RENEWABLE FUELS ASSOCIATION

October 30, 2025

Attention: Docket ID No. EPA-HQ-OAR-2024-0505

The Honorable Lee Zeldin
Administrator
U.S. Environmental Protection Agency
EPA Docket Center
Office of Air and Radiation Docket
Mail Code 28221T
1200 Pennsylvania Ave NW
Washington, DC 20460

Via: www.regulations.gov

Re: Comments on Supplemental Notice of Proposed Rulemaking; *Renewable Fuel Standard (RFS) Program: Standards for 2026 and 2027, Partial Waiver of 2025 Cellulosic Biofuel Volume Requirement, and Other Changes;* 90 Fed. Reg. 45007 (September 18, 2025)

Dear Administrator Zeldin,

The Renewable Fuels Association (RFA) appreciates the opportunity to submit these comments in response to the U.S. Environmental Protection Agency's (EPA) supplemental proposed rule that addresses the expected impacts of EPA's August 22, 2025 small refinery exemption (SRE) decisions on the proposed volumes and percentage standards for four categories of renewable fuel that would apply to obligated parties in 2026 and 2027 under the Renewable Fuel Standard (RFS) program. EPA, *Renewable Fuel Standard (RFS) Program: Standards for 2026 and 2027, Partial Waiver of 2025 Cellulosic Biofuel Volume Requirement, and Other Changes*; Supplemental Notice of Proposed Rulemaking (90 Fed. Reg. 45007; September 18, 2025).

RFA is the leading national trade association representing America's ethanol industry. Its membership includes ethanol producers, renewable fuel marketers, farm groups, and other industry partners who collectively account for the majority of U.S. ethanol production. For decades, RFA has advocated for fair and consistent implementation of the RFS to ensure that the program's environmental, energy security, and rural economic goals are fully realized. Issues surrounding SREs are of critical importance to RFA members because improper or excessive exemptions directly erode renewable fuel demand, depress Renewable Identification Number (RIN) values, and undermine market certainty for ethanol producers and farmers. In prior comments—including RFA's submissions on EPA's 2020, 2022, and 2023 RFS rulemakings—RFA emphasized that unaccounted SREs have led to billions of gallons of lost blending obligations and billions of dollars in economic harm to rural communities. RFA has consistently urged EPA to adopt transparent, data-driven, and lawful approaches to evaluating

"disproportionate economic hardship" claims and to reallocate any exempted volumes to preserve the integrity of the program.

These comments expand upon RFA's concerns as they relate to EPA's supplemental proposal. First, the letter details the legal and analytical flaws in EPA's reliance on the Department of Energy's 2011 study and scoring matrix to assess small refinery hardship. Next, it examines the economic and market consequences of failing to fully reallocate exempted volumes for 2023 through 2025, drawing on historical evidence of demand destruction and RIN price volatility. Finally, the letter outlines RFA's recommendations for ensuring that previously finalized standards for 2023-2025 are not retroactively eroded and the final 2026–2027 standards fulfill EPA's statutory duty to achieve the required renewable fuel volumes and support the continued growth of the biofuels industry. Specifically, EPA must reallocate 100 percent of any exempted volumes affiliated with 2023-2025 SREs. The Agency must also ensure that all projected SREs for 2026-2027 are properly accounted for and prospectively reallocated in the final 2026-2027 standards.

I. RFA strongly disagrees with EPA's new approach to "disproportionate economic hardship" (DEH) and believes that the Agency is improperly expanding the scope of relief available to small refineries by overreading the D.C. Circuit's opinion in *Sinclair IV*.

While the Clean Air Act directs EPA to "consider" the Department of Energy's (DOE) 2011 study when evaluating SRE petitions, the Agency has a duty to independently evaluate such petitions and assess whether a small refiner has experienced DEH. EPA failed in this duty by deferring to DOE's DEH findings based on the Department's long outdated study and scoring matrix. EPA's finding that the DOE matrix "properly assesses" DEH is the epitome of arbitrary and capricious decision-making.

In November of 2022, the Government Accountability Office (GAO) published a report entitled "Renewable Fuel Standard: Actions Needed to Improve Decision-Making in the Small Refinery Exemption Program," GAO-23-105801 (November 3, 2022) (GAO Report or Report). In its Report, GAO made several findings critical of DOE's 2011 study. First, GAO noted that while the study identified 16 metrics as important to determining DEH, "in evaluating petitions, DOE has never scored five of the metrics because, according to DOE officials, better data are needed to score these metrics." GAO Report, p. 13. Second, GAO faulted DOE for failing to update its study to reflect the significant changes that have occurred in the renewable fuels industry in the decade-plus since the study was first released. *Id.* Nor had DOE even formally *evaluated* whether any parts of the study needed updating. *Id.* at 13-14 (emphasis added). Third, GAO concluded that DOE's 2011 study methodology "was critically flawed" for failing to assess a control group of larger refiners to compare against the small refiners that were assessed in the study— "[w]ithout a control group, it is impossible to know whether small refineries are experiencing disproportionate hardship." *Id.* at 14. Finally, GAO noted that "EPA officials told [GAO] that they do not plan to use DOE's scoring in the future because the study was not designed to account for RIN pass-through and, therefore, the study no longer provides information that EPA finds useful." *Id.*

Consistent with its statements to GAO, when EPA issued its *July 2023 Denial of Petitions for RFS Small Refinery Exemptions*, the Agency stated, "that while many of the petitioning small refineries submitted information containing 'self-scored' metrics using the matrix from the DOE

2011 Study … EPA did not request that DOE use the information to prepare a matrix from the DOE 2011 Study." EPA-420-R-23-007 (July 2023) at 5. According to EPA, "DOE … confirm[ed] its DOE 2011 Study did not evaluate the degree to which refineries would pass through the cost of compliance in the products they sold, and hence, did not evaluate empirical data or any other information pertaining to RIN cost passthrough by refineries." *Id.* at 6.

Despite being aware of the critical flaws in DOE's 2011 study and scoring matrix, EPA never addressed them in its August 2025 SRE decisions document. Nowhere did EPA explain why, in spite of the significant changes that have occurred in the renewable fuels industry since 2011, the DOE matrix still "properly assesses" DEH. Moreover, EPA never acknowledged its own prior criticisms of the DOE study and scoring matrix. The Agency went from stating that it did not use DOE's scoring because it fails to account for RIN-cost passthrough to concluding that it both "properly assesses" DEH and that "DOE's evaluation of SRE petitions … implicitly considers the ability for small refineries to recover the cost of acquiring the RINs they need for RFS compliance." In flipping its position, EPA never acknowledged—much less explained—the obvious inconsistencies. And "an unacknowledged and unexplained inconsistency is the hallmark of arbitrary and capricious decision-making." *Bauer v. DeVos*, 325 F. Supp. 3d 74, 109 (D.D.C. 2018) (citing *FCC v. Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009)).

Additionally, while EPA acknowledged that it must consider "other economic factors," it failed to adequately explain what those factors are or how it considered them. Hiding its "consideration" of such factors in confidential appendices fails to instill confidence in EPA's assessment of DEH and returns the SRE process to the kind of black box analysis that courts have previously criticized for "paint[ing] a troubling picture of intentionally shrouded and hidden agency law" that can leave "those aggrieved by the agency's actions without a viable avenue for judicial review." *Advanced Biofuels Assoc. v. EPA*, 792 Fed. Appx. 1, 5 (D.C. Cir. 2019).

II. If EPA is going to resume granting small refinery exemptions, particularly under its flawed notion of DEH, it must reallocate 100 percent of those exempted volumes.

RFA applauds EPA for projecting the exempt volumes for 2026 and 2027. As EPA first recognized in 2020 and reaffirmed in 2022, reallocation of exempted volumes is the only way for the Agency to meet its statutory obligation to ensure that the required volumes are achieved; partial reallocation cannot satisfy this duty. And EPA's authority to adjust the standards to account for SREs has been confirmed by the D.C. Circuit. *See Sinclair Wyoming Refining Co., LLC v. EPA*, 101 F.4th 871, 893 (D.C. Cir. 2024) ("EPA has the authority to adjust the percentage standards to account for small refinery exemptions.").

EPA must similarly reallocate 100 percent of the exempted volumes for 2023 and 2024 and the projected exempted volume for 2025. EPA correctly justified its 2020 reallocation policy based on the recognition that "exempted volumes associated with SREs granted after the annual percentage standards were established" in the years prior to 2020 "constituted a *significant* portion of the total volume of obligated fuel, resulting in fewer RINs being used to comply with the RFS standards." 85 FR 7016, 7051 (Feb. 6, 2020) (emphasis added). By way of example, in August 2019 EPA granted 31 SREs for the 2018 compliance year after the percentage standards for 2018 had been established, which "effectively reduced the required volume of total renewable fuel for 2018 by 1.43 billion RINs." *Id.* at 7050. Here, EPA's August 2025 SRE decisions regarding 2016-2024 SREs, coupled with EPA's projection of 2025 exempted

volumes, constitute 6.15 billion RINs—more than four times the exempted volume from 2018 that had devastating effects on the marketplace. For 2016-2022 SREs, EPA is correctly returning 3.96 billion expired RINs to exempted small refiners, but that means the remaining 2.18 billion RINs affiliated with 2023-2025 SREs are "live" and may be used—in lieu of physical volumes of renewable fuel—to comply with current volume obligations. *See* 90 FR 45007, 45010 (September 18, 2025).

EPA's supplemental proposal correctly recognizes that flooding the market with returned RINs from 2023 and 2024 will decimate demand and tank RIN pricing for renewable fuels in 2026 and 2027 by allowing obligated parties to use these carryover RINs for compliance with the renewable volume obligations (RVOs) rather than acquiring renewable fuel produced in those years. *See id.* Furthermore, EPA must set the RVOs for 2026 and 2027 based on its analysis of the six "set factors" and its review of the implementation of the RFS program to date. CAA § 211(o)(2)(B)(ii).

Any review of EPA's rampant granting of SREs from 2016 through 2019 clearly demonstrates the need for reallocating 100 percent of exempted volumes and the significant programmatic damage that ensues when the Agency fails to do so. RFA's prior analysis demonstrated that EPA's 48 retroactive exemptions granted for 2016 and 2017 adversely impacted ethanol sales volumes and prices, resulting in at least $2.3 billion in lost industry revenue from February through August 2019. The ethanol "blend rate" dropped in early 2018 as the marketplace became increasingly aware of the large-scale increase in SREs granted by EPA in 2017 and 2018, which by April 2018 had hit its lowest level since early 2015. A similar pattern repeated after EPA granted 31 SREs for compliance year 2018 in August of 2019. Moreover, based on the return over operating cost estimates for a representative Iowa corn ethanol plant, as prepared by the Center for Agricultural and Rural Development at Iowa State University, profitability fell in 2018 and then plummeted in 2019 to the second-lowest level of the entire 2007-2025 period for which estimates are maintained—only slightly higher than the drought year of 2012. Finally, as reported by OPIS, the D6 RIN price averaged $0.76 for calendar years 2016 and 2017, but prices then dropped to an average of $0.18 between June 2018 and December 2019.

Given the sudden nature of the influx of RINs onto the market that will result from EPA's decision to grant 43 exemptions, in whole or in part, for 2023 and 2024, and the additional projection of exempted volumes for 2025, this past history likely underestimates the dramatic impacts that will occur without reallocating 100 percent of the exempted volumes as part of the final 2026-2027 RVOs. Anything less than full reallocation would permit obligated parties to avoid their share of the statutory mandate, shifting the burden unfairly onto renewable fuel producers, and render it impossible to achieve the final 2026-2027 RVOs. If the final rule fails to fully reallocate 2023-2025 exempted volumes, RIN prices will collapse and blending of physical volumes of renewable fuel will fall far short of the intended RVO levels.

Lastly, RFA strongly urges EPA against selecting an arbitrary reallocation percentage, such as 50 percent, in a misguided effort to achieve regulatory compromise. As EPA knows, any reallocation percentage it chooses must be supported by the rulemaking record. Here, that record lacks a rational basis for pursuing only partial reallocation of the substantial exempted volumes. As the supplemental proposal itself acknowledges, partial reallocations would leave billions of gallons of renewable fuel obligations unmet.

EPA has not only the discretion, but the statutory obligation, to ensure that the RFS continues to drive growth in renewable fuel use, reduce greenhouse gas emissions, and support rural economies. The only option under the supplemental proposal that satisfies this obligation is 100 percent reallocation of exempted volumes.

III. RFA agrees that EPA's return of expired RINs for 2022 and earlier years is a reasonable and prudent exercise of its authority under the Clean Air Act.

The Clean Air Act and EPA's RFS regulations set forth clear requirements regarding the generation and use of RINs. Under those requirements, a RIN may be used to demonstrate compliance during the calendar year it was generated, or the following calendar year, and thereafter is expired and cannot be used for compliance purposes. 40 C.F.R. §§ 80.1427(a)(6), 80.1428(c), 80.1431(a). There is no legal mechanism under either the Clean Air Act or EPA's RFS regulations that permits the Agency to reverse this clear process to generate new, current vintage RINs to replace RINs that have expired.

Importantly, even if EPA had the legal authority to generate new, current year vintage RINs, doing so for the 2016-2022 SREs would pose a significant threat to the continued viability of the RFS program. Per EPA's estimates, allowing small refineries to generate new RINs to replace these old, expired RINs would interject 3.96 billion new RINs into the market. When added to the exemptions for 2023-2024 and the projected exemptions for 2025, a total of 6.15 billion RINs would be flooded into the RIN market. EPA correctly concludes that such a sudden and significant influx of RINs would have catastrophic consequences for the RIN market and the overall RFS program. EPA has correctly recognized that the benefits of maintaining a stable RIN market and the connection between RIN generation and real-world fuel volumes outweigh the refinery-specific benefits of generating new RINs.

Finally, RFA notes that EPA's decision to return expired RINs is analogous in many ways to EPA's "Alternative Compliance Approach" for 2018 RVOs. *See* EPA, *April 2022 Alternative RFS Compliance Demonstration Approach for Certain Small Refineries*, EPA-420-R-22-006 (April 7, 2022). Under that approach, EPA allowed 31 small refineries whose SRE petitions were denied to meet their 2018 compliance obligations without purchasing or redeeming additional RIN credits. *See id.*

IV. Conclusion

RFA appreciates the opportunity to submit these comments in response to EPA's supplemental proposed rule to address the impacts of its August 2025 SRE decisions on previously proposed RVOs for 2026 and 2027. We look forward to continued interaction with EPA as the Agency finalizes the 2026 and 2027 standards.

Sincerely,

Geoff Cooper

Geoff Cooper
President & CEO