§ 80.1142 What are the provisions for small refiners under the RFS program?

(a)(1) Gasoline produced by a refiner, or foreign refiner (as defined at § 80.1165(a)), is exempt from the renewable fuel standards of § 80.1105 and the requirements that apply to obligated parties under this subpart if the refiner or foreign refiner does not meet the definition of a small refinery under § 80.1101(g) but meets all of the following criteria:

(i) The refiner produced gasoline at its refineries by processing crude oil through refinery processing units from January 1, 2004 through December 31, 2004.

(ii) The refiner employed an average of no more than 1,500 people, based on the average number of employees for all pay periods for calendar year 2004 for all subsidiary companies, all parent companies, all subsidiaries of the parent companies, and all joint venture partners.

(iii) The refiner had a corporate-average crude oil capacity less than or equal to 155,000 barrels per calendar day (bpcd) for 2004.

(2) The small refiner exemption shall apply through December 31, 2010, unless a refiner chooses to waive the exemption (pursuant to paragraph (h) of this section) prior to that date.

(3) For the purposes of this section, the term ''refiner'' shall include foreign refiners.

(4) This exemption shall only apply to refineries that process crude oil, or feedstocks derived from crude oil, through refinery processing units.

(b) The small refiner exemption is effective immediately, except as provided in paragraph (d) of this section. Refiners who qualify for the small refiner exemption under paragraph (a) of this section must submit a verification letter (and any other relevant information) to EPA containing all of the following information for the refiner and for all subsidiary companies, all parent companies, all subsidiaries of the parent companies, and all joint venture partners:

(1)(i) A listing of the name and address of each company location where any employee worked for the period January 1, 2004 through December 31, 2004.

(ii) The average number of employees at each location based on the number of employees for each pay period for the period January 1, 2004 through December 31, 2004.

(iii) The type of business activities carried out at each location.

(iv) For joint ventures, the total number of employees includes the combined employee count of all corporate entities in the venture.

(v) For government-owned refiners, the total employee count includes all government employees.

(2) The total corporate crude oil capacity of each refinery as reported to the Energy Information Administration (EIA) of the U.S. Department of Energy (DOE), for the period January 1, 2004 through December 31, 2004. The information submitted to EIA is presumed to be correct. In cases where a company disagrees with this information, the company may petition EPA with appropriate data to correct the record when the company submits its verification letter.

(3) The verification letter must be signed by the president, chief operating or chief executive officer of the company, or his/her designee, stating that the information is true to the best of his/her knowledge, and that the company owned the refinery as of December 31, 2004.

(4) Name, address, phone number, facsimile number, and e-mail address of a corporate contact person.

(c) Verification letters under paragraph (b) of this section must be submitted by September 1, 2007.

(d) For foreign refiners the small refiner exemption shall be effective upon approval, by EPA, of a small refiner application. The application must contain all of the elements required for small refiner verification letters (as specified in paragraphs (b)(1), (b)(3), and (b)(4) of this section), must demonstrate compliance with the crude oil capacity criterion of paragraph (a)(1)(iii) of this section, must satisfy the provisions of § 80.1165(f) through (h) and (o), and must be submitted by September 1, 2007 to one of the addresses listed in paragraph (j) of this section.

(e) A refiner who qualifies as a small refiner under this section and subsequently fails to meet all of the qualifying criteria as set out in paragraph (a) of this section will have its small refiner exemption terminated effective January 1 of the next calendar year.

(1) In the event such disqualification occurs, the refiner shall notify EPA in writing no later than 20 days following the disqualifying event.

(2) Disqualification under this paragraph (e) shall not apply in the case of a merger between two approved small refiners.

(f) If EPA finds that a refiner provided false or inaccurate information in its small refiner status verification letter under this subpart, the small refiner's exemption will be void as of the effective date of these regulations.

(g) If a small refiner is complying on an aggregate basis for multiple refineries, the refiner may exempt the refineries from the calculation of its Renewable Volume Obligation under § 80.1107.

(h)(1) A refiner may, at any time, waive the small refiner exemption under paragraph (a) of this section upon notification to EPA.

(2) A refiner's notice to EPA that it intends to waive the small refiner exemption must be received by November 1 in order for the waiver to be effective for the following calendar year. The waiver will be effective beginning on January 1 of the following calendar year, at which point the refiner will be subject to the renewable fuel standard of § 80.1105.

(3) The waiver must be sent to EPA at one of the addresses listed in paragraph (j) of this section.

(i) Any refiner that acquires a refinery from another refiner with approved small refiner status under paragraph (a) of this section shall notify EPA in writing no later than 20 days following the acquisition.

(j) Verification letters under paragraph (b) of this section and small refiner exemption waivers under paragraph (h) of this section shall be sent to one of the following addresses:

(1) *For U.S. Mail:* U.S. EPA—Attn: RFS Program, 6406J, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

(2) *For overnight or courier services:* U.S. EPA, Attn: RFS Program, 6406J, 1310 L Street, NW., 6th floor, Washington, DC 20005.

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§ 80.1143 What are the opt-in provisions for noncontiguous states and territories?

(a) A noncontiguous state or United States territory may petition the Administrator to opt-in to the program requirements of this subpart.

(b) The Administrator will approve the petition if it meets the provisions of paragraphs (c) and (d) of this section.

(c) The petition must be signed by the Governor of the state or his authorized representative (or the equivalent official of the territory).

(d)(1) A petition submitted under this section must be received by the Agency by November 1 for the state or territory to be included in the RFS program in the next calendar year.

(2) A petition submitted under this section should be sent to either of the following addresses:

(i) *For U.S. Mail:* U.S. EPA—Attn: RFS Program, 6406J, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

(ii) *For overnight or courier services:* U.S. EPA, Attn: RFS Program, 6406J, 1310 L Street, NW., 6th floor, Washington, DC 20005.

(e) Upon approval of the petition by the Administrator:

(1) EPA shall calculate the standard for the following year, including the total gasoline volume for the State or territory in question.

(2) Beginning on January 1 of the next calendar year, all gasoline refiners and importers in the state or territory for which a petition has been approved shall be obligated parties as defined in § 80.1106.

(3) Beginning on January 1 of the next calendar year, all renewable fuel producers in the State or territory for which a petition has been approved shall, pursuant to § 80.1126(a)(2), be required to generate RINs and assign them to batches of renewable fuel.

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