

The Honorable Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
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 "Control of Air Pollution from New Motor Vehicles: Tier 3 Emission and Fuel Standards" (or "Tier 3"). This notice of proposed rulemaking is being developed by the U.S. Environmental Protection Agency (EPA) under the Clean Air Act (CAA).

EPA's Tier 2 Vehicle and Gasoline Sulfur Program, which was finalized in February 2000, took a systems-based approach to motor vehicle pollution by setting standards for both passenger vehicles and their fuel (gasoline). The program set stricter tailpipe and evaporative emissions standards for criteria pollutants from vehicles beginning with model year 2004 and phasing in through 2009. The program also lowered the sulfur content of gasoline to a 30 parts per million (ppm) refinery average, 80 ppm per-gallon cap, and 95 ppm downstream cap; beginning in 2004 and phasing in through 2008. The potential to extend the phase-in for small refiners and approved Gasoline Phase-In Area refiners through the end of 2010 was provided in the Highway Diesel Rule (*66 FR 5136, January 18, 2001*) in exchange for early compliance with the diesel program.

Similar to the Tier 2 rule, the proposed rule "Control of Air Pollution from New Motor Vehicles: Tier 3 Emission and Fuel Standards" (Tier 3) is a comprehensive, systems-based approach to address the impact of light-duty vehicles on air quality and health. The Tier 3 rule will establish new standards for light-duty vehicles and new fuel standards for gasoline. The May 21, 2010 Presidential Memorandum directed EPA to "review for adequacy" the current non-greenhouse gas (GHG) emissions regulations for new motor vehicles and fuels, including tailpipe emissions standards for NOx and air toxics, and sulfur standards for gasoline. The memo further directed EPA to "promulgate such regulations as part of a comprehensive approach toward regulating motor vehicles" if EPA determines new regulations are required.

On August 4, 2011, 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 Assessment and Standards Division within EPA's Office of Air and Radiation, 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 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

Before beginning the formal SBREFA process, EPA actively engaged in outreach with entities that would potentially be affected by the upcoming rulemaking. EPA held phone conferences and face-to-face meeting with many of these companies to discuss the upcoming proposed rulemaking and to provide these contacts with an early opportunity to ask questions and discuss their concerns with the upcoming rulemaking.

Prior to convening the Panel, EPA conducted outreach with small entities that will potentially be affected by these regulations. In June 2011, EPA invited SBA, OMB, and 25 potentially affected small entity representatives to a conference call and meeting, and solicited comments from them on 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 small entity representatives (SERs) on August 4, 2011, for their review and comment and in preparation for another outreach meeting. On August 18, 2011, the Panel met with the SERs to hear their comments on the information distributed in these mailings. The SERs were asked to provide written feedback on ideas under consideration for the proposed rulemaking and responses to questions regarding their experience with the existing requirements. The Panel received written comments from the SERs in response to the discussions at this meeting and the outreach materials. See Section 8 of the Panel Report for a complete discussion of SER comments. Their full written comments are also attached (see Appendix B of the Panel Report). In light of these comments, the Panel considered the regulatory flexibility issues specified by RFA/SBREFA and developed the findings and discussion summarized below.

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 proposed rule on small entities consistent with the stated objectives of the authorizing 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 Panel Report.

A. Number and Types of Entities Affected

For a complete description of the small entities to which the proposed rule may apply, see Section 5 of the Panel Report. For businesses potentially impacted by the Tier 3 vehicle standards, this includes vehicle manufacturers, alternative fuel converters, and independent commercial importers. For businesses potentially impacted by the Tier 3 fuel standards, this includes gasoline refiners and importers, distributors, fuel additive manufacturers, transmix producers, and ethanol producers. For businesses potentially impacted by the change in certification fuel, this includes manufacturers of engines used in on-highway motorcycles, heavy-duty vehicles, nonroad equipment such as lawn and garden equipment, recreational vehicles, and marine vessels, as well as manufacturers of fuel tanks and fuel hoses used for these types of products.

B. Recordkeeping, Reporting, and Other Compliance Requirements

For any emission control program, EPA must have assurances that the regulated products will meet the standards. The program that EPA is considering for manufacturers subject to this proposal will include testing, reporting, and record keeping requirements for manufacturers of vehicles covered by the proposed Tier 3 regulations, and manufacturers of on-highway motorcycles, heavy-duty gasoline engines, and gasoline-powered nonroad engines. Testing requirements for these manufacturers could include certification emission (including deterioration factor) testing, in-use testing, and production line testing. Reporting requirements would likely include emission test data and technical data on the vehicles. Manufacturers would have to keep records of this information.

For any fuel control program, EPA must have assurance that fuel produced, distributed, sold and used meets the applicable standard. EPA expects that the recordkeeping, reporting, and compliance provisions of the proposed rule will be fairly consistent with those in place today for other fuel programs. Further, we expect to use existing registration and reporting systems that parties in the fuel production and distribution industry are already familiar with.

C. Related Federal Rules

The Panel is aware of the following primary federal rules that are related to the proposed Tier 3 rule under consideration: the Tier 2 Vehicle/Gasoline Sulfur rulemaking (*Federal Register*

Vol. 65, p. 6698, February 10, 2000), Light-duty Greenhouse Gas (GHG) proposed rule, and the Petroleum Refinery Sector Risk and Technology Review and New Source Performance Standards proposed rule (RTR/NSPS).

The Light-duty GHG proposed rule is a coordinated effort by EPA and the National Highway Traffic Safety Administration (NHTSA) taking steps to enable the production of a new generation of clean vehicles, though reduced GHG emissions and improved fuel efficiency from on-road vehicles and engines.

The upcoming proposed rule on Petroleum Refinery Sector Risk and Technology Review (RTR) and New Source Performance Standards (NSPS) will focus on developing updated emissions standards for petroleum refineries for multiple pollutants, including GHGs. The proposed rule is expected to perform RTR analyses for both Maximum Achievable Control Technology standards (MACT 1 and 2). The technology review will be conducted to identify any new practices, processes, or control technologies for the industry and cost-effective emission control options. EPA is developing uniform standards for some emission sources in the petroleum refining sector that may serve as the basis for these technology reviews. The proposed rule will also review the standards and rule provisions to determine whether other changes may be needed during periods of start-up, shutdown, and malfunction to ensure the standards are consistent with recent court opinions and other CAA programs. With regard to NSPS, the proposed rule will address remaining NSPS issues under reconsideration and other NSPS rules affecting the refining sector, including the regulation of GHGs and the development of emission guidelines for existing sources.

D. Regulatory Flexibility Alternatives

As described above, EPA is developing standards for vehicles and fuels to be addressed in this rulemaking. Because of the potential costs and technology challenges involved in meeting these standards, the Panel recommends that EPA consider and seek comments on the flexibility options described below. We believe that the following set of flexibility options, taken together, have the potential to significantly reduce compliance burden without compromising the environmental benefits of the program.

Tier 3 Fuels

The Panel discussed several regulatory flexibility alternatives with SERs for small businesses in the gasoline production and distribution, fuel additive manufacturing, and ethanol production industries subject to the proposed fuel requirements. Panel recommendations on these approaches are discussed below.

Lead Time—Sulfur

The Panel recommends that EPA propose a delay option, similar to previous fuels rulemakings, in the Tier 3 proposed rule. The Panel recommends that EPA allow small refiners to postpone their compliance with the Tier 3 program for up to three years. Small refiners choosing this flexibility option would have from January 1, 2017 through December 31, 2019 to

continue production of gasoline with an average sulfur level of 30 ppm (per the Tier 2 gasoline sulfur program). Compliance with the 10 ppm sulfur standard would begin on January 1, 2020. Any small refiner choosing this proposed option would be allowed to continue use of their Tier 2 gasoline sulfur credits through December 31, 2019 to meet the refiner average 30 ppm sulfur standard.

The Panel also recommends that EPA request comment on case-by-case hardship provisions that would provide additional relief for any refiner experiencing extreme difficulty in compliance with the Tier 3 requirements, as discussed below in “Hardship Provisions”.

Lead Time—RVP

The Panel is aware that EPA is likely to propose a start date of 2017 for the RVP standards; as such, the Panel recommends that EPA request comment on the concept of either a phase-in or a delay of the RVP requirements. While a phase-in could take any number of forms, the Panel recommends that EPA consider: 10.0 psi (current levels), 9.7 psi beginning summer of 2016, 9.4 psi beginning summer of 2017, and 9.0 psi beginning summer of 2018. The EPA Panel member also noted that any proposed RVP flexibilities may need to be industry-wide flexibilities, as small refiner-specific flexibilities could result in situations where there would be two different types of gasoline in the distribution system. EPA further noted that this could also create a need for additional compliance and enforcement requirements for small refiners and segregation of the fuel from fuel produced by non-small refiners, which could result in more compliance burdens and costs for small refiners. The Panel also recommends that EPA request comment on the trade-offs of the additional burden with a small refiner delay for RVP versus one industry-wide start date.

Provisions for Additive Manufacturers

The Panel recommends that EPA provide flexibilities for gasoline additive manufacturers. Following discussion with EPA, the Panel suggested that EPA propose the following flexibilities:

- For additives used downstream of the refiner: Differentiating bulk additives based on whether they meet a 20 or 25 ppm sulfur standard.
- For aftermarket consumer additives: Allow for aftermarket additives to meet either a 20 ppm or 25 ppm sulfur cap.
- For additives not meeting a 10, 20, or 25 ppm sulfur limit: Allow for the use of volume accounting reconciliation (VAR) records for additives that would not be able to meet a 25 ppm sulfur cap to show that use of the additive would not cause the sulfur level of the finished fuel to exceed 10 ppm (similar to the Nonroad Diesel Rulemaking, *69 FR 39088, June 29, 2004*), and require product labeling for aftermarket additives.

Refinery Gate and Downstream Caps

With regard to the 20 ppm refinery gate cap discussed in Section 3 of the Panel Report, the Panel has concerns that this standard could cause operational problems for small refiners

during a refinery turnaround or an upset, because a cap of this level could result in a refiner not being able to produce gasoline (as noted in their comments in Section 8 of the Panel Report). The Panel likewise has concerns that a downstream cap of 25 ppm may cause problems for small downstream entities, such as transmix processors, because they may not be able to reprocess finished gasoline down to this level (also noted in their comments in Section 8 of the Panel Report).

Thus, the Panel recommends that EPA assess and request comment on retaining the current Tier 2 refinery gate and downstream caps of 80 and 95 ppm, respectively, to help provide maximum flexibility and avoid system upsets for the entire refining and distribution system. However, the SBA and OMB Panel members recommend that EPA propose retaining the 80 ppm and 95 ppm caps.

The Panel also recommends that EPA request comment on additional refinery gate and downstream caps that are above 20/25 ppm but below 80/95 ppm.

Special Provisions for Alaska and Hawaii

The Panel recommends that EPA allow the current Tier 2 80 ppm sulfur refinery gate cap and 95 ppm sulfur downstream cap in Alaska to remain at these levels indefinitely. The Panel also recommends that EPA continue the RVP exemptions for Alaska and Hawaii, as governed by ASTM International (ASTM).

Hardship Provisions

EPA has stated that it intends to propose hardship provisions (for all gasoline refiners and importers) similar to those in prior EPA fuels programs: a) the extreme unforeseen circumstances hardship provision and b) the extreme hardship provision. A hardship based on extreme unforeseen circumstances is intended to provide short term relief due to unanticipated circumstances beyond the control of the refiner, such as a natural disaster or a refinery fire. An extreme hardship is intended to provide short-term relief based on extreme circumstances (e.g., extreme financial problems, extreme operational or technical problems, etc.) that impose extreme hardship and thus significantly affect a refiner's ability to comply with the program requirements by the applicable dates. In the context of the proposal, the Panel agrees that such relief could consider long-term relief on the sulfur cap (similar to that for Alaska) if the circumstances both warrant it and can be structured in a way to allow for it. The Panel agrees with the proposal of such provisions and recommends that EPA include them in the Tier 3 proposed rulemaking.

While the Panel understands EPA's concerns that small refiner flexibilities for RVP (e.g., small refiner-specific standards or a small refiner delay) could result in situations where there would be multiple types of gasoline (that could not be commingled) in the distribution system or additional compliance and enforcement burdens for small entities, the Panel nonetheless recommends that EPA continue to explore and consider hardship provisions for refiners who are facing hardship with the RVP standards under consideration. The Panel further recommends that EPA request comment on potential hardship relief for the RVP standards.

Tier 3 Vehicles

As discussed in Section 5 of the Panel Report, in addition to vehicle manufacturers, two distinct categories of businesses relating to highway light-duty vehicles and trucks would be covered by the new vehicle standards: independent commercial importers (ICIs), and alternative fuel vehicle converters. As discussed below, EPA expects to propose a set of flexibilities that would be available to all small entities in these three business categories as well as any businesses in these categories that sell less than 5,000 vehicles per year. The Panel identified a number of entities covered by the vehicle standards that qualify as small businesses under the SBA definition. Six of these companies participated as SERs.

The Panel discussed several regulatory flexibility alternatives with SERs for small businesses that certify vehicles subject to the proposed Tier 3 emission standards. As described in Appendix A (and similar to provisions in the Tier 2 rule), we sought comment from the SERs on allowing small entities to simply comply with the proposed emission standards with 100 percent of their vehicles during the last year of the phase-in period. In addition, we sought comment on the following flexibilities: 1) a hardship provision that would allow these businesses to apply for additional time to meet any of the 100 percent phase-in requirements, 2) use of assigned deterioration factors for certification purposes, and 3) reduction in the number of tests required in the manufacturer in-use verification testing program (see 40 CFR 86.1845-04). SERs were generally supportive of these flexibility provisions. However, one SER requested that we consider providing relaxed standards for exhaust emissions in addition to the delay and another SER requested that we consider eliminating some of the evaporative emission testing requirements.

Panel recommendations on these approaches are discussed below.

Exhaust Emission Standards and Leadtime

In the types of businesses subject to the potential Tier 3 standards, small businesses have limited resources available for developing new designs to comply with new emission standards. In addition, it is often necessary for these businesses to rely on vendor companies for technology. Moreover, percentage phase-in requirements pose a dilemma for a small manufacturer that has a limited product line (e.g., the manufacturer certifies vehicles in only one or two test groups). Thus, similar to the flexibility provisions implemented in previous vehicle rules, the Panel recommends that we allow small businesses the following flexibility options for meeting the potential Tier 3 exhaust emissions standards.

The Panel recommends that small businesses be given additional leadtime to comply with the potential Tier 3 exhaust standards and allow small businesses to comply with the standards with 100 percent of their vehicles starting in model year 2022. (This is similar to the Tier 2 rule where EPA allowed small manufacturers to wait until the end of the phase-in to comply with the Tier 2 standards.) The proposed Tier 3 rule is expected to have several different phase-in schedules; with the final dates varying from model year 2021 for the new exhaust PM standards and use of the new E15 certification fuel, to model year 2022 for the new evaporative emission standards, to model year 2025 for the new exhaust gaseous pollutant standards. Requiring all

small businesses to comply with the full slate of Tier 3 requirements in model year 2022 should provide sufficient lead time for manufacturers to plan for and implement the technology changes needed to comply with the Tier 3 standards.

One of the SERs recommended that EPA adopt relaxed exhaust standards for small manufacturers. They noted that the exhaust emission averaging program being proposed by EPA will allow large manufacturers that have many engine families to certify their small, niche products at levels numerically higher than the standards. Small manufacturers that typically do not have more than one or two emission families generally cannot use averaging to the same extent because of their limited product offerings. The SER is concerned that the high-performance vehicles produced by large manufacturers which they compete against will be able to certify at numerically higher levels at less cost than the SER would incur. While EPA is planning to propose the same standards for all manufacturers, the Panel recommends that EPA request comment on allowing small manufacturers to meet relaxed exhaust emission standards. This could also be included as part of the hardship provision discussed below. The Panel recommends that EPA request comment on the relaxed standards recommended by the SER. The SER-recommended relaxed NMOG+NO_x standards over the Federal Test Procedure (FTP) are 0.125 grams/mile in model year 2020 and 0.070 grams/mile in model year 2025. In addition, the Supplemental FTP standards would be the standards for the corresponding bins which the manufacturer selected for complying with the FTP standards. For example, if the manufacturer certified to the proposed Tier 3 Bin 125 standards over the FTP, the manufacturer would have to comply with the corresponding Tier 3 Bin 125 standards for the Supplemental FTP.

Evaporative Emission Standards and Leadtime

The Panel recommends that small businesses comply with the Tier 3 evaporative emission standards, including the leak standard, with 100 percent of their vehicles starting in model year 2022. For evaporative emissions, where the Tier 3 standards begin as early as 2017 and phase-in through 2022, this provision would allow small businesses and SVMs to wait until the last year of the Tier 3 phase-in period for evaporative emission standards for all of their vehicles. This start date is consistent with the start date described above for the Tier 3 exhaust emission requirements being recommended by the Panel for small businesses.

Assigned Deterioration Factors

Under EPA's regulations, manufacturers must demonstrate that their vehicles comply with the emission standards throughout the "useful life" period. This is generally done by testing vehicles at low-mileage and then applying a deterioration factor to these emission levels. The deterioration factors are determined by aging new emission control systems and then testing the aged systems again to determine how much deterioration in emissions has occurred. In order to reduce the testing burden on small manufacturers, EPA suggested that small manufacturers could use deterioration factor values assigned by EPA instead of performing the extended testing. A manufacturer would apply the assigned deterioration factors to its low-mileage emission level to demonstrate whether it complied with the Tier 3 emission standards. EPA currently allows this flexibility for small manufacturers. The Panel recommends EPA propose that small businesses be allowed the option to use EPA-developed assigned deterioration factors in demonstrating

compliance with the Tier 3 exhaust and evaporative emission standards. In the past, EPA has relied on deterioration factor data from large manufacturers to develop the assigned DFs for small manufacturers. EPA would expect to follow a similar procedure to determine the assigned DFs for the Tier 3 standards once large manufacturers start certifying their Tier 3 designs. Given that larger manufacturers will begin phasing in to the Tier 3 standards in model year 2017, EPA should have a significant set of emissions deterioration data upon which to base the assigned DFs for small businesses within the first few years of the Tier 3 program. EPA recognizes that assigned DFs need to be determined well in advance of model year 2022 in order to provide sufficient time for small businesses to decide whether or not to use the assigned DFs for certification purposes.

Reduced Testing Burden

Under EPA's regulations, manufacturers must perform in-use testing on their vehicles and demonstrate their in-use vehicles comply with the emission standards. The current in-use testing regulations provide for reduced levels of testing for small manufacturers, including no testing in some cases. EPA suggested that these provisions should continue for small manufacturers with the Tier 3 program. The Panel recommends EPA propose that small businesses be allowed to have reduced burden under the in-use testing program for Tier 3 vehicles.

One SER requested that EPA eliminate some of the evaporative emission testing requirements for small businesses based on its belief that some of the tests may be duplicative. While EPA understands the reasons behind the manufacturer's suggestion, we believe it may be premature to consider such an option in the Tier 3 rule given the impact of the CO₂ emission standards on engine and fuel system development. Currently, it is generally understood that the 2-day diurnal test drives the purge characteristics of evaporative control systems, while the refueling test, and to a lesser degree the 3-day test, drive the capacity requirement of evaporative canisters. Prospectively, due to expected changes in engine and fuel system designs in response to upcoming CO₂ emission standard requirements, this may not be the case. Therefore, at this point in time EPA believes it is appropriate to retain all of the evaporative test procedures. It can be noted that under current regulations, EPA does allow manufacturers to waive 2-day diurnal testing for certification purposes (see 40 CFR 86.1829-01(b)(2)(iii)) and perform only the 2-day diurnal test as part of the in-use testing program (see 40 CFR 86.1845-04(c)(5)(ii)). These provisions would continue in the Tier 3 program. In general, EPA is open to changes that reduce test burden while maintaining the environmental effectiveness of its programs and could consider changes like those suggested by the SER in the future as the impacts of the future regulations on engine and vehicle design become clearer. EPA intends to request comment in the Tier 3 proposal on streamlining the current test procedures for small businesses in ways that would still maintain the overall stringency of the tests.

Hardship Provisions

The Panel recommends that hardship provisions be provided to small businesses for the Tier 3 exhaust and evaporative emission standards. Under the hardship provisions, small businesses would be allowed to apply for additional time to meet the 100 percent phase-in

requirements for exhaust and evaporative emissions. All hardship requests would be subject to EPA review and approval. Appeals for such hardship relief must be made in writing and must be submitted well before the earliest date of noncompliance. The request should identify how much time is being requested. It must also include evidence that the noncompliance will occur despite the manufacturer's best efforts to comply, and must contain evidence that severe economic hardship will be faced by the company if the relief is not granted. The above provision should effectively provide the opportunity for small businesses to obtain more time to comply with the new Tier 3 standards. (The existing hardship provisions limit the extra time that can be requested to 1 year, but such a limit may or may not be included in the proposed Tier 3 hardship provisions.)

Applicability

Under EPA's current Tier 2 regulations, EPA provides a number of flexibilities for small volume manufacturers. The criteria for determining if a company is a small volume manufacturer is based on the annual production level of vehicles and is based on whether the company produces less than 15,000 vehicles per year. Unlike EPA's small volume manufacturer criteria noted above, SBA defines which manufacturers are small businesses (and therefore should be considered under the SBAR Panel process) based on the number of employees for vehicle manufacturers and annual revenues for ICIs and alternative fuel converters. For example, SBA defines a small business vehicle manufacturer as those who have less than 1,000 employees. Similarly, SBA defines a small business ICI as those who have annual revenue of less than \$8 million per year.

The Panel recommends that EPA propose to allow all small businesses that meet the SBA criteria be eligible for the flexibilities described above. In addition, EPA is expecting to propose that manufacturers that meet a specified sales-based criteria to be eligible for the flexibilities described above. It is relatively easy for a manufacturer to project and ultimately determine sales. Determining the annual revenues or number of employees is less straightforward. In the recent rule setting the first light-duty vehicle and truck CO₂ emission standards, EPA adopted provisions for small manufacturers based on a sales cutoff of 5,000 vehicles per year as opposed to the 15,000 level noted earlier that is used in the Tier 2 program. EPA expects to propose a small volume manufacturer definition based on the 5,000 vehicle per year level for the Tier 3 program. EPA believes the 5,000 unit cut-off for small volume manufacturers would include all of the small business vehicle manufacturers, ICIs, and alternative fuel converters that meet the applicable SBA definition as well as some additional companies that have similar concerns to small businesses. EPA expects to propose the flexibilities described above to be available to any manufacturer that meets either the SBA small business criteria or the sales-based criteria.

Certification Test Fuel

EPA expects to propose a revised certification fuel specification for light-duty vehicles, light-duty trucks, medium-duty passenger vehicles, and complete heavy-duty vehicles with GVWR at or below 14,000 pounds that are subject to the new Tier 3 requirements. As noted in Section 3 of the Panel Report, EPA expects the following additional regulatory categories also will be subject to the new certification fuel requirement.

- On-highway heavy-duty engine manufacturers
- On-highway motorcycle manufacturers
- Small spark-ignition (SI) engine (≤ 19 kilowatts) manufacturers
- Large SI engine (> 19 kW) manufacturers
- Marine SI engine (including outboard and personal watercraft) manufacturers
- Off-highway motorcycle & motorcycle parts manufacturers
- Snowmobile & all-terrain vehicle (ATV) manufacturers
- Manufacturers of evaporative emission components (i.e., fuel tanks and fuel hose) for nonroad SI engines and equipment
- Portable gas can manufacturers

The Panel presented several ideas regarding regulatory flexibility alternatives for these additional regulatory categories based on initial comments from SERs that will be impacted by the proposed change in certification fuel. Panel recommendations for small businesses impacted by the certification fuel change in these additional categories are discussed below. (Panel recommendations with regard to flexibilities for the Tier 3 vehicle requirements are described above.)

Assuming EPA proposes an E15 certification fuel requirement for these other categories of engines, vehicles, equipment, and fuel system components, the Panel recommends that EPA assess and request comment on two other possible options for the new certification fuel requirement. First, EPA should request comment on adopting an E10 certification fuel for these other categories. Second, EPA should request comment for these other categories on an initial switch to an E10 certification fuel followed by another switch to an E15 certification fuel either based on a market review that shows E15 is in widespread use throughout the country or triggered based on E15 use meeting some market threshold (e.g., 30%). The Panel recommends that EPA provide a robust analysis of these two possible options in order to be able to finalize either of these options as part of the final rulemaking.

Lead Time

EPA is expecting to propose a multiple year period in which manufacturers would start using the new certification fuel. Given the expected timing of the final rule, we would likely start allowing manufacturers to use the new certification fuel as early as the 2014 model year, but that would be at the manufacturer's option. Starting in model year 2015, any "new" certifications would need to be done on the new certification fuel. (By "new" certifications, EPA means an emission family that is not being certified based on carryover emissions data.) Starting in model year 2020, all certifications would need to be done on the new certification fuel. During the intervening years, manufacturers could continue to carry-over certifications based on the existing certification fuel tests. Given that EPA is expecting to allow six years for switching over to the new certification fuel, EPA does not believe it is necessary to offer any additional lead time for small businesses. However, the Panel recommends that EPA request comment on whether the phase-in period could be adjusted to appropriately align with life-cycle redesign periods for engines, vehicles, equipment, or fuel system components.

“Grandfathered” Certifications and Small Volume Exemptions

Given that exhaust certification testing is currently performed on a fuel that contains no ethanol, and because ethanol can impact emissions significantly depending on how manufacturers adjust and recalibrate their engines to operate on an ethanol-containing fuel, EPA does not believe it can allow current certifications to be carried over indefinitely or allow small volume exemptions once a new certification fuel is required. EPA believes that eventually manufacturers must recertify all of their engines on the new certification fuel, and will provide several years of leadtime in which the manufacturer can make the transition, as described in the previous section (“Lead Time”).

In the situations where evaporative certifications are performed on a fuel with 10 percent ethanol (i.e., fuel tank and fuel line permeation emissions), the Panel recommends that EPA allow existing certifications to continue indefinitely whether EPA adopts a new certification fuel that contains 10 percent or 15 percent ethanol. For permeation emissions, EPA expects the differences in emission levels should not be significant between an E10 and E15 certification fuel. For diurnal emissions, which only apply in some of the regulatory categories and are currently performed with no ethanol in the fuel, EPA does not believe it can allow current certifications to be grandfathered because tank permeation emissions are measured as part of the diurnal test and increasing the ethanol in the fuel from zero percent to 10 or 15 percent will potentially have a noticeable impact on permeation emissions and the associated diurnal emissions measured during the test. As noted earlier, EPA expects to provide several years of leadtime in which the manufacturer can make the transition to the new certification fuel.

Certifying with Alternative Emissions Data

A wide range of engines have been certified with EPA’s nonroad programs. In some situations, engines certified in one nonroad program could potentially be used in applications regulated under another of EPA’s nonroad programs. For example, there is a large variety of engines certified to EPA Small SI standards some of which could be used in recreational vehicles. Two SERs commented that EPA should allow manufacturers to certify to EPA standards based on engines certified in a different emission control program (whether certified by EPA or a different entity such as Europe). The Panel recommends that EPA propose allowing small businesses to request certification for a given nonroad category based on data collected for another EPA emission control program provided that through tests data the manufacturer can demonstrate that the controls and emission rates are at least as stringent as the nonroad category for which the manufacturer is attempting to certify. The Panel also recommends that EPA consider developing a process to allow small businesses to request certification on the basis of non-EPA data provided that the manufacturer can demonstrate that the controls and emission rates are at least as stringent as the nonroad category for which the manufacturer is attempting to certify. Under such a flexibility, the small business using the engine would not have to retest the engine provided the manufacturer does not alter the engine in such a way as to cause it to exceed the emission standards it was originally certified as meeting.

Replacement Fuel Tanks

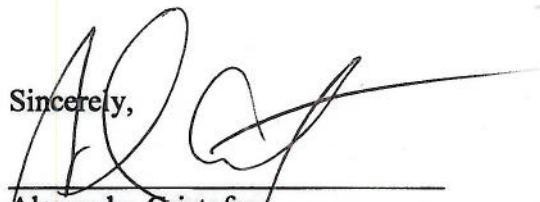
The Panel recommends that EPA propose to allow manufacturers to sell replacement fuel tanks that were originally certified on an E10 certification fuel if a switch in the certification fuel to E15 is adopted. This would be consistent with the flexibility noted earlier in which the Panel recommended that manufacturers be allowed to carry-over evaporative certifications performed on E10 if a switch in the certification fuel to E15 is adopted.

Extending Current Flexibilities

In most of the categories of engines, vehicles, equipment and fuel system components affected by the change in certification fuel, EPA has adopted a variety of flexibilities for small businesses. For example, in some categories, EPA has allowed small businesses to use assigned deterioration factors and broad engine family criteria, among others. The Panel recommends that EPA propose to extend those existing flexibilities available to small businesses in each of the categories as the switch to the new certification fuel is implemented.

One SER raised concerns regarding the start of the new certification fuel requirements and whether manufacturers would be allowed to use up existing products in their inventory. Under current regulations (see 40 CFR Part 1068, section 1068.105), when a new set of requirements take effect, EPA allows manufacturers to use up their normal inventory of products that were manufactured before the date of the new or changed standards. (It should be noted that the regulations prohibit manufacturers from stockpiling products that were built before new or changed standards take effect in an attempt to take advantage of this provision.) Therefore, EPA does not believe any new flexibilities are necessary to continue to allow this practice. The Panel recommends that EPA request comment on whether the current regulations are sufficient to address the concerns raised by the SER.

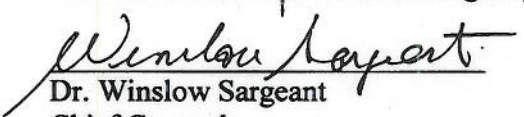
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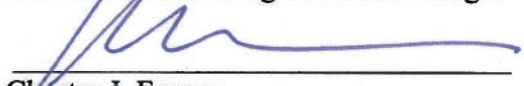
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Enclosure

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