

violates the prohibitions in 40 CFR 1068.101(a)(1).

(g) *Participation in averaging, banking and trading.* Engines using this exemption may not generate or use emission credits under this part 1042. These engines may generate credits under the ABT provisions in 40 CFR part 89 or 1039, as applicable. These engines must use emission credits under 40 CFR part 89 or 1039 as applicable if they are certified to an FEL that exceeds an emission standard.

(h) *Operator requirements.* The requirements specified for vessel manufacturers, owners, and operators in this subpart (including requirements in 40 CFR part 1068) apply to these engines whether they are certified under this part 1042 or another part as allowed by this section.

**§ 1042.615 Replacement engine exemption.**

For replacement engines, apply the provisions of 40 CFR 1068.240 as described in this section.

(a) This paragraph (a) applies instead of the provisions of 40 CFR 1068.240(b)(3). The prohibitions in 40 CFR 1068.101(a)(1) do not apply for a new replacement engine meeting Tier 3 standards if the engine being replaced is a Tier 3 or earlier engine (this applies where new engines would otherwise be subject to Tier 4 or later standards). For other cases, 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.

(2) You make a record of your determination for each replacement engine with the following information and keep these records for eight years:

(i) If you determine that no engine certified to the current requirements of this part is available with the appropriate performance characteristics, explain why certified engines produced by you and other manufacturers cannot be used as a replacement because they are

not similar to the engine being replaced in terms of power or speed.

(ii) You may determine that all engines certified to the current requirements of this part that have appropriate performance characteristics are not available because they do not have the appropriate physical characteristics. If this is the case, explain why these certified engines produced by you and other manufacturers cannot be used as a replacement because their weight or dimensions are substantially different than those of the engine being replaced, or because they will not fit within the vessel's engine compartment or engine room.

(iii) In evaluating appropriate physical or performance characteristics, you may account for compatibility with vessel components you would not otherwise replace when installing a new engine, including transmissions or reduction gears, drive shafts or propeller shafts, propellers, cooling systems, operator controls, or electrical systems for generators or indirect-drive configurations. If you make your determination on this basis, you must identify the vessel components that are incompatible with engines certified to current standards and explain how they are incompatible and why it would be unreasonable to replace them.

(iv) In evaluating appropriate physical or performance characteristics, you may account for compatibility in a set of two or more propulsion engines on a vessel where only one of the engines needs replacement, but only if each engine not needing replacement has operated for less than 75 percent of its applicable useful life in hours or years (see § 1042.101). If any engine not otherwise needing replacement exceeds this 75 percent threshold, your determination must consider replacement of all the propulsion engines.

(v) In addition to the determination specified in paragraph (a)(1) of this section, 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

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engines of that size are currently subject to Tier 3 standards, you must 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 can produce a Tier 2 engine with the appropriate physical and performance characteristics, you must use it as the replacement engine.

(3) You must notify us within 30 days after you ship each replacement engine under this section. Your notification must include all the following things and be signed by an authorized representative of your company:

(i) A copy of your records describing how you made the determination described in paragraph (a)(2) of this section for this particular engine.

(ii) The total number of replacement engines you have shipped in the applicable calendar year, from all your marine engine models.

(iii) The following statement:

I certify that the statements and information in the enclosed document are true, accurate, and complete to the best of my knowledge. I am aware that there are significant civil and criminal penalties for submitting false statements and information, or omitting required statements and information.

(4) We may reduce the reporting and recordkeeping requirements in this section.

(b) Modifying a vessel to significantly increase its value within six months after installing a replacement engine produced under this section is a violation of 40 CFR 1068.101(a)(1).

(c) We may void an exemption for an engine if we determine that any of the conditions described in paragraph (a) of this section are not met.

**§ 1042.620 Engines used solely for competition.**

The provisions of this section apply for new engines and vessels built on or after January 1, 2009.

(a) We may grant you an exemption from the standards and requirements of this part for a new engine on the grounds that it is to be used solely for competition. The requirements of this part, other than those in this section, do not apply to engines that we exempt for use solely for competition. The pro-

hibitions in § 1068.101(a)(1) do not apply to engines exempted under this section.

(b) We will exempt engines that we determine will be used solely for competition. The basis of our determination is described in paragraphs (c) and (d) of this section. Exemptions granted under this section are good for only one model year and you must request renewal for each subsequent model year. We will not approve your renewal request if we determine the engine will not be used solely for competition.

(c) Engines meeting all the following criteria are considered to be used solely for competition:

(1) Neither the engine nor any vessels containing the engine may be displayed for sale in any public dealership or otherwise offered for sale to the general public.

(2) Sale of the vessel in which the engine is installed must be limited to professional racing teams, professional racers, or other qualified racers. Keep records documenting this, such as a letter requesting an exempted engine.

(3) The engine and the vessel in which it is installed must have performance characteristics that are substantially superior to noncompetitive models.

(4) The engines are intended for use only as specified in paragraph (e) of this section.

(d) You may ask us to approve an exemption for engines not meeting the applicable criteria listed in paragraph (c) of this section as long as you have clear and convincing evidence that the engines will be used solely for competition.

(e) Engines will not be considered to be used solely for competition if they are ever used for any recreational or other noncompetitive purpose. This means that their use must be limited to competition events sanctioned by the U.S. Coast Guard or another public organization with authorizing permits for participating competitors. Operation for such engines may include only racing events or trials to qualify for racing events. Authorized attempts to set speed records (and the associated official trials) are also considered racing events. Any use of exempt engines in recreational events, such as poker