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## Modifications to RFS RIN Market Regulations

**VIA ELECTRONIC DELIVERY**

**April 29, 2019**

U.S. Environmental Protection Agency  
EPA Docket Center  
Office of Air and Radiation Docket  
Mail Code 28221T  
1200 Pennsylvania Avenue N.W.  
Washington, D.C. 20460

**Re: *Docket ID No. EPA-HQ-OAR-2018-0775; Proposed Rule, Modifications to Fuel Regulations to Provide Flexibility for E15; Modifications to RFS RIN Market Regulations, 84 Fed. Reg. 10584 (Mar. 21, 2019) (“Proposed Rule”)***

Dear Environmental Protection Agency Administrator and Staff:

Thank you for the opportunity to comment on the Proposed Rule. The Environmental Markets Association (“EMA”) commends the Environmental Protection Agency (“EPA”) on its thorough and diligent analysis of Renewable Identification Number (“RIN”) markets and the principles that drive them. The EPA’s evidence-based approach and cognizance of consequences is strongly evident throughout the Proposed Rule.

EMA is the leading US-based trade association focused on promoting market-based solutions for environmental challenges through sound public policy, industry best practices, effective education and training, and member networking. EMA represents a diverse membership including large energy companies, project developers, brokers and traders, exchanges, investors, law firms, consultants, academics, NGOs and government agencies. EMA’s members have direct, first-hand experience, in all aspects of the North American Environmental Markets and, collectively, have made significant contributions to their success and achievements to date.

EPA rules for the RIN market will be a source of reference and leadership for state and federal regulators of markets in other environmental commodities, such as those for renewable energy certificates (“RECs”) and carbon allowances, several of which were in turn referenced by the EPA as sources of ideas and practices in its Proposed Rule. EMA members are active in those markets, in addition to RINs, so it is important to EMA and its members that the Renewable Fuel Standard (“RFS”) RIN market regulations enable a well-functioning market that achieves its targets, while also serving as a source of best practices for other regulators.

EMA appreciates the opportunity to provide input to the EPA regarding the Proposed Rule. To this end, EMA submits these comments on EPA’s proposed reforms. These comments represent the consensus, if not entirely unanimous, views of EMA’s membership. In addition, please find in Appendix A EMA’s *Recommended Principles for Markets Based Solutions*, which

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provide overarching guidance to stakeholders on how to design well-functioning environmental commodity markets to cost-effectively achieve their stated goals.

### **Reform One**

EMA agrees with EPA on Reform One,<sup>1</sup> preferring a disclosure approach, rather than a limit on ownership approach, to RIN holdings. EMA especially notes EPA's statement that EPA has no data-based evidence of manipulation.<sup>2</sup> EMA appreciates EPA's research that no state renewable portfolio standard program has a REC holding threshold or limit.<sup>3</sup> EMA believes that market participants benefit from disclosure-driven market regulatory models in preference to proscriptive market regulatory models. Disclosure requirements also help level the playing field. Caps on holdings and limits on participation have been noted by the Congressional Budget Office in its study of environmental commodity markets ("CBO Study") as unlikely to address concerns such as those stated by EPA.<sup>4</sup> EMA therefore respectfully suggests that since disclosure can at times be salutary, in contrast to the harm presented by an absolute prohibition on ownership, the EPA's use of the phrase "avoid at all times" in reference to a triggering level<sup>5</sup> is unnecessarily negative.

With respect to EPA's proposal "that the RIN holdings of corporate affiliates be included in a party's calculations to determine if they trigger a threshold",<sup>6</sup> EMA respectfully recommends that EPA review the Commodity Futures Trading Commission's ("CFTC") Final Rule on Aggregation of Positions.<sup>7</sup> This rule sets forth criteria by which positions among affiliates would not be aggregated for purposes of the CFTC's as-yet unfinalized position limits rules. CFTC regulation §150.4(b)(7), for example, exempts aggregation among affiliates that by regulation cannot share information.

EMA further notes and supports the wisdom of the Proposed Rule's exclusion of forward purchases in thresholds.<sup>8</sup>

### **Reform Three**

Consistently with the foregoing discussion of Reform One, the EMA strongly opposes Reform Three,<sup>9</sup> which proposes to limit purchases of D6 RINs to obligated parties based only on anecdotal evidence.<sup>10</sup> This is a lesser standard of evidence for reforms proposed than that applied by EPA elsewhere in the Proposed Rule, and the EMA respectfully suggests that

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<sup>1</sup> 84 Fed. Reg. at 10609.

<sup>2</sup> 84 Fed. Reg. at 10586, col. 1.

<sup>3</sup> text at 84 Fed. Reg. at 10610, col. 2 at fn. 170.

<sup>4</sup> Congressional Budget Office, *Evaluating Limits on Participation and Transactions in Markets for Emissions Allowances* (Dec. 2010) (avail. at <https://www.cbo.gov/publication/21967>).

<sup>5</sup> 84 Fed. Reg. at 10611, col. 1

<sup>6</sup> 84 Fed. Reg. at 10609, col. 3.

<sup>7</sup> 17 C.F.R. §150.4; 81 Fed. Reg. 91454 (Dec. 16, 2016).

<sup>8</sup> at 84 Fed. Reg. at 10613, col. 3.

<sup>9</sup> 84 Fed. Reg. at 10618.

<sup>10</sup> 84 Fed. Reg. at 10619 col. 3

there is nothing about D6 RINs that should lead the EPA to relax the excellent standard of evidence gathering as a precondition to action that it has applied elsewhere in the Proposed Rule. EMA further suggests that it is consistent with EPA's views articulated in Reform One that thin environmental markets be addressed through improving disclosure and transparency, rather than restricting the number of participants. The former will enable market participants to feel more comfortable and likely increase participation; the latter will only make the participant pool even more shallow and further reduce market liquidity and pricing transparency. Reform Three would severely limit market liquidity by limiting trading to companies that are in the end-use business as opposed to the trading business with trading expertise. Trading businesses serve an important role in environmental commodity markets by using their balance sheets to improve liquidity and pricing transparency by making markets between natural sellers and compliance entities that tend to transact in the markets sporadically.

EMA notes that the CBO Study found that such limits on participation would be unlikely to address concerns such as those stated with respect to Reform Three.<sup>11</sup> Reform Three will also increase costs for those participants it purports to protect. Trading, or the buying and disposing of excess RINs, would require these obligated companies to develop their own trading function or use brokers, and bear those costs, which become relatively higher in an artificially thinned market, while limiting cost mitigation opportunities for those that have over procured. These higher costs ultimately get passed onto consumers. Reform Three as proposed would give a cost advantage to compliance entities with trading affiliates, since limiting financial parties thins out the market, and entities with trading shops do better than those entities without in thin markets. A speculative limit<sup>12</sup> would be better than a bar; but any such "limit" should be a disclosure obligation in the nature of Reform One, rather than a hard holding limit.

As a matter of principle, the EPA should be encouraging participation and competition in the environmental markets it oversees. Environmental markets that are open and competitive increase participation and private investment. Competition lowers costs and fosters innovation and innovation in turn leads to more cost-effective solutions.

#### **Reform Four**

Likewise, the EMA opposes Reform Four, a hot-potato time limit for holding separated D6 RINs.<sup>13</sup> This will create artificial market distortion that will not yield the anticipated benefit.

#### **Enhancing EPA's Market Monitoring Capabilities**

EMA supports EPA's proposals for enhanced data collection.<sup>14</sup> EMA respectfully requests that the EPA provide safe harbors for data collection errors and omissions that are made in good faith despite using best practices. To that end, EMA directs EPA's attention to the safe harbor provisions in the policy statements and orders of the Federal Energy Regulatory Commission on

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<sup>11</sup> CBO Study at pp. viii, 6-8.

<sup>12</sup> 84 Fed. Reg. at 10620, col. 3.

<sup>13</sup> 84 Fed. Reg. at 10620 col. 3.

<sup>14</sup> 84 Fed. Reg. at 10622, col. 3.

price reporting for natural gas and electricity.<sup>15</sup>

Regarding the EPA's consideration of third party market monitors,<sup>16</sup> EMA recommends that any consideration by the EPA of such service providers require very strong protection of data and that they be subject to significant sanctions for the improper disclosure of data. Data collected can be compromised and corruptly obtained. Section 746 of Dodd-Frank, codified at §4c(a)(4) of the Commodity Exchange Act, specifically recognized the risks of corrupt dissemination of insider information collected by government agencies. EMA respectfully recommends that EPA take all necessary steps to require strong protection of any such data in the hands of any third-party market monitor. EMA also respectfully recommend that EPA consider how the Freedom of Information Act would apply to such collected data, and the risks that may thereby be presented to the contributors of such data. EPA notes no other compliance environmental market uses third party monitors, and we respectfully support EPA's continuation of this trend; however, noting the thorough, evidence-based approach that EPA has taken in the Proposed Rule, EMA believes EPA will make an informed decision that is most supportive of market integrity, and EMA strongly supports market integrity.

The EMA stands ready to offer additional assistance and to answer any additional questions that the EPA may have.

Sincerely,



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<sup>15</sup> *Policy Statement on Natural Gas and Electric Price Indices*, 104 FERC ¶ 61,121 (2003); *Order on Clarification of Policy Statement on Natural Gas and Electric Price Indices*, 105 FERC ¶ 61,282 (2003), and *Order Further Clarifying Policy Statement on Natural Gas and Electric Price Indices*, 112 FERC ¶ 61,040 (2005).

<sup>16</sup> 84 Fed. Reg. at 10623, col. 2.

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## Appendix A – Recommended Principles for Market-Based Solutions

EMA strongly supports the utilization of markets to achieve environmental policy goals. Well-designed markets yield many benefits including, but not limited to, transparent price signals determined through competition, risk mitigation opportunities, incentives for technological innovation, efficient allocation of capital and resources, investor certainty, and rate payer protection. To that end, EMA endorses the following principles for meeting environmental policy goals through market-based programs:

### 1) Tradeable Products

EMA supports the utilization of tradable products for meeting environmental policy compliance obligations. Clearly defined tradeable products provide a means for facilitating commercial transactions through bilateral markets to enable market participants to manage risk on a forward basis outside of a centralized allocation or auction process. In addition, relying on tradeable products allows for market participants, who may not have entitlements or compliance obligations, to provide market liquidity and risk management services to those entities with future entitlements to the product (for example, renewable resource developers) and to those entities with future compliance obligations (for example, load serving entities).

### 2) Market-Based Pricing

EMA supports the pricing of environmental products through market-based mechanisms as opposed to administrative processes. The formation of prices of environmental products should be driven by competition that accounts for the economic preferences of market participants. Market-driven prices provide transparent signals to all market participants in order to achieve emission reductions, encourage innovation, promote competition, and facilitate risk management.

### 3) Market Design That Fosters Transparency, Competition, and Liquidity

EMA supports market design features that create transparent and reliable price signals capable of facilitating market or auction objectives to channel the allowance or offset units to the participants who most highly value them. Design components should ensure that all participants have both an incentive and interest to ensure that efficient price discovery occurs and is revealed to the market in a timely and transparent manner. If design components include features such as price boundaries and alternative compliance payments, such features must be transparent to market participants, must facilitate competitive market outcomes, and must support the integrity of the market. Also, EMA supports market design that enables diverse participation and competition in environmental markets, since a competitive market reduces liquidity risk and ensures that no one entity can influence the market. Any regulation that could potentially increase the cost for participants should be carefully evaluated as to its impact on market liquidity. EMA does not support efforts to limit participation in environmental trading markets or allowance auctions to only those with compliance obligations.

#### **4) Market Oversight**

Successful market design must include robust measures to protect the market from activity that is illegal or detrimental to the function of the market. EMA supports clearly-defined independent oversight of environmental markets in order to maximize the benefits of competitive commercial behavior in achieving policy goals and providing transparency while guarding against fraud and manipulation and minimizing systemic risk. In addition, EMA supports independent oversight of the market structure and operation, which includes periodic review, and as needed, recommendations for addressing any identified market design flaws.

#### **5) Market Integrity and Stability**

Long-term regulatory and policy certainty will allow a robust market-based system to evolve with price discovery and liquidity. Constantly changing rules creates uncertainty and stifles market development. EMA supports legislative, regulatory, and rulemaking efforts to establish a stable, clearly-defined, and transparent market regime. EMA promotes the inclusion of experienced market participants at all stages of the development process and post-implementation market review process in order to contribute to the overall strength and vibrancy of markets. Both the design process and the post-implementation review process must be transparent to all stakeholders.

In addition, EMA supports the usage of robust tracking mechanisms and methodologies to provide certainty of ownership. Failure to implement a system to track ownership of environmental compliance products can undermine the success of the market. Developing such mechanisms and methodologies must be part of the market design process and must be completed prior to implementing the market design.