The Problem of Invalidated RINs in the Renewable Fuel Standard

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Under the Renewable Fuel Standard (RFS), the EPA imposed a "buyer beware" approach to the purchase and sale of RINs. This creates a liability for any buyer of RINs, making them responsible for purchases of invalid RINS, even if it's done inadvertently. For marketers, the RFS is both an opportunity and also a responsibility, and to the extent that they hold RINs, marketers shoulder the responsibility for invalidated RINs. The liability includes the replacement cost of invalidated RINs as well as civil fines and penalties imposed by the EPA . The EPA has prosecuted millions of US$ worth of fraudulent RIN transactions, yet fraud continues to be a significant risk, as the EPA's records show:

Company	No of invalid RINs	Fuel code	year
Clean Green Fuels	6,800,000	D4	2013
Absolute Fuels	48,100,000	D4	2013
Imperial Petroleum	33,500,000	D4	2013
Green Diesel	60,000,000	D4	2014
Global Marketing	6,300,000	D4	2014
New Energy Fuels	15,100,000	D4	2015
Montgomery recycling	12,500,000	D4	2016
Chemoil	72,700,000	D4	2016
NCL crude	36,000,000	D4	2016
Triton	39,000,000	D4	2017
Total	330,000,000		

This is a risk that is not covered by standard property and liability insurance policies; neither are RINs considered "goods" under the Uniform Commercial Code (UCC), so the Code's warranty provisions do not apply.

Starting in 2011, the Environmental Protection Agency launched a series of investigations into fraudulent RIN transactions and prosecuted millions of dollars' worth of fraudulent RIN transactions after finding that so-called producers of renewable fuels had not actually produced the amount of renewable fuel claimed in RIN transactions.

The EPA then sought to address the potential for fraudulent RIN transactions by encouraging third-party verification of the generation of RINs. The EPA enacted a Quality Assurance Program (QAP) under which third-party auditors evaluate producers of renewable fuel to certify they were in fact producing the required product in compliance with RFS regulations. The RINs certified under this voluntary program became known as Q-RINs and the Quality Assurance Program provides the Q-RIN owner with an affirmative defense. Affirmative defenses limit or excuse a defendant's criminal culpability or civil liability. The success of the QAP, though, has been limited. Only about 12% of all RINs are Q-RINs because the process is expensive and numerous administrative steps are required for any party replacing RINs, claiming an affirmative defense to an alleged civil violation, requesting corrective action, and notifying EPA of the existence of a potentially invalid RIN (PIR) – so market participants have relied on other risk management strategies: only purchasing RINs from parties who have long established and trusted trading relationships; implementing their own auditing processes, or only purchasing ethanol-based RINs. This development hurt smaller renewable fuel producers and reduced the RIN market's overall liquidity.

Insurance is another possible protection against the risk of invalidation. It is used successfully in several markets, most notably in California's Cap & Trade program, where "buyer liability" has created a price differential between carbon offsets, depending on the level of risk associated with them. By removing ▶

Treatment of Invalid RINs Code of Federal Regulations, Title 40, Chapter 1, Subchapter C, Part 80, sub-part M – Renewable Fuel Standard - § 80.1430 >.
Code of Federal Regulations, Title 40, Chapter 1, Subchapter C, Part 80, sub-part M – Renewable Fuel Standard; The Clean Air Act as contained in the United States Code, 2013 edition
https://www.inc.com/jeff-haden/15-surprisingly-inspirational-business-takeaways-from-moneyball.html

this risk from both offset buyers (typically refineries and utilities) and sellers (project developers), insurance adds certainty to the market because it's a guarantee with investment-grade A+ security.

Similar solutions are available in the federal RFS and state LCFS markets, allowing marketers that assume RIN invalidation risk in sales contracts to offer clear title. For refiners incurring significant RFS compliance costs as obligated parties, Platinum RIN insurance reinforces their due diligence programs at relatively small additional expense. ★

Parhelion Underwriting is a Lloyds, London-backed risk finance company specializing in risks impacting investment in clean energy and climate finance markets.

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