

IN THE UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

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RENEWABLE FUELS ASSOCIATION, ET AL.,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY,

Respondent,

and

HOLLYFRONTIER CHEYENNE REFINING, ET AL.,

Intervenor-Respondents.

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No. 18-9533

**UNITED STATES' UNOPPOSED MOTION FOR EXTENSION OF TIME  
WITHIN WHICH TO FILE A PETITION FOR REHEARING**

Pursuant to Fed. R. of App. P. 26(b) and 10th Cir. R. 27.5, the undersigned attorney for the United States, respondent in the above-captioned case, hereby moves for a 15-day extension of time within which to file a petition for rehearing in this case. The judgment in this case was entered on January 24, 2020, Doc. 010110294793, and, unless the time is extended, a petition for rehearing would be due on or before March 9, 2020. *See* Fed R. App. P. 35(c), 40(a)(1). The extension of time is necessary to allow the United States an opportunity to determine whether, and to what extent, the government will file a petition for

rehearing en banc in this case. Accordingly, the U.S. Department of Justice respectfully requests an extension of time to and including March 24, 2020, within which to file a petition for rehearing. Counsel has indicated that Petitioners do not oppose the relief requested.<sup>1</sup> Intervenor-Respondents join the motion.<sup>2</sup>

In support of this motion, counsel states as follows:

1. On May 29, 2018, Petitioners filed a petition for review challenging three unpublished U.S. Environmental Protection Agency (“EPA”) adjudications of petitions for extension of the small refinery exemption under the Renewable Fuels Standard (“RFS”), which EPA granted.

2. On January 24, 2020, the Court issued an opinion granting the petitions for review, vacating the three petitions for extension of the small refinery exemption under the RFS, and remanding to EPA for further proceedings consistent with the opinion. *See generally* Doc. 010110294786. Among other things, the Court concluded that the small refinery exemption authorized in 42 U.S.C. § 7545(o)(9)(B) is a “temporary extension” of the exemption authorized in 42 U.S.C. § 7545(o)(9)(A), and that an exemption had “to have been in existence”

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<sup>1</sup> Petitioners are the Renewable Fuels Association, American Coalition for Ethanol, National Corn Growers Association, and the National Farmers Union.

<sup>2</sup> Intervenor-Respondents are HollyFrontier Refining & Marketing LLC, HollyFrontier Cheyenne Refining, LLC, and HollyFrontier Woods Cross Refining, LLC. Doc. 010110016029.

in the past for a small refinery to receive an extension of that exemption. Based on that conclusion, the Court held that the three refinery petitions in this case were improvidently granted because the refineries sought to renew or restart their exemptions, rather than extend existing exemptions. On the same day, the Court issued its judgment in this case. *See* Doc. 010110294793.

3. While the Court's interpretation of 42 U.S.C. §§ 7545(o)(9)(A)–(B) is one of first impression, it alters EPA's interpretation and practice, which has been employed in the adjudication of past exemption petitions from many small refineries. The Court's interpretation of 42 U.S.C. §§ 7545(o)(9)(A)–(B) could also have significant practical impacts on the RFS program going forward. Accordingly, the United States requires more time to consider whether to file a petition for rehearing en banc on this issue.

4. Beyond the statutory interpretation, the Court's 99-page opinion is complex and addresses many jurisdictional, statutory, and fact-specific issues. The United States reasonably seeks more time to determine whether to file a petition for rehearing en banc on these myriad, complicated issues.

5. No party would be harmed by the extension proposed here. Even if the Court's opinion ultimately stands, EPA will require significant time to consider any potential actions in response. In the meantime, an extension will maintain the

status quo while the government considers the important and complex issues addressed in the Court's opinion.

For all the foregoing reasons, the United States respectfully moves this Court to extend the deadline within which to file a petition for rehearing by 15 days to allow it further time to determine whether, and to what extent, the government will file a petition for rehearing en banc in this case.

Dated: March 6, 2020

Respectfully Submitted,

/s/ Patrick R. Jacobi

PATRICK R. JACOBI

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*Counsel for Respondent United States  
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**CERTIFICATE OF DIGITAL SUBMISSION**

I hereby certify that with respect to the foregoing:

- (1) all required privacy redactions have been made per 10th Cir. R. 25.5;
- (2) if required to file additional hard copies, that the ECF submission is an exact copy of those documents; and
- (3) the digital submissions have been scanned for viruses with the most recent version of a commercial virus scanning program, Symantec Endpoint Protection, Version 4.18.1806.18062, last updated on March 6, 2020, and according to the program are free of viruses.

Dated: March 6, 2020

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**CERTIFICATE OF COMPLIANCE**

Pursuant to Fed. R. App. P. 32(g)(1), I hereby certify that:

- (1) This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because, according to the word processor used to compose the motion, this motion contains 630 words, excluding the parts of the motion exempted by Fed. R. App. P. 32(f) and 10th Cir. R. 32(b).
- (2) This motion complies with the typeface requirements of Fed. R. App. P. 27(d)(1)(E), 32(a)(5)–(6) because this motion has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point font size and Times New Roman type style.

Dated: March 6, 2020

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 6th day of March 2020, I served the foregoing United States' Unopposed Motion for Extension of Time Within Which to File a Petition for Rehearing on all registered counsel through the Court's electronic filing system (ECF).

Dated: March 6, 2020

*/s/ Patrick R. Jacobi*  
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