

United States for resale, and all other actions to comply with the requirements of this part constitute actions or activities covered by and within the meaning of 28 U.S.C. 1605(a)(2), but solely with respect to actions instituted against the foreign nonroad equipment manufacturer, its agents, officers, and employees in any court or other tribunal in the United States for conduct that violates the requirements of part 1039, including such conduct that violates 18 U.S.C. 1001, Clean Air Act section 113(c)(2), or other applicable provisions of the Clean Air Act.

(f) The foreign nonroad equipment manufacturer, or its agents, officers, or employees, will not seek to detain or to impose civil or criminal remedies against EPA inspectors or auditors, whether EPA employees or EPA contractors, for actions performed within the scope of EPA employment related to the provisions of this section.

(g) The commitment required by this section shall be signed by the owner or president of the foreign nonroad equipment manufacturer business.

(h) *Sovereign immunity.* By submitting a notification of its intent to use the flexibility provision under § 1039.625, or by producing and exporting for resale to the United States nonroad equipment under this section, the foreign nonroad equipment manufacturer, its agents, officers, and employees, without exception, become subject to the full operation of the administrative and judicial enforcement powers and provisions of the United States without limitation based on sovereign immunity, with respect to actions instituted against the foreign nonroad equipment manufacturer, its agents, officers, and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign nonroad equipment manufacturer under this part, including such conduct that violates 18 U.S.C. 1001, section

113(c)(2) of the Clean Air Act, or other applicable provisions of the Clean Air Act.

(i) *English language reports.* Any report or other document submitted to EPA by any foreign nonroad equipment manufacturer shall be in the English language, or shall include an English language translation.

§ 1039.630 What are the hardship provisions for equipment manufacturers?

If you qualify for the hardship provisions specified in 40 CFR 1068.255, we may approve your hardship application subject to three additional conditions:

(a) You must show that you were selling new equipment with engines that were certified to meet the requirements of 40 CFR part 89 before 2003.

(b) You must show that you have used up the allowances to produce equipment with exempted engines under § 1039.625.

(c) You may produce engines under this section for up to one year total (or two years for small-volume manufacturers).

§ 1039.635 What are the hardship provisions for engine manufacturers?

If you qualify for the hardship provisions specified in 40 CFR 1068.245, we may approve a period of delayed compliance for up to two years total for small-volume manufacturers or one year total for all other companies. If you qualify for the hardship provisions specified in 40 CFR 1068.250 for small-volume manufacturers, we may approve a period of delayed compliance for up to two years total.

§ 1039.639 What special provisions apply to engines sold in Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands?

Engines introduced into commerce in Guam, American Samoa, or the Commonwealth of the Northern Mariana

Islands are subject to the latest emission standards in 40 CFR 89.112 instead of the Tier 4 standards in § 1039.101, but only if the engines include the following statement on the label we require in 40 CFR 89.110 (or on a separate, permanent label with your corporate name and trademark): "THIS ENGINE DOES NOT CONFORM TO U.S. EPA EMISSION REQUIREMENTS IN EFFECT AT THE TIME OF PRODUCTION AND MAY NOT BE IMPORTED INTO THE UNITED STATES OR ANY TERRITORY OF THE UNITED STATES EXCEPT GUAM, AMERICAN SAMOA, OR THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.". Introducing any such engine into commerce in any state or territory of the United States other than Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands, throughout its lifetime, is a violation of 40 CFR 1068.101(a)(1).

§ 1039.645 What special provisions apply to engines used for transportation refrigeration units?

The provisions of this section apply for engines used in transportation refrigeration units (TRUs). All other provisions of this part apply for these engines, except as specified in this section.

(a) Engines used only in TRU applications may be certified using the following special provisions:

(1) The engines are not required to meet the transient emission standards of subpart B of this part.

(2) The steady-state emission standards of subpart B apply for emissions measured over the steady-state test cycle described in paragraph (b) of this section instead of the otherwise applicable test cycle described in Appendix I, III, or IV of this part.

(b) The steady-state test cycle for TRU engines is:

STEADY-STATE CYCLE FOR TRU ENGINES

Mode No.	Engine speed	Observed torque ¹	Minimum time in mode (minutes)	Weighting factors
1	Maximum test speed	75	3.0	0.25
2	Maximum test speed	50	3.0	0.25
3	Intermediate test speed	75	3.0	0.25
4	Intermediate test speed	50	3.0	0.25

¹ The percent torque is relative to the maximum torque at the given engine speed.

(c) Engines certified under this section must be certified in a separate

engine family that contains only TRU engines.

(d) You must do the following for each engine certified under this section:

(1) State on the emission control information label for each engine that is certified under the provisions of this