

recordkeeping involves the use of product transfer documents, which are already required under the 15 ppm highway diesel sulfur rule (40 CFR 80.560).

5. Relevant Federal Rules

The proposed certification fees rule, through the Agency's Certification and Compliance Division (CCD), may have some impact on the upcoming rule, and the Panel recommended that we take into consideration the effects that this rule may have on small businesses.

The fuel regulations that we expect to propose would be similar in many respects to the existing sulfur standard for highway diesel fuel. We are not aware of any area where the regulations under consideration would directly duplicate or overlap with the existing federal, state, or local regulations; however, several small refiners will also be subject to the gasoline sulfur and highway diesel sulfur control requirements, as well as air toxics requirements.

More stringent nonroad diesel sulfur standards may require some refiners to obtain permits from state and local air pollution control agencies under the Clean Air Act's New Source Review program prior to constructing the desulfurization equipment needed to meet the standards.

The Internal Revenue Service (IRS) has an existing rule that levies taxes on highway diesel fuel only. The rule requires that nonroad diesel (un-taxed) fuel be dyed so that regulators and customers will know which type of fuel is which. Because of the need to separate dyed from undyed diesel fuel, some marketers may choose to install extra tanks. Therefore, fuel marketers have claimed that, if two grades of nonroad fuel are allowed in the marketplace, they may decide to maintain two segregated tanks for both nonroad (dyed 500 ppm and dyed 15 ppm) and highway diesel fuels (undyed 500 ppm and undyed 15 ppm), during the transition periods for both of these fuels.

6. Summary of SBREFA Panel Process and Panel Outreach

a. Significant Panel Findings

The Small Business Advocacy Review Panel (SBAR Panel, or the Panel) considered many regulatory options and flexibilities that would help mitigate potential adverse effects on small businesses as a result of this rule. During the SBREFA Panel process, the Panel sought out and received comments on the regulatory options and flexibilities that were presented to SERs

and Panel members. The major flexibilities and hardship relief provisions that are recommended by the Panel, along with specific recommendations by individual Panel members, are described below and are also located in Section 9 of the SBREFA Final Panel Report which is available in the public docket.³⁴⁶

b. Panel Process

As required by section 609(b) of the RFA, as amended by SBREFA, we also conducted outreach to small entities and convened a SBAR Panel to obtain advice and recommendations of representatives of the small entities that potentially would be subject to the rule's requirements.

On October 24, 2002, EPA's Small Business Advocacy Chairperson convened a Panel under Section 609(b) of the RFA. In addition to the Chair, the Panel consisted of the Deputy Director of EPA's Office of Transportation and Air Quality, the Chief Counsel for Advocacy of the Small Business Administration, and the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget. As part of the SBAR Panel process, we conducted outreach with representatives from the various small entities that would be affected by the proposed rulemaking. We met with these Small Entity Representatives (SERs) to discuss the potential rulemaking approaches and ways to decrease the impact of the rulemaking on their industries. We distributed outreach materials-including background on the nonroad diesel sector, possible regulatory approaches, and possible rulemaking alternatives to the SERs on October 30, 2002. On November 13, 2002 the Panel met with the SERs to discuss the outreach materials and receive initial feedback on the approaches and alternatives detailed in the outreach packet. The Panel received written comments from the SERs following the meeting in response to discussions had at the meeting and the questions posed to the SERs by the Agency. The SERs were specifically asked to provide comment on regulatory alternatives that could help to minimize the impact on small businesses as a result of the rulemaking.

In general, SERs representing the nonroad diesel equipment manufacturers raised concerns about the added cost of compliance and the increase in size of compliant engines

(and how this would affect their products). SERs representing the nonroad diesel fuel industry raised comments that generally included anticipated difficulty in going to a lower grade of fuel and the need for increased tankage to carry interim grades of fuel. All SERs raised concerns that small entities do not have the capital and have fewer resources which make compliance difficult. Thus, they maintain that there is a need to provide alternatives and provisions to address these issues, as (per their view) more stringent emission standards could impose more significant adverse impacts on small entities than on large businesses. (For the most part, EPA has not found the facts to support these contentions in this proposal, and thus is not proposing separate provisions applicable only to small entities.)

The Panel's findings and discussions are based on the information that was available during the term of the Panel and issues that were raised by the SERs during the outreach meetings and in their comments. It was agreed that EPA should consider the issues raised by the SERs (and discussions had by the Panel itself) and that EPA should consider comments on flexibility alternatives that would help to mitigate any negative impacts on small businesses.

Alternatives discussed throughout the Panel process include those offered in previous or current EPA rulemakings, as well as alternatives suggested by SERs and Panel members, and the Panel recommended that all be considered in the development of the rule. Though some of the flexibilities suggested may be appropriate to apply to all entities affected by the rulemaking, the Panel's discussions and recommendations are focused mainly on the impacts, and ways to mitigate adverse impacts, on small businesses. In addition some of the provisions, such as the equipment manufacturer transition provision, that apply to all entities also help to mitigate the effects on small entities. A summary of these recommendations is detailed below, and a full discussion of the regulatory alternatives and hardship provisions discussed and recommended by the Panel can be found in the SBREFA Final Panel Report. A complete discussion of the transition and hardship provisions that we are proposing in today's action can be found in Sections VII.C and III.A of this preamble. Also, the Panel Report includes all comments received from SERs (Appendix B of the Report), a summary of those comments (Section 8), and summaries of the two outreach meetings that were held with the SERs

³⁴⁶ Final Panel Report of the Small Business Advocacy Review Panel on EPA's Proposed Rule: Control of Emissions of Air Pollution From Land-Based Nonroad Compression Ignition Engines, December 23, 2003.