

## Environmental Protection Agency

## § 89.6

*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  
CO<sub>2</sub> 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  
NO<sub>2</sub> Nitrogen dioxide  
NO<sub>x</sub> Oxides of nitrogen  
O<sub>2</sub> 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]

### § 89.4 [Reserved]

### § 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](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.

Document number and name	40 CFR part 89 reference
ASTM D86-97: "Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure" ...	Appendix A to Subpart D.
ASTM D93-97: "Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester" .....	Appendix A to Subpart D.
ASTM D129-95: "Standard Test Method for Sulfur in Petroleum Products (General Bomb Method)" .....	Appendix A to Subpart D.
ASTM D287-92: "Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products" (Hydrometer Method).	Appendix A to Subpart D.
ASTM D445-97: "Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (the Calculation of Dynamic Viscosity)".	Appendix A to Subpart D.
ASTM D613-95: "Standard Test Method for Cetane Number of Diesel Fuel Oil" .....	Appendix A to Subpart D.
ASTM D1319-98: "Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption".	Appendix A to Subpart D.
ASTM D2622-98: "Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-ray Fluorescence Spectrometry".	Appendix A to Subpart D.
ASTM D5186-96: "Standard Test Method for "Determination of the Aromatic Content and Polynuclear Aromatic Content of Diesel Fuels and Aviation Turbine Fuels By Supercritical Fluid Chromatography".	Appendix A to Subpart D.
ASTM E29-93a: "Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications".	89.120; 89.207; 89.509.

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

**§ 89.7 Treatment of confidential information.**

(a) Any manufacturer may assert that some or all of the information submitted pursuant to this part is entitled to confidential treatment as provided by part 2, subpart B of this chapter.

(b) Any claim of confidentiality must accompany the information at the time it is submitted to EPA.

(c) To assert that information submitted pursuant to this part is confidential, a manufacturer must indicate clearly the items of information 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