

**Final Report**

**of the**

**Small Business Advocacy Review Panel**

**on EPA's Planned Proposed Rule**

**Regulation of Fuels and Fuel Additives:**

**Renewable Fuel Standard Program**

**September 5, 2008**



## Table of Contents

1. Introduction
  2. Background
    - 2.1 Regulatory History
    - 2.2 Description of Rule and its Scope
    - 2.3 Related Federal Rules
  3. Overview of Proposal Under Consideration
    - 3.1 Potential Requirements and Guidelines of the Proposal
    - 3.2 Options Likely to be Proposed
    - 3.3 Broader Rule Issues
  4. Applicable Small Entity Definitions
  5. Small Entities That May Be Subject to the Proposed Regulation
  6. Summary of Small Entity Outreach
  7. List of Small Entity Representatives
  8. Summary of Comments from Small Entity Representatives
    - 8.1 Number and Types of Entities Affected
    - 8.2 Potential Reporting, Recordkeeping, and Compliance
    - 8.3 Related Federal Rules
    - 8.4 Regulatory Flexibility Alternatives
    - 8.5 Discussion and Summary of Comments During June 3, 2008 EPA Outreach Meeting
    - 8.6 Discussion and Summary of Comments During July 30, 2008 Outreach Meeting
  9. Panel Findings and Discussions
    - 9.1 Number and Types of Entities Affected
    - 9.2 Potential Reporting, Record Keeping, and Compliance
    - 9.3 Related Federal Rules
    - 9.4 Regulatory Flexibility Alternatives
- Appendix A: List of Materials Shared With SERs  
Appendix B: Written Comments Received from SERs

## 1. INTRODUCTION

This report is presented by the Small Business Advocacy Review Panel (SBAR Panel or Panel) convened for the planned proposed rulemaking on the Renewable Fuel Standard Program (RFS2), currently being developed by the U.S. Environmental Protection Agency (EPA). Under section 609(b) of the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), a Panel is required to be convened prior to publication of the initial regulatory flexibility analysis (IRFA) that an agency may be required to prepare under the RFA. In addition to EPA's Small Business Advocacy Chairperson, the Panel consisted of the Director of the Assessment and Standards Division within EPA's Office of Air and Radiation- Office of Transportation and Air Quality, the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget, and the Chief Counsel for Advocacy of the Small Business Administration.

This report includes the following:

- background information on the planned proposed rule under development;
- information on the types of small entities that would be subject to the planned proposed rule ;
- a summary of the Panel's outreach activities; and
- the comments and recommendations of the Small Entity Representatives (SERs).

Section 609(b) of the RFA directs the Panel to report on the comments of small entity representatives and make findings on issues related to identified elements of IRFA under section 603 of the RFA. Those elements of an IRFA are:

- a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;
- projected reporting, record keeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirements and the type of professional skills necessary for preparation of the report or record;
- an identification, to the extent practicable, of all other relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule;
- any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities; and
- any impacts on small entities, such as a business or community, of the proposed rule or

significant alternatives to the proposed rule.

Once completed, the Panel report is provided to the agency issuing the proposed rule and included in the rulemaking record. In light of the Panel report, and where appropriate, the agency is to make changes to the draft planned proposed rule, the IRFA for the planned proposed rule, or the decision on whether an IRFA is required.

It is important to note that the Panel's findings and discussion will be based on the information available at the time the final Panel report is drafted. EPA will continue to conduct analyses relevant to the proposed rule, and additional information may be developed or obtained during the remainder of the rule development process. The Panel makes its report at a preliminary stage of rule development and its report should be considered in that light. At the same time, the report provides the Panel and the Agency with an opportunity to identify and explore potential ways of shaping the proposed rule to minimize the burden of the rule on small entities while achieving the rule's purposes.

Any options identified by the Panel for reducing the rule's regulatory impact on small entities may require further analysis and/or data collection to ensure that the options are practicable, enforceable, environmentally sound, and consistent with the Clean Air Act.

## **2. BACKGROUND**

### **2.1 Background and Regulatory History**

Section 1501 of the Energy Policy Act of 2005 (EPAAct) amended section 211 of the Clean Air Act (CAA) by adding section 211(o) which required the Environmental Protection Agency (EPA) to promulgate regulations implementing a renewable fuel program. EPAAct specified that the regulations must ensure a specific volume of renewable fuel to be used in gasoline sold in the U.S. each year, with the total volume increasing over time. The goal of the program was to reduce dependence on foreign sources of petroleum, increase domestic sources of energy, and help transition to alternatives to petroleum in the transportation sector.

The final Renewable Fuels Standard (RFS1) program rule was published on May 1, 2007, and the program began on September 1, 2007. Per EPAAct, the RFS1 program created a specific annual level for minimum renewable fuel use that increases over time—resulting in a requirement that 7.5 billion gallons of renewable fuel be blended into gasoline (for highway use only) by 2012. Under the RFS program, compliance is based on meeting the required annual renewable fuel volume percent standard (published annually in the Federal Register by EPA) through the use of Renewable Identification Numbers, or RINs, 38-digit serial numbers assigned to each batch of renewable fuel produced. For obligated parties (those who must meet the annual volume percent standard), RINs must be acquired to show compliance.

### **2.2 Description of the Rule and its Scope**

The Energy Independence and Security Act of 2007 (EISA) amended section 211(o), and

the RFS program, by requiring higher volumes of renewable fuels, to result in 36 billion gallons of renewable fuel by 2022. EISA also expanded the purview of the RFS program by requiring that these renewable fuels be blended into gasoline and diesel fuel (both highway and nonroad). This expanded the pool of regulated entities, so the obligated parties under the RFS2 program will now include certain refiners, importers, and blenders of these fuels that were not previously covered by the RFS1 program. In addition to the total renewable fuel standard required by EPAct, EISA added standards for three additional types of renewable fuels to the program (advanced biofuel, cellulosic biofuel, and biomass-based diesel) and requires compliance with all four standards.

### **2.3 Related Federal Rules**

The primary federal rules that are related to the proposed RFS2 rule under consideration are the Mobile Source Air Toxics rule and the first Renewable Fuel Standard (RFS1) rule (*Federal Register Vol. 72, p. 23900, May 1, 2007*). In addition, the RFS1 Technical Amendment Direct Final Rulemaking is expected to be published by early Fall 2008.<sup>1</sup>

## **3. OVERVIEW OF PROPOSAL UNDER CONSIDERATION**

### **3.1 Potential Requirements and Guidelines of the Proposal**

As stated above, EISA requires 36 billion gallons of renewable fuel by the year 2022 and requires that renewable fuels must be blended into both gasoline and diesel. Unlike the RFS1 program (which only required compliance with one total renewable fuel standard until 2012, and thereafter also required compliance with a cellulosic biomass standard), obligated parties must comply with the four “nested” standards described above in section 2.2 (total renewable fuel, advanced biofuel, cellulosic biofuel, and biomass-based diesel) to reach the 36 billion gallon requirement. Of the 36 billion gallons of total renewable fuels mandated by EISA for 2022, 21 billion gallons of that must be advanced biofuel; of the 21 billion gallons of advanced biofuel required, 16 billion gallons must be cellulosic biofuel and 1 billion gallon must be biomass-based diesel.

While EPA intends to propose to largely use the framework and regulations currently in place for the RFS1 program, EPA will need to make some changes to the regulations to account for the new requirements mandated by EISA, as discussed more below.

### **3.2 Options Likely to be Proposed**

The details of the proposed RFS2 program are still under development. However, as EISA amended the mandates in section 211(o), EPA will propose amending the RFS1 program regulations to implement the new EISA requirements. EPA anticipates that the RFS2 program will continue to use the RIN system developed for RFS1, though some modifications will be

---

<sup>1</sup>This Direct Final Rule will simply correct minor typographical errors and provide clarification on existing provisions in the RFS1 regulations.

necessary to account for the four nested standards required by EISA. Further, EPA anticipates amending the regulations to account for additional changes made by EISA, including additional definitions (for the new renewable fuel categories), lifecycle GHG reduction thresholds, etc.

For recently finalized or promulgated fuel programs (e.g., the Mobile Source Air Toxics rule (MSAT2), and the Renewable Fuels Standard rule (RFS1)), EPA included regulatory flexibility provisions for small refiners. The RFS1 rule included an exemption from the renewable fuel standard requirements for small refineries (defined by EPA as refineries with a crude throughput of no more than 75,000 barrels of crude per day) through December 31, 2010, as mandated by EPA's amendments to the CAA. This small refinery exemption applied to most, but not all, of the small refiners. Using EPA's discretion under CAA section 211(o)(3)(B)(ii)(I)<sup>2</sup>, EPA provided the same temporary exemption to the remaining small refiners that met the Small Business Administration's definition of a small refiner (1,500 employees or less, company-wide) but did not operate a small refinery (as defined in section 211(o)(9)). Congress did not amend or change the relief provided to small refineries through EISA's amendments to CAA section 211(o).

As EPA develops the proposed RFS2 program, EPA is considering appropriate options that would, consistent with the Clean Air Act, ease the compliance burden for small businesses that may be affected by the rule while maintaining the overall goals of the program. EPA will continue to seek input from small entities throughout the regulatory development process. While not an exhaustive list, the following potential regulatory flexibility provisions to assist small refiners in compliance with the RFS2 program requirements have been identified and are being evaluated.

#### *RIN-related Flexibilities*

EPA intends to seek comment in the proposed rule on provisions for small refiners related to the RIN system. Such provisions could include flexibilities in the RIN rollover cap percentage. Currently in the RFS program, EPA allows for 20 percent of a previous year's RINs to be "rolled over" and used for compliance in the following year. A provision to allow for flexibilities in the rollover cap could include a higher RIN rollover cap for small refiners for some period of time.

#### *Extension of Existing RFS1 Temporary Exemption*

CAA section 211(o)(9)(A)(ii) requires the Department of Energy (DOE) to conduct a study to determine if compliance with the RFS2 requirements imposes disproportionate economic hardship on small refineries. If DOE determines that a small refinery would be subject to disproportionate hardship then EPA is required to grant an extension of at least 2 years. EPA intends to propose the same extension from the RFS1 program (at 40 CFR 80.1141(e)) in the RFS2 program for any small refinery DOE determines meets such criteria.

#### *Petitions for Disproportionate Hardship Relief*

EPA intends to propose the same case-by-case hardship provision from the RFS1

---

<sup>2</sup> "[...The renewable fuel obligation determined for a calendar year under clause (i) shall] be applicable to refineries, blenders, and importers, as appropriate."

program (at 40 CFR 80.1141(e)(1)) in the RFS2 program for small refineries to apply for hardship relief at any time on the basis of disproportionate economic hardship per CAA section 211(o)(9)(B). The results of the DOE study, and a consideration of EPA's ongoing review of the functioning of the RIN market, could factor into the basis for approval of such a hardship.

EPA is also considering proposing a case-by-case hardship provision, using its discretion under CAA section 211(o)(3)(B)(ii)(I) (that the standards shall be applicable to obligated parties "as appropriate"), to allow those small refiners that are not small refineries to apply for the same relief available to small refineries based on a showing of disproportionate economic hardship.

Please see section 9.4 of this Report for flexibilities the Panel recommends that EPA propose, as well as more discussion on EPA's discretion in providing regulatory flexibility for small refiners in the RFS2 program.

### **3.3 Broader Rule Issues**

In developing the proposed RFS2 rule, EPA is also evaluating the RFS1 program and will use this opportunity to address concerns that have arisen during implementation of the RFS1 program. During the SBREFA Panel process, some SERs raised concerns over the burden placed on them to implement the RIN system—these concerns are largely the same as those raised by other regulated entities. EPA is currently processing the multitude of reports that have been received for the first RFS1 reporting period. Many reporting errors have been discovered, and those who have participated in RIN trading so far have made suggestions to EPA for improvements in the RIN program. EPA's proposed rule will include proposed options to improve the RIN system, and will request comment on these options. However, EPA does suggest that SERs also provide comments during the rulemaking's public comment period. These concerns are broader rulemaking issues, and are better suited for discussion in the rulemaking process, rather than in the SBREFA process.

## **4. APPLICABLE SMALL ENTITY DEFINITIONS**

For purposes of assessing the impacts of the proposed rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Small businesses (as well as large businesses) would be regulated by this rulemaking, but not small governmental jurisdictions or small organizations as described above. As set by SBA, the categories of small entities that will potentially be affected by this rulemaking are defined in the following table:



Industry	Defined as small entity by SBA if less than or equal to:	NAICS Codes
Gasoline fuel refiners	1500 employees*	324110

\* EPA has included in past fuels rulemakings a provision that, in order to qualify for the small refiner flexibilities, a refiner must also produce no greater than 155,000 bpcd crude capacity.

EPA used a variety of sources to identify which entities are appropriately considered “small.” EPA used the criteria for small entities developed by the Small Business Administration under the North American Industry Classification System (NAICS) as a guide. Information about the characteristics of refiners comes from sources including the Energy Information Administration (EIA) within the U.S. Department of Energy, oil industry literature, and previous rulemakings that have affected the refining industry. EPA then found employment information for these companies using the business information database Hoover’s Online (a subsidiary of Dun and Bradstreet). These refiners fall under the *Petroleum Refineries* category, 324110, as defined by NAICS.

## 5. SMALL ENTITIES THAT MAY BE SUBJECT TO THE PROPOSED REGULATION

Small entities that will be subject to the renewable fuel standard include: domestic refiners that produce gasoline and/or diesel and importers of gasoline and/or diesel into the U.S. Based on 2007 data, EPA believes that there are about 95 refiners of gasoline and diesel fuel. Of these, EPA believes that there are currently 21 refiners producing gasoline and/or diesel fuel that meet the SBA small entity definition of having 1,500 employees or less. Further, we believe that three of these refiners own refineries that do not meet the Congressional definition of a “small refinery”. It should be noted that because of the dynamics in the refining industry (i.e., mergers and acquisitions), the actual number of refiners that ultimately qualify for small refiner status under the RFS2 program could be different than this initial estimate.

## 6. SUMMARY OF SMALL ENTITY OUTREACH

### 6.1 Small Entity Outreach

Before beginning the formal SBREFA process, EPA actively engaged in outreach with entities that would potentially be affected by the upcoming rulemaking. EPA held phone conferences with many of these companies, and also had conference calls with an ad-hoc coalition of small refiners to discuss the proposed rulemaking and to provide these contacts with an early opportunity to ask questions and discuss their concerns with the upcoming rulemaking.

EPA provided each business with general information on the SBREFA process and background information on EISA and the RFS2 rulemaking process. Once the SBREFA process began and potential SERs were identified, EPA held an outreach meeting with the potential

SERs on June 3, 2008. After the Panel convened on July 9, 2008, the Panel then held an outreach meeting with the SERs on July 30, 2008.

## **6.2 Summary of EPA's Outreach Meeting with Potential Small Entity Representatives**

On June 3, 2008 EPA held a two-hour meeting with potential SERs for this SBREFA Panel and invited representatives from the Office of Advocacy of the Small Business Administration (SBA-Advocacy) and the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB) to the meeting. To help them prepare for the meeting/teleconference, on May 20, 2008, EPA sent materials to each of the potential SERs via email. A list of the materials shared with the potential SERs during the pre-panel outreach meeting is contained in Appendix A. The Outreach Meeting was held to solicit feedback from the potential SERs on the upcoming rulemaking. Representatives from all eight companies and organizations that we selected as potential SERs for this SBREFA process participated in the meeting (in person and by phone).

The meeting was opened by Alex Cristofaro, EPA's Small Business Advocacy Chair, with a short introduction to the Regulatory Flexibility Act (RFA) and SBREFA; this also included an explanation of the SBREFA process, the purpose of the Outreach Meeting, and the importance of the SERs' comments. Following this was a presentation by EPA staff on the RFS1 rule, requirements of EISA, and our current thinking on the scope of the proposed requirements for the RFS2 rule. EPA then began a discussion on how the RFS program is working so far (as the majority of the small refiners have not participated in the RFS program as of yet), small business flexibility alternatives used in past rulemakings, and potential small business flexibilities for the RFS2 rule. EPA asked that the potential SERs provide feedback on the outreach packet as well as the outreach meeting itself, and potential SERs were asked to provide these comments by June 17, 2008.

A discussion of issues related to the RFS program (both the RFS1 and RFS2 rules) followed EPA's presentation. The RFS1 program was discussed for those SERs who were not as familiar with the program since they currently have a temporary exemption from the standards. Further, there were discussions regarding the changes mandated by EISA that will be proposed in the RFS2 rule that are of importance to the small refiners. These changes include: compliance with four standards instead of one (thus requiring four different types of RINs), new obligated parties (refiners of diesel and/or nonroad fuels only were not obligated parties under the RFS1 rule), and higher required volumes of renewable fuels. In general, potential SERs noted that they wanted to ensure that the RFS2 RIN program was fair and equitable to all. Some small refiners also raised the concern that, while the RFS2 program doesn't require capital changes like other EPA fuels programs, they would still need to make capital improvements in order to blend renewable fuels into their gasoline and diesel fuel.

With regard to regulatory flexibility, ideas that were discussed during the meeting included: a delay in at least some of the RFS standards, concept of RINs of one type being used for compliance with a different standard (e.g., use of two biomass-based diesel RINs to equal one advanced biofuel RIN), a phase-in of the standards for small refiners, and treatment of diesel-

only refiners.

### **6.3 SBAR Panel's Outreach to Small Entity Representatives**

On July 30, 2008 the SBAR Panel held an outreach meeting/teleconference with the SERs. In addition to the materials that the SERs received for the pre-Panel outreach, the SERs were provided with background information (SERs were sent an outreach packet on July 16, 2008, which can be found in Appendix A) to help them prepare for the teleconference and prepare their comments on the planned proposed rulemaking.

During the July 30, 2008 teleconference representatives from seven of the eight SERs that were selected for this SBREFA process participated in the conference call. Alex Cristofaro, EPA's Small Business Advocacy Chair, opened the meeting by giving SERs a short introduction on the purpose of the SBREFA Panel process and the Panel Outreach Meeting, and a brief description of the Panel process. Tom Sullivan, SBA-Advocacy Chief Counsel, also provided opening remarks thanking the SERs for their participation in this SBREFA. The remainder of the Outreach Meeting itself focused on Section B of the July 16 Outreach Packet that was sent to SERs. This discussion focused on four specific areas of the SERs comments from the Pre-Panel Outreach Meeting; the SERs' comments on each area were summarized, EPA explained preliminary views regarding the feasibility of some options, and discussion was then had regarding these explanations. The four areas of focus were: 1) participation in the RFS1 program, 2) challenges of meeting the four required RFS2 standards, 3) regulatory flexibility options suggested by SERs, and 4) the credit trading/RIN program. In general, the SERs voiced concerns with respect to the RIN program, uncertainty about RFS2 (volumes, RIN availability, and cost), and the desire for a RIN system review.

Lastly, EPA asked that the SERs provide feedback on the Outreach Packet materials as well as the outreach meeting itself, and SERs were asked to send any written comments by August 13, 2008.

The outreach meetings with SERs were held to solicit feedback on the information provided their suggestions for the upcoming rulemaking. At the meetings, the SERs were asked to also provide written feedback on ideas under consideration for the proposed rulemaking and responses to questions regarding their experience with the existing RFS1 rule. Comments made during the June 3, 2008 and July 30, 2008 outreach meetings and written comments submitted by the SERS are summarized in section 8 of this document. Written comments received are included in Appendix B.

## **7. LIST OF SMALL ENTITY REPRESENTATIVES**

The following is a list of the SERs that were included in the Panel process:

AGE Refining, Inc.  
Cindy Fuqua  
San Antonio, TX

American Farm Bureau Federation  
Anne Steckel  
Washington, D.C.

American Refining Group  
John Robinson, Steve Sherk  
Bradford, PA

Countrymark Cooperative  
John Stern  
Indianapolis, IN

Gary-Williams Energy Corporation  
Sally Allen  
Denver, CO

Kern Oil & Refining Co.  
Jerry Frost  
Bakersfield, CA

Placid Refining  
Pam Posster  
Port Allen, LA

Wyoming Refining  
Bob Neufeld  
Denver, CO

## **8. SUMMARY OF COMMENTS FROM SMALL ENTITY REPRESENTATIVES**

As described in Section 6 above, EPA and the SBAR Panel conducted outreach to the potential SERs and SERs by sending outreach packages to them and conducting outreach meetings/ teleconferences on June 3, 2008 and July 30, 2008. In addition to the comments that the SERs made during the June 3 outreach meeting, EPA received five sets of comments from five individual potential SERs, one set of comments from the small refiner potential SERs, and the small refiner potential SERs also resubmitted their comments from the RFS1 public comment period for consideration in this SBREFA Panel process.<sup>3</sup>

Following the July 30 meeting, the small refiner SERs submitted one set of comments jointly on August 12, 2008. The comments received from the SERs were distributed to all Panel members and are included in Appendix B. A summary of the comments is provided below.

---

<sup>3</sup> 3 SERs for the RFS2 SBREFA Panel process are considered “potential SERs” prior to the Panel Convening on July 9, 2008.

## **8.1 Number and Types of Entities Affected**

In their November 2006 comments (submitted during the comment period for the RFS1 rule), the Ad-Hoc Coalition of Small Refiners commented that there were approximately 20 U.S. small refiners with 1,500 or less total employees (SBA's definition of a small refiner). The commenters also commented that small refining companies are located across the country from Pennsylvania to the West Coast; vary greatly in operational configuration, product slate, marketing area, capacity; and some are only diesel refiners. Kern Oil, a small refiner located in California, noted that the number of small refiners in California has decreased from 26 to seven from 1981 to 2003. AGE Refining commented that it is the only diesel-only refiner with no plans to produce gasoline in the future.

In their August 12 comments, the small refiner SERs did not comment specifically on the number and/or types of entities affected, but they did mention that they believe that small refiners currently produce less than six percent of all U.S. gasoline and diesel fuel.

## **8.2 Potential Reporting, Recordkeeping, and Compliance**

All of the small refiner potential SERs for this SBREFA process submitted joint comments as the "Ad Hoc RFS2 Small Refiner SBREFA Coalition" (Coalition) and thus, they all concur with comments submitted by the Coalition. The Coalition refiners commented that they believe it will be much more difficult—if not impossible—for small refiners to meet all four standards rather than complying with just the total renewable fuel standard of RFS1. The commenters fear the cellulosic ethanol fuels will be limited in supply (if available at all), more expensive, and perhaps more difficult to handle. They also commented that they fear the biofuel demand and infrastructure will not be sufficient to realistically move the fuel into the marketplace, so that RINs for these three fuel categories will be limited in number and volatile in price. The commenters also noted that small refiners do not typically own or operate upstream oil and gas production or downstream marketing, transportation, or retail (as do many of the larger integrated oil companies); and therefore, it is much more difficult for small refiners to implement and to recover from new regulations and programs. The commenters stated that, due to their limited resources and capital, small refiners are more affected by market, pricing, and supply fluctuations.

The Ad Hoc RFS2 Small Refiner SBREFA Coalition noted that they believe mandated biomass-based diesel blending would be a significant problem, as two small refiners (American Refining Group, AGE Refining) with two very different seasonal temperatures have not been able to meet the biomass-based diesel blending pour point for blended biodiesel. The commenters also stated that they cannot really comment on potential operational costs or operational changes that meeting the new standards would impose, but they did note that extra tankage and perhaps blending facilities could be needed (thus necessitating additional time to secure pre-construction and operating permits from various regulatory oversight agencies). They further noted that the Magellan pipeline/terminal system, used by some small refiners, estimates that each ethanol injection facility being built at its terminals will cost approximately \$3.3 million, and the pipeline projects will not be able to complete construction of the additional tankage and injection systems for ethanol until the end of 2010.

The Ad Hoc RFS2 Small Refiner SBREFA Coalition commented that they are very concerned about the cost and availability of RINs, and noted that there could be additional costs for them for automated measuring systems, RIN reporting software, and more accounting/operational staff needed.

While it does not currently need to acquire or sell RINs for compliance, Placid Refining's experience with the RIN program has been that RIN transfer rarely occurs with actual product transfer and obtaining RINs after the fact is an on-going task, many times at no fault of the ethanol suppliers as they have yet to receive RINs from the prior ethanol/RIN owner in the chain (and ethanol vendors do not necessarily sell current RINs). Also, Placid currently has one marketing person dedicated to ethanol buying/selling, RIN tracking, EPA report coordination, and RIN trading; Placid anticipates needing to add one accounting person to manage the RIN portion of the RFS program as ethanol blending locations increase and the blending volumes expand.

In their comments originally submitted during the comment period for the RFS1 rule, the Ad-Hoc Coalition of Small Refiners commented on seasonality issues and varying state standards and noted that these could cause problems with compliance.

Gary-Williams Energy Corporation commented that they had not yet participated in the RIN program, but noted that they do not currently have the internal accounting capability to handle complex reporting of RINs. They also commented that there are no ethanol blending facilities at many of the terminals on the pipeline system that they use to ship product, nor are there blending facilities at their Wynnewood refinery (or sufficient tankage for storing ethanol).

American Refining Group (ARG) commented that they fear that there will be compliance issues for small refiners if there is volatility in the RIN market, as this could drive up costs for small refiners (and place a large burden on them). ARG also commented that they believe that regional refiners and small refiners will have problems accessing RINs for certain renewable categories—thus driving up the cost of RINs and sourcing/transporting renewables—and the commenter is especially concerned about compliance with the advanced biofuel and cellulosic biofuel standards. ARG is also concerned that they will need to install additional tankage to comply with the RFS program, and the company is concerned that biodiesel compliance will be problematic due to ASTM pour-point specs and issues with diesel in colder climates.

ARG commented that similar-sized operations/companies have had significant difficulty under RFS1 with tracking, recording, and reporting RINs. The commenter noted that many of these companies have had to hire additional staffing to comply and still there remains much confusion with the RIN System.

AGE Refining commented that they had previously made an unsuccessful attempt to enter the biodiesel market. The commenter also noted that to enter the biodiesel market again, it would require added tankage, piping, a blending unit, and extra staff to handle the RIN system. Further, a new process unit would be required to produce and sell biomass or cellulose-based diesel. AGE Refining also commented that the biggest challenge facing small refiners is the

availability and cost of purchasing renewable fuel components.

Countrymark Cooperative (Countrymark) commented that it has been blending some renewable fuel and has purchased fuel with attached RINs, and noted that it has experienced some problems with the RIN system; namely mistakes in the RIN digits and issues with the RIN date (invoice date versus product delivery date). While Countrymark does not need to participate in the RIN program for compliance currently, it recommended that EPA make the RIN date the date of product delivery for ease in tracking the product and associating it with the RIN. Countrymark also noted that because of the difficulties experienced with the RIN system, it has added one employee, obtained a new software system, and would likely hire another new employee after RFS2 begins.

In their August 12 comments, the small refiner SERs commented that they are very concerned about the economic and financial impact on their businesses of trying to meet the four standards at any time, and especially before the RFS2 program has been operational for a sufficient time period to smooth out potentially severe expected market volatility. The commenters stressed that volatility is their main concern with the RFS2 program (with regard to both the available renewable fuels volumes as well as the anticipated “blend wall”). The commenters also stated that EPA’s denial of Texas’ waiver offers them little comfort that EPA’s waiver authority will actually be used when needed. The commenters questioned how market maturity will be ascertained in accepting and consuming the more advanced fuels. The commenters raised the concern that it is too risky for their businesses to “simply hope that the program operates as designed”—the commenters further questioned if decisions to waive the RFS2 requirements would actually come in time to allow small refiners to avoid capital investments for infrastructure.

The small refiner SERs commented that they are severely disadvantaged by the economies of scale that exist for larger companies. The commenters noted that in many cases they do not have upstream oil and gas production, or downstream marketing, transportation, or retail outlets like many larger integrated oil companies. The commenters stated that it is thus more difficult for their businesses to implement and recover from new regulations and programs, and further they are more affected by market pricing and supply fluctuations. The small refiner SERs also noted that they may also face additional transportation costs, especially for those small refiners that are far from the sources of most renewable fuels.

### **8.3 Related Federal Rules**

Kern Oil commented that small refiners in California “are still recovering” from recently having to meet new California Air Resources Board Reformulated Fuel Standards, (Federal) Ultra-Low Sulfur Diesel standards, new Low Carbon Fuel Standards, and Renewable Fuel Standards. The commenter noted that small refiners are facing significant uncertainty as to how state and federal fuel standards will either compete or overlay each other and what impact the costs of these new programs and standard will ultimately be. The commenter also noted that it is more difficult for small refiners to implement and recover from new regulations and programs considering the fact that they do not typically have limited resources and capital compared to larger integrated oil companies. (This was also noted in the Ad Hoc RFS2 Small Refiner

SBREFA Coalition's comments.)

AGE Refining commented that the company is still working to complete its processing unit to comply with the Nonroad Diesel rules.

#### **8.4 Regulatory Flexibility Alternatives**

The Ad Hoc RFS2 Small Refiner SBREFA Coalition requested the following flexibilities for small refiners:

- 1) Small refiners be completely exempt from complying with RFS2 until January 1, 2016 or five years after the RFS2 effective date, at which time small refiners should only be required to comply with the total renewable fuel standard on a phased-in basis;
- 2) Small refiner renewable fuel compliance volumes should be increased by no more than 20% per year until the full required volume is attained;
- 3) There should be no specific requirements for advanced biofuel, biomass-based diesel and cellulosic biofuels at any time (though RINs for these fuels would always be valid to demonstrate small refiner compliance with the total renewable fuel standard);
- 4) The advanced biofuel standard, if small refiners are subject to it, should be phased in at a requirement of 20% or less of additional volume over a five year period;
- 5) EPA should review the RFS2 program with small refiners in 2015 to evaluate whether or not changes are appropriate.

The commenters further commented that they estimate that small refiners now produce less than 6% of U.S. gasoline and diesel fuel, and may well be an even more insignificant part of the U.S. refining industry by 2020. The commenters stated that they believe their exemption from immediate full compliance will have no material impact on the country's renewable fuels consumption but will provide much needed relief for small refiners.

The Ad Hoc RFS2 Small Refiner SBREFA Coalition requested that RINs for all four fuel categories be interchangeable for small refiners. The commenters requested a permanent ability for small refiners to enjoy interchangeability on a one-to-one or other basis between the four categories such that RINs generated in one category can be used for small refiner compliance in any other category. The commenters also believe that all RINs should have equivalent value on a one-to-one basis (independent from the lifecycle analysis), as they believe that tracking different vintage RINs for each of the four "nested" fuels will be much more complex and error-prone than even the cumbersome RIN reporting system of RFS1. The commenters requested that small refiner-generated or purchased RINs should be valid for compliance in the calendar year generated and for an unlimited time thereafter with no credit rollover cap. However, they requested that if elimination of a credit rollover cap is not possible, small refiners should be granted the flexibility to meet their current year renewable volume obligation (RVO) with up to 50% of prior year RINs.

The Ad Hoc RFS2 Small Refiner SBREFA Coalition also requested that EPA plan a comprehensive review of the RIN program—in cooperation with small refiners—at least one year before the small refiner RFS2 compliance deadline, similar to the program review in the



MSAT2 rulemaking.

Kern Oil commented that it strongly believes that additional lead time beyond the RFS1 temporary exemption is essential given the costs, reporting complexities, the anticipated 2013 blend wall, and potential RIN market volatility.

AGE Refining stressed that a delay to 2016 and additional flexibilities for small refiners would provide the company with the time and flexibility to make adjustments and make the financial commitments necessary to remain in the fuel market.

Countrymark also commented that it is concerned that it has been receiving “stale-dated” RINs. The commenter thus suggested that small refiners be allowed to carry-over RINs for an indefinite period to eliminate the 20% carry-over penalty. Further, Countrymark recommended that small refiners be given a complete exemption from RFS2 due to market uncertainties and financial impacts—the commenter believes that a complete exemption would have little or no impact on the program since small refiners make up a small percentage of the total gasoline and diesel market.

In their August 12 comments, the small refiner SERs repeated their request for a delay in the small refiner compliance deadline and flexibility in the requirements for some or all of the four RFS2 standards. The SERs commented that they believe such relief would have no material impact on the country’s renewable fuels consumption and an insignificant impact on the RIN system. The commenters also requested a phase-in of the standards upon the small refiner compliance date, and as much flexibility in compliance with the various nested RFS2 requirements as legally possible.

The small refiner SERs commented that they believe EPA has more authority under EISA and that the Act can be interpreted to provide additional small refiner flexibility. The commenters thus requested that RINs be totally fungible for small refiners. Additionally, the small refiner SERs requested an extension of credit life and an expansion in the 20 percent RIN rollover cap for RINs generated or purchased by small refiners—the commenters requested that these RINs have an unlimited credit life with no rollover cap.

The small refiner SERs requested that EPA perform a comprehensive review of the RIN system in cooperation with small refiners at least one year prior to the small refiner compliance deadline. The commenters stated that they could support the concept of tying the small refiner compliance date to an EPA review if (in addition to the EPA annual review of available renewable fuel volumes) there is a RIN technical compliance review to estimate trading versus blending activity and the extent to which RINS are being generated and are available. The commenters noted that if most companies are blending to comply, that will impact small refiner compliance choices.

## **8.5 Discussion and Summary of Comments During June 3, 2008 Outreach Meeting**

### **Background Presentation (EPA-OTAQ)/Discussion (all)**

- EPA-OTAQ presented a briefing titled “The Renewable Fuels Standard”
  - Presentation discussion included background on RFS1, as many small refiners have not yet participated in the program
  - The presentation then discussed the changes that would need to be made to the RFS program to implement changes mandated by the Energy Independence and Security Act
  - The presentation concluded with rule-related and SBREFA-related questions that EPA would like the potential SERs to try and respond to in their comments
- Discussion began with a question to the potential SERs on whether or not any of them have participated in the RFS program/traded RINs yet
  - One potential SER indicated that his refinery has, another mentioned they blended fuels without RINs attached
- EPA mentioned that even if you are a gasoline-only or diesel-only refiner, you will be required to comply with all four of the RFS standards
  - One potential SER commented that it is important that if small refiners are buying RINs, the program should be fair and equitable, they should not have to shoulder more burden with regard to RINs
  - A potential SER questioned why EPA would require parties to meet all four standards, and mentioned that it would be helpful if there were a way to tailor the program to allow diesel-only refiners to not have to comply with all of the standards—EPA indicated it is open to discussing and pursuing other options but EISA mandates that all the standards be a percentage of the obligated volume, which includes both gasoline and diesel; additionally, EPA indicated that such a program would become extremely complex
- One potential SER commented that the price of RINs could easily be driven up under the RFS2 program, and asked if waivers were possible
  - EPA noted that EISA provides for potential waivers (slides 17 and 18 of the presentation): general waivers and biomass-based diesel waivers (anyone subject to the requirements can apply for a waiver); and cellulosic “waivers” (EISA gave general guidelines on how EPA is to implement this waiver authority, but these decisions will largely be outside the scope of this rulemaking)
- A potential SER asked about delays, and whether or not small refiners should focus on a delay as possible regulatory flexibility
  - EPA noted that the total renewable standard isn’t new (it already exists under RFS1), but that a delay could more likely be applied to one or more of the 3 new standards
- A potential SER questioned what would happen if there was a glut of ethanol and the vehicle fleet was not able to absorb all of this ethanol
  - EPA mentioned the concept of the “blend wall” (a point where the market is not able to blend sufficient ethanol to meet the standard), and noted the various ideas that have been discussed with industry to date- including the need for more E85 vehicles and stations, the notion of mid-level ethanol blends, etc.
- A potential SER suggested the possibility of allowing 2 of one type of RIN to count as 1 of another
  - EPA explained that EISA doesn’t really allow EPA the flexibility to do something like this

- Also, this could result in one or more of the standards not being met
- A potential SER commented that a delay and/or phase-in of the standards would be most helpful to small refiners (i.e., meet total renewable standard initially, then a phase-in of the other three standards); another potential SER mentioned that he thought a four year delay would be necessary for small refiners
- One potential SER stated that cap-and-trade programs are bad for small businesses initially because they aren't as well equipped to absorb 'hiccups' as well, and market volatility can also be worse for them
- A few potential SERs noted that they would need to put in additional tankage at their facilities to meet the standards
- One potential SER commented that the earliest his company could comply would likely be 2015
  - The potential SER noted that this could be a bad year to enter the program, as that would likely be when things were most volatile in the market
  - Another potential SER commented that this might be the time when E85 legislation might have been put in place to address blend wall issues
- A few potential SERs asked for clarification on the lifecycle GHG threshold (slide 15) and biomass-based diesel (slide 16)
  - EPA explained EISA's mandate that renewable fuels must meet these thresholds and discussed how EPA's goal is to create a truly market-based system
  - EPA explained the definitions of "FAME" (fatty acid methyl esters) and "renewable diesel" (can not be co-processed with petroleum)

## **8.6 Discussion and Summary of Comments During July 30, 2008 Outreach Meeting**

- EPA-OTAQ explained that the focus of the Outreach Meeting would be on Section B of the outreach document, which summarized the small refiner SERs' comments from the June 3, 2008 Outreach Meeting and provided some explanation and discussion regarding those comments
- The comments from the June 3 Outreach Meeting were summarized into four main areas of focus: 1) participation in the RFS1 program, 2) challenges in meeting the four required RFS2 standards, 3) regulatory flexibility options suggested by SERs, and 4) the credit trading/RIN program
- Participation in the RFS1 program
  - A SER that has been participating in the RIN system commented that they are having issues with RINs, and that the system needs to be modernized and updated; the SER further commented that it believes problems with the RIN system could be exacerbated with the introduction of more boutique fuels
  - Another SER commented that it is having problems with RINs because your ability to get RINs relies on the person who sold you the fuel
    - EPA questioned why refiners couldn't just specify in their contracts that RINs must be transferred with the fuel; SERs replied that contracts do specify this, but parties are still not transferring RINs with the fuel
  - EPA also asked if any small refiners were using some of the industry RIN trading systems or if all RIN trading and other RIN compliance was being done in-house

- SERs mentioned that they were doing everything in-house
  - EPA noted that the upcoming NPRM will include proposed provisions for improving the RIN system; and also offered to send the RFS program Compliance Help weblink to SERs to assist them in compliance
- Challenge in meeting the four required RFS2 standards/regulatory flexibility options suggested by SERs
  - A SER questioned why EPA did not believe that it would be feasible to allow small refiners to use RINs fungibly to meet the standards
    - EPA explained that EISA specifies that all four standards must be met by all obligated parties, and such a provision for small refiners would be akin to different standards for small refiners—which EPA believes is not consistent with the Act
    - EPA also explained that the standards are nested and that some standards can actually be used to meet other standards (thus providing SERs some ability to use RINs for one standard to meet another standard)
    - A SER commented that it did not agree with EPA’s reading of EISA and that it believes that EPA has more discretion to allow this
  - EPA asked for the SERs to try and explain, with more specificity, exactly what relief they need, and why they believe this relief is needed
    - One SER commented that its main concern is renewable fuel volume uncertainty, and also the fact that its refinery is in a non-agricultural area
    - Another SER commented that the market may hit a blend wall in 2013, and thus the suggestion of a delay until 2015 was because this could likely be when the volatility is lower following the blend wall
    - A SER commented that small refiners would prefer a delay until 2015 or 2016 (five years after the general compliance date) and a phase-in after that point
    - The SBA-Advocacy Panel member suggest that EPA may want to explore projecting when the market would potentially be less volatile, and proposing that small refiners would comply at some point after that
    - SERs also mentioned potential technical problems, demand issues (if they make the decision to comply by blending, but customers do not want the fuel), and state-mandated blending; SERs also asked about EPA’s waiver authority
    - EPA discussed its waiver authority under EISA (CAA section 211(o)(7))
- Credit trading/RIN program
  - The SBA-Advocacy and OMB Panel members also expressed that they believe a review of the credit trading/RIN system would be helpful to small refiners
    - They commented that this review could help to show if the credit trading system is working, availability of RINs and other renewable fuels for small refiner planning, (if possible) permitting and refinery plans, and RIN pricing
    - A SER questioned whether or not such a review could include information on the availability of specific types of fuels in certain areas of the country
  - EPA voiced its concern with a review since there will already be similar work being done as part of EPA’s requirement to publish the RFS2 standard annually in

the Federal Register, and EPA noted that some of this information will be required in reports that obligated parties will be sending to EPA (which will be discussed in the NPRM)

- EPA also noted that it cannot provide information on pricing (EPA does not have such information) but that this information is often provided by other industry sources (e.g., the Oil Price Information Service (OPIS)) for free; and that specific geographic information on renewable fuels production could only be provided on a PADD level if it were to be provided

## **9. PANEL FINDINGS AND DISCUSSION**

### **9.1 Number and Types of Entities Affected**

As discussed above in section 5, the Panel believes that small entities that will be subject to the upcoming RFS2 rulemaking include domestic refiners that produce gasoline and/or diesel and importers of gasoline and/or diesel into the United States. The current estimate of small refiners that would be subject to the upcoming rule, based on 2007 data, is 21 gasoline and/or diesel refiners. These refiners meet the SBA small-entity definition of having 1,500 employees or less. The Panel also notes that because of the dynamics in the refining industry (i.e., mergers and acquisitions), the actual number of refiners that ultimately qualify for small refiner status under the RFS2 program could be different than this estimate.

### **9.2 Potential Reporting, Record Keeping, and Compliance**

Registration, recordkeeping and reporting are necessary to track compliance with the RFS2 requirements and transactions involving RINs. These compliance requirements under the RFS2 program will likely be similar to those required under the RFS1 program. Program registration for the RFS1 program uses the same basic forms that EPA uses under the reformulated gasoline (RFG) and anti-dumping program, as these forms are well known in the regulated community and are simple to fill out. Reporting under the RFS1 program currently uses a simplified method of reporting via EPA's Central Data Exchange (CDX), and records related to RIN transactions may be kept in any format and the period of record retention by reporting parties is five years, similar to other EPA fuel programs.

### **9.3 Related Federal Rules**

The primary federal rules that the Panel notes are related to the proposed RFS2 rule under consideration are the Mobile Source Air Toxics rule (*Federal Register Vol. 72, p. 8428, February 26, 2007*) and the first Renewable Fuel Standard (RFS1) rule (*Federal Register Vol. 72, p. 23900, May 1, 2007*). The Panel is also aware of a Technical Amendment Direct Final Rulemaking for RFS1, which EPA expects to be published by early Fall 2008.

### **9.4 Regulatory Flexibility Alternatives**

As described above in section 3.2, RFA, as amended by SBREFA, requires that EPA

consider providing regulatory relief as appropriate, in accordance with the Agency's authority under the Clean Air Act. EPA evaluated potential regulatory alternatives with this in mind.

In section 211(o)(9), Congress specifically addressed the issue of an extension of time for small refineries, temporarily exempting them from the renewable fuel obligations through December 31, 2010. This temporary exemption may be extended under two separate provisions. One involves a study by the Department of Energy (DOE) concerning whether compliance with the renewable fuel requirements would impose disproportionate economic hardship on small refineries, with an extension of not less than two years for a small refinery that DOE determines would be subject to such disproportionate hardship. Another provision authorizes EPA to grant an extension for a small refinery based upon disproportionate economic hardship, on a case-by-case basis. EISA did not amend the small refinery provisions.

Nearly half of the small refineries that meet the "small refinery" definition are owned and operated by small refiners; there are only a few small refiners with refineries that do not meet the small refinery definition. Thus almost all of the small refiners are covered by the small refinery provisions in section 211(o)(9). As noted above, in RFS1 EPA whether it should provide relief to the limited number of small refiners who were not covered by the small refinery provision, by providing them a temporary exemption consistent with that provided by Congress for small refineries. EPA exercised its discretion under section 211(o)(3), as described above, and provided such relief. It's important to note that this did not modify the small refinery provision or provide any further relief than Congress provided for small refineries.

The RFS2 rulemaking now presents a very different issue – whether EPA has the authority to provide small refineries that are operated by a small refiner with an extension of time that would be different from and more than the temporary exemption specified by Congress in section 211(o)(9) to small refineries. For those small refiners who are covered by the small refinery provisions, Congress has specifically adopted a relief provision aimed at their refineries. This provides a temporary extension through December 31, 2010 and allows for further extensions if certain criteria are met. EPA believes that providing small refineries with an additional exemption different from that provided by section 211(o)(9) raises serious concerns about inconsistency with the intent of Congress. Congress spoke directly to the relief that EPA may provide for small refineries, including those small refineries operated by small refiners, and limited it to a blanket exemption through December 31, 2010, with additional extensions if the criteria specified by Congress were met. An additional or different extension, relying on a more general provision in section 211(o)(3), raises serious questions about consistency with the clear intent of Congress.

For the small refiners who do not operate small refineries, there would not be the same issue of consistency with section 211(o)(9), as Congress did not specifically address the issue of an extension for this group of small refiners. However EPA noted that it has concerns, as it did in RFS1, that in general small refiners should be treated similarly, whether they are covered by the small refinery provisions or not.

It is important to recognize that the small refinery provision does allow for extensions beyond December 31, 2010, with two separate provisions addressing extensions beyond 2010.

EPA believes that these avenues of relief can and should be fully explored by small refiners who are covered by the small refinery provision. In addition, EPA believes that it is appropriate to consider allowing petitions to EPA for an extension of the temporary exemption based on disproportionate economic hardship for those small refiners who are not covered by the small refinery provision. As in RFS1, this would ensure that all small refiners have available to them the same relief available to small refineries.

The purpose of the Panel process is to solicit information as well as suggested flexibility options from the SERs, and the Panel recommends that EPA continue to do so during the development of the RFS2 rule. Recognizing the concerns about EPA's authority to provide extensions to small refineries different from that provided in section 211(o)(9), the Panel recommends that EPA continue to evaluate this issue, and that EPA request comment on its authority and the appropriateness of providing extensions beyond those authorized by section 211(o)(9) for small refineries operated by a small refiner. The Panel also recommends that EPA propose to provide the same extension provision to small refiners who do not operate small refineries as is provided for small refineries.

#### *Delay in Standards*

The RFS1 program regulations provide small refiners who operate small refineries as well as small refiners who do not operate small refineries with a temporary exemption from the standard through December 31, 2010. Small refiner SERs suggested that an additional temporary exemption for the RFS2 program would be beneficial to them in meeting the standards. EPA evaluated a temporary exemption for at least some of the four required RFS2 standards for small refiners. The Panel recommends that EPA propose a delay in the effective date of the standards until 2014 for small entities, to the maximum extent allowed by the statute. However, the Panel recognizes that EPA has serious concerns about its authority to provide an extension of the temporary exemption for small refineries that is different from that provided in CAA section 211(o)(9), since Congress specifically addressed an extension for small refineries in that provision.

#### *Phase-in*

Small refiner SERs' suggested that a phase-in of the obligations applicable to small refiners would be beneficial for compliance, such that small refiners would comply by gradually meeting the standards on an incremental basis over a period of time, after which point they would comply fully with the RFS2 standards, EPA has serious concerns about its authority to allow for such a phase-in of the standards. CAA section 211(o)(3)(B) states that the renewable fuel obligation shall "consist of a single applicable percentage that applies to all categories of persons specified" as obligated parties. This kind of phase-in approach would result in different applicable percentages being applied to different obligated parties. Further, as discussed above, such a phase-in approach would provide more relief to small refineries operated by small refiners than that provided under the small refinery provision.<sup>4</sup> Thus the Panel recommends that EPA should invite comment on a phase-in, but not propose such a provision.

---

<sup>4</sup> Additional extensions under section 211(o)(9) are discussed below. To the extent a phase-in may be an appropriate form for an extension under that provision, the Panel recommends that it be considered in that context.

### RIN-related Flexibilities

The small refiner SERs requested that the proposed rule contain provisions for small refiners related to the RIN system, such as flexibilities in the RIN rollover cap percentage and allowing all small refiners to use RINs interchangeably. Currently in the RFS program, EPA allows for 20 percent of a previous year's RINs to be "rolled over" and used for compliance in the following year. A provision to allow for flexibilities in the rollover cap could include a higher RIN rollover cap for small refiners for some period of time or for at least some of the four standards. Since the concept of a rollover cap was not mandated by section 211(o), EPA believes that there is an opportunity to provide appropriate flexibility in this area to small refiners under the RFS2 proposed program but only if it is determined that there is a disproportionate effect warranting relief. The Panel recommends that EPA request comment on increasing the RIN rollover cap percentage for small refiners, and further that EPA should request comment on an appropriate level of that percentage. The Panel recommends that EPA should invite comment on allowing RINs to be used interchangeably for small refiners, but should not propose this concept because under this approach small refiners would arguably be subject to a different applicable percentage than other obligated parties.

### Program Review

With regard to the suggested program review, EPA raised the concern that this could lead to some redundancy since EPA is required to publish a notice of the applicable RFS standards in the Federal Register annually, and that this annual process will inevitably include an evaluation of the projected availability of renewable fuels. Nevertheless, the SBA and OMB Panel members believe that a program review could be helpful to small entities in providing them some insight to the RFS program's progress and alleviate some uncertainty regarding the RIN system. As EPA will be publishing a Federal Register notice annually, the Panel recommends that EPA include an update of RIN system progress (e.g., RIN trading, RIN availability, etc.) in this notice and that the results of this evaluation be considered in any request for case-by-case hardship relief. The Panel also recommends that EPA work with DOE in the development of DOE's small refinery study, specifically to communicate the comments that SERs raised during the Panel process.

### Extension of Existing RFS1 Temporary Exemption

The Panel recommends that EPA propose in the RFS2 program the provision at 40 CFR 80.1141(e) extending the RFS1 temporary exemption for at least two years for any small refinery that DOE determines would be subject to disproportionate economic hardship if required to comply with the RFS2 requirements.

### Petitions for an Extension Based on Disproportionate Economic Hardship

While SERs did not specifically comment on the concept of hardship provisions for the upcoming proposal, the Panel notes that under CAA section 211(o)(9)(B) small refineries may apply to EPA for case-by-case extensions of the small refinery temporary exemption on the basis of disproportionate economic hardship. The Panel recommends that EPA propose in the RFS2 program a case-by-case hardship provision for small refineries similar to that provided at 40 CFR 80.1141(e)(1). The Panel also recommends that EPA



propose a case-by-case hardship provision for small refiners that do not operate small refineries that is comparable to that provided for small refineries under section 211(o)(9)(B), using its discretion under CAA section 211(o)(3)(B). This would apply if EPA does not adopt an automatic extension for small refiners, and would allow those small refiners that do not operate small refineries to apply for the same kind of extension as a small refinery. The Panel recommends that EPA take into consideration the results of the annual update of RIN system progress.

**Appendix A:**  
**List of Materials Shared With SERs**

## **List of Materials EPA shared with Potential Small Entity Representatives**

(May 2008)

- EPA Outreach Document for June 3, 2008 Outreach Meeting/Teleconference
- The RFS2 Briefing Presentation Prepared for the June 3, 2008 Outreach Meeting/Teleconference
- Flexibility Concepts from Current and Previous EPA Rulemakings
- List of Potential Small Entity Representatives

## **Additional Materials the SBAR Panel shared with Small Entity Representatives**

(July 2008)

- RFS2 Panel Outreach Document for July 30, 2008 Panel Outreach Meeting
- List of Small Entity Representatives

**Appendix B:  
Written Comments the SBAR Panel  
Received from SERs**



## AD HOC COALITION OF SMALL BUSINESS REFINERS

June 16, 2008

Ms. Tia Sutton  
Environmental Protection Agency  
2000 Traverwood Drive  
Ann Arbor, MI 48105

[Sutton.Tia@epa.gov](mailto:Sutton.Tia@epa.gov)

Dear Tia:

Age Refining Company, American Refining Company, Countrymark Cooperative, Gary-Williams Energy Corporation, Kern Oil & Refining Company, Placid Refining Company and Wyoming Refining Company greatly appreciate the opportunity to participate in the SBREFA process on Renewable Fuel Standards 2.

In our meeting on June 3, you asked us to comment on a series of questions by June 17.

We have discussed the issues raised at the meeting and have strong consensus about our recommendations. Therefore we are submitting these comments as an "Ad Hoc RFS 2 Small Refiner SBREFA Coalition". Several companies expect to submit individual comments also. We have not yet conferred with other small refiners who did not participate in the June 3 meeting.

### **Background: June 3, 2008 Meeting Highlights**

Our understanding of RFS 2 highlights, as discussed on June 3, includes the following:

1. EPA is continuing to develop the RFS 2 regs as specified in the 2007 Energy Independence and Security Act (EISA) though the schedule has slipped a bit.
  - EISA calls for a Final Rule 12.19.08 with a 1.1.09 effective date;
  - EPA expects a proposal this fall with a final rule by 1.1.09 and 1.1.10 effective date;
  - Current RFS 1 regs will be in effect until 1.1.10 with new ethanol volumes as mandated;
  - Small refiners are exempt from RFS 1 until 1.1.11;
  - The SBREFA panel will formally convene on July 9 and then has 60 days to complete its work; another meeting with SERs is tentatively scheduled for July 30.

2. EISA mandated some key changes (in addition to new definitions of GHG lifecycles, etc.).
  - Standards are extended to include diesel and non-road gasoline, in addition to highway gasoline;
  - New renewable fuel categories include 4 “nested” standards;
  - By 2022 total renewable fuels volumes must be 36 billion gallons including 21 billion gallons of total advanced biofuel which in turn includes both biomass-based diesel (16 billion gals) and cellulosic biofuels (1.0 billion gals).
3. A period of great volatility is anticipated when a “blend wall” hits (when the national average concentration of ethanol is greater than 10% (E-10) but there are not yet enough E-85 vehicles to consume it).
  - At that time, the only way for obligated parties to comply will be to produce fuel they can't sell or buy RINs;
  - EPA estimates the US will hit the E-10 blend wall in 2013;
  - NPRA and API, however, predict the blend wall will occur in 2010;
  - EPA noted that if small refiners produce RINs before they are required to and have no use for them, they may be able to sell profitably to larger companies with an earlier compliance deadline.
4. EPA expects significant market volatility up until 2015 (and perhaps beyond) while the market sorts itself out.

## **Responses to EPA Questions**

### **General Program Details**

#### Participation in the RFS Program.

Of the seven small refiner SERs, only Countrymark and Placid have participated in the RFS RIN program to date. Countrymark blends biodiesel from soy beans and gasoline with corn ethanol. Placid is blending ethanol at select conventional gasoline terminal racks in the Southeast U.S. Countrymark and Placid report that tracking RINs has been cumbersome, complex and time consuming. It is almost impossible to avoid errors because the 38 digit numbers are subject to human error at each stage of the process. In addition, EPA requires, for example, that RINs transfer on the date of product transfer, which differs from company records which are based on date of purchase (or delivery). Placid's experience has been that RIN transfer rarely occurs with product transfer and obtaining RINs after the fact is an on-going task, many times at no fault of the ethanol suppliers as they have yet to receive RINs from the prior ethanol/RIN owner in the chain. Moreover, ethanol vendors do not necessarily sell current RINs. Countrymark has received ethanol in 2008 with 2007 RINs. Vendors may detach RINs but hold product in inventory for some time or sell different ethanol batches to which they attach old RINs. Thus often the RINs traded to Countrymark are “stale”.

Countrymark has had to add at least one accounting staff person just for RFS record-keeping. As the program continues, they expect to add at least one marketing staff person to handle the purchase and sale of RINs. Placid currently has one marketing person dedicated to ethanol buying/selling, RIN tracking, EPA report coordination and RIN trading. As ethanol blending locations increase and the blending volumes expand, Placid anticipates

that they may have to add one accounting person to manage just the RIN portion of the program.

#### Relative Challenge of Meeting the Four Standards.

We believe that it will be much more difficult – if not impossible -- for small refiners to meet total advanced biofuel, biomass-based diesel and cellulosic biofuels standards than to comply with a general total renewable fuel standard. We fear the non-corn-based ethanol fuels will be limited in supply (if available at all), more expensive, and perhaps more difficult to handle. In addition, we fear the biofuel demand and infrastructure will not be sufficient to realistically move the fuel into the marketplace. RIN credits for these three fuel categories will be limited in number and volatile in price. It is important to consider that small refiners do not typically own or operate upstream oil and gas production or downstream marketing, transportation or retail as do many of the larger integrated oil companies. Therefore, it is much more difficult for small refiners to implement and to recover from new regulations and programs. Due to their limited resources and capital, small refiners are more affected by market, pricing and supply fluctuations.

In California, in particular, small refiners are still recovering from recently having to meet new Air Resources Board Reformulated Fuel Standards and Ultra-Low Sulfur Diesel standards. Small refiners in California are now facing new Low Carbon Fuel Standards and Renewable Fuel Standards. Small refiners are facing significant uncertainty as to how state and federal fuel standards will either compete or overlay each other and what impact the costs of these new programs and standard will ultimately be.

### **Overall Response to Options**

#### Additional Lead Time/How Long.

We strongly believe that additional lead time (beyond the RFS1 delay until January 1, 2011) is essential. In addition to the costs and reporting complexities of the rule and based on the anticipated 2013 blend wall, we expect significant RINs market volatility until 2015 – assuming the RFS 2 program goes into effect on January 1, 2010 -- and probably beyond.

Small refiners request the following consideration:

1. Small refiners should be fully exempt from complying with the RFS 2 rule until January 1, 2016 – or at least five years after the RFS 2 effective date. At that time, small refiners should be required to comply only with the overall renewable fuel standard on a phased-in basis.
2. Small refiner renewable fuel compliance volumes should be increased by not more than 20%/year until the full required volume is attained.
3. There should be no specific requirements for advanced biofuel, biomass-based diesel and cellulosic biofuels at any time although RINs for these fuels would always

be valid to demonstrate small refiner compliance with the overall renewable fuel standard.<sup>1</sup>

4. If EPA decides that at some future time small refiners must be subject to the advanced biofuels standard, it too should be phased in by requiring not more than 20% of additional volume over a five-year period.
5. In 2015, EPA should review the RFS -2 program with small refiners to evaluate if changes are appropriate.

It should be pointed out that mandated biomass-based diesel blending would be a significant problem. At least two small refiners, American Refining Group and Age Refining with two very different seasonal temperatures, have not been able meet biomass-based diesel blending pour point for blended biodiesel. In Michigan and Wisconsin, American Refining reports, home heating systems became plugged and inoperable and fuel systems in trucks have formed restrictions and experienced plugging of fuel lines and system components. Pour point depressants have not been shown to be effective with biodiesel at any level.

We estimate that small refiners now produce less than 6% of U.S. gasoline and diesel fuel. By 2020, we may well be an even more insignificant part of the U.S. refining industry. Our exemption from immediate full compliance will have no material impact on the country's renewable fuels consumption. However it will provide much needed relief for small refiners.

## **Costs of Compliance and Lead Time**

### Operational Costs and Changes.

We do not have enough information at this time to comment on potential operational costs or operational changes that meeting the new standards would impose. We do not know, for example, whether each of the four fuels have to be segregated for RIN tracking and verification and therefore do not know whether we will need significant extra tankage and perhaps blending facilities. If that is the case, additional time will be required to secure the pre-construction and operating permits from the local air pollution control districts and other regulatory over-site agencies.

We understand that the Magellan pipeline/terminal system, used by Gary-Williams Energy Corporation and Placid Refining, estimates that each ethanol injection facility being built at its terminals will cost approximately \$3.3 million in today's dollars. The pipeline projects that it will not be able to complete construction of the additional tankage and injection systems for ethanol until the end of 2010.

In any case, we do know that there will be additional costs for tankage, automated measurement system and RINs reporting software, and staff both at the accounting and

---

<sup>1</sup> This concept is compatible with EISA which requires only that the "renewable fuels obligation" apply to "transportation fuels" generally rather than to each category on a specific and separate basis. An EPA determination that RIN fungibility for small refiners does not endanger meeting the volume mandates for any renewable fuel category will satisfy the requirements of the statute in this regard.



operations levels. We anticipate that pipeline tariffs and terminal storage/handling charges will have to increase as a result.

### **Credit Trading Program**

We are very concerned about the cost and availability of credits (RINs). Whatever final RFS volumes are established for small refiners, RIN credits for all four fuel categories must be interchangeable for small refiners. There should be a permanent ability for small refiners to enjoy interchangeability on a one-to-one or other basis between the “renewable fuel”, “advanced biofuel”, “cellulosic biofuel” and “biomass-based diesel” categories such that credits or RINs generated in one category can be used for small refiner compliance in any other category. (See footnote 1 above.)

If small refiner RINs are not fungible, as suggested above, we anticipate that our credit purchasing costs could be extremely damaging.

We also believe that all RINs should have equivalent value on a one-to-one basis, independent from the life cycle analysis. This will significantly facilitate and enhance RIN trading and reporting. Tracking different vintage RINs for each of the four “nested” fuels will be much more complex and error-prone than even the cumbersome RIN reporting system of RFS 1.

Small refiner-generated or purchased RINs should be valid for compliance in the calendar year generated and for an unlimited time thereafter with no credit rollover cap. Our small businesses will be particularly vulnerable to credit market fluctuations. We might, for example, buy RINs when they are relatively highly priced and be forced to sell them when their value is much less. The combination of RIN interchangeability and no rollover cap will give small refiners the ability to fully utilize renewable fuels opportunities in the limited and sometimes niche markets where we operate. If elimination of a credit rollover cap is not possible, small refiners at the very least should be granted the flexibility to meet their current year RVO with up to 50% of prior year RINs.

We also request that EPA plan a comprehensive review of the credit trading program and RINs system – in cooperation with small refiners – at least one year before the small refiner RFS 2 compliance deadline. By that time, there should be sufficient RINs market trading data to assess the availability and relative costs of the nested fuels and their credits. Such a review was proposed in the preamble to the MSAT 2 rule published in the Federal Register on February 26, 2007 (page 8492).

Thank you for your consideration of these comments. We refer you also to the comments on RFS 1 which we submitted in November 2006 and which are attached.

We look forward to the opportunity to discuss these concepts with you in greater detail as the SBREFA process continues.

Sincerely yours,

(Signed by:)

Age Refining

Cindy Fuqua, Environmental Consultant  
Phil Goodman, Director of Operations

Gary-Williams Energy  
Corporation/Wynnewood  
Refining Company

Sally V. Allen, VP Administration and Governmental Affairs

American Refining Group

John Robinson, VP Business Development  
Steve Sherk, VP Compliance

Countrymark Cooperative

John Stern, Consultant

Kern Oil & Refining Company

Jerry Frost, Senior Environmental Regulatory Advisor

Placid Refining Company

Pam Posster, Marketing Manager

Wyoming Refining Company

Bob Neufeld, VP Environment and Governmental Relations



# **AD HOC COALITION OF SMALL BUSINESS REFINERS**

## **Comments On EPA's Proposed Rule on Regulation of Fuels and Fuel Additives: Renewable Fuel Standard Program November 10, 2006**

Docket ID No. EPA-OAR-2005-0161  
Submission deadline: November 12, 2006

There are approximately 20 U.S. small refiners falling within the EPA definition of small business refiner (with a capacity of not more than 155,000 BPD and fewer than 1,500 total employees). We have worked together for many years in an ad hoc coalition which has enabled us to share views, exchange relevant information and work cooperatively on issues of importance, even survival. We appreciate the opportunity to comment on the proposed Renewable Fuel Standard Program

Small refining companies are located across the country from Pennsylvania to the West Coast. They vary greatly in operational configuration, product slate, marketing area and capacity. Some do not now make gasoline but are considering entrance into the gasoline market. Some are subject to California regulations. There is generally no single regulatory approach which assists all small refiners equally. Therefore small refiner flexibilities included in EPA rulemakings are particularly important to the continuing viability of the small refiner segment of the industry.

As part of its ongoing effort to confer with stakeholders during the development of clean fuels rules, EPA's Office of Transportation and Air Quality met with ten to twelve small refiners in two extended conference calls to discuss the rulemaking as it developed and to seek small refiner input.

### Waiving the SBREFA Requirement

A key initial question involved the exemption granted in the Energy Policy Act to smaller refineries (75,000 bpd or less) until 2011. EPA proposed that the exemption be extended to small refiners with fewer than 1,500 employees and a capacity of 155,000 bpd or less (as noted above, the EPA small refiner definition) and asked whether that would obviate the need for an investigation of the economic impact of the rule on small

business refiners under the Small Business Regulatory Enforcement Fairness Act (SBREFA). EPA's objective was to expedite compilation and finalization of the rule.

The small refiners agreed that such an expedited approach would be acceptable if (1) small business refiners receive such an exemption, (2) they could generate RFS credits if they elected to blend renewables before 2011; and (3) those small refiners electing to blend and earn credits are relieved of program compliance requirements.

#### Strong Endorsement of Expanded Small Refiner Definition

EPA specifically requested comment on the proposal to extend the small refinery exemption until 2011 which is incorporated in the act to small refiners as defined above. We strongly support that expanded definition. In fact, as noted, our initial agreement not to insist on a SBREFA panel was predicated on the understanding that the expanded definition would be incorporated in the final rule.

#### Need for Change in and Continued Monitoring of Credit System

Small refiners generally endorse the Renewable Identification Numbers (RINs) approach to the establishment and operation of a credit trading program – with a key exception: we oppose it's companywide (versus individual facility) compliance basis, as noted below

EPA apparently anticipates that there will be a surplus of available credits and that therefore their cost will not be prohibitive. The cost and availability of credits are important issues to small refiners. The Energy Policy Act provides that the Secretary of Energy must determine whether the renewable fuels requirements impose disproportionate economic hardship on small refineries. We request that the rule include a specific provision, similar to that proposed in MSAT 2, to review the credit program and its impact on small refiners on a periodic basis.

#### Plant-by-Plant vs Company-wide Compliance

We strongly believe, for the reasons provided below, that compliance with the renewable fuels standard should be based on individual refinery plants rather than tallied on a company-wide basis.

EPA points out in the preamble to the proposed rule that 42 small refineries are expected to qualify under the Energy Policy Act definition of small refinery (capacity not exceeding 75,000 bpd regardless of the size of the refining company that owns the refinery). We estimate that more than half of those are owned by large integrated oil and gas companies. Small refiners are concerned about the disproportionate advantage which will be enjoyed by large companies which can spread RINS among several refining facilities for two important reasons.

On the one hand, large refiners with several facilities will be able to comply but still benefit from exemption for their small refineries. There may economies of scale, longer term contracts, and various other competitive benefits which larger

companies will enjoy. Larger companies may build or acquire their own ethanol production facilities. Small refiners with only one plant operating in the same market area will be disadvantaged. Small refiners believe that compliance should be based on an individual refinery basis. Otherwise, the “solution” appears to lie only in the credit program and the hope that the volume of available credits will result in reasonable credit costs.

On the other hand, in markets where production of corn-based ethanol is expected to be significant, large refining companies may decide to meet most or all of their RFS blending obligation at plants situated close to ethanol production sources. By doing so, they will save the transportation costs incurred when ethanol is shipped to other markets. The result will be an imbalance in the distribution of ethanol, with a concentration in the corn-belt area and lower volumes on the coasts. The related increase in gasoline volume in those corn-growing/ethanol producing regions will lead to lower gasoline prices which will disadvantage, in fact may be disastrous to, a small refiner or small refinery dependent upon its gasoline sales.

In the Midwest, for example, corn is grown and ethanol is produced in most of the states served by the Magellan pipeline. Corn and ethanol production in the area is expected to increase significantly over the next decade. That volume will very soon grow by at least 10% if regional refineries elect to blend as much ethanol as possible (currently most cars can operate with a maximum 10% ethanol blended fuel) and thereby satisfy their company-wide ethanol blending requirement. As more flex vehicles come into use and retail distribution systems are put in place, gasoline volumes will increase further. Demand is not expected to keep pace. Prices will drop below national averages. There will be at least two consequences. Small refiners marketing in those states, without the ability to offset loss of revenue at other facilities, will be severely disadvantaged. And the “corn belt” already benefiting significantly from federal tax advantages and blending requirements, will enjoy lower gasoline prices than the rest of the country: a double whammy with potential consumer outrage in other parts of the country.

#### Opportunity to Accumulate RINs before 2011

The proposed rule is not clear, in our opinion, about whether a small refiner blending ethanol at a terminal or any location without formally opting into the program before 2011 can separate RINs and sell them or transfer them to customers (or use them if a later opt-in decision is made). The preamble to the rule, referring to small refineries and small refiners, says “If a refiner does not waive the exemption, the refiner could still separate and transfer RINS, but only for the renewable fuel that the refiner itself blends into gasoline (i.e. the refiner operates as an oxygenate blender.” The meaning of the word “itself” should be interpreted broadly. Most companies will purchase ethanol and blend at locations other than their own physical plant.

As noted above, we proposed to EPA during our early discussions that small refiners should generate RFS credits if they elected to blend renewables before 2011 without formally opting into the program but they should not be held to specific RFS volumes under program compliance requirements. We formally recommend this provision again now. Such an approach would provide an incentive to small refiners to blend ethanol.

#### Need to Address Hardships Resulting from Varying State RVP Standards

The proposed rulemaking does not address seasonality issues: the hardships faced by small refiners who market gasoline in non-attainment areas and/or must meet varying state RVP standards. We note the “ethanol penalty” resulting from both the California permeation emissions program and the fact that some areas in which small refiners market do not allow a 1 lb summer RVP waiver. It is our understanding that the Energy Information Administration (EIA) intends to study seasonal use. We request that the study be accelerated and that the RFS regulations allow subsequent revisions to the small refiner provisions to recognize the hardship which seasonality imposes on small business refiners if demonstrated by the EIA study

#### Need for a General Hardship Provision

EPA has not proposed a temporary exemption based on unforeseen circumstances. Other recent EPA clean fuels regs include hardship provisions allowing for temporary waivers based on unforeseen circumstances and/or extreme hardship circumstances. It may turn out , as EPA suggests in the Preamble to the rule, that there will be a sufficient volume of RINs available to offset reduced gasoline production. In addition lower gasoline volumes would result in a reduction of the renewable fuels requirement. But it is impossible at this early regulatory stage to predict with any certainty just how this program will in fact impact small refiners. We strongly request the inclusion of such provisions in this rule, particularly because of the competitive disadvantages that may result for small refiners if the small refinery exemption is not expanded to small refiners and if the company-wide (versus individual plant) compliance structure of the RINS program is not changed.

We appreciate this opportunity to submit comments on this important rulemaking. If you have questions or need additional information at this time, please do not hesitate to contact any of the companies listed below or Sally V. Allen, Vice President of Administration and Governmental Affairs, Gary-Williams Energy Corporation, at 303.628.3800 X460 ([sallen@gwec.com](mailto:sallen@gwec.com) ).

#### **The following companies endorse this statement:**

Age Refining Company, San Antonio, TX  
American Refining Group, Bradford, PA  
Countrymark Cooperative, Mt Vernon, IN  
Frontier Refining Company

- C heyenne, WY
- El Dorado, KS

Gary-Williams Energy Corporation, Denver, CO

- Wynnewood Refining Company, OK

Holly Corporation, Dallas, TX

- Navajo Refining, NM
- Woods Cross Refining, UT

Montana Refining Company, Inc., Great Falls, MT

Petro Star Inc., Anchorage, Alaska

- North Pole, AK
- Val dez, AK

Placid Refining Company, Dallas, TX

- Port Allen, LA

Silver Eagle Refining Company, Woods Cross, UT and Eagle Springs, NV

The Somerset Refinery, Inc., Somerset, KY

Western Refining Company, El Paso, TX

Wyoming Refining Company, Denver, CO

- Newcastle, WY



**GARY-WILLIAMS**  
ENERGY CORPORATION

June 16, 2008

Ms. Tia Sutton  
Environmental Protection Agency  
2000 Traverwood Drive  
Ann Arbor, MI 48105

[Sutton.Tia@epa.gov](mailto:Sutton.Tia@epa.gov)

Dear Tia:

In our RFS 2 SBREFA meeting on June 3, you asked us to comment on a series of questions by June 17. Gary-Williams Energy Corporation strongly endorses the entire statement sent to you by the group of seven small business refiner SERs and by reference incorporates those in this company statement.

As you know, Gary-Williams Energy Corporation is a privately held, independent refining and marketing company headquartered in Denver, CO. Our major asset is a crude oil refinery in Oklahoma: Wynnewood Refining Company (WRC). The refinery is just completing the start-up process after a turnaround and expansion project which will increase our capacity from about 55,000 bpd to 70,000 bpd.

We have not yet participated in the RINs program. The economics of ethanol blending have not merited the burden of obtaining and tracking RINs. During the first part of this year, we have purchased about 400 bpd of ethanol, but without RINs. We do not have the internal accounting capability to handle complex RINs reporting.

We ship most of our product via the Magellan pipeline system and blend what little ethanol we purchase at the terminal; many of the Magellan terminals do not yet have ethanol blending facilities. We do not have ethanol blending facilities at our plant and do not—in any case -- have sufficient tankage to store it.

We do not have enough information at this time to comment specifically on potential operational costs or operational changes that meeting the four standards will require. We certainly anticipate that there will be additional costs for tankage, automated measurement system and RINs reporting software, and staff both at the accounting and operations levels.

Thank you for your consideration. We look forward to working with you during the RFS 2 SBREFA process.

Sincerely yours,

Sally V. Allen  
Vice President, Administration and Governmental Affairs



Ms. Tia Sutton  
Environmental Protection Agency  
2000 Traverwood Dr.  
Ann Arbor, MI 48105

June 17, 2008

Tia,

ARG would like to comment on RFS#2 as below and we also endorse the comments made jointly under the Ad HOC Coalition of Small Business Refiners as submitted recently by Sally Allen.

American Refining Group operates a small 10,000 bpd refinery in North Western Pennsylvania. We are unique in that 50% of our output is commodity fuels while the remaining portion is specialty lubricants, waxes, base oils, resins and extracts. We serve local markets and sell our entire fuels output local to Bradford, PA. We are a significant source for Locomotive Diesel Fuel, Off Road Diesel and Home Heating Fuel. We are currently supplying <500ppm Sulfur Diesel under the small refiners exemption. Our Gasoline sulfur levels are well below the mandated 30ppm. We operate on 100% Penn Grade Crude Oil that is indigenous to the geographic area. This crude is highly paraffinic and naturally low in sulfur.

Our thoughts and concerns regarding RFS#2 are as follows:

- We fear great volatility in the RIN market potentially driving up costs for small refiners. This will be true as we approach the “blend wall” for ethanol in gasoline estimated for 2013. We expect market volatility to remain for several years as flex fuel vehicles and other alternatives work their way through the market. We foresee market volatility through 2015; this instability would place a large burden on small refiners.
- Access to RIN’s. We believe under RFS#2 the blend categories may make it difficult for regional refiners to source certain categories of renewable fuels. This will put us at a disadvantage purchasing RIN’s and or drive up the cost of sourcing renewables with heavy freight charges. This holds especially true for Advanced Bio-mass material and cellulosic material. The volume purchasing power of large refiners and nation wide locations will put us at a price disadvantage.
- We have seen that similar sized operations like ours have had significant difficulty under RFS#1 tracking, recording and reporting RIN’s. Many have had to higher additional staffing to comply and still there remains much confusion with the RIN System. We see staffing, RIN Trading and purchasing staff, accounting and others needed to comply with the burden of this legislation. This cost will be difficult to recover on the small volume of fuels we produce as compared to large refiners.
- We have budgeted \$1.5MM for a blending system in 2009 to comply under RFS#1. Further to comply with RFS#2 we are estimating several more tanks and blending would be required; estimates are as high as \$6MM to comply. This is a significant outlay of

desperately needed capitol for a small company that only produces aprox 5,000 bpd of commodity fuels at full production. This cost is a burden based on the relatively small amount of fuel we provide compared to our larger competitors.

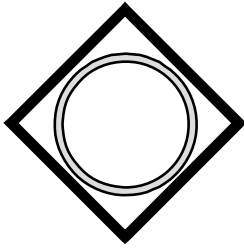
- We fully expect mandatory bio-diesel blending will be problematic for the northern tier states due to ASTM pour point specs. We have found no PPD (pour point depressants) to work with diesel fuel and bio-diesel blends. An insufficient amount of ULSK exists to blend with and at the blend % of bio-diesel expected would not be effective. We cite recent problems in Wisconsin and Michigan as evidence that serious potential problems with gelled fuels will exist. Forcing small refiners to buy RIN's for half of their winter diesel blending requirements is not a good solution due to availability issues, market fluctuations and additional cost considerations.

We appreciate this opportunity to voice our concerns to EPA, we hope that EPA will consider and implement the recommendations on delayed implementation and phase, RIN issues etc in as proposed by the Ad HOC Coalition of Small Business Refiners cited in Sally Allen's letter of June 16th, 2008. We also ask that you consider many of the points raised above when implementing your program going forward.

Should you have any questions or if you would like to discuss any point further please feel free to contact me.

Sincerely,

John W. Robinson  
V.P. of Business Development



## *Kern Oil & Refining Co.*

7724 East Panama Lane  
Bakersfield, CA 93307  
Phone (661) 845-0761  
Fax (661) 845-0330

June 17, 2008

Ms. Tia Sutton  
Environmental Protection Agency  
2000 Traverwood Drive  
Ann Arbor, MI 48105

[Sutton.Tia@epa.gov](mailto:Sutton.Tia@epa.gov)

SUBJECT: SBREFA RFS2 Comments

Dear Tia:

Kern Oil & Refining Co. (Kern) appreciates the opportunity to participate in the SBREFA process on Renewable Fuel Standards 2. For the record, Kern supports the comments previously submitted on June 16, 2008 by the Ad Hoc Coalition of Small Business Refiners (Attached)

### **Small Refiner Overview**

Kern is a small independent refiner who has been operating in the Southern San Joaquin Valley for over 70-years. Kern is the only small independent refinery in California continuously producing and supplying both California Air Resources Board (CARB) Reformulated Phase 3 Gasoline and new CARB Ultra-Low Sulfur Diesel. Kern is recognized by CARB and the CEC as a "Small Refinery".

Kern has no upstream oil and gas production nor do we have any marketing or retail facilities. Therefore, the economies of scale for Kern are much poorer than they are for the larger refiners.

The California Air Resources Board (CARB), and others, have long recognized Small Refiners as vital in providing supply and competition to California's petroleum industry.

Recognizing the importance of Small Refiners yet understanding the higher compliance costs, CARB has adopted Small Refiner specific regulations, which provides certain flexibility for compliance while preserving the intent. The USEPA has adopted similar regulations applicable to Small Refiners under the same premise (Ref. 40 CFR 80.550).

Based on the "Oil & Gas Journal", there were 26 small refiners in California in 1981, and by 2003 there were only 7 small refiners.

EPA recognizes the uniqueness of Small Refineries and in EPA's FR notice dated 1-18-01, pages 5073-5075, EPA makes the following references to small refiners:

- " ...disproportionately challenged..."
- "...poorer economies of scale..."
- "...relative difficulty...warrants flexibility..."
- "...are disadvantaged by the economies of scale that exist for larger refining companies..."
- "...capital costs and per-barrel fixed operating costs are generally higher..."
- "...we agree that small refiners would likely experience a significant and disproportionate financial hardship..."
- "...generally lack the resources available to large companies..."
- "...more difficulty in securing loans, competing for engineering resources and completing construction..."
- "...have limited additional sources of income beyond refinery earnings..."
- "...do not have the financial backing that larger more integrated companies have..."

As mentioned previously, Small Refiners experience poorer economies of scale than the large refineries and refineries owned by major integrated oil companies. Small refiners have no upstream oil and gas production nor do they have marketing and retail distribution.

In California, in particular, small refiners are still recovering from recently having to meet new Air Resources Board Reformulated Fuel Standards and Ultra-Low Sulfur Diesel standards. Small refiners in California are now facing new Low Carbon Fuel Standards and Renewable Fuel Standards. Small refiners are facing significant uncertainty as to how state and federal fuel standards will either compete or overlay each other and what impact the costs of these new programs and standard will ultimately be.

It is important to consider that small refiners do not typically own or operate upstream oil and gas production or downstream marketing, transportation or retail as do many of the larger integrated oil companies. Therefore, it is much more difficult for small refiners to implement and to recover from new regulations and programs. Due to their limited resources and capital, small refiners are more affected by market, pricing and supply fluctuations

## **Overall Response to RFS2 Options**

### Additional Lead Time/How Long

Kern strongly believes that additional lead time (beyond the RFS1 delay until January 1, 2011) is essential. In addition to the costs and reporting complexities of the rule and based on the anticipated 2013 blend wall, we expect significant RINs market volatility until 2015 – assuming the RFS 2 program goes into effect on January 1, 2010 -- and probably beyond.

Kern and the other small refiners request the following consideration:

1. Small refiners should be fully exempt from complying with the RFS 2 rule until January 1, 2016 – or at least five years after the RFS 2 effective date. At that time, small refiners should be required to comply only with the overall renewable fuel standard on a phased-in basis.
2. Small refiner renewable fuel compliance volumes should be increased by not more than 20%/year until the full required volume is attained.
3. There should be no specific requirements for advanced biofuel, biomass-based diesel and cellulosic biofuels at any time although RINs for these fuels would always be valid to demonstrate small refiner compliance with the overall renewable fuel standard.<sup>1</sup>
4. If EPA decides that at some future time small refiners must be subject to the advanced biofuels standard, it too should be phased in by requiring not more than 20% of additional volume over a five-year period.
5. In 2015, EPA should review the RFS -2 program with small refiners to evaluate if changes are appropriate.

---

<sup>1</sup> This concept is compatible with EISA which requires only that the “renewable fuels obligation” apply to “transportation fuels” generally rather than to each category on a specific and separate basis. An EPA determination that RIN fungibility for small refiners does not endanger meeting the volume mandates for any renewable fuel category will satisfy the requirements of the statute in this regard.

SBREFA RFS2 Comments

June 17, 2008

Page 4 of 4

It is estimated that small refiners now produce less than 6% of U.S. gasoline and diesel fuel. By 2020, we may well be an even more insignificant part of the U.S. refining industry. Our exemption from immediate full compliance will have no material impact on the country's renewable fuels consumption. However, it will provide much needed relief for small refiners.

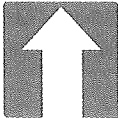
Thank you for your consideration of these comments and we look forward to the opportunity to discuss these concepts with you in greater detail as the SBREFA process continues.

Sincerely,

COPY

Jerry L. Frost, REA, REM  
Senior Environmental Regulatory Advisor

Attachment



June 16, 2008

Ms. Tia Sutton  
Environmental Protection Agency  
2000 Traverwood Drive  
Ann Arbor, MI 48105  
[Sutton.Tia@epa.gov](mailto:Sutton.Tia@epa.gov)

RE: Renewable Fuels Standard 2

Dear Tia:

Thank you for the opportunity to discuss potential impacts to AGE Refining, Inc. regarding the above standard. As you know AGE Refining is the only refiner of the small refiners that does not produce gasoline and currently has no plans to do so. To date AGE has not participated in the RIN program although we are registered to blend and sell B-20 Biodiesel product.

During 2006 AGE Refining made an unsuccessful attempt to make B-20 Biodiesel product and sell it in the San Antonio market. We produced approximately 6,000 barrels of B-20 product, but were unable to consistently sell it in bulk (truck load) to diesel customers in the San Antonio area. Few customers were willing to purchase 7,500 gallons of product at once. Many people inquired about purchasing 55 gallons at a time. In addition, AGE encountered significant quality and consistency issues with the soy based B100 material we purchased. We subsequently exited the biodiesel market.

To prepare to enter into the biodiesel market again, AGE would have to add tankage, piping and a blending unit. In addition, extra staff would be required to track and maintain the credit program and RIN system. AGE estimates approximately \$400,000 to install the blending system and \$100,000/year in additional staff to purchase B100 Biodiesel with RINS and market a B10 or B20 product. To produce and sell a bio-mass diesel product or cellulose-based diesel product would require considerable investment in a new process unit. An example would be to purchase palm oil or animal fat and convert it directly to diesel. Present technology, which is being tested, requires a catalytic reaction unit similar to a diesel hydrotreater. AGE Refining does have hydrogen available for such a process unit, but would still require complicated processing equipment with a capital cost of \$20-\$50 million and approximately three years or more of planning, financing and construction time.

It seems the biggest challenge facing AGE and the other small refiners is the availability and cost of purchasing renewable fuels components, such as soy-based biodiesel for blending, or a cellulose-based diesel feedstock/product or even the palm oil, vegetable oil or animal fat to produce a renewable diesel product. This is a significant unknown and challenge as AGE is still working to complete our ultra-low sulfur diesel unit to comply with that regulation.

AGE strongly concurs with the correspondence from the Ad Hoc small refiner's group. We have consulted with Hawthorne & Associates regarding the RIN system and the numerous complications thereof. Therefore the delay requested to 2016 and flexibility to participate in the Total Renewable Fuel category only would provide AGE the time and flexibility to adjust our business plan and make the financial commitments necessary to remain a participant in the San Antonio fuel market.

Thank again for your time and coordinating efforts.

Respectfully,

A handwritten signature in black ink, appearing to read "Philip J. Goodman". The signature is fluid and cursive, with a long horizontal stroke at the end.

Philip J. Goodman  
Director of Operations

cc: G. Gonzalez, C. Fuqua  
S. Allen, Gary Williams



**JOHN H. STERN**  
**Consultant**  
**7033 West Kimberly Way**  
**Glendale, AZ 85308**

June 16, 2008

Ms. Tia Sutton  
Environmental Protection Agency  
2000 Traverwood Drive  
Ann Arbor, MI 48105

Dear Ms. Sutton:

I am making these comments on behalf of Countrymark Cooperative, LLP (Countrymark). Countrymark appreciates the opportunity to participate in the SBREFA process on Renewable Fuel Standards 2 (RFS 2) and to make comments concerning the proposed regulations.

EPA should be receiving comments from "Ad Hoc RFS 2 Small Refiner SBREFA Coaliton" dated June 16, 2008 and Countrymark adopts and supports those comments. Also, during the process of the adoption of the Renewable Fuel Standard Program in November of 2006, the Ad Hoc Coalition of Small Business Refiners made comments dated November 10, 2006. A copy of which is attached and which Countrymark feels is appropriate to be included in the SBREFA comments for our RFS 2.

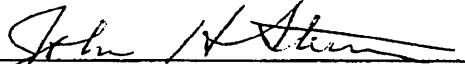
In addition to the comments in the above two documents Countrymark would like to take the opportunity to make the following comments. Countrymark has been blending ethanol into gasoline and soybean oil into diesel fuel and has purchased renewable fuels which have had attached RINS. Countrymark has been experiencing problems with the RINS program. First of all, it is finding many mistakes in the RINS identification numbers and it takes considerable time and effort to obtain corrected numbers. Generally these are human errors or caused by lack of understanding of the program by those issuing the RINS. Secondly, Countrymark is finding that there is a problem in coordinating the RINS with the renewable fuels purchased since EPA has instructed renewable fuel providers to use the date of invoicing for the date of the RINS while the product may be delivered at some time prior to the issuance of the invoice and placed in storage or used for blending. This creates record keeping and logistics problems. Countrymark recommends that EPA consider making the RIN date the date of the delivery of the product so that it will be easier

to track the product and associate it with the RIN. Thirdly, Countrymark has received what it considers stale dated RINS. As late as this month (June 2008) Countrymark has been receiving RINS with 2007 dates. These RINS will be subject to being reduced to 20% of their carry over value in a little over six months. Therefore, it is suggested that for small refiners the RINS be allowed to be carried over for an indefinite period otherwise small refiners will be penalized if they have to purchase RINS or have extra RINS and they cannot be used or sold within the year as they would be limited to the 20% carry over. Because of the difficulties experienced with the RINS program, Countrymak has already added one employee and is in the process to having to obtain a new software program to track and report the RINS and it anticipates one more employee will need to be added after the RFS 2 program begins.

Countrymark strongly recommends that small refiners be allowed an exemption from RFS 2 because of the uncertainties of the marketplace and the financial impact that this program may have on small refiners. Since small refiners make up a small percentage of both the gasoline and diesel markets, a complete exemption would have little or no impact on the program.

Countrymark looks forward to being involved in the continuing SBREFA process and the panel's consideration of suggestions and comments of the Small Refiner participants.

Countrymark Cooperative, LLP

  
By John H. Stern, Consultant  
Telephone 623-561-2058