

Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *April 7, 2014*. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: December 4, 2013.

**Debra H. Thomas,**

*Acting Regional Administrator, Region 8.*

40 CFR part 52 is amended to read as follows:

#### PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

#### Subpart TT—[AMENDED]

■ 2. Section 52.2320 is amended by adding paragraph (c)(75) to read as follows:

##### § 52.2320 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(75) On September 15, 2006, the Governor submitted revisions to the Utah State Implementation Plan (SIP) permitting rules. The September 15, 2006 submittal contains new, amended and renumbered rules in Utah Administrative Code (UAC) Title R-307 that pertain to the issuance of Utah air quality permits. EPA is approving the following rules or parts of rules from the September 15, 2006 submittal: R307-401-1 through 6; R307-401-8; R307-401-9 (except for paragraph (b) and the portions of paragraph (c) that reference paragraph (b)); R307-401-10 through 11; R307-401-13; R307-401-17 through 20; and R307-410-1 through 4. EPA is disapproving the following rules or parts of rules from the September 15, 2006 submittal: R307-401-7; R307-401-9(b) and the portions of 9(c) that reference 9(b); R307-401-12; and R307-410-5. EPA is limitedly approving and limitedly disapproving R307-410-6 from the September 15, 2006 submittal—this means EPA is approving this rule because it will strengthen the SIP but is simultaneously disapproving it because it does not fully comply with applicable requirements. EPA is not acting on the revisions to UAC R307-101-2 because the revisions have been superseded by later revisions to the rule, which EPA approved at § 52.2320(c)(67) (see 73 FR 51222). EPA is not acting on R307-401-14 through 16 because EPA previously acted on such provisions (notice of final rulemaking signed October 19, 2012).

(i) Incorporation by reference.

(A) Title R307 of the Utah Administrative Code, *Environmental Quality, Air Quality*, Rule R307-401, *Permits: New and Modified Sources*, Rule R307-401-1, *Purpose*; Rule R307-401-2, *Definitions*; Rule R307-401-3, *Applicability*; Rule R307-401-4, *General Requirements*; Rule R307-401-5, *Notice of Intent*; Rule R307-401-6, *Review Period*; Rule R307-401-8, *Approval Order*; R307-401-9, *Small Source Exemption* except for R307-401-9(1)(b) and the phrase "or (b)" in R307-401-9(1)(c); Rule R307-401-10, *Source Category Exemptions*; Rule R307-401-11, *Replacement-in-Kind Equipment*; Rule R307-401-13, *Plantwide Applicability Limits*; Rule R307-401-17, *Temporary Relocation*; Rule R307-401-18, *Eighteen Month Review*; Rule R307-

401-19, *Analysis of Alternatives*; and Rule R307-401-20, *Relaxation of Limitations*. Title R307 of the Utah Administrative Code, *Environmental Quality, Air Quality*, Rule R307-410, *Permits: Emissions Impact Analysis*, Rule R307-410-1, *Purpose*; Rule R307-410-2, *Definitions*; Rule R307-410-3, *Use of Dispersion Models*; R307-410-4, *Modeling of Criteria Pollutant Impacts in Attainment Areas*; and R307-410-6, *Stack Heights and Dispersion Techniques*. Effective June 16, 2006, as published in the Utah State Bulletin on December 1, 2005, modified on April 1, 2006, and July 15, 2006. **Note:** The July 15, 2006 publication contains a typographical error in the title for Rule R307-410.

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Parts 1039, 1042, and 1068

[EPA-HQ-OAR-2012-0102; FRL-9905-35-OAR]

RIN 2060-AR48; 2127-AL31

#### Nonroad Technical Amendments

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is adopting amendments to the technical hardship provisions under the Transition Program for Equipment Manufacturers related to the Tier 4 standards for nonroad diesel engines, and to the replacement engine exemption generally applicable to new nonroad engines. These provisions may have minor impacts on the costs and emission reductions of the underlying regulatory programs amended in this action, though in most cases these are simple technical amendments. For those provisions that may have a minor impact on the costs or benefits of the amended regulatory program, any potential impacts would be small and we have not attempted to quantify the potential changes.

**DATES:** This final rule is effective on March 10, 2014, except for § 1039.625(m) which will be effective on February 6, 2014.

**FOR FURTHER INFORMATION CONTACT:** Alan Stout, Environmental Protection Agency, Office of Transportation and Air Quality, Assessment and Standards Division, 2000 Traverwood Drive, Ann Arbor, Michigan 48105; telephone number: (734) 214-4805; email address: [stout.alan@epa.gov](mailto:stout.alan@epa.gov).

**SUPPLEMENTARY INFORMATION:**

This action affects companies that manufacture or remanufacture nonroad

engines and equipment in the United

States. Regulated categories and entities include the following:

Category	NAICS Code <sup>a</sup>	Examples of potentially affected entities
Industry .....	333618	Manufacturers of new nonroad engines.
Industry .....	333111	Manufacturers of farm machinery.
Industry .....	333120	Manufacturers of construction equipment.
Industry .....	336611	Manufacturers of marine vessels.
Industry .....	811310	Engine repair, remanufacture, and maintenance.

**Note:**

<sup>a</sup>North American Industry Classification System (NAICS)

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely covered by these rules. This table lists the types of entities that the agencies are aware may be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your activities are regulated by this action, you should carefully examine the applicability criteria in the referenced regulations. You may direct questions regarding the applicability of this action to the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

**I. Background**

EPA published a direct final rule on June 17, 2013, to amend various aspects of the regulations that apply for heavy-duty highway engines and vehicles and for nonroad engines and equipment (78 FR 36370). For most of those changes, we did not receive adverse comment and most of the amendments became effective as published. We received adverse comments on certain amendments, which led us to withdraw those regulatory changes in a notice published August 16, 2013 (78 FR 49963).

On the same day that we published the direct final rule, we published a companion proposed rule that included all the content of the direct final rule (78 FR 36135). This final rule follows up on two broad areas from the proposed rule that were the subject of adverse comment—the replacement engine exemption for nonroad engines, and the technical hardship and related provisions for nonroad diesel engine and equipment manufacturers transitioning to Tier 4 compliance.

**II. Replacement Engine Exemption**

In 1996, EPA adopted a provision allowing manufacturers in limited circumstances to produce new engines for replacing failed engines that are exempt from the requirement to be certified to current emission standards (61 FR 58102, November 12, 1996). With

this approach, manufacturers have been able to make new, exempt engines in cases where engines certified to current standards do not have the physical or performance characteristics needed to power equipment that was originally equipped with an older engine. Without this provision, some equipment owners would have been forced to prematurely scrap otherwise working equipment (sometimes worth millions of dollars) because no engine meeting current emission standards could be adapted for installation within the space occupied by the original engine.

EPA later amended the replacement engine exemption provisions to address complications related to producing partially complete engines for replacement purposes and to address the need to produce and sell replacement engines such that they would be available to operators with a critical need to avoid extended downtime in the case of engine failure (73 FR 59034, October 8, 2008). These revisions allowed manufacturers to sell a limited number of new, exempt replacement engines without taking the steps that would otherwise be required to document the need for the exemption and to arrange for the proper disposition of the old engine. The amendments also included anti-circumvention provisions to clarify the overall purpose of the replacement engine exemption in an attempt to prevent manufacturers and operators from using exempted engines in ways that were unnecessary and/or detrimental to the environment.

In the June 2013 direct final rule and companion proposed rule, EPA amended these provisions to remove the overly restrictive anti-circumvention provisions and replaced them with a variety of more specific conditions and requirements that were intended to more effectively ensure that the exemption would be used appropriately. We received adverse comment on some of the most recent amendments in § 1068.240(b). Based on these comments, we withdrew all the amendments to § 1068.240(a) through

(d), leaving intact the change to remove the anti-circumvention provisions in § 1068.240(g), with the understanding that we would revisit all the intended changes from § 1068.240(a) through (d) in this subsequent final rule.

EPA continues to believe that new, exempt replacement engines should be used only in cases where a currently certified engine cannot practically be installed to power the old equipment. EPA believes the proposed regulatory language in § 1068.240 serves this purpose without the unintended consequences described above associated with the anti-circumvention provisions. EPA expects manufacturers and operators following the regulations to continue to use the exemption provisions appropriately and not for the purpose of circumventing the emission standards. EPA is adding language to explicitly limit this provision to equipment that has been in service 40 years or less (at the point of installation) so that manufacturers and operators do not use this provision to keep older dirtier equipment in operation beyond its normal lifetime by continually using new, exempt engines to replace old engines. EPA has adopted a similar restriction for stationary engines under 40 CFR 60.4210(i), except that the maximum equipment age is 15 years for stationary engines. EPA will continue to monitor compliance with the amended exemption provisions and will consider any appropriate changes to the regulation in the future to ensure that the exemption is properly used toward this purpose. This 40-year limit does not apply for marine diesel engines, since those engines are subject to separate replacement engine provisions.

We included a 25-year limit in the proposed rule, but four commenters weighed in on this age limit. The California Air Resources Board stated that it did not oppose the proposal and appreciated the intent of the provision to ensure against older technology engines being available indefinitely. However, CARB did not believe it was necessary to incorporate the limit into

the California program because the state's in-use programs are expected to require fleet modernization for most nonroad applications well in advance of the proposed 25 year cut-off. The Northeast States for Coordinated In-Use Management supported the 25-year limit as a reasonable measure to address circumvention concerns. The National Groundwater Association objected to the 25-year limit, noting that their members have thousands of powered drilling units with an expected lifetime of 50 years or more. They stated that limiting access to the replacement engine exemption and thereby requiring operators to prematurely buy expensive new equipment would cause significant economic hardship. They acknowledged that a 40-year limit for groundwater drilling applications would be more appropriate. Case New Holland also described the potential for significant adverse impacts if the 25-year limit were applied to agricultural equipment; they favored simply removing the age specification but also stated that changing to a 40-year limit would provide substantial relief. As a result, we are replacing the proposed 25-year limit with a 40-year limit.

The "tracked option" specified in § 1068.240(b) also includes an additional step to qualify for the replacement engine exemption for equipment not experiencing premature engine failure. In particular, manufacturers would need to make a determination that the replacement engine is designed with the greatest degree of emission control that is available for the particular application (i.e., "cleanest available"). For example, consider an engine being replaced that was built before the Tier 1 standards started to apply and that engines of its power category are currently subject to Tier 4 standards. In addition to the exemption provision requiring the manufacturer to determine that a Tier 4 engine does not have the necessary physical or performance characteristics, the manufacturer must also consider whether any Tier 1, Tier 2, or Tier 3 engines are being produced with the appropriate physical and performance characteristics for replacing the old engine. If a Tier 3 engine is available with the appropriate physical and performance characteristics for a given installation, Tier 1 and Tier 2 engines emitting at levels above the Tier 3 standards would not qualify for an exemption for that equipment. This requirement to use the cleanest available engine fits with the intent of the amendments facilitating voluntary incentive programs involving

replacement engine upgrades toward the goal of reducing emissions from in-use equipment, but without imposing a requirement that would involve new technology development or impractical equipment design changes. A provision similar to this has already been in place for marine diesel engines in § 1042.615. In the case of equipment experiencing premature engine failure, we will continue to apply the simpler requirement that the replacement engine must meet emission standards that are the same as or better than the standards that applied to the old engine. We received no adverse comment on this provision.

We are also revising the provisions related to the disposition of the old engine in § 1068.240(b). The engine manufacturer making the exempt new replacement engine must take possession of the old engine or confirm that it has been destroyed. Although this is not a new requirement, we are including an additional new provision to explicitly allow the re-use of the old engine block, but to limit such re-use. Specifically, to be re-introduced into U.S. commerce, the old engine must either meet current emission standards or qualify for an exemption as if it were a new engine. For example, the old engine could be re-used as a replacement engine for a different piece of equipment under certain circumstances. Under this approach, an engine made with a used engine block and any mix of new or used additional parts would be treated in a consistent way. For example, the recycled replacement engine would be subject to all the demonstrations and documentation requirements of § 1068.240(b), or it could alternatively count toward the engine manufacturer's allowance to produce a limited number of exempt replacement engines under § 1068.240(c). For engines covered by the "tracked option" under § 1068.240(b) that are not re-introduced into U.S. commerce, the engine manufacturer making the new exempt engine must destroy the old engine or confirm that it has been destroyed. We note that destroying an engine means altering it so it can never be used again in any form as a working engine. However, we believe manufacturers will rarely choose to destroy an engine that could be remanufactured as a replacement engine under § 1068.240.

North American Repower provided comments describing their objection to the amendments related to the disposition of the engines being replaced. Their comments focused primarily on their desire for a steady source of old engine blocks to supply

their remanufacturing activities. However, their objection seems to be directed at the existing restriction rather than the proposed flexibility regarding the disposition of engine cores. The existing requirement for the engine manufacturer to take possession of the old engine (or confirm that it was destroyed) has never allowed replaced engines under the "tracked option" in § 1068.240(b) to be reused by other parties. This restriction was put in place in the past because the "tracked option" does not limit the number of exempt replacement engines a manufacturer may produce. Thus, it is important to restrict the re-use of these replaced engines so this option cannot be used to significantly increase the number of older-technology engines in use. To the extent that the provision in question has any impact on the availability of these engine cores, it can only make them more available. The revised regulations explicitly allow for re-use of the replaced engines if they are modified to meet current emission standards, or if they qualify for exemptions that apply for new engines. For example, a manufacturer taking possession of a replaced engine may remanufacture that engine in a certified configuration, or they may sell it as an exempt replacement engine if they take the steps and meet the conditions that apply under § 1068.240. The manufacturer may also sell the engine core to another remanufacturing company under the provisions of § 1068.262; such a transaction was not specifically authorized under the previous regulation. Additionally, we note that these provisions do not limit the ability of remanufacturing companies to recover engine cores from scrapped *equipment* or from engines replaced by *used* engines. Because of limits on producing exempt new replacement engines, it is likely that the number of these other engines will typically be much higher than the number of engines replaced with new exempt replacement engines under § 1068.240(b) in any given year. We are finalizing these provisions as proposed. Note that a more detailed discussion of North American Repower's comments can be found in the docket for this rulemaking.<sup>1</sup>

EPA is also adding some clarification to the replacement engine regulations to address questions that have arisen, as well as making the following changes that did not receive adverse comment:

<sup>1</sup> Response to Comments from North American Repower Regarding Engine Core Recovery." EPA memo to Docket EPA-HQ-OAR-2012-0102 from Alan Stout, January 10, 2014.

- Revising the labeling requirements to account for the possibility of using a new replacement engine to replace a previously exempted replacement engine. To the extent that the revised label statement differs from that specified by California ARB, we would expect to approve an adjusted statement that allows for a single, 50-state label under § 1068.201(c).

- Adjusting the reporting deadline for untracked replacement engines under § 1068.240(c). This change would allow manufacturers some time after the end of the calendar year to make the determinations and to take the required steps to fulfill the tracking requirements for replacement engines under § 1068.240(b). Any engines for which these steps and determinations are incomplete by the deadline for the report would need to be counted as untracked replacement engines. Further, to account for prevailing practices and typical timelines for replacement engines, we are moving back the deadline for this annual report from February 15 to March 31.

- Adding language to allow manufacturers to redesignate their exempt replacement engines before submitting the annual report. The regulation already specifies that it is acceptable to qualify for a tracked exemption under § 1068.240(b), even if that wasn't the original plan, as long as all the applicable conditions and requirements are met. We are adding language to allow the converse as well. Specifically, if manufacturers plan to use a tracked exemption, but find in the end that they don't want to deal with the limitations on what can be done with the old engine (or if any of the other conditions or requirements are not met), they may count that as an untracked exemption for that reporting period.

- Revising § 1068.240(c)(1) to specify that manufacturers may base sales limits for the untracked option on total U.S. production of certified and exempted engines together (including stationary engines).

- Clarifying that the provisions in § 1068.240(d) related to partially complete engines also apply for "current-tier" replacement engines exempted under § 1068.240(e).

- Adding a statement to § 1042.615 for marine diesel engines to clarify our pre-determination that certified Tier 4 engines do not have the appropriate physical and performance characteristics for replacing older non-Tier 4 engines in marine vessels. This policy was established in our final rule from June 30, 2008 (see 73 FR 37157).

### III. Nonroad Diesel Engine Technical Hardship Program

EPA adopted Tier 4 standards for nonroad diesel engines under 40 CFR part 1039 in 2004 (69 FR 38958, June 29, 2004). To meet these standards, engine manufacturers are pursuing development of advanced technologies, including new approaches for exhaust aftertreatment. Equipment manufacturers will need to modify their equipment designs to accommodate these new engine technologies and the corresponding changes to engine operating parameters (such as operating temperatures and heat rejection rates). To provide flexibility for equipment manufacturers in their efforts to respond to these engine design changes, the Tier 4 standards included the Transition Program for Equipment Manufacturers. Flexibilities allowed under this program include delaying compliance for small-volume equipment models for several years or using allowances in the first year to manage the transition to the Tier 4 engines. While a certain number of allowances are available to all companies, the regulation provides additional relief for nonroad diesel equipment manufacturers under certain limited circumstances we refer to as "technical hardship". EPA is amending this technical hardship program to facilitate EPA granting exemptions to address certain hardship circumstances that were not contemplated when the original 2004 final rule was published.

The Transition Program for Equipment Manufacturers is intended to allow nonroad equipment manufacturers wide discretion to manage their product development timeline. Equipment manufacturers may comply either based on a percent of their production (generally for high-volume manufacturers, as described in § 1039.625(b)(1)), or based on a maximum number of exempted pieces of equipment (generally for low-volume manufacturers, as described in § 1039.625(b)(2)). At the same time, the regulations include at § 1039.625(m) an acknowledgement that equipment manufacturers might face a wide range of circumstances, including cases where engine manufacturers might be late in providing compliant engines to nonintegrated equipment manufacturers, such that the specified allowances are insufficient to avoid a disruption in the equipment manufacturer's production schedule. The technical hardship provision at § 1039.625(m) allows EPA to make a judgment that an equipment manufacturer that buys engines from another company, through no fault of its

own, needs additional allowances to manage the transition to Tier 4 products. The regulation as originally adopted specifies a maximum allowance of 150 percent of a manufacturer's annual production (relative to § 1039.625(b)(1)), or a total of 1,100 allowances (relative to § 1039.625(b)(2)). The regulation also allows for economic hardship provisions under § 1068.255; however, that eligibility depends on manufacturers showing that their solvency is in jeopardy without relief. Economic hardship therefore serves as a flexibility provision of last resort.

As the compliance dates for the Tier 4 standards approach, equipment manufacturers have described scenarios where the technical hardship provisions are too restrictive for EPA to address their circumstances. For example, engine manufacturers have in some cases delayed delivery of Tier 4 engines until six or even twelve months after the Tier 4 standards start to apply, which is forcing equipment manufacturers to use up all their allowances under § 1039.625(b) in the first year of the new standards. Some equipment manufacturers have expressed the concern that engine manufacturers in some cases have chosen to take advantage of these program allowances for their own benefit, even though they were intended to provide relief to equipment manufacturers. Not only have there been cases in which engine manufacturers did not have certain engines ready for production when required by the standards, but there have also been cases in which engine manufacturers had not provided prototype engines or even dimensional drawings for certain engine models for equipment manufacturers to use to redesign their equipment. Whether or not this is the result of engine manufacturers acting in bad faith, it seems clear that this questionable planning by engine manufacturers has created the potential for significant hardship to some equipment manufacturers. Although at this point the maximum number of additional allowances available for EPA to grant under § 1039.625(m) would cover a good portion of the second year of the Tier 4 standards, we now understand that this too may be inadequate to allow equipment manufacturers to respond to the engine manufacturers' very late deliveries of compliant engines.

In these cases, the maximum allowable relief under § 1039.625(m) may be insufficient to allow equipment manufacturers to transition to meeting Tier 4 requirements without disrupting their ability to continue producing their equipment models. There have also

been cases where a company would meet the criteria to qualify for consideration for technical hardship under § 1039.625(m) except that the regulation disallowed technical hardship relief for all engines above 560 kW and provided only limited relief for engines above 37 kW. The regulation also provided only limited relief for companies that are not small businesses. In these cases, no additional relief was available under § 1039.625(m), which again would leave equipment manufacturers unable to continue producing their equipment models. To address these circumstances, we proposed to amend the Transition Program for Equipment Manufacturers in three ways to address these concerns.

First, we proposed to remove some of the qualifying criteria so that any non-vertically integrated equipment manufacturer may apply for technical hardship relief under § 1039.625(m) for any size engine, rather than limiting the technical hardship relief to small businesses and to engines within certain power categories. We believe it is more appropriate to rely on our discretion to evaluate each hardship application on its merits rather than automatically precluding hardship relief based on certain characteristics of the engine or the company. If hardship relief is not appropriate because of an engine's power rating or a company's size or financial standing, we would not approve such a request.

Second, we initially removed the maximum number of allowances we can approve under § 1039.625(m). We also removed the deadlines for exercising those additional allowances. Specifically, we adjusted the provision for additional small-volume allowances under § 1039.625(b)(2) and (m)(4) by specifying that we may waive the annual limits on the number of allowances instead of or in addition to granting additional hardship allowances. We did this because there may be times when manufacturers only need approval to use up their regular allowances at a faster pace than the regulations originally allowed.

In response to these amendments, we received adverse comments from the California Air Resources Board and the Manufacturers of Emission Controls Association. They expressed concern about EPA allowing itself unlimited discretion in the total number of allowances we may grant to provide relief to manufacturers that qualified for technical hardship under § 1039.625(m). They also objected to the proposed approach, expressing a concern that we would be putting ourselves in a position to substantially undermine the expected

emission reductions from the Tier 4 program. Therefore, in this final rule we are only increasing the maximum number of percent-of-production hardship allowances EPA may grant from 70 to 200 percent, and the maximum number of and small-volume hardship allowances from 400 to 2,000 units.

Third, we initially removed all limitations for the higher FEL caps under § 1039.104(g). However, the California Air Resources Board and the Manufacturers of Emission Controls questioned the need for the revision and argued that allowing more engines with higher FELs would cause higher emissions where engines were operating, even though the net impact would be emissions-neutral due to the use of emissions credits. Subsequent to these comments, John Deere provided supplemental comments describing their product development efforts for engines in the 19–56 kW power category. They explained why the original limit on the higher FEL cap flexibility was not sufficient for them to complete their development and implementation of Tier 4 technologies in time.

To address the environmental concerns expressed while also accommodating the technology development needs that were explained, we are adopting revised the limits on the higher FEL caps, but isolated that to the 19–56 kW power category. Specifically, we are increasing this limitation for higher FEL caps from 20 to 40 percent annually, and from 40 to 80 percent over the specified four-year period. This expanded flexibility addresses similar technological readiness circumstances, as described in this section for transitioning to the Tier 4 standards. However, with this amendment there would be no net environmental impact since manufacturers would need to produce low-emission engines that generate emission credits to offset the additional credits used by transition engines certified to higher FELs.

We are also revising § 1039.104(g) to specify that the Temporary Compliance Adjustment Factor is the same whether an engine is subject to NO<sub>x</sub> + NMHC standards or NO<sub>x</sub>-only standards. This revision also addresses Tier 3 carry-over engines that would need to certify to the alternate FEL caps after the Tier 4 final standards take effect.

Finally, we are republishing § 1039.625(e)(3), which was inadvertently omitted in the withdrawal notice without the last sentence, which describes the alternative standards that

apply for engines below 56 kW and engines above 560 kW.

Section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C. chapter 5, generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. APA section 553(d) excepts from this provision any action that grants or recognizes an exemption or relieves a restriction. Since the provisions expanding the technical hardship relief in § 1039.625(m) increase access to an exemption from emission standards, EPA is making the revisions to § 1039.625(m) effective immediately upon publication. The expanded technical hardship provisions do not set new requirements, but rather create a streamlined path by which equipment manufacturers unable to install compliant Tier 4 engines may install previous-tier engines that they could not otherwise install without this final rule. Thus, the expanded technical hardship provisions of § 1039.625(m) promulgated in this final rule are effective on February 6, 2014.

#### **IV. Statutory and Executive Order Reviews**

##### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a “significant regulatory action” under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011). These provisions may have minor impacts on the costs and emission reductions of the underlying regulatory programs amended in this action. Where there may be a minor impact on the costs or benefits of the amended regulatory program, any potential impacts would be small and we have not attempted to quantify the potential changes. As such, a regulatory impact evaluation or analysis is unnecessary. EPA also does not expect this rule to have substantial Congressional or public interest.

##### *B. Paperwork Reduction Act*

This action does not impose any new information collection burden. The regulatory changes include changes to the way we implement the emission standards or exemption provisions to reduce burden or to streamline administrative procedures. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at

40 CFR parts 1039 and 1068 under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB Control Numbers 2060–0287 and 2060–0460. The OMB control numbers for EPA’s regulations in title 40 of the Code of Federal Regulations are listed in 40 CFR part 9.

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business as defined by Small Business Administration regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of these rules on small entities, we concluded that this action will not have a significant economic impact on a substantial number of small entities.

This final rule allows for greater flexibility and reduced burden for manufacturers and remanufacturers. There are no costs and therefore no regulatory burden associated with this rule. We have therefore concluded that this rule will not increase regulatory burden for affected small entities.

### D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory

requirements that might significantly or uniquely affect small governments.

### E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this action.

### F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). Tribal governments would be affected only to the extent they purchase and use regulated vehicles. Thus, Executive Order 13175 does not apply to this action.

### G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. Any potential environmental health or safety impacts of this final rule would be very small.

### H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

### I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide

Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve application of new technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

### J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it merely makes minor revisions to existing regulatory programs.

### K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). The changes to § 1039.625(m) are effective on February 6, 2014. All other provisions in this rule are effective on March 10, 2014.

### V. Statutory Authority

Statutory authority for the vehicle controls is found in Clean Air Act section 213 (which authorizes standards for emissions of pollutants from new nonroad engines which emissions cause or contribute to air pollution which may reasonably be anticipated to endanger

public health or welfare), sections 203–209, 216, and 301 (42 U.S.C. 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7550, and 7601).

**List of Subjects**

*40 CFR Part 1039*

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Labeling, Penalties, Reporting and recordkeeping requirements, Warranties.

*40 CFR Part 1042*

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Labeling, Penalties, Vessels, Reporting and recordkeeping requirements, Warranties.

*40 CFR Part 1068*

Environmental protection, Administrative practice and procedure, Confidential business information, Imports, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements, Warranties.

Dated: January 28, 2014.

**Gina McCarthy,**

*Administrator.*

For the reasons set forth in the preamble, the Environmental Protection Agency is amending title 40, chapter I of the Code of Federal Regulations as follows:

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

■ 1. The authority citation for part 1039 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

**Subpart B—[Amended]**

■ 2. Section 1039.104 is amended by revising paragraph (g) to read as follows:

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

\* \* \* \* \*

(g) *Alternate FEL caps.* You may certify engines to the FEL caps in Table 1 of this section instead of the otherwise applicable FEL caps in § 1039.101(d)(1), § 1039.102(e), or § 1039.102(g)(2) for the indicated model years, subject to the following provisions:

(1) The provisions of this paragraph (g) apply for limited numbers of engines as specified in this paragraph (g)(1). If you certify an engine under an alternate FEL cap in this paragraph (g) for any pollutant, count it toward the allowed percentage of engines certified to the alternate FEL caps.

(i) Except as specified in paragraph (g)(1)(ii) of this section, the number of engines certified to the FEL caps in Table 1 of this section must not exceed 20 percent in any single model year in each power category, and the sum of percentages over the 4-year period must not exceed a total of 40 percent in each power category.

(ii) For the 19–56 kW power category, the number of engines certified to the FEL caps in Table 1 of this section must not exceed 40 percent in any single model year, and the sum of percentages over the 4-year period must not exceed a total of 80 percent.

(2) If your engine is not certified to transient emission standards under the provisions of § 1039.102(a)(1)(iii), you must adjust your FEL upward by a temporary compliance adjustment factor (TCAF) before calculating your negative emission credits under § 1039.705, as follows:

(i) The temporary compliance adjustment factor for NO<sub>x</sub> and for NO<sub>x</sub> + NMHC is 1.1.

(ii) The temporary compliance adjustment factor for PM is 1.5.

(iii) The adjusted FEL (FEL<sub>adj</sub>) for calculating emission credits is determined from the steady-state FEL (FEL<sub>ss</sub>) using the following equation:

$$FEL_{adj} = (FEL_{ss}) \times (TCAF)$$

(iv) The unadjusted FEL (FEL<sub>ss</sub>) applies for all purposes other than credit calculation.

(3) These alternate FEL caps may not be used for phase-in engines.

(4) 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 40 CFR part 89.

TABLE 1 OF § 1039.104—ALTERNATE FEL CAPS

Maximum engine power	PM FEL cap, g/kW-hr	Model years for the alternate PM FEL cap	NO <sub>x</sub> FEL cap, g/kW-hr <sup>1</sup>	Model years for the alternate NO <sub>x</sub> FEL cap
19 ≤ kW < 56 .....	0.30	<sup>2</sup> 2012–2015	.....	.....
56 ≤ kW < 130 <sup>3</sup> .....	0.30	2012–2015	3.8	<sup>4</sup> 2012–2015
130 ≤ kW ≤ 560 .....	0.20	2011–2014	3.8	<sup>5</sup> 2011–2014
kW > 560 <sup>6</sup> .....	0.10	2015–2018	3.5	2015–2018

<sup>1</sup> The FEL cap for engines demonstrating compliance with a NO<sub>x</sub> + NMHC standard is equal to the previously applicable NO<sub>x</sub> + NMHC standard specified in 40 CFR 89.112 (generally the Tier 3 standards).

<sup>2</sup> For manufacturers certifying engines under Option #1 of Table 3 of § 1039.102, these alternate FEL caps apply to all 19–56 kW engines for model years from 2013 through 2016 instead of the years indicated in this table. For manufacturers certifying engines under Option #2 of Table 3 of § 1039.102, these alternate FEL caps do not apply to 19–37 kW engines except in model years 2013 to 2015.

<sup>3</sup> For engines below 75 kW, the FEL caps are 0.40 g/kW-hr for PM emissions and 4.4 g/kW-hr for NO<sub>x</sub> emissions.

<sup>4</sup> For manufacturers certifying engines in this power category using a percentage phase-in/phase-out approach instead of the alternate NO<sub>x</sub> standards of § 1039.102(e)(1), the alternate NO<sub>x</sub> FEL cap in the table applies only in the 2014–2015 model years if certifying under § 1039.102(d)(1), and only in the 2015 model year if certifying under § 1039.102(d)(2).

<sup>5</sup> For manufacturers certifying engines in this power category using the percentage phase-in/phase-out approach instead of the alternate NO<sub>x</sub> standard of § 1039.102(e)(2), the alternate NO<sub>x</sub> FEL cap in the table applies only for the 2014 model year.

<sup>6</sup> For engines above 560 kW, the provision for alternate NO<sub>x</sub> FEL caps is limited to generator-set engines.

(5) You may certify engines under this paragraph (g) in any model year provided for in Table 1 of this section without regard to whether or not the engine family’s FEL is at or below the otherwise applicable FEL cap. For

example, a 200 kW engine certified to the NO<sub>x</sub> + NMHC standard of § 1039.102(e)(3) with an FEL equal to the FEL cap of 2.8 g/kW-hr may nevertheless be certified under this paragraph (g).

(6) For engines you produce under this paragraph (g) after the Tier 4 final standards take effect, you may certify based on a NO<sub>x</sub> + NMHC FEL as described in Table 1 of this section. Calculate emission credits for these

engines relative to the applicable NO<sub>x</sub> standard in § 1039.101 or § 1039.102, plus 0.1 g/kW-hr.

\* \* \* \* \*

**Subpart G—[Amended]**

■ 3. Section 1039.625 is amended by revising paragraphs (e)(3) and (m) to read as follows:

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

\* \* \* \* \*

(e) \* \* \*

(3) In all other cases, engines at or above 56 kW and at or below 560 kW must meet the appropriate Tier 3 standards described in 40 CFR 89.112. Engines below 56 kW and engines above 560 kW must meet the appropriate Tier 2 standards described in 40 CFR 89.112.

\* \* \* \* \*

(m) *Additional exemptions for technical or engineering hardship.* You may request additional engine allowances under paragraph (b) of this section; however, you may use these extra allowances only for those equipment models for which you, or an affiliated company, do not also produce the engine. Additional allowances under this paragraph (m) must be used within the specified seven-year period. After considering the circumstances, we may permit you to introduce into U.S. commerce equipment with such engines that do not comply with Tier 4 emission standards, as follows:

(1) We may approve additional exemptions if extreme and unusual circumstances that are clearly outside your control and that could not have been avoided with reasonable discretion have resulted in technical or engineering problems that prevent you from meeting the requirements of this part. You must show that you exercised prudent planning and have taken all reasonable steps to minimize the scope of your request for additional allowances.

(2) To apply for exemptions under this paragraph (m), send the Designated Compliance Officer a written request as soon as possible before you are in violation. In your request, include the following information:

(i) Describe your process for designing equipment.

(ii) Describe how you normally work cooperatively or concurrently with your engine supplier to design products.

(iii) Describe the engineering or technical problems causing you to request the exemption and explain why you have not been able to solve them. Describe the extreme and unusual

circumstances that led to these problems and explain how they were unavoidable.

(iv) Describe any information or products you received from your engine supplier related to equipment design—such as written specifications, performance data, or prototype engines—and when you received it.

(v) Compare the design processes of the equipment model for which you need additional exemptions and that for other models for which you do not need additional exemptions. Explain the technical differences that justify your request.

(vi) Describe your efforts to find and use other compliant engines, or otherwise explain why none is available.

(vii) Describe the steps you have taken to minimize the scope of your request.

(viii) Include other relevant information. You must give us other relevant information if we ask for it.

(ix) Estimate the increased percent of production you need for each equipment model covered by your request, as described in paragraph (m)(3) of this section. Estimate the increased number of allowances you need for each equipment model covered by your request, as described in paragraph (m)(4) of this section.

(3) We may approve your request to increase the allowances under paragraph (b)(1) of this section, subject to the following limitations:

(i) You must use up the allowances under paragraph (b)(1) of this section before using any additional allowances under this paragraph (m).

(ii) The additional allowances under this paragraph (m)(3) may not exceed 200 percent for each power category.

(iii) You may use these additional allowances only for the specific equipment models covered by your request.

(4) We may approve your request to increase the small-volume allowances under paragraph (b)(2) of this section, subject to the following limitations:

(i) You are eligible for additional allowances under this paragraph (m)(4) only if you do not use the provisions of paragraph (m)(3) of this section to obtain additional allowances within a given power category.

(ii) You must use up the allowances under paragraph (b)(2) of this section before using any additional allowances under this paragraph (m).

(iii) The additional allowances under this paragraph (m)(4) may not exceed 2,000 units.

(iv) We may approve additional allowances in the form of waiving the annual limits specified in paragraph

(b)(2) of this section instead of or in addition to increasing the total number of allowances under this paragraph (m)(4).

(v) If we increase the total number of allowances, you may use these allowances only for the specific equipment models covered by your request.

**PART 1042—CONTROL OF EMISSIONS FROM NEW AND IN-USE MARINE COMPRESSION-IGNITION ENGINES AND VESSELS**

■ 4. The authority citation for part 1042 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

**Subpart G—[Amended]**

■ 5. Section 1042.615 is amended as follows:

■ a. By revising the introductory text and paragraphs (a) introductory text and (a)(1).

■ b. By redesignating paragraphs (b) through (d) as paragraphs (c) through (e).

■ c. By adding a new paragraph (b).

**§ 1042.615 Replacement engine exemption.**

For Category 1 and Category 2 replacement engines, the provisions of 40 CFR 1068.240 apply except as described in this section. In unusual circumstances, you may ask us to allow you to apply these provisions for a new Category 3 engine.

(a) This paragraph (a) applies instead of the provisions of 40 CFR 1068.240(b)(2). The prohibitions in 40 CFR 1068.101(a)(1) do not apply to a new replacement engine if all the following conditions are met:

(1) You use good engineering judgment to determine that no engine certified to the current requirements of this part is produced by any manufacturer with the appropriate physical or performance characteristics to repower the vessel. We have determined that engines certified to Tier 4 standards do not have the appropriate physical or performance characteristics to replace uncertified engines or engines certified to emission standards that are less stringent than the Tier 4 standards.

\* \* \* \* \*

(b) The 40-year limit specified in 40 CFR 1068.240(a) does not apply for engines subject to this part 1042. You may accordingly omit the statement on the permanent labels specified in 40 CFR 1068.240 describing this limitation.

\* \* \* \* \*



**PART 1068—GENERAL COMPLIANCE PROVISIONS FOR HIGHWAY, STATIONARY, AND NONROAD PROGRAMS**

■ 6. The authority citation for part 1068 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

**Subpart C—[Amended]**

■ 7. Section 1068.240 is revised to read as follows:

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

The prohibitions in § 1068.101(a)(1) do not apply to a new engine if it is exempt under this section as a replacement engine. For purposes of this section, a replacement engine is a new engine that is used to replace an engine that has already been placed into service (whether the previous engine is replaced in whole or in part with a new engine).

(a) *General provisions.* You are eligible for the exemption for new replacement engines only if you are a certificate holder. Note that this exemption does not apply for locomotives (40 CFR 1033.601) and that unique provisions apply to marine compression-ignition engines (40 CFR 1042.615).

(1) Paragraphs (b), (c), and (d) of this section describe different approaches for exempting new replacement engines where the engines are specially built to correspond to an engine model from an earlier model year that was subject to less stringent standards than those that apply for current production (or is no longer covered by a certificate of conformity). You must comply with the requirements of paragraph (b) of this section for any number of replacement engines you produce in excess of what we allow under paragraph (c) of this section. You must designate engines you produce under this section as tracked engines under paragraph (b) of this section or untracked engines under paragraph (c) of this section by the deadline for the report specified in paragraph (c)(3) of this section.

(2) Paragraph (e) of this section describes a simpler approach for exempting partially complete new replacement engines that are built under a certificate of conformity that is valid for producing engines for the current model year.

(3) For all the different approaches described in paragraphs (b) through (e) of this section, the exemption applies only for equipment that is 40 years old or less at the time of installation.

(b) *Previous-tier replacement engines with tracking.* You may produce any number of new engines to replace an engine already placed into service in a piece of equipment, as follows:

(1) The engine being replaced must have been either not originally subject to emission standards or originally subject to less stringent emission standards than those that apply to a new engine meeting current standards. The provisions of this paragraph (b) also apply for engines that were originally certified to the same standards that apply for the current model year if you no longer have a certificate of conformity to continue producing that engine configuration.

(2) The following requirements and conditions apply for engines exempted under this paragraph (b):

(i) You must determine that you do not produce an engine certified to meet current requirements that has the appropriate physical or performance characteristics to repower the equipment. If the engine being replaced was made by a different company, you must make this determination also for engines produced by this other company.

(ii) In the case of premature engine failure, if the old engine was subject to emission standards, you must make the new replacement engine in a configuration identical in all material respects to the old engine and meet the requirements of § 1068.265. You may alternatively make the new replacement engine in a configuration identical in all material respects to another certified engine of the same or later model year as long as the engine is not certified with a family emission limit higher than that of the old engine.

(iii) For cases not involving premature engine failure, you must make a separate determination for your own product line addressing every tier of emission standards that is more stringent than the emission standards for the engine being replaced. For example, if the engine being replaced was built before the Tier 1 standards started to apply and engines of that power category are currently subject to Tier 3 standards, you must also consider whether any Tier 1 or Tier 2 engines that you produce have the appropriate physical and performance characteristics for replacing the old engine; if you produce a Tier 2 engine with the appropriate physical and performance characteristics, you must use it as the replacement engine.

(iv) You must keep records to document your basis for making the determinations in paragraphs (b)(2)(i) and (iii) of this section.

(3) An old engine block replaced by a new engine exempted under this paragraph (b) may be reintroduced into U.S. commerce as part of an engine that meets either the current standards for new engines, the provisions for new replacement engines in this section, or another valid exemption. Otherwise, you must destroy the old engine block or confirm that it has been destroyed.

(4) If the old engine was subject to emission standards, the replacement engine must meet the appropriate emission standards as specified in § 1068.265. This generally means you must make the new replacement engine in a previously certified configuration.

(5) Except as specified in paragraph (d) of this section, you must add a permanent label, consistent with § 1068.45, with your corporate name and trademark and the following additional information:

(i) Add the following statement if the new engine may only be used to replace an engine that was not subject to any emission standards under this chapter:

THIS REPLACEMENT ENGINE IS EXEMPT UNDER 40 CFR 1068.240. SELLING OR INSTALLING THIS ENGINE FOR ANY PURPOSE OTHER THAN TO REPLACE AN UNREGULATED ENGINE MAY BE A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY. THIS ENGINE MAY NOT BE INSTALLED IN EQUIPMENT THAT IS MORE THAN 40 YEARS OLD AT THE TIME OF INSTALLATION.

(ii) Add the following statement if the new engine may replace an engine that was subject to emission standards:

THIS ENGINE COMPLIES WITH U.S. EPA EMISSION REQUIREMENTS FOR [Identify the appropriate emission standards (by model year, tier, or emission levels) for the replaced engine] ENGINES UNDER 40 CFR 1068.240. SELLING OR INSTALLING THIS ENGINE FOR ANY PURPOSE OTHER THAN TO REPLACE A [Identify the appropriate emission standards for the replaced engine, by model year(s), tier(s), or emission levels]] ENGINE MAY BE A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY. THIS ENGINE MAY NOT BE INSTALLED IN EQUIPMENT THAT IS MORE THAN 40 YEARS OLD AT THE TIME OF INSTALLATION.

(6) Engines exempt under this paragraph (b) may not be introduced into U.S. commerce before you make the determinations under paragraph (b)(2) of this section, except as specified in this paragraph (b)(6). We may waive this restriction for engines excluded under paragraph (c)(5) of this section that you ship to a distributor. Where we waive this restriction, you must take steps to ensure that the engine is installed consistent with the requirements of this paragraph (b). For example, at a minimum you must report to us

annually whether engines we allowed you to ship to a distributor under this paragraph (b)(6) have been placed into service or remain in inventory. After an engine is placed into service, your report must describe how the engine was installed consistent with the requirements of this paragraph (b). Send these reports to the Designated Compliance Officer by the deadlines we specify.

(c) *Previous-tier replacement engines without tracking.* You may produce a limited number of new replacement engines that are not from a currently certified engine family under the provisions of this paragraph (c). If you produce new engines under this paragraph (c) to replace engines subject to emission standards, the new replacement engine must be in a configuration identical in all material respects to the old engine and meet the requirements of § 1068.265. You may make the new replacement engine in a configuration identical in all material respects to another certified engine of the same or later model year as long as the engine is not certified with a family emission limit higher than that of the old engine. The provisions of this paragraph (c) also apply for engines that were originally certified to the same standards that apply for the current model year if you no longer have a certificate of conformity to continue producing that engine configuration. This would apply, for example, for engine configurations that were certified in an earlier model year but are no longer covered by a certificate of conformity. The following provisions apply to engines exempted under this paragraph (c):

(1) You may produce a limited number of replacement engines under this paragraph (c) representing 0.5 percent of your annual production volumes for each category and subcategory of engines identified in Table 1 to this section (1.0 percent through 2013). Calculate this number by multiplying your annual U.S.-directed production volume by 0.005 (or 0.01 through 2013) and rounding to the nearest whole number. Determine the appropriate production volume by identifying the highest total annual U.S.-directed production volume of engines from the previous three model years for all your certified engines from each category or subcategory identified in Table 1 to this section, as applicable. In unusual circumstances, you may ask us to base your production limits on U.S.-directed production volume for a model year more than three years prior. You may include stationary engines and exempted engines as part of your U.S.-

directed production volume. Include U.S.-directed engines produced by any parent or subsidiary companies and those from any other companies you license to produce engines for you.

(2) Count every exempted new replacement engine from your total U.S.-directed production volume that you produce in a given calendar year under this paragraph (c), including partially complete engines, except for the following:

(i) Engines built to specifications for an earlier model year under paragraph (b) of this section.

(ii) Partially complete engines exempted under paragraph (e) of this section.

(3) Send the Designated Compliance Officer a report by March 31 of the year following any year in which you produced exempted replacement engines under this paragraph (c). In your report include the total number of replacement engines you produce under this paragraph (c) for each category or subcategory, as appropriate, and the corresponding total production volumes determined under paragraph (c)(1) of this section. If you send us a report under this paragraph (c)(3), you must also include the total number of replacement engines you produced under paragraphs (b), (d), and (e) of this section. You may include this information in production reports required under the standard-setting part.

(4) Add a permanent label as specified in paragraph (b)(5) of this section. For partially complete engines, you may alternatively add a permanent or removable label as specified in paragraph (d) of this section.

(5) You may not use the provisions of this paragraph (c) for any engines in the following engine categories or subcategories:

(i) Land-based nonroad compression-ignition engines we regulate under 40 CFR part 1039 with a per-cylinder displacement at or above 7.0 liters.

(ii) Marine compression-ignition engines we regulate under 40 CFR part 1042 with a per-cylinder displacement at or above 7.0 liters.

(iii) Locomotive engines we regulate under 40 CFR part 1033.

(d) *Partially complete engines.* The following requirements apply if you ship a partially complete replacement engine under this section:

(1) Provide instructions specifying how to complete the engine assembly such that the resulting engine conforms to the applicable certificate of conformity or the specifications of § 1068.265. Where a partially complete engine can be built into multiple different configurations, you must be

able to identify all the engine models and model years for which the partially complete engine may properly be used for replacement purposes. Your instructions must make clear how the final assembler can determine which configurations are appropriate for the engine they receive.

(2) You must label the engine as follows:

(i) If you have a reasonable basis to believe that the fully assembled engine will include the original emission control information label, you may add a removable label to the engine with your corporate name and trademark and the statement: "This replacement engine is exempt under 40 CFR 1068.240." This would generally apply if all the engine models that are compatible with the replacement engine were covered by a certificate of conformity and they were labeled in a position on the engine or equipment that is not included as part of the partially complete engine being shipped for replacement purposes. Removable labels must meet the requirements specified in § 1068.45.

(ii) If you do not qualify for using a removable label in paragraph (d)(1) of this section, you must add a permanent label in a readily visible location, though it may be obscured after installation in a piece of equipment. Include on the permanent label your corporate name and trademark, the engine's part number (or other identifying information), and the statement: "THIS REPLACEMENT ENGINE IS EXEMPT UNDER 40 CFR 1068.240. THIS ENGINE MAY NOT BE INSTALLED IN EQUIPMENT THAT IS MORE THAN 40 YEARS OLD AT THE TIME OF INSTALLATION."

If there is not enough space for this statement, you may alternatively add: "REPLACEMENT" or "SERVICE ENGINE." For purposes of this paragraph (d)(2), engine part numbers permanently stamped or engraved on the engine are considered to be included on the label.

(e) *Partially complete current-tier replacement engines.* The provisions of paragraph (d) of this section apply for partially complete engines you produce from a current line of certified engines or vehicles. This applies for engine-based and equipment-based standards as follows:

(1) Where engine-based standards apply, you may introduce into U.S. commerce short blocks or other partially complete engines from a currently certified engine family as replacement components for in-use equipment powered by engines you originally produced. You must be able to identify all the engine models and model years

for which the partially complete engine may properly be used for replacement purposes.

(2) Where equipment-based standards apply, you may introduce into U.S. commerce engines that are identical to engines covered by a current certificate of conformity by demonstrating

compliance with currently applicable standards where the engines will be installed as replacement engines. These engines might be fully assembled, but we would consider them to be partially complete engines because they are not yet installed in the equipment.

(f) *Emission credits.* Replacement engines exempted under this section may not generate or use emission credits under the standard-setting part nor be part of any associated credit calculations.

TABLE 1 TO § 1068.240—ENGINE CATEGORIES AND SUBCATEGORIES FOR NEW REPLACEMENT ENGINES EXEMPTED WITHOUT TRACKING

Engine category	Standard-setting part <sup>1</sup>	Engine subcategories
Highway CI .....	40 CFR part 86 .....	disp. < 0.6 L/cyl. 0.6 ≤ disp. < 1.2 L/cyl. disp. ≥ 1.2 L/cyl.
Nonroad CI, Stationary CI, and Marine CI .....	40 CFR part 1039, or 40 CFR part 1042 .....	disp. < 0.6 L/cyl. 0.6 ≤ disp. < 1.2 L/cyl. 1.2 ≤ disp. < 2.5 L/cyl. 2.5 ≤ disp. < 7.0 L/cyl.
Marine SI .....	40 CFR part 1045 .....	outboard. personal watercraft. all engines.
Large SI, Stationary SI, and Marine SI (sterndrive/inboard only).	40 CFR part 1048 or 40 CFR part 1045 .....	
Recreational vehicles .....	40 CFR part 1051 .....	off-highway motorcycle. all-terrain vehicle. snowmobile.
Small SI and Stationary SI .....	40 CFR part 1054 .....	handheld. Class I. Class II.

<sup>1</sup> Include an engine as being subject to the identified standard-setting part if it will eventually be subject to emission standards under that part. For example, if you certify marine compression-ignition engines under part 94, count those as if they were already subject to part 1042.

[FR Doc. 2014-02612 Filed 2-5-14; 8:45 am]  
BILLING CODE 6560-50-P

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

**44 CFR Part 64**

[Docket ID FEMA-2013-0002; Internal Agency Docket No. FEMA-8319]

**Suspension of Community Eligibility**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and

a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at <http://www.fema.gov/fema/csb.shtm>.

**DATES: Effective Dates:** The effective date of each community's scheduled suspension is the third date ("Susp.") listed in the third column of the following tables.

**FOR FURTHER INFORMATION CONTACT:** If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-2953.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public

body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR Part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction