

claimed confidential by marking, circling, bracketing, stamping, or otherwise specifying the confidential information. Furthermore, EPA requests, but does not require, that the submitter also provide a second copy of its submittal from which all confidential information has been deleted. If a need arises to publicly release nonconfidential information, EPA will assume that the submitter has accurately deleted the confidential information from this second copy.

(d) If a claim is made that some or all of the information submitted pursuant to this part is entitled to confidential treatment, the information covered by that confidentiality claim will be disclosed by the Administrator only to the extent and by means of the procedures set forth in part 2, subpart B of this chapter.

(e) Information provided without a claim of confidentiality at the time of submission may be made available to the public by EPA without further notice to the submitter, in accordance with § 2.204(c)(2)(i)(A) of this chapter.

APPENDIX A TO SUBPART A OF PART 89—
STATE REGULATION OF NONROAD INTERNAL COMBUSTION ENGINES

This appendix sets forth the Environmental Protection Agency's (EPA's) interpretation of the Clean Air Act regarding the authority of states to regulate the use and operation of nonroad engines.

EPA believes that states are not precluded under section 209 from regulating the use and operation of nonroad engines, such as regulations on hours of usage, daily mass emission limits, or sulfur limits on fuel; nor are permits regulating such operations precluded, once the engine is no longer new. EPA believes that states are precluded from requiring retrofitting of used nonroad engines except that states are permitted to adopt and enforce any such retrofitting requirements identical to California requirements which have been authorized by EPA under section 209 of the Clean Air Act.

[62 FR 67736, Dec. 30, 1997]

**Subpart B—Emission Standards
and Certification Provisions**

§ 89.101 Applicability.

The requirements of subpart B are applicable to all new nonroad compression-ignition engines subject to the

provisions of subpart A of part 89, pursuant to the schedule delineated in § 89.102.

[59 FR 31335, June 17, 1994. Redesignated at 63 FR 56995, Oct. 23, 1998]

§ 89.102 Effective dates, optional inclusion, flexibility for equipment manufacturers.

(a) This subpart applies to all engines described in § 89.101 with the following power rating and manufactured after the following dates:

(1) Less than 19 kW and manufactured on or after January 1, 2000;

(2) Greater than or equal to 19 kW but less than 37 kW and manufactured on or after January 1, 1999;

(3) Greater than or equal to 37 kW but less than 75 kW and manufactured on or after January 1, 1998;

(4) Greater than or equal to 75 kW but less than 130 kW and manufactured on or after January 1, 1997;

(5) Greater than or equal to 130 kW but less than or equal to 560 kW and manufactured on or after January 1, 1996;

(6) Greater than 560 kW and manufactured on or after January 1, 2000.

(b) A manufacturer can optionally certify engines manufactured up to one calendar year prior to the effective date of mandatory certification to earn emission credits under the averaging, banking, and trading program. Such optionally certified engines are subject to all provisions relating to mandatory certification and enforcement described in this part.

(c) Engines meeting the voluntary standards described in § 89.112(f) may be designated as Blue Sky Series engines through the 2004 model year.

(d) *Implementation flexibility for equipment and vehicle manufacturers and post-manufacture marinizers.* Nonroad equipment and vehicle manufacturers and post-manufacture marinizers may take any of the otherwise prohibited actions identified in § 89.1003(a)(1) with respect to nonroad equipment and vehicles and marine diesel engines, subject to the requirements of paragraph (e) of this section. The following allowances apply separately to each engine power category subject to standards under § 89.112:

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(1) *Percent-of-production allowances.* (i) *Equipment rated at or above 37 kW.* For nonroad equipment and vehicles with engines rated at or above 37 kW, a manufacturer may take any of the actions identified in §89.1003(a)(1) for a portion of its U.S.-directed production volume of such equipment and vehicles during the seven years immediately following the date on which Tier 2 engine standards first apply to engines used in such equipment and vehicles, provided that the seven-year sum of these portions in each year, as expressed as a percentage for each year, does not exceed 80, and provided that all such equipment and vehicles or equipment contain Tier 1 engines;

(ii) *Equipment rated under 37 kW.* For nonroad equipment and vehicles and marine diesel engines with engines rated under 37 kW, a manufacturer may take any of the actions identified in §89.1003(a)(1) for a portion of its U.S.-directed production volume of such equipment and vehicles during the seven years immediately following the date on which Tier 1 engine standards first apply to engines used in such equipment and vehicles, provided that the seven-year sum of these portions in each year, as expressed as a percentage for each year, does not exceed 80.

(2) *Small volume allowances.* A nonroad equipment or vehicle manufacturer or post-manufacture marinizer may exceed the production percentages in paragraph (d)(1) of this section, provided that in each regulated power category the manufacturer's total of excepted nonroad equipment and vehicles and marine diesel engines:

(i) Over the years in which the percent-of-production allowance applies does not exceed 100 units times the number of years in which the percent-of-production allowance applies; and

(ii) Does not exceed 200 units in any year; and

(iii) Does not use engines from more than one engine family, or, for excepted equipment vehicles, and marine diesel engines using engines not belonging to any engine family, from more than one engine manufacturer.

(3) *Inclusion of previous-tier engines.* Nonroad equipment and vehicles and marine diesel engines built with previous tier or noncertified engines under

the existing inventory provisions of §89.1003(b)(4) need not be included in determining compliance with paragraphs (d)(1) and (d)(2) of this section.

(e) *Recordkeeping and calculation to verify compliance.* The following shall apply to nonroad equipment or vehicle manufacturers and post-manufacture marinizers who produce excepted equipment or vehicles or marine diesel engines under the provisions of paragraph (d) of this section:

(1) For each power category in which excepted nonroad equipment or vehicles or marine diesel engines are produced, a calculation to verify compliance with the requirements of paragraph (d) of this section shall be made by the nonroad equipment or vehicle manufacturer or post-manufacture marinizer. This calculation shall be made no later than December 31 of the year following the last year in which allowances are used, and shall be based on actual production information from the subject years. If both the percent-of-production and small volume allowances have been exceeded, then the manufacturer is in violation of section 203 of the Act and §89.1003, except as provided under paragraphs (f) and (h) of this section.

(2) A nonroad equipment or vehicle manufacturer or post-manufacture marinizer shall keep records of all nonroad equipment and vehicles and marine diesel engines excepted under the provisions of paragraph (d) of this section, for each power category in which exceptions are taken. These records shall include equipment and engine model numbers, serial numbers, and dates of manufacture, and engine rated power. In addition, the manufacturer shall keep records sufficient to demonstrate the verifications of compliance required in paragraph (e)(1) of this section. All records shall be kept until at least two full years after the final year in which allowances are available for each power category, and shall be made available to EPA upon request.

(f) *Hardship relief.* Nonroad equipment and vehicle manufacturers and post-manufacture marinizers may take any of the otherwise prohibited actions identified in §89.1003(a)(1) if approved

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by the Administrator, and subject to the following requirements:

(1) Application for relief must be submitted to the Engine Programs and Compliance Division of the EPA in writing prior to the earliest date in which the applying manufacturer would be in violation of § 89.1003. The manufacturer must submit evidence showing that the requirements for approval have been met.

(2) The applying manufacturer must not be the manufacturer of the engines used in the equipment for which relief is sought. This requirement does not apply to post-manufacture marinizers.

(3) The conditions causing the impending violation must not be substantially the fault of the applying manufacturer.

(4) The conditions causing the impending violation must be such that the applying manufacturer will experience serious economic hardship if relief is not granted.

(5) The applying manufacturer must demonstrate that no allowances under paragraph (d) of this section will be available to avoid the impending violation.

(6) Any relief granted must begin within one year after the implementation date of the standard applying to the engines being used in the equipment, or to the marine diesel engines, for which relief is requested, and may not exceed one year in duration.

(7) The Administrator may impose other conditions on the granting of relief including provisions to recover the lost environmental benefit.

(g) *Allowance for the production of engines.* Engine manufacturers may take any of the otherwise prohibited actions identified in § 89.1003(a)(1) with regard to uncertified engines or Tier 1 engines, as appropriate, if the engine manufacturer has received written assurance from the equipment manufacturer that the engine is required to meet the demand for engines created under paragraph (d), (f), or (h) of this section.

(h) *Alternative Flexibility for Post-Manufacture Marinizers.* Post-manufacture marinizers may elect to delay the effective date of the Tier 1 standards in § 89.112 for marine diesel engines rated under 37 kW by one year, instead of

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using the provisions of paragraphs (d) and (f) of this section. Post-manufacture marinizers wishing to take advantage of this provision must inform the Director of the Engine Programs and Compliance Division of their intent to do so in writing before the date that the standards would otherwise take effect.

[59 FR 31335, June 17, 1994. Redesignated and amended at 63 FR 56995, 56997, Oct. 23, 1998]

§ 89.103 Definitions.

The definitions in subpart A of part 89 apply to this subpart. All terms not defined herein or in subpart A have the meaning given them in the Act.

[59 FR 31335, June 17, 1994. Redesignated at 63 FR 56995, Oct. 23, 1998]

§ 89.104 Useful life, recall, and warranty periods.

(a) The useful life is based on the rated power and rated speed of the engine.

(1) For all engines rated under 19 kW, and for constant speed engines rated under 37 kW with rated speeds greater than or equal to 3,000 rpm, the useful life is a period of 3,000 hours or five years of use, whichever first occurs.

(2) For all other engines rated at or above 19 kW and under 37 kW, the useful life is a period of 5,000 hours or seven years of use, whichever first occurs.

(3) For all engines rated at or above 37 kW, the useful life is a period of 8,000 hours of operation or ten years of use, whichever first occurs.

(b) Engines are subject to recall testing for a period based on the rated power and rated speed of the engines. However, in a recall, engines in the subject class or category would be subject to recall regardless of actual years or hours of operation.

(1) For all engines rated under 19 kW, and for constant speed engines rated under 37 kW with rated speeds greater than or equal to 3,000 rpm, the engines are subject to recall testing for a period of 2,250 hours or four years of use, whichever first occurs.

(2) For all other engines rated at or above 19 kW and under 37 kW, the engines are subject to recall for a period