



OFFICE OF TRANSPORTATION AND AIR QUALITY

WASHINGTON, D.C. 20460

December 26, 2023

Mr. Frank Rusco
Director
Natural Resources and Environment
U.S. Government Accountability Office
Washington, D.C. 20548

Dear Mr. Rusco:

In its November 2022 Final Report on the process by which the Environmental Protection Agency (“EPA”) decides small refinery exemption (“SRE”) petitions under the Renewable Fuel Standard (“RFS”) program, the U.S. Government Accountability Office (“GAO”) recommended that “EPA should identify and communicate what information refineries would need to submit to demonstrate disproportionate economic hardship.”¹ EPA responded by stating that while it “believes the petitions it has received from small refineries indicate that they do understand the information relevant to EPA’s new approach for evaluating SRE petitions, EPA nevertheless intends to issue new guidance before the end of calendar year 2023.”² EPA is issuing this letter to fulfill that commitment by explaining why no new guidance is needed.³

After further review of EPA’s prior descriptions of information that small refineries could submit to demonstrate disproportionate economic hardship (“DEH”), EPA believes that no new guidance is necessary. As explained in the EPA Final GAO Response, “in December 2021, EPA issued the Proposed Denial that not only served this purpose for the SRE petitions EPA had pending in front of it at that time, but also for future SRE petitions, since the Proposed Denial provided a robust description of EPA’s proposed conclusions and invited small refineries to provide supplemental information to directly address evidence of DEH to individual small refineries due to compliance with the RFS program.”⁴

¹ “Renewable Fuel Standard: Actions Needed to Improve Decision-Making in the Small Refinery Exemption Program,” GAO-23-104273 and GAO 23-105801, November 2022 (“Final Report” or “Final GAO Report”), Recommendation 3, p. 27.

² EPA Response to Final GAO SRE Report, May 2, 2023 (“EPA Final GAO Response”), pp. 8-9, available at <https://www.epa.gov/renewable-fuel-standard-program/epa-analysis-price-rins-and-small-refineries>; See, e.g., <https://www.epa.gov/system/files/documents/2023-05/EPA-Response-to-Final-GAO-SRE-Report-Letter-to-House-and-Senate-Appropriations-Committees.pdf>.

³ The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity regarding existing requirements under the law and EPA policies.

⁴ EPA Final GAO Response, pp. 8-9.

In the Proposed Denial,⁵ EPA identified what would be needed to demonstrate DEH.⁶ EPA sought comment on its statutory interpretation and economic analysis, and its underlying findings, including: (1) whether “the structure of the RFS program places a proportional burden on all obligated parties based on their gasoline and diesel fuel production volume”; (2) whether “the structure of the RFS compliance system EPA put in place, which enables the use of” RINs, “provides equal access to all obligated parties to the same means of compliance”; (3) whether “the fuel and RIN markets are competitive and that RIN costs per gallon are the same to all obligated parties regardless of their role in the market, their size, or whether they acquire RINs through blending renewable fuel or by purchasing RINs (credits) representing that volume of fuel”; (4) whether “RIN costs are passed through to consumers”; (5) whether “the compliance costs of the RFS program do not impose economic harm to obligated parties and, therefore, the RFS program does not cause [disproportionate economic hardship] for small refineries or any obligated party”; and (6) “additional data that may illustrate the relationship between RFS compliance costs and the price of transportation fuel and blendstocks.” EPA put petitioners on notice that this was the specific type of information that would be necessary for a small refinery to demonstrate why the economic principles at work in the RIN market at large do not apply to it, which would allow EPA to reach a different conclusion for that particular refinery given its individualized circumstances.

Again, as explained in the EPA Final GAO Response, “[a]s evidenced by their submittals—both for those pending petitions and for new petitions submitted after the Proposed Denial—small refineries understood this to include data and contract information to show the relative cost of compliance for refineries that acquire RINs by blending renewable fuels when compared to those that bought separated RINs, data to show whether the small refinery received prices for its refined products that were below the market prices received by other program participants, and analysis to show that the markets in which they operate do, or do not, pass through RFS compliance costs.”⁷

Additionally, in its 2022 SRE Denial Actions⁸ and in ongoing litigation challenging those actions, EPA has described how the information that was submitted by small refineries to demonstrate DEH was consistent with the list EPA provided in its Proposed Denial and how EPA considered the information in its decision-making process.⁹

Separately, in its Final Report, GAO also recommended that “EPA should assess the effect of small refinery exemption decision timing on the benefit provided to small refineries, as well as the effect on fuel markets, and reconsider petition requirements, such as that of three quarters of current year

⁵ “Proposed RFS Small Refinery Exemption Decision,” EPA-420-D-21-001, December 2021 (“Proposed Denial”); *see also* Notice of Opportunity to Comment on Proposed Denial of Petitions for Small Refinery Exemptions, 86 FR 70999 (December 14, 2021).

⁶ Proposed Denial, pg. 7; *see also* pp. 1-2 (containing same list).

⁷ EPA Final GAO Response, pg. 9.

⁸ “April 2022 Denial of Petitions for RFS Small Refinery Exemptions,” EPA-420-R-22-006, April 2022 (“April 2022 SRE Denial Action”), <https://www.epa.gov/renewable-fuel-standard-program/april-2022-denial-petitions-rfs-small-refinery-exemptions>; “June 2022 Denial of Petitions for RFS Small Refinery Exemptions,” EPA-HQ-OAR-2021-0556, June 2022 (“June 2022 SRE Denial Action”), <https://www.epa.gov/renewable-fuel-standard-program/june-2022-denial-petitions-rfs-small-refinery-exemptions> (collectively the “2022 SRE Denial Actions”).

⁹ 2022 SRE Denial Actions, Section IV.B; *Sinclair Wyoming Refining Co. LLC et al. v. EPA*, No. 22-1073 (and consolidated cases) (D.C. Cir.), Brief for EPA, Doc. No. 2021394, filed October 11, 2023, pp. 95-99.

financial information.”¹⁰ EPA responded by stating that it had “finalized new RFS regulations that project SRE volumes and reallocate those volumes to other program participants beginning with the 2020 compliance year, helping to ensure a consistent demand for RINs (and the associated renewable fuels) and, through that consistent demand, more consistent and predictable RIN prices. EPA believes this regulatory change addresses the primary effect on fuel markets and considers this recommendation fully resolved.”¹¹ Regarding the remaining portion of this recommendation, as EPA has described above in this letter, EPA has previously provided small refineries with extensive descriptions of the types of information small refineries could submit to demonstrate DEH. Representative data from the compliance year, such as three quarters of current year financial information, could be, but is not required to be, submitted by small refineries to demonstrate DEH.

Considering the above, EPA does not believe that additional guidance regarding the information small refineries may submit with their SRE petitions to demonstrate they are experiencing DEH caused by RFS compliance is needed at this time.

Sincerely,

Byron Bunker, Director
Compliance Division
Office of Transportation and Air Quality

¹⁰ Final GAO Report, Recommendation 7, p. 28.

¹¹ EPA Final GAO Response, p. 10.