

The Panel recommended two types of hardship provisions for small engine manufacturers. These provisions are:

- For the case of a catastrophic event, or other extreme unforeseen circumstances, beyond the control of the manufacturer that could not have been avoided with reasonable discretion (*i.e.*, fire, tornado, supplier not fulfilling contract, etc.); and
- For the case where a manufacturer has taken all reasonable business, technical, and economic steps to comply but cannot.

Either hardship relief provision would provide lead time for up to 2 years, and a manufacturer would have to demonstrate to EPA's satisfaction that failure to sell the noncompliant engines would jeopardize the company's solvency. EPA may also require that the manufacturer make up the lost environmental benefit.

ii. What EPA is Proposing

EPA is proposing to adopt the Panel recommendations for hardship provisions for small engine manufacturers. While perhaps ultimately not necessary given the phase-in schedule discussed above, such provisions provide a useful safety valve in the event of unforeseen extreme hardship.

c. Other Small Engine Manufacturer Issues

i. What the Panel Recommended

The Panel also recommended that an ABT program be included as part of the overall rulemaking program. In addition, the Panel suggested that EPA take comment on including specific ABT provisions for small engine manufacturers.

ii. What EPA is Proposing

As discussed above, an ABT program has been included in the overall program in this rule proposal. ABT is being proposed in today's action as it is intended to enhance the flexibility offered to engine manufacturers that will be of assistance in making the transition to meet the stringent standards proposed in today's rules in the leadtime proposed. As noted in Section VII.A, EPA is proposing to retain the basic structure of the current nonroad diesel ABT program, though a number of changes (which will help to accommodate implementation of the proposed emission standards) are being proposed today.

Though the Panel recommended small engine manufacturer-specific ABT provisions, such provisions are not being included in this proposal. EPA does not believe it would be appropriate to provide a different ABT program for small engine manufacturers, especially given the provisions mentioned above.

Discussions during the SBAR process indicated that small volume manufacturers would need extra time to comply due to cost and personnel constraints, and there is little reason to believe that small manufacturer specific ABT provisions could create an incentive to accelerate compliance. Small manufacturers would of course be able to participate in the general ABT program, which EPA believes will provide sufficient lead time for small entities.

2. Nonroad Diesel Small Equipment Manufacturers

a. Transition Provisions for Small Equipment Manufacturers

i. What the Panel Recommended
The Panel recommended that EPA adopt the transition provisions described below for small manufacturers and small importers of nonroad diesel equipment. These transition provisions are similar to those in the Tier 2/3 rule (*see* 89.102). The recommended transition provisions are as follows:

- **Percent-of-Production Allowance:** Over a seven model year period, equipment manufacturers may install engines not certified to the new emission standards in an amount of equipment equivalent to 80 percent of one year's production. This is to be implemented by power category with the average determined over the period in which the flexibility is used.

- **Small Volume Allowance:** A manufacturer may exceed the 80 percent allowance in seven years as described above, provided that the previous Tier engine use does not exceed 700 total over seven years, and 200 in any given year. This is limited to one family per power category.

Alternatively, the Panel also recommended, at the manufacturer's choice by hp category, a program that eliminates the "single family provision" restriction with revised total and annual sales limits as shown below:

- For categories <175 hp—525 previous Tier engines (over 7 years) with an annual cap of 150 units (these engine numbers are separate for each hp category defined in the regulations)

- For categories of > 175hp—350 previous Tier engines (over 7 years) with an annual cap of 100 units (these engine numbers are separate for each hp category defined in the regulations)

The Panel recommended that EPA seek comment on the total number of engines and annual cap values listed above. In contrast to the Tier 2/Tier 3 rule promulgated in 1998, SBA expects the transition to the Tier 4 technology will be more costly and technically

difficult. Therefore, the small equipment manufacturers may need more liberal flexibility allowances especially for equipment using the lower hp engines. The Panel's recommended flexibility may not adequately address the approximately 50 percent of small business equipment models where the annual sales per model is less than 300 and the fixed costs are higher. Thus, the SBA and OMB Panel members recommended that comment be sought on implementing the small volume allowance (700 engine provision) for small equipment manufacturers without a limit on the number of engine families which could be covered in any hp category.

- Due to the changing nature of the technology as the manufacturers transition from Tier 2 to Tier 3 and Tier 4, the Panel recommended that the equipment manufacturers be permitted to borrow from the Tier 3/Tier 4 flexibilities for use in the Tier 2/Tier 3 time frame.

- Lastly, the Panel recommended proposing a continuation of the current transition provisions, without modifications to the levels or nature of the provisions, that are available to these manufacturers.

To maximize the likelihood that the application of these provisions will result in the availability of previous Tier engines for use by the small equipment manufacturers, the Panel recommended that—similar to the application of flexibility options that are currently in place—these provisions should be provided to all equipment manufacturers.³⁰⁶

During the SBAR Panel process, an issue was raised requesting that EPA establish a provision which would allow small entity manufacturers to request limited "application specific" alternative standards for equipment configurations which present unusually challenging technical issues for compliance. The Panel recommended that EPA seek comment on the need for and value of special application specific standards for small equipment manufacturers.

ii. What EPA is Proposing

EPA is in fact proposing the Percent-of-Production and Small Volume Allowances for all equipment manufacturers, and explicitly took the

³⁰⁶ The Panel recognized that, similar to the Tier 2/3 standards, it may be necessary to provide transition provisions for all equipment manufacturers, not just for small entities; and the Panel recommended that this be taken into account. However, the work of the SBAR Panel is meant to develop regulatory alternatives for small manufacturers, thus the Panel nominally recommended transition provisions for small equipment manufacturers only.