



February 10, 2023

Michael Regan, Administrator
U.S. Environmental Protection Agency
EPA Docket Center, Air Docket, Mail Code 28221T
1200 Pennsylvania Avenue NW
Washington, DC 20460

RE: Docket ID No. EPA-HQ-OAR-2021-0427. Comments of Center for Resource Solutions on Renewable Fuel Standard (RFS) Program: Standards for 2023–2025 and Other Changes

Dear Administrator Regan,

Center for Resource Solutions (CRS) appreciates this opportunity to comment on the Environmental Protection Agency's (EPA's) proposed regulatory changes to the Renewable Fuel Standard program included in the "Renewable Fuel Standard (RFS) Program: Standards for 2023–2025 and Other Changes" published in the Federal Register (Vol. 87, No. 250) on December 30, 2022 ("Proposed Rule"). Our comments focus on new regulations governing the generation of Renewable Identification Numbers for electricity made from renewable biomass that is used for transportation fuel (eRINs).

Background on CRS and Green-e®

CRS is a 501(c)(3) nonprofit organization, established in 1997, that creates policy and market solutions to advance sustainable energy. CRS provides technical guidance to policymakers and regulators at different levels on renewable energy and greenhouse gas (GHG) program design, accounting, tracking and verification, market interactions, and consumer protection. CRS also administers the Green-e® programs. For over 20 years, the Green-e® Energy program has been the leading independent certification for voluntary renewable electricity products in North America. In 2021, the Green-e® Energy program certified retail sales of over 110 million megawatt-hours (MWh), serving over 1.3 million retail purchasers of Green-e® certified renewable energy, including over 309,000 businesses.¹

¹ See the 2022 (2021 Data) Green-e® Verification Report here for more information: <https://resource-solutions.org/g2022/>.

Comments and Recommendations for eRIN Program

The Clean Air Act² requires that EPA ensure that qualifying renewable electricity is used as a transportation fuel.³ As a result, the “use” of electricity generated with renewable biomass and specifically its “use as a transportation fuel” is a critical requirement that must be verified for eRIN issuance.

Renewable energy certificates (or RECs) are the legal instrument representing property rights⁴ to all environmental and other nonpower attributes associated with the generation of a MWh of electricity from a renewable resource on the grid. RECs are required to contractually demonstrate and verify delivery and “use” of grid-connected renewable electricity, and associated generation attributes, for all procurement, transactions, and retail claims.⁵ RECs are therefore required to establish exclusive use of renewable biogas electricity by a vehicle original equipment manufacturer (OEM) for transportation.

While eRINs themselves do not represent electricity generation attributes, eRIN issuance represents a usage claim on the underlying electricity (for the OEM) based on the proposed program requirements and stipulations in the Clean Air Act. eRIN issuance (and verification and tracking for the RFS program) must reflect ownership and transactions of electricity generation attributes (RECs) so that eRINs are awarded in line with generation that is legally used by an OEM for transportation, as required by the Clean Air Act, and to avoid double claiming.

Along with “ensuring that renewable electricity is used as a transportation fuel,” the other three goals that EPA establishes for the eRIN program are: “ensuring that renewable electricity is produced from renewable biomass,” “preventing double counting and fraud,” and “[minimizing] program complexity

² 42 USC 7545(o)(1)(J): “The term ‘renewable fuel’ means fuel that is produced from renewable biomass and that is used to replace or reduce the quantity of fossil fuel present in a transportation fuel.”

³ Sec. VIII.D.2 of the Preamble of the Proposed Rule (Fed Reg pg. 80641).

⁴ See U.S. Federal Trade Commission (FTC) (November 27, 2007). Guides for the Use of Environmental Marketing Claims; Carbon Offsets and Renewable Energy Certificates; Public Workshop. Announcement of public workshop; request for public comment. Federal Register. Vol. 72, No. 227. Pg. 66095. Footnote 9. <https://www.govinfo.gov/content/pkg/FR-2007-11-27/pdf/FR-2007-11-27.pdf>

See U.S. Commodity Futures Trading Commission (CFTC). (August 13, 2012). Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement”; Mixed Swaps; Security-Based Swap Agreement Recordkeeping; Final Rule. Federal Register. Vol. 77, No. 156. pg. 48233-48235. <https://www.govinfo.gov/content/pkg/FR-2012-08-13/pdf/FR-2012-08-13.pdf>

See Weinstein, J. (Jan 2021). *What are Renewable Energy Certificates?* Futures and Derivatives Law Report, Volume 41, Issue 1. Thomson Reuters.

See Jones, T. et al. (2015). *The Legal Basis of Renewable Energy Certificates*. Center for Resource Solutions. <https://resource-solutions.org/wp-content/uploads/2015/07/The-Legal-Basis-for-RECs.pdf>. Footnotes 12, 25, 27, 28, 32, and 34.

⁵ U.S. Federal Trade Commission (FTC). (2012). Guides for the Use of Environmental Marketing Claims; Final Rule. Sec. 260.15. Available at: https://www.ftc.gov/sites/default/files/documents/federal_register_notices/guides-use-environmental-marketing-claims-green-guides/greenguidesfrn.pdf

U.S. Federal Trade Commission (FTC). (2015). Letter from James A. Kohm, Associate Director, Division of Enforcement, Bureau of Consumer Protection, to R. Jeffrey Behm, Esq., Sheehy, Furlong & Behm, P.C. February 5, 2015. Available at: www.ftc.gov/system/files/documents/public_statements/624571/150205gmpletter.pdf.

See Jones, T. et al. (2015). *The Legal Basis of Renewable Energy Certificates*. Center for Resource Solutions. <https://resource-solutions.org/wp-content/uploads/2015/07/The-Legal-Basis-for-RECs.pdf>.

See Weinstein, J. (Jan 2021). *What are Renewable Energy Certificates?* Futures and Derivatives Law Report, Volume 41, Issue 1. Thomson Reuters.

and implementation burden.”⁶ REC ownership and retirement supports each of these objectives. RECs include the fuel type attribute of electricity generation, prevent a single MWh from being used more than once or by more than one party, and are supported by existing tracking systems upon which EPA can rely for compliance.

RECs may be transacted either “bundled” with the electricity or separate from electricity (“unbundled”). Due to the shared grid and the contractual system for allocating generation and associated emissions to load (there is no way to physically deliver electricity from a specified source to a particular customer on the grid), there is no distinction in terms of accounting and renewable electricity usage claims between bundled and unbundled transactions of attributes. Sourcing electricity and unbundled RECs from the same grid region is functionally equivalent to sourcing electricity and RECs from a single grid-connected renewable facility.

CRS therefore recommends the following:

1. **EPA should require that RECs associated with electricity generation that is included in a RIN generation agreement (i.e., biogas electricity generation for which eRINS are issued) be retired on behalf of the OEM party to that agreement** (or that associated environmental attributes be otherwise retired by that party) to prevent the RECs from being used by a different user or for non-transportation purposes. Use of associated RECs for a different (non-transportation) purpose or end-use would undermine the stated RFS program objective and requirements of the Clean Air Act. The RECs could nevertheless be simultaneously retired for compliance with any applicable state or voluntary clean transportation or renewable energy programs (where permitted by those programs), but not by a different entity or for non-transportation purposes.
2. **EPA should allow OEMs to purchase and use unbundled RECs from qualifying biogas electricity generation, and “book-and-claim” accounting, for eRIN issuance, i.e., to demonstrate use of qualifying biogas electricity.** This is consistent with existing state low-carbon fuel standard (LCFS) and clean fuels programs (CFPs) in California,⁷ Oregon,⁸ and Washington,⁹ as well as the legal function of and claims associated with RECs more broadly. Qualifying REC purchases could still be required not to exceed light-duty fleet electricity usage. But this would expand participation and also facilitate participation by OEMs located in regions with organized electricity markets and the expansion of these markets, which has other environmental advantages.

⁶ See Sec. VIII.D.1, 3, and 4 of the Preamble of the Proposed Rule, respectively.

⁷ 17 CCR 95488.8(i), 95491(d)(3)(B) and (C)

⁸ OAR 340-253-0470

⁹ WAC 173-424-630

Comments addressing statements made in Sec. VIII.H.5 of the Preamble (Fed. Reg. pg. 80665-80666) on Renewable Electricity Credit Programs

EPA provides the following reasons (paraphrased) for why it cannot rely on REC programs for compliance purposes under an eRIN program. We provide a response below each.

1. RECs are issued for non-biogas renewable electricity generation.

The fuel type is indicated on the REC, and so RECs from qualifying biogas electricity generation can be identified and tracked. EPA would simply limit eligibility for the RFS to qualifying biogas electricity generation. All state RPS programs and voluntary programs similarly limit resource eligibility and enforce other regulatory requirements using RECs. Other Clean Air Act requirements can similarly be verified and tracked using RECs. If required information is not already included and tracked with the REC, it can easily be added and used for verification.

2. Using RECs would require additional regulatory requirements similar to what is already being proposed and would not simplify regulatory requirements and compliance.

REC retirement is required to avoid double counting. But retiring and using RECs for eRIN issuance employs existing infrastructure and tracks use and delivery of renewable electricity consistently with other programs. Proposed use of a contractual verification method (RIN generation agreements) that is entirely separate from RECs not only creates a risk of double counting use of renewable electricity but also additional administrative and transactional burden and cost for RIN generating entities and renewable energy program administrators.

3. There is no centralized, national REC registry and clearinghouse.

Regional REC tracking systems provide complete coverage of the United States. National voluntary renewable energy programs and standards (e.g., the Green-e[®] Energy program) have relied on regional REC tracking systems for over 20 years. Differences between regional tracking systems do not prevent or preclude national renewable energy programs. Regional REC tracking systems are quite similar with regard to their structure and procedures, resulting in a nationally uniform REC instrument and enabling a national voluntary REC market. EPA can simply define program eligibility requirements and identify qualifying regional tracking systems.

4. EPA cannot delegate compliance and enforcement responsibility to state REC programs.

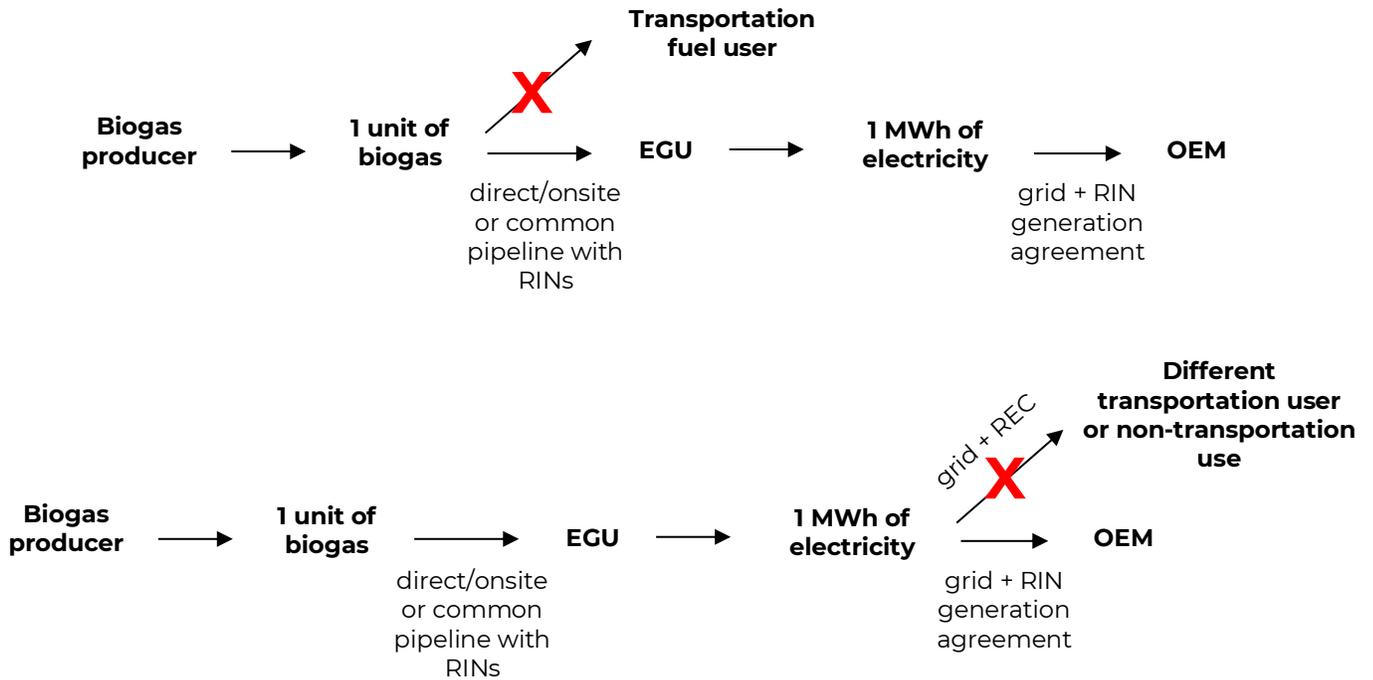
Using RECs and REC tracking systems as a part of compliance for eRIN issuance would not delegate compliance and enforcement to state programs. Rather, EPA would use REC tracking systems, most of

which serve multiple state and voluntary programs, as a part of its own compliance and enforcement procedures. State agencies and tracking system operators would not be performing verification or enforcement functions. EPA can identify qualifying tracking systems based on their renewable energy facility and generation data collection and verification procedures, as well as their certificate information and certificate issuance, transfer, and retirement procedures.

5. RIN revenues should be able to be stacked on top of incentives from other federal and state programs (e.g., LCFS and REC revenues) such that the RFS helps subsidize cost of these programs. Requiring REC retirement for RIN issuance would not allow for this “complementary” program relationship/interaction. A single unit of biogas cannot be used to both generate electricity and also as a transportation fuel. But a single unit of biogas can be used to generate electricity that can both generate an eRIN and a REC and an LCFS credit, etc.

RECs are not simply a compliance instrument, and neither are they a compliance instrument that is used only for clean transportation programs. They represent the attributes of renewable energy generation and are the exclusive tracking/verification instrument for delivery and use of renewable energy. As a result, where an eRIN is issued for use of biogas electricity for transportation and the associated REC is used either by a different entity for a different transportation use or for a non-transportation use (e.g., a state RPS or voluntary end use electricity claim) there is double counting of the unit of renewable energy generation, since a single MWh cannot be delivered/used by different parties or for different end uses. Such double counting would affect the integrity of the REC system, which is an unacceptable outcome of the Proposed Rule. EPA does not permit double counting of the biogas fuel (e.g., for both electricity generation and also compressed and used directly as a transportation fuel) (see footnote 275), and it also should not permit double counting of the electricity generation by multiple parties for multiple uses. These two types of double counting are illustrated in Figure 1 below.

Figure 1. Two Types of Potential Double Counting



To avoid double counting, RECs must be retired on behalf of the OEM. In this case, the single party using the electricity for a single use (e.g., transportation) can still seek credit or compliance under multiple programs regulating or incentivizing that use at different levels (e.g., a state LCFS, the federal LCFS, etc.) where permitted by those programs. But importantly, it would prevent double counting of electricity generation by different parties and/or for multiple end-uses. EPA should require REC retirement and recognize REC retirement for qualified state LCFS/CFPs—allowing retirement for multiple transportation programs by the same entity. In other words, EPA can achieve the desired “stacking” of benefits/revenue and complementary relationship between programs while requiring REC retirement to avoid double counting.

Please let me know if we can provide any further information or answer any other questions.

Sincerely,

_____/s/____

Todd Jones
Director, Policy