



June 17, 2023

VIA ELECTRONIC SUBMISSION

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

Re: Safety Standard for Portable Generators (CPSC-2006-0057), 88 Fed. Reg. 24346 (April 20, 2023)

To Whom It May Concern:

On April 20, 2023, the Consumer Product Safety Commission (CPSC) published a supplemental proposed rule entitled *Safety Standard for Portable Generators*.¹ The Office of Advocacy (Advocacy) is concerned that, given the complexity of the rule, the current comment period will not be sufficient to allow small entity stakeholders to provide meaningful feedback. Therefore, Advocacy requests that CPSC extend the public comment period for this proposed rule by at least 60 days.

I. Background

A. The Office of Advocacy

Congress established the Office of 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 SBA or the Administration. The Regulatory Flexibility Act (RFA),² as amended by the Small Business Regulatory Enforcement Fairness Act,³ gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant

¹ Safety Standard for Portable Generators, 88 Fed. Reg. 24346 (April 20, 2023) (to be codified at 16 C.F.R. pt. 1281).

² 5 U.S.C. §601 et seq.

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

economic impact on a substantial number of small entities, the RFA requires federal agencies 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 a response to these written comments in any explanation or discussion accompanying the final rule's publication in the *Federal Register*, unless the agency certifies that the public interest is not served by doing so.⁵

B. The Proposed Rule

On November 21, 2016, CPSC published a proposed rule that would establish carbon monoxide (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.⁶ As required by the Consumer Product Safety Act,⁷ CPSC had previously issued an advanced notice of proposed rulemaking in December 2006. CPSC published an Initial Regulatory Flexibility Analysis (IRFA) with the proposed rule.⁸

On April 24, 2017, Advocacy submitted public comments on the proposed rule.⁹ Advocacy commented on the significantly disproportionate impact the proposed rule would have on small businesses and encouraged CPSC to expand the evaluation of alternatives in its RFA analysis.

On April 20, 2023, CPSC published a supplemental notice of proposed rulemaking (SNPRM).¹⁰ In the SNPRM, the Commission proposes to establish performance standards that limit CO emissions from portable generators and require generators to shut off when specific emissions levels are reached.¹¹

The proposed rule's performance standards build upon, but are more restrictive than, two voluntary industry standards that include CO hazard mitigation requirements. Those industry standards are the Underwriters Laboratories 2201 (UL 2201) and the Portable Generator Manufacturers Association G300 (PGMA G300).¹² CPSC has found that, for each of the UL 2201 and PGMA G300, the voluntary standard either is not likely to eliminate or adequately reduce the risk of injury, or substantial compliance with the voluntary standard is unlikely.¹³

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

⁵ *Id.*

⁶ Safety Standard for Portable Generators, 81 Fed. Reg. 83556 (November 21, 2016) (to be codified at 16 C.F.R. pt. 1241).

⁷ See 15 U.S.C. § 2052(a).

⁸ 81 Fed. Reg. 83556 at 83604-83608.

⁹ Regulations.gov Document ID CPSC-2006-0057-0073.

¹⁰ 88 Fed. Reg. 24346.

¹¹ *Id.*

¹² *Id.* at 24374.

¹³ *Id.*

The proposed rule would limit the weighted CO emissions rate of a portable generator to no more than 150 g/h, when tested to one of two methods for verifying compliance.¹⁴ The standards would further require the generator to shut off before the concentration measured above the generator exceeds either 400 ppmv for an instantaneous reading or 150 ppmv over a 10-minute rolling average.¹⁵ The proposed rule includes additional testing, monitoring, safety, and labeling requirements.¹⁶ Notably, CPSC proposes that the rule apply to all portable generators manufactured beginning 180 days after publication of the final rule in the *Federal Register*.¹⁷

The SNPRM includes an updated IRFA, in which CPSC states that small manufacturers would incur the costs to redesign, test, and manufacture compliant generators.¹⁸ The IRFA assumes that the impact of the proposed rule on small importers would be similar to the impact on small manufacturers.¹⁹

II. Request for Public Comment Period Extension

Advocacy continues to have significant concerns about the impact this rule would have on small entities. CPSC's current comment deadline of June 20, 2023, provides stakeholders with only 61 days to review the proposed rule. The rule is expected to impose a costly regulatory burden on small entities that manufacture or import portable generators. Although the Commission previously issued a notice of proposed rulemaking related to portable generators, the SNPRM outlines considerable substantive changes to the rule. Therefore, Advocacy urges CPSC to extend this public comment period by at least 60 additional days to allow for a meaningful review of the proposed rulemaking.

Small entities and their representatives have expressed concerns about their ability to provide constructive feedback given the scope and complexity of the proposal. Small entities often have relatively limited staff and resources to devote to understanding and analyzing regulatory requirements. For this reason, a two-month comment period is likely insufficient to allow small entities to gather the information necessary, adequately consider the proposed rule, and propose reasonable regulatory alternatives. CPSC has also received two extension requests from trade associations representing the interests of small and large equipment manufacturers. The Outdoor Power Equipment Association and the National Electrical Manufacturers Association each have requested a 60-day extension to perform the research and data analysis necessary to provide meaningful comments on the proposed rules. Advocacy agrees with the concerns presented in each of these extension requests.

¹⁴ *Id.* at 24356-24357.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ In its 2016 notice of proposed rulemaking, CPSC proposed an effective date one year after publication of the final rule for larger generators and three years for smaller generators. Those effective dates were proposed to allow enough time for manufacturers and importers to comply with the rule. *Id.* at 24370.

¹⁸ *Id.* at 24356-24357.

¹⁹ *Id.*

III. Conclusion

Advocacy urges CPSC to extend the public comment period by at least 60 days to enable small entities to participate more meaningfully in this rulemaking process. An extension will help small entities provide more comprehensive and detailed comments on this important rulemaking.

If you have any questions or require additional information, please contact me or Assistant Chief Counsel Meagan Singer at (202) 921-4843 or by email at meagan.singer@sba.gov.

Sincerely,

/s/

Major L. Clark, III
Deputy Chief Counsel
Office of Advocacy
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/s/

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Copy to: Richard L. Revesz, Administrator
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