



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
NATIONAL VEHICLE AND FUEL EMISSIONS LABORATORY
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OFFICE OF
AIR AND RADIATION

December 6, 2016

SUBJECT: Financial and Other Information to Be Submitted with 2016 RFS Small Refinery Hardship Exemption Requests

The Clean Air Act (“CAA” or “the Act”) includes a provision that allows small refineries to petition the EPA for an exemption from their federal Renewable Fuels Standard (“RFS”) requirements. The EPA may only grant such petitions if it finds that the small refinery will experience a “disproportionate economic hardship” from compliance with its RFS obligations. The purpose of this correspondence is to provide information about the petition submission process for small refineries seeking exemptions from their 2016 RFS obligations. The correspondence also includes information regarding the kinds of financial and other information the EPA will need to evaluate a petitioning small refinery’s request. We also provide a summary of how the EPA has conducted, and will continue to conduct, its evaluation.

Background

The CAA exempted all small refineries from the RFS program until calendar year 2011, and permits the EPA to extend the exemption for a small refinery that would experience a “disproportionate economic hardship” if required to comply with its RFS requirements.¹ A small refinery is one with an average crude oil input no greater than 75,000 barrels per day (bpd) crude in 2006.² Subsequent revisions to the RFS program regulations further limit small refineries’ eligibility to petition to those having an average aggregate daily crude oil throughput no greater than 75,000 bpd in the most recent full calendar year prior to submitting a petition. In addition, the petitioner cannot be projected to exceed the 75,000 bpd threshold in the year or years for which it is seeking an exemption.³

The EPA regulations require that a small refinery petition specify the factors that demonstrate a “disproportionate economic hardship,” provide a detailed discussion regarding the hardship the small refinery would face in meeting its RFS obligations, and identify the date by which the small refinery anticipates that compliance with its RFS obligations can reasonably be achieved.⁴

Petition Evaluation and Content

In reviewing small refinery petitions, the EPA will continue to assess whether a small refinery would face a “disproportionate economic hardship” if required to comply with its RFS obligations. A small refinery is most likely to experience a “disproportionate economic hardship” from its RFS requirements when it faces “a high cost of compliance relative to the industry average, and an effect sufficient to cause a significant impairment of the

¹ CAA § 211(o)(9)(A)(i); CAA § 211(o)(9)(B)(i).

² CAA § 211(o)(1)(K).

³ 40 CFR 80.1441(e)(2)(iii).

⁴ 40 CFR 80.1441(e)(2)(i).

refinery operations.”⁵ Specifically, “disproportionate economic hardship” encompasses an impact on “the ability of the [refinery] to remain competitive and profitable.”⁶ The EPA therefore considers whether the petitioning small refinery will remain competitive and profitable while satisfying its RFS obligations.

The EPA, in consultation with the Department of Energy (DOE), considers the findings of the DOE Small Refinery Study and a variety of economic factors in evaluating petitions. For example, in assessing whether or not a small refinery faces a “disproportionate economic hardship” from compliance with its RFS obligations, the EPA independently reviews the information a small refinery submits. The EPA also analyzes other economic factors including, but not limited to, profitability, net income, cash flow and cash balances, gross and net refining margins, ability to pay for small refinery improvement projects, corporate structure, debt and other financial obligations, RIN prices, and the cost of compliance through RIN purchases. To enable this analysis, petitioning small refineries should submit detailed financial and operational information to support a claim of “disproportionate economic hardship” from compliance with their RFS obligations. Typical documentation would include accurate and up-to-date financial statements that are prepared according to generally accepted accounting principles. Documentation may also include loan covenants and restrictions affecting the purchase of RINs, a discussion of local impediments to blending, a discussion of local market conditions negatively impacting a refinery’s ability to comply with its RFS obligations, a discussion of the extent of RFS compliance costs relative to refinery operating margins and capital expenditures, and any documentation of the effect of 2016 RFS compliance costs on the ability of the refinery to remain financially viable and profitable. Financial statements should include RFS compliance costs for the year of the petition. Petitions should also describe the small refinery’s plan for achieving compliance in the future.

Timing of small refinery petition evaluations for 2016 necessitates a slightly different evaluation process compared to the petition evaluation process for 2014 and 2015. In particular, financial data may not be available in time for petitioners to provide full-year financial information for 2016 and still enable the EPA to issue decisions before the 2016 compliance deadline of March 31, 2017. Petitions should include the following financial data:

- Full calendar-year financial data for 2013, 2014, and 2015;
- Full calendar year gross and net refining margins for 2013, 2014, and 2015;
- Aggregate financial data for the first three quarters (Q1, Q2, and Q3) of calendar-year 2016; and
- Aggregate calculated gross and net refining margins for the first three quarters (Q1, Q2, and Q3) of calendar-year 2016.

EPA also welcomes any relevant 2016 fourth quarter (Q4) information that petitioners can provide with confidence. All information submitted needs to be accurate and true to the best of the petitioner’s knowledge.

Additionally, a complete petition will also include the narratives, analyses, and other information the EPA needs for evaluating whether RFS compliance would cause the small refinery “disproportionate economic hardship.” The EPA recommends complete petitions be submitted as soon as possible to enable the EPA to conduct its evaluation and issue a decision prior to the 2016 compliance deadline of March 31, 2017. The EPA will acknowledge receipt of petitions and will communicate with petitioners as to whether their submission includes the necessary materials, and will also communicate with petitioners when the EPA considers a petition to be complete. The EPA generally will not act on incomplete petitions. The EPA will consult with DOE during its

⁵ “Small Refinery Exemption Study, An Investigation into Disproportionate Economic Hardship,” Office of Policy and International Affairs, U.S. Department of Energy, March 2011 (DOE Small Refinery Study), pg. 3; *Hermes Consol., LLC. v. EPA*, 787 F.3d 568, 575 (D.C. Cir. 2015); *Lion Oil Co. v. EPA*, 792 F.3d 978, 984 (8th Cir. 2015). Since 2011, when the EPA began evaluating small refinery petitions, the EPA has adopted the interpretation of “disproportionate economic hardship” set forth in the DOE Small Refinery Study.

⁶ DOE Small Refinery Study, at pg. 27; *Hermes Consol.* at 575; *Lion Oil* at 984.

evaluation of each petition, and all petition documentation will be shared with DOE. The EPA intends to act on completed petitions within 90 days of the submission of a complete petition.

We suggest that petitioners, including small refineries that have already submitted a 2016 petition, review the information in this correspondence and update the submissions accordingly, especially with the financial information described above and with updated RFS compliance cost estimates that include the most recent cost data available.

Petitioning small refineries should always presume that they are subject to the requirements of the RFS program and include RFS compliance in their overall planning.

Petition Submission

A small refinery may submit an electronic copy of its petition and all supporting materials to Brent Williams at williams.brent@epa.gov. A hard copy of the petition and all supporting materials may be submitted to:

Attn: RFS Program
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Mail Code 6405A
Washington, DC 20460

We believe that the information provided here will enhance the small refinery petition process. If you have any questions, please send an email to complianceinfo@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Byron Bunker", is written over the typed name and title.

Byron Bunker, Director
Compliance Division
Office of Transportation and Air Quality