

# Transition Program for Equipment Manufacturers:

## End-of-TPEM Scenarios

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

# Transition Program for Equipment Manufacturers: END-OF-TPEM SCENARIOS

This document provides information to engine and equipment manufacturers participating in the Transition Program for Equipment Manufacturers (TPEM) on topics related to ending their participation on TPEM as the program phases out.

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## Closing out your TPEM participation as the program comes to an end

The Transition Program for Equipment Manufacturers (TPEM) is coming to an end. As shown in the [TPEM Availability Dates tables](#), all allowances will expire between December 31, 2018 and December 31, 2021, for power categories above 19 kW. (The program already ended for power categories under 19 kW.)

If you are participating in TPEM, either as an equipment manufacturer, engine manufacturer or importer, you must be aware of the end dates and what you can do and cannot do with remaining TPEM engines and equipment after the program expires. If you are an equipment importer, please refer to the sections for equipment manufacturers as that information also applies to you. If you manufacture TPEM engines outside the US, please refer to the engine manufacturers' section.

## TPEM Availability Dates

TPEM ends on December 31<sup>st</sup> of the last calendar year shown in the tables below, depending on the power category and the allowance period you are participating in – general allowances (Table 1) or delayed allowances (Table 2). Please note that if you participated during the general allowance period, you cannot also participate in the delayed allowance period for the same power category. Please see [40 CFR 1039.625\(a\)\(1\) and \(a\)\(2\)](#).

**TABLE 1 OF §1039.625—GENERAL AVAILABILITY OF ALLOWANCES**

Power category	Calendar years
kW <19	2008-2014
19 ≤kW <56	2008-2014
56 ≤kW <130	2012-2018
130 ≤kW ≤560	2011-2017
kW >560	2011-2017

**TABLE 2 OF §1039.625—AVAILABILITY OF DELAYED ALLOWANCES**

Power category	Calendar years
kW <19	Delayed allowances are not available for this power category.
19 ≤kW <56	2012-2018
56 ≤kW <130	2014-2020
130 ≤kW ≤560	2014-2020
kW >560	2015-2021

## TPEM End-of-Program FAQs for Equipment Manufacturers

### When is the last day that I can produce TPEM equipment?

As an equipment manufacturer, you may produce or manufacture<sup>1</sup> TPEM (or “flex”) equipment until the last day the program is available for your power category and allowance period, as long as you have not exceeded your allowance limits. For example, if you are participating in TPEM in the 56 kW to 130 kW power category during the general availability allowance period, you may produce TPEM equipment until December 31<sup>st</sup>, 2018. You may not manufacture TPEM equipment on or after January 1<sup>st</sup>, 2019.

For equipment, the date of manufacture is generally defined at 40 CFR [1068.30](#) as the date on which the engine is installed or some point later in the assembly process. If you customarily designate the day you install the engine in a piece of equipment as the date of manufacture, you may install your last TPEM engine no later than December 31 of the last year when allowances are available to you. You may select another point in the assembly process for a piece of equipment as the date of manufacture, as long as that point occurs after you install the engine.

After the TPEM program has ended, there is no limit to how long you have to sell TPEM equipment as long as it was manufactured before the program expired and in compliance with your allowance. However, please note that there are [time limits regarding the importation of TPEM equipment](#) to the U.S.

### What if I didn’t get to use/install all my TPEM engines before the TPEM period ended?

### What if I have left-over engines after I reached the limits of my allowance?

If you purchased more TPEM engines than you were able to install in a piece of equipment before your allowance period is over (or in excess of the total or annual volume limits of your allowance), you may dispose of them in any of the following ways:

- You may export them if they meet the requirements of the destination country;
- You may sell them back to the engine manufacturer if they accept them;
- You may destroy them; or
- You may sell them to an equipment manufacturer that still has allowances available to them if the allowance period is not over yet. However, you should first notify and obtain acknowledgement from the engine manufacturer of the sale and the purchaser must separately provide the engine manufacturer with written assurance that the engines are needed under TPEM (see 40 CFR 1039.625(j)). Please keep clear records of the transaction. Both the engine

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<sup>1</sup> Please note that the terms “produce” and “manufacture” are used interchangeably, both in the TPEM regulation at 40 CFR 1039.625 and in this guidance. The term “manufacture” is defined at 40 CFR 1039.801 as “the physical and engineering process of designing, constructing, and assembling a nonroad engine or a piece of nonroad equipment.”

manufacturer and EPA must be able to locate the engines if needed. Note that the sale of TPEM engines to someone other than an equipment manufacturer (i.e., someone authorized to use exempted TPEM engines under 40 CFR 1039.625(a)) is not permissible.

You may not install TPEM engines in a piece of equipment after the applicable period has ended or after you have exhausted your TPEM allowances. There are no flexibilities for TPEM engines like the normal inventory provisions of [40 CFR 1068.105\(a\)](#), so you may not manufacture new equipment with TPEM engines after the program has ended.

A number of equipment manufacturers have asked if they may keep excess TPEM engines and request that the engine manufacturer re-designate and/or relabel them as replacement engines exempt under 40 CFR 1068.240 for servicing of equipment in the field. We are currently considering this question, but unable to provide a response as to its appropriateness at this time. This guidance will be updated in the near future with more information on the topic.

### How long do I have to import TPEM equipment after the program ends?

If you manufacture equipment outside the US (or if you import someone else's equipment), you may import your TPEM equipment up to December 31<sup>st</sup> of the year after the end of your allowance period. Per [40 CFR 1068.360\(b\)](#), engines installed in new equipment imported into the US must comply with, at minimum, the emission requirements applicable to the model year prior to its importation. That means, for example, that new equipment brought into the US in 2018 must have engines that comply with 2017 model year or newer requirements. Likewise, new equipment imported in 2019 must have engines that comply with 2018 model year or newer requirements.

The effects of this provision on your business depends on the TPEM power category and allowance period you are participating in. For example, TPEM provisions expire on December 31, 2017 for equipment manufacturers participating in the general availability allowance period for the 130 kW to 560 kW power category. Equipment manufactured after that date must have engines that comply with Tier 4 final standards. As a result, if they import equipment into the US in 2018, the engines must be 2017 model year or newer and may comply with either TPEM or Tier 4 final requirements (both engine options were available to these equipment manufacturers in 2017). However, since TPEM is no longer available to them in 2018, any equipment they import in 2019 must have 2018 model year or newer engines that comply with Tier 4 final. Therefore, participants in the 130 to 560 kW power category during the general availability allowance period have until December 31, 2018 to import their TPEM equipment. Please consult the [TPEM End Dates chart](#) to identify the last year that TPEM is available to you according to the power category and allowance period you are participating in and to determine the last year you can import TPEM equipment into the US.

Please note that for the purpose of applying 1068.360(b) to TPEM equipment, the actual date of manufacture is not relevant as long as the equipment was built at any time during the allowance availability period AND it has not been used. In the previous example, participants of the 130 to 560 kW power category during the general availability allowance period can import TPEM equipment in 2018 as long as it was manufactured after the start of that allowance period in 2011. [For importation requirements applicable to used equipment, please see 40 CFR 1068.360(c).]

### What if I keep producing TPEM equipment for the US market after TPEM has ended?

[40 CFR 1068.101\(a\)\(1\)](#) states that “you may not sell, offer for sale, or introduce or deliver into commerce in the United States or import into the United States any new engine/equipment after emission standards take effect for the engine/equipment, unless it is covered by a valid certificate of conformity for its model year and has the required label or tag. You also may not take any of the actions listed in the previous sentence with respect to any equipment containing an engine subject to this part's provisions unless the engine is covered by a valid certificate of conformity for its model year and has the required engine label or tag.” If you install TPEM engines in a piece of equipment intended for the US market after the program has ended, we may find you in violation of 40 CFR Part 1068.101(a)(1), and we may assess a civil penalty up to \$44,539<sup>2</sup> for each engine or piece of equipment in violation. For additional information, please refer to [40 CFR Part 1068, Subpart B](#).

### What if I have already violated the terms of the program?

If you find that you have already exceeded your TPEM allowance, used ineligible engines, produced equipment after TPEM ended, or in any other way violated the terms of the program, please report the violation to EPA. See self-reporting guidelines at <http://www2.epa.gov/compliance/epas-audit-policy>.

### Examples of End-of-program scenarios:

#### Scenario #1: Canceled orders.

“I am an equipment manufacturer and had not exceeded my allowance. I had a customer order and assembled the equipment before the end of the final year of the TPEM period, but the order was canceled.”

**ANSWER:** You may still sell your equipment to another customer after TPEM has ended. There are no limitations in the time you have to sell your legally produced TPEM equipment. However, if you manufactured your equipment outside the US, there is a limit on the [amount of time you have to import](#) that equipment into the US.

#### Scenario #2: I did not receive enough orders.

“I am an equipment manufacturer and had not exceeded my allowance. I assembled a number of TPEM pieces of equipment before the end of the TPEM period, but did not receive enough orders to sell all the equipment before the program ended.”

**ANSWER:** As in the previous scenario, you can sell your equipment after the TPEM period is over. All that matters is that the equipment was manufactured under an available allowance. That means that you had not reached the maximum number of pieces of equipment you can manufacture under your

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<sup>2</sup> New maximum as of August 1, 2016, per the 2016 Civil Monetary Penalty Inflation Adjustment Rule (81 Federal Register 43091, July 1, 2016). For additional information, go to <https://www.epa.gov/sites/production/files/2016-07/documents/finalpenaltyinflationguidance.pdf>.

allowance and TPEM had not expired for your power category and allowance period (general availability vs. delayed).

Scenario #3: I overestimated the number of TPEM engines I would need.

“I am an equipment manufacturer and had not exceeded my allowance. I purchased and inventoried TPEM engines before the end of the TPEM period with the intent to assemble a piece of equipment with that engine in a future year.”

**ANSWER:** You may not manufacture TPEM equipment (which means that you may not install a TPEM engine into a piece of equipment) after the program has ended. Engine inventory provisions [[40 CFR 1068.105\(a\)](#)] do not apply to TPEM engines. Engine inventory provisions allow equipment manufacturers to continue to use certified engines in their inventory after new emission standards apply. TPEM engines are exempted engines for the model year in which they were manufactured, and are not certified.

## TPEM End-of-Program FAQs for Engine Manufacturers:

When is the last day that I can produce TPEM engines? What can I do with remaining TPEM engines?

For an engine to be exempted under TPEM provisions, it must have been requested in writing by an equipment manufacturer under [40 CFR 1039.625](#). Therefore, it must have been manufactured during an available TPEM period. Engines manufactured after December 31<sup>st</sup> of the last year of availability for either allowance period are not exempt under TPEM and must comply with applicable standards or be covered under another valid exemption, such as an export-only exemption. Written assurance from an equipment manufacturer does not limit your liability for complying with [40 CFR 1068.101](#) after the end of the program. However, since equipment manufacturers may not install engines past December 31<sup>st</sup> of the last year of their allowance availability, it is expected that engine manufacturers will need to cease production of TPEM engines for the US market before that date. We also expect that engine manufacturers will not keep TPEM-labeled engines in inventory after the end of the program.

These statements also apply to the transition between the general availability period and the delayed availability period as the standards TPEM engines must meet are different—see [40 CFR 1039.625\(e\)](#).

Likewise, we expect that your customers (or the equipment manufacturing side of your company, if applicable) will not keep TPEM engines in inventory after the end of the program as the inventory provisions at [40 CFR 1068.105\(a\)](#) do not apply to TPEM engines. Please destroy any left-over TPEM labels.

A number of equipment manufacturers have asked if they may keep excess TPEM engines and request that you, the engine manufacturer, re-designate and/or relabel them as replacement engines exempt

under 40 CFR 1068.240 for servicing of equipment in the field. We are currently considering this question, but unable to provide a response as to its appropriateness at this time. This guidance will be updated in the near future with more information on the topic.

### How long do I have to import TPEM engines into the US after the program ends?

If you manufacture engines outside the US, you could technically import your TPEM engines up to December 31<sup>st</sup> of the year in which the applicable TPEM allowance period ends. However, since that is also the deadline for equipment manufacturers to install TPEM engines into their equipment, it is expected that you will import your last TPEM engine with sufficient lead-time for an equipment manufacturer to install it before the deadline expires.

Likewise, the provisions of [40 CFR 1068.360\(b\)](#) that allow [equipment manufacturers to import their TPEM equipment](#) for sale in the US up to a year after the end of the program, does not apply to the importation of TPEM engines not already installed in a piece of equipment. Since the TPEM exemption expires on December 31<sup>st</sup> of the last year of availability, any engine imported after the expiration date must be either certified or covered under a valid exemption.

Please note that these statements also apply to the transition between the general availability period and the delayed availability period as the standards TPEM engines must meet are different—see [40 CFR 1039.625\(e\)](#).

We also expect that you will not keep TPEM-labeled engines in inventory after the end of the program. Please destroy any left-over TPEM labels.

### What if I keep producing or importing TPEM engines for the US market after TPEM has ended?

As for equipment manufacturers, [40 CFR 1068.101\(a\)\(1\)](#) states that “you may not sell, offer for sale, or introduce or deliver into commerce in the United States or import into the United States any new engine/equipment after emission standards take effect for the engine/equipment, unless it is covered by a valid certificate of conformity for its model year and has the required label or tag. You also may not take any of the actions listed in the previous sentence with respect to any equipment containing an engine subject to this part’s provisions unless the engine is covered by a valid certificate of conformity for its model year and has the required engine label or tag.” If you import or introduce into United States commerce TPEM engines after the program has ended, we may find you in violation of 40 CFR Part 1068.101(a)(1) and we may assess a civil penalty up to \$44,539<sup>3</sup> for each engine or piece of equipment in violation. For additional information, please refer to [40 CFR Part 1068, Subparts B and D](#).

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<sup>3</sup> New maximum as of August 1, 2016, per the 2016 Civil Monetary Penalty Inflation Adjustment Rule (81 Federal Register 43091, July 1, 2016). For additional information, go to <https://www.epa.gov/sites/production/files/2016-07/documents/finalpenaltyinflationguidance.pdf>.

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