

(2) If the Administrator determines that the new or changed engine(s) meets the requirements of this subpart and the Act, the appropriate certificate of conformity will be amended.

(3) If the Administrator determines that the proposed amendment would not be covered by the certificate of conformity, the Administrator must provide a written explanation to the engine manufacturer of his or her decision not to amend the certificate. The manufacturer may request a hearing on a denial.

(4) If the Administrator determines that a revised FEL meets the requirements of this subpart and the Act, the appropriate certificate of conformity will be amended, or a new certificate will be issued to reflect the revised FEL. The certificate of conformity is revised conditional upon compliance with § 90.207(b).

(e)(1) Alternatively, an engine manufacturer may make changes in or additions to production engines concurrently with amending the application for an engine family as set forth in paragraph (a) and (b) of this section. In these circumstances the manufacturer may implement the production change without EPA pre-approval provided the request for change together with all supporting emission test data, related engineering evaluations, and other supporting documentation is received at EPA within three working days of implementing the change. Such changes are ultimately still subject to the provisions of paragraphs (c) and (d) of this section.

(2) If, after a review, the Administrator determines that additional testing or information is required, the engine manufacturer must provide required test data or information within 30 days or cease production of the affected engines.

(3) If the Administrator determines that the affected engines do not meet applicable requirements, the Administrator will notify the engine manufacturer to cease production of the affected engines.

[60 FR 34598, July 3, 1995, as amended at 64 FR 15239, Mar. 30, 1999; 69 FR 1833, Jan. 12, 2004]

§ 90.123 Denial, revocation of certificate of conformity.

(a) If, after review of the engine manufacturer's application, request for certification, information obtained from any inspection, and any other information the Administrator may require, the Administrator determines that the test engine does not meet applicable standards and requirements, the Administrator will notify the manufacturer in writing, setting forth the basis for this determination.

(b) Notwithstanding the fact that engines described in the application may comply with all other requirements of this subpart, the Administrator may deny the issuance of or revoke a previously issued certificate of conformity if the Administrator finds any one of the following infractions to be substantial:

(1) The engine manufacturer submits false or incomplete information;

(2) The engine manufacturer denies an EPA enforcement officer or EPA authorized representative the opportunity to conduct authorized inspections;

(3) The engine manufacturer fails to supply requested information or amend its application to include all engines being produced;

(4) The engine manufacturer renders inaccurate any test data which it submits or otherwise circumvents the intent of the Act or this part; or

(5) The engine manufacturer denies an EPA enforcement officer or EPA authorized representative reasonable assistance (as defined in § 90.506).

(c) If a manufacturer knowingly commits an infraction specified in paragraph (b)(1) or (b)(4) of this section or knowingly commits any fraudulent act which results in the issuance of a certificate of conformity, the Administrator may deem such certificate void ab initio.

(d) When the Administrator denies or revokes a certificate of conformity, the engine manufacturer will be provided a written determination. The manufacturer may request a hearing on the Administrator's decision.

(e) Any revocation of a certificate of conformity extends no further than to forbid the introduction into commerce of those engines previously covered by

§ 90.124

the certification which are still in the possession of the engine manufacturer, except in cases of such fraud or other misconduct that makes the certification void ab initio.

§ 90.124 Request for hearing.

(a) An engine manufacturer may request a hearing on the Administrator's denial or revocation of a certificate of conformity.

(b) The engine manufacturer's request must be filed within 30 days of the Administrator's decision, be in writing, and set forth the manufacturer's objections to the Administrator's decision and data to support the objections.

(c) If, after review of the request and supporting data, the Administrator finds that the request raises a substantial and factual issue, the Administrator will provide the engine manufacturer a hearing.

§ 90.125 Hearing procedures.

The hearing procedures set forth in §§ 90.513, 90.514, and 90.515 apply to this subpart.

§ 90.126 Right of entry and access.

Any engine manufacturer that has applied for certification of a new engine or engine family subject to certification testing under this subpart must admit or cause to be admitted to any applicable facilities during operating hours any EPA enforcement officer or EPA authorized representative as provided in § 90.506.

Subpart C—Certification Averaging, Banking, and Trading Provisions

SOURCE: 64 FR 15239, Mar. 30, 1999, unless otherwise noted.

§ 90.201 Applicability.

The requirements of this subpart C are applicable to all Phase 2 spark-ignition engines subject to the provisions of subpart A of this part except as provided in § 90.103(a). These provisions are not applicable to any Phase 1 engines. Participation in the averaging, banking and trading program is voluntary, but if a manufacturer elects to partici-

40 CFR Ch. I (7–1–07 Edition)

pate, it must do so in compliance with the regulations set forth in this subpart. The provisions of this subpart are applicable for HC+NO_x (NMHC+NO_x) emissions but not for CO emissions.

§ 90.202 Definitions.

The definitions in subpart A of this part apply to this subpart. The following definitions also apply to this subpart:

Averaging means the exchange of emission credits between engine families within a given manufacturer's product line.

Banking means the retention of emission credits by the manufacturer generating the emission credits or obtaining such credits through trading, for use in future model year averaging or trading as permitted in this part.

Emission credits represent the amount of emission reduction or exceedance, by an engine family, below or above the applicable HC+NO_x (NMHC+NO_x) emission standard, respectively. FELs below the standard create "positive credits," while FELs above the standard create "negative credits." In addition, "projected credits" refer to emission credits based on the projected applicable production volume of the engine family. "Reserved credits" are emission credits generated within a model year waiting to be reported to EPA at the end of the model year. "Actual credits" refer to emission credits based on actual applicable production volume as contained in the end-of-year reports submitted to EPA. Some or all of these credits may be revoked if EPA review of the end-of-year reports or any subsequent audit action(s) reveals problems or errors of any nature with credit computations.

Trading means the exchange of emission credits between manufacturers.

§ 90.203 General provisions.

(a) The certification averaging, banking, and trading provisions for HC+NO_x and NMHC+NO_x emissions from eligible engines are described in this subpart.

(b) An engine family may use the averaging, banking and trading provisions for HC+NO_x and NMHC+NO_x emissions if it is subject to regulation under this part with certain exceptions