

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA-HQ-OAR-2005-0161; FRL-9147-6]

RIN 2060-AQ31

Regulation of Fuels and Fuel Additives: Modifications to Renewable Fuel Standard Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to amend certain of the Renewable Fuel Standard program regulations published on March 26, 2010, that are scheduled to take effect on July 1, 2010 (the "RFS2 regulations"). Following publication of the RFS2 regulations, promulgated in response to the requirements of the Energy Independence and Security Act of 2007, EPA discovered some technical errors and areas within the final RFS2 regulations that could benefit from clarification or modification. This direct final rule amends the RFS2 regulations to make the appropriate corrections, clarifications, and modifications.

DATES: This direct final rule is effective on July 1, 2010 without further notice, except to the extent that EPA receives adverse comment by June 9, 2010 or receives a request for a public hearing by May 25, 2010. If EPA receives adverse comment or a request for a hearing, we will publish a timely withdrawal in the **Federal Register** informing the public that the amendment, paragraph, or section of the rule on which adverse comment or a hearing request were received will not take effect. If a public hearing is requested, we will publish a notice in the **Federal Register** announcing the date and location of the hearing at least 14 days prior to the hearing.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2005-0161, by one of the following methods:

- <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- *E-mail:* a-and-r-docket@epa.gov, Attention Air and Radiation Docket ID No. EPA-HQ-OAR-2005-0161.
- *Mail:* Air and Radiation Docket, Docket No. EPA-HQ-OAR-2005-0161, Environmental Protection Agency, Mail Code: 6406J, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of 2 copies.
- *Hand Delivery:* EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301

Constitution Ave., NW., Washington, DC, 20460, Attention Air and Radiation Docket, ID No. EPA-HQ-OAR-2005-0161. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2005-0161. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington,

DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Why is EPA using a direct final rule?

EPA is publishing this rule without a prior proposed rule because we view this as a non-controversial action and anticipate no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, we are publishing a separate document that will serve as the proposal to adopt the provisions in this direct final rule on which adverse comments or a hearing request are filed. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If EPA receives adverse comment or a request for hearing on any portion of this rule, we will publish a timely withdrawal in the **Federal Register** informing the public that the portion of the rule on which adverse comment or a hearing request was received will not take effect. Any distinct amendment, paragraph, or section of today's rule for which we do not receive adverse comment or a hearing request will become effective on the date set out above, notwithstanding any adverse comment or hearing request on any other distinct amendment, paragraph, or section of this rule. We will address all public comments in any subsequent final rule based on the proposed rule.

II. Does this action apply to me?

Entities potentially affected by this action include those involved with the production, distribution and sale of transportation fuels, including gasoline and diesel fuel, or renewable fuels such as ethanol and biodiesel. Regulated categories and entities affected by this action include:

Category	NAICS codes ^a	SIC codes ^b	Examples of potentially regulated parties
Industry	324110	2911	Petroleum refiners, importers.
Industry	325193	2869	Ethyl alcohol manufacturers.
Industry	325199	2869	Other basic organic chemical manufacturers.
Industry	424690	5169	Chemical and allied products merchant wholesalers.
Industry	424710	5171	Petroleum bulk stations and terminals.
Industry	424720	5172	Petroleum and petroleum products merchant wholesalers.
Industry	454319	5989	Other fuel dealers.

^a North American Industry Classification System (NAICS).

^b Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could be potentially regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria of Part 80, subparts D, E and F of title 40 of the Code of Federal Regulations. If you have any question regarding applicability of this action to a particular entity, consult the person in the preceding **FOR FURTHER INFORMATION CONTACT** section above.

III. What should I consider as I prepare my comments for EPA?

A. Submitting CBI. Do not submit this information to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI

must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

B. Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

C. Docket Copying Costs. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

IV. Renewable Fuel Standard (RFS2) Program Amendments

EPA is taking direct final action to amend certain of the Renewable Fuel Standard regulations published on March 26, 2010, at 75 FR 14670 (the “RFS2 regulations”) that are scheduled to take effect on July 1, 2010. Following publication of the RFS2 regulations, EPA discovered some technical errors and areas that could benefit from clarification or modification. As a result, we are making the following amendments to the RFS2 regulations at 40 CFR part 80, subpart M.

A. Summary of Amendments

Below is a table listing the provisions that we are amending. Many of the amendments address grammatical or typographical errors or provide clarification of language contained in the final RFS2 regulations. A few amendments are being made in order to correct regulatory language that inadvertently misrepresented our intent as reflected in the preamble to the final RFS2 regulations. We have provided additional explanation for several of these amendments in the sections IV.B through IV.M below.

RFS2 PROGRAM AMENDMENTS

Section	Description
80.1401	• Corrected typographical errors in the definitions of “advanced biofuel” and “forestland.” • Deleted definition of “fractionation of feedstocks” and added definitions of “corn oil fractionation,” “membrane separation,” and “raw starch hydrolysis” to be consistent with terms listed as advanced technologies in Table 2 to § 80.1426. See Section IV.B. • Deleted definition of “yard waste,” since the term “separated yard waste” is defined in the context of § 80.1426(f)(5)(i)(A). • Added definition of “actual peak capacity” (moved from § 80.1403(a)(3)) and revised definition to clarify that actual peak capacity for facilities that commenced construction prior to December 19, 2007, but that did not operate prior to 2008, should be based on any calendar year after startup during the first three years of operation. This definition was also revised to clarify that for facilities that commenced construction after December 19, 2007 but before January 1, 2010, that are fired with natural gas, biomass, or a combination thereof, the actual peak capacity is based on any calendar year after startup during the first three years of operation. • Added definition of “baseline volume” (moved from § 80.1403(a)(3)). See Section IV.C.

RFS2 PROGRAM AMENDMENTS—Continued

Section	Description
	- Added definition of “foreign ethanol producer” to describe foreign parties that produce ethanol for use in transportation fuel, heating oil, or jet fuel in the United States. <i>See</i> Section IV.D. - Added definition of “permitted capacity” (moved from 80.1403(a)(3)) and revised definition to clarify the dates before which permits used to establish a facility’s permitted capacity must have been issued or revised. <i>See</i> Section IV.E. - Added definition of “renewable electricity” to clarify that electricity must meet the definition of renewable fuel in order to qualify for RINs. - Revised definition of “biogas” to clarify that biogas must meet the definition of renewable fuel in order to qualify for RINs. - Revised definition of “combined heat and power” to clarify meaning. <i>See</i> Section IV.B. - Revised definition of “corn oil extraction” to clarify that “DGS” means “distillers grains and solubles.” <i>See</i> Section IV.B. - Revised definition of “exporter” to clarify that exported fuels must be exported from the contiguous 48 states or Hawaii. - Revised definition of “naphtha” to clarify that it can be either a blendstock or fuel blending component and need not be renewable fuel. <i>See</i> Section IV.F. - Revised definition of “non-ester renewable diesel” to clarify that it must be able to be used in an engine designed to operate on conventional diesel fuel, or be heating oil or jet fuel, and that it may also be known as renewable diesel. Also deleted requirement that non-ester renewable diesel be registered under 40 CFR part 79 for consistency with other definitions in § 80.1401. - Revised definitions of “pastureland” and “pre-commercial thinnings” to clarify meaning. - Revised definition of “Renewable Identification Number (RIN)” to clarify that a gallon-RIN represents a gallon of renewable fuel used for compliance with renewable volume obligations under § 80.1427. - Revised definition of “transportation fuel” to clarify that fuel used in ocean-going vessels is not transportation fuel under Subpart M.
80.1403(a)(1) and (a)(2); removed (a)(3)	Moved definitions of “baseline volume,” “permitted capacity,” and “actual peak capacity” to § 80.1401 to consolidate with other definitions.
80.1403(c)(2)	Revised to require that construction of a grandfathered renewable fuel production facility for which construction commenced prior to December 19, 2007, be complete by December 19, 2010, rather than within 36 months from the date of commencement of construction. <i>See</i> Section IV.G.
80.1405(c)	Revised definition of “RFV _{CB,i} ” to clarify that the volume of cellulosic biofuel used to calculate the annual standard for cellulosic biofuel will either be the statutory volume or the adjusted volume in the event that EPA waives a portion of the statutory volume requirement.
80.1406(c)(1)	Revised to clarify that, unless otherwise excepted, when demonstrating compliance with the RFS2 regulations on an aggregate basis, an obligated party must include all of the refineries that it operates.
80.1406(f)	Revised to clarify that all joint owners of a gasoline or diesel refinery or import facility are subject to the liability provisions of § 80.1461(d).
80.1415(a)(1)	Corrected references to paragraphs that describe gallon equivalents for biogas and electricity.
80.1415(a)(2)	Revised to clarify that the equivalence value represents the number of gallon-RINs that can be generated for a gallon of renewable fuel.
80.1415(b)(5) and (b)(6)	Revised to clarify the equivalence values for biogas and electricity, respectively.
80.1415(c)(1)	Revised definition of variable “R” in equivalence value equation to clarify that the renewable content of a renewable fuel is based on the portion that came from renewable biomass, and that it should be expressed as a fraction, not a percentage.
80.1416(a) and (d)	Revised to clarify the circumstances under which a party may petition EPA for consideration of a D code for their renewable fuel.
80.1416(b)(2)(vi)	Revised to clarify that information submitted to EPA by a company for purposes of evaluating a new renewable fuel pathway must include the current and future quantities of feedstocks used to produce the renewable fuel, including information on current and projected yields for feedstocks that are harvested or collected.
80.1416(c)(2)	Revised to clarify that the responsible corporate officer of the company submitting a petition for evaluation of a new renewable fuel pathway must sign and certify that the petition meets all the applicable requirements.
80.1425	Amended to clarify that RINs generated after July 1, 2010, may only be generated and transferred using the EPA-Moderated Transaction System (EMTS) and will not be identified by a 38-digit code.
80.1425(i)	Revised to clarify that the value of EEEEEEE in a batch-RIN will be determined by the number of gallon-RINs generated for the batch.
80.1426(a)(2)	Amended to clarify that renewable fuel contained in imported heating oil and jet fuel, in addition to that contained in imported transportation fuel, may qualify for RIN generation.
80.1426(c)(2)	Corrected typographical error.
80.1426(c)(3) and 80.1455(c)	Revised to clarify the conditions under which a renewable fuel producer may qualify for the temporary producer threshold and not be required to generate RINs for their renewable fuel.

RFS2 PROGRAM AMENDMENTS—Continued

Section	Description
80.1426(c)(4)	Revised to prohibit importers of renewable fuel produced by a foreign renewable fuel producer, or of renewable fuel made with ethanol produced by a foreign ethanol producer, from generating RINs for such fuel or ethanol unless the foreign renewable fuel producer or foreign ethanol producer is registered with EPA as required in § 80.1450. <i>See</i> Section IV.D.
80.1426(c)(6)	Revised to prohibit the generation of RINs for a volume of renewable fuel produced from other renewable fuel that was accompanied by RINs, either assigned or separated.
80.1426(d)(1), (f)(3)(iv), and (f)(3)(v)	Revised to clarify that a unique BBBB code in the RIN, or its equivalent in EMTS, is used to identify a batch of renewable fuel from a given renewable fuel producer or importer.
80.1426(d)(2)(ii)	Amended to clarify that the RIN volume used to determine the last gallon-RIN of a batch of renewable fuel is identified as V_{RIN} in the equations at § 80.1426(f).
80.1426, Table 1	Revised to clarify which feedstocks may be used to produce renewable fuel, in order to be consistent with definitions at § 80.1401. Also revised to clarify the extent to which distillers grains and solubles may be dried via the application of thermal energy for renewable fuel to qualify for certain fuel pathways.
80.1426, Table 2	Revised to clarify the extent to which renewable fuel producers must use certain advanced technologies in order for them to be considered when determining the proper D code for their fuel. <i>See</i> Section IV.B.
80.1426, Table 3	Corrected typographical errors in the definitions of $V_{RIN,AB}$ and $V_{RIN,RF}$.
80.1426, Table 4	Revised definitions of different feedstock energy value (“FE”) to clarify that they represent feedstock energy from all feedstocks used to produce renewable fuel with a certain D code.
80.1426(f)(4)	Revised to clarify that partially renewable fuel may be used as transportation fuel, heating oil, or jet fuel.
80.1426(f)(4)(ii)	Revised to clarify that the contribution of non-renewable feedstocks to the production of partially renewable fuel should be ignored when determining the appropriate pathway for the fuel.
80.1426(f)(5)(i)	Corrected grammatical and typographical errors in definitions of “separated yard waste,” “separated food waste,” and “separated municipal solid waste.”
80.1426(f)(5)(iii)(B)	Revised to clarify that a renewable fuel producer who uses separated municipal solid waste as a feedstock must have evidence of all contracts relating to the disposal of the specified recyclable materials.
80.1426(f)(5)(vi)	Corrected typographical errors and added the term “separated” to “food waste” and “MSW” to be consistent with other sections.
80.1426(f)(9)(iv)(C)	Corrected typographical error.
80.1426(f)(10)	Revised to clarify the requirements for generating RINs for renewable electricity or biogas that is not commingled with fuel derived from non-renewable feedstocks.
80.1426(f)(11)	Revised to clarify the requirements for generating RINs for renewable electricity or biogas that is introduced into a commercial distribution system.
80.1426(f)(12)	Amended to clarify the requirements for gas to be considered biogas for purposes of determining a renewable fuel’s D code.
80.1427(a)(4)(i)	Amended to allow RFS1 RINs with an RR code of “16” to be treated as RFS2 biomass-based diesel RINs with a D code of 4. <i>See</i> Section IV.H.
80.1427(a)(7)(i)	Amended to allow RFS1 RINs with an RR code of “16” to be subtracted from the 2010 biomass-based diesel RVO. <i>See</i> Section IV.H.
80.1428(c)	Revised to clarify that an expired RIN is considered an invalid RIN and cannot be used for compliance.
80.1429(b)(5)	Revised to clarify the requirement that the producer of renewable electricity or biogas separate any RINs they generate for a given volume of renewable electricity or biogas.
80.1429(d)	Revised to clarify that separated RINs must be accompanied by a PTD when being transferred from one party to another.
80.1429(g)	Revised to clarify that any 2009 or 2010 RINs retired because renewable fuel was used in a specific nonroad application may be reinstated by the retiring party and used for 2010 RVO compliance.
80.1430(a)	Corrected references to subsequent paragraphs in § 80.1430.
80.1430(b)(2) and (b)(3)	Revised definitions of VOL_k to eliminate redundant language.
80.1440(c)(3)	Revised to clarify that a renewable fuel blender who delegates its RIN-related responsibilities will remain liable for any violation associated with its renewable fuel blending activities.
80.1440(d) and (e)	Revised to clarify restrictions on small blenders who upward delegate their RIN responsibilities.
80.1442(b)(1), (b)(4), (c), and (d)(1)	Revised to clarify that the small refiner exemption from obligated party requirements is effective immediately for those who qualify.
80.1450(a), (b), and (c)	Revised to clarify that registration information for obligated parties and exporters of renewable fuel, renewable fuel producers (unless grandfathered), and renewable fuel importers must be submitted to and accepted by EPA no later than July 1, 2010, or 60 days prior to generating or owning RINs, whichever date comes later.
80.1450(b)	Revised to require foreign ethanol producers, as defined in § 80.1401, that produce ethanol used in renewable fuel for which RINs are generated by a United States importer to register their facilities with EPA prior to the generation of any RINs for fuel made with their ethanol. <i>See</i> Section IV.D.

RFS2 PROGRAM AMENDMENTS—Continued

Section	Description
80.1450(b)(1)(v)(A), (b)(1)(v)(B), (b)(1)(v)(C), and (b)(1)(vi); removed (b)(1)(v)(D) and (b)(1)(v)(E).	Revised to require all renewable fuel producers to submit information on their baseline production volume, including copies of applicable air permits and other documents, when registering their facility. See Section IV.C. Also revised to correct typographical and grammatical errors.
80.1450(b)(1)(vi)	Revised to clarify the documents required as part of registration for a renewable fuel production facility claiming grandfathered status in order to demonstrate the date that construction of the facility commenced.
80.1450(b)(1)(vii) and (b)(1)(viii)	Revised to clarify specific registration requirements for producers of renewable fuel made from separated yard waste, separated food waste, and separated municipal solid waste.
80.1450(b)(2)(i)(A)	Revised to clarify that the engineering review that must be submitted to EPA as part of the registration process for a renewable fuel production facility must be conducted by a professional engineer licensed by an appropriate state agency in the U.S. for domestic facilities, or by a foreign equivalent for foreign facilities, and that the engineer must be an independent third party. See Section IV.I.
80.1450(b)(2)(iii)(E)	Moved to § 80.1450(b)(2)(v) for clarity.
Added 80.1450(b)(2)(vi)	Amended to clarify that owners and operators of grandfathered renewable fuel production facilities must submit the engineering review no later than December 31, 2010. While this allowance was discussed in the preamble to the final RFS2 regulations, it was inadvertently left out of the final regulations.
80.1450(b)(3)	Moved to § 80.1450(b)(1)(iv) to clarify that a process heat fuel supply plan must be submitted as part of registration for all renewable fuel production facilities, and revised to clarify the information that must be included in such a plan. See Section IV.J.
80.1450(d)(2)	Revised to clarify that any renewable fuel producer who makes changes to their facility that will affect the producer's registration information but will not affect the renewable fuel category for which the producer is registered must update their registration information seven (7) days prior to the change. See Section IV.K.
80.1450(e)	Revised to clarify that registration information for RIN owners must be submitted to EPA at least 30 days prior to RIN ownership.
80.1450(f)	Revised to clarify that any renewable fuel facility that claims grandfathered status under RFS2 must register with EPA no later than July 1, 2013.
80.1451(a)(1)(xi)	Revised to clarify that the annual compliance report that must be submitted by obligated parties and exporters of renewable fuel must include a list of all RINs retired for compliance in the reporting period.
80.1451(b)(1)(ii)(D)	Corrected typographical error.
80.1451(b)(1)(ii)(H)	Revised to clarify that RIN generators must report the fuel type of each batch in their RIN generation reports.
80.1451(b)(1)(ii)(K) and (b)(1)(ii)(N)	Revised to require information on quantities, rather than volume, of renewable fuel feedstocks and co-products, since feedstocks and co-products can be measured in mass or volume.
80.1451(b)(1)(ii)(M)	Deleted “of renewable fuel” to make language consistent with other reporting elements required under § 80.1454(b)(1)(ii).
80.1451(b)(1)(ii)(P) and (b)(1)(ii)(Q)	Revised to clarify reporting requirements for producers and importers, as appropriate, of renewable electricity and biogas used for transportation and producers and importers of renewable fuel produced at facilities that use biogas for process heat. Specifically, these amendments clarify that the renewable electricity and biogas should be reported as total energy used (<i>i.e.</i> , kW or BTU) rather than as a rate (kW/hr or BTU/hr).
80.1451(b)(1)(ii)(R)	Added the term “separated” to “municipal solid waste” to be consistent with other sections. Also revised to clarify that the amount of separated MSW used for renewable fuel that is produced or imported should be in units of weight (in tons).
80.1451(c)(1)(iii)(D) and (c)(2)(xv)	Revised to clarify that reinstatement should apply to all RFS1 RINs generated in 2009 or 2010.
80.1451(d) and (d)(1)	Revised to clarify that producers and RIN-generating importers of renewable fuel made from feedstocks not covered by the aggregate compliance approach must submit quarterly reports containing information on their feedstocks, including a summary of the types and quantities of feedstocks used in that quarter.
80.1451(e)	Revised to clarify requirements for quarterly reporting on feedstocks by producers of renewable fuel that is made from feedstocks covered by the aggregate compliance approach if the 2007 baseline amount of U.S. agricultural land is found to have been exceeded.
80.1452(b)	Revised to clarify that RINs must be generated in EMTS within five (5) business days of being assigned to a batch of renewable fuel. This paragraph is also revised to clarify the information required to be submitted via EMTS for each batch of renewable fuel produced or imported.
80.1452(c)	Revised to clarify that transactions involving RINs generated on or after July 1, 2010 must be conducted via EMTS within five (5) business days of a reportable event. This paragraph is also revised to clarify the meaning of the term “reportable event” and to clarify the information required to be submitted via EMTS for each transaction involving RINs generated on or after July 1, 2010.
80.1453(a)(5)	Deleted the requirement for price to appear on the PTD. Although parties do not need to convey price information on the PTD, parties must still be in agreement on whether they will submit the price per RIN or price per gallon of renewable fuel to EMTS.
80.1453(a)(7), (a)(8), and (a)(10)	Revised to clarify the information required on product transfer documents (PTDs) that accompany renewable fuel or separated RINs.

RFS2 PROGRAM AMENDMENTS—Continued

Section	Description
80.1453(a)(11)(i)	Revised to clarify the RIN information required on PTDs for RFS1 and RFS2 RINs, since RFS2 RINs may be transferred uniquely or generically in EMTS. Section 80.1453(a)(11)(i) currently does not identify the information for RFS1 and RFS2 RINs that must be transferred on a PTD.
80.1453(a)(11)(ii)	Revised to reference the identifying information required on a PTD for RFS1 and RFS2 RINs.
80.1454(a)(2)	Revised to clarify that obligated parties and exporters are not required to keep the production outlook reports in § 80.1449.
80.1454(a)(3)(iv)	Revised to clarify the records that obligated parties and exporters of renewable fuel must keep related to RIN transactions and their terms.
Added 80.1454(a)(6)	Amended to clarify that exporters must maintain invoices, BOLs and other documents related to the purchase, transfer and export of renewable fuel.
80.1454(c)(1)(i), (c)(1)(ii), (d)(3), and (g); added (d)(4).	Revised to clarify that the aggregate compliance approach applies to planted crops and crop residue from agricultural land in the U.S. See Section IV.L.
80.1454(c)(2)(ii)	Deleted allowance that duplicate copies of reports submitted to EPA are not required, since this language is not necessary.
80.1454(d)	Amended heading to be formatted consistently when printed in the Federal Register .
80.1454(d)(3)	Amended to clarify that domestic renewable fuel producers that use separated yard and food waste are subject to additional recordkeeping requirements located at § 80.1454(j). This provision was also renumbered as (d)(4). See Section IV.M.
80.1454(g) and (h)	Revised to include RIN-generating importers of renewable fuel made from planted crops or crop residue from U.S. agricultural land under the aggregate compliance approach for renewable biomass.
80.1454(g)(2)(ii)	Corrected typographical error and reference within paragraph (g)(2)(ii).
80.1454(h)(6)(v)	Revised to clarify that EPA may revoke approval of a survey plan if it determines that the approved survey plan was not fully implemented.
80.1454(j)	Added the term “solid” to “separated municipal waste” to be consistent with other sections.
80.1454(j)(2)(iii); added (j)(2)(iv)	Amended to require renewable fuel producers who use separated municipal solid waste as feedstock for renewable fuel to maintain records that demonstrate the fuel sampling methods used and the results of all fuel analyses to determine the non-fossil fraction of the fuel.
80.1454(k)	Revised to clarify recordkeeping requirements for a renewable fuel producer that generates RINs for biogas or electricity produced from renewable biomass.
80.1455(a), (b), (c), and (d)	Corrected typographical errors.
80.1460(c)(2); removed 80.1460(c)(3)	Revised to eliminate redundant language.
80.1463(a)	Corrected typographical error.
80.1463(b)	Revised to clarify that any person that fails to meet their RVOs, or causes another person to fail to meet their RVOs during any compliance period, is subject to a separate day of violation for each day in the compliance period.
80.1464(a)(1)(i)(A)	Corrected references to paragraphs in § 80.1430.
80.1464(a)(1)(iv)(A)	Corrected typographical error.
80.1464(a)(1)(iv)(D); removed 80.1464(a)(1)(vii) ...	Revised to clarify the attest procedures specific to an exporter of renewable fuel and deleted the requirement that each exporter's RVO be calculated from a sampling of renewable fuel batches, as doing so is infeasible.
80.1464(b)(1)(i)	Corrected references to paragraphs (d) and (e).
80.1464(b)(1)(ii)	Revised to clarify that the number of gallon-RINs must be computed for each batch of renewable fuel produced or imported by a RIN generator as part of the attest engagement requirements.
80.1464(c)(2)(ii)	Corrected typographical error.
80.1465(a)(6)	Restructured paragraph to clarify meaning.
80.1465(d)(1)(ii)	Revised to clarify that the volume of imported RFS-FRUEL must be temperature-corrected to 60 °F.

B. Advanced Technologies for Renewable Fuel Pathways

The final RFS2 rule includes two corn ethanol pathways in Table 1 of § 80.1426 that require the use of advanced technologies at the production facility as a prerequisite to the generation of RINs. The advanced technologies are listed in Table 2 of § 80.1426. However, only three of these advanced technologies are explicitly defined in § 80.1401. To clarify our intent with regard to implementation of these advanced technologies, we have created new definitions for membrane

separation and raw starch hydrolysis. We also replaced the existing definition of “fractionation of feedstocks” with the definition for “corn oil fractionation” to be more consistent with the terminology used in Table 2 of § 80.1426. Finally, we modified the definition of “combined heat and power (CHP)” and clarified in Table 2 of § 80.1426 the degree to which it, as well as the other advanced technologies, must be implemented in order to represent a valid advanced technology for the generation of RINs.

C. Baseline Production Volume for All Renewable Fuel Production Facilities

Section 80.1450(b)(1)(v) currently requires information pertinent to facilities described in § 80.1403(c) and (d), i.e., those facilities for which the renewable fuel would be exempted (“grandfathered”) from the requirement of 20 percent GHG emission reduction. This amendment modifies § 80.1450(b)(1)(v) to require all renewable fuel producers to include information on their facilities’ baseline volume when registering for RFS2 in order for EPA to verify renewable fuel

production volumes and RIN generation reports. Specifically, all owners and operators of renewable fuel facilities, including those described in § 80.1403(c) and (d), must submit copies of their most recent air permits. In addition, the facilities described in § 80.1403(c) must submit copies of air permits issued no later than December 19, 2007; those described in § 80.1403(d) must submit copies of air permits issued no later than December 31, 2009. Thus, for those facilities we will have information on permitted capacity for 2007 and 2009 from which baseline volumes will be determined. We will also have the most recent permitted capacity for those facilities. In case of discrepancies in permitted capacity between the most recent permits and those representing operation in 2007 and 2009, EPA may ask for additional information. The information required to establish when construction of the grandfathered facilities commenced is now contained in § 80.1450(b)(vi), since § 80.1450(b)(v) now addresses only baseline volume.

D. Foreign Ethanol Producers

We have added a new definition of “foreign ethanol producer” to § 80.1401 that describes foreign producers that produce ethanol for use in transportation fuel, heating oil or jet fuel but who do not add denaturant to their product, and therefore do not technically produce “renewable fuel” as defined in our regulations. We have also added amendments to the registration provisions at § 80.1450(b) to require the registration of these parties if the ethanol they produce is used to make renewable fuel for which RINs are ultimately generated. The result of these changes is to require foreign ethanol facilities that produce ethanol that ultimately becomes part of a renewable fuel for which RINs are generated to provide EPA the same registration information as foreign renewable fuel facilities that export their product to the United States. In both cases the required registration information is important for enforcement purposes, including verifying the use of renewable biomass as feedstock and the assignment of appropriate D codes. The changes made today conform the regulations to EPA’s intent at the time the RFS2 regulations were issued.

E. Permitted Capacity

EPA is modifying the definition of “permitted capacity” to reference the specific permits, by year, which are to be used in establishing the permitted capacity of facilities claiming the exemptions specified in § 80.1403(c)

and (d). Permitted capacity is one means by which “baseline volume” is determined for purposes of these exemptions. The registration provisions in the existing regulations at § 80.1450(b)(1)(v)(C) accurately identify the permits (by year) that are relevant in establishing “permitted capacity” for facilities claiming the exemptions in § 80.1403(c) and (d), but EPA neglected to include comparable references in the existing definition of “permitted capacity.” Today’s amendments will help to clarify the regulations by adding comparable references in the definition of “permitted capacity.”

F. Definition for “Naphtha”

The final RFS2 rule includes the term naphtha in Table 1 to § 80.1426 in the form of both “naphtha” and “cellulosic naphtha.” The final rule also includes a definition of naphtha in § 80.1401 indicating that naphtha must be a renewable fuel or fuel blending component. Since naphtha is generally not used as transportation fuel in its neat form, requiring naphtha to be renewable fuel could cause confusion. Therefore, we have modified the definition of naphtha to indicate that it must be a blendstock or fuel blending component.

G. Grandfathering Exemption for Renewable Fuel Production Facilities

Section 80.1403(c)(2) requires as a condition of the exemption from the 20 percent greenhouse gas (GHG) emission reduction that construction of the renewable fuel facility be completed within 36 months of commencement. In the proposed RFS2 rule, however, the regulatory language required completion of construction within 36 months of EISA enactment, which would be December 19, 2010. In preparing the final rulemaking package we mistakenly removed the proposed language. Today’s rule provides that construction must be completed within 36 months of December 19, 2007, for facilities that commenced construction prior to that date. For facilities that commenced construction after that date, as described in § 80.1403(d), the requirement remains that construction must be completed within three years of commencement of construction.

H. Use of RFS1 RINs for RFS2 Compliance in 2010

The RFS2 final rule allows RFS1 RINs to be used for compliance purposes under RFS2. With regard to biodiesel and renewable diesel, the regulations at § 80.1427(a)(4)(i) indicate that RFS1 RINs with a D code of 2 and RR code of 15 or 17 may be deemed equivalent

to an RFS2 RIN with a D code of 4 representing biomass-based diesel. The RR codes of 15 and 17 were included in this provision because they are indicative of biodiesel and renewable diesel, respectively, as described in the assignment of Equivalence Values in § 80.1415. However, EPA also approved an Equivalence Value of 1.6 for a particular renewable fuel diesel substitute that is compositionally similar to biodiesel. Therefore, we are modifying the RFS1/RFS2 transition provisions at § 80.1427(a)(4)(i) to also allow RFS1 RINs with a D code of 2 and RR code of 16 to be deemed equivalent to an RFS2 RIN with a D code of 4.

I. Engineering Review

Section 80.1450(b)(2)(i)(A) and (b)(2)(i)(B) are amended to clarify the types of professional engineers who may qualify to conduct the third-party engineering review for renewable fuel facilities located in the United States or in a foreign country. The original requirements in the final regulations in § 80.1450(b)(2)(i)(A) state that domestic renewable fuel production facilities must have an engineering review conducted by a “Professional Chemical Engineer.” For foreign facilities, § 80.1450(b)(2)(i)(B) provides that the review should be conducted by “a licensed professional engineer or foreign equivalent who works in the chemical engineering field.” EPA interprets these provisions similarly but is amending the regulations to clarify that the requirements are the same. For both domestic and foreign facilities the third party engineering review should be conducted by a professional engineer (or foreign equivalent) who works in the chemical engineering field. EPA views renewable fuel production to fall generally within the chemical engineering field, and is amending the regulation to clarify that professional work experience related to renewable fuel production will satisfy this requirement. As required in § 80.1450(b)(2)(ii)(E), the professional engineer shall provide to EPA documentation of their qualifications to conduct the engineering review, including but not limited to proof of a license as a professional engineer and relevant work experience. Additional language is added to clarify that the professional engineer must also be an independent third-party, which is further defined in § 80.1450(b)(2)(ii), to qualify to conduct the engineering review.

J. Process Heat Fuel Supply Plan

The requirements for the process heat fuel supply plan were moved from

§ 80.1450(b)(3) and inserted under § 80.1450(b)(1)(iv) in these amendments to minimize duplicative requirements and to provide clear instruction that the process heat fuel supply plan is required to be submitted as part of registration and will be subject to verification in the engineer review required in § 80.1450(b)(2).

The requirements for the process heat fuel supply plan have been divided into two subparts. Section 80.1450(b)(1)(iv)(A) is applicable to all renewable fuel producers and requires submissions of information on any process heat fuel that is used at a renewable fuel facility. Examples of process heat fuel include biomass, biogas, coal, and natural gas. The information submitted on the type of process heat fuel and its supply source will help EPA determine if a renewable fuel facility qualifies as a grandfathered facility pursuant to § 80.1403(d) and help verify a producer's fuel pathway pursuant to Table 1 to § 80.1426.

The required information in § 80.1450(b)(1)(iv)(B) for renewable fuel producers using biogas as process heat fuel will help EPA verify the contractual pathway of the biogas from the supplier to the renewable fuel facility for the purposes of confirming the applicable fuel pathway pursuant to Table 1 to § 80.1426 and to § 80.1426(f)(12).

The information submitted under § 80.1450(b)(1)(iv)(A) and (b)(1)(iv)(B) will also help EPA in our evaluation of the engineering review that is conducted and submitted by an independent third party engineer pursuant to § 80.1450(b)(2). Since the requirements for the process heat fuel supply plan have been revised and relocated within the regulations, the requirements stipulated in the original § 80.1450(b)(3)(ii) through (iv) have been deleted to avoid redundancy.

K. Updating Registration To Account for Facility Changes Not Affecting the Renewable Fuel Category

Section 80.1450(d)(2) currently requires producers of renewable fuel to update their facility registration seven (7) days prior to any change to the facility that does not affect the renewable fuel category for which the producer is registered. EPA is revising § 80.1450(d)(2) to narrow the scope of changes that would require a producer to update their registration. The revisions clarify that not just any change, but only changes to the facility that actually affect the information submitted to EPA in the producer's original registration, will trigger such a registration update.

L. Applicability of the Renewable Biomass Aggregate Compliance Approach

Sections 80.1451 and 80.1454 include requirements for renewable fuel producers to report and maintain records to affirm that their feedstocks meet the definition of renewable biomass and come from qualifying land. Through amendments to these two sections, EPA is clarifying our intent, as discussed in the preamble to the final RFS2 regulations, that producers, either domestic or foreign, who use crops and crop residue from existing U.S. agricultural land are covered by the renewable biomass aggregate compliance approach for those particular feedstocks, as described in § 80.1454(g), and need not keep detailed records or report to EPA concerning whether those particular feedstocks meet the definition of renewable biomass. However, if a producer (domestic or foreign) uses any type of feedstock other than crops and crop residue from existing U.S. agricultural land, then he or she must keep records and report to EPA to demonstrate that their feedstocks meet the definition of renewable biomass. This includes maintaining records that show that the feedstock type is one allowed under the renewable biomass definition under the RFS2 regulations and that the feedstock is harvested from qualifying lands, where applicable.

M. Additional Recordkeeping Requirements for Renewable Fuel Producers Using Separated Yard and Food Waste as a Feedstock

Section 80.1454(d)(3) currently requires that domestic renewable fuel producers using feedstock other than planted trees or tree residue from actively managed tree plantations, slash or pre-commercial thinnings from non-federal forestland, biomass from areas at risk of wildfire, crops or crop residue covered by the aggregate compliance approach under § 80.1454(g), or any feedstock covered by an alternative biomass tracking approach under § 80.1454(h) must maintain documents from their feedstock supplier certifying that their feedstocks meet the definition of renewable biomass. While separated yard and food waste falls into this category, parties using these feedstocks are also subject to the additional recordkeeping requirements in § 80.1454(j). Therefore, EPA is revising § 80.1454(d)(3) to clarify that renewable fuel producers that use separated yard and food waste as a feedstock are subject to the additional requirements in § 80.1454(j).

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this action is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The corrections, clarifications, and modifications to the final RFS2 regulations contained in this rule are within the scope of the information collection requirements submitted to the Office of Management and Budget (OMB) for the final RFS2 regulations. OMB has partially approved the information collection requirements contained in the existing regulations at 40 CFR part 80, subpart M under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0637. The remaining RFS2 information collection requirements are currently pending approval at OMB (EPA ICR No. 2333.02). The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the

Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This direct final rule will not impose any requirements on small entities that were not already considered under the final RFS2 regulations, as it makes relatively minor corrections and modifications to those regulations.

D. Unfunded Mandates Reform Act

This rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. We have determined that this action will not result in expenditures of \$100 million or more for the above parties and thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. It only applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers and makes relatively minor corrections and modifications to the RFS2 regulations.

E. Executive Order 13132 (Federalism)

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action only applies to gasoline, diesel, and renewable fuel producers, importers,

distributors and marketers and makes relatively minor corrections and modifications to the RFS2 regulations. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This direct final rule does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers. This action makes relatively minor corrections and modifications to the RFS regulations, and does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211 (66 FR 18355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this direct final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. These technical amendments do not relax the control measures on sources regulated by the RFS regulations and therefore will not cause emissions increases from these sources.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

L. Clean Air Act Section 307(d)

This rule is subject to Section 307(d) of the CAA. Section 307(d)(7)(B) provides that "[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review." This section also provides a mechanism for the EPA to

convene a proceeding for reconsideration, “[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.” Any person seeking to make such a demonstration to the EPA should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Director of the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

List of Subjects in 40 CFR Part 80

Environmental protection, Administrative practice and procedure, Agriculture, Air pollution control, Confidential business information, Diesel Fuel, Energy, Forest and Forest Products, Fuel additives, Gasoline, Imports, Motor vehicle pollution, Penalties, Petroleum, Reporting and recordkeeping requirements.

Dated: April 30, 2010.

Lisa P. Jackson,
Administrator.

■ For the reasons set forth in the preamble, 40 CFR part 80 is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

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

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

■ 2. Section 80.1401 is amended as follows:

■ a. By revising the definitions of “Advanced biofuel”, “Biogas”, “Combined heat and power (CHP)”, “Corn oil extraction”, “Exporter of renewable fuel”, “Forestland”, “Naphtha”, “Non-ester renewable diesel”, “Pastureland”, “Pre-commercial thinnings”, “Renewable Identification Number (RIN)”, and “Transportation fuel”.

■ b. By removing the definitions of “Fractionation of feedstocks” and “Yard waste”.

■ c. By adding definitions of “Actual peak capacity”, “Baseline volume”, “Corn oil fractionation”, “Foreign ethanol producer”, “Membrane separation”,

“Permitted capacity”, “Raw starch hydrolysis”, and “Renewable electricity”, in alphabetical order.

§ 80.1401 Definitions.

* * * * *

Actual peak capacity means 105% of the maximum annual volume of renewable fuels produced from a specific renewable fuel production facility on a calendar year basis.

(1) For facilities that commenced construction prior to December 19, 2007, the actual peak capacity is based on the last five calendar years prior to 2008, unless no such production exists, in which case actual peak capacity is based on any calendar year after startup during the first three years of operation.

(2) For facilities that commenced construction after December 19, 2007 and before January 1, 2010 that are fired with natural gas, biomass, or a combination thereof, the actual peak capacity is based on any calendar year after startup during the first three years of operation.

(3) For all other facilities not included above, the actual peak capacity is based on the last five calendar years prior to the year in which the owner or operator registers the facility under the provisions of § 80.1450, unless no such production exists, in which case actual peak capacity is based on any calendar year after startup during the first three years of operation.

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

* * * * *

Baseline volume means the permitted capacity or, if permitted capacity cannot be determined, the actual peak capacity of a specific renewable fuel production facility on a calendar year basis.

* * * * *

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

* * * * *

Combined heat and power (CHP), also known as cogeneration, refers to industrial processes in which waste heat from the production of electricity is used for process energy in the renewable fuel production facility.

* * * * *

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

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

* * * * *

Exporter of renewable fuel means:

(1) A person that transfers any renewable fuel from a location within the contiguous 48 states or Hawaii to a location outside the contiguous 48 states and Hawaii; and

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

* * * * *

Foreign ethanol producer means a person from a foreign country or from an area that has not opted into the program requirements of this subpart who produces ethanol for use in transportation fuel, heating oil, or jet fuel but who does not add denaturant to their product as described in paragraph (2) of the definition of renewable fuel in this section.

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

* * * * *

Membrane separation means the process of dehydrating ethanol to fuel grade (> 99.5% purity) using a hydrophilic membrane.

* * * * *

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

* * * * *

Non-ester renewable diesel, also known as renewable diesel, means renewable fuel which is all of the following:

(1) A fuel which can be used in an engine designed to operate on conventional diesel fuel, or be heating oil or jet fuel.

(2) Not a mono-alkyl ester.

* * * * *

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

Permitted capacity means 105% of the maximum permissible volume output of renewable fuel that is allowed under operating conditions specified in the most restrictive of all applicable preconstruction, construction and operating permits issued by regulatory authorities (including local, regional, state or a foreign equivalent of a state, and federal permits, or permits issued by foreign governmental agencies) that govern the construction and/or operation of the renewable fuel facility, based on an annual volume output in a calendar year basis. If the permit specifies maximum rated volume output on an hourly basis, then annual volume output is determined by multiplying the hourly output by 8,322 hours per year.

(1) For facilities that commenced construction prior to December 19, 2007, the permitted capacity is based on permits issued or revised no later than December 19, 2007.

(2) For facilities that commenced construction after December 19, 2007 and before January 1, 2010 that are fired with natural gas, biomass, or a combination thereof, the permitted capacity is based on permits issued or revised no later than December 31, 2009.

(3) For facilities other than those described in paragraphs (1) and (2) of this definition, permitted capacity is based on the most recent applicable permits.

* * * * *

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

Raw starch hydrolysis means the process of hydrolyzing corn starch into simple sugars at low temperatures, generally not exceeding 100 °F (38 °C), using enzymes designed to be effective under these conditions.

* * * * *

Renewable electricity means electricity that meets the definition of renewable fuel.

* * * * *

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

(1) *Gallon-RIN* is a RIN that represents an individual gallon of renewable fuel used for compliance purposes pursuant to § 80.1427 to satisfy a renewable volume obligation.

(2) *Batch-RIN* is a RIN that represents multiple gallon-RINs.

* * * * *

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

* * * * *

■ 3. Section 80.1403 is amended as follows:

- a. By revising paragraph (a).
- b. By revising paragraph (c)(2).
- c. By revising paragraphs (d) introductory text and (d)(3).

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

(a) For purposes of this section, the following definitions apply:

(1) *Commence construction*, as applied to facilities that produce renewable fuel, means that:

(i) The owner or operator has all necessary preconstruction approvals or permits (as defined at 40 CFR 52.21(b)(10)), and has satisfied either of the following:

(A) Begun, or caused to begin, a continuous program of actual

construction on-site (as defined in 40 CFR 52.21(b)(11)).

(B) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the facility.

(ii) For multi-phased projects, the commencement of construction of one phase does not constitute commencement of construction of any later phase, unless each phase is mutually dependent for physical and chemical reasons only.

(2) [Reserved]

* * * * *

(c) * * *

(2) Completed construction by December 19, 2010.

(d) The baseline volume of ethanol that is produced from facilities and any expansions all of which commenced construction after December 19, 2007 and on or before December 31, 2009, shall not be subject to the requirement that lifecycle greenhouse gas emissions be at least 20 percent less than baseline lifecycle greenhouse gas emissions if such facilities are fired with natural gas, biomass, or a combination thereof at all times the facility operated between December 19, 2007 and December 31, 2009 and if:

* * * * *

(3) The baseline volume continues to be produced through processes fired with natural gas, biomass, or any combination thereof.

* * * * *

■ 4. Section 80.1405 is amended by revising paragraph (c) to read as follows:

§ 80.1405 What are the Renewable Fuel Standards?

* * * * *

(c) EPA will calculate the annual renewable fuel percentage standards using the following equations:

$$\text{Std}_{\text{CB},i} = 100 * \frac{\text{RFV}_{\text{CB},i}}{(G_i - RG_i) + (GS_i - RGS_i) - GE_i + (D_i - RD_i) + (DS_i - RDS_i) - DE_i}$$

$$\text{Std}_{\text{BBD},i} = 100 * \frac{\text{RFV}_{\text{BBD},i} \times 1.5}{(G_i - RG_i) + (GS_i - RGS_i) - GE_i + (D_i - RD_i) + (DS_i - RDS_i) - DE_i}$$

$$\text{Std}_{\text{AB},i} = 100 * \frac{\text{RFV}_{\text{AB},i}}{(G_i - RG_i) + (GS_i - RGS_i) - GE_i + (D_i - RD_i) + (DS_i - RDS_i) - DE_i}$$

$$\text{Std}_{\text{RF},i} = 100 * \frac{\text{RFV}_{\text{RF},i}}{(G_i - \text{RG}_i) + (GS_i - \text{RGS}_i) - GE_i + (D_i - \text{RD}_i) + (DS_i - \text{RDS}_i) - DE_i}$$

Where:

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

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

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

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

$\text{RFV}_{\text{CB},i}$ = Annual volume of cellulosic biofuel required by section 211(o)(2)(B) of the Clean Air Act for year i , or volume as adjusted pursuant to section 211(o)(7)(D) of the Clean Air Act, in gallons.

$\text{RFV}_{\text{BBD},i}$ = Annual volume of biomass-based diesel required by section 211(o)(2)(B) of the Clean Air Act for year i , in gallons.

$\text{RFV}_{\text{AB},i}$ = Annual volume of advanced biofuel required by section 211(o)(2)(B) of the Clean Air Act for year i , in gallons.

$\text{RFV}_{\text{RF},i}$ = Annual volume of renewable fuel required by section 211(o)(2)(B) of the Clean Air Act for year i , in gallons.

G_i = Amount of gasoline projected to be used in the 48 contiguous states and Hawaii, in year i , in gallons.

D_i = Amount of diesel projected to be used in the 48 contiguous states and Hawaii, in year i , in gallons.

RG_i = Amount of renewable fuel blended into gasoline that is projected to be consumed in the 48 contiguous states and Hawaii, in year i , in gallons.

RD_i = Amount of renewable fuel blended into diesel that is projected to be consumed in the 48 contiguous states and Hawaii, in year i , in gallons.

GS_i = Amount of gasoline projected to be used in Alaska or a U.S. territory, in year i , if the state or territory has opted-in or opts-in, in gallons.

RGS_i = Amount of renewable fuel blended into gasoline that is projected to be consumed in Alaska or a U.S. territory, in year i , if the state or territory opts-in, in gallons.

DS_i = Amount of diesel projected to be used in Alaska or a U.S. territory, in year i , if the state or territory has opted-in or opts-in, in gallons.

RDS_i = Amount of renewable fuel blended into diesel that is projected to be consumed in Alaska or a U.S. territory, in year i , if the state or territory opts-in, in gallons.

GE_i = The amount of gasoline projected to be produced by exempt small refineries and small refiners, in year i , in gallons in any year they are exempt per §§ 80.1441 and 80.1442, respectively. Assumed to equal $0.119 * (G_i - \text{RG}_i)$.

DE_i = The amount of diesel fuel projected to be produced by exempt small refineries and small refiners in year i , in gallons, in any year they are exempt per §§ 80.1441 and 80.1442, respectively. Assumed to equal $0.152 * (D_i - \text{RD}_i)$.

■ 5. Section 80.1406 is amended by revising paragraphs (c)(1) and (f) to read as follows:

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

* * * * *

(c) * * *

(1) Except as provided in paragraphs (c)(2), (d) and (e) of this section, an obligated party may comply with the requirements of paragraph (b) of this section in the aggregate for all of the refineries that it operates, or for each refinery individually.

* * * * *

(f) Where a refinery or import facility is jointly owned by two or more parties, the requirements of paragraph (b) of this section may be met by one of the joint owners for all of the gasoline or diesel fuel produced/imported at the facility, or each party may meet the requirements of paragraph (b) of this section for the portion of the gasoline or diesel fuel that it produces or imports, as long as all of the gasoline or diesel fuel produced/imported at the facility is accounted for in determining the Renewable Volume Obligations under § 80.1407. In either case, all joint owners are subject to the liability provisions of § 80.1461(d).

* * * * *

■ 6. Section 80.1415 is amended as follows:

■ a. By revising paragraph (a).

■ b. By revising paragraphs (b)(5) and (b)(6).

■ c. By revising paragraph (c)(1).

§ 80.1415 How are equivalence values assigned to renewable fuel?

(a)(1) Each gallon of a renewable fuel, or gallon equivalent pursuant to paragraph (b)(5) or (b)(6) of this section, shall be assigned an equivalence value by the producer or importer pursuant to paragraph (b) or (c) of this section.

(2) The equivalence value is a number that is used to determine how many gallon-RINs can be generated for a gallon of renewable fuel according to § 80.1426.

(b) * * *

(5) 77,000 Btu (lower heating value) of biogas shall represent one gallon of renewable fuel with an equivalence value of 1.0.

(6) 22.6 kW-hr of electricity shall represent one gallon of renewable fuel with an equivalence value of 1.0.

* * * * *

(c) * * *

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

$$\text{EV} = (\text{R}/0.972) * (\text{EC}/77,000)$$

Where:

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

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

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

* * * * *

■ 7. Section 80.1416 is revised to read as follows:

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

(a) Pursuant to this section, a party may petition EPA to assign a D code for their renewable fuel if any of the following apply:

(1) The renewable fuel pathway has not been evaluated by EPA to determine if it qualifies for a D code pursuant to § 80.1426(f).

(2) The renewable fuel pathway has been determined by EPA not to qualify for a D code pursuant to § 80.1426(f) and the party can document significant differences between their fuel production processes and the fuel production processes already considered by EPA.

(3) The renewable fuel pathway has been determined to qualify for a certain D code pursuant to § 80.1426(f) and the party can document significant differences between their fuel production processes and the fuel production processes already considered by EPA that may qualify their fuel pathway for a different D code.

(b)(1) Any petition under paragraph (a) of this section shall include all the following:

(i) The information specified under § 80.76.

(ii) A technical justification that includes a description of the renewable fuel, feedstock(s) used to make it, and the production process. The justification must include process modeling flow charts.

(iii) A mass balance for the pathway, including feedstocks, fuels produced, co-products, and waste materials production.

* * * * *

(iv) Information on co-products, including their expected use and market value.

(v) An energy balance for the pathway, including a list of any energy and process heat inputs and outputs used in the pathway, including such sources produced off site or by another entity.

(vi) Any other relevant information, including information pertaining to energy saving technologies or other process improvements.

(vii) The Administrator may ask for additional information to complete the lifecycle greenhouse gas assessment of the new fuel or pathway.

(2) For those companies who use a feedstock not previously evaluated by EPA under this subpart, the petition must include all the following in addition to the requirements in paragraph (b)(1) of this section:

(i) Type of feedstock and description of how it meets the definition of renewable biomass.

(ii) Market value of the feedstock.

(iii) List of other uses for the feedstock.

(iv) List of chemical inputs needed to produce the renewable biomass source of the feedstock and prepare the renewable biomass for processing into feedstock.

(v) Identify energy needed to obtain the feedstock and deliver it to the facility. If applicable, identify energy needed to plant and harvest the renewable biomass source of the feedstock and modify the source to create the feedstock.

(vi) Current and projected quantities of the feedstock that will be used to produce the fuel, including information on current and projected yields for feedstocks that are harvested or collected.

(vii) The Administrator may ask for additional information to complete the lifecycle Greenhouse Gas assessment of the new fuel or pathway.

(c)(1) A company may only submit one petition per pathway. If EPA determines the petition to be incomplete, then the company may resubmit.

(2) The petition must be signed and certified as meeting all the applicable requirements of this subpart by the responsible corporate officer of the applicant company.

(3) If EPA determines that the petition is incomplete then EPA will notify the applicant in writing that the petition is incomplete and will not be reviewed further. However, an amended petition that corrects the omission may be re-submitted for EPA review.

(4) If the fuel or pathway described in the petition does not meet the definitions in § 80.1401 of renewable fuel, advanced biofuel, cellulosic biofuel, or biomass-based diesel, then EPA will notify the applicant in writing that the petition is denied and will not be reviewed further.

(d) A D code must be approved prior to the generation of RINs for the fuel in question.

(e) The petition under this section shall be submitted on forms and following procedures as prescribed by EPA.

■ 8. Section 80.1425 is amended by revising the introductory text and paragraph (i) to read as follows:

§ 80.1425 Renewable Identification Numbers (RINs).

RINs generated on or after July 1, 2010 shall not be generated as a 38-digit code, but shall be identified by the information specified in paragraphs (a) through (i) of this section and introduced into EMTS as data elements during the generation of RINs pursuant to § 80.1452(b). For RINs generated prior to July 1, 2010, each RIN is a 38-digit code of the following form:

YYYYYCCCCFFFFBBBBB
RRDSSSSSSSEEEEEEE
* * * * *

(i) EEEEEEE is a number representing the last gallon-RIN associated with a batch of renewable fuel. EEEEEEE will be identical to SSSSSSS if the batch-RIN represents a single gallon-RIN. The value of EEEEEEE will be determined by the number of gallon-RINs being generated for the batch as described in § 80.1426(f).

■ 9. Section 80.1426 is amended as follows:

■ a. By revising paragraph (a)(2).

■ b. By revising paragraphs (c)(2), (c)(3), (c)(4), and (c)(6)(ii).

■ c. By revising paragraphs (d)(1) introductory text and (d)(2)(ii).

■ d. By revising paragraph (f)(1) and Table 1 to § 80.1426 and Table 2 to § 80.1426.

■ e. By revising paragraphs (f)(3)(iv) and (f)(3)(v), and Table 3 to § 80.1426.

■ f. By revising paragraph (f)(4).

■ g. By revising paragraphs (f)(5)(i) and (f)(5)(iii)(B).

■ h. By revising paragraph (f)(10).

■ i. By revising paragraphs (f)(11)(i) introductory text, (f)(11)(i)(C), (f)(11)(ii) introductory text, (f)(11)(iii) introductory text, (f)(11)(iii)(A), and (f)(11)(iv).

■ j. By revising paragraph (f)(12).

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

(a) * * *

(2) To generate RINs for imported renewable fuel, including any renewable fuel contained in imported transportation fuel, heating oil, or jet fuel, importers must obtain information from a foreign producer that is registered pursuant to § 80.1450 sufficient to make the appropriate determination regarding the applicable D code and compliance with the renewable biomass definition for each imported batch for which RINs are generated.

* * * * *

(c) * * *

(2) *Small producer/importer threshold.* Pursuant to § 80.1455(a) and (b), renewable fuel producers that produce less than 10,000 gallons a year of renewable fuel, and importers that import less than 10,000 gallons a year of renewable fuel, are not required to generate and assign RINs to batches of renewable fuel that satisfy the requirements of paragraph (a)(1) of this section that they produce or import.

(3) *Temporary new producer threshold.* Pursuant to § 80.1455(c) and (d), new renewable fuel producers that produce less than 125,000 gallons of renewable fuel a year are not required to generate and assign RINs to batches of renewable fuel to satisfy the requirements of paragraph (a)(1) of this section.

(i) The provisions of this paragraph (c)(3) apply only to new facilities, for a maximum of three years beginning with the calendar year in which the production facility produces its first gallon of renewable fuel.

(ii) [RESERVED]

(4) Importers shall not generate RINs for renewable fuel imported from a foreign renewable fuel producer, or for renewable fuel made with ethanol produced by a foreign ethanol producer, unless the foreign renewable fuel producer or foreign ethanol producer is registered with EPA as required in § 80.1450.

* * * * *

(6) * * *

(ii) The fuel has been produced from a chemical conversion process that uses another renewable fuel as a feedstock, the renewable fuel used as a feedstock was produced by another party, and RINs were received with the renewable fuel.

(A) Parties who produce renewable fuel made from a feedstock which itself was a renewable fuel received with RINs, shall assign the original RINs to the new renewable fuel.

(B) [Reserved]

(d)(1) *Definition of batch.* For the purposes of this section and § 80.1425, a “batch of renewable fuel” is a volume of renewable fuel that has been assigned a unique BBBB code in the RIN, or its equivalent in EMTS, within a calendar year by the producer or importer of the renewable fuel in accordance with the provisions of this section and § 80.1425.

* * * * *

(2) * * *

(ii) The value of EEEEEEE in the batch-RIN shall represent the last gallon-RIN associated with the volume of renewable fuel, based on the RIN volume V_{RIN} determined pursuant to paragraph (f) of this section.

* * * * *

(f) * * *

(1) *Applicable pathways.* D codes shall be used in RINs generated by

producers or importers of renewable fuel according to the pathways listed in Table 1 to this section, or as approved by the Administrator. In choosing an appropriate D code, producers and importers may disregard any incidental, de minimis feedstock contaminants that are impractical to remove and are related to customary feedstock production and transport.

TABLE 1 TO § 80.1426—APPLICABLE D CODES FOR EACH FUEL PATHWAY FOR USE IN GENERATING RINS

Fuel type	Feedstock	Production process requirements	D-code
Ethanol	Corn starch	All of the following: Dry mill process, using natural gas, biomass, or biogas for process energy and at least two advanced technologies from Table 2 to this section.	6
Ethanol	Corn starch	All of the following: Dry mill process, using natural gas, biomass, or biogas for process energy and at least one of the advanced technologies from Table 2 to this section plus drying no more than 65% of the distillers grains with solubles it markets annually.	6
Ethanol	Corn starch	All of the following: Dry mill process, using natural gas, biomass, or biogas for process energy and drying no more than 50% of the distillers grains with solubles it markets annually.	6
Ethanol	Corn starch	Wet mill process using biomass or biogas for process energy.	6
Ethanol	Starches from crop residue and annual covercrops.	Fermentation using natural gas, biomass, or biogas for process energy.	6
Biodiesel, and renewable diesel	Soy bean oil; Oil from annual covercrops; Algal oil; Biogenic waste oils/fats/greases; Non-food grade corn oil.	One of the following: Trans-Esterification Hydrotreating Excluding processes that co-process renewable biomass and petroleum.	4
Biodiesel, and renewable diesel	Soy bean oil; Oil from annual covercrops; Algal oil; Biogenic waste oils/fats/greases; Non-food grade corn oil.	One of the following: Trans-Esterification. Hydrotreating Includes only processes that co-process renewable biomass and petroleum.	5
Ethanol	Sugarcane	Fermentation	5
Ethanol	Cellulosic Biomass from crop residue, slash, pre-commercial thinnings and tree residue, annual covercrops, switchgrass, and miscanthus; cellulosic components of separated yard waste; cellulosic components of separated food waste; and cellulosic components of separated MSW.	Any	3
Cellulosic Diesel, Jet Fuel and Heating Oil.	Cellulosic Biomass from crop residue, slash, pre-commercial thinnings and tree residue, annual covercrops, switchgrass, and miscanthus; cellulosic components of separated yard waste; cellulosic components of separated food waste; and cellulosic components of separated MSW.	Any	7
Butanol	Corn starch	Fermentation; dry mill using natural gas, biomass, or biogas for process energy.	6

TABLE 1 TO § 80.1426—APPLICABLE D CODES FOR EACH FUEL PATHWAY FOR USE IN GENERATING RINS—Continued

Fuel type	Feedstock	Production process requirements	D-code
Cellulosic Naphtha	Cellulosic Biomass from crop residue, slash, pre-commercial thinnings and tree residue, annual covercrops, switchgrass, and miscanthus; cellulosic components of separated yard waste; cellulosic components of separated food waste; and cellulosic components of separated MSW.	Fischer-Tropsch process	3
Ethanol, renewable diesel, jet fuel, heating oil, and naphtha.	The non-cellulosic portions of separated food waste.	Any	5
Biogas	Landfills, sewage waste treatment plants, manure digesters.	Any	5

TABLE 2 TO § 80.1426—ADVANCED TECHNOLOGIES

Corn oil fractionation that is applied to all corn used to produce ethanol in the facility.

Corn oil extraction that is applied to all the thin stillage and distillers grains and solubles produced by the ethanol production facility.

Membrane separation in which all ethanol dehydration in the ethanol production facility is done using a hydrophilic membrane.

Raw starch hydrolysis that is used for all starch hydrolysis in the ethanol production facility instead of hydrolysis using a traditional high heat (>120 °C) cooking process.

Combined heat and power such that all the thermal energy used at the facility (including thermal energy produced at the facility and that which is derived from an off-site waste heat supplier), exclusive of any thermal energy used for the drying of distillers grains and solubles, is used to produce electricity prior to being used to meet the process heat requirements of the facility.

* * * * *

(3) * * *

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

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

Where:

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

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

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

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

TABLE 3 TO § 80.1426—NUMBER OF GALLON-RINS TO ASSIGN TO BATCH-RINS WITH D CODES DEPENDENT ON FUEL TYPE

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

Where:

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

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

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

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

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

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

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

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

EV_{RF} = Equivalence value for the renewable fuel portion of the batch per § 80.1415.

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

$V_{\text{s, CB}}$ = Standardized volume at 60 °F of the portion of the batch that must be assigned a D code of 3, in gallons, calculated in accordance with paragraph (f)(8) of this section.

$V_{\text{s, BBD}}$ = Standardized volume at 60 °F of the portion of the batch that must be assigned a D code of 4, in gallons, calculated in accordance with paragraph (f)(8) of this section.

$V_{\text{s, AB}}$ = Standardized volume at 60 °F of the portion of the batch that must be assigned a D code of 5, in gallons, calculated in accordance with paragraph (f)(8) of this section.

$V_{\text{s, RF}}$ = Standardized volume at 60 °F of the portion of the batch that must be assigned a D code of 6, in gallons, calculated in accordance with paragraph (f)(8) of this section.

$V_{\text{s, CD}}$ = Standardized volume at 60 °F of the portion of the batch that must be assigned a D code of 7, in gallons, calculated in accordance with paragraph (f)(8) of this section.

* * * * *

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

(i) The number of gallon-RINs that shall be generated for a batch of partially renewable fuel shall be equal

to a volume V_{RIN} calculated according to Method A or Method B.

(A) *Method A.*

(1) V_{RIN} shall be calculated according to the following formula:

$$V_{\text{RIN}} = EV * V_s * FE_{\text{R}} / (FE_{\text{R}} + FE_{\text{NR}})$$

Where:

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

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

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

FE_{R} = Feedstock energy from renewable biomass used to make the transportation fuel, heating oil, or jet fuel, in Btu.

FE_{NR} = Feedstock energy from non-renewable feedstocks used to make the transportation fuel, heating oil, or jet fuel, in Btu.

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

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

Where:

FE = Feedstock energy, in Btu.

M = Mass of feedstock, in pounds, measured on a daily or per-batch basis.

m = Average moisture content of the feedstock, in mass percent.

CF = Converted Fraction in annual average mass percent, representing that portion of the feedstock that is converted into transportation fuel, heating oil, or jet fuel by the producer.

E = Energy content of the components of the feedstock that are converted to fuel, in annual average Btu/lb, determined according to paragraph (f)(7) of this section.

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

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

Where:

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

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

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

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

(ii) The D code that shall be used in the RINs generated to represent partially renewable transportation fuel, heating oil, or jet fuel shall be the D code specified in Table 1 to this section, or a D code as approved by the Administrator, which corresponds to the pathway that describes a producer's operations. In determining the

appropriate pathway, the contribution of non-renewable feedstocks to the production of partially renewable fuel shall be ignored.

(5) * * *

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

(A) *Separated yard waste*, which is a feedstock stream consisting of yard waste kept separate since generation from other waste materials. Separated yard waste is deemed to be composed entirely of cellulosic materials.

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

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

* * * * *

(iii) * * *

(B) The fuel producer has evidence of all contracts relating to the disposition of paper, cardboard, plastics, rubber, textiles, metals, and glass that are recycled.

* * * * *

(10)(i) For purposes of this section, renewable electricity or biogas that is not introduced into a distribution system with fuels derived from non-renewable feedstocks is considered renewable fuel and the producer may generate RINs if all of the following apply:

(A) The fuel is produced from renewable biomass and qualifies for a D code in Table 1 to this section or has received approval for use of a D code by the Administrator;

(B) The fuel producer has entered into a written contract for the sale and use of a specific quantity of renewable electricity or biogas as transportation fuel; and

(C) The renewable electricity or biogas is used as a transportation fuel.

(ii) A producer of renewable electricity that is generated by co-firing a combination of renewable biomass and fossil fuel may generate RINs only for the portion attributable to the

renewable biomass, using the procedure described in paragraph (f)(4) of this section.

(11)(i) For purposes of this section, renewable electricity or biogas that is introduced into a commercial distribution system may be considered renewable fuel and the producer may generate RINs if:

* * * * *

(C) The quantity of biogas or renewable electricity for which RINs were generated was sold for use as transportation fuel and for no other purposes.

(ii) For biogas that is introduced into a commercial distribution system, the producer may generate RINs only for the volume of biogas that has been gathered, processed, and injected into a common carrier pipeline if:

* * * * *

(iii) The fuel used for transportation purposes is considered produced from renewable biomass only to the extent that:

(A) The amount of fuel sold for use as transportation fuel matches the amount of fuel derived from renewable biomass that the producer contracted to have placed into the commercial distribution system; and

* * * * *

(iv) For renewable electricity that is generated by co-firing a combination of renewable biomass and fossil fuel, the producer may generate RINs only for the portion attributable to the renewable biomass, using the procedure described in paragraph (f)(4) of this section.

(12) For purposes of Table 1 to this section, process heat produced from combustion of gas at a renewable fuel facility is considered derived from biomass if the gas is biogas.

(i) For biogas directly transported to the facility without being placed in a commercial distribution system, all of the following conditions must be met:

(A) The producer has entered into a written contract for the procurement of a specific volume of biogas with a specific heat content.

(B) The volume of biogas was sold to the renewable fuel production facility, and to no other facility.

(C) The volume and heat content of biogas injected into the pipeline and the volume of gas used as process heat are measured by continuous metering.

(D) The common carrier pipeline into which the biogas is placed ultimately serves the producer's renewable fuel facility.

(ii) For biogas that has been gathered, processed and injected into a common carrier pipeline, all of the following conditions must be met:

(A) The producer has entered into a written contract for the procurement of a specific volume of biogas with a specific heat content.

(B) The volume of biogas was sold to the renewable fuel production facility, and to no other facility.

(C) The volume of biogas placed into a common carrier pipeline is ultimately withdrawn from that pipeline is withdrawn in a manner and at a time consistent with the transport of fuel between the injection and withdrawal points.

(D) The volume and heat content of biogas injected into the pipeline and the volume of gas used as process heat are measured by continuous metering.

(E) The common carrier pipeline into which the biogas is placed ultimately serves the producer's renewable fuel facility.

(iii) The process heat produced from combustion of gas at a renewable fuel facility described in paragraph (f)(12)(i) of this section shall not be considered derived from biomass if any other party relied upon the contracted volume of biogas for the creation of RINs.

■ 10. Section 80.1427 is amended by revising paragraphs (a)(4)(i) and (a)(7)(i) to read as follows:

§ 80.1427 How are RINs used to demonstrate compliance?

(a) * * *

(4) * * *

(i) A RIN generated pursuant to § 80.1126 with a D code of 2 and an RR code of 15, 16, or 17 is deemed equivalent to a RIN generated pursuant to § 80.1426 having a D code of 4.

* * * * *

(7) * * *

(i) Prior to determining compliance with the 2010 biomass-based diesel RVO, obligated parties may reduce the value of $RVO_{BBD,2010}$ by an amount equal to the sum of all 2008 and 2009 RINs that they used for compliance purposes for calendar year 2009 which have a D code of 2 and an RR code of 15, 16, or 17.

* * * * *

■ 11. Section 80.1428 is amended by revising paragraph (c) to read as follows:

§ 80.1428 General requirements for RIN distribution.

* * * * *

(c) *RIN expiration.* Except as provided in § 80.1427(a)(7), a RIN is valid for compliance during the calendar year in which it was generated, or the following calendar year. Any RIN that is not used for compliance purposes for the calendar year in which it was generated, or for the following calendar year, will

be considered an expired RIN. Pursuant to § 80.1431(a), an expired RIN will be considered an invalid RIN and cannot be used for compliance purposes.

* * * * *

■ 12. Section 80.1429 is amended by revising paragraphs (d) and (g) to read as follows:

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

* * * * *

(d) Upon and after separation of a RIN from its associated volume of renewable fuel, the separated RIN must be accompanied by a PTD pursuant to § 80.1453 when transferred to another party.

* * * * *

(g) Any 2009 or 2010 RINs retired pursuant to § 80.1129 because renewable fuel was used in a nonroad vehicle or nonroad engine (except for ocean-going vessels), or as heating oil or jet fuel may be reinstated by the retiring party for sale or use to demonstrate compliance with a 2010 RVO.

■ 13. Section 80.1430 is amended by revising paragraphs (a), (b)(2), and (b)(3) to read as follows:

§ 80.1430 Requirements for exporters of renewable fuels.

(a) Any party that owns any amount of renewable fuel, whether in its neat form or blended with gasoline or diesel, that is exported from any of the regions described in § 80.1426(b) shall acquire sufficient RINs to comply with all applicable Renewable Volume Obligations under paragraphs (b) through (e) of this section representing the exported renewable fuel.

(b) * * *

(2) *Biomass-based diesel.*

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

Where:

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

k = A discrete volume of exported renewable fuel.

VOL_k = The standardized volume of discrete volume k of exported renewable fuel that is biodiesel or renewable diesel, in gallons, calculated in accordance with § 80.1426(f)(8).

EV_k = The equivalence value associated with discrete volume k.

Σ = Sum involving all volumes of biodiesel or renewable diesel exported.

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

(3) *Advanced biofuel.*

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

Where:

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

k = A discrete volume of exported renewable fuel.

VOL_k = The standardized volume of discrete volume k of exported renewable fuel that is biodiesel or renewable diesel, or that the exporter knows or has reason to know is cellulosic biofuel or advanced biofuel, in gallons, calculated in accordance with § 80.1426(f)(8).

EV_k = The equivalence value associated with discrete volume k.

Σ = Sum involving all volumes of advanced biofuel exported.

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

* * * * *

■ 14. Section 80.1440 is amended by revising paragraphs (c)(3), (d), and (e) to read as follows:

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

* * * * *

(c) * * *

(3) A renewable fuel blender who delegates its RIN-related responsibilities under this section will remain liable for any violation of this subpart M associated with its renewable fuel blending activities.

(d) Renewable fuel blenders who handle and blend less than 125,000 gallons of renewable fuel per year and delegate their RIN-related responsibilities under paragraph (b) of this section must register pursuant to § 80.1450(e), and may not own RINs.

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

■ 15. Section 80.1442 is amended as follows:

■ a. By revising paragraph (b)(1).

■ b. By removing and reserving paragraph (b)(4).

■ c. By revising paragraph (c).

■ d. By revising paragraph (d)(1).

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

* * * * *

(b)(1) The small refiner exemption in paragraph (c) of this section is effective immediately, except as provided in paragraph (b)(5) of this section, provided that all requirements of this section are satisfied.

* * * * *

(4) [Reserved]

* * * * *

(c) *Small refiner temporary exemption.*

(1) Transportation fuel produced by a small refiner pursuant to paragraph (b)(1) of this section, or an approved foreign small refiner (as defined at § 80.1465(a)), is exempt from January 1, 2010 through December 31, 2010 from the renewable fuel standards of § 80.1405 and the requirements that apply to obligated parties under this subpart if the refiner or foreign refiner meets all the criteria of paragraph (a)(1) of this section.

(2) The small refiner exemption shall apply to a small refiner pursuant to paragraph (b)(1) of this section or an approved foreign small refiner unless that refiner chooses to waive this exemption (as described in paragraph (d) of this section).

(d)(1) A refiner may, at any time, waive the small refiner exemption under paragraph (c) of this section upon notification to EPA.

* * * * *

■ 16. Section 80.1450 is amended by revising paragraphs (b), (c), (d)(2), (e), and (f) to read as follows:

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

* * * * *

(b) *Producers.* Any RIN-generating foreign or domestic producer of renewable fuel, any foreign renewable fuel producer that sells renewable fuel for RIN generation by a United States importer, or any foreign ethanol producer that produces ethanol used in renewable fuel for which RINs are generated by a United States importer, must provide EPA the information specified under § 80.76 if such information has not already been provided under the provisions of this part, and must receive EPA-issued company and facility identification numbers prior to the generation of any RINs for their fuel or for fuel made with their ethanol. Unless otherwise specifically indicated, all the following registration information must be submitted and accepted by EPA by July 1, 2010, or 60 days prior to the generation of RINs, whichever date comes later, subject to this subpart:

(1) A description of the types of renewable fuels or ethanol that the producer intends to produce at the facility and that the facility is capable of producing without significant modifications to the existing facility. For each type of renewable fuel or ethanol, the renewable fuel producer or foreign ethanol producer shall also provide all the following:

(i) A list of all the feedstocks the facility is capable of utilizing without

significant modification to the existing facility.

(ii) A description of the facility's renewable fuel or ethanol production processes.

(iii) The type of co-products produced with each type of renewable fuel or ethanol.

(iv) A process heat fuel supply plan that includes all of the following:

(A) For all process heat fuel, provide all the following information:

(1) Each type of process heat fuel used at the facility.

(2) Name and address of the company supplying each process heat fuel to the renewable fuel or foreign ethanol facility.

(B) For biogas used for process heat, provide all the following information:

(1) Locations from which the biogas was produced or extracted.

(2) Name of suppliers of all biogas the producer purchases for use for process heat in the facility.

(3) An affidavit from the biogas supplier stating its intent to supply biogas to the renewable fuel producer or foreign ethanol producer, and the quantity and energy content of the biogas that it intends to provide to the renewable fuel producer or foreign ethanol producer.

(v) The following records that support the facility's baseline volume as defined in § 80.1401 or, for foreign ethanol facilities, their production volume:

(A) For all facilities except those described in paragraph (b)(1)(v)(B) of this section, copies of the most recent applicable air permits issued by the U.S. Environmental Protection Agency, state, local air pollution control agencies, or foreign governmental agencies and that govern the construction and/or operation of the renewable fuel or foreign ethanol facility.

(B) For facilities claiming the exemption described in § 80.1403(c) or (d), applicable air permits issued by the U.S. Environmental Protection Agency, state, local air pollution control agencies, or foreign governmental agencies that govern the construction and/or operation of the renewable fuel facility that were:

(1) Issued or revised no later than December 19, 2007, for facilities described in § 80.1403(c); or

(2) Issued or revised no later than December 31, 2009, for facilities described in § 80.1403(d).

(C) For all facilities, copies of documents demonstrating each facility's actual peak capacity as defined in § 80.1401 if the maximum rated annual volume output of renewable fuel is not specified in the air permits specified in paragraphs (b)(1)(v)(A) and (b)(1)(v)(B) of this section, as appropriate.

(D) Such other records as may be requested by the Administrator.

(vi) For facilities claiming the exemption described in § 80.1403(c) or (d), evidence demonstrating the date that construction commenced (as defined in § 80.1403(a)(1)) including all of the following:

(A) Contracts with construction and other companies.

(B) Applicable air permits issued by the U.S. Environmental Protection Agency, state, local air pollution control agencies, or foreign governmental agencies that governed the construction and/or operation of the renewable fuel facility during construction and when first operated.

(vii)(A) For a producer of renewable fuel or a foreign producer of ethanol made from separated yard waste per § 80.1426(f)(5)(i)(A):

(1) The location of any municipal waste facility or other facility from which the waste stream consisting solely of separated yard waste is collected; and

(2) A plan documenting how the waste will be collected and how the renewable fuel producer or foreign ethanol producer will conduct ongoing verification that such waste consists only of yard waste (and incidental other components such as paper and plastics) that is kept separate since generation from other waste materials.

(B) For a producer of renewable fuel or a foreign producer of ethanol made from separated food waste per § 80.1426(f)(5)(i)(B):

(1) The location of any municipal waste facility or other facility from which the waste stream consisting solely of separated food waste is collected; and

(2) A plan documenting how the waste will be collected, how the cellulosic and non-cellulosic portions of the waste will be quantified, and for ongoing verification that such waste consists only of food waste (and incidental other components such as paper and plastics) that is kept separate since generation from other waste materials.

(viii) For a producer of renewable fuel, or a foreign producer of ethanol, made from separated municipal solid waste per § 80.1426(f)(5)(i)(C):

(A) The location of the municipal waste facility from which the separated municipal solid waste is collected or from which material is collected that will be processed to produce separated municipal solid waste.

(B) A plan providing ongoing verification that there is separation of recyclable paper, cardboard, plastics, rubber, textiles, metals, and glass wastes

to the extent reasonably practicable and which documents the following:

(1) Extent and nature of recycling that occurred prior to receipt of the waste material by the renewable fuel producer or foreign ethanol producer;

(2) Identification of available recycling technology and practices that are appropriate for removing recycling materials from the waste stream by the fuel producer or foreign ethanol producer; and

(3) Identification of the technology or practices selected for implementation by the fuel producer or foreign ethanol producer including an explanation for such selection, and reasons why other technologies or practices were not.

(C) Contracts relevant to materials recycled from municipal waste streams as described in § 80.1426(f)(5)(iii).

(D) Certification by the producer that recycling is conducted in a manner consistent with goals and requirements of applicable State and local laws relating to recycling and waste management.

(2) An independent third-party engineering review and written report and verification of the information provided pursuant to paragraph (b)(1) of this section. The report and verification shall be based upon a site visit and review of relevant documents and shall separately identify each item required by paragraph (b)(1) of this section, describe how the independent third-party evaluated the accuracy of the information provided, state whether the independent third-party agrees with the information provided, and identify any exceptions between the independent third-party's findings and the information provided.

(i) The verifications required under this section must be conducted by a professional engineer, as specified in paragraphs (b)(2)(i)(A) and (b)(2)(i)(B) of this section, who is an independent third-party. The verifying engineer must be:

(A) For a domestic renewable fuel production facility or a foreign ethanol production facility, a professional engineer who is licensed by an appropriate state agency in the United States, with professional work experience in the chemical engineering field or related to renewable fuel production.

(B) For a foreign renewable fuel production facility, an engineer who is a foreign equivalent to a professional engineer licensed in the United States with professional work experience in the chemical engineering field or related to renewable fuel production.

(ii) To be considered an independent third-party under this paragraph (b)(2):

(A) The third-party shall not be operated by the renewable fuel producer or foreign ethanol producer, or any subsidiary or employee of the renewable fuel producer or foreign ethanol producer.

(B) The third-party shall be free from any interest in the renewable fuel producer or foreign ethanol producer's business.

(C) The renewable fuel producer or foreign ethanol producer shall be free from any interest in the third-party's business.

(D) Use of a third-party that is debarred, suspended, or proposed for debarment pursuant to the Government-wide Debarment and Suspension regulations, 40 CFR part 32, or the Debarment, Suspension and Ineligibility provisions of the Federal Acquisition Regulations, 48 CFR, part 9, subpart 9.4, shall be deemed noncompliance with the requirements of this section.

(iii) The independent third-party shall retain all records pertaining to the verification required under this section for a period of five years from the date of creation and shall deliver such records to the Administrator upon request.

(iv) The renewable fuel producer or foreign ethanol producer must retain records of the review and verification, as required in § 80.1454(b)(6).

(v) The third-party must provide to EPA documentation of his or her qualifications as part of the engineering review, including proof of appropriate professional license or foreign equivalent.

(vi) Owners and operators of facilities described in § 80.1403(c) and (d) must submit the engineering review no later than December 31, 2010.

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

(d) * * *

(2) Any producer of renewable fuel who makes any other changes to a facility that will affect the producer's registration information but will not affect the renewable fuel category for which the producer is registered per paragraph (b) of this section must update his registration information 7 days prior to the change.

(e) Any party who owns RINs, intends to own RINs, or intends to allow another party to separate RINs as per § 80.1440, but who is not covered by paragraph (a), (b), or (c) of this section, must provide EPA the information specified under § 80.76, if such information has not already been provided under the provisions of this part and must receive an EPA-issued company identification number prior to owning any RINs. Registration information must be submitted at least 30 days prior to RIN ownership.

(f) Registration for any facility claiming an exemption under § 80.1403(c) or (d), must be submitted by July 1, 2013. EPA may in its sole discretion waive this requirement if it determines that the information submitted in any later registration can be verified by EPA in the same manner as would have been possible with a timely submission.

* * * * *

■ 17. Section 80.1451 is amended as follows:

■ a. By revising paragraph (a)(1)(xi).

■ b. By revising paragraphs (b)(1)(ii)(H), (b)(1)(ii)(K), (b)(1)(ii)(N), (b)(1)(ii)(P), (b)(1)(ii)(Q), and (b)(1)(ii)(R).

■ c. By revising paragraphs (c)(1)(iii)(D) and (c)(2)(xv).

■ d. By revising paragraphs (d) introductory text and (d)(1).

■ e. By revising paragraph (e).

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

(a) * * *

(1) * * *

(xi) A list of all RINs retired for compliance in the reporting period.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(H) The fuel type of each batch.

* * * * *

(K) The types and quantities of feedstocks used.

* * * * *

(M) The type of co-products produced with each batch.

(N) The quantity of co-products produced in each quarter.

* * * * *

(P) Producers of renewable electricity and producers or importers of biogas used for transportation as described in § 80.1426(f)(10) and (11), shall report all of the following:

(1) The total energy produced and supplied for use as a transportation fuel, in units of energy (for example, MMBtu or MW) based on metering of gas volume or electricity.

(2) The name and location of where the fuel is sold for use as a transportation fuel.

(Q) Producers or importers of renewable fuel produced at facilities that use biogas for process heat as described in § 80.1426(f)(12), shall report the total energy supplied to the renewable fuel facility, in MMBtu based on metering of gas volume.

(R) Producers or importers of renewable fuel made from separated municipal solid waste as described in § 80.1426(f)(5)(i)(C), shall report the amount of paper, cardboard, plastics, rubber, textiles, metals, and glass separated from municipal solid waste for recycling. Reporting shall be in units of weight (in tons).

* * * * *

(c) * * *
(1) * * *
(iii) * * *

(D) Transaction type (i.e., RIN buy, RIN sell, RIN separation, RIN retire, reinstated 2009 or 2010 RINs).

* * * * *

(2) * * *

(xv) The total 2009 and 2010 retired RINs reinstated.

* * * * *

(d) Except for those producers using feedstocks subject to the aggregate compliance approach described in § 80.1454(g), producers and RIN-generating importers of renewable fuel made from feedstocks that are planted crops and crop residue from existing foreign agricultural land, planted trees or tree residue from actively managed tree plantations, slash and pre-commercial thinnings from forestlands or biomass obtained from areas at risk of wildfire must submit quarterly reports according to the schedule in paragraph (f)(2) of this section that include all of the following:

(1) A summary of the types and quantities of feedstocks used in that quarter.

* * * * *

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

(1) A summary of the types and quantities of feedstocks used in that quarter.

(2) Electronic data identifying the land by coordinates of the points

defining the boundaries from which each type of feedstock listed per paragraph (d)(1) of this section was harvested.

(3) If electronic data identifying a plot of land have been submitted previously, producers and RIN-generating importers may submit a cross-reference to that electronic data.

* * * * *

■ 18. Section 80.1452 is amended as follows:

■ a. By revising paragraphs (b) introductory text, (b)(2), (b)(4), (b)(6), (b)(9), (b)(13), and (b)(15).

■ b. By revising paragraphs (c) introductory text, (c)(4), (c)(5), and (c)(7).

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

* * * * *

(b) Starting July 1, 2010, each time a domestic or foreign producer or importer of renewable fuel assigns RINs to a batch of renewable fuel pursuant to § 80.1426(e), all the following information must be submitted to EPA via the submitting party's EMTS account within five (5) business days of the date of RIN assignment.

* * * * *

(2) The EPA company registration number of the producer of renewable fuel.

* * * * *

(4) The EPA facility registration number of the producer of the renewable fuel.

* * * * *

(6) The D code of RINs generated for the batch.

* * * * *

(9) The fuel type of the batch.

* * * * *

(13) The type and quantity of feedstock(s) used for the batch.

* * * * *

(15) The type and quantity of co-products produced with the batch of renewable fuel.

* * * * *

(c) Starting July 1, 2010, each time any party engages in a transaction involving RINs generated on or after July 1, 2010, all the following information must be submitted to EPA via the submitting party's EMTS account within five (5) business days of the reportable event. The reportable event for a RIN purchase or sale occurs on the date of transfer per § 80.1453(a)(4). The reportable event for a RIN separation or retirement occurs on the date of separation or retirement as described in § 80.1429.

* * * * *

(4) The RIN status (Assigned or Separated).

(5) The D code of the RINs.

* * * * *

(7) The date of transfer per § 80.1453(a)(4), if applicable.

* * * * *

■ 19. Section 80.1453 is amended as follows:

■ a. By removing and reserving paragraph (a)(5).

■ b. By revising paragraphs (a)(7), (a)(8), (a)(10), and (a)(11).

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

(a) * * *

(5) [Reserved]

* * * * *

(7) The D code of the RINs.

(8) The RIN status (Assigned or Separated).

* * * * *

(10) The associated reason for the sell or buy transaction (e.g., standard trade or remedial action).

(11) Additional RIN-related information, as follows:

(i) If assigned RINs are being transferred on the same PTD used to transfer ownership of the renewable fuel, then the assigned RIN information shall be identified on the PTD.

(A) The identifying information for a RIN that is transferred in EMTS generically is the information specified in paragraphs (a)(1) through (a)(10) of this section.

(B) The identifying information for a RIN that is transferred in EMTS uniquely is the information specified in paragraphs (a)(1) through (a)(10) of this section, the RIN generator company ID, the RIN generator facility ID, and the batch number.

(C) The identifying information for a RIN that is generated prior to July 1, 2010, is the 38-digit code pursuant to § 80.1425, in its entirety.

(ii) If 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 include all the following:

(A) The number of gallon-RINs being transferred.

(B) A unique reference to the PTD which is transferring the assigned RINs.

(C) The information specified in paragraphs (a)(11)(i)(A) through (a)(11)(i)(C) of this section, as appropriate.

(iii) If no assigned RINs are being transferred with the renewable fuel, the PTD which is used to transfer

ownership of the renewable fuel shall state "No assigned RINs transferred."

(iv) If RINs have been separated from the renewable fuel or fuel blend pursuant to § 80.1429(b)(4), then all PTDs which are at any time used to transfer ownership of the renewable fuel or fuel blend shall state "This volume of fuel must be used in the designated form, without further blending."

* * * * *

■ 20. Section 80.1454 is amended as follows:

■ a. By revising paragraphs (a)(2) and (a)(3)(iv), and adding a new paragraph (a)(6).

■ b. By revising paragraphs (c)(1)(i) introductory text, (c)(1)(i)(A), (c)(1)(ii)(A), and (c)(2)(ii).

■ c. By revising paragraph (d) introductory text.

■ d. By redesignating paragraph (d)(3) as paragraph (d)(4), adding a new paragraph (d)(3), and revising newly designated paragraph (d)(4).

■ e. By revising paragraph (g).

■ f. By revising paragraphs (h) introductory text and (h)(6)(v).

■ g. By revising paragraph (j) introductory text.

■ h. By redesignating paragraph (j)(2)(iii) as paragraph (j)(2)(iv), and adding a new paragraph (j)(2)(iii).

■ i. By revising paragraphs (k)(1) through (k)(5).

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

(a) * * *

(2) Copies of all reports submitted to EPA under § 80.1451(a), as applicable.

(3) * * *

(iv) Additional information, including contracts, correspondence, and invoices, related to details of the RIN transaction and its terms.

* * * * *

(6) For exported renewable fuel, invoices, bills of lading and other documents describing the exported renewable fuel.

* * * * *

(c) * * *

(1) * * *

(i) RIN-generating foreign producers and importers of renewable fuel made from feedstocks that are planted crops or crop residue from existing foreign agricultural land, planted trees or tree residue from actively managed tree plantations, slash and pre-commercial thinnings from forestlands or biomass obtained from wildland-urban interface must maintain all the following records to verify the location where these feedstocks were produced:

(A) Maps or electronic data identifying the boundaries of the land

where each type of feedstock was produced.

* * * * *

(ii)(A) RIN-generating foreign producers and importers of renewable fuel made from planted crops or crop residue from existing foreign agricultural land must keep records that serve as evidence that the land from which the feedstock was obtained was cleared or cultivated prior to December 19, 2007 and actively managed or fallow, and nonforested on December 19, 2007. RIN-generating foreign producers or importers of renewable fuel made from planted trees or tree residue from actively managed tree plantations must keep records that serve as evidence that the land from which the feedstock was obtained was cleared prior to December 19, 2007 and actively managed on December 19, 2007.

* * * * *

(2) * * *

(ii) Copies of all reports submitted to EPA under §§ 80.1449 and 80.1451(b).

* * * * *

(d) *Additional requirements for domestic producers of renewable fuel.* Except as provided in paragraphs (g) and (h) of this section, beginning July 1, 2010, any domestic producer of renewable fuel as defined in § 80.1401 that generates RINs for such fuel must keep documents associated with feedstock purchases and transfers that identify where the feedstocks were produced and are sufficient to verify that feedstocks used are renewable biomass (as defined in § 80.1401) if RINs are generated.

* * * * *

(3) Domestic producers of renewable fuel made from planted crops or crop residue from existing foreign agricultural land must keep all the following records:

(i) Records that serve as evidence that the land from which the feedstock was obtained was cleared or cultivated prior to December 19, 2007 and actively managed or fallow, and nonforested on December 19, 2007. The records must be provided by the feedstock producer and must include at least one of the following documents, which must be traceable to the land in question:

(A) Sales records for planted crops, crop residue, or livestock.

(B) Purchasing records for fertilizer, weed control, seeds, seedlings, or other nursery stock.

(C) A written management plan for agricultural purposes.

(D) Documentation of participation in an agricultural program sponsored by a Federal, State, or local government agency.

(E) Documentation of land management in accordance with an agricultural product certification program.

(ii) Records to verify the location where the feedstocks were produced:

(A) Maps or electronic data identifying the boundaries of the land where each type of feedstock was produced; and

(B) Bills of lading, product transfer documents or other commercial documents showing the quantity of feedstock purchased from each area identified in paragraph (d)(3)(ii)(A) of this section, and showing each transfer of custody of the feedstock from the location where it was produced to the renewable fuel facility.

(4) Domestic producers of renewable fuel made from any other type of renewable biomass must have documents from their feedstock supplier certifying that the feedstock qualifies as renewable biomass as defined in § 80.1401, describing the feedstock. Separated yard and food waste and separated municipal solid waste are subject to the requirements in paragraph (j) of this section.

* * * * *

(g) *Aggregate compliance with renewable biomass requirement.* Any producer or RIN-generating importer of renewable fuel made from planted crops or crop residue from existing U.S. agricultural land as defined in § 80.1401 is subject to the aggregate compliance approach and is not required to maintain feedstock records unless EPA publishes a finding that the 2007 baseline amount of agricultural land has been exceeded.

(1) EPA will make a finding concerning whether the 2007 baseline amount of U.S. agricultural land has been exceeded and will publish this finding in the **Federal Register** by November 30 of the year preceding the compliance period.

(2) If EPA finds that the 2007 baseline amount of U.S. agricultural land has been exceeded, beginning on the first day of July of the compliance period in question any producer or RIN-generating importer of renewable fuel made from planted crops and/or crop residue from U.S. agricultural lands as feedstock for renewable fuel for which RINs are generated must keep all the following records:

(i) Records that serve as evidence that the land from which the feedstock was obtained was cleared or cultivated prior to December 19, 2007 and actively managed or fallow, and nonforested on December 19, 2007. The records must be provided by the feedstock producer and

must include at least one of the following documents, which must be traceable to the land in question:

(A) Sales records for planted crops, crop residue or livestock.

(B) Purchasing records for fertilizer, weed control, seeds, seedlings, or other nursery stock.

(C) A written management plan for agricultural purposes.

(D) Documentation of participation in an agricultural program sponsored by a Federal, state, or local government agency.

(E) Documentation of land management in accordance with an agricultural product certification program.

(ii) Records to verify the location where the feedstocks were produced:

(A) Maps or electronic data identifying the boundaries of the land where each type of feedstock was produced; and

(B) Bills of lading, product transfer documents or other commercial documents showing the quantity of feedstock purchased from each area identified in paragraph (g)(2)(ii)(A) of this section, and showing each transfer of custody of the feedstock from the location where it was produced to the renewable fuel facility.

(h) *Alternative renewable biomass tracking requirement.* Any foreign or domestic renewable fuel producer or RIN-generating importer may comply with the following alternative renewable biomass tracking requirement instead of the recordkeeping requirements in paragraphs (c)(1), (d), and (g) of this section:

* * * * *

(6) * * *

(v) EPA may revoke any approval of a survey plan under this section for cause, including an EPA determination that the approved survey plan had proved inadequate in practice or that it was not fully implemented.

* * * * *

(j) A renewable fuel producer that produces fuel from separated yard and food waste as described in § 80.1426(f)(5)(i)(A) and (B) and separated municipal solid waste as described in § 80.1426(f)(5)(i)(C) shall keep all the following additional records:

* * * * *

(2) * * *

(iii) Documents demonstrating the fuel sampling methods used pursuant to § 80.1426(f)(9) and the results of all fuel analyses to determine the non-fossil fraction of fuel made from separated municipal solid waste.

(k) * * *

(1) Contracts and documents memorializing the sale of biogas or renewable electricity for use as transportation fuel relied upon in § 80.1426(f)(10), § 80.1426(f)(11), or for use of biogas for use as process heat to make renewable fuel as relied upon in § 80.1426(f)(12), and the transfer of title of the biogas or renewable electricity and all associated environmental attributes from the point of generation to the facility which sells or uses the fuel for transportation purposes.

(2) Documents demonstrating the volume and energy content of biogas, or kilowatts of renewable electricity, relied upon under § 80.1426(f)(10) that was delivered to the facility which sells or uses the fuel for transportation purposes.

(3) Documents demonstrating the volume and energy content of biogas, or kilowatts of renewable electricity, relied upon under § 80.1426(f)(11), or biogas relied upon under § 80.1426(f)(12), that was placed into the common carrier pipeline (for biogas) or transmission line (for renewable electricity).

(4) Documents demonstrating the volume and energy content of biogas, or kilowatts of renewable electricity, relied upon under § 80.1426(f)(12) at the point of distribution.

(5) Affidavits from the biogas or renewable electricity producer and all parties that held title to the biogas or renewable electricity confirming that title and environmental attributes of the biogas or renewable electricity relied upon under § 80.1426(f)(10) and (11) were used for transportation purposes only, and that the environmental attributes of the biogas relied upon under § 80.1426(f)(12) were used for process heat at the renewable fuel producer's facility, and for no other purpose. The renewable fuel producer shall create and/or obtain these affidavits at least once per calendar quarter.

* * * * *

■ 21. Section 80.1455 is amended by revising paragraphs (a) introductory text, (b)(1), (c) introductory text, and (d)(1) to read as follows:

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

(a) *Standard volume threshold.* Renewable fuel production facilities located within the United States that produce less than 10,000 gallons of renewable fuel each year, and importers who import less than 10,000 gallons of renewable fuel each year, are not subject to the requirements of § 80.1426(a) and (e) related to the generation and assignment of RINs to batches of

renewable fuel. Except as stated in paragraph (b) of this section, such production facilities and importers that do not generate and assign RINs to batches of renewable fuel are also exempt from all the following requirements of this subpart:

* * * * *

(b)(1) Renewable fuel production facilities and importers who produce or import less than 10,000 gallons of renewable fuel each year and that generate and assign RINs to batches of renewable fuel are subject to the provisions of §§ 80.1426, 80.1449 through 80.1452, 80.1454, and 80.1464.

* * * * *

(c) *Temporary volume threshold.* Renewable fuel production facilities located within the United States that produce less than 125,000 gallons of renewable fuel each year are not subject to the requirements of § 80.1426(a) and (e) related to the generation and assignment of RINs to batches of renewable fuel for up to three years, beginning with the calendar year in which the production facility produces its first gallon of renewable fuel. Except as stated in paragraph (d) of this section, such production facilities that do not generate and assign RINs to batches of renewable fuel are also exempt from all the following requirements of this subpart for a maximum of three years:

* * * * *

(d)(1) Renewable fuel production facilities who produce less than 125,000 gallons of renewable fuel each year and that generate and assign RINs to batches of renewable fuel are subject to the provisions of §§ 80.1426, 80.1449 through 80.1452, 80.1454, and 80.1464.

* * * * *

■ 22. Section 80.1460 is amended by revising paragraph (c)(2) to read as follows:

§ 80.1460 What acts are prohibited under the RFS program?

* * * * *

(c) * * *

(2) Use a validly generated RIN to meet the person's RVOs under § 80.1427, or separate and transfer a validly generated RIN, where the person using the RIN ultimately uses the renewable fuel volume associated with the RIN in an application other than for use as transportation fuel, jet fuel, or heating oil (as defined in § 80.1401).

* * * * *

■ 23. Section 80.1463 is amended by revising paragraphs (a) and (b) to read as follows:

§ 80.1463 What penalties apply under the RFS program?

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

(b) Any person liable under § 80.1461(a) for a violation of § 80.1460(c) for failure to meet its RVOs, or § 80.1460(e) for causing another person to fail to meet their RVOs during any compliance period, is subject to a separate day of violation for each day in the compliance period.

* * * * *

■ 24. Section 80.1464 is amended as follows:

■ a. By revising paragraphs (a)(1)(i)(A) and (a)(1)(iv)(A), adding paragraph (a)(1)(iv)(D), and removing paragraph (a)(1)(vii).

■ b. By revising paragraphs (b)(1)(i) and (b)(1)(ii).

■ c. By revising paragraph (c)(2)(ii).

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

* * * * *

(a) * * *

(1) * * *

(i) * * *

(A) The obligated party's volume of all products listed in § 80.1407(c) and (e), or the exporter's volume of each category of exported renewable fuel identified in § 80.1430(b)(1) through (b)(4).

* * * * *

(iv) For exporters, perform all of the following:

(A) Obtain the database, spreadsheet, or other documentation that the

exporter maintains for all exported renewable fuel.

* * * * *

(D) Select sample batches in accordance with the guidelines in § 80.127 from each separate category of renewable fuel exported and identified in § 80.1451(a); obtain invoices, bills of lading and other documentation for the representative samples; state whether any of these documents refer to the exported fuel as advanced biofuel or cellulosic biofuel; and report as a finding whether or not the exporter calculated an advanced biofuel or cellulosic biofuel RVO for these fuels pursuant to § 80.1430(b)(1) or § 80.1430(b)(3).

* * * * *

(b) * * *

(1) * * *

(i) Obtain and read copies of the reports required under § 80.1451(b)(1), (d), and (e) for the compliance year.

(ii) Obtain production data for each renewable fuel batch by type of renewable fuel that was produced or imported during the year being reviewed; compute the number of gallon-RINs production dates, types, volumes of denaturant and applicable equivalence values, and production volumes for each batch; report the total RINs generated during the year being reviewed; and state whether this information agrees with the party's reports to EPA. Report as a finding any exceptions.

* * * * *

(c) * * *

(2) * * *

(ii) Obtain the database, spreadsheet, or other documentation used to generate the information in the RIN activity reports; compare the RIN transaction

samples reviewed under paragraph (c)(1) of this section with the corresponding entries in the database or spreadsheet and report as a finding any discrepancies; compute the total number of current-year and prior-year RINs owned at the start and end of each quarter, purchased, sold, retired, separated, and reinstated and for parties that reported RIN activity for RINs assigned to a volume of renewable fuel, the volume of renewable fuel owned at the end of each quarter, as represented in these documents; and state whether this information agrees with the party's reports to EPA.

* * * * *

■ 25. Section 80.1465 is amended by revising paragraphs (a)(6) and (d)(1)(ii) to read as follows:

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

(a) * * *

(6) *Non-RFS-FRFUEL* is transportation fuel produced at a foreign refinery that has not received a small refinery exemption under § 80.1441 or by a foreign refiner that has not received a small refiner exemption under § 80.1442.

* * * * *

(d) * * *

(1) * * *

(ii) Determine the volume of RFS-FRFUEL loaded onto the vessel, temperature-corrected to 60°F (exclusive of any tank bottoms before loading).

* * * * *

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