

## RIN Questions and Answers

Following are your questions and our responses:

1. *Who is eligible to register under the program and what does “registered” actually mean?*

Any individual or company who plans to participate in the RFS program must first register with the Agency. There are three principal categories of registrant: 1) a RIN-generating renewable fuel producer/importer, 2) an obligated party, and 3) a RIN owner. Registration for each category has different requirements and results in the assignment of a company identification number and possibly one or more facility identification numbers (in the case of RIN generators and obligated parties). Only a party registered as a renewable fuel producer or importer can generate RINs in the EPA Moderated Transaction System (EMTS).

2. *What is the registration process?*

Registration requirements vary by registrant category. All registrations are processed through the EPA fuels registration system. In the case of renewable fuel producers, they must provide information on the renewable fuel product they produce, the production process employed, the feedstocks they are capable of using, as well as facility production capacity. Producers must also provide documentation including a demonstration that their product has been registered with EPA’s fuel and fuel additives registration system, copies of air permits, a feedstock plan, and an independent engineer’s review and report that they are capable of producing the renewable fuel product they plan to produce. Some producers (e.g., those claiming an exemption from the 20% minimum lifecycle greenhouse gas reduction requirements, foreign renewable fuel producers) must supply additional information. In the case of obligated parties, they are typically already registered in the EPA fuel registration system because they are subject to registration requirements under other fuel programs. Those obligated parties that are already registered have no additional registration requirements for the RFS program. Those parties that are not already registered must complete the registration process. As for RIN owners that are not also RIN generators or obligated parties, they must submit identifying and other information into the fuel registration system. Detailed requirements are posted on our web page at - <http://www.epa.gov/otaq/fuels/reporting/programsregistration.htm>.

In general, EPA reviews each party’s registration submission package to ensure that it is complete and consistent with the registrant’s proposed plan for RIN generation. EPA accepts the registration application (allowing generation of RINs in EMTS for renewable fuel producers and importers) if application requirements have been met.

3. *What factors does EPA use to evaluate applicants and ensure their capability to produce renewable fuel and thus legally generate the accompanying RINs?*



EPA generally accepts renewable fuel applications if the information is complete and in order. Since the start of the RFS2 program implementing changes required by the Energy Independence and Security Act of 2007, EPA has required supplemental documentation such as air permits and an independent engineer's review. In most cases EPA accepts the registration if the documentation supports the information provided by the party in the registration system. The independent engineer's report is used to help confirm that a facility exists, that it has the equipment necessary to make a product, that it has the capacity to support reported volume, and that is capable of processing claimed feedstocks. EPA may also conduct on-site inspections and audits to review whether the information submitted is complete and accurate.

4. *What components of the program are designed to minimize fraud and protect participants?*

Two third-party elements are designed to minimize fraud. First, an independent engineering review and report is required as part of registration. Second, an independent auditor's attestation report is required to be completed annually by a CPA or certified auditor. The attest process requires that a party that is engaged in the RIN system as a RIN generator, obligated party, and/or RIN owner hire an independent auditor to review the party's records and reports according to the schedule provided in the regulations. This audit helps ensure that information reported to EPA is backed by documents such as purchase receipts for feedstocks, bills of lading for delivery, invoices, laboratory test results, etc., as required by the program. EPA may also conduct on-site inspections and audits to review the accuracy and completeness of reported information and underlying documentation.

Additionally, the EPA Moderated Transaction System (EMTS), the electronic RFS reporting and RIN tracking tool, is tied into the registration system to control access and functionality such that only registered renewable fuel producers or importers may generate RINs and only for the specific products for which they are registered. For example a registered ethanol producer would not be able to generate biomass-based diesel RINs without additional registration submissions and EMTS authorization. The EMTS system also allows obligated parties to block RINs that might come from renewable fuel sources that are questionable or that they have not verified, and it also allows market participants to "lock" out RINs that may not be valid to avoid them from being traded or used for compliance.

5. *How does EPA monitor the actions of registered parties?*

EPA monitors registered party actions through EMTS, attest audits, annual compliance reports (for obligated parties) and follow-up EPA inspections, as appropriate. Registered parties report to EMTS their accounting of RIN generation, RIN transactions between parties and RIN use for compliance. Transaction information must be submitted to EMTS within five business days of a transaction being completed. However, EMTS only monitors RIN transactions; all other information regarding the production of renewable fuel product is required to be kept as records that are used for attest audits and subject to inspection or audit by EPA.



6. *What reviews, audits, or checks does EPA perform to ensure the integrity of the program?*

As noted above, the RFS program provides obligated parties with compliance flexibility by allowing volume requirements to be met with RINs that can be traded. An express underpinning of that flexibility is that obligated parties bear responsibility for ensuring the validity of the RINs they use to demonstrate compliance. EPA has the ability to review information submitted to EMTS for consistency, review attest audit reports and conduct on-site inspections and audits.

7. *Does EPA conduct its own internal audits of registered applicants or does it contract out those services? If EPA uses outside contractors, what guidelines does the Agency employ to ensure third party adherence to audit requirements and standards?*

As a general matter, field inspections are conducted by EPA personnel and may also be conducted by contractors. OECA has requirements and standards for conducting inspections.

8. *What actions does EPA take to warn and/or protect potential victims that purchase invalid or fraudulent RINs?*

As EPA stated at the inception of the RFS program, the Agency does not validate or certify RINs and is not capable of doing so based solely on the information reported to EPA. In rulemaking notices and the regulations themselves (RFS2 preamble and CFR§ 80.1431 ), EPA has made clear that buyers of RINs are responsible for ensuring their validity. Existing business practices and common sense similarly counsel that buyers take steps to ensure that products they purchase meet their specifications or have recourse if the products do not.

When EPA suspects RINs have been fraudulently generated, it commences an investigation, but it may take considerable time to determine whether a violation has occurred. It is thus important that the regulated community protect itself by exercising due diligence.

9. *What is the relationship between the Central Data Exchange (CDX) and EPA Moderated Transaction System (EMTS)?*

CDX is EPA's electronic reporting portal; it provides a secure and standardized environment for regulated parties to submit data under a variety of EPA programs. It allows individual users to access the registration and reporting systems for the fuels programs in OTAQ. EMTS is one of the fuels reporting system that is accessible through CDX.

10. *Must all RIN transactions be cleared through EMTS? If not, why not.*

Since the start of the RFS2 program, all RIN transactions must be reported to EMTS shortly after the transaction is conducted.



11. *Can only registered CDX parties have RIN transactions recognized on EMTS?*

Yes. Since the start of the RFS2 program, only persons registered with CDX who are also associated with a registered EMTS company (RIN generator, obligated party, or RIN owner) can access and use EMTS to conduct RIN transactions.

12. *EMTS was created by rulemaking in 2010. Why did EPA not seek new public comment on the "buyers beware" principle in the proposed 2011 rule?*

The "buyer beware" principle was established in the original RFS program as an essential element of providing obligated parties with the flexibility to meet all or part of their volume requirements through the purchase of RINs. In revising the RFS regulations to reflect the changes required by EISA, EPA kept in place that and other fundamental building blocks of the RFS program. To implement EISA's changes, EPA created the EMTS reporting system to manage the more complex RIN generation qualifications and significantly expanded volume requirements and RIN types that EISA established. The additional complexity of the EISA's requirements only increased the need for RIN buyers to take responsibility for ensuring the validity of RINs. To the extent interested parties wished to revisit this principle in the RFS2 rulemaking implementing EISA's requirements, they were free to do so.

13. *How long has EPA been aware of and investigating allegations of fraud in the RIN marketplace? Were any concerns about the integrity of the RIN market ever communicated to the obligated party community prior to the issuance of the Notice of Violations (NOV) on November 7, 2011?*

EPA has investigated suspected instances of fraud as the Agency has become aware of them. However, it is not appropriate for EPA to inform the regulated community about suspected instances of fraud until the Agency has developed sufficient proof of fraudulent activity.

14. *What percentage of RINs entered into EMTS in 2011 does EPA believe to be fraudulent or otherwise invalid?*

EPA believes that the vast majority of RINs entered into EMTS in 2011 are in fact valid. The RINs involved in the recently announced NOV's are about 0.3 percent of the total 2010 RIN market, and were generated before RFS2 requirements and EMTS were established.

15. *Has EPA considered methods to allow obligated parties, or other affected parties, to replace fraudulent/invalid RINs in a manner that would allow the party to remain in compliance without the need to issue an NOV?*

It is not a violation of the RFS regulations to acquire fraudulent or invalid RINs; refiners and other obligated parties may therefore replace those fraudulent or invalid RINs with valid RINs without violating the RFS requirements, as long as they do so before using the fraudulent or invalid RINs to demonstrate its compliance with its annual renewable fuel volume requirements.



Use of a fraudulent or invalid RIN is a violation of the RFS regulations, however, so EPA issued NOV's to those companies that used RIN's fraudulently generated by Clean Green Fuels to demonstrate compliance with their 2010 RFS requirement.

The regulatory prohibition on using invalid RIN's is distinct from the regulatory requirement that refiners and obligated parties have a sufficient number of valid RIN's to satisfy their annual renewable fuel obligation. EPA has made clear that NOV recipients, in revising their 2010 compliance reports to remove the invalid RIN's, may show that they meet the 2010 volume requirements by purchasing valid RIN's or carrying forward a RIN deficit to be made up in the following compliance period.

It is also worth noting that some refiners and obligated parties have asked that EPA issue formal notices of violation to enable them to exercise their commercial contract indemnification provisions against invalid RIN sellers, which in turn protect them as buyers.

16. *Is EPA's enforcement policy (with regard to obligated parties that acquired invalid RIN's in good faith) consistent with EPA's enforcement policies for other credit programs? Please provide examples of where EPA has initiated enforcement actions against parties that acquired and used credits that were later found to be invalid through no fault of the company using the credits for compliance.*

The RFS program, like other EPA fuel programs, provides that invalid credits cannot be used to achieve compliance, regardless of the buyer's good faith belief that the credits were valid. See, for example, the provisions at 40 C.F.R. §§ 80.67(h), 80.275(d), 80.315(b), 80.532(d) and 80.536(d). In recent years, EPA has not found violations that led to enforcement actions against parties that acquired and used credits that were later found to be invalid. During the gasoline lead phase down, the Agency did take a number of enforcement actions arising from the generation and use of invalid lead credits.

17. *What are the obligations and/or liabilities of parties in the transaction chain other than obligated parties that may have purchased and re-sold RIN's that were determined to be invalid?*

It is a violation for any party to sell an invalid RIN, and any party that transfers an invalid RIN will be liable for a violation. Any party that purchases and re-sells RIN's must register with EPA and comply with a number of reporting and recordkeeping requirements. Commercial contracts for RIN transactions between buyers and sellers constitute obligations or liabilities outside of the Agency's purview.

18. *Describe the specific due diligence that an obligated party could take to ensure with 100% confidence that RIN's are valid. Would such due diligence be an affirmative defense against an NOV for retiring RIN's that are subsequently found to be invalid? If the recommended due diligence requires physically inspecting all plants that an obligated party would accept RIN's from, would this be practicable for foreign producers of renewable fuel?*

Each RIN transaction has the potential to be unique depending on circumstances of the transaction, so it is not practicable to describe the specific due diligence that an obligated party could take in every instance to ensure RINs are valid. We have learned from some RIN market participants that careful questioning and/or site inspections have revealed information indicating potential problems with the RINs they were considering purchasing. We are currently working with stakeholders to develop examples of questions and other practices that may be helpful in determining the validity of RINs. Due diligence is not an affirmative defense, but EPA may consider the level of due diligence in determining an appropriate penalty for any particular violation.

19. *Can Financial Services Firms participate in RIN markets? If so what is their role?*

Financial Services Firms may register and participate as RIN owners and are subject to all requirements of the program as such.

20. *What is EPA's plan to ensure the future reliability of RIN markets?*

EPA investigation of possible RIN fraud and enforcement against fraudulent RIN generators will help ensure the future reliability of RIN markets. Enforcement of the prohibition against use of invalid RINs also provides potential RIN buyers with increased incentive to take steps to determine the validity of RINs, which will also increase the reliability of RIN markets. In addition, EPA is working with stakeholders to provide more information and suggestions that can help potential buyers spot RIN fraud. We understand that market participants are also making efforts to develop systems that could potentially provide greater assurance to buyers that they are purchasing valid RINs.