§ 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 intend 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.

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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 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