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in marine vessels (as defined in the General Provisions of the United States Code, 1 U.S.C. 3);

(4) Non-propulsion compression-ignition engines used in locomotives; and

(5) Compression-ignition marine engines with rated power under 37 kW.

(b) (1) *Aircraft engines*. This part does not apply for engines used in aircraft (as defined in 40 CFR 87.1).

(2) *Mining engines*. This part does not apply for engines used in underground mining of engines used in underground mining equipment and regulated by the Mining Safety and Health Administration (MSHA) in 30 CFR Parts 7, 31, 32, 36, 56, 57, 70, and 75.

(3) *Locomotive engines*. This part does not apply for engines that:

(i) Are subject to the standards of 40 CFR part 92; or

(ii) Are exempted from the requirements of 40 CFR part 92 by exemption provisions of 40 CFR part 92 other than those specified in 40 CFR 92.907.

(4) *Marine engines*. This part does not apply for engines that:

(i) Are subject to the standards of 40 CFR part 94;

(ii) Are exempted from the requirements of 40 CFR part 94 by exemption provisions of 40 CFR part 94 other than those specified in 40 CFR 94.907 or 94.912.

(iii) Are marine engines (as defined in 40 CFR part 94) with rated power at or above 37kW that are manufactured in calendar years in which the standards of 40 CFR part 94 are not yet applicable.

(5) *Hobby engines*. This part does not apply for engines with a per-cylinder displacement of less than 50 cubic centimeters.

(6) *Tier 4 engines*. This part does not apply to engines that are subject to emission standards under 40 CFR part 1039. See 40 CFR 1039.1 to determine when that part 1039 applies. Note that certain requirements and prohibitions apply to engines built on or after January 1, 2006 if they are installed in stationary applications or in equipment that will be used solely for competition, as described in 40 CFR 1039.1 and 40 CFR 1068.1; those provisions apply instead of the provisions of this part 89.

(c) In certain cases, the regulations in this part 89 apply to engines at or

above 250 kW that would otherwise be covered by 40 CFR part 1048. See 40 CFR 1048.620 for provisions related to this allowance.

[64 FR 73330, Dec. 29, 1999, as amended at 69 FR 39212, June 29, 2004; 70 FR 40444, July 13, 2005]

§ 89.2 Definitions.

The following definitions apply to part 89. All terms not defined herein have the meaning given them in the Act.

Act means the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*

Adjustable parameter means any device, system, or element of design which is physically capable of being adjusted (including those which are difficult to access) and which, if adjusted, may affect emissions or engine performance during emission testing.

Administrator means the Administrator of the Environmental Protection Agency or his or her authorized representative.

Aircraft means any vehicle capable of sustained air travel above treetop heights.

Amphibious vehicle means a vehicle with wheels or tracks that is designed primarily for operation on land and secondarily for operation in water.

Auxiliary emission control device (AECD) means any element of design that senses temperature, vehicle speed, engine RPM, transmission gear, or any other parameter for the purpose of activating, modulating, delaying, or deactivating the operation of any part of the emission control system.

Auxiliary marine diesel engine means a marine diesel engine that is not a propulsion marine diesel engine.

Blue Sky Series engine means a nonroad engine meeting the requirements of § 89.112(f).

Certification means, with respect to new nonroad engines, obtaining a certificate of conformity for an engine family complying with the nonroad engine emission standards and requirements specified in this part.

Compression-ignition means relating to a type of reciprocating, internal-combustion engine that is not a spark-ignition engine.

Constant-speed engine means an engine that is governed to operate only at rated speed.

Crankcase emissions means airborne substances emitted to the atmosphere from any portion of the engine crankcase ventilation or lubrication systems.

Emission control system means any device, system, or element of design which controls or reduces the emission of substances from an engine.

Engine, as used in this part, refers to nonroad engine.

Engine manufacturer means any person engaged in the manufacturing or assembling of new nonroad engines or importing such engines for resale, or who acts for and is under the control of any such person in connection with the distribution of such engines. Engine manufacturer does not include any dealer with respect to new nonroad engines received by such person in commerce.

Engine used in a locomotive means either an engine placed in the locomotive to move other equipment, freight, or passenger traffic, or an engine mounted on the locomotive to provide auxiliary power.

EPA enforcement officer means any officer or employee of the Environmental Protection Agency so designated in writing by the Administrator (or by his or her designee).

Exhaust gas recirculation means an emission control technology that reduces emissions by routing exhaust gases that had been exhausted from the combustion chamber(s) back into the engine to be mixed with incoming air prior to or during combustion. The use of valve timing to increase the amount of residual exhaust gas in the combustion chamber(s) that is mixed with incoming air prior to or during combustion is not considered to be exhaust gas recirculation for the purposes of this part.

Family emission limit (FEL) means an emission level that is declared by the manufacturer to serve in lieu of an emission standard for certification purposes and for the averaging, banking, and trading program. A FEL must be expressed to the same number of decimal places as the applicable emission standard.

Full load governed speed is the maximum full load speed as specified by the manufacturer in the sales and service literature and certification application. This speed is the highest engine speed with an advertised power greater than zero.

Gross power means the power measured at the crankshaft or its equivalent, the engine being equipped only with the standard accessories (such as oil pumps, coolant pumps, and so forth) necessary for its operation on the test bed. Alternators must be used, if necessary, to run the engine. Fans, air conditioners, and other accessories may be used at the discretion of the manufacturer, but no power adjustments for these accessories may be made.

Identification number means a specification (for example, model number/serial number combination) which allows a particular nonroad engine to be distinguished from other similar engines.

Intermediate speed means peak torque speed if peak torque speed occurs from 60 to 75 percent of rated speed. If peak torque speed is less than 60 percent of rated speed, intermediate speed means 60 percent of rated speed. If peak torque speed is greater than 75 percent of rated speed, intermediate speed means 75 percent of rated speed.

Marine engine means a nonroad engine that is installed or intended to be installed on a marine vessel. This includes a portable auxiliary marine engine only if its fueling, cooling, or exhaust system is an integral part of the vessel. There are two kinds of marine engines:

(1) Propulsion marine engine means a marine engine that moves a vessel through the water or directs the vessel's movement.

(2) Auxiliary marine engine means a marine engine not used for propulsion.

Marine vessel has the meaning given in 1 U.S.C. 3, except that it does not include amphibious vehicles. The definition in 1 U.S.C. 3 very broadly includes every craft capable of being used as a means of transportation on water.

Model year (MY) means the manufacturer's annual new model production period which includes January 1 of the

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calendar year, ends no later than December 31 of the calendar year, and does not begin earlier than January 2 of the previous calendar year. Where a manufacturer has no annual new model production period, model year means calendar year.

New for purposes of this part, means a nonroad engine, nonroad vehicle, or nonroad equipment the equitable or legal title to which has never been transferred to an ultimate purchaser. Where the equitable or legal title to the engine, vehicle, or equipment is not transferred to an ultimate purchaser until after the engine, vehicle, or equipment is placed into service, then the engine, vehicle, or equipment will no longer be new after it is placed into service. A nonroad engine, vehicle, or equipment is placed into service when it is used for its functional purposes. With respect to imported nonroad engines, nonroad vehicles, or nonroad equipment, the term *new* means an engine, vehicle, or piece of equipment that is not covered by a certificate of conformity issued under this part at the time of importation, and that is manufactured after the effective date of a regulation issued under this part which is applicable to such engine, vehicle, or equipment (or which would be applicable to such engine, vehicle, or equipment had it been manufactured for importation into the United States).

Nonroad engine means:

(1) Except as discussed in paragraph (2) of this definition, a nonroad engine is any internal combustion engine:

(i) In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or

(ii) In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or

(iii) That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

(2) An internal combustion engine is not a nonroad engine if:

(i) the engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under section 202 of the Act; or

(ii) the engine is regulated by a federal New Source Performance Standard promulgated under section 111 of the Act; or

(iii) the engine otherwise included in paragraph (1)(iii) of this definition remains or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least two years) and that operates at that single location approximately three months (or more) each year. This paragraph does not apply to an engine after the engine is removed from the location.

Nonroad equipment means equipment that is powered by nonroad engines.

Nonroad vehicle means a vehicle that is powered by a nonroad engine as defined in this section and that is not a motor vehicle or a vehicle used solely for competition.

Nonroad vehicle or nonroad equipment manufacturer means any person engaged in the manufacturing or assembling of new nonroad vehicles or equipment or importing such vehicles or equipment for resale, or who acts for and is under the control of any such person in connection with the distribution of such vehicles or equipment. A nonroad vehicle or equipment manufacturer does not include any dealer with respect to new nonroad vehicles or equipment received by such person in commerce. A nonroad vehicle or

equipment manufacturer does not include any person engaged in the manufacturing or assembling of new nonroad vehicles or equipment who does not install an engine as part of that manufacturing or assembling process. All nonroad vehicle or equipment manufacturing entities that are under the control of the same person are considered to be a single nonroad vehicle or nonroad equipment manufacturer.

Opacity means the fraction of a beam of light, expressed in percent, which fails to penetrate a plume of smoke.

Operating hours means:

(1) For engine storage areas or facilities, all times during which personnel other than custodial personnel are at work in the vicinity of the storage area or facility and have access to it.

(2) For all other areas or facilities, all times during which an assembly line is in operation or all times during which testing, maintenance, service accumulation, production or compilation of records, or any other procedure or activity related to certification testing, to translation of designs from the test stage to the production stage, or to engine manufacture or assembly is being carried out in a facility.

Post-manufacture marinizer means a person who produces a marine diesel engine by substantially modifying a certified or uncertified complete or partially complete engine, and is not controlled by the manufacturer of the base engine or by an entity that also controls the manufacturer of the base engine. For the purpose of this definition, “substantially modify” means changing an engine in a way that could change engine emission characteristics.

Presentation of credentials means the display of the document designating a person as an EPA enforcement officer or EPA authorized representative.

Propulsion marine diesel engine means a marine diesel engine that is intended to move a vessel through the water or direct the movement of a vessel.

Rated speed is the maximum full load governed speed for governed engines and the speed of maximum horsepower for ungoverned engines.

Spark-ignition means relating to a gasoline-fueled engine or other engines with a spark plug (or other sparking

device) and with operating characteristics significantly similar to the theoretical Otto combustion cycle. Spark-ignition engines usually use a throttle to regulate intake air flow to control power during normal operation.

Specific emissions means emissions expressed on the basis of observed brake power, using units of g/kW-hr. Observed brake power measurement includes accessories on the engine if these accessories are required for running an emission test (except for the cooling fan). When it is not possible to test the engine in the gross conditions, for example, if the engine and transmission form a single integral unit, the engine may be tested in the net condition. Power corrections from net to gross conditions will be allowed with prior approval of the Administrator.

Sulfur-sensitive technology means an emission-control technology that experiences a significant drop in emission-control performance or emission-system durability when an engine is operated on low-sulfur fuel (*i.e.*, fuel with a sulfur concentration up to 500 ppm) as compared to when it is operated on ultra low-sulfur fuel (*i.e.*, fuel with a sulfur concentration less than 15 ppm). Exhaust-gas recirculation is not a sulfur-sensitive technology.

Test fleet means the engine or group of engines that a manufacturer uses during certification to determine compliance with emission standards.

Tier 1 engine means an engine subject to the Tier 1 emission standards listed in § 89.112(a).

Tier 2 engine means an engine subject to the Tier 2 emission standards listed in § 89.112(a).

Tier 3 engine means an engine subject to the Tier 3 emission standards listed in § 89.112(a).

Ultimate purchaser means, with respect to any new nonroad engine, new nonroad vehicle, or new nonroad equipment, the first person who in good faith purchases such new nonroad engine, nonroad vehicle, or nonroad equipment for purposes other than resale.

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United States means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, and the U.S. Virgin Islands.

Used solely for competition means exhibiting features that are not easily removed and that would render its use other than in competition unsafe, impractical, or highly unlikely.

U.S.-directed production volume means the number of nonroad equipment, vehicle, or marine diesel engine units produced by a manufacturer for which the manufacturer has reasonable assurance that sale was or will be made to ultimate purchasers in the United States.

[59 FR 31335, June 17, 1994, as amended at 61 FR 52102, Oct. 4, 1996; 63 FR 18998, Apr. 16, 1998; 63 FR 56996, Oct. 23, 1998; 65 FR 73331, Dec. 29, 1999; 67 FR 68339, Nov. 8, 2002; 69 FR 39212, June 29, 2004; 70 FR 40444, July 13, 2005]

§ 89.3 Acronyms and abbreviations.

The following acronyms and abbreviations apply to part 89.

AECD Auxiliary emission control device
ASME American Society of Mechanical Engineers
ASTM American Society for Testing and Materials
CAA Clean Air Act
CAAA Clean Air Act Amendments of 1990
CI Compression-ignition
CO Carbon monoxide
CO₂ Carbon dioxide
EGR Exhaust gas recirculation
EPA Environmental Protection Agency
FEL Family emission limit
FTP Federal Test Procedure
g/kW-hr Grams per kilowatt hour
HC Hydrocarbons
ICI Independent Commercial Importer
kW Kilowatt
NIST National Institute for Standards and Testing
NMHC Nonmethane hydrocarbon
NTIS National Technical Information Service
NO Nitric oxide
NO₂ Nitrogen dioxide
NO_x Oxides of nitrogen
O₂ Oxygen
OEM Original equipment manufacturer
PM Particulate matter
SAE Society of Automotive Engineers
SEA Selective Enforcement Auditing
SI Spark-ignition
THC Total hydrocarbon
U.S.C. United States Code

VOC Volatile organic compounds

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

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§ 89.5 Table and figure numbering; position.

(a) Tables for each subpart appear in an appendix at the end of the subpart. Tables are numbered consecutively by order of appearance in the appendix. The table title will indicate the model year (if applicable) and the topic.

(b) Figures for each subpart appear in an appendix at the end of the subpart. Figures are numbered consecutively by order of appearance in the appendix. The figure title will indicate the model year (if applicable) and the topic.

§ 89.6 Reference materials.

(a) *Incorporation by reference.* The documents in paragraph (b) of this section have been incorporated by reference. The incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at US EPA, OAR, 1200 Pennsylvania Ave., NW., Washington, DC 20460, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(b) The following paragraphs and tables set forth the material that has been incorporated by reference in this part.

(1) *ASTM material.* The following table sets forth material from the American Society for Testing and Materials which has been incorporated by reference. The first column lists the number and name of the material. The second column lists the section(s) of this part, other than § 89.6, in which the matter is referenced. The second column is presented for information only and may not be all inclusive. Copies of these materials may be obtained from American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959.