

Panel report into account in making that proposal (*see* Section VII.B. above). The Agency believes that this proposal should provide the type of transition leeway recommended by the Panel. EPA believes that the transition provisions could allow small equipment manufacturers to postpone any redesign needed on low sales volume or difficult equipment packages, thus saving both money and strain on limited engineering staffs. Within limits, small equipment manufacturers would be able to continue to use their current engine/equipment configuration and avoid out-of-cycle equipment redesign until the allowances are exhausted or the time limit passes.

With respect to these transition provisions, EPA requests comment on the Panel's suggested exemption and annual cap values listed above. As discussed above in Section VII.B, EPA also requests comment on implementing the small volume allowance provision without the single family limit provision using caps slightly lower than 700 units, with this provision being applied separately to each engine power category subject to the proposed standards.

Similar to the discussion in Section VII.B above, EPA requests comment on new proposed requirements associated with use of transition provisions by foreign importers. During the SBREFA Panel process, the Panel discussed the possible misuse of the transition provisions by using them as a loophole to enter the nonroad diesel equipment market or to gain unfair market position relative to other manufacturers. The Panel recognized that this was a possible problem, and believed that the requirement that small equipment manufacturers and importers have reported equipment sales using certified engines in model year 2002 or earlier was sufficient to alleviate this problem. Upon further analysis, EPA found that importers of equipment from a foreign equipment manufacturer could as a group import more excepted equipment from that foreign manufacturer than 80% of that manufacturer's production for the United States market or more than the small volume allowances identified in the transition provisions. This also creates a potentially significant disparity between the treatment of foreign and domestic equipment manufacturers. EPA did not intend this outcome, and does not believe it is needed to provide reasonable leadtime to foreign equipment manufacturers.

Therefore, as explained earlier in Section VII.B, EPA is requesting comment on the additional requirement

that only the nonroad diesel equipment manufacturer that is most responsible for the manufacturing and assembling process, and therefore the burden of complying with the proposed standards, would qualify for the allowances provided under the small equipment manufacturer transition provisions. Under this requirement, only an importer that produces or manufactures nonroad diesel equipment would be eligible for these transition provisions. An importer that does not manufacture or produce equipment does not face a burden in complying with the proposed standard, and therefore would not receive any allowances under these transition provisions directly, but could import exempt equipment if it is covered by an allowance or transition provisions associated with a foreign small equipment manufacturer. EPA believes that this requirement transfers the flexibility offered in these transition provisions to the party with the burden and would allow transition provisions and allowances to be used by foreign equipment manufacturers in the same way as domestic equipment manufacturers, while avoiding the potential for misuse by importers of unnecessary allowances. EPA also sees no reason that this provision should not apply in the same way to all importers, and thus (as explained in Section VII.B) is proposing that the provision apply uniformly.

EPA is also proposing the Panel's recommendation that equipment manufacturers be allowed to borrow from Tier 4 flexibilities in the Tier 2/3 timeframe. See the more extended discussion on this issue in Section VII.B above.

With regard to the Panel recommendation for a provision allowing small manufacturers to request limited "application specific" alternative standards for equipment configurations which present unusually challenging technical issues for compliance, EPA requests comment on this recommendation. EPA believes that the need for such a provision has not been established and that it likely would provide more lead time than can be justified, and could undermine emission reductions which are achievable. Moreover, no participant in the SBAR process offered any empirical support that such a problem even exists. Nor have such issues been demonstrated (or raised) by equipment manufacturers, small or large, in implementing the current nonroad standards. In addition, EPA believes that any application-specific difficulties can be accommodated by the transition provisions the Agency is proposing

including ABT. Nonetheless, in keeping with the SBAR recommendations, comment is requested on the value of, and need for, special application specific standards for small equipment manufacturers.

b. Hardship Provisions for Small Equipment Manufacturers

i. What the Panel Recommended

The Panel also recommended that two types of hardship provisions be extended to small equipment 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.).

- For the case where a manufacturer has taken all reasonable business, technical, and economic steps to comply but cannot. In this case relief would have to be sought before there is imminent jeopardy that a manufacturer's equipment could not be sold and a manufacturer would have to demonstrate to the Agency's satisfaction that failure to get permission to sell equipment with a previous Tier engine would create a serious economic hardship. Hardship relief of this nature cannot be sought by a "integrated" manufacturer (one which also manufactures the engines for its equipment).

ii. What EPA is Proposing

EPA is proposing that the Panel recommended hardship provisions be extended to small equipment manufacturers in addition to the transition provisions described above. To be eligible for these hardship provisions (as well as the proposed transition provisions), equipment manufacturers and importers must have reported equipment sales using certified engines in model year 2002 or earlier. As explained earlier, this proposal is needed to thwart misuse of these provisions as a loophole to enter the nonroad diesel equipment market or to gain unfair market position relative to other manufacturers. We request comment on this restriction.

As explained earlier, hardship relief would not be available until other allowances have been exhausted. Either relief provision would provide small equipment manufacturers with additional lead time for up to two model years based on the circumstances, but EPA may require recovery of the lost environmental benefit.

EPA requests comment on all of the aspects of the proposed hardship provisions for small equipment manufacturers.