

The Honorable Lisa P. Jackson  
Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Dear Administrator Jackson:

Enclosed for your consideration is the Report of the Small Business Advocacy Review Panel (SBAR Panel or Panel) convened for EPA's planned proposed rulemaking entitled "Revised New Source Performance Standards (NSPS) for New Residential Wood Heaters." These regulations are under development by the U.S. Environmental Protection Agency (EPA) under Section 111 of the Clean Air Act (CAA). They would update the 1988 NSPS to reflect significant advancements in wood heater technologies and design, potentially broaden the range of residential wood heaters covered by the regulation, and improve and streamline implementation procedures.

The rulemaking is expected to require manufacturers of new residential wood heaters to redesign these appliances to be cleaner and lower emitting, which will also increase the heaters' performance and efficiency. The revisions are also expected to retain the requirement for manufacturers to contract for testing of model lines by third-party independent laboratories, report the results to EPA, and label the models accordingly. This rule would apply only to new residential wood heaters; it does not apply to existing units.

The proposal is scheduled to be issued in January 2012 and promulgated in January 2013. This rule is not subject to a court-ordered deadline.

On August 4, 2010, EPA's Small Business Advocacy Chairperson convened this Panel under section 609(b) of the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA). In addition to its chairperson, the Panel consists of the Director of the Outreach and Information Division, Office of Air Quality Planning and Standards within EPA's Office of Air and Radiation (OAR); the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB); and the Chief Counsel for Advocacy of the Small Business Administration (SBA).

It is important to note that the Panel's findings and discussion are based on the information available at the time this report was first drafted. EPA is continuing to conduct analyses relevant to the proposed rule, and additional information may be developed or obtained during this process as well as from public comment on the proposed rule. The options the Panel

identified for reducing the rule's economic impact on small entities will require further analysis and/or data collection to ensure that the options are practicable, enforceable, protective of public health, environmentally sound and consistent with the CAA.

## **SUMMARY OF SMALL ENTITY OUTREACH**

EPA has involved stakeholders very early in the development process in order to ensure the quality of information on affected entities, identify and understand potential implementation and compliance issues, and explore regulatory alternatives. In the process, EPA received direct input from numerous small manufacturers about the impacts of the proposed rule on the industry.

Prior to convening the panel, EPA conducted outreach with small entities that will potentially be affected by these regulations. In June 2010, EPA invited SBA, OMB, and 30 potentially affected small entity representatives (SERs) to a conference call and solicited comments from them on the preliminary information sent to them. EPA shared the small entities' written comments with the Panel as part of the Panel convening document.

After the SBAR Panel was convened, the Panel distributed additional information to the SERs on August 11 and August 19, 2010, for their review and comment and in preparation for another outreach meeting. On August 25, 2010, the Panel met with the SERs to hear their comments on the information distributed via email. The Panel received written comments from the SERs in response to the discussions at this meeting and the outreach materials. The Panel asked the SERs to evaluate how they would be affected and to provide advice and recommendations regarding early ideas to provide flexibility. See Section 8 of the Panel Report for a complete discussion of the SER comments. Their full written comments are also attached as Appendix B. In light of these comments, the Panel considered the regulatory flexibility issues specified by RFA/SBREFEA and developed the findings and discussion summarized below.

### **SBREFEA Process**

Two SERs expressed concern that the SBREFEA Process needs to be suspended until EPA has more information to support regulatory options.

The SER representing Wood Pellet Fuel Manufacturers stated that the Panel seems to be using this process as more of an information-gathering exercise instead a discussion of the pertinent issues. The SER expressed disappointment that by that time EPA issues their proposal, the SERs will not have an actual forum to discuss their concerns about how the proposal will affect them economically because the SBREFEA panel will have already convened and finished its work. The SER further stated that this outcome does not seem fair to the many small businesses that will have to live with this decision.

The SER representing the industry trade association stated that it was concerned that the materials "never included a full set of regulatory options and analysis. When we reviewed the EPA guidance on the process, ... we anticipated that the SERs would see a presentation with enough information to fully 'judge the likely impact of the rulemaking.' ... Much of this process seems to be an information gathering process for EPA rather than an opportunity for small

business to provide specific feedback on specific options.” This SER requested that EPA re-activate the SBREFA process once it has developed its regulatory options and impact analyses. This SER stated that would allow the SERs to have a more meaningful opportunity for comment and analysis than they have had in this SBREFA round. This SER also stated that giving the SERs a second SBREFA round to more clearly inform the agency of the real world consequences of its NSPS options would enable the SBREFA Panel to give the Administrator a better-informed set of recommendations.

## **PANEL FINDINGS AND DISCUSSION**

Under section 609(b) of the RFA, the Panel is to report its findings related to these four items:

1. A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.
2. A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.
3. Identification, to the extent practicable, of all relevant federal rules which may duplicate, overlap, or conflict with the proposed rule.
4. A description of any significant alternatives to the planned proposed rule which would minimize any significant economic impact of the planned proposed rule on small entities consistent with the stated objectives of the authorizing the statute.

The Panel’s most significant findings and discussion with respect to each of these items are summarized below. To read the full discussion of the Panel findings and recommendations, see Section 9 of the Report.

### **A. Number and Types of Small Entities Affected**

Small entities that EPA anticipates being affected by the standards would include almost all manufacturers of wood heaters listed in Section 2.2 of the Report. EPA estimates that roughly 250-300 U.S. companies manufacture residential wood heaters. EPA believes that approximately 90 percent of these manufacturers meet the SBA small-entity definition of having fewer than 500 employees.

### **B. Potential Reporting, Recordkeeping, and Compliance Requirements**

The General Provisions, subpart A of 40 CFR part 60, list the requirements for recordkeeping and reporting to ensure compliance with, and effective enforcement of rules established under section 111 of the CAA. As part of any rulemaking, these requirements are evaluated to determine the minimum recordkeeping and reporting necessary to ensure compliance with and enforcement of the proposed rules. The Panel recommends that EPA minimize the potential burden of compliance on small entities.

EPA is looking at opportunities for reducing the burden on small entities of potential reporting, record keeping, and compliance requirements. For reporting and record keeping requirements in the revised NSPS, EPA is considering providing flexibilities similar to those in the 1988 NSPS. For example, the Panel recommends that EPA continue allowing manufacturers to keep records and report test results for a representative model appliance rather than testing and reporting results for each individual unit.

Many SERs expressed concern about potential compliance requirements associated with the planned proposed standards. Specifically, SERs anticipated potential logjams at third-party testing facilities as a result of EPA's regulating a broader range of product categories, which the SERs believe will slow down the certification process. In addition, many SERs are concerned about the costs associated with compliance requirements, including research and development, preliminary testing and certification of new products and recertification of products approved under the 1988 NSPS. The Panel recommends that EPA consider ways to streamline compliance certification, in particular, identifying flexible approaches and procedures that will reduce the burden and time for manufacturers to complete the application, testing and approval process for new model lines. For example, the Panel recommends that EPA consider allowing the use of International Standards Organization (ISO)-accredited laboratories and certifying bodies to expand the number of facilities that would be required for testing and certification of the new residential solid biomass combustion appliances. Additionally, the Panel recommends that EPA consider different compliance time frames for different product categories to reduce the potential for logjams at test labs and the overall impact on companies that manufacture multiple categories. More flexible compliance schedules would also help manufacturers of additional new appliances, such as hydronic heaters and forced-air furnaces, which were not subject to the 1988 standards.

### **C. Related Federal Rules**

The federal rule that is related to the proposed regulation under consideration is the "Standards of Performance for New Residential Wood Heaters" (codified at 40 CFR Part 60, Subpart AAA), promulgated on February 26, 1988. The current (1988) NSPS generally requires manufacturers of new residential wood combustion devices (e.g., wood stoves) to design heaters to meet particulate emission limits, have representative model lines be tested by EPA-accredited labs, and attach EPA labels and hangtags after EPA approval. Since the current standard was promulgated, EPA has been encouraging homeowners to upgrade their pre-1988 wood stoves with newer, cleaner, more efficient appliances, which can reduce fine particle emissions by approximately 70 percent or more. EPA's focus on residential wood stoves for the last 5 years has been on encouraging voluntary upgrades because they can result in very large emission reductions, greater energy efficiency, less wood burned, and less money wasted.

EPA anticipates that the current NSPS will be revised to improve combustion and reduce particle emissions from new residential wood combustion devices, as well as expanding the scope of the current standard by including new residential stoves and heaters that burn other solid biomass fuels.

#### **D. Regulatory Flexibility Alternatives**

The purpose of the Panel process is to solicit information as well as suggested flexibility options from the SERs, and the Panel recommends that EPA continue to be open to receiving suggestions from the SERs and other small businesses and other stakeholders during the development of the rulemaking(s). The Panel thanks the SERs for the helpful information they have already provided and for their offers to provide additional information.

Many of the SERs and the Panel have concerns about the breadth of this rulemaking and the challenges EPA faces in conducting rulemaking for all of these source categories at one time and the challenges that the small businesses will face in having to comply with standards for all of these source categories at one time. The Panel recommends that EPA should consider focusing efforts first on emissions sources that have the greatest potential to impact public health through the magnitude of emissions and population exposure. The Panel is well aware of the adverse effects of the 1988 NSPS on wood stove manufacturers, and is sensitive to the need to carefully develop a rule that will minimize business closures, while still achieving significant emission reductions. All panel members believe that EPA has adequate information to move forward with developing revisions that apply to the residential wood heater categories that are already regulated by the 1988 NSPS. However, SBA and OMB recommend that the EPA Administrator should consider taking more time to collect additional information to better determine best demonstrated technology for the certified wood heater category. Their recommendation rests on their conclusion that EPA did present to the Panel enough information to justify regulation of this category, but did not adequately inform the SERs about the other categories.

The Panel recommends that EPA should consider focusing efforts first on emissions sources that have the greatest potential to impact public health through the magnitude of emissions and population exposure. SBA and OMB believe, based on the information available from EPA and the SERs at this time, that they cannot conclude that a nationwide NSPS limit on many categories would be the preferred approach. The Panel recommends that the EPA Administrator should consider assessing the availability of data to better characterize each source category prior to considering proposal of standards. In particular, the SERs did not have an opportunity to provide their views on EPA emission estimates for each category not already covered by the 1987 listing of "residential wood heaters" in order to determine whether those categories would constitute a significant source of emissions under section 111 of the Clean Air Act. EPA developed information on projected future emissions from wood stoves, pellet stoves, wood fireplaces, outdoor fireplaces, and hydronic central heating systems for the Panel members, however that information was not yet available at the time the Panel was consulting with SERs. For several categories, either no emissions testing protocol exists or is still under development. For some categories, such as site-built fireplaces, it appears difficult to develop a test protocol or a workable emissions standard. This Panel is not commenting on the viability of specific emission limits, or how to develop such emission limits, and has not taken into account intra- or inter-lab variability, or other emissions-related issues, for coal stoves for which no emissions data are yet in existence.

The Panel encourages EPA to consider flexibilities that will most directly minimize the small business burdens: Exemptions from the standards based on very low volume production, and delayed compliance dates for low volume production. The delayed compliance approach is predicated on the concept that it will take a number of years for manufacturers to recover the costs of the R&D investment in order to achieve compliance. Exemptions are justified for some very low production volumes where it may not be possible to ever recover the costs, even with a delayed compliance deadline.

The Panel encourages EPA to develop information about the effectiveness of local programs including voluntary standards regulating such wood heating devices vs. the national standards. For example, many US Eastern areas do not demonstrate PM 2.5 nonattainment in the winter, but only in the summer; in this circumstance wood stove emissions have no role in remedying nonattainment designations. SBA and OMB believe that National standards can conflict with local and regional strategies. Further, SBA and OMB believe that national standards could hurt efforts to voluntarily change out higher-emitting wood heaters by raising the price of the new wood heaters. This is of particular concern to SBA and OMB for new wood heating devices that are currently not regulated by EPA.

SBA and OMB believe it is unclear whether adoption of a more stringent standard for new sources will slow the adoption of new, cleaner burning stoves, potentially delaying improvements in air quality. SBA and OMB further believe, based on the information available from EPA and the SERs, at this time, that they cannot conclude that a nationwide NSPS limit on the other categories would be the preferred approach for reducing wood heater emissions.

EPA intends to collect additional information before issuing a proposal and to share that information with stakeholders, including SERs and other small businesses, as appropriate. However, EPA believes that SBREFA envisions a process in which available information is shared with SERs and Panel members and feedback is received in the form of a Panel Report. EPA staff intend to refine its economic and technical analyses based in part on this input and present regulatory options to the Administrator for her consideration. Thus, EPA believes that the absence of complete information at this time should not preclude consideration of regulatory options that may turn out to be viable.

The Panel recommends that the EPA Administrator should consider assessing the availability of data to better characterize each source category prior to considering proposal of standards. In particular, EPA should consider characterizing the emissions per unit, operating hours per year, and the distribution of emissions across the unit types within each category under discussion in this report in order to better understand the magnitude of emissions reductions that may or may not be reduced through alternative regulatory and non-regulatory mechanisms.

The Panel recommends that the EPA Administrator should consider, where beneficial, adopting behavioral approaches including but not limited to disclosure and labeling, as well as increasing the public's awareness of voluntary programs.

The Panel recommends that the EPA Administrator should consider better describing exemptions, phase-in, voluntary programs, credits/averaging at the manufacturer or regional level, and other approaches prior to proposing any emissions standards.

The Panel recommends that the EPA Administrator should consider the availability and feasibility of certification, testing labs, testing standards, and other requirements prior to proposing any emissions standards.

The Panel recommends that the EPA Administrator should consider emphasizing that the NSPS will address only new units, and the EPA Administrator should consider clarifying whether exemptions will be considered for historic replica equipment and historic property renovations.

The Panel recommends that the EPA Administrator should consider exempting small production lines where the firm may be unable to recover the R&D and related expenses in a reasonable amount of time.

For categories where EPA estimates that the nationwide emissions are less than 300 tons per year (or some other value), SBA and OMB recommend that the EPA Administrator should consider options of not issuing an NSPS but rather consider allowing Regions and States to control such sources and consider other efforts, including voluntary standards to lower emissions. EPA does not agree with this recommendation, principally because it is premature, especially considering the strong recommendations by many states that EPA regulate these sources as soon as possible to provide another tool to help them with their efforts to reduce wood smoke emissions.

SBA and OMB believe, based on the information available from EPA and the SERs, at this time, that they cannot conclude that a nationwide NSPS limit on many categories would be the preferred approach for reducing wood heater emissions. As much work remains to be done by EPA before the scheduled proposal, e.g., detailed cost and economic analyses of the refined regulatory alternatives and suggested flexibility options; the Panel recommends that EPA consider providing such additional information to stakeholders, including the SERs and other small businesses, when it becomes available.

At this time, SBA and OMB recommend that EPA not move forward with proposed emission limits for the following categories: pellet stoves, indoor hydronic heaters, biomass pellet stoves, masonry heaters, masonry fireplace kits, site-built masonry fireplaces, coal stoves, cook stoves, bake ovens (including Native American Traditional Bake Ovens), camp stoves, outdoor fireplaces, and chimineas. EPA does not agree with the scope of this recommendation. EPA believes that such a broad recommendation is inappropriate for most of these categories, and premature at best, for all the categories. As stated elsewhere in the Report, EPA does expect that the NSPS(s) will not likely include bake ovens, outdoor fireplaces, chimineas, ceremonial fires, and commercial pizza ovens. SBA and OMB recommend that if EPA decides to later pursue regulation of categories other than the certified wood heaters, that EPA convene another panel to address those categories at the appropriate time. EPA does not agree with this recommendation because EPA believes that the SERs have already had opportunity to address

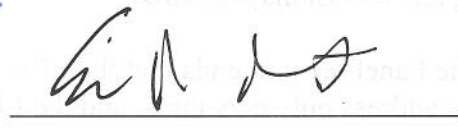
those categories. As stated in numerous places in the Report, EPA will provide additional information (e.g., economic analyses of refined alternatives) to stakeholders including the SERs and other small businesses when it becomes available.

Sincerely,



---

Alexander Cristofaro  
Small Business Advocacy Chair  
Office of Policy, Economics and Innovation  
U.S. Environmental Protection Agency



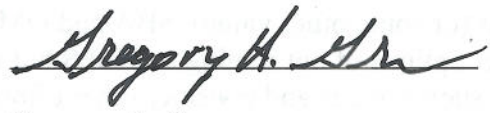
---

Cass R. Sunstein  
Acting Administrator  
Office of Information and  
Regulatory Affairs  
U.S. Office of Management and Budget



---

Dr. Winslow Sargeant  
Chief Counsel  
Office of Advocacy  
U.S. Small Business Administration



---

Gregory A. Green  
Director  
Outreach and Information Division  
Office of Air and Radiation  
U.S. Environmental Protection  
Agency

OCT 26 2011