

(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

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to whether you are required to conduct a defect investigation or submit a defect report under this section.

[73 FR 59344, Oct. 8, 2008, as amended at 75 FR 23064, Apr. 30, 2010; 81 FR 74232, Oct. 25, 2016]

§ 1068.505 How does the recall program work?

(a) If we make a determination that a substantial number of properly maintained and used engines/equipment within a given class or category do not conform to the regulations of this chapter during their useful life, you must submit a plan to remedy the nonconformity of your engines/equipment. We will notify you of our determination in writing. Our notice will identify the class or category of engines/equipment affected and describe how we reached our conclusion. If this happens, you must meet the requirements and follow the instructions in this subpart. You must remedy at your expense all engines/equipment that experienced the nonconformity during the useful life in spite of being properly maintained and used, as described in § 1068.510(a)(7), regardless of their age or extent of service accumulation at the time of repair. You may not transfer this expense to a dealer (or equipment manufacturer for engine-based standards) through a franchise or other agreement.

(b) You may ask for a hearing if you disagree with our determination (see subpart G of this part).

(c) Unless we withdraw the determination of noncompliance, you must respond to it by sending a remedial plan to the Designated Compliance Officer. We will designate a date by which you must send us the remedial plan; the designated date will be no sooner than 45 days after we notify you, and no sooner than 30 days after a hearing.

(d) Once you have sold engines/equipment to the ultimate purchaser, we may inspect or test the engines/equipment only if the purchaser permits it, or if state or local inspection programs separately provide for it.

(e) You may ask us to allow you to conduct your recall differently than specified in this subpart, consistent with section 207(c) of the Clean Air Act (42 U.S.C. 7541(c)).

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(f) You may do a voluntary recall under § 1068.535 unless we have made the determination described in § 1068.535(a).

(g) For purposes of recall, “owner” means someone who owns an engine or piece of equipment affected by a remedial plan.

[73 FR 59344, Oct. 8, 2008, as amended at 81 FR 74233, Oct. 25, 2016]

§ 1068.510 How do I prepare and apply my remedial plan?

(a) In your remedial plan, describe all of the following:

(1) The class or category of engines/equipment to be recalled, including the number of engines/equipment involved and the model year or other information needed to identify the engines/equipment.

(2) The modifications, alterations, repairs, corrections, adjustments, or other changes you will make to correct the affected engines/equipment.

(3) A brief description of the studies, tests, and data that support the effectiveness of the remedy you propose to use.

(4) The instructions you will send to those who will repair the engines/equipment under the remedial plan.

(5) How you will determine the owners' names and addresses.

(6) How you will notify owners; include a copy of any notification letters.

(7) The proper maintenance or use you will specify, if any, as a condition to be eligible for repair under the remedial plan. Describe how these specifications meet the provisions of paragraph (e) of this section. Describe how the owners should show they meet your conditions.

(8) The steps owners must take for you to do the repair. You may set a date or a range of dates, specify the amount of time you need, and designate certain facilities to do the repairs.

(9) Which company (or group) you will assign to do or manage the repairs.

(10) If your employees or authorized warranty agents will not be doing the work, state who will and describe their qualifications.

(11) How you will ensure an adequate and timely supply of parts.

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(12) The effect of proposed changes on fuel consumption, driveability, and safety of the engines/equipment you will recall; include a brief summary of the information supporting these conclusions.

(13) How you intend to label the engines/equipment you repair and where you will place the label on the engine/equipment (see § 1068.515).

(b) We may require you to add information if it is needed to evaluate your remedial plan.

(c) We may require you to test the proposed repair to show it will remedy the noncompliance.

(d) Use all reasonable means to locate owners. We may require you to use government or commercial registration lists to get owners' names and addresses so your notice will be effective.

(e) The maintenance or use that you specify as a condition for eligibility under the remedial plan may include only things you can show would cause noncompliance. Do not require use of a component or service identified by brand, trade, or corporate name unless we approved this approach with your original certificate of conformity. Also, do not place conditions on who maintained the engine/equipment.

(f) We may require you to adjust your repair plan if we determine owners would be without their engines or equipment for an unreasonably long time.

(g) We will tell you in writing within 15 days of receiving your remedial plan whether we have approved or disapproved it. We will explain our reasons for any disapproval.

(h) Begin notifying owners within 15 days after we approve your remedial plan. If we hold a hearing, but do not change our position about the noncompliance, you must begin notifying owners within 60 days after we complete the hearing unless we specify a later deadline.

[73 FR 59344, Oct. 8, 2008, as amended at 81 FR 74233, Oct. 25, 2016]

§ 1068.515 How do I mark or label repaired engines/equipment?

(a) Attach a label to engines/equipment you repair under the remedial plan. At your discretion, you may label

or mark engines/equipment you inspect but do not repair. Designate the specific recall campaign on the label.

(b) Make the label from a durable material suitable for its planned location. Make sure no one can remove the label without destroying or defacing it.

(c) Identify the facility where you repaired or inspected the engine/equipment on the label, or keep records of this information for each vehicle and give it to us if we ask for it.

(d) We may waive or modify the labeling requirements if we determine they are overly burdensome.

[73 FR 59344, Oct. 8, 2008, as amended at 81 FR 74233, Oct. 25, 2016]

§ 1068.520 How do I notify affected owners?

(a) Notify owners by first class mail or e-mail unless we say otherwise. We may require you to use certified mail. Include the following in your notice:

(1) State: "The U.S. Environmental Protection Agency has determined that your engine/equipment may be emitting pollutants in excess of the federal emission standards as defined in Title 40 of the Code of Federal Regulations. These emission standards were established to protect the public health or welfare from air pollution."

(2) State that you (or someone you designate) will repair these engines/equipment at your expense.

(3) If we approved maintenance and use conditions in your remedial plan, state that you will make these repairs only if owners show their engines/equipment meet the conditions for proper maintenance and use. Describe these conditions and how owners should prove their engines/equipment are eligible for repair.

(4) Describe the components your repair will affect and say generally how you will repair the engines/equipment.

(5) State that the engine/equipment, if not repaired, may fail an emission inspection test if state or local law requires one.

(6) Describe any adverse effects on its performance or driveability that would be caused by not repairing the engine/equipment.

(7) Describe any adverse effects on the functions of other components that