

for both tractors and vocational vehicles, treat them as separate averaging sets. Adjust the CO₂ emission rates to be equivalent to an engine meeting the average NO_x FEL of new engines (assuming engines certified to the 0.20 g/hp-hr NO_x standard have a NO_x FEL equal to 0.20 g/hp-hr), as described in paragraph (b)(1) of this section.

(d) Include the following statement on the emission control information label: "THIS ENGINE WAS CERTIFIED TO AN ALTERNATE CO₂ STANDARD UNDER §1036.620."

(e) You may not bank CO₂ emission credits for any engine family in the same averaging set and model year in which you certify engines to the standards of this section. You may not bank any advanced technology credits in any averaging set for the model year you certify under this section (since such credits would be available for use in this averaging set). Note that the provisions of §1036.745 apply for deficits generated with respect to the standards of this section.

(f) You need our approval before you may certify engines under this section, especially with respect to the numerical value of the alternate standards. We will not approve your request if we determine that you manipulated your engine families or test engine configurations to certify to less stringent standards, or that you otherwise have not acted in good faith. You must keep and provide to us any information we need to determine that your engine families meet the requirements of this section. Keep these records for at least five years after you stop producing engines certified under this section.

§ 1036.625 In-use compliance with family emission limits (FELs).

You may ask us to apply a higher in-use FEL for certain in-use engines, subject to the provisions of this section. Note that §1036.225 contains provisions related to changing FELs during a model year.

(a) *Purpose.* This section is intended to address circumstances in which it is in the public interest to apply a higher in-use FEL based on forfeiting an appropriate number of emission credits.

(b) *FELs.* When applying higher in-use FELs to your engines, we would in-

tend to accurately reflect the actual in-use performance of your engines, consistent with the specified testing provisions of this part.

(c) *Equivalent families.* We may apply the higher FELs to other families in other model years if they used equivalent emission controls.

(d) *Credit forfeiture.* Where we specify higher in-use FELs under this section, you must forfeit CO₂ emission credits based on the difference between the in-use FEL and the otherwise applicable FEL. Calculate the amount of credits to be forfeited using the applicable equation in §1036.705, by substituting the otherwise applicable FEL for the standard and the in-use FEL for the otherwise applicable FEL.

(e) *Requests.* Submit your request to the Designated Compliance Officer. Include the following in your request:

(1) The engine family name and model year of the engines affected.

(2) A list of other engine families/model years that may be affected.

(3) The otherwise applicable FEL for the engine families along with your recommendations for higher in-use FELs.

(4) Your source of credits for forfeiture.

(f) *Relation to recall.* You may not request higher in-use FELs for any engine families for which we have made a determination of nonconformance and ordered a recall. You may, however, make such requests for engine families for which you are performing a voluntary emission recall.

(g) *Approval.* We may approve your request if we determine that you meet the requirements of this section and such approval is in the public interest. We may include appropriate conditions with our approval or we may approve your request with modifications.

Subpart H—Averaging, Banking, and Trading for Certification

§ 1036.701 General provisions.

(a) You may average, bank, and trade (ABT) emission credits for purposes of certification as described in this subpart and in subpart B of this part to show compliance with the standards of §1036.108. Participation in this program is voluntary. (Note: As described in

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subpart B of this part, you must assign an FCL to all engine families, whether or not they participate in the ABT provisions of this subpart.)

(b) [Reserved]

(c) The definitions of subpart I of this part apply to this subpart. The following definitions also apply:

(1) *Actual emission credits* means emission credits you have generated that we have verified by reviewing your final report.

(2) *Averaging set* means a set of engines in which emission credits may be exchanged. Credits generated by one engine may only be used by other engines in the same averaging set. See § 1036.740.

(3) *Broker* means any entity that facilitates a trade of emission credits between a buyer and seller.

(4) *Buyer* means the entity that receives emission credits as a result of a trade.

(5) *Reserved emission credits* means emission credits you have generated that we have not yet verified by reviewing your final report.

(6) *Seller* means the entity that provides emission credits during a trade.

(7) *Standard* means the emission standard that applies under subpart B of this part for engines not participating in the ABT program of this subpart.

(8) *Trade* means to exchange emission credits, either as a buyer or seller.

(d) Emission credits may be exchanged only within an averaging set as specified in § 1036.740.

(e) You may not use emission credits generated under this subpart to offset any emissions that exceed an FCL or standard. This applies for all testing, including certification testing, in-use testing, selective enforcement audits, and other production-line testing. However, if emissions from an engine exceed an FCL or standard (for example, during a selective enforcement audit), you may use emission credits to recertify the engine family with a higher FCL that applies only to future production.

(f) Emission credits may be used in the model year they are generated. Surplus emission credits may be banked for future model years. Surplus emission credits may sometimes be

used for past model years, as described in § 1036.745.

(g) You may increase or decrease an FCL during the model year by amending your application for certification under § 1036.225. The new FCL may apply only to engines you have not already introduced into commerce.

(h) You may trade emission credits generated from any number of your engines to the engine purchasers or other parties to retire the credits. Identify any such credits in the reports described in § 1036.730. Engines must comply with the applicable FELs even if you donate or sell the corresponding emission credits under this paragraph (h). Those credits may no longer be used by anyone to demonstrate compliance with any EPA emission standards.

(i) See § 1036.740 for special credit provisions that apply for credits generated under § 1036.615 or 40 CFR 1037.104(d)(7) or 1037.615.

(j) Unless the regulations explicitly allow it, you may not calculate credits more than once for any emission reduction. For example, if you generate CO₂ emission credits for a hybrid engine under this part for a given vehicle, no one may generate CO₂ emission credits for that same hybrid engine and vehicle under 40 CFR part 1037. However, credits could be generated for identical vehicles using engines that did not generate credits under this part.

§ 1036.705 Generating and calculating emission credits.

(a) The provisions of this section apply separately for calculating emission credits for each pollutant.

(b) For each participating family, calculate positive or negative emission credits relative to the otherwise applicable emission standard based on the engine family's FCL for greenhouse gases. If your engine family is certified to both the vocational and tractor engine standards, calculate credits separately for the vocational engines and the tractor engines (as specified in paragraph (b)(3) of this section). Calculate positive emission credits for a family that has an FCL below the standard. Calculate negative emission credits for a family that has an FCL above the standard.

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Sum your positive and negative credits for the model year before rounding. Round the sum of emission credits to the nearest megagram (Mg), using consistent units throughout the following equations:

(1) For vocational engines:

$$\text{Emission credits (Mg)} = (\text{Std} - \text{FCL}) \cdot (\text{CF}) \cdot (\text{Volume}) \cdot (\text{UL}) \cdot (10^{-6})$$

Where:

Std = the emission standard, in g/hp-hr, that applies under subpart B of this part for engines not participating in the ABT program of this subpart (the "otherwise applicable standard").

FCL = the Family Certification Level for the engine family, in g/hp-hr, measured over the transient duty cycle, rounded to the same number of decimal places as the emission standard.

CF = a transient cycle conversion factor (hp-hr/mile), calculated by dividing the total (integrated) horsepower-hour over the duty cycle (average of vocational engine configurations weighted by their production volumes) by 6.3 miles for spark-ignition engines and 6.5 miles for compression-ignition engines. This represents the average work performed by vocational engines in the family over the mileage represented by operation over the duty cycle.

Volume = the number of vocational engines eligible to participate in the averaging, banking, and trading program within the given engine family during the model year, as described in paragraph (c) of this section.

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

(2) For tractor engines:

$$\text{Emission credits (Mg)} = (\text{Std} - \text{FCL}) \cdot (\text{CF}) \cdot (\text{Volume}) \cdot (\text{UL}) \cdot (10^{-6})$$

Where:

Std = the emission standard, in g/hp-hr, that applies under subpart B of this part for engines not participating in the ABT program of this subpart (the "otherwise applicable standard").

FCL = the Family Certification Level for the engine family, in g/hp-hr, measured over the SET duty cycle rounded to the same number of decimal places as the emission standard.

CF = a transient cycle conversion factor (hp-hr/mile), calculated by dividing the total (integrated) horsepower-hour over the duty cycle (average of tractor-engine configurations weighted by their production volumes) by 6.3 miles for spark-ignition engines and 6.5 miles for compression-ignition engines. This represents the average work performed by tractor engines in the family over the mileage represented by operation over the duty cycle. Note that this calculation re-

quires you to use the transient cycle conversion factor even for engines certified to SET-based standards. Volume = the number of tractor engines eligible to participate in the averaging, banking, and trading program within the given engine family during the model year, as described in paragraph (c) of this section.

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

(3) For engine families certified to both the vocational and tractor engine standards, we may allow you to use statistical methods to estimate the total production volumes where a small fraction of the engines cannot be tracked precisely.

(4) You may not generate emission credits for tractor engines (*i.e.*, engines not certified to the transient cycle for CO₂) installed in vocational vehicles (including vocational tractors certified pursuant to 40 CFR 1037.630 or exempted pursuant to 40 CFR 1037.631). We will waive this requirement where you demonstrate that less than five percent of the engines in your tractor family were installed in vocational vehicles. For example, if you know that 96 percent of your tractor engines were installed in non-vocational tractors, but cannot determine the vehicle type for the remaining four percent, you may generate credits for all the engines in the family.

(c) As described in §1036.730, compliance with the requirements of this subpart is determined at the end of the model year based on actual U.S.-directed production volumes. Keep appropriate records to document these production volumes. Do not include any of the following engines to calculate emission credits:

(1) Engines that you do not certify to the CO₂ standards of this part because they are permanently exempted under subpart G of this part or under 40 CFR part 1068.

(2) Exported engines.

(3) Engines not subject to the requirements of this part, such as those excluded under §1036.5. For example, do not include engines used in vehicles certified to the greenhouse gas standards of 40 CFR 1037.104.

(4) [Reserved]

(5) Any other engines if we indicate elsewhere in this part 1036 that they

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are not to be included in the calculations of this subpart.

(d) You may use CO₂ emission credits to show compliance with CH₄ and/or N₂O FELs instead of the otherwise applicable emission standards. To do this, calculate the CH₄ and/or N₂O emission credits needed (negative credits) using the equation in paragraph (b) of this section, using the FEL(s) you specify for your engines during certification instead of the FCL. You must use 25 Mg of positive CO₂ credits to offset 1 Mg of negative CH₄ credits. You must use 298 Mg of positive CO₂ credits to offset 1 Mg of negative N₂O credits.

§ 1036.710 Averaging.

(a) Averaging is the exchange of emission credits among your engine families. You may average emission credits only within the same averaging set.

(b) You may certify one or more engine families to an FCL above the applicable standard, subject to any applicable FEL caps and other the provisions in subpart B of this part, if you show in your application for certification that your projected balance of all emission-credit transactions in that model year is greater than or equal to zero, or that a negative balance is allowed under § 1036.745.

(c) If you certify an engine family to an FCL that exceeds the otherwise applicable standard, you must obtain enough emission credits to offset the engine family's deficit by the due date for the final report required in § 1036.730. The emission credits used to address the deficit may come from your other engine families that generate emission credits in the same model year (or from later model years as specified in § 1036.745), from emission credits you have banked, or from emission credits you obtain through trading.

§ 1036.715 Banking.

(a) Banking is the retention of surplus emission credits by the manufacturer generating the emission credits for use in future model years for averaging or trading.

(b) You may designate any emission credits you plan to bank in the reports you submit under § 1036.730 as reserved

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credits. During the model year and before the due date for the final report, you may designate your reserved emission credits for averaging or trading.

(c) Reserved credits become actual emission credits when you submit your final report. However, we may revoke these emission credits if we are unable to verify them after reviewing your reports or auditing your records.

(d) Banked credits retain the designation of the averaging set in which they were generated.

§ 1036.720 Trading.

(a) Trading is the exchange of emission credits between manufacturers, or the transfer of credits to another party to retire them. You may use traded emission credits for averaging, banking, or further trading transactions. Traded emission credits remain subject to the averaging-set restrictions based on the averaging set in which they were generated.

(b) You may trade actual emission credits as described in this subpart. You may also trade reserved emission credits, but we may revoke these emission credits based on our review of your records or reports or those of the company with which you traded emission credits. You may trade banked credits within an averaging set to any certifying manufacturer.

(c) If a negative emission credit balance results from a transaction, both the buyer and seller are liable, except in cases we deem to involve fraud. See § 1036.255(e) for cases involving fraud. We may void the certificates of all engine families participating in a trade that results in a manufacturer having a negative balance of emission credits. See § 1036.745.

§ 1036.725 What must I include in my application for certification?

(a) You must declare in your application for certification your intent to use the provisions of this subpart for each engine family that will be certified using the ABT program. You must also declare the FELs/FCL you select for the engine family for each pollutant for which you are using the ABT program. Your FELs must comply with the specifications of subpart B of this part, including the FEL caps. FELs/

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FCL must be expressed to the same number of decimal places as the applicable standards.

(b) Include the following in your application for certification:

(1) A statement that, to the best of your belief, you will not have a negative balance of emission credits for any averaging set when all emission credits are calculated at the end of the year; or a statement that you will have a negative balance of emission credits for one or more averaging sets, but that it is allowed under §1036.745.

(2) Detailed calculations of projected emission credits (positive or negative) based on projected U.S.-directed production volumes. We may require you to include similar calculations from your other engine families to project your net credit balances for the model year. If you project negative emission credits for a family, state the source of positive emission credits you expect to use to offset the negative emission credits.

§ 1036.730 ABT reports.

(a) If any of your engine families are certified using the ABT provisions of this subpart, you must send an end-of-year report within 90 days after the end of the model year and a final report within 270 days after the end of the model year.

(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 and averaging set.

(2) The emission standards that would otherwise apply to the engine family.

(3) The FCL for each pollutant. If you change the FCL after the start of production, identify the date that you started using the new FCL and/or give the engine identification number for the first engine covered by the new FCL. In this case, identify each applicable FCL and calculate the positive or negative emission credits as specified in §1036.225.

(4) The projected and actual U.S.-directed production volumes for the model year. If you changed an FCL during the model year, identify the ac-

tual production volume associated with each FCL.

(5) The transient cycle conversion factor for each engine configuration as described in §1036.705.

(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 participating engine families in each averaging set in the applicable model year is not negative, except as allowed under §1036.745.

(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:

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(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 decreased 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 increased your balance of emission credits, you must correct the errors and recalculate the balance of emission credits.

§ 1036.735 Recordkeeping.

(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 at least eight years after the due date for the end-of-year report. You may not use emission credits for 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.

(c) Keep a copy of the reports we require in §§ 1036.725 and 1036.730.

(d) Keep records of the engine identification number (usually the serial number) for each engine you produce that generates or uses emission credits under the ABT program. You may identify these numbers as a range. If you change the FEL after the start of production, identify the date you started using each FCL and the range of engine identification numbers associated with each FCL. You must also identify the purchaser and destination for each engine you produce to the extent this information is available.

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(e) We may require you to keep additional records or to send us relevant information not required by this section in accordance with the Clean Air Act.

§ 1036.740 Restrictions for using emission credits.

The following restrictions apply for using emission credits:

(a) *Averaging sets.* Except as specified in paragraph (c) of this section, emission credits may be exchanged only within an following averaging sets. There are four principal averaging sets for engines subject to this subpart:

- (1) Spark-ignition engines.
- (2) Compression-ignition light heavy-duty engines.
- (3) Compression-ignition medium heavy-duty engines.
- (4) Compression-ignition heavy heavy-duty engines.

(b) *Applying credits to prior year deficits.* Where your credit balance for the previous year is negative, you may apply credits to that credit deficit only after meeting your credit obligations for the current year.

(c) *Credits from hybrid engines and other advanced technologies.* The averaging set restrictions of paragraph (a) of this section do not apply for credits generated under § 1036.615 or 40 CFR 1037.104(d)(7) or 1037.615 from hybrid power systems with regenerative braking, or from other advanced technologies. Such credits may also be used under 40 CFR part 1037.

(1) The maximum amount of credits you may bring into the following service class groups is 60,000 Mg per model year:

(i) Spark-ignition engines, light heavy-duty compression-ignition engines, and light heavy-duty vehicles. This group comprises the averaging sets listed in paragraphs (a)(1) and (2) of this section and the averaging set listed in 40 CFR 1037.740(a)(1).

(ii) Medium heavy-duty compression-ignition engines and medium heavy-duty vehicles. This group comprises the averaging sets listed in paragraph (a)(3) of this section and 40 CFR 1037.740(a)(2).

(iii) Heavy heavy-duty compression-ignition engines and heavy heavy-duty vehicles. This group comprises the

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averaging sets listed in paragraph (a)(4) of this section and 40 CFR 1037.740(a)(3).

(2) The limit specified in paragraph (c)(1) of this section does not limit the amount of advanced technology credits that can be used within a service class group if they were generated in that same service class group.

(d) *Credit life.* Credits expire after five years.

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

§ 1036.745 End-of-year CO₂ credit deficits.

Except as allowed by this section, we may void the certificate of any engine family certified to an FCL above the applicable standard for which you do not have sufficient credits by the deadline for submitting the final report.

(a) Your certificate for an engine family for which you do not have sufficient CO₂ credits will not be void if you remedy the deficit with surplus credits within three model years. For example, if you have a credit deficit of 500 Mg for an engine family at the end of model year 2015, you must generate (or otherwise obtain) a surplus of at least 500 Mg in that same averaging set by the end of model year 2018.

(b) You may not bank or trade away CO₂ credits in the averaging set in any model year in which you have a deficit.

(c) You may apply only surplus credits to your deficit. You may not apply credits to a deficit from an earlier model year if they were generated in a model year for which any of your engine families for that averaging set had an end-of-year credit deficit.

(d) If you do not remedy the deficit with surplus credits within three model years, we may void your certificate for that engine family. We may void the certificate based on your end-of-year report. Note that voiding a certificate applies *ab initio*. Where the net deficit is less than the total amount of negative credits originally generated by the family, we will void the certificate only with respect to the number of engines needed to reach the amount of the net deficit. For example, if the original engine family generated 500 Mg of negative credits, and the manu-

facturer's net deficit after three years was 250 Mg, we would void the certificate with respect to half of the engines in the family.

§ 1036.750 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 conditioned 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 FCL above an applicable standard based on a projection that you will have enough emission credits to offset the deficit for the engine family. See § 1036.745 for provisions specifying what happens 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. Note that failing to keep records, send reports, or give us information we request is also a violation of 42 U.S.C. 7522(a)(2).

(d) You may ask for a hearing if we void your certificate under this section (see § 1036.820).

§ 1036.755 Information provided to the Department of Transportation.

After receipt of each manufacturer's final report as specified in § 1036.730 and completion of any verification testing required to validate the manufacturer's submitted final data, we will issue a report to the Department of Transportation with CO₂ emission information and will verify the accuracy of each manufacturer's equivalent fuel consumption data that required by NHTSA

under 49 CFR 535.8. We will send a report to DOT for each engine manufacturer based on each regulatory category and subcategory, including sufficient information for NHTSA to determine fuel consumption and associated credit values. See 49 CFR 535.8 to determine if NHTSA deems submission of this information to EPA to also be a submission to NHTSA.

Subpart I—Definitions and Other Reference Information

§ 1036.801 Definitions.

The following definitions apply to this part. The definitions apply to all subparts unless we note otherwise. All undefined terms have the meaning the Act gives to them. The definitions follow:

Act means the Clean Air Act, as amended, 42 U.S.C. 7401–7671q.

Adjustable parameter has the meaning given in 40 CFR part 86.

Advanced technology means technology certified under § 1036.615, 40 CFR 1037.104(d)(7) or 1037.615.

Aftertreatment means relating to a catalytic converter, particulate filter, or any other system, component, or technology mounted downstream of the exhaust valve (or exhaust port) whose design function is to decrease emissions in the engine exhaust before it is exhausted to the environment. Exhaust-gas recirculation (EGR) and turbochargers are not aftertreatment.

Aircraft means any vehicle capable of sustained air travel above treetop heights.

Alcohol-fueled engine mean an engine that is designed to run using an alcohol fuel. For purposes of this definition, alcohol fuels do not include fuels with a nominal alcohol content below 25 percent by volume.

Auxiliary emission control device means any element of design that senses temperature, motive speed, engine RPM, transmission gear, or any other parameter for the purpose of activating, modulating, delaying, or deactivating the operation of any part of the emission control system.

Averaging set has the meaning given in § 1036.740.

Calibration means the set of specifications and tolerances specific to a par-

ticular design, version, or application of a component or assembly capable of functionally describing its operation over its working range.

Carryover means relating to certification based on emission data generated from an earlier model year as described in § 1036.235(d).

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.

Certified emission level means the highest deteriorated emission level in an engine family for a given pollutant from the applicable transient and/or steady-state testing, rounded to the same number of decimal places as the applicable standard. Note that you may have two certified emission levels for CO₂ if you certify a family for both vocational and tractor use.

Complete vehicle means a vehicle meeting the definition of complete vehicle in 40 CFR 1037.801 when it is first sold as a vehicle. For example, where a vehicle manufacturer sells an incomplete vehicle to a secondary manufacturer, the vehicle is not a complete vehicle under this part, even after its final assembly.

Compression-ignition means relating to a type of reciprocating, internal-combustion engine that is not a spark-ignition engine.

Crankcase emissions means airborne substances emitted to the atmosphere from any part of the engine crankcase's ventilation or lubrication systems. The crankcase is the housing for the crankshaft and other related internal parts.

Criteria pollutants means emissions of NO_x, HC, PM, and CO. Note that these pollutants are also sometimes described collectively as “non-greenhouse gas pollutants”, although they do not necessarily have negligible global warming potentials.

Designated Compliance Officer means the Manager, Heavy-Duty and Nonroad Engine Group (6405–J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Designated Enforcement Officer means the Director, Air Enforcement Division (2242A), U.S. Environmental Protection