

Earthjustice Public Hearing Testimony on the Environmental Protection Agency's Proposed Set Rule for the Renewable Fuel Standard (RFS)

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Peter Lehner

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Good morning. I'm Peter Lehner, attorney at Earthjustice. We have twice represented environmental organizations in litigation against prior RFS rules, and twice the U.S. Court of Appeals has agreed with us that portions of EPA's analysis were arbitrary and capricious. Unfortunately, this rule follows the same pattern—relying on flawed climate analysis to justify unsound volume increases.

The most troubling aspect of the proposed rule is its disregard for the realities of agriculture and its climate impacts. Agriculture is land-intensive. When land is used to grow fuel, it cannot be used to grow food. This inevitably leads to land conversion elsewhere—often of forests or grasslands—to meet global food demand.

This rule proposes to increase the biobased diesel mandate by more than 2 billion gallons above 2025 levels. Meeting this target would require approximately 30 million new acres of soybeans. That land has to come from somewhere—and its conversion will harm the climate, biodiversity, and water quality.

Even EPA admits that estimating climate impacts of biofuels is highly uncertain. Yet the rule moves forward anyway. While different models EPA uses show varying results, all indicate substantial cropland expansion. This means the rule could be slightly helpful—or deeply harmful—for the climate. That range of outcomes demands a much lower mandate.

The past is instructive. Over 20 years, biobased diesel has driven 40% of the increase in vegetable oil use. Oilseed production has expanded by roughly 250 million acres. Yields have not increased, and U.S. imports of vegetable oil have grown in parallel with the RFS mandates—often from tropical regions where soybean and oil palm expansion drives deforestation.

Some biofuel proponents argue that rising prices for crops will suppress food demand, reducing land conversion. But to the billions of food-insecure people in the world, “eat less” is not a viable climate solution.

Biofuels from genuine waste products can help fight climate change. But the proposed volumes—largely crop-based—will harm the climate, degrade ecosystems, and raise consumer costs. EPA should reduce the volumes accordingly.

Carrie Apfel

**Deputy Managing Attorney, Sustainable Food and Farming Program
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Good morning. My name is Carrie Apfel, Deputy Managing Attorney for the Sustainable Food and Farming program at Earthjustice.

While I have many concerns about the volumes proposed for 2026 and 2027, I will focus my time here today on EPA's failure to reassess in this Set Rule whether crop-based biofuels—which have been the main driver of increasing renewable fuel volumes over the life of the RFS program—qualify as renewable fuels.

The Clean Air Act requires EPA to determine which biofuel pathways sufficiently reduce lifecycle greenhouse gas (GHG) emissions to qualify as renewable fuels. For conventional biofuels like corn ethanol, this requires at least a 20 percent reduction compared to fossil fuel emissions; for advanced biofuels like biobased diesel, the requirement is at least a 50 percent reduction.

EPA had an opportunity in this Set Rule to reassess whether these crop-based biofuels meet those thresholds—just as it appears to have done for renewable electricity in this same proposal.

As the science currently stands, there is no assurance that crop-based biofuels meet these definitions. And EPA has long known that this is the case:

- In the previous Set Rule, EPA's literature review revealed a wide range of GHG emissions from corn ethanol and soy diesel, with some studies showing that crop-based biofuels produce even more emissions than fossil fuels.
- In the First Set Rule, EPA's Model Comparison Exercise used three separate models. Two of them found significant net increases in GHG emissions linked to rising biodiesel demand.

These findings undermine any definitive conclusion that crop-based biofuels qualify as conventional renewable fuels or advanced biofuels.

The Draft Regulatory Impact Analysis (RIA) does not change this conclusion. In fact, one of the two models EPA used—GCAM—found that crop-based biofuels may **increase** emissions relative

to a No-RFS baseline over a 30-year period. It also showed that higher mandated volumes could lead to even greater emissions.

This is not a new concern. EPA's own Science Advisory Board (SAB), in its commentary on the First Set Rule, explicitly stated that "[a]ccording to the best available science, it appears there is a reasonable chance there are minimal or no climate benefits from substituting corn ethanol for gasoline or diesel," and urged EPA to "conduct more extensive research into the role the RFS plays in reducing GHG emissions."

The SAB further recommended that EPA directly address whether crop-based biofuels meet the GHG reduction thresholds required by statute.

EPA ignored that essential recommendation then—and it is doing so again now. It is unreasonable for EPA to avoid conducting additional scientific analysis to determine whether these fuels meet statutory standards for renewable fuel.

Ashley Ingram

Attorney, Earthjustice

Good morning. My name is Ashley Ingram, and I am an attorney at Earthjustice. Thank you for the opportunity to speak on this proposed rule.

EPA claims the proposed volumes reflect a careful balancing of the statutory factors outlined in the Energy Independence and Security Act (EISA). But EPA's own analysis makes clear that the proposed volumes for crop-based biofuels would result in overwhelmingly negative impacts—and are therefore arbitrary and irrational.

EPA finds that crop-based biofuels will:

- Emit thousands of tons of additional air pollution;
- Degrade soil and water quality;
- Deplete water quantity; and
- Harm ecosystems and wildlife habitat.

Though EPA admits that the magnitude of these harms is hard to quantify, every one of them weighs in favor of **lower** volumes.

As for climate change, EPA's findings are inconclusive. One model predicts modest emissions reductions; another shows that the rule would actually **increase** emissions. EPA cannot rationally base volume increases on such contradictory outcomes.

Moreover, the proposed volumes would cost consumers dearly—\$4.8 billion in higher food prices and \$13.4 billion in increased fuel prices over two years. EPA tries to minimize these impacts by calculating per-gallon or per-person costs, but the total burden is enormous and should be considered fully.

EPA also claims the rule promotes energy security, but the benefits are meager—just \$406 million, or 3% of the estimated fuel cost increases. And up to 40% of the fuels used to meet these volumes will come from imported feedstocks, raising serious energy security risks.

EPA touts rural economic benefits—100,000 jobs and \$10 billion in development—but concedes these are not **net** gains. They're simply displacements from other sectors.

EPA cannot lawfully prioritize energy security and production while ignoring devastating environmental and economic harms. It must consider all statutory factors holistically.