

EPA Proposes Fundamental Changes to Environmental Commodities Markets

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Environmental

Acting at the direction of President Trump, the EPA [on March 12 proposed major revisions](#) to regulations governing one of the premiere environmental commodities markets: the trading of fuel credits known as Renewable Identification Numbers (RINs) under EPA's Renewable Fuel Standard (RFS) Program. The proposed rule would, if finalized as proposed, dramatically re-shape the market, significantly limit or ban the participation of some entities in the RIN market, and limit the nature or operation of available financial instruments to intermediate those markets. EPA's changes may also set a precedent for other environmental markets, including emerging carbon markets. Underscoring the significance of this issue, on March 13 the nominee to be the Chairman of the Commodities Futures Trading Commission testified that he would want to meet with EPA to provide assistance on these issues, if confirmed.

The proposed rule includes the following changes to RIN markets:

- Generally banning non-obligated parties (i.e., all parties other than refiners or importers of conventional fuel) from purchasing separated D6 RINs (i.e., conventional ethanol RINs).
- Requiring non-obligated parties that generate separated D6 RINs to divest those RINs within the same quarter that they are generated.
- Collecting additional data on transactions and potentially hiring third party market monitors.
- Disclosure of D6 RIN holdings above certain thresholds.
- Quarterly compliance demonstrations by obligated parties.

If enacted as proposed, these changes would dramatically narrow the ability of parties who do not have compliance obligations under the RFS program to participate in the RIN market. Moreover, it is possible EPA could make the final rule more stringent—for example, by banning non-obligated parties from trading in *any* separated RINs (rather than only D6 RINs).

Interested parties have until April 29, 2019 to submit comments to EPA. Submission of comments is critical to attempt to persuade the agency to take a different course, as well as to build a record for potential litigation.

We have been following these developments closely and would be pleased to discuss them with you. [Thomas Brugato](#) has been deeply involved in evaluating the legal and economic issues raised by these potential changes. [Gary Guzy](#), a former EPA General Counsel, has also

advised on these renewable fuel issues. Notably, the Covington team recently prepared a detailed white paper addressing EPA's potential RIN market rule changes, which EPA references in its proposed rule. More broadly, the Covington team has advised on, and litigated, a broad range of renewable fuels issues over the life of the RFS program, and regularly advises entities participating in environmental markets concerning CFTC regulation, fund formation and related market rules. Market participants have an important role to play in this upcoming RINs market rulemaking in educating this Administration's decision makers on how changes to the market could impact important stakeholders and pose obstacles to the development of markets for environmental commodities in other contexts.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our Environmental and CFTC practices:

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