

RENEWABLE FUEL STANDARD (RFS) FLEXIBILITY PROVISIONS

The Renewable Fuel Standard (RFS) regulation contains a number of provisions that provide both compliance flexibility for obligated parties and regulatory flexibility for the Environmental Protection Agency (EPA). These measures are intended to: 1) afford EPA the ability to administratively adjust RFS requirements on an annual basis in light of prevailing fuel market and economic conditions; and, 2) provide obligated parties the ability to comply with annual RFS requirements in the event of a shortage of renewable fuel or other market anomaly.

Obligated parties, typically refiners and importers, demonstrate that they have met or exceeded their annual RFS blending requirements by submitting RINs (Renewable Identification Numbers). In essence, RINs are serial numbers assigned to every gallon of renewable fuel. When a refiner or blender purchases a gallon of renewable fuel, they also receive the RIN. When that gallon of renewable fuel is blended with gasoline or diesel fuel and placed into commerce, the obligated party separates the RIN from the gallon. The RIN can then be submitted to EPA to demonstrate compliance, banked for compliance with future RFS requirements, or sold to other regulated parties on the open market.

COMPLIANCE FLEXIBILITY FOR OBLIGATED PARTIES

- **RIN Banking and Trading Provisions:** If an obligated party blends more renewable fuel than is required by the RFS, it can sell its surplus RINs to other obligated parties who may not have blended enough renewable fuel to meet their obligation. Alternatively, the obligated party can bank the surplus RINs for future compliance use. Further, non-obligated third parties are also allowed to buy, sell and hold RINs.
- **RIN Roll-Over Allowance:** The RFS regulations allow obligated parties to meet up to 20 percent of their current year blending obligation with RINs generated in the previous year. Thus, RINs have a two-year compliance life, adding a significant measure of flexibility to the program. This provision was intended to ensure obligated parties are able to comply with annual requirements even in the event of marketplace anomalies that may result in temporary shortages of renewable fuel.
- **Deficit Carry-Forward Provision:** If an obligated party is unable to blend the necessary quantity of renewable fuel to comply with its annual requirement, and is also unable to obtain sufficient RINs from other parties to cover the obligation, it may carry a RIN deficit into the following compliance year. There is no limitation on the size of the deficit that may be carried forward; the only requirement is that both the deficit from the previous year and the obligation for the current year be fully reconciled.
- **Small Refiner Exemptions:** EPA has historically exempted small refiners from complying with the RFS. While the blanket exemption for small refiners has expired, small refiners may still petition EPA for an exemption from RFS requirements.
- **RIN Interchangeability:** The RFS consists of several “nested standards” that require obligated parties to use quotas of certain renewable fuels, with each type of renewable fuel having its own distinctive RIN type. The “advanced biofuel” standard is nested within the overall “renewable fuel” standard. The “advanced biofuel” standard includes requirements for “cellulosic biofuel” and “biomass-based diesel.” In the event of a shortage of conventional biofuel (e.g., grain-based ethanol), any “advanced biofuel” can

be used to meet RFS requirements for “renewable fuel.” For example, if there is a shortage of grain-based ethanol, imported sugarcane ethanol or biodiesel (both of which are classified as advanced biofuels) can be used to meet conventional renewable fuel requirements.

ADMINISTRATIVE FLEXIBILITY FOR EPA

- **Annual Renewable Volume Obligation (RVO) Percentage:** On an annual basis, EPA conducts a rulemaking to establish actual RFS blending requirements for obligated parties. Based on the statutory RFS volumetric requirements, projected gasoline and diesel consumption, and other factors, EPA establishes a percentage that represents the share of an obligated party’s fuel that must be constituted by renewable fuels. Because the annual RVO is a percentage, the actual RIN obligation may be lower than the statutory volume if actual gasoline and/or diesel consumption turns out to be lower than projected at the time the RVO was established. In this way, *the RFS is sensitive to changes in gasoline and diesel demand* that occur within the course of the year.
- **Cellulosic Biofuel Waiver Provisions:** EPA has the authority to reduce the annual statutory cellulosic biofuel requirement to the projected volume available during the calendar year. EPA has done this every year since the RFS2 was promulgated. In 2012, for instance, EPA reduced the cellulosic biofuel requirement from the statutory level of 500 million gallons to just 10.45 million gallons.
- **Advanced Biofuel Standard Adjustment:** Through the annual rulemaking process, EPA may also reduce the annual advanced biofuel requirement by an amount commensurate with the cellulosic biofuel waiver.
- **Total RFS Adjustment:** EPA also has the authority to reduce the total annual RFS requirement by the amount of the cellulosic biofuel and advanced biofuel waivers.
- **Total RFS Waiver Authority:** EPA is empowered by the statute to waive any part of the RFS if the Administrator determines the program is causing “severe harm” to the economy or environment, or if there is “inadequate domestic supply.” States and parties subject to RFS requirements may also petition the Administrator to consider waiving the RFS, in whole or in part, based on these criteria.
- **Future Modification of Applicable RFS Volumes:** If the Administrator waives at least 20 percent of the applicable RFS volume requirement set forth in the statute for 2 consecutive years, or at least 50 percent of such volume requirement for a single year, EPA must modify the applicable statutory volumes for 2016 and beyond.

CONCLUSION

Through various provisions allowing banking and trading of RIN credits, obligated parties have extraordinary flexibility to ensure compliance with annual RFS requirements. Additionally, EPA has tremendous latitude in administering the RFS program on a year-to-year basis. This combination of compliance and regulatory flexibility ensures obligated parties can meet RFS requirements even in the face of unusual market anomalies. Accordingly, these flexibilities render legislative reform of the RFS program unnecessary and imprudent.