



HollyFrontier Corporation Comments on EPA’s Modifications to Fuel Regulations to Provide Flexibility for E15; Modifications to RFS RIN Market Regulations, Docket ID No. EPA-HQ-OAR-2018-0775

HollyFrontier submits these comments in response to the Environmental Protection Agency’s (“EPA” or the “Agency”) proposed rule entitled *Modifications to Fuel Regulations to Provide Flexibility for E15; Modifications to RFS RIN Market Regulations*.¹ HollyFrontier is regulated as an obligated party under the Renewable Fuel Standard (“RFS”) and supports EPA’s efforts to achieve RIN market reform. As detailed below, HollyFrontier believes each RIN market measure will help to prevent market manipulation and reduce RFS compliance costs. EPA should implement additional measures to ensure that the objectives of its proposal are achieved.

I. About HollyFrontier

HollyFrontier is an independent or “merchant” petroleum refining company operating across midcontinent and western states. Our operations are focused on refining and wholesale marketing of petroleum-based products, principally gasoline and diesel. As a wholesale marketer at terminals connected to major product pipelines, our sales mix of blended versus unblended fuels is dictated by our customers, many of whom blend biofuels into our products post-sale. Given that we are an obligated party under EPA’s regulations, HollyFrontier has a vested interest in the RFS program and the associated costs of the program.

HollyFrontier routinely comments on issues regarding the RFS due to the substantial compliance costs imposed on HollyFrontier by the regulation. For 2018, HollyFrontier spent over \$280 million on Renewable Identification Numbers (“RINs”). To put this figure in perspective, it is one of HollyFrontier’s largest operating costs—even larger than its U.S. payroll. These annual compliance costs are unreasonable under any regulatory program, and cause severe economic harm to HollyFrontier and similarly situated merchant refiners. The costs of the RFS program impede HollyFrontier’s ability to invest in creating jobs, to undertake capital improvement projects, and to improve the company’s operations. We urge EPA to reduce the RFS compliance burden for obligated parties and to implement an approach that is sustainable for HollyFrontier and other similarly situated parties.

II. Expanded use of the 1 pound RVP waiver

HollyFrontier does not believe EPA possesses the authority to expand the RVP waiver to cover blends of ethanol greater than 10%. For purposes of our public comment, we adopt via reference those submitted by the American Fuel & Petrochemical Manufacturers.

¹ 84 Fed. Reg. 10,584 (Mar. 21, 2019), referred to as “proposed rule.”



III. Proposed Reforms

A. RIN Holding Restrictions

EPA proposes a two-tier test for daily D6 RIN holding limits to determine whether disclosure is necessary. The first tier requires a party to determine if it is holding a number of D6 RINs equal to or greater than 3% of the implied conventional renewable fuel RVO, which is equivalent to approximately 450 million D6 RINs. If a non-obligated party's holdings are above this threshold, it must report this to EPA. If an obligated party's holdings are above this threshold, then that party must assess with its RIN holdings are greater than 130% of its RVO. If so, the obligated party must report this exceedance to EPA. EPA requested comments on a number of issues related to this proposal, to which HollyFrontier responds as follows.

1. Should EPA establish position limits/enforcement consequence?

HollyFrontier believes enforceable position limits are necessary to prevent market manipulation. When combined with quarterly retirement obligations, an obligated party has no need to hold more than 130% of its RVO on a given day. Moreover, a non-obligated party does not need to hold such a large quantity of RINs. The stockpiling of a large quantity of RINs could suggest an effort by a party to manipulate the RIN market by decreasing the supply, increasing the price, and reducing the liquidity of RINs. We believe disclosure of RIN positions absent a prohibition of position limits will not affect the change EPA seeks in this rulemaking.

2. Should EPA lower the primary threshold from 3% to 1%?

HollyFrontier supports lowering the initial threshold for both obligated and non-obligated parties to 1% of the implied RVO for conventional biofuel, or approximately 150 million D6 RINs. EPA's proposed 3% threshold would admittedly have no impact on non-obligated parties. 84 Fed. Reg. at 10,612 ("None of the 280 non-obligated parties that held separated D6 RINs in that time period exceeded the three percent primary threshold."). Setting a primary threshold for non-obligated parties at such a high level would provide no meaningful change to the RIN market. Non-obligated parties have no basis for holding more than 450 million separated RINs on a single day – the compliance obligation for 4.5 billion gallons of gasoline assuming a 10% RVO. A threshold of 1% or 150 million RINs is more than any non-obligated party should require. Assuming EPA imposes a requirement for non-obligated parties to turnover separated RINs on a quarterly basis, then a 150 million RIN limit would permit a party to hold up to 600 million RINs annually if that party only sold its inventory once per quarter.² The purpose

² A 450 million RIN limit would be equivalent to 1.8 billion RINs annually if a party only sold its inventory once per quarter. There is likely only one ethanol producer in the country that produces that much ethanol.



HOLLYFRONTIER[®]

of RIN market reform should be to encourage the frequent sale of RINs to obligated parties, not permit non-obligated parties to stockpile them and drive up the price.

The same 1% threshold should apply to obligated parties as well. Though EPA may be concerned that a lower threshold would require more obligated parties to report excess holdings, such parties are insulated from a reporting requirement if their RIN holdings are less than 130% of their RVO. This secondary threshold ensures that obligated parties with RVOs above the first threshold are not treated differently than any other obligated party. Additionally, given the quarterly retirement requirements, there is no basis for an obligated party to hold more than 130% of its RVO on any single day.

3. Should RIN holdings of corporate affiliates be included in a party's calculations to determine if they trigger a threshold?

HollyFrontier supports EPA's proposal to aggregate the RIN holdings of corporate affiliates in calculating a daily holding limit. This is an important element in preventing parties from taking advantage of a corporate structure to spread RIN holdings among a number of corporate subsidiaries to avoid reporting obligations. EPA should implement this approach thoughtfully in order to permit non-obligated corporate affiliates to fall within the two-tier reporting threshold of a corporate affiliate and ensure that non-obligated corporate affiliates can purchase separated RINs on behalf of an obligated corporate affiliate.

HollyFrontier supports excluding contractual affiliates from this limit calculation. To the extent a contractual affiliate has no annual obligation under the RFS, such a party should be subject to the single tier 150 million RIN daily limit.

4. Would implementation of this provision harm market participants?

If properly implemented, this reform measure should not harm market participants. EPA should consider, however, implementing an exemption to the reporting requirement for small refineries who receive a small refinery exemption and have retired RINs reinstated. EPA should omit the reinstated RINs from the daily limit calculation so that such refineries are not penalized for having RINs reinstated.

HollyFrontier also supports EPA's proposal to publish the names of the parties that exceed the RIN holding threshold on the EMTS website.

5. Calculating an RVO

EPA requested comment on whether it was appropriate to base an RVO calculation based on the gasoline and diesel production and import volumes from the prior compliance year as a proxy for volumes in the current year. HollyFrontier supports this approach, but requests that EPA permit an obligated party to adjust this figure based on the acquisition/sale of a refinery or to account for a turnaround or other shutdown event that



HOLLYFRONTIER[®]

would underestimate fuel production in the current year. EPA could permit an obligated party to report its anticipated RVO for the current year in the first quarterly report filed on June 1 if the previous year's production would not be representative of the current year's production.

B. Quarterly RIN Retirements

HollyFrontier supports EPA's proposal to require obligated parties to retire RINs for 80% of quarterly gas and diesel production and to file reports with EPA on June 1, September 1, and December 1 of the compliance year. A quarterly retirement obligation should not be burdensome, so long as the deadline to retire RINs is the same as the deadline to file reports (i.e. 60 days following the close of a quarter). Additionally, the requirement to retire 80% of an anticipated RVO provides sufficient flexibility to work around seasonal RIN availability issues. Quarterly retirement obligations also comports with EPA's proposal to require non-obligated parties to sell their inventory of separated RINs on a quarterly basis. HollyFrontier does not support a more frequent retirement interval, as that could impose an undue burden on obligated parties, and believes the value in quarterly retirements as proposed in this rulemaking should be considered only if coupled with the other reforms in this comprehensive rulemaking. Should the agency decide in a final rule to adopt this change in isolation, it will add only a regulatory burden for obligated parties without bringing improvements other reforms will provide.

C. Limitations on the Purchase of Separated RINs

HollyFrontier supports measures that restrict who may purchase separated RINs. Under EPA's proposal, only obligated parties, exporters, and certain non-obligated parties would be allowed to purchase separated D6 RINs. HollyFrontier believes the exemption provision is overly broad, however. The only non-obligated parties that should be permitted to purchase separated RINs should be those who must replace invalid RINs, renewable fuel exporters, and corporate affiliates of obligated parties.

The exemption for contractual affiliates of non-obligated parties should not be necessary. While EPA indicates that certain contractual affiliates may have an obligation of providing RINs to obligated parties, those affiliates are unlikely to have to provide more RINs than they themselves separate. Thus, there is no basis for them to acquire RINs on the marketplace. To the extent any of the RINs they do hold are later deemed invalid, the contractual affiliate could fall under the exemption for non-obligated parties that must replace invalid RINs.

HollyFrontier also requests that EPA extend this exemption for all RIN categories. Obligated parties are the only ones with an affirmative obligation to retire RINs. Accordingly, there is no basis for non-obligated parties (other than those who are exempt) to purchase any separated RINs. Those EPA raised concerns that this restriction may impact liquidity, the same such restriction is present in the benzene and sulfur credit programs and does not cause an issue. If EPA does not extend this restriction to all RIN categories, it should require those non-obligated parties who purchase separated RINs to



HOLLYFRONTIER[®]

disclose the volume and price of the separated RINs such parties purchase on a quarterly basis.

EPA also requested comment on how to prevent parties from gaming this restriction by becoming obligated parties themselves. If EPA implements a 2 or 3 trade restriction per separated RIN, similar to the trading restrictions in the sulfur and benzene credit program, it will remove any incentive to game the system. By placing trading restrictions on RINs, EPA would substantially reduce arbitrage opportunities because RINs could not be traded many times over.

D. Limiting Duration Of RIN Holdings By Non-Obligated Parties

HollyFrontier supports EPA's proposal to set a quarterly limit on the duration that a non-obligated party can hold separated D6 RINs and the requirement for a non-obligated party to sell or retire as many RINs as it obtained in a calendar quarter. Though EPA has suggested this could be limited to D6 RINs, it would be appropriate to extend this limitation to all RIN categories. As indicated above, there is no basis for a non-obligated party to hold on to separated RINs for a long period of time. Additionally, a quarterly divestment period complements the quarterly retirement obligation for obligated parties under the proposed reform measures.

E. Other Proposals

In addition to the reform proposal outlined above, EPA also sought comment on a few additional items. HollyFrontier responds to those below.

1. Identifying Corporate Affiliates

EPA requested comment on whether auditors should include in their attest engagements to EPA a full list of a party's affiliates, including affiliates not registered with the RFS program. HollyFrontier does not believe it necessary to include affiliates not registered with EMTS, as such affiliates would not participate in the RFS and would not hold, buy or sell RINs. By requiring disclosure of all such affiliates, EPA would impose a reporting and review burden that does not further the goals of the proposed RFS reform.

2. Reporting RIN Transactions

EPA also requested comment on whether parties should report accurate RIN purchase pricing and whether it should require both parties in a RIN transaction enter the same RIN price. HollyFrontier supports this proposal and believe it will provide better and accurate data on the RIN market and reduce potential opportunities for market manipulation.

HollyFrontier does not believe EPA should require parties to disclose whether a RIN transaction is the result of a spot trade or of delivery from a term contract. This information is unlikely to provide meaningful data as some contracts can be pegged to the



HOLLYFRONTIER[®]

spot price while others take a different approach. Accordingly, it may be difficult for EPA to obtain meaningful information based on such a distinction.

3. Third-Party Monitor

EPA requested comment on whether it should employ a third-party monitor for the RIN market, including production of market analysis reports. HollyFrontier would support EPA expanding the scope of the existing memorandum of understanding between the Agency and CFTC so as to provide better market oversight and visibility into potential market manipulation. Such an effort between agencies would be beneficial to the overall integrity of the RFS. The scope of such an undertaking may be daunting, however, and may not be necessary if the above reforms are implemented.

4. Point of Obligation

HollyFrontier has long advocated that the most beneficial RIN market reform EPA can undertake is to move the point of obligation for purposes of compliance to more accurately match the petroleum fuel manufacturing and biofuel blending supply chain. As a merchant refiner, HollyFrontier possesses limited ability to mix petroleum based fuel it produces with biofuel. Yet EPA establishes an annual biofuel mandate based upon 100% of the petroleum fuel production regardless of physical ability to introduce biofuel with these volumes. As we have petitioned EPA in the past, our belief is moving the point of obligation further downstream in the supply chain to incorporate rack-sellers as obligated parties will reduce RIN price volatility and more efficiently accomplish goals of this proposed rulemaking and the RFS program generally.

Conclusion

HollyFrontier believes that the proposed suite of RIN market reforms will help reduce RFS compliance costs and bring much relief for obligated parties. Key to these initiatives is EPA providing in a final rule a package of reforms as is proposed, and not moving single RIN market reforms in isolation. Further, it is essential that EPA establish position limits at a level that will prevent RIN stockpiling – a level of 1% or less of the conventional biofuel RVO. Additionally, the reform effort should prohibit parties that do not need RINs to satisfy a compliance obligation to purchase separated RINs. These and other reforms should help reduce RIN market manipulation and ensure that the credits operate as the compliance mechanism that Congress intended.