



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

September 27, 2017

**Amended No Action Assurance for Mobile Power Generators
for Hurricane Recovery Efforts in Puerto Rico**

The United States Environmental Protection Agency (EPA) will exercise its discretion not to pursue enforcement for certain violations of the Clean Air Act (CAA) concerning the importation, sale, donation or distribution of mobile power generators in Puerto Rico to increase the number of generators available for use during the recovery from the devastation of Hurricane Maria. The generators covered by this No Action Assurance (NAA), and the scope and conditions of this NAA, are detailed below. In short, under Category A, this NAA allows for the import and sale of mobile power generators that, while not legal for import and sale in Puerto Rico, satisfy air pollution emissions standards that are similar to current EPA standards. Under Category B, this NAA allows for the import and use of other mobile power generators that do not meet standards similar to current EPA standards, but only if they are removed from Puerto Rico as provided below.

EPA has determined that this NAA, which amends the NAA issued on September 22, 2017, is in the public interest given currently reported conditions in Puerto Rico. Through today's NAA, the EPA is continuing its commitment to address the very difficult circumstances caused by recent hurricanes, especially Hurricane Maria. Available information indicates extreme damage to Puerto Rico's power grid, including near-total destruction to power transmission infrastructure.

The units covered by this NAA include only those units meeting all of the following criteria, referred to hereafter as "Mobile Power Generators":

1. The unit is an internal combustion engine (subject to 40 C.F.R. Parts 1039, 1048, or 1054) that is used in or on a piece of equipment (this does not include loose engines, that is, those not already used in or on a piece of equipment);
2. The unit is designed to and is capable of generating electricity;
3. The unit is portable or transportable, meaning designed to be and capable of being carried to or moved from one location to another; and
4. The unit is not used to power any vehicle or vessel, and is not stationary (that is, regulated under 40 C.F.R. Part 60 or otherwise subject to New Source Performance Standards promulgated under section 111 of the CAA, 42 U.S.C. § 7411).

This NAA arises under Part A of Title II of the CAA, §§ 202–219, 42 U.S.C. §§ 7521–7554, and the regulations promulgated thereunder. These laws aim to reduce emissions from mobile sources of air pollution, including Mobile Power Generators. Sections 203(a) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a) and 7547(d), and 40 C.F.R. § 1068.101(a)(1) prohibit manufacturers

from selling, offering for sale, introducing into commerce, delivering for introduction into commerce (or causing any of the foregoing with respect to) non-compliant Mobile Power Generators. These laws also prohibit any person from importing or causing the import of non-compliant Mobile Power Generators. Here, “non-compliant” means Mobile Power Generators that are not covered by an EPA-issued Certificate of Conformity (for both exhaust and evaporative emission standards) and labeled accordingly, and which are neither exempted nor excluded from the certification and labeling requirements.

The EPA will exercise its discretion not to pursue enforcement for the following violations concerning Mobile Power Generators. This NAA provides only the relief specified below. The scope of this NAA, as well as the various conditions imposed below, are designed to facilitate the importation and use of Mobile Power Generators to aid in hurricane relief, but also to prevent excess air pollution from the continued use of non-compliant Mobile Power Generators once emergency conditions in Puerto Rico have subsided.

Category A: Mobile Power Generators that satisfy emissions standards similar to current EPA standards, and are labeled accordingly

The EPA will exercise its discretion not to pursue enforcement for the sale, offering for sale, introduction into commerce (including lease), delivery for introduction into commerce (including lease), importation of (or causing the foregoing with respect to) the following Category A Mobile Power Generators in Puerto Rico, but only if the following Category A Conditions are satisfied.

Category A Mobile Power Generators include only those which satisfy exhaust emissions standards that are similar to the currently applicable EPA standards set by 40 C.F.R. Parts 1039, 1048, or 1054. This includes only those Mobile Power Generators currently legal for sale in Canada and the European Union, as identified in the Table in Attachment A.

The Category A Conditions are:

1. Each Mobile Power Generator is imported no later than January 31, 2018;
2. Each Mobile Power Generator is sold, leased, donated, or otherwise transferred—and is in fact delivered—to its ultimate purchaser, or the person who places it into service, no later than March 31, 2018;
3. The person acting in reliance upon this NAA (e.g., the importer, seller, lessor, or donor) must report all the following information, as soon as practicable but no later than April 30, 2018.
 - a. name, address, and contact information for the person submitting the report;
 - b. the serial number, manufacturer, model, model year, and date of manufacture for each Mobile Power Generator;
 - c. the emission standards (stated in the terms of the table above) to which each Mobile Power Generator is manufactured;
 - d. if applicable, a picture of the label (or a representative picture or drawing of the label) on each Mobile Power Generator stating the emission standards (stated in the terms of the table above) to which it is manufactured;

- e. the date of importation, the importer of record, the entry number for the importation; and
- f. a description (including name, address and contact information) of who received each Mobile Power Generator, and the nature of the transaction (e.g., donation, sale, lease).

Category B: Mobile Power Generators that do not meet current EPA standards

The EPA will exercise its discretion not to pursue enforcement for the import and lease or donation (to the Commonwealth of Puerto Rico or a nonprofit organization for use in matters of public health or safety in Puerto Rico) of the following Category B Mobile Power Generators in Puerto Rico, but only if the following Category B Conditions are satisfied.

Category B Mobile Power Generators are all Mobile Power Generators, as defined above, regardless of emission performance and regulatory status.

The Category B Conditions are:

1. Each Mobile Power Generator is imported no later than January 31, 2018;
2. Each Mobile Power Generator is removed from service and not operated whatsoever in Puerto Rico, after March 31, 2018.
3. Except in the case of donated units, each Mobile Power Generator is exported from Puerto Rico, or destroyed, no later than April 30, 2018.
4. Each Mobile Power Generator is placed into service only by the person who owns it, or pursuant to a lease or similar time-limited transfer of possession, or by the entity to whom it was donated;
5. No Mobile Power Generator is ever sold, or otherwise has its title or ownership transferred in Puerto Rico. However, Mobile Power Generators may be donated to the Commonwealth of Puerto Rico or a nonprofit organization for use in matters of public health or safety, but in the case of any such donation, the recipient must not sell or lease the units in Puerto Rico;
6. The person acting in reliance upon this NAA (e.g., the importer, seller, lessor, or donor) must report all the following information, as soon as possible but no later than May 31, 2018. Where that person donates the Mobile Power Generator, the report must include the following information insofar as it is available.
 - a. name, address, and contact information for the person submitting the report;
 - b. the serial number, manufacturer, model, model year, and date of manufacture for each Mobile Power Generator;
 - c. the emission standards to which each Mobile Power Generator is manufactured;
 - d. if applicable, a picture of the label (or a representative picture or drawing of the label) on each Mobile Power Generator stating the emission standards to which it is manufactured;
 - e. the date of importation, the importer of record, the entry number for the importation;
 - f. the date of destruction or exportation from Puerto Rico, the exporter of record, and destination for each Mobile Power Generator;

- g. a description of who (including name, address and contact information) leased or used (or both) each Mobile Power Generator, or to whom it was donated; and
 - h. a description of where and how each Mobile Power Generator was used, including total hours of operation and the type of fuel used.
7. Recipients of donated Mobile Power Generators, as described above, must report as soon as possible but no later than May 31, 2018, affirming that the units have been taken out of service in Puerto Rico, and providing a statement of how such units will be permanently taken out of service in Puerto Rico (e.g., exportation or destruction).


The reports for Category A and/or B Generators, referenced above, must be sent by email to Mario Jorquera, Senior Engineer within EPA's Air Enforcement Division, at jorquera.mario@epa.gov. All reports must be presented as a singular file in portable document format (PDF), and be clearly labeled as "Report for Category [A or B, as applicable] Mobile Power Generators Pursuant to EPA's No Action Assurance for Hurricane Relief in Puerto Rico." Where the information for these reports is not available due to the emergency circumstances, the EPA will accept instead as much of the required information that could be obtained if the reporting entity provides a reasonable explanation of why all the information cannot be provided. In addition to the information specified above, each report must include a certification that the information provided is, based on knowledge and belief, true and complete.

EPA will work with Customs and Border Protection personnel on any importation questions arising in connection with this NAA. The EPA reserves the right to extend, revoke or modify the NAA if the EPA believes that such action is necessary to protect public health and the environment. This NAA does not apply to any other federal requirements that may apply to Mobile Power Generation other than the prohibition on importing and introducing the generators in to commerce. Nothing in this NAA is intended to override state or local authorities. Nothing in this exercise of enforcement discretion relieves any person from other obligations under law, if any, concerning these generators.

This NAA does not expire on a particular date because Category A engines should have no significant emission impacts and Category B engines are already required to be exported or destroyed by April 30, 2018.

Please contact Evan Belser, Chief, Vehicle and Engine Enforcement Branch, with questions and information that may inform the EPA as it considers future similar actions that may best serve the public interest. Mr. Belser can be reached at (202) 564-6850 or belser.evan@epa.gov.

Sincerely,



Lawrence Starfield
Acting Assistant Administrator

Attachment A
September 27, 2017 Amended No Action Assurance for Mobile Power Generators
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Engine Type	Foreign Standards	Power Range	Designated Standard
Diesel-fueled and other compression-ignition engines	Canada	All	Tier 4 or TPEM*
	European Union	0 – 560 kW	Stage III A
	South Korea	<19 kW	Phase 3 (in 2018) / Phase 2 now
Gasoline-fueled and other spark-ignition engines	Canada	<56 kW	Phase 2
	European Union	All	Stage III A

* Canadian TPEM allows interim Tier 4 until 12/31/2018 (under delayed availability time frame) for generators between 19 – 56kWe, For generators between 56 and 130kWe, Canada's TPEM program allows Tier 3 until 12/31/2018 (under general availability timeframe).