

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

PAR HAWAII REFINING, LLC; U.S.
OIL & REFINING COMPANY,
WYOMING REFINING COMPANY,

Petitioner,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

Case No. 23-1255

PETITION FOR REVIEW

Pursuant to Section 307(b) of the Clean Air Act, 42 U.S.C. § 7607(b), and Federal Rule of Appellate Procedure 15(a), Par Hawaii Refining, LLC, U.S. Oil & Refining Company and Wyoming Refining Company (“Petitioners”) petition this Court for review of the actions of the Administrator of the United States Environmental Protection Agency (“EPA”) issued on July 14, 2023 denying Petitioners’ petitions for small refinery hardship relief from the requirements of the Renewable Fuel Standard (“RFS”) for the 2021 compliance year and titled “July 2023 Denial of Petitions for RFS Small Refinery Exemptions” (attached as Exhibit A). Notice of these actions was published in the Federal Register on July 20, 2023. 88 Fed. Reg. 46795 (July 20, 2023) (attached as Exhibit B). This Petition is timely filed within 60 days of the notice published in the Federal Register. *See* 42 U.S.C. § 7607(b)(1).

This is a “protective petition” for review filed out of an abundance of caution to preserve Petitioners’ rights. Petitioners believe the denials of their hardship petitions are “locally . . . applicable” agency actions that must be challenged in the regional circuits in which Petitioners’ refineries are located. 42 U.S.C. § 7607(b)(1). Thus, Petitioners have filed petitions for review of the same agency actions in the United States Courts of Appeals for the Ninth and Tenth Circuits. However, EPA stated in its Federal Register notice that “petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia.” 88 Fed. Reg. at 46796.

Accordingly, Petitioners is filing this “protective petition” for review in this Court. *See N.Y. Republican State Comm. v. S.E.C.*, 799 F.3d 1126, 1134–35 (D.C. Cir. 2015) (instructing petitioners to file “a protective petition” if “any doubt as to the proper forum exists”).

The Corporate Disclosure Statement required by Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1 is attached as Exhibit C.

Dated: September 12, 2023

Respectfully submitted,

s/ Jonathan G. Hardin

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EXHIBIT A

July 2023 1 of P t t o s
for RFS Sm al R f ry Ex mpt o s

July 2023 Denial of Petitions
for RFS Small Refinery Exemptions

United States Environmental Protection Agency

Table of Contents

- I. Executive Summary 1
- II. Background 1
- III. EPA Evaluation 2
 - A. Two Refineries Ineligible for Exemptions 2
 - B. SRE Petition Requirements 3
 - C. DOE Consultation 4
 - D. DEH Must Be Caused by RFS Compliance 6
- IV. EPA’s Response to the Final GAO Report 7
- V. Denial of Petitions and Judicial Review 9
- Appendix A – Updated Market Analysis 12

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I. Executive Summary

In this action, the Environmental Protection Agency (“EPA” or “the Agency”) is acting on 26 individual small refinery exemption (“SRE”) petitions from 15 small refinery petitioners seeking exemption from their Renewable Fuel Standard (“RFS”) obligations for compliance years 2016–2018 and 2021–2023.¹ In consultation with the Department of Energy (“DOE”), EPA reviewed all the information submitted by each individual small refinery in support of its petition or petitions. After careful consideration of all the information submitted by the small refineries, EPA is denying all of the petitions because the individual small refineries have failed to demonstrate that compliance with their RFS obligations would cause disproportionate economic hardship (“DEH”). This final action denies 26 SRE petitions (hereinafter the “July 2023 SRE Denial Action”).

The decision to deny these 26 petitions is based on the following reasons, including the analysis found in prior EPA actions denying SRE petitions in April 2022² and June 2022³ (collectively the “2022 SRE Denial Actions”) and any new information submitted by the small refineries for the specific petitions addressed in this action.

II. Background

In the 2022 SRE Denial Actions, EPA denied 105 petitions from 39 small refineries seeking exemptions from their RFS obligations for the 2016–2021 compliance years. These decisions have been challenged in different courts and those challenges are currently pending.⁴ In the 2022 SRE Denial Actions, we described the RFS program and explained relevant background information, including the Renewable Identification Number (“RIN”) compliance program and the market dynamics of the RIN system as well as the SRE provisions.⁵ We explained EPA’s revised interpretation of the SRE statutory provisions, including DEH, in light of the U.S. Court of Appeals for the Tenth Circuit’s decision in *Renewable Fuels Association et al. v. EPA*, 948 F.3d 1206 (10th Cir. 2020) (“*RFA*”).⁶ This July 2023 SRE Denial Action relies on the same approach and the same analyses described in the 2022 SRE Denial Actions in denying 26 additional SRE petitions from 15 small refineries for compliance years 2016–2018 and 2021–2023. This action therefore incorporates by reference the explanation and analyses in the 2022 SRE Denial Actions, including both the non-confidential and confidential refinery-

¹ EPA is acting on a 2023 SRE petition prior to the conclusion of the 2023 compliance year because that small refinery has indicated its intent to initiate litigation against the Agency if EPA does not act on this petition.

² “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>.

³ “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>.

⁴ *Sinclair Wyoming Refining Co. LLC, et al. v. EPA*, No. 22-1073 (and consolidated cases) (D.C. Cir.); *Calumet Shreveport Refining, LLC et al. v. EPA*, No. 22-60266 (and consolidated cases) (5th Cir.); and *Hunt Refining Co. v. EPA*, No. 22-11617 (and consolidated case) (11th Cir.). Decisions in these cases will likely be dispositive to most issues that would be raised in any challenges to this final action.

⁵ 2022 SRE Denial Actions, Section II.

⁶ 2022 SRE Denial Actions, Section III.

specific policies. However, the EPA is carefully evaluating relevant information provided in the submissions by small refineries, but the relevant information provided will differ conclusively.

III. EPA Evaluation

This section describes EPA's evaluation of the 26 SRE petitions before the 2016–2018 and 2021–2023 RFS. EPA is pressing this case. EPA first evaluated the petitions before the refinery is eligible to petition for small refinery exemption. EPA has evaluated the petitions using the same process as the 2022 SRE Deil Act. Regulation requires emissions to be below 10,000 barrels per day.⁷ In general, the small refineries provide the information, EPA has pressed the information in the 2023 CFS. EPA's memo (HSCUSSE) in Section III.C of this case. EPA is conducting refinery-specific policies. This case is particularly important for small refineries. EPA's support in November 2022 report from the Government Accountability Office ("GAO").⁹ EPA provides its response to the report in October 2022.¹⁰ EPA's issue is the price of RINs provided by small refineries in December 2022.¹¹ On May 2, 2023, EPA issued its response to the GAO report.¹² Section IV of this case discusses the GAO report and its response to the small refineries' response to the report.

A. Two Refineries Ineligible to Petition for Exemptions

EPA received two SRE petitions before the 2018, 2019, and 2020 compliance years from two refineries; EPA determined these two refineries were eligible to petition for exemption under the Clean Air Act (CAA) section 211(o)(9) in the 2022 SRE Deil Act.¹³ However, this finding by EPA is being challenged in the 2022 SRE petitions before the two refineries, particularly because they have filed emissions to the DEH, but the relevant information is repeated. EPA here determines that the two refineries remain eligible to petition for SREs. These two refineries submitted refinery-specific comments to the claims for the relevant information.

⁷ 2022 SRE Deil Act, Section IV.

⁸ It is possible where small refinery resubmission is previously submitted in response to EPA's "Proposed RFS Small Refinery Exemption Decision" EPA-420-D-21-001, December 2021 ("Proposed Deil"), EPA relies on previous evaluation of the response to the 2022 SRE Deil Act.

⁹ "Review of Fuel Standards: Action Needed to Improve Decision Making in the Small Refinery Exemption Program," GAO-23-104273. EPA-23-105801, November 2022 ("Final Report" or "Final GAO Report").

¹⁰ Letter from Joseph Giffman, EPA, to Frank Ruscio, GAO, October 13, 2022 ("EPA Comments Letter"). The EPA Comments Letter is included in Appendix IV of the Final GAO Report.

¹¹ "A Policy Analysis of the Price of Rethene and Ethane Numbers (RINs) for Small Refineries," EPA-420-R-22-038, December 2022 ("EPA RIN Price Analysis").

¹² EPA Response to Final GAO SRE Report, May 2, 2023 ("EPA Final GAO Response"), available at <https://www.epa.gov/review-of-fuel-standards-program/epa-response-to-price-analysis-for-small-refineries>; See, e.g., <https://www.epa.gov/system/files/2023-05/EPA-Response-to-Final-GAO-SRE-Report-Letter-Header-Use-Only-Appendix-IV-Comments.pdf>.

¹³ 2022 SRE Deil Act, Section IV.A.

specific v v essing thei e igibi it to submit SRE petitions; EPA v v esses these efine v v specific e igibi it comments in confi enti , efine v-specific ppen ices to this ction. v

We h ve g in ete mine th t these two efine ies e ine igibe to petition fo 2021 n v 2022 SREs bec use the i not ecei e the initi b vnket exemption fom the RFS p og v m v un e CAA section 211(o)(9)(A). In m king this ete min tion, we e pping the sme v inte p et tion t ken in the 2022 SRE Deni Actions: th t the SRE st tuto vp o isions ict te v th t on vsm a vefine ies th t ctu v ecei e the initi b vnket exemption e e igibe to v petition fo n extension of th t initi exemption.¹⁴ This ine igibi it ete min tion p o i es n v te n ti e n in epen ent b sis to suppo t EPA’s conc usion th t these sma vefine ies shou v v not be g vnte n exemption fom thei 2021 n 2022 RFS ob ig tions, in v ition to EPA’s v conc usion th t thei petitions o not emonst te th t the expe ience DEH c use b RFS v comp i nce. v

B. SRE Petition Requirements v

The ppic b e SRE petition equi ements e cont ine in EPA’s egu vtions t 40 CFR v 80.1441(e)(2). As exp vine in the 2022 SRE Deni Actions, the petitioning sma vefine v h s v the ob ig tion to emonst te in its petition th t its DEH is c use b comp i nce with its RFS v ob ig tions.¹⁵ In this ction, EPA consi e e 26 SRE petitions fo comp i nce e vs 2016–2018 v n 2021–2023; sma vefine ies c v m th t e ch petition cont ins the sma vefine v’s v emonst tion of DEH c use b RFS comp i nce. EPA e v u te the info m tion submitte in v e ch petition—in consu t tion with DOE s iscusse in mo e et i be ow—to ete mine if the v petition s tisfie the egu vto vc ite i n met the st tuto v equi ement to emonst te DEH v b se on EPA’s inte p et tion of the SRE p o isions of the CAA s escrbe in the 2022 SRE v Deni Actions. v

In comments on EPA’s P o pose Deni , sma vefine ies c vine th t EPA’s ction v wou vbe imp ope bec use it wou v“ et o cti e v” p v the Agenc ’s inte p et tion of the v SRE st tuto vp o isions n the *RFA* ecision to petitions th t h v ve v been submitte , n v fu the th t the cke sufficient notice of th t inte p et tion. As exp vine in the 2022 SRE v Deni Actions, n fo v the e sons ticu vte in EPA’s ecent fie esponse b iefs in the v ch venges to the 2022 SRE Deni Actions, inco p vte he in, EPA is g aes.¹⁶ The ction is v not et o cti e bec use EPA p v ie its e ise p v o ch to then-pen ing petitions, which i v not t ke w v o imp i “este ights cqui e un e existing ws” o c e te “new v ob ig tion...in espect to t ns ctions...a v v p st,” but me e v confi me the st tus quo th t v petitioning sma vefine ies comp v with *preexisting* RFS ob ig tions; the efo e, no ights h v v este in n of the sma vefine ies’ uncompe t ns ctions (e.g., thei pen ing petitions).¹⁷ v These RFS ob ig tions we e p e ious v impose b Cong ess n imp emente th ough EPA v

¹⁴ 2022 SRE Deni Actions, Section IV.A. v

¹⁵ 2022 SRE Deni Actions, Section IV.D. v

¹⁶ 2022 SRE Deni Actions, Appen ix B, Section I.3; EPA’s Secon Co vcte Response B ief, pp. 29-39, Doc. v No. 336-2 (Rest icte), June 22, 2023, *Calumet Shreveport Refining, LLC et al. v. EPA*, No. 22-60266 (n v conso i vte c ses) (5th Ci .) (w vting fo cou t to ocket e vcte e sion of b ief fi e June 22, 2023); n EPA’s v Response B ief, pp. 22-33, Doc. No. 77, Ap i 20, 2023, *Hunt Refining Co. v. EPA*, No. 22-11617 (n conso i vte v c se) (11th Ci .) (co cti e v “EPA’s Response B iefs”). v

¹⁷ *Landgraf v. USI Film Prods.*, 511 U.S. 244, 269 (1994); 42 U.S.C. § 7545(o)(3)(B)(ii)(I); 40 CFR 80.1406. v

regula “ wh lly epara e fr m he SRE pe “ pr ce “ More“ ver, C “ gre “delega ed “ re “lu “ f SRE pe “ EPA a a y me,”¹⁸ hereby expre “ly au h r z “g a y purp r ed “ re r ac ve effec , a d EPA rea “ ably adjud ca ed he SRE pe “ by apply “g he pr per “ a u “ry “erpre a “ he fac a ha d, mak “g a y purp r ed re r ac ve effec “ perm i ble.¹⁹ A d clear ha he pe “ g mall ref er e ca have “rea “ able rel a ce “ ere w “h re pec EPA’ pr r appr ach. The mall ref er e were well aware f EPA’ “ pr p “ed rev “ed appr ach a wa ev de “ he r umer u uppleme “ he r pe “ a d “ c mme “ ubm i ed “ he Pr p “ed De “al, a well a he r ac ve par c pa “ mee “g a d “ rela ed l ga “ .²⁰ Add “ ally, EPA ha repea edly a ed ha mall ref er e h uld expec “ c mply w h he r RFS bl ga “ u le a d u “l a exemp “ rece ved.²¹ A uch, h “ ac “ d e “ d rup a y rea “ able expec a “ he mall ref er e c uld have had regard g “ he pr r appr ach. Par cularly l gh f he 2022 SRE De “al Ac “ , he “ly rea “ able “ expec a “ wa ha c mpl a ce w “h he RFS pr gram w “uld c “ ue be requ red. “

More“ ver, here, he mall ref er e ubm i ed he 2021–2023 SRE pe “ a “ue after “ EPA “ued he 2022 SRE De “al Ac “ .²² All f he e mall ref er e had pe “ f r her “ c mpl a ce year ha were de “ed he 2022 SRE De “al Ac “ , mea “g hey are clearly “ aware f he rev “ed appr ach EPA “w ak “g whe evalua “g SRE pe “ , EPA’ “ upp r “g a aly e , a d he fac ha EPA “e d c “ ue apply “rev “ed appr ach “ fu ure a aly “ f SRE pe “ .²³ The mall ref er e are al aware f he ype f f rma “ “ hey w “uld ed ubm i “ he r pe “ dem o “ra e he r DEH cau ed by he r RFS “ c mpl a ce.²⁴ N “ e hele “; a “ed ab ve, he SRE pe “ addre “ed h “ac “ c “ a “ “ l le ew f rma “ , bu “ead mply repea he mall ref er e ’pa argume “ a d rely “ “ he ame f rma “ EPA prev “u ly evalua ed. “

C. *DOE Consultation* “

A m cre“fully de cr bed he 2023 C “ ul a “ Mem o²⁵ EPA c “ ul ed w “h DOE “ evalua e each f he 26 SRE pe “ , c “ e “w “h he rev “ed appr ach DEH ha EPA “ mpleme “ed w “h he 2022 SRE De “al Ac “ .²⁶ Tech “cal, legal, a d p l cy aff f r EPA a d “ DOE me “a lea 14 epara e cca “ d cu “var u a pec f DEH a d he SRE “ pe “ . “

¹⁸ CAA ec “ 211(o)(9)(B)() , () . “

¹⁹ *Nat’l Petrochemical & Refiners Ass’n v. EPA*, 630 F.3d 145, 159 (D.C. C r. 2010).“ “

²⁰ 2022 SRE De “al Ac “ , Sec “ II.D.; EPA’ Re p “ e Br ef , Sec “ II. Fac ual a d Pr cedural Backgr u tl. “

²¹ See, e.g., F “a c al a d O her I f rma “ Be Subm i ed w “h 2016 RFS Small Ref ery Hard h p Exemp “ “ Reque “,” December 6, 2016, p.3 ([p]e “ g mall ref er e h uld *always presume* ha hey are ubjec he “ requ reme “ f he RFS pr gram a d clude RFS c mpl a ce he r verall pla “ g.”) (empha “ added), “ ava lable a [h p ://www.epa.gov/ef/default/file/2016-12/d-cume/rf-mall-ref-ery-2016-12-06.pdf](http://www.epa.gov/ef/default/file/2016-12/d-cume/rf-mall-ref-ery-2016-12-06.pdf). “

²² The 2016–2018 SRE pe “ a “ue were ubm i ed pr r he 2022 SRE De “al Ac “ a d are addre ed “ he c “f de “al ref ery- pec f c appe d ce . “

²³ 2022 SRE De “al Ac “ , Sec “ IV.D.1.a. “

²⁴ 2022 SRE De “al Ac “ , Appe d x B, Sec “ I.8. “

²⁵ C “ ul a “ w “h he Depar me “ f E rgy u der Clea A r Ac Sec “ 211() (9)(B)() Regard “g he “ Pe “ Addre “ed he July 2023 SRE De “al Ac “ ” (he 2023 C “ ul a “ Mem o):“ “

²⁶ 2022 SRE De “al Ac “ , Sec “ IV.C. “

For this petition, EPA has read the 26 SRE petitions and all supporting information with DOE. The agency reviewed the petitions and all the supporting information to determine the ultimate approach to take with the proposed 2022 SRE De minimis petition to determine if any of the information indicated that the petitioning small refinery faces higher cost of RFS compliance relative to the industry average (disproportionate cost of compliance). If the information demonstrated small refinery experience disproportionate cost of compliance, the agency considered whether that disproportionate cost of compliance constituted DEH. Where petitioning small refinery submitted information they had previously provided to support their prior-year petition, the agency did not re-evaluate that information if they had previously reviewed and considered that information when the prior petition in the 2022 SRE De minimis petition and had determined that the information does not demonstrate disproportionate cost of compliance for those small refinery. The agency did however carefully evaluate all the new information the petitioning small refinery provided to support the petition, addressed this petition to determine if any individual petitioning small refinery may face disproportionate cost of compliance when compared to the industry average. In particular, the agency looked for:

1. Evidence that petitioning small refinery paid above-market price for RIN or demonstrated it could pay more than the proportional market price of RIN.
2. Evidence that petitioning small refinery was unable to pay RIN cost to the market because it received price for its gasoline or diesel below that for full production of its RIN cost for reasons due to the RFS. A petitioning small refinery does not imply, a priori, without supporting information, that it received lower price than other market participants. The difference may be due to other non-RFS factors that support its cost.

The agency's review did not identify any information in any of the 26 SRE petitions that indicated that any petitioning small refinery faces disproportionate cost of RFS compliance when compared to the industry average.

We note that while many of the petitioning small refinery submitted information to this agency "self-reported" metrics using the matrix from the DOE 2011 Study²⁷ during the agency's review of all the information submitted (e.g., the PI-588 survey form, small refinery financial statement and the RFS cost compliance spreadsheet), EPA did not request that DOE use the information to prepare a matrix from the DOE 2011 Study. The DOE 2011 Study contemplated scenarios where refinery that blend renewable fuel and export RIN would have lower cost of compliance. The "disproportionate true cost impact" portion of the matrix was designed in part to identify which refinery were likely to be able to blend renewable fuel due to lack of resources or support for renewable fuel blend in the market where they competed.²⁸ It was thought refinery that the DOE 2011 Study presumed would have to buy RIN and would therefore potentially face higher cost of RFS compliance. None of the petitioning small refinery provided information demonstrating such a difference in their RFS compliance.

²⁷ *Small Refinery Exemption Study, An Investigation into Disproportionate Economic Hardship*, Office of Policy and International Affairs, U.S. Department of Energy, March 2011 ("DOE 2011 Study"), available at <http://www.epa.gov/ite/defult/file/2016-12/dome t / m-al-refi-ery-exempt- tudy.pdf>.

²⁸ DOE 2011 Study pp. 33-35.

costs. Additionally, EPA estimates the expense to DOE scenario materials due to a less accurate that has not materialize.

DOE also comments that its DOE 2021 Study did not evaluate the effects to which effectiveness would pass through the cost of compliance the projects they solve, although, DOE did not evaluate empirical data on a variety of material impacts to RIN cost pass-through by effectiveness.

EPA and DOE also totally consider the submission made by small effectiveness in the Final GAO Report to estimate of a small effectiveness estimate that, according to separate RINs, to face a separate cost of compliance. EPA and DOE found that small effectiveness of such separate costs the project.

D. DEH Must Be Caused by RFS Compliance

In the 2022 SRE De Facto Act, EPA explains its interpretation of the statutory provisions at CAA section 211(o)(9) over EPA's authority to treat SREs. Specifically, EPA explains that its authority to treat a SRE "for the case of [DEH]" equates that the health impacts caused by RFS compliance. As explained in those actions, this interpretation is consistent with the statutory text as well as with the structure and purpose of the SRE provisions under the RFS program.²⁹

EPA bases this action on the same analyses described in the 2022 SRE De Facto Act.³⁰ EPA explains in the 2022 SRE De Facto Act that "this final action is for a few weeks with equal impact to small effectiveness estimate that DEH is caused by RFS compliance" and provides additional examples to enable small effectiveness to understand what would be needed to make such an estimate for future projects.³¹ However, the 26 SRE project is essentially we do not support by evidence material to amounts. Instead, small effectiveness merely restate the same with EPA's analyses presented in the 2022 SRE De Facto Act and claim that EPA has failed to consider the small effectiveness' specific evidence of the low DEH. The remainder of this section summarizes EPA's approach to evaluate DEH as applied in the 2022 SRE De Facto Act and further explains how that approach should be applied here to the 26 SRE projects covered by this action.

In the 2022 SRE De Facto Act, EPA explains that under its interpretation of the statute, EPA only has the authority to treat SREs where a small effectiveness's DEH is caused by RFS compliance, consistent with the Text Committee's holding in *RFA*.³² EPA also explains the RIN scoring a RIN cost pass-through projects and the implications for EPA's authority to treat SREs based on the equivalence of DEH, consistent with a separate holding in *RFA*.³³ EPA's interpretation of the statute and its assessment of RIN market impacts, the economic implications of RIN scoring a RIN cost pass-through, and the impacts of effective market participants are

²⁹ 2022 SRE De Facto Act, Section IV.D.1.

³⁰ 2022 SRE De Facto Act, Section IV.D.

³¹ 2022 SRE De Facto Act, Section IV.D.1.a.

³² 2022 SRE De Facto Act, Section IV.D.1.

³³ 2022 SRE De Facto Act, Section IV.D.2.

described in the 2010 SRE Deial Actio s apply o eac of e individual SRE pe i io s I
 evalua ed i is ac io . No small refi ery provided a yi forma io o s ow a ei er e R N I
 cos pass roug or R N discou I pri ciples do o apply for e SRE pe i io s addressed i is I
 ac io . EPA is erefore de yi g ese pe i io s for all e same reaso s explai ed i e 0 I I
 SRE Deial Ac io s si ce o small refi ery as demo s ra ed a i suffers DEH caused y is I
 RFS complia ce. I

Addio ally, EPA as upda ed par of i s a lysis regardi g R N cos pass roug o I
 i clude da a from complia ce years 0 I a d 0 I. T e resul s of is upda ed a lysis—w ic I
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IV. EPA’s Response to the Final GAO Report I

Novem ber 0 I, GAO pu lis ed i s Fi al Repor , w lic reviewed EPA’s I
 impleme Ia io of e SRE program. T e Fi al GAO Repor did o direc ly assess w e er I
 small refi eries experie ce DEH.³⁴ spi e of a fac , ma y small refi eries a ac ed e Fi al I
 GAO Repor o eir SRE pe i io s, claimi gi provides evide ce a ey face ig er cos s of I
 RFS complia ce due o a purpor ed differe ce i e price ey mus pay o acquire R Ns, a d I
 a ey erefore will face DEH. EPA disagrees. EPA a d DOE provided comme Is o a I
 Sep em ber 0 I draf versio (“Draf Repor”) of e Fi al GAO Repor , a d ese comme Is I
 are availa le i e Fi al GAO Repor , Appe dices V (EPA Comme I Le er) a d V. As I
 explai ed elow, e Fi al GAO Repor fails o address EPA’s comme Is o a d co cer s wi I
 e Draf Repor raised i e EPA Comme I Le er. Followi g issua ce of e Fi al GAO I
 Repor , i Decem ber 0 I, EPA comple ed e EPA R N Price A lalysis—a addio al I
 evalua io of e price of R Ns paid y small refi eries—a d provided GAO wi a copy of is I
 a lalysis. O I May , 0 3, EPA issued i s Fi al GAO Respo se o GAO a d Co gress. I

Small refi eries a su mi ed e Fi al GAO Repor as evide ce of eir DEH did o I
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 pay a cos a ove e pos ed marke prices w le ey uy R Ns. s ead, ese small refi eries I
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 suppor i gi forma io . For example, e pe i io i g small refi eries did o i clude a y I
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 cos o acquire R Ns w le compared o larger refi eries. Nor did ese small refi eries a emp I
 o explai w ly payi g a slig lly ig er price for R Ns (if rue) would so sig ifica lly impac I
 eir opera io s as o co s i ue DEH. is e o liga io of pe i io i g small refi eries o I
 develop eir argume Is a d s ow ow e i forma io ey are prese li g suppor s eir I
 pe i io . T e pe i io i g small refi eries ave failed o prese ose argume Is ere a d I
 erefore ave failed o explai ow e Fi al GAO Repor demo s ra es ey experie ce DEH I
 caused y eir RFS complia ce. I

³⁴ “EPA expressed co cer s a our a lysis did o direc ly assess w le ler small refi eries experie ce I
 dispor io a e eco omic ards ip. Give e i forma io availa le o us a e ime, is is o w la we a llyzed.” I
 Fi al GAO Repor , p. 9. I

EPA has provided the Final GAO Report and subsequently disagreed with its primary findings, conclusions, and recommendations that respect to the SRE program. The Final GAO Report analyzes various aspects of the fundamental flaws EPA previously addressed in the EPA Comment Letter on the Draft Report. For example, GAO did not actually analyze “small firms” as defined by the CAA in its analysis. And GAO again reached the same flawed conclusions in the results of its RIN price analysis changed from small firms all together paying 39% more to only all together paying 2.4% more for RINs. EPA’s own analysis concluded that the costs and suggests that resulting price differential could simply be only 0.5% (0.6¢), and that differential “could simply fluctuate in the data rather than an actual characteristic of the RIN market.”³⁵ Further, GAO misunderstands and does not address the fact that historically small firms have not claimed they paid more than the market price for RINs, and in the limited instances where individual small firms made those claims, EPA fully rebutted and responded to them. Lastly, GAO does not properly account for the possibility that EPA undertakes to rebut SRE petitions, which often includes the very market data GAO suggests is missing. T

In its Final Report, GAO asserts that EPA does not have “quality information” to rebut the SRE petitions.³⁶ The Final GAO Report also asserts that EPA’s conclusion regarding RIN cost pass-through is based on “two assumptions that the agency has not fully addressed” in its market SRE decisions: (1) “EPA assumed that all parties pay and contribute for RINs” and (2) “EPA assumed that the studied RIN pass-through could be based on the data conclusions about additional markets that were not examined in those studies” (e.g., EPA must “fully examine[] and document[]...RIN [cost] pass-through in all relevant markets”).³⁷ GAO concludes that “EPA will continue to make decisions on small firm exemptions without quality information” and “skipped operational and regulatory exemptions” if it does not address these assumptions.³⁸ T

EPA rejects these and other statements in the Final GAO Report, as EPA considered the extensive data and other information and explained the basis for the 2022 SRE Final Act. Moreover, EPA attempted to fully explain the discrepancy between EPA’s and GAO’s respective analyses during the Agency’s ongoing meeting with GAO on this audit, but those explanations were not taken into account in the Final GAO Report. When GAO provided the Draft Report to EPA, containing many of the same erroneous conclusions as are now found in the Final GAO Report, EPA explained its disagreement and began its own analysis to remedy the flaws in the Draft Report. EPA further explained its reasons for its disagreement in the EPA Comment Letter, which included preliminary results of EPA’s own RIN price analysis. Since the publication of the Final GAO Report, EPA concluded and published its final analysis in the EPA RIN Price Analysis. T

EPA’s criticisms and concerns regarding the fundamental flaws in the Final GAO Report are thoroughly explained in the EPA Final GAO Response. In particular, EPA’s response to the R comment letter on the basis of EPA’s suggested changes in the EPA Comment Letter to GAO’s analysis in the Draft Report, and how GAO failed to act on or incorporate those comments into T

³⁵ Final GAO Report, pg. 4. T

³⁶ Final GAO Report, pg. 9. T

³⁷ *Id.* at 10, 13. T

³⁸ *Id.* at 13. T

its Final Report.³⁹ As the report explains, in the EPA Final Report, GAO's analysis of its Final Report ultimately supports GAO's conclusion that smaller in-ribs may be more effective than larger in-ribs. Consistent with the EPA Final Report, EPA continues to disagree with the Final Report, and we do not believe the Final Report provides sufficient evidence to support the DEH in support of any of the SE titles before us. In reaching this conclusion, EPA relies on the previous analysis we have conducted on this issue and our ongoing experience administering the SER program pursuant to Congress's delegation of authority to EPA in CAA section 211(o)(9). GAO lacks any similar delegation of authority and has no expertise in exercising its role in implementing and administering the SER program.

V. Denial of Petitions and Judicial Review

Section 211(o)(9)(B) of the CAA gives EPA the authority to grant an SE title in any form when a smaller in-rib demonstrates DEH caused by its compliance with the FS program. Based on our detailed evaluation, careful consideration of the available information, consultation with DOE, and consideration of the DOE Study and the relevant metrics, EPA finds that in the 26 pending SE titles for the 2016–2018 and 2021–2023 compliance years, we have demonstrated DEH caused by their FS obligations.

As explained in the 2022 SEDRIA Act, the market-based design of the FS program and the IN-based compliance system have qualified the cost compliance among a market participants, such that the in-rib would achieve DEH through its FS obligations. A trade-off of evaluating an extensive amount of data and available information, we continue to conclude that the cost of INs is the same for a big and small in-rib, where the INs are acquired by bidding for a new unit of capacity by buying the market. Hence, smaller in-ribs do not achieve a disproportionate cost compliance when compared to the larger in-ribs, reaching the point. Our analysis further shows that the costs of FS compliance (i.e., INs) are passed through in the form of increased electricity prices. Hence, in reviewing the IN costs, smaller in-ribs do not achieve a disproportionate cost compliance with the FS program. Finding a disproportionate cost compliance and a disproportionate cost with the FS program, we conclude that smaller in-ribs do not achieve DEH. As such, EPA finds that compliance with the FS program does not improve the DEH in the pending smaller in-ribs and, accordingly, is denying 26 pending SE titles in this instance.

Section 307(b)(1) of the CAA governs judicial review of actions by the EPA. This section provides, in part, that titles for review must be filed in the United States Circuit Court of Appeals for the District of Columbia Circuit: (i) when the agency action consists of "any other final action by the Administrator," or (ii) when an action is "final" and "not subject to reconsideration" but "such action is based on a determination that such action is final and in taking such action the Administrator finds and publishes that such action is final."

³⁹ EPA Final Report, p. 2-8.

based on a determination.” The CAA reserves to EPA the complete discretion to determine whether it is appropriate to (i) describe the pre-edited. ⁴⁰

This final title is “nationally applicable” with the meaning of CAA section 307(b)(1). Whether a title is “nationally applicable” is a statutory question based on the “facts” of the title. ⁴¹ The question is whether the title itself is nationally applicable, and whether the arguments raised in relief sought by a petitioner are nationally applicable. ⁴² On its face, this final title is nationally applicable because it defines 26 SRE petitions for 15 small refineries as a separate category of petitions filed with 14 states in 7 feet 10 inches EPA regions and 8 different Federal judicial circuits. This final title is based on EPA’s systematic nationwide application of its revised interpretation of the relevant CAA provisions and its “common” nationwide analytical method” for RIN distribution and RIN distribution principles for evaluation of all SRE petitions, and matter related to the market for small refineries. ⁴³

The text of the final title is nationally applicable, and the Administrator is exercising the complete discretion afforded to him under the CAA to make a decision based on a determination of “nationality” with the meaning of CAA section 307(b)(1). ⁴⁴ I describe the question by making a decision based on a determination of “nationality” as the Administrator should take into account the number of petitions, including the judicial decisions by the D.C. Circuit’s authoritative centralized review versus all wide development of the issue in the texts and the best of the Agency’s responses. The best of the Administrator’s determination is entitled to deference. ⁴⁵ I add that the analytical method, this title defines SRE petitions for 26 small refineries as a separate category of petitions filed with 14 states in 7 feet 10 inches EPA regions and 8 different Federal judicial circuits. Where, as here, the Administrator “ambiguously” determines that [a] final title . . . as “nationality” a decision is that the “all petitions for review filed [in] the [D.C.] Circuit” under CAA section

⁴⁰ *Sierra Club v. EPA*, 47 F.4t 738, 745 (D.C. Cir. 2022) (“EPA’s decision to make a decision based on a determination of “nationality” is “reviewable”; *Texas v. EPA*, 983 F.3d 826, 834-35 (5t Cir. 2020).

⁴¹ *Dalton Trucking, Inc. v. EPA*, 808 F.3d 875, 881 (D.C. Cir. 2015).

⁴² *S. Ill. Power Corp. v. EPA*, 863 F.3d 666, 670-71 (7t Cir. 2017); *ATK Launch Sys., Inc. v. EPA*, 651 F.3d 1194, 1198-1199 (10t Cir. 2011); *RMS of Ga., LLC v. EPA*, 64 F.4t 1368, 1372-1373 (11t Cir. 2023).

⁴³ *S. Ill. Power*, 863 F.3d at 671; *ATK Launch Sys.*, 651 F.3d at 1197.

⁴⁴ I interpret the 1977 Amendment to section 307(b)(1) of the CAA, Congress intended that the Administrator’s determination of “nationality” applies widely and be appropriate for a year to the extent that the “nationality” of a petition is determined. See H.R. Rep. N. 95-294 at 323, 324, reprinted in 1977 U.S.C.A.N. 1402-03.

⁴⁵ The Administrator’s determination is a determination of “nationality” at Congress leaves the Agency’s burden of discretion, as the Federal Administrative Procedure Act, a “substantial” deference. *Cf., e.g., WildEarth Guardians v. EPA*, 751 F.3d 649, 651 (D.C. Cir. 2014) (dismissing *Massachusetts v. EPA*, 549 U.S. 497 (2007), see also *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 543 (1978) (absent “stipulated” limitations, otherwise “extremely” compelling “matters,” agencies “should be free to fashion their rules for the purpose of the permit process and the frequency of the permit process”); *NAACP v. FPC*, 425 U.S. 662, 668 (1976) (reiterating the “general principle” that agencies have discretion to determine what is appropriate regulatory adjustments).

307(b)(1) of this outcome promotes the principles underlying CAA section 307(b)(1) and ensures that petitions for review are consolidated in the DC Circuit where Congress designated them to be heard, avoiding piecemeal litigation, curtailing judicial economy, and eliminating the risk of inconsistent judgments.⁷

For these reasons, this final action is nationally applicable or, alternatively, the Administrator is exercising the complete discretion afforded to him by the CAA and hereby finds that this final action is based on a determination of nationwide scope or effect or purposes of CAA section 307(b)(1) and is hereby publishing this finding in the *Federal Register*.

Under CAA section 307(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit within 60 days from the effective date notice of this final action is published in the *Federal Register*.

This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking. This action is immediately effective upon issuance.

⁷ *Alcoa, Inc. v. EPA*, No. 00-1189, 2000 WL 271311, at *1 (DC Cir. Nov. 2, 2000); see also *ATK Launch Sys., Inc.*, 51 F.3d at 1199 n.1 (acknowledging *Alcoa*).

⁷ *Texas v. EPA*, No. 10-091, 2011 WL 710598, at * (5th Cir. Feb. 2, 2011).

Appendix A Updated Market Analysis

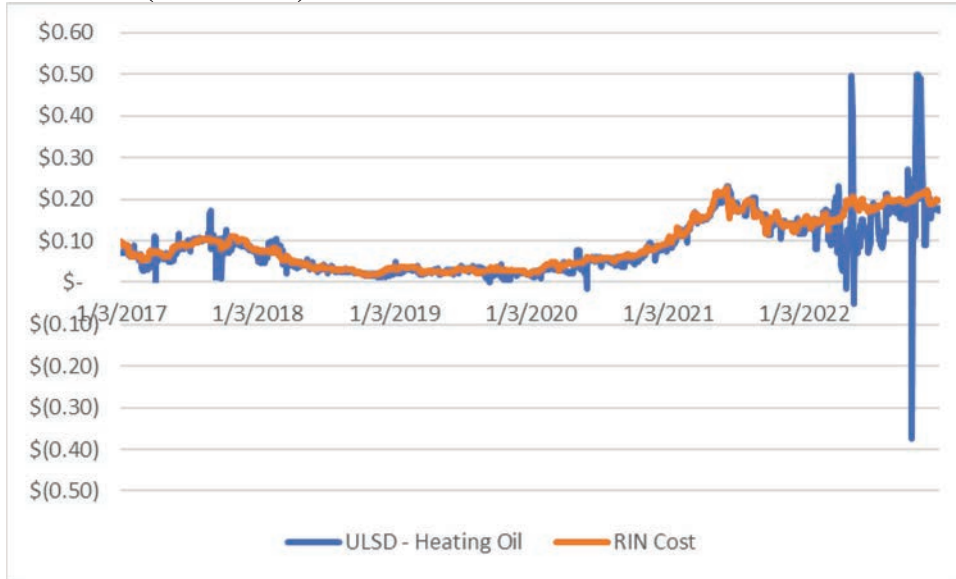
In the 2022 SRE Denial Actions, EPA analyzed the available market data to verify the economic principles that work and to verify that the RIN cost and RIN discount are being reflected in the retail price of blended fuel.⁴⁸ These analyses confirm that both the *cost* of the RINs—which is reflected in the price for fuel and blendstocks—and the *discount* of the RINs are passed through to wholesale purchasers in the marketplace in the price they pay for blended fuel. For this action, EPA updated its analysis from the 2022 SRE Denial Actions regarding RIN cost pass-through⁴⁹ to include the available market data for 2021 and 2022 and again found that the RIN cost per gallon is passed through in the prices of petroleum transportation fuels. EPA used the same analytic approach described in the 2022 SRE Denial Actions.⁵⁰ Including the 2021–2022 market data in its analysis, EPA again found strong correlation between the RIN cost per gallon of petroleum transportation fuel and the price difference in New York Harbor between ultra-low sulfur diesel (ULSD) (which is subject to an RFS obligation) and heating oil (which is essentially identical to ULSD but is not subject to an RFS obligation), as shown in Figures A-1 and 2. EPA found similar correlation between the RIN cost per gallon of petroleum transportation fuel and the price difference in the U.S. Gulf Coast between ULSD and jet fuel (a non-obligated fuel similar to ULSD, but less so than heating oil), as shown in Figures A-3 and 4. As explained in the 2022 SRE Denial Actions, there is more noise in the data for ULSD vs. jet fuel, but a general relationship between the price difference of these fuels and the RIN cost can be seen. EPA concludes that the 2021–2022 market data continue to reflect the economic principle of RIN cost pass-through.

⁴⁸ 2022 SRE Denial Actions, Section IV.D.2.d.

⁴⁹ 2022 SRE Denial Actions, Section IV.D.2.d.i.

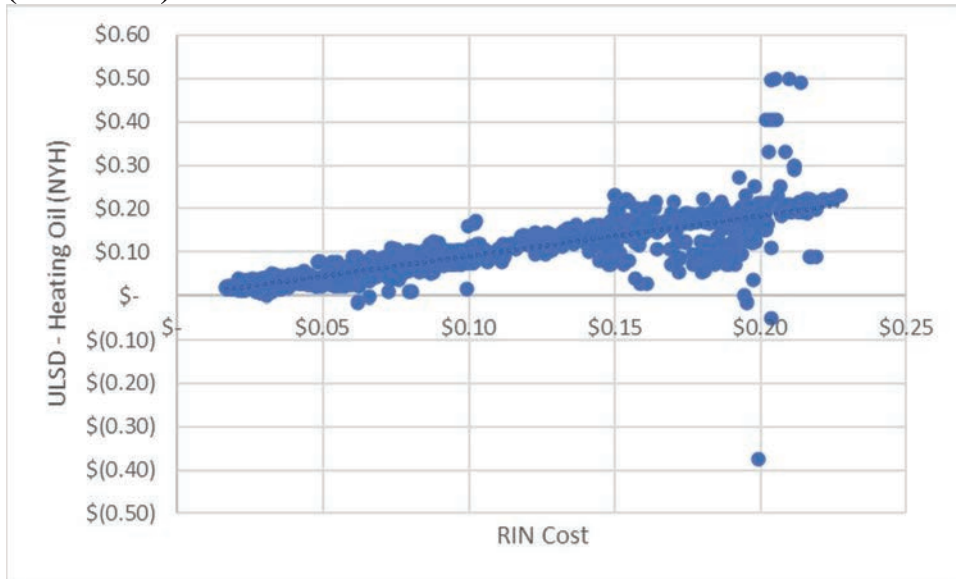
⁵⁰ 2022 SRE Denial Actions, Section IV.D.2.d.i.

Figure 10 Price Difference Between ULSD and Heating Oil in New York Harbor and RIN Cost (2017-2022)



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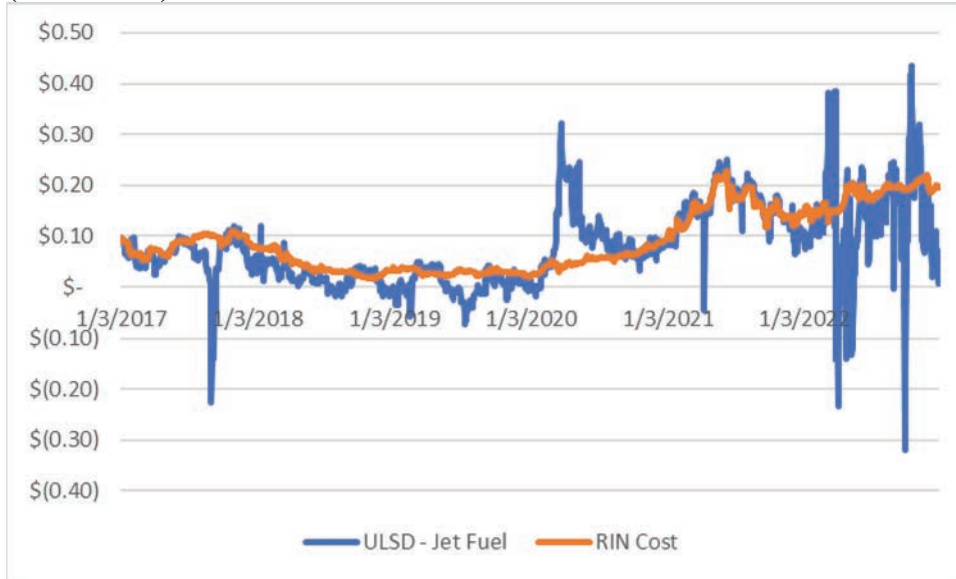
Figure 12 Correlation Between Price Difference of ULSD and Heating Oil and RIN Cost (2017-2022)



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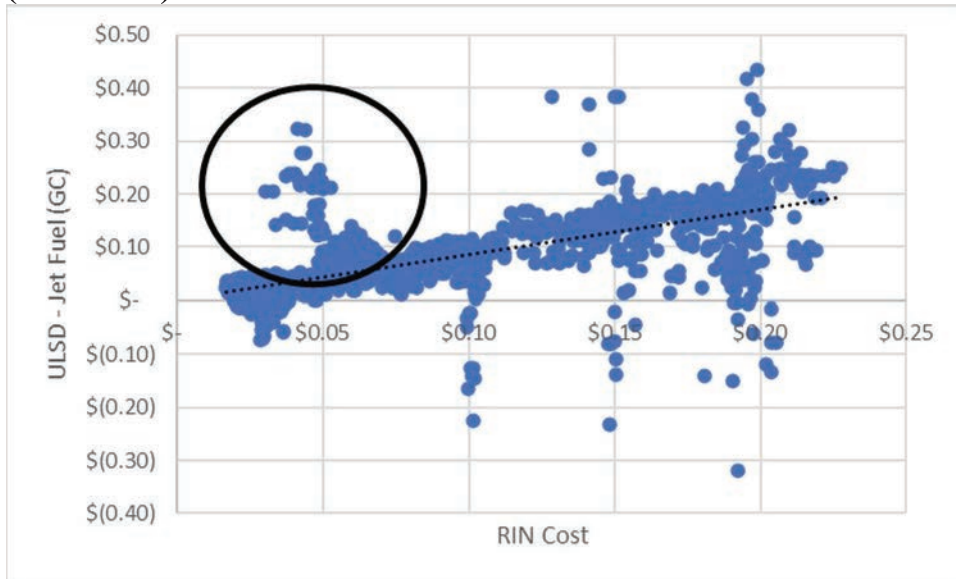
⁵¹ Prices for ULSD and heating oil are reported by EIA and are available at https://www.eia.gov/dnav/pet/pet_pri_spt_s1_d.htm.

Figure 3 Price Difference Between ULSD and Jet Fuel in the Gulf Coast and RIN Cost (2017–2022)⁵²



o

Figure 4 Correlation Between Price Difference of ULSD and Jet Fuel and RIN Cost (2017–2022)⁵³



o

⁵² Prices for ULSD and jet fuel are reported by EIA and are available at https://www.eia.gov/dnav/pet/pet_pri_spt_s1_d.htm. Also apparent in Figure A-3 is the impact of the COVID-19 pandemic. In late March 2020, air travel and demand for jet fuel decreased dramatically, resulting in an oversupply of jet fuel and a spike in the price premium for ULSD over jet fuel. Over time, as demand for jet fuel gradually increased and refiners adjusted their production to better match fuel demand, the price difference between jet fuel and ULSD returned to match the RIN cost.

⁵³ Circled data is for March through May 2020, and reflects the temporary sharp decrease in jet fuel prices due to the COVID-19 pandemic.

EXHIBIT B

DDP Specialty Electronic Material US, Inc. (DDP Material) and MC (US) 3, LLC (MC 3) file the required baseline submission within 15 day of the date of issuance of the April 20 Order or face revocation of their authority to sell power at market-based rate and termination of their electric market-based rate tariff .⁴

The time period for compliance with the April 20 Order has elapsed. DDP Material and MC 3 failed to file their delinquent baseline submission to the market-based rate relational database. The Commission hereby revoke, effective as of the date of issuance of this notice, the market-based rate authority and terminate the electric market-based rate tariff of DDP Material and MC 3. This revocation does not preclude DDP Material and MC 3 from re-applying for market-based rate authority.

Dated: July 14, 2023.
Debbie-Anne A. Reese, Deputy Secretary.
[FR Doc. 2023-15422 Filed 7-19-23; 8:45 am]
BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-10686-01-OAR]

Notice of July 2023 Denial of Petitions for Small Refinery Exemptions Under the Renewable Fuel Standard Program

AGENCY: Environmental Protection Agency (EPA).
ACTION: Denial of petition.

SUMMARY: The Environmental Protection Agency (EPA) is providing notice of its final action entitled July 2023 Denial of Petition for RFS Small Refinery Exemption (“July 2023 SRE Denial Action”) in which EPA denied 26 small refinery exemption (SRE) petitions under the Renewable Fuel Standard (RFS) program. EPA is providing this notice for public awareness of, and the basis for, EPA’s decision announced on July 14, 2023.

DATES: July 20, 2023.

FOR FURTHER INFORMATION CONTACT: Benjamin Sarver, Office of Transportation and Air Quality, Compliance Division, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20004; telephone number: 202-564-1881; email address: sarver.benjamin@epa.gov.

SUPPLEMENTARY INFORMATION:

⁴ April 20 Order, 183 FERC ¶ 61,027 at Ordering Paragraph A.

I. Background
The Clean Air Act (CAA) provides that a small refinery¹ may at any time petition EPA for an extension of the exemption from the obligation of the RFS program for the reason of disproportionate economic hardship (DEH).² In evaluating such petition, the EPA Administrator, in consultation with the Secretary of Energy, will consider the finding of a Department of Energy (DOE) study and other economic factors.³

II. Decision

The July 2023 SRE Denial Action⁴ relies on the same approach and the same analytical described in the April 2022 SRE Denial Action⁵ and the June 2022 SRE Denial Action.⁶ In this action, we conducted an extensive analysis and review of information provided to EPA by small refineries in their SRE petition and we found that all refineries face the same cost to acquire RIN regardless of whether the RIN are created through the act of blending renewable fuel or are purchased on the open market. This happens because the market price for the fuel increases to reflect the cost of the RIN, much as it would increase in response to higher crude price. In other words, this increased price for gasoline and diesel fuel allows obligated parties to recover their RIN cost through the market price of the fuel they produce. Because the market behaves this way for all parties subject to the RFS program, there is no disproportionate cost to any party, including small refineries, and no hardship given that the costs are recovered. As a result, we continue to conclude that small refineries do not face DEH. Given this conclusion and the other reasons described in the July 2023 SRE Denial Action, we have denied 26 SRE petitions for the 2016–2018 and 2021–2023 compliance years by finding the petitioning small refineries do not face DEH caused by compliance with their RFS obligation.

¹ The CAA defines a small refinery as “a refinery for which the average aggregate daily crude oil throughput for a calendar year . . . does not exceed 75,000 barrel.” CAA section 211(o)(1)(K).

² CAA section 211(o)(9)(B)(i).

³ CAA section 211(o)(9)(B)(ii).

⁴ “July 2023 Denial of Petition for RFS Small Refinery Exemption,” EPA-420-R-23-007, July 2023.

⁵ “April 2022 Denial of Petition for RFS Small Refinery Exemption,” EPA-420-R-22-005, April 2022.

⁶ “June 2022 Denial of Petition for RFS Small Refinery Exemption,” EPA-420-R-22-011, June 2022.

III. Judicial Review

Section 307(b)(1) of the CAA governs judicial review of final action by the EPA. This section provides, in part, that a petition for review must be filed only in the United States Court of Appeals for the District of Columbia Circuit: (i) when the agency action consists of “any other nationally applicable . . . final action taken by the Administrator,” or (ii) when a final action is locally or regionally applicable but “such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.” The CAA reserves to EPA the complete discretion to decide whether to invoke the exception in (ii) described in the preceding sentence.⁷

This final action is “nationally applicable” within the meaning of CAA section 307(b)(1). Whether an action is “nationally applicable” is a narrow inquiry based only on the “face” of the action.⁸ The question is whether the action itself is nationally applicable, not whether the nature and scope of the argument raised or relief sought by a petitioner challenging the action are nationally applicable.⁹ On its face, this final action is nationally applicable because it denies 26 SRE petitions for 15 small refineries across the country’s located within 14 states in 7 of the 10 EPA regions and in 8 different Federal judicial circuits. This final action is based on EPA’s consistent nationwide application of its revised interpretation of the relevant CAA provision and using its “common, nationwide analytical method” of RIN discount and RIN cost pass-through principle for evaluating all SRE petitions, no matter the location or market in which the small refinery operates.¹⁰ To the extent a court finds this final action to be locally or regionally applicable, the Administrator is exercising the complete discretion afforded to him under the CAA to make and publish a finding that this action is based on a determination of “nationwide scope or effect” within the

⁷ *Sierra Club v. EPA*, 47 F.4th 738, 745 (D.C. Cir. 2022) (“EPA’s decision whether to make and publish a finding of nationwide scope or effect is committed to the agency’s discretion and thus unreviewable”); *Texas v. EPA*, 983 F.3d 826, 834–35 (5th Cir. 2020).

⁸ *Dalton Trucking, Inc. v. EPA*, 808 F.3d 875, 881 (D.C. Cir. 2015).

⁹ *S. Ill. Power Coop. v. EPA*, 863 F.3d 666, 670–71 (7th Cir. 2017); *ATK Launch Sys., Inc. v. EPA*, 651 F.3d 1194, 1198–1199 (10th Cir. 2011); *RMS of Ga., LLC v. EPA*, 64 F.4th 1368, 1372–1373 (11th Cir. 2023).

¹⁰ *S. Ill. Power*, 863 F.3d at 671; *ATK Launch Sys.*, 651 F.3d at 1197.

meaning of CAA section 307(b)(1).¹¹ In deciding whether to invoke the exception by making a publishing a final action that this final action is based on a determination of nationwide scope or effect, the Administrator has also taken into account a number of policy considerations, including his judgment balancing the benefit of obtaining the D.C. Circuit's authoritative centralized review versus allowing development of the issue in other contexts and the best use of Agency resources. The substance of the Administrator's determination is entitled to deference.¹² In addition to applying a common analytical method to this action, the Administrator has also reviewed SRE petitions for 26 small refineries across the country located within 14 states in 7 of the 10 EPA regions and in 8 different Federal judicial circuits. Where, as here, the Administrator "unambiguously determine[s] that [a] final action . . . has nationwide scope and effect" and publishes that finding, "all petitions for review of th[e] action belong in [the DC Circuit]" under CAA section 307(b)(1).¹³ This outcome promotes the principles underlying CAA section 307(b)(1) and ensures that petitions for review are consolidated in the D.C. Circuit where Congress designate them to be heard, avoiding piecemeal litigation, furthering judicial economy, and delimiting the risk of inconsistent judgments.¹⁴

For these reasons, this final action is nationally applicable or, alternatively, the Administrator is exercising the complete discretion afforded to him by the CAA and hereby finds that this final action is based on a determination of

¹¹ In the report on the 1977 Amendments that revise section 307(b)(1) of the CAA, Congress note that the Administrator's determination that the "nationwide scope or effect" exception applies would be appropriate for any action that has a scope or effect beyond a single judicial circuit. See H.R. Rep. No. 95-294 at 323, 324, reprinted in 1977 U.S.C.A.N. 1402-03.

¹² The Administrator's determination is akin to other determinations that Congress leaves to an agency's broad discretion, such as the denial of a rulemaking petition, an merits consideration of deference. Cf., e.g., *WildEarth Guardians v. EPA*, 751 F.3d 649, 651 (D.C. Cir. 2014) (discussing *Massachusetts v. EPA*, 549 U.S. 497 (2007)); see also *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 543 (1978) (absent constitutional or statutory limitations or otherwise "extremely compelling circumstances," agencies "should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties"); *NAACP v. FPC*, 425 U.S. 662, 668 (1976) (reiterating the "general proposition" that agencies have discretion to determine how to shape their regulatory and administrative actions).

¹³ *Alcoa, Inc. v. EPA*, No. 04-1189, 2004 WL 2713116, at *1 (D.C. Cir. Nov. 24, 2004); see also *ATK Launch Sys., Inc.*, 651 F.3d 1199 n.4 (acknowledging *Alcoa*).

¹⁴ *Texas v. EPA*, No. 10-60961, 2011 WL 710598, at *4 (5th Cir. Feb. 24, 2011).

nationwide scope or effect for purposes of CAA section 307(b)(1) and hereby publishing that finding in the Federal Register. Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit by September 18, 2023.

Alejandra Nunez, Deputy Assistant Administrator for Mobile Sources, Office of Air and Radiation.
[FR Doc. 2023-15401 Filed 7-19-23; 8:45 am]
BILLING CODE 6560-50-P

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice: EIB-2023-0007]

Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of \$100 Million: AP089448XB

AGENCY: Export-Import Bank of the United States.
ACTION: Notice.

SUMMARY: This Notice is to inform the public the Export-Import Bank of the United States ("EXIM") has received an application for final commitment for a long-term loan or financial guarantee in excess of \$100 million. Comments received within the comment period specified below will be presented to the EXIM Board of Directors prior to final action on this Transaction.

DATES: Comments must be received on or before August 14, 2023 to be assured of consideration before final consideration of the transaction by the Board of Directors of EXIM.

ADDRESSES: Comments may be submitted through *Regulations.gov* at *WWW.REGULATIONS.GOV*. To submit a comment, enter EIB-2023-0007 under the heading "Enter Keyword or ID" and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and EIB-2023-0007 on any attached document.
SUPPLEMENTARY INFORMATION:
Reference: AP089448XB

Purpose and Use: Brief description of the purpose of the transaction: To support the export of U.S.-manufactured commercial aircraft to South Korea.

Brief non-proprietary description of the anticipated use of the item being exported: To be used for passenger air transport between South Korea and other countries within Asia. To the extent that EXIM is reasonably aware, the item being exported is not

expected to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

Parties:
Principal Supplier: The Boeing Company.
Obligor: Korean Air Lines Co., Ltd.
Guarantor(s): N/A.
Description of Item Being Exported: Boeing commercial jet aircraft.
Information on Decision: Information on the final decision for this transaction will be available in the "Summary of Minutes of Meetings of Board of Directors" on <https://www.exim.gov/news/meeting-minutes>.

Confidential Information: Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.
Authority: Section 3(c)(10) of the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635a(c)(10)).

Joyce B. Stone, Assistant Corporate Secretary.
[FR Doc. 2023-15380 Filed 7-19-23; 8:45 am]
BILLING CODE 6690-01-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-1170; FR ID 156257]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.
ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the

EXHIBIT C

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

PAR HAWAII REFINING, LLC; U.S.
OIL & REFINING COMPANY,
WYOMING REFINING COMPANY,

Petitioner,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

Case No. _____

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, Petitioners Ergon Refining, Inc., and Ergon-West Virginia, Inc., provide the following corporate disclosure statement:

Par Hawaii Refining, LLC is a limited liability company organized under the laws of Delaware. Par Hawaii Refining, LLC, is a refiner of petroleum products. Par Hawaii Refining, LLC, is an indirect wholly owned subsidiary of Par Pacific Holdings, Inc., a publicly traded corporation. BlackRock, Inc., pursuant to its recent 13F filing, reported that it or funds or accounts managed by it, owns more than 10% of Par Pacific Holding's stock; no other publicly held company has a 10% or greater ownership interest in it.

U.S. Oil & Refining Co. is incorporated under the laws of Delaware. U.S. Oil & Refining Co. is a refiner of petroleum products.

U.S. Oil & Refining Co. is an indirect wholly owned subsidiary of Par Pacific Holdings, Inc., a publicly held corporation. BlackRock, Inc., pursuant to its recent 13F filing, reported that it or funds or accounts managed by it, owns more than 10% of Par Pacific Holding's stock; no other publicly held company has a 10% or greater ownership interest in it.

Wyoming Refining Company is a trade name for Hermes Consolidated, LLC, a limited liability company organized under the laws of Delaware, doing business as Wyoming Refining Company. Wyoming Refining Company is a refiner of petroleum products. Wyoming Refining Company is an indirect wholly owned subsidiary of Par Pacific Holdings, Inc., a publicly held corporation. BlackRock, Inc., pursuant to its recent 13F filing, reported that it or funds or accounts managed by it, owns more than 10% of Par Pacific Holding's stock; no other publicly held company has a 10% or greater ownership interest in it.

Petitioners will file a revised corporate disclosure statement should they become aware of a change in corporate ownership interests that would affect the disclosures required by Rule 26.1.

Dated: September 12, 2023

Respectfully submitted,

s/ Jonathan G. Hardin

Jonathan G. Hardin
Alexandra Magill Bromer
PERKINS COIE LLP
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800
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CERTIFICATE OF SERVICE

Pursuant to Federal Rules of Appellate Procedure 3(d), 15(c) and 25, D.C. Circuit Rules 15(a) and 25, and 40 C.F.R. § 23.12(a), I hereby certify that on September 12, 2023, I will cause copies of the foregoing Petition for Review to be served by certified mail, return receipt requested upon the following:

HON. MICHAEL S. REGAN, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

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Dated: September 12, 2023

s/ Jonathan G. Hardin

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