

(3) Identify the engine/equipment by model number (or name), serial number, and original production year.

(4) Identify the specific regulatory provision under which you are seeking an exemption.

(5) Authorize EPA enforcement officers to conduct inspections or testing as allowed under the Clean Air Act.

(6) Include any additional information we specify for demonstrating that you qualify for the exemption.

[73 FR 59344, Oct. 8, 2008, as amended at 74 FR 8428, Feb. 24, 2009; 75 FR 23064, Apr. 30, 2010]

§ 1068.335 What are the penalties for violations?

(a) *All imported engines/equipment.* Unless you comply with the provisions of this subpart, importation of nonconforming engines/equipment violates sections 203 and 213(d) of the Clean Air Act (42 U.S.C. 7522 and 7547(d)). You may then have to export the engines/equipment, pay civil penalties, or both. U.S. Customs and Border Protection may seize unlawfully imported engines and equipment.

(b) *Temporarily imported engines/equipment.* If you do not comply with the provisions of this subpart for a temporary exemption under § 1068.325, you may forfeit the total amount of the bond in addition to the sanctions we identify in paragraph (a) of this section. We will consider an engine or piece of equipment to be exported if it has been destroyed or delivered to U.S. Customs and Border Protection for export or other disposition under applicable Customs laws and regulations. EPA or U.S. Customs and Border Protection may offer you a grace period to allow you to export temporarily exempted engines/equipment without penalty after the exemption expires.

§ 1068.360 What restrictions apply to assigning a model year to imported engines and equipment?

This section includes limitations on assigning a model year to engines and equipment that are imported in a year later than the model year in which they were manufactured, except as specified in paragraph (e) of this section.

(a) The term “model year” is defined in each of the standard-setting parts.

These definitions may vary slightly to address the different categories of engines and equipment. Except as specified in paragraphs (b) and (c) of this section, the emission standards and other emission-related requirements that apply for an imported engine or piece of equipment are determined by the model year as defined in the applicable standard-setting part and the provisions of 40 CFR 1068.105(a).

(b) This paragraph (b) applies for the importation of new engines and new equipment in any calendar year that is more than one year after the named model year of the engine or equipment when emission control requirements applying to current engines are different than for engines or equipment in the named model year, unless they are imported under special provisions for Independent Commercial Importers as allowed under the standard-setting part. Regardless of what other provisions of this subchapter U specify for the model year of the engine or equipment, such engines and equipment are deemed to have an applicable model year no more than one year earlier than the calendar year in which they are imported. For example, a new engine identified as a 2007 model-year product that is imported on January 31, 2010 will be treated as a 2009 model-year engine; the same engine will be treated as a 2010 model-year engine if it is imported any time in calendar year 2011.

(c) If you claim that an engine or piece of equipment is not subject to standards—or is subject to standards less stringent than those currently in place—based on its original manufacture date because it has already been placed into service, you must provide clear and convincing evidence that it has already been placed into service. Such evidence must generally include, but not be limited to, documentary evidence of purchase and maintenance history and visible wear that is consistent with the reported manufacture date. Importing products for resale or importing more than one engine or piece of equipment at a time would generally require a greater degree of evidence under this paragraph (c). If you do not satisfactorily demonstrate that the engine or equipment has already been

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placed into service, the provisions of paragraph (b) of this section apply.

(d) Nothing in this section should be interpreted to allow circumvention of the requirements of this part by misstating or mis-labeling the model year of engines or equipment. For example, this section does not permit engines imported in the same year that they are manufactured to be treated as an engine manufactured in the previous year. To verify compliance with the provisions of this section, we may require you to verify the original manufacture date of the engine or equipment based on manufacturing records, title-transfer documents, service records, or other documentation.

(e) If all the current emission control requirements are the same as in the named model year, the provisions of this section do not apply.

Subpart E—Selective Enforcement Auditing

§ 1068.401 What is a selective enforcement audit?

(a) We may conduct or require you to conduct emission tests on your production engines/equipment in a selective enforcement audit. This requirement is independent of any requirement for you to routinely test production-line engines/equipment. For products subject to equipment-based standards, but tested using engine-based test procedures, this subpart applies to the engines and/or the equipment, as applicable. Otherwise this subpart applies to engines for products subject to engine-based standards and to equipment for products subject to equipment-based standards.

(b) If we send you a signed test order, you must follow its directions and the provisions of this subpart. We may tell you where to test the engines/equipment. This may be where you produce the engines/equipment or any other emission testing facility.

(c) If we select one or more of your families for a selective enforcement audit, we will send the test order to the person who signed the application for certification or we will deliver it in person.

(d) If we do not select a testing facility, notify the Designated Compliance

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Officer within one working day of receiving the test order where you will test your engines/equipment.

(e) You must do everything we require in the audit without delay.

§ 1068.405 What is in a test order?

(a) In the test order, we will specify the following things:

(1) The family and configuration (if any) we have identified for testing.

(2) The engine/equipment assembly plant, storage facility, or (if you import the engines/equipment) port facility from which you must select engines/equipment.

(3) The procedure for selecting engines/equipment for testing, including a selection rate.

(4) The test procedures, duty cycles, and test points, as appropriate, for testing the engines/equipment to show that they meet emission standards.

(b) We may state that we will select the test engines/equipment.

(c) We may identify alternate families or configurations for testing in case we determine the intended engines/equipment are not available for testing or if you do not produce enough engines/equipment to meet the minimum rate for selecting test engines/equipment.

(d) We may include other directions or information in the test order.

(e) We may ask you to show us that you meet any additional requirements that apply to your engines/equipment (closed crankcases, for example).

(f) In anticipation of a potential audit, you may give us a list of your preferred families and the corresponding assembly plants, storage facilities, or (if you import the engines/equipment) port facilities from which we should select engines/equipment for testing. The information would apply only for a single model year so it would be best to include this information in your application for certification. If you give us this list before we issue a test order, we will consider your recommendations, but we may select different engines/equipment.

(g) If you also do routine production-line testing with the selected family in the same time period, the test order will tell you what changes you might