

The Administrator signed the following rule on February 3, 2010 and we are submitting it for publication in the Federal Register. While we have taken steps to ensure the accuracy of this Internet version of the rule, it is not the official version of the rule. Please refer to the official version in a forthcoming Federal Register publication or on GPO's Web Site. You can access the Federal Register at: www.gpoaccess.gov/fr/index.html. When using this site, note that text files may be incomplete because they don't include graphics. Instead, select Adobe Portable Document File (PDF) files. For the reasons set forth in the preamble, 40 CFR part 80 is amended as follows:

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PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7542, 7545, and 7601(a).

2. A new Subpart M is added to part 80 to read as follows:

Subpart M—Renewable Fuel Standard

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Subpart M—Renewable Fuel Standard

§ 80.1400 Applicability.

The provisions of this Subpart M shall apply for all renewable fuel produced on or after July 1, 2010, for all RINs generated on or after July 1, 2010, and for all renewable volume obligations and compliance periods starting with January 1, 2010. Except as provided otherwise in this Subpart M, the provisions of Subpart K of this Part 80 shall not apply for such renewable fuel, RINs, renewable volume obligations, or compliance periods.

§ 80.1401 Definitions.

The definitions of §80.2 and of this section apply for the purposes of this Subpart M. The definitions of this section do not apply to other subparts unless otherwise noted. Note that many terms defined here are common terms that have specific meanings under this subpart M. The definitions follow:

Advanced biofuel means renewable fuel, other than ethanol derived from cornstarch, has lifecycle greenhouse gas emissions that are at least 50 percent less than baseline lifecycle greenhouse gas emissions.

Annual cover crop means an annual crop, planted as a rotation between primary planted crops, or between trees and vines in orchards and vineyards, typically to protect soil from erosion and to improve the soil between periods of regular crops.

Areas at risk of wildfire are those areas in the “wildland-urban interface”, where humans and their development meet or intermix with wildland fuel. Note that, for guidance, the SILVIS laboratory at the University of Wisconsin maintains a website that provides a detailed map of areas meeting this criteria at: http://www.silvis.forest.wisc.edu/projects/US_WUI_2000.asp. The SILVIS laboratory is located at 1630 Linden Drive, Madison, Wisconsin, 53706 and can be contacted at (608)263-4349.

Baseline lifecycle greenhouse gas emissions means the average lifecycle greenhouse gas emissions for gasoline or diesel (whichever is being replaced by the renewable fuel) sold or distributed as transportation fuel in 2005.

Biodiesel means a mono-alkyl ester that meets ASTM D 6751 (incorporated by reference, see § 80.1468).

Biogas means a mixture of hydrocarbons that is a gas at 60 degrees Fahrenheit and 1 atmosphere of pressure that is produced through the conversion of organic matter. Biogas that is used to generate RINs must be renewable fuel. Biogas includes propane, and landfill gas, manure digester gas, and sewage waste treatment gas.

Biomass-based diesel means a renewable fuel that has lifecycle greenhouse gas emissions that are at least 50 percent less than baseline lifecycle greenhouse gas emissions and meets all of the requirements of paragraph (1) of this definition:

- (1)
 - (i) Is a transportation fuel, transportation fuel additive, heating oil, or jet fuel.
 - (ii) Meets the definition of either biodiesel or non-ester renewable diesel.
 - (iii) Is registered as a motor vehicle fuel or fuel additive under 40 CFR part 79, if the fuel or fuel additive is intended for use in a motor vehicle.
- (2) Renewable fuel that is co-processed with petroleum is not biomass-based diesel.

Cellulosic biofuel means renewable fuel derived from any cellulose, hemi-cellulose, or lignin that has lifecycle greenhouse gas emissions that are at least 60 percent less than the baseline lifecycle greenhouse gas emissions.

Cellulosic diesel is any renewable fuel which meets both the definitions of cellulosic biofuel and biomass-based diesel, as defined in this section 80.1401. Cellulosic diesel includes heating oil and jet fuel made from cellulosic feedstocks.

Combined heat and power (CHP), also known as cogeneration, refers to industrial processes in which byproduct heat that would otherwise be released into the environment is used for process heating and/or electricity production.

Co-processed means that renewable biomass was simultaneously processed with fossil fuels or other non-renewable feedstock in the same unit or units to produce a fuel that is partially derived from renewable biomass.

Corn oil extraction means the recovery of corn oil from the thin stillage and/or the DGS produced by a dry mill corn ethanol plant, most often by mechanical separation.

Crop residue is the biomass left over from the harvesting or processing of planted crops from existing agricultural land and any biomass removed from existing agricultural land that facilitates crop management (including biomass removed from such lands in relation to invasive species control or fire management), whether or not the biomass includes any portion of a crop or crop plant.

Cropland is land used for production of crops for harvest and includes cultivated cropland, such as for row crops or close-grown crops, and non-cultivated cropland, such as for horticultural or aquatic crops.

Diesel, for the purposes of this subpart, refers to any and all of the products specified at §80.1407(e).

Ecologically sensitive forestland means forestland that meets either of the following criteria:

- (1) An ecological community with a global or state ranking of critically imperiled, imperiled or rare pursuant to a State Natural Heritage Program. For examples of such ecological communities, see "Listing of Forest Ecological Communities Pursuant to 40 CFR 80.1401; S1-S3 communities," which is number EPA-HQ-OAR-2005-0161-1034.1 in the public docket, and "Listing of Forest Ecological Communities Pursuant to 40 CFR 80.1401; G1-G2 communities," which is number EPA-HQ-OAR-2005-0161-2906.1 in the public docket. This material is available for inspection at the EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington DC. The telephone number for the Air Docket is (202) 566-1742.
- (2) Old growth or late successional, characterized by trees at least 200 years in age.

EPA Moderated Transaction System, or EMTS, means a closed, EPA moderated system that provides a mechanism for screening and tracking Renewable Identification Numbers (RINs) as per §80.1452.

Existing agricultural land is cropland, pastureland, and land enrolled in the Conservation Reserve Program (administered by the U.S. Department of Agriculture's Farm Service Agency) that was cleared or cultivated prior to December 19, 2007, and that, on December 19, 2007, was:

- (1) Nonforested; and
- (2) Actively managed as agricultural land or fallow, as evidenced by records which must be traceable to the land in question, which must include one of the following:
 - (i) Records of sales of planted crops, crop residue, or livestock, or records of purchases for land treatments such as fertilizer, weed control, or seeding.
 - (ii) A written management plan for agricultural purposes.
 - (iii) Documented participation in an agricultural management program administered by a Federal, state, or local government agency.
 - (iv) Documented management in accordance with a certification program for agricultural products.

Exporter of renewable fuel means:

- (1) A person that transfers any renewable fuel to a location outside the contiguous 48 states and Hawaii; and
- (2) A person that transfers any renewable fuel from a location in the contiguous 48 states or Hawaii to Alaska or a United States territory, unless that state or territory has received an approval from the Administrator to opt-in to the renewable fuel program pursuant to §80.1443.

Facility means all of the activities and equipment associated with the production of renewable fuel starting from the point of delivery of feedstock material to the point of final storage of the end product, which are located on one property, and are under the control of the same person (or persons under common control).

Fallow means cropland, pastureland, or land enrolled in the Conservation Reserve Program (administered by the U.S. Department of Agriculture's Farm Service Agency) that is intentionally left idle to regenerate for future agricultural purposes with no seeding or planting, harvesting, mowing, or treatment during the fallow period.

Forestland is generally undeveloped land covering a minimum area of 1 acre upon which the primary vegetative species are trees, including land that formerly had such tree cover and that will be regenerated and tree plantations. Tree covered areas in intensive agricultural crop production settings, such fruit orchards or tree-covered areas in urban settings such as city parks, are not considered forestland.

Fractionation of feedstocks means a process whereby seeds are divided in various components and oils are removed prior to fermentation for the production of ethanol.

Fuel for use in an ocean-going vessel means, for this subpart only:

- (1) Any marine residual fuel (whether burned in ocean waters, Great Lakes, or other internal waters);

- (2) Emission Control Area (ECA) marine fuel, pursuant to §§80.2(ttt) and 80.510(k) (whether burned in ocean waters, Great Lakes, or other internal waters); and
- (3) Any other fuel intended for use only in ocean-going vessels.

Gasoline, for the purposes of this subpart, refers to any and all of the products specified at §80.1407(c).

Heating oil has the meaning given in §80.2(ccc).

Importers. For the purposes of this subpart, an importer of transportation fuel or renewable fuel is any U.S. domestic person who:

- (1) Brings transportation fuel or renewable fuel into the 48 contiguous states of the United States or Hawaii, from a foreign country or from an area that has not opted in to the program requirements of this subpart pursuant to §80.1443; or
- (2) Brings transportation fuel or renewable fuel into an area that has opted in to the program requirements of this subpart pursuant to §80.1443 from a foreign country or from an area that has not opted in to the program requirements of this subpart.

Motor vehicle has the meaning given in Section 216(2) of the Clean Air Act (42 U.S.C. 7550(2)).

Naphtha means a renewable fuel or fuel blending component falling within the boiling range of gasoline.

Neat renewable fuel is a renewable fuel to which 1% or less of gasoline (as defined in this section) or diesel fuel has been added.

Non-ester renewable diesel means renewable fuel which is all of the following:

- (1) Registered as a motor vehicle fuel or fuel additive under 40 CFR Part 79, if the fuel or fuel additive is intended for use in a motor vehicle.
- (2) Not a mono-alkyl ester.

Nonforested land means land that is not forestland.

Nonroad vehicle has the meaning given in Section 216(11) of the Clean Air Act (42 U.S.C. 7550(11)).

Pastureland is land managed for the production of indigenous or introduced forage plants for livestock grazing or hay production, and to prevent succession to other plant types.

Planted crops are all annual or perennial agricultural crops from existing agricultural land that may be used as feedstocks for renewable fuel, such as grains, oilseeds, sugarcane, switchgrass, prairie grass, duckweed, and other species (but not including algae species or planted trees), providing that they were intentionally applied by humans to the ground, a growth medium, a pond or tank, either by direct application as seed or plant, or through

intentional natural seeding or vegetative propagation by mature plants introduced or left undisturbed for that purpose.

Planted trees are trees harvested from a tree plantation.

Pre-commercial thinnings are trees, including unhealthy or diseased trees, primarily removed to reduce stocking to concentrate growth on more desirable, healthy trees, or other vegetative material that is removed to promote tree growth.

Renewable biomass means each of the following (including any incidental, de minimis contaminants that are impractical to remove and are related to customary feedstock production and transport):

- (1) Planted crops and crop residue harvested from existing agricultural land cleared or cultivated prior to December 19, 2007 and that was nonforested and either actively managed or fallow on December 19, 2007.
- (2) Planted trees and tree residue from a tree plantation located on non-federal land (including land belonging to an Indian tribe or an Indian individual that is held in trust by the U.S. or subject to a restriction against alienation imposed by the U.S.) that was cleared at any time prior to December 19, 2007 and actively managed on December 19, 2007.
- (3) Animal waste material and animal byproducts.
- (4) Slash and pre-commercial thinnings from non-federal forestland (including forestland belonging to an Indian tribe or an Indian individual, that are held in trust by the United States or subject to a restriction against alienation imposed by the United States) that is not ecologically sensitive forestland.
- (5) Biomass (organic matter that is available on a renewable or recurring basis) obtained from the immediate vicinity of buildings and other areas regularly occupied by people, or of public infrastructure, in an area at risk of wildfire.
- (6) Algae.
- (7) Separated yard waste or food waste, including recycled cooking and trap grease, and materials described in §80.1426(f)(5)(i).

Renewable fuel means a fuel which meets all of the requirements of paragraph (1) of this definition:

- (1)
 - (i) Fuel that is produced from renewable biomass.
 - (ii) Fuel that is used to replace or reduce the quantity of fossil fuel present in a transportation fuel, heating oil, or jet fuel.
 - (iii) Has lifecycle greenhouse gas emissions that are at least 20 percent less than baseline lifecycle greenhouse gas emissions, unless the fuel is exempt from this requirement pursuant to §80.1403.
- (2) Ethanol covered by this definition shall be denatured as required and defined in 27 CFR parts 19 through 21. Any volume of denaturant added to the undenatured ethanol by a producer or importer in excess of 2 volume percent shall not be included in the volume of ethanol for purposes of determining compliance with the requirements under this subpart.

Renewable Identification Number (RIN), is a unique number generated to represent a volume of renewable fuel pursuant to §§ 80.1425 and 80.1426.

- (1) Gallon-RIN is a RIN that represents an individual gallon of renewable fuel; and
- (2) Batch-RIN is a RIN that represents multiple gallon-RINs.

Slash is the residue, including treetops, branches, and bark, left on the ground after logging or accumulating as a result of a storm, fire, delimiting, or other similar disturbance.

Small refinery, for this subpart only, means a refinery for which the average aggregate daily crude oil throughput for calendar year 2006 (as determined by dividing the aggregate throughput for the calendar year by the number of days in the calendar year) does not exceed 75,000 barrels.

Transportation fuel means fuel for use in motor vehicles, motor vehicle engines, nonroad vehicles, or nonroad engines (except for ocean-going vessels).

Tree plantation is a stand of no less than 1 acre composed primarily of trees established by hand- or machine-planting of a seed or sapling, or by coppice growth from the stump or root of a tree that was hand- or machine-planted. Tree plantations must have been cleared prior to December 19, 2007 and must have been actively managed on December 19, 2007, as evidenced by records which must be traceable to the land in question, which must include:

- (1) Sales records for planted trees or tree residue together with other written documentation connecting the land in question to these purchases;
- (2) Purchasing records for seeds, seedlings, or other nursery stock together with other written documentation connecting the land in question to these purchases;
- (3) A written management plan for silvicultural purposes;
- (4) Documentation of participation in a silvicultural program sponsored by a Federal, state or local government agency;
- (5) Documentation of land management in accordance with an agricultural or silvicultural product certification program;
- (6) An agreement for land management consultation with a professional forester that identifies the land in question; or
- (7) Evidence of the existence and ongoing maintenance of a road system or other physical infrastructure designed and maintained for logging use, together with one of the above-mentioned documents.

Tree residue is slash and any woody residue generated during the processing of planted trees from tree plantations for use in lumber, paper, furniture or other applications, provided that such woody residue is not mixed with similar residue from trees that do not originate in tree plantations.

Yard waste is leaves, sticks, pine needles, grass and hedge clippings, and similar waste from residential, commercial, or industrial areas (but not from forestlands or tree plantations).

§ 80.1402 [Reserved]

§ 80.1403 Which fuels are not subject to the 20% GHG thresholds?

- (a) For purposes of this section, the following definitions apply:
- (1) Baseline volume means the permitted capacity or, if permitted capacity cannot be determined, the actual peak capacity of a specific renewable fuel production facility on a calendar year basis.
 - (2) Permitted capacity means 105% of the maximum permissible volume output of renewable fuel that is allowed under operating conditions specified in the most restrictive of all applicable preconstruction, construction and operating permits issued by regulatory authorities (including local, regional, state or a foreign equivalent of a state, and federal permits, or permits issued by foreign governmental agencies) that govern the construction and/or operation of the renewable fuel facility, reported as:
 - (i) Annual volume output on a calendar year basis; or
 - (ii) If the permit specifies maximum rated volume output on an hourly basis, then multiplying the hourly output by 8,322 hours per year to obtain the annual output.
 - (3) Actual peak capacity means 105% of the maximum annual volume of renewable fuels produced from a specific renewable fuel production facility on a calendar year basis.
 - (i) For facilities that commenced construction prior to December 19, 2007 the actual peak capacity is based on the last five calendar years prior to 2008, unless no such production exists, in which case actual peak capacity is determined pursuant to paragraph (a)(3)(ii) of this section.
 - (ii) For facilities that commenced construction after December 19, 2007, and are fired with natural gas, biomass, or a combination thereof, the actual peak capacity is based on any calendar year after startup during the first three years of operation.
 - (4) Commence construction, as applied to facilities that produce renewable fuel, means that:
 - (i) The owner or operator has all necessary preconstruction approvals or permits (as defined at 40 CFR 52.21(b)(10)), and has satisfied either of the following:
 - (A) Begun, or caused to begin, a continuous program of actual construction on-site (as defined in 40 CFR 52.21(b)(11)).
 - (B) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial

loss to the owner or operator, to undertake a program of actual construction of the facility.

- (ii) For multi-phased projects, the commencement of construction of one phase does not constitute commencement of construction of any later phase, unless each phase is mutually dependent for physical and chemical reasons only.
- (b) The lifecycle greenhouse gas emissions from renewable fuels must be at least 20 percent less than baseline lifecycle greenhouse gas emissions, with the exception of the baseline volumes of renewable fuel produced from facilities described in paragraphs (c) and (d) of this section.
- (c) The baseline volume of renewable fuel that is produced from facilities and any expansions, all of which commenced construction on or before December 19, 2007, shall not be subject to the requirement that lifecycle greenhouse gas emissions be at least 20 percent less than baseline lifecycle greenhouse gas emissions if the owner or operator:
 - (1) Did not discontinue construction for a period of 18 months after commencement of construction; and
 - (2) Completed construction within 36 months of commencement of construction.
- (d) The baseline volume of ethanol that is produced from facilities and any expansions all of which commenced construction after December 19, 2007 and on or before December 31, 2009, shall not be subject to the requirement that lifecycle greenhouse gas emissions be at least 20 percent less than baseline lifecycle greenhouse gas emissions if such facilities are fired with natural gas, biomass, or a combination thereof at all times the facility operated between December 19, 2007 and December 31, 2009 and if:
 - (1) The owner or operator did not discontinue construction for a period of 18 months after commencement of construction;
 - (2) The owner or operator completed construction within 36 months of commencement of construction; and
 - (3) The baseline volume continues to be produced through processes fired with natural gas, biomass, or any combination thereof.
- (e) The annual volume of renewable fuel during a calendar year from facilities described in paragraphs (c) and (d) of this section that exceeds the baseline volume shall be subject to the requirement that lifecycle greenhouse gas emissions be at least 20 percent less than baseline lifecycle greenhouse gas emissions.
- (f) If there are any changes in the mix of renewable fuels produced by those facilities described in paragraph (d) of this section, only the ethanol volume (to the extent it is less than or equal to baseline volume) will not be subject to the requirement that lifecycle greenhouse gas emissions be at least 20 percent less than baseline

lifecycle greenhouse gas emissions. Any party that changes the fuel mix must update their registration as specified in §80.1450(d).

§ 80.1404 [Reserved]

§ 80.1405 What are the Renewable Fuel Standards?

- (a) Renewable Fuel Standards for 2010.
- (1) The value of the cellulosic biofuel standard for 2010 shall be 0.004 percent.
 - (2) The value of the biomass-based diesel standard for 2010 shall be 1.10 percent.
 - (3) The value of the advanced biofuel standard for 2010 shall be 0.61 percent.
 - (4) The value of the renewable fuel standard for 2010 shall be 8.25 percent.
- (b) Beginning with the 2011 compliance period, EPA will calculate the value of the annual standards and publish these values in the Federal Register by November 30 of the year preceding the compliance period.
- (c) EPA will calculate the annual renewable fuel percentage standards using the following equations:

$$\text{Std}_{\text{CB},i} = 100 * \frac{\text{RFV}_{\text{CB},i}}{(G_i - \text{R}G_i) + (\text{G}S_i - \text{R}G\text{S}_i) - \text{G}E_i + (D_i - \text{R}D_i) + (\text{D}S_i - \text{R}D\text{S}_i) - \text{D}E_i}$$

$$\text{Std}_{\text{BBD},i} = 100 * \frac{\text{RFV}_{\text{BBD},i} \times 1.5}{(G_i - \text{R}G_i) + (\text{G}S_i - \text{R}G\text{S}_i) - \text{G}E_i + (D_i - \text{R}D_i) + (\text{D}S_i - \text{R}D\text{S}_i) - \text{D}E_i}$$

$$\text{Std}_{\text{AB},i} = 100 * \frac{\text{RFV}_{\text{AB},i}}{(G_i - \text{R}G_i) + (\text{G}S_i - \text{R}G\text{S}_i) - \text{G}E_i + (D_i - \text{R}D_i) + (\text{D}S_i - \text{R}D\text{S}_i) - \text{D}E_i}$$

$$\text{Std}_{\text{RF},i} = 100 * \frac{\text{RFV}_{\text{RF},i}}{(G_i - \text{R}G_i) + (\text{G}S_i - \text{R}G\text{S}_i) - \text{G}E_i + (D_i - \text{R}D_i) + (\text{D}S_i - \text{R}D\text{S}_i) - \text{D}E_i}$$

Where:

$\text{Std}_{\text{CB},i}$ = The cellulosic biofuel standard for year i, in percent.

$\text{Std}_{\text{BBD},i}$ = The biomass-based diesel standard for year i, in percent.

$\text{Std}_{\text{AB},i}$ = The advanced biofuel standard for year i, in percent.

$\text{Std}_{\text{RF},i}$ = The renewable fuel standard for year i, in percent.

- $RFV_{CB,i}$ = Annual volume of cellulosic biofuel required by section 211(o)(2)(B) of the Clean Air Act for year i , in gallons.
- $RFV_{BBD,i}$ = Annual volume of biomass-based diesel required by section 211(o)(2)(B) of the Clean Air Act for year i , in gallons.
- $RFV_{AB,i}$ = Annual volume of advanced biofuel required by section 211(o)(2)(B) of the Clean Air Act for year i , in gallons.
- $RFV_{RF,i}$ = Annual volume of renewable fuel required by section 211(o)(2)(B) of the Clean Air Act for year i , in gallons.
- G_i = Amount of gasoline projected to be used in the 48 contiguous states and Hawaii, in year i , in gallons.
- D_i = Amount of diesel projected to be used in the 48 contiguous states and Hawaii, in year i , in gallons.
- RG_i = Amount of renewable fuel blended into gasoline that is projected to be consumed in the 48 contiguous states and Hawaii, in year i , in gallons.
- RD_i = Amount of renewable fuel blended into diesel that is projected to be consumed in the 48 contiguous states and Hawaii, in year i , in gallons.
- GS_i = Amount of gasoline projected to be used in Alaska or a U.S. territory, in year i , if the state or territory has opted-in or opts-in, in gallons.
- RGS_i = Amount of renewable fuel blended into gasoline that is projected to be consumed in Alaska or a U.S. territory, in year i , if the state or territory opts-in, in gallons.
- DS_i = Amount of diesel projected to be used in Alaska or a U.S. territory, in year i , if the state or territory has opted-in or opts-in, in gallons.
- RDS_i = Amount of renewable fuel blended into diesel that is projected to be consumed in Alaska or a U.S. territory, in year i , if the state or territory opts-in, in gallons.
- GE_i = The amount of gasoline projected to be produced by exempt small refineries and small refiners, in year i , in gallons in any year they are exempt per §§80.1441 and 80.1442, respectively. Assumed to equal $0.119*(G_i - RG_i)$.
- DE_i = The amount of diesel fuel projected to be produced by exempt small refineries and small refiners in year i , in gallons, in any year they are

exempt per §§80.1441 and 80.1442, respectively. Assumed to equal $0.152*(D_i-RD_i)$.

- (d) The 2010 price for cellulosic biofuel waiver credits is \$1.56 per waiver credit.

§ 80.1406 Who is an obligated party under the RFS program?

- (a) (1) An obligated party is any refiner that produces gasoline or diesel fuel within the 48 contiguous states or Hawaii, or any importer that imports gasoline or diesel fuel into the 48 contiguous states or Hawaii during a compliance period. A party that simply blends renewable fuel into gasoline or diesel fuel, as defined in §80.1407(c) or (e), is not an obligated party.
- (2) If the Administrator approves a petition of Alaska or a United States territory to opt-in to the renewable fuel program under the provisions in §80.1443, then "obligated party" shall also include any refiner that produces gasoline or diesel fuel within that state or territory, or any importer that imports gasoline or diesel fuel into that state or territory.
- (b) For each compliance period starting with 2010, an obligated party is required to demonstrate, pursuant to §80.1427, that it has satisfied the Renewable Volume Obligations for that compliance period, as specified in §80.1407(a).
- (c) Aggregation of facilities.
- (1) Except as provided in paragraph (c)(2) of this section, an obligated party may comply with the requirements of paragraph (b) of this section for all of its refineries in the aggregate, or for each refinery individually.
- (2) An obligated party that carries a deficit into year i+1 must use the same approach to aggregation of facilities in year i+1 as it did in year i.
- (d) An obligated party must comply with the requirements of paragraph (b) of this section for all of its imported gasoline or diesel fuel in the aggregate.
- (e) An obligated party that is both a refiner and importer must comply with the requirements of paragraph (b) of this section for its imported gasoline or diesel fuel separately from gasoline or diesel fuel produced by its domestic refinery or refineries.
- (f) Where a refinery or import facility is jointly owned by two or more parties, the requirements of paragraph (b) of this section may be met by one of the joint owners for all of the gasoline or diesel fuel produced/imported at the facility, or each party may meet the requirements of paragraph (b) of this section for the portion of the gasoline or diesel fuel that it produces or imports, as long as all of the gasoline or diesel fuel produced/imported at the facility is accounted for in determining the Renewable Volume Obligations under §80.1407.

- (g) The requirements in paragraph (b) of this section apply to the following compliance periods: Beginning in 2010, and every year thereafter, the compliance period is January 1 through December 31.

§ 80.1407 How are the Renewable Volume Obligations calculated?

- (a) The Renewable Volume Obligations for an obligated party are determined according to the following formulas:

- (1) Cellulosic biofuel.

$$RVO_{CB,i} = (RFStd_{CB,i} * (GV_i + DV_i)) + D_{CB,i-1}$$

Where:

$RVO_{CB,i}$ = The Renewable Volume Obligation for cellulosic biofuel for an obligated party for calendar year i , in gallons.

$RFStd_{CB,i}$ = The standard for cellulosic biofuel for calendar year i , determined by EPA pursuant to §80.1405, in percent.

GV_i = The non-renewable gasoline volume, determined in accordance with paragraphs (b), (c), and (f) of this section, which is produced in or imported into the 48 contiguous states or Hawaii by an obligated party in calendar year i , in gallons.

DV_i = The non-renewable diesel volume, determined in accordance with paragraphs (d), (e), and (f) of this section, produced in or imported into the 48 contiguous states or Hawaii by an obligated party in calendar year i , in gallons.

$D_{CB,i-1}$ = Deficit carryover from the previous year for cellulosic biofuel, in gallons.

- (2) Biomass-based diesel.

$$RVO_{BBD,i} = (RFStd_{BBD,i} * (GV_i + DV_i)) + D_{BBD,i-1}$$

Where:

$RVO_{BBD,i}$ = The Renewable Volume Obligation for biomass-based diesel for an obligated party for calendar year i , in gallons.

$RFStd_{BBD,i}$ = The standard for biomass-based diesel for calendar year i , determined by EPA pursuant to §80.1405, in percent.

$GV_i =$ The non-renewable gasoline volume, determined in accordance with paragraphs (b), (c), and (f) of this section, which is produced in or imported into the 48 contiguous states or Hawaii by an obligated party in calendar year i , in gallons.

$DV_i =$ The non-renewable diesel volume, determined in accordance with paragraphs (d), (e), and (f) of this section, produced in or imported into the 48 contiguous states or Hawaii by an obligated party in calendar year i , in gallons.

$D_{BBD,i-1} =$ Deficit carryover from the previous year for biomass-based diesel, in gallons.

(3) Advanced biofuel.

$$RVO_{AB,i} = (RFStd_{AB,i} * (GV_i + DV_i)) + D_{AB,i-1}$$

Where:

$RVO_{AB,i} =$ The Renewable Volume Obligation for advanced biofuel for an obligated party for calendar year i , in gallons.

$RFStd_{AB,i} =$ The standard for advanced biofuel for calendar year i , determined by EPA pursuant to §80.1405, in percent.

$GV_i =$ The non-renewable gasoline volume, determined in accordance with paragraphs (b), (c), and (f) of this section, which is produced in or imported into the 48 contiguous states or Hawaii by an obligated party in calendar year i , in gallons.

$DV_i =$ The non-renewable diesel volume, determined in accordance with paragraphs (d), (e), and (f) of this section, produced in or imported into the 48 contiguous states or Hawaii by an obligated party in calendar year i , in gallons.

$D_{AB,i-1} =$ Deficit carryover from the previous year for advanced biofuel, in gallons.

(4) Renewable fuel.

$$RVO_{RF,i} = (RFStd_{RF,i} * (GV_i + DV_i)) + D_{RF,i-1}$$

Where:

$RVO_{RF,i} =$ The Renewable Volume Obligation for renewable fuel for an obligated party for calendar year i , in gallons.

$RFS_{RF,i}$ = The standard for renewable fuel for calendar year i , determined by EPA pursuant to §80.1405, in percent.

GV_i = The non-renewable gasoline volume, determined in accordance with paragraphs (b), (c), and (f) of this section, which is produced in or imported into the 48 contiguous states or Hawaii by an obligated party in calendar year i , in gallons.

DV_i = The non-renewable diesel volume, determined in accordance with paragraphs (d), (e), and (f) of this section, produced in or imported into the 48 contiguous states or Hawaii by an obligated party in calendar year i , in gallons.

$D_{RF,i-1}$ = Deficit carryover from the previous year for renewable fuel, in gallons.

- (b) The non-renewable gasoline volume, GV_i , for an obligated party for a given year as specified in paragraph (a) of this section is calculated as follows:

$$GV_i = \sum_{x=1}^n G_x - \sum_{y=1}^m RBG_y$$

Where:

x = Individual batch of gasoline produced or imported in calendar year i .

n = Total number of batches of gasoline produced or imported in calendar year i .

G_x = Volume of batch x of gasoline produced or imported, as defined in paragraph (c) of this section, in gallons.

y = Individual batch of renewable fuel blended into gasoline in calendar year i .

m = Total number of batches of renewable fuel blended into gasoline in calendar year i .

RBG_y = Volume of batch y of renewable fuel blended into gasoline, in gallons.

- (c) Except as specified in paragraph (f) of this section, all of the following products that are produced or imported during a compliance period, collectively called “gasoline” for the purposes of this section (unless otherwise specified), are to be included (but not double-counted) in the volume used to calculate a party’s Renewable Volume Obligations under paragraph (a) of this section, except as provided in paragraph (f) of this section:

- (1) Reformulated gasoline, whether or not renewable fuel is later added to it.
- (2) Conventional gasoline, whether or not renewable fuel is later added to it.

- (3) Reformulated gasoline blendstock that becomes finished reformulated gasoline upon the addition of oxygenate (RBOB).
 - (4) Conventional gasoline blendstock that becomes finished conventional gasoline upon the addition of oxygenate (CBOB).
 - (5) Blendstock (including butane and gasoline treated as blendstock (GTAB)) that has been combined with other blendstock and/or finished gasoline to produce gasoline.
 - (6) Any gasoline, or any unfinished gasoline that becomes finished gasoline upon the addition of oxygenate, that is produced or imported to comply with a state or local fuels program.
- (d) The diesel non-renewable volume, DV_i , for an obligated party for a given year as specified in paragraph (a) of this section is calculated as follows:

$$DV_i = \sum_{x=1}^n D_x - \sum_{y=1}^m RBD_y$$

Where:

- x = Individual batch of diesel produced or imported in calendar year i.
- n = Total number of batches of diesel produced or imported in calendar year i.
- D_x = Volume of batch x of diesel produced or imported, as defined in paragraph (e) of this section, in gallons.
- y = Individual batch of renewable fuel blended into diesel in calendar year i.
- m = Total number of batches of renewable fuel blended into diesel in calendar year i.
- RBD_y = Volume of batch y of renewable fuel blended into diesel, in gallons.

- (e) Except as specified in paragraph (f) of this section, all products meeting the definition of MVNRLM diesel fuel at §80.2(qqq) that are produced or imported during a compliance period, collectively called “diesel fuel” for the purposes of this section (unless otherwise specified), are to be included (but not double-counted) in the volume used to calculate a party’s Renewable Volume Obligations under paragraph (a) of this section.
- (f) The following products are not included in the volume of gasoline or diesel fuel produced or imported used to calculate a party’s Renewable Volume Obligations according to paragraph (a) of this section:
- (1) Any renewable fuel as defined in §80.1401.
 - (2) Blendstock that has not been combined with other blendstock, finished gasoline, or diesel to produce gasoline or diesel.
 - (3) Gasoline or diesel fuel produced or imported for use in Alaska, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American

Samoa, and the Commonwealth of the Northern Marianas, unless the area has opted into the RFS program under §80.1443.

- (4) Gasoline or diesel fuel produced by a small refinery that has an exemption under §80.1441 or an approved small refiner that has an exemption under §80.1442.
- (5) Gasoline or diesel fuel exported for use outside the 48 United States and Hawaii, and gasoline or diesel fuel exported for use outside Alaska, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Marianas, if the area has opted into the RFS program under §80.1443.
- (6) For blenders, the volume of finished gasoline, finished diesel fuel, RBOB, or CBOB to which a blender adds blendstocks.
- (7) The gasoline or diesel fuel portion of transmix produced by a transmix processor, or the transmix blended into gasoline or diesel fuel by a transmix blender, under §80.84.
- (8) Any gasoline or diesel fuel that is not transportation fuel.

§§ 80.1408-80.1414 [Reserved]

§ 80.1415 How are equivalence values assigned to renewable fuel?

- (a)
 - (1) Each gallon of a renewable fuel, or gallon equivalent pursuant to paragraph (c) of this section, shall be assigned an equivalence value by the producer or importer pursuant to paragraph (b) or (c) of this section.
 - (2) The equivalence value is a number that is used to determine how many gallon-RINs can be generated for a batch of renewable fuel according to §80.1426.
- (b) Equivalence values shall be assigned for certain renewable fuels as follows:
 - (1) Ethanol which is denatured shall have an equivalence value of 1.0.
 - (2) Biodiesel (mono-alkyl ester) shall have an equivalence value of 1.5.
 - (3) Butanol shall have an equivalence value of 1.3.
 - (4) Non-ester renewable diesel with a lower heating value of at least 123,500 Btu/gal shall have an equivalence value of 1.7.
 - (5) A gallon of renewable fuel represents 77,000 Btu (lower heating value) of biogas, and biogas shall have an equivalence value of 1.0.
 - (6) A gallon of renewable fuel represents 22.6 kW-hr of electricity, and electricity shall have an equivalence value of 1.0.
 - (7) For all other renewable fuels, a producer or importer shall submit an application to the Agency for an equivalence value following the provisions of paragraph (c) of this section. A producer or importer may also submit an application for an alternative equivalence value pursuant to paragraph (c) if the renewable fuel is listed in this paragraph (b), but the producer or importer has reason to believe that a different equivalence value than that listed in this paragraph (b) is warranted.

(c) Calculation of new equivalence values.

- (1) The equivalence value for renewable fuels described in paragraph (b)(7) of this section shall be calculated using the following formula:

$$EV = (R / 0.972) * (EC / 77,000)$$

Where:

EV = Equivalence Value for the renewable fuel, rounded to the nearest tenth.

R = Renewable content of the renewable fuel. This is a measure of the portion of a renewable fuel that came from a renewable source, expressed as a percent, on an energy basis.

EC = Energy content of the renewable fuel, in Btu per gallon (lower heating value).

- (2) The application for an equivalence value shall include a technical justification that includes a description of the renewable fuel, feedstock(s) used to make it, and the production process.
- (3) The Agency will review the technical justification and assign an appropriate equivalence value to the renewable fuel based on the procedure in this paragraph (c).
- (4) Applications for equivalence values must be sent to one of the following addresses:
- (i) For US Mail: U.S. EPA, Attn: RFS2 Program Equivalence Value Application, 6406J, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.
 - (ii) For overnight or courier services: U.S. EPA, Attn: RFS2 Program Equivalence Value Application, 6406J, 1310 L Street, NW, 6th floor, Washington, DC 20005. (202) 343-9038.
- (5) All applications required under this section shall be submitted on forms and following procedures prescribed by the Administrator.

§ 80.1416 Petition process for evaluation of new renewable fuels pathways.

- (a) (1) A party may petition EPA to assign a D code for a new renewable fuel pathway that has not been evaluated by EPA to determine if it qualifies for a D code as defined in §80.1426(f), pursuant to this section. A D code must be approved prior to the generation of RINs for the fuel in question.
- (2) For renewable fuel pathways that have been determined by EPA not to qualify for a D code as defined in §80.1426(f), parties who can document significant differences between the fuel production processes considered in this rule and their fuel pathway production processes may petition EPA to use a D code pursuant to this section.
- (3) Parties may petition EPA to qualify their renewable fuel pathway for a different D code than the D code assigned to the fuel pathway as defined in §80.1426(f) if the parties can document significant differences between

the fuel production processes considered in this rule and their fuel pathway production processes, pursuant to this section.

- (b) (1) Any petition under paragraph (a) of this section shall include all the following:
 - (i) The information specified under §80.76.
 - (ii) A technical justification that includes a description of the renewable fuel, feedstock(s) used to make it, and the production process. The justification must include process modeling flow charts.
 - (iii) A mass balance for the pathway, including feedstocks, fuels produced, co-products, and waste materials production.
 - (iv) Information on co-products, including their expected use and market value.
 - (v) An energy balance for the pathway, including a list of any energy and process heat inputs and outputs used in the pathway, including such sources produced off site or by another entity.
 - (vi) Any other relevant information, including information pertaining to energy saving technologies or other process improvements.
 - (vii) The Administrator may ask for additional information to complete the lifecycle greenhouse gas assessment of the new fuel or pathway.
- (2) For those companies who use a feedstock not previously evaluated by EPA under this subpart, the petition must include all the following in addition to the requirements in paragraph (b)(1) of this section:
 - (i) Type of feedstock and description of how it meets the definition of renewable biomass.
 - (ii) Market value of the feedstock.
 - (iii) List of other uses for the feedstock.
 - (iv) List of chemical inputs needed to produce the renewable biomass source of the feedstock and prepare the renewable biomass for processing into feedstock.
 - (v) Identify energy needed to obtain the feedstock and deliver it to the facility. If applicable, identify energy needed to plant and harvest the renewable biomass source of the feedstock and modify the source to create the feedstock.
 - (vi) Current and projected yields of the feedstock that will be used to produce the fuels.
 - (vii) The Administrator may ask for additional information to complete the lifecycle Greenhouse Gas assessment of the new fuel or pathway.
- (c) (1) A company may only submit one petition per pathway. If EPA determines the petition to be incomplete, then the company may resubmit.

- (2) The petition must be signed and certified as meeting all the applicable requirements of this subpart by the responsible corporate officer of the applicant organization.
 - (3) If EPA determines that the petition is incomplete then EPA will notify the applicant in writing that the petition is incomplete and will not be reviewed further. However, an amended petition that corrects the omission may be re-submitted for EPA review.
 - (4) If the fuel or pathway described in the petition does not meet the definitions in §80.1401 of renewable fuel, advanced biofuel, cellulosic biofuel, or biomass-based diesel, then EPA will notify the applicant in writing that the petition is denied and will not be reviewed further.
- (d) The petition under this section shall be submitted on forms and following procedures as prescribed by EPA.

§§ 80.1417-80.1424 [Reserved]

§ 80.1425 Renewable Identification Numbers (RINs).

Each RIN is a 38-character numeric code of the following form:

KYYYYCCCCFFFFFBBBBBRRDSSSSSSSSEEEEEEE

- (a) K is a number identifying the type of RIN as follows:
 - (1) K has the value of 1 when the RIN is assigned to a volume of renewable fuel pursuant to §§ 80.1426(e) and 80.1428(a).
 - (2) K has the value of 2 when the RIN has been separated from a volume of renewable fuel pursuant to §80.1429.
- (b) YYYY is the calendar year in which the RIN was generated.
- (c) CCCC is the registration number assigned, according to §80.1450, to the producer or importer of the batch of renewable fuel.
- (d) FFFFF is the registration number assigned, according to §80.1450, to the facility at which the batch of renewable fuel was produced or imported.
- (e) BBBBB is a serial number assigned to the batch which is chosen by the producer or importer of the batch such that no two batches have the same value in a given calendar year.
- (f) RR is a number representing 10 times the equivalence value of the renewable fuel as specified in §80.1415.
- (g) D is a number determined according to §80.1426(f) and identifying the type of renewable fuel, as follows:

- (1) D has the value of 3 to denote fuel categorized as cellulosic biofuel.
 - (2) D has the value of 4 to denote fuel categorized as biomass-based diesel.
 - (3) D has the value of 5 to denote fuel categorized as advanced biofuel.
 - (4) D has the value of 6 to denote fuel categorized as renewable fuel.
 - (5) D has the value of 7 to denote fuel categorized as cellulosic diesel.
- (h) SSSSSSSS is a number representing the first gallon-RIN associated with a batch of renewable fuel.
- (i) EEEEEEEE is a number representing the last gallon-RIN associated with a batch of renewable fuel. EEEEEEEE will be identical to SSSSSSSS if the batch-RIN represents a single gallon-RIN. Assign the value of EEEEEEEE as described in §80.1426.

§ 80.1426 How are RINs generated and assigned to batches of renewable fuel by renewable fuel producers or importers?

- (a) General requirements.
- (1) To the extent permitted under paragraphs (b) and (c) of this section, producers and importers of renewable fuel must generate RINs to represent that fuel if the fuel:
 - (i) Qualifies for a D code pursuant to §80.1426(f), or EPA has approved a petition for use of a D code pursuant to §80.1416; and
 - (ii) Is demonstrated to be produced from renewable biomass pursuant to the reporting requirements of §80.1451 and the recordkeeping requirements of §80.1454.
 - (A) Feedstocks meeting the requirements of renewable biomass through the aggregate compliance provision at §80.1454(g) are deemed to be renewable biomass.
 - (B) [Reserved]
 - (2) To generate RINs for imported renewable fuel, including any renewable fuel contained in imported transportation fuel, importers must obtain information from a foreign producer that is registered pursuant to §80.1450 sufficient to make the appropriate determination regarding the applicable D code and compliance with the renewable biomass definition for each imported batch for which RINs are generated.
 - (3) A party generating a RIN shall specify the appropriate numerical values for each component of the RIN in accordance with the provisions of §80.1425(a) and paragraph (f) of this section.
- (b) Regional applicability.
- (1) Except as provided in paragraph (c) of this section, a RIN must be generated by a renewable fuel producer or importer for a batch of renewable fuel that satisfies the requirements of paragraph (a)(1) of this section if it is produced or imported for use as transportation fuel, heating oil, or jet fuel in the 48 contiguous states or Hawaii.

- (2) If the Administrator approves a petition of Alaska or a United States territory to opt-in to the renewable fuel program under the provisions in §80.1443, then the requirements of paragraph (b)(1) of this section shall also apply to renewable fuel produced or imported for use as transportation fuel, heating oil, or jet fuel in that state or territory beginning in the next calendar year.
- (c) Cases in which RINs are not generated.
- (1) Fuel producers and importers may not generate RINs for fuel that is not designated or intended for use as transportation fuel, heating oil, or jet fuel.
- (2) Small producer/importer threshold. Pursuant to §80.1455(a) and (b), renewable fuel producers that produce less than 10,000 gallons a year of renewable fuel, and importers that import less than 10,000 gallons a year of renewable fuel, are not required to generate and assign RINs to batches of renewable fuel that that satisfy the requirements of paragraph (a)(1) of this section that they produce or import.
- (3) Temporary new producer threshold. Pursuant to §80.1455(c) and (d), renewable fuel producers that produce less than 125,000 gallons a year of renewable fuel are not required to generate and assign RINs to batches of renewable fuel that satisfy the requirements of paragraph (a)(1) of this section and that are produced from a new facility, for a maximum of three years beginning with the calendar year in which the production facility produces its first gallon of renewable fuel.
- (4) Importers shall not generate RINs for fuel imported from a foreign producer that is not registered with EPA as required in §80.1450.
- (5) Importers shall not generate RINs for renewable fuel that has already been assigned RINs by a registered foreign producer.
- (6) A party is prohibited from generating RINs for a volume of fuel that it produces if:
- (i) The fuel does not meet the requirements of paragraph (a)(1) of this section; or
- (ii) The fuel has been produced from a chemical conversion process that uses another renewable fuel as a feedstock, the renewable fuel used as a feedstock was produced by another party, and RINs with a K code of 1 were received with the renewable fuel.
- (A) Parties who produce renewable fuel made from a feedstock which itself was a renewable fuel received with RINs, shall assign the original RINs to the new renewable fuel.
- (B) [Reserved]
- (d) (1) Definition of batch. For the purposes of this section and §80.1425, a "batch of renewable fuel" is a volume of renewable fuel that has been assigned a unique identifier within a calendar year by the producer or importer of the renewable fuel in accordance with the provisions of this section and §80.1425.

- (i) The number of gallon-RINs generated for a batch of renewable fuel may not exceed 99,999,999.
- (ii) A batch of renewable fuel cannot represent renewable fuel produced or imported in excess of one calendar month.
- (2) Multiple gallon-RINs generated to represent a given volume of renewable fuel can be represented by a single batch-RIN through the appropriate designation of the RIN volume codes SSSSSSSS and EEEEEEEE.
 - (i) The value of SSSSSSSS in the batch-RIN shall be 00000001 to represent the first gallon-RIN associated with the volume of renewable fuel.
 - (ii) The value of EEEEEEEE in the batch-RIN shall represent the last gallon-RIN associated with the volume of renewable fuel, based on the RIN volume determined pursuant to paragraph (f) of this section.
 - (iii) Under §80.1452, RIN volumes will be managed by EMTS. RIN codes SSSSSSSS and EEEEEEEE do not have a role in EMTS.
- (e) Assignment of RINs to batches.
 - (1) The producer or importer of renewable fuel must assign all RINs generated to volumes of renewable fuel.
 - (2) A RIN is assigned to a volume of renewable fuel when ownership of the RIN is transferred along with the transfer of ownership of the volume of renewable fuel, pursuant to §80.1428(a).
 - (3) All assigned RINs shall have a K code value of 1.
- (f) Generation of RINs.
 - (1) Applicable pathways. D codes shall be used in RINs generated by producers or importers of renewable fuel according to the pathways listed in Table 1 to this section, or as approved by the Administrator. In choosing an appropriate D code, producers and importers may disregard any incidental, de minimis feedstock contaminants that are impractical to remove and are related to customary feedstock production and transport.

Table 1 to §80.1426
Applicable D Codes For Each Fuel Pathway for Use in Generating RINs

Fuel Type	Feedstock	Production Process Requirements	D-Code
Ethanol	Corn starch	All of the following: Drymill process, using natural gas, biomass, or biogas for process energy and at least two advanced	6

		technologies from Table 2 to this section.	
Ethanol	Corn starch	All of the following: Dry mill process, using natural gas, biomass, or biogas for process energy and at least one of the advanced technologies from Table 2 to this section plus drying no more than 65% of the distillers grains with solubles it markets annually.	6
Ethanol	Corn starch	All of the following: Dry mill process, using natural gas, biomass, or biogas for process energy and drying no more than 50% of the distillers grains with solubles it markets annually.	6
Ethanol	Corn starch	Wet mill process using biomass or biogas for process energy.	6
Ethanol	Starches from agricultural residues and annual covercrops	Fermentation using natural gas, biomass, or biogas for process energy	6
Biodiesel, and renewable diesel	Soy bean oil; Oil from annual covercrops;	One of the following: Trans-Esterification	4

	<p>Algal oil;</p> <p>Biogenic waste oils/fats/greases;</p> <p>Non-food grade corn oil</p>	<p>Hydrotreating</p> <p>Excluding processes that co-process renewable biomass and petroleum</p>	
Biodiesel, and renewable diesel	<p>Soy bean oil;</p> <p>Oil from annual covercrops;</p> <p>Algal oil;</p> <p>Biogenic waste oils/fats/greases;</p> <p>Non-food grade corn oil</p>	<p>One of the following:</p> <p>Trans-Esterification</p> <p>Hydrotreating</p> <p>Includes only processes that co-process renewable biomass and petroleum</p>	5
Ethanol	Sugarcane	Fermentation	5
Ethanol	Cellulosic Biomass from agricultural residues, slash, forest thinnings and forest product residues, annual covercrops; switchgrass, and miscanthus; cellulosic components of separated yard wastes; cellulosic components of separated food wastes; and cellulosic components of separated MSW	Any	3
Cellulosic Diesel, Jet Fuel and Heating Oil	Cellulosic Biomass from agricultural residues, slash, forest thinnings and forest	Any	7

	product residues, annual covercrops, switchgrass, and miscanthus; cellulosic components of separated yard wastes; cellulosic components of separated food wastes; and cellulosic components of separated MSW		
Butanol	Corn starch	Fermentation; dry mill using natural gas, biomass, or biogas for process energy	6
Cellulosic Naphtha	Cellulosic Biomass from agricultural residues, slash, forest thinnings and forest product residues, annual covercrops, switchgrass, and miscanthus; cellulosic components of separated yard wastes; cellulosic components of separated food wastes; and cellulosic components of separated MSW	Fischer-Tropsch process	3
Ethanol, renewable diesel, jet fuel, heating oil, and naphtha	The non-cellulosic portions of separated food wastes	Any	5
Biogas	Landfills, sewage and waste treatment plants, manure digesters	Any	5

Table 2 to §80.1426
Advanced Technologies

Corn oil fractionation
Corn oil extraction
Membrane separation
Raw starch hydrolysis
Combined heat and power

(2) Renewable fuel that can be described by a single pathway.

- (i) The number of gallon-RINs that shall be generated for a batch of renewable fuel by a producer or importer for renewable fuel that can be described by a single pathway shall be equal to a volume calculated according to the following formula:

$$V_{\text{RIN}} = \text{EV} * V_s$$

Where:

V_{RIN} = RIN volume, in gallons, for use in determining the number of gallon-RINs that shall be generated for the batch.

EV = Equivalence value for the batch of renewable fuel per §80.1415.

V_s = Standardized volume of the batch of renewable fuel at 60 °F, in gallons, calculated in accordance with paragraph (f)(8) of this section.

- (ii) The D code that shall be used in the RINs generated shall be the D code specified in Table 1 to this section, or a D code as approved by the Administrator, which corresponds to the pathway that describes the producer's operations.

(3) Renewable fuel that can be described by two or more pathways.

- (i) The D codes that shall be used in the RINs generated by a producer or importer whose renewable fuel can be described by two or more pathways shall be the D codes specified in Table 1 to this section, or D codes as approved by the Administrator, which correspond to the pathways that describe the renewable fuel throughout that calendar year.

- (ii) If all the pathways describing the producer's operations have the same D code and each batch is of a single fuel type, then that D code shall be used in all the RINs generated and the number of gallon-RINs that shall be generated for a batch of renewable fuel shall be equal to a volume calculated according to the following formula:

$$V_{\text{RIN}} = \text{EV} * V_s$$

Where:

V_{RIN} = RIN volume, in gallons, for use in determining the number of gallon-RINs that shall be generated for the batch.

EV = Equivalence value for the batch of renewable fuel per §80.1415.

V_s = Standardized volume of the batch of renewable fuel at 60 °F, in gallons, calculated in accordance with paragraph (f)(8) of this section.

- (iii) If all the pathways describing the producer's operations have the same D code but individual batches are comprised of a mixture of fuel types with different equivalence values, then that D code shall be used in all the RINs generated and the number of gallon-RINs that shall be generated for a batch of renewable fuel shall be equal to a volume calculated according to the following formula:

$$V_{\text{RIN}} = \sum(\text{EV}_i * V_{s,i})$$

Where:

V_{RIN} = RIN volume, in gallons, for use in determining the number of gallon-RINs that shall be generated for the batch.

EV_i = Equivalence value for fuel type i in the batch of renewable fuel per §80.1415.

$V_{s,i}$ = Standardized volume of fuel type i in the batch of renewable fuel at 60 °F, in gallons, calculated in accordance with paragraph (f)(8) of this section.

- (iv) If the pathway applicable to a producer changes on a specific date, such that one pathway applies before the date and another pathway applies on and after the date, and each batch is of a single fuel type, then the applicable D code and batch identifier used in generating RINs must change on the date that the change in pathway occurs and the number of gallon-RINs that shall be generated for a batch of renewable fuel shall be equal to a volume calculated according to the following formula:

$$V_{\text{RIN}} = \text{EV} * V_s$$

Where:

V_{RIN} = RIN volume, in gallons, for use in determining the number of gallon-RINs that shall be generated for a batch with a single applicable D code.

EV = Equivalence value for the batch of renewable fuel per §80.1415.

V_s = Standardized volume of the batch of renewable fuel at 60 °F, in gallons, calculated in accordance with paragraph (f)(8) of this section.

- (v) If a producer produces batches that are comprised of a mixture of fuel types with different equivalence values and different applicable D codes, then separate values for V_{RIN} shall be calculated for each category of renewable fuel according to formulas in Table 3 to this section. All batch-RINs thus generated shall be assigned to unique batch identifiers for each portion of the batch with a different D code.

Table 3 to §80.1426

Number of gallon-RINs to assign to batch-RINs with D codes dependent on fuel type

D code to use in batch-RIN	Number of gallon-RINs
D = 3	$V_{RIN, CB} = EV_{CB} * V_{s, CB}$
D = 4	$V_{RIN, BBD} = EV_{BBD} * V_{s, BBD}$
D = 5	$V_{RIN, AB} = EV_{AB} * V_{s, AB}$
D = 6	$V_{RIN, RF} = EV_{RF} * V_{s, RF}$
D = 7	$V_{RIN, CD} = EV_{CD} * V_{s, CD}$

Where:

$V_{RIN, CB}$ = RIN volume, in gallons, for use in determining the number of gallon-RINs that shall be generated for the cellulosic biofuel portion of the batch with a D code of 3.

$V_{RIN, BBD}$ = RIN volume, in gallons, for use in determining the number of gallon-RINs that shall be generated for the biomass-based diesel portion of the batch with a D code of 4.

$V_{RIN, AB}$ = RIN volume, in gallons, for use in determining the number of gallon-RINs that shall be generated for the advanced biofuel portion of the batch with a D code of 5.

$V_{RIN, RF}$ = RIN volume, in gallons, for use in determining the number of gallon-RINs that shall be generated for the renewable fuel portion of the batch with a D code of 6.

$V_{RIN, CD}$ = RIN volume, in gallons, for use in determining the number of gallon-RINs that shall be generated for the cellulosic diesel portion of the batch with a D code of 7.

EV_{CB} = Equivalence value for the cellulosic biofuel portion of the batch per §80.1415.

EV_{BBD} = Equivalence value for the biomass-based diesel portion of the batch per §80.1415.

$EV_{AB} =$	Equivalence value for the advanced biofuel portion of the batch per §80.1415.
$EV_{RF} =$	Equivalence value for the renewable fuel portion of the batch per §80.1415.
$EV_{CD} =$	Equivalence value for the cellulosic diesel portion of the batch per §80.1415.
$V_{s,CB} =$	Standardized volume at 60 °F of the portion of the batch that must be assigned a D code of 3, in gallons, calculated in accordance with paragraph (f)(8) of this section.
$V_{s,BBD} =$	Standardized volume at 60 °F of the portion of the batch that must be assigned a D code of 4, in gallons, calculated in accordance with paragraph (f)(8) of this section.
$V_{s,AB} =$	Standardized volume at 60 °F of the portion of the batch that must be assigned a D code of 5, in gallons, calculated in accordance with paragraph (f)(8) of this section.
$V_{s,RF} =$	Standardized volume at 60 °F of the portion of the batch that must be assigned a D code of 6, in gallons, calculated in accordance with paragraph (f)(8) of this section.
$V_{s,CD} =$	Standardized volume at 60 °F of the portion of the batch that must be assigned a D code of 7, in gallons, calculated in accordance with paragraph (f)(8) of this section.

- (vi) If a producer produces a single type of renewable fuel using two or more different feedstocks which are processed simultaneously, and each batch is comprised of a single type of fuel, then the number of gallon-RINs that shall be generated for a batch of renewable fuel and assigned a particular D code shall be determined according to the formulas in Table 4 to this section.

Table 4 to §80.1426

Number of gallon-RINs to assign to batch-RINs with D codes dependent on feedstock

D code to use in batch-RIN	Number of gallon-RINs
D = 3	$V_{RIN, CB} = EV * V_s * \left(\frac{FE_3}{FE_3 + FE_4 + FE_5 + FE_6 + FE_7} \right)$
D = 4	$V_{RIN, BBD} = EV * V_s * \left(\frac{FE_4}{FE_3 + FE_4 + FE_5 + FE_6 + FE_7} \right)$
D = 5	$V_{RIN, AB} = EV * V_s * \left(\frac{FE_5}{FE_3 + FE_4 + FE_5 + FE_6 + FE_7} \right)$
D = 6	$V_{RIN, RF} = EV * V_s * \left(\frac{FE_6}{FE_3 + FE_4 + FE_5 + FE_6 + FE_7} \right)$
D = 7	$V_{RIN, CD} = EV * V_s * \left(\frac{FE_7}{FE_3 + FE_4 + FE_5 + FE_6 + FE_7} \right)$

Where:

$V_{RIN,CB}$ = RIN volume, in gallons, for use in determining the number of gallon-RINs that shall be generated for a batch of cellulosic biofuel with a D code of 3.

$V_{RIN,BBD}$ = RIN volume, in gallons, for use in determining the number of gallon-RINs that shall be generated for a batch of biomass-based diesel with a D code of 4.

$V_{RIN,AB}$ = RIN volume, in gallons, for use in determining the number of gallon-RINs that shall be generated for a batch of advanced biofuel with a D code of 5.

$V_{RIN,RF}$ = RIN volume, in gallons, for use in determining the number of gallon-RINs that shall be generated for a batch of renewable fuel with a D code of 6.

$V_{RIN,CD}$ = RIN volume, in gallons, for use in determining the number of gallon-RINs that shall be generated for a batch of cellulosic diesel with a D code of 7.

EV = Equivalence value for the renewable fuel per §80.1415.

V_s = Standardized volume of the batch of renewable fuel at 60 °F, in gallons, calculated in accordance with paragraph (f)(8) of this section.

FE_3 = Feedstock energy from all feedstocks whose pathways have been assigned a D code of 3 under Table 1 to this section, or a D code of 3 as approved by the Administrator, in Btu.

FE_4 = Feedstock energy from all feedstocks whose pathways have been assigned a D code of 4 under Table 1 to this section, or a D code of 4 as approved by the Administrator, in Btu.

- FE₅ = Feedstock energy from all feedstocks whose pathways have been assigned a D code of 5 under Table 1 to this section, or a D code of 5 as approved by the Administrator, in Btu.
- FE₆ = Feedstock energy from all feedstocks whose pathways have been assigned a D code of 6 under Table 1 to this section, or a D code of 6 as approved by the Administrator, in Btu.
- FE₇ = Feedstock energy from all feedstocks whose pathways have been assigned a D code of 7 under Table 1 to this section, or a D code of 7 as approved by the Administrator, in Btu.

Feedstock energy values, FE, shall be calculated according to the following formula:

$$FE = M * (1 - m) * CF * E$$

Where:

- FE = Feedstock energy, in Btu.
- M = Mass of feedstock, in pounds, measured on a daily or per-batch basis.
- m = Average moisture content of the feedstock, in mass percent.
- CF = Converted Fraction in annual average mass percent, representing that portion of the feedstock that is converted into renewable fuel by the producer.
- E = Energy content of the components of the feedstock that are converted to renewable fuel, in annual average Btu/lb, determined according to paragraph (f)(7) of this section.

(4) Renewable fuel that is produced by co-processing renewable biomass and non-renewable feedstocks simultaneously to produce a transportation fuel that is partially renewable.

- (i) The number of gallon-RINs that shall be generated for a batch of partially renewable transportation fuel shall be equal to a volume V_{RIN} calculated according to Method A or Method B.
- (A) Method A.
- (1) V_{RIN} shall be calculated according to the following formula:

$$V_{RIN} = EV * V_s * FE_R / (FE_R + FE_{NR})$$

Where:

- V_{RIN} = RIN volume, in gallons, for use in determining the number of gallon-RINs that shall be generated for the batch.
- EV = Equivalence value for the batch of renewable fuel per §80.1415.
- V_s = Standardized volume of the batch of renewable fuel at 60 °F, in gallons, calculated in accordance with paragraph (f)(8) of this section.
- FE_R = Feedstock energy from renewable biomass used to make the transportation fuel, in Btu.
- FE_{NR} = Feedstock energy from non-renewable feedstocks used to make the transportation fuel, in Btu.

(2) The value of FE for use in paragraph (f)(4)(i)(A)(1) of this section shall be calculated from the following formula:

$$FE = M * (1 - m) * CF * E$$

Where:

- FE = Feedstock energy, in Btu.
- M = Mass of feedstock, in pounds, measured on a daily or per-batch basis.
- m = Average moisture content of the feedstock, in mass percent.
- CF = Converted Fraction in annual average mass percent, representing that portion of the feedstock that is converted into transportation fuel by the producer.
- E = Energy content of the components of the feedstock that are converted to fuel, in annual average Btu/lb, determined according to paragraph (f)(7) of this section.

(B) Method B. V_{RIN} shall be calculated according to the following formula:

$$V_{RIN} = EV * V_s * R$$

Where:

- V_{RIN} = RIN volume, in gallons, for use in determining the number of gallon-RINs that shall be generated for the batch.
- EV = Equivalence value for the batch of renewable fuel per §80.1415.

V_s = Standardized volume of the batch of renewable fuel at 60 °F, in gallons, calculated in accordance with paragraph (f)(8) of this section.

R = The renewable fraction of the fuel as measured by a carbon-14 dating test method as provided in paragraph (f)(9) of this section.

- (ii) The D code that shall be used in the RINs generated to represent partially renewable transportation fuel shall be the D code specified in Table 1 to this section, or a D code as approved by the Administrator, which corresponds to the pathway that describes a producer's operations. In determining the appropriate pathway, the contribution of fossil fuel feedstocks to the production of partially renewable fuel shall be ignored.

(5) Renewable fuel produced from separated yard and food waste.

- (i) Separated yard waste and food waste means, for the purposes of this section, waste that is one of the following:

- (A) Separated yard wastes, which are feedstock streams consisting of yard waste kept separate since generation from other waste materials. Separated yard wastes are deemed to be composed entirely of cellulosic materials.

- (B) Separated food wastes, which are feedstock streams consisting of food wastes kept separate since generation from other waste materials, and which include food and beverage production wastes and post-consumer food and beverage wastes. Separated food wastes are deemed to be composed entirely of non-cellulosic materials, unless a party demonstrates that a portion of the feedstock is cellulosic through approval of their facility registration.

- (C) Separated municipal solid waste (MSW), which is material remaining after separation actions have been taken to remove recyclable paper, cardboard, plastics, rubber, textiles, metals, and glass from municipal solid waste, and which is composed of both cellulosic and non-cellulosic materials.

- (ii) (A) A feedstock qualifies under paragraph (f)(5)(i)(A) or (f)(5)(i)(B) of this section only if it is collected according to a plan submitted to and approved by U.S. EPA under the registration procedures specified in §80.1450(b)(1)(vii).

- (B) A feedstock qualifies under paragraph (f)(5)(i)(C) of this section only if it is collected according to a plan submitted to and approved by U.S. EPA under the registration procedures specified in §80.1450(b)(1)(viii).

- (iii) Separation and recycling actions specified in paragraph (f)(5)(i)(C) of this section are considered to occur if:

- (A) Recyclable paper, cardboard, plastics, rubber, textiles, metals, and glass that can be recycled are separated and removed from the municipal solid waste stream to the extent reasonably practicable according to a plan submitted to and approved by U.S. EPA under the registration procedures specified in §80.1450(b)(1)(viii); and
 - (B) The fuel producer has evidence of all contractual arrangements for paper, cardboard, plastics, rubber, textiles, metals, and glass that are recycled.
- (iv) (A) The number of gallon-RINs that shall be generated for a batch of renewable fuel derived from separated yard waste as defined in paragraph (f)(5)(i)(A) of this section shall be equal to a volume V_{RIN} and is calculated according to the following formula:

$$V_{RIN} = EV * V_s$$

Where:

V_{RIN} = RIN volume, in gallons, for use in determining the number of cellulosic biofuel gallon-RINs that shall be generated for the batch.

EV = Equivalence value for the batch of renewable fuel per §80.1415.

V_s = Standardized volume of the batch of renewable fuel at 60 °F, in gallons, calculated in accordance with paragraph (f)(8) of this section.

- (B) The number of gallon-RINs that shall be generated for a batch of renewable fuel derived from separated food waste as defined in paragraph (f)(5)(i)(B) of this section shall be equal to a volume V_{RIN} and is calculated according to the following formula:

$$V_{RIN} = EV * V_s$$

Where:

V_{RIN} = RIN volume, in gallons, for use in determining the number of cellulosic or advanced biofuel gallon-RINs that shall be generated for the batch.

EV = Equivalence value for the batch of renewable fuel per §80.1415.

V_s = Standardized volume of the batch of renewable fuel at 60 °F, in gallons, calculated in accordance with paragraph (f)(8) of this section.

- (v) The number of cellulosic biofuel gallon-RINs that shall be generated for the cellulosic portion of a batch of renewable fuel derived from separated MSW as defined in paragraph (f)(5)(i)(C) of this section shall be determined according to the following formula:

$$V_{\text{RIN}} = \text{EV} * V_s * R$$

Where:

V_{RIN} = RIN volume, in gallons, for use in determining the number of cellulosic biofuel gallon-RINs that shall be generated for the batch.

EV = Equivalence value for the batch of renewable fuel per §80.1415.

V_s = Standardized volume of the batch of renewable fuel at 60 °F, in gallons, calculated in accordance with paragraph (f)(8) of this section.

R = The calculated non-fossil fraction of the fuel as measured by a carbon-14 dating test method as provided in paragraph (f)(9) of this section.

- (vi) The D code that shall be used in the RINs generated to represent separated yard waste, food waste, and MSW shall be the D code specified in Table 1 to this section, or a D code as approved by the Administrator, which corresponds to the pathway that describes the producer's operations and feedstocks.

- (6) Renewable fuel neither covered by the pathways in Table 1 to this section, nor given an approval by the Administrator for use of a specific D code.

If none of the pathways described in Table 1 to this section apply to a producer's operations, and the producer has not received approval for the use of a specific D code by the Administrator, the party may generate RINs if the fuel from its facility is made from renewable biomass and qualifies for an exemption under §80.1403 from the requirement that renewable fuel achieve at least a 20 percent reduction in lifecycle greenhouse gas emissions compared to baseline lifecycle greenhouse gas emissions.

- (i) The number of gallon-RINs that shall be generated for a batch of renewable fuel that qualifies for an exemption from the 20 percent GHG reduction requirements under §80.1403 shall be equal to a volume calculated according to the following formula:

$$V_{\text{RIN}} = \text{EV} * V_s$$

Where:

V_{RIN} = RIN volume, in gallons, for use in determining the number of gallon-RINs that shall be generated for the batch.

EV = Equivalence value for the batch of renewable fuel per §80.1415.

V_s = Standardized volume of the batch of renewable fuel at 60 °F, in gallons, calculated in accordance with paragraph (f)(8) of this section.

(ii) A D code of 6 shall be used in the RINs generated under this paragraph (f)(6).

(7) Determination of feedstock energy content factors.

(i) For purposes of paragraphs (f)(3)(vi) and (f)(4)(i)(A)(2) of this section, producers must specify the value for E, the energy content of the components of the feedstock that are converted to renewable fuel, used in the calculation of the feedstock energy value FE.

(ii) The value for E shall represent the higher or gross calorific heating value for a feedstock on a zero moisture basis.

(iii) Producers must specify the value for E for each type of feedstock at least once per calendar year.

(iv) A producer must use default values for E as provided in paragraph (f)(7)(vi) of this section, or must determine alternative values for its own feedstocks according to paragraph (f)(7)(v) of this section.

(v) Producers that do not use a default value for E must use the following test methods, or alternative test methods as approved by EPA, to determine the value of E. The value of E shall be based upon the test results of a sample of feedstock that, based upon good engineering judgment, is representative of the feedstocks used to produce renewable fuel:

(A) ASTM E 870 or ASTM E 711 for gross calorific value (both incorporated by reference, see §80.1468).

(B) ASTM D 4442 or ASTM D 4444 for moisture content (both incorporated by reference, see §80.1468).

(vi) Default values for E.

(A) Starch: 7600 Btu/lb.

(B) Sugar: 7300 Btu/lb.

(C) Vegetable oil: 17,000 Btu/lb.

(D) Waste cooking oil or trap grease: 16,600 Btu/lb.

(E) Tallow or fat: 16,200 Btu/lb.

(F) Manure: 6900 Btu/lb.

(G) Woody biomass: 8400 Btu/lb.

(H) Herbaceous biomass: 7300 Btu/lb.

(I) Yard wastes: 2900 Btu/lb.

(J) Biogas: 11,000 Btu/lb.

(K) Food waste: 2000 Btu/lb.

- (L) Paper: 7200 Btu/lb.
- (M) Crude oil: 19,100 Btu/lb.
- (N) Coal - bituminous: 12,200 Btu/lb.
- (O) Coal - anthracite: 13,300 Btu/lb.
- (P) Coal - lignite or sub-bituminous: 7900 Btu/lb.
- (Q) Natural gas: 19,700 Btu/lb.
- (R) Tires or rubber: 16,000 Btu/lb.
- (S) Plastic: 19,000 Btu/lb.

(8) Standardization of volumes. In determining the standardized volume of a batch of renewable fuel for purposes of generating RINs under this paragraph (f), the batch volumes shall be adjusted to a standard temperature of 60 °F.

(i) For ethanol, the following formula shall be used:

$$V_{s,e} = V_{a,e} * (-0.0006301 * T + 1.0378)$$

Where:

- $V_{s,e}$ = Standardized volume of ethanol at 60 °F, in gallons.
- $V_{a,e}$ = Actual volume of ethanol, in gallons.
- T = Actual temperature of the batch, in °F.

(ii) For biodiesel (mono-alkyl esters), one of the following two methods for biodiesel temperature standardization to 60 °Fahrenheit (°F) shall be used:

(A) $V_{s,b} = V_{a,b} * (-0.00045767 * T + 1.02746025)$

Where:

$V_{s,b}$ = Standardized volume of biodiesel at 60 °F, in gallons.

$V_{a,b}$ = Actual volume of biodiesel, in gallons.

T = Actual temperature of the batch, in °F.

(B) The standardized volume of biodiesel at 60 °F, in gallons, as calculated from the use of the American Petroleum Institute Refined Products Table 6B, as referenced in ASTM D 1250 (incorporated by reference, see §80.1468).

(iii) For other renewable fuels, an appropriate formula commonly accepted by the industry shall be used to standardize the actual volume to 60 °F. Formulas used must be reported to EPA, and may be determined to be inappropriate.

(9) Use of radiocarbon dating test methods.

(i) Parties may use a radiocarbon dating test method for determination of the renewable fraction of a fuel R used to determine V_{RIN} as provided in paragraphs (f)(4) and (f)(5) of this section.

- (ii) Parties must use Method B or Method C of ASTM D 6866 (incorporated by reference, see § 80.1468), or an alternative test method as approved by EPA.
- (iii) For each batch of fuel, the value of R must be based on:
 - (A) A radiocarbon dating test of the batch of fuel produced; or
 - (B) A radiocarbon dating test of a composite sample of previously produced fuel, if all of the following conditions are met:
 - (1) Based upon good engineering judgment, the renewable fraction of the composite sample must be representative of the batch of fuel produced.
 - (2) The composite sample is comprised of a volume weighted combination of samples from every batch of partially renewable transportation fuel produced by the party over a period not to exceed one calendar month, or more frequently if necessary to ensure that the test results are representative of the renewable fraction of the partially renewable fuel.
 - (3) The composite sample must be well mixed prior to testing.
 - (4) A volume of each composite sample must be retained for a minimum of two years, and be of sufficient volume to permit two additional tests to be conducted.
- (iv) If the party is using the composite sampling approach according to paragraph (f)(9)(iii)(B) of this section, the party may estimate the value of R for use in generating RINs in the first month if all of the following conditions are met:
 - (A) The estimate of R for the first month is based on information on the composition of the feedstock;
 - (B) The party calculates R in the second month based on the application of a radiocarbon dating test on a composite sample pursuant to (f)(9)(iii)(B) of this section; and
 - (C) The party adjusts the value of R used to generate RINs in the second month using the following formula:

$$R_{i+1,adj} = 2 \times R_{i+1,calc} - R_{i,est}$$

Where:

$R_{i+1,adj}$ = Adjusted value of R for use in generating RINs in month the second month $i+1$.

$R_{i+1,calc} =$ Calculated value of R in second month $i+1$ by applying a radiocarbon dating test method to a composite sample of fuel.

$R_{i,est} =$ Estimate of R for the first month i .

- (10) (i) For purposes of this section, electricity and biogas used as transportation fuel is considered renewable fuel and the producer may generate RINs if all of the following apply:
- (A) The fuel is produced from renewable biomass and qualifies for a D code in Table 1 to this section or has received approval for use of a D code by the Administrator;
 - (B) The renewable electricity, or biogas, is not placed in a commercial distribution system along with fuels derived from nonrenewable feedstocks; and
 - (C) The fuel producer has entered into a written contract for the sale and use as transportation fuel of a specific quantity of electricity or biogas.
- (ii) Electricity that is generated by co-firing a combination of renewable biomass and fossil fuel may generate RINs only for the portion attributable to the renewable biomass portion, using the procedure described in paragraph (f)(4) of this section.
- (11) (i) For purposes of this section, electricity and biogas that is introduced into a commercial distribution system may be considered renewable fuel and may qualify for RINs if:
- (A) The fuel is produced from renewable biomass and qualifies for a D code in Table 1 of this section or has received approval for use of a D code by the Administrator;
 - (B) The fuel producer has entered into a written contract for the sale of a specific quantity of fuel derived from renewable biomass sources with a party that uses fuel taken from a commercial distribution system for transportation purposes, and such fuel has been introduced into that commercial distribution system (e.g., pipeline, transmission line); and
 - (C) The quantity of biogas or electricity for which RINs were generated was sold to the transportation fueling facility and to no other facility.
- (ii) Biogas that is introduced into a commercial distribution system may qualify for RINs only for the volume of biogas that has been gathered, processed, and injected into a common carrier pipeline if:
- (A) The gas that is ultimately withdrawn from that pipeline for transportation purposes is withdrawn in a manner and at a time consistent with the transport of fuel between the injection and withdrawal points; and

- (B) The volume and heat content of biogas injected into the pipeline and the volume of gas used as transportation fuel are measured by continuous metering.
- (iii) The fuel used for transportation purposes is considered produced from renewable biomass only to the extent that:
 - (A) The amount of fuel used at the transportation fueling facility matches the amount of fuel derived from renewable biomass that the producer contracted to have placed into the commercial distribution system; and
 - (B) No other party relied upon the contracted volume of biogas for the creation of RINs.
- (iv) Electricity that is generated by co-firing a combination of renewable biomass and fossil fuel may qualify for RINs only for the portion attributable to the renewable biomass, using the procedure described in paragraph (f)(4) of this section.
- (12) (i) For purposes of Table 1 to this section, process heat produced from combustion of gas at a renewable fuel facility is considered derived from biomass if the gas used for process heat is biogas, and is generated at the facility or directly transported to the facility and meets all of the following conditions:
 - (A) The producer has entered into a written contract for the procurement of a specific volume of biogas with a specific heat content.
 - (B) The volume of biogas was sold to the renewable fuel production facility, and to no other facility.
 - (C) The volume of biogas has been gathered, processed and injected into a common carrier pipeline and the gas that is ultimately withdrawn from that pipeline is withdrawn in a manner and at a time consistent with the transport of fuel between the injection and withdrawal points.
 - (D) The volume and heat content of biogas injected into the pipeline and the volume of gas used as process heat are measured by continuous metering.
 - (E) The common carrier pipeline into which the biogas is placed ultimately serves the producer's renewable fuel facility.
- (ii) The process heat produced from combustion of gas at a renewable fuel facility described in (f)(12)(i) of this section shall not be considered derived from biomass if any other party relied upon the contracted volume of biogas for the creation of RINs.

§ 80.1427 How are RINs used to demonstrate compliance?

- (a) Renewable Volume Obligations.
 - (1) Except as specified in paragraph (b) of this section or §80.1456, each party that is an obligated party under §80.1406 and is obligated to meet the

Renewable Volume Obligations under §80.1407, or is an exporter of renewable fuels that is obligated to meet Renewable Volume Obligations under §80.1430, must demonstrate pursuant to §80.1451(a)(1) that it is retiring for compliance purposes a sufficient number of RINs to satisfy the following equations:

(i) Cellulosic biofuel.

$$(\sum \text{RINNUM})_{\text{CB},i} + (\sum \text{RINNUM})_{\text{CB},i-1} = \text{RVO}_{\text{CB},i}$$

Where:

$(\sum \text{RINNUM})_{\text{CB},i}$ = Sum of all owned gallon-RINs that are valid for use in complying with the cellulosic biofuel RVO, were generated in year i, and are being applied towards the $\text{RVO}_{\text{CB},i}$, in gallons.

$(\sum \text{RINNUM})_{\text{CB},i-1}$ = Sum of all owned gallon-RINs that are valid for use in complying with the cellulosic biofuel RVO, were generated in year i-1, and are being applied towards the $\text{RVO}_{\text{CB},i}$, in gallons.

$\text{RVO}_{\text{CB},i}$ = The Renewable Volume Obligation for cellulosic biofuel for the obligated party or renewable fuel exporter for calendar year i, in gallons, pursuant to §80.1407 or §80.1430.

(ii) Biomass-based diesel. Use the equation in this paragraph, except as provided in paragraph (a)(7) of this section.

$$(\sum \text{RINNUM})_{\text{BBD},i} + (\sum \text{RINNUM})_{\text{BBD},i-1} = \text{RVO}_{\text{BBD},i}$$

Where:

$(\sum \text{RINNUM})_{\text{BBD},i}$ = Sum of all owned gallon-RINs that are valid for use in complying with the biomass-based diesel RVO, were generated in year i, and are being applied towards the $\text{RVO}_{\text{BBD},i}$, in gallons.

$(\sum \text{RINNUM})_{\text{BBD},i-1}$ = Sum of all owned gallon-RINs that are valid for use in complying with the biomass-based diesel RVO, were generated in year i-1, and are being applied towards the $\text{RVO}_{\text{BBD},i}$, in gallons.

$\text{RVO}_{\text{BBD},i}$ = The Renewable Volume Obligation for biomass-based diesel for the obligated party or renewable fuel exporter for calendar year i after 2010, in gallons, pursuant to §80.1407 or §80.1430.

(iii) Advanced biofuel.

$$(\sum \text{RINNUM})_{\text{AB},i} + (\sum \text{RINNUM})_{\text{AB},i-1} = \text{RVO}_{\text{AB},i}$$

Where:

$(\sum \text{RINNUM})_{\text{AB},i}$ = Sum of all owned gallon-RINs that are valid for use in complying with the advanced biofuel RVO, were generated in year i, and are being applied towards the $\text{RVO}_{\text{AB},i}$, in gallons.

$(\sum \text{RINNUM})_{\text{AB},i-1}$ = Sum of all owned gallon-RINs that are valid for use in complying with the advanced biofuel RVO, were generated in year i-1, and are being applied towards the $\text{RVO}_{\text{AB},i}$, in gallons.

$\text{RVO}_{\text{AB},i}$ = The Renewable Volume Obligation for advanced biofuel for the obligated party or renewable fuel exporter for calendar year i, in gallons, pursuant to §80.1407 or §80.1430.

(iv) Renewable fuel.

$$(\sum \text{RINNUM})_{\text{RF},i} + (\sum \text{RINNUM})_{\text{RF},i-1} = \text{RVO}_{\text{RF},i}$$

Where:

$(\sum \text{RINNUM})_{\text{RF},i}$ = Sum of all owned gallon-RINs that are valid for use in complying with the renewable fuel RVO, were generated in year i, and are being applied towards the $\text{RVO}_{\text{RF},i}$, in gallons.

$(\sum \text{RINNUM})_{\text{RF},i-1}$ = Sum of all owned gallon-RINs that are valid for use in complying with the renewable fuel RVO, were generated in year i-1, and are being applied towards the $\text{RVO}_{\text{RF},i}$, in gallons.

$\text{RVO}_{\text{RF},i}$ = The Renewable Volume Obligation for renewable fuel for the obligated party or renewable fuel exporter for calendar year i, in gallons, pursuant to §80.1407 or §80.1430.

(2) Except as described in paragraph (a)(4) of this section, RINs that are valid for use in complying with each Renewable Volume Obligation are determined by their D codes.

(i) RINs with a D code of 3 or 7 are valid for compliance with the cellulosic biofuel RVO.

(ii) RINs with a D code of 4 or 7 are valid for compliance with the biomass-based diesel RVO.

- (iii) RINs with a D code of 3, 4, 5, or 7 are valid for compliance with the advanced biofuel RVO.
- (iv) RINs with a D code of 3, 4, 5, 6, or 7 are valid for compliance with the renewable fuel RVO.
- (3) (i) Except as provided in paragraph (a)(3)(ii) of this section, a party may use the same RIN to demonstrate compliance with more than one RVO so long as it is valid for compliance with all RVOs to which it is applied.
- (ii) A cellulosic diesel RIN with a D code of 7 cannot be used to demonstrate compliance with both a cellulosic biofuel RVO and a biomass-based diesel RVO.
- (4) Notwithstanding the requirements of §80.1428(c) or paragraph (a)(6)(i) of this section, for purposes of demonstrating compliance for calendar years 2010 or 2011, RINs generated pursuant to §80.1126 that have not been used for compliance purposes may be used for compliance in 2010 or 2011, as follows, insofar as permissible pursuant to paragraphs (a)(5) and (a)(7)(iii) of this section:
 - (i) A RIN generated pursuant to §80.1126 with a D code of 2 and an RR code of 15 or 17 is deemed equivalent to a RIN generated pursuant to §80.1426 having a D code of 4.
 - (ii) A RIN generated pursuant to §80.1126 with a D code of 1 is deemed equivalent to a RIN generated pursuant to §80.1426 having a D code of 3.
 - (iii) All other RINs generated pursuant to §80.1126 are deemed equivalent to RINs generated pursuant to §80.1426 having D codes of 6.
 - (iv) A RIN generated pursuant to §80.1126 that was retired pursuant to §80.1129(e) because the associated volume of fuel was not used as motor vehicle fuel may be reinstated for use in complying with a 2010 RVO pursuant to §80.1429(g).
- (5) The value of $(\sum \text{RINNUM})_{i-1}$ may not exceed values determined by the following inequalities except as provided in paragraph (a)(7)(iii) of this section and §80.1442(d):

$$(\sum \text{RINNUM})_{\text{CB},i-1} \leq 0.20 * \text{RVO}_{\text{CB},i}$$

$$(\sum \text{RINNUM})_{\text{BBD},i-1} \leq 0.20 * \text{RVO}_{\text{BBD},i}$$

$$(\sum \text{RINNUM})_{\text{AB},i-1} \leq 0.20 * \text{RVO}_{\text{AB},i}$$

$$(\sum \text{RINNUM})_{\text{RF},i-1} \leq 0.20 * \text{RVO}_{\text{RF},i}$$

- (6) Except as provided in paragraph (a)(7) of this section:
 - (i) RINs may only be used to demonstrate compliance with the RVOs for the calendar year in which they were generated or the following calendar year.

- (ii) RINs used to demonstrate compliance in one year cannot be used to demonstrate compliance in any other year.

(7) Biomass-based diesel in 2010.

- (i) Prior to determining compliance with the 2010 biomass-based diesel RVO, obligated parties may reduce the value of $RVO_{BBD,2010}$ by an amount equal to the sum of all 2008 and 2009 RINs that they used for compliance purposes for calendar year 2009 which have a D code of 2 and an RR code of 15 or 17.
- (ii) For calendar year 2010 only, the following equation shall be used to determine compliance with the biomass-based diesel RVO instead of the equation in paragraph (a)(1)(ii) of this section:

$$(\sum RINNUM)_{BBD,2010} + (\sum RINNUM)_{BBD,2009} + (\sum RINNUM)_{BBD,2008} = RVO_{BBD,2010}$$

Where:

$(\sum RINNUM)_{BBD,2010} =$ Sum of all owned gallon-RINs that are valid for use in complying with the biomass-based diesel RVO, were generated in year 2010, and are being applied towards the $RVO_{BBD,2010}$, in gallons.

$(\sum RINNUM)_{BBD,2009} =$ Sum of all owned gallon-RINs that are valid for use in complying with the biomass-based diesel RVO, were generated in year 2009, have not previously been used for compliance purposes, and are being applied towards the $RVO_{BBD,2010}$, in gallons.

$(\sum RINNUM)_{BBD,2008} =$ Sum of all owned gallon-RINs that are valid for use in complying with the biomass-based diesel RVO, were generated in year 2008, have not previously been used for compliance purposes, and are being applied towards the $RVO_{BBD,2010}$, in gallons.

$RVO_{BBD,2010} =$ The Renewable Volume Obligation for biomass-based diesel for the obligated party for calendar year 2010, in gallons, pursuant to §80.1407 or §80.1430, as adjusted by paragraph (a)(7)(i) of this section.

- (iii) The values of $(\sum RINNUM)_{2008}$ and $(\sum RINNUM)_{2009}$ may not exceed values determined by both of the following inequalities:

$$(\sum RINNUM)_{BBD,2008} \leq 0.087 * RVO_{BBD,2010}$$

$$(\sum \text{RINNUM})_{\text{BBD},2008} + (\sum \text{RINNUM})_{\text{BBD},2009} \leq 0.20 * \text{RVO}_{\text{BBD},2010}$$

- (8) A party may only use a RIN for purposes of meeting the requirements of paragraph (a)(1) or (a)(7) of this section if that RIN is a separated RIN with a K code of 2 obtained in accordance with §§ 80.1428 and 80.1429.
- (9) The number of gallon-RINs associated with a given batch-RIN that can be used for compliance with the RVOs shall be calculated from the following formula:

$$\text{RINNUM} = \text{EEEEEEEE} - \text{SSSSSSSS} + 1$$

Where:

RINNUM = Number of gallon-RINs associated with a batch-RIN, where each gallon-RIN represents one gallon of renewable fuel for compliance purposes.

EEEEEEEE = Batch-RIN component identifying the last gallon-RIN associated with the batch-RIN.

SSSSSSSS = Batch-RIN component identifying the first gallon-RIN associated with the batch-RIN.

(b) Deficit carryovers.

- (1) An obligated party or an exporter of renewable fuel that fails to meet the requirements of paragraph (a)(1) or (a)(7) of this section for calendar year i is permitted to carry a deficit into year i+1 under the following conditions:
 - (i) The party did not carry a deficit into calendar year i from calendar year i-1 for the same RVO.
 - (ii) The party subsequently meets the requirements of paragraph (a)(1) of this section for calendar year i+1 and carries no deficit into year i+2 for the same RVO.
 - (iii) For compliance with the biomass-based diesel RVO in calendar year 2011, the deficit which is carried over from 2010 is no larger than 57% of the party's 2010 biomass-based diesel RVO as determined prior to any adjustment applied pursuant to paragraph (a)(7)(i) of this section.
 - (iv) The party uses the same compliance approach in year i+1 as it did in year i, as provided in §80.1406(c)(2).
- (2) A deficit is calculated according to the following formula:

$$D_i = \text{RVO}_i - [(\sum \text{RINNUM})_i + (\sum \text{RINNUM})_{i-1}]$$

Where:

D_i = The deficit, in gallons, generated in calendar year i that must be carried over to year i+1 if allowed pursuant to paragraph (b)(1) of this section.

$RVO_i =$	The Renewable Volume Obligation for the obligated party or renewable fuel exporter for calendar year i, in gallons.
$(\sum RINNUM)_i =$	Sum of all acquired gallon-RINs that were generated in year i and are being applied towards the RVO_i , in gallons.
$(\sum RINNUM)_{i-1} =$	Sum of all acquired gallon-RINs that were generated in year i-1 and are being applied towards the RVO_i , in gallons.

§ 80.1428 General requirements for RIN distribution.

(a) RINs assigned to volumes of renewable fuel.

- (1) Assigned RIN, for the purposes of this subpart, means a RIN assigned to a volume of renewable fuel pursuant to §80.1426(e) with a K code of 1.
- (2) Except as provided in §80.1429, no person can separate a RIN that has been assigned to a batch pursuant to §80.1426(e).
- (3) An assigned RIN cannot be transferred to another person without simultaneously transferring a volume of renewable fuel to that same person.
- (4) No more than 2.5 assigned gallon-RINs with a K code of 1 can be transferred to another person with every gallon of renewable fuel transferred to that same person.
- (5) (i) On each of the dates listed in paragraph (a)(5)(ii) of this section in any calendar year, the following equation must be satisfied for assigned RINs and volumes of renewable fuel owned by a person:

$$\sum(RIN)_D \leq \sum(V_{si} * 2.5)_D$$

Where:

$D =$	Applicable date.
$\sum(RIN)_D =$	Sum of all assigned gallon-RINs with a K code of 1 that are owned on date D.
$(V_{si})_D =$	Volume i of renewable fuel owned on date D, standardized to 60 °F, in gallons.

- (ii) The applicable dates are March 31, June 30, September 30, and December 31.
- (6) Any transfer of ownership of assigned RINs must be documented on product transfer documents generated pursuant to §80.1453.
 - (i) The RIN must be recorded on the product transfer document used to transfer ownership of the volume of renewable fuel to another person; or
 - (ii) The RIN must be recorded on a separate product transfer document transferred to the same person on the same day as the product

transfer document used to transfer ownership of the volume of renewable fuel.

- (b) RINs separated from volumes of renewable fuel.
 - (1) Separated RIN, for the purposes of this subpart, means a RIN with a K code of 2 that has been separated from a volume of renewable fuel pursuant to §80.1429.
 - (2) Any person that has registered pursuant to §80.1450 can own a separated RIN.
 - (3) Separated RINs can be transferred any number of times.
- (c) RIN expiration. Except as provided in §80.1427(a)(7), a RIN is valid for compliance during the calendar year in which it was generated, or the following calendar year. Any RIN that is not used for compliance purposes for the calendar year in which it was generated, or for the following calendar year, will be considered an expired RIN. Pursuant to §80.1431(a), an expired RIN that is used for compliance will be considered an invalid RIN.
- (d) Any batch-RIN can be divided into multiple batch-RINs, each representing a smaller number of gallon-RINs, if all of the following conditions are met:
 - (1) All RIN components other than SSSSSSSS and EEEEEEEE are identical for the original parent and newly formed daughter RINs.
 - (2) The sum of the gallon-RINs associated with the multiple daughter batch-RINs is equal to the gallon-RINs associated with the parent batch-RIN.

§ 80.1429 Requirements for separating RINs from volumes of renewable fuel.

- (a)
 - (1) Separation of a RIN from a volume of renewable fuel means termination of the assignment of the RIN to a volume of renewable fuel.
 - (2) RINs that have been separated from volumes of renewable fuel become separated RINs subject to the provisions of §80.1428(b).
- (b) A RIN that is assigned to a volume of renewable fuel can be separated from that volume only under one of the following conditions:
 - (1) Except as provided in paragraphs (b)(7) and (b)(9) of this section, a party that is an obligated party according to §80.1406 must separate any RINs that have been assigned to a volume of renewable fuel if that party owns that volume.
 - (2) Except as provided in paragraph (b)(6) of this section, any party that owns a volume of renewable fuel must separate any RINs that have been assigned to that volume once the volume is blended with gasoline or diesel to produce a transportation fuel, heating oil, or jet fuel. A party may separate up to 2.5 RINs per gallon of blended renewable fuel.
 - (3) Any party that exports a volume of renewable fuel must separate any RINs that have been assigned to the exported volume. A party may separate up to 2.5 RINs per gallon of exported renewable fuel.

- (4) Any party that produces, imports, owns, sells, or uses a volume of neat renewable fuel, or a blend of renewable fuel and diesel fuel, must separate any RINs that have been assigned to that volume of neat renewable fuel or that blend if:
- (i) The party designates the neat renewable fuel or blend as transportation fuel, heating oil, or jet fuel; and
 - (ii) The neat renewable fuel or blend is used without further blending, in the designated form, as transportation fuel, heating oil, or jet fuel.
- (5) Any party that produces, imports, owns, sells, or uses a volume of electricity or biogas for which RINs have been generated in accordance with §80.1426(f) must separate any RINs that have been assigned to that volume of renewable electricity or biogas if:
- (i) The party designates the electricity or biogas as transportation fuel; and
 - (ii) The electricity or biogas is used as transportation fuel.
- (6) RINs assigned to a volume of biodiesel (mono-alkyl ester) can only be separated from that volume pursuant to paragraph (b)(2) of this section if such biodiesel is blended into diesel fuel at a concentration of 80 volume percent biodiesel (mono-alkyl ester) or less.
- (i) This paragraph (b)(6) shall not apply to biodiesel owned by obligated parties or to exported volumes of biodiesel.
 - (ii) This paragraph (b)(6) shall not apply to parties meeting the requirements of paragraph (b)(4) of this section.
- (7) For RINs that an obligated party generates for renewable fuel that has not been blended into gasoline or diesel to produce a transportation fuel, heating oil, or jet fuel, the obligated party can only separate such RINs from volumes of renewable fuel if the number of gallon-RINs separated in a calendar year are less than or equal to a limit set as follows:
- (i) For RINs with a D code of 3, the limit shall be equal to RVO_{CB} .
 - (ii) For RINs with a D code of 4, the limit shall be equal to RVO_{BBD} .
 - (iii) For RINs with a D code of 7, the limit shall be equal to the larger of RVO_{BBD} or RVO_{CB} .
 - (iv) For RINs with a D code of 5, the limit shall be equal to $RVO_{AB} - RVO_{CB} - RVO_{BBD}$.
 - (v) For RINs with a D code of 6, the limit shall be equal to $RVO_{RF} - RVO_{AB}$.
- (8) Small refiners and small refineries may only separate RINs that have been assigned to volumes of renewable fuel that the party blends into gasoline or diesel to produce transportation fuel, heating oil, or jet fuel, or that the party used as transportation fuel, heating oil, or jet fuel. This paragraph (b)(8) shall apply only under the following conditions:
- (i) During the calendar year in which the party has received a small refinery exemption under §80.1441 or a small refiner exemption under §80.1442; and

- (ii) The party is not otherwise an obligated party during the period of time that the small refinery or small refiner exemption is in effect.
- (9) Except as provided in paragraphs (b)(2) through (b)(5) and (b)(8) of this section, RINs owned by obligated parties whose non-export renewable volume obligations are solely related to the addition of blendstocks into a volume of finished gasoline, finished diesel fuel, RBOB, or CBOB, can only be separated from volumes of renewable fuel if the number of gallon-RINs separated in a calendar year are less than or equal to a limit set as follows:
 - (i) For RINs with a D code of 3, the limit shall be equal to RVO_{CB} .
 - (ii) For RINs with a D code of 4, the limit shall be equal to RVO_{BBD} .
 - (iii) For RINs with a D code of 7, the limit shall be equal to the larger of RVO_{BBD} or RVO_{CB} .
 - (iv) For RINs with a D code of 5, the limit shall be equal to $RVO_{AB} - RVO_{CB} - RVO_{BBD}$.
 - (v) For RINs with a D code of 6, the limit shall be equal to $RVO_{RF} - RVO_{AB}$.
- (c) The party responsible for separating a RIN from a volume of renewable fuel shall change the K code in the RIN from a value of 1 to a value of 2 prior to transferring the RIN to any other party.
- (d) Upon and after separation of a RIN from its associated volume of renewable fuel, the separated RIN must be accompanied by documentation when transferred to another party pursuant to §80.1453.
- (e) Upon and after separation of a RIN from its associated volume of renewable fuel, product transfer documents used to transfer ownership of the volume must meet the requirements of §80.1453.
- (f) Any party that uses a renewable fuel in any application that is not transportation fuel, heating oil, or jet fuel, or designates a renewable fuel for use as something other than transportation fuel, heating oil, or jet fuel, must retire any RINs received with that renewable fuel and report the retired RINs in the applicable reports under §80.1451.
- (g) Any 2009 RINs retired pursuant to §80.1129 because renewable fuel was used in a non-motor vehicle application, heating oil, or jet fuel may be reinstated by the retiring party for sale or use to demonstrate compliance with a 2010 RVO.

§ 80.1430 Requirements for exporters of renewable fuels.

- (a) Any party that owns any amount of renewable fuel, whether in its neat form or blended with gasoline or diesel, that is exported from any of the regions described in §80.1426(b) shall acquire sufficient RINs to comply with all applicable

Renewable Volume Obligations under paragraph (b) of this section representing the exported renewable fuel.

- (b) Renewable Volume Obligations. An exporter of renewable fuel shall determine its Renewable Volume Obligations from the volumes of the renewable fuel exported.

- (1) Cellulosic biofuel.

$$RVO_{CB,i} = \sum(VOL_k * EV_k)_i + D_{CB,i-1}$$

Where:

- $RVO_{CB,i}$ = The Renewable Volume Obligation for cellulosic biofuel for the exporter for calendar year i, in gallons.
 k = A discrete volume of exported renewable fuel.
 VOL_k = The standardized volume of discrete volume k of exported renewable fuel that the exporter knows or has reason to know is cellulosic biofuel, in gallons, calculated in accordance with §80.1426(f)(8).
 EV_k = The equivalence value associated with discrete volume k.
 \sum = Sum involving all volumes of cellulosic biofuel exported.
 $D_{CB,i-1}$ = Deficit carryover from the previous year for cellulosic biofuel, in gallons.

- (2) Biomass-based diesel.

$$RVO_{BBD,i} = \sum(VOL_k * EV_k)_i + D_{BBD,i-1}$$

Where:

- $RVO_{BBD,i}$ = The Renewable Volume Obligation for biomass-based diesel for the exporter for calendar year i, in gallons.
 k = A discrete volume of exported renewable fuel.
 VOL_k = The standardized volume of discrete volume k of exported renewable fuel that is biodiesel or renewable diesel, or that the exporter knows or has reason to know is biomass-based diesel, in gallons, calculated in accordance with §80.1426(f)(8).
 EV_k = The equivalence value associated with discrete volume k.
 \sum = Sum involving all volumes of biomass-based diesel exported.
 $D_{BBD,i-1}$ = Deficit carryover from the previous year for biomass-based diesel, in gallons.

- (3) Advanced biofuel.

$$RVO_{AB,i} = \sum(VOL_k * EV_k)_i + D_{AB,i-1}$$

Where:

$RVO_{AB,i}$ =	The Renewable Volume Obligation for advanced biofuel for the exporter for calendar year i, in gallons.
k =	A discrete volume of exported renewable fuel.
VOL_k =	The standardized volume of discrete volume k of exported renewable fuel that is biodiesel or renewable diesel, or that the exporter knows or has reason to know is biomass-based diesel, cellulosic biofuel, or advanced biofuel, in gallons, calculated in accordance with §80.1426(f)(8).
EV_k =	The equivalence value associated with discrete volume k.
\sum =	Sum involving all volumes of advanced biofuel exported.
$D_{AB,i-1}$ =	Deficit carryover from the previous year for advanced biofuel, in gallons.

(4) Renewable fuel.

$$RVO_{RF,i} = \sum(VOL_k * EV_k)_i + D_{RF,i-1}$$

Where:

$RVO_{RF,i}$ =	The Renewable Volume Obligation for renewable fuel for the exporter for calendar year i, in gallons.
k =	A discrete volume of exported renewable fuel.
VOL_k =	The standardized volume of discrete volume k of any exported renewable fuel, in gallons, calculated in accordance with §80.1426(f)(8).
EV_k =	The equivalence value associated with discrete volume k.
\sum =	Sum involving all volumes of renewable fuel exported.
$D_{RF,i-1}$ =	Deficit carryover from the previous year for renewable fuel, in gallons.

- (c) If the exporter knows or has reason to know that a volume of exported renewable fuel is cellulosic diesel, he must treat the exported volume as either cellulosic biofuel or biomass-based diesel when determining his Renewable Volume Obligations pursuant to paragraph (b) of this section.
- (d) For the purposes of calculating the Renewable Volume Obligations:
- (1) If the equivalence value for a volume of exported renewable fuel can be determined pursuant to §80.1415 based on its composition, then the appropriate equivalence value shall be used in the calculation of the exporter's Renewable Volume Obligations under paragraph (b) of this section.

- (2) If the category of the exported renewable fuel is known to be biomass-based diesel but the composition is unknown, the value of EV_k shall be 1.5.
 - (3) If neither the category nor composition of a volume of exported renewable fuel can be determined, the value of EV_k shall be 1.0.
- (e) For renewable fuels that are in the form of a blend with gasoline or diesel at the time of export, the exporter shall determine the volume of exported renewable fuel based on one of the following:
- (1) Information from the supplier of the blend of the concentration of renewable fuel in the blend.
 - (2) Determination of the renewable portion of the blend using Method B or Method C of ASTM D 6866 (incorporated by reference, see §80.1468), or an alternative test method as approved by the EPA.
 - (3) Assuming the maximum concentration of the renewable fuel in the blend as allowed by law and/or regulation.
- (f) Each exporter of renewable fuel must demonstrate compliance with its RVOs pursuant to §80.1427.

§ 80.1431 Treatment of invalid RINs.

- (a) Invalid RINs.
- (1) An invalid RIN is a RIN that is any of the following:
 - (i) A duplicate of a valid RIN.
 - (ii) Was based on incorrect volumes or volumes that have not been standardized to 60 °F.
 - (iii) Has expired, as provided in §80.1428(c).
 - (iv) Was based on an incorrect equivalence value.
 - (v) Deemed invalid under §80.1467(g).
 - (vi) Does not represent renewable fuel as defined in §80.1401.
 - (vii) Was assigned an incorrect “D” code value under §80.1426(f) for the associated volume of fuel.
 - (viii) Was improperly separated pursuant to §80.1429.
 - (ix) Was otherwise improperly generated.
 - (2) In the event that the same RIN is transferred to two or more parties, all such RINs are deemed invalid, unless EPA in its sole discretion determines that some portion of these RINs is valid.
- (b) In the case of RINs that are invalid, the following provisions apply:
- (1) Upon determination by any party that RINs owned are invalid, the party must keep copies and adjust its records, reports, and compliance calculations in which the invalid RINs were used. The party must retire the invalid RINs in the applicable RIN transaction reports under §80.1451(c)(2) for the quarter in which the RINs were determined to be invalid.

- (2) Invalid RINs cannot be used to achieve compliance with the Renewable Volume Obligations of an obligated party or exporter, regardless of the party's good faith belief that the RINs were valid at the time they were acquired.
- (3) Any valid RINs remaining after invalid RINs are retired must first be applied to correct the transfer of invalid RINs to another party before applying the valid RINs to meet the party's Renewable Volume Obligations at the end of the compliance year.

§ 80.1432 Reported spillage or disposal of renewable fuel.

- (a) A reported spillage or disposal under this subpart means a spillage or disposal of renewable fuel associated with a requirement by a federal, state, or local authority to report the spillage or disposal.
- (b) Except as provided in paragraph (c) of this section, in the event of a reported spillage or disposal of any volume of renewable fuel, the owner of the renewable fuel must retire a number of RINs corresponding to the volume of spilled or disposed of renewable fuel multiplied by its equivalence value.
 - (1) If the equivalence value for the spilled or disposed of volume may be determined pursuant to §80.1415 based on its composition, then the appropriate equivalence value shall be used.
 - (2) If the equivalence value for a spilled or disposed of volume of renewable fuel cannot be determined, the equivalence value shall be 1.0.
- (c) If the owner of a volume of renewable fuel that is spilled or disposed of and reported establishes that no RINs were generated to represent the volume, then no RINs shall be retired.
- (d) A RIN that is retired under paragraph (b) of this section:
 - (1) Must be reported as a retired RIN in the applicable reports under §80.1451.
 - (2) May not be transferred to another person or used by any obligated party to demonstrate compliance with the party's Renewable Volume Obligations.

§§ 80.1433-80.1439 [Reserved]

§ 80.1440 What are the provisions for blenders who handle and blend less than 125,000 gallons of renewable fuel per year?

- (a) Renewable fuel blenders who handle and blend less than 125,000 gallons of renewable fuel per year, and who do not have Renewable Volume Obligations, are permitted to delegate their RIN-related responsibilities to the party directly upstream of them who supplied the renewable fuel for blending.

- (b) The RIN-related responsibilities that may be delegated directly upstream include all of the following:
 - (1) The RIN separation requirements of §80.1429.
 - (2) The reporting requirements of §80.1451.
 - (3) The recordkeeping requirements of §80.1454.
 - (4) The attest engagement requirements of §80.1464.

- (c) For upstream delegation of RIN-related responsibilities, both parties must agree on the delegation, and a quarterly written statement signed by both parties must be included with the reporting party's reports under §80.1451.
 - (1) Both parties must keep copies of the signed quarterly written statement agreeing to the upward delegation for 5 years.
 - (2) Parties delegating their RIN responsibilities upward shall keep copies of their registration forms as submitted to EPA.
 - (3) If EPA finds that a renewable fuel blender improperly delegated its RIN-related responsibilities under this subpart M, the blender will be held accountable for any RINs separated and will be subject to all RIN-related responsibilities under this subpart.

- (d) Renewable fuel blenders who handle and blend less than 125,000 gallons of renewable fuel per year and delegate their RIN-related responsibilities under paragraph (b) of this section must register pursuant to §80.1450(e).

- (e) Renewable fuel blenders who handle and blend less than 125,000 gallons of renewable fuel per year and who do not opt to delegate their RIN-related responsibilities will be subject to all requirements stated in paragraph (b) of this section, and all other applicable requirements of this subpart M.

§ 80.1441 Small refinery exemption.

- (a)
 - (1) Transportation fuel produced at a refinery by a refiner, or foreign refiner (as defined at §80.1465(a)), is exempt from January 1, 2010 through December 31, 2010 from the renewable fuel standards of §80.1405, and the owner or operator of the refinery, or foreign refinery, is exempt from the requirements that apply to obligated parties under this subpart M for fuel produced at the refinery if the refinery meets the definition of a small refinery under §80.1401 for calendar year 2006.
 - (2) The exemption of paragraph (a)(1) of this section shall apply unless a refiner chooses to waive this exemption (as described in paragraph (f) of this section), or the exemption is extended (as described in paragraph (e) of this section).
 - (3) For the purposes of this section, the term "refiner" shall include foreign refiners.
 - (4) This exemption shall only apply to refineries that process crude oil through refinery processing units.

- (5) The small refinery exemption is effective immediately, except as specified in paragraph (b)(3) of this section.
 - (6) Refiners who own refineries that qualified as small under 40 CFR 80.1141 do not need to resubmit a small refinery verification letter under this subpart M. This paragraph (a) does not supersede §80.1141.
- (b)
- (1) A refiner owning a small refinery must submit a verification letter to EPA containing all of the following information:
 - (i) The annual average aggregate daily crude oil throughput for the period January 1, 2006 through December 31, 2006 (as determined by dividing the aggregate throughput for the calendar year by the number 365).
 - (ii) A letter signed by the president, chief operating or chief executive officer of the company, or his/her designee, stating that the information contained in the letter is true to the best of his/her knowledge, and that the refinery was small as of December 31, 2006.
 - (iii) Name, address, phone number, facsimile number, and e-mail address of a corporate contact person.
 - (2) Verification letters must be submitted by July 1, 2010 to one of the addresses listed in paragraph (h) of this section.
 - (3) For foreign refiners the small refinery exemption shall be effective upon approval, by EPA, of a small refinery application. The application must contain all of the elements required for small refinery verification letters (as specified in paragraph (b)(1) of this section), must satisfy the provisions of §80.1465(f) through (i) and (o), and must be submitted by July 1, 2010 to one of the addresses listed in paragraph (h) of this section.
 - (4) Small refinery verification letters are not required for those refiners who have already submitted a complete verification letter under subpart K of this part 80. Verification letters submitted under subpart K prior to July 1, 2010 that satisfy the requirements of subpart K shall be deemed to satisfy the requirements for verification letters under this subpart M.
- (c) If EPA finds that a refiner provided false or inaccurate information regarding a refinery's crude throughput (pursuant to paragraph (b)(1)(i) of this section) in its small refinery verification letter, the exemption will be void as of the effective date of these regulations.
- (d) If a refiner is complying on an aggregate basis for multiple refineries, any such refiner may exclude from the calculation of its Renewable Volume Obligations (under §80.1407) transportation fuel from any refinery receiving the small refinery exemption under paragraph (a) of this section.
- (e)
- (1) The exemption period in paragraph (a) of this section shall be extended by the Administrator for a period of not less than two additional years if a study by the Secretary of Energy determines that compliance with the

requirements of this subpart would impose a disproportionate economic hardship on a small refinery.

- (2) A refiner may petition the Administrator for an extension of its small refinery exemption, based on disproportionate economic hardship, at any time.
 - (i) A petition for an extension of the small refinery exemption must specify the factors that demonstrate a disproportionate economic hardship and must provide a detailed discussion regarding the hardship the refinery would face in producing transportation fuel meeting the requirements of §80.1405 and the date the refiner anticipates that compliance with the requirements can reasonably be achieved at the small refinery.
 - (ii) The Administrator shall act on such a petition not later than 90 days after the date of receipt of the petition.

- (f) At any time, a refiner with a small refinery exemption under paragraph (a) of this section may waive that exemption upon notification to EPA.
 - (1) A refiner's notice to EPA that it intends to waive its small refinery exemption must be received by November 1 to be effective in the next compliance year.
 - (2) The waiver will be effective beginning on January 1 of the following calendar year, at which point the transportation fuel produced at that refinery will be subject to the renewable fuels standard of §80.1405 and the owner or operator of the refinery shall be subject to all other requirements that apply to obligated parties under this Subpart M.
 - (3) The waiver notice must be sent to EPA at one of the addresses listed in paragraph (h) of this section.

- (g) A refiner that acquires a refinery from either an approved small refiner (as defined under §80.1442(a)) or another refiner with an approved small refinery exemption under paragraph (a) of this section shall notify EPA in writing no later than 20 days following the acquisition.

- (h) Verification letters under paragraph (b) of this section, petitions for small refinery hardship extensions under paragraph (e) of this section, and small refinery exemption waiver notices under paragraph (f) of this section shall be sent to one of the following addresses:
 - (1) For US mail: U.S. EPA, Attn: RFS Program, 6406J, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.
 - (2) For overnight or courier services: U.S. EPA, Attn: RFS Program, 6406J, 1310 L Street, NW, 6th floor, Washington, DC 20005. (202) 343-9038.

§ 80.1442 What are the provisions for small refiners under the RFS program?

- (a) (1) To qualify as a small refiner under this section, a refiner must meet all of the following criteria:

- (i) The refiner produced transportation fuel at its refineries by processing crude oil through refinery processing units from January 1, 2006 through December 31, 2006.
 - (ii) The refiner employed an average of no more than 1,500 people, based on the average number of employees for all pay periods for calendar year 2006 for all subsidiary companies, all parent companies, all subsidiaries of the parent companies, and all joint venture partners.
 - (iii) The refiner had a corporate-average crude oil capacity less than or equal to 155,000 barrels per calendar day (bpcd) for 2006.
 - (2) For the purposes of this section, the term “refiner” shall include foreign refiners.
 - (3) Refiners who qualified as small under 40 CFR 80.1142 do not need to reapply for small refiner status under this subpart M. This paragraph (a) does not supersede §80.1142.
- (b)
- (1) The small refiner exemption is effective immediately, except as provided in paragraph (b)(5) of this section.
 - (2) Refiners who qualify for the small refiner exemption under paragraph (a) of this section must submit a verification letter (and any other relevant information) to EPA by July 1, 2010. The small refiner verification letter must include all of the following information for the refiner and for all subsidiary companies, all parent companies, all subsidiaries of the parent companies, and all joint venture partners:
 - (i) A listing of the name and address of each company location where any employee worked for the period January 1, 2006 through December 31, 2006.
 - (ii) The average number of employees at each location based on the number of employees for each pay period for the period January 1, 2006 through December 31, 2006.
 - (iii) The type of business activities carried out at each location.
 - (iv) For joint ventures, the total number of employees includes the combined employee count of all corporate entities in the venture.
 - (v) For government-owned refiners, the total employee count includes all government employees.
 - (vi) The total corporate crude oil capacity of each refinery as reported to the Energy Information Administration (EIA) of the U.S. Department of Energy (DOE), for the period January 1, 2006 through December 31, 2006. The information submitted to EIA is presumed to be correct. In cases where a company disagrees with this information, the company may petition EPA with appropriate data to correct the record when the company submits its application.
 - (vii) The verification letter must be signed by the president, chief operating or chief executive officer of the company, or his/her designee, stating that the information is true to the best of his/her

knowledge, and that the company owned the refinery as of December 31, 2006.

- (viii) Name, address, phone number, facsimile number, and e-mail address of a corporate contact person.
 - (3) In the case of a refiner who acquires or reactivates a refinery that was shutdown or non-operational between January 1, 2005 and January 1, 2006, the information required in paragraph (b)(2) of this section must be provided for the time period since the refiner acquired or reactivated the refinery.
 - (4) EPA will notify a refiner of its approval or disapproval of the application for small refiner status by letter.
 - (5) For foreign refiners the small refiner exemption shall be effective upon approval, by EPA, of a small refiner application. The application must contain all of the elements required for small refiner verification letters (as specified in paragraph (b)(2) of this section), must satisfy the provisions of §80.1465(f) through (h) and (o), must demonstrate compliance with the crude oil capacity criterion of paragraph (a)(1)(iii) of this section, and must be submitted by July 1, 2010 to one of the addresses listed in paragraph (i) of this section.
 - (6) Small refiner verification letters submitted under subpart K (§80.1142) prior to July 1, 2010 that satisfy the requirements of subpart K shall be deemed to satisfy the requirements for small refiner verification letters under this subpart M.
- (c) Small refiner temporary exemption.
- (1) Transportation fuel produced by an approved small refiner, or foreign small refiner (as defined at §80.1465(a)), is exempt from January 1, 2010 through December 31, 2010 from the renewable fuel standards of §80.1405 and the requirements that apply to obligated parties under this subpart if the refiner or foreign refiner meets all the criteria of paragraph (a)(1) of this section.
 - (2) The small refiner exemption shall apply to an approved small refiner unless that refiner chooses to waive this exemption (as described in paragraph (d) of this section).
- (d)
- (1) A refiner with approved small refiner status may, at any time, waive the small refiner exemption under paragraph (c) of this section upon notification to EPA.
 - (2) A refiner's notice to EPA that it intends to waive the small refiner exemption must be received by November 1 of a given year in order for the waiver to be effective for the following calendar year. The waiver will be effective beginning on January 1 of the following calendar year, at which point the refiner will be subject to the renewable fuel standards of §80.1405 and the requirements that apply to obligated parties under this subpart.

- (3) The waiver must be sent to EPA at one of the addresses listed in paragraph (i) of this section.
- (e) Refiners who qualify as small refiners under this section and subsequently fail to meet all of the qualifying criteria as set out in paragraph (a) of this section are disqualified as small refiners as of January 1 of the next calendar year, except as provided under paragraphs (d) and (e)(2) of this section.
- (1) In the event such disqualification occurs, the refiner shall notify EPA in writing no later than 20 days following the disqualifying event.
- (2) Disqualification under this paragraph (e) shall not apply in the case of a merger between two approved small refiners.
- (f) If EPA finds that a refiner provided false or inaccurate information in its small refiner status verification letter under this subpart M, the refiner will be disqualified as a small refiner as of the effective date of this subpart.
- (g) Any refiner that acquires a refinery from another refiner with approved small refiner status under paragraph (a) of this section shall notify EPA in writing no later than 20 days following the acquisition.
- (h) Extensions of the small refiner temporary exemption.
- (1) A small refiner may apply for an extension of the temporary exemption of paragraph (c)(1) of this section based on a showing of all the following:
- (i) Circumstances exist that impose disproportionate economic hardship on the refiner and significantly affects the refiner's ability to comply with the RFS standards.
- (ii) The refiner has made best efforts to comply with the requirements of this subpart.
- (2) A refiner must apply, and be approved, for small refiner status under this section.
- (3) A small refiner's hardship application must include all the following information:
- (i) A plan demonstrating how the refiner will comply with the requirements of §80.1405 (and all other requirements of this subpart applicable to obligated parties), as expeditiously as possible.
- (ii) A detailed description of the refinery configuration and operations including, at a minimum, all the following information:
- (A) The refinery's total crude capacity.
- (B) Total crude capacity of any other refineries owned by the same entity.
- (C) Total volume of gasoline and diesel produced at the refinery.
- (D) Detailed descriptions of efforts to comply.
- (E) Bond rating of the entity that owns the refinery.

- (F) Estimated investment needed to comply with the requirements of this subpart M.
- (4) A small refiner shall notify EPA in writing of any changes to its situation between approval of the extension application and the end of its approved extension period.
- (5) EPA may impose reasonable conditions on extensions of the temporary exemption, including reducing the length of such an extension, if conditions or situations change between approval of the application and the end of the approved extension period.
- (i) Small refiner status verification letters, small refiner exemption waivers, or applications for extensions of the small refiner temporary exemption under this section must be sent to one of the following addresses:
 - (1) For US Mail: U.S. EPA, Attn: RFS Program, 6406J, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.
 - (2) For overnight or courier services: U.S. EPA, Attn: RFS Program, 6406J, 1310 L Street, NW, 6th floor, Washington, DC 20005. (202) 343-9038.

§ 80.1443 What are the opt-in provisions for noncontiguous states and territories?

- (a) Alaska or a United States territory may petition the Administrator to opt-in to the program requirements of this subpart.
- (b) The Administrator will approve the petition if it meets the provisions of paragraphs (c) and (d) of this section.
- (c) The petition must be signed by the Governor of the state or his authorized representative (or the equivalent official of the territory).
- (d)
 - (1) A petition submitted under this section must be received by EPA by November 1 for the state or territory to be included in the RFS program in the next calendar year.
 - (2) A petition submitted under this section should be sent to either of the following addresses:
 - (i) For US Mail: U.S. EPA, Attn: RFS Program, 6406J, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.
 - (ii) For overnight or courier services: U.S. EPA, Attn: RFS Program, 6406J, 1310 L Street, NW, 6th floor, Washington, DC 20005. (202) 343-9038.
- (e) Upon approval of the petition by the Administrator:
 - (1) EPA shall calculate the standards for the following year, including the total gasoline and diesel fuel volume for the state or territory in question.

- (2) Beginning on January 1 of the next calendar year, all gasoline and diesel fuel refiners and importers in the state or territory for which a petition has been approved shall be obligated parties as defined in §80.1406.
- (3) Beginning on January 1 of the next calendar year, all renewable fuel producers in the state or territory for which a petition has been approved shall, pursuant to §80.1426(a)(2), be required to generate RINs and comply with other requirements of this subpart M that are applicable to producers of renewable fuel.

§§ 80.1444-80.1448 [Reserved]

§ 80.1449 What are the Production Outlook Report requirements?

- (a) A registered renewable fuel producer or importer, for each of its facilities, must submit all of the following information, as applicable, to EPA by March 31 of each year (September 1 for the report due in 2010):
 - (1) The type, or types, of renewable fuel expected to be produced or imported at each facility owned by the renewable fuel producer or importer.
 - (2) The volume of each type of renewable fuel expected to be produced or imported at each facility.
 - (3) The number of RINs expected to be generated by the renewable fuel producer or importer for each type of renewable fuel.
 - (4) Information about all the following:
 - (i) Existing and planned production capacity.
 - (ii) Long-range plans for expansion of production capacity at existing facilities or construction of new facilities.
 - (iii) Feedstocks and production processes to be used at each production facility.
 - (iv) Changes to the facility that would raise or lower emissions of any greenhouse gases from the facility.
 - (5) For expanded production capacity that is planned or underway at each existing facility, or new production facilities that are planned or underway, information on all the following, as available:
 - (i) Strategic planning.
 - (ii) Planning and front-end engineering.
 - (iii) Detailed engineering and permitting.
 - (iv) Procurement and construction.
 - (v) Commissioning and startup.
 - (6) Whether capital commitments have been made or are projected to be made.
- (b) The information listed in paragraph (a) of this section shall include the reporting party's best estimates for the five following calendar years.

- (c) Production outlook reports must provide an update of the progress in each of the areas listed in paragraph (a) of this section in comparison to information provided in previous year production outlook reports.
- (d) Production outlook reports shall be sent to one of the following addresses:
 - (1) For US Mail: U.S. EPA, Attn: RFS Program- Production Outlook Reports, 6406J, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.
 - (2) For overnight or courier services: U.S. EPA, Attn: RFS Program- Production Outlook Reports, 6406J, 1310 L Street, NW, 6th floor, Washington, DC 20005. (202) 343-9038.
- (e) All production outlook reports required under this section shall be submitted on forms and following procedures prescribed by the Administrator.

§ 80.1450 What are the registration requirements under the RFS program?

- (a) Obligated Parties and Exporters. Any obligated party described in §80.1406, and any exporter of renewable fuel described in §80.1430, must provide EPA with the information specified for registration under §80.76, if such information has not already been provided under the provisions of this part. An obligated party or an exporter of renewable fuel must receive EPA-issued identification numbers prior to engaging in any transaction involving RINs. Registration information may be submitted to EPA at any time after publication of this rule in the Federal Register, but must be submitted and accepted by EPA by July 1, 2010, or 60 days prior to RIN ownership, whichever date comes later.
- (b) Producers. Any RIN-generating foreign or domestic producer of renewable fuel or any foreign producer that sells renewable fuel for RIN generation by a United States importer must provide EPA the information specified under §80.76 if such information has not already been provided under the provisions of this part, and must receive EPA-issued company and facility identification numbers prior to the generation of any RINs for their fuel. All the following registration information may be submitted to EPA at any time after promulgation of this rule in the Federal Register, but must be submitted and accepted by EPA by July 1, 2010, or 60 days prior to the generation of RINs, whichever date comes later, subject to this subpart:
 - (1) A description of the types of renewable fuels that the producer intends to produce at the facility and that the facility is capable of producing without significant modifications to the existing facility. For each type of renewable fuel, the renewable fuel producer shall also provide all the following:
 - (i) A list of all the feedstocks the facility is capable of utilizing without significant modification to the existing facility.
 - (ii) A description of the facility's renewable fuel production processes.
 - (iii) The type of co-products produced with each type of renewable fuel.

- (iv) A list of the facility's process energy fuel types and locations from which the fuel was produced or extracted.
- (v) For facilities described in §80.1403(c) and (d):
 - (A) The facility's baseline volume as defined in §80.1403(a)(1).
 - (B) The facility's renewable fuel production capacity as specified in applicable air permits issued by the U.S. Environmental Protection Agency, state, local air pollution control agencies, or foreign governmental agencies and that govern the construction and/or operation of the renewable fuel facility:
 - (1) Issued or revised no later than December 19, 2007 for facilities described in §80.1403(c).
 - (2) Issued or revised no later than December 31, 2009 for facilities described in §80.1403(d).
 - (C) Copies of applicable air permits issued by the U.S. Environmental Protection Agency, state, local air pollution control agencies, or foreign governmental agencies, that provide evidence that such permits were issued prior to December 19, 2007 for facilities described in §80.1403(c), and prior to December 31, 2009 for facilities described in §80.1403(d).
 - (D) Copies of documents demonstrating the facility's actual peak capacity as defined in §80.1401(a)(3) if the maximum rated annual volume output of renewable fuel is not specified in any applicable air permits issued by the U.S. Environmental Protection Agency, state, local air pollution control agencies, or foreign governmental agencies.
 - (E) The date that construction commences, along with evidence demonstrating that construction commenced as defined in §80.1403(a)(4) including, but not limited to, contracts with construction and other companies.
- (vi) Records relevant to generation of RINs from:
 - (A) Producers providing biogas, or renewable electricity to transportation fueling facilities as described in §80.1426(f)(10);
 - (B) Producers providing biogas, or renewable electricity to transportation fueling facilities via commercial distribution systems as described in §80.1426(f)(11); and
 - (C) Producers using biogas for process heat in the production of renewable fuel as described in §80.1426(f)(12).
- (vii) (A) For a producer of renewable fuel made from separated yard waste per §80.1426(f)(5)(i)(A):
 - (1) The location of any municipal waste facility or other facility from which the waste stream

- consisting solely of separated yard waste is collected; and
- (2) A plan documenting how the waste will be collected and for ongoing verification that such waste consists only of yard waste and kept separate since generation from other waste materials, and incidental other components (e.g., paper and plastics).
- (B) For a producer of renewable fuel made from separated food waste per §80.1426(f)(5)(i)(B):
 - (1) The location of any municipal waste facility or other facility from which the waste stream consisting solely of separated food waste is collected; and
 - (2) A plan documenting how the waste will be collected, how the cellulosic and non-cellulosic portions of the waste will be quantified, and for ongoing verification that such waste consists only of food waste kept separate since generation from other waste materials, containing only incidental other components (e.g., paper and plastics).
 - (viii) For a producer of renewable fuel made from separated municipal solid waste per §80.1426(f)(5)(i)(C):
 - (A) The location of the municipal waste facility from which the separated food and yard waste is collected.
 - (B) A plan providing ongoing verification that there is separation of recyclable paper, cardboard, plastics, rubber, textiles, metals, and glass wastes to the extent reasonably practicable and which documents the following:
 - (1) Extent and nature of recycling that occurred prior to receipt of the waste material by the renewable fuel producer;
 - (2) Identification of available recycling technology and practices that are appropriate for removing recycling materials from the waste stream; and
 - (3) Identification of the technology or practices selected including an explanation for such selection, and reasons why other technologies or practices were not.
 - (C) Contracts relevant to materials recycled from municipal waste streams as described in §80.1426(f)(5)(iii).
 - (D) Certification by the producer that recycling is conducted in a manner consistent with goals and requirements of applicable State and local laws relating to recycling and waste management.

- (2) An independent third party engineering review and written report and verification of the information provided pursuant to paragraph (b)(1) of this section. The report and verification shall be based upon a site visit and review of relevant documents and shall separately identify each item required by paragraph (b)(1) of this section, describe how the independent third party evaluated the accuracy of the information provided, state whether the independent third party agrees with the information provided, and identify any exceptions between the independent third party's findings and the information provided.
- (i) The verifications required under this section must be conducted by:
 - (A) A Professional Chemical Engineer who is based in the United States and is licensed by an appropriate state agency for a domestic production facility.
 - (B) An independent third party who is a licensed professional engineer or foreign equivalent who works in the chemical engineering field for a foreign production facility.
 - (ii) To be considered an independent third party under this paragraph (b)(2):
 - (A) The third party shall not be operated by the renewable fuel producer or any subsidiary or employee of the renewable fuel producer.
 - (B) The third party shall be free from any interest in the renewable fuel producer's business.
 - (C) The renewable fuel producer shall be free from any interest in the third party's business.
 - (D) Use of a third party that is debarred, suspended, or proposed for debarment pursuant to the Government-wide Debarment and Suspension regulations, 40 CFR part 32, or the Debarment, Suspension and Ineligibility provisions of the Federal Acquisition Regulations, 48 CFR, part 9, subpart 9.4, shall be deemed noncompliance with the requirements of this section.
 - (E) The third party must provide to EPA documentation of his or her qualifications as part of the engineering review, including proof of appropriate professional license or foreign equivalent.
 - (iii) The independent third party shall retain all records pertaining to the verification required under this section for a period of five years from the date of creation and shall deliver such records to the Administrator upon request.
 - (iv) The renewable fuel producer must retain records of the review and verification, as required in §80.1454(b)(6).
- (3) A Fuel Supply Plan that includes all the following information:
- (i) Name of source of each and every fuel that the renewable fuel producer intends to be co-fired or used in a fuel blend.
 - (ii) Anticipated proportion of each fuel in the mix or in the fuel blend.

- (iii) Anticipated net heat content of each, including any expected seasonal variations, such as those due to moisture content or wood species.
 - (iv) Seasonal variation, if any, of the fuel mix or blend.
 - (v) An affidavit from the biogas supplier stating its intent to supply biogas to the renewable fuel producer, the quantity and energy content of the biogas that it intends to provide to the renewable fuel producer, and a statement that this volume of biogas will not be used for the creation of a Renewable Energy Credit, or of any other type of environmental or energy attribute or credit.

- (c) Importers. Importers of renewable fuel must provide EPA the information specified under §80.76, if such information has not already been provided under the provisions of this part and must receive an EPA-issued company identification number prior to generating or owning RINs. Registration information may be submitted to EPA at any time after promulgation of this rule in the Federal Register, but must be submitted and accepted by EPA by July 1, 2010, or 60 days prior to an importer importing any renewable fuel with assigned RINs or generating any RINs for renewable fuel, whichever dates comes later.

- (d) Registration updates.
 - (1) Any producer of renewable fuel who makes changes to his facility that will qualify his renewable fuel for a renewable fuel category or D code as defined in §80.1425(g) that is not reflected in the producer's registration information on file with EPA must update his registration information and submit a copy of an updated independent engineering review at least 60 days prior to producing the new type of renewable fuel.
 - (2) Any producer of renewable fuel who makes any other changes to a facility that do not affect the renewable fuel category for which the producer is registered per paragraph (b) of this section must update his registration information 7 days prior to the change.
 - (3) All producers of renewable fuel must update registration information and submit a copy of an updated independent engineering review every 3 years after initial registration. In addition to conducting the engineering review and written report and verification required by paragraph (b)(2) of this section, the updated independent engineering review shall include a detailed review of the renewable fuel producer's calculations used to determine V_{RIN} of a representative sample of batches of each type of renewable fuel produced since the last registration. The representative sample shall be selected in accordance with the sample size guidelines set forth at §80.127.

- (e) Any party who owns RINs, intends to own RINs, or intends to allow another party to separate RINs as per §80.1440, but who is not covered by paragraphs (a), (b), or (c) of this section, must provide EPA the information specified under §80.76, if such information has not already been provided under the provisions of this part

and must receive an EPA-issued company identification number prior to owning any RINs. Registration information may be submitted to EPA at any time after promulgation of this rule in the Federal Register, but must be submitted at least 30 days prior to RIN ownership.

- (f) To aid EPA in verifying claims that a facility qualifies for an exemption described in §80.1403(c) or (d), registrations for such facilities must be submitted by July 1, 2013. EPA may in its sole discretion waive this requirement if it determines that the information submitted in any later registration can be verified by EPA in the same manner as would have been possible with a timely submission.
- (g) Registration shall be on forms, and following policies, established by the Administrator.

§ 80.1451 What are the reporting requirements under the RFS program?

- (a) Obligated parties and exporters. Any obligated party described in §80.1406 or exporter of renewable fuel described in §80.1430 must submit to EPA reports according to the schedule, and containing all the information, that is set forth in this paragraph (a).
 - (1) Annual compliance reports for the previous compliance period shall be submitted by February 28 of each year and shall include all of the following information:
 - (i) The obligated party's or exporter's name.
 - (ii) The EPA company registration number.
 - (iii) Whether the domestic refiner, as defined in §80.1406, is complying on a corporate (aggregate) or facility-by-facility basis.
 - (iv) The EPA facility registration number, if complying on a facility-by-facility basis.
 - (v) The production volume and import volume of all of the products listed in §80.1407(c) and (e) for the reporting year.
 - (vi) The RVOs, as defined in §80.1427(a) for obligated parties and §80.1430(b) for exporters of renewable fuel, for the reporting year.
 - (vii) Any deficit RVOs carried over from the previous year.
 - (viii) The total current-year RINs by category of renewable fuel, as those fuels are defined in §80.1401 (i.e., cellulosic biofuel, biomass-based diesel, advanced biofuel, renewable fuel, and cellulosic diesel), retired for compliance.
 - (ix) The total prior-year RINs by renewable fuel category, as those fuels are defined in §80.1401, retired for compliance.
 - (x) The total cellulosic biofuel waiver credits used to meet the party's cellulosic biofuel RVO.
 - (xi) A list of all RINs retired for compliance in the reporting year.
 - (A) RIN information provided by the EPA Moderated Transaction System (EMTS) that is retired to meet compliance conveyed via the EMTS as per §80.1452.

- (B) [Reserved]
 - (xii) Any deficit RVO(s) carried into the subsequent year.
 - (xiii) Any additional information that the Administrator may require.
 - (2) The RIN transaction reports required under paragraph (c)(1) of this section.
 - (3) The quarterly RIN activity reports required under paragraph (c)(2) of this section.
 - (4) Reports required under this paragraph (a) must be signed and certified as meeting all the applicable requirements of this subpart by the owner or a responsible corporate officer of the obligated party or exporter.
- (b) Renewable fuel producers (domestic and foreign) and importers. Any domestic producer or importer of renewable fuel who generates RINs, or foreign renewable fuel producer who generates RINs, must submit to EPA reports according to the schedule, and containing all the information, that is set forth in this paragraph (b).
- (1) (i) For RINs generated beginning on July 1, 2010, RIN generation reports for each facility owned by the renewable fuel producer or importer shall be submitted according to the schedule specified in paragraph (f)(2) of this section.
 - (ii) The RIN generation reports shall include all the following information for each batch of renewable fuel produced or imported, where “batch” means a discrete quantity of renewable fuel produced or imported and assigned a unique batch-RIN per §80.1426(d):
 - (A) The RIN generator’s name.
 - (B) The RIN generator’s EPA company registration number.
 - (C) The renewable fuel producer EPA facility registration number.
 - (D) The importer EPA facility registration number and foreign renewable producer company registration number, if applicable.
 - (E) The applicable reporting period.
 - (F) The quantity of RINs generated for each batch according to §80.1426.
 - (G) The production date of each batch.
 - (H) The category of renewable fuel of each batch, as defined in §80.1401.
 - (I) The volume of denaturant and applicable equivalence value of each batch.
 - (J) The volume of each batch produced.
 - (K) The types and volumes of feedstocks used.
 - (L) The process(es) and feedstock(s) used and proportion of renewable volume attributable to each process and feedstock.
 - (M) The type of co-products produced with each batch of renewable fuel.

- (N) The volume of co-products produced in each quarter.
 - (O) A list of the RINs generated and an affirmation that the feedstock(s) used for each batch meets the definition of renewable biomass as defined in §80.1401.
 - (P) Producers of renewable electricity and biogas used for transportation as described in §80.1426(f)(10) and (11), and producers of renewable fuel that use biogas for process heat as described in §80.1426(f)(12), shall report the energy content produced and supplied to the transportation fueling facility, in units of energy (for example, MMBtu or MW) based on metering of gas volume or electricity. And the name and EPA company registration number of the transportation fueling facility.
 - (Q) Producers of renewable fuel that use biogas for process heat as described in §80.1426(f)(12), shall identify the supplier of the biogas and report the energy content produced and supplied to the renewable fuel facility, in MMBtu based on metering of gas volume.
 - (R) Producers of renewable fuel made from municipal solid waste as described in §80.1426(f)(5)(i)(C), shall report the amount of paper, cardboard, plastics, rubber, textiles, metals, and glass separated from municipal solid waste for recycling. Reporting shall be in units of weight.
 - (S) Any additional information the Administrator may require.
- (2) The RIN transaction reports required under paragraph (c)(1) of this section.
 - (3) The RIN activity reports required under paragraph (c)(2) of this section.
 - (4) Reports required under this paragraph (b) must be signed and certified as meeting all the applicable requirements of this subpart by the owner or a responsible corporate officer of the renewable fuel producer or importer.
- (c) All RIN-owning parties. Any party, including any party specified in paragraphs (a) and (b) of this section, that owns RINs during a reporting period, must submit reports to EPA according to the schedule, and containing all the information, that is set forth in this paragraph (c).
- (1) (i) For RIN transactions beginning on July 1, 2010, RIN transaction reports listing each RIN transaction shall be submitted according to the schedule in paragraph (f)(2) of this section.
 - (ii) As per §80.1452, RIN transaction information listing each RIN transaction shall be submitted to the EMTS.
 - (iii) Each report required by paragraph (c)(1)(i) of this section shall include all of the following information:
 - (A) The submitting party's name.
 - (B) The submitting party's EPA company registration number.
 - (C) The applicable reporting period.

- (D) Transaction type (i.e., RIN buy, RIN sell, RIN separation, RIN retire, reinstated 2009 RIN).
 - (E) Transaction date.
 - (F) For a RIN purchase or sale, the trading partner's name.
 - (G) For a RIN purchase or sale, the trading partner's EPA company registration number. For all other transactions, the submitting party's EPA company registration number.
 - (H) RIN subject to the transaction.
 - (I) For a RIN purchase or sale, the per gallon RIN price and/or the per gallon price of renewable fuel price with RINs included.
 - (J) The reason code for retiring RINs, separating RINs, buying RINs, or selling RINs.
 - (K) Any additional information that the Administrator may require.
- (2) RIN activity reports shall be submitted to EPA according to the schedule specified in paragraph (f)(2) of this section. Each report shall summarize RIN activities for the reporting period, separately for RINs separated from a renewable fuel volume and RINs assigned to a renewable fuel volume. The quarterly RIN activity reports shall include all of the following information:
- (i) The submitting party's name.
 - (ii) The submitting party's EPA company registration number.
 - (iii) The number of current-year RINs owned at the start of the quarter.
 - (iv) The number of prior-year RINs owned at the start of the quarter.
 - (v) The total current-year RINs purchased.
 - (vi) The total prior-year RINs purchased.
 - (vii) The total current-year RINs sold.
 - (viii) The total prior-year RINs sold.
 - (ix) The total current-year RINs retired.
 - (x) The total prior-year RINs retired.
 - (xi) The number of current-year RINs owned at the end of the quarter.
 - (xii) The number of prior-year RINs owned at the end of the quarter.
 - (xiii) The number of RINs generated.
 - (xiv) The volume of renewable fuel (in gallons) owned at the end of the quarter.
 - (xv) The total 2009 retired RINs reinstated.
 - (xvi) Any additional information that the Administrator may require.
- (3) All reports required under this paragraph (c) must be signed and certified as meeting all the applicable requirements of this subpart by the RIN owner or a responsible corporate officer of the RIN owner.
- (d) Except for those producers subject to the aggregate compliance approach described in §80.1454(g), producers and RIN-generating importers of renewable fuel made from feedstocks that are planted crops and crop residue from existing agricultural land, planted trees or tree residue from actively managed tree

plantations, slash and pre-commercial thinnings from forestlands or biomass obtained from areas at risk of wildfire must submit quarterly reports according to the schedule in paragraph (f)(2) of this section that include all of the following:

- (1) A summary of the types and volumes of feedstocks used in that quarter.
- (2) Electronic data identifying the land by coordinates of the points defining the boundaries from which each type of feedstock listed per paragraph (d)(1) of this section was harvested.
- (3) If electronic data identifying a plot of land have been submitted previously, producers and RIN-generating importers may submit a cross-reference to that electronic data.

(e) If EPA finds that the 2007 baseline amount of agricultural land has been exceeded in any year beginning in 2010, beginning on the first day of July of the following calendar year any domestic producers of renewable fuel as defined in §80.1401 who use planted crops and/or crop residue from existing agricultural lands as feedstock must submit quarterly reports according to the schedule in paragraph (f)(2) of this section that include all of the following:

- (1) A summary of the types and volumes of feedstocks used in that quarter.
- (2) Maps or electronic data identifying the land from which each type of feedstock listed per paragraph (d)(1) above was harvested.
 - (i) If maps or electronic data identifying a plot of land have been submitted previously, producers and RIN-generating importers may submit a cross-reference to that map or electronic data.
 - (ii) [Reserved]

(f) Quarterly report submission deadlines. The submission deadlines for quarterly reports shall be as follows:

- (1) [Reserved.]
- (2) Quarterly reports shall be submitted to EPA by the last day of the second month following the reporting period (i.e., the report covering January – March would be due by May 31st, the report covering April - June would be due by August 31st, the report covering July - September would be due by November 30th and the report covering October - December would be due by February 28th). Any reports generated by EMTS must be reviewed, supplemented, and/or corrected if not complete and accurate, and verified by the owner or responsible corporate office prior to submittal.
- (3) Reports required must be signed and certified as meeting all the applicable requirements of this subpart by the owner or a responsible corporate officer of the submitter.

(g) All reports required under this section shall be submitted on forms and following procedures prescribed by the Administrator.

§ 80.1452 What are the requirements related to the EPA Moderated Transaction System (EMTS)?

- (a) Each party required to submit information under this section must establish an account with the EPA Moderated Transaction System (EMTS) at least 60 days prior to engaging in any RIN transactions, or July 1, 2010, whichever is later.
- (b) Starting July 1, 2010, each time a domestic producer or importer of renewable fuel, or foreign renewable fuel producer who generates RINs, produces or imports a batch of renewable fuel, all the following information must be submitted to EPA via the submitting party's EMTS account within five (5) business days:
 - (1) The renewable fuel producer's, foreign renewable fuel producer's, or importer's name.
 - (2) The renewable fuel producer's or foreign renewable fuel producer's EPA company registration number.
 - (3) The importer's EPA company registration number if applicable.
 - (4) The renewable fuel producer's or foreign renewable fuel producer's EPA facility registration number.
 - (5) The importer's EPA facility registration number.
 - (6) The RIN type (i.e., D code) of the batch.
 - (7) The production process(es) used for the batch.
 - (8) The production date of the batch.
 - (9) The category of renewable fuel of the batch, as defined in §80.1401.
 - (10) The volume of the batch.
 - (11) The volume of denaturant and applicable equivalence value of each batch.
 - (12) Quantity of RINs generated for the batch.
 - (13) The type and volume of feedstock(s) used for the batch.
 - (14) An affirmation that the feedstock(s) used for each batch meets the definition of renewable biomass as defined in §80.1401.
 - (15) The type of co-products produced with the batch of renewable fuel.
 - (16) Any additional information the Administrator may require.
- (c) Starting July 1, 2010, each time any party engages in a transaction involving RINs, all the following information must be submitted to EPA via the submitting party's EMTS account within five (5) business days:
 - (1) The submitting party's name.
 - (2) The submitting party's EPA company registration number.
 - (3) The generation year of the RINs.
 - (4) The RIN assignment information (Assigned or Separated).
 - (5) The RIN type, or D code.
 - (6) Transaction type (i.e., RIN buy, RIN sell, RIN separation, RIN retire).
 - (7) Transaction date as per §80.1453(a)(4).
 - (8) For a RIN purchase or sale, the trading partner's name.
 - (9) For a RIN purchase or sale, the trading partner's EPA company registration number.
 - (10) For an assigned RIN purchase or sale, the renewable fuel volume associated with the sale.
 - (11) Quantity of RINs involved in a transaction.

- (12) The per gallon RIN price or the per-gallon price of renewable fuel with RINs included.
 - (13) The reason for retiring RINs, separating RINs, buying RINs, or selling RINs.
 - (14) Any additional information that the Administrator may require.
- (d) All information required under this section shall be submitted on forms and following procedures prescribed by the Administrator.

§ 80.1453 What are the product transfer document (PTD) requirements for the RFS program?

- (a) On each occasion when any party transfers ownership of renewable fuels or separated RINs subject to this subpart, the transferor must provide to the transferee documents identifying the renewable fuel and any RINs (whether assigned or separated) which include all of the following information, as applicable:
- (1) The name and address of the transferor and transferee.
 - (2) The transferor's and transferee's EPA company registration numbers.
 - (3) The volume of renewable fuel that is being transferred, if any.
 - (4) The date of the transfer.
 - (5) For assigned or separated RINs, the per gallon RIN price or the per gallon renewable fuel price if the RIN price is included.
 - (6) The quantity of RINs being traded.
 - (7) The RIN type (i.e., D code).
 - (8) The Assignment Code (Assigned or Separated, or K code = 1 or 2).
 - (9) The RIN generation year.
 - (10) The associated reason for the sell or buy transaction.
 - (11) Whether any RINs are assigned to the volume, as follows:
 - (i) If the assigned RINs are being transferred on the same PTD used to transfer ownership of the renewable fuel, then the assigned RINs shall be listed on the PTD.
 - (ii) If the assigned RINs are being transferred on a separate PTD from that which is used to transfer ownership of the renewable fuel, then the PTD which is used to transfer ownership of the renewable fuel shall state the number of gallon-RINs being transferred as well as a unique reference to the PTD which is transferring the assigned RINs.
 - (iii) If no assigned RINs are being transferred with the renewable fuel, the PTD which is used to transfer ownership of the renewable fuel shall state "No assigned RINs transferred."
 - (iv) If RINs have been separated from the renewable fuel or blend pursuant to §80.1429(b)(4), then all PTDs which are at any time used to transfer ownership of the renewable fuel or blend shall state "This volume of fuel must be used in the designated form, without further blending."

- (b) Except for transfers to truck carriers, retailers, or wholesale purchaser-consumers, product codes may be used to convey the information required under paragraphs (a)(1) through (a)(11) of this section if such codes are clearly understood by each transferee.
- (c) For renewable fuel, other than ethanol, that is not registered as motor vehicle fuel under 40 CFR Part 79, the PTD which is used to transfer ownership of the renewable fuel shall state "This volume of renewable fuel may not be used as a motor vehicle fuel."

§ 80.1454 What are the recordkeeping requirements under the RFS program?

- (a) Requirements for obligated parties and exporters. Beginning July 1, 2010, any obligated party (as described at §80.1406) or exporter of renewable fuel (as described at §80.1401) must keep all of the following records:
 - (1) Product transfer documents consistent with §80.1453 and associated with the obligated party's or exporter's activity, if any, as transferor or transferee of renewable fuel or separated RINs.
 - (2) Copies of all reports submitted to EPA under §§80.1449 and 80.1451(a), as applicable.
 - (3) Records related to each RIN transaction, including all the following:
 - (i) A list of the RINs owned, purchased, sold, separated, retired, or reinstated.
 - (ii) The parties involved in each RIN transaction including the transferor, transferee, and any broker or agent.
 - (iii) The date of the transfer of the RIN(s).
 - (iv) Additional information related to details of the RIN transaction and its terms.
 - (4) Records related to the use of RINs (by facility, if applicable) for compliance, including all the following:
 - (i) Methods and variables used to calculate the Renewable Volume Obligations pursuant to §80.1407 or §80.1430.
 - (ii) List of RINs used to demonstrate compliance.
 - (iii) Additional information related to details of RIN use for compliance.
 - (5) Records related to the separation of assigned RINs from renewable fuel volume.
- (b) Requirements for all producers of renewable fuel. Beginning July 1, 2010, any domestic or RIN-generating foreign producer of a renewable fuel as defined in §80.1401 must keep all of the following records in addition to those required under paragraphs (c) or (d) of this section:
 - (1) Product transfer documents consistent with §80.1453 and associated with the renewable fuel producer's activity, if any, as transferor or transferee of renewable fuel or separated RINs.

- (2) Copies of all reports submitted to EPA under §§80.1449 and 80.1451(b).
 - (3) Records related to the generation and assignment of RINs for each facility, including all of the following:
 - (i) Batch volume in gallons.
 - (ii) Batch number.
 - (iii) RIN as assigned under §80.1426, if applicable.
 - (iv) Identification of batches by renewable category.
 - (v) Type and quantity of co-products produced.
 - (vi) Type and quantity of feedstocks used.
 - (vii) Type and quantity of fuel used for process heat.
 - (viii) Feedstock energy calculations per §80.1426(f)(4).
 - (ix) Date of production.
 - (x) Results of any laboratory analysis of batch chemical composition or physical properties.
 - (xi) All commercial documents and additional information related to details of RIN generation.
 - (4) Records related to each RIN transaction, separately for each transaction, including all of the following:
 - (i) A list of the RINs owned, purchased, sold, retired, or reinstated.
 - (ii) The parties involved in each transaction including the transferor, transferee, and any broker or agent.
 - (iii) The date of the transfer of the RIN(s).
 - (iv) Additional information related to details of the transaction and its terms.
 - (5) Records related to the production, importation, ownership, sale or use of any volume of renewable fuel for which RINs were generated or blend of renewable fuel for which RINs were generated and gasoline or diesel fuel that any party designates for use as transportation fuel, jet fuel, or heating oil and the use of the fuel or blend as transportation fuel, jet fuel, or heating oil without further blending, in the designated form.
 - (6) Copies of registration documents required under §80.1450, including information on fuels and products, feedstocks, facility production processes, process changes, and capacity, energy sources, and a copy of the independent third party engineering review submitted to EPA per §80.1450(b)(2).
- (c) Additional requirements for imports of renewable fuel.
- (1) Beginning July 1, 2010, any RIN-generating foreign producer of a renewable fuel or RIN-generating importer must keep records of feedstock purchases and transfers associated with renewable fuel for which RINs are generated, sufficient to verify that feedstocks used are renewable biomass (as defined in §80.1401).
 - (i) RIN-generating foreign producers and importers of renewable fuel made from feedstocks that are planted crops or crop residue from existing agricultural land, planted trees or tree residue from actively managed tree plantations, slash and pre-commercial

thinnings from forestlands or biomass obtained from wildland-urban interface must maintain all the following records to verify the location where these feedstocks were produced:

- (A) Maps or electronic data indentifying the boundaries of the land where each type of feedstock was produced.
 - (B) Bills of lading, product transfer documents, or other commercial documents showing the quantity of feedstock purchased from each area identified in paragraph (c)(1)(i)(A) of this section, and showing each transfer of custody of the feedstock from the location where it was produced to the renewable fuel production facility.
- (ii) (A) RIN-generating foreign producers and importers of renewable fuel made from planted crops or crop residue from existing agricultural land must keep records that serve as evidence that the land from which the feedstock was obtained was cleared or cultivated prior to December 19, 2007 and actively managed or fallow, and nonforested on December 19, 2007. RIN-generating foreign producers or importers of renewable fuel made from planted trees or tree residue from actively managed tree plantations must keep records that serve as evidence that the land from which the feedstock was obtained was cleared prior to December 19, 2007 and actively managed on December 19, 2007.
- (B) The records must be provided by the feedstock producer, traceable to the land in question, and consist of at least one of the following documents:
- (1) Sales records for planted crops or trees, crop or tree residue, or livestock; purchasing records for fertilizer, weed control, or reseeded, including seeds, seedlings, or other nursery stock.
 - (2) A written management plan for agricultural or silvicultural purposes; documentation of participation in an agricultural or silvicultural program sponsored by a Federal, state, or local government agency.
 - (3) Documentation of land management in accordance with an agricultural or silvicultural product certification program, an agreement for land management consultation with a professional forester that identifies the land in question.
 - (4) Evidence of the existence and ongoing maintenance of a road system or other physical infrastructure designed and maintained for logging use, together with one of the aforementioned documents in this paragraph (c)(1)(ii)(B).

- (iii) RIN-generating foreign producers and importers of renewable fuel made from any other type of renewable biomass must have documents from their feedstock supplier certifying that the feedstock qualifies as renewable biomass as defined in §80.1401, describing the feedstock and identifying the process that was used to generate the feedstock.
- (2) Beginning July 1, 2010, any RIN-generating importer of renewable fuel (as defined in §80.1401) must keep all of the following records:
 - (i) Product transfer documents consistent with §80.1453 and associated with the renewable fuel importer's activity, if any, as transferor or transferee of renewable fuel.
 - (ii) Copies of all reports submitted to EPA under §§80.1449 and 80.1451(b); however, duplicate records are not required.
 - (iii) Records related to the generation and assignment of RINs for each facility, including all of the following:
 - (A) Batch volume in gallons.
 - (B) Batch number.
 - (C) RIN as assigned under §80.1426.
 - (D) Identification of batches by renewable category.
 - (E) Type and quantity of feedstocks used.
 - (F) Type and quantity of fuel used for process heat.
 - (G) Date of import.
 - (H) Results of any laboratory analysis of batch chemical composition or physical properties.
 - (I) The EPA registration number of the foreign renewable fuel producers producing the fuel.
 - (J) Additional information related to details of RIN generation.
 - (iv) Records related to each RIN transaction, including all of the following:
 - (A) A list of the RINs owned, purchased, sold, separated, retired, or reinstated.
 - (B) The parties involved in each transaction including the transferor, transferee, and any broker or agent.
 - (C) The date of the transfer of the RIN(s).
 - (D) Additional information related to details of the transaction and its terms.
 - (v) Copies of registration documents required under §80.1450.
 - (vi) Records related to the import of any volume of renewable fuel that the importer designates for use as transportation fuel, jet fuel, or heating oil.
- (d) Additional requirements for domestic producers of renewable fuel. Except as provided in paragraphs (g) and (h) of this section, beginning July 1, 2010, any domestic producer of renewable fuel as defined in §80.1401 that generates RINs for such fuel must keep documents associated with feedstock purchases and transfers that identify where the feedstocks were produced and are sufficient to

verify that feedstocks used are renewable biomass (as defined in §80.1401) if RINs are generated.

- (1) Domestic producers of renewable fuel made from feedstocks that are planted trees or tree residue from actively managed tree plantations, slash and pre-commercial thinnings from forestlands or biomass obtained from areas at risk of wildfire must maintain all the following records to verify the location where these feedstocks were produced:
 - (i) Maps or electronic data identifying the boundaries of the land where each type of feedstock was produced.
 - (ii) Bills of lading, product transfer documents or other commercial documents showing the quantity of feedstock purchased from each area identified in paragraph (d)(1)(i) of this section, and showing each transfer of custody of the feedstock from the location where it was produced to the renewable fuel production facility.
 - (2) Domestic producers of renewable fuel made from planted trees or tree residue from actively managed tree plantations must keep records that serve as evidence that the land from which the feedstock was obtained was cleared prior to December 19, 2007 and actively managed on December 19, 2007. The records must be provided by the feedstock producer and must include at least one of the following documents, which must be traceable to the land in question:
 - (i) Sales records for planted trees or tree residue.
 - (ii) Purchasing records for fertilizer, weed control, or reseeded, including seeds, seedlings, or other nursery stock.
 - (iii) A written management plan for silvicultural purposes
 - (iv) Documentation of participation in a silvicultural program sponsored by a Federal, state, or local government agency
 - (v) Documentation of land management in accordance with a silvicultural product certification program, an agreement for land management consultation with a professional forester.
 - (vi) Evidence of the existence and ongoing maintenance of a road system or other physical infrastructure designed and maintained for logging use, together with one of the aforementioned documents.
 - (3) Domestic producers of renewable fuel made from any other type of renewable biomass must have documents from their feedstock supplier certifying that the feedstock qualifies as renewable biomass as defined in §80.1401, describing the feedstock and identifying the process that was used to generate the feedstock.
- (e) Additional requirements for producers of fuel exempt from the 20% GHG reduction requirement. Beginning July 1, 2010, any production facility with a baseline volume of fuel that is not subject to the 20% GHG threshold, pursuant to §80.1403(c) and (d), must keep all of the following:
- (1) Detailed engineering plans for the facility.
 - (2) Federal, State, and local (or foreign governmental) preconstruction approvals and permitting.

- (3) Procurement and construction contracts and agreements.
- (f) Requirements for other parties that own RINs. Beginning July 1, 2010, any party, other than those parties covered in paragraphs (a) and (b) of this section, that owns RINs must keep all of the following records:
 - (1) Product transfer documents consistent with §80.1453 and associated with the party's activity, if any, as transferor or transferee of renewable fuel or separated RINs.
 - (2) Copies of all reports submitted to EPA under §80.1451(c).
 - (3) Records related to each RIN transaction by renewable fuel category, including all of the following:
 - (i) A list of the RINs owned, purchased, sold, retired, or reinstated.
 - (ii) The parties involved in each RIN transaction including the transferor, transferee, and any broker or agent.
 - (iii) The date of the transfer of the RIN(s).
 - (iv) Additional information related to details of the transaction and its terms.
 - (4) Records related to any volume of renewable fuel that the party designated for use as transportation fuel, jet fuel, or heating oil and from which RINs were separated pursuant to §80.1429(b)(4).
- (g) Aggregate compliance with renewable biomass requirement. Any domestic producer of renewable fuel made from planted crops or crop residue from existing agricultural land as defined in §80.1401 is subject to the aggregate compliance approach and is not required to maintain feedstock records unless EPA publishes a finding that the 2007 baseline amount of agricultural land has been exceeded.
 - (1) EPA will make a finding concerning whether the 2007 baseline amount of agricultural land has been exceeded and will publish this finding in the Federal Register by November 30 of the year preceding the compliance period.
 - (2) If EPA finds that the 2007 baseline amount of agricultural land has been exceeded, beginning on the first day of July of the compliance period in question any domestic producer of renewable fuel made from planted crops and/or crop residue from agricultural lands as feedstock for renewable fuel for which RINs are generated must keep all the following records:
 - (i) Records that serve as evidence that the land from which the feedstock was obtained was cleared or cultivated prior to December 19, 2007 and actively managed or fallow, and nonforested on December 19, 2007. The records must be provided by the feedstock producer and must include at least one of the following documents, which must be traceable to the land in question:
 - (A) Sales records for planted crops, crop residue or livestock.
 - (B) Purchasing records for fertilizer, weed control, seeds, seedlings, or other nursery stock.

- (C) A written management plan for agricultural purposes.
 - (D) Documentation of participation in an agricultural program sponsored by a Federal, state, or local government agency.
 - (E) Documentation of land management in accordance with an agricultural product certification program.
- (ii) Records to verify the location where the feedstocks were produced:
- (A) Maps or electronic data indentifying the boundaries of the land where each type of feedstock was produced; and
 - (B) Bills of lading, product transfer documents or other commercial documents showing the quantity of feedstock purchased from each area identified in paragraph (c)(1)(i)(A) of this section, and showing each transfer of custody of the feedstock from the location where it was produced to the renewable fuel facility.
- (h) Alternative renewable biomass tracking requirement. Any foreign or domestic renewable fuel producer or importer as defined in §80.1401 may comply with the following alternative renewable biomass tracking requirement instead of the recordkeeping requirements in paragraphs (c)(1), (d), and (g) of this section:
- (1) To comply with the alternative renewable biomass tracking requirement under this paragraph (h), a renewable fuel producer or importer must either arrange to have an independent third party conduct a comprehensive program of annual compliance surveys, or participate in the funding of an organization which arranged to have an independent third party conduct a comprehensive program of annual compliance surveys, to be carried out in accordance with a survey plan which has been approved by EPA.
 - (2) The annual compliance surveys under this paragraph (h) must be all the following:
 - (i) Planned and conducted by an independent surveyor that meets the requirements in §80.68(c)(13)(i).
 - (ii) Conducted at renewable fuel production and import facilities and their feedstock suppliers.
 - (iii) Representative of all renewable fuel producers and importers in the survey area and representative of their feedstock suppliers.
 - (iv) Designed to achieve at least the same level of quality assurance required in paragraphs (c)(1), (d) and (g) of this section.
 - (3) The compliance survey program shall require the independent surveyor conducting the surveys to do all the following:
 - (i) Conduct feedstock audits of renewable fuel production and import facilities in accordance with the survey plan approved under this paragraph (h), or immediately notify EPA of any refusal of these facilities to allow an audit to be conducted.
 - (ii) Obtain the records and product transfer documents associated with the feedstocks being audited.
 - (iii) Determine the feedstock supplier(s) that supplied the feedstocks to the renewable fuel producer.

- (iv) Confirm that feedstocks used to produce RIN-generating renewable fuels meet the definition of renewable biomass as defined in §80.1401.
 - (v) Immediately notify EPA of any case where the feedstocks do not meet the definition of renewable biomass as defined in §80.1401.
 - (vi) Immediately notify EPA of any instances where a renewable fuel producer, importer or feedstock supplier subject to review under the approved plan fails to cooperate in the manner described in this section.
 - (vii) Submit to EPA a report of each survey, within thirty days following the completion of each survey, such report to include all the following information:
 - (A) The identification of the person who conducted the survey.
 - (B) An attestation by the officer of the surveyor company that the survey was conducted in accordance with the survey plan and the survey results are accurate.
 - (C) Identification of the parties for whom the survey was conducted.
 - (D) Identification of the covered area surveyed.
 - (E) The dates on which the survey was conducted.
 - (F) The address of each facility at which the survey audit was conducted and the date of the audit.
 - (G) A description of the methodology used to select the locations for survey audits and the number of audits conducted.
 - (viii) Maintain all records relating to the survey audits conducted under this section (h) for a period of at least 5 years.
 - (ix) At any time permit any representative of EPA to monitor the conduct of the surveys, including observing audits, reviewing records, and analysis of the audit results.
- (4) A survey plan under this section (h) must include all the following:
- (i) Identification of the parties for whom the survey is to be conducted.
 - (ii) Identification of the independent surveyor.
 - (iii) A methodology for determining all the following:
 - (A) When the audits will be conducted.
 - (B) The audit locations.
 - (C) The number of audits to be conducted during the annual compliance period.
 - (iv) Any other elements determined by EPA to be necessary to achieve the level of quality assurance required under paragraphs (c)(1), (d), and (g) of this section.
- (5) (i) Each renewable fuel producer and importer who participates in the alternative renewable biomass tracking under this section (h) must take all reasonable steps to ensure that each feedstock producer, aggregator, distributor, or supplier cooperates with this program by

- allowing the independent surveyor to audit their facility and by providing to the independent surveyor and/or EPA, upon request, copies of management plans, product transfer documents, and other records or information regarding the source of any feedstocks received.
- (ii) Reasonable steps under paragraph (h)(5)(i) of this section must include, but typically should not be limited to: contractual agreements with feedstock producers, aggregators, distributors, and suppliers, which require them to cooperate with the independent surveyor and/or EPA in the manner described in paragraph (h)(5)(i) of this section.
- (6) The procedure for obtaining EPA approval of a survey plan under this paragraph (h), and for revocation of any such approval, are as follows:
- (i) A detailed survey plan which complies with the requirements of this paragraph (h) must be submitted to EPA, no later than September 1 of the year preceding the calendar year in which the surveys will be conducted.
 - (ii) The survey plan must be signed by a responsible corporate officer of the renewable fuel producer or importer, or responsible officer of the organization which arranges to have an independent surveyor conduct a program of renewable biomass compliance surveys, as applicable.
 - (iii) The survey plan must be sent to the following address: Director, Compliance and Innovative Strategies Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW (6406J), Washington, DC 20460.
 - (iv) EPA will send a letter to the party submitting a survey plan under this section, either approving or disapproving the survey plan.
 - (v) EPA may revoke any approval of a survey plan under this section for cause, including an EPA determination that the approved survey plan had proved inadequate in practice or that it was not diligently implemented.
 - (vi) The approving official for an alternative quality assurance program under this section is the Director of the Compliance and Innovative Strategies Division, Office of Transportation and Air Quality.
 - (vii) Any notifications required under this paragraph (h) must be directed to the officer designated in paragraph (h)(6)(vi) of this section.
- (7) (i) No later than December 1 of the year preceding the year in which the surveys will be conducted, the contract with the independent surveyor shall be in effect, and an amount of money necessary to carry out the entire survey plan shall be paid to the independent surveyor or placed into an escrow account with instructions to the escrow agent to pay the money to the independent surveyor during the course of the conduct of the survey plan.

- (ii) No later than December 15 of the year preceding the year in which the surveys will be conducted, EPA must receive a copy of the contract with the independent surveyor, proof that the money necessary to carry out the survey plan has either been paid to the independent surveyor or placed into an escrow account, and, if placed into an escrow account, a copy of the escrow agreement, to be sent to the official designated in paragraph (h)(6)(iii) of this section.
- (8) A failure of any renewable fuel producers or importer to fulfill or cause to be fulfilled any of the requirements of this paragraph (h) will cause the option for such party to use the alternative quality assurance requirements under this paragraph (h) to be void ab initio.
- (i) Beginning July 1, 2010, all parties must keep transaction information sent to EMTS in addition to other records required under this section.
- (j) A renewable fuel producer that produces fuel from separated yard and food waste as described in §80.1426(f)(5)(i)(A) and (B) and separated municipal waste as described in §80.1426(f)(5)(i)(C) shall keep all the following additional records:
 - (1) For separated yard and food waste as described in §80.1426(f)(5)(i)(A) and (B):
 - (i) Documents demonstrating the amounts, by weight, purchased of separated yard and food waste for use as a feedstock in producing renewable fuel.
 - (ii) Such other records as may be requested by the Administrator.
 - (2) For separated municipal solid waste as described in §80.1426(f)(5)(i)(C):
 - (i) Contracts and documents memorializing the sale of paper, cardboard, plastics, rubber, textiles, metals, and glass separated from municipal solid waste for recycling.
 - (ii) Documents demonstrating the amounts by weight purchased of post-recycled separated yard and food waste for use as a feedstock in producing renewable fuel.
 - (iii) Such other records as may be requested by the Administrator.
- (k) A renewable fuel producer that generates RINs for biogas or electricity produced from renewable biomass (renewable electricity) for fuels that are used for transportation pursuant to §80.1426(f)(10) and (11), or that uses process heat from biogas to generate RINs for renewable fuel pursuant to §80.1426(f)(12) shall keep all of the following additional records:
 - (1) Contracts and documents memorializing the sale of biogas or renewable electricity for use as transportation fuel relied upon in §80.1426(f)(10), §80.1426(f)(11), or for use of biogas for use as process heat to make renewable fuel as relied upon in §80.1426(f)(12), and the transfer of title of the biogas or renewable electricity and all associated environmental attributes from the point of generation to the transportation fueling facility.

- (2) Documents demonstrating the volume and energy content of biogas, or energy content of renewable electricity relied upon under §80.1426(f)(10) that was delivered to the transportation fueling facility.
 - (3) Documents demonstrating the volume and energy content of biogas, or energy content of renewable electricity relied upon under §80.1426(f)(11) or biogas relied upon under §80.1426(f)(12) that was placed into the common carrier pipeline (for biogas) or transmission line (for renewable electricity).
 - (4) Documents demonstrating the volume and energy content of biogas, or energy content of renewable electricity relied upon under §80.1426(f)(12) at the point of distribution.
 - (5) Affidavits from the biogas, or renewable electricity producer and all parties that held title to the biogas or renewable electricity confirming that title and environmental attributes of to the biogas or renewable electricity relied upon under §80.1426(f)(10) and (11) or biogas relied upon under §80.1426(f)(12) were delivered to the transportation fueling facility and only to the transportation fueling facility. The renewable fuel producer shall create and/or obtain these affidavits at least once per calendar quarter.
 - (6) The biogas or renewable electricity producer's Compliance Certification required under Title V of the Clean Air Act.
 - (7) Such other records as may be requested by the Administrator.
- (l) The records required under paragraphs (a) through (d) and (f) through (k) of this section and under §80.1453 shall be kept for five years from the date they were created, except that records related to transactions involving RINs shall be kept for five years from the date of the RIN transaction.
 - (m) The records required under paragraph (e) of this section shall be kept through calendar year 2022.
 - (n) On request by EPA, the records required under this section and under §80.1453 must be made available to the Administrator or the Administrator's authorized representative. For records that are electronically generated or maintained, the equipment or software necessary to read the records shall be made available; or, if requested by EPA, electronic records shall be converted to paper documents.
 - (o) The records required in paragraphs (b)(3) and (c)(1) of this section must be transferred with any renewable fuel sent to the importer of that renewable fuel by any foreign producer not generating RINs for his renewable fuel.
 - (p) Copies of all reports required under §80.1464.

§ 80.1455 What are the small volume provisions for renewable fuel production facilities and importers?

- (a) Standard volume threshold. Renewable fuel production facilities located within the United States that produce less than 10,000 gallons of renewable fuel each year, and importers who import less than 10,000 gallons of renewable fuel each year, are not subject to the requirements of §80.1426(a) and (e) related to the generation and assignment of RINs or to batches of renewable fuel. Except as stated in paragraph (b) of this section, such production facilities and importers that do not generate and/or assign RINs to batches of renewable fuel are also exempt from all the following requirements of this subpart:
- (1) The registration requirements of §80.1450.
 - (2) The reporting requirements of §80.1451.
 - (3) The EMTS requirements of §80.1452.
 - (4) The recordkeeping requirements of §80.1454.
 - (5) The attest engagement requirements of §80.1464.
 - (6) The production outlook report requirements of §80.1449.
- (b) (1) Renewable fuel production facilities and importers who produce or import less than 10,000 gallons of renewable fuel each year and that generate and/or assign RINs to batches of renewable fuel are subject to the provisions of §§ 80.1426, 80.1449 through 80.1452, 80.1454, and 80.1464.
- (2) Renewable fuel production facilities and importers who produce or import less than 10,000 gallons of renewable fuel each year but wish to own RINs will be subject to all requirements stated in paragraphs (a)(1) through (a)(6) and (b)(1) of this section, and all other applicable requirements of this subpart M.
- (c) Temporary volume threshold. Renewable fuel production facilities located within the United States that produce less than 125,000 gallons of renewable fuel each year are not subject to the requirements of §80.1426(a) and (e) related to the generation and assignment of RINs to batches of renewable fuel for up to three years, beginning with the calendar year in which the production facility produces its first gallon of renewable fuel. Except as stated in paragraph (d) of this section, such production facilities that do not generate and/or assign RINs to batches of renewable fuel are also exempt from all the following requirements of this subpart for a maximum of three years:
- (1) The registration requirements of §80.1450.
 - (2) The reporting requirements of §80.1451.
 - (3) The EMTS requirements of §80.1452.
 - (4) The recordkeeping requirements of §80.1454.
 - (5) The attest engagement requirements of §80.1464.
 - (6) The production outlook report requirements of §80.1449.
- (d) (1) Renewable fuel production facilities who produce less than 125,000 gallons of renewable fuel each year and that generate and/or assign RINs to batches of renewable fuel are subject to the provisions of §§ 80.1426, 80.1449 through 80.1452, 80.1454, and 80.1464.

- (2) Renewable fuel production facilities who produce less than 125,000 gallons of renewable fuel each year but wish to own RINs will be subject to all requirements stated in paragraphs (c)(1) through (c)(6) and (d)(1) of this section, and all other applicable requirements of this subpart M.

§ 80.1456 What are the provisions for cellulosic biofuel waiver credits?

- (a) If EPA reduces the applicable volume of cellulosic biofuel pursuant to section 211(o)(7)(D)(i) of the Clean Air Act (42 U.S.C. 7545(o)(7)(D)(i)) for any given compliance year, then EPA will provide cellulosic biofuel waiver credits for purchase for that compliance year.
 - (1) The price of these cellulosic biofuel waiver credits will be set by EPA on an annual basis in accordance with paragraph (d) of this section.
 - (2) The total cellulosic biofuel waiver credits available will be equal to the reduced cellulosic biofuel volume established by EPA for the compliance year.
- (b) Use of cellulosic biofuel waiver credits.
 - (1) Cellulosic biofuel waiver credits are only valid for use in the compliance year that they are made available.
 - (2) Cellulosic biofuel waiver credits are nonrefundable.
 - (3) Cellulosic biofuel waiver credits are nontransferable.
 - (4) Cellulosic biofuel waiver credits may only be used for an obligated party's current year cellulosic biofuel RVO and not towards any prior year deficit cellulosic biofuel volume obligations.
- (c) Purchase of cellulosic biofuel waiver credits.
 - (1) Only parties with an RVO for cellulosic biofuel may purchase cellulosic biofuel waiver credits.
 - (2) Cellulosic biofuel waiver credits shall be purchased from EPA at the time that a party submits its annual compliance report to EPA pursuant to §80.1451(a)(1).
 - (3) Parties may not purchase more cellulosic biofuel waiver credits than their current year cellulosic biofuel RVO minus cellulosic biofuel RINs with a D code of 3 that they own.
 - (4) Cellulosic biofuel waiver credits may only be used to meet an obligated party's cellulosic biofuel RVO.
- (d) Setting the price of cellulosic biofuel waiver credits.
 - (1) The price for cellulosic biofuel waiver credits shall be set equal to the greater of:
 - (i) \$0.25 per cellulosic biofuel waiver credit, adjusted for inflation in comparison to calendar year 2008; or
 - (ii) \$3.00 less the wholesale price of gasoline per cellulosic biofuel waiver credit, adjusted for inflation in comparison to calendar year 2008.

- (2) The wholesale price of gasoline will be calculated by averaging the most recent twelve monthly values for U.S. Total Gasoline Bulk Sales (Price) by Refiners as provided by the Energy Information Administration that are available as of September 30 of the year preceding the compliance period.
 - (3) The inflation adjustment will be calculated by comparing the most recent Consumer Price Index for All Urban Consumers (CPI-U) for All Items expenditure category as provided by the Bureau of Labor Statistics that is available at the time EPA sets the cellulosic biofuel standard to the most recent comparable value reported after December 31, 2008. When EPA must set the price of cellulosic biofuel waiver credits for a compliance year, EPA will calculate the new amounts for paragraphs (d)(1)(i) and (ii) of this section for each year after 2008 and every month where data is available for the year preceding the compliance period at the time EPA sets the cellulosic biofuel standard.
- (e) Cellulosic biofuel waiver credits under this section will only be able to be purchased on forms and following procedures prescribed by EPA.

§§ 80.1457-80.1459 [Reserved]

§ 80.1460 What acts are prohibited under the RFS program?

- (a) Renewable fuels producer or importer violation. Except as provided in §80.1455, no person shall produce or import a renewable fuel without complying with the requirements of §80.1426 regarding the generation and assignment of RINs.
- (b) RIN generation and transfer violations. No person shall do any of the following:
 - (1) Generate a RIN for a fuel that is not a renewable fuel, or for which the applicable renewable fuel volume was not produced.
 - (2) Create or transfer to any person a RIN that is invalid under §80.1431.
 - (3) Transfer to any person a RIN that is not properly identified as required under §80.1425.
 - (4) Transfer to any person a RIN with a K code of 1 without transferring an appropriate volume of renewable fuel to the same person on the same day.
 - (5) Introduce into commerce any renewable fuel produced from a feedstock or through a process that is not described in the person's registration information.
- (c) RIN use violations. No person shall do any of the following:
 - (1) Fail to acquire sufficient RINs, or use invalid RINs, to meet the person's RVOs under §80.1427.
 - (2) Fail to acquire sufficient RINs to meet the person's RVOs under §80.1430.
 - (3) Use a validly generated RIN to meet the person's RVOs under §80.1427, or separate and transfer a validly generated RIN, where the person ultimately uses the renewable fuel volume associated with the RIN in an

application other than for use as transportation fuel, jet fuel, or heating oil (as defined in §80.1401).

- (d) RIN retention violation. No person shall retain RINs in violation of the requirements in §80.1428(a)(5).
- (e) Causing a violation. No person shall cause another person to commit an act in violation of any prohibited act under this section.
- (f) Failure to meet a requirement. No person shall fail to meet any requirement that applies to that person under this subpart.

§ 80.1461 Who is liable for violations under the RFS program?

- (a) Liability for violations of prohibited acts.
 - (1) Any person who violates a prohibition under §80.1460(a) through (d) is liable for the violation of that prohibition.
 - (2) Any person who causes another person to violate a prohibition under §80.1460(a) through (d) is liable for a violation of §80.1460(e).
- (b) Liability for failure to meet other provisions of this subpart.
 - (1) Any person who fails to meet a requirement of any provision of this subpart is liable for a violation of that provision.
 - (2) Any person who causes another person to fail to meet a requirement of any provision of this subpart is liable for causing a violation of that provision.
- (c) Parent corporation liability. Any parent corporation is liable for any violation of this subpart that is committed by any of its subsidiaries.
- (d) Joint venture liability. Each partner to a joint venture is jointly and severally liable for any violation of this subpart that is committed by the joint venture operation.

§ 80.1462 [Reserved]

§ 80.1463 What penalties apply under the RFS program?

- (a) Any person who is liable for a violation under §80.1461 is subject a to civil penalty as specified in sections 205 and 211(d) of the Clean Air Act, for every day of each such violation and the amount of economic benefit or savings resulting from each violation.

- (b) Any person liable under §80.1461(a) for a violation of §80.1460(c) for failure to meet its RVOs, or §80.1460(e) for causing another person to fail to meet their RVOs, during any averaging period, is subject to a separate day of violation for each day in the averaging period.
- (c) Any person liable under §80.1461(b) for failure to meet, or causing a failure to meet, a requirement of any provision of this subpart is liable for a separate day of violation for each day such a requirement remains unfulfilled.

§ 80.1464 What are the attest engagement requirements under the RFS program?

The requirements regarding annual attest engagements in §§80.125 through 80.127, and 80.130, also apply to any attest engagement procedures required under this subpart M. In addition to any other applicable attest engagement procedures, such as the requirements in §§80.1465 and 80.1466, the following annual attest engagement procedures are required under this subpart.

- (a) Obligated parties and exporters. The following attest procedures shall be completed for any obligated party as stated in §80.1406(a) or exporter of renewable fuel:
 - (1) Annual compliance demonstration report.
 - (i) Obtain and read a copy of the annual compliance demonstration report required under §80.1451(a)(1) which contains information regarding all the following:
 - (A) The obligated party's volume of all products listed in §80.1407(c) and (e), or the exporter's volume of each category of exported renewable fuel identified in §80.1430 (b)(1)(i), (b)(1)(ii), (b)(2)(i), and (b)(2)(ii).
 - (B) RVOs.
 - (C) RINs used for compliance.
 - (ii) Obtain documentation of any volumes of renewable fuel used in products listed in §80.1407(c) and (e) at the refinery or import facility or exported during the reporting year; compute and report as a finding the total volumes of renewable fuel represented in these documents.
 - (iii) For obligated parties, compare the volumes of products listed in §80.1407(c) and (e) reported to EPA in the report required under §80.1451(a)(1) with the volumes, excluding any renewable fuel volumes, contained in the inventory reconciliation analysis under §80.133 and the volume of non-renewable diesel produced or imported. Verify that the volumes reported to EPA agree with the volumes in the inventory reconciliation analysis and the volumes of non-renewable diesel produced or imported, and report as a finding any exception.
 - (iv) For exporters, perform all of the following:

- (A) Obtain the database, spreadsheet, or other documentation that the exporter maintains for purposes for all exported renewable fuel.
- (B) Compare the volume of products identified in these documents with the volumes reported to EPA.
- (C) Verify that the volumes reported to EPA agree with the volumes identified in the database, spreadsheet, or other documentation, and report as a finding any exception.
- (v) Compute and report as a finding the obligated party's or exporter's RVOs, and any deficit RVOs carried over from the previous year or carried into the subsequent year, and verify that the values agree with the values reported to EPA.
- (vi) Obtain the database, spreadsheet, or other documentation for all RINs by type of renewable fuel used for compliance during the year being reviewed; calculate the total number of RINs associated with each type of renewable fuel used for compliance by year of generation represented in these documents; state whether this information agrees with the report to EPA and report as a finding any exceptions.
- (vii) For exporters, perform all the following:
 - (A) Select sample batches in accordance with the guidelines in §80.127 from each separate category of renewable fuel exported and identified in §80.1451(a).
 - (B) Obtain invoices, bills of lading and other documentation for the representative samples. Calculate the RVO for the exported fuel, state whether this information agrees with the report to EPA and report as a finding any exception.
 - (C) State whether any of these documents refer to the exported fuel as advanced biofuel or cellulosic biofuel, and report as a finding whether or not the exporter calculated an advanced biofuel or cellulosic biofuel RVO for these fuels pursuant to §80.1430(b)(2)(i) or (ii).
- (2) RIN transaction reports.
 - (i) Obtain and read copies of a representative sample, selected in accordance with the guidelines in §80.127, of each RIN transaction type (RINs purchased, RINs sold, RINs retired, RINs reinstated) included in the RIN transaction reports required under §80.1451(a)(2) for the compliance year.
 - (ii) Obtain contracts, invoices, or other documentation for the representative samples of RIN transactions; compute the transaction types, transaction dates, and RINs traded; state whether the information agrees with the party's reports to EPA and report as a finding any exceptions.
- (3) RIN activity reports.
 - (i) Obtain and read copies of all quarterly RIN activity reports required under §80.1451(a)(3) for the compliance year.

- (ii) Obtain the database, spreadsheet, or other documentation used to generate the information in the RIN activity reports; compare the RIN transaction samples reviewed under paragraph (a)(2) of this section with the corresponding entries in the database or spreadsheet and report as a finding any discrepancies; compute the total number of current-year and prior-year RINs owned at the start and end of each quarter, purchased, sold, retired and reinstated, and for parties that reported RIN activity for RINs assigned to a volume of renewable fuel, the volume and type of renewable fuel (as defined in §80.1401) of renewable fuel owned at the end of each quarter; as represented in these documents; and state whether this information agrees with the party's reports to EPA.
- (b) Renewable fuel producers and RIN-generating importers. The following attest procedures shall be completed for any RIN-generating renewable fuel producer or importer:
- (1) RIN generation reports.
 - (i) Obtain and read copies of the reports required under §80.1451(b)(1), (e), and (d) for the compliance year.
 - (ii) Obtain production data for each renewable fuel batch by type of renewable fuel that was produced or imported during the year being reviewed; compute the RIN numbers, production dates, types, volumes of denaturant and applicable equivalence values, and production volumes for each batch; report the total RINs generated during the year being reviewed; and state whether this information agrees with the party's reports to EPA. Report as a finding any exceptions.
 - (iii) Verify that the proper number of RINs were generated and assigned pursuant to the requirements of §80.1426 for each batch of renewable fuel produced or imported.
 - (iv) Obtain product transfer documents for a representative sample, selected in accordance with the guidelines in §80.127, of renewable fuel batches produced or imported during the year being reviewed; verify that the product transfer documents contain the applicable information required under §80.1453; verify the accuracy of the information contained in the product transfer documents; report as a finding any product transfer document that does not contain the applicable information required under §80.1453.
 - (v) (A) Obtain documentation, as required under §80.1451(b), (d), and (e) associated with feedstock purchases for a representative sample, selected in accordance with the guidelines in §80.127, of renewable fuel batches produced or imported during the year being reviewed.

- (B) Verify that feedstocks were properly identified in the reports and met the definition of renewable biomass in §80.1401.
- (2) RIN transaction reports.
- (i) Obtain and read copies of a representative sample, selected in accordance with the guidelines in §80.127, of each transaction type (RINs purchased, RINs sold, RINs retired, RINs reinstated) included in the RIN transaction reports required under §80.1451(b)(2) for the compliance year.
 - (ii) Obtain contracts, invoices, or other documentation for the representative samples of RIN transactions; compute the transaction types, transaction dates, and the RINs traded; state whether this information agrees with the party's reports to EPA and report as a finding any exceptions.
- (3) RIN activity reports.
- (i) Obtain and read copies of the quarterly RIN activity reports required under §80.1451(b)(3) for the compliance year.
 - (ii) Obtain the database, spreadsheet, or other documentation used to generate the information in the RIN activity reports; compare the RIN transaction samples reviewed under paragraph (b)(2) of this section with the corresponding entries in the database or spreadsheet and report as a finding any discrepancies; report the total number of each RIN generated during each quarter and compute and report the total number of current-year and prior-year RINs owned at the start and end of each quarter, purchased, sold, retired and reinstated, and for parties that reported RIN activity for RINs assigned to a volume of renewable fuel, the volume of renewable fuel owned at the end of each quarter, as represented in these documents; and state whether this information agrees with the party's reports to EPA.
- (4) Independent Third Party Engineering Review.
- (i) Obtain documentation of independent third party engineering reviews required under §80.1450(b)(2).
 - (ii) Review and verify the written verification and records generated as part of the independent third party engineering review.
- (c) Other parties owning RINs. The following attest procedures shall be completed for any party other than an obligated party or renewable fuel producer or importer that owns any RINs during a calendar year:
- (1) RIN transaction reports.
- (i) Obtain and read copies of a representative sample, selected in accordance with the guidelines in §80.127, of each RIN transaction type (RINs purchased, RINs sold, RINs retired, RINs separated, RINs reinstated) included in the RIN transaction reports required under §80.1451(c)(1) for the compliance year.

- (ii) Obtain contracts, invoices, or other documentation for the representative samples of RIN transactions; compute the transaction types, transaction dates, and the RINs traded; state whether this information agrees with the party's reports to EPA and report as a finding any exceptions.
- (2) RIN activity reports.
 - (i) Obtain and read copies of the quarterly RIN activity reports required under §80.1451(c)(2) for the compliance year.
 - (ii) Obtain the database, spreadsheet, or other documentation used to generate the information in the RIN activity reports; compare the RIN transaction samples reviewed under paragraph (c)(1) of this section with the corresponding entries in the database or spreadsheet and report as a finding any discrepancies; compute the total number of current-year and prior-year RINs owned at the start and end of each quarter, purchased, sold, retired separated, and reinstated and for parties that reported RIN activity for RINs assigned to a volume of renewable fuel, the volume of renewable fuel owned at the end of each quarter, as represented in these documents; and state whether this information agrees with the party's reports to EPA.
- (d) For each compliance year, each party subject to the attest engagement requirements under this section shall cause the reports required under this section to be submitted to EPA by May 31 of the year following the compliance year.
- (e) The party conducting the procedures under this section shall obtain a written representation from a company representative that the copies of the reports required under this section are complete and accurate copies of the reports filed with EPA.
- (f) The party conducting the procedures under this section shall identify and report as a finding the commercial computer program used by the party to track the data required by the regulations in this subpart, if any.

§ 80.1465 What are the additional requirements under this subpart for foreign small refiners, foreign small refineries, and importers of RFS-FRFUEL?

- (a) Definitions. The following additional definitions apply for this subpart:
 - (1) Foreign refinery is a refinery that is located outside the United States, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (collectively referred to in this section as “the United States”).
 - (2) Foreign refiner is a person that meets the definition of refiner under §80.2(i) for a foreign refinery.

- (3) Foreign small refinery is a foreign refinery that has received a small refinery exemption under §80.1441.
 - (4) Foreign small refiner is a foreign refiner that has received a small refiner exemption under §80.1442.
 - (5) RFS-FRFUEL is transportation fuel produced at a foreign refinery that has received a small refinery exemption under §80.1441 or by a foreign refiner with a small refiner exemption under §80.1442.
 - (6) Non-RFS-FRFUEL is one of the following:
 - (i) Transportation fuel produced at a foreign refinery that has received a small refinery exemption under §80.1441 or by a foreign refiner with a small refiner exemption under §80.1442.
 - (ii) Transportation fuel produced at a foreign refinery that has not received a small refinery exemption under §80.1441 or by a foreign refiner that has not received a small refiner exemption under §80.1442.
- (b) General requirements for RFS-FRFUEL for foreign small refineries and small refiners. A foreign refiner must do all the following:
- (1) Designate, at the time of production, each batch of transportation fuel produced at the foreign refinery that is exported for use in the United States as RFS-FRFUEL.
 - (2) Meet all requirements that apply to refiners who have received a small refinery or small refiner exemption under this subpart.
- (c) Designation, foreign small refiner certification, and product transfer documents.
- (1) Any foreign small refiner must designate each batch of RFS-FRFUEL as such at the time the transportation fuel is produced.
 - (2) On each occasion when RFS-FRFUEL is loaded onto a vessel or other transportation mode for transport to the United States, the foreign small refiner shall prepare a certification for each batch of RFS-FRFUEL that meets all the following requirements:
 - (i) The certification shall include the report of the independent third party under paragraph (d) of this section, and all the following additional information:
 - (A) The name and EPA registration number of the refinery that produced the RFS-FRFUEL.
 - (B) [Reserved]
 - (ii) The identification of the transportation fuel as RFS-FRFUEL.
 - (iii) The volume of RFS-FRFUEL being transported, in gallons.
 - (3) On each occasion when any person transfers custody or title to any RFS-FRFUEL prior to its being imported into the United States, it must include all the following information as part of the product transfer document information:
 - (i) Designation of the transportation fuel as RFS-FRFUEL.
 - (ii) The certification required under paragraph (c)(2) of this section.

- (d) Load port independent testing and refinery identification.
- (1) On each occasion that RFS-FRFUEL is loaded onto a vessel for transport to the United States the foreign small refiner shall have an independent third party do all the following:
- (i) Inspect the vessel prior to loading and determine the volume of any tank bottoms.
 - (ii) Determine the temperature-corrected volume of RFS-FRFUEL loaded onto the vessel (exclusive of any tank bottoms before loading).
 - (iii) Obtain the EPA-assigned registration number of the foreign refinery.
 - (iv) Determine the name and country of registration of the vessel used to transport the RFS-FRFUEL to the United States.
 - (v) Determine the date and time the vessel departs the port serving the foreign refinery.
 - (vi) Review original documents that reflect movement and storage of the RFS-FRFUEL from the foreign refinery to the load port, and from this review determine:
 - (A) The refinery at which the RFS-FRFUEL was produced; and
 - (B) That the RFS-FRFUEL remained segregated from Non-RFS-FRFUEL and other RFS-FRFUEL produced at a different refinery.
- (2) The independent third party shall submit a report to all the following:
- (i) The foreign small refiner or owner of the foreign small refinery, containing the information required under paragraph (d)(1) of this section, to accompany the product transfer documents for the vessel.
 - (ii) The Administrator, containing the information required under paragraph (d)(1) of this section, within thirty days following the date of the independent third party's inspection. This report shall include a description of the method used to determine the identity of the refinery at which the transportation fuel was produced, assurance that the transportation fuel remained segregated as specified in paragraph (j)(1) of this section, and a description of the transportation fuel's movement and storage between production at the source refinery and vessel loading.
- (3) The independent third party must do all the following:
- (i) Be approved in advance by EPA, based on a demonstration of ability to perform the procedures required in this paragraph (d).
 - (ii) Be independent under the criteria specified in §80.65(f)(2)(iii).
 - (iii) Sign a commitment that contains the provisions specified in paragraph (f) of this section with regard to activities, facilities, and documents relevant to compliance with the requirements of this paragraph (d).
- (e) Comparison of load port and port of entry testing.

- (1) (i) Any foreign small refiner or foreign small refinery and any United States importer of RFS-FRFUEL shall compare the results from the load port testing under paragraph (d) of this section, with the port of entry testing as reported under paragraph (k) of this section, for the volume of transportation fuel, except as specified in paragraph (e)(1)(ii) of this section.
 - (ii) Where a vessel transporting RFS-FRFUEL offloads this transportation fuel at more than one United States port of entry, the requirements of paragraph (e)(1)(i) of this section do not apply at subsequent ports of entry if the United States importer obtains a certification from the vessel owner that the requirements of paragraph (e)(1)(i) of this section were met and that the vessel has not loaded any transportation fuel or blendstock between the first United States port of entry and any subsequent port of entry.
 - (2) If the temperature-corrected volumes determined at the port of entry and at the load port differ by more than one percent, the United States importer and the foreign small refiner or foreign small refinery shall not treat the transportation fuel as RFS-FRFUEL and the importer shall include the volume of transportation fuel in the importer's RFS compliance calculations.
- (f) Foreign refiner commitments. Any foreign small refinery or foreign small refiner shall commit to and comply with the provisions contained in this paragraph (f) as a condition to being approved for a small refinery or small refiner exemption under this subpart.
- (1) Any United States Environmental Protection Agency inspector or auditor must be given full, complete, and immediate access to conduct inspections and audits of the foreign refinery.
 - (i) Inspections and audits may be either announced in advance by EPA, or unannounced.
 - (ii) Access will be provided to any location where:
 - (A) Transportation fuel is produced;
 - (B) Documents related to refinery operations are kept; and
 - (C) RFS-FRFUEL is stored or transported between the foreign refinery and the United States, including storage tanks, vessels, and pipelines.
 - (iii) EPA inspectors and auditors may be EPA employees or contractors to EPA.
 - (iv) Any documents requested that are related to matters covered by inspections and audits must be provided to an EPA inspector or auditor on request.
 - (v) Inspections and audits may include review and copying of any documents related to all the following:
 - (A) The volume of RFS-FRFUEL.
 - (B) The proper classification of transportation fuel as being RFS-FRFUEL or as not being RFS-FRFUEL.

- (C) Transfers of title or custody to RFS-FRFUEL.
 - (D) Testing of RFS-FRFUEL.
 - (E) Work performed and reports prepared by independent third parties and by independent auditors under the requirements of this section, including work papers.
 - (vi) Inspections and audits may include interviewing employees.
 - (vii) Any employee of the foreign refiner must be made available for interview by the EPA inspector or auditor, on request, within a reasonable time period.
 - (viii) English language translations of any documents must be provided to an EPA inspector or auditor, on request, within 10 working days.
 - (ix) English language interpreters must be provided to accompany EPA inspectors and auditors, on request.
- (2) An agent for service of process located in the District of Columbia shall be named, and service on this agent constitutes service on the foreign refiner or any employee of the foreign refiner for any action by EPA or otherwise by the United States related to the requirements of this subpart.
 - (3) The forum for any civil or criminal enforcement action related to the provisions of this section for violations of the Clean Air Act or regulations promulgated thereunder shall be governed by the Clean Air Act, including the EPA administrative forum where allowed under the Clean Air Act.
 - (4) United States substantive and procedural laws shall apply to any civil or criminal enforcement action against the foreign refiner or any employee of the foreign refiner related to the provisions of this section.
 - (5) Submitting an application for a small refinery or small refiner exemption, or producing and exporting transportation fuel under such exemption, and all other actions to comply with the requirements of this subpart relating to such exemption constitute actions or activities covered by and within the meaning of the provisions of 28 U.S.C. 1605(a)(2), but solely with respect to actions instituted against the foreign refiner, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign refiner under this subpart, including conduct that violates the False Statements Accountability Act of 1996 (18 U.S.C. 1001) and section 113(c)(2) of the Clean Air Act (42 U.S.C. 7413).
 - (6) The foreign refiner, or its agents or employees, will not seek to detain or to impose civil or criminal remedies against EPA inspectors or auditors, whether EPA employees or EPA contractors, for actions performed within the scope of EPA employment or contract related to the provisions of this section.
 - (7) The commitment required by this paragraph (f) shall be signed by the owner or president of the foreign refiner business.
 - (8) In any case where RFS-FRFUEL produced at a foreign refinery is stored or transported by another company between the refinery and the vessel that transports the RFS-FRFUEL to the United States, the foreign refiner

shall obtain from each such other company a commitment that meets the requirements specified in paragraphs (f)(1) through (f)(7) of this section, and these commitments shall be included in the foreign refiner's application for a small refinery or small refiner exemption under this subpart.

- (g) Sovereign immunity. By submitting an application for a small refinery or small refiner exemption under this subpart, or by producing and exporting transportation fuel to the United States under such exemption, the foreign refiner, and its agents and employees, without exception, become subject to the full operation of the administrative and judicial enforcement powers and provisions of the United States without limitation based on sovereign immunity, with respect to actions instituted against the foreign refiner, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign refiner under this subpart, including conduct that violates the False Statements Accountability Act of 1996 (18 U.S.C. 1001) and section 113(c)(2) of the Clean Air Act (42 U.S.C. 7413).
- (h) Bond posting. Any foreign refiner shall meet the requirements of this paragraph (h) as a condition to approval of a foreign small refinery or foreign small refiner exemption under this subpart.
- (1) The foreign refiner shall post a bond of the amount calculated using the following equation:
$$\text{Bond} = G * \$ 0.01$$

Where:
Bond = amount of the bond in United States dollars.
G = the largest volume of transportation fuel produced at the foreign refinery and exported to the United States, in gallons, during a single calendar year among the most recent of the following calendar years, up to a maximum of five calendar years: the calendar year immediately preceding the date the refinery's or refiner's application is submitted, the calendar year the application is submitted, and each succeeding calendar year.
- (2) Bonds shall be posted by:
- (i) Paying the amount of the bond to the Treasurer of the United States;
 - (ii) Obtaining a bond in the proper amount from a third party surety agent that is payable to satisfy United States administrative or judicial judgments against the foreign refiner, provided EPA agrees in advance as to the third party and the nature of the surety agreement; or
 - (iii) An alternative commitment that results in assets of an appropriate liquidity and value being readily available to the United States, provided EPA agrees in advance as to the alternative commitment.
- (3) Bonds posted under this paragraph (h) shall:

- (i) Be used to satisfy any judicial judgment that results from an administrative or judicial enforcement action for conduct in violation of this subpart, including where such conduct violates the False Statements Accountability Act of 1996 (18 U.S.C. 1001) and section 113(c)(2) of the Clean Air Act (42 U.S.C. 7413);
 - (ii) Be provided by a corporate surety that is listed in the United States Department of Treasury Circular 570 “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds”; and
 - (iii) Include a commitment that the bond will remain in effect for at least five years following the end of latest annual reporting period that the foreign refiner produces transportation fuel pursuant to the requirements of this subpart.
 - (4) On any occasion a foreign refiner bond is used to satisfy any judgment, the foreign refiner shall increase the bond to cover the amount used within 90 days of the date the bond is used.
 - (5) If the bond amount for a foreign refiner increases, the foreign refiner shall increase the bond to cover the shortfall within 90 days of the date the bond amount changes. If the bond amount decreases, the foreign refiner may reduce the amount of the bond beginning 90 days after the date the bond amount changes.
- (i) English language reports. Any document submitted to EPA by a foreign refiner shall be in English, or shall include an English language translation.
 - (j) Prohibitions.
 - (1) No person may combine RFS-FRFUEL with any Non-RFS-FRFUEL, and no person may combine RFS-FRFUEL with any RFS-FRFUEL produced at a different refinery, until the importer has met all the requirements of paragraph (k) of this section.
 - (2) No foreign refiner or other person may cause another person to commit an action prohibited in paragraph (j)(1) of this section, or that otherwise violates the requirements of this section.
 - (k) United States importer requirements. Any United States importer of RFS-FRFUEL shall meet the following requirements:
 - (1) Each batch of imported RFS-FRFUEL shall be classified by the importer as being RFS-FRFUEL.
 - (2) Transportation fuel shall be classified as RFS-FRFUEL according to the designation by the foreign refiner if this designation is supported by product transfer documents prepared by the foreign refiner as required in paragraph (c) of this section. Additionally, the importer shall comply with all requirements of this subpart applicable to importers.
 - (3) For each transportation fuel batch classified as RFS-FRFUEL, any United States importer shall have an independent third party do all the following:
 - (i) Determine the volume of transportation fuel in the vessel.

- (ii) Use the foreign refiner's RFS-FRFUEL certification to determine the name and EPA-assigned registration number of the foreign refinery that produced the RFS-FRFUEL.
 - (iii) Determine the name and country of registration of the vessel used to transport the RFS-FRFUEL to the United States.
 - (iv) Determine the date and time the vessel arrives at the United States port of entry.
 - (4) Any importer shall submit reports within 30 days following the date any vessel transporting RFS-FRFUEL arrives at the United States port of entry to:
 - (i) The Administrator, containing the information determined under paragraph (k)(3) of this section; and
 - (ii) The foreign refiner, containing the information determined under paragraph (k)(3)(i) of this section, and including identification of the port at which the product was off loaded.
 - (5) Any United States importer shall meet all other requirements of this subpart for any imported transportation fuel that is not classified as RFS-FRFUEL under paragraph (k)(2) of this section.
- (1) Truck imports of RFS-FRFUEL produced at a foreign refinery.
- (1) Any refiner whose RFS-FRFUEL is transported into the United States by truck may petition EPA to use alternative procedures to meet all the following requirements:
 - (i) Certification under paragraph (c)(2) of this section.
 - (ii) Load port and port of entry testing requirements under paragraphs (d) and (e) of this section.
 - (iii) Importer testing requirements under paragraph (k)(3) of this section.
 - (2) These alternative procedures must ensure RFS-FRFUEL remains segregated from Non-RFS-FRFUEL until it is imported into the United States. The petition will be evaluated based on whether it adequately addresses all the following:
 - (i) Provisions for monitoring pipeline shipments, if applicable, from the refinery, that ensure segregation of RFS-FRFUEL from that refinery from all other transportation fuel.
 - (ii) Contracts with any terminals and/or pipelines that receive and/or transport RFS-FRFUEL that prohibit the commingling of RFS-FRFUEL with Non-RFS-FRFUEL or RFS-FRFUEL from other foreign refineries.
 - (iii) Attest procedures to be conducted annually by an independent third party that review loading records and import documents based on volume reconciliation, or other criteria, to confirm that all RFS-FRFUEL remains segregated throughout the distribution system.

- (3) The petition described in this section must be submitted to EPA along with the application for a small refinery or small refiner exemption under this subpart.
- (m) Additional attest requirements for importers of RFS-FRFUEL. The following additional procedures shall be carried out by any importer of RFS-FRFUEL as part of the attest engagement required for importers under this subpart M.
- (1) Obtain listings of all tenders of RFS-FRFUEL. Agree the total volume of tenders from the listings to the transportation fuel inventory reconciliation analysis required in §80.133(b), and to the volumes determined by the third party under paragraph (d) of this section.
 - (2) For each tender under paragraph (m)(1) of this section, where the transportation fuel is loaded onto a marine vessel, report as a finding the name and country of registration of each vessel, and the volumes of RFS-FRFUEL loaded onto each vessel.
 - (3) Select a sample from the list of vessels identified per paragraph (m)(2) of this section used to transport RFS-FRFUEL, in accordance with the guidelines in §80.127, and for each vessel selected perform all the following:
 - (i) Obtain the report of the independent third party, under paragraph (d) of this section.
 - (A) Agree the information in these reports with regard to vessel identification and transportation fuel volume.
 - (B) Identify, and report as a finding, each occasion the load port and port of entry volume results differ by more than the amount allowed in paragraph (e)(2) of this section, and determine whether all of the requirements of paragraph (e)(2) of this section have been met.
 - (ii) Obtain the documents used by the independent third party to determine transportation and storage of the RFS-FRFUEL from the refinery to the load port, under paragraph (d) of this section. Obtain tank activity records for any storage tank where the RFS-FRFUEL is stored, and pipeline activity records for any pipeline used to transport the RFS-FRFUEL prior to being loaded onto the vessel. Use these records to determine whether the RFS-FRFUEL was produced at the refinery that is the subject of the attest engagement, and whether the RFS-FRFUEL was mixed with any Non-RFS-FRFUEL or any RFS-FRFUEL produced at a different refinery.
 - (4) Select a sample from the list of vessels identified per paragraph (m)(2) of this section used to transport RFS-FRFUEL, in accordance with the guidelines in §80.127, and for each vessel selected perform all of the following:
 - (i) Obtain a commercial document of general circulation that lists vessel arrivals and departures, and that includes the port and date

- of departure of the vessel, and the port of entry and date of arrival of the vessel.
- (ii) Agree the vessel's departure and arrival locations and dates from the independent third party and United States importer reports to the information contained in the commercial document.
- (5) Obtain separate listings of all tenders of RFS-FRFUEL, and perform all the following:
- (i) Agree the volume of tenders from the listings to the transportation fuel inventory reconciliation analysis in §80.133(b).
 - (ii) Obtain a separate listing of the tenders under this paragraph (m)(5) where the transportation fuel is loaded onto a marine vessel. Select a sample from this listing in accordance with the guidelines in §80.127, and obtain a commercial document of general circulation that lists vessel arrivals and departures, and that includes the port and date of departure and the ports and dates where the transportation fuel was off loaded for the selected vessels. Determine and report as a finding the country where the transportation fuel was off loaded for each vessel selected.
- (6) In order to complete the requirements of this paragraph (m), an auditor shall do all the following:
- (i) Be independent of the foreign refiner or importer.
 - (ii) Be licensed as a Certified Public Accountant in the United States and a citizen of the United States, or be approved in advance by EPA based on a demonstration of ability to perform the procedures required in §§ 80.125 through 80.127, 80.130, 80.1464, and this paragraph (m).
 - (iii) Sign a commitment that contains the provisions specified in paragraph (f) of this section with regard to activities and documents relevant to compliance with the requirements of §§ 80.125 through 80.127, 80.130, 80.1464, and this paragraph (m).
- (n) Withdrawal or suspension of foreign small refiner or foreign small refinery status. EPA may withdraw or suspend a foreign refiner's small refinery or small refiner exemption where:
- (1) A foreign refiner fails to meet any requirement of this section;
 - (2) A foreign government fails to allow EPA inspections as provided in paragraph (f)(1) of this section;
 - (3) A foreign refiner asserts a claim of, or a right to claim, sovereign immunity in an action to enforce the requirements in this subpart; or
 - (4) A foreign refiner fails to pay a civil or criminal penalty that is not satisfied using the foreign refiner bond specified in paragraph (h) of this section.
- (o) Additional requirements for applications, reports and certificates. Any application for a small refinery or small refiner exemption, alternative procedures under paragraph (l) of this section, any report, certification, or other submission required under this section shall be:

- (1) Submitted in accordance with procedures specified by the Administrator, including use of any forms that may be specified by the Administrator.
- (2) Signed by the president or owner of the foreign refiner company, or by that person's immediate designee, and shall contain the following declaration:
 "I hereby certify: (1) That I have actual authority to sign on behalf of and to bind [insert name of foreign refiner] with regard to all statements contained herein; (2) that I am aware that the information contained herein is being Certified, or submitted to the United States Environmental Protection Agency, under the requirements of 40 CFR part 80, subpart M, and that the information is material for determining compliance under these regulations; and (3) that I have read and understand the information being Certified or submitted, and this information is true, complete and correct to the best of my knowledge and belief after I have taken reasonable and appropriate steps to verify the accuracy thereof. I affirm that I have read and understand the provisions of 40 CFR part 80, subpart M, including 40 CFR 80.1465 apply to [INSERT NAME OF FOREIGN REFINER]. Pursuant to Clean Air Act section 113(c) and 18 U.S.C. 1001, the penalty for furnishing false, incomplete or misleading information in this certification or submission is a fine of up to \$10,000 U.S., and/or imprisonment for up to five years."

§ 80.1466 What are the additional requirements under this subpart for RIN-generating foreign producers and importers of renewable fuels for which RINs have been generated by the foreign producer?

- (a) Foreign producer of renewable fuel. For purposes of this subpart, a foreign producer of renewable fuel is a person located outside the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (collectively referred to in this section as "the United States") that has been approved by EPA to generate RINs for renewable fuel it produces for export to the United States, hereinafter referred to as a "foreign producer" under this section.
- (b) General requirements. An approved foreign producer under this section must meet all requirements that apply to renewable fuel producers under this subpart.
- (c) Designation, foreign producer certification, and product transfer documents.
 - (1) Any approved foreign producer under this section that generates RINs for renewable fuel must designate each batch of such renewable fuel as "RFS-FRRF" at the time the renewable fuel is produced.
 - (2) On each occasion when RFS-FRRF is transferred for transport to a vessel or loaded onto a vessel or other transportation mode for transport to the United States, the RIN-generating foreign producer shall prepare a certification for each batch of RFS-FRRF; the certification shall include

the report of the independent third party under paragraph (d) of this section, and all the following additional information:

- (i) The name and EPA registration number of the company that produced the RFS-FRRF.
 - (ii) The identification of the renewable fuel as RFS-FRRF.
 - (iii) The identification of the renewable fuel by type, D code, and number of RINs generated.
 - (iv) The volume of RFS-FRRF, standardized per §80.1426(f)(8), being transported, in gallons.
- (3) On each occasion when any person transfers custody or title to any RFS-FRRF prior to its being imported into the United States, it must include all the following information as part of the product transfer document information:
- (i) Designation of the renewable fuel as RFS-FRRF.
 - (ii) The certification required under paragraph (c)(2) of this section.
- (d) Load port independent testing and producer identification.
- (1) On each occasion that RFS-FRRF is loaded onto a vessel for transport to the United States the RIN-generating foreign producer shall have an independent third party do all the following:
- (i) Inspect the vessel prior to loading and determine the volume of any tank bottoms.
 - (ii) Determine the volume of RFS-FRRF, standardized per §80.1426(f)(8), loaded onto the vessel (exclusive of any tank bottoms before loading).
 - (iii) Obtain the EPA-assigned registration number of the foreign producer.
 - (iv) Determine the name and country of registration of the vessel used to transport the RFS-FRRF to the United States.
 - (v) Determine the date and time the vessel departs the port serving the foreign producer.
 - (vi) Review original documents that reflect movement and storage of the RFS-FRRF from the RIN-generating foreign producer to the load port, and from this review determine all the following:
 - (A) The facility at which the RFS-FRRF was produced.
 - (B) That the RFS-FRRF remained segregated from Non-RFS-FRRF and other RFS-FRRF produced by a different foreign producer.
- (2) The independent third party shall submit a report to the following:
- (i) The RIN-generating foreign producer, containing the information required under paragraph (d)(1) of this section, to accompany the product transfer documents for the vessel.
 - (ii) The Administrator, containing the information required under paragraph (d)(1) of this section, within thirty days following the date of the independent third party's inspection. This report shall include a description of the method used to determine the identity

of the foreign producer facility at which the renewable fuel was produced, assurance that the renewable fuel remained segregated as specified in paragraph (j)(1) of this section, and a description of the renewable fuel's movement and storage between production at the source facility and vessel loading.

- (3) The independent third party must:
- (i) Be approved in advance by EPA, based on a demonstration of ability to perform the procedures required in this paragraph (d);
 - (ii) Be independent under the criteria specified in §80.65(e)(2)(iii); and
 - (iii) Sign a commitment that contains the provisions specified in paragraph (f) of this section with regard to activities, facilities and documents relevant to compliance with the requirements of this paragraph (d).

(e) Comparison of load port and port of entry testing.

- (1) (i) Any RIN-generating foreign producer and any United States importer of RFS-FRRF shall compare the results from the load port testing under paragraph (d) of this section, with the port of entry testing as reported under paragraph (k) of this section, for the volume of renewable fuel, standardized per §80.1426(f)(8), except as specified in paragraph (e)(1)(ii) of this section.
- (ii) Where a vessel transporting RFS-FRRF offloads the renewable fuel at more than one United States port of entry, the requirements of paragraph (e)(1)(i) of this section do not apply at subsequent ports of entry if the United States importer obtains a certification from the vessel owner that the requirements of paragraph (e)(1)(i) of this section were met and that the vessel has not loaded any renewable fuel between the first United States port of entry and the subsequent ports of entry.
- (2) (i) If the temperature-corrected volumes, after accounting for tank bottoms, determined at the port of entry and at the load port differ by more than one percent, the number of RINs associated with the renewable fuel shall be calculated based on the lesser of the two volumes in paragraph (e)(1)(i) of this section.
- (ii) Where the port of entry volume is the lesser of the two volumes in paragraph (e)(1)(i) of this section, the importer shall calculate the difference between the number of RINs originally assigned by the foreign producer and the number of RINs calculated under §80.1426 for the volume of renewable fuel as measured at the port of entry, and acquire and retire that amount of RINs in accordance with paragraph (k)(3) of this section.

- (f) Foreign producer commitments. Any RIN-generating foreign producer shall commit to and comply with the provisions contained in this paragraph (f) as a condition to being approved as a foreign producer under this subpart.

- (1) Any United States Environmental Protection Agency inspector or auditor must be given full, complete, and immediate access to conduct inspections and audits of the foreign producer facility.
 - (i) Inspections and audits may be either announced in advance by EPA, or unannounced.
 - (ii) Access will be provided to any location where:
 - (A) Renewable fuel is produced;
 - (B) Documents related to renewable fuel producer operations are kept; and
 - (C) RFS-FRRF is stored or transported between the foreign producer and the United States, including storage tanks, vessels and pipelines.
 - (iii) EPA inspectors and auditors may be EPA employees or contractors to EPA.
 - (iv) Any documents requested that are related to matters covered by inspections and audits must be provided to an EPA inspector or auditor on request.
 - (v) Inspections and audits may include review and copying of any documents related to the following:
 - (A) The volume of RFS-FRRF.
 - (B) The proper classification of renewable fuel as being RFS-FRRF.
 - (C) Transfers of title or custody to RFS-FRRF.
 - (D) Work performed and reports prepared by independent third parties and by independent auditors under the requirements of this section, including work papers.
 - (vi) Inspections and audits by EPA may include interviewing employees.
 - (vii) Any employee of the foreign producer must be made available for interview by the EPA inspector or auditor, on request, within a reasonable time period.
 - (viii) English language translations of any documents must be provided to an EPA inspector or auditor, on request, within 10 working days.
 - (ix) English language interpreters must be provided to accompany EPA inspectors and auditors, on request.
- (2) An agent for service of process located in the District of Columbia shall be named, and service on this agent constitutes service on the foreign producer or any employee of the foreign producer for any action by EPA or otherwise by the United States related to the requirements of this subpart.
- (3) The forum for any civil or criminal enforcement action related to the provisions of this section for violations of the Clean Air Act or regulations promulgated thereunder shall be governed by the Clean Air Act, including the EPA administrative forum where allowed under the Clean Air Act.

- (4) United States substantive and procedural laws shall apply to any civil or criminal enforcement action against the foreign producer or any employee of the foreign producer related to the provisions of this section.
 - (5) Applying to be an approved foreign producer under this section, or producing or exporting renewable fuel under such approval, and all other actions to comply with the requirements of this subpart relating to such approval constitute actions or activities covered by and within the meaning of the provisions of 28 U.S.C. 1605(a)(2), but solely with respect to actions instituted against the foreign producer, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign producer under this subpart, including conduct that violates the False Statements Accountability Act of 1996 (18 U.S.C. 1001) and section 113(c)(2) of the Clean Air Act (42 U.S.C. 7413).
 - (6) The foreign producer, or its agents or employees, will not seek to detain or to impose civil or criminal remedies against EPA inspectors or auditors for actions performed within the scope of EPA employment or contract related to the provisions of this section.
 - (7) The commitment required by this paragraph (f) shall be signed by the owner or president of the foreign producer company.
 - (8) In any case where RFS-FRRF produced at a foreign producer facility is stored or transported by another company between the production facility and the vessel that transports the RFS-FRRF to the United States, the foreign producer shall obtain from each such other company a commitment that meets the requirements specified in paragraphs (f)(1) through (7) of this section, and these commitments shall be included in the foreign producer's application to be an approved foreign producer under this subpart.
- (g) Sovereign immunity. By submitting an application to be an approved foreign producer under this subpart, or by producing and exporting renewable fuel to the United States under such approval, the foreign producer, and its agents and employees, without exception, become subject to the full operation of the administrative and judicial enforcement powers and provisions of the United States without limitation based on sovereign immunity, with respect to actions instituted against the foreign producer, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign producer under this subpart, including conduct that violates the False Statements Accountability Act of 1996 (18 U.S.C. 1001) and section 113(c)(2) of the Clean Air Act (42 U.S.C. 7413).
- (h) Bond posting. Any RIN-generating foreign producer shall meet the requirements of this paragraph (h) as a condition to approval as a foreign producer under this subpart.
- (1) The RIN-generating foreign producer shall post a bond of the amount calculated using the following equation:

$$\text{Bond} = G * \$ 0.01$$

Where:

Bond = amount of the bond in U.S. dollars.

G = the greater of: the largest volume of renewable fuel produced by the foreign producer and exported to the United States, in gallons, during a single calendar year among the five preceding calendar years, or the largest volume of renewable fuel that the foreign producers expects to export to the United States during any calendar year identified in the Production Outlook Report required by §80.1449. If the volume of renewable fuel exported to the United States increases above the largest volume identified in the Production Outlook Report during any calendar year, the foreign producer shall increase the bond to cover the shortfall within 90 days.

- (2) Bonds shall be posted by any of the following methods:
 - (i) Paying the amount of the bond to the Treasurer of the United States.
 - (ii) Obtaining a bond in the proper amount from a third party surety agent that is payable to satisfy United States administrative or judicial judgments against the foreign producer, provided EPA agrees in advance as to the third party and the nature of the surety agreement.
 - (iii) An alternative commitment that results in assets of an appropriate liquidity and value being readily available to the United States provided EPA agrees in advance as to the alternative commitment.
- (3) Bonds posted under this paragraph (h) shall:
 - (i) Be used to satisfy any judicial judgment that results from an administrative or judicial enforcement action for conduct in violation of this subpart, including where such conduct violates the False Statements Accountability Act of 1996 (18 U.S.C. 1001) and section 113(c)(2) of the Clean Air Act (42 U.S.C. 7413);
 - (ii) Be provided by a corporate surety that is listed in the United States Department of Treasury Circular 570 “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds”; and
 - (iii) Include a commitment that the bond will remain in effect for at least five years following the end of latest annual reporting period that the foreign producer produces renewable fuel pursuant to the requirements of this subpart.
- (4) On any occasion a foreign producer bond is used to satisfy any judgment, the foreign producer shall increase the bond to cover the amount used within 90 days of the date the bond is used.

(i) English language reports. Any document submitted to EPA by a foreign producer shall be in English, or shall include an English language translation.

(j) Prohibitions.

- (1) No person may combine RFS-FRRF with any Non-RFS-FRRF, and no person may combine RFS-FRRF with any RFS-FRRF produced at a different production facility, until the importer has met all the requirements of paragraph (k) of this section.
 - (2) No foreign producer or other person may cause another person to commit an action prohibited in paragraph (j)(1) of this section, or that otherwise violates the requirements of this section.
 - (3) No foreign producer and importer may generate RINs for the same volume of renewable fuel.
 - (4) A foreign producer of renewable fuel is prohibited from generating RINs in excess of the number for which the bond requirements of this section have been satisfied.
- (k) Requirements for United States importers of RFS-FRRF. Any United States importers of RFS-FRRF shall meet all the following requirements:
- (1) Renewable fuel shall be classified as RFS-FRRF according to the designation by the foreign producer if this designation is supported by product transfer documents prepared by the foreign producer as required in paragraph (c) of this section.
 - (2) For each renewable fuel batch classified as RFS-FRRF, any United States importer shall have an independent third party do all the following:
 - (i) Determine the volume of renewable fuel, standardized per §80.1426(f)(8), in the vessel.
 - (ii) Use the foreign producer's RFS-FRRF certification to determine the name and EPA-assigned registration number of the foreign producer that produced the RFS-FRRF.
 - (iii) Determine the name and country of registration of the vessel used to transport the RFS-FRRF to the United States.
 - (iv) Determine the date and time the vessel arrives at the United States port of entry.
 - (3) Where the importer is required to retire RINs under paragraph (e)(2) of this section, the importer must report the retired RINs in the applicable reports under §80.1451.
 - (4) Any importer shall submit reports within 30 days following the date any vessel transporting RFS-FRRF arrives at the United States port of entry to all the following:
 - (i) The Administrator, containing the information determined under paragraph (k)(2) of this section.
 - (ii) The foreign producer, containing the information determined under paragraph (k)(2)(i) of this section, and including identification of the port at which the product was offloaded, and any RINs retired under paragraph (e)(2) of this section.
 - (5) Any United States importer shall meet all other requirements of this subpart for any imported renewable fuel that is not classified as RFS-FRRF under paragraph (k)(1) of this section.

- (l) Truck imports of RFS-FRRF produced by a foreign producer.
- (1) Any foreign producer whose RFS-FRRF is transported into the United States by truck may petition EPA to use alternative procedures to meet all the following requirements:
 - (i) Certification under paragraph (c)(2) of this section.
 - (ii) Load port and port of entry testing under paragraphs (d) and (e) of this section.
 - (iii) Importer testing under paragraph (k)(2) of this section.
 - (2) These alternative procedures must ensure RFS-FRRF remains segregated from Non-RFS-FRRF until it is imported into the United States. The petition will be evaluated based on whether it adequately addresses all of the following:
 - (i) Contracts with any facilities that receive and/or transport RFS-FRRF that prohibit the commingling of RFS-FRRF with Non-RFS-FRRF or RFS-FRRF from other foreign producers.
 - (ii) Attest procedures to be conducted annually by an independent third party that review loading records and import documents based on volume reconciliation to confirm that all RFS-FRRF remains segregated.
 - (3) The petition described in this section must be submitted to EPA along with the application for approval as a foreign producer under this subpart.
- (m) Additional attest requirements for producers of RFS-FRRF. The following additional procedures shall be carried out by any producer of RFS-FRRF as part of the attest engagement required for renewable fuel producers under this subpart M.
- (1) Obtain listings of all tenders of RFS-FRRF. Agree the total volume of tenders from the listings to the volumes determined by the third party under paragraph (d) of this section.
 - (2) For each tender under paragraph (m)(1) of this section, where the renewable fuel is loaded onto a marine vessel, report as a finding the name and country of registration of each vessel, and the volumes of RFS-FRRF loaded onto each vessel.
 - (3) Select a sample from the list of vessels identified in paragraph (m)(2) of this section used to transport RFS-FRRF, in accordance with the guidelines in §80.127, and for each vessel selected perform all the following:
 - (i) Obtain the report of the independent third party, under paragraph (d) of this section, and of the United States importer under paragraph (k) of this section.
 - (A) Agree the information in these reports with regard to vessel identification and renewable fuel volume.
 - (B) Identify, and report as a finding, each occasion the load port and port of entry volume results differ by more than the amount allowed in paragraph (e) of this section, and

determine whether the importer retired the appropriate amount of RINs as required under paragraph (e)(2) of this section, and submitted the applicable reports under §80.1451 in accordance with paragraph (k)(4) of this section.

- (ii) Obtain the documents used by the independent third party to determine transportation and storage of the RFS-FRRF from the foreign producer's facility to the load port, under paragraph (d) of this section. Obtain tank activity records for any storage tank where the RFS-FRRF is stored, and activity records for any mode of transportation used to transport the RFS-FRRF prior to being loaded onto the vessel. Use these records to determine whether the RFS-FRRF was produced at the foreign producer's facility that is the subject of the attest engagement, and whether the RFS-FRRF was mixed with any Non-RFS-FRRF or any RFS-FRRF produced at a different facility.
- (4) Select a sample from the list of vessels identified in paragraph (m)(2) of this section used to transport RFS-FRRF, in accordance with the guidelines in §80.127, and for each vessel selected perform the following:
- (i) Obtain a commercial document of general circulation that lists vessel arrivals and departures, and that includes the port and date of departure of the vessel, and the port of entry and date of arrival of the vessel.
 - (ii) Agree the vessel's departure and arrival locations and dates from the independent third party and United States importer reports to the information contained in the commercial document.
- (5) Obtain a separate listing of the tenders under this paragraph (m)(5) where the RFS-FRRF is loaded onto a marine vessel. Select a sample from this listing in accordance with the guidelines in §80.127, and obtain a commercial document of general circulation that lists vessel arrivals and departures, and that includes the port and date of departure and the ports and dates where the renewable fuel was offloaded for the selected vessels. Determine and report as a finding the country where the renewable fuel was offloaded for each vessel selected.
- (6) In order to complete the requirements of this paragraph (m) an auditor shall:
- (i) Be independent of the foreign producer;
 - (ii) Be licensed as a Certified Public Accountant in the United States and a citizen of the United States, or be approved in advance by EPA based on a demonstration of ability to perform the procedures required in §§ 80.125 through 80.127, 80.130, 80.1464, and this paragraph (m); and
 - (iii) Sign a commitment that contains the provisions specified in paragraph (f) of this section with regard to activities and documents relevant to compliance with the requirements of §§ 80.125 through 80.127, 80.130, 80.1464, and this paragraph (m).

- (n) Withdrawal or suspension of foreign producer approval. EPA may withdraw or suspend a foreign producer's approval where any of the following occur:
- (1) A foreign producer fails to meet any requirement of this section.
 - (2) A foreign government fails to allow EPA inspections or audits as provided in paragraph (f)(1) of this section.
 - (3) A foreign producer asserts a claim of, or a right to claim, sovereign immunity in an action to enforce the requirements in this subpart.
 - (4) A foreign producer fails to pay a civil or criminal penalty that is not satisfied using the foreign producer bond specified in paragraph (h) of this section.
- (o) Additional requirements for applications, reports and certificates. Any application for approval as a foreign producer, alternative procedures under paragraph (l) of this section, any report, certification, or other submission required under this section shall be:
- (1) Submitted in accordance with procedures specified by the Administrator, including use of any forms that may be specified by the Administrator.
 - (2) Signed by the president or owner of the foreign producer company, or by that person's immediate designee, and shall contain the following declaration:

“I hereby certify: (1) That I have actual authority to sign on behalf of and to bind [INSERT NAME OF FOREIGN PRODUCER] with regard to all statements contained herein; (2) that I am aware that the information contained herein is being Certified, or submitted to the United States Environmental Protection Agency, under the requirements of 40 CFR part 80, subpart M, and that the information is material for determining compliance under these regulations; and (3) that I have read and understand the information being Certified or submitted, and this information is true, complete and correct to the best of my knowledge and belief after I have taken reasonable and appropriate steps to verify the accuracy thereof. I affirm that I have read and understand the provisions of 40 CFR part 80, subpart M, including 40 CFR 80.1465 apply to [INSERT NAME OF FOREIGN PRODUCER]. Pursuant to Clean Air Act section 113(c) and 18 U.S.C. 1001, the penalty for furnishing false, incomplete or misleading information in this certification or submission is a fine of up to \$10,000 U.S., and/or imprisonment for up to five years.”.

§ 80.1467 What are the additional requirements under this subpart for a foreign RIN owner?

- (a) Foreign RIN owner. For purposes of this subpart, a foreign RIN owner is a person located outside the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern

Mariana Islands (collectively referred to in this section as “the United States”) that has been approved by EPA to own RINs.

- (b) General Requirement. An approved foreign RIN owner must meet all requirements that apply to parties who own RINs under this subpart.
- (c) Foreign RIN owner commitments. Any person shall commit to and comply with the provisions contained in this paragraph (c) as a condition to being approved as a foreign RIN owner under this subpart.
 - (1) Any United States Environmental Protection Agency inspector or auditor must be given full, complete, and immediate access to conduct inspections and audits of the foreign RIN owner’s place of business.
 - (i) Inspections and audits may be either announced in advance by EPA, or unannounced.
 - (ii) Access will be provided to any location where documents related to RINs the foreign RIN owner has obtained, sold, transferred or held are kept.
 - (iii) Inspections and audits may be by EPA employees or contractors to EPA.
 - (iv) Any documents requested that are related to matters covered by inspections and audits must be provided to an EPA inspector or auditor on request.
 - (v) Inspections and audits by EPA may include review and copying of any documents related to the following:
 - (A) Transfers of title to RINs.
 - (B) Work performed and reports prepared by independent auditors under the requirements of this section, including work papers.
 - (vi) Inspections and audits by EPA may include interviewing employees.
 - (vii) Any employee of the foreign RIN owner must be made available for interview by the EPA inspector or auditor, on request, within a reasonable time period.
 - (viii) English language translations of any documents must be provided to an EPA inspector or auditor, on request, within 10 working days.
 - (ix) English language interpreters must be provided to accompany EPA inspectors and auditors, on request.
 - (2) An agent for service of process located in the District of Columbia shall be named, and service on this agent constitutes service on the foreign RIN owner or any employee of the foreign RIN owner for any action by EPA or otherwise by the United States related to the requirements of this subpart.
 - (3) The forum for any civil or criminal enforcement action related to the provisions of this section for violations of the Clean Air Act or regulations

promulgated thereunder shall be governed by the Clean Air Act, including the EPA administrative forum where allowed under the Clean Air Act.

- (4) United States substantive and procedural laws shall apply to any civil or criminal enforcement action against the foreign RIN owner or any employee of the foreign RIN owner related to the provisions of this section.
 - (5) Submitting an application to be a foreign RIN owner, and all other actions to comply with the requirements of this subpart constitute actions or activities covered by and within the meaning of the provisions of 28 U.S.C. 1605(a)(2), but solely with respect to actions instituted against the foreign RIN owner, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign RIN owner under this subpart, including conduct that violates the False Statements Accountability Act of 1996 (18 U.S.C. 1001) and section 113(c)(2) of the Clean Air Act (42 U.S.C. 7413).
 - (6) The foreign RIN owner, or its agents or employees, will not seek to detain or to impose civil or criminal remedies against EPA inspectors or auditors, whether EPA employees or EPA contractors, for actions performed within the scope of EPA employment related to the provisions of this section.
 - (7) The commitment required by this paragraph (c) shall be signed by the owner or president of the foreign RIN owner business.
- (d) Sovereign immunity. By submitting an application to be a foreign RIN owner under this subpart, the foreign entity, and its agents and employees, without exception, become subject to the full operation of the administrative and judicial enforcement powers and provisions of the United States without limitation based on sovereign immunity, with respect to actions instituted against the foreign RIN owner, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign RIN owner under this subpart, including conduct that violates the False Statements Accountability Act of 1996 (18 U.S.C. 1001) and section 113(c)(2) of the Clean Air Act (42 U.S.C. 7413).
- (e) Bond posting. Any foreign entity shall meet the requirements of this paragraph (e) as a condition to approval as a foreign RIN owner under this subpart.
- (1) The foreign entity shall post a bond of the amount calculated using the following equation:
$$\text{Bond} = G * \$ 0.01$$

Where:
Bond = amount of the bond in U.S. dollars.
G = the total of the number of gallon-RINs the foreign entity expects to sell or transfer during the first calendar year that the foreign entity is a RIN owner, plus the number of gallon-RINs the foreign entity expects to sell or transfer during the next four calendar years. After the first calendar year, the bond amount shall be based on the actual number of gallon-RINs sold or transferred during the current calendar year and the number held at

the conclusion of the current averaging year, plus the number of gallon-RINs sold or transferred during the four most recent calendar years preceding the current calendar year. For any year for which there were fewer than four preceding years in which the foreign entity sold or transferred RINs, the bond shall be based on the total of the number of gallon-RINs sold or transferred during the current calendar year and the number held at the end of the current calendar year, plus the number of gallon-RINs sold or transferred during any calendar year preceding the current calendar year, plus the number of gallon-RINs expected to be sold or transferred during subsequent calendar years, the total number of years not to exceed four calendar years in addition to the current calendar year.

- (2) Bonds shall be posted by doing any of the following:
 - (i) Paying the amount of the bond to the Treasurer of the United States.
 - (ii) Obtaining a bond in the proper amount from a third party surety agent that is payable to satisfy United States administrative or judicial judgments against the foreign RIN owner, provided EPA agrees in advance as to the third party and the nature of the surety agreement.
 - (iii) An alternative commitment that results in assets of an appropriate liquidity and value being readily available to the United States, provided EPA agrees in advance as to the alternative commitment.
 - (3) All the following shall apply to bonds posted under this paragraph (e); bonds shall:
 - (i) Be used to satisfy any judicial judgment that results from an administrative or judicial enforcement action for conduct in violation of this subpart, including where such conduct violates the False Statements Accountability Act of 1996 (18 U.S.C. 1001) and section 113(c)(2) of the Clean Air Act (42 U.S.C. 7413).
 - (ii) Be provided by a corporate surety that is listed in the United States Department of Treasury Circular 570 "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds".
 - (iii) Include a commitment that the bond will remain in effect for at least five years following the end of latest reporting period in which the foreign RIN owner obtains, sells, transfers, or holds RINs.
 - (4) On any occasion a foreign RIN owner bond is used to satisfy any judgment, the foreign RIN owner shall increase the bond to cover the amount used within 90 days of the date the bond is used.
- (f) English language reports. Any document submitted to EPA by a foreign RIN owner shall be in English, or shall include an English language translation.
- (g) Prohibitions.

- (1) A foreign RIN owner is prohibited from obtaining, selling, transferring, or holding any RIN that is in excess of the number for which the bond requirements of this section have been satisfied.
 - (2) Any RIN that is sold, transferred, or held that is in excess of the number for which the bond requirements of this section have been satisfied is an invalid RIN under §80.1431.
 - (3) Any RIN that is obtained from a person located outside the United States that is not an approved foreign RIN owner under this section is an invalid RIN under §80.1431.
 - (4) No foreign RIN owner or other person may cause another person to commit an action prohibited in this paragraph (g), or that otherwise violates the requirements of this section.
- (h) Additional attest requirements for foreign RIN owners. The following additional requirements apply to any foreign RIN owner as part of the attest engagement required for RIN owners under this subpart M.
- (i) The attest auditor must be independent of the foreign RIN owner.
 - (ii) The attest auditor must be licensed as a Certified Public Accountant in the United States and a citizen of the United States, or be approved in advance by EPA based on a demonstration of ability to perform the procedures required in §§80.125 through 80.127, 80.130, and 80.1464.
 - (iii) The attest auditor must sign a commitment that contains the provisions specified in paragraph (c) of this section with regard to activities and documents relevant to compliance with the requirements of §§80.125 through 80.127, 80.130, and 80.1464.
- (i) Withdrawal or suspension of foreign RIN owner status. EPA may withdraw or suspend its approval of a foreign RIN owner where any of the following occur:
- (1) A foreign RIN owner fails to meet any requirement of this section, including, but not limited to, the bond requirements.
 - (2) A foreign government fails to allow EPA inspections as provided in paragraph (c)(1) of this section.
 - (3) A foreign RIN owner asserts a claim of, or a right to claim, sovereign immunity in an action to enforce the requirements in this subpart.
 - (4) A foreign RIN owner fails to pay a civil or criminal penalty that is not satisfied using the foreign RIN owner bond specified in paragraph (e) of this section.
- (j) Additional requirements for applications, reports and certificates. Any application for approval as a foreign RIN owner, any report, certification, or other submission required under this section shall be:
- (1) Submitted in accordance with procedures specified by the Administrator, including use of any forms that may be specified by the Administrator.
 - (2) Signed by the president or owner of the foreign RIN owner company, or by that person's immediate designee, and shall contain the following declaration:

“I hereby certify: (1) That I have actual authority to sign on behalf of and to bind [INSERT NAME OF FOREIGN RIN OWNER] with regard to all statements contained herein; (2) that I am aware that the information contained herein is being Certified, or submitted to the United States Environmental Protection Agency, under the requirements of 40 CFR part 80, subpart M, and that the information is material for determining compliance under these regulations; and (3) that I have read and understand the information being Certified or submitted, and this information is true, complete and correct to the best of my knowledge and belief after I have taken reasonable and appropriate steps to verify the accuracy thereof. I affirm that I have read and understand the provisions of 40 CFR part 80, subpart M, including 40 CFR 80.1467 apply to [INSERT NAME OF FOREIGN RIN OWNER]. Pursuant to Clean Air Act section 113(c) and 18 U.S.C. 1001, the penalty for furnishing false, incomplete or misleading information in this certification or submission is a fine of up to \$10,000 U.S., and/or imprisonment for up to five years.”.

§ 80.1468 Incorporation by reference.

- (a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Environmental Protection Agency (EPA) must publish notice of change in the Federal Register and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030 or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. This material is also available for inspection at the EPA Docket Center, Docket No. EPA-HQ-OAR-2005-0161, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington DC. The telephone number for the Air Docket is (202) 566-1742. Also, this material is available from the source listed in paragraph (b) of this section.
- (b) American Society for Testing and Materials, 100 Barr Harbor Drive, P.O. Box C-700, West Conshohocken, Pennsylvania 19428 (1-800-262-1373, www.astm.org).
- (1) ASTM D 1250-08 (“ASTM D 1250”), Standard Guide for Use of the Petroleum Measurement Tables, Approved 2008; IBR approved for §80.1426(f)(8)(ii)(B).
 - (2) ASTM D 4442-07 (“ASTM D 4442”), Standard Test Methods for Direct Moisture Content Measurement of Wood and Wood-Base Materials, Approved 2007; IBR approved for §80.1426(f)(7)(v)(B).
 - (3) ASTM D 4444-08 (“ASTM D 4444”), Standard Test method for Laboratory Standardization and Calibration of Hand-Held Moisture Meters, Approved 2008; IBR approved for §80.1426(f)(7)(v)(B).

- (4) ASTM D 6751-09 (“ASTM D 6751”), Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels, Approved 2009; IBR approved for §80.1401.
- (5) ASTM D 6866-08 (“ASTM D 6866”), Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples Using Radiocarbon Analysis, Approved 2008; IBR approved for §§ 80.1426(f)(9)(ii) and 80.1430(e)(2).
- (6) ASTM E 711-87 (“ASTM E 711”), Standard Test Method for Gross Calorific Value of Refuse-Derived Fuel by the Bomb Calorimeter, Reapproved 2004; IBR approved for §80.1426(f)(7)(v)(A).
- (7) ASTM E 870-82 (“ASTM E 870”), Standard Test Methods for Analysis of Wood Fuels, Reapproved 2006; IBR approved for §80.1426(f)(7)(v)(A).