

After a Hot Start to 2020, COVID-19 Creates RIN Market Uncertainty for Landfill Gas

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There are number of recent developments in Environmental Protection Agency (“EPA”) enforcement, court rulings, and the pandemic-related economic slowdown which have impacted the market for renewable biofuels. This article will provide a background for the Renewable Fuel Standard and EPA enforcement, renewable biofuel targets for 2020, and discuss market factors and predictions that will impact the landfill gas market for the remainder of 2020. As you will see, the already volatile Renewable Identification Number (“RIN”) market has become even more unstable as a result of the novel coronavirus pandemic and increasing uncertainty surrounding future demand of transportation fuel.

THE RENEWABLE FUEL STANDARD

The Energy Policy Act of 2005 (42 USC §§ 7545, *et seq.*) as later amended by the Energy Independence and Security Act in 2007 (42 USC 152 § 170001, *et seq.*) created the Renewable Fuel Standard (“RFS”) which requires biofuels to be blended into transportation fuel at volumes set annually by the EPA for the purpose of reducing greenhouse gas emissions in the transportation sector. Entities that refine, blend, or import fossil fuels for transportation purposes must submit tradable credits to the EPA identified by a RIN to prove compliance with the EPA’s annual biofuel blending requirements.

Once biofuel is produced by an EPA registered renewable fuel producer, a RIN is assigned to each gallon of biofuel or equivalent volume of biogas (77,000 btu). Once the biofuel is blended with gasoline or diesel fuel, or is exported outside of the US, the RIN is separated and may be used for compliance, traded as a commodity, or banked for future use. The RFS has established four separate types of biofuels, each of which have a separate RIN type, annual EPA established blending target, and value on the market. These RIN types are:

1. Renewable fuel RIN (D6) – D6 RINs are the most basic RINs with the highest EPA annual volume mandate and are generated by blending corn-based ethanol into gasoline;
2. Advanced biofuel RIN (D5) – D5 RINs are created by blending sugar-cane based ethanol, biobutanol, or bionaphtha into gasoline;

3. Biomass based diesel RIN (D4) – D4 RINs are created by blending diesel made from soybean oil, canola oil, waste oil, or animal fats into diesel; and
4. Cellulosic biofuel RIN (D3) – D3 RINs are generated by blending ethanol made from cellulosic material (e.g. corn stover, wood chips, miscanthus, biogas, landfill gas) into gasoline.

Due to the historic lack of Cellulosic Biofuels to meet EPA targets, D3 RINs have maintained the highest RIN market values and the EPA has created waiver credits that must be purchased and retired in the event that the market does not produce enough cellulosic biofuel. Additionally, the EPA has allowed small refineries to be exempt from the requirements of the RFS if it can demonstrate that compliance would cause disproportionate economic hardship. As a result, different RIN types carry different market values based upon annual mandates set by the EPA, annual production of RINs, the number of Small Refinery Exemptions granted by the EPA, the number of RINs that have been carried over from the previous year, the price of cellulosic waiver credits for D3 RIN, and traditional supply and demand market principles.

2020 RIN TARGETS AND SMALL REFINERY EXEMPTIONS

2020 started out strong for D3 RIN prices due to increased EPA blending targets, and a Tenth Circuit Court of Appeals decision that reduced the number of Small Refinery Exemptions granted by the EPA. As a result of this increased demand for biofuels, market RIN values increased during the first quarter of 2020.

The EPA announced the 2020 final rule for the RFS in December of 2019, which requires 20.09 billion gallons of total renewable fuel for 2020 – an increase of 170 million gallons from the 19.92 billion gallons required in 2019. Importantly, for D3 RIN prices, the EPA target in 2020 for Renewable Fuel D6 RINs has remained at 15 billion gallons, the same target set in 2019. Thus, the entire increase in 2020 biofuel targets is for D3, D4, and D5 RINs. The 2020 EPA target for cellulosic biofuel D3 RINs is 560 million gallons, an increase of 142 million gallons from 2019 targets.

In addition to increased demand for D3 RINs, the number of Small Refinery Exemptions (“SRE”) to the RFS that are granted to qualifying refineries has historically impacted RIN values. Refineries that qualify for SREs have been exempted from the requirements of the RFS and may obtain a waiver from its blending requirements. A refinery seeking an SRE must petition the EPA each year and if the EPA determines that the small refinery has demonstrated a disproportionate economic hardship, it may receive a compliance waiver. When a small refinery receives an exemption, the annual blending targets for the RFS are reduced, resulting in lower RIN values. Under the Trump Administration, the EPA has increasingly granted refineries SREs negatively impacting RIN values.

In January of this year, the Tenth Circuit Court of Appeals found that the EPA had previously abused its discretion in granting SREs to many refineries. In its ruling in *Renewable Fuels Association v. U.S. Environmental Protection Agency et al.*, No. 18-9553 (10th Cir. Jan. 24, 2020), the Court found that the EPA could not extend SREs to refineries that had not historically been granted waivers. Biofuel producers have commended the decision as SREs have reduced demand for RINs under the RFS requirements by over 4 billion gallons in the past three years. As a result, RIN prices soared in the first quarter of 2020. Refineries have appealed the decision to the U.S. Supreme Court, however, it is not expected that the Court will undertake a review of the decision.

2020 D3 RIN MARKET OUTLOOK

The emergence of the novel coronavirus pandemic in March of 2020 has created many market uncertainties and, as could be expected, this uncertainty has extended into both the transportation fuel and D3 RIN markets. Since the pandemic has reduced transportation fuel demand and consumption, transportation fuel supply initially decreased as refineries responded to the market. The transportation fuel market outlook, however, remains uncertain for the remainder of 2020.

The actual production of transportation fuel by refineries plays a large part in the volume of biofuel that can be blended into the fuel supply. Due to a variety of factors there is a maximum percentage of biofuel that may be blended into gasoline, including limitations on automobile performance due to engine design, manufacturers' warranty coverage, and fueling station infrastructure. As a result, this ceiling on biofuel blending can result in an undersupply of RINs to the market as EPA blending requirements exceed what may be possibly blended into the fuel supply. It is possible that Congress may intervene or that the EPA

will revisit its 2020 RFS targets to lower these required biofuel blending targets. In this event, refineries will require smaller volumes of renewable fuels to meet blending requirements leaving the market with a potential oversupply of biofuel that could negatively impact RIN values. In fact, the EPA has now put its proposal for 2021 biofuel targets on hold indefinitely, creating additional market uncertainty for future prices.

The values of D6 RINs, D5 RINs, and D4 RINs have remained stable because of the ability for producers to reduce respective RIN production and sell the sources for each underlying biofuel in other markets; however, because of the lack of a secondary market for sources of D3 RINs, producers were unable to reduce supply and stabilize prices during the initial COVID-19 period. While D6 RINs are produced from corn, D5 RINs from sugar, and D4 RINs from soy bean, canola oil, waste oil or animal fats, D3 RINs for the most part come from landfills that continue to produce gas as they always have, and are locked into off-take agreements with suppliers that prevent reductions in supply. This oversupply, reduced demand and market uncertainty initially resulted in D3 RIN value dropping significantly by 30%. D3 RIN values have since recovered to their pre-pandemic levels, but many of these same risks continue.

D3 RIN value projections for the remainder of 2020 remain uncertain and depend on the strength of global markets, the timing of post-pandemic market recovery, and EPA targets for 2021. In the short term, we might expect the value for D3 RINs to remain at or near current levels as stakeholders take a wait-and-see approach. As the supply for D3 RINs remains fairly constant, values for the remainder of the year will depend on: the demand for transportation fuel; increases or decreases in refineries' production of transportation fuel and the actual blending of biofuels; the potential for Congressional intervention or EPA adjustment to 2020 blending targets; the 2021 EPA biofuel blending targets; and the results of the 2020 presidential election.

If you have any questions about Renewable Identification Numbers or how COVID-19 is affecting transportation fuel, please contact Fielden Fleming (ffleming@freeborn.com; (312) 360-6342) or another member of [Freeborn's Environment & Energy Practice Group](#).

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