2019 RVO Proposed Rule

On June 26th, the U.S. Environmental Protection Agency (EPA) released a pre-publication version of its proposed rule for 2019 renewable volume obligations (RVOs) under the Renewable Fuel Standard (RFS).

The proposed 2019 RVOs for each biofuel category are shown below, along with the final 2018 RVOs and the 2019 statutory volumes from the Energy Independence and Security Act of 2007.

(All figures in millions of gallons)	2018 Final	2019 Proposed	2019 Statutory
Cellulosic Biofuel (D3/D7)	288	381	8,500
Biomass-Based Diesel (D4)*	3,150	3,150	1,500
Undifferentiated Advanced Biofuel (D5)	852	1,349	3,000
TOTAL ADVANCED BIOFUEL (D3/D4/D5/D7)	**4,290**	**4,880**	**13,000**
Residual Renewable Fuel (Conventional) (D6)	15,000	15,000	15,000
TOTAL RENEWABLE FUEL (All D-codes)	**19,290**	**19,880**	**28,000**

**BBD volume shown as ethanol-equivalent gals. (BBD generates 1.5 RIN per gal.)*

At first blush, the proposed conventional biofuel volume of 15 BG and the proposed increases in cellulosic, advanced, and total renewable fuels may appear to be positive signals and supportive of growth in the production of all forms of biofuel. However, EPA's failure to modify its approach to granting small refinery waivers largely renders the RVOs meaningless and it is highly unlikely that 15 BG of actual conventional biofuel blending will be required to meet the final 2019 RVO.

Use of Cellulosic Waiver Authority

EPA proposes to use its statutory cellulosic waiver authority to reduce the cellulosic biofuel RVO from the statutory level of 8.5 BG to 0.381 BG in 2019, a waiver of 8.12 BG. When EPA uses the cellulosic biofuel waiver, the statute allows the agency to also reduce the advanced biofuel standard and the total renewable fuel standard by an amount that is the "same as" or "lesser than" the amount of the cellulosic biofuel waiver. For 2019, EPA is proposing to apply the full amount (8.12 BG) of the cellulosic waiver to the total advanced biofuel standard, resulting in the advanced biofuel total being reduced from the statutory volume of 13 BG to 4.88 BG. EPA also proposes to reduce the total RFS by this same volume, resulting in a drop from the statutory level of 28 BG to 19.88 BG.

In proposing to set the cellulosic biofuel RVO at 0.381 BG, EPA assumes 0.358 BG will come from biogas and just 0.024 BG will come from liquid cellulosic biofuels. Further, EPA assumes only 0.100 BG of imported sugarcane ethanol will be available to meet the 2019 RVOs, meaning compliance will rely heavily upon excess volumes of biodiesel production.

Triggering Re-set Provisions

EPA is proposing to waive the total RFS by 29% in 2019. This follows a 26% waiver in 2018. Thus, if finalized as proposed, 2019 would be the second consecutive year that the total RFS would be waived by 20% or more, satisfying the statutory criteria to trigger a re-set of the RFS volumes for 2020 and beyond. It is believed that EPA staff is already in the process of piecing together a "reset rule," as the 2018 RVO proposal last summer disclosed that "…the Administrator has directed EPA staff to initiate the required technical analysis to inform a reset rule."

RIN Market Operation

In response to comments from stakeholders, EPA states that it is considering—but not formally proposing—steps that could improve the transparency of RIN market. Possible actions include increasing the breadth and frequency of RIN data reported by EPA. The Agency also said it is considering changes to who may purchase and hold RINs, the duration for which RINs may be held, and more formal cooperation with CFTC on management of the RIN market. If EPA decides to pursue any of these changes, it would publish a separate proposed rulemaking and invite public comment.

Responding to *Americans for Clean Energy v. EPA* Remand

RFA and other organizations (collectively, "Americans for Clean Energy") successfully sued EPA over its abuse of the "general waiver authority" in setting RVOs for 2014-2016. As an outcome of that case, the court vacated EPA's decision to reduce the 2016 conventional biofuel RVO from 15 BG to 14.5 BG and remanded the rule to EPA for remedy. EPA's 2019 proposal does not address the remand or reallocate the 500 million gallons as directed by the court. Rather, EPA says only that it will "respond to the court's remand in a separate process" and any comments on the issue "will be treated as outside the scope of this rulemaking."

Carryover RINs

EPA plans to maintain its position that a "buffer" of carryover RINs must be maintained and that RIN stocks should not be considered in determinations of the adequacy of domestic supplies to meet the RVOs.

EPA also re-estimated the size of the carryover RIN bank, determining that "there are currently approximately **3.06 billion total carryover RINs available**, an increase of 840 million RINs from the previous estimate of 2.22 billion total carryover RINs in the 2018 final rule." Of the 3.06 billion surplus RINs, EPA implies that 2.42 billion are conventional (D6) RINs. This means 16% of the 15 BG statutory requirement for conventional biofuels could be met with surplus RINs—near the 20% level that implies "full carry."

The main drivers of the increase in RIN stocks are related to the "…approximately 1,460 million RINs that were not required to be retired by small refineries that were granted hardship exemptions for 2017 and approximately 790 million RINs that were not required to be retired by small refineries that were granted hardship exemptions for 2016, along with the RINs that Philadelphia Energy Solutions Refining and Marketing, LLC ("PESRM") was not required to retire as part of its bankruptcy settlement agreement." In essence, this means small refiner exemptions effectively reduced the 2016 and 2017 RVOs by some 2.25 BG (and even more when the PES exemptions are included).

Small Refinery Exemptions

EPA says very little about small refiner exemptions in the 2019 RVO proposal, however, the proposed rule did include the following information:

- EPA's estimate of carryover RINs may increase further due to "the possibility of additional small refinery exemptions" for 2018 and/or 2019.
- EPA does not include any small refiner exemptions in the RVO calculations, meaning any exemptions granted after publication of the RVO would not be reallocated to larger refiners. EPA notes that "…at this time no exemptions have been approved for 2019, and therefore we have calculated the percentage standards for 2019 without any adjustment for exempted volumes. EPA is maintaining its approach that any exemptions for 2019 that are granted after the final rule is released will not be reflected in the percentage standards that apply to all gasoline and diesel produced or imported in 2019.
- EPA states that it "…is not soliciting comments on how small refinery exemptions are accounted for in the percentage standards formulas in 40 CFR 80.1405, and any such comments will be deemed beyond the scope of this rulemaking."
- The proposal ambiguously states that "EPA has currently identified a total of 10 small refiners that own 12 refineries subject to the RFS program, all of which have been identified as being small refineries." It is not clear if this means EPA is already planning to issue 12 small refinery exemptions from the 2019 RVO, or if this means something else.
- EPA discloses that it granted **20 small refinery exemptions from 2016** compliance and **29 exemptions from 2017 compliance** (with another four petitions still under review for 2017).

Public Hearing and Comments

EPA will soon announce a date and location for a public hearing on this proposal. The Agency also set a deadline of **August 17, 2018** for written comments (it is unusual for an agency to specify a deadline for comments before the proposal is officially published in the Federal Register).