

# RFS Compliance Date Extension: Response to Comments

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# RFS Compliance Date Extension: Response to Comments

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

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## 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
EMTS	EPA Moderated Transaction System
NPRM	notice of proposed rulemaking
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 RFS Compliance Date Extension Rule

Docket Item Number <sup>a</sup>	Commenter or Organization Name
0003	Anonymous
0004	Citizen - Lingenfelter
0005	Anonymous
0006	Renewable Fuels Association (RFA)
0007	Anonymous
0008	American Fuel and Petrochemical Manufacturers (AFPM)
0009	Citizen - Delsack
0010	Citizen - Matinez
0011	Weaver and Tidwell, LLP
0012	American Petroleum Institute (API)
0013	Advanced Biofuels Association (ABFA)
0014	Citizen - Howell
0015	CountryMark
0016	Renewable Fuels Association (RFA)
0017	National Corn Growers Association (NCGA)
0018	South Dakota Corn Growers Association (SDCGA)
0019	National Biodiesel Board (NBB)
0020	Growth Energy
0021	Coalition for Renewable Natural Gas (CRNG)
0022	Producers of Renewables United for Integrity Truth and Transparency (Producers United)
0023	American Fuel and Petrochemical Manufacturers (AFPM)
0024	Small Refiners Coalition
0025	Alternative Fuels & Chemicals Coalition (AFCC)

<sup>a</sup> Individual comments from the public (and attachments submitted with comments) submitted to Docket No. EPA-HQ-OAR-2020-0725 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-2020-0725-0015 is presented as 0015 in this table and within the text of this document.

# 1. RFS Compliance Date Extension Rule

## 1.1. General Comments

### Comment:

#### ➤ ABFA (0013)

EPA is proposing to modify certain compliance dates under the RFS. These extensions to compliance deadlines for the 2019 and 2020 standards matter to both the current market and the future market. While the production and physical use of fuels, both petroleum-based and renewable, has already passed for the compliance years in question, any changes in the programmatic compliance components and related policies will certainly have significant market impacts depending on the final determinations.

The structure of the program was intentionally designed to allow banking, trading, deficit carry forward and two-year rollover to support flexibility in compliance. This market-based approach should in itself sufficient for obligated parties to meet the existing compliance deadlines. Recognizing the unique challenges presented by 2020 and 2021, ABFA does not oppose consideration of the proposed extensions; rather, we ask that the Agency afford acknowledgement and strong consideration of the impacts on both compliance and overall economics in making its final determinations on these proposed extensions. Mitigation of negative impacts on obligated parties and all those from production, distribution, and use should be applied.

#### ➤ AFCC (0025)

##### Supporting Nation's Farmers

AFCC and its member companies oppose granting any more extensions to the RFS compliance. We agree, COVID-19 has decreased fuel consumption nationwide and caused lower demand for liquid biofuels, but these unreasonable extensions continue to prevent domestic production of sustainable biofuels.

The U.S. farmers should not be held accountable for the increase in supply and lack of demand, and therefore should not be responsible for helping oil refineries through this problem. The U.S. farmers have already suffered enough monetary losses with trade restrictions and tariffs in the past year. Farmers need more nationwide use of E15 and E85, as they continue to promote domestic ethanol and biodiesel production; and by supporting the Nation's farmers will provide greater energy security for U.S. and less dependence on foreign oil – expanding domestic energy production will in turn expand domestic energy production and improve the Renewable Fuels Standard (RFS) program that will result in sustained biofuel production to help American farmers and will promote climate smart innovation.

We continue to need champions and stable policies for our nation's farmers and rural America, and unstable policies as presented in the EPA rule making proposal will not provide sustainable production or promote economic growth of biofuels and result in revenue for American farmers. Instead, building on the success of the year-round E15 rule, would make improvements to the RFS program that will better harness the production of our farmers and ensure America remains energy dominant. The EPA rule making proposal is one last attempt by the former administration to undermine the RFS, by providing one last favor to oil refiners, which is contradicting the statute. All that this proposed rule does is to compound problems that EPA 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.

### Concluding Remarks

The EPA proposed rule 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 had ample time to position themselves to be complying. EPA should quickly reject the proposed extensions and reestablish integrity in its implementation of the RFS. AFCC and its member companies urge EPA to 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. No extensions should be offered, since this will not help the U.S. farmers and rural America; unstable policies as presented in the EPA rule making proposal will not provide sustainable production or promote economic growth of biofuels and revenue for American farmers.

#### ➤ AFPM (0023)

##### I. Regulatory Clarity is Needed

As EPA stated in their proposal, under existing RFS regulations, obligated parties must submit compliance demonstration reports for each calendar year by March 31 of the following year, and associated attest engagements by June 1 of the following year.<sup>2</sup> On March 27, 2020, EPA responded to the COVID-19 Pandemic with a press release announcing an extension of the 2019 compliance dates for small refineries and indicating that it would take future action “to extend the RFS compliance date for small refineries to provide them with additional flexibility.”<sup>3</sup> Unfortunately, no such “forthcoming action” materialized. This lack of clarity created enormous uncertainty and contributed to increased RIN market volatility, further harming obligated parties. To make matters worse, we are fast approaching the 2020 compliance reporting deadline. It is worth noting that the comment deadline in this proposal is just 3 weeks prior to the 2020 compliance reporting date of March 31, 2021. We know EPA staff recognizes the importance of issuing a final action on this proposal prior to the March 31 compliance deadline and we urge the Agency to announce its decision as far in advance of that compliance date as possible.

##### II. Additional Regulatory Uncertainty Supports an Extension

The announced small refinery compliance extension for 2019 and the fact that 2019 RINs may be used in 2020, creates market uncertainty that complicates compliance demonstrations for 2020 – the years are linked. Moreover, we are three months into the 2021 compliance year and the Agency has not yet proposed or finalized the renewable volume obligations (“RVOs”) for 2021. In the absence of 2021 RVOs and given the linkage between RIN vintages, it is inappropriate for obligated parties to submit RFS compliance reports for 2020, which would require adjustments to obligated parties’ RIN procurement strategies, the purchase of cellulosic waiver credits, and in some cases declaring a deficit. There are several reasons why this is the case. For example, obligated parties cannot determine the appropriate RIN carry-forward, given the 20% limit on the use of last year’s RINs, without knowing 2021 obligations. The 2-year useful life of RINs makes it important to know the 2021 obligation before deciding whether to run a deficit, use banked RINs, or enter the market to buy or sell RINs. Obligated parties must be able to take 2021 obligations into consideration as they determine 2020 compliance. EPA agrees as well, when it notes 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.”<sup>4</sup> Knowledge of 2021 renewable fuel volumes is crucial to developing compliance strategies for obligated parties.

Small refineries are still waiting on RFS small refinery exemption (“SRE”) decisions for 2019 and 2020. Without these decisions, small refineries should not be required to comply for 2019 or 2020, due to their RIN linkage. Additionally, the U.S. Supreme Court has granted *certiorari* in a case affecting small refinery exemptions.<sup>5</sup> EPA again here is correct in noting that “... 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.”<sup>6</sup> AFPM notes further that refineries should not be required to comply with the 2020 RFS rule until all obligated parties have submitted their 2019 compliance reports.

### III. Precedents for Compliance Extensions Exist

If the Agency finalizes this proposal, it will not be the first-time that RFS compliance reports have been delayed. 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.<sup>7</sup> The Agency expressed its intent of another deferral in a legal brief dated February 4, 2014 on the 2013 RFS. Yet again, there was another deferral for 2013 compliance to September 30, 2014 in a final rule.<sup>8</sup> When that extension was deemed inadequate, the Agency deferred to 30 days after the 2014 RFS was promulgated in a direct final rule.<sup>9</sup> In the 2014-16 RFS final rule, EPA revised its regulations again to choose that 2013 RFS compliance reports are due by March 1, 2016 or 60 days after the 2014 RFS final rule is published in the Federal Register, whichever is later.<sup>10</sup> 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 trade 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. In the final rule for 2014-16 RFS, the Agency promulgated August 1, 2016 for the 2014 RFS compliance reports and December 1, 2016 for the 2015 RFS compliance reports.<sup>11</sup> As demonstrated, the Agency is not in uncharted territory, and there is adequate precedent for the Agency to proceed with the compliance reporting extension.



## VI. Proposal Will Have No Impact on Biofuel Volumes

A compliance reporting extension for 2020 will have no impact on the amount of renewable fuel produced (or blended), because the compliance year is concluded. There is no way to influence further biofuel volumes in 2020.

## VII. Conclusion

AFPM appreciates the opportunity to provide its perspective on this critical issue. AFPM agrees EPA should extend RFS reporting deadlines. There is no environmental impact or reduction in the amount of renewable fuel blended if RFS reporting is delayed. We note that there is very little time between the close of this public comment period and the current due date of March 31, 2021. Due to this tight timeline, we urge an expeditious decision.

### ➤ API (0012)

API supports delaying the small refinery compliance and attest engagement deadlines for 2019 per Table 1.A-1 in the Notice of Proposed Rulemaking (NPRM). We also support the proposed extension of the compliance deadline and attest report submission covering 2020 for all obligated parties (also found in Table 1.A-1). 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, hampering obligated parties' ability to manage RIN carryover would harm obligated parties if existing deadlines were maintained. Due to delays in issuing volume obligations for the 2014, 2015, and 2016 RFS standards, EPA took a similar action to delay reporting deadlines for the 2013, 2014, and 2015 compliance years. 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. However, the agency needs to be prepared to further delay both the 2019 small refinery dates and the 2020 reporting dates if the lawsuits related to the small refinery exemptions are not settled when reports are due. Likewise, the 2020 report deadlines may need to be extended again if the 2021 standards are further delayed.

### ➤ Citizen – Delsack (0009)

The EPA should not allow these small refineries another extension on the compliance deadline. If they are unable to meet their previous deadline, they are at fault and should be recognized for negligent behavior. An extended deadline is an unreasonable favor and suggests questionable practices. This year's compliance deadline should remain unchanged along with future compliance deadlines. Lastly, this action seems to be a mere last ditch effort by the previous EPA administrator and should be recognized as a senseless proposition to assist the refining industry.

➤ Citizen – Howell (0014)

I think this is a great proposed regulation. Extending the deadline will give states that may have had rough or unfocused years due to the pandemic time to find the best renewable fuel sources. By finding the best sources to use, we will be on a safer and more efficient path to creating less pollution, thus reducing the greenhouse gas effect and slowing the effects of global warming.

➤ Citizen – Lingenfelter (0004)

I am a corn grower in eastern Nebraska. I implore you not to grant any more extensions to the RFS compliance. I agree COVID-19 has decreased fuel consumption nation wide. The American farmer should not be held accountable for this and should not be responsible for helping oil refineries through this problem. Grain farmers have suffered enough with trade restrictions and tariffs. We need more nationwide use of E15 and E85. Ethanol keeps US dollars circulating in the heartland of America!

➤ CountryMark (0015)

CountryMark supports the proposed extensions of the RFS compliance reporting dates for 2019 and 2020. The ability of an SBR to accurately submit RFS compliance reports for 2019 and 2020 without knowing the Renewable Fuel Obligations for 2021 is not reasonably possible. Leaving in place the current Compliance Reporting deadline would force an unreasonable burden upon SBRs by complicating RIN carry forward decision making, while having no impact on the 2019 or 2020 levels of renewable fuel blending as those years are closed.

The EPA has previously delayed RFS compliance reporting dates in prior years when the RFS rulemaking was similarly delayed; most notably in 2013 and 2014. The factors making those delayed compliance reporting deadlines reasonable and present for the 2019 and 2020 Compliance reporting deadlines.

An additional fact in support of the proposed extensions is the ruling that the U. S. Supreme Court will issue from its review of *HollyFrontier Cheyenne Refining, LLC, et al v. Renewable Fuels Association, et al* concerning small refiner hardship exemptions under the RFS. The Court's ruling and subsequent actions may impact Compliance reporting for 2019 and 2020 for CountryMark, and other SBRs. Accordingly, the EPA should implement the proposed extensions for 2019 and 2020. In addition, if the EPA delays proposing the RFS 2021 Standards as indicated, consideration should be given to extending the compliance deadline for 2021 as well.

➤ CRNG (0021)

Although the RNG industry has suffered setbacks as a result of the pandemic (and regulatory uncertainty), it is a success story for the RFS program, growing substantially since RNG became part of the cellulosic biofuel program. EPA has and should continue to support

America's RNG industry. Here, it should do so by getting the program back on track. Regardless of EPA's final decision, EPA must keep the compliance deadlines so that it need not extend the compliance deadline for the 2021 RFS. As noted above, EPA also should not use these extensions as grounds to further delay setting the 2021 (or 2022) RFS or to decline to consider the amount of carryover RINs that may be available for 2021 (or 2022) when assessing the appropriate minimum volume requirement for cellulosic biofuel.

➤ Growth Energy (0020)

Specifically, we call on EPA to reject calls to delay RFS compliance [...].

➤ NBB (0019)

EPA is proposing two actions to adjust the renewable fuel standard compliance dates. Both actions would be detrimental to the biodiesel industry as they undermine the integrity of the RFS and create continued uncertainty for the biofuels industry. The RFS is a market driver for the biodiesel industry. Supportive policies, including the RFS, have helped the biodiesel market grow from 300 million gallons in 2010 to 3 billion gallons in 2020.

When implemented as directed by statute, the RFS provides the biodiesel industry the certainty that is needed to continue making investments in new production capacity, increase efficiency, diversification of biofuel feedstocks, and fuel distribution infrastructure. Timely implementation of the RFS and compliance support the growth Congress intended to achieve with this program. Any delay in compliance undercuts investments and derails growth, particularly for the still growing biodiesel industry.

We urge the agency to withdraw the proposed rule, maintain the annual compliance deadlines, and set the RFS on a sustainable path to achieving its principal goal – reducing greenhouse gas emissions by increasing use of renewable fuels.

➤ NCGA (0017)

NCGA urges EPA to maintain current compliance deadlines as an important first step toward putting the RFS back on track. As the producers of the primary feedstock for ethanol, we believe the RFS is a successful energy and environmental policy. However, recent RFS implementation, including the 88 small refinery exemptions (SREs) issued for the 2016-2019 compliance years, totaling 4.4 billion ethanol-equivalent gallons, and failure to issue 2021 RFS volume standards, has reduced its effectiveness in diversifying our energy supply and its environmental benefits by limiting the carbon and air pollution reductions that result from biofuels use. Extending 2019 and 2020 compliance deadlines for nearly an additional year each would only exacerbate the problems resulting from the large expansion in SREs and the lack of a 2021 volume rule. Instead, EPA should maintain compliance deadlines to begin restoring RFS integrity.

Conclusion

NCGA urges EPA to conclude 2019 RFS compliance for small refineries and maintain the 2020 RFS deadline. Obligated parties have no ability to generate additional 2019 or 2020 RINs, but have the flexibility to carry forward a deficit, including for 2019, if needed. A year extension is unnecessary.

Upholding these deadlines is an opportunity for EPA to take a first step toward restoring RFS integrity and making RFS volume requirements meaningful. This important first step needs to be followed by others, such as applying the Tenth Circuit Court decision, completing 2021 volume obligations, restoring gallons lost to past improper waivers, finalizing proposals to support expansion of E15 and adopting updated lifecycle emissions modeling to accurately reflect the emissions reductions of ethanol. By drawing out compliance as proposed, EPA would compound uncertainty created by recent RFS administration. Maintaining compliance now upholds the RFS and allows EPA to move the RFS forward.

➤ RFA (0016)

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 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.

➤ SDCGA (0018)

Extending 2019 and 2020 compliance deadlines for nearly an additional year each would only worsen the problems resulting from the 88 SREs issued for the 2016-2019 compliance years, totaling 4.4 billion ethanol equivalent gallons, and the lack of a 2021 volume rule. Instead, EPA should maintain compliance deadlines to begin restoring RFS integrity, which allows us to move forward towards a future of a low carbon fuel standard.

Conclusion

SDCGA urges EPA to contemplate all involved parties, not just the fossil fuels industry when considering how waivers effect the transportation sector. We ask that EPA conclude RFS compliance deadlines for 2019 and maintain the 2020 deadline. There is no ability for obligated parties to generate additional RINs, but there is a flexibility to carry forward a deficit, including 2019 if needed. A year extension is unnecessary.

EPA should reject the proposed extensions and uphold the integrity of the renewable fuel standard. This important first step needs to be followed by others, such as applying the Tenth

Circuit Court decision, completing 2021 volume obligations, restoring gallons lost to past improper waivers, finalizing proposals to support expansion of E15 and adopting updated lifecycle emissions modeling to accurately reflect the emissions reductions of ethanol. Maintaining compliance now upholds the RFS and allows EPA to move the RFS forward, as we continue to build an even brighter future for biofuels.

➤ Small Refiners Coalition (0024)

Over the past year, the pandemic has dramatically affected the economy and, separately, there is tremendous uncertainty surrounding the RFS program. In response, EPA is seeking comment on extended RFS compliance deadlines for 2019 for small refineries and 2020 for all obligated parties.<sup>3</sup> The Coalition supports EPA’s decision to extend the compliance dates, a tool the Agency has utilized in the past,<sup>4</sup> in response to the regulatory uncertainty; and we urge EPA to finalize the deadlines as soon as possible. Unfortunately, the current proposal is insufficient and risks harming small refineries even further. EPA must adjust its proposal to provide sufficient time for the resolution of several RFS issues before small refineries are required to comply with their renewable volume obligations (“RVOs”) for 2019 and 2020. Currently, both the 2020 and 2021 Volumes are unsettled, the U.S. Supreme Court has yet to issue its decision regarding small refinery eligibility for hardship relief,<sup>5</sup> most small refineries still have not received decisions on their 2019 hardship petitions, and all small refineries are waiting for decisions on their 2020 petitions. The consequence of these unresolved RFS issues is an out-of-control RIN market, with the price of ethanol RINs now at an eight-year high and rising.<sup>6</sup> As RIN prices currently stand, some small refineries quite literally cannot afford to buy enough RINs for compliance.

For the reasons explained below, the 2019 and 2020 compliance deadlines should be a minimum of one year after the Supreme Court issues its decision on small refinery eligibility for hardship relief, and the corresponding attest engagements should be a minimum of two months after the 2019 and 2020 compliance deadlines. But adjusting the compliance deadlines will only help if EPA also resolves the RFS issues in a manner that reduces RIN market volatility and brings RIN prices down. Thus, EPA must also commit to issuing decisions on the 2019 and 2020 hardship petitions within 90 days of the Supreme Court’s decision, restoring a healthy bank of carryover RINs, and reforming the RIN market to put an end to the extraordinary market disparity that has plagued the RFS program for years.<sup>7</sup>

Many small refineries are almost entirely dependent on RINs for compliance, which is why adequate lead time for compliance planning and the liquidity of the RIN market are critical to their ability to meet their RVOs. EPA already understands and supports these principles. The Agency knows that obligated parties like small refineries need lead time “to engage in transactions to acquire the RINs they need for compliance.”<sup>8</sup> EPA also has acknowledged the importance of liquidity in the RIN market as a “programmatically and cost spike buffer that [] both facilitate[s] individual compliance and provide[s] for smooth overall functioning of the program.”<sup>9</sup> As proposed, the compliance deadlines would force small refineries to demonstrate compliance before the uncertainty surrounding the RFS is resolved and at a time when the RIN market is highly likely to be illiquid—exact opposite circumstances from those that EPA has recognized as critical to the proper functioning of the RFS program. Thus, the

proposal falls short of providing the lead time that small refineries—the parties most affected by an extension of the deadlines—require for compliance. It will do little to help RIN-reliant small refineries and could even make compliance more difficult if the deadlines are not adjusted as described in this letter. And even with additional lead time, some small refineries still will not be able to afford compliance due to the disparities caused by the current implementation of the RFS program.

### III. Amending the Compliance Deadlines Will Not Harm Farmers, Ethanol Producers, or Biofuels Producers.

The biofuels industry vehemently opposes any extensions of the RFS compliance deadlines, calling EPA’s proposal “[o]ne last favor to oil refiners.”<sup>31</sup> EPA’s deadline extensions are not a favor; they are critical to obligated parties’ ability to develop compliance plans in light of the tremendous uncertainty surrounding the RFS program. And more importantly, the deadline extensions do not harm the biofuels industry, which makes their fervent opposition even more puzzling. The biofuels industry often cites the destruction of demand for renewable fuel as the reason they are opposed to any form of relief or flexibility EPA affords obligated parties. But for two clear reasons, demand destruction is not at play here.

First, even the biofuels industry has acknowledged that “[a]ny biofuel usage to comply with the [2019 and 2020] RFS has already occurred.”<sup>32</sup> Because the renewable fuels for the 2019 and 2020 compliance years were already produced and blended, deadline extensions of any length for those years will have no effect on the demand for biofuels for those years. The only question is the amount of money vulnerable small refineries will be forced to transfer to large, integrated refiners and exempt blenders in order to purchase exorbitantly priced RINs.

Second, whether small refineries are ultimately required to retire RINs for compliance will depend entirely on the pending Supreme Court case and EPA’s decisions on the hardship petitions—it will have nothing to do with the final compliance deadlines. This means that the biofuels industry’s oft-cited claim that small refinery relief destroys demand for renewable fuels is unrelated to this rulemaking. And, more importantly, that claim is incorrect. The blending of ethanol with gasoline up to 10% will occur regardless of small refinery relief. There is no correlation between blend rates and relief to small refineries, and the federal government knows that.<sup>33</sup> Government data and independent analyses demonstrate that relief for small refineries has not reduced the ethanol blend rate. In fact, the blend rate has increased year after year, despite EPA granting hardship relief in prior years to a number of small refineries (see chart below).<sup>34</sup> Thus, small refinery hardship relief does not reduce the amount of fuel that will be blended; it only removes the small refinery’s obligation to buy RINs from other wealthier market participants for the volume of fuel they cannot physically blend.

Contrary to claims by the biofuels industry, it is not a “favor” to small refineries to extend compliance deadlines in light of the unprecedented regulatory uncertainty due in large part to the Agency’s delays. In reality, the deadline extensions are necessary to many small refineries’ survival.

**Response:**

We do not believe that changes to the RFS compliance deadlines will have impacts on the RIN or renewable fuels market since the amount of renewable fuel produced and used in 2019 and 2020 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.

We do not believe that this action to extend the compliance deadlines will cause uncertainty, and commenters did not articulate why simply extending the deadline for compliance would do so. This action will not impact renewable fuel volumes for 2019 or 2020, as those years are in the past, and this action merely extends the time for which obligated parties must submit compliance reports and retire RINs to satisfy their obligations. Additionally, the compliance extensions we are finalizing only modify the compliance deadlines for 2019 for small refineries, and for 2020 for all obligated parties, and do not modify the compliance deadline for 2021. In this action, we have balanced the interests in providing additional flexibility for obligated parties in knowing their future obligations, while also maintaining future compliance deadlines, which provide certainty for the market. As there is no need at this point to consider compliance date extensions for 2021, and it is in all parties' interest to keep to the existing compliance schedule when possible, we are finalizing the proposed compliance deadlines for 2019 for small refineries, and for 2020 for all obligated parties; we are not modifying the 2021 compliance deadline.

We agree with the commenter who pointed out specific linkages between the various compliance years and compliance decisions that need to be made by obligated parties. These are the type of decisions that these compliance date extensions are intended to accommodate.

**Comment:**

- Small Refiners Coalition (0024)

**IV. Small Refineries Must Be Able to Retain Full Flexibility to Carry Forward a Deficit for the 2020 Compliance Year.**

In the early days of the COVID-19 pandemic, EPA recognized the need for “additional flexibility” in the compliance deadline, in light of the sudden and dramatic impact of the pandemic on small refineries.<sup>35</sup> Since then, flexibility has become even more critical because while the pandemic continues, there is also tremendous regulatory uncertainty surrounding the RFS program and, in particular, small refinery hardship relief. This uncertainty already caused the price of ethanol RINs to hit an eight-year high and prices are still rising. At the same time, the bank of carryover RINs, which is essential to compliance flexibility, is projected to run dry by the end of the year.<sup>36</sup> In its proposal to extend the compliance deadlines, EPA stated that “all of the existing regulatory flexibilities for small refineries, including the ability to satisfy up to 20 percent of their 2019 RVOs using 2018 carryover RINs under 40 CFR 80.1427(a)(4), and the ability to carry forward a deficit from 2019 to

2020 if they did not carry forward a deficit from 2018 under 40 CFR 80.1427(b), would continue to be available to them to demonstrate compliance for 2019 at the proposed later compliance deadline.”<sup>37</sup> We agree and ask that the final rule be clear about the flexibility that small refineries retain for 2019 and 2020 compliance, namely, that (1) small refineries that already carried forward a deficit for 2019 can reverse that decision in new compliance reports and retain their ability to carry forward a deficit for 2020, (2) small refineries that did not submit 2019 compliance reports by March 31, 2020, and are being temporarily treated by EPA “as having carried forward a deficit [for 2019] for purposes of compliance status”<sup>38</sup> are not held to EPA’s temporary deficit carryforward once they do submit 2019 compliance reports, and (3) small refineries that have not yet carried forward a deficit still can do so for either 2019 or 2020.

The deficit carryforward under 40 C.F.R. § 80.1427(b) functions as a regulatory tool for flexibility that obligated parties may choose to employ. 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 RVO for that year and the next year. Small refineries must still be able to do that for the 2019 and 2020 compliance years, once they know their RVOs, whether they have received hardship relief, and the state of the RIN market. After all, the final deadlines themselves will affect compliance decisions: if EPA ultimately adjusts its compliance dates as suggested in this comment letter, and the RIN market therefore has the chance to settle prior to the compliance deadlines, small refineries’ plans for compliance would look much different from their plans if RIN prices remain at current levels. For the 2019 and 2020 compliance years, small refineries’ ability to use the deficit carryforward provision will be as critical as ever.

**Response:**

As discussed in Section I.A of the final rule, small refineries will retain their ability to carry forward a deficit for 2019 or 2020, pursuant to the provisions of 40 CFR 80.1427(b).



## 2. 2019 Compliance Date

### 2.1. General Comments

#### Comment:

- AFPM (0023)

#### IV. Suggested Changes to the Proposal

##### 2019 Compliance Year

EPA has proposed that RFS compliance reports for 2019 by small refineries are due by November 30, 2021. This is appropriate if the U.S. Supreme Court rules on its small refinery exemption case by July 2021 and small refinery petitions for 2019 are decided by September 30, 2021.

However, considering the uncertainty surrounding the issuance of SREs and related court decisions, and to ensure that additional delay rulemaking is not needed, AFPM suggests that proposed 40 CFR §80.1451 should be revised to require 2019 RFS compliance reports by small refineries be due 60 days after the later of: 1) the U.S. Supreme Court decision on small refinery exemptions;<sup>12</sup> and 2) EPA decisions on 2019 small refinery exemption petitions.

- API (0012)

As EPA stated in the NPRM, the submission of the 2019 small refinery reports must be extended because of the uncertainty triggered by the court cases surrounding the Small Refinery Exemptions (SRE). As an alternative, API proposes that instead of setting a specific date in a final rule, the agency should stipulate the number of days after all legal recourse is exhausted for the reports. This will eliminate the need for the agency to change the due date if legal proceedings drag out. API proposes 60 days.

- Small Refiners Coalition (0024)

#### I. EPA Must Adjust the Compliance Deadlines to Allow for Resolution of RFS Implementation Issues That Have Caused a Grossly-Inflated RIN Market.

##### A. Whether nearly all small refineries are eligible for hardship relief, including for the 2019 and 2020 compliance years, has yet to be decided by the U.S. Supreme Court.

On January 8, 2021, the U.S. Supreme Court agreed to review a decision from the United States Court of Appeals for the Tenth Circuit, in which the lower court ordered EPA to revoke extensions of the small refinery hardship relief it granted to three small refineries for the 2016 and 2017 compliance years because those refineries had not received extensions every year since the beginning of the program.<sup>10</sup> If the Supreme Court affirms the Tenth

Circuit decision, a small refinery would be ineligible for hardship relief moving forward if it has not “submitted meritorious hardship petitions each year.”<sup>11</sup> This has the potential to effect a number of small refineries’ eligibility for hardship relief.

There are currently 30 pending 2019 hardship petitions and 16 pending 2020 petitions submitted by small refineries. Oral argument in the Supreme Court case is expected in April, with a decision from the Court by July.<sup>12</sup> The Court’s decision will affect the outcome of nearly all of the outstanding 2019 and 2020 petitions. EPA already has stated that it does “not believe it would be appropriate to require small refineries to demonstrate compliance with their 2019 obligations pending ongoing appeals of the RFA decision.”<sup>13</sup> The Coalition agrees, but EPA’s current proposal misses the mark as it fails to provide enough time for the RIN market to settle and for small refineries to plan for compliance once the Supreme Court issues its decision.

The outcomes of the 2019 and 2020 hardship petitions depend on the Supreme Court’s ruling expected by July, and small refineries’ 2019 and 2020 compliance obligations depend on EPA’s decisions on the hardship petitions, which likely will be issued several months after the Supreme Court decision and right against November 30, 2021, the proposed 2019 compliance deadline for small refineries. That is not enough time for RIN market volatility to subside particularly because, as described below, it is highly unlikely that the 2020 Volumes will be finalized by then. As a result, there will be practically no buffer time between hardship decisions and the 2019 compliance deadline for small refineries to develop an accurate compliance plan, nor will there be time for the RIN market to settle at levels that would allow small refineries “to engage in transactions to acquire the RINs they need for compliance.”<sup>14</sup>

EPA must apply its understanding of the importance of lead time to the current proposal. The Coalition’s proposed adjustments to the deadlines are tied to the Supreme Court decision date, in recognition that the Court’s decision is critical to the resolution of other RFS issues and, in turn, the resolution of those issues is critical to RIN market liquidity.

**Response:**

We are maintaining the 2019 compliance deadline for small refineries of November 30, 2021, as proposed. We decline to adopt commenters’ suggestion that we set the 2019 compliance date for small refineries as the later of 60 days after the Supreme Court’s decision in *HollyFrontier* or EPA decisions on SRE petitions. A set deadline, as opposed to a variable one, will provide certainty for accurate planning as well as sufficient time for small refineries to make compliance decisions, if necessary, following the Court’s decision and EPA’s adjudication of pending SRE petitions.

We acknowledge that some legal proceedings addressing SREs may continue beyond a November 30, 2021, deadline. However, tying the deadline to “after all legal recourse is exhausted” could create additional uncertainty as to the meaning of that phrase. We will continue to monitor legal proceedings and retain the ability to adjust deadlines further if necessary.

Finally, we do not believe that extending compliance deadlines until a year or longer after the Supreme Court's decision would be necessary or appropriate. While this type of extension would allow small refineries additional time to acquire RINs, should such acquisitions be required, it may also interfere with the normal sequence of compliance deadlines. As there is no need at this point to consider compliance date extensions for 2021, and it is in all parties' interest to keep to the existing compliance schedule when possible, we are maintaining the compliance deadlines as proposed. We recognize commenters' position on RIN liquidity and compliance; however, we estimate that RINs representing as much as 95% of the total 2019 RVO have been retired, suggesting additional compliance demonstrations after the *HollyFrontier* decision will be limited. We do not typically modify our regulations in light of obligated parties' compliance strategies.

**Comment:**

➤ CRNG (0021)

A. EPA Has Not Explained the Factual or Legal Basis for Extending the Deadline for Small Refineries for Compliance Year 2019.

The compliance deadline for 2019 has already passed. Despite the procedural requirements of the Clean Air Act, EPA provides no explanation of the legal basis to extend the deadline retroactively in such a case or to only extend the deadlines for small refineries. In addition to providing no explanation of its legal authority, EPA provides no factual support for its proposal, even though there appears to be no real need for the extension of the 2019 compliance deadline. Based on EPA's own data, it appears most refiners have complied with the 2019 volume requirements, as shown below.

Since the compliance deadline was almost one year ago—March 31, 2020, EPA should have information as far as how many refineries may even need an extension of the deadline and how that might impact compliance and RIN availability. Yet, EPA provides no such information, which is needed for the public to understand the need or impacts of EPA's proposal or to meaningfully comment.

EPA further has not provided any assessment of the potential impacts on the RFS program by its proposed extension. These questions arise because of EPA's recent handling of small refinery exemptions that has allowed RINs to move in and out of the market by refiners with small refineries. These actions have been done behind closed doors and without following proper procedures, are inconsistent with EPA's own regulations, and have created an unlevel playing field regarding information on RIN availability, resulting in uncertainty and volatility in the RIN market. EPA also notes that it may receive more exemption requests for 2019, 86 Fed. Reg. 3930 n.5, even though it is now 2021 and EPA has recently denied similar requests for exemptions for compliance year 2018 that were submitted in 2020. This calls into question the true purpose of the proposal to extend the deadline for compliance year 2019.

Instead, EPA merely asserts that an extension is appropriate because the U.S. Supreme Court is reviewing a January 2020 decision by the U.S. Court of Appeals for the Tenth Circuit. But,

that review is only on the meaning of “extension,” and EPA does not explain why review of that holding alone has prevented EPA from acting. Indeed, EPA, on January 19, 2021, issued a decision on two small refinery exemptions for compliance year 2019 (without explanation).

Moreover, there are ample grounds for EPA to deny these exemption requests, notwithstanding the Supreme Court’s review. For example, the refiners did not appeal the Tenth Circuit’s holding that the hardship must be due to RFS compliance. If refineries have complied, EPA must explain how that refinery can still seek an exemption under the statute and even its own regulations, which require a showing of when a refinery anticipates it will be able to comply to support its exemption request. The refineries real complaint is that increasing requirements may increase their compliance costs, but this is not a “disproportionate economic hardship.” This is how the incentives Congress created were supposed to work. And EPA has found that refineries pass through their RIN costs, which was another aspect of the Tenth Circuit’s decision that was not appealed. Even if the refinery has not yet complied, the refinery, as EPA acknowledges, can claim a “deficit.” While that deficit would be added to the refinery’s 2020 obligation, EPA has also proposed to extend that deadline.

While there has been a delay in resolving the pending exemption requests for 2019, which EPA has attributed to allowing appeals of the Tenth Circuit decision to be completed,<sup>2</sup> that delay cannot be used to circumvent statutory limitations. For example, 2018 RINs expired in March of 2020, but the extension of the compliance deadline for 2019 would revive them, even though the statute limits their “life” to 12 months. And, even if a refinery needed more time to comply with the 2019 requirements, Congress provided a limited remedy for obligated parties who could not meet their obligations by allowing a deficit to be carried for one year. But these 2018 RINs could not be used toward any deficit carried into 2020, yet they would appear to remain viable under EPA’s proposal. The limits imposed by Congress were because Congress sought to increase annual production of renewable fuels, and so it established a “market-forcing policy.” The proposed extension for compliance year 2019, then, appears to be merely an attempt to avoid the limitations imposed by Congress on the life of RINs and carrying a deficit. EPA’s proposal fails to address these issues.

At EPA’s public hearing, representatives for the American Fuel & Petrochemical Manufacturers (AFPM) and American Petroleum Institute (API) complained that EPA’s extension may not be long enough, suggesting a time frame based on unknown dates. This suggestion must be rejected. Where EPA at least proposes a specified date that may potentially reduce the impacts on future year standards, it is unclear how the actual compliance deadlines under the AFPM/API would get confirmed and noticed to the public. The AFPM/API suggestion also would create uncertainty as to available carryover RINs for compliance with 2020, which could impact the 2021 standards (and later).

**Response:**

As explained in both the proposed and final rule, 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

both the proposed and final rule for extending both the 2019 compliance deadline for small refineries and the 2020 compliance deadline 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.<sup>1</sup> The underlying obligations (i.e., the RFS obligations for calendar years 2019 and 2020) are unaffected by the revised compliance deadlines.

The commenter states that most refineries have complied with the 2019 requirements. We do not disagree that most refineries have complied; however, compliance occurs on an individual basis, and there are indeed some small refineries that have not yet submitted compliance reports or have carried forward deficits. Additionally, many of these small refineries continue to have pending 2019 SRE petitions before EPA. EPA's decisions on these petitions will directly impact their compliance obligations. EPA has consistently maintained that individual compliance decisions and reports are protected as confidential business information, and thus providing information about the scope of parties that need an exemption would not be appropriate. However, as discussed previously, RINs have been retired representing as much as 95% of the 2019 total RVO. We do not anticipate that this extension will have any impact on the RFS volume requirements, as we are not modifying any of the 2019 or 2020 standards in this action; rather, we are only extending the deadline by which small refineries must demonstrate compliance for the 2019 compliance year. As explained, we are merely extending the compliance date pending resolution of the *HollyFrontier* decision and the pending 2019 SRE petitions. Furthermore, in response to the commenter's suggestion that this is an impermissible "retroactive" extension, we disagree. We explained in the proposal that we would treat small refineries that did not submit compliance reports as of March 31, 2020, as having carried forward a deficit. However, upon our finalization of this rule, the 2019 compliance deadline for small refineries is extended to November 30, 2021. This makes the change forward-looking and not retroactive.

Comments related to the decisions to be made on SRE petitions are beyond the scope of this action, and not addressed here. EPA retains the discretion to take action on pending SRE petitions at any time, even perhaps ahead of the *HollyFrontier* decision; however, we recognize that the Court's ruling may ultimately affect some small refineries' eligibility for SREs.

We recognize the flexibility provided by the deficit carry-forward provisions, but we do not believe that it would be fair or equitable to require small refineries to carry forward deficits pending EPA decisions on their SRE petitions for 2019 when doing so would preclude them from taking a deficit in the subsequent year. Forcing small refineries to carry forward a deficit pending EPA decisions would remove a compliance flexibility established in the CAA. The compliance deadline extension thus maintains the availability of the statutory flexibility for small refineries for 2019.

We disagree with the commenter 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). If a party chose to

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<sup>1</sup> E.g., In 2014, EPA modified the annual RFS compliance date from February 28 to March 31. See 79 FR 23414 (April 28, 2014).

carry forward a deficit from 2019 into 2020, only 2019 and 2020 vintage RINs would be available to comply with that obligation – not 2018 RINs.

The commenter opposed conditional deadlines suggested by other stakeholders, as they could create uncertainty surrounding the deadlines. As noted in the final rule and in responses to those comments elsewhere in this document, EPA is finalizing specific deadlines for compliance as proposed and not finalizing conditional deadlines for which it may not be clear when the conditions are met, or parties may not have notice of conditions being met.

The commenter refers generally to “procedural requirements” of the CAA, but points to no specific provisions. EPA has complied with the requirements of CAA 307(d) for a notice and comment rulemaking to modify these regulations, including an explanation of the legal and policy bases for this action.

**Comments:**

➤ AFCC (0025)

Response to Extend the 2019 Compliance Deadline

EPA is proposing to extend the 2019 compliance deadline for small refineries, after fourteen months have passed since the end of 2019 and eleven months have passed since compliance demonstrations would have ordinarily been due. The biofuels usage to comply with the 2019 RFS has long since occurred. If refiners did not use sufficient volume of biofuels at the time of compliance 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.

The EPA rule making is an extension of an extension of the 2019 compliance deadline. Last March, 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. Refiners 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.

In January of this year, the EPA finally set a date for compliance, being November 30, which is approximately nine months from now and a date nearly two years after the end of 2019. The justification is not the pandemic, but the lack of final resolution of a lawsuit over small refinery exemptions. The U.S. Court of Appeals for the Tenth Circuit issued its decision on January 24, 2020, and for which the refineries involved had filed petitions for having another hearing on March 24. EPA did not mention the lack of resolution of the case when it issued the original extension, since EPA is waiting for all SRE-related lawsuits to be resolved before requiring compliance, which we could be waiting a very long time. EPA acknowledges in the rule making proposal, small refineries could simply run a deficit for 2019 if they do not have sufficient RINs to retire.

➤ NCGA (0017)

Extension of 2019 Compliance for Small Refineries

EPA proposes to extend the 2019 annual compliance deadline for small refineries to November 30, 2021, 20 months after the normal compliance deadline of March 31, 2020. Last March, EPA suspended 2019 RFS compliance for small refineries, citing impacts resulting from the COVID-19 pandemic. Now, in this proposed extension, EPA no longer references impacts from the pandemic but cites ongoing legal actions regarding SREs as the reason for the further extension.

Annual RFS volume requirements are subject to frequent legal challenges. However, EPA does not regularly suspend annual RFS compliance deadlines while waiting for those legal challenges to be resolved. If EPA did, the RFS volume requirements would become meaningless and would rarely be enforced. EPA should not view the Tenth Circuit Court decision in *Renewable Fuels Association (RFA) v. EPA* invalidating several SREs differently than other RFS legal challenges. The uncertainties EPA cites regarding SREs come from EPA's actions, not the appeals process related to the Tenth Circuit decision.

A further 2019 compliance extension is unnecessary. Obligated parties have no additional opportunity to generate 2019 RINs because no additional biofuels blending can occur in 2019. The RIN supply for 2019 is fixed, and refineries either blended enough biofuels to meet their obligations during the year or have had more than an additional year to purchase RINs, largely at very low prices, if they opted not to blend or did not blend enough.

As EPA notes, those small refineries afforded the suspension in 2019 compliance throughout the past year and that did not submit a compliance report as normally would have been required on March 31, 2020 could simply be given the option to carry forward a deficit into the next year as a flexibility if they do not hold sufficient RINs to meet their 2019 obligations. A further extension of the compliance deadline, however, is not necessary to avoid noncompliance. The ability to carry forward a deficit provides compliance flexibility for small refineries that have yet to submit a 2019 compliance report.

➤ RFA (0016)

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.<sup>1</sup> 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.”<sup>2</sup>

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.”<sup>3</sup> (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.<sup>4</sup> As a result, 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 . . .”<sup>5</sup>



➤ SDCGA (0018)

COVID-19 Impact

SDCGA believes EPA has a duty to ensure the RFS volumes it sets are made whole when following any granted exemptions. We urge EPA to do the right thing and recognize that annual renewable volume obligations (RVOs) are not appropriate in light of the COVID-19 pandemic for small refineries, as the ethanol industry was also hit hard by the pandemic, as was the transportation sector as a whole.

The proposal by EPA is an extension of the 2019 compliance deadline for SREs, which is a year that has long since passed nearly 15 months ago. It has been almost a year since the first extension was granted at the beginning of the pandemic and the compliance year in question is over.

In this proposed extension, EPA no longer references the impact from the COVID-19 pandemic as it has in the past, but rather cites the ongoing legal actions regarding SREs as the reason for furthering the extension, and in short, kicking the can further down the road.

SDCGA understands that RFS volume requirements are subject to frequent legal challenges. However, we observe that EPA does not regularly suspend annual compliance deadlines while waiting for those legal challenges to be resolved, and this situation should be no different.

Uphold RFS

The overall decline in transportation fuel consumption within the pandemic was proportional with the reduction of required biofuel volumes, therefore the RIN bank carried over from 2019 would have covered a large share of the obligations for 2020. Furthering the 2019 compliance extension is unnecessary and obligated parties have no additional to generate 2019 RINs because no additional biofuels blending can occur in 2019.

The RIN supply for 2019 is fixed, and refineries either blended enough biofuels to meet their obligations during the year or have had more than an additional year to purchase RINs, largely at very low prices, if they opted not to blend or did not blend enough.

**Response:**

EPA's announcement in March 2020 did not extend the 2019 compliance deadline for small refineries. The compliance deadline is established in our regulations and can only be changed through a rulemaking process, which is the purpose of this final rule. Although the first reference to the deadline extension for small refineries was mentioned in a document providing flexibilities for refineries during the pandemic, 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.

Although compliance data may indicate that RIN generation and retirements from 2019 are at or close to the amount required for compliance, as noted previously, compliance occurs on an individual basis, and we do not think it is appropriate to require small refineries to submit compliance reports while SRE petitions are pending before EPA. As noted in the proposal and final rule, EPA’s justification for the extension is not “waiting for all SRE-related lawsuits to be resolved,” but rather extending compliance beyond the resolution of the *HollyFrontier* Supreme Court case, which is likely to decide a fundamental issue regarding the availability of SREs. As explained further in other comment responses in this document, EPA is not establishing a policy of modifying compliance deadlines pending any litigation associated with RFS standards; we are modifying the 2019 compliance deadline in this case for small refineries given the importance of the *HollyFrontier* decision on the availability of SREs.<sup>2</sup>

Some commenters noted that additional renewable fuel cannot be produced or used in 2019. We agree, and therefore an extension of the compliance deadline for small refineries only provides small refineries with additional time to acquire RINs and demonstrate compliance should such requirements be necessary.

We recognize the flexibility provided by the deficit carry-forward provisions, but we do not believe that it would be fair or equitable to require small refineries to carry forward deficits pending EPA decisions on their SRE petitions for 2019 when doing so would preclude them from taking a deficit in the subsequent year. Forcing small refineries to carry forward a deficit pending EPA decisions would remove a compliance flexibility established in the CAA. The compliance deadline extension thus maintains the availability of the statutory flexibility for small refineries for 2019.

**Comment:**

➤ NBB (0019)

Specifically, allowing small refineries to disregard the 2019 compliance deadline is another blow to the biofuels industry, which has been fighting for EPA to fulfil its statutory duty to ensure that volumes it sets each year are met. Past volumes were destroyed by EPA’s granting of small refinery exemptions and lack of accounting in annual rules. In this proposal, EPA is delaying the inevitable compliance of small refiners and other obligated parties. As EPA has announced a new position on RFS small refinery exemptions, we are anticipating, as should all obligated parties, that a majority of the pending SREs will be denied.<sup>2</sup>

Proposing to extend the compliance period is particularly unnecessary as EPA has already stated that they have changed course in how they will be granting small refinery exemptions going forward. That statement should be indicative that small refineries will not be receiving exemptions for 2019 and should plan to come into compliance.

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<sup>2</sup> Our justification for extending the 2020 compliance deadline is unrelated to any pending litigation.

➤ Producers United (0022)

I. EPA Does Not Provide Adequate Grounds for Extending the Compliance Deadline for Small Refineries for Compliance Year 2019.

The Clean Air Act requires notices of proposed rulemakings to include: (A) the factual data on which the proposed rule is based; (B) the methodology used in obtaining the data and in analyzing the data; and (C) the major legal interpretations and policy considerations underlying the proposed rule. 42 U.S.C. §7607(d)(3). This information is needed to provide the public with sufficient information to understand EPA's proposal and provide meaningful comment. EPA's proposal to extend the annual compliance reporting deadline for compliance year 2019 for small refineries fails to meet these basic procedural requirements.

For its proposal for compliance year 2019, EPA merely refers to the pending U.S. Supreme Court case, *HollyFrontier v. EPA*, No. 20-472, to assert an extension of the compliance deadline for small refineries is needed to give the Court time to issue its decision. 86 Fed. Reg. at 3930. But the compliance deadline was March 31, 2020, which has already passed. EPA provides no legal basis or rationale to extend the deadline retroactively. EPA also provides no explanation as to its authority to extend the deadline for small refineries only. The RFS is to apply to all obligated parties in the same manner. 42 U.S.C. §7545(o)(3). EPA also has had more than enough time to identify if any refineries hadn't yet complied and, if so, how many.<sup>1</sup> That data is necessary to understand the need for EPA's proposal and the potential impacts, such as on availability of carryover RINs. Indeed, EPA's own data shows that the volume requirements have been met for 2019, indicating that most of the refiners have already complied.<sup>2</sup> Since EPA failed to provide relevant data or any data to support the proposal, EPA fails to meet the procedural requirements of the statute and, importantly, fails to give the public a meaningful opportunity to comment.

While Producers United understands that there are exemption requests pending for compliance year 2019 and the Supreme Court's decision may provide grounds for denying many of those exemptions (if not all), the statute and EPA's regulations provide for prospective exemptions only.<sup>3</sup> Based on EPA's website, EPA didn't receive any exemption requests for compliance year 2019 until after September 19, 2019 and many were received after the year ended (with some even after March 31, 2020).<sup>4</sup> EPA inexplicably notes that it is "proposing to extend this flexibility to all small refineries because others may submit petitions in the future." 86 Fed. Reg. at 3930 n.5. But it is now March 2021. If these refineries were, in fact, experiencing a hardship from the RFS, it is unclear why it took so long to submit these requests.<sup>5</sup> And EPA has yet to explain how a small refinery that actually complies by retiring RINs is eligible for a hardship exemption as a result of the RFS. The Tenth Circuit's holding in *Renewable Fuels Ass'n v. EPA* regarding requiring that RFS be the cause of the hardship was not appealed. As such, there have been ample grounds for EPA to deny these requests regardless of how the Supreme Court ultimately rules. That the prior administration chose to delay action does not require this administration to continue the unlawful actions EPA had taken in recent years with respect to small refinery exemptions. Even if some refineries have not retired RINs yet, EPA indicates that it has assumed refiners that have not complied are claiming a deficit for 2019. 86 Fed. Reg. at 3930. While these

deficits must be met as part of compliance with 2020, EPA does not explain why an extension of the compliance deadline for 2019 is needed in light of its proposal to extend the 2020 compliance deadline.

Instead, we are concerned that the extension of the compliance deadline will allow small refineries to manipulate the RIN market by impacting RIN availability and affecting RIN prices. As the starkest example of RIN manipulation, EPA's proposal to extend the compliance deadline may unlawfully extend the "life" of RINs. The statute limits the life of a credit (i.e., RINs) to 12 months. While EPA has interpreted this to allow RINs to be used for compliance in the year they are generated and the next year in its regulations, EPA's extension of the compliance deadline to 2021, as proposed, would allow these RINs to have a life of over two years and even three years as 2018 RINs can be used for compliance with the 2019 requirements.<sup>6</sup> Under EPA's regulations, 2018 RINs expired in March of 2020 and would not be eligible to be used if the refineries had claimed a deficit. This matters because the market is defined by RIN availability, and the statute created strict limits on the life of credits and on carrying deficits to promote increased production of biofuels year after year. Extending the life of these RINs is unlawful and undermines those incentives. EPA provides no assessment how its proposal would affect RIN availability and the unlawful rollover of RINs that can impact compliance with later years. This is arbitrary.

**Response:**

Although EPA has announced we are taking a new position regarding small refinery eligibility for SREs,<sup>3</sup> we are not making any decisions on pending SRE petitions based on that position, and therefore there remains uncertainty surrounding the compliance obligations of small refineries. Such decisions will not occur—and such uncertainty will not be resolved—until after the Supreme Court issues its *HollyFrontier* decision.

EPA retains significant discretion and authority to implement the RFS program, including adjusting compliance dates for the RFS program where appropriate. The statute does not prescribe a particular compliance date, and EPA has explained in the proposed and final rules its justification for extending the deadlines given the current circumstances, including the pending Supreme Court decision in *HollyFrontier* and the SRE petitions pending before EPA. Information on the number of small refineries that have yet to comply or other data is not necessary to evaluate whether a compliance date extension is appropriate.

The commenter's own view that small refineries cannot petition for an exemption for a past year is not relevant and does not eliminate the uncertainty and the need for compliance extensions. As discussed in the final rule, we take no position in this action on the availability of SREs. Instead, we are providing small refineries the opportunity to delay their compliance with their 2019 RFS obligations until they have additional certainty regarding their SRE petitions and their corresponding compliance obligations.

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<sup>3</sup> Available at: <https://www.epa.gov/renewable-fuel-standard-program/epa-signals-new-position-small-refinery-exemptions>.

An extension for 2019 is justified, as explained in the proposal, because small refineries' compliance obligations for 2019 remain unknown. Requiring these parties to comply or carry forward deficits is inappropriate because carrying forward deficits would preclude them from doing so again in 2020.

EPA disagrees with the commenter's suggestion that we did not provide a rationale for extending the compliance deadline for 2019 for small refineries only. As presented in both the proposed and final rule, EPA explains that only the compliance obligations of small refineries will be affected by the resolution of the appeal of the Tenth Circuit case *Renewable Fuels Association v. EPA*, now before the Supreme Court as *HollyFrontier v. Renewable Fuels Association*.

The extension of the compliance deadline for small refineries only provides small refineries with additional time to acquire RINs and demonstrate compliance, should such demonstrations be necessary. It cannot impact renewable fuel volumes produced or used in 2019. Furthermore, we do not think that the extension is likely to lead to RIN market manipulation as suggested. The example provided by the commenter regarding altering the lifespan of RINs is not being permitted under this action. 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). If a party chooses to carry forward a deficit from 2019 into 2020, only 2019- and 2020-vintage RINs would be available to comply with that obligation, not 2018 RINs. Therefore, the commenter is incorrect and EPA is not extending the lifespan of RINs beyond two years.

### **3. 2020 Compliance Date**

#### **3.1. General Comments**

**Comment:**

- AFPM (0023)

IV. Suggested Changes to the Proposal

2020 Compliance Year

EPA has also proposed that all obligated parties 2020 RFS compliance reports are due by January 31, 2022. This is appropriate if the 2021 RFS rule is promulgated by November 30, 2021.

However, AFPM suggests that 40 CFR §80.1451 should be edited to state that RFS compliance reports for 2020 are due 60 days after the later of: 1) 2021 RFS rule is promulgated; and 2) the small refinery reporting due date for 2019 compliance.

- API (0012)

Likewise, the submission date for the 2020 reports for all obligated parties could be set 60 days after the 2021 RFS Renewable Volume Obligations (RVO) are finalized, or 60 days after the deadline for small refineries to submit their 2019 compliance reports, whichever date is later. Requiring compliance reports to be submitted after the 2021 RFS RVO are finalized will allow obligated parties to include the impact of the 2021 standards in their planning. Requiring compliance reports to be submitted by obligated parties after the 2019 small refinery reports are finalized is necessary because compliance by small refineries could impact the RIN bank.

**Response:**

Similar to our response in Section 2.1, we decline to adopt commenters' suggestions for conditional compliance deadlines for the 2020 compliance year. Such conditional deadlines are likely to create additional uncertainty within the market. We anticipate that the January 31, 2022, compliance deadline will provide sufficient time between both a final 2021 annual rule and the 2019 compliance deadline for small refineries of November 30, 2021.

**Comment:**

- Small Refiners Coalition (0024)

B. The 2020 Volumes are subject to significant change.

The 2020 Volumes currently incorporate an additional 770 million gallons to account for EPA's anticipated 2020 small refinery hardship relief. Because of this increase in the 2020 Volumes, RIN market liquidity has plummeted, and RIN prices have spiked in anticipation of an increased demand for RINs for compliance. As described below, the 2020 Volumes may require significant revision, and EPA will be unable to finalize any adjustments with enough lead time before the proposed 2019 and 2020 deadlines for obligated parties to plan for compliance.

Several parties, including a number of small refineries, have challenged the 2020 Volumes rule as inconsistent with the Clean Air Act, which does not permit EPA to increase the annual renewable volume to account for future, hypothetical small refinery hardship relief. In addition to the looming possibility that EPA may be ordered by the D.C. Circuit to fix the rule, EPA knows that the 2020 Volumes will require significant downward adjustment if the Supreme Court affirms the Tenth Circuit's decision on small refinery eligibility.<sup>15</sup> EPA's recent motion to seek an abeyance pending resolution of the case reasons that "the scope of EPA's authority to grant small refinery exemptions is relevant to this case. . . . because EPA's calculation of the 2020 percentage standards relied on a projection of small refinery exemptions that EPA will grant for the 2020 compliance year."<sup>16</sup> The agency also argued that an abeyance "will allow EPA the opportunity to decide whether any reconsideration of the 2020 Rule is appropriate in light of the eventual *HollyFrontier* decision."<sup>17</sup> EPA makes clear to the Court that the 2020 Volumes will require revision if the Supreme Court affirms the lower court decision, yet it fails to account for this possible outcome in its proposed compliance schedule. While the Supreme Court decision is expected to issue by July, it is extremely unlikely that, by November 30, 2021—EPA's proposed deadline for small refineries to comply with their 2019 RVOs—the 2020 Volumes rule case in the D.C. Circuit will be resolved and the 2020 Volumes will be settled.<sup>18</sup>

EPA already "recognize[s] the importance to obligated parties of planning their compliance for a given calendar year by understanding their obligations for the years before and after," particularly in light of the two-year lifespan for RINs.<sup>19</sup> Again, the Agency must apply its own principles to the current proposal. The Coalition's proposed compliance deadlines would provide the minimum amount of additional time for EPA to take a voluntary remand in the D.C. Circuit case, in order to adjust the volumes downward in the event the Supreme Court upholds the Tenth Circuit decision. And EPA would need even more time to adjust the volumes in response to a decision from the D.C. Circuit on the validity of the 2020 rule.

**Response:**

Legal challenges to EPA's annual RFS rulemakings occur on an annual basis. Delaying compliance until resolution of litigation associated with the 2020 annual rulemaking is inappropriate and could set a precedent where EPA delays compliance obligations each year due to pending litigation. In contrast, this action is being taken in response to the unusual circumstances resulting from pending actions on SRE petitions and pending Supreme Court review. We will, of course, consider the outcome of any litigation as it might impact compliance obligations, but we decline to prospectively delay compliance deadlines due to pending litigation over the annual RFS rulemakings. Additionally, we are not extending the compliance deadline

for 2020 due to pending litigation, but rather due to the delay in promulgating the 2021 RFS standards and the resulting impact on obligated parties' compliance decisions.

**Comment:**

➤ Small Refiners Coalition (0024)

C. EPA failed to set the 2021 Volumes by the statutory deadline.

Uncertainty about the 2021 Volumes, which have yet to be proposed, only adds to the current volatility in the RIN market.<sup>20</sup> For small refineries that already face two years' worth of RVOs for 2019 and 2020 these obligations represent an enormous financial burden at current RIN prices. As small refineries remain in the dark about their 2021 RVOs, as well as the outcomes of their hardship petitions, they have no idea how much capital they will need to reserve for RIN purchases. Further, the two-year life of RINs and the 20% limit on the use of RINs generated in the prior year mean that small refineries need to know their 2021 RVOs before deciding how to comply with their 2020 RVOs. As a result, it is nearly impossible for small refineries to develop future financial and business plans that would allow them to invest in refinery efficiency improvements, growth, job creation, or any other part of their business. In an environment where small refineries already face competitive disadvantage, this level of uncertainty threatens to paralyze these businesses.

When setting the annual renewable volumes, EPA consistently has taken RIN market liquidity into account, recognizing that the carryover RIN bank “provides an important and necessary programmatic and cost spike buffer that [] both facilitate[s] individual compliance and provide[s] for smooth overall functioning of the program.”<sup>21</sup> EPA's practice should be no different when setting the 2021 Volumes, particularly if the 2020 Volumes are not adjusted downward and the RIN market remains illiquid. As EPA knows, RIN market liquidity is critical to small refineries' ability to comply with their RFS obligations.

EPA must consider RIN market liquidity not only when setting the 2021 Volumes, but also when adjusting the 2021 compliance deadline. EPA's proposal only addresses the 2019 and 2020 deadlines, but for the same reasons that apply to 2019 and 2020, it is also important to revise the 2021 deadline: the RFS issues will not be fully resolved by March 31, 2022—the current 2021 compliance deadline—and, as a result, the RIN market still will be illiquid, making compliance nearly impossible for many small refineries.<sup>22</sup> Further, it would not make sense to maintain the current 2021 deadline in March 2022 when the 2019 and 2020 deadlines, if adjusted to reflect RIN market realities and as suggested in this letter, cannot occur before mid-2022. Small refineries would be forced to comply with their 2021 RVOs before “understanding their obligations for the years before,” contrary to EPA's principles.<sup>23</sup>

**Response:**

We decline to adjust the 2021 compliance deadline at this time. Although we have not yet proposed or finalized the obligations associated with the 2021 rule, delaying the 2021 compliance deadline at this time would have cascading impacts on future compliance deadlines.



It is in all parties' interest to keep to the existing compliance schedule to the extent possible. At this time, we anticipate that obligated parties will know their 2021 and 2022 obligations at the time of the 2021 compliance deadline. Again, we retain the ability to adjust deadlines further if necessary. Comments about the 2021 standards themselves are beyond the scope of this action and not addressed here.

**Comment:**

➤ AFCC (0025)

Response to Extend the 2020 Compliance Deadline

EPA is proposing a extension of the 2020 compliance deadline for all refineries until January 31, 2022 more –than a year after the proposal was published. 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.

**Response:**

EPA's justification for extending the 2020 compliance deadline is not based on the uncertainty surrounding the 2020 RFS standards, but rather due to the delay in promulgating the 2021 RFS standards. While commenters are correct that additional renewable fuel cannot be produced or blended in 2020, we have consistently maintained that due to the two-year lifespan of RINs and the ability to carry forward a deficit as a compliance strategy, it is important for obligated parties to know the following year's compliance obligation when making compliance decisions. As discussed in prior actions to extend compliance deadlines, obligated parties benefit from knowing future volume requirements when acquiring RINs for compliance with their individual RVOs.<sup>4</sup>

**Comment:**

➤ CRNG (0021)

B. If EPA Extends the Compliance Deadline for 2020, It Must Not Use that Delay To Further Delay or to Undermine the 2021 RFS.

EPA also proposes to extend the compliance deadline for all obligated parties for compliance year 2020. Similar to its proposal for compliance year 2019, EPA fails to adequately explain the need to extend the compliance deadlines for 2020. For example, a refiner recently admitted that “most refineries will have purchased all the RINs the[sic] need for 2020

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<sup>4</sup> See 78 FR 49794, 49823 (August 15, 2013); 80 FR 33099, 33149 (June 10, 2015).

compliance before [March 31, 2021].”<sup>3</sup> There is no impediment for refiners to comply on time.

The only explanation provided by EPA to support the proposed extension is that obligated parties “have a valid interest in knowing their 2021 compliance obligations.” 86 Fed. Reg. 3930. This is the same argument made by AFPM/API in suggesting an even longer extension than EPA has proposed. But EPA merely references an “interest,” and obligated parties provide no real explanation as to how knowing the final 2021 standards could change their compliance plans for 2020 in any material way. While EPA references the ability to use prior-year RINs for compliance in 2021, EPA does not explain why obligated parties would not simply use as many 2019 RINs as possible and then use 2020 RINs to meet the rest of the requirements, regardless of the next year’s obligation. And, although an obligated party can choose to claim a deficit, this should only be if it cannot meet its obligation in 2020. Otherwise, the incentives created by Congress, even if refiners deem them burdensome, would be undermined.

Even if obligated parties’ compliance plans for 2020 somehow did depend on their 2021 obligations, an obligated party must always estimate its actual obligations for the next year even when it knows the standards as those obligations are based on its projected production (or import) of gasoline and diesel fuel in the coming year. Moreover, the RFS program has been in place for over ten years, and while EPA has reduced the statutory volumes in recent years, EPA has outlined its general approach for using its waiver authority under the statute. In other words, unlike what may have been the case in prior years, obligated parties now should have enough information and enough experience to estimate the next year’s volume requirements when complying with their current obligations, even without knowing the exact standards EPA will set for the next year.

EPA also references the need to have an “accurate picture of the RIN market, including the availability of 2019 carryover RINs for compliance with the 2020 standards.” 86 Fed. Reg. at 3930. But each obligated party should have an “accurate picture” of the RINs it holds and needs. Setting aside that any uncertainty in the overall availability of 2019 RINs is due to the actions (or inaction) of EPA and the obligated parties with respect to seeking and acting on small refinery exemption requests, this uncertainty has been around in recent years as a result of EPA’s granting of retroactive exemptions and its (improper) practice of unretiring RINs, all of which is done behind closed doors. This year is no different. And, while we disagree with EPA’s “practice” to “unretire” RINs and believe there are ample grounds for denying the pending exemption requests regardless of the Supreme Court’s pending case, EPA has information it could provide the market to assess how many RINs may be implicated. Where EPA has chosen not to provide that information, the lack of transparency should not be grounds to delay the compliance deadlines.

Retaining the compliance deadline matters. RNG companies have already been making investments in anticipation of increased volume requirements year-over-year. Once the year is over, RINs must be retired and must stay retired. Delaying the RFS requirements only creates uncertainty and volatility in RIN prices, affecting those investments as well as continued investments to support ongoing growth as envisioned by Congress. As such, EPA

must have sound legal and factual bases for extending the deadlines and such extension must not undermine the goals of the statute. Where the RFS program is supposed to incentivize renewable fuels, having an “interest” in knowing the 2021 standards and having an “accurate picture” of RIN availability prior to complying with the 2020 requirements are simply insufficient reasons to bring in the uncertainty that may be caused by such extension.

In addition, if EPA does extend the compliance deadline for 2020, we are concerned that EPA (or obligated parties) may then seek to extend the 2021 RFS and compliance deadline because of uncertainty with respect to 2020 compliance and 2020 RIN availability on similar grounds as EPA asserts here. We reject the more open-ended compliance deadlines proposed by AFPM/API, and appreciate EPA’s attempt to retain the current 2021 compliance deadline. 86 Fed. Reg. at 3931. If EPA does ultimately choose to extend the compliance deadline for 2020, it should not use that as a delaying tactic for issuing the 2021 standards or for requiring compliance with the 2021 requirements.<sup>4</sup>

➤ Producers United (0022)

EPA also proposes to extend the compliance deadline for compliance year 2020 for all obligated parties, not just small refineries. The only explanation EPA provides for such extension is that obligated parties “have a valid interest in knowing their 2021 compliance obligations.” 86 Fed. Reg. at 3930. EPA references the “two-year ‘lifespan’ for RINs.” Id. This cannot be sufficient “interest” to extend the compliance deadlines when the statute only grants a 12-month life for RINs. Regardless, where EPA’s regulations only allow up to 20% of prior-year RINs to be used to show compliance in any given year, obligated parties always have an interest in using as many prior-year RINs as possible to retain as much flexibility as possible for the next year. There is no explanation as to how knowing the final standards for the next year will fundamentally or materially change their purported compliance plans. At best, an obligated party may want to determine if they can/should sell any excess RINs that they may have above their compliance requirements. But this determination can easily be made based on what the projected volumes would be the next year. The RFS program has been in place for over ten years. It is not new, and obligated parties have a long history to draw from to make such projections. As noted above, the real reason to extend these deadlines is because if EPA subsequently grants any of the pending exemptions, this could result in an influx of RINs, affecting RIN prices. This again is a means of RIN manipulation, rather than letting the market and Congress’s carefully crafted incentives to work, and should not be allowed.

**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 the commenter suggests, we believe that extending the compliance deadline for 2020 is reasonable, provides greater certainty, and does not undermine the renewable fuel volumes required by the RFS program. However, we are not using this compliance extension to delay the 2021 compliance deadline of March 31, 2022. With this final

rule, we are maintaining the properly sequenced compliance schedule for all three years and getting back on schedule for 2021 compliance, which was an important consideration in this action. This action strikes the appropriate balance in providing compliance flexibilities for obligated parties in light of EPA's delay in promulgating the 2021 RFS standards, and in maintaining compliance deadlines that do not yet need to be adjusted (i.e., the 2021 compliance deadline).

As explained by both EPA and 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 or carryover RINs. We do not weigh in on the many reasons why a company may choose to carry forward a deficit.

**Comment:**

➤ NBB (0019)

Extending the compliance deadline for all obligated parties in 2020 compounds the problems facing the agency charged with righting the wrongs of the past implementation of the program. Furthermore, we believe that it is reasonable to assume that obligated parties were planning to meet their regulatory compliance deadlines and delaying their compliance date is not necessary. Once again, annual RFS volumes EPA sets will continue to be meaningless if they are not enforced in a timely manner.

Extending the compliance deadlines decreases demand for biodiesel, but the decision has far greater impacts that go beyond the biodiesel industry. Decreasing demand for biodiesel has a direct impact on the clean air benefits for all communities, particularly vulnerable communities. Every 100 million gallons of biodiesel used reduces particulate emissions by 252 tons and hydrocarbons by over 282 tons. Additionally, these reduced emissions result in a healthcare savings equal to fewer asthma and restricted activity days, fewer hospital admissions and lost workdays, and reduced mortality and cancer risk.

The economic benefits of biodiesel will also be lost if the volumes set in the RFS are not ensured and the compliance extensions move forward. The biodiesel industry supports economic opportunities in rural sectors. Specifically, biodiesel production supports 13% of the value of every U.S. soybean acre. Using 2018 production figures, the sector generates \$17 billion in annual economic activity, sustains 65,600 jobs across multiple industries, and supports \$2.5 billion in annual wages. Additionally, for every 100-million-gallon increase of biodiesel, an additionally \$780 million in economic activity and 3,200 jobs are supported.<sup>4</sup> The biodiesel industry relies on EPA to issue timely RFS rules that provide growth opportunities to generate these economic benefits.

➤ NCGA (0017)

Extension of 2020 Compliance for All Obligated Parties

EPA also proposes to extend the 2020 annual compliance deadline for all obligated parties until January 31, 2022, nearly a full year extension of compliance that would currently be due at the end of this month. EPA did not propose to extend 2020 compliance until two months before the compliance deadline, a deadline obligated parties would have expected to be required to meet and should be prepared to meet.

Just like obligated parties have no ability to generate more 2019 RINs, the 2020 RIN supply is also fixed. No additional biofuels blending can occur in 2020. Refineries either blended enough biofuels to meet their obligations during the year or have had the full year to purchase RINs, largely at low prices, if they opted not to blend biofuels or did not blend enough. An additional year to demonstrate 2020 compliance is unlikely to affect an obligated party's compliance.

Furthermore, no extension in compliance is needed to address COVID-19 impacts. The RFS, as a percentage standard of obligated parties' annual fuel production, automatically adjusts to a change in fuel demand through the year, including the decline in 2020 fuel production and use compared to production estimates when the 2020 RFS volume rule was finalized.

➤ RFA (0016)

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 . . .”<sup>6</sup> 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.”<sup>7</sup> 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.

**Response:**

As several commenters stated, additional renewable fuel cannot be produced or blended in 2020. We disagree with the commenter who suggested that extending the compliance deadlines would result in reductions in biodiesel demand and note that the commenter did not articulate how an extended compliance deadline results in reductions in biodiesel demand. As noted above, the statute does not require a particular compliance deadline, and EPA maintains the discretion to set a reasonable deadline. Given the lack of any impact on volumes, we have consistently maintained that due to the two-year lifespan of RINs and the ability to carry forward a deficit as a compliance strategy, it is important for obligated parties to know the following year's compliance obligation when making compliance decisions. As discussed in prior actions to extend compliance deadlines, obligated parties benefit from knowing future volume requirements when acquiring RINs for compliance with their individual RVOs.<sup>5</sup>

We do not think that the time for compliance is excessive in relation to the timing of the 2021 annual rule, which has yet to be proposed, let alone finalized.

As discussed in Section 2.1 of this document, we continue to believe that a compliance date extension for small refineries is necessary for 2019, and thus the proper sequencing of compliance (i.e., complete 2019 compliance before 2020 compliance) is additional justification for the 2020 compliance date extension.

**Comment:**

➤ AFPM (0023)

IV. Suggested Changes to the Proposal

2020 Compliance Year

Moreover, attest engagement reports should be due 90 days after the due date for RFS compliance reports.

**Response:**

We are providing at least 90 days between the annual compliance deadline and the annual attest engagement reporting deadline for the 2019, 2020, and 2021 compliance periods, as requested by commenters. We believe this is necessary to help ensure that obligated parties and attest auditors have enough time to comply with and effectively audit conformance with the RFS standards.

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<sup>5</sup> See 78 FR 49794, 49823 (August 15, 2013); 80 FR 33099, 33149 (June 10, 2015).

**Comment:**

➤ Weaver (0011)

On January 15, 2021, the EPA published its proposal to modify the compliance year 2020 attestation deadlines for “obligated parties and RIN-generating renewable fuel producers and importers, and other parties holding RINs” from the current deadline of June 1, 2021 to June 1, 2022. Weaver respectfully requests that the EPA consider not postponing the compliance year 2020 attestation deadline from June 1, 2021 for RIN-generating renewable fuel producers and importers and other parties holding RINs. These parties do not have a RIN retirement obligation; therefore all information needed to perform these attestations, including all quarterly reports, are subject to the normal reporting deadlines. This includes the March 31, 2021 deadline related to the fourth quarter reports (as applicable). One of the benefits in keeping these parties’ attestation deadline June 1, 2021 is that the supporting documentation (e.g., production records, product transfer documents, etc.) will be more readily available and in the parties’ current, on-site, records. In our experience, the longer the time after a compliance year an attestation is completed, the more difficult it is for parties to efficiently locate all needed records. Further, one of the functions of the annual attestations is to identify reporting or recordkeeping exceptions and notify the regulated party when such items are found, so that the regulated party can take action to remedy any non-compliance. Waiting another full calendar year (i.e., if the deadline is moved to June 1, 2022) could perpetuate any such instances that would otherwise be addressed in a more timely manner. Thus, instead of regulated parties needing to complete two compliance years’ attestation reports for by the same date, i.e., June 1, 2022, the 2020 compliance year attestation reports for RIN-generating renewable fuel producers and importers and other parties holding RINs can remain June 1, 2021.

Specific to exporters of renewable fuel, in addition to quarterly reporting requirements, they are subject to filing an annual compliance report. However, all RIN retirements for exports that occurred in the 2020 compliance year should have already been satisfied, due to the 30-day RIN retirement obligation for exporters of renewable fuel.

**Response:**

As discussed in Section I.C of the final rule, we are revising the proposed rule and not modifying 2020 annual attest engagement reporting deadlines for parties other than obligated parties including exporters of renewable fuel.

**Comment:**

➤ Weaver (0011)

Considering the primary reason for the EPA proposing extensions, being directly related to extending the compliance deadlines for obligated parties, we would recommend the following deadline schedule:

Type of Regulated Party	Annual Compliance Reporting Deadline	Attestation Reporting Deadline
<b><u>2019 Compliance Year</u></b>		
Obligated parties (small refineries)	January 31, 2022	March 31, 2022
<b><u>2020 Compliance Year</u></b>		
RIN-generating renewable fuel producers (domestic and foreign) and importers; other parties owning RINs	Not applicable	June 1, 2021
Exporters of renewable fuel	March 31, 2021	June 1, 2021
Obligated parties	January 31, 2022	March 31, 2022

**Response:**

We are not extending the 2019 annual compliance deadline to January 31, 2022, for small refineries as suggested by the commenter. We decline to make this change because it would compromise the existing March 31, 2022, compliance deadline for 2021 compliance, which as discussed in Section 1.1 and 2.1 of this document, provides certainty for the market and balances interests in informed compliance decisions and maintained compliance deadlines.

Additionally, we note that, in general, compliance deadlines for multiple compliance periods should not fall on the same date because the EPA Moderated Transaction System (EMTS) is designed to only have one compliance period active at any given time. The purpose of this limitation is to prevent data entry errors and take into account the sequential nature of annual compliance and avoid unnecessary burden on obligated parties and EPA to remediate data entry errors or reporting errors across multiple years. For example, if an error is found in the 2019 compliance period, this may affect the 2020 compliance period and associated reports. We note that keeping separation between the 2019 and 2020 annual compliance deadlines for small refiners affects the sequencing of the 2019, 2020, and 2021 attest engagement reporting deadlines as described in Section I.C of the final rule.

We note that the commenter’s suggested annual compliance reporting deadlines for 2020 are the same as the compliance reporting deadlines proposed and finalized in this action. We address issues related to the commenter’s suggestions for the 2020 compliance year attest engagements above and in Section I.C of the final rule.



## 4. Other Comments

### 4.1. RIN Holdings Threshold

#### Comment:

#### ➤ AFPM (0023)

##### V. Compliance Extension and RIN Holding

AFPM supports this compliance extension; however, we draw your attention to a related issue. This deadline extension could result in RIN holding thresholds being exceeded by obligated parties. EPA promulgated RIN holding threshold regulations in 40 CFR § 80.1435. 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 it may publish information if reported thresholds are exceeded, “... EPA may publish the name and EPA-issued company identification number of the submitting party.” These RIN holding thresholds may be exceeded 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 the issue of aggregating RIN holdings over multiple compliance years should not have been a major consideration. AFPM urges the Agency to interpret the RIN disclosure thresholds in a manner that avoids triggering disclosure based on EPA’s missed deadlines and the resulting compliance deadline extension.

#### ➤ Anonymous (0007)

The RFS0105 is a quarterly report submitted by RIN generators, renewable fuel exporters, obligated parties, and RIN owners only. If a company exceeds the RIN holding threshold in their bank, relative to the previous year RVO, the RFS0105 requires disclosure. Today, it is unclear whether the percentages will be adjusted for 2021 if the compliance deadline is moved later in the year. It also remains unclear which RVO the obligated party should use, as the previously submitted RVO will be from the 2019 compliance year.

#### ➤ API (0012)

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.

#### ➤ Weaver (0011)

Weaver also has been asked by several obligated parties about the RIN Holding threshold calculations that are part of the RFS0105 quarterly report. If the EPA decides to postpone the reporting deadline for obligated parties, it is possible that some of them may exceed the two

thresholds because they will be holding RINs to be used for two compliance years. Based on 40 CFR 80.1451(c)(2)(ii)(E)(1), the EPA may publish the name and EPA-issued company identification number of an obligated party which exceeds both thresholds. We ask that the EPA address this issue in its rulemaking, as it will also impact the attestations for such obligated parties.

**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. We are not modifying the regulations as such changes to the regulations are beyond the scope of this rulemaking. However, as suggested by one commenter, we believe that the provisions of 40 CFR 80.1435(d) provide flexibility for the use of reasonable alternatives for gasoline and diesel production volumes in the secondary RIN holdings threshold that account for situations like extension of the annual compliance deadlines as long as all the applicable requirements of 40 CFR 80.1435(d) are met. We intend to issue 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. The guidance will be made available on our fuels compliance website.<sup>6</sup>

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<sup>6</sup> EPA's RIN Market Reform webpage is available here: <https://www.epa.gov/renewable-fuel-standard-program/compliance-overview-e15-rvp-and-rin-market-reform-final-rule>.

## 4.2. Beyond the Scope

Commenters that provided comment on this topic include but are not limited to: 0003, 0005, 0010, 0013, 0018, 0020, 0022, 0024.

### Comment:

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

- Changes to the E15 label and other EPA policies regarding E15
- EPA's policy regarding SREs and the impacts of granting SREs
- EPA's response to the *ACE* remand
- Cellulosic biofuel pathways (e.g., corn kernel fiber)
- Ethanol lifecycle emissions modeling
- RFS volume standards for 2021
- RFS volumes for 2023 and beyond (the "Set" rule)
- 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 or otherwise seek comment on these issues. These topics are not further addressed in this document.