



April 24, 2017

VIA ELECTRONIC SUBMISSION

Office of the Secretary
U.S. Consumer Product Safety Commission
Room 820
4330 East-West Highway
Bethesda, MD 20814

Re: Safety Standard for Portable Generators (CPSC 2006-0057), 81 Fed. Reg. 83556 (November 21, 2016).

To Whom It May Concern:

On November 21, 2016, the Consumer Product Safety Commission (CPSC) published a proposed rule titled: *Safety Standard for Portable Generators*.¹ The CPSC's proposed rule establishes CO emissions rates for portable generators in an effort to reduce the risk of unreasonable injury or death from use of the device in an indoor or confined space. The proposed rule has a disproportionate impact on small generator manufacturers. The U.S. Small Business Administration's Office of Advocacy (Advocacy) recommends that CPSC fully analyze and consider alternatives to the proposed rule that would minimize this impact.

The Office of Advocacy

Congress established Advocacy under Pub. L. 94-305 to represent the views of small entities before Federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA); as such the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The Regulatory Flexibility Act (RFA),² as

¹ Safety Standard for Portable Generators, 81 Fed. Reg. 83556 (November 21, 2016). (to be codified at 16 C.F.R. pt. 1241).

² 5 U.S.C. §601 et seq.



amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),³ gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, federal agencies are required by the RFA to assess the impact of the proposed rule on small entities and to consider less burdensome alternatives.

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.⁴ The agency must include, in any explanation or discussion accompanying the final rule's publication in the Federal Register, the agency's response to these written comments submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so.⁵

Background

Under the Consumer Product Safety Act (CPSA), the CPSC has the authority to regulate consumer products including portable generators.⁶ In order to commence such rule making, the CPSC must issue an Advanced Notice of Proposed Rulemaking (ANPRM).⁷ Accordingly, in December 2006, the CPSC published an ANPRM to explore whether there may be an unreasonable risk of injury or death associated with the use of portable generators.⁸ The CPSC received 10 comments in response to its ANPRM.

Following the ANPRM, the CPSC contracted with the University of Alabama (U of A) to conduct a technology demonstration of a low CO emission prototype generator. Concurrently, the CPSC contracted with the National Institute of Standards and Technology (NIST) to perform comparative testing of unmodified and prototype generators.⁹ Following the U of A demonstrations, CPSC staff published a report and received 12 comments in response. NIST also published a report following its comparative testing and received four comments in response. On November 21, 2016 the CPSC, in response to the testing and comments, issued this proposed rule to limit CO emissions rates in portable generators in order to reduce the risk of death or injury from the use of a portable generator in an enclosed space.¹⁰

The CPSC also held a public comment hearing on the proposed rule on March 8, 2017 at which time members of the industry presented their concerns regarding the proposed rule, as well as alternatives to the current requirements of the rule.

In its Initial Regulatory Flexibility Analysis (IRFA), the CPSC cites a report from the CPSC's Directorate for Epidemiology, Division of Hazard Analysis (EPHA) that states that there were

³ Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. §601 et seq.).

⁴ Small Business Jobs Act of 2010 (PL. 111-240) §1601.

⁵ Id.

⁶ See 15 U.S.C. § 2052(a).

⁷ See id.

⁸ 81 Fed Reg. 83556.

⁹ See id.

¹⁰ Id.

659 deaths involving portable generators from 2004 to 2012, averaging 73 deaths annually.¹¹ The same report estimates that there were 8,703 nonfatal CO poisonings involving portable generators that were treated in hospital emergency departments from 2004-2012.¹²

The proposed rule establishes performance standards that limit the rate of CO emissions in portable generators in an effort to reduce the risk of injury or death from CO inhalation. The standards are based on the generator's weighted CO emissions rate in terms of grams/hour (g/hr). Specifically the standards include the following:

- Handheld and Class I engines: No more than 75 g/hr weighted rate
- Class II engines with a single cylinder: No more than 150 g/hr weighted rate
- Class II engines with twin cylinders: No more than 300 g/hr weighted rate

Under Section 14 of the CPSA, manufacturers must certify that the product conforms to the above standards based on a test of each product or a reasonable alternative method that demonstrates compliance.¹³ The certificate must include several items, and copies must be furnished to each distributor, retailer, and the CPSC.

Small Businesses Are Concerned about the Economic Impacts Associated with This Rule

In its IRFA, the CPSC identified 20 domestic manufacturers of portable generators, of which 13 are considered small businesses based on the North American Classification System (NAICS) standards.¹⁴ For nine of the small businesses identified, portable generator manufacturing accounts for a significant portion of the firm's total sales.¹⁵ CPSC provided Advocacy with contact information for seven of the nine small business generator manufacturers; Advocacy contacted all seven.

In speaking with these manufacturers, Advocacy notes that many were concerned about their ability to comply with the proposed rule. Specifically, one manufacturer stated that the proposed rule has the potential to eliminate the portable generator manufacturing sector from his business entirely because it will be too costly and burdensome. Another stated that the current effective deadline of one year is simply not a feasible amount of time in which to comply.

Advocacy's Comments to the Proposed Rule

The CPSC's proposed rule would have a significant economic impact on a substantial number of small businesses if finalized. Section 603 of the RFA requires CPSC to prepare an IRFA which includes among other things an analysis of the impact of the proposed rule on small businesses,

¹¹ See *id.* at 83605 (citing MATTHEW V. HNATOV, U.S. CONSUMER PRODUCT SAFETY COMM'N, DIRECTORATE FOR EPIDEMIOLOGY, DIVISION OF HAZARD ANALYSIS, INCIDENTS, DEATHS, AND IN-DEPTH INVESTIGATIONS ASSOCIATED WITH NON-FIRE CARBON MONOXIDE FROM ENGINE-DRIVEN GENERATORS AND OTHER ENGINE DRIVEN TOOLS, 2004-2014, 81 (June 2015), *available at* <https://cpsc.gov/s3fspublic/ProposedRuleSafetyStandardforPortableGenerators.pdf>).

¹² 81 Fed. Reg. 83556 at 83605.

¹³ See *id.* at 83606.

¹⁴ See *id.* at 83605.

¹⁵ *Id.*

and a consideration of regulatory alternatives to minimize that impact.¹⁶ Advocacy has reviewed CPSC's IRFA and believes that CPSC has not adequately considered significant alternatives.

In its IRFA, the CPSC states that the cost to manufacturers for complying with the proposed rule is \$114 per unit for handheld engines; \$113 per unit for Class I engine generators; \$110 for single cylinder Class II engines; and \$138 for twin cylinder Class II engines.¹⁷ As the CPSC indicates, for small businesses, these estimates may be twice the average cost reported due to lower production volumes.¹⁸ The CPSC further estimates that the cost to purchase necessary components to modify the engines may be 35 percent higher for manufacturers that purchase and produce smaller quantities of units.¹⁹

As noted by the CPSC in their economic analysis, the proposed rule will have a significant impact on small businesses. Per-unit the increase in costs is between three percent and 80 percent of the current retail price of the generators depending on type.²⁰ The burden of these costs may fall heavier on small businesses due to the economies of scale for larger manufacturers. Due to the significant impact of the proposed rule, Advocacy encourages the CPSC to expand the evaluation of alternatives in their RFA analysis.

CPSC Should Analyze and Consider Reasonable Alternatives

In its full economic analysis, the CPSC evaluates the feasibility of a number of regulatory alternatives; however, these alternatives are not evaluated further in the RFA analysis.²¹ Many of these alternatives may provide needed relief to small businesses, but their effects are unknown. To give these alternatives full consideration, CPSC should analyze the impacts of each on small business. The specific characteristics of small manufacturers may warrant the inclusion of additional regulatory flexibilities in addition to those previously considered by the CPSC and listed below. Currently, the inclusion of these alternatives is only considered by the CPSC for both large and small businesses. Additional analysis will reveal how the Agency may achieve its regulatory goal while limiting the impacts on small businesses. Below Advocacy outlines three such alternatives that were mentioned both during the public hearing, and in conversations with small businesses.

A. Automatic Shut Off Alternative

Advocacy notes that during the public hearing, some industry professionals indicated that they were in support of the automatic shut off option.²² While the industry was split as to whether this alternative should be in addition to or instead of the CO emissions standards, these manufacturers alluded to the fact that it was feasible to incorporate an automatic shut off option

¹⁶ 5 U.S.C. § 603.

¹⁷ See 81 Fed. Reg. 83556, 83606.

¹⁸ See *id.*

¹⁹ See *id.*

²⁰ See *id.* at 83607.

²¹ See *id.*

²² Portable Generators Notice of Proposed Rulemaking (NPR): Public Hearing Before the U.S. Consumer Product Safety Comm'n. (March 8, 2017).

in the devices.²³ The CPSC should further analyze its ability to achieve the desired goal using this alternative, and the costs for implementation both to businesses generally and specifically small businesses. Furthermore, the CPSC should consider whether implementing just the automatic shut off and not the current CO emissions standards, can achieve its stated goals while reducing the disproportionate impact to small businesses.

B. Less Stringent Emissions Standards

The CPSC indicates in its Regulatory Alternatives section that less stringent CO emissions limits may result in lower costs for compliance, including lower costs for catalysts or in some cases not requiring a catalyst at all in order to comply.²⁴ The CPSC does not, however, provide detailed estimates as to the impacts less stringent limits may have on small businesses. The CPSC should further analyze the effectiveness and feasibility of less stringent emissions limits in achieving its goal and the costs associated with these limits.

C. Compliance Deadlines

As noted previously, small entities were concerned that the one year compliance deadline would not allow them enough time to redesign their products to comply with the proposed standards. The CPSC is proposing a three year compliance deadline for handheld and Class I engines, and a one year deadline for Class II engines.²⁵ Advocacy urges the CPSC to analyze the costs for compliance to small entities if it were to extend compliance deadlines for all types of engines and consider whether doing so would still achieve the goals of the proposed rule.

²³ Id.

²⁴ See id. at 83602.

²⁵ See id. at 83603.

Conclusions and Recommendations

The RFA requires agencies to include significant alternatives to the proposed rule “which minimize any significant economic impact of the proposed rule on small entities.”²⁶ Advocacy believes that in order to comply with the RFA and ensure that the alternatives the CPSC considered truly address the economic impacts on small entities, additional analysis is required.

Advocacy urges CPSC to give full consideration to the above issues and recommendations. If you have any questions or require additional information please contact me or Assistant Chief Counsel Prianka Sharma at (202) 205-6938 or by email at prianka.sharma@sba.gov.

Sincerely,



Major L. Clark, III
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Copy to: Dominic Mancini, Acting Administrator
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²⁶ 5 U.S.C. § 603(c).