



August 8, 2025

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

**RE: Renewable Fuel Standard (RFS) Program: Standards for 2026 and 2027, Partial Waiver of 2025 Cellulosic Biofuel Volume Requirement, and Other Changes  
[Docket No. EPA-HQ-OAR-2024-0505]**

Dear Mr. Burkholder,

The Energy Marketers of America (EMA) submits the following comments to the U.S. Environmental Protection Agency's (EPA) on its proposed Renewable Fuel Standard (RFS) for 2026 and 2027. Although EMA supports expanding the availability and accessibility of biofuels as a matter of energy independence and climate policy, we encourage EPA to consider retail infrastructure compatibility, price stability, and fuel fungibility when structuring its RFS regime.

EMA is a federation of 48 state and regional trade associations representing small business fuel distributors and retailers across the country. EMA marketers are responsible for supplying 80 percent of all finished motor and heating fuel products nationwide—operating approximately 60,000 retail stations, distributing motor fuels to an additional 40,000 gas stations, and delivering heating fuels to more than five million homes and businesses. EMA companies operate mainly below the rack and do not have the ability to blend biofuels. However, our downstream marketers react to market dynamics and adjust operations according to policy signals and retail realities.

Wholesale and retail fuel markets are highly competitive, forcing energy marketers to operate within narrow margins and respond quickly to price fluctuations. Because consumers are very price-sensitive, particularly in the current inflationary environment, downstream marketers must consistently offer the lowest possible prices to maintain their customer base. Thus, any cost advantage—no matter how small—is critical in staying competitive. This is especially true for small business energy marketers, who have far less flexibility.

As fuel travels downstream through the distribution system, upstream costs inevitably pass along the chain and are ultimately reflected at the pump and in homes. Conversely, when opportunities arise to reduce costs—such as through biofuels incentives—marketers act swiftly to capitalize. Accordingly, it is important for the RFS, the cornerstone of federal biofuels policy, to be price sensitive and account for key factors such as fuel compatibility with retail infrastructure when setting volumes. Please find below EMA's detailed comments.

**I. EPA Shouldn't Force UST System Retail Upgrades Through Unrealistically High Ethanol RVOs.**

a. Ethanol RVOs Must Reflect Real-World UST System Compatibility.

EMA strongly supports the continued use and growth of renewable fuels as part of the nation's long-term energy strategy. However, we remain deeply concerned that the proposed Renewable Volume Obligations (RVOs) for conventional ethanol could exceed practical infrastructure limits, effectively forcing E15 blends into the retail market at a pace that is not supported by current underground storage tank (UST) system compatibility.

As EMA has consistently maintained, the annual corn ethanol RVO should not amount to a de facto mandate to upgrade UST systems. Instead, it should reflect current infrastructure compatibility. Absent sufficient financial support to retrofit or replace existing UST systems, corn ethanol RVOs above this level creates a tilted playing field for small business energy marketers.

Most UST systems in operation today were installed to store and dispense fuels containing no more than 10 percent ethanol. While the vast majority of tanks are compatible with higher blends, other components of the system—such as underground piping, monitoring equipment, seals, gaskets, sumps—often are not. A particularly serious concern involves the ethanol compatibility of pipe dope, the sealing adhesive used at threaded junctions throughout UST systems. According to EPA's Office of Underground Storage Tanks (OUST), systems installed as recently as 2007 likely used pipe dope incompatible with ethanol concentrations greater than E10.<sup>1</sup> Incompatible pipe dope can degrade, leading to leaks and releases that violate federal and state UST regulations, jeopardize groundwater resources, and potentially require expensive corrective action. In many cases, retrofitting these pipe joints would require excavation and full system disassembly, particularly where components are buried outside secondary containment.

EMA estimates that achieving universal E15 compatibility would require more than \$1 billion in infrastructure investment—without accounting for the revenue losses during site closures required to complete the upgrades. Such funding is not yet available at scale and is simply untenable for most small business energy marketers.

To be clear, EMA is not opposed to contributing to higher E15 penetration, but it must be safe, legal, and economically viable to do so. Setting RVOs that assume full market access for E15 ahead of infrastructure readiness risks unintended consequences. It pressures retailers to either undertake costly upgrades they cannot afford or exit the liquid fuels market entirely—undermining the very goals of the RFS. Therefore, EMA urges EPA to set the volumetric ethanol mandate to

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<sup>1</sup> U.S. Environmental Protection Agency, Underground Storage Tank Technical Compendium about the 2015 UST Regulation, available at <https://www.epa.gov/ust/underground-storage-tank-technical-compendium-about-2015-ust-regulation#compatibility> (“Ensuring UST systems are compatible with the pipe dope and sealant used is critical because EPA thinks that pipe dope used prior to 2007 is probably not compatible with ethanol blends greater than 10 percent.”).

no more than 9.7 percent of projected gasoline demand as determined by the Energy Information Administration (EIA).

b. Ethanol RVOs Should Consider Consumer Confusion at the Pump.

E15 increases at the pump, driven by ethanol RVOs, have the potential to exacerbate an ongoing advertising fuel problem.<sup>2</sup> EMA is aware that consumers are often confused by the E15 operability limitations. A growing segment of the retail market advertises E15 as “88 Octane”, “Unleaded 88,” or “88 Plus” on street signs displaying fuel type and price per gallon to passing motorists. The advertised price is often significantly lower than comparable E10 blends, but the signs typically fail to disclose that the product is E15.

As a result, consumers are drawn by the prospect of high-octane gasoline at a lower price, believing they are purchasing E10. It is not until they reach the pump, or often after refueling, that they realize the fuel advertised is E15 rather than E10. This kind of product confusion increases the risk of misfuelling, which can damage engines and emissions systems, and puts nearby small business retailers selling only E10 due to UST system compatibility issues at an unfair competitive disadvantage.

EMA urges EPA to consider consumers’ limited awareness of fuel compatibility and the market distortions caused by confusing signage when setting RVOs, particularly as higher ethanol blends gain broader distribution under the RFS.

**II. EPA Should Restore Confidence in Biodiesel and Renewable Diesel Markets Through the RFS.**

EMA is concerned that aspects of the proposed rule risk exacerbating market instability for biodiesel and renewable diesel, rather than promoting sustained growth and investment. While EMA is neutral on the overall volumes proposed for biomass-based diesel and non-cellulosic advanced biofuels in 2026 and 2027—so long as they help counteract the significant disruption caused by the flawed rollout of the Section 45Z Clean Fuel Production Credit—we caution against any market design changes that could further erode confidence in the sector.

The biofuels market continues to grapple with uncertainty stemming from delays and a lack of clarity surrounding the transition from the \$1-per-gallon blender’s tax credit to the emissions-based 45Z credit. According to the EIA, production of renewable diesel and biodiesel fell sharply in the first quarter of 2025, due in large part to confusion over eligibility and commercial viability under the new tax credit structure.<sup>3</sup> The RFS policy should send signals for long-term stability.

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<sup>2</sup> EMA is neutral in extending the 1-psi RVP waiver to E15 blends during summer months.

<sup>3</sup> U.S. Energy Information Administration, U.S. renewable diesel production and biodiesel production declined in 1Q25 (June 4, 2025), available at <https://www.eia.gov/todayinenergy/detail.php?id=65424> (“U.S. production of renewable diesel and biodiesel fell sharply in the first quarter of 2025 (1Q25) because of uncertainty related to federal biofuel tax credits and negative profit margins.”).

While EPA's proposed rule appears reasonable on its face in terms of volume targets, it introduces new variables into already volatile markets. The industry urgently needs regulatory certainty to cure 45Z deficits and its regulatory whiplash—not additional shifts in crediting or compliance frameworks. Accordingly, EMA urges EPA to preserve core market design principles that support broad and efficient participation across domestic and global supply chains.

First, EMA opposes the proposed RIN reduction for imported fuels and foreign feedstocks. From a structural standpoint, the proposed RIN reduction for imported products would effectively inflate compliance burdens by reducing the pool of qualifying credits without commensurate adjustments to overall volume targets. This artificially tightens supply, reduces commercial flexibility, and risks pushing up RIN prices—impacts that would likely be passed down to energy marketers below the rack and consumers. At the same time, the proposed change would impose burdensome origin-tracking and verification requirements that could further impact the market.

EMA is primarily concerned over price impacts in the biodiesel and renewable diesel sector. This change would disproportionately affect regions that rely heavily on imported finished fuels, such as the Northeast and Midwest. For example, states like New York, Illinois, Minnesota, Pennsylvania, Rhode Island and Connecticut depend on imported fuels to meet demand and state compliance requirements. In these areas, the inflationary consequences and supply chain disruptions would be most acutely felt.

While we commend the Agency's intent to incentivize domestic production, global biofuels value chains remain essential to domestic policy goals under the statute: energy security, supply reliability, consumer affordability, and climate change. For the foregoing reasons, EMA urges EPA not to move forward with this proposal. If the Agency insists on adjusting RIN values for imports, a phased approach—starting at 85% and tapering gradually to 65%—could mitigate inflationary effects, provide supply chains in key regions time to adapt, and avoid further destabilization in the biodiesel and renewable diesel market.

Second, while EMA does not strongly oppose the proposed reduction in the equivalence value for renewable diesel, we urge EPA to recognize that even incremental changes to the RFS—especially those affecting RIN generation and RVO compliance—can impact investor decisions, particularly for planned, new, or marginal renewable diesel facilities.

In sum, EPA should avoid structural changes that risk undermining the biodiesel and renewable diesel sector—a market that has gained growing traction in both transportation and heating applications. At a time when industry needs regulatory certainty and investor confidence, it is imperative for the Agency to minimize further market disruption and enable broader participation in the clean fuel value chain.

### **III. EPA Should Maximize Incentives for the Heating Oil Sector by Removing Inefficiencies in RIN Generation.**

While EMA understands the need to preserve program integrity, affidavit requirements for heating oil end-users lack a favorable cost-benefit ratio. Notably, it imposes impractical and burdensome barriers, particularly for small business fuel marketers, that jeopardize commercial gains from the incentives.

The downstream heating oil market is structurally incompatible with a customer affidavit regime. For example, EMA marketers serve millions of individual households and small businesses. Thus, affidavit requirements imply collecting and maintaining a significant volume of customer attestations—a logistical challenge that far outweighs any identifiable benefit. Furthermore, the overwhelming majority of renewable heating oil distributed is used for qualifying RFS purposes. Requiring extensive documentation for such well-established, routine use cases imposes compliance obligations that are disproportionate to any marginal reduction in misuse risk. Even EPA has recognized the difficulties of such burdens when it evaluated the scope of the term “heating oil” under the program:<sup>4</sup>

*If EPA interpreted the term to apply only to heating oil actually used in homes, we would necessarily require tracking of individual gallons from production through ultimate [use] in homes in order to determine eligibility of the fuel for RINs. Given the fungible nature of the oil delivery market, this would likely be sufficiently difficult and potentially expensive so as to discourage the generation of RINs for renewable fuels used as home heating oil.*

EMA is cognizant that some level of end-use documentation for certain RFS pathways—such as biogas—is sound policy. It makes sense for pathways that involve consolidated or major customers and have predominantly non-RFS qualifying uses to have downstream verification mechanisms. While end-use affidavits may be appropriate in some RFS contexts—where use pathways are highly complex and verification is otherwise infeasible and cannot be presumed for sake of efficiency—the same logic does not extend to renewable heating oil. Here, the use case is well-established, the customer base is diffuse, and the compliance burden would fall disproportionately on small business fuel marketers and their residential customers. EPA should revisit its affidavit approach for renewable fuel oil to maximize operational efficiencies and federal incentives to the heating oil sector.

Related to maximizing the RFS incentives in the heating oil sector, EMA asks EPA to take a hard look at expanding the definition of qualifying heating oil applications to better reflect modern energy realities and expand market opportunities. While the current RFS regime reinforces the value of heating oil for space and water heating, as explained above, there is opportunity to create additional avenues for RIN generation and incentives to reduce the use of fossil fuels—consistent with statutory intent and policy goals. Specifically, EMA recommends evaluating whether fuel

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<sup>4</sup> Regulation of Fuels and Fuel Additives: Modifications to Renewable Fuel Standard Program, 78 Fed. Reg. 62464 (Oct. 22, 2013).

oils used to produce energy for industrial, commercial, or institutional operations, such as backup or standby heating systems in data centers or hospitals, is warranted under the law. After all, similar to the 2013 expansion, maximizing federal incentives in the heating oil context can meaningfully support both decarbonization and energy resilience.

#### **IV. EPA Should Avoid SRE Reallocation to Prevent Disproportionate Hardships on Small Marketers and Preserve Fuel Pricing Stability.**

While EMA takes no position on the granting of Small Refinery Exemptions (SREs), it is important that EPA refrain from reallocating volumes based on exemptions. Reallocating exempt volumes alters compliance obligations and can indirectly affect downstream market dynamics—particularly by influencing RIN values and supply pricing. EMA urges EPA to maintain a predictable RFS structure that recognizes the cascading impact of upstream compliance decisions on downstream fuel pricing.

Reallocation tends to inflate RIN prices and inject volatility into the market. These fluctuations in RIN values are often reflected in wholesale fuel prices, which EMA marketers must absorb or pass along in competitive retail environments. Small business fuel marketers are especially vulnerable to pricing swings they cannot control or reliably predict. Even EPA acknowledges that “[t]here is currently significant uncertainty regarding the number of [SRE] petitions that could be granted for 2026 and 2027.”<sup>5</sup> While EMA commends the Agency for attempting to reduce price volatility and support price stability through the use of lower and upper bound projections, the future of SRE petitions remains in flux. Ongoing litigation and unresolved legal questions regarding the parameters for granting exemptions makes reallocation impacts highly uncertain.

Given these uncertainties, utilizing reallocation as a factor in setting volumes risks distorting supply costs and pricing dynamics in ways that disproportionately affect those least equipped to absorb them. Stability and transparency in the administration of exemptions are therefore critical to ensuring price responsiveness and preserving a level playing field for all market participants. EMA urges EPA not to impose disproportionate economic hardship on small businesses through added uncertainty and volatility stemming from SRE re-allocation.

#### **V. EMA Commends the Removal of the e-RIN Pathway.**

EMA supports the Agency’s repeal of the eRIN pathway which would have allowed automakers to generate eRINs based on the EVs they sell by establishing contracts with parties that produce electricity from qualifying biogas. EMA has argued during the Biden Administration that EPA lacked the authority to implement the proposed eRIN credit for renewable electricity because it is inconsistent with the statutory purpose of the RFS, which is to support the production of renewable fuels, not the production and sale of certain vehicle technologies that eRINS are designed to promote. EPA should proceed with its proposal to remove the e-RIN pathway.

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<sup>5</sup> Renewable Fuel Standard (RFS) Program: Standards for 2026 and 2027, Partial Waiver of 2025 Cellulosic Biofuel Volume Requirement, and Other Changes, 90 Fed. Reg. 25784, 25833 (June 17, 2025).

Mr. Dallas Burkholder

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EMA appreciates your attention to these important issues and welcomes the opportunity to meet and discuss its comments. If you have any questions about the comments, please reach out to EMA's Regulatory Counsel, Jeff Leiter ([jleiter@bmalaw.net](mailto:jleiter@bmalaw.net)) and Jorge Roman ([jroman@bmalaw.net](mailto:jroman@bmalaw.net)).

Sincerely,

Rob Underwood, President