

# RNG Requirements, Restrictions & RINs:

Recent Regulatory Reforms under the Renewable Fuel Standard

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# Pillsbury's Fuels Team

## David McCullough | Partner

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Recognized expert in the production, trade, shipment and use of renewable fuels (including RNG), environmental and carbon credits, petroleum products and other energy commodities.

Has advised clients on implementation of the Renewable Fuel Standard and California Low Carbon Fuel Standard since their inception in 2010.



## Matthew Morrison | Partner

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Spent more than two decades working at EPA and the Justice Department addressing a variety of cases involving the Clean Air Act and other environmental laws. As associate director of EPA's Air Enforcement Division, oversaw enforcement of EPA's Renewable Fuel Standard.

Counsels clients on compliance with the RFS and represents companies in federal court challenging EPA actions under the RFS.



Pillsbury's fuels team has been recognized by *Chambers USA* as a leading firm in Environmental and Climate Change law based on expertise in the Renewable Fuel Standard.



## Shelby Dyl | Associate

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Focuses on complex commercial litigation, with an emphasis on environmental, energy and infrastructure matters.

Currently litigating several RFS appellate matters in the federal courts of appeal.



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Represents clients in all areas of state and federal environmental law, regulatory compliance and transactional due diligence, including with respect to EPA's implementation of the RFS.



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Regularly counsels renewable fuel producers and marketers on regulatory compliance and commercial dealings, including on engagement with the EPA on RFS related matters.



# Program Agenda

1. Key Takeaways
2. Current Registration and RIN Generation Requirements
3. New and Continued Registration Requirements
4. New Limitations Applicable to Biogas Producers
5. Requirements for RNG Producers and Importers
6. Generating RINs on RNG
7. Requirements for RNG RIN Separators
8. Impact of New RNG Requirements on Contracts
9. Restrictions on Storage of RNG
10. Product Transfer Document Requirements

# Current RNG RIN Generation Requirements

- Flexibility in who can serve as RIN generator (RNG producer, RNG marketer, RNG dispenser can decide who generates the RIN).
- Only the RIN generator needs to register with EPA.
- RINs are generated once the RNG is sold as transportation fuel.
- RINs are generated on a separated basis.

# Key Takeaways

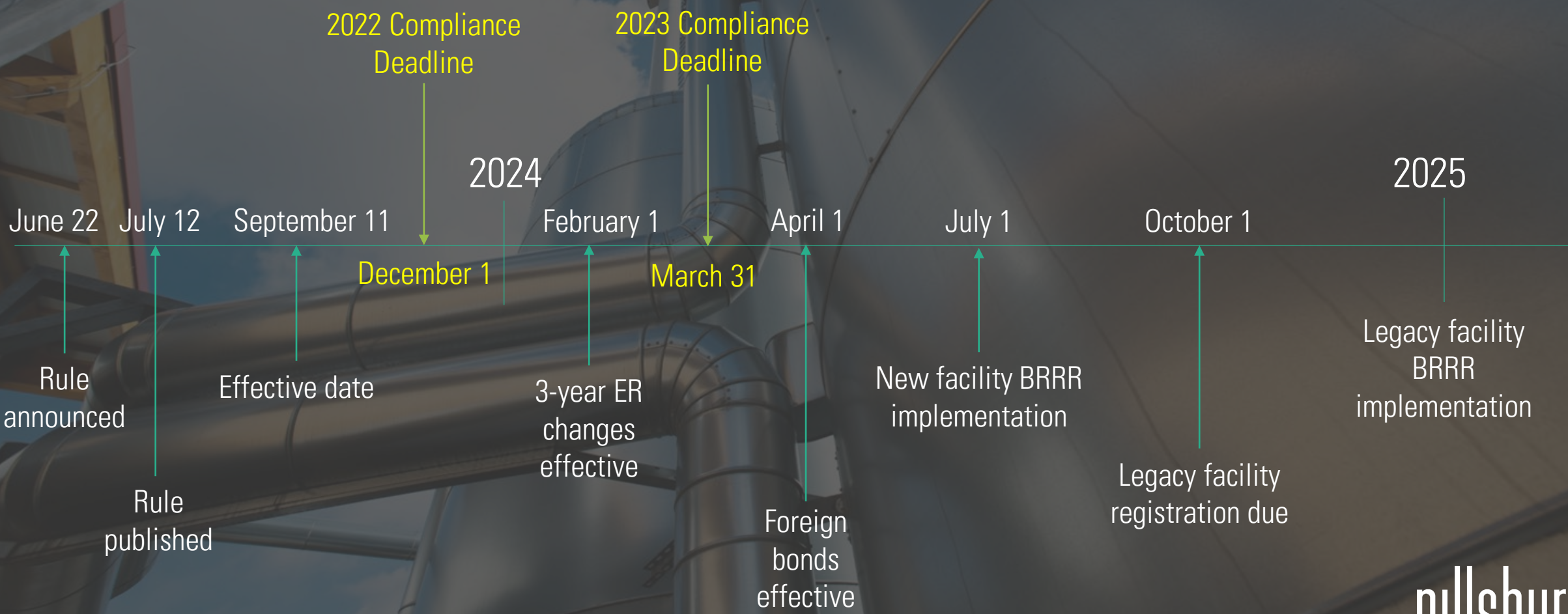
- RINs on RNG will now be generated upon injection into the pipeline
- Only the RNG producer will be able to serve as the RIN generator
- RINs will be generated on RNG on an assigned basis and transferred downstream with RNG
- Biogas producer, RNG producer and RIN separator will be required to register and be liable for other parties' actions
- RINs on RNG will be separated when it is demonstrated that fuel is produced, used or sold as transportation fuel
- EPA has stated that these changes are not to alter the "book and claim" system of accounting for matching production with use of RNG.
- Entities constructing new RNG facilities will no longer be able to store RNG offsite prior to registration for future RIN generation

A low-angle photograph of industrial machinery, featuring large silver pipes and cylindrical tanks against a blue sky with light clouds. The image is dimmed to serve as a background for text.

# New and Continued Registration Requirements

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# Timeline for Regulatory Dates with Compliance Deadlines



# Registration Requirements

- Biogas producers, RNG producers, and RNG RIN separators must register with EPA prior to participation in the RFS program.
- As part of their registration, biogas producers, RNG producers, and RNG RIN separators must submit information that demonstrates that their facilities are capable of producing biogas, RNG, or renewable CNG/LNG from renewable biomass under an EPA-approved pathway.
- For biogas producers and RNG producers, this information must include (a) the feedstocks that the producer intends to use, (2) the process through which the feedstock is converted into biogas or RNG, and (3) any other information necessary for EPA to determine whether the biogas or RNG, was produced in a manner consistent with Clean Air Act and EPA's regulatory requirements.
- Biogas producers and RNG producers doing business with one another must also identify each other and any other entities with whom they are associated. This is so EPA can track the relationships between the parties in EMTS.



# Registration Requirements Depend on How CNG/LNG is Produced and Used for Transportation

- Renewable CNG/LNG produced from biogas that is only distributed via a closed, private, non-commercial system.
  - Usually involves directly supplying renewable CNG/LNG to a CNG/LNG fleet in close proximity to where the biogas is produced and collected; in many cases the party that generates the RIN is the same party that owns/ operates the CNG/LNG fleet
- Renewable CNG/LNG is introduced into a commercial distribution system (e.g., natural gas commercial pipeline system).
  - RIN generators must also demonstrate that the RNG was loaded onto and withdrawn from a physically-connected natural gas commercial distribution system, and that the amount of CNG/LNG sold as transportation fuel corresponds with the amount of RNG placed onto the natural gas commercial distribution system. (See 2014 Pathways II Rule)
- The requirements for both approaches are now in 40 CFR Part 80, Subpart E (not M)

# Biogas Biointermediates

- In establishing the initial biointermediates program, EPA previously did not include biogas as a biointermediate because EPA said those circumstances were too complex.
- In the biogas regulatory reform rule, EPA figured out the compliance and oversight mechanisms necessary to allow biogas to be processed into a biointermediate at one facility and then further processed at another
  - Examples: Steam methane reforming the biogas into hydrogen or using a “Fischer-Tropsch” process to turn the biogas into renewable diesel
  - The new rule could result in significant increase in biogas as a feedstock for other renewable fuels

# New Registration Deadlines

- Parties that are registered to generate RINs for renewable CNG/LNG prior to July 1, 2024 will have until January 1, 2025 to come into compliance with the biogas regulatory reforms.
- Parties registered July 1, 2024 or after will have to meet the biogas regulatory reform provisions beginning July 1, 2024.
- Starting on January 1, 2025, all parties must comply with the biogas regulatory reform provisions and only biogas and RNG produced under the biogas regulatory reform provisions are eligible for RIN generation.

# Enforcement Note

- All biogas producers, RNG producers, and RIN separators (likely CNG/LNG dispensers) must not only register, but each will be liable for other parties' actions
- RNG importers, biogas closed distribution system RIN generators, and renewable fuel producers using biogas as a biointermediate or RNG as a feedstock also must register
  - RIN generators will not be the only party targeted by an EPA investigation
  - There may be less of a premium for serving as the RIN generator
  - All parties should ensure their counterparties comply with the RFS (or at least obtain an indemnity)

# Quality Assurance Plans

- Quality Assurance Plans (“QAPs”) remain voluntary since the EPA Moderated Transaction System (“EMTS”) will be expanded to track RIN contractual agreements
  - Fewer documentation requirements
- New testing, measurement, and QAP procedural requirements were introduced that should be discussed with producers’ QAP providers and/or third-party auditors

The background image shows a large-scale industrial facility, likely a biogas production plant. It features several large, cylindrical storage tanks or silos, interconnected by a complex network of pipes and structural steel. The sky is visible in the upper portion of the frame, suggesting an outdoor or semi-outdoor setting. The overall scene is industrial and technical.

# Biogas Producer Requirements

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# “Biogas Producer” Defined

Any person that owns, leases, operates, controls or supervises a biogas production facility where the biogas is produced from renewable biomass under an approved pathway

# Requirements for Biogas Producers

- Register with EPA and submit an engineering review
- Continuously measure all biogas leaving each facility
- Measure/test each batch pathway before mixing with nonqualifying gas
- Complete product transfer documents (“PTDs”) and maintain records
- Comply with an annual attestation requirement (third party audits, as with other EPA fuels programs and biointermediates)
- Submit monthly batch reports with the amount of biogas produced as well as the biomethane and energy of the biogas produced



# Biogas Producer Requirements (cont'd)

- Registration and engineering review
  - Biogas producers must submit information that demonstrates that the facilities are capable of producing biogas from renewable biomass under an EPA-approved pathway.
  - This information must include the feedstocks that the producer intends to use, the process through which the feedstock is converted into biogas
    - Note that a digester may not accept wastewater treatment plant sludge feedstocks that are less than 75% cellulosic
  - Biogas producers must also establish the production *capacity* of the facility (serves as a check for third parties and EPA to avoid fraud)
  - Engineering review has to be done by an independent third party, not in-house

# Supplying Biogas

- Biogas producers can supply biogas only for the following uses:
  - For CNG/LNG in a closed distribution system
  - To put RNG into a commercial pipeline system that received and delivers gas from multiple parties
  - As a biointermediate in a closed distribution system
    - Using biogas to make electricity for transportation (eRINs) was withdrawn
- For biogas shipped via a closed distribution system and used as a biointermediate, the producer can supply biogas only to a single renewable fuel production facility

A low-angle photograph of industrial machinery, featuring large silver pipes and cylindrical tanks against a blue sky with light clouds. The scene is dimly lit, with a dark overlay across the entire image.

# Requirements for RNG Producers and Importers

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# “RNG Producer” Defined

- RNG producer is someone who owns, leases, or operates a facility where biogas is upgraded to RNG
- RNG Importer is someone who imports RNG into the United States
  - Only the foreign RNG producer or the domestic importer of RNG may generate RINs

# Requirements for RNG Producers and Importers

- Register and submit a third-party engineering report
- Meet recordkeeping requirements and PTD requirements
- Continuously measure RNG produced at the facility and injected into pipeline or shipped on a truck
- Test injected RNG once a year before and after blending/upgrading
- Meet attestation engagement requirements
- Submit monthly batch reports

A low-angle photograph of an industrial facility, likely a refinery or chemical plant. The image shows several large, cylindrical storage tanks and a complex network of pipes and structural steel. The sky is a clear, bright blue with a few wispy clouds. The overall scene is industrial and modern.

# Generating RINs on RNG

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# RNG Producers Serve as RIN Generators

- RINs are generated upon injection into a commercial pipeline system (closed systems operate differently).
- Generate RINs monthly – can claim the RNG was dispensed as transportation fuel in the same month it was injected (do not need to wait one month).
- RINs generated on an assigned basis and transferred downstream with the RNG.
- EPA has publicly stated that this regime is not intended to change the book and claim practices of RIN generation for RNG and that RNG marketers/offtakers do not need to have shipping capacity on the pipeline into which the RNG is injected.
  - What should you do if offtaker doesn't have capacity? Have the offtaker buy RNG and sell brown gas back to the producer, keeping the environmental attributes and matching them with downstream CNG/LNG sales as transportation fuel.

# Affidavits and Certificates of Analysis

- EPA will not require parties to submit affidavits in the biogas distribution change in most instances
  - No requirement that biogas and RNG producers demonstrate that there are contracts between each party in the biogas/distribution generation chain to demonstrate transportation use
- RNG producers no longer required to supply a certificate of analysis (“COAs”) for biogas and RNG at initial registration



The background of the slide is a photograph of an industrial facility, likely a refinery or chemical plant. It features several large, cylindrical storage tanks and a complex network of pipes and structural steel. The lighting is somewhat dim, giving the scene a blue-grey tint. The text is overlaid on this image.

# Requirements for RIN Separators

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# Requirements for RIN Separators

- Only the following parties may separate RINs:
  - Party withdraws RNG from the commercial pipeline system;
  - The party that produced CNG/LNG from the RNG (i.e., the compressing or liquifying party); or
  - The party that dispensed the RNG as transportation fuel.
- RIN separation occurs:
  - RIN separator has documentation showing when, where and how much RNG was sold as transportation fuel.
  - If this documentation is from another party, the RIN separator must have a written contract with the other party for the sale of RNG as transportation fuel, must have records on the dispensing of the RNG as transportation fuel and an affidavit from the dispenser.
- Register, report, meet recordkeeping requirements
- Provide PTDs and continuously measure volumes of natural gas withdrawn from a pipeline
- A dispensing location may only be induced in one RNG RIN separator's registration at a time

The background of the slide is a photograph of an industrial facility, likely a refinery or chemical plant. It features several large, cylindrical storage tanks and a complex network of pipes and structural steel. The sky is visible in the upper portion of the image, showing some clouds. The overall image has a dark, semi-transparent overlay to make the text stand out.

# Impact of New RNG Requirements on Contracts

# RIN Generation

- Previously, RINs were generated on RNG when RNG was dispensed as transportation fuel
- **Now RINs are generated upon injection into a pipeline**
- RNG contracts will need RIN transfer agreements
- Pricing terms and general contract provisions may need to be revised to take into account change in liabilities.

A low-angle photograph of an industrial facility, likely a refinery or chemical plant. The image shows several large, cylindrical storage tanks and a complex network of pipes and structural steel. The sky is a clear, bright blue with a few wispy clouds. The overall scene is industrial and modern.

# Restrictions on Storage of RNG

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# Storage Requirement Overview

- Storage of RNG for future RIN generation prior to receiving EPA registration will not be permitted
  - This may pose as a challenge for project financing
- Those constructing new RNG facilities may no longer store RNG offsite prior to registration for a future RIN generation

# Requirements for RIN Storage Prior to EPA Acceptance of RFS Registration

- The fuel was produced after the engineering review
- No changes have occurred at the facility after the engineering review
- Fuel is stored at the facility (and not injected into a pipeline in the case of RNG)
- Custody is maintained to the fuel until EPA accepts the producer's registration

A low-angle photograph of an industrial facility, likely a refinery or chemical plant. The image shows several large, cylindrical storage tanks and a complex network of pipes and structural steel. The sky is a clear, pale blue with some light clouds. The overall tone is industrial and professional.

# Product Transfer Document Requirements

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# Biogas Title Transfer Requirements

- Information related to the transfer and transferee
- The intended use of the biogas
- The amount of biogas being transferred
- The location and date that title of the biogas was transferred
- Period of production

# RNG Title Transfer Requirements

- The names and addresses of the transferor and transferee
- The transferor's and transferee's EPA company registration numbers
- The amount of RNG being transferred
- Date of transfer
- EPA requires RNG producers must clearly designate within the PTDs that the RNG **must** be used for transportation fuel

A low-angle, upward-looking photograph of a complex industrial facility. The scene is dominated by large, metallic, cylindrical pipes and tanks. The pipes are interconnected, with some running horizontally and others vertically. The tanks are massive, with curved surfaces that reflect the light. The background shows a clear blue sky with a few wispy white clouds. The overall color palette is muted, with a dark blue overlay on the image.

Questions?

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