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Legal Sidebar

Supreme Court Holds Small Refineries Remain Eligible for Renewable Fuel Standard Exemptions After Lapse

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In *HollyFrontier Cheyenne Refining v. Renewable Fuels Association*, the Supreme Court held that small refineries may receive small refinery exemptions (SREs) from the renewable fuel standard (RFS) even if they have not received an exemption for every year of the program. Under the RFS, the U.S. Environmental Protection Agency (EPA) requires refineries and importers of non-renewable fuels to blend a certain amount of renewable fuel into transportation fuel (or to obtain credits that fulfill this requirement). Congress included exemption provisions in the RFS for small refineries, allowing those refineries to petition EPA "at any time" "for an extension of the exemption . . . for the reason of disproportionate economic hardship." These exemptions have garnered attention from stakeholders and Congress as the number of exemptions sought and granted increased significantly during the Trump Administration. Several renewable fuels producers challenged EPA's decisions to grant petitions to exempt three small refineries. The Tenth Circuit vacated all three exemptions on several grounds, one of which was appealed to the Supreme Court in *HollyFrontier Cheyenne Refining*. The Supreme Court reversed. This Sidebar provides background on the RFS, discusses the Tenth Circuit's and Supreme Court's opinions, and explores its implications for Congress.

Small Refinery Exemptions Under the Renewable Fuel Standard

Under the Clean Air Act, the RFS generally requires EPA to ensure that increasing (i.e., market-forcing) specified volumes of categories of renewable fuels are blended into transportation fuel in the United States each year. In turn, EPA requires refineries and importers of non-renewable fuels (obligated parties) to meet annual renewable volume obligations (RVOs) by either blending renewable fuels into transportation fuel themselves or obtaining credits (renewable identification numbers or RINs) from other entities that blended renewable fuels. Each obligated party's individual RVO is based on its gasoline and diesel production or imports and an annual percentage standard that EPA promulgates every year. The annual percentage standards for each renewable fuel category are based on projected gasoline and diesel consumption in the United States and the statutory volume requirements.

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When the RFS was enacted in 2005, Congress included an exemption provision for small refineries. Under the RFS, a refinery is considered a small refinery if it does not process more than 75,000 barrels a day of crude oil on average in a calendar year. The RFS automatically exempted all small refineries from RFS compliance until 2011 (i.e., through the 2010 compliance year). Congress required EPA to extend this exemption for two additional years (i.e., through 2012) if, according to a study by the Secretary of Energy, compliance with the RFS would subject small refineries to a "disproportionate economic hardship." In addition—and relevant to the Tenth Circuit decision—the RFS allows small refineries to petition EPA "at any time" "for an extension of the exemption . . . for the reason of disproportionate economic hardship." The statute requires EPA to consult with the Department of Energy (DOE) regarding any such petitions and to act on the petitions within 90 days of receiving them. If granted, the exemption is only valid for a specified compliance year(s). Small refineries must petition for each compliance year and demonstrate disproportionate economic hardship due to RFS compliance for that year.

EPA considers the information in small refinery exemption petitions (including the petitioners' names) and its decisions to grant or deny them to be confidential business information (CBI). As a result, information about which refineries petitioned for the exemption, the outcome of those petitions, or the analysis supporting EPA's decision is only available to the extent the refinery itself discloses it. However, EPA now publishes aggregate data on petitions received, grants issued, and volumes exempted on its RFS Small Refinery Exemptions dashboard. According to the dashboard, EPA extended the small refinery exemption for 24 small refineries for 2011 and 2012 pursuant to DOE's study. EPA received as few as 13 petitions in 2014 and as many as 42 petitions in 2018 for small refinery exemptions. EPA granted the fewest petitions in 2015, exempting seven small refineries, and the most to-date in 2017, exempting 35 small refineries. The increasing number of small refinery exemption petitions filed and granted beginning with the 2016 compliance year has gained attention from a number of different stakeholders.

Tenth Circuit Opinion in *Renewable Fuels Association v. EPA*

In the underlying Tenth Circuit litigation in *Renewable Fuels Association v. EPA*, renewable fuels producers challenged EPA's decision to grant petitions to exempt three small refineries from the RFS for specific compliance years: HollyFrontier Cheyenne Refining LLC (Cheyenne) for 2016, HollyFrontier Woods Cross Refining LLC (Woods Cross) for 2016, and Wynnewood Refining Company, LLC (Wynnewood) for 2017. Despite the confidentiality of the exemption petition process, the petitioners determined that the refineries had received the exemptions based on media reports and public company filings. They challenged a number of aspects of EPA's decisions, and the Tenth Circuit agreed with the challengers with respect to two central legal issues.

The first grounds on which the Tenth Circuit vacated the small refinery exemptions was appealed to the Supreme Court. The Tenth Circuit agreed with the petitioners that small refineries are only eligible to receive a small refinery exemption if they have previously received an SRE for every compliance year up to the compliance year for which they seek an exemption. The statute allows small refineries to petition EPA for "an *extension* of the exemption." To interpret this phrase, the court considered the plain meaning of the term "extension" as defined by various dictionaries. These definitions, it determined, generally involved something being increased or added to, such as a period of time. The court reasoned, based on these definitions and "common sense," "that the subject of an extension must be in existence before it can be extended." In other words, a small refinery could only *extend* an exemption it already had received. In reaching this conclusion, the court distinguished extending an exemption from renewing or restarting it.

Based on this understanding, the court held that "a small refinery which did not seek or receive an exemption in prior years is ineligible for an extension, because at that point there is nothing to prolong, enlarge, or add to." The court determined that this interpretation would "funnel[] small refineries towards compliance over time" to achieve the "aggressive and 'market forcing'" renewable fuels targets set by the statute. Finding that none of the three small refineries at issue had received an exemption every year prior

to the compliance years at issue in the petitions, the court held that the petitions were improperly granted. HollyFrontier Cheyenne Refining, which had intervened in the Tenth Circuit case, filed a petition for certiorari with the Supreme Court for review of this holding.

The Tenth Circuit also vacated the SREs by concluding that EPA had erred in its analysis of the SRE petitions. This holding was not appealed to the Supreme Court.

Supreme Court Reverses Tenth Circuit in *HollyFrontier Cheyenne Refining v. Renewable Fuels Association*

The Supreme Court reversed the Tenth Circuit's holding that small refineries must have obtained continuous SREs to continue to be eligible for an "extension" of the exemption. Looking to the "ordinary or natural meaning," the majority opinion by Justice Gorsuch reasoned that it is "consistent with ordinary usage" to allow for an extension after a time period has lapsed or expired. The Court pointed to examples such as a student asking for an extension after a deadline, or coronavirus aid legislation allowing for the extension of certain public benefits that had lapsed—without retroactively providing benefits for the intervening period. While affirming that an extension could include a continuity requirement, the Court relied on other statutory "clues"—such as the fact that small refineries may petition for an extension "at any time"—to conclude that Congress did not intend to require continuity for SREs.

The Court rejected the Renewable Fuels Association's contention that the exemption was intended to "end as quickly as possible," concluding that the statutory language would have been an "odd way to achieve" a sunset scheme. Furthermore, even under the sunset theory, small refineries that did obtain an exemption every year could continue receiving them indefinitely. The Court took this fact as evidence that the provision was not intended to sunset quickly.

Noting that the remaining arguments revolve around legislative intent and public policy justifications, the Court concluded that both sides present plausible policy arguments for their favored interpretations. After identifying multiple policy arguments with plausible competing narratives, the Court stated that "neither the statute's text, structure, nor history afford [the Court] sufficient guidance to be able to choose with confidence between the parties' competing narratives and metaphors." The Court concluded, therefore, that it could not rely on such policy arguments as a basis for its decision and it must depend solely on the statutory text. Holding that the statutory text does not "command[] a continuity requirement," the Court reversed the Tenth Circuit opinion.

Justice Barrett dissented, joined by Justices Sotomayor and Kagan. The dissent concluded that even if it were possible to interpret "extension" as not requiring continuing, the term is "*most naturally* read" to "dictate that the subject of an extension must be in existence before it can be extended."

Considerations for Congress

With the Supreme Court's reversal of the Tenth Circuit's opinion, small refineries that have not received continuous exemptions from the RFS are once again eligible to petition for SREs. Small refinery exemptions have been of interest to many in the 116th and 117th Congresses. In light of the Tenth Circuit's opinion and Supreme Court's reversal, Congress could consider whether the Supreme Court's interpretation reflects the intent of Congress as to which small refineries may be exempt from RFS compliance. In particular, Congress could consider whether the exemption was intended to be available for any compliance year as market conditions and economic factors change over time, as the Court interprets congressional intent, or intended as a temporary measure to allow small refineries more time to comply. To the extent the Court's opinion does not reflect congressional intent, Congress could consider amending the small refinery exemption provision to provide more explicit directions.

Beyond amending the RFS to directly address the issues that the Supreme Court considered, Congress may also more broadly examine the economic burden the RFS imposes on obligated parties, which cause small refineries to petition for exemptions. To the extent Congress determines that any such costs are higher than anticipated or have not generated the intended market-forcing effect, it could consider amending other provisions of the RFS to modify either the burdens imposed or the parties who bear them.

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