



Congress of the United States  
House of Representatives  
Washington, DC 20515-0906

December 15, 2022

The Honorable Michael S. Regan  
Administrator  
Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20004

Dear Administrator Regan,

We write today to express serious concerns about the Environmental Protection Agency's (EPA) decision to deny small refinery hardship relief, or small refinery exemption (SRE) petitions, under the Renewable Fuel Standard (RFS) program.<sup>1</sup> In a recent report, the Government Accountability Office (GAO) found that EPA based the decision to deny SRE petitions on a flawed, inaccurate, and unverified assumption and administers the SRE program in a wholly arbitrary manner. This information is especially concerning considering the decision's potential to further deteriorate US refining capacity, which is currently at an eight-year low,<sup>2</sup> and increase the skyrocketing energy prices that are harming American families.

As you know, in June 2022, EPA issued a denial of 69 outstanding SRE petitions for the 2016-2021 compliance years.<sup>3</sup> This decision imposes an enormous burden on US refineries and will lead to job losses, diminished gasoline and diesel production, and increased costs for refined products. To put the situation into perspective, one independent refinery in San Antonio, Texas that, prior to EPA's wholesale denial of SRE petitions, had always merited and received an exemption, found that the newly imposed compliance costs stemming from the EPA decision are up to 10 times greater than its annual payroll. Such astronomical costs will ultimately force the small refinery into bankruptcy. And small refineries throughout the nation face a similar reality, which puts roughly 17 billion gallons of annual gasoline and diesel production at risk.<sup>4</sup>

Many noted that EPA's refusal to consider each SRE petition on its own merits was misguided and neglected statutory requirements,<sup>5</sup> but GAO's report raised even more alarming issues with EPA's decision-making. EPA based the decision to deny all outstanding SRE petitions on the finding that "all refineries face the same costs to acquire RINs," which EPA asserted meant "there is no disproportionate cost to any party, including small refineries, and no hardship given that the costs are recovered."<sup>6</sup> GAO found that this was not only a "potentially flawed assumption" but also, EPA's own data "suggests the assumption is incorrect." EPA's data demonstrates that small refineries "were either paying more to buy [RFS compliance credits] or receiving less when they

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<sup>1</sup> <https://www.gao.gov/assets/gao-23-105801.pdf>

<sup>2</sup> <https://www.spglobal.com/commodityinsights/en/market-insights/latest-news/oil/062122-us-refining-capacity-falls-to-lowest-mark-in-8-years-amid-record-prices-eia>

<sup>3</sup> <https://www.epa.gov/renewable-fuel-standard-program/june-2022-denial-petitions-rfs-small-refinery-exemptions#:~:text=On%20June%203%2C%202022%2C%20EPA,years%20between%202016%20and%202021.>

<sup>4</sup> <https://www.eia.gov/petroleum/refinerycapacity/table5.pdf>

<sup>5</sup> 42 U.S.C. § 7545 (o)(9)(B)

<sup>6</sup> <https://www.govinfo.gov/content/pkg/FR-2022-06-08/pdf/2022-12359.pdf>

sell [RFS compliance credits], relative to larger companies from 2013 through 2021.” This finding illustrates that small refineries experience the “disproportionate economic hardship” necessary to receive an exemption from the RFS and contradicts EPA’s incorrect justification of its denial of outstanding SRE petitions.

Equally concerning is the fact that EPA and the Department of Energy (DOE) have administered the SRE program in an inconsistent and arbitrary manner. GAO found that *EPA had not even analyzed whether the assumption that all refiners face the same RFS compliance costs was valid.* Further, GAO found that “neither EPA nor DOE has policies and procedures for administering the small refinery exemption program.” These findings suggest that EPA is wielding its regulatory power in a completely arbitrary manner and calls into question not only EPA’s administration of the RFS program, but its decision-making processes agency wide. Put simply, EPA appears to be handing down decisions that have massive implications for the nation’s energy supply in the midst of an unprecedented energy crisis based on the unfounded whims of unelected bureaucrats.

With these serious concerns in mind, we request answers to the following questions by January 20, 2023:

1. Does EPA intend to reverse its decision to deny all outstanding SRE petitions following GAO’s finding that the decision was based on a flawed, inaccurate, and unverified assumption? If not, please explain.
2. Does EPA plan to publicly retract its finding that all refineries – regardless of size – face the same costs when complying with the RFS? If not, please explain.
3. If a small refinery is forced into bankruptcy because of RFS compliance costs, does EPA consider that to satisfy the statutory definition of “disproportionate economic hardship”? If not, what would satisfy the definition?
4. Have any small refineries that had their SRE petitions denied notified EPA that they were now at risk of closure, bankruptcy, or other financial harm? If so, how many have contacted EPA?
5. Does EPA, in conjunction with DOE, intend to implement clear, publicly available policies and procedures that govern its administration of the SRE program? If so, when would small refineries have access to these policies and procedures?

The RFS imposes a massive burden on refineries and the US energy supply and EPA’s recent actions have exacerbated this burden. In light of GAO’s recent report, we urge you to reverse the decision to deny all outstanding SRE petitions, take further steps to improve EPA’s administration of the RFS, and reduce the program’s burden on American refiners, workers, and families.

Sincerely,



Chip Roy  
Member of Congress



Matthew Rosendale, Sr.  
Member of Congress



Van Taylor  
Member of Congress



Randy K. Weber  
Member of Congress



Gary Palmer  
Member of Congress



Andy Biggs  
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W. Gregory Steube  
Member of Congress



Clay Higgins  
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Michael Guest  
Member of Congress



Louie Gohmert  
Member of Congress



Brian Babin, D.D.S.  
Member of Congress

CC: The Honorable Jennifer Granholm, Secretary, US Department of Energy