



National Energy & Fuels Institute, Inc. – NEFI

DC Office: 1629 K Street NW, Ste. 300, Washington, DC 20006

MA Billing Office: 36 Jonspin Rd, PO Box 822 Wilmington, MA 01887

Phone: (617) 924-1000 • Fax: (508) 373-2740 • www.nefi.com

February 10, 2023

Via Electronic Filing (www.regulations.gov)

The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
EPA Docket Center
Air Docket
Mail Code 28221T
1200 Pennsylvania Avenue, NW
Washington, DC 20460
ATTN: Docket ID No. EPA-HQ-OAR-2021-0427

Re: Renewable Fuel Standard (RFS) Program: Standards for 2023-2025
and Other Changes, Proposed Rule, 87 Fed. Reg. 80,582 (Dec. 30, 2022)

Dear Administrator Regan:

Thank you for the opportunity to comment on the U.S. Environmental Protection Agency's (EPA) proposed rule entitled "Renewable Fuel Standard (RFS) Program: Standards for 2023-2025 and Other Changes," published at 87 Fed. Reg. 80,582. In establishing the RFS program, Congress sought to promote advanced biofuels in the transportation fuel market, which were to increasingly contribute to the program. As part of the 2007 amendments, Congress provided for the ability of heating oil to generate Renewable Identification Numbers (RINs) as "additional renewable fuel" and, therefore, to also contribute toward meeting the RFS volume requirements. 42 U.S.C. § 7545(o)(1)(A), (5)(E). Heating oil currently can and does contribute to the advanced biofuel volume requirements, including biomass-based diesel and cellulosic biofuels, as applicable. We are concerned that EPA's proposed volumes for 2023, 2024 and 2025 do not accurately reflect the volume of advanced biofuel production that can be achieved and urge EPA to increase these volume requirements. In addition, we are very concerned with an unexplained change to 40 C.F.R. § 80.1429(b)(6) that was buried in the proposed regulatory language (87 Fed. Reg. at 80,747) that will severely impact the ability of the heating oil industry to participate in the RFS program. This unexplained change is coupled with other proposed changes that could further restrict supply to this market. In light of the clear incentives Congress included in the RFS program to increase advanced biofuel production and use in this country, we urge EPA to reject this change. While we believe this change is unwarranted, we note that EPA cannot make the change in the final rule without violating

Advocacy • Regulatory Compliance • Education • Business Success

In Defense and Promotion of America's Main Street Energy Providers

the Clean Air Act until, at a minimum, it provides for proper notice and opportunity for meaningful public comment.

I. About us

The National Energy & Fuels Institute (NEFI) has represented the liquid heating fuels industry and related services companies since 1942.¹ NEFI members include hundreds of independent Oilheat, propane, biofuel and motor fuel dealers and associated companies. Our industry delivers a safe, dependable, and efficient heating fuel to six million homes and businesses across the country. Of the five billion gallons of heating oil used on average in the United States each winter, 85-percent is utilized by homes and businesses in the Northeast from Maryland to Maine.² Many of our retail members, often referred to as “heating fuel dealers,” provide both fuel delivery and heating, cooling, ventilation, and air conditioning (HVAC) services. These “full service” companies commonly sell, install, and service residential and commercial HVAC systems, including liquid fuel (i.e., oil- and biofuel-fired) furnaces, boilers, and water heaters.

The comments included in this letter are endorsed by the Advanced Biofuels Association (ABFA) and numerous state and local associations that represent wholesale and retail heating fuel distributors. A complete list is provided at the end of this letter.

II. Transition to Renewable Liquid Heating Fuels

NEFI members are actively working to replace conventional home heating oil with renewable fuels to reduce greenhouse gas (GHG) emissions, support local economies, and contribute to American energy and environmental security. Advanced biofuels under the RFS program, which require at least a 50% reduction in lifecycle GHG emissions compared to petroleum fuels, are key to these efforts.

Many NEFI members now blend biodiesel into their fuel. Renewable diesel is also suitable for use in space heating applications, and next-generation cellulosic heating fuels are currently in development. Biodiesel, renewable diesel, and other advanced biofuels provide our mostly small family businesses with the opportunity to help achieve local, state,

¹ NEFI changed its name and became a national association on July 1, 2020.

² This is based on data from the U.S. Census Bureau, American Community Survey (ACS), Fuel Oil Use by Occupied Housing Units, Five-Year Avg. (2013-2017). Percent (%) of homes is calculated as a percentage of total state occupied housing units.

and federal climate goals while enhancing their competitiveness and preserving a future for themselves in the new energy economy. In addition, several Northeast states now require by law or regulation the use of blends of biofuel, including biodiesel and renewable diesel, in home heating oil. For example, the blending requirements in Connecticut, New York, and Rhode Island are to increase to as much as 50% by 2030.³

Renewable liquid heating fuels offer Northeast states an immediate “plug and play” solution to reducing GHG emissions in residential and commercial buildings. These fuels utilize existing and well-regulated storage and distribution infrastructure and, with minor and very low-cost modifications, work seamlessly in existing appliances to deliver immediate reductions in GHG emissions—all at little to no additional cost to the consumer.⁴

In other words, heating oil customers can help fight climate change without costly conversions of their entire home heating systems to other fuels or energy sources. The RFS program is vital to the heating oil industry’s transition to a low carbon future. Moreover, it provides a substantial, alternative market for renewable fuels to meet this country’s energy independence goals.

III. Comments on EPA’s RFS Proposal.

A. EPA Must Increase the Volume Requirements to Ensure Incentives for Biodiesel and Renewable Diesel under the Advanced Biofuel Program, including Biomass-based Diesel.

Ensuring access to advanced biofuels is vital to the heating oil’s efforts toward decarbonization. The RFS program largely establishes the market for advanced biofuels, particularly the biomass-based diesel fuels upon which heating oil suppliers and distributors currently rely for those efforts. Since the heating oil industry largely uses the same fuels that are used in the transportation fuel market (e.g., biodiesel) and the RINs generated are important economics for these biofuel producers, the operation of the RFS program and the growth of the volume requirements have significant implications for the availability of supply for heating oil. We are disappointed that EPA is only proposing 100

³ See 296 CGS §16a-21b; NYCL ENV §19-0327; 23 RIGL §23-23.7.

⁴ National Oilheat Research Alliance, *Developing a Renewable Biofuel Option for the Home Heating Sector: A Report to Congress, State Governments and Administrator of the Environmental Protection Agency*, at 18 (2015), available at <https://noraweb.org/wp-content/uploads/2015/10/Developing-a-Renewable-Biofuel-Option-May-2015-R2.pdf>.

million ethanol-equivalent gallon increases for non-cellulosic advanced biofuels for 2023, 2024, and 2025.⁵ From the perspective of the heating oil industry, this is essentially no growth at all.

EPA indicates that, under its proposal, it expects the growth in non-cellulosic advanced biofuels each year to come from renewable diesel, as it anticipates decreases in biodiesel. 87 Fed. Reg. at 80,598. This means the annual increase under the RFS would only be about 60 million actual gallons of renewable diesel (while biodiesel supply contracts).⁶ Renewable diesel can be used for heating oil applications, but “[n]early all domestically produced and imported renewable diesel is used in California due to economic benefits under the Low Carbon Fuel Standard.”⁷ Most of the heating oil market is in the Northeast, as shown in the following chart from the U.S. Energy Information Administration (EIA) below.⁸ Despite EPA’s forecasts and increased demand for biomass-based diesel on the West Coast, the Northeast will continue to see growth in biodiesel demand as state laws increase blending requirements above 20-percent in Connecticut, New York, and Rhode Island and as other states in the region enact blending requirements or incentive programs.

⁵ Although EPA does not propose volume requirements for 2026, it provides possible volumes based on this same minimal increase for non-cellulosic advanced biofuels. As such, we believe EPA should hold off on finalizing volumes for 2026.

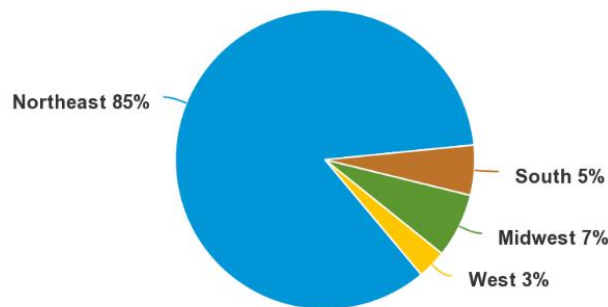
⁶ Most renewable diesel gallons under the RFS program have a 1.7 equivalence value, meaning fewer actual gallons will be needed to meet the advanced biofuel and biomass-based diesel requirements. Even though EPA is also proposing to adjust the conversion factor for determining compliance with the biomass-based diesel volumes, the proposed conversion factor is only 1.57 compared to the renewable diesel value of 1.7.

⁷ U.S. Department of Energy Alternative Fuels Data Center, *Renewable Diesel*, https://afdc.energy.gov/fuels/renewable_diesel.html (last visited Feb. 10, 2023); see also EPA, *Draft Regulatory Impact Analysis: RFS Standards for 2023-2025 and Other Changes*, at 387 (2022).

⁸ EIA, *Heating Oil Explained: Use of Heating Oil*, <https://www.eia.gov/energyexplained/heating-oil/use-of-heating-oil.php> (last updated Feb. 23, 2022).

Sales of residential heating oil by census region, 2020

Total = 3.07 billion gallons



Data source: U.S. Energy Information Administration, *Fuel Oil and Kerosene Sales, Adjusted Sales of Distillate Fuel Oil by End Use*, February 2022

We believe there needs to be robust volumes to ensure continued growth to serve all markets eligible to participate under the RFS program. As state laws to mandate or incentivize biofuel use in heating oil are implemented, it is especially important to ensure a continued *and growing* supply of advanced biofuels for heating oil uses throughout the country.

- B. The heating oil industry strongly opposes EPA's unexplained proposed change to 40 C.F.R. § 80.1429(b)(6).

The biodiesel and heating oil industries have been operating under the same rules in the RFS for over 15 years.⁹ Because demand for heating oil depends on the weather, the heating oil industry, in particular, has had to invest in infrastructure and innovative and flexible distribution methods and business models to ensure compliance with these regulations and obtain the value of the incentives Congress provided. One key part of the RFS is how RINs can be separated and, for heating oil that is not an obligated fuel, how to obtain the value of those RINs to recoup investments being made. This value is an

⁹ In 2007, EPA promulgated the RFS1 Rules, which included a similar provision under 40 C.F.R. § 80.1129(b)(5). 72 Fed. Reg. 23,900, 23,998 (May 1, 2007). The RFS2 regulations continued to apply this rule starting in 2010. 75 Fed. Reg. 14,670, 14,879 (Mar. 26, 2010); 40 C.F.R. § 80.1429(b)(6).

important consideration for biodiesel and heating oil suppliers and distributors as they determine: what markets to target; how to comply with state blending requirements; and whether to participate in efforts to decarbonize in the first instance. How these rules are structured will have significant implications on supply and on the availability of RINs to support the heating oil industry and to further the goals of the RFS program, as well as Northeast states' decarbonization efforts. Out of the blue, however, EPA is proposing to change those rules, appearing to limit blends of biodiesel to B20 or lower. EPA's unsupported and unexplained proposal violates the law, is not good governance, and is arbitrary.

Generally, RINs may be separated upon blending under 40 C.F.R. § 80.1429(b)(2). Because biodiesel can be blended with a minimal amount of diesel fuel for purposes of the blenders tax credit (e.g., B99) and further blending often occurred downstream for purposes of transportation fuel use, EPA required that the RIN separation for biodiesel occur at blend levels of **B80** or less.¹⁰ See 40 C.F.R. § 80.1429(b)(6). Since biodiesel producers are restricted in RIN separation¹¹ and the heating oil market typically does not involve obligated parties, the blending provision for RIN separation is an important avenue for the heating oil market to obtain the value of the RIN, which is intended to promote production but also to support investments in infrastructure for the distribution and use of renewable fuels. EPA imposed no such limitation on blending for purposes of separating RINs to any other biofuel, but it, nonetheless, currently allows suppliers to blend high levels of biodiesel for sale into the heating oil market. Without explanation, EPA is proposing to change this provision to provide that "RINs assigned to a volume of biodiesel can only be separated from that volume pursuant to paragraph (b)(2) of this section if such biodiesel is blended into diesel fuel at a **concentration of 20 volume percent biodiesel or less.**" 87 Fed. Reg. at 80,747 (proposed 40 C.F.R. §80.1429(b)(6)) (emphasis added). Nowhere in the preamble to the proposed rule does the EPA offer a reason for this change. Nor is there one. EPA must not finalize this provision in the final rule.

What makes EPA's unexplained regulatory change more troubling is that EPA has coupled it with other proposed changes that will further impact the biodiesel market and how it operates today. In particular, we are concerned with the removal of the ability to sell

¹⁰ EPA, *Regulation of Fuels and Fuel Additives: Renewable Fuel Standard Program – Summary and Analysis of Comments*, at 5-30 to 5-31 (2007) (referred to as "RFS1 RTC").

¹¹ In certain cases, biodiesel producers are allowed to separate RINs if the biodiesel or biodiesel blend is used in that form without further blending. 40 C.F.R. § 80.1429(b)(4). However, EPA is also proposing, without explanation, to remove this allowance. 87 Fed. Reg. at 80,747 (proposed 40 C.F.R. § 80.1429(b)(4)(iii)).

“RINless” biodiesel by proposing to revise the limitations on the number of RINs that can be assigned and separated per gallon. This has been important to help expand the market and increase the use of biodiesel, as Congress sought. EPA has failed to provide a reasoned explanation for this change. Importantly, coupled with other unexplained changes, EPA has failed to consider an important aspect of the problem, and, as such, its proposal is arbitrary.

1. EPA’s proposal violates notice and comment requirements.

First, EPA’s proposal violates the notice and comment requirements of the Clean Air Act. A notice of proposed rulemaking requires “a statement of its basis and purpose.” 42 U.S.C. § 7607(d)(3). Under the Clean Air Act, this must include (1) the factual data on which the proposed rule is based, (2) the methodology used in obtaining the data and in analyzing the data, and (3) the major legal interpretations and policy considerations underlying the proposed rule. *Id.* The purpose is to “give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments.” 5 U.S.C. § 553(c), *quoted in Owner-Operator Indep. Drivers Ass’n v. Fed. Motor Carrier Safety Admin.*, 494 F.3d 188, 199 (D.C. Cir. 2007). While EPA provided the proposed regulatory language, EPA failed to provide the information necessary for the public to meaningfully comment, in violation of the notice and comment requirements.

It is without question that EPA has an obligation to do more than simply provide proposed regulatory language to make the change it proposes here. “These requirements, which serve important purposes of agency accountability and reasoned decisionmaking, impose a significant duty on the agency. Notice of a proposed rule must include sufficient detail on its content and basis in law and evidence to allow for meaningful and informed comment.” *Am. Med. Ass’n v. Reno*, 57 F.3d 1129, 1132-33 (D.C. Cir. 1995) (citations omitted). The need to provide an explanation for the agency’s position is arguably heightened when EPA is amending a regulation and, by definition, changing a prior (and relied on) position. “An agency may not, for example, depart from a prior policy *sub silentio* or simply disregard rules that are still on the books. ... And of course the agency must show that there are good reasons for the new policy.” *FCC v. Fox TV Stations, Inc.*, 556 U.S. 502, 515 (2009) (citation omitted). It is impossible for the public to be able to comment on a change in policy when the agency fails to explain its asserted “good reasons” for it.

The importance of following proper notice and comment procedures cannot be understated. Notice and comment rulemaking is a central tenet of administrative law and necessary to ensure good governance. “If the notice of proposed rule-making fails to

provide an accurate picture of the reasoning that has led the agency to the proposed rule, interested parties will not be able to comment meaningfully upon the agency's proposals. As a result, the agency may operate with a one-sided or mistaken picture of the issues at stake in a rule-making." *Conn. Light & Power Co. v. Nuclear Regulatory Com.*, 673 F.2d 525, 530 (D.C. Cir. 1982). The only discussion in the preamble we could find on RIN separation provisions for blending activities that might apply to biodiesel (40 C.F.R. § 80.1429(b)(2)) relates to the limits on the number of RINs that could be separated per gallon of liquid fuel (up to 2.5 RINs), which we also oppose.¹² 87 Fed. Reg. at 80,707. That discussion, however, makes no mention of biodiesel or, more importantly, of biodiesel blend levels. Because EPA did not provide the basis for this change, the public simply cannot provide the information that might be needed to refute EPA's rationale or to meaningfully comment on the proposed change to 40 C.F.R. § 80.1429(b)(6). As such, finalizing such a proposal would violate the notice and comment requirements of the Clean Air Act.

2. The proposed limitation on RIN assignment and separation does not comply with EPA's notice and comment obligations and is arbitrary.

We acknowledge that EPA has proposed to limit the assignment to and separation of RINs for a gallon of renewable fuel. 87 Fed. Reg. at 80,707. This proposal would change the current regulations that allow RINs to be assigned and separated up to 2.5 RINs to be limited to the equivalence value of the renewable fuel. *Id.* This change, however, is unrelated to the amount of fuel that could be blended and, thus, could not support EPA's proposed change to limit RIN separation for blenders of biodiesel. Moreover, we do not support this change.

If EPA somehow believes the discussion on limitations on RIN separations noted above applies to the proposed limits on RIN separation for biodiesel blending, EPA provided no facts or explanation necessary to support its claims. EPA discusses the so-called practice of "RIN-flashing" that EPA is claiming to address. EPA's explanation of "RIN-flashing," however, is confusing and fails to explain clearly and adequately why even the elimination of allowing to separate up to 2.5 RINs per gallon, which is the only proposed regulatory change actually discussed in the preamble, is needed. EPA's only concern appears to be ensuring transparency as to the origin of the RIN, even though EPA's regulations require that the facility producing the biofuel for which that RIN was generated

¹² There are provisions related to separation of RINs for renewable electricity and renewable natural gas (RNG) that are unrelated to biodiesel blending.

be identified. Even if that might be a valid reason, which it is not, there is nothing to indicate that restricting blends of biodiesel to B20 or less addresses this issue versus, for example, revising the EMTS to better track these RINs or revising the product transfer documents to better identify the RINs. Moreover, the actions referenced are apparently acts between renewable fuel producers and obligated parties, not blenders. Obligated parties can separate RINs upon ownership and remain excluded from this limitation. Biodiesel producers typically only blend to B99 for purposes of the tax credit. There would seem to be no connection to the RIN separation provisions for blenders of biodiesel to EPA's claimed concern regarding "RIN-flashing." EPA cannot wait until the final rule to explain this connection. Moreover, blenders are the entities that are most likely to be adversely impacted by this change, which EPA does not appear to consider.

In addition, this explanation is insufficient to even support EPA's proposal to limit the number of RINs that could be assigned and separated per gallon of renewable fuel.¹³ There are markets for "RINless" biodiesel for designated uses and allowing RIN separation (and assignment) up to 2.5 RINs per gallon allows a biodiesel producer to serve all markets while contributing to meeting the volume requirements under the RFS program.

While we are not aware of the practice of RIN flashing between renewable fuel producers and obligated parties, renewable fuel producers may sell neat renewable fuel with 2.5 K1 RINs/gallon to non-obligated parties. Those non-obligated parties then blend the renewable fuel into a finished fuel such as B20 and then transfer back the 2.5 K2 RINs/gallon to the renewable fuel producer. This practice is beneficial to both parties. The renewable fuel producer can sell more fuel often at higher renewable fuel blend rates while the non-obligated party can offload their RIN risk to the renewable fuel producer. Renewable fuel producers often then sell their K2 RINs directly to obligated parties which provides a direct link from the RIN being generated to the RIN being retired. This allows the RIN generator and the obligated party to be connected on the K2 RIN sale and provides EPA with a mechanism to address concerns about the ability of parties to ascertain the origin and validity of fuels and RINs.

¹³ The only other rationale provided to remove the ability to assign and separate RINs up to 2.5 RINs per gallon is to make the RIN separation limits for liquid biofuels based on equivalence value to be the same as EPA is proposing for RNG—i.e., gaseous fuels. This is similarly an inadequate basis for this change. EPA has different rules for RNG throughout the RFS regulations, and separating RINs beyond those generated based on equivalence values for RNG makes little sense under those requirements or EPA's proposed changes to those requirements. The markets have developed differently based on long-standing rules, and there is no rational basis to change them in light of changes deemed necessary for an entirely different market.

The ability to sell “RINless” biodiesel is particularly important for the heating oil industry that involves numerous small businesses. Reducing the RIN separation limit on biodiesel to 1.5 K1 RIN per gallon, or the equivalence value of biodiesel, could impose significant RFS compliance costs on heating oil suppliers in order to supply the market. While EPA may claim that it is allowing such entities to “opt-out” of the RFS program through other proposed changes to 40 C.F.R. § 80.1426, we believe this misunderstands how supply in the fuels market works for diesel fuel, biodiesel, and heating oil. This option has also been an important way to ensure biodiesel can be marketed for heating oil, and its removal would have implications for the ability of the heating oil industry to participate in the RFS program. This would seem to be unexplored by EPA, rendering its proposal arbitrary.

As such, we also encourage EPA to maintain the current RIN separation and distribution limits to 2.5 K1 RINs per gallon for biodiesel instead of the proposed limitation to the equivalence value. Heating oil blended with biodiesel—referred to as Bioheat—often depends on the availability of RINless biodiesel, as Bioheat suppliers do not have the resources to comply with the RFS as a registered RIN generator, including managing RIN sales and performing periodic audits as required by the RFS along with the resources of participating in the RIN market. Changing the existing distribution limit to the equivalence value of the fuel would be a major administrative burden for Bioheat suppliers and could disrupt access to bioheat.

3. EPA’s proposed change to restrict RIN separation for biodiesel blends above 20% is arbitrary.

Even if EPA could find an explanation for the proposed change, we do not believe it would be reasoned. “Normally, an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *see also API v. EPA*, 684 F.3d 1342, 1347-48 (D.C. Cir. 2012). We believe EPA’s proposal is arbitrary based on each of these grounds.

Here EPA provided no explanation for the proposed change, and we are not aware of any relevant factor it could have considered or any plausible explanation to support a

change now more than 15 years after EPA first established the rules on RIN separation under the RFS. As noted above, the heating oil industry is using advanced biofuels, including biodiesel, to move toward decarbonization. To meet those goals, heating oil can tolerate high blends of biodiesel with nominal changes to the existing furnace or boiler. Heating oil blended with biodiesel at higher levels than 20-percent report optimal system performance. Based on the current rules, the industry has taken numerous actions, including moving toward as much as B100 for use as heating oil through work with ASTM and UL. Just this year, the R.W. Beckett Corp. announced that beginning February 1, it will produce the first production run of burners with B100 compliant components with their full warranty.¹⁴ Further, there are no federal regulatory limits on the amount of biodiesel than can be blended into heating oil (or even transportation fuel).

While, at best, B20 is the most common blend of biodiesel sold in the transportation fuel market, the RFS is supposed to be promoting increased biofuel use. Indeed, EPA has stated: “We believe that biodiesel blended with diesel fuel *at any concentration*, including biodiesel in its neat form, should be available for compliance purposes under the RFS program.”¹⁵ Moreover, this Administration, through the U.S. Department of Agriculture (USDA) is providing grants to support increased production and use of higher blends of biodiesel through the Higher Blends Infrastructure Incentive Program.¹⁶ EPA’s proposed change is inconsistent with these efforts and could undermine them.

As explained above, EPA’s only discussion of RIN separation that even may relate to biodiesel does not address this issue at all. If there was an issue with RIN separation for biodiesel, EPA should be able to provide the public with data and an analysis of the need and impact of these changes. But EPA did not do so.¹⁷ Importantly, EPA did not explain how or why this change promotes the goals of Congress.¹⁸

¹⁴ ICM, *B100 Burner from Beckett*, Indoor Comfort Marketing, Jan. 24, 2023, <https://www.indoorcomfortmarketing.com/b100-burner-from-beckett/>.

¹⁵ RFS1 RTC at 5-30 (emphasis added). The concern raised by EPA when it set the B80 or less requirement for RIN separation upon blending was ensuring access of RINs for obligated parties. Biodiesel blended for heating oil is an “additional renewable fuel” that increases the availability of RINs.

¹⁶ 87 Fed. Reg. 51,641 (Aug. 23, 2022). This program is not limited to blends up to B20. *See, e.g., id.* at 51,646. The heating oil industry is eligible for the USDA grants. *Id.* at 51,642.

¹⁷ Because of EPA’s failure to provide this information, it cannot finalize the proposed change until it undergoes proper notice and comment. *See, supra* Section III.B.2.

¹⁸ It is clear that Congress had blenders of heating oil in mind for the credit program. Congress provided that EPA “may issue regulations providing: (i) for the generation of an appropriate amount of credits *by any*

Most important, EPA has entirely failed to consider an important aspect of the problem. In particular, EPA ignores the potential impact of this change on the biodiesel market and on the heating oil market. As noted above, these markets have structured their distribution and business models based on the current rules in the RFS program. EPA's proposed change could lead to significant changes in how the entire market operates that will have negative impacts on supply of biodiesel into the heating oil markets.¹⁹

In short, the proposed change to 40 C.F.R. § 80.1429(b)(6) will harm small family-owned heating oil businesses and their ability to offer low carbon alternatives. Because of the RFS, biodiesel blends are lower cost and deliver immediate emissions reductions. This has significant implications for the ability of heating oil providers to comply with state requirements and may lead to them abandoning decarbonization efforts all together. None of this would be good for the industry or its consumers, the economy, the environment, or the country as a whole. Given the demand for low carbon heating fuels, we urge EPA to maintain the current limit and maximize the RFS as a tool to deliver higher blends of biodiesel in the heating sector.

IV. Conclusion

We believe the heating oil market presents an important opportunity to help meet this country's decarbonization goals. Toward those ends, Congress included "heating oil" as "additional renewable fuel" that could be used toward meeting the RFS volume requirements. This is an important incentive to help meet the Northeast region's decarbonization goals and enhance U.S. energy security and independence.

person that refines, *blends*, or imports additional renewable fuels specified by the Administrator; and (ii) for the use of such credits by the generator, or the transfer of all or a portion of the credits to another person, for the purpose of complying with paragraph (2)." 42 U.S.C. § 7545(o)(5)(E) (emphasis added). While Congress gave EPA some discretion in determining the "appropriate amount" of credits (i.e., the number of credits, which EPA has done with respect to the creation of equivalence values), EPA does not provide any explanation how this would apply to potentially restrict the amount of blending or, even if it does, why use of its discretion here is needed, supported, or furthers the goals of the statute.

¹⁹ Currently, EPA also allows for RIN separation for neat biodiesel and biodiesel blends with diesel fuel that are not blended further downstream. 40 C.F.R. § 80.1429(b)(4). While EPA proposes to remove the ability of biodiesel producers to utilize this provision (again without explanation), we do not believe this provision solves the concerns of the industry. Much of the supply comes from blenders who would be restricted to B20 blends to separate the RINs, if higher blends were sought downstream. This would change the economics of the transaction and, in any event, would limit the ability to blend at higher levels.

EPA's proposed limited growth in advanced biofuel volumes and the proposed limit on RIN separation for blending biodiesel can significantly impact the supply that may be available for use in the heating oil markets, especially in the Northeast. This will impact heating oil distributors and their customers. Given the importance of federal incentives to the heating oil industry's transition to renewable liquid heating fuels, we urge EPA to increase the volumes for advanced biofuels, particularly for biomass-based diesel, and to **not** finalize its proposed change to 40 C.F.R. § 80.1429(b)(6).

Thank you again for the opportunity to provide these comments. We stand ready to answer any additional questions or provide additional information as needed. I can be reached at (202) 508-3645 or via email at sean.cota@nefi.com.

Sincerely,



Sean O. Cota, NEFI President & CEO

Other organizations endorsing these comments:

Advanced Biofuels Association
Better Home Heat Council of the Lehigh Valley (Pennsylvania)
Clean Fuels Alliance America
Connecticut Energy Marketers Association
Delaware Valley Energy Marketers Association (Pennsylvania)
Empire State Energy Association (New York)
Energy Marketers Association of Rhode Island
Fuel Merchants Association of New Jersey
Maine Energy Marketers Association
Massachusetts Energy Marketers Association
National Association of Oil and Energy Service Professionals
New Hampshire Energy Marketers Association
New York State Energy Coalition
Pennsylvania Petroleum Association
Vermont Fuel Dealer's Association
Washington Independent Energy Distributors (Washington State)