

## § 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-

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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<sub>x</sub> (NMHC+NO<sub>x</sub>) 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<sub>x</sub> (NMHC+NO<sub>x</sub>) 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<sub>x</sub> and NMHC+NO<sub>x</sub> emissions from eligible engines are described in this subpart.

(b) An engine family may use the averaging, banking and trading provisions for HC+NO<sub>x</sub> and NMHC+NO<sub>x</sub> emissions if it is subject to regulation under this part with certain exceptions

specified in paragraph (c) of this section. HC+NO<sub>x</sub> and NMHC+NO<sub>x</sub> credits shall be interchangeable subject to the limitations on credit generation, credit usage, and other provisions described in this subpart.

(c) A manufacturer shall not include in its calculation of credit generation and may exclude from its calculation of credit usage, any new engines:

(1) Which are intended to be exported, unless the manufacturer has reason or should have reason to believe that such engines have been or will be imported in a piece of equipment; or

(2) Which are subject to state engine emission standards pursuant to a waiver granted by EPA under section 209(e) of the Act, unless the manufacturer demonstrates to the satisfaction of the Administrator that inclusion of these engines in averaging, banking and trading is appropriate.

(d) For an engine family using credits, a manufacturer may, at its option, include its entire production of that engine family in its calculation of credit usage for a given model year.

(e) (1) A manufacturer may certify engine families at Family Emission Limits (FELs) above or below the applicable emission standard subject to the limitation in paragraph (f) of this section, provided the summation of the manufacturer's projected balance of credits from all calculations and credit transactions for all engine classes in a given model year is greater than or equal to zero, as determined under § 90.207. Notwithstanding the previous sentence, a manufacturer may project a negative balance of credits as allowed under § 90.207(c)(2).

(2) A manufacturer of an engine family with an FEL exceeding the applicable emission standard must obtain positive emission credits sufficient to address the associated credit shortfall via averaging, banking, or trading.

(3) A nonhandheld engine family with an FEL below the applicable emission standard may generate positive emission credits for averaging, banking, or trading, or a combination thereof. A handheld engine family with an FEL below the applicable emission standard may generate positive emission credits for averaging or trading. A handheld engine family meeting the require-

ments of § 90.205(a)(4) or (5), whichever is applicable, may generate positive emission credits for banking.

(4) In the case of a Selective Enforcement Audit (SEA) failure, credits may be used to cover subsequent production of engines for the family in question if the manufacturer elects to recertify to a higher FEL. Credits may not be used to remedy a nonconformity determined by an SEA, except that the Administrator may permit the use of credits to address a nonconformity determined by an SEA where the use of such credits is one component of a multi-part remedy for the previously produced engines and the remedy, including the use of credits and the quantity of credits being used, is such that the Administrator is satisfied that the manufacturer has strong and lasting incentive to accurately verify its new engine emission levels and will set or reset its FELs for current and future model years so that production line compliance is assured.

(5) In the case of a production line testing (PLT) failure pursuant to subpart H of this part, a manufacturer may revise the FEL based upon production line testing results obtained under subpart H of this part and upon Administrator approval pursuant to § 90.122(d). The manufacturer may use credits to cover both past production and subsequent production of the engines as needed as allowed under § 90.207(c)(1).

(f) No Phase 2 engine family may have a HC + NO<sub>x</sub> FEL that is greater than 32.2 g/kW-hr for Class I engines, 94 g/kW-hr for Class I-A engines, 50 g/kW-hr for Class I-B engines, 26.8 g/kW-hr for Class II engines, 336 g/kW-hr for Class III engines, 275 g/kW-hr for Class IV engines, or 186 g/kW-hr for Class V engines.

(g)(1) Credits generated in a given model year by an engine family subject to the Phase 2 emission requirements may only be used in averaging, banking or trading, as appropriate, for any other engine family for which the Phase 2 requirements are applicable. Credits generated in one model year may not be used for prior model years, except as allowed under § 90.207(c).

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(2) For the 2005 model year and for each subsequent model year, manufacturers of Class II engines must provide a demonstration that the production weighted average FEL for HC+NO<sub>x</sub> (including NMHC+NO<sub>x</sub> FELs), for all of the manufacturer's Class II engines, will not exceed 13.6 g/kW-hr for the 2005 model year, 13.1 g/kW-hr for the 2006 model year and 12.6 g/kW-hr for the 2007 and each subsequent Phase 2 model year. Such demonstration shall be subject to the review and approval of the Administrator, shall be provided at the time of the first Class II certification of that model year and shall be based on projected eligible production for that model year.

(h) Manufacturers must demonstrate compliance under the averaging, banking, and trading provisions for a particular model year by 270 days after the end of the model year. Except as provided in § 90.207(c), an engine family generating negative credits for which the manufacturer does not obtain or generate an adequate number of positive credits by that date from the same or previous model year engines will violate the conditions of the certificate of conformity. The certificate of conformity may be voided *ab initio* pursuant to § 90.123 for this engine family.

[64 FR 15239, Mar. 30, 1999, as amended at 65 FR 24308, Apr. 25, 2000; 69 FR 1833, Jan. 12, 2004]

## § 90.204 Averaging.

(a) Negative credits from engine families with FELs above the applicable emission standard must be offset by positive credits from engine families having FELs below the applicable emission standard, as allowed under the provisions of this subpart. Averaging of credits in this manner is used to determine compliance under § 90.207(b). A manufacturer may have a negative balance of credits as allowed under § 90.207(c)(2).

(b) Cross-class averaging of credits is allowed across all classes of nonroad spark-ignition engines at or below 19 kW.

(c) Credits used in averaging for a given model year may be obtained from credits generated in the same model year by another engine family, credits banked in previous model years, or

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credits of the same or previous model year obtained through trading subject to the provisions of § 90.205(a). Credits generated under the previously available "Optional transition year averaging, banking, and trading program for Phase 2 handheld engines" of §§ 90.212 through 90.220, since repealed, may also be used in averaging. The restrictions of this paragraph notwithstanding, credits from a given model year may be used to address credit needs of previous model year engines as allowed under § 90.207(c).

(d) The use of credits generated under the early banking provisions of § 90.205(b) is subject to regulations under this subpart.

[64 FR 15239, Mar. 30, 1999, as amended at 65 FR 24308, Apr. 25, 2000; 69 FR 1834, Jan. 12, 2004]

## § 90.205 Banking.

(a)(1) Beginning August 1, 2007, a manufacturer of a Class I engine family with an FEL below the applicable emission standard for a given model year may bank credits in that model year for use in averaging and trading. For new Class I engine families initially produced during the period starting August 1, 2003 through July 31, 2007, a manufacturer of a Class I engine family with an FEL below the applicable emission standard for a given model year may bank credits in that model year for use in averaging and trading.

(2) Beginning with the 2000 model year, a manufacturer of a Class I-A or Class I-B engine family with an FEL below the applicable emission standard for a given model year may bank credits in that model year for use in averaging and trading.

(3) Beginning with the 2001 model year, a manufacturer of a Class II engine family with an FEL below the applicable emission standard for a given model year may bank credits in that model year for use in averaging and trading.

(4) For the 2002 model year, a manufacturer of a Class III or Class IV engine family may bank credits for use in future model year averaging and trading from only those Class III or Class IV engine families with an FEL at or below 72 g/kW-hr. Beginning with the 2003 model year, a manufacturer of a