

level of enforcement as domestic equipment manufacturers. We believe a bonding requirement for the foreign equipment manufacturer is an important enforcement tool in order to ensure that EPA has the ability to collect any judgments assessed against a foreign equipment manufacturer for violations of these transition provisions. We request comments on all aspects of the specific program we describe here, but also on alternative measures which would achieve the same goal. A memo has been placed in the docket for today's notice that contains draft regulatory language that would apply if we adopted a bonding requirement as discussed in this section.³⁰⁵

Under a bond program, the participating foreign equipment manufacturer would have to obtain annually a bond in the proper amount that is payable to satisfy United States judicial judgments that results from administrative or judicial enforcement actions for conduct in violation of the Clean Air Act. The foreign equipment manufacturer would have three options for complying with the bonding requirement. The foreign equipment manufacturer could:

(1) Post a bond by paying the amount of the bond to the Treasurer of the United States;

(2) obtain a bond in the proper amount from a third party surety agent, provided EPA agrees in advance as to the third party and the nature of the surety agreement; or

(3) obtain an EPA waiver from the bonding requirement, if the foreign equipment manufacturer can show that it has assets of an appropriate value in the United States.

EPA expects the third bond option to address instances where an equipment manufacturer produces equipment outside the United States containing flexibility engines, but also has facilities (and thus significant assets) inside the United States. Under this third option, such a manufacturer could apply to the EPA for a waiver of the bonding requirement.

Since EPA's concerns of compliance will relate to the nature and tier of engine used in the transition equipment, we believe the bond value should be related to the value of the engine used. Therefore, we are requesting comment on a value of the bond set at a level designed to represent approximately 10% of the cost of the engine for each piece of transition equipment produced

for import into the United States under this program. So that manufacturers have certainty regarding the bond amounts and so that there isn't a need for extensive data submittals and evaluation between EPA and the manufacturer, we request comment on EPA specifying in this rulemaking the estimated average cost for a Tier 4 engine on which the bond would be based. For example, we believe cost estimates on the order of those contained in Table 10.3-3 of the draft RIA may be an appropriate basis. Under this approach, transition equipment using engines in the less than 25 horsepower category would require a bond of \$150 per piece of equipment (10 percent of \$1,500), equipment using engines in the 25-50 horsepower range would require a bond of \$250 per piece of equipment (10 percent of \$2,500), etc. We also request comment on whether 10 percent is a sufficient value for the bond or whether higher values, such as 50 percent, or lower values are more appropriate.

Finally, if a foreign equipment manufacturer's bond is used to satisfy a judgment, the foreign equipment manufacturer would then be required to increase the bond to cover the amount used within 90 days of the date the bond is used.

In addition to the foreign equipment manufacturer requirements discussed above, EPA also proposes to require importers of exempted equipment from a complying foreign equipment manufacturer to comply with certain provisions. EPA believes these importer provisions are essential to EPA's ability to monitor compliance with the transition provisions. EPA proposes that the regulations would require each importer to notify EPA prior to their initial importation of equipment exempted under the Tier 4 transition provisions. Importers would be required to submit their notification prior to the first calendar year in which they intend to import exempted equipment from a complying foreign equipment manufacturer under the transition provisions. The importer's notification would need to include the following information:

(1) The name and address of importer (and any parent company);

(2) The name and address of the manufacturers of the exempted equipment and engines the importer expects to import;

(3) Number of exempted equipment the importer expects to import for each year broken down by equipment manufacturer and power category; and

(4) The importer's use of the transition provisions in prior years

(number of flexibility engines imported in a particular year, under what power category, and the names of the equipment and engine manufacturers).

In addition, EPA is proposing that any importer electing to import to the United States exempted equipment from a complying foreign equipment manufacturer would have to submit annual reports to EPA. The annual report would include the number of exempted equipment the importer actually imported to the United States in the previous calendar year; and the identification of the equipment manufacturers and engine manufacturers whose exempted equipment/engines were imported.

C. Engine and Equipment Small Business Provisions (SBREFA)

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. Since EPA believes that the proposed rule may have a significant economic impact on small businesses, we intend to prepare a regulatory flexibility analysis as part of this rulemaking, and have prepared an initial regulatory flexibility analysis (IRFA) pursuant to section 603 of the RFA which is part of the record for this proposal.

Under section 609(b) of the RFA, a Small Business Advocacy Review Panel (SBAR Panel or Panel) is required to be convened prior to publication of an IRFA that an agency may be required to prepare under the RFA. Section 609(b) directs the Panel to, through outreach with small entity representatives (SERs), report on the comments of the SERs and make findings on issues related to identified elements of an IRFA under section 603 of the RFA (*see* Section X.C of this preamble for more discussion on the elements of an IRFA). The purpose of the Panel is to gather information to identify potential impacts on small businesses and to develop options to mitigate these concerns. At the completion of the SBAR Panel process, the Panel is required to prepare a Final Panel Report. This report includes background information on the proposed rule being developed, information on the types of small entities that would be subject to the proposed rule, a description of efforts

³⁰⁵ "Potential Bond Regulations for Foreign Equipment Manufacturers Under the Tier 4 Nonroad Diesel Proposal," EPA memorandum from Leslie Kirby-Miles, U.S. EPA/OECA to Docket A-2001-28.