

## **CHAPTER 8: Initial Regulatory Flexibility Analysis**

This section presents our Initial Regulatory Flexibility Analysis (IRFA) which evaluates the impacts of our proposed program on small businesses. Prior to issuing our proposal, we analyzed the potential impacts of our program on small businesses. As a part of this analysis, we convened a Small Business Advocacy Review Panel, as required under the Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). Through the Panel process, we gathered advice and recommendations from small entity representatives (SERs) who would be affected by our proposed vehicle and fuel standards. The report of the Panel has been placed in the rulemaking record.

### **8.1 Requirements of the Regulatory Flexibility Act**

When proposing and promulgating rules subject to notice and comment under the Clean Air Act, we are generally required under the Regulatory Flexibility Act (RFA) to conduct a regulatory flexibility analysis unless we certify that the requirements of a regulation will not cause a significant impact on a substantial number of small entities. The key elements of the FRFA include:

- the number of affected small entities;
- the projected reporting, record keeping, and other compliance requirements of the proposed rule, including the classes of small entities that would be affected and the type of professional skills necessary for preparation of the report or record;
- other federal rules that may duplicate, overlap, or conflict with the proposed rule; and,
- any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and which minimize significant economic impacts of the proposed rule on small entities.

The RFA was amended by SBREFA to ensure that concerns regarding small entities are adequately considered during the development of new regulations that affect them. Although we are not required by the CAA to provide special treatment to small businesses, the RFA requires us to carefully consider the economic impacts that our rules will have on small entities. Specifically, the RFA requires us to determine, to the extent feasible, our rule's economic impact on small entities, explore regulatory options for reducing any significant economic impact on a substantial number of such entities, and explain our ultimate choice of regulatory approach.

In developing the NPRM, we concluded that the program under consideration for recreational vehicles would likely have a significant impact on a substantial number of small

entities.

## **8.2 Description of Affected Entities**

The following table (Table 1) provides an overview of the primary SBA small business categories potentially affected by this regulation. EPA is in the process of developing a more detailed industry characterization of the entities potentially subject to this regulation.

**Table 8.2-1  
Primary SBA Small Business Categories Potentially Affected by this Proposed Regulation**

Industry	NAICS <sup>a</sup> Codes	Defined by SBA as a Small Business If: <sup>b</sup>
Motorcycles and motorcycle parts manufacturers	336991	<500 employees
Snowmobile and ATV manufacturers	336999	<500 employees
Independent Commercial Importers of Vehicles and parts	421110	<100 employees
Nonroad SI engines	333618	<1,000 employees
Internal Combustion Engines	333618	<1000 employees
Boat Building and Repairing	336612	<500 employees

**NOTES:**

a. North American Industry Classification System

b. According to SBA’s regulations (13 CFR 121), businesses with no more than the listed number of employees or dollars in annual receipts are considered “small entities” for purposes of a regulatory flexibility analysis.

### **8.2.1 Recreational Vehicles (off-highway motorcycles, ATVs, and snowmobiles)**

The ATV sector has the broadest assortment of manufacturers. There are seven companies representing over 95 percent of total domestic ATV sales. The remaining 5 percent come from importers who tend to import inexpensive, youth-oriented ATVs from China and other Asian nations. EPA has identified 21 small companies (as defined in Table 4.1, above) that offer off-road motorcycles, ATVs, or both products. Annual unit sales for these companies can range from a few hundred to several thousand units per year.

Based on available industry information, four major manufacturers, Arctic Cat, Bombardier (also known as Ski-Doo), Polaris, and Yamaha, account for over 99 percent of all domestic snowmobile sales. The remaining one percent comes from very small manufacturers who tend to specialize in unique and high performance designs .

We have identified three small manufacturers of snowmobiles and one potential small manufacturer who hopes to produce snowmobiles within the next year. Two of these manufacturers (Crazy Mountain and Fast), plus the potential newcomer (Redline) specialize in high performance versions of standard recreational snowmobile types (i.e., travel and mountain sleds). The other manufacturer (Fast Trax) produces a unique design, which is a scooter-like snowmobile designed to be ridden standing up. Most of these manufacturers build less than 50 units per year.

### **8.2.2 Marine Vessels**

Marine vessels include the boat, engine, and fuel system. Exhaust emission controls including NTE requirements, as addressed in the August 29, 1999 SBREFA Panel Report, would affect the engine manufacturers and may affect boat builders.

#### **8.2.2.1 Small Diesel Engine Marinizers**

EPA has determined that there are at least 16 companies that manufacture CI diesel engines for recreational vessels. Nearly 75 percent of diesel engines sales for recreational vessels in 2000 can be attributed to three large companies. Six of the 16 identified companies are considered small businesses as defined by SBA SIC code 3519. Based on sales estimates for 2000, these six companies represent approximately 4 percent of recreational marine diesel engine sales. The remaining companies each comprise between two and seven percent of sales for 2000.

#### **8.2.2.2 Small Recreational Boat Builders**

EPA has less precise information about recreational boat builders than is available about engine manufacturers. EPA has utilized several sources, including trade associations and Internet sites when identifying entities that build and/or sell recreational boats. EPA has also worked with an independent contractor to assist in the characterization of this segment of the industry. Finally, EPA has obtained a list of nearly 1,700 boat builders known to the U.S. Coast Guard to produce boats using engines for propulsion. More than 90% of the companies identified so far would be considered small businesses as defined by SBA SIC code 3732. EPA continues to develop a more complete picture of this segment of the industry and will provide additional information as it becomes available.

### **8.2.3 Large Spark Ignition Engines**

The Panel is aware of one engine manufacturer of Large SI engines that qualifies as a small business. This company plans to produce engines that meet the standards adopted by CARB in 2004, with the possible exception of one engine family. If EPA adopts long-term standards, this would require manufacturers to do additional calibration and testing work. If EPA adopts new test procedures (including transient operation), there may also be a cost associated with upgrading test facilities.

### **8.3 Projected Costs of the Proposed Program**

The costs associated with the proposed program can be found in Chapter 5 of the Draft Regulatory Support Document. Chapter 5 includes a description of our approach to estimating the cost of complying with emission standards. We start with a general description of the approach to estimating costs, then describe the technology changes we expect and assign costs to them. We also present an analysis of the estimated aggregate cost to society.

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

For any emission control program, EPA must have assurances that the regulated engines will meet the standards. Historically, EPA programs have included provisions placing manufacturers responsible for providing these assurances. The program that EPA is considering for manufacturers subject to this proposal may include 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.

### **8.5 Other Related Federal Rules**

We are aware of several other current Federal rules that relate to the proposed rule under development. During the Panel's outreach meeting, SERs specifically pointed to Consumer Product Safety Commission (CPSC) regulations covering ATVs, and noted that they may be relevant to crafting an appropriate definition for a competition exclusion in this category. The Panel recommends that EPA continue to consult with the CPSC in developing a proposed and final rule in order to better understand the scope of the Commission's regulations as they may relate to the competition exclusion.

The Panel is also aware of other Federal rules that relate to the categories that EPA would address with the proposed rule, but are not likely to affect policy considerations in the rule development process. For example, there are now EPA noise standards covering off-road motorcycles; however, EPA expects that most emission control devices are likely to reduce, rather than increase, noise, and that therefore the noise standards are not likely to be important in developing a proposed rule.

### **8.6 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

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recommended by the Panel 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. Three 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 part 90). Small entities would be allowed to use those requirements in lieu of the requirements EPA intends to propose for large entities.

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

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

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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.