

## Environmental Protection Agency

## § 1068.201

(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.

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(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.

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

**§ 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.

(2) Show you need an exemption to achieve the purpose of the test program (time constraints may be a basis for needing an exemption, but the cost of certification alone is not).

(3) Estimate the duration of the proposed test program and the number of engines involved.

(4) Allow us to monitor the testing.

(5) Describe how you will ensure that you stay within this exemption's purposes. Address at least the following things:

(i) The technical nature of the test.

(ii) The test site.

(iii) The duration and accumulated engine operation associated with the test.

(iv) Ownership and control of the engines involved in the test.

(v) The intended final disposition of the engines.

(vi) How you will identify, record, and make available the engine identification numbers.

(vii) The means or procedure for recording test results.

(e) If we approve your request for a testing exemption, we will send you a letter or a memorandum for your signature describing the basis and scope of the exemption. The exemption does not take effect until we receive the signed letter or memorandum from you. It will also include any necessary terms and conditions, which normally require you to do the following:

(1) Stay within the scope of the exemption.

(2) Create and maintain adequate records that we may inspect.

(3) Add a permanent, legible label, written in block letters in English, to a readily visible part of each exempted engine. This label must include at least the following items: