Regulatory Announcement

Small Refinery Exemptions Under the Renewable Fuel Standard Program

- The Energy Policy Act of 2005 (EPAct) established the Renewable Fuel Standard (RFS) program under Section 211 (o) of the Clean Air Act (CAA) mandating gasoline sold in the United States contain a minimum amount of renewable fuel content determined on an annual production volume basis (original RFS program denoted as RFS1).

- Small refineries were exempt under the RFS1 program through December 31, 2010. There were 59 small refineries that were exempt under the provisions in EPAct.

- Section 1501 of EPAct required that DOE conduct a study to determine whether the RFS1 program imposes disproportionate economic hardships on any small refineries and if so, EPA is required to provide an extension of at least two years to any small refinery for which the RFS program imposes disproportionate economic hardship, as determined by the DOE study.

- In 2007, the Energy Independence and Security Act (EISA) amended the original RFS program by increasing the renewable fuels mandate from 7.5 billion gallons to 15.2 billion gallons in 2012, and extending it to 36 billion gallons of renewable fuel to be blended in 2022. The revised program is referred to as RFS2.

- In February, 2009, DOE sent its Section 1501 study and recommendations to EPA. The study concluded that exemptions should not be extended for any small refinery. This study did not evaluate whether individual small refineries would suffer disproportionate economic hardship by complying with the Renewable Fuel Standard. The study noted that, if it was believed that a particular small refinery would suffer disproportionate economic hardship, individual refiners could apply directly to EPA for relief Under Section 211(o)(9)(B) of the Clean Air Act.

EPA United States Environmental Protection Agency

Office of Transportation and Air Quality
EPA-420-F-11-015
May 2011

- However, in October 2009 Congress directed DOE to conduct a new study that would evaluate economic hardship on individual small refineries and solicit input from small refineries. DOE developed a survey of small refineries to collect data necessary to determine whether individual small refineries would suffer disproportionate economic hardship. Prior to developing this survey DOE conducted conference calls with an ad-hoc coalition of small refiners to identify the reasons why operators of small refineries believed that they would experience disproportionate economic hardship if their exemptions were not extended and to determine what information should be sought in the survey of small refineries.

- After receiving and analyzing the surveys from the respondents, DOE determined that certain refineries would experience disproportionate economic hardship if their exemptions were not extended. The data and analysis were documented in a revised DOE study. DOE delivered the study to EPA on April 22, 2011.

- Based on the developed metrics and analysis, DOE recommended that thirteen of the eighteen refineries receive an extension of their exemption.

- Of the five small refineries that were not recommended to receive an extension of exemption, two are not primarily in the transportation fuel business, one is a unit of a large integrated refiner active in the renewable fuels business, and two were determined to be profitable and efficient refineries that are not facing economic hardship.

- Therefore, based on the DOE study and as explicitly directed by EISA, EPA has notified the 13 affected refineries that the exemption from the RFS2 provisions has been extended for a period of 2 years.

- A redacted (confidential business information removed) version of the report has been posted to provide additional background on the DOE study.