

# Regulatory Impact Analysis

## Control of Hazardous Air Pollutants from Mobile Sources

### Chapter 14 Small-Business Flexibility Analysis

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## **CHAPTER 14: Small-Business Flexibility Analysis**

This chapter discusses our Final Regulatory Flexibility Analysis, which evaluates the potential impacts of new standards on small entities. The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Prior to issuing a proposal for this rulemaking, we analyzed the potential impacts of these regulations on small entities. As a part of this analysis, we convened a Small Business Advocacy Review Panel (SBAR Panel, or ‘the Panel’). During the Panel process, we gathered information and recommendations from Small Entity Representatives (SERs) on how to reduce the impact of the rule on small entities, and those comments are detailed in the Final Panel Report which is located in the public record for this rulemaking (Docket EPA-HQ-OAR-2005-0036).

### **14.1 Overview of the Regulatory Flexibility Act**

In accordance with section 609(b) of the Regulatory Flexibility Act, we convened an SBAR Panel before conducting the Regulatory Flexibility Analysis. A summary of the Panel’s recommendations can be found in our proposal. Further, the Final Panel Report contains a detailed discussion of the Panel’s advice and recommendations (as well as the SER recommendations). The regulatory alternatives that are being adopted in this final rule are described below.

Section 609(b) of the Regulatory Flexibility Act further directs the Panel to report on the comments of small entity representatives and make findings on issues related to identified elements of the Regulatory Flexibility Analysis under section 603 of the Regulatory Flexibility Act. Key elements of a Regulatory Flexibility Analysis are:

- a description and, where feasible, an estimate of the number of small entities to which the proposed rule applies;
- projected reporting, record keeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that would be subject to the rule and the type of professional skills necessary to prepare reports or other records;
- an identification, to the extent practicable, of all other relevant federal rules that may duplicate, overlap, or conflict with the proposed rule;
- any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities.

The Regulatory Flexibility Act was amended by SBREFA to ensure that concerns regarding small entities are adequately considered during the development of new regulations that affect those entities. Although we are not required by the Clean Air Act to provide special treatment to

small businesses, the Regulatory Flexibility Act requires us to carefully consider the economic impacts that our rules may have on small entities. The recommendations made by the Panel may serve to help lessen these economic impacts on small entities when consistent with Clean Air Act requirements.

## **14.2 Need for the Rulemaking and Rulemaking Objectives**

A detailed discussion on the need for and objectives of this rule are located in the preamble to the final rule. As previously stated, controlling emissions from light-duty highway vehicles, gasoline, and portable fuel containers has important public health and welfare benefits.

Section 202(l)(2) of the Clean Air Act (CAA) authorizes EPA to promulgate standards to control emissions of mobile source air toxics (MSATs) from new motor vehicles and fuels. Specifically, this section states that EPA must:

...promulgate (and from time to time revise) regulations under subsection (a)(1) or section 211(c)(1) containing reasonable requirements to control hazardous air pollutants from motor vehicles and motor vehicle fuels. The regulations shall contain standards for such fuels or vehicles, or both, which the Administrator determines reflect the greatest degree of emission reduction achievable through the application of technology which will be available, taking into consideration the standards established under subsection (a), the availability and costs of the technology, and noise, energy, and safety factors, and lead time....The regulations shall, at a minimum, apply to emissions of benzene and formaldehyde.

Thus, EPA must determine the maximum amount of emission reduction possible through application of technology, and further assess the reasonableness of these reductions after considering cost, lead time, and the other enumerated factors. Controls on NMHC (a surrogate for organic mobile source air toxics) for light-duty vehicles, and benzene emissions from gasoline, implement this provision. In addition, many prior rules (including the Tier 2 standards and the highway and nonroad diesel engine standards) control toxics emitted by motor vehicles.

In addition, section 183(e) directs EPA to study, list, and regulate consumer and commercial products that are significant sources of VOC emissions. The final rule for portable fuel containers implements this provision. Regulations under section 183(e) must require the "best available control," considering technological and economic feasibility and health, environmental, and energy impacts.

## **14.3 Definition and Description of Affected Entities**

Small entities include small businesses, small organizations, and small governmental jurisdictions. For the purposes of assessing the impacts of the proposed rule on small entities, a small entity is defined as: (1) a small business that meets the definition for business based on the Small Business Administration's (SBA) size standards (see Table 14.3-1); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-

profit enterprise which is independently owned and operated and is not dominant in its field. Table 14.3-1 provides an overview of the primary SBA small business categories potentially affected by this regulation.

The following sections discuss the small entities directly regulated by this final rule—namely light-duty manufacturers, gasoline fuel refiners, and portable fuel container manufacturers. We conducted preliminary industry profiles to identify the universe of small entities in each sector.

**Table 14.3-1. Small Business Definitions**

<b>Industry</b>	<b>Defined as small entity by SBA if less than or equal to:</b>	<b>NAICS<sup>a</sup> Codes</b>
Light-duty vehicles: - vehicle manufacturers (including small volume manufacturers)	1,000 employees	336111
- independent commercial importers	\$6 million annual sales	811111, 811112, 811198
- alternative fuel vehicle converters	100 employees 1,000 employees \$6 million annual sales	424720 335312 811198
Gasoline fuel refiners	1,500 employees <sup>b</sup>	324110
Portable Fuel Container Manufacturers: - plastic container manufacturers - metal fuel container manufacturers	500 employees 1,000 employees	326199 332431

*a North American Industrial Classification System*

*b We have included in past fuels rulemakings a provision that, in order to qualify for the small refiner flexibilities, a refiner must also have a company-wide crude refining capacity of no greater than 155,000 barrels per calendar day. We have included this criterion to qualify for the small refiner provisions for this program as well.*

### 14.3.1 Description of Highway Light-Duty Vehicle Manufacturers

To assess how many small entities would be directly affected by the rule, EPA first created a database comprised of firms specified in its Certification and Fuel Economy Information System (CFEIS) and EPA's independent commercial importers (ICIs) and converters lists. Sales and employment data for the parent companies of these firms was then found using the Dunn and Bradstreet (and Hoover's) and ReferenceUSA databases. Due to the range of manufacturers and ICIs, there are several NAICS codes in which these businesses report their sales, but the majority of the manufacturers and ICIs are listed under the following major groups, respectively: 33611x - *Automobile and Light Duty Motor Vehicle Manufacturing* and 8111xx - *Automotive Repair and Maintenance*. For alternative fuel converters, there did not appear to be a prominent NAICS code, and the codes range from 335312 - *Motor and Generator Manufacturing* (and/or 336312 - *Gasoline Engine and Engine Parts Manufacturing*) to 811198 - *All Other Automotive Repair and Maintenance*.

Based on the preliminary industry characterization, we identified a total of about 50 businesses that would be covered by the new light-duty vehicle standards. However, due to a lack of sales or employment data, a few of these entities could not be confirmed for consideration in EPA's analysis. Out of these 50 businesses, 21 entities (or 42 percent) fit the SBA criterion of a small business. EPA estimates that these entities comprise about 0.02 percent of the total light-duty vehicle sales in the U.S. for the year 2004.<sup>A</sup>

In addition to major vehicle manufacturers, three distinct categories of businesses characterize the above 50 total entities (and the subset of 21 small businesses): small volume manufacturers (SVMs), ICIs, and alternative fuel vehicle converters. The below discussion gives more detail on these categories.

#### **14.3.1.1 Vehicle Manufacturers**

In most cases, new standards for light-duty vehicles would minimally increase the costs of vehicle manufacturers to produce these vehicles. In addition to major vehicle manufacturers, SVMs are companies that sell less than 15,000 vehicles per year, as defined in past EPA regulations, and this status allows vehicle models to be certified under a slightly simpler certification process.

Using information from a preliminary assessment of the industry, EPA identified a total of 30 businesses that manufacture vehicles (including about 14 SVMs). The top 10 vehicle manufacturers comprise 97 percent of the U.S. total market (there were about 16.9 million total U.S. sales for the year 2004), while the other 20 manufacturers (including SVMs), ICIs, and converters make up the remaining 3 percent. Of the 30 manufacturers (14 SVMs included), 5 SVMs fit the SBA definition of a small entity. These five small businesses comprise about 0.01 percent of the total vehicle sales for the year 2004. Also, these businesses produce vehicles for small niche markets, and nearly all of these entities manufacture limited production, high performance cars. In addition, there are four other SVMs that EPA believes meet the SBA small-entity criterion, but since they are foreign businesses, they cannot be considered in the SBREFA work.

#### **14.3.1.2 Independent Commercial Importers**

ICIs are companies that hold a Certificate (or Certificates) of Conformity permitting them to import nonconforming vehicles and to modify these vehicles to meet U.S. emission standards. ICIs are not required meet the emission standards in effect when the vehicle is modified, but instead they must meet the emission standards in effect when the vehicle was originally produced (with an annual production cap of a total of 50 light-duty vehicles and trucks).<sup>B</sup> ICIs would likely have minimal increased cost from the new standards.

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<sup>A</sup> Sales information used for this analysis was 2004 data.

<sup>B</sup> To prevent entities from circumventing Tier 2 light-duty vehicle standards, EPA capped at 50 each ICI's annual production of vehicles meeting the original production (OP) year standards when OP year standards are less stringent than standards that apply during the year of modification. This does not impact the number of vehicles an ICI may produce that are certified to the standards that apply during the year of modification.

Currently 10 ICIs hold EPA certificates, and EPA believes all 10 of these businesses would meet the small-entity criteria as defined by SBA. In 2004, collectively they had total U.S. sales of about 300 vehicles, and thus, they comprised about 0.002 percent of the total vehicle sales. ICIs modify vehicles for a small niche market, and many of these vehicles are high performance cars.

#### **14.3.1.3 Alternative Fuel Vehicle Converters**

Alternative fuel vehicle converters are businesses that convert gasoline or diesel vehicles to operate on alternative fuel (e.g., compressed natural gas), and converters must seek a certificate for all of their vehicle models. Model year 1993 and newer vehicles that are converted are required to meet the standards applicable at the time the vehicle was originally certified. Converters would likely have minimal increased cost from the new light-duty vehicle standards.

As with SVMs and ICIs, converters serve a small niche market, and these businesses primarily convert vehicles to operate on compressed natural gas (CNG) and liquefied petroleum gas (LPG), on a dedicated or dual fuel basis. Based on information from a preliminary assessment, EPA identified a total of 10 alternative fuel vehicle converters. Together these 10 businesses had about 0.02 percent of the total vehicle sales in the U.S. for the year 2004. Out of these 10 businesses, 6 meet the SBA small-entity criteria. These 6 converters represent about 0.01 percent of the total vehicle sales. In addition, EPA believes three of the other converters fit the SBA small-entity definitions, but since they are foreign businesses, they cannot be considered in the SBREFA work.

#### **14.3.2 Description of Gasoline Refiners**

Information about the characteristics of gasoline refiners comes from sources including the Energy Information Administration within the U.S. Department of Energy, oil industry literature, and industry searches using Hoover's and Dun and Bradstreet. These refiners fall under the *Petroleum Refineries* category, NAICS code 324110.

Using our preliminary industry characterization, coupled with 2003 gasoline production data, we believe that there are about 116 domestic refineries producing gasoline (however, due to a lack of publicly available sales or employment data, some of these entities could not be confirmed for consideration in the analysis). Our current assessment is that 14 refiners, owning 16 refineries, meet SBA's employee count criterion of having 1,500 employees or less. Due to dynamics in the refining industry (i.e., mergers and acquisitions) and decisions by some refiners to enter or leave the gasoline market, the actual number of refiners producing gasoline (and, thus, the number of small refiners that ultimately qualify for small refiner status under this program) could be much different than these estimates.

### **14.3.3 Description of Portable Fuel Container Manufacturers**

For manufacturers of portable fuel containers, the SBA size thresholds are 500 employees for manufacturers of plastic containers and 1,000 employees for metal fuel containers. The NAICS codes are 326199 - *All Other Plastics Product Manufacturing* and 332431 - *Metal Can Manufacturing*. Discussions with industry and searches in databases such as LexisNexis Academic and ReferenceUSA (electronic resources) enabled EPA to determine how many businesses would be impacted by the proposed rule and may meet the small-entity criteria. The latter two sources provided sales and employment data for the parent companies of these businesses.

As discussed earlier, annual sales nationwide of portable fuel containers are about 21 million units. 98 percent are plastic containers, and 2 percent are metal. Blow molding equipment is relatively costly and large production volumes are necessary to operate profitably. These factors seem to limit the number of companies engaged in producing fuel containers. EPA has identified 9 domestic manufacturers and 1 foreign manufacturer. Of these 9 U.S. manufacturers, 8 meet the SBA definition of a small entity. One small business accounted for over 50 percent of the U.S. sales in 2002, and the other small entities comprised about 10 percent of U.S. sales.

## **14.4 Issues Raised by Public Comments**

During the public comment period we received numerous comments regarding various aspects of the proposed rule; however, we did not receive many comments on our proposed small business provisions. The comments relating to the small business provisions were mainly focused on those provisions proposed for small refiners, and are summarized below. More information on these comments can be found in the Final Summary and Analysis of Comments, which is a part of the rulemaking record.

We received comments from small refiners generally supporting the small refiner provisions. We also received comments from a few stakeholders regarding the small refiner employee count and crude capacity criteria. These commenters stated that they believed that EPA's criteria fail to provide relief to a small number of refiners whom they believe are similar in many respects to those refiners that will qualify as small under our criteria. The commenters pointed to recent Congressionally-enacted programs, specifically the Energy Policy Act of 2005 and the American Jobs Creation Act of 2004, which use definitions that are different from SBA's definition, and from the criteria that EPA is adopting in this rule. The Energy Policy Act focuses on refinery size rather than company size, and the American Jobs Creation Act focuses on refinery-only employees rather than employees company-wide. EPA has established the criteria for qualifying for small refiner relief based on the Small Business Administration's (SBA) small business definition (13 CFR 121.201). Further, we have used these criteria in previous and current fuels programs and we believe it is prudent to retain the criteria of 1,500 employees and 155,000 bpcd crude capacity limit for consistency with these programs.



We do not believe that it would be appropriate to change the small refiner employee count or crude capacity limit criteria to fit either the Energy Policy Act or the Jobs Creation Act definitions. Further, SBA established the small business standards to set apart those companies which were at an inherent economic disadvantage due to their size. We agree with SBA's assessment that refiners of this size should be afforded special consideration under regulatory programs that have a significant economic impact on them. We continue to believe that it is most appropriate to remain consistent with our previous fuels programs and retain the small refiner criteria that have been used in the past (with some minor clarifications to avoid confusion).

We also received comments from representatives of small refiners which stated that a maximum average benzene standard changes the economics of small refiner compliance and that it should (and must) be considered by an SBAR Panel before a rule is finalized. The commenters stated that they believe that the imposition of a 1.3 vol% refinery maximum average violates the Regulatory Flexibility Act because the Panel did not have the opportunity to review the impacts of such a standard on small businesses. The commenter stated that EPA needed to present the maximum average provision to the Panel for its consideration prior to including it as part of a final rule. The commenters added that the possibility of a maximum average was never raised during the Panel process and that had it been, the small refiner SERs would have opposed the concept as greatly damaging to their segment of the industry. The commenters expressed concerns with the 1.3 vol% refinery maximum average, and requested that small refiner provisions allowing flexibility in meeting this maximum average be included in the final rule. The commenters also expressed concerns such as maintaining octane levels, costs for transportation of extracted benzene, and ability to locate other treatment facilities. Lastly, the commenters stated that they have serious concerns about inability to use credits to meet levels above 1.3, thus they suggested that EPA should allow small refiners to use credits for compliance with the 1.3 vol% refinery maximum average, with either a PADD restriction on credit trading or discounting credits used to meet the 1.3 vol% standard.

We understand the commenters' concerns with regard to the comments on the small refiners' difficulty in meeting the 1.3 vol% refinery maximum average. As discussed further in section VI of the preamble to the final rule, as well as chapter 4 of the Summary and Analysis document, we disagree that adopting a refinery maximum average in the final rule without specifically presenting the option for consideration by the Panel, or without reconvening that panel, violates the requirements of the Regulatory Flexibility Act. EPA complied with all requirements under SBREFA, and we note that the statute in fact contemplates that there will be changes between proposed and final rules, and states that EPA's only procedural requirement in such a case is to describe that change in the Final Regulatory Flexibility Analysis. Further, EPA requested comment on the option of adopting a 1.3 vol% maximum average (71 FR 15869, 15903) and received comment on the issue (including from small refiners).

We do not agree with the suggestion for PADD-restricted trading. Such geographic restrictions on credit use can prove to be very problematic, and would necessitate that we set different standards in different PADDs, due to the different level of benzene reductions achievable considering cost and other factors in those PADDs. This would reduce the liquidity

of the credit trading market, and thus drive up the costs of the program. We believe that even with a maximum average standard, the combination of provisions that we are finalizing will minimize the likelihood of extreme hardship for small refiners. As discussed below in section 14.6, we are finalizing several significant relief provisions that apply specifically to small refiners, namely four years of additional lead-time to meet the 1.3 vol% maximum average (until July 1, 2016). Further, the hardship provisions that we are finalizing are available to all refiners, and these provisions could apply to situations that the commenters identified may still occur.

## **14.5 Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Regulation**

For highway light-duty vehicles, EPA is continuing the reporting, recordkeeping, and compliance requirements prescribed for this category in 40 CFR part 86. These requirements include certification requirements and provisions related to reporting of production, emissions information, flexibility use, etc. The types of professional skills required to prepare reports and keep records are also similar to the types of skills set out in 40 CFR part 86.

For any fuel control program, EPA must have assurance that fuel produced by refiners meets the applicable standard, and that the fuel continues to meet this standard as it passes downstream through the distribution system to the ultimate end user. The recordkeeping, reporting and compliance provisions we are finalizing are fairly consistent with those currently in place for other fuel programs. For example, reporting will include the submission of pre-compliance reports, which are already required under the highway and nonroad diesel fuel programs, to give EPA general information on refiners' plans and projected credit availability. Refiners will be required to submit refinery batch reports under the MSAT2 program, as they currently are for our other fuel programs. As with previous fuel regulations, small refiners will be required to apply for small refiner status and small refiner baselines. Lastly, we are requiring that all records be kept for at least five years. This recordkeeping requirement should impose little additional burden, as five years is the applicable statute of limitations for current fuel programs.

For portable fuel containers, requirements are similar to those in the California program, such as submitting emissions testing information, reporting of certification families, and use of transition provisions. For more information on the specific compliance provisions that are being finalized today, please see section VII.D of the preamble to the final rule.

Section XI.B of the preamble to the final rule includes a discussion of the estimated burden hours and costs of the recordkeeping and reporting that will be required by this final rule. Detailed information on the reporting and recordkeeping measures associated with this rulemaking are described in the Information Collection Requests (ICRs), also located in the preamble to this rulemaking: EPA ICR #0783.50 for light-duty vehicles, EPA ICR #1591.20 for fuel-related items, and EPA ICR #2213.01 for portable fuel containers.

## **14.6 Steps to Minimize Significant Economic Impact on Small Entities**

As a part of the SBREFA process, we conducted outreach to a number of small entities representing the various sectors covered in this rulemaking and convened a Panel to gain feedback and advice from these representatives. Prior to convening the Panel, we held outreach meetings with the SERs to learn the needs of small businesses and potential challenges that these entities may face. The outreach meetings also helped to provide the SERs an opportunity to gain a better understanding of the upcoming standards. The feedback that we received from SERs as a result of these meetings was used during the Panel process to develop regulatory alternatives to mitigate the impacts of the rulemaking on small businesses. General concerns raised by SERs during the SBREFA process were potential difficulty and costs of compliance with the upcoming standards.

The Panel consisted of members from EPA, the Office of Management and Budget (OMB), and the Small Business Administration's Office of Advocacy. Following the Panel convening, a Final Panel Report detailing all of the alternatives that were recommended by the Final Regulatory Support Document Panel (as well as individual Panel members) was issued. We either proposed or requested comment on the various recommendations put forth by the Panel. Below we discuss those flexibility options recommended in the Panel Report, our proposed regulatory alternatives, and those provisions which are being finalized. We are finalizing many of the provisions recommended by the Panel, with exceptions noted below. We believe that the provisions that we are finalizing will help to mitigate the burden imposed upon small entities in complying with this rule.

#### **14.6.1 Regulatory Alternatives and Hardship Provisions for Highway Light-Duty Vehicle Manufacturers**

The Panel developed a wide range of regulatory alternatives to mitigate the impacts of the rulemaking on small businesses, and recommended that we propose and seek comment on the flexibilities. Described below are the flexibility options recommended by the Panel and our proposed regulatory alternatives.

##### **14.6.1.1 Panel Recommendations**

For certification purposes, SVMs include ICIs and alternative fuel vehicle converters since they sell less than 15,000 vehicles per year. Similar to the flexibility provisions implemented in the Tier 2 rule, the Panel recommended that we allow SVMs (includes all vehicle small entities that would be affected by this rule, which are the majority of SVMs) the following flexibility options for meeting cold temperature VOC standards and evaporative emission standards:

For cold VOC standards, the Panel recommended that SVMs simply comply with the standards with 100 percent of their vehicles during the last year of the four-year phase-in period. For example, if the standard for light-duty vehicles and light light-duty trucks (0 to 6,000 pounds GVWR) were to begin in 2010 and end in 2013 (25%, 50%, 75%, 100% phase-in over 4 years), the SVM provision would be 100 percent in 2013. If the standard for heavy light-duty trucks and

medium-duty passenger vehicles (greater than 6,000 pounds GVWR) were to start in 2012 (25%, 50%, 75%, 100% phase-in over four years), the SVM provision would be 100 percent in 2015.

In regard to evaporative emission standards, the Panel recommended that since the evaporative emissions standards will not have phase-in years, we allow SVMs to simply comply with standards during the third year of the program (we have implemented similar provisions in past rulemakings). For a 2009 start date for light-duty vehicles and light light-duty trucks, SVMs would need to meet the evaporative emission standards in 2011. For a 2010 implementation date for heavy light-duty trucks and medium-duty passenger vehicles, SVMs would need to comply in 2012.

In addition, the Panel recommended that hardship flexibility provisions be extended to SVMs for the cold temperature VOC and evaporative emission standards. The Panel recommended that SVMs be allowed to apply (EPA would need to review and approve application) for up to an additional 2 years to meet the 100 percent phase-in requirements for cold VOC and the delayed requirement for evaporative emissions. Appeals for such hardship relief must be made in writing, must be submitted before the earliest date of noncompliance, must include evidence that the noncompliance will occur despite the manufacturer's best efforts to comply, and must include evidence that severe economic hardship will be faced by the company if the relief is not granted.

#### **14.6.1.2 What We Proposed**

For cold VOC standards, we proposed the Panel's recommendation that SVMs comply with the standards with 100 percent of their vehicles during the last year of the four-year phase-in period, which would be 100 percent in model year 2013. Also, since the proposed standard for heavy light-duty trucks and medium-duty passenger vehicles would start in 2012 (25%, 50%, 75%, 100% phase-in over four years), we proposed that the SVM provision would be 100 percent in model year 2015.

We agreed with the Panel's recommendation regarding evaporative emission standards, therefore, for a 2009 model year start date for light-duty vehicles and light light-duty trucks, we proposed that SVMs meet the evaporative emission standards in model year 2011. For a model year 2010 implementation date for heavy light-duty trucks and medium-duty passenger vehicles, we proposed that SVMs comply in model year 2012.

Although the SBAR panel did not specifically recommend it, we also proposed to allow ICIs to participate in the averaging, banking, and trading program for cold temperature NMHC fleet average standards (as described in Table VI.B-1 of the preamble), but with appropriate constraints to ensure that fleet averages will be met. The existing regulations for ICIs specifically bar ICIs from participating in emission related averaging, banking, and trading programs unless specific exceptions are provided (see 40 CFR 85.1515(d)). The concern is that they may not be able to predict their sales and control their fleet average emissions because they are dependent upon vehicles brought to them by individuals attempting to import uncertified vehicles. However, an exception for ICIs to participate in an averaging, banking, and trading

program was made for the Tier 2 NO<sub>x</sub> fleet average standards, and thus we proposed to apply a similar exception for the cold temperature NMHC fleet average standards.

If an ICI is able to purchase credits or to certify a test group to a family emission level (FEL) below the applicable cold temperature NMHC fleet average standard, we would permit the ICI to bank credits for future use. Where an ICI desires to certify a test group to a FEL above the applicable fleet average standard, we would permit them to do so if they have adequate and appropriate credits. Where an ICI desires to certify to an FEL above the fleet average standard and does not have adequate or appropriate credits to offset the vehicles, we would permit the manufacturer to obtain a certificate for vehicles using such a FEL, but would condition the certificate such that the manufacturer can only produce vehicles if it first obtains credits from other manufacturers or from other vehicles certified to a FEL lower than the fleet average standard during that model year.

We do not believe that ICIs can predict or estimate their sales of various vehicles well enough to participate in a program that would allow them leeway to produce some vehicles to a higher FEL now but sell vehicles with lower FELs later, such that they were able to comply with the fleet average standard. We also cannot reasonably assume that an ICI that certifies and produces vehicles one year would certify or even be in business the next. Consequently, we proposed that ICIs not be allowed to utilize the deficit carry-forward provisions of the proposed ABT program.

We proposed the Panel recommendation that hardship provisions be extended to SVMs for the cold temperature NMHC and evaporative emission standards as an aspect of determining the greatest emission reductions feasible. These entities could, on a case-by-case basis, face hardship more than major manufacturers (manufacturers with sales of 15,000 vehicles or more per year). We proposed this provision to provide what could prove to be a needed safety valve for these entities, and we are proposing that SVMs would be allowed to apply for up to an additional 2 years to meet the 100 percent phase-in requirements for cold NMHC and the delayed requirement for evaporative emissions. As with hardship provisions for the Tier 2 rule, we proposed that appeals for such hardship relief must be made in writing, must be submitted before the earliest date of noncompliance, must include evidence that the noncompliance will occur despite the manufacturer's best efforts to comply, and must include evidence that severe economic hardship will be faced by the company if the relief is not granted.

#### **14.6.1.3 Provisions Being Finalized in this Rule**

We are finalizing, as proposed, that the SVM provision will be 100 percent in model years 2013 and 2015. For a 2009 model year start date for LDVs and LLDTs, we are finalizing that SVMs must meet the evaporative emission standards in model year 2011. For a model year 2010 implementation date for HLDTs and MDPVs, we are finalizing that SVMs must comply in model year 2012.

We are also finalizing the proposed provision that ICIs may participate in the averaging, banking, and trading program for cold temperature NMHC fleet average standards, but with

appropriate constraints to ensure that fleet averages will be met. Further, we are finalizing that ICIs not be allowed to utilize the deficit carry-forward provisions of the ABT program.

Lastly, we are finalizing the proposed hardship provisions described above. Sections V.E.1 through V.E.3 of the preamble to the final rule contain more detailed discussions on provisions for small volume manufacturers.

## **14.6.2 Regulatory Alternatives and Hardship Provisions for Gasoline Refiners**

### **14.6.2.1 Panel Recommendations**

Discussed below are the options that the Panel recommended during the SBREFA process.

#### *Delay in Standards*

The Panel recommended that a four-year delay period should be proposed for small refiners. Such a delay would be needed in order to allow for a review of the ABT program, as discussed below, to occur one year after implementation but still three years prior to the small refiner compliance deadline. It was also noted that a delay option would also allow for small refiners to be able to expand their production capacity. The Panel supported allowing for refinery expansion and recommended that refinery expansion be provided for in the rule.

#### *Early ABT Credits*

The Panel recommended that early credit generation be afforded to small refiners that take some steps to meet the benzene requirement prior to the effective date of the standard. Depending on the start date of the program, and coupled with the four-year delay option, a small refiner could have a total credit generation period of five to seven years. The Panel also stated that it supports allowing refiners (small, as well as non-small, refiners) to generate credits for reductions to their benzene emissions levels (unlike prior fuels programs which have given early credits only to refiners who have fully met the applicable standard early).

#### *Extended Credit Life*

The Panel recommended that EPA propose a program that does not place a limit on credit life. During Panel discussions, it was noted that some Panel members were not in support of limited credit life for the general program. When the Final Panel Report was written, EPA intended to proceed with a proposal that did not place a limit on credit life; therefore the Panel did not make a specific recommendation on the concept of extended credit life. However, based on discussions during the Panel process, the Panel would have recommended that extended credit life be offered to small refiners if the general ABT program were to include a limit on credit life.

#### *Program Review*

The Panel recommended a review of the credit trading program and small refiner flexibility options one year after the general program starts. Such a review could take into account the number of early credits generated, as well as the number of credits generated and sold during the first year of the program. Further, requiring the submission of pre-compliance reports from all refiners would likely aid EPA in assessing the ABT program prior to performing the review. The Panel noted that, combined with the recommended four-year delay, a review after the first year of the program would still provide small refiners with the three years that it was suggested would be needed for these refiners to obtain financing and perform engineering and construction for benzene reduction equipment. Should the review conclude that changes to either the program or the small refiner provisions are necessary, the Panel recommended that EPA also consider some of the suggestions provided by the small refiners (their comments are located in Appendix E of the Final Panel Report), such as:

- the general MSAT program should require pre-compliance reporting (similar to EPA's highway and nonroad diesel rules);
- following the review, EPA should revisit the small refiner provisions if it is found that the credit trading market does not exist, or if credits are only available at a cost that would not allow small refiners to purchase credits for compliance; and,
- the review should offer ways either to help the credit market, or help small refiners gain access to credits (e.g., EPA could 'create' credits to introduce to the market, EPA could impose additional requirements to encourage trading with small refiners, etc.).

In addition, the Panel recommended that EPA consider in this rulemaking establishing an additional hardship provision to assist those small refiners that cannot comply with the MSAT with a viable credit market. (This suggested hardship provision was also suggested by the small refiners in their comments, located in Appendix E of the Final Panel Report). This hardship provision could address concerns that, for some small refineries, compliance may be technically feasible only through the purchase of credits and it may not be economically feasible to purchase those credits. This flexibility could be provided to a small refiner on a case-by-case basis following the review and based on a summary, by the refiner, of technical or financial infeasibility (or some other type of similar situation that would render its compliance with the standard difficult). This hardship provision might include further delays and/or a slightly relaxed standard on an individual refinery basis for a duration of two years; in addition, this provision might allow the refinery to request, and EPA grant, multiple extensions of the flexibility until the refinery's material situation changes. The Panel also stated that it understood that EPA may need to modify or rescind this provision, should it be implemented, based on the results of the program review.

During the Panel process, we stated that we intended to propose the extreme unforeseen circumstances hardship and extreme hardship provisions (for all gasoline refiners and importers), similar to those in prior EPA fuels programs. A hardship based on extreme unforeseen circumstances would 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 would

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. The Panel agreed with the proposal of such provisions and recommended that we include them in the MSAT rulemaking.

#### **14.6.2.2 What We Proposed**

In general, we proposed the Panel's recommended regulatory flexibility provisions. The following is a discussion of the proposed provisions, as well as an additional provision that we proposed based on additional analysis following the SBREFA Panel process.

##### *Delay in Standards*

We proposed the Panel's recommendation that small refiners be allowed to postpone compliance with the proposed benzene standard until January 1, 2015, which is four years after the general program begins. While all refiners are allowed some lead time before the general proposed program begins, we believe that in general small refiners would still face disproportionate challenges. Previous EPA fuel programs have included two to four year delays in the start date of the effective standards for small refiners, consistent with the lead time we believe appropriate here. The proposed four-year delay for small refiners would help mitigate these challenges. Further, a four-year delay would be needed in order to allow for a review of the ABT program, as discussed below, to occur one year after the general MSAT program implementation but still roughly three years prior to the small refiner compliance deadline.

##### *Early ABT Credit Generation Opportunities*

We are proposing the Panel's recommendation that early credit generation be afforded to small refiners that take steps to meet the benzene requirement prior to their effective date. While we have anticipated that many small refiners would likely find it more economical to purchase credits for compliance, some have indicated they will make reductions to their gasoline benzene levels to meet the proposed benzene standard. Further, a few small refiners indicated that they would likely do so earlier than would be required by the January 1, 2015 proposed small refiner start date. Small refiner credit generation would be governed by the same rules as the general program, described in the preamble to the proposed rule in Section VII.E. The only difference is that small refiners would have an extended early credit generation period of up to seven years. Early credits could be generated by small refiners making qualifying reductions from June 1, 2007 through December 31, 2014, after which program credits could be generated indefinitely for those that over-comply with the standard.

##### *Extended Credit Life*

As discussed in the preamble, we proposed a limit on credit life. However, in order to encourage the trading of credits to small refiners and increase the certainty that credits would be available (as it would provide a viable outlet for credits facing expiration), we proposed that the useful life of credits be extended by 2 years if they are generated or



used by small refiners. This is meant to directly address concerns expressed by small refiners during the Panel process that they would be unable to rely on the credit market to avoid large capital costs for benzene control. While this flexibility option was not specifically recommended by the Panel, we believe that the Panel would be in support of such an option.

#### ABT Program Review

We proposed the Panel's recommendation that a review of the ABT program be performed within the first year of the general MSAT program (i.e., by 2012). To aid the review, we also proposed the requirement that all refiners submit refinery pre-compliance reports annually beginning June 1, 2008. In order for EPA to carry out this review, we believe that refiners' 2011 annual compliance report would also need to contain additional information, including credits generated, credits used, credits banked, credit balance, cost of credits purchased, and projected credit generation and use through 2015. When combined with the four-year delay option, this would afford small refiners with the knowledge of the credit trading market's status before they would need to invest capital.

As suggested by the Panel, we requested comment on elements to be included in the ABT program review, and suggested actions that could be taken following such a review. Such elements could include:

- Revisiting the small refiner provisions if it is found that the credit trading market does not exist to a sufficient degree to allow them to purchase credits, or that credits are only available at a cost-prohibitive price.
- Options to either help the credit market, or help small refiners gain access to credits.

In addition, we proposed the Panel's recommendation of the inclusion of an additional hardship provision that could be applied for following, and based on the results of, the ABT program review.

We did in fact propose the two hardship provisions stated above that the Panel recommended (the extreme unforeseen circumstances hardship and extreme hardship provisions). In addition, we proposed that these hardship provisions would be available to all refiners, regardless of size. These provisions would, at our discretion, permit a refiner to seek a temporary waiver from the MSAT benzene standard under certain rare circumstances.

#### **14.6.2.3 Provisions Being Finalized in This Rule**

We are finalizing a four-year period of additional lead time for small refiners to comply with the 0.62 vol% benzene requirement, until January 1, 2015. Consistent with the general program allowance of an additional 18 months (beyond the 0.62 vol% benzene standard compliance date) for compliance with the 1.3 vol% refinery maximum average, we are also finalizing 18 months of additional lead-time for small refiners to comply with the 1.3 vol% maximum average, until July 1, 2016 (and thus, small refiners will also receive an additional four years of lead-time from the general program start date for the 1.3 vol% refinery maximum

average). We believe that this lead-time will provide these refiners with sufficient time to complete any necessary capital projects.

We are also finalizing the early credit generation provision for small refiners. This is similar to the general early credit generation provision that is provided to all refiners, except that small refiners may generate early credits until January 1, 2015. As discussed further in section VI.A.2.b.ii of the preamble to the final rule, refineries must reduce their 2004-2005 benzene levels by at least ten percent to generate early credits. This ten percent threshold is being set to ensure that changes in gasoline benzene levels are representative of real refinery process improvements, not just normal fluctuations in benzene level at a given refinery (allowed under MSAT1). The small refiner early credit generation period will be from June 1, 2007 to December 31, 2014, after which credits may be generated indefinitely for those that overcomplied with the standard. We are finalizing a modified version of the proposed extended credit life provision. The two-year credit life extension will pertain to standard credits only (since refiners already have an incentive to trade early credits to small refiners), and the extension will only apply to those standard credits traded to small refiners. There is no need to extend credit life for credits generated by small refiners, because in this event, the small refiner would already have the utmost certainty that the credits would be available for use.

We are also finalizing as proposed the ABT program review after the first year of the overall program. In part to support this review, we are requiring that refiners submit pre-compliance reports, similar to those required under the highway and nonroad diesel programs. If, following the review, EPA finds that the credit market is not adequate to support the small refiner provisions, we will revisit the ABT provisions to determine whether or not they should be altered or whether EPA can assist the credit market (and small refiners' access to credits) to enable a successful ABT program. We are finalizing an additional hardship provision to assist small refiners if it is found that some small refiners still cannot comply with the benzene standard even with a viable credit market. This hardship provision would be for the case of a small refiner for which compliance with the 0.62 vol% benzene standard would be feasible only through the purchase of credits, but it was not economically feasible for the refiner to do so. This hardship provision will only be afforded to a small refiner on a case-by-case basis, and will only be available following the ABT program review. The hardship application must be based on a summary by the refiner of the practical or financial difficulty with compliance with the 0.62 vol% benzene standard (or some other type of similar situation that would render its compliance with the standard) difficult. The relief offered under this hardship provision is a further delay, on an individual refinery basis, for up to two years. Following the two years, a small refiner will be allowed to request one or more extensions of the hardship until the refinery's material situation has changed.

We are finalizing the extreme hardship provision and the extreme unforeseen circumstances hardship provision with some modifications, as this final rule includes a 1.3 vol% refinery maximum average benzene standard. As discussed in more detail in section VI.A.3.b of the preamble to the final rule, relief will be granted on a case-by-case basis, however it may differ somewhat depending upon whether a refiner applies for hardship relief for the 0.62 vol% benzene standard or for the 1.3 vol% refinery maximum average standard. This is partly due to

the fact that a refiner may use credits to meet the 0.62 vol% benzene standard, but credits cannot be used for compliance with the 1.3 vol% refinery maximum average.

Extreme hardship circumstances could exist based on severe economic or physical lead time limitations of the refinery to comply with the required benzene standards at the start of the program. For relief from the 0.62 vol% benzene standard in extreme hardship circumstances, relief will likely be in the form of an extension of the one-year deficit carry-forward allowed by the rule. Hardship relief from the 1.3 vol% refinery maximum average benzene standard in extreme hardship circumstances would consist of additional time to comply with the 1.3 vol% refinery maximum average. Refiners must apply by January 1, 2008 (or, January 1, 2013 for approved small refiners) for extreme hardship relief from the 1.3 vol% refinery maximum average, as this provision is intended to address unusual circumstances that should be apparent now or well before the effective date of the standard.

The extreme unforeseen circumstances hardship is available to both refiners and importers, and is intended to provide relief in extreme and unusual circumstances outside the refiner or importer's control that could not have been avoided through the exercise of due diligence. Hardship relief for the 0.62 vol% benzene standard will allow a deficit to be carried forward for an extended, but limited, time period (more than the one year allowed by the rule). Hardship relief from the 1.3 vol% refinery maximum average benzene standard based on unforeseen circumstances will be granted on a case-by-case basis, following an assessment of the hardship application.

### **14.6.3 Portable Fuel Container Manufacturers**

#### **14.6.3.1 Panel Recommendations**

Since nearly all portable fuel container manufacturers are small entities and they account for about 60 percent of sales, the Panel suggested that the flexibility options be offered to all portable fuel container manufacturers. The flexibilities that the Panel recommended are detailed below.

##### *Design Certification*

The Panel recommended that we propose to permit portable fuel container manufacturers to use design certification in lieu of running any or all of the durability aging cycles. Manufacturers could demonstrate the durability of their portable fuel containers based in part on emissions test data from designs using the same permeation barriers and materials. Under a design-based certification program a manufacturer would provide evidence in the application for certification that their container would meet the applicable standards based on its design (e.g., use of a particular permeation barrier). The manufacturer would submit adequate engineering and other information about its individual design such that EPA could determine that the emissions performance of their individual design would not be negatively impacted by slosh, UV exposure, and/or

pressure cycling (whichever tests the manufacturer is proposing to not run prior to emissions testing).

### *Broaden Certification Families*

This approach would relax the criteria used to determine what constitutes a certification family. It would allow small businesses to limit their certification families (and therefore their certification testing burden), rather than testing all of the various size containers in a manufacturer's product line. Some small entities may be able to put all of their various size containers into a single certification family. Manufacturers would then certify their containers using the "worst case" configuration within the certification family. To be grouped together, containers would need to be manufactured using the same materials and processes even though they are of different sizes. The Panel recommended that EPA propose this approach.

### *Additional Lead-time*

It was recognized that time would be needed for the portable fuel container SERs to gather information to fully evaluate whether or not additional lead-time might be needed beyond the proposed 2009 start date, the Panel recommended that we discuss lead-time in the proposal and request comment on the need for additional lead-time to allow manufacturers to ramp up to a nationwide program.

### *Product Sell-through*

As with past rulemakings for other source sectors, the Panel recommended that EPA propose to allow normal sell through of portable fuel containers as long as manufacturers do not create stockpiles of noncomplying portable fuel containers prior to the start of the program.

Following the SBREFA process, the Panel recommended that we propose two types of hardship programs for small portable fuel container manufacturers. These suggested provisions were:

- Allow small manufacturers to petition EPA for limited additional lead-time to comply with the standards. A manufacturer would have to make the case that it has taken all possible business, technical, and economic steps to comply but the burden of compliance costs or would have a significant adverse effect on the company's solvency. Hardship relief could include requirements for interim emission reductions. The length of the hardship relief would be established during the initial review and would likely need to be reviewed annually thereafter.
- Permit small manufacturers to apply for hardship relief if circumstances outside their control cause the failure to comply (i.e., supply contract broken by parts supplier) and if failure to sell the subject containers would have a major impact on the company's solvency. The terms and timeframe of the relief would depend on the

specific circumstances of the company and the situation involved. As part of its application, a company would be required to provide a compliance plan detailing when and how it would achieve compliance with the standards under both types of hardship relief.

#### **14.6.3.2 What We Proposed**

Based upon the comments received from portable fuel container small entity representatives during the SBREFA Panel process, we decided to propose the Panel-recommended flexibility and hardship provisions for portable fuel container manufacturers. As stated previously, nearly all portable fuel container manufacturers (8 of 10 manufacturers as defined by SBA) are small entities and they account for about 60 percent of sales, the Panel recommended to extend the flexibility options and hardship provisions to all portable fuel container manufacturers, thus we proposed that these flexibilities be offered to all portable fuel container manufacturers. Moreover, implementation of the program would be much simpler by doing so.

Further, we proposed that the two types of hardship provisions recommended by the Panel be extended to portable fuel container manufacturers.

#### **14.6.3.3 Provisions Being Finalized in This Rule**

We are finalizing, as proposed, the flexibility provisions described above for portable fuel container manufacturers. We are also finalizing the hardship provisions described above for these entities. These entities could, on a case-by-case basis, face hardship, and we are finalizing these provisions to provide what could prove to be needed safety valves for these entities. For both types of hardship provisions, the length of the hardship relief will be established, during the initial review, for not more than one year and will be reviewed annually thereafter as needed. Section VII.F of the preamble to the final rule contains a more detailed discussion of these hardship provisions.

### **14.7 Related Federal Rules**

The primary federal rules that are related to this rule are the first mobile source air toxics rule (66 FR 17230, March 29, 2001), the Tier 2 Vehicle/Gasoline Sulfur rulemaking (65 FR 6698, February 10, 2000), the fuel sulfur rules for highway diesel (66 FR 5002, January 18, 2001) and nonroad diesel (69 FR 38958, June 29, 2004), the Reformulated Gasoline and Anti-dumping rule (59 FR 7813 and 59 FR 7860, February 16, 1994), and the Cold Temperature Carbon Monoxide Rulemaking (57 FR 31888, July 17, 1992).

In addition, the Evaporative Emissions Streamlining Direct Final Rulemaking was issued on December 8, 2005 (70 FR 72917). For portable fuel containers, the Occupational Safety and Health Organization (OSHA) has safety regulations for gasoline containers used in workplace settings. Containers meeting OSHA requirements, commonly called safety cans, are exempt

from the California program, and EPA is planning to exempt them from the EPA program.

Section 1501 of the Energy Policy Act of 2005 (EPAct) requires that EPA implement a Renewable Fuels Standard (RFS) program. Beginning in 2006, this program will require increasing volumes of renewable fuel to be used in gasoline, until a total of 7.5 billion gallons is required in 2012. The most prevalent renewable fuel to be used in gasoline is expected to be ethanol.

There are a wide variety of potential impacts of ethanol blending on MSAT emissions that will be evaluated as part of the RFS rulemaking process. In general, as ethanol use increases, other sources of octane in gasoline can decrease. Depending on these changes, the impact on benzene emissions will vary. The specific effects of ethanol on benzene are addressed in this Regulatory Impact Analysis, and will also be addressed and in future rulemakings such as the RFS rule.

## **14.8 Conclusions**

Throughout the entire rulemaking process, we conducted substantial outreach-- including convening a Panel during the SBREFA process as well as meetings with other stakeholders-- to gather information about the effect of this final rule on small entities. We used this information, and performed cost-to-sales ratio tests (a ratio of the estimated annualized compliance costs to the value of sales per company) to determine the impacts of the rule on small entities.

In regard to the highway light-duty manufacturers, we found that small vehicle entities (which include manufacturers, ICIs and converters) in general would likely be impacted similarly as large entities. As we discussed earlier in Chapter 5 (Vehicle Feasibility) and Chapter 8 (Vehicle Costs), we are aligning the EPA evaporative emission standards with California LEV II standards, and essentially all manufacturers certify 50-state evaporative systems that meet both sets of standards. We do not expect additional costs from this requirement since we expect that manufacturers will continue to produce 50-state evaporative systems. In limited cases where vehicle small entities may not currently produce 50-state systems, the flexibilities and hardship relief for small entities, as described earlier, will reduce the burden on these entities.

In addition, as described earlier in Chapters 5 and 8, the cold temperature exhaust (VOC) emission standards for light-duty vehicles can be achieved through calibration alone. It will only require up-front research and development costs, and certification burden is likely to be small due to existing cold carbon monoxide testing requirements. Therefore, the new cold temperature VOC standard is expected to add less than \$1 on average to the cost of vehicles. In general, small vehicle entities will likely experience similar impacts as large entities. Also, as described earlier, the flexibility and hardship provisions will reduce the burden of the new cold VOC standard on small vehicle entities.

With respect to small refiners, these entities in general would likely experience a significant and disproportionate financial hardship in complying with the requirements in this rule. Refinery

modeling (of all refineries), indicates higher refining costs for small refiners. Chapter 9 of this RIA contains a detailed discussion of our analysis and projected costs for U.S. refiners in complying with the benzene control program.

Of the small refiners with publicly available sales data, we were able to estimate annual costs, and use this information to complete a cost-to-sales ratio test. Our current estimate for the 14 small refiners (owning 16 refineries) that we believe will be subject to this rulemaking is as follows: 37.5 percent (6 refineries) would be affected at less than 1 percent of their sales (i.e., the estimated costs of compliance with the proposed rule would be less than 1 percent, of their sales), 37.5 percent (6 refineries) would be affected at greater than 1 percent but less than 3 percent, and 25 percent (4 refineries) would be affected at greater than 3 percent of their sales. Therefore, we believe that the flexibility provisions are necessary to help mitigate these impacts to small refiners. Our cost analysis, however, does not consider benzene control options which could dramatically reduce compliance costs for these small refineries, particularly those refineries affected by the 1.3 vol% maximum average standard. The costs for these small refineries are high because of their poorer economies of scale for installed capital. We believe that these refiners can avoid high per-gallon costs by installing a reformate splitter. The reformate splitter is a relatively low capital and operating cost unit that would allow them to remove a benzene-rich stream from the rest of their reformate, resulting in a final gasoline that would be in compliance with the maximum average standard. The benzene-rich stream can be sold to another refinery with gasoline benzene levels below the cap standard and so can absorb this small benzene-rich volume. This sort of trading is similar to the credit trading program, except that actual benzene is being traded instead of paper credits.

For portable fuel containers, as discussed earlier, nearly all manufacturers are small entities, thus the flexibility and hardship provisions afforded in this rule will be offered to all portable fuel container manufacturers. Moreover, small portable fuel container manufacturers will likely be impacted by the new standards similarly as the large manufacturers. Automatically-closing spouts and permeation control are expected to be utilized to meet the evaporative emissions standard for portable fuel containers. As discussed in Chapters 10 (Portable Fuel Container Costs) and Chapter 13 (Economic Impact Analysis), all portable fuel containers range in price from \$3 to \$7, and the added variable and fixed costs for the new portable fuel containers with auto-close spouts and permeation control is estimated to be about \$2.70 per unit on average. We continue to believe that manufacturers will be able to pass on these costs without a significant impact on portable fuel container sales. In addition, the flexibilities and hardship relief for all portable fuel container manufacturers would reduce the burden of the new standards on small and large manufacturers.