Frequently Asked Questions

Bond Requirements for Nonroad Spark-Ignition Engines

On October 8, 2008, the Environmental Protection Agency (EPA) published regulations adopting new exhaust emissions standards for nonroad spark-ignition engines, also known as Small SI engines (73 FR 59034). As part of these regulations, EPA has adopted a bond requirement for manufacturers that are subject to these new regulations.

Why is EPA requiring a bond for Small SI engine manufacturers?

Before a manufacturer can introduce an engine into commerce in the United States, they must first apply for a Certificate of Conformity (certificate) from EPA. The certification process requires manufacturers to demonstrate that engines and equipment meet applicable emission standards. Once a manufacturer has received a certificate, several important obligations apply to the certifying manufacturer or importer. For example, we require ongoing testing of production engines, as well as reporting of recurring defects. Manufacturers may need to pay penalties if there is a violation and may need to perform a recall if their products are noncompliant.

For manufacturers operating within the United States, we are generally able to communicate clearly and insist on compliance. Depending on the circumstances, we may meet with specific manufacturer representatives, halt production, or seize assets. For manufacturers without staff or assets in the United States, these alternatives are not available. Our limited ability to enforce requirements or to recover appropriate penalties increases the risk of environmental problems as well as problems for consumers. This creates the potential for a manufacturer to gain a competitive advantage if they do not have substantial assets or operations in the United States. We have learned from several recent enforcement cases that there is an increasing number of manufacturers selling certified engines in the United States without committing the necessary resources to meet their in-use and long-term obligations.

Warranty is an example of a potential compliance obligation that manufacturers commit to when they receive a certificate from EPA. Regulations require that

EPA United States Environmental Protection Agency

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engine manufacturers must service warranty claims for emission-related defects that occur during the prescribed warranty period. We have experience with manufacturers that did not have the resources to make warranty repairs if necessary. Such manufacturers benefit from being able to legally sell their product in the United States without bearing the full range of associated obligations.

To address this concern, we adopted a requirement for manufacturers of certified engines to meet bond requirements to cover the cost of any potential compliance or enforcement actions under the Clean Air Act.

When does the bond requirement take effect?

This requirement was adopted in regulations that were published on October 8, 2008, at 40 CFR 1054.690 (73 FR 59034). Starting with the 2010 model year, applications for certification must include information related to the bond, including a commitment to secure a bond if that is required for the manufacturer. Starting January 1, 2010, all Small SI engines that are subject to the bond requirement must have the bond in place before introducing 2010 and later model year engines into U.S. commerce. U.S. Customs and Border Protection in particular will be looking for documentation related to required bonds starting in 2010.

Does the bond requirement apply to all manufacturers?

The bond provisions apply to all manufacturers that certify and sell Small SI engines in the United States. This includes domestic and foreign producers of engines. In the case of imported products, this also includes equipment manufacturers and importers that import products containing engines certified by another manufacturer.

The regulation includes provisions that allow certain manufacturers or importers to waive the bond requirements in certain circumstances. To be exempt from the bond requirements, a manufacturer would need to meet both the asset test and the repair-network test. Note that equipment manufacturers and importers may meet the bond requirements or obtain waivers of the bond requirements in conjunction with the certifying engine manufacturer. For example, if the certifying engine manufacturer passes the asset test and the repair-network test, or has met the bond requirements, all equipment manufacturers and importers that import those engines will be considered to be in compliance with the bond provisions in the regulations.

The bond requirements apply with respect to engines that are subject to exhaust emission standards; they do not apply separately for fuel-system components or any other products relative to evaporative emission standards.

What is the asset test for waiving bond requirements?

The asset test is based on the understanding that manufacturers with substantial long-term assets in the United States are more likely able to meet any compliance- or enforcement-related

obligations. We have therefore adopted provisions to allow for waiving the bond requirements for manufacturers that have fixed assets in the United States meeting one of the following applicable thresholds:

- $3 million – For manufacturers that have been certificate holders 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.
- $6 million – For secondary engine manufacturers. A secondary engine manu facturer is generally a certifying manufacturer that buys partially complete engines for final assembly from another engine manufacturer.
- $10 million – For manufacturers that do not qualify for the smaller specified bond thresholds.

The value of long-term assets is based on the value from the manufacturer's most recent balance sheet for buildings, land, and fixed equipment, after subtracting depreciation and related long-term liabilities (such as a mortgage) using Generally Accepted Accounting Principals (GAAP) or International Accounting Standards (IAS).

What is the repair-network test for waiving bond requirements?

The biggest indicator of a manufacturer's ability to make warranty repairs is the presence of repair facilities in the United States. The regulations specify that manufacturers can demonstrate a readiness to meet warranty obligations by maintaining an adequate repair network. Such a repair network would need to involve at least 100 authorized repair facilities in the United States, or at least one such facility for each 5,000 engines sold in the United States, whichever is less.

Does the bond requirement apply to engines sold only in California?

Yes.

If I need to meet the bond requirements, how do I determine the value of the bond?

The value of the bond must be at least $500,000, though a higher bond value may apply based on multiplying the annual volume of shipments by a per-engine rate. The per-engine bond values are shown in the following table.

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

The total bond amount will be based on the value of imported products over a one-year period. For example, for total projected U.S.-directed production volumes of 10,000 engines with 180 cc displacement and 10,000 engines with 400 cc displacement in a given calendar year, the calculated bond value is $750,000. This calculated value must be adjusted as follows:

- If estimated or actual U.S.-directed production volume increases beyond the level appropriate for the currently held bond, the manufacturer must increase the value of the bond to reflect the increased volume within 90 days.
- You may not decrease the value of the bond.
- The bond values (as well as the asset thresholds identified above) must be adjusted for inflation based on the Consumer Price Index (CPI) published by the Bureau of Labor Statistics. For example, 2010 bond values are adjusted by comparing the CPI for June 2009 with the CPI for June 2008. Round calculated values for the thresholds and for total bond obligations to the nearest thousand dollars.
- For engines produced within the United States and shipped without aftertreatment devices under the delegated-assembly provisions of 40 CFR 1054.610, the calculated bond value must increase by 20 percent.

The bond must remain in place for every year that a manufacturer or importer is selling or importing engines in the U.S. Additionally, the bond must remain in place for five years after the engine manufacturer no longer certifies Small SI engines (or after the equipment manufacturer or importer no longer imports Small SI engines).

What information must I include in my application for certification?

The manufacturer must identify whether or not the bond requirement applies. If the bond requirement is waived, the manufacturer must provide basic information to demonstrate that the asset test and the repair-network test have been met. For example, the applications must include street addresses to identify the location of the relevant long-term assets. If a bond is required, the application must include an estimate of the value of the bond and a commitment to meet the bond requirement. It is not necessary to secure the bond before we can issue a certificate.

What is a surety agent?

A surety agent is a party that provides a surety bond, such as those required to meet the bond requirements for Small SI engines. This is somewhat like an insurance company that is prepared to underwrite a policy to ensure that the manufacturer required to post a bond will be able to meet its obligations under the regulations. A sample bond form is attached to this fact sheet. The Surety & Fidelity Association of America (www.surety.org/) and the National Association of Surety Bond Producers (www.nasbp.org/) have an extensive set of information on surety bonds, both for an explanation about how surety bonds works (see especially www.surety.org/content.cfm?lid=70&catid=2) and for help in finding a surety agent (see www.nasbp.org/AM/Template.cfm?Section=Find_a_Producer_in_your_State).

How much does it cost to get a bond?

Each prospective surety agent will charge a fee for underwriting a bond. The costs related to this service are negotiated between the manufacturer and the surety agent. The surety agent will generally take into account the ability of the manufacturer to meet its obligations, from the perspective of current business practices and presence in the market as well as the financial standing to be able to meet potential monetary obligations. The surety agent might consider any number of factors in evaluating the risk that the bond might be needed for EPA compliance or enforcement actions.

Part of the fee for underwriting the bond would also depend on the quantity and quality of collateral provided by the manufacturer. Manufacturers that have a well established history of compliance and a sound financial standing may need to provide minimal collateral to secure a bond at an agreed-on price. Manufacturers that represent a greater risk would likely need to provide substantial collateral for any surety agent to offer a bond at any price. A common example of collateral would be an escrow account held at a U.S. bank that could be accessed by the surety agent to cover bond amounts that are forfeited based on an EPA judgment for noncompliance.

Where can I get further information?

You may contact us at:

U.S. Environmental Protection Agency
Office of Transportation and Air Quality
Compliance and Innovative Strategies Division
2000 Traverwood
Ann Arbor, MI 48108
Phone: 734.214.4343
Email: complianceinfo@epa.gov

Surety Bond
Manufacturers and Importers of Small Nonroad Spark Ignition Engines and Equipment

KNOW ALL PERSONS BY THESE PRESENTS, that subject to the terms, conditions and limitations of this bond, _____, as Principal, and __[SURETY NAME AND MAILING ADDRESS]_____, a corporation organized and existing under the laws of _____, as Surety, are held and firmly bound unto the Environmental Protection Agency ("EPA"), an agency of the United States, as Obligee, in the Penal Sum of _____ Dollars ($_____) for the payment of which Principal and Surety bind themselves, their heirs, executors, administrators and assigns, jointly and severally, by these presents.

WHEREAS, Principal is a certificate holder as defined in 40 CFR 1068.30 and is introducing into U.S. commerce or is seeking to introduce into U.S. commerce small nonroad spark ignition (SI) engines and/or equipment regulated 40 CFR part 90 or part 1054; and

WHEREAS, pursuant to 40 CFR 90.1007 or 1054.690, the Principal is required to provide a surety bond as a condition of introducing certified engines into U.S. commerce, and this bond is provided in compliance with the supplier's obligations as set forth in those authorities.

NOW THEREFORE, the condition of this Bond is that if the Principal shall pay the Obligee any civil penalties or other judgments for violations of the Clean Air Act, then this Bond shall be null and void, otherwise to remain in full force and effect, subject, however, to the following:

1. Principal and Surety are liable under this Bond for only the amount of any unpaid claim, civil money penalty or assessment imposed by EPA or the Office of Inspector General, plus accrued interest, for which the Principal is responsible and for which, subject to Paragraph 7, the Obligee first demands payment from the Surety during the term of this Bond.
2. Surety agrees to pay a claim within 30 days of receiving written notice of the claim and sufficient evidence to establish Surety's liability under this Bond.
3. EPA is the sole Obligee of this Bond, and no action may be brought on it by, or for the use or benefit of, any person or entity other than EPA or its contractors.
4. Regardless of the number of years this Bond is in effect, the number of premiums paid, or the number of claims made, the Surety's aggregate liability shall not be more than the penal sum of this Bond.
5. Subject to Paragraph 7, the Surety's liability under this Bond shall terminate and the Surety shall have no further liability upon the effective date of cancellation or expiration of this Bond by the Surety or Principal in accordance with Paragraph 6 of this Bond.
6. The Surety or Principal may cancel this Bond by providing written notice of such cancellation to the Obligee. Cancellation or expiration shall be effective 30 days after notice of cancellation or expiration is sent to the Obligee's Designated Compliance Officer, provided such notice is actually received.

SAMPLE

7. In the event this Bond is cancelled or expires, and the Principal fails to submit a new bond to the Obligee, the Surety remains liable for unpaid claims, civil money penalties or assessments that were imposed or assessed by EPA or the Office of Inspector General during the 2 years following the effective date of cancellation or expiration of this Bond.

In witness whereof, the undersigned Principal and Surety have set their hands and seals on this ____ day of _____, 20__.

Principal

_____

Surety

_____

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