only if you are a small equipment manufacturer and you do not use the provisions of paragraph (m)(3) of this section to obtain additional allowances for the 19–56 kW power category.

(ii) You must use up all the available allowances for the 19–56 kW power category under paragraph (b)(2) of this section in a given year before using any additional allowances under this paragraph (m)(4).

(iii) Base your request only on equipment you produce with engines at or above 19 kW and below 37 kW. You may use any additional allowances only for equipment you produce with engines at or above 19 kW and below 37 kW.

(iv) The total allowances under either paragraph (b)(2)(i) or (ii) of this section for the 19–56 kW power category will not exceed 1,100 units.

(v) Any allowances we approve under this paragraph (m)(4) expire 36 months after the provisions of this section start for this power category, as described in paragraph (a) of this section. These additional allowances are not subject to the annual limits specified in paragraph (b)(2) of this section. You may use these allowances only for the specific equipment models covered by your request.

(5) For purposes of this paragraph (m), small equipment manufacturer means a small-business equipment manufacturer that had annual U.S.-directed production volume of equipment using nonroad diesel engines between 19 and 56 kW of no more than 3,000 units in 2002 and all earlier calendar years, and has 750 or fewer employees (500 or fewer employees for nonroad equipment manufacturers that produce no construction equipment or industrial trucks). For manufacturers owned by a parent company, the production limit applies to the production of the parent company and all its subsidiaries and the employee limit applies to the total number of employees of the parent company and all its subsidiaries.

(viii) You must provide English language translations of any documents to an EPA inspector or auditor, on request, within 10 working days.

(ix) You must provide English-language interpreters to accompany EPA inspectors and auditors, on request.

(2) Name an agent for service located in the United States. Service on this agent constitutes service on you or any of your officers or employees for any action by EPA or otherwise by the United States related to the requirements of this part.

(3) The forum for any civil or criminal enforcement action related to the provisions of this section for violations of the Clean Air Act or regulations promulgated thereunder shall be governed by the Clean Air Act.

(4) The substantive and procedural laws of the United States shall apply to any civil or criminal enforcement action against you or any of your officers or employees related to the provisions of this section.

(5) Provide the notification required by §1039.625(g). Include in the notice of intent in §1039.625(g)(1) a commitment to comply with the requirements and obligations of §1039.625 and this section. This commitment must be signed by the owner or president.

(6) You, your agents, officers, and employees must not seek to detain or to impose civil or criminal remedies against EPA inspectors or auditors, whether EPA employees or EPA contractors, for actions performed within the scope of EPA employment related to the provisions of this section.

(7) By submitting notification of your intent to use the provisions of §1039.625, producing and exporting for resale to the United States nonroad equipment under this section, or taking other actions to comply with the requirements of this part, you, your agents, officers, and employees, without exception, become subject to the full operation of the administrative and judicial enforcement powers and provisions of the United States as described in 28 U.S.C. 1605(a)(2), without limitation based on sovereign immunity, for conduct that violates the requirements applicable to you under this part 1039—including such conduct that violates 18 U.S.C. 1001, 42 U.S.C. 7433(c)(2), or other applicable provisions of the Clean Air Act with respect to actions instituted against you and your agents, officers, and employees in any court or other tribunal in the United States.

(8) Any report or other document you submit to us must be in the English language, or include a complete translation in English.

(9) You must post a bond to cover any potential enforcement actions under the Clean Air Act before you or anyone else imports your equipment under this section, as follows:

(i) The value of the bond is based on the per-engine bond values shown in Table 1 of this section and on the highest number of engines in each power category you produce in any single calendar year under the provisions of §1039.625. For example, if you have projected U.S.-directed production volumes of 100 exempt engines in the 19–56 kW power category and 300 exempt engines in the 56–130 kW power category in 2013, the appropriate bond amount is $180,000. If your estimated or actual engine imports increase beyond the level appropriate for your current bond payment, you must post additional bond to reflect the increased sales within 90 days after you change your estimate or determine the actual sales. You may not decrease your bond.

(ii) You may meet the bond requirements of this section with any of the following methods:

(A) Get a 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.” Maintain this bond for five years after the applicable allowance period expires, or five years after you use up all the available allowances under §1039.625, whichever comes first.

(B) Get us to approve a waiver from the bonding requirement if you can show that you meet the asset thresholds described in 40 CFR 1054.690.

(iii) If you forfeit some or all of your bond in an enforcement action, you must post any appropriate bond for continuing importation within 90 days after you forfeit the bond amount.
§ 1039.627 What are the incentives for equipment manufacturers to use cleaner engines?

This section allows equipment manufacturers to generate additional allowances under the provisions of §1039.625 by producing equipment using engines at or above 19 kW certified to specified levels earlier than otherwise required.

(a) For early-compliant engines to generate offsets for use under this section, the following general provisions apply:

(1) The engine manufacturer must comply with the provisions of §1039.104(a)(1) for the offset-generating engines.

(2) Engines you install in your equipment after December 31 of the years specified in §1039.104(a)(1) do not generate allowances under this section, even if the engine manufacturer generated offsets for that engine under §1039.104(a).

(3) Offset-generating engines must be certified to the following standards under this part 1039:

<table>
<thead>
<tr>
<th>If the engine's maximum power is . . .</th>
<th>And you install . . .</th>
<th>Certified early to the . . .</th>
<th>You may reduce the number of engines in the same power category that are required to meet the . . .</th>
<th>In later model years by . . .</th>
</tr>
</thead>
<tbody>
<tr>
<td>kW ≥ 19</td>
<td>One engine</td>
<td>Emissions standards in §1039.101</td>
<td>Standards in Tables 2 through 7 of §1039.102 or in §1039.101.</td>
<td>One engine.</td>
</tr>
<tr>
<td>56 ≤ kW &lt; 130</td>
<td>Two engines</td>
<td>NOx standards in §1039.102(a)(1), and NMHC standard of 0.19 g/kWh-hr, a PM standard of 0.02 g/kWh-hr, and a CO standard of 5.0 g/kWh-hr.</td>
<td>Standards in Tables 2 through 7 of §1039.102 or in §1039.101.</td>
<td>One engine.</td>
</tr>
</tbody>
</table>

(b) Offset-generating engines will import under this section in the upcoming calendar year, broken down by equipment manufacturer and power category.

(iv) You will forfeit the proceeds of the bond posted under this section if you need to satisfy any U.S. 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.

[69 FR 39213, June 29, 2004, as amended at 73 FR 59192, Oct. 8, 2008]

§ 1039.627TABLE 1 OF § 1039.626—PER-ENGINE BOND VALUES

For engines with maximum engine power falling in the following ranges . . . The per-engine bond value is . . .

| kW < 19 | $150 |
| 19 ≤ kW < 56 | 300 |
| 56 ≤ kW < 130 | 500 |
| 130 ≤ kW < 225 | 1,000 |
| 225 ≤ kW < 450 | 3,000 |
| kW ≥ 450 | 8,000 |

(iv) You will forfeit the proceeds of the bond posted under this section if you need to satisfy any U.S. 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.

(b) The provisions of this paragraph (b) apply to importers that do not install engines into equipment and do not have primary responsibility for designing and manufacturing equipment. Such importers may import equipment with engines exempted under §1039.625 only if each engine is exempted under an allowance provided to an equipment manufacturer meeting the requirements of §1039.625 and this section. You must notify us of your intent to use the provisions of this section and send us an annual report, as follows:

(1) Before you use the provisions of this section, send the Designated Compliance Officer a written notice of your intent, including:

(i) Your company’s name and address, and your parent company’s name and address, if applicable.

(ii) The name and address of the companies that produce the equipment and engines you will be importing under this section.

(iii) Your best estimate of the number of units in each power category you will import under this section in the upcoming calendar year, broken down by engine manufacturer and power category.

(2) For each year that you use the provisions of this section, send the Designated Compliance Officer a written report by March 31 of the following year. Include in your report the total number of engines you imported under this section in the preceding calendar year, broken down by engine manufacturer and by equipment manufacturer.

[69 FR 39213, June 29, 2004, as amended at 73 FR 59192, Oct. 8, 2008]