

sufficient federalism implications requiring a Federalism Assessment.

Regulatory Flexibility Act

The interim rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b), and is deemed by the Commission to be a rule of agency practice that does not substantially affect the rights or obligations of non-agency parties pursuant to Section 804(3)(c) of the Congressional Review Act.

Unfunded Mandates Reform Act of 1995

This rule will not cause State, local, or tribal governments, or the private sector, to spend \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. No action under the Unfunded Mandates Reform Act of 1995 is necessary.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on the ability of United States-based companies to compete with foreign-based companies.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and Parole.

The Interim Rule

■ Accordingly, the U.S. Parole Commission is adopting the following amendment to 28 CFR part 2.

PART 2—[AMENDED]

■ 1. The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

■ 2. Revise § 2.25 to read as follows:

§ 2.25 Hearings by videoconference.

The Commission may conduct a parole determination hearing (including a rescission hearing), a probable cause hearing, and an institutional revocation hearing, by a videoconference between the hearing examiner and the prisoner or releasee.

Dated: August 7, 2007.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. E7-17762 Filed 9-17-07; 8:45 am]

BILLING CODE 4410-31-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. CGD05-07-084]

Special Local Regulations for Marine Events; Sunset Lake, Wildwood Crest, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce special local regulations for the Sunset Lake Hydrofest on Sunset Lake from 8:30 a.m. September 29, 2007 through 5:30 p.m. September 30, 2007. This action is necessary to provide for the safety of life on navigable waters during the event. During the enforcement period, vessel traffic will be restricted in portions of Sunset Lake during the event.

DATES: The regulations in 33 CFR 100.536 will be enforced from 8:30 a.m. September 29, 2007 through 5:30 p.m. September 30, 2007.

FOR FURTHER INFORMATION CONTACT: Dennis Sens, Regulatory project manager, Inspections and Investigations Branch, at (757) 398-6204.

SUPPLEMENTARY INFORMATION: Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for giving notice of the enforcement date less than 30 days before the enforcement period goes into effect. Delaying notice of the enforcement date would be contrary to the public interest, since immediate action is needed to ensure the safety of the event participants, support vessels, spectator craft and other vessels transiting the event area. However advance notification of this recurring event is being given to users of Sunset Lake via marine information broadcasts, local notice to mariners, commercial radio stations and area newspapers.

The Coast Guard will enforce the special local regulations for the annual Sunset Lake Hydrofest on Sunset Lake, New Jersey in 33 CFR 100.536 from 8:30 a.m. on September 29, 2007, through 5:30 p.m. September 30, 2007. Annually, the Sunset Lake Hydrofest Association sponsors this event on the waters of Sunset Lake near Wildwood

Crest, New Jersey. The event consists of approximately 100 inboard hydroplanes, Jersey speed skiffs and flat-bottom ski boats racing in heats counter-clockwise around an oval racecourse.

Under the provisions of 33 CFR 100.536, except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. Additionally, when authorized by the Patrol Commander to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course.

This notice is issued under authority of 33 CFR 100.536 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advance notification of this enforcement via the Local Notice to Mariners, marine information broadcasts, local radio stations and area newspapers.

Dated: September 11, 2007.

Neil O. Buschman,

Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District, Acting.

[FR Doc. E7-18354 Filed 9-17-07; 8:45 am]

BILLING CODE 4910-15-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 89, and 1039

[EPA-HQ-OAR-2007-0652; FRL-8467-2]

RIN 2060-AO37

Nonroad Diesel Technical Amendments and Tier 3 Technical Relief Provision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this rulemaking, EPA is making certain technical corrections to the rules establishing emission standards for nonroad diesel engines. In addition, we are amending those rules to provide nonroad diesel equipment manufacturers with a production technical relief provision for Tier 3 equipment which is similar to the technical relief provision already available for Tier 4 equipment. Like the Tier 4 provisions, the new Tier 3 technical relief provision deals with a situation where an equipment manufacturer which is not vertically integrated with its engine supplier is unable to complete redesign of the equipment within the time required by rule (here, the Tier 3 rule). To be

eligible, the equipment manufacturer must show both that its inability to furnish a compliant equipment design is due to the engine supplier, and that the equipment manufacturer has exhausted other flexibilities already provided by the Tier 3 rule. The amount of relief under the Tier 3 technical relief provision is somewhat less than is available under the parallel Tier 4 provision, however. The Tier 3 Technical flexibility will apply up to a maximum of an additional 50% of production beyond the original 80% provided by the Tier 3 production flexibility provision. In addition, each grant of Tier 3 technical relief is associated with the likelihood of earlier use of Tier 4 nonroad diesel engines. The rule thus provides that for each one percent of use of Tier 3 technical relief, some percentage of the automatic Tier 4 production flexibility for the same engine power category, and some percentage of potential Tier 4 technical relief, is no longer available. The percentage varies based on the type of engine for which Tier 3 technical relief is granted, the largest Tier 4 "penalty" being associated with use of the higher emitting earlier tier engines.

DATES: This direct final rule is effective on November 19, 2007 without further notice, unless we receive adverse comments by October 18, 2007 or receive a request for a public hearing by October 3, 2007. If we receive any significant adverse comments on this direct final rule, or on one or more amendments in this direct final rule, or receive a request for a hearing within the time frame described above, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule, or the provisions of this rule that are the subject of significant adverse comment, will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2007-0652, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *E-mail:* a-and-r-Docket@epa.gov.

- *Fax:* (202) 566-9744.

- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket, Mail Code 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Deliveries are only accepted during the Docket's normal hours of operation from 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday, except on government holidays. If your Docket requires the submission of

multiple copies, please insert the following here:

- ▶ Please include a total of copies.

- ▶ If the comment involves an ICR that will be submitted to OMB for review and approval under 5 CFR 1320.11, then you must also include the following language pursuant to 1320.11(a): "In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503."

- *Hand Delivery:* EPA Docket Center (Air Docket), U.S. Environmental Protection Agency, EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation. The EPA/DC Public Reading Room hours of operation will be 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday, except on government holidays, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2007-0652. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov, or e-mail. The <http://www.regulations.gov> website is an "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Public Hearing: If a public hearing is held, it will be held at 10 a.m. on October 18, 2007 at the EPA NVFEL Office Building, 2000 Traverwood Drive, Ann Arbor, MI, or at an alternate site nearby. Persons interested in presenting oral testimony must contact Zuimdie Guerra, Environmental Protection Agency, Office of Transportation and Air Quality, Assessment and Standards Division, 2000 Traverwood Drive Ann Arbor, MI 48105; e-mail guerra.zuimdie@epa.gov; telephone (734) 214-4387; fax number (734) 214-4050, no later than October 15, 2007.

Persons interested in attending the public hearing must also call Zuimdie Guerra to verify the time, date, and location of the hearing. If no one contacts Zuimdie Guerra by October 15, 2007 with a request to present oral testimony at the hearing, the hearing will be canceled.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the EPA Docket Center (EPA/DC), Air Docket, EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 566-1742 and by facsimile at (202) 566-9744. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Zuimdie Guerra, Environmental Protection Agency, Office of Transportation and Air Quality, Assessment and Standards Division, 2000 Traverwood Drive Ann Arbor, MI 48105; e-mail address guerra.zuimdie@epa.gov; telephone

(734) 214-4387; fax number (734) 214-4050.

SUPPLEMENTARY INFORMATION:

I. General Information

EPA is publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse comment. For this reason, we believe that notice and comment procedures are “unnecessary”, within the meaning of 5 U.S.C. section 553 (b) and that therefore there is good cause to adopt this rule without utilizing such procedures. However, in the “Proposed Rules” section of today’s **Federal Register** publication, we are publishing a separate document that

will serve as the proposal to adopt the provisions in this Direct Final Rule if our assumption is incorrect and significant adverse comments are filed. This rule will be effective on November 19, 2007 without further notice unless we receive significant adverse comment by October 18, 2007 or a request for a public hearing by October 3, 2007. If we receive significant adverse comment on one or more distinct provisions of this rule, we will publish a timely withdrawal in the **Federal Register** indicating which provisions are being withdrawn due to adverse comment. We may address all adverse comments in a subsequent final rule based on the proposed rule. We are not planning to

institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document. Any distinct provisions of today’s rulemaking for which we do not receive adverse comment will become effective on the date set out above, notwithstanding any adverse comment on any other discrete provisions of today’s rule.

A. Regulated Entities

This action will affect companies that manufacture and certify nonroad equipment powered by diesel engines in the United States.

Category	NAICS code ^a	Examples of potentially affected entities
U.S. Industry	333111	Farm Machinery and Equipment Manufacturing.
U.S. Industry	333112	Lawn and Garden Tractor and Home Lawn and Garden Equipment Manufacturing.
U.S. Industry	333131	Mining Machinery and Equipment Manufacturing.
U.S. Industry	333132	Oil and Gas Field Machinery and Equipment Manufacturing.
Industry	33341	Ventilation, Heating, Air-Conditioning, and Commercial Refrigeration Equipment Manufacturing.
Industry	33361	Engine, Turbine, and Power Transmission Equipment Manufacturing.
U.S. Industry	333618	Manufacturers of new engines.
U.S. Industry	333911	Pump and Pumping Equipment Manufacturing.
U.S. Industry	333912	Air and Gas Compressor Manufacturing.
Industry	33392	Material Handling Equipment Manufacturing.
U.S. Industry	333924	Industrial Truck, Tractor, Trailer, and Stacker Machinery Manufacturing.
U.S. Industry	333991	Power-Driven Handtool Manufacturing.
U.S. Industry	333992	Welding and Soldering Equipment Manufacturing.
U.S. Industry	811112	Commercial importers of vehicles and vehicle components.
U.S. Industry	811198	Commercial importers of vehicles and vehicle components.

^aNorth American Industry Classification System (NAICS).

To determine whether particular activities may be affected by this action, you should carefully examine the regulations. You may direct questions regarding the applicability of this action as noted in **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- i. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.
- v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- vi. Provide specific examples to illustrate your concerns, and suggest alternatives.
- vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

C. How and to Whom Do I Submit Comments?

You may submit comments on this direct final rule as described in this section. You should note that we are also publishing a notice of proposed rulemaking in the “Proposed Rules” section of today’s **Federal Register**, which matches the substance of this direct final rule. Your comments on this direct final rule will be considered to also be applicable to that notice of proposed rulemaking. As explained above, if we receive any adverse comments on this direct final rule or receive a request for a hearing within the time frame described above, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule, or the provisions of this rule for which we received adverse comment, will not take effect. We may then take final action in a final rule based on the accompanying proposal. We will not institute a second comment period.

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD-ROM you submit, and in any cover letter accompanying the disk or CD-ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments directly to EPA Dockets at <http://www.regulations.gov> and follow the online instructions for submitting comments. Once in the system, select "search," and then key in Docket ID No. EPA-HQ-OAR-2007-0652. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to a-and-r-Docket@epa.gov. Attention Air Docket ID No. EPA-HQ-OAR-2007-0652. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail

system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD-ROM.* You may submit comments on a disk or CD-ROM that you mail to the mailing address identified in **ADDRESSES** above. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send two copies of your comments to: U.S. Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket, Mail Code 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460., Attention Docket ID No. EPA-HQ-OAR-2007-0652.

3. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center (Air Docket), U.S. Environmental Protection Agency, EPA West Building, 1301 Constitution Avenue, NW., Room: 3334, Mail Code: 2822T, Washington, DC, Attention Air Docket ID No. EPA-HQ-OAR-2007-0652. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit I.

4. *By Facsimile.* Fax your comments to: (202) 566-9744, Attention Docket ID No. EPA-HQ-OAR-2007-0652.

B. How Can I Get Copies of This Document?

1. *Docket.* EPA has established an official public docket for this action under Air Docket Number EPA-HQ-OAR-2007-0652. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-9744.

2. *Electronic Access.* This direct final rule is available electronically from the EPA Internet Web site. This service is free of charge, except for any cost

incurred for internet connectivity. The electronic version of this final rule is made available on the date of publication on the primary web site listed below. The EPA Office of Transportation and Air Quality also publishes **Federal Register** notices and related documents on the secondary web site listed below.

i. <http://www.epa.gov/docs/fedrgstr/EPA-AIR> (either select desired date or use Search features).

ii. <http://www.epa.gov/otaq> (look in What's New or under the specific rulemaking topic).

Please note that due to differences between the software used to develop the documents and the software into which the document may be downloaded, format changes may occur.

II. Summary of Rule

A. EPA is making the following technical amendments to correct a variety of regulatory provisions in the regulations establishing emission standards for nonroad diesel engines:

- *40 CFR 9.1:* Adding the approved information collection for nonroad diesel engines to the summary table in 40 CFR part 9.

- *40 CFR 89.1:* Correcting a typographical error.

- *40 CFR 89.101:* Adding a provision to allow manufacturers to start using the provisions already adopted for Tier 4 engines in the time that Tier 2 or Tier 3 standards continue to apply. We would allow this only to the extent that it does not affect our ability to ensure that manufacturers fully comply with applicable requirements.

- *40 CFR 89.102:* Clarifying the legal status for equipment using engines exempted from current standards under the Transition Program for Equipment Manufacturers. The original language does not clearly exempt the equipment from the otherwise applicable prohibition in § 89.1003, which would be necessary for this whole program.

- *40 CFR 89.102:* Clarifying the limitation of allowances based on engine families. Since these engines are not certified, we clarify that this term relates to the characteristics described for certifying engines in § 89.116.

- *40 CFR 89.102:* Technical relief provision; discussion below in part B.

- *40 CFR 89.108:* Adding a provision for engines to be adjusted outside the normal range of parameter adjustment for applications involving landfill or wellhead gas. We have already adopted this in 40 CFR part 1039 for Tier 4 engines, so this change simply allows manufacturers to implement this provision earlier.

- *40 CFR 89.115*: Requiring manufacturers to name an agent for service in the United States. This simply allows us to ensure that we will have a person in the United States who is able to speak for the company and receive communication regarding any aspect of our effort to certify engines and oversee compliance of certified products.

- *40 CFR 89.205*: Clarifying provisions in the nonroad diesel engine averaging, banking, and trading (ABT) program. The text change is to clarify that these credits are considered to be Tier 2 credits.

- *40 CFR 89.601*: Requiring importers to complete the EPA declaration form before importing engines, and to keep the forms for five years. This amendment simply restates the provisions that are already in place for the U.S. Customs and Border Patrol at 19 CFR 12.74.

- *40 CFR 89.611*: Defining the initial dates for implementing emission standards for nonroad diesel engines below 37 kW. This corrects an earlier oversight in the definition of the scope of the exemption for importing engines that were built before emission standards started to apply.

- *40 CFR 1039.102*: Clarifying provisions in the nonroad diesel engine averaging, banking, and trading (ABT) program.

- *40 CFR 1039.104*: Clarifying provisions in the nonroad diesel engine averaging, banking, and trading (ABT) program. The change corrects an inconsistency with the existing regulatory text that effectively prevents the use of credit-using Tier 3 engines in the initial years of Tier 4 in certain situations.

- *40 CFR 1039.115*: Specifying that crankcase requirements apply throughout an engine's useful life. Without this clarifying language, it is not clear how long this requirement applies, or whether it ever expires. We are also clarifying that the requirements of this section do not apply to engines that are subject to part 1039 requirements, but have been exempted from the emission standards for any reason.

- *40 CFR 1039.125*: Correcting an inadvertent reference to nonroad equipment, which should refer instead to nonroad engines as is clear from the context.

- *40 CFR 1039.135*: Adding clarifying language to describe when an engine's emission control information label is so obscured as to require the equipment manufacturer to apply a separate duplicate label. To be consistent with all other programs for nonroad engines, we specify that a label that is visible

during normal maintenance is not obscured. We are also adding a specification that manufacturers keep records of the engine families for which they send duplicate labels.

- *40 CFR 1039.205*: Requiring submission of emission results for each test mode if manufacturers conduct discrete-mode testing. This does not apply for ramped-modal testing. These measurements would be submitted for demonstrating compliance with not-to-exceed standards, so this should not include any additional testing or reporting burden.

- *40 CFR 1039.205*: Requiring manufacturers to name an agent for service in the United States, as described above for § 89.115.

- *40 CFR 1039.205*: Requiring that manufacturers make good-faith estimates of projected production volumes.

- *40 CFR 1039.210*: Clarifying EPA's role in preliminary approvals to describe that we generally would not reverse a decision without new information supporting a different decision.

- *40 CFR 1039.225*: Revising the language to avoid using the term "new nonroad engine," since that defined term is not appropriate for this section.

- *40 CFR 1039.235*: Clarifying that carryover of emission data is possible for engine families that have engine changes in a new model year, as long as there are no changes that might affect emissions.

- *40 CFR 1039.245*: Removing a regulatory provision that was inadvertently included in two separate paragraphs.

- *40 CFR 1039.255*: Narrowing the scope of recordkeeping that would subject an engine manufacturer to an action that could result in the certificate of conformity being revoked or voided, consistent with the similar provisions in our other nonroad engine programs.

- *40 CFR 1039.501*: Clarifying the emission standards to which specific test procedures apply.

- *40 CFR 1039.505*: Clarifying that cycle statistics for discrete-mode testing should be based on a calculation for each mode rather than the sequence of modes.

- *40 CFR 1039.605 and 40 CFR 1039.610*: Amending the regulatory language to address a variety of legal and technical clarifications.

- *40 CFR 1039.625*: Amending the regulatory language to specify the proper engine power lower bound.

- *40 CFR 1039.705*: Amending the description for calculating emission credits to clarify the steps in making the calculation.

- *40 CFR 1039.730*: Revising the description of emission credit calculations to clarify that manufacturers need consider only those families that generate or use emission credits. The emission credit program described in this subpart for these engines is not based on fleet-average compliance.

- *40 CFR 1039.735*: Clarifying the recordkeeping provisions related to emission credits and adding a requirement to keep records as long as the banked credits are considered valid for demonstrating compliance with emission standards.

- *40 CFR 1039.801*: Correcting various definitions to be consistent with more recent rulemakings that used somewhat different wording.

- *40 CFR 1039.810*: Removing the incorporation by reference for the document that defines our rounding conventions, since we are already relying on the same reference established in 40 CFR part 1065.

- *40 CFR 1039.825*: Adding a new section to summarize the information collection requirements in part 1039.

B. This rulemaking also provides nonroad diesel equipment manufacturers that are not vertically integrated with engine suppliers with a production technical relief provision for Tier 3 equipment, modeled on the comparable provision for Tier 4 equipment found in 40 CFR section 1039.625(m).

Only equipment manufacturers who do not make the engines used in the equipment for which technical relief is sought are eligible to apply for technical relief under this provision (since the engine production and equipment production segments of integrated entities would necessarily be in contact and therefore not experience the type of unexpected redesign changes which could warrant technical relief). This applies exclusively to equipment manufacturers as described in section 1039.626. Engine manufacturers and importers thus may not request this relief.

The Tier 4 nonroad diesel rule applies both to diesel engine manufacturers and to equipment manufacturers who install engines made by engine manufacturers. Equipment manufacturers are ultimately responsible for producing nonroad applications which comply with the rule's standards by the rule's compliance date. However, there can be circumstances when equipment manufacturers, through no fault of their own, receive engines from their suppliers too late to meet compliance dates. Although the Tier 4 rule contains a number of equipment manufacturer

flexibility provisions which apply automatically (i.e., without any showing of need or any requirement to obtain EPA approval), we were convinced that some additional flexibility was needed to cover circumstances where (a) an equipment manufacturer has exhausted its automatic flexibilities, and (b) it demonstrates to EPA that it cannot comply with the rule because, through no fault of its own, the engine manufacturer failed to deliver a compliant engine to the equipment manufacturer in sufficient time. The provision can be used only as a last resort, so an equipment manufacturer is eligible for relief under the provision only after it exhausts all other flexibility provisions and implementation options. This provision (which we call "technical relief"¹) is explained in the Tier 4 nonroad preamble at 69 FR 39007–008 (June 29, 2004), and (as noted) is codified at section 1039.625(m).

The same issue can arise for producers of Tier 3 nonroad diesel equipment, but the Tier 3 rule does not contain the technical relief provision. Today's rule essentially adds the same technical relief provision to the Tier 3 rule, for the same reasons EPA adopted it in Tier 4.

Tier 3 equipment manufacturers may need this technical relief to address challenges that may occur as engine manufacturers choose to implement technical changes for Tier 3. If an engine manufacturer changes their plan late in the design implementation process, an equipment company with unique or complicated equipment designs could face challenges with their internal redesign process. If the equipment manufacturer has already used its other flexibilities, there thus may be circumstances warranting technical relief for Tier 3 equipment.

There are two principal differences between the Tier 3 technical relief provision, and the existing provision in Tier 4. The first is that the dirtier the substitute engine used if technical relief is granted for Tier 3 equipment, the more Tier 4 flexibilities (both automatically available flexibilities and potential technical relief) the equipment manufacturer must give up (further details are provided below). This encourages earlier use of Tier 4 engines (the cleanest), and ensures that the net emission reductions from Tier 3 and Tier 4 engines remain the greatest achievable, as required by section 213 of the Act. Another difference between the

Tier 3 and Tier 4 technical relief provisions is that for the Tier 3 program, relief is limited to 50% of one year's production volume for each power category (as opposed to 70% under Tier 4). This allows for the transitional nature of this program to be realized, while limiting the potential for abuse beyond the need to facilitate a transition to cleaner engines.

However, for the most part, the Tier 3 technical provision mirrors that in Tier 4. As with the parallel provision in Tier 4, this technical relief provision provides a case-by-case exemption granted by EPA to an equipment manufacturer after evaluating the equipment manufacturer's application. Any engine produced utilizing this relief must be appropriately labeled to avoid the introduction into commerce of engines that are not in compliance. A clearly visible label thus must be provided which indicates the regulatory flexibility under which these engines are being produced. The provision applies to equipment that would otherwise be required to use engines certified to the Tier 3 standard (i.e., model year 2006 to 2008 equipment with 37 to 560 kW nonroad diesel engines). The equipment manufacturer would have the burden of demonstrating existence of an extreme technical or engineering hardship condition that is outside its control, i.e. is essentially due to conduct of the (nonintegrated) engine supplier and therefore out of the equipment manufacturer's control. The equipment manufacturer must also demonstrate that it has exercised reasonable due diligence to try to avoid being in the situation.

In order to meet these criteria, the equipment manufacturer needs to provide to EPA documentation, or a written explanation, addressing the following issues:

- Documentation of the technical or engineering problem that was unsolvable within the lead time provided by the Tier 3 rule.
- A description of the normal design cycle between the engine manufacturer and the equipment manufacturer and why that process did not work in this instance.
- All information (such as written specifications, performance data, prototype engines) received by the equipment manufacturer from the engine manufacturer.
- Comparison of the design process for the equipment model for which the exemption is requested versus those for which the exemption is not needed.

- A description of efforts the equipment maker has made to find other compliant engines for the model.

- Documentation that existing flexibilities will be fully utilized before the need for technical relief.

EPA would then decide on a case-by-case basis what percentage, if any, of additional relief (i.e., relief above and beyond that afforded by the automatic percent of production flexibility) would be provided.

Applicability of the Tier 3 technical relief provision is restricted to:

- Up to a maximum of an additional 50% beyond original 80% automatic percent of production technical flexibility (a change from Tier 4, as noted above).
- Full allowance is limited to the first two (2) years of Tier 3.
- Phased-in by power category.
- The Tier 3 automatic flexibility provisions continue to apply for their original seven years or until fully consumed.
- Applies to 56 to 560 kW categories only for the percent of production and only available between 37 to 75 kW for the small volume.

A significant feature of this Tier 3 technical relief provision, which has no counterpart in the Tier 4 provision, is that for every 1% of the equipment production using this relief provision in the Tier 3 timeframe (i.e., equipment that uses engines not conforming to the Tier 3 standard in the Tier 3 timeframe), a percentage of the (automatic) production equipment flexibility allowance for Tier 4 is sacrificed from the comparable Tier 4 power category (i.e., this percent of the otherwise automatic flexibility is no longer available), *and* an additional 1% is sacrificed from any potential Tier 4 technical relief that the Agency may grant for that power category. Please see Table 1. In other words, to utilize the Tier 3 technical relief, the equipment manufacturer must give up some amount of its otherwise automatic Tier 4 flexibility and some portion of its potential Tier 4 technical relief. The Tier 4 percent of production sacrifice is based on the percentage of earlier Tier (e.g., Tier 1 or 2) engines utilized in place of Tier 3 engines. Grant of Tier 3 technical relief thus would be linked to earlier use of Tier 4 engines.

¹ The Tier 4 rule uses the phrase "technical or engineering hardship" to describe this provision, and today's rule uses that same language.

TABLE 1.—TECHNICAL RELIEF USAGE

Use of percent of production allowances by equipment manufacturer during implementation of Tier 2 program (percent)	Offsetting deductions required for use of one percent of Tier 3 technical relief	
	Tier 4 percent of production allowance (percent)	Tier 4 technical relief (percent)
0–20	0	1
20–40	1	1
40–60	2	1
60–80	3	1

For example, if you used 45 percent of your production flexibility for equipment using Tier 2 engines of a given power category (i.e. if in the Tier 2 timeframe you used 45% of the total 80% percent of production flexibility for that power category), you must forfeit 2 percent of the (automatic) production flexibility for Tier 4 engines of that power category for every 1 percent technical relief EPA grants for Tier 3 equipment using engines of that power category. You must also forfeit 1 percent of any potential technical relief which could be granted for Tier 4 engines (i.e. for equipment using Tier 4 engines) for every 1 percent technical relief exemption EPA grants for Tier 3 engines. If you use the Tier 3 technical relief allowances for 5 percent of your equipment for two years, you have used a total allowance of 10 percent. Therefore, as shown in Table 1, you must forfeit a total of 20 percent of production flexibility for Tier 4 engines plus 10 percent of any technical relief which could be granted for Tier 4 engines.

The technical relief will be further adjusted based on the sales volume by power category. Because the Tier 3 and Tier 4 rules have different power category ranges, today's rule specifies which power categories in Tier 4 correspond to those in Tier 3 for purposes of this rule. The Tier 3 power categories of 37kW to 75kW and 75kW to 130kW correspond to the Tier 4 power category of 56kW to 130kW. For the Tier 3 equipment in the 37kW to 75kW category, you must only use the sales volume for equipment that uses engines with a rated power greater than 56kW. For example, if you have a Tier 3 piece of equipment that uses a 40kW engine, the sales of the equipment are counted in the Tier 4 power category of 19kW to 56kW. If you have a Tier 3 piece of equipment that uses a 60kW engine, the sales of the equipment are counted in the Tier 4 power category of 56kW to 130kW. The Tier 3 power categories of 130kW to 225kW, 225kW

to 450kW and 450kW to 560kW correspond to the Tier 4 power category of 130kW to 560kW. You will need to sum the sales of the Tier 3 power categories that correspond to the Tier 4 power category. Please see Table 2. If EPA grants technical relief, the sum of all the Tier 3 units that are so exempted are divided by the sum of all the Tier 3 units sold in the corresponding Tier 4 power category to determine the percentage of Tier 4 equipment affected.

TABLE 2.—POWER CATEGORIES

Tier 3 power category	Tier 4 power category
37kW to 75kW*	19kW to 56kW.
37kW to 75kW**, 75kW to 130kW.	56kW to 130kW
130kW to 225kW, 225kW to 450kW, 450kW to 560kW.	130kW to 560kW.

*Applies only to use of engines rated between 37kW and 56kW by small volume equipment manufacturers.

**Includes only equipment that uses engines with a rated power greater than 56kW.

For example, if you produce 50 units using Tier 3 technical relief in the range of 130kW to 225kW, and you produce 50 units using Tier 3 technical relief in the range of 225kW to 450kW, and no units are produced in the 450kW to 560kW range, and your overall sales volume for the power ranges of 130kW to 560kW in Tier 3 is 400 units, the amount of Tier 3 technical relief used is 100/400 or 25 percent. Because you forfeit 1 percent of your Tier 4 technical relief for every 1 percent of Tier 3 technical relief used (see Table 1 above), then you will lose 25 percent of your (potential) Tier 4 technical relief in the 130kW to 560kW power range category. If you used 45 percent of your production flexibility for Tier 2 engines, you must forfeit 2 percent of production flexibility for Tier 4 engines for every 1 percent of Tier 3 technical relief. Therefore, you will forfeit 50 percent of your Tier 4 production allowance in the 130kW to 560kW power range category.

Because the technical relief provision was not originally included in the Tier 3 program, we believe it is important to maintain the emission benefits of the Tier 3 rule by requiring a consistent emission trade-off with Tier 4. EPA has already found that the greatest emissions reduction achievable industry-wide for Tier 3 and Tier 4 does not include Tier 3 technical relief plus all of the other Tier 3 and Tier 4 flexibilities. The requirement that certain otherwise-available Tier 4 flexibilities be foregone is designed to ensure protection of the environment,

prevent abuse, and encourage earlier introduction of Tier 4 technology. Most basically, as noted above, the linkage is designed to assure that the Tier 3 and Tier 4 rules, in combination, continue to result in the greatest emissions reduction achievable industry-wide, as required by section 213(a) of the Act.

The technical relief for small volume equipment manufacturers is similar to the equipment manufacturer technical relief with the distinction that it applies to small volume equipment manufacturers. The following criteria for small volume apply:

- 100 unit cap.
- Small volume technical relief is only available to the 37 to 56 kW range and the 56 to 75 kW range.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a “significant regulatory action” under the terms of Executive Order (EO)12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Agency believes this action does not impose information collection burden because this rulemaking only provides a technical relief provision for nonroad equipment manufacturers.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

Today's direct final rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. Although the rule is subject to the APA, the Agency has invoked the "good cause" exemption under 5 U.S.C. 553(b), therefore it is not subject to the notice and comment requirement.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's final rule contains no Federal mandates for State, local, or Tribal governments or the private sector. The rule imposes no new expenditure or enforceable duty on any State, local or Tribal governments or the private sector, and EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This direct final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rulemaking affects only nonroad equipment manufacturers providing them a production technical relief provision. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This direct final rule does not have tribal implications, as specified in Executive Order 13175. This rulemaking affects only nonroad equipment manufacturers providing them a production technical relief provision. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885,

April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, Section 5-501 of the Order directs the Agency to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to the Executive Order because it is not economically significant, and does not involve decisions on environmental health or safety risks that may disproportionately affect children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent

practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The technical amendments on this rule do not relax the control measures on sources regulated by the rule and therefore will not cause emissions increases from these sources. The technical relief for the Tier 3 timeframe seeks to compensate for any emissions impact by encouraging earlier use of Tier 4 engines requiring the equipment manufacturer to give up specific Tier 4 flexibilities.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice

and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of November 19, 2007. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

L. Statutory Authority

The statutory authority for this action comes from section 213 of the Clean Air Act as amended (42 U.S.C. 7547). This action is a rulemaking subject to the provisions of the Administrative Procedure Act (see Clean Air Act section 307(d)(1) final sentence).

List of Subjects

40 CFR Part 9

Environmental protection, Administrative practice and procedure, Confidential business information, Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Vessels, Warranties.

40 CFR Part 89

Environmental protection, Administrative practice and procedure, Confidential business information, Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping

requirements, Research, Vessels, Warranties.

40 CFR Part 1039

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Labeling, Penalties, Reporting and recordkeeping requirements, Warranties.

Dated: September 6, 2007.

Stephen L. Johnson,
Administrator.

■ For the reasons set forth in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 et seq., 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 et seq., 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342 1344, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 et seq., 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. Section 9.1 is amended in the table by adding a center heading and an entry in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	* * * * *
Control of Emissions from New and In-use Nonroad Compression-Ignition Engines	
1039.8252060–0287.
* * * * *	* * * * *

PART 89—CONTROL OF EMISSIONS FROM NEW AND IN-USE NONROAD COMPRESSION-IGNITION ENGINES

■ 3. The authority citation for part 89 is revised to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart A—[Amended]

■ 4. Section 89.1 is amended by revising paragraph (b)(2) to read as follows:

§ 89.1 Applicability.

* * * * *

(b) * * *

(2) *Mining engines.* This part does not apply for engines used in underground mining equipment and regulated by the Mining Safety and Health Administration (MSHA) in 30 CFR parts 7, 31, 32, 36, 56, 57, 70, and 75.

* * * * *

■ 5. Section 89.2 is amended by adding a definition for "Designated

Enforcement Officer" in alphabetical order to read as follows:

§ 89.2 Definitions.

* * * * *

Designated Enforcement Officer means the Director, Air Enforcement Division (2242A), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

* * * * *

Subpart B—[Amended]

■ 6. Section 89.101 is revised to read as follows:

§ 89.101 Applicability.

(a) The requirements of subpart B of this part are applicable to all new nonroad compression-ignition engines subject to the provisions of subpart A of this part 89, pursuant to the schedule delineated in § 89.102.

(b) In a given model year, you may ask us to approve the use of procedures for certification, labeling, reporting, and recordkeeping specified in 40 CFR part 1039 or 1068 instead of the comparable procedures specified in this part 89. We will approve the request as long as it does not prevent us from ensuring that you fully comply with the intent of this part.

■ 7. Section 89.102 is amended by revising paragraphs (d) introductory text, (d)(2)(iii) and (g) and adding paragraphs (i) through (m) to read as follows:

§ 89.102 Effective dates, optional inclusion, flexibility for equipment manufacturers.

* * * * *

(d) Implementation flexibility for equipment and vehicle manufacturers and post-manufacture marinizers. Nonroad equipment and vehicle manufacturers and post-manufacture marinizers may take any of the otherwise prohibited actions identified in § 89.1003(a)(1) and (b)(4) with respect to nonroad equipment and vehicles and marine diesel engines, subject to the requirements of paragraph (e) of this section. The following allowances apply separately to each engine power category subject to standards under § 89.112: * * *

(2) * * *

(iii) Does not use engines from more than one engine family, or, for excepted equipment vehicles, and marine diesel engines using engines not belonging to any engine family, from more than one engine manufacturer. For purposes of this paragraph (d)(2)(iii), engine family refers to engines that have common characteristics as described in § 89.116.

* * * * *

(g) *Allowance for the production of engines.* Engine manufacturers may take any of the otherwise prohibited actions identified in § 89.1003(a)(1) with regard to uncertified engines, Tier 1 engines, or Tier 2 engines, as appropriate, if the engine manufacturer has received written assurance from the equipment manufacturer that the engine is required to meet the demand for engines created

under paragraph (d), (f), or (h) of this section.

* * * * *

(i) *Additional exemptions for technical or engineering hardship.* You may request additional engine allowances under paragraph (d)(1) of this section for 56–560 kW power categories or, if you are a small equipment manufacturer, under paragraph (d)(2) of this section for engines at or above 37 and below 75 kW. However, you may use these extra allowances only for those equipment models for which you, or an affiliated company, do not also produce the engine. After considering the circumstances, we may permit you to introduce into U.S. commerce equipment with such engines that do not comply with Tier 3 emission standards, as follows:

(1) We may approve additional exemptions if extreme and unusual circumstances that are clearly outside your control and that could not have been avoided with reasonable discretion have resulted in technical or engineering problems that prevent you from meeting the requirements of this part. You must show that you exercised prudent planning and have taken all reasonable steps to minimize the scope of your request for additional allowances.

(2) To apply for exemptions under this paragraph (i), send the Designated Compliance Officer and the Designated Enforcement Officer a written request as soon as possible before you are in violation. In your request, include the following information:

(i) Describe your process for designing equipment.

(ii) Describe how you normally work cooperatively or concurrently with your engine supplier to design products.

(iii) Describe the engineering or technical problems causing you to request the exemption and explain why you have not been able to solve them. Describe the extreme and unusual circumstances that led to these problems and explain how they were unavoidable.

(iv) Describe any information or products you received from your engine supplier related to equipment design—such as written specifications, performance data, or prototype engines—and when you received it.

(v) Compare the design processes of the equipment model for which you need additional exemptions and that for other models for which you do not need additional exemptions. Explain the technical differences that justify your request.

(vi) Describe your efforts to find and use other compliant engines, or otherwise explain why none is available.

(vii) Describe the steps you have taken to minimize the scope of your request.

(viii) Include other relevant information. You must give us other relevant information if we ask for it.

(ix) Estimate the increased percent of production you need for each equipment model covered by your request, as described in paragraph (i)(3) of this section. Estimate the increased number of allowances you need for each equipment model covered by your request, as described in paragraph (i)(4) of this section.

(3) We may approve your request to increase the allowances under paragraph (d)(1) of this section, subject to the following limitations:

(i) The additional allowances will not exceed 50 percent for each power category.

(ii) You must use up the allowances under paragraph (d)(1) of this section before using any additional allowance under this paragraph (i).

(iii) Any allowances we approve under this paragraph (i)(3) expire 24 months after the provisions of this section start for a given power category. You may use these allowances only for the specific equipment models covered by your request.

(4) We may approve your request to increase the allowances for the 37–75kW power category under paragraph (d)(2) of this section, subject to the following limitations:

(i) You are eligible for additional allowances under this paragraph (i)(4) only if you are a small equipment manufacturer and you do not use the provisions of paragraph (i)(3) of this section to obtain additional allowances for the 37–75kW power category.

(ii) You must use up all the available allowances for the 37–75kW power category under paragraph (d)(2) of this section in a given year before using any additional allowances under this paragraph (i)(4).

(iii) Base your request only on equipment you produce with engines at or above 37kW and below 75kW. You may use any additional allowances only for equipment you produce with engines at or above 37kW and below 75kW.

(iv) Any allowances we approve under this paragraph (i)(4) expire 24 months after the provisions of this section start for this power category. These additional allowances are not subject to the annual limits specified in paragraph (d)(2) of this section. You may use these allowances only for the

specific equipment models covered by your request.

(v) The total allowances under paragraph (d)(2) of this section for the 37–75kW power category will not exceed 700 units. The total allowances under this paragraph (i)(4) follow the requirements under paragraph (d)(2) of this section for the 37–75kW power category and will not exceed 200 units. Therefore, the total maximum allowances for the 37–75kW power category will not exceed 900 units.

(5) For purposes of this paragraph (i), *small equipment manufacturer* means an equipment manufacturer that had annual U.S.-directed production volume of equipment using nonroad diesel engines between 37 and 75kW of no more than 3,000 units in 2002 and all earlier calendar years, and has 750 or fewer employees (500 or fewer employees for nonroad equipment manufacturers that produce no construction equipment or industrial trucks). For manufacturers owned by a parent company, the production limit applies to the production of the parent company and all its subsidiaries and the employee limit applies to the total number of employees of the parent company and all its subsidiaries.

(6) The following provisions for adjusted flexibilities for Tier 4 engines apply to equipment manufacturers that are granted additional exemptions for technical or engineering hardship:

(i) If you use the additional allowance under this paragraph (i) you shall forfeit percent of production flexibility plus technical or engineering hardship exemptions available for Tier 4 engines in the amounts shown in Table 1 of this section.

(ii) Table 1 of this section shows the percent of production flexibility and technical or engineering hardship exemptions that you must forfeit for Tier 4 engines. The amount of Tier 4 flexibility forfeited by each equipment manufacturer depends on the percent of production flexibility used for Tier 2 engines and the technical or engineering hardship exemptions granted for Tier 3 engines in the proportions shown in Table 1. For example, if you used 45 percent of your production flexibility for Tier 2 engines, you must forfeit 2 percent of your production flexibility for Tier 4 engines for every 1 percent of technical or engineering hardship flexibility granted for Tier 3 engines. In addition you must also forfeit 1 percent of any technical or engineering hardship exemptions available for Tier 4 engines for every 1 percent technical or engineering hardship exemptions available for Tier 3 engines. If you use the Tier 3 technical or engineering

hardship allowances for 5 percent of your equipment in each of two different years, you have used a total allowance of 10 percent. Therefore you must forfeit a total of 20 percent of production flexibility for Tier 4 engines plus 10 percent of any technical or engineering hardship exemptions available for Tier 4 engines.

TABLE 1 OF § 89.102.—ADJUSTMENTS TO TIER 4 FLEXIBILITIES

Percent of use tier 2 production flexibility (percent)	Percent of forfeit tier 4 production flexibility (percent)	Percent of forfeit tier 4 Tech./Eng. exemption (percent)
0–20	0	1
20–40	1	1
40–60	2	1
60–80	3	1

(iii) Because the Tier 3 and Tier 4 rules have different power category ranges, the availability of technical relief will be further adjusted based on the sales volume by power category. Table 2 of this section shows the applicable power categories for Tier 3 and Tier 4. The Tier 3 power categories of 37kW to 75kW and 75kW to 130kW correspond to the Tier 4 power category of 56kW to 130kW. For the Tier 3 equipment in the 37 to 75kW category, you must only use the sales volume for equipment that uses engines with a rated power greater than 56kW. For example, if you have a Tier 3 piece of equipment that uses a 40kW engine, the sales of the equipment are counted in the Tier 4 power category of 19kW to 56kW. If you have a Tier 3 piece of equipment that uses a 60kW engine, the sales of the equipment are counted in the Tier 4 power category of 56kW to 130kW. The Tier 3 power categories of 130kW to 225kW, 225kW to 450kW and 450kW to 560kW correspond to the Tier 4 power category of 130kW to 560kW. You will need to sum the sales of the Tier 3 power categories that correspond to the Tier 4 power category during each calendar year in which Tier 3 technical relief is used. The sum of all the Tier 3 units that are produced and exempted by the technical relief divided by the sum of all the Tier 3 units sold in the corresponding Tier 4 power category will determine the percentage of Tier 4 flexibility affected. For example, if you produce 50 units using Tier 3 technical relief in the range of 130kW to 225kW, and you produce 50 units using Tier 3 technical relief in the range of 225 to 450kW, and no units are produced in the 450kW to 560kW range, and your overall sales volume for the power ranges of 130kW to 560kW in Tier 3 is

400 units, the amount of Tier 3 technical relief used is 100/400 or 25 percent. Because you forfeit 1 percent of your Tier 4 technical relief for every 1 percent of Tier 3 technical relief used, then you will lose 25 percent of your Tier 4 technical relief in the 130kW to 560kW power range category. If you used 45 percent of your production flexibility for Tier 2 engines, you must forfeit 2 percent of production flexibility for Tier 4 engines for every 1 percent of Tier 3 technical relief. Therefore, you will forfeit 50 percent of your Tier 4 production allowance in the 130kW to 560kW power range category.

TABLE 2 OF § 89.102.—CORRESPONDING TIER 3 AND TIER 4 POWER CATEGORIES

Tier 3 Power Categories	Tier 4 Power Categories
37kW to 75kW*	19kW to 56kW.
37kW to 75kW**, 75kW to 130kW.	56kW to 130kW.
130kW to 225kW, 225kW to 450kW, 450kW to 560kW.	130kW to 560kW.

*Applies only to use of engines rated between 37kW and 56kW by small volume equipment manufacturers.

**Includes only equipment that uses engines with a rated power greater than 56kW.

(iv) Manufacturers using allowances under this paragraph (i) must comply with the notification and reporting requirements specified in paragraph (j) of this section.

(j) *Notification and reporting.* You must notify us of your intent to use the provisions of this section and send us an annual report to verify that you are not exceeding the allowances, as follows:

(1) Before the first year you intend to use the provisions of this section, send the Designated Compliance Officer and the Designated Enforcement Officer a written notice of your intent, including:

(i) Your company’s name and address, and your parent company’s name and address, if applicable.

(ii) Whom to contact for more information.

(iii) The calendar years in which you expect to use the exemption provisions of this section.

(iv) The name and address of the company that produces the engines you will be using for the equipment exempted under this section.

(v) Your best estimate of the number of units in each power category you will produce under this section and whether you intend to comply under paragraph (d)(1) or (d)(2) of this section.

(vi) The number of units in each power category you have sold in

previous calendar years under paragraph (d) of this section.

(2) For each year that you use the provisions of this section, send the Designated Compliance Officer and the Designated Enforcement Officer a written report by March 31 of the following year. Include in your report the total number of engines you sold in the preceding year for each power category, based on actual U.S.-directed production information. Also identify the percentages of U.S.-directed production that correspond to the number of units in each power category and the cumulative numbers and percentages of units for all the units you have sold under this section for each power category. You may omit the percentage figures if you include in the report a statement that you will not be using the percent-of-production allowances in paragraph (d) of this section.

(k) *Recordkeeping.* Keep the following records of all equipment with exempted engines you produce under this section for at least five full years after the final year in which allowances are available for each power category:

(1) The model number, serial number, and the date of manufacture for each engine and piece of equipment.

(2) The maximum power of each engine.

(3) The total number or percentage of equipment with exempted engines, as described in paragraph (d) of this section and all documentation supporting your calculation.

(4) The notifications and reports we require under paragraph (j) of this section.

(l) *Equipment Labeling.* Any engine produced under this provision must meet the labeling requirements of 40 CFR 89.110, but add the following statement instead of the compliance statement in 40 CFR 89.110(b)(10): THIS ENGINE MEETS U.S. EPA EMISSION STANDARDS UNDER 40 CFR 89.102. SELLING OR INSTALLING THIS ENGINE FOR ANY PURPOSE OTHER THAN FOR THE EQUIPMENT FLEXIBILITY PROVISIONS OF 40 CFR 89.102 MAY BE A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY.

(m) *Enforcement.* Producing more exempted engines or equipment than we allow under this section or installing engines that do not meet the applicable Tier 1 emission standards described in § 89.112 violates the prohibitions in § 89.1003(a)(1). You must give us the records we require under this section if we ask for them (see § 89.1003(a)(2)).

■ 8. Section 89.108 is revised by adding paragraph (d) to read as follows:

§ 89.108 Adjustable parameters, requirements.

* * * * *

(d) For engines that use noncommercial fuels significantly different than the specified test fuel of the same type, the manufacturer may ask to use the parameter-adjustment provisions of 40 CFR 1039.615 instead of those in this section. Engines certified under this paragraph (d) must be in a separate engine family. See 40 CFR 1039.801 for the definition of “noncommercial fuels”.

■ 9. Section 89.115 is amended by adding paragraph (g) to read as follows:

§ 89.115 Application for certificate.

* * * * *

(g) The manufacturer must name an agent for service located in the United States. Service on this agent constitutes service on the manufacturer or any of its officers or employees for any action by EPA or otherwise by the United States related to the requirements of this part.

■ 10. Section 89.205 is amended by revising to paragraph (a) to read as follows:

§ 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. These credits are considered to be Tier 2 credits.

(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.

* * * * *

Subpart G—[Amended]

■ 11. Section 89.601 is amended by adding paragraph (d) to read as follows:

§ 89.601 Applicability.

* * * * *

(d) Importers must complete the appropriate EPA declaration form before importing an engine. These forms are available on the Internet at <http://www.epa.gov/OTAQ/imports/> or by phone at 734–214–4100. Importers must keep the forms for five years and make them available upon request.

■ 12. Section 89.611 is amended by adding paragraphs (f)(1)(v) and (f)(1)(vi) to read as follows:

§ 89.611 Exemptions and exclusions.

* * * * *

(f) * * *

(1) * * *

(v) All nonroad engines greater than or equal to 19 kW but less than 37 kW originally manufactured prior to January 1, 1999.

(vi) All nonroad engines less than 19 kW originally manufactured prior to January 1, 2000.

* * * * *

PART 1039—CONTROL OF EMISSIONS FROM NEW AND IN-USE NONROAD COMPRESSION-IGNITION ENGINES

■ 13. The authority citation for part 1039 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart A—[Amended]

■ 14. A new § 1039.2 is added to read as follows:

§ 1039.2 Who is responsible for compliance?

The regulations in this part 1039 contain provisions that affect both engine manufacturers and others. However, the requirements of this part are generally addressed to the engine manufacturer. The term “you” generally means the engine manufacturer, as defined in § 1039.801, especially for issues related to certification.

■ 15. Section 1039.10 is amended by revising the introductory text to read as follows:

§ 1039.10 How is this part organized?

This part 1039 is divided into the following subparts:

* * * * *

Subpart B—[Amended]

■ 16. Section 1039.102 is amended by revising paragraphs (g)(2) to read as follows:

§ 1039.102 What exhaust emission standards and phase-in allowances apply for my engines in model year 2014 and earlier?

* * * * *

(g) * * * part by certifying engines to FELs for PM, NO_x, or NO_x+NMHC instead of the standards in Tables 1 through 7 of this section for the model years shown. The FEL caps listed in the following table apply instead of the FEL caps in § 1039.101(d)(1), except as allowed by § 1039.104(g):

TABLE 8 OF § 1039.102.—INTERIM TIER 4 FEL CAPS, G/KW-HR

Maximum engine power	Phase-in option	Model years ¹	PM	NO _x	NO _x +NMHC
kW < 19		2008–2014	0.80		² 9.5
19 ≤ kW < 37		2008–2012	0.60		9.5
37 ≤ kW < 56		³ 2008–2012	0.40		7.5
56 ≤ kW < 130	phase-in	2012–2013	0.04	0.80	
56 ≤ kW < 130	phase-out	2012–2013	0.04		⁴ 6.6
130 ≤ kW ≤ 560	phase-in	2011–2013	0.04	0.80	
130 ≤ kW ≤ 560	phase-out	2011–2013	0.04		⁵ 6.4
kW > 560		2011–2014	0.20	6.2	

¹ For model years before 2015 where this table does not specify FEL caps, apply the FEL caps shown in § 1039.101.

² For engines below 8 kW, the FEL cap is 10.5 g/kW-hr for NO_x+NMHC emissions.

³ For manufacturers certifying engines to the standards of this part 1039 in 2012 under Option #2 of Table 3 of § 1039.102, the FEL caps for 37–56 kW engines in the 19–56 kW category of Table 2 of § 1039.101 apply for model year 2012 and later; see 40 CFR part 89 for provisions that apply to earlier model years.

⁴ For engines below 75 kW, the FEL cap is 7.5 g/kW-hr for NO_x+NMHC emissions.

⁵ For engines below 225 kW, the FEL cap is 6.6 g/kW-hr for NO_x+NMHC emissions.

* * * * *

§ 1039.104 Are there interim provisions that apply only for a limited time?

(4) * * *

■ 17. Section 1039.104 is amended by revising Table 1 in paragraph (g)(4) to read as follows:

* * * * *

(g) * * *

TABLE 1 OF § 1039.104.—ALTERNATE FEL CAPS

Maximum engine power	PM FEL cap, g/kW-hr	Model years for the alternate PM FEL cap	NO _x FEL cap, g/kW-hr	Model years for the alternate NO _x FEL cap
19 ≤ kW < 56	0.30	¹ 2012–2015		
56 ≤ kW < 130 ²	0.30	2012–2015	3.8	³ 2012–2015
130 ≤ kW ≤ 560	0.20	2011–2014	3.8	⁴ 2011–2014
kW > 560 ⁵	0.10	2015–2018	3.5	2015–2018

¹ For manufacturers certifying engines under Option #1 of Table 3 of § 1039.102, these alternate FEL caps apply to all 19–56 kW engines for model years from 2013 through 2016 instead of in the years indicated in this table. For manufacturers certifying engines under Option #2 of Table 3 of § 1039.102, these alternate FEL caps do not apply to 19–37 kW engines except in model years 2013 to 2015.

² For engines below 75 kW, the FEL caps are 0.40 g/kW-hr for PM emissions and 4.4 g/kW-hr for NO_x emissions.

³ For manufacturers certifying engines in this power category using a percentage phase-in/phase-out approach instead of the alternate NO_x standards of § 1039.102(e)(1), the alternate NO_x FEL cap in the table applies only in the 2014–2015 model years if certifying under § 1039.102(d)(1), and only in the 2015 model year if certifying under (1039.102(d)(2).

⁴ For manufacturers certifying engines in this power category using the percentage phase-in/phase-out approach instead of the alternate NO_x standard of § 1039.102(e)(2), the alternate NO_x FEL cap in the table applies only for the 2014 model year.

⁵ For engines above 560 kW, the provision for alternate NO_x FEL caps is limited to generator-set engines. For example, if you produce 1,000 generator-set engines above 560 kW in 2015, up to 200 of them may be certified to the alternate NO_x FEL caps.

■ 18. Section 1039.115 is amended by revising the section heading, the introductory text, and paragraph (a) introductory text to read as follows:

§ 1039.115 What other requirements apply?

Engines that are required to meet the emission standards of this part must meet the following requirements, except as noted elsewhere in this part:

(a) *Crankcase emissions.* Crankcase emissions may not be discharged directly into the ambient atmosphere from any engine throughout its useful life, except as follows:

* * * * *

■ 19. Section 1039.125 is amended by revising paragraph (f) introductory text to read as follows:

§ 1039.125 What maintenance instructions must I give to buyers?

* * * * *

(f) *Source of parts and repairs.* State clearly on the first page of your written maintenance instructions that a repair shop or person of the owner's choosing may maintain, replace, or repair emission-control devices and systems. Your instructions may not require components or service identified by brand, trade, or corporate name. Also, do not directly or indirectly condition your warranty on a requirement that the

engine be serviced by your franchised dealers or any other service establishments with which you have a commercial relationship. You may disregard the requirements in this paragraph (f) if you do one of two things:

* * * * *

■ 20. Section 1039.135 is amended by revising paragraph (g) to read as follows:

§ 1039.135 How must I label and identify the engines I produce?

* * * * *

(g) If you obscure the engine label while installing the engine in the equipment such that the label cannot be

read during normal maintenance, you must place a duplicate label on the equipment. If others install your engine in their equipment in a way that obscures the engine label, we require them to add a duplicate label on the equipment (see 40 CFR 1068.105); in that case, give them the number of duplicate labels they request and keep the following records for at least five years:

- (1) Written documentation of the request from the equipment manufacturer.
- (2) The number of duplicate labels you send for each engine family and the date you sent them.

Subpart C—[Amended]

■ 21. Section 1039.205 is amended by revising paragraphs (o) and (x) and adding paragraph (aa) to read as follows

§ 1039.205 What must I include in my application?

* * * * *

(o) Present emission data for hydrocarbons (such as NMHC or THCE, as applicable), NO_x, PM, and CO on an emission-data engine to show your engines meet the applicable duty-cycle emission standards we specify in § 1039.101. Show emission figures before and after applying adjustment factors for regeneration and deterioration factors for each engine. Include emission results for each mode if you do discrete-mode testing under § 1039.505. Present emission data to show that you meet any applicable smoke standards we specify in § 1039.105. If we specify more than one grade of any fuel type (for example, high-sulfur and low-sulfur diesel fuel), you need to submit test data only for one grade, unless the regulations of this part specify otherwise for your engine. Note that § 1039.235 allows you to submit an application in certain cases without new emission data.

(x) Include good-faith estimates of U.S.-directed production volumes. Include a justification for the estimated production volumes if they are substantially different than actual production volumes in earlier years for similar models.

(aa) Name an agent for service located in the United States. Service on this agent constitutes service on you or any of your officers or employees for any action by EPA or otherwise by the United States related to the requirements of this part.

■ 22. Section 1039.210 is revised to read as follows:

§ 1039.210 May I get preliminary approval before I complete my application?

If you send us information before you finish the application, we will review it and make any appropriate determinations, especially for questions related to engine family definitions, auxiliary emission-control devices, deterioration factors, testing for service accumulation, maintenance, and NTE deficiencies and carve-outs. Decisions made under this section are considered to be preliminary approval, subject to final review and approval. We will generally not reverse a decision where we have given you preliminary approval, unless we find new information supporting a different decision. If you request preliminary approval related to the upcoming model year or the model year after that, we will make best-efforts to make the appropriate determinations as soon as practicable. We will generally not provide preliminary approval related to a future model year more than two years ahead of time.

■ 23. Section 1039.225 is amended by revising paragraphs (a), (b)(3), (d), and (e) to read as follows:

§ 1039.225 How do I amend my application for certification to include new or modified engines or change an FEL?

(a) You must amend your application before you take any of the following actions:

(1) Add an engine configuration to an engine family. In this case, the engine configuration added must be consistent with other engine configurations in the engine family with respect to the criteria listed in § 1039.230.

(2) Change an engine configuration already included in an engine family in a way that may affect emissions, or change any of the components you described in your application for certification. This includes production and design changes that may affect emissions any time during the engine's lifetime.

(3) Modify an FEL for an engine family as described in paragraph (f) of this section.

(b) * * *

(3) If the original emission-data engine for the engine family is not appropriate to show compliance for the new or modified engine configuration, include new test data showing that the new or modified engine configuration meets the requirements of this part.

(d) For engine families already covered by a certificate of conformity, we will determine whether the existing

certificate of conformity covers your newly added or modified engine. You may ask for a hearing if we deny your request (see § 1039.820).

(e) For engine families already covered by a certificate of conformity, you may start producing the new or modified engine configuration anytime after you send us your amended application and before we make a decision under paragraph (d) of this section. However, if we determine that the affected engines do not meet applicable requirements, we will notify you to cease production of the engines and may require you to recall the engines at no expense to the owner. Choosing to produce engines under this paragraph (e) is deemed to be consent to recall all engines that we determine do not meet applicable emission standards or other requirements and to remedy the nonconformity at no expense to the owner. If you do not provide information required under paragraph (c) of this section within 30 days, you must stop producing the new or modified engines.

* * * * *

■ 24. Section 1039.230 is amended by revising paragraph (a) to read as follows:

§ 1039.230 How do I select engine families?

(a) For purposes of certification, divide your product line into families of engines that are expected to have similar emission characteristics throughout the useful life as described in this section. Your engine family is limited to a single model year.

■ 25. Section 1039.235 is amended by revising paragraph (d)(1) to read as follows:

§ 1039.235 What emission testing must I perform for my application for a certificate of conformity?

(d) * * *

(1) The engine family from the previous model year differs from the current engine family only with respect to model year or other characteristics unrelated to emissions.

■ 26. Section 1039.245 is amended by revising the introductory text to read as follows:

§ 1039.245 How do I determine deterioration factors from exhaust durability testing?

Establish deterioration factors to determine whether your engines will meet emission standards for each

pollutant throughout the useful life, as described in §§ 1039.101 and 1039.240. This section describes how to determine deterioration factors, either with an engineering analysis, with pre-existing test data, or with new emission measurements.

* * * * *

■ 27. Section 1039.255 is amended by revising paragraph (d) to read as follows:

§ 1039.255 What decisions may EPA make regarding my certificate of conformity?

* * * * *

(d) We may void your certificate if you do not keep the records we require or do not give us information as required under this part or the Act.

* * * * *

Subpart F—[Amended]

■ 28. Section 1039.501 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1039.501 How do I run a valid emission test?

(a) Use the equipment and procedures for compression-ignition engines in 40 CFR part 1065 to determine whether engines meet the duty-cycle emission standards in subpart B of this part. Measure the emissions of all the regulated pollutants as specified in 40 CFR part 1065. Use the applicable duty cycles specified in §§ 1039.505 and 1039.510.

(b) Section 1039.515 describes the supplemental procedures for evaluating whether engines meet the not-to-exceed emission standards in subpart B of this part.

* * * * *

■ 29. Section 1039.505 is amended by revising paragraphs (a)(1) introductory text and (a)(1)(ii) to read as follows:

§ 1039.505 How do I test engines using steady-state duty cycles, including ramped-modal testing?

* * * * *

(a) * * *

(1) For discrete-mode testing, sample emissions separately for each mode, then calculate an average emission level for the whole cycle using the weighting factors specified for each mode. Calculate cycle statistics for each mode and compare with the specified values in 40 CFR part 1065 to confirm that the test is valid. Operate the engine and sampling system as follows:

* * * * *

(ii) Engines without NO_x aftertreatment. For other engines, operate the engine for at least 5 minutes,

then sample emissions for at least 1 minute in each mode.

* * * * *

Subpart G—[Amended]

■ 30. Section 1039.605 is amended by revising paragraphs (a), (b), (c), (d) introductory text, (d)(8)(ii), and (d)(8)(iii) to read as follows:

§ 1039.605 What provisions apply to engines certified under the motor-vehicle program?

(a) *General provisions.* If you are an engine manufacturer, this section allows you to introduce new nonroad engines into commerce if they are already certified to the requirements that apply to compression-ignition engines under 40 CFR parts 85 and 86 for the appropriate model year. If you comply with all the provisions of this section, we consider the certificate issued under 40 CFR part 86 for each engine to also be a valid certificate of conformity under this part 1039 for its model year, without a separate application for certification under the requirements of this part 1039. See § 1039.610 for similar provisions that apply to engines certified to chassis-based standards for motor vehicles.

(b) *Equipment-manufacturer provisions.* If you are not an engine manufacturer, you may produce nonroad equipment using motor-vehicle engines under this section as long as you meet all the requirements and conditions specified in paragraph (d) of this section. You must also add the fuel-inlet label we specify in § 1039.135(e). If you modify the motor-vehicle engine in any of the ways described in paragraph (d)(2) of this section, we will consider you a manufacturer of a new nonroad engine. Such engine modifications prevent you from using the provisions of this section.

(c) *Liability.* Engines for which you meet the requirements of this section are exempt from all the requirements and prohibitions of this part, except for those specified in this section. Engines exempted under this section must meet all the applicable requirements from 40 CFR parts 85 and 86. This applies to engine manufacturers, equipment manufacturers who use these engines, and all other persons as if these engines were used in a motor vehicle. The prohibited acts of 40 CFR 1068.101(a)(1) apply to these new engines and equipment; however, we consider the certificate issued under 40 CFR part 86 for each engine to also be a valid certificate of conformity under this part 1039 for its model year. If we make a determination that these engines do not

conform to the regulations during their useful life, we may require you to recall them under 40 CFR part 86 or 40 CFR 1068.505.

(d) *Specific requirements.* If you are an engine manufacturer or equipment manufacturer and meet all the following criteria and requirements regarding your new nonroad engine, the engine is eligible for an exemption under this section:

* * * * *

(8) * * *

(ii) List the engine or equipment models you expect to produce under this exemption in the coming year and describe your basis for meeting the sales restrictions of paragraph (d)(3) of this section.

(iii) State: “We produce each listed [engine or equipment] model for nonroad application without making any changes that could increase its certified emission levels, as described in 40 CFR 1039.605.”

* * * * *

■ 31. Section 1039.610 is amended by revising paragraphs (a), (b), (c), (d)(7)(ii), and (d)(7)(iii) to read as follows:

§ 1039.610 What provisions apply to vehicles certified under the motor-vehicle program?

(a) *General provisions.* If you are a motor-vehicle manufacturer, this section allows you to introduce new nonroad engines or equipment into commerce if the vehicle is already certified to the requirements that apply under 40 CFR parts 85 and 86 for the appropriate model year. If you comply with all of the provisions of this section, we consider the certificate issued under 40 CFR part 86 for each motor vehicle to also be a valid certificate of conformity for the engine under this part 1039 for its model year, without a separate application for certification under the requirements of this part 1039. See § 1039.605 for similar provisions that apply to motor-vehicle engines produced for nonroad equipment.

(b) *Equipment-manufacturer provisions.* If you are not a motor-vehicle manufacturer, you may produce nonroad equipment from motor vehicles under this section as long as you meet all the requirements and conditions specified in paragraph (d) of this section. You must also add the fuel-inlet label we specify in § 1039.135(e). If you modify the motor vehicle or its engine in any of the ways described in paragraph (d)(2) of this section, we will consider you a manufacturer of a new nonroad engine. Such modifications prevent you from using the provisions of this section.

(c) *Liability.* Engines, vehicles, and equipment for which you meet the requirements of this section are exempt from all the requirements and prohibitions of this part, except for those specified in this section. Engines exempted under this section must meet all the applicable requirements from 40 CFR parts 85 and 86. This applies to engine manufacturers, equipment manufacturers, and all other persons as if the nonroad equipment were motor vehicles. The prohibited acts of 40 CFR 1068.101(a)(1) apply to these new pieces of equipment; however, we consider the certificate issued under 40 CFR part 86 for each motor vehicle to also be a valid certificate of conformity for the engine under this part 1039 for its model year. If we make a determination that these engines, vehicles, or equipment do not conform to the regulations during their useful life, we may require you to recall them under 40 CFR part 86 or 40 CFR 1068.505.

(d) * * *
(7) * * *

(ii) List the equipment models you expect to produce under this exemption in the coming year and describe your basis for meeting the sales restrictions of paragraph (d)(3) of this section.

(iii) State: "We produced each listed engine or equipment model for nonroad application without making any changes that could increase its certified emission levels, as described in 40 CFR 1039.610."

* * * * *

■ 32. Section 1039.625 is amended by revising paragraph (e)(3) as follows:

§ 1039.625 What requirements apply under the program for equipment-manufacturer flexibility?

* * * * *

(e) * * *

(3) In all other cases, engines at or above 56 kW and at or below 560 kW must meet the appropriate Tier 3 standards described in § 89.112. Engines below 56 kW and engines above 560 kW must meet the appropriate Tier 2 standards described in § 89.112.

* * * * *

Subpart H—[Amended]

■ 33. Section 1039.705 is amended by removing and reserving paragraph (a) and revising paragraph (b) before the equation to read as follows:

§ 1039.705 How do I generate and calculate emission credits?

* * * * *

(a) [Reserved]

(b) For each participating family, calculate positive or negative emission

credits relative to the otherwise applicable emission standard. Calculate positive emission credits for a family that has an FEL below the standard. Calculate negative emission credits for a family that has an FEL above the standard. Sum your positive and negative credits for the model year before rounding. Round calculated emission credits to the nearest kilogram (kg), using consistent units throughout the following equation:

* * * * *

■ 34. Section 1039.730 is amended by revising paragraph (c)(1) to read as follows:

§ 1039.730 What ABT reports must I send to EPA?

* * * * *

(c) * * *

(1) Show that your net balance of emission credits from all your participating engine families in each averaging set in the applicable model year is not negative.

* * * * *

■ 35. Section 1039.735 is amended by revising paragraph (b) to read as follows:

§ 1039.735 What records must I keep?

* * * * *

(b) Keep the records required by this section for eight years after the due date for the end-of-year report. You may not use emission credits on any engines if you do not keep all the records required under this section. You must therefore keep these records to continue to bank valid credits. Store these records in any format and on any media, as long as you can promptly send us organized, written records in English if we ask for them. You must keep these records readily available. We may review them at any time.

* * * * *

Subpart I—[Amended]

■ 36. Section 1039.801 is amended by revising the definitions for "Certification", "Constant-speed operation", "Designated Compliance Officer", "Emission-control system", "Intermediate test speed", paragraph (1) of the definition of "New nonroad engine", "Nonmethane hydrocarbon", "Oxides of nitrogen", "Round", and "Steady-state" and adding a definition for "Owners manual" in alphabetical order to read as follows:

§ 1039.801 What definitions apply to this part?

* * * * *

Certification means relating to the process of obtaining a certificate of

conformity for an engine family that complies with the emission standards and requirements in this part.

* * * * *

Constant-speed operation has the meaning given in 40 CFR 1065.1001.

* * * * *

Designated Compliance Officer means the Manager, Heavy-Duty and Nonroad Engine Group (6403-J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

* * * * *

Emission-control system means any device, system, or element of design that controls or reduces the emissions of regulated pollutants from an engine.

* * * * *

Intermediate test speed has the meaning given in 40 CFR 1065.1001.

* * * * *

New nonroad engine means any of the following things:

(1) A freshly manufactured nonroad engine for which the ultimate purchaser has never received the equitable or legal title. This kind of engine might commonly be thought of as "brand new." In the case of this paragraph (1), the engine is new from the time it is produced until the ultimate purchaser receives the title or the product is placed into service, whichever comes first.

* * * * *

Nonmethane hydrocarbons (NMHC) means the sum of all hydrocarbon species except methane. Refer to 40 CFR 1065.660 for NMHC determination.

* * * * *

Owners manual means a document or collection of documents prepared by the engine manufacturer for the owner or operator to describe appropriate engine maintenance, applicable warranties, and any other information related to operating or keeping the engine. The owners manual is typically provided to the ultimate purchaser at the time of sale.

Oxides of nitrogen has the meaning given in 40 CFR 1065.1001.

* * * * *

Round has the meaning given in 40 CFR 1065.1001.

* * * * *

Steady-state has the meaning given in 40 CFR 1065.1001.

* * * * *

■ 37. Section 1039.810 is amended by revising paragraph (a) and removing and reserving paragraph (b) to read as follows:

§ 1039.810 What materials does this part reference?

* * * * *

(a) *SAE material.* Table 1 of this section lists material from the Society of Automotive Engineering that we have incorporated by reference. The first column lists the number and name of the material. The second column lists the sections of this part where we reference it. Anyone may purchase copies of these materials from the Society of Automotive Engineers, 400 Commonwealth Drive, Warrendale, PA 15096 or <http://www.sae.org>. Table 1 follows:

TABLE 1 OF § 1039.810.—SAE MATERIALS

Document number and name	Part 1039 reference
SAE J1930, Electrical/Electronic Systems Diagnostic Terms, Definitions, Abbreviations, and Acronyms, revised May 1998	1039.135

(b) [Reserved]

■ 38. A new § 1039.825 is added to read as follows:

§ 1039.825 What reporting and recordkeeping requirements apply under this part?

Under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the Office of Management and Budget approves the reporting and recordkeeping specified in the applicable regulations. The following items illustrate the kind of reporting and recordkeeping we require for engines and equipment regulated under this part:

(a) We specify the following requirements related to engine certification in this part 1039:

(1) In § 1039.20 we require engine manufacturers to label stationary engines that do not meet the standards in this part.

(2) In § 1039.135 we require engine manufacturers to keep certain records related to duplicate labels sent to equipment manufacturers.

(3) [Reserved]

(4) In subpart C of this part we identify a wide range of information required to certify engines.

(5) [Reserved]

(6) [Reserved]

(7) In subpart G of this part we identify several reporting and recordkeeping items for making demonstrations and getting approval related to various special compliance provisions. For example, equipment manufacturers must submit reports and

keep records related to the flexibility provisions in § 1039.625.

(8) In § 1039.725, 1039.730, and 1039.735 we specify certain records related to averaging, banking, and trading.

(b) We specify the following requirements related to testing in 40 CFR part 1065:

(1) In 40 CFR 1065.2 we give an overview of principles for reporting information.

(2) In 40 CFR 1065.10 and 1065.12 we specify information needs for establishing various changes to published test procedures.

(3) In 40 CFR 1065.25 we establish basic guidelines for storing test information.

(4) In 40 CFR 1065.695 we identify data that may be appropriate for collecting during testing of in-use engines using portable analyzers.

(c) We specify the following requirements related to the general compliance provisions in 40 CFR part 1068:

(1) In 40 CFR 1068.5 we establish a process for evaluating good engineering judgment related to testing and certification.

(2) In 40 CFR 1068.25 we describe general provisions related to sending and keeping information.

(3) In 40 CFR 1068.27 we require manufacturers to make engines available for our testing or inspection if we make such a request.

(4) In 40 CFR 1068.105 we require equipment manufacturers to keep certain records related to duplicate labels from engine manufacturers.

(5) In 40 CFR 1068.120 we specify recordkeeping related to rebuilding engines.

(6) In 40 CFR part 1068, subpart C, we identify several reporting and recordkeeping items for making demonstrations and getting approval related to various exemptions.

(7) In 40 CFR part 1068, subpart D, we identify several reporting and recordkeeping items for making demonstrations and getting approval related to importing engines.

(8) In 40 CFR 1068.450 and 1068.455 we specify certain records related to testing production-line engines in a selective enforcement audit.

(9) In 40 CFR 1068.501 we specify certain records related to investigating and reporting emission-related defects.

(10) In 40 CFR 1068.525 and 1068.530 we specify certain records related to recalling nonconforming engines.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2002-0043; FRL-8126-5]

Pesticide Tolerance Nomenclature Changes; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: This document makes minor revisions to the terminology of certain commodity terms listed under 40 CFR part 180, subpart C. EPA is taking this action to establish a uniform listing of commodity terms.

DATES: This Direct Final Rule is effective on November 2, 2007 without notice, unless EPA receives adverse comment by October 18, 2007. If EPA receives adverse comments, EPA will publish a **Federal Register** document to withdraw the direct final rule before the effective date.

If this Direct Final Rule becomes effective on November 2, 2007, any person may file objections and request for hearings on those objections. Objections and requests for hearings must be received on or before November 19, 2007. For direct final rules, the date of issuance is considered to be the effective date. Objections and hearings must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2002-0043. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Stephen Schaible, Registration Division