

D. What Is a New Marine Vessel?

1. Newly Manufactured Vessel

The definition of new vessel is set out in 40 CFR 94.2. This definition is similar to the definition of new engine: a new marine vessel is a vessel whose equitable or legal title has never been transferred to an ultimate purchaser. In the case where the equitable or legal title to a vessel is not transferred to an ultimate purchaser prior to its being placed into service, a vessel ceases to be new when it is placed into service.

2. Modification of an Existing Vessel With Category 1 or Category 2 Main Propulsion Engines

In addition, our definition in 40 CFR 94.2 specifies that a vessel is considered new when it has been modified such that the value of the modifications exceeds 50 percent of the value of the modified vessel. As noted in our 1999 rulemaking, this provision is intended to prevent someone from re-using the hull or other parts from a used vessel to avoid emission standards. This provision is based on a similar provision in our locomotive engine emission control program (*see* 40 CFR 92.2 definition of “freshly manufactured locomotive”). Since we finalized our 1999 commercial marine diesel engine rule we received several questions about how to apply this provision. The following is intended to clarify this provision.

When applying this provision, the modifications must be completed prior to the effective date of the standards that would otherwise apply. For example, for the Tier 2 engine standards that go into effect in 2007 for Category 1 and Category 2 marine diesel engines, modifications that are completed by December 31, 2006 will not trigger the engine requirements and the engines on that vessel would not have to meet the standards. However, if the vessel modifications are completed on or after January 1, 2007, and they exceed 50 percent of the value of the modified vessel, then the engines on the vessel must meet the standards regardless of whether they have been changed as part of the vessel modification.

The definition in 40 CFR 94.2 refers to the “value” of the modifications, rather than the costs. These figures must therefore be based on the appraised value of the vessel before modifications compared with the value of the modified vessel. The following equation demonstrates the calculation, showing that a vessel is new if:

$$\frac{[\text{assessed value after modifications}]}{[\text{assessed value}]} \geq 0.5$$

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If the value of the modifications exceeds 50 percent of the final value of the modified vessel, we would treat the vessel as new under 40 CFR part 94. To evaluate whether the modified vessel would be considered new, one would need to project the fair market value of the modified vessel based on an objective assessment, such as an appraisal for insurance or financing purposes, or some other third-party analysis. While the preliminary decision can be based on the projected value of the modified vessel, the decision must also be valid when basing the calculations on the actual assessed value of the vessel after modifications are complete.

3. Modification of an Existing Vessel With Category 3 Main Propulsion Engines

EPA is adopting a separate definition of “new vessel” for those vessels equipped with a Category 3 engine. A separate definition for these vessels is reasonable because large ocean-going vessels are already subject to a different definition of “new vessel” pursuant to the U.S. adoption of the requirements in MARPOL Annex I, Regulations for the Prevention of Pollution by Oil.²⁸ The MARPOL Annex I criteria for determining when the modifications made to an existing vessel make that vessel “new” and thereby subject to MARPOL Annex I are contained in its definition for “major conversion” of a ship. The goal of the Annex I provision is similar to the goal of our provision: To require ships that have been so modified as to make them substantially new, to comply with the standards otherwise applicable to new vessels.

Note that while the provisions of MARPOL Annex I apply to all vessels, Annex I distinguishes between vessels at or above 400 gross tonnage, which are subject to the specific MARPOL requirements, and those below 400 gross tonnage, which are subject to potentially different provisions, adopted by each Member State to “ensure that it is equipped as far as practicable and reasonable with [relevant] installations.” Vessels above 400 gross tonnage, which are likely to be ocean-going vessels equipped with Category 3 main propulsion engines, are therefore subject to the Annex I criteria for determining when an existing vessel is modified in such a way that it is

considered “new” and subject to MARPOL Annex VI’s requirements.

For the purpose of this Clean Air Act regulation, we are adopting a definition of “new vessel” for vessels with Category 3 main propulsion engines that is consistent with the way Annex I was adopted into U.S. law (*see* 40 U.S.C. 2101). According to this approach, an existing vessel with a Category 3 main propulsion engine will be considered a “new vessel” and will be subject to the requirements of using a new engine certified to the emissions standards adopted in this final rule if that vessel undergoes a modification that:

- Substantially alters the dimensions or carrying capacity of the vessel;
- Changes the type of the vessel; or
- Substantially prolongs the life of a vessel.

Under our provision, once a vessel with a Category 3 propulsion engine is determined to be “new” according to the above criteria, then all the engines on that vessel would have to comply with EPA’s marine diesel engine emission limits. To the extent that any judgment is required in interpreting this provision, EPA intends to implement this definition consistently with the application of the MARPOL.

E. Is EPA Retaining the Foreign-Trade Exemption?

In addition to their main propulsion engines, which are generally Category 3 marine diesel engines, ocean-going commercial vessels typically have several Category 1 and Category 2 engines that are used in auxiliary power applications. They provide electricity for important navigational and maneuvering equipment, and crew services.

Several commenters to our earlier marine diesel engine rulemaking expressed concern that requiring ship owners to obtain and use compliant Category 1 and Category 2 engines for vessels that spend most of their time outside the United States could be burdensome for those vessels if these engines need to be repaired or replaced when they are away from U.S. ports. Consequently, we provided a foreign-trade exemption for these engines. A vessel owner could obtain this exemption for Category 1 and Category 2 marine diesel engines if it was demonstrated to the Administrator’s satisfaction that the vessel: (a) Will spend less than 25 percent of its total engine operation time within 320 kilometers of U.S. territory; or (b) will not operate between two U.S. ports (40 CFR 94.906(d)).

We are eliminating the foreign-trade exemption because the conditions on

²⁸ Annex I to the International Convention on the Prevention of Pollution from Ships, 1973, as Modified by the Protocol of 1978 Relating Thereto.