

Environmental Protection Agency

§ 89.1006

(c) *Importation provision.* (1) A new nonroad engine, vehicle, or equipment offered for importation or imported by a person in violation of § 89.1003 is to be refused admission into the United States, but the Secretary of the Treasury and the Administrator may, by joint regulation, provide for deferring a final determination as to admission and authorizing the delivery of such a nonroad engine offered for import to the owner or consignee thereof upon such terms and conditions (including the furnishing of a bond) as may appear to them appropriate to insure that the nonroad engine will be brought into conformity with the standards, requirements, and limitations applicable to it under this part.

(2) If a nonroad engine is finally refused admission under this paragraph, the Secretary of the Treasury shall cause disposition thereof in accordance with the customs laws unless it is exported, under regulations prescribed by the Secretary, within 90 days of the date of notice of the refusal or additional time as may be permitted pursuant to the regulations.

(3) Disposition in accordance with the customs laws may not be made in such manner as may result, directly or indirectly, in the sale, to the ultimate consumer, of a new nonroad engine that fails to comply with applicable standards of the Administrator under this part.

(d) *Export provision.* A new nonroad engine intended solely for export, and so labeled or tagged on the outside of the container and on the engine itself, shall be subject to the provisions of § 89.1003, except that if the country that is to receive the engine has emission standards that differ from the standards prescribed under subpart B of this part, then the engine must comply with the standards of the country that is to receive the engine.

§ 89.1005 Injunction proceedings for prohibited acts.

(a) The district courts of the United States have jurisdiction to restrain violations of § 89.1003(a).

(b) Actions to restrain violations of § 89.1003(a) must be brought by and in the name of the United States. In an action, subpoenas for witnesses who

are required to attend a district court in any district may run into any other district.

§ 89.1006 Penalties.

(a) *Violations.* A violation of the requirements of this subpart is a violation of the applicable provisions of the Act, including sections 213(d) and 203, and is subject to the penalty provisions thereunder.

(1) A person who violates § 89.1003(a)(1), (a)(4), or (a)(6), or a manufacturer or dealer who violates § 89.1003(a)(3)(i), is subject to a civil penalty of not more than \$25,000 for each violation.

(2) A person other than a manufacturer or dealer who violates § 89.1003(a)(3)(i) or any person who violates § 89.1003(a)(3)(ii) is subject to a civil penalty of not more than \$2,500 for each violation.

(3) A violation with respect to § 89.1003 (a)(1), (a)(3)(i), (a)(4), or (a)(6) constitutes a separate offense with respect to each nonroad engine.

(4) A violation with respect to § 89.1003(a)(3)(ii) constitutes a separate offense with respect to each part or component. Each day of a violation with respect to § 89.1003(a)(5) constitutes a separate offense.

(5) A person who violates § 89.1003(a)(2) or (a)(5) is subject to a civil penalty of not more than \$25,000 per day of violation.

(b) *Civil actions.* The Administrator may commence a civil action to assess and recover any civil penalty under paragraph (a) of this section.

(1) An action under this paragraph may be brought in the district court of the United States for the district in which the defendant resides or has the Administrator's principal place of business, and the court has jurisdiction to assess a civil penalty.

(2) In determining the amount of a civil penalty to be assessed under this paragraph, the court is to take into account the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator's business, the violator's history of compliance with Title II of the Act, action taken to remedy the violation, the effect of the penalty on the violator's ability to continue in