

We would structure any nonroad credit ABT program in a way that provides greater overall emissions reductions over the life of the group of nonroad engines involved than would otherwise be achieved. These additional overall reductions would be achieved by applying a discount of 20 percent to ABT retrofit credits that are used to meet nonroad standards. The result of applying a discount would be that each ABT retrofit credit generated would translate to less than one nonroad engine credit available for consumption in the nonroad program. For example, a discount of 20 percent would reduce the consumable credits by 20 percent. The discount would provide greater overall net emissions reductions from the use of an ABT retrofit program, and the amount of this environmental benefit would increase with increased use of the program. Also, applying a discount would be consistent with past Agency actions (see additional discussion in the memorandum to the docket noted above).

A discount would be an essential element of the nonroad retrofit credit provisions, since one of our objectives if we promulgated such an expanded ABT program would be to create greater net emission reductions. The absence of a discount would result in no net environmental impact, as the generation of credits would lead to emissions reductions which would be offset by the increase in emissions when the credits were used. A discount would also serve to mitigate the potential for net environmental detriments due to uncertainties in credit calculation and use.

We request comment on whether a discount of 20 percent would be appropriate given the expectation that the discount will generate cost-effective emissions reductions that would otherwise not occur, as well as the more prevalent uncertainties associated with trading credits between nonroad retrofits and new nonroad engines.

b. How would EPA ensure compliance with retrofit emissions standards?

If this program were adopted, we would expect to require the retrofit manufacturer to specify all emissions related maintenance and to list the type of fuel used to certify its retrofit-engine system and whether a particular fuel sulfur level is necessary to meet the standard and to maintain emissions compliance of the retrofit-engine system in-use. If such a fuel is necessary to maintain emissions compliance in-use, EPA would also consider the fuel to be "critical emission related scheduled maintenance" under a retrofit engine

program. As a result of such classification, the manufacturer would be required to demonstrate that proper fueling will be performed in-use. Such a demonstration would include a showing that the required fuel is available to, and would be used by, the ultimate consumer or fleet operator receiving the retrofitted engines. Such retrofitted engines would also have to be labeled appropriately to reflect the new engine family and may also require labeling for the type of fuel to be used. In general, we would require the manufacturer to submit a plan for implementing all relevant aspects of the retrofit to ensure proper installation and emissions compliance throughout the useful life period. A full discussion of compliance issues and possible compliance provisions, such as recall, in-use testing, useful life, and warranty is provided in the memorandum to the docket, noted above. We request comment on these approaches for ensuring in-use compliance with possible nonroad retrofit emissions standards and requirements.

c. What is the legal authority for a nonroad ABT retrofit program?

Allowing use by new nonroad engines of credits generated by retrofit of in-use nonroad engines is justified legally as an aspect of EPA's standard setting authority. As we envision a program, a retrofit nonroad engine would be considered to be a new nonroad engine when the manufacturer opts into a voluntary retrofit program (if established). Upon such opt-in, this new engine would be subject to enforceable standards under CAA section 213, somewhat similar to opting into the voluntary Blue Sky series standards (see Section VII.E.2). Thus, the generation of credits by nonroad retrofits and their use by new engines subject to Tier 4 would be similar to conventional ABT. Put another way, the generation of credits by retrofitting in-use non-road engines and their subsequent use by new nonroad engines subject to the Tier 4 standards is an averaging program involving emission credits generated by one type of new nonroad engine and used by other new nonroad engines, similar to conventional ABT programs. With a nonroad retrofit credit program, and the emissions reductions associated with it, the overall emission reductions from Tier 4 nonroad engines and nonroad retrofit engines, taken together, would be the greatest achievable considering cost, noise, safety and energy factors, and would also be appropriate after considering those same factors. See also *NRDC v. Thomas*, 805 F.2d 410, 425 (D.C. Cir. 1986) (averaging provisions upheld against challenge that

they are inconsistent with NCP provisions), and *Husqvarna AB v. EPA*, 254 F.3d 195, 202 (D.C. Cir 2001) (averaging, banking, and trading provisions cited as an element supporting EPA's selection of lead time under section 213(b)). At the same time, we also note that the proposed standards are the greatest achievable (taking all statutory factors into account) and appropriate independent of the nonroad retrofit program, as explained elsewhere in this preamble.³⁰⁰

B. Transition Provisions for Equipment Manufacturers

1. Why Are We Proposing Transition Provisions for Equipment Manufacturers?

As EPA developed the 1998 Tier 2/3 standards for nonroad diesel engines, we determined that provisions were needed to avoid unnecessary hardship for equipment manufacturers. The specific concern is the amount of work required and the resulting time needed for equipment manufacturers to incorporate all of the necessary equipment redesigns into their applications in order to accommodate engines that have been redesigned to meet the new emission standards. We therefore adopted a set of provisions for equipment manufacturers to provide them with reasonable leadtime for the transition process to the newly adopted standards. The program consisted of four major elements: (1) A percent-of-production allowance, (2) a small-volume allowance, (3) availability of hardship relief, and (4) continuance of the allowance to use up existing inventories of engines. See 63 at FR 56977–56978 (Oct. 23, 1998).

Given the level of the proposed Tier 4 standards, we believe that there will be engine design changes comparable in magnitude to those involved during the transition to Tier 2/3. We thus believe that at least some equipment manufacturers will face comparable challenges during the transition to the Tier 4 standards. This is confirmed by comments to EPA by a number of the equipment Small Entity Representatives during the SBREFA process, which indicated that the Tier 2/3 transition provisions were proving beneficial in providing adequate leadtime and urging

³⁰⁰ There is one minor exception to this analysis. Retrofits involving use of new nonroad engines as replacement engines in older nonroad equipment would be justified primarily as an aspect of EPA's lead time authority under section 213(d). This is because credits would not be generated from an engine certifying to a more stringent standard, so that the credit is effectively generated by equipment rather than by an engine, *i.e.* generated by something other than a new non-road engine.