

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

CHS INC.,

Petitioner,

v.

U.S. ENVIRONMENTAL PROTECTION  
AGENCY,

Respondent.

Case No. 22-1185

**PETITION FOR REVIEW**

Pursuant to Federal Rule of Appellate Procedure Rule 15(a) and Section 307(b) of the Clean Air Act, 42 U.S.C. § 7607(b), CHS Inc. (“Petitioner”) petitions the Court for review of the final action of the United States Environmental Protection Agency (“EPA”) entitled “June 2022 Denial of Petitions for RFS Small Refinery Exemptions,” issued on June 3, 2022, and published in the Federal Register on June 8, 2022, at 87 Fed. Reg. 34,873. Pursuant to the Clean Air Act’s Renewable Fuel Standard (“RFS”) program, Petitioner and numerous other small refineries sought extensions of an exemption for their RFS compliance obligations for the 2019–21 compliance years. In this final action, EPA denied 69 pending petitions from 33 small refineries, including those

submitted by Petitioner. A copy of the agency's action is attached as Exhibit A.

This petition is timely because it has been filed within sixty days of publication of the agency action.

Dated: August 5, 2022

Respectfully submitted,

/s/ Ryan C. Morris

Ryan C. Morris

Peter C. Whitfield

Christopher S. Ross

SIDLEY AUSTIN LLP

1501 K Street, NW

Washington, DC 20005

(202) 736-8000

rmorris@sidley.com

*Counsel for CHS Inc.*

# **EXHIBIT A**

factors.<sup>3</sup> In separate actions announced on April 7, 2022, and June 3, 2022, EPA denied 36 and 69 small refinery exemption (SRE) petitions, respectively, for the 2016–2021 compliance years by finding the petitioning small refineries did not face DEH caused by compliance with the RFS program.<sup>4</sup> Forty-one of those 105 SRE petitions were for the 2016, 2017, or 2018 compliance years, and 34 of those 41 SRE petitions had previously been granted, and those decisions were reversed on remand. It is the 2016, 2017, and 2018 RFS renewable volume obligations (RVOs or “RFS obligations”) created by the denial of these 34 SRE petitions that are the subject of the June 2022 Compliance Action.<sup>5</sup>

## II. Compliance Action

Concurrent with issuing the April 2022 SRE Denial on April 7, 2022, EPA announced<sup>6</sup> the availability of the April 2022 Compliance Action,<sup>7</sup> which provided an alternative compliance demonstration approach for the 31 small refineries whose SRE petitions had been previously granted for the 2018 compliance year and were denied upon remand and reconsideration.<sup>8</sup> With this notice, EPA is announcing the availability of the June 2022 Compliance Action, which supplements the April 2022 Compliance Action to include three additional SRE petitions for the 2016 or 2017 compliance year that had not yet been decided at that time.<sup>9</sup> EPA is providing 31 specific small refineries with an alternative approach to demonstrating compliance with their 2016, 2017, and/or 2018 RVOs created by the SRE Denials. Each of the 31 specified small refineries had previously been granted an SRE for the 2016, 2017, and/or 2018 compliance year; however, each of their petitions again came before EPA as the result of judicial remands. As established in the

June 2022 Compliance Action, EPA has determined there are extenuating circumstances that warrant an alternative compliance demonstration approach that the specified small refineries may use to meet their 2016, 2017, and/or 2018 RFS obligations without retiring any additional RINs.

## III. Judicial Review

Section 307(b)(1) of the CAA governs judicial review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the United States Court of Appeals for the District of Columbia Circuit: (i) when the agency action consists of “nationally applicable . . . final actions taken by the Administrator,” or (ii) when such 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.” For locally or regionally applicable final actions, the CAA reserves to the EPA complete discretion whether to invoke the exception in (ii) described in the preceding sentence.

This final action is “nationally applicable” within the meaning of CAA section 307(b)(1). In the alternative, 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 meaning of CAA section 307(b)(1).<sup>10</sup> This final action provides an alternative approach to demonstrating compliance with the 2016, 2017, and/or 2018 RFS obligations for 31 small refineries across the country and applies to small refineries located within 16 states in 7 of the 10 EPA regions and in 7 different Federal judicial circuits.<sup>11</sup> This final action is based on the extenuating circumstances applicable to these 31 small refineries and the impacts their compliance with their newly created 2016, 2017, and/or

2018 RFS obligations under the existing compliance scheme would have on the RFS program. 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 for purposes of CAA section 307(b)(1) and is 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 August 8, 2022.

**Joseph Goffman,**

*Principal Deputy Assistant Administrator,  
Office of Air and Radiation.*

[FR Doc. 2022–12357 Filed 6–7–22; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2021–0566; FRL–9867–01–OAR]

### Notice of June 2022 Denial of Petitions for Small Refinery Exemptions Under the Renewable Fuel Standard Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Denial of petitions.

**SUMMARY:** The Environmental Protection Agency (EPA) is providing notice of its final action entitled June 2022 Denial of Petitions for RFS Small Refinery Exemptions (“SRE Denial”) in which EPA denied 69 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 June 3, 2022.

**DATES:** June 8, 2022.

**FOR FURTHER INFORMATION CONTACT:** Karen Nelson, Office of Transportation and Air Quality, Compliance Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: 734–214–4657; email address: *nelson.karen@epa.gov*.

## SUPPLEMENTARY INFORMATION:

### I. Background

The Clean Air Act (CAA) provides that a small refinery<sup>1</sup> may at any time petition EPA for an extension of the

<sup>1</sup> 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 barrels.” CAA section 211(o)(1)(K).

<sup>3</sup> CAA section 211(o)(9)(B)(ii).

<sup>4</sup> “April 2022 Denial of Petitions for RFS Small Refinery Exemptions,” EPA–420–R–22–005, April 2022; “June 2022 Denial of Petitions for RFS Small Refinery Exemptions,” EPA–420–R–22–011, June 2022 (hereinafter the “SRE Denials”).

<sup>5</sup> “June 2022 Alternative RFS Compliance Demonstration Approach for Certain Small Refineries,” EPA–420–R–22–012, June 2022.

<sup>6</sup> 87 FR 24294 (April 25, 2022).

<sup>7</sup> “April 2022 Alternative RFS Compliance Demonstration Approach for Certain Small Refineries,” EPA–420–R–22–006, April 2022.

<sup>8</sup> *Sinclair Wyoming Refining Co. v. EPA*, No. 19–1196 (D.C. Cir.), Dec. 8, 2021 Order, Doc. No. 1925942.

<sup>9</sup> The June 2022 Compliance Action covers a total of 34 SRE petitions; however, the three additional SRE petitions were all submitted by small refineries that were previously covered in the April 2022 Compliance Action. Thus, the June 2022 Compliance Action still applies to 31 small refineries.

<sup>10</sup> In deciding whether to invoke the exception by making and publishing a finding 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.

<sup>11</sup> In the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted 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.

exemption from the obligations of the RFS program for the reason of disproportionate economic hardship (DEH).<sup>2</sup> In evaluating such petitions, the EPA Administrator, in consultation with the Secretary of Energy, will consider the findings of a Department of Energy (DOE) study and other economic factors.<sup>3</sup>

## II. Decision

In the SRE Denial,<sup>4</sup> we conducted an extensive analysis and review of information provided to EPA by small refineries in their SRE petitions and in the comments submitted in response to the Proposed Denial.<sup>5</sup> We sought comment on all aspects of the Proposed Denial, including on our conclusions that the CAA requires small refineries to demonstrate that DEH is caused by compliance with the RFS program. We also sought comment on our economic analyses and conclusion that no small refineries face disproportionate costs of compliance due to the RFS program, no economic hardship, and, therefore, no DEH caused by RFS compliance. We requested additional data that would show the relationship between RFS compliance costs and the price of transportation fuel blendstocks. We also sought comment on our proposed change in approach to SRE eligibility based on receipt of the original statutory exemption, and our proposed decision to deny all pending SRE petitions based on the proportional nature of the RFS requirements and our findings regarding RIN cost passthrough. We considered all the comments received and have responded to them in the SRE Denial and its corresponding appendices.

In the SRE Denial, we find that all refineries face the same costs to acquire RINs regardless of whether the RINs are created through the act of blending renewable fuels 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 higher crude prices. 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, and no hardship given that the costs are recovered. As a result, we conclude that small refineries do not face DEH. Given this conclusion and the other reasons described in the SRE Denial, we have denied 69 SRE petitions for the 2016–2021 compliance years by finding the petitioning refineries do not face DEH caused by compliance with their RFS obligations.

## III. Judicial Review

Section 307(b)(1) of the CAA governs judicial review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the United States Court of Appeals for the District of Columbia Circuit: (i) when the agency action consists of “nationally applicable . . . final actions taken by the Administrator,” or (ii) when such 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.” For locally or regionally applicable final actions, the CAA reserves to the EPA complete discretion whether to invoke the exception in (ii) described in the preceding sentence.

This final action is “nationally applicable” within the meaning of CAA section 307(b)(1). In the alternative, 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 meaning of CAA section 307(b)(1).<sup>6</sup> This final action denies 69 petitions for exemptions from the RFS program for over 30 small refineries across the country and applies to small refineries located within 15 states in 7 of the 10 EPA regions and in 8 different Federal judicial circuits.<sup>7</sup> This final action is based on EPA’s revised interpretation of the relevant CAA provisions and the RIN discount

<sup>6</sup> In deciding whether to invoke the exception by making and publishing a finding 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.

<sup>7</sup> In the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted 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.

and RIN cost passthrough principles that are applicable to all small refineries no matter the location or market in which they operate. 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 for purposes of CAA section 307(b)(1) and is 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 August 8, 2022.

**Joseph Goffman,**

*Principal Deputy Assistant Administrator,  
Office of Air and Radiation.*

[FR Doc. 2022–12359 Filed 6–7–22; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0288; FR ID 90242]

### 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 collection. 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 information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it

<sup>2</sup> CAA section 211(o)(9)(B)(i).

<sup>3</sup> CAA section 211(o)(9)(B)(ii).

<sup>4</sup> “June 2022 Denial of Petitions for RFS Small Refinery Exemptions,” EPA–420–R–22–011, June 2022.

<sup>5</sup> “Proposed RFS Small Refinery Exemption Decision,” EPA–420–D–21–001, December 2021 (hereinafter the “Proposed Denial”). 86 FR 70999 (December 14, 2021).

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**RULE 26.1 STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, CHS Inc. hereby states the following:

CHS Inc. is a privately held cooperative formed under the laws of the State of Minnesota with some publicly traded preferred stock. CHS Inc. has no parent companies and no publicly held corporation owns 10% or more of its stock.

Dated: August 5, 2022

Respectfully submitted,

/s/ Ryan C. Morris  
Ryan C. Morris

*Counsel for CHS Inc.*

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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 the foregoing Petition for Review and Rule 26.1 Statement have been served by United States certified mail, return receipt requested, this 5th day of August, 2022, upon each of the following:

Hon. Michael S. Regan, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20460

U.S. Environmental Protection Agency  
Correspondence Control Unit  
Office of General Counsel (2311)  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Hon. Merrick Garland

Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Ave., N.W.  
Washington, D.C. 20530

Hon. Todd Sunhwaee Kim  
Assistant Attorney General  
Environmental and Natural Resources Division  
U.S. Department of Justice  
950 Pennsylvania Ave., N.W.  
Washington, D.C. 20530

Dated: August 5, 2022

Respectfully submitted,

/s/ Ryan C. Morris  
Ryan C. Morris

*Counsel for CHS Inc.*