

Attachment 1

Bond Requirements Guidance for Small Spark-Ignited Off-Road Equipment

Background

On November 17, 2016, the California Air Resources Board (CARB or Board) adopted amendments to the small spark-ignited engine (SSIE) evaporative regulations and test procedures. As part of the adopted regulations, a surety bond requirement was incorporated for the Holder of the Executive Order (EO) for any certification that is subject to these new regulations.

Title 13 California Code of Regulations (CCR) Section 2774 requires the Holder to post a bond, obligated to CARB, to cover any potential compliance or enforcement actions related to compliance with evaporative emission control system certifications unless the Holder has sufficient long-term U.S. assets. The bond requirement will enable CARB to collect penalties from Holders whose evaporative families fail evaporative emission control system compliance testing in the event that a Holder is non-responsive to compliance obligations. The amount of the bond is \$500 per California engine, and the minimum bond amount is \$500,000, except that Holders with evaporative systems sales of fewer than 1000 units per year may be subject instead to a \$25,000 minimum bond under specific conditions.

A Holder must get the bond from a third-party surety that is cited in U.S. Department of Treasury Circular 570 <https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570.htm>. The surety agent remains responsible for obligations under the bond for two years after the bond is cancelled or expires without being replaced. A Holder must meet the bond requirements in Section 2774 before an EO will be issued beginning with the 2020 model year evaporative families. The Executive Officer may also suspend or revoke an EO that has been issued if a Holder does not meet the bond requirements.

Applicability of Bond Requirements

The bond provisions apply to all evaporative EO Holders that certify and sell small spark-ignited equipment in California. This includes domestic and foreign producers of equipment. This also includes equipment EO Holders and importers that import products containing engines certified by another Holder.

The regulation includes provisions that allow Holders or importers to waive the bond requirements in certain circumstances. To be exempt from the bond requirements, a Holder would need to have long-term assets in the United States. If the Holder has long-term assets, or has met the bond requirements, the Holder and/or importer will be considered to be in compliance with the bond provisions in the regulations.

Long-term Asset Threshold for Waiving Bond Requirements

The regulations waive the bond requirement for Holders with sufficient long-term assets in the United States meeting one of the following applicable thresholds:

- A threshold of \$3 million applies if the Holder has held an Executive Order of Certification in each of the preceding ten years without failing a compliance test under section 2765 or having been found by the Executive Officer to be out of compliance with any requirement of this Article.
- A threshold of \$10 million applies if the Holder does not qualify for the smaller bond threshold described above.

The value of long-term assets is to be calculated based on the value from the Holder'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 Principles (GAAP) or International Accounting Standards (IAS).

Determination of the Value of the Bond

The value of the bond is calculated on a per California-engine basis, but must be at least \$500,000. The per California-engine bond value is \$500.

For example, if the Holder has projected a California-directed production volume of 2,000 engines in 2018, the calculated bond amount is \$1,000,000. This calculated value must be adjusted as follows:

- If a Holder's or importer's estimated or actual California-directed production volume increases beyond the level appropriate for that Holder's or importer's current bond payment, the Holder must post additional bond to reflect the increased volume within 90 days after the Holder changes the estimate or determines the actual production volume.
- A Holder may not decrease the bond in a given year, but may calculate a lower bond value in a later year based on the highest actual California-directed production volumes from the preceding three years.
- 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. The first adjustment to the bond value is scheduled to be in 2030. Rounding methodology for the thresholds and for total bond obligations are specified in Title 13 CCR, Section 2774(e).

Holders with evaporative systems sales of fewer than 1000 units per year may be subject instead to a \$25,000 minimum bond if the holder has held an Executive Order

in each of the preceding five years without failing a compliance test under section 2765 or having been found by the Executive Officer to be out of compliance with any requirement of the regulations.

The bond requirement must be met for every year that a Holder or importer is selling or importing equipment in California.

Bond Effective Date and Bond Documents that Must be Submitted with the Certification Application

Holders requesting SSIE evaporative emission control system EOs will be required to meet the bond requirements beginning in model year 2020. Specifically, Holders must submit a completed bond worksheet (using attached template) detailing the specifics of its compliance with the bond requirements. In addition to the bond worksheet, applicants must file a copy of the bond (if applicable) with CARB electronically through DMS as a part of their certification package. If a surety bond purchase is needed, please also submit a copy of the purchased surety bond agreement for the appropriate amount payable to the “California Air Resources Board.”

Surety Agent Information

A surety agent is a party that provides a surety bond, such as those required to meet the bond requirements for small spark-ignited equipment. This is somewhat like an insurance company that is prepared to underwrite a policy to ensure that the Holder will be able to meet its obligations under the regulations. A sample bond form is attached to this guidance document.

The Surety & Fidelity Association of America (<http://surety.org/>) and the National Association of Surety Bond Producers (<http://www.nasbp.org/>) have extensive information on surety bond, and how they work.

Electronic Submittals and DMS File Naming Convention for the Bond Requirement Documents

To ensure accuracy and confidentiality, Holders are requested to submit a copy of their bond worksheet and a copy of the bond (if applicable) to CARB’s Document Management System (DMS).

Bond documents should be submitted to DMS using the document class “Other” in the Support Documents folder.

File Naming Convention

Each file should be named in accordance with the DMS file naming convention. For example, a file may be named as follows:

CBI_JABCS_COMMON_CR1ABWS_.xlsx (bond worksheet) and

CBI_JABCS_COMMON_CR1ABRD_.xlsx (copy of bond), where:

<u>Section 1 Confidentiality</u> (3 characters + underscore)	<u>Section 2</u> <u>Applicability</u> (12 characters + underscore)	<u>Section 3</u> <u>Information Type</u> (7 characters + underscore)
CBI_: a confidential file	XXXXX_COMMON_: any Common Information submittals <i>"XXXXX" is the first five characters, e.g. "model year + EPA MFR code + vehicle/engine category code (S for SSIE)"</i>	CR#*BWS_: Bond Worksheet CR#*BRD_: Copy of Bond <i>"*" alphanumeric (A,B,C,etc... or 1,2,3,etc...) "#" should be 1,2,3... etc. Represents Report No.</i>

DMS Workflow Process Naming Convention

The workflow process name should be in accordance with the DMS workflow process naming convention. A workflow process should be named as follows:

Bond Documents: Model Year_Category_CARB Mfr. Code_BWS Bond Worksheet or BRD Copy of Bond	
<i>Examples of Types of Submittals</i>	2020_SSIE_ABCD_BWS Bond Worksheet 2020_SSIE_ABCD_BRD Copy of Bond

**Sample Format for Surety Bond
EO Holder and Importers of Small Spark-Ignited Equipment certified to
California Evaporative Emissions Standards**

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 California Air Resources Board (CARB), 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 Holder of Executive Order of Certification as defined in Title 13 California Code of Regulations (CCR) Section 2752 and is introducing into California commerce or is seeking to introduce into California commerce small spark-ignited (SI) engines and/or equipment regulated under Title 13 CCR Section 2750 et. seq.

WHEREAS, pursuant to Title 13 CCR Section 2774, the Principal is required to provide a surety bond as a condition of introducing certified engines into commerce in California, 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 California Air Quality Regulations, 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 CARB, 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. CARB 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 CARB 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 Oblige. Cancellation or expiration shall be effective 30 days after notice of cancellation or expiration is sent to the Oblige's Designated Compliance Officer, provided such notice is actually received.
7. In the event this Bond is canceled or expires, and the Principal fails to submit a new bond to the Oblige, the Surety remains liable for unpaid claims, civil money penalties or assessments that were imposed or assessed by CARB 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

SAMPLE