

Supporting Statement for
Information Collection Request

**Transition Program
For Equipment Manufacturers**
(Renewal)

EPA Number 1826.04
OMB Control Number 2060-0369

42 USC 7521 ' 213(d)
40 CFR 89.102
40 CFR 1039.625

December 2007

Certification and Compliance Division
Office of Transportation and Air Quality
Office of Air and Radiation
U.S. Environmental Protection Agency

1. Identification of the Information Collection

1(a) Title and Number of the Information Collection

Transition Program for Equipment Manufacturers (Renewal), EPA Number 1826.04, OMB Number 2060-0369.

1(b) Short Characterization

When EPA establishes new regulations with tighter engine emission standards, engine manufacturers often need to change the design of their engines to achieve the required emissions reductions. Consequently, original equipment manufacturers (OEMs) may also need to redesign their products to accommodate these engine design changes. Sometimes, OEMs have trouble making the necessary adjustments by the effective date of the regulations. In an effort to provide OEMs with some flexibility in complying with the regulations, EPA created the Transition Program for Equipment Manufacturers (TPEM). Under this program, OEMs are allowed to delay compliance with the new standards for up to seven years as long as they comply with certain limitations. Participation in the program is voluntary. Participating OEMs and engine manufacturers who provide the noncompliant engines are required to keep records and submit reports of their activities under the program.

In 2008, a new TPEM phase will start as the new, nonroad compression-ignition emission regulations (also known as Tier 4 regulations) become effective. This ICR Renewal incorporates the requirements that will be in effect during the active period of this supporting statement. The Tier 4 TPEM program is codified at 40 CFR Part 1039.625 while the Tier 1-Tier 3 program is codified at 40 CFR Part 89.102.

It has been estimated that a total of 99 manufacturers will respond to this collection with an approximate cost of \$652,930, including \$123,558 annualized capital or O&M costs.

2. Need for and Use of the Collection

2(a) Need/Authority for the Collection

Pursuant to Section 206(a) of the Clean Air Act (42 USC 7521), vehicle and engine manufacturers may not legally introduce their product into US commerce unless EPA has certified that their vehicles and engines comply

with applicable emission standards. Section 213(d) extends that prohibition, codified at 40 CFR 89.1003(a), to non-road engines.

EPA created TPEM to alleviate the unintended impact of emission regulations on OEMs. The program allows OEMs to install noncompliant engines in their equipment for a limited period of time provided they comply with the requirements described in this information collection.

TPEM also provides protection for engine manufacturers so that they can sell engines that do not comply with current regulations to OEMs under the provisions of TPEM. The program is codified at 40 CFR 89.102 and 1039.625. Engine manufacturers are also required to report the number of engines they sold under TPEM and their purchasers annually. The purpose of these reports is to independently verify the information provided by OEMs in their reports and prevent misuse of the program.

2(b) Practical Utility/Users of the Data

The information collected under TPEM is used to verify compliance and prevent abuse or misuse of the program. If compliance issues are identified, information submitted under the program could be used for enforcement purposes.

The information will be received, reviewed, and used by the Heavy-Duty and Nonroad Engines Group (HDNEG), Certification and Innovative Strategies Division (CISD), Office of Transportation and Air Quality (OTAQ), Office of Air and Radiation. Non-confidential portions of the information might be used by importers, end users, environmental groups, members of the public, state and local governments or other federal agencies such as US Customs.

3. **Nonduplication, Consultations and Other Collection Criteria**

3(a) Nonduplication

This program is unique to EPA. No other program or Agency collects this information. Because of its specialized (and sometimes confidential) nature, the information collected is not available from any other source. Some of the information requested --such as actual production volumes-- is claimed by manufacturers as confidential business information (CBI); therefore, EPA can only obtain it from manufacturers. Participation in the program is voluntary.

3(b) Public Notice Required Prior to ICR Submission to OMB

An announcement of the public comment period for this ICR renewal was published in the Federal Register (75 FR 54654) on September 26, 2007. No comments were received.

3(c) Consultations

EPA consulted less than ten past respondents regarding this information collection burden.

Contact: Mr. Gary Gauthun
Company: Northwest Products
Phone: 253-854-1915

Contact: Ms. Lisa Maeser

Company: Hardy Diesels and Equipment,
China Diesel Imports
Phone: 800-341-7027

3(d) Effects of Less Frequent Collection

Under the new Tier 4 regulations, participating OEMs are required to report annually the number of equipment they exempted and percentage calculations, if applicable, to demonstrate that the annual and cumulative requirements have not been exceeded. Under the Tier 1 - Tier 3 program, compliance reports from OEMs were only required once, within a year after the OEM last used the program. It has been EPA's experience that OEMs are more prone to lose track of compliance and reporting requirements when only a one-time report is required. Less than annual reporting also makes it more difficult for all parties involved to keep track of compliance.

Engine manufacturers are already required to submit an annual production report under the requirements of the Certification Program. Under TPEM, engine manufacturers must report annually who they sold exempted engines to and the number of engines sold. To simplify reporting, TPEM information may, and often is, submitted as part of the certification annual production report. It is easier for the engine manufacturer to gather the information at the end of the engine model year rather than coming back later to gather information from different years and production cycles.

More information could be requested if it is deemed necessary for compliance or enforcement purposes.

3(e) General Guidelines

According to 1039.625(h), Tier 4 TPEM related records must be maintained for five years. However, records may be retained as hard copy or reduced to microfilm, ADP film, etc., depending on the manufacturer's record retention procedure, provided that in every case all the information contained in the hard copy is retained. These recordkeeping requirements stem, in large part, from the statutory requirement to warrant some items for long periods of time, as well as from enforcement considerations. In addition, the engine manufacturers must comply with requirements to recall vehicles and engines failing to meet emission standards during their useful lives.

Manufacturers are required to submit actual sales information which is considered confidential business information. This information is kept confidential in accordance with the Freedom of Information Act, EPA

regulations at 40 CFR Part 2, and class determinations issued by EPA's Office of General Counsel.

No other Paperwork Reduction Act guideline is exceeded.

3(f) Confidentiality

Manufacturers are allowed to assert a claim of confidentiality over information provided to EPA. Confidentiality is provided in accordance with the Freedom of Information Act and EPA regulations at 40 CFR Part 2.

3(g) Sensitive Questions

No sensitive questions are asked in this information collection.

4. Respondents and Information Requested

4(a) Respondents/NAICS Codes

Respondents are manufacturers of nonroad equipment and engines within the following North American Industry Classification System codes:

333618	Other Engine Equipment Manufacturing
333111	Farm Machinery and Equipment Manufacturing
333120	Construction Machinery Manufacturing

4(b) Information Requested

TPEM consists of four main allowances or exemptions:

- Percent-of-Production Allowance
- Small Volume Allowance
- Technical or Engineering Hardship Relief
- Hardship Relief for Equipment Manufacturers¹

OEMs can claim only one of the first two allowances (percent-of-production or small volume) per power category. If an OEM is requesting hardship relief, it might be able to use one of the first two allowances after the hardship relief period is over, depending on the agreement that the company reaches with EPA. OEMs must demonstrate compliance with the provisions of the allowance they have selected for each power category by submitting the corresponding calculations and by keeping adequate records of all exempt equipment.

OEMs electing to participate in TPEM must also assure, in writing, to the engine manufacturer supplying the noncompliant engines that these engines are going to be used only in accordance with the provisions of TPEM. Engine manufacturers need that written assurance to protect themselves against the liabilities found in 40 CFR 89.1003.

Under Tier 4 regulations, engine manufacturers are required to attach a label to the noncompliant engines used under the provisions of TPEM.

¹ Hardship relief for engine manufacturers is provided under 1068.255 as part of the general certification and compliance provisions and is included into the general compression-ignition ICR 2060-0287.

Although regulations governing previous Tiers do not require labeling, EPA has suggested that manufacturers attach the label voluntarily. OEMs, importers and engine manufacturers have welcomed this suggestion as it prevents unnecessary problems at the time of importation. To be legally imported, an engine needs to be certified and labeled accordingly. Unlabeled engines might be detained by Customs until the importer can prove that the engine is certified (and the label is obscured or missing) or exempt from compliance. By labeling the engine, OEMs let Customs know that the engine is covered by TPEM's provisions right away.

Part 1039.627 also provides OEMs with incentives to use cleaner engines. Under the offsets provision, an OEM may increase in later years the amount of their allowances if they use engines certified to standards stringent than current standards in earlier years. Manufacturers using this provision must also report their generation and use of the offsets when they submit their first annual report.

There are also special compliance provisions for equipment imported under TPEM set forth at Part 1039.626. A foreign OEM may use this program if they submit themselves to US laws and commit to give access to EPA employees to their facilities, employees and records during an audit (same as domestic OEMs). They must also provide English translations of their documents as well as interpreters, appoint an agent for service of process in the District of Columbia, and post a bond to cover any potential enforcement action. Section 1039.626, Table 1 lists the amount of the bond per engine per power category.

(i) Data Items

a. Information Items Requested from Equipment Manufacturers

- Program participation: small volume and percent of production allowances
 - o Letter notifying EPA of participation intent (Tier 4 only) – must be submitted before January 1 of the first year the OEM intends to participate in the program.
 - o Report numbers of equipment exempted and calculations to verify compliance with all provisions the OEM is using
 - One time after the end of the program (Tier 1-Tier 3 Program)
 - Once year (Tier 4 Program)
 - Offset provision calculations (Tier 4, only in the first annual report)
 - o Letter to the engine manufacturer requesting noncompliant engines to use under the program

- Application for Hardship Relief - OEMs who feel that TPEM does not provide a viable alternative for them to comply with EPA emissions regulations on a timely manner and, as a consequence, will face serious economic hardship, may apply for hardship relief.
 - o Statement that the applicant is not also the engine manufacturer
 - o Evidence showing that the conditions causing the impending violation are substantially not the applicant's fault
 - o Evidence showing that, if relief is not granted, the applicant will face serious economic hardship
 - o Demonstration that no other allowance will help avoid the impending violation

- Application for Technical or Engineering Hardship Relief - available for certain power categories only and for OEMs who do not also manufacture their equipment, this provision allows small OEMs (as defined at 1039(b)(2)) to petition EPA for permission to increase the number of equipment they can exempt under TPEM provided the circumstances ailing them are unusual and extreme and clearly outside the OEM's control.
 - o A written request of hardship submitted before any violation occurs
 - o Description of design process
 - o Description of efforts to find other compliant engines
 - o Description of the steps the OEM has taken to minimize the scope of the request
 - o Estimated number or percentage of additional allowance needed

- Recordkeeping Requirements - OEMs must keep records of all exempt equipment. Under the Tier 1-Tier 3 Program, OEMs and/or their representatives must keep sufficient records to demonstrate compliance until at least two full years after the last year in which the allowances are available for each power category (89.102(e)(2)). Tier 4 regulations, however, require OEMs to keep records for at least five years after the last year the program was available for each power category (1039.625(h)). All OEMs must make these records available to the Agency upon request. An OEM with inaccurate or inadequate records would be subject to civil penalties under existing law.
 - o Number of engines and calculations
 - o Equipment and engine model numbers
 - o Serial numbers
 - o Dates of manufacture
 - o Engine rated power
 - o Copy of all reports and notifications submitted

- o Sufficient information to verify compliance
- b. Information Items Requested from Engine Manufacturers
 - Annual report - Every year, within 30 days of the end of the model year, engine manufacturers supplying noncompliant engines under the provisions of TPEM must submit a report with the number of engines produced by:
 - o Engine Model
 - o Purchaser or shipping destination
 - o Other categories that EPA may require

(ii) Respondent Activities

Activities carried out by participating OEMs are as follows:

- Review the regulations; OEMs may contact EPA for further guidance
- Select an allowance per power category and decide what equipment to exempt
- Notify EPA of participation (optional for Tier 1-Tier 3)
- Send a letter to the engine manufacturer
- Count exempt equipment as it is produced
- Make corresponding calculations to ensure compliance with the requirements of the selected allowance
- Submit calculations and actual production data to EPA
- Retain and maintain records, and submit them upon request

Additional activities for foreign manufacturers:

- Appoint representative in Washington, DC
- Post a bond
- Provide translations into English of their documents and interpreters during audits

OEMs who wish to apply for hardship relief will:

- Submit their request in writing describing their situation, and
- Provide proof that they will face serious economic hardship if relief is not granted

Engine manufacturers participating in TPEM as providers of noncompliant engines:

- Receive requests for engines and supply them (customary business practice)
- Gather information about who is requesting and purchasing the

- noncompliant engines
- Report to EPA their sales under TPEM by engine model and purchaser
- Keep records

5. The Information Collected--Agency Activities, Collection Methodology, and Information Management

5(a) Agency Activities

EPA spends a significant amount of time answering questions and providing guidance to OEMs, importers, engine manufacturers and other interested parties about the program. EPA reviews and stores the information and reports provided by OEMs or their representatives. The information contained in the reports will be used to verify compliance and for enforcement purposes, as needed. The agency also conducts investigations if there is reason to believe an OEM or its representative is misusing the program or failing to comply with its requirements.

5(b) Collection Methodology and Management

Currently, EPA receives information from respondents both in electronic format and in hard copy. EPA may, in the future, set up a database to collect OEM reports. Once the database is in place, EPA will store respondent's information both in hard copy and electronic format.

5(c) Small Entity Flexibility

TPEM is particularly useful to small businesses as it provides them with additional time to comply with EPA emission regulations. Actually, the format of the program is based on recommendations made by the panel convened for the August 1998 rule under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The small volume allowance is intended to address the needs of small businesses with a limited product line. The percent-of-production allowance requires OEMs to use certified engines in a portion of their production. The small volume allowance eliminates that requirement and allows OEMs to exempt up to 200 pieces of equipment without using certified engines at all.

Tier 4 regulations also provide a Technical or Engineering Hardship Relief Provision exclusively for small OEMs. This provision allows small OEMs to request an increase of their allowances when they face extreme and unusual circumstances that are outside of their control.

The information being requested is the minimum needed to maintain

the integrity of the program. Further measures to simplify reporting for small businesses do not appear prudent or necessary.

5(d) Collection Schedule

Under the Tier1-Tier 3 Program, information submitted by OEMs is collected only at the beginning and at the end of their participation in the program. At the beginning, they notify EPA of their participation in the program, if they wish to. At the end of the program, they must submit their calculations (no later than December 31 of the final year in which they use the allowances).

The Tier 4 Program requires EPA notification at the beginning of the program and annual reporting from OEMs.

Engine manufacturers need to submit their TPEM production reports every year, concurrent with the engine production reports they already submit under the certification program.

6. Estimating the Burden and Cost of the Collection

Refer to Table 1 through Table 3 in Appendix 1 for details.

6(a) Estimating Respondent Burden

Burden estimates were taken from the previous ICRs and adjusted to reflect new regulations, EPA experience and comments from fewer than 10 respondents.

All burden estimates, including those associated with one-time preparations were annualized.

6(b) Estimating Respondent Costs

(i) Estimating Labor Costs

To estimate labor costs, EPA used the Bureau of Labor Statistics= National Industry-specific Occupational Wage Estimates (May 2006) for the Engine and Turbines Industry (SIC 351) and increased by a factor of 2.1 to account for benefits and overhead. The specific rates used are listed below. These are mean hourly rates.

**Table 3
Labor Costs Estimates**

Occupation	SOC Code Number	Mean Hourly Rate (BLS)	110%
Mechanical Engineers	17-2141	\$34.49	\$72.43
Engineering Managers	11-9041	\$52.52	\$110.29
Lawyers	23-1011	\$54.65	\$114.77
Secretaries, Except Legal, Medical and Executive	43-6014	\$14.25	\$29.93

(ii) Estimating Capital and Operations and Maintenance (O&M) Costs

Per 1039.626(a)(9), Foreign OEMs must post a bond before importing their equipment “to cover any potential enforcement actions under the Clean Air Act”. The total value of the bond is based on the per-engine bond values established by the regulation. To estimate this amount, EPA estimated that two foreign OEMs will need to post this bond under the small volume allowance and the power category of 19 kW to 56 kW. This allowance only permits the importation of up to 200 pieces of equipment per year. The bond for the power category is \$300 per engine for a total of \$60,000 per foreign OEM. OEMs may get their bonds from a third-party surety instead of posting the whole amount themselves.

Other Operation and Maintenance Costs associated with TPEM include phone calls, photocopying, postage expenses and diskettes. Diskettes may be used by manufacturers to keep their records.

No capital costs are associated with participation in this program.

(iii) Capital/Start-up vs. Operating and Maintenance Costs

There are no capital or start-up costs associated with this ICR. O&M costs are discussed in section 6(b)(ii).

(iv) Annualizing capital costs

There are no capital costs associated with this ICR.

6(c) Estimating Agency Burden

Table 4 summarizes EPA=s labor costs associated with this information collection. These costs are based on 2007 hourly wage rates obtained from the Office of Personnel Management and adjusted by a factor of 1.6 to account for benefits and overhead.

Table 5
Agency Labor Costs

Occupation	Hourly Rate	160%
Engineer (GS-13/6)	\$44.39	\$71.02
Lawyers (GS-14/5)	\$50.95	\$81.52
Managers (GS-15)	\$52.88	\$84.61
SES-1	\$89.42	\$143.08

EPA estimates that it will conduct 12 audits in the next three years (4 per year) on equipment manufacturers to ensure compliance. O&M costs for these audits include an average of \$75 per company in phone calls, faxes, mail and other expenses and two trips at a cost of \$650 each, annualized.

Other O&M costs include phone calls, faxes, postage, diskettes to store information and other expenses incurred in contacting respondents and costs associated with distribution of the fact sheet and other written guidance.

6(d) Estimating the Respondent Universe and Total Burden and Costs

Tier 1- Tier 3 Program (Part 89)

The majority of the Tier 1-Tier 3 TPEM participants sold equipment outfitted with engines rated below 37 kW. This program lasts for seven years per power category. Most of these OEMs have already ceased or are about to cease participation as the seven-year period for most categories is ending. Tier 1- Tier 3 TPEM will still be in effect during the active period of this collection in only two categories of engines, both representing a small portion of the industry. EPA estimates that about 50 OEMs will still participate under this program. Since these OEMs only need to submit reports once, within one year after they finish their participation, reporting estimates have been annualized.

Tier 4 Program (Part 1039)

The Tier 4 Program requires OEMs to notify EPA in writing of their intent to participate in the program before January 1 of the first year they intend to use the program. To date, EPA has only received about 10 notifications for the first phase of the program, which runs from 2008 through 2012. Therefore, EPA is calculating that a total 30 manufacturers will register for the program during the next three years.

There are fewer participants in this program than in the Tier 1-Tier 3 program because under Tier 4, all engines must meet at least Tier 1 standards. Under the Tier 1-Tier 3 program, engines rated at 37kW or less used in exempted equipment did not have to meet any standards. This opened the door for many companies to claim an allowance in the program without concern of the emission levels of the engines they were using. Furthermore, Tier 4 regulations restrict the program to companies that install at least one engine in the piece of equipment to be exempt, excluding many importers who simply bought equipment from any foreign company and imported it under the importer's own allowances.

The need to post a bond per engine/piece of equipment imported under Tier 4 TPEM further diminishes the expected amount of respondents. Please refer to section 6(b)(ii) for details.

EPA also estimates that only one OEM will apply for hardship, four OEMs from the previous program might be audited and 15 engine manufacturers will sell TPEM engines.

6(e) Bottom Line Burden Hours and Cost Tables

(i) Respondent Tally

Number of Respondents:	99
Number of Activities:	15
Total Hours Per Year:	8,547
Total Labor Cost Per Year:	\$529,372
Total Annual Capital Costs:	0
Total Annual O&M Costs:	\$123,558
Total Costs:	\$652,930

(ii) The Agency Tally

Number of Respondents:	99
Number of Activities:	9
Total Hours Per Year:	922
Total Labor Cost Per Year:	\$69,645
Total Annual Capital Costs:	0
Total Annual O&M Costs:	\$28,342
Total Costs:	\$97,987

6(f) Reasons for change in burden

Burden has decreased due to a program change (new regulations). The current phase, as described in the previous ICR (the Tier1 -Tier 3 Program codified at 40 CFR Part 89), is nearing its end and a new phase with new requirements is starting in 2008 (Tier 4, 40 CFR Part 1039). Some overlap exists between the two programs. Although the new requirements impose a slightly larger burden on respondents, EPA estimates that fewer respondents will participate in the Tier 4 phase. The increase in O&M costs is due largely

to foreign OEMs that must post a bond before importing their equipment “to cover any potential enforcement actions under the Clean Air Act.”

6(g) Burden Statement

The annual public reporting and recordkeeping burden for this collection of information is 86 hours per respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this ICR under Docket ID Number EPA-HQ-OAR-2004-0058, which is available for online viewing at www.regulations.gov, or in person viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW, Washington, D.C. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566-1742. An electronic version of the public docket is available at www.regulations.gov. This site can be used to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select "search," then key in the Docket ID Number identified above. Also, you can send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, D.C. 20503, Attention: Desk Officer for EPA. Please include the EPA Docket ID Number EPA-HQ-OAR-2004-0058 and OMB Control Number 2060-0369 in any correspondence.

