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To rgault@emamail.org  
cc  
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Subject Delegated assembly re-draft

Roger,

The attached files include a revised approach for delegated assembly that we believe represents a unified approach that will be workable across the range of affected engine programs. This includes a comprehensive writeup in 40 CFR 1068.260, with various category-specific provisions spelled out for individual engine types as appropriate.

The "source" file show where all the pieces from the new draft regulations came from. Part 85 was the basis of most of the structure of the unified approach (either price aftertreatment with engines, or do audits), while many of the proposed innovations we came up with for Small SI engines in part 1054 contribute to the combined approach. The underlined text in the "unified" file shows what is new since we published all the different versions in the proposal last May.

Since this issue is prominent in the loco-marine rule, we may go ahead and adopt the new 1068.260 on that more accelerated track. Along those lines, it would be good to hear back regarding any ideas, comments, or concerns by the week of Nov. 12. If the timing for the earlier rule doesn't work out, we can continue with the plan to finalize this in the rule for Marine SI and Small SI emission standards. We will be curious to hear your thoughts on the subject.

Alan



del assembly -unified.pdf del assembly -source.pdf

**§1068.260 What 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. See the standard-setting part to determine whether and how the provisions of this section apply. (Note: See §1068.262 for provisions related to manufacturers introducing into U.S. commerce partially complete engines for which someone else holds the certificate of conformity.)

(a) Shipping an engine separately from an aftertreatment component that you have specified as part of its certified configuration will not be a violation of the prohibitions in §1068.101(a)(1) subject to the provisions in paragraphs (b) through (k) of this section. These provisions apply without request. Paragraphs (m) through (o) of this section describe additional provisions that apply for other special circumstances.

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

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

(1) Apply for and receive a certificate of conformity for the engine and its emission control system before shipment. For an existing certificate of conformity, amend the application for certification by including the new configuration to ensure that it is covered by the certificate.

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

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

(4) Take appropriate additional steps to ensure that all engines will be in their certified configuration when installed by the equipment manufacturer. At a minimum, you must obtain annual affidavits from every equipment manufacturer to which you sell engines under this section. Include engines that you sell 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 and include confirmation that the number of aftertreatment devices received were sufficient for the number of engines involved.

(5) Describe in your application for certification how you plan to use the provisions of this section and any steps you plan to take under paragraph (c)(4) of this section.

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

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

- (i) Apply an additional 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.
  - (ii) Add the statement “DELEGATED ASSEMBLY” to the permanent emission control information label. You may alternatively add the abbreviated statement “DEL ASSY” if there is not enough room on the label.
- (8) Describe the following things in your application for certification:
- (i) How you plan to use the provisions of this section.
  - (ii) A detailed plan for auditing equipment manufacturers, as described in paragraph (d)(3) of this section, if applicable.
  - (iii) All other steps you plan to take under paragraph (c)(4) of this section.
- (9) If one of your engines produced under this section is selected for production-line testing, you must arrange to get a randomly selected aftertreatment component that will be used with the engine; you may not use aftertreatment components from your own inventory. You may obtain such aftertreatment components from any point in the normal distribution from the aftertreatment component manufacturer to the equipment manufacturer. Keep records showing how you randomly selected these aftertreatment components, consistent with the requirements specified in the standard-setting part.
- (10) Note that for purposes of importation, you may itemize your invoice to 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.
- (d) If you do not include the price of all aftertreatment components in the price of the engine, you must meet all the conditions described in paragraphs (c)(1) through (9) of this section, with the following additional provisions:
- (1) The contractual agreement described in paragraph (c)(3) of this section must include a commitment that the equipment manufacturer will do the following things:
    - (i) Purchase the aftertreatment components you have specified in your application for certification and keep records to document these purchases.
    - (ii) Cooperate with the audits described in paragraph (d)(3) of this section.
  - (2) You must have written confirmation that the equipment manufacturer has ordered the appropriate type of aftertreatment components for an initial shipment of engines under this section. For the purpose of this paragraph (d)(2), initial shipment means the first shipment of engines in a model year to a given equipment manufacturer for a given engine model. You must receive the written confirmation within 30 days after shipment. If you do not receive written confirmation within 30 days, you may not ship any more engines from that engine family to that equipment manufacturer until you have the written confirmation. Note that it may be appropriate to obtain subsequent written confirmations to ensure compliance with this section, as described in paragraph (c)(4) of this section.
  - (3) You must perform or arrange for audits of equipment manufacturers as follows:
    - (i) If you sell engines to 16 or more equipment manufacturers under the provisions of this section, you must annually perform or arrange for audits of four equipment manufacturers to whom you sell engines under this section. To select individual equipment manufacturers, divide all the affected equipment manufacturers into quartiles based on the number of engines they buy from you; select a single equipment manufacturer from each quartile each model year. Vary the equipment manufacturers selected for auditing from year to year, though you may repeat an audit in a later model year if you find or suspect that a particular equipment manufacturer is not properly installing aftertreatment devices.
    - (ii) If you sell engines to fewer than 16 equipment manufacturers under the provisions of this

section, set up a plan to perform or arrange for audits of each equipment manufacturer on average once every four model years.

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

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

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

(e) The following provisions apply if you ship engines without air filters or other portions of the air intake system such that the shipped engine is not in its certified configuration (for example, if you identify specific part numbers of air filters needed to ensure that the engine will meet emission standards but do not include those with the shipped engine):

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

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

(f) Once the equipment manufacturer takes possession of an engine exempted under this section and the engine reaches the point of final equipment assembly, the exemption expires and the engine is subject to all the prohibitions in §1068.101.

(g) You may use the provisions of this section for engines you sell to a distributor. A participating distributor is considered to be the equipment manufacturer for all applicable requirements and prohibitions. Such distributors must bring engines into their final certified configuration. This may include shipping the engine with the appropriate catalyst and air filter, but without completing the assembly with all the components. The exemptions expire for such engines when the distributor no longer has control of them.

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

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

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

(2) We may suspend or revoke your exemption for the entire engine family if we determine that you have failed to comply with the requirements of this section. If we make an adverse decision with respect to the exemption for any of your engine families under this paragraph (i), this exemption will

not apply for future certificates unless you convince us that the factors causing the noncompliance do not apply to the other engine families. We may also set additional conditions beyond the provisions specified in this section.

(3) We may void your exemption for the entire engine family if you intentionally submit false or incomplete information or fail to keep and provide to EPA the records required by this section. Note that all records and reports required under this section (whether generated by the engine manufacturer, equipment manufacturer, or others) are subject to the prohibition in §1068.101(a)(2), which prohibits the submission of false or incomplete information. For example, the affidavits required by this section are considered a submission.

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

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

(l) [Reserved]

(m) 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 (m).

(n) 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.

(o) 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 (o) in your application for certification, or in a separate submission to the Designated Compliance Officer.

#### **§85.1713 Delegated-assembly exemption.**

The provisions of 40 CFR 1068.260 related to shipping engines that are not yet in their certified configuration apply for manufacturers of heavy-duty highway engines, with the following exceptions and clarifications:

(a) The relevant prohibitions are in Clean Air Act section 203 (42 U.S.C. 7522), rather than 40 CFR 1068.101.

(b) References to equipment should be understood as references to vehicles.

(c) The provisions related to reduced auditing rates in 40 CFR 1068.260(d)(3)(iii) apply starting with the 2014 model year.

(d) The engine's model year does not change based on the date the vehicle manufacturer adds the aftertreatment device.

#### **§1048.612 What is the exemption for delegated final assembly?**

The provisions of 40 CFR 1068.260 related to delegated final assembly apply for engines certified under

this part 1048, with the following exceptions and clarifications:

- (a) The provisions related to reduced auditing rates in 40 CFR 1068.260(d)(3)(iii) apply starting with the 2014 model year.
- (b) [Reserved]

**§1054.610 What is the exemption for delegated final assembly?**

The provisions of 40 CFR 1068.260 related to delegated final assembly do not apply for handheld engines certified under this part 1054. The provisions of 40 CFR 1068.260 apply for with respect to nonhandheld engines, with the following exceptions and clarifications:

- (a) Through the 2014 model year, you may use the provisions of this section for engines you sell to a distributor, where you establish a contractual arrangement in which you designate the distributor to be your agent in all matters related to compliance with the requirements of this section. Identify each of the distributors you intend to designate as your agent under this paragraph (a) in your application for certification.
- (b) If you identify distributors as your agents under paragraph (a) of this section, you must perform or arrange for audits of all participating distributors and equipment manufacturers based on the following auditing rate instead of the provisions specified in 40 CFR 1068.260(d)(3)(i) and (ii):
  - (1) If you sell engines to 48 or more equipment manufacturers under the provisions of this section, you must annually perform or arrange for audits of twelve 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 equal numbers of equipment manufacturers from each quartile each model year as much as possible. Vary the equipment manufacturers selected for auditing from year to year, though audits may be repeated in later model years if you find or suspect that a particular equipment manufacturer is not properly installing aftertreatment devices.
  - (2) If you sell engines to fewer than 48 equipment manufacturers under the provisions of this section, set up a plan to perform or arrange for audits of each equipment manufacturer on average once every four model years.
- (d) Engines produced under this section may be subject to higher bond payments under §1054.690.



*The following section is from 40 CFR part 85, including the changes proposed from May 2007.*

**§85.1713 Delegated-assembly exemption.**

The provisions of this section apply with respect to heavy-duty highway engines. This section is addressed to engine manufacturers unless specified otherwise.

(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 Clean Air Act section 203 (42 U.S.C. 7522) if you follow the provisions of paragraph (b), (c), or (d) of this section.

(b) If you include the cost of all aftertreatment components in the cost of the engine and ship the aftertreatment components directly to the vehicle manufacturer, or arrange for separate shipment by the component manufacturer to the vehicle manufacturer, you must meet all the following conditions:

(1) Apply for and receive a certificate of conformity for the engine and its 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 a vehicle manufacturer obligating the vehicle manufacturer to complete the final assembly of the engine so it is in its certified configuration when installed in the vehicle. This agreement must also obligate the vehicle manufacturer to provide the affidavits required under paragraph (b)(4) of this section.

(4) Take appropriate additional steps to ensure that all engines will be in their certified configuration when installed by the vehicle manufacturer. At a minimum, you must obtain annual affidavits from every vehicle 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 vehicle manufacturers install on each engine they purchase from you under this section.

(5) Describe in your application for certification how you plan to use the provisions of this section and any steps you plan to take under paragraph (b)(3) of this section.

(6) Keep records to document how many engines you produce under this exemption. Also, keep records to document your contractual agreements under paragraph (b)(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.

(7) Make sure the engine has the emission control information label we require under the standard-setting part.

(c) If you do not include the cost of all aftertreatment components in the cost of the engine, you must meet all the conditions described in paragraphs (b)(1) through (7) of this section, with the following additional provisions:

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

(i) Separately purchase the aftertreatment components you have specified in your application for certification.

(ii) Perform audits as described in paragraph (c)(3) of this section.

(2) Before you ship an engine under the provisions of this paragraph (c), you must have written confirmation that the vehicle manufacturer has ordered the appropriate aftertreatment components.

(3) You must audit vehicle manufacturers as follows:

(i) If you sell engines to 16 or more vehicle manufacturers under the provisions of this section, you must annually audit four vehicle manufacturers to whom you sell engines under this section. To select individual vehicle manufacturers, divide all the affected vehicle manufacturers into quartiles based on the number of engines they buy from you;



select a single vehicle manufacturer from each quartile each model year. Vary the vehicle 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 vehicle manufacturer is not properly installing aftertreatment devices.

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

(iii) Starting with the 2014 model year, if you sell engines to fewer than 40 vehicle manufacturers under the provisions of this section, you may ask us to approve a reduced auditing rate. We may approve an alternate plan that involves auditing each vehicle manufacturer on average once every ten model years, as long as you show that you have met the auditing requirements in preceding years without finding noncompliance or improper procedures.

(iv) 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.

(v) [Reserved]

(vi) 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 (f) of this section:

(4) In your application for certification, give a detailed plan for auditing vehicle manufacturers, as described in paragraph (c)(3) of this section.

(d) 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 the requirements of this section by maintaining a database showing how you pair aftertreatment components with the appropriate engines.

(e) The engine's model year does not change based on the date the vehicle manufacturer adds the aftertreatment device.

(f) Once the vehicle manufacturer takes possession of an engine exempted under this section and the engine reaches the point of final vehicle assembly, the exemption expires and the engine is subject to all the prohibitions in Clean Air Act section 203 (42 U.S.C. 7522).

(g) You must notify us within 15 days if you find from an audit or another source that a vehicle manufacturer has failed to meet its obligations under this section.

(h) 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 vehicle, 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 (g), 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.

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

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

(k) [Reserved]

(l) 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 (l) in your application for certification, or in a separate submission.

*The following section is from 40 CFR part 1068, including the changes proposed from May 2007.*

**§1068.260 What 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 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 JJJJ).
- (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) 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 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 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 (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 engines 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. 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 (e) of this section.

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

(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 (b)(6) of this section.

(iii) All other steps you plan to take under paragraph (b)(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 (b)(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 §1068.101.

(e) 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.

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

(1) We may suspend or revoke your exemption for the entire 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 families under this paragraph (f), this exemption will not apply for future certificates unless you demonstrate that the factors causing the nonconformity do not apply to the other 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 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:

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

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

(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.

(l) 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 (l) in your application for certification, or in a separate submission to the Designated Compliance Officer.

*The following section was proposed for Small SI engines in May 2007.*

**§1054.610 What is the exemption for delegated final assembly?**

(a) The provisions of 40 CFR 1068.260 related to delegated final assembly do not apply for handheld engines certified under this part 1054. The provisions of this section apply for nonhandheld engines instead of the provisions of 40 CFR 1068.260 related to delegated final assembly.

(b) Shipping an engine separately from emission-related components that you have specified as part of its certified configuration will not be a violation of the prohibitions in 40 CFR 1068.101(a)(1) if you follow the provisions of paragraphs (c) through (e) of this section. **These provisions apply without request;** however, note that engines produced under this section may be subject to higher bond payments under §1054.690.

(c) If you do not manufacture the equipment in which the engine will be installed, you must meet all the following conditions with respect to aftertreatment components:

(1) Apply for and receive a certificate of conformity for the engine and its 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. **Provide the installation instructions in a timely manner, generally directly after you receive an order for shipping engines or earlier. If you apply temporary labels as described in paragraph (c)(7)(i) of this section, include an instruction for the equipment manufacturer to remove the temporary label after installing the appropriate aftertreatment component.**

(3) Have a contractual agreement with each equipment manufacturer obligating the equipment manufacturer to complete the engine assembly so it is in its certified configuration when final assembly is complete. The contractual agreement must include a commitment that the equipment manufacturer will do the following things:

(i) Purchase the aftertreatment components you have specified in your application for certification.

(ii) Provide the affidavits required under paragraph (c)(4) of this section.

(iii) Provide production records that demonstrate compliance with your instructions. This may involve records to document purchases of aftertreatment components.

(iv) Perform or allow audits as described in paragraph (c)(10) of this section.

(4) Take appropriate additional steps to ensure that all engines will be in their certified configuration when installed by the equipment manufacturer. At a minimum, you must obtain annual affidavits from every equipment manufacturer to whom you sell engines under this section. The affidavits must identify the part numbers of the aftertreatment devices (or the corresponding alphanumeric designation established under paragraph (c)(8) of this section) that the equipment manufacturer installs on each engine model they purchase from you under this section **and include confirmation that the number of aftertreatment devices received were sufficient for the number of engines involved.**

(5) Describe in your application for certification how you plan to use the provisions of this section and any steps you plan to take under paragraph (c)(4) of this section.

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

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

(i) **Apply an additional 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.

(ii) Add the statement “DELEGATED ASSEMBLY” to the permanent emission control information label.

(iii) Add an alphanumeric code that you identify in your application for certification to the permanent emission control information label and include additional label features such as coloring or shading to ensure that the equipment manufacturer will recognize that the engine needs an aftertreatment component to be in its certified configuration.

(8) Engine manufacturers must establish an alphanumeric designation to identify each unique catalyst design (including size, washcoat, precious metal loading, supplier, and any other appropriate factors). Include this alphanumeric designation in the application for certification as described in §1054.205. Engine manufacturers must also give instructions as appropriate to ensure that the external surface of the exhaust system includes stamping or other means to permanently display this designation and that it will be readily visible as much as possible when the equipment is fully assembled, consistent with the objective of verifying the identity of the installed catalyst.

(9) You must have written confirmation that the vehicle manufacturer has ordered the appropriate type of aftertreatment components for an initial shipment of engines under this section. For the purpose of this paragraph, initial shipment means the first shipment of engines in a model year to a given equipment manufacturer for a given engine model. You must receive the written confirmation within 30 days of shipment. If you do not receive written confirmation within 30 days, you may not ship any more engines from that engine family to that equipment manufacturer until you have the written confirmation. Note that it may be appropriate to obtain subsequent written confirmations to ensure compliance with this section, as described in paragraph (c)(4) of this section.

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

(i) If you sell engines to 48 or more equipment manufacturers under the provisions of this section, you must annually perform or arrange for audits of twelve 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 equal numbers of equipment manufacturers from each quartile each model year as much as possible. Vary the equipment manufacturers selected for auditing from year to year, though audits may be repeated in later model years if you find or suspect that a particular equipment manufacturer is not properly installing aftertreatment devices.

(ii) If you sell engines to fewer than 48 equipment manufacturers under the provisions of this section, set up a plan to perform or arrange for audits of each equipment manufacturer on average once every four model years.

(iii) Starting with the 2019 model year, you may ask us to approve a reduced auditing rate if you sell engines to fewer than 120 equipment manufacturers under the provisions of this section. We may approve an alternate plan that involves performing or arranging for audits of each equipment manufacturer on average once every ten model years, as long as you show that you have met the auditing requirements in preceding years without finding noncompliance or improper procedures. You may also ask us to approve a reduced auditing rate after you have audited all affected equipment manufacturers at least once.

(iv) To meet these audit requirements, you or your agent must at a minimum either review the equipment manufacturers production records and procedures, inspect the equipment manufacturer's production operations, or inspect the final assembled products. You or your agent must review the available information as needed to demonstrate that the equipment manufacturer is complying with your installation instructions. This must

include confirmation that the number of aftertreatment devices shipped was sufficient for the number of engines involved. Inspection of final assembled products may occur at any point in the product distribution system after the exemption defined in this section expires. For example, you or your agent may inspect products at the equipment manufacturer's assembly or storage facilities, at regional distribution centers, or at retail locations.

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

(11) In your application for certification, give a detailed plan for performing audits as described in paragraph (c)(10) of this section.

(12) If one of your engines produced under this section is selected for production-line testing, you must arrange to get a randomly selected aftertreatment component that will be used with the engine; you may not use aftertreatment components from your own inventory. You may obtain such aftertreatment components from any point in the normal distribution from the aftertreatment component manufacturer to the equipment manufacturer. Keep records showing how you randomly selected these aftertreatment components, consistent with the requirements of §1054.305.

(d) 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.

(e) The following provisions apply if you ship engines without air filters or other portions of the air intake system such that the shipped engine is not in its certified configuration (for example, if you identify specific part numbers of air filters needed to ensure that the engine will meet emission standards but do not include those with the shipped engine):

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

(2) If you are not using the provisions of this section to ship an engine without aftertreatment, shipping an engine without air-intake components that you have specified as part of its certified configuration will not be a violation of the prohibitions in 40 CFR 1068.101(a) if you follow the provisions specified in paragraphs (c)(1) through (7) of this section. If we find there is a problem, we may require you to perform audits as specified in paragraph (c)(10) of this section.

(f) Once the equipment manufacturer takes possession of an engine exempted under this section and the engine reaches the point of final equipment assembly, the exemption expires and the engine is subject to all the prohibitions in 40 CFR 1068.101(a)(1).

(g) You may use the provisions of this section for engines you sell to a distributor, subject to the following provisions:

(1) You may establish a contractual arrangement in which you designate the distributor to be your agent in all matters related to compliance with the requirements of this section.

(2) Without the contractual arrangement specified in paragraph (g)(2) of this section, a participating distributor is considered to be the equipment manufacturer for all applicable requirements and prohibitions. Such distributors must bring engines into their final certified configuration. This may include shipping the engine with the appropriate catalyst and air filter, but without completing the assembly with all the components. The exemptions expire for such engines when the distributor no longer has control of them.

(h) You must notify us within 15 days if you find from an audit or another source that engines produced under this section are not in their certified configuration at the point of final assembly. If this occurs, send us a report within 90 days of the audit describing the circumstances related to the noncompliance.

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



(1) We may suspend, revoke, or void your exemption for a specific equipment manufacturer if any of the engines are not in their certified configuration after installation in that manufacturer's equipment, or if we determine that the equipment manufacturer has otherwise failed to comply with the requirements of this section.

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

(3) We may void your exemption for the entire engine family if you intentionally submit false or incomplete information or fail to keep and provide to EPA the records required by this section. Note that all records and reports required under this section (whether generated by the engine manufacturer, equipment manufacturer, or others) are subject to the prohibition in 40 CFR 1068.101(a)(2), which prohibits the submission of false or incomplete information. For example, the affidavits required by this section are considered a submission.

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

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

(l) [Reserved]

(m) 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 (m) in your application for certification, or in a separate submission.