

(c) You remain responsible for meeting all the requirements of this chapter, including warranty and defect-reporting provisions.

[70 FR 40504, July 13, 2005]

**Subpart H—Averaging, Banking, and Trading for Certification**

**§ 1051.701 General provisions.**

(a) You may average, bank, and trade emission credits for purposes of certification as described in this subpart to show compliance with the standards of this part. To do this you must certify your engines to Family Emission Limits (FELs) and show that your average emission levels are below the applicable standards in subpart B of this part, or that you have sufficient credits to offset a credit deficit for the model year (as calculated in § 1051.720).

(b) The following averaging set restrictions apply:

(1) You may not average together engine families that are certified to different standards. You may, however, use banked credits that were generated relative to different standards, except as prohibited by paragraphs (b)(2) and (3) of this section, paragraph (e) of this section, or by other provisions in this part. For example, you may not average together within a model year off-highway motorcycles that are certified to the standards in § 1051.105(a)(1) and § 1051.105(a)(2); but you may use banked credits generated by off-highway motorcycles that are certified to the standards in § 1051.105(a)(1) to show compliance with the standards in § 1051.105(a)(2) in a later model year, and vice versa.

(2) There are separate averaging, banking, and trading programs for snowmobiles, ATVs, and off-highway motorcycles. You may not average or exchange banked or traded credits from engine families of one type of vehicle with those from engine families of another type of vehicle.

(3) You may not average or exchange banked or traded credits with other engine families if you use fundamentally different measurement procedures for the different engine families (for example, ATVs certified to chassis-based vs. engine-based standards). This para-

graph (b)(3) does not restrict you from averaging together engine families that use test procedures that we determine provide equivalent emission results.

(4) You may not average or exchange banked or traded exhaust credits with evaporative credits, or vice versa.

(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) *Average standard* means a standard that allows you comply by averaging all your vehicles under this part. See subpart B of this part to determine which standards are average standards.

(3) *Averaging set* means a set of engines in which emission credits may be exchanged only with other engines in the same averaging set.

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

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

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

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

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

(d) In your application for certification, base your showing of compliance on projected production volumes for vehicles whose point of first retail sale is in the United States. As described in § 1051.730, compliance with the requirements of this subpart is determined at the end of the model year based on actual production volumes for vehicles whose point of first retail sale is in the United States. Do not include any of the following vehicles to calculate emission credits:

(1) Vehicles exempted under subpart G of this part or under 40 CFR part 1068.

(2) Exported vehicles.

(3) Vehicles not subject to the requirements of this part, such as those excluded under § 1051.5.

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(4) Vehicles for which the location of first retail sale is in a state that has applicable state emission regulations for that model year. However, this restriction does not apply if we determine that the state standards and requirements are equivalent to those of this part and that these vehicles sold in such a state will not generate credits under the state program. For example, you may not include vehicles certified for California if it has more stringent emission standards for these vehicles or those vehicles generate or use emission credits under the California program.

(5) Any other vehicles, where we indicate elsewhere in this part 1051 that they are not to be included in the calculations of this subpart.

(e) You may not use emission credits generated under this subpart to offset any emissions that exceed an FEL or standard, except as specified in §1051.225(f)(1). This applies for all testing, including certification testing, in-use testing, selective enforcement audits, and other production-line testing.

(f) Emission credits may be used in the model year they are generated or in future model years. Emission credits may not be used for past model years.

(g) You may increase or decrease an FEL during the model year by amending your application for certification under §1051.225.

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### § 1051.705 How do I average emission levels?

(a) As specified in subpart B of this part, certify each vehicle to an FEL, subject to the FEL caps in subpart B of this part.

(b) Calculate a preliminary average emission level according to §1051.720 for each averaging set using projected U.S.-directed production volumes from your application for certification, excluding vehicles described in §1051.701(d)(4).

(c) After the end of your model year, calculate a final average emission level according to §1051.720 for each type of recreational vehicle or engine you manufacture or import. Use actual U.S.-directed production volumes, ex-

cluding vehicles described in §1051.701(d)(4).

(d) If your preliminary average emission level is below the allowable average standard, see §1051.710 for information about generating and banking emission credits. These credits will be considered reserved until we verify them in reviewing the end-of-year report.

(e) If your average emission level is above the allowable average standard, you must obtain enough emission credits to offset the deficit by the due date for the final report required in §1051.730. The emission credits used to address the deficit may come from emission credits you have banked or from emission credits you obtain through trading.

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### § 1051.710 How do I generate and bank emission credits?

(a) Banking is the retention of emission credits by the manufacturer generating the emission credits for use in averaging or trading in future model years. You may use banked emission credits only within the averaging set in which they were generated.

(b) If your average emission level is below the average standard, you may calculate credits according to §1051.720. Credits you generate do not expire.

(c) You may generate credits if you are a certifying manufacturer.

(d) In your application for certification, designate any emission credits you intend to bank. These emission credits will be considered reserved credits. During the model year and before the due date for the final report, you may redesignate these emission credits for averaging or trading.

(e) You may use banked emission credits from the previous model year for averaging or trading before we verify them, but we may revoke these emission credits if we are unable to verify them after reviewing your reports or auditing your records.

(f) Reserved credits become actual emission credits only when we verify them in reviewing your final report.

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