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U.S. Environmental Protection Agency
Office of Air and Radiation
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460


Shell appreciates the opportunity to comment on the proposed RFS annual rules for 2020-2022 and EPA’s proposed denial of petitions for small refinery exemptions. Shell is an obligated party under the Renewable Fuel Standard (RFS) program, a renewable fuel blender and marketer, and a renewable fuel producer. Shell appreciates the significant efforts that went into the proposed regulations and recognizes the critical role of the EPA in achieving the Country’s emission reduction ambitions.

Through Shell’s global Powering Progress strategy, we are working with our customers and across sectors to accelerate our own progress and support the transition to net zero emissions in the United States and globally, in step with society. Industry, governments, policymakers, and consumers all must work together so we can move toward a world that stops increasing greenhouse gases in the atmosphere. With more than a 100-year history in the United States, we want to play our part to ensure that Americans continue to have access to reliable and affordable energy during this necessary and essential transition to low and zero carbon energy. We believe in sound policies that support the transition to renewables and lower-carbon energy sources, including seeking to ensure transition in a fair and equitable manner. As such, Shell generally supports the RFS.

Retroactive Adjustment to 2020 Standards

EPA proposed to retroactively relax the 2020 RFS standards. 86 Fed. Reg. at 72438. While we understand EPA’s desire to adjust the standards for the reasons explained in the proposal, EPA is penalizing those obligated parties that acquired RINs to comply with the 2020 standards. To alleviate the impact on those obligated parties, EPA should revise the 20% RIN rollover cap.
(80.1427(a)) to provide the obligated parties with more flexibility to decide whether to use their RINs for their own compliance. EPA should allow 40% carry over for 2020 to 2021, and 30% carry over for 2021 to 2022 for both the annual standards and the supplemental standard. Starting in 2023, EPA should revert to 20% RIN rollover cap.

**Biointermediates**

EPA is proposing to allow biointermediates produced at one facility to be used at a second facility to produce renewable fuel. EPA is understandably concerned about the potential complications that this creates for the program and has proposed several limitations on the use of biointermediates. EPA has proposed three key limitations: 1) limiting the number of biointermediates allowed at this time; 2) requiring that both the biointermediates facility and the facility that produces the renewable fuel to participate in the RIN Quality Assurance Program (QAP); and 3) requiring that all of the biointermediates produced at a facility be delivered to a single facility to produce the renewable fuel. 86 Fed. Reg. at 72466

We welcome EPA’s proposal to expand the RFS program to include biointermediates. We do believe, however, that the proposed regulations can be improved to unlock the potential for biointermediates to reduce the carbon intensity of liquid fuels.

The definition of “biointermediates” states that a biointermediate must not “meet the definition of renewable fuel in this section and RINs were not generated for it as a renewable fuel in its own right”. In other words, in those cases where the properties of a potential biointermediate product are such that it can be used either directly as renewable fuel (and thereby generate RINs) or as a biointermediate, it would be disqualified for consideration as a biointermediate under the RFS under this proposed definition. Unfortunately, there are many cases in commercial practice where a renewable product could be used, as produced, as either a renewable fuel or a biointermediate. This proposed definition would exclude them from use as a “biointermediate.” This is counterproductive and does not support the goals of the program. We believe that EPA can expand the definition of “biointermediates” to include such fuels while protecting the integrity of the program through batch designation for the product to be either as a fuel or as a biointermediate at the time of production and transport / transfer.

We also suggest that EPA revise the definition of “biocrude” to make it more expansive. The proposed definition unnecessarily narrows the scope of potential biocrude production technologies to gasification and pyrolysis, when there are several explicit additional approved pathways in TABLE 1 of §80.1426 which produce a biocrude intermediate. We suggest that EPA expand the definition of “biocrude” so as not to inadvertently exclude processes that should qualify:

*Biocrude* means a liquid biointermediate produced from renewable biomass through gasification or pyrolysis at a biointermediate production facility to be used to produce renewable fuel at a refinery as defined in 40 CFR 1090.80.
Alternatively, EPA could expand the definition of “biocrude” to include additional processes:

*Biocrude* means a liquid biointermediate produced from renewable biomass through gasification, hydrothermal liquefaction, catalytic pyrolysis, hydroprocessing or pyrolysis at a biointermediate production facility to be used to produce renewable fuel at a refinery as defined in 40 CFR 1090.80.

In addition, we suggest that the definition of “biointermediates” be revised to broaden it to include other alcohols, such as methanol, which could be used in the production of biodiesel. Specifically, we suggest revising proposed 40 CFR 80.1401(5)(ii) to include alcohols in addition to “undenatured ethanol alcohol feedstock.”

While we understand EPA’s desire to create a robust program to guard against RIN fraud, we believe that the proposed limitation that would require the entire biointermediate production be sent to a single facility for further processing into a final renewable fuel is overly prescriptive. EPA is also proposing to require that both the biointermediate production facility and the facility that produces the renewable fuel participate in the QAP program. We support the mandatory QAP provision. Requiring that both the biointermediates production facility and the facilities that receive the biointermediates participate in the QAP program is sufficient to address EPA’s concerns about RIN fraud. RIN fraud is the reason the QAP program was created, and EPA created a robust program to guard against fraud. EPA should rely on that program and not restrict the number of facilities that can receive the biointermediates from the biointermediate production facility. Further, we suggest that EPA not require all related facilities use the same QAP provider. That is an unnecessary restriction and there may be benefits in terms of independence by allowing the facilities to each chose their own – EPA approved – QAP provider.

Furthermore, EPA should allow for the possibility of an intermediate facility between the initial facility that converts the renewable biomass feedstock to a biointermediate and the final facilities that convert the biomass to a renewable fuel. We envision situations where an intermediate facility will be necessary to further process the biointermediate to, for example, deoxygenate, before the biointermediate will be suitable for processing into a renewable fuel at another facility. We would expect that EPA would require all facilities in the chain to participate in the QAP program. We believe that participation in the QAP program will ensure the integrity of the RINs.

EPA has proposed other restrictions on the use of biointermediates that will undermine their potential. EPA is proposing to require that batches of biointermediates remain segregated from other biointermediates and other feedstocks, even though it can be chemically and physically the same feedstock, until its arrival at the renewable fuel production facility. This complicates logistics and unnecessarily increases costs. Biointermediates should be treated the same as other renewable fuel feedstocks and like biointermediates should be allowed to be comingled prior to arrival at the final renewable fuel production facility. The mandatory QAP requirement will ensure the integrity of the RINs.
RFS SET

EPA will soon be proposing the RFS SET rule that will establish the RFS volumes for 2023 and beyond. It is imperative that EPA complete this rulemaking as soon as possible in 2022 to provide the industry the necessary guidance to comply with the RFS in 2023 and beyond. Given the shortness of time, we suggest that EPA bifurcate the SET process and focus first on a combined rule for 2023-2025 to provide the industry some certainty and to provide the Agency time to develop a more robust SET rule to shape the RFS program for the future to drive greater reductions in GHG emissions.

Small Refinery Exemptions

EPA is proposing to deny all undecided/pending small refinery exemption petitions under the Renewable Fuel Standard program currently before the agency. EPA explained that the Agency “conducted an extensive analysis and review of information provided by small refineries in their SRE petitions to EPA, finding that all refineries face the same costs to acquire RINs regardless of whether the RINs are created through the act of blending renewable fuels or purchased on the open market.” 86 Fed. Reg. at 7100. Thus, EPA concludes that this situation applies to “all parties subject to the RFS, there is no disproportionate cost to any party, including small refineries. As a result, we conclude that small refineries do not face DEH [Disproportionate Economic Harm, which is the test for small refinery exemptions].” Id. EPA is correct to recognize, consistent with the court’s decision in Renewable Fuels Association, et al. v. EPA, 948 F.3d 1206 (10th Cir. 2020) that in order to qualify for a small refinery exemption the petitioner must demonstrate that the harm is caused solely by the RFS, which they cannot due to the fact that they recover the cost of the RINs and all refineries are similarly affected.

EPA summarizes the analysis succinctly in the detailed Proposed RFS Small Refinery Exemption Decision at 1:

The conclusions we rely on in presenting this proposal are: (1) Regardless of the mechanism by which small refineries and other obligated parties comply with their RFS obligations, the RFS compliance costs are the same for all obligated parties and thus no party bears RFS compliance costs that are disproportionate relative to others’ costs; (2) Obligated parties, including small refineries, recover their compliance costs through the market price they receive when they sell their fuel products and thus do not bear a hardship created by compliance with the RFS program; and (3) With no disproportionality and no economic hardship, there can be no disproportionate economic hardship pursuant to the statute.

Shell supports EPA’s proposed decision to deny the outstanding SRE petitions and hopes that EPA will be guided by this analysis in the future to restore stability to the RFS program to provide confidence to investors in the advanced and cellulosic biofuels that will be needed
reduce emissions from transportation fuels to achieve net zero emissions.

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We appreciate your consideration of these comments and your continued leadership in this area. Shell hopes to be a partner in your ongoing efforts to support clean mobility and looks forward to the road ahead. If you should have any questions concerning these comments, please feel free to contact me at John.Reese@Shell.com.

Sincerely,

John E. Reese
Policy & Advocacy Lead, Downstream