

exempted under this section are not used solely for competition.

(f) You must permanently label engines exempted under this section to clearly indicate that they are to be used solely for competition. Failure to properly label an engine will void its exemption.

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

The provisions of this section allow equipment manufacturers to produce equipment with engines certified to previous tiers of emission standards after the Tier 4 emission standards begin to apply. To be eligible to use these provisions, you must follow all the instructions in this section. See 40 CFR 89.102(d) and (e) for provisions that apply to equipment made while Tier 1, Tier 2, or Tier 3 standards apply. See § 1039.626 for requirements that apply specifically to equipment manufacturers using the flexibility provisions of this section for equipment produced outside the United States.

(a) *General.* We may allow you to introduce into commerce in the United States limited numbers of nonroad equipment with exempted engines under this section. These provisions are available up to seven years after Tier 4 emission standards begin for each engine-power category, as shown in Table 1 of this section. Consider all U.S.-directed equipment sales, including those from any parent or subsidiary companies, in showing that you meet the requirements of this section. You may use the exemptions in this section only if you have the primary responsibility for designing and manufacturing the equipment and install the engine in the equipment.

TABLE 1 OF § 1039.625

Engine power	Model year
kW < 19	2008
19 ≤ kW < 56	2013
56 ≤ kW < 130	2012
130 ≤ kW < 560	2011
kW > 560	2011

(b) *Allowances.* The following provisions, which apply separately to each engine-power category used to define emission standards in § 1039.101, describe how many exempted engines you may produce under this section:

(1) *Percent-of-production allowances.* You may produce a certain number of units with exempted engines based on a percentage of your total sales within an engine-power category. The sum of these percentages within an engine-power category during the seven-year

period specified in paragraph (a) of this section may not exceed 80 percent of your U.S.-directed production, except as allowed under paragraph (b)(2) of this section.

(2) *Small-volume allowances.* You may produce up to 700 units with exempted engines within an engine-power category during the seven-year period, with no more than 200 units in any single calendar year within an engine-power category. This paragraph (b)(2) applies only to engines from a single engine family within each calendar year.

(c) *Percentage calculation.* Calculate annually the percentage of equipment with exempted engines from your total U.S.-directed production within an engine-power category if you need to show that you meet the percent-of-production allowances in paragraph (b)(1) of this section.

(d) *Inclusion of engines not subject to Tier 4 standards.* The following provisions apply to engines that are not subject to Tier 4 standards:

(1) If you use the provisions of § 1068.105(a) to use up your inventories of engines not certified to new emission standards, do not include these units in your count of equipment with exempted engines under paragraph (b) of this section.

(2) If you install engines that are exempted from the Tier 4 standards for any reason, other than for equipment-manufacturer flexibility under this section, do not include these units in your count of exempted engines under paragraph (b) of this section. For example, if we grant a hardship exemption for the engine manufacturer, you do not need to count those as exempted engines under this section. This paragraph (d)(2) applies only if the engine has a permanent label describing why it is exempted from the Tier 4 standards.

(3) If the engine's model year or manufacturing date for its engine-power category precedes the applicability of the Tier 4 standards, you may nevertheless start using the allowances under this section before the applicability of the Tier 4 standards apply; however, you may not start using these early allowances before the seven-year period for using allowances under the Tier 2 or Tier 3 program expires (see 40 CFR 89.102(d)). To use these early allowances, you must use engines that meet the emission standards described in paragraph (e) of this section. You must also count these units or calculate these percentages as described in paragraph (c) of this section and apply them to the total number or percentage of equipment with exempted engines we

allow for the Tier 4 standards as described in paragraph (b) of this section. The maximum number of cumulative early allowances is 10 percent under the percent-of-production allowance or 100 units under the small-volume allowance.

(4) Do not include equipment using model year 2008 or 2009 engines certified under the provisions of § 1039.101(j) in your count of equipment using exempted engines.

(e) *Standards.* If you produce equipment with exempted engines under this section, the engines must meet less stringent emission standards.

(1) If you are using the provisions of paragraph (d)(3) of this section, engines must meet the appropriate Tier 1 (or more stringent) emission standards described in § 89.112.

(2) In all other cases, engines with maximum power from 37 kW up to 560 kW must meet the appropriate Tier 3 standards described in § 89.112. Engines with maximum power below 37 kW or at least 560 kW must meet the appropriate Tier 2 standards described in § 89.112.

(f) *Equipment labeling.* You must add a permanent, legible label, written in block letters in English to the engine or another readily visible part of each piece of equipment you produce with exempted engines under this section. This label, which supplements the engine manufacturer's emission control information label, must include at least the following items:

(1) The label heading "EMISSION CONTROL INFORMATION".

(2) Your corporate name and trademark.

(3) The calendar year in which the equipment is manufactured.

(4) Whom to contact for further information.

(5) The following statement: THIS EQUIPMENT [or identify the type of equipment] HAS AN ENGINE THAT HAS BEEN EXEMPTED FROM CURRENT FEDERAL NONROAD EMISSION STANDARDS, AS ALLOWED BY 40 CFR 1039.625.

(g) *Notification and reporting.* You must notify us of your intent to use the provisions of this section and send us an annual report to verify that you are not exceeding the allowances.

(1) Before January 1 of the first year you intend to use the flexibility provisions of this section, send the Designated Compliance Officer and the Designated Enforcement Officer a written notice of your intent, including:

(i) Your company's name and address.
(ii) Whom to contact for more information.