

The EPA Administrator signed a proposed rule on April 17, 2007 that included changes to 40 CFR part 1068 as shown in this document. The proposed rule will be published in the *Federal Register*. While EPA has taken steps to ensure the accuracy of this redline version, it is not the official version of the rule for purposes of public comment. Please refer to the official version in the corresponding *Federal Register* publication. You can access the *Federal Register* at: <http://www.gpoaccess.gov/fr/index.html>.

PART 1068— GENERAL COMPLIANCE PROVISIONS FOR NONROAD PROGRAMS

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Authority: 42 U.S.C. 7401 - 7671q.

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 following engines and to equipment using the following engines (including owners, operators, parts manufacturers, and persons performing maintenance).

- (1) ~~Large nonroad spark-ignition~~[Locomotives we regulate under 40 CFR part 1039.](#)
- (2) ~~Land-based nonroad compression-ignition~~ engines we regulate under 40 CFR part ~~1048.~~
- ~~(2) Recreational SI engines and vehicles that we regulate under 40 CFR part 1051 (such as snowmobiles and off-highway motorcycles);~~
- ~~(3) Land-based nonroad diesel engines that we regulate under 40 CFR part 1039;~~
- ~~(4) [1039.](#)~~
- (3) Stationary compression-ignition engines certified to the provisions of 40 CFR part 1039, as indicated under 40 CFR part 60, subpart IIII.
- (4) ~~Marine diesel engines we regulate under 40 CFR part 1042.~~
- (5) ~~Marine spark-ignition engines we regulate under 40 CFR part 1045.~~

(6) Large nonroad spark-ignition engines we regulate under 40 CFR part 1048.

(7) Stationary spark-ignition engines certified to the provisions of 40 CFR parts 1048 or 1054, as indicated under 40 CFR part 60, subpart JJJJ.

(8) Recreational engines and vehicles we regulate under 40 CFR part 1051 (such as snowmobiles and off-highway motorcycles).

(9) Small nonroad spark-ignition engines we regulate under 40 CFR part 1054.

(b) This part does not apply to any of the following engine or vehicle categories:

(1) Light-duty motor vehicles (see 40 CFR part 86).

(2) Heavy-duty motor vehicles and motor vehicle engines (see 40 CFR part 86).

(3) Aircraft engines (see 40 CFR part 87).

~~(4) Locomotive engines (see 40 CFR part 92).~~

~~(5) Land-based nonroad diesel engines that we regulate under 40 CFR part 89.~~

~~(6) Marine diesel engines (see 40 CFR parts 89 and 94)~~

~~(7) Marine outboard and personal watercraft engines (see 40 CFR part 91).~~

~~(8) Small nonroad spark-ignition engines (see we regulate under 40 CFR part 90).~~

(c) For equipment subject to this part and regulated under equipment-based standards, interpret the term “engine” in this part to include equipment (see §1068.30):

~~(d) Marine spark-ignition engines we regulate under 40 CFR part 91.~~

~~(7) Locomotive engines (see 40 CFR part 92).~~

~~(8) Marine diesel engines (see 40 CFR parts 89 and 94).~~

(c) Paragraph (a)(1) of this section identifies the parts of the CFR that define emission standards and other requirements for particular types of engines and ~~vehicles~~ 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.

~~(e)~~(1) The provisions of §§1068.30, 1068.310, and 1068.320 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) The provisions of §§1068.30 and 1068.235 apply for the types of ~~engines~~ engines/equipment listed in paragraph

(a) of this section beginning January 1, 2004, ~~where~~ if they are used solely for competition.

§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) This 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) Where 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. Where 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~~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 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 What provisions apply to confidential information?

- (a) Clearly show what you consider confidential by marking, circling, bracketing, stamping, or some other method.
- (b) We will store your confidential information as described in 40 CFR part 2. Also, we will disclose it only as specified in 40 CFR part 2. This applies both to any information you send us and to any information we collect from inspections, audits, or other site visits.
- (c) If you send us a second copy without the confidential information, we will assume it contains nothing confidential whenever we need to release information from it.
- (d) 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 2.204.

§1068.15 Who is authorized to represent the Agency?

- (a) The Administrator of the Environmental Protection Agency or any 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 Delegation Manual from the Designated 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.

§1068.20 May EPA enter my facilities for inspections?

- (a) We may inspect your engines, testing, manufacturing processes, engine storage facilities (including port facilities for imported engines and equipment or other relevant facilities), or records, as authorized by the 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) If we come to inspect, we may or may not have a warrant or court order.
- (1) If we do not have a warrant or court order, you may deny us entry.
 - (2) If we have a warrant or court order, you must allow us to enter the facility and carry out the activities it describes.
- (c) We may seek a warrant or court order authorizing an inspection described in this section, whether or not we first tried to get your permission to inspect.

(d) 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/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.

(e) You must give us reasonable help without charge during an inspection authorized by the 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).

(f) 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.

§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 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 Act (42 U.S.C. 7542). This also applies to engines/engines/equipment we exempt from emission standards or prohibited acts.

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

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.

§1068.30 What definitions apply to this part?

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

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

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 above treetop heights.

Certificate holder means a manufacturer (including importers) with a currently valid certificate of conformity for at least one engine family in a given model year.

Date of manufacture means—

(1) For engines, the later of the following dates:

(i) The date on which an engine is assembled to the point of being able to run. This does not require installation of a cooling system, fuel tank, or aftertreatment devices.

(ii) The date on which a partially complete engine that was introduced into U.S. commerce with an exemption under §1068.262 is assembled in its final certified configuration.

(2) For equipment, the date on which assembly of the equipment is completed.

Days means calendar days, including weekends and holidays.

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

Designated Officer means the Manager of the Heavy-Duty and Nonroad Engine Programs Group (6405-J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., Washington, DC 20460.

Emission-related defect means a defect in design, materials, or workmanship (in an emission-control device or vehicle component or system) that affects an emission-related component, parameter, or specification that is identified in Appendix I or Appendix II of this part. Using an incorrect emission-related component is an emission-related defect.

~~— Engine means an engine to which this part applies. For equipment subject to this part and regulated under equipment-based~~Engine means a complete or partially complete internal combustion engine. The term engine broadly includes any assembly of an engine block and at least one other attached component. The term engine does not include engine blocks with no attached components, nor does it include any assembly of engine components that does not include the engine block. This includes complete and partially complete engines as follows:

(1) A complete engine is a fully assembled engine in its final configuration.

(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 only an aftertreatment component.

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

(iii) An 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 engine components connected to the engine block, but missing the head assembly.

(v) A loose engine that will be installed in an off-highway motorcycle that will be subject to vehicle-based standards,~~the term engine in this part shall be interpreted to include equipment.~~

~~Engine-based~~ standard means having an emission ~~standards~~ standard expressed in units of grams of pollutant per kilowatt-hour, and which apply/applies to the engine. Emission standards are either engine-based or equipment-based.—

~~Engine manufacturer means the manufacturer that is subject to the certification requirements of the standard-setting part. For vehicles and equipment subject to this part and regulated under vehicle-based or~~Engine-based test means an emission test intended to measure emissions in units of grams of pollutant per kilowatt-hour, without regard to whether the standard applies to the engine or equipment.

Engine/equipment and engines/equipment mean either engine(s) or equipment. 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, the term engine manufacturer in this part includes vehicle and equipment manufacturers~~ apply.

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

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

Equipment means none 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.

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

~~Equipment-based~~ standard means having an emission ~~standards~~ that apply/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. Where 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.

~~— Equipment manufacturer means any company manufacturing a piece of equipment (such as a vehicle) 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.~~

Exempted means relating to an engine/engines/equipment that is/are not required to meet otherwise applicable standards. Exempted engines/engines/equipment must conform to regulatory conditions specified for an exemption in this part 1068 or in the standard-setting part. Exempted engines/engines/equipment are deemed to be “subject to” the standards of the standard-setting part, even though they are not required to comply with the otherwise applicable requirements. Engines/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 or emission family, 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.

Good engineering judgment means judgments made consistent with generally accepted scientific and engineering

principles and all available relevant information. ~~See 40 CFR 1068.5 for the administrative process we use to evaluate good engineering judgment~~

Incomplete engine assembly means an assembly of engine components that includes at least the engine block and one other component, but lacks certain parts essential for engine operation. An engine block with no other assembled components is not an incomplete engine assembly under this section. An assembly of engine parts that does not include the engine block is also not an incomplete engine assembly.

Manufacturer has the meaning given in section 216(1) of the Act (42 U.S.C. 7550(1)). In general, this term includes any person who manufactures an engine or ~~vehicle~~ piece of equipment for sale in the United States or otherwise introduces a new engine or ~~vehicle~~ piece of equipment into U.S. commerce in the United States. This includes importers that import new engines or new equipment into the United States for resale. It also includes secondary engine manufacturers, ~~as described in §1068.255.~~

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 date determined by the manufacturer. 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 commerce in the United States.

Motor vehicle has the meaning given in 40 CFR 85.1703(a).

New has the meaning we give it in the standard-setting part.

Nonroad engine means:

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

(i) ~~It is (or will be) used in~~ 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); ~~or~~

(ii) ~~It is (or will be) used in~~ 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); ~~or~~

(iii) ~~That, b~~ 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; ~~or is subject to standards promulgated under section 202 of the Act (42 U.S.C. 7521); or~~

(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 Act (42 U.S.C. 7411); ~~or~~

(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. 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 will be included 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. ~~This paragraph (2)(iii) does not~~ See §1068.31 for provisions that apply to an engine after 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.

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

Placed into service means used for its intended purpose.

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.

Revoke means to terminate the certificate or an exemption for an engine family. If we revoke a certificate or exemption, you must apply for a new certificate or exemption before continuing to introduce the affected engines/engines/equipment into U.S. commerce. This does not apply to engines/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. 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. Equipment manufacturers that substantially modify engines are secondary engine manufacturers. Also, equipment manufacturers that certify to equipment-based standards using engines produced by another company are deemed to be secondary engine manufacturers.

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.

Standard-setting part means the 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 non-recreational marine spark-ignition engines over 19 kW is 40 CFR part 1048 of this chapter 1045. For provisions related to evaporative emissions, the standard-setting part may be 40 CFR part 1060, as specified in 40 CFR 1060.1.

Suspend means to temporarily discontinue the certificate or an exemption for an engine family. If we suspend a certificate, you may not introduce into U.S. commerce engines/engines/equipment from that engine family unless we reinstate the certificate or approve a new one. If we suspend an exemption, you may not introduce into U.S. commerce engines/engines/equipment that were previously covered by the exemption unless we reinstate the exemption.

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

United States 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 means the number of engine/engines/equipment units, subject to the requirements of this part, produced by a manufacturer for which the manufacturer has a reasonable assurance that sale was or will be made to ultimate purchasers in the United States.

Void means to invalidate a certificate or an exemption ab initio. If we void a certificate, all the engines/engines/equipment introduced into U.S. commerce under that engine family for that model year are considered noncompliant, and you are liable for each engine/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/engines/equipment in the engine family, including engines/engines/equipment introduced into U.S. commerce before we voided the certificate. If we void an exemption, all the engines/engines/equipment introduced into U.S. commerce under that exemption are considered uncertified (or nonconforming), and you are liable for each engine/engines/equipment introduced into U.S. commerce under the exemption and may face civil or criminal penalties or both. You may not introduce into U.S. commerce any additional engines/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.

§1068.31 What provisions apply to nonroad or stationary engines that change their status?

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 previous 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) 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.

(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.

(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.

(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 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.

§1068.35 What symbols, acronyms, and abbreviations does this part use?

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

\$	U.S. dollars.
CFR	Code of Federal Regulations.
EPA	Environmental Protection Agency.
U.S.	United States.
U.S.C.	United States Code.

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. The maximum penalty values listed in paragraphs (a) and (b) of this section are shown for calendar year 2004. As described in paragraph (e) of this section, maximum penalty limits for later years are set forth in 40 CFR part 19.

(a) The following prohibitions and requirements apply to manufacturers of new engines ~~and~~ manufacturers of equipment containing these engines, and manufacturers of new equipment, 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 or equipment~~ engine/equipment after emission standards take effect for that ~~engine or equipment~~ engine/equipment, unless it has ~~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 has ~~is covered by~~ a valid and appropriate certificate of conformity ~~and~~ has the required engine label or tag. We may assess a civil penalty up to \$32,500 for each engine or piece of equipment in violation.

(i) For purposes of this paragraph (a)(1), an appropriate 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 of ~~engines~~ engines/equipment (such as locomotive or ~~CFM~~ Marine 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 requirements of this paragraph (a)(1) also cover new engines you produce to replace an older engine in a piece of equipment, unless the engine qualifies for the replacement-engine exemption in §1068.240. ~~We may assess a civil penalty up to \$32,500 for each engine in violation~~

(iii) For engines used in equipment subject to equipment-based standards, 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, unless it is covered by a valid certificate of conformity for its model year and has the required label or tag. See the standard-setting part for more information about how this prohibition applies.

(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 the required complete and accurate reports or ~~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 \$32,500 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~~ 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 \$32,500 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~~ disable, or render inoperative a device or element of design that may affect an engine's or piece of equipment's emission levels. This includes, for example, operating an engine without a supply of appropriate quality urea if the emissions control system relies on urea to reduce NOx emissions or the use of incorrect fuel or engine oil that renders the emissions control system inoperative. This restriction applies before and after the engine or equipment is placed in service. 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 \$32,500 for each engine or piece of equipment in violation. For anyone else, we may assess a civil penalty up to \$2,750 for each day an engine or piece of equipment is operated in violation. This prohibition does not apply in any of the following situations:

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

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

(iii) You modify a new ~~engine~~ engines/equipment that another manufacturer has already certified to meet emission standards and recertify it/them under your own ~~engine~~ family. In this case you must tell the original

- manufacturer not to include the modified engines/engines/equipment in the original engine family.
- (2) Defeat devices. You may not knowingly manufacture, sell, offer to sell, or install, an engine/any part that bypasses, impairs, defeats, or disables the engine's control the emissions of any pollutant. See the standard-setting part, which may include additional provisions regarding actions prohibited by this requirement. We may assess a civil penalty up to \$2,750 for each part 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. We may assess a civil penalty up to \$32,500 for each day you are in violation.
- (4) Competition engines/engines/equipment. For an uncertified engine or piece of equipment/engines/equipment that is/are excluded or exempted from any requirements of this chapter because it is/they are to be used solely for competition, you may not use it/any of them in a manner that is inconsistent with use solely for competition. We may assess a civil penalty up to \$32,500 for each day you are in violation.
- (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 and it is built after emission standards start to apply in the United States. We may assess a civil penalty up to \$32,500 for each day you are in violation. Note the following:
- (i) The definition of new is broad for imported engines/engines/equipment; uncertified engines and equipment (including used engines and equipment) are generally considered to be new when imported.
 - (ii) Engines/Engines/equipment that were originally manufactured before applicable EPA standards were in effect are generally not subject to emission standards.
- (6) Warranty and recall. You must meet your obligation to honor your emission-related warranty under §1068.115 and to fulfill any applicable responsibilities to recall engines under §1068.505, 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. 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 \$32,500 for each engine or piece of equipment in violation.
- (c) [Reserved]
- (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) [Reserved]
- (g) The maximum penalty values listed in paragraphs (a) and (b) of this section are shown for calendar year 20024. Maximum penalty limits for later years may be adjusted 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>U.S.</u> commerce of an uncertified <u>productsource</u> .	42 U.S.C. 7522(a)(1)
§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. Tampering with emission controls by someone other than a manufacturer or dealer.	42 U.S.C. 7522(a)(3)
§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)
§1068.101 (b)(4)	Noncompetitive use of <u>an</u> uncertified <u>engineengines/equipment</u> that is exempted for competition.	42 U.S.C. 7522(a)(1)
§1068.101 (b) (5)	Importation of an uncertified <u>productsource</u> .	42 U.S.C. 7522(a)(1)

§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.

(a) Transitioning to new engine-based standards. If new engine-based emission standards apply in a given model year, your equipment in that model year must have engines that are certified to the new standards, except that you may continue to use up your normal inventory of earlier engines that were built before the date of the new or changed standards. For example, if 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 standard starts to apply for the 2015 model year, you may order engines based on your normal inventory requirements late in the engine manufacturer’s 2014 model year and install those engines in your equipment, regardless of the date of installation. 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 produce 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. You may not circumvent the provisions of §1068.101(a)(1) by stockpiling engines that were built before new or changed standards take effect. Note that this allowance does not apply for equipment subject to equipment-based standards.

(b) Installing engines or certified components. 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 §1068.101(b)(1).

(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 with 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 engine 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.
- (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.

~~(d) Producing nonroad equipment certified to highway emission standards. You may produce nonroad equipment from complete or incomplete motor vehicles with the motor vehicle engine if you meet three criteria:~~

- ~~—(1) The engine or vehicle is certified to 40 CFR part 86.~~
- ~~—(2) The engine is not adjusted outside the manufacturer's specifications.~~
- ~~—(3) The engine or vehicle is not modified in any way that may affect its emission control. This applies to evaporative emission controls, but not refueling emission controls.~~

§1068.110 What other provisions apply to enginesengines/equipment in service?

- (a) Aftermarket parts and service. As the engine 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 Act for anyone to manufacture an engine or vehicle 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 ~~§85.2114 of this chapter~~ 40 CFR part 85, subpart V, that using the part will not cause enginesengines/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 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 it 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 Act for anyone to make, install or use defeat devices. See §1068.101(b)(2) and the standard-setting part.
- (e) Warranty and maintenance. Owners are responsible for properly maintaining their enginesengines/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. The warranty period begins when the engineequipment is first placed into service. See the standard-setting part for specific requirements. It is a violation of the Act for anyone to disable emission controls; see §1068.101(b)(1) and the standard-setting part.

§1068.115 When must manufacturers honor emission-related warranty claims?

Section 207(a) of the Clean Air Act (42 U.S.C. 7541(a)) requires certifying manufacturers to warrant to purchasers that their enginesengines/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 enginesengines/equipment are free from defects in materials and workmanship that would cause an engineengine/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 an enginethe engine/equipment or the operator's use of the engineengine/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) EngineEngine/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 engineengine/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 engine equipment operates, unless your written maintenance instructions state that this fuel would harm the engine's equipment's emission control system and operators can readily find the proper fuel.

§1068.120 What requirements must I follow to rebuild 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 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) ~~For maintenance or service that is not rebuilding, you may not make changes that might increase emissions of any pollutant, but you do not need to keep any records.~~ [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~~ 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 or another certified configuration of the same or later model year.

(f) If the rebuilt engine replaces another certified engine in a piece of equipment, you must rebuild it to a certified configuration of the same model year as, or a later model year than, the engine you are replacing.

(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:

(1) Identify the hours of operation (or mileage, as appropriate) at time of rebuild.

(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 engine-families rather than individual engines if that is the way you normally do business.

§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 main factors:
 - (i) The seriousness of your violation.
 - (ii) How much you benefitted or saved because of the violation.
 - (iii) The size of your business.
 - (iv) Your history of compliance with Title II of the 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 \$270,000 against you individually. This maximum penalty may be greater if the Administrator and the Attorney General jointly determine that is appropriate for administrative penalty assessment, or if the limit is adjusted under 40 CFR part 19. No court may review such a determination. Before we assess an administrative penalty, you may ask for a hearing (subject to 40 CFR part 22). 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.

Subpart C— Exemptions and Exclusions

§1068.201 Does EPA exempt or exclude any engines/engines/equipment from the prohibited acts?

We may exempt new engines/engines/equipment from some or all of the prohibited acts or requirements of this part under provisions described in this subpart. We may exempt an engine/engines/equipment already placed in service in the United States from the prohibition in §1068.101(b)(1) if the exemption for engines/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/engines/equipment are excluded from some or all of the regulations in this chapter.

- (a) This subpart identifies which engines/engines/equipment qualify for exemptions and what information we need. We may ask for 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 label to your exempted engines/engines/equipment. You may ask us to modify these labeling requirements if it is appropriate for your engine/engines/equipment.
- (d) If you produce engines/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/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/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 Officer.
- (h) You may ask us to modify the administrative requirements for the exemptions described in this subpart. 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/engines/equipment that is prohibited by the exemption or exclusion, such as selling it, you need to certify the engine/engines/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. Also, in some cases, we may allow manufacturers to modify the engine/engines/equipment as needed to make it identical to engines/engines/equipment already covered by a certificate. We would base such an approval on our review of any appropriate documentation. These engines/engines/equipment must have emission control information labels that accurately describe their status.

§1068.210 What are the provisions for exempting test engines/engines/equipment?

- (a) We may exempt engines/engines/equipment that are not exempted under other sections of this part that you will use for research, investigations, studies, demonstrations, or training.
- (b) Anyone may ask for a testing exemption.
- (c) If you are a certificate holder, you may request an exemption for engines/engines/equipment you intend to include in test programs over a two-year period.
 - (1) In your request, tell us the maximum number of engines/engines/equipment involved and describe how you will make sure exempted engines/engines/equipment are used only for this testing.
 - (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 of the following:
 - (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/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/engines/equipment operation associated with the test.

- (iv) Ownership and control of the enginesengines/equipment involved in the test.
 - (v) The intended final disposition of the enginesengines/equipment.
 - (vi) How you will identify, record, and make available the engineengine/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 for your signature describing the basis and scope of the exemption. The exemption does not take effect until we receive the signed letter or memorandum from you. 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, legible label, written in block letters in-English, to a readily visible part of eachall exempted engineengines/equipment. This label must include at least the following items:
 - (i) The label heading "EMISSION CONTROL INFORMATION".
 - (ii) Your corporate name and trademark.
 - (iii) Engine displacement, engine-family identification (as applicable), and model year of the engineengine/equipment (as applicable); or whom to contact for further information.
 - (iv) The statement "THIS ENGINEOne of these statements (as applicable)"
 - (A) "THIS ENGINE IS EXEMPT UNDER 40 CFR 1068.210 OR 1068.215 FROM EMISSION STANDARDS AND RELATED REQUIREMENTS."
 - (B) "THIS EQUIPMENT 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 enginesengines/equipment.
 - (6) Send us a written confirmation that you meet the terms and conditions of this exemption.

§1068.215 What are the provisions for exempting manufacturer-owned enginesengines/equipment?

- (a) You are eligible for the exemption for manufacturer-owned enginesengines/equipment only if you are a certificate holder.
- (b) An engineEngines/equipment may be exempt without a request if it is they are nonconforming engineengines/equipment under your ownership and control and you operate it them to develop products, assess production methods, or promote your enginesengines/equipment in the marketplace. You may not loan, lease, sell, or use the engineengine/equipment to generate revenue, either by itself or for an engine installed in a piece of equipment.
- (c) To use this exemption, you must do three things:
 - (1) Establish, maintain, and keep adequately organized and indexed information on eachall exempted engineengines/equipment, including the engineengine/equipment identification number, the use of the engineengine/equipment on exempt status, and the final disposition of any engineengine/equipment removed from exempt status.
 - (2) Let us access these records, as described in §1068.20.
 - (3) Add a permanent, legible label, written in block letters in-English, to a readily visible part of eachall exempted engineengines/equipment. This label must include at least the following items:
 - (i) The label heading "EMISSION CONTROL INFORMATION".
 - (ii) Your corporate name and trademark.
 - (iii) Engine displacement, engine-family identification (as applicable), and model year of the engineengine/equipment (as applicable); or whom to contact for further information.
 - (iv) The statementOne of these statements (as applicable)"
 - (A) "THIS ENGINE IS EXEMPT UNDER 40 CFR 1068.210 OR 1068.215 FROM EMISSION STANDARDS AND RELATED REQUIREMENTS."
 - (B) "THIS EQUIPMENT IS EXEMPT UNDER 40 CFR 1068.210 OR 1068.215 FROM EMISSION STANDARDS AND RELATED REQUIREMENTS."

§1068.220 What are the provisions for exempting display enginesengines/equipment?

- (a) Anyone may request an exemption for display enginesengines/equipment.
- (b) A nNonconforming display engineengines/equipment will be exempted if it is they are used only for displays in the interest of a business or the general public. This exemption does not apply to enginesengines/equipment displayed for private use, private collections, or any other purpose we determine is inappropriate for a display exemption.
- (c) You may operate the exempted engineengine/equipment, but only if we approve specific operation that is part of the display.

- (d) You may sell or lease the exempted engine/engine/equipment only with our advance approval; you may not use it to generate revenue.
- (e) To use this exemption, you must add a permanent, legible label, written in block letters in English, to a readily visible part of each/all exempted engine/engines/equipment. This label must include at least the following items:
- (1) The label heading "EMISSION CONTROL INFORMATION".
 - (2) Your corporate name and trademark.
 - (3) Engine displacement, engine family identification (~~as applicable~~), and model year of the engine/engine/equipment, (as applicable) or whom to contact for further information.
 - (4) The statement One of these statements (as applicable):
 - (i) "THIS ENGINE IS EXEMPT UNDER 40 CFR 1068.220 FROM EMISSION STANDARDS AND RELATED REQUIREMENTS."
 - (ii) "THIS EQUIPMENT IS EXEMPT UNDER 40 CFR 1068.220 FROM EMISSION STANDARDS AND RELATED REQUIREMENTS."
- (f) We may set other conditions for approval of this exemption.

§1068.225 What are the provisions for exempting engines/engines/equipment for national security?

- (a) You are eligible for the exemption for national security only if you are a manufacturer.
- (b) Your engine/engine/equipment is exempt without a request if you produce it for a piece of equipment owned/will be used or used/owned by an agency of the federal government responsible for national defense, where the equipment has armor, permanently attached weaponry, or other substantial features typical of military combat.
- (c) You may request a national security exemption for engines/engines/equipment not meeting the conditions of paragraph (b) of this section, as long as your request is endorsed by an agency of the federal government responsible for national defense. In your request, explain why you need the exemption.
- (d) Add a legible label, written in block letters in English, to each engine/all engines/equipment exempted under this section. The label must be permanently secured to a readily visible part of the engine/engine/equipment needed for normal operation and not normally requiring replacement, such as the engine block. This label must include at least the following items:
- (1) The label heading "EMISSION CONTROL INFORMATION".
 - (2) Your corporate name and trademark.
 - (3) Engine displacement, engine family identification (~~as applicable~~), and model year of the engine/engine/equipment, (as applicable), or whom to contact for further information.
 - (4) The statement One of these statements (as applicable):
 - (i) "THIS ENGINE HAS AN EXEMPTION FOR NATIONAL SECURITY UNDER 40 CFR 1068.225."
 - (ii) "THIS EQUIPMENT HAS AN EXEMPTION FOR NATIONAL SECURITY UNDER 40 CFR 1068.225."

§1068.230 What are the provisions for exempting engines/engines/equipment for export?

- (a) If you export a new engine or new piece of equipment to a country with emission standards identical to ours, we will not exempt it. These engines/engines/equipment must comply with our certification requirements.
- (b) If you export an engine/engines/equipment to a country with different emission standards or no emission standards, it/they are exempt from the prohibited acts in this part without a request. If you produce an exempt engine/engines/equipment for export and it is/any are sold or offered for sale to someone in the United States (except for export), we will void the exemption.
- (c) Label each/all exempted engine/engines/equipment and shipping containers s with a label or tag showing the engine is/engines/equipment are not certified for sale or use in the United States. These labels need not be permanently attached to the engines/engines/equipment. The label must include at least one of these statement/statements (as applicable):
- (1) "THIS ENGINE IS SOLELY FOR EXPORT AND IS THEREFORE EXEMPT UNDER 40 CFR 1068.230 FROM U.S. EMISSION STANDARDS AND RELATED REQUIREMENTS."
 - (2) "THIS EQUIPMENT IS SOLELY FOR EXPORT AND IS THEREFORE EXEMPT UNDER 40 CFR 1068.230 FROM U.S. EMISSION STANDARDS AND RELATED REQUIREMENTS."

§1068.235 What are the provisions for exempting engines/engines/equipment used solely for competition?

- (a) New engines/engines/equipment you produce that are used solely for competition are generally excluded from emission standards. See the standard-setting parts for specific provisions where applicable.
- (b) If you modify an engine/engines/equipment after it/they has/ve been placed into service in the United States so it/they will be used solely for competition, it is/they are exempt without request. This exemption applies only to the

prohibition in §1068.101(b)(1) and is valid only as long as the engine/engine/equipment is used solely for competition. (c) If you modify an engine engines/equipment under paragraph (b) of this section, you must destroy the original emission label^s. If you loan, lease, sell, or give one any of these engine engines/equipment to someone else, you must tell the new owner (or operator, if applicable) in writing that it they may be used only for competition.

§1068.240 What are the provisions for exempting new replacement engines?

(a) 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).

(b) The prohibitions in §1068.101(a)(1) do not apply to an engine if all the following conditions apply:

(1) You produce a new engine to replace an engine already placed in service in a piece of equipment.

(2) The engine being replaced was manufactured before not originally subject the emission standards, or was originally subject to less stringent emission standards than those that would otherwise apply to the new engine took effect.—

(3) You 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.

(4) You or your agent takes possession of the old engine or confirms that the engine has been destroyed.

(5) You make the replacement engine in a configuration identical in all material respects to the engine being replaced (or that of another certified engine of the same or later model year) and meet all the requirements of §1068.265. This requirement applies only if the old engine was certified subject to emission standards less stringent than those in effect when you produce the replacement engine.

(c) If the engine being replaced was not certified to any emission standards under this chapter, add a permanent label with your corporate name and trademark and the following language:

THIS ENGINE DOES NOT COMPLY WITH U.S. EPA NONROAD EMISSION REQUIREMENTS.
SELLING OR INSTALLING THIS ENGINE FOR ANY PURPOSE OTHER THAN TO REPLACE A
NONROAD ENGINE BUILT BEFORE JANUARY 1, [Insert appropriate year reflecting when the earliest tier
of standards began to apply to engines of that size and type] MAY BE A VIOLATION OF FEDERAL LAW
SUBJECT TO CIVIL PENALTY.

(d) If the engine being replaced was certified to emission standards less stringent than those in effect when you produce the replacement engine, add a permanent label with your corporate name and trademark and the following language:

THIS ENGINE COMPLIES WITH U.S. EPA NONROAD EMISSION REQUIREMENTS FOR [Insert
appropriate year reflecting when the applicable tier of emission standards for the replaced engine began to
apply] ENGINES UNDER 40 CFR 1068.240. SELLING OR INSTALLING THIS ENGINE FOR ANY
PURPOSE OTHER THAN TO REPLACE A NONROAD ENGINE BUILT BEFORE JANUARY 1, [Insert
appropriate year reflecting when the next tier of emission standards began to apply] MAY BE A VIOLATION
OF FEDERAL LAW SUBJECT TO CIVIL PENALTY.

(e) 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.

(ef) The provisions of this section may not be used to circumvent emission standards that apply to new engines under the standard-setting part.

§1068.245 What temporary provisions address hardship due to unusual circumstances?

(a) After considering the circumstances, we may permit you to introduce into U.S. commerce engine or equipment 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 and that could not have been avoided with reasonable discretion 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) Not having the exemption will jeopardize the solvency of your company.

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

(b) To apply for an exemption, you must send the Designated 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.

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

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

(e) 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.

(f) Add a permanent, legible label, written in block letters in English, to a readily visible part of each engine/all engines/equipment exempted under this section. This label must include at least the following items:

- (1) The label heading "EMISSION CONTROL INFORMATION".
- (2) Your corporate name and trademark.
- (3) Engine displacement (in liters), rated power, and model year of the engine/engine/equipment, (as applicable) or whom to contact for further information.
- (4) One of the following statements:
 - (i) If the engine/engine/equipment does not meet any emission standards:
 - (A) "THIS ENGINE IS EXEMPT UNDER 40 CFR 1068.245 FROM EMISSION STANDARDS AND RELATED REQUIREMENTS."; or
 - (B) "THIS EQUIPMENT IS EXEMPT UNDER 40 CFR 1068.245 FROM EMISSION STANDARDS AND RELATED REQUIREMENTS."
 - (ii) If the engine/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.

§1068.250 -What are the provisions for extending compliance deadlines for small-volume manufacturers/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) To be eligible for this exemption, you must qualify under the standard-setting part for special provisions for small businesses or small-volume manufacturers. be a small business.

(c) To apply for an extension, you must send the Designated Officer a written request. 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 engine/engine/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 engine/engine/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) Send your request for this extension at least nine months before the relevant deadline. If different deadlines apply to companies that are not small-volume manufacturers, do not send your request before the regulations in question apply to the other manufacturers. Otherwise, do not send your request more than three years before the relevant deadline.

(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 ~~will~~may approve extensions of ~~up to one model year.~~ We may review and revise an extension~~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, legible label, written in ~~block letters in~~ English, to a readily visible part of ~~each engine~~all engines/equipment exempted under this section. This label must include at least the following items:
- (1) The label heading "EMISSION CONTROL INFORMATION".
 - (2) Your corporate name and trademark.
 - (3) Engine displacement (in liters), rated power, and model year of the ~~engine~~engine/equipment or whom to contact for further information.
 - (4) One of the following statements:
 - (i) If the ~~engine~~engine/equipment does not meet any emission standards:
 - (A) "THIS ENGINE IS EXEMPT UNDER 40 CFR 1068.250 FROM EMISSION STANDARDS AND RELATED REQUIREMENTS.", or
 - (B) "THIS EQUIPMENT IS EXEMPT UNDER 40 CFR 1068.250 FROM EMISSION STANDARDS AND RELATED REQUIREMENTS."
 - (ii) If the ~~engine~~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.

§1068.255 What are the provisions for exempting engines and fuel-system components for hardship for equipment manufacturers and secondary engine manufacturers?

This section describes how, in unusual circumstances, we may ~~exempt certain engines~~approve an exemption to prevent a hardship to an equipment manufacturer or a secondary engine manufacturer. This section does not apply to products that are subject to ~~vehicle-based~~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 the first year that new or revised emission standards apply. Send the Designated 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 ~~engine~~ 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 an engine ~~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 ~~to be exempted~~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 ~~a~~ complying engine ~~products~~.
- (4) Whether there was any breach of contract by an engine ~~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 engines ~~products~~ for the equipment we exempt in paragraph (a) of this section. You do not have to request this exemption ~~for your engines~~, but you must have written assurance from equipment manufacturers that they need a certain number of exempted engines ~~products~~ under this section. Label engines or fuel-system components as follows:

- (1) Engines. Add a permanent, legible label, written ~~in block letters~~ in English, to a readily visible part of each exempted engine. This label must include at least the following items:
 - ~~(i)~~ (i) The label heading "EMISSION CONTROL INFORMATION".
 - ~~(ii)~~ (ii) Your corporate name and trademark.
 - ~~(iii)~~ (iii) Engine displacement (in liters), rated power, and model year of the engine or whom to contact for further information.

~~(4) One of the following statements:~~

~~(iv)~~ (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."

~~(ii)~~ (ii) 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, legible label, written in English, to a readily visible part of each fuel-system component exempted under this section. This label must prominently include 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) For the purpose of this section, a secondary engine manufacturer is a manufacturer that produces an engine by modifying an engine that is made by a different manufacturer for a different type of application. This includes, for example, automotive engines converted for use in industrial applications, or land-based engines converted for use in marine applications. This applies whether the secondary engine manufacturer is modifying a complete or partially complete engine and whether the engine was previously certified to emission standards or not. To be a secondary engine manufacturer, you must not be controlled by the manufacturer of the base engine (or by an entity that also controls the manufacturer of the base engine). In addition, equipment manufacturers that substantially modify engines become secondary engine manufacturers. For the purpose of this definition, "substantially modify" means changing an engine in a way that could change its emission characteristics.~~

~~(2) 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 can approve the exemption under this section, we will generally require that you must 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.~~

~~(3) 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.~~

§1068.260 What are the provisions for temporarily exempting engines for delegated final assembly?

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

The provisions of §1068.101(a)(1) generally require that all new engines be in their certified configuration before being introduced into U.S. commerce. 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 exceptions to these requirements for engines. This section does not apply to equipment subject to equipment-based standards. (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.)

(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), if you do if you follow the provisions of paragraph (b) or (c) of this section. Note that the standard-setting parts allows this exemption for delegated final assembly only for the following engines:

(1) Stationary compression-ignition engines (see 40 CFR part 60, subpart IIII).

(2) Stationary spark-ignition engines (see 40 CFR part 60, subpart JJJ).

(3) Land-based nonroad compression-ignition engines (see 40 CFR part 1039).

(4) Marine spark-ignition engines (see 40 CFR part 1045).

(5) Marine compression-ignition engines (see 40 CFR part 1042).

(6) Large nonroad spark-ignition engines (see 40 CFR part 1048).

~~(b) An engine you produce under this section becomes new when it is fully assembled, except for aftertreatment devices, for the first time. Use this date to determine the engine's model year.~~

(b) If you do not manufacture the equipment in which the engine will be installed, you must meet all the following conditions to ship engines without aftertreatment components specified in your application for certification:

(1) Apply for and receive a certificate of conformity for the engine and its ~~emission-control~~ emission control system before shipment.

(2) Provide installation instructions in enough detail to ensure that the engine will be in its certified configuration if someone follows these instructions.

(3) Have a contractual agreement with ~~an~~ each equipment manufacturer obligating the equipment manufacturer to complete the final assembly of the engine so it is in its certified configuration when installed in the equipment. This agreement must also obligate the equipment manufacturer to provide the affidavits and cooperate with the audits required under paragraph ~~(a)~~ (b)(6) of this section.

(4) Include the cost of all aftertreatment components in the cost of the engine. For purposes of importation, you may itemize your invoice to separately identify the cost of 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 that include the value of aftertreatment components.

(5) Ship the aftertreatment components directly to the equipment manufacturer, or arrange for separate shipment by the component manufacturer to the equipment manufacturer.

(6) Take appropriate additional steps to ensure that all engines will be in their certified configuration when installed by the equipment manufacturer. At a minimum do the following:

(i) Obtain annual affidavits from every equipment manufacturer to whom you sell engines under this section. Include engines that you sell through 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.

(ii) If you sell ~~more than 50~~ engines ~~per model year~~ to 16 or more equipment manufacturers under the provisions of this section, you must annually audit 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 you audit 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. If you sell engines to fewer than 16 equipment manufacturers under the provisions of this section, you may instead set up a plan to audit each equipment manufacturer on average once every four model years. Audits must involve the assembling companies' facilities, procedures, and production records to monitor their compliance with your instructions, must include investigation of some assembled engines, and must confirm that the number of aftertreatment devices shipped were sufficient for the number of engines produced. ~~Where an equipment manufacturer is not located in the United States, you may conduct the audit at a distribution or port facility in the United States.~~ You must keep records of these audits for five years after the end of the model year and provide a report to us describing any uninstalled or improperly installed aftertreatment components. Send us these reports within 90 days of the audit, except as specified in paragraph ~~(d)~~ of this section.

(iii) If you sell ~~up to 50~~ engines ~~per model year~~ to fewer than 16 equipment manufacturers under the provisions of this section, you must conduct audits as described in paragraph ~~(d)~~(6)(ii) of this section or propose an alternative plan for ensuring that equipment manufacturers properly install aftertreatment devices.—

~~(iv) If you produce engines and use them to produce equipment under the provisions of this section, you must take steps to ensure that your facilities, procedures, and production records are set up to ensure compliance with the provisions of this section, but you may meet your auditing responsibilities under this paragraph (a)(6) by maintaining a database showing how you pair aftertreatment components with the appropriate engines.—~~

(7) 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)~~(6) of this section.

(iii) All other steps you plan to take under paragraph ~~(d)~~(6) of this section.

(8) Keep records to document how many engines you produce under this exemption. Also, keep records to document your contractual agreements under paragraph ~~(d)~~(3) of this section. Keep all these records for five years after the end of the model year and make them available to us upon request.

(9) Make sure the engine has the emission control information label we require under the standard-setting part. Apply an additional temporary label or tag in a way that makes it unlikely that the engine will be installed in equipment other than in its certified configuration. The label or tag must identify the engine as incomplete and include a clear statement that failing to install the aftertreatment device, or otherwise bring the engine into its certified configuration, is a violation of federal law subject to civil penalty.

(10) You must keep a supply of aftertreatment devices available at your production facility so you can test production-line engines as specified in the standard-setting part or in subpart E of this part. Use a new catalyst with each tested engine, following the specified procedures for stabilizing emission levels. Keep records showing how you randomly selected these catalysts, consistent with applicable requirements.

(c) If you manufacture engines and install them in equipment you also produce, you must take steps to ensure that your facilities, procedures, and production records are set up to ensure that equipment and engines are assembled in their proper certified configurations. You may demonstrate compliance with this requirement by maintaining a database showing how you pair aftertreatment components with the appropriate engines.

(d) 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 40 CFR 1068.101.

~~(d)~~ You must notify us within 15 days if you find from an audit or another source that an equipment manufacturer has

failed to meet its obligations under this section.

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

(1) We may suspend or revoke your exemption for the entire engine family if we determine that any of the engines are not in their certified configuration after installation in the equipment, or if you fail to comply with the requirements of this section. If we suspend or revoke the exemption for any of your engine families under this paragraph (df), this exemption will not apply for future certificates unless you demonstrate that the factors causing the nonconformity do not apply to the other engine families. We may suspend or revoke the exemption for shipments to a single facility where final assembly occurs.

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

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

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

(i) [Reserved]

(j) In certain circumstances you may ship engines with emission-related components that are not yet assembled to the engine. This allowance is limited to situations where the final assembly depends on equipment design parameters and we determine that shipment of the fully assembled engine is impractical. For example, you may generally ship aftertreatment devices along with engines rather than installing them on the engine before shipment. You do not need an exemption to ship an engine under this paragraph (j).

(k) 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 radiators needed to cool the engine. You may ask us at the time of certification to allow you to ship your engines without other equipment-related components (such as a vehicle speed sensor) that are described in your application for certification. If we allow it, 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.

(hl) You may ask us to provide a temporary exemption to allow you to complete production of your engines at different facilities, as long as you maintain control of the engines until they are in their certified configuration. We may require you to take specific steps to ensure that such engines are in their certified configuration before reaching the ultimate purchaser. You may request an exemption under this paragraph (hl) in your application for certification, or in a separate submission to the Designated Compliance Officer.

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

Except as specified in paragraph (f) of this section, all new engines in the United States are presumed to be subject to the prohibitions of §1068.101. This section specifies when manufacturers may introduce into U.S. commerce partially complete engines that have a certificate of conformity held by a secondary engine manufacturer and are not yet in their certified configuration. (Note: See §1068.260 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 (e) of this section.

(a) 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 manufacturer that has certified the engine and will finish the engine assembly. The original engine manufacturer must apply a temporary label to each engine to make clear that the engine is not yet in its certified configuration. The temporary label must include the corporate names of both the original and certifying manufacturers and the engine family name for the engine. The original engine manufacturer may not apply a permanent emission control information label identifying the engine's eventual certification status.

(b) The provisions of this section apply only where the secondary engine manufacturer has substantial control over the design and assembly of emission controls. In determining whether a manufacturer has substantial control over the design and assembly of emission controls, we would consider the degree to which the secondary manufacturer would be able to ensure that the engine will conform to the regulations in its final configuration. Such secondary 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.

(c) The manufacturer that will hold the certificate must include the following information in its 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 (b) 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 the engines will comply with all applicable regulations in their final configuration.

(d) [Reserved]

(e) These provisions are intended only to allow you to obtain engines in the specific circumstances identified in this section, so any exemption under this section expires when you complete the assembly of the engine/equipment in its final configuration.

(f) Reduced-scale hobby engines are not presumed to be engines subject to the prohibitions of §1068.101. Hobby engines are compression-ignition engines with a per-cylinder displacement of less than 50 cubic centimeters or spark-ignition engines installed in reduced-scale models of vehicles that are not capable of transporting a person. Other engines that do not have a valid certificate of conformity or exemption when introduced into U.S. commerce 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.

(g) For purposes of this section, an allowance to introduce engines into U.S. commerce includes a conditional allowance to sell, introduce, or deliver such partially complete 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.

(h) No exemption is needed to import equipment that does not include an engine. No exemption is available under this section for equipment subject to equipment-based standards if the engine has been installed.

§1068.265 What provisions apply to enginesengines/equipment that are conditionally exempted from certification?

Engines produced under an exemption for replacement engines (§1068.240) or engines/equipment produced under an exemption for hardship (§1068.245, §1068.250, or §1068.255) may need to meet alternate emission standards as a condition of the exemption. The standard-setting part may similarly exempt enginesengines/equipment from all certification requirements, or allow us to exempt enginesengines/equipment from all certification requirements for certain cases, but require the enginesengines/equipment to meet alternate standards. In these cases, all the following provisions apply:

- (a) Your enginesengines/equipment must meet the alternate standards we specify in (or pursuant to) the exemption section, and all other requirements applicable to enginesengines/equipment that are subject to such standards.
- (b) You need not apply for and receive a certificate for the exempt enginesengines/equipment. However, you must comply with all the requirements and obligations that would apply to the enginesengines/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 enginesengines/equipment using the appropriate procedures that demonstrate compliance with the alternate standards, unless the enginesengines/equipment are identical in all material respects to enginesengines/equipment that you have previously certified to standards that are the same as, or more stringent than, the alternate standards.
- (d) Unless we specify otherwise elsewhere in the standard-setting part, you must meet the labeling requirements in the standard-setting part, with the following exceptions:
 - (1) Modify the engine-familyfamily designation by eliminating the character that identifies the model year.
 - (2) See the provisions of the applicable exemption for appropriate 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 enginesengines/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 enginesengines/equipment are identical to previously certified enginesengines/equipment, keep your most recent application for certification for the certified engine family.
 - (2) If you previously certified a similar engine family, but have modified the exempted engineengines/equipment in a way that changes itthem from itstheir previously certified configuration, keep your most recent application for certification for the certified engine 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 ~~engine~~ 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~~ engines/equipment you produce under this section.

Subpart D—Imports

§1068.301 ~~Does this subpart~~What general provisions apply to me?

(a) This subpart applies to you if you import into the United States engines or equipment subject to our emission standards or equipment containing engines subject to our emission standards.

(b) In general, ~~engines~~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~~engines/equipment. For equipment not subject to equipment-based exhaust emission standards, an exemption of the engine allows you to import the equipment.

(c) The U.S. Customs Service may prevent you from importing ~~an engine~~engines or equipment if you do not meet the requirements of this subpart. In addition, U.S. Customs Service regulations may contain other requirements for ~~engines~~engines/equipment imported into the United States (see 19 CFR Chapter I).

(d) Complete the appropriate EPA declaration form before importing any engines or equipment. These forms are available on the Internet at <http://www.epa.gov/OTAQ/imports/> or by phone at 734-214-4100. Importers must keep the forms for five years and make them available promptly upon request.

§1068.305 How do I get an exemption or exclusion for imported ~~engines~~?

(a) Complete ~~engines~~engines/equipment?

(a) You must meet the requirements of the specific exemption or exclusion you intend to use and complete the appropriate EPA declaration form before importing any nonconforming engine. These forms are available on the Internet at <http://www.epa.gov/OTAQ/imports/> or by phone at 734-214-4100 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, telephone number, and taxpayer identification number.

(2) Give the ~~engine~~engine/equipment owner's name, address, telephone number, and taxpayer identification number.

(3) Identify the make, model, identification number, and original production year of ~~each engine~~all engines/equipment.

(4) Identify which exemption or exclusion in this subpart allows you to import a nonconforming ~~engine~~engines/equipment and describe how your ~~engine~~engine/equipment qualifies.

(5) Tell us where you will keep your ~~engines~~engines/equipment if you might need to store them until we approve your request.

(6) Authorize us to inspect or test your ~~engines~~engines/equipment as the Act allows.

(c) We may ask for more information.

(d) You may import the nonconforming ~~engines~~engines/equipment you identify in your request if you get prior written approval from us. The U.S. Customs Service may require you to show them the approval letter. We may temporarily or permanently approve the exemptions or exclusions, as described in this subpart.

(e) Meet the requirements specified for the appropriate exemption in this part or the standard-setting part, including any labeling requirements that apply.

§1068.310 What are the exclusions for imported ~~engines~~engines/equipment?

If you show us that your ~~engines~~engines/equipment qualify under one of the paragraphs of this section, we will approve your request to import such excluded ~~engines~~engines/equipment. You must have our approval ~~to~~before import ~~an engine~~ing engines/equipment under paragraph (a) of this section. You may, but are not required to request our approval to import the ~~engines~~engines/equipment under paragraph (b) or (c) of this section. The following ~~engines~~engines/equipment are excluded:

(a) ~~Engines~~Engines/equipment used solely for competition. ~~Engines~~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. Section 1068.101(b)(4) prohibits anyone from using these excluded ~~engines~~engines/equipment for purposes other than competition.

(b) Stationary engines. The definition of nonroad engine in ~~40 CFR 1068~~§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) Other engines/equipment. The standard-setting parts may exclude engines/equipment used in certain applications. For example, engines used in aircraft and very small engines used in hobby vehicles are generally excluded. Engines/equipment used in underground mining are excluded if they are regulated by the Mine Safety and Health Administration.

§1068.315 What are the permanent exemptions for imported engines/equipment?

We may approve a permanent exemption from the restrictions on imports under §1039.68.301(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, but only if it is properly labeled.

(b) Manufacturer-owned engine/equipment exemption. You may import a manufacturer-owned engine/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 an engine 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) Delegated-assembly exemption. You may import a nonconforming engine for final assembly under the provisions of §1068.260. However, this does not include the staged-assembly provisions of §1068.260(h); see §1068.330 for importing incomplete engines.~~

~~(h) [Reserved]~~

~~(i) Identical configuration exemption. ~~Unless specified otherwise in the standard-setting part,~~ you may import a nonconforming engine/equipment if ~~it is~~they are identical to certified engines/equipment produced by the same manufacturer, subject to the following provisions:~~

~~— (1) You may import only the following engines under this exemption:~~

~~— (i) Large nonroad spark-ignition engines (see part 1048 of this chapter).~~

~~— (ii) Recreational nonroad spark-ignition engines and equipment (see part 1051 of this chapter).~~

~~— (iii) Land-based nonroad diesel engines (see part 1039 of this chapter).~~

~~(2) You must meet all the following criteria:~~

~~(i) You have owned the engine/equipment for at least six months.~~

~~(ii) You agree not to sell, lease, donate, trade, or otherwise transfer ownership of the engine/equipment for at least five years, ~~or until the engine is eligible for the exemption in paragraph (g) of this section.~~ During this period, the only acceptable way to dispose of the engine/equipment is to destroy or export ~~it~~them.~~

~~(iii) You use data or evidence sufficient to show that the engine/equipment are in a configuration that is identical to an engine/equipment the original manufacturer has certified to meet emission standards that apply at the time the manufacturer finished assembling or modifying the engine/equipment in question. If you modify the engine/equipment to make ~~it~~them identical, you must completely follow the original manufacturer's written instructions.~~

~~(3) We will tell you in writing if we find the information insufficient to show that the engine isengines/equipment are eligible for this exemption. In this case, we will not consider your request further until you address our concerns.~~

~~(j) Ancient engine/equipment exemption. If you are not the original engine/equipment manufacturer, you may import a nonconforming engine/equipment that ~~is~~are subject to a standard-setting part and ~~was~~were first manufactured at least 21 years earlier, as long as ~~it is~~they are still in ~~its~~their original configurations.~~

§1068.320 How must I label an imported engine/equipment with an exclusion or a permanent exemption?

(a) For engines/equipment imported under §1068.310(a) or (b), you must place a permanent label or tag on ~~each engine~~all engines/equipment. If no specific label requirements in the standard-setting part apply for these engines/equipment, you must meet the following requirements:

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

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

- (3) Secure it to a part of the engine/engine/equipment needed for normal operation and not normally requiring replacement.
 - (4) Write it in block letters in English.
 - (5) For labels on the engine, make the labels readily visible to the average person after the engine is installed in the equipment.
- (b) On the engine/engine/equipment label or tag, do the following:
- (1) Include the heading "EMISSION CONTROL INFORMATION".
 - (2) Include your full corporate name and trademark.
 - (3) State the engine displacement (in liters) and rated power. If the engine's rated power is not established, state the approximate power rating accurately enough to allow a determination of which standards would otherwise apply.
 - (4) State: "THIS ENGINE IS EXEMPT FROM THE REQUIREMENTS OF [identify the part referenced in 40 CFR 1068.1068.1(a)] that would otherwise apply], AS PROVIDED IN [identify the paragraph authorizing the exemption (for example, "40 CFR 1068.315(a)")]. INSTALLING THIS ENGINE IN ANY DIFFERENT APPLICATION MAY BE A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY."
- (c) Get us to approve alternate label language if it is more accurate for your engine/engine/equipment.

§1068.325 What are the temporary exemptions for imported engines/engine/equipment?

You may import engines/engine/equipment under certain temporary exemptions, subject to the conditions in this section. We may ask the U.S. Customs Service 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 engines/engine/equipment while it is in the United States. You must eventually export the engine/engine/equipment as we describe in this section unless you get a certificate of conformity for it or it qualifies for one of the permanent exemptions in §1068.315. Section 1068.330 specifies an additional temporary exemption allowing you to import certain engines/engine/equipment you intend to modify.

- (a) Exemption for repairs or alterations. You may temporarily import a nonconforming engine/engine/equipment under bond solely to for repair or alter it or the equipment in which it is installed. You may operate the engine and equipment/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/engine/equipment directly after servicing is complete.
- (b) Testing exemption. You may temporarily import a nonconforming engine/engine/equipment under bond for testing if you follow the requirements of §1068.210. You may operate the engine/engine/equipment in the United States only as needed to allow testing/perform tests. This exemption expires one year after you import the engine/engine/equipment, unless we approve an extension. The engine/engine/equipment must be exported before the exemption expires.
- (c) Display exemption. You may temporarily import a nonconforming engine/engine/equipment under bond for display, as described in §1068.220. This exemption expires one year after you import the engine/engine/equipment, unless we approve your request for an extension. We may approve an extension of up to one more year for each request, but no more than three years in total. The engine/engine/equipment must be exported by the time the exemption expires or directly after the display concludes, whichever comes first.
- (d) Export exemption. You may temporarily import a nonconforming engine/engine/equipment to export it/them, as described in §1068.230. You may operate the engine/engine/equipment in the United States only as needed to prepare it for export. Label the engine/engine/equipment as described in §1068.230.
- (e) Diplomatic or military exemption. You may temporarily import nonconforming engines/engine/equipment without bond if you represent a foreign government in a diplomatic or military capacity. In your request to the Designated Officer (see §1068.305), include either written confirmation from the U.S. State Department that you qualify for this 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/engine/equipment.
- (f) Delegated-assembly exemption. You may import a nonconforming engine for final assembly under the provisions of §1068.260. However, this does not include the staged-assembly provisions of §1068.260(j).
- (g) Partially complete engine exemption. 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 under the provisions of §1068.262.

§1068.330 How do I import engines requiring further assembly?

This section allows you to import engines in configurations different than their final configuration. This exemption is temporary, as described in paragraph (d) of this section.

(a) This section applies in the following cases:

- (1) You import a partially complete engine with the intent to manufacture complete engines for which you have

either a certificate of conformity or an exemption that allows you to sell completed engines.

- (2) You import an uncertified complete engine with the intent to modify it for installation in an application different than its otherwise intended application (for example, you import a land-based engine to modify it for a marine application). In this case, to qualify for an exemption under this section, you need either a certificate of conformity or an exemption that allows you to sell completed engines.
 - (3) You import a complete or partially complete engine to modify for an application for which emission standards do not apply.
 - (4) You import a complete or partially complete engine for installation in equipment subject to equipment-based standards for which you have either a certificate of conformity or an exemption that allows you to sell the equipment.
- (b) You may request this exemption in an application for certification. Otherwise, send your request to the Designated Officer. Your request must include:
- (1) The name of the supplier of the partially complete engine, or the original manufacturer of the complete engine.
 - (2) A description of the certificate or exemption that will apply to the engines in the final configuration, or an explanation why a certificate or exemption is not needed.
 - (3) A brief description of how and where final assembly will be completed.
 - (4) An unconditional statement that the engines will comply with all applicable regulations in their final configuration.
- (c) If we approve a temporary exemption for an engine, you may import it under the conditions in this section. If you are not a certificate holder, we may ask the U.S. Customs Service to require a specific bond amount to make sure you comply with the requirements of this subpart.
- (d) These provisions are intended only to allow you to import engines in the specific circumstances identified in this section, so any exemption under this section expires when you complete the assembly of the engine in its final configuration. If the engine in its final configuration is subject to emission standards, then it must be covered by a certificate or a different exemption before you introduce it into commerce.

§1068.335 What are the penalties for violations?

- (a) All imported engines/engines/equipment. Unless you comply with the provisions of this subpart, importation of nonconforming engines/engines/equipment violates sections 203 and 213(d) of the Act (42 U.S.C. 7522 and 7547(d)). You may then have to export the engines/engines/equipment, or pay civil penalties, or both. The U.S. Customs Service may seize unlawfully imported engines and equipment.
- (b) Temporarily imported engines/engines/equipment. If you do not comply with the provisions of this subpart for a temporary exemption under §1068.325 or §1068.330, 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 the U.S. Customs Service for export or other disposition under applicable Customs laws and regulations. EPA or the U.S. Customs Service may offer you a grace period to allow you to export a temporarily exempted engine/engines/equipment without penalty after the exemption expires.

Subpart E—Selective Enforcement Auditing

§1068.401 What is a selective enforcement audit?

- (a) We may conduct or require you to conduct emission tests on your production enginesengines/equipment in a selective enforcement audit. This requirement is independent of any requirement for you to routinely test production-line enginesengines/equipment. 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 enginesengines/equipment. This may be where you produce the enginesengines/equipment or any other emission testing facility.
- (c) If we select one or more of your engine 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 Officer within one working day of receiving the test order where you will test your enginesengines/equipment.
- (e) You must do everything we require in the audit without delay. -

§1068.405 What is in a test order?

- (a) In the test order, we will specify the following things:
- (1) The engine family and configuration (if any) we have identified for testing.
 - (2) The engineengine/equipment assembly plant, storage facility, or (if you import the enginesengines/equipment) port facility from which you must select enginesengines/equipment.
 - (3) The procedure for selecting enginesengines/equipment for testing, including a selection rate.
 - (4) The test procedures, duty cycles, and test points, as appropriate, for testing the enginesengines/equipment to show that they meet emission standards.
- (b) We may state that we will select the test enginesengines/equipment.
- (c) We may identify alternate engine families or configurations for testing in case we determine the intended enginesengines/equipment are not available for testing or if you do not produce enough enginesengines/equipment to meet the minimum rate for selecting test enginesengines/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 enginesengines/equipment (closed crankcases, for example).
- (f) In anticipation of a potential audit, you may give us a list of your preferred engine families and the corresponding assembly plants, storage facilities, or (if you import the enginesengines/equipment) port facilities from which we should select enginesengines/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 enginesengines/equipment differently.
- (g) If you also do routine production-line testing with the selected engine 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.

§1068.410 How must I select and prepare my enginesengines/equipment?

- (a) Selecting enginesengines/equipment. Select enginesengines/equipment as described in the test order. If you are unable to select test enginesengines/equipment this way, you may ask us to approve an alternate plan, as long as you make the request before you start selecting enginesengines/equipment.
- (b) Assembling enginesengines/equipment. Produce and assemble test enginesengines/equipment using your normal production and assembly process for that engine 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 enginesengines/equipment.
 - (2) If you do not fully assemble enginesengines/equipment at the specified location, we will describe in the test order how to select components to finish assembling the enginesengines/equipment. Assemble these components onto the test enginesengines/equipment using your documented assembly and quality control procedures.
- (c) Modifying enginesengines/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/engines/equipment and make the action routine for all the engines/engines/equipment in the engine family.
- (2) This subpart otherwise allows your action.
- (3) We approve your action in advance.
- (d) Engine/Engine/equipment malfunction. If an engine/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) We may adjust or require you to adjust idle speed outside the physically adjustable range as needed until the engine has stabilized emission levels (see paragraph (f) of this section). We may ask you for information needed to establish an alternate minimum idle speed.
 - (2) We may make or specify adjustments within the physically adjustable range by considering their effect on emission levels, as well as how likely it is someone will make such an adjustment with in-use engines/engines/equipment.
- (f) Stabilizing emission levels. (1) Before you test production-line engines/engines/equipment for exhaust emission, you may operate the engine/engine/equipment to stabilize the exhaust emission levels. Using good engineering judgment, operate your engines/engines/equipment in a way that represents the way production engines/engines/equipment will be used. You may operate each engine or piece of equipment for no more than the greater of two periods:
 - ~~(1)~~ 50 hours.
 - ~~(2)~~ The number of hours you operated your emission-data engine/engine/equipment for certifying the engine 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 an engine/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/engine/equipment. Report to us, in your written report under §1068.450, all adjustments or repairs you make on test engines/engines/equipment before each test.
- (h) Shipping engines/engines/equipment. If you need to ship engines/engines/equipment to another facility for testing, make sure the test engines/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/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/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.

§1068.415 How do I test my engines/engines/equipment?

- (a) Use the test procedures specified in the standard-setting part for showing that your engines/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/engines/equipment in each 24-hour period (including void tests). However, if your projected U.S. nonroad engine sales within the engine family are less than 7,500 for the year, you may test a minimum of 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/engines/equipment at a minimum rate of 6 hours per engine or piece of equipment during each 24-hour period. 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. You may ask us to approve a lower service accumulation rate. 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 engine operation for accumulating operating hours on your test engines/engines/equipment to represent normal in-use engine operation for the engine family.

(e) Test engines/engines/equipment in the same order you select them.

§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/engines/equipment until you reach a pass decision for all pollutants or a fail decision for one pollutant.
- (c) You reach a pass decision for the SEA requirements when the number of failed engines/engines/equipment is less than or equal to the pass decision number in Appendix A to this subpart for the total number of engines/engines/equipment tested. You reach a fail decision for the SEA requirements when the number of failed engines/engines/equipment is greater than or equal to the fail decision number in Appendix A to this subpart for the total number of engines/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/engine/equipment testing sequence.
- (e) If you reach a pass decision for one pollutant, but need to continue testing for another pollutant, we will disregard these later test results for the pollutant with the pass decision.
- (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 engine family.
- (g) We may choose to stop testing after any number of tests.
- (h) If we test some of your engines/engines/equipment in addition to your own testing, we may decide not to include your test results as official data for those engines/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.

§1068.425 What happens if one of my production-line engines/engines/equipment exceeds the emission standards?

- (a) If one of your production-line engines/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/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 at any time ask for a hearing to determine whether the tests and sampling methods were proper (see subpart G of this part).

§1068.430 What happens if an engine family fails an SEA?

- (a) We may suspend your certificate of conformity for an engine family if it fails the SEA under §1068.420. The suspension may apply to all facilities producing engines/engines/equipment from an engine family, even if you find noncompliant engines/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 engine family fails the SEA. The suspension is effective when you receive our notice.
- (c) Up to 15 days after we suspend the certificate for an engine family, you may ask for a hearing to determine whether the tests and sampling methods were proper (see subpart G of this part). If we agree before a hearing that we used erroneous information in deciding to suspend the certificate, we will reinstate the certificate.

§1068.435 May I sell engines/engines/equipment from an engine family with a suspended certificate of conformity?

You may sell engines/engines/equipment that you produce after we suspend the engine 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 engine family. We may do so if you agree to recall all the affected engines/engines/equipment and remedy any noncompliance at no expense to the owner if later testing shows that

enginesengines/equipment in the engine 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 data from production-line testing showing that enginesengines/equipment in the remedied-engine family comply with all the emission standards that apply.

§1068.445 When may EPA revoke my certificate under this subpart and how may I sell these enginesengines/equipment again?

- (a) We may revoke your certificate for an enginea family in the following cases:
 - (1) You do not meet the reporting requirements under this subpart.
 - (2) Your engine-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'sengine/equipment's design or emission-controlemission control system.
- (b) To sell enginesengines/equipment from an enginea family with a revoked certificate of conformity, you must modify the engine-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'sengine/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 enginesengines/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 calendar days of the end of each audit, send us a report with the following information:
 - (1) Describe any facility used to test production-line enginesengines/equipment and state its location.
 - (2) State the total U.S.-directed production volume and number of tests for each engine-family.
 - (3) Describe your test enginesengines/equipment, including the engine-family's identification and the engine'sengine/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 enginesengines/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 engineengine/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 enginesengines/equipment conform with 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 engine-family in a way that might affect the emission control from production enginesengines/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 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. We will not release information about your sales or production volumes, which is all we will consider confidential.

§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/engine/equipment and the names of all supervisors who oversee this work.
 - (3) If you shipped the engine/engine/equipment for testing, the date you shipped it, the associated storage or port facility, and the date the engine/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 an engine family. Include each assembly plant if you produce engines/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 A-1—Sampling Plan Code Letter

Projected Engine 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 engine 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

Stage ^a	AA		A		B		C		D	
	Pass #	Fail #	Pass #	Fail #	Pass #	Fail #	Pass #	Fail #	Pass #	Fail #
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
55									26	32
56									27	33
57									27	33
58									28	33
59									28	33
60									32	33

^aStage refers to the cumulative number of engines/equipment tested.-

Subpart F—Reporting Defects and Recalling Engines/Equipment

§1068.501 How do I report engine emission-related defects?

This section addresses your 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/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 an engine certifying manufacturer, you must investigate in certain circumstances whether engines/engines/equipment that have been introduced into U.S. commerce in the United States 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 might increase emissions of any pollutant without significantly degrading engine/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 an engine's the emissions of any 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/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/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/engines/equipment in the engine-family, use actual sales figures for the whole model year when they become available. Use projected sales figures until the actual sales 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/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/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/engines/equipment (see §1068.505).

(8) Send all reports required by this section to the Designated 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/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/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, 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. Send us an updated defect report anytime you have significant additional information.
- (6) If a component with a possible defect is used in additional engine families or model years, you must investigate whether the component may be defective when used in these additional engine 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 enginesengines/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 enginesengines/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 enginesengines/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 enginesengines/equipment. See paragraph (h) of this section for reporting requirements that apply if the number of enginesengines/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 enginesengines/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.
- (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 enginesengines/equipment that have the defect, including engine families, models, and range of production dates.
 - (4) An estimate of the number and percentage of each class or category of affected enginesengines/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 enginesengines/equipment that may have the defect:
- (1) For enginesengines/equipment with maximum engine power at or below 560 kW:
 - (i) For engine families with annual sales below 500 units: 50 or more enginesengines/equipment.
 - (ii) For engine families with annual sales from 500 to 50,000 units: more than 10.0 percent of the total number of enginesengines/equipment in the engine family.
 - (iii) For enginefamilies with annual sales from 50,000 to 550,000 units: more than the total number of engines/equipment represented by the following equation:
Investigation threshold = 5,000 + (Production units - 50,000) × 0.04

- (iv) For families with annual sales above 50550,000 units: 525,000 or more enginesengines/equipment.
- (2) For enginesengines/equipment with maximum engine power greater than 560 kW:
- (i) For engine-families with annual sales below 250 units: 25 or more enginesengines/equipment.
- (ii) For engine-families with annual sales at or above 250 units: more than 10.0 percent of the total number of enginesengines/equipment in the engine-family.
- (f) Thresholds for filing a defect report. You must send a defect report based on the following number of enginesengines/equipment that have the defect:
- (1) For enginesengines/equipment with maximum engine power at or below 560 kW:
- (i) For engine-families with annual sales below 1,000 units: 20 or more enginesengines/equipment.
- (ii) For engine-families with annual sales from 1,000 to 50,000 units: more than 2.0 percent of the total number of enginesengines/equipment in the engine-family.
- (iii) For enginefamilies with annual sales 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 sales above 50550,000 units: 16,000 or more enginesengines/equipment.
- (2) For enginesengines/equipment with maximum engine power greater than 560 kW:
- (i) For engine-families with annual sales below 150 units: 10 or more enginesengines/equipment.
- (ii) For engine-families with annual sales from 150 to 750 units: 15 or more enginesengines/equipment.
- (iii) For engine-families with annual sales above 750 units: more than 2.0 percent of the total number of enginesengines/equipment in the engine-family.
- (g) How to count defects. (1) Track defects separately for each model year and engine-family as much as possible. If information is not identifiable by model year or engine-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 an engine-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 engine-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 enginesengines/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 enginesengines/equipment from

meeting the requirements of this part, you must correct the defect as soon as possible for future production of enginesengines/equipment in every family affected by the defect. This applies without regard to whether you are required to conduct a defect investigation or submit a defect report under this section.

§1068.505 How does the recall program work?

- (a) If we make a determination that a substantial number of properly maintained and used enginesengines/equipment do not conform to the regulations of this chapter during their useful life, you must submit a plan to remedy the nonconformity of your enginesengines/equipment. We will notify you of our determination in writing. Our notice will identify the class or category of enginesengines/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 noncompliant enginesengines/equipment that have been properly maintained and used, as described in §1068.510(a)(7). 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 Officer by the later of these two deadlines:
- (1) Within 60 days after we notify you.
 - (2) Within 60 days after a hearing.
- (d) Once you have sold an engineengines/equipment to the ultimate purchaser, we may inspect or test the engineengines/equipment only if he or she 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 Act (42 U.S.C. 7541(c)).
- (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 or someone who owns a piece of equipment that has one of these engines.

§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 enginesengines/equipment to be recalled, including the number of enginesengines/equipment involved and the model year or other information needed to identify the enginesengines/equipment.
 - (2) The modifications, alterations, repairs, corrections, adjustments, or other changes you will make to correct the affected enginesengines/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 enginesengines/equipment under the remedial plan.
 - (5) How you will determine the owners' names and addresses.
 - (6) How you will notify owners; include copies 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.
 - (12) The effect of proposed changes on fuel consumption, driveability, and safety of the enginesengines/equipment you will recall; include a brief summary of the information supporting these conclusions.
 - (13) How you intend to label the enginesengines/equipment you repair and where you will place the label on the engineengine/equipment (see §1068.515).
- (b) We may require you to add information to 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/engine/equipment.

(f) We may require you to adjust your repair plan if we determine owners would be without their engines/engines/equipment 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 otherwise. -

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

(a) Attach a label to each engine/engines/equipment you repair under the remedial plan. At your discretion, you may label or mark engines/engines/equipment you inspect but do not repair.

(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) On the label, designate the specific recall campaign and state where you repaired or inspected the engine/engine/equipment.

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

§1068.520 How do I notify affected owners?

(a) Notify owners by first class 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/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/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/engines/equipment meet the conditions for proper maintenance and use. Describe these conditions and how owners should prove their engines/engines/equipment are eligible for repair.

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

(5) State that the engine/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/engine/equipment.

(7) Describe any adverse effects on the functions of other engine components that would be caused by not repairing the engine/engine/equipment.

(8) Specify the date you will start the repairs, the amount of time you will need to do them, and where you will do them. Include any other information owners may need to know.

(9) Include a self-addressed card that owners can mail back if they have sold the engine (or equipment in which the engine is installed)/engine/equipment; include a space for owners to write the name and address of a buyer.

(10) State that owners should call you at a phone number you give to report any difficulty in obtaining repairs.

(11) State: "To ensure your full protection under the emission warranty on your engine/engine/equipment by federal law, and your right to participate in future recalls, we recommend you have your engine/engine/equipment serviced as soon as possible. We may consider your not servicing it to be improper maintenance."

(b) We may require you to add information to your notice or to send more notices.

(c) You may not in any communication with owners or dealers say or imply that your noncompliance does not exist or that it will not degrade air quality.

§1068.525 What records must I send to EPA?

(a) Send us a copy of all communications related to the remedial plan you sent to dealers and others doing the repairs. Mail or e-mail us the information at the same time you send it to others.

(b) From the time you begin to notify owners, send us a report within 25 days of the end of each calendar quarter. Send reports for six consecutive quarters or until all the engines/engines/equipment are inspected, whichever comes first. In these reports, identify the following:

(1) The range of dates you needed to notify owners.

- (2) The total number of notices sent.
 - (3) The number of enginesengines/equipment you estimate fall under the remedial plan (explain how you determined this number).
 - (4) The cumulative number of enginesengines/equipment you inspected under the remedial plan.
 - (5) The cumulative number of these enginesengines/equipment you found needed the specified repair.
 - (6) The cumulative number of these enginesengines/equipment you have repaired.
 - (7) The cumulative number of enginesengines/equipment you determined to be unavailable due to exportation, theft, retirement, or other reasons (specify).
 - (8) The cumulative number of enginesengines/equipment you disqualified for not being properly maintained or used.
- (c) If your estimated number of enginesengines/equipment falling under the remedial plan changes, change the estimate in your next report and add an explanation for the change.
- (d) We may ask for more information.
- (e) We may waive reporting requirements or adjust the reporting schedule.
- (f) If anyone asks to see the information in your reports, we will follow the provisions of §1068.10 for handling confidential information.

§1068.530 What records must I keep?

We may review your records at any time, so it is important that you keep required information readily available. Keep records associated with your recall campaign for three years after you send the last report we require under §1068.525(b). Organize and maintain your records as described in this section.

- (a) Keep a paper copy of the written reports described in §1068.525.
- (b) Keep a record of the names and addresses of owners you notified. For each engine or piece of equipment, state whether you did any of the following:
 - (1) Inspected the engineengine/equipment.
 - (2) Disqualified the engineengine/equipment for not being properly maintained or used.
 - (3) Completed the prescribed repairs.
- (c) You may keep the records in paragraph (b) of this section in any form we can inspect, including computer databases.

§1068.535 How can I do a voluntary recall for emission-related problems?

If we have made a determination that a substantial number of properly maintained and used enginesengines/equipment do not conform to the regulations of this chapter during their useful life, you may not use a voluntary recall or other alternate means to meet your obligation to remedy the noncompliance. Thus, this section only applies where you learn that your engine family does not meet the requirements of this chapter and we have not made such a determination.

- (a) To do a voluntary recall under this section, first send the Designated Officer a plan, following the guidelines in §1068.510. Within 15 days, we will send you our comments on your plan.
- (b) Once we approve your plan, start notifying owners and carrying out the specified repairs.
- (c) From the time you start the recall campaign, send us a report within 25 days of the end of each calendar quarter, following the guidelines in §1068.525(b). Send reports for six consecutive quarters or until all the enginesengines/equipment are inspected, whichever comes first.
- (d) Keep your reports and the supporting information as described in §1068.530.

Subpart G—Hearings

§1068.601 What are the procedures for hearings?

If we agree to hold a hearing related to our decision to order a recall under §1068.505, we will hold the hearing according to the provisions of 40 CFR 85.1807. For any other issues, you may request an informal hearing, as described in 40 CFR 86.1853-01.

Appendix I to Part 1068—Emission-Related Components

This appendix specifies emission-related components that we refer to for describing such things as emission-related warranty or requirements related to rebuilding engines.

- I. Emission-related components include any engine/engine/equipment parts related to the following systems:
 1. Air-induction system.
 2. Fuel system, including evaporative emission controls.
 3. Ignition system.
 4. Exhaust gas recirculation systems.
 5. All components comprising the combustion chamber, including the piston, piston rings, block, head, and valves.
- II. The following parts are also considered emission-related components:
 1. Aftertreatment devices.
 2. Crankcase ventilation valves.
 3. Sensors.
 4. Electronic control units.
- III. Emission-related components also include any other part whose only purpose is to reduce emissions or whose failure will increase emissions without significantly degrading engine performance.

Appendix II to Part 1068—Emission-Related Parameters and Specifications

This appendix specifies emission-related parameters and specifications that we refer to for describing such things as emission-related defects or requirements related to rebuilding engines.

- I. Basic Engine Parameters -- Reciprocating Engines.
 1. Compression ratio.
 2. Type of air aspiration (natural, Roots-blown, supercharged, turbocharged).
 3. Valves (intake and exhaust).
 - a. Head diameter dimension.
 - b. Valve lifter or actuator type and valve lash dimension.
 4. Camshaft timing.
 - a. Valve opening - intake exhaust (degrees from top-dead center or bottom-dead center).
 - b. Valve closing - intake exhaust (degrees from top-dead center or bottom-dead center).
 - c. Valve overlap (degrees).
 5. Ports -- two stroke engines (intake and/or exhaust).
 - a. Flow area.
 - ii. Opening timing (degrees from top-dead center or bottom-dead center).
 - iii. Closing timing (degrees from top-dead center or bottom-dead center).
- II. Intake Air System.
 1. Roots blower/supercharger/turbocharger calibration.
 2. Charge air cooling.
 - a. Type (air-to-air; air-to-liquid).
 - b. Type of liquid cooling (engine coolant, dedicated cooling system).
 - c. Performance.
 3. Temperature control system calibration.
 4. Maximum allowable inlet air restriction.
- III. Fuel System.
 1. General.
 - a. Engine idle speed.
 - b. Engine idle mixture.
 2. Carburetion.
 - a. Air-fuel flow calibration.
 - b. Idle mixture.
 - c. Transient enrichment system calibration.
 - d. Starting enrichment system calibration.
 - e. Altitude compensation system calibration.
 - f. Hot idle compensation system calibration.

3. Fuel injection for spark-ignition engines.
 - a. Control parameters and calibrations.
 - b. Idle mixture.
 - c. Fuel shutoff system calibration.
 - d. Starting enrichment system calibration.
 - e. Transient enrichment system calibration.
 - f. Air-fuel flow calibration.
 - g. Altitude compensation system calibration.
 - h. Operating pressure(s).
 - i. Injector timing calibration.
4. Fuel injection for compression-ignition engines.
 - a. Control parameters and calibrations.
 - b. Transient enrichment system calibration.
 - c. Air-fuel flow calibration.
 - d. Altitude compensation system calibration.
 - e. Operating pressure(s).
 - f. Injector timing calibration.

IV. Ignition System for Spark-ignition Engines.

1. Control parameters and calibration.
2. Initial timing setting.
3. Dwell setting.
4. Altitude compensation system calibration.
5. Spark plug voltage.

V. Engine Cooling System—thermostat calibration.

VI. Exhaust System—maximum allowable back pressure.

VII. System for Controlling Exhaust Emissions.

1. Air injection system.
 - a. Control parameters and calibrations.
 - b. Pump flow rate.
2. EGR system.
 - a. Control parameters and calibrations.
 - b. EGR valve flow calibration.
3. Catalytic converter system.
 - a. Active surface area.
 - b. Volume of catalyst.
 - c. Conversion efficiency.
4. Backpressure.

VIII. System for Controlling Crankcase Emissions.

1. Control parameters and calibrations.
2. Valve calibrations.

IX. Auxiliary Emission Control Devices (AECD).

1. Control parameters and calibrations.
2. Component calibration(s).

X. System for Controlling Evaporative Emissions.

1. Control parameters and calibrations.
2. Fuel tank.
 - a. Volume.
 - b. Pressure and vacuum relief settings.

XI. Warning Systems Related to Emission Controls.

1. Control parameters and calibrations.
2. Component calibrations.