



March 11, 2021

Attention: Docket ID No. EPA-HQ-OAR-2020-0725

U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Comments on *Extension of 2019 and 2020 Renewable Fuel Standard Compliance and Attest Engagement Reporting Deadlines* (86 Fed. Reg. 3928; January 15, 2021)

Dear Docket Clerk:

The Renewable Fuels Association (RFA) appreciates the opportunity to submit these comments in response to the U.S. Environmental Protection Agency's (EPA) proposed *Extension of 2019 and 2020 Renewable Fuel Standard Compliance and Attest Engagement Reporting Deadlines* (86 Fed. Reg. 3928; January 15, 2021).

RFA is the leading trade association for America's ethanol industry. Its mission is to drive expanded demand for American-made renewable fuels and bioproducts worldwide. Founded in 1981, RFA serves as the premier forum for industry leaders and supporters to discuss ethanol policy, regulation, and technical issues. RFA's 300-plus members are working to help America become cleaner, safer, more energy secure, and economically vibrant.

The EPA has proposed extending the Renewable Fuel Standard (RFS) compliance reporting deadline for the 2019 compliance year to November 30, 2021, and the reporting deadline for the 2020 compliance year to January 31, 2022. The associated deadlines for submission of attest engagement reports would be extended to June 1, 2022.

This proposal is unnecessary, and the timelines are excessive. All that the extensions would do is to compound problems that the EPA itself created under the last administration: the massive and unjustified increase in small refinery exemptions (SREs) and the failure to finalize the 2021 renewable volume obligations (RVOs) by the statutory deadline.

Extension of the 2019 Compliance Deadline for Small Refineries

More than 14 months have passed since the end of 2019, and almost exactly one year has passed since the regulatory deadline for submitting annual compliance demonstration reports. The usage of biofuels toward the annual RVOs has long since occurred. If refiners did not use a sufficient volume of biofuels at that time and did not

own enough renewable identification numbers (RINs) to cover the differential, they could have bought RINs at historically low prices during most of the period since then. In fact, RIN prices were considerably lower in March 2020 than they are in March 2021.

The EPA is actually proposing to further extend a previous extension of the 2019 compliance deadline. On March 27, 2020, just a few days before compliance reports were due, the EPA announced it would “extend the RFS compliance date for small refineries to provide them with additional flexibility” in response to the COVID-19 pandemic.¹ This is no longer an issue, as refining companies quickly figured out how to operate during the pandemic. Moreover, a review of data on the EPA’s website indicates that enough RINs were retired to likely meet a substantial majority of small refineries’ 2019 obligations.

On January 15, 2021, five days before the end of the last administration, the EPA proposed a new date for compliance: November 30, 2021. This is nearly two years after the end of 2019. The justification this time is not the pandemic but the lack of final resolution of a lawsuit over SREs. It is notable that the U.S. Court of Appeals for the Tenth Circuit issued its decision in the case, *Renewable Fuels Association v. EPA*, on January 24, 2020, and the refineries involved had filed petitions for rehearing on March 24, but the EPA didn’t mention the lack of resolution of the case when it issued the original compliance extension.

Moreover, subsequent to the publication of the current extension proposal, the EPA announced a new position on SREs. On February 22, 2021, the EPA announced that it “supports [the Tenth Circuit] court’s interpretation of the renewable fuel standard (RFS) small-refinery provisions.” Further, it stated, “. . . EPA has reevaluated the statutory text and now agrees with the Tenth Circuit’s reading of [Clean Air Act] section 211(o)(9)(B)(i) that an exemption must exist for EPA to be able to ‘extend’ it. EPA agrees with the court that the exemption was intended to operate as a temporary measure and, consistent with that Congressional purpose, the plain meaning of the word ‘extension’ refers to continuing the status of an exemption that is already in existence.”²

In its extension proposal, the EPA stated, “Because of the uncertainty both leading up to the March 31, 2020, deadline *and of SREs going forward*, we do not believe it would be appropriate to require small refineries to demonstrate compliance with their 2019 obligations pending ongoing appeals of the *RFA* decision.”³ (Emphasis added). Given the EPA’s new position, the number of *SREs going forward* is likely to be considerably less than in compliance years 2016-2018, since there are at most seven refineries that could have received continuous exemptions according to the Agency’s data.⁴ As a result,

¹ U.S. Environmental Protection Agency. “EPA Announces Steps to Protect the Availability of Gasoline during COVID-19 Pandemic.” 27 Mar. 2020. <https://www.epa.gov/newsreleases/epa-announces-steps-protect-availability-gasoline-during-covid-19-pandemic>

² U.S. Environmental Protection Agency. “EPA Signals New Position on Small Refinery Exemptions.” 22 Feb. 2021. <https://www.epa.gov/renewable-fuel-standard-program/epa-signals-new-position-small-refinery-exemptions>

³ 86 FR 3930

⁴ U.S. Environmental Protection Agency. “RFS Small Refinery Exemptions.” <https://www.epa.gov/fuels-registration-reporting-and-compliance-help/rfs-small-refinery-exemptions>

continuing to place 2019 compliance on hold pending final resolution of the three SREs at issue in the Supreme Court's review of the *RFA* decision is not merited and would be excessive.

Finally, it is highly unusual for the EPA to favor one group of obligated parties over others in regard to demonstrating compliance, as was the case for small refineries in the March 2020 extension and would be repeated if the EPA's current proposal is adopted. It is also unnecessary, since small refineries could simply run a deficit for 2019 if they don't have sufficient RINs to retire more than a year later. As the EPA acknowledged in the proposal, "For small refineries that did not submit a compliance report as of the March 31, 2020, compliance deadline, we intend to treat those refineries as having carried forward a deficit for purposes of compliance status and do not intend to treat these refineries as being in noncompliance . . ."⁵

Extension of the 2020 Compliance Deadline for All Obligated Parties

In explaining its decision to extend the 2020 deadline, the EPA stated, "We are doing so because we have yet to promulgate the 2021 RFS standards . . ."⁶ The new deadline for 2020 compliance would be January 31, 2022—ten months after the regulatory deadline. The length of this extension is excessive compared to any reasonable timeline for RVO rulemaking.

Again, the compliance year in question is over, any biofuel usage to comply with the RFS has already occurred, and refiners could have bought RINs to cover any shortfall. Moreover, since RVOs are expressed as percentages, the decline in transportation fuel consumption during the pandemic resulted in a proportional reduction in required biofuel volumes, so the RIN bank carried over from 2019 would have covered a larger share of the 2020 obligations.

In addition to citing the EPA's failure to issue the 2021 RVOs as a primary reason for the proposed extension, the Agency again referred to the lack of final resolution of the *RFA* case as a pretext for the length of the extension, stating, "We are also proposing to modify the 2020 compliance deadline to allow small refineries who have not yet demonstrated compliance with their 2019 obligations sufficient time between each year's compliance obligation demonstration."⁷ For the reasons discussed above, delaying 2019 compliance by small refineries pending final resolution of the case is not merited; therefore, there is no justification for compounding that delay by deferring the 2020 compliance deadline for all obligated parties to 2022.

Conclusion

The rationales that the EPA laid out in its proposal are either not valid or not sufficient to extend the RFS compliance deadlines. Additionally, it is reasonable to assume that before the Agency issued its proposal on January 15, obligated parties were

⁵ 86 FR 3930

⁶ Ibid

⁷ Ibid

preparing to meet the compliance deadlines for 2019 and 2020 on March 31, and as previously described they have had ample time to position themselves to do so. Accordingly, the Agency should quickly reject the proposed extensions and re-establish integrity in its implementation of the RFS. Any refiners that have not yet demonstrated compliance with the 2019 standards should be required to do so immediately, and the original 2020 compliance deadline on March 31 should be retained.

Thank you for the opportunity to submit these comments. RFA appreciates your consideration.

Sincerely,

A handwritten signature in black ink that reads "Geoff Cooper". The signature is written in a cursive, flowing style.

Geoff Cooper
President & CEO