

October 26, 1998

The Honorable Carol M. Browner
Administrator, United States Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Dear Ms. Browner:

Enclosed for your consideration is the Report of the Small Business Advocacy Review Panel (SBAR Panel or the Panel) convened for the proposed rulemaking on Tier 2 light-duty vehicle (LDV) and light-duty truck (LDT) emission standards, heavy-duty (HD) gasoline engine standards, and gasoline sulfur standards that the Environmental Protection Agency (EPA or the Agency) is currently developing.

On August 27, 1998, 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 of 1996 (SBREFA). In addition to its chairperson, the Panel consists of the Deputy Director of EPA's Office of Mobile Sources (OMS), 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 that the Panel report was drafted. EPA is continuing to conduct analyses relevant to the proposed rule, and additional information may be developed or obtained during the remainder of the rule development process and from public comment on the proposed rule. Any options the Panel identifies for reducing the rule's regulatory impact on small entities may require further analysis and/or data collection to ensure that the options are practicable, enforceable, environmentally sound and consistent with the Clean Air Act (CAA or the Act).

Summary of Small Entity Outreach

A Tier 2 program establishing stringent vehicle emission standards and requiring reductions in gasoline sulfur content would primarily affect manufacturers of light-duty vehicles, light-duty trucks, heavy-duty gasoline vehicles, and oil refiners that produce gasoline. Most companies in these industries do not meet the small business definitions provided in the SBA regulations (13 CFR Part 121). However, EPA has identified several companies within these industries that are small businesses as defined by SBA. These businesses may be subject to the Tier 2 vehicle and gasoline sulfur standards, and could be significantly impacted. The industries of industry segments that contain small businesses

are: 1) small refiners, 2) small petroleum marketers, and 3) certain small certifiers of vehicles (independent commercial importers of vehicles, converters of gasoline vehicles to operate on alternative fuels, and small volume vehicle manufacturers).

EPA, alone and in conjunction with SBA and OMB, has had several meetings and conversations with small entity representatives (SERs) to discuss the potential Tier 2/gasoline sulfur program. Two months prior to convening the Panel, EPA staff held two phone conferences with representatives of two small refining companies and a subsequent face-to-face meeting with representatives of four small refining companies. On August 18, shortly before the Panel was convened, representatives from EPA, SBA, and OMB held two pre-panel outreach conference calls with representatives from small businesses in the automotive and refining industries. Once the Panel was officially convened, two additional meetings (one vehicle-related and one gasoline sulfur-related) were held on September 21 between EPA, SBA, OMB, and the SERs (listed in Section 6 of the Panel report). Summaries of the August 18 and September 21 meetings are included in Appendix B of the Panel report.

The Panel also had the opportunity to visit Frontier Oil Company's refinery in Cheyenne, Wyoming, at the company's invitation, during the Panel process. The Panel notes that this was a unique opportunity to gain a "first-hand perspective" on what a refinery would have to do in order to comply with the proposed Tier 2/gasoline sulfur rule. Two members of the Panel (SBA and EPA) also met with representatives from the Gary-Williams Energy Corporation to discuss the potential impacts of the rule.

In addition to verbal comments noted by the panel at meetings and teleconferences, the panel also received written comments from members of each of the affected industry segments or their representatives.

Panel Findings and Discussion

Major Topics of Panel Discussion

The Panel discussed each of the issues raised in the outreach meetings and in written comments by the SERs. Regarding small refiner issues, the Panel discussed the nature of refining operations and refinery process economics, how operations and economics differ between small and larger refiners (and among individual small refiners), and the kinds of regulatory alternatives that might assist small refiners in complying with a gasoline sulfur standard. In regard to small gasoline marketers, the Panel discussed the potential that gasoline sulfur requirements may add to existing recordkeeping and reporting requirements (for other gasoline regulations) with which various parties in the gasoline distribution system must already comply. The Panel also considered the relationship of small refiner

relief options to international trade issues and believes that such options bear further examination in the context of domestic environmental policy goals and U.S. international trade considerations.

The Types and Number of Small Entities to Which the Proposed Rule Would Apply

Small Refiners: About 15

Small Gasoline Marketers: Several hundred

Small Certifiers of Covered Vehicles: About 15

Projected Reporting, Record Keeping, and Other Compliance Requirements of the Proposed Rule

EPA does not expect the rule, when proposed, to include any significant new recordkeeping and reporting requirements for any party. The proposed rule may include a new requirement for gasoline distributors to add sulfur content to the set of gasoline quality parameters they currently record and/or report. The Panel believes that this requirement would add little, if any, burden to small gasoline marketers since sulfur content is generally measured along with other parameters and the results would simply need to be recorded and reported. The Panel encourages EPA to continue to request comment on this during the rulemaking process.

Other Relevant Federal Rules Which May Duplicate, Overlap, or Conflict with the Proposed Rule

The regulations EPA expects to propose on gasoline sulfur content and vehicle emission standards would be similar in many respects to existing regulations, often replacing earlier requirements with more stringent requirements for refiners and vehicle manufacturers. However, the Panel is not aware of any area where the new regulations would duplicate, overlap, or conflict with the existing federal, state, or local regulations.

Regulatory Alternatives

The Panel considered a wide range of options and regulatory alternatives for providing small businesses with flexibility in complying with potential Tier 2 vehicle emission and gasoline sulfur standards. As a part of the process, the Panel requested and received comment on several early ideas for compliance flexibility that were suggested by SERs and Panel members. Taking into consideration the comments received on these ideas as well as additional business and technical information gathered about the affected small entities, the Panel is prepared to recommend that EPA solicit comment on several of them. As described below, the Panel recommends some of these concepts individually and, in the case of small refiners, the Panel recommends a comprehensive option that incorporates several

ideas. The Panel took considerable time in addressing the concerns of the small refiners, who indicated their belief that their businesses may have to close if relief is not considered for their industry. Taken together, the Panel believes that these options would provide meaningful relief to small businesses in each of the industry sectors potentially affected by a Tier 2/gasoline sulfur control program while protecting the environmental goals of the program.

Small Refiners: The panel recommends that small refiners be provided a four- to six-year period during which less stringent gasoline sulfur requirements would apply. Each refinery's gasoline sulfur limit would be set based on its individual average sulfur level as reported in the most recent batch report (submitted under the reformulated gasoline program, e.g., for 1997) available at the time of the proposed rule, as described below. This four- to six-year period of relief would begin at the time that final standards become effective for the refining industry as a whole. Following this period of relief, small refiners would be required to meet the industry-wide standard, although temporary hardship relief would be available on a case-by-case basis. The Panel believes that the additional time that this approach would provide would allow 1) new sulfur-reduction technologies to be proven out by larger refiners, 2) the costs of advanced technology units to drop as the volume of their sales increased, 3) industry engineering and construction resources to be freed up, and 4) additional time to raise capital for infrastructure changes.

Small Marketers of Gasoline: The Panel believes that adding gasoline sulfur to the fuel parameters already being sampled and tested by gasoline marketers will likely result in little, if any, additional burden. The gasoline marketer SERs that commented to the Panel did not address this issue. The Panel does not recommend any special provisions for gasoline marketers. (These parties raised concerns about indirect effects of a sulfur control program on marketers, especially if some refiners go out of business and reduce the number of gasoline suppliers.)

Small Certifiers of Covered Vehicles: The Panel recommends that EPA solicit comment on several ideas suggested by small companies that certify LDVs, LDTs, and HD gasoline vehicles, as discussed further below. However, several other concerns that these businesses raised to the Panel do not appear to be affected by potential new Tier 2 emission standards but rather involve existing regulations. While the Panel does not believe that these "non-Tier 2" issues would be appropriately addressed in a Tier 2 rulemaking, the Panel encourages EPA to meet with small certifiers designated as Independent Commercial Importers to discuss those issues.

The Panel recommends that EPA solicit comment on the following potential regulatory options:

- 1) For small certifiers that convert imported vehicles to U.S. standards or that convert vehicles to operate on alternative fuels, provide a delay in required compliance of two years after Tier 2 standards apply to the model (engine family) involved.

- 2) If the Tier 2 program involves a phase-in of standards, allow small certifiers to comply at the end of such a phase-in.
- 3) If the Tier 2 program does not involve a phase-in of standards, delay compliance for small certifiers until 2007 (or three years after the program begins industry-wide).
- 4) Establish a credit program as a part of the Tier 2 program, and provide incentives for large manufacturers to make credits available to small certifiers. In addition, develop a program to provide credits to small certifiers for taking older vehicles off the road (scrappage).
- 5) Design a case-by-case hardship relief provision that would delay required compliance for small certifiers that demonstrate that they would face a severe economic impact from meeting the Tier 2 standards.

The Panel believes that each of these ideas, individually or in combination, could potentially provide significant relief to small certifiers at little cost to the environment and should be considered in the Tier 2 rulemaking. In addition to the above package of regulatory alternatives, the Panel believes EPA should carefully consider all comments received during the outreach process on these and other issues of concern to small entities. A full discussion of comments received and Panel recommendations are included in the Panel's final report.

Sincerely,

/S/

Thomas E. Kelly, Chair
Small Business Advocacy
U.S. Environmental Protection Agency

/S/

Don Arbuckle, Acting Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget

/S/

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Enclosure