

systems are installed to satisfy requirements in § 89.109 or for other reasons and regardless of form or interface. Diagnostic systems must be free of all such codes when the rebuilt engine is returned to service. Such signals may not be rendered inoperative during the rebuilding process.

(e) When conducting a rebuild without removing the engine from the equipment, or during the installation of a rebuilt engine, all critical emission-related components listed in 40 CFR part 86, subpart B, not otherwise addressed by paragraphs (b) through (d) of this section must be checked and cleaned, adjusted, repaired, or replaced as necessary, following manufacturer recommended practices.

(f) Records shall be kept by parties conducting activities included in paragraphs (b) through (e) of this section. The records shall include at minimum the hours of operation at time of rebuild, a listing of work performed on the engine, and emission-related control components including a listing of parts and components used, engine parameter adjustments, emission-related codes or signals responded to and reset, and work performed under paragraph (e) of this section.

(1) Parties may keep records in whatever format or system they choose as long as the records are understandable to an EPA enforcement officer or can be otherwise provided to an EPA enforcement officer in an understandable format when requested.

(2) Parties are not required to keep records of information that is not reasonably available through normal business practices including information on activities not conducted by themselves or information that they cannot reasonably access.

(3) Parties may keep records of their rebuilding practices for an engine family rather than on each individual engine rebuilt in cases where those rebuild practices are followed routinely.

(4) Records must be kept for a minimum of two years after the engine is rebuilt.

[63 FR 57005, Oct. 23, 1998]

Subpart C—Averaging, Banking, and Trading Provisions

§ 89.201 Applicability.

Nonroad compression-ignition engines subject to the provisions of subpart A of this part are eligible to participate in the averaging, banking, and trading program described in this subpart.

[59 FR 31335, June 17, 1994. Redesignated at 63 FR 56995, Oct. 23, 1998]

§ 89.202 Definitions.

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

Averaging for nonroad engines means the exchange of emission credits among engine families within a given manufacturer's product line.

Banking means the retention of nonroad engine emission credits by the manufacturer generating the emission credits for use in future model year averaging or trading as permitted by these regulations.

Emission credits represent the amount of emission reduction or exceedance, by a nonroad engine family, below or above the emission standard, respectively. Emission reductions below the standard are considered as "positive credits," while emission exceedances above the standard are considered as "negative credits." In addition, "projected credits" refer to emission credits based on the projected applicable production/sales 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/sales 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) uncovers problems or errors.

Trading means the exchange of nonroad engine emission credits between manufacturers.

[59 FR 31335, June 17, 1994. Redesignated at 63 FR 56995, Oct. 23, 1998]

§ 89.203 General provisions.

(a) The averaging, banking, and trading programs for NO_x, NMHC+NO_x, and PM emissions from eligible nonroad engines are described in this subpart. Participation in these programs is voluntary.

(b) *Requirements for Tier 1 engines rated at or above 37 kW.* (1) A nonroad engine family is eligible to participate in the averaging, banking, and trading program for NO_x emissions and the banking and trading program for PM emissions if it is subject to regulation under subpart B of this part with certain exceptions specified in paragraph (b)(2) of this section. No averaging, banking, and trading program is available for meeting the Tier 1 HC, CO, or smoke emission standards specified in subpart B of this part. No averaging program is available for meeting the Tier 1 PM emission standards specified in subpart B of this part.

(2) Nonroad engines may not participate in the averaging, banking, and trading programs if they are exported or are sold as Blue Sky Series engines as described in § 89.112(f). Nonroad engines certified on a special test procedure under § 89.114(a), may not participate in the averaging, banking and trading programs unless the manufacturer has requested that the engines be included in the averaging, banking, and trading programs at the time the request for the special test procedure is made and has been granted approval by the Administrator for inclusion in the averaging, banking, and trading programs.

(3) A manufacturer may certify one or more nonroad engine families at NO_x family emission limits (FELs) above or below the Tier 1 NO_x emission standard, provided the summation of the manufacturer's projected balance of all NO_x credit transactions in a given model year is greater than or equal to zero, as determined under § 89.207(a). A manufacturer may certify one or more nonroad engine families at PM FELs below the Tier 2 PM emission standard that will be applicable to those engine families.

(i) FELs for NO_x may not exceed the Tier 1 upper limit specified in § 89.112(d).

(ii) An engine family certified to an FEL is subject to all provisions specified in this part, except that the applicable FEL replaces the emission standard for the family participating in the averaging, banking, and trading program.

(iii) A manufacturer of an engine family with a NO_x FEL exceeding the Tier 1 NO_x emission standard must obtain NO_x emission credits sufficient to address the associated credit shortfall via averaging, banking, or trading.

(iv) An engine family with a NO_x FEL below the applicable Tier 1 standard may generate emission credits for averaging, banking, trading, or a combination thereof. An engine family with a PM FEL below the Tier 2 standard that will be applicable to that engine family may generate emission credits for banking, trading, or a combination thereof. Emission credits may not be used to offset an engine family's emissions that exceed its applicable FEL. Credits may not be used to remedy nonconformity determined by a Selective Enforcement Audit (SEA) or by recall (in-use) testing. However, in the case of an SEA failure, credits may be used to allow subsequent production of engines for the family in question if the manufacturer elects to recertify to a higher FEL.

(4) NO_x credits generated in a given model year may be used to address credit shortfalls with other engines during that model year or in any subsequent model year except as noted under paragraph (b)(5)(ii) of this section. PM credits may be used to address credit shortfalls with Tier 2 and later engines greater than or equal to 37 kW and Tier 1 and later engines less than 37 kW and greater than or equal to 19 kW. Credits generated in one model year may not be used for prior model years.

(5) The following provisions apply to the use of Tier 1 NO_x credits for showing compliance with the Tier 2 or Tier 3 NMHC+NO_x standards.

(i) A manufacturer may use NO_x credits from engines subject to the Tier 1 NO_x standard to address NMHC+NO_x credit shortfalls with engines in the same averaging set subject to Tier 1 NMHC+NO_x or Tier 2 NMHC+NO_x emission standards.

(ii) A manufacturer may not use NO_x credits from engines subject to the Tier 1 standards to address NMHC+NO_x credit shortfalls with engines subject to the Tier 3 NMHC+NO_x emission standards.

(c) *Requirements for Tier 2 and later engines rated at or above 37 kW and Tier 1 and later engines rated under 37 kW.* (1) A nonroad engine family is eligible to participate in the averaging, banking, and trading programs for NMHC+NO_x emissions and PM emissions if it is subject to regulation under subpart B of this part with certain exceptions specified in paragraph (c)(2) of this section. No averaging, banking, and trading program is available for meeting the CO or smoke emission standards specified in subpart B of this part.

(2) Nonroad engines may not participate in the averaging, banking, and trading programs if they are exported or are sold as Blue Sky Series engines as described in § 89.112(f). Nonroad engines certified on a special test procedure under § 89.114(a), may not participate in the averaging, banking and trading programs unless the manufacturer has requested that the engines be included in the averaging, banking, and trading programs at the time the request for the special test procedure is made and has been granted approval by the Administrator for inclusion in the averaging, banking, and trading programs.

(3)(i) A manufacturer may certify one or more nonroad engine families at FELs above or below the applicable NMHC+NO_x emission standard and PM emission standard, provided the summation of the manufacturer's projected balance of all NMHC+NO_x credit transactions and the summation of the manufacturer's projected balance of all PM credit transactions in a given model year in a given averaging set is greater than or equal to zero, as determined under § 89.207(b).

(A) FELs for NMHC+NO_x and FELs for PM may not exceed the upper limit specified in § 89.112(d).

(B) An engine family certified to an FEL is subject to all provisions specified in this part, except that the applicable FEL replaces the emission standard for the family participating in the

averaging, banking, and trading program.

(C) A manufacturer of an engine family with an FEL exceeding the applicable emission standard must obtain emission credits sufficient to address the associated credit shortfall via averaging, banking, or trading, within the restrictions described in § 89.204(c) and § 89.206(b)(4).

(D) An engine family with an FEL below the applicable standard may generate emission credits for averaging, banking, trading, or a combination thereof. Emission credits may not be used to offset an engine family's emissions that exceed its applicable FEL. Credits may not be used to remedy nonconformity determined by a Selective Enforcement Audit (SEA) or by recall (in-use) testing. However, in the case of an SEA failure, credits may be used to allow subsequent production of engines for the family in question if the manufacturer elects to recertify to a higher FEL.

(ii)(A) In lieu of generating credits under paragraph (c)(3)(i) of this section, a manufacturer may certify one or more nonroad engine families rated under 37 kW at family emission limits (FELs) above or below the applicable NMHC+NO_x emission standard and PM emission standard. The summation of the manufacturer's projected balance of all NMHC+NO_x credit transactions and the summation of the manufacturer's projected balance of all PM credit transactions in a given model year, as determined under § 89.207(b), are each allowed to be less than zero. Separate calculations shall be required for the following two categories of engines: engines rated under 19 kW and engines rated at or above 19 kW and under 37 kW.

(B) For each calendar year a negative credit balance exists as of December 31, a penalty equal to ten percent of the negative credit balance as of December 31 of the calendar year shall be added to the negative credit balance. The resulting negative credit balance shall be carried into the next calendar year.

(C) For engines rated under 19 kW, a manufacturer will be allowed to carry over a negative credit balance until December 31, 2003. For engines rated at or above 19 kW and under 37 kW, a

manufacturer will be allowed to carry over a negative credit balance until December 31, 2002. As of these dates, the summation of the manufacturer's projected balance of all NMHC+NO_x credit transactions and the summation of the manufacturer's projected balance of all PM credit transactions must each be greater than or equal to zero.

(D) FELs for NMHC+NO_x and FELs for PM may not exceed the upper limits specified in § 89.112(d).

(E) An engine family certified to an FEL is subject to all provisions specified in this part, except that the applicable NMHC+NO_x FEL or PM FEL replaces the NMHC+NO_x emission standard or PM emission standard for the family participating in the averaging and banking program.

(F) A manufacturer of an engine family with an FEL exceeding the applicable emission standard must obtain emission credits sufficient to address the associated credit shortfall via averaging or banking. The exchange of emission credits generated under this program with other nonroad engine manufacturers in trading is not allowed.

(G) An engine family with an FEL below the applicable standard may generate emission credits for averaging, banking, or a combination thereof. Emission credits may not be used to offset an engine family's emissions that exceed its applicable FEL. Credits may not be used to remedy nonconformity determined by a Selective Enforcement Audit (SEA) or by recall (in-use) testing. However, in the case of an SEA failure, credits may be used to allow subsequent production of engines for the family in question if the manufacturer elects to recertify to a higher FEL.

(4)(i) Except as noted in paragraphs (c)(4)(ii), (c)(4)(iii), and (c)(4)(iv) of this section, credits generated in a given model year may be used during that model year or used in any subsequent model year. Except as allowed under paragraph (c)(3)(ii) of this section, credits generated in one model year may not be used for prior model years.

(ii) Credits generated from engines rated under 19 kW prior to the implementation date of the applicable Tier 2

standards, shall expire on December 31, 2007.

(iii) Credits generated from engines rated under 19 kW under the provisions of paragraph (c)(3)(ii) shall expire on December 31, 2003.

(iv) Credits generated from engines rated at or above 19 kW and under 37 kW under the provisions of paragraph (c)(3)(ii) of this section shall expire on December 31, 2002.

(5) Except as provided in paragraph (b)(3) of this section, engine families may not generate credits for one pollutant while also using credits for another pollutant in the same model year.

(d) Manufacturers must demonstrate compliance under the averaging, banking, and trading programs for a particular model year within 270 days of the end of the model year. Except as allowed under paragraph (c)(3)(ii) of this section, manufacturers that have certified engine families to FELs above the applicable emission standards and do not have sufficient emission credits to offset the difference between the emission standards and the FEL for such engine families will be in violation of the conditions of the certificate of conformity for such engine families. The certificates of conformity may be voided ab initio under § 89.126(c) for those engine families.

[63 FR 57006, Oct. 23, 1998]

§ 89.204 Averaging.

(a) *Requirements for Tier 1 engines rated at or above 37 kW.* A manufacturer may use averaging to offset an emission exceedance of a nonroad engine family caused by a NO_x FEL above the applicable emission standard. NO_x credits used in averaging may be obtained from credits generated by another engine family in the same model year, credits banked in a previous model year, or credits obtained through trading.

(b) *Requirements for Tier 2 and later engines rated at or above 37 kW and Tier 1 and later engines rated under 37 kW.* A manufacturer may use averaging to offset an emission exceedance of a nonroad engine family caused by an NMHC+NO_x FEL or a PM FEL above the applicable emission standard. Credits used in averaging may be obtained

Environmental Protection Agency

§ 89.206

from credits generated by another engine family in the same model year, credits banked in previous model years that have not expired, or credits obtained through trading. The use of credits shall be within the restrictions described in paragraph (c) of this section, § 89.206(b)(4) and § 89.203(b)(5)(ii).

(c) *Averaging sets for emission credits.* The averaging and trading of NO_x emission credits, NMHC + NO_x emission credits, and PM emissions credits will only be allowed between engine families in the same averaging set. The averaging sets for the averaging and trading of NO_x emission credits, NMHC + NO_x emission credits, and PM emission credits for nonroad engines are defined as follows:

(1) Eligible engines rated at or above 19 kW, other than marine diesel engines, constitute an averaging set.

(2) Eligible engines rated under 19 kW, other than marine diesel engines, constitute an averaging set.

(3) Marine diesel engines rated at or above 19 kW constitute an averaging set. Emission credits generated from marine diesel engines rated at or above 19 kW may be used to address credit shortfalls for eligible engines rated at or above 19 kW other than marine diesel engines.

(4) Marine diesel engines rated under 19 kW constitute an averaging set. Emission credits generated from marine diesel engines rated under 19 kW may be used to address credit shortfalls for eligible engines rated under 19 kW other than marine diesel engines.

[63 FR 57007, Oct. 23, 1998]

§ 89.205 Banking.

(a) *Requirements for Tier 1 engines rated at or above 37 kW.* (1) A manufacturer of a nonroad engine family with a NO_x FEL below the applicable standard for a given model year may bank credits in that model year for use in averaging and trading in any subsequent model year.

(2) A manufacturer of a nonroad engine family may bank NO_x credits up to one calendar year prior to the effective date of mandatory certification. Such engines must meet the requirements of subparts A, B, D, E, F, G, H, I, J, and K of this part.

(3)(i) A manufacturer of a nonroad engine family may bank PM credits from Tier 1 engines under the provisions specified in § 89.207(b) for use in averaging and trading in the Tier 2 or later timeframe.

(ii) Such engine families are subject to all provisions specified in subparts A, B, D, E, F, G, H, I, J, and K of this part, except that the applicable PM FEL replaces the PM emission standard for the family participating in the banking and trading program.

(b) *Requirements for Tier 2 and later engines rated at or above 37 kW and Tier 1 and later engines rated under 37 kW.* (1) A manufacturer of a nonroad engine family with an NMHC + NO_x FEL or a PM FEL below the applicable standard for a given model year may bank credits in that model year for use in averaging and trading in any following model year.

(2) For engine rated under 37 kW, a manufacturer of a nonroad engine family may bank credits prior to the effective date of mandatory certification. Such engines must meet the requirements of subparts A, B, D, E, F, G, H, I, J, and K of this part.

(c) A manufacturer may bank actual credits only after the end of the model year and after EPA has reviewed the manufacturer's end-of-year reports. During the model year and before submittal of the end-of-year report, credits originally designated in the certification process for banking will be considered reserved and may be redesignated for trading or averaging in the end-of-year report and final report.

(d) Credits declared for banking from the previous model year that have not been reviewed by EPA may be used in averaging or trading transactions. However, such credits may be revoked at a later time following EPA review of the end-of-year report or any subsequent audit actions.

[63 FR 57008, Oct. 23, 1998]

§ 89.206 Trading.

(a) *Requirements for Tier 1 engines rated at or above 37 kW.* (1) A nonroad engine manufacturer may exchange emission credits with other nonroad engine manufacturers within the same averaging set in trading.

§ 89.207

(2) Credits for trading can be obtained from credits banked in a previous model year or credits generated during the model year of the trading transaction.

(3) Traded credits can be used for averaging, banking, or further trading transactions within the restrictions described in § 89.204(c).

(b) *Requirements for Tier 2 and later engines rated at or above 37 kW and Tier 1 and later engines rated under 37 kW.* (1) A nonroad engine manufacturer may exchange emission credits with other nonroad engine manufacturers within the same averaging set in trading.

(2) Credits for trading can be obtained from credits banked in previous model years that have not expired or credits generated during the model year of the trading transaction.

(3) Traded credits can be used for averaging, banking, or further trading transactions within the restrictions described in § 89.204(c) and paragraph (b)(4) of this section.

(4) Emission credits generated from engines rated at or above 19 kW utilizing indirect fuel injection may not be traded to other manufacturers.

(c) In the event of a negative credit balance resulting from a transaction, both the buyer and the seller are liable, except in cases deemed involving fraud. Certificates of all engine families participating in a negative trade may be voided ab initio under § 89.126(c).

[63 FR 57008, Oct. 23, 1998]

§ 89.207 Credit calculation.

(a) *Requirements for calculating NOx credits from Tier 1 engines rated at or above 37 kW.* (1) For each participating engine family, emission credits (positive or negative) are to be calculated according to one of the following equations and rounded, in accordance with ASTM E29-93a, to the nearest one-hundredth of a megagram (Mg). This ASTM procedure has been incorporated by reference (see § 89.6). Consistent units are to be used throughout the equation.

(i) For determining credit availability from all engine families generating credits: Emission credits = (Std-FEL) × (Volume) × (AvgPR) × (UL) × (Adjustment) × (10⁻⁶)

(ii) For determining credit usage for all engine families requiring credits to offset emissions in excess of the standard:

Emission credits = (Std-FEL) × (Volume) × (AvgPR) × (UL) × (10⁻⁶)

Where:

Std = the applicable Tier 1 NOx nonroad engine emission standard, in grams per kilowatt-hour.

FEL = the NOx family emission limit for the engine family in grams per kilowatt-hour.

Volume = the number of nonroad engines eligible to participate in the averaging, banking, and trading program within the given engine family during the model year. Engines sold to equipment or vehicle manufacturers under the provisions of § 89.102(g) shall not be included in this number. Quarterly production projections are used for initial certification. Actual applicable production/sales volume is used for end-of-year compliance determination.

AvgPR = the average power rating of all of the configurations within an engine family, calculated on a sales-weighted basis, in kilowatts.

UL = the useful life for the engine family, in hours.

Adjustment = a one-time adjustment, as specified in paragraph (a)(2) of this section, to be applied to Tier 1 NOx credits to be banked or traded for determining compliance with the Tier 1 NOx standards or Tier 2 NOx+NMHC standards specified in subpart B of this part. Banked credits traded in a subsequent model year will not be subject to an additional adjustment. Banked credits used in a subsequent model year's averaging program will not have the adjustment restored.

(2) If an engine family is certified to a NOx FEL of 8.0 g/kW-hr or less, an Adjustment value of 1.0 shall be used in the credit generation calculation described in paragraph (a)(1)(i) of this section. If an engine family is certified to a NOx FEL above 8.0 g/kW-hr, an Adjustment value of 0.65 shall be used in the credit generation calculation described in paragraph (a)(1)(i) of this section. If the credits are to be used by the credit-generating manufacturer for averaging purposes in the same model year in which they are generated, an Adjustment value of 1.0 shall be used for all engines regardless of the level of the NOx FEL. If the credits are to be banked by the credit-generating manufacturer and used in a subsequent model year for another Tier 1 engine family, an Adjustment value of 1.0

Environmental Protection Agency

§ 89.209

shall be used for all engines regardless of the level of the NO_x FEL.

(b) *Requirements for calculating NMHC + NO_x Credits from Tier 2 and later engines rated at or above 37 kW and Tier 1 and later engines rated under 37 kW and PM credits from all engines.* (1) For each participating engine family, NO_x + NMHC emission credits and PM emission credits (positive or negative) are to be calculated according to one of the following equations and rounded, in accordance with ASTM E29-93a, to the nearest one-hundredth of a megagram (Mg). This procedure has been incorporated by reference (see §89.6). Consistent units are to be used throughout the equation.

(i) For determining credit availability from all engine families generating credits:

$$\text{Emission credits} = (\text{Std-FEL}) \times (\text{Volume}) \times (\text{AvgPR}) \times (\text{UL}) \times (10^{-6})$$

(ii) For determining credit usage for all engine families requiring credits to offset emissions in excess of the standard:

$$\text{Emission credits} = (\text{Std-FEL}) \times (\text{Volume}) \times (\text{AvgPR}) \times (\text{UL}) \times (10^{-6})$$

Where:

Std = the current and applicable nonroad engine emission standard, in grams per kilowatt-hour, except for PM calculations where it is the applicable nonroad engine Tier 2 PM emission standard, and except for engines rated under 19 kW where it is the applicable nonroad engine Tier 2 emission standard, in grams per kilowatt-hour. (Engines rated under 19 kW participating in the averaging and banking program provisions of §89.203(c)(3)(ii) shall use the Tier 1 standard for credit calculations.)

FEL = the family emission limit for the engine family in grams per kilowatt-hour.

Volume = the number of nonroad engines eligible to participate in the averaging, banking, and trading program within the given engine family during the model year. Engines sold to equipment or vehicle manufacturers under the provisions of §89.102(g) shall not be included in this number. Quarterly production projections are used for initial certification. Actual applicable production/sales volume is used for end-of-year compliance determination.

AvgPR = the average power rating of all of the configurations within an engine family, calculated on a sales-weighted basis, in kilowatts.

UL = the useful life for the given engine family, in hours.

[63 FR 57008, Oct. 23, 1998]

§ 89.208 Labeling.

For all nonroad engines included in the averaging, banking, and trading programs, the family emission limits to which the engine is certified must be included on the label required in §89.110.

[63 FR 57009, Oct. 23, 1998]

§ 89.209 Certification.

(a) In the application for certification a manufacturer must:

(1) Declare its intent to include specific engine families in the averaging, banking, and trading programs.

(2) Submit a statement that the engines for which certification is requested will not, to the best of the manufacturer's belief, cause the manufacturer to have a negative credit balance when all credits are calculated for all the manufacturer's engine families participating in the averaging, banking, and trading programs, except as allowed under §89.203(c)(3)(ii).

(3) Declare the applicable FELs for each engine family participating in averaging, banking, and trading.

(i) The FELs must be to the same number of significant digits as the emission standard for the applicable pollutant.

(ii) In no case may the FEL exceed the upper limits prescribed in §89.112(d).

(4) Indicate the projected number of credits generated/needed for this family; the projected applicable production/sales volume, by quarter; and the values required to calculate credits as given in §89.207.

(5) Submit calculations in accordance with §89.207 of projected emission credits (positive or negative) based on quarterly production projections for each participating family.

(6)(i) If the engine family is projected to have negative emission credits, state specifically the source (manufacturer/engine family or reserved) of the credits necessary to offset the credit deficit according to quarterly projected production, or, if the engine family is to be included in the provisions of §89.203(c)(3)(ii), state that the engine

§ 89.210

40 CFR Ch. I (7-1-00 Edition)

family will be subject to those provisions.

(ii) If the engine family is projected to generate credits, state specifically (manufacturer/engine family or reserved) where the quarterly projected credits will be applied.

(b) All certificates issued are conditional upon manufacturer compliance with the provisions of this subpart both during and after the model year of production.

(c) Failure to comply with all provisions of this subpart will be considered to be a failure to satisfy the conditions upon which the certificate was issued, and the certificate may be deemed void ab initio.

(d) The manufacturer bears the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied or waived.

(e) Projected credits based on information supplied in the certification application may be used to obtain a certificate of conformity. However, any such credits may be revoked based on review of end-of-year reports, follow-up audits, and any other verification steps deemed appropriate by the Administrator.

[59 FR 31335, June 17, 1994. Redesignated and amended at 63 FR 56995, 57009, Oct. 23, 1998]

§ 89.210 Maintenance of records.

(a) The manufacturer of any nonroad engine that is certified under the averaging, banking, and trading program must establish, maintain, and retain the following adequately organized and indexed records for each such engine produced:

- (1) EPA engine family;
- (2) Engine identification number;
- (3) Engine model year and build date,
- (4) Power rating;
- (5) Purchaser and destination; and
- (6) Assembly plant.

(b) The manufacturer of any nonroad engine family that is certified under the averaging, banking, and trading programs must establish, maintain, and retain the following adequately organized and indexed records for each such family:

- (1) EPA engine family;
- (2) Family emission limits (FEL);

(3) Power rating for each configuration tested;

(4) Projected applicable production/sales volume for the model year; and

(5) Actual applicable production/sales volume for the model year.

(c) Any manufacturer producing an engine family participating in trading reserved credits must maintain the following records on a quarterly basis for each engine family in the trading program:

- (1) The engine family;
- (2) The actual quarterly and cumulative applicable production/sales volume;
- (3) The values required to calculate credits as given in § 89.207;
- (4) The resulting type and number of credits generated/required;
- (5) How and where credit surpluses are dispersed; and
- (6) How and through what means credit deficits are met.

(d) The manufacturer must retain all records required to be maintained under this section for a period of eight years from the due date for the end-of-model-year report. Records may be retained as hard copy or reduced to microfilm, ADP diskettes, and so forth, depending on the manufacturer's record retention procedure; provided, that in every case all information contained in the hard copy is retained.

(e) Nothing in this section limits the Administrator's discretion in requiring the manufacturer to retain additional records or submit information not specifically required by this section.

(f) Pursuant to a request made by the Administrator, the manufacturer must submit to the Administrator the information that the manufacturer is required to retain.

(g) EPA may void ab initio under § 89.126(c) a certificate of conformity for an engine family for which the manufacturer fails to retain the records required in this section or to provide such information to the Administrator upon request.

[59 FR 31335, June 17, 1994. Redesignated and amended at 63 FR 56995, 57009, Oct. 23, 1998]

§ 89.211 End-of-year and final reports.

(a) End-of-year and final reports must indicate the engine family, the

Environmental Protection Agency

§ 89.301

actual applicable production/sales volume, the values required to calculate credits as given in § 89.207, and the number of credits generated/required. Manufacturers must also submit how and where credit surpluses were dispersed (or are to be banked) and/or how and through what means credit deficits were met. Copies of contracts related to credit trading must be included or supplied by the broker, if applicable. The report shall include a calculation of credit balances to show that the summation of the manufacturer's use of credits results in a credit balance equal to or greater than zero, except as allowed under § 89.203(c)(3)(ii). Manufacturers participating under the program described in § 89.203(c)(3)(ii) shall include the NMHC + NO_x credit balance and the PM credit balance as of December 31 of that calendar year.

(b) The applicable production/sales volume for end-of-year and final reports must be based on the location of the point of first retail sale (for example, retail customer, dealer, secondary manufacturer) also called the final product purchase location.

(c)(1) End-of-year reports must be submitted within 90 days of the end of the model year to: Director, Engine Programs and Compliance Division (6405-J), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460.

(2) Final reports must be submitted within 270 days of the end of the model year to: Director, Engine Programs and Compliance Division (6405-J), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460.

(d) Failure by a manufacturer participating in the averaging, banking, or trading program to submit any end-of-year or final reports in the specified time for all engines is a violation of sections 203(a)(1) and 213 of the Clean Air Act for each engine.

(e) A manufacturer generating credits for deposit only who fails to submit end-of-year reports in the applicable specified time period (90 days after the end of the model year) may not use the credits until such reports are received and reviewed by EPA. Use of projected credits pending EPA review is not permitted in these circumstances.

(f) Errors discovered by EPA or the manufacturer in the end-of-year report, including errors in credit calculation, may be corrected in the final report up to 270 days from the end of the model year.

(g) If EPA or the manufacturer determines that a reporting error occurred on an end-of-year or final report previously submitted to EPA under this section, the manufacturer's credits and credit calculations will be recalculated. Erroneous positive credits will be void except as provided in paragraph (h) of this section. Erroneous negative credit balances may be adjusted by EPA.

(h) If within 270 days of the end of the model year, EPA review determines a reporting error in the manufacturer's favor (that is, resulting in an increased credit balance) or if the manufacturer discovers such an error within 270 days of the end of the model year, the credits shall be restored for use by the manufacturer.

[59 FR 31335, June 17, 1994. Redesignated and amended at 63 FR 56995, 57009, Oct. 23, 1998]

§ 89.212 Notice of opportunity for hearing.

Any voiding of the certificate under §§ 89.203(d), 89.206(c), 89.209(c) or 89.210(g) will be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with §§ 89.512 and 89.513 and, if a manufacturer requests such a hearing, will be made only after an initial decision by the Presiding Officer.

[63 FR 57010, Oct. 23, 1998]

Subpart D—Emission Test Equipment Provisions

§ 89.301 Scope; applicability.

(a) This subpart describes the equipment required in order to perform exhaust emission tests on new nonroad compression-ignition engines subject to the provisions of subpart B of part 89.

(b) Exhaust gases, either raw or dilute, are sampled while the test engine is operated using an 8-mode test cycle on an engine dynamometer. The exhaust gases receive specific component