



December 27, 2022

VIA ELECTRONIC FILING (www.regulations.gov) and ELECTRONIC MAIL

Michael S. Regan, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Regan.Michael@epa.gov
ATTN: Docket ID No. EPA-HQ-OAR-2021-0427

Re: Renewable Fuel Standard (RFS) Program: Standards for 2023–2025 and Other Changes

Dear Administrator Regan:

The Coalition for Renewable Natural Gas (“RNG Coalition”) represents the renewable natural gas (“RNG”) industry in North America. We are a non-profit association of companies and organizations dedicated to the advancement of RNG as a clean, green, alternative, and domestic energy and fuel resource. RNG Coalition’s diverse membership includes each sector of the RNG value chain—waste collection, waste management & recycling companies, renewable energy/gas developers, engineers, banks, financiers, investors, gas/power marketers, gas/power transporters, manufacturers, technology & service providers, environmental advocates, research organizations, organized labor, law firms, consultants, non-profits, airports, municipalities, universities, utilities, and individual ratepayers. The above referenced proposal includes significant proposed changes referred to as “Biogas Regulatory Reforms” that will directly impact the RNG industry, potentially changing how the entire industry currently operates. EPA acknowledges that time will be needed to implement these proposed changes, and we are concerned that EPA has not provided sufficient time for the industry to consider, review and then implement these proposed changes. Moreover, we believe these proposed changes are not necessary for the proper implementation of the RFS program. The RNG industry has grown significantly under the RFS program without any instances of reported fraud, and, while RNG Coalition supports ensuring flexibility in the use of RNG as transportation fuel and as a feedstock, we believe EPA can build on the current book-and-claim program, which EPA is proposing to substantially revise. EPA is proposing additional regulatory changes that impact the RNG industry and is requesting comments related to potential RNG-to-hydrogen pathways. As such, we request an extension of the comment period by 31 days to March 13, 2023.¹ We understand that this may result in a delay in implementing some of EPA’s proposed changes, which we believe may be necessary even if EPA finalized the revisions as proposed.

¹ An additional 30 days would fall on a Sunday, as such, we request a 31-day extension.

EPA’s proposed rule, entitled “Renewable Fuel Standard (RFS) Program: Standards for 2023–2025 and Other Changes,” seeks to establish a multi-year program using EPA’s “set” authority under 42 U.S.C. §7545(o)(2)(B)(ii). Although the “reset” authority references this same provision, this is the first time EPA is using the “set” authority for all the categories, including cellulosic biofuels, which raises several legal and factual questions that the industry must consider and address. EPA also proposed provisions to address “e-RINs,” which include substantial changes to the regulations. On top of these major changes to how EPA implements the RFS program, EPA is including numerous proposed changes to the RFS regulations, several of which impact the RNG industry. Of most significance is EPA’s “Biogas Regulatory Reforms.” For a proposal that contained similar significant potential regulatory changes to the RFS program, the Renewables Enhancement and Growth Support (“REGS”) proposed rule, EPA granted a request for a 30-day extension of a 60-day comment period² “[i]n light of the large number of revisions proposed in [that] action.” 81 Fed. Reg. 95,097, 95,097 (Dec. 27, 2016).³

Despite the large number of issues raised in the proposal, EPA delayed in releasing the proposal to the public⁴ and the record was not available until December 13, 2022.⁵ While EPA released the pre-publication version of the proposal on December 1, 2022, the public will have less than 60 days to review the supporting documentation. In addition, the numerous issues raised require us to reach out to several stakeholders across the value chain, but the public comment period extends over the holidays when it will be difficult to discuss the issues raised by EPA in the proposal with the various members of the industry. Given the numerous issues raised and their complexity, more time is needed for the public to meaningfully comment. An additional 31 days would extend the comment period to March 13, 2023. We do not believe this extension will impact EPA’s ability to quickly finalize the RFS volumes for 2023 and 2024, which are already late.

RNG Coalition understands that EPA is under a consent decree to finalize the applicable volumes for 2023 by June 14, 2023, but the regulatory changes proposed by EPA are not subject to the consent decree. While we believe the requested extension of the comment period will still allow EPA to finalize the rule by June 14, 2023, we believe EPA also can segregate the Biogas Regulatory Reforms (and other regulatory changes)⁶ from the volume requirements (and e-RIN provisions) if needed to ensure compliance with the consent decree. EPA indicates that it “intend[s] for the volume requirements and percentage standards for a single year (i.e., 2023, 2024, and 2025) to be severable from the volume requirements and percentage standards for other year” and “intend[s] for the other regulatory amendments to be severable from the volume requirements and

² This comment period on the REGS proposed rule extended from the date of publication in the Federal Register. Here, EPA set the comment deadline of February 10, 2023, although the proposal had not yet been published.

³ EPA is re-proposing some of those changes from the 2016 REGS proposed rule in the current proposal. *See, e.g.*, Prepublication Version at 362. However, the RNG industry must reassess these proposals in light of changed events.

⁴ EPA, without public input and without explanation, extended the time to issue the proposal under a consent decree entered in the U.S. District Court for the District of Columbia. *See Notice, Growth Energy v. Regan*, No. 1:22-cv-01191-RC (D.D.C. filed Nov. 4, 2022).

⁵ *See* EPA-HQ-OAR-2021-0427-0001.

⁶ Other issues that may require the RNG industry more time to review include: RIN Apportionment in Anaerobic Digesters; Hydrogen Fuel Lifecycle Analysis; Separated Food Waste Recordkeeping Requirements; and Definition of Produced from Renewable Biomass. Each of these may have an impact on different members of the RNG industry.

percentage standard.” Prepublication Version at 36. An agreed consent decree with one biofuel group for 2023 should not dictate EPA’s timing on such major changes to the RFS program.

RNG Coalition also understands that an extension of the comment period may result in a delay in finalizing the Biogas Regulatory Reforms and possibly the implementation date. But EPA acknowledges that the process of registering parties for e-RINs alone, “and of them becoming familiar with and complying with the RFS program, will require significant time and resources, both for participants and the EPA.” Prepublication Version at 235. Yet, EPA proposes that the Biogas Regulatory Reforms occur at the same time, by January 1, 2024. We are concerned that EPA will prioritize the e-RIN registrations, and, even so, EPA acknowledges that these registrations will take time. *Id.* at 237. Moreover, the proposal does not provide adequate transitions for current participants in the RFS program in the event of registration delays by EPA. EPA has indicated that the Biogas Regulatory Reforms are related to the e-RIN provisions, which may impact the proposed volumes. *Id.* at 187 n.202. However, EPA acknowledges that they can finalize provisions related to e-RINs without the Biogas Regulatory Reforms and, in any event, we believe EPA could finalize provisions that would be sufficient to protect against double-counting even if the Biogas Regulatory Reforms occurred a little later in time.⁷

While EPA claims it is seeking to streamline generation of e-RINs, it is proposing to substantially change how hundreds of parties currently operate in the market for biogas and RNG, requiring, among other things, re-negotiation of existing RNG contracts related to dispensing of RNG and RIN sales agreements, revisions to administrative processes for RIN generation and transactions, instituting methods to ensure compliance with new requirements, and updating registrations, QAPs and recordkeeping methods. EPA estimates 10,454 respondents associated with the e-RIN provisions and the Biogas Regulatory Reforms, *see* EPA-HQ-OAR-2021-0427-0268, which may not include all the parties in the “the generation/disposition chain” that may be affected by EPA’s proposed changes. Prepublication Version at 190-191; *see also id.* at 194. Yet, EPA would be giving these thousands of entities only a few months to undertake all the efforts that may be needed under EPA’s proposal. As such, we believe more time may be needed in any event and, therefore, EPA should extend the comment deadline to ensure the industry has adequate time to review and meaningfully respond to EPA’s proposal.

⁷ For example, EPA has indicated that they may require e-RIN participants to utilize quality assurance plans (“QAP”). Prepublication Version at 347. Although we continue to review the proposed regulations and discuss with our members throughout the supply chain, the RNG industry, which largely operates under QAPs, may not necessarily oppose such a requirement for generation of e-RINs.

Coalition for Renewable Natural Gas
Request for Extension of Comment Period
December 27, 2022

We appreciate your prompt consideration of this request and a response as soon as may be practicable.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Johannes Escudero', with a stylized flourish at the end.

Johannes Escudero
Founder & CEO
Coalition for Renewable Natural Gas

cc: Sarah Dunham, EPA
Ben Hengst, EPA
David Korotney, EPA (RFS-Rulemakings@epa.gov)