

**State of California
AIR RESOURCES BOARD**

**California Exhaust Emission Standards and Test Procedures for New 2008 and
Later Tier 4 Off-Road Compression-Ignition Engines**

PART I-C

Adopted: (date of adoption)

NOTE: This document incorporates by reference 40 Code of Federal Regulations (CFR) part 1039, subparts A, B, C, D, E, F, G, H, and I, including Appendix I, II, III, IV, V, and VI to part 1039, as promulgated June 29, 2004, 40 CFR Part 1065, Subparts A, B, C, D, E, F, G, H, I, J, and K, as amended June 29, 2004, 40 CFR Part 1068, Subparts A, B, C, D, E, F, and G, including Appendix A to Subpart E and Appendix I and II to part 1068, as amended June 29, 2004, and the internally referenced subparts of 40 CFR Part 85, 40 CFR Part 86, and 40 CFR Part 89. All originally proposed language is set forth in standard type. Staff's suggested modifications to the original proposal are shown in double underline to indicate additions and ~~double-strikeout~~ to indicate deletions. Sections that have been included in their entirety are set forth with the section number and title. California provisions that replace specific federal language provisions are denoted by the words "DELETE" for the federal language and "REPLACE WITH" or "ADD" for the California language. The symbols "* * * * *" and "..." mean that the remainder of the CFR text for a specific section is not shown in these procedures but has been incorporated by reference, unchanged. CFR sections that are not listed are not part of the test procedures. If there is any conflict between the provisions of this document and the California Health and Safety Code, Division 26, or Title 13 of the California Code of Regulations (CCR), the Health and Safety Code and Title 13 apply.

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CALIFORNIA EXHAUST EMISSION STANDARDS AND TEST PROCEDURES FOR NEW 2008 AND LATER TIER 4 OFF-ROAD COMPRESSION-IGNITION ENGINES

The following provisions of Part 1039, Part 1065, and Part 1068, Title 40, Code of Federal Regulations, as proposed by the United States Environmental Protection Agency on the date listed, are adopted and incorporated herein by this reference for 2008 model year and later off-road compression-ignition engines as the California Exhaust Emission Standards and Test Procedures for New 2008 and Later Tier 4 Off-Road Compression-Ignition Engines, except as altered or replaced by the provisions set forth below.

PART 1039 – CONTROL OF EMISSIONS FROM NEW AND IN-USE NONROAD COMPRESSION-IGNITION ENGINES

SOURCE: 69 FR 38957, June 29, 2004, unless otherwise noted.

Subpart A – Overview and Applicability

§ 1039.1 Does this part apply for my engines?

* * * * *

(b)(3)

See Title 13, CCR, Chapter 9, Article 4, and the 2000 Plus Limited Test Procedures for requirements that apply to engines not yet subject to the requirements of this part 1039.

§ 1039.5 Which engines are excluded from this part's requirements?

* * * * *

§ 1039.10 How is this part organized?

Introductory Text DELETE,
REPLACE WITH:

The regulations in this part 1039 contain provisions that may affect engine or equipment manufacturers, or both, and others. However, the requirements of this part are generally addressed to the engine manufacturer. The term "you" generally means the engine manufacturer, as defined in § 1039.801. This part 1039 is divided into the following subparts:

* * * * *

§ 1039.15 Do any other regulation parts apply to me?

* * * * *

§ 1039.20 What requirements from this part apply to excluded stationary engines?

* * * * *

(b)(4) DELETE,
REPLACE WITH:

State: "THIS ENGINE IS EXCLUDED FROM THE REQUIREMENTS OF 13 CCR, CH 9, ARTICLE 4, AS A "STATIONARY ENGINE." INSTALLING OR USING THIS ENGINE IN ANY OTHER APPLICATION MAY BE A VIOLATION OF CALIFORNIA LAW SUBJECT TO CIVIL PENALTY.". The referencing of similar federal requirements in combination with California references under this provision is permitted.

Subpart B – Emission Standards and Related Requirements

§ 1039.101 What exhaust emission standards must my engines meet after the 2014 model year?

Introductory Text DELETE,
REPLACE WITH:

The exhaust emission standards of this section apply after the 2014 model year. Certain of these standards also apply for model year 2014 and earlier. This section presents the full set of emission standards that apply after all the transition and phase-in provisions of § 1039.102 and § 1039.104 expire. See § 1039.102 and Title 13, CCR, § 2423(b)(1)(A) for exhaust emission standards that apply to 2014 and earlier model years. § 1039.105 specifies smoke standards.

* * * * *

(d) "not-to-exceed standards" DELETE,
REPLACE WITH:
"not-to-exceed limits"

* * * * *

(e) "not-to-exceed (NTE) standards" DELETE,
REPLACE WITH:
"not-to-exceed (NTE) limits"

* * * * *

(e)(2) "section, the NTE standard" DELETE,
REPLACE WITH:
"section, the NTE limit"

* * * * *

(e)(2) "equation: NTE standard" DELETE,
REPLACE WITH:
"equation: NTE limit"

* * * * *

(e)(6) "NTE standards" DELETE,
REPLACE WITH:
"NTE limits"

* * * * *

(e)(7) "NTE standard" DELETE,
REPLACE WITH:
"NTE limit"

* * * * *

(h) "The NTE standards of" DELETE,
REPLACE WITH:
"The NTE limits of"

* * * * *

(h) "meet the NTE standards" DELETE,
REPLACE WITH:
"meet the NTE limits"

* * * * *

§ 1039.102 What exhaust emission standards and phase-in allowances apply for my engines in model year 2014 and earlier?

Introductory Text DELETE,
REPLACE WITH:

The exhaust emission standards of this section apply for 2014 and earlier model years. See §1039.101 for exhaust emission standards that apply to later model years. See Title 13, CCR, §2423(b)(1)(A), for exhaust emission standards that apply to model years before the standards of this part 1039 take effect.

* * * * *

(a)(2) DELETE,
REPLACE WITH:

The transient standards in this section for gaseous pollutants do not apply to phase-out engines that you certify to the same numerical standards (and FELs if the engines are certified using ABT) for gaseous pollutants as certified under the Tier 3 requirements of Title 13, CCR, § 2423(b)(1)(A). However, except as specified by paragraph (a)(1) of this section, the transient PM emission standards apply to these engines.

* * * * *

Table 1 Footnote ¹ DELETE,
REPLACE WITH:

For engines that qualify for the special provisions in § 1039.101(c), you may delay certifying to the standards in this part 1039 until 2010. In 2009 and earlier model years, these engines must instead meet the applicable Tier 2 standards and other requirements of Title 13, CCR, § 2423(b)(1)(A). Starting in 2010, these engines must meet a PM standard of 0.60 g/kW-hr, as described in § 1039.101(c). Engines certified to the 0.60 g/kWhr PM standard may not generate ABT credits.

* * * * *

Table 3 Footnote ¹ DELETE,
REPLACE WITH:

You may certify engines to the Option #1 or Option #2 standards starting in the listed model year. Under Option #1, all engines at or above 37 kW and below 56 kW produced before the 2013 model year must meet the applicable Option #1 standards in this table. These engines are considered to be "Option #1 engines." Under Option #2, all these engines produced before the 2012 model year must meet the applicable standards under Title 13, CCR, § 2423(b)(1)(A). Engines certified to the Option #2 standards in model year 2012 are considered to be "Option #2 engines."

* * * * *

(d)(1) DELETE,
REPLACE WITH:

For model years 2012 through 2014, you may use banked NOx+NMHC credits from any Tier 2 engine at or above 37 kW certified under Title 13, CCR, § 2423(b)(1)(A) to meet the NOx phase-in standards or the NOx+NMHC phase-out standards under paragraphs (b) and (c) of this section, subject to the additional ABT provisions in § 1039.740.

* * * * *

(g)(1) “(1) NTE standards.” DELETE,
REPLACE WITH:
“(1) NTE limits.”

* * * * *

(g)(1) “calculate and apply the NTE standards” DELETE,
REPLACE WITH:
“calculate and apply the NTE limits.”

* * * * *

(g)(1) “The NTE standards do not” DELETE,
REPLACE WITH:
“The NTE limits do not.”

* * * * *

(g)(1)(iii) “the NTE standards” DELETE,
REPLACE WITH:
“the NTE limits”

* * * * *

(g)(1)(iv) DELETE,
REPLACE WITH:

Gaseous pollutants for phase-out engines that you certify to the same numerical standards and FELs for gaseous pollutants to which you certified under the Tier 3 requirements of Title 13, CCR, § 2423(b)(1)(A). However, the NTE limits for PM apply to these engines.

* * * * *

Table 8 Footnote ³ DELETE,
REPLACE WITH:

For manufacturers certifying engines to the standards of this part 1039 in 2012 under Option #2 of Table 3 of § 1039.102, the FEL caps of § 1039.101 apply for model year 2012 and later; see Title 13, CCR, § 2423(b)(1)(A) for provisions that apply to earlier model years.

* * * * *

§ 1039.104 Are there interim provisions that apply only for a limited time?

* * * * *

(a)(4)(iii) DELETE.
REPLACE WITH:

All other offset-using engines must meet the standards and other provisions that apply in model year 2011 for engines in the $19 \leq \text{kW} < 130$ power categories, in model year 2010 for engines in the $130 \leq \text{kW} \leq 560$ power category, or in model year 2014 for engines above 560 kW. Show that engines meet these emission standards by meeting all the requirements of §1039.260. You must meet the labeling requirements in Title 13, CCR, § 2424, but use the following in place of the otherwise required statement of compliance in § 2424(c)(2): "THIS ENGINE MEETS CALIFORNIA EMISSION STANDARDS UNDER 13 CCR 2423(b)(6)." The referencing of similar federal requirements in combination with California references under this provision is permitted. For power categories with a percentage phase-in, these engines should be treated as phase-in engines for purposes of determining compliance with phase-in requirements.

* * * * *

(c)(1) Table DELETE "The standards and requirements in 40 CFR part 89",
REPLACE WITH:

The standards and requirements in Title 13, CCR, § 2423(b)(1)(A)

* * * * *

(c)(2)(ii) DELETE,
REPLACE WITH:

If you do not choose to comply with paragraph (c)(2)(i) of this section, you may continue to comply with the standards and requirements in Title 13, CCR, § 2423(b)(1)(A) and the 2000 Plus Limited Test Procedures for model years through 2012, but you must begin complying in 2013 with Tier 4 standards and requirements specified in Table 3 of § 1039.102 for model years 2013 and later.

* * * * *

(c)(4)(i) DELETE,
REPLACE WITH:

Produce engines that meet all the emission standards and other requirements under Title 13, CCR, § 2423(b)(1)(A) and the 2000 Plus Limited Test Procedures applicable for that model year, except as noted in this paragraph (c).

(c)(4)(ii) DELETE,
REPLACE WITH:

Meet the labeling requirements in Title 13, CCR, § 2424, but use the following in place of the otherwise required statement of compliance in § 2424(c)(2): "THIS ENGINE COMPLIES WITH CALIFORNIA REGULATIONS FOR [CURRENT MODEL YEAR] OFF-ROAD COMPRESSION-IGNITION ENGINES UNDER 13 CCR 2423(b)(7)". The referencing of similar federal requirements in combination with California references under this provision is permitted.

* * * * *

(c)(5)(ii) DELETE,
REPLACE WITH:

Meet the labeling requirements in Title 13, § 2424, but use the following in place of the otherwise required statement of compliance in § 2424(c)(3): "THIS ENGINE COMPLIES WITH CALIFORNIA REGULATIONS FOR [CURRENT MODEL YEAR] OFF-ROAD COMPRESSION-IGNITION ENGINES UNDER 13 CCR 2423(b)(7)". The referencing of similar federal requirements in combination with California references under this provision is permitted.

* * * * *

(d) "Deficiencies for NTE standards." DELETE,
REPLACE WITH:

"Deficiencies for NTE limits."

* * * * *

(d) "applicable NTE standards" DELETE,
REPLACE WITH:

"applicable NTE limits."

* * * * *

(d) "from the NTE standards" DELETE,
REPLACE WITH:

"from the NTE limits."

* * * * *

(d) “with the NTE standards” DELETE,
REPACE WITH:
“with the NTE limits.”

* * * * *

(d)(4) “which NTE standards” DELETE,
REPLACE WITH:
“which NTE limits.”

* * * * *

(g)(4) DELETE,
REPLACE WITH:
Do not apply TCAFs to gaseous emissions for phase-out engines that you certify to the same numerical standards (and FELs if the engines are certified using ABT) for gaseous pollutants as you certified under the Tier 3 requirements of Title 13, CCR, § 2423(b)(1)(A) and § 2423(b)(2)(A).

* * * * *

§ 1039.105 What smoke standards must my engines meet?

* * * * *

§ 1039.107 What evaporative emission standards and requirements apply?

* * * * *

§ 1039.110 [Reserved]

* * * * *

§ 1039.115 What other requirements must my engines meet?

* * * * *

§ 1039.120 What emission-related warranty requirements apply to me?

* * * * *

(c) DELETE,
REPLACE WITH:
Components covered. The emission-related warranty covers all components whose

failure would increase an engine's emissions of any pollutant. This includes components listed in Title 13, CCR, § 2425(d), and components from any other system developed to control emissions. The emission-related warranty covers these components even if another company produces the component. Your emission-related warranty does not cover components whose failure would not increase an engine's emissions of any pollutant.

* * * * *

§ 1039.125 What maintenance instructions must I give to buyers?

* * * * *

§ 1039.130 What installation instructions must I give to equipment manufacturers?

* * * * *

§ 1039.135 How must I label and identify the engines I produce?

* * * * *

(c)(12) DELETE,
REPLACE WITH:

State: "THIS ENGINE COMPLIES WITH CALIFORNIA REGULATIONS FOR [MODEL YEAR] OFF-ROAD DIESEL ENGINES.". The referencing of similar federal requirements in combination with California references under this provision is permitted.

* * * * *

ADD:

~~(h)(1) Re-labeling prohibition and supplemental labels for rebuilt engines. In addition to the requirements for rebuilding off-road compression ignition engines specified in § 1068.120, a rebuilder or remanufacturer of engines shall not remove or deface in any manner the original emission control label, as described in Title 13, CCR, § 2424, from an off-road compression ignition engine that is rebuilt or remanufactured after December 31, 2005. The rebuilder or remanufacturer must take care to protect the original label from the effects of sandblasting, acid dipping, or any other restorative process.~~

~~(2) A supplemental label must be affixed to the rebuilt or remanufactured engine indicating the date of renovation and other pertinent information, but must not obscure in any way the visibility of the original label or imply that the rebuilt or remanufactured engine is "new" or that it belongs to an engine family other than the one to which it was originally certified. Retaining the original label offers proof, and a means to verify, that the engine was "rebuilt to a certified configuration of the same or later model year as the original engine" as required by the existing rebuild provisions.~~

~~(3) Notwithstanding, the original emission control label on any engine that is remanufactured to “like new” condition and which is recertified to current year emission requirements including durability and warranty must be replaced by the remanufacturer with one identifying the engine as belonging to a family meeting current year emission requirements in accordance with the provisions of Title 13, CCR, § 2424. A supplemental label may be affixed by the remanufacturer, if desired, but must adhere to the requirements for supplemental labels described in this paragraph (h).~~

(h) Practices and labeling requirements for rebuilt engines. This subsection shall apply as provided in paragraph (1) below to all off-road compression-ignition engines subject to the requirements of Section 2423 that are rebuilt after December 31, 2005, including those engines that were originally manufactured on, or prior to, December 31, 2005.

(1) Practices. The rebuilding practices described in Part 89.130 of the incorporated 2000 Plus Limited Test Procedures, including the exemption for engines equal to or greater than 37 kW that meet the Tier 1 standard, and Part 1068.120 of the 2008 and Later Test Procedures shall apply. These practices are summarized in paragraphs (1)(A) and (1)(B) below, which are provided as respective references for the labeling requirements in paragraphs (2)(A) and (2)(B) of this subsection.

(A) Any person who rebuilds an engine that either remains installed in a piece of equipment during the rebuilding process or will be reinstalled after the rebuilding process has been completed shall rebuild the engine to the same certified configuration or the certified configuration of a later model year engine. For the purposes of this section, these engines shall be referred to as “rebuilt original engines.”

(B) Any person who replaces the engine in a piece of equipment with a rebuilt engine (this includes engines that have been assembled from parts originally belonging to one or more other engines) shall use a replacement engine with a certified configuration that is at least equivalent, from an emissions standpoint, to that of the engine being replaced. For the purposes of this section, these engines shall be referred to as “rebuilt replacement engines.”

(2) Labeling Requirements.

(A) Rebuilt Original Engines. Any person who rebuilds engines for which the practices in paragraph (1)(A) of this subsection apply shall ensure that the rebuilt engines are labeled as follows:

1. An original engine that is rebuilt to the same emissions configuration employed by the engine at the time it was issued an Executive Order shall retain the emissions control label described in Section 2424. The rebuilder shall not remove or deface in any manner the original label and must take care to protect it from the effects of sandblasting, acid dipping, or any other restorative processes. Notwithstanding the

preceding requirements and prohibitions of this paragraph (2)(A)1., the rebuilder shall substitute a new permanent label containing the text in paragraph (2)(A)2. below for the original emission control label if the rebuilder determines that the label has been irreparably corrupted due to extreme and unintentional circumstances (e.g., fire or collision). The rebuilder shall provide to the Executive Officer annually a list of all rebuilt engines for which original labels have been removed under this provision no later than two months after the end of each calendar year. The rebuilder shall retain all removed labels, or otherwise document the degree to which the labels were damaged or missing (e.g., photographic proof of the corruption), for a period of no less than eight years following the date of renovation, and shall make these available to the Executive Officer upon request. The rebuilder shall be subject to civil penalty under State law should the Executive Officer determine that the original emission control label did not warrant replacement or that the rebuilder is abusing this provision:

2. An original engine that is rebuilt to a more stringent emissions configuration shall be permanently re-labeled using the following text:

“THIS ENGINE HAS BEEN REBUILT UNDER 13 CCR 2423(L) USING MATCHED COMPONENTS OF THE SAME SPECIFICATIONS AND CALIBRATIONS AS THOSE OF A CERTIFIED TIER [*insert the numerical tier designation of the rebuilt engine*] OFF-ROAD COMPRESSION-IGNITION ENGINE. IF PLACED INTO SERVICE IN AN OFF-ROAD APPLICATION, THIS ENGINE MUST BE INSTALLED IN EQUIPMENT ORIGINALLY SOLD WITH A TIER [*insert the numerical tier designation of the rebuilt engine*] OR EARLIER ENGINE. [*insert the engine family name of the reference engine*].”

For the purpose of this label, “MATCHED” means a complete set of components corresponding to the certified emissions configuration being referenced. The reference engine is either the originally certified engine or, in the case of assembly from parts originally belonging to one or more engines, the engine from which any of the parts are obtained with the most stringent emissions configuration. The label shall conform to the provisions of Section 2424 regarding location and visibility.

(B) Rebuilt Replacement Engines. Any person who rebuilds engines for which the practices in paragraph (1)(B) of this subsection apply shall ensure that the rebuilt engines are labeled as follows:

1. A replacement engine that is rebuilt to the same California emissions configuration employed by the engine at the time it was issued an Executive Order shall either retain the emission control label described in Section 2424 or be permanently re-labeled using the text in paragraph (2)(A)2 of this subsection. A replacement engine that is rebuilt to the same emissions configuration employed by the engine at the time it was issued a federal Certificate of Conformity, and for which no Executive Order exists, shall be permanently re-labeled using the text in paragraph (2)(A)2 of this subsection, prior to being installed in equipment that was originally sold with a California certified engine:

2. A replacement engine that is rebuilt to a more stringent emissions configuration shall be permanently re-labeled using the text in paragraph (2)(A)2. above:

3. An incomplete rebuilt replacement engine shall be permanently re-labeled using the text specified below. For the purposes of this subsection, "incomplete rebuilt replacement engine" means a rebuilt replacement engine that is sold or offered for sale in California without all the necessary components to enable engine operation including, but not necessarily limited to, the fuel system and the air system:

"THIS ENGINE HAS BEEN REBUILT UNDER 13 CCR 2423(L) AS AN INCOMPLETE ENGINE AND MUST BE COMPLETED USING ONLY MATCHED COMPONENTS OF THE SAME SPECIFICATIONS AND CALIBRATIONS AS THOSE OF A CERTIFIED TIER [*insert the numerical tier designation of the rebuilt engine*] OFF-ROAD COMPRESSION-IGNITION ENGINE. IF PLACED INTO SERVICE IN AN OFF-ROAD APPLICATION, THIS ENGINE MUST BE INSTALLED IN EQUIPMENT ORIGINALLY SOLD WITH A TIER [*insert the numerical tier designation of the rebuilt engine*] OR EARLIER ENGINE. [*insert the engine family name of the reference engine*]."

Any person who completes an incomplete rebuilt replacement engine with components that are not matched components, and the resulting engine is placed into service in California, shall be in violation of this section and be subject to civil penalty under State law. The person who sells or offers for sale an incomplete rebuilt replacement engine shall provide, at the time of sale, clear written instructions to the person who performs final assembly of the engine that the engine must be finished using only the TIER [X] components designed for that engine.

(C) Supplemental Labeling Requirements. Except as noted below, any person who sells or offers for sale any rebuilt engine subject to the provisions of subsection (I) shall affix a supplemental label to the rebuilt engine that:

1. states the name of the rebuilder, year of rebuild, and other pertinent information as determined by the rebuilder or specified by the Executive Officer; and

2. is clearly visible without the need to remove any engine components; and

3. does not obscure in any way the visibility of the original emission control label or the labels required under paragraphs (2)(A)2. or (2)(B)3. of this subsection; and

4. does not state or imply that the rebuilt engine is “new” or that it belongs to an engine family other than the one to which it was originally certified; and

5. has sufficient durability to remain intact and legible throughout all mandatory record keeping periods for rebuilt engines.

The requirement for a supplemental label shall be waived in cases where the rebuilder alternately chooses to incorporate the information in (C)1. above into the new permanent label specified in subsection (2)(A)2. or (2)(B)3.

(D) Rebuilt New Engines. Notwithstanding any other requirement of this subsection (l), any person who rebuilds an engine to comply with current-year emission requirements (including, but not limited to, durability and warranty), with the intent to sell or offer for sale the rebuilt engine as “new” under the coverage of a new and unique Executive Order, shall replace the original emission control label on that engine with one identifying the engine as belonging to a family meeting current-year emission requirements in accordance with the provisions of Section 2424. If desired, the rebuilder of a such an engine may optionally affix to it a supplemental label, but such a label would be required to comply with the same requirements specified in paragraph (C) of this subsection for any other rebuilt engine.

* * * * *

§ 1039.140 What is my engine’s maximum engine power?

* * * * *

Subpart C – Certifying Engine Families

§ 1039.201 What are the general requirements for obtaining an Executive Order?

* * * * *

§ 1039.205 What must I include in my application?

* * * * *

(p) “not-to-exceed emission standards” DELETE,

REPLACE WITH:
“not-to-exceed emission limits”

* * * * *

(w) DELETE,
REPLACE WITH:

Unconditionally certify that all the engines in the engine family comply with the requirements of this part, other referenced parts of the California Code of Regulations and the California Health and Safety Code.

* * * * *

§ 1039.210 May I get preliminary approval before I complete my application?

* * * * *

§ 1039.220 How do I amend the maintenance instructions in my application?

* * * * *

§ 1039.225 How do I amend my application for certification to include new or modified engines?

* * * * *

§ 1039.230 How do I select engine families?

* * * * *

§ 1039.235 What emission testing must I perform for my application for an Executive Order?

Introductory Text: DELETE, “NTE standards”
REPLACE WITH:
“NTE limits”

* * * * *

§ 1039.240 How do I demonstrate that my engine family complies with exhaust emission standards?

* * * * *

§ 1039.245 How do I determine deterioration factors from exhaust durability testing?

* * * * *

(a) DELETE,
REPLACE WITH:

An engine manufacturer may request the Executive Officer to approve deterioration factors for an engine family with established technology based on engineering analysis instead of testing. Engines certified to a NOx+NMHC standard or FEL greater than the Tier 3 NOx+NMHC standard described in Title 13, CCR, § 2423(b)(1)(A) are considered to rely on established technology for gaseous emission control, except that this does not include any engines that use exhaust-gas recirculation or aftertreatment. In most cases, technologies used to meet the Tier 1 and Tier 2 emission standards would be considered to be established technology.

* * * * *

§ 1039.250 What records must I keep and what reports must I send to the Air Resources Board (ARB)?

* * * * *

§ 1039.255 What decisions may ARB make regarding my Executive Order?

* * * * *

§ 1039.260 What provisions apply to engines that are conditionally exempted from certification?

* * * * *

(d)(2) DELETE,
REPLACE WITH:

Instead of the compliance statement in § 1039.135(c)(12), add the following statement: "THIS ENGINE MEETS CALIFORNIA EMISSION STANDARDS UNDER CONDITIONAL EXEMPTION.". The referencing of similar federal requirements in combination with California references under this provision is permitted.

* * * * *

Subpart D – [Reserved]

Subpart E – In-use Testing

§ 1039.401 General Provisions.

* * * * *

Subpart F – Test Procedures

§ 1039.501 How do I run a valid emission test?

* * * * *

(b) “not-to-exceed emission standards” DELETE,
REPLACE WITH:
“not-to-exceed emission limits”

* * * * *

§ 1039.505 How do I test engines using steady-state duty cycles, including
ramped-modal testing?

* * * * *

§ 1039.510 Which duty cycles do I use for transient testing?

* * * * *

§ 1039.515 What are the test procedures related to not-to-exceed limits?

* * * * *

(a) “not-to-exceed emission standards” DELETE,
REPLACE WITH:
“not-to-exceed emission limits”

* * * * *

§ 1039.520 What testing must I perform to establish deterioration factors?

* * * * *

§ 1039.525 How do I adjust emission levels to account for infrequently regenerating
aftertreatment devices?

* * * * *

Subpart G – Special Compliance Provisions

§ 1039.601 What compliance provisions apply to these engines?

* * * * *

§ 1039.605 What provisions apply to engines already certified under the motor-vehicle program?

DELETE.

§ 1039.610 What provisions apply to vehicles already certified under the motor-vehicle program?

DELETE.

§ 1039.615 What special provisions apply to engines using noncommercial fuels?

* * * * *

(b)(2)(ii) DELETE,

REPLACE WITH:

State: “THIS ENGINE IS CERTIFIED TO OPERATE IN APPLICATIONS USING NONCOMMERCIAL FUEL. MALADJUSTMENT OF THE ENGINE IS A VIOLATION OF CALIFORNIA LAW SUBJECT TO CIVIL PENALTY.”. The referencing of similar federal requirements in combination with California references under this provision is permitted.

* * * * *

§ 1039.620 What are the provisions for exempting engines used solely for competition?

* * * * *

§ 1039.625 What requirements apply under the program for equipment-manufacturer flexibility?

Introductory Text DELETE,

REPLACE WITH:

The provisions of this section allow equipment manufacturers to produce equipment with engines that are subject to less stringent emission standards after the Tier 4 emission standards begin to apply. To be eligible to use these provisions, you must follow all the instructions in this section. See Title 13, CCR, §§ 2423(d) and (e) for provisions that apply to equipment produced while Tier 1, Tier 2, or Tier 3 standards

apply. See § 1039.626 for requirements that apply specifically to companies that manufacture equipment outside the United States and to companies that import such equipment without manufacturing it.

* * * * *

(b)(1) DELETE,
REPLACE WITH:

Percent-of-production allowances. A manufacturer may produce equipment and vehicles with engines that are exempt from meeting current model year emission standards for a portion of its California-directed production volume. These percent-of-production flexibility allowances must be used within one of the seven-year flexibility usage periods specified in Table 1 or Table 2 of this section for each applicable power category, provided that the seven-year sum of the U.S.-directed portion of the manufacturer's percent-of-production flexibility allowances does not exceed 80 percent of a single year's national production by the manufacturer, expressed in yearly percentage increments, except as provided for in paragraph (b)(2) or (m) of this section. Equipment claimed as percent-of-production flexibility allowances must contain only engines that have been certified to, at least, the standards in paragraph (e), corresponding to the flexibility usage period selected by the manufacturer. All flexibility allowances for a power category must be used within the same flexibility usage period.

(b)(2) DELETE,
REPLACE WITH:

Small-volume allowances. As an alternative to the percent-of-production allowance in paragraph (b)(1), an off-road equipment or vehicle manufacturer may produce equipment with engines that are exempt from meeting current model year emission standards for a portion of its California-directed production volume, provided that the exempt equipment is a subset of the manufacturer's U.S.-directed volume of exempt equipment and the manufacturer is in compliance with the following provisions:

* * * * *

(d)(4) DELETE,
REPLACE WITH:

Manufacturers may start using a portion of the flexibility allowances in paragraphs (b)(1) or (b)(2) of this section for equipment and vehicles containing engines not yet subject to the Tier 4 standards, provided that the seven-year period for using flexibility allowances under the Tier 2/3 flexibility program in Title 13, CCR, §§ 2423(d)(1)(a), (d)(1)(b), or (d)(2)(a) has expired. Manufacturers must count these early-use flexibility allowances toward the total percentage, or number, of flexibility allowances permitted under the provisions of paragraphs (b)(1) or (b)(2) of this section. The maximum cumulative early-use allowance is 10 percent under the percent-of-production provision in paragraph (b)(1), or 100 units under the small volume provision in paragraph (b)(2).

Table 3 shows the applicable years for using early-use flexibility allowances. Manufacturers using allowances under this paragraph (d)(4) must comply with the notification and reporting requirements specified in paragraph (g) of this section. Table 3 follows:

* * * * *

(e)(1) DELETE,
REPLACE WITH:

Equipment manufacturers using the provisions of paragraph (d)(4) of this section, must use engines that, at a minimum, meet the applicable Tier 1 emission standards in Title 13, CCR, § 2423(b)(1)(a).

* * * * *

(e)(3) DELETE,
REPLACE WITH:

In all other cases, engines at or above 37 kW and at or below 560 kW must meet the appropriate Tier 3 standards described in Title 13, CCR, § 2423(b)(1)(a). Engines below 37 kW and engines above 560 kW must meet the appropriate Tier 2 standards described in Title 13, CCR, § 2423(b)(1)(a).

* * * * *

(f)(5) DELETE,
REPLACE WITH:

The following statement: THIS EQUIPMENT [or identify the type of equipment] HAS AN ENGINE THAT MEETS CALIFORNIA EMISSION STANDARDS UNDER 13 CCR 2423(d).

* * * * *

(g)(1)(vi) DELETE,
REPLACE WITH:

The number of units in each power category that the equipment manufacturer has sold in previous calendar years under 40 CFR 89.102(d) and if available, Title 13, CCR, § 2423(d).

(g)(2) DELETE,
REPLACE WITH:

For each year that an equipment manufacturer uses the provisions of this section, the manufacturer must send the Executive Officer a written report by March 31 of the following year. The report shall include the total number of engines sold by the manufacturer in the preceding year for each power category, based on actual U.S.-directed production ~~information and California-directed production~~ volume and, if

available, California-directed production volume. Also, the manufacturer must identify the percentages of U.S.-directed ~~and California-directed~~ production volumes and, if available, California-directed production volumes, that correspond to the number of units in each power category and the cumulative numbers and percentages of units for all the units sold by the manufacturer under this section for each power category. The percentage figures may be omitted if the manufacturer states in the report that it will not be using the percent-of-production allowances in paragraph (b)(1) of this section.

* * * * *

(i) DELETE,
REPLACE WITH:

Enforcement. Producing more equipment with engines exempted from meeting current-model year emission requirements under this section or installing engines that do not meet the emission standards of paragraph (e) of this section violates the requirements of Title 13, CCR, § 2423(d) and may be subject to civil penalties under California Health and Safety Code, Division 26, and corresponding regulations. Equipment manufacturers must, upon request, surrender to the Executive Officer all records required under this section.

* * * * *

(j) DELETE,
REPLACE WITH:

(1) Provisions for engine manufacturers. To meet the demand for engines created under this section, engine manufacturers may produce engines that do not meet current model year emission requirements ~~without obtaining permission from the ARB prior to production.~~ However, engine manufacturers must receive written assurance from each equipment manufacturer, prior to production, that a certain number of these engines are needed for the equipment manufacturer's equipment flexibility allowances. Engine manufacturers shall provide to the Executive Officer annually, as part of the certification application, a list of the equipment manufacturers requesting such engines for their flexibility allowances. The list shall include the equipment manufacturers' names, engine models, volumes, and a copy of the original correspondence requesting the flexibility engines. ~~Notwithstanding~~ Furthermore, all engines produced for sale in California under the provisions of this section must be covered by an Executive Order. ~~The Executive Order need not be current for the year in which the engine is used as a flexibility allowance, but may have been issued previously so long as the engine was certified to the standards required by the applicable flexibility provision.~~ To obtain an Executive Order for these engines, the engine manufacturer must shall comply with the following:

- (A) Prior to the start of production, submit a letter to the Chief of the Mobile Source Operations Division, or designee, requesting certification for flexibility engines intended for sale in California, and

(B) Provide written assurance that the flexibility engines to be produced will be identical in all material respects to those for which a valid Executive Order has been issued in a previous model year. The engine family name of the previously certified engine family must be included in the manufacturer's request for certification.

Upon determination that the conditions in paragraphs (1) and (2) have been satisfied, the engine manufacturer shall be provided with an Executive Order covering the requested flexibility engine families for the current model year. The engine family names included in the Executive Order shall either be the same as, or a subset of the previously certified engine family names, and will remain the same for as long as the engines continue to qualify as flexibility allowances regardless of model year. These engine family names shall be used by the engine manufacturer to comply with the labeling requirements of paragraph (2) below.

(2) Engine labeling. Engine manufacturers shall meet the labeling requirements provided in § 1039.135 for all engines produced under the allowances of this section. However, the following statement must be substituted for the statement of compliance required under § 1039.135:

“THIS ENGINE BELONGS TO FAMILY _____ AND MEETS COMPLIES WITH CALIFORNIA EMISSION STANDARDS REQUIREMENTS UNDER 13 CCR 2423(d). SELLING OR INSTALLING THIS ENGINE FOR ANY PURPOSE OTHER THAN FOR THE EQUIPMENT FLEXIBILITY PROVISIONS CITED MAY BE A VIOLATION OF STATE LAW SUBJECT TO CIVIL PENALTY.” [Insert Engine Family Name]

The referencing of similar federal requirements in combination with California references under this provision is permitted. Furthermore, the Executive Officer may, upon request, approve alternate labeling specifications provided that they meet the intent of this requirement.

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

* * * * *

(b)(1)(iv) DELETE,
REPLACE WITH:

The number of units in each power category imported by the foreign manufacturer in previous calendar years under 40 CFR 89.102(d) and Title 13, CCR, § 2423(d).

* * * * *

§ 1039.627 What are the incentives for equipment manufacturers to use cleaner engines?

* * * * *

§ 1039.630 What are the economic hardship provisions for equipment manufacturers?

Entire Section DELETE,
REPLACE WITH:
The provisions in Title 13, CCR, § 2423(f) shall apply.

§ 1039.635 What are the hardship provisions for engine manufacturers?

* * * * *

§ 1039.640 What special provisions apply to branded engines?

* * * * *

(a)(1) DELETE,
REPLACE WITH:

Meet the emission warranty requirements that apply under Title 13, CCR, § 2425. This may involve a separate agreement involving reimbursement of warranty-related expenses.

* * * * *

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

* * * * *

(d)(1) DELETE,
REPLACE WITH:

State on the emission control information label: "THIS ENGINE IS CERTIFIED TO OPERATE ONLY IN TRANSPORTATION REFRIGERATION UNITS. INSTALLING OR USING THIS ENGINE IN ANY OTHER APPLICATION MAY BE A VIOLATION OF CALIFORNIA LAW SUBJECT TO CIVIL PENALTY.". The referencing of similar federal requirements in combination with California references under this provision is permitted.

* * * * *

(e) "comply with NTE standards" DELETE,
REPLACE WITH:
"comply with NTE limits."

* * * * *

(e) "that the NTE standards" DELETE,
REPLACE WITH:
"that the NTE limits."

* * * * *

(e) "the not-to-exceed standards" DELETE,
REPLACE WITH:
"the not-to-exceed limits."

* * * * *

(e) "subject to NTE standards" DELETE,
REPLACE WITH:
"subject to NTE limits."

* * * * *

(f)(2)(i) REPLACE "NTE emission standards" WITH "NTE emission limits"

* * * * *

§ 1039.650 [Reserved]

* * * * *

§ 1039.655 What special provisions apply to engines sold in Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands?

DELETE.

§ 1039.660 What special provisions apply to Independent Commercial Importers?

* * * * *

Subpart H – Averaging, Banking, and Trading for Certification

§ 1039.701 General provisions.

* * * * *

§ 1039.705 How do I generate and calculate emission credits?

* * * * *

§ 1039.710 How do I average emission credits?

* * * * *

§ 1039.715 How do I bank emission credits?

* * * * *

§ 1039.720 How do I trade emission credits?

* * * * *

§ 1039.725 What must I include in my application for certification?

* * * * *

§ 1039.730 What ABT reports must I send to ARB?

* * * * *

§ 1039.735 What records must I keep?

* * * * *

§ 1039.740 What restrictions apply for using emission credits?

* * * * *

(b)(1) DELETE,
REPLACE WITH:

For purposes of ABT under this subpart, you may not use emission credits generated from engines subject to emission standards under 40 CFR part 89 or Title 13, CCR, § 2423(b)(1)(A), except as specified in § 1039.102(d)(1) or the following table:

* * * * *

Table Heading DELETE “And it was certified to the following standards under 40 CFR part 89”,
REPLACE WITH:

And it was certified to the following standards under 40 CFR part 89 or 13 CCR 2423(b)(1)(A) ...

(b)(2) DELETE,
REPLACE WITH:

Emission credits generated from marine engines certified under the provisions of 40 CFR part 89 or Title 13, CCR, § 2423(b)(1)(A), may not be used under this part.

(b)(3) DELETE,
REPLACE WITH:

See 40 CFR part 89 or Title 13, CCR, § 2423 and the 2000 Plus Limited Test Procedures for other restrictions that may apply for using emission credits generated under that part.

* * * * *

§ 1039.745 What can happen if I do not comply with the provisions of this subpart?

* * * * *

Subpart I – Definitions and Other Reference Information

§ 1039.801 What definitions apply to this part?

ADD:

40 CFR part 1065 means Part 1065 and applicable subparts of these 2008 and Later Test Procedures when referenced in unrevised sections.

ADD:

40 CFR part 1068 means Part 1068 and applicable subparts of these 2008 and Later Test procedures when referenced in unrevised sections.

Act DELETE,
REPLACE WITH:

Act means California Health and Safety Code, Division 26, and corresponding regulations, except where the context indicates otherwise.

* * * * *

ADD:

Certificate of Conformity means an Executive Order issued in accordance with the California Health and Safety Code, Division 26, Part 5.

Certification DELETE,
REPLACE WITH:

Certification means obtaining an executive order for an engine family complying with the off-road compression-ignition engine emission standards and requirements specified in Title 13, CCR, Chapter 9, §§ 2420-2427.

* * * * *

ADD:

Certified configuration or certified emissions configuration means the assembled state of an engine that is equipped with a complete set of emission-related components and systems that are equivalent from an emissions standpoint (i.e., tolerances, calibrations, and specifications) to those components and systems that (A) were originally installed on the engine when it was issued an Executive Order, or (B) have been approved by the engine manufacturer to supersede any of the original emission-related components and systems for that engine.

* * * * *

ADD:

Clean Air Act means California Health and Safety Code, Division 26, and corresponding regulations, except where the context indicates otherwise.

* * * * *

Designated Compliance Officer DELETE,
REPLACE WITH:

Designated Compliance Officer means the Executive Officer of the Air Resources Board (or the Executive Officer's designee).

Designated Enforcement Officer DELETE,
REPLACE WITH:

Designated Enforcement Officer means the Executive Officer of the Air Resources Board (or the Executive Officer's designee).

* * * * *

ADD:

EPA or U.S. EPA means Air Resources Board.

* * * * *

ADD:

Executive Order means an order issued by the Executive Officer of the Air Resources Board certifying engines for sale in California.

* * * * *

Nonroad DELETE,
REPLACE WITH:

Nonroad means relating to off-road engines or equipment that includes off-road engines.

* * * * *

Nonroad engine DELETE,
REPLACE WITH:

Nonroad engine means an off-road engine as defined in this section.

* * * * *

Nonroad equipment DELETE,
REPLACE WITH:

Nonroad equipment means a piece of equipment that is powered by one or more off-road engines.

* * * * *

ADD:

Off-road engine means:

(1) Except as discussed in paragraph (2) of this definition, any internal combustion engine:

(i) 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) 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, by itself or in or on a piece of equipment, 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 an off-road engine if:

(i) The engine is used to propel a vehicle subject to the emissions standards contained in Title 13, California Code of Regulations, Sections 1950-1978, or a vehicle used solely for competition, or is subject to standards promulgated under section 202 of the federal Clean Air Act (42 U.S.C); or

(ii) The engine is regulated by a federal New Source Performance Standard promulgated under section 111 of the 1990 Clean Air Act (42 U.S.C. 7511); 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 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 does not apply to an engine after the engine is removed from the location.

* * * * *

We (us, our) DELETE,
REPLACE WITH:

We (us, our) means the Executive Officer of the California Air Resources Board and any authorized representatives.

ADD:

ADDENDUM: The definitions in the California Health and Safety Code and in Title 13, CCR, § 2421, shall apply.

§ 1039.805 What symbols, acronyms, and abbreviations does this part use?

* * * * *

§ 1039.810 What materials does this part reference?

* * * * *

§ 1039.815 What provisions apply to confidential information?

DELETE,

REPLACE WITH:

Any manufacturer may assert that some or all of the information submitted pursuant to Title 13, CCR, Division 3, Chapter 9, Article 4 (Off-Road Compression-Ignition Engines and Equipment) is entitled to confidential treatment as provided by Title 17, CCR, §§ 91000-91022.

§ 1039.820 How do I request a hearing?

DELETE,

REPLACE WITH:

A manufacturer may request a hearing on an Executive Officer's decision regarding certification, as specified in Title 17, CCR, Division 3, Chapter 1, Subchapter 1.25, Articles 1 and 2.

Appendix I to Part 1039 – [Reserved]

* * * * *

Appendix II to Part 1039 – Steady-state Duty Cycles for Constant-Speed Engines

* * * * *

Appendix III to Part 1039 – Steady-state Duty Cycles for Variable-Speed Engines with Maximum Power below 19 kW

* * * * *

Appendix IV to Part 1039 – Steady-state Duty Cycles for Variable-Speed Engines with Maximum Power at or above 19 kW

* * * * *

Appendix V to Part 1039 – [Reserved]

* * * * *

Appendix VI to Part 1039 – Nonroad Compression-Ignition Composite Transient Cycle

* * * * *

PART 1065 – ENGINE-TESTING PROCEDURES

SOURCE: 67 FR 68409, November 8, 2002, amended June 29, 2004, unless otherwise noted.

Subpart A – Applicability and General Provisions

§ 1065.1 Applicability.

* * * * *

(a)(3) DELETE,
REPLACE WITH:

Land-based off-road compression-ignition engines regulated under Title 13, CCR, Chapter 9, Article 4, and subject to the emission standards in § 2423(b)(1)(B) of that Article.

* * * * *

(b)(6) DELETE,
REPLACE WITH:

Off-road compression-ignition engines regulated under Title 13, CCR, Chapter 9, Article 4, and subject to the emission standards in § 2423(b)(1)(A) of that Article.

* * * * *

§ 1065.5 Overview of test procedures.

* * * * *

§ 1065.10 Other test procedures.

* * * * *

§ 1065.15 Engine testing.

* * * * *

§ 1065.20 Limits for test conditions.

* * * * *

(b) “not-to-exceed or other off-cycle emission standards” DELETE,
REPLACE WITH:
“not-to-exceed or other off-cycle emission limits”

* * * * *

Subpart B – Equipment and Analyzers

§ 1065.101 Overview.

* * * * *

§ 1065.105 Dynamometer and engine equipment specifications.

* * * * *

§ 1065.110 Exhaust gas sampling system; spark-ignition (SI) engines.

DELETE.

§ 1065.115 Exhaust gas sampling system; compression-ignition engines.

* * * * *

(b) DELETE,

REPLACE WITH:

Raw-gas sampling during steady-state tests as specified in Title 13, CCR, Chapter 9, Article 4, and the incorporated 2000 Plus Limited Test Procedures.

(c) DELETE,

REPLACE WITH:

Partial-flow sampling for measuring gaseous emission constituents during steady-state tests as specified in Title 13, CCR, Chapter 9, Article 4, and the incorporated 2000 Plus Limited Test Procedures.

* * * * *

§ 1065.120 Raw sampling. [Reserved]

§ 1065.125 Analyzers (overview/general response characteristics).

* * * * *

§ 1065.130 Hydrocarbon analyzers.

* * * * *

§ 1065.135 NOx analyzers.

* * * * *

§ 1065.140 CO and CO₂ analyzers.

* * * * *

§ 1065.145 Smoke meters. [Reserved]

* * * * *

§ 1065.150 Flow meters.

* * * * *

§ 1065.155 Temperature and pressure sensors.

* * * * *

Subpart C – Test Fuels and Analytical Gases

§ 1065.201 General requirements for test fuels.

* * * * *

(e) DELETE,
REPLACE WITH:

With Executive Officer approval, the certifying entity may use other test fuels so long as they do not affect the demonstration of compliance.

§ 1065.205 Test fuel specifications for distillate diesel fuel.

* * * * *

ADD:

(c) The Executive Officer may allow other fuel specifications, such as California diesel fuel, so long as they do not affect the demonstration of compliance.

§ 1065.210 Test fuel specifications for gasoline.

DELETE.

§ 1065.215 Test fuel specifications for natural gas.

* * * * *

§ 1065.220 Test fuel specifications for liquefied petroleum gas.

* * * * *

§ 1065.240 Lubricating oils.

* * * * *

§ 1065.250 Analytical gases.

* * * * *

Subpart D – Analyzer and Equipment Calibrations

§ 1065.301 Overview.

* * * * *

§ 1065.305 International calibration standards.

* * * * *

§ 1065.310 CVS calibration.

* * * * *

§ 1065.315 Torque calibration.

* * * * *

Subpart E – Engine Selection, Preparation, and Service Accumulation

§ 1065.401 Selecting a test engine.

* * * * *

§ 1065.405 Preparing and servicing a test engine.

* * * * *

§ 1065.410 Service limits for stabilized test engines.

* * * * *

§ 1065.415 Durability demonstration.

* * * * *

Subpart F – Running an Emission Test

§ 1065.501 Overview of the engine dynamometer test procedures.

* * * * *

§ 1065.510 Engine mapping procedures.

* * * * *

§ 1065.515 Test cycle generation.

* * * * *

§ 1065.520 Engine starting, restarting, and shutdown.

* * * * *

§ 1065.525 Engine dynamometer test run.

* * * * *

§ 1065.530 Test cycle validation criteria.

* * * * *

Subpart G – Data Analysis and Calculations

§ 1065.601 Overview.

* * * * *

§ 1065.605 Required records.

* * * * *

§ 1065.610 Bag sample analysis.

* * * * *

§ 1065.615 Bag sample calculations.

* * * * *

§ 1065.620 Continuous sample analysis and calculations.

* * * * *

Subpart H – Particulate Measurements

§ 1065.701 Particulate measurements.

* * * * *

Subpart I – Testing with Oxygenated Fuels

§ 1065.801 Applicability.

* * * * *

§ 1065.805 Sampling system.

* * * * *

§ 1065.810 Calculations.

* * * * *

Subpart J – Field Testing

DELETE.

Subpart K – Definitions and Other Reference Information

§ 1065.1001 Definitions.

ADD:

The definitions in 40 CFR 1039.801, as modified, apply with the following revisions.

ADD:

40 CFR part 1039 means Part 1039 and applicable subparts of these 2008 and Later Test procedures when referenced in unrevised sections.

40 CFR part 1068 means Part 1068 and applicable subparts of these 2008 and Later Test procedures when referenced in unrevised sections.

* * * * *

Designated Officer DELETE,

REPLACE WITH:

Designated Officer means the Executive Officer of the Air Resources Board, or a designee of the Executive Officer.

* * * * *

§ 1065.1005 Symbols, abbreviations, acronyms, and abbreviations.

* * * * *

§ 1065.1010 Reference materials.

* * * * *

§ 1065.1015 Confidential information.

DELETE,

REPLACE WITH:

Any manufacturer may assert that some or all of the information submitted pursuant to Title 13, CCR, Division 3, Chapter 9, Article 4 (Off-Road Compression-Ignition Engines and Equipment) is entitled to confidential treatment as provided by Title 17, CCR, §§ 91000-91022.

PART 1068 – GENERAL COMPLIANCE PROVISIONS FOR NONROAD PROGRAMS

SOURCE: 67 FR 68427, November 8, 2002, amended June 29, 2004, unless otherwise noted.

Subpart A – Applicability and Miscellaneous Provisions

§ 1068.1 Does this part apply to me?

* * * * *

(a)(3) DELETE,
REPLACE WITH:

Land-based off-road compression-ignition engines regulated under Title 13, CCR, Chapter 9, Article 4, and subject to the emission standards in § 2423(b)(1)(B) of that Article.

* * * * *

(b)(5) DELETE,
REPLACE WITH:

Off-road compression-ignition engines regulated under Title 13, CCR, Chapter 9, Article 4, and subject to the emission standards in § 2423(b)(1)(A) of that Article.

* * * * *

§ 1068.5 How must manufacturers apply good engineering judgment?

* * * * *

§ 1068.10 What provisions apply to confidential information?

DELETE,
REPLACE WITH:

Any manufacturer may assert that some or all of the information submitted pursuant to Title 13, CCR, Division 3, Chapter 9, Article 4 (Off-Road Compression-Ignition Engines and Equipment) is entitled to confidential treatment as provided by Title 17, CCR, §§ 91000-91022.

§ 1068.15 Who is authorized to represent the Air Resources Board?

* * * * *

§ 1068.20 May ARB enter my facilities for inspections?

DELETE,
REPLACE WITH:

(a) Any engine manufacturer affected by these regulations, upon receipt of prior notice must admit or cause to be admitted during operating hours any ARB Enforcement Officer that has presented proper credentials to any of the following:

(1) Any facility where tests or procedures or activities connected with such tests or procedures are or were performed.

(2) Any facility where any new off-road compression-ignition engine is present and is being, has been, or will be tested.

(3) Any facility where a manufacturer constructs, assembles, modifies, or builds-up an engine into a certification engine that will be tested for certification.

(4) Any facility where any record or other document relating to any of the above is located.

(b) Upon admission to any facility referred to in paragraph (c)(1) of this Section, any ARB Enforcement Officer must be allowed:

(1) To inspect and monitor any part or aspect of such procedures, activities, and testing facilities, including, but not limited to, monitoring engine preconditioning, emissions tests and break-in, maintenance, and engine storage procedures.

(2) To verify correlation or calibration of test equipment; and,

(3) To inspect and make copies of any such records, designs, or other documents; and,

(4) To inspect and/or photograph any part or aspect of any such certification engine and any components to be used in the construction thereof.

(c) To permit an ARB determination whether production off-road compression-ignition engines conform in all material respects to the design specifications that apply to those engines described in the Executive Order certifying such engines and to standards prescribed herein. Engine manufacturers must, upon receipt of prior notice, admit any ARB Enforcement Officer, upon presentation of credentials, to:

(1) Any facility where any document design, or procedure relating to the translation of the design and construction of engines and emission related components described in the application for certification or used for certification testing into production engines is located or carried on; and,

(2) Any facility where any off-road compression-ignition engines to be introduced into commerce are manufactured or assembled.

(3) Any California retail outlet where any off-road compression-ignition engine is sold.

(d) On admission to any such facility referred to in this Section, any ARB Enforcement Officer must be allowed:

(1) To inspect and monitor any aspects of such manufacture or assembly and other procedures;

- (2) To inspect and make copies of any such records, documents or designs; and,
- (3) To inspect and photograph any part or aspect of any such new off-road compression-ignition engines and any component used in the assembly thereof that are reasonably related to the purpose of the Enforcement Officer's entry.

(e) Any ARB Enforcement Officer must be furnished by those in charge of a facility being inspected with such reasonable assistance as may be necessary to discharge any function listed in this paragraph. Each applicant for or recipient of certification is required to cause those in charge of a facility operated for its benefit to furnish such reasonable assistance without charge to the ARB irrespective of whether or not the applicant controls the facility.

(f) The duty to admit or cause to be admitted any ARB Enforcement Officer applies whether or not the applicant owns or controls the facility in question and applies both to domestic and foreign engine manufacturers and facilities. The ARB will not attempt to make any inspections that it has been informed that local law forbids. However, if local law makes it impossible to insure the accuracy of data generated at a facility, no informed judgment that an engine is certifiable or is covered by an Executive Order can properly be based on the data. It is the responsibility of the engine manufacturer to locate its testing and manufacturing facilities in jurisdictions where this situation will not arise.

(g) For purposes of this Section:

(1) "Presentation of credentials" means a display of a document designating a person to be an ARB Enforcement Officer.

(2) Where engine, component, or engine storage areas or facilities are concerned, "operating hours" means all times during which personnel are at work in the vicinity of the area or facility and have access to it.

(3) Where facilities or areas other than those covered by paragraph (g)(2) of this Section are concerned, "operating hours" means all times during which an assembly line is in operation or during which testing, maintenance, break-in procedure, production or compilation of records, or any other procedure or activity is being conducted related to certification testing, translation of designs from the test stage to the production stage, or engine manufacture or assembly.

(4) "Reasonable assistance" includes, but is not limited to, providing clerical, copying, interpretation and translation services; making personnel available upon request to inform the ARB Enforcement Officer of how the facility operates and to answer questions; and performing requested emissions tests on any engine that is being, has been, or will be used for certification testing. Such tests must be nondestructive, but may require appropriate break-in. The engine manufacturer must be compelled to cause the personal appearance of any employee at such a facility before an ARB Enforcement Officer, upon written request from the Executive Officer for the appearance of any employee of a facility, and service of such request upon the engine manufacturer. Any such employee who has been instructed by the engine

manufacturer to appear will be entitled to be accompanied, represented, and advised by counsel.

§ 1068.25 What information must I give to ARB?

* * * * *

(b) DELETE,
REPLACE WITH:

Manufacturers subject to the requirements of this part must establish and maintain records, perform tests, make reports and provide additional information that the Executive Officer may reasonably require under the California Health and Safety Code, Division 26, and corresponding regulations. This also applies to engines that are exempt from emission standards.

§ 1068.27 May ARB conduct testing with my production engines?

* * * * *

§ 1068.30 What definitions apply to this part?

ADD:

The definitions in 40 CFR 1039.801 and 1065.1001, as modified, apply with the following revisions:

ADD:

40 CFR part 1039 means Part 1039 and applicable subparts contained in these 2008 and Later Test procedures when referenced in unrevised sections.

ADD:

40 CFR part 1068 means Part 1068 and applicable subparts contained in these 2008 and Later Test procedures when referenced in unrevised sections.

* * * * *

ADD:

Administrator means the Executive Officer of the Air Resources Board, or a designee of the Executive Officer.

* * * * *

Certificate holder DELETE,
REPLACE WITH:

Certificate holder means a manufacturer (including importers) with a valid Executive Order for at least one engine family in a given model year.

ADD:

Certified configuration or certified emissions configuration means the assembled state of an engine that is equipped with a complete set of emission-related components and systems that are equivalent from an emissions standpoint (i.e., tolerances, calibrations, and specifications) to those components and systems that (A) were originally installed on the engine when it was issued an Executive Order, or (B) have been approved by the engine manufacturer to supersede any of the original emission-related components and systems for that engine.

* * * * *

ADD:

EPA Delegation Manual means documents explaining the procedures for delegation within the Air Resources Board.

* * * * *

Standard-setting part DELETE,
REPLACE WITH:

Standard-setting part means the articles of the California Code of Regulations that define emission standards for a particular engine.

* * * * *

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

* * * * *

Subpart B – Prohibited Actions and Related Requirements

§ 1068.101 What general actions does this regulation prohibit?

* * * * *

(a) DELETE,
REPLACE WITH:

The following prohibitions and requirements apply to manufacturers of new engines and manufacturers of equipment containing these engines, except as described in subparts C and D of this part:

(1) Introduction into commerce. New engines and equipment may not be sold, offered for sale, or introduced or delivered into commerce in California or imported into California unless it has a valid Executive Order for its model year and the required label or tag. The actions listed in the previous sentence may not be taken with respect to any equipment containing an engine subject to this part's provisions, unless the engine has a valid and appropriate Executive Order and the required engine label or tag. For purposes of this paragraph (a)(1), an appropriate Executive Order 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, and conforms to all requirements specified for the equipment in the standard-setting part. The requirements of this paragraph (a)(1) also cover new engines that are produced solely to replace an older engine in a piece of equipment, unless the engine qualifies for the replacement-engine exemption in § 1068.240. Civil penalties may be assessed for each engine in violation under the requirements of the California Health and Safety Code, Division 26, and corresponding regulations.

(2) Reporting and recordkeeping. Manufacturers are required to record certain types of information to show that their engines are meeting California's standards.

Manufacturers must comply with these requirements to make and maintain required records (including those described in § 1068.501), and may not deny ARB access to these records or the ability to copy these records for which ARB has the authority to examine upon request. The required reports and information must be provided to the ARB upon request without delay. Failure to comply with the requirements of this paragraph is prohibited. A violation of the requirements of this subpart is a violation of the applicable provisions of the California Health and Safety Code, Division 26, and corresponding regulations, and is subject to the penalty provisions thereunder.

(3) Testing and access to facilities. Manufacturers may not prevent ARB or its delegated agents from entering the manufacturer's facility to inspect and/or perform authorized testing. Manufacturers must perform the tests we require (or have the tests performed by an outside source). Failure to perform this testing is prohibited. Civil penalties may be assessed for each engine in violation under the requirements of the California Health and Safety Code, Division 26, and corresponding regulations.

(b) DELETE,
REPLACE WITH:

The following prohibitions apply to all entities with respect to the engines to which this part applies:

(1) Tampering. No one may remove or disable a device or element of design that may affect an engine's emission levels. This restriction applies before and after the engine is placed in service. Section 1068.120 describes how this applies to rebuilding engines. A person or a manufacturer or dealer who violates this part is subject to a civil penalty

as specified in the California Health and Safety Code, Division 26, and corresponding regulations. This prohibition does not apply in any of the following situations:

* * * * *

(2) Defeat devices. A manufacturer may not knowingly manufacture, sell, offer to sell, or install, an engine part if it bypasses, impairs, defeats, or disables the engine's control the emissions of any pollutant. A violation of the requirements of this subpart is a violation of the applicable provisions of the California Health and Safety Code, Division 26, and corresponding regulations, and is subject to the penalty provisions thereunder.

(3) Stationary engines. An engine that is excluded from any requirements of this chapter because it is a stationary engine may not be moved or installed in any mobile equipment except as allowed by the provisions of this chapter. The residence time requirements of paragraph (2)(iii) of the nonroad engine definition in § 1068.30 may not be intentionally circumvented. A violation of the requirements of this subpart is a violation of the applicable provisions of the California Health and Safety Code, Division 26, and corresponding regulations, and is subject to the penalty provisions thereunder for each day you are in violation.

(4) Competition engines. An uncertified engine or piece of equipment that is excluded or exempted from any requirements of this chapter because it is to be used solely for competition may not be used in a manner that is inconsistent with use solely for competition. A violation of the requirements of this subpart is a violation of the applicable provisions of the California Health and Safety Code, Division 26, and corresponding regulations, and is subject to the penalty provisions thereunder.

(5) Importation. An uncertified engine or piece of equipment may not be imported if it is defined to be new in the standard-setting part and it is built after emission standards start to apply in California. A violation of the requirements of this subpart is a violation of the applicable provisions of the California Health and Safety Code, Division 26, and corresponding regulations, and is subject to the penalty provisions thereunder. Note the following:

(i) The definition of new is broad for imported engines; uncertified engines and equipment (including used engines and equipment) are generally considered to be new when imported.

(ii) Engines that were originally manufactured before applicable ARB standards became effective are generally not subject to emission standards.

(6) Warranty. Manufacturers must honor the emission-related warranty requirements under § 1068.115 and fulfill any applicable responsibilities to recall engines under § 1068.505. Failure to meet these obligations is prohibited. A violation of the requirements of this subpart is a violation of the applicable provisions of the California Health and Safety Code, Division 26, and corresponding regulations, and is subject to the penalty provisions thereunder.

* * * * *

(e) DELETE,
REPLACE WITH:

The maximum penalty values listed in paragraphs (a) and (b) of this section are shown for calendar year 2002. Maximum penalty limits for later years may be adjusted based on the applicable provisions of the California Health and Safety Code, Division 26, and corresponding regulations.

ADD:

(f) Under § 43017 of the California Health and Safety Code, the Air Resources Board may enjoin any violation of any provision of Subpart B of this part 1068.

§ 1068.105 What other provisions apply to me specifically if I manufacture equipment needing certified engines?

* * * * *

(d) DELETE,
REPLACE WITH:

Producing off-road equipment certified to highway emission standards. A manufacturer may produce off-road equipment from complete or incomplete motor vehicles with the motor vehicle engine under the following conditions:

- (1) The engine or vehicle is certified to California on-road requirements.
- (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.
- (4) Additional restrictions may be imposed by the Executive Officer as determined necessary to ensure emission performance equity.

§ 1068.110 What other provisions apply to engines in service?

* * * * *

(b) DELETE,
REPLACE WITH:

Certifying aftermarket parts. The manufacturer or rebuilder of an aftermarket engine part shall be required to certify according to the requirements of Title 13, CCR, Chapter 4, Article 2. The aftermarket part rebuilder or manufacturer must keep all records showing how the part affects emissions, and shall provide this information to the Executive Officer within 30 calendar days upon request.

* * * * *

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

Introductory text DELETE,

REPLACE WITH:

Title 13, CCR, Chapter 9, Article 4, § 2425, requires certifying manufacturers of compression-ignition engines to warrant to purchasers that their engines 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 engines are free from defects in materials and workmanship that would cause an engine to fail to conform to the applicable regulations during the specified warranty period. This section codifies the warranty requirements without intending to limit them.

* * * * *

§ 1068.120 What requirements must I follow to rebuild engines?

* * * * *

ADD:

(l) The provisions in Title 13, CCR, § 2423(l) shall apply.

§ 1068.125 What happens if I violate the regulations?

DELETE,

REPLACE WITH:

A violation of the requirements of this subpart is a violation of the applicable provisions of the California Health and Safety Code, Division 26, and corresponding regulations, and is subject to the penalty provisions thereunder.

Subpart C – Exemptions and Exclusions

§ 1068.201 Does ARB exempt or exclude any engines from the prohibited acts?

* * * * *

§ 1068.210 What are the provisions for exempting test engines?

* * * * *

§ 1068.215 What are the provisions for exempting manufacturer-owned engines?

* * * * *

(b) DELETE,

REPLACE WITH:

By provision of the California Health and Safety Code, Division 24, Part 5, Chapter 1, § 43014, a manufacturer may request the Executive Officer to issue an experimental

permit for a nonconforming engine under the ownership and control of the manufacturer for the purposes of developing products, assessing production methods, or promoting engines in the marketplace. The engine shall not be loaned, leased, or sold to generate revenue, either by itself or in a piece of equipment.

* * * * *

(c)(3)(iv) DELETE,
REPLACE WITH:

The statement "THIS ENGINE IS COVERED BY AN EXPERIMENTAL PERMIT AND IS EXEMPT FROM MEETING CALIFORNIA EMISSION REQUIREMENTS.". The referencing of similar federal requirements in combination with California references under this provision is permitted.

§ 1068.220 What are the provisions for exempting display engines?

* * * * *

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

* * * * *

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

* * * * *

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

* * * * *

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

* * * * *

(c) DELETE,
REPLACE WITH:

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 CALIFORNIA OFF-ROAD EMISSION REQUIREMENTS. SALE OR INSTALLATION OF THIS ENGINE FOR ANY PURPOSE OTHER THAN AS A REPLACEMENT ENGINE FOR AN ENGINE MANUFACTURED PRIOR TO JANUARY 1, [Insert appropriate year reflecting when the earliest tier of emission standards began to apply to engines of that size and type] IS A VIOLATION

OF CALIFORNIA LAW SUBJECT TO CIVIL PENALTY.” The referencing of similar federal requirements in combination with California references under this provision is permitted.

(d) DELETE,
REPLACE WITH:

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 DOES NOT COMPLY WITH CALIFORNIA OFF-ROAD EMISSION REQUIREMENTS. SALE OR INSTALLATION OF THIS ENGINE FOR ANY PURPOSE OTHER THAN AS A REPLACEMENT ENGINE FOR AN ENGINE MANUFACTURED PRIOR TO JANUARY 1, [Insert appropriate year reflecting when the next tier of emission standards began to apply to engines of that size and type] IS A VIOLATION OF CALIFORNIA LAW SUBJECT TO CIVIL PENALTY.” The referencing of similar federal requirements in combination with California references under this provision is permitted.

* * * * *

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

* * * * *

§ 1068.250 What are the provisions for extending compliance deadlines for small-volume manufacturers under hardship?

* * * * *

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

* * * * *

(b)(4) DELETE,
REPLACE WITH:

The statement “THIS ENGINE IS EXEMPT UNDER 13 CCR 2423(f) FROM EMISSION STANDARDS AND RELATED REQUIREMENTS.”. The referencing of similar federal requirements in combination with California references under this provision is permitted.

* * * * *

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

* * * * *

Subpart D – Imports

§ 1068.301 Does this subpart apply to me?

* * * * *

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

* * * * *

ADD:

(f) For any engine whose destination is California, send the completed form to the Executive Officer of the Air Resources Board.

§ 1068.310 What are the exclusions for imported engines?

* * * * *

§ 1068.315 What are the permanent exemptions for imported engines?

* * * * *

§ 1068.320 How must I label an imported engine with a permanent exemption?

* * * * *

(b)(4) DELETE,
REPLACE WITH:

State: "THIS IMPORT ENGINE IS GRANTED A PERMANENT EXEMPTION FROM MEETING CURRENT YEAR CALIFORNIA OFF-ROAD DIESEL EMISSION REQUIREMENTS BY ALLOWANCE FOR [identify the permanent exemption category authorizing the exemption (for example, "NATIONAL SECURITY")]. INSTALLING THIS ENGINE IN ANY DIFFERENT APPLICATION IS A VIOLATION OF CALIFORNIA LAW SUBJECT TO CIVIL PENALTY.". The referencing of similar federal requirements in combination with California references under this provision is permitted.

§ 1068.325 What are the temporary exemptions for imported engines?

* * * * *

§ 1068.330 How do I import engines to modify for other applications?

* * * * *

§ 1068.335 What are the penalties for violations?

* * * * *

ADD:

(c) Under § 43017 of the California Health and Safety Code, the Air Resources Board may enjoin any violation of any provision of Subpart D of this part 1068.

Subpart E – Selective Enforcement Auditing

§ 1068.401 What is a selective enforcement audit?

* * * * *

§ 1068.405 What is in a test order?

* * * * *

§ 1068.410 How must I select and prepare my engines?

* * * * *

§ 1068.415 How do I test my engines?

* * * * *

§ 1068.420 How do I know when my engine family fails an SEA?

* * * * *

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

* * * * *

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

* * * * *

§ 1068.435 May I sell engines from an engine family with a suspended Executive Order?

* * * * *

§ 1068.440 How do I ask ARB to reinstate my suspended Executive Order?

* * * * *

§ 1068.445 When may ARB revoke my Executive Order under this subpart and how may I sell these engines again?

* * * * *

§ 1068.450 What records must I send to ARB?

* * * * *

ADD:

(f) The manufacturer shall supply upon request emission test results from U.S. EPA-directed audits for engines certified in California.

§ 1068.455 What records must I keep?

* * * * *

Appendix A to Subpart E of Part 1068-Plans for Selective Enforcement Auditing

* * * * *

Subpart F – Reporting Defects and Recalling Engines

§ 1068.501 How do I report engine defects?

* * * * *

§ 1068.505 How does the recall program work?

DELETE,
REPLACE WITH:

Off-road engines subject to provisions of subpart B of this part are subject to recall regulations specified in Title 13, California Code of Regulations, Chapter 2, Articles 2.1 – 2.4, §§ 2111 – 2141.

§ 1068.510 How do I prepare and apply my remedial plan?

DELETE,
REPLACE WITH:

Off-road engines subject to provisions of subpart B of this part are subject to recall regulations specified in Title 13, California Code of Regulations, Chapter 2, Articles 2.1 – 2.4, §§ 2111 – 2141.

§ 1068.515 How do I mark or label repaired engines?

DELETE,
REPLACE WITH:

Off-road engines subject to provisions of subpart B of this part are subject to recall regulations specified in Title 13, California Code of Regulations, Chapter 2, Articles 2.1 – 2.4, §§ 2111 – 2141.

§ 1068.520 How do I notify affected owners?

DELETE,
REPLACE WITH:

Off-road engines subject to provisions of subpart B of this part are subject to recall regulations specified in Title 13, California Code of Regulations, Chapter 2, Articles 2.1 – 2.4, §§ 2111 – 2141.

§ 1068.525 What records must I send to ARB?

DELETE,
REPLACE WITH:

Off-road engines subject to provisions of subpart B of this part are subject to recall regulations specified in Title 13, California Code of Regulations, Chapter 2, Articles 2.1 – 2.4, §§ 2111 – 2141.

§ 1068.530 What records must I keep?

DELETE,
REPLACE WITH:

Off-road engines subject to provisions of subpart B of this part are subject to recall regulations specified in Title 13, California Code of Regulations, Chapter 2, Articles 2.1 – 2.4, §§ 2111 – 2141.

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

DELETE,
REPLACE WITH:

Off-road engines subject to provisions of subpart B of this part are subject to recall regulations specified in Title 13, California Code of Regulations, Chapter 2, Articles 2.1 – 2.4, §§ 2111 – 2141.

§ 1068.540 What terms do I need to know for this subpart?

DELETE,
REPLACE WITH:

Off-road engines subject to provisions of subpart B of this part are subject to recall regulations specified in Title 13, California Code of Regulations, Chapter 2, Articles 2.1 – 2.4, §§ 2111 – 2141.

Subpart G – Hearings

§ 1068.601 What are the procedures for hearings?

DELETE,
REPLACE WITH:

A manufacturer may request a hearing on an Executive Officer's decision regarding certification, as specified in Title 17, California Code of Regulations, Division 3, Chapter 1, Subchapter 1.25, Articles 1 and 2.

Appendix I to Part 1068 – Emission-Related Components

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

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