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[PESRM Options Paper.docx](#)
[Final RFS1 Rule Excerpt - General Hardship.pdf](#)

Mandy and Patrick –

Attached is a one-pager laying out three tools that EPA has available to relieve PESRM of its 2016/2017 RFS obligations. Based on the feedback we've received from EPA about the use of the waiver authority, we think an interim or direct final rule or combination of enforcement and interim or direct final rule, is the best option. We think an interim or direct final rule relying on the 2007 final rule to include "general" hardship provisions will be the fastest and the fact that EPA proposed to include general hardship provisions in an earlier rulemaking would support using an interim/direct final rule to establish one now, rather than initiating a multi-year rulemaking process. For your convenience, I've attached a one-page excerpt from the 2007 rule. General hardship provisions were not included at the time based on the belief that RINs would be cheap and available.

I would be interested in talking with you about this approach once you've had an opportunity to consider it.

Thanks,

LeAnn

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specified in the regulations at §80.1142), except the letter will not be due prior to the program. Small refiner status verification letters for this rule that are later found to contain false or inaccurate information will be void as of the effective date of these regulations. Unlike the case for small refineries, small refiners who subsequently do not meet all of the criteria for small refiner status (i.e., cease producing gasoline by processing crude oil, employ more than 1,500 people or exceed the 155,000 bpcd crude oil capacity limit) as a result of a merger with or acquisition of or by another entity are disqualified as small refiners, except in the case of a merger between two previously approved small refiners. As in other EPA programs, where such disqualification occurs, the refiner must notify EPA in writing no later than 20 days following the disqualifying event.

The Act provides that the Secretary of Energy must conduct a study for EPA to determine whether compliance with the renewable fuels requirement would impose a disproportionate economic hardship on small refineries. If the study finds that compliance with the renewable fuels requirements would impose a disproportionate economic hardship on a particular small refinery, EPA is required to extend the small refinery's exemption for a period of not less than two additional years (i.e., to 2013). The Act also provides that a refiner with a small refinery may at any time petition EPA for an extension of the exemption for the reason of disproportionate economic hardship. In accordance with these provisions of the Act, we are finalizing the provision that refiners with small refineries may petition EPA for an extension of the small refinery exemption. As provided in the Act, EPA will act on the petition not later than 90 days after the date of receipt of the petition. Today's regulations do not provide a comparable opportunity for an extension of the small refinery exemption for small refiners. Therefore, all parties temporarily exempted from the RFS program on the basis of qualifying as a small refiner, rather than a small refinery, must comply with the program beginning January 1, 2011 (unless they waive their exemption prior to this date).

During the initial exemption period for small refineries and small refiners and any extended exemption periods for small refineries, the gasoline produced by exempted small refineries and refineries owned by approved small refiners will not be subject to the renewable fuel standard.

We proposed that the automatic exemption to 2011 and any small refinery extended exemptions may be waived upon notification to EPA; and we are finalizing this provision. Gasoline produced at a refinery which waives its exemption will be included in the RFS program and will be included in the gasoline used to determine the refiner's renewable fuel obligation. If a refiner waives the exemption for its small refinery or its exemption as a small refiner, the refiner will be able to separate and transfer RINs like any other obligated party. 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 refinery operates as an oxygenate blender facility). Thus, exempt small refineries and small refiners who blend ethanol can separate RINs from batches without opting in to the program in the same manner that an oxygenate blender is allowed to do.

b. General Hardship Exemption

In recent rulemakings, we have included a general hardship exemption for parties that are able to demonstrate severe economic hardship in complying with the standard. We proposed not to include provisions for a general hardship exemption in the RFS program. Unlike most other fuels programs, the RFS program includes inherent flexibility since compliance with the renewable fuels standard is based on a nationwide trading program without any per gallon requirements, and without any requirement that the refiner or importer produce the renewable fuel. By purchasing RINs, obligated parties will be able to fulfill their renewable fuel obligation without having to make capital investments that may otherwise be necessary in order to blend renewable fuels into gasoline. We believe that sufficient RINs will be available and at reasonable prices, given that EIA projects that far greater renewable fuels will be used than required. Given the flexibility provided in the RIN trading program, including the provisions for deficit carry-over, and the fact that the standard is proportional to the volume of gasoline actually produced or imported, we continue to believe a general hardship exemption is not warranted. As a result, the final rule does not contain provisions for a general hardship exemption.

c. Temporary Hardship Exemption Based on Unforeseen Circumstances

In recent rulemakings, we have included a temporary hardship exemption based on unforeseen

circumstances. We proposed not to include such an exemption in the RFS program. The need for such an exemption would primarily be based on the inability to comply with the renewable fuels standard due to a natural disaster, such as a hurricane. However, in the event of a natural disaster, we believe it is likely that the volume of gasoline produced by an obligated party would also drop, which would result in a reduction in the renewable fuel requirement. We, therefore, reasoned in the NPRM that unforeseen circumstances, such as a hurricane or other natural disaster, would not result in a party's inability to obtain sufficient RINs to comply with the applicable renewable fuels standard.

We received several comments regarding the inclusion of a temporary hardship exemption based on unforeseen circumstances. One commenter believes it would be of value to have a mechanism for selectively waiving or modifying the RFS downward on a temporary basis in the event of unforeseen circumstances such as significant drought affecting potential crop production. The commenter believes that crop shortages could have an impact on a national level, or a major disaster may impact logistics of renewable fuel distribution regionally, necessitating a more rapid response from EPA than is provided in the Energy Act. Another commenter believes that a temporary hardship exemption based on unforeseen circumstances should be included in the rule since it is impossible to predict how the RFS program will impact small refiners. Another commenter believes that, given the variety of potentially challenging unforeseen events during the last several years, it is not inconceivable that man-made or natural circumstances could adversely impact the RFS program. A natural disaster in the agricultural section, for example, may make it difficult to meet the renewable fuels mandate which, in turn, could drive the price of RINs high enough to disrupt the gasoline market. The commenter believes that a mechanism built into the program from the outset would provide a more flexible and less disruptive way to address unforeseen circumstances than the more time-consuming waiver process provided in the Energy Act.

Under other EPA fuels programs, compliance is based on a demonstration that the fuel meets certain component or emissions standards. Unforeseen circumstances, such as a natural disaster, may affect an individual refiner's or importer's ability to produce or import fuel that complies with the

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EPA Has Authority To Relieve PESRM Of Its 2016/2017 RFS Obligation. There are at least three distinct tools that EPA could use:

- **Interim Final Rule:** Relying on its authority to obligate refiners, importers, and blenders “as appropriate” (CAA § 211(o)(2)(A)(iii)(I)), EPA can issue an interim final rule modifying the RFS regulation to include a “general hardship” exemption to prevent severe economic harm, similar to the provisions of EPA’s other fuel rules and as it proposed to do when it promulgated the RFS regulations in 2006 (72 FedReg 23900, 23926 (September 22, 2006)). “Good cause” for an interim final rule exists because it would be impracticable and contrary to the public interest to proceed through the lengthy and time-consuming rulemaking process when doing so would do harm to critical energy infrastructure and thwart the RFS program’s statutory purposes – energy independence and security and reducing dependence on foreign sources of supply. An interim final rule would allow for additional public input on the modification to the rule but would defer public input until after the interim rule becomes effective.
- **Enforcement:** EPA can enter into a settlement with PESRM under its CAA enforcement authorities which relieves PESRM of the obligation to buy RINs for 2016 and 2017 and treats the avoided cost of RINs as “economic benefit” under the agency’s “BEN” (economic benefit) model. EPA can apply its ABLE (ability to pay) model, which would demonstrate that PESRM does not have the ability to pay the civil penalty (including the “economic benefit” of the avoided cost of RINs). EPA has authority to tailor injunctive relief to the particular case and has done so in other cases (e.g., *U.S. v. NGL Crude Logistics*, Case No. 16-cv-1038-LRR).
- **Waiver:** EPA can provide targeted relief by waiving, in whole or in part, PESRM’s renewable volume obligations under section 211(o)(7)(A)(i) of the Clean Air Act (CAA). Through a waiver, EPA can reduce the national quantity of renewable fuel to avoid severe economic harm to a State, region or the U.S. EPA can find that curtailment or shutdown of one or both of PESRM’s refineries would cause severe economic harm to Pennsylvania, the Central Atlantic and Northeast regions, and the United States as whole. The agency would reduce PESRM’s portion of the national quantity of renewable fuel in the same way that it does for small refineries.