

(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?

This section generally applies for certifying engine manufacturers. It also applies to importers that do not certify engines as described in paragraph (j) of this section.

(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 with respect to engines certified under this part 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. Note that you might also need to post bond under this section to meet your obligations under § 1054.120(f).

(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.

(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) Determine the value of the bond as follows:

(1) Calculate a value based on the per-engine bond values shown in Table 1 to this section and on the projected U.S.-directed production volume from each displacement grouping for the 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 calculated bond amount is \$750,000. If the calculated value is less than \$500,000, the appropriate bond amount is \$500,000. If the calculated value exceeds the applicable threshold value specified in paragraph (b) of this section, use the applicable threshold value as the appropriate value of the bond. These values may be adjusted as described in paragraphs (d)(2) through (4) of this section. You may generally change your projected U.S.-directed production volume under § 1054.225 during the model year; however, you may not decrease your bond based on new projected U.S.-directed production volumes once you have imported or otherwise introduced into U.S. commerce your first engine from that model year.

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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

(2) If your estimated or actual U.S.-directed production volume 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 in a given year, but you may calculate a lower bond value in a later year based on the highest actual U.S.-directed production volumes from the preceding three years.

(3) 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.

(4) The minimum bond value is \$25,000 instead of \$500,000 if you are a small-volume engine manufacturer or a small-volume equipment manufacturer that has been a certificate holder in each of the preceding five years without failing a test conducted by EPA officials or having been found by EPA to be noncompliant under applicable regulations.

(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. We will adjust these values for 2020 and later, and every 10 years after that, by considering the current Consumer Price Index values published by the Bureau of Labor Statistics relative to 2008. We will generally round values for thresholds and total bond obligations as follows:

(1) Round calculated values at or below \$125,000 to the nearest \$5,000.

(2) Round calculated values above \$125,000 and at or below \$2.25 million to the nearest \$50,000.

(3) Round calculated values above \$2.25 million to the nearest \$500,000.

(f) If you are required to post a bond under this section, you must get the 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

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and the repair-network provisions of § 1054.120(f)(4).

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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, and other production-line testing. However, if exhaust emissions from an engine exceed an exhaust FEL or standard (for example, during a selective enforcement audit), you may use emission credits to recertify the family with a higher FEL that applies only to future production.