

**TESTIMONY OF SCOTT RICHMAN
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**U.S. ENVIRONMENTAL PROTECTION AGENCY
VIRTUAL PUBLIC HEARING
RE: PROPOSED EXTENSION OF 2019 AND 2020 RENEWABLE FUEL STANDARD
COMPLIANCE AND ATTEST ENGAGEMENT REPORTING DEADLINES
(DOCKET No. EPA-HQ-OAR-2020-0725)
FEBRUARY 9, 2021**

Good morning. My name is Scott Richman, and I am the Chief Economist of the Renewable Fuels Association (RFA), the nation's leading trade association representing fuel ethanol producers.

The RFA appreciates the opportunity to share our initial comments on EPA's proposed extension of the 2019 and 2020 Renewable Fuel Standard compliance and attest engagement reporting deadlines.

To put it briefly, this proposal is one last attempt by the former EPA administrator to undermine the RFS on his way out the door. One last favor to oil refiners. One last bit of contorted logic to justify actions contrary to the statute and even to common sense.

All that this proposal does is to compound problems that the Agency itself created under the former administration: the massive and illegal increase in small refinery exemptions and the failure to finalize the 2021 Renewable Volume Obligations by the statutory deadline.

Let me address the two proposed extensions in turn.

First, the Agency is proposing to extend the 2019 compliance deadline for small refineries. *2019*. Thirteen months have passed since the end of 2019 and 11 months have passed since compliance demonstrations would have ordinarily been due. Any biofuel usage to comply with the 2019 RFS has long since occurred. If refiners did not use a sufficient volume of biofuels at that time and did not own enough RINs to cover the differential, they could have bought RINs at historically low prices during most of the period since then.

This proposal is actually an extension of an extension of the 2019 compliance deadline. Last March 27, just days before compliance should have been 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. Refining companies have long since

figured out how to operate during the pandemic. Moreover, a review of data on the EPA's website indicates that enough RINs have been retired to likely meet a substantial majority of small refineries' 2019 obligations.

Then, five days before the end of the previous administration last month, the EPA finally set a date for compliance: this November 30—nearly ten months from now and a date 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 small refinery exemptions. A lawsuit brought by RFA and other parties for which the U.S. Court of Appeals for the Tenth Circuit issued its decision on January 24 of last year, and for which the refineries involved had filed petitions for rehearing on March 24. Notably, the EPA didn't mention the lack of resolution of the case when it issued the original extension. This is a convenient excuse. If the Agency were to wait for all SRE-related lawsuits to be resolved before requiring compliance, we could be waiting a very long time.

To my knowledge, this is the first time the EPA has favored one group of obligated parties—small refineries—over others in regard to demonstrating compliance. It's also unnecessary. As the EPA acknowledges in the proposal, small refineries could simply run a deficit for 2019 if they don't have sufficient RINs to retire.

The second component of the Agency's proposal is an extension of the 2020 compliance deadline for all refineries until January 31, 2022 – more than a year after the proposal was published. Which prompts the question: How long is the Agency planning on taking to propose and finalize the RVOs for 2021? The length of this extension is excessive compared to any reasonable timeline for rulemaking.

Once 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 summary, this proposal is unwarranted, and the timelines it contains are excessive. It is reasonable to assume that refiners were planning to meet the regulatory compliance deadline on March 31, and as previously described they have had ample time to position themselves to do so. The Agency should quickly reject the proposed extensions and re-establish integrity in its implementation of the RFS. EPA should require any refiners who have not yet demonstrated compliance with the 2019 standards to do so immediately. And the original 2020 compliance deadline of March 31, 2021, should be retained.