

Does the EPA's Proposed Rule Spell the End of Independent Biomass Recycling in America?

A market impact analysis by Reiter USA

Author: Kristof Reiter
Founder ReiterUSA.com

At the end of November 2022, the EPA announced its proposed updates to the Renewable Fuel Standard (RFS) Program Standards for 2023-2025 and requested comments from industry stakeholders. It is our opinion that this rule, while well-intentioned, could be detrimental to independent operators in the biofuel feedstock recycling space.

Per the EPA,

"We are also aware there are parties that may have suggestions for how to better apply this requirement specifically to separated food waste feedstocks. We are therefore requesting comment on the separated food waste-specific recordkeeping requirement in 40 CFR 80.1454(j)(1)(ii).375 In particular, we seek comment on how renewable fuel producers using separated food waste as feedstocks can best implement, in a manner consistent with standard business practices within the industry, the requirement to keep records demonstrating where their feedstocks were produced and that are sufficient to verify that the feedstocks meet the definition of renewable biomass."

In other words, if you are a UCO collector in the United States NOW is the time to get educated on the proposed changes, and to let your voice be heard.

A Brief History

Under the Clean Air Act, qualifying renewable fuel must be produced from renewable biomass. To ensure that RIN-generating renewable fuels satisfy this requirement, EPA's regulations contain, among other things, recordkeeping provisions.

But over the years, there's been confusion over what exactly these records must contain and who needs to hold on to them. When the EPA clarified that collectors needed to share with producers the address of each individual location from which they collected oil, some collectors were unwilling or unable to provide this information.

Clean Fuels Alliance challenged the EPA. In response, the EPA has introduced a new solution: optional use of independent auditors in lieu of sharing records directly with producers.

Summarizing the situation, the EPA [wrote](#) that in 2020,

"We also reiterated that, pursuant to the existing recordkeeping provisions at 40 CFR 80.1454(d), renewable fuel producers were still required to "keep documents associated with feedstock purchases and transfers that identify where the feedstocks were produced; these documents must be sufficient to verify that the feedstocks meet the definition of renewable biomass."

The agency added that the location data must include the locations of individual establishments from which oil was collected.

“we also promulgated a provision at 40 CFR 80.1454(j)(1)(ii) requiring renewable fuel producers to keep documents demonstrating the location of any establishment(s) from which the separated food waste stream is collected.”

EPA’s Latest Proposed Solution

The new option is described as follows:

*“While the current regulations require the renewable fuel producer to keep the records on the feedstock source and amount as specified under 40 CFR 80.1454(j), as further explained below, we are proposing an **OPTION** to **allow independent auditors to verify records** held by the feedstock supplier by **leveraging the biointermediates provisions** of the RFS program.”*

While it may seem like a win-win that allows companies freedom to choose whether to adopt the use of a 3rd party auditor, approval of this rule, unfortunately, could very well expedite consolidation, limit competition, and drive independent collectors out of business all while having little to no impact on fraud.

The decision of whether to use a third-party auditor is offered to the producers, not the used cooking oil sellers. This splits buyers into two tiers: QAP buyers who are held to one standard, and non-QAP buyers who are held to another.

Currently, only two approved QAP auditors exist. The loss of even one auditor would create a zero-competition scenario where audit costs could become undisciplined by competition.

Biointermediaries as a Solution?

The code above explicitly states that the option to allow an independent auditor to verify records held by the feedstock supplier would need to leverage the biointermediates provisions of the RFS program.

Those provisions state:

*“A biointermediate producer must transfer all biointermediates produced from a **single biointermediate facility to a single renewable fuel production facility** as designated under [§ 80.1450\(b\)\(1\)\(ii\)\(B\)\(1\)](#).”*

The audit arrangement means that a UCO collector could not easily move their sales to a new producer if the current buyer’s bids were uncompetitive, their facility experienced a breakdown, or in the event of financial concerns with the counterparty.

Registering to sell to a new buyer could take time, resulting in a diminished negotiating position for the seller/biointermediary.

Where Do Traders and other B2B Product Transfers Fit in?

The rule also seems to eliminate a pathway for collectors to work with traders, or each other. There seems to be no language allowing a trader to hold records or be included in the audit. Additionally, the limited ability to shift from one buyer to another substantially degrades the ability of a trader to create value for the collector.

Traders do more than negotiate the sale of aggregated oil. They are transaction experts who market in bulk to large users, provide bridge financing and efficient logistical execution, and have access to price discovery that an individual small recycler cannot attain. By doing these things well, a trader can provide a vendor with a price that is often higher than they can get on their own. The absence of independent traders would diminish the ability of independent UCO collectors to attain bulk market pricing.

An Impossible Decision for UCO Collectors

There are 3 possible buyer types: those that are non-QAP, those that are strictly QAP, and buyers willing to do both. Currently, 90% of RINs are produced by non-QAP buyers and 10% by QAP buyers. As of yet, no buyers have made the decision to offer both pathways.

A seller's first option is to sell oil via a non-QAP pathway, providing records. To do this, they will hand over their confidential business records to those producers. A benefit of this scenario is that they can avoid being forced to register as a biointermediary, and would therefore have access to shorter duration contracts.

A seller's second option is to sell their oil via a QAP pathway. This not only limits their options for bids, but they must lock themselves in to selling to one producer at a time.

A Path Forward

We urge the EPA to hold off on putting the rule into effect until these problems can be rectified, and a solution can be reached to prevent the expedited consolidation and monopolization of this robust market. Implementing the rule as-is could cause irreparable damage to the industry.

Closing Statements

To be clear, The Reiter Companies are NOT alleging that the major integrated biofuel producers today seek an outcome where they gain unfair pricing advantage against smaller local oil

recyclers and biofuel producers by limiting their sales options and remove their ability to utilize traders, only that the current EPA's proposed rule would codify their ability to do so as currently written.