



Frank J. Macchiarola
Group Director
Downstream & Industry Operations

1220 L Street, NW
Washington, DC 20005-4070
USA
Telephone 202-682-8167
Fax 202-682-8051
Email MacchiarolaF@api.org
www.api.org

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The Honorable William Wehrum
Assistant Administrator
U.S. Environmental Protection Agency
Office of Air and Radiation
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Transmitted via email

Re: Renewable Fuel Standard Program: Requests for Waivers and Exemptions

Dear Assistant Administrator Wehrum,

The burden of the Renewable Fuel Standard (RFS) program impacts the entire refining sector with costs that are ultimately borne by consumers. For years, the American Petroleum Institute (API)¹ has recommended that EPA should establish RFS standards that are consistent with the ability of the fuels marketplace to consume the required volumes of renewable fuels. When the RFS volume standards exceed the limits of the fuel distribution system and the vehicle fleet, significant market disruptions occur, and the overall cost of the program increases. The economic impact of high volume standards is felt across the marketplace.

Recently, arguments have been made that certain obligated parties are experiencing economic harm and are structurally disadvantaged by the RFS. Two specific examples are: 1) RFS waiver requests submitted by the states of Pennsylvania, New Mexico, Texas, and Delaware²; and 2) reports of small refinery exemption petitions. API does not agree with these arguments. Any RFS volume reductions contemplated by the agency must maintain a level playing field in the marketplace, and must apply equally across the whole refining sector. The ongoing issues with the RFS program are structural in nature, apply to all regulated parties, and need to be addressed on a nationwide basis. API recommends that EPA should deny the state waivers and should not approve any small refinery exemptions.

¹ The American Petroleum Institute (API) is the national trade association that represents all aspects of America's oil and natural gas industry. Our more than 625 corporate members - from the large major oil and gas companies to the small independents - come from all segments of the industry. They are producers, refiners, suppliers, marketers, pipeline operators and marine transporters as well as service and supply companies that support all segments of the industry. They provide most of the nation's energy and are backed by a growing grassroots movement of more than 30 million Americans. As refiners and importers of transportation fuels, our member companies are obligated parties under the Renewable Fuel Standard (RFS) program and subject to its requirements.

² Pennsylvania – Wolf, Tom. "Petition for RFS Waiver Under CAA Section 211(o)(7)(A)(i)." November 2, 2017
New Mexico – Martinez, Susana. "Petition for RFS Waiver Under CAA Section 211(o)(7)(A)." November 22, 2017
Texas – Abbott, Greg. Letter to The Honorable Scott Pruitt. December 1, 2017
Delaware – Carney, John. "Petition for RFS Waiver under CAA Section 211(o)(7)(A)(i)." January 30, 2018

Regarding the state waiver requests, the Clean Air Act (CAA) provides EPA authority to waive the RFS requirements when the standards cause “severe harm to the economy or the environment” or when there is “inadequate domestic supply.”³ The individual waiver requests rely on the claim of economic harm experienced by obligated parties in each state. Based on numerous studies and EPA’s own analysis, individual refineries in these states are faced with the same compliance requirements as refineries in other states and are not disadvantaged based on their location. Furthermore, the RFS is an annual program that applies on a nationwide basis, excluding Alaska. There is no practical rationale for waiving the standard for a specific region or for a specific period. Granting state, region, or refinery specific RFS exemptions creates uncertainty and distorts the level playing field, resulting in harm for the non-exempted obligated parties. Therefore, EPA should deny these waiver requests.

For an individual small refinery, defined as a refinery whose average aggregate daily crude oil throughput does not exceed 75 thousand barrels per day (kbd), EPA may grant a temporary exemption from the annual RFS volume standards if compliance with RFS obligations will impose a “disproportionate economic hardship” on the refinery.⁴ According to news reports, several small refineries have submitted petitions based on this hardship. These arguments center on the high cost of acquiring RINs, which are used by obligated parties to demonstrate compliance with the RFS. However, RIN acquisition is just one of many factors that determine the economic performance of a refinery.

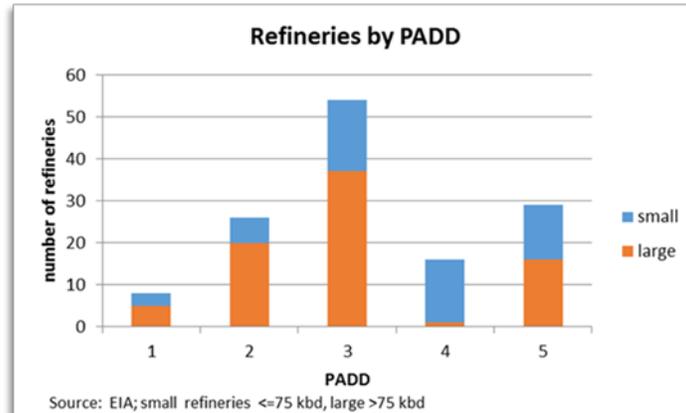
Several studies have concluded that RIN costs are largely recovered by refineries, both large and small, through the increased value of gasoline and diesel fuel they supply to the market. EPA’s own analysis comes to the same conclusion. In EPA’s Denial of Petitions for Rulemaking to Change the RFS Point of Obligation,⁵ the agency found that “while a merchant refiner is directly paying for the RINs they buy on the market, they are passing that cost along” and concluded that merchant refiners are not disadvantaged compared to integrated refiners in terms of their costs of compliance. This dynamic applies equally to small refineries as it does to merchant refiners and evidences the fact that the RFS program is not causing disproportionate harm on small refiners. Further, the decision also noted: “If exempted, [small refiners] could have a (potentially significant) financial advantage over parties that do have RFS obligations and this dynamic could result in an increasing number of small businesses entering this market.” These points make clear that small refinery exemptions are unnecessary as all parties should be subject to the same regulatory costs as their competitors.

The Figure below shows that there are small refineries throughout the US. In PADD 4 for example, 15 out of 16 refineries have crude distillation capacity that does not exceed 75 kbd.

³ CAA 211(o)(7)

⁴ [40 CFR Part 80.1441](#)

⁵ Assessment and Standards Division Office of Transportation and Air Quality U.S. Environmental Protection Agency, Denial of Petitions for Rulemaking to Change the RFS Point of Obligation. EPA-420-R-17-008. November 2017.



Furthermore, PADD markets do not work in isolation. For example, refineries in PADD 3 supply products to PADD 1. EPA should ensure any reductions in the RFS volume obligations apply equally across the refining industry. Small refinery exemptions, especially when granted retroactively, introduce additional uncertainty and RIN market disruptions.

It is ultimately up to Congress to repeal or reform the RFS. Meanwhile, API seeks regulatory solutions that: are based on sound science; are achievable for regulated parties; are cost effective for the consumer; and, maintain a level playing field in the market. As the size of a refinery alone does not determine operational competitiveness in the marketplace, it is not appropriate for EPA to grant small refiner exemptions to the RFS program. Similarly, it is not appropriate to grant state petitions to waive the RFS program that are based on the premise that RIN acquisition adversely impacts small or merchant refiners, or to otherwise relieve these obligated parties of their obligations.

The best available remedy is for EPA to use its waiver authority to establish annual volumes that are reasonable, achievable, and fair for all RFS stakeholders. Granting individual requests for relief creates a distortion in the marketplace and threatens the integrity of the RFS program. API welcomes the opportunity to work with EPA to develop regulatory solutions to meet these goals.

API and our member companies appreciate your attention to these issues. If you have any questions or concerns, please contact me at (202) 682-8167.

Sincerely,

Frank J. Macchiarola
 Group Director
 Downstream & Industry Operations