January 21, 2025

VIA ELECTRONIC FILING (www.regulations.gov)

The Honorable James Payne, Acting Administrator
U.S. Environmental Protection Agency
EPA Docket Center
Mail Code 28221T
1200 Pennsylvania Ave., NW
Washington, DC 20460

ATTN: Docket No. EPA–HQ–OAR–2024–0411

Re: Renewable Fuel Standard (RFS) Program: Partial Waiver of 2024 Cellulosic Biofuel Volume Requirement and Extension of 2024 Compliance Deadline, Proposed Rule, 89 Fed. Reg. 100,442 (Dec. 12, 2024)

Dear Acting Administrator Payne:

The Sustainable Advanced Biofuel Refiners (SABR) Coalition is a coalition of biodiesel stakeholders that have invested in building out America's first advanced biofuel. It includes stakeholders from every link in the value chain from feedstock growers to biodiesel producers, distributors, retailers, and consumers, as well as infrastructure and products and services suppliers. SABR Coalition appreciates the opportunity to submit these comments on EPA's proposal entitled "Renewable Fuel Standard (RFS) Program: Partial Waiver of 2024 Cellulosic Biofuel Volume Requirement and Extension of 2024 Compliance Deadline" (Proposed Rule), published at 89 Fed. Reg. 100,442. Because its members produce biodiesel and participate in the RFS program and would be impacted by the final rule, SABR Coalition has a strong interest in the Proposed Rule. 89 Fed. Reg. at 100,442.

SABR Coalition believes that EPA's waiver authority under the RFS must only be used in very limited circumstances. The carefully crafted incentives established by Congress to support increased renewable fuel production and use only work if the volume requirements are binding and enforced by EPA. It appears that EPA is proposing to waive the cellulosic biofuel volume for 2024 based on a projected shortfall of D3 RINs generated in 2024 to meet the volume requirement for 2024 and the deficits being carried over from 2023. Generally, we do not believe a mere shortfall in generation of RINs to meet the volumes EPA set under 42 U.S.C. §7545(o)(2)(B)(ii) is sufficient grounds to support a general waiver based on inadequate domestic supply under §7545(o)(7)(A)(ii). A shortfall in RINs does not necessarily equate to a lack of supply of renewable fuel volumes. We also believe that the general waiver authority is not intended to alleviate the obligation to comply with prior year deficits in the next year under §7545(o)(5)(D). In fact, the deficit carryover is the remedy Congress provided if there is shortfall in RINs. This is distinct from

the general waiver authority to reduce the national quantity of renewable fuel required under paragraph (2) of the statute based on "inadequate domestic supply."

Importantly, there is absolutely no basis for reducing the overall advanced biofuel volume requirement, even if EPA determines that there is a supply issue with cellulosic biofuels. While the cellulosic biofuel volume requirement is nested within the overall advanced biofuel volume requirement, there are, as EPA correctly found, more than enough non-cellulosic advanced biofuel RINs (D4/D5) to meet the 2024 advanced biofuel requirement set by EPA. According to EPA's EMTS RIN generation data,[1] there were over 9.397 Billion D4/D5 (net) RINs generated in 2024. That is about 2.857 Billion RINs more than EPA's 2024 advanced biofuel volume requirement of 6.54 Billion ethanol-equivalent gallons. There are also more than enough 2024 RINs (approx. 25.2 Billion) to meet the overall renewable fuel volume requirement of 21.54 Billion ethanol-equivalent gallons. EPA also lists over 645 Million D4/D5 RINs and almost 367 Million D6 RINs from 2023 that are still available for compliance. That is almost 4.7 Billion RINs more than needed to meet the 2024 requirements. In short, there is simply no basis to reduce the advanced biofuel or renewable fuel volume requirement for 2024, even if EPA can show a reduction of the cellulosic biofuel volume is warranted and consistent with the terms and goals of the statute. EPA has appropriately found that other *advanced biofuels* should backfill for any gaps in cellulosic biofuel production to meet the goals of Congress, and it provides no basis for a change in that policy.

We note that the claimed shortfall of D3 RINs in the proposal is barely a drop in the bucket compared to the total RINs generated. Indeed, we find it telling and concerning that EPA does not propose to increase the volume requirements for 2024 or for 2025 to address EPA's clear underestimate of the advanced biofuel volumes that could be achieved. EPA's concern over less than 1% of the program's 2024 volume requirements to claim some sort of harms to the program if it does not issue a waiver ring hollow and seem simply untrue. Indeed, the large surplus of D4/D5 RINs shows EPA set the advanced biofuel volume requirements way too low, yet EPA does not even consider the impacts of such a large surplus and how that may reduce the overall burdens on obligated parties to minimize any claimed harms as a result of any shortfall in D3 2024 RINs.

SABR Coalition also strongly opposes EPA's proposal to include an automatic extension of the compliance deadlines based on a "mere proposal" to reduce already established volume requirements. We are unclear as to the need for an extension of the compliance deadline for 2024, if there is clearly inadequate domestic supply and if EPA *reduces* the volume requirement. Not even American Fuel & Petrochemical Manufacturers (AFPM) requested an extension of the deadline when it submitted its letter requesting a reduction in the cellulosic biofuel volume requirement (EPA-HQ-OAR-2024-0411-0007). Regardless, such automatic extensions allow EPA to defy Congress's directives and the limitations it imposed on its authority, to potentially foreclose public comment and judicial review on future extensions, and to manipulate the market (intentionally or not) to the detriment of the RFS. Thus, this part of the proposal is unlawful, arbitrary, and an abuse of discretion that must not be finalized.

[1] EPA, RINs Generated Transactions, https://www.epa.gov/fuels-registration-reporting-and-compliance-help/rins-generated-transactions (data as of Jan. 10, 2025).

Finally, however, SABR Coalition does support EPA's proposal to update the ASTM D6751 specification incorporated by reference in the definition of "biodiesel." SABR Coalition raised this concern with EPA on several occasions and appreciates its proposed amendment. We do believe, however, that EPA can and should, at a minimum, make these updates more routine.

## COMMENTS

### I. EPA's Waiver Authority is Limited.

The RFS is a "market forcing policy" that creates "'demand pressure' to increase consumption" of renewable fuel. *Americans for Clean Energy v. EPA ("ACE")*, 864 F.3d 691, 705 (D.C. Cir. 2017) (citations and internal quotation marks omitted). "In other words, the Renewable Fuel Program's increasing requirements are designed to force the market to create ways to produce and use greater and greater volumes of renewable fuel each year." *Id.* at 710. Congress directed EPA to "ensure" the volume requirements are met. 42 U.S.C. §7545(o)(2)(A)(i). After 2022, EPA sets these requirements, taking into consideration numerous factors. *Id.* §7545(o)(2)(B)(ii). While we believe EPA should set maximum achievable volumes based on a review of those factors, at a minimum, they must be market forcing. This requires EPA to enforce those volumes and hold obligated parties' feet to the fire. Otherwise, the incentives created by Congress become essentially meaningless, and obligated parties have the perverse incentive not to take any actions in the hopes of being rewarded by EPA later.

While SABR Coalition recognizes that Congress provided a backstop in the general waiver provision at 42 U.S.C. §7545(o)(7)(A) if EPA sets the volumes too high, Congress also imposed high standards to use that authority. It also made that authority discretionary, which EPA has properly found means that it must also consider the potential harms of a proposed waiver to the RFS before granting any such waiver. 73 Fed. Reg. 47,168, 47,172 (Aug. 13, 2008). EPA does not appear to have considered any such harms that might stem from its proposal here.

The phrase "inadequate domestic supply" requires a "'supply-side' assessment of the volumes of renewable fuel that can be supplied to refiners, importers, and blenders." 89 Fed. Reg. at 100,444 (citing *ACE*, 864 F.3d 691). In *ACE,* the D.C. Circuit rejected attempts by EPA to expand its general waiver authority to include considerations beyond supply. There is no indication that Congress intended inadequate domestic supply to include a potential shortfall in RINs available for compliance. The question EPA must answer is if there is an "adequate *volume* of renewable fuel" available. *ACE*, 864 F.3d at 705. Indeed, the remedy in cases where obligated parties are unable to generate or obtain sufficient RINs is to carry a deficit, not to waive the volume requirements. 42 U.S.C. §7545(o)(5)(D).

Based on the plain terms of the statute, SABR Coalition is also concerned that EPA is considering "the total cellulosic RIN deficit carried forward from 2023 into 2024" to determine whether there are appropriate grounds to partially waive the cellulosic biofuel volume requirement for 2024. 89 Fed. Reg. at 100,446-100,447. At a minimum, EPA is proposing to include the deficit to determine how much to reduce the volume requirement. But the deficit provision is separate from the volume requirements that are specifically referenced in the general waiver provision.

42 U.S.C. §7545(o)(7)(A) (providing for reduction of "the national quantity of renewable fuel required under paragraph (2)"). The volume requirement referenced is the applicable volume requirement EPA set for 2024, not the separate requirement imposed under paragraph (5) on obligated parties that claim a deficit to make up that deficit the next year. There is no indication that Congress granted EPA authority to waive that requirement, which it would essentially do under its proposal.

While EPA claims some sort of undefined and unsupported set of potential harms if obligated parties that had claimed a deficit in 2023 face non-compliance in 2024, the D.C. Circuit rejected these same concerns to support EPA's attempts to expand the waiver authority in *ACE*, 864 F.3d at 711-712. At most, the obligated parties may face penalties as a result of non-compliance, where surely those that may face the penalties believe are "negative economic effects." Such claimed harms, however, were also rejected by the D.C. Circuit to support a waiver, finding that "EPA has not explained why Congress would have established the severe-harm waiver standard 'only to allow waiver under the inadequate-supply' provision based on 'lesser degrees' of economic harm." *Id.* at 712 (citation omitted). EPA also may contend it will only make increasing volumes harder to meet if it does not take action for 2024, but this was also rejected by the D.C. Circuit as grounds to issue a waiver. *Id*.

It would be inconsistent with the structure and purpose of the statute to allow use of the waiver authority to eliminate or alleviate the obligation to offset any claimed deficits the next year. Obligated parties have been fully aware of this obligation and, for 2024, had ample opportunity to ensure they obtained enough RINs to meet the requirements for claiming a deficit in 2023. They also took the risk of waiting until the end of the year to see if EPA decides to waive the volumes, rather than take actions to meet the volume requirements. EPA rewarding those parties through the proposed waiver undermines the limitations imposed by Congress, which were intended to force the market to act. To effectuate the market-forcing intent of the program, the only reading of the general waiver authority is that EPA is to reduce the volume requirements only to the extent necessary to address the inadequate supply for meeting the compliance year's volumes. We further note that clear limits imposed by Congress on its waiver authority also does not give EPA grounds to be "conservative" with the volume requirements moving forward. Congress listed the factors that EPA must consider in setting the volume requirements and those requirements *must be market forcing.* Forcing obligated parties to ensure they take actions to make up a deficit is not penalizing them, it is requiring them to meet the criteria for using the compliance method they voluntarily chose to use.

Moreover, EPA does not "check" the reasons obligated parties choose to use the deficit provisions, and EPA has allowed obligated parties to utilize the deficit as a tool of compliance rather than merely to address the inability of obligated parties to purchase fuel or obtain RINs. In other words, a deficit may be claimed for reasons that are completely unrelated to whether there is sufficient renewable fuel supply in the marketplace. It could be simply gambling on RIN prices being lower the next year, which is likely the case for deficits claims for the biomass-based diesel category where the surplus of RINs continues to grow. Allowing parties to claim deficits whenever they want and then wiping them away at the end of the year because of inaction by obligated parties

to meeting the volume requirements the next year ensures that the volume requirements in the prior year (here, 2023) are never met. EPA is required to ensure the volume requirements are met, and EPA determined that a waiver was unnecessary for 2023. This indicates that EPA is exceeding its authority in attempting to use the deficits being carried from 2023 as a basis for a waiver in 2024. This also defies the goals of the program and allows obligated parties to game the system in an attempt to avoid the obligations altogether. *ACE*, 864 F.3d at 710 (rejecting EPA's approach to general waiver authority as being "goal-defying") (citation omitted).

We also believe that EPA's concerns regarding potential non-compliance are unfounded. There is no transparency regarding obligated parties' compliance (an issue the biofuels industry has long sought EPA to address), but obligated parties have claimed deficits even where there is more than ample supply of renewable fuel and credits. For example, there has been a substantial surplus of D4 RINs generated to meet the volume requirements in recent years, yet there is a good number of deficits still being claimed, as illustrated in the table below.[2]

| Year | Biomass-based Diesel Reported Current Year Obligation (RINs) | D4 Net RINs Generated | Deficits Claimed for Biomass-Based Diesel |
|---|---|---|---|
| 2019 | 3.241 B | 4.140 B | 125 M |
| 2020 | 3.850 B | 4.459 B | 230 M |
| 2021 | 3.823 B | 4.870 B | 338 M |
| 2022 | 4.186 B | 5.779 B | 263 M |
| 2023 | 4.664 B | 7.954 B | 292 M |

Source: EPA, Public Data for the Renewable Fuel Standard, https://www.epa.gov/fuels-registration-reporting-and-compliance-help/public-data-renewable-fuel-standard (last visited Jan. 17, 2025).

This indicates that obligated parties do not always claim a deficit due to insufficient supply (notwithstanding the intent of the statute).[3] In addition, there is no evidence that obligated parties that claimed a deficit cannot comply or how it would harm the operation of RFS program if EPA

[2] There were also ample current-year and prior-year RINs available to meet the advanced biofuel volume requirements for these years.

[3] EPA has previously acknowledged that small refineries have claimed deficits. This could occur because they waiting for a decision from EPA on their requests for an exemption. It also could be that they challenged any denials of those requests. EPA's denial of numerous exemption requests was recently vacated, yet EPA's proposal makes no mention of the potential impacts if EPA subsequently grants any of these exemptions on remand. *Sinclair Wyoming Refining Co. v. EPA*, 114 F.4th 693 (D.C. Cir. 2024). Instead, EPA's proposal uses the same assumptions used in setting the standards, which is zero small refinery exemptions. If EPA does reconsider the denials (and extends the compliance deadlines), it should revise the standards to reflect new assumptions on small refinery exemptions to minimize the impact of any retroactively granted exemptions on the volume requirements.

simply confirms to obligated parties that the volumes it set are binding and they must act to meet them. On the other hand, EPA has previously outlined numerous harms to the RFS program when it uses its waiver authority to reduce *established* volume requirements. *See, e.g.,* EPA, Denial of AFPM Petition for Waiver of 2016 Cellulosic Biofuel Standard, at 3-4 (2017), https://www.epa.gov/sites/default/files/2017-01/documents/afpm-rfs-petition-decision-ltr-2017-01-17.pdf; EPA, Denial of AFPM Petition for Partial Waiver of 2023 Cellulosic Biofuel Standard, at 7-8 (2024), https://www.epa.gov/system/files/documents/2024-03/afpm-part-waiver-denial-cellulosic-biofuel-stndrd-2024-03.pdf. EPA does not provide a reasoned explanation for its change in position. Thus, we do not believe EPA is authorized to consider prior-year deficits in determining whether a general waiver is appropriate or in setting the level of the reduction. Even if EPA has discretion to do so, we believe it would be an abuse of any such discretion.

## II. There is No Basis for Reducing the 2024 Advanced Biofuel or Renewable Fuel Volume Requirements.

If a partial waiver of the cellulosic biofuel volume requirement is subsequently granted by EPA, regardless of the authority claimed, there is simply no basis to reduce the overall advanced biofuel or renewable fuel volume requirements. As an initial matter, we note that EPA does not propose to use its general waiver authority to reduce the volumes based on severe economic or environmental harms. Any comments arguing for such reductions are outside the scope of the proposal and cannot be used as the basis for a subsequent waiver without EPA providing notice and an opportunity to comment on the factual and legal basis for such a waiver.

Instead, EPA proposes to use its general waiver authority to reduce the cellulosic biofuel volume requirement for 2024 based on inadequate domestic supply. While SABR Coalition does not take a position on whether there was sufficient supply of cellulosic biofuels in 2024, it does not believe EPA has shown that to be the case in the proposal. What EPA does show, however, is that there absolutely is more than enough supply of advanced biofuels to meet the advanced biofuel and renewable fuel volume requirements for 2024. While EPA considers RIN generation, RINs are typically generated upon production of biodiesel and renewable diesel fuel, which make up the bulk of the non-cellulosic advanced biofuel RINs generated (D4 RINs). As noted above, EPA's EMTS RIN generation data shows D4/D5 (net) RIN generation for 2024 at 9.397 Billion—about 2.857 Billion RINs more than EPA's advanced biofuel volume requirement of 6.54 Billion gallons. There are also approximately 25.2 Billion total 2024 RINs available to meet the overall renewable fuel volume requirement of 21.54 Billion. EPA also lists over 645 Million D4/D5 RINs and almost 367 Million D6 RINs from 2023 that are still available for compliance. That is almost 4.7 Billion RINs more than needed to meet the 2024 requirements.[4] Indeed, as SABR Coalition argued in its comments in the Set Rule, we believe the advanced biofuel volume requirement for 2024 was set too low and did not accurately reflect potential production of biodiesel and renewable diesel. In short, there is simply no grounds for claiming inadequate domestic supply of advanced biofuels.

[4] This does not include the potential additional RINs that may become available as a result of EPA's review of small refinery exemption requests on remand.

Although EPA does not propose to use the authority in 42 U.S.C. §7545(o)(7)(D) to reduce the 2024 cellulosic biofuel volume requirement, EPA asks for comment on its availability to reduce the 2024 cellulosic biofuel volume requirement and whether to also reduce the 2024 advanced biofuel and total renewable fuel volume requirements by the same or lesser amount as the volume of cellulosic biofuel partially waived under the cellulosic waiver authority. 89 Fed. Reg. at 100,448. Such a general request for comment is not sufficient notice for any subsequent reduction, as changes to the standards require amending the regulations that requires notice and comment rulemaking. Moreover, EPA has long held that other *advanced* biofuels should make up any shortfall in production of cellulosic biofuel, which has been upheld by the D.C. Circuit. *Am. Petroleum Inst. v. EPA ("API")*, 706 F.3d 474, 480-481 (D.C. Cir. 2013). As such, EPA is required to provide its factual and legal basis for such an action, including any change in policy position, before it can be finalized. The public cannot comment on any potential scenario where nothing in the record points to any other alternative. Thus, if EPA subsequently believes it has authority to issue such a waiver it must and should provide the public with notice of its proposed reduction and the factual and legal support for that reduction before finalizing any such reduction.

In any event, we do not believe there are any grounds to reduce the advanced biofuel volume requirements for 2024 even under 42 U.S.C. §7545(o)(7)(D). First, that provision is written in prospective terms, requiring action by November 30, 2023 to issue such a waiver. In other words, there is no indication that Congress intended the waiver to be used retroactively, and EPA essentially determined that the cellulosic waiver authority was not triggered for 2024 when it set the cellulosic biofuel volume based on its projection of cellulosic biofuel production. We further note that 42 U.S.C. §7545(o)(7)(D) actually references projections based on information to be provided by the U.S. Energy Information Administration through years 2021. Thus, it is not clear whether this authority exists after compliance year 2022. Either way, by the statute's plain terms EPA cannot issue a waiver under the provision for 2024 and, thus, never gets to the question as to whether it should also reduce the advanced biofuel volume requirement for that year.

Second, assuming the cellulosic waiver authority is available for 2024, any attempt to also reduce the advanced biofuel volume requirement would be an abuse of discretion. We acknowledge that Section 7545(o)(7)(D)(i) provides that EPA "may" reduce the advanced biofuel volumes if the cellulosic waiver authority is triggered and the volumes are reduced. We also recognize that the D.C. Circuit has indicated that this gives EPA discretion in making such decision. But this also means EPA has discretion *not to reduce* these volumes, even if it finds a shortfall of cellulosic biofuels. That is the position EPA has taken consistently when there are sufficient volumes of advanced biofuel to make up the difference, and EPA provides no explanation for any potential change in policy.[5] *See, e.g.,* 77 Fed. Reg. 1320, 1333 (Jan. 9, 2012). This approach has been upheld by the D.C. Circuit in *API*, 706 F.3d 474. The D.C. Circuit has noted that there was "no great obstacle to the *production* of advanced biofuel generally," supporting EPA's determination. *Id.* at 481. Similarly, there is no great obstacle to the production of other advanced

[5] This may not have been the case when EPA was setting the volumes retroactively and used actual RIN generation as the basis to set the volume requirements. Under that approach, EPA would be required to *increase* the volume requirements it set for biomass-based diesel and advanced biofuel in light of the substantial surplus of RINs that were generated in 2024.

biofuels today, including biodiesel. In short, where there is a significant surplus of advanced biofuel volumes that more than makes up for any shortfall in cellulosic biofuel production, there can be no basis for reducing the volume requirements in light of the market forcing purposes of the statute. Any attempt to do so for 2024 would be an abuse of discretion.

## III. SABR Coalition Opposes EPA's Proposal to Provide Automatic Extensions of the Compliance Deadlines Based on a Mere Proposal to Reduce the Volume Requirements.

SABR Coalition opposes the proposed extension of the compliance deadlines. EPA's proposal has caused uncertainty in the market, and EPA should withdraw the proposal or finalize any action regarding the 2024 volume requirements quickly, as any delays will impact the compliance deadlines for later years. More important, however, is EPA's proposal to automatically extend the compliance deadlines based on a "mere proposal—as opposed to a final action—by EPA to change an existing RFS standard." 89 Fed. Reg. at 100,450; *see also id.* at 100,456. The proposed automatic extension is unlawful and arbitrary and should not be finalized.

Proposals are not final agency action. While proposals have served as notice of potential action by EPA under the RFS to provide guideposts to assist obligated parties in preparing for compliance when EPA is delayed in finalizing standards, proposed rules are subject to public notice and comment, which is to ensure the public has a say in administrative action. And, even in those cases, the extensions were not automatic based on the proposal. *See* 40 C.F.R. §80.1451(f)(1). If proposals can be used to automatically extend compliance deadlines for previously promulgated requirements, this makes the public comment period virtually meaningless for biofuel producers as they will already feel the harms caused by the proposal. The importance of the public comment period is why a proposed rule "in no way binds the [agency] to promulgate the proposed regulation." *Willaims Natural Gas Co. v. FERC*, 872 F.2d 438, 446 (D.C. Cir. 1989). Indeed, the general waiver provision *requires* public notice and comment, as well as consultation with the U.S. Department of Agriculture and U.S. Department of Energy. 42 U.S.C. §7545(o)(7)(A). EPA's proposal here makes no mention of such consultation, and the public comment period is happening now. In other words, the proposal, by definition, does not meet the waiver requirements and nothing in the statute allows EPA to automatically stay compliance based on a proposal.

Had Congress wanted to grant EPA such authority, it would have done so. For example, Congress expressly provides that a grant of reconsideration of a rule "shall not postpone the effectiveness of the rule." 42 U.S.C. §7607(d)(7)(B). While Congress did give authority to administratively stay the effectiveness of a rule pending reconsideration, this proposal does not meet the criteria for reconsideration and, in any event, such authority is only to grant a stay for three months. *Id.* EPA is not imposing any deadlines by when it must act in its proposed rule, except that it can sit on the proposal for 12 months before the compliance deadline may be triggered. That is well beyond the three months Congress allows for reconsideration. This, in turn, also would extend the deadlines for later years without any cause whatsoever. 40 C.F.R. §80.1451(f)(1)(i)(A). The D.C. Circuit, however, has found that any attempts to extend the deadlines amounts to an amendment or revocation of a rule. *Clean Air Council v. Pruitt*, 862 F.3d 1, 6-7 (D.C. Cir. 2017). This requires notice and comment rulemaking and opens decisions to

extend deadlines to judicial review. *Id.* EPA is essentially foreclosing any ability to comment on the appropriateness of future extensions and, no doubt, trying to foreclose the ability to seek judicial review of those decisions. That is arbitrary and beyond its authority.

EPA's proposal also allows it to circumvent the 90-day deadline to respond to petitions for waivers. 42 U.S.C. §7545(o)(7)(B). Under EPA's proposed regulation, if it proposed to change an existing standard based on a petition, it could sit on that proposal well beyond the 90-day requirement. EPA's only apparent basis for this automatic extension is to give it more time to finalize any waiver.[6] This deadline was imposed, however, to give the market certainty. EPA's automatic extension undermines that certainty and, in fact, allows manipulation of the market, creating volatility and questions as to the binding nature of EPA's volumes. The harms EPA identified that could occur in the event of a waiver of an established standard can still occur based on a mere proposal, regardless of whether EPA has any viable grounds for a waiver at all. This adds a huge amount of uncertainty into the program that violates EPA's duty to "ensure" the volume requirements and that defies the goals of Congress.

On the other hand, it is not entirely clear why an automatic extension is needed if EPA proposes to *reduce* the obligations. While obligated parties expressed support for such extensions at the public hearing, their requests for a waiver did not ask for such an extension and they submitted their requests with the full understanding that, even if EPA responded in 90 days, which it was not required to do based on the submissions, there would be little time to issue compliance reports before the March 31 compliance deadline.[7] The proposal provides no explanation for why such an extension would be needed when it would appear they merely would have to adjust their compliance reports, a paperwork exercise, as they would have already known their obligations under the more stringent volume requirements.

## IV. SABR Coalition Supports the Update to the ASTM Specification in the Definition of "Biodiesel," But Urges EPA to Ensure More Timely and Consistent Updates in the Future.

SABR Coalition appreciates EPA's proposal to update the reference to ASTM D6751-20a in the definition of biodiesel to reference the most recent standard of ASTM D6751-24. 89 Fed. Reg. at 100,452. In July 2024, SABR Coalition raised concerns to EPA with respect to confusion that had been created in the marketplace due to the continued reference to the outdated ASTM specification in the RFS regulations. In August 2024, EPA proposed to update this standard in its

[6] EPA cites cases affirming extensions of compliance deadlines in an apparent effort to defend its actions. *See, e.g., Wynnewood Refining Co., LLC v. EPA,* 77 F.4th 767, 779 (D.C. Cir. 2023). Those cases, however, addressed whether extensions of the compliance deadline were proper mitigation when EPA misses statutory deadline to issue standards for a given year (and to address uncertainty in EPA's small refinery exemption policy). More important, they did not involve "automatic" extensions whenever EPA issues a proposal to revise the standards. It should also be noted that the Court found that the statute did not require a particular length of time to submit compliance reports and, thus, there is no obligation for EPA to provide an extended period of time to submit compliance reports. Instead, EPA should ensure that obligated parties believe the volume requirements are binding throughout the entire compliance year, not only at the time the compliance reports are due. That is the only way to make sure the RFS program works as intended.
[7] This includes a March 4, 2024 "update" to a request to reduce the 2023 cellulosic biofuel volume requirement.

Fuels Regulatory Streamlining Amendments Rule, but only in the regulations for Part 1090. 89 Fed. Reg. 70,048, 70,061 (Aug. 28, 2024). In its comments on that proposed rule, SABR Coalition supported this change but again urged EPA to address the inconsistency with the definitions for the RFS and to better ensure against similar inconsistencies in the future. EPA-HQ-OAR-2024-0143-0010. We incorporate these comments by reference, and they are attached.

We again urge EPA to either (1) provide notice of enforcement discretion that provides that any biodiesel producer that is complying with the most recent version of ASTM D6751 may properly generate RINs under the RFS, even if EPA has not yet updated the ASTM standard in §80.12 or (2) revise the definition of biodiesel to remove the reference to ASTM D6751 and replace it with reference to biodiesel registered under Part 79 of EPA's regulations. At a minimum, EPA should set up a process to update the standard on a more regular basis to avoid inconsistent requirements and confusion in the marketplace. Despite being proposed in August of 2024, the Fuels Regulatory Streamlining Amendments Rule was only recently finalized and is not effective until July 1, 2025.[8] 90 Fed. Reg. 4320 (Jan. 15, 2025). Such delays are unnecessary for merely updating a standard that is widely accepted in the market and that is simply used for definitional purposes. While we appreciate EPA proposing this change, it included the proposed change (along with other technical amendments) in a rule that is likely to garner significant opposition as indicated by testimony at the public hearing and will likely be delayed with the incoming administration. Again, such delays are unnecessary, and EPA should finalize this change as soon as possible.

EPA's response to comments on the Fuels Regulatory Streamlining Rule indicated that the Incorporation by Reference requirements do not allow it to refer to the most recent version of the ASTM standard or to use a direct final rule process. We acknowledge that the guidance referenced by EPA indicates that the Office of Federal Register only approves specific standards. It is unclear, however, if this somehow prohibits EPA from using a definition of biodiesel that merely references ASTM D6751 more generally. *See, e.g.,* 12 C.F.R. §217.602(b) (definition of NAIC RBC meaning "the most recent version of the Risk-Based Capital (RBC) For Insurers Model Act"); 7 C.F.R. §54.1002 (defining standards as "most recent version of standards for equipment and utensils formulated by the NSF/3-A Joint Committee on Food Processing Equipment"); *see also* IRS Notice 2025-10 at 8 (2025), https://www.irs.gov/pub/irs-drop/n-25-10.pdf (defining low-GHG biodiesel as "the monoalkyl esters of long chain fatty acids that meet the specifications of ASTM D6751 …"). As explained to EPA, since the definition is only conforming to the market definition of biodiesel, there is no impact to EPA's regulatory authority by incorporating "the most recent version" of that standard.

Nonetheless, while the response did not address the other options noted, above, we have found no limitation on the agency's ability to use a direct final rule to update a specification that is incorporated by reference. 1 C.F.R. §51.3(b). EPA has used direct final rules to incorporate materials by reference, which would appear consistent with the Incorporation by Reference

[8] Of the 14 comments posted on the Fuels Regulatory Streamlining Amendments Rule to www.regulations.gov, no one opposed this change. Indeed, AFPM and the American Petroleum Institute supported the proposed updates and urged EPA to ensure they use the most recent ASTM standards. EPA-HQ-OAR-2024-0143-0012 at 24.

regulations, including using direct final rules for actions taken under the Clean Air Act. *See, e.g.,* 89 Fed. Reg. 106,330, 106,331 (Dec. 30, 2024); 89 Fed. Reg. 104,435, 104,446-104,447 (Dec. 23, 2024). Other agencies have also used the direct final rule process to update standards that have been incorporated by reference. 89 Fed. Reg. 91,545, 91,550 (Nov. 20, 2024) ("The Commission concludes that when it updates a reference to an ASTM standard that the Commission previously incorporated by reference under section 104(b) of the CPSIA, notice and comment are not necessary."); 86 Fed. Reg. 52,593, 52,597 (Sept. 22, 2021) (finding direct final rule "complies with the requirements for direct final rules as set forth in 1 CFR 51.5(b)(2)"). Indeed, the guidance cited by EPA states: "If updating or substituting a new publication would be non-controversial, consider publishing a publications-specific direct final rule or technical amendment." Office of the Federal Register, Incorporation by Reference Handbook, at 18 (2023) (citing OMB Circular A-119),[9] *cited in* EPA, *Fuels Regulatory Streamlining Amendments: Response to Comments*, at 67 (2024). We do not believe it is controversial to update the specification for the definition of biodiesel to make it consistent with the market's understanding of that definition and with other federal and state regulatory requirements. This is evidenced by the lack of opposition to EPA's update in the Fuels Regulatory Streamlining Amendments Rule.

We understand EPA's concerns and we appreciate the limited resources of the agency, but there is no requirement that EPA incorporate by reference the ASTM specification and, by choosing to do so, it is incumbent on them to ensure EPA is referencing the most updated one. Thus, we again urge EPA to find a reasonable and practical way to ensure it is routinely updating the specification for biodiesel.

* * *

As always, the biodiesel industry stands ready to meet the RFS volume requirements. The biofuels industry has always done its job, EPA must also do its job. It must enforce the volume requirements it sets to "ensure" they are met. While SABR Coalition believes there is more than enough biodiesel available to make up shortfalls in cellulosic biofuel production, EPA also must set market-forcing volume requirements in a manner that supports *all fuels*.

SABR Coalition has raised several concerns with EPA's implementation of the biomass-based diesel program and urges EPA to consider ways to address those concerns. EPA must provide a level playing field, must increase the volumes required for biodiesel, and must enforce the volume requirements. Otherwise, as EPA already admitted, the biodiesel industry will continue to see declines due to EPA's implementation of the RFS, even though Congress expressly sought to support and promote the biodiesel industry. We urge EPA to turn its attention to these important matters and to issuing the volume requirements for 2026 to keep the RFS program on track. We look forward to working with EPA to ensure a workable RFS program that fulfills the goals and intent of Congress.

[9] This Handbook is available at https://www.archives.gov/files/federal-register/write/handbook/ibr.pdf.

We appreciate EPA's consideration of these comments. If you have any questions regarding these comments, please contact Joe Jobe, joe@rockhouse.us, on behalf of the Sustainable Advanced Biofuel Refiners Coalition.

Sincerely,

Joe Jobe, Chief Executive Officer
Sustainable Advanced Biofuel Refiners Coalition