October 31, 2025

Submitted via www.regulations.gov and
by email (RFS-Rulemakings@epa.gov)

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

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

Dear Mr. Burkholder,

The Energy Marketers of America (EMA) submits the following comments on the Environmental Protection Agency's (EPA or Agency) supplemental notice of proposed rulemaking (SNPRM) related to revisions to the Renewable Fuel Standard (RFS) for 2026 and 2027 to account for the Agency's recent small refinery exemption (SRE) decisions. Because EPA's SRE decisions exempted significant volumes of gasoline and diesel fuel for the 2023 and 2024 compliance years, the Agency should waive these exempted renewable fuel volumes rather than reallocating them back into the renewable volume obligations (RVOs) of non-exempt refiners.

EMA is a federation of 48 state and regional trade associations representing small business fuel distributors and retailers across the country. EMA marketers supply 80 percent of all finished motor and heating fuels nationwide, operating approximately 60,000 retail stations, distributing motor fuels to an additional 40,000 gas stations, and delivering heating oil to more than five million homes and businesses. Most EMA marketers sell branded fuel, operate below the rack, and do not have the ability to blend biofuels. In that context, our downstream marketers are highly sensitive to policy signals, supply pricing, and retail realities. While EMA has remained neutral on the granting of SREs, offsetting the waived gallons by increasing the RVOs of non-exempt refiners undermines the predictability of the RFS program and yields higher fuel costs.

At the most basic level, EPA's co-proposed reallocations materially change regulatory burdens across the liquid fuels industry, resulting in multi-billion effects that eventually get passed through to consumers with EMA marketers stuck in the middle. This is a substantial transfer of wealth within the liquid fuels industry. Because reallocation lacks clear congressional authorization in the Clean Air Act, EPA's final decision on the SNPRM will present the issue of the "major questions doctrine" from the vast economic and political significance resulting from the Agency's action. There also is a substantive difference between adjusting aggregate national volumes of renewable fuels and shifting specific legally assigned obligations of private parties.

If EPA transfers either 100% or 50% of the waived SRE volumes to non-exempt refiners, it will have practical effects, including increasing or spiking the cost of RINs and raising compliance costs for the non-exempt refiners. For fuel marketers that do not blend products, SRE reallocation creates significant challenges. Reallocation effectively will lead to higher prices for fuels at the rack—especially for branded marketers. Branded distributors and retailers rely on major refiners to supply fuel under their brand and cannot easily switch suppliers to mitigate costs.

Branded marketers generally enter into long-term contractual agreements to obtain fuel under a brand, which obligates them to purchase specific volumes at set specifications and pricing terms. These contracts often limit marketers' ability to switch suppliers or source unbranded fuel, leaving them exposed to any upstream cost increases or supply constraints caused by SRE reallocation with very limited ability to mitigate costs. Bound by contractual supply obligations, EMA branded marketers are forced to absorb these costs, as passing them through in retail transactions is often not feasible in a competitive market.

Moreover, reallocation introduces additional market volatility that impacts EMA marketers. As non-exempt refiners adjust to meet RVO requirements, RIN prices and fuel costs will rise unpredictably, further straining EMA marketers' ability to maintain competitive pricing. Given their limited flexibility and reliance on branded supply, it is critical that any SRE reallocation consider the disproportionate impact on branded marketers to avoid disrupting local fuel supply and harming their economic viability.

EMA urges EPA to recognize the cascading effects of upstream compliance decisions on downstream fuel pricing and avoid any SRE volume reallocation. Given inherent uncertainties and market pressures, including litigation over the implementation of SREs and the proposed RIN reductions for imported fuels and feedstocks, utilizing reallocation as a factor in setting RVOs risks further distorting supply costs and pricing dynamics in ways that disproportionately affect those least equipped to absorb them. EMA therefore urges EPA not to impose disproportionate economic hardship on small business fuel marketers through added uncertainty and volatility stemming from SRE reallocation.

EMA appreciates EPA's efforts to balance the goals of the RFS program in encouraging the production and use of renewable fuels with its economic impacts. Here, there is a disproportionate economic hardship that will result from the reassignment of the waived SRE volumes to other obligated parties. Consumers ultimately will face higher costs because of such reallocation, while EMA marketers must deal with compliance-cost impacts and market volatility. Reallocation should not occur.

If you have any questions about the comments, please reach out to EMA's Regulatory Counsel, Jeff Leiter (jleiter@bmalaw.net) and Jorge Roman (jroman@bmalaw.net).

Sincerely,

Rob Underwood
President