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U.S. Environmental Protection Agency
EPA Docket Center
Air Docket
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1200 Pennsylvania Avenue NW
Washington, DC 20460

Docket ID No: EPA–HQ–OAR–2022–0434

Re: Comments of Clean Fuels Alliance America on the Renewable Fuel Standard (RFS) Program:
Alternative RIN Retirement Schedule for Small Refineries

Dear Administrator Regan,

Clean Fuels Alliance America (Clean Fuels), formerly the National Biodiesel Board (NBB), appreciates the opportunity to comment on the proposed Renewable Fuel Standard (RFS) Program: Alternative RIN Retirement Schedule for Small Refineries.¹

Clean Fuels is the U.S. trade association representing the entire biodiesel, renewable diesel, and sustainable aviation fuel supply chain, including producers, feedstock suppliers and fuel distributors. Made from an increasingly diverse mix of resources such as recycled cooking oil, soybean oil, and animal fats, the clean fuels industry is a proven, integral part of America’s clean energy future. We serve as the clean fuel industry’s primary organization for technical, environmental, and quality assurance programs and are the strongest voice for its advocacy, communications, and market development.

While we appreciate that EPA is ultimately requiring refiners to retire their 2019 and 2020 obligations in full, Clean Fuels is concerned that this proposed alternative Renewable Identification Number (RIN) retirement schedule will create a new policy position that the agency will take to placate refiners any time they allege trouble complying with their RIN obligations in future years.

Clean Fuels does not find EPA’s rationale a valid excuse to provide an alternative RIN retirement schedule. EPA states that extenuating circumstances specific to the 2020 compliance year, including the

¹ U.S. Environmental Protection Agency. Renewable Fuel Standard (RFS) Program: Alternative RIN Retirement Schedule for Small Refineries, EPA–HQ–OAR–2022–0434, 87 FR 35711 (June 13, 2022), available at <https://www.federalregister.gov/d/2022-12375>

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“significant delay in EPA issuing its decisions on SRE petitions,” is their reason to provide the alternative RIN retirement schedule.

However, the obligated parties, including small refiners, have been aware that EPA proposed to deny pending SREs and change their policy towards SREs since December 14, 2021.² Further, the refiners were also aware of the United States Court of Appeals for the Tenth Circuit’s February 2020 decision in *Renewable Fuels Association v. EPA*, which held that any alleged hardship justifying the grant of an SRE petition must be “caused by” RFS compliance.³ Through this court case and others related to SREs, it has been demonstrated numerous times that no refinery bears disproportionate RFS compliance costs or a hardship created by compliance with the RFS program. Therefore, the refiners should have been preparing to come into compliance since the 10th Circuit’s ruling in February 2020, at the latest.

As a result of the notice small refiners have received, we fundamentally disagree with EPA’s assertion that some small refiners may not be prepared to comply with their renewable volume obligations for the 2020 compliance year by the applicable compliance deadlines and have been unable to acquire RINs they need to comply with the RFS obligations. As a result of these decisions, obligated parties, including small refiners, should not have had a “settled expectation” that they would be exempt from compliance with the 2020 RVOs.⁴

This proposed rule would remove the reliability and predictability of the program that EPA has vowed to get back on track. Allowing the retirement of RINs beyond when they are required would be detrimental to the program. EPA is reversing without sufficient explanation its prior decisions to require retirement of RINs generated within the compliance year and limit use of carryover RINs. EPA is enabling obligated parties to use future year RINs for the 2020 obligation, thereby limiting future volume obligations based on its own inability to accurately account for available RINs. The unpredictability lies in the fact that we will not know how and when small refiners will decide to comply with their 2020 obligations. Allowing this alternative RIN retirement would once again render the program entirely unpredictable for renewable fuel producers, disincentivizing the investment in renewable fuels that Congress sought to promote through the RFS.

To complicate this proposal further, EPA used a contradictory rationale to support lowering the 2020 volumes.

“We project that the 2020 standards, if unmodified and SREs are not granted, would result in a significant drawdown of the total number of carryover RINs, to a volume (630 million RINs) that would represent less than 4 percent of the proposed 2021 and 2022 total renewable fuel standards. The number of carryover cellulosic biofuel RINs would also be projected to decrease significantly, as we project that the number of cellulosic carryover RINs would be reduced to just 2.2 million RINs, which is less than 0.5 percent of the proposed 2021 and 2022 cellulosic biofuel volumes. Such a drastic reduction in the carryover RIN bank has the potential to reduce the liquidity of RINs and could negatively impact parties that do not currently have sufficient RINs to meet their 2020 obligation.”

² U.S. Environmental Protection Agency. Notice of Opportunity to Comment on Proposed Denial of Petitions for Small Refinery Exemptions, EPA- EPA-HQ-OAR-2021-0566, 86 FR 70999 (December 14, 2021), available at <https://www.federalregister.gov/d/2021-26983>

³ *Renewable Fuels Association et al. v. EPA*, 948 F.3d 1206.

⁴ *Landgraf v. USI Film Prods.*, 511 U.S. 244, 269-270 (1994); see *Monroe Energy*, 750 F.3d at 920, 909 (D.C. Cir. 2014).

This could make it difficult for some parties to acquire enough RINs to comply with their 2020 RFS obligations, as well as the 2021 and 2022 standards being proposed, and could cause those parties to carry forward deficits or to become non-compliant. This could lead to significant negative impacts on the fuels market and the ongoing implementation of the RFS program, as discussed in Section IV.B.

These considerations also support our decision to retroactively reduce the 2020 volumes to those actually used. In doing so, we are relieving burdens on obligated parties, and in some cases, the potentially onerous burden of non-compliance with the RFS program and the possibility of penalty payments. This approach also ensures sufficient RINs for compliance. It also ensures the continued functioning of the carryover RIN bank, a necessary compliance flexibility for obligated parties. It also protects the ongoing implementation of the RFS program and facilitates the higher volumes proposed for 2022, as we discuss further in Section IV.B.”⁵

If the Agency implements the alternative RIN retirement schedule, then it is effectively going against the stated reasoning and support for retroactively lowering the 2020 volumes. But, because EPA ultimately decided to reduce the 2020 volumes for the stated purpose to *ensure sufficient RINs for compliance*, this alternative RIN retirement schedule should not be needed by obligated parties, as stated above.

EPA does not need to grant this alternative retirement schedule as they have already provided multiple flexibilities to refiners large and small:

- EPA retroactively reduced 2020 volumes to match its estimates of available 2020 RINs, eschewing the opportunity to minimize reductions to the volumes or rely on carryover RINs to address the unforeseen circumstances that impacted fuel markets in 2020.
- EPA extended the RFS compliance deadline for the 2019 compliance year for small refineries.
- EPA extended the RFS compliance deadline for the 2020, 2021, and 2022 compliance years for all obligated parties.

EPA also provided the April 2022 Alternative RFS Compliance Demonstration Approach for Certain Small Refineries. On April 7, 2022, EPA denied 36 petitions for small refinery exemptions (SRE) under the Renewable Fuel Standard (RFS) program for the 2018 compliance year. This denial action included a subset of 31 SRE petitions that EPA had previously granted, but that were remanded to the Agency by the U.S. Court of Appeals for the D.C. Circuit after the original grants were challenged. Concurrent with the SRE denials, EPA is also taking action to provide an alternate compliance approach that allows the 31 small refineries to meet their new 2018 compliance obligations without purchasing or redeeming additional RFS credits. EPA is granting this compliance flexibility because the Agency has determined that there are extenuating circumstances specific to this set of petitions, including the fact that SRE petitions were previously granted.

On June 3, 2022, EPA also announced the June 2022 Alternative RFS Compliance Demonstration Approach for Certain Small Refineries. This accompanied the denial of 69 petitions for small refinery exemptions (SRE) under the Renewable Fuel Standard (RFS) program. This denial action included a subset of three SRE petitions for the 2016 and 2017 compliance years that EPA had previously granted,

⁵ U.S. Environmental Protection Agency. Renewable Fuel Standard (RFS) Program: RFS Annual Rules, EPA-HQ-OAR-2021-0324, 86 FR 72436 (December 21, 2021), available at <https://www.federalregister.gov/d/2021-26839>

but that were remanded to the Agency by the U.S. Court of Appeals for the Tenth Circuit after the original grants were challenged. Due to extenuating circumstances, EPA has supplemented its “April 2022 Alternative RFS Compliance Demonstration Approach for Certain Small Refineries” to include these three additional SRE petitions, providing the small refineries that submitted them with an alternative approach to demonstrating compliance with their 2016 and 2017 RFS obligations created by the Agency’s separate and concurrent action, the June 2022 Denial of Petitions for RFS Small Refinery Exemptions.

Providing additional flexibilities to refiners that have already been granted through the RFS Annual Rule, Extension of Renewable Fuel Standard Compliance Deadlines, and The Alternative RFS Compliance Demonstration Approach for Certain Small Refineries (for 2018 and 2016-2017) will further hurt the RFS program and will once again prevent the RFS from being implemented as intended.

If EPA were to finalize this proposal despite our objections, we ask that at a minimum, participating small refineries not be permitted to carry forward a RIN deficit from 2021 or a subsequent year into the following compliance year unless they fully complied with their 2020 RFS obligations. Without this minimum safeguard, small refineries will never come into compliance with RFS obligations and will instead continue to function in a deficit at expense of all other obligated parties.

We also ask that, if EPA does finalize the proposal in its current form, it add a clarification that such compliance flexibility will not be granted going forward and is not a new policy position in addressing RIN compliance for small refiners. Clean Fuels’ understanding is that EPA is justifying the alternative compliance approach solely on considerations of minimizing the retroactive impact of untimely small refinery exemption denials. EPA should therefore clarify that because the determinations described in its recent denials of small refinery exemptions have given small refineries notice that they will not receive exemptions going forward, there will be no basis for an alternative compliance approach if and when EPA denies small refinery exemption petitions in the future.

Sincerely,

A handwritten signature in black ink that reads "Kurt A. Kovarik". The signature is written in a cursive, slightly slanted style.

Kurt Kovarik
Vice President, Federal Affairs
Clean Fuels Alliance America