Van Ness Feldman LLP
vnf.com

EPA Proposes Updated RFS Volume Requirements and a New RFS Credit Market for Electric Vehicles

DECEMBER 6, 2022

Kyle Danish, Tracy Tolk, Britt Fleming, Janet Anderson and A.J. Singletary

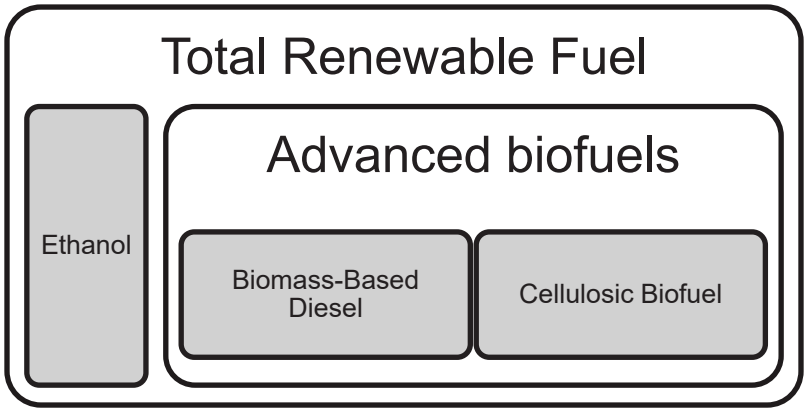
On December 1, 2022, the Environmental Protection Agency (EPA) released a proposed rule under the Renewable Fuel Standard (RFS) program. The proposal would set new volume requirements for the use of renewable fuel for transportation purposes. In addition, the proposal would establish a long-awaited rule structure for crediting the use of biomass-based electricity in vehicles—creating a substantial new market in regulatory credits. Comments on the proposal are due by February 10, 2023.

About the Renewable Fuel Standard

Congress added the RFS program to the Clean Air Act in 2005 and significantly expanded the program as part of the Energy Independence Security Act of 2007. The RFS has dual aims of promoting energy security by reducing dependence on foreign oil and mitigating climate change.

The RFS provisions require use of certain volumes of renewable fuel to replace or reduce petroleum-based transportation fuel, some types of heating oil, and jet fuel. The RFS defines renewable fuel as fuel derived from biomass.

The statute establishes a set of "nested" categories of renewable fuels, consisting of biomass-based diesel; cellulosic biofuel; advanced biofuels (a category that includes cellulosic biofuels); and total renewable fuel (a category that includes the prior categories plus conventional—typically corn-based—ethanol). The categories are distinguished by the extent to which their life-cycle greenhouse gas emissions are lower than petroleum. (See diagram below)



For each year through 2022, Congress codified specific volume requirements for each category of renewable fuel. After 2022, EPA sets the volume requirements based on a set of statutory criteria.

RFS "obligated parties"—refiners and fuel importers—are subject to these annual volume requirements. They comply by acquiring and surrendering RFS regulatory credits—referred to as Renewable Identification Numbers (RINs)—which reflect amounts of renewable fuel that have been produced and used for transportation purposes.

The EPA has promulgated "pathways" designating fuels and feedstocks that qualify under the various categories.

The RFS program has been the subject of constant litigation and the current program reflects various court decisions and settlements.

Van Ness Feldman LLP
vnf.com

Proposed Volume Requirements for 2023-2025

The proposed rule outlines volume requirements for each category of fuel for 2023 through 2025. The total requirements rise from 20.99 billion gallons (bg), or about 12% of the transportation fuel supply in 2022 to 21.07 bg in 2023, 21.87 bg in 2024, and 22.68 bg in 2025. The amounts for 2022 and 2023 incorporate a 0.25 bg "supplement" to address a court remand of EPA's volume requirements for 2016. At the level of individual categories, the proposed volumes reflect gradual growth in the cellulosic biofuel and advanced biofuel categories and a steady state for conventional ethanol.

This is the first time that the EPA has proposed volume requirements for multiple years. The agency suggests that the multi-year approach could promote regulatory and market certainty.
The EPA also is proposing various other modifications to the RFS regulations, including with respect to third-party assessments, use of fuel in ocean-going vessels, and other program elements. In addition, the agency is soliciting comments on how to account for carbon capture and sequestration in fuel production.

Crediting Use of Biogas-based Electricity in Vehicles

In 2014, the EPA recognized a crediting "pathway" for the use of electricity as a renewable transportation fuel. To qualify as a "renewable fuel," the EPA determined that the electricity needed to come from biogas production—including biogas produced from landfills, municipal wastewater treatment facility digesters, agricultural digesters, and municipal solid waste (MSW) digesters.

However, the agency struggled to establish an "eRIN" crediting system for the electricity pathway that would meet the EPA's standards for program integrity, including avoiding double-counting risks. Multiple types of entities in the supply chain have argued that they have the best claim to be the eRINs "generator"—biogas producers, electricity generators, charging station owners, fleet owners, representatives of EV owners, and automakers (also known as Original Equipment Manufacturers or "OEMs").

After several years of deliberation, the EPA has designated the OEM as the credit generator in the eRIN system. Under the proposed rule, an OEM would calculate the total electricity consumed by its new and previously sold light-duty vehicles. Then, the OEM would enter into contracts with generators of biogas-based electricity to match some or all of the electricity consumed by the OEM's fleet. To be clear, the contracts would not necessarily be for the electricity itself but would convey rights to the OEM to claim eRINs attributable to the electricity production. (The electricity generators would remain free to sell their electricity and other environmental attributes to other parties.) Having obtained these contractual rights, the OEM would "generate" eRINs that they could then sell to refiners and fuel importers that have RFS obligations.

The EPA envisions that the key parties in the supply chain—the biogas producer, the electricity generator, and the OEM—effectively would share in the eRIN value, thereby creating incentives for more electricity generation from biogas and more EV sales.

The EPA is soliciting comment on this approach, as well as alternatives that the agency has proposed to reject. In addition, the EPA is taking comment on a comprehensive framework of review and registration requirements that would apply to biogas producers, renewable electricity generators, and the OEMs. The deadline for submitting comments is February 10, 2023.

For More Information

Van Ness Feldman, LLP can provide assistance with analysis of, comments on, and compliance with the EPA's proposed Renewable Fuel Standard rule. Please contact Kyle Danish, Britt Fleming, Tracy Tolk, Janet Anderson, A.J. Singletary, or any other member of the Environmental, Public Policy, and Energy Transition Practices for further assistance.

Follow us on Twitter @VanNessFeldman