

(b) It is a violation of the tampering provisions in 40 CFR 1068.101(b)(1) to remove a governor from a certified engine unless you recertify the engine in the modified configuration.

§ 1054.655 What special provisions apply for installing and removing altitude kits?

An action for the purpose of installing or modifying altitude kits and performing other changes to compensate for changing altitude is not considered a prohibited act under 40 CFR 1068.101(b) as long as as it is done consistent with the manufacturer's instructions.

§ 1054.660 What are the provisions for exempting emergency rescue equipment?

The provisions of this section apply for new equipment built on or after January 1, 2010.

(a) Equipment manufacturers may introduce into U.S. commerce equipment that is not certified to current emission standards under the following conditions if the equipment will be used solely in emergency rescue situations:

(1) You must determine annually that no engines certified to current emission standards are available to power the equipment safely and practically. We may review your records supporting this determination at any time.

(2) You may not use exempted engines for the following equipment used to provide remote power to a rescue tool: generators, alternators, compressors, or pumps.

(3) If engines that meet less stringent emission standards are capable of powering your equipment safely and practically, you must use them as a condition of this exemption. You must use available engines meeting the most stringent standards feasible.

(4) You must send the engine manufacturer a written request for each exempted equipment model.

(5) You must notify the Designated Compliance Officer of your intent to use the provisions of this section. We may require you to notify us annually or to send us annual reports describing

how you meet the conditions of this section.

(b) For the purposes of this section, "emergency rescue situations" means firefighting or other situations in which a person is retrieved from imminent danger.

(c) As an engine manufacturer, you may produce exempt engines under this section without our prior approval if you have a written request for an exempted engine for use in emergency rescue equipment from the equipment manufacturer. You must permanently label engines with the following statement: "EMERGENCY RESCUE EQUIPMENT—EXEMPT FROM EMISSION STANDARDS UNDER 40 CFR 1054.660." Failure to properly label an engine will void the exemption.

(d) We may discontinue an exemption under this section if we find that engines are not used solely for emergency rescue equipment or if we find that a certified engine is available to power the equipment safely and practically.

§ 1054.690 What bond requirements apply for certified engines?

(a) Before introducing certified engines into U.S. commerce, you must post a bond to cover any potential compliance or enforcement actions under the Clean Air Act unless you demonstrate to us in your application for certification that you are able to meet any potential compliance- or enforcement-related obligations, as described in this section. See paragraph (j) of this section for the requirements related to importing engines that have been certified by someone else. Note that you might also post bond under this section to meet your obligations under § 1054.120.

(b) The bonding requirements apply if you do not have long-term assets in the United States meeting any of the following thresholds:

(1) A threshold of \$3 million applies if you have been a certificate holder in each of the preceding ten years without failing a test conducted by EPA officials or having been found by EPA to be noncompliant under applicable regulations.

(2) A threshold of \$6 million applies if you are a secondary engine manufacturer.

§ 1054.690

40 CFR Ch. I (7–1–10 Edition)

(3) A threshold of \$10 million applies if you do not qualify for the smaller bond thresholds in paragraph (b)(1) or (2) of this section.

(c) For the purpose of establishing your level of long-term assets under paragraph (b) of this section, include the values from your most recent balance sheet for buildings, land, and fixed equipment, but subtract depreciation and related long-term liabilities (such as a mortgage). If you have sufficient long-term assets to avoid bond payments under this section, you must identify the location of these assets in your application for certification.

(d) The minimum value of the bond is \$500,000. A higher bond value may apply based on the per-engine bond values shown in Table 1 to this section and on the U.S.-directed production volume from each displacement grouping for the calendar model year. For example, if you have projected U.S.-directed production volumes of 10,000 engines with 180 cc displacement and 10,000 engines with 400 cc displacement in 2013, the appropriate bond amount is \$750,000. Adjust the value of the bond as follows:

(1) If your estimated or actual U.S.-directed production volume in any later year increases beyond the level appropriate for your current bond payment, you must post additional bond to reflect the increased volume within 90 days after you change your estimate or determine the actual production volume. You may not decrease your bond.

(2) If you sell engines without aftertreatment components under the provisions of §1054.610, you must increase the per-engine bond values for the current year by 20 percent.

TABLE 1 TO § 1054.690—PER-ENGINE BOND VALUES

For engines with displacement falling in the following ranges . . .	The per-engine bond value is . . .
Disp. < 225 cc	\$25
225 ≤ Disp. < 740 cc	50
740 ≤ Disp. ≤ 1,000 cc	100
Disp. > 1,000 cc	200

(e) The threshold identified in paragraph (b) of this section and the bond values identified in paragraph (d) of this section are in 2008 dollars. Adjust these values in 2010 and later calendar years by comparing the Consumer

Price Index values published by the Bureau of Labor Statistics for the preceding June and June 2008 (see <ftp://ftp.bls.gov/pub/special.requests/cpi/cpiiai.txt>). Round calculated values for the thresholds and for total bond obligations to the nearest thousand dollars.

(f) You may meet the bond requirements of this section by obtaining a bond from a third-party surety that is cited in the U.S. Department of Treasury Circular 570, “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” (<http://www.fms.treas.gov/c570/c570.html#certified>). You must maintain this bond for every year in which you sell certified engines. The surety agent remains responsible for obligations under the bond for two years after the bond is cancelled or expires without being replaced.

(g) If you forfeit some or all of your bond in an enforcement action, you must post any appropriate bond for continuing sale within 90 days after you forfeit the bond amount.

(h) You will forfeit the proceeds of the bond posted under this section if you need to satisfy any United States administrative settlement agreement, administrative final order, or judicial judgment against you arising from your violation of this chapter, or violation of 18 U.S.C. 1001, 42 U.S.C. 7413(c)(2), or other applicable provisions of the Clean Air Act.

(i) If you are required to post a bond under this section, you must note that in your application for certification as described in §1054.205. Your certification is conditioned on your compliance with this section. Your certificate is automatically suspended if you fail to comply with the requirements of this section. We may also revoke your certificate.

(j) The following provisions apply if you import engines for resale when those engines have been certified by someone else (or equipment containing such engines):

(1) You and the certificate holder are each responsible for compliance with the requirements of this part and the

Clean Air Act. For example, we may require you to comply with the warranty requirements in §1054.120.

(2) You do not need to post bond if you or the certificate holder complies with the bond requirements of this section. You also do not need to post bond if the certificate holder complies with the asset requirements of this section and the repair-network provisions of §1054.120(f)(4).

[73 FR 59259, Oct. 8, 2008, as amended at 74 FR 8426, Feb. 24, 2009; 75 FR 23025, Apr. 30, 2010]

Subpart H—Averaging, Banking, and Trading for Certification

§ 1054.701 General provisions.

(a) You may average, bank, and trade (ABT) emission credits for purposes of certification as described in this subpart to show compliance with the standards of this part. This applies for engines with respect to exhaust emissions and for equipment with respect to evaporative emissions. Participation in this program is voluntary.

(b) 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 (or equipment) in which emission credits may be exchanged only with other engines (or equipment) in the same averaging set.

(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) *Family* means engine family for exhaust credits or emission family for evaporative credits.

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

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

(c) The use of emission credits is limited to averaging sets, as follows:

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

(2) Handheld engines and nonhandheld engines are in separate averaging sets with respect to exhaust emissions except as specified in §1054.740(e). You may use emission credits generated under 40 CFR part 90 for handheld engines subject to the standards in §1054.103 only if you can demonstrate that those credits were generated by handheld engines, except as specified in §1054.740(e). You may use emission credits generated under 40 CFR part 90 for nonhandheld engines only if you can demonstrate that those credits were generated by nonhandheld engines, subject to the provisions of §1054.740.

(3) Equipment using handheld engines and equipment using nonhandheld engines are in separate averaging sets with respect to evaporative emissions. You may not average or exchange evaporative credits between either of these averaging sets.

(4) For purposes of calculating emission credits under this subpart, engines with displacement at or below 80 cc are presumed to be handheld engines. You may treat these as nonhandheld engines for calculating exhaust or evaporative emission credits only for those engines you can demonstrate will be installed in nonhandheld equipment. For example, if 50 percent of engines in a family will be used in nonhandheld equipment, you may calculate the emission credits for 50 percent of the engines to be nonhandheld credits. Use the specified calculation methods for handheld engines to quantify positive or negative exhaust emission credits for all engines at or below 80 cc.

(d) You may not generate evaporative credits based on permeation measurements from metal fuel tanks.

(e) You may not use emission credits generated under this subpart to offset any emissions that exceed an FEL or standard. This applies for all testing, including certification testing, in-use testing, selective enforcement audits,