

No. 26-1132 (consolidated)

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

CENTER FOR BIOLOGICAL DIVERSITY,

Petitioner,

v.

EPA et al.,

Respondents.

On Petition for Review of Final Agency Action
of the Environmental Protection Agency

**MOTION OF GROWTH ENERGY TO
INTERVENE IN SUPPORT OF RESPONDENTS**

This consolidated case involves petitions for review of the final EPA rule entitled *Renewable Fuel Standard (RFS) Program: Standards for 2026 and 2027, Partial Waiver of 2025 Cellulosic Biofuel Volume Requirements, and Other Changes*, 91 Fed. Reg. 16,388 (Apr. 1, 2026) [hereinafter “Set 2 Rule”]. Growth Energy anticipates that some of the challenges, if successful, will impair its significant interests in the Set 2 Rule. Accordingly, Growth Energy moves to intervene in support of respondents in the consolidated cases. *See* D.C. Cir. R. 15(b).

The Center for Biological Diversity (one of the environmental petitioners) takes no position on this motion while reserving the right to respond. The petroleum petitioners and respondents take no position.¹ The Sierra Club (the other environmental petitioner) and the renewable-fuel petitioners do not object to this motion.²

BACKGROUND

A. The RFS Program

Congress created the Renewable Fuel Standard (“RFS”) program under the Clean Air Act “to force the market” to “replace” the petroleum in the nation’s transportation fuel—gasoline and diesel—with “greater and greater volumes of renewable fuel each year.” *Americans for Clean Energy v. EPA*, 864 F.3d 691, 696-697, 710 (D.C. Cir. 2017).³ To accomplish this goal, the Act “requires [petroleum] refineries and other obligated parties to meet applicable volumes—

¹ The petroleum petitioners are: Small Refineries of America; Alon USA LP; American Fuel & Petrochemical Manufacturers; American Refining Group, Inc.; Countrymark Refining and 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; Wyoming Refining Company; Coffeyville Resources Refining & Marketing, LLC; and Wynnewood Refining Company, LLC.

² The renewable-fuel petitioners are: Coalition for Renewable Natural Gas; Biogas Works for America, LLC; and Biogas Works Coalition.

³ All quotations omit citations and immaterial punctuation unless otherwise indicated.

mandatory and annually increasing quantities of renewable fuels that must be introduced into commerce in the United States each year.” *Sinclair Wyoming Refining Co. v. EPA*, 114 F.4th 693, 701 (D.C. Cir. 2024) [hereinafter “*Sinclair-Exemptions*”]; see 42 U.S.C. §7545(o)(2)(A)(i). “By requiring upstream market participants ... to introduce increasing volumes of renewable fuel into the transportation fuel supply, Congress intended the [RFS] to be a market forcing policy that would create demand pressure to increase consumption of renewable fuel.” *Sinclair Wyoming Refining Co. v. EPA*, 101 F.4th 871, 877 (D.C. Cir. 2024) [hereinafter “*Sinclair-Reset*”]. Thus, the national “demand for renewable fuel will be a function of the renewable fuel standards.” *Americans for Clean Energy*, 864 F.3d at 710.

The Act specifies that there is an annual “applicable volume” for each of “four categories of renewable fuel[:] (i) cellulosic biofuel; (ii) biomass-based diesel [‘BBD’]; (iii) advanced biofuel; and (iv) total renewable fuel.” *Americans for Clean Energy*, 864 F.3d at 697. These categories are “‘nested,’ meaning that cellulosic biofuel and [BBD] are kinds of advanced biofuel, and advanced biofuel in turn is a kind of renewable fuel that may be credited toward the total renewable fuel obligation.” *Id.* at 697-698 The difference between the total requirement and the advanced requirement is often called “the implied conventional” requirement. *Center for Biological Diversity v. EPA*, 141 F.4th 153, 174 (D.C. Cir. 2025).

Conventional renewable fuel can be used to satisfy only the implied conventional requirement, and this requirement is “primarily met by corn ethanol.” *Id.* at 186.

Congress directed EPA to establish the volume requirements for 2026 and 2027 based on EPA’s consideration of various statutory factors, including: the “rate of future commercial production of renewable fuels”; “the sufficiency of infrastructure to deliver and use renewable fuel”; and “the impact of the production and use of renewable fuels on the environment,” “the energy security of the United States,” “the infrastructure of the United States,” “the cost to consumers of transportation fuel,” “job creation, the price and supply of agricultural commodities, rural economic development, and food prices.” §7545(o)(2)(B)(ii).

EPA annually operationalizes the national volume requirements by converting them into “applicable percentages,” or percentage standards, which roughly equal the volume requirement divided by the volume of transportation fuel that EPA projects will be used during the year. *Sinclair-Exemptions*, 114 F.4th at 701. An obligated party shows compliance by “retiring” a number of credits equal to its individual RFS obligations, or Renewable Volume Obligations, which roughly equal the percentage standards multiplied by the volume of transportation fuel it produced during the compliance year. *Ibid.*; see 40 C.F.R. §§80.1406-1407. “In other words, the EPA estimates what percentage of the overall fuel supply each renewable-fuel type should constitute and then requires each obligated party to

replicate those percentages on an individual basis.” *Growth Energy v. EPA*, 5 F.4th 1, 11 (D.C. Cir. 2021).

B. Growth Energy

Growth Energy is a national trade association of companies that produce corn ethanol. Declaration of Emily Skor (“Skor Declaration”) ¶2 [attached as Ex.]. Its members produce about 60% of the 14 billion gallons of ethanol that are used to meet the RFS annually. *Id.* ¶4. Its members’ ethanol comprises about 36% of the total renewable fuel used to comply with the RFS annually and about 55% of the renewable fuel used to meet the RFS’s “implied conventional” requirement annually. *Id.* ¶5.

C. Small-Refinery Exemptions

“Small refineries” are obligated refineries whose aggregate crude-oil throughput is below a specified level. §7545(o)(1)(K). The Act provides for small refineries to be exempt from their RFS obligations when certain conditions are met. By relieving an obligated party of the obligation to use its share of renewable fuel, a small-refinery exemption (“SRE”) “reduc[es] demand for renewable fuel production and use” nationally. Set 2 Rule at 16,436:3; *see also, e.g., Renewable Fuel Standard Program: Standards for 2020 and Biomass-Based Diesel Volume for 2021 and Other Changes*, 85 Fed. Reg. 7,016, 7,050:3 (Feb. 6, 2020) (SREs “effectively reduce the volumes of renewable fuel required by the RFS program”).

Consequently, SREs cause a “renewable-fuel shortfall,” *American Fuel & Petrochemical Manufacturers v. EPA*, 937 F.3d 559, 571, 588 (D.C. Cir. 2019) [hereinafter “*American Fuel 2019*”], “hinder[ing] the achievement of the applicable renewable-fuel volumes,” *Sinclair-Reset*, 101 F.4th at 881.

In August and November 2025 EPA issued two decisions fully or partially granting 154 SREs for 2016-2024, covering 6.14 billion gallons of renewable fuel. EPA, *November 2025 Decisions on Petitions for RFS Small Refinery Exemptions* at 1, 26, EPA-420-R-25-013 (Nov. 2025)⁴; EPA, *August 2025 Decisions on Petitions for RFS Small Refinery Exemptions*, EPA-420-R-25-010 (Aug. 2025).⁵

D. The Endangered Species Act

The Endangered Species Act (“ESA”) states: “Each Federal agency shall, in consultation with and with the assistance of the Secretary [of the Interior], insure that any action authorized, funded, or carried out by such agency ... is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat of such species.” 16 U.S.C. §1536(a)(2). Under the Interior Department’s implementing regulations, the action agency must determine whether its action “may affect [endangered] species or critical habitat.” 50 C.F.R. §402.14(a). If the agency

⁴ <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P101HUOJ.pdf>.

⁵ <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P101HUUDF.pdf>.

makes such a finding, “the agency must engage in either formal or informal consultation with the U.S. Fish and Wildlife Service and National Marine Fisheries Service.” *Growth Energy*, 5 F.4th at 26 (citing §402.14(a), (b)(1)). The “consultation process terminates and no further action is necessary if the agency determines, with the written concurrence of the relevant Service, that the action ‘is not likely to adversely affect’ any [endangered] species or critical habitat.” *American Fuel 2019*, 937 F.3d at 597 (quoting §402.14(c)).

E. The Set 2 Rule

In the Set 2 Rule, EPA set the RFS volume requirements and percentage standards for 2026 and 2027.

EPA set the “advanced” biofuel volume requirements to 10.82 and 10.98 billion gallons, and the total volume requirements to 25.82 and 25.98 billion gallons, implying a conventional requirement of 15 billion gallons for each year. Set 2 Rule at 16,390 Table I.A.1-1. As in all prior years, EPA expects most of the implied conventional requirement and most of the total requirement to be met with domestically produced corn ethanol: 14.398 billion gallons in 2026 and 14.331 in 2027, about 99% of which would be “conventional” ethanol, i.e., corn-starch ethanol. *Id.* at 16,414-16,415 Tables III.A.3.a-1 & III.A.3.c-1. These levels reflect hundreds of millions of gallons of corn ethanol usage above the “No RFS” levels that EPA estimated, i.e., EPA expects the 2026-2027 RFS standards to force the

market to use hundreds of millions of gallons of corn ethanol. EPA, *Renewable Fuel Standard (RFS) Program: Standards for 2026 and 2027, Partial Waiver of 2025 Cellulosic Biofuel Volume Requirement, and Other Changes: Regulatory Impact Analysis* at 88 Table 2.1.5-2 (Mar. 2026), EPA-420-R-26-011. In mandating these levels, EPA stressed “the importance of ongoing support for corn ethanol generally and for an implied conventional renewable fuel volume requirement that helps to incentivize the domestic consumption of corn ethanol.” Set 2 Rule at 16,430:2.

EPA then converted the volume requirements to percentage standards for 2026 and 2027. It then increased the percentage standards to offset 70% of the volume of SREs that EPA had recently granted for 2023-2024, 70% of the volume of SREs that EPA projected for 2025, and 100% of the volume of SREs that EPA projected for 2026 and 2027. Set 2 Rule at 16,435:3-16,437:2, 16,441:1-2. To the extent EPA made those adjustments, it in effect “reallocated” the exempt small refineries’ obligations to the non-exempt obligated parties. Without reallocation, EPA recognized that these SREs would “result[] in an increased number of RINs” that “obligated parties [would] use ... to comply with their RFS obligations in lieu of RINs generated for renewable fuel produced and used in 2026 and 2027,” which in turn would “reduce ... RIN prices in future years and may ultimately result in

the market failing to produce the volume of renewable fuel anticipated by the volume requirements” EPA had set. Set 2 Rule at 16,436:1-3.

The renewable-fuel demand destruction that would occur if the 2023-2027 SREs were not reallocated would be substantial: about 4.87 billion gallons of renewable fuel (1.9 billion for the 2023-2024 SREs already granted and another 990 million for 2025, 2026, and 2027 each). Set 2 Rule at 16,436:2, 16,437:1, 16,439 Table IV.C.2, 16,441:1-2. That amounts to 9.4% of the 2026-2027 volume requirements. By reallocating the exempt volumes, EPA (mostly) mitigated this substantial demand destruction that the SREs would otherwise cause.

Long before issuing the 2026-27 Rule, EPA commenced consultation with the Services under the ESA. Set 2 Rule at 16,394. In May 2024, EPA first solicited input from the Services on the development of a Biological Evaluation for the Set 2 Rule. *See* Biological Evaluation of the Renewable Fuel Standard Set 2 Rule at 9 (Mar. 20, 2026).⁶ After nearly two years of consultation with the Services, EPA finalized a Biological Evaluation, concluding that “species and critical habitat ... are not likely to be adversely affected by this federal action.” *Id.* at 8. The National Marine Fisheries Service informed EPA on March 27, 2026, that it “concur[s]” with EPA’s determination that the 2026-27 Rule is “not likely to

⁶ <https://www.regulations.gov/document/EPA-HQ-OAR-2024-0505-0918>.

adversely affect” endangered species or critical habitats. NOAA-NMFS Concurrence Letter for the EPA RFS Set 2 Rule, at 4 (Mar. 27, 2026).⁷

F. This Lawsuit

Various parties have petitioned for review of the Set 2 Rule, including representatives of the petroleum industry (Case Nos. 26-1138, -1140, -1146 & -1147) and environmental groups (Case Nos. 26-1132 & -1134). No petitioner has yet filed a statement of issues, but based on the litigation regarding the RFS standards for prior years, *see, e.g., Center for Biological Diversity*, 141 F.4th 153, and based on the comments on the proposed Set 2 Rule that were submitted by the petroleum and environmental petitioners, we expect that those petitioners will argue that the 2026-2027 RFS standards—including the implied conventional standards—should be lower than EPA set, for various reasons.

ARGUMENT

I. GROWTH ENERGY MEETS THE STANDARD FOR INTERVENTION

Federal Rule of Appellate Procedure 15(d) and Circuit Rule 15(b) establish procedural requirements for intervention on appeal. This motion satisfies those procedural requirements. This motion is timely because it was filed within 30 days of the petitions for review. This motion is being served on all parties to the case.

⁷ <https://www.regulations.gov/document/EPA-HQ-OAR-2024-0505-0936>.

And the discussion in this motion constitutes “a concise statement of [Growth Energy’s] interest ... and the grounds for intervention.” Fed. R. App. P. 15(d).

For the substantive requirements, this Court has “held that intervention in the court of appeals is governed by the same standards as in the district court.” *Massachusetts School of Law at Andover, Inc. v. United States*, 118 F.3d 776, 779 (D.C. Cir. 1997) (emphasis omitted). Thus, a party has the right to intervene if it “claims an interest relating to the ... transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest, unless existing parties adequately represent that interest.” Fed. R. Civ. P. 24(a)(2); *see also Deutsche Bank National Trust Co. v. FDIC*, 717 F.3d 189, 192 (D.C. Cir. 2013). Growth Energy satisfies this standard for the reasons discussed presently.

A. This Court Has Routinely Allowed Growth Energy to Intervene in Challenges to RFS Standards

Growth Energy has successfully intervened in every lawsuit challenging EPA’s annual RFS standards. *See Order, Center for Biological Diversity v. EPA*, No. 22-1164, ECF No. 1975422 (D.C. Cir. Nov. 29, 2022) (2023-2025 standards); *Order, Sinclair Wyoming Refining Co. v. EPA*, No. 22-1210, ECF No. 1975422 (2020-22 standards); *Order, RFS Power Coalition v. EPA*, No. 20-1046, ECF No. 1843937 (D.C. Cir. May 22, 2020) (2020 standards); *Order, Growth Energy v. EPA*, No. 19-1023, ECF No. 1784196 (D.C. Cir. Apr. 23, 2019) (2019 standards); *Order,*

American Fuel & Petrochemical Manufacturers v. EPA, No. 17-1258, ECF No. 1725309 (D.C. Cir. Apr. 5, 2018) (2018 standards); Order, *Alon Refining Krotz Springs, Inc. v. EPA*, No. 16-1052, ECF No. 1722824 (D.C. Cir. Mar. 19, 2018) (2017 standards); Order, *Americans for Clean Energy v. EPA*, No. 16-1005, ECF No. 1611965 (D.C. Cir. May 5, 2016) (2014-16 standards); Order, *Monroe Energy, LLC v. EPA*, No. 13-1265, ECF No. 1468501 (D.C. Cir. Dec. 2, 2013) (2013 standards); Order, *American Petroleum Institute v. EPA*, No. 12-1139, ECF No. 1370535 (D.C. Cir. Apr. 24, 2012) (2012 standards); Order, *National Petrochemical & Refiners v. EPA*, No. 10-1070, ECF No. 1242852 (D.C. Cir. May 3, 2010) (2009-10 standards).

Growth Energy has also been a petitioner challenging annual RFS standards. See, e.g., *Americans for Clean Energy*, 864 F.3d 691 (petitioner); *Growth Energy*, 5 F.4th 1 (petitioner).

There is no reason for the Court to depart from its longstanding practice and exclude Growth Energy from this case given Growth Energy's significant interest in the 2026-2027 RFS standards established by the Set 2 Rule.

B. The Disposition of This Case Could Impair Growth Energy's Strong Interest in the 2026-2027 RFS Standards

EPA has already acknowledged that entities "involved with the production, distribution, and sale of ... ethanol" are "potentially affected by this action." Set 2 Rule at 16,388:3. That obviously includes Growth Energy, whose members will

produce a significant portion of the ethanol used to meet the 2026-2027 RFS standards established by the Set 2 Rule. *See supra* p.5. This interest is jeopardized by the petroleum petitioners' and environmental petitioners' expected claims that the 2026-2027 RFS standards are too high. The threat to Growth Energy's interest can be seen in at least three ways.

First, although RFS "annual standards" nominally obligate petroleum refiners, they also "directly regulate biofuel producers" by defining the amount of renewable fuel that must be supplied and used in the nation's transportation fuel. *American Fuel 2019*, 937 F.3d at 595; *see Energy Future Coalition v. EPA*, 793 F.3d 141, 144 (D.C. Cir. 2015) (although "regulation [prohibiting use of certain biofuel in vehicles] is technically directed at vehicle manufacturers," biofuel producers were also "an object of the action").

Second, if successful, the petroleum and environmental petitioners' challenges would lift a regulatory barrier and expose Growth Energy's members to increased competition from petroleum producers. Petroleum and ethanol are in a zero-sum competition: petroleum producers directly "compete with biofuel producers in the motor vehicle fuel market because ethanol is a substitute for the traditional petroleum-based components of gasoline." *American Fuel & Petrochemical Manufacturers v. EPA*, 3 F.4th 373, 379 (D.C. Cir. 2021) [hereinafter "*American Fuel 2021*"]; *see* Skor Declaration ¶6. RFS standards

mandate the amount of petroleum in the nation's transportation fuel that must be replaced with renewable fuel. Thus, RFS standards function as a barrier protecting renewable fuels against competition from petroleum producers for the content of the nation's transportation fuel up to the level of the standards. By reducing the RFS standards, the petitioners' challenges would lift that regulatory restriction, subjecting Growth Energy's members to increased competition from petroleum producers, to the members' detriment. *See* Skor Declaration ¶¶6-9.

And third, because the “demand for renewable fuel [is] a function of the renewable fuel standards,” *Americans for Clean Energy*, 864 F.3d at 710, “the basic laws of economics” establish that reducing those standards will “cause the demand for corn [ethanol] to drop,” *Growth Energy*, 5 F.4th at 33; *see also Monroe Energy, LLC v. EPA*, 750 F.3d 909, 917 (D.C. Cir. 2014).

Moreover, no party will adequately represent Growth Energy's interests. The adequate-representation “requirement ... is satisfied if the [movant] shows that representation of [its] interest ‘may be’ inadequate; and the burden of making that showing should be treated as minimal.” *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972); *see also Berger v. North Carolina State Conference of the NAACP*, 597 U.S. 179, 195 (2022) (requirement “present[s] proposed intervenors with only a minimal challenge”). Thus, this requirement is unmet only if “it is clear

that the party will provide adequate representation.” *Crossroads Grassroots Policy Strategies v. FEC*, 788 F.3d 312, 321 (D.C. Cir. 2015).

Here, it is far from clear that respondents, whom Growth Energy would support, will adequately represent Growth Energy’s interests. This Court “look[s] skeptically on government entities serving as adequate advocates for private parties.” *Crossroads*, 788 F.3d at 321. That skepticism is warranted here: as governmental agencies, respondents are “charged by law with representing the public interest,” whereas Growth Energy “seek[s] to protect a more narrow and parochial financial interest.” *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 736-737 (D.C. Cir. 2003). This difference means that respondents would not clearly provide adequate representation even if they and Growth Energy “undisputedly agreed that the agenc[ies’] [actions] were lawful.” *Crossroads*, 788 F.3d at 321.

Indeed, as in many prior RFS cases, respondents and Growth Energy might *not* agree on everything. For example, Growth Energy has a different view of EPA’s statutory authority to reallocate exempt obligations. *Compare* Growth Energy Supplemental Comment at 7-15⁸ with Set 2 Rule at 16,437:2-16,438:2. Growth Energy also has a different view of the market’s ability to increase its usage of corn ethanol in response to the RFS standards. *Compare* Growth Energy

⁸ <https://www.regulations.gov/comment/EPA-HQ-OAR-2024-0505-0779>.

Comment at 11-17⁹ with Set 2 Rule at 16,412:2-16,414:3. Further, Growth Energy may have a different view regarding the Set 2 Rule's effect on reducing greenhouse gas emissions and in turn regarding the effect of those emissions reductions on climate change, which issues relate to EPA's consideration of the statutory factors for setting the 2026-2027 volume requirements in light of the congressional policy to prioritize "greater energy independence and reduced greenhouse gas emissions" over fuel costs. *Sinclair-Reset*, 101 F.4th at 889; compare Growth Energy Comment at 49-58 with Set 2 Rule at 16,421:1-3.

II. GROWTH ENERGY NEED NOT ESTABLISH ARTICLE III STANDING, BUT ANYWAY IT SATISFIES THIS COURT'S STANDING REQUIREMENT

A. Defensive Intervenors Should Not Need to Show Article III Standing

This Court has said that a proposed intervenor supporting a respondent or defendant must also establish its Article III standing. *See Deutsche Bank*, 717 F.3d at 193. Any such requirement is legally unsound and contrary to Supreme Court precedent, as other circuits have recognized. *See, e.g., King v. Governor of New Jersey*, 767 F.3d 216, 245-246 (3d Cir. 2014), *abrogated in part on other grounds by National Institute of Family & Life Advocates v. Becerra*, 585 U.S. 755 (2018).

⁹ <https://www.regulations.gov/comment/EPA-HQ-OAR-2024-0505-0646>.

The Supreme Court recently held that it is “not ... incumbent” on intervenors supporting “Defendants” or “appellee[s]” “to demonstrate [their] standing” “[b]ecause neither role entail[s] invoking a court’s jurisdiction.” *Virginia House of Delegates v. Bethune-Hill*, 587 U.S. 658, 663 (2019). Indeed, the notion of a defensive party’s “standing” is incoherent because such a party necessarily does not claim to have been injured by the action being defended and does not ask the court to grant it any relief regarding that action. It makes no more sense to ask whether a defensive intervenor has “standing” than to ask whether a defendant or respondent has standing. *See also DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 n.3 (2006); *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 410-411 (2013); *Town of Chester, N.Y. v. Laroe Estates, Inc.*, 581 U.S. 433, 439-440 (2017).

Moreover, even if defensive standing were required, the respondent or defendant would certainly have it, obviating the need for a defensive intervenor to establish its own standing because an intervenor need show its standing only if it “pursues relief that is broader than or different from” the relief pursued by an existing party, and a defensive intervenor can seek only the relief that the defendant or respondent seeks: the rejection of the plaintiff’s or petitioner’s claim and the vindication of the defendant’s action (though, again, that is not “relief” in a jurisdictional sense at all). *Little Sisters of the Poor Saints Peter & Paul Home v.*

Pennsylvania, 591 U.S. 657, 674 n.6 (2020); see *Maine Lobstermen’s Ass’n v. National Marine Fisheries Service*, 70 F.4th 582, 593 (D.C. Cir. 2023) (“Because the Association has standing to sue ..., we do not need to consider the standing of the intervenors.”). That is certainly true here because Growth Energy merely seeks affirmance of the challenged Set 2 Rule, just as EPA does. Cf. *Institutional Shareholder Services, Inc. v. SEC*, 142 F.4th 757, 764 n.3 (D.C. Cir. 2025) (observing that circuit requirement that intervenors show standing “is in tension with” Supreme Court decisions holding that “intervenors that seek the same relief sought by at least one existing party need not do so”).¹⁰

Because these “intervening Supreme Court cases ... overruled” this Court’s precedent requiring defensive intervenors to show standing, this Court can and should jettison its precedent, with or without the *Irons* procedure. *Hurt v. SSA*, 544 F.3d 308, 310 n.1 (D.C. Cir. 2008); see D.C. Cir., *Policy Statement on en Banc Endorsement of Panel Decisions* at 1 (Jan. 17, 1996).

¹⁰ A defensive intervenor might need to establish Article III standing to *appeal* a judgment if the defendant or respondent declines to appeal the same portion of the judgment below, but that standing can and should be assessed only at the time of the appeal and assessed only relative to the *judgment*, which would be the relevant injurious act. See, e.g., *Virginia House*, 587 U.S. at 663 (defensive intervenor did not need to establish standing in district court but did need to as appellant); *Hollingsworth v. Perry*, 570 U.S. 693, 705 (2013).

B. Growth Energy Has Standing

In any event, Growth Energy satisfies this Court's standing requirement for defensive intervenors. An association has Article III standing when: "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Military Toxics Project v. EPA*, 146 F.3d 948, 953-954 (D.C. Cir. 1998). And to have standing in its own right, an association member must show "injury-in-fact, causation, and redressability." *Deutsche Bank*, 717 F.3d at 193.¹¹

Growth Energy's members plainly have standing to intervene because they "benefit[] from" the RFS standards, the standards are "challenged in court," and "an unfavorable decision would remove [that] benefit." *Crossroads*, 788 F.3d at 317; *Fund for Animals*, 322 F.3d at 733-734; *Military Toxics*, 146 F.3d at 954. That is all that is needed to establish standing.

Nonetheless, Growth Energy's members' standing is also evident for the same reasons that Growth Energy's members have a sufficient interest at stake to intervene under Rule 24(a). *See Roeder v. Islamic Republic of Iran*, 333 F.3d 228,

¹¹ Only one Growth Energy member needs to have standing. *Sierra Club v. EPA*, 292 F.3d 895, 898 (D.C. Cir. 2002); *Military Toxics Project*, 146 F.3d at 954.

233 (D.C. Cir. 2003) (“any person who satisfies Rule 24(a) will also meet Article III’s standing requirement”).

First, because Growth Energy’s members are “object[s] of the [challenged] action,” there is “little question” that they have standing, even though they are not the nominally regulated actors. *Diamond Alternative Energy v. EPA*, 606 U.S. 100, 112, 114 (2025); accord *Mirabelli v. Bonta*, 607 U.S. 492, 498 (2026); *Energy Future*, 793 F.3d at 144. Second, Growth Energy’s members have standing because reducing the 2026-2027 RFS standards would “lift regulatory restrictions on their [petroleum] competitors or otherwise allow increased competition” from petroleum producers. *American Fuel 2021*, 3 F.4th at 379; see also *Clinton v. City of New York*, 524 U.S. 417, 433 (1998) (“The Court routinely recognizes probable economic injury resulting from governmental actions that alter competitive conditions as sufficient to satisfy the Article III ‘injury-in-fact’ requirement.”); *Air Excursions LLC v. Yellen*, 66 F.4th 272, 279-280 (D.C. Cir. 2023). And third, reducing the RFS standards would “constrict[]” Growth Energy’s members’ “market,” causing the members “a direct economic injury” cognizable under Article III. *Craig v. Boren*, 429 U.S. 190, 194 (1976).

Indeed, for virtually identical reasons, this Court has routinely deemed it self-evident that a fuel producer had Article III standing to litigate the validity of an EPA action regulating the amount of renewable fuel to be used in transportation

fuel. See *National Biodiesel Board v. EPA*, 843 F.3d 1010, 1015-1016 (D.C. Cir. 2016) (renewable-fuel producers had “self-evident” standing to challenge action “incentiviz[ing] importation of renewable fuels that will compete with domestic production”); *Alon Refining Krotz Springs v. EPA*, 936 F.3d 628, 665 (D.C. Cir. 2019) (renewable-fuel producers had standing to claim RFS standard was too low “for the same reasons” as in *National Biodiesel* and in light of fact that “by establishing the ... volume requirement at a level lower ..., EPA was creating the potential for some competition between [their] diesel and other ... biofuels”); *American Fuel 2021*, 3 F.4th at 379-380 (petroleum refiners had standing to challenge action permitting E15 year-round because that approval was “substantially likely to increase demand for E15” relative to E10 and “in turn, likely to cause a significant rise in demand for ethanol and a significant reduction in demand for petroleum”); *Delta Construction Co. v. EPA*, 783 F.3d 1291, 1299-1300 (D.C. Cir. 2015) (fuel company’s standing was “self-evident” because challenged action “incentivizes other renewable fuels to the detriment of [its] interests”); *White Stallion Energy Center, LLC v. EPA*, 748 F.3d 1222, 1256 (D.C. Cir. 2014) (gas company’s standing was “self-evident” because challenged action declined to require “fuel switching” from coal to gas), *rev’d on other grounds sub nom. Michigan v. EPA*, 576 U.S. 743 (2015).

Finally, the other two requirements for associational standing are also satisfied. The interests that Growth Energy seeks to protect in this litigation are germane—indeed, integral—to its purpose of protecting and promoting the demand for corn ethanol, and “mere pertinence between litigation subject and organizational purpose is sufficient.” *National Lime Ass’n v. EPA*, 233 F.3d 625, 636 (D.C. Cir. 2000). And the validity of the relevant determinations reflected in the Set 2 Rule can be adjudicated without the participation of any of Growth Energy’s individual members.

CONCLUSION

For the foregoing reasons, the Court should grant Growth Energy’s motion to intervene.

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(202) 237-2727
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CORPORATE DISCLOSURE STATEMENT

Growth Energy is a non-profit trade association within the meaning of Circuit Rule 26.1(b). Its members are ethanol producers and supporters of the ethanol industry. It operates to promote the general commercial, legislative, and other common interests of its members. It does not have a parent company, and no publicly held company has a 10% or greater ownership interest in it.

Respectfully submitted,

/s/ David M. Lehn

DAVID M. LEHN

BOIES SCHILLER FLEXNER LLP

1401 New York Avenue NW

Washington, DC 20035

(202) 237-2727

June 24, 2026

CERTIFICATE OF PARTIES AND AMICI CURIAE

Pursuant to Circuit Rule 27(a)(4), Growth Energy certifies that the parties in these consolidated cases are:

Petitioners: Center for Biological Diversity; Sierra Club; Small Refineries of America; Alon USA LP; American Fuel & Petrochemical Manufacturers; Coalition for Renewable Natural Gas; Biogas Works for America, LLC; Biogas Works Coalition; American Refining Group, Inc.; Countrymark Refining and 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; Wyoming Refining Company; Coffeyville Resources Refining & Marketing, LLC; Wynnewood Refining Company, LLC.

Respondents: U.S. Environmental Protection Agency; Lee M. Zeldin; U.S. Fish and Wildlife Service; National Marine Fisheries Service.

Movant-Intervenors: None.

Amici curiae: None.

Respectfully submitted,

/s/ David M. Lehn

DAVID M. LEHN

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June 24, 2026

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), the undersigned hereby certifies:

1. This motion complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 4,646 words, excluding the exempted portions, as provided in Federal Rule of Appellate Procedure 32(f). As permitted by Federal Rule of Appellate Procedure 32(g)(1), the undersigned has relied upon the word count feature of this word processing system in preparing this certificate.

2. This motion complies with the typeface and type style requirements of Federal Rule of Appellate Procedure 27(a)(5)-(6) because it was prepared in proportionally spaced typeface using Microsoft Word for Office 365 in 14-point Times New Roman font.

/s/ David M. Lehn

DAVID M. LEHN

June 24, 2026

CERTIFICATE OF SERVICE

I certify that on this day, I filed a copy of the foregoing using the Court's case management electronic case filing system, which will automatically serve notice of the filing on registered users of that system.

/s/ David M. Lehn

DAVID M. LEHN

June 24, 2026