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August 8, 2025

Via Electronic Filing (www.regulations.gov)

The Honorable Lee Zeldin
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-2024-0505

Re: 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. 25,784 (June 17, 2025)

Dear Administrator Zeldin:

The National Energy & Fuels Institute (NEFI) appreciates the opportunity to comment on the U.S. Environmental Protection Agency's (EPA) proposed rule entitled "Renewable Fuel Standard (RFS) Program: Standards for 2026 and 2027, Partial Waiver of 2025 Cellulosic Biofuel Volume Requirement, and Other Changes," published at 90 Fed. Reg. 25,784 (July 17, 2025) ("Proposed Set 2 Rule").

Established in 1942, NEFI is the nation's premiere direct-to-member association representing wholesale and retail distributors of liquid heating fuels (*e.g.*, home heating oil). Most of our retail members, commonly referred to as "fuel dealers," are small, family-owned and -operated businesses that deliver warmth and comfort to millions of American homes. These businesses distribute vital home heating fuels and related products and services to residential and commercial customers. Among the end users served by NEFI members are homeowners, commercial fleet accounts, manufacturers, federal, state and local governments, farmers, gasoline stations/convenience stores operators, airports, railroads, and marinas. NEFI members often develop close relationships with their local communities and are recognized leaders in energy efficiency, conservation, and safety.

First, please note that NEFI strongly supports the proposed increase in volumes for biomass-based diesel and advanced biofuels for compliance years 2026 and 2027 under the Renewable Fuel Standard (RFS) program. Our association agrees with EPA's assessment that there is ample capacity and more than adequate feedstock availability to meet the proposed volume requirements in the years to come.

In its 2019 *Providence Resolution*, the heating oil industry voluntarily pledged to reduce emissions through increased use of biofuels to support American farmers, enhance energy diversity and security, and meet consumer demand for cleaner fuels. Several state governments in the Northeast have recognized the benefits of biodiesel-blended heating oil and now require minimum blends statewide. As of July 1, 2025, these requirements are 10-percent in Connecticut and New York and 20-percent in Rhode Island, affecting more than 1.9 million households and requiring around 160 million gallons of biomass-based diesel (BBD) for minimum compliance in an average winter. This does not include retailers who blend above these amounts in these states or that blend on a discretionary basis in states without similar requirements. Note as well that these fuels are used primarily during the winter months, when transportation fuel demand is lowest, providing year-round stability for American feedstock growers and biofuel producers.

The RFS is key to ensuring the availability of these fuels at competitive prices, enabling the heating oil industry to meet its voluntary commitments, comply with state blending requirements, remain competitive in an ever-changing market, and respond to growing demand for cleaner, American-produced fuels from customers – and to do so in a cost-effective manner that benefits small businesses and working families. Given this, NEFI is supportive of the higher renewable volume obligations (RVOs) for BBD.

However, we are deeply concerned with proposed changes that could undermine 15 years of successful policy. EPA's proposed changes with respect to the definition of "heating oil" and the newly proposed definition of "renewable fuel oil" threaten to impose burdensome and impractical requirements that could harm our mostly small family businesses and increase home heating costs for millions of American families.

Congress recognized the fungibility of biofuels that can be used in transportation fuel and in residential heating applications. For 15 years, EPA has correctly allowed RIN generation for heating oil used in both residential space heating *and* water heating—consistent with Congressional intent. The proposed definitional changes appear unduly restrictive, which would be a significant and unexplained departure from established policy that must be addressed. To support its goals of increasing American biofuel use and strengthening energy independence, Congress provided that biofuel used in space and water heating applications can contribute toward meeting the RFS volume requirements. 42 U.S.C. §7545(o)(1)(A), (5)(E). To meet Congress's goals, EPA's implementation of the RFS program should support increased use of biofuels in this market, rather than restrict such use through overly burdensome requirements that could disincentivize producers from supplying the heating oil market, thereby reducing supply, potentially increasing prices, and undermining the innovative efforts our industry has made to rise to Congress's challenge.

Claiming it is merely "clarifying" the regulations regarding the use of the terms "heating oil" and "renewable fuel oil," EPA's proposed rule creates confusion and could impose undue restrictions on the use of biofuels in the heating oil market. Indeed, we believe some of the claimed "technical corrections" could be read as making significant changes to the current regulations without explanation and in violation of the notice and comment requirements of the Clean Air Act. As such, NEFI urges EPA not to finalize the proposed revisions to the heating oil definition or those related to its proposed new definition of "renewable fuel oil."

NEFI has been a strong supporter of the growth of biofuels to support American farmers and rural economies, enhance energy reliability and affordability, meet growing demand for cleaner fuels, and promote American energy dominance. Biodiesel, renewable diesel, renewable propane, and other advanced biofuels provide our mostly small family businesses with the opportunity to help achieve state and federal goals while enhancing their own competitiveness and preserving a future for themselves in the evolving energy economy. The RFS program has been key to supporting the growth of biofuel use in the heating oil market. When implemented properly, it has also led to reduced prices for consumers, as RIN values can be passed down to customers in the form of savings.

Continued growth and success of biofuel use in the heating oil industry depends on sound federal policy that reduces – not increases – regulatory burdens. Wholesale and retail marketers of these fuels are looking for assurances from the agency that it is serious about promoting deployment of larger volumes and higher blends of biofuels. Robust implementation of the RFS is one area in which the administration can signal this commitment and thereby inject confidence into the entire value chain, from farmers and biofuel producers all the way down to American homeowners and Main Street businesses.

The heating oil market can accommodate extremely high concentrations of biofuels into its fuel supply. America's residential heating oil market serves 4.79 million households[1] with robust infrastructure that has demonstrated the capacity to handle billions of gallons annually. Approximately four billion gallons were used in the most recent winter of 2024-2025.[2] Also consider that in most cases, homeowners can utilize blends of 20% (B20) or higher with nominal system modification, achieving superior environmental performance without costly heating system conversions.

Because of the outsized role heating oil plays in the Northeast relative to other parts of the country, our industry has become an essential partner as states and localities look to fulfill their goals of reducing emissions without increasing household energy costs. Indeed, states throughout the Northeast and Mid-Atlantic regions have enacted or are actively considering an array of policies to require or incentivize increased use of biofuels in the heating oil sector. The RFS helps ensure these American-produced fuels can compete dollar-for-dollar against petroleum fuel and incentivizes fuel suppliers and distributors to invest in related infrastructure and supplant conventional heating oil with biodiesel or other advanced biofuels.

Thus, to further the goals of Congress and this administration's commitment to unleashing American energy, NEFI supports the proposed increases in the volume requirements for biomass-based diesel but strongly opposes the proposed changes to the definition of "heating oil" and the new definition of "renewable fuel oil." The proposed regulatory changes make significant changes to the regulations that the heating oil industry has been operating under for

[1] U.S. Energy Information Administration (EIA), *Heating Oil Explained – Use of Heating Oil* (June 13, 2024), https://www.eia.gov/energyexplained/heating-oil/use-of-heating-oil.php.
[2] According to the National Oilheat Research Alliance (NORA), 3.96 billion gallons of heating oil gallons were assessed in 21 participating states between July 2024 – July 2025. This does not include Alaska, which based on historic U.S. Energy Information Administration Distillate Fuel Oil Consumption Estimates, averages 60-65 million gallons of home heating oil consumption per year..

15 years without explanation beyond a claim that EPA is “clarifying” requirements. But the proposed regulatory language could be read to impose burdensome requirements on fuels that have long been used in the heating oil market and to restrict innovation in the sector, moving backwards from the advances the industry has made to incorporate biofuels into "home heating oil" as Congress provided and intended.

Imagine asking millions of American homeowners to sign affidavits about their heating oil use – this is the type of impractical burden these changes could impose. We further urge EPA to revise the regulations related to fuels used in the heating oil market to ensure sufficient availability and choice and to continue to support innovation and growing volumes of American biofuels for use in the heating oil market.

Detailed comments on the proposed definitional changes and their potential impacts and our responses to EPA's specific requests for information are provided in the attached.

Additionally, NEFI aligns itself with comments submitted by the Advanced Biofuels Association (ABFA) regarding EPA's proposed 50 percent RIN discount for foreign fuels and domestic fuels produced from foreign feedstocks. This provision would further constrain access to renewable fuel supplies in the Northeast, particularly given our geographic constraints. The Northeast liquid fuels market relies heavily on waterborne fuel delivery and is distant from regions where most domestic feedstocks and biofuels are produced. Moreover, as ABFA notes, the recently enacted One Big Beautiful Bill (PL 119-21) already provides substantial incentives for domestic feedstock use, making EPA's proposed RIN discount both redundant and counterproductive. Trade policy tools are better suited to address concerns about foreign competition while preserving the flexibility needed for effective negotiations with trading partners. The RIN discount would result in substantial market uncertainty and disruption and potentially increase fuel costs for our members and their customers. NEFI urges EPA to withdraw this provision entirely and allow existing tax incentives and trade policy to address domestic production priorities.

We look forward to working with the EPA to ensure the RFS program meets the growing demand for cleaner fuels in the heating oil market while supporting American farmers, reducing regulatory burdens on American businesses and working families, and ensuring access to reliable and affordable energy solutions.

Thank you in advance for your consideration.

Sincerely,



James M. Collura
President & CEO

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DETAILED COMMENTS OF NEFI ON EPA'S PROPOSED SET 2 RULE
90 Fed. Reg. 25,784 (June 17, 2025) (EPA-HQ-OAR-2024-0505)

EPA has indexed each comment solicitation with a unique identifier. While not limiting comments to its identified list of comment solicitations, EPA has requested comments include a reference to the corresponding identifier when providing comments relevant to that comment solicitation. NEFI has attempted to organize its comments consistent with these identifiers, but its comments below are focused on EPA's proposed revisions to the definition of heating oil and renewable fuel oil and related provisions.

I. Response to Comment Solicitation D-1: The other proposed amendments to the RFS program, including: the equivalence values for renewable diesel, naphtha, and jet fuel; the changes to the percentage standards equations; and the changes and additions to the pathways in Table 1 to 40 CFR 80.1426 (D–1).

NEFI Strongly Opposes the Proposed Revision to the Heating Oil Definition, the New Proposed Renewable Fuel Oil Definition, and the Related Claimed "Technical Corrections and Clarifications."

Of particular concern to NEFI are two sets of proposed changes in the Proposed Set 2 Rule that would (1) revise the definition of heating oil and (2) add a new definition for and use of the term "renewable fuel oil." We believe these proposed changes are not adequately explained as required by the Clean Air Act, create confusion rather than provide any sort of clarity to the regulated industry, and could arbitrarily impose burdensome and unnecessary requirements that would disincentivize use of renewable fuel in the heating oil industry, against Congress's intent.

First, EPA proposes to clarify "that RINs [(Renewable Identification Numbers)] cannot be generated on pure or neat biodiesel used as process heat or for power generation." 90 Fed. Reg. at 25,788, 25,844. EPA proposes to do so by adding a new paragraph (2) to the definition of heating oil in 40 C.F.R. §80.2 as follows:

> Heating oil means a product that meets one of the definitions in paragraph (1) of this definition:
>
> (1)(i) Any No. 1, No. 2, or non-petroleum diesel blend that is sold for use in furnaces, boilers, and similar applications and which is commonly or commercially known or sold as heating oil, fuel oil, and similar trade names, and that is not jet fuel, kerosene, or MVNRLM diesel fuel.
>
> (ii) Any fuel oil that is used to heat or cool interior spaces of homes or buildings to control ambient climate for human comfort. The fuel oil must be liquid at STP and contain no more than 2.5% mass solids.

> *(2) Pure biodiesel (i.e., B100) or neat biodiesel (i.e., B99) that is used for process heat or power generation is not heating oil*.

Id. at 25,858 (emphasis added).

Second, EPA indicates, "[t]o provide regulatory clarity," it is proposing to add a definition of "renewable fuel oil" to 40 C.F.R. §80.2, as follows:

> Renewable fuel oil means heating oil that is renewable fuel and that meets paragraph (2) of the definition of heating oil.

90 Fed. Reg. at 25,849, 25,859. EPA then proposes to essentially replace similar references to "renewable fuel oil that is heating oil as defined in paragraph (2) of the definition of heating oil in §80.2" throughout the RFS regulations with this new term "renewable fuel oil." *Id.* at 25,852. Also listed as "miscellaneous technical corrections and clarifications to RFS regulations," the proposal would also replace the term "heating oil" with "renewable fuel oil" in certain definitions in 40 C.F.R. §80.2 and in various pathways listed in the table of approved pathways in 40 C.F.R. §80.1426. *Id.* Although "renewable fuel oil" would be a subset of "heating oil" under EPA's definition, EPA provides no other explanation for these changes in the proposal, simply stating that it is "[r]eplacing text in existing regulations" to use this new definition. *Id.*

The major problem with EPA's proposed regulatory language is that the reference to paragraph (2) in the definition of heating oil would now reference only the asserted clarification that pure biodiesel and neat biodiesel used for process heat or power generation are not heating oil. This, then, could be read as applying all those requirements that had been limited solely to fuel oils falling under the second prong of the heating oil definition to *all* heating oil. This would be a substantial expansion of the current requirements, which EPA did not explain in the proposal. Further, rather than providing clarity, EPA continues to use the term "heating oil" while replacing "heating oil" with "renewable fuel oil" in other provisions of the regulations without explanation, creating significant confusion as to the use of these different terms. This confusion is particularly high with respect to "biodiesel" and "renewable diesel" that are separately defined and are key biofuels used in the heating oil market. This confusion also impacts other advanced biofuels that are in development for the heating oil industry and could disincentivize further research and development into additional fuels that could be sold for use in the heating oil market. In short, NEFI believes these changes are unnecessary, arbitrary, and should not be finalized.

Instead, EPA should again confirm, as it did in 2010 and 2013, that biodiesel (and renewable diesel) can be designated and sold for use into the heating oil market ***at any blend level (including "pure biodiesel" and "neat biodiesel")*** and ***without any additional burdensome tracking requirements***, particularly any requirement to obtain affidavits from end users and separate product transfer document requirements that could conflict with other requirements and create confusion in the marketplace.

As will be further discussed below (and also in response to Comment Solicitation E-7), we further believe EPA could revise the regulations with respect to its handling of "heating oil"

to reflect current market conditions and recognize and allow for new biofuels that are being explored for use in the heating oil market. "Home heating oil" is synonymous with "oilheat fuel," which Congress found to be "an important commodity" that is "an efficient and economical energy source for commercial and residential space and hot water heating." National Oilheat Research Alliance Act of 2000, §702(1), 42 U.S.C. §6201 note. "Oilheat fuel" is defined as (a) No. 1 distillate, No. 2 distillate, a liquid blended with No. 1 distillate or No. 2 distillate, or *a biobased liquid* (b) used as a fuel for nonindustrial commercial or residential space or hot water heating. *Id.* §703(8). There is nothing in the RFS statute, however, that favored any particular type of heating oil over another. Rather, Congress allowed for RIN generation for renewable fuel use in the heating oil market because of the fungibility of these fuels with those in the transportation fuel market and to facilitate compliance with the increasing volume requirements. The affidavit requirements, in particular, could prevent these fuels from going to the heating oil market due to the impracticality and burdensomeness of attempting to obtain affidavits from millions of U.S. homeowners and local businesses that use heating oil.

1. Congress expressly provided for generation of RINs for use of renewable fuels in the heating oil market without limitation.

Under the Energy Independence and Security Act of 2007 (EISA), Congress gave EPA authority to allow for the generation of "credits" (i.e., RINs) for "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." 42 U.S.C. §7545(o)(1)(A), (o)(5)(E) (emphasis added). To implement this provision, EPA originally defined "heating oil" as it was defined in former 40 C.F.R. §80.2(ccc), which defined "heating oil" as "any No. 1, No. 2, or non-petroleum diesel blend that is sold for use in furnaces, boilers, and similar applications and which is commonly or commercially known or sold as heating oil, fuel oil, and similar trade names, and that is not jet fuel, kerosene, or MVNRLM [(motor vehicle, nonroad, locomotive and marine)] diesel fuel." 75 Fed. Reg. 14,670, 14,865 (Mar. 26, 2010) (previously codified at 40 C.F.R.§80.1401); 40 C.F.R. §80.2(ccc) (2011). This definition distinguished distillate fuels used for heating oil versus transportation fuel that previously had different sulfur content requirements. 40 C.F.R. §§80.501(a), 80.510 (2011). EPA modified the regulations to allow for RINs to be assigned to renewable fuel blended into heating oil or jet fuel; "From a regulatory standpoint, there is no difference between renewable fuels used for transportation purposes, versus heating oil and jet fuels." 75 Fed. Reg. at 14,687.

EPA determined that "home heating oil" essentially referred to the heating oil market, not any particular use. The proposal here does not indicate any change to this determination, nor can EPA wait until its final rule to provide such an explanation as that would not provide an opportunity for the public to meaningfully comment and would be in violation of notice and comment requirements of the Clean Air Act. In the 2010 rulemaking, which the industry has relied upon for 15 years, EPA stated as follows:

> EISA uses the term "home heating oil" in the definition of "additional renewable fuel. The statute does not clarify whether the term should be interpreted to refer only to heating oil actually used in homes, or to all fuel of a type that can be used in homes. We

> note that the term "home heating oil" is typically used in industry in the latter manner, to refer to a type of fuel, rather than a particular use of it, and the term is typically used interchangeably in industry with heating oil, heating fuel, home heating fuel, and other terms depending on the region and market. We believe this broad interpretation based on typical industry usage best serves the goals and purposes of the statute. If EPA interpreted the term to apply only to heating oil actually used in homes, we would necessarily require tracking of individual gallons from production through ultimate use in use in homes in order to determine eligibility of the fuel for RINs. Given the fungible nature of the oil delivery market, this would likely be sufficiently difficult and potentially expensive so as to discourage the generation of RINs for renewable fuels used as home heating oil. This problem would be similar to that which arose under RFS1 for certain renewable fuels (in particular biodiesel) that were produced for the highway diesel market but were also suitable for other markets such as heating oil and non-road applications where it was unclear at the time of fuel production (when RINs are typically generated under the RFS program) whether the fuel would ultimately be eligible to generate RINs. Congress eliminated the complexity with regards to non-road applications in RFS2 by making all fuels used in both motor vehicle and nonroad applications subject to the renewable fuel standard program. We believe it best to interpret the Act so as to also avoid this type of complexity in the heating oil context. Thus, under today's regulations, RINs may be generated for renewable fuel used as "heating oil," as defined in existing EPA regulations at 80.2(ccc). In addition to simplifying implementation and administration of the Act, this interpretation will best realize the intent of EISA to reduce or replace the use of fossil fuels,

75 Fed. Reg. at 14,687; *see also* EPA, *Renewable Fuel Standard Program (RFS2) Summary and Analysis of Comments,* at 3-41 (Feb. 2010) ("RFS2 RTC") (same);[1] RFS2 RTC at 3-221 ("[B]y using the broader industry interpretation of the term 'home heating oil' to refer to all heating oil that could be used in homes, whether or not it ultimately does, the RFS2 program will be greatly simplified for both regulated parties and EPA enforcement personnel, and appropriate credit will be provided for the use of renewable fuels that displace fossil fuels"). EPA found this broader definition "is in keeping both with the [greenhouse gas] reduction and energy security goals of EISA." RFS2 RTC at 3-221.

In 2010, biodiesel was the renewable fuel used by the heating oil industry. In the 2010 RFS2 Rule, EPA acknowledged that blending levels of biodiesel should be "handled and addressed by industry outside of EPA rulemaking to the extent possible, particularly if they

[1] Available at https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P1007GC4.pdf.

relate more to vehicle performance issues rather than to emission performance." RFS2 RTC at 3-29. EPA stated that "[t]he final RFS2 regulations allow biodiesel to be *blended at any level* and still be valid for RFS2 compliance purposes so long as it is used as transportation fuel, heating oil, or jet fuel." *Id.* (emphasis added). "[F]or the final rule we are eliminating the requirement that RINs be retired for renewable fuel present in heating oil that is used in a commercial or industrial boiler, and are allowing RINs to be generated and used for RFS2 compliance purposes for all renewable fuels designated as or used in heating oil." *Id.* at 3-221. "RINs can be separated from biodiesel blends with greater than 80 percent biodiesel if such blends are designated and used as transportation fuel, heating oil, or jet fuel at that blend level." *Id.* at 3-223; *see also id.* at 3-225 ("We agree that parties designating neat renewable fuels as transportation fuel, heating oil, or jet fuel for use without further blending can separate the RINs.").

EPA reaffirmed this approach in 2013 when it "confirm[ed] that inclusion of the new heating oil provision for fuel oils does not impact the current definition and use of biodiesel as heating oil, even where that biodiesel is used for process heat, power generation, or in stationary sources." EPA, *Regulation of Fuels and Fuel Additives: Modifications to Renewable Fuel Standard Program - Response to Comments*, at 13-14 (Sept. 2013) ("Heating Oil Modification RTC").[2] EPA also "confirm[ed] that biodiesel producers can (and must) separate the RINs from wet gallons when used by the producer as heating oil or for process heat or power." *Id.* at 14.

In other words, "pure biodiesel" or "neat biodiesel" (even as EPA has now defined it as B99) is a fuel that is "at least 80 percent mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats." 78 Fed. Reg. 62,462, 62,464 (Oct. 22, 2013). Producers of biodiesel typically sell it as B100 or B99 into the market, which allows biodiesel to be blended into heating oil or used as heating oil at any blend level.[3] This has been the policy of the agency for 15 years, and the market has acted, making investments into distribution and research and development to support use of higher blends of biofuels in heating oil applications, including but not limited to B99 and B100.

2. EPA's expansion of the definition of "heating oil" in 2013 was not intended to impose undue burdens on homeowners and other end users of heating oil blended with biodiesel and renewable diesel.

While EPA subsequently determined it appropriate to allow other "fuel oils" that are used for heating or cooling spaces to generate RINs as "additional renewable fuel," the limitations and requirements applicable to those fuel oils (which have never been clearly identified by EPA) would be limited to those fuels.[4] Nothing in the Proposed RFS Set 2 Rule provides any

[2] Available at https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100GYHD.PDF.
[3] No. 1 and No. 2 diesel fuel oil also can contain a percentage of biodiesel and still be considered No. 1 and No. 2 fuel oil under ASTM specifications.
[4] At best, EPA references comments submitted by companies that produced "biodiesel" that does not meet ASTM D6751. Heating Oil Modification RTC at 8-9.

explanation or rationale for applying these limitations and requirements more broadly to all "heating oil," including renewable fuels that have long been used by the heating oil industry.

In 2013, EPA expanded the definition of "heating oil" to include an additional category of "fuel oils" "produced from qualifying renewable biomass and used to generate heat to warm up buildings or other facilities where people live, work, recreate, or conduct other activities." 78 Fed. Reg. at 62,462. In so doing, EPA added a paragraph (2) to the definition of heating oil in 40 C.F.R. §80.1401 to include: "A fuel oil that is used to heat interior spaces of homes or buildings to control ambient climate for human comfort. The fuel oil must be liquid at 60 degrees Fahrenheit and 1 atmosphere of pressure, and contain no more than 2.5% mass solids." *Id.* at 62,470. This paragraph (2) was added to allow other types of fuel oils to be identified as heating oil "not by their chemical specifications but instead by their actual use for heating for the purposes of climate control for human comfort."[5] *Id*. at 62,466. "All fuels previously included in the definition of heating oil continue to be included as heating oil for purposes of the RFS program." *Id.* at 62,462; *see also id.* at 62,463 (same), 62,464 (same); *id.* at 62,467 (same).

For these "specific[]" fuel oils that fell under paragraph (2) of the definition of heating oil, EPA imposed "specific registration, reporting, product transfer document, and recordkeeping requirements." 78 Fed. Reg. at 62,462. The purpose of these requirements was to ensure that the producer has "adequate documentation to demonstrate that the fuel oil volume for which RINs were generated was or will be used to heat buildings for climate control for human comfort as a condition for generating RINs." *Id.* at 62,466. These requirements "will not apply to *fuels* qualifying under the original part of the 40 CFR 80.1401 definition." *Id.* The following provides a brief summary of key elements of those requirements.

> *End user affidavits:* EPA required receipt of "affidavits from the final end users or users of the fuel oil" to generate RINs. 40 C.F.R. §80.1426(c)(7). The producer of the fuel oil is to provide with its registration: (a) an affidavit from the producer stating that the fuel oil will be sold for the purposes of heating or cooling interior spaces of homes or buildings to control ambient climate for human comfort, and no other purpose; and (b) affidavits from the final end user or users of the fuel oil stating that the fuel oil "will be used for purposes of heating or cooling interior spaces of homes or buildings to control ambient climate for human comfort, and no other purpose, and acknowledging that any other use of the fuel oil would violate EPA regulations and subject the user to civil and/or criminal penalties under the Clean Air Act." 40 C.F.R. §80.1450(b)(1)(xi).
>
> *Product Transfer Documents:* EPA also required that product transfer documents state: "This volume of renewable fuel oil is designated and intended to be used to heat or cool interior spaces of homes or buildings to control ambient climate for human comfort. Do NOT use for process heat or cooling or any other purpose, as these uses are prohibited pursuant to 40 CFR 80.1460(g)." 40 C.F.R. §80.1453(d). This product transfer document "must be prepared and maintained between the fuel oil producer and the final end user for the legal transfer of title and custody of a specific volume of fuel oil that is designated for

[5] EPA subsequently added fuels that are used to "cool" interior spaces. 85 Fed. Reg. 7016, 7074 (Feb. 6, 2020).

> use only for the purpose of heating interior spaces of buildings to control ambient climate for human comfort." 78 Fed. Reg. at 62,467. "If the fuel oil is used for some non-qualifying purpose instead of for generating heat for climate control purposes, then the end user of that fuel oil is subject to and liable for violations of the RFS regulations and the CAA, as are any parties that caused that violation." *Id.*
>
> *Contracts with Each End User:* The additional recordkeeping requirement is that the producer must keep copies of all contracts that describe the fuel oil under contract with each end user. 40 C.F.R. §80.1454(b)(8).

Unlike EPA's prior determination that additional requirements would be impractical for fuels typically used in heating oil, EPA claimed that "[t]hese requirements are tailored to be the least restrictive possible while reasonably ensuring compliance with the amended definition of heating oil." 78 Fed. Reg. at 62,468. EPA claimed it was "aware of producers who have customers willing to sign such affidavits." *Id.*

Biodiesel and renewable diesel are typically the biofuels used in the heating oil market, but they are not the only ones that could be used. Because EPA defines biodiesel and renewable diesel separately, "heating oil" reported in EMTS would appear to be largely relegated to other biofuels produced as "heating oil." Based on EMTS data (as of July 10, 2025), there have been relatively few RINs generated that were designated as "Heating Oil" since 2013 and have been mostly generating D5 RINs, ranging from around 71,000 gallons in 2014 to a high of about 3.25 million gallons in 2023.[6] Not including cellulosic heating oil, EPA estimates about 3 million RINs annually for "heating oil" in the Proposed RFS Set 2 Rule. 90 Fed. Reg. at 25,805. Heating oil can have an equivalence value of 1.6. As such, this would be less than 2 million gallons of fuel. EPA's proposed overall volume requirement is 24.02 billion gallons for 2026. EPA does not address whether the regulatory burdens imposed on these "heating oil" producers have restricted their participation in the program.

Also missing is any discussion of the potential implications if these requirements are imposed on the larger heating oil market that could impact hundreds of millions of gallons. Also ignored by EPA is the distribution system for these fuels, which largely go through a marketer or distributor. In other words, the producer does not sell directly to the end users, would not have "contracts" with such users, nor would it be likely that millions of residents would be willing to sign affidavits as to how they use or intend to use heating oil. In short, the requirements appear onerous even for the millions of gallons of fuel oil that might fall under the provisions. These burdens would be substantially greater if applied more broadly to the heating oil industry. EPA clearly indicated in 2013 that this was not its intent.

3. EPA's proposed revisions regarding heating oil and renewable fuel oil are unnecessary and cause confusion. They therefore should not be finalized.

a. NEFI opposes the proposed new definition of "renewable fuel oil."

[6] This does not include any RINs generated for "cellulosic heating oil."

EPA proposes to add a new definition of "renewable fuel oil" to "provide regulatory clarity." 90 Fed. Reg. at 25,849. The proposed definition would define "renewable fuel oil" as "heating oil that is renewable fuel and that meets paragraph (2) of the definition of heating oil." *Id.* EPA would then utilize the term "renewable fuel oil" throughout the regulations, including, but not limited to, the requirements for end user affidavits and separate product transfer documents. The problem with this definition is that, under the proposal, the reference to paragraph (2) is to new language EPA proposes to add regarding pure biodiesel and neat biodiesel used for process energy. EPA's preamble provides no explanation as to any change in EPA's longstanding policy with respect to not requiring tracking of use for heating oil that meets the first prong of the current definition of heating oil. Because applying the same requirements EPA applies to "renewable fuel oil" to all "heating oil" would be a significant expansion of these requirements and the Clean Air Act and administrative law requires EPA to provide the public with notice of any change in policy, we assume the reference to paragraph (2) in the proposed new definition was a typographical error, and EPA intended the definition of "renewable fuel oil" to refer to "heating oil that is renewable fuel and that meets paragraph (1)(ii)" under the revised the definition of heating oil.[7] Otherwise, as the proposed new definition is written, we believe it would impermissibly and arbitrarily expand these requirements to "heating oil." As such, NEFI opposes the proposed changes.

First, the Clean Air Act requires the proposed rule to include: (A) the factual data on which the proposed rule is based; (B) the methodology used in obtaining the data and in analyzing the data; and (C) the major legal interpretations and policy considerations underlying the proposed rule. 42 U.S.C. §7607(d)(3). The Supreme Court has found: "To be sure, the requirement that an agency provide reasoned explanation for its action would ordinarily demand that it display awareness that it *is* changing 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). As explained above, EPA has long found that Congress intended for RIN generation for heating oil that is *able* to be used for both residential space and water heating. The requirements applicable to "fuel oils" would limit heating oil to space heating only, against this clear intent. The preamble provides no explanation for any change to this longstanding policy and, thus, fails to meet the statute's notice requirements. As such, EPA cannot finalize any regulation that would expand the current requirements that are currently only applicable to fuel oils to all "heating oil."

Second, any attempt to expand the current requirements that are only applicable to certain "fuel oils" is arbitrary, as there is no reasoned explanation that could support such expansion. As an initial matter, while EPA claims it is seeking to provide clarity, the proposed revisions would appear to have inconsistent use of the term "heating oil" and "renewable fuel oil," particularly as it may relate to "biodiesel" and "renewable diesel" that are defined separately. The proposed changes, if finalized, could potentially impose impractical and inconsistent obligations on biodiesel, renewable diesel, and the heating oil industry. As EPA said in 2010 and confirmed in

[7] NEFI also opposes the proposed new paragraph (2) under the definition of heating oil.

2013, tracking renewable fuel use in "heating oil" would bring unnecessary "complexity" into the program that Congress removed with the 2007 amendments.

We support Administrator Zeldin's commitment to unleashing American energy, lowering household energy costs, and supporting small businesses and rural economies.[8] The proposed changes related to "heating oil" could undermine these shared goals. The starkest example is that it would be practically impossible to obtain affidavits from millions of local homeowners and businesses that are the end users of heating oil. Imposing such impractical requirements would undermine Congress's clear policy choice to support increased use of renewable fuels in the heating oil market under the RFS. The product transfer documents also would appear to have conflicting requirements for "biodiesel," "heating oil," and "renewable fuel oil." These requirements, if applied to the heating oil market, could disincentivize producers from selling to heating oil distributors, increase home heating costs, and undermine our industry's voluntary efforts to reduce emissions by making renewable fuels less available or more expensive. This could also push states toward mandated electrification and away from renewable liquid heating fuels. The liability provisions would further likely raise concerns by residential homeowners and small businesses that are simply seeking cheaper and more environmentally friendly fuels to use in their boilers, furnaces, and water heaters. There simply is no reasoned justification to impose such requirements on the heating oil industry.

For these reasons, we oppose the proposed revisions to the regulations with respect to the new definition of "renewable fuel oil." Indeed, NEFI believes that EPA should support innovation and the entry of "new" fuels into the heating oil market. We believe EPA can do so by revising the heating oil definition and clarifying the use of biodiesel and renewable diesel in the heating oil market. We address this further below, which is also in response to comment solicitation E-7.

b. Biodiesel can be used as "home heating oil" at any blend level.

As noted, we believe EPA should be expanding the fuels that can be used for heating oil, not imposing confusing and potentially burdensome requirements to participate in the RFS program. As such, NEFI also opposes EPA's proposed "clarification" that "pure biodiesel (i.e., B100) or neat biodiesel (i.e., B99) that is used for process heat or power generation is not heating oil." 90 Fed. Reg. at 25,844.

As an initial matter, this is not a mere "clarification." EPA has expressly stated that blends of biodiesel above B80 fall under the definition of "heating oil." EPA also explained that the end uses of such fuel need not be tracked, even if used for process heat or power generation. Moreover, the producer of the biodiesel generates the RIN, not the blender of biodiesel into heating oil. As such, this "clarification" also creates confusion for biodiesel producers that sell B100 and B99 into the heating oil market or that sell to marketers or terminals. Nothing in the statute would limit such uses of biodiesel blends.

[8] *See, e.g.,* EPA March 12, 2025 Press Release, EPA Launches Biggest Deregulatory Action in U.S. History, https://www.epa.gov/newsreleases/epa-launches-biggest-deregulatory-action-us-history.

EPA claims that "pure biodiesel (B100)" and "neat biodiesel (B99)" are not "commonly or commercially known as heating oil" and are not "sold for use in furnaces, boilers, or similar applications." 90 Fed. Reg. at 25,844. The only support for these claims (albeit conclusory) is that pure or neat biodiesel "has several natural qualities that make it problematic as a heating oil, the primary issue being that biodiesel gels at low temperatures and could negatively impact the equipment being fueled by biodiesel (e.g., by clogging filters)." *Id*. These conclusory statements, however, are not grounded in fact and are incorrect.

As an initial matter, "neat biodiesel" is typically used in the industry to refer to B100, not B99, which is a blend of biodiesel with diesel fuel.[9] This shows that EPA does not understand the industry or how the fuels are marketed, even though its own regulations refer to "neat renewable fuel" (e.g., unblended with any petroleum fuel) compared to "a blend of renewable fuel and diesel fuel."[10] Further, it makes little sense that B98 would be considered "heating oil" but not B99. The one to two percent difference is immaterial to the claimed concern, and EPA provides no explanation why this would be the case. Indeed, EPA would appear to be promoting use of fossil fuels by requiring additional petroleum-based heating oil to be added to the biodiesel to be considered "heating oil" under the regulations. This makes no sense for a program that is seeking to increase use of renewable biofuels over fossil-based fuels.

Importantly, biodiesel blends at different blend levels *and B100* are, in fact, marketed as renewable liquid heating fuels, so they are commercially known as heating oil.[11] Many retailers deliver B20 to all their customers, and several deliver B50 or B100. These fuels reduce emissions of greenhouse gases, lubricate heating equipment to increase efficiency, and cost about the same as traditional heating oil. In 2022, Underwriters Laboratories (UL) updated its UL 296 Standard for Oil Burners to include liquid fuel-fired burners intended for use with biodiesel blends of 20% to 100% with heating oil.[12] States are also recognizing B100 and B99 as "bioheating fuel."[13]

The major equipment manufacturers also manufacture and sell burners, boilers, and furnaces that will accept all liquid fuels, from traditional heating oil to biodiesel blends from B2-B99 and even 100 percent biodiesel or renewable diesel. For example, Energy Kinetics announced the 100% biodiesel listing for its complete line of residential heat and hot water boilers.[14] This was supported by B100 rated burners that were UL listed from both R.W. Beckett

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[9] *See, e.g.,* U.S. Energy Information Administration, *Biofuels Explained – Biodiesel, renewable diesel, and other biofuels*, https://www.eia.gov/energyexplained/biofuels/biodiesel-rd-other-use-supply.php (last updated Feb. 26, 2024) (noting some vehicle fleets use "B100 (neat biodiesel)").
[10] *See, e.g.,* 40 C.F.R. §§80.1429(b)(4), 80.1453(a).
[11] *See, e.g.,* FSi Oil and Propane, *What You Need to Know About the B100 Burner*, Sept. 9, 2024, https://fsioilandpropane.com/b100-burner/ (referring to B100 Bioheat fuel (100% biofuel)); *B100 – The Fuel of the Future*, Oil & Energy Online, https://oilandenergyonline.com/articles/all/b100-fuel-future/ (last visited Aug. 5, 2025) (marketing B100, noting "B100 is being used in homes across the country").
[12] National Oilheat Research Alliance (NORA), *UL Liquid Fuel Burner Safety Standard Amended to Include Biodiesel Blends up to B100*, Dec. 13, 2022, https://noraweb.org/2022/12/ul-liquid-fuel-burner-safety-standard-amended-to-include-biodiesel-blends-up-to-b100/.
[13] New York State Bill S2411, https://www.nysenate.gov/legislation/bills/2025/S2411 (introduced Jan. 17, 2025).
[14] Energy Kinetics, *Revolutionizing Heating: Energy Kinetics Introduces B100 Compatible Boilers*, https://energykinetics.com/biofuel-boilers/ (last visited Aug. 5, 2025).

Corp. and Carlin Combustion Technology that operate on 100% biodiesel, as well as blends of biodiesel and fuel oil.[15] Contrary to EPA's unsupported claim, this equipment can utilize an indoor fuel tank, "so cold weather is not an issue."[16] Further, existing equipment can be converted to upgrade older burners to B100 capability.[17] "The transition to higher blends has been ongoing, supported by updated codes and standards, like ASTM and UL, that ensure safe and effective operation," and has reduced costs overall for customers.[18] In other words, the heating oil industry has taken the goals of the RFS to heart, making substantial investments to support higher uses of renewable fuels in the sector. EPA's proposal appears to ignore all this, taking the industry backwards, instead of forward. As such, NEFI opposes the proposed change to the definition of "heating oil" as unnecessary, unsupported, and arbitrary.

c. EPA's claimed "technical corrections and clarifications" regarding heating oil and renewable fuel oil appear to make significant changes to the current regulations without explanation in violation of the Clean Air Act.

Under "miscellaneous technical corrections and clarifications to RFS regulations," EPA lists "[r]eplacing text in existing regulations to use the new definition of 'renewable fuel oil.'" 90 Fed. Reg. at 25,852. Among other things, EPA's proposed regulatory changes would replace "heating oil" with "renewable fuel oil" in the definition of cellulosic diesel and co-processed cellulosic diesel. *Id.* at 25,858. Similarly, EPA proposes to replace "heating oil" with the term "renewable fuel oil" in Table 1 of 40 C.F.R. §80.1426. *Id.* at 25,865. EPA does so without explanation.

Under current regulations and the explanation in EPA's proposal, "renewable fuel oil" is a more limited, subset of fuel oils than what may qualify as "heating oil," indicating that EPA is making a substantive change with these revisions. The other places where EPA proposes to use the term "renewable fuel oil" would replace references similar to "heating oil as defined in paragraph (2) of the definition of heating oil in §80.2." Although we disagree with the proposed definition of "renewable fuel oil," those would appear to be merely conforming changes to utilize this new definition. However, the definitions of cellulosic diesel and co-processed cellulosic diesel and the pathways in Table 1 are not so limited in the current regulations. For example, the current regulations do not limit cellulosic diesel or co-processed cellulosic diesel to only those fuels that would meet the definition of "renewable fuel oil." As such these proposed revisions appear to be more than mere technical corrections or clarifications. EPA's failure to explain these changes, which appear to be a change in policy, violates the notice and comment

[15] *Id.*; *see also* Beckett, *The NEW Beckett RF Oil, Biodiesel, and Renewable Diesel Burner*, https://www.beckettcorp.com/ (last visited Aug. 5, 2025); Carlin Combustion Technology, *Ready When You Are. Confidently burn #2 through B100 with Carlin*, https://carlincombustion.com/b100/ (last visited Aug. 5, 2025).
[16] *B100 – The Future has Arrived!*, Oil & Energy Online, https://oilandenergyonline.com/articles/all/b100-future-has-arrived/ (last visited Aug. 5, 2025).
[17] *Carlin Begins Production on UL Listed B100 Burners*, https://oilandenergyonline.com/articles/all/carlin-begins-production-ul-listed-b100-burners/ (last visited Aug. 5, 2025).
[18] Energy Kinetics, *Revolutionizing Heating: Energy Kinetics Introduces B100 Compatible Boilers*, https://energykinetics.com/biofuel-boilers/ (last visited Aug. 5, 2025).

requirements of the Clean Air Act. 42 U.S.C. §7607(d)(3); *Fox TV Stations, Inc.*, 556 U.S. at 515.

These unexplained changes are particularly troubling because fuels have been in development based, in part, on the idea that the fuels would be eligible for RIN generation under the current structure of the RFS regulations. One such fuel that has been in development specifically for the heating oil market is Ethyl Levulinate (EL). EL is cellulosic biofuel derived from wood waste that can be used in stationary boilers, furnaces, and engines.[19] The fuel has been in development for years, working toward commercialization for the heating oil market. If cellulosic biofuels are limited to "renewable fuel oil," the requirements imposed on such fuels would be detrimental to the ability of this fuel to be commercialized, even though it would be designated for use in the same "home heating oil" market as biodiesel and renewable diesel and even though Congress sought to ambitiously grow cellulosic biofuels under the RFS. EPA does not explain these changes, except to simply say it is replacing text to use this new definition. That is not sufficient to meet the notice requirements of the Clean Air Act.

Moreover, such a reason for excluding fuels that otherwise may have been eligible is arbitrary. Indeed, these proposed changes appear to create more confusion than clarity, making it difficult to discern EPA's intent with the proposed changes. For example, EPA is proposing to define cellulosic diesel to include "renewable fuel oil." Yet, it is also proposing to list "renewable fuel oil" separately from "cellulosic diesel" in the list of approved pathways, while deleting "heating oil" from that list. As with the case of "biodiesel" discussed above, this creates confusion as to what requirements apply—the requirements for cellulosic diesel or the requirements for "renewable fuel oil."

For all these reasons, NEFI opposes the proposed revisions related to the definition of heating oil and renewable fuel oil, including the replacement of the term "heating oil" with "renewable fuel oil" in definitions and Table 1. NEFI urges EPA to work with the heating oil industry to truly make clarifications to the regulations and to ensure it is incentivizing the increased use of renewable fuels in the heating oil market, rather than working to undermine Congress's goals.

[19] NORA, *Combustion Tests of Ethyl Levulinate Biofuel in a Commercial Boiler*, at 1 (2020), https://noraweb.org/wp-content/uploads/2021/01/Combustion-Tests-of-Levulinate-Biofuel-in-a-Commercial-Boiler.pdf.

II. Response to Comment Solicitation D-1: The other proposed amendments to the RFS program, including: the equivalence values for renewable diesel, naphtha, and jet fuel; the changes to the percentage standards equations; and the changes and additions to the pathways in Table 1 to 40 CFR 80.1426 (D–1).

Response to Comment Solicitation E-7: Any other modifications to the RFS program designed to unleash the production of American energy. (E-7)

EPA Should Make Clear that Biodiesel and Renewable Diesel Need Not Track Downstream Use for Fuel (at any blend level including B100 and B99) Designated for "Heating Oil" Applications and Should Revisit the Regulations to Ensure Additional Fuels Marketed for Use in the Heating Oil Market are not Subject to Burdensome Requirements that Can Increase Costs to Consumers and Disincentivize Additional Fuels from Entering the Heating Oil Market.

We are concerned that EPA's proposal has caused confusion in the industry as to what fuels qualify for use in the heating oil market. For example, biodiesel is typically sold as B100 or B99, which is then blended for use as heating oil or used as "neat" biodiesel. EPA regulations require that such biodiesel include specific language in the product transfer document that such biodiesel must be used as transportation fuel, heating oil or jet fuel. 40 C.F.R. § 80.1453(a)(12)(ii). The biodiesel generates the RINs and is typically sold to a marketer or distributor (e.g., a terminal), and the RINs can be separated when the biodiesel is blended or designated as transportation fuel, heating oil, or jet fuel. *Id.* §80.1429(b)(4). Yet, there are different requirements for biodiesel versus heating oil and (as proposed by EPA) renewable fuel oil. EPA's new claim that B100 and B99 cannot be used as heating oil makes no sense as discussed above, but it also creates confusion as to what regulations might apply to what fuel if it is biodiesel (or renewable diesel) that is blended with heating oil or used as heating oil. We also note that EPA's fuel regulations at Part 1090 use yet a different definition for "heating oil." 40 C.F.R. §1090.80. Thus, while we do not agree with EPA's proposed changes, we do believe EPA could clarify the confusion it has now created and use more consistent terminology throughout the RFS regulations.

As such, we believe EPA should consider revising its regulations to clarify the requirements for "heating oil" and allow for biodiesel and renewable diesel to be used in the heating oil market at any blend level while also allowing new fuels to be used in the market without being subject to impractical, costly, and overly burdensome tracking requirements. In other words, EPA should make clear that heating oil includes any fuel that is designated for use in the heating oil market without the need to track downstream uses. This would incentivize more fuels to be developed or sold into the market, "unleashing American energy" and providing more choices for heating oil marketers and distributors. EPA has long recognized that diversity of fuels provides energy security benefits and can reduce costs to consumers. Thus, we make the following recommendations for EPA's consideration.

- EPA should clarify that "biodiesel" and "renewable diesel" can be used, at any blend level, as heating oil. So long as the biodiesel or renewable diesel is designated for use as or in a transportation fuel or heating oil, it need only comply with the requirements for biodiesel and renewable diesel in the regulations with no need for further tracking of downstream uses.

- Rather than continuing to use an outdated heating oil definition in the RFS, EPA could utilize the same definition of "heating oil" that is used in Part 1090. This would make the definitions in the RFS consistent with its fuel regulations, but would also recognize the advancements made in the industry. There, heating oil is defined as "a combustible product that is used, intended for use, or made available for use in furnaces, boilers, or similar applications." 40 C.F.R. §1090.80. Kerosene and jet fuel are excluded from the heating oil definition in §1090.80. EPA's continued reliance on an outdated regulation (and outdated view of the heating oil market) may exclude otherwise viable fuels from being used for heating oil.

- For any fuels that are not otherwise defined by a separate pathway (such as biodiesel and renewable diesel) but fall under the definition of "heating oil," EPA could make clear that such fuel would comply with the regulations referencing "heating oil" without the need for further tracking of downstream uses. In other words, renewable fuels designated for use in the heating oil market should not be subject to the onerous affidavit, product transfer document, and recordkeeping requirements EPA imposed on "renewable fuel oil."

- To the extent EPA continues to believe there are additional renewable fuels that should be able to generate RINs as "renewable fuel oil" that are not targeted for the heating oil market, EPA can define "renewable fuel oil" and continue to impose the separate affidavit, product transfer, and other requirements. We believe it might be clearer for EPA to specifically identify these fuels, rather than use the definition in the current regulations. Alternatively, EPA could redefine "renewable fuel oil" as: "Any fuel oil*, as approved by EPA to generate RINs as Additional Renewable Fuel (as defined in 42 U.S.C. §7545(o)(1)(A)),* that is used to heat or cool interior spaces of homes or buildings to control ambient climate for human comfort. The fuel oil must be liquid at STP and contain no more than 2.5% mass solids." This may require addition of the term throughout the regulations where EPA may reference "heating oil" to ensure "renewable fuel oil" is also covered (*e.g.*, in §§ 80.1426, 80.1450, 80.1451). EPA should, in such case, identify such fuels so that the public is aware of the fuels being used to meet this definition and track them separately from "heating oil."

EPA may not be aware of the advancements in the heating oil industry, and, thus, we urge EPA to work with the industry to ensure that the intent of Congress is being fulfilled. The heating oil industry requires access to renewable fuels and additional competition generally allows producers more flexibility to choose the appropriate fuel based on market conditions. This benefits consumers through lower prices and allows them to use more environmentally friendly fuels. This further supports energy security and rural economies that are supported by the biofuel production facilities. These are all the benefits to implementing a workable program to have a functioning market.

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