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40 CFR Part 80 is amended as follows:

## **PART 80--REGULATION OF FUEL 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. Section 80.1100 is revised to read as follows:

### **§ 80.1100 How is the statutory default requirement for 2006 implemented?**

- (a) Definitions. For calendar year 2006, the definitions of section 80.2 and the following additional definitions apply to this section.
  - (1) Renewable fuel.
    - (i) Renewable fuel means motor vehicle fuel that is used to replace or reduce the quantity of fossil fuel present in a fuel mixture used to operate a motor vehicle, and which:
      - (A) Is produced from grain, starch, oil seeds, vegetable, animal, or fish materials including fats, greases, and oils, sugarcane, sugar beets, sugar components, tobacco, potatoes, or other biomass; or
      - (B) Is natural gas produced from a biogas source, including a landfill, sewage waste treatment plant, feedlot, or other place where decaying organic material is found.
    - (ii) The term "renewable fuel" includes cellulosic biomass ethanol, waste derived ethanol, biodiesel, and any blending components derived from renewable fuel.
  - (2) Cellulosic biomass ethanol means ethanol derived from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis, including dedicated energy crops and trees, wood and wood residues, plants, grasses, agricultural residues, fibers, animal wastes and other waste materials, and municipal solid waste. The term also includes any ethanol produced in facilities where animal wastes or other waste materials are digested or otherwise used to displace 90 percent or more of the fossil fuel normally used in the production of ethanol.
  - (3) Waste derived ethanol means ethanol derived from animal wastes, including poultry fats and poultry wastes, and other waste materials, or municipal solid waste.

- (4) Small refinery means a refinery for which the average aggregate daily crude oil throughput for a calendar year (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.
- (5) Biodiesel means a diesel fuel substitute produced from nonpetroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act. It includes biodiesel derived from animal wastes (including poultry fats and poultry wastes) and other waste materials, or biodiesel derived from municipal solid waste and sludges and oils derived from wastewater and the treatment of wastewater.
- (b) Renewable Fuel Standard for 2006. The percentage of renewable fuel in the total volume of gasoline sold or dispensed to consumers in 2006 in the United States shall be a minimum of 2.78 percent on an annual average volume basis.
- (c) Responsible parties. Parties collectively responsible for attainment of the standard in paragraph (b) of this section are refiners (including blenders) and importers of gasoline. However, a party that is a refiner only because he owns or operates a small refinery is exempt from this responsibility.
- (d) EPA determination of attainment. EPA will determine after the close of 2006 whether or not the requirement in paragraph (b) of this section has been met. EPA will base this determination on information routinely published by the Energy Information Administration on the annual domestic volume of gasoline sold or dispensed to U.S. consumers and of ethanol produced for use in such gasoline, supplemented by readily available information concerning the use in motor fuel of other renewable fuels such as cellulosic biomass ethanol, waste derived ethanol, biodiesel, and other non-ethanol renewable fuels.
  - (1) The renewable fuel volume will equal the sum of all renewable fuel volumes used in motor fuel, provided that:
    - (i) One gallon of cellulosic biomass ethanol or waste derived ethanol shall be considered to be the equivalent of 2.5 gallons of renewable fuel; and
    - (ii) Only the renewable fuel portion of blending components derived from renewable fuel shall be counted towards the renewable fuel volume.
  - (2) If the nationwide average volume percent of renewable fuel in gasoline in 2006 is equal to or greater than the standard in paragraph (b) of this section, the standard has been met.
- (e) Consequence of nonattainment in 2006. In the event that EPA determines that the requirement in paragraph (b) of this section has not been attained in 2006, a deficit carryover volume shall be added to the renewable fuel volume obligation for 2007 for use in calculating the standard applicable to gasoline in 2007.
  - (1) The deficit carryover volume shall be calculated as follows:

$$DC = V_{\text{gas}} * (R_s - R_a)$$

Where:

DC = Deficit carryover, in gallons, of renewable fuel.

V<sub>gas</sub> = Volume of gasoline sold or dispensed to U.S. consumers in 2006, in gallons.

R<sub>s</sub> = 0.0278.

R<sub>a</sub> = Ratio of renewable fuel volume divided by total gasoline volume determined in accordance with paragraph (d)(2) of this section.

- (2) There shall be no other consequence of failure to attain the standard in paragraph (b) of this section in 2006 for any of the parties in paragraph (c) of this section.

3. Section 80.1101 is added to read as follows:

**§ 80.1101 Definitions.**

The definitions of §80.2 and the following additional definitions apply for the purposes of this subpart. For calendar year 2007 and beyond, the definitions in this section §80.1101 supplant those in §80.1100.

- (a) Cellulosic biomass ethanol means either of the following:
  - (1) Ethanol derived from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis and includes any of the following:
    - (i) Dedicated energy crops and trees.
    - (ii) Wood and wood residues.
    - (iii) Plants.
    - (iv) Grasses.
    - (v) Agricultural residues.
    - (vi) Animal wastes and other waste materials, the latter of which may include waste materials that are residues (e.g., residual tops, branches, and limbs from a tree farm).
    - (vii) Municipal solid waste.
  - (2) Ethanol made at facilities at which animal wastes or other waste materials are digested or otherwise used onsite to displace 90 percent or more of the fossil fuel that is combusted to produce thermal energy integral to the process of making ethanol, by:
    - (i) The direct combustion of the waste materials or a byproduct resulting from digestion of such waste materials (e.g., methane from animal wastes) to make thermal energy; and/or
    - (ii) The use of waste heat captured from an off-site combustion process as a source of thermal energy.
- (b) Waste derived ethanol means ethanol derived from either of the following:
  - (1) Animal wastes, including poultry fats and poultry wastes, and other waste materials.
  - (2) Municipal solid waste.

- (c) Biogas means methane or other hydrocarbon gas produced from decaying organic material, including landfills, sewage waste treatment plants, and animal feedlots.
- (d) Renewable fuel.
  - (1) Renewable fuel is any motor vehicle fuel that is used to replace or reduce the quantity of fossil fuel present in a fuel mixture used to fuel a motor vehicle, and is produced from any of the following:
    - (i) Grain.
    - (ii) Starch.
    - (iii) Oilseeds.
    - (iv) Vegetable, animal, or fish materials including fats, greases, and oils.
    - (v) Sugarcane.
    - (vi) Sugar beets.
    - (vii) Sugar components.
    - (viii) Tobacco.
    - (ix) Potatoes.
    - (x) Other biomass.
    - (xi) Natural gas produced from a biogas source, including a landfill, sewage waste treatment plant, feedlot, or other place where there is decaying organic material.
  - (2) The term “Renewable fuel” includes cellulosic biomass ethanol, waste derived ethanol, biodiesel (mono-alkyl ester), non-ester renewable diesel, and blending components derived from renewable fuel.
  - (3) Ethanol covered by this definition shall be denatured as required and defined in 27 CFR Parts 20 and 21.
  - (4) Small volume additives (excluding denaturants) less than 1.0 percent of the total volume of a renewable fuel shall be counted as part of the total renewable fuel volume.
  - (5) A fuel produced by a renewable fuel producer that is used in boilers or heaters is not a motor vehicle fuel and therefore is not a renewable fuel.
- (e) Blending component has the same meaning as “Gasoline blending stock, blendstock, or component” as defined at §80.2(s), for which the portion that can be counted as renewable fuel is calculated as set forth in §80.1115(a).
- (f) Motor vehicle has the meaning given in Section 216(2) of the Clean Air Act (42 U.S.C. 7550).
- (g) Small refinery means a refinery for which the average aggregate daily crude oil throughput for the calendar year 2004 (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.
- (h) Biodiesel (mono-alkyl ester) means a motor vehicle fuel or fuel additive which is all the following:
  - (1) Registered as a motor vehicle fuel or fuel additive under 40 CFR part 79.
  - (2) A mono-alkyl ester.

- (3) Meets ASTM D-6751-07, entitled "Standard Specification for Biodiesel Fuel Blendstock (B100) for Middle Distillate Fuels." ASTM D-6751-07 is incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. A copy may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania. A copy may be inspected at the EPA Docket Center, Docket No. EPA-HQ-OAR-2005-0161, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 866-272-6272, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.
- (4) Intended for use in engines that are designed to run on conventional diesel fuel.
- (5) Derived from nonpetroleum renewable resources (as defined in paragraph (m) of this section).
- (i) Non-ester renewable diesel means a motor vehicle fuel or fuel additive which is all the following:
  - (1) Registered as a motor vehicle fuel or fuel additive under 40 CFR Part 79.
  - (2) Not a mono-alkyl ester.
  - (3) Intended for use in engines that are designed to run on conventional diesel fuel.
  - (4) Derived from nonpetroleum renewable resources (as defined in paragraph (m) of this section).
- (j) Renewable crude means biologically derived liquid feedstocks including but not limited to poultry fats, poultry wastes, vegetable oil, and greases that are used as feedstocks to make gasoline or diesel fuels at production units as specified in paragraph (k) of this section.
- (k) Renewable crude-based fuels are renewable fuels that are gasoline or diesel products resulting from the processing of renewable crudes in production units within refineries or at dedicated facilities within refineries, that process petroleum based feedstocks and which make gasoline and diesel fuel.
- (l) Importers. For the purposes of this subpart only, an importer of gasoline or renewable fuel is:
  - (1) Any person who brings gasoline or renewable fuel into the 48 contiguous states of the United States from a foreign country or from an area that has not opted in to the program requirements of this subpart pursuant to §80.1143; and
  - (2) Any person who brings gasoline or renewable fuel into an area that has opted in to the program requirements of this subpart pursuant to §80.1143.
- (m) Nonpetroleum renewable resources include, but are not limited to the following:
  - (1) Plant oils.
  - (2) Animal fats and animal wastes, including poultry fats and poultry wastes, and other waste materials.

- (3) Municipal solid waste and sludges and oils derived from wastewater and the treatment of wastewater.
- (n) Export of renewable fuel means:
  - (1) Transfer of a batch of renewable fuel to a location outside the United States; and
  - (2) Transfer of a batch of renewable fuel from a location in the contiguous 48 states to Alaska, Hawaii, 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 §80.1143.
- (o) Renewable Identification Number (RIN), is a unique number generated to represent a volume of renewable fuel pursuant to §§ 80.1125 and 80.1126.
  - (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.
- (p) Neat renewable fuel is a renewable fuel to which only de minimus amounts of conventional gasoline or diesel have been added.

**§§ 80.1102-80.1103 [Added and Reserved]**

- 4. Sections 80.1102 and 80.1103 are added and reserved.
- 5. Sections 80.1104 through 80.1107 are added to read as follows:

**§ 80.1104 What are the implementation dates for the Renewable Fuel Standard Program?**

The RFS standards and other requirements of §80.1101 and all sections following are effective beginning on September 1, 2007.

**§ 80.1105 What is the Renewable Fuel Standard?**

- (a) The annual value of the renewable fuel standard for 2007 shall be 4.02 percent.
- (b) Beginning with the 2008 compliance period, EPA will calculate the value of the annual standard and publish this value in the Federal Register by November 30 of the year preceding the compliance period.
- (c) EPA will base the calculation of the standard on information provided by the Energy Information Administration regarding projected gasoline volumes and projected volumes of renewable fuel expected to be used in gasoline blending for the upcoming year.

- (d) EPA will calculate the annual renewable fuel standard using the following equation:

$$RFStd_i = 100 * \frac{RFV_i - Cell_i}{(G_i - R_i) + (GS_i - RS_i) - GE_i}$$

Where:

- RFStd<sub>i</sub> = Renewable Fuel Standard, in year i, in percent.  
 RFV<sub>i</sub> = Nationwide annual volume of renewable fuels required by section 211(o)(2)(B) of the Act (42 U.S.C. 7545), for year i, in gallons.  
 G<sub>i</sub> = Amount of gasoline projected to be used in the 48 contiguous states, in year i, in gallons.  
 R<sub>i</sub> = Amount of renewable fuel blended into gasoline that is projected to be used in the 48 contiguous states, in year i, in gallons.  
 GS<sub>i</sub> = Amount of gasoline projected to be used in noncontiguous states or territories (if the state or territory opts-in), in year i, in gallons.  
 RS<sub>i</sub> = Amount of renewable fuel blended into gasoline that is projected to be used in noncontiguous states or territories (if the state or territory opts-in), in year i, in gallons.  
 GE<sub>i</sub> = Amount of gasoline projected to be produced by exempt small refineries and small refiners, in year i, in gallons (through 2010 only, except to the extent that a small refinery exemption is extended pursuant to §80.1141(e)).  
 Cell<sub>i</sub> = Beginning in 2013, the amount of renewable fuel that is required to come from cellulosic sources, in year i, in gallons.

- (e) Beginning with the 2013 compliance period, EPA will calculate the value of the annual cellulosic standard and publish this value in the Federal Register by November 30 of the year preceding the compliance period.
- (f) EPA will calculate the annual cellulosic standard using the following equation:

$$RFCell_i = 100 * \frac{Cell_i}{(G_i - R_i) + (GS_i - RS_i)}$$

Where:

- RFCell<sub>i</sub> = Renewable Fuel Cellulosic Standard in year i, in percent.  
 G<sub>i</sub> = Amount of gasoline projected to be used in the 48 contiguous states, in year i, in gallons.  
 R<sub>i</sub> = Amount of renewable fuel blended into gasoline that is projected to be used in the 48 contiguous states, in year i, in gallons.  
 GS<sub>i</sub> = Amount of gasoline projected to be used in noncontiguous states or territories (if the state or territory opts-in), in year i, in gallons.  
 RS<sub>i</sub> = Amount of renewable fuel blended into gasoline that is projected to be used in noncontiguous states or territories (if the state or territory opts-in), in year i, in gallons.

Cell<sub>i</sub> = Amount of renewable fuel that is required to come from cellulosic sources, in year i, in gallons.

**§ 80.1106 To whom does the Renewable Volume Obligation apply?**

- (a)(1) An obligated party is a refiner that produces gasoline within the 48 contiguous states, or an importer that imports gasoline into the 48 contiguous states. A party that simply adds renewable fuel to gasoline, as defined in §80.1107(c), is not an obligated party.
- (2) If the Administrator approves a petition of Alaska, Hawaii, or a United States territory to opt-in to the renewable fuel program under the provisions in §80.1143, then "obligated party" shall also include any refiner that produces gasoline within that state or territory, or any importer that imports gasoline into that state or territory.
- (3) For the purposes of this section, "gasoline" refers to any and all of the products specified at §80.1107(c).
- (b) For each compliance period starting with 2007, any obligated party is required to demonstrate, pursuant to §80.1127, that it has satisfied the Renewable Volume Obligation for that compliance period, as specified in §80.1107(a).
- (c) 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.
- (d) An obligated party must comply with the requirements of paragraph (b) of this section for all of its imported gasoline 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 separately from gasoline produced by its refinery or refineries.
- (f) Where a refinery or importer 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 produced at the refinery, or all of the imported gasoline, in the aggregate, or each party may meet the requirements of paragraph (b) of this section for the portion of the gasoline that it owns, as long as all of the gasoline produced at the refinery, or all of the imported gasoline, is accounted for in determining the renewable fuels obligation under §80.1107.
- (g) The requirements in paragraph (b) of this section apply to the following compliance periods:
  - (1) For 2007, the compliance period is September 1 through December 31.
  - (2) Beginning in 2008, and every year thereafter, the compliance period is January 1 through December 31.



**§ 80.1107      How is the Renewable Volume Obligation calculated?**

- (a) The Renewable Volume Obligation for an obligated party is determined according to the following formula:

$$RVO_i = (RFStd_i * GV_i) + D_{i-1}$$

Where:

- $RVO_i$  = The Renewable Volume Obligation for an obligated party for calendar year i, in gallons of renewable fuel.  
 $RFStd_i$  = The renewable fuel standard for calendar year i, determined by EPA pursuant to §80.1105, in percent.  
 $GV_i$  = The non-renewable gasoline volume, determined in accordance with paragraphs (b), (c), and (d) of this section, which is produced or imported by the obligated party in calendar year i, in gallons.  
 $D_{i-1}$  = Renewable fuel deficit carryover from the previous year, per §80.1127(b), in gallons.

- (b) The non-renewable gasoline volume for a refiner, blender, or importer for a given year,  $GV_i$ , specified in paragraph (a) of this section is calculated as follows:

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

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

- (c) 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 in the volume used to calculate a party’s renewable volume obligation under paragraph (a) of this section, except as provided in paragraph (d) 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 following products are not included in the volume of gasoline produced or imported used to calculate a party’s renewable volume obligation under paragraph (a) of this section:
  - (1) Any renewable fuel as defined in §80.1101(d).
  - (2) Blendstock that has not been combined with other blendstock or finished gasoline to produce gasoline.
  - (3) Gasoline produced or imported for use in Alaska, Hawaii, 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 §80.1143.
  - (4) Gasoline produced by a small refinery that has an exemption under §80.1141 or an approved small refiner that has an exemption under §80.1142 until January 1, 2011 (or later, for small refineries, if their exemption is extended pursuant to §80.1141(e)).
  - (5) Gasoline exported for use outside the 48 United States, and gasoline exported for use outside Alaska, Hawaii, 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 §80.1143.
  - (6) For blenders, the volume of finished gasoline, RBOB, or CBOB to which a blender adds blendstocks.
  - (7) The gasoline portion of transmix produced by a transmix processor, or the transmix blended into gasoline by a transmix blender, under 40 CFR 80.84.

**§§ 80.1108-80.1114 [Added and Reserved]**

6. Sections 80.1108 through 80.1114 are added and reserved.

7. Section 80.1115 is added to read as follows:

**§ 80.1115 How are equivalence values assigned to renewable fuel?**

- (a)(1) Each gallon of a renewable fuel 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 §80.1126.
- (b) Equivalence values shall be assigned for certain renewable fuels as follows:

- (1) Cellulosic biomass ethanol and waste derived ethanol produced on or before December 31, 2012 which is denatured shall have an equivalence value of 2.5.
  - (2) Ethanol other than cellulosic biomass ethanol or waste-derived ethanol which is denatured shall have an equivalence value of 1.0.
  - (3) Biodiesel (mono-alkyl ester) shall have an equivalence value of 1.5.
  - (4) Butanol shall have an equivalence value of 1.3.
  - (5) Non-ester renewable diesel, including that produced from coprocessing a renewable crude with fossil fuels in a hydrotreater, shall have an equivalence value of 1.7.
  - (6) All other renewable crude-based renewable fuels shall have an equivalence value of 1.0.
- (c)(1) For renewable fuels not listed in paragraph (b) of this section, a producer or importer shall submit an application to the Agency for an equivalence value following the provisions of paragraph (d) of this section.
- (2) A producer or importer may also submit an application for an alternative equivalence value pursuant to paragraph (d) of this section if the renewable fuel is listed in paragraph (b) of this section, but the producer or importer has reason to believe that a different equivalence value than that listed in paragraph (b) of this section is warranted.
- (d) Determination of equivalence values.
- (1) Except as provided in paragraph (d)(4) of this section, the equivalence value for renewable fuels described in paragraph (c) of this section shall be calculated using the following formula:

$$EV = (R / 0.931) * (EC / 77,550)$$

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 (d).
  - (4) For biogas, the Equivalence Value is 1.0, and 77,550 Btu of biogas is equivalent to 1 gallon of renewable fuel.

**§§ 80.1116-80.1124 [Added and Reserved]**

8. Sections 80.1116 through 80.1124 are added and reserved.

9. Sections 80.1125 through 80.1132 are added to read as follows:

**§ 80.1125 Renewable Identification Numbers (RINs).**

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

KYYYYCCCCFFFFBBBBRRDSSSSSSSEEEEEEE

- (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 §§ 80.1126(e) and 80.1128(a).
  - (2) K has the value of 2 when the RIN has been separated from a volume of renewable fuel pursuant to §80.1126(e)(4) or §80.1129.
- (b) YYYY is the calendar year in which the batch of renewable fuel was produced or imported. YYYY also represents the year in which the RIN was originally generated.
- (c) CCCC is the registration number assigned according to §80.1150 to the producer or importer of the batch of renewable fuel.
- (d) FFFFFF is the registration number assigned according to §80.1150 to the facility at which the batch of renewable fuel was produced or imported.
- (e) BBBBBB 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 the equivalence value of the renewable fuel as specified in §80.1115 and multiplied by 10 to produce the value for RR.
- (g) D is a number identifying the type of renewable fuel, as follows:
  - (1) D has the value of 1 if the renewable fuel can be categorized as cellulosic biomass ethanol as defined in §80.1101(a).
  - (2) D has the value of 2 if the renewable fuel cannot be categorized as cellulosic biomass ethanol as defined in §80.1101(a).
- (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 §80.1126.

**§ 80.1126      How are RINs generated and assigned to batches of renewable fuel by renewable fuel producers or importers?**

- (a) Regional applicability.
  - (1) Except as provided in paragraph (b) of this section, a RIN must be assigned by a renewable fuel producer or importer to every batch of renewable fuel produced by a facility located in the contiguous 48 states of the United States, or imported into the contiguous 48 states.
  - (2) If the Administrator approves a petition of Alaska, Hawaii, or a United States territory to opt-in to the renewable fuel program under the provisions in §80.1143, then the requirements of paragraph (a)(1) of this section shall also apply to renewable fuel produced or imported into that state or territory beginning in the next calendar year.
- (b) Volume threshold. Renewable fuel producers located within the United States that produce less than 10,000 gallons of renewable fuel each year, and importers that import less than 10,000 gallons of renewable fuel each year, are not required to generate and assign RINs to batches of renewable fuel. Such producers and importers are also exempt from the registration, reporting, and recordkeeping requirements of §§80.1150-80.1152. However, for such producers and importers that voluntarily generate and assign RINs, all the requirements of this subpart apply.
- (c) Definition of batch. For the purposes of this section and §80.1125, a "batch of renewable fuel" is a volume of renewable fuel that has been assigned a unique RIN code BBBB within a calendar year by the producer or importer of the renewable fuel in accordance with the provisions of this section and §80.1125.
  - (1) The number of gallon-RINs generated for a batch of renewable fuel may not exceed 99,999,999.
  - (2) A batch of renewable fuel cannot represent renewable fuel produced or imported in excess of one calendar month.
- (d) Generation of RINs.
  - (1) Except as provided in paragraph (b) of this section, the producer or importer of a batch of renewable fuel must generate RINs for that batch, including any renewable fuel contained in imported gasoline.
  - (2) A producer or importer of renewable fuel may generate RINs for volumes of renewable fuel that it owns on September 1, 2007.
  - (3) A party generating a RIN shall specify the appropriate numerical values for each component of the RIN in accordance with the provisions of §80.1125 and this paragraph (d).

- (4) Except as provided in paragraph (d)(6) of this section, the number of gallon-RINs that shall be generated for a given batch of renewable fuel shall be equal to a volume calculated according to the following formula:

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

Where:

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

EV = Equivalence value for the renewable fuel per §80.1115.

$V_s$  = Standardized volume of the batch of renewable fuel at 60 °F, in gallons, calculated in accordance with paragraph (d)(7) of this section.

- (5) 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 (d)(4) of this section.

- (6)(i) For renewable crude-based renewable fuels produced in a facility or unit that coprocesses renewable crudes and fossil fuels, the number of gallon-RINs that shall be generated for a given batch of renewable fuel shall be equal to the gallons of renewable crude used rather than the gallons of renewable fuel produced.

(ii) Parties that produce renewable crude-based renewable fuels in a facility or unit that coprocesses renewable crudes and fossil fuels may submit a petition to the Agency requesting the use of volumes of renewable fuel produced as the basis for the number of gallon-RINs, pursuant to paragraph (d)(4) of this section.

- (7) Standardization of volumes. In determining the standardized volume of a batch of renewable fuel for purposes of generating RINs under this paragraph (d), 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), the following formula shall be used:

$$V_{s,b} = V_{a,b} * (-0.0008008 * T + 1.0480)$$

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.

- (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 the Agency, and may be reviewed for appropriateness.
- (8)(i) A party is prohibited from generating RINs for a volume of renewable fuel that it produces if:
  - (A) The renewable fuel has been produced from a chemical conversion process that uses another renewable fuel as a feedstock; and
  - (B) The renewable fuel used as a feedstock was produced by another party.
- (ii) Any RINs that the party acquired with renewable fuel used as a feedstock shall be assigned to the new renewable fuel that was made with that feedstock.
- (e) Assignment of RINs to batches.
  - (1) Except as provided in paragraph (e)(4) of this section, 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 §80.1128(a).
  - (3) All assigned RINs shall have a K code value of 1.
  - (4) RINs not assigned to batches.
    - (i) If a party produces or imports a batch of cellulosic biomass ethanol or waste-derived ethanol having an equivalence value of 2.5, that party must assign at least one gallon-RIN to each gallon of cellulosic biomass ethanol or waste-derived ethanol, representing the first 1.0 portion of the Equivalence Value.
    - (ii) Any remaining gallon-RINs generated for the cellulosic biomass ethanol or waste-derived ethanol which represent the remaining 1.5 portion of the Equivalence Value may remain unassigned.
    - (iii) The producer or importer of cellulosic biomass ethanol or waste-derived ethanol shall designate the K code as 2 for all unassigned RINs.

#### **§ 80.1127      How are RINs used to demonstrate compliance?**

- (a) Renewable volume obligations.
  - (1) Except as specified in paragraph (b) of this section, each party that is obligated to meet the Renewable Volume Obligation under §80.1107, or each party that is an exporter of renewable fuels that is obligated to meet a Renewable Volume Obligation under §80.1130, must demonstrate pursuant to §80.1152(a)(1) that it has taken ownership of sufficient RINs to satisfy the following equation:

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

Where:

- $(\sum \text{RINNUM})_i$  = Sum of all owned gallon-RINs that were generated in year i and are being applied towards the  $\text{RVO}_i$ , in gallons.
- $(\sum \text{RINNUM})_{i-1}$  = Sum of all owned gallon-RINs that were generated in year i-1 and are being applied towards the  $\text{RVO}_i$ , in gallons.

- $RVO_i =$  The Renewable Volume Obligation for the obligated party or renewable fuel exporter for calendar year  $i$ , in gallons, pursuant to §80.1107 or §80.1130.
- (2) For compliance for calendar years 2008 and later, the value of  $(\sum RINNUM)_{i-1}$  may not exceed a value determined by the following inequality:  
 $(\sum RINNUM)_{i-1} \leq 0.20 \times RVO_i$
  - (3) RINs may only be used to demonstrate compliance with the RVO for the calendar year in which they were generated or the following calendar year. RINs used to demonstrate compliance in one year cannot be used to demonstrate compliance in any other year.
  - (4) A party may only use a RIN for purposes of meeting the requirements of paragraphs (a)(1) and (a)(2) of this section if that RIN is an unassigned RIN with a K code of 2 obtained in accordance with §§ 80.1126(e)(4), 80.1128, and 80.1129.
  - (5) The number of gallon-RINs associated with a given batch-RIN that can be used for compliance with the RVO shall be calculated from the following formula:  
 $RINNUM = EEEEEEEE - SSSSSSSS + 1$

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 paragraphs (a)(1) or (a)(2) 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  $i-1$ .
- (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  $i+2$ .

(2) A deficit is calculated according to the following formula:

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

Where:

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

**§ 80.1128 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 §80.1126(e) with a K code of 1.
- (2) Except as provided in §80.1126(e)(4) and §80.1129, no party can separate a RIN that has been assigned to a batch pursuant to §80.1126(e).
- (3) An assigned RIN cannot be transferred to another party without simultaneously transferring a volume of renewable fuel to that same party.
- (4) No more than 2.5 assigned gallon-RINs with a K code of 1 can be transferred to another party with every gallon of renewable fuel transferred to that same party.
- (5)(i) On each of the dates listed in paragraph (a)(5)(v) of this section in any calendar year, the following equation must be satisfied for assigned RINs and volumes of renewable fuel owned by a party:

$$\sum(\text{RIN})_D \leq \sum(V_{si} \% \text{EV}_i)_D$$

Where:

D = Applicable date.

$\sum(\text{RIN})_D$  = 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.

$\text{EV}_i$  = Equivalence value representing volume i.

$\sum(V_{si} \% \text{EV}_i)_D$  = Sum of all volumes of renewable fuel owned on date D, multiplied by their respective equivalence values.

- (ii) The equivalence value  $\text{EV}_i$  for use in the equation in paragraph (a)(5)(i) of this section for any volume of ethanol shall be 2.5.
- (iii) If the equivalence value for a volume of renewable fuel i can be determined pursuant to §80.1115 based on its composition, then the appropriate equivalence value shall be used for  $\text{EV}_i$ .
- (iv) If the equivalence value for a volume of renewable fuel cannot be determined based on its composition, the value of  $\text{EV}_i$  shall be 1.0.
- (v) The applicable dates are March 31, June 30, September 30, and December 31. For 2007 only, the applicable dates are September 30, and December 31.
- (6) Producers and importers of renewable fuel.
- (i) Except as provided in paragraph (a)(6)(ii) of this section, a producer or importer of renewable fuel must transfer ownership of a number of gallon-RINs with a K code of 1 whenever it transfers ownership of a volume of renewable fuel such that the ratio of gallon-RINs to gallons is equal to the equivalence value for the renewable fuel.

$$\sum(\text{RIN}) / V_s = \text{EV}$$

Where:

$\sum(\text{RIN})$  = Sum of all gallon-RINs with a K code of 1 which are transferred along with volume  $V_s$ .

$V_s$  = A volume of renewable fuel transferred, standardized to 60 °F, in gallons.

EV = Equivalence value assigned to the renewable fuel being transferred.

- (ii) A producer or importer of renewable fuel can transfer ownership of a volume of renewable fuel without simultaneously transferring ownership of gallon-RINs having a K code of 1 if it can demonstrate one of the following:
  - (A) It is a small volume producer exempt from the requirement to generate RINs pursuant to §80.1126(b); or
  - (B) The producer or importer received an equivalent volume of renewable fuel from another party without accompanying RINs.
  - (C) The producer or importer has generated RINs for cellulosic biomass ethanol or waste-derived ethanol having an equivalence value of 2.5, and has chosen to specify as unassigned a number of gallon-RINs pursuant to §80.1126(e)(4).
- (7) Any transfer of ownership of assigned RINs must be documented on product transfer documents generated pursuant to §80.1153.
  - (i) The RIN must be recorded on the product transfer document used to transfer ownership of the RIN and the volume to another party; or
  - (ii) The RIN must be recorded on a separate product transfer document transferred to the same party on the same day as the product transfer document used to transfer ownership of the volume of renewable fuel.
- (b) RINs not assigned to volumes of renewable fuel.
  - (1) Unassigned 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 §80.1126(e)(4) or §80.1129.
  - (2) Any party that has registered pursuant to §80.1150 can hold title to an unassigned RIN.
  - (3) Unassigned RINs can be transferred from one party to another any number of times.
  - (4) An unassigned batch-RIN can be divided by its holder into multiple batch-RINs, each representing a smaller number of gallon-RINs, if all of the following conditions are met:
    - (i) All RIN components other than SSSSSSSS and EEEEEEEE are identical for the original parent and newly formed daughter RINs.
    - (ii) 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.

**§ 80.1129 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 unassigned RINs subject to the provisions of §80.1128(b).
- (b) A RIN that is assigned to a volume of renewable fuel is separated from that volume only under one of the following conditions:

- (1) Except as provided in paragraph (b)(6) of this section, a party that is an obligated party according to §80.1106 must separate any RINs that have been assigned to a volume of renewable fuel if they own that volume.
  - (2) Except as provided in paragraph (b)(5) 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 motor vehicle fuel.
  - (3) Any party that exports a volume of renewable fuel must separate any RINs that have been assigned to the exported volume.
  - (4) Any renewable fuel producer or importer that produces or imports a volume of renewable fuel shall have the right to separate any RINs that have been assigned to that volume if the producer or importer designates the renewable fuel as motor vehicle fuel and the renewable fuel is used as motor vehicle fuel.
  - (5) 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)(5) shall not apply to obligated parties or exporters of renewable fuel.
    - (ii) This paragraph (b)(5) shall not apply to renewable fuel producers meeting the requirements of paragraph (b)(4) of this section.
  - (6) For RINs that an obligated party generates, the obligated party can only separate such RINs from volumes of renewable fuel if the number of gallon-RINs separated is less than or equal to its annual RVO.
  - (7) A producer or importer of cellulosic biomass ethanol or waste-derived ethanol can separate a portion of the RINs that it generates pursuant to §80.1126(e)(4).
- (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)(1) Upon and after separation from a renewable fuel volume, a RIN shall not appear on documentation that is either:
- (i) Used to identify title to the volume of renewable fuel; or
  - (ii) Transferred with the volume of renewable fuel.
- (2) Upon and after separation of a RIN from its associated volume, product transfer documents used to transfer ownership of the volume must continue to meet the requirements of §80.1153(a)(5)(iii).
- (e) Any obligated party that uses a renewable fuel in a boiler or heater must retire any RINs associated with that volume of renewable fuel and report the retired RINs in the applicable reports under §80.1152.

**§ 80.1130 Requirements for exporters of renewable fuels.**

(a) Any party that owns any amount of renewable fuel (in its neat form or blended with gasoline or diesel) that is exported from the region described in §80.1126(a) shall acquire sufficient RINs to offset a Renewable Volume Obligation representing the exported renewable fuel.

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

(1) A renewable fuel exporter's total Renewable Volume Obligation shall be calculated according to the following formula:

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

Where:

$RVO_i$  = The Renewable Volume Obligation for the exporter for calendar year i, in gallons of renewable fuel.

$k$  = A discrete volume of renewable fuel.

$VOL_k$  = The standardized volume of discrete volume k of exported renewable fuel, in gallons, calculated in accordance with §80.1126(d)(7).

$EV_k$  = The equivalence value associated with discrete volume k.

$\sum$  = Sum involving all volumes of renewable fuel exported.

$D_{i-1}$  = Renewable fuel deficit carryover from the previous year, in gallons.

(2)(i) If the equivalence value for a volume of renewable fuel can be determined pursuant to §80.1115 based on its composition, then the appropriate equivalence value shall be used in the calculation of the exporter's Renewable Volume Obligation.

(ii) If the equivalence value for a volume of renewable fuel cannot be determined, the value of  $EV_k$  shall be 1.0.

(c) Each exporter of renewable fuel must demonstrate compliance with its RVO using RINs it has acquired pursuant to §80.1127.

#### **§ 80.1131 Treatment of invalid RINs.**

(a) Invalid RINs. An invalid RIN is a RIN that is any of the following:

(1) Is a duplicate of a valid RIN.

(2) Was based on volumes that have not been standardized to 60 °F.

(3) Has expired.

(4) Was based on an incorrect equivalence value.

(5) Is deemed invalid under §80.1167(g).

(6) Does not represent renewable fuel as it is defined in §80.1101.

(7) Was otherwise improperly generated.

(b) In the case of RINs that are invalid, the following provisions apply:

(1) Invalid RINs cannot be used to achieve compliance with the Renewable Volume Obligation 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.

- (2) Upon determination by any party that RINs owned are invalid, the party must adjust their records, reports, and compliance calculations as necessary to reflect the deletion of the invalid RINs.
- (3) Any valid RINs remaining after deleting invalid RINs 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 Obligation at the end of the compliance year.
- (4) In the event that the same RIN is transferred to two or more parties, all such RINs will be deemed to be invalid, unless EPA in its sole discretion determines that some portion of these RINs is valid.

**§ 80.1132      Reported spillage of renewable fuel.**

- (a) A reported spillage under paragraph (d) of this section means a spillage of renewable fuel associated with a requirement by a federal, state or local authority to report the spillage.
- (b) Except as provided in paragraph (c) of this section, in the event of a reported spillage of any volume of renewable fuel, the owner of the renewable fuel must retire a number of gallon-RINs corresponding to the volume of spilled renewable fuel multiplied by its equivalence value.
  - (1) If the equivalence value for the spilled volume may be determined pursuant to §80.1115 based on its composition, then the appropriate equivalence value shall be used.
  - (2) If the equivalence value for a spilled 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 and reported establishes that no RINs were generated to represent the volume, then no gallon-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 §80.1152.
  - (2) May not be transferred to another party or used by any obligated party to demonstrate compliance with the party's Renewable Volume Obligation.

**§§ 80.1133-80.1140    [Added and Reserved]**

10. Sections 80.1133 through 80.1140 are added and reserved.

11. Sections 80.1141 through 80.1143 are added to read as follows:

**§ 80.1141      Small refinery exemption.**

- (a)(1) Gasoline produced at a refinery by a refiner, or foreign refiner (as defined at §80.1165(a)), is exempt from the renewable fuel standards of §80.1105 if that refinery meets the definition of a small refinery under §80.1101(g) for calendar year 2004.
- (2) This exemption shall apply through December 31, 2010, 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.
- (b)(1) The small refinery exemption is effective immediately, except as specified in paragraph (b)(4) of this section.
- (2) 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, 2004, through December 31, 2004 (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 company owned the refinery as of January 1, 2004.
  - (iii) Name, address, phone number, facsimile number, and e-mail address of a corporate contact person.
- (3) Verification letters must be submitted by August 31, 2007, to one of the addresses listed in paragraph (h) of this section.
- (4) 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)(2) of this section), must satisfy the provisions of §80.1165(f) through (h) and (o), and must be submitted by August 31, 2007 to one of the addresses listed in paragraph (h) of this section.
- (c) If EPA finds that a refiner provided false or inaccurate information regarding a refinery’s crude throughput (pursuant to paragraph (b)(2)(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 Obligation (under §80.1107(a)) gasoline 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 the small refinery.

- (i) A refiner may at any time petition the Administrator for an extension of its small refinery exemption under paragraph (a) of this section for the reason of disproportionate economic hardship.
- (ii) 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 inability of the refinery to produce gasoline meeting the requirements of §80.1105 and the date the refiner anticipates that compliance with the requirements can be achieved at the small refinery.
- (2) 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 an approved 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 gasoline produced at that refinery will be subject to the renewable fuels standard of §80.1105.
- (3) The waiver 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 §80.1142(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 waivers 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.

**§ 80.1142 What are the provisions for small refiners under the RFS program?**

- (a)(1) Gasoline produced by a refiner, or foreign refiner (as defined at §80.1165(a)), is exempt from the renewable fuel standards of §80.1105 if the refiner or foreign refiner does not meet the definition of a small refinery under §80.1101(g) but meets all of the following criteria:
  - (i) The refiner produced gasoline at its refineries by processing crude oil through refinery processing units from January 1, 2004 through December 31, 2004.
  - (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 2004 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 2004.
  - (2) The small refiner exemption shall apply through December 31, 2010, unless a refiner chooses to waive the exemption (pursuant to paragraph (h) of this section) prior to that date.
  - (3) For the purposes of this section, the term “refiner” shall include foreign refiners.
- (b) The small refiner exemption is effective immediately, except as provided in paragraph (d) of this section. 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 containing 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:
- (1)(i) A listing of the name and address of each company location where any employee worked for the period January 1, 2004 through December 31, 2004.
  - (ii) The average number of employees at each location based on the number of employees for each pay period for the period January 1, 2004 through December 31, 2004.
  - (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.
  - (2) 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, 2004 through December 31, 2004. 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 verification letter.
  - (3) 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, 2004.
  - (4) Name, address, phone number, facsimile number, and e-mail address of a corporate contact person.
- (c) Verification letters under paragraph (b) of this section must be submitted by September 1, 2007.
- (d) 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 paragraphs (b)(1), (b)(3), and (b)(4) of this section), must demonstrate compliance with the crude oil capacity criterion of paragraph (a)(1)(iii) of this section, must satisfy the



provisions of §80.1165(f) through (h) and (o), and must be submitted by September 1, 2007 to one of the addresses listed in paragraph (j) of this section.

- (e) A refiner who qualifies as a small refiner under this section and subsequently fails to meet all of the qualifying criteria as set out in paragraph (a) of this section will have its small refiner exemption terminated effective January 1 of the next calendar year; however, disqualification 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, the small refiner's exemption will be void as of the effective date of these regulations.
- (g) If a small refiner is complying on an aggregate basis for multiple refineries, the refiner may exempt the refineries from the calculation of its Renewable Volume Obligation under §80.1107.
- (h)(1) A refiner may, at any time, waive the small refiner exemption under paragraph (a) 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 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 standard of §80.1105.
- (3) The waiver must be sent to EPA at one of the addresses listed in paragraph (j) of this section.
- (i) 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.
- (j) Verification letters under paragraph (b) of this section and small refiner exemption waivers under paragraph (h) 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.

**§ 80.1143      What are the opt-in provisions for noncontiguous states and territories?**

- (a) A noncontiguous state or 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 the Agency 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.
- (e) Upon approval of the petition by the Administrator:
  - (1) EPA shall calculate the standard for the following year, including the total gasoline volume for the State or territory in question.
  - (2) Beginning on January 1 of the next calendar year, all gasoline refiners and importers in the state or territory for which a petition has been approved shall be obligated parties as defined in §80.1106.
  - (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 §80.1126(a)(2), be required to generate RINs and assign them to batches of renewable fuel.

**§§ 80.1144-80.1149 [Added and Reserved]**

12. Sections 80.1144 through 80.1149 are added and reserved.

13. Sections 80.1150 through 80.1155 are added to read as follows:

**§ 80.1150 What are the registration requirements under the RFS program?**

- (a) Any obligated party described in §80.1106 and any exporter of renewable fuel described in §80.1130 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 promulgation of this rule in the Federal Register.

- (b) Any importer or producer of a 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 EPA-issued company and facility identification numbers prior to generating or assigning any RINs. Registration information may be submitted to EPA at any time after promulgation of this rule in the Federal Register.
- (c) Any party who owns or intends to own RINs, but who is not covered by paragraphs (a) and (b) 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.
- (d) Registration shall be on forms, and following policies, established by the Administrator.

**§ 80.1151 What are the recordkeeping requirements under the RFS program?**

- (a) Beginning September 1, 2007, any obligated party (as described at §80.1106) or exporter of renewable fuel (as described at §80.1130) must keep all of the following records:
  - (1) Product transfer documents consistent with §80.1153 and associated with the obligated party's activity, if any, as transferor or transferee of renewable fuel.
  - (2) Copies of all reports submitted to EPA under §80.1152(a).
  - (3) Records related to each RIN transaction, which includes all the following:
    - (i) A list of the RINs owned, purchased, sold, retired or expired.
    - (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 the use of RINs (by facility, if applicable) for compliance, which includes all the following:
    - (i) Methods and variables used to calculate the Renewable Volume Obligation pursuant to §80.1107 or §80.1130.
    - (ii) List of RINs used to demonstrate compliance.
    - (iii) Additional information related to details of RIN use for compliance.
- (b) Beginning September 1, 2007, any producer or importer of a renewable fuel as defined at §80.1101(d) must keep all of the following records:
  - (1) Product transfer documents consistent with §80.1153 and associated with the renewable fuel producer's or importer's activity, if any, as transferor or transferee of renewable fuel.
  - (2) Copies of all reports submitted to EPA under §80.1152(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 number as assigned under §80.1126.
- (iv) Identification of batches meeting the definition of cellulosic biomass ethanol.
- (v) Date of production or import.
- (vi) Results of any laboratory analysis of batch chemical composition or physical properties.
- (vii) Additional information related to details of RIN generation.
- (4) Records related to each RIN transaction, including all of the following:
  - (i) A list of the RINs owned, purchased, sold, retired or expired.
  - (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 or importation of any volume of renewable fuel that the renewable fuel producer or importer designates as motor vehicle fuel and the use of the fuel as motor vehicle fuel.
- (c) Beginning September 1, 2007, any producer of a renewable fuel defined at §80.1101(d) must keep verifiable records of the following:
  - (1) The amount and type of fossil fuel and waste material-derived fuel used in producing on-site thermal energy dedicated to the production of ethanol at plants producing cellulosic biomass ethanol through the displacement of 90 percent or more of the fossil fuel normally used in the production of ethanol, as described at §80.1101(a)(2).
  - (2) The amount and type of feedstocks used in producing cellulosic biomass ethanol as defined in §80.1101(a)(1).
  - (3) The equivalent amount of fossil fuel (based on reasonable estimates) associated with the use of off-site generated waste heat that is used in the production of ethanol at plants producing cellulosic biomass ethanol through the displacement of 90 percent or more of the fossil fuel normally used in the production of ethanol, as described at §80.1101(a)(2).
  - (4) The plot plan and process flow diagram for plants producing cellulosic biomass and waste derived ethanol as defined in §80.1101(a) and (b), respectively.
  - (5) The independent third party verification required under §80.1155 for producers of cellulosic biomass ethanol and waste derived ethanol.
- (d) Beginning September 1, 2007, 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 §80.1153 and associated with the party's activity, if any, as transferor or transferee of renewable fuel.
  - (2) Copies of all reports submitted to EPA under §80.1152(c).
  - (3) Records related to each RIN transaction, including all of the following:
    - (i) A list of the RINs owned, purchased, sold, retired or expired.

- (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.
- (e) The records required under this section and under §80.1153 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 transfer.
- (f) On request by EPA, the records required under this section and under §80.1153 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.

**§ 80.1152 What are the reporting requirements under the RFS program?**

- (a) Any obligated party described in §80.1106 or exporter of renewable fuel described in §80.1130 must submit to EPA reports according to the schedule, and containing the information, that is set forth in this paragraph (a).
  - (1) An annual compliance demonstration report for the previous compliance period shall be submitted every February 28, except as noted in paragraph (a)(1)(x) of this section, and shall include all of the following information:
    - (i) The obligated party's name.
    - (ii) The EPA company registration number.
    - (iii) Whether the party 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 of all of the products listed in §80.1107(c) for the reporting year.
    - (vi) The renewable volume obligation (RVO), as defined in §80.1127(a) for obligated parties and §80.1130(b) for exporters of renewable fuel, for the reporting year.
    - (vii) Any deficit RVO carried over from the previous year.
    - (viii) The total current-year gallon-RINs used for compliance.
    - (ix) The total prior-years gallon-RINs used for compliance.
    - (x) A list of all RINs used for compliance in the reporting year. For compliance demonstrations covering calendar year 2007 only, this list shall be reported by May 31, 2008. In all subsequent years, this list shall be submitted by February 28.
    - (xi) Any deficit RVO carried into the subsequent year.
    - (xii) Any additional information that the Administrator may require.
  - (2) The quarterly RIN transaction reports required under paragraph (c)(1) of this section.
  - (3) The quarterly gallon-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.
- (b) Any producer or importer of a renewable fuel must, beginning November 30, 2007, submit to EPA reports according to the schedule, and containing the information, that is set forth in this paragraph (b).
  - (1) A quarterly RIN-generation report for each facility owned by the renewable fuel producer, and each importer, shall be submitted according to the schedule specified in paragraph (d) of this section, and shall include for the reporting period all of the following information for each batch of renewable fuel produced or imported, where “batch” means a discreet quantity of renewable fuel produced or imported and assigned a unique RIN:
    - (i) The renewable fuel producer’s or importer’s name.
    - (ii) The EPA company registration number.
    - (iii) The EPA facility registration number.
    - (iv) The applicable quarterly reporting period.
    - (v) The RINs generated for each batch according to §80.1126.
    - (vi) The production date of each batch.
    - (vii) The type of renewable fuel of each batch, as defined in §80.1101(d).
    - (viii) Information related to the volume of denaturant and applicable equivalence value of each batch.
    - (ix) The volume of each batch produced or imported.
    - (x) Any additional information the Administrator may require.
  - (2) The RIN transaction reports required under paragraph (c)(1) of this section.
  - (3) The quarterly gallon-RIN activity report 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.
- (c) Any party, including any party specified in paragraphs (a) and (b) of this section, that owns RINs during a reporting period must, beginning November 30, 2007, submit reports to EPA according to the schedule, and containing the information, that is set forth in this paragraph (c).
  - (1) A RIN transaction report for each RIN transaction shall be submitted by the end of the quarter in which the transaction occurred, according to the schedule specified in paragraph (d) of this section. Each report shall include all of the following:
    - (i) The submitting party’s name.
    - (ii) The party’s EPA company registration number.
    - (iii) The party’s facility registration number, if the report required under paragraph (c)(2) of this section is submitted on a facility-by-facility basis.
    - (iv) The applicable quarterly reporting period.
    - (v) Transaction type (RIN purchase, RIN sale, expired RIN, retired RIN).
    - (vi) Transaction date.

- (vii) For a RIN purchase or sale, the trading partner's name.-
- (viii) 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.
- (ix) RIN subject to the transaction.
- (x) For a retired RIN, the reason for retiring the RIN (e.g., reportable spill under §80.1132, import volume correction under §80.1166(k), renewable fuel used in boiler or heater under §80.1129(e), enforcement obligation).
- (xi) Any additional information that the Administrator may require.
- (2) A quarterly gallon-RIN activity report shall be submitted to EPA according to the schedule specified in paragraph (d) of this section. Each report shall summarize gallon-RIN activities for the reporting period, separately for RINs separated from a renewable fuel volume and RINs assigned to a renewable fuel volume. A RIN owner with more than one facility may submit the report required under this paragraph for each of its facilities individually, or for all of its facilities in the aggregate. The quarterly gallon-RIN activity report shall include all of the following information:
  - (i) The submitting party's name.
  - (ii) The party's EPA company registration number.
  - (iii) Whether the party is submitting the report required under this paragraph on a corporate (aggregate) or facility-by-facility basis.
  - (iv) The party's EPA facility registration number, if the report required under this paragraph is submitted on a facility-by-facility basis.
  - (v) Number of current-year gallon-RINs owned at the start of the quarter.
  - (vi) Number of prior-years gallon-RINs owned at the start of the quarter.
  - (vii) The total current-year gallon-RINs purchased.
  - (viii) The total prior-years gallon-RINs purchased.
  - (ix) The total current-year gallon-RINs sold.
  - (x) The total prior-years gallon-RINs sold.
  - (xi) The total current-year gallon-RINs retired.
  - (xii) The total prior-years gallon-RINs retired.
  - (xiii) The total current-year gallon-RINs expired (fourth quarter only).
  - (xiv) The total prior-years gallon-RINs expired (fourth quarter only).
  - (xv) Number of current-year gallon-RINs owned at the end of the quarter.
  - (xvi) Number of prior-years gallon-RINs owned at the end of the quarter.
  - (xvii) For parties reporting gallon-RIN activity under this paragraph for RINs assigned to a volume of renewable fuel, the volume of renewable fuel (in gallons) owned at the end of the quarter.
  - (xviii) 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) Quarterly reports shall be submitted to EPA by: May 31<sup>st</sup> for the first calendar quarter of January through March; August 31<sup>st</sup> for the second calendar quarter of April through June; November 30<sup>th</sup> for the third calendar quarter of July through

September; and February 28<sup>th</sup> for the fourth calendar quarter of October through December. For 2007, quarterly reports shall commence on November 30, 2007.

- (e) Reports required under this section shall be submitted on forms and following procedures as prescribed by EPA.

**§ 80.1153      What are the product transfer document (PTD) requirements for the RFS program?**

- (a) Any time that a person transfers ownership of renewable fuels subject to this subpart, the transferor must provide to the transferee documents identifying the renewable fuel and any assigned RINs 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 number.
  - (3) The volume of renewable fuel that is being transferred.
  - (4) The date of the transfer.
  - (5) 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 RINs transferred".
- (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)(4) of this section if such codes are clearly understood by each transferee. The RIN number required under paragraph (a)(5) of this section must always appear in its entirety.

**§ 80.1154      What are the provisions for renewable fuel producers and importers who produce or import less than 10,000 gallons of renewable fuel per year?**

- (a) Renewable fuel producers 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 required to generate RINs or to assign RINs to batches of renewable fuel. Such producers 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 K, except as stated in paragraph (b) of this section:

- (1) The registration requirements of §80.1150.
  - (2) The recordkeeping requirements of §80.1151.
  - (3) The reporting requirements of §80.1152.
- (b) Renewable fuel producers 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 §§ 80.1150 through 80.1152.

**§ 80.1155      What are the additional requirements for a producer of cellulosic biomass ethanol or waste derived ethanol?**

- (a) A producer of cellulosic biomass ethanol or waste derived ethanol (hereinafter referred to as “ethanol producer” under this section) is required to arrange for an independent third party to review the records required in §80.1151(c) and provide the ethanol producer with a written verification that the records support a claim that:
- (1) The ethanol producer’s facility is a facility that has the capability of producing cellulosic biomass ethanol as defined in §80.1101(a) or waste derived ethanol as defined in §80.1101(b); and
  - (2) The ethanol producer produces cellulosic biomass ethanol as defined in §80.1101(a) or waste derived ethanol as defined in §80.1101(b).
- (b) The verifications required under paragraph (a) of this section must be conducted by a Professional Chemical Engineer who is based in the United States and is licensed by the appropriate state agency, unless the ethanol producer is a foreign producer subject to §80.1166.
- (c) To be considered an independent third party under paragraph (a) of this section:
- (1) The third party shall not be operated by the ethanol producer or any subsidiary or employee of the ethanol producer.
  - (2) The third party shall be free from any interest in the ethanol producer’s business.
  - (3) The ethanol producer shall be free from any interest in the third party’s business.
  - (4) 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.
- (d) The ethanol producer must obtain the written verification required under paragraph (a)(1) of this section by February 28 of the year following the first year

in which the ethanol producer claims to be producing cellulosic biomass ethanol or waste derived ethanol.

- (e) The verification in paragraph (a)(2) of this section is required for each calendar year that the ethanol producer claims to be producing cellulosic biomass ethanol or waste derived ethanol. The ethanol producer must obtain the written verification required under paragraph (a)(2) of this section by February 28 for the previous calendar year.
- (f) The ethanol producer must retain records of the verifications required under paragraph (a) of this section, as required in §80.1151(c)(5).
- (g) 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.

**§§ 80.1156-80.1159 [Added and Reserved]**

14. Sections 80.1156 through 80.1159 are added and reserved.

15. Sections 80.1160 and 80.1161 are added to read as follows:

**§ 80.1160 What acts are prohibited under the RFS program?**

- (a) Renewable fuels producer or importer violation. Except as provided in §80.1154, no person shall produce or import a renewable fuel without assigning the proper RIN value or identifying it by a RIN number as required under §80.1126.
- (b) RIN generation and transfer violations. No person shall do any of the following:
  - (1) Improperly generate a RIN (i.e., generate a RIN for which the applicable renewable fuel volume was not produced).
  - (2) Create or transfer to any person a RIN that is invalid under §80.1131.
  - (3) Transfer to any person a RIN that is not properly identified as required under §80.1125.
  - (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.
- (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 party's renewable fuel volume obligation under §80.1127.
  - (2) Fail to acquire sufficient RINs to meet the party's renewable fuel volume obligation under §80.1130.
  - (3) Use a validly generated RIN to meet the party's renewable fuel volume obligation under §80.1127, or separate and transfer a validly generated RIN, where the party

ultimately uses the renewable fuel volume associated with the RIN in a heater or boiler.

- (d) RIN retention violation. No person shall retain RINs in violation of the requirements in §80.1128(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.

**§ 80.1161 Who is liable for violations under the RFS program?**

- (a) Persons liable for violations of prohibited acts.
  - (1) Any person who violates a prohibition under §80.1160(a) through (d) is liable for the violation of that prohibition.
  - (2) Any person who causes another person to violate a prohibition under §80.1160(a) through (d) is liable for a violation of §80.1160(e).
- (b) Persons liable 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.

**§ 80.1162 [Added and Reserved]**

16. Section 80.1162 is added and reserved.

17. Sections 80.1163 through 80.1167 are added to read as follows:

**§ 80.1163 What penalties apply under the RFS program?**

- (a) Any person who is liable for a violation under §80.1161 is subject a to civil penalty of up to \$32,500, 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 §80.1161(a) for a violation of §80.1160(c) for failure to meet a renewable volume obligation, or §80.1160(e) for causing another party to fail to meet a renewable volume obligation, during any averaging period, is subject to a separate day of violation for each day in the averaging period.
- (c) Any person liable under §80.1161(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.

**§ 80.1164 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. In addition to any other applicable attest engagement procedures, the following annual attest engagement procedures are required under this subpart.

- (a) The following attest procedures shall be completed for any obligated party as stated in §80.1106(a) or exporter of renewable fuel that is subject to the renewable fuel standard under §80.1105:
  - (1) Annual compliance demonstration report.
    - (i) Obtain and read a copy of the annual compliance demonstration report required under §80.1152(a)(1) which contains information regarding all the following:
      - (A) The obligated party's volume of finished gasoline, reformulated gasoline blendstock for oxygenate blending (RBOB), and conventional gasoline blendstock that becomes finished conventional gasoline upon the addition of oxygenate (CBOB) produced or imported during the reporting year.
      - (B) Renewable volume obligation (RVO).
      - (C) RINs used for compliance.
    - (ii) Obtain documentation of any volumes of renewable fuel used in gasoline during the reporting year; compute and report as a finding the volumes of renewable fuel represented in these documents.
    - (iii) Compare the volumes of gasoline reported to EPA in the report required under §80.1152(a)(1) with the volumes, excluding any renewable fuel volumes, contained in the inventory reconciliation analysis under §80.133.
    - (iii) Verify that the production volume information in the obligated party's annual summary report required under §80.1152(a)(1) agrees with the volume information, excluding any renewable fuel volumes, contained in the inventory reconciliation analysis under §80.133.
    - (iv) Compute and report as a finding the obligated party's RVO, and any deficit RVO carried over from the previous year or carried into the subsequent year, and verify that the values agree with the values reported to EPA.
    - (v) Obtain documentation for all RINs used for compliance during the year being reviewed; compute and report as a finding the RIN numbers and year of

generation of RINs represented in these documents; and state whether this information agrees with the report to EPA.

(2) RIN transaction reports.

- (i) Obtain and read copies of a representative sample of all RIN transaction reports required under §80.1152(a)(2) for the compliance year.
- (ii) Obtain contracts or other documents for the representative sample of RIN transactions; compute and report as a finding the transaction types, transaction dates, and RINs traded; and state whether the information agrees with the party's reports to EPA.

(3) Gallon-RIN activity reports.

- (i) Obtain and read copies of all quarterly gallon-RIN activity reports required under §80.1152(a)(3) for the compliance year.
- (ii) Obtain documentation of total RINs (including current-year RINs and previous-year RINs) owned at the start of the quarter, purchased, used for compliance, sold, expired and retired during the quarter being reviewed, and owned at the end of the quarter; compute and report as a finding the total RINs owned at the start and end of the quarter, purchased, used for compliance, sold, expired and retired as represented in these documents; and state whether this information agrees with the party's reports to EPA.

(b) The following attest procedures shall be completed for any renewable fuel producer or importer:

(1) RIN-generation reports.

- (i) Obtain and read copies of the quarterly RIN generation reports required under §80.1152(b)(1) for the compliance year.
- (ii) Obtain production data for each renewable fuel batch produced during the year being reviewed; compute and report as a finding the RIN numbers, production dates, types, volumes of denaturant and applicable equivalence values, and production volumes for each batch; and state whether this information agrees with the party's reports to EPA.
- (iii) Verify that the proper number of RINs were generated and assigned for each batch of renewable fuel produced, as required under §80.1126.
- (iv) Obtain product transfer documents for each renewable fuel batch produced during the year being reviewed; report as a finding any product transfer document that did not include the RIN for the batch.

(2) RIN transaction reports.

- (i) Obtain and read copies of a representative sample of the RIN transaction reports required under §80.1152(b)(2) for the compliance year.
- (ii) Obtain contracts or other documents for the representative sample of RIN transactions; compute and report as a finding the transaction types, transaction dates, and the RINs traded; and state whether this information agrees with the party's reports to EPA.

(3) Gallon-RIN activity reports.

- (i) Obtain and read copies of the quarterly gallon-RIN activity reports required under §80.1152(b)(3) for the compliance year.

- (ii) Obtain documentation of total RINs (including current-year RINs and previous-year RINs) owned at the start of the quarter, purchased, sold, expired and retired during the quarter being reviewed, and owned at the end of the quarter; compute and report as a finding the total RINs owned at the start and end of the quarter, purchased, used for compliance, sold, expired and retired as represented in these documents; and state whether this information agrees with the party's reports to EPA.
- (c) 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 of the RIN transaction reports required under §80.1152(c)(1) for the compliance year.
    - (ii) Obtain contracts or other documents for the representative sample of RIN transactions; compute and report as a finding the transaction types, transaction dates, and the RINs traded; and state whether this information agrees with the party's reports to EPA.
  - (2) Gallon-RIN activity reports.
    - (i) Obtain and read copies of the gallon-RIN activity reports required under §80.1152(c)(2) for the compliance year.
    - (ii) Obtain documentation of total RINs (including current-year RINs and previous-year RINs) owned at the start of the quarter, purchased, sold, expired and retired during the quarter being reviewed, and owned at the end of the quarter; compute and report as a finding the total RINs owned at the start and end of the quarter, purchased, used for compliance, sold, expired and retired as represented in these documents; and state whether this information agrees with the party's reports to EPA.
- (d) The following submission dates apply to the attest engagements required under this section.
  - (1) 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.
  - (2) For the 2007 compliance year only, the attest engagement required under paragraph (a) of this section may be submitted to EPA with the attest engagement for the 2008 compliance year.

**§ 80.1165      What are the additional requirements under this subpart for a foreign small refiner?**

- (a) Definitions. The following 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) RFS-FRGAS is gasoline produced at a foreign refinery that has received a small refinery exemption under §80.1141 or a small refiner exemption under §80.1142 that is imported into the United States.
  - (4) Non-RFS-FRGAS is one of the following:
    - (i) Gasoline produced at a foreign refinery that has received a small refinery exemption under §80.1141 or a small refiner exemption under §80.1142 that is not imported into the United States.
    - (ii) Gasoline produced at a foreign refinery that has not received a small refinery exemption under §80.1141 or small refiner exemption under §80.1142.
  - (5) A foreign small refiner is a foreign refiner that has received a small refinery exemption under §80.1141 for one or more of its refineries or a small refiner exemption under §80.1142.
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- (b) General requirements for RFS-FRGAS foreign small refineries and small refiners.
    - (1) A foreign small refiner must designate, at the time of production, each batch of gasoline produced at the foreign refinery that is exported for use in the United States as RFS-FRGAS; and
    - (2) Meet all requirements that apply to refiners who have received a small refinery or small refiner exemption under this subpart.
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- (c) Designation, foreign refiner certification, and product transfer documents.
    - (1) Any foreign small refiner must designate each batch of RFS-FRGAS as such at the time the gasoline is produced.
    - (2) On each occasion when RFS-FRGAS is loaded onto a vessel or other transportation mode for transport to the United States, the foreign refiner shall prepare a certification for each batch of RFS-FRGAS 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-FRGAS.
        - (B) [Reserved]
      - (ii) The identification of the gasoline as RFS-FRGAS.
      - (iii) The volume of RFS-FRGAS being transported, in gallons.
    - (3) On each occasion when any person transfers custody or title to any RFS-FRGAS 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 gasoline as RFS-FRGAS.
      - (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-FRGAS 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 volume of RFS-FRGAS 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-FRGAS 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-FRGAS from the foreign refinery to the load port, and from this review determine:
    - (A) The refinery at which the RFS-FRGAS was produced; and
    - (B) That the RFS-FRGAS remained segregated from Non-RFS-FRGAS and other RFS-FRGAS produced at a different refinery.
- (2) The independent third party shall submit a report to:
  - (i) The foreign small refiner containing the information required under paragraph (d)(1) of this section, to accompany the product transfer documents for the vessel; and
  - (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 gasoline was produced, assurance that the gasoline remained segregated as specified in paragraph (j)(1) of this section, and a description of the gasoline's movement and storage between production at the source refinery 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(f)(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 small foreign small refiner and any United States importer of RFS-FRGAS 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 gasoline, except as specified in paragraph (e)(1)(ii) of this section.
  - (ii) Where a vessel transporting RFS-FRGAS off loads this gasoline 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 gasoline or



- blendstock between the first United States port of entry and the 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 shall not treat the gasoline as RFS-FRGAS and the importer shall include the volume of gasoline in the importer's RFS compliance calculations.
- (f) Foreign refiner commitments. Any small 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) Gasoline is produced;
      - (B) Documents related to refinery operations are kept; and
      - (C) RFS-FRGAS is stored or transported between the foreign refinery and the United States, including storage tanks, vessels and pipelines.
    - (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 all the following:
      - (A) The volume of RFS-FRGAS.
      - (B) The proper classification of gasoline as being RFS-FRGAS or as not being RFS-FRGAS.
      - (C) Transfers of title or custody to RFS-FRGAS.
      - (D) Testing of RFS-FRGAS.
      - (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 by EPA may include taking 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 gasoline 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 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-FRGAS produced at a foreign refinery is stored or transported by another company between the refinery and the vessel that transports the RFS-FRGAS 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 gasoline 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 small foreign refinery or small foreign 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 gasoline 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 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 gasoline 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 language, or shall include an English language translation.

- (j) Prohibitions.

- (1) No person may combine RFS-FRGAS with any Non-RFS-FRGAS, and no person may combine RFS-FRGAS with any RFS-FRGAS 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-FRGAS shall meet the following requirements:
    - (1) Each batch of imported RFS-FRGAS shall be classified by the importer as being RFS-FRGAS.
    - (2) Gasoline shall be classified as RFS-FRGAS 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 gasoline batch classified as RFS-FRGAS, any United States importer shall have an independent third party do all the following:
      - (i) Determine the volume of gasoline in the vessel.
      - (ii) Use the foreign refiner's RFS-FRGAS certification to determine the name and EPA-assigned registration number of the foreign refinery that produced the RFS-FRGAS.
      - (iii) Determine the name and country of registration of the vessel used to transport the RFS-FRGAS 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-FRGAS 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 gasoline that is not classified as RFS-FRGAS under paragraph (k)(2) of this section.
  - (l) Truck imports of RFS-FRGAS produced at a foreign refinery.
    - (1) Any refiner whose RFS-FRGAS 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-FRGAS remains segregated from Non-RFS-FRGAS until it is imported into the United States. The petition will be evaluated based on whether it adequately addresses the following:

- (i) Provisions for monitoring pipeline shipments, if applicable, from the refinery, that ensure segregation of RFS-FRGAS from that refinery from all other gasoline.
- (ii) Contracts with any terminals and/or pipelines that receive and/or transport RFS-FRGAS that prohibit the commingling of RFS-FRGAS with Non-RFS-FRGAS or RFS-FRGAS 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-FRGAS 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-FRGAS. The following additional procedures shall be carried out by any importer of RFS-FRGAS as part of the attest engagement required for importers under this subpart K.
  - (1) Obtain listings of all tenders of RFS-FRGAS. Agree the total volume of tenders from the listings to the gasoline 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 gasoline is loaded onto a marine vessel, report as a finding the name and country of registration of each vessel, and the volumes of RFS-FRGAS 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-FRGAS, in accordance with the guidelines in §80.127, and for each vessel selected perform 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 gasoline 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-FRGAS from the refinery to the load port, under paragraph (d) of this section. Obtain tank activity records for any storage tank where the RFS-FRGAS is stored, and pipeline activity records for any pipeline used to transport the RFS-FRGAS prior to being loaded onto the vessel. Use these records to determine whether the RFS-FRGAS was produced at the refinery that is the subject of the attest engagement, and whether the RFS-FRGAS was mixed with any Non-RFS-FRGAS or any RFS-FRGAS produced at a different refinery.
  - (4) Select a sample from the list of vessels identified in paragraph (m)(2) of this section used to transport RFS-FRGAS, 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 separate listings of all tenders of RFS-FRGAS, and perform the following:
  - (i) Agree the volume of tenders from the listings to the gasoline inventory reconciliation analysis in §80.133(b).
  - (ii) Obtain a separate listing of the tenders under this paragraph (m)(5) where the gasoline 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 gasoline was off loaded for the selected vessels. Determine and report as a finding the country where the gasoline was off loaded for each vessel selected.
- (6) In order to complete the requirements of this paragraph (m), an auditor shall:
  - (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, 80.1164, 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, 80.1164, and this paragraph (m).
- (n) Withdrawal or suspension of foreign refiner 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) Be 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 [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 K, 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 K, including 40 CFR 80.1165 apply to [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.”

**§ 80.1166      What are the additional requirements under this subpart for a foreign producer of cellulosic biomass ethanol or waste derived ethanol?**

- (a) Foreign producer of cellulosic biomass ethanol or waste derived ethanol. For purposes of this subpart, a foreign producer of cellulosic biomass ethanol or waste derived ethanol 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 assign RINs to cellulosic biomass ethanol or waste derived ethanol that the foreign producer produces and exports to the United States, hereinafter referred to as a “foreign producer” under this section.
- (b) General requirements.
  - (1) An approved foreign producer under this section must meet all requirements that apply to cellulosic biomass ethanol or waste derived ethanol producers under this subpart, except to the extent otherwise specified in paragraph (b)(2) of this section.
  - (2)(i) The independent third party that conducts the facility verification required under §80.1155(a) must inspect the foreign producer’s facility and submit a report to EPA which describes in detail the physical plant and its operation.
  - (ii) The independent third party that conducts the facility verification required under §80.1155(a) must be a licensed Professional Engineer in the chemical engineering field, but need not be based in the United States. The independent third party must include documentation of its qualifications as a licensed Professional Engineer in the report required in paragraph (b)(2)(i) of this section.
  - (iii) The requirements of paragraphs (b)(2)(i) and (ii) of this section must be met before a foreign entity may be approved as a foreign producer under this subpart.

- (c) Designation, foreign producer certification, and product transfer documents.
  - (1) Any approved foreign producer under this section must designate each batch of cellulosic biomass ethanol or waste derived ethanol as “RFS-FRETH” at the time the ethanol is produced.
  - (2) On each occasion when RFS-FRETH is loaded onto a vessel or other transportation mode for transport to the United States, the foreign producer shall prepare a certification for each batch of RFS-FRETH; 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-FRETH.
    - (ii) The identification of the ethanol as RFS-FRETH.
    - (iii) The volume of RFS-FRETH being transported, in gallons.
  - (3) On each occasion when any person transfers custody or title to any RFS-FRETH 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 ethanol as RFS-FRETH.
    - (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-FRETH is loaded onto a vessel for transport to the United States the 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-FRETH 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-FRETH 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-FRETH from the foreign producer to the load port, and from this review determine the following:
      - (A) The facility at which the RFS-FRETH was produced.
      - (B) That the RFS-FRETH remained segregated from Non-RFS-FRETH and other RFS-FRETH produced by a different foreign producer.
  - (2) The independent third party shall submit a report to the following:
    - (i) The 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 ethanol was produced, assurance that the ethanol remained segregated as specified in



- paragraph (j)(1) of this section, and a description of the ethanol'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 foreign producer and any United States importer of RFS-FRETH 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 ethanol, except as specified in paragraph (e)(1)(ii) of this section.
    - (ii) Where a vessel transporting RFS-FRETH off loads the ethanol 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 ethanol between the first United States port of entry and the subsequent port of entry.
    - (2)(i) If the temperature-corrected volumes determined at the port of entry and at the load port differ by more than one percent, the number of RINs associated with the ethanol 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 §80.1126 for the volume of ethanol as measured at the port of entry, and retire that amount of RINs in accordance with paragraph (k)(4) of this section.
  - (f) Foreign producer commitments. Any 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) Ethanol is produced;
        - (B) Documents related to ethanol producer operations are kept; and
        - (C) RFS-FRETH is stored or transported between the foreign producer and the United States, including storage tanks, vessels and pipelines.
      - (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) The volume of RFS-FRETH.
  - (B) The proper classification of gasoline as being RFS-FRETH;
  - (C) Transfers of title or custody to RFS-FRETH.
  - (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 ethanol 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, 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 (f) shall be signed by the owner or president of the foreign producer company.
- (8) In any case where RFS-FRETH produced at a foreign producer facility is stored or transported by another company between the refinery and the vessel that

transports the RFS-FRETH 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 ethanol 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 foreign producer shall meet the requirements of this paragraph (h) as a condition to approval as a foreign producer under this subpart.
- (1) The 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 largest volume of ethanol produced at the foreign producer's facility 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 application is submitted, the calendar year the application is submitted, and each succeeding calendar year.
- (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 ethanol 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.
  - (5) If the bond amount for a foreign producer increases, the foreign producer 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 producer shall be in English language, or shall include an English language translation.
- (j) Prohibitions.
- (1) No person may combine RFS-FRETH with any Non-RFS-FRETH, and no person may combine RFS-FRETH with any RFS-FRETH produced at a different refinery, 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.
- (k) Requirements for United States importers of RFS-FRETH. Any United States importer shall meet the following requirements:
- (1) Each batch of imported RFS-FRETH shall be classified by the importer as being RFS-FRETH.
  - (2) Ethanol shall be classified as RFS-FRETH 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.
  - (3) For each ethanol batch classified as RFS-FRETH, any United States importer shall have an independent third party do all the following:
    - (i) Determine the volume of gasoline in the vessel.
    - (ii) Use the foreign producer’s RFS-FRETH certification to determine the name and EPA-assigned registration number of the foreign producer that produced the RFS-FRETH.
    - (iii) Determine the name and country of registration of the vessel used to transport the RFS-FRETH to the United States.
    - (iv) Determine the date and time the vessel arrives at the United States port of entry.
  - (4) 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 §80.1152.

- (5) Any importer shall submit reports within 30 days following the date any vessel transporting RFS-FRETH arrives at the United States port of entry to the following:
  - (i) The Administrator containing the information determined under paragraph (k)(3) of this section.
  - (ii) The foreign producer 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, and any RINs retired under paragraph (e)(2) of this section.
- (6) Any United States importer shall meet all other requirements of this subpart for any imported ethanol or other renewable fuel that is not classified as RFS-FRETH under paragraph (k)(2) of this section.
- (l) Truck imports of RFS-FRETH produced by a foreign producer.
  - (1) Any foreign producer whose RFS-FRETH 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)(3) of this section.
  - (2) These alternative procedures must ensure RFS-FRETH remains segregated from Non-RFS-FRETH until it is imported into the United States. The petition will be evaluated based on whether it adequately addresses the following:
    - (i) Contracts with any facilities that receive and/or transport RFS-FRETH that prohibit the commingling of RFS-FRETH with Non-RFS-FRETH or RFS-FRETH 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-FRETH 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-FRETH. The following additional procedures shall be carried out by any producer of RFS-FRETH as part of the attest engagement required for renewable fuel producers under this subpart K.
  - (1) Obtain listings of all tenders of RFS-FRETH. 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 ethanol is loaded onto a marine vessel, report as a finding the name and country of registration of each vessel, and the volumes of RFS-FRETH 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-FRETH, in accordance with the guidelines in § 80.127, and for each vessel selected perform 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 ethanol 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 §80.1152 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-FRETH 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-FRETH is stored, and activity records for any mode of transportation used to transport the RFS-FRGAS prior to being loaded onto the vessel. Use these records to determine whether the RFS-FRETH was produced at the foreign producer's facility that is the subject of the attest engagement, and whether the RFS-FRETH was mixed with any Non-RFS-FRETH or any RFS-FRETH 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-FRETH, 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 gasoline 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 ethanol was off loaded for the selected vessels. Determine and report as a finding the country where the ethanol was off loaded 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, 80.1164, 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, 80.1164, 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 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 (g) 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 K, 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 K, including 40 CFR 80.1165 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.

**§ 80.1167      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 persons 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; and
  - (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 (d) 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:  
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) Bonds posted under this paragraph (e) 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 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 language, 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 §80.1131.
  - (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 §80.1131.
  - (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 K.
  - (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 80.1164.
  - (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 80.1164.

- (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 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 K, 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 K, including 40 CFR 80.1167 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.