

CATHY McMORRIS RODGERS, WASHINGTON
CHAIR

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED EIGHTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (202) 225-3641
Minority (202) 225-2927

April 25, 2023

The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
Mail Code 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Regan,

We write regarding the Environmental Protection Agency's (EPA) proposed regulatory provisions creating Renewable Identification Numbers (RINs) generated from renewable electricity (eRINs) that the Agency included in the proposed rule for the Renewable Fuel Standard (RFS) Program for 2023, 2024, and 2025.¹

When the RFS was first created by Congress in 2005 and amended two years later in 2007, the program was designed to encourage the use of certain types of domestically produced blends of gasoline for vehicles.² The RFS is intended to focus on liquid transportation fuels, and not to be used as a tool to electrify transportation. However, EPA's proposed rule significantly changes how RINs would be addressed under the RFS program to allow for blended transportation fuel produced from renewable biomass to generate eRINs for electric vehicles (EVs). Under the proposed rule, the eRIN regulatory provisions would go into effect on January 1, 2024, and apply to calendar years 2024 and 2025.

Both compressed natural gas (CNG) and liquefied natural gas (LNG) derived from biogas and eRINs fall under the RFS's cellulosic biofuel category. The proposed rule, published on December 30, 2022, sets maximum production volume targets for eRINs at 600 million RINs in 2024 and 1,200 million RINs in 2025, which makes eRINs the significant driver of the increase in total cellulosic biofuel. The Agency's proposed increase in RINs also correlates with the growth in the Renewable Volume Obligations (RVOs) for cellulosic biofuel from 720 million gallons this year to 2.13 billion gallons in 2025.

¹ See Renewable Fuel Standard (RFS) Program: Standards for 2023-2025 and Other Changes, 87 Fed. Reg. 250 (to be codified at 40 CFR Parts 80 and 1090), December 30, 2022.

² Clean Air Act section 211(o)(2) states that, in general, the RFS would be a set of regulations to "ensure that gasoline sold or introduced into commerce in the United States" contain the applicable volume of renewable fuel.

Of concern, and unlike for liquid fuels vehicles, under the proposed rule, original equipment manufacturers (OEMs) of electric vehicles (EVs) would generate RINs for light-duty vehicles.³ According to the proposed rule, OEMs would “generate” RINs and then be responsible for “establishing contracts with parties that produce electricity from qualifying biogas.”⁴ However, under Clean Air Act section 211(o)(5)(A)(i), the authority to generate RINs under the RFS Program is specifically given to “any person that refines, blends, or imports gasoline that contains a quantity of renewable fuel greater than the quantity required.”⁵ The existing statute also includes an option for the generation of credits by small refineries, a term defined in Clean Air Act section 211(o)(1)(K) that means a refinery with a certain amount of “daily crude oil throughput.” Nevertheless, OEMs of EVs are not listed as a party that can generate RINs, because they do not refine, blend, or import gasoline containing renewable fuel, nor do they maintain daily crude oil throughput. By allowing OEMs to generate RINs in the proposed rule, EPA is disregarding existing statute.

In addition to the approach where OEMs generate the RINs, the proposed rule also explained that EPA is considering allowing renewable energy producers to generate RINs, allowing public access charging stations to generate RINs, allowing independent third parties to generate RINs, and allowing multiple parties to generate RINs.⁶ EPA noted that having one generator for RINs may help prevent double counting, but a lack of certainty over program design in the proposed rule is troubling. Any changes to the RIN generation structure should be accomplished through legislation rather than regulation without the proper statutory authority.

Furthermore, several inconsistencies exist in the proposed rule that the EPA should address before finalization. For example, the proposed rule asserts that creating a regulatory structure for eRINs would support the section 211(o) of the Clean Air Act by “increasing the use of renewable fuel in the transportation sector.” However, the EPA acknowledges that eRIN generators will “use primarily existing generating capacity.”

In addition, EPA is working towards finalizing the RFS Program for 2023, 2024, and 2025 rulemaking without studying the impacts of renewable electricity credits as required by law. Section 206(b) of the Energy Independence and Security Act of 2007 included a provision that required the EPA Administrator to conduct a study on “the feasibility of issuing credits” for “electric vehicles powered by electricity produced from renewable energy sources” within 18 months of enactment.⁷ EPA has missed the statutory deadline by nearly 14 years, but now it is moving forward with the rulemaking without studying the feasibility or market impacts of establishing an entirely new RIN program that would be contrary to both the RFS’ statutory language and the intent of Congress.

³ See Renewable Fuel Standard (RFS) Program: Standards for 2023-2025 and Other Changes, 87 Fed. Reg. 250 (to be codified at 40 CFR Parts 80 and 1090), December 30, 2022.

⁴ *Id*

⁵ 42 USC 7545(o)(5)(A)(i)

⁶ Section H, Alternative eRIN Program Structures, of the 87 Fed. Reg. 250 rulemaking outlines different approaches EPA may consider as the rulemaking progresses.

⁷ See P.L. 110-140

Our goal is to ensure that all Americans have access to affordable, available, reliable, and secure energy. The final design of the eRINs program under the RFS inserts uncertainty into the transportation fuels market. It could create new economic opportunities for parties that service the electricity distribution sector and certain renewable fuels producers, or it could create regulatory barriers that would negatively impact American companies and complicate consumer's ability to access the fuels they need for the lives they live.

Accordingly, we ask that you assist the Committee in better understanding the proposed revisions to the RFS Program by responding to the following questions in writing by May 9, 2023.

1. The proposed rule explains that the assessment of potential electricity demand from EVs and projected production of eRINs is based on the Revised 2023 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions Standards. The Revised Greenhouse Gas Emissions Standard assumes an expansion of market share of zero-emission vehicles of 17%.⁸ Given that the International Energy Agency (IEA) calculated the EV market share to be 4.5% in 2021 and that “qualifying renewable electricity will be a direct function of the number of EVs sold and registered,” how can EPA accurately set maximum volume requirements?⁹
2. The proposed rule notes that the price of fuel is expected to increase by \$0.01 per gallon in 2024 and \$0.02 per gallon in 2025 directly due to the generation of eRINs. If uncertainty in RIN markets drives fuel costs to increase more than expected, how will the EPA revise regulations to protect American consumers from excessive price hikes?
3. Will the Agency commit to completing the study of credits for use of renewable electricity in electric vehicles as required under the Energy Independence and Security Act of 2007 before issuing a final rule on eRINs?
4. How will EPA prevent waste, fraud, and abuse of the newly created market for eRINs proposed in the rule?
5. We understand that EPA is considering several approaches to the entity that would be allowed to generate eRINs.
 - a. Is the EPA likely to stay with the existing approach, granting the authority to generate eRINs to OEMs? If not, what types of entities would be allowed to generate eRINs?
 - b. Has EPA calculated the effects on consumers or the impacts on the electric grid from giving eRINs to OEMs of EVs, particularly as it relates to incentives for better mileage range or lower costs?
 - c. Please state the specific statutory authority that authorizes EPA to create a new framework for eRINs.

⁸ See “[By the Numbers: Revised 2023 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions Standards](#),” Environmental Protection Agency, December 2021.

⁹ See “[Electric Vehicles](#),” IEA, 2022.

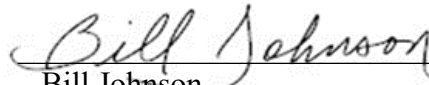
6. As written, would the proposed rule expand market opportunities for renewable biogas producers?
7. When does the EPA intend to publish the final rule in the Federal Register? Will the EPA meet the consent decree deadline of June 14, 2023?¹⁰

We look forward to your prompt response. Thank you in advance for your cooperation. If you have any questions regarding this matter, please contact Mary Martin, Jerry Couri, or Sarah Alexander with the Majority Committee staff at (202) 225-3641.

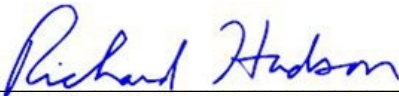
Sincerely,



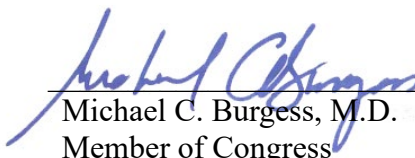
Cathy McMorris Rodgers
Chair
Committee on Energy and Commerce



Bill Johnson
Chair
Subcommittee on Environment,
Manufacturing, and Critical Materials



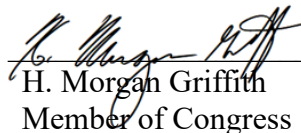
Richard Hudson
Member of Congress



Michael C. Burgess, M.D.
Member of Congress



Robert E. Latta
Member of Congress



H. Morgan Griffith
Member of Congress



Gus M. Bilirakis
Member of Congress




Larry Bucshon, M.D.
Member of Congress

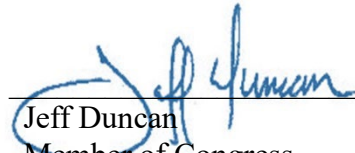
¹⁰ Based on the deadline of June 14, 2023, for EPA to sign a rulemaking to finalize the 2023 volumes pursuant to the consent decree in *Growth Energy v. Regan, et al.*, No. 1:22-cv-01191 (D.D.C.), EPA expects the 2023 compliance deadline to be March 31, 2024. See 40 CFR 80.1451(f)(1)(A).



Tim Walberg
Member of Congress



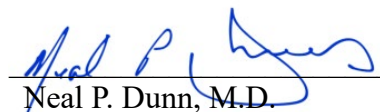
Earl L. "Buddy" Carter
Member of Congress



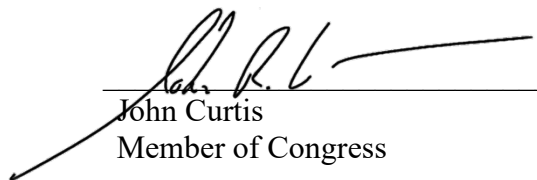
Jeff Duncan
Member of Congress



Gary Palmer
Member of Congress




Neal P. Dunn, M.D.
Member of Congress



John Curtis
Member of Congress



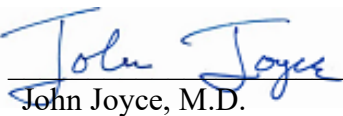
Debbie Lesko
Member of Congress



Greg Pence
Member of Congress



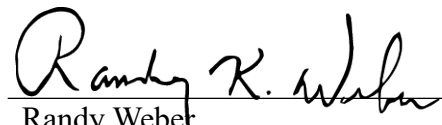
Dan Crenshaw
Member of Congress



John Joyce, M.D.
Member of Congress



Kelly Armstrong
Member of Congress



Randy Weber
Member of Congress



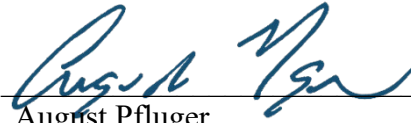
Rick W. Allen
Member of Congress



Troy Balderson
Member of Congress



Russ Fulcher
Member of Congress



August Pfluger
Member of Congress



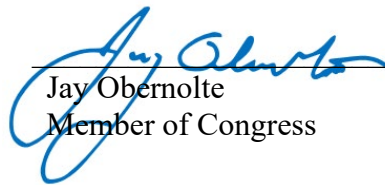
Diana Harshbarger
Member of Congress



Mariannette Miller Meeks, M.D.
Member of Congress



Kat Cammack
Member of Congress



Jay Obernolte
Member of Congress