§ 94.221 Application of good engineering judgment.

(a) The manufacturer shall exercise good engineering judgment in making all decisions called for under this part, including but not limited to selections, categorizations, determinations, and applications of the requirements of the part.

(b) Upon written request by the Administrator, the manufacturer shall provide within 15 working days (or such longer period as may be allowed by the Administrator) a written description of the engineering judgment in question.

(c) The Administrator may reject any such decision by a manufacturer if it is not based on good engineering judgment or is otherwise inconsistent with the requirements of this part.

(d) If the Administrator rejects a decision by a manufacturer with respect to the exercise of good engineering judgment, the following provisions shall apply:

(1) If the Administrator determines that incorrect information was deliberately used in the decision process, that important information was deliberately overlooked, that the decision was not made in good faith, or that the decision was not made with a rational basis, the Administrator may suspend or void ab initio a certificate of conformity.

(2) If the Administrator determines that the manufacturer’s decision is not covered by the provisions of paragraph (d) (1) of this section, but that a different decision would reflect a better exercise of good engineering judgment, then the Administrator will notify the manufacturer of this concern and the basis of the concern.

(i) The manufacturer shall have at least 30 days to respond to this notice. The Administrator may extend this response period upon request from the manufacturer if it is necessary to generate additional data for the manufacturer’s response.

(ii) The Administrator shall make the final ruling after considering the information provided by the manufacturer during the response period. If the Administrator determines that the manufacturer’s decision was not made using good engineering judgment, he/she may reject that decision and apply the new ruling to future corresponding decisions as soon as practicable.

(e) The Administrator shall notify the manufacturer in writing regarding any decision reached under paragraph (d)(1) or (2) of this section. The Administrator shall include in this notification the basis for reaching the determination.

(f) Within 30 working days following receipt of notification of the Administrator’s determinations made under paragraph (d) of this section, the manufacturer may request a hearing on those determinations. The request shall be in writing, signed by an authorized representative of the manufacturer, and shall include a statement specifying the manufacturer’s objections to the Administrator’s determinations, and data or other analysis in support of such objections. If, after review of the request and supporting data or analysis, the Administrator...
finds that the request raises a substantial factual issue, he/she shall provide
the manufacturer a hearing in accordance with §94.216 with respect to such
issue.

§ 94.222 Certification of engines on imported vessels.

For marine engines subject to the requirements of this part that are in-
stalled on imported vessels, the Administrator may specify alternate certifi-
cation provisions as necessary.

Subpart D—Certification Aver-
aging, Banking, and Trading
Provisions

§ 94.301 Applicability.

Marine engine families subject to the standards of subpart A of this part are
eligible to participate in the certification averaging, banking, and trading
program described in this subpart. The provisions of this subpart apply to
manufacturers of new engines that are subject to the emission standards of
§94.8. To the extent specified in 40 CFR part 60, subpart III, stationary engines
certified under this part and subject to the standards of 40 CFR part 60, sub-
part III, may participate in the averaging, banking, and trading program
described in this subpart.

[71 FR 39184, July 11, 2006]

§ 94.302 Definitions.

The definitions of Subpart A of this part apply to this subpart. The fol-
lowing definitions also apply:

Applicable standard means a standard
that would have otherwise been appli-
cable had the engine not been certified
under this subpart to an FEL different
than that standard.

Broker means any entity that facili-
tates a trade between a buyer and seller.

Buyer means the entity that receives
credits as a result of trade.

Reserved credits means credits that
have been generated but have not yet
been reviewed by EPA or used to dem-
onstrate compliance under the aver-
aging provisions of this subpart.

Seller means the entity that provides
credits during a trade.

§ 94.303 General provisions.

(a) Participation in the averaging,
banking, and trading program is vol-
untary. A manufacturer may choose to
involve some or all of its engine fami-
lies in any or all aspects of the pro-
gram.

(b) An engine family is eligible to
participate in the certification aver-
aging, banking, and trading program
for THC+NO\textsubscript{X} and PM emissions only if
it is subject to regulation under this
part with certain exceptions specified
in paragraph (c) of this section. No
averaging, banking, and trading pro-
gram is available for meeting the CO
standards of this part.

(c) Engines may not participate in
the certification averaging, banking,
and trading program if they are ex-
ported. Only engines certified under
this part are eligible for generation or
use of credits in this certification aver-
aging, banking, and trading program.
Engines certified to the Blue Sky pro-
visions of §94.8(f) are not eligible for
inclusion in this certification aver-
aging, banking, and trading program.

(d) Averaging involves the generation
of credits by a manufacturer for use by
that same manufacturer in the same
calendar year. A manufacturer may use
averaging during certification to offset
an emission exceedance of an engine
family caused by an FEL above the ap-
licable emission standard, subject to
the provisions of this subpart.

(e) Banking involves the generation
of credits by a manufacturer in a given
calendar year for use in a subsequent
model year. A manufacturer may bank
actual credits only after the end of the
calendar year and after EPA has re-
viewed the manufacturer’s end-of-year
reports. During the calendar year and
before submittal of the end-of-year re-
port, 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. Credits de-
clared for banking from the previous
calendar year that have not been re-
viewed by EPA may be used in aver-
aging or trading transactions. How-
ever, such credits may be revoked at a
later time following EPA review of the
end-of-year report or any subsequent
audit actions.