

The Renewable Fuel Standard: The Final Rule

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Background

- The current renewable fuel standard program (“RFS1”) was established under the Energy Policy Act of 2005 (“EPAAct”)
- In 2007, Congress passed the Energy Independence and Security Act of 2007 (“EISA”), which dramatically expanded the RFS1 and required EPA to promulgate new regulations to implement these changes.
- On February 3, 2010, the Environmental Protection Agency (“EPA”) issued a final rule to implement the new renewable fuels standard program (“RFS2”)

Primary Changes Under RFS2

- Expansion of the applicable renewable volume obligation (“RVO”)
- Separation of RVOs into four separate categories of renewable fuel
- New definitions of renewable fuel, advanced biofuel, biomass-based diesel, and cellulosic biofuel
- Renewable fuels must meet certain lifecycle emission reduction thresholds
- A new definition of renewable biomass
- Expansion of fuel types subject to the standards, including diesel
- A cellulosic biofuel waiver now available under the RFS2 program
- Municipal solid waste (“MSW”) may be included as renewable biomass in some circumstances
- Renewable fuel from existing facilities is exempt from the lifecycle GHG emission reduction threshold of 20% up to a baseline volume for that facility that will be established at the time of registration

Who is an obligated party under the RFS2 program?

- Obligated parties are those that produce or import finished gasoline or unfinished gasoline that becomes finished gasoline upon the addition of an oxygenate blend downstream from the refinery or importer.
 - A party that simply blends renewable fuel into gasoline or diesel fuel is not an obligated party.

Renewable Volume Obligation (RVO)

- Obligated parties will demonstrate compliance with the RFS2 by meeting a renewable volume obligation (“RVO”) through the accumulation of Renewable Identification Numbers (“RINs”)
- Each gallon-RIN = one gallon of renewable fuel for compliance purposes.
- Obligated parties must determine their RVOs based on the volume of gasoline or diesel fuel they produce and import during the year
- They must demonstrate compliance with their RVOs in an annual report, due Feb 28th the following year

Renewable Volume Obligation (RVO) Con't

- RVOs are now calculated based on production or importation of both gasoline *and diesel* fuels, rather than gasoline alone.
 - Gasoline
 - Both reformulated gasoline blendstock for oxygenate blending ("RBOB") and unfinished conventional gasoline designed for downstream oxygenate blending ("CBOB")
 - Diesel
 - Petroleum-based diesel fuel that is designated as motor vehicle, nonroad, locomotive, and marine diesel fuel ("MVNRLM")
 - Transportation fuels other than gasoline or MVNRLM diesel fuel (natural gas, propane, and electricity) are not subject to the standards

What are the New Standards?

■ Four Separate Standards

- **Cellulosic Biofuel: 16 billion gallons by 2022 – waiver available**
 - Renewable fuel produced from cellulose, hemicellulose, or lignin each of which must originate from renewable biomass. Includes any biomass-to-liquid fuel
 - E.g., cellulosic ethanol, BTL diesel, green gasoline, etc.
 - Must meet a 60% lifecycle GHG threshold
- **Biomass-Based Diesel: 1 billion gallons by 2012 and beyond**
 - E.g., Biodiesel, “renewable diesel” if fats and oils not co-processed with petroleum
 - Must meet a 50% lifecycle GHG threshold
- **Advanced Biofuel: Total of 21 billion gallons by 2022**
 - Essentially anything but corn starch ethanol
 - Includes cellulosic biofuels and biomass-based diesel
 - Must meet a 50% lifecycle GHG threshold
- **Renewable Biofuel: Total of 36 billion gallons by 2022**
 - Ethanol derived from corn starch – or any other qualifying renewable fuel
 - Now includes heating fuel and jet fuel, as well as fuel used in motor vehicles, motor vehicle engines, nonroad vehicles or nonroad engines.
 - Must meet 20% lifecycle GHG threshold - Only applies to fuel produced in new facilities

Renewable Fuel Volume Requirements (billion gallons)

Year	Cellulosic biofuel requirement	Biomass-based diesel requirement	Advanced biofuel requirement	Total renewable fuel requirement
2008	n/a	n/a	n/a	9.0
2009	n/a	0.5	0.6	11.1
2010	0.1	0.65	0.95	12.95
2011	0.25	0.80	1.35	13.95
2012	0.5	1.0	2.0	15.2
2013	1.0	A	2.75	16.55
2014	1.75	A	3.75	18.15
2015	3.0	A	5.5	20.5
2016	4.25	A	7.25	22.25
2017	5.5	A	9.0	24.0
2018	7.0	A	11.0	26.0
2019	8.5	A	13.0	28.0
2020	10.5	A	15.0	30.0
2021	13.5	A	18.0	33.0
2022	16.0	A	21.0	36.0
2023+	B	B	B	B

“Nested” RVOs

- The new volume requirements are not exclusive, and are “nested” requirements.
 - Renewable fuel that meets the requirement for cellulosic biofuel or biomass-based diesel are valid for meeting the advanced biofuel requirement.
 - Renewable fuel that meets the requirement for advanced biofuel is also valid for meeting the total renewable fuel requirement.
- May not use single RIN to meet two RVOs

2010 Standards

- EISA requires the total renewable fuel standard of 12.95 billion gallons
- This volume, represented as a fraction of a blender's or importers gasoline and diesel volume, must be renewable fuel.

Fuel Category	% of Required Renewable Fuel	Vol. of Renewable Fuel (bil gal)
Cellulosic biofuel	0.004%	0.0065
Biomass-based diesel	1.10%*	1.15*
Advanced biofuel	0.61%	0.95
Renewable fuel	8.25%	12.95

* Combined 2009/2010 Biomass-Based Diesel Volumes Applied in 2010

2010 Standards Special Rules

- Cellulosic Biofuel
 - 2010 cellulosic biofuel standard is 5 million gallons (6.5 million ethanol equivalent), which is significantly less than the volume EISA required for 2010
 - EPA will make cellulosic credits available to obligated parties for end-of-year compliance, should they need them, at a price of \$1.56 per gallon (gallon-RIN)
- Biomass-based Diesel
 - EPA combined the 2010 biomass-based diesel requirement of 0.65 billion gallons with the 2009 biomass-based diesel requirement of 0.5 billion gallons, to require that obligated parties meet a combined 2009/2010 requirement of 1.15 billion gallons by the end of 2010

Renewable Identification Numbers (RINs)

- Each RIN = one gallon of renewable fuel in demonstrating compliance with RVOs.
- Under RFS2, RINs will continue to have the same 38-character numeric code of the following form:

RIN: KYYYYCCCCFFFFFFBBBBRRDSSSSSSSSEEEEEEEE

- The major change under RFS2 is that the “D Code” will now identify the renewable fuel category
 - “D code” = 1 for cellulosic biofuel
 - = 2 for biomass-based diesel
 - = 3 for advanced biofuel
 - = 4 for other renewable fuel

Assigning a “D Code”

- Renewable fuel producers and importers use a “lookup table” to assign the appropriate “D code”
- By identifying their applicable pathway (combination of fuel type, feedstock, and process), the look up table specifies the appropriate D code to use in the RIN
- Regulations also provide a mechanism for dealing with multiple simultaneous pathways, for example
 - Two different types of fuel made from the same feedstock
 - Two different feedstocks used to produce the same fuel type
 - Processes that use both renewable feedstocks and fossil fuels

RIN Generation

- Producers and importers of renewable fuel *may* generate RINs if the fuel:
 - Is appropriately assigned a “D Code”
 - Is demonstrated to be produced from “renewable biomass”
- However, the EPA is *not requiring* producers and importers of renewable fuels to generate RINs.
 - RFS2 permits U.S. manufacturers to produce biofuels and enter them into the domestic stream of commerce without generating a corresponding RIN.

Cases in which RINs are not generated

- RINs may not be generated for fuel that is not designated or intended for use as transportation fuel, heating oil, or jet fuel.
- Small producer/importer threshold:
 - Fuel producers and importers that produce/import less than 10,000 gallons a year of renewable fuel, are not required to generate and assign RINs
- Temporary Volume threshold:
 - Renewable fuel producers that produce less than 125,000 gallons a year of renewable fuel are not required to generate RINs.
- Importers can not generate RINs for fuel imported from a foreign producer that is not registered with EPA
- Importers can not generate RINs for renewable fuel that has already been assigned RINs by a registered foreign producer.

Deficit or Carryover RINs

- Obligated parties may:
 - Transfer excess RINs to another party or
 - Retain excess RINs for use in complying with its RVOs in the following year (subject to a 20% rollover cap)
 - However, parties can not carry deficit RINs for two consecutive years
- Non-obligated parties may not carry RINs over in the next year

RIN Expiration

- RINs are generally valid for compliance during the calendar year in which it was generated, or the following calendar year.
- RINs not used for compliance purposes for the calendar year in which it was generated, or for the following calendar year, will be considered expired RINs.

Invalid RINs

- An invalid RIN is a RIN that is any of the following:
 - A duplicate of a valid RIN
 - Was based on incorrect volumes
 - Was based on an incorrect equivalence value
 - Has expired
 - Does not meet the renewable fuel definition
 - Was assigned an incorrect “D” code for the associated volume of fuel.
 - Was improperly separated
 - Was otherwise improperly generated.
- In the event that the same RIN is transferred to two or more parties, all such RINs are deemed invalid, unless EPA determines that some portion of these RINs is valid.

Equivalence Values

- The equivalence value is a number that is used to determine how many gallon-RINs can be generated for a batch of renewable fuel
- Equivalence Value for each renewable fuel will be based on its energy content in comparison to ethanol, adjusted for renewable content.
 - The cellulosic biofuel, advanced biofuel, and renewable fuel standards can be met with ethanol equivalent volumes of renewable fuel. However, the biomass-based diesel standard must be met on a biodiesel-equivalent energy basis.
- Equivalence values are assigned for certain renewable fuels as follows:
 - Ethanol which is denatured shall have an equivalence value of 1.0.
 - Biodiesel (mono-alkyl ester) shall have an equivalence value of 1.5.
 - Butanol shall have an equivalence value of 1.3.
 - Non-ester renewable diesel with a lower heating value of at least 123,500 Btu/gal shall have an equivalence value of 1.7.
 - A gallon of renewable fuel represents 77,000 Btu (lower heating value) of biogas, and biogas shall have an equivalence value of 1.0.
 - A gallon of renewable fuel represents 22.6 kW-hr of electricity, and electricity shall have an equivalence value of 1.0.

Verifying Feedstocks

- Renewable fuel producers may only generate RINs for fuels made from feedstocks meeting the definition of “renewable biomass”
- Three Options for Showing Feedstock Compliance
 1. Satisfy recordkeeping and reporting requirements for their individual facilities
 2. Form a consortium to hire an independent third-party to conduct an annual renewable biomass quality-assurance survey, based on a plan approved by EPA.
 3. An “aggregate compliance approach” applicable only to domestic crops and crop residues.
 - Renewable fuel producers using domestically grown crops and crop residue are automatically in compliance. Those producers need not comply with the recordkeeping and quarterly reporting requirements established for the non-crop based biomass sector.

EPA Moderated Transaction System (EMTS)

- Parties required to register with EPA must establish an account with the EPA Moderated Transaction System (EMTS) at least 60 days prior to engaging in any RIN transactions, or July 1, 2010, whichever is later.
- EMTS monitors RIN transfers between interested parties
- Of note, the sale, and particularly the price of the sale, must be reported to the EPA through the EMTS.
- After RINs have entered the system, parties may then trade them based on agreements outside of EMTS.
- EMTS will be optional for calendar year 2010 and mandatory for calendar year 2011.
- EMTS is still under development; but a Beta Version is available here: <http://www.epa.gov/otaq/fuels/renewablefuels/epamts.htm>

Main Requirements Under RFS2

- Registration/re-registration under RFS2
- Reporting Requirements
- Recordkeeping Requirements

Registration Requirements

- Obligated Parties, Producers, Importers and Exporters of renewable fuel must register or re-register under the RFS2 program by **July 1, 2010**, or 60 days prior to RIN ownership - whichever date comes later.
- Other Interested Parties. Any other party who owns RINs, or intends to own RINs, must register or re-register with the EPA and must receive an EPA-issued company identification number prior to owning any RINs. Registration information must be submitted to EPA at least 30 days prior to RIN ownership.

Reporting Requirements

- Types of Reports
 - RIN Generation Report: Renewable fuel producers and importers above 10,000 gallons/year must report to EPA on each batch of their fuel and indicate whether or not RINs are generated for the batch.
 - RIN Transaction Report: Under the RFS2, there are two changes to the RIN Transaction Report. First, for reports of RINs assigned to a volume of renewable fuel, the volume of renewable fuel must be reported. Second, RIN price information must be submitted for transactions involving both separated RINs and RINs assigned to a renewable volume. This information was not collected under RFS1.
 - Production Outlook Reports: Starting in 2010, the EPA will require annual production outlook reports from all domestic renewable fuel producers, foreign renewable fuel producers who register to generate RINs, and importers of renewable fuels.

Reporting Requirements Con't.

- Obligated parties and exporters must submit to EPA:
 - Annual compliance reports due 2/28 of the following year
 - RIN transaction reports
 - Quarterly RIN activity reports
 - Annual Production Reports
- Renewable fuel producers (domestic and foreign) and importers who generate RINs must submit to EPA:
 - For RINs generated beginning on July 1, 2010, RIN generation reports for each facility owned by the renewable fuel producer or importer
 - RIN generation and transaction reports
 - Quarterly RIN activity reports
 - Annual Production Reports
- All Other RIN-owning parties must submit to EPA:
 - For RIN transactions beginning on July 1, 2010, RIN transaction reports listing each RIN transaction
 - RIN transaction information listing each RIN transaction submitted to the EMTS

Attest Engagement Requirements

- Producers of renewable fuels, obligated parties, exporters, and any party who owns RINs must arrange for an annual attest engagement.
- The attest engagement report for any given year must be submitted to EPA by no later than May 31 of the following year.
- As with the RFS1 program, an attest engagement must be conducted by a Certified Public Accountant ("CPA") or Certified Internal Auditor ("CIA"), who is independent of the party whose records are being reviewed, and who will follow agreed-upon procedures to determine whether underlying records, reported items, and transactions agree.

Recordkeeping Requirements

- Requirements for obligated parties and exporters. Beginning July 1, 2010, any obligated party or exporter of renewable fuel must keep:
 - ❑ Product transfer documents
 - ❑ Copies of all reports submitted to EPA
 - ❑ Records related to each RIN transaction
 - ❑ Records related to the use of RINs used for RVO compliance
 - ❑ Records related to the separation of assigned RINs from renewable fuel volume

Recordkeeping Requirements Con't

- RIN-Generating Domestic Renewable Fuel Producers
 - ❑ Product transfer documents
 - ❑ Copies of all reports submitted to EPA
 - ❑ Records related to the generation/assignment of RINs
 - ❑ Records related to each RIN transaction
 - ❑ Records related to the production, importation, ownership, sale or use of any volume of renewable fuel for which RINs were generated
 - ❑ Copies of all registration documents
 - ❑ Documents associated with feedstock purchases and transfers that identify where the feedstocks were produced and are sufficient to verify that feedstocks used are “renewable biomass” if RINs are generated.

Recordkeeping Requirements Con't

- RIN-Generating Importers of Renewable Fuel
 - ❑ Product transfer documents
 - ❑ Copies of all reports submitted to EPA
 - ❑ Records related to the generation, assignment, transfer of RINs for each facility
 - ❑ Copies of registration documents
 - ❑ Records related to the import of any volume of renewable fuel that the importer designates for use as transportation fuel, jet fuel, or heating oil.
 - ❑ Records of feedstock purchases and transfers associated with renewable fuel for which RINs are generated, sufficient to verify feedstocks

Recordkeeping Requirements Con't

- Other parties that own RINs. Beginning July 1, 2010, any other party that owns RINs must keep:
 - Product transfer documents
 - Copies of all reports submitted to EPA
 - Records related to each RIN transaction by renewable fuel category, including:
 - A list of the RINs owned, purchased, sold, retired, or reinstated.
 - The parties involved in each RIN transaction including the transferor, transferee, and any broker or agent.
 - The date of the transfer of the RIN(s).

Additional Requirements for Foreign Producers of Renewable Fuel

- Foreign Producers of Renewable Fuel
 - Same requirements as domestic producers, (registering feedstocks, facilities, and products; and on-site independent engineering)
 - RIN-generating foreign producer:
 - The ethanol must be dewatered and denatured by the foreign producer prior to leaving the production facility and prior to the generation of RINs.
 - Must strictly segregate a batch of renewable fuel and its associated RINs from all other volumes of renewable fuel as it travels from the foreign producer to the importer.
 - Foreign producer of renewable fuel can choose not to participate in the RFS2 program, and can still export to the U.S., but no RINs may be generated from their fuel.

Best Practices to Ensure Compliance



Ensuring Compliance

- Domestic Producers:
 - ❑ Need documents from feedstock suppliers related to “renewable biomass” to verify feedstocks
 - ❑ Maintain records – even if feedstock does not qualify
 - ❑ Update RFS2 registration
 - Determine applicable D code with EPA lookup table
 - Arrange for independent review
 - Forms are now available
 - ❑ Upgrade technology
 - New RIN generation (D codes, equivalence values) and tracking
 - Transition to EMTS (Beta Version now available)

Ensuring Compliance

- Foreign Renewable Fuel Producers
 - ❑ Generally has same requirements as domestic producers
 - ❑ Can decline to generate RINs, but must still register feedstock information if importers wish to generate RINs
 - ❑ Must submit to to EPA inspections and jurisdiction; segregate renewable fuel and its associated RINs
- Renewable Fuel Importers
 - ❑ Generate RINs only if: (1) foreign producer declines; and (2) documentation of feedstock verification
 - ❑ Register or Re-Register under RFS2 program
 - ❑ Transition to EMTS (Beta Version now available)
 - ❑ Discuss registration and feedstock verification with foreign suppliers; receive and maintain documents from suppliers

Prohibited Acts and Penalties



Prohibited Acts Under RFS2

- Renewable fuels producer or importer violation
 - Must comply with RFS2 requirements – meet RVOs
- RIN generation and transfer violations No person shall:
 - Generate a RIN for a fuel that is not a renewable fuel, or for which the applicable renewable fuel volume was not produced.
 - Create/transfer a RIN that is invalid or not properly identified
 - Introduce into commerce any renewable fuel produced from a feedstock or through a process that is not described in the person's registration information.
- RIN use violations
 - Must acquire sufficient, valid RINs to meet RVOs if obligated
 - Must not use a validly generated RIN to meet RVOs in an application other than for use as transportation fuel, jet fuel, or heating oil

Who is liable for violations?

- Liability for violations of prohibited acts
 - Any person who violates, or causes another to violate, a prohibited act is liable
- Parent corporation liability
 - Any parent corporation is liable for any violation that is committed by any of its subsidiaries.
- Joint venture liability
 - Each partner to a joint venture is jointly and severally liable for any violation of this subpart that is committed by the joint venture operation.

Penalties under the RFS program?

- Civil penalties of up to **\$37,500 per day**, per each individual violation, plus the amount of any economic benefit or savings resulting from each violation.
 - A failure to acquire sufficient RINs to meet a party's renewable fuels obligation constitutes a separate day of violation for each day the violation occurred during the annual averaging period.

Question and Answer Section



- If you have additional questions, please contact:
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