UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE ADMINISTRATOR

The Honorable John M. Shimkus
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Shimkus:

Thank you for your letter of June 20, 2003, co-signed by forty-five of your colleagues, in regard to the Environmental Protection Agency's (EPA) proposed emission standards for new street motorcycles. I appreciate having this opportunity to respond to your concerns.

The Notice of Proposed Rulemaking for new street motorcycles was published in the Federal Register on August 14, 2002, and the public comment period was extended to January 7, 2003, in response to a request for more time from the motorcycle rider community. We received many comments on the proposed rule, and they will be carefully considered before any decisions are made. The enclosure to this letter contains responses to your six questions. Be assured that the Agency has special provisions in place to reduce the burden on small volume manufacturers. We have also proposed the addition of a number of new elements designed to reduce the burden on small manufacturers.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact (name omitted by editor) in EPA's Office of Congressional and Intergovernmental Relations (phone number omitted by editor).

Sincerely yours,

Marianne Lamont Horinko
Acting Administrator

Enclosure

ENCLOSURE

1. Would you please share with us your general comments on the degree to which the Agency met its obligations under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

EPA fulfilled all of its small business obligations under SBREFA. We completed a SBREFA Panel process for this rulemaking to ensure that we fully evaluated and considered the effects on small entities. In doing so, we considered alternatives that would provide flexibility to small entities. EPA met all of the SBREFA requirements as set out by the Regulatory Flexibility Act (RFA) and provided the report of the process proceedings and outcomes when the rule was proposed. An Initial Regulatory Flexibility Analysis was also developed for the proposal. It should be noted that we have proposed to continue the small volume manufacturer provisions which have been in place for many years, and we have also proposed the addition of a number of new elements designed to reduce the burden on small manufacturers. We understand the difficulty a small motorcycle manufacturer could have in meeting the second phase of standards and we proposed and expect to finalize a provision that will exempt small manufacturers from meeting these standards at this time.

2. In addition, we were informed that the motorcycle industry's independent shops and aftermarket suppliers were not included as part of the small business community potentially affected by this proposed rule. Did the Agency determine that these business have no standing in the SBREFA process as directly impacted small businesses and, if so, why?

These regulations would not impose any direct requirements on entities that are not motorcycle manufacturers (like dealers, the aftermarket and end-users). Case law on this matter states: "An agency is under no obligation to conduct a small entity impact analysis of effects on entities which it does not regulate." Motor & Equipment Mfrs. Ass'n v. Nichols, 142 F. 3d 449, 467 (D.C. Cir. 1998). This rule would promulgate requirements only on manufacturers of new motorcycles. Because this rule does not subject these other entities to regulation, EPA was not required to conduct a flexibility analysis as to small aftermarket and other businesses. Independent dealers, shops, and aftermarket parts suppliers and end-users are not directly regulated by the rule, so EPA did not violate any SBREFA guidelines by not including these parties in the formal SBREFA process. Moreover, as noted in the NPRM, we expect no significant effects, even indirect ones, on these entities. However, as part of our analysis of comments on the proposal, we continue to assess the possibility and the potential nature of impacts of this rule on other businesses.

3. Would you please comment on the degree to which the Agency complied with Executive Order 12866 that obligates regulatory agencies to consider less stringent alternatives.

Before this regulation is adopted, EPA will have complied fully with the requirements of Executive Order 12866. We considered a variety of options for new highway motorcycle emission standards, including keeping the current standards, adopting some or all of California's

highway motorcycle standards, and adopting standards more stringent than California's standards. In addition, we considered alternatives to the timing of our proposed standards and alternative requirements to ensure the protection of small business motorcycle manufacturers. These alternatives were described and assessed in the proposed rule. We submitted the proposal to the Office of Management and Budget for review, as is required for "significant regulatory actions" under Executive Order 12866. We are conducting further assessment of program options as we complete our analysis of the comments received, and will be submitting the final rule to OMB for review under Executive Order 12866.

4. What segment of the industry will be responsible for certifying compliance with the regulations – the owner, assembler, or the aftermarket engine manufacturer? More specifically, in the case of kit bikes offered for sale by aftermarket companies, who should bear the burden of compliance? And, if the engine maker bears some responsibility to certify his or her engine as EPA compliant, who becomes responsible for certification in the case of independent shops (or individual Americans) that procure a disassembled engine from an engine maker?

Under current EPA rules, which have been in place for over 20 years, the responsibility for certifying motorcycles falls to the motorcycle manufacturer or assembler, not the engine manufacturer. We require emissions testing and certification of a full motorcycle using a chassis-based test. There are no engine-only test procedures or emission standards. Thus, our rules do not directly impact "aftermarket" engine manufacturers. Purchasers and owners of certified motorcycles are not impacted by these regulatory requirements. The rules apply to all motorcycle manufacturers regardless of the number they produce, and indeed, many small volume manufacturers do certify their vehicles. We have special provisions in place today to reduce the burden on small volume manufacturers, and we proposed others in the NPRM. Under present rules, a kit bike would need to be certified by either the entity selling the kit or the individual assembling it. Since we do not certify engines, those purchasing disassembled engines would have to certify the motorcycle in which the engine is installed. Several commenters to the rule expressed concern about the requirement to certify in these one of a kind circumstances and we are exploring options to provide greater flexibility in these cases.

5. We would be interested in your comments about the Agency's consideration of safety when drafting this proposed rule.

The proposed rule published in the Federal Register on August 14, 2002, contained several paragraphs regarding the issue of safety, particularly as it relates to the use of catalytic converters on motorcycles. The proposal pointed out that tens of thousands of motorcycles in the U.S. fleet are equipped with catalysts, and approximately 15 million motorcycles worldwide use catalysts. Countries that have successfully implemented catalyst-based emission control programs for motorcycles (some of which have many years of experience) do not report any safety issues associated with the use of catalytic converters under real-world conditions. The proposal also cited a number of approaches to shield the rider from the heat of a catalytic

converter. Every motorcycle manufacturer who either testified at the public hearing or provided written comments on the proposed rule has unequivocally stated that they can build motorcycles that will meet the proposed standards with no negative impact on safety or performance relative to motorcycles manufactured today. However, several motorcycle user groups and individual motorcyclists raised the safety issue in their comments. We take the safety concerns expressed by motorcyclists very seriously; thus my staff has been carrying out a very thorough assessment of any safety issues while developing the final rule.

6. Finally, given motorcycles' value in conserving fuel, we would like your assurance that this proposed rule would not discourage this mode of transportation and have a significant impact on energy use.

It is true that motorcycles use fuel more efficiently on average than cars and light trucks. However, emission testing data show quite clearly that the emissions per mile driven of a typical motorcycle can be more than twenty times greater than that of a typical passenger car, and even several times that of the biggest sport utility vehicles.

My staff has evaluated the potential impacts of the proposed emission standards on users. We believe that motorcycle riding in the U.S. will suffer no adverse effects as a result of the proposed emission standards. The average price increase as a result of the new standards is estimated to be less than one percent of the cost of a new motorcycle. We believe that the proposed standards will actually have a positive impact on energy use. Some of the technologies likely to be used to meet the standards (e.g., electronic fuel injection) would be expected to improve performance, fuel economy, and overall reliability. The permeation requirements we proposed would significantly reduce the amount of fuel vapors lost through the walls of plastic fuel tanks and fuel hoses. None of these technological changes are expected to adversely affect the performance or fuel economy. Thus, we do not expect the rule would discourage the use of motorcycles relative to other modes of personal transportation and we expect salutary impacts on fuel consumption.