

EPA Proposes to Deny All Pending RFS Small Refinery Exemption Petitions

Today, the Environmental Protection Agency (EPA) announced a proposed decision to deny all pending small refinery exemption (SRE) petitions submitted under the Renewable Fuel Standard (RFS) program. Notice of this proposed decision is being published in the Federal Register with a request for comment on the analysis and findings relied upon in this proposal. This proposal includes a detailed background on EPA's prior interpretation of the Clean Air Act's (CAA) SRE provision and approach to determining whether disproportionate economic hardship (DEH) exists at a small refinery. This proposal also announces a change in EPA's interpretation of the SRE provision and an associated change in approach to determining DEH. The proposed adjudication is available in the docket for this action (Docket ID No. EPA-HQ-OAR-2021-0566) and on EPA's website at www.epa.gov/renewable-fuel-standard-program/proposal-deny-petitions-small-refinery-exemptions. This proposed decision is not a final agency action, and parties may submit comments in response to the proposal for 30 days after the date of publication in the Federal Register.

Background

The CAA provides that a small refinery may at any time petition EPA for an exemption from the obligations of the RFS program for the reason of DEH. In evaluating SRE petitions, the EPA Administrator, in consultation with the Secretary of Energy, considers the findings of a Department of Energy (DOE) study and other economic factors. EPA currently has 65 pending SRE petitions from years 2016 through 2021. This proposal is being issued after the Agency has carefully considered the impacts of the

Renewable Fuels Association, et al. v. EPA, 948 F.3d 1206 (10th Cir. 2020) (*RFA*) and *HollyFrontier Cheyenne Refining, LLC, et al. v. Renewable Fuels Ass'n, et al.*, 114 S.Ct. 2172 (2021) (*HollyFrontier*) opinions.

The Proposed Decision

EPA is departing from past practice regarding SRE decisions by inviting comment on the proposed decision and the analysis provided in the proposal. This public notice-and-comment process is intended to achieve the broadest possible dissemination of EPA's preliminary analysis, to solicit information or data to bolster or refute the analysis of RIN market dynamics and economic principles, and to receive public input on the proposed decision to deny all pending SRE petitions based on that analysis. The proposed decision and EPA's accompanying change in its interpretation of the relevant CAA provision are compelled by the Tenth Circuit's 2020 ruling in *RFA*, the Supreme Court's subsequent decision in *HollyFrontier*, EPA's experience implementing the RFS program for more than a decade, and EPA's exhaustive analysis of how the RIN market functions.

EPA is proposing to determine that the petitioning small refineries have failed to demonstrate the DEH necessary for an exemption, and therefore all pending SRE petitions should be denied. The conclusions EPA relies on in the proposal are: (1) Regardless of the mechanism by which small refineries and other obligated parties comply with their RFS obligations, the RFS compliance costs are the same for all obligated parties and thus no party bears RFS compliance costs that are disproportionate relative to others' costs; (2) Obligated parties, including small refineries, recover their compliance costs through the market price they receive when they sell their fuel products and thus do not bear a hardship created by compliance with the RFS program; and (3) With no disproportionality and no economic hardship, there can be no disproportionate economic hardship pursuant to the statute.

EPA has reviewed the available literature on the economics of the RIN market, publicly available price data from various fuels markets and the RIN market, and confidential data small refineries submitted regarding their local markets and RIN purchases. The data EPA reviewed, including those submitted by the small refineries, support the proposed conclusions. In short, EPA's analysis shows that all refineries face the same costs to acquire RINs regardless of whether the RINs are obtained through the act of blending renewable fuel or are purchased on the open market.

This happens because the market price for these fuels increases to reflect the cost of the RIN, much as it would increase in response to a new tax. In other words, this increased price for gasoline and diesel fuel allows obligated parties to recover their RIN costs 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. As a result, EPA concludes that small refineries do not face DEH and proposes to deny all pending SRE petitions. As stated above, EPA is requesting comment on the proposed decision and further requests any available data that supports or refutes the conclusions described in the proposal.

For More Information

You can access the proposed adjudication and related documents on EPA's website at:
<https://www.epa.gov/renewable-fuel-standard-program/proposal-deny-petitions-small-refinery-exemptions>