

(Appendices C and D). In accordance with the RFA/SBREFAs requirements, the Panel evaluated the aforementioned materials and SER comments on issues related to the Initial Regulatory Flexibility Analysis (IRFA). The following sections describe the Panel recommendations, along with specific recommendations by individual Panel members, from the SBAR Panel Report.

#### c. Transition Flexibilities

The Panel recommended that EPA consider and seek comment on a wide range of regulatory alternatives to mitigate the impacts of the rulemaking on small businesses, including those flexibility options described below. As previously stated, the following discussion is a summary of the SBAR Panel recommendations; our proposals regarding these recommendations are located in earlier sections of this rule preamble.

#### i. Nonroad Diesel Engines

##### (a) Transition Flexibility Alternatives for Small Engine Manufacturers

The Panel recommended the following transition flexibilities to be considered, which were dependent upon what approach, or approaches, EPA proposes for the rulemaking.

- For an approach with two phases of standards:
  - An engine manufacturer could skip the first phase and comply on time with the second; or,
  - a manufacturer could delay compliance with each phase of standards.
- For an approach that entails only one phase of standards, the manufacturer could opt to delay compliance. The Panel recommended that the length of the delay be a three year period; the Panel also recommended that EPA take comment on whether this delay period should be two, three, or four years. Each delay would be pollutant specific (*i.e.*, the delay would apply to each pollutant as it is phased in).

##### (b) Hardship Provisions for Small Engine Manufacturers

The Panel also recommended that two types of hardship provisions be extended to 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 do so.

Either relief provision would provide lead time for up to 2 years—in addition to the transition flexibilities listed above—and a manufacturer would have to demonstrate to the Agency's satisfaction that failure to sell the noncompliant engines would jeopardize the company's solvency. EPA could require that the manufacturer make up the lost environmental benefit through the use of programs such as supplemental environmental projects.

For the transition flexibilities listed above, the Panel recommended that engine manufacturers and importers must have certified engines in model year 2002 or earlier in order to take advantage of these provisions. Each manufacturer would be limited to 2500 units per year. This number allows for some market growth. The Panel recommended these provisions in order to prohibit the misuse of these transition provisions as a tool to enter the nonroad diesel market or to gain unfair market position relative to other manufacturers.

##### (c) Other Small Engine Manufacturer Issues

It was also recommended by the SBAR Panel that an averaging, banking, and trading (ABT) program be included as part of the overall rulemaking program, and, as discussed above, ABT has been included in the program.

During the SBREFA panel process several alternative approaches for engine standards were examined and considered by the panel. See Section 3.1.1 of the SBAR panel report. The SBA Chief Counsel for the Office of Advocacy also offered some observations about the impacts of the standards for engines less than 70 hp on affected small engine and equipment manufacturers which are based on the performance of PM or NO<sub>x</sub> advanced aftertreatment devices. While the other Panel members did not join in these observations, the Panel recommended that the Administrator carefully consider these points and examine further the factual, legal and policy questions raised here in developing the proposed rule. First, given the available information, the Office of Advocacy stated that they had substantial doubts about the technical feasibility and cost of engineering aftertreatment devices into a wide diversity of nonroad diesel applications for engines less than 70 hp. They stated that considerable concern has been raised regarding the technical feasibility of PM and NO<sub>x</sub> advanced aftertreatment devices, even for larger engines, and particularly in the case of NO<sub>x</sub> adsorbers. Second, the low retail

cost and low annual production for many of these applications make it extremely difficult for the equipment manufacturer to absorb these additional costs. The Office of Advocacy believes that, based on the available information, the Agency does not have a sufficient basis to move forward with a proposal that would require nonroad engines under 70 hp to use aftertreatment devices. Based on the SERs' concerns about the technical feasibility of the Tier 4 standards, and the technical information discussed in the Panel report, SBA recommended that we include a technological review of the standards in the 2008 time frame in the rulemaking proposal. The Panel recommended that we consider this recommendation.

The SBA Office of Advocacy stated that considerable concern has been raised regarding the technical feasibility of PM and NO<sub>x</sub> aftertreatment devices, particularly in the case of NO<sub>x</sub> adsorbers. As explained in the preamble, we have found no factual basis for this statement with respect to PM controls based on use of advanced aftertreatment for engines between 25 and 75 hp. We are not proposing standards based on performance of advanced aftertreatment for engines under 25 hp, and for NO<sub>x</sub>, for engines 75 hp and under.

With respect to the PM standards for these engines, however, EPA disagrees with the statement made by the Office of Advocacy that, based on available information, we do not have a sufficient basis to move forward with this proposed rulemaking requiring nonroad engines under 70 hp to use aftertreatment devices. As we have documented in the preamble and elsewhere in this Draft RIA, EPA believes that the standards for PM for engines in these power ranges are feasible at reasonable cost, and will help to improve very important air quality problems, especially by reducing exposure to diesel PM and by aiding in attainment of the PM 2.5 National Ambient Air Quality Standards (NAAQS). Indeed, given these facts, EPA is skeptical that an alternative of no PM standards for these engines would be appropriate under section 213(a)(4). Moreover, the statement regarding cost impacts fails to account for transition flexibilities provided all equipment manufacturers as part of the proposal.

Further discussion of alternative engine standards below 75 hp can be found in Section VI of this preamble and Chapter 11 and 12 of the draft RIA, specifically the discussion of Options 5a and 5b. EPA invites comment on these specific small engine alternatives, as