

## EPA Innovates With Planned Green Power Credits For EVs

By **Levi McAllister, Douglas Hastings and Maggie Curran**

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On Dec. 1, the U.S. Environmental Protection Agency published its proposed set rule for the Renewable Fuel Standard program, setting the volume and percentage standards for renewable fuels for 2023 through 2025.

The proposed rule also includes several regulatory changes to the RFS program — the most notable of which is its proposal to create a new program to govern renewable identification numbers for renewable electricity, which are known as eRINs.

Although the proposal is thorough and requires careful analysis, as a general matter, eRINs are credits for the electricity used in electric vehicles so long as that electricity originates from renewable fuel consistent with the parameters of the EPA's proposed rule.

While the EPA has long recognized the generation of electricity from biogas as a potential pathway for RFS credits, current RFS regulations do not provide a viable system for participants to generate those credits.

The agency has struggled with how to implement such a program, citing concerns with double counting of credits, and the inherent impossibility of verifying the source of the electricity transmitted to and from an electric grid.

To solve those difficulties, the EPA has proposed a credit system that is unique under its RFS regulations. Under the proposal, auto manufacturers would have the sole ability to generate eRINs.

They would do so by first determining the electricity consumption of their vehicles, then entering into a contract with a renewable energy generator or generators to acquire the exclusive authority to generate RINs to cover their vehicles' electricity consumption.

The auto manufacturers would then be able to generate eRINs that represent either the quantity of electricity used by their fleet, or the renewable electricity generated under the RIN agreement with the generator, whichever is less.



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That system is a marked departure from how credits are generated for other fuels under the RFS program, program for which market participants are generally required to link credits to specific gallons of liquid fuels that are used for transportation purposes.

The rule proposes several other important requirements for RIN generation and program participation, including the following:

- The renewable electricity must be produced from biogas;
- Only renewable electricity used in light-duty EVs is eligible to generate eRINs;
- Two types of EVs are eligible: battery electric vehicles and plug-in hybrid electric vehicles;
- The geographic scope of the program covers any EV that is registered by a state in the conterminous 48 states are eligible to generate eRINs; and
- The program will begin, and eRINs will be permitted to be generated, starting Jan. 1, 2024.

The proposed eRIN program is likely to provide a significant benefit to EV manufacturers, and it is also anticipated to support those who generate biogas or renewable natural gas, or convert biogas or RNG to electricity, as the program will create an additional market.

But some industry participants have already expressed their disagreement with the EPA's proposal to designate auto manufacturers as the eRIN generator — including biogas producers, EV owners and owners of public EV charging stations, all of whom were hoping to be able to qualify to generate credits.

In the preamble to the proposed rule, the EPA recognized that there are various alternative ways to structure the eRIN program, but the agency determined that making auto manufacturers the sole point of eRIN generation is the best way to ensure that eRINs accurately represent the renewable electricity used as transportation fuel.

The EPA has solicited comment on its proposed rule, with the comment period lasting until Feb. 10, 2023. The agency is then likely to finalize the rule by June 14, 2023 — the deadline under a court-approved consent decree with biofuel interests for finalizing the volumes for the next two years.

Given the significant interest in the eRIN program, the EPA is likely to receive significant public comments, and aspects of the program could be adjusted in the final rule. There is also a strong likelihood that aspects of the eRIN program will be subject to litigation after the rule is finalized.

### **Takeaways**

The eRIN provisions in the proposed rule represent a unique development for the RFS program in two key ways.

First, the proposal's use of contracts between original equipment manufacturer, or OEMs, and parties generating electricity from biogas or RNG as a proxy for the electricity used by EVs is a fundamental departure from the way the EPA has ensured that other fuels come from renewable sources.

While there are some analogs to such a system in California's LCFS or state renewable electrify portfolio standards, the EPA has required strict tracking between volumes of fuel used in transportation and renewable feedstocks for other fuels under the RFS program.

Second, granting the ability to generate RINs to OEMs is a novel approach compared to the EPA's regulations for other fuels under the RFS program, for which RINs are typically generated by biofuel producers.

Moreover, the impact of the eRIN program on EV sector participants and the electric generation markets cannot be understated. The ability to generate eRINs provides an alternative revenue stream opportunity to OEMs as they consider expansion of EV fleet offerings and the monetization opportunities of such expansion.

Similarly, the creation of the eRIN program provides a new market for existing biogas or RNG producers, which can directly affect the value of the underlying biogas and RNG commodities and any related derivative products.

The expansion of EV fleet deployments in U.S. markets over the coming years — the Biden administration has established a goal of 50% by 2030 — will create additional demand for eRIN generation opportunities. That, in turn, will create upward demand pressure for increased biogas and RNG production and electric generation fueled by biogas and RNG.

Given the novelty of the eRIN program and the significant interests at stake, the program is likely to be the subject of numerous administrative comments. It is also likely to be challenged in court once finalized. Opponents of the program, which include some oil and gas interests, might argue that the design of the system is inconsistent with the structure of the RFS statute, which does not explicitly mention credits for electricity, or the type of compliance system the EPA has proposed for eRINs.

If the eRIN program is successfully finalized and withstands judicial review, it could serve as a model for similar programs in the future. For one, the EPA's proposal explicitly contemplates eventually expanding the program beyond light duty vehicles.

The program could also influence the design of other credit trading schemes, both at the federal and state level, as governments move to increasingly incentivize EV adoption and promote renewable energy sources to address climate change.

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