ORAL ARGUMENT NOT YET SCHEDULED
No. 25-1180 & consolidated cases

In the United States Court of Appeals for the District of Columbia Circuit

REH COMPANY, LLC,

Petitioner,

v.

ENVIRONMENTAL PROTECTION AGENCY,

Respondent.

On Petitions for Review of Final Decisions of the Environmental Protection Agency, 90 Fed. Reg. 41,829 (Aug. 27, 2025); 90 Fed. Reg. 52,385 (Nov. 20, 2025)

INITIAL JOINT BRIEF OF SMALL REFINERY PETITIONERS
PUBLIC COPY—SEALED MATERIAL DELETED

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to Circuit Rule 28(a)(1), Small Refinery Petitioners certify the following:

A. Parties and *Amici*

These cases involve petitions for review filed directly in this Court. Accordingly, there were no parties, *amici*, or intervenors below within the meaning of D.C. Circuit Rule 28(a)(1)(A).

In this Court, the following are parties in these consolidated cases:

<u>Petitioners</u>:

- Small Refinery Petitioners:
  - REH Company, LLC
  - Alon Refining Krotz Springs, Inc.
  - Calumet Shreveport Refining, LLC
  - Calumet Montana Refining, LLC
  - HF Sinclair Refining & Marketing LLC
  - HF Sinclair Parco Refining LLC
  - HF Sinclair Casper Refining LLC
  - HF Sinclair Cheyenne Refining LLC
  - HF Sinclair Woods Cross Refining LLC

- Kern Oil & Refining Co.
- Lion Oil Company, LLC
- Delek Refining, Ltd.
- CHS Inc.
- American Refining Group, Inc.
- Countrymark Refining & Logistics, LLC
- Placid Refining Company LLC
- San Joaquin Refining Co., Inc.
- Par Montana, LLC
- U.S. Oil & Refining Company
- Wyoming Refining Company
- The San Antonio Refinery, LLC
- Wynnewood Refining Company, LLC
- Ergon Refining, Inc.
- Ergon-West Virginia, Inc.
- Alon USA, LP
- Suncor Energy (U.S.A.) Inc.
- Big West Oil, LLC

- Biofuels Petitioners:
  - Growth Energy
  - Renewable Fuels Association

Respondents:

- United States Environmental Protection Agency
- United States Department of Energy

Intervenors:

- Coalition to Preserve Refined Fuel Markets
- Small Refinery Intervenors:
  - HF Sinclair Refining & Marketing LLC
  - HF Sinclair Parco Refining LLC
  - HF Sinclair Casper Refining LLC
  - HF Sinclair Cheyenne Refining LLC
  - HF Sinclair Woods Cross Refining LLC
  - HF Sinclair Tulsa Refining LLC
  - American Refining Group, Inc.
  - Calumet Montana Refining, LLC
  - Calumet Shreveport Refining, LLC
  - Countrymark Refining & Logistics, LLC

  - Ergon Refining, Inc.
  - Ergon-West Virginia, Inc.
  - Par Montana, LLC
  - Placid Refining Company LLC
  - San Joaquin Refining Co., Inc.
  - The San Antonio Refinery, LLC
  - U.S. Oil & Refining Company
  - Wynnewood Refining Co., LLC
  - Wyoming Refining Company
  - Kern Oil & Refining Co.
  - Small Refineries of America

Movants-Intervenors:

- Biofuels Movants-Intervenors:
  - Renewable Fuels Association
  - Growth Energy
  - Clean Fuels Alliance America
  - Coalition for Renewable Natural Gas
  - Sustainable Advanced Biofuel Refiners Coalition

Amici:

- None

B. Rulings Under Review

Under review are EPA's final actions titled "August 2025 Decisions on Petitions for RFS Small Refinery Exemptions," EPA-420-R-25-010, issued on August 22, 2025, resolving 175 separately reviewable petitions from 38 small refineries seeking exemptions from their annual compliance obligations under the Clean Air Act's Renewable Fuel Standard. EPA published notice of those decisions in the Federal Register on August 27, 2025. *See* 90 Fed. Reg. 41,829 (Aug. 27, 2025).

Also under review are EPA's final actions titled "November 2025 Decisions on Petitions for RFS Small Refinery Exemptions," EPA-420-R-25-013, issued on November 7, 2025, resolving 16 additional small-refinery exemption petitions from 8 refineries. EPA published notice of those decisions in the Federal Register on November 20, 2025. *See* 90 Fed. Reg. 52,385 (Nov. 20, 2025).

C. Related Cases

These cases have not been before any court.

This Court previously resolved two challenges to EPA's August 2025 decisions—seeking review of EPA's ineligibility determinations for two refineries—that it severed from these cases in light of the distinct issues involved. *See Alon Refin. Krotz Springs, Inc. v. EPA*, 172 F.4th 12 (D.C. Cir. 2026); *see also Alon Refin. Krotz Springs, Inc. v. EPA*, No. 25-1187 (D.C. Cir.); *HF Sinclair Refin. & Mktg. LLC v. EPA*, No. 25-1197 (D.C. Cir.).

Several cases arising from EPA's August 2025 decisions are proceeding in other courts of appeals: *Alon USA, LP v. EPA*, No. 25-60584 (5th Cir.); *Suncor Energy (U.S.A.) Inc. v. EPA*, No. 25-9582 (10th Cir.); and *Hunt Refining Company v. EPA*, No. 25-13759 (11th Cir.). The petitioners in those cases also filed protective petitions in this Court; those petitions have been severed from these cases and are being held in abeyance. *See* Doc. #2154800 (Jan. 20, 2026); *see also Alon USA, LP v. EPA*, No. 25-1246 (D.C. Cir.); *Hunt Refin. Co. v. EPA*, No. 25-1247 (D.C. Cir.); and *Suncor Energy (U.S.A.) Inc. v. EPA*, No. 25-1248 (D.C. Cir.).

At this time, counsel is unaware of any other related cases within the meaning of Circuit Rule 28(a)(1)(C).

July 10, 2026

Respectfully submitted,

/s/ *Allyson N. Ho*

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RULE 26.1 DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, Small Refinery Petitioners state the following:

REH Company, LLC (REH) is a wholly owned subsidiary of REH Advisors Inc., a privately held corporation with no parent corporation. Until March 14, 2022, REH, then known as The Sinclair Companies, was the sole owner of the Sinclair Oil Corporation, which in turn owned Sinclair Wyoming Refining Company and Sinclair Casper Refining Company. On that date, the Company merged Sinclair Oil Corporation with HollyFrontier Corporation, resulting in the creation of HF Sinclair Corporation. As the company responsible for compliance with the Renewable Fuel Standard program before the closing of the merger, REH is contractually entitled to seek small-refinery exemption petitions for Sinclair Wyoming Refining Company and Sinclair Casper Refining Company for all other periods before March 14, 2022.

Alon Refining Krotz Springs, Inc. is a direct or indirect wholly owned subsidiary of Delek US Holdings, Inc. Delek US Holdings, Inc. is a publicly traded company. No publicly held company has a 10% or greater ownership interest in Delek US Holdings.

Calumet Shreveport Refining, LLC is a Delaware limited liability company. It is owned 100% by Calumet, Inc., a manufacturer of specialty products and a publicly traded company under the symbol "CLMT." There are no other known parent corporations or publicly held corporations that own 10% or more of Calumet Inc.'s stock.

Calumet Montana Refining, LLC is a Delaware limited liability company. It is owned 100% by Calumet, Inc., a manufacturer of specialty products and a publicly traded company under the symbol "CLMT." There are no other known parent corporations or publicly held corporations that own 10% or more of Calumet Inc.'s stock.

HF Sinclair Refining & Marketing LLC is a Delaware limited liability company that is a fuel supplier and marketer and has its principal place of business at 2323 Victory Avenue, Suite 1400, Dallas, Texas 75219. HF Sinclair Refining & Marketing LLC is a wholly owned subsidiary of HollyFrontier Corporation.

HollyFrontier Corporation is a Delaware corporation that has its principal place of business at 2323 Victory Avenue, Suite 1400, Dallas, Texas 75219 and is a wholly owned subsidiary of HF Sinclair Corporation.

HF Sinclair Corporation is a publicly traded company that has no parent company. The publicly traded Blackrock, Inc., has a 10% or greater ownership interest in HF Sinclair Corporation. HF Sinclair Corporation is a Delaware corporation and has its principal place of business at 2323 Victory Avenue, Suite 1400, Dallas, Texas 75219.

HF Sinclair Parco Refining LLC is a Delaware limited liability company that operates a refinery and has its principal place of business at 2323 Victory Avenue, Suite 1400, Dallas, Texas 75219. HF Sinclair Parco Refining LLC is a wholly owned subsidiary of Sinclair Oil LLC.

Sinclair Oil LLC is a Delaware limited liability company that has its principal place of business at 2323 Victory Avenue, Suite 1400, Dallas, Texas 75219 and is a wholly owned subsidiary of Sinclair Holding LLC. Sinclair Holding LLC is a Delaware limited liability company that has its principal place of business at 2323 Victory Avenue, Suite 1400, Dallas, Texas 75219 and is a wholly owned subsidiary of HF Sinclair Corporation.

HF Sinclair Casper Refining LLC is a Delaware limited liability company that operates a refinery and has its principal place of business at 2323 Victory Avenue, Suite 1400, Dallas, Texas 75219. HF Sinclair Casper Refining LLC is a wholly owned subsidiary of Sinclair Oil LLC.

HF Sinclair Cheyenne Refining LLC (formerly known as HollyFrontier Cheyenne Refining LLC) is a Delaware limited liability company that operates a refinery and has its principal place of business at 2323 Victory Avenue, Suite 1400, Dallas, Texas 75219. HF Sinclair Cheyenne Refining LLC is a wholly owned subsidiary of HollyFrontier Corporation.

HF Sinclair Woods Cross Refining LLC is a Delaware limited liability company that operates a refinery and has its principal place of business at 2323 Victory Avenue, Suite 1400, Dallas, Texas 75219. HF Sinclair Woods Cross Refining LLC is a wholly owned subsidiary of HollyFrontier Corporation.

Kern Oil & Refining Co. (Kern Energy) is a wholly owned subsidiary of Casey Co., a privately held California corporation. Neither Kern Energy nor Casey Co. has any ownership relationship with a publicly-held company.

Lion Oil Company, LLC is a direct or indirect wholly owned subsidiary of Delek US Holdings, Inc. Delek US Holdings, Inc. is a publicly traded company. No publicly held company has a 10% or greater ownership interest in Delek US Holdings.

Delek Refining, Ltd. is a direct or indirect wholly owned subsidiary of Delek US Holdings, Inc. Delek US Holdings, Inc. is a publicly traded company. No publicly held company has a 10% or greater ownership interest in Delek US Holdings.

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.

American Refining Group, Inc. is incorporated under the laws of Pennsylvania. American Refining Group, Inc. is a refiner of petroleum products. American Refining Group, Inc. has no parent company, and no publicly held company has a 10% or greater ownership interest in it.

Countrymark Refining and Logistics, LLC (CountryMark) is a cooperative business, owned and controlled by CountryMark member cooperatives, and each member cooperative, in turn, is owned and controlled by farmers, or local agricultural producers. CountryMark is a refiner of petroleum products. No publicly held company has a 10% or greater ownership interest in it.

Placid Refining Company LLC, a limited liability company organized under the laws of Delaware, is a refiner of petroleum products. Placid Refining Company LLC is owned 100 percent by its parent companies Placid Holding Company and RR Refining, Inc. and no publicly held company has a 10% or greater ownership interest in it.

San Joaquin Refining Co., Inc. is a privately held company located in Bakersfield, California. San Joaquin Refining Co., Inc. has no parent company, is not publicly traded, and no publicly held company has a 10% or greater ownership interest in it.

Par Montana, LLC is a limited liability company organized under the laws of Delaware. Par Montana, LLC is a refiner of petroleum products. Par Montana, LLC is an indirect wholly owned subsidiary of Par Pacific Holdings, Inc., a publicly traded corporation. BlackRock, Inc., pursuant to its recent 13F filing, reported that it or funds or accounts managed by it, owns more than 10% of Par Pacific Holdings' stock; no other publicly held company has a 10% or greater ownership interest in it.

U.S. Oil & Refining Company (U.S. Oil) is incorporated under the laws of Delaware. U.S. Oil is a refiner of petroleum products. U.S. Oil is an indirect wholly owned subsidiary of Par Pacific Holdings, Inc., a publicly held corporation. BlackRock, Inc., pursuant to its recent 13F filing, reported that it or funds or accounts managed by it, owns more than 10% of Par Pacific Holdings' stock; no other publicly held company has a 10% or greater ownership interest in it.

Wyoming Refining Company is a trade name for Hermes Consolidated, LLC, a limited liability company organized under the laws of Delaware, doing business as Wyoming Refining Company. Wyoming Refining Company is a refiner of petroleum products. Wyoming Refining Company is an indirect wholly owned subsidiary of Par Pacific Holdings, Inc., a publicly held corporation. BlackRock, Inc., pursuant to its recent 13F filing, reported that it or funds or accounts managed by it, owns more than 10% of Par Pacific Holdings' stock; no other publicly held company has a 10% or greater ownership interest in it.

The San Antonio Refinery LLC is a Delaware limited liability company (f/k/a Calumet San Antonio Refining, LLC). The San Antonio Refinery LLC is a refiner of petroleum products. The San Antonio

Refinery LLC is owned 100% by Allegiance Refining, LLC. Allegiance Refining, LLC is a Texas limited liability company. It is a refining operations company and operator of The San Antonio Refinery. Allegiance Refining, LLC is not publicly traded, and no publicly held company has a 10% or greater ownership interest in it.

Wynnewood Refining Company, LLC is a wholly owned subsidiary of CVR Refining, LLC, a Delaware limited liability company. CVR Refining, LLC is a wholly owned subsidiary of CVR Refining, LP, which is an indirect wholly owned subsidiary of CVR Energy, Inc., a Delaware corporation that is publicly traded on the NYSE under the symbol "CVI." Icahn Enterprises, L.P. and its affiliates ("IEP") hold a 10% or greater ownership interest in CVR Energy, Inc. IEP is a publicly traded partnership under the symbol "IEP."

Ergon Refining, Inc., incorporated under the laws of Mississippi, is a refiner of petroleum products. Ergon Refining, Inc. is wholly owned by parent company Ergon, Inc. No publicly held company has a 10% or greater ownership interest in it.

Ergon-West Virginia, Inc., is incorporated under the laws of Mississippi. Ergon-West Virginia, Inc. is a refiner of petroleum products.

Ergon-West Virginia, Inc. is wholly owned by parent company Ergon, Inc. No publicly held company has a 10% or greater ownership interest in it.

Alon USA, LP is a direct or indirect wholly owned subsidiary of Delek US Holdings, Inc. Delek US Holdings, Inc. is a publicly traded company. No publicly held company has a 10% or greater ownership interest in Delek US Holdings.

Suncor Energy (U.S.A.) Inc., a Delaware corporation, is wholly owned by Suncor Energy (U.S.A.) Holdings, Inc., a Delaware corporation, which is wholly owned by Suncor Energy Inc., a federally incorporated Canadian corporation that is publicly traded. Suncor Energy Inc. has no parent corporation, and no publicly held company owns 10% or more of its stock.

Big West Oil, LLC is a Utah limited liability company. It is a wholly owned subsidiary of Big West Holdings LLC, a Utah limited liability company, which in turn is wholly owned by FJ Management Inc., a Utah corporation. FJ Management Inc. is a privately held corporation with no parent corporation.

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GLOSSARY

APA	Administrative Procedure Act
DOE	Department of Energy
GAO	Government Accountability Office
EPA	Environmental Protection Agency
RFS	Renewable Fuel Standard
RINs	Renewable Identification Numbers

INTRODUCTION

To increase the production of renewable fuels, Congress amended the Clean Air Act to require that oil refineries introduce certain volumes of those fuels into the Nation's energy supply. But Congress recognized its mandate could especially burden small refineries, which are crucial to the Nation's energy infrastructure but lack their larger counterparts' economies of scale. So Congress instructed the Environmental Protection Agency to exempt small refineries for which compliance would impose disproportionate economic hardship.

EPA has persistently failed to give full effect to that "carefully crafted legislative bargain," and instead has tried to deny small refineries the relief Congress promised them. *Sinclair Wyo. Refin. Co. v. EPA*, 114 F.4th 693, 711 (D.C. Cir. 2024). Five years ago, the Supreme Court held unlawful EPA's efforts to make it harder for small refineries to obtain exemptions. *HollyFrontier Cheyenne Refin., LLC v. Renewable Fuels Ass'n*, 594 U.S. 382, 386 (2021). Two years ago, this Court struck down a previous round of EPA's exemption denials as "contrary to law and arbitrary and capricious," rejecting EPA's attempt to "rewrite" the statute "by regulatory fiat." *Sinclair*, 114 F.4th at 700.

EPA still hasn't gotten the message. Last year, the agency decided nearly 200 exemption petitions (including some on remand from *Sinclair*) but denied full relief in the overwhelming majority. Once again, those decisions—along with the Department of Energy analyses on which they rely—take an impermissibly narrow view of the small-refinery exemption, depriving small refineries of exemptions to which the law entitles them. Those decisions also fail to heed administrative law's core mandate that agencies must "engage in reasoned decision making." *Sinclair*, 114 F.4th at 711.

Even where EPA purported to grant relief, it failed to provide the relief required by law. Despite determining that some refineries had demonstrated hardship entitling them to exemptions, EPA purported to provide those exemptions by returning virtually worthless expired "credits" that fail to relieve the hardship the exemptions exist to address. That sham remedy defies the Clean Air Act's plain text. EPA's approach also is arbitrary and capricious several times over. EPA disregarded that expired credits provide no meaningful relief from hardship; contradicted its prior approach of recognizing that returning expired credits is no "exemption" at all; and failed to consider and mitigate the harm EPA itself created by causing petitioners' credits to expire before petitioners received exemptions.

Where EPA denied relief, its decisionmaking was equally flawed. In assessing whether a refinery demonstrates the requisite hardship, EPA largely relies on findings by DOE, which uses a scoring matrix made up of a set of metrics. Favorable scores on just a few of those metrics can be enough to qualify a refinery for at least some relief, so accurate scoring on each metric is critical. But DOE and EPA failed to properly apply those metrics, generating decisions at odds with the statute, their own past practice, and common sense.

This Court shouldn't tolerate EPA's recalcitrant unwillingness to give effect to a key part of the bargain Congress struck in providing the small-refinery exemption. The Clean Air Act and basic tenets of administrative law require more. This Court should remand and order EPA to award a meaningful remedy and properly evaluate petitioners' exemption petitions.

JURISDICTIONAL STATEMENT

EPA had jurisdiction to resolve petitioners' exemption petitions under 42 U.S.C. §7545(o)(9)(B).[1] EPA published notice of the "August 2025 Decisions on Petitions for RFS Small Refinery Exemptions" on August 27, 2025, *see* 90 Fed. Reg. 41,829, and it published notice of the "November 2025 Decisions on Petitions for RFS Small Refinery Exemptions" on November 20, 2025, *see* 90 Fed. Reg. 52,385.[2] Petitioners timely filed petitions for review within 60 days of the August and November decisions (together, the "Decisions").[3] This Court has jurisdiction to review the Decisions under §7607(b)(1).

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[1] All statutory citations are to title 42 of the U.S. Code unless otherwise noted.

[2] The August decisions appear at Joint Appendix (JA) ___-__[AR_0032589-619]. The November decisions are at JA__-__[AR_0032620-48].

[3] No. 25-1180, Doc. #2132515 (Aug. 28, 2025); No. 25-1195, Doc. #2138242 (Sep. 29, 2025); No. 25-1196, Doc. #2137844 (Sep. 29, 2025); No. 25-1203, Doc. #2140822 (Oct. 17, 2025); No. 25-1204, Doc. #2140842 (Oct. 17, 2025); No. 25-1205, Doc. #2140833 (Oct. 17, 2025); No. 25-1206, Doc. #2140881 (Oct. 17, 2025); No. 25-1207, Doc. #2140907 (Oct. 17, 2025); No. 25-1208, Doc. #2140852 (Oct. 17, 2025); No. 25-1209, Doc. #2140866 (Oct. 17, 2025); No. 25-1210, Doc. #2140877 (Oct. 17, 2025); No. 25-1211, Doc. #2140883 (Oct. 17, 2025); No. 25-1212, Doc. #2140892 (Oct. 17, 2025); No. 25-1213, Doc. #2140913 (Oct. 17, 2025); No. 25-1214, Doc. #2140920 (Oct. 17, 2025); No. 25-1219, Doc. #2141450 (Oct. 21, 2025); No. 25-1229, Doc. #2142125 (Oct. 24, 2025); No. 25-1230, Doc. #2142194 (Oct.

STATEMENT OF ISSUES

I. Whether EPA's decision to implement small-refinery exemptions by returning expired credits with virtually no economic value violated the Clean Air Act or was arbitrary.

II. Whether respondents unlawfully applied multiple DOE metrics in assessing small refineries' hardship, including:

- Metrics 1.a and 1.b, which consider access to capital and business lines other than refining;
- Metric 1.c, which considers local market acceptance of renewable fuels; and
- Metric 3.a, which considers whether the costs of compliance eliminate any efficiency gains.

III. Whether respondents arbitrarily failed to account for the COVID-19 pandemic in deciding 2020 and 2021 exemption petitions.

24, 2025); No. 25-1231, Doc. #2142202 (Oct. 24, 2025); No. 25-1232, Doc. #2142214 (Oct. 24, 2025); No. 25-1233, Doc. #2142433 (Oct. 27, 2025); No. 25-1234, Doc. #2142440 (Oct. 27, 2025); No. 25-1235, Doc. #2142489 (Oct. 27, 2025); No. 25-1236, Doc. #2142418 (Oct. 27, 2025); No. 25-1237, Doc. #2142475 (Oct. 27, 2025); No. 25-1238, Doc. #2142395 (Oct. 27, 2025); No. 25-1239, Doc. #2142402 (Oct. 27, 2025); No. 25-1240, Doc. #2142398 (Oct. 27, 2025); No. 25-1241, Doc. #2142456 (Oct. 27, 2025); No. 25-1242, Doc. #2142493 (Oct. 27, 2025); No. 25-1243, Doc. #2142465 (Oct. 27, 2025); No. 25-1244, Doc. #2142473 (Oct. 27, 2025); No. 25-1245, Doc. #2142505 (Oct. 27, 2025); No. 25-1249, Doc. #2142500 (Oct. 27, 2025); No. 25-1276, Doc. #2148986 (Dec. 3, 2025); No. 25-1277, Doc. #2149006 (Dec. 3, 2025).

IV. Whether EPA's failure to ameliorate harms to small refineries caused by the agency's violations of the 90-day statutory deadline to decide exemption petitions was arbitrary.

V. Whether respondents' decisions on certain individual exemption petitions were unlawful.

VI. Whether Biofuels-Movants-Intervenors should be denied intervention for lack of a cognizable interest in this litigation.

STATUTES AND REGULATIONS

The pertinent statute appears in the addendum.

STATEMENT OF THE CASE

I. The Renewable Fuel Standard program requires refineries to blend renewables into their fuel.

In 2005, Congress created the Renewable Fuel Standard (RFS), which "requires most domestic [oil] refineries" "to blend a certain amount of ethanol and other renewable fuels into the transportation fuels they produce." *HollyFrontier*, 594 U.S. at 385; *see* §7545(o)(2)(A). Congress prescribed steadily increasing annual volumes for the program's initial years, §7545(o)(2)(B)(i), and directed EPA to set annual requirements thereafter, §7545(o)(2)(B)(ii).

To implement the annual mandates, EPA sets a yearly "renewable fuel obligation" for each of four biofuel categories, §7545(o)(3)(B)(i), expressed as a percentage of all transportation fuels predicted to be sold or introduced into domestic commerce during the year, §7545(o)(3)(A), (B)(ii). Refineries and importers calculate their individual obligations by multiplying that percentage by the volume of transportation fuel they produce or import. 40 C.F.R. §80.1407.

When a gallon of renewable fuel is produced, a unique credit called a "RIN"—Renewable Identification Number—is generated and attached to that gallon. RINs are the "currency" of the RFS program. *Wynnewood Refin. Co. v. EPA*, 77 F.4th 767, 774 (D.C. Cir. 2023). When the gallon of renewable fuel is blended with gasoline or diesel, the RIN is "separated" from the renewable fuel. 40 C.F.R. §80.1429(b). The entity that separates the RIN may keep it or sell it on a secondary market. §7545(o)(5)(B); 40 C.F.R. §§80.1425-80.1429.

Refineries must submit a certain number of RINs to EPA annually to satisfy their RFS obligations. *Alon Refin. Krotz Springs, Inc. v. EPA*, 172 F.4th 12, 16 n.1 (D.C. Cir. 2026). This process is called "retiring" RINs.

If refineries can't generate enough RINs through blending, they must buy them on a secondary market. *HollyFrontier*, 594 U.S. at 386. The RIN market is necessary because many small refineries "do not have access to renewable fuels or the ability to blend them, and so must use credits to comply." 72 Fed. Reg. 23,900, 23,904 (May 1, 2007). In "numerous circumstances," refineries face higher compliance costs when forced to purchase RINs. JA__[AR_0031088]; *see* JA__[AR_0032602]. Indeed, the per-refinery cost of buying enough RINs to comply with the RFS often exceeds tens of millions of dollars annually. *Wynnewood*, 77 F.4th at 777.

Under EPA regulations, RINs may be used for compliance in the calendar year when they were generated or the following calendar year; thereafter, the RINs are "expired" and "invalid." 40 C.F.R. §§80.1427(a)(6), 80.1428(c).

II. Congress directed EPA to exempt small refineries from the Renewable Fuel Standard when compliance imposes disproportionate economic hardship.

A. In adopting the RFS, Congress took pains to temper its application to "small refineries"—those that process, "on average, no more than 75,000 barrels a day 'for a calendar year.'" *Alon Refin.*, 172 F.4th at 14 (quoting §7545(o)(1)(K)). Congress feared that RFS obligations "could work special burdens on small refineries that lack the 'inherent scale advantages of large refineries' and sometimes supply a major source of jobs in rural communities." *HollyFrontier*, 594 U.S. at 386-87.

That concern proved well founded. "The number of small refineries has been in long-term decline," JA__[AR_0001483], in part because of "overburdening government regulations that make it too expensive for small refiners to stay in business," S. Rep. No. 108-57, at 42 (2003) (statement of Sen. Cornyn). Small refineries typically lack the infrastructure needed to blend renewable fuel as a compliance strategy, and they can't capitalize on the economies of scale available to their larger counterparts. Gov't Accountability Off., *Renewable Fuel Standard* 8 (Nov. 3, 2022), tinyurl.com/3c4xtczs (GAO Report), JA__-__[AR_0001472-549]. Untempered, the RFS's ever-growing burdens would have exacerbated those challenges and imposed significant costs on small refineries. *Id.* at 7-8.

Those additional costs would have flowed through to small refineries' local communities, many of which are small or rural. Small Refineries Coalition Amicus Br. 8-9, *HollyFrontier*, No. 20-472, 2021 WL 878677 (U.S. Mar. 1, 2021). Small refineries are essential to the economic vitality of their communities, providing not only critical transportation fuels, but also jobs, resources, and tax revenues. *Id.*

To protect small refineries from crushing regulatory burdens, Congress enacted a three-phase scheme to exempt them from RFS compliance. *Alon Refin.*, 172 F.4th at 15. First, it gave all small refineries a blanket exemption until 2011. §7545(o)(9)(A)(i). Second, it instructed EPA to extend that exemption for at least two more years for refineries DOE found would "be subject to a disproportionate economic hardship if required to comply." §7545(o)(9)(A)(ii)(II).

Third, and most relevant here, Congress authorized small refineries to petition EPA "at any time" for an "extension of the exemption" if they face "disproportionate economic hardship" from RFS obligations. §7545(o)(9)(B)(i). By permitting small refineries to petition for an exemption "at any time," Congress recognized that a refinery's need and eligibility for relief may vary year to year "in light of market fluctuations and changing hardship conditions." *HollyFrontier*, 594 U.S. at 393. Congress also understood that many compliance challenges small refineries face are structural, extending across years. *See id.* at 395.

Congress also gave instructions on handling exemption petitions. It directed DOE to study whether RFS compliance "would impose a disproportionate economic hardship on small refineries." §7545(o)(9)(A)(ii)(I). It then directed EPA to assess exemption petitions, "in consultation with" DOE, by "consider[ing]" the findings of DOE's study along with "other economic factors." §7545(o)(9)(B)(ii). In recognition of small refineries' need for prompt relief, Congress required EPA to decide each petition within 90 days after receipt. §7545(o)(9)(B)(iii).

B. DOE's study found that small refineries face "particular obstacles that would make compliance more costly" than for "large integrated" refineries. JA__[0031088]. DOE developed a scoring matrix "to evaluate the full impact of disproportionate economic hardship," and it applied that matrix to conclude that many small refineries should be exempt. JA__, __[AR_0031117;AR_0031122].

DOE's scoring matrix consists of two indices that track the "'broad components' of disproportionate economic hardship": the Disproportionate Impact Index and the Viability Index. *Sinclair*, 114 F.4th at 703 n.4; JA__, __[AR_0003118;AR_0031121].

The Disproportionate Impact Index assesses whether a small refinery faces a "high cost of compliance relative to the industry average." JA__, __[AR_0031088;AR_0031118]. The Viability Index evaluates the refinery's ability "'to remain competitive and profitable' while complying with the [RFS]." *Ergon-W. Va., Inc. v. EPA*, 896 F.3d 600, 606 (4th Cir. 2018) (*Ergon II*). Each index comprises several metrics—nine for the Disproportionate Impact Index and three for the Viability Index. *Id.* at 604-05. For each metric, EPA awards a score between 0 and 10—typically 0 for an insufficient showing, 5 for a moderate showing, and 10 for a sufficient showing. *See id.* at 605.

Several metrics are relevant here. Three address disproportionate impacts. Metric 1.a evaluates a refinery's access to working capital and loans, recognizing that small refineries struggle to obtain capital or credit at reasonable borrowing costs. This, in turn, limits their compliance options by hindering investments to support blending and making it harder to manage RIN purchases effectively. JA__[AR_0031119].

Next, Metric 1.b asks whether the refinery has "additional lines of business" besides refining and marketing, potentially reducing its vulnerability to the relatively volatile refining market. JA__[AR_0031119].

And because compliance costs can be higher for refineries that can't blend their way into compliance, Metric 1.c assesses "local market acceptance" of E10 (a blend of 10% ethanol and 90% gasoline), E85 (a blend of up to 85% ethanol), and biodiesel blends (biodiesel blended with diesel). JA__, __[AR_0031088;AR_0031119].

Three viability metrics are also relevant. Metric 3.a considers whether compliance costs would "eliminate[] efficiency gains," as "significant constraints on efficiency improvements" jeopardize small refineries. JA__[AR_0031121]. Metric 3.b evaluates whether refinery-specific "special events" negatively affected the refinery's ability to comply. JA__[AR_0031121]. And Metric 3.c asks whether the refinery's "unique vulnerability" indicates that "[c]ompliance costs likely lead to [the refinery's] shutdown." JA__[AR_0031121]. If a small refinery achieves a sufficiently high score in both indices, it's entitled to a full exemption. If it achieves a sufficiently high score in one index but not the other, DOE considers it entitled to "partial (50 percent)" relief. JA__, __[AR_0032607;AR_0032635].

III. EPA systematically misses key statutory deadlines in administering the hardship-exemption program.

Congress established deadlines for EPA in administering the RFS program. EPA must set renewable fuel obligations every year by certain dates. §7545(o)(2)(B)(ii). And it must grant or deny exemption petitions "not later than 90 days after the date of receipt." §7545(o)(9)(B)(iii). EPA has repeatedly "missed its statutory deadlines to publish renewable fuel standards for a given year." *Wynnewood*, 77 F.4th at 775. Of particular importance here, EPA has likewise "routinely missed statutory deadlines for issuing small refinery exemption decisions and does not have policies and procedures to ensure that it meets these deadlines." GAO Report 20.

The Government Accountability Office found that EPA violated the 90-day deadline nearly 90% of the time between 2013 and 2022, often taking hundreds of days to decide petitions. GAO Report 20. EPA's compliance hasn't improved since then. *See*, *e.g.*, Oral Arg. 1:08:03-20, *Alon Refin.*, No. 25-1187 (D.C. Cir. Mar. 6, 2026) (argument of EPA's counsel); Appendix A.

EPA's lengthy delays and missed deadlines have serious practical consequences for small refineries. Its tardy decisions "diminish the benefit of exemptions, create market uncertainty" for small refineries, "discourage investment, and undermine the design of the [RFS] more broadly." GAO Report 20-25.

That's partly because EPA, while persistently disregarding its own statutory deadlines, insists that small refineries "comply with their" obligations "unless and until an exemption is received" and that they not apply until they can provide at least three fiscal quarters of financial data. JA__ n.1, __[AR_0032592;AR_0032610]. Small refineries are thus caught in a Catch-22. They may be entitled to an exemption, but EPA won't tell them whether they are until *after* the compliance deadline. At that point, any refinery denied an exemption that didn't comply in advance would face steep monetary penalties—up to $60,000 per day, plus "the amount of economic benefit" from noncompliance. §7545(d)(1); *see* 40 C.F.R. §19.4. As a result, small refineries have spent millions of dollars acquiring and retiring RINs they may not ultimately need if EPA finally gets around to granting them exemptions.

To make matters worse, EPA and DOE haven't meaningfully updated their guidance on the scoring matrix since 2011. In 2022, the GAO recommended that EPA "identify and communicate what information refineries would need to submit to demonstrate disproportionate economic hardship" and that DOE "develop policies and procedures for its consultation with EPA on small refinery exemption petitions." GAO Report 27. EPA and DOE haven't followed through on those recommendations.

IV. Courts consistently reject EPA's repeated attempts to narrow the small-refinery exemption.

Over the past decade, courts have repeatedly rejected EPA's overly narrow constructions of the statutory exemption criteria. In 2016, EPA announced that refineries wouldn't qualify for exemptions unless RFS compliance "threatened the[ir] 'long-term' survival." *Sinclair Wyo. Refin. Co. v. EPA*, 887 F.3d 986, 994-95 (10th Cir. 2017). The Tenth Circuit rejected that high bar as inconsistent with the Act's more modest hardship requirement. *Id.*

Several years later, EPA asserted that a small refinery was ineligible for an "extension" of its exemption unless it had been continuously exempt in every prior year. U.S. Br. 13, *HollyFrontier*, No. 20-472 (U.S. Mar. 24, 2021). The Supreme Court held that EPA's newfound "taper[] down" view of the exemption violated the statutory text, which permits applications for exemption extensions "at any time." *HollyFrontier*, 594 U.S. at 399 (citation omitted); *see* §7545(o)(9)(B)(i).

Then, in 2022, EPA interpreted the Act to prohibit it from considering any factor in assessing disproportionate economic hardship other than the costs of RINs bought contemporaneously with a refinery's sale of fuel. *Sinclair*, 114 F.4th at 704-05. EPA further theorized that all small refineries could always pass those costs on to consumers, such that their cost of compliance was zero. *Id.* The practical result was that "[n]o small refinery" would *ever* "experience[] disproportionate economic hardship as a result of compliance." *Id.* at 705 (internal quotation marks and citation omitted). So EPA denied every then-pending exemption petition, *id.* at 700, and indicated that it "d[id] not anticipate" granting any future petitions, EPA, *June 2022 Denial of Petitions for RFS Small Refinery Exemptions* 63 (June 3, 2022), tinyurl.com/3b49bkzd.

This Court rejected EPA's position in August 2024, holding that the agency's attempt to "render the exemption[] superfluous" conflicted with statutory text and rested on an arbitrary and capricious misunderstanding of the RIN market. *Sinclair*, 114 F.4th at 711. That vacatur led to a slew of new exemption petitions in 2025, including for previous compliance years.

V. EPA issues the decisions under review addressing hundreds of exemption petitions.

This case concerns EPA's latest round of decisions on exemption petitions. In 2025, EPA decided nearly 200 exemption petitions in two batches. Although "each EPA [adjudication] of a refinery's exemption petition [is] its own 'action'" independently subject to judicial review, "regardless of how EPA chooses to package its decisions," EPA has often chosen to "aggregat[e]" multiple decisions "into omnibus notices." *EPA v. Calumet Shreveport Refin., LLC*, 605 U.S. 627, 637-40 (2025).

In August, EPA adjudicated 175 exemption petitions from 38 refineries seeking hardship relief for the 2016-2024 compliance years. JA__[AR_0032592]. EPA granted 63 of those petitions in full and 77 in part, denied 28, and determined that 7 were ineligible for an exemption. JA__[AR_0032592].

In November, EPA resolved 16 more petitions from eight refineries seeking hardship relief for the 2021-2024 compliance years. JA__[AR_0032623]. EPA granted 2 petitions in full, 12 in part, denied 2, and clarified that one August partial grant was really a full grant. JA__[AR_0032623].

In the Decisions, EPA asserted that it "defer[red]" to DOE's application of the scoring matrix and generally based its decisions on DOE's analysis because EPA believed a refinery's performance on the metrics was a "reasonable proxy" for whether it had established disproportionate economic hardship. JA__, __[AR_0032615;AR_0032644]. EPA also decided to award 50% exemptions to refineries that had adequate scores on only one of DOE's two indices and thus demonstrated only "partial disproportionate economic hardship." JA__-__, __[AR_0032604-10;AR_0032635].

To implement the exemptions it granted, EPA "return[ed] the corresponding RINs" petitioners had previously retired to comply with the RFS. JA__, __[AR_0032611;AR_0032639]. EPA recognized that the value of the returned RINs would "depend to a significant degree on whether they [we]re 'expired' or 'unexpired,'" as expired RINs "cannot be used to meet future RFS compliance obligations." JA__[AR_0032611].

In fact, all the RINs for pre-2023 compliance years were expired. JA__[AR_0032611]. EPA thus expected that "very few small refineries, if any, will have a compliance use for" expired RINs. JA__[AR_0032611]. Except for rare cases where refineries had outstanding, non-exempted pre-2023 obligations, the expired RINs EPA returned would have at most "residual value" "[i]n the abstract." JA__[AR_0032611].

The expiration of petitioners' RINs, and the corresponding significant loss in value, were entirely attributable to EPA's own actions. EPA's 2022 denials ensured that no refinery could get relief until this Court's *Sinclair* decision. *See supra* p. 17. In addition, EPA didn't rule on most of the exemption petitions until long after—often years after—its 90-day statutory deadline had passed. *See* Appendix A (listing time EPA took to rule on each petition). By then, the corresponding compliance years had ended and petitioners' retired RINs had expired.

In an earlier similar situation, EPA made refineries whole by providing new replacement RINs they could use or sell. *Producers of Renewables United for Integrity Truth & Transparency v. EPA*, 2022 WL 538185, at *3 (10th Cir. Feb. 23, 2022) (*PRUITT II*). Here, EPA therefore acknowledged it had authority to "generate new, current-year vintage RINs" to replace expired RINs. JA__[AR_0032612]. But EPA refused to follow its past practice. JA__-__, __-__[AR_0032611-12;AR_0032639-40].

Petitioners—a wide array of small refineries—sought review of the Decisions in this Court. So did Growth Energy and Renewable Fuels

Association, trade associations that represent renewable-fuel producers. This Court consolidated nearly all the challenges to the Decisions. Doc. #2153443 (Jan. 8, 2026).

Additional entities sought to intervene. Coalition to Preserve Refined Fuel Markets, an organization representing petroleum refineries and importers opposed to small-refinery exemptions, intervened to support the renewable-fuel producers. On the other side, 20 entities that petitioned EPA for small-refinery hardship exemptions and the trade association Small Refineries of America intervened in support of EPA's decisions granting exemptions.

In addition, five trade associations representing interests of renewable-fuel producers sought leave to intervene in support of certain aspects of EPA's decisions. After several refineries opposed the intervention motions, arguing that the trade associations lacked a legally protected interest in these cases, this Court referred the motions to the merits panel and directed the parties and movants-intervenors to address "the issues presented in the [intervention] motions" in their briefs. Doc. #2146228 (Nov. 19, 2025).

SUMMARY OF THE ARGUMENT

I. This case is the latest example of EPA's refusal to afford small refineries the relief to which Congress has entitled them. Once again, EPA violated the statute and bedrock administrative-law principles—this time, by purporting to implement hardship exemptions by returning expired RINs. As a matter of both statutory text and reasoned decisionmaking, a virtually worthless remedy is no "exemption" at all.

A. EPA violated the Clean Air Act by failing to provide the required "exemption" to refineries that demonstrate disproportionate economic hardship. §7545(o)(9)(B)(i). "Exemption" means relief, freedom, or immunity from an obligation. But expired RINs do nothing to relieve, free, or immunize refineries from the multimillion-dollar burdens of complying with the RFS.

EPA's approach is also inconsistent with the statutory scheme. Refineries are entitled to seek an "exemption" "at any time" if compliance would result in "disproportionate economic hardship." §7545(o)(9)(B)(i). The "exemption" refineries receive thus must alleviate the hardship that justified relief in the first place. Expired RINs don't.

B. EPA's decision to return expired RINs was also arbitrary. EPA ignored that expired RINs provide no meaningful relief from hardship to the small refineries Congress's exemption scheme is designed to protect. That oversight was especially egregious because previously EPA not only replaced expired RINs with current-vintage RINs, but also told this Court that simply returning the expired RINs would provide small refineries *no true relief*—a position EPA abandons now with little explanation.

EPA also ignored that petitioners' RINs expired as a result of both the agency's own unlawful attempt to kill off the small-refinery-exemption program and its violations of the 90-day deadline for deciding hardship petitions; under this Court's precedents, EPA had a duty to mitigate the resulting harm. These deficiencies (and others) are hallmarks of an effort to reach EPA's long-desired outcome, not an exercise of reasoned decisionmaking.

II. Respondents violated the Clean Air Act and acted arbitrarily in applying several metrics in the DOE matrix the agencies used to assess whether petitioners demonstrated disproportionate economic hardship.

A. Respondents' scoring of Metrics 1.a and 1.b, which examine access to capital and other lines of business besides refining and marketing, respectively, was contrary to law and arbitrary and capricious. The statute asks whether the petitioning *small refinery* would suffer disproportionate economic hardship. Rather than conducting that inquiry, respondents evaluated refineries' financial health by looking to the financial condition of business operations *outside* the small "refinery," including those of legally distinct parent corporations and affiliates—disregarding the fundamental principle of corporate separateness without any statutory basis for doing so.

Even if that approach were legally permissible, respondents applied these metrics irrationally. They assumed that corporate parents would subsidize struggling refineries while offering no evidentiary support for that supposition and ignoring contrary evidence. They also *sometimes* looked only to the financial health of the small refinery itself (even when information was available on its parent)—without any explanation for selectively upholding corporate separateness in those cases.

B. Respondents arbitrarily scored Metrics 1.b, 2.a, and 2.c. They applied Metric 1.b in a manner that prevents it from serving its purpose in the hardship analysis and overstates small refineries' resilience to compliance costs. Compounding that error, they also applied conflicting definitions of "refining" across Metrics 1.b, 2.a, and 2.c, arbitrarily downgrading the hardship scores of small refineries.

C. Respondents arbitrarily refused to consider local-market acceptance of biodiesel and E85 in scoring Metric 1.c. The DOE Study recognizes that local acceptance of renewable fuels bears directly on whether a refinery can blend for compliance, rather than purchasing costly RINs. Yet respondents failed to evaluate local acceptance of biodiesel and E85, asserting that relevant data were unavailable. That's false. Publicly available state-level data from DOE itself reflects the degree of biodiesel consumption and E85 availability, which indicates local market acceptance. Respondents' refusal to consider that data was unlawful.

D. Even if respondents were correct that data is not available to evaluate all three fuels, they erred by scoring the metric based solely on local market acceptance of E10 because Metric 1.c measures the ability to blend for compliance, for which all three fuels are essential. Respondents did not, and could not, offer a reasoned explanation for that refusal. So they ignored an important aspect of the problem before them.

E. Respondents arbitrarily departed from their previous approach to scoring Metric 3.a. As originally conceived by DOE, the metric called for a totality-of-the-circumstances inquiry into whether compliance costs would impair future efficiency improvements. In scoring many of the petitions here, however, respondents departed from their longstanding approach. Respondents scored many petitions by examining only a single metric—the ratio of a refinery's RFS compliance costs to its cash flow from operations—rather than undertaking a holistic analysis. Respondents also failed multiple petitions for not providing full-year financial information—something the agencies never required before. These changes in position were never acknowledged, much less explained.

III. Respondents likewise acted arbitrarily in evaluating the effects of the COVID-19 pandemic on refinery viability. DOE acknowledged that the pandemic devastated refinery margins, reduced demand, and threatened refinery closures, and it correctly awarded hardship points based on those conditions in petitions for the 2019 compliance year (which extended into 2020). But when petitioners presented evidence of precisely those effects in their 2020 and 2021 petitions—during the height of the pandemic—EPA denied relief, asserting that petitioners failed to identify specific financial burdens likely to lead to shutdown. That explanation can't be squared with the administrative record, which contains the very evidence respondents previously deemed relevant. And respondents arbitrarily failed to explain why COVID-related hardships justified relief for 2019, but not for 2020 and 2021.

IV. EPA's persistent failure to comply with the statutory 90-day deadline for adjudicating exemptions independently requires relief. Congress imposed that deadline so that small refineries could receive exemptions *before* incurring compliance costs. Yet EPA routinely sat on petitions for years, forcing petitioners to purchase and retire RINs while their petitions remained pending and causing petitioners to incur additional delay-related costs. EPA was obligated to consider and mitigate the injuries caused by its delay—but it did not.

V. In addition to these systemic errors, respondents committed numerous petition-specific errors that independently require remand. For example, they arbitrarily rejected evidence that RFS compliance impaired efficiency improvements; disregarded refinery-specific operational disruptions that significantly reduced production; ignored evidence demonstrating limited access to capital; perfunctorily dismissed exceptional state regulatory burdens; and departed without explanation from prior practice and established methodologies governing several DOE metrics. EPA also relied on factual mistakes and unexplained changes in scoring methodologies in compliance years. These refinery-specific errors require reconsideration of the affected exemption decisions.

VI. The Court should deny the biofuels trade associations' motions to intervene because the would-be intervenors haven't demonstrated the required legally cognizable interest in these proceedings. The movants rely on generalized assertions of competitive harm of precisely the sort this Court deemed insufficient in *Sinclair*.

VII. This Court should remand the relevant decisions to EPA for further consideration. Vacatur would needlessly disrupt what little relief petitioners did receive and jeopardize the correct aspects of the Decisions. Remand without vacatur is warranted to prevent that disruption while EPA reconsiders the petitions and provides petitioners the relief to which they're entitled.

STANDING

Petitioners have standing to seek review of the Decisions. *See Sierra Club v. EPA*, 292 F.3d 895, 900 (D.C. Cir. 2002); D.C. Cir. R. 28(a)(7). The Decisions granted petitioners less than the full exemptions they sought or provided inadequate relief on the exemptions they received, forcing petitioners to bear substantial costs. *See* Appendix A (listing common issues joined by each petitioner); ADD-29-64.

Petitioners are the "object of the action[s]" at issue; EPA's "action[s] … ha[ve] caused [petitioners] injury" by depriving them of the relief from RFS obligations to which they're entitled; and "a judgment preventing" respondents' "action[s] will redress" those injuries. *Sierra Club*, 292 F.3d at 900.

STANDARD OF REVIEW

This Court "shall … hold unlawful and set aside agency action" that is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right" or "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. §706(2)(A), (C); *see HollyFrontier*, 594 U.S. at 388, 399. The Court interprets statutes de novo, using "every tool at [its] disposal to determine the best reading of the statute and resolve the ambiguity." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024). Agency action is arbitrary and capricious "if it is not 'reasonable and reasonably explained.'" *Ohio v. EPA*, 603 U.S. 279, 292 (2024) (citation omitted).

ARGUMENT

I. EPA's decision to implement small-refinery exemptions by returning expired RINs is unlawful.

The Clean Air Act requires EPA to grant "exemption[s]" from RFS obligations to small refineries that demonstrate that complying with those obligations would cause them to suffer "disproportionate economic hardship." §7545(o)(9)(B)(i). In its Decisions, EPA determined that many small refineries made that showing and granted them hardship exemptions. JA__, __-__[AR_0032611;AR_0032639-40]. But EPA chose to implement those exemptions by returning the RINs refineries had previously retired to comply with the RFS—despite acknowledging that most returned RINs had expired and thus had little if any value. JA__, __-__[AR_0032611;AR_0032639-40].

EPA's faux "exemption" is as absurd (and unlawful) as it sounds. An "exemption" means relief from an obligation, but expired RINs don't relieve small refineries from the disproportionate economic hardship caused by spending millions of dollars to comply with the RFS. To make matters worse, EPA's decision to grant petitioners this ersatz remedy was neither reasonable nor reasonably explained. To "exempt[]" refineries as the Clean Air Act demands, EPA must provide relief that makes petitioners whole by remedying their disproportionate economic hardship.

A. EPA's return of expired RINs violates the Clean Air Act.

The Clean Air Act provides that a "small refinery may at any time petition [EPA] for an extension of the exemption" from the obligations of the RFS program "for the reason of disproportionate economic hardship." §7545(o)(9)(B)(i). The "ordinary meaning and structure of the law itself" make clear that EPA's return of expired RINs fails to provide the exemption required by the statute. *Food Mktg. Inst. v. Argus Leader Media*, 588 U.S. 427, 436 (2019).

1. A return of expired RINs isn't an "exemption" from the Renewable Fuel Standard.

Statutory text, context, and structure make clear that EPA's return of expired RINs isn't an "exemption" from the RFS.

This Court's analysis "begin[s] with the text." *Kimball Wind, LLC v. FERC*, 140 F.4th 496, 499 (D.C. Cir. 2025) (citation omitted). Because Congress didn't define "exemption," it carries its "ordinary or natural meaning." *HollyFrontier*, 594 U.S. at 388 (citation omitted). "The term 'exemption' is ordinarily used to denote relief from a duty or service." *Am. Paper Inst., Inc. v. Am. Elec. Power Serv. Corp.*, 461 U.S. 402, 421 (1983).

Dictionaries similarly define "exemption" as freedom or immunity from liability. *E.g.*, *Merriam Webster's Collegiate Dictionary* 437 (11th ed. 2003) ("exemption" includes "[the] state of being exempt" and "immunity"; "exempt" means "free or released from some liability or requirement to which others are subject"); 5 *Oxford English Dictionary* 527 (2d ed. 1989) ("exemption" is "the state of being exempted … from a liability, obligation, penalty, law, or authority; … an immunity"); *Webster's New International Dictionary* 892 (2d ed. 1949) ("exemption" is "freedom from any charge, burden, evil, etc., to which others are subject; immunity").

So when EPA grants an "exemption" to a qualifying small refinery, it must relieve, free, or immunize the refinery from "[t]he requirements of" the RFS. §7545(o)(9)(A)-(B). For refineries that haven't retired RINs to meet their compliance obligation, an exemption is straightforward—

EPA can simply tell the refineries they need not do so. *See* JA__[AR_0032618]. But most small refineries have no choice but to bear the cost of compliance and retire RINs *before* receiving their exemptions to avoid risking severe penalties for noncompliance. *See supra* p. 15. For these refineries, the statute demands a remedy that restores them to their position before complying.

Expired RINs don't check that box. They generally "cannot be used for compliance purposes," 40 C.F.R. §80.1428(c); *see* §7545(o)(5)(C), so they cannot relieve the compliance costs a refinery has wrongfully borne—costs that were the foundation of the hardship. A refinery that receives expired RINs hasn't been "exempted" from anything. Rather, it's been forced by the agency to spend millions of dollars to obtain and retire RINs—only to be told years later that it didn't need to expend those costs after all and there's nothing the agency will do to make it whole. That's not an "exemption" as any ordinary English speaker would understand the term.

Consider, for example, a charity that's eligible for a sales-tax exemption. The charity buys supplies and pays sales tax on them, then requests the exemption. If the government approved the request but declined to return the tax the charity paid, no one would say the charity received an "exemption." It wouldn't make any difference if the government offered to "return" the tax in the form of an expired, no-longer-usable credit. Neither scenario restores the charity to the position it would have been in had it been freed from the tax in the first place.

The same is true here. Even EPA, when taking its first crack at interpreting its refund obligations in 2019, acknowledged that "[s]imply returning" expired RINs wouldn't provide "true relief." EPA Supp. Br. 6, *PRUITT II*, No. 19-9532, 2019 WL 3943578 (10th Cir. Aug. 19, 2019). EPA got it right the first time, and the Court should "give more weight to this contemporaneous interpretation than to the agency's current view." *Cont'l Airlines, Inc. v. DOT*, 856 F.2d 209, 217 (D.C. Cir. 1998). Returning expired RINs of no meaningful value doesn't relieve, free, or immunize small refineries from the RFS, so it doesn't provide an "exemption" under the statute.

That conclusion is reinforced by statutory context and the role of exemptions in the "overall statutory scheme." *Calumet Shreveport*, 605 U.S. at 643 (citation omitted). It's a "fundamental canon of statutory construction" that a statute must be interpreted "as a symmetrical and coherent regulatory scheme," operating as a "harmonious whole." *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (citations omitted). Under the Clean Air Act, a small refinery qualifies for an exemption if RFS compliance would cause it to suffer "disproportionate economic hardship." §7545(o)(9)(B)(i).

Because Congress tied eligibility for the exemption to economic hardship, the exemption itself must provide economic relief to offset the hardship that warranted the exemption in the first place. Expired RINs, however, cannot redress small refineries' regulatory burdens—so they "simply do not fit" "within the [Clean Air Act's] regulatory scheme." *Brown & Williamson*, 529 U.S. at 143.

This Court's decision in *Transbrasil S.A. Linhas Aereas v. Department of Transportation*, 791 F.2d 202 (D.C. Cir. 1986), illustrates the point. There, the statute required the Federal Aviation Administration to grant "exemption[s]" from airline-noise regulations for foreign airlines in "hardship situations," provided the airline didn't increase its "frequency of operations." *Id.* at 204 (citation omitted). This Court rejected the agency's reading of "frequency of operations" in part because the airline's alternative reading "best addressed" the statute's "concerns with economic hardship." *Id.* at 205-06.

The same logic forecloses EPA's approach here. The economic hardship exemptions are meant to relieve is "best addressed" by reading the word "exemption" to require real-world economic relief. Otherwise, there's a fatal disconnect between the hardship justifying the exemption and the exemption itself. "Congress does not ordinarily enact self-defeating statutes." *Exxon Mobil Corp. v. Corporacion Cimex, S.A. (Cuba)*, No. 24-699 (U.S. June 23, 2026), slip op. 11.

The statute's provision governing the timing of exemption petitions sharpens the point. Small refineries may seek hardship exemptions "at any time." §7545(o)(9)(B)(i). "[A]t any time" has an "expansive meaning" and eschews any "rigid" approach restricting when small refineries can petition for exemptions. *HollyFrontier*, 594 U.S. at 393 (citation omitted).

As EPA acknowledged in the Decisions, that provision "allows small refineries the flexibility to seek and receive" hardship exemptions "even long after the compliance deadline has passed." JA__[AR_0032612]. It would be self-defeating for Congress to allow refineries to submit hardship exemption petitions "at any time" yet permit EPA to deny meaningful relief to those who reasonably rely on the statute's deliberate "flexibility." JA__[AR_0032612].

Rather, a refinery remains entitled to an "exemption" from its RFS obligations whether it seeks and obtains the exemption before or after it complies. That includes refineries that, like many petitioners here, submitted an exemption petition before the compliance deadline, bore the hardship of complying while awaiting EPA's decision, and received the exemption only after the deadline had passed and their RINs had expired.

EPA's approach, by contrast, "read[s] words into the statute"—that contradict its express text. *HollyFrontier*, 594 U.S. at 393 n.1. The Clean Air Act's provision authorizing small refineries to seek exemptions "at any time" would be warped into an instruction that a refinery may at any time petition for an extension—but it can obtain meaningful relief only if it applies for and obtains the extension before its RINs expire. EPA can't rewrite statutory text "to suit its own sense of how the statute should operate." *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 328 (2014).

EPA's approach also "runs headlong" into the exemption's "animating aim." *Hewitt v. United States*, 606 U.S. 419, 439 (2025) (opinion of

Jackson, J.). Congress enacted the exemption as a "tempering feature[]" to "protect" small refineries from the "special burdens" the RFS could inflict on them. *HollyFrontier*, 594 U.S. at 386-87. So it would "undermine" Congress's design, *Hewitt*, 606 U.S. at 439, to allow EPA to provide small refineries with no real relief from the disproportionate economic hardship compliance has caused them.

Background common-law principles reinforce that EPA cannot offer "relief" that doesn't make petitioners whole. *See Dewberry Grp., Inc. v. Dewberry Eng'rs Inc.*, 604 U.S. 321, 326-27 (2025) (courts generally interpret statutes consistent with the common law). At common law, recipients of money or its equivalent were required to "refund" when obliged by "natural justice and equity." *Moses v. Macferlan* (1760) 97 Eng. Rep. 676, 678, 681 (KB) (Mansfield, J.). Whether a recipient erroneously retained something of value, *Nash v. Towne*, 72 U.S. (5 Wall.) 689, 701 (1866), or received more value than was due, *Elliott v. Swartwout*, 35 U.S. (10 Pet.) 137, 158 (1836), the fundamental principle was that the transferor must "be made whole," *Bd. of Educ. of Cold Spring Harbor Cent. Sch. Dist. v. Rettaliata*, 576 N.E.2d 716, 720 (N.Y. 1991); *see also, e.g.*, *Claflin v. Godfrey*, 38 Mass. 1, 11 (1838) (granting "interest from the time of payment”). That principle applied to the government as well. *E.g.*, *City of Philadelphia v. The Collector*, 72 U.S. (5 Wall.) 720, 732 (1866). This common-law backdrop reinforces that EPA can’t collect valid RINs and “refund” virtually worthless ones.

2. EPA failed to reconcile its approach with the statutory language.

EPA didn’t dispute that expired RINs have virtually no value. It *admitted* that “very few,” “if any,” refineries will have any use for expired RINs, which therefore have no more than “residual value” “[i]n the abstract.” JA__[AR_0032611]; *see supra* pp. 19-20. EPA nonetheless asserted that returning expired RINs comports with the statute, EPA’s past practice, and the Ninth Circuit’s unpublished decision in *Kern Oil & Refining Co. v. EPA*, 2022 WL 3369528 (9th Cir. Aug. 16, 2022). JA__-__[AR_0032611-13]. Each excuse fails.

a. EPA offered no real defense under the statute. EPA made little effort to argue that returning expired RINs fits within the ordinary meaning of “exemption.” It argued instead that statutory “structure” supports its view because the statute permits exemption petitions “at any time.” JA__[AR_0032612]. But that structural feature points the opposite way. *See supra* pp. 36-38. That a refinery may seek a hardship exemption "at any time" only underscores that EPA must relieve the refinery's hardship even when it grants the exemption after the RINs the refinery used to comply have expired.

EPA insisted that under its approach, refineries obtain "the same result" regardless of when they apply. JA__[AR_0032612]. Not so. That assertion rests on the fiction that unexpired and expired RINs are equivalent. But it's self-evident that valid unexpired RINs and invalid expired ones are economically miles apart.

EPA's conclusory assertion that its "approach is the only one supported by the statute," JA__[AR_0032612], is thus entirely off-base.

b. Past practice can't help EPA, either. EPA previously told this Court and the Tenth Circuit that returning *current-year* RINs to refineries whose retired RINs had since expired was "appropriate[ ]" "to effectuate th[ose refineries'] exemptions" and to "ensure that [they] would be meaningful," despite the "passage of time" leading to expiration. EPA Br. 8, 21-23, 29, *Producers of Renewables United for Integrity Truth & Transparency v. EPA*, No. 18-1202, 2019 WL 1458225 (D.C. Cir. Apr. 1, 2019) (*PRUITT I*); EPA Supp. Br. 1, 6, *PRUITT II*, 2019 WL 3943578.

In the Decisions, EPA tried to run from its prior position, but it lacks a reasoned basis to do so. It characterized its generation of replacement RINs in *PRUITT I* and *II* as responding to "exceptional circumstances," but it didn't explain why the circumstances here are any less exceptional. *See* JA__[AR_0032612]. EPA observed that its initial exemption denials there had been "vacated by a court." JA__[AR_0032612]. But many of the exemptions EPA granted here came after this Court vacated earlier denials in *Sinclair*, and, in any event, judicial vacatur is hardly the only reason RINs may expire before receipt of an exemption.

EPA "acknowledge[d] that it [wa]s taking a different approach" here, JA__[AR_0032612], but offered no "good reason[ ]" for its about-face, *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016) (citation omitted). Its primary justification—"the sheer volume of exemptions EPA is implementing in this document"—is a problem of its own making by failing to comply with the 90-day decision timeline. *See supra* p. 20. EPA tying its own shoelaces together hardly constitutes a good reason for disregarding a statutory entitlement to a hardship exemption. *See id.*

Regardless, EPA can't evade its own recognition that hardship exemptions must provide "*meaningful* relief"—and that returning expired

RINs misses that mark. *PRUITT II*, 2022 WL 538185, at *10 (emphasis added).

c. EPA retreated to the only decision upholding an analogous approach—the Ninth Circuit's unpublished decision in *Kern*. But that decision is a product of a bygone era. The Ninth Circuit deemed the Clean Air Act "ambiguous" on the question of remedy and blessed EPA's approach of declining to return current-year RINs to replace expired ones as a "persuasive" view of the statute in light of policy-based concerns. *Kern Oil & Refin. Co.*, 2022 WL 3369528, at *1-3.

That deferential mode of statutory interpretation doesn't fly anymore. *Loper Bright* instructed courts to "use every tool at their disposal" to discern a statute's "single, best meaning," even if the statute might seem "ambiguous." 603 U.S. at 400. Here, those tools make clear that EPA's return of expired RINs is inconsistent with the statute.

* * *

To grant an "exemption" under the Clean Air Act, EPA must relieve a small refinery from its RFS obligations in a manner that counteracts the disproportionate economic hardship the exemption was designed to address. EPA's return of expired RINs fails that test. Only meaningful relief—whether through a "Compliance Bank" or otherwise, *see* JA__, __[[redacted]]—can remedy the hardship imposed on small refineries as the Clean Air Act requires.

B. EPA's return of expired RINs violates the APA.

In addition to complying with the governing statute, agency action must be "reasonable and reasonably explained." *Laccetti v. SEC*, 885 F.3d 724, 725 (D.C. Cir. 2018). EPA's decision to return expired RINs was not.

1. EPA arbitrarily failed to consider its obligation to meaningfully remedy petitioners' economic hardships.

In the Clean Air Act, Congress sought to shield small refineries from disproportionate economic hardship caused by the RFS. §7545(o)(9)(A)(ii)(II). But the Decisions disregarded that expired RINs provide no meaningful relief from that hardship. Because EPA "entirely failed to consider an important aspect of the problem" and didn't "articulate a satisfactory explanation for its action," it acted arbitrarily and capriciously. *Motor Vehicle Mfrs. Ass'n of the U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43, 55 (1983).

Congress balanced two competing considerations when developing the RFS: promoting American "energy independence and security" and "increas[ing] the production of clean renewable fuels," *Am. Fuel & Petrochemical Mfrs. v. EPA*, 937 F.3d 559, 568 (D.C. Cir. 2019) (citation omitted), while simultaneously shielding small refineries from the "special burdens" of compliance, *HollyFrontier*, 594 U.S. at 386. But EPA didn't even pay lip service to Congress's "carefully crafted legislative bargain," to which small-refinery exemptions are key. *Sinclair*, 114 F.4th at 711.

EPA acknowledged that "very few small refineries, if any," had any use for expired RINs but nevertheless concluded that "the benefits of maintaining a stable RIN market and the connection between RIN generation and real-world fuel volumes outweigh the refinery-specific benefits of generating new RINs." JA__, __[AR_0032613;AR_0032641]. That passing reference to "refinery-specific benefits" was EPA's only discussion of the stakes for small refineries.

EPA gave no consideration to the effect on small refineries of receiving what EPA previously told this Court amounted to "no true relief." EPA Supp. Br. 6, *PRUITT II*, 2019 WL 3943578. And it ignored that small refineries entitled to exemptions by definition were experiencing "disproportionate economic hardship" because they were "required to comply with" the RFS. §7545(o)(9)(A)(ii), (B)(i). Instead, EPA stacked the deck by listing only reasons in favor of returning expired RINs.

EPA can't engage in analysis so "stunningly one-sided in its focus" and call the result reasonable. *Morall v. DEA*, 412 F.3d 165, 167 (D.C. Cir. 2005). This Court regularly holds agency action arbitrary when the agency ignores a key consideration or fails to evaluate the costs and trade-offs of its decision. In *Kentucky Municipal Energy Agency v. FERC*, this Court held that an agency acted arbitrarily by "refus[ing] to even consider the effect" its action would have on "electricity rates" when that question was relevant to the regulatory framework. 45 F.4th 162, 177 (D.C. Cir. 2022). The agency "could not sensibly brush off the effect" of its decision on regulated parties by taking an "ostrich-like approach." *Id.* (citation omitted).

So too here. Instead of considering whether its remedy sufficiently addressed petitioners' hardship, EPA buried its head in the sand and failed to address the impact of providing what it previously recognized as a non-"meaningful" remedy. EPA Br. 21, *PRUITT I*, 2019 WL 1458225.

That omission of a critical consideration renders EPA's decision arbitrary. *State Farm*, 463 U.S. at 43. EPA's ipse dixit conclusion that other considerations "outweigh the refinery-specific benefits of generating new RINs" was just that—a conclusion, not reasoned analysis. It can't salvage EPA's arbitrary course of action. *See Butte County v. Hogen*, 613 F.3d 190, 194 (D.C. Cir. 2010).

Beyond its misreading of the statute, EPA advanced two primary justifications for effectively gutting the hardship exemption: (1) other courts supposedly sanctioned its no-meaningful-remedy approach, and (2) generating new RINs for all eligible small refineries at once would disrupt the RIN market. JA__[AR_0032612]. Neither justification withstands scrutiny.

First, EPA's approach has received no stamp of judicial approval. *Kern*—the only case to consider the validity of EPA's remedy—is of no help to the agency because it rested on an outmoded, deferential approach to statutory interpretation. *See supra* p. 42. Regardless, *Kern* recognized the problem of refineries "receiving no economic benefit from their exemptions at all." 2022 WL 3369528, at *2.

Second, EPA's market-disruption concern rings hollow. For one thing, it's perverse for EPA to use the fact that many refineries faced economic hardship to justify a remedy that relieves no hardship at all. For another, the statute permits refineries to apply "at any time" and gives EPA 90 days to resolve each petition. §7545(o)(9)(B)(i), (iii). EPA, however, has "routinely" flouted the 90-day timeline and failed to implement "policies and procedures to ensure that it meets these deadlines." GAO Report 20. It has also chosen to adjudicate petitions in bulk. Adjudicating petitions on time and in order would have avoided the disruption to the RIN market EPA claims. Yet EPA doesn't even acknowledge its role in creating the problem it now cites as an excuse for denying small refineries meaningful relief.

In all events, EPA "offers no evidence" for its assertion that returning replacement RINs would destabilize the RIN market. *Sorenson Commc'ns Inc. v. FCC*, 755 F.3d 702, 707-08 (D.C. Cir. 2014). That "unsubstantiated conclusion" grounded in "sheer speculation" is no substitute for reasoned decisionmaking. *Id.* (citation omitted).

EPA also ignored petitioners' proposals on how to avoid any market-disruption concerns. Refineries suggested that EPA refund RINs to a "Compliance Bank" from which refineries could draw current-vintage RINs up to an "annual limit," thus "minimiz[ing] disruption of the RIN market," JA__[AR_0000787], or that EPA apply the equivalent of their exemption in future years, JA__[AR_0000315]. EPA arbitrarily failed even to consider these suggestions. *See State Farm*, 463 U.S. at 55.

There's no "de maximis" exception to EPA's obligation to grant hardship exemptions under the Clean Air Act. *Mahmoud v. Taylor*, 606 U.S. 522, 567 (2025). "Such a statutory dodge is the essence of arbitrary-and-capricious and ill-reasoned agency action." *Humane Soc'y of the United States v. Zinke*, 865 F.3d 585, 603 (D.C. Cir. 2017).

2. EPA arbitrarily contradicted its previous approach of generating new RINs.

EPA previously opted to issue new RINs to replace expired ones, recognizing that usable RINs are required for small refineries to obtain "meaningful relief." EPA Br. 23, *PRUITT I*, 2019 WL 1458225. It was arbitrary for EPA to refuse to do the same here.

An agency that changes its position must both "display awareness that it *is* changing position" and "show that there are good reasons for the new policy." *Encino Motorcars*, 579 U.S. at 221-22 (internal quotation marks omitted) (emphasis added). Although EPA acknowledged its departure from past practice here, it failed to justify it.

In recent years, EPA told this Court and the Tenth Circuit exactly what petitioners argue now: returning expired RINs to small refineries provides no "exemption" at all. *See PRUITT I*, 778 F. App'x 1, 3 (D.C. Cir. 2019); *PRUITT II*, 2022 WL 538185, at *3. Instead, to provide "meaningful relief" after used RINs have "expired," EPA said it must "provide[] replacement RINs" of a current vintage. EPA Br. 21-23, *PRUITT I*, 2019 WL 1458225. EPA previously acted on that understanding by "replac[ing] expired RINs … with the same number of unexpired RINs" for certain small refineries. *PRUITT II*, 2022 WL 538185, at *3. It should do the same here.

EPA identifies no "good reason[]" for refusing to do so. *Encino Motorcars*, 579 U.S. at 221-22. Neither its unsubstantiated concern about market impacts nor its inaccurate effort to distinguish its prior actions, JA__-__[AR_0032612-13], supports its refusal to extend petitioners the meaningful relief it previously extended to other refineries.

EPA's 180-degree change in policy boils down to its own convenience. EPA isn't free to adjudicate exemption petitions on its own greatly delayed timetable and then provide meaningful relief only when it finds it convenient to do so.

3. EPA arbitrarily failed to consider and mitigate the harm it created by causing petitioners' RINs to expire before they received exemptions.

EPA failed to recognize that the expiration of the significant majority of petitioners' RINs was a problem entirely of EPA's own making. EPA had a duty to consider and mitigate the hardship to small refineries from having created that problem. Its failure to do so was unlawful.

EPA's responsibility for petitioners' expired RINs traces to the denial decisions this Court vacated in *Sinclair*. In 2022, EPA denied all then-pending exemption petitions for the 2016-2021 compliance years—including many now at issue here. *Sinclair*, 114 F.4th at 704-05. Even at that time, the 2016-2018 RINs small refineries had retired were already expired because EPA ignored its duty to decide refineries' exemption petitions within 90 days, *see* §7545(o)(9)(B)(iii), in many cases by years, *see* GAO Report 20, 23.

But even for those refineries whose retired RINs were still valid in 2022, EPA's attempt to "sunset the small refinery exemption by regulatory fiat," *Sinclair*, 114 F.4th at 711, ensured their RINs would expire during the years it took to secure vacatur of EPA's unlawful actions in August 2024. *See id.* at 700.

EPA's actions also shut the door to any real prospect of obtaining exemptions during those years. EPA's 2022 decisions made clear that the agency didn't anticipate issuing exemptions ever again. *See June 2022 Denial, supra*, at 63. Indeed, when some small refineries tried to obtain relief during that period, EPA denied exemptions across the board in "reli[ance] on the same approach and the same analyses" as its 2022 denials. EPA, *July 2023 Denial of Petitions for RFS Small Refinery Exemptions* 1 (July 14, 2023), tinyurl.com/2tm875c3.

So there was no real hope of obtaining exemptions until after this Court's *Sinclair* decision in 2024. But, by then, 2019-2022 RINs had expired as well. In short, EPA's attempt to render small-refinery exemptions "superfluous," *Sinclair*, 114 F.4th at 711, resulted in exemptions not being granted until after the refineries' 2018-2022 RINs had become virtually worthless.

EPA was required to consider and mitigate that harm from its unlawful attempt to effectively eliminate small refinery exemptions—not use it as an excuse to further harm small refineries. When EPA violates its statutory deadlines in implementing the RFS, this Court's precedents and "basic principles of due process" require the agency to "consider and mitigate any hardships caused to obligated parties by reason of its lateness." *Ams. for Clean Energy v. EPA*, 864 F.3d 691, 718-19 (D.C. Cir. 2017) (*ACE*) (collecting cases); *see also Wynnewood*, 77 F.4th at 779-80.

EPA's attempt to write small-refinery exemptions out of existence by delaying petitioners' rightful access to hardship relief by years and causing years' worth of RINs to expire triggered the same duty. The Clean Air Act instructs that small refineries may apply for hardship exemptions "at any time" and that EPA "shall act" on their petitions "not later than 90 days" after receipt, §7545(o)(9)(B)(i), (iii)—a "mandatory command," *Bufkin v. Collins*, 604 U.S. 369, 379 (2025). But EPA's 2022 actions made a mockery of those requirements.

At that time, many of the petitions EPA decided had been pending far longer than 90 days—and would remain in limbo for years more given the need to undo EPA's unlawful actions through litigation. What's more, in finding that no refinery—past, present, or future—could receive an exemption, EPA effectively told refineries that they could secure relief not "at any time" but "never." By the time this Court vacated EPA's denials in August 2024, all RINs through 2022 had expired. EPA is thus entirely responsible for petitioners' RINs having expired by the time of the Decisions in 2025.

Having created that hardship, EPA had a duty to "consider and mitigate" it. *ACE*, 864 F.3d at 718. EPA did neither. It never acknowledged its responsibility for causing billions of RINs to expire before issuing exemptions. And it didn't do a thing to mitigate that hardship. This Court's "precedents (not to mention basic principles of due process)" demand more. *ACE*, 864 F.3d at 719.

II. Respondents unlawfully applied multiple DOE metrics in assessing hardship.

Respondents applied multiple DOE metrics in a manner both contrary to law and arbitrary.

A. Respondents unlawfully considered economic circumstances beyond the "refinery" in scoring Metrics 1.a and 1.b.

To measure the hardship associated with RFS compliance, Metric 1.a evaluates the small refinery's access to capital or credit, and Metric 1.b considers the refinery's lines of business other than refining and marketing of petroleum products. In scoring Metrics 1.a and 1.b, respondents considered economic circumstances beyond those of the applicant refinery, including the credit ratings and other business lines of the refinery's corporate parent or affiliate. That was unlawful twice over. First, respondents violated the Clean Air Act in looking beyond each small "refinery" in assessing disproportionate economic hardship. Second, respondents unreasonably assumed that corporate parents would use their capital to help struggling refinery subsidiaries.

1. Respondents violated the Clean Air Act and the bedrock presumption of corporate separateness.

Respondents' application of Metrics 1.a and 1.b violated the Clean Air Act because the agencies considered not just individual refineries' access to capital and lines of business, but also their *non*-refining activities and the activities of wholly distinct corporations.

a. The statute focuses the hardship analysis on the small refinery itself. It provides that a "small refinery" may petition for an exemption "for the reason of disproportionate economic hardship." §7545(o)(9)(B)(i). Although the statute doesn't define "refinery," the term ordinarily refers to the "place, building, or establishment, where refining … [of] oil … is carried on." 13 *Oxford English Dictionary* 469 (2d ed. 1989); *accord Merriam Webster's Collegiate Dictionary* 1045 (11th ed. 2003); *see HollyFrontier*, 594 U.S. at 388 (courts apply ordinary meaning in the absence of a statutory definition). EPA regulations similarly define the term as the facility "where gasoline or diesel fuel is produced." 40 C.F.R. §80.2. The "refinery" that may be subject to economic hardship thus doesn't include non-refining business lines.

Case law supports this reading. In *Suncor Energy (U.S.A.) Inc. v. EPA*, the Tenth Circuit refused to lump together two refineries that were under common ownership, shared a "unified management chain," and operated "as a single profit center." 50 F.4th 1339, 1343, 1356 (2022) (citation omitted). Those factors, the court reasoned, had "no apparent relation" to "the key element identified by Congress in determining a 'small refinery,' *i.e.*, the average daily throughput of crude oil." *Id.* at 1357-58. Similarly here, respondents erred by considering activities unrelated to refining.

Focusing on the small refinery itself also better serves the broader goals of the RFS program. Congress designed the program to promote "greater energy independence and security," *ACE*, 864 F.3d at 697 (citation omitted), in which "[r]efineries play a key role," H.R. Rep. No. 119-267, at 2 (Sep. 11, 2025). Unrelated business lines shed no light on whether RFS obligations undermine that goal by burdening (and therefore jeopardizing) refineries.

Respondents thus violated the Clean Air Act when they assessed small refineries' economic hardship based on non-refining activity. *See*, *e.g.*, JA__[[redacted]] ("offshore oil production"); JA__[[redacted]] ("convenience stores"). Those "other" business lines are indisputably not refining, *see*, *e.g.*, JA__[[redacted]], and therefore not part of the "refinery."

b. Respondents also violated the Clean Air Act in conflating small refineries' businesses with those of distinct parent and affiliate entities. It's "long settled as a matter of American corporate law that separately incorporated organizations are separate legal units with distinct legal rights and obligations." *Dewberry*, 604 U.S. at 327 (citation omitted). If Congress wants to override that default presumption, it "must speak directly to the question" and make clear that corporate separateness should be disregarded. *United States v. Bestfoods*, 524 U.S. 51, 63 (1998) (citation omitted). Congress didn't do so here.

The statute makes hardship exemptions available to a "small refinery," §7545(o)(9)(B)(i), which it defines based on the average aggregate daily crude oil throughput of the particular "refinery," §7545(o)(1)(K). Far from a "direc[t]" statement that respondents should disregard corporate separateness, *Bestfoods*, 524 U.S. at 63, the statute reinforces that they should respect it. As this Court has observed, "the pertinent statutory text requires EPA to consider whether the small refinery *itself* faces disproportionate economic hardship." *Hermes Consol., LLC v. EPA*, 787 F.3d 568, 579 (D.C. Cir. 2015).

The Tenth Circuit took the same view in *Renewable Fuels Association v. EPA*, observing that "[n]othing" in the statute or regulations "required the EPA to base its decisions on … parent company information." 948 F.3d 1206, 1255 (10th Cir. 2020), *rev'd on other grounds by HollyFrontier*, 594 U.S. 382.

The Energy Policy Act of 2005—which adopted the RFS—confirms as much. Elsewhere in that act, Congress explicitly rejected corporate separateness. For example, it created a tax credit for "producers" of certain renewable fuels and provided that "in the case of a partnership, trust, S corporation, or other pass-thr[ough] entity," certain limitations "shall be applied at the entity level and at the partner or similar level." Pub. L. No. 109-58, §1345, 119 Stat. 594, 1052-53 (2005); *see also id.*

§1341(a) (tax credit incorporating corporate flattening in 26 U.S.C. § 52(a)). When Congress wishes to erase corporate lines, "it knows how" to do "just that." *Trump v. Hawaii*, 585 U.S. 667, 692 (2018). It didn't for small-refinery exemptions.

Considering the activity of a corporate parent or affiliate also undermines the Clean Air Act's concern for protecting small refineries from financial distress caused by compliance. *See HollyFrontier*, 594 U.S. at 386. Congress understood that each refinery reflects a discrete going concern. With no guarantee that a corporate parent will prop up a struggling refinery subsidiary, Congress focused on the economic hardship experienced by the small refinery, §7545(*o*)(9)(A)-(B), not the small refinery plus its corporate parent. Respondents' approach frustrates this scheme, leaving the small refineries that Congress sought to protect to shoulder crushing compliance burdens without any reason to believe their parent corporations will come to their aid.

Respondents have cited nothing to suggest that Congress intended to deny exemptions to severely economically burdened small refineries based on assets of legally separate affiliates or parents. *See Hermes*, 787

F.3d at 579 (hardship determination reasonably confined "to the finances of the refinery" and not those of its holding company).

c. Respondents violated the Clean Air Act by looking outside the "refinery" in applying Metrics 1.a and 1.b. Start with Metric 1.a, which assesses access to capital. In the Decisions, if no credit score was available for the small refinery itself, the agencies looked to the credit rating of a corporate parent or affiliate. For example, in addressing [redacted] 2019 exemption petition, EPA assessed Metric 1.a based on the credit rating of [redacted] parent, ignoring that [redacted] own debt-to-equity ratio was [redacted] JA__, __-__[[redacted]]. EPA provided no reason for rejecting [redacted] contention that its parent's credit rating "would have no impact on [redacted] access to capital." JA__[[redacted]]. EPA repeated the same error in 2024. JA__[[redacted]].

EPA committed similar errors under Metric 1.b, which asks whether the refinery has business lines beyond refining. EPA routinely penalized small refineries for non-refining business lines, including those of parent and affiliate companies—unlawfully disregarding corporate separateness and distorting the refinery-focused hardship inquiry

Congress mandated. *E.g.*, JA__[[redacted]] ([redacted]); JA__, __[[redacted]] ([redacted]).

2. Respondents' application of Metrics 1.a and 1.b was arbitrary and capricious.

In addition to being contrary to law, respondents' application of Metrics 1.a and 1.b was arbitrary and capricious in multiple ways.

a. Compounding their legal error, respondents relied on the unsupported assumption that a corporate parent or other affiliate would rescue a struggling subsidiary. The administrative record "does not substantiate" that "hunch." *Sierra Club v. EPA*, 884 F.3d 1185, 1198 (D.C. Cir. 2018). Nothing in the record suggests small refineries' corporate parents or affiliates have provided or will provide financial support to mitigate RFS compliance burdens.

It's a fundamental principle of corporate law that "a parent corporation is … not liable for the acts of its subsidiaries." *Bestfoods*, 524 U.S. at 61. "Wholly-owned subsidiary corporations are expected to operate for the benefit of their parent corporations," but "[p]arent corporations do not owe such subsidiaries fiduciary duties." *Trenwick Am. Litig. Tr. v. Ernst & Young, LLP*, 906 A.2d 168, 173 (Del. Ch. 2006), *aff'd sub nom. Trenwick*

Am. Litig. Tr. v. Billett, 931 A.2d 438 (Del. 2007). Respondents needed to offer a "compelling explanation" why those principles don't apply here. *MISO Transmission Owners v. FERC*, 45 F.4th 248, 264 (D.C. Cir. 2022). They failed to do so.

In fact, some refineries established that their "assets are encumbered as collateral for loans entered into by [the parent] … over which [the refinery] exercises no control." JA__[[redacted]]. Others explained that their corporate parent "is under no obligation to loan money to [the refinery] for RIN expenses," JA__[[redacted]], and provided data showing the parent hadn't provided support in nearly two decades and likely wouldn't do so again, JA__[[redacted]]. Respondents simply ignored these points. *Contra Genuine Parts Co. v. EPA*, 890 F.3d 304, 312 (D.C. Cir. 2018).

Nor was there evidence that corporate parents generally use revenue from other lines of business to mitigate economic harm to refinery subsidiaries. To the contrary, DOE's study recognized shutdowns of small refineries owned by Valero, Sunoco, Marathon, Hess, Shell, and Chevron—all profitable and diversified corporate parents. *See* JA__[AR_0031170-71].

While respondents have observed that a corporate parent *can* support a refinery subsidiary, JA__-__, __[[redacted]], *can* doesn't mean *must* or *will*.

b. In its Decisions, EPA sometimes disregarded corporate separateness and sometimes didn't—with no explanation for the differential treatment.

If the agencies always assumed that a profitable corporate parent would prop up a shaky subsidiary, then in asking whether a refinery's compliance costs affect its viability, respondents presumably would have looked consistently to how much relief its parent company has to offer. But they didn't. *See Renewable Fuels Ass'n*, 948 F.3d at 1254-55 (affirming EPA's decision to ignore parent refinery's RIN surplus); JA__[[redacted]] (scoring correctly based on small refinery's debt-to-equity ratio and ignoring parent's potential access to capital).[4] "[I]nternally inconsistent" actions are a sign of "arbitrary and capricious"

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[4] Respondents based [redacted]'s Metric 1.a score for 2020 on a transposition error. [redacted] provided the data to calculate a 63% debt-to-equity ratio, entitling it to a 10. JA__[[redacted]]. Respondents assigned a 0 based on a transposition error (a [redacted] ratio). JA__[[redacted]]. The Court should remand [redacted]'s 2020 petition for EPA to correct the scoring.

decisionmaking. *ANR Storage Co. v. FERC*, 904 F.3d 1020, 1028 (D.C. Cir. 2018).

B. Respondents arbitrarily defined "refining" in scoring Metrics 1.b, 2.a, and 2.c.

Respondents' approach to scoring Metrics 1.b, 2.a, and 2.c for several refineries was arbitrary and capricious in two ways.

First, respondents irrationally applied Metric 1.b in a manner that prevents it from serving its purpose in the hardship analysis. As the DOE Study explains, Metric 1.b is meant to assess a refinery's insulation against the "considerable volatility" of "[r]efining margins" by examining whether the refinery has "[a]dditional lines of business … that are less correlated with refining." JA__[[redacted]]. Metric 1.b thus wasn't intended to treat other refined petroleum products, such as asphalt and lubricating oils, as "other lines of business" that mitigate hardship, because those products are "refining"—they come from the same crude oil refineries use to produce gasoline and diesel, and thus are as correlated with refining margins as transportation fuels. Rather, Metric 1.b seeks to assess business activities "less correlated with refining"—in particular, upstream operations such as exploration and production of crude oil, JA__[[redacted]], and downstream "non-petroleum product sales at convenience stores," JA__[[redacted]].

Several of the Decisions here, however, effectively limited "refining" to production of transportation fuels, treating asphalt, lubricating oils, and other refined petroleum products as separate lines of business—that is, not refining. This approach systematically and prejudicially overstated the resilience of small refineries. Although the ratio of outputs at a particular refinery depends on the type of crude-oil input, refining inherently produces a mix of co-products. All those products of the refining process—transportation fuel and non-transportation fuel alike—are directly "correlated with refining" because they are the *direct outputs* of the refining process. It is thus irrational for respondents to treat them as "other business lines" "less correlated with refining" that can "smooth the firm's cash flows" despite volatile refining margins. JA__[[redacted]].

Compounding the harm, respondents applied conflicting definitions of "refining" across several metrics, ensuring failing scores on each. For Metric 1.b, respondents treated refined petroleum products such as lubricating oils as separate lines of business from "refining." *E.g.*, JA__[[redacted]] ([redacted]); JA__[[redacted]]

([redacted]). But for Metric 2.a (relative refining margin), respondents included products such as lubricating oils when calculating the net refining margin, thereby capturing the higher margins on those products. *Compare* JA__[[redacted]] ([redacted] providing its net refining margin for its transportation fuels), *with* JA__[[redacted]] (scoring based on [redacted] net refining margin for all of its refined products). Likewise, EPA treated refineries that produce "higher margin" lubricating oils and asphalt as having access to niche markets, giving them a failing score on Metric 2.c. *E.g.*, JA__[[redacted]] ([redacted]).

In each case, EPA's approach is to the refinery's detriment. *See*, *e.g.*, JA__-__, __-__[[redacted]].[5] EPA excludes coproducts from "refining" when it harms petitioners under Metric 1.b and includes them when it harms petitioners under Metrics 2.a and 2.c. *See*

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[5] For example, [redacted] received a 0 score on Metric 2.c for 2020 because its lubrication-oil production made it a "niche" refinery. JA__, __[[redacted]]. It also received a 0 score on Metric 2.a based on the "total net refining margin," including from its production of lubrication oils. JA__[[redacted]]. Yet on Metric 1.b, EPA treated lubrication oils as a non-refining business, resulting in another 0 score. JA__[[redacted]].

JA__[AR_0031120]. If the production of lubricating oils is not refining (Metric 1.b), the margins from their production can't be included in the calculation of net refining margins (Metric 2.a) and whether the refinery is niche (Metric 2.c), without defeating the purpose of the scoring. Such outcome-driven scoring is arbitrary and capricious.

C. Respondents arbitrarily refused to consider local market acceptance of certain renewables in scoring Metric 1.c.

Since 2011, DOE has recognized the importance of whether a refinery's local market accepts certain renewable fuels. JA__[AR_0031119]. Specifically, DOE identified three different fuels—E10 (a gasoline blend containing up to 10% ethanol), E85 (up to 85% ethanol), and biodiesel (a diesel substitute made with vegetable oil or animal fat)—whose degree of acceptance in a refinery's local market affects the hardship the refinery experiences. JA__[AR_0031119].[6]

Yet DOE has persistently refused to consider acceptance of biodiesel and E85 when evaluating exemption petitions, and EPA has uncritically accepted that refusal. The agencies assert that DOE needs

[6] Different petitioners challenging respondents' refusal to score Metric 1.c advance different arguments. Some join Part II.D. *See infra* at n.9. The remainder join Part II.C. *See* Appendix A.

retail-sales data to measure local market acceptance and that such data is unavailable for biodiesel and E85. *See*, *e.g.*, JA__, __, __[[redacted]]. EPA has also contended that existing biodiesel data was "unusable" because it didn't distinguish between different grades of biodiesel, *see* JA__[[redacted]], or covered too broad a geographic area, *see* JA__[[redacted]].

None of these excuses holds up. DOE has data bearing on local market acceptance of biodiesel and E85, which neither DOE nor EPA has justified ignoring. Respondents' failure to "examine the relevant data" was thus arbitrary, *GameFly, Inc. v. Postal Regul. Comm'n*, 704 F.3d 145, 149 (D.C. Cir. 2013) (citation omitted), and it resulted in "ignor[ing] an important aspect of the problem," *Ohio*, 603 U.S. at 294 (cleaned up).

1. Acceptance of biodiesel and E85 are important aspects of the hardship analysis.

Metric 1.c, the local-acceptance-of-renewables metric, recognizes the hardship imposed when "[l]ocal conditions … inhibit blending as a compliance strategy," forcing refineries to comply by purchasing RINs. JA__[AR_0031119]. If small refineries "must purchase RINs that are far more expensive than those that may be generated through blending, this will lead to disproportionate economic hardship for those [a]ffected entities." JA__[AR_0031087].

Biodiesel acceptance is a critical part of this analysis. Different renewable fuels correspond to different categories of RINs, and not all RIN categories are interchangeable for compliance purposes. JA__[AR_0031092]. Relevant here, EPA sets a renewable volume obligation for biodiesel that can be met only by blending biodiesel or purchasing biodiesel RINs. *See* 40 C.F.R. §80.1407(a). Because only biodiesel RINs can satisfy the biomass-based diesel requirement, whether a refinery's local market accepts biodiesel is central to whether blending is a viable compliance option. *See* EPA, *Overview of the Renewable Fuel Standard Program* (last updated Apr. 16, 2026), tinyurl.com/yyd5kc36.

Biodiesel's importance, moreover, has only grown since 2011 as the difference between overall RFS obligations and the "ethanol blend wall" has increased. The ethanol blend wall is the "aggregate limit to which [ethanol] can be blended into its recipient motor fuel." JA__[AR_0031098]. EPA has long acknowledged that this blend wall was reached in about 2010 and that it limits the amount of ethanol the market can absorb to approximately 10%. *See* 88 Fed. Reg. 44,468, 44,490 (July 12, 2023); 75 Fed. Reg. 14,670, 14,759 (Mar. 26, 2010).

Nevertheless, for years, EPA has set conventional renewable volume obligations above the blend wall, 91 Fed. Reg. 16,388, 16,434 (Apr. 1, 2026), with the understanding that "corn ethanol and other conventional biofuel volumes would not be sufficient" and that advanced biofuels like biodiesel will "make up for the shortfall," 88 Fed. Reg. at 44,493. Refineries must therefore blend "significant volumes" of biodiesel and other advanced-biofuel RINs "beyond the volume requirement[s] for th[ose] categor[ies]" if "final total renewable fuel volume requirements" are to be "achievable." 91 Fed. Reg. at 16,392, 16,436.

These dynamics also make local market acceptance of E85 critical to evaluating hardship. "The total volume of ethanol that can be consumed … is a function of the[] three ethanol blends"—E10, E15, and E85—and "demand for E0," *i.e.*, pure gasoline. 88 Fed. Reg. at 44,490. Because E85 has a higher ethanol concentration than E10, a refinery whose market accepts E85 could acquire more ethanol-based RINs from blending and thus face fewer challenges meeting RFS obligations for conventional renewable fuel.

EPA recognizes the importance of this blending capacity given the ethanol blend wall. As early as 2010, EPA acknowledged that meeting RFS obligations would require "growth in" flexible fuel vehicles that can run on E85 "and E85 infrastructure." 75 Fed. Reg. at 14,759.

EPA has also explained that the "average ethanol concentration [in gasoline] can exceed 10 percent only insofar as the ethanol in E15 and E85" provide the boost: they must be consumed at levels that "more than offset[] the volume of E0." 88 Fed. Reg. at 44,490. Acceptance of E85 is thus significant to assessing the hardship imposed by the conventional renewable fuel obligation, which has exceeded 10% per gallon every year since 2016 and reached a high of 13.13% in 2025. *See* 40 C.F.R. §80.1405.

2. Respondents arbitrarily ignored publicly available data on local market acceptance of biodiesel and E85.

Despite the significance of acceptance of biodiesel and E85, the respondents asserted DOE couldn't assess local acceptance of those fuels. In their view, the available data wasn't sufficient because it didn't show retail-sales volumes, disaggregate biodiesel by blend, or cover narrow enough regions. *See*, *e.g.*, JA__, __, __, __[[redacted]]. But DOE publishes state-level data regarding biodiesel's consumption and E85's availability at retail stations. This data shows the degree of consumer market acceptance of each type of fuel. So respondents *can* evaluate how local acceptance of biodiesel and E85 affects hardship, and their excuses for not doing so can't justify ignoring an important aspect of the hardship inquiry. *See Carlson v. Postal Regul. Comm'n*, 938 F.3d 337, 344 (D.C. Cir. 2019).

a. DOE has state-specific and nationwide data on biodiesel consumption from the Energy Information Administration, the DOE statistical agency whose data and projections respondents routinely use to administer the RFS program. *See*, *e.g.*, JA__[AR_0031099]; 91 Fed. Reg. at 16,409-10. That data, which extends back to 2001, enables DOE to assess how much biodiesel is consumed in each state. *See* Energy Information Administration, *State Energy Consumption Estimates 1960 Through 2024*, tinyurl.com/cpcfmhfn.

For example, the data shows that Colorado consumes low amounts of biodiesel. In 2019, Colorado—around 1.75% of the U.S. population—consumed only 0.66% of the biodiesel consumed in the United States, ranking 34th in the nation.[7] The data similarly reveals that Montana consumes minimal biodiesel—just 4,000 of the 43,529,000 barrels of biodiesel consumed for transportation in 2023, and only 2,000 of 39,478,000 barrels the year before.[8]

DOE also has data indicating how much E85 consumers buy in each state. Published data going back to 2014 shows E85 fueling stations by state. *See* DOE, Alternative Fuels Data Center, *Alternative Fueling Station Counts by State*, tinyurl.com/5n7rvejr. EPA has recognized that this data correlates with E85 consumption. EPA, *Renewable Fuel Standard (RFS) Program: Standards for 2023-2025 and Other Changes—Response to Comments* 73 (June 2023), tinyurl.com/yx8y7sns. And EPA has recognized that "the correlation between the nationwide average ethanol

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[7] *See* U.S. Census Bureau, *2019 National and State Population Estimates, Table 1: Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: April 1, 2010 to July 1, 2019* (Dec. 30, 2019), tinyurl.com/j58ueh29; U.S. Census Bureau, *State Population Totals and Components of Change: 2020-2025, Table: Annual Estimates of the Resident Population for the United States, Regions, States, District of Columbia and Puerto Rico: April 1, 2020 to July 1, 2025* (Jan. 2026), tinyurl.com/bdkc722v.

[8] Energy Information Administration, *Table F29: Biodiesel Consumption Estimates, 2023*, tinyurl.com/veckuxzd; Energy Information Administration, *Table F30: Biodiesel Consumption Estimates, 2022*, tinyurl.com/49p2dzwu.

concentration and number of stations offering E15 and E85 … was relatively strong." *Id.* at 77.

Indeed, EPA relied on this correlation to "project total ethanol consumption for 2023-2025" and to justify increasing the conventional renewable fuel obligation for those years. 88 Fed. Reg. at 44,489-90; *see Response to Comments*, *supra*, at 76-77. This makes sense: If a market doesn't demand much E85, there's little reason to invest in developing and maintaining E85-capable stations there.

This data on E85 fueling stations identifies states with low E85 acceptance. For example, in 2019 Louisiana had just 14 E85 stations—0.37% of the country's total—despite having 1.42% of the U.S. population. *See* DOE, *Alternative Fueling Station Counts*, *supra*; U.S. Census Bureau, *2019 National and State Population Estimates*, *supra*. Or consider Texas, home to over 9.12% of the U.S. population but only 5.9% of its E85 stations in 2023. *See* DOE, *Alternative Fueling Station Counts*, *supra*; U.S. Census Bureau, *State Population Totals, supra*.

In short, respondents already have state-specific data regarding market acceptance of biodiesel and E85 at their fingertips. The data isn't unavailable—the agencies just failed to analyze it.

b. None of the agencies' rationales supports their continued refusal to evaluate the biodiesel and E85 components of the market-acceptance metric using the available data.

Respondents can't ignore this data simply because they would prefer retail data. State-level data on biodiesel consumption and E85 retail stations is "readily available" and represents "empirical evidence about" how much of these fuels local markets consume and thus accept. *Bus. Roundtable v. SEC*, 647 F.3d 1144, 1150 (D.C. Cir. 2011). DOE cannot "duck[] serious evaluation" of these aspects of the hardship inquiry, *id.* at 1152, by "ignor[ing] evidence undercutting its conclusion" about its purported inability to score the market-acceptance metric, *Genuine Parts*, 890 F.3d at 308.

Respondents' apparent preference for retail-sales data provides no cover. DOE failed to adequately explain that preference. Its limited justification—that "retail sales volumes are needed to show the consumer market acceptance of a fuel" because "[c]onsumer acceptance is indicated by retail sales," JA__[[redacted]]—is circular. It is also unsupported. Given the availability of other relevant data, respondents breached their duty "to explain *why*" their specific demand for retail-sales data was reasonable. *Pub. Citizen v. Fed. Motor Carrier Safety Admin.*, 374 F.3d 1209, 1217 (D.C. Cir. 2004) (emphasis added).

Even if hypothetical retail-sales data were superior, that wouldn't justify ignoring available data. "Regulators by nature work under conditions of serious uncertainty," *Pub. Citizen*, 374 F.3d at 1221, and "are often called upon to confront difficult administrative problems armed with imperfect data," *Mont. Wilderness Ass'n v. McAllister*, 666 F.3d 549, 559 (9th Cir. 2011).

EPA itself has previously defended its ability to "draw conclusions" in circumstances involving "imperfect data," Final Br. of Respondents at 32, *Edison Elec. Inst. v. EPA*, No. 96-1062, 2004 WL 3190505 (D.C. Cir. Aug. 17, 2004) (citation omitted), including when "data is scarce," Final Br. of Respondents at 66, *Dithiocarbamate Task Force v. EPA*, No. 95-1249, 1996 WL 34483234 (D.C. Cir. June 28, 1996) (citation omitted). The agency must still "do the best it can with the data it has," and can't "ignore" that data "completely." *Mont. Wilderness*, 666 F.3d at 559.

So too here. Uncertainty doesn't relieve respondents of their "statutory obligation to determine as best [they] can" the degree of hardship associated with acceptance of those fuels. *Chamber of Com. v. SEC*, 412 F.3d 133, 143 (D.C. Cir. 2005).

EPA fares no better with its excuse that "the available biodiesel data is unusable" for assessing local market acceptance because the Energy Information Administration doesn't "distinguish among the different grades of blended diesel: B0, B5, B10, or B20." JA__[[redacted]]. To start, DOE's metric for market acceptance doesn't distinguish blended diesel by grade either, *e.g.*, JA__, __-__[[redacted];AR_0031118-19], so the agency that created the hardship matrix doesn't deem such granularity necessary. Nor does this explanation account for the fact that some states have so little biodiesel consumption that blend-specific data couldn't possibly move the needle on DOE's evaluation.

In any event, just because distinguishing by grade might tell the agencies *more* about biodiesel acceptance doesn't mean that the existing data doesn't tell them *enough*. The theoretical possibility of better data will always exist. But holding out for that possibility can't justify ignoring existing relevant data.

The Energy Information Administration data also belies EPA's claim that existing data covers too large a geographical area for proper assessment of local market acceptance of biodiesel. JA__[[redacted]]. The Energy Information Administration "estimates biodiesel production and *consumption by state*." Energy Information Administration, *EIA Now Estimates Biodiesel Production and Consumption by State*, tinyurl.com/w8htj42m (emphasis added). DOE's data on E85 retail stations is also state-specific. *See* DOE, *Alternative Fueling Station Counts by State*, *supra*. Any suggestion that only regional data is available is simply wrong.

D. Respondents must consider local market acceptance of all available blends or not score Metric 1.c.

Petitioners joining this section agree that respondents arbitrarily considered only local-market acceptance of E10 in evaluating Metric 1.c, but differ regarding the solution. In these refineries' view, respondents must either score local-market acceptance of all biofuel blends (E15, E85, and biodiesel blends *as well as E10*) or, if existing data isn't sufficient, not score Metric 1.c at all.[9]

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[9] [redacted]

Although large refineries primarily produce gasoline, small refineries disproportionately produce diesel. In fact, most small refineries disproportionately produce diesel, and some produce no gasoline at all. *See*, *e.g.*, JA__, __[redacted]. But by definition, refineries can't make E10 from diesel.

Assessing local-market acceptance only of E10 thus says little about whether small refineries can blend their products to meet their compliance obligations. Biodiesel's local-market acceptance is much lower than ethanol's—and more variable. Biodiesel is harder to blend (especially in cold climates) and is blended at much lower rates (≤5%). JA__-__, __-__, __-__[redacted]. Proximity to biodiesel sources, transportation costs, consumer preference, and other factors vary too. JA__, __[redacted]. By ignoring this, respondents have "ignored an important aspect of the problem" small refineries face, *Ohio*, 603 U.S. at 294 (cleaned up).

EPA cites Metric 1.d as an excuse for scoring only E10, but Metrics 1.c and 1.d address distinct concepts. *E.g.*, JA__[redacted] (EPA

[redacted]

explaining that [redacted] "local market resistance" to biodiesel blends has "been considered already by DOE when scoring" Metric 1.d). Metric 1.d addresses the *percentage of diesel production*: a refinery gets a 10 if diesel accounts for 40% or more of its combined production of gasoline and diesel. JA__[AR_0031119]. This differs from Metric 1.c, which addresses *local-market acceptance of renewables*. JA__[AR_0031119]. Both matter to the ultimate issue: whether small refineries can economically blend their way to compliance. Measuring Metric 1.c without assessing how easily small refineries can sell blended fuels is nonsensical.

Respondents' exclusive focus on E10 is arbitrary even for refineries that blend ethanol. Even if small refineries could blend 10% ethanol into their entire gasoline production, they still could not meet their renewable volume obligation. *E.g.*, JA__, __[[redacted]]. Satisfying that obligation requires making E15 and E85 too. Yet respondents consider only E10 in assessing local-market acceptance. That makes no sense. *See Butte County*, 613 F.3d at 194.

Respondents claim that DOE needs retail-sales data to measure local-market acceptance and such data is unavailable for E85 and biodiesel. *E.g.*, JA__[[redacted]]. EPA also concluded existing biodiesel data doesn't distinguish between grades of biodiesel, *see* JA__-__[[redacted]], or covers too broad a geographic area, *see* JA__[[redacted]]. Regardless, imperfections in E85 and biodiesel data can't justify respondents' sole reliance on E10 acceptance, which correlates poorly with small refineries' ability to blend for compliance.

This Court should hold that respondents have two options. They may apply Metric 1.c by individually assessing local-market acceptance for each refinery based on its diesel/gasoline mix and available data regarding acceptance of E10, E15, E85, and biodiesel in its market. Or they may conclude that available data is insufficient to make a reliable assessment and not score Metric 1.c at all. What they can't do is continue to score Metric 1.c solely by evaluating E10.

E. Respondents arbitrarily changed their approach to scoring Metric 3.a without explanation.

Metric 3.a "evaluates whether the totality of factors … would reduce the profitability of the firm enough to impair future efficiency improvements." JA__[AR_0031121]. Consistent with the "totality of factors" approach, respondents historically have considered numerous datapoints in assessing this metric—including a refinery's debt, available capital for efficiency-improvement projects, and actual deferrals of efficiency-improvement projects due to compliance costs. *E.g.*, JA__, __[[redacted]]. Petitioners relied on respondents' prior, consistent practice and addressed those factors in their petitions.

In the Decisions, however, respondents changed position on Metric 3.a in two ways. First, they switched from a totality-of-the-circumstances standard to a single-factor rule. Second, they no longer accepted partial-year data as sufficient, summarily rejecting petitions without full-year data. Respondents' failure to acknowledge, much less explain, their changes in approach was arbitrary.

1. Respondents inexplicably abandoned their totality standard.

EPA and DOE historically considered "the totality of factors," as prescribed by the DOE study. JA__[AR_0031121]. In the Decisions, however, respondents shifted to a new test focusing on a single factor: the ratio of a refinery's RFS compliance costs to its cash flow from operations. *See, e.g.*, JA__, __, __[[redacted]].[10] They then applied that new test without elaboration to most exemption petitions.

[10] "Cash flow from operations" reflects cash generated by a business's operational activities, with cash disbursements subtracted. *See Black's*

The "flexible, all-things-considered approach," which DOE announced in 2011, differs fundamentally from the "mechanistic inquir[y]" respondents applied in 2025. *Florida v. Harris*, 568 U.S. 237, 244 (2013). As this Court has recognized, treating "one factor standing alone [as] dispositive" is the antithesis of a totality-of-the-circumstances standard. *Morrison v. Int'l Programs Consortium, Inc.*, 253 F.3d 5, 11 (D.C. Cir. 2001); *accord Keathley v. Buddy Ayers Constr., Inc.*, No. 25-6 (U.S. June 11, 2026), slip op. 7-8.

Respondents didn't explain, much less justify, the change. In fact, they didn't even articulate what the new test was: respondents never informed refineries what ratio of compliance costs to cash flows would receive 5 or 10 points on this metric. *See, e.g.*, JA__[[redacted]] ([redacted]). Nor did the agencies

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Law Dictionary 245 (9th ed. 2009) (defining "cash flow"). Critically, it doesn't include expenditures for capital projects, tax distributions, and dividends. JA__[[redacted]].

"display awareness that [they were] changing position" or account for reliance interests. *Encino Motorcars*, 579 U.S. at 221 (citation omitted).

Respondents' arbitrary about-face harmed petitioners. For example, [redacted] compiled and submitted a host of financial data bearing on this metric, only for respondents to brush it aside in favor of their new, single-element test. *See* JA__, __, __[[redacted]]. Respondents similarly disregarded [redacted] evidence that RFS compliance forced it to cut [redacted] JA__, __[[redacted]].

In other cases, the agencies disregarded evidence that compliance costs were a refinery's "highest cost of operation" apart from purchases of crude oil. *E.g.*, JA__[[redacted]]. And respondents no longer credited direct evidence of postponed efficiency improvements. *See*, *e.g.*, JA__-__[[redacted]] ([redacted]); JA__-__[[redacted]] ([redacted]); JA__, __[[redacted]] ([redacted].

To be sure, petitioners don't oppose respondents comparing compliance costs to cash flow from operations; a high ratio on that metric surely demonstrates significant efficiency impairments. But respondents can't rely on that factor to the exclusion of all others—and they can't change the rules of the road to deny petitioners relief without explanation. *See Encino Motorcars*, 579 U.S. at 221. They must explain any change in position and account for petitioners' "reliance interests," *id*. at 221-22 (citation omitted)—both of which they failed to do.

2. Respondents newly and inexplicably demanded full-year financials.

Respondents also adopted a stricter standard to obtain points on Metric 3.a, abruptly requiring small refineries to include full-year data for all exemption petitions. This too was arbitrary.

The Clean Air Act permits applying for an exemption "at any time." §7545(o)(9)(B)(i). Historically, small refineries who filed their petitions before the compliance deadline provided then-available data—which often covered only part of the relevant year. For example, if a refinery filed on December 1, it couldn't possibly provide data for the full calendar year. Respondents historically understood this fact, accepting partial-year data without objection or penalty. *E.g.*, JA__[[redacted]] ([redacted]

[redacted] JA__[[redacted]] ([redacted]); JA__[[redacted]] ([redacted]). But in the Decisions, respondents in numerous instances assigned petitioners automatic failing scores if their petitions didn't provide financial statements covering the full exemption year.[11]

Some petitioners provided partial-year data, while specifically requesting notice if "additional information [was] required to make [the] determination." *E.g.*, JA__[[redacted]] ([redacted]; JA__[[redacted]] ([redacted]); JA__[[redacted]] ([redacted]). Respondents never provided notice or otherwise signaled that small refineries should submit the full-year information the agencies required. That failure to acknowledge or explain the change from permitting partial-year data was arbitrary.

III. Respondents arbitrarily ignored COVID-related threats to viability and failed to explain their inconsistent scoring.

Respondents' COVID-related scoring decisions were also arbitrary. DOE appropriately awarded all refineries points for COVID-related

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[11] *E.g.*, [redacted].

threats to viability for 2019—compliance for which wasn't due until 2022—as demand for transportation fuel cratered and small refineries faced existential threats. But when DOE scored the 2020 and 2021 petitions—even though the pandemic was at its height, fuel demand remained extremely low, and petitioners again established grave threats to their viability—DOE awarded no points. That inconsistent scoring made no sense, yet EPA adopted DOE's mistakes without question. This Court should remand for respondents to rescore the viability metrics (3.a-3.c) for 2020 and 2021.

A. The record belies the only asserted basis for respondents' scoring decisions.

An agency acts arbitrarily when it "offer[s] an explanation … that runs counter to the evidence" before it. *State Farm*, 463 U.S. at 43. This Court overturns agency decisions that "ignore evidence that undercuts [the agency's] judgment" or "minimize such evidence without adequate explanation." *Genuine Parts*, 890 F.3d at 312.

Respondents violated these principles when they adjudicated petitioners' 2020 and 2021 applications. In scoring petitions for the 2019 compliance year, DOE recognized the existential threat COVID posed for small refineries: COVID "reduced deman[d]," leading to "low refinery crude runs and low refinery margins as refineries compete[d] for the available demand." JA__[[redacted]]. These challenges, plus the "escalating price of RINs," meant small refineries "face[d] burdens that could cause bankruptcy or closure." JA__[[redacted]]. Against this backdrop, DOE recognized that imposing the additional burden of RFS "compliance costs" would "likely ... lead to shut-down"—a conclusion worth 10 points (*i.e.*, full credit) on Metric 3.c. JA__[[redacted]].

Petitioners faced precisely these conditions in 2020 and 2021. Petitioner [redacted] for example, explained that COVID "significantly reduced" demand, production, and margin in both "2020 and 2021." JA__[[redacted]]. Compared to 2019 levels, net refining margin plummeted [redacted] in 2020. JA__, __, __[[redacted]]. And 2021 was much the same, with margins still half of pre-pandemic levels. *See* JA__[[redacted]]. Other small refineries submitted similar evidence.[12]

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[12] *E.g.*, JA__[[redacted]] ([redacted]); JA__-__[[redacted]] ([redacted]; JA__-__[[redacted]] ([redacted]); JA__-__[[redacted]] ([redacted]).

Petitioners thus presented the very evidence DOE itself had deemed probative under Metric 3.c. Yet despite that evidence, DOE awarded many small refineries 0 points on Metric 3.c for 2020 and 2021—the height of the pandemic—and EPA adopted those scores. *E.g.*, JA__, __[[redacted]].

DOE's explanation? Petitioners supposedly didn't "identify any specific financial burdens associated with compliance costs that would likely lead to a shutdown." JA__, __[[redacted]] ([redacted] *see also*, *e.g.*, JA__[[redacted]] ([redacted]); JA__, __[[redacted]] ([redacted]). As a result, many petitioners received only partial exemptions for both 2020 and 2021. *E.g.*, JA__, __[[redacted]; JA__-__[[redacted]] ([redacted]); JA__[[redacted]] ([redacted]).

But petitioners identified numerous "specific financial burdens" stemming from the pandemic, JA__, __[[redacted]]—including the same burdens DOE had previously highlighted.[13] Indeed,

[13] *Compare* JA__[[redacted]] (DOE recognizing for [redacted] that COVID led to "reduced demands" and "low refining margins"), *with*, *e.g.*, JA__[[redacted]], *and* JA__[[redacted]] ([redacted]

DOE recognized that these burdens "could cause bankruptcy or closure." JA__[[redacted]]. And it acknowledged the correlation between these burdens and the likelihood that compliance costs would lead to shutdown. *See* JA__[[redacted]]. Meanwhile, neither DOE nor EPA cited contrary evidence or offered any other reason for rejecting petitioners' requests. Because respondents' explanation "runs counter to the evidence" before the agencies, *State Farm*, 463 U.S. at 43, and "the record belies" the agencies' only asserted rationale, *Petrol. Commc'ns, Inc. v. FCC*, 22 F.3d 1164, 1172 (D.C. Cir. 1994), their actions are arbitrary.

B. Respondents failed to explain their inconsistent scoring.

At a minimum, respondents failed to explain why COVID affected viability in the 2019 compliance year and not during the height of the pandemic in 2020 and 2021. That independently warrants remand.

[redacted] explaining for 2020 and 2021 petitions that COVID "significantly reduced demand, production, revenue, and margin"); *compare* JA__[[redacted]] ([redacted] explaining in 2020 petition that "[d]emand for transportation fuel has plummeted" because of COVID), *with* JA__[[redacted]] ([redacted]) (EPA asserting DOE "considered COVID" for the 2020 [redacted] petition without awarding points or explaining further).

An agency "must articulate the reasoning behind its decision with sufficient clarity to enable petitioners and this court to understand the basis for its decision." *Jost v. STB*, 194 F.3d 79, 88 (D.C. Cir. 1999). That includes "explain[ing] how an outcome coheres with previous decisions." *Balt. Gas & Elec. Co. v. FERC*, 954 F.3d 279, 286 (D.C. Cir. 2020). Here, respondents fell short by failing to explain why they awarded points for COVID in 2019, but not in 2020 and 2021.

COVID first hit the United States in January 2020, when the 2019 compliance date remained open and many exemption petitions remained undecided. DOE and EPA recognized that COVID had adversely affected the whole industry, awarding all petitioners a full score for 2019 because RFS compliance would likely have led to shutdown. *E.g.*, JA__[[redacted]] ([redacted]); JA__[[redacted]] ([redacted]); JA__[[redacted]] ([redacted]). Then, when petitioners raised COVID in their petitions for 2020 and 2021, the pandemic's peak, the agencies awarded no points. *E.g.*, JA__, __, __[[redacted]] ([redacted]); JA__, __[[redacted]] ([redacted]).

Respondents failed to acknowledge this glaring and "unexplained inconsistency." *Encino Motorcars*, 579 U.S. at 222 (citation omitted); *e.g.*, JA__, __[[redacted]]; JA__, __[[redacted]]; JA__, __[[redacted]].

"Perhaps there is some explanation why" the pandemic warranted hardship relief only in 2019. *Ohio*, 603 U.S. at 293. "But if there is an explanation, it does not appear in" the Decisions. *Id.* at 293-94.

IV. EPA's unlawful failure to comply with the Clean Air Act's mandatory deadline caused concrete harm the agency must remedy.

EPA didn't decide the vast majority of petitioners' hardship petitions by the deadline set out in the Clean Air Act. Its delay caused petitioners severe harms. And its failure to consider or mitigate those harms was unlawful.

EPA has routinely flouted Congress's "mandatory command," *Bufkin*, 604 U.S. at 379, that the agency "shall act" on exemption petitions "not later than 90 days after" receipt, §7545(o)(9)(B)(iii). EPA's delays have left small refineries with significant "financial uncertainty"—forced to buy RINs they may not need, retire RINs they may not get back, rush to court to secure stays to avoid noncompliance, forgo capital projects to preserve capital to buy RINs if needed, or hold off on buying RINs in expectation of receiving relief while facing bet-the-company exposure to liability if they guess wrong. *See*, *e.g.*, GAO Report 23-24.

The cost to a small refinery of not knowing whether it will receive an exemption is significant, given that RFS compliance often costs tens of millions of dollars and is a refinery's second or third highest operating expense after crude oil and labor. *E.g.*, JA__[[redacted]] ([redacted]); JA__[[redacted]] ([redacted]); JA__[[redacted]] ([redacted]).

This instability "lessen[s] the aid provided to small refineries" by diminishing the value refineries can obtain from their RINs. GAO Report 23. For example, when EPA belatedly returned RINs that refineries previously retired, some refineries sold those RINs "at a loss" or else had no use for them at all. *Id.* at 24. Other refineries didn't buy RINs but carried the obligation as debt on their balance sheets, increasing their cost of credit and forcing them to defer capital projects and incur higher borrowing costs. *See*, *e.g.*, JA__-__[[redacted]].

Under the Clean Air Act as well as "basic principles of due process" and administrative law, EPA had a "duty" to "reasonably consider[ ]" and "mitigate any effects of its delay[s] on obligated parties" and to remedy the "hardship caused to obligated parties" by its delays. *ACE*, 864 F.3d at 718-19, 721. Yet EPA didn't even consider the severe economic harms its delays in adjudicating petitioners' exemption petitions had caused, much less attempt to mitigate them. That was unlawful and arbitrary.

Indeed, even as EPA embraces the Ninth Circuit's decision in *Kern*, *supra* p. 42, the agency ignores that the decision instructed EPA to exercise its "authority under the [Clean Air Act]" to "compensate[ ]" refineries that suffered "injur[ies] ... when [EPA's] own legal errors ... deprived [them] of a benefit" to which they were entitled. 2022 WL 3369528, at *3. At minimum, *Kern* requires that EPA compensate refineries "for the loss in value that [their] unexpired RINs experienced between the time when the EPA should have acted on [their hardship] petitions] ... and when it ultimately granted th[ose] petition[s]." *Id.*

V. Respondents arbitrarily adjudicated various individual exemption petitions.

On top of the defects common to several petitioners, respondents also erred in ways unique to individual petitioners.[14] In a campaign of death by a thousand cuts, the Decisions are replete with instances of arbitrary action—further evidencing respondents' longstanding efforts to narrow the small-refinery exemption scheme.

A. Respondents' inconsistent treatment of 2018 petitions was arbitrary.

In August 2019, EPA granted hardship exemptions to 31 small refineries for the 2018 compliance year. Of those refineries, 20 satisfied only one component of the DOE matrix—disproportionate impacts or viability impairment—so DOE recommended granting them only 50% exemptions. JA__ & n.21[AR_0032595&n.21]; Pet'rs Br. 38, *Renewable Fuels Ass'n v. EPA*, No. 19-1220, 2020 WL 7226597 (D.C. Cir. Dec. 7, 2020). As explained in its decision, EPA nevertheless awarded the refineries full relief. JA__[AR_0031197]. In EPA's view, the DOE matrix recognized two different ways to demonstrate disproportionate economic

[14] Each of the following arguments is joined only by the petitioners discussed therein.

hardship; if a small refinery showed either, it was entitled to a full exemption. JA__[AR_0031198].

When EPA issued the Decisions in 2025, however, it took a different approach. EPA invoked its statutory "discretion" to grant partial relief in the form of 50% exemptions to the 74 refineries that satisfied only one component of the DOE matrix. JA__[AR_0032605]. Of those, three were for the 2018 compliance year—including one for a small refinery that had submitted its 2018 petition in early 2019—just like the 31 other small refineries whose 2018 petitions were granted in August 2019.[15] Although EPA articulated a rationale for awarding 50% exemptions generally, it offered no reason for granting *partial* relief to 2018 petitions despite previously granting identically situated petitions *full* relief.

EPA's inconsistent treatment violates the "great principle that like cases must receive like treatment." *Grayscale Invs., LLC v. SEC*, 82

[15] [redacted] received partial exemptions for 2018 in the August 2025 decisions. [redacted] submitted its 2018 petition in early 2019, but EPA denied it when it granted 31 others in August 2019. [redacted] challenged that denial, and EPA later acknowledged a mistake in handling [redacted], but litigation over the denial had not been resolved when EPA issued the August decisions.

F.4th 1239, 1245 (D.C. Cir. 2023). To do otherwise is "the quintessence of arbitrariness and caprice." *Colo. Interstate Gas Co. v. FERC*, 850 F.2d 769, 774 (D.C. Cir. 1988).

EPA didn't "even acknowledge, much less justify," its inconsistent approach to 2018 petitions. *Public Citizen v. Fed. Motor Carrier Safety Admin.*, 374 F.3d 1209, 1222-23 (D.C. Cir. 2004). And it failed to "support [its] disparate treatment with a reasoned explanation and substantial evidence in the record." *Burlington N. & Santa Fe Ry. Co. v. Surface Transp. Bd.*, 403 F.3d 771, 777 (D.C. Cir. 2005).

B. Respondents arbitrarily declined to evaluate the totality of factors for [redacted] in 2018.

Respondents' application of Metric 3.a to [redacted] 2018 petition was arbitrary. In assessing whether compliance would impair efficiency gains, *see supra* Part II.E, respondents considered only whether the refinery's 2018 petition listed specific projects that had been cancelled. But they arbitrarily failed to conduct the requisite "totality of [the] factors" analysis as contemplated by the DOE Study. JA__[[redacted]].

For instance, the refinery explained that [redacted] JA__[[redacted]]; JA__[[redacted]] ([redacted]).

But in scoring the petition, DOE merely stated that the refinery "did not identify any specific capital projects delayed or deferred." JA__[[redacted]]. EPA adopted DOE's score without further explanation. [redacted] JA__-__[[redacted]].

Having established that this metric should consider the "totality of factors," it's arbitrary for respondents not to do so.

C. Respondents arbitrarily discounted the impact of individual special events on the [redacted] in 2020.

The decision to grant [redacted] suffers from an additional infirmity: Respondents arbitrarily disregarded events that led to a substantial loss in production.

In scoring Metric 3.b, DOE evaluates whether "[r]efinery specific events (such as a shutdown due to an accident, and subsequent loss of revenue) in the recent past that have a temporary negative impact on the ability of the refinery to comply with the RFS." JA__[AR_0031121]. [redacted] 2020 petition [redacted]

[redacted]

JA__[[redacted]]. DOE dismissed the materiality of this impact, characterizing the events as "normal operational upsets" and awarding a score of 0 on Metric 3.b. JA__[[redacted]]. EPA adopted DOE's scoring without further discussion. JA__-__[[redacted]].

This determination was arbitrary because the agencies failed to "articulate a *satisfactory* explanation" for why these events were normal. *State Farm*, 463 U.S. at 43 (emphasis added). They weren't. In 2020, the refinery [redacted] JA__[[redacted]]. [redacted] JA__[[redacted]].

Disregarding the impact of these events was also arbitrary because DOE [redacted]. *See Grayscale Invs.*, 82 F.4th at 1242 ("agencies must treat like cases alike"). [redacted] *See* JA__[[redacted]] ([redacted]).[16] Neither agency explained where the "materiality" line is or why two similarly situated

[16] In 2019, [redacted]

refineries should be on different sides of that line. *See State Farm*, 463 U.S. at 55. The Court should reject such arbitrary decisionmaking.

D. Respondents arbitrarily disregarded the impacts of events at the [redacted] in 2018.

Flaws in respondents' analysis of Metric 3.b also render their decision to grant [redacted] arbitrary.

In its 2018 petition, the refinery noted that it [redacted] JA__[[redacted]].

DOE awarded the refinery a score of 0, dismissing these serious impacts because "refinery turnarounds are normal operating events that are anticipated and planned. They do not constitute 'special events.'" JA__[[redacted]]. EPA adopted this scoring without further analysis. JA__-__[[redacted]].

But respondents took an entirely different approach with another refinery. [redacted]

[redacted] JA__[redacted]].

Such inconsistent decisionmaking without explanation is arbitrary. *See Grayscale Invs., LLC*, 82 F.4th at 1249.

E. Respondents arbitrarily concluded that [redacted] had adequate access to capital in 2018 when it did not.

Respondents' refusal to grant [redacted] is fatally flawed because respondents arbitrarily ignored data showing that the refinery suffered from a lack of access to capital.

In applying Metric 1.a, if a small refinery or its parent has no credit rating, DOE relied on "other financial information provided by the [survey] respondent (*such as* debt/equity ratios)." JA__[AR_0031119] (emphasis added). [redacted] petition provided that information: [redacted] JA__-__[[redacted]].

Yet DOE awarded a 0 on this metric, ignoring this evidence and stating only that [redacted] JA__[[redacted]]. EPA unquestioningly adopted DOE's scoring. JA__-__[[redacted]]. Respondents' determination was unlawful for multiple reasons.

First, the DOE Study requires DOE to consider "other financial information" that shows "poor access to capital." [redacted]. JA__-__[[redacted]]. In awarding a 0, DOE arbitrarily departed from its own rubric without explanation. *INS v. Yueh-Shaio Yang*, 519 U.S. 26, 32 (1996).

Second, respondents ignored their obligation to "treat like cases alike." *Grayscale*, 82 F.4th at 1242. In petitions for multiple years, [redacted] provided essentially the same explanation—that it had [redacted]. DOE gave [redacted], *see, e.g.*, JA__, __[[redacted]], while giving [redacted] a 0.

EPA's decisionmaking was equally inconsistent. EPA previously recognized the refinery's lack of financing opportunities. [redacted] JA__[[redacted]].

F. Respondents arbitrarily scored [redacted] differently in 2018 than they did in 2019 and 2020.

Even if respondents may lawfully consider the financial contributions of a refinery's parent, affiliates, or other subsidiaries in assessing hardship under Metric 1.b (*but see supra* Part II.A), respondents still arbitrarily applied this metric to [redacted] 2018 petition.

In 2018, [redacted] received [redacted] JA__, __[redacted]]. EPA adopted this scoring without explanation. JA__-__[[redacted]].

But respondents' determinations came at the same time they analyzed [redacted] petitions for 2019 and 2020. In those petitions, [redacted] received [redacted]. *See*, *e.g.*, JA__, __[[redacted]]. A few months later, DOE gave [redacted]. *See*, *e.g.*, JA__-__[[redacted]].

Respondents should have reached the same conclusion for 2018. The record demonstrated that in 2018, [redacted]. *See* JA__[[redacted]]. DOE's analysis for 2019 acknowledges as much. JA__[[redacted]]. It was arbitrary for the agencies to treat [redacted] 2018 request differently than its other requests, violating respondents' obligation "to treat like cases alike." *Westar Energy, Inc. v. FERC*, 473 F.3d 1239, 1241 (D.C. Cir. 2007).

G. Respondents unlawfully scored the [redacted] refineries' hardship applications.

Petitioner [redacted] EPA partially denied [redacted] petition for a hardship exemption for the 2019 compliance year, in part because DOE assigned 0 points on Metric 1.e, which addresses whether a refinery is subject to exceptional state regulations. *See* JA__-__[[redacted]]. Although [redacted] identified multiple [redacted] regulations that fit the bill, *see* JA__-__[[redacted]], DOE responded only that [redacted] "[redacted]," JA__[[redacted]]. EPA adopted DOE's score without further explanation. *See* JA__-__[[redacted]].

EPA also partially denied [redacted] exemption petitions for 2021, in part because DOE awarded 0 points on Metric 3.a. JA__-__[[redacted]]. DOE's sole rationale was that [redacted] which purportedly prevented DOE from comparing each refinery's compliance costs to its free cash flow. JA__[[redacted]]. But the data [redacted] provided permitted that very analysis. Each of these decisions was arbitrary.

1. Respondents failed to explain why [redacted] wasn't subject to exceptional state regulation in 2019.

Respondents arbitrarily scored the [redacted] refinery on Metric 1.e in 2019. This metric asks whether a small refinery is subject to exceptional state regulations that limit "blending opportunities" or "increase compliance costs." JA__-__[AR_0031119-20].

[redacted] told the agencies in its 2019 hardship application that it was subject to [redacted] JA__-__[[redacted]]. For example, [redacted], which made it cost-prohibitive to produce gasoline blends with over 10% ethanol, 89 Fed. Reg. 14,760, 14,761 (Feb. 29, 2024), and significantly increased operating costs, EPA, *Request from States for Removal of Gasoline Volatility Waiver: Technical Support Document & Cost Analysis* 41 (Feb. 2024), tinyurl.com/y8s6xjkp; *see* JA__[[redacted]] ([redacted]). Only a handful of jurisdictions across the nation impose a similar restriction.

See EPA, *Gasoline Reid Vapor Pressure* (last updated Oct. 23, 2025), tinyurl.com/57xby8fj.

In response, EPA said nothing, and DOE offered only a bare conclusion: "The petitioner is located [redacted] JA__[[redacted]]. DOE never explained *why* [redacted], let alone why those raised by [redacted] fell short. Such a "conclusory" statement without any explanation renders respondents' decision arbitrary and capricious. *Am. Clean Power Ass'n v. FERC*, 54 F.4th 722, 727 (D.C. Cir. 2022).

2. Respondents' scoring of the efficiency-impairment metric for [redacted] was arbitrary and capricious.

DOE told small refineries for over a decade that Metric 3.a, which measures efficiency impairment, was a flexible, multifactor test, focused on the finances of "the firm." *See supra* Part II.E. But then it penalized [redacted] for failing to provide information about a single financial measure concerning one part of the firm.

Even if respondents validly could apply their new approach to Metric 3.a (*but see* Part II.E), that decision was arbitrary because DOE could have reasonably determined from the data [redacted] provided that [redacted]

[redacted] merited relief. DOE's new test compares RFS compliance costs to annual free cash flow. *See* JA__[[redacted]]. [redacted] data permitted DOE to assess both factors.

Specifically, [redacted] provided refinery-specific annual RFS compliance costs. JA__[[redacted]]. And the financial data [redacted] provided allowed DOE to assess [redacted] free cash flow by apportioning financial information based on the refinery's throughput. DOE could [redacted] free cash flow for the year.

That analysis would have revealed that [redacted] RFS compliance costs were more than [redacted] of free cash flow in 2021. DOE's excuse that it couldn't "assess[] the significance of [[redacted] compliance] cost relative to the [refinery]'s income," *e.g.*, JA__[[redacted]], "runs counter to the evidence before the agency" and is arbitrary, *State Farm*, 463 U.S. at 43.

H. Respondents arbitrarily scored two refineries on the percentage-of-diesel-production metric.

Metric 1.d considers the refinery's percentage of diesel production. JA__[AR_0031119]. EPA awarded just 5 of 10 points on this metric on the 2019 petition of [redacted], JA__[[redacted]]—and the 2022 petition of [redacted], JA__[[redacted]]. JA__, __[[redacted]]. In doing so, DOE ignored petitioners' argument that because the industry average diesel production had decreased, so should DOE's 40% cutoff for scoring the full 10 points. *See* JA__-__, __-__[[redacted]].

DOE's refusal to adjust its scoring thresholds was arbitrary. The DOE Study recognized that "refineries that disproportionately favor diesel production over gasoline inherently have a more difficult compliance pathway" because the percentage of renewable fuel "normally" blended into diesel is lower than that for gasoline. JA__[AR_0031119].

Accordingly, DOE provided that, under Metric 1.d, "[r]efineries that have greater than the industry average of approximately 32 percent diesel production receive a score of 5; those at 40 percent diesel or above have a score of 10." *Id.*

But the industry average for diesel production changed between 2011 and 2019. So petitioners argued in their exemption petitions that DOE "should also adjust the 40%" cutoff set in 2011 because "[i]n 2017, 2018, and 2019, the industry average diesel production … was much lower than the 2011 average—28.2%, 28.9%, and 29.5%—respectively." JA__-__[[redacted]]. Because petitioners' diesel percentages exceeded the industry average—in both absolute and percentage terms—by an amount greater than what DOE had said warranted 10 points, petitioners should have received 10 points on this metric. JA__-__[[redacted]]; JA__[[redacted]].

DOE refused, summarily saying that [redacted] diesel production was "below 40 percent," so "a score of five is given for this element." JA__, __-__[[redacted]].

That was arbitrary. DOE didn't dispute that the industry average diesel production dropped to approximately 29% in 2019. Respondents' own data showed as much. *See* 83 Fed. Reg. 63,704, 63,740 (Dec. 11, 2018); Energy Information Administration, *U.S. Refinery Yield of Distillate Fuel Oil*, tinyurl.com/53drmerd. Thus, DOE could have stuck by its 40% threshold only by ignoring the new data entirely, *contra Portland Cement Ass'n v. EPA*, 665 F.3d 177, 187 (D.C. Cir. 2011), or by illogically treating the cutoff as untethered to the industry average, in contravention of the agency's own rationale for this metric, *contra World Shipping Council v. Fed. Maritime Comm'n*, 152 F.4th 215, 223 (D.C. Cir. 2025). Either way, DOE's action was arbitrary.

I. Respondents arbitrarily applied Metric 3.a in multiple ways.

1. Respondents arbitrarily ignored certain deferred projects.

In the Decisions, respondents excluded certain deferred projects from consideration under Metric 3.a. JA__[AR_0031121]. These exclusions were arbitrary.

For example, the agencies' scoring of Metric 3.a for [redacted] 2020 exemption petition illogically disregarded deferred turnaround costs. A turnaround occurs when a refinery, or a portion of it, temporarily shuts down and other projects cannot be undertaken. A refinery loses money every day it's shut down because of a turnaround. Despite the importance of these projects to a refinery's ability to remain efficient and competitive, respondents categorically disregarded [redacted]. JA__[[redacted]].

Similarly, respondents' scoring of Metric 3.a for [redacted] 2020 exemption application illogically excluded efficiency projects related to fuel logistics. [redacted] JA__-__[[redacted]]. In response, DOE [redacted] and it awarded a 0 on Metric 3.a. EPA adopted DOE's score without further explanation. JA__[[redacted]].

Respondents' categorical exclusion was flawed for multiple reasons. First, excluding logistics projects from this metric contradicts the DOE Study, which treated logistics—including pipelines and storage facilities—as a normal part of the refining business. *E.g.*, JA__, __[AR_0031108;AR_0031114]; *see also* JA__[AR_0031135].

Second, the distinction is irrational. EPA has repeatedly said that the RFS program is designed to incentivize investments in renewable-fuel-related logistics infrastructure (such as terminals and equipment to facilitate biofuel blending and distribution).[17] If such investments are desirable because they drive growth in renewable fuels, the inability to invest in such projects must be relevant to assessing hardship from the cost of RFS compliance. Treating that inability as irrelevant contradicts EPA's stated goal without "acknowledge[ment]" or "explanation." *Am. Wild Horse Pres. Campaign v. Perdue*, 873 F.3d 914, 923 (D.C. Cir. 2017).

Third, in some cases DOE *has* counted deferred logistics projects under Metric 3.a. For example, DOE awarded [redacted] a 5 on its 2019 and 2020 petitions based in part on a deferred [redacted] project. JA__-__, __-__[[redacted]]. That disparate treatment violates EPA's obligation "to treat like cases alike." *Westar Energy*, 473 F.3d at 1241.

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[17] *See*, *e.g.*, EPA, *Denial of Petitions for Rulemaking to Change the RFS Point of Obligation* 60-61 (Nov. 2017), tinyurl.com/mweuje6m.

2. EPA improperly scored [redacted] compliance years.

For [redacted], EPA denied relief to [redacted] based on an erroneous standard applied to no other [redacted] petitioner. As to viability (the second index in the DOE matrix), EPA summarily concluded that "[p]ositive refining margins and RFS compliance would not appear … to threaten the refinery's economic viability." JA__, __[[redacted]].

EPA ignored that refining margins are evaluated under the *first* part of the matrix (structural/economic metrics), not the second (viability metrics), and that a refinery need not demonstrate a threat to viability to secure a passing score on the viability metrics. Respondents have long told small refineries that under Metric 3.a, they need only demonstrate that RFS compliance costs would impair their ability to invest in efficiency gains needed for longer-term competitiveness—not that they face an immediate risk of shutdown. *See* JA__[AR_0031121] (discussing Metric 3.a). EPA didn't recognize that it was deviating from the methodology applied to other [redacted] petitioners, much less justify the departure. The deviation was thus arbitrary.

3. Respondents failed to consider how [redacted] tax obligations affected its ability to make efficiency investments.

In scoring Metric 3.a, respondents ignored [redacted] detailed showing regarding its obligations to distribute funds to its owners to cover tax payments. DOE gave [redacted]. DOE added the value of [redacted] distributions—a "large portion" of which "serve to cover … taxes and cannot be reallocated elsewhere"—to the company's cash flow from operations, characterizing these distribution payments as additional sources of available cash to achieve efficiency gains. *Compare* JA__[[redacted]], *and* JA__[[redacted]], *with* JA__[[redacted]], *and* JA__[[redacted]]. But that money indisputably was not available for efficiency improvements; [redacted] needed to fund payment of tax liability.

If DOE hadn't mischaracterized the payments, it would have calculated that [redacted] compliance costs consumed [redacted] cash flow from operations, warranting a 10 score for both years. *Compare* JA__-__, __-__[[redacted]] *with* JA__, __[[redacted]]. Respondents arbitrarily failed to recognize that funds earmarked for tax payments aren't cash available for efficiency investments.

4. Respondents arbitrarily scored [redacted] based on parent company investments.

[redacted] demonstrated that it had to suspend all efficiency projects during the 2020 compliance year because of compliance costs and, as a result, should have received a full 10 score on Metric 3.a. JA__[[redacted]]. But respondents gave [redacted] JA__[[redacted]]. That reasoning improperly conflated [redacted]. *See supra* Part II.A.

Even if separate legal entities could be conflated, respondents' scoring was irreconcilable with Metric 3.a's purpose: evaluating a refinery's ability to implement efficiency gains. A parent company's decision to shut down a major processing unit supports [redacted]'s claim that the refinery was suspending efficiency improvements.

5. Respondents arbitrarily scored [redacted] based on incorrect financial data.

Respondents' 2022 and 2023 scoring of Metric 3.a for [redacted] hinged on a cash-flow-from-operations number found nowhere in [redacted] petition or supporting financial data—and one EPA hasn't traditionally evaluated. *See* JA__-__, __[[redacted]]. Relying on respondents' established totality-of-factors approach, [redacted] didn't submit its 2022 cash flow from operations and instead submitted specific evidence of efficiency impairments. JA__-__, __-__[[redacted]]. EPA ignored that information and instead derived—without explanation—its own cash-flow-from-operations number.

As explained, *supra*, in Part II.E, [redacted] had no notice that EPA would base its Metric 3.a evaluation solely on cash flow from operations and ignore clear evidence of efficiency impairments. That was arbitrary. If EPA wants to consider cash flow from operations, it must give [redacted] the opportunity to submit such data for 2022.

6. Respondents used a different methodology to score two refineries' 2023 petition.

When scoring the 2021 petitions for [redacted], respondents gave scores of 10 on Metric

3.a because the refineries' compliance costs exceeded their cash flow from operations—even though the refineries "*did not* provide … list[s] of proposed capital projects which were not approved due to … estimated RFS compliance cost[s]." JA__, __[[redacted]] (emphasis added). Yet, for 2023, respondents gave both refineries 0 scores because they purportedly failed to provide lists of specific deferred projects. JA__, __[[redacted]]. EPA didn't "display [any] awareness that it [wa]s changing [its] position," much less provide a "reasoned explanation" for the change, rendering EPA's decisions arbitrary. *Encino Motorcars*, 579 U.S. at 221-22.

EPA also arbitrarily ignored the fact that the refineries *did* identify deferred efficiency projects. In their petitions, they each explained that no metric improved from prior years and some had worsened. JA__, __[[redacted]]. They appended their prior-year petitions showing that they continued to face disproportionate economic hardship. JA__-__, __-__[[redacted]]. There, each refinery listed and described capital projects that it had been "forc[ed] … to table," explained that its compliance costs were "significant enough to eliminate any possibility of executing efficiency projects," JA__, __[[redacted]], and explained that without exemptions, it would "face an immediate liquidity crisis," JA__, __[[redacted]].

The refineries made clear that they immediately faced the very "risk" that Metric 3.a is intended to assess. JA__[[redacted]]. Respondents arbitrarily failed to acknowledge that information or explain why they ignored those project lists. *See Sinclair*, 114 F.4th at 711.

7. Respondents arbitrarily penalized [redacted] for failing to provide full-year financial statements.

[redacted] 2023 hardship petition provided financial statements for the second half of 2023, *all* the financial data available at the time of submission. As it explained, [redacted] JA__[[redacted]], [redacted] JA__[[redacted]], [redacted]. JA__[[redacted]]. Respondents nevertheless gave [redacted] a 0 for "not provid[ing] financial data for the full year," penalizing the refinery for its inability to [redacted]. JA__[[redacted]].

EPA's decision was doubly arbitrary. Even though [redacted] provided detailed information explaining that its [redacted] JA__[[redacted]], EPA awarded a 0 because it inexplicably changed positions and demanded information on a comparison of compliance costs and cash flow from operations. JA__[AR_0022110]. And when [redacted] explained it wasn't possible due to the transaction, respondents arbitrarily failed to consider additional evidence.

J. Respondents' Metric 1.c analysis irrationally penalized diesel-only refineries for their inability to blend ethanol.

In their 2019-2024 scoring of Metric 1.c (local market acceptance of E10, E85, and biodiesel), respondents assessed *all* small refineries on this metric based solely on whether their local markets accepted E10. That was arbitrary, as explained, *supra*, in Part II.D. It was also arbitrary as to [redacted], which produce *only* diesel fuel and *no* gasoline. *See* JA__-__, __[[redacted]] ([redacted]); JA__, __[[redacted]] ([redacted]).

Local acceptance of E10 is irrelevant to diesel-only refineries' ability to blend renewable fuel for RFS compliance. Even widespread acceptance of E10 in their local markets is useless because they have no gasoline to blend with ethanol. That's a critical reason why diesel-only small refineries experience disproportionate economic hardship.

Respondents arbitrarily saddled these refineries with scores of 0 on Metric 1.c, even though E10 acceptance was irrelevant to these refineries' compliance capabilities. JA__-__[[redacted]] ([redacted]); JA__-__[[redacted]] ([redacted]). Because no degree of local market acceptance of E10 can help these refineries blend for compliance, a score of 0 was arbitrary because it ignored that harm.

K. Respondents inconsistently applied Metric 3.b to [redacted].

Metric 3.b assesses whether a small refinery experienced a "[r]efinery specific event[]" that caused "a temporary negative impact on the ability of the refinery to comply with the RFS," such as a "shutdown due to an accident, and subsequent loss of revenue." JA__[AR_0031121].

In its 2023 petition, [redacted] made that showing: [redacted]

[redacted] JA__[[redacted]]. Yet, respondents gave [redacted] a 0 based on a "*general* test of loss of 10% annual production" that appears not to have been applied before or since for any other petitioner. JA__[[redacted]] (emphasis added).

Respondents haven't articulated and applied a consistent standard, and their inconsistent scoring of this metric was arbitrary.

L. Respondents scored Metric 3.c inconsistently and ignored evidence that certain refineries were likely to shut down.

For 2024, DOE gave [redacted] a score of 0 on Metric 3.c, concluding that "[n]o specific concerns were raised for the refinery going forward." JA__[[redacted]]. That assertion was directly contrary to the record evidence. The refinery detailed its risk of imminent shutdown absent an exemption, explaining that it [redacted] JA__[[redacted]] [redacted] JA__[redacted]].

Respondents arbitrarily failed to explain why they didn't consider this evidence of imminent shutdown for Metric 3.c. JA__[redacted]. *See State Farm*, 463 U.S. at 43.

M. Respondents arbitrarily scored Metric 3.a and 3.c of [redacted] 2022 exemption petition.

Respondents' scoring of [redacted] 2022 petition was arbitrary as to Metrics 3.a. and 3.c, resulting in only a 50% exemption for that year. JA__-__[redacted]. Even assuming DOE's test for Metric 3.a was permissible (*but see supra* Part II.E), [redacted] individual scoring was arbitrary for three reasons: (1) DOE misscored Metric 3.c under its own test; (2) DOE treated [redacted] dividends as profit distributions rather than pass-through tax payments when scoring Metrics 3.a and 3.c; and (3) DOE used a new, more restrictive method of measuring compliance costs under Metrics 3.a and 3.c that ignored [redacted] actual production costs.

First, DOE incorrectly scored Metric 3.c based on its own test. DOE scored Metric 3.c by comparing [redacted] 2020-2022 net cash flow from operations with compliance costs during the same time period. JA__[redacted]. By that calculation, [redacted] compliance costs were approximately 151% of net cash flow from operations during the three-year look-back period. *See* JA__[redacted] [redacted]

[redacted] JA__[[redacted]] ([redacted]); JA__[[redacted]] ([redacted]); JA__-__[[redacted]] ([redacted]).

Given this disparity, which translates to an eight-figure deficit, DOE acted arbitrarily by giving [redacted] a score of 0. While DOE conceded these "signs of financial and liquidity challenges are concerning," DOE justified the score by noting "the improvement in 2022 compared to 2021" in [redacted] net cash flow from operations. JA__[[redacted]]. But the fact that [redacted] improved doesn't matter when its total compliance costs dwarfed its net cash flow from operations over the look-back period. Compliance costs will likely cause shutdown when they constitute 151% of net cash flow from operations over the prior three years.

Second, DOE's scoring of Metrics 3.a and 3.c was arbitrary because it treated [redacted]. *See* JA__[[redacted]] [redacted] JA__[[redacted]] [redacted]; JA__[[redacted]] [redacted]

[redacted]; JA__, __[[redacted]] [redacted]; JA__[[redacted]] [redacted]. EPA's mistake skewed its assessment of [redacted] 2022 compliance costs compared to 2022 net cash flow from operations (Metric 3.a), and 2020-2022 compliance costs compared to net cash flow (Metric 3.c).

When scoring Metric 3.c, DOE noted (1) [redacted] net cash flow from operations, and (2) its dividend payments, over the 2020-2022 period. JA__[[redacted]]. DOE, however, should have netted those two amounts because [redacted] tax distributions were paid from net cash flow from operations, which *decreased* its cash flow from operations. After accounting for reductions from tax payments, [redacted] compliance costs, JA__, __-__[[redacted]], were a staggering [redacted] of cash flow from operations in 2020-2022, JA__[[redacted]]. Thus, [redacted] should have received a 10 for Metric 3.c.

Third, DOE's scoring of Metrics 3.a and 3.c was arbitrary because EPA measured compliance costs without considering [redacted] actual production costs. After receiving [redacted] 2022 petition, EPA claimed that [redacted] miscalculated the value for differential cost of blended renewable fuel and asked [redacted] to recalculate. JA__[[redacted]]. EPA stated that the metric is "supposed to be the purchased (or produced) cost of renewable fuel minus the sales price of the blended fuel (e.g., cost of purchased ethanol minus sales price of E10)." *Id.* Applying EPA's new methodology, [redacted] compliance costs fell [redacted], adversely impacting scoring for the two viability metrics that consider compliance costs—Metrics 3.a. and 3.c. *Compare* JA__[[redacted]] [redacted], *with* JA__[[redacted]] [redacted]; *see also* JA__[[redacted]] [redacted]; JA__[[redacted]] [redacted].

[redacted] objected to this method of calculating compliance costs as a departure from EPA's previous methodology and as understating [redacted] actual compliance costs. JA__[[redacted]]. EPA's long-established method of calculating differential cost was the weighted average cost of acquiring each of the listed renewable fuel types, less the *production cost per gallon* for the applicable refined products produced by the refinery. *See* JA__, __, __[[redacted]]. EPA's new method is purchased (or produced) cost of each of the listed renewable fuel types, less the *sales price* of the blended fuel. *See* JA__, __[[redacted]].

There are meaningful differences between these two methods. *See* JA__[[redacted]]. Unlike sales price, production cost takes into consideration the full gamut of expenses associated with the creation of refined products, including refinery operational expenses, manpower, and the [redacted]. *Id.* The new method ignores the fact that "B99 and ethanol are more expensive feedstocks [or] blending components compared to crude." *Id.* It also "incorrectly assumes that the volume blended increases the sales volume rather than replacing the crude volume." *Id.*

By "subtracting the purchased (or produced) cost of renewable fuel (input price) from the sales price of the blended fuel (output price)," the new method "improperly treats the output price as pure profit." *Id.* And it fails to capture the cost to [redacted] of paying a premium to purchase ethanol with the RIN still attached to meet its compliance obligations—without which [redacted] would purchase that ethanol at a lower price by buying ethanol without the RIN attached. *Id.*

DOE scored Metric 3.a by comparing [redacted] compliance costs with net cash flow from operations in 2022. JA__[[redacted]]. However, if DOE used [redacted] method of calculating compliance costs based on production costs, [redacted] compliance costs would have been more than [redacted] of net cash flow from operations in 2022. *See* JA__[[redacted]] [redacted]; JA__[[redacted]] [redacted]; JA__[[redacted]] [redacted]; JA__[[redacted]] [redacted]. If EPA had considered cash flow from operations *after* dividend tax distributions, that percentage would've increased to more than [redacted]. *See id.* DOE recommends a score of 5 for 25-49%, suggesting [redacted] should have received a score of at least 5 for Metric 3.a.

EPA ignored all these important differences, *see Ohio*, 603 U.S. at 294, and failed to acknowledge that it was changing its approach or explain that change, *see Encino Motorcars*, 579 U.S. at 221. Moreover, [redacted] had a reliance interest in EPA's established method of calculating differential cost, and retroactive application of a different calculation methodology is impermissible. *See Sierra Club v. Whitman*, 285 F.3d 63, 68 (D.C. Cir. 2002). Even assuming EPA wasn't changing its approach in calculating RFS compliance costs, EPA's reliance on sale price rather than production cost was arbitrary, as it substantially understated [redacted] actual cost of compliance. Given these mistakes, it was arbitrary for EPA to award [redacted] a 50% exemption for 2022, but a 100% exemption for every other compliance year from 2018 to 2024. JA__[[redacted]].

N. Exemptions for Calumet Shreveport Refining and Calumet Montana Refining should be full, not partial.

EPA determined that Calumet Shreveport Refining and Calumet Montana Refining (the Calumet petitioners) suffered disproportionate economic hardship because of RFS compliance. JA__[AR_0003463-3504;AR_0004307-4349]. But rather than extending "the exemption under subparagraph (A)," §7545(o)(9)(B)(i), EPA instead afforded the Calumet petitioners different relief—a "50 percent exemption," JA__[AR_0003504;AR_0004349]. In doing so, EPA converted a specific and limited congressional grant of authority to extend the blanket initial exemption into a general equitable power to mete out piecemeal relief. That decision violates the Clean Air Act.

1. The statute provides a "blanket exemption."

The Act authorizes EPA to grant "an extension of the *exemption under subparagraph (A)* for the reason of disproportionate economic hardship." §7545(o)(9)(B)(i) (emphasis added). The exemption under subparagraph (A), in turn, provided a complete but temporary exemption from RFS compliance: "The requirements of paragraph (2) shall not apply to small refineries until calendar year 2011." §7545(o)(9)(A)(i). The Supreme Court has interpreted this language as "creat[ing] a blanket exemption" from compliance through 2011 that EPA may extend. *HollyFrontier*, 594 U.S. at 387. As befitting a "blanket exemption," when the exemption under subparagraph (A) was in effect, small refineries were exempt from *all* RFS obligations, not just half of them. *Id.*

Congress then acted specifically to provide two mechanisms for extending subparagraph (A)'s blanket exemption. The first, which isn't at issue, required DOE to conduct a study to "determine whether [RFS] compliance … would impose a disproportionate economic hardship on small refineries," and if so, required EPA to "extend the exemption" for "a period of not less than 2 additional years." §7545(o)(9)(A)(ii). The second—invoked by the Calumet petitioners—authorized small refineries to petition for extension of the exemption under subparagraph (A) "for the reason of disproportionate economic hardship." §7545(o)(9)(B)(i). This mechanism didn't include a temporal limitation, instead authorizing small refineries to petition for an extension of the exemption under subparagraph (A) "at any time." *Id.*; *see also HollyFrontier*, 594 U.S. at 395 ("[S]ubparagraph (B)(i) expressly contemplates exemptions beyond 2013—'at any time' hardship conditions are satisfied.").

Given the Act's plain language and Supreme Court precedent interpreting subparagraph (A) as authorizing extension of a "blanket exemption," EPA's decision to grant the Calumet petitioners only "partial exemption[s]" violated the Act. EPA found that the conditions for extending the exemption were met—that the Calumet petitioners suffered disproportionate economic hardship. That being so, EPA lacked authority to do anything but grant an "extension" of the relief afforded by the exemption under subparagraph (A)—full exemptions.

Congress's decision to grant an initial blanket exemption under subparagraph (A), and to authorize later extensions of this blanket exemption at any time, is unambiguous evidence of its intent to ensure that small refineries remain viable through extension of full, not partial, exemptions from the RFS's requirements. EPA's contrary decision violates the Act's text as well as its purpose to relieve small refineries of disproportionate economic hardship inflicted by RFS compliance—all that hardship, not just half of it.

2. EPA's justifications for partial exemptions are meritless.

None of EPA's justifications for granting partial exemptions on the Calumet petitions is persuasive.

First, EPA contended that because adjudicating "disproportionate economic hardship" requires a discretionary judgment about the extent of economic hardship, Congress must also have granted EPA authority to tailor the scope of relief to the quantity of hardship determined. JA__[AR_0032605]. This theory finds no support in the statutory text. "An agency has no power to 'tailor' legislation to bureaucratic policy goals by rewriting unambiguous statutory terms." *Util. Air Regul. Grp.*, 573 U.S. at 325. The Act is clear: The exemption under subparagraph (A) that the Calumet petitioners sought to extend is the "blanket exemption" under subparagraph (A). *HollyFrontier*, 594 U.S. at 387, 395. Thus, EPA lacks authority to grant lesser relief.

Second, EPA argued that post-enactment congressional statements support partial exemptions. JA__[AR_0032606]. But "[p]ost-enactment legislative history (a contradiction in terms) is not a legitimate tool of statutory interpretation." *Bruesewitz v. Wyeth LLC*, 562 U.S. 223, 242 (2011). The various statements EPA cites don't change the plain statutory language or the Supreme Court precedent that the statute requires a "blanket exemption" from compliance.

* * *

The Decisions mark yet another episode in EPA's yearslong campaign to read the small-refinery exemption out of the Clean Air Act—despite the Supreme Court's and this Court's rejections of the agency's prior attempts to do so. EPA's latest effort should likewise be rejected. The Clean Air Act bars EPA from granting "exemptions" that are virtually worthless or denying relief by looking at entities beyond the "refinery" itself.

The Decisions also defy the APA's core command of reasoned and reasonable decisionmaking: EPA failed to consider important aspects of the statutory problem, departed from prior practice without acknowledging or explaining the change, and applied inconsistent standards to similar petitions. This Court should hold EPA to its statutory obligations and reject its outcome-driven and incoherent reasoning.

VI. The pending intervention motions should be denied.

The Court should deny the pending motions to intervene filed on behalf of entities representing biofuels interests. Would-be intervenors must demonstrate their "interest" in the case, Fed. R. App. P. 15(d), a term that "refers not to *any* interest the applicant can put forward, but only to a legally protectable one" equivalent to the injury required for Article III standing. *S. Christian Leadership Conf., (SCLC) v. Kelley*, 747 F.2d 777, 779 (D.C. Cir. 1984); *accord IGas Holdings, Inc. v. EPA*, 146 F.4th 1126, 1135 n.2 (D.C. Cir. 2025). This Court has stringently applied that standard in the small-refinery context.

In *Sinclair*, the Court rejected alleged injuries to "market share alone" because they were "sparse and conclusory," explaining that the "dynamics of the RIN market" are not "so clear" that the Court could simply assume injury "without further information or analysis." 114 F.4th at 722. Rather, to show injury, would-be intervenors must offer detailed economic modeling explaining how exemptions for the particular refineries at issue would adversely affect demand for the would-be intervenors' products. *Id.* at 723 & n.15.

Movants have failed to put forward that specific and concrete evidence. Instead, they rely on vague generalizations that mirror the deficient showing in *Sinclair*.[18] Given this wide evidentiary gap, intervention should be denied here for the same reasons.

VII. Remand without vacatur is the appropriate remedy.

Although vacatur is the default remedy for unlawful agency action, this Court's "precedents permit a court to remand without vacating the agency's action" when appropriate. *Am. Great Lakes Ports Ass'n v. Schultz*, 962 F.3d 510, 518 (D.C. Cir. 2020). This Court typically weighs "the seriousness of the order's deficiencies" and whether vacatur would result in "disruptive consequences." *Allied-Signal, Inc. v. U.S. Nuclear Regul. Comm'n*, 988 F.2d 136, 150 (D.C. Cir. 1993) (citation omitted). While the agency actions here are severely deficient, remand without vacatur is warranted to prevent serious disruption to the small-refinery petitioners.

[18] Doc. #2141396 (Clean Fuels Alliance asserting that "small-refinery exemptions" could result in "lowered [renewables] demand"); Doc. #2142907 (Coalition for Renewable Natural Gas failing to identify any specific member that would suffer injury or quantify purported harms); Doc. #2142907 (similar for Sustainable Advanced Biofuel Refiners Coalition); Doc. #2137689 (Growth Energy recycling declaration forecasting "reduc[ed] … national demand for renewable fuel" without elaboration); Doc. #2140424 (Renewable Fuels Association failing to identify injured members or quantify alleged harms).

For example, consider petitioners that received (some) non-expired RINs as a result of partial exemptions and have already retired those RINs to satisfy compliance obligations. "The egg has been scrambled" as to those RINs, and it would be highly disruptive to force petitioners to find a way to unscramble it while EPA considers whether it should have granted a full exemption instead. *Am. Great Lakes Ports Ass'n*, 962 F.3d at 519 (citation omitted).

More broadly, in the numerous instances in which EPA prejudicially erred in *part* of its analysis, it makes little sense as a matter of efficiency or fairness to set aside *correct* aspects of the Decisions and force all involved to start from square one. A targeted remand to correct respondents' errors is warranted.

CONCLUSION

The Court should grant petitioners' petitions and remand to the agencies to correct their errors.

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CERTIFICATE OF SERVICE

I hereby certify that, on July 10, 2026, I electronically filed the foregoing document with the Clerk for the United States Court of Appeals for the District of Columbia Circuit using the appellate CM/ECF system. Notice of this filing will be sent to all counsel of record by operation of the Court's electronic filing system.

July 10, 2026

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), the undersigned certifies that this brief complies with the applicable typeface, type style, and type-volume limitations. This brief was prepared using a proportionally spaced type (New Century Schoolbook, 14 point). Exclusive of the portions exempted by Federal Rule of Appellate Procedure 32(f) and D.C. Circuit Rule 32(e)(1), this brief contains 25,726 words, as authorized by this Court's February 24, 2026 Order (Doc. #2160825). This certificate was prepared in reliance on the word-count function of the word-processing system used to prepare this brief.

July 10, 2026

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APPENDIX A
COMMON ISSUES JOINED BY PETITIONER AND COMPLIANCE YEAR

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Addendum

ORAL ARGUMENT NOT YET SCHEDULED
No. 25-1180 & consolidated cases

In the United States Court of Appeals for the District of Columbia Circuit

REH COMPANY, LLC,

Petitioner,

v.

ENVIRONMENTAL PROTECTION AGENCY,

Respondent.

On Petitions for Review of Final Decisions of the Environmental Protection Agency, 90 Fed. Reg. 41,829 (Aug. 27, 2025); 90 Fed. Reg. 52,385 (Nov. 20, 2025)

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PRIMARY STATUTE

A. 42 U.S.C. § 7545(*o*)

* * *

(o) Renewable fuel program

(1) Definitions

In this section:

(A) Additional renewable fuel

The term "additional renewable fuel" means fuel that is produced from renewable biomass and that is used to replace or reduce the quantity of fossil fuel present in home heating oil or jet fuel.

(B) Advanced biofuel

(i) In general

(ii) The term "advanced biofuel" means renewable fuel, other than ethanol derived from corn starch, that has lifecycle greenhouse gas emissions, as determined by the Administrator, after notice and opportunity for comment, that are at least 50 percent less than baseline lifecycle greenhouse gas emissions.

(iii) Inclusions

The types of fuels eligible for consideration as "advanced biofuel" may include any of the following:

(I) Ethanol derived from cellulose, hemicellulose, or lignin.

(II) Ethanol derived from sugar or starch (other than corn starch).

(III) Ethanol derived from waste material, including crop residue, other vegetative waste material, animal waste, and food waste and yard waste.

(IV) Biomass-based diesel.

(V) Biogas (including landfill gas and sewage waste treatment gas) produced through the conversion of organic matter from renewable biomass.

(VI) Butanol or other alcohols produced through the conversion of organic matter from renewable biomass.

(VII) Other fuel derived from cellulosic biomass.

(C) Baseline lifecycle greenhouse gas emissions

The term "baseline lifecycle greenhouse gas emissions" means the average lifecycle greenhouse gas emissions, as determined by the Administrator, after notice and opportunity for comment, for gasoline or diesel (whichever is being replaced by the renewable fuel) sold or distributed as transportation fuel in 2005.

(D) Biomass-based diesel

The term "biomass-based diesel" means renewable fuel that is biodiesel as defined in section 13220(f) of this title and that has lifecycle greenhouse gas emissions, as determined by the Administrator, after notice and opportunity for comment, that are at least 50 percent less than the baseline lifecycle greenhouse gas emissions. Notwithstanding the preceding sentence, renewable fuel derived from co-processing biomass with a petroleum feedstock shall be advanced biofuel if it meets the requirements of subparagraph (B), but is not biomass-based diesel.

(E) Cellulosic biofuel

The term "cellulosic biofuel" means renewable fuel derived from any cellulose, hemicellulose, or lignin that is derived from renewable biomass and that has lifecycle greenhouse gas emissions, as determined by the Administrator, that are at least 60 percent less than the baseline lifecycle greenhouse gas emissions.

(F) Conventional biofuel

The term "conventional biofuel" means renewable fuel that is ethanol derived from corn starch.

(G) Greenhouse gas

The term "greenhouse gas" means carbon dioxide, hydrofluorocarbons, methane, nitrous oxide, perfluorocarbons, sulfur hexafluoride. The Administrator may include any other anthropogenically-emitted gas that is determined by the Administrator, after notice and comment, to contribute to global warming.

(H) Lifecycle greenhouse gas emissions

The term "lifecycle greenhouse gas emissions" means the aggregate quantity of greenhouse gas emissions (including direct emissions and significant indirect emissions such as significant emissions from land use changes), as determined by the Administrator, related to the full fuel lifecycle, including all stages of fuel and feedstock production and distribution, from feedstock generation or extraction through the distribution and delivery and use of the finished fuel to the ultimate consumer, where the mass values for all greenhouse gases are adjusted to account for their relative global warming potential.

(I) Renewable biomass

The term "renewable biomass" means each of the following:

(i) Planted crops and crop residue harvested from agricultural land cleared or cultivated at any time prior to December 19, 2007, that is either actively managed or fallow, and nonforested.

(ii) Planted trees and tree residue from actively managed tree plantations on non-federal land cleared at any time prior to December 19, 2007, including land belonging to an Indian tribe or an Indian individual, that is held in trust by the United States or subject to a restriction against alienation imposed by the United States.

(iii) Animal waste material and animal byproducts.

(iv) Slash and pre-commercial thinnings that are from non-federal forestlands, including forestlands belonging to an Indian tribe or an Indian individual, that are held in trust by the United States or subject to a restriction against alienation imposed by the United States, but not forests or forestlands that are ecological communities with a global or State ranking of critically imperiled, imperiled, or rare pursuant to a State Natural Heritage Program, old growth forest, or late successional forest.

(v) Biomass obtained from the immediate vicinity of buildings and other areas regularly occupied by people, or of public infrastructure, at risk from wildfire.

(vi) Algae.

(vii) Separated yard waste or food waste, including recycled cooking and trap grease.

(J) Renewable fuel

The term "renewable fuel" means 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.

(K) Small refinery

The term "small refinery" means a refinery for which the average aggregate daily crude oil throughput for a calendar year (as determined by dividing the aggregate throughput for the calendar year by the number of days in the calendar year) does not exceed 75,000 barrels.

(L) Transportation fuel

The term "transportation fuel" means fuel for use in motor vehicles, motor vehicle engines, nonroad vehicles, or nonroad engines (except for ocean-going vessels).

(2) Renewable fuel program

(A) Regulations

(i) In general

Not later than 1 year after August 8, 2005, the Administrator shall promulgate regulations to ensure that gasoline sold or introduced into commerce in the United States (except in noncontiguous States or territories), on an annual average basis, contains the applicable volume of renewable fuel determined in accordance with subparagraph (B). Not later than 1 year after December 19, 2007, the Administrator shall revise the regulations under this paragraph to ensure that transportation fuel sold or introduced into commerce in the United States (except in noncontiguous States or territories), on an annual average basis, contains at least the applicable volume of renewable fuel, advanced biofuel, cellulosic biofuel, and biomass-based diesel, determined in accordance with subparagraph (B) and, in the case of any such renewable fuel produced from new facilities that commence construction after December 19, 2007, achieves at least a 20 percent reduction in lifecycle greenhouse gas emissions compared to baseline lifecycle greenhouse gas emissions.

(ii) Noncontiguous State opt-in

(I) In general

On the petition of a noncontiguous State or territory, the Administrator may allow the renewable fuel program established under this subsection to apply in the noncontiguous State or territory at the same time or any time after the Administrator promulgates regulations under this subparagraph.

(II) Other actions

In carrying out this clause, the Administrator may—

(aa) issue or revise regulations under this paragraph;

(bb) establish applicable percentages under paragraph (3);

(cc) provide for the generation of credits under paragraph (5); and

(dd) take such other actions as are necessary to allow for the application of the renewable fuels program in a noncontiguous State or territory.

(iii) Provisions of regulations

Regardless of the date of promulgation, the regulations promulgated under clause (i)—

(I) shall contain compliance provisions applicable to refineries, blenders, distributors, and importers, as appropriate, to ensure that the requirements of this paragraph are met; but

(II) shall not—

(aa) restrict geographic areas in which renewable fuel may be used; or

(bb) impose any per-gallon obligation for the use of renewable fuel.

(iv) Requirement in case of failure to promulgate regulations

If the Administrator does not promulgate regulations under clause (i), the percentage of renewable fuel in gasoline sold or dispensed to consumers in the United States, on a volume basis, shall be 2.78 percent for calendar year 2006.

(B) Applicable volumes

(i) Calendar years after 2005

(I) Renewable fuel

For the purpose of subparagraph (A), the applicable volume of renewable fuel for the calendar years 2006 through 2022 shall be determined in accordance with the following table:

Calendar year:	Applicable volume of renewable fuel (in billions of gallons):
2006	4.0
2007	4.7
2008	9.0
2009	11.1
2010	12.95
2011	13.95
2012	15.2
2013	16.55
2014	18.15
2015	20.5
2016	22.25
2017	24.0
2018	26.0
2019	28.0
2020	30.0
2021	33.0
2022	36.0

(II) Advanced biofuel

For the purpose of subparagraph (A), of the volume of renewable fuel required under subclause (I), the applicable volume of advanced biofuel for the calendar years 2009 through 2022 shall be determined in accordance with the following table:

Calendar year:	Applicable volume of advanced biofuel (in billions of gallons):
2009	0.6
2010	0.95
2011	1.35
2012	2.0
2013	2.75
2014	3.75
2015	5.5
2016	7.25
2017	9.0
2018	11.0
2019	13.0
2020	15.0
2021	18.0
2022	21.0

(III) Cellulosic biofuel

For the purpose of subparagraph (A), of the volume of advanced biofuel required under subclause (II), the applicable volume of cellulosic biofuel for the calendar years 2010 through 2022 shall be determined in accordance with the following table:

Calendar year:	**Applicable volume of cellulosic biofuel (in billions of gallons):**
2010	0.1
2011	0.25
2012	0.5
2013	1.0
2014	1.75
2015	3.0
2016	4.25
2017	5.5
2018	7.0
2019	8.5
2020	10.5
2021	13.5
2022	16.0

(IV) Biomass-based diesel

For the purpose of subparagraph (A), of the volume of advanced biofuel required under subclause (II), the applicable volume of biomass-based diesel for the calendar years 2009 through 2012 shall be determined in accordance with the following table:

Calendar year:	Applicable volume of biomass-based diesel (in billions of gallons):
2009	0.5
2010	0.65
2011	0.80
2012	1.0

(ii) Other calendar years

For the purposes of subparagraph (A), the applicable volumes of each fuel specified in the tables in clause (i) for calendar years after the calendar years specified in the tables shall be determined by the Administrator, in coordination with the Secretary of Energy and the Secretary of Agriculture, based on a review of the implementation of the program during calendar years specified in the tables, and an analysis of—

(I) the impact of the production and use of renewable fuels on the environment, including on air quality, climate change, conversion of wetlands, ecosystems, wildlife habitat, water quality, and water supply;

(II) the impact of renewable fuels on the energy security of the United States;

(III) the expected annual rate of future commercial production of renewable fuels, including advanced biofuels in each category (cellulosic biofuel and biomass-based diesel);

(IV) the impact of renewable fuels on the infrastructure of the United States, including deliverability of materials, goods, and products other than renewable fuel, and the sufficiency of infrastructure to deliver and use renewable fuel;

(V) the impact of the use of renewable fuels on the cost to consumers of transportation fuel and on the cost to transport goods; and

(VI) the impact of the use of renewable fuels on other factors, including job creation, the price and supply of agricultural commodities, rural economic development, and food prices.

The Administrator shall promulgate rules establishing the applicable volumes under this clause no later than 14 months before the first year for which such applicable volume will apply.

(iii) Applicable volume of advanced biofuel

For the purpose of making the determinations in clause (ii), for each calendar year, the applicable volume of advanced biofuel shall be at least the same percentage of the applicable volume of renewable fuel as in calendar year 2022.

(iv) Applicable volume of cellulosic biofuel

For the purpose of making the determinations in clause (ii), for each calendar year, the applicable volume of cellulosic biofuel established by the Administrator shall be based on the assumption that the Administrator will not need to issue a waiver for such years under paragraph (7)(D).

(v) Minimum applicable volume of biomass-based diesel

For the purpose of making the determinations in clause (ii), the applicable volume of biomass-based diesel shall not be less than the applicable volume listed in clause (i)(IV) for calendar year 2012.

(3) Applicable percentages

(A) Provision of estimate of volumes of gasoline sales

Not later than October 31 of each of calendar years 2005 through 2021, the Administrator of the Energy Information Administration shall provide to the Administrator of the Environmental Protection Agency an estimate, with respect to the following calendar year, of the volumes of transportation fuel, biomass-based diesel, and cellulosic biofuel projected to be sold or introduced into commerce in the United States.

(B) Determination of applicable percentages

(i) In general

Not later than November 30 of each of calendar years 2005 through 2021, based on the estimate provided under subparagraph (A), the Administrator of the Environmental Protection Agency shall determine and publish in the Federal Register, with respect to the following calendar year, the renewable fuel obligation that ensures that the requirements of paragraph (2) are met.

(ii) Required elements

The renewable fuel obligation determined for a calendar year under clause (i) shall—

(I) be applicable to refineries, blenders, and importers, as appropriate;

(II) be expressed in terms of a volume percentage of transportation fuel sold or introduced into commerce in the United States; and

(III) subject to subparagraph (C)(i), consist of a single applicable percentage that applies to all categories of persons specified in subclause (I).

(C) Adjustments

In determining the applicable percentage for a calendar year, the Administrator shall make adjustments—

(i) to prevent the imposition of redundant obligations on any person specified in subparagraph (B)(ii)(I); and

(ii) to account for the use of renewable fuel during the previous calendar year by small refineries that are exempt under paragraph (9).

(4) Modification of greenhouse gas reduction percentages

(A) In general

The Administrator may, in the regulations under the last sentence of paragraph (2)(A)(i), adjust the 20 percent, 50 percent, and 60 percent reductions in lifecycle greenhouse gas emissions specified in paragraphs

(2)(A)(i) (relating to renewable fuel), (1)(D) (relating to biomass-based diesel), (1)(B)(i) (relating to advanced biofuel), and (1)(E) (relating to cellulosic biofuel) to a lower percentage. For the 50 and 60 percent reductions, the Administrator may make such an adjustment only if he determines that generally such reduction is not commercially feasible for fuels made using a variety of feedstocks, technologies, and processes to meet the applicable reduction.

(B) Amount of adjustment

In promulgating regulations under this paragraph, the specified 50 percent reduction in greenhouse gas emissions from advanced biofuel and in biomass-based diesel may not be reduced below 40 percent. The specified 20 percent reduction in greenhouse gas emissions from renewable fuel may not be reduced below 10 percent, and the specified 60 percent reduction in greenhouse gas emissions from cellulosic biofuel may not be reduced below 50 percent.

(C) Adjusted reduction levels

An adjustment under this paragraph to a percent less than the specified 20 percent greenhouse gas reduction for renewable fuel shall be the minimum possible adjustment, and the adjusted greenhouse gas reduction shall be established by the Administrator at the maximum achievable level, taking cost in consideration, for natural gas fired corn-based ethanol plants, allowing for the use of a variety of technologies and processes. An adjustment in the 50 or 60 percent greenhouse gas levels shall be the minimum possible adjustment for the fuel or fuels concerned, and the adjusted greenhouse gas reduction shall be established at the maximum achievable level, taking cost in consideration, allowing for the use of a variety of feedstocks, technologies, and processes.

(D) 5-year review

Whenever the Administrator makes any adjustment under this paragraph, not later than 5 years thereafter he shall review and revise (based upon the same criteria and standards as required for the initial adjustment) the regulations establishing the adjusted level.

(E) Subsequent adjustments

After the Administrator has promulgated a final rule under the last sentence of paragraph (2)(A)(i) with respect to the method of determining lifecycle greenhouse gas emissions, except as provided in subparagraph (D), the Administrator may not adjust the percent greenhouse gas reduction levels unless he determines that there has been a significant change in the analytical methodology used for determining the lifecycle greenhouse gas emissions. If he makes such determination, he may adjust the 20, 50, or 60 percent reduction levels through rulemaking using the criteria and standards set forth in this paragraph.

(F) Limit on upward adjustments

If, under subparagraph (D) or (E), the Administrator revises a percent level adjusted as provided in subparagraphs (A), (B), and (C) to a higher percent, such higher percent may not exceed the applicable percent specified in paragraph (2)(A)(i), (1)(D), (1)(B)(i), or (1)(E).

(G) Applicability of adjustments

If the Administrator adjusts, or revises, a percent level referred to in this paragraph or makes a change in the analytical methodology used for determining the lifecycle greenhouse gas emissions, such adjustment, revision, or change (or any combination thereof) shall only apply to renewable fuel from new facilities that commence construction after the effective date of such adjustment, revision, or change.

(5) Credit program

(A) In general

The regulations promulgated under paragraph (2)(A) shall provide—

(i) for the generation of an appropriate amount of credits by any person that refines, blends, or imports gasoline that contains a quantity of renewable fuel that is greater than the quantity required under paragraph (2);

(ii) for the generation of an appropriate amount of credits for biodiesel; and

(iii) for the generation of credits by small refineries in accordance with paragraph (9)(C).

(B) Use of credits

A person that generates credits under subparagraph (A) may use the credits, or transfer all or a portion of the credits to another person, for the purpose of complying with paragraph (2).

(C) Duration of credits

A credit generated under this paragraph shall be valid to show compliance for the 12 months as of the date of generation.

(D) Inability to generate or purchase sufficient credits

The regulations promulgated under paragraph (2)(A) shall include provisions allowing any person that is unable to generate or purchase sufficient credits to meet the requirements of paragraph (2) to carry forward a renewable fuel deficit on condition that the person, in the calendar year following the year in which the renewable fuel deficit is created—

(i) achieves compliance with the renewable fuel requirement under paragraph (2); and

(ii) generates or purchases additional renewable fuel credits to offset the renewable fuel deficit of the previous year.

(E) Credits for additional renewable fuel

The Administrator may issue regulations providing: (i) for the generation of an appropriate amount of credits by any person that refines, blends, or imports additional renewable fuels specified by the Administrator; and (ii) for the use of such credits by the generator, or the transfer of all or a portion of the credits to another person, for the purpose of complying with paragraph (2).

(6) Seasonal variations in renewable fuel use

(A) Study

For each of calendar years 2006 through 2012, the Administrator of the Energy Information Administration shall conduct a study of renewable fuel blending to determine whether there are excessive seasonal variations in the use of renewable fuel.

(B) Regulation of excessive seasonal variations

If, for any calendar year, the Administrator of the Energy Information Administration, based on the study under subparagraph (A), makes the determinations specified in subparagraph (C), the Administrator of the Environmental Protection Agency shall promulgate regulations to ensure that 25 percent or more of the quantity of renewable fuel necessary to meet the requirements of paragraph (2) is used during each of the 2 periods specified in subparagraph (D) of each subsequent calendar year.

(C) Determinations

The determinations referred to in subparagraph (B) are that—

(i) less than 25 percent of the quantity of renewable fuel necessary to meet the requirements of paragraph (2) has been used during 1 of the 2 periods specified in subparagraph (D) of the calendar year;

(ii) a pattern of excessive seasonal variation described in clause (i) will continue in subsequent calendar years; and

(iii) promulgating regulations or other requirements to impose a 25 percent or more seasonal use of renewable fuels will not prevent or interfere with the attainment of national ambient air quality standards or significantly increase the price of motor fuels to the consumer.

(D) Periods

The 2 periods referred to in this paragraph are—

(i) April through September; and

(ii) January through March and October through December.

(E) Exclusion

Renewable fuel blended or consumed in calendar year 2006 in a State that has received a waiver under section 7543(b) of this title shall not be included in the study under subparagraph (A).

(F) State exemption from seasonality requirements

Notwithstanding any other provision of law, the seasonality requirement relating to renewable fuel use established by this paragraph shall not apply to any State that has received a waiver under section 7543(b) of this title or any State dependent on refineries in such State for gasoline supplies.

(7) Waivers

(A) In general

The Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, may waive the requirements of paragraph (2) in whole or in part on petition by one or more States, by any person subject to the requirements of this subsection, or by the Administrator on his own motion by reducing the national quantity of renewable fuel required under paragraph (2)—

(i) based on a determination by the Administrator, after public notice and opportunity for comment, that implementation of the requirement would severely harm the economy or environment of a State, a region, or the United States; or

(ii) based on a determination by the Administrator, after public notice and opportunity for comment, that there is an inadequate domestic supply.

(B) Petitions for waivers

The Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, shall approve or disapprove a petition for a waiver of the requirements of paragraph (2) within 90 days after the date on which the petition is received by the Administrator.

(C) Termination of waivers

A waiver granted under subparagraph (A) shall terminate after 1 year, but may be renewed by the Administrator after consultation with the Secretary of Agriculture and the Secretary of Energy.

(D) Cellulosic biofuel

(i) For any calendar year for which the projected volume of cellulosic biofuel production is less than the minimum applicable volume established under paragraph (2)(B), as determined by the Administrator based on the estimate provided under paragraph (3)(A), not later than November 30 of the preceding calendar year, the Administrator shall reduce the applicable volume of cellulosic biofuel required under paragraph (2)(B) to the projected volume available during that calendar year. For any calendar year in which the Administrator makes such a reduction, the Administrator may also reduce the applicable volume of renewable fuel and advanced biofuels requirement established under paragraph (2)(B) by the same or a lesser volume.

(ii) Whenever the Administrator reduces the minimum cellulosic biofuel volume under this subparagraph, the Administrator shall make available for sale cellulosic biofuel credits at the higher of $0.25 per gallon or the amount by which $3.00 per gallon exceeds the average wholesale price of a gallon of gasoline in the United States. Such amounts shall be adjusted for inflation by the Administrator for years after 2008.

(iii) Eighteen months after December 19, 2007, the Administrator shall promulgate regulations to govern the issuance of credits under this subparagraph. The regulations shall set forth the method for determining the exact price of credits in the event of a waiver. The price of such credits shall not be changed more frequently than once each quarter. These regulations shall include such provisions, including limiting the credits' uses and useful life, as the Administrator deems appropriate to assist market liquidity and transparency, to provide appropriate certainty for regulated entities and renewable fuel producers, and to limit any potential misuse of cellulosic biofuel credits to reduce the use of other renewable fuels, and for such other purposes as the Administrator determines will help achieve the goals of this subsection. The regulations shall limit the number of cellulosic biofuel credits for any calendar year to the minimum applicable volume (as reduced under this subparagraph) of cellulosic biofuel for that year.

(E) Biomass-based diesel

(i) Market evaluation

The Administrator, in consultation with the Secretary of Energy and the Secretary of Agriculture, shall periodically evaluate the impact of the biomass-based diesel requirements established under this paragraph on the price of diesel fuel.

(ii) Waiver

If the Administrator determines that there is a significant renewable feedstock disruption or other market circumstances that would make the price of biomass-based diesel fuel increase significantly, the Administrator, in consultation with the Secretary of Energy and the Secretary of Agriculture, shall issue an order to reduce, for up to a 60-day period, the quantity of biomass-based diesel required under subparagraph (A) by an appropriate quantity that does not exceed 15 percent of the applicable annual requirement for biomass-based diesel. For any calendar year in which the Administrator makes a reduction under this subparagraph, the Administrator may also reduce the applicable volume of renewable fuel and advanced biofuels requirement established under paragraph (2)(B) by the same or a lesser volume.

(iii) Extensions

If the Administrator determines that the feedstock disruption or circumstances described in clause (ii) is continuing beyond the 60-day period described in clause (ii) or this clause, the Administrator, in consultation with the Secretary of Energy and the Secretary of Agriculture, may issue an order to reduce, for up to an additional 60-day period, the quantity of biomass-based diesel required under subparagraph (A) by an appropriate quantity that does not exceed an additional 15 percent of the applicable annual requirement for biomass-based diesel.

(F) Modification of applicable volumes

For any of the tables in paragraph (2)(B), if the Administrator waives—

(i) at least 20 percent of the applicable volume requirement set forth in any such table for 2 consecutive years; or

(ii) at least 50 percent of such volume requirement for a single year,

the Administrator shall promulgate a rule (within 1 year after issuing such waiver) that modifies the applicable volumes set forth in the table concerned for all years following the final year to which the waiver applies, except that no such modification in applicable volumes shall be made for any year before 2016. In promulgating such a rule, the Administrator shall comply with the processes, criteria, and standards set forth in paragraph (2)(B)(ii).

(8) Study and waiver for initial year of program

(A) In general

Not later than 180 days after August 8, 2005, the Secretary of Energy shall conduct for the Administrator a study assessing whether the renewable fuel requirement under paragraph (2) will likely result in significant adverse impacts on consumers in 2006, on a national, regional, or State basis.

(B) Required evaluations

The study shall evaluate renewable fuel—

(i) supplies and prices;

(ii) blendstock supplies; and

(iii) supply and distribution system capabilities.

(C) Recommendations by the Secretary

Based on the results of the study, the Secretary of Energy shall make specific recommendations to the Administrator concerning waiver of the requirements of paragraph (2), in whole or in part, to prevent any adverse impacts described in subparagraph (A).

(D) Waiver

(i) In general

Not later than 270 days after August 8, 2005, the Administrator shall, if and to the extent recommended by the Secretary of Energy under subparagraph (C), waive, in whole or in part, the renewable fuel requirement under paragraph (2) by reducing the national quantity of renewable fuel required under paragraph (2) in calendar year 2006.

(ii) No effect on waiver authority

Clause (i) does not limit the authority of the Administrator to waive the requirements of paragraph (2) in whole, or in part, under paragraph (7).

(9) Small refineries

(A) Temporary exemption

(i) In general

The requirements of paragraph (2) shall not apply to small refineries until calendar year 2011.

(ii) Extension of exemption

(I) Study by Secretary of Energy

Not later than December 31, 2008, the Secretary of Energy shall conduct for the Administrator a study to determine whether compliance with the requirements of paragraph (2) would impose a disproportionate economic hardship on small refineries.

(II) Extension of exemption

In the case of a small refinery that the Secretary of Energy determines under subclause (I) would be subject to a disproportionate economic hardship if required to comply with paragraph (2), the Administrator shall extend the exemption under clause (i) for the small refinery for a period of not less than 2 additional years.

(B) Petitions based on disproportionate economic hardship

(i) Extension of exemption

A small refinery may at any time petition the Administrator for an extension of the exemption under subparagraph (A) for the reason of disproportionate economic hardship.

(ii) Evaluation of petitions

In evaluating a petition under clause (i), the Administrator, in consultation with the Secretary of Energy, shall consider the findings of the study under subparagraph (A)(ii) and other economic factors.

(iii) Deadline for action on petitions

The Administrator shall act on any petition submitted by a small refinery for a hardship exemption not later than 90 days after the date of receipt of the petition.

(C) Credit program

If a small refinery notifies the Administrator that the small refinery waives the exemption under subparagraph (A), the regulations promulgated under paragraph (2)(A) shall provide for the generation of credits by the small refinery under paragraph (5) beginning in the calendar year following the date of notification.

(D) Opt-in for small refineries

A small refinery shall be subject to the requirements of paragraph (2) if the small refinery notifies the Administrator that the small refinery waives the exemption under subparagraph (A).

(10) Ethanol market concentration analysis

(A) Analysis

(i) In general

Not later than 180 days after August 8, 2005, and annually thereafter, the Federal Trade Commission shall perform a market concentration analysis of the ethanol production industry using the Herfindahl-Hirschman Index to determine whether there is sufficient competition among industry participants to avoid price-setting and other anticompetitive behavior.

(ii) Scoring

For the purpose of scoring under clause (i) using the Herfindahl-Hirschman Index, all marketing arrangements among industry participants shall be considered.

(B) Report

Not later than December 1, 2005, and annually thereafter, the Federal Trade Commission shall submit to Congress and the Administrator a report on the results of the market concentration analysis performed under subparagraph (A)(i).

(11) Periodic reviews

To allow for the appropriate adjustment of the requirements described in subparagraph (B) of paragraph (2), the Administrator shall conduct periodic reviews of—

(A) existing technologies;

(B) the feasibility of achieving compliance with the requirements; and

(C) the impacts of the requirements described in subsection (a)(2) on each individual and entity described in paragraph (2).

(12) Effect on other provisions

Nothing in this subsection, or regulations issued pursuant to this subsection, shall affect or be construed to affect the regulatory status of carbon dioxide or any other greenhouse gas, or to expand or limit regulatory authority regarding carbon dioxide or any other greenhouse gas, for purposes of other provisions (including section 7475) of this chapter. The previous sentence shall not affect implementation and enforcement of this subsection.

Standing Declarations

MATERIAL UNDER SEAL DELETED

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

REH COMPANY, LLC, *Petitioner*, v. U.S. ENVIRONMENTAL PROTECTION AGENCY, *Respondent*.	Case No. 25-1180 and consolidated cases

DECLARATION OF [redacted]

I, [redacted], declare under penalty of perjury that the following is true and correct to the best of my knowledge:

1. I am the [redacted]. In that role, I am the person primarily responsible for handling the Renewable Fuel Standard ("RFS") requirements for [redacted], including supervising the process of petitioning for small refinery hardship relief and planning for RFS compliance. As such, I have personal knowledge of the facts and information set forth in this declaration.

2. [redacted] retired Renewable Identification Numbers ("RINs") to demonstrate compliance with the Renewable Fuel Standard for the [redacted] compliance years before EPA issued its August decisions ruling on the company's then pending hardship petitions.

3. In August 2025, EPA granted [redacted] full or partial exemptions from its obligations under the RFS for the [redacted] compliance years, among others. EPA then returned to [redacted] the RINs it had previously retired to demonstrate compliance, some of which were expired and could not be used to demonstrate compliance with any outstanding compliance obligation or sold.

[redacted]

Dated: July 10, 2026

[redacted]

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

REH COMPANY, LLC, *Petitioner*, v. U.S. ENVIRONMENTAL PROTECTION AGENCY, *Respondent*.	Case No. 25-1180 and consolidated cases

DECLARATION OF [redacted]

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1. I am [redacted]. In that role, I am the person primarily responsible for handling the Renewable Fuel Standard ("RFS") requirements for [redacted], including supervising the process of petitioning for small refinery hardship relief and planning for RFS compliance. As such, I have personal knowledge of the facts and information set forth in this declaration.

2. [redacted] retired Renewable Identification Numbers ("RINs") to demonstrate compliance with the Renewable Fuel Standard for the [redacted] compliance years before EPA issued its August decisions ruling on the company's then pending hardship petitions.

3. In August 2025, EPA granted [redacted] full or partial exemptions from its obligations under the RFS for the [redacted] compliance years. EPA then returned to [redacted] the RINs it had previously retired to demonstrate compliance, some of which were expired and could not be used to demonstrate compliance with any outstanding compliance obligation or sold.

[redacted]

Dated: July 10, 2026

[redacted]

UNITED STATES COURT OF APPEALS
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DECLARATION OF [redacted]

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3. In August 2025, EPA granted [redacted] full or partial exemptions from its obligations under the RFS for the [redacted] compliance years, among others. EPA then returned to [redacted] the RINs it had previously retired to demonstrate compliance, some of which were expired and could not be used to demonstrate compliance with any outstanding compliance obligation or sold.

[redacted]

Dated: July 10, 2026

[redacted]

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DECLARATION OF [redacted]

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2. [redacted] retired Renewable Identification Numbers ("RINs") to demonstrate compliance with the Renewable Fuel Standard for the [redacted] compliance years before EPA issued its August decisions ruling on the company's then pending hardship petitions.

3. In August 2025, EPA granted [redacted] partial exemptions from its obligations under the RFS for the [redacted] compliance years, among others. EPA then returned to [redacted] the RINs it had previously retired to demonstrate compliance, some of which were expired and could not be used to demonstrate compliance with any outstanding compliance obligation or sold.

[redacted]

Dated: July 10, 2026

[redacted]

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

REH COMPANY, LLC, *Petitioner*, v. U.S. ENVIRONMENTAL PROTECTION AGENCY, *Respondent*.	Case No. 25-1180 and consolidated cases

DECLARATION OF [redacted]

I, [redacted], declare under penalty of perjury that the following is true and correct to the best of my knowledge:

1. I am [redacted]. In that role, I am the person primarily responsible for handling the Renewable Fuel Standard ("RFS") requirements for [redacted], including supervising the process of petitioning for small refinery hardship relief and planning for RFS compliance. As such, I have personal knowledge of the facts and information set forth in this declaration.

2. [redacted] retired Renewable Identification Numbers ("RINs") to demonstrate compliance with the Renewable Fuel Standard for the [redacted] compliance years before EPA issued its August decisions ruling on the company's then pending hardship petitions.

3. In August 2025, EPA granted [redacted] full or partial exemptions from its obligations under the RFS for the [redacted] compliance years, among others. EPA then returned to [redacted] the RINs it had previously retired to demonstrate compliance, some of which were expired and could not be used to demonstrate compliance with any outstanding compliance obligation or sold.

[redacted]

Dated: July 10, 2026

[redacted]

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

REH COMPANY, LLC, *Petitioner*, v. U.S. ENVIRONMENTAL PROTECTION AGENCY, *Respondent*.	Case No. 25-1180 and consolidated cases

DECLARATION OF [redacted]

I, [redacted], declare under penalty of perjury that the following is true and correct to the best of my knowledge:

1. I am [redacted]. In that role, I am the person primarily responsible for handling the Renewable Fuel Standard ("RFS") requirements for [redacted], including supervising the process of petitioning for small refinery hardship relief and planning for RFS compliance. As such, I have personal knowledge of the facts and information set forth in this declaration.

2. [redacted] retired Renewable Identification Numbers ("RINs") to demonstrate compliance with the Renewable Fuel Standard for the [redacted] compliance years before EPA issued its August decisions ruling on the company's then pending hardship petitions.

3. In August 2025, EPA granted [redacted] full or partial exemptions from its obligations under the RFS for the [redacted] compliance years, among others. EPA then returned to [redacted] the RINs it had previously retired to demonstrate compliance, a significant majority of which were expired and could not be used to demonstrate compliance with any outstanding compliance obligation or future compliance requirements.

Dated: July 10, 2026

[redacted]

MATERIAL UNDER SEAL DELETED

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

REH COMPANY, LLC, *Petitioner*, v. U.S. ENVIRONMENTAL PROTECTION AGENCY, *Respondent*.	Case No. 25-1180 and consolidated cases

DECLARATION OF [redacted]

I, [redacted], declare under penalty of perjury that the following is true and correct to the best of my knowledge:

1. I am [redacted]. In that role, I am involved with handling the Renewable Fuel Standard ("RFS") requirements for [redacted], including the process of petitioning for small refinery hardship relief and planning for RFS compliance. As such, I have personal knowledge of the facts and information set forth in this declaration.

2. [redacted] retired Renewable Identification Numbers ("RINs") to demonstrate compliance with the Renewable Fuel Standard for the [redacted] compliance year before EPA issued its August decisions ruling on the company's then pending hardship petitions.

3. In August 2025, EPA granted [redacted] partial exemption from its obligations under the RFS for the [redacted] compliance year, among others. EPA then returned to [redacted] the RINs it had previously retired to demonstrate compliance, some of which were expired and could not be used to demonstrate compliance with any outstanding compliance obligation or sold.

[redacted]

Dated: July 10, 2026

[redacted]

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

REH COMPANY, LLC, *Petitioner*, v. U.S. ENVIRONMENTAL PROTECTION AGENCY, *Respondent*.	Case No. 25-1180 and consolidated cases

DECLARATION OF [redacted]

I, [redacted], declare under penalty of perjury that the following is true and correct to the best of my knowledge:

1. I am [redacted]. In that role, I am involved with handling the Renewable Fuel Standard ("RFS") requirements for [redacted], including the process of petitioning for small refinery hardship relief and planning for RFS compliance. As such, I have personal knowledge of the facts and information set forth in this declaration.

2. [redacted] retired Renewable Identification Numbers ("RINs") to demonstrate compliance with the Renewable Fuel Standard for the [redacted] compliance years before EPA issued its August decisions ruling on the company's then pending hardship petitions.

3. In August 2025, EPA granted [redacted] full or partial exemptions from its obligations under the RFS for the [redacted] compliance years, among others. EPA then returned to [redacted] the RINs it had previously retired to demonstrate compliance, some of which were expired and could not be used to demonstrate compliance with any outstanding compliance obligation or sold.

Dated: July 10, 2026

[redacted]

[redacted]

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

REH COMPANY, LLC, *Petitioner*, v. U.S. ENVIRONMENTAL PROTECTION AGENCY, *Respondent*.	Case No. 25-1180 and consolidated cases

DECLARATION OF [redacted]

I, [redacted], declare under penalty of perjury that the following is true and correct to the best of my knowledge:

1. I am [redacted]. In that role, I am involved with handling the Renewable Fuel Standard ("RFS") requirements for [redacted], including the process of petitioning for small refinery hardship relief and planning for RFS compliance. As such, I have personal knowledge of the facts and information set forth in this declaration.

2. [redacted] retired Renewable Identification Numbers ("RINs") to demonstrate compliance with the Renewable Fuel Standard for the [redacted] compliance years before EPA issued its August decisions ruling on the company's then pending hardship petitions.

3. In August 2025, EPA granted [redacted] full or partial exemptions from its obligations under the RFS for the [redacted] compliance years. EPA then returned to [redacted] the RINs it had previously retired to demonstrate compliance, some of which were expired and could not be used to demonstrate compliance with any outstanding compliance obligation or sold.

[redacted]

Dated: July 10, 2026 [redacted]

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

REH COMPANY, LLC, *Petitioner*, v. U.S. ENVIRONMENTAL PROTECTION AGENCY, *Respondent*.	Case No. 25-1180 and consolidated cases

DECLARATION OF [redacted]

I, [redacted], declare under penalty of perjury that the following is true and correct to the best of my knowledge:

1. I am [redacted]. In that role, I am the person primarily responsible for handling the Renewable Fuel Standard ("RFS") requirements for [redacted], including supervising the process of petitioning for small refinery hardship relief and planning for RFS compliance. As such, I have personal knowledge of the facts and information set forth in this declaration.

2. [redacted] retired Renewable Identification Numbers ("RINs") to demonstrate compliance with the Renewable Fuel Standard for the [redacted] compliance year before EPA issued its August 2025 decisions ruling on the company's then pending hardship petitions.

3. In August 2025, EPA granted [redacted] a full exemption from its obligations under the RFS for the [redacted] compliance year. EPA then returned to [redacted] the RINs it had previously retired to demonstrate compliance, some of which were expired and could not be used to demonstrate compliance with any outstanding compliance obligation or sold.

[redacted]

Dated: July 10, 2026

[redacted]

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

REH Company, LLC,

Petitioner,

v.

Environmental Protection Agency,

Respondent.

Case No. 25-1180 & consolidated cases

DECLARATION OF MIKE REMY

I, Mike Remy, declare under penalty of perjury that the following is true and correct to the best of my knowledge:

1. I am Renewable Fuels Manager at HF Sinclair Corporation, the corporate parent of HF Sinclair Refining & Marketing LLC, HF Sinclair Casper Refining, LLC, HF Sinclair Cheyenne Refining LLC, HF Sinclair Parco Refining LLC, and HF Sinclair Woods Cross Refining LLC. In that role, I am responsible for managing the trading of Renewable Identification Numbers (RINs) for HF Sinclair Refining & Marketing LLC to satisfy Renewable Volume Obligations of all refinery subsidiaries of HF Sinclair Corporation.

2. [redacted]

[redacted]

Dated: July 8, 2026

Mike Remy

Mike Remy

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

REH, COMPANY, LLC., *Petitioner*, v. U.S. ENVIRONMENTAL PROTECTION AGENCY, *Respondent*.	Case No. 25-1180 and consolidated cases

DECLARATION OF JALYN ROWSER

I, Jalyn Rowser, declare under penalty of perjury that the following is true and correct to the best of my knowledge:

1. I am the Marketing & Biofuels Manager of Big West Oil, LLC, which owns and operates the North Salt Lake, Utah refinery (the "Refinery") that is the subject of the small refinery exemption petitions at issue in this case. I have held this position since 2012. Among others, my responsibilities in this role include overseeing compliance with the Refinery's Renewable Fuel Standard ("RFS"), including seeking small refinery exemptions from the U.S. Environmental Protection Agency.

2. Big West Oil, LLC retired Renewable Identification Numbers ("RINs") to demonstrate compliance with the RFS for [redacted]

3. In August and November 2025, EPA [redacted].

4. EPA implemented those exemptions by returning to Big West Oil, LLC the RINs it had previously retired to demonstrate compliance. All such RINs generated in 2022 or earlier years had expired—and thus were virtually worthless—by the time EPA returned them.

Dated: July 8, 2026

Jalyn Rowser

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

REH, COMPANY, LLC., *Petitioner*, v. U.S. ENVIRONMENTAL PROTECTION AGENCY, *Respondent*.	Case No. 25-1180 and consolidated cases

DECLARATION OF KATE KLOSSNER

I, Kate Klossner, declare under penalty of perjury that the following is true and correct to the best of my knowledge:

1. I am Vice President of Government Relations and Public Communications at REH Company, LLC ("REH"), formerly known as The Sinclair Companies. Until March 14, 2022, The Sinclair Companies was the sole owner of Sinclair Oil Corporation. Sinclair Oil owned (i) Sinclair Wyoming Refining Company ("SWRC"), which operated the Sinclair Wyoming Refinery, and (ii) Sinclair Casper Refining Company ("SCRC"), which operated the Sinclair Casper Refinery (SWRC and SCRC, together with their respective refineries, the "Refineries").

2. On March 14, 2022, Sinclair Oil Corporation merged with HollyFrontier Corporation, resulting in the creation of HF Sinclair Corporation. As the company responsible for compliance with the Renewable

Fuel Standard ("RFS") program prior to the closing of the merger, REH retained contractual rights to seek small refinery exemption petitions for SWRC and SCRC for periods prior to March 14, 2022, including the small refinery exemption petitions at issue in this case.

3. In my role, I am responsible for shaping and promoting REH's interests in the political and policy arenas, at the federal and state levels, before executive, legislative, and regulatory officials, including with respect to the RFS program. Since joining REH in 2025, I am the person primarily responsible for the process of petitioning for small refinery hardship exemptions from the RFS program for the Refineries.

4. Each of the Refineries retired Renewable Identification Numbers ("RINs") to demonstrate compliance with the RFS for [redacted]

5. In August and November 2025, EPA [redacted].

6. EPA implemented those exemptions by returning to REH the RINs that each Refinery had previously retired to demonstrate compliance. All such RINs generated in 2022 or earlier years had expired—and thus were virtually worthless—by the time EPA returned them.

Dated: July 8, 2026

Kate Klossner

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

REH, COMPANY, LLC., *Petitioner*, v. U.S. ENVIRONMENTAL PROTECTION AGENCY, *Respondent*.	Case No. 25-1180 and consolidated cases

DECLARATION OF JENNIFER HALEY

I, Jennifer Haley, declare under penalty of perjury that the following is true and correct to the best of my knowledge:

1. I am the President and Chief Executive Officer of Kern Oil & Refining Co., doing business as Kern Energy, which owns a small refinery in Bakersfield, California ("Kern Energy Refinery"). In that role, I am responsible for oversight of issues related to Renewable Fuel Standard compliance.

2. The Kern Energy Refinery retired Renewable Identification Numbers ("RINs") to demonstrate compliance with the Renewable Fuel Standard for the [redacted] among other years.

3. In August 2025, EPA granted the Kern Energy Refinery full exemptions from its obligations under the Renewable Fuel Standard

("RFS") for the [redacted] among other years, and a partial exemption for [redacted] EPA implemented the [redacted] exemptions by returning to the Kern Energy Refinery all or part of the RINs it had previously retired to demonstrate compliance. Those RINs had expired—and thus were virtually worthless—by the time EPA returned them.

Dated: July 8, 2026

Signed by:

FCCF77FC98D4447...

Jennifer Haley

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

REH, COMPANY, LLC., *Petitioner*, v. U.S. ENVIRONMENTAL PROTECTION AGENCY, *Respondent*.	Case No. 25-1180 and consolidated cases

DECLARATION OF ISMAIL BHAYAT

I, Ismail Bhayat, declare under penalty of perjury that the following is true and correct to the best of my knowledge:

1. I am Executive Vice President, Chief Commercial Officer at Delek US Holdings, Inc., the corporate parent of Alon Refining Krotz Springs, Inc. ("Krotz Springs"); Alon USA, LP ("Alon"); Delek Refining, Ltd. ("Delek Refining"); and Lion Oil Company, LLC ("Lion Oil"). In that role, I am responsible for overseeing the performance of all refinery subsidiaries of Delek US Holdings, including Krotz Springs, Alon, Delek Refining, and Lion Oil.

Krotz Springs

2. Krotz Springs retired Renewable Identification Numbers ("RINs") to demonstrate compliance with the Renewable Fuel Standard ("RFS") for each of the 2019 through 2022 compliance years.

3. In August 2025, EPA granted Krotz Springs full or partial exemptions from its RFS obligations for the 2019 through 2022 compliance years. EPA implemented those exemptions by returning to Krotz Springs the RINs it had previously retired to demonstrate compliance. Those RINs had expired—and thus were virtually worthless—by the time EPA returned them.

Alon

4. Alon retired RINs to demonstrate compliance with the Renewable Fuel Standard for each of the 2019, 2021, and 2022 compliance years.

5. In August 2025, EPA granted Alon partial exemptions from its RFS obligations for the 2019, 2021, and 2022 compliance years. EPA implemented those exemptions by returning to Alon the RINs it had previously retired to demonstrate compliance. Those RINs had expired—and thus were virtually worthless—by the time EPA returned them.

Delek Refining

6. Delek Refining retired RINs to demonstrate compliance with the Renewable Fuel Standard for each of the 2019 through 2023 compliance years.

7. In August 2025, EPA granted Delek Refining full or partial exemptions from its RFS obligations for the 2019 through 2023 compliance years. EPA implemented those exemptions by returning to Delek Refining the RINs it had previously retired to demonstrate compliance. Those RINs had expired—and thus were virtually worthless—by the time EPA returned them.

Lion Oil

8. Lion Oil retired RINs to demonstrate compliance with the Renewable Fuel Standard for each of the 2019 through 2021 compliance years.

9. In August 2025, EPA granted Lion Oil full exemptions from its RFS obligations for the 2019 through 2021 compliance years. EPA implemented those exemptions by returning to Lion Oil the RINs it had previously retired to demonstrate compliance. Those RINs had expired—and thus were virtually worthless—by the time EPA returned them.

Dated: July 9, 2026

Signed by:
0F83FBC23247473...
Ismail Bhayat

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

REH, COMPANY, LLC., *Petitioner*, v. U.S. ENVIRONMENTAL PROTECTION AGENCY, *Respondent*.	Case No. 25-1180 and consolidated cases

DECLARATION OF APRIL MAESTAS

I, April Maestas, declare under penalty of perjury that the following is true and correct to the best of my knowledge:

1. I am the Director, Engineering at Suncor Energy (U.S.A.) Inc. ("Suncor"), which owns two Denver-area small petroleum refineries: Suncor East and Suncor West. I have personal knowledge of the matters in this declaration relating to Suncor's Renewable Fuel Standard ("RFS") compliance program.

2. While its petitions for extensions of the small refinery exemptions for Suncor East and Suncor West for compliance years 2018 through 2024 were pending, Suncor retired Renewable Identification Numbers ("RINs") to demonstrate Suncor East's and Suncor West's RFS compliance for each of the 2018 through 2023 compliance years.

3. As relevant in the above-captioned case, in August 2025, EPA granted Suncor East full or partial exemptions from its RFS obligations for the 2018 through 2022 compliance years, and granted Suncor West a partial exemption for the 2019 compliance year.

4. For each of those compliance years, EPA has offered to return to Suncor only the RINs it had previously retired to demonstrate compliance. All those RINs have expired, resulting in significant financial harm to Suncor.

Dated: July 9, 2026

April Maestas

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

REH, COMPANY, LLC., *Petitioner*, v. U.S. ENVIRONMENTAL PROTECTION AGENCY, *Respondent*.	Case No. 25-1180 and consolidated cases

DECLARATION OF JIM IRWIN

I, Jim Irwin, declare under penalty of perjury that the following is true and correct to the best of my knowledge:

1. I am Vice President, Refining, Pipelines and Terminals at CHS, Inc., which owns a petroleum refinery in Laurel, Montana. In that role, I am responsible for managing operations of CHS's refining operations, including compliance with Renewable Fuel Standards.

2. CHS retired Renewable Identification Numbers ("RINs") to demonstrate the Laurel refinery's compliance with the Renewable Fuel Standard ("RFS") for each of the 2019 through 2022 compliance years.

3. In August 2025, EPA granted CHS full or partial exemptions from its RFS obligations for the 2019 through 2022 compliance years. EPA implemented those exemptions by returning to CHS the RINs it had

previously retired to demonstrate compliance. Those RINs had expired—and thus were virtually worthless—by the time EPA returned them.

Dated: July 10, 2026

Jim Irwin