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U.S. Environmental Protection Agency EPA Docket
Center Air Docket, Mail Code 28221T 1200
Pennsylvania Avenue, N.W. Washington, DC 20460

Re: Renewable Fuel Standard (RFS) Program: Standards for 2023-2025 and Other Changes (Docket ID No. EPA-HQ-OAR-2021-0427)

Submitted Electronically

BACKGROUND:

The Energy Marketers of America (EMA) is a federation of 47 state and regional trade associations representing family-owned and operated small business energy marketers throughout the United States. Energy marketers represent a vital link in the motor and heating fuels distribution chain. EMA members supply 80 percent of all finished motor and heating fuel products sold nationwide including renewable hydrocarbon biofuels, gasoline, diesel fuel, biofuels, heating fuel, jet fuel, kerosene, racing fuel and lubricating oils. The vast majority these energy marketers qualify as small businesses under U.S. Small Business Administration size categories. Moreover, energy marketers represented by EMA own and operate approximately 60,000 retail motor fuel stations nationwide, supply motor fuels to an additional 40,000 gas stations and heating fuel to more than 5 million homes and businesses.

COMMENTS:

EMA supports the Renewable Fuel Standard's twin goals of moving the United States toward greater energy independence and security while increasing the production of clean renewable fuels. EMA and its members fully support the sale and distribution of all liquid motor and heating fuels including renewable fuel blends mandated under the RFS so long as they reflect market demand and do not result in fuel blends that are noncompatible with storage and dispensing equipment at retail fueling stations. Fuel compatibility is essential not only for supplying fuel to end users through existing petroleum storage and distribution infrastructure but, also to meet customer expectations for quality, performance and operability.

Energy marketers believe the private market is best able to determine downstream customer demand for renewable fuels rather than arbitrary statutory renewable volume obligations (RVOs) set down by Congress

over 15 years ago. Until now, the energy marketing industry was expected to sell more renewable fuel than customers were willing to buy. EMA is pleased that the EPA is now free under the proposed "set" rule to adopt annual renewable volume obligations (RVOs) based on market demand and compatibility rather than artificial statutory mandates.

EPA Proposed RFS Volume Targets for 2023, 2024 and 2025

The EPA is proposing to establish required Renewable Fuel Standard (RFS) volumes and percentage standards for 2023, 2024, and 2025, as well as a series of modifications to strengthen and expand the RFS program. The Notice of Proposed Rulemaking (NPRM) proposes to set the total 2023 RVOs at 21.07 billion gallons, up 190 million gallons compared to the 2022 RVOs. The 2023 blend target includes the nested requirements of 720 million gallons of cellulosic fuel, 2.82 billion gallons of biomass-based diesel and 5.82 billion gallons of advanced biofuel along with a 250-million-gallon supplemental obligation to recapture blending volumes lost to small refiner exemptions (SREs) approved in prior years by the EPA over the past decade. The NPRM would increase the total 2024 RVOs by 1.05 billion gallons to 21.87 billion gallons, including 1.42 billion gallons of cellulosic biofuel, 2.89 billion gallons of biomass-based diesel, and 6.62 billion gallons of advanced biofuel. The nested requirements would allow obligated parties to blend up to 15.25 billion gallons of conventional biofuel to meet their blend requirements. In 2025. The NPRM proposes to increase RVOs by an additional 810 million gallons to 22.68 billion. The nested RVOs would include 2.13 billion gallons of cellulosic biofuel, 2.95 billion gallons of biomass-based diesel, and 7.43 billion gallons of advanced biofuel. The volume of conventional biofuels that can be used to meet RFS blend requirements would be maintained at 15.25 billion gallons.

E15 Compatibility

EMA has historically opposed a total corn ethanol RVO greater than 9.7 percent of projected consumer demand as determined by the Energy Information Administration (EIA). The 9.7 percent corn ethanol limit would ensure that E15 blends would not be forced onto the market where consumer demand is insufficient to support it.

As EMA has stated over previous years in response to proposed RFS standards, ethanol blends greater than E10 are not compatible with the vast majority UST storage and dispensing equipment currently in service today. While many underground storage ***tanks*** may be compatible with ethanol blends over E10, piping and dispensing equipment running from the tank to the pump nozzle are not. Gasoline blends greater than E10 can crack, dissolve, or corrode rubber seals, gaskets, plastic sump components, piping and dispenser equipment over a short period of time. The EPA's Office of Underground Storage Tanks (OUST) recently highlighted a particularly alarming compatibility issue regarding "pipe dope" in an agency guidance document. Pipe dope is essentially the glue that holds UST systems together. Pipe dope is used to join all threaded connections in the underground pipes that carry fuel from the UST to pump dispensers on the island where consumer fueling occurs. Typically, there are over 100 such connections held together by pipe dope in a six- dispenser UST system. The EPA writes in in its UST Guidance on pipe dope compatibility:

> "*Higher-ethanol compatible pipe dope was available beginning around 2007. Despite that, UST systems installed then and since to store lower levels of ethanol, such as E0 or E10****, probably have pipe dope compatible only with lower levels of ethanol.*** *Storing greater than 10 percent ethanol in those UST systems means* ***the pipe dope is incompatible****. Because higher-ethanol compatible pipe dope is more expensive, pipe dope compatible only with lower levels of ethanol to be stored in those UST systems may have been used, rather than higher-ethanol compatible pipe dope.*
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> *Liquid tight seals at joints in the UST system are essential in preventing releases of regulated substances to the environment.* ***If pipe dope or sealants are incompatible with the fuel stored, they may lose their ability to seal properly and release fuel to the environment.***
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> *This means an owner or operator considering storing regulated substances containing greater than 10 percent ethanol in a system, which was not explicitly installed with the intent of storing regulated substances with greater than 10 percent ethanol,* ***will presumably need to modify each threaded connection point where pipe dope seals the threads.*** *To avoid violating the compatibility requirements in 40 CFR 280.32,* ***each thread or junction must be re-sealed with compatible pipe dope if owners and operators wish to store ethanol blends greater than 10 percent*** *and they currently have pipe dope incompatible with such blends in their UST system. Otherwise, they may not store those blends****. In some UST systems, these joints may be buried beneath the surface and not in contained sump areas; it may be necessary to excavate to access them.****"*

E15 Compatibility Costs

Removing and replacing UST piping is a prohibitively expensive process. Piping is often buried four or more feet underground depending on the size of the tank and number of dispensers. Asphalt and concrete over piping must be removed by jack-hammer. Dirt and protective backfill must be expertly excavated from over and under the piping to provide access. All piping connections including, pipe to pipe connections, pipe to containment sumps connections, pipe to dispenser connections, etc; must be disconnected, (if possible), carefully cleaned, fitted and otherwise prepared for reconnection with E15 compliant pipe dope. Moreover, all this must be done by skilled tank installers. These retrofit upgrades are costly.

EMA estimates that the retrofit upgrade alone could cost small business energy marketers approximately $280,000 per site. The cost to achieve universal E15 compatibility nationwide is estimated to be over $1 billion dollars, a collective cost far beyond the financial capabilities of most small business energy marketers. These costs increase well beyond the retrofit itself due to lost sales revenue for fuels and in store convenience items during the 5 to 10 days the site must close to accommodate the upgrade process. EMA is currently working with members of Congress to secure the necessary funding for UST E15 compatible retrofit grants. Once secured, EMA would welcome corn ethanol RVOs greater than 9.7 percent customer demand. We invite the EPA to support such funding so that liquid renewable fuels can more readily expand into a wider marketplace.

Again, energy marketers are eager to sell liquid renewable fuel in all available blends. Unfortunately, the E15 compatibility issue is a major roadblock to retail expansion of renewable fuel blends beyond E10. E15 compatibility retrofits are advancing too slowly due to the upgrade costs involved.

Biomass-Based Diesel and Advanced Biofuels

EMA is concerned that the proposed RVOs in the NPRM for biomass-based diesel and overall advanced biofuel volumes through 2025 are not consistent with the industry's projected growth, or with the Administration's own goals to reduce greenhouse gas emissions. The NPRM sets RVOs for biomass- based diesel at 2.82 billion gallons for 2023, 2.89 billion gallons in 2024, and 2.95 billion gallons in 2025. However, the 2.95-billion-gallon RVO for 2025 is 8 percent below 2022 supply levels. EPA's own data from the RFS program shows the U.S. biofuels market reached 3.1 billion gallons of biomass-based diesel in 2021 and 2.9 billion gallons through October 2022. The Energy Information Administration's (EIA) Short Term Energy Outlook, which informs EPA's decisions on setting annual RVOs, currently projects a 500-million- gallon increase in biodiesel and renewable diesel consumption for 2023. EIA also projects approximately 2.4 billion gallons of added renewable diesel production capacity will come online by 2024, with another 1.8 billion gallons in announced plan capacity. EMA believes that the low RVOs for these fuels will limit the RFS's short-term positive price impact on RIN's and biofuels, while reducing incentives for continued growth in the biomass-based diesel industry. EMA supports an increase in RVOs for these fuels that is more in line with current production and projected growth for biomass-based diesel and overall advanced biofuel volumes.

eRINS as a Renewable Fuel Pathway

EMA believes the agency's eRIN proposal in the NPRM is not authorized by existing law. In Section 206 of the Energy Independence and Security Act of 2007 (EISA), Congress contemplated the feasibility of a credits system connected to renewable electricity for electric vehicles (EVs) as an adjunct program to the RFS. Congress chose not to authorize a renewable electricity credit in EISA. Instead, lawmakers instructed the EPA to consider alternatives for designing an eRINS pilot project and report its findings back to Congress. The agency never conducted the study or submitted a report to Congress as required under Section 206. EISA contains no affirmative authorization for an eRIN pilot project, no less a comprehensive regulatory eRIN mandate. EMA believes the EPA lacks the authority to implement the proposed eRIN credit for renewable electricity. EPA's eRIN proposal is inconsistent with the statutory purpose of the RFS, which is to support the production of renewable fuels, not the production and sale of certain vehicle technologies that eRINS are designed to promote.

Moreover, Section 202 of the EISA instructed the EPA to develop a renewable fuels standard that requires the blending of liquid renewable fuels into transportation fuel. Section 202 does not make any reference to renewable electricity. Instead, it focuses on liquid measurement terms including "volumetric obligations," "blend stocks" and "gallons." These terms have no relation to electricity. Attempting to include electricity into the RFS is fraught with potential inaccuracies, providing no measurable values to establish gallon equivalency, carbon reduction rates, and obligated volumes.

Congress designed the RFS to promote renewable transportation fuels to achieve energy independence not to promote renewable electricity or other unconventional non liquid renewable pathways. Congress chose a specific approach to reduce reliance on imported oil, which was to blend renewable fuels into transportation fuel, not to promote renewable electricity designed to usher in an entirely new mode of transportation. There is no energy independence or security in a renewable fuel that depends on battery, microchip and other essential technologies from foreign adversaries, including China.

The EPA discusses its goal to reshape the renewable electricity market and vehicle fleet through eRINS. The agency is seeking to make these enormous decisions of economic and political significance without Congressional authorization. The proposed rule runs counter to both the plain language of the law and the objectives of the RFS program. EMA urges the EPA to withdraw the eRINs provisions in the NPRM and craft a new rule that is consistent with the EISA statute.

RIN Separation Limits

The EPA is proposing to limit separation of RINs assigned to biodiesel blended into diesel fuel at a content of 20 percent or less. The plain language of the 40 C.F.R. 80.1429(b)(2) requires separation of RINS by any party that owns a volume of renewable fuel once that volume is blended with gasoline or fossil- based diesel to produce a transportation fuel, heating oil, or jet fuel. There are no blend concentration limitations on the separation of RINS in Paragraph (b)(2). However, paragraph (b)(2) refers to a blend concentration limit in paragraph (b)(6) limiting RIN separation for biodiesel fuel blends of 20 percent or less.

Unfortunately, there is little narrative in the NPRM explaining the reduction in blend concentration limits for transportation diesel fuel from the current 80 percent to the proposed 20 percent. However, paragraph (b)(6) is clearly a reference to transportation diesel fuel blends since 20 percent is the concentration limit for such blends in ASTM Standard 7467. B20 is also the upper biofuel concentration limit for nearly all new and existing diesel engines in service today. EMA was able to confirm this with the Office of Air and Radiation that the 20 percent blend concentration limit does not apply to designated heating oil blended with biodiesel. It therefore follows that neat transportation diesel fuel redesignated as heating oil and subsequently blended with renewable fuel, would similarly not be limited the 20 percent limitation. This makes sense because paragraph (b)(2) does not contain a blend concentration limitation for heating oil and heating oil is not a transportation fuel subject to an RVO but still produce RINS for separation when blended with biodiesel. The ability to make such redesignations provides heating oil dealers with the flexibility they rely on to blend heating oil with biodiesel concentrations greater than 20 percent which result in higher rates of fuel decarbonization.

EMA is requesting that the agency rewrite language in Section 80.1429 in the final rule to make it clear that fuel designated as heating oil is not subject to the 20 percent blend concentration limitation, including transportation diesel fuel redesignated as heating oil and subsequently blended with biodiesel. EMA suggests the following language be added to 80.1429 (b):

*(7) Diesel fuel redesignated as heating oil and subsequently blended with biodiesel is not subject to the 20% or less blend concentration limit in paragraph (b)(6) * * * * **

EMA believes this language change will make clear what the EPA has already confirmed with EMA; that the NPRM does not limit biodiesel blend concentrations in heating oil.

CONCLUSION

EMA appreciates the opportunity to submit comments on this important NPRM. Energy marketers are ready and willing, but currently unable to sell higher ethanol blends beyond E10. Gasoline blends above E10 are not compatible with existing fueling infrastructure which significantly increases the risk of release from UST systems. As a result, EMA cannot support any ethanol RVO above 9.7 percent of projected consumer demand. However, small business energy marketers are prepared to enthusiastically embrace higher ethanol blends once Congress authorizes grants to cover E15 compatibility retrofit costs for their UST systems. EMA supports increases in RVOs for biomass-based diesel fuels, particularly renewable biodiesel along with advanced biodiesel fuels that are based on production capacity and market demand.

EMA opposes the eRINS credit proposal in the NPRM because the EPA lacks the authority under EISA to implement a renewable electricity pathway under the RFS. Finally, EMA is proposing new language to clarify EPA's position that renewable heating oil blends are not limited by the 20 percent blend concentration limit for transportation diesel fuel in Section 80.1429(b)(6).

I am happy to answer any questions you may have and provide any additional information you may require. Please feel free to contact me at (202) 487-4536 or by email at: mmorgan@emamerica.org.

Sincerely,

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