

The Administrator Michael S. Regan signed the following notice rule on November 17, 2021, and EPA is submitting it for publication in the *Federal Register* (FR). While we have taken steps to ensure the accuracy of this Internet version of the rule, it is not the official version of the rule for purposes of public comment. Please refer to the official version in a forthcoming FR publication, which will appear on the Government Printing Office's FDSys website ([www.gpo.gov/fdsys/search/home.action](http://www.gpo.gov/fdsys/search/home.action)) and on Regulations.gov ([www.regulations.gov](http://www.regulations.gov)) in Docket ID No. EPA-HQ-OAR-2021-0793. Once the official version of this document is published in the FR, this version will be removed from the Internet and replaced with a link to the official version.

6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 80**

**[EPA-HQ-OAR-2021-0793; FRL-8521.1-02-OAR]**

**RIN 2060-AV57**

### **Renewable Fuel Standard (RFS) Program: Extension of 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) program. First, EPA is proposing to extend the RFS compliance reporting deadline and the associated attest engagement reporting deadline for the 2019 compliance year for small refineries only. Second, EPA is proposing to extend the RFS compliance reporting deadline and the associated attest engagement reporting deadline for the 2020 and 2021 compliance years for all obligated parties. Finally, EPA is proposing to change the way in which future RFS compliance and attest engagement reporting deadlines are determined.

**DATES:** *Comments.* Comments must be received on or before January 3, 2022.

*Public hearing.* EPA will hold a virtual public hearing on December 3, 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-2021-0793, 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](mailto:a-and-r-Docket@epa.gov). Include Docket ID No. EPA-HQ-OAR-2021-0793 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

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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 December 3, 2021. The hearing will begin at 10 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 register for the public hearing by November 30, 2021. Information on how to register can be found at <https://www.epa.gov/renewable-fuel-standard-program/proposed-extension-renewable-fuel-standard-compliance-deadlines>. Additional information regarding the hearing appears below under **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** For questions regarding this action, contact Karen Nelson, Office of Transportation and Air Quality, Compliance Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214-4657; email address: [nelson.karen@epa.gov](mailto:nelson.karen@epa.gov). For questions regarding the public hearing, contact Nick Parsons at (734) 214-4479 or [ASD-Registration@epa.gov](mailto:ASD-Registration@epa.gov).

**SUPPLEMENTARY INFORMATION:**

*Does this action apply to me?*

Entities potentially affected by this rule 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:

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Category	NAICS <sup>1</sup> 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

<sup>1</sup> 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 action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your entity would be affected by this action, you should carefully examine the applicability criteria in 40 CFR part 80. If you have any questions regarding the applicability of this 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.

Information on how to register for the hearing can be found at <https://www.epa.gov/renewable-fuel-standard-program/proposed-extension-renewable-fuel-standard-compliance-deadlines>. The last day to pre-register to speak at the hearing will be November 30, 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. 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/proposed-extension-renewable-fuel-standard-compliance-deadlines>. 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 November 30, 2021. EPA may not be able to arrange accommodations without advance notice.

### **Outline of this Preamble**

- I. Background and Proposed Extension of Deadlines
  - A. Extension of the 2019 RFS Compliance Reporting Deadline for Small Refineries
  - B. Extension of the 2020 and 2021 RFS Compliance Reporting Deadline for All Obligated Parties
  - C. Corresponding Attest Engagement Reporting Deadlines
  - D. Annual Compliance and Attest Engagement Reporting Deadlines Based on Federal Register Publication
- II. Statutory and Executive Order Reviews

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

### III. Statutory Authority

#### **I. Background and Proposed Extension of Deadlines**

The RFS regulations establish deadlines for obligated parties with renewable volume obligations (RVOs) to submit annual compliance reports to EPA, and later deadlines for the same parties to submit associated attest engagement reports. Under existing RFS regulations, obligated parties must submit compliance reports for each calendar year by March 31 of the following year, and the associated attest engagements by June 1 of the following year.<sup>1</sup> On April

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<sup>1</sup> See 40 CFR 80.1451(a) and 80.1464(d).

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1, 2021, EPA extended the deadlines for small refineries to demonstrate compliance with their 2019 RFS obligations and for all obligated parties to demonstrate compliance with their 2020 RFS obligations.<sup>2</sup> In that same action, we also extended the deadlines for the corresponding attest engagements reports.<sup>3</sup> As discussed in Sections I.A through C, we are proposing to again extend certain reporting deadlines applicable to the 2019 and 2020 compliance years, and additionally extending certain reporting deadlines for the 2021 compliance year, due to continued delay in the promulgation of the 2021 RFS standards and uncertainty around EPA's small refinery exemption (SRE) policy. We are also proposing a new approach to setting reporting deadlines for obligated parties that would automatically establish the annual compliance and attest engagement reporting deadlines for a given compliance year based on the publication of the subsequent compliance year's RFS standards, if such a date is less than 60 days from the March 31 regulatory deadline. We discuss this proposed approach in more detail in Section I.D.

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

For small refineries, we are proposing to further extend the 2019 compliance reporting deadline to the next quarterly reporting deadline that is at least 60 days after publication of the 2021 RFS percentage standards in the *Federal Register*, in light of the continued uncertainty surrounding SREs under the RFS program.<sup>4</sup> For example, under this proposal, if the final rule establishing the 2021 standards is published in the *Federal Register* on March 1, 2022, the 2019 compliance reporting deadline for small refineries would be June 1, 2022, because that would be the next quarterly reporting deadline that is at least 60 days after the publication date for the

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<sup>2</sup> See 86 FR 17073 (April 1, 2021).

<sup>3</sup> Id.

<sup>4</sup> A small refinery may petition EPA for an exemption from its RFS obligations under 40 CFR 80.1441(e)(2). This document is a prepublication version, signed by Administrator Michael S. Regan on November 17, 2021. We have taken steps to ensure the accuracy of this version, but it is not the official version.

2021 standards. We are proposing to tie the 2019 compliance reporting deadline to the promulgation of the 2021 standards to allow for the proper sequencing of deadlines such that 2019 compliance would be complete prior to 2020 compliance, and 2020 compliance would be complete prior to 2021 compliance, given the continued delay in promulgating the 2021 standards. EPA is still evaluating SRE petitions consistent with the recent case law, including those for 2019.<sup>5</sup>

On January 24, 2020, the U.S. Court of Appeals for the Tenth Circuit issued a decision in *Renewable Fuels Association v. EPA (RFA)* invalidating on multiple grounds three SREs granted by EPA.<sup>6</sup> 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.<sup>7</sup> Thus, the Tenth Circuit's decision was not final until after the 2019 compliance reporting deadline of March 31, 2020, had already passed. 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, which was granted on January 8, 2021, in *HollyFrontier v. RFA*.<sup>8</sup> On June 25, 2021, the Supreme Court issued its opinion in *HollyFrontier*.<sup>9</sup> EPA is still considering how to adjust its SRE policy in light of these two judicial opinions, including holdings from the *RFA* case that were not appealed; for this reason, there is still uncertainty regarding the 2019 SRE petitions.

Therefore, we believe it appropriate to further extend the 2019 annual compliance reporting deadline for small refineries. We believe that it is appropriate to do so only for small

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<sup>5</sup> More information about SREs and the number of SRE petitions that EPA is currently evaluating is available at <https://www.epa.gov/fuels-registration-reporting-and-compliance-help/rfs-small-refinery-exemptions>

<sup>6</sup> *Renewable Fuels Ass'n v. EPA*, 948 F.3d 1206 (10th Cir. 2020) (*RFA*).

<sup>7</sup> Order, *RFA*, No. 18-9533 (10th Cir. Apr. 7, 2020).

<sup>8</sup> *HollyFrontier Cheyenne Refining, LLC v. Renewable Fuels Ass'n*, 114 S.Ct. 2172 (2021).

<sup>9</sup> *Id.* at 2181.



refineries because it is only their compliance requirements that have been affected by the recent *HollyFrontier* decision. We are proposing to extend this flexibility to all small refineries regardless of whether they have an SRE petition for 2019 pending before EPA because those that do not may elect to submit petitions in the future. All other obligated parties' compliance obligation deadlines for 2019 have already passed and remain unchanged.<sup>10</sup>

We recognize that some small refineries, despite the previous compliance reporting deadline extension for 2019, have already submitted their 2019 compliance reports. However, we are proposing to allow small refineries to revisit their 2019 compliance reports before their new 2019 compliance reporting deadline. This means that if a small refinery carried forward a deficit to demonstrate compliance for 2019 by March 31, 2020, but later receives an SRE for 2019 or retires RINs in accordance with its RVOs, 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 2020 under 40 CFR 80.1427(b). Small refineries that did not submit a compliance report by March 31, 2020, would need to submit a compliance report to comply with the new 2019 compliance reporting deadline, unless they receive an exemption for 2019.

This proposed deadline extension would apply only to those parties who meet the definition of small refinery in Clean Air Act (CAA) section 211(o)(1)(k) and 40 CFR 80.1441(e)(2)(iii) for the 2019 compliance year. Limiting the extension in this way is appropriate because only small refineries' compliance obligations are affected by the *HollyFrontier* and *RFA* opinions and it is consistent with our eligibility requirements regarding SREs. We recognize that,

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<sup>10</sup> The 2019 compliance and attest engagement reporting deadlines were March 31, 2020, and June 1, 2020, respectively.

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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 oil per day) or the nature of their business (i.e., not a petroleum refinery). The parties that EPA has found ineligible because they do not meet the definition of small refinery in recent years will similarly not be eligible for the 2019 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)(5) 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 by the proposed 2019 compliance reporting deadline. This means that small refineries that carried forward a deficit for 2019 in their initial 2019 compliance reports (filed in 2020) could reverse that decision in new compliance reports and retain their ability to carry forward a deficit for 2020. It also means that small refineries that did not submit a 2019 compliance report by March 31, 2020, could also carry forward a deficit for 2020. Finally, small refineries could either carry forward a deficit for 2019 (if they did not do so for 2018) or for 2020 (if they do not do so for 2019). We seek comments on the proposed deadlines for small refineries for the 2019 compliance year.

*B. Extension of the 2020 and 2021 RFS Compliance Reporting Deadline for All Obligated Parties*

We are proposing to further extend the 2020 compliance reporting deadline for all obligated parties from January 31, 2022, to the next quarterly reporting deadline after the 2019 compliance reporting deadline for small refineries, and to extend the 2021 compliance reporting deadline for all obligated parties from March 31, 2022, to the next quarterly reporting deadline

that is after the 2020 compliance reporting deadline. We are proposing to do so because EPA has not yet established the 2021 or 2022 standards, including applicable volumes, 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.<sup>11</sup> 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 and 2022 will remain unknown until EPA finalizes the 2021 and 2022 standards.

These proposed deadline extensions would allow several things to occur prior to those compliance dates. First, it would allow small refineries to complete compliance with their 2019 obligations before having to comply with their 2020 RFS obligations. Second, it would provide at least 60 days between the 2019 and 2020 compliance reporting deadlines and at least 60 days between the 2020 and 2021 compliance reporting deadlines to allow for obligated parties to make additional RIN acquisitions, transfers, transactions, and retirements prior to the compliance reporting deadlines. Finally, these deadlines would provide at least 60 days between 2021 and 2022 compliance reporting deadlines, allowing the 2022 compliance reporting deadline to remain on March 31, 2023, as currently prescribed in our regulations.<sup>12</sup>

Using the prior example, if the final rule establishing the 2021 standards is published in the *Federal Register* on March 1, 2022, the 2019 compliance reporting deadline for small refineries would be June 1, 2022. Furthermore, by operation of law, under this scenario, the 2020 compliance reporting deadline for all obligated parties would be September 1, 2022, and the 2021 compliance reporting deadline would be December 1, 2022. This would allow for at least

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<sup>11</sup> For discussion of obligated parties’ interest in such extensions in past actions, see 80 FR 33100, 33149-50 (June 10, 2015) and 78 FR 49794, 49823 (August 15, 2013).

<sup>12</sup> See 40 CFR 80.1451.

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60 days before the 2022 compliance reporting deadline of March 31, 2023. We seek comments on the proposed deadlines for all obligated parties for the 2020 and 2021 compliance years.

*C. Corresponding Attest Engagement Reporting Deadlines*

We are proposing to extend the deadline for attest engagement reports required under 40 CFR 80.1464(g) for small refineries for 2019 compliance demonstrations and for all obligated parties for 2020 and 2021 compliance demonstrations to the next June 1 annual attest engagement reporting deadline that is at least 60 days after the applicable 2019, 2020, and 2021 compliance reporting deadline. Using the example described in Section IX.C where the final rule establishing the 2021 standards is published in the *Federal Register* on March 1, 2022, under this proposal, the 2019 attest engagement reporting deadline for small refineries and the 2020 and 2021 attest engagement reporting deadline for all obligated parties would be due on June 1, 2023.

We are proposing these extended attest engagement reporting deadlines to ensure enough time for attest auditors to reasonably conduct the 2019, 2020, and 2021 attest engagement reports. Because the annual attest engagement reporting deadline occurs only once each year (June 1), it is likely that with the proposed compliance deadline extensions, several or all of the affected 2019, 2020, and 2021 attest engagement reports would be due on the same deadline (June 1, 2023). This proposed change would therefore minimize confusion and maximize efficiency for the attest auditors to conduct and prepare reports. We seek comment on the proposed attest engagement reporting deadlines for 2019, 2020, and 2021.

*D. Annual Compliance and Attest Engagement Reporting Deadlines Based on Federal Register Publication*

For annual compliance and annual attest engagement reporting deadlines for 2022 and beyond, we are proposing the same approach as that outlined above for 2019, 2020, and 2021. Under this proposal, for 2022 and beyond, the annual compliance reporting deadline would be the latest date of the following:

- March 31<sup>st</sup> of the subsequent calendar year;
- The next quarterly reporting that is at least 60 days after publication in the *Federal Register* of a final rule establishing the subsequent compliance year's renewable fuel standards; or
- The next quarterly reporting deadline under 40 CFR 80.1451(f)(2) after the annual compliance reporting deadline for the prior compliance year.

Under this approach, the annual compliance reporting deadline would also be at least 60 days after publication of the subsequent year's RFS standards in the *Federal Register* and 60 days after the prior year's compliance reporting deadline. This approach would also avoid EPA having to repeatedly extend compliance reporting deadlines for obligated parties should promulgation of the subsequent year's standards be delayed. We believe this approach would provide regulatory certainty for obligated parties, and we seek comment on whether we should adopt this approach for 2022 and beyond.

Similarly, for 2022 and beyond, we are proposing to tie the annual attest engagement reporting deadline to the publication of the RFS standards in the *Federal Register* in the same manner as proposed for the 2019, 2020, and 2021 annual attest engagement reporting deadlines, which would make it the latest date of the following:

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- June 1 of the subsequent calendar year; or
- The next June 1 annual attest engagement reporting deadline that is at least 60 days after the annual compliance reporting deadline.

Under this proposed approach, annual attest engagement reports would be due at least 60 days after the annual compliance reporting deadline like under the current regulations. We seek comment on whether we should adopt this approach for 2022 and beyond.

To help communicate the annual compliance and annual attest engagement reporting deadlines, we are also proposing to post the annual compliance and annual attest engagement reporting deadlines on our website.<sup>13</sup>

## **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. 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 only makes a one-time change in the compliance dates for certain regulated parties and adjusts the due

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<sup>13</sup> Information related to annual compliance and attest engagement reporting is available at: <https://www.epa.gov/fuels-registration-reporting-and-compliance-help/reporting-fuel-programs>

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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.

*C. 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, EPA concludes that the impact of concern for this rule is any significant adverse economic impact on small entities and that the agency is certifying that this rule will not have a significant economic impact on a substantial number of small entities if the rule has no net burden on the small entities subject to the rule. This action extends the RFS compliance and attest engagement reporting deadlines. We do not anticipate that there will be any costs associated with these changes. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

*D. 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.

*E. Executive Order 13132: Federalism*

This 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.

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

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

*G. 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.

*H. 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.

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

This action does not involve technical standards.

*J. 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 12898 (59 FR 7629, February 16, 1994) because it does establish an environmental health or safety standard. This action addresses the RFS compliance and attest engagement reporting deadlines and does not impact the RFS standards themselves.



### **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 in 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.

Dated:

Michael S. Regan,

*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:

- a. Revising paragraph (a)(1) introductory text;
- b. Removing and reserving paragraph (a)(1)(xiv);
- c. Revising paragraphs (f) introductory text and (f)(1); and
- d. Revising paragraphs (f)(2) and (3) to add section headings.

The revisions and additions read as follows:

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

(a) \* \* \*

(1) Annual compliance reports must include all the following information:

\* \* \* \* \*

(f) *Report submission deadlines.* The submission deadlines for annual and quarterly reports are as follows:

(1) *Annual compliance reports.* (i) *Obligated parties.* (A) Except as specified in paragraph (f)(1)(i)(B) of this section, for obligated parties, annual compliance reports must be submitted by whichever of the following dates is latest:

(1) March 31 of the subsequent calendar year.

(2) The next quarterly reporting deadline under paragraph (f)(2) of this section that is at least 60 days after publication in the Federal Register of a final rule establishing the subsequent compliance year's renewable fuel standards in §80.1405(a).

(3) The next quarterly reporting deadline under paragraph (f)(2) of this section after the annual compliance reporting deadline for the prior compliance year.

(B)(1) 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 the next quarterly reporting deadline under paragraph (f)(2) of this section that is at least 60 days after publication in the Federal Register of a final rule establishing the 2021 renewable fuel standards in §80.1405(a).

(2) For the 2020 compliance year, annual compliance reports must be submitted no later than the next quarterly reporting deadline in paragraph (f)(2) of this section after the deadline in paragraph (f)(1)(i)(B)(1) of this section.

(3) For the 2021 compliance year, annual compliance reports must be submitted no later than the next quarterly reporting deadline in paragraph (f)(2) of this section after the deadline in paragraph (f)(1)(i)(B)(2) of this section.

(ii) *All other parties.* For all parties other than obligated parties, annual compliance reports must be submitted by March 31 of the subsequent year.

(iii) *Deadline publication.* The annual compliance reporting deadline will be calculated in accordance with paragraph (f)(1)(i) of this section and published on EPA's website.

(2) *Quarterly compliance reports.* \* \* \*

(3) *Report certification.* \* \* \*

\* \* \* \* \*

3. Amend §80.1464 by:
  - a. Revising paragraph (d); and
  - b. Removing and reserving paragraphs (g) and (i)(3).

The revision reads as follows:

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

\* \* \* \* \*

(d) *Report submission deadlines.* (1) *Obligated parties.* (i) Except as specified in paragraph (d)(1)(ii) of this section, for obligated parties, annual attest engagement reports must be submitted to EPA by whichever of the following dates is latest:

(A) June 1 of the subsequent calendar year.

(B) The next June 1 annual attest engagement reporting deadline that is at least 60 days after the annual compliance reporting deadline under §80.1451(f)(1)(i)(A).

(ii)(A) For obligated parties that meet the requirements for a small refinery under §80.1441(e)(2)(iii), for the 2019 compliance year, annual attest engagement reports must be submitted to EPA no later than the next June 1 annual attest engagement reporting deadline that is at least 60 days after the annual compliance reporting deadline under §80.1451(f)(1)(i)(B)(1).

(B) For obligated parties, for the 2020 compliance year, annual attest engagement reports must be submitted to EPA no later than the next June 1 annual attest engagement reporting deadline that is at least 60 days after the annual compliance reporting deadline under §80.1451(f)(1)(i)(B)(2).

(C) For obligated parties, for the 2021 compliance year, annual attest engagement reports must be submitted to EPA no later than the next June 1 annual attest engagement reporting

deadline that is at least 60 days after the annual compliance reporting deadline under §80.1451(f)(1)(i)(B)(3).

(2) *All other parties.* All parties other than obligated parties must submit annual attest engagement reports to EPA by June 1 of the subsequent calendar year.

(3) *Deadline publication.* The annual attest engagement reporting deadline will be calculated in accordance with paragraph (d)(1) of this section and published on EPA's website.

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