

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.

(a) The requirements of subpart B of this part are applicable to all new nonroad compression-ignition engines

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

(b) In a given model year, you may ask us to approve the use of procedures for certification, labeling, reporting, and recordkeeping specified in 40 CFR part 1039 or 1068 instead of the comparable procedures specified in this part 89. We will approve the request as long as it does not prevent us from ensuring that you fully comply with the intent of this part.

[72 FR 53127, Sept. 18, 2007]

§ 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