



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 27 2015

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Conditional No Action Assurance Regarding RFS Attest Engagement Reporting
Deadline for the 2014 Compliance Year

FROM: Cynthia Giles
Assistant Administrator *Cynthia Giles*

TO: Janet G. McCabe
Acting Assistant Administrator
Office of Air and Radiation

Pursuant to your request of May 15, 2015 (attached), I am today providing a “no action assurance” (No Action Assurance) relating to the June 1, 2015 attest engagement reporting deadline for the 2014 compliance year under the Renewable Fuel Standard (RFS) program, as provided in this memorandum.

Because of delays in promulgating the final annual volume percentage requirements for the 2014 compliance year, the RFS annual reporting deadlines are out of sequence. Regulated parties are required to submit “attest engagement reports” for the 2014 compliance year by June 1, 2015. However, regulated parties are not yet required to submit their attest engagement reports for the 2013 compliance year, which makes it impractical for certain regulated parties to complete their attest engagement reports by June 1, 2015.

As noted in your memorandum, the EPA therefore has committed to issue a rule to amend these reporting deadlines.¹ Specifically, the EPA intends to propose to change the attest engagement reporting deadline for the 2014 compliance year for renewable identification number (RIN)-generating renewable fuel producers (domestic and foreign), RIN-generating importers, other parties owning RINs and independent third-party auditors from June 1, 2015, to January 31, 2016.²

Consistent with the intent and purpose of this proposed regulatory action, this No Action Assurance provides that the EPA will exercise its enforcement discretion not to pursue enforcement actions against

¹ See also Enviroflash notification, “Upcoming Announcement of Proposed Changes to RFS Reporting Deadlines” (May 19, 2015) (notification of intent to revise attest reporting deadlines).

² The attest engagement requirements for RIN-generating renewable fuel producers (domestic and foreign), RIN-generating importers, other parties owning RINs, and independent third-party auditors are found at 40 C.F.R. § 80.1464(b), (c) and (i). The deadline to submit these reports is set forth at 40 C.F.R. § 80.1464(d).

a RIN-generating renewable fuel producer (domestic and foreign), a RIN-generating importer, any other party owning RINs, and an independent third-party auditor solely for violations of the 2014 attest engagement reporting deadline at 40 C.F.R. § 80.1464(d). This No Action Assurance does not apply to the June 1, 2015 deadline for exporters of fuel to submit their reports for the 2014 compliance year, nor does it extend to any other RFS-related requirement.³ Furthermore, as applied to an individual regulated party, this No Action Assurance is conditioned upon the regulated party complying with all other RFS requirements applicable to it. This No Action Assurance will remain in effect until either (1) 11:59 PM EST, January 30, 2016, or (2) the effective date of a final rule addressing the 2014 attest engagement deadlines, whichever occurs earlier.

The issuance of this No Action Assurance is in the public interest to alleviate confusion and ensure the orderly administration of the RFS program. In addition, I understand that this action will not result in any adverse environmental impacts, as no requirements to comply with the RFS volume standards nor any requirements to comply with emission standards are affected by this action. The EPA reserves its right to revoke or modify this No Action Assurance.

If you have any further questions regarding this matter, please contact Jeff Kodish, of my staff, at (303) 312-7153, or kodish.jeff@epa.gov.

Attachment

cc: Byron Bunker, OAR, OTAQ
Susan Shinkman, OECA, OCE
Phillip Brooks, OCE, OCE, AED

³ The EPA provided guidance regarding the 2014 attest engagement reporting deadlines for renewable fuel exporters in its March 17, 2015 Enviroflash.



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WASHINGTON, D.C. 20460

MAY 15 2015

OFFICE OF
AIR AND RADIATION

MEMORANDUM

SUBJECT: Enforcement Discretion of the Attest Engagement Reporting Deadline for the 2014 Compliance Year

FROM: Janet G. McCabe *JGM*
Acting Assistant Administrator

TO: Cynthia Giles, Assistant Administrator
Office of Enforcement and Compliance Assurance

The Office of Air and Radiation requests that the Office of Enforcement and Compliance Assurance exercise enforcement discretion regarding the June 1, 2015 attest engagement reporting deadlines in the Renewable Fuel Standard (RFS) program for the 2014 compliance year. Specifically, OAR requests that OECA exercise enforcement discretion as a bridge to a final rulemaking that will set the 2014 annual volume percentages and change associated attest engagement reporting deadlines. We anticipate this final rule will be signed no later than November 30, 2015.

As you know, the 2014 annual volume-setting rule has proven to be very challenging. We were not able to finalize the volume requirement for 2014 in a timely manner. In 2014, we amended the RFS program regulations to delay the program's 2013 reporting deadlines because we had not yet finalized the 2014 RFS volume standards. As a result, the current regulations include reporting deadlines that are out of sequence such that the 2013 reporting deadlines follow the 2014 reporting deadlines. This makes it impractical for certain regulated parties to comply with certain reporting deadlines.

As a part of the proposed RFS volume standards for 2014, 2015, and 2016, we will also be proposing changes to the annual compliance demonstration and attest engagement reporting deadlines for the 2013, 2014, and 2015 compliance years. The agency will propose to amend these reporting deadlines in order to put them back in sequential order, as well as to provide an appropriate amount of time between the deadlines for the 2013, 2014, and 2015 annual compliance reports and attest engagement reports.

The current regulations at 40 CFR 80.1464(d) require regulated parties to submit attest engagement reports for the 2014 compliance year by June 1, 2015. On March 17, 2015, we issued an Enviroflash notice to clarify that obligated parties (refiners and importers of gasoline and diesel fuel) are not required to submit 2014 compliance demonstration reports or the associated attest engagement reports until the agency issues a final rule establishing the final 2014 RFS standards and sets (in that action) a compliance demonstration deadline for those standards. The agency interpreted the annual compliance demonstration and attest engagement reporting deadlines at 40 CFR 80.1451(a) and 80.1464(a) and (d) to be inoperative for obligated parties for the 2014 compliance year because final RFS standards for

2014 have not been established, and it is therefore impossible for obligated parties to assess their compliance with the applicable standards. At the same time, we clarified in the Enviroflash that exporters of renewable fuel must submit at a minimum partial compliance demonstration and attest engagement reports by the respective regulatory deadlines and full reports following publication of the 2014 RFS volume rule because an exporter's compliance obligation is determined entirely by the volume and type of renewable fuel exported and not the renewable fuel volume percentage standards. It is therefore possible for exporters to partially or fully meet the current regulatory reporting deadlines including the June 1, 2015 deadline for attest engagement reports.

The Enviroflash did not specifically address the attest engagement requirements for parties other than obligated parties and exporters. Following issuance of the March 17, 2015 Enviroflash, the agency received comments from attest engagement auditors indicating that it would be impractical for certain other parties to meet the June 1, 2015 attest engagement deadline at 40 CFR 80.1464(d) for the 2014 compliance year. The auditors explained that they generally rely on the beginning balance of Renewable Identification Numbers (RINs) based on attest procedures performed in the previous year, and that it would be impractical for them to do this since the agency delayed the 2013 attest engagement deadlines until after the 2014 attest engagement deadline.

In order to address these concerns, the agency will propose to change the June 1, 2015 attest engagement reporting deadline for the 2014 compliance year for RIN-generating renewable fuel producers (domestic and foreign), RIN-generating importers, and other parties owning RINs to January 31, 2016.¹ Since independent third-party auditor annual attest requirements are dependent upon the submission of the RIN verification reports to the EPA, the agency will also propose to delay the 2014 attest engagement reporting deadline for independent third-party auditors from June 1, 2015 to January 31, 2016.

Accordingly, we request that the OECA exercise its enforcement discretion to not pursue enforcement actions against RIN-generating renewable fuel producers (domestic and foreign), RIN-generating importers, other parties owning RINs, and independent third-party auditors for violations of the 2014 attest engagement reporting deadlines at 40 CFR 80.1464(d) until 11:59 PM EDT, January 30, 2016, or the effective date of a final rule addressing the 2014 attest engagement deadlines, whichever occurs earlier. We do not anticipate that this action will result in any adverse environmental impacts, as no requirements to comply with the RFS volume standards are affected by this action.

Please contact Byron Bunker on my staff if you have any questions.

Attachment: Enviroflash

cc: Phillip A. Brooks, Director, Air Enforcement Division, OECA
Christopher Thompson, Chief, Western Field Office, Air Enforcement Division, OECA
Jeff Kodish, Fuels Team Leader, Air Enforcement Division, OECA

¹ The attest engagement requirements for RIN-generating renewable fuel producers (domestic and foreign), RIN-generating importers, other parties owning RINs, and independent third-party auditors are found at 40 CFR 80.1464(b),(c) and (i), and the associated deadline is specified in 40 CFR 80.1464(d).

From: EnviroFlash [<mailto:enviroflash@epa.gov>]
Sent: Tuesday, March 17, 2015 2:19 PM
To: Kodish, Jeff
Subject: RFS Annual Compliance Deadline

This Enviroflash relates to the dates that obligated parties and exporters must file their annual compliance demonstration reports and associated attest engagement reports required by 40 CFR 80.1451(a) and 80.1464(a). EPA is today clarifying that obligated parties (refiners and importers of gasoline and diesel fuel) under the Renewable Fuel Standard (RFS) program are not required to submit compliance demonstration reports (or associated attest engagements) for the 2014 standards until EPA issues a final rule establishing the final 2014 RFS standards and sets (in that action) a compliance demonstration deadline for those standards.

Under the Clean Air Act, EPA establishes RFS percentage standards through annual rulemaking. The Act provides that rulemaking for a given compliance year is to be completed by November 30 of the prior year. However, on December 9, 2014, the EPA issued a Federal Register Notice announcing that it would not be finalizing the 2014 percentage standards under the RFS program until sometime in 2015. 79 FR 73007.

EPA regulations require obligated parties to submit compliance reports by March 31 of each year for the previous annual compliance period, and submit attest engagements with respect to these compliance reports by June 1 of each year. 40 CFR 80.1451(a) and 80.1464(d). EPA interprets these reporting and attest engagement deadlines at 40 CFR 80.1451(a) and 80.1464(a) to be inoperative for obligated parties for the 2014 compliance year because final RFS standards for 2014 have not been established, and it is therefore impossible for obligated parties to assess their compliance with the applicable standards. Therefore, obligated parties are not required to submit compliance reports or attest engagements for the 2014 compliance year in accordance with the deadlines set forth in 40 CFR 80.1451(a) and 80.1464(d). When EPA issues a final rule establishing 2014 RFS percentage standards, we will in the same action establish a deadline for compliance demonstration reports and attest engagements for obligated parties associated with the 2014 standards.

The situation is different for exporters of renewable fuel in that it is possible for exporters to partially or fully meet the regulatory deadlines for compliance reports and attest engagements, as described in more detail below. An exporter's renewable volume obligation ("ERVO") is determined entirely by the volume and type of renewable fuel exported. Therefore, all exporters are able to comply with the requirement in 40 CFR 80.1451(a)(1)(vi) to report their ERVOs for 2014 by the March 31, 2015 annual compliance demonstration deadline.

Beginning September 17, 2014, exporters of renewable fuel must retire RINs to satisfy ERVOs within 30 days of each export. ERVOs associated with exports occurring between January 1, 2013 and September 16, 2014 must be satisfied at the time of the compliance demonstration deadline for the 2013 compliance period. 40 CFR 80.1430(g). That deadline is currently set by 40 CFR 80.1451(a)(1)(xiv) as 30 days after publication in the Federal Register of the final rule establishing the 2014 RFS percentage standards. Considering that all exporters currently know their 2014 ERVOs, and that certain 2014 ERVOs (for exports on or after September 17, 2014), must be satisfied within 30 days of export and other 2014 ERVOs (for exports prior to September 17, 2014) need only be satisfied at the time of the compliance demonstration for the 2013 compliance period (which is 30 days after publication of the final 2014 rule), EPA interprets the March 31, 2015 deadline in 40 CFR 80.1451(a) for 2014 annual

compliance demonstration reports for exporters, and the associated deadline for attest engagements for such reports, as follows.

All exporters of renewable fuel in 2014 must submit annual compliance reports by the March 31, 2015 deadline that includes at a minimum the information specified in 40 CFR 80.1451(a)(1)(i)(exporter's name), (ii)(EPA company registration number), and (vi)(the exporter renewable volume obligation for all of calendar 2014). All exporters may elect to fully comply with the annual reporting requirement in 40 CFR 80.1451(a)(1).

In addition, those parties that exported renewable fuel on or after September 17, 2014 must include information pursuant to 80.1451(a)(1)(viii) regarding RINs retired to satisfy such ERVOs, and (x) regarding cellulosic biofuel waiver credits used, if applicable.

For all exporters not submitting complete annual compliance reports by March 31, 2015, (e.g., those exporters that have not elected to fully report RINs retired to meet their full calendar year ERVOs), supplemental annual compliance reports are due 30 days after EPA issues a final 2014 rule, unless EPA modifies this deadline through rulemaking.

Attest engagements with respect to the partial or complete annual compliance reports submitted by March 31, 2015 are due on June 1, 2015, in accordance with 40 CFR 80.1464(d). Attest engagements with respect to supplemental annual compliance reports are due 90 days after issuance of the 2014 final rule, consistent with the attest engagement deadline specified for the 2013 compliance year that is specified in 80.1464(g), unless this deadline is modified by EPA through rulemaking.

EPA will publish another Enviroflash if it issues rules changing the deadlines described in this Enviroflash.