

RFS Extension of Compliance and Attest Engagement Reporting Deadlines: Response to Comments

RFS Extension of Compliance and Attest Engagement Reporting Deadlines: Response to Comments

Assessment and Standards Division
Office of Transportation and Air Quality
U.S. Environmental Protection Agency

Table of Contents

List of Acronyms and Abbreviations	ii
List of Organizations Submitting Comments on the Extension of Compliance and Attest Engagement Reporting Deadlines Rule	iii
1. Extension of Compliance and Attest Engagement Reporting Deadlines	4
1.1. General Comments	4
2. 2019-2021 Compliance Deadlines	21
2.1. 2019 Compliance Deadline	21
2.2. 2020 Compliance Deadline	28
2.3. 2021 Compliance Deadline	31
3. Automatic Extension of Compliance Deadlines	33
3.1. General Comments	33
3.2. 2022 Compliance Deadline	46
3.3. 2023+ Compliance Deadline	49
4. Other Comments	50
4.1. Attestation Reports	50
4.2. RIN Holding Threshold	52
4.3. Regulatory Flexibility Analysis	54
4.4. Beyond the Scope	59

List of Acronyms and Abbreviations

Numerous acronyms and abbreviations are included in this document. While this may not be an exhaustive list, to ease the reading of this document and for reference purposes, the following acronyms and abbreviations are defined here:

CAA	Clean Air Act
CFR	Code of Federal Regulations
EPA	Environmental Protection Agency
RFS	Renewable Fuel Standard
RIN	Renewable Identification Number
RVO	Renewable Volume Obligation
SRE	Small Refinery Exemption
U.S.	United States
U.S.C.	United States Code

List of Organizations Submitting Comments on the Extension of Compliance and Attest Engagement Reporting Deadlines Rule

Docket Item Number^a	Commenter or Organization Name
0002	Minnesota Corn Growers Association (MCGA)
0003	Phillips 66
0004	RINAlliance
0005	National Biodiesel Board (NBB)
0006	BTR Energy
0007	American Petroleum Institute (API)
0008	Renewable Fuels Association (RFA)
0009	National Corn Growers Association (NCGA)
0010	Coalition for Renewable Natural Gas (CRNG)
0011	Growth Energy
0012	American Fuel & Petrochemical Manufacturers (AFPM)
0013	Eversheds Sutherland
0014	CountryMark Refining & Logistics (“CountryMark”)
0015	Small Refiners Coalition (SRC)
0016	Coffeyville Resources Refining & Marketing (“Coffeyville”)
0017	Renewable Energy Group (REG)

^a Individual comments from the public (and attachments submitted with comments) submitted to Docket No. EPA-HQ-OAR-2021-0793 are assigned a unique 4-digit docket number that follows the base docket number (i.e., XXXX, where “XXXX” represents the unique 4-digit document docket number). For example, Docket Item No. EPA-HQ-OAR-2021-0793-0010 is presented as 0010 in this table and within the text of this document.

1. Extension of Compliance and Attest Engagement Reporting Deadlines

1.1. General Comments

Comment:

➤ AFPM (0012)

I. EPA's Rationale for the Compliance Extension

AFPM supports EPA's rationale to postpone RFS compliance until obligations for the subsequent year have been promulgated. This position is grounded in the Clean Air Act, which requires EPA to determine RFS standards prior to the year in which they apply.⁴ This position also makes sense based on the two-year life of RINs, which links compliance years and makes the following year's obligations an important part of an ongoing RIN acquisition strategy. EPA agrees, noting that "... we recognize the importance to obligated parties of planning their compliance for a given calendar year by understanding their obligations for the years before and after."⁵ EPA's rationale is sound, and the proposed extensions are necessitated by the inordinate delay in promulgating RFS standards and resolving pending small refinery exemption petitions. RFS deadlines have been extended before in a variety of circumstances involving the delay of RFS annual rules.⁶

The proposed compliance dates in this rulemaking, however, may not cure the harms caused by EPA's delays, and do not give adequate effect to the lead-time requirements Congress imposed. Therefore, as outlined in more detail below, EPA should further extend these deadlines. Existing statutory and regulatory deadlines contemplate a minimum of sixteen months from the time EPA promulgates an annual standard to the time that an obligated party must retire RINs for compliance, and eighteen months for attest reports.⁷ Given this statutory and regulatory framework, the proposed extensions do not provide obligated parties with adequate lead-time and EPA's proposal contains no discussion of why departing from these statutory and regulatory requirements is warranted.

II. EPA's Inaction Necessitates Compliance Extensions

When EPA sets rules outside the statutory timeframe, EPA has an obligation to mitigate the impact on obligated parties. EPA has proposed downward revisions to the 2020 final rule and proposed long overdue annual rules for 2021 and 2022. In the absence of final action by EPA on rules covering these years and given the linkage between RFS annual requirements and RIN vintages, it is wholly inappropriate for EPA to require obligated parties to submit RFS compliance reports for 2020 or 2021, as currently scheduled.⁸ Changes to the final standards could require obligated parties to adjust their RIN procurement strategies, purchase cellulosic waiver credits, and/or in some cases declare a deficit. Some of the harms and unnecessary costs caused by regulatory uncertainty can be avoided through the promulgation of

reasonable compliance deadlines. Moreover, any delay in compliance reporting will have no impact on the amount of renewable fuel that was actually produced or blended in 2020 or 2021.

In addition to not issuing timely annual RFS rules, EPA has also not acted on more than 60 small refinery exemption (SRE) petitions, including some from 2019, despite the fact that EPA is required to make SRE decisions within 90 days of receiving an individual SRE petition.⁹ AFPM supports the small refinery compliance extension for 2019 because resolving these SRE petitions will have a direct impact on those refineries' RFS obligations and may influence the broader RIN market.¹⁰ Obligated parties need – and deserve – regulatory certainty. Here, as well, a delay in demonstrating 2019 RFS compliance will not alter the quantity of renewable fuel produced or consumed.

Unfortunately, delaying the compliance date does not completely address the injuries EPA causes when it misses the statutory deadlines. Delaying the compliance date does not lower the RIN price or volatility caused by the market uncertainty created by EPA's failure to respect the statutory deadlines. Additionally, stacking the compliance dates for multiple years so close together risks overheating the RIN market. This translates to an increase in the cost of complying with the program with no resulting increase in the amount of renewable fuel consumed. Such considerations forcefully argue for EPA to provide additional time between the finalization of RFS volumes and applicable percentage requirements and the deadline for obligated parties to submit compliance reports.

III. Suggested Changes to the Proposal

Compliance reporting deadlines should be set in a manner that allows obligated parties to know their current and future renewable fuel obligations, including EPA's resolution of pending SREs and waiver petitions,¹¹ and provides adequate time for them to execute their RIN compliance/acquisition strategies. The proposed rule does not adequately protect obligated parties from unnecessary costs imposed by an overheated RIN market, address other difficulties imposed by the closely stacked compliance report deadlines, or provide required lead-time.¹²

⁴ 42 U.S.C. §§ 7545(o)(2)(B)(ii), (o)(3)(B)(i).

⁵ 86 Fed. Reg. at 67,422.

⁶ In the final rule for the 2014-16 RFS, the Agency made the 2014 RFS compliance reports due August 1, 2016, and the 2015 compliance reports due December 1, 2016 because of the Agency's delay in promulgating final standards for those years. Previously, the 2013 RFS compliance reports were delayed because the 2014 RFS rule was late. The final rule for the 2013 RFS extended 2013 RFS compliance reports from February 28, 2014, to June 30, 2014. The Agency expressed its intent to further defer the 2013 RFS deadlines in a legal brief dated February 4, 2014. Yet again, there was another deferral for 2013 compliance to September 30, 2014, in a final rule. When that extension was deemed inadequate, the Agency deferred to 30 days after the 2014 RFS was promulgated in a direct final rule. In the 2014-16 RFS final rule, EPA revised its regulations again to specify that 2013 RFS compliance reports were due by March 1, 2016, or 60 days after the 2014 RFS final rule was published in the Federal Register, whichever was later. In another instance, 2014 RFS compliance reports were delayed because the 2015 RFS rule was late. In this case, AFPM and API sent a joint letter to EPA dated February 10, 2015, requesting a deferral for 2014 compliance. EPA granted the deferral of the 2014 RFS in an Enviroflash e-mail dated March 17, 2015.

⁷ The Clean Air Act provides that RFS standards be determined prior to the start of a compliance year and that compliance occur based on the transportation fuel “sold or introduced into commerce.” 42 U.S.C. § 7545(o)(3)(B)(ii)(II); 40 C.F.R. §§80.1451(a),80.1464(d).

⁸ Compliance with the 2021 RFS rule is impossible since EPA has not yet defined what applicable percentage standards apply for that year.

⁹ 42 U.S.C. § 7545(o)(9)(B)(iii).

¹⁰ 86 Fed. Reg. 70,999 (December 14, 2021).

¹¹ 86 Fed. Reg. 5,182 (January 19, 2021).

¹² In implementing the RFS, EPA must consider statutory and regulatory lead-times. For 2020, EPA was required to determine RFS standards one month prior to the start of the compliance year, a 12-month compliance period was then to ensue, and RFS regulations in effect at that time provided 3 months in the following year for annual compliance reports – a total of 16 months. For the 2021 RFS, EPA has proposed to use the “reset” provision of the statute to determine standards that would apply for that year as well as 2022. Pursuant to 42 U.S.C. 7545(o)(2)(B)(ii), when using such authority, EPA is required to determine final standards “no later than 14 months before the first year for which such applicable volume will apply.” Under this statutory schedule, RFS standards would be set at least 26 months prior to the end of a compliance year, meaning that compliance could not occur before that time and a reasonable period of time thereafter to allow for calculation of final obligations.

➤ API (0007)

Given that just in December 2021, EPA released the 2021 and 2022 RFS proposals and also proposed adjustments to the 2020 RFS standards, API supports the proposal to extend the deadlines for submittal of 2020, 2021, and 2022 RFS compliance and attest engagement reports. API also supports delaying the deadlines for filing the 2019 small refinery compliance and attest engagement reports. These changes are necessary due to the continued delays in issuing timely annual RFS volume obligations and delays in responding to pending small refinery exemption petitions. Extending these deadlines is a reasonable accommodation for obligated parties facing uncertainties relating to regulatory delays, and potential court actions. An extension of these deadlines will have no effect on the volumes of renewable fuel produced or used in the compliance years, and do not harm renewable fuel producers. However, maintaining existing deadlines would harm obligated parties by hampering their ability to manage RIN carryover. EPA correctly notes in the proposal that establishing compliance deadlines after the subsequent year’s RVO is finalized will allow obligated parties to better plan their compliance for a given calendar year by including the impacts of their obligations for the years immediately before and after. API supports a continuation of the policy EPA has historically followed with regard to reporting deadlines in the event the subsequent annual standards are delayed.

➤ CRNG (0010)

I. EPA’s Priority Must Be to Issue the Annual Standards in a Timely Manner

At the public hearing, obligated parties claimed that the compliance deadline does not impact the volume requirements, because the compliance year is already over. This is incorrect. Failure to timely enforce the RFS requirements does create uncertainty moving forward. Indeed, EPA has previously declined to prematurely extend the RFS compliance deadlines, acknowledging that “maintaining future compliance deadlines...provide[s] certainty for the market” and that “it is in all parties’ interest to keep to the existing compliance schedule

when possible.”⁵ When EPA extended the deadlines for compliance year 2019 and 2020 initially, EPA properly declined to extend the deadlines for 2021 in an effort to keep the program on track.

While EPA has indicated it seeks to avoid having to issue more notices in the future,⁶ mere administrative convenience is insufficient explanation for EPA’s change in position.

⁵ EPA, RFS Compliance Date Extension: Response to Comments, at 10, 30-31 (2021) (“EPA 2021 RTC”).

⁶ <https://www.epa.gov/renewable-fuel-standard-program/proposed-extension-renewable-fuel-standard-compliance-deadlines> (last updated Dec. 1, 2021).

➤ Growth Energy (0011)

Unfortunately, this proposal would permit continued delays in enforceable and meaningful volume obligations, which would stymie the rate at which the RFS can decarbonize the transportation sector during this critical inflection point for the environment. Not only will this proposal stall environmental progress, but it will also cause further uncertainty for farm families and biofuel workers across the country while extending our dependence on fossil fuels.

➤ MCGA (0002) and NCGA (0009)

2019, 2020 and 2021 Compliance

Obligated parties have no additional opportunity to generate 2019, 2020 or 2021 RINs because no additional biofuels blending can occur in those years. The RIN supply for those years is fixed, and refineries either blended enough biofuels to meet their 2019 and 2020 obligations during the year or have had up to two years to purchase RINs if they opted not to blend or did not blend enough. The ability to carry forward a deficit, if necessary, also provides compliance flexibility.

Furthermore, no extension in 2020 compliance [...] is needed to address COVID-19 impacts.

➤ Phillips 66 (0003)

Phillips 66 supports the proposed approach for determining the compliance reporting and attest report submission deadlines for 2019, 2020 and 2021. This approach is as follows:

- 2019 small refinery compliance reporting - required by the next quarterly deadline after the effective date of the 2021 RFS percentage standards
- 2020 all obligated parties - required to submit compliance reports by the next quarterly reporting deadline following the 2019 compliance reporting deadline for small refineries
- 2021 all obligated parties - required to submit compliance reports by the quarterly reporting deadline that is after the 2020 compliance reporting deadline
- Attest reports – due the next June 1st that is at least 60 days after the applicable annual compliance reporting deadline

These adjustments to the reporting deadlines are necessary due to continued delays in issuing the annual rulemaking to establish the applicable percentage standards. The proposed sequencing is also appropriate since RINs are valid for two years. Obligated parties manage their RIN acquisitions and holdings to cover two compliance periods. Therefore, the compliance dates need to be sequential with some time in between submission dates to allow parties to buy/sell/manage RINs.

➤ RFA (0008)

Further extending prior years' compliance deadlines and codifying a new mechanism to automatically trigger future delays is not the way to get the RFS back on track.

➤ RINAlliance (0004)

(I) The Unusual Circumstances of the Past Two Years Should Remain an Exception and Should Not Change the RFS Compliance Deadlines for Any Party.

RINAlliance supports EPA's adjustment of the 2019, 2020 and 2021 compliance deadlines due to court decisions that impacted how EPA granted small refinery exemptions, and to allow for these decisions to be put into practice during a time where the world is managing through a pandemic. These were highly unusual circumstances that required unique solutions.

Response:

As discussed more fully in the preamble, we are finalizing the compliance deadline extensions for 2019, 2020, and 2021 as proposed. Given the timing of the final rule, we are also extending the compliance deadline for 2022 consistent with the proposed regulations at the suggestion of some commenters. We are also finalizing regulations that will automatically adjust future compliance deadlines should the following year's standards be delayed. Our reasons for these extensions are described more fully in the final rule.

Were EPA not to further extend the 2019-2021 compliance deadlines, refineries would be faced with a quickly approaching January 31, 2022, deadline to demonstrate compliance with their 2020 obligations, and then a March 31, 2022, deadline to demonstrate compliance with their 2021 obligations (which are currently unknown as those obligations have not yet been finalized). Furthermore, small refineries would no longer have the opportunity to amend their 2019 compliance reports, as the previous deadline was November 30, 2021. By further extending the compliance deadlines for 2019-2021 in this action, EPA is providing all obligated parties additional time to acquire the RINs necessary to demonstrate compliance, as well as ensuring that obligated parties will be fully aware of the following year's obligations before having to demonstrate compliance with the current year's obligations. By staggering the compliance deadlines in the manner proposed, EPA is providing obligated parties with at least 60 days between compliance deadlines, consistent with past practice when EPA has missed the deadline

to establish the annual volume obligations for a given year.¹ Our past experience administering this program has indicated that, where the RFS annual rules have been delayed, this 60-day window between compliance deadlines is a workable amount of time for obligated parties to develop their compliance strategy and acquire sufficient RINs to demonstrate compliance. For instance, we found that this amount of time was generally sufficient for obligated parties to comply with the 2013–2016 standards, which had a similar compliance schedule to the one finalized in this action.

We thank commenters who supported our action to extend compliance deadlines. We incorporate and agree with their comments providing reasons why such extensions are warranted.

We do not believe that changes to the RFS compliance deadlines will have impacts on the RIN or renewable fuels markets since the amount of renewable fuel produced and used in 2019–2021 cannot be modified at this time as those years have passed. The final rule appropriately balances the interest of the renewable fuels industry and obligated parties by finalizing reasonable extensions that will allow obligated parties additional time to understand their compliance obligations based on future EPA actions without causing harm to the renewable fuels industry.

The typical 16 months between promulgation of a given year’s standards (November 30 before the given year) and the corresponding compliance deadline (March 31 of the year after the given year) was determined and established by EPA through regulation. Additionally, the year-long interval between each compliance deadline was also established by EPA via regulation and is not specified in the CAA. Therefore, in certain circumstances, such as delays in the promulgation of standards, EPA retains the authority to modify the intervals of compliance in a reasonable manner. In fact, EPA has done so in the past.² Commenters are correct that when EPA is late in promulgating standards, the D.C. Circuit has held that EPA must mitigate burdens on obligated parties. The extended deadlines here do mitigate burdens associated with compliance, including allowing compliance to occur significantly later (at least 14 months) than originally required. Additionally, we find that the interval between the compliance deadlines is appropriate. While it is true that parties usually have a full year between compliance deadlines, there will be at least 60 days between the 2020 and 2021 compliance deadlines. We are not convinced that additional time between these deadlines will result in lower RIN prices or lower compliance costs. In the past, when adjusting deadlines due to delay, we have not seen an “overheating” of the RIN market, and we do not anticipate that the situation is materially different now.

The first quarterly reporting deadline after the effective date of the final rule establishing the 2021 standards is as soon as practicable for the 2019 compliance deadline for small refineries. The subsequent compliance deadlines (for 2020, 2021, and 2022) follow at regular but appropriately spaced intervals after that compliance deadline. A commenter suggested that the deadlines were too close together and that the proposed deadlines are likely to “heat up” the RIN market. Based on past compliance deadlines that occurred at similar intervals, we do not think

¹ See, e.g., the extension of the 2013–2015 compliance deadlines (80 FR 77512–77514, December 14, 2015) and the previous extension of the 2019 and 2020 compliance deadlines (86 FR 17073, April 1, 2021).

² See 2014 final rule, modifying the compliance deadline from February 28 to March 31 (79 FR 23414, April 28, 2014). See also the 2014–2016 rule, modifying the compliance deadlines for specified years due to delays in promulgation of the standards (80 FR 77420, December 14, 2015).

that increases in RIN prices are likely simply as a result of the need to demonstrate compliance at these intervals.³ A multitude of factors affect RIN prices, many of which are outside of EPA's control and thus also beyond the scope of this rulemaking.

As to comments about the statutory deadlines in the CAA, we note that there are no statutory deadlines for when obligated parties must demonstrate compliance, and that EPA retains significant discretion to determine the appropriate compliance deadlines under the RFS program. While the statute does provide deadlines for certain EPA actions (e.g., setting the percentage standards, utilizing the reset authority), these provisions do not speak to the amount of time needed between EPA action (i.e., establishing the applicable volumes or percentage standards) and the deadline to demonstrate compliance with those standards.

Ideally, EPA would have met the statutory deadlines for establishing the applicable volumes and percentage standards, obviating the need for this action. However, since we have not, compliance deadline extensions are necessary. While maintaining compliance deadlines does provide certainty, and when possible, we will try to maintain them, the circumstances currently before us justify their modification. It is not inconsistent for EPA to seek to maintain the 2021 compliance deadline, as in the previous compliance deadline extension rule,⁴ and to change that deadline in this action due to the continued passage of time and continued delay in the issuance of the 2021 standards.

As discussed further in Section 2.2., this action does not modify obligations, and only extends the time at which obligated parties must submit compliance reports and retire associated RINs.

We agree with commenters who asserted that the RIN supply for past compliance years (i.e., 2019, 2020, and 2021) is finite and cannot be changed. However, we still believe that providing obligated parties with the ability to know the next year's compliance obligations at the time of compliance is important for making compliance decisions.

Our action in this rulemaking is justified only by the reasons articulated in the proposed and final rules. The COVID-19 pandemic is not an independent justification for our action. Our action in this rulemaking to extend the compliance deadlines (including 2020) is due to the delay in the promulgation of the 2021 standards.

Comment:

➤ SRC (0015)

I. EPA's only equitable option is to excuse compliance for 2019–2021.

³ Due to the delay in establishing the 2014 and 2015 standards, EPA required that obligated parties submit their compliance reports for the 2013, 2014, and 2015 compliance years during calendar year 2016. RIN prices for D4, D5, and D6 RINs were relatively stable during 2016, generally averaging between \$0.50 and \$1.00 per RIN. See RIN price data at: <https://www.epa.gov/fuels-registration-reporting-and-compliance-help/rin-trades-and-price-information>

⁴ 86 FR 17073 (April 1, 2021).

EPA's unlawful and unprecedented delay in publishing the annual volume requirements and delay in issuing decisions on hardship petitions have played a significant part in the increased RIN market volatility and RIN scarcity. The extent of EPA's unlawful activity means that there is no equitable means of administering the 2019–2021 compliance deadlines.

EPA has yet to issue final decisions on the pending hardship petitions, despite the Clean Air Act requirement that EPA issue its decision on a petition within 90 days of receipt of the petition.⁸ Although EPA's proposed denial of all pending hardship petitions was published in the Federal Register on December 14, 2021, it is by no means final and small refineries cannot rely on the proposal for compliance planning.⁹ If EPA finalizes the proposal as written, litigation will ensue, which would extend the period of uncertainty regarding compliance planning.

[...]

In addition to RIN market volatility, RIN scarcity is a serious problem that disproportionately impacts small refineries. Due to the uncertainty surrounding small refinery hardship relief, EPA extended the 2019 compliance deadline for small refineries but did not also extend the deadline for other obligated parties.¹³ When EPA set mismatched 2019 compliance deadlines, all obligated parties (except small refineries) were required to show compliance for 2019 by March 31, 2020, meaning that those obligated parties retired their 2018- and 2019-vintage RINs nearly two years ago to comply. 40 C.F.R. § 80.1451(a). Now, it is virtually impossible for small refineries to obtain 2018- and 2019-vintage RINs. To force small refineries to show compliance for three years in a period as short as six months is contrary to EPA's own understanding that the "success of the entire [RFS] program" depends on a liquid and well- functioning RIN market, and a poorly functioning RIN market raises compliance costs for obligated parties and undermines the market.¹⁴ Small refineries are the only obligated parties to which EPA's proposed 2019 compliance deadline applies. The scarcity of 2018- and 2019-vintage RINs makes 2019 compliance unfairly burdensome, if not impossible, for small refineries.

If EPA had administered the program consistent with the Clean Air Act, RINs prices would not be where they are today, and small refineries would have had 16 months to plan for compliance with each deadline and 12 months between deadlines to demonstrate compliance. Putting small refineries out of business or subjecting them to crippling compliance costs or enforcement penalties runs counter to the purpose of the RFS program. Congress created the RFS to promote American energy independence, of which small refineries are a critical part. Congress intended to keep small refineries "competitive and profitable."¹⁵

II. Even if EPA does not excuse compliance for 2019–2021, it still must revise the proposed compliance schedule, which is too compressed, and adjust RVOs for non- exempt small refineries to eliminate the additional costs EPA has imposed on small refineries by unlawfully delaying action.

EPA has determined that obligated parties deserve 16 months to plan for compliance. For 2005 through 2021, the Clean Air Act requires the EPA Administrator to "determine and

publish in the Federal Register” the “renewable fuel obligation” by November 30 of the year proceeding the compliance year in question. 42 U.S.C. § 7545(o)(3)(B)(i). For 2022 and beyond, EPA must “promulgate rules establishing the applicable volumes . . . no later than 14 months before the first year for which such applicable volume will apply.” 42 U.S.C. § 7545(o)(2)(B)(ii). And under 40 C.F.R. § 80.1451(a), the deadline to demonstrate RFS compliance is March 31 of the year following the compliance year. Thus, the successive compliance deadlines are supposed to be 12 months apart and obligated parties are supposed to have at least 16 months to plan for and demonstrate compliance between the publication of the annual volume obligation and the deadline for compliance with that obligation.

Further, it is critical that small refineries know whether they received hardship relief well in advance of the compliance deadline. EPA’s proposal does not commit to deciding the 2019–2021 hardship petitions on any specified timeline, which means there is still no guarantee small refineries will have sufficient time before the new proposed deadlines to plan for compliance (e.g., either buying or selling RINs). Under the proposed plan, small refineries may need to comply with three years of RFS obligations within a six- or seven-month period. While large integrated refining companies may be able to comply with little lead time because they secure RINs through their vast retail marketing arms, small refineries are not. Even those small refineries with the ability to blend a portion of their product and purchase the remainder of their RINs still face astronomical and disproportionate RFS compliance costs. Small refineries have reached the limit in their ability to blend, because they lack the market power and presence to increase the blends accepted in their markets, they do not have the ability to blend certain renewable fuels into their product, and they do not have the capital to invest in joint ventures that would allow them to access RINs through other pathways.

Following EPA’s proposed compliance schedule would be an extreme financial shock to the system of any obligated party, much less the smallest producers that Congress specifically sought to protect from disproportionate economic hardship. Therefore, EPA must reset the compliance deadlines to allow at least 16 months of lead time for compliance. This means that the 2019 compliance deadline for small refineries should be at least 16 months after issuance of either the final 2019 hardship decisions or the final 2020–2022 renewable fuel volumes, whichever is later; and the 2020 through 2022 compliance deadlines each should be staggered 12 months after the preceding deadline.¹⁶

As explained above, EPA’s delayed decision making has caused the current volatility in the RIN market and astronomical RINs prices. If not for EPA’s delay in issuing the 2020–2022 renewable fuel volumes¹⁷ and deciding the pending hardship petitions, RFS compliance costs would have been significantly lower. Thus, for those small refineries that ultimately do not receive hardship relief, EPA should adjust the small refineries’ RVOs to eliminate the additional costs directly imposed by EPA through its delayed decision making.

III. The compliance flexibilities under the Clean Air Act are meaningless when the compliance deadlines are compressed into a six-month timeframe.

EPA disingenuously claims that the proposal would still permit small refineries to use “all existing regulatory [compliance] flexibilities.”¹⁸ The deficit carryforward promulgated by

EPA, and required under the Clean Air Act, functions as a regulatory tool for flexibility that obligated parties may choose to employ. 42 U.S.C. § 7545(o)(5)(D); 40 C.F.R. § 80.1427(b). In a typical year, a small refinery would be able to decide whether to carry forward a deficit after weighing the financial and business sense of that decision in light of its RVOs for that year and the following year. Under EPA’s compressed compliance schedule, the carryforward provision is effectively useless because the 2019, 2020, and 2021 deadlines are within months of each other—there are three compliance deadlines compressed into a six- or seven-month span. This means that even if a small refinery carries forward a deficit for 2019, for example, it will be required to satisfy that deficit only months later when the 2020 deadline occurs.

As made clear in 42 U.S.C. § 7545(o)(5)(D), Congress contemplated that, in the event an obligated party carried forward a deficit, the obligated party would be able to carry that deficit into “the calendar year following the year in which the renewable fuel deficit is created.”¹⁹ Under Congress’s scheme—which assumes that EPA meets the statutory deadlines to promulgate annual renewable blending volumes—a small refinery could carry a deficit for one compliance year into the next calendar year before achieving compliance for the first compliance year. EPA’s proposal contradicts Congress’s intent and, therefore, fails to allow obligated parties to utilize the Clean Air Act’s compliance flexibilities. For the 2019–2021 compliance years, small refineries should be able to use the deficit carryforward provision as Congress intended.

⁸ 42 U.S.C. § 7545(o)(9)(B)(iii) (“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 the receipt of the petition.”); 40 C.F.R. § 80.1441(e)(2)(ii) (“The Administrator shall act on such a petition not later than 90 days after the date of receipt of the petition.”). Congress imposed this deadline on EPA for good reason: small refineries rely in large part on the RIN market for compliance with their RFS obligations.

⁹ 86 Fed. Reg. 70,999 (Dec. 14, 2021); Proposal to Deny Petitions for Small Refinery Exemptions, available at <https://www.epa.gov/renewable-fuel-standard-program/proposal-deny-petitions-small-refinery-exemptions>.

¹⁰ 42 U.S.C. § 7545(o)(3)(B)(i) (providing that by November 30 of each 2005 through 2021, EPA must publish in the Federal Register the renewable fuel obligation for the following year)

¹¹ 86 Fed. Reg. 72,436 (Dec. 21, 2021).

¹² In addition, on December 8, 2021, the D.C. Circuit granted EPA’s motion for voluntary remand, without vacatur, of the 2018 hardship decisions. Thus, in addition to the uncertainty surrounding the 2019–2021 hardship petitions, there is now uncertainty as to the fate of the 2018 decisions, which were issued well over two years ago. EPA’s proposed compliance extension does not account for whether or how the remand of the 2018 hardship decisions could impact EPA’s proposed compliance schedule.

¹³ 86 Fed. Reg. 17,073 (Apr. 1, 2021).

¹⁴ 85 Fed. Reg. 7021 (Feb. 6, 2020).

¹⁵ S. Rep. No. 114-281, at 70–71.

¹⁶ The 2019–2021 attest engagement deadlines should be a minimum of two months after the corresponding compliance deadlines.

¹⁷ The Coalition intends to submit comments on EPA’s proposed 2020–2022 renewable fuel volumes by the deadline, February 4, 2022.

¹⁸ 86 Fed. Reg. at 67,421.

¹⁹ See also 72 Fed. Reg. 23,899, 23,909, 23,935 (May 1, 2007) (EPA explaining that the deficit carry-over option is for circumstances where a small refinery cannot generate or buy enough RINs).

➤ Coffeyville (0016)

I. EPA’s only equitable option is to excuse compliance for 2019–2021.

EPA's unlawful and unprecedented delay in publishing the annual volume requirements and delay in issuing decisions on hardship petitions have played a significant part in the increased RIN market volatility and RIN scarcity. The extent of EPA's unlawful activity means that there is no equitable means of administering the 2019–2021 compliance deadlines.

EPA has yet to issue final decisions on WRC's pending 2019, 2020 and 2021 hardship petitions, despite the Clean Air Act requirement that EPA issue its decision on a petition within 90 days of receipt of the petition.⁷ Although EPA's proposed denial of all pending hardship petitions was published in the Federal Register on December 14, 2021, it is by no means final and small refineries cannot rely on the proposal for compliance planning.⁸ If EPA finalizes the proposal as written, litigation will ensue, which would extend the period of uncertainty regarding compliance planning.

[...]

If EPA had administered the program consistent with the Clean Air Act, RINs prices would not be where they are today, and obligated parties would have had 16 months to plan for compliance with each deadline and 12 months between deadlines to demonstrate compliance. Putting refineries out of business or subjecting them to crippling compliance costs or enforcement penalties runs counter to the purpose of the RFS program. Congress created the RFS to promote American energy independence, of which merchant refineries like CRRM and WRC are a critical part.

All renewable fuel blending for 2019 and 2020 is complete and, therefore, the volume of renewable fuel blended for those years is not at issue. Blending for 2021 also will be complete soon. The only question is whether vulnerable companies like CRRM and WRC will be forced to transfer hundreds of millions of dollars to purchase as much as three years' worth of exorbitantly priced RINs for blending that has already occurred or will soon be completed.

Congress has determined that obligated parties deserve more than a year to plan for compliance. For 2005 through 2021, the Clean Air Act requires the EPA Administrator to “determine and publish in the Federal Register” the “renewable fuel obligation” by November 30 of the year proceeding the compliance year in question. 42 U.S.C. § 7545(o)(3)(B)(i). For 2022 and beyond, EPA must “promulgate rules establishing the applicable volumes . . . no later than 14 months before the first year for which such applicable volume will apply.” 42 U.S.C. § 7545(o)(2)(B)(ii). And under 40 C.F.R. § 80.1451(a), the deadline to demonstrate RFS compliance is March 31 of the year following the compliance year. Thus, obligated parties are entitled to have at least 16 months to plan for and demonstrate compliance, between the publication of the annual volume obligation and the deadline for compliance with that obligation. While large integrated refining companies may be able to comply with little lead time because they secure RINs through their vast retail marketing arms, merchant refineries like CRRM and WRC are not. Therefore, if EPA refuses to excuse compliance for those years in which EPA violated the law, it should combine those compliance periods—2019 through 2022—enabling obligated parties to use any available

vintage RINs for compliance, and set the compliance deadline for the combined periods at 16 months following finalization of the 2020–2022 renewable fuel volumes.¹²

II. The compliance flexibilities under the Clean Air Act are meaningless when the compliance deadlines are compressed into a six-month timeframe.

The deficit carryforward provision promulgated by EPA, and required under the Clean Air Act, functions as a regulatory tool for flexibility that obligated parties may choose to employ. 42 U.S.C. § 7545(o)(5)(D); 40 C.F.R. § 80.1427(b). Congress contemplated that, in the event an obligated party carried forward a deficit, the obligated party would be able to carry that deficit into “the calendar year following the year in which the renewable fuel deficit is created.”¹³ Under Congress’s scheme—which assumes that EPA meets the statutory deadlines to promulgate annual renewable blending volumes—an obligated party could carry a deficit for one compliance year into the next calendar year before achieving compliance for the first compliance year. Thus, in a typical year, an obligated party would be able to decide whether to carry forward a deficit after weighing the financial and business sense of that decision in light of its RVOs for that year and the following year.

Under EPA’s compressed compliance schedule, the carryforward provision is effectively useless because the compliance deadlines are within months of each other—for small refineries in particular, there are three compliance deadlines compressed into a six- or seven-month span.¹⁴ This means that even if an obligated party carries forward a deficit for 2020, for example, it will be required to satisfy that deficit only months later when the 2021 deadline occurs. EPA’s proposal contradicts Congress’s intent and, therefore, fails to allow obligated parties to utilize the Clean Air Act’s compliance flexibilities. EPA must revise the proposal to provide obligated parties the ability to use the deficit carryforward provision as Congress intended.

And in the case of small refineries, it is critical that they know whether they received hardship relief well in advance of the compliance deadlines. EPA’s proposal does not commit to deciding the 2019–2021 hardship petitions on any specified timeline, which means there is still no guarantee small refineries will have sufficient time before the new proposed deadlines to plan for compliance (e.g., either buying or selling RINs). Following EPA’s proposed compliance schedule would be an extreme financial shock to the system of any obligated party, much less the smallest producers that Congress specifically sought to protect from disproportionate economic hardship.¹⁵

⁷ 42 U.S.C. § 7545(o)(9)(B)(iii) (“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 the receipt of the petition.”); 40 C.F.R. § 80.1441(e)(2)(ii) (“The Administrator shall act on such a petition not later than 90 days after the date of receipt of the petition.”). Congress imposed this deadline on EPA for good reason: small refineries rely in large part on the RIN market for compliance with their RFS obligations.

⁸ 86 Fed. Reg. 70,999 (Dec. 14, 2021); Proposal to Deny Petitions for Small Refinery Exemptions, available at <https://www.epa.gov/renewable-fuel-standard-program/proposal-deny-petitions-small-refinery-exemptions>.

⁹ 42 U.S.C. § 7545(o)(3)(B)(i) (providing that by November 30 of each 2005 through 2021, EPA must publish in the Federal Register the renewable fuel obligation for the following year)

¹⁰ 86 Fed. Reg. 72,436 (Dec. 21, 2021).

¹¹ In addition, on December 8, 2021, the D.C. Circuit granted EPA’s motion for voluntary remand, without vacatur, of the 2018 hardship decisions. Thus, in addition to the uncertainty surrounding the 2019–2021 hardship petitions, there is now uncertainty as to the fate of the 2018 decisions, which were issued well over two years ago. EPA’s proposed compliance extension does not account for whether or how the remand of the 2018 hardship decisions could impact EPA’s proposed compliance schedule.

¹² The 2019–2021 attest engagement deadlines should be a minimum of two months after the corresponding compliance deadlines.

¹³ See also 72 Fed. Reg. 23,899, 23,909, 23,935 (May 1, 2007) (EPA explaining that the deficit carry-over option is for circumstances where a small refinery cannot generate or buy enough RINs).

¹⁴ EPA disingenuously claims that the proposal would still permit small refineries to use “all of the existing regulatory [compliance] flexibilities.” 86 Fed. Reg. at 67,421.

¹⁵ Congress intended to keep small refineries “competitive and profitable.” S. Rep. No. 114-281, at 70–71.

➤ CountryMark (0014)

I. EPA’s only equitable option is to excuse compliance for 2019–2021.

EPA’s unlawful and unprecedented delay in publishing the annual volume requirements and delay in issuing decisions on hardship petitions have played a significant part in the increased RIN market volatility. The extent of EPA’s unlawful activity means that there is no equitable means of administering the 2019–2021 compliance deadlines.

EPA has yet to issue final decisions on the pending hardship petitions, despite the Clean Air Act requirement that EPA issue its decision on a petition within 90 days of receipt of the petition.⁵ Although EPA’s proposed denial of all pending hardship petitions was published in the Federal Register on December 14, 2021, it is by no means final and small refineries cannot rely on the proposal for compliance planning.⁶ If EPA finalizes the proposal as written, litigation will ensue, which would extend the period of uncertainty regarding compliance planning.

[...]

If EPA had administered the program consistent with the Clean Air Act, RINs prices would not be where they are today, and small refineries would have had 16 months to plan for compliance with each deadline and 12 months between deadlines to demonstrate compliance. Putting small refineries out of business or subjecting them to crippling compliance costs or enforcement penalties runs counter to the purpose of the RFS program. Congress created the RFS to promote American energy independence, of which small refineries like CountryMark are a critical part. Congress intended to keep small refineries “competitive and profitable.”¹⁰

Excusing compliance will not affect the volumes of renewable fuel blended into transportation fuel. All renewable fuel blending for 2019 and 2020 is complete and blending for 2021 also will be complete soon. Further, small refineries already have blended as much as their respective markets will bear in order to reduce their RFS compliance costs. The only question is whether vulnerable small refineries will be forced to transfer hundreds of millions of dollars to purchase three years’ worth of exorbitantly priced RINs for blending that has already occurred or will soon be completed.

II. Even if EPA does not excuse compliance for 2019–2021, it still must revise the proposed compliance schedule, which is too compressed.

EPA has determined that obligated parties deserve 16 months to plan for compliance. For 2005 through 2021, the Clean Air Act requires the EPA Administrator to “determine and publish in the Federal Register” the “renewable fuel obligation” by November 30 of the year proceeding the compliance year in question. 42 U.S.C. § 7545(o)(3)(B)(i). For 2022 and beyond, EPA must “promulgate rules establishing the applicable volumes . . . no later than 14 months before the first year for which such applicable volume will apply.” 42 U.S.C. § 7545(o)(2)(B)(ii). And under 40 C.F.R. § 80.1451(a), the deadline to demonstrate RFS compliance is March 31 of the year following the compliance year. Thus, the successive compliance deadlines are supposed to be 12 months apart and obligated parties are supposed to have at least 16 months to plan for and demonstrate compliance, between the publication of the annual volume obligation and the deadline for compliance with that obligation.

Further, it is critical that small refineries know whether they received hardship relief well in advance of compliance deadlines. EPA’s proposal does not commit to deciding the 2019–2021 hardship petitions on any specified timeline, which means there is still no guarantee small refineries will have sufficient time before the new proposed deadlines to plan for compliance (e.g., either buying or selling RINs). While large integrated refining companies may be able to comply with little lead time because they secure RINs through their vast retail marketing arms, small refineries are not. Even those small refineries, like CountryMark, with the ability to blend a portion of their product and purchase the remainder of their RINs still face astronomical and disproportionate RFS compliance costs. Small refineries have reached the limit in their ability to blend, because they lack the market power and presence to increase the blends accepted in their markets, they do not have the ability to blend certain renewable fuels into their product, and they do not have the capital to invest in joint ventures that would allow them to access RINs through other pathways.

Following EPA’s proposed compliance schedule would be an extreme financial shock to the system of any obligated party, much less the smallest producers that Congress specifically sought to protect from disproportionate economic hardship. Therefore, EPA must reset the compliance deadlines to allow at least 16 months of lead time for compliance. This means that the 2019 compliance deadline for small refineries should be at least 16 months after issuance of either the final 2019 hardship decisions or the final 2020–2022 renewable fuel volumes, whichever is later; and the 2020 through 2022 compliance deadlines each should be staggered 12 months after the preceding deadline.¹¹ Further, EPA should allow obligated parties to use next year-vintage RINs for compliance. For example, to show compliance for the 2020 compliance year, an obligated party should be able to retire 2019-, 2020-, and 2021-vintage RINs. This would further alleviate the current RIN market volatility.

III. The compliance flexibilities under the Clean Air Act are meaningless when the compliance deadlines are compressed into a six-month timeframe.

EPA claims that the proposal would still permit small refineries to use “all existing regulatory [compliance] flexibilities.”¹² The deficit carryforward promulgated by EPA, and

required under the Clean Air Act, functions as a regulatory tool for flexibility that obligated parties may choose to employ. 42 U.S.C. § 7545(o)(5)(D); 40 C.F.R. § 80.1427(b). In a typical year, a small refinery would be able to decide whether to carry forward a deficit after weighing the financial and business sense of that decision in light of its RVOs for that year and the following year. Under EPA’s compressed compliance schedule, the carryforward provision is effectively useless because the 2019, 2020, and 2021 deadlines are within months of each other—there are three compliance deadlines compressed into a six- or seven-month span. This means that even if a small refinery carries forward a deficit for 2020, for example, it will be required to satisfy that deficit only months later when the 2021 deadline occurs.

As made clear in 42 U.S.C. § 7545(o)(5)(D), Congress contemplated that, in the event an obligated party carried forward a deficit, the obligated party would be able to carry that deficit into “the calendar year following the year in which the renewable fuel deficit is created.”¹³ Under Congress’s scheme—which assumes that EPA meets the statutory deadlines to promulgate annual renewable blending volumes—a small refinery could carry a deficit for one compliance year into the next calendar year before achieving compliance for the first compliance year. EPA’s proposal contradicts Congress’s intent and, therefore, fails to allow obligated parties to utilize the Clean Air Act’s compliance flexibilities. For the 2019–2021 compliance years, small refineries should be able to use the deficit carryforward provision as Congress intended.

⁵ 42 U.S.C. § 7545(o)(9)(B)(iii) (“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 the receipt of the petition.”); 40 C.F.R. § 80.1441(e)(2)(ii) (“The Administrator shall act on such a petition not later than 90 days after the date of receipt of the petition.”). Congress imposed this deadline on EPA for good reason: small refineries rely in large part on the RIN market for compliance with their RFS obligations.

⁶ 86 Fed. Reg. 70,999 (Dec. 14, 2021); Proposal to Deny Petitions for Small Refinery Exemptions, available at <https://www.epa.gov/renewable-fuel-standard-program/proposal-deny-petitions-small-refinery-exemptions>.

⁷ 42 U.S.C. § 7545(o)(3)(B)(i) (providing that by November 30 of each 2005 through 2021, EPA must publish in the Federal Register the renewable fuel obligation for the following year)

⁸ 86 Fed. Reg. 72,436 (Dec. 21, 2021).

⁹ In addition, on December 8, 2021, the D.C. Circuit granted EPA’s motion for voluntary remand, without vacatur, of the 2018 hardship decisions. Thus, in addition to the uncertainty surrounding the 2019–2021 hardship petitions, there is now uncertainty as to the fate of the 2018 decisions, which were issued well over two years ago. EPA’s proposed compliance extension does not account for whether or how the remand of the 2018 hardship decisions could impact EPA’s proposed compliance schedule.

¹⁰ S. Rep. No. 114-281, at 70–71.

¹¹ The 2019–2021 attest engagement deadlines should be a minimum of two months after the corresponding compliance deadlines.

¹² 86 Fed. Reg. at 67,421.

¹³ See also 72 Fed. Reg. 23,899, 23,909, 23,935 (May 1, 2007) (EPA explaining that the deficit carry-over option is for circumstances where a small refinery cannot generate or buy enough RINs).

Response:

While EPA has historically allowed for approximately 16 months between setting standards and the deadline to demonstrate compliance with those standards, this has not always been the case,

and is not specified in the statute.⁵ We find that providing 16 months between deadlines is unnecessary, as the number of RINs available remains the same no matter when we require parties to demonstrate compliance. The 12 months between deadlines, as is often the case when RFS standards are prospective in nature, is unnecessary for retroactive standards set at actual renewable fuel use in the U.S. (i.e., the standards proposed for 2020 and 2021). We find that it is also appropriate to require only a minimum of 60 days between compliance deadlines for 2021 and 2022, as those deadlines are still likely to come significantly after the compliance years are complete, and parties will have had significant notice of the standards ahead of the compliance deadlines.⁶ Commenters are essentially suggesting that small refineries deserve special treatment with respect to compliance deadlines. To the extent this extends beyond the delayed 2019 compliance deadline, we disagree.

The carryforward deficit statutory provision and implementing regulations still provide small refineries with a compliance flexibility. Obligated parties have information about at least three years of standards as well as gasoline and diesel fuel production and RIN generation. Utilizing that information, they can make decisions about the best compliance strategy, including the option to take a deficit. Obligated parties are still able to weigh the financial and business sense of their decisions under a compressed compliance deadline. We do not believe that requiring parties to demonstrate compliance several months, as opposed to a year, later obviates the benefits of the carryforward deficit provision; the provision still allows parties to delay compliance, and modifies the RIN vintage that they are able to utilize to comply. For example, an obligated party that chooses to carry forward a deficit for its 2020 obligations into 2021 would be able to utilize 2021 RINs to meet that obligation, something it would otherwise be unable to do. The statutory reference to “calendar year” in CAA section 211(o)(5)(D) is given meaning by allowing obligated parties that choose to carry forward a deficit to utilize RINs from the next calendar year to fulfill its obligations. We are also allowing small refineries that initially decided to carryforward a deficit to reverse that decision and retire RINs if doing so make sense for that refinery.

To the extent commenters suggest EPA should relieve compliance for 2019–2021 for small refineries, those comments are beyond the scope of this action, which proposes only to change compliance deadlines without changing the underlying obligations.

In any case, while commenters are correct that EPA has yet to issue SRE decisions, such decisions are imminent. We recently proposed to deny all pending SRE petitions, as described in this final rule.⁷ We intend for SRE decisions to be final ahead of the compliance deadlines and with sufficient time for small refineries to come into compliance. We anticipate that all obligated

⁵ See compliance deadlines for 2013–2016, which were also adjusted as a result of delays in promulgating standards. We also note that prior to 2014, the compliance deadline was February 28 of the subsequent year, thus providing only 15 months between promulgation of the standards and the compliance deadline.

⁶ Given the nature of the already established RFS quarterly reporting deadlines in 40 CFR 80.1451(f)(2), and the uncertainty of the timing of the final rule establishing the 2021 standards, the time between reporting deadlines may be approximately as short as 60 days or as long as 120 days. Regardless of the exact timing, we believe that there is sufficient time between each reporting deadline.

⁷ See 86 FR 70999 (December 14, 2021).

parties, including small refineries, will have sufficient time to come into compliance, but we will continue to monitor RIN acquisitions and holdings.

We do not find that it is appropriate to delay compliance pending potential or threatened litigation, as much litigation ensues following many EPA actions relating to the RFS program, and doing so would then interfere with ongoing implementation of the program.

To the extent commenters suggest that EPA actions impact the RIN market, many other factors, including many outside of EPA's control, impact RIN prices. We continue to find that the cost of RINs is passed through by refiners in the sale of their products *at the time they are sold*, and thus the costs of RFS compliance are not equivalent to RIN costs as described by commenters. The fundamentals of RIN cost passthrough indicate that any cost of RINs is the same whether separated RINs are purchased or renewable fuel is blended into petroleum products.⁸

As for commenters' suggestions about RIN scarcity, we anticipate that, should we finalize reductions to the 2020 standards as proposed, additional 2019 RINs may become available on the market, and thus sufficient RINs should be available for compliance. We have no evidence before us to indicate that there are insufficient RINs for 2019 compliance by small refineries.

Assertions that RIN prices are solely a result of EPA's delay in promulgating standards is simply speculation and not supported by market realities that there are many factors that go into RIN prices, including the underlying costs of renewable fuel production vs. petroleum fuel production. We disagree that this action itself imposes any costs on small refineries—it merely modifies the dates by which small refineries must demonstrate compliance.

Small refineries have had over two years to plan for compliance with their 2019 obligations, which have not changed. Therefore, allowing for another 16 months after the SRE decisions are finalized for parties to come into compliance would unreasonably delay compliance for not only 2019, but also for subsequent years. Compliance obligations exist until such time as an exemption is granted—we have previously suggested to small refineries that they should plan for compliance, and many have done so.

⁸ *Id.*

2. 2019-2021 Compliance Deadlines

2.1. 2019 Compliance Deadline

Comment:

➤ AFPM (0012)

III. Suggested Changes to the Proposal

2019

For small refineries, EPA proposes to extend the 2019 compliance reporting deadline to the next quarterly deadline that is after the effective date of the 2021 RFS final rule. As an example, reports would be due by September 1 if the 2021 final rule is published in the Federal Register after April 1 and before July 2. AFPM suggests that EPA include an additional compliance trigger based on Agency action on the pending 2019 SRE petitions. AFPM suggests that section 40 C.F.R. §80.1451 be amended to require 2019 RFS compliance reports by small refineries be due at least six months after EPA's decisions on the pending 2019 SRE petitions in addition to including the tie to the promulgation of the final rule for 2021, as EPA proposed. A departure from a general timeframe of 16 months is appropriate here since 2019 final volumes were promulgated on November 30, 2018. Under this reporting framework, obligated parties will know the result of 2019 SRE petitions, which affect RIN supply and demand for everyone, and those with pending SRE petitions will have adequate time to obtain RINs with less risk of overheating the RIN market.

➤ CRNG (0010)

II. EPA Has Had Ample Opportunity to Resolve the Pending Small Refinery Exemption Requests for Compliance Year 2019.

While RNG Coalition does not believe EPA has adequately responded to the comments previously submitted on the initial extension for small refineries,⁷ EPA proposes to again extend the compliance deadline for 2019 for small refineries only. While there has been intervening case law on eligibility for these exemptions, EPA has had ample opportunity to review the pending requests, including considering the holdings in the January 2020 Tenth Circuit decision that were not appealed to the Supreme Court.

As with the initial extension, EPA provides no explanation as to how many refineries have yet to comply or claim a deficit that would warrant an extension of the compliance deadlines.⁸ See 42 U.S.C. §7607(d)(3)(A) (requiring proposed rules include “the factual data on which the proposed rule is based”). EPA's initial extension was after the March 31, 2020 deadline had already passed⁹ and, as such, unless a petition was already submitted, the small refinery should have already complied or already claimed a deficit.¹⁰ Without understanding the practical implications of EPA's proposed extension, it is difficult for the public to meaningfully comment on the proposal. In addition, EPA does not explain why it proposes to

set the revised compliance deadline for the 2019 standards with when the 2021 standards become effective. 86 Fed. Reg. at 67,424. Compliance with the 2019 standards has no relation to the 2021 standards and such a proposed deadline would further delay compliance with the 2020 and 2021 standards under EPA’s proposal. To the extent EPA can justify an additional extension of the 2019 compliance deadlines for small refineries only, EPA must set a revised deadline as soon as possible that would not delay compliance with later years.

However, EPA should not set the deadlines based on when it issues its decisions on small refinery exemptions as requested by some at EPA’s public hearing. While RNG Coalition believes EPA can and should require petitions be filed prospectively (consistent with EPA’s regulations),¹¹ the statute provides adequate remedy for small refineries due to any delay by EPA in making its decisions on small refinery exemptions. EPA has now proposed to deny all pending exemption requests, 86 Fed. Reg. 70,999 (Dec. 14, 2021), but notes small refineries may continue to provide additional information to support their petitions. Under the request to tie compliance to exemption determinations, these refineries may continue to extend these compliance deadlines indefinitely. That would be arbitrary and contrary to the statute. RNG Coalition urges EPA to finalize those determinations as soon as possible to remove this uncertainty that has been hanging over the RFS program.¹²

⁷ RNG Coalition’s prior comments are incorporated herein by reference (EPA-HQ-OAR-2020-0725-0021).

⁸ Where EPA has routinely provided aggregated data on small refinery exemptions since 2018, assertions that it is “inappropriate” to provide such data to support its proposal here are inadequate. EPA 2021 RTC at 16.

⁹ EPA claims it is not acting retroactively because its initial extension proposal indicated that EPA would treat small refineries that had not complied by March 31, 2020 as having claimed a deficit. EPA 2021 RTC at 16. But that proposal was issued in January of 2021, almost one year after the compliance deadline passed. 86 Fed. Reg. 3928 (Jan. 15, 2021). EPA choosing to not enforce a compliance deadline in the books does not make EPA’s action any less retroactive. Where EPA’s treatment of such noncompliance as being a claimed deficit shows that an extension of the compliance deadline was not needed, EPA then claims it is unfair to require small refineries to claim a deficit because it may restrict their flexibility to comply. EPA 2021 RTC at 16. But that is the remedy Congress provided, and EPA’s actions undermine the limitations Congress placed on the flexibility provided in the statute. EPA’s rewriting of the statute, even if by regulation, does not change this fact.

¹⁰ EPA inexplicably states that small refineries may still “elect to submit petitions in the future.” 86 Fed. Reg. at 67,421. Under the Tenth Circuit January 2020 decision, any “hardship” that may be claimed—two years after the compliance year—clearly cannot be due to the RFS program and, as such, must be denied. See also EPA, Denial of Small Refinery Gap-Filling Petitions, Sept. 2020 (questioning authority to grant exemptions years later, especially after compliance).

¹¹ EPA did not note any small refinery exemption requests for compliance year 2019 until October of 2019. As of January 10, 2020, EPA listed 21 pending requests for compliance year 2019, but lists 32 total requests, indicating at least 11 were submitted after the compliance year was over. If RFS compliance was, in fact, causing economic hardships, it remains unclear why the refineries would wait so long to seek the exemptions.

¹² RNG Coalition has raised concerns with EPA’s lack of transparency with respect to the small refinery exemptions and appreciates EPA’s providing the public with notice of the changes to how it approaches small refinery exemptions. While RNG Coalition remains concerned with EPA’s apparent willingness to continue to accept requests for “retroactive” exemptions, it supports EPA’s proposed determinations and believes that EPA had impermissibly expanded the exemptions since 2016. The small refinery exemption provision was to provide limited relief when compliance with the RFS program actually causes disproportionate economic hardship. RNG Coalition will submit comments on the proposed denial.

➤ Growth Energy (0011)

Specifically, we ask EPA to reject the calls to extend compliance deadlines for 2019 and 2020. The volumes for 2019 and 2020 were finalized more than 3 and 2 years ago, respectively, and the compliance deadlines have already been unnecessarily extended once. Obligated parties have had more than ample time to comply with these standards. EPA should leave the volumes for 2019 and 2020 untouched (in spite of its pending RVO proposal for 2020) and insist that the current compliance deadlines be met accordingly.

➤ NBB (0005)

EPA already announced that they have changed course in granting small refinery exemptions going forward, making the April extension unnecessary. That statement alone should have been indicative that small refineries, and those who applied for small refinery exemptions, will not be receiving exemptions for 2019 and should plan to come into compliance. But the extended 2019 deadline – which EPA reset to November 30, a full 20 months past the statutory deadline – has come and gone. It is time now to bring refiners into compliance and end the illegal handouts.

➤ RFA (0008)

RFA opposes EPA's proposal to extend, for a second time, the 2019 renewable volume obligation (RVO) compliance deadline for small refiners and the 2020 RVO compliance deadline for all obligated parties. A reasonable amount of additional time now needs to be granted to small refineries to demonstrate 2019 compliance because the EPA's latest proposal preempted the November 30, 2021 compliance date set in the initial extension last April; however, the other proposed extensions only serve to undermine the impetus for obligated parties to comply with their biofuel usage requirements across multiple years.

In its proposal, the EPA cited two reasons for extending reporting deadlines for a second time: "continued delay in the promulgation of the 2021 RFS standards and uncertainty around EPA's small refinery exemption (SRE) policy." However, on December 7, the EPA issued a proposed rule establishing the RVOs for 2021 and 2022 and revising the RVOs for 2020, and it simultaneously proposed denying the 65 applications that were pending for SREs at the time (RFA commends the Agency for proposing to take this latter step).

As a result, the RVOs are on an imminent path to be finalized, and there is clarity on EPA's approach to SREs going forward based on the Tenth Circuit Court's unappealed holdings in Renewable Fuels Association et al. v. EPA, which, as the Agency stated, narrowed the situations in which it may grant exemptions. Obligated parties now have a clear view of the likely path for RFS implementation, and they tend to be large, sophisticated operations that don't need an additional 60-90 days to make market decisions. Moreover, the RIN market has already incorporated expectations based on the EPA's proposals. Put simply, there is no justification for deadlines for compliance with past years' requirements to be pushed to December 2022 or later.

RFA fully understands that the previous administration left the RFS program in disarray and failed to meet its deadlines for deciding SRE petitions and issuing RVOs. Mismanagement of the RFS program under the previous administration created significant turmoil and uncertainty in the marketplace and undermined the purpose and intent of the RFS. However, with the issuance of December 7 proposals, the end of this period of instability is in sight. Extending the compliance deadlines again would only revive and lengthen the uncertainty.

[...]

Rather, the EPA should take the following steps to restore integrity to the RFS and help stabilize the marketplace:

1. Require 2019 compliance by small refineries as soon as practicable.

➤ RINAlliance (0004)

(II) Firm Compliance Deadlines Accompanied by Timely and Consistently Determined Small Refinery Exemptions Remains the Best Solution.

Extending compliance deadlines to account for EPA's noncompliance with statutory deadlines is not a suitable practice. Rather, RINAlliance urges EPA to hold itself and all participating parties accountable for the compliance deadlines of the RFS. This includes meeting future deadlines for the petitioning, evaluation, and granting of small refinery exemptions.

Firm compliance deadlines allow obligated parties to accurately plan for their compliance obligations while simultaneously holding them accountable. The obligation portion of an RVO requires that obligated parties purchase and retire RINs against that incurred obligation⁴. Allowing these parties a definitive period of time to adequately prepare for their incurred obligation is a greater assurance of annual compliance.

Further, annual compliance deadlines are one mechanism of ensuring obligated parties satisfy their compliance obligations. Conditioning compliance on a "moving timeline" would mean that obligated parties may never have to meet their incurred compliance obligation as EPA could perpetually delay the release of RVOs without ever finalizing them. Creating a rule which would have the effect of making compliance deadlines into a "moving target" only creates more uncertainty among all parties, including obligated parties.

EPA has been provided a framework with which to be able to decide Small Refinery Exemption petitions more accurately. In June of 2021, EPA was provided with a decision from the United States Supreme Court which required that EPA evaluate petitions as a "stop-gap" measure against small [sic] refineries experiencing a disproportionate economic hardship⁵. EPA has had over 6 months since this decision was published to determine the best method to apply that decision. Using future compliance extensions as a means to implement that decision is not a solution.

Hardships felt by small [sic] refineries will not be alleviated by EPA continuing to create compliance deadlines on a moving timeline. Furthermore, applying a homogenous “solution” to account for small [sic] refinery exemptions is unnecessary, particularly when an individual evaluation is not only more appropriate, but required by the regulations⁶. Each small [sic] refinery petition is evaluated on an individual basis and then a determination is made by EPA (in conjunction with the Department of Energy) as to whether that petition should be granted⁷. At no point in time do the regulations allow for an exemption for one small [sic] refinery mean an exemption for all small [sic] refineries. EPA is allowed to evaluate small [sic] refinery exemptions on a case-by-case basis, completely negating the need for an inaccurate, one-size-fits-all solution⁸. Extending the 2019 compliance deadline for all small refineries is an imprecise solution for an individualized issue.

⁴ 40 C.F.R. § 80.1427(a) (Dec. 4, 2020).

⁵ *HollyFrontier Cheyenne Refining, LLC, et al. v. Renewable Fuels Association et al.*, No. 20-472 (Dec. June 25, 2021).

⁶ *Id.*

⁷ 40 C.F.R. § 80.1441(e) (Dec. 4, 2020).

⁸ 40 C.F.R. § 80.1441 (Dec. 4, 2020).

Response:

As explained in both the proposed and final rules—as well as in the prior proposed and final rules by which we first extended the 2019 and 2020 compliance deadlines in early 2021⁹—in extending the 2019–2022 compliance deadlines, we are acting within our authority and discretion to implement the RFS program, which includes the ability to adjust compliance deadlines for obligated parties where appropriate. We have additionally provided justifications in the prior and current proposed and final rules for extending both the 2019 compliance deadline for small refineries and the 2020–2022 compliance deadlines for all obligated parties. There is no statutory requirement that the deadline to demonstrate compliance must be March 31 of the following calendar year, or any other particular date.¹⁰ The underlying obligations are unaffected by the revised compliance deadlines. What the extensions will provide is a full picture of compliance for obligated parties, including future years’ obligations.

We are finalizing the 2019 compliance deadline for small refineries as proposed. Because it is important for small refineries to know their 2019 obligations at the time of compliance, we intend to issue decisions on 2019 SRE petitions prior to or concurrent with the 2021 standards. Therefore, it is appropriate to tie the 2019 compliance deadline to when the 2021 standards are promulgated, and a separate trigger associated with the issuance of SRE decisions is unnecessary. Moreover, providing six months after SRE decisions are made for small refineries to demonstrate compliance would not materially alter small refineries’ abilities to comply. We note that the 2019 standards were promulgated on time, and that the 2019 compliance deadline for small refineries will likely be more than 24 months after the original compliance deadline.

⁹ 86 FR 3928 (January 15, 2021) and 86 FR 17073 (April 1, 2021).

¹⁰ E.g., in 2014, EPA modified the annual RFS compliance deadline from February 28 to March 31 (79 FR 23414, April 28, 2014).

While EPA has made some statements about SREs and issued a proposed denial of pending SRE petitions, including many for 2019, EPA has not made final decisions on these pending SRE petitions, as explained in the final rule. We do not find it appropriate to require compliance for small refineries until that time. It is additionally true that EPA has proposed RFS standards for 2021 and 2022. However, those proposals are subject to modification and the public notice and comment rulemaking process, and thus are subject to change. Indeed, it would increase uncertainty and confusion were EPA to establish compliance deadlines based on a proposed action. Therefore, it is appropriate to require compliance only after the standards are finalized.

While uncertainty surrounding SREs is a reason for our extension of the compliance deadline for 2019 for small refineries, this action is not, as suggested by a commenter, a means of implementing the *HollyFrontier* decision, or a way to alleviate potential hardship felt by small refineries.

As explained in the proposed rule, EPA is requiring 2019 compliance for small refineries after the 2021 standards are promulgated to allow for the proper sequencing of compliance deadlines. We have also proposed to modify the 2020 standards in the same action; if the changes to the 2020 standards are finalized, we would also be tying the 2019 small refinery compliance deadline to the revised 2020 standards. A commenter suggested that “firm compliance deadlines” and “a definitive period of time to demonstrate compliance” are important for obligated parties. We note that this action only provides additional time for obligated parties to submit compliance reports demonstrating compliance, and that such additional time should not prejudice or harm any party. Furthermore, it does not modify any obligations, or eliminate any statutory requirements for EPA to promulgate standards, or for obligated parties to comply with those standards. The commenter did not provide support for their assertions otherwise. EPA has a statutory obligation to promulgate the RFS standards, and thus we fully intend for the compliance deadlines to occur after the promulgation of those standards.

A commenter suggested that we have not provided information needed to adequately comment on the proposed change to the 2019 compliance deadline. We disagree. Knowing the exact number of small refineries that have or have not demonstrated compliance or carried forward a deficit is irrelevant to the decision to extend the compliance deadlines, though our proposal did include a reference to our Small Refinery Exemption website that provides information on the number of pending petitions. We are also allowing any small refinery to amend their compliance report for 2019. Whether small refineries chose to comply with either the initial or revised 2019 compliance deadlines (March 31, 2020, and November 30, 2021, respectively) or took a deficit is irrelevant to the action we are finalizing in this rulemaking. As this action does not change any obligations, but only extends compliance deadlines until small refineries know their compliance obligations, more specific information is unnecessary for parties to meaningfully comment.

A commenter suggested that the 2019 SRE deadline should be set such that it will not delay other compliance deadlines. The extension of the 2020-2022 compliance deadlines is necessary given the delay in the promulgation of the 2021 standards and thus, even were EPA not to modify the compliance deadline for 2019 for small refineries, we would still be justified in modifying the 2021-2022 deadlines. Because a revision to 2020 standards may make additional RINs available in the market, sequencing the completion of 2019 compliance prior to the 2020

and 2021 compliance deadlines allows parties to make informed decisions and properly use available RINs to demonstrate compliance. We have sequenced the 2020 compliance deadline as quickly as feasible after the 2019 compliance deadline.

As to comments suggesting that EPA should extend compliance deadlines for small refineries on an individual basis, we disagree. Extending compliance deadlines for all small refineries through a public notice and comment rulemaking process is an efficient and transparent solution. It also allows for all market participants to be engaging in a RIN market with the same market dynamics—case-by-case extensions could unfairly advantage one refinery over another depending on the market dynamics at the time of compliance. Case-by-case extensions would be unnecessarily secretive and potentially incomplete should other small refineries seek exemptions for 2019 in the future.

2.2. 2020 Compliance Deadline

Comment:

➤ AFPM (0012)

III. Suggested Changes to the Proposal

2020

EPA's proposal would move the 2020 compliance reporting deadline for all obligated parties from January 31, 2022, to the next quarterly reporting deadline after the 2019 compliance reporting deadline for small refineries. AFPM supports an extension based on EPA's pending reconsideration of the 2020 final rule and unresolved 2020 SRE petitions. To limit disruption in the RIN market from placing successive-year compliance deadlines too close, EPA should require these RFS compliance demonstration reports¹³ to be due six months after the later of: (1) the 2019 compliance demonstration for small refineries; (2) decisions on the pending 2020 SRE petitions, (3) promulgation of the revised 2020 RFS rule; and (4) promulgation of the 2021 RFS rule. AFPM considers this extension to be appropriate given the unique circumstances involved in this rulemaking, e.g., EPA re-opening a final rule to reduce renewable volume obligations.¹⁴

¹³ 40 CFR 80.1451(a)(1)(B).

¹⁴ As noted above, lead time requirements are statutory. AFPM's support for a shorter time period in the context of this rulemaking should not be interpreted as waiving any argument that EPA must comply with RFS statutory deadlines.

➤ CRNG (0010)

III. EPA has No Rational Basis to Further Extend the Compliance Deadline for 2020.

EPA finalized the 2020 standards on December 19, 2019.¹³ The current compliance deadline for 2020 is January 31, 2022, over two years later. EPA's proposal provides no justification for further delay, except for mere conclusory statements that obligated parties have an interest in knowing the subsequent year's obligation. That is insufficient to justify an extension of the compliance deadlines already extended almost an additional year.

Subsequent to EPA's proposal to extend the compliance deadlines, EPA issued its proposal to revise the 2020 standards and set the 2021 and 2022 standards under the RFS program.¹⁴ Although RNG Coalition believes the proposal to revise the 2020 standards must be withdrawn, EPA proposes a similar approach to setting the volumes for 2021 to its approach for 2015 when it also delayed in issuing the standards. This illustrates that there was ample basis for the market to estimate how EPA may adjust the statutory volumes for 2021. Further, EPA provides no examples for how different volumes for 2021 would or even could change any refiner's strategy for compliance with 2020. Compliance is dependent on 2019 and 2020 RINs available, and the current RIN bank is below the limit on how many prior year RINs can be used for compliance. Obligated parties should then have an incentive to use as many

2019 RINs as allowed to retain as large a “bank” of 2020 RINs as possible to use toward compliance for 2021, regardless of the final 2021 volumes. Ignoring this, EPA merely continues to make the same conclusory statements for which it has declined to provide any evidentiary support, despite requests to do so.

In short, EPA is required to provide the public with the basis, both legal and factual, for its action in order to meaningfully comment. EPA has failed to do so here, and, while EPA now has proposed to revise the 2020 standards, it could have addressed the compliance deadline for the revised standards with that proposal. In light of EPA’s subsequent action, this proposal appears, instead, to be an attempt at an administrative stay of the current 2020 standards to give EPA time to make its revisions, which RNG Coalition believes to be unnecessary and arbitrary. EPA must justify such a stay and has failed to do so. As such, RNG Coalition opposes the proposal to revise the deadlines for compliance for 2020.

¹³ <https://www.epa.gov/renewable-fuel-standard-program/final-renewable-fuel-standards-2020-and-biomass-based-diesel-volume> (last updated Jan. 15, 2021).

¹⁴ EPA did not indicate it was planning to revise the 2020 standards in its proposed extension of the compliance deadlines, and RNG Coalition believes such revision is unnecessary and arbitrary and should be withdrawn. RNG Coalition will submit comments on that proposal under that docket.

➤ Growth Energy (0011)

Specifically, we ask EPA to reject the calls to extend compliance deadlines for 2019 and 2020. The volumes for 2019 and 2020 were finalized more than 3 and 2 years ago, respectively, and the compliance deadlines have already been unnecessarily extended once. Obligated parties have had more than ample time to comply with these standards. EPA should leave the volumes for 2019 and 2020 untouched (in spite of its pending RVO proposal for 2020) and insist that the current compliance deadlines be met accordingly.

➤ NBB (0005)

Extending the compliance deadline for all obligated parties in 2020 compounds the problems facing the agency in putting the program back on track. If EPA continues to extend the compliance obligation deadlines, obligated parties will continue to assume that they do not need to meet them, rendering the annual RFS volumes that EPA sets meaningless because they are not enforced in a timely manner or changed retroactively. Or worse, refiners will be provided new opportunities, such as this one, to skirt their obligations to blend renewable fuels.

➤ RFA (0008)

Rather, the EPA should take the following steps to restore integrity to the RFS and help stabilize the marketplace:

3. Require compliance for 2020 and 2021 on June 1, or otherwise as soon as practicable after finalization of the RVOs.

Response:

As stated earlier, we are finalizing the proposed compliance deadline extension for 2020 in order to provide certainty for obligated parties of their compliance obligations for 2021 prior to having to demonstrate compliance with their 2020 obligations. While obligated parties could project their 2021 obligations as a commenter suggests, we believe that extending the compliance deadline for 2020 is reasonable, provides greater certainty for obligated parties, and does not undermine the renewable fuel volumes required by the RFS program because it affects only the compliance deadline. This action strikes the appropriate balance in providing compliance flexibilities for obligated parties in light of EPA's delay in promulgating the 2021 and 2022 standards, without jeopardizing renewable fuel use.

As explained by both EPA and some commenters, obligated parties make compliance decisions, including decisions on RIN procurement, with future compliance years in mind, due to the two-year lifespan of RINs, the ability to carry forward deficits, and the opportunity to purchase cellulosic waiver credits in lieu of using RINs. We do not weigh in on the many reasons why a company may choose to carry forward a deficit, nor are we basing our rulemaking on assumptions about incentives and their effect on business decisions to be made by obligated parties, each of which has unique goals and considerations. As discussed in prior actions to extend compliance deadlines, it cannot be disputed that obligated parties benefit from knowing future volume requirements when they develop strategies to comply with their individual RVOs, including whether to acquire, retire, or bank RINs or take deficits.¹¹

Some commenters suggested that our compliance deadline extensions were making the standards meaningless; this is not true. Obligated parties still have an obligation to retire RINs by the newly promulgated compliance deadlines. These changes to the compliance deadlines do not impact the amount of renewable fuel used in any year and certainly do not represent an administrative stay of the 2020 standards, which remain in place unless and until EPA revises them. Any suggestion otherwise is hyperbole.

We decline to put in place a 2020 compliance deadline that would be conditional on other events, including decisions on SREs, or promulgation of later standards. We are finalizing the deadline as proposed, with the 2020 compliance deadline following the 2019 compliance deadline for small refineries, which will only occur after promulgation of the 2021 standards. As we have currently proposed to modify the existing 2020 standards and establish the 2022 standards in the same action, those final actions are likely to all be promulgated at the same time. As stated previously, we intend for our final action on SREs to occur prior to the 2019 compliance deadline for small refineries. We repeat that allowing six months between each compliance deadline would amount to too much time, and instead are finalizing compliance deadlines at quarterly intervals.

¹¹ See 78 FR 49794, 49823 (August 15, 2013); 80 FR 33099, 33149 (June 10, 2015).

2.3. 2021 Compliance Deadline

Comment:

➤ AFPM (0012)

III. Suggested Changes to the Proposal

2021

EPA proposes to extend the 2021 compliance reporting deadline for all obligated parties from March 31, 2022, to the next quarterly reporting deadline that is after the 2020 compliance reporting deadline. EPA has not yet finalized the 2021 implementation rule and therefore EPA should set compliance reports deadlines for all obligated parties for 2021 after considering the lead-time requirements specified in the Clean Air Act for RFS rules promulgated pursuant to section 211(o)(3)(B). In the context of this multi-year RFS rulemaking and EPA's proposal to retroactively set the 2021 volumes equal to actual renewable fuel consumption, AFPM supports a 2021 compliance reporting extension equal to six months from the later of: (1) the 2020 compliance demonstration, (2) promulgation of the 2021 RFS rule, and (3) promulgation of the 2022 RFS rule.¹⁵

¹⁵ As noted in note 12, supra, EPA is proposing to proceed under its "reset" authority to determine standards for 2021 under which compliance may not be required until at least 26 months after final standards are promulgated. Similar to the considerations expressed above, AFPM's support for a shorter time period is based solely on the unique circumstances of this rulemaking and its context.

➤ Growth Energy (0011)

Unfortunately, because of frustrating delays, the standards for 2021 have not yet been finalized. While we would hope that the agency would move to fix the flaws in its proposal for the 2021 volumes and finalize those volumes as quickly as possible, it may not be realistic to insist on the current compliance deadline of March 31, 2022. We do believe some flexibility should be accommodated to account for when the volumes for 2021 are finalized which we strongly urge to be done immediately. However, this accommodation should be a one-time anomaly as the agency strives to get the program back on track with its proposal for 2022.

➤ RFA (0008)

Rather, the EPA should take the following steps to restore integrity to the RFS and help stabilize the marketplace:

3. Require compliance for 2020 and 2021 on June 1, or otherwise as soon as practicable after finalization of the RVOs.

Response:

We are finalizing the 2021 compliance deadline extension as proposed—the next quarterly reporting deadline after the 2020 compliance deadline. Doing so will provide sufficient time between sequential reporting deadlines consistent with our past practice of extending compliance deadlines when the RFS standards were delayed.¹² We also note that under this approach, due to the sequential nature of the extended compliance deadlines for 2019, 2020, and 2021, obligated parties will have at least seven months of time between the publication of the 2021 standards and the extended 2021 compliance deadline.¹³ Considering that all RINs for 2021 renewable fuel production have already been generated and all gasoline and diesel fuel production has already occurred, we believe this is a sufficient amount of time for obligated parties to demonstrate compliance for 2021. We have sequenced the 2021 compliance deadline as quickly as feasible after the 2020 and 2019 compliance deadlines, while also allowing for an appropriate interval of time between each compliance deadline.

¹² See, e.g., the extension of the 2013–2015 deadlines (80 FR 77512-77514, December 14, 2015) and the previous extension of the 2019 and 2020 deadlines (86 FR 17073, April 1, 2021).

¹³ This minimum of seven months assumes that the final rule establishing the 2021 standards is published in the Federal Register on January 29, with an effective date 60 days later of March 30. This would result in the 2019, 2020, and 2021 compliance deadlines being March 31, June 1, and September 1, respectively. This provides obligated parties with seven months between January 29 and September 1. As the example deadlines presented in Table I.C-1 of the Preamble demonstrates, the time between the 2021 annual compliance deadline and publication of the 2021 RFS standards could be much more (e.g., 11 months in the cited example).

3. Automatic Extension of Compliance Deadlines

3.1. General Comments

Comment:

➤ CRNG (0010)

V. EPA Should Not Finalize Automatic Extensions of Deadlines Beyond 2021.

Even if EPA believes some extension is justified for 2019, 2020 or 2021, this proposal would also provide open-ended extensions of the compliance deadlines for all future years of the program, based only on conclusory assertions. RNG Coalition believes EPA's proposal invites undue delays and could lead to gaming the system by obligated parties that have a history of challenging the annual standards to create uncertainty and delays in the program.

First, you have acknowledged the importance of transparency in EPA's decisions.¹⁵ EPA should be issuing the RFS standards on time and, if there is or will be a delay, EPA should face the public and explain the delay and why an extension of the compliance deadline is needed. Under this proposal, EPA would never have to give any notice or explanation. This is particularly troubling for the RNG industry, which has consistently requested certainty and predictability in how EPA sets the volumes. Typically, the RNG industry could simply track the growth rate to estimate future volumes and make decisions on investments based on EPA's approach in recent years. Inexplicable delays will only create confusion, undermining those investments.

Second, as noted above, the Biden Administration has indicated it would get the RFS program back on track, and EPA previously acknowledged that failure to timely enforce the RFS requirements creates uncertainty moving forward. EPA provides no explanation for its apparent change in position. EPA has previously asserted that obligated parties have some interest in knowing the final standards for the next year but has not automatically extended the compliance deadlines for later compliance years. This also impermissibly continues to extend the life of the credit well beyond the 12 months from the date of generation provided in the statute. 42 U.S.C. §7545(o)(5)(C). While EPA regulations provide a "two-year" life to these RINs based on the year of generation, EPA would now codify potentially unlimited "life" of RINs well beyond the 12 months provided by Congress. Such interest by obligated parties is wholly inadequate to change EPA's policy that would circumvent Congressional limits and intentionally invite unsupported delays and uncertainty in the future.

Third, EPA's proposal lacks any assessment of the impacts on the RIN market by the suggested revised deadlines. Although EPA claims that the volumes are not impacted by the change in the compliance deadline, RIN availability is a key factor for RNG producers to consider when assessing demand. RIN availability is determined by the number of RINs generated and retired and includes available prior-year RINs that roll into subsequent years. Changes to the compliance deadline does create uncertainty and speculation as to the actual supply of RINs to meet compliance in future years. Focusing on the compliance year only,

EPA appears to ignore that RNG producers also make business decisions and investments based on RFS demand, whether final or anticipated. These decisions and investments are undermined by the uncertainty EPA is now seeking to codify.

Fourth, RNG Coalition does not believe that this proposal is necessary to “position” obligated parties to fully comply with the RFS program. EPA simply asserts that these extensions “help ensure” that obligated parties “are positioned to fully comply with their RFS obligations by ensuring that each year’s compliance deadline falls after the standards for the subsequent compliance year are known.”¹⁶ In the preamble, EPA simply notes “the importance to obligated parties of planning their compliance for a given calendar year by understanding their obligations for the years before and after.” 86 Fed. Reg. at 67,422. To date, however, EPA has not provided any evidentiary support for such a claim. Cf. 42 U.S.C. §7607(d)(3)(A) (requiring proposed rules include “the factual data on which the proposed rule is based”). In fact, according to EMTS data, such information is not necessary for compliance, as refiners have already begun to retire 2020 RINs for annual compliance, despite EPA not finalizing the 2021 standards.¹⁷ Also, as noted above, EPA does not explain why obligated parties would not have an incentive to “bank” as many RINs in any given year as possible, regardless of the volumes it may set for the next year.

In support of its conclusory statement, EPA only refers to its explanation for extensions of the 2013 and 2014 compliance deadlines. 86 Fed. Reg. at 67,422 n.12. In those preambles, however, EPA did not provide any evidentiary support only discussing “obligated parties’ interest in such extensions.” *Id.* Those years are also distinct, as EPA indicated it would use certain waiver authority for the first time, which at least arguably could affect the obligated parties’ ability to project their next year’s obligations. But, today, five years later, EPA has followed a similar approach for setting the volumes for the last several years and obligated parties should have a strong sense of the upcoming volume requirements. This is particularly true for RNG, where EPA has been using a 12-month growth rate approach using EMTS data, which the industry has been tracking for the last several years. Even if there may be some change in EPA’s approach for an upcoming compliance year, EPA has typically issued a proposal for the next year’s standards outlining such changes well before the compliance deadline for that year. EPA simply does not explain why knowing the exact annual standards for the subsequent year under these circumstances is so important, or how that knowledge might change a refiner’s ability to comply.

Obligated parties always need to make assumptions regarding their actual volume obligations for the next year, yet they should have enough experience to identify and implement different compliance strategies, even when EPA may be late in issuing the standards for the next year. Instead, it appears that the proposal is intended to give EPA a blank check to continue to delay issuance of the standards. This is arbitrary.

Finally, the proposal for automatic extensions also ignores changes EPA may (and should) make to ensure the integrity of the RFS program. Starting for compliance year 2023, EPA is to set the volumes at least 14 months in advance. RNG Coalition has indicated support for issuing those volumes for several years into the future, such that obligated parties would have advanced notice of the volume requirements and, while EPA may still have waiver authority,

the annual setting of the standards should be facilitated. EPA also has previously raised concerns with RIN market manipulation by obligated parties, proposing, for example, to move toward quarterly compliance requirements, which would render the proposal unnecessary.¹⁸ Regardless, annual compliance should not become a moving target, which may only exacerbate RIN hoarding than ensure RIN liquidity.

¹⁵ Todd Neeley, Regan: EPA to Get RFS Back on Track, *Progressive Farmer*, Mar. 26, 2021, <https://www.dtnpf.com/agriculture/web/ag/news/article/2021/03/25/broader-economy-can-learn-climate>.

¹⁶ <https://www.epa.gov/renewable-fuel-standard-program/proposed-extension-renewable-fuel-standard-compliance-deadlines> (last updated Dec. 1, 2021).

¹⁷ EPA, RIN Use - Total Retirements by Fuel (D Code) Report, <https://www.epa.gov/fuels-registration-reporting-and-compliance-help/rin-use> (last updated Dec. 10, 2021). EPA data shows 1.78 billion 2020 RINs have already been retired by refiners to demonstrate annual compliance.

¹⁸ RNG Coalition supports and has urged EPA to move toward quarterly compliance.

➤ Eversheds Sutherland (0013)

I. EPA's Proposed Approach to Setting Future Compliance Deadlines Would Result in Uncertainty for Obligated Parties and the RIN Market

Pursuant to the Clean Air Act, EPA must determine and publish in the Federal Register the RFS Annual Percentage Standards and Volumes (the “Annual Rule”) by November 30 of each year before the compliance year.¹ Relatedly, Obligated Parties must demonstrate compliance with the RFS by retiring a number of RINs equal to its renewable volume obligation (“RVO”) per the Annual Rule each year by March 31 of the year following the compliance year.² In creating this statutory regime, Congress intended for EPA to finalize the Annual Rule and RVOs for the upcoming year so that regulated entities may know and understand what their obligations would be well before the start of the compliance year. Moreover, EPA set compliance deadlines such that there would be sufficient time from the end of the compliance year so, with the knowledge of the next compliance year's obligation, Obligated Parties could have a compliance plan that takes into account all available data.

Under the Proposed Compliance Deadlines, two additional compliance deadline options could be effective based on whether EPA delays the publication of the Annual Rule and RVOs. Effectively, EPA is asking for unfettered ability to delay the publication of the Annual Rule and RVOs, which is directly contrary to the statute and Congress' intent, and detrimental to RFS regulated parties. If EPA has reason to delay the Annual Rule and RVOs, the Agency should have to engage in notice and comment to explain why it is delayed and provide regulated parties an opportunity to comment on the specific circumstances of the delay.

While compliance deadlines should be tied to the publication of the Annual Rule and RVOs, EPA should not employ an approach that grants the Agency a floating Annual Rule and RVO deadline that results in a shifting compliance deadline for Obligated Parties. In the event EPA repeatedly delays the publication of the Annual Rule and RVOs, as the Agency historically and recently has done, such an approach would be detrimental to the RIN market, RIN liquidity and transparency, and Obligated Party compliance planning. Moreover, the Proposed Compliance Deadlines also prejudices renewable fuel producers and RIN

generators by delaying compliance, and therefore the need to acquire and retire RINs, and creating a market in which it is not known when such RINs are needed and external forces are permitted to cause further delays and uncertainty. Such external forces—like political pressures including elections and changes of administrations—have continued to plague the RFS, and most recently, over the last 14 months, caused significant delays in the 2021 and 2022 Annual Rules and RVOs and has proved detrimental to Obligated Parties, renewable fuel producers, and RIN generators alike.

The RFS has already been afflicted with uncertainties, and under the Proposed Compliance Deadlines, EPA is proposing to institutionalize additional uncertainty by making it far easier on itself to delay—significantly, at times—the publication of the Annual Rule and RVOs. Although the CAA specifies that the statutory deadline applies to calendar years 2005 through 2021, the November 30 deadline has historically proved to provide regulated entities sufficient time to conduct compliance planning for the upcoming compliance year and ultimately satisfy their compliance obligation. EPA states in the Proposed Rule Preamble that its Proposed Compliance Deadlines “would provide regulatory certainty for [O]bligated [P]arties,” but the current RFS compliance deadline—March 31 each year—provides all the regulatory certainty that is needed. Rather, EPA has perpetuated regulatory uncertainty through its historical and continued delay in publishing the Annual Rule and RVOs. The regulatory certainty EPA seeks in the Proposed Compliance Deadlines could be accomplished by keeping the current compliance deadlines in place and prioritizing the Annual Rule and RVOs and promptly publishing the Annual Rule and RVOs in the Federal Register by November 30 each year. Such an approach is what Congress intended, providing Obligated Parties time to plan their operations accordingly and satisfy their compliance per the established March 31 deadline. Since the inception of Part 80 (and now also Part 1090), compliance deadlines have been set forth with clarity and certainty. EPA has provided no basis, need or rationale for changing this approach with the most complex of its mobile source programs, the RFS.

¹ 42 USC § (o)(3)(B)(i).

² 40 CFR § 80.1451(a)(1).

➤ MCGA (0002) and NCGA (0009)

Compliance for 2022 and Beyond

MCGA and NCGA oppose EPA’s proposal to change RFS compliance deadlines for 2022 and beyond and strongly urges EPA to maintain the current compliance schedule, which is March 31 of the subsequent calendar year.

EPA states this part of the proposal would, “avoid EPA having to repeatedly extend compliance reporting deadlines for obligated parties should promulgation of the subsequent year’s standards be delayed.” We disagree. The best way for EPA to avoid repeatedly extending compliance deadlines is by meeting deadlines to set volumes and holding obligated parties responsible for compliance requirements in the first place. Instead of resolving RFS delays, the proposal to extend compliance for 2022 and subsequent years only ensures

deadlines will continue to be missed and sidelines the RFS. EPA appears to be pre-emptively admitting defeat when it comes to keeping the RFS on schedule.

EPA's proposed approach provides less certainty for farmers, renewable fuel producers and consumers. For the RFS to be successful, we need more certainty, not less. RFS integrity comes from firm deadlines to set volume requirements and demonstrate compliance and confidence that volumes will not be undermined by waivers or other retroactive cuts. Floating deadlines only invite more delays and a free pass to undercut the RFS.

➤ NBB (0005)

Additionally, we remain concerned that EPA is using this proposal to sneak in an automatic delay in the compliance reporting and attest engagements for future years. This action, while may help EPA on the administrative back end, implies an admission that EPA will miss the statutory deadlines going forward, while making it easier to do so. With EPA's past history and delayed RVOs, coupled with this proposal, the agency is acting as if there is no statutory deadline for promulgating and enforcing the annual rules.

➤ REG (0017)

REG is concerned that linking future compliance dates to the finalization of each year's Renewable Volume Obligations (RVO) will create much uncertainty to the industry and have an adverse effect on biofuel producers. EPA has been frequently late to issue RVOs despite the statutory requirement for those obligations to be established by November of the preceding year. For example, by statute, the 2021 RVO was set to be issued on November 30, 2020. However, the 2021 final RVO, much less the 2022 final RVO, has still not been issued despite the fact that we are now in calendar year 2022.

Linking compliance deadlines to the promulgation of a rule that EPA has historically been tardy in issuing would create confusion and uncertainty on the part of biofuel producers and discourage investment in low carbon transportation fuels that play a critical role in decarbonizing the U.S. transportation sector today. This proposal will could pose uncertainty and confusion for biofuel producers and will likely lead to instability and volatility in the transportation fuel industry.

➤ RFA (0008)

In addition, RFA strongly opposes EPA's proposal to change the way in which future RFS compliance deadlines are determined. Setting the compliance deadline for a given year based on the effective date of the subsequent year's RFS standards—rather than the annual compliance date of March 31—would give EPA a license to perpetually delay annual RVO rulemaking. This would result in a constantly moving target for RFS compliance, injecting even more uncertainty into the program.

➤ SRC (0015)

IV. EPA cannot promulgate regulations that attempt to “cure” the Agency’s own statutory violation.

For 2022 and beyond, EPA proposes to reset future compliance deadlines to be the latest of the following: (a) March 31 of the subsequent calendar year; (b) the next quarterly reporting deadline that is at least 60 days after publication in the Federal Register of the final volumes for the subsequent compliance year; or (c) the next quarterly reporting deadline after the annual compliance reporting deadline for the prior compliance year.²⁰ EPA’s proposal to reset future compliance deadlines in line with the 2019–2021 adjustments contemplates future Agency violations of its statutory obligation to promulgate the annual volume by “no later than 14 months before the first year for which such applicable volume will apply,” 42 U.S.C. § 7545(o)(2)(B)(ii): “This approach would also avoid EPA having to repeatedly extend compliance reporting deadlines for obligated parties should promulgation of the subsequent year’s standards be delayed.”²¹ In other words, EPA is conceding that it will continue to issue annual renewable volume requirements late, in violation of the Clean Air Act. However, EPA cannot regulate its way around the deadlines set by Congress in the Clean Air Act. To do so would be shirking the Agency’s statutory obligation to timely issue annual renewable blending volumes. See *Dilley v. Alexander*, 603 F.2d 914, 920 (D.C. Cir. 1979), decision clarified, 627 F.2d 407 (D.C. Cir. 1980) (“It is a basic tenet of our legal system that a government agency is not at liberty to ignore its own laws and that agency action in contravention of applicable statutes and regulations is unlawful.”); see also *Texas v. United States*, 95 F. Supp. 3d 965, 979 (N.D. Tex. 2015) (“federal agencies may not promulgate rules in conflict with federal statutes”).

EPA further claims that its proposed approach for future compliance years “would provide regulatory certainty for obligated parties.”²² To the contrary, the best and only way for EPA to provide regulatory certainty is to issue the annual volumes by the statutory deadline, and to decide small refinery hardship petitions within 90 days of submission as required by statute. Any other approach is inherently uncertain and harms obligated parties. EPA’s timely issuance of the annual renewable volume requirements and decisions on small refinery petitions would help allow small refineries to (1) source renewable fuels for blending and (2) better assess the necessity of purchasing RINs.

Indeed, if EPA continues to violate the Clean Air Act by failing to timely issue annual renewable blending volumes, small refineries and other obligated parties could be subject to compressed deadlines, similar to the proposed deadlines for 2019–2021. That is an unacceptable solution that places the economic burden of EPA’s failure to meet its statutory deadline on obligated parties, like small refineries.

²⁰ 86 Fed. Reg. at 67,422.

²¹ *Id.*

²² 86 Fed. Reg. at 67,422.

➤ Coffeyville (0016)

III. EPA cannot promulgate regulations that attempt to “cure” the Agency’s own statutory violation.

For 2022 and beyond, EPA proposes to reset future compliance deadlines to be the latest of the following: (a) March 31 of the subsequent calendar year; (b) the next quarterly reporting deadline that is at least 60 days after publication in the Federal Register of the final volumes for the subsequent compliance year; or (c) the next quarterly reporting deadline after the annual compliance reporting deadline for the prior compliance year.¹⁶ EPA’s proposal to reset future compliance deadlines in line with the 2019–2021 adjustments contemplates future Agency violations of its statutory obligation to promulgate the annual volume by “no later than 14 months before the first year for which such applicable volume will apply,” 42 U.S.C. § 7545(o)(2)(B)(ii): “This approach would also avoid EPA having to repeatedly extend compliance reporting deadlines for obligated parties should promulgation of the subsequent year’s standards be delayed.”¹⁷ However, EPA cannot regulate its way around the deadlines set by Congress in the Clean Air Act. To do so would be shirking the Agency’s statutory obligation to timely issue annual renewable blending volumes. See *Dilley v. Alexander*, 603 F.2d 914, 920 (D.C. Cir. 1979), decision clarified, 627 F.2d 407 (D.C. Cir. 1980) (“It is a basic tenet of our legal system that a government agency is not at liberty to ignore its own laws and that agency action in contravention of applicable statutes and regulations is unlawful.”); see also *Texas v. United States*, 95 F. Supp. 3d 965, 979 (N.D. Tex. 2015) (“federal agencies may not promulgate rules in conflict with federal statutes”).

EPA further claims that its proposed approach for future compliance years “would provide regulatory certainty for obligated parties.”¹⁸ To the contrary, the best and only way for EPA to provide regulatory certainty is to issue the annual volumes by the statutory deadline, and to decide small refinery hardship petitions within 90 days of submission as required by statute. Any other approach is inherently uncertain and harms obligated parties. Indeed, if EPA continues to violate the Clean Air Act by failing to timely issue annual renewable blending volumes, obligated parties like CRRM and WRC could be subject to compressed deadlines, similar to the proposed deadlines for 2019–2021. That is an unacceptable solution that places the economic burden of EPA’s failure to meet its statutory deadline on obligated parties.

¹⁶ 86 Fed. Reg. at 67,422.

¹⁷ *Id.*

¹⁸ 86 Fed. Reg. at 67,422.

➤ CountryMark (0014)

IV. EPA cannot promulgate regulations that attempt to “cure” the Agency’s own statutory violation.

For 2022 and beyond, EPA proposes to reset future compliance deadlines to be the latest of the following: (a) March 31 of the subsequent calendar year; (b) the next quarterly reporting deadline that is at least 60 days after publication in the Federal Register of the final volumes for the subsequent compliance year; or (c) the next quarterly reporting deadline after the

annual compliance reporting deadline for the prior compliance year.¹⁴ EPA’s proposal to reset future compliance deadlines in line with the 2019–2021 adjustments contemplates future Agency violations of its statutory obligation to promulgate the annual volume by “no later than 14 months before the first year for which such applicable volume will apply,” 42 U.S.C. § 7545(o)(2)(B)(ii): “This approach would also avoid EPA having to repeatedly extend compliance reporting deadlines for obligated parties should promulgation of the subsequent year’s standards be delayed.”¹⁵ However, EPA cannot regulate its way around the deadlines set by Congress in the Clean Air Act. To do so would be shirking the Agency’s statutory obligation to timely issue annual renewable blending volumes. See *Dilley v. Alexander*, 603 F.2d 914, 920 (D.C. Cir. 1979), decision clarified, 627 F.2d 407 (D.C. Cir. 1980) (“It is a basic tenet of our legal system that a government agency is not at liberty to ignore its own laws and that agency action in contravention of applicable statutes and regulations is unlawful.”); see also *Texas v. United States*, 95 F. Supp. 3d 965, 979 (N.D. Tex. 2015) (“federal agencies may not promulgate rules in conflict with federal statutes”).

EPA further claims that its proposed approach for future compliance years “would provide regulatory certainty for obligated parties.”¹⁶ To the contrary, the best and only way for EPA to provide regulatory certainty is to issue the annual volumes by the statutory deadline, and to decide small refinery hardship petitions within 90 days of submission as required by statute. Any other approach is inherently uncertain and harms obligated parties. Indeed, if EPA continues to violate the Clean Air Act by failing to timely issue annual renewable blending volumes, small refineries and other obligated parties could be subject to compressed deadlines, similar to the proposed deadlines for 2019–2021. That is an unacceptable solution that places the economic burden of EPA’s failure to meet its statutory deadline on obligated parties, like small refineries.

¹⁴ 86 Fed. Reg. at 67,422.

¹⁵ *Id.*

¹⁶ 86 Fed. Reg. at 67,422.

Response:

We are finalizing our proposed modifications to future RFS compliance deadlines to automatically adjust should promulgation of the subsequent year’s standards be delayed. Contrary to some comments, we believe that doing so will provide additional certainty to the implementation of the RFS program, not less. Doing so will obviate the need for EPA to engage in rulemaking processes such as this one to adjust compliance deadlines in the future. While this approach has the potential to result in compliance deadlines other than March 31 of the following year, the deadlines will be calculated as prescribed in the regulations promulgated in this action, and will provide parties with sufficient notice. EPA has significant discretion to determine the appropriate compliance deadlines for the RFS program, which are prescribed by regulation. While the CAA provides a November 30 deadline to establish RFS percentage standards for years prior to 2023, it does not prescribe or address compliance deadlines, nor a deadline to establish percentage standards for the 2023 standards and beyond. It is therefore neither arbitrary nor inconsistent with statutory obligations for EPA to set up this regulatory scheme. EPA continues to have statutory requirements to establish the RFS standards, and the changes in this action do not modify those requirements or timelines. Regulations that automatically shift the

compliance deadline when promulgation of the subsequent year's standards is delayed do not relieve EPA of the requirement to establish those standards by the deadlines articulated in the statute, nor does it in any way "cure" the statutory delay. It does, however, make the procedure for setting the resulting compliance deadlines clear and transparent from the outset, in comparison to how this action and the preceding one to extend the compliance deadlines have proceeded.

While EPA has indeed missed some deadlines in the past, we intend to meet deadlines to issue standards going forward, and the conditional deadlines established in this action will only apply in the unusual circumstances where future standards are delayed. We continue to believe that setting standards ahead of compliance years provides all interested stakeholders with important information. EPA has in the past laid out our reasoning for extending compliance deadlines when future standards are delayed, including the two-year lifespan of RINs and the benefit of complete information about future compliance obligations in making compliance decisions.¹⁴ As described by some obligated parties in comments on this action, changes to standards can impact decisions by obligated parties to "adjust their RIN procurement strategies, purchase cellulosic waiver credits, and/or in some cases declare a deficit."¹⁵ A commenter seems to suggest EPA needs to provide data to support this assertion; we are not privy to individual obligated parties' compliance strategies, but we have no reason to doubt that such information factors into their decision making. Those reasons also justify adopting a regulatory provision that creates automatic extensions of compliance deadlines if future standards are not timely promulgated, since the extension would provide time for obligated parties to adjust their compliance strategies as needed with the knowledge of future compliance obligations. We do not anticipate this reasoning to change in the future, and thus automatic extensions are appropriate. Finally, we note that while some parties may have retired RINs for compliance with their 2020 obligations as pointed out by a commenter based on public EMTS data, it is common for obligated parties to retire RINs in several transactions—we do not know whether those retirements represent full compliance by any party until compliance reports are submitted, which have not yet become due. We are not persuaded that the actions of *some* parties that have chosen not to wait until the 2021 standards are known to retire RINs means that all obligated parties can or should take that same action—comments from obligated parties suggest otherwise.¹⁶

A commenter pointed out that the 2013 and 2014 compliance deadline extensions were different because "EPA indicated it would use certain waiver authorities for the first time." We note that in the 2020-2022 proposed rule, we are proposing to use our "reset waiver authority" for the first time. We are also proposing to modify the existing 2020 standards. This is not EPA's "usual approach" and it is not appropriate to require obligated parties to comply with the previous deadlines given the pendency of the 2020-2022 rule. While a proposal can inform obligated parties of EPA's intended approach, significant changes can occur between a proposal and a final rule, including changes that are informed by comments received, and thus we will not require compliance until the standards for the following year are known and finalized.

¹⁴ See 86 FR 17073 (April 1, 2021), 79 FR 34242 (June 16, 2014), 79 FR 46353 (August 8, 2014), 80 FR 77420 (December 14, 2015). See also, this final rule.

¹⁵ Comments from AFPM (0012).

¹⁶ See, e.g., comments from AFPM (0012), API (0007), Phillips 66 (0003).

We do not find arguments that setting up automatic extensions will harm investments persuasive. While it may be true that delays in promulgating standards can impact investments, simple modifications to compliance deadlines should not have those impacts, as such decisions would be tied to RFS obligations, not compliance deadlines.

We disagree with the commenter who stated that this action would extend the lifespan of RINs. RINs continue to only be available for compliance for the year in which they are produced and the following year, consistent with our regulations at 40 CFR 80.1427(a)(6)(i), and the statute at CAA section 211(o)(5). While we are providing parties additional time to demonstrate compliance using valid RINs, we are not modifying our regulations that prescribe that only RINs generated in the relevant compliance year and the prior compliance year (up to 20% of the obligated party's obligation) can be used to demonstrate compliance.

We do not anticipate that automatic compliance deadline extensions will have appreciable impacts on the RIN market. As previously noted, we are not modifying the RINs that can be used to demonstrate compliance for a given year, so while RINs will remain "available" until retired, they can still only be used to demonstrate compliance for a particular year, and this retained "availability" should not impact RIN pricing. Automatic extensions of compliance deadlines will not impact the supply of RINs as suggested by some commenters, as it is not changing the RFS standards themselves. We also do not find arguments that automatic adjustments of compliance deadlines will result in uncertainty for biofuel production persuasive; instead, it is the RFS standards themselves that influence decisions regarding biofuel production and investment.

As finalized, this change will also apply to setting compliance deadlines for years in which the CAA does not provide RFS volume requirements (i.e., 2023 and beyond). While EPA may ultimately decide to take a different approach to compliance reporting in those years in a future action, at this time we find it appropriate to take the approach articulated in this rule.

A commenter suggested that this action contemplates EPA violating the statutory provisions to determine volumes for those years not in the statute by "no later than 14 months before the first year for which such applicable volumes will apply." We note that the provision only requires EPA to determine the *volume* by that time and does not refer to the percentage standards. We note also that the statute does not provide compliance deadlines, so our actions to modify the compliance deadline are not contrary to the statute, nor does this action signal an intent to violate statutory requirements going forward. The 14-month provision identified by the commenter continues to apply as a statutory requirement to determine volumes after the timeframe of the statutory volumes.

While issuing standards and volumes by statutory deadlines, as well as making SRE decisions, increases certainty for obligated parties, we believe that clearly articulated deadlines that are able to automatically adjust via regulations in a manner that provides adequate notice improves certainty for obligated parties as well.

Finally, we note that when the standards are not delayed, the compliance deadline will remain as March 31. We intend to promulgate standards in accordance with the statutory deadlines and ahead of the compliance years in which they will apply.

Comment:

➤ RINAlliance (0004)

(I) The Unusual Circumstances of the Past Two Years Should Remain an Exception and Should Not Change the RFS Compliance Deadlines for Any Party.

What RINAlliance does not support is a future with “adjusting” deadlines for compliance predicated on EPA’s issuance of Renewable Fuel Standard (RFS) standards (i.e., Renewable Volume Obligations (RVOs)). EPA has currently proposed this rule because it “would also avoid EPA having to repeatedly extend compliance reporting deadlines of obligated parties should promulgation of the subsequent year’s standard be delayed².” However, EPA does not have a history of meeting the compliance deadline for RVOs. In fact, EPA published RVOs for: 2012, 2013, 2014, 2015, and 2017 after the November 30 statutory deadline – nearly every year since the second iteration of the RFS³. Putting this flexible compliance rule in place for obligated parties gives EPA another “out” for not setting RVOs in a timely manner, and an additional opportunity for political advocates to derail the RFS by constantly interjecting into the process. Rather than propose adjustable compliance deadlines, EPA should meet the compliance deadlines for setting standards.

(III) Extending Compliance Deadlines Means Obligated Parties Have No Reason to Comply with the Regulations.

Finalizing the proposed rule would virtually guarantee that obligated parties have no reason to comply with the regulations. Obligated parties are required to retire RINs against RVOs incurred as a result of those entities’ business activities⁹. One mechanism of ensuring that obligated parties satisfy the RVOs they incur is by requiring them to comply on an annual basis.

According to Section D of the proposed rule, EPA is considering setting the annual compliance deadline “...60 days after publication in the Federal Register of the final rule establishing the subsequent compliance year’s renewable fuel standards; or [t]he next quarterly reporting deadline under 40 C.F.R. 80.1451(f)(2) after the annual compliance reporting deadline for the prior compliance year¹⁰.” Moreover, there is no provision in this rule proposal which would require EPA to set a more definitive timeline. In essence, EPA is ensuring that all compliance deadlines could always be extended without a guarantee of any final deadline. Requiring compliance obligations be fulfilled on this type of moving timeline means that obligated parties can be assured that every compliance deadline could be moved without ever really needing to fulfil any type of compliance obligation. If there is no guarantee of a final deadline, then there would be little need for any compliance obligation, rendering the entire purpose of the RFS moot.

(IV) Extending Compliance Deadlines Undermines the Goals of the Renewable Fuel Standard.

Extension of annual compliance deadlines only serves to undermine the original intent of the RFS. In 2005, the Congressional Legislature passed the Energy Policy Act (“EPACT”), thereby developing the first iteration of the RFS.¹¹ In 2007, Congress passed the Energy Independence and Security Act (“EISA”), constituting the second iteration of the RFS¹². In both cases, congressional intent for the RFS was very clear, the RFS was supposed to: “...move the United States toward greater energy independence and security, [and] to increase the production of clean renewable fuels¹³...”

The way the federal government chose to implement that goal is through the development of the RFS and the creation of the RIN trade. By creating a financial consequence for obligated parties, the federal government was attempting to disincentivize entities whose business activities run contrary to the purpose of the RFS¹⁴. These entities, known as obligated parties, are responsible for annual compliance, not just as a punitive financial mechanism, but as means of driving the RFS forward.

Setting definitive compliance deadlines is the best method of effectuating the underlying goals of the RFS. Providing an annual benchmark for all participants, not just obligated parties, means that all participants can organize their business activities in a manner that is best suited towards their needs yet simultaneously complies with RFS regulations. If all participants can plan accordingly, the more their business structures can become better suited towards ensuring renewable fuel enters the transportation marketplace, as the original intention of EISA and of the RFS.

EPA’s insistence on creating moving timelines does more harm to all RFS participants than it does good. Delaying, or worse, negating the need for obligated parties to purchase RINs means the financial consequence for their business activities is effectively circumvented. Without the imminent pressure the compliance deadlines provide, obligated parties have little incentive to follow the law. Since the purpose of both EPACT and EISA was to create a financial consequence for continuing to work contrary to the renewable fuel goals of the federal government, effectively circumventing compliance obligations by extending compliance deadlines is a direct undermining of the RFS.

(V) Extending Compliance Deadlines Adversely Affects Blenders’ Market Position within the Renewable Fuel Standard.

The purpose of the RFS was to mandate that renewable fuel replace, gallon for gallon, nonrenewable fuel within the transportation marketplace¹⁵. As such, blenders of renewable fuel hold an integral position within the RFS. Without blenders of renewable fuel, two things would be true: (1) obligated parties would not be able to receive the separated RINs they need for their compliance obligation and (2) the fundamental purpose of the RFS would not be met. Accordingly, extension of compliance deadlines without a firm deadline only serves as an economic disincentive to blenders of renewable fuel.

Very generally, in order for obligated parties to retire RINs against incurred compliance obligations, RINs have to be separated from the gallon of renewable fuel to which they are attached¹⁶. The primary mechanism driving this process is the blending of renewable fuel.

Blenders of renewable fuel are responsible for contributing to the flow of RINs from the point of creation (generation) to the end use for compliance. Accordingly, blenders of renewable fuel are an integral part of the RFS. Proposing rules which only serve to economically harm integral participants is a detrimental undermining of the original intent of the RFS.

Furthermore, blending renewable fuels is done at an additional cost. While blenders of renewable fuel may be incentivized through a variety of manners, the ability to sell RINs to obligated parties is essential, particularly for smaller wholesalers and retailers that comprise the industry. The ability to gain income through the sale of RINs is integral to its existence. Through the sale of RINs, blenders can offset the cost associated with blending renewable fuel into transportation fuel. In this way, RINs, as a function of the RFS create an economical incentive.

However, without the demand for RINs from obligated parties, blenders of renewable fuel will not have a market to sell their RINs. The effect of the lack of demand means blenders of renewable fuel will be less economically incentivized and more pointedly, may lack the economic means to be able to blend renewable fuel. In essence, blenders of renewable fuel will not have the economic incentive to continue to create renewable transportation fuel in increasing volumes, providing a barrier to driving the RFS forward.

² EPA Proposed Rule: Extension of Compliance and Attest Engagement Reporting Deadlines EPA-HQ-OAR-2021-0793, pg. 13, (pub. Nov. 17, 2021).

³ <<https://www.epa.gov/renewable-fuel-standard-program/news-notice-and-announcements-renewable-fuel-standard>>.

⁹ 40 C.F.R. 80.1427 (Dec. 20, 2020).

¹⁰ EPA Proposed Rule: Extension of Compliance and Attest Engagement Reporting Deadlines EPA-HQ-OAR-2021-0793, pg. 13 (pub. Nov. 17, 2021).

¹¹ <<https://www.epa.gov/renewable-fuel-standard-program/overview-renewable-fuel-standard>>.

¹² Id.

¹³ P. Law 110-140 at recitals; 121 Stat. 1492, (Dec. 19, 2007).

¹⁴ P. Law 109-58 § 1501(a)(5); 119 Stat. 1070 (Aug. 8, 2005).

¹⁵ P. Law 110-140 at recitals, (Dec. 19, 2007); 121 Stat. 1492 (Dec. 19, 2007).

¹⁶ 40 C.F.R. § 80.1429(b)(4)(i)-(ii) (Dec. 4, 2020).

Response:

While there is indeed no backstop in the regulations at 40 CFR 80.1427 should EPA fail to promulgate standards, EPA continues to have a statutory duty to determine volumes of renewable fuel, and thus, should EPA fail to promulgate a rule, our failure to meet our mandatory duty under the statute would be subject to litigation. Thus, our action does not mean obligated parties will never need to comply, or that EPA will have a “free pass” to ignore its obligations under the CAA. We also do not think that our action will decrease demand for RINs from obligated parties. Our action does not change RFS obligations for obligated parties, and thus, they will still be required to obtain and retire RINs to demonstrate compliance. This action only changes the date by which obligated parties will need to retire RINs to demonstrate compliance with their 2019-2022 obligations, and provides a regulatory mechanism to determine the compliance deadlines should promulgation of the subsequent year’s standards be delayed.

3.2. 2022 Compliance Deadline

Comment:

➤ AFPM (0012)

III. Suggested Changes to the Proposal

2022 and Beyond

EPA has not proposed a specific compliance deadline for the 2022 RFS requirements or future annual volumes following reset. The proposed rule, however, provides alternative compliance dates for both RFS reporting and attest engagement reports that would apply in the future if EPA misses the deadline to finalize new RFS rules. EPA has statutory deadlines to finalize RFS rules well before the next compliance year. See e.g., 42 U.S.C. §§ 7545(o)(2)(B)(ii), (o)(7)(f). Rather than establish floating deadlines that contemplate a failure to meet EPA's statutory requirements, the Agency should commit to meeting its RFS obligations and propose case-by-case revisions to reporting requirements only if necessitated by the Agency's inability to meet its obligations under the Clean Air Act. In that regard, given the additional compliance determination delays necessitated for previous connected years (2019-2021) and the delay in promulgating the 2022 RFS rule, EPA should extend the 2022 compliance reporting deadline to be due six months after the 2021 compliance demonstration, provided that EPA releases the 2023 RFS rule in a timely manner.

AFPM is concerned by and does not support EPA's repeated failure to respect the RFS statutory deadlines. Compliance demonstration and report extensions are a necessary but inadequate means of curing the harms caused by EPA's delays.

Response:

We acknowledge that the 2022 annual compliance and attest engagement reporting deadlines should be extended and are changing these deadlines as described in Section I.B of the Preamble. However, we believe that we should apply the same approach provided for the 2019, 2020, and 2021 compliance deadlines to 2022. We have previously applied this approach when EPA has significantly delayed setting the RFS standards.¹⁷ We also note that under this approach, obligated parties will likely have more time to obtain RINs and comply with their 2022 obligations than they would have under the prior 2022 annual compliance deadline. Should the timing for EPA's actions be as in the example presented in Table I.C-1 of the Preamble, the 2022 annual compliance deadline would occur no sooner than June 1, 2023. This would provide at least two additional months for obligated parties to obtain RINs to demonstrate compliance compared to the prior 2022 compliance deadline. We believe this approach provides obligated

¹⁷ See, e.g., the extension of the 2013–2015 deadlines (80 FR 77512-77514, December 14, 2015) and the previous extension of the 2019 and 2020 deadlines (86 FR 17073, April 1, 2021).

parties sufficient time to comply with their 2022 obligations. We do not find that providing 6 months after the 2021 compliance deadline is necessary as described above.

Comment:

➤ Phillips 66 (0003)

EPA also proposes utilizing this same approach (establishing compliance and attest engagement reporting deadlines based on rule effective date) for 2022 and beyond. Phillips 66 does not support this part of the proposal and suggests changes here. Following issuance of this proposal, EPA subsequently issued the proposed rule for 2020, 2021, and 2022 volume targets and percentage standards. Given there is still considerable uncertainty as to when these standards will be finalized, we do agree that the 2022 compliance reporting deadline should be addressed. We believe it should be handled in the same manner as was proposed for 2019, 2020, and 2021 and language included specifically for the 2022 compliance year (would follow the 2021 language in 80.1451(f)(1)(B)(3)). We do not support extending this approach to 2023 and beyond. We hope moving forward, EPA can return to issuing the rules in a timely manner so further changes in reporting deadlines will not be needed. We prefer the certainty of known reporting deadlines rather than moving targets based on late rulemaking. If EPA is further delayed in issuing the 2023 rules (the RFS Set) they can address the 2023 compliance reporting deadlines in that rulemaking.

EPA has proposed regulatory language for 40 CFR 80.1451 that incorporates compliance deadlines based on date of final rule for all years going forward. As mentioned above, we oppose this approach and want to get back to issuing rules on time and reverting to the normal reporting deadlines. We suggest addition of 2022 language as follows and removal of the proposed modification that would apply to subsequent years (2023 and beyond). The proposed language referencing 2019, 2020, and 2021 reporting would remain.

Response:

We acknowledge that the 2022 annual compliance and attest engagement reporting deadlines should be extended and are extending these deadlines. We discuss the extension of the 2022 annual compliance and attest engagement reporting deadlines in Sections I.B and I.C of the Preamble. We discuss issues related to the annual compliance and attest engagement reporting deadlines for 2023 and beyond above.

Comment:

➤ Growth Energy (0011)

For 2022 and beyond, there is no reason why the agency should move beyond its current March 31 deadlines for compliance. EPA will finalize the standard for 2022 with plenty of time to comply by March 31, 2023 and should be in a strong position to issue standards for 2023 and beyond in a timely manner to ensure that subsequent March 31 deadlines can be met. Moving the deadlines for future compliance would send exactly the wrong signal to

innovative biofuel producers seeking to meet the goals of the RFS now and well into the future.

Response:

While it is likely that EPA will finalize the 2022 standards well ahead of the previous March 31, 2023, deadline, the likely compliance deadlines for 2019–2021 are such that the 2022 compliance deadline will need to be delayed in order to provide for proper sequencing and the necessary time between compliance deadlines. Thus, we are revising the 2022 compliance deadline in this action consistent with the approach proposed for 2019–2021 and 2022+.

3.3. 2023+ Compliance Deadline

Comment:

➤ API (0007)

Moving forward, EPA should adhere to the statutory deadlines for RFS rulemakings and other RFS decisions. There is no reason at this point to adjust these filing deadlines for calendar years 2023 and beyond. If warranted, EPA can consider this issue again in the context of the forthcoming RFS Set rulemaking.

Response:

While we intend to meet the statutory deadlines for establishing the RFS standards, we also recognize that it is important to provide regulatory certainty to all parties as to how reporting deadlines may be adjusted in the future. Waiting until the RFS Set rulemaking to make this change is unnecessary and would provide no benefit. Additionally, we retain the authority to take a different approach to compliance deadlines in the RFS Set rulemaking.

4. Other Comments

4.1. Attestation Reports

Comment:

➤ AFPM (0012)

IV. Attestation Reports

For all compliance years addressed in these comments, AFPM believes that the attest engagement reports should be due 90 days after the revised due dates for RFS compliance demonstration reports. We further believe that this 90-day period should be embraced for all future RFS annual demonstrations, as there are a limited number of qualified auditors needed to complete these reports and the current regulatory deadline of 60-days following the compliance demonstrations is an unnecessary challenge.

Response:

We believe that the extensions to the annual attest engagement reporting requirements for 2019–2022 provide a sufficient amount of time for obligated parties to arrange for qualified auditors to conduct attest engagements and submit reports. As highlighted in the example presented in Table I.C-1 of the Preamble, obligated parties will have at least 60 days between the annual compliance reporting deadline and the annual attest engagement reporting deadline, consistent with the previous regulatory timeframe between the annual compliance reporting deadline (March 31) and annual attest engagement reporting deadline (June 1). In these instances, we note that obligated parties have historically arranged for RFS attest engagements from qualified auditors at the same time using the same auditors as those required under EPA’s Gasoline Programs under 40 CFR part 1090. As such, we do not believe that obligated parties will have any additional difficulty arranging for these attest engagements as they would have under the existing regulatory requirements.

Furthermore, we believe that by minimizing the number of dates that attest engagements are due to just the June 1 annual attest engagement deadline, this will limit the number of times that an obligated party will need to arrange for an annual attest engagement by a qualified auditor. As the example presented in Table I.C-1 of the Preamble highlights, three attest engagement reporting deadlines would occur on the same deadline for the 2019, 2020, and 2021 compliance years. In this example, obligated parties would only need to arrange for a single attest engagement to cover all three years versus scheduling three separate attest engagements.

For these reasons, we are finalizing as proposed our approach regarding annual attest engagement deadlines as discussed in Sections I.C and I.D of the Preamble. However, we note that we have slightly revised the proposed regulatory language at 40 CFR 80.1464(d)(1) to no longer state that the annual attest engagement reporting deadlines are the June 1 deadline “that is at least 60 days” after the applicable annual compliance reporting deadline because the phrase “that is at least 60 days” was superfluous. Under the approach for annual compliance and attest

engagement reporting deadlines established in this action, the annual attest engagement reporting deadline will always be at least 60 days after the applicable annual compliance reporting deadline.

4.2. RIN Holding Threshold

Comment:

➤ AFPM (0012)

V. Compliance Extension and RIN Holding

AFPM supports RFS reporting and attest engagement compliance extensions; however, this proposal risks inadvertent exceedance of the RIN holding disclosure thresholds set forth in 40 CFR § 80.1435. The primary RIN disclosure threshold test requires comparing the daily separated D6 RINs to the expected annual volume of conventional renewable fuels for the compliance period.¹⁶ The secondary threshold looks at the refinery's implied conventional renewable volume obligation (RVO) for the prior year and is triggered when current RIN holdings exceed 130% of the prior year's RVO. Further, in 40 CFR § 80.1402(a), EPA states that it may disclose information on RIN activity reports: "EPA may make information submitted under 40 CFR § 80.1451(c)(2)(ii)(E) available to the public." EPA further states in 40 CFR § 80.1451(c)(2)(i)(E) that if reported thresholds are exceeded, "... EPA may publish the name and EPA-issued company identification number of the submitting party."

AFPM is concerned over the potential to exceed the RIN holding disclosure thresholds because RINs have not been retired for RFS compliance, as allowed under this proposal extending the RFS compliance deadlines. Certainly, when the disclosure regulation was promulgated, EPA did not contemplate missing its statutory deadlines and having obligated parties maintain RIN holdings over multiple compliance years. To address these concerns AFPM urges EPA to consider alternative threshold calculations that accommodate these compliance deadline modifications and the unusual need for some obligated parties to hold additional RINs caused by the rulemaking delays.

¹⁶ If any day exceeds 3%, the primary data threshold has been exceeded.

➤ API (0007)

EPA should also refrain from enforcing requirements to disclose RIN holdings that exceed certain thresholds. Companies taking a conservative approach to the uncertainty caused by delayed rulemakings should not be unnecessarily penalized.

Response:

We recognize the issue that some corporate affiliate groups (as defined in 40 CFR 80.1401) may exceed the secondary RIN holdings threshold as a result of carrying multiple compliance periods' worth of RINs when the annual compliance deadline is extended. However, we are not modifying the regulations as such changes to the regulations are beyond the scope of this action. We believe that the provisions of 40 CFR 80.1435(d) provide sufficient flexibility for the use of reasonable alternatives for gasoline and diesel production volumes in the secondary RIN holdings threshold that account for situations like extensions of the compliance deadlines

provided all the applicable requirements of 40 CFR 80.1435(d) are met. In June 2021, we issued temporary guidance on how parties required to calculate secondary thresholds under 40 CFR 80.1435(b)(2) may utilize 40 CFR 80.1435(d) to account for multiple years of gasoline and diesel production for the 2019, 2020, and 2021 compliance years.¹⁸ Even though the temporary guidance only covered the RIN holdings tied to the prior compliance deadlines, the provisions of 40 CFR 80.1435(d) continue to apply, and corporate affiliate groups may use this provision to calculate secondary RIN holding thresholds. We intend to update this temporary guidance to reflect the newly extended compliance deadlines at a later date.

¹⁸ The temporary guidance is available on our website at:
<https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P1012JAV.pdf>.

4.3. Regulatory Flexibility Analysis

Comment:

➤ SRC (0015)

I. EPA's only equitable option is to excuse compliance for 2019–2021.

The delays caused by EPA's multi-year failures to implement the RFS program—on the schedule required by Congress—have wreaked havoc on the RIN market, which in turn, has and will continue to harm small refineries. The skyrocketing cost of RFS compliance for obligated parties that rely on the RIN market—like small refineries—is inextricably linked to EPA's delays. For example, EPA's extreme delay in issuing decisions on pending 2019 and 2020 hardship petitions has caused volatility in the RIN market, as speculators anticipate whether EPA will deny hardship petitions and small refineries will therefore be forced to turn to the RIN market to meet their compliance obligations. As a result, small refineries' compliance costs are unfairly burdensome, and many small refineries now cannot afford compliance.

V. Regulatory Flexibility Act

In its proposal, EPA certifies that “this action will not have a significant economic impact on a substantial number of small entities under the [Regulatory Flexibility Act (“RFA”)].”²³ EPA goes on to state that “[w]e do not anticipate that there will be any costs associated with these changes. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.”²⁴ To the extent EPA's statements apply to small refineries that qualify as “small entities” under the RFA, EPA's assertions are incorrect.²⁵

EPA's rulemaking is more than a simple extension of compliance deadlines. The proposed 2019–2021 compliance schedule impacts small refineries in at least two significant ways: (1) it compresses three compliance deadlines into an impossible six- or, at most, seven-month period of time, and (2) it fails to solve the volatility in the RIN market, which largely is the product of EPA's delayed and improper decision making that has led to the need for compliance deadline extensions in the first place. EPA's proposal also leaves room for future compliance deadline extensions, under the assumption that the Agency will continue to miss the statutory deadline to issue annual renewable volumes. These are not inconsequential decisions and they have a direct, negative impact on small refineries. Without question, small refineries—a number of which also qualify as “small entities” under the RFA—will suffer tremendous costs due to EPA's proposal and they will experience a negative regulatory burden. Due to this rulemaking's significant economic impact on a substantial number of small entities, EPA should conduct a full regulatory flexibility analysis. At the least, EPA must provide an explanation of its cursory statement that small entities will not be impacted by this rulemaking, to allow small entities the opportunity to prepare responsive comments.

²³ Id. at 67,423.

²⁴ Id.

²⁵ Included in the definition of “small entity” is any small business that meets the Small Business Administration’s (“SBA”) size requirements.

➤ Coffeyville (0016)

I. EPA’s only equitable option is to excuse compliance for 2019–2021.

The delays caused by EPA’s multi-year failures to implement the RFS program—on the schedule required by Congress—have wreaked havoc on the RIN market, which in turn, has and will continue to harm obligated parties that rely on the RIN market for compliance. The skyrocketing cost of RFS compliance is inextricably linked to EPA’s delays. For example, EPA’s extreme delay in issuing decisions on pending 2019 and 2020 hardship petitions has caused volatility in the RIN market, as speculators anticipate whether EPA will deny hardship petitions and small refineries will therefore be forced to turn to the RIN market to meet their compliance obligations. As a result, compliance costs are unfairly burdensome for those parties that rely on the RIN market. Without question, companies like CRRM and WRC cannot recover the cost of the RINs they must buy for compliance for the simple reason that the fuel already has been sold—refineries cannot retroactively increase the price of their fuel to incorporate RIN prices.

IV. Regulatory Flexibility Act

In its proposal, EPA certifies that “this action will not have a significant economic impact on a substantial number of small entities under the [Regulatory Flexibility Act (“RFA”)].”¹⁹ EPA goes on to state that “[w]e do not anticipate that there will be any costs associated with these changes. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.”²⁰ To the extent EPA’s statements apply to refineries that qualify as “small entities” under the RFA, EPA’s assertions are incorrect.²¹

EPA’s rulemaking is more than a simple extension of compliance deadlines. The proposed 2019–2021 compliance schedule impacts merchant refineries like CRRM and WRC by failing to solve the volatility in the RIN market, which largely is the product of EPA’s delayed and improper decision making that has led to the need for compliance deadline extensions in the first place. EPA’s proposal also leaves room for future compliance deadline extensions, under the assumption that the Agency will continue to miss the statutory deadline to issue annual renewable volumes. These are not inconsequential decisions and they have a direct, negative impact on CRRM and WRC. Without question, obligated parties—some of which also qualify as “small entities” under the RFA—will suffer tremendous costs due to EPA’s proposal and they will experience a negative regulatory burden. Due to this rulemaking’s significant economic impact on a substantial number of small entities, EPA should conduct a full regulatory flexibility analysis. At the least, EPA must provide an explanation of its cursory statement that small entities will not be impacted by this rulemaking, to allow small entities the opportunity to prepare responsive comments.

¹⁹ Id. at 67,423.

²⁰ Id.

²¹ Included in the definition of “small entity” is any small business that meets the Small Business Administration’s size requirements.

➤ CountryMark (0014)

I. EPA’s only equitable option is to excuse compliance for 2019–2021.

The delays caused by EPA’s multi-year failures to implement the RFS program—on the schedule required by Congress—have wreaked havoc on the RIN market, which in turn, has and will continue to harm small refineries. The skyrocketing cost of RFS compliance for obligated parties that rely on the RIN market—like small refineries—is inextricably linked to EPA’s delays. For example, EPA’s extreme delay in issuing decisions on pending 2019 and 2020 hardship petitions has caused volatility in the RIN market, as speculators anticipate whether EPA will deny hardship petitions and small refineries will therefore be forced to turn to the RIN market to meet their compliance obligations. As a result, compliance costs for small refineries are unfairly burdensome. Without question, small refineries cannot recover the cost of the RINs they must buy for compliance for the simple reason that the fuel already has been sold—refineries cannot retroactively increase the price of their fuel to incorporate RIN prices.

V. Regulatory Flexibility Act

In its proposal, EPA certifies that “this action will not have a significant economic impact on a substantial number of small entities under the [Regulatory Flexibility Act (“RFA”)].”¹⁷ EPA goes on to state that “[w]e do not anticipate that there will be any costs associated with these changes. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.”¹⁸ CountryMark qualifies as a “small entity” under the RFA.¹⁹ To the extent EPA’s statements apply to CountryMark and other small refineries that qualify as “small entities,” EPA’s assertions are incorrect.

EPA’s rulemaking is more than a simple extension of compliance deadlines. The proposed 2019–2021 compliance schedule impacts small refineries in at least two significant ways: (1) it compresses three compliance deadlines into an impossible six- or, at most, seven-month period of time, and (2) it fails to solve the volatility in the RIN market, which largely is the product of EPA’s delayed and improper decision making that has led to the need for compliance deadline extensions in the first place. EPA’s proposal also leaves room for future compliance deadline extensions, under the assumption that the Agency will continue to miss the statutory deadline to issue annual renewable volumes. These are not inconsequential decisions and they have a direct, negative impact on small refineries, including CountryMark. Without question, small refineries will suffer tremendous costs due to EPA’s proposal and they will experience a negative regulatory burden. Due to this rulemaking’s significant economic impact on a substantial number of small entities, EPA should conduct a full regulatory flexibility analysis. At the least, EPA must provide an explanation of its cursory statement that small entities will not be impacted by this rulemaking, to allow small entities the opportunity to prepare responsive comments.

¹⁷ Id. at 67,423.

¹⁸ Id.

¹⁹ Included in the definition of “small entity” is any small business that meets the Small Business Administration’s (“SBA”) size requirements.

Response:

EPA disagrees with commenters’ assertion that small refineries will suffer “tremendous costs” and “negative regulatory burden” due to this action.¹⁹ Commenters claim that EPA is compressing multiple compliance deadlines into an “impossible” six- or seven-month period of time. Commenters, however, fail to present any data or analysis as to why this time window makes compliance “impossible.” EPA disagrees with this assertion given that this rulemaking is actually providing obligated parties with more time to comply than they otherwise would have and given obligated parties’ ability to meet similar compliance deadlines in the past.

Were EPA not to further extend the 2019-2021 compliance deadlines, small refineries would be faced with a quickly approaching January 31, 2022, deadline to demonstrate compliance with their 2020 obligations, and then a March 31, 2022, deadline to demonstrate compliance with their 2021 obligations (which are currently unknown as those obligations have not yet been finalized). Furthermore, small refineries would no longer have the opportunity to amend their 2019 compliance reports, as the previous deadline was November 30, 2021. By further extending the compliance deadlines for 2019-2021 in this action, EPA is providing all obligated parties (including small refineries) additional time to acquire the RINs necessary to demonstrate compliance, as well as ensuring that obligated parties will be fully aware of the following year’s obligations before having to demonstrate compliance with the current year’s obligations. By staggering the compliance deadlines in the manner proposed, EPA is providing obligated parties with at least 60 days between compliance deadlines, consistent with past practice when EPA has missed the deadline to establish the annual volume obligations for a given year.²⁰ Our past experience administering this program has indicated that, where the RFS annual rules have been delayed, this 60-day window between compliance deadlines is a workable amount of time for obligated parties to develop their compliance strategy and acquire sufficient RINs to demonstrate compliance. For instance, we found that this amount of time was generally sufficient for obligated parties to comply with the 2013–2016 standards, which had a similar compliance schedule to the one finalized in this action.

Commenters also complain about EPA’s delayed and improper decision-making in issuing annual RVO rules and how this rule anticipates such delays. Any comments regarding EPA’s decision-making in annual RVO rules is beyond the scope of this rulemaking. This rulemaking only extends compliance deadlines and does not make any decisions regarding the timing or substance of annual RVO rulemakings. We acknowledge that the automatic extension of future compliance deadlines addressed in this rule will only occur if EPA is delayed in establishing the RFS standards in a future year. While we do not anticipate such delays at this time, proactively ensuring sufficient time for obligated parties to meet their compliance obligations with knowledge of the following year’s compliance obligations in the event delays do occur will

¹⁹ We also address comments on this topic in Section 1.1.

²⁰ See, e.g., the extension of the 2013–2015 deadlines (80 FR 77512-77514, December 14, 2015) and the previous extension of the 2019 and 2020 deadlines (86 FR 17073, April 1, 2021).

benefit, rather than harm, all obligated parties, including small refineries by providing adequate notice of the future compliance deadlines. It is unclear to EPA how this extension would actually negatively affect small refineries, let alone any obligated party. Additionally, this action does not change any RFS standards, or impose any new obligations on parties. It merely changes the deadline by which obligated parties must demonstrate compliance with their RFS obligations by submitting reports.

Commenters also claim that this action fails to solve RIN market volatility. The purpose of this action is to extend compliance deadlines to provide obligated parties with sufficient time to comply with their RFS obligations. Commenters have failed to adequately explain why this action in particular negatively affects RIN market volatility. To the contrary, EPA does not believe that this action will meaningfully affect RIN prices or RIN volatility.²¹ This action was not intended to “solve the volatility in the RIN market” more generally, and EPA did not solicit comment on this issue. Thus, comments related to other actions EPA could or should take to address the volatility of the RIN market are beyond the scope of this rule. To the extent commenters believe EPA’s decisions in annual RVO rules are unduly causing volatility, the rulemaking dockets for those proceedings are the proper fora for commenters to raise these concerns, together with supporting data and evidence. To the extent commenters are seeking broader reforms of the RFS program, such comments may be presented to the agency as petitions for rulemaking.

In general, we disagree with commenters’ assertions that this action will somehow negatively impact small refineries. A multitude of factors affect RIN prices, many of which are outside of EPA’s control and thus also beyond the scope of this rulemaking. This action is being taken simply to provide obligated parties with the additional time and regulatory certainty needed to demonstrate compliance with their RFS obligations; it is not intended to solve any financial problems that certain obligated parties may face, many of which are unrelated to RFS compliance.

Having carefully considered and refuted the commenters’ claims, EPA continues to certify that this final rule does not “have a significant economic impact on a substantial number of small entities.” Therefore, EPA is not required to conduct either an initial or final regulatory flexibility analysis.²²

²¹ Due to the delay in establishing the 2014 and 2015 standards, EPA required that obligated parties submit their compliance reports for the 2013, 2014, and 2015 compliance years during calendar year 2016 with similar intervals between the compliance report deadlines as is being finalized for 2019-2022 in this action. RIN prices for D4, D5, and D6 RINs were relatively stable during 2016, generally averaging between \$0.50 and \$1.00 per RIN. See RIN price data at: <https://www.epa.gov/fuels-registration-reporting-and-compliance-help/rin-trades-and-price-information>. While broader market factors in 2022 and 2023 may result in RIN volatility, evidence from 2016 suggests that the sequencing of compliance deadlines we are finalizing in this action is unlikely to result in increased RIN volatility.

²² 5 U.S.C. § 605(b).

4.4. Beyond the Scope

Commenters that provided comment on this topic include but are not limited to: 0002, 0006, 0009, 0010, 0011, 0014, 0015, 0016

Comment:

Several commenters addressed numerous additional topics, including but not limited to the following:

- EPA has not justified its delay in setting the 2021 RFS standards
- EPA must prioritize timely setting of RFS standards
- No reconsideration of 2020 standards is needed to address COVID-19 impacts
- EPA should have acted on pending SRE petitions sooner
- EPA should relieve compliance for 2019-2021 for small refineries
- The compliance deadline extensions finalized in April 2021
- Changes to the E15 label and other EPA policies regarding E15 and ethanol
- EPA's policy regarding SREs and the impacts of granting SREs
- Cellulosic biofuel pathways (e.g., corn kernel fiber)
- Renewable electricity pathways
- Ethanol lifecycle emissions modeling
- RFS volume standards for 2020 and 2021
- Changes to provisions of the RFS program other than those proposed (e.g., reforms to the RIN market)

Response:

These comments are all beyond the scope of this rulemaking. We did not propose any of the changes described above in this action or otherwise seek comment on these issues. These topics are not further addressed in this document.