



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA-HQ-OAR-2020-0725; FRL-10019-09-OAR]

RIN 2060-AV07

Extension of 2019 and 2020 Renewable Fuel Standard Compliance and Attest Engagement Reporting Deadlines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to modify certain compliance dates under the Renewable Fuel Standard (RFS). First, EPA proposes to extend the RFS compliance deadline for the 2019 compliance year and the associated deadline for submission of attest engagement reports for the 2019 compliance year for small refineries. The new deadlines would be November 30, 2021, and June 1, 2022, respectively. Second, EPA proposes to extend the RFS compliance deadline for the 2020 compliance year and the associated deadline for submission of attest engagement reports for the 2020 compliance year for obligated parties and RIN-generating renewable fuel producers and importers, and other parties holding RINs. The new deadlines would be January 31, 2022, and June 1, 2022, respectively.

DATES: *Comments:* Comments must be received on or before March 11, 2021.

Public Hearing: EPA will hold a virtual public hearing on February 9, 2021. Please refer to the

SUPPLEMENTARY INFORMATION section for additional information on the public hearing.

ADDRESSES: *Comments.* You may send your comments, identified by Docket ID No. EPA–HQ–OAR–2020–0725, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov> (our preferred method) Follow the online instructions for submitting comments.

- E-mail: a-and-r-Docket@epa.gov. Include Docket ID No. EPA-HQ-OAR-2020-0448 in the subject line of the message.
- Mail: U.S. Environmental Protection Agency, EPA Docket Center, Air Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- Hand Delivery or Courier (by scheduled appointment only): EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m. – 4:30 p.m., Monday – Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov>, including any personal information provided. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www.epa.gov/dockets/commenting-epa-dockets>.

Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov> or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID-19.

Public Hearing. The virtual public hearing will be held on February 9, 2021. The hearing will begin at 9:00 a.m. Eastern Time (ET) and end when all parties who wish to speak have had

an opportunity to do so. All hearing attendees (including even those who do not intend to provide testimony) should notify the contact person listed under **FOR FURTHER INFORMATION CONTACT** by February 2, 2021. Additional information regarding the hearing appears below under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: For questions regarding this proposed action, contact Lauren Michaels, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214-4640; email address: *michaels.lauren@epa.gov*. To register for the virtual public hearing, contact Nick Parsons at (734) 214-4479 or *ASD-Registration@epa.gov*

SUPPLEMENTARY INFORMATION:

Does this action apply to me?

Entities potentially affected by this rule, should it become final, are those involved with the production, distribution, and sale of transportation fuels, including gasoline, diesel, and renewable fuels such as ethanol, biodiesel, renewable diesel, and biogas. Potentially affected categories include:

Category	NAICS¹ Code	Examples of Potentially Affected Entities
Industry	324110	Petroleum refineries
Industry	325193	Ethyl alcohol manufacturing
Industry	325199	Other basic organic chemical manufacturing
Industry	424690	Chemical and allied products merchant wholesalers
Industry	424710	Petroleum bulk stations and terminals
Industry	424720	Petroleum and petroleum products merchant wholesalers
Industry	221210	Manufactured gas production and distribution
Industry	454319	Other fuel dealers

¹ North American Industry Classification System (NAICS).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this proposed action. This table lists the types of entities that EPA is now aware could potentially be affected by this proposed action. Other types of entities not listed in the table could also be affected. To determine whether your entity would be affected by this proposed action, you should carefully examine the applicability criteria in 40 CFR part 80. If

you have any questions regarding the applicability of this proposed action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Participation in Virtual Public Hearing

Please note that EPA is deviating from its typical approach because the President has declared a national emergency. Because of current CDC recommendations, as well as state and local orders for social distancing to limit the spread of COVID-19, EPA cannot hold in-person public meetings at this time.

EPA will begin pre-registering speakers for the hearing upon publication of this document in the *Federal Register*. To register to speak at the virtual hearing, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The last day to pre-register to speak at the hearing will be February 2, 2021.

Each commenter will have 3 minutes to provide oral testimony. EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. EPA recommends submitting the text of your oral comments as written comments to the rulemaking docket. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing will be posted online at <https://www.epa.gov/renewable-fuel-standard-program/news-notices-and-announcements-renewable-fuel-standard>. While EPA expects the hearing to go forward as set forth above, please monitor the website or contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to determine if there are any updates. EPA does not intend to publish a document in the *Federal Register* announcing updates.

If you require the services of a translator or special accommodations such as audio description, please pre-register for the hearing and describe your needs by February 2, 2021. EPA may not be able to arrange accommodations without advance notice.

Outline of this Preamble

I. Background and Extension of Deadlines

- A. Extension of the 2019 RFS Compliance Deadline for Small Refineries
- B. Extension of the 2020 RFS Compliance Deadline
- C. Corresponding Attest Engagement Report Deadlines

II. Statutory and Executive Order Reviews

- A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
- B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs
- C. Paperwork Reduction Act (PRA)
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- E. Unfunded Mandates Reform Act (UMRA)
- F. Executive Order 13132: Federalism
- G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
- H. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
- I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
- J. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51
- K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

III. Statutory Authority

I. Background and Extension of Deadlines

EPA is proposing to amend existing regulatory deadlines for small refineries under the Renewable Fuel Standard (RFS) program to submit reports demonstrating compliance with their

2019 RFS obligations, and to submit corresponding attest engagement reports. We are also proposing to amend existing regulatory deadlines for all obligated parties to submit reports demonstrating compliance with their 2020 RFS obligations, and to submit corresponding attest engagement reports. Finally, we also propose to modify the attest engagement report deadline for RIN-generating renewable fuel producers, RIN-generating importers of renewable fuel, and other parties owning RINs in order to maintain a single attest report deadline for 2020.

For small refineries, we are proposing to extend the 2019 compliance deadline in light of ongoing uncertainty surrounding small refinery exemptions (SREs) under the RFS program. We are proposing a 2019 compliance deadline for small refineries of November 30, 2021. For the 2020 compliance year, we are proposing to extend the compliance deadline for all obligated parties because we have not yet promulgated an annual rulemaking establishing the 2021 RFS standards. We are proposing a 2020 compliance deadline of January 31, 2022. We are proposing a June 1, 2022, attest engagement report deadline for both small refineries for 2019 and all relevant parties for 2020.

Table I.A-1: Current and Proposed Annual Compliance and Attest Engagement Reporting Deadlines by Regulated Party for the 2019 (as applicable) and 2020 Compliance Years

Regulated Party Category	Current Annual Compliance Deadline	Current Attest Engagement Reporting Deadline	Proposed Revised Annual Compliance Deadline	Proposed Revised Attest Engagement Reporting Deadline
2019 Compliance Year				
Small refineries	March 31, 2020	June 1, 2020	November 30, 2021	June 1, 2022
2020 Compliance Year				
Small refineries	March 31, 2021	June 1, 2021	January 31, 2022	June 1, 2022
Obligated parties	March 31, 2021	June 1, 2021	January 31, 2022	June 1, 2022

A. Extension of the 2019 RFS Compliance Deadline for Small Refineries

The RFS regulations establish deadlines for obligated parties with renewable volume obligations (RVOs) to submit annual compliance demonstration reports to EPA, and later deadlines for the same parties to submit associated attest engagement reports. Under existing RFS regulations (40 CFR 80.1451(a) and 80.1464(d)), 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. In this action, we are proposing to revise certain reporting deadlines applicable to the 2019 and 2020 compliance years.

On January 24, 2020, the U.S. Court of Appeals for the Tenth Circuit issued a decision in *Renewable Fuels Association (RFA) v. EPA* invalidating several SREs granted by EPA.¹ The small refineries whose SREs were invalidated by the court in the *RFA* case sought rehearing from the Tenth Circuit, which was denied on April 7, 2020.² Thus, the Tenth Circuit's decision was not final until after the compliance reporting deadline for the 2019 compliance year had already passed on March 31, 2020. Moreover, although the rehearing petitions have now been resolved in the Tenth Circuit, on September 4, 2020, the small refinery intervenors in that suit filed a petition for a writ of certiorari from the U.S. Supreme Court.³ This case is pending on the Supreme Court's docket at this time. The resolution of the appeals process for the *RFA* case has the potential to impact the availability of SREs going forward. 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.⁴

Therefore, we are proposing to extend the 2019 compliance deadline for small refineries. We believe that it is appropriate to do so only for small refineries because it is only the compliance requirements of these parties that would be affected by the outcome of the *RFA* case.⁵ All other obligated parties' compliance obligations for 2019 remain the same regardless of the *RFA* decision.

¹ *Renewable Fuels Ass'n v. EPA*, 948 F.3d 1206 (10th Cir. 2020).

² Order, *RFA v. EPA*, No. 18-9533 (10th Cir. Apr. 7, 2020).

³ *RFA*, Petition for Certiorari, No. 20-472 (U.S. Sept. 4, 2020).

⁴ EPA received a letter from the Small Refineries Coalition dated July 30, 2020, requesting that EPA modify the 2019, 2020, and 2021 compliance deadlines and corresponding attest engagement reporting deadlines. The letter suggests that uncertainty due to the lack of 2019 and 2020 SRE decisions and the unknown 2021 RFS standards "make it practically impossible for small refineries to plan for compliance." This letter is available in the docket for this action.

⁵ Most small refineries currently have pending 2019 SRE petitions before the agency. We are proposing to extend this flexibility to all small refineries because others may submit petitions in the future.

We intend to allow small refineries to revisit their compliance reports in the time period after this rule is finalized and by the new compliance date established by this rulemaking. This means that if a small refinery had decided to carry forward a deficit for 2019 at the time of the March 31, 2020 compliance deadline, but then later receives an SRE for 2019 or retires RINs in accordance with its obligation, that initial decision to carry forward a deficit will not constitute a carry-forward deficit (i.e., failing to meet the requirement to retire sufficient RINs as described in 40 CFR 80.1427(a)(1)) that would make the small refinery ineligible to do the same for the following compliance year (i.e., 2020) under 40 CFR 80.1427(b). 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 pending the implementation of this action to extend the compliance date for small refineries. Such small refineries would need to submit a compliance report to comply with the new compliance deadline, unless they receive an exemption.

This proposed extension would apply only to those parties who meet the definition of small refinery in CAA section 211(o)(1)(k) and 40 CFR 80.1441(e)(2)(iii) for the 2019 compliance year. This proposal to extend only the deadline for parties that meet the definition of small refinery is appropriate because only a presently unknown number of small refineries' compliance obligations will be affected by ongoing litigation and it is consistent with our eligibility requirements regarding SREs. We recognize that in recent years we have determined that some parties who have petitioned for SREs have been deemed ineligible by EPA, often due to the refinery's throughput (i.e., more than 75,000 barrels of crude per day) or the nature of their business (i.e., not a refinery). We are proposing that the parties that EPA has found ineligible because they do not meet the definition of small refinery in recent years would similarly not be eligible for the proposed compliance date extension for small refineries.

We note 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. Due to the ongoing litigation, we take no position on the availability of SREs for the 2019 compliance year.

B. Extension of the 2020 RFS Compliance Deadline for All Obligated Parties

We are proposing to modify the 2020 compliance deadline for all obligated parties. We are doing so because we have yet to promulgate the 2021 RFS standards, and 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.⁶ That is, prior to demonstrating compliance with their 2020 obligations, obligated parties have a valid interest in knowing their 2021 compliance obligations. This is particularly true given the two-year “lifespan” for RINs; such that 2020 RINs can be used for compliance with either 2020 or 2021 obligations. Compliance obligations for 2021 will remain unknown until EPA finalizes the 2021 standards, and at this time, EPA has not yet proposed the 2021 standards.

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. Modifying the 2020 compliance deadline to a date after the proposed 2019 compliance deadline for small refineries will allow for complete compliance for 2019 by all obligated parties, including these small refineries, prior to demonstrating compliance for 2020. Requiring full compliance with the 2019 standards prior to the 2020 compliance deadline will provide all obligated parties and market participants with an

⁶ See 80 FR 33100, 33149 (June 10, 2015); 78 FR 49823 (August 15, 2013) for discussion of obligated parties’ interests in extensions in past actions.

accurate picture of the RIN market, including the availability of 2019 carryover RINs for compliance with the 2020 standards.

We are proposing a 2020 compliance date of January 31, 2022, for all obligated parties. This deadline would allow several things to occur prior to that compliance date. First, it would allow small refineries to complete compliance with their 2019 obligations. Second, it would provide 60 days between 2019 and 2020 compliance deadlines to allow for obligated parties to make additional RIN acquisitions, transfers, transactions, and retirements prior to the 2020 compliance deadline. Finally, this deadline would provide 60 days between 2020 and 2021 compliance deadlines, allowing the 2021 compliance deadline to remain on March 31, 2022, as currently prescribed in our regulations.⁷

C. Corresponding Attest Engagement Report Deadlines

We are proposing to revise the deadline for attest engagement reports in 40 CFR 80.1464(g) for small refineries for 2019 compliance demonstrations and for all obligated parties as well as RIN-generating renewable fuel producers, RIN-generating importers of renewable fuel, and other parties owning RINs for 2020 compliance demonstrations.

For small refineries, given the short period of time between when small refineries will have to demonstrate compliance with their 2019 and 2020 obligations, we do not believe it is feasible for them to conduct an attest engagement for 2019 between the proposed 2019 and 2020 compliance deadlines. As such, we are proposing that small refineries conduct their 2019 attest engagement by June 1, 2022. For all obligated parties, as well as RIN-generating renewable fuel producers, RIN-generating importers of renewable fuel, and other parties owning RINs, we are proposing that the 2020 attest engagement report deadline would also be June 1, 2022. We believe this will provide all relevant parties with the time necessary to conduct their attest engagement in a timely manner and on a similar schedule. Because attest engagements are based on the information in the submitted compliance reports, sequencing the attest engagement to

⁷ See 40 CFR 80.1464.

occur after the compliance deadline is a reasonable approach. We believe that this sequencing of reports, and the time allowed between them, will allow obligated parties to proceed to demonstrate their compliance with both 2019 and 2020 RVOs in a logical and orderly fashion with all relevant information available and with sufficient intervening time so as not to pose an increased burden. Although up to three years of attest engagements will be due on the same day, obligated parties would need to submit a separate attest reports covering each year. For RIN-generating renewable fuel producers, RIN-generating importers of renewable fuel, and other parties owning RINs, maintaining a single attest report date for 2020 will alleviate any confusion for these parties who also need to submit attest engagements. We intend to also provide additional reporting instructions on our fuels reporting webpage for the attest engagement reports prior to the revised deadlines.

Given the potential for different reporting schedules for the 2019 and 2020 compliance years that we are proposing for obligated parties, and the multiple considerations we are trying to balance across regulated parties, we seek comment on whether the proposed deadlines are appropriate in light of the considerations identified in this action and whether there are other specific considerations that we should evaluate when establishing the 2019 and 2020 compliance demonstration and attest engagement reporting deadlines.

II. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060-0725 and 2060-0723. This action proposes only to make a one-time change in the compliance dates for certain regulated parties and adjusts the due date of their compliance reports and attest engagements to reflect this change. It does not change the information to be collected or increase the frequency of collection.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This action proposes to extend the RFS compliance deadlines. We do not anticipate that there will be any costs associated with these proposed changes. We have therefore concluded that this action will have no regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments. Requirements for the private sector do not exceed \$100 million in any one year.

F. Executive Order 13132: Federalism

This proposed action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This proposed rule only affects RFS obligated parties. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This proposed action does not involve technical standards.

K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action is not subject to Executive Order 12989 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard.

III. Statutory Authority

Statutory authority for this action comes from section 211(o) of the Clean Air Act, 42 U.S.C. sections 7545(o).

List of Subjects

40 CFR Part 80

Environmental protection, Administrative practice and procedure, Air pollution control, Diesel fuel, Fuel additives, Gasoline, Imports, Oil imports, Penalties, Petroleum, Renewable fuel, Reporting and recordkeeping requirements.

Andrew Wheeler,
Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR part 80 as follows:

PART 80—REGISTRATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7521, 7542, 7545, and 7601(a).

Subpart M—RENEWABLE FUEL STANDARD

2. Amend §80.1451 by adding paragraphs (a)(1)(xiv)(E) and (F) to read as follows:

§80.1451 What are the reporting requirements under the RFS program?

(a) * * *

(1) * * *

(xiv) * * *

(E) For obligated parties that meet the requirements for a small refinery under §80.1441(e)(2)(iii), for the 2019 compliance year, annual compliance reports must be submitted no later than November 30, 2021.

(F) For obligated parties, for the 2020 compliance year, annual compliance reports must be submitted no later than January 31, 2022.

* * * * *

3. Amend §80.1464 by adding paragraphs (g)(7), (8) and (9) to read as follows:

§80.1464 What are the attest engagement requirements under the RFS program?

(g) * * *

(7) For obligated parties that meet the requirements for a small refinery under §80.1441(e)(2)(iii), for the 2019 compliance year, reports required under this section must be submitted to the EPA no later than June 1, 2022.

(8) For obligated parties, for the 2020 compliance year, reports required under this section must be submitted no later than June 1, 2022.

(9) For RIN-generating renewable fuel producers, RIN-generating importers of renewable fuel, and other parties owning RINs, for the 2020 compliance year, reports required under this section shall be submitted to the EPA no later than June 1, 2022.

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[FR Doc. 2021-00204 Filed: 1/14/2021 8:45 am; Publication Date: 1/15/2021]