

# United States Senate

WASHINGTON, DC 20510

June 26, 2020

Mark Menezes  
Under Secretary of Energy  
United States Department of Energy  
1000 Independence Ave  
Washington DC, 20585

Dear Mr. Menezes,

Thank you for taking the time on June 22nd to discuss the role that the Department of Energy (DOE) plays as a technical advisor to the Environmental Protection Agency (EPA) on determining whether or not small refineries qualify for an exemption under the Renewable Fuel Standard (RFS).

As you noted, EPA has sent you small refinery exemptions (SREs) from as far back as 2011. You also noted that due to the nature of SREs, that not all small refineries requested an exemption every year due to market demands.

In January, the U.S. Court of Appeals for the Tenth Circuit unanimously ruled that EPA had been abusing the SRE program, and granting far more than were allowed by law. The three key aspects of the ruling was that: exemptions could only be granted as extensions – so if a refinery had not received one continuously every year they no longer qualify, exemptions should only be granted if the economic hardship is caused by the RFS – not based on outside market factors, and finally, that refiners recoup the cost of renewable identification numbers (RINs) so higher RIN prices cannot be used as justification for granting SREs.

With that being said, we request answers to the following questions in writing by July 10, 2020.

1. In the technical analysis of the SREs, what data does the technical advisor review? Will the technical analysis change if you are reviewing a request from 2011? Has the basis of what constitutes economic harm remained consistent throughout the implementation of the program?
2. As you review the SRE requests from the EPA, will you be reviewing eligibility that the 10th Circuit Court requires in their three—part test? Specifically, in DOE's technical evaluation of SRE petitions, "RINs net revenue or cost" is listed as one of the Disproportionate Economic Impact Metrics. Does DOE plan to continue to use that metric for SRE petitions?
3. Has DOE received SREs determination requests from the EPA in the past month that have previously been scored by DOE?

Again, thank you for your time in discussing these issues. We will continue to advocate for the rule of law and your answers to our questions will help us represent the people of Iowa.

Sincerely,



Chuck Grassley  
United States Senator



Joni K. Ernst  
United States Senator

