

## Environmental Protection Agency

## § 1068.125

of any pollutant, but you do not need to keep any records.

(d) If you rebuild an engine or engine system, you must have a reasonable technical basis for knowing that the rebuilt engine's emission-control system performs as well as, or better than, it performs in its certified configuration. Identify the model year of the resulting engine configuration. You have a reasonable basis if you meet two main conditions:

(1) Install parts—new, used, or rebuilt—so a person familiar with engine design and function would reasonably believe that the engine with those parts will control emissions of all pollutants at least to the same degree as with the original parts. For example, it would be reasonable to believe that parts performing the same function as the original parts (and to the same degree) would control emissions to the same degree as the original parts.

(2) Adjust parameters or change design elements only according to the original engine manufacturer's instructions. Or, if you differ from these instructions, you must have data or some other technical basis to show you should not expect in-use emissions to increase.

(e) If the rebuilt engine remains installed or is reinstalled in the same piece of equipment, you must rebuild it to the original configuration or another certified configuration of the same or later model year.

(f) If the rebuilt engine replaces another certified engine in a piece of equipment, you must rebuild it to a certified configuration of the same model year as, or a later model year than, the engine you are replacing.

(g) Do not erase or reset emission-related codes or signals from onboard monitoring systems without diagnosing and responding appropriately to any diagnostic codes. This requirement applies regardless of the manufacturer's reason for installing the monitoring system and regardless of its form or interface. Clear any codes from diagnostic systems when you return the rebuilt engine to service. Do not disable a diagnostic signal without addressing its cause.

(h) When you rebuild an engine, check, clean, adjust, repair, or replace

all emission-related components (listed in Appendix I of this part) as needed according to the original manufacturer's recommended practice. In particular, replace oxygen sensors, replace the catalyst if there is evidence of malfunction, clean gaseous fuel system components, and replace fuel injectors (if applicable), unless you have a reasonable technical basis for believing any of these components do not need replacement.

(i) If you are installing an engine that someone else has rebuilt, check all emission-related components listed in Appendix I of this part as needed according to the original manufacturer's recommended practice.

(j) Keep at least the following records:

(1) Identify the hours of operation (or mileage, as appropriate) at time of rebuild.

(2) Identify the work done on the engine or any emission-related control components, including a listing of parts and components you used.

(3) Describe any engine parameter adjustments.

(4) Identify any emission-related codes or signals you responded to and reset.

(k) You must show us or send us your records if we ask for them. Keep records for at least two years after rebuilding an engine. Keep them in any format that allows us to readily review them.

(1) You do not need to keep information that is not reasonably available through normal business practices. We do not expect you to have information that you cannot reasonably access.

(2) You do not need to keep records of what other companies do.

(3) You may keep records based on engine families rather than individual engines if that is the way you normally do business.

[67 FR 68347, Nov. 8, 2002, as amended at 69 FR 39266, June 29, 2004]

### § 1068.125 What happens if I violate the regulations?

(a) *Civil penalties and injunctions.* We may bring a civil action to assess and recover civil penalties and/or enjoin and restrain violations in the United States District Court for the district

where you allegedly violated a requirement, or the district where you live or have your main place of business. Actions to assess civil penalties or restrain violations of §1068.101 must be brought by and in the name of the United States. The selected court has jurisdiction to restrain violations and assess civil penalties.

(1) To determine the amount of a civil penalty and reach a just conclusion, the court considers these main factors:

- (i) The seriousness of your violation.
- (ii) How much you benefitted or saved because of the violation.
- (iii) The size of your business.
- (iv) Your history of compliance with Title II of the Act (42 U.S.C. 7401-7590).
- (v) What you did to remedy the violation.
- (vi) How the penalty will affect your ability to continue in business.
- (vii) Such other matters as justice may require.

(2) Subpoenas for witnesses who must attend a district court in any district may apply to any other district.

(b) *Administrative penalties.* Instead of bringing a civil action, we may assess administrative penalties if the total is less than \$270,000 against you individually. This maximum penalty may be greater if the Administrator and the Attorney General jointly determine that is appropriate for administrative penalty assessment, or if the limit is adjusted under 40 CFR part 19. No court may review such a determination. Before we assess an administrative penalty, you may ask for a hearing (subject to 40 CFR part 22). The Administrator may compromise or remit, with or without conditions, any administrative penalty that may be imposed under this section.

(1) To determine the amount of an administrative penalty, we will consider the factors described in paragraph (a)(1) of this section.

(2) An administrative order we issue under this paragraph (b) becomes final 30 days after we issue it, unless you ask for judicial review by that time (see paragraph (c) of this section). You may ask for review by any of the district courts listed in paragraph (a) of this section. Send the Administrator a copy of the filing by certified mail.

(3) We will not pursue an administrative penalty for a particular violation if either of the following two conditions is true:

(i) We are separately prosecuting the violation under this subpart.

(ii) We have issued a final order for a violation, no longer subject to judicial review, for which you have already paid a penalty.

(c) *Judicial review.* If you ask a court to review a civil or administrative penalty, we will file in the appropriate court within 30 days of your request a certified copy or certified index of the record on which the court or the Administrator issued the order.

(1) The judge may set aside or remand any order issued under this section only if one of the following is true:

(i) Substantial evidence does not exist in the record, taken as a whole, to support finding a violation.

(ii) The Administrator's assessment of the penalty is an abuse of discretion.

(2) The judge may not add civil penalties unless our penalty is an abuse of discretion that favors you.

(d) *Effect of enforcement actions on other requirements.* Our pursuit of civil or administrative penalties does not affect or limit our authority to enforce any provisions of this chapter.

(e) *Penalties.* In any proceedings, the United States government may seek to collect civil penalties assessed under this section.

(1) Once a penalty assessment is final, if you do not pay it, the Administrator will ask the Attorney General to bring a civil action in an appropriate district court to recover the money. We may collect interest from the date of the final order or final judgment at rates established by the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)). In this action to collect overdue penalties, the court will not review the validity, amount, and appropriateness of the penalty.

(2) In addition, if you do not pay the full amount of a penalty on time, you must then pay more to cover interest, enforcement expenses (including attorney's fees and costs for collection), and a quarterly nonpayment penalty for each quarter you do not pay. The quarterly nonpayment penalty is 10 percent of your total penalties plus any unpaid

nonpayment penalties from previous quarters.

[67 FR 68347, Nov. 8, 2002, as amended at 69 FR 39266, June 29, 2004; 70 FR 40513, July 13, 2005]

### Subpart C—Exemptions and Exclusions

#### § 1068.201 Does EPA exempt or exclude any engines from the prohibited acts?

We may exempt new engines from some or all of the prohibited acts or requirements of this part under provisions described in this subpart. We may exempt an engine already placed in service in the United States from the prohibition in § 1068.101(b)(1) if the exemption for engines used solely for competition applies (see § 1068.235). In addition, see § 1068.1 and the standard-setting parts to determine if other engines are excluded from some or all of the regulations in this chapter.

(a) This subpart identifies which engines qualify for exemptions and what information we need. We may ask for more information.

(b) If you violate any of the terms, conditions, instructions, or requirements to qualify for an exemption, we may void the exemption.

(c) If you use an exemption under this subpart, we may require you to add a permanent label to your exempted engines. You may ask us to modify these labeling requirements if it is appropriate for your engine.

(d) If you produce engines we exempt under this subpart, we may require you to make and keep records, perform tests, make reports and provide information as needed to reasonably evaluate the validity of the exemption.

(e) If you own or operate engines we exempt under this subpart, we may require you to provide information as needed to reasonably evaluate the validity of the exemption.

(f) Subpart D of this part describes how we apply these exemptions to engines you import (or intend to import).

(g) If you want to ask for an exemption or need more information, write to the Designated Officer.

(h) You may ask us to modify the administrative requirements for the exemptions described in this subpart. We

may approve your request if we determine that such approval is consistent with the intent of this part. For example, waivable administrative requirements might include some reporting requirements, but would not include any eligibility requirements or use restrictions.

(i) If you want to take an action with respect to an exempted or excluded engine that is prohibited by the exemption or exclusion, such as selling it, you need to certify the engine. We will issue a certificate of conformity if you send us an application for certification showing that you meet all the applicable requirements from the standard-setting part and pay the appropriate fee. Also, in some cases, we may allow manufacturers to modify the engine as needed to make it identical to engines already covered by a certificate. We would base such an approval on our review of any appropriate documentation. These engines must have emission control information labels that accurately describe their status.

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#### § 1068.210 What are the provisions for exempting test engines?

(a) We may exempt engines that are not exempted under other sections of this part that you will use for research, investigations, studies, demonstrations, or training.

(b) Anyone may ask for a testing exemption.

(c) If you are a certificate holder, you may request an exemption for engines you intend to include in test programs over a two-year period.

(1) In your request, tell us the maximum number of engines involved and describe how you will make sure exempted engines are used only for this testing.

(2) Give us the information described in paragraph (d) of this section if we ask for it.

(d) If you are not a certificate holder do all of the following:

(1) Show that the proposed test program has a valid purpose under paragraph (a) of this section.