The American Fuel & Petrochemical Manufacturers' Comments on the 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),90 Fed. Reg. 45007 (Sept. 18, 2025)

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EXECUTIVE SUMMARY

The American Fuel & Petrochemical Manufacturers (AFPM) strongly opposes the Environmental Protection Agency's (EPA's) unlawful attempt to increase the 2026 and 2027 Renewable Fuel Standard (RFS) volumes to account for small refinery exemptions granted for 2023-2025. If finalized, the proposed supplemental mandate (or "SNPRM") would harm consumers and U.S. energy manufacturers. EPA's proposal suffers from a lack of coherent analytical or statutory basis and should be withdrawn.

EPA lacks statutory authorization to increase biofuel volumes based solely on the existence of carryover RINs. By arbitrarily proposing to add volumes of either 50% or 100% of the 2023–2025 small refinery exempt volumes (hereinafter "SRE Reallocation Volumes")[1] to the Renewable Volume Obligations (RVOs) for 2026 and 2027, EPA attempts to add new renewable fuel volumes without undertaking the mandatory analyses required under the Clean Air Act (CAA) § 211(o)(2)(B)(ii).[2] The CAA clearly establishes six categories and 20 factors that EPA must evaluate when setting volumes after 2022 and none of those factors authorize EPA to consider the availability of SRE RINs.

The RFS does not provide *any* authority for the EPA to create an "SRE Reallocation Volumes" obligation based on compliance years that have already passed or to increase the volumes of renewable fuel in future years on this basis. EPA can only set standards for 2026 and 2027 after undertaking an analysis of six criteria contained in CAA §§ 211(o)(2)(B)(ii)(I)-(VI) and a review of the RFS program in calendar years 2006 through 2022. In creating out of whole cloth an SRE reallocation based on SREs granted for 2023-2025, EPA provided no assessment of the six statutory criteria and is considering implementation of the RFS in years beyond 2022, which it plainly cannot do.[3]

EPA's stated purpose of the SNPRM is to add volumes to safeguard RIN demand and RIN prices remain high enough to support the production of renewable fuel,[4] which impacts the RIN market and RFS compliance. Even assuming this is a permissible interpretation of its authority, EPA should have, but did not, review the implementation of the program and perform an analysis of those CAA's statutory factors in CAA § 211(o)(2)(B)(ii) to offer its assessment of how the proposal aligns with its review of the statutory factors. Nor did EPA provide data transparency or sensitivity analyses. Indeed, despite explicit direction from the Office of Management and Budget (OMB), EPA failed to perform a full Regulatory Impact Analysis (RIA), which should have included a 0% reallocation as suggested through interagency review, or quantifying the incremental impact of adding the 2023-2025 SRE RINs on top of the proposed Set 2 volumes for 2026 and 2027.

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[1] We use the term "SRE Reallocation Volumes" to align with the SNPRM, although the substance of EPA's proposal is to add applicable volumes to the Set 2 proposal equivalent to the values of the 2023 and 2024 SRE granted and the expected 2025 SREs to maintain or increase RIN demand and RIN price.
[2] 42 U.S.C. §§ 7545(o)(2)(B)(ii).
[3] EPA must explicitly "review implementation of the program during the calendar years [specified in CAA § 7545(o)(2)(B)(i)]. *Id.*, § 7545(o)(2)(B)(ii). As noted in further detail below, these are only years between 2006 and 2022.
[4] 90 Fed. Reg. at 45010.

Second, EPA's limited analysis disregards ongoing RIN deficits, production shortfalls, and compliance bank depletion, rendering the proposal arbitrary and capricious. EPA's conjecture that it can grant SREs for 2023-2024 today and then add volumes equivalent to those RINs returned to small refiners for 2023 and 2024, along with projected SREs for 2025, to the 2026 and 2027 RFS volumes without additional market costs overlooks critical RIN market fundamentals. The RIN market must be understood in the context of renewable fuel supply, RIN demand, market liquidity, and inherent volatility—factors that have been significantly affected by EPA's delay in issuing the SRE decisions.[5] Indeed, analysts already "expect the RVO compliance per barrel of gasoline or diesel to go from $5.42/bbl through the first five months of 2025 to $10.24 in 2026,"[6] meaning that they will nearly double in less than two years. EPA must not exacerbate these high costs with additional volumes.

It is unlikely that in granting the 2023-2025 SRE petitions, EPA actually made available for compliance *all* 2.18 billion SRE RINs that EPA is proposing to add as applicable volumes to the Set 2 proposal. For RINs to be 'returned,' they must have first been purchased. Some small refineries may not have purchased 2023 and 2024 RINs in the expectation they would receive an SRE. It is unlikely that those exempted volumes will result in additional RINs being available to market. Assuming all 2.18 billion SRE RINs were made available to small refineries, not all of these RINs will be available for 2026–2027 compliance years because a severely depleted RIN bank, which led to carryover deficits that must be satisfied in the next calendar year. Also, lagging 2025 renewable fuel production is projected to result in an additional RIN supply/demand deficit of approximately 1.64 billion RINs. While decisions on the 2025 SRE petitions and high biofuel production in 2024 will aid compliance, the Cumulative Net RIN Balance by the end of the 2025 compliance year will be *below* 2.18 billion RINs, contradicting EPA's claim that the addition of SRE reallocation volumes to the 2026-2027 compliance years can be met by the submission of the returned SRE RINs at no additional cost.[7] The fact is additional renewable fuel production will be required to achieve the additional volume requirements proposed in the SNPRM, increasing RIN demand, putting upward pressure on feedstock and RIN prices, and increasing overall RFS program costs. Again, EPA is required by CAA § 211(o)(2)(B)(ii) to evaluate the cost impacts of producing and using those additional

[5] General Accounting Office, *RENEWABLE FUEL STANDARD Actions Needed to Improve Decision-Making in the Small Refinery Exemption Program*, November 2022 at 24 (RIN prices drop when EPA grants all exemptions simultaneously for a certain compliance year, demonstrating that the timing of EPA's decision impacts the volatility in the RIN market). Available at GAO-23-105801, RENEWABLE FUEL STANDARD: Actions Needed to Improve Decision-Making in the Small Refinery Exemption Program.

[6] Robert Auers, RBN Energy, Double Trouble - EPA's RVO Proposal Would Raise Feedstock Prices, Compliance Costs, June 27, 2025. The article is proprietary information that was submitted to EPA as Appendix A in accordance with 40 CFR Part 2.203(b).

[7] What EPA fails to address is that EPA's proposed Set 2 biomass-based diesel (BBD) volumes were calculated based on limited 2023 and 2024 biofuel production volume that provided BBD an equivalence value of 1.7 RINs and any imported biofuels and domestic biofuels made with imported feedstocks received 100% RIN value. As detailed in AFPM's comments, even more biofuel volume will be needed to meet the Set 2 volumes if EPA's finalizes its proposal to reduce the BBD equivalence value to 1.6 and impose the 50% RIN reduction penalty. *See* AFPM Comments at 29-33.

volumes of renewable fuel and that evaluation should be based on the most recent available data.

EPA's action will have significant consequences for U.S. refining and consumers. Turner Mason & Company (TM&C) estimates that full (100%) reallocation alone could increase compliance costs by $10–12 billion. However, new analysis by S&P Global Commodity Insight confirms that feedstock shortages will increase soybean oil prices, forcing higher imports, and further undermining U.S. energy security—the very outcome the RFS was intended to prevent. As a result of forecasted higher feedstock prices, the price difference between bean oil (BO) or more specifically soybean oil—the primary feedstock for biodiesel production—and heating oil (HO) or ultra-low sulfur diesel (referred to as the BOHO spread) is expected to widen. If the spread widens to historical highs, TM&C projects the proposal could increase compliance costs from $136 to as much as $190 billion – an increase of $54 billion or 40%.[8] Furthermore, EPA failed to evaluate the impact of this proposal on food prices, which may require shifting the use of soybean oil from current uses, such as food or animal feed, to biofuel production.

Since volumes from the 2023 and 2024 SREs have been blended, the proposal to add/"reallocate" those volumes further increases volumes for 2026 and 2027. Adding these volumes punishes all refiners by inflating their obligations, deepening market inequities, and amplifying compliance instability. Importantly, the timing compounds harm: at best, the rule will be finalized mere weeks before the 2026 compliance year begins and at worst will be finalized after the 2026 compliance year begins, violating the CAA's 14-month lead-time requirement and denying refiners the ability to secure feedstocks or adjust operations. These policy failures risk market disruptions, higher fuel prices, and potential non-compliance across the refining sector that cannot be mitigated simply by extending the compliance deadline.

EPA must withdraw the SNPRM and instead implement a 0% reallocation policy. Only by setting volumes grounded in real, forward-looking production data and completing a comprehensive statutory impact analysis can EPA maintain compliance with both the CAA and principles of regulatory accountability.

[8] AFPM Comments on the Environmental Protection Agency's Proposed Renewable Fuel Standard (RFS) Program: Standards for 2026 and 2027, Partial Waiver of 2025 Cellulosic Biofuel Volume Requirement, and Other Changes (AFPM Set 2 Comments) at 11-15, available at Regulations.gov and attached as Appendix B. See also Turner Mason & Company, *2026-2027 SRE Scenarios, Comparing the Base Case, Supplemental SRE Scenarios* (TM&C SRE Report) at Slide 22 (attached as Appendix C).

COMMENTS

I. THERE IS NO LEGAL AUTHORITY FOR THIS PROPOSAL

A. EPA FAILED TO CONDUCT THE NECESSARY STATUTORY ANALYSIS

EPA "legal justification" for this proposal relies on its Set authority, which permits EPA to determine "applicable volumes" based on an evaluation of the enumerated statutory factors, including the rate of future commercial production of renewable fuels, the environmental impacts of producing and using renewable fuels, energy security, costs, and impacts on infrastructure and agricultural commodities.[9] The relevant provision, CAA § 211(o)(2)(B), requires:

> For the purposes of subparagraph (A), the applicable volumes of each fuel specified in the tables in clause (i) for calendar years after the calendar years specified in the tables shall be determined by the Administrator, in coordination with the Secretary of Energy and the Secretary of Agriculture, based on a review of the implementation of the program during calendar years specified in the tables, and an analysis of [the following 6 statutory factors][10]

The SNPRM departs from EPA's Set authority under the Clean Air Act by proposing to add the SRE Reallocation Volumes resulting from recently granted SREs petitions to the Set 2 volumes. The CAA neither recognizes nor permits EPA to set volumes exclusively based on the existence of *carryover* RINs resulting from SREs. Under the statutory framework, applicable renewable fuel volumes must be established each year based on expected annual production, with the intent of guaranteeing the blending and use of renewable fuels. EPA's proposed reallocation violates the statute's year-by-year structure. The best reading of CAA §211(o)(2)(B)(ii) requires EPA to set "applicable volumes" for "each" renewable fuel based on an analysis of statutory factors in CAA §211(o)(2)(B)(ii).[11] Notably, the statute is silent on the consideration of past SREs granted, clearly indicating that if Congress intended this factor to be considered, it would have included it among the statutory criteria.

The statute is also explicitly prospective. The EPA Administrator is to set applicable volumes for "other calendar years" after 2022 on an annual basis. These volumes must be promulgated 14 months "before the first year for which such applicable volumes apply."[12] Nothing in this statutory language provides EPA with authority to "look back" to past RFS years (after 2022) nor to consider how exemptions granted under the authority of CAA 211(o)(9)(B) impact future RFS volumes that are to be calculated under criteria making no mention of such exemptions.

The approach EPA proposes in its SNPRM starkly contrasts with its previous effort to add supplemental volumes to the 2020-2022 RFS (Set 1) volumes in response to the *Americans for Clean Energy v. EPA* (*ACE*) remand.[13] In the Set 1 context, EPA increased the applicable

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[9] *Id*.
[10] 42 U.S.C. § 7545(o)(2)(B)(ii).
[11] *Id.* at § 7545(o)(2)(B)(ii)(I)-(VI).
[12] *Id.* at § 7545(o)(2)(B)(ii).
[13] *Ams. for Clean Energy v. EPA* (*ACE),* 864 F.3d 691 (D.C. Cir. 2017).

volumes to address the D.C. Circuit's decision that EPA unlawfully exercised its general waiver authority. The court held EPA improperly interpreted the statutory criteria regarding "inadequate domestic supply" to lower required volumes and percentage standards relying on traditional tools of statutory interpretation.[14] The *ACE* decision, therefore, has no impact on either EPA's legal rationale for the proposed supplemental volumes or interpretation of CAA § 211(o)(2)(B)(ii).

ACE also stands for the proposition that EPA is not required to consider carryover RINs in setting standards. "[N]othing in the text of [either the CAA § 211(o)(7)(A) domestic supply waiver or CAA 211(o)(5) authority for credits/RINs] indicates that the 'supply' of renewable fuel available in a year must include any available 'carryover' credits from the prior year . . . EPA's interpretation reads the 'supply' of renewable fuel to mean just that – 'supply of renewable fuel' – rather than 'supply of renewable fuel and *supply of carryover credits*.' EPA's interpretation is consistent with the statutory text, not contrary to it."[15]

Though AFPM understands EPA's logic that the return of RINs resulting from the SRE decisions could theoretically result in obligated parties carrying over the returned RINs to future compliance years, thus reducing renewable fuel demand in 2026 and 2027, an analysis of the RIN market as shown in Table 1 on page 14, illustrates that this situation will not exist in reality because:

- There was a significant compliance deficit in 2023
- The RIN bank will be utilized in 2024 to satisfy the 2023 deficit
- 2025 RIN generation data shows RIN generation for January through August has declined by 25% compared to 2024.[16]

Finally, EPA's proposal effectively converts an exemption into a partial deferment, which may deprive some small refineries of previously granted exemptions. Specifically, the proposal reallocates volumes that Congress stated "shall not apply" to small refineries with exemptions, distributing those volumes to all obligated parties, including the same small refineries that initially received the exemptions. Although small refineries could seek another exemption, it remains uncertain whether EPA would grant a second exemption to cover the "reallocated volumes," or whether any subsequent SRE petition would be granted. Therefore, since this proposal could deny some small refineries the benefit of previously granted SREs, the only remedy is 0% reallocation.

B. EPA CANNOT CONSIDER SRES GRANTED IN 2023-2025 AS PART OF EPA'S REVIEW OF THE IMPLEMENTATION OF THE PROGRAM

EPA co-proposes to add volumes in 2026 and 2027 representing 100% and 50% of the SRE Reallocation Volumes granted for 2023 and 2024 and projected for 2025. EPA's attempt to explain its statutory authority for the SNPRM falls woefully short. At points in the supplemental proposal, EPA recognizes that its authority to set the RVOs stems from its application of the set

[14] *Id*. at 710.
[15] *Id.* at 714 (emphasis in opinion).
[16] AFPM Set 2 Comments (Appendix B) at 11-15. *See also* TM&C SRE Report (Appendix C) at Slide 2 (2025 D4 RIN generation has been 35% lower than 2024, and is the lowest in a 3-year average).

criteria and goes on to say that it has considerable discretion to weigh and balance those factors; however, it doesn't properly invoke that authority since it never weighs the factors and fails to explain to stakeholders the outcome of its evaluation of these criteria. EPA misinterprets a programmatic lookback provision as a separate grant of authority for retroactive reallocation: "We are considering the SREs granted for 2023-2025 under *our directive to review implementation of the program*."[17] Such action is clearly and unequivocally contrary to statute.[18]

CAA § 211(o)(2)(B)(ii) directs EPA to set standards, in part, "based on a review of the implementation of the program during ***calendar years specified in the tables***,"[19] meaning the tables contained in CAA § 211(o)(2)(B)(i).[20] These tables cover the years 2006 to 2022. They do not include the calendar years 2023-2025. Thus, EPA is without authority to "consider" the SREs granted during years 2023-2025 as part of the directive contained in CAA 211(o)(2)(B)(ii) to review "implementation of the program."

The CAA directive to review the implementation of the program during the years covered by the tables is a specific admonishment to EPA to consider the learnings of the first 15 years of the program when applying the six statutory criteria to set volumes. For example, experience has shown that high RIN prices do not result in increased ethanol production, program costs are typically passed through to consumers in most markets, and a depleted RIN bank can introduce unnecessary costs and volatility to the program, among other lessons.

The CAA § 211(o)(2)(B)(ii) is explicitly forward-looking, authorizing EPA to set applicable volumes "for calendar years *after* the calendar years specified in the tables. EPA points to no provision in CAA § 211(o) that allows the agency to in essence retroactively reallocate the volumes that applied in 2023 – 2025 and apply them in 2026 -2027.[21]

C. THE CAA DOES NOT AUTHORIZE EPA TO SET APPLICABLE VOLUMES BASED ON RIN AVAILABILITY

1. The CAA requires EPA to set cellulosic volumes based on the projected production of cellulosic biofuel and on the assumption no waiver will be required

The cellulosic statutory provisions are explicit and are based on deliberate legislative choices. When Congress approved the RFS2 program in 2007, it recognized that cellulosic biofuel technology was emerging and uncertain and it would be unfair to penalize obligated parties for failure to meet unachievable cellulosic mandates due to lack of production. Congress therefore created an unequivocal, mandatory waiver for cellulosic biofuel[22] and provided for cellulosic waiver credits (CWCs) to be available to ensure a method of achieving compliance with RFS requirements. Given this statutory structure unique to cellulosic biofuel, EPA may not

[17] 90 Fed. Reg. at 45014.
[18] *Id*. at 45011.
[19] 42 U.S.C. § 7545(o)(2)(B)(ii). (emphasis added).
[20] *Id. a*t § 7545(o)(2)(B)(i).
[21] *Loper Bright v. Raimondo*, 603 U.S. 369 (2024).
[22] 42 U.S.C. § 7545(o)(7).

take actions that would serve to "incentivize" higher aspirational volumes[23] nor can EPA rely on CWCs or carryover RINs in determining cellulosic biofuel standards.

EPA must set cellulosic biofuel standards equal to the projected production of cellulosic biofuel within an upcoming compliance year to comply with CAA § 211(o)(2)(B)(iv).[24] Second, EPA must promulgate post-2022 applicable volumes of cellulosic biofuel based on the "assumption that the Administrator will not need to issue a waiver."[25] Third, EPA must determine whether it is required to use its cellulosic biofuel waiver authority for RFS compliance year 2026 by November 30, 2025.[26] This mandatory duty regarding cellulosic biofuel volumes is separate and distinct from other, discretionary waivers found in CAA § 211(o)(7)(A) regarding all renewable fuels and CAA § 211(o)(7)(E) regarding biomass-base diesel (BBD). EPA cannot, therefore, simply add an additional non-statutory factor (*i.e.*, $SRERV_{CB,i}$) to the calculation of annual percentage standards for cellulosic biofuel as it proposes to do in the SNPRM.[27]

The SNPRM acknowledges the D.C. Circuit's clear indication that "projected volume available" for cellulosic biofuel expressly excludes carryover RINs, and similarly, that any projection of cellulosic biofuel production would not include such carryover credits.[28] This means EPA must set cellulosic biofuel volume standards that do not exceed the expected production of cellulosic biofuel *in the year to which a standard applies, i.e.*, for "that calendar year."[29] Consequently, EPA is legally prohibited from using potentially available cellulosic RINs from the 2023-2025 SRE petitions as the basis for setting cellulosic biofuel volume requirements.

EPA contradicts the court's guidance by stating that the newly available cellulosic carryover RINs from SREs, combined with the proposed 2026 and 2027 volumes, result in volume requirements unlikely to require waivers due to the availability of RINs.[30] EPA cites to no authority to consider carryover cellulosic RINs (originating 1 to 3 years prior to the SNPRM) as the basis for setting cellulosic biofuel volume requirements in 2026 and 2027 which must be promulgated in accordance with CAA § 211(o)(2)(B)(ii) and (iv), no doubt due to the fact that no authority exists. EPA cannot transfer or reallocate a volume of cellulosic biofuel from one party

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[23] *API v. EPA.* 706 F.3d 474 (D.C. Cir. 2013).
[24] 42 U.S.C. § 7545(o)(7)(D).
[25] *Id*. § 7545(o)(2)(B)(iv).
[26] *Id.* at § 7545(o)(7)(D).
[27] 90 Fed. Reg. at 45013.
[28] *Id*. at 45011 (quoting *Sinclair Wyoming Refining Co. v. Envtl. Prot. Agency*, 101 F.4th 871, 883-84 (D.C. Cir. 2024) (the statute does not mandate the inclusion of carryover cellulosic RINs in calculating the "projected volume available."). See also *Ams. for Clean Energy v. EPA* (*ACE),* 864 F.3d 691, 714 (D.C. Cir. 2017) ("[w]hen evaluating the available 'supply' of renewable fuel for purposes of the 'inadequate domestic supply' waiver provision . . . the statute is better read not to require EPA to consider carryover RINs.").
[29] 42 U.S.C. § 7545(o)(7)(D)(i).
[30] 90 Fed. Reg. at 45011. The only justification EPA points to for its conclusion that it will not need to waive cellulosic volumes as a result of reallocating the SRE RINS are comments from the renewable natural gas (RNG) lobby that EPA's proposed Set 2 cellulosic volumes for 2026 and 2027 "are too low." However, EPA offers no evaluation independent assessment of whether a higher volume could be achieved. Given the depleted cellulosic RIN bank and the fact that EPA acknowledged in the DRIA that it overestimated the projected volume of cellulosic biofuel production for 2023 and 2024 and it proposed to partially waive the 2025 cellulosic biofuel volumes, EPA must evaluate the costs that would be imposed by potentially reallocating 100% of the SRE volume. 42 U.S.C. § 7545(o)(2)(B)(ii)(V).

in one compliance year (i.e., 2023) to another obligated party (or to the same previously exempt small refiner) three compliance years later (i.e., 2026).

In defending such an action, EPA states that cellulosic carryover RINs from SREs, originating in 2023 to 2025, combined with the proposed 2026 and 2027 volumes, result in volume requirements unlikely to require waivers due to the availability of RINs.[31] Even if this were true, it is of no matter. The statute separates volume setting for cellulosic biofuel from both SREs and from any banked RINs. The statute and the courts are clear: cellulosic biofuel volumes must be based on projected production, and not on the availability of banked credits.

Even if EPA were authorized to rely on 100 million SRE carryover cellulosic RINs to set applicable cellulosic volumes, there simply are not enough D3/D7 RINs available. The Set 2 proposal acknowledges that the market for biogas-derived CNG/LNG is limited by demand – that is, RINs can only be separated from this pathway when CNG/LNG is used by vehicles as a transportation fuel. The Draft Regulatory Impact Analysis (DRIA) acknowledges that coming out of 2025, there will be no cellulosic biofuel carryover RINs.[32] In setting the proposed Set 2 cellulosic volumes, EPA relied upon the DRIA's projected volume of biogas-derived compressed natural gas and liquid natural gas that would be demanded during 2026 and 2027 and EPA, leaving no margin for error, then set the cellulosic volumes based on that analysis.[33] The SNPRM offers no data or analysis to justify a different conclusion. Thus, the only conclusion that can be drawn from EPA's proposal to increase the 2026 and 2027 cellulosic biofuel volumes is that EPA expects to rely on carryover cellulosic RINs, which the Agency is precluded from doing.[34]

Additionally, due to the projected production shortfall of cellulosic biofuel in 2025, EPA's Set 2 proposal includes a partial waiver of 0.19 billion RINs to align with the projected 2025 cellulosic RIN generation of 1.19 billion RINs.[35] EPA has shown no basis for its contention that all 100 million cellulosic SRE Reallocation Volumes will be available in 2026 to meet either the additional 50 (50% reallocation) or 100 (100% reallocation) million cellulosic RINs that would be required by the SNPRM.[36]

Therefore, in response to EPA's request for comment on whether it "should include all, some, or none of those [cellulosic] volumes in the SRE reallocation volumes" and whether EPA

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[31] 90 Fed. Reg. at 45010.
[32] U.S. EPA, "Renewable Fuel Standard (RFS) Program – Standards for 2026 and 2027, Draft Regulatory Impact Analysis (DRIA), June 2025 at 32, Table 1.8.2-1: Projected Carryover RINs for 2026 and 2027 RFS Standard.
[33] *Id.*, at 260-282 and Table 7.1.6-1: Projected Production of Cellulosic Biofuel in 2026–2030.
[34] As explained in AFPM's comments on the Set 2 proposal, the cellulosic RIN bank is too low to ensure compliance and enhance market liquidity for the proposed Set 2 volumes, let alone the additional volumes the SNPRM is proposing to add. *See* AFPM Set 2 Comments (Appendix B) at 39-41.
[35] 90 Fed. Reg. 25784, 25836 (June 17, 2025).
[36] 90 Fed. Reg. at 45012-13. Further, the DRIA shows that, relative to EPA's 2025 baseline, ethanol consumption is projected to decline because reduced gasoline demand vastly outweighs the small increases in E15 and E85 consumption. DRIA at 112, Table 3.4-7. In fact, this table shows that when comparing the expected change in ethanol volumes under the proposal to the 2025 baseline, EPA notes ethanol consumption will decline between now and 2030. EPA also concedes that the Set 2 proposal will lead to modest increases of ethanol consumed through E15 and E85. *Id.* at 18.

should "consider reducing the advanced biofuel and total renewable fuel SRE Reallocation Volumes as part of our review of the implementation of the program given the nested nature of the standards," it is clear that both the CAA and case law mandate that EPA must not reallocate or add any of the 100 million cellulosic SRE RINs. Correspondingly, EPA should reduce the nested advanced biofuel and total renewable fuel standards by that same amount (100 million RINs).

2. EPA cannot increase volumes for any biofuel categories based on RIN availability

As noted above, the SNPRM purports to rely on CAA § 211(o)(2)(B)(ii)'s required review of the RFS program and the statutory criteria to "set" applicable volumes of renewable fuel across all categories. However, the CAA directs that when setting applicable volumes, EPA must follow Congress' clear direction to evaluate the enumerated statutory factors, none of which require consideration of credits, carryover RINs, or reassigning SRE Reallocation Volumes to future years.[37] Clearly, if Congress wanted EPA to consider using RINs from past SRE decisions and the number of RINs in the market to set new standards, it would have stated so.

Congress created separate provisions establishing a credit program that allows obligated parties to carry over RINs from one year to the next, with credits valid for only 12 months from generation.[38] This credit system is designed solely to assist obligated parties in compliance, not to set statutory volume requirements. EPA's proposed rule, however, seeks to transform this credit system designed to provide market liquidity (*i.e.*, credits may be transferred to another person)[39] into a mechanism to carry forward RFS obligations far beyond 12 months' time and to effectively transfer these obligations from one party to another (including parties that may have previously been exempt in previous years). EPA acknowledged in 2010 that SREs are a compliance flexibility, when it stated "[w]hatever renewable fuels small refineries and small refineries blend will be reflected as RINs available in the market; thus there is no need for a separate accounting of their renewable fuel use in the equations used to determine the standards. We proposed and are finalizing this value as zero."[40] This is precisely why EPA cannot identify any statutory authority that permits transforming a compliance flexibility mechanism into a tool for increasing applicable volumes based on previously completed RFS compliance years, nor can it explain how the CAA authorizes a multi-year forward transfer of obligations from one party to another.

Indeed, the only RFS provisions concerning the relationship between the previous year's applicable volumes and future years' volumes are either flexibilities for obligated parties or involve reducing renewable fuel requirements. Specifically:

- CAA §211(o)(3)(B)(ii)(II), (3)(C)(ii) requires EPA to account for the use of renewable fuel during the previous year by exempt small refineries.[41]

[37] 42 U.S.C. § 7545(o)(2)(B)(ii)(I)-(VI).
[38] *ACE*, 864 F.3d at 714 (quoting 42 U.S.C. § 7545(o)(5)(C)).
[39] 42 U.S.C. § 7545(o)(5)(B).
[40] 75 Fed. Reg. 14670, 14717 (Mar. 26, 2010).
[41] 42 U.S.C. § 7545(o)(3)(B)(ii)(II), (3)(C)(ii). *See also* 75 Fed. Reg. at 14717.

- CAA §211(o)(7)(F) requires EPA to modify the statutory volumes if it waives at least 20 percent of a particular volume requirement for two consecutive years, or at least 50 percent of a requirement for one year.[42]
- CAA § 211(o)(5)(D) allows obligated parties to "carry forward a renewable fuel deficit" for a single year.[43]

Moreover, setting volumes based on SREs creates a compliance system that is completely beyond the control of the non-exempt obligated party. Because a small refinery may petition for an exemption "at any time"[44] — and some have indeed petitioned for SREs after the August 2025 SRE decisions[45] — basing applicable volumes solely on SREs granted for prior compliance years creates a significant problem. Specifically, an obligated party could be forced to carry forward a compliance deficit resulting from additional SRE volumes that are "reallocated" well after the SRE compliance year.

For example, if an obligated party buys ratably to meet the Set 2 volume requirements without accounting for any SRE volumes, but cannot comply with higher Set 2 volumes that factor in newly granted SREs from prior compliance years, that obligated party would likely accumulate a deficit. This deficit arises because the obligated party was unaware during their planning process that additional renewable fuel volumes would be required due to reallocations of SRE exemptions that may be granted "at any time."

This uncertainty disadvantages obligated parties by effectively altering compliance obligations based on prior year volumes and SREs after compliance plans have already been established. It highlights the challenge of managing RFS compliance when SRE petitions and exemptions are not time-bound, disrupting predictability for obligated parties. This makes the deficit carryover dependent upon factors beyond an obligated party's control, essentially defeating the purpose of the deficit carryover as a compliance flexibility.

EPA's attempt at retroactive application of the law is especially punitive because it imposes new burdens on previous conduct. It is a "deeply rooted" presumption that "the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place."[46] This presumption is even stronger where, as in the RFS, regulatory requirements are required to be promulgated well before obligated parties may be required to comply with same.

Thus, there is no legal support for the EPA's proposal to legally rely solely on SRE Reallocation Volumes to set applicable volumes for any renewable fuel categories. Absent explicit authority, EPA's SNPRM fails and should be withdrawn.

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[42] *Id.* at § 7545(o)(7)(F).
[43] *Id.* at § 7545(o)(5)(D).
[44] *Id.* at § 7545(o)(9)(B)(i).
[45] There are at least five pending petitions for 2024 and eight pending petitions for 2023 since the August decisions were announced - https://www.epa.gov/fuels-registration-reporting-and-compliance-help/rfs-small-refinery-exemptions
[46] *Landgraf v. USI Film Products*, 511 U.S. 244, 265 (1994).

D. PROSPECTIVELY REALLOCATING PROJECTED SRE GASOLINE VOLUMES IS UNLAWFUL AND CREATES OVERCOMPLIANCE RISK

EPA proposes to change the percentage standard equations to account for gasoline and diesel volumes exempted via SRE petitions it projects to grant for compliance years 2026 and 2027. This change will be reflected in the projected exempted volumes in the denominator of the formula in 40 CFR 80.1405(c), while adding additional renewable fuel volumes to the numerator. These changes are outside the scope of EPA's authority and will most likely result in overcompliance.

1. EPA's proposed changes in 40 C.F.R. § 80.1405(c) to calculate 2026 and 2027 RFS percentage standards are contrary to the CAA

a. CAA 211(o)(2)(B)(ii) does not allow EPA's review of SREs and associated volumes from RFS compliance years 2023-2025 to be included in the numerator

For the 2026 and 2027 RFS compliance year, EPA has proposed to calculate annual renewable fuel percentage standards using a new factor, a "small refinery exemption reallocation volume ("SRERV") which is added to the numerator of the annual percentage standard for all four renewable fuels.[47] This is the first time in the 15-year history of the RFS2 program that EPA has proposed to alter the numerator (the annual volume of renewable fuel "required by 42 U.S.C. § 7545(o)(2)(B) for year i") by adding an additional volume to the formula.[48] EPA cited no authority that allows the agency to simply add an additional volume of renewable fuel to the numerator that are otherwise calculated on the basis of its standard-setting criteria in CAA § 211(o)(2)(B)(ii).[49] EPA is required to adjust the RVOs for non-exempt obligated parties "to account for the use of renewable fuel during the previous calendar year by small refineries that are exempt".[50] EPA affirmed this statutory obligation when it stated that RINs attributable to exempt small refiner biofuel blending will act as excess RINs, which are intended to ease the burden on obligated parties.[51] EPA's approach the SNPRM is inconsistent with the CAA and is therefore illegal.

b. EPA failed to explain or justify its proposal to prospectively exempt 5.95 billion gallons of gasoline and diesel

EPA is also updating the denominator in the equation for calculating the percentage standards to include its projection that for each year of this rule, 5.95 billion gallons of gasoline and diesel will be exempt. EPA failed to provide a reliable basis to prospectively reallocate exempt gasoline and diesel volumes because it does not know how many small refineries will apply for exemptions or whether such petitions will be granted for 2026 and 2027. As such, it is possible the volume of exempt gasoline and diesel could be significantly lower than EPA's

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[47] 90 Fed. Reg. at 45013.
[48] Compare 40 C.F.R. § 1405(c) (C.F.R. 2010 Ed.) with 40 C.F.R. § 1405(c) as proposed in supplemental proposed rule. *Id.* Previously, EPA has amended the denominator or this formula to account for SRE it projects it will grant as well as SREs granted prior to the date of a final rule.
[49] 42 U.S.C. § 7545(o)(2)(B)(ii).
[50] *Id.* at § 7545(o)(3)(C)(ii).
[51] 75 Fed. Reg. 14670, 14717 (Mar. 26, 2010).

projection of 5.95 billion gallons for each year. Therefore, the SNPRM is arbitrary and capricious because EPA failed to justify its proposal to exempt 5.95 billion gallons in 2026 and 2027.[52]

Furthermore, 10% ethanol (conventional renewable fuel) blending is going to continue at the same levels, independent of the implied conventional RVOs because it is already added to virtually all gasoline sold in the United States.[53] Because small refinery exempt gasoline is blended with ethanol downstream despite any granted SRE, EPA could create a redundant obligation in violation of Clean Air Act § 211(o)(3)(c)(i).[54] To fill the gap between the 15 billion implied conventional and ethanol use in 2023-2025, EPA would therefore need to shift advanced (D4/D5) biofuel to the advanced category. The effect of the RVOs would be to further link the D4/D5 RIN price to the D6 RIN price, further increasing the overall cost of the program. Finally, the current proposal is arbitrary and capricious as EPA simply uses a three-year average of exempted volumes without further explanation as to why this approach is appropriate nor conducts any analysis of the impacts of this proposed number.

E. EPA IGNORED OMB'S CLASSIFICATION OF THE SNPRM AS AN "ECONOMICALLY SIGNIFICANT" ACTION REQUIRING A COMPLETE REGULATORY IMPACT ANALYSIS

During the interagency review of the SNPRM, the Office of Management and Budget (OMB) explicitly noted that the proposal does not grant SREs. Instead, because EPA is adding 1.4 billion gallons (e.g., 2.18 billion RINs) to the 2026 and 2027 renewable fuel volumes, OMB emphasized that a complete regulatory impact analysis is required. OMB stated to EPA that this proposal represents a substantive increase in the applicable volumes subject to the RFS, triggering the need for a full analysis of impacts consistent with regulatory review requirements. OMB wrote to EPA:

> This is an economically significant regulatory action, so EPA needs to provide a Regulatory Impact Analysis that assesses the societal costs, benefits, and any transfers expected to result from the SNPRM provisions, especially the 100% and 50% SRE Reallocation Volumes. Reviewers note that EPA views this SNPRM as a "corrective action" (p. 12) and anticipates the "same projected prices for renewable fuels, petroleum-based fuels, RINs, etc. as the Set 2 proposal" (p. 23); however, this action does not grant SREs (the August SREs are now in the baseline), so EPA needs to discuss the incremental impact of reallocating the 1.4 billion gallons in question to 2026 and 2027 relative to the new baseline. The statutory factor analysis in Section VI includes helpful information but does not present the incremental effects relative to this new baseline, including the total fuel costs to society from reallocating the volumes (in addition to presenting total incremental fuel costs, it would be helpful to add columns to Table VI-1 showing the new baseline for 2026 and 2027, i.e., 'the Set 2 Proposal modified by the August SREs,' in addition to Set 2 Proposal, the 100% reallocation, and the 50% reallocation). Please also provide more information on sources of uncertainty and sensitivity analyses where relevant. For example, why might obligated parties "hold, rather than use" carryover RINs, and what are the expected effects from the

[52] *Cf. Sinclair Wyoming Refining Co. v. Envtl. Prot. Agency*, 101 F.4th 871, 882 (D.C. Cir. 2024) (permitting EPA prospective exemptions of gasoline and diesel when EPA adequately justifies its decision).
[53] DRIA at 89.
[54] 42 U.S.C. § 7545(o)(3)(c)(i).

Reallocation Volumes under such a scenario? And will large refiners bear a larger portion of RFS costs and pass these costs along to consumers in scenarios with SREs plus reallocation volumes compared with scenarios without reallocation volumes?[55]

EPA arbitrarily ignored OMB's explicit request to thoroughly evaluate the statutory factors and assess the costs associated with the SNPRM. EPA's failure to follow the CAA's requirement under CAA § 211(o)(2)(B)(ii) and to provide a reasoned explanation in response to OMB's input undermines both transparency and regulatory rigor and deprives directly regulated parties from providing informed comment on the SNPRM, meriting withdrawal of the proposal due to noncompliance with the CAA.

F. THE SNPRM VIOLATES THE ADMINISTRATIVE PROCEDURES ACT

Because the SNPRM adds volumes to the Set 2 proposal mere months before the compliance period begins, and EPA failed to provide any analysis of the impact of its proposal and declined to re-open of the entire Set 2 proposal for comment, EPA violated the Administrative Procedure Act (APA).[56] First, EPA provided virtually no analysis of the impact of adding applicable volumes as required by CAA § 211(o)(2)(B)(ii)(I)-(VI).[57] Therefore, the SNPRM is arbitrary and capricious under APA § 706(2)(A)[58] because it significantly alters the volume obligations without sufficient explanation, which prevents the public from providing informed comments. Second, EPA issued the SNPRM after the comment period for the Set 2 proposal ended and limited comment to the sparse information contained in the SNPRM.[59] As discussed in Section IV.C, below, the SNPRM's co-proposal is not severable from the Set 2 proposal and, therefore, the public should have the opportunity to comment on how the SNPRM impacts the entire Set 2 proposal. Therefore, this supplemental proposal violates the requirement for adequate notice and comment required by APA §§ 553(b) and (c).[60]

II. IN THE ALTERNATIVE, THE SUPPLEMENTAL PROPOSAL FAILS TO ASSESS THE REQUIRED STATUTORY FACTORS AND IS UNNECESSARY

A. EPA'S PROPOSAL IS DEFICIENT BECAUSE IT FAILED TO EVALUATE THE MANDATORY STATUTORY FACTORS

Even if EPA is authorized to rely on SRE Reallocation Volumes to set the RFS standards, the Agency failed to evaluate the mandatory statutory factors. Relying on its Set authority, EPA co-proposes to add volumes equivalent to 100% or 50% of the 2023-2025 exempted SRE volumes.[61] EPA states it has "largely not revised our analysis of the impact of the proposed volumes for 2026 and 2027 on the statutory factors presented in the Set 2 proposal and associated Draft Regulatory Impact Analysis."[62] EPA makes this statement even while it proposes, as one alternative, to add an additional 2.18 billion RIN volumes across all

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[55] See email from Oreska, Matthew P. EOP/OMB to Chapin, Amanda, regarding RFS Set 2 Supplemental NPRM uploaded to ROCIS (Sept. 4, 2025), available at Regulations.gov.
[56] 5 U.S.C. §§ 551–559.
[57] 42 U.S.C. § 7545(o)(2)(B)(ii)(I)-(VI).
[58] 5 U.S.C. § 706(2)(A).
[59] 90 Fed. Reg. at 45009.
[60] 5 U.S.C. at § 553(b) (EPA must provide a complete description of all issues involved) and § 553(c) (provide an opportunity for the public to submit comment on all aspects of the proposed rulemaking).
[61] 90 Fed. Reg. at 45009.
[62] *Id*. at 45014.

four renewable fuel categories.[63] EPA is also proposing to make an additional adjustment to the volumes it originally proposed by "revising our proposed percentage standards for 2026 and 2027 to include "a better-informed projection of exempted gasoline and diesel for 2026 and 2027."[64] These statements provide further proof that EPA has not complied with its duty to "set" applicable volumes for 2026 and 2027 based on an analysis of the statutory factors contained in CAA § 211(o)(2)(B)(ii)(I)-(VI).[65]

Alternatively, EPA's statutory analysis is self-contradictory. On the one hand EPA states that "we do not expect this action to result in an increase of the production and use of renewable fuel."[66] But on the other hand, EPA states that the supplemental proposal is necessary because not taking action could (1) "reduce RIN demand and RIN prices in future years,"[67] with this effect "likely to be most acute in 2026 and 2027"[68]; and (2) "result in a decrease in demand for renewable fuel produced in 2026 and 2027."[69] RINs explicitly reflect the production of qualified renewable fuel. EPA cannot alternately justify its supplemental proposal on the basis it will likely ensure RIN demand (*i.e*., the production of qualified renewable fuels) and on the other hand claim that increasing the amount of RINs that would need to be retired in 2026 and 2027 will have no effect on the statutory factors it is required to analyze.

While EPA has been granted discretion in determining the weight given to the statutory factors, there are limits to that discretion. EPA must still demonstrate that it has meaningfully considered and balanced each factor. By failing to produce an actual analysis of the factors, EPA has failed to meet the statutory intent as well as the precedent set by the courts which require that setting RFS volumes be grounded in data and well-reasoned assessments, not arbitrary judgments. This fatal flaw warrants withdrawal of this SNPRM.

1. EPA must examine the impacts of the proposed supplemental volumes

EPA recognizes the statutory factors governing volume setting require a comprehensive assessment of production and use impacts. While EPA asserts it considered one statutory criteria (cost),[70] it offered only a conclusory statement that the remaining statutory factors are "not impacted by the use of carryover RINs."[71] Instead, EPA simply substitutes its unsupported conclusion that introducing additional 2023-2025 SRE Reallocation Volumes will translate RIN-for-RIN into supplemental volume compliance,[72] without examining how compliance with these additional volumes will be achieved, the actual effects of renewable fuel production and use as required by law, and the effect that other Set 2 proposed provisions (e.g., 50% RIN reduction penalty and the proposed lower equivalence values for renewable diesel, renewable jet, and

[63] In *ACE*, 864 F.3d 691, EPA added to the total renewable fuel volume and did not allocate across all categories. This reallocation across all categories is entirely novel and unauthorized.
[64] 90 Fed. Reg. at 45009.
[65] 42 U.S.C. § 7545(o)(2)(B)(ii)(I)-(VI)
[66] 90 Fed. Reg. at 45009.
[67] *Id.* at 45010.
[68] *Id.*
[69] *Id.*
[70] *Id.* at 45014.
[71] *Id.*
[72] *Id.*

renewable naphtha) will have if the proposed additional SRE Reallocation Volumes need to be produced/blended.

EPA's assumption that the SNPRM will have zero impact[73] is fundamentally flawed. Without any analysis, the SNPRM asserts that it can add up to 2.18 billion RINs to the market in 2025 through its SRE decisions - of course it is unclear whether 2.18 billion RINs were actually returned - and recover those same SRE Reallocation Volumes in 2026 and 2027 by increasing the RVOs for those years. This assumption is unsupported and conflicts with current market realities.

EPA abrogated its obligation to analyze the availability of the carryover RINs and deficits to determine how many of the SRE returned RINs are available for 2026 and 2027 compliance and how EPA's proposed 50% RIN reduction penalty impacts compliance and cost. The claim that 2.18 billion SRE Reallocation Volumes will be freely available for future compliance lacks any market analysis or RIN supply and demand dynamics, especially given RIN expirations, carryover deficits, banking limitations, and real-world blending capacity.

First, EPA failed to consider whether all 2.18 billion SRE Reallocation Volumes from 2023-2025 actually result in RINs being added to the market. Some small refineries may never have purchased RINs in the hope they would receive an exemption for 2023-2024. Will EPA make available to the market additional RINs for these exempted volumes? Additionally, will refineries who did not purchase RINs expecting a full exemption but only receiving a partial exemption partially deplete the RIN bank as well? The fact is we do not know whether exempting all SRE volumes will actually result in putting RINs into the market. EPA cannot simply pick a volume arbitrarily - it must look back at how the program has *actually* operated and incorporate that retrospective insight into the new volume proposals. Indeed, EPA is the only party with the requisite information to complete such an analysis since much of the SRE process is shrouded in secrecy. EPA did not study the extent to which some obligated parties will hold carryover RINs for their future needs, again, something uniquely within EPA's knowledge. Without a transparent market review and quantifiable projections, EPA's approach risks creating compliance gaps and further increasing costs in ways that are not accounted for in the SNPRM.

Second, EPA's SNPRM also completely disregards the current depleted state of the RIN bank, which EPA itself acknowledges will be nearly exhausted except for D4 RINs.[74] While EPA claims 2.18 billion SRE Reallocation Volumes will be available for 2026 and 2027 compliance, it offers no explanation or analysis of the availability of those RINs. Crucially, EPA neglects to account that 2025 biofuel RIN generation will fall significantly short of the 2025 RVOs. The 2025 biofuel production shortfall, combined with RIN retirements related to noncompliance and exports, will result in an anticipated 2025 cumulative net RIN balance of about 1.65 billion RINs

[73] *Id*. at 45014 ("The use of carryover RINs to satisfy RFS obligations is not expected to impact these [statutory] factors. Given this supplemental proposal's purpose in maintaining the volumes originally proposed in the Set 2 proposal, we have also considered the impact on the expected rate of commercial production of renewable fuels. We intend that this supplemental proposal, if finalized, would not result in an impact on the expected rate of commercial production of renewable fuels in 2026 and 2027.
[74] DRIA at 32, Table 1.8.2-1: Projected Carryover RINs for 2026 and 2027.

– 75 percent of the amount of SRE Reallocation Volumes supposedly available for 2026 and 2027 compliance.[75] EPA must consider compliance deficits carried over by many obligated parties, which increases RIN demand because deficits must be repaid in the year following their occurrence. Obligated parties may utilize RINs rightfully returned to small refiners through SREs primarily to cover these deficits and the 2025 production shortfall, thus limiting the availability of SRE Reallocated Volumes RINs to satisfy the SNPRM's incremental 2026-2027 volume requirements. For these reasons, EPA's conclusion that the SNPRM will not require additional renewable fuel production is not justified.

Finally, EPA completely ignores the proposed Set 2 aggressive targets and the challenges to be faced in achieving those targets, further reducing the availability of carryover RINs. As pointed out in AFPM's Set 2 comments, the method used by EPA to establish the proposed 2026 and 2027 BBD volumes relied on historically high BBD supply for 2024 and a methodology for "projecting" 2025 volumes that disregards EPA's own Electronic Moderated Transaction System (EMTS) data, which shows overall 2025 RIN generation for January through August declined by 25% as compared to 2024.[76] In 2024, the Blenders' Tax Credit (BTC) provided a $1 credit for every gallon of biodiesel or renewable diesel blended with a transportation fuel in the United States, regardless of the fuel or feedstock. In contrast, the 45Z tax credit is less than the BTC's flat tax credit of $1 per gallon. Biofuel producers increased biofuel production and imports to the maximum extent possible before the BTC expired on December 31, 2024 and was replaced with the less lucrative 45Z tax credit. Following changes made through the One Big Beautiful Bill, the credit is now limited to fuels made from feedstocks produced or grown in the US, Mexico, or Canada. The loss of the BTC, along with uncertainty regarding the 45Z credit, the proposed volume levels, and feedstock availability, compounded by 45Z and tariff restrictions on foreign feedstock, led to a dramatic reduction in D4 generation during 2025. Taken together, the proposed Set 2 volumes and this supplemental proposal will require additional commercial production of renewable fuels. The CAA requires EPA to analyze the impact of these additional volumes on the enumerated statutory factors.[77] The SNPRM's assumption of zero impact risks creating compliance gaps, increasing feedstock and RIN cost, and escalating importation of feedstocks and fuels.

a. 2.18 billion RINs will not be available for 2026 and 2027 compliance

While the RINs from granting SRE petitions may provide some limited compliance relief, EPA needs to assess whether all 2.18 billion RINs would be available for 2026 and 2027, if some or all of those carryover RINs would be used for compliance deficits.[78] Using data from EIA's October 2025 STEO[79] and EPA's EMTS database, Table 1 shows it is estimated that with

[75] *See* Table 1, infra.
[76] AFPM Set 2 Comments (Appendix B) at 11-15. See also TM&C SRE Report (Appendix C) at Slide 2 (2025 D4 RIN generation has been 35% lower than 2024, and is the lowest in a 3-year average).
[77] *See* 42 U.S.C.§§ 7545(o)(2)(B)(ii)(i)(III) (impact on the commercial rate of production on the environment); § 7545(o)(2)(B)(ii)(i)(VI) (impact on the price and supply of agricultural commodities), and 7545(o)(2)(B)(ii)(i)(II) (impact on U.S. energy security).
[78] *Id*. §7545(o)(5)(D).
[79] The Energy Information Administration's October 2025 Short-Term Energy Outlook, Table 4d, was used for this analysis, specifically for years 2024-2026, with an upward adjustment made for 2027. AFPM

the 2.18 billion SRE Reallocation Volumes and no additional volumes added to the Set 2 proposal (*i.e.*, "0% reallocation"), there will be a cumulative carryover RIN balance of only 1.65 billion RINs available for 2026 compliance and a "negative" RIN bank balance of 640 million RINs for the beginning of the 2027 compliance year, well below the 2.18 billion claimed by EPA.

Table 1: Estimated RINs Available for Compliance in 2026 and 2027 and Estimated 2026 and 2027 Balances with 0% SRE Reallocation

RIN Balances (billion RINS)	2023	2024	2025	2026	2027
RIN Supply					
RIN Generation	*23.85*	*25.34*	*22.84*	*24.15*	*26.12*
Retirements, non-compliance	*(0.48)*	*(0.11)*	*(0.11)*	*(0.09)*	*(0.09)*
Retirements, exports	*(1.31)*	*(1.61)*	*(1.37)*	*(1.37)*	*(1.37)*
RIN Domestic Supply	*22.06*	*23.62*	*21.37*	*22.70*	*24.66*
RIN Demand					
Proposed RVOs	*21.19*	*21.54*	*22.33*	*24.02*	*24.46*
*Reported/Estimated RVOs**	*21.88*	*21.85*	*23.01*	*25.00*	*25.76*
S/D Balance RIN Surplus (Deficit)	*0.18*	*1.77*	*(1.64)*	*(2.29)*	*(1.10)*
Carryover RINs	*1.18*				
Compliance Deficits	*(2.02)*				
SRE RINs Returned	*0.67*	*0.73*	*0.78*		
Compliance RIN Surplus (Deficit)	*(0.17)*	*0.73*	*0.78*	*0.00*	*0.00*
Net RIN Balance	*0.01*	*2.50*	*(0.86)*	*(2.29)*	*(1.10)*
Cumulative Net RIN Balance	***0.01***	***2.52***	***1.65***	***(0.64)***	***(1.74)***

used the petroleum consumption figures from Table 4d to calculate the Estimated RVOs (using the given year's proposed percentage standards). Biofuels production and net imports from Table 4d were also used to calculate RIN generation, using the appropriate equivalence values.

Table 1 provides an outlook on RIN balances. TM&C's analysis concludes that after considering the availability of SRE Reallocation Volumes, the RIN bank will be below 1-billion-gallon RINs.[80] Moreover, due to the aggressive RVOs proposed for Set 2 and the expected shortfall in RIN generation for 2025, the percentage of RINs carried forward will continue to decline to below 5%.[81]

While we forecast that there would be no RINs available for compliance in 2027, there would be a *deficit* of more than one billion RINs if EPA adds 100% of the SRE volumes to the Set 2 proposal (e.g., "100% reallocation).[82] Appendix D shows a range of expert opinions on where the Net RIN bank will be through the 2027 compliance periods, depending on the amount of SREs reassigned.[83] While ranges vary, it is important to note:

- In every case, by the end of 2025, the Net RIN bank remains below the 2.18 B RINs added via the 2023-25 SREs
- There is a general consensus that there will be a very small "Net RIN Bank" by the end of 2025, with analysis showing a negative balance by the end of 2027 even in the 0% SRE reassignment case.

This analysis confirms there is no need to add SRE volumes because even with the SRE Reallocation Volumes, current biofuel forecasts, *and 0% reallocation*, there will be a lack of RINs available for compliance with the proposed Set 2 volumes and as a result biofuels will need to be produced to generate additional RINs. If EIA's STEO forecast of modest biofuel production increases is correct, then RVOs *lower* than what was proposed in Set 2 are needed to balance markets. Had EPA undertaken a robust analysis, it would have recognized that this SNPRM risks exacerbating the compliance deficits created in the Set 2 proposal and will lead to significant non-compliance by obligated parties. EPA should not, under any circumstances, proceed with increasing volumes to the proposed 2026 and 2027 levels by adding volumes based on carryover RINs. Instead, the Set 2 proposed volumes should be revised downward to reflect the reality of market conditions and mitigate the excessive cost of the proposed Set 2 volumes.[84]

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[80] TM&C SRE Report (Appendix C) at Slide 3.
[81] *Id.* at Slide 4.
[82] The analysis calculates RIN Supply by considering 2025 RIN generation and RIN retirements due to non-compliance and exports. RIN demand for 2025 is based on the estimated RVOs calculated from petroleum consumption (adjusted for exemptions) and the percentage standards. The difference between RIN Supply and Demand yielded the RIN Surplus or Deficit for the year. From the RIN Surplus or Deficit, compliance deficits must be subtracted and carryover RINs and SRE RINs returned must be added. Finally, any overall balance surplus from the prior year must be added or overall balance deficit from the prior year must be subtracted to arrive at the cumulative balance that can be used for compliance.
[83] The distributions in Appendix D were created using EPA EMTS data, EIA's STEO, TM&C's model, and net RIN bank estimates from S&P Global Commodity Insights, and Bloomberg Intelligence.
[84] *See* AFPM Set 2 Comments (Appendix B) at 5-23, and 37-41.

b. The Set 2 Proposed 2026 and 2027 volumes are already too aggressive

EPA's proposed Set 2 volumes for 2026 and 2027 are historically high, with total RVOs of 24.02 billion and 24.46 billion RINs respectively, representing the most ambitious RVO levels set under the RFS program to date. EPA set an implied conventional biofuel volume of 15 billion gallons for both 2026 and 2027 despite acknowledging two key facts: (1) the U.S. will not consume that volume of conventional biofuels, and (2) the proposed volumes will only result in a fraction of a percent increase in the use of gasoline containing higher concentrations of ethanol, such as E15 or higher blends.[85] EPA noted that any shortfall in conventional biofuel consumption could be made up by increased volumes of advanced biofuels and BBD.

The Set 2 proposal increases the 2026 BBD volumes by 33% above the 2025 target of 5.36 billion RINs, despite EMTS data indicating production is significantly below 2024 production.[86] With the SNPRM, EPA proposes an even larger increase—raising the 2026 BBD volumes by **40% above the 2025 targets**. As detailed in AFPM's Set 2 comments, these proposed advanced biofuel and BBD volumes are arbitrary because EPA failed to provide sufficient supporting information in the rulemaking docket and relied on outdated and limited RIN generation data.[87] Furthermore, the Agency made inaccurate assumptions about biofuel plant operations.[88] EMTS data through August 2025 shows a dramatic slowdown in RIN generation, whereas the proposed Set 2 volumes assume that import and production levels observed in 2024 will continue into 2026 and 2027—clearly, August 2025 data has disproven EPA's assumption and rendered it arbitrary and capricious.

c. Additional commercial renewable fuel production is required to satisfy the supplemental volumes

Despite EPA's protestations to the contrary, since there will be less than 2.18 billion RINs available for compliance by the end of the 2025 compliance year – 1.65 billion by our estimate – additional volumes of biofuels must be produced to meet the supplemental proposal. EPA is required by CAA §§ 211(o)(2)(B)(ii)(I) and (III) to analyze the expected rate of future commercial production of each category of renewable fuels[89] and the impact of that biofuel production on the environment.[90] Because EPA offered no such analysis, the SNPRM fails to comport with the CAA and the Agency is owed no deference on this matter.

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[85] *Id.* at 6-7 (citing the DRIA at 112, Table 3.4-7 and 139).

[86] Public data confirms that historically high RIN generation in 2024 was the result of efforts to maximize the value of the BTC before it was replaced with the lower-value 45Z credit. This resulted in a slight surplus in carryover RINs before the SREs were granted. However, due to decreased biofuel production and RIN generation in 2025, the cumulative carryover RINs balance is negative. Adding the SREs without increasing volume to the proposed 2026 and 2027 RVOs (e.g., 0% reallocation) provides some relief and leads to a cumulative positive balance in 2025. However, the balance shifts into a deficit by the end of 2026, likely due to compliance deficits from 2023 and the use of the SRE Reallocation Volumes to comply with the 2025 RVOs.

[87] *See* AFPM Comments (Appendix B) at 12-15.

[88] *Id.* at 15-18.

[89] 42 U.S.C. § 7545(o)(2)(B)(ii)(III).

[90] *Id.* at § 7545(o)(2)(B)(ii)(I).

d. EPA must evaluate the impact of the use of renewable fuels on agricultural commodities

Increased renewable fuel production mandated by the SNPRM will increase biofuel feedstock demand and prices, requiring increased imported feedstocks and/or a massive shift of Soybean Oil (SBO) from food/feed use to biofuels. S&P's Analysis of the Set 2 proposed volumes concluded:

- US feedstocks alone are inadequate to meet the proposed BBD volume requirements and, therefore, imported feedstock would need to increase from 11 to 14 billion pounds between 2024 and 2027 to meet the proposed volumes.[91]
- Domestic sources will provide around 70% of all feedstocks used for US biofuel production, with imports making up the remaining approximately 30%.[92]
- The proposed higher volumes plus the 50% import RIN reduction will push feedstock prices higher (particularly soybean oil), further increasing the cost of the RFS compliance and making imported feedstocks price competitive
- Current tariff/trade policy makes compliance with the volume requirements challenging (i.e., if import tariffs continue to be applied to feedstock imports)
- The combination of proposed high volumes and the 50% RIN reduction applied to imported feedstocks is likely to produce the opposite effect - requiring more imported feedstocks.[93]

Because the SNPRM will likely require additional biofuel production, the SNPRM will increase biofuel feedstock demand and/or cause a shift of SBO from food/feed use to biofuels, increasing seed oil and biofuel feedstock prices. Specifically, EPA should have evaluated how adding the SRE volumes impacts agricultural commodity prices, including the prices for soybeans and their derivatives. A recent study from the University of Illinois, Urbana-Champaign (UIUC) includes a graphic illustrating the relationship between the prices of soybeans, soybean meal, and soybean oil. The graphic shows that while soybean oil prices have increased, soybean meal prices have decreased, and soybean prices have been stable, calling into question whether the increased RVO for BBD positively affects soybean revenues to farmers. While it is possible that there could be an overall net benefit to farmers from increased soybean oil demand, that benefit isn't guaranteed, especially if soybean meal demand does not increase.[94]

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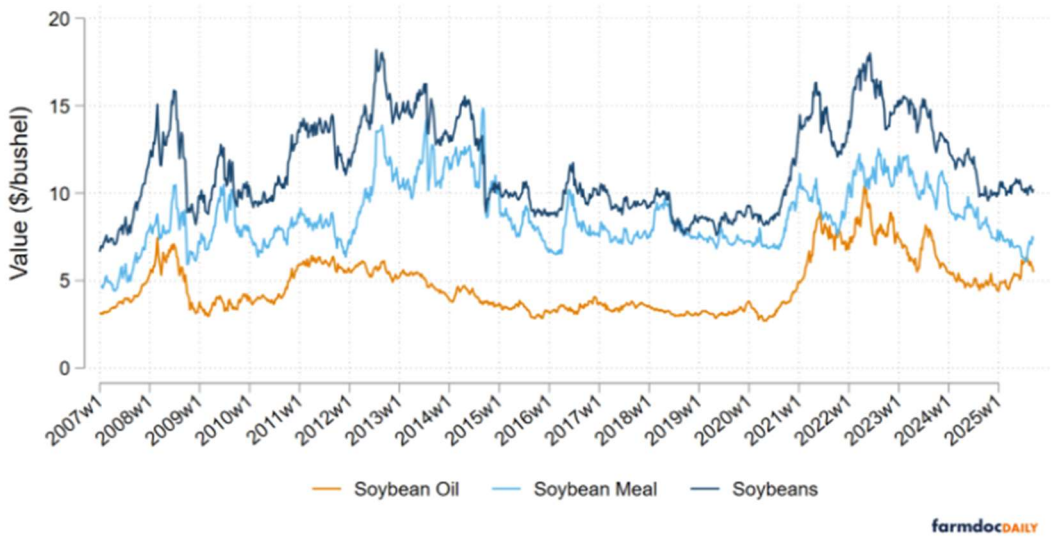
[91] S&P Global Commodity Insights, Availability to Meet Biodistillate RVOs (S&P Analysis), August 2025 (Proprietary Submission per 40 CFR § 2.203(b)).
[92] *See* AFPM Set 2 Comments (Appendix B), S&P Global Commodity Insights, Availability to Meet Biodistillate RVOs (S&P Analysis), public version (attached as Appendix E).
[93] *Id*. at Slide 3.
[94] Janzen, J., and Y. Wang. "The Soybean Industry Response to the Renewable Diesel Boom, Part 3: the Value of Soybean Oil in the Soybean Crush." (UIIUC Study) *farmdoc daily* (15):188, Department of Agricultural and Consumer Economics, University of Illinois at Urbana-Champaign, October 13, 2025. Available Permalink.

Figure 1: Soybean and Soybean Derivative Values (Weekly, 2007-2025)



Because EPA failed to assess the impact of its supplemental proposal to add volumes on agricultural commodities as required by CAA § 211(o)(2)(B)(ii)(VI),[95] the SNPRM should be withdrawn.

e. The SNPRM undermines energy security

Because the Set 2 proposal will largely consume most domestic feedstocks to meet the aggressive Set 2 proposed volumes, the SNPRM is likely to increase the relative share of imported feedstock for renewable fuel or will increase importation of other oils that can be used to backfill for soybean oil that is diverted from food use to biofuel production. Since the SNPRM will likely necessitate greater imports of agricultural commodities, this proposal increases our dependency on imports, making the United States *less* energy secure.[96] EPA's failure to evaluate the impact of this proposal on U.S. energy security violates the CAA.[97]

Furthermore, the proposed 50% RIN penalty on imported biofuels exacerbates the challenge of meeting the advanced biofuel volume mandates, along with the advanced biofuels necessary to meet the implied conventional that cannot be satisfied with ethanol.[98] Yet, EPA failed to offer any analysis of the impact of the SNPRM on feedstock demand or prices as required by CAA § 211(o)(2)(B)(ii)(VI).[99]

2. The co-proposal to add 50%,100% or some other non-zero percentage of the SRE volumes is arbitrary

Highlighting the completely arbitrary nature of the SNPRM's proposal is EPA's request for comment on whether it should add to the proposed 2026 and 2027 volumes 100%, 50%, or any other percentage (including 0%) of the SRE volumes without providing any analysis

[95] 42 U.S.C. § 7545(o)(2)(B)(ii)(VI)
[96] AFPM Set 2 Comments (Appendix B) at 18-23.
[97] 42 U.S.C. § 7545(o)(2)(B)(ii)(II).
[98] AFPM Set 2 Comments (Appendix B*)* at 21-23.
[99] 42 U.S.C. § 7545(o)(2)(B)(ii)(VI).

regarding the actual RIN demand (adjusted for carryover deficits) and the quantity of RINs that would remain available for 2026 and 2027 compliance. While reducing the percentage of SRE volume that is added to the proposed 2026 and 2027 volumes could reduce the harms compared to adding 100% of the SRE Reallocation Volumes, no support or analysis has been provided to show what percentage of reduction would, for example, prevent market upheaval, including total depletion of the RIN bank, RIN price spikes, or other foreseeable harms to refiners and consumers resulting from adding the SRE volumes to 2026 and 2027 RFS mandates. Without any comprehensive analysis of market conditions and their implications for renewable fuel availability, EPA lacks a reasoned basis or principled justification to conclude that reallocating 50%, 100%, or any other proportion of SRE Reallocation Volumes is feasible or appropriate. This renders EPA's co-proposal arbitrary and unsupported by the factual record or the statutory framework and makes it impossible for obligated parties to provide informed comment on EPA's underlying methodology.

B. REASSIGNING SRES FOR 2023-2025 IS NOT NECESSARY BECAUSE THE RVOS WILL BE MET FOR THOSE YEARS

EPA proposes to add the SRE Reallocation Volumes to the Set 2 proposed volumes to safeguard RIN demand and RIN prices so they do not fall in future years and to ensure compliance with the 2026 and 2027 proposed volumes are achieved through production of renewable biofuels.[100] However, this co-proposal is unnecessary because the 2023 and 2024 RVOs were met before SREs were considered. As illustrated in Table 2, domestic biofuels blending in both 2023 and 2024 exceeded the *full RVOs before considering SREs*. This means that while RINs have been returned for those two years, this did not affect biofuels blending for those years. Thus, there would be no need to "reallocate" volumes for 2023 and 2024.

[100] 90 Fed. Reg. at 45010.

Table 2: Domestic biofuel blending for 2023-2024, assuming no SREs granted[101]

RIN Balances (billion RINS)	2023	2024
RIN Supply		
RIN Generation	23.85	25.34
Retirements, non-compliance	(0.48)	(0.11)
Retirements, exports	(1.31)	(1.61)
RIN Domestic Supply	22.06	23.62
RIN Demand		
Proposed RVOs	21.19	21.54
Reported/Estimated RVOs*	21.88	22.57
S/D Balance RIN Surplus (Deficit)	*0.18*	*1.04*

Rather, the SNPRM aims to prevent SRE Reallocation Volumes from reducing the level of renewable fuel use needed to comply with volumes under Set 2. First, this conflicts with the fundamental purpose of carryover RINs, which is to provide compliance flexibility rather than serve as a basis for volume setting.[102] Second, this proposal comes amid historically low

[101] AFPM calculated the RVOs using reported/estimated renewable volume obligations from EPA's EMTS (for 2023) or from calculating the RVOs from the percentage standards using the Energy Information Agency's (EIA's) most recent Short-Term Energy Outlook (STEO), Table 4d for 2024 and 2025. To calculate the domestic blending value, AFPM used the total RIN generation from a given year and then adjusted the figure downward by removing both non-compliance and export RIN retirements. The final RIN generation number can be assumed to reflect total domestic blending that took place during the compliance year in question. All 2025 data was annualized from the most recent monthly report (through September).

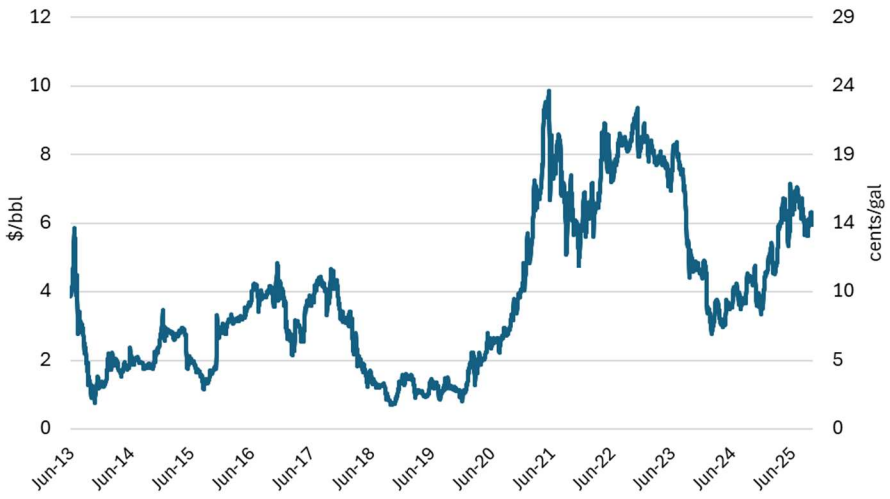
[102] EPA consistently explained that the RIN bank provides essential flexibility and liquidity, helping obligated parties comply in the event of biofuel production shortfalls or unexpected increases in RIN demand. *See Sinclair*, 101 F.4th at 884; and *ACE*, 864 F.3d at 715. These flexibilities include banking and trading RINs (up to 20% of prior year RINs can be used for current compliance), and deficit carry-forward provisions, all designed to ensure the market functions smoothly while incentivizing growth in renewable fuel volumes over time. This framework provides a buffer against temporary market disruptions and avoids compliance failures that could undermine the program's goals. Based on EPA's review of the historical size of the total RIN bank for 2013 through 2019, AFPM's longstanding position is that RIN banks for each biofuel category should hover between 9% and 17% of the volume requirements, enabling all obligated parties to comply and providing sufficient liquidity to the RIN market. *See* AFPM Comments on the proposed rule, Partial Waiver of 2024 Cellulosic Biofuel Volume Requirement and Extension of 2024 Compliance Deadline, EPA Docket ID No. EPA-HQ-OAR-2024-0411. Available at https://www.regulations.gov/comment/EPA-HQ-OAR-2024-0411-0047 (citing EPA's Draft Regulatory Impact Analysis: RFS Annual Rules, EPA-420-D-21-002 (Dec. 2021) at 44, Table 1.9.1-1: Total Renewable Fuel Carryover RINs Compared to Total Renewable Fuel Volume Requirement). EPA should have compared the size of the RIN bank relative to the 2026 and 2027 RVOs and the transportation fuel market (the SRE Reallocation Volumes equate to approximately 7% of the proposed Set 2 volumes) to

carryover RINs, looming shortfalls in 2025 biofuel production relative to the 2025 target RVOs, and EPA's significantly higher RVOs proposed for 2026 and 2027. Third, EPA's claim that obligated parties will choose to comply using these carryover RINs while pushing down biofuels production and blending is speculative. Even if there were 2.18 billion RINs available for 2026 and 2027 compliance – a conclusion that contradicts current data – that means there would be approximately 10% carryover RINs available for compliance, well below the 20% ceiling for carryover RINs.[103] Therefore, there is no impediment to continued biofuel production while carryover RINs are used for compliance, especially since there is still room to *grow* carryover RINs into following years. Economic factors – not the availability of carryover RINs – are the main drivers of biofuels production and blending.

III. ADDING VOLUMES EQUIVALENT TO THE 2023-2025 SRE EXEMPTIONS WILL ADD SIGNIFICANT COSTS AND BURDENS

When finalizing the Set 2 rule, EPA must evaluate compliance costs. Using RIN price data, Figure 2 illustrates the marginal cost of compliance over the period 2013-2025 has largely risen.

Figure 2: Marginal cost per gallon for RVO compliance[104]



The SNPRM will have a tangible impact on RIN balances, creating RIN shortages in 2026 and 2027 and driving up RIN prices, leading to further increases in the marginal cost per gallon for RVO compliance. EPA's assertion that the proposal will impose no additional costs because SRE Reallocation Volumes will simply be used to meet the extra volumes it proposes to add on top of the Set 2 volumes is demonstrably false for three critical reasons.

First, adding SRE volumes to proposed 2026 and 2027 volumes will by definition increase RIN demand. This could cost as much as $10 to $12 billion—depending on the

determine whether an appropriate RIN bank will be maintained if any additional volumes are added to the proposed Set 2 volumes.

[103] 40 CFR § 80.1127(a)(2). *See also* DRIA at 29-37 (discussion of carryover RIN projections).

[104] AFPM analysis of Argus Media data.

percentage reallocated and the consequential drawdown of the already depleted RIN bank. This is not a trivial figure as such a spike in costs directly burdens obligated parties and consumers.

Second, any SRE reallocation has a tangible impact on RIN prices and balances for all obligated parties. In a study aimed at improving the SRE program, the General Accounting Office (GAO) noted that EPA data suggests that small refineries trading lower volumes of RINs pay 2.4% more to buy RINs or receive 2.4% less when they sell RINs.[105] This finding also applies to all merchant refiners, creating RIN shortages in 2026 and 2027 and driving up RIN prices, which will further significantly increase overall compliance costs in 2026 and 2027, make it more challenging to meet the Set 2 volumes, let alone the Set 2 volumes plus the SRE Reallocation Volumes, and increase the likelihood that small refineries will need exemptions for 2026 and 2027, further burdening non-exempt parties.

The requirement to buy more RINs due to reallocation also drives up RIN costs for non-exempt refiners, thus increasing overall compliance costs. These increased costs may be passed downstream, negatively impacting the markets they serve, including fuel wholesalers and consumers who could face higher fuel prices. If EPA overestimates renewable fuel production or the volume of RINs available, or over-projects the volume of gasoline/diesel exempted, the percentage standards in the RFS program will be set too high relative to what is actually available. Such inaccuracies can exacerbate RIN shortages, further driving compliance costs, which harm the competitiveness and operations of refiners and the stability of the renewable fuels market. In essence, EPA's cost-free narrative is disconnected from economic reality and contradicts both market data and logical compliance dynamics. Ignoring these facts risks undermining the program's integrity and intensifying compliance burdens, making EPA's justification untenable and unsupported by any credible analysis.

Third, the severely depleted RIN bank combined with unaddressed carryover deficits means EPA cannot rely on the returned SRE RINs alone — additional renewable fuel production will be mandatory to meet the heightened volume targets. Because this proposal will require increased biofuel production in the first place, increased costs associated with the SNPRM could swell the overall compliance costs for this rulemaking to approximately $54 billion.[106]

A. ADDING SRE VOLUMES ALONE COULD ADD UP TO $10 TO $12 BILLION IN COMPLIANCE COSTS, AND THE ADDITIONAL COST COULD POSSIBLY BALLOON TO $54 BILLION FOR 2026 AND 2027

Assuming SRE Reallocation Volumes are available to meet the proposed – an assumption we reject – the SNPRM simplistically concludes that there are no costs associated with returning SRE Reallocation Volumes today for use in 2026 and 2027. Were EPA to add 100% of the SRE volumes on top of the proposed Set 2 volumes, Figure 2 shows that the increase in RINs demanded to comply with higher RVOs will increase RFS compliance costs by an *additional* $10 to $12 billion.

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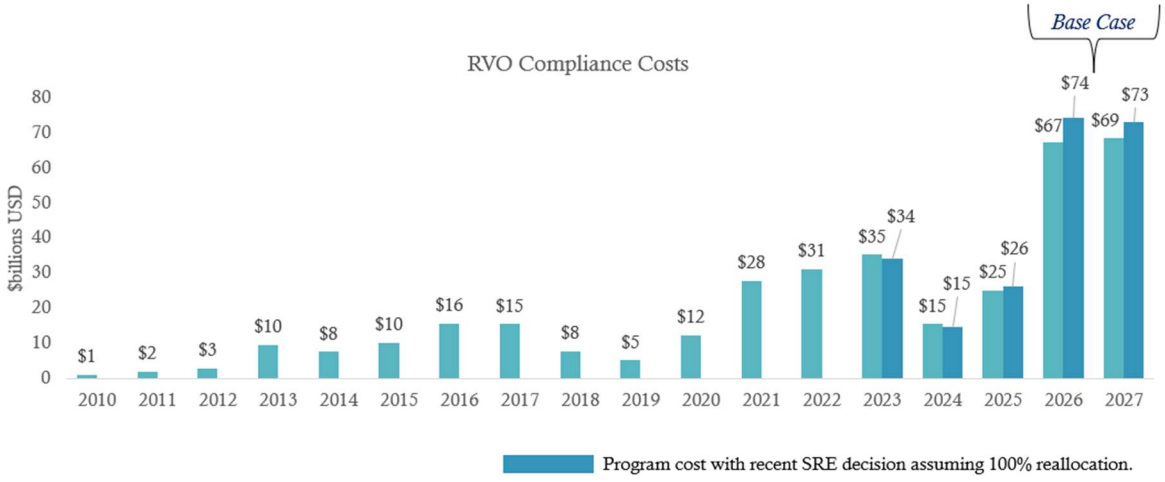
[105] General Accounting Office, *RENEWABLE FUEL STANDARD Actions Needed to Improve Decision-Making in the Small Refinery Exemption Program*, November 2022 at 10 and Appendix II (Available at GAO-23-105801, RENEWABLE FUEL STANDARD: Actions Needed to Improve Decision-Making in the Small Refinery Exemption Program.

[106] TM&C SRE Report (Appendix C) at Slide 23.

Figure 3: RFS Program Cost considering recent SRE decisions, assuming 100% reallocation[107]

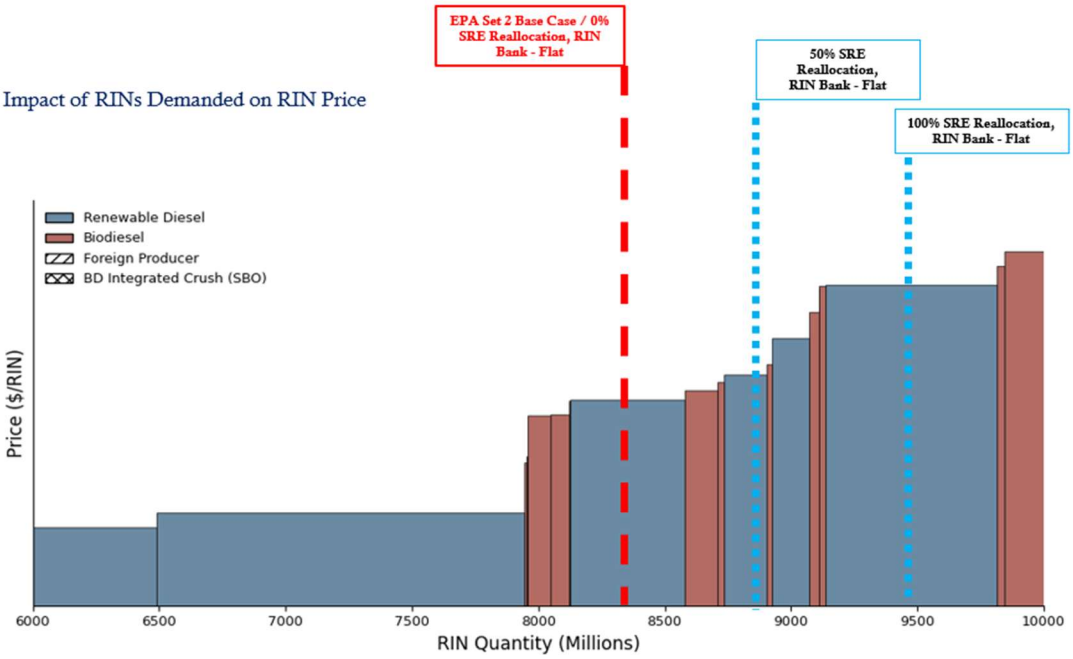


A change in program cost is driven by a net change in RINs demanded and the marginal production costs. Market demand for RINs, pricing, fuel demand, and compliance decisions are influenced by several factors including RVOs, production capacity, fuel pathways' greenhouse gas reduction criteria, availability of feedstocks, and compliance strategies.[108] Changes in one segment, such as small refinery exemptions or volume reallocations, ripple through the entire system, affecting supply, demand, prices, and the economic feasibility for different biofuel producers. This intricate interplay makes forecasting obligated parties' behavior and decisions on use of the RIN bank challenging.

As detailed in AFPM's Set 2 Comments, TM&C developed its Base Case that adhered to the proposed Set 2 RVOs. Establishing the Base Case was a three-step process that included generating a supply curve to determine the market price for RINs.[109] TM&C used its data on each BBD facility's capacity and feedstock slate to determine where each biofuel producer fit on the supply curve, which is shown in Figure 4 in the Base Case and assuming 50% and 100% reassignment of the SRE Reallocation Volumes.

[107] *Id*. at Slide 16.
[108] EPA fails to consider compliance strategies that allow obligated parties to use SRE Reallocation Volumes to offset current compliance deficits, retain them for future needs rather than making them available to other obligated parties, or to satisfy their 2025 obligation.
[109] *See* AFPM Set 2 Comments (Appendix B) at 52-53 for a complete description of how the Base Case was developed.

Figure 4: TM&C's Base Case BBD Supply Curve[110]



As RIN demand increases due to higher RVOs, the price of RINs rises accordingly. This occurs because the marginal RIN determines the RIN price — the last unit of renewable fuel that must be produced to meet the RVO. The marginal RIN is typically generated by smaller, higher-cost producers who sit on the right side of the supply curve and set the market-clearing price.

The proposed supplemental volume increases RIN demand, effectively shifting the RIN quantity demanded to the right along the supply curve in Figure 4. When demand shifts right, it changes which renewable fuel producer is marginal — that is, the producer who supplies the last gallon of renewable fuel needed to meet the required volume and thus sets the market price for all RINs. The co-proposal to reallocate 50% or 100% shifts the marginal producer to one with more expensive production costs, thus increasing *all* RFS compliance costs. As explained in AFPM's Set 2 comments, EPA could reduce the RFS compliance costs for the Set 2 proposal *by 55%* without changing the blending levels if EPA set the implied conventional mandate at the expected ethanol consumption level and moved the additional volumes of biofuel that would have been used to meet the 15-billion-gallon mandate to the advanced biofuel category.[111]

TM&C was asked to compare the Base Case to three SRE scenarios – adding 0%, 50%, and 100% of the SRE Reallocation Volumes to the proposed Set 2 RVOs and to adjust the

[110] *See* TM&C SRE Report (Appendix C) at Slide 21. *See also* AFPM Comments (Appendix B) at 13-15 for a detailed explanation of the BBD supply curve.
[111] AFPM Set 2 Comments (Appendix B) at 4-11.

denominator to prospectively reallocate 5.95 billion gallons of exempted gasoline and diesel for 2026 and 2027. SRE reallocation increases overall compliance costs for 2026 and 2027, by $10-12 billion (100% reallocation), depending on the RIN bank drawdown. *See* Table 3 for SRE scenario results.

Table 3: 2026 and 2027 *RFS compliance costs for SRE scenarios*[112]

Case/Yr	Base Case w/ Prospective SREs			Add 100% of SRE Carryover RINs			Add 100% of SRE Carryover RINs (High BOHO)			Add 50% of SRE Carryover RINs		
	2026	2027	Total	2026	2027	Total	2026	2027	Total	2026	2027	Total
RVO numerator adjustment (B-gal)	–	–	–	1.04	1.14	2.18	1.04	1.14	2.18	0.52	0.57	1.09
RVO denominator adjustment (B-gal)	(5.95)	(5.95)	(11.9)	(5.95)	(5.95)	(11.9)	(5.95)	(5.95)	(11.9)	(5.95)	(5.95)	(11.9)
RFS compliance cost ($B/yr)	$67	$69	$136	$74	$73	$147	$96	$94	$190	$71	$71	$142
Delta program cost v. Base ($B/yr)	–	–	–	$7	$4	$11	$29	$25	$54	$4	$2	$6

In every scenario, the SNPRM *increases* compliance costs to well more than double the most expensive RFS program in history - costs that could ultimately be paid by consumers - that were never considered by the Agency in violation of CAA § 211(o)(2)(B)(ii)(V).[113]

B. WIDENING OF THE "BOHO SPREAD" COULD INCREASE COMPLIANCE COSTS BY AN ADDITIONAL $54 BILLION

Additional feedstock costs will also impact what is known as the "BOHO spread," or the price difference between soybean oil and heating oil or ultra-low sulfur diesel fuel (ULSD).[114] When the BOHO spread widens, the RIN value rises to cover the spread between the price of soybean oil and ULSD. This raises total RFS compliance costs.

Current analysis and data suggests that the BOHO spread will widen at least through 2026. The EIA STEO reports that in October 2025 diesel fuel wholesale prices are $2.30 per gallon and projects that by the end of 2026, diesel fuel prices will fall to $2.07 per gallon.[115] In addition to S&P's projected rise in feedstock prices for 2026 and 2027 due to high RVOs and growing global demand for feedstocks, the International Energy Agency reported that by 2030,

[112] The SRE scenarios assume that obligated parties will purchase RINs on the market or produce renewable fuel.
[113] 42 U.S.C. § 7545(o)(2)(B)(ii)(V).
[114] The BOHO spread uses futures prices. The original futures prices for ULSD on the CME/NYMEX started out as heating oil futures when there was a difference between the specifications for heating oil and ULSD. However, since there is no longer a specification difference between ULSD and heating oil and futures prices now align, ULSD futures are still talked about as heating oil futures - hence the HO in the BOHO spread.
[115] Energy Information Agency, Short-term Energy Outlook Data Browser, Table 2: Energy Prices, available at STEO Data Browser - 2. Energy Prices.

biofuel feedstock demand will increase by 25% as compared to 2024, with most of the growth linked to transportation fuels.[116] Thus, the bean oil price will rise, widening the spread potentially to historic heights. Were that to happen, TM&C estimates that total compliance costs for 2026 and 2027 could increase by an additional $54 billion.[117]

It is important to note that higher RIN prices may not necessarily incentivize more renewable fuel production. While higher RIN prices result in more expensive finished fuel, they may not incentivize renewable fuel production. Higher RIN prices are caused by EPA's proposal to increase RIN demand – and by extension – demand for feedstocks, which puts upward pressure on feedstock costs. These higher feedstock costs reduce the renewable fuel producer's gross profit margin, thereby impacting renewable fuel production. To encourage renewable fuel production. The proposed 50% RIN penalty for imported biofuels and feedstocks will also impose inflationary pressure on RIN and fuel prices – impacts that could ultimately be borne by the American consumer. EPA must analyze these factors to justify its proposed additional volumes.

IV. ADDITIONAL COMMENTS

A. THE SUPPLEMENTAL PROPOSAL INCREASES PERCENTAGE STANDARDS

EPA's calculations that percentage standards for 2026 and 2027 will decline under its proposed reallocation formula is really a smokescreen to hide the fact that such percentage standards should be (and would be) much lower if EPA did not improperly propose to reallocate SREs in past years to obligated parties in future years. EPA incorrectly claims that "after accounting for both the SRE Reallocation Volumes and an updated projection of exempted gasoline and diesel for 2026 and 2027, [the percentage standards] are lower than those considered in the Set 2 proposal," irrespective of whether EPA reallocates 50% or 100% of the SRE volumes.[118] However, this claim is misleading. Table VI-1 in the SNPRM shows lower percentage standards because EPA used AEO 2023 for the proposed Set 2 rule and the SNPRM, despite acknowledging that it would use AEO 2025 for the final rule and its forecast of reduced gasoline and diesel consumption. In addition, Table VI reflects the Set 2 proposal under the assumption that 100% of SRE volumes were reallocated. In contrast, the Set 2 proposal included scenarios where zero or 18 billion of gasoline and diesel were exempted due to small refinery exemptions for 2026 and 2027.[119] If Table VI-1 had used the zero exempt gallons scenario, it would have shown a substantial increase in the percentage standards.

B. THE TIMING OF THIS PROPOSAL REQUIRES NO REALLOCATION

This SNPRM proposes to increase the RVOs for the 2026 compliance year by adding SRE volumes just three months before the 2026 compliance year begins—and well after the statutory requirement for at least 14 months of lead time.[120] This crucial lead time is intended to

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[116] International Energy Agency, *Renewables 2025. Analysis and forecasts to 2030*, October 7, 2025. Available at Renewables 2025 – Analysis - IEA
[117] TM&C SRE Report (Appendix C) at Slide 22.
[118] 90 Fed. Reg. at 45015.
[119] 90 Fed. Reg. 25784, 25833 (June 17, 2025).
[120] 42 U.S.C. § 7545(o)(2)(B)(ii).

enable obligated parties to adequately prepare for their RVOs and manage the volatility of the RIN market. While EPA has repeatedly disregarded statutory lead time mandates throughout its administration of the RFS program, the current proposal is especially egregious. It is highly probable the 2026 and 2027 RVOs will be finalized during the 2026 compliance year, drastically reducing the window for obligated parties to adapt to increased obligations. Even if EPA finalizes the rule early in 2026, the shortened timeline will not provide sufficient opportunity for compliance with the newly reallocated SRE volumes.

The D.C. Circuit recognized that "EPA may promulgate late, and even retroactive, volume requirements so long as it 'reasonably considers and mitigates any hardship caused to obligated parties by reason of the lateness.'"[121] Yet, the SNPRM fails this test, as it provides no meaningful mitigation for the harm imposed on obligated refineries. As detailed in AFPM's Set 2 comments, this late rule directly undermines long-term feedstock contracts and the ability of obligated parties to procure adequate feedstocks and finished biofuel supplies at reasonable prices for compliance with sharply increased RVOs.[122]

Moreover, EPA cannot accurately estimate the number of SRE Reallocation RINs available for 2025, 2026, or 2027, since 2025 compliance status will not be known before the proposal is finalized. Until the December 1, 2025 compliance deadline for the 2024 compliance year is complete, it becomes impossible to determine how many 2024 RINs may be available for 2025 compliance. Proposed compliance extensions offer no real solution to this harm.

Without compliance with statutory lead time and no genuine mitigation for the adverse effects of lateness, EPA cannot lawfully add any SRE volumes—either in Set 2 or the current SNPRM. Under these circumstances, EPA must add 0% of SRE volumes for 2026 and 2027.

C. THE PROPOSED SUPPLEMENTAL VOLUMES ARE NOT SEVERABLE

The SNPRM is structured to add volumes to the Set 2 proposed RVOs for 2026 and 2027 as a direct response to recent SRE decisions. These supplemental volumes are designed to reallocate RIN obligations that originated from SREs granted for 2023–2025, and EPA's proposal merges these obligations into the overall RVOs for 2026 and 2027.

The concept of distinct "SRE Reallocation Volumes" does not exist in the CAA or EPA regulations. The SNPRM proposal to add SRE Reallocation Volumes" to the Set 2 proposed volumes is misleading. The SNPRM creates new renewable fuel obligations for 2026 and 2027, replacing those originally proposed in Set 2. Thus, these newly proposed volumes are inextricably linked to the initial Set 2 proposal. As explained in Section III.A, the compliance costs of the RFS program are shaped by the interplay of RIN demand (RVOs), production capacity, feedstock availability and pricing, the supply of carryover RINs, and compliance strategies. These factors are interconnected; a change in any one factor influences the others. The market demand for RINs, their price, and compliance decisions are responsive to these variables. By adding 2.18 billion RINs to the 2026 and 2027 RVOs, EPA is changing which renewable fuel producer supplies the last gallon of renewable fuel needed to meet the required volume and thus sets the market price for all RINs.

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[121] *Center for Biological Diversity v. EPA*, 141 F. 4th 153, 184 (D.C. Cir.) (2025).
[122] AFPM Set 2 Comments (Appendix B) at 53-55.

Furthermore, the SNPRM likely requires additional biofuel production, which will increase feedstock demand and prices for *all* biofuel production, thereby widening the BOHO spread for all 2026 and 2027 volumes. Since the SNPRM's supplemental volumes and the underlying Set 2 proposal are calculated with the same underlying assumptions, they are analytically and economically inseparable. Treating these supplemental volumes as severable from the Set 2 proposal ignores the integrated reality of the RFS where RVOs, RIN pricing, and the broader RIN market are inevitably linked.

V. CONCLUSION

For all the reasons stated above, AFPM opposes the reallocation of any SRE Reallocation Volumes. The only legally viable choice for EPA is to finalize a 0% reallocation determination. Any other conclusion would be inconsistent with the CAA and would otherwise be arbitrary and capricious.

We thank you for your consideration of these comments and are available for future discussion should you have questions.

Sincerely,

Leslie Bellas
Vice President
Regulatory Affairs