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ultimate purchaser. Where the equitable or legal title to an engine or vehicle is not transferred to an ultimate purchaser until after the engine or vehicle is placed into service, then the engine or vehicle will no longer be new once it is placed into service. A nonroad engine or vehicle is placed into service when it is used for its functional purposes. This paragraph (3) does not apply to locomotives or engines used in locomotives.

Nonroad engine has the meaning given in 40 CFR 1068.30

Primarily used means used 51 percent or more.

States and localities means any or all of the states, commonwealths, and territories in the United States including the District of Columbia and any or all of their political subdivisions.

Ultimate purchaser means the first person who in good faith purchases a new nonroad engine or new nonroad vehicle or equipment for purposes other than resale.

United States has the meaning given in 40 CFR 1068.30.

§ 1074.10 Scope of preemption.

(a) States and localities are preempted from adopting or enforcing standards or other requirements relating to the control of emissions from new engines smaller than 175 horsepower that are primarily used in farm or construction equipment or vehicles, as defined in this part. For equipment that is used in applications in addition to farming or construction activities, if the equipment is primarily used as farm and/or construction equipment or vehicles (as defined in this part), it is considered farm or construction equipment or vehicles.

(b) For nonroad engines or vehicles other than those described in paragraph (a) of this section and § 1074.12, States and localities are preempted from enforcing any standards or other requirements relating to control of emissions from nonroad engines or vehicles except as provided in subpart B of this part.

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§ 1074.12 Scope of preemption-specific provisions for locomotives and locomotive engines

(a) States and localities are preempted from adopting or enforcing standards or other requirements relating to the control of emissions from new locomotives and new engines used in locomotives.

(b) During a period equivalent in length to 133 percent of the useful life, expressed as MW-hrs (or miles where applicable), beginning at the point at which the locomotive or engine becomes new, those standards or other requirements which are preempted include, but are not limited to, the following: emission standards, mandatory fleet average standards, certification requirements, retrofit and aftermarket equipment requirements, and non-federal in-use testing requirements. The standards and other requirements specified in the preceding sentence are preempted whether applicable to new or other locomotives or locomotive engines.

Subpart B—Procedures for Authorization

§ 1074.101 Procedures for California nonroad authorization requests.

(a) California must request authorization from the Administrator to enforce its adopted standards and other requirements relating to control of emissions from nonroad engines or vehicles that are not preempted by § 1074.10(a) or § 1074.12. The request must include the record on which the state rulemaking was based.

(b) After receiving the authorization request, the Administrator will provide notice and opportunity for a public hearing regarding such requests.

§ 1074.105 Criteria for granting authorization.

(a) The Administrator will grant the authorization if California determines that its standards will be, in the aggregate, at least as protective of public health and welfare as otherwise applicable federal standards.

(b) The authorization will not be granted if the Administrator finds that any of the following are true:

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(1) California's determination is arbitrary and capricious.

(2) California does not need such standards to meet compelling and extraordinary conditions.

(3) The California standards and accompanying enforcement procedures are not consistent with section 209 of the Act (42 U.S.C. 7543).

(c) In considering any request from California to authorize the state to adopt or enforce standards or other requirements relating to control of emissions from new nonroad spark-ignition engines smaller than 50 horsepower, the Administrator will give appropriate consideration to safety factors (including the potential increased risk of burn or fire) associated with compliance with the California standard.

§ 1074.110 Adoption of California standards by other states.

(a) Except as described in paragraph (b) of this section, any state other than California that has plan provisions approved under Part D of Title I of the Act (42 U.S.C. 7501 to 7515) may adopt and enforce emission standards for any period for nonroad engines and vehicles subject to the following requirements:

(1) The state must provide notice to the Administrator that it has adopted such standards.

(2) Such standards may not apply to new engines smaller than 175 horsepower that are used in farm or construction equipment or vehicles, or to

new locomotives or new engines used in locomotives.

(3) Such standards and implementation and enforcement must be identical, for the period concerned, to the California standards authorized by the Administrator.

(4) The state must adopt such standards at least two years before the standards first take effect.

(5) California must have adopted such standards two years before the standards first take effect in the state that is adopting them under this section.

(b) States and localities, other than the State of California, may not adopt or attempt to enforce any standard or other requirement applicable to the control of emissions from spark-ignition engines smaller than 50 horsepower, except standards or other requirements that were adopted by that state before September 1, 2003.

§ 1074.115 Relationship of federal and state standards.

If state standards apply to a new nonroad engine or vehicle pursuant to authorization granted under section 209 of the Act (42 U.S.C. 7543), compliance with such state standards will be treated as compliance with the otherwise applicable standards of this chapter for engines or vehicles introduced into commerce in that state.

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