The engine/equipment assembly plant, storage facility, or (if you import the engines/equipment) port facility from which you must select engines/equipment.

(3) The procedure for selecting engines/equipment for testing, including a selection rate.

(4) The test procedures, duty cycles, and test points, as appropriate, for testing the engines/equipment to show that they meet emission standards.

(b) We may state that we will select the test engines/equipment.

(c) We may identify alternate families or configurations for testing in case we determine the intended engines/equipment are not available for testing or if you do not produce enough engines/equipment to meet the minimum rate for selecting test engines/equipment.

(d) We may include other directions or information in the test order.

(e) We may ask you to show us that you meet any additional requirements that apply to your engines/equipment (closed crankcases, for example).

(f) In anticipation of a potential audit, you may give us a list of your preferred families and the corresponding assembly plants, storage facilities, or (if you import the engines/equipment) port facilities from which we should select engines/equipment for testing. The information would apply only for a single model year so it would be best to include this information in your application for certification. If you give us this list before we issue a test order, we will consider your recommendations, but we may select different engines/equipment.

(g) If you also do routine production-line testing with the selected family in the same time period, the test order will tell you what changes you might need to make in your production-line testing schedule.

[73 FR 59344, Oct. 8, 2008, as amended at 81 FR 74132, Oct. 25, 2016]

§ 1068.410 How must I select and prepare my engines/equipment?

(a) *Selecting engines/equipment.* Select engines/equipment as described in the test order. If you are unable to select test engines/equipment this way, you may ask us to approve an alternate plan as long as you make the request before you start selecting engines/equipment.

(b) *Assembling engines/equipment.* Produce and assemble test engines/equipment using your normal production and assembly process for that family.

(1) Notify us directly if you make any change in your production, assembly, or quality control processes that might affect emissions between the time you receive the test order and the time you finish selecting test engines/equipment.

(2) If you do not fully assemble engines/equipment at the specified location, we will describe in the test order how to select components to finish assembling the engines/equipment. Assemble these components onto the test engines/equipment using your documented assembly and quality control procedures.

(c) *Modifying engines/equipment.* Once an engine or piece of equipment is selected for testing, you may adjust, repair, prepare, or modify it or check its emissions only if one of the following is true:

(1) You document the need for doing so in your procedures for assembling and inspecting all your production engines/equipment and make the action routine for all the engines/equipment in the family.

(2) This subpart otherwise allows your action.

(3) We approve your action in advance.

(d) *Engine/equipment malfunction.* If an engine/equipment malfunction prevents further emission testing, ask us to approve your decision to either repair the engine or delete it from the test sequence.

(e) *Setting adjustable parameters.* Before any test, we may adjust or require you to adjust any adjustable parameter to any setting within its physically adjustable range.

(1) [Reserved]

(2) We may make or specify adjustments within the physically adjustable range by considering their effect on emission levels. We may also consider how likely it is that someone will make such an adjustment with in-use engines/equipment.

(f) *Stabilizing emission levels.* (1) Before you test production-line engines/equipment for exhaust emission, you may operate the engine/equipment to stabilize the exhaust emission levels. Using good engineering judgment, operate your engines/equipment in a way that represents the way production engines/equipment will be used. You may operate each engine or piece of equipment for no more than the greater of two periods:

(i) 50 hours.

(ii) The number of hours you operated your emission-data engine/equipment for certifying the family (see 40 CFR part 1065, subpart E).

(2) Use good engineering judgment and follow the standard-setting part to stabilize equipment for evaporative emissions, where appropriate.

(g) *Damage during shipment.* If shipping the engine/equipment to a remote facility for testing under a selective enforcement audit makes necessary an adjustment or repair, you must wait until after the initial emission test to do this work. We may waive this requirement if the test would be impossible or unsafe or if it would permanently damage the engine/equipment. Report to us, in your written report under §1068.450, all adjustments or repairs you make on test engines/equipment before each test.

(h) *Shipping engines/equipment.* If you need to ship engines/equipment to another facility for testing, make sure the test engines/equipment arrive at the test facility within 24 hours after being selected. You may ask that we allow more time if you are unable to do this.

(i) *Retesting after invalid tests.* You may retest an engine or piece of equipment if you determine an emission test is invalid under the standard-setting part. Explain in your written report reasons for invalidating any test and the emission results from all tests. If you retest an engine or piece of equipment and, within ten days after testing, ask to substitute results of the new tests for the original ones, we will answer within ten days after we receive your information.

(j) *Retesting after reaching a fail decision.* You may retest your engines/equipment once a fail decision for the audit has been reached based on the first test on each engine or piece of equipment under §1068.420(c). You may test each engine or piece of equipment up to a total of three times, but you must perform the same number of tests on each engine or piece of equipment. You may further operate the engine/equipment to stabilize emission levels before testing, subject to the provisions of paragraph (f) of this section. We may approve retesting at other times if you send us a request with satisfactory justification.

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

§1068.415 How do I test my engines/equipment?

(a) Use the test procedures specified in the standard-setting part for showing that your engines/equipment meet emission standards. The test order will give further testing instructions.

(b) If no test cells are available at a given facility, you may make alternate testing arrangements with our approval.

(c) Test at least two engines/equipment in each 24-hour period (including void tests). However, for engines with maximum engine power above 560 kW, you may test one engine per 24-hour period. If you request and justify it, we may approve a lower testing rate.

(d) For exhaust emissions, accumulate service on test engines/equipment at a minimum rate of 6 hours per engine or piece of equipment during each 24-hour period; however, service accumulation to stabilize an engine's emission levels may not take longer than eight days. The first 24-hour period for service accumulation begins when you finish preparing an engine or piece of equipment for testing. The minimum

service accumulation rate does not apply on weekends or holidays. We may approve a longer stabilization period or a lower service accumulation rate if you request and justify it. We may require you to accumulate hours more rapidly than the minimum rate, as appropriate. Plan your service accumulation to allow testing at the rate specified in paragraph (c) of this section. Select operation for accumulating operating hours on your test engines/equipment to represent normal in-use operation for the family.

(e) Test engines/equipment in the same order you select them.

[73 FR 59344, Oct. 8, 2008, as amended at 81 FR 74232, Oct. 25, 2016]

§ 1068.420 How do I know when my engine family fails an SEA?

(a) A failed engine or piece of equipment is one whose final deteriorated test results exceed an applicable emission standard for any regulated pollutant.

(b) Continue testing engines/equipment until you reach a pass decision for all pollutants or a fail decision for one pollutant, as described in paragraph (c) of this section.

(c) You reach a pass decision for the SEA requirements when the number of failed engines/equipment is less than or equal to the pass decision number in Appendix A to this subpart for the total number of engines/equipment tested. You reach a fail decision for the SEA requirements when the number of failed engines/equipment is greater than or equal to the fail decision number in Appendix A to this subpart for the total number of engines/equipment you test. An acceptable quality level of 40 percent is the basis for the pass or fail decision.

(d) Consider test results in the same order as the engine/equipment testing sequence.

(e) If you reach a pass decision for one pollutant, but need to continue testing for another pollutant, we will not use these later test results for the pollutant with the pass decision as part of the SEA.

(f) Appendix A to this subpart lists multiple sampling plans. Use the sampling plan for the projected sales volume you reported in your application for the audited family.

(g) We may choose to stop testing after any number of tests.

(h) If we test some of your engines/equipment in addition to your own testing, we may decide not to include your test results as official data for those engines/equipment if there is substantial disagreement between your testing and our testing. We will reinstate your data as valid if you show us that we made an error and your data are correct.

(i) If we rely on our test data instead of yours, we will notify you in writing of our decision and the reasons we believe your facility is not appropriate for doing the tests we require under this subpart. You may request in writing that we consider your test results from the same facility for future testing if you show us that you have made changes to resolve the problem.

[73 FR 59344, Oct. 8, 2008, as amended at 81 FR 74232, Oct. 25, 2016]

§ 1068.425 What happens if one of my production-line engines/equipment exceeds the emission standards?

(a) If one of your production-line engines/equipment fails to meet one or more emission standards (see § 1068.420), the certificate of conformity is automatically suspended for that engine or piece of equipment. You must take the following actions before your certificate of conformity can cover that engine or piece of equipment:

(1) Correct the problem and retest the engine/equipment to show it complies with all emission standards.

(2) Include in your written report a description of the test results and the remedy for each engine or piece of equipment (see § 1068.450).

(b) You may ask for a hearing relative to the suspended certificate of conformity for the failing engine/equipment as specified in subpart G of this part.

[73 FR 59344, Oct. 8, 2008, as amended at 81 FR 74232, Oct. 25, 2016]

§ 1068.430 What happens if a family fails an SEA?

(a) We may suspend your certificate of conformity for a family if it fails the SEA under § 1068.420. The suspension

may apply to all facilities producing engines/equipment from a family even if you find noncompliant engines/equipment only at one facility.

(b) We will tell you in writing if we suspend your certificate in whole or in part. We will not suspend a certificate until at least 15 days after the family fails the SEA. The suspension is effective when you receive our notice.

(c) You may ask for a hearing as described in subpart G of this part up to 15 days after we suspend the certificate for a family. If we agree that we used erroneous information in deciding to suspend the certificate before a hearing is held, we will reinstate the certificate.

[73 FR 59344, Oct. 8, 2008, as amended at 81 FR 74232, Oct. 25, 2016]

§ 1068.435 May I sell engines/equipment from a family with a suspended certificate of conformity?

You may sell engines/equipment that you produce after we suspend the family's certificate of conformity only if one of the following occurs:

(a) You test each engine or piece of equipment you produce and show it complies with emission standards that apply.

(b) We conditionally reinstate the certificate for the family. We may do so if you agree to recall all the affected engines/equipment and remedy any noncompliance at no expense to the owner if later testing shows that engines/equipment in the family still do not comply.

§ 1068.440 How do I ask EPA to reinstate my suspended certificate?

(a) Send us a written report asking us to reinstate your suspended certificate. In your report, identify the reason for the SEA failure, propose a remedy, and commit to a date for carrying it out. In your proposed remedy include any quality control measures you propose to keep the problem from happening again.

(b) Give us test data from production engines/equipment showing that engines/equipment in the remedied family comply with all the emission standards that apply.

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

§ 1068.445 When may EPA revoke my certificate under this subpart and how may I sell these engines/equipment again?

(a) We may revoke your certificate for a family in the following cases:

(1) You do not meet the reporting requirements under this subpart.

(2) Your family fails an SEA and your proposed remedy to address a suspended certificate is inadequate to solve the problem or requires you to change the engine/equipment's design or emission control system.

(b) To sell engines/equipment from a family with a revoked certificate of conformity, you must modify the family and then show it complies with the applicable requirements.

(1) If we determine your proposed design change may not control emissions for the engine/equipment's full useful life, we will tell you within five working days after receiving your report. In this case we will decide whether production-line testing will be enough for us to evaluate the change or whether you need to do more testing.

(2) Unless we require more testing, you may show compliance by testing production-line engines/equipment as described in this subpart.

(3) We will issue a new or updated certificate of conformity when you have met these requirements.

§ 1068.450 What records must I send to EPA?

(a) Within 30 days of the end of each audit, send us a report with the following information:

(1) Describe any facility used to test production-line engines/equipment and state its location.

(2) State the total U.S.-directed production volume and number of tests for each family.

(3) Describe your test engines/equipment, including the family's identification and the engine/equipment's model year, build date, model number, identification number, and number of hours of operation before testing for each test engine or piece of equipment.

(4) Identify where you accumulated hours of operation on the engines/equipment and describe the procedure and schedule you used.

(5) Provide the test number; the date, time and duration of testing; test procedure; initial test results before and after rounding; final test results; and final deteriorated test results for all tests. Provide the emission figures for all measured pollutants. Include information for both valid and invalid tests and the reason for any invalidation.

(6) Describe completely and justify any nonroutine adjustment, modification, repair, preparation, maintenance, or test for the test engine/equipment if you did not report it separately under this subpart. Include the results of any emission measurements, regardless of the procedure or type of equipment.

(7) Report on each failed engine or piece of equipment as described in §1068.425.

(b) We may ask you to add information to your written report, so we can determine whether your new engines/equipment conform to the requirements of this subpart.

(c) An authorized representative of your company must sign the following statement: We submit this report under Sections 208 and 213 of the Clean Air Act. Our testing conformed completely with the requirements of 40 CFR part 1068. We have not changed production processes or quality-control procedures for the family in a way that might affect the emission control from production engines/equipment. All the information in this report is true and accurate to the best of my knowledge. I know of the penalties for violating the Clean Air Act and the regulations. (Authorized Company Representative)

(d) Send reports of your testing to the Designated Compliance Officer using an approved information format. If you want to use a different format, send us a written request with justification for a waiver.

(e) We may post test results on publicly accessible databases and we will send copies of your reports to anyone from the public who asks for them, consistent with §1068.11.

[73 FR 59344, Oct. 8, 2008, as amended at 81 FR 74232, Oct. 25, 2016; 88 FR 4718, Jan. 24, 2023]

§1068.455 What records must I keep?

(a) We may review your records at any time so it is important to keep required information readily available. Organize and maintain your records as described in this section.

(b) Keep paper records for testing under this subpart for one full year after you complete all the testing required for the selective enforcement audit. For additional storage, you may use any format or media.

(c) Keep a copy of the written reports described in §1068.450.

(d) Keep the following additional records:

(1) The names of supervisors involved in each test.

(2) The name of anyone who authorizes adjusting, repairing, preparing, or modifying a test engine/equipment and the names of all supervisors who oversee this work.

(3) If you shipped the engine/equipment for testing, the date you shipped it, the associated storage or port facility, and the date the engine/equipment arrived at the testing facility.

(4) Any records related to your audit that are not in the written report.

(5) A brief description of any significant events during testing not otherwise described in the written report or in this section.

(e) If we ask, you must give us projected or actual production for a family. Include each assembly plant if you produce engines/equipment at more than one plant.

(f) We may ask you to keep or send other information necessary to implement this subpart.

APPENDIX A TO SUBPART E OF PART 1068—PLANS FOR SELECTIVE ENFORCEMENT AUDITING

The following tables describe sampling plans for selective enforcement audits, as described in §1068.420:

TABLE A–1—SAMPLING PLAN CODE LETTER

Projected family sales	Code letter [1]	Minimum number of tests		Maximum number of tests
		To pass	To fail	
20–50	AA	3	5	20
20–99	A	4	6	30
100–299	B	5	6	40
300–499	C	5	6	50
500 +	D	5	6	60

[1] A manufacturer may optionally use either the sampling plan for code letter ''AA'' or sampling plan for code letter ''A'' for Selective Enforcement Audits of families with annual sales between 20 and 50 engines/equipment. Additionally, the manufacturer may switch between these plans during the audit.

TABLE A–2—SAMPLING PLANS FOR DIFFERENT ENGINE FAMILY SALES VOLUMES

Stage [a]	AA		A		B		C		D	
	Pass #	Fail #	Pass #	Fail #	Pass #	Fail #	Pass #	Fail #	Pass #	Fail #
1	.....	.....	.....	.....	.....	.....	.....	.....	.....	
2	.....	.....	.....	.....	.....	.....	.....	.....	.....	
3	0	.....	.....	.....	.....	.....	.....	.....	.....	
4	0	.....	0	.....	.....	.....	.....	.....	.....	
5	1	5	0	.....	0	.....	0	.....	0	
6	1	6	1	6	1	6	0	6	0	6
7	2	6	1	7	1	7	1	7	1	7
8	2	7	2	7	2	7	2	7	2	8
9	3	7	2	8	2	8	2	8	2	8
10	3	8	3	8	3	8	3	9	3	9
11	4	8	3	8	3	9	3	9	3	9
12	4	9	4	9	4	9	4	10	4	10
13	5	9	5	10	4	10	4	10	4	10
14	5	10	5	10	5	10	5	11	5	11
15	6	10	6	11	5	11	5	11	5	11
16	6	10	6	11	6	12	6	12	6	12
17	7	10	7	12	6	12	6	12	6	12
18	8	10	7	12	7	13	7	13	7	13
19	8	10	8	13	8	13	7	13	7	13
20	9	10	8	13	8	14	8	14	8	14
21	.....	.....	9	14	9	14	8	14	8	14
22	.....	.....	10	14	9	15	9	15	9	15
23	.....	.....	10	15	10	15	10	15	9	15
24	.....	.....	11	15	10	16	10	16	10	16
25	.....	.....	11	16	11	16	11	16	11	16
26	.....	.....	12	16	11	17	11	17	11	17
27	.....	.....	12	17	12	17	12	17	12	17
28	.....	.....	13	17	12	18	12	18	12	18
29	.....	.....	14	17	13	18	13	18	13	19
30	.....	.....	16	17	13	19	13	19	13	19
31	.....	.....	.....	.....	14	19	14	19	14	20
32	.....	.....	.....	.....	14	20	14	20	14	20
33	.....	.....	.....	.....	15	20	15	20	15	21
34	.....	.....	.....	.....	16	21	15	21	15	21
35	.....	.....	.....	.....	16	21	16	21	16	22
36	.....	.....	.....	.....	17	22	16	22	16	22
37	.....	.....	.....	.....	17	22	17	22	17	23
38	.....	.....	.....	.....	18	22	18	23	17	23
39	.....	.....	.....	.....	18	22	18	23	18	24
40	.....	.....	.....	.....	21	22	19	24	18	24
41	.....	.....	.....	.....	.....	.....	19	24	19	25
42	.....	.....	.....	.....	.....	.....	20	25	19	26
43	.....	.....	.....	.....	.....	.....	20	25	20	26
44	.....	.....	.....	.....	.....	.....	21	26	21	27
45	.....	.....	.....	.....	.....	.....	21	27	21	27
46	.....	.....	.....	.....	.....	.....	22	27	22	28
47	.....	.....	.....	.....	.....	.....	22	27	22	28
48	.....	.....	.....	.....	.....	.....	23	27	23	29
49	.....	.....	.....	.....	.....	.....	23	27	23	29
50	.....	.....	.....	.....	.....	.....	26	27	24	30
51	.....	.....	.....	.....	.....	.....	.....	.....	24	30
52	.....	.....	.....	.....	.....	.....	.....	.....	25	31
53	.....	.....	.....	.....	.....	.....	.....	.....	25	31
54	.....	.....	.....	.....	.....	.....	.....	.....	26	32

TABLE A–2—SAMPLING PLANS FOR DIFFERENT ENGINE FAMILY SALES VOLUMES—Continued

Stage [a]	AA		A		B		C		D	
	Pass #	Fail #	Pass #	Fail #	Pass #	Fail #	Pass #	Fail #	Pass #	Fail #
55	.....	.....	.....	.....	.....	.....	.....	.....	26	32
56	.....	.....	.....	.....	.....	.....	.....	.....	27	33
57	.....	.....	.....	.....	.....	.....	.....	.....	27	33
58	.....	.....	.....	.....	.....	.....	.....	.....	28	33
59	.....	.....	.....	.....	.....	.....	.....	.....	28	33
60	.....	.....	.....	.....	.....	.....	.....	.....	32	33

[a] Stage refers to the cumulative number of engines/equipment tested.

Subpart F—Reporting Defects and Recalling Engines/Equipment

§ 1068.501 How do I report emission-related defects?

This section addresses the certificate holder's responsibility to investigate and report emission-related defects in design, materials, or workmanship. The provisions of this section do not limit your liability under this part or the Clean Air Act. For example, selling an engine/equipment that does not conform to your application for certification is a violation of §1068.101(a)(1) independent of the requirements of this section. The requirements of this section apply separately to each certificate holder if there is more than one certificate holder for the equipment.

(a) *General provisions.* As a certifying manufacturer, you must investigate in certain circumstances whether engines/equipment that have been introduced into U.S. commerce under your certificate have incorrect, improperly installed, or otherwise defective emission-related components or systems. This includes defects in design, materials, or workmanship. You must also send us reports as specified by this section.

(1) This section addresses defects for any of the following emission-related components or systems containing the following components:

(i) Electronic control units, aftertreatment devices, fuel-metering components, EGR-system components, crankcase-ventilation valves, all components related to charge-air compression and cooling, and all sensors associated with any of these components.

(ii) For engines and equipment subject to evaporative emission standards, fuel tanks, fuel caps, and fuel lines and connectors.

(iii) Any other component whose primary purpose is to reduce emissions.

(iv) Any other component whose failure would commonly increase emissions of any regulated pollutant without significantly degrading engine/equipment performance.

(2) The requirements of this section relate to defects in any of the components or systems identified in paragraph (a)(1) of this section if the defects might affect any of the parameters or specifications in Appendix II of this part or might otherwise affect the emissions of any regulated pollutant.

(3) For the purposes of this section, defects do not include damage to emission-related components or systems (or maladjustment of parameters) caused by owners improperly maintaining or abusing their engines/equipment.

(4) The requirements of this section do not apply to emission control information labels. Note however, that §1068.101(a)(1) prohibits the sale of engines/equipment without proper labels, which also applies to misprinted labels.

(5) You must track the information specified in paragraph (b)(1) of this section. You must assess this data at least every three months to evaluate whether you exceed the thresholds specified in paragraphs (e) and (f) of this section. Where thresholds are based on a percentage of engines/equipment in the family, use actual U.S.-directed production volumes for the whole model year when they become available. Use projected production figures until the actual production figures become available. You are not required to collect additional information other than that specified in paragraph (b)(1) of this section before reaching a threshold

for an investigation specified in paragraph (e) of this section.

(6) You may ask us to allow you to use alternate methods for tracking, investigating, reporting, and correcting emission-related defects. In your request, explain and demonstrate why you believe your alternate system will be at least as effective in the aggregate in tracking, identifying, investigating, evaluating, reporting, and correcting potential and actual emissions-related defects as the requirements in this section. In this case, provide all available data necessary to demonstrate why an alternate system is appropriate for your engines/equipment and how it will result in a system at least as effective as that required under this section.

(7) If we determine that emission-related defects result in a substantial number of properly maintained and used engines/equipment not conforming to the regulations of this chapter during their useful life, we may order you to conduct a recall of your engines/equipment (see §1068.505).

(8) Send all reports required by this section to the Designated Compliance Officer.

(9) This section distinguishes between defects and possible defects. A possible defect exists anytime there is an indication that an emission-related component or system might have a defect, as described in paragraph (b)(1) of this section.

(b) *Investigation of possible defects.* Investigate possible defects as follows:

(1) If the number of engines/equipment that have a possible defect, as defined by this paragraph (b)(1), exceeds a threshold specified in paragraph (e) of this section, you must conduct an investigation to determine if an emission-related component or system is actually defective. You must classify an engine/equipment component or system as having a possible defect if any of the following sources of information shows there is a significant possibility that a defect exists:

(i) A warranty claim is submitted for the component, whether this is under your emission-related warranty or any other warranty.

(ii) Your quality-assurance procedures suggest that a defect may exist.

(iii) You receive any other information for which good engineering judgment would indicate the component or system may be defective, such as information from dealers, field-service personnel, equipment manufacturers, hotline complaints, in-use testing, or engine diagnostic systems.

(2) If the number of shipped replacement parts for any individual component is high enough that good engineering judgment would indicate a significant possibility that a defect exists, you must conduct an investigation to determine if it is actually defective. Note that this paragraph (b)(2) does not require data-tracking or recording provisions related to shipment of replacement parts.

(3) Your investigation must be prompt, thorough, consider all relevant information, follow accepted scientific and engineering principles, and be designed to obtain all the information specified in paragraph (d) of this section.

(4) Your investigation needs to consider possible defects that occur only within the useful life period, or within five years after the end of the model year, whichever is longer.

(5) You must continue your investigation until you are able to show that there is no emission-related defect or you obtain all the information specified for a defect report in paragraph (d) of this section.

(6) If a component with a possible defect is used in additional families or model years, you must investigate whether the component may be defective when used in these additional families or model years, and include these results in any defect report you send under paragraph (c) of this section.

(7) If your initial investigation concludes that the number of engines/equipment with a defect is fewer than any of the thresholds specified in paragraph (f) of this section, but other information later becomes available that may show that the number of engines/equipment with a defect exceeds a threshold, then you must resume your investigation. If you resume an investigation, you must include the information from the earlier investigation to determine whether to send a defect report.

(c) *Reporting defects.* You must send us a defect report in either of the following cases:

(1) Your investigation shows that the number of engines/equipment with a defect exceeds a threshold specified in paragraph (f) of this section. Send the defect report within 21 days after the date you identify this number of defective engines/equipment. See paragraph (h) of this section for reporting requirements that apply if the number of engines/equipment with a defect does not exceed any of the thresholds in paragraph (f) of this section.

(2) You know there are emission-related defects for a component or system in a number of engines/equipment that exceeds a threshold specified in paragraph (f) of this section, regardless of how you obtain this information. Send the defect report within 21 days after you learn that the number of defects exceeds a threshold. Send us an updated defect report anytime you have significant additional information.

(d) *Contents of a defect report.* Include the following information in a defect report:

(1) Your corporate name and a person to contact regarding this defect.

(2) A description of the defect, including a summary of any engineering analyses and associated data, if available.

(3) A description of the engines/equipment that have the defect, including families, models, and range of production dates.

(4) An estimate of the number and percentage of each class or category of affected engines/equipment that have the defect, and an explanation of how you determined this number. Describe any statistical methods you used under paragraph (g)(6) of this section.

(5) An estimate of the defect's impact on emissions, with an explanation of how you calculated this estimate and a summary of any emission data demonstrating the impact of the defect, if available.

(6) A description of your plan for addressing the defect or an explanation of your reasons for not believing the defects must be addressed.

(e) *Thresholds for conducting a defect investigation.* You must begin a defect investigation based on the following number of engines/equipment that may have the defect:

(1) For engines/equipment with maximum engine power at or below 560 kW:

(i) For families with annual production below 500 units: 50 or more engines/equipment.

(ii) For families with annual production from 500 to 50,000 units: more than 10.0 percent of the total number of engines/equipment in the family.

(iii) For families with annual production from 50,000 to 550,000 units: more than the total number of engines/equipment represented by the following equation:

$$\text{Investigation threshold} = 5{,}000 + (\text{Production units} - 50{,}000) \times 0.04$$

(iv) For families with annual production above 550,000 units: 25,000 or more engines/equipment.

(2) For engines/equipment with maximum engine power greater than 560 kW:

(i) For families with annual production below 250 units: 25 or more engines/equipment.

(ii) For families with annual production at or above 250 units: more than 10.0 percent of the total number of engines/equipment in the family.

(f) *Thresholds for filing a defect report.* You must send a defect report based on the following number of engines/equipment that have the defect:

(1) For engines/equipment with maximum engine power at or below 560 kW:

(i) For families with annual production below 1,000 units: 20 or more engines/equipment.

(ii) For families with annual production from 1,000 to 50,000 units: more than 2.0 percent of the total number of engines/equipment in the family.

(iii) For families with annual production from 50,000 to 550,000 units: more than the total number of engines/equipment represented by the following equation:

$$\text{Reporting threshold} = 1{,}000 + (\text{Production units} - 50{,}000) \times 0.01$$

(iv) For families with annual production above 550,000 units: 6,000 or more engines/equipment.

(2) For engines/equipment with maximum engine power greater than 560 kW:

(i) For families with annual production below 150 units: 10 or more engines/equipment.

(ii) For families with annual production from 150 to 750 units: 15 or more engines/equipment.

(iii) For families with annual production above 750 units: more than 2.0 percent of the total number of engines/equipment in the family.

(g) *How to count defects.* (1) Track defects separately for each model year and family as much as possible. If information is not identifiable by model year or family, use good engineering judgment to evaluate whether you exceed a threshold in paragraph (e) or

(f) of this section. Consider only your U.S.-directed production volume.

(2) Within a family, track defects together for all components or systems that are the same in all material respects. If multiple companies separately supply a particular component or system, treat each company's component or system as unique.

(3) For engine-based standards, if a possible defect is not attributed to any specific part of the engine, consider the complete engine a distinct component for evaluating whether you exceed a threshold in paragraph (e) of this section. For equipment-based standards, if a possible defect is not attributed to any specific part of the equipment, consider the complete piece of equipment a distinct component for evaluating whether you exceed a threshold in paragraph (e) of this section.

(4) If you correct defects before they reach the ultimate purchaser as a result of your quality-assurance procedures, count these against the investigation thresholds in paragraph (e) of this section unless you routinely check every engine or piece of equipment in the family. Do not count any corrected defects as actual defects under paragraph (f) of this section.

(5) Use aggregated data from all the different sources identified in paragraph (b)(1) of this section to determine whether you exceed a threshold in paragraphs (e) and (f) of this section.

(6) If information is readily available to conclude that the possible defects identified in paragraph (b)(1) of this section are actual defects, count these toward the reporting thresholds in paragraph (f) of this section.

(7) During an investigation, use appropriate statistical methods to project defect rates for engines/equipment that you are not otherwise able to evaluate. For example, if 75 percent of the components replaced under warranty are available for evaluation, it would be appropriate to extrapolate known information on failure rates to the components that are unavailable for evaluation. Take steps as necessary to prevent bias in sampled data. Make adjusted calculations to take into account any bias that may remain.

(h) *Investigation reports.* Once you trigger an investigation threshold under paragraph (e) of this section, you must report your progress and conclusions. In your reports, include the information specified in paragraph (d) of this section, or explain why the information is not relevant. Send us the following reports:

(1) While you are investigating, send us mid-year and end-of-year reports to describe the methods you are using and the status of the investigation. Send these status reports no later than June 30 and December 31 of each year.

(2) If you find that the number of components or systems with an emission-related defect exceeds a threshold specified in paragraph (f) of this section, send us a report describing your findings within 21 days after the date you reach this conclusion.

(3) If you find that the number of components or systems with an emission-related defect does not exceed any of the thresholds specified in paragraph (f) of this section, send us a final report supporting this conclusion. For example, you may exclude warranty claims that resulted from misdiagnosis and you may exclude defects caused by improper maintenance, improper use, or misfueling. Send this report within 21 days after the date you reach this conclusion.

(i) *Future production.* If you identify a design or manufacturing defect that prevents engines/equipment from meeting the requirements of this part, you must correct the defect as soon as possible for future production of engines/equipment in every family affected by the defect. This applies without regard