

# United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

January 30, 2020

The Honorable Gene L. Dodaro  
Comptroller General of the United States  
U.S. Government Accountability Office  
441 G Street NW  
Washington, DC 20548

Dear Comptroller General Dodaro:

On January 10, 2020, the Government Accountability Office (GAO) notified Rep. Abby Finkenauer (IA-01) and other members of Congress that it has accepted their request to review matters relating to the approval of small refinery exemption waivers under the Renewable Fuel Standard (RFS), including the Department of Energy's (DOE) viability scores for the 40 small refinery waivers reviewed by the DOE for the 2018 compliance year.

In the request, Rep. Finkenauer and her colleagues state that “[a] comprehensive review is needed to ensure appropriate oversight going forward as well as ensuring the transparency of the EPA’s process.” We agree. For that reason, we ask GAO to expand its review of this program to address the following questions in a *single* standard performance audit:

1. Pursuant to section 1501 of the Energy Policy Act of 2005 (Public Law 109-58; 119 Stat. 1073; 42 U.S.C. 7545(o)(9)(A)(ii)(I)), DOE prepared and adopted its March 2011 “Small Refinery Exemption Study.” Under what, if any, statutory authority, did DOE prepare and adopt its May 2014 “Addendum to the Small Refinery Exemption Study”?
2. What has been the practical effect of the 2014 Addendum and the changes to DOE’s evaluation process and scoring methodology for small refineries petitioning for hardship relief? Has the 2014 Addendum and the changes to DOE’s evaluation process and scoring methodology made it more difficult for small refineries to earn DOE’s recommendation in favor of partial or full relief? If so, how?
3. Since 2014, has DOE made any other changes to its evaluation process and scoring methodology for small refineries petitioning for hardship relief? If so, what are those additional changes to DOE’s evaluation process and scoring methodology?
4. Pursuant to what, if any, statutory authority did DOE adopt these additional changes? What has been the practical effect of the additional changes for small refineries petitioning for hardship relief? Have the changes made it more difficult for small refineries to earn DOE’s recommendation in favor of partial or full relief? If so, how?
5. When scoring metric 1.a. (“Access to capital/credit”), does DOE assume that a parent entity will necessarily provide access to capital and credit to a subsidiary small refinery?

If so, is that an accurate assumption? Has DOE always made this assumption or has DOE scored this metric differently in the past? If DOE has changed its assumption and scored this metric differently in the past, what prompted this change?

6. When scoring metric 1.b. ("Other business lines besides refining and marketing"), DOE has determined that producing asphalt and lube oils from crude oil is not "refining." On what basis has DOE made this determination? Is DOE's determination consistent with its instructions for complaint in the DOE PI-588 survey form and the agency's definition of refining? Has DOE always excluded the production of asphalt and lube oils when scoring this metric in the past? If not, what prompted this change?

7. Since 2011, when scoring metrics 1.c. ("Local market acceptance of Renewables") and 2.b. ("Renewable fuel blending (% of production)"), DOE has only examined local market acceptance of E10 and the blending of E10, respectively. DOE has not scored the following metrics:

1.c.ii. ("Local market acceptance of Renewables - E85"),

1.c.iii. ("Local market acceptance of Renewables - Biodiesel"),

2.b.ii. ("Renewable fuel blending (% of production) - Biodiesel blending (not used)") and

2.b.iii. ("Renewable fuel blending (% of production) - Other Advanced Biofuel blending (not used)").

Why has DOE not developed the data to score metrics 1.c.ii., 1.c.iii., 2.b.ii., and 2.b.iii.? If DOE fails to score metrics 1.c.ii., 1.c.iii., 2.b.ii., and 2.b.iii., can DOE fairly assess the RFS's impact on small refineries, including those that produce high amounts of diesel?

8. After DOE divides the viability score by three (the total number of viability metrics), DOE then divides again by two. Why does DOE divide again by two?

9. Has DOE changed its interpretations of any metrics or changed scores for individual small refineries in response to federal court rulings in litigation, challenging the denial of hardship relief? If so, please explain how DOE has changed its interpretations of any metrics or changed scores for individual small refineries.

10. Does DOE staff evaluate and score small refinery petitions for hardship relief, itself, or does DOE use an outside contractor to evaluate and score small refinery petitions?

11. If DOE uses one or more outside contractors, which contractors has DOE employed?

12. Does DOE's contractor(s) have any past or current commercial relationships with entities within the biofuel industry? If so, please describe those commercial relationships.

13. What, if any, protocols does DOE have in place to protect confidential business information and other sensitive information about the small refineries petitioning for hardship relief? Do these protocols apply to DOE's contractors?

14. What, if any, protocols does the Environmental Protection Agency (EPA) have in place to protect confidential business information and other sensitive information about the small refineries petitioning for hardship relief?
15. Has Secretary of Agriculture, Sonny Perdue, Deputy Secretary of Agriculture, Stephen Censky, or others at the Department of Agriculture (USDA) attempted to obtain from EPA or DOE confidential business information or other sensitive information about the small refineries petitioning for hardship relief? If so, please describe these efforts.
16. In a series of articles, beginning in January 2018, Jarret Renshaw of *Reuters* appeared to obtain the total number and then the identity of some small refineries petitioning for hardship relief. Did this information come from EPA, DOE, DOE contractors, or USDA?
17. Does GAO agree that failure to protect the identity of a small refinery, which has petitioned for hardship relief, could give entities selling refined petroleum products in the same market as the small refinery a competitive advantage over that small refinery?
18. Does GAO agree that failure to protect the identity of a small refinery, which has petitioned for hardship relief, could give entities selling renewable identification numbers (RINs) to the small refinery the ability to extract a higher price for RINs from that small refinery?
19. The Clean Air Act authorizes “the Administrator [of EPA], in consultation with the Secretary of Energy,” to act on small refinery hardship relief petitions. The nonpartisan Congressional Research Service (CRS) has stated that “[i]n light of the Secretary of Agriculture being included with the Secretary of Energy in the other consultation requirements in the statute, a court would likely interpret the exclusion of the Secretary of Agriculture from the small refinery exemption provisions as intentional and find that Congress intended that only the Secretary of Energy be consulted for those exemptions.”


Does GAO agree with CRS that the Act does not give the Secretary of Agriculture authority over small refinery hardship relief petitions?


20. Has anyone at the U.S. Department of Agriculture (USDA) attempted to influence DOE’s evaluation process, scoring methodology, and recommendations on small refinery petitions for hardship relief? If so, please describe these efforts.
21. Has anyone at USDA attempted to influence, directly or indirectly, EPA’s evaluation process or decisions related to small refinery petitions for hardship relief? If so, please describe these efforts.
22. Prior to his confirmation, Deputy Secretary of Agriculture, Stephen Censky, served as Chief Executive Officer of the American Soybean Association for 21 years. Given that approximately 30 percent of U.S. soybean oil is used for biodiesel production, does Deputy Secretary Censky’s work on the RFS, including *but not limited to* his efforts to

increase biodiesel mandates, present a conflict of interest or the appearance of a conflict of interest?


Thank you in advance for your consideration. If you have any questions or would like to discuss these issues further, please contact Justin Memmott, who may be reached at 202-224-6389 or by e-mail at [justin\\_memmott@epw.senate.gov](mailto:justin_memmott@epw.senate.gov).

Sincerely,

  
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John Barrasso, M.D.  
Chairman  
U.S. Senate Committee on  
Environment and Public Works


  
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Michael B. Enzi  
United States Senator

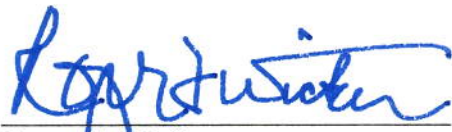
  
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John Kennedy  
United States Senator

  
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Steve Daines  
United States Senator


  
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James Lankford  
United States Senator

  
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Shelley Moore Capito  
United States Senator

  
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Mike Lee  
United States Senator

  
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Roger F. Wicker  
United States Senator

  
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James M. Inhofe  
United States Senator

  
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Pat Toomey  
United States Senator

CC: Dan Brouillette, Secretary of Energy  
Andrew Wheeler, Administrator, Environmental Protection Agency