

(see EIA's definition of "Barrels per Calendar Day" in the glossary to Petroleum Supply Annual 2000, Vol. 1).

If a refiner believes that a successful bidder is not small when it self-certifies as such, then that refiner, or any other interested party, may file a size protest with the procuring agency's contracting officer. Provisions and procedures for doing so are set forth in SBA's Small Business Size Regulations, 13 CFR 121.1001–1010, "Procedures for Size Protests and Requests for Formal Size Determinations" and the Federal Acquisition Regulation (FAR) 48 CFR 19.302, "Protesting a small business representation."

SBA believes that standardizing measurement units among Federal agencies is an appropriate justification for this part of the rule, because it is consistent with the type of information refiners furnish EIA and that EIA reports. Additionally, the rule applies only to the Federal government's procurement of refined petroleum products.

### 3. Whether SBA should increase the capacity component to 155,000 bpcd

*Comments received:* Eight commenters opposed SBA's proposed increase to 155,000 bpcd. Three, including a national petroleum association, opposed the increase to 155,000 bpcd, and suggested 125,000 bpcd as an acceptable alternative because it would be sufficient to allow small refiners to increase their capacity without affecting their small refiner status. The association maintained that a 155,000 bpcd refiner is not a small business, and that it is well above the level for realizing economies of scale. In addition, noted the association, most small refiners, under the current definition, are not disadvantaged when competing in local and regional markets.

Four of the eight opposed any increase at all. The current size standard is adequate, one argued, to allow expansion, mergers or acquisition among existing small refiners. The commenter maintained that there are economic benefits that accrue to the small refiner that loses its eligibility as a small refiner by merger or acquisition. Accordingly, such growth provides the economies of scale that were not available to the small refiner and that will adequately compensate the small refiner for its loss of small refiner status.

Commenters also had concerns, if SBA were to adopt the proposed rule, with adding additional refiners to the existing universe of small refiners. Since newly eligible refiners would be substantially larger than currently small

refiners, the adoption of the proposed rule could adversely affect small refiners' ability to compete for Federal government contracts and undermine their competitiveness. Some stated that SBA's targeted 7.6 percent of domestic production capacity may not be correct in today's economy, and that a smaller share for small refiners may actually be more appropriate in today's competitive environment. Some commenters were particularly concerned with the possible effect on regional markets served by both small refiners and those refineries below 75,000 bpcd that are affiliated with others, and do not qualify as small refiners because of their total refiner capacity.

Another commenter expressed concern that the proposed rule might actually be detrimental to existing small refiners and result in less fuel supply in one or more states, particularly because of the inclusion of refiners that are significantly larger than the current small refiners. The commenter is concerned that newly classified small refiners would be located in geographic areas where there is now significant small refiner participation. The commenter also questioned SBA's targeted 7.6 percent share of domestic petroleum production.

Four commenters supported the increase to 155,000 bpcd as adequate to meet the purposes of the proposed rule, and stated that size standard should be no higher. A fifth, supporting an increase, commented that SBA should increase the size standard more, to about 160,000 bpcd. In the proposed rule, SBA projected that there would be no more than two refiners that would gain small refiner status if it adopted the proposed rule. The commenter stated that, at 155,000 bpcd, due to one refiner's increase in capacity that was not caused by merger, acquisition, *etc.*, there will be only one refiner with 1,500 employees or less that could qualify as a small refiner, not two. That is, there would remain only one U.S. refiner with 1,500 employees or less that would not qualify as a small refiner.

One of the five comments in support of an increase in the size standard noted that the reduced number of small refiners is due to closures because small refiners could not compete with larger, integrated refiners. Another stated that 155,000 bpd is consistent with the EPA's definition of a small refiner and that this size standard will restore small refiners' capacity to their historical levels. 155,000 bpd is below the average sized refiner, and allows for some limited expansion by small refiners.

One refiner agreed with SBA that a size standard of 75,000 bpd is too low.

The refiner suggested eliminating the capacity requirement, maintaining that it would be more far reaching than retaining a capacity limit.

Commenters suggested other alternatives as well. One would qualify a refiner as small if it has no more than 1,500 employees and/or no refinery larger than 100,000 bpd. Because EPA has granted certain compliance exemptions to refineries below 155,000 bpd and the exemptions can run until 2010, the commenter also suggested that SBA not increase the standard until the 2010 or when refineries have complied, whichever occurs first.

Another commenter was not entirely opposed to the increase, but offered an alternative—retain the 75,000 bpd capacity per refinery and increase the limit to 155,000 bpd for the entire company. The refiner also suggested including in the number of employees only those that are employed in the refining activity of the refiner. This refiner suggested eliminating the 1,500 employee size standard entirely, or counting only those that are engaged in refining operations. The commenter stated that the 1,500 employee size standard lacks meaning when measuring a refiner's resources available for competing for government contracts.

*SBA's position:* After evaluating all comments, SBA agrees that increasing the capacity component to 155,000 bpcd would not provide the best assistance for small refiners. SBA agrees with the position of the commenters that recommended a smaller increase of 125,000 bpcd. SBA accepts the position that refiners with 155,000 bpcd would be above the level needed to realizing economies of scale that accrue to refiners of that size and suffer no disadvantage when competing in local and regional markets. Further, because SBA recognizes that most if not all currently small refiners produce and market their products regionally, adding significantly larger refineries owned by newly designated small refiners to those regions could adversely affect small refiners' ability to bid for and fulfill Federal government contracts as small refiners. SBA accepts commenters' concerns that additional competition from substantially larger refiners in their competitive areas might adversely affect those refiners that are currently defined as small. From EIA's Form EIA-820, "Annual Refinery Report" as of January 1, 2002, SBA determined that increasing the standard to 125,000 bpcd will not characterize any refiners as small that are not small now. Therefore, increasing the size standard to 125,000 bpcd will not by itself increase the number of small refiners competing for Federal