

model year. We may waive the requirement to send the end-of year report, as long as you send the final report on time.

(b) Your end-of-year and final reports must include the following information for each engine family participating in the ABT program:

- (1) Engine-family designation.
- (2) The emission standards that would otherwise apply to the engine family.
- (3) The FEL for each pollutant. If you changed an FEL during the model year, identify each FEL you used and calculate the positive or negative emission credits under each FEL. Also, describe how the applicable FEL can be identified for each engine you produced. For example, you might keep a list of engine identification numbers that correspond with certain FEL values.
- (4) The projected and actual production volumes for the model year with a point of retail sale in the United States. If you changed an FEL during the model year, identify the actual production volume associated with each FEL.
- (5) Maximum engine power for each engine configuration, and the sales-weighted average engine power for the engine family.
- (6) Useful life.
- (7) Calculated positive or negative emission credits for the whole engine family. Identify any emission credits that you traded, as described in paragraph (d)(1) of this section.

(c) Your end-of-year and final reports must include the following additional information:

- (1) Show that your net balance of emission credits from all your engine families in each averaging set in the applicable model year is not negative.
- (2) State whether you will reserve any emission credits for banking.
- (3) State that the report's contents are accurate.
- (d) If you trade emission credits, you must send us a report within 90 days after the transaction, as follows:

- (1) As the seller, you must include the following information in your report:
 - (i) The corporate names of the buyer and any brokers.

- (ii) A copy of any contracts related to the trade.

- (iii) The engine families that generated emission credits for the trade, including the number of emission credits from each family.

(2) As the buyer, you must include the following information in your report:

- (i) The corporate names of the seller and any brokers.
- (ii) A copy of any contracts related to the trade.
- (iii) How you intend to use the emission credits, including the number of emission credits you intend to apply to each engine family (if known).

(e) Send your reports electronically to the Designated Compliance Officer using an approved information format. If you want to use a different format, send us a written request with justification for a waiver.

(f) Correct errors in your end-of-year report or final report as follows:

- (1) You may correct any errors in your end-of-year report when you prepare the final report, as long as you send us the final report by the time it is due.
- (2) If you or we determine within 270 days after the end of the model year that errors mistakenly decrease your balance of emission credits, you may correct the errors and recalculate the balance of emission credits. You may not make these corrections for errors that are determined more than 270 days after the end of the model year. If you report a negative balance of emission credits, we may disallow corrections under this paragraph (f)(2).
- (3) If you or we determine anytime that errors mistakenly increase your balance of emission credits, you must correct the errors and recalculate the balance of emission credits.

§ 1039.735 What records must I keep?

- (a) You must organize and maintain your records as described in this section. We may review your records at any time.
- (b) Keep the records required by this section for eight years after the due date for the end-of-year report. You may use any appropriate storage formats or media, including paper, microfilm, or computer diskettes.

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(c) Keep a copy of the reports we require in § 1039.725 and § 1039.730.

(d) Keep the following additional records for each engine you produce that generates or uses emission credits under the ABT program:

- (1) Engine family designation.
- (2) Engine identification number.
- (3) FEL and useful life.
- (4) Maximum engine power.
- (5) Build date and assembly plant.
- (6) Purchaser and destination.

(e) We may require you to keep additional records or to send us relevant information not required by this section.

§ 1039.740 What restrictions apply for using emission credits?

The following restrictions apply for using emission credits:

(a) *Averaging sets.* Emission credits may be exchanged only within an averaging set. For Tier 4 engines, there are two averaging sets—one for engines at or below 560 kW and another for engines above 560 kW.

(b) *Emission credits from earlier tiers of standards.* (1) For purposes of ABT under this subpart, you may not use emission credits generated from engines subject to emission standards under 40 CFR part 89, except as specified in § 1039.102(d)(1) or the following table:

If the maximum power of the credit-generating engine is . . .	And it was certified to the following standards under 40 CFR part 89 . . .	Then you may use those banked credits for the following Tier 4 engines . . .
(i) kW < 19	Tier 2	kW < 19
(ii) 19 ≤ kW < 37 . . .	Tier 2	kW ≥ 19
(iii) 37 ≤ kW ≤ 560 . . .	Tier 3	kW ≥ 19
(iv) kW > 560	Tier 2	kW ≥ 19

(2) Emission credits generated from marine engines certified under the provisions of 40 CFR part 89 may not be used under this part.

(3) See 40 CFR part 89 for other restrictions that may apply for using emission credits generated under that part.

(4) If the maximum power of an engine generating credits under the Tier 2 standards in 40 CFR part 89 is at or above 37 kW and below 75 kW, you may

use those credits for certifying engines under the Option #1 standards in § 1039.102.

(c) *NO_x and NO_x+NMHC emission credits.* You may use NO_x emission credits without adjustment to show compliance with NO_x+NMHC standards. You may use NO_x+NMHC emission credits to show compliance with NO_x standards, but you must adjust the NO_x+NMHC emission credits downward by twenty percent when you use them, as shown in the following equation:

$$\text{NO}_x \text{ emission credits} = (0.8) \times (\text{NO}_x + \text{NMHC emission credits}).$$

(d) *Other restrictions.* Other sections of this part specify additional restrictions for using emission credits under certain special provisions.

[69 FR 39213, June 29, 2004, as amended at 70 FR 40464, July 13, 2005]

§ 1039.745 What can happen if I do not comply with the provisions of this subpart?

(a) For each engine family participating in the ABT program, the certificate of conformity is conditional upon full compliance with the provisions of this subpart during and after the model year. You are responsible to establish to our satisfaction that you fully comply with applicable requirements. We may void the certificate of conformity for an engine family if you fail to comply with any provisions of this subpart.

(b) You may certify your engine family to an FEL above an applicable standard based on a projection that you will have enough emission credits to offset the deficit for the engine family. However, we may void the certificate of conformity if you cannot show in your final report that you have enough actual emission credits to offset a deficit for any pollutant in an engine family.

(c) We may void the certificate of conformity for an engine family if you fail to keep records, send reports, or give us information we request.

(d) You may ask for a hearing if we void your certificate under this section (see § 1039.820).