

SUMMARY OF THE HIGH POINTS OF THE 2023 - 2025 RFS RULEMAKING

On July 12, 2023 the U.S. EPA’s Final Renewable Fuel Standard (RFS) “Set” Rule was published in the Federal Register. The Rule established renewable volume obligations (RVOs) for compliance years 2023-25, and notably included a higher volume projection for RNG. It also provided simplified credit allocation for co-digestion of food waste and cellulosic feedstocks, and a series of biogas regulatory reforms. However, the Final Rule did not introduce credits for electricity generated from biogas or RNG (“eRINs”), which featured prominently in December 2022’s Proposed Rule.

Renewable Volume Obligations (RVOs):

The final volume requirements, by broad category, are shown below. The 2023 levels for cellulosic biofuels are up 33% over volumes EPA set for 2022. (One RIN represents one ethanol-gallon-equivalent of renewable fuel.)

Volume Targets (billion RINs; B-b diesel in billion gallons)			
	2023	2024	2025
Cellulosic biofuel	0.84	1.09	1.38
Biomass-based diesel	2.82	3.04	3.35
Advanced biofuel	5.94	6.54	7.33
Renewable fuel	20.94	21.54	22.33
Supplemental standard	0.25	n/a	n/a

The volume projections used for cellulosic RNG are shown below, in millions of RINs:

	2023	2024	2025
CNG/LNG Derived from Biogas	831	1,039	1,299

Below, the final RNG volume projections are compared to those used in the Proposal, in millions of RINs. EPA used a 25% increase in the Final Rule, versus a roughly 13% increase in the Proposal.

	2023	2024	Increase '23-'24	2025	Increase '24-'25
Final CNG/LNG Derived from Biogas	831	1,039	25%	1,299	25%
Proposed CNG/LNG from Biogas	719.3	813.9	13.2%	920.9	13.1%
<i>Difference Final vs. Proposal</i>	<i>111.7</i>	<i>225.1</i>		<i>378.1</i>	
<i>Difference Final vs. Proposal, Percent</i>	<i>15.5%</i>	<i>27.7%</i>		<i>41.1%</i>	

RINs for Biogas/RNG Generated Electricity (eRINs)

In the December 2022 Proposed Rule, an “eRIN” program for biogas- or RNG-generated electricity used to fuel electric vehicles would have been introduced in 2024. However, due to a consent decree obliging it to finalize fuel volumes, EPA ultimately deferred finalizing the program in order to continue reviewing comments it had received about eRINs and working with stakeholders. (eRIN volumes were proposed at 600 million in 2024 and 1.2 billion in 2025, within the “D3” cellulosic biofuel category; these were withdrawn from the final volume requirements shown above.) Coalition for Renewable Natural Gas submitted comments supporting the introduction of eRINs in 2024, and recommended changes to the proposed regulations that included increasing volume projections and revising RIN generator provisions.

Renewable electricity derived from biogas under the cellulosic biofuel category was first added to the RFS pathways table in 2014, but EPA has not yet approved RIN generation under these pathways. Given the long delay, Coalition for Renewable Natural Gas continues to support the introduction of eRINs as soon as possible.

The “D3-D5 Split” for RNG

The Final Rule goes some way to addressing credit allocation issues associated with the co-digestion of food waste with other cellulosic feedstocks. RNG made from cellulosic feedstocks is eligible for D3 RINs; RNG from food waste is eligible for less valuable D5 RINs. Historically, due to the difficulty of establishing total cellulosic content of mixed feedstocks, blending food waste with cellulosic materials has downgraded all RNG produced to D5 RINs.

In the Final Rule, EPA effectively acknowledges the complexity of previous calculation requirements, and that understanding biogas yield from cellulosic feedstocks allows non-cellulosic yields to be calculated as the difference

between total yield and cellulosic yield. To allocate RINs according to shares of feedstock, the Final Rule offers facilities the choice of 1) providing operational data demonstrating cellulosic biogas yield (based on a specified wastewater volatile solids formula), supporting information on how that yield was calculated, and a plan for how RINs will be apportioned based on that data and total biogas yield; or 2) applying a formula to total codigested output that assumes the yield from the cellulosic portion is 50% of the biomethane potential (BMP) cited in published literature (which the Agency generally considers to be too high.)

Cellulosic Waiver Credits (CWCs):

In the Final Rule EPA did not exercise its cellulosic waiver authority and, therefore, is not issuing Cellulosic Waiver Credits as an alternative vehicle for meeting volume obligations for 2023-2025.

Biogas Regulatory Reforms:

The Proposed Rule set out “biogas reforms” EPA considered necessary to improve program oversight and eliminate “double counting” of biogas and RNG volumes. These reforms also allow the use of biogas as a bio-intermediate in the production of fuels other than bio-CNG/LNG, and help facilitate the use of RNG as a feedstock for producing other fuels, once applicable pathways are approved. Highlights of the biogas reforms include:

- For RNG that is being injected into pipelines for distribution, the “RIN generator” is now considered exclusively to be the party that upgrades the biogas to RNG (the “RNG Producer”). Historically, pathway applications had identified various parties as the RIN generator.
- Both RNG and biogas production facilities must register for the RFS. These facilities must “associate” with each other upon registration/renewal for purposes of tracking in EPA’s Moderated Transaction System (EMTS).
- Registrants in the biogas pathways are subject to various reporting, recordkeeping, procedure- and documentation-auditing requirements, as applicable. EPA also outlines when and how biogas and RNG should be measured, and has revised the liability provisions to reflect the changes under the biogas reforms.
- For purposes of generating RINs under the RFS, biogas production facilities are limited to supplying biogas for a single use— for instance, for conversion to RNG or use as a bio-intermediate. It is unclear how this will be affected by a future introduction of eRINs.
- Minor changes to RIN accounting for biogas converted to “treated biogas” within a closed distribution system, such as a landfill that is producing fuel for its collection fleet. (EPA refers to RNG within a closed distribution system as “treated biogas”; if injected into a pipeline, it is referred to as RNG.)
- To track RNG through EMTS, any and all RNG intended for inclusion under the RFS must have RINs assigned to it when it is injected into a pipeline. Title of these “K-1” RINs must transfer with title of the RNG.
- Only parties that withdraw gas from the pipeline, produce CNG/LNG or dispense CNG/LNG may separate (“unbundle”) the RINs from the RNG. These “K-2” RINs may then be transferred without a volume of RNG.
- Biogas is added as a biointermediate in the production of fuels other than RNG or “treated biogas” (in closed distribution systems). Previously finalized provisions on biointermediates would apply in such cases.
- RNG is recognized as a feedstock for other fuels; parties using it as a feedstock will have to retire the RINs assigned for the RNG, and generate RINs for the new fuel according to the requirements for that fuel.
- All biogas and RNG under the RFS program must comply with the biogas regulatory reforms by January 1, 2025.
- New registrants after July 1, 2024 must comply with the biogas regulatory reforms (new Subpart E, Title 40, Code of Federal Regulations). New registrants cannot generate RINs for RNG until EPA accepts their registration, except that they may store RNG (on-site only) pending approval.
- Existing registrants may continue to generate RINs under the current program (Subpart M, Title 40, Code of Federal Regulations) until January 1, 2025, but must update their registration by October 1, 2024.