The American Fuel & Petrochemical Manufacturers' 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 (Proposed Rule),

90 Fed. Reg. 25784 (June 17, 2025)

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EXECUTIVE SUMMARY

The American Fuel & Petrochemical Manufacturers (AFPM)[1] supports policies that enhance energy security and that allow our members to provide the affordable and reliable fuels the American people deserve and expect. We know President Trump and the Environmental Protection Agency (EPA) share these goals. Unfortunately, EPA's proposal for the 2026-2027 Renewable Fuel Standard (RFS) volumes[2] missed the mark by an Iowa mile.[3] AFPM's recommendations, detailed through these comments, would reduce the cost of this regulation by up to 68%, or nearly $47 billion each year.

AFPM's recommendations are so impactful because EPA proposed the costliest RFS mandates since the program began. The proposed mandates are anticipated to impose nearly $70 billion in annual compliance costs, nearly double the cost of any previous year. These costs will be borne by refiners, consumers, and the rest of the economy through the increased costs of producing and transporting goods and individual mobility, while inhibiting investment in domestic refining capacity and midstream infrastructure.

The impact of the Proposed Rule on the rural economy will be muted, at best, as the US will still consume the same volume of corn starch ethanol and continue importing fuels and feedstocks to meet the aggressive advanced biofuel mandates. Domestically produced feedstocks and renewable fuels are simply insufficient to meet the sheer magnitude of the proposed volumes, and in fact the proposal would require increasing imported renewable feedstocks. One need look no further than EPA's own (incomplete) analysis showing the societal costs of the proposal *are nearly 33 times greater than the purported benefits* to recognize this policy is unbalanced. Had EPA completely analyzed its proposal the disparity would be even greater.[4]

We offer the following comments in the spirit of improving the proposal.

The Clean Air Act does not require EPA to impose ever-increasing mandates on the US refining industry, and EPA should not interpret its authority otherwise. Congress detailed specific volumetric targets through 2022 but left EPA discretion to balance six factors to set volumes starting in 2023. The only statutory requirements are for a minimum biomass-based diesel of 1 billion gallons per year and that the advanced biofuel mandate be at least the same applicable share of the total renewable volume mandate as it was in 2022.

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[1] AFPM is a national trade association representing nearly 90% of U.S. refining capacity. Our members proudly produce the gasoline, diesel, jet fuel, and thousands of other products that fuel the U.S. economy, and are also responsible for more than 85% of investments in renewable diesel in addition to other biofuels. They are obligated parties under the Renewable Fuel Standard (RFS).
[2] 90 Fed. Reg. 25784 (June 17, 2025).
[3] For purposes of these comments, an "Iowa mile" is approximately 1.2 billion gallons of an implied mandate for corn starch ethanol.
[4] *See infra* Sec I(D).

In light of its statutory requirements and considering the overwhelming costs compared to the minimal benefits of this Proposed Rule, EPA should clearly articulate its objectives for the RFS program so stakeholders can better evaluate the future of this program. For 2026 and 2027, AFPM seeks a reasonable balance for annual standards that minimize compliance costs and provide certainty to domestic fuel producers. To inform and support these comments, AFPM retained Turner Mason & Company (TM&C) and S&P Global Commodity Insights (S&P) to model the Proposed Rule and various scenarios. Taken together, the following recommendations would reduce the compliance cost of the RFS proposal by nearly 70% while supporting American agriculture and renewable fuel producers:

1. **Set the implied conventional mandate[5] at the expected ethanol consumption level**. EPA again acknowledges the US will not consume 15 billion gallons of conventional biofuels (i.e., corn starch ethanol) in the foreseeable future because ethanol consumption will *decline.* It also acknowledges that this proposal will result in a fraction of a percent increase in the use of gasoline containing higher concentrations of ethanol, which would come at exorbitant prices. Based on calculations using EPA and TM&C estimates, the marginal cost to supply additional ethanol in E15 next year will be upwards of $770 per gallon. Nonetheless the proposed regulation establishes a 15-billion-gallon mandate, expecting that the additional volumes of advanced biofuel will make up the difference. If EPA set the implied conventional mandate at actual ethanol consumption and moved the additional volumes of advanced that would have been used to meet the 15-billion-gallon mandate to the advanced biofuel category, EPA could halve the compliance costs without changing the overall levels of renewable fuel blending.

2. **Set advanced biofuel mandates based on North American feedstock supplies**. The proposed volumes are based on limited, outdated data and inaccurate assumptions. EPA used historically high 2024 biomass-based diesel (BBD) supply as a basis to conclude that 1.07 billion more renewable diesel gallons could be produced in 2026—a 40% increase as compared to 2024. On top of this, EPA added 500 million ethanol equivalent gallons to account for EPA's projected production increases in domestic feedstock production. EPA justifies its analysis by comparing the proposed 2026 volumes to its "projected" 2025 volumes, which are based on limited data from 2023 and 2024. The fundamental flaws with the proposed advanced volumes are (1) it assumes that 2024 volumes will be repeated, and (2) that production and imports would continue at the same rate in 2024.

   EPA's analysis overlooks the impact on renewable feedstocks of losing the Blender's Tax Credit, changes to the 45Z clean fuel production credit, and ongoing tariffs. Data from EPA for the first six months of 2025 indicates a significant reduction in Renewable Identification Number (RIN) generation, partly due to these policy

[5] For purposes of these comments, "implied conventional mandate" refers to the difference between total renewable fuel and advanced biofuel volumetric standards in a given compliance year.

changes. Moreover, EPA's assumption that domestic feedstocks will be used to meet these aggressive volumes is unfounded. An updated analysis by S&P shows that the Proposed Rule would require an increase in the absolute tonnage of imported feedstocks, accounting for nearly 30% of inputs of renewable fuel production. AFPM proposes alternative volumes that prioritize domestic feedstocks and lower compliance costs, consistent with the Administration's policy of promoting energy dominance, providing affordable transportation fuels, and reducing regulatory burden.

3. **Withdraw the proposed 50 percent import RIN reduction**. EPA's proposed 50% RIN reduction for imported fuels and feedstocks lacks a statutory basis, raises costs, increases reliance on imported fuels and feedstocks, cannot be implemented by 2026, creates untenable regulatory burdens, and penalizes American renewable fuel producers. It should be withdrawn and reconsidered, particularly given that it is unlikely to benefit US agricultural producers as intended.

4. **Finalize adjustments to the 2025 cellulosic biofuel standard**. The market will not produce enough cellulosic biofuel to meet the 2025 cellulosic standards, so those mandates must be lowered. As detailed below, AFPM also requests that EPA account for cellulosic biofuel deficits and a depleted RIN bank resulting from EPA's aspirational cellulosic biofuel volumes since 2023. Similarly, the proposed 2026 and 2027 cellulosic biofuel volumes must be set at levels that do not require the use of the cellulosic waiver and allow for the restoration of an adequate cellulosic RIN bank to ensure compliance and market liquidity.

5. **Act promptly on outstanding small refinery exemption (SRE) petitions without reallocating exempted volumes**. EPA is sitting on nearly 200 RFS SRE petitions, dating back to 2016, even though the law requires EPA to act on these petitions within 90 days of receipt. EPA's delayed decisions continue to cause unacceptable uncertainty for small refineries and RFS compliance. EPA's proposal to reallocate SRE volumes to other obligated parties is not required by the law, harms non-exempt parties, and does nothing to increase the amount of ethanol used.

6. **Finalize the rescission of the electric vehicle RIN (eRIN) pathway**. For the reasons it articulates and more, EPA correctly concluded it lacks statutory authority to include renewable electricity in the RFS program.

These actions are consistent with President Trump's executive order, Unleashing American Energy,[6] and consistent with Administrator Zeldin's objectives.[7]

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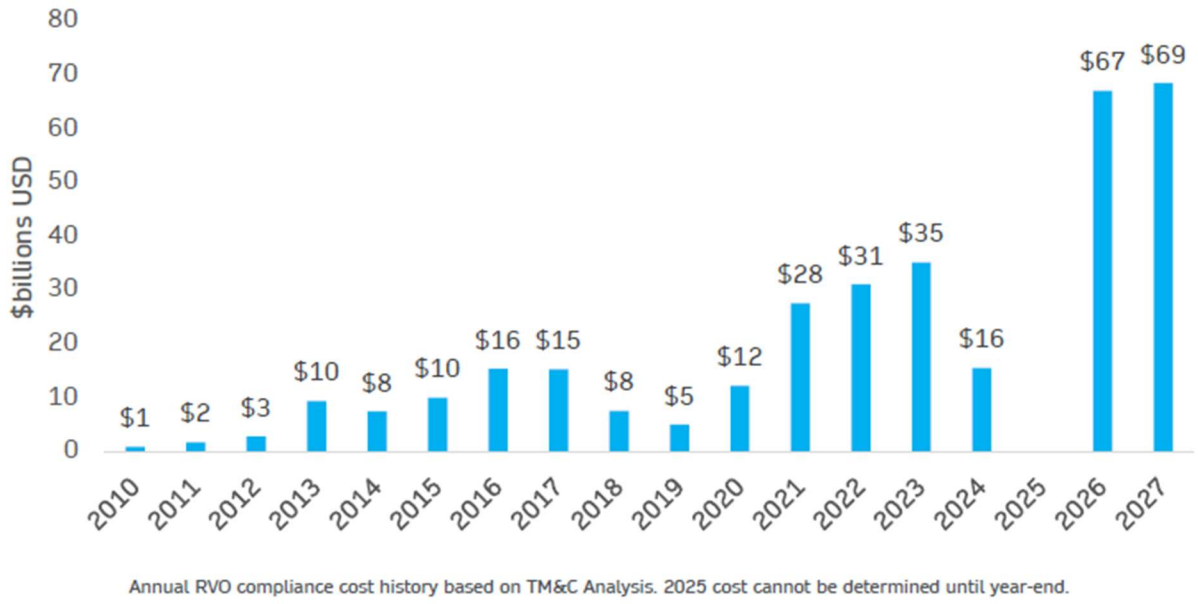
[6] U.S. President, "Unleashing American Energy," 90 Fed. Reg. 8353 (Jan. 29, 2025).
[7] *"Alongside President Trump, we are living up to our promises to unleash American energy, lower costs for Americans, revitalize the American auto industry, and work hand-in-hand with our state partners to advance our shared mission,"* EPA Administrator Zeldin, March 12, 2025.

COMMENTS

I. EPA's Proposed Volumes are Unnecessarily Costly, Undermine Energy Security, and Impede Economic Development

The required volumes must be achievable and aligned with the statutory requirements of the RFS program. Several aspects of the Proposed Rule unnecessarily increase costs and, ironically, increase reliance on foreign fuels and imported feedstocks without providing additional benefits to consumers, domestic agriculture, domestic fuel producers, or the environment. To aid EPA in assessing the cost of the proposal, AFPM retained TM&C to model the supply, demand, and cost curves for EPA's proposal and other sensitivity scenarios. TM&C updated its models following EPA's methodology, adjusted for Annual Energy Outlook (AEO) 2025 data, which EPA stated it will use for the final rule. TM&C found that annual compliance costs could jump to $67-69 billion during the next two years.[8]

Figure 1 Historical and Projected RVO Compliance Costs[9]



This significant increase is the result of multiple interrelated issues. However, as explained below, setting the implied conventional volumes higher than the gasoline-ethanol

[8] Turner Mason & Company, "EPA's Proposed RFS Set 2 Rule Review and Analysis," August 2025 (TM&C Report), attached as Appendix A, at 5.
[9] *Id.* at 5 and 59.

blendwall[10] remains the most substantial single factor in driving up compliance costs. If EPA ensured that the implied conventional mandate was set no higher than the amount of ethanol actually blended and maintained the total renewable volume, it would reduce compliance costs by approximately $37 billion in 2026 and $38 billion in 2027 without changing the amount of ethanol blended. As shown in Figure 1, TM&C estimates that these costs are nearly double those of the costliest compliance year, 2023. For the refining industry, this is particularly troublesome because it is so plainly unnecessary. Ethanol is cost-competitive without a subsidy, much less a subsidy and a mandate. It now has both. Congress recently passed changes to the 45Z clean fuels production tax credit and removed indirect land use change (ILUC) penalties for fuels that previously prevented renewable fuels produced from domestic corn and soy from generating the credit. As a result, corn starch ethanol can generate significant tax credit value in addition to receiving RINs under the RFS program and low carbon fuel standard (LCFS) credits in state programs.

EPA proposed increasing the 2026 BBD volumes by 61% above the 2025 target of 3.35 billion RINs, despite EPA Moderated Transaction System (EMTS) RIN generation data showing production is significantly below the 2025 standard. EPA claims these additional volumes would come from increased production of domestic fuels and feedstocks and from diverting domestic vegetable oil production away from food and other uses to biofuel production. However, an updated feedstock analysis by S&P confirms that under current tax and trade policies, the proposed volumes – coupled with the proposed 50% import RIN reduction – cannot be met solely by domestic feedstocks.[11]

Finally, even if the Clean Air Act (CAA) authorized EPA to adjust the RIN value for specific fuels and feedstocks, which it does not, the reality is that the proposal does not meaningfully change the relative percentage of imported feedstocks that BBD and advanced biofuel producers will need to meet the higher volumes. In fact, the proposal may increase the absolute tonnage of imported feedstocks as more imported physical gallons and feedstocks would be needed to generate the same number of RINs. Meanwhile, the proposal undermines President Trump's aim to reduce unnecessary bureaucratic burdens and unleash domestic energy production by adding another layer of burdensome recordkeeping and reporting requirements. Setting the implied conventional volumes at the blendwall and setting advanced biofuel volumes limited to North American feedstocks could reduce compliance costs by more than 60%, with relatively minor changes and reductions in volumes.

A. Implied Conventional Renewable Fuel Volumes

EPA should set achievable implied conventional renewable fuel volumes based on actual ethanol demand. Its failure to do so inflates the costs of the RFS without any corresponding increase in midlevel ethanol blends or product improvements. As detailed

[10] The "blendwall" refers to the physical volume of ethanol that the market can consume in a given year given vehicle and infrastructure compatibility.
[11] *See* S&P Global Commodity Insights, Availability to Meet Biodistillate RVOs (S&P Analysis), public version attached as Appendix B. The complete S&P Analysis (Appendix C) is proprietary information that was submitted to EPA in accordance with 40 CFR Part 2.203(b).

below, there is no correlation between D6 RIN prices and ethanol blending, and the marginal cost per gallon of supplying midlevel ethanol blends, notionally driven by RIN prices, far exceeds what is reasonable. EPA's continued failure to establish a realistic conventional biofuel target is arbitrary.

Although EPA states the volumes of conventional renewable and cellulosic biofuels "are expected to be limited by the quantity of these fuels that will be used as transportation fuel in 2026 and 2027,"[12] EPA proposes an implied conventional volume of 15 billion gallons, well above what can be blended into the gasoline pool. In doing so, EPA inadequately applied the statutory factors listed in CAA §211(o)(2)(B)(ii). The CAA requirement requires EPA to base volumes on its "review of the implementation of the program" and based on information in the administrative docket this should have led EPA to conclude that high RIN prices have not resulted in higher ethanol blend rates.[13]

EPA concedes ethanol consumption has never reached, and is not expected to reach, 15 billion gallons, but claims a "market signal" is needed to promote its use.[14] In maintaining the 15-billion-gallon implied conventional mandate with vague assertions about "market signals," EPA improperly back casts Congressional intent. In reality, Congress never intended to use the RFS to drive midlevel ethanol blends, but rather likely intended to establish a floor for ethanol consumption. The 2007 AEO, the forecast Congress used to inform development of the RFS, estimated that the US would consume 156 billion gallons of gasoline in 2015, the first year the 15-billion-gallon mandate took effect. This would imply a 9.6% ethanol concentration.

The same 2007 AEO projected gasoline demand would grow each subsequent year, thereby reducing the implied ethanol concentration each year. For 2026 and 2027, the 2007 AEO forecast that gasoline demand would climb to 182 and 184 billion gallons, respectively.[15] The same 15-billion-gallon implied conventional mandate in 2007's projected gasoline pool for the next two years would have meant an 8.2% ethanol concentration. Additionally, despite adding a major new section of the Clean Air Act through the 2005 and 2007 RFS legislation, Congress did not change the law to allow the sale of E15, which was not authorized until EPA took action in 2010. EPA glosses over the history of this program and market changes. In light of its requirements under CAA §211(o)(2)(B)(ii) and *Loper Bright Enterprises v. Raimondo*,[16] EPA must reevaluate its approach to the implied conventional mandate.

EPA confirms this dynamic in the Draft Regulatory Impact Analysis (DRIA), which shows that, relative to EPA's 2025 baseline, ethanol consumption is projected to decline

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[12] U.S. EPA, "Renewable Fuel Standard (RFS) Program – Standards for 2026 and 2027, Draft Regulatory Impact Analysis (DRIA), June 2025 at 89.
[13] 42 U.S.C. § 7545(o)(2)(B)(ii).
[14] 90 Fed. Reg. at 25826.
[15] EIA, Annual Energy Outlook 2007, With Projections to 2030, Feb. 2007, Table 11 Petroleum Supply and Disposition Balance, Available at https://www.eia.gov/outlooks/archive/aeo07/aeoref_tab.html.
[16] 144 S.Ct. 2244, 2266 (2024).

because reduced gasoline demand vastly outweighs the small increases in E15 and E85 consumption.[17] EPA admits this proposal will lead to modest increases of ethanol consumed through E15 and E85.[18] Even with the RFS, E15 and E85 have generally not been cost effective, because:

(1) Fuel blends that contain greater than 10% ethanol are currently not optimized to take advantage of the high octane value of ethanol;

(2) The lower energy content of ethanol is more noticeable as the amount of ethanol increases, thereby impacting consumer acceptance; and

(3) Infrastructure limitations have restricted the availability of higher-level ethanol.[19]

In fact, 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.[20] In 2024, the historical nationwide concentration of ethanol in the gasoline pool was 10.30%[21] and EPA projects that percentage to *fall* to 10.27% and 10.29% during 2026 and 2027, respectively.[22] The fact remains that EPA has imposed substantial costs on consumers of gasoline since 2015, when it first set the implied conventional volume requirement at 15 billion gallons in an effort to make higher D6 RIN signal the market to increase the concentration of conventional biofuels in the gasoline pool. However, as Figures 2 and 3 show, there has been no correlation between D6 RIN prices and ethanol blending. In particular, the scatterplot on Figure 3 shows there is only a 0.08 coefficient of determination (R-squared), which indicates that there is no correlation between D6 RIN prices and the ethanol blend rate.

[17] DRIA at 112, Table 3.4-7.
[18] *Id.*at 139 (48 and 106 million gallons in 2026 and 2027, respectively).
[19] *Id*. at 22.
[20] *Id*. at 112,Table 3.4-7.
[21] 90 Fed. Reg. at 25806.
[22] DRIA at 318, Table 7.5.1-5.

Figure 2 Historical Relationship Between Fuel Ethanol Blending and D6 RIN Prices

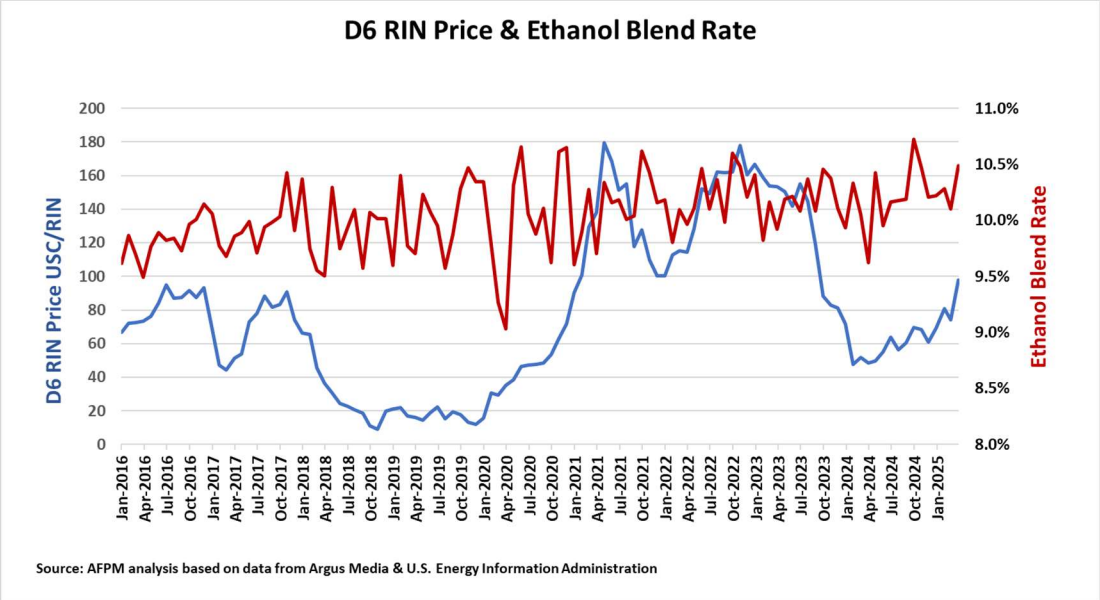
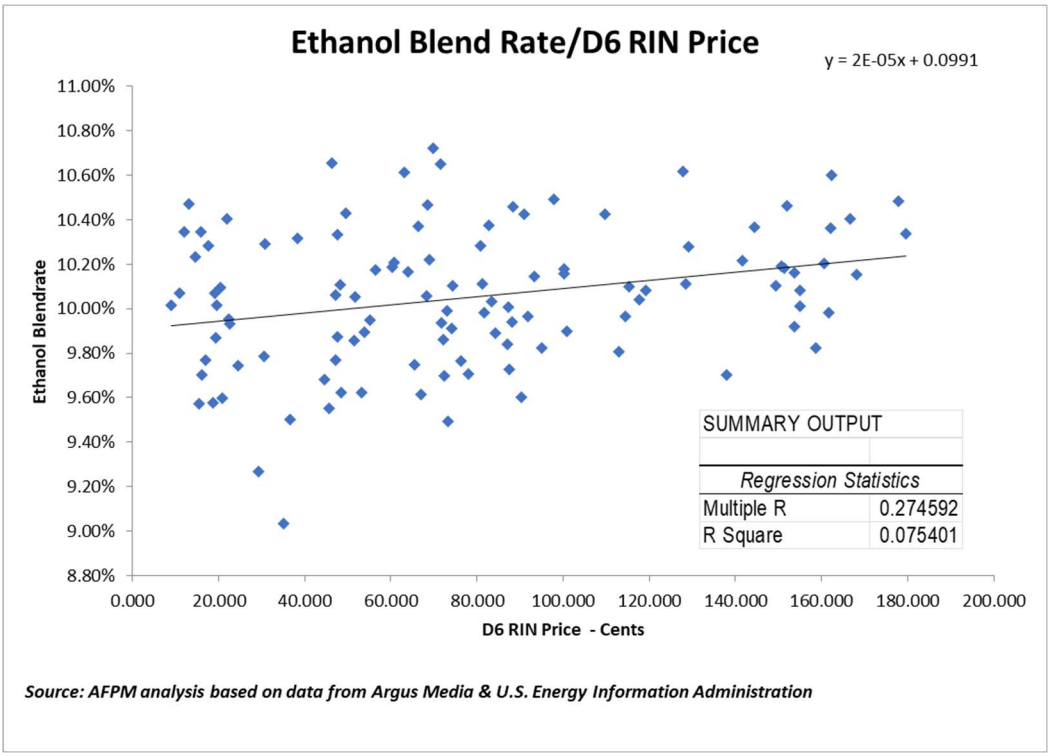


Figure 3 Scatterplot of Monthly Ethanol Blend Rate and D6 RIN Prices (Jan 2016-Present)



To the extent EPA believes that the 15-billion-gallon implied conventional mandate can or will increase market uptake of E15, it should calculate the marginal cost of providing those gallons. EPA anticipates incremental ethanol consumption through E15 and E85 to total approximately 150 million gallons combined in 2026-27.[23] As described below, TM&C calculated the compliance cost savings from simply establishing the implied conventional mandate at the blendwall amount to $37 billion per year.[24] **This results in a marginal cost of about $770 per gallon of ethanol consumed as E15 and E85 in 2026 and $349 per gallon in 2027**. Under any straight-faced interpretation of what a balanced policy should be, this is unreasonable.

Despite its own projections for reduced ethanol concentrations in the gasoline pool, EPA argues constraints on ethanol consumption alone should not determine the volume requirements, since advanced and BBD volumes can fulfill the conventional renewable fuel mandates, and higher volumes are needed to incentivize E15.[25] However, 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), not on the idea that other renewable fuels can fill in for intentionally inflated, non-statutory "implied" requirements.[26]

Reducing EPA's unrealistic 15 billion gallon mandate and applying any advanced volumes EPA to that category would not materially change E15 infrastructure or consumption, but it will dramatically decrease the cost of RFS compliance by 55%.[27] Since more expensive BBD D4 and advanced D5 RINs are the marginal RINs – the last unit needed to fulfill the implied conventional mandate – they set the price for *all RINs* used to fulfill those requirements, explaining the convergence of D4, D5, and D6 RIN prices.[28] The CAA requirement that EPA base volumes on its "review of the implementation of the program" should have led EPA to conclude that high RIN prices have not resulted in higher ethanol blend rates, that high implied conventional volumes have not increased E15 use, and that this approach has caused unnecessarily high costs.

For the sole purpose of showing the compliance cost impact of relying on D4 and D5 RINs to satisfy the conventional biofuel mandate, AFPM asked TM&C to calculate the volume obligations, percentage standards, and total program costs using EPA's methodology, assumptions, and proposed total renewable fuel volume.[29] This calculation reduces the implied conventional volumes to the ethanol blendwall while maintaining the same total renewable mandates (thereby assigning those same non-achievable volumes to the total

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[23] *Id.* at 112.
[24] TM&C Report (Appendix A) at 5, 47, and 55.
[25] 90 Fed. Reg. at 25826.
[26] *See Loper Bright*, 144 S.Ct. at 2266 ("It therefore makes no sense to speak of a 'permissible' interpretation that is not one the court, after applying all relevant interpretative tools, concludes is best. In the business of statutory interpretation, if it is not the best, it is not permissible.")
[27] *See* TM&C Report (Appendix A) at 55. Since the unachievable 15-billion-gallon mandate has been in effect since 2015, EPA has likely imposed hundreds of billions of dollars of unnecessary compliance costs with its failed approach to increasing ethanol blending.
[28] *See* DRIA at 22, Figure 1.7.2-1.
[29] *See generally* TM&C Report (Appendix A) at 17 and 19.

advanced biofuel category). This approach does not change the renewable fuel requirement or the way the market has complied with the recent "implied conventional gap." While for the reasons expressed in Section I.B, we do not support these proposed 2026 and 2027 advanced volumes, we present Figure 4 to illustrate how the volumes and percentage standards would change if the implied conventional volumes are set to the blendwall and the volumes represented in excess of the blendwall are allocated to the BBD and advanced fuel categories.

Figure 4 Limiting Implied Conventional to Ethanol Blendwall but Maintaining Total Renewable[30]

RVOs	Base Case	Set 2 with Ethanol Blendwall
B-RINs	**2026**	**2026**
Cellulosic Biofuel	1.30	1.30
Biomass Based Diesel	7.20	8.34
Advanced Biofuel	9.09	10.23
Total Renewable Fuel	24.09	24.09
Implied Undifferentiated	*0.60*	*0.60*
Implied Conventional	*15.00*	*13.86*

Under this scenario, the total amount of renewable fuel remains the same as EPA's proposal, but the more expensive D4 and D5 would no longer be the marginal RINs setting the price for all D6 RINs. Instead, additional volumes of advanced biofuels would be allocated to the advanced and BBD categories. This simple fix would reduce the overall RFS compliance costs by 55%, bringing this proposal roughly in line with 2023's rule, which is the next highest compliance cost year.[31] To put it another way, EPA's proposal will dramatically and unnecessarily increase the cost of the RFS program, RIN prices, RFS compliance costs, and the need for SREs, as shown in Figure 1 above. This approach is in line with the CAA's requirement to set applicable volumes for *each* renewable fuel.

In this case, the volume of each renewable fuel produced remains constant, meaning farmers and renewable fuel producers would have the same demand for their products. What would dramatically change, however, is the impact on consumer costs and inflation, as EPA's estimated increase for gasoline and diesel fuel prices would be halved.[32] Because EPA projects this proposal will not lead to increased ethanol consumption and D6 RIN prices have never resulted in increased ethanol blending or expanded infrastructure due to regulatory

[30] *Id.*(Appendix A) at 54. TM&C used 2025 AEO for its base case model in the expectation that EPA would use the updated data unavailable to it at the time of the proposal.
[31] *Id.* (Appendix A) at 55.
[32] 90 Fed. Reg at 25832, Table V.H.5–1 (Estimated effect of the proposed volumes on retail fuel prices as compared to the No RFS Baseline).

hurdles, EPA struggles to support its argument that the 15 billion gallon volume requirement is a necessary "market signal" to expand ethanol consumption.

EPA's proposed approach cannot be justified by its statutory requirements. Benefits related to energy security and independence, environmental impacts, expected commercial production rates, infrastructure impacts, and opportunities for job creation and rural development would remain constant.[33] The *only* change caused by reallocating BBD and advanced volumes to their appropriate category is a substantial reduction in RFS compliance costs.[34] This outcome supports the purpose of the statutory criteria requiring EPA to analyze "costs to consumers of transportation fuel and cost to transport goods."[35]

Moreover, uncertainty remains regarding the volume of gasoline and diesel that EPA will exempt as part of its evaluation of petitions for small refinery exemptions (SREs), given recent court decisions[36] and the potential that EPA will reallocate exempt volumes by adjusting the percentage standards. This creates an extra burden on non-exempt parties, even if some costs are passed on to consumers. Lowering program costs by 55% would alleviate this burden and lower consumer costs.

There is no valid reason for maintaining an unattainable implied conventional mandate. It is economical (profitable) to blend ethanol into the motor gasoline pool as E10 without the RFS.[37] Yet, despite the economic viability of virtually all ethanol produced, EPA is proposing to impose crippling compliance costs on all consumers to increase ethanol consumption by just 0.1% rather than simply establishing a realistic implied conventional target in the proposal. Instead of forcing American consumers to fund a windfall for ethanol producers through higher RIN prices, EPA should set the implied conventional volume to match the amount of ethanol that can be blended into the gasoline pool. Any further projected demand for advanced biofuels should be included in their statutorily defined category. This helps ensure market realities are accurately reflected, overall program costs are minimized, and it fulfills the President's promise to ensure *affordable* energy for all Americans,[38] while supporting energy security and independence.[39]

B. Proposed BBD and Advanced Biofuel Volumes

The core of EPA's Proposed Rule focuses on a dramatic increase in the production and use of advanced biofuels, especially BBD. But EPA fails to provide sufficient supporting information in the rulemaking docket to support these requirements. First, EPA's proposal is arbitrary as it offers an inadequate explanation of how it arrived at its suggested volumes and

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[33] 42 U.S.C. § 7545(o)(2)(B)(ii)(I)-(IV) and (VI).
[34] *Id*. at § 7545(o)(2)(B)(ii)(VI).
[35] *Id*. at § 7545(o)(2)(B)(ii)(V).
[36] *Sinclair Wyo. Refin. Co. LLC v. EPA*, 114 F.4th 693 (D.C. Cir. 2024) (*Sinclair Denials*); *Calumet Shreveport Refin., L.L.C. v. EPA*, 86 F.4th 1121 (5th Cir. 2023) *rev'd on other grounds, sub nom. EPA v. Calumet Shreveport Refin., L.L.C.*, No. 23-1229 (U.S. June 18, 2025).
[37] DRIA at 48. The DRIA's "The No RFS Baseline" concluded it is economical to blend up to 10% ethanol into the entire gasoline pool.
[38] U.S. President, "Unleashing American Energy," 90 Fed. Reg. 8353 (Jan. 29, 2025).
[39] 90 Fed. Reg. at 25788.

how these volumes will help achieve its policy objectives. Second, to the extent that AFPM could piece it together, the proposed volumes appear to depend on outdated and limited RIN generation data and inaccurate assumptions about the operation of biofuel plants. As previewed by 2025 EMTS data available to date showing a dramatic slowdown in RIN generation, EPA's assumption that the imports seen in 2024 will continue is unfounded given the restrictions of 45Z, tariffs that are reducing feedstock imports, observed 2025 EMTS RIN generation data, the proposal to halve RIN generation for imported fuels and feedstocks, and new restrictions under state low-carbon fuel programs (traceability requirements and a "crop cap"). Third, an updated feedstock analysis by S&P confirms that available domestic feedstocks cannot meet the proposed volume requirements, meaning that an increasing volume of imported biofuels and feedstocks is required to meet the aggressive volumes, undermining EPA's objective of promoting energy independence and security. Fourth, the proposal to halve the RIN value for imported fuels and domestic fuels is not authorized by the CAA. Finally, if the proposed RIN reduction is lawful, it should be subject to a separate notice of proposed rulemaking because the provision cannot be implemented as proposed or in the time available, imposes significant burdens, makes achieving these proposed volumes highly uncertain, and could lead to even higher prices.

1. EPA's Proposed BBD Volumes are Arbitrary

Similar to the "Set 1" rule for 2023-2025, EPA determined BBD volumes by subtracting 600 million RINs from the total non-cellulosic advanced biofuel volume to allow for other non-cellulosic advanced biofuels besides BBD.[40] However, the DRIA provides little explanation for the rationale behind proposing the BBD volumes be set at 600 million RINs below the non-cellulosic advanced biofuel volumes. EPA is only required by statute to establish a 1-billion-gallon BBD standard and to utilize the statutory factors in setting volume targets. EPA's proposal and supporting docket do not provide an adequate basis for stakeholders to comment on whether EPA has a reasoned basis for its proposed BBD standard.[41]

2. Methodology and Data Concerns

To establish the 2026 and 2027 BBD volumes, EPA estimates 2024 BBD supply by fuel and feedstock type (including imported v. domestic sources) and then projects which feedstocks will increase through 2027. Based on this analysis, EPA estimates 4.71 billion gallons of BBD will be produced in 2026, an increase of 1.07 billion gallons compared to record volumes in 2024. [42] Additionally, EPA adds 500 million RINs to account for its projected increases in domestic soybean oil (SBO) and fats, oil, and grease production.[43] To assess whether these volumes could be met, EPA compares its proposed volumes to its "projected" volumes for 2025, which is based entirely on limited data from 2023 and 2024

[40] *Id.* at 25825.
[41] Congress directed EPA to set a BBD not less than the 2012 statutory volume of 1 billion gallons. This aims to promote competition within the advanced biofuel category after 2022 by minimizing the BBD volume. It did not require EPA to use the most recent 2022 volume standard, as it did when it prescribed a minimum advanced-to-total biofuel ratio. 42 U.S.C. § 7545 (o)(2)(B)(iv), (v).
[42] DRIA at 89-99 (Section 3.2),
[43] *Id.* at 94. *See* Table 3.2-5 for proposed volumes in RINs, which accounts for the 50% import RIN reduction).

and contradicts the dramatic reduction in RIN generation seen during the first six months of this year.[44] EPA also mistakenly assumes all renewable diesel plants can economically process SBO, the feedstock that this rulemaking seeks to promote. If EPA set the implied conventional at the blendwall and established BBD volumes based on the availability of North American feedstocks, it would reduce RFS compliance costs by 66% in 2026 and 68% in 2027.[45]

a. EPA Incorrectly Assumes that 2024 BBD Volumes Will Be Replicated

EPA proposes increasing the 2026 BBD volumes by 61% above the 2025 BBD target based on the assumption that the 2024 record imports will be repeated. This assumption contradicts current data and market dynamics, changes in the renewable fuels tax credits, and the provisions of this Proposed Rule, EPA's continued reliance on that assumption would therefore be arbitrary and capricious.

In 2024, the 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 origin. Data shows that biofuel producers increased 2024 production and imports to the maximum extent possible before the BTC expired on December 31, 2024 and was replaced with the less lucrative 45Z clean fuels tax credit.

Effective January 1, 2025, the new 45Z clean fuels tax credit took effect. 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 credit amount is tied to the fuel's carbon intensity and provides the full value of the credit only if certain prevailing wage and apprenticeship requirements are met. The loss of the BTC, along with uncertainty regarding the 45Z credit, the proposed volume levels, and feedstock availability, led to a dramatic reduction in D4 generation.[46]

According to EMTS data, during the first five months of 2025 compared to the same period in 2024, 15% fewer D4 RINs were generated domestically, while foreign and imported D4 RIN generation fell by a staggering 83%.[47] The latest EMTS data indicates total D4 RIN generation for the first six months of 2025 fell by 25% compared to the same period for 2024.[48] These RIN generation figures include both domestic and imported fuels, as well as domestic fuels produced from imported feedstocks. Based on the current rate of BBD RIN generation and retirements, net production of BBD in 2025 is estimated at approximately 3.7 billion gallons, which is about 28% less than EPA's "2025 Baseline" projection from the

[44] *Id.* at Section 3.2.
[45] TM&C Report (Appendix A) at 51.
[46] S&P Analysis (Proprietary Submission at Appendix C) at Slide 46.
[47] EPA, Public Data for the Renewable Fuel Standard, RINs Generated Transactions (EMTS RIN Generation Data), available at https://www.epa.gov/fuels-registration-reporting-and-compliance-help/rins-generated-transactions.
[48] *Id.* Further, the 2025 RIN generation data is an overstatement of available BBD supply. EMTS data on RIN generation to date in 2025 includes RINs generated on product that ultimately is exported to international markets. These RINs must be retired and are not available for compliance.

DRIA.[49] To reach EPA's projected 2026 BBD production of 6.83 billion gallons from the DRIA, BBD production would need to increase by 85% from its current pace in 2025 in just one year while it has taken 20 years of the RFS program to reach the current levels.[50] EPA had access to this data, but did not present it in its proposal. This resulted in a misleading proposal and will lead to the submission of many uninformed third-party comments.

Similarly, EIA's June 2025 Monthly Energy Review (MER) confirms reduced production of renewable diesel and biodiesel for the first three months of 2025 as compared to the same time period in 2024,[51] while its Short-Term Energy Outlook (STEO) shows biodiesel and renewable diesel consumption has been and is projected to be less than 2024.[52]

While acknowledging that replacing the BTC with the 45Z credit will lower the value of federal tax incentives and eliminate incentives for imported BBD, EPA's process for setting advanced volumes completely ignores how this new tax policy impacts EMTS 2025 RIN generation.[53] S&P estimates that losing the BTC and market uncertainty regarding U.S. biofuel policy could reduce BBD production in 2025 by 500 million gallons below 2024 levels.[54] It is arbitrary for EPA to assume the level of imports seen in 2024 will continue into 2026 and beyond. That is why it is vital for EPA to set BBD volumes based on domestic feedstock supply.

After relying on historically high BBD supply for 2024 to justify the feasibility of its proposed volumes using domestic feedstocks, EPA turns around and uses limited data to "project" 2025 volumes. EPA's projected 2025 volumes by comparing RIN generation from January through May of 2023 to the same period in 2024[55] and then applying the year-over-year percentage increase (17.3%) to project RINs generation for all of 2024 and 2025.[56] As discussed above, 2025 RIN generation for January through June shows a 25% decline, not a 17.3% increase. As of August 2025, it is too soon to tell whether a general waiver may be needed for 2025. EPA arbitrarily ignored its own data showing this decline and instead resorted to outdated data to project the opposite conclusions with respect to 2025 volumes.

As if the impacts of 45Z and the current market dynamics were not enough to demonstrate that the 2024 volumes could not be replicated in 2026, the proposed 50% import RIN reduction will make meeting the proposed 2026 and 2027 volumes more

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[49] DRIA at 83, Table 2.2-4.
[50] *Id*. at 97, Table 3.2-6.
[51] EIA, Monthly Energy Review, June 2025, Table 10.4a (biodiesel), available at https://www.eia.gov/totalenergy/data/monthly/pdf/sec10_8.pdf, and Table 10.4b (renewable diesel), available at https://www.eia.gov/totalenergy/data/monthly/pdf/sec10_9.pdf.
[52] EIA, Short-Term Energy Outlook, June 2025, Table 8, available at https://www.eia.gov/outlooks/steo/pdf/steo_full.pdf.
[53] EMTS RIN Generation Data
[54] S&P Analysis (Proprietary Submission at Appendix C) at Slide 56.
[55] DRIA at 286.
[56] *Id.* EPA acknowledges that it calculated separate percentages for biodiesel and renewable diesel due to different supply trends. Similarly, EPA arbitrarily applied the identical growth rate for all feedstocks used to produce biodiesel, and applied another growth rate for all renewable diesel/jet fuel. See DRIA at 287, Table 7.2.2-2. There is no basis to conclude that SBO and FOGs would grow at precisely the same rate in 2024-2025.

challenging. As explained by S&P's revised analysis, these new tax and trade policies, coupled with the proposed 50% import RIN reduction and higher BBD volume obligations, will require producers to maximize the use of US feedstocks.[57] However, the proposed 2026 volumes are based on an implicit assumption that 2024 BBD imports will continue into 2026, despite all indications to the contrary.[58] Before finalizing these volumes, EPA must consider the available 2025 EMTS RIN data to establish a realistic basis for projecting volumes for 2026 and 2027.

b. EPA Incorrectly Assumes All Domestic Renewable Diesel Capacity Can Economically Process Soybean Oil

i. Increased Costs

In recent years, the overwhelming majority of domestic BBD volumes have come from increased renewable diesel produced from used cooking oil (UCO), animal fats, oil, and greases (collectively referred to as "FOGs"), distillers corn oil (DCO), canola oil, and SBO.[59] EPA acknowledges limited growth in domestic feedstock production of FOGs, DCO, and canola oil.[60] Most of the proposed increase in BBD volumes depends heavily on the expected domestic growth of SBO crush capacity.[61] Most crush facility expansions announced since 2022 are expected to be operational by 2026, with the rest coming online in 2027 and 2028, resulting in 4% annual growth from 2025 to 2028.[62] As noted by S&P, any new crush capacity, if fully realized, will take approximately two years to plan and construct, meaning it will not be available to meet the volumes proposed in this rule.[63] Figure 5 shows that the projected changes in US SBO supply and demand from 2024 to 2028 will outstrip production. Additionally, S&P projects that SBO for use in food and export markets will need to decline as subsidized biofuel use increases. The increased competition will have inflationary impacts on commodity and food prices, and require substitution to less economic feedstocks, some of which will be imported.

[57] S&P Analysis (Proprietary Submission at Appendix C) at Slides 7-10 and 20-23, and 72.
[58] *Compare* DRIA at 94, Table 3.2-4 (shows 2024 BBD production by fuel and volume, including imports) *with* Table 3.2-5 (shows 2026 and 2027 proposed volumes BBD supply).
[59] *See Id*. at 91, Table 3.2-3 (showing 2024 supply of domestic and imported BBD) and 96, Table 3.2-5 (showing proposed 2026 and 2027 volumes for BBD supply in RINs, including imports).
[60] *See* 90 Fed. Reg. at 25801; *See also* DRIA at 292 and 294.
[61] 90 Fed. Reg. at 25787.
[62] S&P Analysis (Proprietary Submission at Appendix C) at Slide 23.
[63] *Id*. (Proprietary Submission at Appendix C) at Slide 7.

Figure 5 Changes in Soybean Oil Supply and Demand: 2024-2028

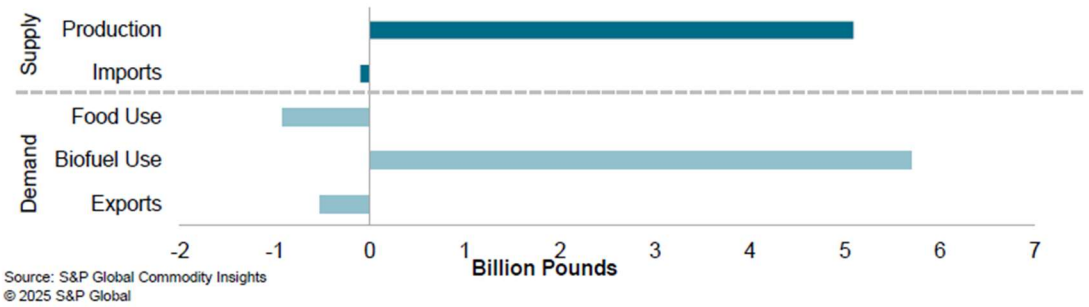
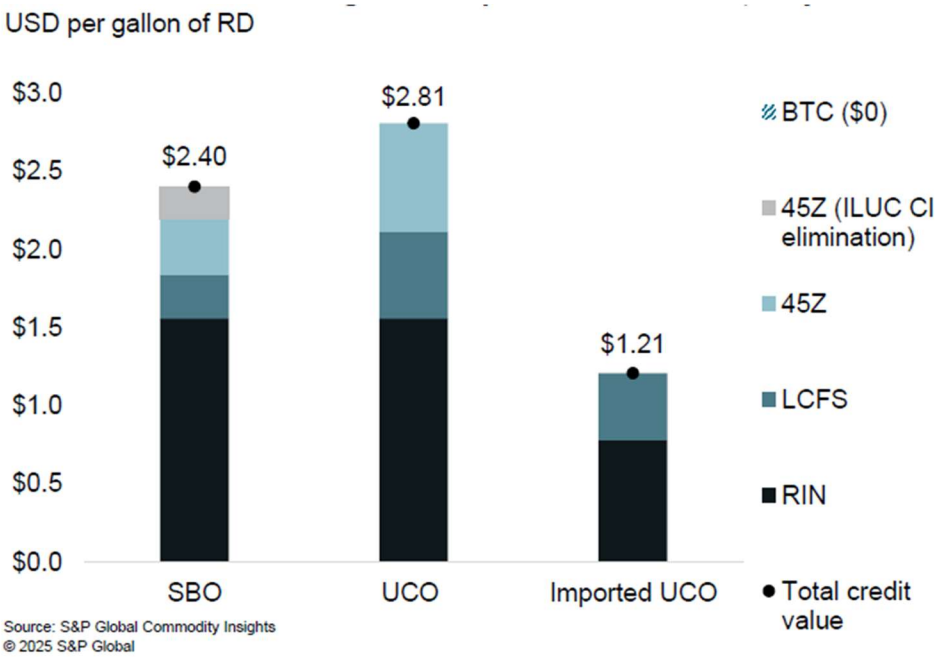


Figure 6 shows S&P estimates that the RIN value for domestic feedstocks could nearly double as a result of the high proposed volumes, no 45Z credit for non-North American feedstocks, and the proposed 50% import RIN reduction. Under these policies, domestic SBO and other US feedstocks become more valuable, leading to a higher RIN price.[64] Thus, on top of the extraordinarily expensive 15-billion-gallon implied conventional proposal, EPA is also proposing to double the RFS compliance costs for Advanced and BBD volumes due to the proposed high volumes and 50% import RIN reduction. These rising costs could jeopardize some biofuel production capacity, undermining the Nation's energy security and independence.

The RIN alone does not enable a biofuel producer to achieve the break-even price. Federal tax credits, LCFS credits, most notably in California, and other tax credits are stacked on top of the RIN value to close the gap between the cost to produce a gallon of advanced biofuel and a competitive sales price. While up until this proposal, the RIN itself was feedstock and location neutral, the value of the LCFS credit has always been based on the carbon intensity of the fuel. Consequently, biofuel producers sought a variety of feedstocks to maximize their LCFS credit value. The Proposed Rule, however, could limit renewable fuel producers' ability to optimize feedstocks to support cost-effective production.

[64] *Id.*

Figure 6 Credit Values for US Origin v Imported Feedstocks (July 2025)[65]



Given these credit price differences, producers may not operate if they are unable to recover the value of their investment. In finalizing this rule, EPA must balance its objectives with the reality that the LCFS and 45Z add significant credit value to advanced biofuels made with imported lower carbon intensity feedstocks to ensure the economic feasibility of domestic advanced biofuel production.[66] Per the CAA, EPA must analyze this impact of its proposal on the rate of commercial renewable fuel production.[67]

ii. Logistical Barriers

Operating with larger volumes of SBO may not be economically or logistically feasible. For example, some West Coast plants receive rail and barge deliveries of SBO, but rail and terminal capacity are limited, and efforts to expand service have been stymied due to local environmental and land use regulations. To move SBO on rail to a BBD producer in the Midwest, it usually takes around a week, depending on location it could be less. However, the time needed to move SBO from the Midwest to the West Coast can take anywhere from 6 days to 6 weeks, crossing multiple rail lines in the process. This is a major issue for RD facilities that prefer to operate on a spot basis to allow them always to optimize feedstocks (like a refinery).

Similarly, renewable diesel plants located on the mouth of the Mississippi River may not be able to secure Jones Act vessels to ship domestic feedstocks to their facilities. Even if physically possible, the cost per ton to ship large quantities of UCO from Asia is less than

[65] *Id.* at Slide 8.
[66] *Id.*
[67] 42 U.S.C. § 7545(o)(2)(B)(ii)(III).

shipping SBO by truck or rail within the United States. Published freight rates highlight the cost differential between the higher cost to move SBO by rail from the Midwest to the West Coast (a cost of $71.81 per metric ton) and the lower cost to ship feedstocks from Asia ($42.50 for a midsize barge from Asia).[68] If physical and supply logistics prevent a biofuel plant from cost-effectively procuring domestic SBO to replace foreign feedstock supply, this is more likely to reduce renewable fuel production volumes than to increase SBO consumption. EPA must go back and carefully consider whether there is sufficient infrastructure to deliver the feedstocks that would be required by this proposal.[69]

Some biofuel refineries imported SBO to increase production and to benefit from tax credits. However, since the new 45Z tax credit is not available for feedstocks outside North America and new tariffs have been imposed on imported biofuel feedstocks, using higher volumes of imported SBO or canola oil is less economically viable given the potential lower 45Z credit value and upward pressure on SBO prices due to this proposal, as discussed in Section I.B.3. Considering the economics and logistics, it is arbitrary for EPA to increase BBD volumes based on the assumption that most US renewable diesel plants will be able to access SBO and use it to produce renewable fuels economically.

3. An Updated S&P Feedstock Analysis Confirms Imported Feedstocks Are Required to Meet the Proposed Volumes

EPA relies on several sources, including a 2024 S&P feedstock analysis using 2023 data, to justify its proposed 33% increase in BBD RINs from 2025 to 2026.[70] Since assessing feedstock supply in 2024, a lot has changed. New tariffs were imposed on imported biofuel feedstocks and Canada has its own low carbon fuel program. The BTC expired, removing the $1 per gallon of biodiesel or renewable blended, irrespective of whether the fuel and feedstocks were produced domestically or imported. The BTC was replaced with the 45Z tax credit, which is harder to claim and less valuable.[71] The proposal requiring record high renewable fuel obligations and the 50% import RIN reduction are the latest measures affecting market dynamics and economics. AFPM asked S&P to update its analysis to account for these changes and S&P concludes:

- Feedstock pricing changed with the proposed 2026 and 2027 volumes and the passage of 45Z revisions in the "One Big Beautiful Bill Act" (OBBBA).
- US feedstocks alone are inadequate to meet the proposed BBD volume requirements and, therefore, **imported feedstock imports would need to increase from 11 to 14 billion pounds between 2024 and 2027 to meet the proposed volumes**.

[68] The BSNF website states the cost to ship roughly 130 metric tons from Newton, IA to the California coast is $9,336, while a major shipping company will charge $1.7 million to move 40,000 metric tons of feedstock from Asia to the U.S. West Coast.
[69] 42 U.S.C. § 7545(o)(2)(B)(ii)(IV).
[70] 90 Fed. Reg. at 25801.
[71] California modified its LCFS program to add feedstock traceability requirements and impose crop caps. Some renewable diesel producers diverted some production to make SAF, for which customers are more discerning on feedstock and less willing to take crop-based fuels.

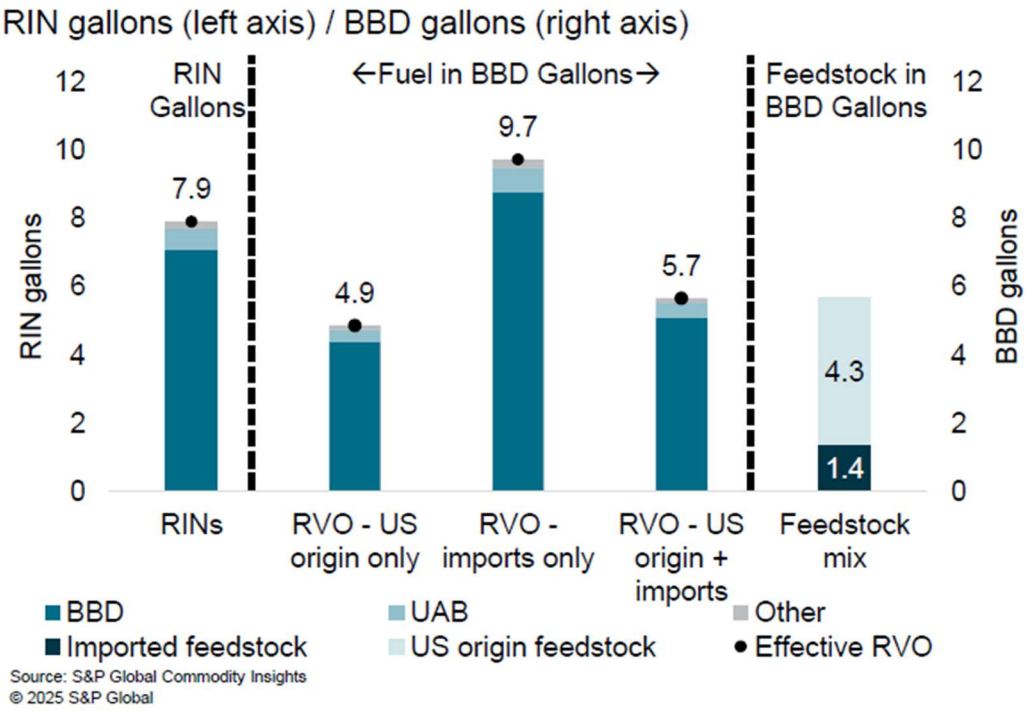
- Adding the proposed 50% RIN reduction on top of these higher volumes makes meeting the advanced volumes even more challenging.
- Importation of lower carbon intensity feedstocks (used cooking oil or UCO and tallow) will continue.[72]
- The proposed higher volumes plus the 50% import RIN reduction will push feedstock prices higher, further increasing the cost of the RFS proposal.
- Current tariff/trade policy makes compliance with the volume requirements challenging (i.e., if import tariffs are applied to feedstock imports).[73]

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 instead of less, contradicting EPA's stated goal, making EPA's proposed volumes and import penalty provision arbitrary.[74]

The proposed volumes are expected to increase BBD volumes from 4 billion gallons in 2025 to approximately 5.7 billion BBD gallons in 2026 and 5.9 billion for 2027.[75] If only US origin feedstocks are used, 4.9 billion BBD gallons would be needed.[76] Since the proposed volumes cannot be met by using only US origin feedstocks, imports will be required. And as demonstrated in Figure 7 below, with the 50% import RIN reduction, approximately 5.7 billion gallons of BBD will be needed to meet the targets.

[72] S&P Analysis (Proprietary Submission at Appendix C) at Slide 26.
[73] S&P Analysis (Appendix B) at Slide 3.
[74] 42 U.S.C. § 7545(o)(2)(B)(ii)(II) (evaluate the impact of renewable fuel on US energy security).
[75] S&P Analysis (Appendix B) at Slide 2.
[76] *Id.*

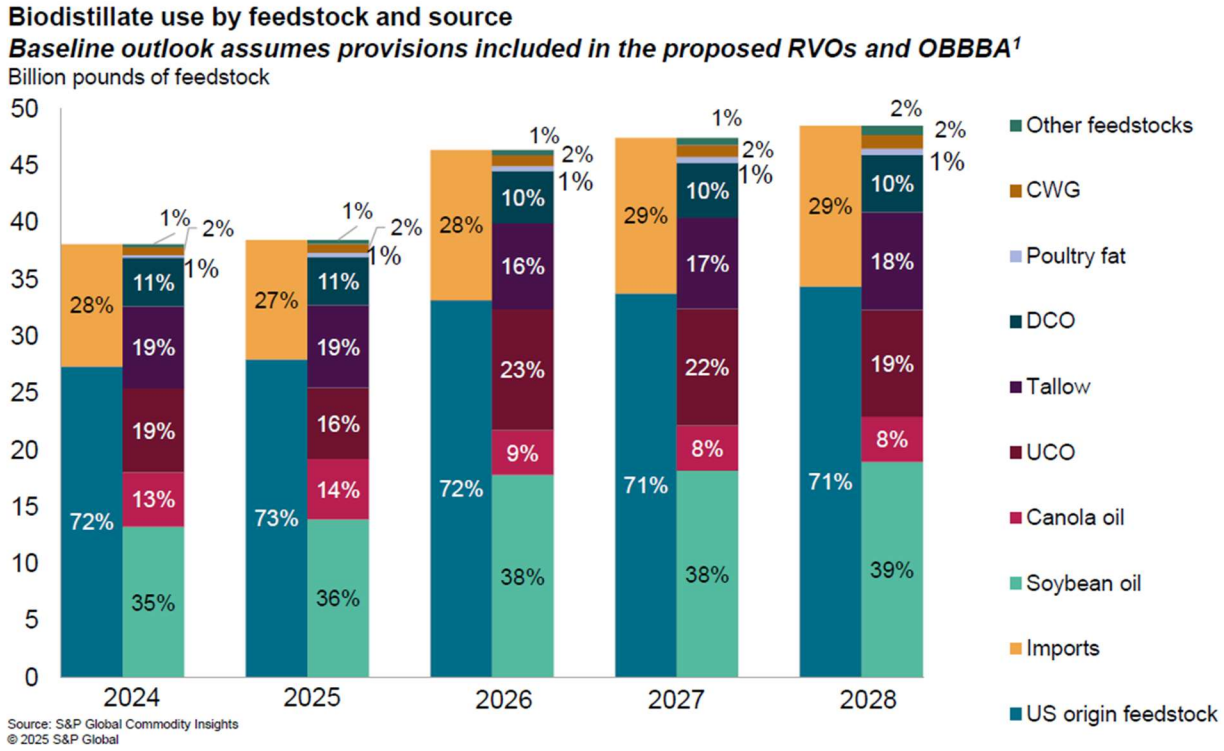
Figure 7 Proposed 2026 Volumes Based on Feedstock Origin[77]



Although domestically sourced feedstocks will remain the dominant player in US biofuel production, S&P's feedstock analysis shows the same percentage of imported feedstocks will be necessary to meet the proposed volume requirements.[78] As shown in Figure 8, the relative share of SBO (around 36-38%) and imports (around 28-29%) needed to fulfill the proposed 2026 and 2027 volumes remain close to historic levels, while the absolute pounds of imported feedstocks will rise. [79]

[77] S&P Analysis (Proprietary Submission at Appendix C) at Slide 8.
[78] The Draft Regulatory Impact Analysis (DRIA) also relies on increases of UCO and tallow imports to justify its conclusion that there is ample feedstock to support the proposed volumes.
[79] S&P Analysis (Appendix B) at Slide 2.

Figure 8 Feedstock by Sourcing and Share[80]



Although domestic SBO will eventually shift from food to biofuel production, that shift will occur gradually over time because food producers must find replacements and update labels, including ingredient, allergen, and nutrition facts.[81] Moreover, higher RVOs and the emphasis of US origin feedstocks are expected to result in not only shift of SBO from food use to biofuel use, but also increased SBO prices of approximately $0.10 per pound annually during the next three years."[82] Rising SBO prices will indirectly make imported feedstocks price competitive, undermining EPA's objectives.[83]

The 50% import RIN reduction makes the economic viability of imports challenging. By requiring more foreign feedstocks to meet the proposed BBD volumes while simultaneously reducing the RIN value for these same feedstocks, EPA is indirectly pushing imports to be priced at a level that allows biofuel producers to achieve similar margins between using US origin SBO and imported feedstock (e.g., UCO).[84] However, global competition for feedstocks will intensify as the EU implements RED III and countries like

[80] *Id.*
[81] *See* Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 343(q) and 21 CFR 101.9.
[82] S&P Analysis (Appendix B) at Slide 3.
[83] *Id.*
[84] S&P Analysis (Proprietary Submission at Appendix C) at Slide 28.

China adopt policies to promote biodiesel and renewable diesel consumption, as well as SAF uptake.[85]

The United States became a net importer of lower-carbon intensity feedstocks to take advantage of the higher LCFS credit values as compared to crop-based feedstocks.[86] By 2023, China emerged as a leading provider of imported UCO to the United States.[87] In 2024, these imported lower-carbon intensity feedstocks accounted for 70% of all feedstock imports, 50% of all lower-carbon intensity feedstocks used for biofuel and 20% of all feedstocks used in the US biofuel production.[88] While this proposal was designed to reduce reliance on foreign feedstocks, it is projected to *increase* the US trade deficit for lower-carbon intensity feedstocks.[89] The 50% import RIN reduction will result in lower imported UCO prices to offset the lost RIN and 45Z credit values.[90] UCO will continue to be imported to fill the mandate in the next three years because of the lower Chinese UCO breakeven price.[91] While the proposed volumes and the OBBBA provide incentives to expand US feedstock supplies, US soy crush expansion to support increased soybean oil production will take at least two years to fully materialize and add availability to the feedstock pool.[92]

The combined policies (*i.e.*, higher volumes, the 50% import RIN reduction, and the 45Z credit) result in increased feedstock requirements while lowering the value of imported feedstocks which constrain feedstock availability. For perspective, if non-North American feedstocks are priced out of the market (*e.g.*, China UCO imports are unfeasible because their value in the United States is lower than elsewhere), then there would be a feedstock gap of 7.8 billion pounds on average from 2026-2027.[93] Consequently, the proposed volume requirements would be challenging to meet using North American alone and could significantly impact domestic SBO prices.

This proposal comes at a great cost, which the market has partially priced. As shown in Figure 9, soybean oil futures rose after the proposed volumes were announced.

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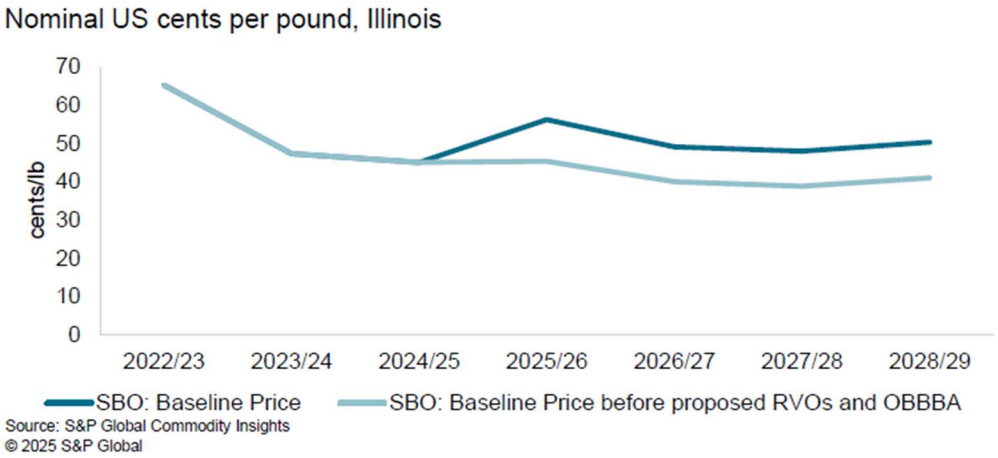
[85] *Id.* (Proprietary Submission at Appendix C) at Slide 35.
[86] *Id.* (Proprietary Submission at Appendix C) at Slides 11 and 26 and 90 Fed. Reg. at 25787-788
[87] *Id.* (Proprietary Submission at Appendix C) at Slides 11, 26, and 27.
[88] *Id.* (Proprietary Submission at Appendix C) at Slide 40.
[89] *Id.* (Proprietary Submission at Appendix C) at Slides 11, 25, and 26. Since EPA acknowledged it does not expect growth in domestic UCO and tallow, these feedstocks are likely to be imported in greater volumes, undercutting EPA's stated goals of reducing imports and addressing concerns regarding fraudulent UCO. *See* 90 Fed. Reg. at 25839. It is also worth noting that S&P estimates that 28-29% of feedstocks will be imported during the covered years, and that imports of tallow, pig fat/choice white grease will continue to increase. S&P Analysis (Proprietary Submission) at Slides 11 and 69. In 2024, Chinese UCO accounted for 29% of all feedstock imports. S&P (Proprietary Submission) at Slide 52.
[90] S&P (Proprietary Submission at Appendix C) at Slides 9, 11, and 28.
[91] *Id.* (Proprietary Submission at Appendix C) at Slide 28.
[92] *Id.* (Proprietary Submission at Appendix C) at Slide 40.
[93] S&P Analysis (Appendix B) at Slide 2.

Figure 9 Soybean Oil Price Forecast Before and After the Proposed Volumes and 45Z Were Announced[94]



What is notable in S&P's analysis is that price impact and implications on the global market is *greatest* under current tax policy.[95] The loss of the BTC, the adoption of 45Z's feedstock limitations, and this proposal will reduce the competitiveness of non-North American feedstocks.

4. EPA's Proposed 50% Import RIN Reduction is Unlawful and Does Not Achieve Stated Objectives

EPA's proposal marks a significant policy shift and advances a new interpretation of EPA's authority under CAA §211(o). EPA justifies its proposed 50% import RIN reduction by citing energy security and rural economic development, but the statutory text does not grant EPA the authority to differentiate RIN values based on feedstock or fuel origin. As such, this provision is inconsistent with the plain language of the law and EPA should not finalize 40 CFR § 80.1426(a)(5). In addition, the proposal is arbitrary as EPA fails to provide any analysis justifying its conclusion that a 50% import RIN reduction will achieve the statutory goals of energy independence and the Administration's goal of supporting domestic agricultural markets. EPA's proposal to treat equally domestically-produced fuels utilizing imported feedstocks and imported fuels produced from foreign feedstocks underscores the arbitrary nature of the proposal. The Proposed Rule lacks adequate supporting data and analysis that is of sufficient quality and quantity to allow for informed comment and thus violates CAA §307(d)(3), which requires EPA to provide the "factual data on which the Proposed Rule is based" as well as the "methodology used in obtaining the data and analyzing the data."[96] This is not only a procedural violation, but affects the ability of affected parties to provide informed comment on this aspect of the Proposed Rule.

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[94] S&P Analysis (Appendix B) at Slide 3.
[95] S&P Analysis (Proprietary Submission at Appendix C) at Slides 7, 9, 10, and 31. *See also* Slides 56-58, discussing the impact of Scenario 5, which reflects current tax policy of 45Z and the loss of the BTC.
[96] 42 U.S.C. § 7607(d)(3).

a. *The CAA Does Not Authorize EPA to Reduce the Value of RINs*

i. EPA Lacks Discretionary Authority under CAA §211(o)(5) to Propose New and Unprecedented RIN Penalties

EPA asserts that CAA Section 211(o)(5)(A) grants EPA discretion to set a different RIN value for imported fuels and feedstocks.[97] The CAA, however, requires that EPA regulations "provide the generation of an appropriate amount of credits by any person that refines, blends, or imports gasoline that contains *a quantity* of renewable fuel that is greater than the quantity required under paragraph (2)."[98] This provision clearly instructs EPA to tie the amount of RINs generated to the *quantity or volumes* of renewable fuel specified in Section 211(o)(2), not to set a different RIN value based on the origin of the fuel or feedstock.

EPA points to its previous promulgation of rules for RIN equivalence values and states, correctly, that CAA §211(o)(5)(A) "does not limit [the RIN program] to a straight volume measurement in gallons."[99] But that is not the issue. EPA established equivalence values partly because different renewable fuels displace different quantities of fossil fuel present in transportation fuel. Domestic and imported renewable fuels displace the same quantity of fossil fuel present in transportation fuel. RIN values based on feedstock origin do not address fossil fuel displacement. EPA is proposing a RIN credit system based on factors not specified by Congress in the RFS statute, which is the only basis for EPA's claimed authority. Despite EPA's assertion to the contrary,[100] EPA is proposing an entirely new interpretation of CAA § 211(o)(5)(A) and thus, pursuant to *Loper*, must advance the *best* interpretation of the statute, not a "permissible" interpretation.

EPA's new interpretation ignores its long-standing interpretations of CAA § 211(o)(5) that have existed since the program's inception in 2007, when RINs were explicitly based on displacing fossil fuel in transportation fuel.[101] EPA noted that "RINs represent proof of production which is then taken as proof of consumption as well, since all but a trivial quantity of renewable fuel produced or imported will be either consumed as fuel or exported."[102] Thus, RINs were originally intended to address – and still address today – requirements within CAA to "ensure" that "transportation fuel sold or introduced into commerce in the United States . . . on an average annual basis, contains at least the applicable volume of renewable fuel."[103]

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[97] 90 Fed. Reg. at 25838.
[98] 42 U.S.C. § 7545(o)(5)(A) (emphasis added).
[99] 90 Fed. Reg. at 25339.
[100] *Id.* (EPA states that it is "not advancing a new interpretation of CAA section 211(o)(5)(A).")
[101] RINs were first utilized pursuant to the "RFS 1" regulations promulgated following passage of Energy Policy Act (EPAct) of 2005. 83 Fed. Reg. 23900 (May 1, 2007).
[102] *Id.* at 23909.
[103] 42 U.S.C. § 7545(o)(2)(A)(i) (this statutory language initially referred only to "gasoline" but contained the same language otherwise).

RINs also addressed RFS requirements precluding EPA from imposing any "per-gallon obligation for the use of renewable fuel."[104] Quite simply, without RINs or another credit mechanism, EPA could not legally enforce the annual volume obligations required by the RFS, because EPA cannot require blenders or other parties to strictly use a certain amount of renewable fuel in each gallon of transportation fuel sold or introduced into commerce in the United States.

EPA claims discretion to broadly interpret the word "appropriate" in a single clause of CAA § 211(o)(5).[105] The legislative history and intent are far from the "clear Congressional delegation of discretion" that EPA claims[106] and does not give EPA authority to rewrite the RFS statute to achieve policy goals not explicitly stated in the statutory text. If EPA desires to weight RFS RIN credits based on their country of origin, it must obtain congressional authorization to do so. As the Supreme Court held, EPA must cite to "clear congressional authorization" for its actions where authority is asserted over matters of "vast economic and political significance."[107] This is one of those areas – choosing to benefit US agricultural producers over US refiners, importers, and consumers requires explicit congressional authority to EPA to do so.

ii. RFS Legislative History and Intent do not Support EPA's Claim of Broad Discretion Regarding RIN Values

When EPA promulgated framework regulations to implement the Energy Independence and Security Act (EISA) in 2010, EPA retained RINs as a compliance mechanism based on the same view of the statute it expressed in the original "RFS1" regulations it promulgated in 2007.[108] Specifically, EPA noted that "the use of Equivalence Values based on energy content was an appropriate measure of the extent to which a renewable fuel would replace or reduce the quantity of petroleum or other fossil fuel present in a fuel mixture."[109] Thus, for nearly two decades, EPA interpreted CAA § 211(o)(5) to create a level playing field for renewable fuels based on energy content, (*i.e.*, the functional ability of a renewable fuel to displace transportation fuel derived from fossil fuels).

When it enacted the EISA, Congress eliminated preferences for one renewable fuel type over others from the statute. Congress did so with knowledge that EPA used equivalence values to "weight" the value of RINs on a neutral basis: their ability to move vehicles over a certain distance. EPA's 2010 rule, which changed aspects of the RFS program (referred to as the "RFS 2 Rule"), affirmed the use of equivalence values to properly weight

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[104] *Id.* at § 7545(o)(2)(A)(iii)(II)(bb).
[105] 90 Fed. Reg. at 25838-39.
[106] *Id*. at 25840.
[107] *West Virginia v. EPA*, 124 S. Ct. 2587, 2608-2609 (2022).
[108] 83 Fed. Reg. 23900 (May 1, 20007).
[109] 75 Fed. Reg. 14670, 14709 (Mar. 26, 2010). *See also Id*. at 14710 (the use of equivalence values provide "incentives to produce different types of renewable fuel from the available feedstocks".)

the volumes of different renewable fuels, ensuring they are assessed on the same basis.[110] Thus, by eliminating such special preferences regarding RIN values, Congress affirmed that it is that body, not EPA, which has the authority to do so.

EPA also noted that RIN generation was based on the energy content because "…use of Equivalence Values based on energy content was *an appropriate measure of the extent to which a renewable fuel would replace or reduce the quantity of petroleum or other fossil fuel present in a fuel mixture*."[111] EPA's proposal to penalize foreign feedstocks is therefore contrary to the CAA because imported biofuels and domestic biofuels made with imported feedstocks replace fossil fuels on an equivalent volume and energy content basis.

Against this backdrop, EPA cannot cite statutory language or legislative history that supports granting the agency the unbridled and unbounded authority it seeks to exercise. Instead, EPA relies on prefatory (*non-statutory*) language contained in the Energy Policy Act of 2005 ("EPAct 2005") and EISA to justify its radical reinterpretation of its regulatory power.[112] But such language was not enacted into law or codified.

By putting its policy thumb on the scale in determining how many RINs are generated per gallon, the proposal opens the door to future arbitrary changes that may change with the priorities of each new administration, creating market uncertainty. Congress did not give EPA that level of authority. The reasons for policy changes for discounting RIN values are numerous, highlighting the arbitrary nature of this proposal. The statutory text and the long-standing structure of the RFS was designed to encourage the limited replacement of fossil transportation fuels used in the United States. It is impossible to reconcile this arbitrary, "policy-thumb-on-the-scale" approach with EPA's concurrent hyper-technical proposal to reduce RIN equivalency values to account for the presence of fossil-derived hydrogen in hydro-processed renewable fuels.

EPA's new reading conflicts with the previous interpretation and implementation of the law, the structure of the program, and the expectations on which the market is based. Biofuel producers legitimately relied on EPA's longstanding reading and implementation of the RFS program, making significant capital investments and entering contracts for feedstocks and finished fuels based on how the RFS credited these biofuels. Furthermore, as discussed in Section I.B.5.a(i) below, obligated parties and biofuel producers have sophisticated tracking systems, reporting procedures and RIN generation protocols based on EPA's current approach. EPA's proposal to penalize foreign feedstocks contradicts the structure and implementation of the RFS program, whereby imported biofuels and domestic biofuels made with imported feedstocks replace fossil fuels on an equivalent volume and

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[110] *Id.* at 14709.
[111] 75 Fed. Reg. 14670, 14709 (Mar. 26, 2010) (emphasis added). (EPA further indicated that using equivalence values established a "level playing field in terms of the RFS program's incentives to produce different types of renewable fuel from the available feedstocks" and that using energy content also preventing gaming of the system by basing RINs on energy produced versus simply volume).
[112] *See* 90 Fed. Reg. at 25838, n. 220, 221 (EPA citations to Pub. Law 109-58 and Pub. Law 110-140).

energy content basis. Abruptly changing the approach without justification is by definition arbitrary and capricious.

b. EPA Provides Inadequate Analysis to Explain How the Proposed 50% Import RIN Reduction Will Achieve its Stated Objectives

The Proposed Rule claims the 50% import RIN reduction will "support the statutory goals of energy independence and the Administration's broader economic vision of strengthening American energy independence and bolstering domestic agricultural markets."[113] The DRIA assesses the six statutory factors based on overall volumes.[114] The proposal contains scant discussion on how it arrived at the 50% import RIN reduction or its impacts on any of the statutory factors, such as food and fuel prices or RFS compliance. While acknowledging that this proposal will cause shifts in SBO use from food to biofuels, EPA fails to assess "the impact of renewable fuels on the infrastructure of the United States, including deliverability of materials, goods, and products other than renewable fuel."[115]

Yet, EPA's proposal does not further those objectives and ignores information that points to the contrary:

- EPA's proposed volumes rely on a 2025 baseline that includes imported biofuels and feedstocks.[116]
- S&P's updated feedstock analysis confirms a greater tonnage of imported feedstocks are necessary to meet the proposed volumes.[117]
- The provision penalizes vegetable oil imports that are crushed abroad from US grown oilseeds, which support US farmers and rural economies.[118]
- The provision does not penalize SBO derived from imported soybeans that are grown abroad and crushed in the US, undermining US farmers and rural economies.[119]

EPA's proposed 50% import RIN reduction will not change the relative share of imports, while the absolute pounds of imports will increase. As shown in Figure 8, the proposal requires the same 28-29% of imported feedstocks to meet the mandate.[120] If SBO

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[113] *Id*. at 25837. *See also Id*. at 25785 ("Ensuring a growing supply of domestically produced renewable fuels, particularly those produced from domestically sourced feedstocks, is a key component in meeting the statutory goals of increasing the energy independence and security of the United States.")
[114] 42 U.S.C. § 7545(o)(2)(B)(ii).
[115] *Id*. § 7545(o)(2)(B)(ii)(IV).
[116] S&P Analysis (Appendix B) at Slide 2 (for 2025, imports accounted for 27% of all feedstocks used for biofuel production).
[117] *Id.* at Slide 3.
[118] For example, the proposed definition of "feedstock point of origin" states that the location of the crushing facility will determine the feedstock point of origin. 90 Fed. Reg at 25858 (citing 40 CFR § 80.2). This means that U.S. soybeans crushed in Canada or Mexico would not be considered domestic feedstock.
[119] *Id.*
[120] S&P Analysis (Appendix B) at Slide 2.

and canola oil used in pet food and animal feed are redirected to meet the increased biofuel mandate, other imported feedstocks will be used to compensate for those purposes.[121] While EPA admits that displacement will happen, it does not address the potential environmental impact of the increased imports of palm oil and other virgin oils that may be necessary to meet this mandate. It also does not assess the impacts on these other markets as required by the statute.[122]

5. If EPA Moves Forward with the 50% Import RIN Reduction, a Separate Notice of Proposed Rulemaking is Required

a. EPA and the Regulated Community Cannot Implement this Provision by the Effective Date of This Rule

i. EMTS and Regulated Community Software Must be Updated before this Provision is Effective

EMTS is an old system required by EPA to report RIN generation for the production, transfer, and use of renewable fuels. Since RINs are generated automatically, EMTS must be updated to implement this provision. Currently, EMTS cannot track feedstock origin, and it is unlikely that the necessary changes can be made and implemented by January 1, 2026.

EPA's proposed solution is for RIN generators to cut the number of RINs in half after generating them. First, the RIN generation system used by producers is highly complex. Renewable diesel producers made significant capital investments to use a variety of feedstocks, some of which may be domestic and others foreign. An individual batch of renewable diesel could use more than a dozen feedstocks, including both foreign and domestic feedstocks. Similarly, RIN generation software used by companies must capture each feedstock and the amount used for each batch. Likewise, biofuel producers may need to invest in new compliance systems, personnel, and training to aid in tracking. It would take at least a year, and likely more, for companies to update their individual software systems to capture the foreign feedstocks for each batch, quantify the amount and RINs generated for only the foreign feedstock, and generate 50% of the RIN for only foreign feedstocks. Finally, the requirement to report feedstock origin may raise confidential business information (CBI) concerns since biofuel producers may not want to reveal their feedstock suppliers and may have confidentiality provisions in their supply contracts prohibiting such disclosure. Since there has been no guidance from the Department of Treasury on what is deemed adequate to demonstrate feedstocks are North American, there is the potential for inconsistency and confusion. Misalignment will only increase complexity and cost to the producers. The absence of policy or guidance on how to generate these RINs, rounding, or how to handle CBI currently makes implementing this provision impossible.

[121] S&P (Proprietary Submission at Appendix C) at Slides 7, 22, 39, and 56.
[122] 42 U.S.C. §§ 7545(o)(2)(B)(ii)(I) and (IV).

If EPA maintains the RIN reduction provision, it must delay its implementation and consider public comments on the proposal to comply with Section 307(d) of the CAA.[123] For participants in the RFS program to be ready to implement these significant changes in RIN generation and reporting, EPA must propose rules around how it intends to implement these new proposed provisions because they require obligated parties and other participants to fundamentally change how they comply with the RFS. This separate notice of proposed rulemaking must at a minimum also lay out when and how EMTS will be updated, how companies should generate RINs for foreign fuels and feedstocks, and how EPA will verify feedstock origins to prevent fraudulent activity within the program and the marketplace to ensure a level playing field. This means at a minimum:

1. Delaying implementation until updates to EMTS are complete to ensure that all changes are correctly enacted and functioning properly and that biofuel producers have time to update RIN generation software.
2. Implement a program or process to verify the origin of all feedstocks, whether domestic and imported, that effectively discourages fraud..
3. Develop an adequate independent third-party verification scheme that will uncover potential fraud or leverage existing programs like the International Sustainability and Carbon Certification (ISCC) or Roundtable for Sustainable Biofuels (RSB) scheme.

b. *The 50% Import RIN Reduction Increases Regulatory Burden and Makes Compliance Even More Challenging and Costly*

i. Reducing RIN Value Adds Regulatory Burden Contrary to the Executive Order "Unleashing Prosperity Through Deregulation" and is Unenforceable

By imposing feedstock traceability requirements on all feedstocks, whether foreign or domestic, EPA is inflicting significant regulatory burdens, contrary to the Administration's deregulatory agenda.[124] Domestic biofuel producers would now need to report feedstock point of origin under 40 CFR 80.1451(b)(1)(ii)(L).[125] EPA is also adding requirements for attest engagements to verify that feedstocks are identified in batch reports and that feedstock point of origin is reported correctly.[126] Quality Assurance Plan (QAP) providers must also verify RIN generation calculations. The additional attest engagement and QAP provider requirements add an extra burden that American biofuel producers - but ironically not foreign biofuel producers - must comply with and pay for. Yet none of this added burden will actually enable the point of origin of the feedstock to be verified.

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[123] *See* 42 U.S.C. § 7607(d)(3) (EPA must provide underlying data and the methodology used for a proposed rule).
[124] White House, Executive Order 14192, Unleashing Prosperity Through Deregulation, at Section 2. Available at https://www.federalregister.gov/documents/2025/02/06/2025-02345/unleashing-prosperity-through-deregulation.
[125] 90 Fed. Reg. at 25840.
[126] *Id.*

The proposed attest engagement and QAP provisions to verify feedstock origin are insufficient to prevent fraud. First, unlike LCFS verifiers and auditors certified under international programs such as ISCC or the RSB, typical EPA attest auditors are not qualified by training or experience to verify the source of feedstocks. Second, unlike LCFS third-party verification or international certification programs such as ISCC and RSB, the RFS attest engagements are desk audits that only confirm the existence of records and that these records match what is reported to EPA. The attest engagement does not require site visits or discussions with feedstock suppliers. Third, because the QAP program is voluntary, only facilities that elect to participate will have their feedstock records reviewed by an independent third-party auditor. Many renewable fuel producers understandably do not participate in QAP because they already incur expenses to utilize alternative means of feedstock verification, such as third-party auditing required for participation in state LCFS programs or internationally recognized traceability verification bodies such as ISCC. Additionally, the QAP record review is similar to attest engagements involving a desk audit of a representative sample of records. Although QAP desk audits occur more frequently, they suffer from the same limitations as an annual attest engagement. While QAP auditors do visit sites, correctly verifying feedstock origin would require site visits along an extended chain of facilities back to the original country of origin. Such a process would dramatically increase the costs of QAP, discouraging even well-meaning parties from participating. Lastly, third-party engineering reviews cannot verify feedstock origin because they visit production facilities, which is not adequate to determine the point of origin of feedstocks.

Asking producers to "cut by half RINs" invites fraud by creating incentives for North American feedstocks that do not meet the definition of "produced from renewable biomass" to be sold as domestic feedstocks suitable for renewable fuel production. Domestic feedstock producers would be enticed to sell crops that do not meet the definition of "renewable biomass" for food production. If fraud is detected, obligated parties who in good faith purchased RINs that were generated based on fraudulent reporting of feedstock origin will lose the ability to use those RINs for compliance. The monetary motivation to commit fraud will be great given the expected increase in RIN prices caused by the loss of the BTC, feedstock limitations from 45Z, the proposed volume targets, and the 50% import RIN reduction.

Finally, the proposal to reduce RIN value by one-half based on the origin of the feedstocks or fuel will slow down RIN transactions and compromise the liquidity of the market. Because RINs are traded, if the proposed RIN reduction means that some RINs may be considered "riskier" than others, buyers will want to know the provenance of the RINs they purchase. The resulting friction will make it more difficult for obligated parties to acquire the RINs they need on a timely basis, and a delay in purchasing RINs creates unnecessary market risk, particularly for obligated parties aiming to acquire RINs ratably.

ii. Reducing RIN Values Makes Compliance More Challenging

The proposed 50% RIN reduction makes it more difficult to comply with these volume requirements. As shown in Figure 7, above and under a variety of scenarios, the feedstock

gap created by 45Z uncertainty and feedstock limitations, combined with the 50% import RIN reduction, threatens compliance and, potentially, the ability to operate economically.[127]

As explained in Section I.B.2.a, the foundation of the proposed 2026 and 2027 volumes include imported fuels and feedstock, as they were included in EPA's estimate of 2024-2025 BBD supply by fuel and feedstock type. Thus, imports are required to achieve these volumes. Yet, EPA overlooks the fact that global biofuel mandates will increase in 2026 and 2027, which will increase competition for the same fuels and feedstocks needed to meet the substantial growth targets in BBD and advanced volumes. For example, many countries follow the latest revision of the European Union (EU) Renewable Energy Directive III (RED III) and the ReFuelEU Aviation (the operative SAF mandate in the EU),[128] which increase the required volumes of biofuels for transportation across the EU by 2030, biofuels that use the exact same feedstocks as BBD.[129] The Canadian Clean Fuel Regulation, provincial low-carbon program, and renewable fuel blending mandates create additional demand for renewable fuels and feedstocks.[130] EPA admits that "if demand for these feedstocks from other markets increases, this may limit the quantity of these feedstocks available to US BBD producers. These projections therefore assume continued incentives for the production of BBD from FOG sufficient to ensure that the US remains the preferred global destination for these feedstocks."[131] EPA's conclusion that the US will remain the preferred destination for foreign feedstocks is arbitrary. Tariffs on biofuel feedstocks, a 45Z credit that only applies to North American biofuels, and, if finalized as proposed, the proposed volumes and the 50% import RIN reduction, will pose significant challenges to meeting the proposed volumes.[132] To highlight this, one only needs to examine the RIN generation data through the first half of 2025 as discussed above, which EPA completely ignored in its proposal. The loss of the BTC, tariffs on imported feedstocks, and overall uncertainty about biofuel and trade policies in 2025 and the cautious sentiment of biofuel producers contributed to an 82% reduction in D4 RIN generation by foreign producers and importers as compared to the same time in 2024. It is arbitrary to assert that the US will remain the preferred destination in 2026-2027 with the addition of the 50% import RIN reduction.

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[127] S&P (Proprietary Submission at Appendix C) at Slides 7-8,12, 20, 36-37, 39, 42-43, and 56-58. *See also id.* at Slide 72 (showing US feedstock availability to reach RVO targets with and without the 50% import RIN reduction).
[128] Directive (EU) 2023/2413 of the European Parliament and of the Council of 18 October 2023 amending Directive (EU) 2018/2001, Regulation (EU) 2018/1999 and Directive 98/70/EC as regards the promotion of energy from renewable sources, and repealing Council Directive (EU) 2015/6523.
[129] *Id.*
[130] Clean Fuel Regulations, SOR/2022-140. Available at: Laws.justice.gc.ca. Available at https://laws-lois.justice.gc.ca/eng/regulations/SOR-2022-140/.
[131] DRIA at 301.
[132] S&P (Proprietary Submission at Appendix C) at Slides 7-8,12, 20, 36-37, 39, 42-43, and 56-58.

iii. The 50% import RIN Reduction Provisions Will Dramatically Raise the Cost of the RFS Program

Understanding the background of the 50% import RIN reduction proposal is essential because the US has experienced increased costs for all feedstocks since the Department of Treasury released its 45Z interim guidance with no pathway for foreign UCO. This has led to higher RIN prices since January 2025, when Treasury's guidance was released. On January 6, 2025, the D4 RIN price was $0.66 and the D6 RIN price was $0.64.[133] As of June 23, 2025, D4 and D6 RIN prices were $0.90, a 36% increase for D4 and a 41% increase for D6 RIN price in six months. Yet, despite the increase in RIN price, D4 RIN generation fell by nearly 25% for the first six months of 2025 as compared to the same period in 2024.[134]

The proposed 50% import RIN reduction, combined with increased global competition for these resources, is expected to raise feedstock and RIN prices dramatically as the market tries to meet the mandate, increasing the cost for consumers. As discussed in Section I.B.3, above, the price of SBO has risen on the announcement of the proposed volumes. Because the proposed volumes, OBBBA, and the 50% import RIN reduction claim to be designed to maximize US SBO use, exports of SBO will decline and SBO will be re-directed to biofuel use.[135] Lowered SBO use for food will be backfilled by other vegetable oils. As a result of these dynamics, SBO prices are projected to rise by around $0.10 per pound for the next three years.[136] By ignoring the impact of the 50% import RIN reduction on SBO prices and RIN prices in their cost analysis, EPA underestimates the program costs.

The high volumes and 50% import RIN discount increase demand for domestically produced fuels and feedstocks.[137] This increases the price of RINs generated for domestic biofuels and feedstocks. However, imported feedstocks are needed to meet the proposed volumes and US producers would need to outbid foreign competitors for feedstocks to meet these aspirational volume requirements, further increasing prices. Because the proposed volumes exceed the domestic supply, RIN prices for foreign biofuels and feedstocks would need to rise to attract them into the US market. Due to tariffs, the 45Z credit, and the 50% import RIN reduction, there will be a preference for domestic biofuels and feedstocks, leading to an increase in the price of SBO.[138] Moreover, since domestic feedstocks are insufficient to meet these volumes, imported biofuels and feedstock gallons become the marginal gallon – just enough to fulfill the last unit of the RFS mandate.[139] Because the cost and availability of the marginal gallon determines the overall RIN price for obligated parties,

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[133] EPA, RIN Trades and Price Information. Available at https://www.epa.gov/fuels-registration-reporting-and-compliance-help/rin-trades-and-price-information.
[134] *Id.*
[135] S&P Analysis (Proprietary Submission at Appendix C) at Slides 7,10-11, 22, 31-, 39, and 56.
[136] S&P Analysis (Appendix B) at Slide 2.
[137] S&P Analysis (Appendix B) at Slide 3. *See also* S&P Analysis (Proprietary Submission at Appendix C) at Slides 14, 22, and 72.
[138] S&P Analysis (Appendix B) at Slide 3.
[139] EIA, Today in Energy, Biomass-based diesel and ethanol compliance credit prices decline 45% from start of year, Feb. 27, 2024 (D4 RIN prices set the price for D6 because the RFS nesting structure allows D4 RINs to satisfy the implied conventional mandate), available at https://www.eia.gov/todayinenergy/detail.php?id=61463.

D4 RIN prices - already being driven up by the loss of the BTCs and the reduced equivalence value for renewable diesel - are expected to further increase. As shown in Figure 1, this Proposed Rule is expected to cost $67 and $69 billion, nearly twice as much as the most expensive RVO compliance costs in history (2023).[140]

By ignoring the impact of the 50% import RIN reduction on SBO prices and RIN prices in their cost analysis, EPA underestimates the program costs.

EPA acknowledges that the 50% import RIN reduction means the "…average number of RINs generated for BBD will be 1.27 and 1.28 RINs per gallon in 2026 and 2027, respectively,…" compared to the current average of 1.6 RINs per gallon of BBD. [141] Additionally, EPA's proposal to decrease the equivalence values for renewable diesel, renewable jet, and renewable naphtha to 1.6, 1.6, and 1.4, respectively, exacerbates the need for more physical gallons. The requirement to blend more renewable diesel, renewable jet, and renewable naphtha into petroleum fuel will increase demand for feedstocks and drive up program costs. By finalizing the 50% import RIN reduction and lowering the equivalence values for the three biofuels listed above, American consumers would be harmed by the increased cost of the RFS volumes that would be driven by this proposal.

6. To Avoid an Extraordinary and Infeasible Increase in Regulatory Burden and Cost, and to Ensure Continued Domestic Biofuel Production, Fuels produced in the US from Imported Feedstocks Should Not be Subject to the 50% RIN Value Penalty.

As written, the Proposed Rule arbitrarily applies the same 50% RIN value penalty to imported biofuels as US-produced biofuel using imported feedstocks. The vast majority of the implementation challenges and regulatory burden associated with the 50% reduction in RIN value results from trying to apply it to imported feedstocks, not imported fuels. If EPA finalizes a version of this proposal, it should protect American refiners by imposing the reduced RIN value only upon foreign producers of finished biofuel and allowing American biofuel producers to obtain the full RIN value for domestically-produced fuels made from imported feedstocks.

Allowing imported feedstocks to obtain the full RIN value also aligns with the proposed definition of "feedstock point of origin," which states that the location of the crushing facility will determine the feedstock's point of origin.[142] According to the proposal, biofuel produced in the US, using SBO crushed in the United States, but made with imported soybeans, receives 100% of the RIN value. If EPA moves forward with the 50% import RIN reduction, it should allow all imported feedstocks to qualify for the full RIN value. Therefore, the proposed definition of "feedstock point of origin" in 40 CFR § 80.2 should be removed along with the following requirements:

[140] TM&C Report (Appendix A) at 5.
[141] 90 Fed. Reg. at 25786.
[142] 90 Fed. Reg at 25858 (citing 40 CFR § 80.2).

- 40 CFR § 80.1451(b)(1)(i)(L) (the requirement to report feedstock point of origin)
- 40 CFR §§ 80.1454(d)(1)(i) and (ii) (requirements for domestic producers to retain records identifying where feedstocks were produced)
- 40 CFR § 80.1464(b)(1)(v)(B) (the attest engagement requirement to verify the feedstock point of origin)
- 40 CFR § 80.1469(a)(3)(vii) (the requirement for QAP providers to verify RIN generation calculations, including the feedstock point of origin).

Finally, removing the proposed 50% RIN penalty on fuel made in the United States from imported feedstocks is necessary to avoid introducing extraordinarily high and infeasible regulatory burdens on American biofuel producers. By applying the penalty only on foreign biofuel producers of finished fuel, EPA would eliminate the extensive regulatory burdens and costs on US fuel producers associated with tracking, maintaining records, verifying and reporting all feedstock origin, updating RIN generation software and practices, discussed in Section I(B)(5)(a)(i), above. While a separate notice of proposed rulemaking is still needed before imposing any penalty based on fuel or feedstock origin, EPA's ability to implement the provision would be enhanced if it only applied to imported finished fuels. While EMTS would still need to be updated to reflect the reduced RIN value for imported finished fuel, EMTS already tracks foreign fuels and imports and it may be able to implement this provision more rapidly. In addition there are economic and energy security benefits of allowing domestic biofuel producers to continue to obtain the full RIN value for fuels made from imported feedstocks, and limiting the RIN reduction provision to imported finished fuels.

7. The Proposed 50% Import RIN Reduction is not Severable

This proposal is too aggressive, even without the 50% import RIN reduction. However, the 50% import RIN reduction is not severable because RIN value is inextricably linked to the feasibility of comply with the volumes for 2026 and 2027.[143]

C. Cellulosic Biofuel

1. Partial Waiver of the 2025 Cellulosic Biofuel Volume Requirement

AFPM supports EPA's recognition of its mandatory duty to partially waive the cellulosic biofuel requirement to address the ongoing cellulosic biofuel production shortfall. Before finalizing this action, EPA should recalculate the projected volume of the 2025 cellulosic biofuel carryover RINs to address any shortfall of cellulosic biofuel RINs, caused by carryover deficits and a depleted RIN bank.[144] The shortfall and depletion result directly from EPA establishing aspirational cellulosic biofuel goals in 2023, 2024, and 2025. EPA's failure to account for these deficits imposes significant burdens on obligated parties and

[143] *Id*. at 25792.
[144] *See* DRIA at 31, Table 1.8.1-4, https://www.epa.gov/system/files/documents/2025-06/420d25001.pdf

undermines the accuracy of the RFS program. By disregarding the carryover deficit, the issue will continue to snowball until EPA makes the necessary adjustment. It is unreasonable and contrary to D.C. Circuit precedent to expect obligated parties to purchase CWCs to satisfy the carryover deficits that directly resulted from EPA setting unachievable cellulosic biofuel mandates.[145]

a. *Unresolved Litigation of 2023 Cellulosic Biofuel Volumes*

In 2023, AFPM petitioned EPA to partially waive the 2023 cellulosic biofuel standard (Petition) due to a cellulosic biofuel production shortfall.[146] The CAA requires EPA to reduce the applicable volume of cellulosic biofuel required to the projected volume available during that calendar year.[147]

In March 2024, EPA denied AFPM's Petition.[148] In response, AFPM filed a complaint in the US District Court for the District of Columbia to compel EPA to partially waive the cellulosic biofuel requirements for 2023 and to make cellulosic waiver credits (CWCs) available for that year.[149] AFPM also filed a petition for review in the D.C. Circuit Court of Appeals.[150] In the district court litigation, AFPM argued that EPA has a nondiscretionary duty to partially waive cellulosic volumes and provide CWCs when the annual minimum cellulosic biofuel volumes exceed the projected volumes produced for a given year.[151] EPA has since confirmed that it has a statutory mandate to exercise the cellulosic waiver whenever there is a projected production shortfall.[152] Both of AFPM's cases remain pending.

While it is encouraging that EPA is taking a more realistic and practical approach in setting cellulosic biofuel requirements, EPA caused an ongoing injury caused by its unlawful "denial" of AFPM's 2023 petition, which resulted in a deficit of 87,789,686 cellulosic RINs.[153] This deficit directly affects the demand for 2024 RINs, depletes the cellulosic RIN bank, and has significant consequences for future compliance years, including harm to obligated

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[145] *See API v. EPA,* 706 F.3d 474 (2013).
[146] *See* EPA, Denial of AFPM Petition for Partial Waiver of 2023 Cellulosic Biofuel Standard, March 2024. Available at https://www.epa.gov/system/files/documents/2024-03/afpm-part-waiver-denial-cellulosic-biofuel-stndrd-2024-03.pdf; *See also AFPM v. EPA,* Petition for Review, filed May 28, 2024. Available at https://www.epa.gov/system/files/documents/2024-05/24-1163_docketentry_05-28-2024_.pdf; When AFPM filed its Petition, RIN data for December 2023 and January 2024 were not available. On February 15, 2024, EPA released January 2024 RIN generation activity, allowing AFPM to provide EPA with a complete picture of the magnitude of the cellulosic RIN shortfall for 2023.
[147] 42 U.S.C. § 7545(o)(7)(D)(i).
[148] Denial of AFPM Petition for Partial Waiver of 2023 Cellulosic Biofuel Standard, March 2024. *See* https;//www.rpa.gov/system/files/documents/2023-03/afpm-part-waiver-denial-cellulosic-biofuel-stndrd-2024-03.pdf.
[149] *AFPM v. EPA,* Petition for Review, filed May 28, 2024. Available at https://www.epa.gov/system/files/documents/2024-08/us_dis_dcd_1_24cv2361_d260366786e297_complaint_for_declaratory_and_injunctive_relief_ag.pdf
[150] *See AFPM v. EPA,* No. 24-1163 (D.C. Cir.).
[151] 42 U.S.C. § 7545(o)(7)(D)(i)-(ii).
[152] *See* 90 Fed. Reg. 29751, 29754 (July 7, 2024).
[153] https://www.epa.gov/system/files/documents/2025-06/420d25001.pdf (Pg. 31; Table 1.8 -4)

parties and consumers through artificially high RIN prices and increased compliance challenges as discussed in Sections b & c, *infra*.

b. 2024 Final Rule Partially Waiving Cellulosic Biofuel Volumes

On July 7, 2025, EPA promulgated a final rule partially waiving the 2024 cellulosic biofuel volume requirements (2024 Waiver).[154] In this rule, EPA used only its cellulosic waiver authority to reduce the original requirement of 1.09 billion RINs to the actual projected production of 1.01 billion RINs. The action also revised the 2024 cellulosic biofuel percentage standard from 0.63% to 0.59%.[155] Unfortunately, EPA did not consider the consequences of its failure to exercise the cellulosic waiver in 2023, in the form of carryover deficits of 87,789,686 million RINs.

In fact, EPA explicitly stated it did not factor in RIN shortfalls from 2023 (the subject of AFPM's litigation referenced above) in its calculation of the 2024 volumes and waiver.[156]

EPA should have addressed the 2023 carryover deficit in its 2024 Waiver, as this deficit must be "paid back" by obligated parties in 2024, which increases demand for 2024 cellulosic RINs. By only waiving an amount equal to the 2024 production shortfall and ignoring the 2023 carryover deficit, *EPA is forcing obligated parties to purchase cellulosic waiver credits and advanced biofuel RINs for cellulosic biofuels that were mandated but never produced*. This contradicts the precedent set in *API v. EPA*, where the court vacated the 2012 cellulosic biofuel standard because EPA enforced a cellulosic biofuel mandate higher than the amount of cellulosic biofuel actually produced in that year.[157] EPA must take into consideration this error from 2023 so that it does not impact cellulosic biofuel RIN supplies and prices in future years.

c. 2025 Proposed Partial Waiver of the 2025 Cellulosic Biofuel Requirements

EPA acknowledged in the DRIA that it overestimated the projected volume of cellulosic biofuel production for 2023 and 2024[158] and it concedes that production may also fall short of its projections in 2025. As a result, it proposes a partial waiver of the 2025 cellulosic biofuel volume requirement based on the mandatory use of its cellulosic waiver authority.

The shortfall in cellulosic biofuel production persists, and EPA appropriately proposes to partially waive the 2025 cellulosic biofuel requirement.[159] EPA initially set the cellulosic

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[154] 90 Fed. Reg. 29751 (July 7, 2025) (Partial Waiver).
[155] 40 C.F.R. §80.1405(a), Table 1 as revised.
[156] *See* 89 Fed. Reg. 100,442, 100,447 (Dec. 12, 2024) ("...other obligated parties that already carried cellulosic RIN deficits from 2023 into 2024 are required to fully satisfy their cellulosic biofuel obligations in 2024, including the cellulosic RIN deficits carried forward from 2023").
[157] *See API v. EPA,* 706 F.3d at 479 ("Viewed in this light, the most natural reading of the provision is to call for a projection that aims at accuracy, not at deliberately indulging a greater risk of overshooting than undershooting.").
[158] DRIA at 263.
[159] 90 Fed. Reg. 25784, 25834 - 25837 (June 17, 2025).

biofuel standard at 1.38 billion RINs in the Renewable Fuels Standards Rule for 2023, 2024, and 2025 (the Set 1 Rule).[160] EPA now estimates that only 1.19 billion cellulosic RINs will be generated due to practical limitations on the consumption of biogas-derived CNG/LNG as transportation fuel. This results in a shortfall of cellulosic biofuel production for 2025 compared to the required volume of cellulosic biofuel. To address this shortfall, EPA is proposing to partially waive the 2025 cellulosic biofuel volume requirement to 1.19 billion RINs and make CWCs available.[161] AFPM supports this proposed partial waiver; however, as indicated above, EPA must also take into consideration the impact of carryover deficits in prior years. EPA acknowledges that obligated parties must pay back these deficits, and simply states that they will be able to purchase CWCs and excess advance biofuel RINs to satisfy these deficits.[162] EPA is effectively saying that obligated parties must buy their way out of EPA's aspirational cellulosic standard that turned out to be unachievable even though EPA ignored its statutory requirement to partially waive the standard. As discussed above, this approach to cellulosic biofuel mandates is contrary to the D.C. Circuit's holding in *API v. EPA*.[163]

EPA's determination that it need not address carryover deficits seems to conflate the impacts of a carryover RIN with a carryover deficit.[164] They are different. Carryover RINs act as a reserve supply that may be effectively rolled over and used in subsequent years.[165] They are necessary to ensure market liquidity and an adequate supply in case of unforeseen demand increases. Carryover deficits, however, affect the current demand for RINs and must be paid back in the following year and negatively impact the projected volume available. EPA must consider this real-world impact on available supply in determining the magnitude of the 2025 cellulosic waiver.

2. Proposed 2026 and 2027 Cellulosic Volumes

The RFS governing statute is explicit that EPA cannot prospectively set cellulosic biofuel volumes at a level that requires the use of CWCs.[166] EPA must therefore set a cellulosic biofuel volume standard that does not exceed the production of cellulosic biofuel to avoid the use of CWCs. However, EPA proposes a 2026 cellulosic biofuel standard at the projected production volume. This allows no margin of error and does not consider the very

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[160] 88 Fed. Reg. 44468 (July 12, 2023).
[161] *90* Fed. Reg. at 25836
[162] *Id.* ("any obligated party that is unable to acquire sufficient cellulosic RINs to comply with their 2025 cellulosic biofuel obligations—*plus any cellulosic RIN deficit carried from 2024*—would be able to purchase CWCs to cover the shortfall").
[163] *API v. EPA,*706 F.3d at 479.
[164] *See* EPA, *Partial Waiver of 2024 Cellulosic Biofuel Volume Requirement: Response to Comments, Final Report,* at 16-17, available at *Renewable Fuel Standard (RFS) Program - Partial Waiver of 2024 Cellulosic Biofuel Volume Requirement: Response to Comments (June 2025).
[165] While RINs have only a two-year life, they can be indefinitely rolled over. For example, a 2023 banked RIN set to expire in 2024 can be used for 2024 compliance and an equivalent number of 2024 RINs could be added to the obligated parties "bank" and used for 2025 compliance.
[166] 42 U.S.C § 7545(o)(2)(B)(iv) ("the applicable volume of cellulosic biofuel established by the Administrator shall be based on the assumption that the Administrator will not need to issue a waiver for such years under paragraph (7)(D)").

real possibility that either transportation fuel demand will increase (resulting in more cellulosic RINs being needed for compliance) or that one or more of the cellulosic producers experiences a production problem over the course of the compliance year. This aspirational methodology poses an unacceptable risk to compliance that can be easily mitigated by EPA setting a more conservative cellulosic biofuel standard. If EPA misses low, it allows for partial replenishment of the depleted RIN bank. However, if the agency sets the standard too high, it must exercise the cellulosic waiver. Moreover, an excessively high mandate is arbitrary and capricious, leading to inflated RIN prices and increased market volatility – ultimately harming obligated parties and consumers.

The statute prohibits EPA from setting aspirational cellulosic biofuel volume standards. The proposed cellulosic biofuel standards are higher than the proposed revised 2025 cellulosic biofuel standard and yet, EPA still has not provided sufficient justification to demonstrate that the 2024-2027 volume standards can be met without the use of CWCs. There are too many uncertainties and too little margin for error for EPA to finalize the 2026 cellulosic biofuel standards, as proposed. Furthermore, uncertainty about the health of the cellulosic RIN bank lingers from 2023. The proposed 2026 cellulosic biofuel RVOs do not mitigate uncertainty and would increase compliance costs. As the D.C. Circuit has noted, under the RFS obligated parties are the object of regulation that other parties benefit from and do not suffer the same consequences for failure to comply. Thus, they should not be penalized for being unable to ensure such growth and thereby be subject to the whims of the cellulosic biofuel industry:

> "Apart from their role as captive consumers, the refiners [and importers] are in no position to ensure, or even contribute to, growth in the cellulosic biofuel industry. (In other words, under the RFS, EPA effectively says): [d]o a good job, cellulosic fuel producers. If you fail, we'll fine your customers."[167]

EPA states there is strong evidence to conclude that the market for biogas-derived CNG/LNG is limited by demand – that is, RINs can only be generated from this pathway when CNG/LNG is used by vehicles as a transportation fuel. AFPM concurs with this determination and its relevance to cellulosic biofuel volume requirements.

The bottom-up, sectoral approach used by EPA to estimate the maximum CNG/LNG demand is highly dependent on the trucking industry's adoption of a new CNG engine and the infrastructure needed to support it. EPA offers a sensitivity analysis based on the rapid market adoption of the new Cummins X15N engine and the quick increase in CNG use in the freight truck sector. EPA should use real-world market data before relying on such a sensitivity analysis to set volume standards. This is especially important given the depletion of the cellulosic RIN bank and the large cellulosic carryover deficit from 2023. EPA correctly states that it is unlikely that 100% of installed biogas production capacity will be used to meet transportation demand due to various facility-level operational factors beyond EPA's ability to predict.

We repeat our central point: The RFS governing statute is explicit that EPA cannot set cellulosic biofuel volumes at a level that requires the use of the cellulosic waiver, and

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[167] *See API v. EPA,* 706 F.3d at 480.

therefore, EPA must set conservative standards. Setting standards at a level equal to an estimated future consumption is not conservative given the numerous uncertainties in the estimates.

3. The Cellulosic RIN Bank is Too Low to Ensure Compliance and Enhance Market Liquidity

The 2023 compliance year demonstrated that not all carryover RINs are available for compliance with some obligated parties choosing to hold them to assist with future compliance obligations. In that year, EPA set an unachievable mandate but claimed that there were adequate RINs to facilitate compliance. That turned out to be wrong, forcing some obligated parties to run a deficit.

EPA has repeatedly confirmed the importance of having an adequate RIN bank,[168] yet in a world where the bank is too low to provide a safety net in the event of an increase in the demand for transportation fuel or a production shortfall, EPA has proposed to set the cellulosic standard at a volume "...that represents the projected *production* volume available in 2026 and 2027."[169] That leaves no margin for error and is contrary to the RFS statute, which provides that "the applicable volume of cellulosic biofuel established by the Administrator shall be based on the assumption that the Administrator will not need to issue a waiver...."[170]

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.[171] AFPM asked TM&C to project the cellulosic biofuel RIN bank at the end of 2025. Total 2025 D3 Net RIN generation is projected to be 888 million RINs, resulting in a shortage of 338 million RINs, requiring the purchase of CWCs and additional Advanced Biofuel RINs. Their assessment is summarized in the following figure:

[168] 87 Fed. Reg. 39600, 39613 (July 1, 2022).
[169] 90 Fed. Reg. at 25821 (emphasis added).
[170] 42 U.S.C. § 7545(o)(2)(B)(iv).
[171] *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.

Figure 10 Assessment of 2025 Cellulosic Biofuel RIN Availability

2025 Calculations	Millions of Cellulosic RINs	Difference[172]
2023 Cellulosic Biofuel Obligation[173]	(868)	-
2022 Carryover Cellulosic Biofuel Compliance Deficit [174]	(28)	(896)
2022 Carryover Cellulosic RINs Available for Compliance [175]	66	(830)
2023 Cellulosic Biofuel RINs Available for Compliance[176]	773	(57)
2024 Cellulosic Biofuel Obligation [177]	(1,029)	(1,086)
2024 Cellulosic Biofuel RINs Available for Compliance [178]	1,007	(79)
2025 Cellulosic Biofuel Obligation [179]	(1,226)	(1,304)
2025 Cellulosic Biofuel RINs Available for Compliance [180]	888	(416)

Figure 10 properly omits CWCs, as EPA is prohibited from relying on CWCs as excess supply to address cellulosic mandates that were set higher than actual cellulosic biofuel production. CWCs are a price control mechanism that is available when an aspirational cellulosic mandate results in a shortfall of RINs available for compliance. EPA is not permitted to treat CWCs as a penalty on obligated parties to address mandates that EPA set beyond current cellulosic biofuel production.

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[172] This column represents the compounding effect to the availability of D3 RINs.
[173] Compliance data from EPA's Public Data for Renewable Fuel Standard. Renewable Volume Obligations "Table 2", Compliance Year 2023, data as of December 10, 2024
[174] Compliance data from EPA's Public Data for Renewable Fuel Standard. Renewable Volume Obligations "Table 6 Total Compliance Deficit by Year", Compliance Year 2022, data as of December 10, 2024
[175] Compliance data from EPA's Public Data for Renewable Fuel Standard. Available RINs "Total Available RINs to Date, (Total Available-Unlocked)," Compliance Year 2022, data as of June 10, 2025.
[176] Compliance data from EPA's Public Data for Renewable Fuel Standard. Available RINs "Total Available RINs to Date, (Total Available-Unlocked)," Compliance Year 2023, data as of June 10, 2025.
[177] TM&C Calculation of 2024 Cellulosic Biofuel Required Volume based on EIA STEO Data from Feb 2025
[178] Compliance data from EPA's Public Data for Renewable Fuel Standard. Available RINs "Total Available RINs to Date, (Total Available-Unlocked," Compliance Year 2024, data as of June 10, 2025.
[179] TM&C Calculation of 2025 Cellulosic Biofuel Required Volume based on EIA STEO Data from Jun 2025
[180] TM&C RIN Projection for remainder of 2025 based on year-to-date actuals plus year-to-date average across remaining months.

The 2025 cellulosic RIN Bank is projected to have a deficit of 416 million RINs after satisfying the 2025 compliance requirement. This means there is no cellulosic RIN bank.

Based on a cellulosic volume of approximately 1.30 billion RINs in 2026, the RIN bank should contain approximately 117 million to 221 million separated RINs available at the start of 2026 to ensure market liquidity and help ensure that obligated parties can meet their compliance requirements. EPA has not yet decided how it will resolve its unlawful denial of AFPM's 2023 cellulosic waiver petition and obligated parties have not submitted their 2024 compliance attestations at the time of writing, so it is currently impossible to determine the actual amount of 2024 cellulosic biofuel RINs remaining available for compliance that can be carried forward into 2025. As described above, TM&C have projected 2025 D3 generation at 888 million RINs, estimating based on current 2025 D3 RIN generation, resulting in yet another shortfall, this time projected to be 416 million RINs. CWCs are not a cure for overly aggressive mandates.

While we appreciate EPA's efforts to revise its methodology to establish cellulosic volumes, the Agency continues to propose cellulosic volumes that are aspirational, if not impossible, to achieve without EPA granting a subsequent cellulosic waiver. EPA's estimate overlooks current market data and the lack of a healthy cellulosic RIN bank, the large, continued effects of the carry-over deficit from 2023, and the delayed 2024 compliance and attest deadlines. These uncertainties have not been properly considered, and thus, AFPM believes the compliance with the proposed 2026 and 2027 cellulosic volumes will be challenging. EPA is required by law to set cellulosic volumes at a level that it believes will not require use of the cellulosic waiver.[181]

D. The Analysis of the Statutory Factors Exposes the Negative Economic Impact on Refiners, Refining Communities, and Consumers.

EPA's justification for its proposal rests on an incomplete analysis of the six statutory criteria it must evaluate. This section focuses on those within AFPM's primary expertise, including energy security and cost. We note, however, that EPA must analyze the impact of new trade patterns and economic pressures on vegetable oil production. Because the proposed volumes dramatically increase demand for SBO, the food, pet food, and animal feed sectors may substitute canola or palm oil to make up for SBO shortages. For example, while EPA acknowledges that the proposed volumes could divert vegetable oils from other uses to biofuel production, it failed to quantify the environmental impact of replacing those with other vegetable oils.[182] Furthermore, EPA also failed to analyze the environmental impacts of the feedstock shifts on other non-fuel markets as required by the statute.[183] For example, EPA failed to evaluate potential environmental impacts from this rule, despite acknowledging that palm oil production in Southeast Asia damages soil and water quality. To fully assess the

[181] 42 U.S.C. § 7545(o)(2)(B)(iv).
[182] *Id.* § 7545(o)(2)(B)(ii)(I).
[183] *Id.*

environmental impacts, EPA must assess the environmental impacts of increasing the use of other vegetable oils to replace SBO.[184]

1. Cost

a. Implied Conventional Volume

As indicated in our discussion of the implied conventional volumes, EPA is proposing the most expensive RFS mandate in history - by a wide margin. While on the surface it may seem impossible to reconcile TM&C's estimated cost of ~$67 billion in 2026 and $69 billion in 2027 (see Figure 1) with EPA's claim that this rule has net costs of $6.5 billion, the fact is EPA failed to consider realistic RIN values when calculating the estimated RIN cost for petroleum fuel.[185]

According to EPA, the tens of billions of dollars spent by obligated parties to comply with these mandates are "transfer payments between parties in the market (*e.g.,* tax subsidies for renewable fuels and RFS compliance costs), which are not relevant under a societal cost analysis."[186] It is arbitrary and capricious for EPA to ignore this massive cost that is ultimately borne by millions of American consumers.

Instead, EPA calculates that the proposed volumes for 2026 and 2027 will generate $387 million in societal benefits for domestic renewable fuel production, energy security, rural economic development, but the social costs are nearly $13 billion—meaning the costs are thirty-three times greater than EPA's estimated societal value. It is arbitrary and capricious for EPA to promulgate a rule with astronomical costs and nominal benefits against the backdrop of its statutory requirements.

b. Advanced and BBD Volumes

EPA failed to consider the energy security detriments of increasing imports of biofuels and feedstocks to meet aspirational advanced biofuel volumes. Yet, in relying on imports to meet its proposed volumes, EPA assumes energy security *benefits* from imported renewable fuels and feedstocks, but contends that some crude oil imports should be reduced to "achieve energy independence."[187] Consequently, the actual costs may be significantly higher and the benefits significantly lower. Any rational decision-maker seeing such a disparity should be doing everything possible to ensure all cost-saving measures are taken. Just as "[n]o regulation is 'appropriate' if it does significantly more harm than good,"[188] no

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[184] *Id*. § 7545(o)(2)(B)(ii)(I) (the impact of the production and use of renewable fuels on the environment, including on air quality, climate change, conversion of wetlands, ecosystems, wildlife habitat, water quality, and water supply.
[185] DRIA at 470, Tables 10.5.1-1, 10.5.1-2, and 10.5.1-3.
[186] 90 Fed. Reg. at 25815.
[187] DRIA at 232.
[188] *Michigan v. EPA*, 576 U.S. 743, 752 (2015).

regulation is justified if the harms under the six statutory factors significantly outweigh the good from those same factors.

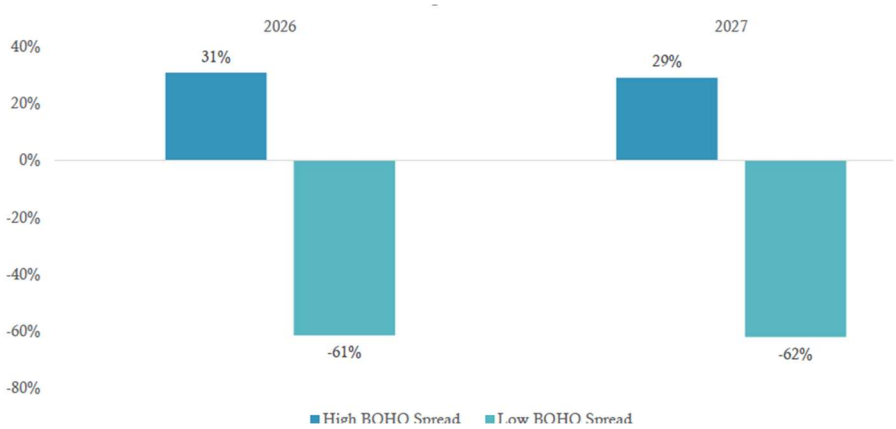
c. Cost Analysis Relies on Outdated SBO Prices

EPA's use of outdated SBO prices resulted in a significant underestimation of the Proposed Rule's cost. As shown in Figure 9, above, SBO prices rose on the announcement of the proposed volumes. S&P projects feedstock prices will increase in the context of the proposed volumes, the lower 45Z credit, and proposed 50% import RIN reduction.[189] Similarly, the crude oil prices are too high.[190] The impact of inaccurately calculating the difference between the price of crude oil and "bean" oil is demonstrated by modeling the "BOHO spread," or the price difference between bean oil and heating oil, which is a proxy for ultra-low sulfur diesel (ULSD). Since the publication of this Proposed Rule, the BOHO spread has more than doubled from $0.80 to $1.72.[191] When the BOHO spread increases, the RIN value must rise to cover the spread between the price of bean oil and ULSD. This raises total RFS compliance costs.

By modeling the BOHO spread, EPA could have quantified how much it costs to produce renewable fuels compared to conventional fuels. TM&C calculated the high BOHO spread at $2.25 per gallon, meaning the delta between the price of bean oil (high) and ULSD (low).[192] The low BOHO spread, which signals it is less costly to replace ULSD with renewable fuel, was set at $0.66 per gallon,. Using the BOHO high and low values, the Base Case supply curve and the AEO 2025 Reference Case, Figure 11 shows that as compared to the Base Case, RFS program costs increase with a wide BOHO spread, while they fall when the spread is narrow.[193]

[189] S&P Analysis (Appendix B) at Slide 3.
[190] *See* EIA, Cushing, OK WTI Spot Price FOB: https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=RWTC&f=M
[191] Using prices recorded on the week ending June 27, 2025: IA Soybean Oil Price from USDA's National Weekly Grain Co-Products Report & EIA's Weekly NY Harbor No. 2 Heating Oil Spot Price FOB.
[192] TM&C Report (Appendix A) at 20 and 56-57.
[193] *See Id.* at 20 for a more detailed explanation regarding the relationship between higher feedstock prices and higher RIN prices, which result in higher RFS program costs.

Figure 11 High/Low BOHO Spread



If the BOHO spread remains, the proposed volumes "are expected to double the cost of the RFS program due to increased RIN obligations, 50% reduction in RINs on foreign feedstocks, and the Implied Conventional exceeding the ethanol blendwall.[194] Failure to consider the BOHO spread renders EPA's analysis of costs and benefits of this rule inaccurate and insufficient to support finalizing the rule as proposed.[195] EPA should have evaluated current SBO and heating oil values to more accurately assess the cost of the Proposed Rule.

Finally, the loss of the tax credit and imposition of the 50% import RIN reduction means that the RIN value needs to increase dramatically relative to EPA's assumed prices for biofuel producers to break even. Consequently, RIN prices must increase to compensate for that lost value. However, EPA's analysis does not consider the large increases in soy prices referenced above or projected higher RIN prices, nor does it consider that basing the prices of other feedstocks like DCO and FOG, off of the historic spread between SBO spot prices and these commodities is inaccurate and reflective of old market dynamics (*e.g.*, prior to new trade and tax policies). While it is more difficult to project DCO and FOG prices, there is commercially available data that would have allowed a more nuanced picture of the feedstock costs associated with this rule.

i. Impact on the Rate of Commercial Renewable Fuel Production

EPA must analyze the impact of its proposal on the rate of commercial renewable fuel production.[196] To the extent EPA accounts for RIN value, the Agency uses RIN prices during April 2024-March 2025, when RIN prices were historically low. This allows EPA to claim the proposal's impact on petroleum fuel pricing is low and not constrained by other recent policy developments. However, despite S&P's prediction that feedstock prices will rise, thereby increasing the cost of renewable fuel production and the RIN price, EPA fails to forecast the

[194] TM&C Report (Appendix A) at 22.
[195] If EPA set the implied conventional volumes to the blendwall, it would also reduce the impacts of the BOHO spread to overall RFS program costs. *See* TM&C Report (Appendix A) at 22.
[196] 42 U.S.C. § 7545(o)(2)(B)(ii)(III).

impacts of their proposal on RIN pricing. As discussed in Section I.B.2.b(i) above, rising RIN prices and the loss of the full RIN value for imported feedstocks could jeopardize renewable fuel production - an impact EPA is required to analyze.

ii. Infrastructure Impacts

EPA's proposal contemplates a shift of SBO from non-fuel uses to biofuel production. Yet, EPA's analysis fails to assess the impact of this proposal on non-fuel markets. The law is clear that EPA must assess "the impact of renewable fuels on the infrastructure of the United States, including deliverability of materials, goods, and products *other than renewable fuel*."[197]

The Proposed Rule is designed to expand the use of domestic SBO. However, as discussed in Section I(B)(2)(b)(ii) above, not all renewable fuel plants can secure adequate volumes of SBO due to limited freight line or Jones Act vessels. Furthermore, shipping costs for domestic rail are nearly double the cost of shipping feedstocks from Asia. Yet, EPA failed to assess these infrastructure impacts.

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Given the extraordinary cost of this proposal, EPA must comply with Executive Order 14192 by identifying the elimination of 10 prior regulations to offset the incremental costs associated with this proposal.[198]

2. Energy Security and Independence

EPA is required to evaluate the impact of the Proposed Rule on the energy security of the United States.[199] Yet, EPA's analysis focuses only on the Proposal's impact on crude oil, while ignoring that this rule increases dependence on imported feedstocks and the potential reduction of US refining capacity. EPA must meaningfully consider the impact of refining capacity loss on refined product markets and in specialized applications such as military-spec jet fuel.

First, EPA's energy security analysis focuses exclusively on the importation of crude oil.[200] However, EPA's analysis ignores the energy security impacts of requiring imported biofuels and feedstocks. Bio-based feedstocks are also global commodities that experience price shocks from agricultural supply and demand, droughts, floods, and policy changes. For example, SBO prices can double within a year during periods of high demand or supply

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[197] *Id.* § 7545(o)(2)(B)(ii)(IV) (emphasis added).
[198] White House, Executive Order 14192, Unleashing Prosperity Through Deregulation, at Section 3(c). Available at https://www.federalregister.gov/documents/2025/02/06/2025-02345/unleashing-prosperity-through-deregulation.
[199] 42 U.S.C. § 7545(o)(2)(B)(ii)(II).
[200] *See* 90 Fed. Reg. at 25813-814 and DRIA Chapter 6.

constraints.[201] The proliferation of biofuel mandates and global trade restrictions can increase feedstock prices. The proposal to dramatically increase BBD volumes will increase competition for limited feedstocks, thereby intensifying volatility. EPA's deficient analysis cannot support an accurate assessment of the Proposed Rule's impact on energy security, as required by CAA Section 211(o)(2)(B)(ii)(II).

Second, EPA justifies the 50% import RIN reduction largely based on reduced reliance on imported fuels and feedstocks.[202] However, in its discussion of feedstocks available to produce BBD in the US, the DRIA continues relying equally on domestic and foreign fuels and feedstocks to justify the proposed volumes, implying imported fuels and feedstocks provide the same energy security and independence benefits as domestic renewable fuels and feedstocks.[203] However, as discussed in Section I.B.3 above, and as illustrated in Figure 8, the Proposed Rule requires approximately the same historical share of imported feedstocks to meet the proposed volumes. Because the proposal substantially increases the volume obligation and reduces the RIN value for those imports, a larger amount of imported feedstock will be required. EPA's proposal simply shifts the dependence on foreign energy sources from one form of energy (crude oil) to another (bio-based feedstocks). Notably, the crude oil refined by US refiners was more than 85% sourced from North America, with Canada as our largest supplier. The integrated infrastructure of North America has made the US largely energy secure over the past 15 years. Furthermore, both the petroleum and biofuel sectors are global commodities and experience price volatility, but for different reasons. Thus, the Proposed Rule fails to enhance energy security.

Third, the cost of this Proposed Rule may undercut the financial viability of some refineries. EPA's proposal has and will increase feedstock, RIN, and RFS compliance costs.[204] By increasing the cost of biofuel production and relying on advanced volumes to fulfill an unachievable ethanol mandate, RIN prices for the entire conventional mandate will need to increase to ensure advanced biofuel production is economical. However, the surge in RIN prices, coupled with declining demand for refined products, puts the economic feasibility of some refineries at risk.[205]

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[201] Aaron M. Ates and Maria Bukowski, United States Department of Agriculture, Amber Waves, Examining Record Soybean Oil Prices in 2021–22, Dec. 21, 2022.Available at https://www.ers.usda.gov/amber-waves/2022/december/examining-record-soybean-oil-prices-in-2021-22

[202] 90 Fed. Reg. at 25837-25838.

[203] *See* DRIA at 298-305.

[204] *See* S&P Analysis (Appendix B) at Slide 3; S&P (Proprietary Submission at Appendix C) at Slides 7-8, 10, 21, 31. 40, and 56; TM&C Report (Appendix A) at 22, 56-57, 59-60

[205] Although the extent and timeliness of RIN cost passthrough is debated, some literature demonstrates that RIN costs are not completely passed-through, and to the extent some costs are passed on to the consumer, the amount varies by market. *See* Pouliot, Sebastian, Smith, Aaron, Stock, James H. RIN Pass-Through at Gasoline Terminals, 2017 ("when we look at pass-through regionally, however, we find significant differences across regions, with essentially complete pass-through in the Gulf and Midwest, and less than complete pass-through in the East." Only 38% of the RIN is passed through in the East at branded stations, while half is passed through to unbranded fuel sales). Available at https://scholar.harvard.edu/files/stock/files/rack-pass-through-pouliot-smith-stock.pdf.

Since January 1, 2025, one refinery has closed and two refineries have announced plans to close by the second quarter of 2026, resulting in the loss of more than 500,000 barrels per day of refining capacity and the loss of hundreds of jobs.[206] A reduction in refining capacity by definition makes this country less energy secure. An unnecessarily expensive RFS program and the projected decline in gasoline demand requires refineries to make challenging decisions regarding their operations.

Unnecessarily increasing the price of the RFS program by tying the D6 RIN price to D4 and D5 RINs, setting advanced volumes well in excess of what can be produced with domestic feedstocks, and imposing a 50% import RIN reduction threatens the financial viability of some US refineries and US energy dominance.

II. Treatment of Carryover RINs

EPA has long recognized the importance of carryover RINs in maintaining liquidity in RIN markets, which this proposal fails to do.[207] EPA acknowledges in Table V.E.1-1 that the effective number of 2023 carryover RINs that are available for compliance with the 2024 standards after accounting for deficits carried forward from 2023 into 2024 is zero or negative for cellulosic, conventional, and total renewable fuel.[208] In this analysis, only the biomass-based diesel category would have effective carryover RINs into 2024. EPA assumes in its analysis in the DRIA that these same effective carryover RINs would be applicable into this rulemaking for 2026-2027 with no supporting evidence.

AFPM had TM&C perform a RIN bank analysis, using data from EPA's EMTS updated through July 10, 2025. TM&C assumed ongoing compliance through 2025, following EPA's methodology. TM&C estimated that all renewable volume obligations for 2025 will be met, except the cellulosic biofuels category, which will be short by approximately 416 million RINs (including the 2024 and 2025 cellulosic waiver credits granted by EPA in this proposal and the 2024 cellulosic partial waiver proposal). BBD production in 2024 generated a very large RIN bank, but current market realities (45Z limitations on imported feedstocks, import tariffs on feedstocks, loss of the BTC, and SRE uncertainty) have greatly lowered BBD production through the first half of 2025. TM&C projects that to meet the effective RVOs for 2025, all D4 carryover RINs from 2024 will need to be used to comply in 2025. This means that there will be no RIN bank for the D4 RIN category going into the 2026 compliance year.

For the overall RFS program, TM&C projects that the total RIN bank will be 799 million RINs (mostly in the conventional biofuels category), which is approximately 3.5% of the 2026 proposal.[209] To create a more balanced RIN market, EPA should set volumes that

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[206] *See, e.g.,* Refinery closures present risk for higher gasoline prices on the West Coast - U.S. Energy Information Administration (EIA); LyondellBasell - Financials - Quarterly results;
[207] *See* 87 Fed. Reg. 39600, 39613 (July 1, 2022); *See also* 90 Fed. Reg. at 25828.
[208] 90 Fed. Reg. at 25827, Table V.E.1-1.
[209] RIN Bank balance assessments vary depending on how the forecaster sees many different variables. TM&C's analysis shows a RIN bank balance of 799 million RINs going from 2025 into 2026. Other analysts and modelers have different forecasts for petroleum gasoline and diesel demand, biofuel production (and RIN generation), and annual compliance in terms of carryover RINs and carryover deficits. With this in mind, some modelers have estimated the RIN bank balance ranges from close to zero to near 1 billion RINs after compliance for 2025.

enable the RIN banks for each biofuel category to have a RIN bank of between 9-17% of the volume requirements to enable all obligated parties' ability to comply.[210]

III. Treatment of Small Refinery Exemptions

A. EPA Must Immediately Act on the Biden SRE Backlog

As EPA recognizes, it has a backlog of SRE petitions that are long overdue for a decision. The previous administration's failure to decide these exemptions creates uncertainty in the market. This administration should take immediate and decisive action to resolve outstanding SRE petitions.

Around 10% of US refining capacity consists of small refineries, many of which are owned by AFPM members. EPA has an obligation to implement SREs as required by the CAA and to act on all SRE applications.[211] AFPM does not take a position on individual SRE petitions.

Congress recognized that the RFS created the potential for economic hardships for small refineries and therefore included the SRE provision to enable small refineries to petition for exemptions from RFS obligations if certain conditions are met. Despite recent legal precedent, EPA has failed to make lawful and timely decisions on SRE petitions for several years and in doing so has violated the statutory requirement to act on SRE petitions within 90 days. Additionally, EPA had attempted to argue that small refineries are ineligible for relief unless they maintain their hardship exemptions every year since the inception of the RFS, until the Supreme Court rejected EPA's argument.[212] EPA then sought to argue that no refinery ever experiences hardship, since it can pass through its costs to consumers, but both the D.C. Circuit and Fifth Circuit rejected this blanket rationale.[213] Since these decisions, EPA has yet to act on these SRE petitions—nor has it acted on other, subsequently filed petitions, violating the statutory 90-day deadline.

EPA's inaction is harmful to any small refinery that otherwise would receive an SRE. Some small refineries have carried over deficits to demonstrate compliance, while others face financial challenges from their ongoing RIN purchases, despite having applied for a hardship exemption. Refineries can spend hundreds of millions of dollars on RINs *each year*. Small refineries may not be able to absorb this cost, and for some, it is an existential threat. Small refinery closures would undermine President Trump's Energy Dominance agenda.

TM&C's analysis is within this range on the higher side, but still well below AFPM's recommended range of 9-17%.

[210] *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.

[211] 42 U.S.C § 7545(o)(9)(B).

[212] *HollyFrontier Cheyenne Refining, LLC v. Renewable Fuels Association,* 594 U.S. 382, 399-400 (2021).

[213] *Sinclair Wyo. Refin. Co. LLC v. EPA,* 114 F.4th 693 (D.C. Cir. 2024) (*Sinclair Denials*); *Calumet Shreveport Refin., L.L.C. v. EPA*, 86 F.4th 1121 (5th Cir. 2023), *rev'd on other grounds, sub nom. EPA v. Calumet Shreveport Refin., L.L.C.*, No. 23-1229 (U.S. June 18, 2025).

If EPA fails to decide the SRE petitions before finalizing the 2026-2027 final rule, EPA must act to mitigate the harms caused by its delay.

B. Reallocating Projected SREs is Unlawful and Unnecessary

AFPM has objected to reallocating exempt volumes to other obligated parties for legal, practical, and equitable reasons. Notwithstanding the decision in *Sinclair Reset*,[214] reallocating projected SRE petition grants is not authorized under the CAA and is unnecessary.[215]

EPA lacks the authority to reallocate projected exempted volumes. The *general* statutory language directing EPA to promulgate regulations to "'ensure' … the renewable fuel volumes"[216] must yield to the *specific* requirements Congress enacted for small-refinery exemptions.[217] The statute grants EPA limited, specific authority to "make adjustments … to account for the use of renewable fuel during the previous calendar year by small refineries that are exempt…."[218] Thus, if an exempt refinery blends renewable fuel, EPA must decrease the percentage standards the next year. The statute accordingly (1) considers only the use of "renewable" fuel by exempt refineries, (2) does so only on a retrospective basis, and (3) mandates a reduction of obligations for nonexempt parties. Nothing in the statute authorizes EPA to reallocate SRE volumes to the remaining "large" refiners, which raises RIN prices and compliance costs associated with the proposal as discussed above.

Reallocating volumes exceeds these statutory constraints by adopting a prospective projection of nonrenewable fuel production by hypothetically exempt small refineries. The absence of language permitting EPA to adjust requirements to account for future exemptions, paired with express language concerning exemptions, precludes this approach.[219]

The statutory mandate to "make adjustments" to annual percentage standards "to prevent the imposition of redundant obligations on any" obligated party[220] reinforces that Congress withheld this reallocation authority. Reallocating obligations from projected exempt to nonexempt obligated parties violates that mandate. When EPA's projection of exempted volumes is too high, the resulting percentage standards exceed those necessary to meet the renewable-fuel targets set in final rules. In such cases, non-exempt obligated parties must bear not only an obligation exceeding what they would have absent EPA's mistaken projection, but also an obligation that is being satisfied twice—redundantly.

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[214] *See Sinclair Wyo. Refin. Co. LLC v. EPA*, 101 F.4th 871 (D.C. Cir. 2024) (*Sinclair Reset*).
[215] *See* Final Br. of Am. Fuel & Petro. Mfrs. et al., Case No. 22-1210, Doc. #2017798 (D.C. Cir. Sept. 19, 2023), p. 22-30. AFPM fully incorporates this argument herein by this reference.
[216] 42 U.S.C. § 7545(o)(2)(A)(i), (A)(iii)(I).
[217] *See Nat'l Cable & Telecomm. Assn., Inc. v. Gulf Power Co.*, 534 U.S. 327, 335-336 (2002).
[218] 42 U.S.C. § 7545(o)(3)(C)(ii) (emphasis added).
[219] *Ams. for Clean Energy v. EPA (ACE)*, 864 F.3d 691, 733 (D.C. Cir. 2017)("that Congress knew how to" legislate "when it wanted to" but did not confirm purposefulness); *see Entergy Corp. v. Riverkeeper, Inc.*, 556 U.S. 208, 223 (2009) ("sometimes statutory silence, when viewed in context, is best interpreted as limiting agency discretion").
[220] 42 U.S.C. § 7545(o)(3)(C)(i),

Obligations caused by the higher-than-necessary percentage standard are imposed on both obligated parties never eligible for a small-refinery exemption, and on small refineries whose volumes were projected to be exempted, but which did not in fact receive exemptions.

C. EPA Cannot Reallocate Prior Year SRE Exemptions

Regardless of the D.C. Circuit's *Sinclair Reset* decision, EPA should not address and reallocate SREs granted in years prior to 2026 and 2027. The plain text of the CAA forecloses any argument that EPA has such authority, much less is required, to saddle future obligated parties with obligations exempted in prior years. EPA's "ensure" duty is not a warranty. EPA need not and cannot guarantee that each year's full applicable volumes are eventually met in fact. It can only, and must, prospectively set volumes that are achievable, and small refineries' ability to petition for a hardship exemption "at any time" reinforces this conclusion. Congress enacted a program that tasks EPA with setting volume obligations for *the applicable year*. While exempted volumes may reduce the nationwide total of RINs eventually retired to demonstrate compliance, an exemption should not increase the percentage standard applicable to all other obligated parties.

The only RFS provisions dealing with 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:

> (1) Through 2021, EPA must reduce renewable-fuel requirements based on the previous use of renewable fuel by exempt small refineries.[221]
>
> (2) EPA must reduce 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.[222]
>
> (3) Individual obligated parties may "carry forward a renewable fuel deficit" for a single year.[223]

None of these provisions speaks to *increasing* applicable volumes in subsequent years, and for good reason. The CAA requires renewable fuel obligations to be set on an "annual average basis" and applies the obligations to a specific "calendar year."[224] The statute sets (or requires EPA to set) applicable renewable fuel volumes for each year,[225] and to the extent those volumes are not met, the Act does not empower EPA to redistribute them to future years. Thus, the entire structure of the RFS program established by Congress prescribed a clear temporal limitation on the RFS—that applicable volumes are set for each year, individually, and thus so too are EPA's promulgations of each year's obligations.

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[221] 42 U.S.C. §7545(o)(3)(B)(ii)(II), (3)(C)(ii); *see* 75 Fed. Reg. 14670, 14717 (Mar. 26, 2010).
[222] 42 U.S.C. § 7545(o)(7)(F).
[223] *Id.* § 7545(o)(5)(D).
[224] *Id.* § 7545(o)(2)-(3).
[225] *Id.* § 7545(o)(2).

Had Congress intended EPA to carry forward exempted volumes from one compliance year to the next, it would have said so in the statute.[226] Congress had ample opportunity when amending the RFS program in 2007, but did not.[227] Small-refinery exemptions have existed in the RFS, unchanged, since 2005.[228] Congress was fully aware of their potential impact on applicable volumes, but did not delegate to EPA any authority to carry forward exempted volumes.

Likewise, Congress failed to specify in the "set" criteria that EPA can consider past SREs when setting current volumes. None of these statutory criteria contemplate an adjustment for past renewable fuel "shortfalls" for *any* reason. Rather, each of these criteria are present-oriented or forward looking.[229] And courts are hesitant to interpret a statute retroactively unless there is clear congressional intent, meaning there is a presumption against reading a statute to have retroactivity.[230]

In sum, EPA simply has no directive from Congress to make every RFS provision subservient to its duty to "ensure" transportation fuel contains applicable volumes of renewable fuel.[231]

IV. Proposed Percentage Standards for 2026 and 2027

EPA must use updated information to estimate the non-renewable gasoline and diesel consumption, [232] the volume of renewable fuel used to replace conventional into gasoline and diesel, and wholesale price projections,[233] then EPA must adjust the final volume requirements downward to account for more current forecasts. First, the most recent STEO projects that for 2026, motor gasoline and ethanol consumption will decline and diesel consumption will remain flat as compared to its projections for 2025, thereby limiting the volume of renewable fuel that can be blended into the fuel pool.[234] Moreover, the AEO 2025 projects that the Brent Spot Price and the West Texas Intermediate Spot prices will be lower than forecasted by the AEO 2023,[235] meaning that renewable fuels are relatively more expensive, increasing the cost of RFS compliance for refiners and importers.

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[226] *See Am. Fuel & Petrochem. Mfrs. v. EPA*, 3 F.4th 373, 381–82 (D.C. Cir. 2021).
[227] Pub. L. No. 110-140, 121 Stat. 1492, 1519 (Dec. 19, 2007).
[228] Compare Pub. L. No. 109-58, 119 Stat. 594, 1073 (Aug. 8, 2005) with §7545(o)(9)(B).
[229] *See* 42 U.S.C. § 7545(o)(2)(B)(ii)-(v).
[230] *E.g. Landgraf v. Usi Film Prods.*, 511 U.S. 244 (1994).
[231] As AFPM has explained elsewhere, EPA's ensure duty is limited and does not permit EPA to "correct" for prior years. *See* Final Br. of Intervenors Resps. Am. Fuel & Petro. Mfrs. And Small Refs., Case No. 20-1046, Doc. #2112802 (D.C. Cir. April 25, 2025), p. 6-15.
[232] 90 Fed. Reg. at 25788.
[233] *Id*. at 25814.
[234] EIA, June STEO at Table 4a, Petroleum and Other Liquids Supply, Consumption, and Inventories, available at https://www.eia.gov/outlooks/steo/data/browser/#/?v=9&f=A&s=&id=&ctype=linechart&maptype=0
[235] EIA, Annual Energy Outlook 2025, Table 1. Total Energy Supply, Disposition, and Price Summary, available at https://www.eia.gov/outlooks/aeo/data/browser/#/?id=1-AEO2025&cases=ref2025~hm2025~lm2025~highprice~lowprice~highogs~lowogs~highZTC~lowZTC~nocaa111~alttrnp~aeo2023ref&sourcekey=0.

EPA calculated the percentage standards for this rule using EIA's 2023 AEO (Annual Energy Outlook), rather than the more recently released 2025 AEO. There have been some notable changes between these forecasts. Although gasoline and diesel consumption are still projected to decline, the 2025 AEO projects gasoline consumption could be 4.3% higher in 2026 and 4.8% higher in the 2025 AEO compared to the 2023 AEO.[236] Similarly, diesel consumption is projected to be 12.6% higher in 2026 and 12.4% higher in 2027 in the 2025 AEO forecast than was forecasted in the 2023 AEO. Similarly, EIA has revised upwards consumption of biofuels in AEO 2025 compared to AEO 2023. We support EPA's decision to use the 2025 AEO in its final rulemaking, but also acknowledge that these updates should yield lower percentage standards than those currently proposed by EPA.

V. AFPM's alternative volume requirements

A. Base Case

In response to EPA's request for alternative volumes, AFPM retained TM&C to develop its Base Case and alternative renewable fuel volume requirements. In building the model Base Case, TM&C adhered to EPA's proposed renewable volume obligations (RVOs).[237] Establishing the Base Case was a three-step process.[238]

First, the baseline volume obligation in the Proposed Rule and the percentage standards were updated to use the EIA's AEO 2025.[239] Because AEO 2025 does not account for renewable feedstock prices, the TM&C model assumed a BOHO spread based on recent bean oil and ULSD pricing, the proposed RVOs, and the 45Z credit for 2026 and 2027.[240]

Second, TM&C generated supply curves to determine the market price for RINs.[241] Because EPA continues to set the implied conventional volumes at 15 billion RINs, BBD is the marginal product in the D4, D5, and D6 fuel categories.[242] Therefore, TM&C used its data on each BBD facility's capacity and feedstock slate. TM&C then calculated the number of RINs generated at each BBD facility. Based on the renewable fuel volume established by EPA, the price of RINs traded would be determined by the marginal RIN. In establishing the supply curve, TM&C incorporated assumptions from the Proposed Rule and implementation of the 45Z credit.[243]

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[236] Compare EIA, Annual Energy Outlook 2023, Table 2, available at https://www.eia.gov/outlooks/aeo/data/browser/?src=-f1#/?id=2-AEO2023&sourcekey=0 with Annual Energy Outlook 2025, Table 2, available at https://www.eia.gov/outlooks/aeo/data/browser/#/?id=2-AEO2025&cases=ref2025&sourcekey=0.
[237] TM&C Report (Appendix A) at 13
[238] *Id*. at 11.
[239] *Id.* at 13.
[240] *Id.* at 14-15.
[241] *Id*. at 11 (A supply curve is generated based on feedstock and cost data, the feedstock slate and available credits, and RIN generation and RIN price).
[242] *Id.* at 15.
[243] *Id*. at 43-44.

Third, market fundamentals (supply and demand) and pricing were added to the model. TM&C used EIA's 2025 AEO Reference Case data for gasoline and diesel production and consumption and pricing Since agricultural pricing is not included in EIA's AEO, TM&C reviewed publicly available pricing data from the National Weekly Co-Products Report[244] (bean oil pricing) and EIA (heating oil) to calculate a BOHO spread of $1.72/gallon.[245] Taking into account RIN nesting, TM&C calculated the number of RINs demanded by the market.[246]

With demand set, TM&C used supply figures from the 2025 AEO to estimate how RINs will be supplied to the market, including calculating the marginal RIN for each renewable fuel category. TM&C assumes each producer will want to maximize RIN value and, due to nesting, the RIN prices for the Base Case converge around $2.89 for all RINs in 2026 and $2.89 in 2027.[247]

Conventional gasoline and diesel refiners and importers are required to retire RINs according to the established percentage standards. The RFS program cost is, therefore, determined by the product of RINs demanded and RIN prices. Assuming all obligated parties purchase their RINs from the open market, the Base Case projects overall compliance costs for 2026 and 2027 to be $67 and $69 billion dollars, the highest since the program's inception, as shown in Figure 1.[248] These RIN prices are more than four times the RIN prices EPA assumed in its analysis in the DRIA based on outdated data.[249] This dramatically increases costs to the American consumer.

B. AFPM's Proposed Alternative Renewable Volume Obligations

AFPM proposes changes to the methodology for determining renewable fuel volumes (other than cellulosic), which should lower program costs for obligated parties while still maintaining energy independence and security. Unless otherwise indicated, all scenarios assume use of North American feedstocks to set the volumes and do not apply the 50% import RIN penalty on either imported finished fuel or on fuels produced in the US from imported feedstocks.

1. Due to the Statutory Lead Time Requirement, 2026 Volumes Should be Set at the Last Properly Promulgated Annual Standard

Congress included a 14-month lead time requirement to ensure that obligated parties maintain their ability to contract with feedstock and biofuel producers to secure adequate

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[244] *Id. and 13;* National Weekly Co-Products Report" Report 6/23-6/27/2025, Iowa soybean oil.
[245] *See* TM&C Report (Appendix A) at 13 and 20. For week ending June 27, 2025 see EIA: https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=EER_EPD2F_PF4_Y35NY_DPG&f=W and USDA: https://mymarketnews.ams.usda.gov/filerepo/sites/default/files/3618/2025-06-23/1254827/ams_3618_00147.pdf
[246] *See* TM&C Report (Appendix A) at 44.
[247] *Id.*. at 15 *See also* DRIA at 470, Table 10.5.1-2 (showing convergence of D4, D5, and D6 RIN price).
[248] TM&C Report (Appendix A) at 16.
[249] DRIA at 470, Table 10.5.1-1.

renewable fuel sources. This lead time helps mitigate the uncertainty and costs associated with the thinly traded, opaque, and volatile RIN market, which refiners and importers depend on for a significant percentage of the biofuels mandated under the RFS.

EPA acknowledges that it is "proposing applicable volume requirements for the 2026 compliance year after the statutory deadline to establish such requirements."[250] EPA has repeatedly ignored statutory lead time requirements throughout its administration of the RFS program, seemingly emboldened by the D.C. Circuit's failure to enforce them.

Three days following publication of this proposal, the D.C. Circuit reaffirmed 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.'"[251] At a minimum, the proposed 50% import RIN reduction fails to satisfy this requirement because it does not adequately mitigate that harm to obligated refineries. For example,

1. Biofuel producers have feedstock contracts that were established before EPA proposed the 50% import RIN reduction.
2. Domestic producers may not have enough time to source domestic feedstocks that qualify for the full RIN value.
3. Producers require time to modify operations to process domestic feedstocks instead of the existing imported feedstocks for which the facilities were originally designed to handle.

In the past, EPA extended RFS annual compliance dates to address its tardiness.

However, extended compliance dates do not address the foundational purpose of these deadlines and do not mitigate "any hardship to obligated parties" for several reasons:

1. The late rules interfere with long-term contracts and obligated parties' ability to secure adequate feedstocks and finished biofuel supplies at reasonable market prices;

2. Biofuel producers will need significant time to: (a) modify feedstock contracts, (b) revise RIN generation software to track multiple feedstock origins, determine the quantity of renewable fuel made from domestic or foreign feedstocks, and apply either the 100% or 50% RIN value to the appropriate feedstock, and

3. Implement reporting and recordkeeping requirements.

Extended compliance dates do not mitigate these harms because they do not expand the supply of RINs or address the increase in RIN prices and volatility associated with market uncertainty created by late rules. These impacts occur during the compliance year and are not

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[250] 90 Fed. Reg. at 25791/2. We also note that EPA likely will miss the deadline for 2027, unless it issues a final rule on or before October 31, 2025. *See* CAA section 211 (o)(2)(B)(ii), requiring EPA to promulgate applicable volume requirements "no later 14 months before the first year for which such applicable volume will apply."
[251] *Center for Biological Diversity v. EPA*, 141 F. 4th 153, 184 (D.C. Cir.) (2025).

ameliorated by simply providing a few extra months for obligated parties to surrender RINs and demonstrate RFS compliance.

EPA continues to assert that "existing compliance flexibilities … such as … carrying forward a deficit from one compliance year into the next"[252] provide a mechanism for obligated parties to comply. However, this compliance solution does not mitigate the harm to those obligated parties on the short end of the supply stick, as it provides only a temporary reprieve that must be made up in the next year. Carryover deficits may lead to additional adverse economic consequences, accounting concerns, increased potential liabilities as RIN prices vary, and the obligated party's ability to access the credit markets. The Proposed Rule does not mitigate these harms. In fact, in light of the RIN bank balance discussed in Section II, *supra*, fewer obligated parties will have the ability to carry over deficits and still comply with the entirety of the following year's obligation.

The inability to mitigate the harms associated with a rule scheduled to take effect on January 1, 2026, is evident in EPA's proposed discounts to the value of imported renewable fuels and feedstocks combined with significant increases in the proposed volumes. This aspect of the proposal presents new hardships and undermines *existing* contractual obligations that obligated parties cannot begin to address until EPA issues a final rule. EPA cannot adequately mitigate this harm and therefore must comply with the 14-month lead time requirement.

These comments demonstrate that EPA does not adequately mitigate the harm it causes obligated parties from its late rules and make a strong case for EPA adhering to the now applicable 14-month lead time requirement, which is Congress's stated remedy for late rules.

EPA's repeated disregard for these statutory deadlines is unacceptable, contrary to Congress's intent, causes unnecessary harm to obligated parties, and increases the costs of RFS compliance. This mismanagement is bad for program governance, and we preserve this legal argument, knowing that the courts cannot forever ignore the plain statutory text prohibiting an increase in the volumes sooner than "14 months before the first year for which such applicable volume will apply." We do not argue that EPA loses the authority to establish a renewable fuel standard for 2026; rather, EPA cannot increase the 2026 standard without complying with this statutory lead time provision. In this circumstance, EPA should maintain the volumes from 2025 for the 2026 compliance year and delay any increases until 2027. This statutorily prescribed remedy maintains the status quo and protects the biofuel industry's investments while avoiding additional harm to obligated parties.

[252] 90 Fed. Reg. at 25791.

2. AFPM's proposed volumes if EPA ignores its lead time obligation

a. AFPM Proposed Volumes if EPA Ignores the 14-month Lead Time Requirement

If EPA persists in ignoring the lead time requirement, AFPM recommends that for both 2026 and 2027, the implied conventional biofuels category be lowered from the current 15 billion RINs to the calculated ethanol blendwall from the 2025 AEO. Advanced Biofuel volumes should be set based on North American feedstock availability and the proposed 50% import RIN reduction should be withdrawn to reduce program compliance costs. Finally, as EPA indicated, data corresponding to the EIA 2025 AEO should be used to calculate the percentage standards based on those updates. Figures 12 and 13 provide AFPM's preferred scenario volumes and percentage standards, respectively.

Figure 12 AFPM's Proposed 2026 and 2027 Renewable Fuel Volumes[253]

RVOs	Base Case		AFPM Proposed	
B-RINs	**2026**	**2027**	**2026**	**2027**
Cellulosic Biofuel	1.30	1.36	1.30	1.36
Biomass Based Diesel	7.20	7.65	6.63	6.71
Advanced Biofuel	9.09	9.61	8.51	8.67
Total Renewable Fuel	24.09	24.61	22.37	22.47
Implied Undifferentiated	*0.60*	*0.60*	*0.59*	*0.59*
Implied Conventional	*15.00*	*15.00*	*13.86*	*13.81*

[253] TM&C Report (Appendix A) at 50.

Figure 13 AFPM's Proposed 2026 Percentage Standards[254]

% Standards	Base Case		AFPM Proposed	
	2026	2027	2026	2027
Cellulosic Biofuel	0.72%	0.77%	0.72%	0.77%
Biomass Based Diesel	4.00%	4.29%	3.68%	3.77%
Advanced Biofuel	5.06%	5.40%	4.73%	4.87%
Total Renewable Fuel	13.40%	13.82%	12.44%	12.62%

Because there would be a reduction in RINs demanded and the implied conventional would be set at a level that would not require BBD to satisfy the volumes, TM&C modeled that RIN prices would drop, resulting in an overall reduction of program costs compared to the Base Case of 66% and 68% in 2026 and 2027, respectively.[255] These achievable volumes would still support biofuels production in the sectors where the support is more necessary, such as cellulosic and advanced biofuels. Per EPA's "No RFS Baseline" scenario from the DRIA, "[w}hen RBOB and CBOB are produced, the refiner makes the decision that ethanol will be blended into their gasoline since the BOBs cannot be sold as finished gasoline without adding 10% ethanol."[256] Ethanol is already valuable as a gasoline blendstock, due to its octane value, and it is "economical to blend ethanol into the entire gasoline pool up to 10%."[257] There is no rational justification for the proposal's excessive costs on the American consumer.

VI. Definitions

A. **"Renewable Jet Fuel,"** 40 CFR § 80.2

EPA has approved a pathway for co-processed renewable jet fuel.[258] However, the proposed definition of "renewable jet fuel" refers to "renewable fuel and that meets ASTM D7566, which does not include an annex for co-processing renewable biomass and petroleum."[259] Co-processing is recognized and permitted under the ASTM D1655 jet fuel standard. Therefore, to ensure we can use the approved pathway, we request the final rule revise 40 CFR § 80.2's definition of "renewable jet fuel" to state:

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[254] *Id.*
[255] *Id.* at 51.
[256] DRIA at 44.
[257] *Id.* at 48.
[258] Table 1 to 40 CFR § 80.1426, Pathway H.
[259] 90 Fed. Reg. at 25859.

> *Renewable jet fuel* means jet fuel that is renewable fuel and that meets ASTM D7566 or ASTM 1655 (incorporated by reference, see § 80.12).

B. "Co-processed cellulosic diesel", 40 CFR § 80.2

EPA defined co-processed cellulosic diesel to include renewable jet fuel produced from cellulosic feedstocks. However, the proposed definition requires that such jet fuel "meets the definition of either biodiesel or renewable diesel."[260] But, most jet fuel would not qualify under this definition since it is unlikely to simultaneously meet the ASTM standards for renewable diesel and renewable jet fuel. Therefore, we request that paragraph (1)(ii) in the definition of "Co-processed cellulosic diesel" be modified as follows: "Meets the definition of biodiesel, renewable diesel, **or renewable jet fuel**."

VII. The Proposed Rule Correctly Concludes the RFS Does Not Authorize EPA to Implement eRINs

A. EPA Lacks Statutory Authority to Include Renewable Electricity in the RFS.

AFPM supports EPA's proposal to remove renewable electricity as a qualifying fuel under the RFS program and the regulations allowing eRIN generation.[261] In the RFS, "renewable fuel" is defined as follows:

> The term "renewable fuel" means fuel that is produced from renewable biomass and that is used to replace or reduce the quantity of fossil fuel present in a transportation fuel.[262]

EPA provides several convincing reasons why renewable electricity is not a renewable fuel under CAA section 211(o)(1)(J). But EPA's case is even stronger than it lets on, as the CAA's definition of "additional renewable fuel" reinforces that renewable electricity is not a renewable fuel. It provides "additional renewable fuel" means "fuel that is produced from renewable biomass and that is used to replace or reduce the quantity of fossil fuel present in home heating oil or jet fuel."[263] This definition again provides that renewable fuel must "replace or reduce the quantity of fossil fuel *present in* home heating oil or jet fuel." While electricity can substitute for heating oil, it cannot reduce the fossil fuel *present in* home heating oil or jet fuel because electricity is not fungible with fuels.

Likewise, the definition of "transportation fuel" under the RFS further bolsters EPA's interpretation. A "transportation fuel" is "fuel for use in motor vehicles, motor vehicle engines, nonroad vehicles, or nonroad engines (except for ocean-going vessels)."[264]

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[260] See *Id.* at 25858.
[261] *Id.* at 25784, 25841-25842. The regulations governing RIN generation for renewable electricity are at 40 CFR 80.1426(f)(10)(i) and (f)(11)(i).
[262] 42 U.S.C. § 7545(o)(1)(j).
[263] *Id.* § 7545(o)(1)(A).
[264] *Id.* § 7545(o)(1)(L).

Yet again, Congress reinforced that transportation fuels must be within the meaning of fuel." Since electricity is not a fuel, it cannot be a transportation fuel that qualifies for this program.

Additionally, EPA's interpretation is supported by the major question doctrine, as including any form of electricity in a renewable fuel program would constitute a major question of political and economic significance for which Congress must provide a clear statement—and has not here.[265]

B. EPA Failed to Report to Congress on the Feasibility of Using Renewable Electricity as an Adjunct to the Renewable Fuels Mandate, as Required by the Energy Independence and Security Act (EISA).

If anything, Congress *withheld* any authority for EPA to implement eRINs. The EISA, which created the current version of the RFS, failed to include electricity in CAA section 211(o) when expanding the RFS to include annual standards for cellulosic biofuel, advanced biofuel, and BBD. Instead, EISA section 206 required EPA to submit a report to Congress's legislative committees of jurisdiction that among other things describes "alternatives for … a pilot program to determine the feasibility of using renewable electricity to power electric vehicles as an adjunct to a renewable fuels mandate." [266] EPA never completed the study, and the report to Congress is now more than 15 years overdue.

Moreover, Congress's use of the term "adjunct" indicates that Congress did not authorize inclusion of a renewable electricity program within the existing, authorized RFS program. In fact, Congress has chosen other means to promote electric vehicles, such as providing billions of dollars for electric vehicle tax credits and charging infrastructure. Fundamentally, this provision indicates Congress left itself with the ultimate decision whether to add renewable electricity to the RFS program.

Indeed, had Congress authorized EPA to act notwithstanding the failure of Congress to act on a report, it would have expressly specified as such. For example, under CAA section 112(f), Congress expressly specified that if Congress failed to act on EPA's stationary source residual risk report submitted to Congress, EPA could promulgate new standards.[267] It did not do anything similar here.

Furthermore, Congress expressly specifies when it includes electricity in various energy programs. It expressly included electricity in other sections of Title II of the CAA relating to mobile sources[268] and in the Energy Policy Act of 1992.[269] Against this backdrop, Congress chose not to include electricity in the definition of "renewable fuel," preferring a

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[265] *See West Virginia v. EPA*, 597 U.S. 697 (2022).
[266] EISA § 206 (c)(2)(A), https://www.congress.gov/110/plaws/publ140/PLAW-110publ140.pdf.
[267] 42 U.S.C. § 7412(f)(1); *Id.* § 7412(f)(2) ("If Congress does not act on any recommendation submitted under paragraph (1), the Administrator shall, within 8 years after promulgation of standards for each category or subcategory of sources pursuant to subsection (d), promulgate standards for such category or subcategory if promulgation of such standards is required in order to provide an ample margin of safety to protect public health in accordance with this section.").
[268] *See, e.g.,* 42 U.S.C. § 441(2) defining "clean alternative fuel" to include electricity.
[269] *See* Energy Policy Act of 1992, 42 U.S.C. § 13211(2) (defining the term "alternative fuel" to include electricity).

separate, more limited definition.[270] In sum, Congress's direction to EPA merely to study the issue hardly constitutes clear statutory authorization to actually include renewable electricity in the RFS program.

Other statutory indicia, such as the broader context of the RFS, clearly demonstrate that Congress never intended for renewable electricity to be included in the RFS. For example, the CAA describes renewable fuel in terms of "the applicable *volume* of renewable fuel"[271] and applicable volumes in terms of "billions of *gallons*."[272] Moreover, Congress's description of EPA's study and report is again instructive, since it distinguishes between the "renewable fuel mandate" and "renewable electricity [used] to power electric vehicles."[273]

The statutory purpose of the RFS does not support an eRIN program either. The purpose of the RFS is to increase renewable fuel use. However, it chooses a specific means to promote renewable fuel use: through the combustion of renewable fuels as transportation fuels. As the Supreme Court has stated, "no legislation pursues its purposes at all costs," and "it frustrates rather than effectuates legislative intent simplistically to assume that *whatever* furthers the statute's primary objective must be the law."[274] Failing to respect Congress's specific choice of means would impermissibly expand the statute beyond what is textually authorized.

C. EPA Further Lacks Authority for eRINs under CAA Section 211(o)(5)

Regardless of whether renewable electricity is a renewable fuel, EPA further lacks authority to allow eRIN generation under CAA section 211(o)(5). This section provides for the generation of "credits" (1) for refining, blending, or importing gasoline that contains sufficient renewable fuel, (2) for "biodiesel," and "additional renewable fuel," and (3) by small refineries. eRINs do not fall within any of these categories. No aspect of electricity production from renewable sources involves refining, blending, or importing gasoline that contains sufficient renewable fuel, nor does it involve producing or using biodiesel or additional renewable fuel. And, of course, it has nothing to do with the generation of credits by small refineries. Nowhere within CAA section 211(o)(5)(A) is the generation of credits explicitly or implicitly associated with the generation of electricity that may subsequently be used to charge an electric vehicle.

D. An eRIN Program Likely Cannot "Ensure" That Renewable Fuel Will Be Used in Transportation

EPA properly concluded—in 2016, as now—that "EPA's existing regulations governing the generation of RINs for renewable electricity produced from biogas were insufficient to

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[270] 42 U.S.C. § 7545(o)(1)(J)
[271] *Id.* § 7545 (o)(2)(A)(i).
[272] *Id.* § 7545 (o)(2)(B)(i)(I)-(IV).
[273] EISA § 206 (c)(2)(A).
[274] *Rodriguez v. United States*, 480 U.S. 522, 525-26 (1987). *See also Board of Governors, FRS v. Dimension Financial Corp.*, 474 U. S. 361, 373-374 (1986) (explaining that "broad purposes" arguments "ignor[e] the complexity of the problems Congress is called upon to address").

guarantee overall programmatic integrity."[275] Put simply, current regulations would allow multiple parties to generate RINs for the same renewable electricity, which constitutes impermissible "double counting."

The RFS requires EPA "to ensure that transportation fuel … contains at least the … applicable volume of renewable fuel, advanced biofuel, cellulosic biofuel, and biomass-based diesel."[276] The RFS unlike other renewable mandates and incentives, explicitly requires the renewable fuel "to replace or reduce the quantity of fossil fuel present in a transportation fuel."[277] Indeed, since the program's inception, EPA has consistently interpreted the RFS to require that qualifying renewable fuels are consumed in qualifying uses in the United States.

An eRIN program would disregard this statutory requirement by failing to ensure that "renewable fuel" is used for transportation. EPA places stringent controls on biofuel producers and parties in the RIN disposition chain for the existing RIN categories. Yet, most of the renewable electricity that would generate RINs under an eRIN program could freely be used for purposes unrelated to transportation, as it would be extraordinarily difficult to track volumes through the rigorous documentation that exists for biofuel producers. Most of the renewable electricity derived from biomass and placed on the grid would not displace transportation fuel but would instead be directed to homes, offices, and other electric devices from dishwashers to cell phones. Similarly, electric vehicle owners that recharge their vehicles on the grid would receive only a miniscule quantity of renewable electricity derived from biomass.

In fact, EPA has initiated multiple enforcement actions in instances where renewable fuel was not actually consumed in transportation.[278] Biofuel producers and obligated parties must account for every gallon of renewable fuel produced, whether used in the United States when blended into transportation fuel or exported. Without a demonstrated mechanism to ensure that renewable electricity is used in domestic transportation, particularly with respect to plug-in hybrid electric vehicles which may operate on either liquid fuels or electricity, an eRIN program would be arbitrary and capricious were it not unlawful.

EPA's longstanding compliance requirements along with the fact that most of the electricity derived from biomass under this program will not be used in transportation, makes clear that eRINs have no place in the RFS.

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In sum, AFPM urges EPA to review the implementation of the program to arrive at achievable volumes that balance all statutory factors. Through this exercise, the final volumes should reflect market realities and may not always warrant increased mandates.

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[275] 90 Fed. Reg. at 25841.
[276] 42 U.S.C. § 7545(o)(2)(A)(i).
[277] *Id.* § 7545(o)(1)(J) (definition of "renewable fuel").
[278] This is particularly important given that there continues to be fraud in RFS-related markets. https://www.justice.gov/usao-edla/pr/texas-company-guilty-aiding-and-abetting-fraudulent-transactions-related-false-ethanol.

Given the exorbitant costs of this program, EPA should also consider RIN cost-containment provisions. 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