

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:****I. Background**

The Clean Air Act (CAA) provides that a small refinery<sup>1</sup> may at any time petition EPA for an exemption from the obligations of the Renewable Fuel Standard (RFS) program for the reason of disproportionate economic hardship (DEH).<sup>2</sup> In evaluating such petitions, the EPA Administrator, in consultation with the Secretary of Energy, will consider the findings of a Department of Energy (DOE) study and other economic factors.<sup>3</sup>

The CAA provided an initial blanket small refinery exemption (SRE) to all small refineries, exempting them from their RFS obligations until calendar year 2011.<sup>4</sup> The CAA includes two additional provisions regarding extensions of the temporary exemption for the period after the initial blanket exemption expired. The first statutory mechanism, applicable to 2011 and 2012, was based on a DOE determination, through the above-mentioned study, that compliance with the RFS requirements would impose DEH on a small refinery. If DOE made such a determination, EPA was required to extend the small refinery's exemption for no less than two years.<sup>5</sup> Under the second statutory mechanism, small refineries are authorized to petition at any time for extensions of the original statutory exemption for the reason of DEH.<sup>6</sup> Since 2013, EPA has shared the incoming petitions and supporting information with DOE, and DOE has provided EPA with its findings based on a scoring matrix; however, the ultimate decision of whether to grant or deny a petition rests with EPA.<sup>7</sup>

<sup>1</sup> The CAA defines a small refinery as "a refinery for which the average aggregate daily crude oil throughput for a calendar year . . . does not exceed 75,000 barrels." CAA section 211(o)(1)(K).

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

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

<sup>4</sup> CAA section 211(o)(9)(A)(i).

<sup>5</sup> CAA section 211(o)(9)(A)(ii)(III).

<sup>6</sup> CAA section 211(o)(9)(B)(i).

<sup>7</sup> More information on the RFS program and the history of SREs, including how EPA's approach to evaluating SRE petitions has changed over time, can be found in Section II of the "Proposed RFS Small Refinery Exemption Decision," available in the docket for this action.

**II. Proposed Decision**

In the Proposed RFS Small Refinery Exemption Decision (hereinafter "the proposed adjudication," available in the docket for this action (Docket ID No. EPA-HQ-OAR-2021-0566) and on EPA's website at <https://www.epa.gov/renewable-fuel-standard-program/proposal-deny-petitions-small-refinery-exemptions>), we have conducted an extensive analysis and review of information provided by small refineries in their SRE petitions to EPA, finding that all refineries face the same costs to acquire RINs regardless of whether the RINs are created through the act of blending renewable fuels or purchased on the open market. This happens because the market price for these fuels increases to reflect the cost of the RIN, much as it would increase in response to higher crude prices. In other words, this increased price for gasoline and diesel fuel allows obligated parties to recover their RIN costs through the market price of the fuel they produce. Because the market behaves this way for all parties subject to the RFS, there is no disproportionate cost to any party, including small refineries. As a result, we conclude that small refineries do not face DEH.

Given this conclusion and the other reasons described in the proposed adjudication, we are proposing to deny all pending SRE petitions by finding the petitioning refineries do not face DEH caused by compliance with their RFS obligations. We seek comment on all aspects of this proposed denial, most notably on our conclusions that the CAA requires small refineries to demonstrate that DEH is caused by compliance with the RFS program and our economic analyses concluding that no small refineries face such disproportionate costs of compliance due to the RFS program. Specifically, we seek comment on our findings regarding the absence of a causal relationship between compliance with the RFS program and DEH experienced by small refineries. We request additional data that would show the relationship between RFS compliance costs and the price of transportation fuel blendstocks. We also seek comment on our proposed change in approach to SRE eligibility based on receipt of the original statutory exemption, and our decision to deny all pending/undecided SRE petitions based on the proportional nature of the RFS requirements and our findings regarding RIN cost passthrough. We intend to consider these comments before making a final

determination on these pending petitions.

**Joseph Goffman,**

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

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 171**

[EPA-HQ-OPP-2021-0831; FRL-9134-01-OCSPP]

RIN 2070-AL00

**Notification of Submission to the Secretary of Agriculture; Pesticides; Certification of Pesticide Applicators; Extension to Expiration Date of Certification Plans**

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

**ACTION:** Notification of submission to the Secretary of Agriculture.

**SUMMARY:** This document notifies the public as required by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) that the EPA Administrator has forwarded to the Secretary of the United States Department of Agriculture (USDA) a draft regulatory document concerning "Pesticides; Certification of Pesticide Applicators; Extension to Expiration Date of Certification Plans (RIN 2070-AL00)." The draft regulatory document is not available to the public until after it has been signed and made available by EPA.

**DATES:** See Unit I. under **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2021-0831, is available at <http://www.regulations.gov>. That docket contains historical information and this **Federal Register** document; it does not contain the draft final rule.

Please note that due to the public health concerns related to COVID-19, the EPA Docket Center (EPA/DC) and Reading Room is open by appointment only. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit <https://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

**I. What action is EPA taking?**

FIFRA section 25(a)(2)(B) requires the EPA Administrator to provide the Secretary of USDA with a copy of any draft final rule at least 30 days before signing it in final form for publication in the **Federal Register**. The draft final rule is not available to the public until after it has been signed by EPA. If the Secretary of USDA comments in writing regarding the draft final rule within 15 days after receiving it, the EPA

Administrator must include the comments of the Secretary of USDA, if requested by the Secretary of USDA, and the EPA Administrator's response to those comments with the final rule that publishes in the **Federal Register**. If the Secretary of USDA does not comment in writing within 15 days after receiving the draft final rule, the EPA Administrator may sign the final rule for publication in the **Federal Register** any time after the 15-day period.

**II. Do any statutory and Executive Order reviews apply to this notification?**

No. This document is merely a notification of submission to the

Secretary of USDA. As such, none of the regulatory assessment requirements apply to this document.

**List of Subjects in 40 CFR Part 171**

Environmental protection, Applicator competency, Agricultural worker safety, Certified applicator, Pesticide safety training, Pesticide worker safety, Pesticides and pests, Restricted use pesticides.

Dated: December 8, 2021.

**Michal Freedhoff,**

*Assistant Administrator, Office of Chemical Safety and Pollution Prevention.*

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