

CASE NOTE: Renewable Fuels Association v. United States Environmental Protection Agency

By: Sarah Thomas

Introduction

The Renewable Fuel Standards Program (“RFS Program”) is a program enacted by Congress during the Bush Administration regulating the energy economy. The program was created to increase the use of renewable fuels and promote American energy independence. The program works by establishing yearly targets outlining the required usage of renewable fuels. The RFS Program also includes an exception program, whereby small oil refineries may petition the United States Environmental Protection Agency (“EPA”) for an exemption from compliance with the RFS Program. This case note pertains to a suit brought regarding extensions of this small oil refinery exemption. In *Renewable Fuels Association v. United States Environmental Protection Agency*, three small oil refineries, Cheyenne, Wynnewood, and Woods Crossed, petitioned the EPA for an extension of the small oil refinery exemption. The suit was brought by the Biofuels Coalition, comprised of four organizations including trade industry associations and other stakeholder organizations.

A. *Energy Policy Act of 2005*

The RFS Program was created by the Energy Policy Act of 2005.¹ This legislation sought to reduce the nation’s dependence on fossil fuels.² To accomplish this goal, the Energy Policy Act set quotas increasing the required amount of renewable fuels.³ In summary, this legislation requires gasoline sold or introduced into United States commerce to contain the designated

¹ *Renewable Fuels Ass'n v. United States Env'tl. Prot. Agency*, 948 F.3d 1206, 1215 (10th Cir. 2020).

² *Id.*

³ *Id.*

annual volume of renewable fuel no later than one year after enactment.⁴ The legislation also creates a credit program whereby fuel blenders, refiners, or importers could buy or sell compliance credits.⁵ Section 1501 of the Energy Policy Act amends Section 211 of the Clean Air Act (42 U.S.C. 7545).⁶

A temporary exception provision is included in Section 1501. Under the temporary exception provision, small oil refineries could be excused from compliance until calendar year 2011.⁷ In this context, a small refinery is defined as one for which the average aggregate daily crude oil throughput for a calendar year not exceeding 75,000 barrels.⁸ When the Secretary of Energy determines that a small refinery would be subject to a disproportionate economic hardship, which is required to comply with the RFS program, the Administrator shall extend the exemption for the small refinery for a period of not less than 2 additional years.⁹ A small refinery may petition at any point for the reason of disproportionate economic hardship.¹⁰

Applicable volume requirements for years 2006 through 2012 are established in Section 1501. Four billion gallons of renewable fuels were required in 2006.¹¹ This required volume increases to 7.5 billion gallons by 2012.¹² After 2012, applicable volume determinations were made by the Administrator (the EPA) in coordination with the Secretary of Agriculture and the Secretary of Energy.¹³

⁴ *Id.*

⁵ *Renewable Fuels Ass'n v. United States Env'tl. Prot. Agency*, 948 F.3d 1206, 1215 (10th Cir. 2020).

⁶ Energy Policy Act of 2005, PL 109–58, August 8, 2005, 119 Stat 594.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Energy Policy Act of 2005, PL 109–58, August 8, 2005, 119 Stat 594.

¹² *Id.*

¹³ *Id.*

Under Section 1501 of the Act, renewable fuels may be composed of grain, starch, oilseeds, vegetable, animal, or fish materials including fats, greases, and oils, sugarcane, sugar beets, sugar components, tobacco, potatoes, or other biomass sources.¹⁴ Alternatively, renewable fuels may be natural gas produced from a biogas source, including a landfill, sewage waste treatment plant, feedlot, or other place where decaying organic material is found.¹⁵ Further, renewable fuels are used to replace or reduce the quantity of fossil fuel present in a fuel mixture used to operate a motor vehicle.¹⁶

B. Energy Independence and Security Act of 2007

The Energy Independence and Security Act of 2007 (“EISA”) expanded RFS program requirements set forth by the Energy Security Act of 2005. For example, EISA requires 36 billion gallons of renewable fuel volume to be introduced to the United States market by 2022. This figure is a sharp increase from the 7.5 billion gallons required for 2012 by the Energy Policy Act.¹⁷

Similar to the Energy Policy Act, EISA includes a small oil refinery exemption provision. The definition of “small oil refinery” remains the same, requiring an aggregate daily crude oil output of 75,000 barrels or less a calendar year.¹⁸ Also, similar to the Energy Policy Act, EISA provides for the small oil refinery exemption until 2011.¹⁹ After 2011, the small oil refinery may apply for an extension of the exemption lasting a minimum of two years.²⁰ Further, the small oil refinery must still meet the disproportionate economic hardship requirement.²¹ A determination

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Jason Scott Johnston, *Regulatory Carrots and Sticks in Climate Policy: Some Political Economic Observations*, 6 *Tex. A&M L. Rev.* 107, 122 (2018).

¹⁸ *Renewable Fuels Ass’n v. United States Envtl. Prot. Agency*, 948 *F.3d* 1206, 1217 (10th Cir. 2020).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

of whether the refinery is facing disproportionate economic hardship due to compliance is based on a DOE study which was to be conducted no later than 2008.²² Under EISA, small oil refineries may still apply for an extension of the hardship exemption at any time.²³

Additionally, EISA extends the credit program included in the Energy Policy Act.²⁴ EISA states a credit “shall be valid to show compliance for the 12 months as of the date of generation.²⁵ In its current version, credits may be generated for refined, blended, or imported gasoline with greater-than-required quantities of renewable fuel. Credits may also be generated for the use or transfer to another person of such credits. Lastly, credits may be generated for carrying forward a renewable fuel deficit in certain circumstances.²⁶

In its current form, EISA includes four categories of renewable fuels obligations.²⁷ The first category is renewable fuels.²⁸ Here, renewable fuel is defined as “fuel that is produced from renewable biomass and that is used to replace or reduce the quantity of fossil fuel present in a transportation fuel.”²⁹ This category is targeted to rise from four billion gallons in 2006 to 36 billion gallons in 2022.³⁰ The second category is advanced biofuel.³¹ In this context, advanced biofuel is generally defined as renewable fuel “other than ethanol derived from corn starch” with lifecycle greenhouse gas emissions at least 50 percent less than baseline, and is targeted to rise from 0.6 billion gallons in 2006 to 21 billion gallons in 2022.³² The third category of renewable fuel obligations under EISA is cellulosic biofuel. For purposes of EISA, cellulosic biofuel is

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Renewable Fuels Ass'n v. United States Envtl. Prot. Agency*, 948 F.3d 1206, 1216 (10th Cir. 2020).

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

defined as renewable fuel “derived from any cellulose, hemicellulose, or lignin that is derived from renewable biomass.”³³ Cellulosic biofuel requires lifecycle greenhouse gas emissions at least 60 percent less than baseline.³⁴ The fourth category is biomass-based diesel (“BBD”).³⁵ BBD defined with certain exceptions as renewable fuel that is “biodiesel” with lifecycle greenhouse gas emissions at least 50 percent less than baseline, was targeted to rise from 0.5 billion gallons in 2009 to one billion gallons in 2012, with volumes in later years to be set by the EPA in consultation with the Department of Energy.³⁶

Reporting

A. Renewable Fuel Standards Program Background

The Renewable Fuel Standard Program (“RFS Program”) is a program designed by Congress to increase the use of renewable fuels in the American energy market and reduce foreign energy dependence.³⁷ As discussed above, Congress established the RFS program through the Energy Security Act of 2005, and later expanded the program through the Energy Independence and Security Act of 2007.³⁸ Judicial review of the RFS program is limited to the United States Court of Appeals for the District of Columbia Circuit.³⁹

The Renewable Fuel Standards program tasks the EPA with establishing yearly regulations identifying the amount of renewable fuels to be introduced into the American energy market.⁴⁰ To increase renewable fuel usage, yearly targets were increased to meet benchmarks.⁴¹

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Renewable Fuels Ass'n v. United States Envtl. Prot. Agency*, 948 F.3d 1206, 1216 (10th Cir. 2020).

³⁸ *Id.*

³⁹ *Id.* at 1240.

⁴⁰ *Id.*

⁴¹ *Id.*

Congress’s benchmarks have been described as “ambitious”⁴², but seek to drastically increase the usage of renewable fuels.

A temporary exception for small oil refineries was created for the Renewable Fuel Standards program. This temporary exception allows for small oil refineries to be exempt from compliance requirements when the refineries meet economic eligibility requirements.⁴³ To qualify for an exemption, a small oil refinery must face “disproportionate economic hardship”⁴⁴ if required to comply with the RFS program. Small refineries are also required to satisfy the definition of “small refinery” as established in Section 80.1401 for the most recent full calendar year prior to seeking an extension.⁴⁵ The refinery must also meet the definition of “small refinery” for the year during which they are seeking the exemption.⁴⁶ In addition to the temporary exception, the program also includes a “Credit Program”, whereby importers or refiners may buy or sell compliance credits.⁴⁷

B. The Three Small Oil Refineries’ Exemption Petitions

1. Cheyenne

HollyFrontier Cheyenne Refining LLC (“Cheyenne”) is a Wyoming oil refinery employing approximately 300 people.⁴⁸ Cheyenne submitted its small oil refinery exemption petition to the EPA in 2017.⁴⁹ The Department of Energy identified Cheyenne as having faced disproportionate economic hardship in a 2011 study.⁵⁰ Notably, Cheyenne did not apply for, nor

⁴² *Id.* at 1214.

⁴³ *Id.*

⁴⁴ *Id.* at 1215.

⁴⁵ *Id.*

⁴⁶ *Renewable Fuels Ass’n v. United States Envtl. Prot. Agency*, 948 F.3d 1206, 1220 (10th Cir. 2020)

⁴⁷ *Id.* at 1214.

⁴⁸ *Id.* at 1226.

⁴⁹ *Id.*

⁵⁰ *Id.*

receive an exemption petition in 2013 or 2014.⁵¹ However, the EPA granted Cheyenne’s exemption petition in full.⁵²

In its 2017 petition, Cheyenne expressed it would face “disproportionate economic hardship” if required to comply with the RFS program in 2016.⁵³ Cheyenne argued compliance would threaten the viability of the refinery, in large part due to its focus on diesel.⁵⁴ Purchasing compliance credits and biodiesel blending, Cheyenne argued, were poor economics.⁵⁵ Further, Cheyenne stated it did not have the same biodiesel blending capabilities as larger refineries.⁵⁶ In reviewing Cheyenne’s supporting financial documents, the Department of Energy concluded Cheyenne would not face disproportionate economic hardship.⁵⁷ The EPA also acknowledged it altered its standard methodology in evaluating Cheyenne’s petition.⁵⁸ Agency orders granting the Cheyenne petition were not published in the Federal Register.⁵⁹

2. Woods Cross

Woods Cross is a Utah-based oil refinery employing 285 employees and 70 full-time contractors, according to its 2017 exemption petition.⁶⁰ Woods Cross’s reasoning for submitting a petition includes “resistance” to biofuels in Woods Cross’s market, and that the refinery has no other lines of business.⁶¹ In its petition, Woods Cross did not assert it had been identified as facing disproportionate economic hardship in the Department of Energy’s 2011 study.⁶² Nor did

⁵¹ *Id.*

⁵² *Renewable Fuels Ass’n v. United States Envtl. Prot. Agency*, 948 F.3d 1206, 1220 (10th Cir. 2020).

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Renewable Fuels Ass’n v. United States Envtl. Prot. Agency*, 948 F.3d 1206, 1220 (10th Cir. 2020).

⁵⁸ Whereas the EPA previously looked to the impact on the small oil refineries’ “viability”, the EPA stated it could also find disproportionate economic hardship in cases where the operations of the refinery were not affected. *Id.*; *Id.* at 1228.

⁵⁹ *Id.* at 1241.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

Woods Cross assert it had previously received an extension of the small oil refinery exemption.⁶³ In response, the Department of Energy recommended a partial grant, 50%, of Woods Cross's petition.⁶⁴ Instead, the EPA fully granted Woods Cross's petition.⁶⁵ In coming to its decision, the EPA stated that "unfavorable structural factors" contributed to Woods Cross's full relief.⁶⁶ Similar to Cheyenne, the Federal Register did not publish an agency grant of the Woods Cross petition.⁶⁷

3. Wynnewood

Wynnewood is an Oklahoma-based oil refinery employing more than 300 employees and 250 full-time contractors, according to its 2018 petition.⁶⁸ Wynnewood's petition stated it had not received economic hardship relief since 2012, but received an extension of the blanket exemption in 2011 and 2012.⁶⁹ The refinery cited its 2017 financial performance as its reasoning for the petition.⁷⁰ Specifically, Wynnewood expressed it lacked sufficient access to credit, other lines of business, a poor market for blended renewable fuels, proportion of diesel fuels, net refining margins, and the consequence of increased prices for customers.⁷¹ The Department of Energy recommended a partial grant, 50%, of Wynnewood's petition. The EPA, however, ended up granting Wynnewood's petition in full and extended the exemption for 2017.⁷² Similar to Woods Cross, the EPA cited "unfavorable structural conditions" in its reasoning for granting Wynnewood's petition in full.⁷³ Wynnewood's petition grant was similarly not published in the

⁶³ *Id.*

⁶⁴ *Renewable Fuels Ass'n v. United States Envtl. Prot. Agency*, 948 F.3d 1206, 1228 (10th Cir. 2020)

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.* at 1241.

⁶⁸ *Id.* at 1229.

⁶⁹ *Renewable Fuels Ass'n v. United States Envtl. Prot. Agency*, 948 F.3d 1206, 1229 (10th Cir. 2020).

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

Federal Register.⁷⁴

4. Biofuels Coalition

As the Refineries challenge the Biofuels Coalition's standing to sue, it is necessary to identify the members of the Biofuels Coalition. The Biofuels Coalition includes four organizations, first including the Renewable Fuels Association ("RFA").⁷⁵ The RFA is a trade association for the ethanol industry.⁷⁶ RFA members include companies that make or sell ethanol, blenders or sellers of gasoline, or ethanol producers' third-party service providers.⁷⁷ The second organization is the American Coalition for Ethanol Producers ("ACE").⁷⁸ Like the RFA, ACE is an advocacy organization for ethanol producers.⁷⁹ ACE members primarily include ethanol producers and farmers growing crops used in renewable fuel production, particularly corn.⁸⁰ The third organization is the National Farmers Union ("NFU").⁸¹ NFU is an advocacy group geared toward "family farmers, ranchers, and rural communities."⁸² NFU members include farmers growing crops, such as corn and soybeans, or family farmers.⁸³ The final organization is the National Corn Growers Association ("NCGA").⁸⁴ The NCGA has more than 40,000 dues-paying corn farmers and 300,000 corn growers who contribute to the NCGA through corn programs.⁸⁵

⁷⁴ *Renewable Fuels Ass'n v. United States Env'tl. Prot. Agency*, 948 F.3d 1206, 1229 (10th Cir. 2020).

⁷⁵ *Id.*

⁷⁶ *Renewable Fuels Ass'n v. United States Env'tl. Prot. Agency*, 948 F.3d 1206, 1229 (10th Cir. 2020).

⁷⁷ *Id.* at 1230.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Renewable Fuels Ass'n v. United States Env'tl. Prot. Agency*, 948 F.3d 1206, 1230 (10th Cir. 2020)

C. Standing

The first issue is whether the Biofuels Coalition has standing to bring suit.⁸⁶ The EPA does not challenge the Biofuels Coalition's standing to sue, only the refineries do.⁸⁷ To bring suit, the Constitution mandates that judicial power only extends to cases and controversies.⁸⁸ In satisfying federal court jurisdiction, the plaintiff must have "alleged such a personal stake in the outcome of the controversy so as to warrant *his* invocation of federal-court jurisdiction."⁸⁹ At minimum, the plaintiff must have, "(1) suffered an injury in fact, (2) that is fairly traceable to the conduct of the defendant, and (3) that is likely to be addressed by favorable judicial decision."⁹⁰

The Refineries do not dispute that the Biofuels Coalition have suffered an injury in-fact⁹¹. For standing purposes, even a small amount of monetary loss is generally an "injury".⁹² The Biofuels Coalition demonstrates their injury through the affidavit of the RFA's chief economist, Scott Richman.⁹³ In this affidavit, Richman concludes that the granting of the Cheyenne, Woods Cross, and Wynnewood petitions, "contributed to reduced demand and lower per-gallon prices for ethanol."⁹⁴ These factors have resulted in lower revenues received by RFA's ethanol producing members."⁹⁵ Richman also states his estimates included in the affidavit are "conservative".⁹⁶

Instead, the Refineries dispute whether the Biofuels Coalition's losses are "fairly traceable" to any individual exemption petition granted to Cheyenne, Woods Cross, or

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.* at 1231.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Renewable Fuels Ass'n v. United States Envtl. Prot. Agency*, 948 F.3d 1206, 1233 (10th Cir. 2020).

⁹³ *Id.* at 1232.

⁹⁴ *Id.*

⁹⁵ *Renewable Fuels Ass'n v. United States Envtl. Prot. Agency*, 948 F.3d 1206, 1232 (10th Cir. 2020).

⁹⁶ *Id.*

Wynnewood.⁹⁷ Namely, the Refineries argue that estimates of RFA’s economist do not detail whether any individual extension caused more or less loss than another.⁹⁸ Further, Cheyenne and Woods Cross argue their exempted credits are only a “tiny fraction” of the total RFS responsibility.⁹⁹ Concerning redressability, the Refineries argue that the harm faced by the Biofuels Coalition cannot be redressed by this suit because the harm could not be remedied in full.¹⁰⁰ Specifically, the Refineries argue that action would not remedy the Biofuels Coalition now, years after the EPA’s granting of the exemptions.¹⁰¹

Concerning standing, the court concludes that the Biofuels Coalition’s losses are “fairly traceable” to the exemption petitions granted to Cheyenne, Woods Cross, and Wynnewood.¹⁰² In its reasoning, the court cites *Massachusetts v. E.P.A.*, where the EPA argued that incremental steps are insignificant, like a “drop in the worldwide bucket”.¹⁰³ The court found the EPA’s reasoning to be erroneous, as the outcome would make it nearly impossible to pursue such claims in federal court.¹⁰⁴

Regarding the case at hand, the court finds the Refineries’ argument similarly erroneous. Though individually the Biofuels Coalition members’ injuries may be small, they are each fairly traceable to the granting of these exemption petitions.¹⁰⁵ When the EPA granted the exemptions, Cheyenne, Woods Cross, and Wynnewood were relieved of a large regulatory burden.¹⁰⁶ By nature, the Refineries and the Biofuels Coalition exist in a competitive relationship.¹⁰⁷ When the

⁹⁷ *Renewable Fuels Ass’n v. United States Env’tl. Prot. Agency*, 948 F.3d 1206, 1234 (10th Cir. 2020).

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Renewable Fuels Ass’n v. United States Env’tl. Prot. Agency*, 948 F.3d 1206, 1235 (10th Cir. 2020).

¹⁰² *Id.* at 1234.

¹⁰³ *Massachusetts v. EPA*, 549 U.S. 497, 499, 127 S. Ct. 1438, 1442, 167 L. Ed. 2d 248 (2007).

¹⁰⁴ *Id.* at 1243.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

regulatory burden is removed, so too is the protection of ethanol and ethanol feedstock sales.¹⁰⁸ Granting the exemptions caused a “particularized change” to the Refineries’ and Biofuels Coalition’s competitive relationship.¹⁰⁹ This change to the parties’ competitive relationship is also grounds for standing.¹¹⁰

In response to the Refineries’ argument that the Biofuel Coalition’s harm would not be remedied by this action, the court cites *Massachusetts*.¹¹¹ In *Massachusetts*, the court held that redressability may be satisfied when the risk of harm is satisfied to “some extent”.¹¹² Here, though a ruling in favor of the Biofuels Coalition would not remedy their injury in full, it would remedy (1) the nature of the parties’ competitive relationship and (2) reinstate the regulatory burden.¹¹³ A ruling in favor of the Biofuels Coalition would remedy the party’s injury to “some extent”, thus granting standing.¹¹⁴ Therefore, the Biofuels Coalition has standing to bring suit as the party has suffered an injury that is fairly traceable to the Refineries and satisfies standards of redress.¹¹⁵

In conclusion, the Biofuels Coalition had standing as the party suffered injury in-fact that is fairly traceable to the granting of the three small oil refineries’ exemption petitions.¹¹⁶

¹⁰⁸ *Renewable Fuels Ass'n v. United States Env'tl. Prot. Agency*, 948 F.3d 1206, 1234 (10th Cir. 2020).

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

D. *Jurisdiction*

1. Timeliness

Concerning timeliness, the issue is whether the action was brought in a timely manner with respect to the Clean Air Act.¹¹⁷ According to the Clean Air Act, challenges to final agency actions must generally be filed “within sixty days from the date notice of such promulgation, approval, or action appears in the Federal Register.”¹¹⁸ In this case, the Federal Register did not publish the EPA’s granting of the Cheyenne, Woods Cross, or Wynnewood petitions.

Narrowly, the issue may be viewed as whether the statutory clock began for purposes of the Clean Air Act when the Refineries’ exemption grants were not published in the Federal Register.¹¹⁹ In light of the Clean Air Act’s 60-day deadline, the Court first looks to when the statutory clock may have started.¹²⁰ As previously mentioned, the Federal Register did not publish the exemption grants of Cheyenne, Woods Cross, or Wynnewood.¹²¹ As such, no parties had notice of the statutory clock beginning.¹²²

In reaching this conclusion, the court looks to the purpose of this statutory window.¹²³ Similar to the reasoning behind the D.C. Circuit Court-review requirement, the court believes such a requirement implements fairness, or a “race to the courthouse”.¹²⁴ The court states it would be “irrational” to eliminate the chance for appeals when parties do not have notice.¹²⁵

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 1239.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Renewable Fuels Ass'n v. United States Envtl. Prot. Agency*, 948 F.3d 1206, 1241 (10th Cir. 2020).

¹²³ *Id.*

¹²⁴ *Id.* at 1240.

¹²⁵ *Id.* at 1241.

In this case, the Biofuels Coalition did not have notice of the exemption grants because the Federal Register did not publish the Cheyenne, Woods Cross, and Wynnewood petition agency orders.¹²⁶ Therefore, the 60-day deadline in 42 U.S.C. § 7607(b)(1) did not cause the Biofuels Coalition's petition to be untimely.¹²⁷ As such, the Plaintiffs brought this suit in a timely manner as the agency orders granting the three small oil refineries' exemption petitions were not published by the Federal Register. As a result, the 60-day "statutory clock" as provided by the Clean Air Act did not start.

2. Ripeness

The Refineries also argue that the issue is not suitable for judicial review in light of the ripeness doctrine. In relation to administrative agencies, the ripeness doctrine seeks to prevent inefficient use of the courts through abstract, and possibly premature, agency disputes.¹²⁸ To determine whether administrative action is "ripe" for review, the court is required to evaluate (1) the fitness of the issues for judicial decision and (2) the hardship to the parties of withholding court consideration."¹²⁹

Ripeness analysis requires a two-step criteria evaluation. The first criteria, "fitness for judicial decision", may be determined by considering whether the issue is "purely legal", the finality of the agency decision, whether the court would benefit from further factual development, and whether intervention would interfere with the agency's future administrative actions.¹³⁰ In this case, the court finds EPA does not indicate intent to change their decisions regarding the exemption petitions granted to Cheyenne, Woods Cross, or Wynnewood.¹³¹ As

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.* at 1241.

¹³⁰ *Id.*

¹³¹ *Id.*

such, the court reasons no further factual development is needed, because the issue rests solely on the granting of these petitions.¹³² The Refineries’ statutory interpretation challenges are purely legal. Therefore, the first criterion of the ripeness test is satisfied.¹³³ Next, the court looks to the second criterion—hardship to the parties¹³⁴. In this case, the court finds that the Biofuels Coalition faced increased competition and reducing the value of products the Coalition buys and sells.¹³⁵ Granting of the three small oil refineries’ petitions caused the Biofuels Coalition to face hardship economically.¹³⁶ As such, the ripeness test’s second criterion is also met.¹³⁷

E. Statutory Construction

The third issue is whether the EPA exceeded its statutory authority by granting the exemption petitions of Cheyenne, Woods Cross, and Wynnewood.¹³⁸ This is a matter of statutory authority: ¹³⁹ “Plain and unambiguous statutory language must be enforced ‘according to its terms,’ because we assume “the ordinary meaning of that language accurately expresses the legislative purpose.”¹⁴⁰

To review an agency’s determination, courts generally look to the test found in *Chevron v. Natural Resources Defense Council*.¹⁴¹ The *Chevron* test has two steps, including (1) asking “whether Congress has directly spoken to the precise question at issue,” and if not, (2) “whether the agency’s answer is based on a permissible construction of the statute.”¹⁴² The court has

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Renewable Fuels Ass’n v. United States Env’tl. Prot. Agency*, 948 F.3d 1206, 1242 (10th Cir. 2020).

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Renewable Fuels Ass’n v. United States Env’tl. Prot. Agency*, 948 F.3d 1206, 1243 (10th Cir. 2020)

¹⁴⁰ *Id.*

¹⁴¹ *Id.*; *Chevron v. Natural Resources Defense Council*, 467 U.S. 837 (1984).

¹⁴² *Id.* at 1244.

previously determined *Chevron* does not apply to informal adjudications of petitions to extend the small refinery exemption were not subject to *Chevron* deference.¹⁴³

When *Chevron* is inapplicable, the court may look to the test in *Skidmore v. Swift & Co.*¹⁴⁴ The *Skidmore* test holds that the weight provided to an administrative judgment “will depend upon the thoroughness evident in [the agency’s] consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.”¹⁴⁵ Under *Skidmore*, an EPA ruling may “claim the merit of its writer’s thoroughness, logic, and expertness” and also, “its fit with prior interpretations, and any other sources of weight.”¹⁴⁶

The court first looks to the meaning of exemption versus an extension. Notably, the court looks to the plain meaning of this term.¹⁴⁷ “Common sense”, the court states, dictates that an extension may not be granted to something that had not been previously granted.¹⁴⁸ In this case, none of the three small oil refineries had been granted an exemption during the appropriate year.¹⁴⁹ Ultimately, a small oil refinery that has not been granted an exemption previously is not eligible for an extension, as there is nothing to “prolong”, or “add onto”.¹⁵⁰ To interpret the term “extension” otherwise would mean a small oil refinery could apply for a petition to their benefit and against the purpose of the statutory scheme.¹⁵¹

The Refineries and EPA also argue a lack of jurisdiction due to the definition of small oil refineries under a 2014 amendment. Regarding the 2014 Small Refinery Rule, the court reasons

¹⁴³ *Id.*

¹⁴⁴ *Id.*; *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944).

¹⁴⁵ *Renewable Fuels Ass'n v. United States Env'tl. Prot. Agency*, 948 F.3d 1206, 1244 (10th Cir. 2020).

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 1245.

¹⁵¹ *Id.*

that the definition of the “small refinery” under the amendment is not up for dispute in this case.¹⁵² As such, this issue is subject to a *Skidmore*, rather than *Chevron* review.¹⁵³ Though ambiguity exists as to the definition of “small refinery” under the rule, there is no ambiguity as to the statutory definition of “extension”.¹⁵⁴ As the statutory definition of “extension” is at issue, and not the 2014 Small Refinery Rule, the court disagrees with the reasoning of the EPA and Refineries.¹⁵⁵

The third statutory construction issue rests in the definition of “disproportionate economic hardship.”¹⁵⁶ The court cites the definition of disproportionate economic hardship in *Sinclair*: “suffering,” “privation,” or “adversity,” i.e., something that “makes one’s life hard or difficult.”¹⁵⁷ As such, the court reasons that a mere “hardship” is not enough; the EPA must find a small oil refinery’s hardship must be disproportionate under the Clean Air Act to grant an extension.¹⁵⁸ Though the EPA altered its metrics in determining hardship, the court reasons that the EPA did not abandon a comparative analysis in deciding whether to grant the petitions.¹⁵⁹

Concerning hardship from compliance, the Biofuels Coalition argues that the EPA erroneously determined that Refineries’ hardship was directly caused by compliance with the RFS program.¹⁶⁰ The court reasons that the statutory language pertaining to exemptions only related to hardships caused by compliance.¹⁶¹ Specifically, the statute states an exemption may be sought, “. . . for the reason of disproportionate economic hardship.”¹⁶² Notably, the court states the clause, “for the reason of” denotes a causation requirement.¹⁶³ This reasoning is supported by the EPA’s own reasoning in granting the Woods Cross and Wynnewood petitions: The EPA cited hardships not possibly caused by compliance; thus, the refineries faced hardships

¹⁵² *Id.*

¹⁵³ *Id.* at 1251.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at 1252.

¹⁵⁷ *Renewable Fuels Ass'n v. United States Env'tl. Prot. Agency*, 948 F.3d 1206, 1252 (10th Cir. 2020).

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

not caused by the reason of compliance.¹⁶⁴ As such, the EPA exceeded its statutory authority in granting petitions to the three small oil refineries for reason of hardship from compliance.¹⁶⁵ Therefore, the EPA exceeded its statutory authority in granting the Cheyenne, Woods Cross, and Wynnewood exemption petitions.¹⁶⁶

Analysis

A. Ruling as a Check on Statutory Authority

From a legal perspective, the Tenth Circuit's decision is a measured check on the EPA's statutory authority under the RFS program. In its role as administrator of the RFS program, the EPA had greater discretion in granting extension petitions to small oil refineries. Due to the statutory structure of the RFS program, the EPA ultimately decided which small oil refineries could successfully petition the EPA for exemptions under the RFS program. Indeed, the EPA's decisions regarding small oil refinery exemptions were informed by previously set metrics: the EPA evaluated whether the small oil refinery had experienced a "disproportionate economic hardship", for example.¹⁶⁷ To evaluate such hardship, the Energy Policy Act required the EPA to reference whether the small oil refinery had been included in a Department of Energy Study identifying which small oil refineries had faced disproportionate economic hardships.

However, prior to this ruling, the EPA wielded a level of discretion in granting extension petitions. The statutory provisions of the Energy Policy Act of 2005 and the Energy and Independence Act of 2007 which created the RFS program did not grant the EPA the power to grant extensions when no exemption was filed. Instead, the power was limited to the EPA's ability to grant extensions of exemptions only when the refinery met the statutory requisites and had filed an exemption. When the EPA granted the extension petitions of the three small oil

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Renewable Fuels Ass'n v. United States Envtl. Prot. Agency*, 948 F.3d 1206, 1220 (10th Cir. 2020).

refineries, the EPA exceeded its statutory authority. This ruling serves as a “check” on the EPA’s statutory authority as established by the RFS program.

B. *Policy Implications*

From a legislative perspective, this ruling is consistent with the legislative intentions of the Energy Policy Act of 2005 and the Energy and Independence Security Act of 2007. The purpose of the Energy Policy Act of 2005 was to increase the amount of renewable fuels in the American energy market.¹⁶⁸ The EPA’s prior grant of the three small oil refineries’ petitions would, by its nature, allow for less renewable fuels to enter the American energy market. Further, the RFS program was created in part to ensure the energy security of the United States. By ensuring greater compliance, the Tenth Circuit’s decision is consistent with Congress’s intention of ensuring national energy security through the RFS program.

Practically speaking, the Tenth Circuit’s ruling in *Renewable Fuels* is a victory for those with a vested interest in a successful renewable fuels market. The general composition of the Biofuels Coalition, including farmers growing crops used in the creation of renewable fuels, energy industry investors, suggest there exists a variety of groups with a vested interest in a successful renewable fuels market.¹⁶⁹ Logistically, the renewable fuels market benefits when a greater number of small oil refineries are in compliance with the RFS program.

Oil refineries are likely to be concerned about economic harms resulting from this ruling. Refineries which are required to comply with the RFS program may have difficulties blending renewable fuels into their products. Further, some refineries are situated in markets which are

¹⁶⁸ *Renewable Fuels Ass'n v. United States Env'tl. Prot. Agency*, 948 F.3d 1206, 1215 (10th Cir. 2020).

¹⁶⁹ *Id.* at 1230.

resistant to renewable fuels. Certainly, the Tenth Circuit’s ruling in *Renewable Fuels* creates more challenges for small oil refineries seeking exemption from RFS program compliance.

C. Appellate Proceedings

The Supreme Court of the United States has been asked to review the Tenth Circuit’s ruling in *Renewable Fuels Association* by the refineries.¹⁷⁰ The EPA “declined to challenge the Tenth Circuit’s ruling itself.” The refineries argue that the decision will “eventually foreclose” the ability of all small refineries within the Tenth Circuit from receiving an exemption petition.

Small oil refinery compliance with the RFS program is inherently a political issue. If the Supreme Court of the United States were to review the Tenth Circuit’s ruling, refineries are likely to argue over the definition of an “extension”.¹⁷¹ The refineries are likely to argue that “extension” does not only “increase a length of time”, but holds additional meanings.¹⁷² This argument, if given weight, would alter the interpretation of the small oil refineries’ extension petitions under the RFS program.

To avoid review of the “politically fraught” issue of refinery compliance with the RFS program in *Renewable Fuels*, Congress could consider further defining “extension” for purposes of the RFS program. If Congress were to explicitly define the meaning of “extension” in this context, it may alter the weight of the refineries’ argument regarding ambiguity of the meaning of “extension” in this context. Further, clarifying these ambiguities could provide a model for future iterations of the RFS program. If the purpose of the small oil refinery exemption is to

¹⁷⁰ Juan Carlos Rodriguez, “Refiners Ask High Court To Review Biofuel Ruling”, *Law 360*. Sept. 8, 2020. <https://www.law360.com/articles/1307908/refiners-ask-high-court-to-review-biofuel-ruling>.

¹⁷¹ *Id.*

¹⁷² *Id.*

target a small demographic of potential refineries, narrowing the definition of “extension” would assist in this goal.

Legislation regulating the energy economy is inherently a political issue. To maintain the legislative intent of such programs, such legislation should be narrowly tailored and be explicitly defined. By including detailed definitions of terms such as “extension”, all parties are more likely to understand whether or not they are in compliance with the program’s requirements. In the case of RFS, a more narrowly tailored and detailed definition of “extension” could help avoid future similar issues. In conclusion, legislation which attempts to regulate the energy economy should elaborate which parties must comply, and fully outline all exceptions, as well as extensions of those exceptions where applicable.

As shown in *Renewable Fuels Association v. United States Environmental Protection Agency*, regulatory programs encouraging the use of renewable fuels are likely to continue into the future. Clearly defining the terms and boundaries of such programs are crucial to their effectiveness. With the RFS program, for example, the following issue could be anticipated: small oil refineries who did not apply for an initial exemption, and later applied for an exemption extension, attempting to avoid RFS compliance. By anticipating such an issue, and providing details of the exemption application process, such issues can be avoided. Further, by anticipating hiccups and challenges to the exemption process, the integrity and mission of renewable energy regulatory programs are preserved.