

previous year. Equipment manufacturers using the percent of production allowance, would also have to calculate the percent of production the exempted engines represented for the appropriate year. Each report would include a cumulative calculation (both total number and, if appropriate, the percent of production) for all years the equipment manufacturer has used the transition provisions for each of the proposed Tier 4 power categories. In order to ease the reporting burden on equipment manufacturers, EPA intends to work with the manufacturers to develop an electronic means for submitting information to EPA.

EPA is requesting comment on whether these reporting requirements should also apply to the current Tier 2/ Tier 3 transition program, and if so, how these provisions should be phased in for equipment manufacturers using the current Tier 2/ Tier 3 transition provisions. Because equipment manufacturers are already required to keep the information we would require under the reporting requirements described above, we believe such a reporting requirement could be implemented to cover exempted engines produced in the 2005 model year. We request comments on the appropriate start date should we adopt such reporting requirements for equipment manufacturers for the Tier 2/ Tier 3 transition program.

d. Labeling Requirements for Engine and Equipment Manufacturers

Engine manufacturers are currently required to label their certified engines with a label that contains a variety of information. Under this proposal, we are proposing that engine manufacturers would be required to identify on the engine label if the engine is exempted under the Tier 4 transition program. In addition, equipment manufacturers would be required to apply a label to the engine or piece of equipment that identifies the equipment as using an engine produced under the Tier 4 transition program for equipment manufacturers. These proposed labeling requirements would allow EPA to easily identify the exempted engines and equipment, verify which equipment manufacturers are using these exceptions, and more easily monitor compliance with the transition provisions. Labeling of the equipment could also help U.S. Customs to quickly identify equipment being imported using the exemptions for equipment manufacturers.

EPA is requesting comment on whether these labeling requirements should also apply to the current Tier 2/

Tier 3 transition program, and if so, how these provisions should be phased in for engine manufacturers and equipment manufacturers. Due to limited impact of such a labeling requirement, we believe such a requirement could be implemented to cover model year 2005 engines and equipment using those engines. We request comments on the appropriate start date should we adopt such labeling requirements for engine manufacturers and equipment manufacturers for the Tier 2/ Tier 3 transition program.

4. What Are the Proposed Requirements Associated With Use of Transition Provisions for Equipment Produced by Foreign Manufacturers?

Under the current regulations, importers are treated as equipment manufacturers and are each allowed the full allowance under the transition provisions. Therefore, under the current provisions, importers of equipment from a foreign equipment manufacturer could as a group import more exempted equipment from that foreign manufacturer than 80% of that manufacturer's production for the U.S. market or more than the small volume allowances identified in the transition provisions. Therefore, the current regulation creates a potentially significant disparity between the treatment of foreign and domestic equipment manufacturers. EPA did not intend this outcome, and does not believe it is needed to provide reasonable leadtime to foreign equipment manufacturers.

Under this proposal, only the nonroad equipment manufacturer that is most responsible for the manufacturing and assembling process would qualify for the allowances or other relief provided under the Tier 4 transition provisions. Foreign equipment manufacturers who comply with the compliance related provisions discussed below would receive the same allowances and other transition provisions as domestic manufacturers. Foreign equipment manufacturers who do not comply with the compliance related provisions discussed below would not receive allowances. Importers that have little involvement in the manufacturing and assembling of the equipment would not receive any allowances or other transition relief directly, but could import exempt equipment if it is covered by an allowance or transition provision associated with a foreign equipment manufacturer. This would allow transition allowances and other provisions to be used by foreign equipment manufacturers in the same way as domestic equipment

manufacturers, while avoiding the potential for importers unnecessarily using allowances. For the purposes of this proposal, a foreign equipment manufacturer would include any equipment manufacturer that produces equipment outside of the United States that is eventually sold in the United States.

All foreign nonroad equipment manufacturers wishing to use the transition provisions would have to comply with all requirements of the regulation discussed above including: notification, recordkeeping, reporting and labeling. Along with the equipment manufacturer's notification described earlier, a foreign nonroad equipment manufacturer would have to comply with various compliance related provisions similar to those adopted in several fuel regulations relating to foreign refiners.³⁰⁴ As part of the notification, the foreign nonroad equipment manufacturer would have to:

- (1) Agree to provide EPA with full, complete and immediate access to conduct inspections and audits;
- (2) Name an agent in the District of Columbia for service of process;
- (3) Agree that any enforcement action related to these provisions would be governed by the Clean Air Act;
- (4) Submit to the substantive and procedural laws of the United States;
- (5) Agree to additional jurisdictional provisions;
- (6) Agree that the foreign nonroad equipment manufacturer will not seek to detain or to impose civil or criminal remedies against EPA inspectors or auditors for actions performed within the scope of EPA employment related to the provisions of this program;
- (7) Agree that the foreign nonroad equipment manufacturer becomes subject to the full operation of the administrative and judicial enforcement powers and provisions of the United States without limitation based on sovereign immunity; and
- (8) Submit all reports or other documents in the English language, or include an English language translation.

In addition to these proposed requirements, we are requesting comment on requiring foreign equipment manufacturers that participate in the transition program to comply with a bond requirement for engines imported into the U.S. We describe a bond program below which we believe could be an important tool to ensure that foreign equipment manufacturers are subject to the same

³⁰⁴ See, for example, 40 CFR 80.410 concerning provisions for foreign refiners with individual gasoline sulfur baselines.