

(iii) The calendar years you expect to use the exemption provisions of this section.

(iv) The name and address of the company that produces the engines you will be using for the equipment exempted under this section.

(v) Your best estimate of the number of units in each engine-power category you will produce under this section in the upcoming calendar year and whether you intend to comply under paragraph (b)(1) or (b)(2) of this section.

(vi) The number of units in each engine-power category you have sold in previous calendar years under 40 CFR 89.102(d).

(2) For each year that you use the flexibility provisions of this section, send the Designated Compliance Officer and the Designated Enforcement Officer a written report by March 31 of the following year. Include in your report the total number of engines you sold in the preceding year for each engine-power category, based on actual U.S.-directed production information. Also identify the percentages of U.S.-directed production that correspond to the number of units in each engine-power category and the cumulative numbers and percentages of units for all the units you have sold under this section for each engine-power category. You may omit the percentage figures if you include in the report a statement that you will not be using the percent-of-production allowances in paragraph (b)(1) of this section.

(h) *Recordkeeping.* Keep the following records of all equipment with exempted engines you produce under this section for at least five full years after the final year in which allowances are available for each engine-power category:

(1) The model number, serial number, and the date of manufacture for each engine and piece of equipment.

(2) The maximum power of each engine.

(3) The total number or percentage of equipment with exempted engines, as described in paragraph (b) of this section and all documentation supporting your calculation.

(4) The notifications and reports we require under paragraph (g) of this section.

(i) *Enforcement.* Producing more exempted engines or equipment than we allow under this section, or installing engines that do not meet the certification requirements of paragraph (e) of this section, is a violation of 40 CFR 1068.101(a)(1). You must give us the records we require under this section if we ask for them (see 40 CFR 1068.101(a)(2)).

(j) *Provisions for engine manufacturers.* As an engine manufacturer, you may produce exempted engines as needed under 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 under this section. Send us an annual report of the engines you produce under this section, as described in § 1039.250(a). The exempted engines must meet less stringent standards, as described in paragraph (e) of this section. It must also have the label we require in § 1039.135, with the following additional statement: "THIS ENGINE HAS BEEN EXEMPTED FROM CURRENT FEDERAL NONROAD EMISSION STANDARDS. SELLING OR INSTALLING THIS ENGINE FOR ANY PURPOSE OTHER THAN FOR THE EQUIPMENT FLEXIBILITY PROVISIONS OF 40 CFR 1039.625 MAY BE A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY."

(k) *Other exemptions.* See 40 CFR 1068.255 for exemptions based on hardship for equipment manufacturers and secondary engine manufacturers.

§ 1039.626 What special provisions apply to engines imported under the equipment-manufacturer flexibility program?

This section identifies requirements that apply specifically to equipment manufacturers using the flexibility provisions of § 1039.625 for equipment produced outside the United States. For purposes of this section, only a nonroad equipment manufacturer with primary responsibility for designing and manufacturing a piece of equipment that also installs the engine in the equipment is eligible to use the allowances under § 1039.625. Companies that import equipment into the U.S., but do not have the primary responsibility for designing and manufacturing a piece of equipment or do not install the engine in the equipment are not eligible for these allowances. They may import exempt equipment if it is covered by an allowance or transition provision associated with an equipment manufacturer meeting the requirements of § 1039.625 and this section. As an equipment manufacturer, you may use the allowances specified in § 1039.625 if you comply with the provision in § 1039.625 and commit to the following:

(a) Any United States Environmental Protection Agency inspector or auditor will be given full, complete and immediate access to conduct inspections and audits of the foreign nonroad equipment manufacturer.

(1) Inspections and audits may be either announced in advance by EPA, or unannounced.

(2) Access will be provided to any location where:

(i) Nonroad equipment or vehicle is produced;

(ii) Documents related to manufacturer operations are kept; and

(iii) Equipment or vehicles are tested or stored.

(3) Inspections and audits may be by EPA employees or EPA contractors.

(4) Any documents requested that are related to matters covered by inspections and audits will be provided to an EPA inspector or auditor on request.

(5) Inspections and audits by EPA may include review and copying of any documents related to demonstrating compliance with the exceptions in § 1039.625.

(6) Inspections and audits by EPA may include taking samples of equipment or vehicles, and interviewing employees.

(7) Any employee of a foreign nonroad equipment manufacturer will be made available for interview by the EPA inspector or auditor, on request, within a reasonable time period.

(8) English language translations of any documents will be provided to an EPA inspector or auditor, on request, within 10 working days.

(9) English language interpreters will be provided to accompany EPA inspectors and auditors, on request.

(b) An agent for service of process located in the District of Columbia will be named, and service on this agent constitutes service on the foreign nonroad equipment manufacturer or any officer, or employee of the foreign nonroad equipment manufacturer for any action by EPA or otherwise by the United States related to the requirements of this part.

(c) The forum for any civil or criminal enforcement action related to the provisions of this section for violations of the Clean Air Act or regulations promulgated thereunder shall be governed by the Clean Air Act, including the EPA administrative forum where allowed under the Clean Air Act.

(d) United States substantive and procedural laws shall apply to any civil or criminal enforcement action against the foreign nonroad equipment manufacturer or any employee of the foreign nonroad equipment manufacturer related to the provisions of this section.

(e) Submitting a notification of intention to use any of the exceptions in § 1039.625 above, producing and exporting equipment or vehicles to the