



**The Secretary of Energy**  
**Washington, D.C. 20585**

July 19, 2019

The Honorable Charles E. Grassley  
United States Senate  
Washington, DC 20510

Dear Senator Grassley:

Thank you for your April 10 letter inquiring about the Department of Energy's (DOE) analysis of Small Refinery Exemption petitions that are presented by industry to the Environmental Protection Agency (EPA). As required by statute, DOE provides EPA with its analysis of each of the petitions. DOE fairly and consistently evaluates all petitions, and has not changed how the analysis is applied or scored from the previous Administration.

DOE analyzes the petitions of small refineries, assigns scores (based solely on factors developed in the 2011 Small Refiners Exemption Study and the 2014 Addendum), and provides EPA the results of that analysis. As required by law, the results of DOE's analysis are intended to identify whether compliance by a small refinery imposes a "disproportionate economic hardship." Although DOE provides the results of the analysis findings for EPA to consider, EPA has exclusive authority to decide whether to grant a petition by a small refinery for an exemption from EPA's Renewable Fuels Standard (RFS) requirements. In making its determination on individual petitions, EPA also is required to consider "other economic factors" that are not part of DOE's scoring of the factors developed in the 2011 study.<sup>1</sup>

DOE's analysis is based on a scoring matrix consisting of two indices. Since the 2014 compliance year, the results of DOE's analysis have indicated that EPA consider an exemption of zero, 50 percent, or 100 percent for each petition. In Congressional Report language and Joint Explanatory Statements accompanying appropriations laws for Fiscal Years 2016, 2017, 2018, and 2019, Congress has consistently and strongly requested that DOE provide a 50 percent option.<sup>2</sup> A zero is indicated if a refinery scores below the

---

<sup>1</sup> See section 211(o)(9)(B)(ii) of the Clean Air Act.

<sup>2</sup> See Pub. Law 114-113/H.R. 2029, Committee Print, Consolidated Appropriations Act 2016, at pages 702-703, available at: <https://www.gpo.gov/fdsys/pkg/CPRT-114HPRT98155/pdf/CPRT-114HPRT98155.pdf>; House Report 114-91, Energy and Water Development Appropriations Bill 2016, at page 112, available at: <https://www.congress.gov/114/crpt/hrpt91/CRPT-114hrpt91.pdf>; Senate Report 114-54, Energy and Water Development Appropriations Bill 2016, at page 95, available at: <https://www.congress.gov/114/crpt/srpt54/CRPT-114srpt54.pdf>; Senate Report 114-236, Energy and Water Development Appropriations Bill, 2017, available at: <https://www.congress.gov/114/crpt/srpt236/CRPT-114srpt236.pdf>; Explanatory Statement Submitted by Mr. Frelinghuysen, Chairman of the House Committee on Appropriations, Regarding the House Amendment to the Senate Amendment on H.R. 1625, 163 Cong. Rec. H2045, H2485 (March 22, 2018), available at: <https://www.congress.gov/crec/2018/03/22/CREC-2018-03-22-bk2.pdf>; House Report 115-230, Energy and Water Development Appropriations 2018, at page 99, available at: <https://www.congress.gov/115/crpt/hrpt230/CRPT-115hrpt230.pdf>; Senate Report 115-132, Energy and Water Development Appropriations Bill 2018, available at: <https://www.congress.gov/115/crpt/srpt132/CRPT-115srpt132.pdf> and Senate Report 115-258, Energy and Water



specified threshold for both indices. A 50 percent exemption is indicated if a refinery scores above the specified threshold for only one index. A 100 percent exemption is indicated if a refinery scores above the threshold for both indices.

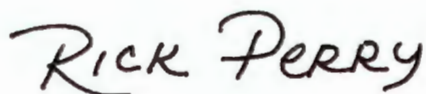
EPA does not formally share with DOE its decisions on individual petitions, and DOE does not track EPA's determinations with respect to individual petitions. I would suggest that EPA is the best source of information regarding its decisions on small refinery exemptions and the number of times in which EPA's decisions on exemptions may have differed with DOE's guidance.

That said, to DOE's knowledge, EPA has never granted a 50 percent exemption. EPA has both granted and denied exemptions in the past for which the results of DOE's analysis indicate that a 50 percent exemption may be appropriate. On a public-facing website (<https://www.epa.gov/fuels-registration-reporting-and-compliance-help/rfs-small-refinery-exemptions>), EPA provides a downloadable summary of compliance decisions by year without identifying the individual refinery petition decisions in order to protect Confidential Business Information. Based on the summary through compliance year 2017, however, DOE is aware of one instance in which DOE's analysis indicated that EPA consider no exemption, but the result was an EPA decision to grant an exemption to the petitioner.

In addition, I am pleased to let you know that DOE completed its analysis of all 2018 small refinery petitions received from EPA to date. While the EPA website notes that EPA has received 40 petitions thus far for the 2018 compliance year, 37 have been sent by EPA to DOE. On April 26, 2019, DOE transmitted to EPA its findings for those 37 petitions for final EPA determination.

Thank you again for your interest in DOE's role in this important matter. If you have further interest in DOE's analysis of the Small Refinery Exemption petitions, please do not hesitate to contact Mr. Shawn Affolter, Deputy Assistant Secretary for Senate Affairs, Office of Congressional and Intergovernmental Affairs, at (202) 586-5450.

Sincerely,

A handwritten signature in black ink that reads "Rick Perry". The signature is written in a cursive, slightly slanted style.

Rick Perry