

The Honorable Christine Todd Whitman
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Jul 17 2001

Dear Ms. Whitman:

Enclosed for your consideration is the Report of the Small Business Advocacy Review Panel (SBAR Panel or Panel) convened for the planned proposed rulemakings on the **Control of Emissions from Nonroad Large Spark Ignition Engines, Recreational Engines (Marine and Land-based), and Highway Motorcycles** that the Environmental Protection Agency (EPA) is currently developing.

On May 3, 2001, EPA's Small Business Advocacy Chairperson convened this Panel under section 609(b) of the Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act of 1996. In addition to the Chair, the Panel consisted of the Director of Assessment and Standards Division of the Office of Transportation and Air Quality within EPA's Office of Air and Radiation, the Acting Chief Counsel for Advocacy of the Office of Advocacy within the Small Business Administration, and the Deputy Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget.

The Report includes a discussion of options considered by the Panel for the proposed regulation under development, a description of the Panel's outreach to small entity representatives, a summary of small entity comments received by the Panel, and the Panel's findings and recommendations.

Sincerely,

/S/

Thomas E. Kelly, Small Business Advocacy Chair
Office of Policy, Economics and Innovation
U.S. Environmental Protection Agency

/S/

Donald R. Arbuckle, Deputy Administrator
Office of Information and Regulatory Affairs
U.S. Office of Management and Budget

/S/

Susan M. Walthall, Acting Chief Counsel
Office of Advocacy
U.S. Small Business Administration

/S/

Chester J. France, Director
Assessment and Standards Division
Office of Air and Radiation
U.S. Environmental Protection Agency

Executive Summary

This section summarizes the Report of the Small Business Advocacy Review Panel (SBAR Panel or the Panel) convened for the proposed rulemaking on Control of Emissions Standards for Nonroad Large Spark Ignition Engines, Recreational Engines (Marine and Land-based), and Highway Motorcycles, currently being developed by the Environmental Protection Agency (EPA).

May 3, 2001, EPA's Small Business Advocacy Chairperson convened this Panel under Section 609(b) of the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). In addition to the Chair, the Panel consisted of the Director of the Assessment and Standards Division (ASD) within EPA's Office of Transportation and Air Quality, the Chief Counsel for Advocacy of the Small Business Administration, and the Deputy Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget.

The Panel's findings and discussion are based on the information available during the term of the Panel. EPA is continuing to conduct analyses relevant to the proposed rule, and additional information may be developed or obtained during the remainder of the rule development process and from public comment on the proposed rule. Any options the Panel identifies for reducing the rule's regulatory impact on small entities may require further analysis and/or data collection to ensure that the options are practicable, enforceable, environmentally sound and consistent with the Clean Air Act (CAA or the Act).

Industries That May Be Subject to the Proposed Regulation

The proposal being developed covers diesel engines used in recreational marine applications. It also covers several nonroad spark ignition (SI) engine applications, as follows:

- land-based recreational engines (for example, engines used in snowmobiles, off-highway motorcycles, and all-terrain vehicles (ATVs))
- marine sterndrive and inboard (SD/I) engines and boats powered by SI marine engines
- land-based engines rated over 19 kW (Large SI) (for example, engines used in forklifts); this category includes auxiliary marine engines, which are not used for propulsion.

In addition to the nonroad vehicles and engines noted above, EPA also intends to update EPA requirements for highway motorcycles. Finally, the proposal being developed included evaporative emission control requirements for gasoline fuel tanks and systems used on marine vessels.

Summary of Small Entity Outreach

The Panel met with small entity representatives (SERs) to discuss the potential emissions standards and, in addition to the oral comments from SERs, the Panel solicited written input. In the months preceding the Panel process, EPA conducted outreach with small entities from each of the five sectors as described above. On May 18, 2001, the Panel distributed an outreach package to the SERs. On May 30 and 31, 2001, the Panel met with SERs to hear their comments on preliminary options for regulatory flexibility and related information. The Panel also received written comments from the SERs in response to the discussions at this meeting and the outreach materials. The Panel asked SERs to evaluate how they would be affected under a variety of regulatory approaches, and to provide advice and recommendations regarding early ideas to provide flexibility. See Section 8 of the Panel Report for a complete discussion of SER comments, and Appendices A and B for summaries of SER oral comments and SER written comments.

Panel Findings and Discussion

Major Topics of Panel Discussion

The Panel discussed each of the issues raised in the outreach meetings and in written comments by the SERs. The Panel agreed that EPA should consider the issues raised by the SERs and that it would be appropriate for EPA to propose and/or request comment on various alternative approaches to address these concerns. The Panel's key discussions centered around the cost for small businesses to comply with the range of standards under consideration by EPA and thus the need for and most appropriate types of regulatory compliance flexibility for small businesses. Because small businesses in the categories that would be affected by the proposed rule that EPA is developing lack resources and produce low volumes, the cost of regulation per unit of production is significantly higher for these small entities than for large entities. The Panel also considered SERs' comments that they would face considerable difficulty (and added cost) in complying with certification requirements associated with the standards EPA is developing. Therefore, for every category of small business, the Panel considered a variety of provisions to reduce the burden of complying with new emission standards and related requirements (including certification requirements). Some of these provisions would apply to all companies (e.g., averaging, banking, and trading), while others would be targeted at the unique circumstances faced by small businesses (see below for detail).

Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule

The program that EPA is considering for manufacturers subject to this proposal may include emission testing, reporting, and record keeping requirements. Testing requirements for some manufacturers may include certification (including deterioration testing), and production line testing. Reporting requirements would likely include test data and technical data on the engines including

defect reporting. Manufacturers would likely have to keep records of this information. The Panel recommends that EPA evaluate ways to minimize the recordkeeping and reporting burdens under the rule.

Other Relevant Federal Rules Which May Duplicate, Overlap, or Conflict with the Proposed Rule

The Panel is aware of several other current Federal rules that relate to the proposed rule under development, potentially including the Consumer Product Safety Commission regulations, U.S. Coast Guard safety regulations, and EPA's planned proposals for Motor Vehicle and Engine Compliance Fees Program and for Maximum Achievable Control Technology Standards for Engine Testing Facilities. Therefore, the Panel made recommendations that EPA take appropriate steps to better understand and minimize any inconsistencies between them.

Regulatory Alternatives

The Panel considered a wide range of options and regulatory alternatives for providing small businesses with flexibility in complying with the proposed emissions standards and related requirements. As part of the process, the Panel requested and received comment on several ideas for flexibility that were suggested by SERs and Panel members. The major options recommended by the Panel are summarized in Table 1 and described below. The complete set of recommendations can be found in Section 9 of the Panel's full Report.

Many of the flexible approaches recommended by the Panel can be applied to several of the equipment categories that would potentially be affected by the proposed rule EPA is developing. These approaches are identified in Table 1. First Tier Flexibilities: Based on consultations with SERs, the Panel believes that the first four provisions in Table 1 are likely to provide the greatest flexibility for many small entities. These provisions are likely to be most valuable because they either provide more time for compliance (e.g., additional leadtime and hardship provisions) or allow for certification of engines based on particular engine designs or certification to other EPA programs. Second Tier Flexibilities: The remaining four approaches have the potential to reduce near-term and even long-term costs once a small entity has a product it is preparing to certify. These are important in that the costs of testing multiple engine families, testing a fraction of the production line, and/or developing deterioration factors can be significant. Small businesses could also meet an emission standard on average or generate credits for producing engines which emit at levels below the standard; these credits could then be sold to other manufacturers for compliance or banked for use in future model years.

During the consultation process, it became evident that, in a few situations, it could be helpful to small entities if unique provisions were available. Five such provisions are described below.

a) Snowmobiles: The Panel recommends EPA seek comment on a provision which would allow small snowmobile manufacturers to petition EPA for a relaxed standard for one or more engine

families, up to 300 engines per year, until the family is retired or modified, if such a standard is justifiable based on the criteria described in the Panel report.

b) ATVs and Off-road Motorcycles: The Panel recommends that the hardship provision for ATVs and off-road motorcycles allow hardship relief to be reviewed annually for a period that EPA anticipates will likely be no more than two years in order for importers to obtain complying products.

c) Large SI: The Panel recommends that small entities be granted the flexibility initially to reclassify a small number of their small displacement engines into EPA's small spark-ignition engine program (40 CFR 90). Small entities would be allowed to use those requirements in lieu of the requirements EPA intends to propose for large entities.

d) Marine Vessel Tanks: Most of this sector involves small fuel tank manufacturers and small boat builders. The Panel recommends that the program be structured with longer lead times and an early credit generation program to enable the fuel tank manufacturers to implement controls on tanks on a schedule consistent with their normal turnover of fuel tank molds.

e) Highway Motorcycles: The California Air Resources Board (CARB) has found that California's Tier 2 standard is potentially infeasible for small manufacturers. Therefore, the Panel recommends that EPA delay making decisions on the applicability to small businesses of Tier 2 or other such revisions to the federal regulations until California's 2006 review is complete.

Table 1 describes the flexibilities that the Panel is generally recommending for each of the sectors where appropriate as indicated in the table.

Other Recommendations

The Panel also crafted recommendations to address SERs' concerns that ATV and off-road motorcycle standards that essentially required manufacturers to switch to four-stroke engines might increase costs to the point that many small importers and manufacturers could experience significant adverse effects. The Panel recommends that EPA request comment in its proposed rule on the effect of the proposed standard on these small entities, with the specific intent of developing information -- including the extent to which sales of their products would likely to be reduced in response to changes in product price attributable to the proposed standards -- that could be used to inform a decision in the final rule as to whether EPA should provide additional flexibility beyond that considered by the Panel. One Panel member recommends, in addition, that EPA collect the requisite information and perform the appropriate analysis prior to proposal and include the results in the Initial and Final Regulatory Flexibility Analyses required by the RFA

**Table 1
Regulatory Flexibilities**

Flexibility	ATV	Snowmobile	Off-Rd MC	Marine Evap	HWMC	Large SI	Marine NTE
Provide Leadtime (e.g. 2 years)	P	P	P	phase-in	P	P	N/A
Allow Certification from other EPA Programs	P	P	P	N/A	N/A	P	N/A
Provide Additional Lead-time for Hardship	P	P	P	P	N	P	P
Provide Design-based Certification	P	C	P	P	N/A	N	P
Define Engine Families Broadly	C	P	C	C	P	N	P
No Production Line Testing	P	P	P	N/A	P	limited	P
Assign Deterioration Factors	P	P	P	N/A	P	limited	N/A
Allow Averaging, Banking, Trading	P	P	P	P	P	P	N/A

P: propose in NPRM
C: ask for comment in NPRM
N: will not propose in NPRM
N/A: not applicable to subcategory