

§ 1068.101

40 CFR Ch. I (7–1–22 Edition)

NARA, call (202) 741–6030 or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. In addition, these materials are available from the sources listed below.

(b) SAE International, 400 Commonwealth Dr., Warrendale, PA 15096–0001, (724) 776–4841, or <http://www.sae.org>:

(1) SAE J1930, Electrical/Electronic Systems Diagnostic Terms, Definitions, Abbreviations, and Acronyms, revised October 2008 (“SAE J1930”), IBR approved for § 1068.45(f).

(2) [Reserved]

[81 FR 74222, Oct. 25, 2016]

Subpart B—Prohibited Actions and Related Requirements

§ 1068.101 What general actions does this regulation prohibit?

This section specifies actions that are prohibited and the maximum civil penalties that we can assess for each violation in accordance with 42 U.S.C. 7522 and 7524. The maximum penalty values listed in paragraphs (a) and (b) of this section and in § 1068.125 apply as of August 1, 2016. As described in paragraph (h) of this section, these maximum penalty limits are different for earlier violations and they may be adjusted as set forth in 40 CFR part 19.

(a) The following prohibitions and requirements apply to manufacturers of new engines, manufacturers of equipment containing these engines, and manufacturers of new equipment, except as described in subparts C and D of this part:

(1) *Introduction into commerce.* You may not sell, offer for sale, or introduce or deliver into commerce in the United States or import into the United States any new engine/equipment after emission standards take effect for the engine/equipment, unless it is covered by a valid certificate of conformity for its model year and has the required label or tag. You also may not take any of the actions listed in the previous sentence with respect to any equipment containing an engine subject to this part’s provisions unless the engine is covered by a valid certificate of conformity for its model year and has the required engine label or tag.

We may assess a civil penalty up to \$44,539 for each engine or piece of equipment in violation.

(i) For purposes of this paragraph (a)(1), a valid certificate of conformity is one that applies for the same model year as the model year of the equipment (except as allowed by § 1068.105(a)), covers the appropriate category or subcategory of engines/equipment (such as locomotive or sterndrive/inboard Marine SI or nonhandheld Small SI), and conforms to all requirements specified for equipment in the standard-setting part. Engines/equipment are considered not covered by a certificate unless they are in a configuration described in the application for certification.

(ii) The prohibitions of this paragraph (a)(1) also apply for new engines you produce to replace an older engine in a piece of equipment, except that the engines may qualify for the replacement-engine exemption in § 1068.240.

(iii) The prohibitions of this paragraph (a)(1) also apply for new engines that will be installed in equipment subject to equipment-based standards, except that the engines may qualify for an exemption under § 1068.260(c) or § 1068.262.

(iv) Where the regulations specify that you are allowed to introduce engines/equipment into U.S. commerce without a certificate of conformity, you may take any of the otherwise prohibited actions specified in this paragraph (a)(1) with respect to those engines/equipment.

(2) *Reporting and recordkeeping.* This chapter requires you to record certain types of information to show that you meet our standards. You must comply with these requirements to make and maintain required records (including those described in § 1068.501). You may not deny us access to your records or the ability to copy your records if we have the authority to see or copy them. Also, you must give us complete and accurate reports and information without delay as required under this chapter. Failure to comply with the requirements of this paragraph is prohibited. We may assess a civil penalty up

to \$44,539 for each day you are in violation. In addition, knowingly submitting false information is a violation of 18 U.S.C. 1001, which may involve criminal penalties and up to five years imprisonment.

(3) *Testing and access to facilities.* You may not keep us from entering your facility to test engines/equipment or inspect if we are authorized to do so. Also, you must perform the tests we require (or have the tests done for you). Failure to perform this testing is prohibited. We may assess a civil penalty up to \$44,539 for each day you are in violation.

(b) The following prohibitions apply to everyone with respect to the engines and equipment to which this part applies:

(1) *Tampering.* You may not remove or render inoperative any device or element of design installed on or in engines/equipment in compliance with the regulations prior to its sale and delivery to the ultimate purchaser. You also may not knowingly remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser. This includes, for example, operating an engine without a supply of appropriate quality urea if the emission control system relies on urea to reduce NO_x emissions or the use of incorrect fuel or engine oil that renders the emission control system inoperative. Section 1068.120 describes how this applies to rebuilding engines. See the standard-setting part, which may include additional provisions regarding actions prohibited by this requirement. For a manufacturer or dealer, we may assess a civil penalty up to \$44,539 for each engine or piece of equipment in violation. For anyone else, we may assess a civil penalty up to \$4,454 for each engine or piece of equipment in violation. This prohibition does not apply in any of the following situations:

(i) You need to repair the engine/equipment and you restore it to proper functioning when the repair is complete.

(ii) You need to modify the engine/equipment to respond to a temporary emergency and you restore it to proper functioning as soon as possible.

(iii) You modify new engines/equipment that another manufacturer has already certified to meet emission standards and recertify them under your own family. In this case you must tell the original manufacturer not to include the modified engines/equipment in the original family.

(2) *Defeat devices.* You may not knowingly manufacture, sell, offer to sell, or install, any component that bypasses, impairs, defeats, or disables the control of emissions of any regulated pollutant, except as explicitly allowed by the standard-setting part. We may assess a civil penalty up to \$4,454 for each component in violation.

(3) *Stationary engines.* For an engine that is excluded from any requirements of this chapter because it is a stationary engine, you may not move it or install it in any mobile equipment except as allowed by the provisions of this chapter. You may not circumvent or attempt to circumvent the residence-time requirements of paragraph (2)(iii) of the nonroad engine definition in §1068.30. Anyone violating this paragraph (b)(3) is deemed to be a manufacturer in violation of paragraph (a)(1) of this section. We may assess a civil penalty up to \$44,539 for each engine or piece of equipment in violation.

(4) *Competition engines/equipment.* (i) For uncertified engines/equipment that are excluded or exempted as new engines/equipment from any requirements of this chapter because they are to be used solely for competition, you may not use any of them in a manner that is inconsistent with use solely for competition. Anyone violating this paragraph (b)(4)(i) is deemed to be a manufacturer in violation of paragraph (a)(1) of this section. We may assess a civil penalty up to \$44,539 for each engine or piece of equipment in violation. (ii) For certified nonroad engines/equipment that qualify for exemption from the tampering prohibition as described in §1068.235 because they are to be used solely for competition, you may not use any of them in a manner that is inconsistent with use solely for competition. Anyone violating this paragraph (b)(4)(ii) is in violation of paragraph (b)(1) or (2) of this section.

(5) *Importation.* You may not import an uncertified engine or piece of equipment if it is defined to be new in the standard-setting part with a model year for which emission standards applied. Anyone violating this paragraph (b)(5) is deemed to be a manufacturer in violation of paragraph (a)(1) of this section. We may assess a civil penalty up to \$44,539 for each engine or piece of equipment in violation. Note the following: is excluded

(i) The definition of new is broad for imported engines/equipment; uncertified engines and equipment (including used engines and equipment) are generally considered to be new when imported.

(ii) Used engines/equipment that were originally manufactured before applicable EPA standards were in effect are generally not subject to emission standards.

(6) *Warranty, recall, and maintenance instructions.* You must meet your obligation to honor your emission-related warranty under § 1068.115, including any commitments you identify in your application for certification. You must also fulfill all applicable requirements under subpart F of this part related to emission-related defects and recalls. You must also provide emission-related installation and maintenance instructions as described in the standard-setting part. Failure to meet these obligations is prohibited. Also, except as specifically provided by regulation, you are prohibited from directly or indirectly communicating to the ultimate purchaser or a later purchaser that the emission-related warranty is valid only if the owner has service performed at authorized facilities or only if the owner uses authorized parts, components, or systems. We may assess a civil penalty up to \$44,539 for each engine or piece of equipment in violation.

(7) *Labeling.* (i) You may not remove or alter an emission control information label or other required permanent label except as specified in this paragraph (b)(7) or otherwise allowed by this chapter. Removing or altering an emission control information label is a violation of paragraph (b)(1) of this section. However, it is not a violation to remove a label in the following circumstances:

(A) The engine is destroyed, is permanently disassembled, or otherwise loses its identity such that the original title to the engine is no longer valid.

(B) The regulations specifically direct you to remove the label. For example, see § 1068.235.

(C) The part on which the label is mounted needs to be replaced. In this case, you must have a replacement part with a duplicate of the original label installed by the certifying manufacturer or an authorized agent, except that the replacement label may omit the date of manufacture if applicable. We generally require labels to be permanently attached to parts that will not normally be replaced, but this provision allows for replacements in unusual circumstances, such as damage in a collision or other accident.

(D) The original label is incorrect, provided that it is replaced with the correct label from the certifying manufacturer or an authorized agent. This allowance to replace incorrect labels does not affect whether the application of an incorrect original label is a violation.

(ii) Removing or altering a temporary or removable label contrary to the provisions of this paragraph (b)(7)(ii) is a violation of paragraph (b)(1) of this section.

(A) For labels identifying temporary exemptions, you may not remove or alter the label while the engine/equipment is in an exempt status. The exemption is automatically revoked for each engine/equipment for which the label has been removed.

(B) For temporary or removable consumer information labels, only the ultimate purchaser may remove the label.

(iii) You may not apply a false emission control information label. You also may not manufacture, sell, or offer to sell false labels. The application, manufacture, sale, or offer for sale of false labels is a violation of this section (such as paragraph (a)(1) or (b)(2) of this section). Note that applying an otherwise valid emission control information label to the wrong engine is considered to be applying a false label.

(c) If you cause someone to commit a prohibited act in paragraph (a) or (b) of

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this section, you are in violation of that prohibition.

(d) Exemptions from these prohibitions are described in subparts C and D of this part and in the standard-setting part.

(e) The standard-setting parts describe more requirements and prohibitions that apply to manufacturers (including importers) and others under this chapter.

(f) The specification of prohibitions and penalties in this part does not limit the prohibitions and penalties described in the Clean Air Act. Additionally, a single act may trigger multiple violations under this section and the Act. We may pursue all available administrative, civil, or criminal rem-

edies for those violations even if the regulation references only a single prohibited act in this section.

(g) [Reserved]

(h) The maximum penalty values listed in paragraphs (a) and (b) of this section and in §1068.125 apply as of August 1, 2016. Maximum penalty values for earlier violations are published in 40 CFR part 19. Maximum penalty limits may be adjusted after August 1, 2016 based on the Consumer Price Index. The specific regulatory provisions for changing the maximum penalties, published in 40 CFR part 19, reference the applicable U.S. Code citation on which the prohibited action is based. The following table is shown here for informational purposes:

TABLE 1 OF § 1068.101—LEGAL CITATION FOR SPECIFIC PROHIBITIONS FOR DETERMINING MAXIMUM PENALTY AMOUNTS

Part 1068 regulatory citation of prohibited action	General description of prohibition	U.S. Code citation for Clean Air Act authority
§ 1068.101(a)(1)	Introduction into U.S. commerce of an uncertified source.	42 U.S.C. 7522(a)(1) and (a)(4).
§ 1068.101(a)(2)	Failure to provide information	42 U.S.C. 7522(a)(2).
§ 1068.101(a)(3)	Denying access to facilities	42 U.S.C. 7522(a)(2).
§ 1068.101(b)(1)	Tampering with emission controls by a manufacturer or dealer.	42 U.S.C. 7522(a)(3).
	Tampering with emission controls by someone other than a manufacturer or dealer.	
§ 1068.101(b)(2)	Sale or use of a defeat device	42 U.S.C. 7522(a)(3).
§ 1068.101(b)(3)	Mobile use of a stationary engine	42 U.S.C. 7522(a)(1) and (a)(4).
§ 1068.101(b)(4)	Noncompetitive use of uncertified engines/equipment that is exempted for competition.	42 U.S.C. 7522(a)(1) and (a)(4).
§ 1068.101(b)(5)	Importation of an uncertified source	42 U.S.C. 7522(a)(1) and (a)(4).
§ 1068.101(b)(6)	Recall and warranty	42 U.S.C. 7522(a)(4).
§ 1068.101(b)(7)	Removing labels	42 U.S.C. 7522(a)(3).

[75 FR 23059, Apr. 30, 2010; 81 FR 74222, Oct. 25, 2016]

§ 1068.103 Provisions related to the duration and applicability of certificates of conformity.

(a) Engines/equipment covered by a certificate of conformity are limited to those that are produced during the period specified in the certificate and conform to the specifications described in the certificate and the associated application for certification. For the purposes of this paragraph (a), “specifications” includes the emission control information label and any conditions or limitations identified by the manufacturer or EPA. For example, if the application for certification specifies certain engine configurations, the certificate does not cover any configura-

tions that are not specified. We may ignore any information provided in the application that we determine is not relevant to a demonstration of compliance with applicable regulations, such as your projected production volumes in many cases.

(b) Unless the standard-setting part specifies otherwise, determine the production period corresponding to each certificate of conformity as specified in this paragraph (b). In general, the production period is the manufacturer’s annual production period identified as a model year.

(1) For engines/equipment subject to emission standards based on model