

Environmental Protection Agency

§ 80.1443

under paragraph (c) 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 of a given year 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 standards of §80.1405 and the requirements that apply to obligated parties under this subpart.

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

(e) Refiners who qualify as small refiners under this section and subsequently fail to meet all of the qualifying criteria as set out in paragraph (a) of this section are disqualified as small refiners of January 1 of the next calendar year, except as provided under paragraphs (d) and (e)(2) of this section.

(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 M, the refiner will be disqualified as a small refiner as of the effective date of this subpart.

(g) 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.

(h) *Extensions of the small refiner temporary exemption.* (1) A small refiner may apply for an extension of the temporary exemption of paragraph (c)(1) of this section based on a showing of all the following:

(i) Circumstances exist that impose disproportionate economic hardship on the refiner and significantly affects the refiner's ability to comply with the RFS standards.

(ii) The refiner has made best efforts to comply with the requirements of this subpart.

(2) A refiner must apply, and be approved, for small refiner status under this section.

(3) A small refiner's hardship application must include all the following information:

(i) A plan demonstrating how the refiner will comply with the requirements of §80.1405 (and all other requirements of this subpart applicable to obligated parties), as expeditiously as possible.

(ii) A detailed description of the refinery configuration and operations including, at a minimum, all the following information:

(A) The refinery's total crude capacity.

(B) Total crude capacity of any other refineries owned by the same entity.

(C) Total volume of gasoline and diesel produced at the refinery.

(D) Detailed descriptions of efforts to comply.

(E) Bond rating of the entity that owns the refinery.

(F) Estimated investment needed to comply with the requirements of this subpart M.

(4) A small refiner shall notify EPA in writing of any changes to its situation between approval of the extension application and the end of its approved extension period.

(5) EPA may impose reasonable conditions on extensions of the temporary exemption, including reducing the length of such an extension, if conditions or situations change between approval of the application and the end of the approved extension period.

(i) Small refiner status verification letters, small refiner exemption waivers, or applications for extensions of the small refiner temporary exemption under this section must be sent to the attention of "RFS Program" to the address in §80.10(a).

[75 FR 14863, Mar. 26, 2010, as amended at 75 FR 26042, May 10, 2010; 85 FR 7077, Feb. 6, 2020; 85 FR 78467, Dec. 4, 2020]

§80.1443 What are the opt-in provisions for noncontiguous states and territories?

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

§ 80.1444

40 CFR Ch. I (7–1–23 Edition)

(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 EPA 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 the attention of “RFS Program” to the address in §80.10(a).

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

(1) EPA shall calculate the standards for the following year, including the total gasoline and diesel fuel volume for the state or territory in question.

(2) Beginning on January 1 of the next calendar year, all gasoline and diesel fuel refiners and importers in the state or territory for which a petition has been approved shall be obligated parties as defined in §80.1406.

(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 §80.1426(a)(2), be required to generate RINs and comply with other requirements of this subpart M that are applicable to producers of renewable fuel.

[75 FR 14863, Mar. 26, 2010, as amended at 85 FR 7077, Feb. 6, 2020]

§ 80.1444 Alternative RIN retirement schedule for small refineries.

(a) *Applicability.* The provisions of this section apply to the following compliance years:

- (1) 2020.
- (2) [Reserved]

(b) *Eligibility.* Any obligated party that has a refinery that meets the definition of small refinery in §80.1401 for the applicable compliance year in paragraph (a) of this section (hereinafter the “applicable compliance year”) is eligible to use the provisions of this section for each small refinery it operates (hereinafter the “small refinery”).

(c) *Treatment of RVOs.* (1) In lieu of retiring sufficient RINs under §80.1427(a) to demonstrate compliance with the small refinery’s RVOs for the applicable compliance year by the applicable compliance deadline, the obligated party must meet all the requirements of this section and all other applicable requirements of this subpart.

(2) If the obligated party does not meet all of the requirements in this section, the obligated party is subject to the requirements of §80.1427(a).

(d) *Individual facility compliance.* (1) If the obligated party carries a deficit into the applicable compliance year from the previous compliance year, the obligated party must comply with its RVOs for each refinery it operates on an individual basis (as specified in §80.1406(c)) for both the previous compliance year and the applicable compliance year.

(2) If the obligated party does not carry a deficit into the applicable compliance year from the previous compliance year, the obligated party must comply with its RVOs for each refinery it operates on an individual basis (as specified in §80.1406(c)) for the applicable compliance year.

(e) *Compliance report submission and notification.* The obligated party must do all the following by the annual compliance reporting deadline specified in §80.1451(f)(1)(i) for the applicable compliance year (hereinafter the “applicable compliance deadline”):

(1) Submit an annual compliance report for the small refinery for the applicable compliance year.

(2) Notify EPA in a letter signed by the responsible corporate officer (RCO) or RCO delegate, as specified at 40 CFR 1090.800(d), of its intent to use the provisions of this section for the small refinery.

(f) *Alternative RIN retirement schedule.* The obligated party must retire sufficient RINs to satisfy the minimum percentages of each and every RVO for the applicable compliance year (as determined under §80.1407(a)) according to the following RIN retirement schedule:

- (1) For the 2020 compliance year: