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Title 40
Protection of Environment

Part 80

Revised as of July 1, 2022

Containing a codification of documents
of general applicability and future effect

As of July 1, 2022

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Cite this Code: CFR

To cite the regulations in this volume use title, part and section number. Thus, 40 CFR 80.1 *refers to title 40, part 80, section 1.*

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Title 17 through Title 27.....as of April 1
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OLIVER A. POTTS,
Director,
Office of the Federal Register
July 1, 2022

THIS TITLE

Title 40—PROTECTION OF ENVIRONMENT is composed of thirty-seven volumes. The parts in these volumes are arranged in the following order: Parts 1–49, parts 50–51, part 52 (52.01–52.1018), part 52 (52.1019–52.2019), part 52 (52.2020–end of part 52), parts 53–59, part 60 (60.1–60.499), part 60 (60.500–end of part 60, sections), part 60 (Appendices), parts 61–62, part 63 (63.1–63.599), part 63 (63.600–63.1199), part 63 (63.1200–63.1439), part 63 (63.1440–63.6175), part 63 (63.6580–63.8830), part 63 (63.8980–end of part 63), parts 64–71, parts 72–79, part 80, part 81, parts 82–84, parts 85–96, parts 97–99, parts 100–135, parts 136–149, parts 150–189, parts 190–259, parts 260–265, parts 266–299, parts 300–399, parts 400–424, parts 425–699, parts 700–722, parts 723–789, parts 790–999, parts 1000–1059, and part 1060 to end. The contents of these volumes represent all current regulations codified under this title of the CFR as of July 1, 2022.

Chapter I—Environmental Protection Agency appears in all thirty-seven volumes. OMB control numbers for title 40 appear in § 9.1 of this chapter.

Chapters IV–IX—Regulations issued by the Environmental Protection Agency and Department of Justice, Council on Environmental Quality, Chemical Safety and Hazard Investigation Board, Environmental Protection Agency and Department of Defense; Uniform National Discharge Standards for Vessels of the Armed Forces, Gulf Coast Ecosystem Restoration Council, and the Federal Permitting Improvement Steering Council appear in volume thirty-seven.

For this volume, Gabrielle E. Burns was Chief Editor. The Code of Federal Regulations publication program is under the direction of John Hyrum Martinez, assisted by Stephen J. Frattini.

Title 40—Protection of Environment

(This book contains part 80)

Part

CHAPTER I—Environmental Protection Agency (Continued) 80

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY (CONTINUED)

EDITORIAL NOTE: Nomenclature changes to chapter I appear at 65 FR 47324, 47325, Aug. 2, 2000; 66 FR 34375, 34376, June 28, 2001; and 69 FR 18803, Apr. 9, 2004.

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SUBCHAPTER C—AIR PROGRAMS (CONTINUED)

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

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APPENDIXES A–G TO PART 80 [RESERVED]

AUTHORITY: 42 U.S.C. 7414, 7521, 7542, 7545, and 7601(a).

SOURCE: 38 FR 1255, Jan. 10, 1973, unless otherwise noted.

Subpart A—General Provisions

§ 80.1 Scope.

(a) This part prescribes regulations for the renewable fuel program under the Clean Air Act section 211(o) (42 U.S.C. 7545(o)).

(b) This part also prescribes regulations for the labeling of fuel dispensing systems for oxygenated gasoline at retail under the Clean Air Act section 211(m)(4) (42 U.S.C. 7545(m)(4)).

(c) Nothing in this part is intended to preempt the ability of state or local governments to control or prohibit any fuel or fuel additive for use in motor vehicles and motor vehicle engines which is not explicitly regulated by this part.

[85 FR 78465, Dec. 4, 2020]

§ 80.2 Definitions.

Definitions apply in this part as described in this section.

Administrator means the Administrator of the Environmental Protection Agency.

Carrier means any distributor who transports or stores or causes the transportation or storage of gasoline or diesel fuel without taking title to or otherwise having any ownership of the gasoline or diesel fuel, and without altering either the quality or quantity of the gasoline or diesel fuel.

Category 3 (C3) marine vessels, for the purposes of this part 80, are vessels that are propelled by engines meeting the definition of ''Category 3'' in 40 CFR 1042.901.

CBOB means gasoline blendstock that could become conventional gasoline solely upon the addition of oxygenate.

Control area means a geographic area in which only oxygenated gasoline under the oxygenated gasoline program may be sold or dispensed, with boundaries determined by Clean Air Act section 211(m) (42 U.S.C. 7545(m)).

Control period means the period during which oxygenated gasoline must be sold or dispensed in any control area, pursuant to Clean Air Act section 211(m)(2) (42 U.S.C. 7545(m)(2)).

Conventional gasoline or CG means any gasoline that has been certified under 40 CFR 1090.1000(b) and is not RFG.

Diesel fuel means any fuel sold in any State or Territory of the United States and suitable for use in diesel engines, and that is one of the following:

(1) A distillate fuel commonly or commercially known or sold as No. 1 diesel fuel or No. 2 diesel fuel;

(2) A non-distillate fuel other than residual fuel with comparable physical and chemical properties (*e.g.*, biodiesel fuel); or

(3) A mixture of fuels meeting the criteria of paragraphs (1) and (2) of this definition.

Distillate fuel means diesel fuel and other petroleum fuels that can be used in engines that are designed for diesel fuel. For example, jet fuel, heating oil, kerosene, No. 4 fuel, DMX, DMA, DMB, and DMC are distillate fuels; and natural gas, LPG, gasoline, and residual fuel are not distillate fuels. Blends containing residual fuel may be distillate fuels.

Distributor means any person who transports or stores or causes the transportation or storage of gasoline or

diesel fuel at any point between any gasoline or diesel fuel refinery or importer's facility and any retail outlet or wholesale purchaser-consumer's facility.

ECA marine fuel is diesel, distillate, or residual fuel that meets the criteria of paragraph (1) of this definition, but not the criteria of paragraph (2) of this definition.

(1) All diesel, distillate, or residual fuel used, intended for use, or made available for use in Category 3 marine vessels while the vessels are operating within an Emission Control Area (ECA), or an ECA associated area, is ECA marine fuel, unless it meets the criteria of paragraph (2) of this definition.

(2) ECA marine fuel does not include any of the following fuel:

(i) Fuel used by exempted or excluded vessels (such as exempted steamships), or fuel used by vessels allowed by the U.S. government pursuant to MARPOL Annex VI Regulation 3 or Regulation 4 to exceed the fuel sulfur limits while operating in an ECA or an ECA associated area (see 33 U.S.C. 1903).

(ii) Fuel that conforms fully to the requirements of this part for MVNRLM diesel fuel (including being designated as MVNRLM).

(iii) Fuel used, or made available for use, in any diesel engines not installed on a Category 3 marine vessel.

Gasoline means any fuel sold in any State[1] for use in motor vehicles and motor vehicle engines, and commonly or commercially known or sold as gasoline.

Gasoline blendstock or component means any liquid compound that is blended with other liquid compounds to produce gasoline.

Gasoline blendstock for oxygenate blending or *BOB* has the meaning given in 40 CFR 1090.80.

Gasoline treated as blendstock or *GTAB* means imported gasoline that is excluded from an import facility's compliance calculations, but is treated as blendstock in a related refinery that includes the GTAB in its refinery compliance calculations.

Heating oil means any No. 1, No. 2, or non-petroleum diesel blend that is sold for use in furnaces, boilers, and similar applications and which is commonly or commercially known or sold as heating oil, fuel oil, and similar trade names, and that is not jet fuel, kerosene, or MVNRLM diesel fuel.

Importer means a person who imports gasoline, gasoline blendstocks or components, or diesel fuel from a foreign country into the United States (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands).

Jet fuel means any distillate fuel used, intended for use, or made available for use in aircraft.

Kerosene means any No.1 distillate fuel commonly or commercially sold as kerosene.

Liquefied petroleum gas or *LPG* means a liquid hydrocarbon fuel that is stored under pressure and is composed primarily of species that are gases at atmospheric conditions (temperature = 25 °C and pressure = 1 atm), excluding natural gas.

Locomotive engine means an engine used in a locomotive as defined under 40 CFR 92.2.

Marine engine has the meaning given in 40 CFR 1042.901.

MVNRLM diesel fuel means any diesel fuel or other distillate fuel that is used, intended for use, or made available for use in motor vehicles or motor vehicle engines, or as a fuel in any nonroad diesel engines, including locomotive and marine diesel engines, except the following: Distillate fuel with a T90 at or above 700 °F that is used only in Category 2 and 3 marine engines is not MVNRLM diesel fuel, and ECA marine fuel is not MVNRLM diesel fuel (note that fuel that conforms to the requirements of MVNRLM diesel fuel is excluded from the definition of ''ECA marine fuel'' in this section without regard to its actual use). Use the distillation test method specified in 40 CFR 1065.1010 to determine the T90 of the fuel.

(1) Any diesel fuel that is sold for use in stationary engines that are required to meet the requirements of 40 CFR

[1] *State* means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands.

1090.300, when such provisions are applicable to nonroad engines, is considered MVNRLM diesel fuel.

(2) [Reserved]

Natural gas means a fuel whose primary constituent is methane.

Non-petroleum diesel means a diesel fuel that contains at least 80 percent mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats.

Nonroad diesel engine means an engine that is designed to operate with diesel fuel that meets the definition of nonroad engine in 40 CFR 1068.30, including locomotive and marine diesel engines.

Oxygenate means any substance which, when added to gasoline, increases the oxygen content of that gasoline. Lawful use of any of the substances or any combination of these substances requires that they be ''substantially similar'' under section 211(f)(1) of the Clean Air Act (42 U.S.C. 7545(f)(1)), or be permitted under a waiver granted by the Administrator under the authority of section 211(f)(4) of the Clean Air Act (42 U.S.C. 7545(f)(4)).

Oxygenated gasoline means gasoline which contains a measurable amount of oxygenate.

Refiner means any person who owns, leases, operates, controls, or supervises a refinery.

Refinery means any facility, including but not limited to, a plant, tanker truck, or vessel where gasoline or diesel fuel is produced, including any facility at which blendstocks are combined to produce gasoline or diesel fuel, or at which blendstock is added to gasoline or diesel fuel.

Reformulated gasoline or RFG means any gasoline whose formulation has been certified under 40 CFR 1090.1000(b), and which meets each of the standards and requirements prescribed under 40 CFR 1090.220.

Reformulated gasoline blendstock for oxygenate blending, or RBOB means a petroleum product that, when blended with a specified type and percentage of oxygenate, meets the definition of reformulated gasoline, and to which the specified type and percentage of oxygenate is added other than by the refiner or importer of the RBOB at the refinery or import facility where the RBOB is produced or imported.

Residual fuel means a petroleum fuel that can only be used in diesel engines if it is preheated before injection. For example, No. 5 fuels, No. 6 fuels, and RM grade marine fuels are residual fuels. Note: Residual fuels do not necessarily require heating for storage or pumping.

Retail outlet means any establishment at which gasoline, diesel fuel, natural gas or liquefied petroleum gas is sold or offered for sale for use in motor vehicles or nonroad engines, including locomotive or marine engines.

Retailer means any person who owns, leases, operates, controls, or supervises a retail outlet.

Wholesale purchaser-consumer means any person that is an ultimate consumer of gasoline, diesel fuel, natural gas, or liquefied petroleum gas and which purchases or obtains gasoline, diesel fuel, natural gas or liquefied petroleum gas from a supplier for use in motor vehicles or nonroad engines, including locomotive or marine engines and, in the case of gasoline, diesel fuel, or liquefied petroleum gas, receives delivery of that product into a storage tank of at least 550-gallon capacity substantially under the control of that person.

[85 FR 78465, Dec. 4, 2020]

§ 80.3 [Reserved]

§ 80.4 Right of entry; tests and inspections.

The Administrator or his authorized representative, upon presentation of appropriate credentials, shall have a right to enter upon or through any refinery, retail outlet, wholesale purchaser-consumer facility, or detergent manufacturer facility; or the premises or property of any gasoline or detergent distributor, carrier, or importer; or any place where gasoline or detergent is stored; and shall have the right to make inspections, take samples, obtain information and records, and conduct tests to determine compliance with the requirements of this part.

[61 FR 35356, July 5, 1996]

§ 80.5 Penalties.

Any person who violates these regulations shall be liable to the United States for a civil penalty of not more than the sum of $25,000 for every day of such violation and the amount of economic benefit or savings resulting from the violation. Any violation with respect to a regulation proscribed under section 211(c), (k), (l) or (m) of the Act which establishes a regulatory standard based upon a multi-day averaging period shall constitute a separate day of violation for each and every day in the averaging period. Civil penalties shall be assessed in accordance with section 205(b) and (c) of the Act.

[58 FR 65554, Dec. 15, 1993]

§ 80.7 Requests for information.

(a) When the Administrator, the Regional Administrator, or their delegates have reason to believe that a violation of section 211(c) or section 211(n) of the Act and the regulations thereunder has occurred, they may require any refiner, distributor, wholesale purchaser-consumer, or retailer to report the following information regarding receipt, transfer, delivery, or sale of gasoline represented to be unleaded gasoline and to allow the reproduction of such information at all reasonable times.

(1) For any bulk shipment of gasoline represented to be unleaded gasoline which is transferred, sold, or delivered within the previous 6 months by a refiner or a distributor to a distributor, wholesale purchaser-consumer or a retail outlet, the refiner or distributor shall maintain and provide the following information as applicable:

(i) Business or corporate name and address of distributors, wholesale purchaser-consumers or retail outlets to which the gasoline has been transferred, sold, or delivered.

(ii) Quantity of gasoline involved.

(iii) Date of delivery.

(iv) Storage location of gasoline prior to transit via delivery vessel (e.g., location of a bulk terminal).

(v) Business or corporate name and address of the person who delivered the gasoline.

(vi) Identification of delivery vessel (e.g., truck number). This information shall be supplied by the person in paragraph (a)(1)(v) of this section who performed the delivery, e.g., common or contract carrier.

(2) For any bulk shipment of gasoline represented to be unleaded gasoline received by a retail outlet or a wholesale-purchaser-consumer facility within the previous 6 months, whether by purchase or otherwise, the retailer or wholesale purchaser-consumer shall maintain accessibility to and provide the following information:

(i) Business or corporate name and address of the distributor.

(ii) Quantity of gasoline received.

(iii) Date of receipt.

(b) Upon request by the Administrator, the Regional Administrator, or their delegates, any retailer shall provide documentation of his annual total sales volume in gallons of gasoline for each retail outlet for each calendar year beginning with 1971.

(c) Any refiner, distributor, wholesale purchaser-consumer, retailer, or importer shall provide such other information as the Administrator or his authorized representative may reasonably require to enable him to determine whether such refiner, distributor, wholesale purchaser-consumer, retailer, or importer has acted or is acting in compliance with sections 211(c) and 211(n) of the Act and the regulations thereunder and shall, upon request of the Administrator or his authorized representative, produce and allow reproduction of any relevant records at all reasonable times. Such information may include but is not limited to records of unleaded gasoline inventory at a wholesale purchaser-consumer facility or a retail outlet, unleaded pump meter readings at a wholesale purchaser-consumer facility or a retail outlet, and receipts providing the date of acquisition of signs, labels, and nozzles required by 40 CFR 1090.1550. No person shall be required to furnish information requested under this paragraph if he can establish that

such information is not maintained in the normal course of his business.

(Secs. 211, 301, Clean Air Act, as amended (42 U.S.C. 1857f–6c, 1857g))

[40 FR 36336, Aug. 20, 1975, as amended at 42 FR 45307, Sept. 9, 1977; 47 FR 49332, Oct. 29, 1982; 61 FR 3837, Feb. 2, 1996; 85 FR 78467, Dec. 4, 2020]

§ 80.8 Sampling methods for gasoline, diesel fuel, fuel additives, and renewable fuels.

The sampling methods specified in this section shall be used to collect samples of gasoline, diesel fuel, blendstocks, fuel additives and renewable fuels for purposes of determining compliance with the requirements of this part.

(a) *Manual sampling*. Manual sampling of tanks and pipelines shall be performed according to the applicable procedures specified in ASTM D4057.

(b) *Automatic sampling*. Automatic sampling of petroleum products in pipelines shall be performed according to the applicable procedures specified in ASTM D4177.

(c) *Sampling and sample handling for volatility measurement*. Samples to be analyzed for Reid Vapor Pressure (RVP) shall be collected and handled according to the applicable procedures specified in ASTM D5842.

(d) *Sample compositing*. Composite samples shall be prepared using the applicable procedures specified in ASTM D5854.

(e) *Materials incorporated by reference*. The published materials identified in this section are incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, a document must be published in the FEDERAL REGISTER and the material must be available to the public. All approved materials are available for inspection at the Air and Radiation Docket and Information Center (Air Docket) in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742. These approved materials are also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. In addition, these materials are available from the sources listed below.

(1) *ASTM International material*. The following standards are available from ASTM International, 100 Barr Harbor Dr., P.O. Box C700, West Conshohocken, PA 19428–2959, (877) 909–ASTM, or *http://www.astm.org:*

(i) ASTM D4057–12, Standard Practice for Manual Sampling of Petroleum and Petroleum Products, approved December 1, 2012 (''ASTM D4057'').

(ii) ASTM D4177–95 (Reapproved 2010), Standard Practice for Automatic Sampling of Petroleum and Petroleum Products, approved May 1, 2010 (''ASTM D4177'').

(iii) ASTM D5842–14, Standard Practice for Sampling and Handling of Fuels for Volatility Measurement, approved January 15, 2014 (''ASTM D5842'').

(iv) ASTM D5854–96 (Reapproved 2010), Standard Practice for Mixing and Handling of Liquid Samples of Petroleum and Petroleum Products, approved May 1, 2010 (''ASTM D5854'').

(2) [Reserved]

[79 FR 23631, Apr. 28, 2014, as amended at 80 FR 9090, Feb. 19, 2015]

§ 80.9 Rounding a test result for determining conformance with a fuels standard.

(a) For purposes of determining compliance with the fuel standards of 40 CFR part 80, a test result will be rounded to the nearest unit of significant digits specified in the applicable fuel standard in accordance with the rounding method described in the ASTM standard practice, ASTM E 29–02$^{\epsilon 1}$, entitled, ''Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications''.

(b) ASTM standard practice, E 29–02[c1] is incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428–2959. Copies may be inspected at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

[71 FR 16499, Apr. 3, 2006]

§ 80.10 Addresses.

(a) For submitting notifications, applications, petitions, or other communications with EPA, use one of the following addresses for mailing:

(1) For U.S. Mail: Attn: [TITLE AS DIRECTED], U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Mail Code 6405A, Washington, DC 20460.

(2) For commercial service: Attn: [TITLE AS DIRECTED], U.S. Environmental Protection Agency, William Jefferson Clinton Building North, Mail Code 6405A, Room 6520V, 1200 Pennsylvania Ave. NW, Washington, DC 20004; Phone: 1–800–385–6164.

(b) [Reserved]

[85 FR 7070, Feb. 6, 2020]

§ 80.11 Confidentiality of information.

(a) Except as specified in paragraph (b) of this section, information obtained by the Administrator or his representatives pursuant to this part shall be treated, in so far as its confidentiality is concerned, in accordance with the provisions of 40 CFR part 2, subpart B.

(b) Information contained in EPA notices of violation, settlement agreements, administrative complaints, civil complaints, criminal information, and criminal indictments is not entitled to confidential treatment and therefore EPA may publicly disclose such information. Such information includes the company name and EPA-issued company identification number, the facility name and EPA-issued facility identification number, the total quantity of fuel and parameter, the time or time period when the violation occurred, information relating to the generation, transfer, or use of credits, and any other information relevant to describing the violation.

[87 FR 39659, July 1, 2022]

EFFECTIVE DATE NOTE: At 87 FR 39659, July 1, 2022, § 80.11 was added, effective Aug. 30, 2022.

Subpart B—Controls and Prohibitions

§§ 80.20–80.23 [Reserved]

§ 80.24 Controls applicable to motor vehicle manufacturers.

(a) [Reserved]

(b) The manufacturer of any motor vehicle equipped with an emission control device which the Administrator has determined will be significantly impaired by the use of gasoline other than unleaded gasoline shall manufacture such vehicle with each gasoline tank filler inlet having a restriction which prevents the insertion of a nozzle with a spout having a terminal end with an outside diameter of 0.930 inch (2.363 centimeters) or more and allows the insertion of a nozzle with a spout meeting the specifications of § 80.22(f)(2).

(c) A motorcycle, as defined at 40 CFR 86.402 for the applicable model year, is exempt from the requirements of paragraph (b) of this section.

[38 FR 26450, Sept. 21, 1973, as amended at 39 FR 34538, Sept. 26, 1974; 46 FR 50472, Oct. 13, 1981; 48 FR 29692, June 28, 1983; 51 FR 33731, Sept. 22, 1986; 61 FR 3838, Feb. 2, 1996; 61 FR 8221, Mar. 4, 1996; 61 FR 28766, June 6, 1996; 67 FR 36771, May 24, 2002]

§§ 80.25–80.33 [Reserved]

Subpart C—Oxygenated Gasoline

§ 80.35 Labeling of retail gasoline pumps; oxygenated gasoline.

(a) For oxygenated gasoline programs with a minimum oxygen content per

gallon or minimum oxygen content requirement in conjunction with a credit program, the following shall apply:

(1) Each gasoline pump stand from which oxygenated gasoline is dispensed at a retail outlet in the control area shall be affixed during the control period with a legible and conspicuous label which contains the following statement:

The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles.

(2) The posting of the above statement shall be in block letters of no less than 20-point bold type; in a color contrasting with the intended background. The label shall be placed on the vertical surface of the pump on each side with gallonage and price meters and shall be on the upper two-thirds of the pump, clearly readable to the public.

(3) The retailer shall be responsible for compliance with the labeling requirements of this section.

(b) For oxygenated gasoline programs with a credit program and no minimum oxygen content requirement, the following shall apply:

(1) Each gasoline pump stand from which oxygenated gasoline is dispensed at a retail outlet in the control area shall be affixed during the control period with a legible and conspicuous label which contains the following statement:

The fuel dispensed from this pump meets the requirements of the Clean Air Act as part of a program to reduce carbon monoxide pollution from motor vehicles.

(2) The posting of the above statement shall be in block letters of no less than 20-point bold type; in a color contrasting with the intended background. The label shall be placed on the vertical surface of the pump on each side with gallonage and price meters and shall be on the upper two-thirds of the pump, clearly readable to the public.

(3) The retailer shall be responsible for compliance with the labeling requirements of this section.

[57 FR 47771, Oct. 20, 1992]

§§ 80.36–80.39 [Reserved]

Subparts D–L [Reserved]

Subpart M—Renewable Fuel Standard

SOURCE: 75 FR 14863, Mar. 26, 2010, unless otherwise noted.

§ 80.1400 Applicability.

The provisions of this Subpart M shall apply for all renewable fuel produced on or after July 1, 2010, for all RINs generated on or after July 1, 2010, and for all renewable volume obligations and compliance periods starting with January 1, 2010.

[75 FR 14863, Mar. 26, 2010, as amended at 85 FR 78467, Dec. 4, 2020]

§ 80.1401 Definitions.

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

A–RIN means a RIN verified during the interim period by a registered independent third-party auditor using a QAP that has been approved under § 80.1469(a) following the audit process described in § 80.1472.

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.

Adjusted cellulosic content means the percent of organic material that is cellulose, hemicellulose, and lignin.

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.

Agricultural digester means an anaerobic digester that processes predominantly cellulosic materials, including animal manure, crop residues, and/or separated yard waste.

Algae grown photosynthetically are algae that are grown such that their energy and carbon are predominantly derived from photosynthesis.

Annual cover crop means an annual crop, planted as a rotation between primary planted crops, or between trees and vines in orchards and vineyards, typically to protect soil from erosion and to improve the soil between periods of regular crops. An annual cover crop has no existing market to which it can be sold except for its use as feedstock for the production of renewable fuel.

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

B–RIN means a RIN verified during the interim period by a registered independent third-party auditor using a QAP that has been approved under § 80.1469(b) following the audit process described in § 80.1472.

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

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.

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

Biogas means a mixture of hydrocarbons that is a gas at 60 degrees Fahrenheit and 1 atmosphere of pressure that is produced through the anaerobic digestion of organic matter.

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

(1)(i) Is a transportation fuel, transportation fuel additive, heating oil, or jet fuel.

(ii) Meets the definition of either biodiesel or non-ester renewable diesel.

(iii) Is registered as a motor vehicle fuel or fuel additive under 40 CFR part 79, if the fuel or fuel additive is intended for use in a motor vehicle.

(2) Renewable fuel that is co-processed with petroleum is not biomass-based diesel.

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

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

Certified non-transportation 15 ppm distillate fuel or *certified NTDF* means distillate fuel that meets all the following:

(1) The fuel has been certified under 40 CFR 1090.1000 as meeting the ULSD standards in 40 CFR 1090.305.

(2) The fuel has been designated under 40 CFR 1090.1015 as certified NTDF.

(3) The fuel has also been designated under 40 CFR 1090.1015 as 15 ppm heating oil, 15 ppm ECA marine fuel, or other non-transportation fuel (*e.g.*, jet fuel, kerosene, or distillate global marine fuel).

(4) The fuel has not been designated under 40 CFR 1090.1015 as ULSD or 15 ppm MVNRLM diesel fuel.

(5) The PTD for the fuel meets the requirements in § 80.1453(e).

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.

Contractual affiliate means one of the following:

(1) Two parties are contractual affiliates if they have an explicit or implicit agreement in place for one to purchase or hold RINs on behalf of the other or to deliver RINs to the other. This other party may or may not be registered under the RFS program.

(2) Two parties are contractual affiliates if one RIN-owning party purchases or holds RINs on behalf of the other. This other party may or may not be registered under the RFS program.

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

Co-processed cellulosic diesel is any renewable fuel that meets the definition of cellulosic biofuel, as defined in this section 80.1401, and meets all of the requirements of paragraph (1) of this definition:

(1)(i) Is a transportation fuel, transportation fuel additive, heating oil, or jet fuel.

(ii) Meets the definition of either biodiesel or non-ester renewable diesel.

(iii) Is registered as a motor vehicle fuel or fuel additive under 40 CFR part 79, if the fuel or fuel additive is intended for use in a motor vehicle.

(2) Co-processed cellulosic diesel includes heating oil and jet fuel made from cellulosic feedstocks and cellulosic biofuel produced as a result of co-processing cellulosic feedstocks with petroleum.

Corporate affiliate means one of the following:

(1) Two RIN-holding parties are corporate affiliates if one owns or controls ownership of more than 20 percent of the other.

(2) Two RIN-holding parties are corporate affiliates if one parent company owns or controls ownership of more than 20 percent of both.

Corporate affiliate group means a group of parties in which each party is a corporate affiliate to at least one other party in the group.

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.

Covered location means the contiguous 48 states, Hawaii, and any state or territory that has received an approval from the Administrator to opt-in to the RFS program under § 80.1443.

Crop residue means biomass left over from the harvesting or processing of planted crops from existing agricultural land and any biomass removed from existing agricultural land that facilitates crop management (including biomass removed from such lands in relation to invasive species control or fire management), whether or not the biomass includes any portion of a crop or crop plant. Biomass is considered crop residue only if the use of that biomass for the production of renewable fuel has no significant impact on demand for the feedstock crop, products produced from that feedstock crop, and all substitutes for the crop and its products, nor any other impact that would result in a significant increase in direct or indirect GHG emissions.

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

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

Distillers corn oil means corn oil recovered at any point downstream of when a dry mill ethanol or butanol plant grinds the corn, provided that the corn starch is converted to ethanol or butanol, the recovered oil is unfit for human food use without further refining, and the distillers grains remaining after the dry mill and oil recovery processes are marketable as animal feed.

Distillers sorghum oil means grain sorghum oil recovered at any point downstream of when a dry mill ethanol or butanol plant grinds the grain sorghum, provided that the grain sorghum is converted to ethanol or butanol, the recovered oil is unfit for human food use without further refining, and the distillers grains remaining after the dry mill and oil recovery processes are marketable as animal feed.

DX RIN means a RIN with a D code of X, where X is the D code of the renewable fuel as identified under § 80.1425(g), generated under § 80.1426, and submitted under § 80.1452. For example, a D6 RIN is a RIN with a D code of 6.

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

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

(2) Old growth or late successional, characterized by trees at least 200 years in age.

End of day means 7:00 a.m. Coordinated Universal Time (UTC).

Energy cane means a complex hybrid in the Saccharum genus that has been bred to maximize cellulosic rather than sugar content. For the purposes of this subpart:

(1) Energy cane excludes the species *Saccharum spontaneum,* but may include hybrids derived from *S. spontaneum* that have been developed and publicly released by USDA; and

(2) Energy cane only includes cultivars that have, on average, at least 75% adjusted cellulosic content on a dry mass basis.

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

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

(1) Nonforested; and

(2) Actively managed as agricultural land or fallow, as evidenced by records which must be traceable to the land in question, which must include one of the following:

(i) Records of sales of planted crops, crop residue, or livestock, or records of purchases for land treatments such as fertilizer, weed control, or seeding.

(ii) A written management plan for agricultural purposes.

(iii) Documented participation in an agricultural management program administered by a Federal, state, or local government agency.

(iv) Documented management in accordance with a certification program for agricultural products.

Exporter of renewable fuel means all buyers, sellers, and owners of the renewable fuel in any transaction that results in renewable fuel being transferred from a covered location to a destination outside of the covered locations.

Facility means all of the activities and equipment associated with the production of renewable fuel starting from the point of delivery of feedstock material to the point of final storage of the

end product, which are located on one property, and are under the control of the same person (or persons under common control).

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

Foreign ethanol producer means a foreign renewable fuel producer who produces ethanol for use in transportation fuel, heating oil, or jet fuel but who does not add ethanol denaturant to their product as described in paragraph (2) of the definition of ''renewable fuel'' in this section.

Foreign renewable fuel producer means a person from a foreign country or from an area outside the covered locations who produces renewable fuel (including neat (undenatured) ethanol for use in transportation fuel, heating oil, or jet fuel).

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.

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

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

(2) Emission Control Area (ECA) marine fuel, pursuant to § 80.2 and 40 CFR 1090.80 (whether burned in ocean waters, Great Lakes, or other internal waters); and

(3) Any other fuel intended for use only in ocean-going vessels.

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

Heating oil means:

(1) A fuel meeting the definition of heating oil set forth in § 80.2; or

(2) A fuel oil that is used to heat or cool interior spaces of homes or buildings to control ambient climate for human comfort. The fuel oil must be liquid at 60 degrees Fahrenheit and 1 atmosphere of pressure, and contain no more than 2.5% mass solids.

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

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

(2) Brings transportation fuel or renewable fuel into an area that has opted in to the program requirements of this subpart pursuant to § 80.1443 from a foreign country or from an area that has not opted in to the program requirements of this subpart.

Independent third-party auditor means a party meeting the requirements of § 80.1471(b) that conducts QAP audits and verifies RINs.

Interim period means the period between February 21, 2013 and December 31, 2014.

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

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

Nameplate capacity means the peak design capacity of a facility for the purposes of registration of a facility under § 80.1450(b)(1)(v)(C).

Naphtha means a blendstock or fuel blending component falling within the boiling range of gasoline which is composed of only hydrocarbons, is commonly or commercially known as naphtha and is used to produce gasoline through blending.

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

Non-ester renewable diesel, also known as renewable diesel, means renewable fuel that is not a mono-alkyl ester and that is either:

(1) A fuel or fuel additive that meets the ASTM D 975–13a (incorporated by reference, see § 80.1468) Grade No. 1–D

or No. 2–D specifications and can be used in an engine designed to operate on conventional diesel fuel; or

(2) A fuel or fuel additive that is registered under 40 CFR part 79 and can be used in an engine designed to operate using conventional diesel fuel.

Non-qualifying fuel use means a use of renewable fuel in an application other than transportation fuel, heating oil, or jet fuel.

Non-renewable feedstock means a feedstock that does not meet the definition of renewable biomass.

Non-RIN-generating foreign producer means a foreign renewable fuel producer that has been registered by EPA to produce renewable fuel for which RINs have not been generated.

Nonforested land means land that is not forestland.

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

Pastureland is land managed for the production of 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 on 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.

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

Planted trees are trees harvested from a tree plantation.

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

Q–RIN means a RIN verified by a registered independent third-party auditor using a QAP that has been approved under § 80.1469(c) following the audit process described in § 80.1472.

Quality assurance audit means an audit of a renewable fuel production facility conducted by an independent third-party auditor in accordance with a QAP that meets the requirements of § 80.1469 and requirements of § 80.1472.

Quality assurance plan, or QAP, means the list of elements that an independent third-party auditor will check to verify that the RINs generated by a renewable fuel producer or importer are valid. A QAP includes both general and pathway specific elements.

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 biomass means each of the following (including any incidental, de

minimis contaminants that are impractical to remove and are related to customary feedstock production and transport):

(1) Planted crops and crop residue harvested from existing agricultural land cleared or cultivated prior to December 19, 2007 and that was nonforested and either actively managed or fallow on December 19, 2007.

(2) Planted trees and tree residue from a tree plantation located on nonfederal land (including land belonging to an Indian tribe or an Indian individual that is held in trust by the U.S. or subject to a restriction against alienation imposed by the U.S.) that was cleared at any time prior to December 19, 2007 and actively managed on December 19, 2007.

(3) Animal waste material and animal byproducts.

(4) Slash and pre-commercial thinnings from non-federal forestland (including forestland belonging to an Indian tribe or an Indian individual, that are held in trust by the United States or subject to a restriction against alienation imposed by the United States) that is not ecologically sensitive forestland.

(5) Biomass (organic matter that is available on a renewable or recurring basis) obtained from within 200 feet of buildings and other areas regularly occupied by people, or of public infrastructure, in an area at risk of wildfire.

(6) Algae.

(7) Separated yard waste or food waste, including recycled cooking and trap grease, and materials described in § 80.1426(f)(5)(i).

Renewable compressed natural gas (CNG) means biogas or biogas-derived pipeline quality gas that is compressed for use as transportation fuel and meets the definition of renewable fuel.

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

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

(1)(i) Fuel that is produced from renewable biomass.

(ii) Fuel that is used to replace or reduce the quantity of fossil fuel present in a transportation fuel, heating oil, or jet fuel.

(iii) Has lifecycle greenhouse gas emissions that are at least 20 percent less than baseline lifecycle greenhouse gas emissions, unless the fuel is exempt from this requirement pursuant to § 80.1403.

(2) Ethanol covered by this definition shall be denatured using an ethanol denaturant as required in 27 CFR parts 19 through 21. Any volume of ethanol denaturant added to the undenatured ethanol by a producer or importer in excess of 2 volume percent shall not be included in the volume of ethanol for purposes of determining compliance with the requirements under this subpart.

Renewable gasoline means renewable fuel made from renewable biomass that is composed of only hydrocarbons and which meets the definition of gasoline in § 80.2.

Renewable gasoline blendstock means a blendstock made from renewable biomass that is composed of only hydrocarbons and which meets the definition of gasoline blendstock in § 80.2.

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.

Renewable liquefied natural gas (LNG) means biogas or biogas-derived pipeline quality gas that goes through the process of liquefaction in which it is cooled below its boiling point, and which meets the definition of renewable fuel.

RIN-generating foreign producer means a foreign renewable fuel producer that has been registered by EPA to generate RINs for renewable fuel it produces.

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

Small refinery means a refinery for which the average aggregate daily crude oil throughput (as determined by dividing the aggregate throughput for the calendar year by the number of

days in the calendar year) does not exceed 75,000 barrels.

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

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

(1) Sales records for planted trees or tree residue together with other written documentation connecting the land in question to these purchases;

(2) Purchasing records for seeds, seedlings, or other nursery stock together with other written documentation connecting the land in question to these purchases;

(3) A written management plan for silvicultural purposes;

(4) Documentation of participation in a silvicultural program sponsored by a Federal, state or local government agency;

(5) Documentation of land management in accordance with an agricultural or silvicultural product certification program;

(6) An agreement for land management consultation with a professional forester that identifies the land in question; or

(7) Evidence of the existence and ongoing maintenance of a road system or other physical infrastructure designed and maintained for logging use, together with one of the above-mentioned documents.

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

Verified RIN means a RIN generated by a renewable fuel producer that was subject to a QAP audit executed by an independent third-party auditor, and determined by the independent third-party auditor to be valid. Verified RINs includes A–RINs, B–RINs, and Q–RINs.

[75 FR 14863, Mar. 26, 2010, as amended at 75 FR 26035, May 10, 2010, and 75 FR 37733, June 30, 2010; 75 FR 79976, Dec. 21, 2010; 77 FR 1354, Jan. 9, 2012; 78 FR 14215, Mar. 5, 2013; 78 FR 62470, Oct. 22, 2013; 79 FR 42159, July 18, 2014; 79 FR 42113, July 18, 2014; 80 FR 77517, Dec. 14, 2016; 83 FR 37746, Aug. 2, 2018; 84 FR 27021, June 10, 2019; 85 FR 7073, Feb. 6, 2020; 85 FR 78467, Dec. 4, 2020]

EFFECTIVE DATE NOTE: At 87 FR 39659, July 1, 2022, § 80.1401 was amended by:

a. Revising the definition of ''Agricultural digester'';

b. Adding in alphabetical order the definition of ''Approved pathway'';

c. Revising the definition of ''Baseline volume'';

d. Adding in alphabetical order the definition of ''Biocrude'';

e. Revising the definition of ''Biodiesel'';

f. Adding in alphabetical order the definitions of ''Biodiesel distillation bottoms'', ''Biointermediate'', ''Biointermediate import facility'', ''Biointermediate importer'', ''Biointermediate producer'', ''Biointermediate production facility'', and ''Biomass-based sugars'';

g. Revising the definitions of ''Combined heat and power (CHP)'' and ''Co-processed'';

h. Adding in alphabetical order the definition of ''Digestate'';

i. Revising the definitions ''Facility'' and ''Foreign renewable fuel producer'';

j. Adding in alphabetical order the definitions of ''Free fatty acid (FFA) feedstock'' and ''Glycerin'';

k. Revising paragraph (1) in the definition of ''Non-ester renewable diesel'' and the definition of ''Non-renewable feedstock'';

l. Adding in alphabetical order the definition of ''Professional liability insurance'';

m. Revising the definitions of ''Quality assurance audit'' and ''Quality assurance plan'', paragraph (7) in the definition of ''Renewable biomass'', and the introductory text and paragraph (1)(i) in the definition of ''Renewable fuel''; and

n. Adding in alphabetical order the definitions of ''Separated food waste'', ''Separated municipal solid waste (MSW)'', ''Separated yard waste'', ''Soapstock'', and ''Undenatured ethanol''.

The amendments are effective Aug. 30, 2022. For the convenience of the user, the added and revised text is set forth as follows:

§ 80.1401 Definitions.

* * * * *

Agricultural digester means an anaerobic digester that processes only animal manure,

crop residues, or separated yard waste with an adjusted cellulosic content of at least 75%. Each and every material processed in an agricultural digester must have an adjusted cellulosic content of at least 75%.

* * * * *

Approved pathway means a pathway listed in Table 1 to § 80.1426 or in a petition approved under § 80.1416.

* * * * *

Baseline volume means the permitted capacity or, if permitted capacity cannot be determined, the actual peak capacity or nameplate capacity as applicable pursuant to § 80.1450(b)(1)(v)(A) through (C), of a specific renewable fuel production facility on a calendar year basis.

Biocrude means a liquid biointermediate that meets all the following requirements:

(1) It is produced at a biointermediate production facility using one or more of the following processes:

(i) A process identified in row M under Table 1 to § 80.1426.

(ii) A process identified in a pathway listed in a petition approved under § 80.1416 for the production of renewable fuel produced from biocrude.

(2) It is to be used to produce renewable fuel at a refinery as defined in 40 CFR 1090.80.

Biodiesel means a mono-alkyl ester that meets ASTM D6751 (incorporated by reference, see § 80.1468).

Biodiesel distillation bottoms means the heavier product from distillation at a biodiesel production facility that does not meet the definition of biodiesel.

* * * * *

Biointermediate means any feedstock material that is intended for use to produce renewable fuel and meets all of the following requirements:

(1) It is produced from renewable biomass.

(2) It has not previously had RINs generated for it.

(3) It is produced at a facility registered with EPA that is different than the facility at which it is used as feedstock material to produce renewable fuel.

(4) It is produced from the feedstock material identified in an approved pathway, will be used to produce the renewable fuel listed in that approved pathway, and is produced and processed in accordance with the process(es) listed in that approved pathway.

(5) Is one of the following types of biointermediate:

(i) Biocrude.

(ii) Biodiesel distillate bottoms.

(iii) Biomass-based sugars.

(iv) Digestate.

(v) Free fatty acid (FFA) feedstock.

(vi) Glycerin.

(vii) Soapstock.

(viii) Undenatured ethanol.

(6) It is not a feedstock material identified in an approved pathway that is used to produce the renewable fuel specified in that approved pathway.

Biointermediate import facility means any facility as defined in 40 CFR 1090.80 where a biointermediate is imported from outside the covered location into the covered location.

Biointermediate importer means any person who owns, leases, operates, controls, or supervises a biointermediate import facility.

Biointermediate producer means any person who owns, leases, operates, controls, or supervises a biointermediate production facility.

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

* * * * *

Biomass-based sugars means sugars (*e.g.*, dextrose, sucrose, etc.) extracted from renewable biomass under an approved pathway, other than through a form change described in § 80.1460(k)(2).

* * * * *

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 a biointermediate or renewable fuel production facility.

* * * * *

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

* * * * *

Digestate means the material that remains following the anaerobic digestion of renewable biomass in an anaerobic digester. Digestate must only contain the leftovers that were unable to be completely converted to biogas in an anaerobic digestor that is

part of an EPA-accepted registration under § 80.1450.

* * * * *

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

* * * * *

Foreign renewable fuel producer means a person from a foreign country or from an area outside the covered locations who produces renewable fuel for use in transportation fuel, heating oil, or jet fuel for export to the covered location. Foreign ethanol producers are considered foreign renewable fuel producers.

* * * * *

Free fatty acid (FFA) feedstock means a biointermediate that is composed of at least 50 percent free fatty acids. FFA feedstock must not include any free fatty acids from the refining of crude palm oil.

* * * * *

Glycerin means a coproduct from the production of biodiesel that primarily contains glycerol.

* * * * *

Non-ester renewable diesel * * *

(1) A fuel or fuel additive that meets the Grade No. 1–D or No. 2–D specification in ASTM D975 (incorporated by reference, see § 80.1468) and can be used in an engine designed to operate on conventional diesel fuel; or

* * * * *

Non-renewable feedstock means a feedstock (or any portion thereof) that does not meet the definition of renewable biomass or biointermediate in this section.

* * * * *

Professional liability insurance means insurance coverage for liability arising out of the performance of professional or business duties related to a specific occupation, with coverage being tailored to the needs of the specific occupation. Examples include abstracters, accountants, insurance adjusters, architects, engineers, insurance agents and brokers, lawyers, real estate agents, stockbrokers, and veterinarians. For purposes of this definition, professional liability insurance does not include directors and officers liability insurance.

* * * * *

Quality assurance audit means an audit of a renewable fuel production facility or biointermediate production facility conducted by an independent third-party auditor in accordance with a QAP that meets the requirements of §§ 80.1469, 80.1472, and 80.1477.

Quality assurance plan, or QAP, means the list of elements that an independent third-party auditor will check to verify that the RINs generated by a renewable fuel producer or importer are valid or to verify the appropriate production of a biointermediate. A QAP includes both general and pathway specific elements.

* * * * *

Renewable biomass * * *

(7) Separated yard waste or food waste, including recycled cooking and trap grease.

* * * * *

Renewable fuel means a fuel that meets all the following requirements:

(1)(i) Fuel that is produced either from renewable biomass or from a biointermediate produced from renewable biomass.

* * * * *

Separated food waste means 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 municipal solid waste (MSW) means 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.

Separated yard waste means a feedstock stream consisting of yard waste kept separate since generation from other waste materials.

* * * * *

Soapstock means an emulsion, or the oil obtained from separation of that emulsion, produced by washing oils listed as a feedstock in an approved pathway with water.

* * * * *

Undenatured ethanol means a liquid that meets one of the definitions in paragraph (1) of this definition:

(1)(i) Ethanol that has not been denatured as required in 27 CFR parts 19 through 21.

(ii) Specially denatured alcohol as defined in 27 CFR 21.11.

(2) Undenatured ethanol is not renewable fuel.

* * * * *

§ 80.1402 Availability of information; confidentiality of information.

(a) Beginning January 1, 2020, no claim of business confidentiality may be asserted by any person with respect to information submitted to EPA under § 80.1451(c)(2)(ii)(E), whether submitted electronically or in paper format. EPA may make information submitted under § 80.1451(c)(2)(ii)(E) available to the public.

(b) [Reserved]

[84 FR 27022, June 10, 2019]

EFFECTIVE DATE NOTE: At 87 FR 39661, July 1, 2022, § 80.1402 was revised, effective Aug. 30, 2022. For the convenience of the user, the revised text is set forth as follows:

§ 80.1402 Availability of information; confidentiality of information.

(a) Beginning January 1, 2020, no claim of business confidentiality may be asserted by any person with respect to information submitted to EPA under § 80.1451(c)(2)(ii)(E), whether submitted electronically or in paper format.

(b) The following information contained in EPA determinations that RINs are invalid under § 80.1474(b)(4)(i)(C)(*2*) and (b)(4)(ii)(C)(*2*), notices of violation, settlement agreements, administrative complaints, civil complaints, criminal information, and criminal indictments arising under this subpart is not entitled to confidential treatment and the provisions of 40 CFR 2.201 through 2.215 and 2.301 do not apply:

(1) The company name.

(2) The name and location of the facility at which the fuel associated with the RINs in question was allegedly produced or imported.

(3) The EPA-issued company or facility identification number of the party that produced the fuel or generated the RINs in question.

(4) The total quantity of fuel and RINs in question.

(5) The time period when the fuel was allegedly produced.

(6) The time period when the RINs in question were generated.

(7) The batch number(s) and the D code(s) of the RINs in question.

(8) Information relating to the generation, transfer, or use of RINs.

(9) The shortfall in RINs related to an obligated party's failure to meet its renewable volume obligation.

(10) Any other information relevant to describing the violation.

(c) The following information contained in submissions under this subpart is not entitled to confidential treatment and the provisions of 40 CFR 2.201 through 2.215 and 2.301 do not apply:

(1) Submitter's name.

(2) The name and location of the facility, if applicable.

(3) The date the submission was transmitted to EPA.

(4) Any EPA-issued company or facility identification numbers associated with the submission.

(5) The purpose of the submission.

(6) The relevant time period for the submission, if applicable.

(d) The following information incorporated into EPA determinations on submissions under this subpart is not entitled to confidential treatment and the provisions of 40 CFR 2.201 through 2.215 and 2.301 do not apply:

(1) Submitter's name.

(2) The name and location of the facility, if applicable.

(3) The date the submission was transmitted to EPA.

(4) Any EPA-issued company or facility identification numbers associated with the submission.

(5) The purpose of the submission.

(6) The relevant time period of the submission, if applicable.

(7) The extent to which EPA granted or denied the request and any relevant terms and conditions.

(e) Except as otherwise specified in this section, any information submitted under this part claimed as confidential remains subject to evaluation by EPA under 40 CFR part 2, subpart B.

(f) EPA may disclose the information specified in paragraphs (a) through (d) of this section on its website, or otherwise make it available to interested parties, without additional notice or process, notwithstanding any claims that the information is entitled to confidential treatment under 40 CFR part 2, subpart B.

§ 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]

(b) The lifecycle greenhouse gas emissions from renewable fuels must be at least 20 percent less than baseline lifecycle greenhouse gas emissions, with the exception of the baseline volumes of renewable fuel produced from facilities described in paragraphs (c) and (d) of this section.

(c) The baseline volume of renewable fuel that is produced from facilities and any expansions, all of which commenced construction on or before December 19, 2007, shall not be subject to the requirement that lifecycle greenhouse gas emissions be at least 20 percent less than baseline lifecycle greenhouse gas emissions if the owner or operator:

(1) Did not discontinue construction for a period of 18 months after commencement of construction; and

(2) Completed construction 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:

(1) The owner or operator did not discontinue construction for a period of 18 months after commencement of construction;

(2) The owner or operator completed construction within 36 months of commencement of construction; and

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

(e) The annual volume of renewable fuel during a calendar year from facilities described in paragraphs (c) and (d) of this section that exceeds the baseline volume shall be subject to the requirement that lifecycle greenhouse gas emissions be at least 20 percent less than baseline lifecycle greenhouse gas emissions.

(f) If there are any changes in the mix of renewable fuels produced by those facilities described in paragraph (d) of this section, only the ethanol volume (to the extent it is less than or equal to baseline volume) will not be subject to the requirement that lifecycle greenhouse gas emissions be at least 20 percent less than baseline lifecycle greenhouse gas emissions. Any party that changes the fuel mix must update their registration as specified in § 80.1450(d).

[75 FR 14863, Mar. 26, 2010, as amended at 75 FR 26036, May 10, 2010; 75 FR 37733, June 30, 2010; 75 FR 79976, Dec. 21, 2010]

§ 80.1404 [Reserved]

§ 80.1405 What are the Renewable Fuel Standards?

(a)(1) *Renewable Fuel Standards for 2010.*

(i) The value of the cellulosic biofuel standard for 2010 shall be 0.004 percent.

(ii) The value of the biomass-based diesel standard for 2010 shall be 1.10 percent.

(iii) The value of the advanced biofuel standard for 2010 shall be 0.61 percent.

(iv) The value of the renewable fuel standard for 2010 shall be 8.25 percent.

(2) *Renewable Fuel Standards for 2011.*

(i) [Reserved]

(ii) The value of the biomass-based diesel standard for 2011 shall be 0.69 percent.

(iii) The value of the advanced biofuel standard for 2011 shall be 0.78 percent.

(iv) The value of the renewable fuel standard for 2011 shall be 8.01 percent.

(3) *Renewable Fuel Standards for 2012.*

(i) [Reserved]

(ii) The value of the biomass-based diesel standard for 2012 shall be 0.91 percent.

(iii) The value of the advanced biofuel standard for 2012 shall be 1.21 percent.

(iv) The value of the renewable fuel standard for 2012 shall be 9.23 percent.

(4) *Renewable Fuel Standards for 2013.*

(i) The value of the cellulosic biofuel standard for 2013 shall be 0.0005 percent.

(ii) The value of the biomass-based diesel standard for 2013 shall be 1.13 percent.

(iii) The value of the advanced biofuel standard for 2013 shall be 1.62 percent.

(iv) The value of the renewable fuel standard for 2013 shall be 9.74 percent.

(5) *Renewable Fuel Standards for 2014.*

(i) The value of the cellulosic biofuel standard for 2014 shall be 0.019 percent.

(ii) The value of the biomass-based diesel standard for 2014 shall be 1.41 percent.

(iii) The value of the advanced biofuel standard for 2014 shall be 1.51 percent.

(iv) The value of the renewable fuel standard for 2014 shall be 9.19 percent.

(6) *Renewable Fuel Standards for 2015.*

(i) The value of the cellulosic biofuel standard for 2015 shall be 0.069 percent.

(ii) The value of the biomass-based diesel standard for 2015 shall be 1.49 percent.

(iii) The value of the advanced biofuel standard for 2015 shall be 1.62 percent.

(iv) The value of the renewable fuel standard for 2015 shall be 9.52 percent.

(7) *Renewable Fuel Standards for 2016.*

(i) The value of the cellulosic biofuel standard for 2016 shall be 0.128 percent.

(ii) The value of the biomass-based diesel standard for 2016 shall be 1.59 percent.

(iii) The value of the advanced biofuel standard for 2016 shall be 2.01 percent.

(iv) The value of the renewable fuel standard for 2016 shall be 10.10 percent.

(8) *Renewable Fuel Standards for 2017.*

(i) The value of the cellulosic biofuel standard for 2017 shall be 0.173 percent.

(ii) The value of the biomass-based diesel standard for 2017 shall be 1.67 percent.

(iii) The value of the advanced biofuel standard for 2017 shall be 2.38 percent.

(iv) The value of the renewable fuel standard for 2017 shall be 10.70 percent.

(9) *Renewable Fuel Standards for 2018.*

(i) The value of the cellulosic biofuel standard for 2018 shall be 0.159 percent.

(ii) The value of the biomass-based diesel standard for 2018 shall be 1.74 percent.

(iii) The value of the advanced biofuel standard for 2018 shall be 2.37 percent.

(iv) The value of the renewable fuel standard for 2018 shall be 10.67 percent.

(10) *Renewable Fuel Standards for 2019.*

(i) The value of the cellulosic biofuel standard for 2019 shall be 0.230 percent.

(ii) The value of the biomass-based diesel standard for 2019 shall be 1.73 percent.

(iii) The value of the advanced biofuel standard for 2019 shall be 2.71 percent.

(iv) The value of the renewable fuel standard for 2019 shall be 10.97 percent.

(11) *Renewable Fuel Standards for 2020.*

(i) The value of the cellulosic biofuel standard for 2020 shall be 0.34 percent.

(ii) The value of the biomass-based diesel standard for 2020 shall be 2.10 percent.

(iii) The value of the advanced biofuel standard for 2020 shall be 2.93 percent.

(iv) The value of the renewable fuel standard for 2020 shall be 11.56 percent.

(b) EPA will calculate the value of the annual standards and publish these values in the FEDERAL REGISTER by November 30 of the year preceding the compliance period.

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

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

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

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

$$Std_{RF,i} = 100 * \frac{RFV_{RF,i}}{(G_i - RG_i) + (GS_i - RGS_i) - GE_i + (D_i - RD_i) + (DS_i - RDS_i) - DE_i}$$

Where:

$Std_{CB,i}$ = The cellulosic biofuel standard for year i, in percent.

$Std_{BBD,i}$= The biomass-based diesel standard for year i, in percent.

$Std_{AB,i}$= The advanced biofuel standard for year i, in percent.

$Std_{RF,i}$= The renewable fuel standard for year i, in percent.

$RFV_{CB,i}$= Annual volume of cellulosic biofuel required by 42 U.S.C. 7545(o)(2)(B) for year i, or volume as adjusted pursuant to 42 U.S.C. 7545(o)(7)(D), in gallons.

$RFV_{BBD,i}$= Annual volume of biomass-based diesel required by 42 U.S.C. 7545 (o)(2)(B) for year i, in gallons.

$RFV_{AB,i}$= Annual volume of advanced biofuel required by 42 U.S.C. 7545(o)(2)(B) for year i, in gallons.

$RFV_{RF,i}$= Annual volume of renewable fuel required by 42 U.S.C. 7545(o)(2)(B) 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 total amount of gasoline projected to be exempt in year i, in gallons, per §§ 80.1441 and 80.1442.

DE_i = The total amount of diesel fuel projected to be exempt in year i, in gallons, per §§ 80.1441 and 80.1442.

(d) The price for cellulosic biofuel waiver credits will be calculated in accordance with § 80.1456(d) and published on EPA's Web site.

[77 FR 1354, Jan. 9, 2012, as amended at 78 FR 49830, Aug. 15, 2013; 79 FR 25031, May 2, 2014; 80 FR 18140, Apr. 3, 2015; 80 FR 77517, Dec. 14, 2015; 81 FR 89804, Dec. 12, 2016; 82 FR 58527, Dec. 12, 2017; 83 FR 63744, Dec. 11, 2018; 85 FR 7074, Feb. 6, 2020]

EFFECTIVE DATE NOTE: At 87 FR 39661, July 1, 2022, § 80.1405 was amended by revising paragraph (a)(11) and adding paragraphs (a)(12) and (13), effective Aug. 30, 2022. For the convenience of the user, the added and revised text is set forth as follows:

§ 80.1405 What are the Renewable Fuel Standards?

(a) * * *

(11) *Renewable Fuel Standards for 2020.* (i) The value of the cellulosic biofuel standard for 2020 shall be 0.32 percent.

(ii) The value of the biomass-based diesel standard for 2020 shall be 2.30 percent.

(iii) The value of the advanced biofuel standard for 2020 shall be 2.93 percent.

(iv) The value of the renewable fuel standard for 2020 shall be 10.82 percent.

(12) *Renewable Fuel Standards for 2021.* (i) The value of the cellulosic biofuel standard for 2021 shall be 0.33 percent.

(ii) The value of the biomass-based diesel standard for 2021 shall be 2.16 percent.

(iii) The value of the advanced biofuel standard for 2021 shall be 3.00 percent.

(iv) The value of the renewable fuel standard for 2021 shall be 11.19 percent.

(13) *Renewable Fuel Standards for 2022.* (i) The value of the cellulosic biofuel standard for 2022 shall be 0.35 percent.

(ii) The value of the biomass-based diesel standard for 2022 shall be 2.33 percent.

(iii) The value of the advanced biofuel standard for 2022 shall be 3.16 percent.

(iv) The value of the renewable fuel standard for 2022 shall be 11.59 percent.

(v) The value of the supplemental total renewable fuel standard for 2022 shall be 0.14 percent.

* * * * *

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

(a)(1) An *obligated party* is any refiner that produces gasoline or diesel fuel within the 48 contiguous states or Hawaii, or any importer that imports gasoline or diesel fuel into the 48 contiguous states or Hawaii during a compliance period. A party that simply blends renewable fuel into gasoline or diesel fuel, as defined in § 80.1407(c) or (e), is not an obligated party.

(2) If the Administrator approves a petition of Alaska or a United States territory to opt-in to the renewable fuel program under the provisions in § 80.1443, then ''obligated party'' shall also include any refiner that produces gasoline or diesel fuel within that state or territory, or any importer that imports gasoline or diesel fuel into that state or territory.

(b) For each compliance period starting with 2010, an obligated party is required to demonstrate, pursuant to § 80.1427, that it has satisfied the Renewable Volume Obligations for that compliance period, as specified in § 80.1407(a).

(c) *Aggregation of facilities*—(1) Except as provided in 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.

(2) An obligated party that carries a deficit into year i + 1 must use the same approach to aggregation of facilities in year i + 1 as it did in year i.

(d) An obligated party must comply with the requirements of paragraph (b) of this section for all of its imported gasoline or diesel fuel in the aggregate.

(e) An obligated party that is both a refiner and importer must comply with the requirements of paragraph (b) of this section for its imported gasoline or diesel fuel separately from gasoline or diesel fuel produced by its domestic refinery or refineries.

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

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

[75 FR 14863, Mar. 26, 2010, as amended at 75 FR 26037, May 10, 2010]

§ 80.1407 How are the Renewable Volume Obligations calculated?

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

(1) *Cellulosic biofuel.*

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

Where:

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

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

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

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

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

(2) *Biomass-based diesel.*

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

Where:

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

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

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

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

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

(3) *Advanced biofuel.*

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

Where:

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

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

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

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

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

(4) *Renewable fuel.*

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

Where:

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

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

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

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

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

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

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

Where:

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

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

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

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

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

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

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

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

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

(3) Reformulated gasoline blendstock that becomes finished reformulated gasoline upon the addition of oxygenate (RBOB).

(4) Conventional gasoline blendstock that becomes finished conventional gasoline upon the addition of oxygenate (CBOB).

(5) Blendstock (including butane, pentane, and gasoline treated as blendstock (GTAB)) that has been combined with other blendstock and/or finished gasoline to produce gasoline.

(6) Any gasoline, or any unfinished gasoline that becomes finished gasoline upon the addition of oxygenate, that is produced or imported to comply with a state or local fuels program.

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

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

Where:

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

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

D_X = Volume of batch x of diesel produced or imported, as defined in paragraph (e) of this section, in gallons.

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

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

RBD_y = Volume of batch y of renewable fuel blended into diesel, in gallons.

(e) Except as specified in paragraph (f) of this section, all products meeting the definition of *MVNRLM diesel fuel* at § 80.2 that are produced or imported during a compliance period, collectively called ''diesel fuel'' for the purposes of this section (unless otherwise specified), are to be included (but not double-counted) in the volume used to calculate a party's Renewable Volume Obligations under paragraph (a) of this section.

(f) The following products are not included in the volume of gasoline or diesel fuel produced or imported used to calculate a party's Renewable Volume Obligations according to paragraph (a) of this section:

(1) Any renewable fuel as defined in § 80.1401.

(2) Blendstock that has not been combined with other blendstock, finished gasoline, or diesel to produce gasoline or diesel.

(3) Gasoline or diesel fuel produced or imported for use in Alaska, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Marianas, unless the area has opted into the RFS program under § 80.1443.

(4) Gasoline or diesel fuel produced by a small refinery that has an exemption under § 80.1441 or an approved small refiner that has an exemption under § 80.1442.

(5) Gasoline or diesel fuel exported for use outside the 48 United States and Hawaii, and gasoline or diesel fuel exported for use outside Alaska, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Marianas, if the area has opted into the RFS program under § 80.1443.

(6) For blenders, the volume of finished gasoline, finished diesel fuel, RBOB, or CBOB to which a blender adds blendstocks.

(7) Transmix gasoline product (as defined in 40 CFR 1090.80) and transmix distillate product (as defined in 40 CFR 1090.80) produced by a transmix processor, and transmix blended into gasoline or diesel fuel by a transmix blender under 40 CFR 1090.500.

(8) Any gasoline or diesel fuel that is not transportation fuel.

(9) Distillate fuel with a sulfur content greater than 15 ppm that is clearly designated for a use other than transportation fuel, such as heating oil or ECA marine fuel.

(10) Distillate fuel that meets a 15 ppm sulfur standard, is designated for non-transportation use, and that remains completely segregated from MVNRLM diesel fuel from the point of production through to the point of use for a non-transportation purpose, such as heating oil or ECA marine fuel.

(11) Certified NTDF, if the refiner or importer has a reasonable expectation that the fuel will be used for non-transportation purposes. To establish a reasonable expectation that the fuel will be used for non-transportation purposes, a refiner or importer must, at a minimum, be able to demonstrate that they supply areas that use heating oil, ECA marine fuel, or 15 ppm distillate fuel for non-transportation purposes in quantities that are consistent with past practices or changed circumstances. EPA may consider any other relevant information, including the price of the fuel, in assessing whether a refiner or importer has a reasonable expectation that the fuel will be used for non-transportation purposes.

[75 FR 14863, Mar. 26, 2010, as amended at 79 FR 23655, Apr. 28, 2014; 85 FR 7074, Feb. 6, 2020; 85 FR 78467, Dec. 4, 2020]

EFFECTIVE DATE NOTE: At 87 FR 39661, July 1, 2022, § 80.1407 was amended by revising paragraph (f)(1), effective Aug. 30, 2022. For the convenience of the user, the revised text is set forth as follows:

§ 80.1407 How are the Renewable Volume Obligations calculated?

* * * * *

(f) * * *

(1) Any renewable fuel. Renewable fuel for which a RIN is invalidly generated under § 80.1431 may not be excluded from a party's renewable volume obligations.

* * * * *

§ 80.1408 What are the requirements for parties that own and redesignate certified NTDF as MVNRLM diesel fuel?

(a) Beginning January 1, 2021, a party that owns certified NTDF, and only a party that owns certified NTDF, may redesignate NTDF as MVNRLM diesel fuel if they meet all of the following requirements:

(1) Register as a refiner and register each facility where redesignation occurs as a refinery under § 80.76. NTDF may only be redesignated as MVNRLM diesel fuel at a facility registered as a refinery.

(2) At each facility, calculate a balance of MVNRLM diesel fuel during each annual compliance period according to the following equation:

$$MVNRLM_{BAL} = MVNRLM_{O} + MVNRLM_{INVCHG} - MVNRLM_{I}$$

Where:

$MVNRLM_{BAL}$ = the balance for MVNRLM diesel fuel for the compliance period.

$MVNRLM_{I}$ = the total volume of all batches of fuel designated as MVNRLM diesel fuel owned when the fuel was received at the facility and acquired at the facility during the compliance period. Any MVNRLM diesel fuel produced (apart from redesignation of NTDF to MVNRLM diesel fuel) or imported into the facility must also be included in this volume.

$MVNRLM_{O}$ = the total volume of all batches of fuel designated as MVNRLM diesel fuel owned and sold or transferred to

other parties at the facility during the compliance period.

$MVNRLM_{INVCHG}$ = the volume of MVNRLM diesel fuel owned at the end of the compliance period minus the volume of MVNRLM diesel fuel owned at the beginning of the compliance period, including accounting for any corrections in inventory due to volume swell or shrinkage, difference in measurement calibration between receiving and delivering meters, and similar matters, where corrections that increase inventory are defined as positive.

(i) If $MVNRLM_{BAL}$ is greater than 0, an RVO is incurred by the redesignating party for the volume of diesel fuel equal to MVNRLM. The redesignating party must also comply with all of the following:

(A) The reporting requirements of § 80.1451(a)(1)(xix).

(B) The recordkeeping requirements of § 80.1454(t).

(C) The attest engagement requirements of §§ 80.1464 and 80.1475, as applicable.

(ii) If $MVNRLM_{BAL}$ is less than or equal to 0, no RVO is incurred by the redesignating party for any redesignated certified NTDF. These parties must comply with all of the following:

(A) The reporting requirements of § 80.1451(i).

(B) The recordkeeping requirements of § 80.1454(t).

(b) Parties that incur an RVO under paragraph (a)(2)(i) of this section must comply with all applicable requirements for obligated parties under this subpart.

(c) The provisions of this section do not apply to gasoline or diesel fuel that is designated for export.

[85 FR 7074, Feb. 6, 2020]

EFFECTIVE DATE NOTE: At 87 FR 39661, July 1, 2022, § 80.1408 was amended by removing ''§ 80.1454(t)'' from paragraphs (a)(2)(i)(B) and (ii)(B) and adding ''§ 80.1454(o)'' in its place, effective Aug. 30, 2022.

§§ 80.1409–80.1414 [Reserved]

§ 80.1415 How are equivalence values assigned to renewable fuel?

(a)(1) Each gallon of a renewable fuel, or gallon equivalent pursuant to paragraph (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) Equivalence values shall be assigned for certain renewable fuels as follows:

(1) Ethanol which is denatured shall have an equivalence value of 1.0.

(2) Biodiesel (mono-alkyl ester) shall have an equivalence value of 1.5.

(3) Butanol shall have an equivalence value of 1.3.

(4) Non-ester renewable diesel with a lower heating value of at least 123,500 Btu/gal shall have an equivalence value of 1.7.

(5) 77,000 Btu (lower heating value) of compressed natural gas (CNG) or liquefied natural gas (LNG) 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.

(7) For all other renewable fuels, a producer or importer shall submit an application to the Agency for an equivalence value following the provisions of paragraph (c) of this section. A producer or importer may also submit an application for an alternative equivalence value pursuant to paragraph (c) if the renewable fuel is listed in this paragraph (b), but the producer or importer has reason to believe that a different equivalence value than that listed in this paragraph (b) is warranted.

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

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

Where:

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

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

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

(2) The application for an equivalence value shall include a technical justification that includes all the following:

(i) A calculation for the requested equivalence value according to the equation in paragraph (c)(1) of this section, including supporting documentation for the value of EC used in the calculation such as a certificate of analysis from a laboratory that verifies the lower heating value in Btu per gallon of the renewable fuel produced.

(ii) For each feedstock, component, or additive that is used to make the renewable fuel, provide a description, the percent input, and identify whether or not it is renewable biomass or is derived from renewable biomass.

(iii) For each feedstock that also qualifies as a renewable fuel, state whether or not RINs have been previously generated for such feedstock.

(iv) A description of the renewable fuel and the production process, including a block diagram that shows all inputs and outputs at each step of the production process with a sample quantity of all inputs and outputs for one batch of renewable fuel produced.

(3) The Agency will review the technical justification and assign an appropriate equivalence value to the renewable fuel based on the procedure in this paragraph (c).

(4) Applications for equivalence values must be sent to the attention of ''RFS2 Program (Equivalence Value Application)'' to the address in § 80.10(a).

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

[75 FR 14863, Mar. 26, 2010, as amended at 75 FR 26037, May 10, 2010; 77 FR 1355, Jan. 9, 2012; 79 FR 42159, July 18, 2014; 85 FR 7075, Feb. 6, 2020]

EFFECTIVE DATE NOTE: At 87 FR 39661, July 1, 2022, § 80.1415 was amended by revising paragraphs (c)(2)(ii) and (iii), effective Aug. 30, 2022. For the convenience of the user, the revised text is set forth as follows:

§ 80.1415 How are equivalence values assigned to renewable fuel?

* * * * *

(c) * * *

(2) * * *

(ii) For each feedstock, biointermediate, component, or additive that is used to make the renewable fuel, provide a description, the percent input, and identify whether or not it is renewable biomass or is derived from renewable biomass.

(iii) For each feedstock or biointermediate that also qualifies as a renewable fuel, state whether or not RINs have been previously generated for such feedstock.

* * * * *

§ 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 40 CFR 1090.805.

(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. During petition review EPA will evaluate whether a feedstock meets the 75% cellulosic content threshold allowing cellulosic RINs to be generated for the entire fuel volume produced. The Administrator may ask for additional information to complete this evaluation.

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

[75 FR 26037, May 10, 2010, as amended at 79 FR 42160, July 18, 2014; 85 FR 78467, Dec. 4, 2020]

EFFECTIVE DATE NOTE: At 87 FR 39662, July 1, 2022, § 80.1416 was amended by revising paragraphs (b)(1)(ii) and (iii), effective Aug. 30, 2022. For the convenience of the user, the revised text is set forth as follows:

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

* * * * *

(b)(1) * * *

(ii) A technical justification that includes a description of the renewable fuel, feedstock(s), and biointermediate(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 and biointermediates, fuels produced, co-products, and waste materials production.

* * * * *

§§ 80.1417–80.1424 [Reserved]

§ 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:

KYYYYCCCCFFFFFBBBBBRRD

SSSSSSSSEEEEEEEE

(a) K is a number identifying the type of RIN as follows:

(1) K has the value of 1 when the RIN is assigned to a volume of renewable fuel pursuant to § 80.1426(e) and § 80.1428(a).

(2) K has the value of 2 when the RIN has been separated from a volume of renewable fuel pursuant to § 80.1429.

(b) YYYY is the calendar year in which the RIN was generated.

(c) CCCC is the registration number assigned, according to § 80.1450, to the producer or importer of the batch of renewable fuel.

(d) FFFFF is the registration number assigned, according to § 80.1450, to the facility at which the batch of renewable fuel was produced or imported.

(e) BBBBB is a serial number assigned to the batch which is chosen by the producer or importer of the batch such that no two batches have the same value in a given calendar year.

(f) RR is a number representing 10 times the equivalence value of the renewable fuel as specified in § 80.1415.

(g) D is a number determined according to § 80.1426(f) and identifying the type of renewable fuel, as follows:

(1) D has the value of 3 to denote fuel categorized as cellulosic biofuel.

(2) D has the value of 4 to denote fuel categorized as biomass-based diesel.

(3) D has the value of 5 to denote fuel categorized as advanced biofuel.

(4) D has the value of 6 to denote fuel categorized as renewable fuel.

(5) D has the value of 7 to denote fuel categorized as cellulosic diesel.

(h) SSSSSSSS is a number representing the first gallon-RIN associated with a batch of renewable fuel.

(i) EEEEEEEE is a number representing the last gallon-RIN associated with a volume of renewable fuel.

[75 FR 14863, Mar. 26, 2010, as amended at 75 FR 79977, Dec. 21, 2010]

§ 80.1426 How are RINs generated and assigned to batches of renewable fuel?

(a) *General requirements.* (1) To the extent permitted under paragraphs (b) and (c) of this section, producers and importers of renewable fuel must generate RINs to represent that fuel if all of the following occur:

(i) The fuel qualifies for a D code pursuant to § 80.1426(f), or the EPA has approved a petition for use of a D code pursuant to § 80.1416.

(ii) The fuel is demonstrated to be produced from renewable biomass pursuant to the reporting requirements of § 80.1451 and the recordkeeping requirements of § 80.1454.

(A) Feedstocks meeting the requirements of renewable biomass through the aggregate compliance provision at § 80.1454(g) are deemed to be renewable biomass.

(B) [Reserved]

(iii) The fuel was produced in compliance with the registration requirements of § 80.1450, the reporting requirements of § 80.1451, the recordkeeping requirements of § 80.1454, all conditions set forth in an approval document for a pathway petition submitted under § 80.1416, and all other applicable regulations of this subpart M.

(iv) The renewable fuel is designated on a product transfer document (PTD) for use as transportation fuel, heating oil, or jet fuel in accordance with § 80.1453(a)(12).

(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 non-RIN-generating foreign renewable fuel producer that is registered pursuant to § 80.1450 sufficient to make the appropriate determination regarding the applicable D code and compliance with the renewable biomass definition for each imported batch for which RINs are generated.

(3) A party generating a RIN shall specify the appropriate numerical values for each component of the RIN in accordance with the provisions of § 80.1425(a) and paragraph (f) of this section.

(b) *Regional applicability.* (1) Except as provided in paragraph (c) of this section, a RIN must be generated by a renewable fuel producer or importer for a batch of renewable fuel that satisfies the requirements of paragraph (a)(1) of this section if it is produced or imported for use as transportation fuel, heating oil, or jet fuel in the 48 contiguous states or Hawaii.

(2) If the Administrator approves a petition of Alaska or a United States territory to opt-in to the renewable fuel program under the provisions in § 80.1443, then the requirements of paragraph (b)(1) of this section shall also apply to renewable fuel produced or imported for use as transportation fuel, heating oil, or jet fuel in that state or territory beginning in the next calendar year.

(c) *Cases in which RINs are not generated.*(1) Fuel producers and importers may not generate RINs for fuel that does not satisfy the requirements of paragraph (a)(1) of this section.

(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 non-RIN-generating foreign renewable fuel producer unless the foreign renewable fuel producer is registered with EPA as required in § 80.1450.

(5) Importers shall not generate RINs for renewable fuel that has already been assigned RINs by a RIN-generating foreign renewable fuel producer.

(6) A party is prohibited from generating RINs for a volume of fuel that it produces if the fuel has been produced by a process that uses a renewable fuel as a feedstock, and the renewable fuel that is used as a feedstock was produced by another party, except that RINs may be generated for such fuel if allowed by the EPA in response to a petition submitted pursuant to § 80.1416 and the petition approval specifies a mechanism to prevent double counting of RINs.

(7) For renewable fuel oil that is heating oil as defined in paragraph (2) of the definition of heating oil in § 80.1401, renewable fuel producers and importers shall not generate RINs unless they have received affidavits from the final end user or users of the fuel oil as specified in § 80.1451(b)(1)(ii)(T)(*2*).

(d)(1) *Definition of batch.* For the purposes of this section and § 80.1425, a ''batch of renewable fuel'' is a volume of renewable fuel that has been assigned a unique identifier within a calendar year by the producer or importer of the renewable fuel in accordance with the provisions of this section and § 80.1425.

(i) The number of gallon-RINs generated for a batch of renewable fuel may not exceed 99,999,999.

(ii) A batch of renewable fuel cannot represent renewable fuel produced or imported in excess of one calendar month.

(2) Multiple gallon-RINs generated to represent a given volume of renewable fuel can be represented by a single batch-RIN through the appropriate designation of the RIN volume codes SSSSSSSS and EEEEEEEE.

(i) The value of SSSSSSSS in the batch-RIN shall be 00000001 to represent the first gallon-RIN associated with the volume of renewable fuel.

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

(iii) Under § 80.1452, RIN volumes will be managed by EMTS. RIN codes

SSSSSSSS and EEEEEEEE do not have a role in EMTS.

(e) *Assignment of RINs to batches.* (1) Except as provided in paragraph (g) of this section for delayed RINs, the producer or importer of renewable fuel must assign all RINs generated to volumes of renewable fuel.

(2) A RIN is assigned to a volume of renewable fuel when ownership of the RIN is transferred along with the transfer of ownership of the volume of renewable fuel, pursuant to § 80.1428(a).

(3) All assigned RINs shall have a K code value of 1.

(f) *Generation of RINs*—(1) *Applicable pathways.* D codes shall be used in RINs generated by producers or importers of renewable fuel according to the pathways listed in Table 1 to this section, paragraph (f)(6) of 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. Tables 1 and 2 to this section do not apply to, and impose no requirements with respect to, volumes of fuel for which RINs are generated pursuant to paragraph (f)(6) of this section.

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
A	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
B	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
C	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
D	Ethanol	Corn starch	Wet mill process using biomass or biogas for process energy.	6
E	Ethanol	Starches from crop residue and annual covercrops.	Fermentation using natural gas, biomass, or biogas for process energy.	6
F	Biodiesel, renewable diesel, jet fuel and heating oil.	Soy bean oil; Oil from annual covercrops; Oil from algae grown photosynthetically; Biogenic waste oils/fats/greases; *Camelina sativa* oil; Distillers corn oil; Distillers sorghum oil; Commingled distillers corn oil and sorghum oil.	One of the following: Transesterification with or without esterification pre-treatment, or Hydrotreating; excludes processes that co-process renewable biomass and petroleum.	4
G	Biodiesel, heating oil.	Canola/Rapeseed oil	Trans-Esterification using natural gas or biomass for process energy.	4
H	Biodiesel, renewable diesel, jet fuel and heating oil.	Soy bean oil; Oil from annual covercrops; Oil from algae grown photosynthetically; Biogenic waste oils/fats/greases; *Camelina sativa* oil; Distillers corn oil; Distillers sorghum oil; Commingled distillers corn oil and sorghum oil.	One of the following: Transesterification with or without esterification pre-treatment, or Hydrotreating; includes only processes that co-process renewable biomass and petroleum.	5
I	Naphtha, LPG	*Camelina sativa* oil; Distillers sorghum oil; Distillers corn oil; Commingled distillers corn oil and distillers sorghum oil.	Hydrotreating	5
J	Ethanol	Sugarcane	Fermentation	5

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
K	Ethanol	Crop residue, slash, pre-commercial thinnings and tree residue, switchgrass, miscanthus, energy cane, Arundo donax, Pennisetum purpureum, and separated yard waste; biogenic components of separated MSW; cellulosic components of separated food waste; and cellulosic components of annual cover crops.	Any process that converts cellulosic biomass to fuel.	3
L	Cellulosic diesel, jet fuel and heating oil.	Crop residue, slash, pre-commercial thinnings and tree residue, switchgrass, miscanthus, energy cane, Arundo donax, Pennisetum purpureum, and separated yard waste; biogenic components of separated MSW; cellulosic components of separated food waste; and cellulosic components of annual cover crops.	Any process that converts cellulosic biomass to fuel.	7
M	Renewable Gasoline and Renewable Gasoline Blendstock; Co-Processed Cellulosic Diesel, Jet Fuel, and Heating Oil.	Crop residue, slash, pre-commercial thinnings, tree residue, and separated yard waste; biogenic components of separated MSW; cellulosic components of separated food waste; and cellulosic components of annual cover crops.	Catalytic Pyrolysis and Upgrading, Gasification and Upgrading, Thermo-Catalytic Hydrodeoxygenation and Upgrading, Direct Biological Conversion, Biological Conversion and Upgrading utilizing natural gas, biogas, and/or biomass as the only process energy sources providing that process used converts cellulosic biomass to fuel; any process utilizing biogas and/or biomass as the only process energy sources which converts cellulosic biomass to fuel.	3
N	Naphtha	Switchgrass, miscanthus, energy cane, Arundo donax, and Pennisetum purpureum.	Gasification and upgrading processes that converts cellulosic biomass to fuel.	3
O	Butanol	Corn starch	Fermentation; dry mill using natural gas, biomass, or biogas for process energy.	6
P	Ethanol, renewable diesel, jet fuel, heating oil, and naphtha.	The non-cellulosic portions of separated food waste and non-cellulosic components of annual cover crops.	Any	5
Q	Renewable Compressed Natural Gas, Renewable Liquefied Natural Gas, Renewable Electricity.	Biogas from landfills, municipal wastewater treatment facility digesters, agricultural digesters, and separated MSW digesters; and biogas from the cellulosic components of biomass processed in other waste digesters.	Any	3
R	Ethanol	Grain Sorghum	Dry mill process using biogas from landfills, waste treatment plants, and/or waste digesters, and/or natural gas, for process energy.	6
S	Ethanol	Grain Sorghum	Dry mill process, using only biogas from landfills, waste treatment plants, and/or waste digesters for process energy and for on-site production of all electricity used at the site other than up to 0.15 kWh of electricity from the grid per gallon of ethanol produced, calculated on a per batch basis.	5
T	Renewable Compressed Natural Gas, Renewable Liquefied Natural Gas, and Renewable Electricity.	Biogas from waste digesters	Any	5

TABLE 2 TO § 80.1426—ADVANCED TECHNOLOGIES

Corn oil fractionation that is applied to at least 90% of the corn used to produce ethanol on a calendar year basis.
Corn oil extraction that is applied to the whole stillage and/or derivatives of whole stillage and results in recovery of corn oil at an annual average rate equal to or greater than 1.33 pounds oil per bushel of corn processed into ethanol.
Membrane separation in which at least 90% of ethanol dehydration is carried out using a hydrophilic membrane on a calendar year basis.
Raw starch hydrolysis that is used for at least 90% of starch hydrolysis used to produce ethanol instead of hydrolysis using a traditional high heat cooking process, calculated on a calendar year basis.
Combined heat and power such that, on a calendar year basis, at least 90% of the thermal energy associated with ethanol production (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.

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

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

Where:

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

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

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

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

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

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

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

Where:

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

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

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

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

$$V_{RIN} = \Sigma(EV_i * V_{s,i})$$

Where:

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

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

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

(iv) If the pathway applicable to a producer changes on a specific date, such that one pathway applies before

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

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

Where:

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

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

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

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

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

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

Where:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Table 4 to §80.1426
Number of gallon-RINs to assign to batch-RINs with D codes dependent on feedstock

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

Where:

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

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

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

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

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

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

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

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

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

FE_5 = Feedstock energy from all feedstocks whose pathways have been assigned a D code of 5 under Table 1 to this section, or a D code of 5 as approved by the Administrator, in Btu.

FE_6 = Feedstock energy from all feedstocks whose pathways have been assigned a D code of 6 under Table 1 to this section, or a D code of 6 as approved by the Administrator, in Btu.

FE_7 = Feedstock energy from all feedstocks whose pathways have been assigned a D code of 7 under Table 1 to this section, or a D code of 7 as approved by the Administrator, in Btu.

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

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

Where:

FE = Feedstock energy, in Btu.

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

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

CF = Converted Fraction in annual average mass percent, except as otherwise provided by §80.1451(b)(1)(ii)(U), representing that portion of the feedstock that is converted into renewable fuel by the producer.

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

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

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

Where:

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

EV = Equivalence value for the batch of renewable fuel per § 80.1415, subject to qualification in paragraph (f)(4)(iii) of this section.

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

FE_R = Feedstock energy from renewable biomass used to make the transportation fuel, in Btu.

FE_{NR} = Feedstock energy from non-renewable feedstocks used to make the transportation fuel, 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, except as otherwise provided by § 80.1451(b)(1)(ii)(U), 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:

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

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, subject to qualification in paragraph (f)(4)(iii) of this section.

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.

(iii) In determining the RIN volume V_{RIN} according to paragraph (f)(4)(i)(A) or (f)(4)(i)(B) of this section, the equivalence value used to determine V_{RIN} which is calculated according to § 80.1415 shall use a value of 1.0 to represent R, the renewable content of the renewable fuel.

(5) *Renewable fuel produced from separated yard and food waste.*(i) *Separated yard waste and food waste* means, for the purposes of this section, waste that is one of the following:

(A) *Separated yard 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.

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

(B) A feedstock qualifies under paragraph (f)(5)(i)(C) of this section only if it is collected according to a plan submitted to and approved by U.S. EPA.

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

(A) Recyclable paper, cardboard, plastics, rubber, textiles, metals, and glass that can be recycled are separated and removed from the municipal solid waste stream to the extent reasonably practicable according to a plan submitted to and approved by U.S. EPA under the registration procedures specified in § 80.1450(b)(1)(viii); and

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

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

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

Where:

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

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

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

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

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

Where:

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

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

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

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

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

Where:

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

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

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

R = The calculated non-fossil fraction of the fuel as measured by a carbon-14 dating test method as provided in paragraph (f)(9) of this section, except that for biogas-derived fuels made from separated MSW, no testing is required and R = 1.

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

(6) *Renewable fuel neither covered by the pathways in Table 1 to this section, nor given an approval by the Administrator for use of a specific D code.* If none of the pathways described in Table 1 to this section apply to a producer's operations, and the producer has not received approval for the use of a specific D code by the Administrator, the party may generate RINs if the fuel from its facility is made from renewable biomass and qualifies for an exemption under § 80.1403 from the requirement that renewable fuel achieve at least a 20 percent reduction in lifecycle greenhouse gas emissions compared to baseline lifecycle greenhouse gas emissions.

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

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

Where:

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

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

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

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

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

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

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

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

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

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

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

(vi) *Default values for E.*

(A) Starch: 7,600 Btu/lb.

(B) Sugar: 7,300 Btu/lb.

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

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

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

(F) Manure: 6,900 Btu/lb.

(G) Woody biomass: 8,400 Btu/lb.

(H) Herbaceous biomass: 7,300 Btu/lb.

(I) Yard wastes: 2,900 Btu/lb.

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

(K) Food waste: 2,000 Btu/lb.

(L) Paper: 7,200 Btu/lb.

(M) Crude oil: 19,100 Btu/lb.

(N) Coal—bituminous: 12,200 Btu/lb.

(O) Coal—anthracite: 13,300 Btu/lb.

(P) Coal—lignite or sub-bituminous: 7,900 Btu/lb.

(Q) Natural gas: 19,700 Btu/lb.

(R) Tires or rubber: 16,000 Btu/lb.

(S) Plastic: 19,000 Btu/lb.

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

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

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

Where:

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

$V_{a,e}$ = Actual volume of ethanol, in gallons.

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

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

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

Where

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

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

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

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

(iii) For other renewable fuels, an appropriate formula commonly accepted

by the industry shall be used to standardize the actual volume to 60 °F. Formulas used must be reported to EPA, and may be determined to be inappropriate.

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

(ii) Parties must use Method B or Method C of ASTM D 6866 (incorporated by reference, *see* § 80.1468), or an alternative test method as approved by EPA.

(iii) For each batch of fuel, the value of R must be based on:

(A) A radiocarbon dating test of the batch of fuel produced; or

(B) A radiocarbon dating test of a composite sample of previously produced fuel, if all of the following conditions are met:

(*1*) Based upon good engineering judgment, the renewable fraction of the composite sample must be representative of the batch of fuel produced.

(*2*) The composite sample is comprised of a volume weighted combination of samples from every batch of partially renewable transportation fuel produced by the party over a period not to exceed one calendar month, or more frequently if necessary to ensure that the test results are representative of the renewable fraction of the partially renewable fuel.

(*3*) The composite sample must be well mixed prior to testing.

(*4*) A volume of each composite sample must be retained for a minimum of two years, and be of sufficient volume to permit two additional tests to be conducted.

(iv) If the party is using the composite sampling approach according to paragraph (f)(9)(iii)(B) of this section, the party may estimate the value of R for use in generating RINs in the first month if all of the following conditions are met:

(A) The estimate of R for the first month is based on information on the composition of the feedstock;

(B) The party calculates R in the second month based on the application of a radiocarbon dating test on a composite sample pursuant to (f)(9)(iii)(B) of this section; and

(C) The party adjusts the value of R used to generate RINs in the second month using the following formula

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

Where

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

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

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

(10)(i) For purposes of this section, electricity that is only distributed via a closed, private, non-commercial system is considered renewable fuel and RINs may be generated if all of the following apply:

(A) The electricity 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 RIN generator has documentation for the sale, if applicable, and use of a specific quantity of renewable electricity as transportation fuel, or has obtained affidavits from all parties selling or using the electricity as transportation fuel.

(C) The electricity is used as a transportation fuel and for no other purposes.

(ii) For purposes of this section, CNG or LNG produced from biogas that is only distributed via a closed, private, non-commercial system is considered renewable fuel for which RINs may be generated if all of the following apply:

(A) The CNG/LNG 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 RIN generator has entered into a written contract for the sale or use of a specific quantity of CNG/LNG to be used as transportation fuel, or obtained affidavits from all parties selling or using the CNG/LNG as transportation fuel.

(C) The CNG/LNG is used as a transportation fuel and for no other purposes.

(iii) A producer of 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, electricity that is introduced into a commercial distribution system (transmission grid) is considered renewable fuel for which RINs may be generated if all of the following apply:

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

(B) The RIN generator has documentation for the sale and use of a specific quantity of renewable electricity as transportation fuel, or has obtained affidavits from all parties selling or using the electricity as transportation fuel.

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

(D) The renewable electricity was loaded onto and withdrawn from a physically connected transmission grid.

(E) The amount of electricity sold for use as transportation fuel corresponds to the amount of electricity derived from biogas that was placed into the commercial distribution system.

(F) No other party relied upon the renewable electricity for the creation of RINs.

(ii) For purposes of this section, CNG or LNG produced from biogas that is introduced into a commercial distribution system is considered renewable fuel for which RINs may be generated if all 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 RIN generator has entered into a written contract for the sale or use of a specific quantity of renewable CNG/LNG, taken from a commercial distribution system (e.g., physically connected pipeline, barge, truck, rail), for use as a transportation fuel, or has obtained affidavits from all parties selling or using the CNG/LNG taken from a commercial distribution system as a transportation fuel.

(C) The quantity of CNG/LNG for which RINs were generated was sold for use as transportation fuel and for no other purposes.

(D) The biogas/CNG/LNG was injected into and withdrawn from the same commercial distribution system.

(E) The biogas/CNG/LNG that is ultimately withdrawn from the commercial distribution system for use as transportation fuel is withdrawn in a manner and at a time consistent with the transport of the biogas/CNG/LNG between the injection and withdrawal points.

(F) The volume and heat content of biogas/CNG/LNG injected into a pipeline and the volume of biogas/CNG/LNG withdrawn to make a transportation fuel are measured by continuous metering.

(G) The amount of fuel sold for use as transportation fuel corresponds to the amount of fuel derived from biogas that was placed into the commercial distribution system.

(H) No other party relied upon the volume of biogas/CNG/LNG for the creation of RINs.

(iii) 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 of 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.

(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 that is withdrawn from the 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.

(13) In order for facilities to satisfy the requirements of the advanced biofuel grain sorghum pathway all of the following conditions (in addition to other applicable requirements) apply.

(i) The quantity of electricity used at the site that is purchased from the grid must be measured and recorded by continuous metering.

(ii) All electricity used on-site that is not purchased from the grid must be produced on-site from biogas from landfills, waste treatment plants, and/or waste digesters.

(iii) 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 biogas that specifies the volume of biogas, its heat content, and that the biogas must be derived from a landfill, waste treatment plant and/or waste digester.

(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 at the renewable fuel production facility are measured by continuous metering.

(iv) [Reserved]

(v) 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 biogas that specifies a specific volume of biogas, with a specific heat content, and that the biogas must be derived from a landfill, waste treatment plant and/or waste digester.

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

(C) The volume of biogas that is withdrawn from the 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 at the renewable fuel production facility are measured by continuous metering.

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

(vi) No party relied upon the contracted volume of biogas for the creation of RINs.

(14) A producer or importer of renewable fuel using giant reed (*Arundo donax*) or napier grass (*Pennisetum purpureum*) as a feedstock may generate RINs for that renewable fuel if:

(i) The feedstock is produced, managed, transported, collected, monitored, and processed according to a Risk Mitigation Plan approved by EPA under the registration procedures specified in § 80.1450(b)(1)(x)(A); or,

(ii) EPA has determined that there is not a significant likelihood of spread beyond the planting area of the feedstock used for production of the renewable fuel. Any determination that *Arundo donax* or *Pennisetum purpureum*

does not present a significant likelihood of spread beyond the planting area must be based upon clear and compelling evidence, including information and supporting data submitted by the producer. Such a determination must be made by EPA as specified in § 80.1450(b)(1)(x)(B).

(15) *Application of formulas in paragraph (f)(3)(vi) of this section to certain producers generating D3 or D7 RINs.* (i) If a producer seeking to generate D code 3 or D code 7 RINs produces a single type of renewable fuel using two or more feedstocks converted simultaneously, and at least one of the feedstocks does not have a minimum 75% average adjusted cellulosic content, one of the following additional requirements apply:

(A) If the producer is using a thermochemical process to convert cellulosic biomass into cellulosic biofuel, the producer is subject to additional registration requirements under § 80.1450(b)(1)(xiii)(A).

(B) If the producer is using any process other than a thermochemical process, or is using a combination of processes, the producer is subject to additional registration requirements under § 80.1450(b)(1)(xiii)(B) and reporting requirements under § 80.1451(b)(1)(ii)(U).

(ii) [Reserved]

(16) *Renewable fuel produced from crop residue.* Producers generating RINs for qualifying renewable fuel utilizing crop residue as feedstock under Pathway K or Pathway L must meet all of the following conditions (in addition to any other applicable requirements):

(i) Registration requirements under § 80.1450(b)(1)(xv).

(ii) Reporting requirements under § 80.1451(b)(1)(ii)(V).

(iii) Recordkeeping requirements under § 80.1454(s).

(17)(i) For purposes of this section, any renewable fuel other than ethanol, biodiesel, or renewable diesel that meets the ASTM D 975–13a Grade No. 1–D or No. 2–D specifications (incorporated by reference, see § 80.1468) is considered renewable fuel and the producer or importer may generate RINs for such fuel only 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 been otherwise approved by the Administrator.

(B) The fuel producer or importer maintains records demonstrating that the fuel was produced for use as a transportation fuel, heating oil or jet fuel by any of the following:

(*1*) Blending the renewable fuel into gasoline or diesel fuel to produce a transportation fuel, heating oil or jet fuel that meets all applicable standards.

(*2*) Entering into a written contract for the sale of the renewable fuel, which specifies the purchasing party shall blend the fuel into gasoline or diesel fuel to produce a transportation fuel, heating oil or jet fuel that meets all applicable standards.

(*3*) Entering into a written contract for the sale of the renewable fuel, which specifies that the fuel shall be used in its neat form as a transportation fuel, heating oil or jet fuel that meets all applicable standards.

(C) The fuel was sold for use in or as a transportation fuel, heating oil, or jet fuel, and for no other purpose.

(ii) [Reserved]

(g) *Delayed RIN generation.* (1) Parties who produce or import renewable fuel may elect to generate delayed RINs to represent renewable fuel volumes that have already been transferred to another party if those renewable fuel volumes meet all of the following requirements.

(i) The renewable fuel volumes can be described by a new pathway that has been added to Table 1 to § 80.1426, or approved by petition pursuant to § 80.1416, after July 1, 2010.

(A) For new pathways that EPA approves in response to petitions submitted pursuant to § 80.1416, complete petitions must be received by EPA by January 31, 2011.

(B) [Reserved]

(ii) The renewable fuel volumes can be described by a pathway that:

(A) Is biodiesel that is made from canola oil through transesterification using natural gas or biomass for process energy; or

(B) EPA has determined was in use as of July 1, 2010, for the primary purpose of producing transportation fuel, heating oil, or jet fuel for commercial sale.

(iii) The renewable fuel volumes were not designated or intended for export from the 48 contiguous states plus Hawaii by the renewable fuel producer or importer, and the producer or importer of the renewable fuel volumes does not know or have reason to know that the volumes were exported from the 48 contiguous states plus Hawaii.

(2) When a new pathway is added to Table 1 to § 80.1426 or approved by petition pursuant to § 80.1416, EPA will specify in its approval action the effective date on which the new pathway becomes valid for the generation of RINs and whether the fuel in question meets the requirements of paragraph (g)(1)(ii) of this section.

(i) The effective date for the pathway describing biodiesel that is made from canola oil through transesterification using natural gas or biomass for process energy is September 28, 2010.

(ii) [Reserved]

(3) Delayed RINs can only be generated to represent renewable fuel volumes produced in the 48 contiguous states plus Hawaii or imported into the 48 contiguous states plus Hawaii between July 1, 2010, and the earlier of either of the following dates:

(i) The effective date (identified pursuant to paragraph (g)(2) of this section) of the new pathway through which the fuel in question was produced; or

(ii) December 31, 2011.

(4) Delayed RINs must be generated no later than 60 days after the effective date (identified pursuant to paragraph (g)(2) of this section) of the pathway by which the fuel in question was produced.

(5) A party authorized pursuant to paragraph (g)(1) of this section to generate delayed RINs, and electing to do so, who generated RINs pursuant to 80.1426(f)(6) for fuel produced through a pathway described in paragraph (g)(1) of this section, and transferred those RINs with renewable fuel volumes between July 1, 2010 and the effective date (identified pursuant to paragraph (g)(2) of this section) of that pathway, must retire a number of gallon-RINs prior to generating delayed RINs.

(i) The number of gallon-RINs retired by a party pursuant to this paragraph must not exceed the number of gallon-RINs originally generated by the party to represent fuel described in paragraph (g)(1) of this section that was produced in the 48 contiguous states plus Hawaii or imported into the 48 contiguous states plus Hawaii, and transferred to another party, between July 1, 2010 and the earlier of either of the following dates:

(A) The effective date (identified pursuant to paragraph (g)(2) of this section) of the new pathway through which the fuel in question was produced; or

(B) December 31, 2011.

(ii) Retired RINs must have a D code of 6.

(iii) Retired RINs must have a K code of 2.

(iv) Retired RINs must have been generated in the same year as the gallon-RINs originally generated by the party to represent fuel described in paragraph (g)(1) of this section.

(A) For gallon-RINs originally generated in 2010 to represent fuel described in paragraph (g)(1) of this section, the generation year of retired RINs shall be 2010.

(B) For gallon-RINs originally generated in 2011 to represent fuel described in paragraph (g)(1) of this section, the generation year of retired RINs shall be 2011.

(6) For parties that retire RINs pursuant to paragraph (g)(5) of this section, the number of delayed gallon-RINs generated shall be equal to the number of gallon-RINs retired in accordance with paragraph (g)(5) of this section.

(7) A party authorized pursuant to paragraph (g)(1) of this section to generate delayed RINs, and electing to do so, who did not generate RINs pursuant to § 80.1426(f)(6) for renewable fuel produced in the 48 contiguous states plus Hawaii or imported into the 48 contiguous states plus Hawaii between July 1, 2010 and the effective date (identified pursuant to paragraph (g)(2) of this section) of a new pathway for the fuel in question, may generate a number of delayed gallon-RINs for that renewable fuel in accordance with paragraph (f) of this section.

(i) The standardized volume of fuel (V_s) used by a party to determine the RIN volume (V_{RIN}) under paragraph (f)

of this section shall be the standardized volume of the fuel described in paragraph (g)(1)(i) of this section that was produced in the 48 contiguous states plus Hawaii or imported into the 48 contiguous states plus Hawaii by the party, and transferred to another party, between July 1, 2010 and the earlier of either of the following dates:

(A) The effective date (identified pursuant to paragraph (g)(2) of this section) of the new pathway through which the fuel in question was produced; or

(B) December 31, 2011.

(ii) [Reserved]

(8) The renewable fuel for which delayed RINs are generated must be described by a pathway that satisfies the requirements of paragraph (g)(1) of this section.

(9) All delayed RINs generated by a renewable fuel producer or importer must be generated within EMTS on the same date.

(10) The generation year of delayed RINs as designated in EMTS shall be the year that the renewable fuel volumes they represent were either produced or imported into the 48 contiguous states plus Hawaii.

(i) For renewable fuel volumes produced or imported in 2010, the generation year of delayed RINs shall be 2010 and the production date specified in EMTS shall be 07/01/2010.

(ii) For renewable fuel volumes produced or imported in 2011, the generation year of delayed RINs shall be 2011 and the production date specified in EMTS shall be 01/01/2011.

(11) Delayed RINs shall be generated as assigned RINs in EMTS with a batch number that begins with ''DRN'', and then immediately separated by the RIN generator.

(12) The D code that shall be used in delayed RINs shall be the D code which corresponds to the new pathway.

(13) Except as provided in this paragraph (g), all other provisions in this Subpart M that pertain to the identification of fuels for which RINs may be generated, the generation and use of RINs, and recordkeeping and reporting, are also applicable to delayed RINs.

[75 FR 14863, Mar. 26, 2010, as amended at 75 FR 26038, May 10, 2010; 75 FR 37733, June 30, 2010; 75 FR 59632, Sept. 28, 2010; 75 FR 76828, Dec. 9, 2010; 75 FR 79977, Dec. 21, 2010; 77 FR 1355, Jan. 9, 2012; 77 FR 61294, Oct. 9, 2012; 77 FR 74605, Dec. 17, 2012; 78 FR 14216, Mar. 5, 2013; 78 FR 41714, July 11, 2013; 78 FR 62470, Oct. 22, 2013; 79 FR 42160, July 18, 2014; 79 FR 42113, July 18, 2014; 80 FR 9098, Feb. 19, 2015; 80 FR 18141, Apr. 3, 2015; 80 FR 77517, Dec. 14, 2015; 83 FR 37746, Aug. 2, 2018; 85 FR 7075, Feb. 6, 2020]

EFFECTIVE DATE NOTE: At 87 FR 39662, July 1, 2022, § 80.1426 was amended by:

a. Adding paragraph (a)(4);

b. Removing the headings from paragraphs (c)(2) and (3);

c. Adding paragraph (c)(8);

d. Revising paragraph (f)(1);

e. Immediately following paragraph (f)(1), in table 1 to § 80.1426, revising entries F and H;

f. Revising paragraph (f)(3)(vi);

g. Revising the heading of paragraph (f)(4);

h. In paragraph (f)(4)(i)(A)(*1*), revising the definitions of ''FE_R'' and ''FE_{NR}'';

i. Adding paragraph (f)(4)(iv);

j. Revising and republishing paragraph (f)(5);

k. Revising paragraphs (f)(7)(v)(A) and (B), (f)(8)(ii)(B), (f)(9)(ii), (f)(15)(i) introductory text, and (f)(16)(iii);

l. Adding a heading to paragraph (f)(17);

m. Revising paragraphs (f)(17)(i) introductory text and (f)(17)(i)(B)(*1*) and (*2*).

The ammendments are effective Aug. 30, 2022. For the convenience of the user, the added and revised text is set forth as follows:

§ 80.1426 How are RINs generated and assigned to batches of renewable fuel?

(a) * * *

(4) Where a feedstock or biointermediate is used to produce renewable fuel and is not entirely renewable biomass, RINs may only be generated for the portion of fuel that is derived from renewable biomass, as calculated under paragraph (f)(4) of this section.

* * * * *

(c) * * *

(8) RINs must not be generated for a biointermediate.

* * * * *

(f) * * *

(1) *Applicable pathways.* (i) 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, paragraph (f)(6) of this section, or as approved by the Administrator.

(ii) 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.

(iii) Tables 1 and 2 to this section do not apply to, and impose no requirements with respect to, volumes of fuel for which RINs are generated pursuant to paragraph (f)(6) of this section.

(iv) Pathways in Table 1 to this section and advanced technologies in Table 2 to this section also apply in cases where the renewable fuel producer is using a biointermediate.

(v) For the purposes of identifying the appropriate pathway in Table 1 to this section, biointermediates used for the production of renewable fuel are considered to be equivalent to the renewable biomass from which they were derived, with the following exceptions:

(A) Oil that is physically separated from any woody or herbaceous biomass and used to produce renewable fuel shall not generate D-code 3 or 7 RINs.

(B) Sugar or starch that is physically separated from cellulosic biomass and used to produce renewable fuel shall not generate D-code 3 or 7 RINs.

(vi) If a renewable fuel producer uses a biointermediate for the production of renewable fuel, additional requirements apply to both the renewable fuel producer and the biointermediate producer as described in § 80.1476.

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
* * *	*	*	* *	*
F	Biodiesel, renewable diesel, jet fuel and heating oil.	Soy bean oil; Oil from annual covercrops; Oil from algae grown photosynthetically; Biogenic waste oils/fats/greases; *Camelina sativa* oil; Distillers corn oil; Distillers sorghum oil; Commingled distillers corn oil and sorghum oil.	One of the following: Transesterification with or without esterification pre-treatment, Esterification, or Hydrotreating; excludes processes that co-process renewable biomass and petroleum.	4
* * *	*	*	* *	*
H	Biodiesel, renewable diesel, jet fuel and heating oil.	Soy bean oil; Oil from annual covercrops; Oil from algae grown photosynthetically; Biogenic waste oils/fats/greases; *Camelina sativa* oil; Distillers corn oil; Distillers sorghum oil; Commingled distillers corn oil and sorghum oil.	One of the following: Transesterification with or without esterification pre-treatment, Esterification, or Hydrotreating; includes only processes that co-process renewable biomass and petroleum.	5
* * *	*	*	* *	*

* * * * *

(3) * * *

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

Table 4 to §80.1426—Number of Gallon-RINs to Assign to Batch-RINs With D Codes Dependent on Feedstock

D Code to Use in Batch-RIN	Number of Gallon-RINs
D = 3	$V_{RIN,CB} = EV * V_S * \frac{FE_3}{FE_3 + FE_4 + FE_5 + FE_6 + FE_7}$
D = 4	$V_{RIN,BBD} = EV * V_S * \frac{FE_4}{FE_3 + FE_4 + FE_5 + FE_6 + FE_7}$
D = 5	$V_{RIN,AB} = EV * V_S * \frac{FE_5}{FE_3 + FE_4 + FE_5 + FE_6 + FE_7}$
D = 6	$V_{RIN,RF} = EV * V_S * \frac{FE_6}{FE_3 + FE_4 + FE_5 + FE_6 + FE_7}$
D = 7	$V_{RIN,CD} = EV * V_S * \frac{FE_7}{FE_3 + FE_4 + FE_5 + FE_6 + FE_7}$

Where:

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

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

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

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

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

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

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

FE_3 = Feedstock energy from all feedstocks or biointermediates whose pathways have been assigned a D code of 3 under an approved pathway, in Btu.

FE_4 = Feedstock energy from all feedstocks or biointermediates whose pathways have been assigned a D code of 4 under an approved pathway, in Btu.

FE_5 = Feedstock energy from all feedstocks or biointermediates whose pathways have been assigned a D code of 5 under an approved pathway, in Btu.

FE_6 = Feedstock energy from all feedstocks or biointermediates whose pathways have been assigned a D code of 6 under an approved pathway, in Btu.

FE_7 = Feedstock energy from all feedstocks or biointermediates whose pathways have been assigned a D code of 7 under an approved pathway, in Btu.

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

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

Where:

FE = Feedstock or biointermediate energy, in Btu.

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

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

CF = Converted Fraction in annual average mass percent, except as otherwise provided by § 80.1451(b)(1)(ii)(U), representing that portion of the feedstock or biointermediate that is converted into renewable fuel by the producer.

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

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

(A) * * *

(*1*) * * *

FE_R = Feedstock energy from renewable biomass (including the renewable portion of a biointermediate) used to make the transportation fuel, in Btu.

FE_{NR} = Feedstock energy from non-renewable feedstocks (including the non-renewable portion of a biointermediate) used to make the transportation fuel, heating oil, or jet fuel, in Btu.

* * * * *

(iv) RIN-generating parties must calculate RIN volume V_{RIN} for co-processed fuels produced from a biointermediate as described in paragraph (f)(4)(i)(B) of this section and calculate the renewable fraction of a fuel R using one of the following:

(A) Method B of ASTM D6866 (incorporated by reference, see § 80.1468) as described in paragraph (f)(9)(ii) of this section.

(B) If the renewable content of the co-processed fuel is 10 percent or greater, Method C of ASTM D6866 as described in paragraph (f)(9)(ii) of this section.

(C) Any other EPA-approved method under paragraph (f)(9)(ii) of this section.

(5) *Renewable fuel produced from separated yard waste, separated food waste, and separated MSW.* (i)(A) Separated yard waste is deemed to be composed entirely of cellulosic materials.

(B) 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.

(ii)(A) A feedstock qualifies as separated yard waste or separated food waste only if it is collected according to a plan submitted to and accepted by EPA under the registration procedures specified in § 80.1450(b)(1)(vii).

(B) A feedstock qualifies as separated MSW only if it is collected according to a plan submitted to and approved by EPA.

(iii) Separation and recycling actions for separated MSW are considered to occur if:

(A) Recyclable paper, cardboard, plastics, rubber, textiles, metals, and glass that can be recycled are separated and removed from the municipal solid waste stream to the extent reasonably practicable according to a plan submitted to and approved by U.S. EPA under the registration procedures specified in § 80.1450(b)(1)(viii); and

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

(iv)(A) The number of gallon-RINs that shall be generated for a batch of renewable fuel derived from separated yard waste shall be equal to a volume V_{RIN} and is calculated according to the following formula:

$V_{RIN} = EV * V_S$

Where:

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

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

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

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

$V_{RIN} = EV * V_S$

Where:

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

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

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

(v) The number of cellulosic biofuel gallon-RINs that shall be generated for the cellulosic portion of a batch of renewable fuel derived from separated MSW shall be determined according to the following formula:

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

Where:

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

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

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

R = The calculated non-fossil fraction of the fuel as measured by a carbon-14 dating test method as provided in paragraph (f)(9) of this section, except that for biogas-derived fuels made from separated MSW, no testing is required and R = 1.

* * * * *

(7) * * *

(v) * * *

(A) ASTM E870 or ASTM E711 for gross calorific value (both incorporated by reference, see § 80.1468).

(B) ASTM D4442 or ASTM D4444 for moisture content (both incorporated by reference, see § 80.1468).

* * * * *

(8) * * *

(ii) * * *

(B) The standardized volume of biodiesel at 60 °F, in gallons, as calculated from the use of the American Petroleum Institute Refined Products Table 6B, as referenced in ASTM D1250 (incorporated by reference, see § 80.1468).

* * * * *

(9) * * *

(ii) Parties must use Method B or Method C of ASTM D6866 (incorporated by reference, see § 80.1468), or an alternative test method as approved by EPA.

* * * * *

(15) * * *

(i) If a producer seeking to generate D code 3 or D code 7 RINs produces a single type of renewable fuel using two or more feedstocks or biointermediates converted simultaneously, and at least one of the feedstocks or biointermediates does not have a minimum 75% average adjusted cellulosic content, one of the following additional requirements apply:

* * * * *

(16) * * *

(iii) Recordkeeping requirements under § 80.1454(n).

(17) *Qualifying use demonstration for certain renewable fuels.* (i) For purposes of this section, any renewable fuel other than ethanol, biodiesel, renewable gasoline, or renewable diesel that meets the Grade No. 1–D or No. 2–D specification in ASTM D975 (incorporated by reference, see § 80.1468) is considered renewable fuel and the producer or importer may generate RINs for such fuel only if all of the following apply:

* * * * *

(B) * * *

(*1*) Blending the renewable fuel into gasoline or distillate fuel to produce a transportation fuel, heating oil, or jet fuel that meets all applicable standards under this part and 40 CFR part 1090.

(*2*) Entering into a written contract for the sale of the renewable fuel, which specifies the purchasing party must blend the fuel into gasoline or distillate fuel to produce a transportation fuel, heating oil, or jet fuel that meets all applicable standards under this part and 40 CFR part 1090.

* * * * *

§ 80.1427 How are RINs used to demonstrate compliance?

(a) *Obligated party renewable volume obligations.* (1) Except as specified in paragraph (b) of this section or § 80.1456, each party that is an obligated party under § 80.1406 and is obligated to meet the Renewable Volume Obligations under § 80.1407 must demonstrate pursuant to § 80.1451(a)(1) that it has retired for compliance purposes a sufficient number of RINs to satisfy the following equations:

(i) *Cellulosic biofuel.*

$$(\Sigma RINNUM)_{CB,i} + (\Sigma RINNUM)_{CB,i-1} = RVO_{CB,i}$$

Where:

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

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

$RVO_{CB,i}$ = The Renewable Volume Obligation for cellulosic biofuel for the obligated party for calendar year i, in gallons, pursuant to § 80.1407.

(ii) *Biomass-based diesel.* Except as provided in paragraph (a)(7) of this section,

$$(\Sigma RINNUM)_{BBD,i} + (\Sigma RINNUM)_{BBD,i-1} = RVO_{BBD,i}$$

Where:

$(\Sigma RINNUM)_{BBD,i}$ = Sum of all owned gallon-RINs that are valid for use in complying with the biomass-based diesel RVO, were

generated in year i, and are being applied towards the $RVO_{BBD,i}$, in gallons.

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

$RVO_{BBD,i}$ = The Renewable Volume Obligation for biomass-based diesel for the obligated party for calendar year i after 2010, in gallons, pursuant to § 80.1407.

(iii) *Advanced biofuel.*

$$(\Sigma RINNUM)_{AB,i} + (\Sigma RINNUM)_{AB,i-1} = RVO_{AB,i}$$

Where:

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

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

$RVO_{AB,i}$ = The Renewable Volume Obligation for advanced biofuel for the obligated party for calendar year i, in gallons, pursuant to § 80.1407.

(iv) *Renewable fuel.*

$$(\Sigma RINNUM)_{RF,i} + (\Sigma RINNUM)_{RF,i-1} = RVO_{RF,i}$$

Where:

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

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

$RVO_{RF,i}$ = The Renewable Volume Obligation for renewable fuel for the obligated party for calendar year i, in gallons, pursuant to § 80.1407.

(2) RINs that are valid for use in complying with each Renewable Volume Obligation are determined by their D codes.

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

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

(iii) RINs with a D code of 3, 4, 5, or 7 are valid for compliance with the advanced biofuel RVO.

(iv) RINs with a D code of 3, 4, 5, 6, or 7 are valid for compliance with the renewable fuel RVO.

(3)(i) Except as provided in paragraph (a)(3)(ii) of this section, a party may use the same RIN to demonstrate compliance with more than one RVO so long as it is valid for compliance with all RVOs to which it is applied.

(ii) A cellulosic diesel RIN with a D code of 7 cannot be used to demonstrate compliance with both a cellulosic biofuel RVO and a biomass-based diesel RVO.

(4) [Reserved]

(5) The value of $(\Sigma RINNUM)_{i-1}$ may not exceed values determined by the following inequalities except as provided in paragraph (a)(7)(iii) of this section and § 80.1442(d)

$$(\Sigma RINNUM)_{CB,i-1} \leq 0.20 * RVO_{CB,i}$$
$$(\Sigma RINNUM)_{BBD,i-1} \leq 0.20 * RVO_{BBD,i}$$
$$(\Sigma RINNUM)_{AB,i-1} \leq 0.20 * RVO_{AB,i}$$
$$(\Sigma RINNUM)_{RF,i-1} \leq 0.20 * RVO_{RF,i}$$

(6) Except as provided in paragraph (a)(7) of this section:

(i) RINs may only be used to demonstrate compliance with the RVOs for the calendar year in which they were generated or the following calendar year.

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

(7) *Biomass-based diesel in 2010.*

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

(ii) For calendar year 2010 only, the following equation shall be used to determine compliance with the biomass-based diesel RVO instead of the equation in paragraph (a)(1)(ii) of this section

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

Where

$(\Sigma RINNUM)_{BBD,2010}$ = Sum of all owned gallon-RINs that are valid for use in complying with the biomass-based diesel RVO, were

generated in year 2010, and are being applied towards the $RVO_{BBD,2010}$, in gallons.

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

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

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

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

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

$$(\Sigma RINNUM)_{BBD,2008} + (\Sigma RINNUM)_{BBD,2009} \leq 0.20 * RVO_{BBD,2010}$$

(8) A party may only use a RIN for purposes of meeting the requirements of paragraph (a)(1) or (a)(7) of this section if that RIN is a separated RIN with a K code of 2 obtained in accordance with §§ 80.1428 and 80.1429.

(9) The number of gallon-RINs associated with a given batch-RIN that can be used for compliance with the RVOs shall be calculated from the following formula:

$$RINNUM = EEEEEEEE - SSSSSSSS + 1$$

Where:

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

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

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

(b) *Deficit carryovers.* (1) An obligated party that fails to meet the requirements of paragraph (a)(1) or (a)(7) of this section for calendar year i is permitted to carry a deficit into year i + 1 under the following conditions:

(i) The party did not carry a deficit into calendar year i from calendar year i-1 for the same RVO.

(ii) The party subsequently meets the requirements of paragraph (a)(1) of this section for calendar year i + 1 and carries no deficit into year i + 2 for the same RVO.

(iii) For compliance with the biomass-based diesel RVO in calendar year 2011, the deficit which is carried over from 2010 is no larger than 57% of the party's 2010 biomass-based diesel RVO as determined prior to any adjustment applied pursuant to paragraph (a)(7)(i) of this section.

(iv) The party uses the same compliance approach in year i + 1 as it did in year i, as provided in § 80.1406(c)(2).

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

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

Where:

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

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

$(\Sigma RINNUM)_i$ = Sum of all acquired gallon-RINs that were generated in year i and are being applied towards the RVO_i, in gallons.

$(\Sigma RINNUM)_{i-1}$ = Sum of all acquired gallon-RINs that were generated in year i-1 and are being applied towards the RVO_i, in gallons.

(c) *Exporter Renewable Volume Obligations (ERVOs).* (1) Each exporter of renewable fuel that is obligated to meet Exporter Renewable Volume Obligations under § 80.1430 must demonstrate pursuant to § 80.1451(a)(1) that is has retired for compliance purposes a sufficient number of RINs to meet its ERVOs by the deadline specified in § 80.1430(f).

(2) In fulfillment of its ERVOs, each exporter of renewable fuel is subject to the provisions of paragraphs (a)(2), (3), (6), and (8) of this section.

(3) No more than 20 percent of the ERVO calculated according to a formula at § 80.1430(b) may be fulfilled using RINs generated in the year prior

to the year in which the RVO was incurred.

[75 FR 14863, Mar. 26, 2010, as amended at 75 FR 26042, May 10, 2010; 79 FR 42114, July 18, 2014; 85 FR 7076, Feb. 6, 2020; 85 FR 78467, Dec. 4, 2020]

§ 80.1428 General requirements for RIN distribution.

(a) *RINs assigned to volumes of renewable fuel.* (1) *Assigned RIN*, for the purposes of this subpart, means a RIN assigned to a volume of renewable fuel pursuant to § 80.1426(e) with a K code of 1.

(2) Except as provided in § 80.1429, no person can separate a RIN that has been assigned to a batch pursuant to § 80.1426(e).

(3) An assigned RIN cannot be transferred to another person without simultaneously transferring a volume of renewable fuel to that same person.

(4) No more than 2.5 assigned gallon-RINs with a K code of 1 can be transferred to another person with every gallon of renewable fuel transferred to that same person.

(5)(i) On each of the dates listed in paragraph (a)(5)(ii) of this section in any calendar year, the following equation must be satisfied for assigned RINs and volumes of renewable fuel owned by a person:

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

Where:

D = Applicable date.

$\Sigma(RIN)_D$ = Sum of all assigned gallon-RINs with a K code of 1 that are owned on date D.

$(V_{si})_D$ = Volume i of renewable fuel owned on date D, standardized to 60 °F, in gallons.

(ii) The applicable dates are March 31, June 30, September 30, and December 31.

(6) Any transfer of ownership of assigned RINs must be documented on product transfer documents generated pursuant to § 80.1453.

(i) The RIN must be recorded on the product transfer document used to transfer ownership of the volume of renewable fuel to another person; or

(ii) The RIN must be recorded on a separate product transfer document transferred to the same person on the same day as the product transfer document used to transfer ownership of the volume of renewable fuel.

(b) *RINs separated from volumes of renewable fuel.* (1) *Separated RIN*, for the purposes of this subpart, means a RIN with a K code of 2 that has been separated from a volume of renewable fuel pursuant to § 80.1429.

(2) Any person that has registered pursuant to § 80.1450 can own a separated RIN.

(3) Separated RINs can be transferred any number of times.

(c) *RIN expiration.* Except as provided in § 80.1427(a)(7), a RIN is valid for compliance during the calendar year in which it was generated, or the following calendar year. Any RIN that is not used for compliance purposes for the calendar year in which it was generated, or for the following calendar year, will be considered an expired RIN. Pursuant to § 80.1431(a), an expired RIN will be considered an invalid RIN and cannot be used for compliance purposes.

(d) Any batch-RIN can be divided into multiple batch-RINs, each representing a smaller number of gallon-RINs, if all of the following conditions are met:

(1) All RIN components other than SSSSSSSS and EEEEEEEE are identical for the original parent and newly formed daughter RINs.

(2) The sum of the gallon-RINs associated with the multiple daughter batch-RINs is equal to the gallon-RINs associated with the parent batch-RIN.

[75 FR 14863, Mar. 26, 2010, as amended at 75 FR 26042, May 10, 2010]

EFFECTIVE DATE NOTE: At 87 FR 39664, July 1, 2022, § 80.1428 was amended by revising paragraph (b)(2), effective Aug. 30, 2022. For the convenience of the user, the revised text is set forth as follows:

§ 80.1428 General requirements for RIN distribution.

* * * * *

(b) * * *

(2) Unless otherwise specified, any person that has registered pursuant to § 80.1450 can own a separated RIN.

* * * * *

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

(a)(1) Separation of a RIN from a volume of renewable fuel means termination of the assignment of the RIN to a volume of renewable fuel.

(2) RINs that have been separated from volumes of renewable fuel become separated RINs subject to the provisions of § 80.1428(b).

(b) A RIN that is assigned to a volume of renewable fuel can be separated from that volume only under one of the following conditions:

(1) Except as provided in paragraphs (b)(7) and (b)(9) of this section, a party that is an obligated party according to § 80.1406 must separate any RINs that have been assigned to a volume of renewable fuel if that party owns that volume.

(2) Except as provided in paragraph (b)(6) of this section, any party that owns a volume of renewable fuel must separate any RINs that have been assigned to that volume once the volume is blended with gasoline or fossil-based diesel to produce a transportation fuel, heating oil, or jet fuel. A party may separate up to 2.5 RINs per gallon of blended renewable fuel.

(3) Any exporter of renewable fuel must separate any RINs that have been assigned to the exported renewable fuel volume. An exporter of renewable fuel may separate up to 2.5 RINs per gallon of exported renewable fuel.

(4) Any party that produces, imports, owns, sells, or uses a volume of neat renewable fuel, or a blend of renewable fuel and diesel fuel, must separate any RINs that have been assigned to that volume of neat renewable fuel or that blend if:

(i) The party designates the neat renewable fuel or blend as transportation fuel, heating oil, or jet fuel; and

(ii) The neat renewable fuel or blend is used without further blending, in the designated form, as transportation fuel, heating oil, or jet fuel.

(5) Any party that produces, imports, owns, sells, or uses a volume of electricity or biogas for which RINs have been generated in accordance with § 80.1426(f) must separate any RINs that have been assigned to that volume of renewable electricity or biogas if:

(i) The party designates the electricity or biogas as transportation fuel; and

(ii) The electricity or biogas is used as transportation fuel.

(6) RINs assigned to a volume of biodiesel (mono-alkyl ester) can only be separated from that volume pursuant to paragraph (b)(2) of this section if such biodiesel is blended into diesel fuel at a concentration of 80 volume percent biodiesel (mono-alkyl ester) or less.

(i) This paragraph (b)(6) shall not apply to biodiesel owned by obligated parties or to exported volumes of biodiesel.

(ii) This paragraph (b)(6) shall not apply to parties meeting the requirements of paragraph (b)(4) of this section.

(7) For RINs that an obligated party generates for renewable fuel that has not been blended into gasoline or diesel to produce a transportation fuel, heating oil, or jet fuel, the obligated party can only separate such RINs from volumes of renewable fuel if the number of gallon-RINs separated in a calendar year are less than or equal to a limit set as follows:

(i) For RINs with a D code of 3, the limit shall be equal to RVO_{CB}.

(ii) For RINs with a D code of 4, the limit shall be equal to RVO_{BBD}.

(iii) For RINs with a D code of 7, the limit shall be equal to the larger of RVO_{BBD} or RVO_{CB}.

(iv) For RINs with a D code of 5, the limit shall be equal to $RVO_{AB} - RVO_{CB} - RVO_{BBD}$.

(v) For RINs with a D code of 6, the limit shall be equal to $RVO_{RF} - RVO_{AB}$.

(8) Small refiners and small refineries may only separate RINs that have been assigned to volumes of renewable fuel that the party blends into gasoline or diesel to produce transportation fuel, heating oil, or jet fuel, or that the party used as transportation fuel, heating oil, or jet fuel. This paragraph (b)(8) shall apply only under the following conditions:

(i) During the calendar year in which the party has received a small refinery exemption under § 80.1441 or a small refiner exemption under § 80.1442; and

(ii) The party is not otherwise an obligated party during the period of time

that the small refinery or small refiner exemption is in effect.

(9) Except as provided in paragraphs (b)(2) through (b)(5) and (b)(8) of this section, parties whose non-export renewable volume obligations are solely related to either the importation of products listed in § 80.1407(c) or § 80.1407(e) or to the addition of blendstocks into a volume of finished gasoline, finished diesel fuel, or BOB, can only separate RINs from volumes of renewable fuel if the number of gallon-RINs separated in a calendar year is less than or equal to a limit set as follows:

(i) For RINs with a D code of 3, the limit shall be equal to RVO_{CB}.

(ii) For RINs with a D code of 4, the limit shall be equal to RVO_{BBD}.

(iii) For RINs with a D code of 7, the limit shall be equal to the larger of RVO_{BBD} or RVO_{CB}.

(iv) For RINs with a D code of 5, the limit shall be equal to $RVO_{AB} - RVO_{CB} - RVO_{BBD}$.

(v) For RINs with a D code of 6, the limit shall be equal to $RVO_{RF} - RVO_{AB}$.

(10) Any party that produces a volume of renewable fuel may separate any RINs that have been generated to represent that volume of renewable fuel or that blend if that party retires the separated RINs to replace invalid RINs according to § 80.1474.

(c) The party responsible for separating a RIN from a volume of renewable fuel shall change the K code in the RIN from a value of 1 to a value of 2 prior to transferring the RIN to any other party.

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

(e) Upon and after separation of a RIN from its associated volume of renewable fuel, product transfer documents used to transfer ownership of the volume must meet the requirements of § 80.1453.

[75 FR 14863, Mar. 26, 2010, as amended at 75 FR 26042, May 10, 2010; 77 FR 1355, Jan. 9, 2012; 79 FR 42115, July 18, 2014; 85 FR 7076, Feb. 6, 2020; 85 FR 78467, Dec. 4, 2020]

EFFECTIVE DATE NOTE: At 87 FR 39664, July 1, 2022, § 80.1429 was amended by revising paragraph (b)(9) introductory text, effective Aug. 30, 2022. For the convenience of the user, the revised text is set forth as follows:

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

* * * * *

(b) * * *

(9) Except as provided in paragraphs (b)(2) through (5) and (8) of this section, parties whose non-export renewable volume obligations are solely related to the importation of products listed in § 80.1407(c) or (e), the addition of blendstocks into a volume of finished gasoline, finished diesel fuel, or BOB, or that incur a renewable volume obligation (RVO) under § 80.1408, can only separate RINs from volumes of renewable fuel if the number of gallon-RINs separated in a calendar year is less than or equal to a limit set as follows:

* * * * *

§ 80.1430 Requirements for exporters of renewable fuels.

(a) Any exporter of renewable fuel, whether in its neat form or blended 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. No provision of this section applies to renewable fuel purchased directly from the renewable fuel producer and for which the exporter of renewable fuel can demonstrate that no RINs were generated through the recordkeeping requirements of § 80.1454(a)(6).

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

(1) *Cellulosic biofuel.*

$$ERVO_{CB,k} = VOL_k * EV_k$$

Where:

$ERVO_{CB,k}$ = The Exporter Renewable Volume Obligation for cellulosic biofuel for discrete volume k in gallons.

k = A discrete volume of renewable fuel that the exporter of renewable fuel knows or has reason to know is cellulosic biofuel that is exported in a single shipment.

VOL_k = The standardized volume of discrete volume k, in gallons, calculated in accordance with § 80.1426(f)(8).

EV_k = The equivalence value associated with discrete volume k.

(2) *Biomass-based diesel.*

$$ERVO_{BBD,k} = VOL_k * EV_k$$

Where:

$ERVO_{BBDI,k}$ = The Exporter Renewable Volume Obligation for biomass-based diesel for discrete volume k, in gallons.

k = A discrete volume of renewable fuel that is biodiesel or renewable diesel and is exported in a single shipment.

VOL_k = The standardized volume of discrete volume k calculated in accordance with § 80.1426(f)(8).

EV_k = The equivalence value associated with discrete volume k.

(3) *Advanced biofuel.*

$$ERVO_{AB,k} = VOL_k * EV_k$$

Where:

$ERVO_{AB,k}$ = The Exporter Renewable Volume Obligation for advanced biofuel for discrete volume k, in gallons.

k = A discrete volume of renewable fuel that is advanced biofuel (including biomass-based diesel, renewable diesel, cellulosic biofuel and other advanced biofuel) and is exported in a single shipment.

VOL_k = The standardized volume of discrete volume k, in gallons, calculated in accordance with § 80.1426(f)(8).

EV_k = The equivalence value associated with discrete volume k.

(4) *Renewable fuel.*

$$ERVO_{RF,i} = VOL_k * EV_k$$

Where:

$ERVO_{RF,i}$ = The Renewable Volume Obligation for renewable fuel for discrete volume k, in gallons.

k = A discrete volume of exported renewable fuel that is exported in a single shipment.

VOL_k = The standardized volume of discrete volume k, in gallons, calculated in accordance with § 80.1426(f)(8).

EV_k = The equivalence value associated with discrete volume k.

(c) If the exporter of renewable fuel knows or has reason to know that a volume of exported renewable fuel is cellulosic diesel, the exporter of renewable fuel must treat the exported volume as either cellulosic biofuel or biomass-based diesel when determining his Renewable Volume Obligations pursuant to paragraph (b) of this section.

(d) For the purposes of calculating the Renewable Volume Obligations:

(1) If the equivalence value for a volume of exported renewable fuel can be determined pursuant to § 80.1415 based on its composition, then the appropriate equivalence value shall be used in the calculation of the exporter of renewable fuel's Renewable Volume Obligations under paragraph (b) of this section.

(2) If the category of the exported renewable fuel is known to be biomass-based diesel but the composition is unknown, the value of EV_k shall be 1.5.

(3) If neither the category nor composition of a volume of exported renewable fuel can be determined, the value of EV_k shall be 1.0.

(e) For renewable fuels that are in the form of a blend at the time of export, the exporter of renewable fuel shall determine the volume of exported renewable fuel based on one of the following:

(1) Information from the supplier of the blend of the concentration of renewable fuel in the blend.

(2) Determination of the renewable portion of the blend using Method B or Method C of ASTM D 6866 (incorporated by reference, see § 80.1468), or an alternative test method as approved by the EPA.

(3) Assuming the maximum concentration of the renewable fuel in the blend as allowed by law and/or regulation.

(f) Each exporter of renewable fuel must fulfill its ERVO for each discrete volume of exported renewable fuel within thirty days of export, and must demonstrate compliance with its ERVOs pursuant to § 80.1427(c).

(g) Each exporter of renewable fuel must fulfill any 2014 ERVOs existing as of September 16, 2014 for which RINs have not yet been retired by the compliance demonstration deadline for the 2013 compliance period, and must demonstrate compliance with such ERVOs pursuant to § 80.1427(c).

(h) Each person meeting the definition of exporter of renewable fuel for a particular export transaction is jointly and severally liable for completion of the requirements of this section and all associated RIN retirement demonstration, registration, reporting, and attest engagement obligations under this subpart. However, these requirements for exporters of renewable fuel must be

met only once for any export transaction.

[75 FR 14863, Mar. 26, 2010, as amended at 75 FR 26042, May 10, 2010; 79 FR 42115, July 18, 2014; 85 FR 7076, Feb. 6, 2020]

EFFECTIVE DATE NOTE: At 87 FR 39665, July 1, 2022, § 80.1430 was amended by revising paragraph (e)(2), effective Aug. 30, 2022. For the convenience of the user, the revised text is set forth as follows:

§ 80.1430 Requirements for exporters of renewable fuels.

* * * * *

(e) * * *

(2) Determination of the renewable portion of the blend using Method B or Method C of ASTM D6866 (incorporated by reference, see § 80.1468), or an alternative test method as approved by the EPA.

* * * * *

§ 80.1431 Treatment of invalid RINs.

(a) *Invalid RINs.* (1) An invalid RIN is a RIN that is any of the following:

(i) A duplicate of a valid RIN.

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

(iii) Has expired, as provided in § 80.1428(c).

(iv) Was based on an incorrect equivalence value.

(v) Deemed invalid under § 80.1467(g).

(vi) Does not represent renewable fuel as defined in § 80.1401.

(vii) Was assigned an incorrect ''D'' code value under § 80.1426(f) for the associated volume of fuel.

(viii) [Reserved]

(ix) Was otherwise improperly generated.

(2) In the event that the same RIN is transferred to two or more parties, all such RINs are deemed invalid, unless EPA in its sole discretion determines that some portion of these RINs is valid.

(b) Except as provided in § 80.1473, the following provisions apply in the case of RINs that are invalid:

(1) Upon determination by any party that RINs owned are invalid, the party must keep copies and adjust its records, reports, and compliance calculations in which the invalid RINs were used. The party must retire the invalid RINs in the applicable RIN transaction reports under § 80.1451(c)(2) for the quarter in which the RINs were determined to be invalid.

(2) Invalid RINs cannot be used to achieve compliance with the Renewable Volume Obligations of an obligated party or exporter of renewable fuel, regardless of the party's good faith belief that the RINs were valid at the time they were acquired.

(3) Any valid RINs remaining after invalid RINs are retired must first be applied to correct the transfer of invalid RINs to another party before applying the valid RINs to meet the party's Renewable Volume Obligations at the end of the compliance year.

(c) Notwithstanding paragraph (b) of this section, improperly generated RINs may be used for compliance provided that all of the following conditions and requirements are satisfied and the renewable fuel producer or importer who improperly generated the RINs demonstrates that the conditions and requirements are satisfied through the reporting and recordkeeping requirements set forth below, that:

(1) The number of RINs generated for a batch exceeds the number of RINs that should have been properly generated.

(2) The RINs were improperly generated as a result of a broken meter, an inadvertent temperature correction error, or an inadvertent administrative error.

(3) The renewable fuel producer or importer had in place at the time the RINs were improperly generated a quality assurance/quality control plan designed to ensure that process measuring equipment such as meters and temperature probes are properly maintained and to prevent inadvertent administrative errors.

(4) The renewable fuel producer or importer has taken any appropriate additional steps to prevent similar violations from occurring in the future.

(5) The improperly generated RINs have been transferred to another party.

(6) The renewable fuel producer or importer has not improperly generated RINs for the reasons described in paragraph (c)(2) of this section on more than five batches during any calendar year.

(7) All of the following remedial actions have been implemented within 30 days of the EMTS submission date of the improper RIN generation:

(i) The renewable fuel producer or importer retires an equal number of valid RINs with the same D Code and RIN year as the properly generated RINs, using an EMTS retire code of 110.

(ii) The renewable fuel producer or importer reports all the following information to EPA via EMTS, which EPA may make publicly available:

(A) Company name.

(B) Company ID.

(C) Facility name.

(D) Facility ID.

(E) The date the renewable fuel was produced.

(F) The date the RINs were originally generated.

(G) The number of RINs generated.

(H) The number of RINs improperly generated.

(I) RIN year.

(J) D codes of generated RINs.

(K) Batch numbers.

(L) EMTS Transaction ID of the original generation.

(M) An explanation of how the violation occurred, and why the improperly generated RINs meet the criteria in paragraph (c)(2) of this section.

(N) Steps taken to prevent similar violations from occurring in the future.

(O) Information under paragraphs (c)(3), (c)(4), and (c)(5) of this section.

(P) Any additional information the Administrator may require.

(8) The renewable fuel producer or importer maintains all records relating to the improper RIN generation and the associated remedial actions taken, including but not limited to any of the following:

(i) All information regarding the generation of invalid RINs, including information that is sufficient to demonstrate that the improperly generated RINs meet the criteria in paragraph (c)(2) of this section.

(ii) Documents demonstrating that the renewable fuel producer or importer has implemented the quality control/quality assurance plan required in paragraph (c)(3) of this section, and has taken all appropriate additional steps to prevent similar violations from occurring in the future.

(iii) All correspondence with EPA.

(iv) All EMTS transactions (Generation, Buy, Sell and Retire).

(v) All Product Transfer Documents (PTDs).

(d) If EPA determines that a renewable fuel producer improperly generated RINs but did not meet the requirements set forth in paragraph (c) of this section, then the requirements of paragraph (b) of this section apply from the moment that the invalid RINs were generated in EMTS. Once the RIN generator has identified improperly generated RINs to EPA, then EPA may remove these improperly generated RINs from EMTS.

[75 FR 14863, Mar. 26, 2010, as amended at 77 FR 1355, Jan. 9, 2012; 79 FR 42115, July 18, 2014; 85 FR 7076, Feb. 6, 2020]

EFFECTIVE DATE NOTE: At 87 FR 39665, July 1, 2022, § 80.1431 was amended by adding paragraph (a)(3), effective Aug. 30, 2022. For the convenience of the user, the added text is set forth as follows:

§ 80.1431 Treatment of invalid RINs.

(a) * * *

(3) If any RIN generated for a batch of renewable fuel produced using a biointermediate is invalid, then all RINs generated for that batch of renewable fuel are deemed invalid, unless EPA in its sole discretion determines that some portion of those RINs are valid.

* * * * *

§ 80.1432 Reported spillage or disposal of renewable fuel.

(a) A reported spillage or disposal under this subpart means a spillage or disposal of renewable fuel associated with a requirement by a federal, state, or local authority to report the spillage or disposal.

(b) Except as provided in paragraph (c) of this section, in the event of a reported spillage or disposal of any volume of renewable fuel, the owner of the renewable fuel must retire a number of RINs corresponding to the volume of spilled or disposed of renewable fuel multiplied by its equivalence value.

(1) If the equivalence value for the spilled or disposed of volume may be determined pursuant to § 80.1415 based on its composition, then the appropriate equivalence value shall be used.

(2) If the equivalence value for a spilled or disposed of volume of renewable fuel cannot be determined, the equivalence value shall be 1.0.

(c) If the owner of a volume of renewable fuel that is spilled or disposed of and reported establishes that no RINs were generated to represent the volume, then no RINs shall be retired.

(d) A RIN that is retired under paragraph (b) of this section:

(1) Must be reported as a retired RIN in the applicable reports under § 80.1451.

(2) May not be transferred to another person or used by any obligated party to demonstrate compliance with the party's Renewable Volume Obligations.

§ 80.1433 [Reserved]

§ 80.1434 RIN retirement.

(a) A RIN must be retired in any of the following cases:

(1) *Demonstrate annual compliance.* Except as specified in paragraph (b) of this section or § 80.1456, each party that is an obligated party under § 80.1406 and is obligated to meet the RVO under § 80.1407 must retire a sufficient number of RINs to demonstrate compliance with an applicable RVO.

(2) *Exported renewable fuel.* Any exporter of renewable fuel that incurs an ERVO as described in § 80.1430(a) shall retire RINs pursuant to §§ 80.1430(b) through (g) and 80.1427(c).

(3) *Volume error correction.* A RIN must be retired when it was based on incorrect volumes or volumes that have not been standardized to 60 °F as described in § 80.1426(f)(8).

(4) *Import volume correction.* Where the port of entry volume is the lesser of the two volumes in § 80.1466(e)(1)(i), the importer shall calculate the difference between the number of RINs originally assigned by the foreign producer and the number of RINs calculated under § 80.1426 for the volume of renewable fuel as measured at the port of entry, and retire that amount of RINs in accordance with § 80.1466(k)(4).

(5) *Spillage or disposal of renewable fuels.* Except as provided in § 80.1432(c), in the event that a reported spillage or disposal of any volume of renewable fuel, the owner of the renewable fuel must notify any holder or holders of the attached RINs and retire a number of gallon-RINs corresponding to the volume of spilled or disposed of renewable fuel multiplied by its equivalence value in accordance with § 80.1432(b).

(6) *Contaminated or spoiled fuel.* In the event that contamination or spoliation of any volume of renewable fuel is reported, the owner of the renewable fuel must notify any holder or holders of the attached RINs and retire a number of gallon-RINs corresponding to the volume of contaminated or spoiled renewable fuel multiplied by its equivalence value.

(i) If the equivalence value for the contaminated or spoiled volume may be determined pursuant to § 80.1415 based on its composition, then the appropriate equivalence value shall be used.

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

(iii) If the owner of a volume of renewable fuel that is contaminated or spoiled and reported establishes that no RINs were generated to represent the volume, then no gallon-RINs shall be retired.

(7) *Delayed RIN generation.* In the event that a party generated a delayed RIN as described in § 80.1426(g)(1) through (4), parties must retire RINs as described in accordance with § 80.1426(g)(5) and (6).

(8) *Invalid RIN.* In the case that a RIN is invalid as described in § 80.1431(a), the RIN will be considered invalid and must be retired as described in § 80.1431(b).

(9) *Potentially invalid RINs.* In the case that a RIN is identified as a PIR under § 80.1474(b)(1), the PIRs or replacement RINs must be retired as described in § 80.1474(b)(2) through (5).

(10) *Replacement.* As required by § 80.1431(b) or § 80.1474, any party that must replace an invalid RIN or PIR that was used for compliance must retire valid RINs to replace the invalid RINs originally used for any RVO.

(11) *Other.* Any other instance identified by EPA.

(b) In the case that retirement of a RIN is necessary, the following provisions apply:

(1) Any party affected by such retirement must keep copies and adjust its

records, reports, and compliance calculations in which the retired RIN was used.

(2) The retired RIN must be reported in the applicable reports under § 80.1451.

(3) The retired RIN must be reported in the EPA Moderated Transaction System pursuant to § 80.1452(c).

(4) Where the importer of renewable fuel is required to retire RINs under paragraph (a)(5) of this section, the importer must report the retired RINs in the applicable reports under §§ 80.1451, 80.1466(k), and 80.1466(m).

[85 FR 7076, Feb. 6, 2020]

§ 80.1435 How are RIN holdings and RIN holding thresholds calculated?

Beginning January 1, 2020, any party that holds RINs must comply with the requirements of this section.

(a) *RIN holdings calculation.* (1) Each party must calculate daily end-of-day separated D6 RIN holdings by aggregating its end-of-day separated D6 RIN holdings with the end-of-day separated D6 RIN holdings of all corporate affiliates in a corporate affiliate group and use the end-of-day separated D6 RIN holdings as specified in paragraph (b) of this section.

(2) Each party must calculate, as applicable, the holdings-to-market percentage under paragraph (b)(1) of this section and the holdings-to-obligation percentage under paragraph (b)(2) of this section quarterly in accordance with the schedule specified in Table 1 to § 80.1451.

(3) For a corporate affiliate group containing at least one obligated party that has a holdings-to-market percentage greater than 3.00 percent for any calendar day in a compliance period, as determined under paragraph (b)(1) of this section, each party must calculate the corporate affiliate group's holdings-to-obligation percentage as specified in paragraph (b)(2) of this section.

(4) Each party must individually keep copies of all calculations and supporting information for separated D6 RIN holding threshold calculations required under this section as specified in § 80.1454(u).

(b) *RIN holding thresholds calculations*—(1) *Primary test calculations.* For each day in a compliance period, each party that owns RINs must calculate the holdings-to-market percentage for their corporate affiliate group using the method specified in paragraph (b)(1)(i) or (b)(1)(ii) of this section, as applicable.

(i) For each day beginning January 1 through March 31, calculate the holdings-to-market percentage for a corporate affiliate group as follows:

$$HTMP_d = [(\Sigma D6RIN_d)_a/(CNV_VOL_{TOT,i} * 1.25)] * 100$$

Where:

$HTMP_d$ = The holdings-to-market percentage is the percentage of separated D6 RINs a corporate affiliate group holds on calendar day d relative to the total expected number of separated D6 RINs in the market in compliance period i, in percent.

d = A given calendar day.

i = The compliance period, typically expressed as a calendar year.

a = Individual corporate affiliate in a corporate affiliate group.

$(\Sigma D6RIN_d)_a$ = Sum of the number of separated D6 RINs each individual corporate affiliate a holds at the end of calendar day d, in RIN-gallons.

$CNV_VOL_{TOT,i}$ = The total expected annual volume of conventional renewable fuels for the compliance period i, in gallons. Unless otherwise specified, this number is 15 billion gallons.

(ii) For each day beginning April 1 through December 31, calculate the holdings-to-market percentage for a corporate affiliate group as follows:

$$HTMP_d = [(\Sigma D6RIN_d)_a/(CNV_VOL_{TOT,i})] * 100$$

Where:

$HTMP_d$ = The holdings-to-market percentage is the percentage of separated D6 RINs a corporate affiliate group holds on calendar day d relative to the total expected number of separated D6 RINs in the market in compliance period i, in percent.

d = A given calendar day.

i = The compliance period, typically expressed as a calendar year.

a = Individual corporate affiliate in a corporate affiliate group.

$(\Sigma D6RIN_d)_a$ = Sum of the number of separated D6 RINs each individual corporate affiliate a holds at the end of calendar day d, in RIN-gallons.

$CNV_VOL_{TOT,i}$ = The total expected annual volume of conventional renewable fuels for compliance period i, in gallons. Unless otherwise specified, this number is 15 billion gallons.

(2) *Secondary threshold calculations.* For each day in a compliance period

where a corporate affiliate group is required to calculate with the secondary threshold requirement under paragraph (a)(3) of this section, each party must calculate the holdings-to-obligation percentage for their corporate affiliate group using the methods at paragraph (b)(2)(i) or (b)(2)(ii) of this section, as applicable.

(i) For each day beginning January 1 through March 31, calculate the holdings-to-obligation percentage as follows:

$$HTOP_d = [(\Sigma D6RIN_d)_a/\{[(\Sigma CNV_RVO_{i-1})_a + (\Sigma CNV_DEF_{i-1})_a + (\Sigma CNV_DEF_{i-2})_a] * 1.25\}] * 100$$

Where:

$HTOP_d$ = The holdings-to-obligation percentage is the percentage of separated D6 RINs a corporate affiliate group holds on calendar day d relative to their expected separated D6 RIN holdings based on the corporate affiliate group's conventional RVO for compliance period i-1, in percent.

d = A given calendar day.

i = The compliance period, typically expressed as a calendar year.

a = Individual corporate affiliate in a corporate affiliate group.

$(\Sigma D6RIN_d)_a$ = Sum of the number of separated D6 RINs each individual corporate affiliate a holds on calendar day d, in RIN-gallons.

$(\Sigma CNV_RVO_{i-1})_a$ = Sum of the conventional RVOs for each individual corporate affiliate a for compliance period i-1 as calculated in paragraph (b)(2)(iii) of this section, in RIN-gallons.

$(\Sigma CNV_DEF_{i-1})_a$ = Sum of the conventional deficits for each individual corporate affiliate a as calculated in paragraph (b)(2)(iv) of this section for compliance period i-1, in RIN-gallons.

$(\Sigma CNV_DEF_{i-2})_a$ = Sum of the conventional deficits for each individual corporate affiliate a as calculated in paragraph (b)(2)(iv) of this section for compliance period i-2, in RIN-gallons.

(ii) For each day beginning April 1 through December 31, calculate the holdings-to-obligation percentage as follows:

$$HTOP_d = \{(\Sigma D6RIN_d)_a/[(\Sigma CNV_RVO_{i-1})_a + (\Sigma CNV_DEF_{i-1})_a]\} * 100$$

Where:

$HTOP_d$ = The holdings-to-obligation percentage is the percentage of separated D6 RINs a corporate affiliate group holds on calendar day d relative to their expected separated D6 RIN holdings based on the corporate affiliate group's conventional RVO for compliance period i-1, in percent.

d = A given calendar day.

i = The compliance period, typically expressed as a calendar year.

a = Individual corporate affiliate in a corporate affiliate group.

$(\Sigma D6RIN_d)_a$ = Sum of the number of separated D6 RINs each individual corporate affiliate a holds on calendar day d, in RIN gallons.

$(\Sigma CNV_RVO_{i-1})_a$ = Sum of the conventional RVOs for each individual corporate affiliate a for compliance period i-1 as calculated in paragraph (b)(2)(iii) of this section, in RIN-gallons.

$(\Sigma CNV_DEF_{i-1})_a$ = Sum of the conventional deficits for each individual corporate affiliate a as calculated in paragraph (b)(2)(iv) of this section for compliance period i-1, in RIN-gallons.

(iii) As needed to calculate the holdings-to-obligation percentage in paragraphs (b)(2)(i) and (b)(2)(ii) of this section, calculate the conventional RVO for an individual corporate affiliate as follows:

$$CNV_RVO_i = \{[RFStd_{RF,i} * (GV_i + DV_i)]—[RFStd_{AB,i} * (GV_i + DV_i)]\} + ERVO_{RF,i}$$

Where:

CNV_RVO_i = The conventional RVO for an individual corporate affiliate for compliance period i without deficits, in RIN-gallons.

i = The compliance period, typically expressed as a calendar year.

$RFStd_{RF,i}$ = The standard for renewable fuel for compliance period i determined by EPA pursuant to § 80.1405, in percent.

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

GV_i = The non-renewable gasoline volume, determined in accordance with § 80.1407(b), (c), and (f), which is produced in or imported into the 48 contiguous states or Hawaii by an obligated party for compliance period i, in gallons.

DV_i = The non-renewable diesel volume, determined in accordance with § 80.1407(b), (c), and (f), which is produced in or imported into the 48 contiguous states or Hawaii by an obligated party for compliance period i, in gallons.

$ERVO_{RF,i}$ = The sum of all renewable volume obligations from exporting renewable fuels, as calculated under § 80.1430, by an obligated party for compliance period i, in RIN-gallons.

(iv) As needed to calculate the holdings-to-obligation percentage in paragraphs (b)(2)(i) and (b)(2)(ii) of this section, calculate the conventional deficit for an individual corporate affiliate as follows:

$$CNV_DEF_i = D_{RF,i} - D_{AB,i}$$

Where:

CNV_DEF_i = The conventional deficit for an individual corporate affiliate for compliance period i, in RIN-gallons. If a conventional deficit is less than zero, use zero for conventional deficits in paragraphs (b)(2)(i) and (b)(2)(ii) of this section.

i = The compliance period, typically expressed as a calendar year.

$D_{RF,i}$ = Deficit carryover from compliance period i for renewable fuel, in RIN-gallons.

$D_{AB,i}$ = Deficit carryover from compliance period i for advanced biofuel, in RIN-gallons.

(c) *Exceeding the D6 RIN holding thresholds*—(1) *Primary threshold test.* A non-obligated party or corporate affiliate group that does not contain an obligated party and that has a holdings-to-market percentage greater than 3.00 percent for any calendar day in a compliance period, as determined under paragraph (b)(1) of this section, has exceeded the primary threshold.

(2) *Secondary threshold test.* Any party or corporate affiliate group required to calculate a holdings-to-obligation percentage under paragraph (a)(3) of this section and that has a holdings-to-obligation percentage greater than 130.00 percent for any calendar day in a compliance period, as determined under paragraph (b)(2) of this section, has exceeded the secondary threshold.

(d) *Alternative gasoline and diesel production volume allowance.* Parties that must calculate the secondary threshold under paragraph (b)(2) of this section may use alternative gasoline and diesel production volumes if all the following requirements are met:

(1) The party must have a reasonable basis for using the alternative production numbers (*e.g.*, selling or acquiring a refinery or a shutdown of a refinery).

(2) When substituting the alternative production volume for the conventional RVO volume, the party must use actual production numbers for any completed quarter in the compliance period and extrapolated production numbers for any future quarters.

(3) The party must meet the applicable recordkeeping requirements of § 80.1454.

(4) The party must retain documentation of the reasonable basis and the calculations used and must provide these to the auditor conducting the attest engagement under § 80.1464.

(e) *Exemption from aggregation requirements.* (1) A party may claim exemption from the requirement to aggregate D6 RIN holdings for any affiliate where one or more of the following apply:

(i) There is an absence of common trading-level control and information sharing with the affiliate.

(ii) The sharing of information regarding aggregation with the affiliate could lead either party to violate state or Federal law, or the law of a foreign jurisdiction.

(iii) The affiliate is exempt from the regulations regarding commodities and securities exchanges under 17 CFR 150.4(b)(7).

(2) A party must retain detailed, explanatory documentation supporting its exemption and must provide this documentation to the attest auditor under § 80.1464, and to EPA upon request. Such records include, but are not limited to, the following:

(i) Documents that reflect that the parties do not have knowledge of the trading decisions of the other.

(ii) Documents that demonstrate that there are developed and independent trading systems in place.

(iii) Documents that demonstrate that the parties have and enforce written procedures to preclude each from having knowledge of, gaining access to, or receiving data about, trades of the other.

(iv) Documents reflective of the risk management and other systems in place.

(v) Documents that support an exemption under 17 CFR 150.4(b)(7).

(vi) Any other documents that support the applicability of the exemption.

[84 FR 27022, June 10, 2019]

EFFECTIVE DATE NOTE: At 87 FR 39665, July 1, 2022, § 80.1435(a)(4) was amended by removing ''§ 80.1454(u)'' and adding ''§ 80.1454(p)'' in its place, effective Aug. 30, 2022.

§§ 80.1436–80.1439 [Reserved]

§ 80.1440 What are the provisions for blenders who handle and blend less than 250,000 gallons of renewable fuel per year or who handle renewable fuel blended for fuels under a national security exemption?

(a)(1) Renewable fuel blenders who handle and blend less than 250,000 gallons of renewable fuel per year, and who do not have one or more reported or unreported Renewable Volume Obligations, are permitted to delegate their RIN-related responsibilities to the party directly upstream of them who supplied the renewable fuel for blending.

(2) Renewable fuel blenders who handle and blend renewable fuel for parties that have a national security exemption under paragraph (f) of this section, or a national security exemption under 40 CFR 1090.605, and who do not have one or more reported or unreported Renewable Volume Obligations, are permitted to delegate their RIN-related responsibilities to the party directly upstream of them who supplied the renewable fuel for blending.

(b) The RIN-related responsibilities that may be delegated directly upstream include all of the following:

(1) The RIN separation requirements of § 80.1429.

(2) The reporting requirements of § 80.1451.

(3) The recordkeeping requirements of § 80.1454.

(4) The attest engagement requirements of § 80.1464.

(c) For upstream delegation of RIN-related responsibilities, both parties must agree on the delegation, and a quarterly written statement signed by both parties must be included with the reporting party's reports under § 80.1451.

(1) Both parties must keep copies of the signed quarterly written statement agreeing to the upward delegation for 5 years.

(2) Parties delegating their RIN responsibilities upward shall keep copies of their registration forms as submitted to EPA.

(3) 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 250,000 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 250,000 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.

(f) The requirements described in paragraph (b) of this section may be delegated directly upstream for renewable fuel (neat or blended) that is produced, imported, sold, offered for sale, supplied, offered for supply, stored, dispensed, or transported for use in any of the following:

(1) Tactical military vehicles, engines, or equipment having an EPA national security exemption from emission standards under 40 CFR 85.1708, 89.908, 92.908, 94.908, 1042.635, or 1068.225.

(2) Tactical military vehicles, engines, or equipment that are not subject to a national security exemption from vehicle or engine emissions standards as described in paragraph (f)(1) of this section but, for national security purposes (for purposes of readiness for deployment overseas), need to be fueled on the same transportation fuel, heating oil, or jet fuel as the vehicles, engines, or equipment for which EPA has granted such a national security exemption.

[75 FR 14863, Mar. 26, 2010, as amended at 75 FR 26042, May 10, 2010; 79 FR 42162, July 18, 2014; 85 FR 7077, Feb. 6, 2020; 85 FR 78467, Dec. 4, 2020]

§ 80.1441 Small refinery exemption.

(a)(1) Transportation fuel produced at a refinery by a refiner, or foreign refiner (as defined at § 80.1465(a)), is exempt from January 1, 2010 through December 31, 2010 from the renewable fuel standards of § 80.1405, and the owner or operator of the refinery, or foreign refinery, is exempt from the requirements that apply to obligated parties

under this subpart M for fuel produced at the refinery if the refinery meets the definition of a small refinery under § 80.1401 for calendar year 2006.

(2) The exemption of paragraph (a)(1) of this section shall apply unless a refiner chooses to waive this exemption (as described in paragraph (f) of this section), or the exemption is extended (as described in paragraph (e) of this section).

(3) For the purposes of this section, the term ''refiner'' shall include foreign refiners.

(4) This exemption shall only apply to refineries that process crude oil through refinery processing units.

(5) The small refinery exemption is effective immediately, except as specified in paragraph (b)(3) of this section.

(b)(1) A refiner owning a small refinery must submit a verification letter to EPA containing all of the following information:

(i) The annual average aggregate daily crude oil throughput for the period January 1, 2006 through December 31, 2006 (as determined by dividing the aggregate throughput for the calendar year by the number 365).

(ii) A letter signed by the president, chief operating or chief executive officer of the company, or his/her designee, stating that the information contained in the letter is true to the best of his/her knowledge, and that the refinery was small as of December 31, 2006.

(iii) Name, address, phone number, facsimile number, and e-mail address of a corporate contact person.

(2) Verification letters must be submitted by July 1, 2010 to one of the addresses listed in paragraph (h) of this section.

(3) For foreign refiners the small refinery exemption shall be effective upon approval, by EPA, of a small refinery application. The application must contain all of the elements required for small refinery verification letters (as specified in paragraph (b)(1) of this section), must satisfy the provisions of § 80.1465(f) through (i) and (o), and must be submitted by July 1, 2010 to one of the addresses listed in paragraph (h) of this section.

(c) If EPA finds that a refiner provided false or inaccurate information regarding a refinery's crude throughput (pursuant to paragraph (b)(1)(i) of this section) in its small refinery verification letter, the exemption will be void as of the effective date of these regulations.

(d) If a refiner is complying on an aggregate basis for multiple refineries, any such refiner may exclude from the calculation of its Renewable Volume Obligations (under § 80.1407) transportation fuel from any refinery receiving the small refinery exemption under paragraph (a) of this section.

(e)(1) The exemption period in paragraph (a) of this section shall be extended by the Administrator for a period of not less than two additional years if a study by the Secretary of Energy determines that compliance with the requirements of this subpart would impose a disproportionate economic hardship on a small refinery.

(2) A refiner may petition the Administrator for an extension of its small refinery exemption, based on disproportionate economic hardship, at any time.

(i) A petition for an extension of the small refinery exemption must specify the factors that demonstrate a disproportionate economic hardship and must provide a detailed discussion regarding the hardship the refinery would face in producing transportation fuel meeting the requirements of § 80.1405 and the date the refiner anticipates that compliance with the requirements can reasonably be achieved at the small refinery.

(ii) The Administrator shall act on such a petition not later than 90 days after the date of receipt of the petition.

(iii) In order to qualify for an extension of its small refinery exemption, a refinery must meet the definition of ''small refinery'' in § 80.1401 for the most recent full calendar year prior to seeking an extension and must be projected to meet the definition of ''small refinery'' in § 80.1401 for the year or years for which an exemption is sought. Failure to meet the definition of small refinery for any calendar year for which an exemption was granted would invalidate the exemption for that calendar year.

(f) At any time, a refiner with a small refinery exemption under paragraph (a) of this section may waive

that exemption upon notification to EPA.

(1) A refiner's notice to EPA that it intends to waive its small refinery exemption must be received by November 1 to be effective in the next compliance year.

(2) The waiver will be effective beginning on January 1 of the following calendar year, at which point the transportation fuel produced at that refinery will be subject to the renewable fuels standard of § 80.1405 and the owner or operator of the refinery shall be subject to all other requirements that apply to obligated parties under this Subpart M.

(3) The waiver notice must be sent to EPA at one of the addresses listed in paragraph (h) of this section.

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

(h) Verification letters under paragraph (b) of this section, petitions for small refinery hardship extensions under paragraph (e) of this section, and small refinery exemption waiver notices under paragraph (f) of this section shall be sent to the attention of ''RFS Program'' to the address in § 80.10(a).

[75 FR 14863, Mar. 26, 2010, as amended at 79 FR 42163, July 18, 2014; 85 FR 7077, Feb. 6, 2020; 85 FR 78467, Dec. 4, 2020]

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

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

(i) The refiner produced transportation fuel at its refineries by processing crude oil through refinery processing units from January 1, 2006 through December 31, 2006.

(ii) The refiner employed an average of no more than 1,500 people, based on the average number of employees for all pay periods for calendar year 2006 for all subsidiary companies, all parent companies, all subsidiaries of the parent companies, and all joint venture partners.

(iii) The refiner had a corporate-average crude oil capacity less than or equal to 155,000 barrels per calendar day (bpcd) for 2006.

(2) For the purposes of this section, the term ''refiner'' shall include foreign refiners.

(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.

(2) Refiners who qualify for the small refiner exemption under paragraph (a) of this section must submit a verification letter (and any other relevant information) to EPA by July 1, 2010. The small refiner verification letter must include all of the following information for the refiner and for all subsidiary companies, all parent companies, all subsidiaries of the parent companies, and all joint venture partners:

(i) A listing of the name and address of each company location where any employee worked for the period January 1, 2006 through December 31, 2006.

(ii) The average number of employees at each location based on the number of employees for each pay period for the period January 1, 2006 through December 31, 2006.

(iii) The type of business activities carried out at each location.

(iv) For joint ventures, the total number of employees includes the combined employee count of all corporate entities in the venture.

(v) For government-owned refiners, the total employee count includes all government employees.

(vi) The total corporate crude oil capacity of each refinery as reported to the Energy Information Administration (EIA) of the U.S. Department of Energy (DOE), for the period January 1, 2006 through December 31, 2006. The information submitted to EIA is presumed to be correct. In cases where a company disagrees with this information, the company may petition EPA with appropriate data to correct the record when the company submits its application.

(vii) The verification letter must be signed by the president, chief operating

or chief executive officer of the company, or his/her designee, stating that the information is true to the best of his/her knowledge, and that the company owned the refinery as of December 31, 2006.

(viii) Name, address, phone number, facsimile number, and e-mail address of a corporate contact person.

(3) In the case of a refiner who acquires or reactivates a refinery that was shutdown or non-operational between January 1, 2005 and January 1, 2006, the information required in paragraph (b)(2) of this section must be provided for the time period since the refiner acquired or reactivated the refinery.

(4) [Reserved]

(5) For foreign refiners the small refiner exemption shall be effective upon approval, by EPA, of a small refiner application. The application must contain all of the elements required for small refiner verification letters (as specified in paragraph (b)(2) of this section), must satisfy the provisions of § 80.1465(f) through (h) and (o), must demonstrate compliance with the crude oil capacity criterion of paragraph (a)(1)(iii) of this section, and must be submitted by July 1, 2010 to one of the addresses listed in paragraph (i) of this section.

(c) *Small refiner temporary exemption.* (1) Transportation fuel produced by an 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.

(2) A refiner's notice to EPA that it intends to waive the small refiner exemption must be received by November 1 of a given year in order for the waiver to be effective for the following calendar year. The waiver will be effective beginning on January 1 of the following calendar year, at which point the refiner will be subject to the renewable fuel standards of § 80.1405 and the requirements that apply to obligated parties under this subpart.

(3) The waiver must be sent to EPA at one of the addresses listed in paragraph (i) of this section.

(e) Refiners who qualify as small refiners under this section and subsequently fail to meet all of the qualifying criteria as set out in paragraph (a) of this section are disqualified as small refiners of January 1 of the next calendar year, except as provided under paragraphs (d) and (e)(2) of this section.

(1) In the event such disqualification occurs, the refiner shall notify EPA in writing no later than 20 days following the disqualifying event.

(2) Disqualification under this paragraph (e) shall not apply in the case of a merger between two approved small refiners.

(f) If EPA finds that a refiner provided false or inaccurate information in its small refiner status verification letter under this subpart M, the refiner will be disqualified as a small refiner as of the effective date of this subpart.

(g) Any refiner that acquires a refinery from another refiner with approved small refiner status under paragraph (a) of this section shall notify EPA in writing no later than 20 days following the acquisition.

(h) *Extensions of the small refiner temporary exemption.* (1) A small refiner may apply for an extension of the temporary exemption of paragraph (c)(1) of this section based on a showing of all the following:

(i) Circumstances exist that impose disproportionate economic hardship on the refiner and significantly affects the refiner's ability to comply with the RFS standards.

(ii) The refiner has made best efforts to comply with the requirements of this subpart.

(2) A refiner must apply, and be approved, for small refiner status under this section.

(3) A small refiner's hardship application must include all the following information:

(i) A plan demonstrating how the refiner will comply with the requirements of § 80.1405 (and all other requirements of this subpart applicable to obligated parties), as expeditiously as possible.

(ii) A detailed description of the refinery configuration and operations including, at a minimum, all the following information:

(A) The refinery's total crude capacity.

(B) Total crude capacity of any other refineries owned by the same entity.

(C) Total volume of gasoline and diesel produced at the refinery.

(D) Detailed descriptions of efforts to comply.

(E) Bond rating of the entity that owns the refinery.

(F) Estimated investment needed to comply with the requirements of this subpart M.

(4) A small refiner shall notify EPA in writing of any changes to its situation between approval of the extension application and the end of its approved extension period.

(5) EPA may impose reasonable conditions on extensions of the temporary exemption, including reducing the length of such an extension, if conditions or situations change between approval of the application and the end of the approved extension period.

(i) Small refiner status verification letters, small refiner exemption waivers, or applications for extensions of the small refiner temporary exemption under this section must be sent to the attention of ''RFS Program'' to the address in § 80.10(a).

[75 FR 14863, Mar. 26, 2010, as amended at 75 FR 26042, May 10, 2010; 85 FR 7077, Feb. 6, 2020; 85 FR 78467, Dec. 4, 2020]

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

(a) Alaska or a United States territory may petition the Administrator to opt-in to the program requirements of this subpart.

(b) The Administrator will approve the petition if it meets the provisions of paragraphs (c) and (d) of this section.

(c) The petition must be signed by the Governor of the state or his authorized representative (or the equivalent official of the territory).

(d)(1) A petition submitted under this section must be received by EPA by November 1 for the state or territory to be included in the RFS program in the next calendar year.

(2) A petition submitted under this section should be sent to the attention of ''RFS Program'' to the address in § 80.10(a).

(e) Upon approval of the petition by the Administrator:

(1) EPA shall calculate the standards for the following year, including the total gasoline and diesel fuel volume for the state or territory in question.

(2) Beginning on January 1 of the next calendar year, all gasoline and diesel fuel refiners and importers in the state or territory for which a petition has been approved shall be obligated parties as defined in § 80.1406.

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

[75 FR 14863, Mar. 26, 2010, as amended at 85 FR 7077, Feb. 6, 2020]

§§ 80.1444–80.1448 [Reserved]

§ 80.1449 What are the Production Outlook Report requirements?

(a) By June 1 of each year (September 1 for the report due in 2010), a registered renewable fuel producer or importer must submit and an unregistered renewable fuel producer may submit all of the following information for each of its facilities, as applicable, to EPA:

(1) The type, or types, of renewable fuel expected to be produced or imported at each facility owned by the renewable fuel producer or importer.

(2) The volume of each type of renewable fuel expected to be produced or imported at each facility.

(3) The number of RINs expected to be generated by the renewable fuel producer or importer for each type of renewable fuel.

(4) Information about all the following:

(i) Existing and planned production capacity.

(ii) Long-range plans for expansion of production capacity at existing facilities or construction of new facilities.

(iii) Feedstocks and production processes to be used at each production facility.

(iv) Changes to the facility that would raise or lower emissions of any greenhouse gases from the facility.

(5) For expanded production capacity that is planned or underway at each existing facility, or new production facilities that are planned or underway, information on all the following, as available:

(i) Strategic planning.

(ii) Planning and front-end engineering.

(iii) Detailed engineering and permitting.

(iv) Procurement and construction.

(v) Commissioning and startup.

(6) Whether capital commitments have been made or are projected to be made.

(b) The information listed in paragraph (a) of this section shall include the reporting party's best estimates for the five following calendar years.

(c) Production outlook reports must provide an update of the progress in each of the areas listed in paragraph (a) of this section in comparison to information provided in previous year production outlook reports.

(d) Production outlook reports shall be sent to the attention of ''RFS Program (Production Output Reports)'' to the address in § 80.10(a).

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

[75 FR 14863, Mar. 26, 2010, as amended at 77 FR 1356, Jan. 9, 2012; 85 FR 7077, Feb. 6, 2020]

EFFECTIVE DATE NOTE: At 87 FR 39665, July 1, 2022, § 80.1449 was amended by revising paragraph (a)(4)(iii), effective Aug. 30, 2022. For the convenience of the user, the revised text is set forth as follows:

§ 80.1449 What are the Production Outlook Report requirements?

(a) * * *

(4) * * *

(iii) Feedstocks, biointermediates, and production processes to be used at each production facility.

* * * * *

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

(a) *Obligated parties and exporters.* Any obligated party described in § 80.1406, and any exporter of renewable fuel described in § 80.1430, must provide EPA with the information specified for registration under 40 CFR 1090.805, if such information has not already been provided under the provisions of this part. An obligated party or an exporter of renewable fuel must receive EPA-issued identification numbers prior to engaging in any transaction involving RINs. Registration information may be submitted to EPA at any time after publication of this rule in the FEDERAL REGISTER, but must be submitted and accepted by EPA by July 1, 2010, or 60 days prior to RIN ownership, whichever date comes later.

(b) *Producers.* Any RIN-generating foreign producer, any non-RIN-generating foreign producer, or any domestic renewable fuel producer that generates RINs must provide EPA the information specified under 40 CFR 1090.805 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.

(A) For registrations indicating production of cellulosic biofuel (D codes 3 or 7) from feedstocks other than biogas (including through pathways in rows K, L, M, and N of Table 1 to § 80.1426), the producer must demonstrate the ability to convert cellulosic components of feedstock into fuel by providing all of the following:

(*1*) A process diagram with all relevant unit processes labeled and a designation of which unit process is capable of performing cellulosic treatment, including required inputs and outputs at each step.

(*2*) A description of the cellulosic biomass treatment process, including required inputs and outputs used at each step.

(*3*) A description of the mechanical, chemical and biochemical mechanisms by which cellulosic materials can be converted to biofuel products.

(B) [Reserved]

(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)(*1*) 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.

(*2*) For facilities not claiming the exemption described in § 80.1403(c) or (d) which are exempt from air permit requirements and for which insufficient production records exist to establish actual peak capacity, copies of documents demonstrating the facility's nameplate capacity, as defined in § 80.1401.

(D) For all facilities producing renewable electricity or other renewable fuel from biogas, submit all relevant information in § 80.1426(f)(10) or (11), including:

(*1*) Copies of all contracts or affidavits, as applicable, that follow the

track of the biogas/CNG/LNG or renewable electricity from its original source, to the producer that processes it into renewable fuel, and finally to the end user that will actually use the renewable electricity or the renewable CNG/LNG for transportation purposes.

(*2*) Specific quantity, heat content, and percent efficiency of transfer, as applicable, and any conversion factors, for the renewable fuel derived from biogas.

(E) Any other records as 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 establishment from which the waste stream consisting solely of separated yard waste is collected.

(*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) or from biogenic waste oils/fats/greases:

(*1*) A plan documenting the type(s) of separated food waste or biogenic waste oils/fats/greases, the type(s) of establishment from which the waste is collected, how the waste will be collected, a description of ongoing verification measures that demonstrate such waste consists only of food waste (and an incidental amount of other components such as paper and plastics) or biogenic waste oils/fats/greases that is kept separate from other waste materials, and if applicable, how the cellulosic and non-cellulosic portions of the waste will be quantified.

(*2*) [Reserved]

(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 establishment(s) 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.

(ix)(A) For a producer of ethanol from grain sorghum or a foreign ethanol producer making product from grain sorghum and seeking to have it sold as renewable fuel after addition of ethanol denaturant, provide a plan that has been submitted and accepted

by U.S. EPA that includes the following information:

(*1*) Locations from which the biogas used at the facility was produced or extracted.

(*2*) Name of suppliers of all biogas used at the facility.

(*3*) An affidavit from each biogas supplier stating its intent to supply biogas to the renewable fuel producer or foreign ethanol producer, the quantity and energy content of the biogas that it intends to provide to the renewable fuel producer or foreign ethanol producer, and that the biogas will be derived solely from landfills, waste treatment plants, and/or waste digesters.

(*4*) If the producer intends to generate advanced biofuel RINs, estimates of the total amount of electricity used from the grid, the total amount of ethanol produced, and a calculation of the amount of electricity used from the grid per gallon of ethanol produced.

(*5*) If the producer intends to generate advanced biofuel RINs, a description of how the facility intends to demonstrate and document that not more than 0.15 kWh of grid electricity is used per gallon of ethanol produced, calculated on a per batch basis, at the time of RIN generation.

(B) [Reserved]

(x)(A) For a producer of renewable fuel made from *Arundo donax* or *Pennisetum purpureum* per § 80.1426(f)(14)(i):

(*1*) A Risk Mitigation Plan (Plan) that demonstrates the growth of *Arundo donax* or *Pennisetum purpureum* will not pose a significant likelihood of spread beyond the planting area of the feedstock used for production of the renewable fuel. The Plan must identify and incorporate best management practices (BMPs) into the production, management, transport, collection, monitoring, and processing of the feedstock. To the extent practicable, the Risk Mitigation Plan should utilize a Hazard Analysis Critical Control Point (HACCP) approach to examine each phase of the pathway to identify spread reduction steps. BMPs should include the development of mitigation strategies and plans to minimize escape and other impacts (e.g., minimize soil disturbance), incorporate desirable traits (e.g., sterility or reduced seed production), develop and implement dispersal mitigation protocols prior to cultivation, develop multiple year eradication controls. Eradication controls should follow an approach of early detection and rapid response (EDRR) to unintended spread. EDRR efforts should demonstrate the likelihood that invasions will be halted while still localized and identify and employ cooperative networks, communication forums, and consultation processes with federal, state, and local agencies. The Risk Mitigation Plan must provide for the following:

(*i*) Monitoring and reporting data for a period prior to planting that is sufficient to establish a baseline, through crop production, and extending beyond crop production for a sufficient period after the field is no longer used for feedstock production to ensure no remnants of giant reed or napier grass survive or spread.

(*ii*) Monitoring must include the area encompassing the feedstock growing areas, the transportation corridor between the growing areas and the renewable fuel production facility, and the renewable fuel production facility, extending to the distance of potential propagation of the feedstock species, or further if necessary.

(*iii*) Monitoring must reflect the likelihood of spread specific to the feedstock.

(*iv*) A closure plan providing for the destruction and removal of feedstock from the growing area upon abandonment by the feedstock grower or end of production.

(*v*) A plan providing for an independent third party who will audit the monitoring and reporting conducted in accordance with the Plan on an annual basis, subject to approval of a different frequency by EPA.

(*2*) A letter from the United States Department of Agriculture (''USDA'') to the renewable fuel producer stating USDA's conclusions and the bases therefore regarding whether the *Arundo donax* or *Pennisetum purpureum* does or does not present a significant likelihood of spread beyond the planting area of the feedstock used for production of the renewable fuel as proposed by the producer. This letter shall also include USDA's recommendation

of whether it is appropriate to require the use of a financial mechanism to ensure the availability of financial resources sufficient to cover reasonable potential remediation costs associated with the invasive spread of giant reed or napier grass beyond the intended planting areas. In coordination with USDA, EPA shall identify for the producer the appropriate USDA office from which the letter should originate.

(*3*) Identification of all federal, state, regional, and local requirements related to invasive species that are applicable for the feedstock at the growing site and at all points between the growing site and the fuel production site.

(*4*) A copy of all state and local growing permits held by the feedstock grower.

(*5*) A communication plan for notifying EPA's Office of Transportation and Air Quality, USDA, adjacent federal land management agencies, and any relevant state, tribal, regional, and local authorities as soon as possible after identification of the issue if the feedstock is detected outside planted area.

(*6*) A copy of the agreement between the feedstock grower and fuel producer establishing all rights and duties of the parties related to the Risk Mitigation Plan and any other activities and liability associated with the prevention of the spread of *Arundo donax* and/or *Pennisetum purpureum* outside of the intended planting area.

(*7*) A copy of the agreement between the fuel producer and an independent third party describing how the third party will audit the monitoring and reporting conducted in accordance with the Risk Mitigation Plan on an annual basis, subject to approval of a different timeframe by EPA.

(*8*) Information on the financial resources or other financial mechanism (such as a state-administered fund, bond, or certificate of deposit) that would be available to finance reasonable remediation activities associated with the potential spread of giant reed or napier grass beyond the intended planting areas, and information on whether it is necessary to have any further such resources or mechanism. EPA may require a demonstration that there is an adequate financial mechanism (such as a state-administered fund, bond, or certificate of deposit) to ensure the availability of financial resources sufficient to cover reasonable potential remediation costs associated with the spread of giant reed or napier grass beyond the intended planting areas.

(*9*) EPA may require additional information as appropriate.

(B) For a producer of renewable fuel made from *Arundo donax* or *Pennisetum purpureum* per § 80.1426(f)(14)(ii):

(*1*) Clear and compelling evidence, including information and supporting data, demonstrating that *Arundo donax* or *Pennisetum purpureum* does not present a significant likelihood of spread beyond the planting area of the feedstock used for production of the renewable fuel. Evidence must include data collected from similar environments (soils, temperatures, precipitation, USDA Hardiness Zones) as the proposed feedstock production project site and accepted by the scientific community. Such a demonstration should include consideration of the elements of a Risk Mitigation Plan set forth in paragraph (b)(1)(x)(A) of this section, fully disclose the potential invasiveness of the feedstock, provide a closure plan for the destruction and removal of feedstock from the growing area upon abandonment by the feedstock grower or end of production, and explain why a Risk Mitigation Plan is not needed to make the required determination.

(*2*) A letter from the United States Department of Agriculture (''USDA'') to the renewable fuel producer stating USDA's conclusions and the bases therefore regarding whether the *Arundo donax* or *Pennisetum purpureum* does or does not present a significant likelihood of spread beyond the planting area of the feedstock used for production of the renewable fuel as proposed by the producer or importer. In coordination with USDA, EPA shall identify for the producer the appropriate USDA office from which the letter should originate.

(C) EPA may suspend a producer's registration for purposes of generating RINs for renewable fuel using *Arundo donax* or *Pennisetum purpureum* as a

feedstock if such feedstock has spread beyond the intended planting area.

(xi) For a producer of fuel oil meeting paragraph (2) of the definition of heating oil in § 80.1401:

(A) An affidavit from the producer of the fuel oil meeting paragraph (2) of the definition of ''heating oil'' in § 80.1401 stating that the fuel oil for which RINs have been generated will be sold for the purposes of heating or cooling interior spaces of homes or buildings to control ambient climate for human comfort, and no other purpose.

(B) Affidavits from the final end user or users of the fuel oil stating that the fuel oil meeting paragraph (2) of the definition of ''heating oil'' in § 80.1401 is being used or will be used for purposes of heating or cooling interior spaces of homes or buildings to control ambient climate for human comfort, and no other purpose, and acknowledging that any other use of the fuel oil would violate EPA regulations and subject the user to civil and/or criminal penalties under the Clean Air Act.

(xii) For a producer or importer of any renewable fuel other than ethanol, biodiesel, renewable gasoline, renewable diesel that meets the ASTM 975–13a Grade No. 1–D or No. 2–D specifications (incorporated by reference, see § 80.1468), biogas or renewable electricity all the following:

(A) A description of the renewable fuel and how it will be blended to into gasoline or diesel fuel to produce a transportation fuel, heating oil or jet fuel that meets all applicable standards.

(B) A statement regarding whether the renewable fuel producer or importer will blend the renewable fuel into gasoline or diesel fuel or enter into a written contract for the sale and use of a specific quantity of the renewable fuel with a party who blends the fuel into gasoline or diesel fuel to produce a transportation fuel, heating oil or jet fuel that meets all applicable standards.

(C) If the renewable fuel producer or importer enters into a written contract for the sale and use of a specific quantity of the renewable fuel with a party who blends the fuel into gasoline or diesel fuel to produce a transportation fuel, heating oil or jet fuel, provide all the following:

(*1*) The name, location and contact information for the party that will blend the renewable fuel.

(*2*) A copy of the contract that requires the party to blend the renewable fuel into gasoline or diesel fuel to produce a transportation fuel, heating oil or jet fuel that meets all applicable standards.

(xiii) (A) A producer of renewable fuel seeking to generate D code 3 or D code 7 RINs, or a foreign ethanol producer seeking to have its product sold as cellulosic biofuel after it is denatured, who intends to produce a single type of fuel using two or more feedstocks converted simultaneously, where at least one of the feedstocks does not have a minimum 75% average adjusted cellulosic content, and who uses only a thermochemical process to convert feedstock into renewable fuel, must provide all the following:

(*1*) Data showing the average adjusted cellulosic content of the feedstock(s) to be used to produce fuel, based on the average of at least three representative samples. Cellulosic content data must come from an analytical method certified by a voluntary consensus standards body or using a method that would produce reasonably accurate results as demonstrated through peer reviewed references provided to the third party engineer performing the engineering review at registration. Samples must be of representative feedstock from the primary feedstock supplier that will provide the fuel producer with feedstock subsequent to registration.

(*2*) For producers who want to use a new feedstock(s) after initial registration, updates to their registration under paragraph (d) of this section indicating the average adjusted cellulosic content of the new feedstock.

(*3*) For producers already registered as of August 18, 2014, to produce a single type of fuel that qualifies for D code 3 or D code 7 RINs (or would do so after denaturing) using two or more feedstocks converted simultaneously using only a thermochemical process, the information specified in this paragraph (b)(1)(xiii)(A) shall be provided at

the next required registration update under paragraph (d) of this section.

(B) A producer of renewable fuel seeking to generate D code 3 or D code 7 RINs, or a foreign ethanol producer seeking to have its product sold as cellulosic biofuel after it is denatured, who intends to produce a single type of fuel using two or more feedstocks converted simultaneously, where at least one of the feedstocks does not have a minimum 75% adjusted cellulosic content, and who uses a process other than a thermochemical process or a combination of processes to convert feedstock into renewable fuel, must provide all the following:

(*1*) The expected overall fuel yield, calculated as the total volume of fuel produced per batch (e.g., cellulosic biofuel plus all other fuel) divided by the total feedstock mass per batch on a dry weight basis (e.g., cellulosic feedstock plus all other feedstocks).

(*2*) The cellulosic Converted Fraction (CF) that will be used for generating RINs under § 80.1426(f)(3)(vi).

(*3*) Chemical analysis data supporting the calculated cellulosic Converted Fraction and a discussion of the possible variability that could be expected between reporting periods per § 80.1451(b)(1)(ii)(U)(*1*). Data used to calculate the cellulosic CF must be representative and obtained using an analytical method certified by a voluntary consensus standards body, or using a method that would produce reasonably accurate results as demonstrated through peer reviewed references provided to the third party engineer performing the engineering review at registration.

(*4*) A description and calculations showing how the data were used to determine the cellulosic Converted Fraction.

(*5*) For producers already registered as of August 18, 2014, to produce a single type of fuel that qualifies for D code 3 or D code 7 RINs (or would do so after denaturing) using two or more feedstocks converted simultaneously using a combination of processes or a process other than a thermochemical process, the information specified in this paragraph (b)(1)(xiii)(B) shall be provided at the next required registration update under paragraph (d) of this section.

(xiv) For a producer of cellulosic biofuel made from energy cane, or a foreign renewable fuel producer making ethanol from energy cane and seeking to have it sold after denaturing as cellulosic biofuel, provide all of the following:

(A) Data showing that the average adjusted cellulosic content of each cane cultivar they intend to use is at least 75%, based on the average of at least three representative samples of each cultivar. Cultivars must be grown under normal growing conditions and consistent with acceptable farming practices. Samples must be of feedstock from a feedstock supplier that the fuel producer intends to use to supply feedstock for their production process and must represent the feedstock supplier's range of growing conditions and locations. Cellulosic content data must come from an analytical method certified by a voluntary consensus standards body or using a method that would produce reasonably accurate results as demonstrated through peer reviewed references provided to the third party engineer performing the engineering review at registration.

(B) Producers that want to change or add new cultivar(s) after initial registration must update their registration and provide EPA with data in accordance with paragraph (d) of this section demonstrating that the average adjusted cellulosic content for any new cultivar is at least 75%. Cultivars that do not meet this requirement are considered sugarcane for purposes of Table 1 to § 80.1426.

(xv) For a producer of cellulosic biofuel made from crop residue or a foreign renewable fuel producer making ethanol from crop residue and seeking to have it sold after denaturing as cellulosic biofuel, provide all the following information:

(A) A list of all feedstocks the producer intends to utilize as crop residue.

(B) A written justification which explains why each feedstock a producer lists according to paragraph (b)(1)(xv)(A) of this section meets the definition of ''crop residue'' per § 80.1401.

(C) For producers already registered as of August 18, 2014 to produce a renewable fuel using crop residue, the information specified in this paragraph (b)(1)(xv) shall be provided at the next required registration update under paragraph (d) of this section.

(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 40 CFR 1090.805, 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) *Registration updates.* (1) Any producer of renewable fuel or any foreign ethanol producer that makes changes to their facility that will allow them to produce renewable fuel that is not reflected in the producer's registration information on file with EPA must update their registration information and submit a copy of an updated independent third-party engineering review

on file with EPA at least 60 days prior to producing the new type of renewable fuel. The producer may also submit an addendum to the independent third-party engineering review on file with EPA provided the addendum meets all the requirements in paragraph (b)(2) of this section and verifies for EPA the most up-to-date information at the producer's existing facility.

(2) Any producer of renewable fuel and any foreign ethanol producer 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.

(3) All producers of renewable fuel and foreign ethanol producers must update registration information and submit an updated independent third-party engineering review according to the schedule in paragraph (d)(3)(i) or (d)(3)(ii) of this section, and including the information specified in paragraph (d)(3)(iii) of this section:

(i) For all producers of renewable fuel and foreign ethanol producers registered in calendar year 2010, the updated registration information and independent third-party engineering review shall be submitted to EPA by January 31, 2013, and by January 31 of every third calendar year thereafter; or

(ii) For all producers of renewable fuel and foreign ethanol producers registered in any calendar year after 2010, the updated registration information and independent third-party engineering review shall be submitted to EPA by January 31 of every third calendar year after the first year of registration.

(iii) In addition to conducting the engineering review and written report and verification required by paragraph (b)(2) of this section, the updated independent third-party engineering review shall include a detailed review of the renewable fuel producer's calculations used to determine V_{RIN} of a representative sample of batches of each type of renewable fuel produced since the last registration. The representative sample shall be selected in accordance with the sample size guidelines set forth at 40 CFR 1090.1805.

(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 40 CFR 1090.805, 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.

(g) Any independent third-party auditor described in § 80.1471 must register with the EPA as an independent third-party auditor and receive an EPA issued company identification number prior to conducting quality assurance audits pursuant to § 80.1472. Registration information must be submitted at least 30 days prior to conducting audits of renewable fuel production facilities. The independent third-party auditor must provide to the EPA all the following:

(1) The information specified under 40 CFR 1090.805, if such information has not already been provided under the provisions of this part.

(2) Documentation of professional qualifications as follows:

(i) For a professional engineer as described in § 80.1450(b)(2)(i)(A) and (b)(2)(i)(B).

(ii) For a domestic independent third-party auditor or a foreign independent third-party auditor, a certified public accountant who is licensed by an appropriate state agency in the United States.

(iii) For a foreign independent third-party auditor, an accountant who is a foreign equivalent to a certified public accountant licensed in the United States.

(3) Documentation of professional liability insurance as described in § 80.1471(c).

(4) Any quality assurance plans as described in § 80.1469.

(5) Name, address, and company and facility identification numbers of all renewable fuel production facilities that the independent third-party auditor intends to audit under § 80.1472.

(6) An affidavit, or electronic consent, from each renewable fuel producer or foreign renewable fuel producer stating its intent to have the independent third-party auditor conduct a quality assurance audit of any of the renewable fuel producer's or foreign renewable fuel producer's facilities.

(7) An affidavit stating that an independent third-party auditor and its contractors and subcontractors are independent, as described in § 80.1471(b), of any renewable fuel producer or foreign renewable fuel producer.

(8) The name and contact information for each person employed (or under contract or subcontract) by the independent third-party auditor to conduct audits or verify RINs, as well as the name and contact information for any professional engineer and certified public accountant performing the review.

(9) *Registration updates.* (i) Any independent third-party auditor who makes changes to its quality assurance plan(s) that will allow it to audit new renewable fuel production facilities, as defined in § 80.1401, that is not reflected in the independent third-party auditor's registration information on file with EPA must update its registration information and submit a copy of an updated QAP on file with EPA at least 60 days prior to auditing new renewable fuel production facilities.

(ii) Any independent third-party auditor who makes any changes other than those specified in paragraphs (g)(9)(i), (iii), and (iv) of this section that will affect the third-party auditor's registration information must update its registration information 7 days prior to the change.

(iii) Independent third-party auditors must update their QAPs at least 60 days prior to verifying RINs generated by a renewable fuel facility for a pathway not covered in the independent third-party auditor's QAPs.

(iv) Independent third-party auditors must update their QAPs at least 60 days prior to verifying RINs generated by any renewable fuel facility not identified in the independent third-party auditor's existing registration.

(10) *Registration renewal.* Registrations for independent third-party auditors expire December 31 of each calendar year. Previously approved registrations will renew automatically if all the following conditions are met:

(i) The independent third-party auditor resubmits all information, updated as necessary, described in § 80.1450(g)(1) through (g)(7) no later than October 31 before the next calendar year.

(ii) The independent third-party auditor submits an affidavit affirming that he or she has only verified RINs using a QAP approved under § 80.1469, notified all appropriate parties of all potentially invalid RINs as described in § 80.1471(d), and fulfilled all of his or her RIN replacement obligations under § 80.1474.

(iii) The auditor has not received a notice of deficiency from the EPA regarding its registration renewal materials.

(11) *Revocation of registration.* (i) The Administrator may issue a notice of intent to revoke the registration of a third-party auditor if the Administrator determines that the auditor has failed to fulfill any requirement of this subpart. The notice of intent shall include an explanation of the reasons for the proposed revocation.

(ii) Within 60 days of receipt of the notice of intent to revoke, the independent third-party auditor may submit written comments concerning the notice, including but not limited to a demonstration of compliance with the requirements which provide the basis for the proposed revocation. Communications should be sent to the EMTS support line (*support@epamts-support.com*). The Administrator shall review and consider any such submission before taking final action concerning the proposed revocation.

(iii) If the auditor fails to respond in writing within 60 days to the notice of intent to revoke, the revocation shall become final by operation of law and

the Administrator shall notify the independent third-party auditor of such revocation.

(h) *Deactivation of registration.* (1) EPA may deactivate the registration of any party required to register under this section § 80.1450, using the process in paragraph (h)(2) of this section, if any of the following criteria are met:

(i) The party has reported no activity in EMTS for twenty-four consecutive months.

(ii) The party has failed to comply with the registration requirements of this section.

(iii) The party has failed to submit any required notification or report within 30 days of the required submission date under § 80.1451.

(iv) The attest engagement required under § 80.1464 has not been received within 30 days of the required submission date.

(v) The party fails to pay a penalty or to perform any requirements under the terms of a court order, administrative order, consent decree, or administrative settlement between the party and EPA.

(vi) The party submits false or incomplete information.

(vii) The party denies EPA access or prevents EPA from completing authorized activities under sections 114 or 208 of the Clean Air Act despite presenting a warrant or court order. This includes a failure to provide reasonable assistance.

(viii) The party fails to keep or provide the records required by this subpart.

(ix) The party otherwise circumvents the intent of the Clean Air Act or of this subpart.

(2) Except as provided in paragraph (h)(3) of this section, EPA will use the following process whenever it decides to deactivate the registration of a party:

(i) EPA will provide written notification to the responsible corporate officer identifying the reasons or deficiencies for which EPA intends to deactivate the party's registration. The party will have fourteen calendar days from the date of the notification to correct the deficiencies identified or explain why there is no need for corrective action.

(ii) If the basis for EPA's notice of intent to deactivate registration is the absence of EMTS activity under paragraph (h)(1)(i) of this section, a stated intent to engage in activity reported through EMTS will be sufficient to avoid deactivation of registration.

(iii) If the party does not correct identified deficiencies under paragraphs (h)(1)(ii) through (ix) of this section, or does not provide an adequate explanation regarding why such correction is not necessary within the time allotted for response, EPA may deactivate the party's registration without further notice to the party.

(3) In instances of willfulness or those in which public health, interest, or safety requires otherwise, EPA may deactivate the registration of the party without any notice to the party. EPA will provide written notification to the responsible corporate officer identifying the reasons EPA deactivated the registration of the party.

(4) Impact of registration deactivation:

(i) A party whose registration is deactivated shall still be liable for violation of any requirements of this subpart.

(ii) A party whose registration is deactivated will not be listed on any public list of actively registered parties that is maintained by EPA.

(iii) A party whose registration is deactivated will not have access to any of the electronic reporting systems associated with the renewable fuel standard program, including the EPA Moderated Transaction System (EMTS).

(iv) A party whose registration is deactivated must submit any corrections of deficiencies to EPA on forms, and following policies, established by EPA.

(v) If a party whose registration has been deactivated wishes to re-register, they may seek to do so by submitting a new registration pursuant to the requirements in paragraphs (a) through (c), (e), and (g) of this section, as applicable.

(i) *Registration procedures.* (1) Registration shall be on forms, and following policies, established by the Administrator.

(2) English language registrations—Any document submitted to EPA under this section must be submitted in

English, or shall include an English translation.

[75 FR 14863, Mar. 26, 2010, as amended at 75 FR 26043, May 10, 2010; 77 FR 1356, Jan. 9, 2012; 77 FR 74606, Dec. 17, 2012; 78 FR 41714, July 11, 2013; 78 FR 62471, Oct. 22, 2013; 79 FR 42163, July 18, 2014; 79 FR 42115, July 18, 2014; 85 FR 7077, Feb. 6, 2020; 85 FR 78467, Dec. 4, 2020]

EFFECTIVE DATE NOTE: At 87 FR 39665, July 1, 2022, § 80.1450 was amended by:

a. Revising paragraphs (b) introductory text, (b)(1) introductory text, (b)(1)(i), and (b)(1)(ii) introductory text;

b. Adding paragraph (b)(1)(ii)(B);

c. Revising paragraphs (b)(1)(iii), (b)(1)(iv)(A)(*1*) and (*2*), (b)(1)(iv)(B)(*3*), (b)(1)(v)(B) and (C), (b)(1)(vii)(A) introductory text, (b)(1)(vii)(B) introductory text, (b)(1)(viii) introductory text, (b)(1)(viii)(B)(*1*) through (*3*), (b)(1)(xii) introductory text, (b)(1)(xii)(B), (b)(1)(xii)(C) introductory text, (b)(1)(xiii)(A), (b)(1)(xiii)(B) introductory text, (b)(1)(xiii)(B)(*1*) and (*5*), and (b)(1)(xv) introductory text;

d. Adding paragraph (b)(1)(xvi);

e. Revising paragraphs (b)(2)(i)(A) and (B), (b)(2)(ii)(A) through (C), (b)(2)(iv), and (d);

f. Adding a heading to paragraph (g); and

g. Revising the second sentence of paragraph (g) introductory text, paragraphs (g)(5) through (7) and (9) and (g)(10)(ii), the second sentence of paragraph (g)(11)(ii), (h)(1)(i), and the last sentence of paragraph (h)(2)(i).

The amendments are effective Aug. 30, 2022. For the convenience of the user, the added and revised text is set forth as follows:

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

* * * * *

(b) *Producers*. Any RIN-generating foreign producer, any non-RIN-generating foreign producer, any domestic renewable fuel producer that generates RINs, or any biointermediate producer that transfers any biointermediate for the production of a renewable fuel for RIN generation, must provide EPA the information specified under 40 CFR 1090.805 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, or prior to the transfer of any biointermediate to be used in the production of a renewable fuel for which RINs may be generated. Unless otherwise specifically indicated, all the following registration information must be submitted to EPA at least 60 days prior to the intended generation of RINs or the intended transfer of any biointermediate to be used in the production of a renewable fuel for which RINs may be generated. Renewable fuel producers may generate RINs for a renewable fuel under this part after EPA has accepted their registration and they have met all other applicable requirements under this part.

(1) A description of the types of renewable fuels, ethanol, or biointermediates 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, ethanol, or biointermediate the renewable fuel producer or foreign ethanol producer must also provide all the following:

(i)(A) A list of all the feedstocks and biointermediates the facility intends to utilize without significant modification to the existing facility.

(B) A description of the type(s) of renewable biomass that will be used as feedstock material to produce the biointermediate, if applicable.

(C) A list of the EPA-issued company and facility registration numbers of all biointermediate producers and biointermediate production facilities that will supply biointermediates for renewable fuel production.

(ii) A description of the facility's renewable fuel, ethanol, or biointermediate production processes, including:

* * * * *

(B) For registrations indicating the production of any biointermediate, the biointermediate producer must provide all of the following:

(*1*) For each biointermediate production facility, the company name, EPA company registration number, and EPA facility registration number of the renewable fuel producer and renewable fuel production facility at which the biointermediate produced from the biointermediate production facility will be transferred and used.

(*2*) Copies of documents and corresponding calculations demonstrating production capacity of each biointermediate produced at the biointermediate production facility.

(*3*) For each type of feedstock that the biointermediate producer intends to process the biointermediate producer must provide all the following:

(*i*) A list of all the feedstocks the facility intends to utilize without significant modification to the existing facility.

(*ii*) A description of the type(s) of renewable biomass that will be used as feedstock material to produce the biointermediate.

(*4*) The approved pathway(s) that the biointermediate could be used in to produce renewable fuel.

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

(iv) * * *

(A) * * *

(*1*) Each type of process heat fuel used at the facility to produce the renewable fuel, ethanol, or biointermediate.

(*2*) The name and address of the company supplying each process heat fuel to the renewable fuel facility, foreign ethanol facility, or biointermediate production facility.

(B) * * *

(*3*) An affidavit from the biogas supplier stating its intent to supply biogas to the renewable fuel producer, foreign ethanol producer, or biointermediate 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) * * *

(B) For facilities claiming the exemption described in § 80.1403(c) or (d):

(*1*) Applicable air permits issued by EPA, state, local air pollution control agencies, or foreign governmental agencies that govern the construction and/or operation of the renewable fuel facility that were:

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

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

(*2*) If the air permits specified in paragraph (b)(1)(v)(B)(*1*) of this section do not specify the maximum rated annual volume output of renewable fuel, copies of documents demonstrating the facility's actual peak capacity.

(C) For facilities not claiming the exemption described in § 80.1403(c) or (d) and that are exempt from air permit requirements or for which the maximum rated annual volume output of renewable fuel is not specified in their air permits, appropriate documentation demonstrating the facility's actual peak capacity or nameplate capacity.

* * * * *

(vii)(A) For a renewable fuel producer, foreign ethanol producer, or biointermediate producer using separated yard waste:

* * * * *

(B) For a renewable fuel producer, foreign ethanol producer, or biointermediate producer using separated food waste:

* * * * *

(viii) For a renewable fuel producer, foreign ethanol producer, or biointermediate producer using separated municipal solid waste:

* * * * *

(B) * * *

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

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

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

* * * * *

(xii) For a producer or importer of any renewable fuel other than ethanol, biodiesel, renewable gasoline, renewable diesel that meets the Grade No. 1–D or No. 2–D specification in ASTM D975 (incorporated by reference, see § 80.1468), biogas, or renewable electricity, all the following:

* * * * *

(B) A statement regarding whether the renewable fuel producer or importer will blend the renewable fuel into gasoline or diesel fuel or enter into a written contract for the sale and use of a specific quantity of the renewable fuel with a party who blends the fuel into gasoline or distillate fuel to produce a transportation fuel, heating oil, or jet fuel that meets all applicable standards under this part and 40 CFR part 1090.

(C) If the renewable fuel producer or importer enters into a written contract for the sale and use of a specific quantity of the renewable fuel with a party who blends the fuel into gasoline or distillate fuel to produce a transportation fuel, heating oil, or jet fuel, provide all the following:

* * * * *

(xiii)(A) A renewable fuel producer seeking to generate D code 3 or D code 7 RINs, a foreign ethanol producer seeking to have its product sold as cellulosic biofuel after it is denatured, or a biointermediate producer seeking to have its biointermediate made into cellulosic biofuel, who intends to produce a single type of fuel using two or more feedstocks converted simultaneously, where at least one of the feedstocks does not have a minimum 75% average adjusted cellulosic content, and who uses only a thermochemical process to convert feedstock into renewable fuel, must provide all the following:

(*1*) Data showing the average adjusted cellulosic content of the feedstock(s) to be used to produce fuel or biointermediate, based on

the average of at least three representative samples. Cellulosic content data must come from an analytical method certified by a voluntary consensus standards body or using a method that would produce reasonably accurate results as demonstrated through peer reviewed references provided to the third party engineer performing the engineering review at registration. Samples must be of representative feedstock from the primary feedstock supplier that will provide the renewable fuel or biointermediate producer with feedstock subsequent to registration.

(*2*) For renewable fuel and biointermediate producers who want to use a new feedstock(s) after initial registration, updates to their registration under paragraph (d) of this section indicating the average adjusted cellulosic content of the new feedstock.

(*3*) For renewable fuel producers already registered as of August 18, 2014, to produce a single type of fuel that qualifies for D code 3 or D code 7 RINs (or would do so after denaturing) using two or more feedstocks converted simultaneously using only a thermochemical process, the information specified in this paragraph (b)(1)(xiii)(A) shall be provided at the next required registration update under paragraph (d) of this section.

(B) A renewable fuel producer seeking to generate D code 3 or D code 7 RINs, a foreign ethanol producer seeking to have its product sold as cellulosic biofuel after it is denatured, or a biointermediate producer seeking to have its biointermediate made into cellulosic biofuel, who intends to produce a single type of fuel using two or more feedstocks converted simultaneously, where at least one of the feedstocks does not have a minimum 75% adjusted cellulosic content, and who uses a process other than a thermochemical process or a combination of processes to convert feedstock into renewable fuel or biointermediate, must provide all the following:

(*1*) The expected overall fuel or biointermediate yield, calculated as the total volume of fuel produced per batch (*e.g.*, cellulosic biofuel plus all other fuel) divided by the total feedstock mass per batch on a dry weight basis (*e.g.*, cellulosic feedstock plus all other feedstocks).

* * * * *

(*5*) For renewable fuel producers already registered as of August 18, 2014, to produce a single type of fuel that qualifies for D code 3 or D code 7 RINs (or would do so after denaturing) using two or more feedstocks converted simultaneously using a combination of processes or a process other than a thermochemical process, the information specified in this paragraph (b)(1)(xiii)(B) shall be provided at the next required registration update under paragraph (d) of this section.

* * * * *

(xv) For a producer of cellulosic biofuel made from crop residue, a foreign ethanol producer making ethanol from crop residue and seeking to have it sold after denaturing as cellulosic biofuel, or a biointermediate producer producing a biointermediate for use in the production of a cellulosic biofuel made from crop residue, provide all the following information:

* * * * *

(xvi) For FFA feedstock, the biointermediate producer must provide a description of how the biointermediate producer will determine FFA concentration.

(2) * * *

(i) * * *

(A) For a domestic renewable fuel production facility, a foreign ethanol production facility, or a biointermediate 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 or foreign biointermediate 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) * * *

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

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

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

* * * * *

(iv) The renewable fuel producer, foreign ethanol producer, or biointermediate producer must retain records of the review and verification, as required in § 80.1454(b)(6) or (i)(4), as applicable.

* * * * *

(d) *Registration updates.* (1)(i)(A) Any renewable fuel producer or any foreign ethanol

producer that makes changes to their facility that will allow them to produce renewable fuel or use a biointermediate that is not reflected in the producer's registration information on file with EPA must update their registration information and submit a copy of an updated independent third-party engineering review on file with EPA at least 60 days prior to producing the new type of renewable fuel.

(B) Any biointermediate producer who makes changes to their biointermediate production facility that will allow them to produce a biointermediate for use in the production of a renewable fuel that is not reflected in the biointermediate producer's registration information on file with EPA must update their registration information and submit a copy of an updated independent third-party engineering review on file with EPA at least 60 days prior to producing the new biointermediate for use in the production of the renewable fuel.

(ii) The renewable fuel producer, foreign ethanol producer, or biointermediate producer may also submit an addendum to the independent third-party engineering review on file with EPA provided the addendum meets all the requirements in paragraph (b)(2) of this section and verifies for EPA the most up-to-date information at the producer's existing facility.

(2)(i) Any renewable fuel producer or any foreign ethanol producer that 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 their registration information 7 days prior to the change.

(ii)(A) Any biointermediate producer that makes any other changes to a biointermediate production facility that will affect the biointermediate producer's registration must update their registration information 7 days prior to the change.

(B)(*1*) Any biointermediate producer that intends to change the designated renewable fuel production facility under paragraph (b)(1)(ii)(B)(*1*) of this section for one of its biointermediate production facilities must update their registration information with EPA at least 30 days prior to transferring the biointermediate to the newly designated renewable fuel production facility.

(*2*) A biointermediate producer may only change the designated renewable fuel production facility under paragraph (b)(1)(ii)(B)(*1*) of this section for each biointermediate production facility one time per calendar year unless EPA, in its sole discretion, allows the biointermediate producer to change the designated renewable fuel production facility more frequently.

(3) All renewable fuel producers, foreign ethanol producers, and biointermediate producers must update registration information and submit an updated independent third-party engineering review according to the schedule in paragraph (d)(3)(i) or (ii) of this section, and include the information specified in paragraph (d)(3)(iii) or (iv) of this section, as applicable:

(i) For all renewable fuel producers and foreign ethanol producers registered in calendar year 2010, the updated registration information and independent third-party engineering review must be submitted to EPA by January 31, 2013, and by January 31 of every third calendar year thereafter; or

(ii) For all renewable fuel producers, foreign ethanol producers, and biointermediate producers registered in any calendar year after 2010, the updated registration information and independent third-party engineering review must be submitted to EPA by January 31 of every third calendar year after the first year of registration.

(iii) For all renewable fuel producers, in addition to conducting the engineering review and written report and verification required by paragraph (b)(2) of this section, the updated independent third-party engineering review must include a detailed review of the renewable fuel producer's calculations used to determine V_{RIN} of a representative sample of batches of each type of renewable fuel produced since the last registration. The representative sample must be selected in accordance with the sample size guidelines set forth at 40 CFR 1090.1805.

(iv) For biointermediate producers, in addition to conducting the engineering review and written report and verification required by paragraph (b)(2) of this section, the updated independent third-party engineering review must include a detailed review of the biointermediate producer's calculations used to determine the renewable biomass and cellulosic renewable biomass proportions, as required to be reported to EPA under § 80.1451(j), of a representative sample of batches of each type of biointermediate produced since the last registration. The representative sample must be selected in accordance with the sample size guidelines set forth at 40 CFR 1090.1805.

* * * * *

(g) *Independent third-party auditors.* * * * Registration information must be submitted at least 30 days prior to conducting audits of renewable fuel production or biointermediate production facilities. * * *

* * * * *

(5) *List of audited producers.* Name, address, and company and facility identification numbers of all renewable fuel production or biointermediate production facilities that

the independent third-party auditor intends to audit under § 80.1472.

(6) *Audited producer associations.* An affidavit, or electronic consent, from each renewable fuel producer, foreign renewable fuel producer, or biointermediate producer stating its intent to have the independent third-party auditor conduct a quality assurance audit of any of the renewable fuel producer's or foreign renewable fuel producer's facilities.

(7) *Independence affidavits.* An affidavit stating that an independent third-party auditor and its contractors and subcontractors are independent, as described in § 80.1471(b), of any renewable fuel producer, foreign renewable fuel producer, or biointermediate producer.

* * * * *

(9) *Registration updates.* (i) Any independent third-party auditor who makes changes to its quality assurance plan(s) that will allow it to audit new renewable fuel production or biointermediate production facilities that is not reflected in the independent third-party auditor's registration information on file with EPA must update its registration information and submit a copy of an updated QAP on file with EPA at least 60 days prior to auditing new renewable fuel production or biointermediate production facilities.

(ii) Any independent third-party auditor who makes any changes other than those specified in paragraphs (g)(9)(i), (iii), and (iv) of this section that will affect the third-party auditor's registration information must update its registration information 7 days prior to the change.

(iii) Independent third-party auditors must update their QAPs at least 60 days prior to verifying RINs generated or biointermediate produced by a renewable fuel or biointermediate production facility, respectively, for a pathway not covered in the independent third-party auditor's QAPs.

(iv) Independent third-party auditors must update their QAPs at least 60 days prior to verifying RINs generated or biointermediate produced by any renewable fuel or biointermediate production facility not identified in the independent third-party auditor's existing registration.

(10) * * *

(ii) The independent third-party auditor submits an affidavit affirming that he or she has only verified RINs and biointermediates using a QAP approved under § 80.1469, notified all appropriate parties of all potentially invalid RINs as described in § 80.1471(d), and fulfilled all of his or her RIN replacement obligations under § 80.1474.

* * * * *

(11) * * *

(ii) * * * Communications should be sent to the EMTS support line (*fuelsprogramsupport@epa.gov*). * * *

* * * * *

(h) * * *

(1) * * *

(i) Unless the party is a biointermediate producer, the party has reported no activity in EMTS for twenty-four consecutive months.

* * * * *

(2) * * *

(i) * * * The party will have 30 calendar days from the date of the notification to correct the deficiencies identified or explain why there is no need for corrective action.

* * * * *

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

(a) *Obligated parties and exporters.* Any obligated party described in § 80.1406 or exporter of renewable fuel described in § 80.1430 must submit to EPA reports according to the schedule, and containing all the information, that is set forth in this paragraph (a).

(1) Annual compliance reports must include all the following information:

(i) The obligated party's or exporter of renewable fuel's name.

(ii) The EPA company registration number.

(iii) Whether the domestic refiner, as defined in § 80.1406, is complying on a corporate (aggregate) or facility-by-facility basis.

(iv) The EPA facility registration number, if complying on a facility-by-facility basis.

(v)(A) For the 2010 through 2019 compliance periods, the production volume and import volume of all of the products listed in § 80.1407(c) and (e) for the compliance period.

(B) For the 2020 compliance period, separately, the production volume and import volume of all of the gasoline products listed in § 80.1407(c), the production volume and import volume of all of the MVNRLM diesel fuel products listed in § 80.1407(e), and the combined volume of all gasoline products and MVNRLM diesel fuel listed in

§ 80.1407(c) and (e) for the compliance period.

(C) Beginning with the 2021 compliance period, separately, the production volume and import volume for the compliance period of all of the following:

(*1*) All of the gasoline products listed in § 80.1407(c).

(*2*) All of the MVNRLM diesel fuel products listed in § 80.1407(e).

(*3*) The combined production volume of all gasoline products and MVNRLM diesel fuel.

(*4*) Distillate fuel that is not transportation fuel.

(*5*) Distillate fuel that is certified NTDF.

(vi) The RVOs, as defined in § 80.1427(a) for obligated parties and § 80.1430(b) for exporters of renewable fuel, for the reporting year.

(vii) Any deficit RVOs carried over from the previous year.

(viii) The total current-year RINs by category of renewable fuel, as those fuels are defined in § 80.1401 (i.e., cellulosic biofuel, biomass-based diesel, advanced biofuel, renewable fuel, and cellulosic diesel), retired for compliance.

(ix) The total prior-year RINs by renewable fuel category, as those fuels are defined in § 80.1401, retired for compliance.

(x) The total cellulosic biofuel waiver credits used to meet the party's cellulosic biofuel RVO.

(xi) A list of all RINs generated prior to July 1, 2010 that were retired for compliance in the reporting period.

(xii) Any deficit RVO(s) carried into the subsequent year.

(xiii) Any additional information that the Administrator may require.

(xiv)–(xv) [Reserved]

(xvi) The total current-year RINs by category of renewable fuel, as those fuels are defined in § 80.1401 (i.e., cellulosic biofuel, biomass-based diesel, advanced biofuel, renewable fuel, and cellulosic diesel), retired for compliance that are invalid as defined in § 80.1431(a).

(xvii) The total prior-year RINs by renewable fuel category, as those fuels are defined in § 80.1401, retired for compliance that are invalid as defined in § 80.1431(a).

(xviii) A list of all RINs that were retired for compliance in the reporting period and are invalid as defined in § 80.1431(a).

(xix) For parties that redesignate certified NTDF as MVNRLM diesel fuel under § 80.1408 at any time during the compliance period, the volumes $MVNRLM_{BAL}$, $MVNRLM_{O}$, $MVNRLM_{INVCHG}$, and $MVNRLM_{I}$ as calculated in § 80.1408(a)(2).

(2) The RIN transaction reports required under paragraph (c)(1) of this section.

(3) The quarterly RIN activity reports required under paragraph (c)(2) of this section.

(4) Reports required under this paragraph (a) must be signed and certified as meeting all the applicable requirements of this subpart by the owner or a responsible corporate officer of the obligated party or exporter of renewable fuel.

(b) *Renewable fuel producers (domestic and foreign) and importers.* Any domestic producer or importer of renewable fuel who generates RINs, or any RIN-generating foreign producer must submit to EPA reports according to the schedule, and containing all of the following information:

(1)(i) For RINs generated beginning on July 1, 2010, RIN generation reports for each facility owned by the renewable fuel producer or importer shall be submitted according to the schedule specified in paragraph (f)(2) of this section.

(ii) The RIN generation reports shall include all the following information for each batch of renewable fuel produced or imported, where ''batch'' means a discrete quantity of renewable fuel produced or imported and assigned a unique batch-RIN per § 80.1426(d):

(A) The RIN generator's name.

(B) The RIN generator's EPA company registration number.

(C) The renewable fuel producer EPA facility registration number.

(D) The importer EPA facility registration number and foreign renewable fuel producer company registration number, if applicable.

(E) The applicable reporting period.

(F) The quantity of RINs generated for each batch according to § 80.1426.

(G) The production date of each batch.

(H) The fuel type of each batch.

(I) The volume of ethanol denaturant and applicable equivalence value of each batch.

(J) The volume of each batch produced.

(K) The types and quantities of feedstocks used.

(L) The process(es) and feedstock(s) used and proportion of renewable volume attributable to each process and feedstock.

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

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

(O) A list of the RINs generated and an affirmation that the feedstock(s) used for each batch meets the definition of renewable biomass as defined in § 80.1401.

(P) Producers of renewable electricity and 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).

(S) Producers of advanced biofuel using grain sorghum shall report all of the following:

(*1*) The total amount of electricity that is purchased from the grid and used at the site, based on metering, in kWh.

(*2*) Total amount of ethanol produced.

(*3*) Calculation of the amount of grid electricity used at the site per gallon of ethanol produced in each batch.

(*4*) Each batch number as specified in § 80.1452(b).

(*5*) Reference ID for documents required by § 80.1454(k)(2)(D).

(T) Producers or importers of any renewable fuel other than ethanol, biodiesel, renewable gasoline, renewable diesel that meets ASTM D 975–13a Grade No. 1–D or No. 2–D specifications (incorporated by reference, see § 80.1468), biogas or renewable electricity, shall report, on a quarterly basis, all the following for each volume of fuel:

(*1*) Total volume of renewable fuel produced or imported, total volume of renewable fuel blended into gasoline and diesel fuel by the producer or importer, and the percentage of renewable fuel in each batch of finished fuel.

(*2*) If the renewable fuel producer or importer enters into a written contract for the sale of a specific quantity of the renewable fuel to a party who blends the fuel into gasoline or diesel fuel to produce a transportation fuel, heating oil or jet fuel, or who uses the neat fuel for a qualifying fuel use, the name, location and contact information for each purchasing party, and one or more affidavits from that party including all the following information:

(*i*) Quantity of renewable fuel received from the producer or importer.

(*ii*) Date the renewable fuel was received from producer.

(*iii*) A description of the fuel that the renewable fuel was blended into and the blend ratios for each batch, if applicable.

(*iv*) A description of the finished fuel, and a statement that the fuel meets all applicable standards and was sold for use as a transportation fuel, heating oil or jet fuel.

(*v*) Quantity of assigned RINs received with the renewable fuel, if applicable.

(*vi*) Quantity of assigned RINs that the end user separated from the renewable fuel, if applicable.

(U) Producers generating D code 3 or D code 7 RINs for fuel derived from feedstocks other than biogas (including

through pathways listed in rows K, L, M, and N of Table 1 to § 80.1426), and that was produced from two or more feedstocks converted simultaneously, at least one of which has less than 75% average adjusted cellulosic content, and using a combination of processes or a process other than a thermochemical process or a combination of processes shall report all of the following:

(*1*) The cellulosic converted fraction as determined by collecting new representative process data and performing the same chemical analysis method accepted at registration. Producers shall calculate this information on an annual basis or within 10 business days of generating every 500,000 gallons of cellulosic biofuel, whichever is more frequent, and report quarterly. Reports shall include all values used to calculate feedstock energy according to § 80.1426(f)(3)(vi). If new data shows that the cellulosic Converted Fraction is different than previously calculated, the formula used to generate RINs under § 80.1426(f)(3) must be updated as soon as practical but no later than 5 business days after the producer receives the updated data. If new testing data results in a change to the cellulosic Converted Fraction, only RINs generated after the new testing data were received, subject to the 5-day allowance, would be affected.

(*2*) If the cellulosic Converted Fraction deviates from the previously calculated cellulosic Converted Fraction by 10% or more then the producer must notify EPA within 5 business days of receiving the new data and must adjust the formula used to generate RINs under § 80.1426(f)(3) for all fuel generated as soon as practical but no later than 5 business days after the producer receives the new data. If new testing data results in a change to the cellulosic Converted Fraction, only RINs generated after the new testing data were received, subject to the 5-day allowance, would be affected.

(V) Producers of renewable fuel using crop residue as a feedstock shall report all of the following according to the schedule specified in paragraph (f)(2) of this section:

(*1*) The specific feedstock(s) utilized to produce renewable fuel under a pathway allowing the use of crop residue as feedstock.

(*2*) The total quantity of each specific feedstock used to produce renewable fuel.

(*3*) The total amount of qualifying renewable fuel produced under the crop residue pathway(s) in that quarter.

(W) Any additional information the Administrator may require.

(2) The RIN transaction reports required under paragraph (c)(1) of this section.

(3) The RIN activity reports required under paragraph (c)(2) of this section.

(4) Reports required under this paragraph (b) must be signed and certified as meeting all the applicable requirements of this subpart by the owner or a responsible corporate officer of the renewable fuel producer or importer.

(c) *All RIN-owning parties.* Any party, including any party specified in paragraphs (a) and (b) of this section, that owns RINs during a reporting period, must submit reports to EPA according to the schedule, and containing all the information, that is set forth in this paragraph (c).

(1)(i) For RIN transactions beginning on July 1, 2010, RIN transaction reports listing each RIN transaction shall be submitted according to the schedule in paragraph (f)(2) of this section.

(ii) As per § 80.1452, RIN transaction information listing each RIN transaction shall be submitted to the EMTS.

(iii) Each report required by paragraph (c)(1)(i) of this section shall include all of the following information:

(A) The submitting party's name.

(B) The submitting party's EPA company registration number.

(C) The applicable reporting period.

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

(E) Transaction date.

(F) For a RIN purchase or sale, the trading partner's name.

(G) For a RIN purchase or sale, the trading partner's EPA company registration number. For all other transactions, the submitting party's EPA company registration number.

(H) RIN subject to the transaction.

(I) For a RIN purchase or sale, the per gallon RIN price and/or the per gallon price of renewable fuel price with RINs included.

(J) The reason code for retiring RINs, separating RINs, buying RINs, or selling RINs.

(K) Any additional information that the Administrator may require.

(2) RIN activity reports must be submitted to EPA according to the schedule specified in paragraph (f)(2) of this section. Each report must summarize RIN activities for the reporting period, separately for RINs separated from a renewable fuel volume and RINs assigned to a renewable fuel volume.

(i) For compliance periods ending on or before December 31, 2019, each report must include all of the following information:

(A) The submitting party's name.

(B) The submitting party's EPA company registration number.

(C) The number of current-year RINs owned at the start of the quarter.

(D) The number of prior-year RINs owned at the start of the quarter.

(E) The total current-year RINs purchased.

(F) The total prior-year RINs purchased.

(G) The total current-year RINs sold.

(H) The total prior-year RINs sold.

(I) The total current-year RINs retired.

(J) The total current-year RINs retired that are invalid as defined in § 80.1431(a).

(K) The total prior-year RINs retired.

(L) The total prior-year RINs retired that are invalid as defined in § 80.1431(a).

(M) The number of current-year RINs owned at the end of the quarter.

(N) The number of prior-year RINs owned at the end of the quarter.

(O) The number of RINs generated.

(P) The volume of renewable fuel (in gallons) owned at the end of the quarter.

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

(R) Any additional information that the Administrator may require.

(ii) For compliance periods starting on or after January 1, 2020, each report must include all of the following information:

(A) The submitting party's name.

(B) The submitting party's EPA-issued company identification number.

(C) Primary registration designation or compliance level for compliance year (*e.g.*, ''Aggregated Refiner,'' ''Exporter,'' ''Renewable Fuel Producer,'' ''RIN Owner Only,'' etc.).

(D) All of the following information:

(*1*) The number of current-year RINs owned at the start of the quarter.

(*2*) The number of prior-year RINs owned at the start of the quarter.

(*3*) The total current-year RINs purchased.

(*4*) The total prior-year RINs purchased.

(*5*) The total current-year RINs sold.

(*6*) The total prior-year RINs sold.

(*7*) The total current-year RINs retired.

(*8*) The total current-year RINs retired that are invalid as defined in § 80.1431(a).

(*9*) The total prior-year RINs retired.

(*10*) The total prior-year RINs retired that are invalid as defined in § 80.1431(a).

(*11*) The number of current-year RINs owned at the end of the quarter.

(*12*) The number of prior-year RINs owned at the end of the quarter.

(*13*) The number of RINs generated.

(*14*) The volume of renewable fuel (in gallons) owned at the end of the quarter.

(E)(*1*) Indicate if the submitting party or the submitting party's corporate affiliate group exceeded the primary threshold for any day in the quarter under § 80.1435(c)(1). If the submitting party is in an affiliate group that does not contain an obligated party, and the affiliate group has exceeded the primary threshold, then EPA may publish the name and EPA-issued company identification number of the submitting party.

(*2*) Indicate if the submitting party or the submitting party's corporate affiliate group exceeded the secondary threshold for any day in the quarter under § 80.1435(c)(2). If the submitting party is an obligated party and has exceeded the secondary threshold or is in a corporate affiliate group containing an obligated party that has exceeded the secondary threshold, then EPA may publish the name and EPA-issued

company identification number of the submitting party.

(F) A list of all corporate and contractual affiliates during the reporting period. For each affiliate, include the identification information (including the EPA company ID number, if registered) and the affiliate type.

(G) The RVO used to calculate D6 RIN threshold, if alternative gasoline and diesel production volumes were used under § 80.1435(d).

(H) A list of contractual affiliates that had a contract with the party that did not result in transfer of RINs to the party during the reporting period.

(I) Any additional information that the Administrator may require.

(3) All reports required under this paragraph (c) must be signed and certified as meeting all the applicable requirements of this subpart by the RIN owner or a responsible corporate officer of the RIN owner.

(d) Except for those producers 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.

(2) Electronic data identifying the land by coordinates of the points defining the boundaries from which each type of feedstock listed per paragraph (d)(1) of this section was harvested.

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

(e) If EPA finds that the 2007 baseline amount of agricultural land has been exceeded in any year beginning in 2010, beginning on the first day of July of the following calendar year any 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.

(f) *Report submission deadlines.* The submission deadlines for annual and quarterly reports are as follows:

(1) *Annual compliance reports*—(i) *Obligated parties.* (A) Except as specified in paragraph (f)(1)(i)(B) of this section, for obligated parties, annual compliance reports must be submitted by whichever of the following dates is latest:

(*1*) March 31 of the subsequent calendar year.

(*2*) The next quarterly reporting deadline under paragraph (f)(2) of this section after the date the subsequent compliance year's renewable fuel standards become effective in § 80.1405(a).

(*3*) The next quarterly reporting deadline under paragraph (f)(2) of this section after the annual compliance reporting deadline for the prior compliance year.

(B)(*1*) For obligated parties that meet the requirements for a small refinery under § 80.1441(e)(2)(iii), for the 2019 compliance year, annual compliance reports must be submitted no later than the next quarterly reporting deadline under paragraph (f)(2) of this section after the date the 2021 renewable fuel standards become effective in § 80.1405(a).

(*2*) For the 2020 compliance year, annual compliance reports must be submitted no later than the next quarterly reporting deadline in paragraph (f)(2) of this section after the deadline in paragraph (f)(1)(i)(B)(*1*) of this section.

(*3*) For the 2021 compliance year, annual compliance reports must be submitted no later than the next quarterly reporting deadline in paragraph (f)(2) of this section after the deadline in paragraph (f)(1)(i)(B)(*2*) of this section.

(*4*) For the 2022 compliance year, annual compliance reports must be submitted by whichever of the following dates is latest:

(*i*) The next quarterly reporting deadline under paragraph (f)(2) of this section after the date the 2023 renewable fuel standards become effective in § 80.1405(a).

(*ii*) The next quarterly reporting deadline in paragraph (f)(2) of this section after the deadline in paragraph (f)(1)(i)(B)(*3*) of this section.

(ii) *All other parties*. For all parties other than obligated parties, annual compliance reports must be submitted by March 31 of the subsequent year.

(iii) *Deadline publication*. The annual compliance reporting deadline will be calculated in accordance with paragraph (f)(1)(i) of this section and published on EPA's website.

(2) *Quarterly compliance reports*. Quarterly reports shall be submitted by the required deadline as shown in Table 1 of this section. Any reports generated by EMTS must be reviewed, supplemented, and/or corrected if not complete and accurate, and verified by the owner or responsible corporate officer prior to submittal. Table 1 follows:

TABLE 1 TO § 80.1451—QUARTERLY REPORTING DEADLINES

Calendar quarter	Time period covered	Quarterly report deadline
Quarter 1	January 1–March 31	June 1.
Quarter 2	April 1–June 30	September 1.
Quarter 3	July 1–September 30	December 1.
Quarter 4	October 1–December 31	March 31.

(3) *Report certification*. Reports required must be signed and certified as meeting all the applicable requirements of this subpart by the owner or a responsible corporate officer of the submitter.

(g) All independent third-party auditors. Any party that is an independent third-party auditor that verifies RINs must submit to the EPA reports according to the schedule, and containing all the information, that is set forth in this paragraph (g).

(1)(i) For RINs verified beginning on September 16, 2014, RIN verification reports for each facility audited by the independent third-party auditor shall be submitted according to the schedule specified in paragraph (f)(2) of this section.

(ii) The RIN verification reports shall include all the following information for each batch of renewable fuel produced or imported verified per § 80.1469(c), where ''batch'' means a discrete quantity of renewable fuel produced or imported and assigned a unique batch-RIN per § 80.1426(d):

(A) The RIN generator's name.

(B) The RIN generator's EPA company registration number.

(C) The renewable fuel producer EPA facility registration number.

(D) The importer EPA facility registration number and foreign renewable fuel producer company registration number, if applicable.

(E) The applicable reporting period.

(F) The quantity of RINs generated for each verified batch according to § 80.1426.

(G) The production date of each verified batch.

(H) The D-code of each verified batch.

(I) The volume of ethanol denaturant and applicable equivalence value of each verified batch.

(J) The volume of each verified batch produced.

(K) The volume and type of each feedstock used to produce the verified batch.

(L) Whether the feedstocks used to produce each verified batch met the definition of renewable biomass.

(M) Whether appropriate RIN generation calculations were followed per § 80.1426(f)(3), (4), or (5) for each verified batch, as applicable.

(N) The quantity and type of co-products produced.

(O) Invoice document identification numbers associated with each verified batch, if applicable.

(P) Laboratory sample identification numbers for each verified batch associated with the generation of any certificates of analysis used to verify fuel type and quality, if applicable.

(Q) Any additional information the Administrator may require.

(2) Aggregate RIN verification reports shall be submitted to the EPA according to the schedule specified in paragraph (f)(2) of this section. Each report shall summarize RIN verification activities for the reporting period. The quarterly aggregate RIN verification reports shall include all of the following information:

(i) The submitting party's name.

(ii) The submitting party's EPA company registration number.

(iii) The number of current-year RINs verified at the start of the quarter.

(iv) The number of prior-year RINs verified at the start of the quarter.

(v) The total current-year RINs verified.

(vi) The number of current-year RINs verified at the end of the quarter.

(vii) A list of all facilities including the EPA's company and facility registration numbers audited under an approved quality assurance plan under § 80.1469 along with the date the independent third-party auditor conducted the on-site visit and audit.

(viii) Mass and energy balances calculated for each facility audited under an approved quality assurance plan under § 80.1469.

(ix) A list of all RINs that were identified as Potentially Invalid RINs (PIRs) pursuant to § 80.1474, along with a narrative description of why the RINs were not verified or were identified as PIRs.

(x) Any additional information that the Administrator may require.

(3) All reports required under this paragraph (g) must be signed and certified as meeting all the applicable requirements of this subpart by the independent third-party auditor or a responsible corporate officer of the independent third-party auditor.

(h) Producers or importers of renewable fuel made from *Arundo donax* or *Pennisetum purpureum* per § 80.1426(f)(14) must report all the following:

(1) Any detected growth of *Arundo donax* or *Pennisetum purpureum* outside the intended planting areas, both surrounding the field of production and feedstock storage sites, along the transportation route, and around the biofuel production facility, within 5 business days after detection and in accordance with the Risk Mitigation Plan, if applicable.

(2) As available, any updated information related to the Risk Mitigation Plan, as applicable. An updated Risk Mitigation Plan must be approved by the Administrator in consultation with USDA and as appropriate other federal agencies prior to its implementation.

(3) On an annual basis, a description of and maps or electronic data showing the average and total size and prior use of lands planted with *Arundo donax* or *Pennisetum purpureum,* the average and total size and prior use of lands set aside to control the invasive spread of these crops, and a description and explanation of any change in land use from the previous year.

(4) On an annual basis, the report from an independent third party auditor evaluating monitoring and reporting activities conducted in accordance with the Risk Mitigation Plan, as applicable subject to approval of a different frequency by the EPA.

(5) Information submitted pursuant to paragraphs (h)(3) and (h)(4) of this section must be submitted as part of the producer or importer's fourth quarterly report, which covers the reporting period October-December, according to the schedule in paragraph (f)(2) of this section.

(i) Parties that redesignate certified NTDF as MVNRLM diesel fuel under § 80.1408 at any time during the compliance period, but do not incur an RVO under § 80.1408(a)(2)(i), must submit a report to EPA stating that they redesignated certified NTDF to MVNRLM diesel fuel during the compliance period, but that their net redesignated volume was less than or equal to zero, and they therefore did not incur an RVO for the compliance period.

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

(k) *English language reports*. Any document submitted to EPA under this section must be submitted in English, or shall include an English translation.

[75 FR 14863, Mar. 26, 2010, as amended at 75 FR 26044, May 10, 2010; 75 FR 79978, Dec. 21, 2010; 77 FR 1356, Jan. 9, 2012; 77 FR 74606, Dec. 17, 2012; 78 FR 41715, July 11, 2013; 78 FR 49830, Aug. 15, 2013; 78 FR 62471, Oct. 21, 2013; 79 FR 34244, June 16, 2014; 79 FR 23655, Apr. 28, 2014; 79 FR 42164, July 18, 2014; 79 FR 42116, July 18, 2014; 79 FR 46356, Aug. 8, 2014; 80 FR 77518, Dec. 14, 2015; 84 FR 27023, June 10, 2019; 85 FR 7079, Feb. 6, 2020; 86 FR 17077, Apr. 1, 2021; 87 FR 5702, Feb. 2, 2022]

EFFECTIVE DATE NOTE: At 87 FR 39668, July 1, 2022, § 80.1451 was amended by:

a. Revising paragraphs (b)(1)(ii)(K) and (L), the first sentence of paragraph (b)(1)(ii)(R), (b)(1)(ii)(T), (b)(1)(ii)(U) introductory text, (g)(1)(i), (g)(1)(ii) introductory text, (g)(1)(ii)(A) through (C), (K), and (L), and (g)(2)(vii) and (viii);

b. Redesignating paragraph (g)(2)(x) as paragraph (g)(2)(xi) and adding a new paragraph (g)(2)(x); and

c. Redesignating paragraphs (j) and (k) as paragraphs (k) and (l) and adding a new paragraph (j).

The amendments are effective Aug. 30, 2022. For the convenience of the user, the added and revised text is set forth as follows:

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

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(K) The types and quantities of feedstocks and biointermediates used.

(L) The process(es), feedstock(s), and biointermediate(s) used and proportion of renewable volume attributable to each process, feedstock, and biointermediate.

* * * * *

(R) Producers or importers of renewable fuel made from separated municipal solid waste must report the amount of paper, cardboard, plastics, rubber, textiles, metals, and glass separated from municipal solid waste for recycling. * * *

* * * * *

(T) Producers or importers of any renewable fuel other than ethanol, biodiesel, renewable gasoline, renewable diesel that meets the Grade No. 1–D or No. 2–D specification in ASTM D975 (incorporated by reference, see § 80.1468), biogas or renewable electricity, must report, on a quarterly basis, all the following for each volume of fuel:

(*1*) Total volume of renewable fuel produced or imported, total volume of renewable fuel blended into gasoline and distillate fuel by the producer or importer, and the percentage of renewable fuel in each batch of finished fuel.

(*2*) If the producer or importer generates RINs under § 80.1426(f)(17)(i)(B)(*2*), report the name, location, and contract information for each party that purchased the renewable fuel.

(U) Producers generating D code 3 or D code 7 RINs for fuel derived from feedstocks or biointermediates other than biogas (including through pathways listed in rows K, L, M, and N of Table 1 to § 80.1426), and that was produced from two or more feedstocks converted simultaneously, at least one of which has less than 75% average adjusted cellulosic content, and using a combination of processes or a process other than a thermochemical process or a combination of processes shall report all of the following:

* * * * *

(g) * * *

(1)(i) RIN and biointermediate verification reports for each renewable fuel or biointermediate production facility audited by the independent third-party auditor shall be submitted according to the schedule specified in paragraph (f)(2) of this section.

(ii) The RIN and biointermediate verification reports shall include all the following information for each batch of renewable fuel produced or imported verified per § 80.1469(c), where ''batch'' means a discrete quantity of renewable fuel produced or imported and assigned a unique batch-RIN per § 80.1426(d):

(A) The RIN generator or biointermediate producer's name.

(B) The RIN generator or biointermediate producer's EPA company registration number.

(C) The renewable fuel or biointermediate producer's EPA facility registration number.

* * * * *

(K) The volume and type of each feedstock and biointermediate used to produce the verified batch.

(L) Whether the feedstocks and biointermediates used to produce each

verified batch met the definition of renewable biomass.

* * * * *

(2) * * *

(vii) A list of all renewable fuel and biointermediate facilities including the EPA's company and facility registration numbers audited under an approved quality assurance plan under § 80.1469 along with the date the independent third-party auditor conducted the on-site visit and audit.

(viii) Mass and energy balances calculated for each renewable fuel and biointermediate production facility audited under an approved quality assurance plan under § 80.1469.

* * * * *

(x) A list of all biointermediates that were identified as potentially improperly produced biointermediates under § 80.1477(d).

* * * * *

(j) *Biointermediate producers*. For each biointermediate production facility, any biointermediate producer must submit quarterly reports for biointermediate batch production to EPA containing all of the information in this paragraph (j).

(1) Include all the following information for each batch of biointermediate produced:

(i) The biointermediate producer's name.

(ii) The biointermediate producer's EPA company registration number.

(iii) The biointermediate producer's EPA facility registration number.

(iv) The applicable compliance period.

(v) The production date.

(vi) The batch number.

(vii) For batches of biointermediates intended for use to produce cellulosic biofuels, the adjusted cellulosic content of each batch and certification that the cellulosic content of each batch was derived from cellulose, hemicellulose, or lignin that was derived from renewable biomass.

(viii) The volume of each batch produced.

(ix) The types and quantities of feedstocks used.

(x) The renewable fuel type(s) each batch of biointermediate was designated to be used as a feedstock material for.

(xi) The EPA company registration number and EPA facility registration number for each renewable fuel producer or foreign renewable fuel producer that received each batch.

(xii) The percentage of each batch of biointermediate that met the definition of renewable biomass and certification that this portion of the batch of biointermediate was derived from renewable biomass.

(xiii) The process(es) and feedstock(s) used and proportion of biointermediate volume attributable to each process and feedstock.

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

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

(xvi) Any additional information the Administrator may require.

(2) Quarterly reports under this paragraph (j) must be submitted according to the schedule in paragraph (f)(2) of this section.

* * * * *

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

(a) Each party required to submit information under this section must establish an account with the EPA Moderated Transaction System (EMTS) at least 60 days prior to engaging in any RIN transactions, or July 1, 2010, whichever is later.

(b) Starting July 1, 2010, each time a domestic 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.

(1) The name of the renewable fuel producer or importer.

(2) The EPA company registration number of the renewable fuel producer or foreign ethanol producer, as applicable.

(3) The importer's EPA company registration number if applicable.

(4) The EPA facility registration number of the facility at which the renewable fuel producer or foreign ethanol producer produced the batch, as applicable.

(5) The EPA facility registration number of the importer that imported the batch, if applicable.

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

(7) The production process(es) used for the batch.

(8) The production date of the batch.

(9) The fuel type of the batch.

(10) The volume of the batch.

(11) The volume of ethanol denaturant and applicable equivalence value of each batch.

(12) Quantity of RINs generated for the batch.

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

(14) An affirmation that the feedstock(s) used for each batch meets the definition of renewable biomass as defined in § 80.1401.

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

(16) Any additional information the Administrator may require.

(c) Starting July 1, 2010, each time any party sells, separates, or retires 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. Starting July 1, 2010, each time any party purchases 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 ten (10) 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 or § 80.1434.

(1) The submitting party's name.

(2) The submitting party's EPA company registration number.

(3) The generation year of the RINs.

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

(5) The D code of the RINs.

(6) Transaction type (i.e., RIN buy, RIN sell, RIN separation, RIN retire).

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

(8) For a RIN purchase or sale, the trading partner's name.

(9) For a RIN purchase or sale, the trading partner's EPA company registration number.

(10) For an assigned RIN purchase or sale, the renewable fuel volume associated with the sale.

(11) Quantity of RINs involved in a transaction.

(12)(i) For transactions through December 31, 2019, the per gallon RIN price or the per-gallon price of renewable fuel with RINs included.

(ii) For transactions on or after January 1, 2020:

(A) For RIN buy or sell transaction types including assigned RINs, the per-gallon RIN price or the per-gallon price of renewable fuel with RINs included.

(B) For RIN buy or sell transaction types including separated RINs, the per-gallon RIN price.

(13) The reason for retiring RINs, separating RINs, buying RINs, or selling RINs.

(14) Any additional information that the Administrator may require.

(15) For buy or sell transactions of separated RINs on or after January 1, 2020, the mechanism used to purchase the RINs (*e.g.*, spot market or fulfilling a term contract).

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

[75 FR 14863, Mar. 26, 2010, as amended at 75 FR 79978, Dec. 21, 2010; 77 FR 1357, Jan. 9, 2012; 84 FR 27024, June 10, 2019; 85 FR 7079, Feb. 6, 2020]

EFFECTIVE DATE NOTE: At 87 FR 39669, July 1, 2022, § 80.1452 was amended by redesignating paragraph (b)(16) as paragraph (b)(18) and adding new paragraphs (b)(16) and (17), effective Aug. 30, 2022. For the convenience of the user, the added text is set forth as follows:

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

* * * * *

(b) * * *

(16) The type and quantity of each biointermediate used for the batch, if applicable.

(17) The EPA facility registration number of each biointermediate production facility at which a biointermediate used for the batch was produced, if applicable.

* * * * *

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

(a) On each occasion when any party transfers ownership of neat and/or blended renewable fuels, except when such fuel is dispensed into motor vehicles or nonroad vehicles, engines, or equipment, or separated RINs subject to this subpart, the transferor must

provide to the transferee documents that include all of the following information, as applicable:

(1) The name and address of the transferor and transferee.

(2) The transferor's and transferee's EPA company registration numbers.

(3) The volume of renewable fuel that is being transferred, if any.

(4) The date of the transfer.

(5) [Reserved]

(6) The quantity of RINs being traded.

(7) The D code of the RINs.

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

(9) The RIN generation year.

(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.''.

(12) For the transfer of renewable fuel for which RINs were generated, an accurate and clear statement on the product transfer document of the fuel type from Table 1 to § 80.1426, and designation of the fuel use(s) intended by the transferor, as follows:

(i) Ethanol. ''This volume of neat or blended ethanol is designated and intended for use as transportation fuel or jet fuel in the 48 U.S. contiguous states and Hawaii. Any person exporting this fuel is subject to the requirements of 40 CFR 80.1430.''.

(ii) Biodiesel. ''This volume of neat or blended biodiesel is designated and intended for use as transportation fuel, heating oil or jet fuel in the 48 U.S. contiguous states and Hawaii. Any person exporting this fuel is subject to the requirements of 40 CFR 80.1430.''.

(iii) Renewable heating oil. ''This volume of heating oil is designated and intended for use as heating oil in the 48 U.S. contiguous states and Hawaii. Any person exporting this fuel is subject to the requirements of 40 CFR 80.1430.''.

(iv) Renewable diesel. ''This volume of neat or blended renewable diesel is designated and intended for use as transportation fuel, heating oil or jet fuel in the 48 U.S. contiguous states and Hawaii. Any person exporting this fuel is subject to the requirements of 40 CFR 80.1430.''.

(v) Naphtha. ''This volume of neat or blended naphtha is designated and intended for use as transportation fuel or jet fuel in the 48 U.S. contiguous states and Hawaii. This naphtha may only be used as a gasoline blendstock or jet fuel. Any person exporting this fuel is subject to the requirements of 40 CFR 80.1430.''.

(vi) Butanol. ''This volume of neat or blended butanol is designated and intended for use as transportation fuel or jet fuel in the 48 U.S. contiguous states and Hawaii. This butanol may only be used as a gasoline blendstock or jet fuel. Any person exporting this fuel is subject to the requirements of 40 CFR 80.1430.''.

(vii) Renewable fuels other than ethanol, biodiesel, heating oil, renewable diesel, naptha or butanol. ''This volume of neat or blended renewable fuel is designated and intended to be used as transportation fuel, heating oil, or jet fuel in the 48 U.S. contiguous states and Hawaii. Any person exporting this fuel is subject to the requirements of 40 CFR 80.1430.''.

(b) Except for transfers to truck carriers, retailers, or wholesale purchaser-consumers, product codes may be used to convey the information required under paragraphs (a)(1) through (11) and (e) of this section if such codes are clearly understood by each transferee.

(c) For renewable fuel, other than ethanol, that is not registered as motor vehicle fuel under 40 CFR Part 79, the PTD which is used to transfer ownership of the renewable fuel shall state ''This volume of renewable fuel may not be used as a motor vehicle fuel.''

(d) For fuel oil meeting paragraph (2) of the definition of ''heating oil'' in § 80.1401, the PTD of the fuel oil shall state: ''This volume of renewable fuel oil is designated and intended to be used to heat or cool interior spaces of homes or buildings to control ambient climate for human comfort. Do NOT use for process heat or cooling or any other purpose, as these uses are prohibited pursuant to 40 CFR 80.1460(g).''.

(e) Beginning January 1, 2021, on each occasion when any party transfers custody or ownership of certified NTDF, except when such fuel is dispensed into motor vehicles or nonroad vehicles, engines, or equipment, the transferor must provide to the transferee documents that include all the following information, as applicable:

(1) The transferor of certified NTDF must list all applicable required information as specified at 40 CFR 1090.1115 and, if the distillate fuel contains renewable fuel, all applicable required information in paragraphs (a), (b), and (d) of this section.

(2) The transferor must include the following statement on the PTD: ''15 ppm sulfur (maximum) certified NTDF—This fuel is designated for non-transportation use.''

[75 FR 14863, Mar. 26, 2010, as amended at 75 FR 26045, May 10, 2010; 78 FR 62471, Oct. 22, 2013; 79 FR 42118, July 18, 2014; 81 FR 23645, Apr. 22, 2016; 85 FR 7079, Feb. 6, 2020; 85 FR 78467, Dec. 4, 2020]

EFFECTIVE DATE NOTE: At 87 FR 39669, July 1, 2022, § 80.1453 was amended by adding paragraph (f), effective Aug. 30, 2022. For the convenience of the user, the added text is set forth as follows:

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

* * * * *

(f)(1) On each occasion when any party transfers title or custody of a biointermediate, the transferor must provide to the transferee documents that include all of the following information:

(i) The name and address of the transferor and transferee.

(ii) The transferor's and transferee's EPA company registration and applicable facility registration numbers.

(iii) The volume of biointermediate that is being transferred.

(iv) The date of the transfer.

(v) The location of the biointermediate at the time of the transfer.

(vi) The following statement designating the volume of biointermediate as feedstock for the production of a renewable fuel: ''This volume is designated and intended for use as biointermediate in the production of renewable fuel as defined in 40 CFR 80.1401. Parties may not generate RINs on this feedstock material and it must remain segregated from all products until received by a designated renewable fuel production facility.''

(2) In addition to the information specified in paragraph (f)(1) of this section, on each occasion when any party transfers title of a biointermediate or when any party transfers a biointermediate to a renewable fuel production facility, the transferor must provide to the transferee documents that include all of the following information:

(i) The renewable fuel type the biointermediate was designated to be used as a feedstock material for by the biointermediate producer under § 80.1476(i).

(ii) The composition of the biointermediate being transferred, including:

(A) The type and quantity of each feedstock that was used to make the biointermediate.

(B) The percentage of each feedstock that is renewable biomass, rounded to two decimal places.

(C) For a biointermediate that contains both renewable and non-renewable feedstocks:

(*1*) The percentage of each feedstock that is not renewable biomass, rounded to two decimal places.

(*2*) The feedstock energy from the renewable biomass used to make the biointermediate, in Btu.

(*3*) The feedstock energy from the non-renewable biomass used to make the biointermediate, in Btu.

(*4*) The total percentage of the biointermediate that may generate RINs, rounded to two decimal places.

(*5*) The total percentage of the biointermediate that may not generate RINs, rounded to two decimal places.

(D) For a biointermediate that contains cellulosic material:

(*1*) The percentage of each feedstock that is cellulosic, rounded to two decimal places.

(*2*) The percentage of each feedstock that is non-cellulosic, rounded to two decimal places, if applicable.

(*3*) If the biointermediate is intended for use in the production of a cellulosic biofuel, the total percentage of the biointermediate that may generate cellulosic RINs, rounded to two decimal places.

(*4*) For separated municipal solid waste, the cellulosic portion of the biointermediate is equivalent to the biogenic portion.

(*5*) For separated food waste, the non-cellulosic percentage is assumed to be zero percent unless it is demonstrated to be partially cellulosic.

(*6*) For separated yard waste, 100% of separated yard waste is deemed to be cellulosic.

(*7*) The following statement: ''I certify that the cellulosic content of this feedstock was derived from cellulose, hemicellulose, or lignin that was derived from renewable biomass.''

(iii) Copies of records specified in § 80.1454(i)(3), (5), and (6) for the volume being transferred, as applicable.

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

(a) *Requirements for obligated parties and exporters of renewable fuel.* Beginning July 1, 2010, any obligated party (as described at § 80.1406) or exporter of renewable fuel (as described at § 80.1430) must keep all of the following records:

(1) Product transfer documents consistent with § 80.1453 and associated with the obligated party's or exporter of renewable fuel's activity, if any, as transferor or transferee of renewable fuel or separated RINs.

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

(3) Records related to each RIN transaction, including all of the following:

(i) A list of the RINs owned, purchased, sold, separated, retired, or reinstated.

(ii) The parties involved in each RIN transaction including the transferor, transferee, and any broker or agent.

(iii) The date of the transfer of the RIN(s).

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

(4) Records related to the use of RINs (by facility, if applicable) for compliance, including all of the following:

(i) Methods and variables used to calculate the Renewable Volume Obligations pursuant to § 80.1407 or § 80.1430.

(ii) List of RINs used to demonstrate compliance.

(iii) Additional information related to details of RIN use for compliance.

(5) Records related to the separation of assigned RINs from renewable fuel volume.

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

(i) For exporters of renewable fuel for which no RINs were generated, an affidavit signed by the producer of the exported renewable fuel affirming that no RINs were generated for that volume of renewable fuel.

(ii) [Reserved]

(b) *Requirements for all producers of renewable fuel.* Beginning July 1, 2010, any domestic or RIN-generating foreign producer of a renewable fuel as defined in § 80.1401 must keep all of the following records in addition to those required under paragraphs (c) or (d) of this section:

(1) Product transfer documents consistent with § 80.1453 and associated with the renewable fuel producer's activity, if any, as transferor or transferee of renewable fuel or separated RINs.

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

(3) Records related to the generation and assignment of RINs for each facility, including all of the following:

(i) Batch volume in gallons.

(ii) Batch number.

(iii) RIN as assigned under § 80.1426, if applicable.

(iv) Identification of batches by renewable category.

(v) Type and quantity of co-products produced.

(vi) Type and quantity of feedstocks used.

(vii) Type and quantity of fuel used for process heat.

(viii) Feedstock energy calculations per § 80.1426(f)(4).

(ix) Date of production.

(x) Results of any laboratory analysis of batch chemical composition or physical properties.

(xi) For RINs generated for ethanol produced from corn starch at a facility using a pathway in Table 1 to § 80.1426 that requires the use of one or more of the advanced technologies listed in Table 2 to § 80.1426, documentation to demonstrate that employment of the required advanced technology or technologies was conducted in accordance with the specifications in Tables 1 and 2 to § 80.1426, including any requirement for application to 90% of the production on a calendar year basis.

(xii) All commercial documents and additional information related to details of RIN generation.

(4) Records related to each RIN transaction, separately for each transaction, including all of the following:

(i) A list of the RINs owned, purchased, sold, separated, retired, or reinstated.

(ii) The parties involved in each transaction including the transferor, transferee, and any broker or agent.

(iii) The date of the transfer of the RIN(s).

(iv) Additional information related to details of the transaction and its terms.

(5) Records related to the production, importation, ownership, sale or use of any volume of renewable fuel for which RINs were generated or blend of renewable fuel for which RINs were generated and gasoline or diesel fuel that any party designates for use as transportation fuel, jet fuel, or heating oil and the use of the fuel or blend as transportation fuel, jet fuel, or heating oil without further blending, in the designated form.

(6) Copies of registration documents required under § 80.1450, including information on fuels and products, feedstocks, facility production processes, process changes, and capacity, energy sources, and a copy of the independent third party engineering review submitted to EPA per § 80.1450(b)(2).

(7) For any producer of renewable fuel made from *Arundo donax* or *Pennisetum purpureum* per § 80.1426(f)(14), all the following:

(i) Records related to all requirements and duties set forth in the registration documents described in § 80.1450(b)(1)(x)(A), including but not limited to the Risk Mitigation Plan, monitoring records and reports, and adherence to state, local and federal invasive species requirements and permits.

(ii) Records associated with feedstock purchases and transfers that identify where the feedstocks were produced and are sufficient to verify that feedstocks used were produced and transported in accordance with an EPA approved Risk Mitigation Plan or were produced on land that the EPA determined does not present a significant likelihood of invasive spread beyond the planting area of the feedstock used for production of the renewable fuel, including all the following:

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

(*B*) Bills of lading, product transfer documents, or other commercial documents showing the quantity of feedstock purchased from each area identified above, and showing each transfer of custody of the feedstock from the location where it was produced to the renewable fuel production facility.

(8) A producer of fuel oil meeting paragraph (2) of the definition of heating oil in § 80.1401 shall keep copies of all contracts which describe the fuel oil under contract with each end user.

(9) Records, including contracts, related to the implementation of a QAP under § 80.1469.

(10) Records related to any volume of renewable fuel where RINs were not generated by the renewable fuel producer or importer pursuant to § 80.1426(c).

(c) *Additional requirements for imports of renewable fuel.* (1) Beginning July 1, 2010, any RIN-generating foreign producer of a renewable fuel or RIN-generating importer must keep records of feedstock purchases and transfers associated with renewable fuel for which RINs are generated, sufficient to verify that feedstocks used are renewable biomass (as defined in § 80.1401).

(i) RIN-generating foreign producers and importers of renewable fuel made from feedstocks that are planted crops or crop residue from existing 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.

(B) Bills of lading, product transfer documents, or other commercial documents showing the quantity of feedstock purchased from each area identified in paragraph (c)(1)(i)(A) of this section, and showing each transfer of custody of the feedstock from the location where it was produced to the renewable fuel production facility.

(ii)(A) RIN-generating foreign producers and importers of renewable fuel made from planted crops or crop residue from existing 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.

(B) The records must be provided by the feedstock producer, traceable to the land in question, and consist of at least one of the following documents:

(*1*) Sales records for planted crops or trees, crop or tree residue, or livestock; purchasing records for fertilizer, weed control, or reseeding, including seeds, seedlings, or other nursery stock.

(*2*) A written management plan for agricultural or silvicultural purposes; documentation of participation in an agricultural or silvicultural program sponsored by a Federal, state, or local government agency.

(*3*) Documentation of land management in accordance with an agricultural or silvicultural product certification program, an agreement for land management consultation with a professional forester that identifies the land in question.

(*4*) Evidence of the existence and ongoing maintenance of a road system or other physical infrastructure designed and maintained for logging use, together with one of the aforementioned documents in this paragraph (c)(1)(ii)(B).

(iii) RIN-generating foreign producers and importers of renewable fuel made from any other type of renewable biomass must have documents from their feedstock supplier certifying that the feedstock qualifies as renewable biomass as defined in § 80.1401, describing the feedstock and identifying the process that was used to generate the feedstock.

(2) Beginning July 1, 2010, any RIN-generating importer of renewable fuel (as defined in § 80.1401) must keep all of the following records:

(i) Product transfer documents consistent with § 80.1453 and associated with the renewable fuel importer's activity, if any, as transferor or transferee of renewable fuel.

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

(iii) Records related to the generation and assignment of RINs for each facility, including all of the following:

(A) Batch volume in gallons.

(B) Batch number.

(C) RIN as assigned under § 80.1426.

(D) Identification of batches by renewable category.

(E) Type and quantity of feedstocks used.

(F) Type and quantity of fuel used for process heat.

(G) Date of import.

(H) Results of any laboratory analysis of batch chemical composition or physical properties.

(I) The EPA registration number of the foreign renewable fuel producers producing the fuel.

(J) Additional information related to details of RIN generation.

(iv) Records related to each RIN transaction, including all of the following:

(A) A list of the RINs owned, purchased, sold, separated, retired, or reinstated.

(B) The parties involved in each transaction including the transferor, transferee, and any broker or agent.

(C) The date of the transfer of the RIN(s).

(D) Additional information related to details of the transaction and its terms.

(v) Copies of registration documents required under § 80.1450.

(vi) Records related to the import of any volume of renewable fuel that the importer designates for use as transportation fuel, jet fuel, or heating oil.

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

(1) Domestic producers of renewable fuel made from feedstocks that are planted trees or tree residue from actively managed tree plantations, slash and pre-commercial thinnings from forestlands or biomass obtained from areas at risk of wildfire must maintain all the following records to verify the location where these feedstocks were produced:

(i) Maps or electronic data identifying the boundaries of the land where each type of feedstock was produced.

(ii) Bills of lading, product transfer documents or other commercial documents showing the quantity of feedstock purchased from each area identified in paragraph (d)(1)(i) of this section, and showing each transfer of custody of the feedstock from the location where it was produced to the renewable fuel production facility.

(2) Domestic producers of renewable fuel made from planted trees or tree residue from actively managed tree plantations must keep records that serve as evidence that the land from which the feedstock was obtained was cleared prior to December 19, 2007 and actively managed on December 19, 2007. The records must be provided by the feedstock producer and must include at least one of the following documents, which must be traceable to the land in question:

(i) Sales records for planted trees or tree residue.

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

(iii) A written management plan for silvicultural purposes.

(iv) Documentation of participation in a silvicultural program sponsored by a Federal, state, or local government agency.

(v) Documentation of land management in accordance with a silvicultural product certification program, an agreement for land management consultation with a professional forester.

(vi) Evidence of the existence and ongoing maintenance of a road system or other physical infrastructure designed and maintained for logging use, together with one of the aforementioned documents.

(3) Domestic producers of renewable fuel made from 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, biogenic oils/fats/greases, and separated municipal solid waste are also subject to the requirements in paragraph (j) of this section.

(e) *Additional requirements for producers of fuel exempt from the 20% GHG reduction requirement.* Beginning July 1, 2010, any production facility with a baseline volume of fuel that is not subject to the 20% GHG threshold, pursuant to § 80.1403(c) and (d), must keep all of the following:

(1) Detailed engineering plans for the facility.

(2) Federal, State, and local (or foreign governmental) preconstruction approvals and permitting.

(3) Procurement and construction contracts and agreements.

(f) *Requirements for other parties that own RINs.* Beginning July 1, 2010, any party, other than those parties covered in paragraphs (a) and (b) of this section, that owns RINs must keep all of the following records:

(1) Product transfer documents consistent with § 80.1453 and associated with the party's activity, if any, as transferor or transferee of renewable fuel or separated RINs.

(2) Copies of all reports submitted to EPA under § 80.1451(c).

(3) Records related to each RIN transaction by renewable fuel category, including all of the following:

(i) A list of the RINs owned, purchased, sold, separated, retired, or reinstated.

(ii) The parties involved in each RIN transaction including the transferor, transferee, and any broker or agent.

(iii) The date of the transfer of the RIN(s).

(iv) Additional information related to details of the transaction and its terms.

(4) Records related to any volume of renewable fuel that the party designated for use as transportation fuel, jet fuel, or heating oil and from which RINs were separated pursuant to § 80.1429(b)(4).

(g) *Aggregate compliance with renewable biomass requirement.* Any 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, or from planted crops or crop residue from existing agricultural land in a country covered by a petition approved pursuant to § 80.1457, is covered by the aggregate compliance approach and is not subject to the recordkeeping requirements for planted crops and crop residue at § 80.1454(g)(2) unless EPA publishes a finding that the 2007 baseline amount of agricultural land in the U.S. has been exceeded or, for the aggregate compliance approach in a foreign country, that the withdrawal of EPA approval of the aggregate compliance approach is warranted pursuant to § 80.1457(e).

(1) EPA will make findings concerning whether the 2007 baseline amount of agricultural land in the U.S. or other country covered by a petition

approved pursuant to § 80.1457 has been exceeded and will publish these findings in the FEDERAL REGISTER by November 30 of the year preceding the compliance period.

(2) If EPA finds that the 2007 baseline amount of agricultural land in the U.S. or other country covered by a petition approved pursuant to § 80.1457 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 or crop residue in the country for which such a finding is made 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:

(1) To comply with the alternative renewable biomass tracking requirement under this paragraph (h), a renewable fuel producer or importer must either arrange to have an independent third party conduct a comprehensive program of annual compliance surveys, or participate in the funding of an organization which arranged to have an independent third party conduct a comprehensive program of annual compliance surveys, to be carried out in accordance with a survey plan which has been approved by EPA.

(2) The annual compliance surveys under this paragraph (h) must be all the following:

(i) Planned and conducted by an independent surveyor that meets the requirements in 40 CFR 1090.55.

(ii) Conducted at renewable fuel production and import facilities and their feedstock suppliers.

(iii) Representative of all renewable fuel producers and importers in the survey area and representative of their feedstock suppliers.

(iv) Designed to achieve at least the same level of quality assurance required in paragraphs (c)(1), (d) and (g) of this section.

(3) The compliance survey program shall require the independent surveyor conducting the surveys to do all the following:

(i) Conduct feedstock audits of renewable fuel production and import facilities in accordance with the survey plan approved under this paragraph (h), or immediately notify EPA of any refusal of these facilities to allow an audit to be conducted.

(ii) Obtain the records and product transfer documents associated with the feedstocks being audited.

(iii) Determine the feedstock supplier(s) that supplied the feedstocks to the renewable fuel producer.

(iv) Confirm that feedstocks used to produce RIN-generating renewable fuels meet the definition of renewable biomass as defined in § 80.1401.

(v) Immediately notify EPA of any case where the feedstocks do not meet the definition of renewable biomass as defined in § 80.1401.

(vi) Immediately notify EPA of any instances where a renewable fuel producer, importer or feedstock supplier subject to review under the approved plan fails to cooperate in the manner described in this section.

(vii) Submit to EPA a report of each survey, within thirty days following the completion of each survey, such report to include all the following information:

(A) The identification of the person who conducted the survey.

(B) An attestation by the officer of the surveyor company that the survey was conducted in accordance with the survey plan and the survey results are accurate.

(C) Identification of the parties for whom the survey was conducted.

(D) Identification of the covered area surveyed.

(E) The dates on which the survey was conducted.

(F) The address of each facility at which the survey audit was conducted and the date of the audit.

(G) A description of the methodology used to select the locations for survey audits and the number of audits conducted.

(viii) Maintain all records relating to the survey audits conducted under this section (h) for a period of at least 5 years.

(ix) At any time permit any representative of EPA to monitor the conduct of the surveys, including observing audits, reviewing records, and analysis of the audit results.

(4) A survey plan under this paragraph (h) must include all the following:

(i) Identification of the parties for whom the survey is to be conducted.

(ii) Identification of the independent surveyor.

(iii) A methodology for determining all the following:

(A) When the audits will be conducted.

(B) The audit locations.

(C) The number of audits to be conducted during the annual compliance period.

(iv) Any other elements determined by EPA to be necessary to achieve the level of quality assurance required under paragraphs (c)(1), (d), and (g) of this section.

(5)(i) Each renewable fuel producer and importer who participates in the alternative renewable biomass tracking under this paragraph (h) must take all reasonable steps to ensure that each feedstock producer, aggregator, distributor, or supplier cooperates with this program by allowing the independent surveyor to audit their facility and by providing to the independent surveyor and/or EPA, upon request, copies of management plans, product transfer documents, and other records or information regarding the source of any feedstocks received.

(ii) Reasonable steps under paragraph (h)(5)(i) of this section must include, but typically should not be limited to: Contractual agreements with feedstock producers, aggregators, distributors, and suppliers, which require them to cooperate with the independent surveyor and/or EPA in the manner described in paragraph (h)(5)(i) of this section.

(6) The procedure for obtaining EPA approval of a survey plan under this paragraph (h), and for revocation of any such approval, are as follows:

(i) A detailed survey plan which complies with the requirements of this paragraph (h) must be submitted to EPA, no later than September 1 of the year preceding the calendar year in which the surveys will be conducted.

(ii) The survey plan must be signed by a responsible corporate officer of the renewable fuel producer or importer, or responsible officer of the organization which arranges to have an independent surveyor conduct a program of renewable biomass compliance surveys, as applicable.

(iii) The survey plan must be sent to the attention of ''RFS Program'' to the address in § 80.10(a).

(iv) EPA will send a letter to the party submitting a survey plan under this section, either approving or disapproving the survey plan.

(v) EPA may revoke any approval of a survey plan under this section for cause, including an EPA determination that the approved survey plan had

proved inadequate in practice or that it was not fully implemented.

(vi) The approving official for an alternative quality assurance program under this section is the Director of the Compliance and Innovative Strategies Division, Office of Transportation and Air Quality.

(vii) Any notifications required under this paragraph (h) must be directed to the officer designated in paragraph (h)(6)(vi) of this section.

(7)(i) No later than December 1 of the year preceding the year in which the surveys will be conducted, the contract with the independent surveyor shall be in effect, and an amount of money necessary to carry out the entire survey plan shall be paid to the independent surveyor or placed into an escrow account with instructions to the escrow agent to pay the money to the independent surveyor during the course of the conduct of the survey plan.

(ii) No later than December 15 of the year preceding the year in which the surveys will be conducted, EPA must receive a copy of the contract with the independent surveyor, proof that the money necessary to carry out the survey plan has either been paid to the independent surveyor or placed into an escrow account, and, if placed into an escrow account, a copy of the escrow agreement, to be sent to the official designated in paragraph (h)(6)(iii) of this section.

(8) A failure of any renewable fuel producers or importer to fulfill or cause to be fulfilled any of the requirements of this paragraph (h) will cause the option for such party to use the alternative quality assurance requirements under this paragraph (h) to be void *ab initio*.

(i) Beginning July 1, 2010, all parties must keep transaction information sent to EMTS in addition to other records required under this section.

(1) For buy or sell transactions of separated RINs, parties must retain records substantiating the price reported to EPA under § 80.1452.

(2) For buy or sell transactions of separated RINs on or after January 1, 2020, parties must retain records demonstrating the transaction mechanism (*e.g.*, spot market or fulfilling a term contract).

(j) A renewable fuel producer that produces fuel from separated yard waste (as described in § 80.1426(f)(5)(i)(A)), separated food waste (as described in § 80.1426(f)(5)(i)(B)), separated municipal solid waste (as described in § 80.1426(f)(5)(i)(C)), or biogenic waste oils/fats/greases must keep all the following additional records:

(1) For separated yard waste, separated food waste, and biogenic waste oils/fats/greases:

(i) Documents demonstrating the amounts, by weight, purchased of separated yard waste, separated food waste, or biogenic waste oils/fats/greases for use as a feedstock in producing renewable fuel.

(ii) Documents demonstrating the location of any establishment(s) from which the waste stream consisting solely of separated yard waste, separated food waste, or biogenic waste oils/fats/greases is collected.

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

(2) For separated municipal solid waste:

(i) Contracts and documents memorializing the sale of paper, cardboard, plastics, rubber, textiles, metals, and glass separated from municipal solid waste for recycling.

(ii) Documents demonstrating the amounts by weight purchased of post-recycled separated yard and food waste for use as a feedstock in producing renewable fuel.

(iii) 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.

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

(k)(1) Biogas/CNG/LNG and electricity in pathways involving feedstocks other than grain sorghum. A renewable fuel producer that generates RINs for renewable CNG, renewable LNG or renewable electricity pursuant to § 80.1426(f)(10) or (11), or that uses process heat from biogas to produce renewable fuel pursuant to § 80.1426(f)(12) shall keep all of the following additional records:

(i) Documentation recording the sale of renewable CNG, renewable LNG 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 process heat to make renewable fuel as relied upon in § 80.1426(f)(12) and the transfer of title of the biogas/CNG/LNG or renewable electricity from the point of biogas production to the facility which sells or uses the fuel for transportation purposes.

(ii) Documents demonstrating the volume and energy content of biogas/CNG/LNG, 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.

(iii) Documents demonstrating the volume and energy content of biogas/CNG/LNG, 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 commercial distribution.

(iv) Documents demonstrating the volume and energy content of biogas relied upon under § 80.1426(f)(12) at the point of distribution.

(v) Affidavits, EPA-approved documentation, or data from a real-time electronic monitoring system, confirming that the amount of the biogas/CNG/LNG or renewable electricity relied upon under § 80.1426(f)(10) and (11) was used for transportation purposes only, and for no other purpose. The RIN generator shall obtain affidavits, or monitoring system data under this paragraph (k), at least once per calendar quarter.

(vi) The biogas or renewable electricity producer's Compliance Certification required under Title V of the Clean Air Act.

(vii) Any other records as requested by the Administrator.

(2) Biogas and electricity in pathways involving grain sorghum as feedstock. A renewable fuel producer that produces fuel pursuant to a pathway that uses grain sorghum as a feedstock shall keep all of the following additional records, as appropriate:

(i) Contracts and documents memorializing the purchase and sale of biogas and the transfer of biogas from the point of generation to the ethanol production facility.

(ii) If the advanced biofuel pathway is used, documents demonstrating the total kilowatt-hours (kWh) of electricity used from the grid, and the total kWh of grid electricity used on a per gallon of ethanol basis, pursuant to § 80.1426(f)(13).

(iii) Affidavits from the producer of biogas used at the facility, and all parties that held title to the biogas, confirming that title and environmental attributes of the biogas relied upon under § 80.1426(f)(13) were used for producing ethanol at the renewable fuel production facility and for no other purpose. The renewable fuel producer shall obtain these affidavits at least once per calendar quarter.

(iv) The biogas producer's Compliance Certification required under Title V of the Clean Air Act.

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

(l) Requirements for producers or importers of any renewable fuel other than ethanol, biodiesel, renewable gasoline, renewable diesel that meets ASTM D 975–13a Grade No. 1–D or No. 2–D specifications (incorporated by reference, see § 80.1468), biogas or renewable electricity. A renewable fuel producer that generates RINs for any renewable fuel other than ethanol, biodiesel, renewable gasoline, renewable diesel that meets ASTM D 975–13a Grade No. 1–D or No. 2–D specifications (incorporated by reference, see § 80.1468), biogas or renewable electricity shall keep all of the following additional records:

(1) Documents demonstrating the total volume of renewable fuel produced, total volume of renewable fuel blended into gasoline and diesel fuel, and the percentage of renewable fuel in each batch of finished fuel.

(2) Contracts and documents memorializing the sale of renewable fuel to parties who blend the fuel into gasoline or diesel fuel to produce a transportation fuel, heating oil or jet fuel, or who use the renewable fuel in its neat form for a qualifying fuel use.

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

(m) Requirements for independent third-party auditors. Any independent

third-party auditor (as described at § 80.1471) must keep all of the following records for a period of at least five years:

(1) Copies of all reports submitted to the EPA under § 80.1451(g), as applicable.

(2) Records related to the implementation of a QAP under § 80.1469 for each facility including records from facility audits and ongoing and quarterly monitoring activities.

(3) Records related to the verification of RINs under § 80.1471(e).

(4) Copies of communications sent to and received from renewable fuel producers or foreign renewable fuel producers, feedstock suppliers, purchasers of RINs, and obligated parties.

(5) Copies of all notes relating to the implementation of a QAP under § 80.1469.

(6) List of RINs reported to the EPA and renewable fuel producers or foreign renewable fuel producers as potentially invalidly generated under § 80.1474 compliance.

(7) Records related to the professional liability insurance requirement under § 80.1471(c).

(8) Copies of all records related to any financial assurance instrument as required under § 80.1470 under a quality assurance plan implemented under § 80.1469(a) during the interim period.

(9) Copies of all records and notifications related to the identification of a potentially invalid RIN under § 80.1474(b).

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

(n) The records required under paragraphs (a) through (d), (f) through (l), and (t) of this section and under § 80.1453 shall be kept for five years from the date they were created, except that records related to transactions involving RINs shall be kept for five years from the date of the RIN transaction.

(o) The records required under paragraph (e) of this section shall be kept through calendar year 2022.

(p) On request by the EPA, the records required under this section and under § 80.1453 must be made available to the Administrator or the Administrator's authorized representative. For records that are electronically generated or maintained, the equipment or software necessary to read the records shall be made available; or, if requested by the EPA, electronic records shall be converted to paper documents.

(q) The records required in paragraphs (b)(3) and (c)(1) of this section must be transferred with any renewable fuel sent to the importer of that renewable fuel by any non-RIN-generating foreign producer.

(r) Copies of all reports required under § 80.1464.

(s) Producers of renewable fuel using crop residue shall keep records of all of the following:

(1) The specific crop residue feedstock(s) utilized to produce renewable fuel for each batch of renewable fuel produced.

(2) The total quantity of each specific crop residue feedstock used for each batch.

(3) Total amount of fuel produced under the crop residue pathway for each batch.

(t) *Requirements for parties that redesignate certified NTDF as MVNRLM diesel fuel.* Parties that redesignate certified NTDF as MVNRLM diesel fuel under § 80.1408 must keep all of the following additional records:

(1) Records related to all transactions in which certified NTDF is redesignated as MVNRLM diesel fuel.

(2) Records related to all transactions in which MVNRLM diesel fuel is redesignated to a non-transportation use.

(3) Records related to the volume of MVNRLM diesel fuel received.

(4) Records related to the volume of MVNRLM diesel fuel delivered.

(5) Records related to the volume of certified NTDF received.

(6) Records related to the volume of certified NTDF delivered.

(u) *Requirements for recordkeeping of RIN holdings for all parties transacting or owning RINs.* (1) Starting January 1, 2020, parties must retain records related to end-of-day separated D6 RIN holdings, and any associated calculations recorded in order to meet the RIN holdings requirements described in § 80.1435 for a period of at least five

years. Such records must include information related to any corporate affiliates, contractual affiliates, and their RIN holdings and calculations.

(2) Parties must retain records related to their reports to EPA regarding threshold compliance under §§ 80.1435 and 80.1451 for a period of at least five years.

(v) *Requirements for recordkeeping of contractual and corporate affiliates.* (1) Parties must retain records including, but not limited to, the name, address, business location, contact information, and description of relationship, for each RIN-holding corporate affiliate for a period of at least five years. For the corporate affiliate group, a relational diagram.

(2) Parties must retain records including, but not limited to, the name, address, business location, contact information, and contract or other agreement for each contractual affiliate for a period of at least five years.

(3) If a party claims an exemption from aggregation under § 80.1435(e), the party must retain all records in support of the exemption for a period of at least five years and must provide these records to the attest auditor under § 80.1464, and to EPA upon request.

(w) *English language records.* Any document requested by the Administrator under this section must be submitted in English, or shall include an English translation.

[75 FR 14863, Mar. 26, 2010, as amended at 75 FR 26046, May 10, 2010; 75 FR 76829, Dec. 9, 2010; 75 FR 79978, Dec. 21, 2010; 77 FR 74606, Dec. 17, 2012; 78 FR 22789, Apr. 17, 2013; 78 FR 41715, July 11, 2013; 78 FR 62471, Oct. 22, 2013; 79 FR 42118, 42165, July 18, 2014; 84 FR 27024, June 10, 2019; 85 FR 7080, Feb. 6, 2020; 85 FR 78467, Dec. 4, 2020]

EFFECTIVE DATE NOTE: At 87 FR 39670, July 1, 2022, § 80.1454 was amended by:

a. Redesignating paragraphs (b)(3)(vii) through (xii) as paragraphs (b)(3)(viii) through (xiii), respectively, and adding a new paragraph (b)(3)(vii);

b. Revising paragraph (b)(6), the first sentence of paragraph (d)(4), and paragraphs (i) and (j) introductory text;

c. Adding a heading to paragraph (k);

d. Revising paragraphs (l) introductory text and (l)(1);

e. Redesignating paragraph (l)(3) as paragraph (l)(4) and adding a new paragraph (l)(3);

f. Revising the first sentence of paragraph (m) introductory text;

g. Redesignating paragraph (m)(10) as paragraph (m)(11) and adding a new paragraph (m)(10);

h. Removing paragraphs (n) through (q);

i. Redesignating paragraphs (s) through (v) as paragraphs (n) through (q);

j. Revising newly redesignated paragraph (n) introductory text;

k. Revising paragraph (r);

l. Adding new paragraphs (s) through (v); and

m. Removing paragraph (w).

The amendments are effective Aug. 30, 2022. For the convenience of the user, the added and revised text is set forth as follows:

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

* * * * *

(b) * * *

(3) * * *

(vii) Type and quantity of biointermediates used.

* * * * *

(6) Copies of registration documents required under § 80.1450, including information on fuels and products, feedstocks, biointermediates, facility production processes, process changes, and capacity, energy sources, and a copy of the independent third party engineering review report submitted to EPA per § 80.1450(b)(2).

* * * * *

(d) * * *

(4) Domestic producers of renewable fuel or biointermediates made from any other type of renewable biomass must have documents from their feedstock supplier certifying that the feedstock qualifies as renewable biomass, describing the feedstock. * * *

* * * * *

(i) *Requirements for biointermediate producers.* In addition to any other applicable records a biointermediate producer must maintain under this section, any biointermediate producer producing a biointermediate must keep all of the following records:

(1) Product transfer documents consistent with § 80.1453(f) and associated with the biointermediate producer's activities, if any, as transferor or transferee of biointermediates.

(2) Copies of all reports submitted to EPA under § 80.1451(i).

(3) Records related to the production of biointermediates for each biointermediate

production facility, including all of the following:

(i) Batch volume.

(ii) Batch number.

(iii) Type and quantity of co-products produced.

(iv) Type and quantity of feedstocks used.

(v) Type and quantity of fuel used for process heat.

(vi) Calculations per § 80.1426(f), as applicable.

(vii) Date of production.

(viii) Results of any laboratory analysis of batch chemical composition or physical properties.

(4) Copies of registration documents required under § 80.1450, including information on products, feedstocks, facility production processes, process changes, and capacity, energy sources, and a copy of the independent third party engineering review submitted to EPA per § 80.1450(b)(2)(i).

(5) Records demonstrating that feedstocks are renewable biomass, as required under paragraphs (d), (g), (h), and (j) of this section, as applicable.

(6) For any biointermediate made from Arundo donax or Pennisetum purpureum per § 80.1426(f)(14), all applicable records described in paragraph (b)(7) of this section.

(7) Records, including contracts, related to the implementation of a QAP under §§ 80.1469 and 80.1477.

(j) *Additional requirements for producers that use separated yard waste, separate food waste, separated municipal solid waste, or biogenic waste oils/fats/greases.* A renewable fuel or biointermediate producer that produces fuel or biointermediate from separated yard waste, separated food waste, separated municipal solid waste, or biogenic waste oils/fats/greases must keep all the following additional records:

* * * * *

(k) *Additional requirements for producers of renewable fuel using biogas.* * * *

* * * * *

(l) *Additional requirements for producers or importers of any renewable fuel other than ethanol, biodiesel, renewable gasoline, renewable diesel, biogas, or renewable electricity.* A renewable fuel producer that generates RINs for any renewable fuel other than ethanol, biodiesel, renewable gasoline, renewable diesel that meets the Grade No. 1–D or No. 2–D specification in ASTM D975 (incorporated by reference, see § 80.1468), biogas or renewable electricity shall keep all of the following additional records:

(1) Documents demonstrating the total volume of renewable fuel produced, total volume of renewable fuel blended into gasoline and distillate fuel, and the percentage of renewable fuel in each batch of finished fuel.

* * * * *

(3) For each batch of renewable fuel that generated RINs under § 80.1426(f)(17)(i)(B)(*2*), one or more affidavits from the party that blended or used the renewable fuel that includes all the following information:

(i) Quantity of renewable fuel received from the producer or importer.

(ii) Date the renewable fuel was received from producer.

(iii) A description of the fuel that the renewable fuel was blended into and the blend ratios for each batch, if applicable.

(iv) A description of the finished fuel, and a statement that the fuel meets all applicable standards and was sold for use as a transportation fuel, heating oil or jet fuel.

(v) Quantity of assigned RINs received with the renewable fuel, if applicable.

(vi) Quantity of assigned RINs that the end user separated from the renewable fuel, if applicable.

* * * * *

(m) *Requirements for independent third-party auditors.* * * *

(10) Copies of all reports required under § 80.1464.

* * * * *

(n) *Additional requirements for producers of renewable fuel using crop residue.* Producers of renewable fuel using crop residue must keep records of all of the following:

* * * * *

(r) *Transaction requirement.* Beginning July 1, 2010, all parties must keep transaction information sent to EMTS in addition to other records required under this section.

(1) For buy or sell transactions of separated RINs, parties must retain records substantiating the price reported to EPA under § 80.1452.

(2) For buy or sell transactions of separated RINs on or after January 1, 2020, parties must retain records demonstrating the transaction mechanism (*e.g.*, spot market or fulfilling a term contract).

(s) *Record retention requirement.* (1) The records required under paragraphs (a) through (d), (f) through (l), (n), and (r) of this section and under § 80.1453 must be kept for five years from the date they were created, except that records related to transactions involving RINs must be kept for five years from the date of the RIN transaction.

(2) The records required under paragraph (e) of this section must be kept through calendar year 2022.

(t) *Record availability requirement*. On request by the EPA, the records required under this section and under § 80.1453 must be made available to the Administrator or the Administrator's authorized representative. For records that are electronically generated or maintained, the equipment or software necessary to read the records shall be made available; or, if requested by the EPA, electronic records shall be converted to paper documents.

(u) *Record transfer requirement*. The records required in paragraphs (b)(3) and (c)(1) of this section must be transferred with any renewable fuel sent to the importer of that renewable fuel by any non-RIN-generating foreign producer.

(v) *English language records*. Any document requested by the Administrator under this section must be submitted in English or must include an English translation.

§ 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:

(1) The registration requirements of § 80.1450.

(2) The reporting requirements of § 80.1451.

(3) The EMTS requirements of § 80.1452.

(4) The recordkeeping requirements of § 80.1454.

(5) The attest engagement requirements of § 80.1464.

(6) The production outlook report requirements of § 80.1449.

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

(2) Renewable fuel production facilities and importers who produce or import less than 10,000 gallons of renewable fuel each year but wish to own RINs will be subject to all requirements stated in paragraphs (a)(1) through (a)(6) and (b)(1) of this section, and all other applicable requirements of this subpart M.

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

(1) The registration requirements of § 80.1450.

(2) The reporting requirements of § 80.1451.

(3) The EMTS requirements of § 80.1452.

(4) The recordkeeping requirements of § 80.1454.

(5) The attest engagement requirements of § 80.1464.

(6) The production outlook report requirements of § 80.1449.

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

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

[75 FR 14863, Mar. 26, 2010, as amended at 75 FR 26047, May 10, 2010]

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

(a) If EPA reduces the applicable volume of cellulosic biofuel pursuant to section 211(o)(7)(D)(i) of the Clean Air Act (42 U.S.C. 7545(o)(7)(D)(i)) for any given compliance year, then EPA will provide cellulosic biofuel waiver credits for purchase for that compliance year.

(1) The price of these cellulosic biofuel waiver credits will be set by EPA on an annual basis in accordance with paragraph (d) of this section.

(2) The total cellulosic biofuel waiver credits available will be equal to the reduced cellulosic biofuel volume established by EPA for the compliance year.

(b) *Use of cellulosic biofuel waiver credits.* (1) Cellulosic biofuel waiver credits are only valid for use in the compliance year that they are made available.

(2) Cellulosic biofuel waiver credits are nonrefundable.

(3) Cellulosic biofuel waiver credits are nontransferable.

(4) Cellulosic biofuel waiver credits may only be used for an obligated party's current year cellulosic biofuel RVO and not towards any prior year deficit cellulosic biofuel volume obligations.

(c) *Purchase of cellulosic biofuel waiver credits.* (1) Only parties with an RVO for cellulosic biofuel may purchase cellulosic biofuel waiver credits.

(2) Cellulosic biofuel waiver credits shall be purchased from EPA at the time that a party submits its annual compliance report to EPA pursuant to § 80.1451(a)(1).

(3) Parties may not purchase more cellulosic biofuel waiver credits than their current year cellulosic biofuel RVO minus cellulosic biofuel RINs with a D code of 3 that they own.

(4) Cellulosic biofuel waiver credits may only be used to meet an obligated party's cellulosic biofuel RVO.

(d) *Setting the price of cellulosic biofuel waiver credits.* (1) The price for cellulosic biofuel waiver credits shall be set equal to the greater of:

(i) $0.25 per cellulosic biofuel waiver credit, adjusted for inflation in comparison to calendar year 2008; or

(ii) $3.00 less the wholesale price of gasoline per cellulosic biofuel waiver credit, adjusted for inflation in comparison to calendar year 2008.

(2) The wholesale price of gasoline will be calculated by averaging the most recent twelve monthly values for U.S. Total Gasoline Bulk Sales (Price) by Refiners as provided by the Energy Information Administration that are available as of September 30 of the year preceding the compliance period.

(3) The inflation adjustment will be calculated by comparing the Consumer Price Index for All Urban Consumers (CPI–U): U.S. City Average, Unadjusted Index for All Items expenditure category as provided by the Bureau of Labor Statistics for June of the year preceding the compliance period to the comparable value reported for January 2009.

(e) Cellulosic biofuel waiver credits under this section will only be able to be purchased on forms and following procedures prescribed by EPA.

[75 FR 14863, Mar. 26, 2010, as amended at 80 FR 18141, Apr. 3, 2015]

§ 80.1457 Petition process for aggregate compliance approach for foreign countries.

(a) EPA may approve a petition for application of the aggregate compliance approach to planted crops and crop residue from existing agricultural land in a foreign country if EPA determines that an aggregate compliance approach will provide reasonable assurance that planted crops and crop residue from the country in question meet the definition of renewable biomass and will continue to meet the definition of renewable biomass, based on the submission of credible, reliable, and verifiable data.

(1) As part of its evaluation, EPA will consider all of the following:

(i) Whether there has been a reasonable identification of the ''2007 baseline area of land,'' defined as the total amount of cropland, pastureland, and land that is equivalent to U.S. Conservation Reserve Program land in the country in question that was actively managed or fallow and nonforested on December 19, 2007.

(ii) Whether information on the total amount of cropland, pastureland, and

land that is equivalent to U.S. Conservation Reserve Program land in the country in question for years preceding and following calendar year 2007 shows that the 2007 baseline area of land identified in paragraph (a)(1)(i) of this section is not likely to be exceeded in the future.

(iii) Whether economic considerations, legal constraints, historical land use and agricultural practices and other factors show that it is likely that producers of planted crops and crop residue will continue to use agricultural land within the 2007 baseline area of land identified in paragraph (a)(1)(i) of this section into the future, as opposed to clearing and cultivating land not included in the 2007 baseline area of land.

(iv) Whether there is a reliable method to evaluate on an annual basis whether the 2007 baseline area of land identified in paragraph (a)(1)(i) of this section is being or has been exceeded.

(v) Whether a credible and reliable entity has been identified to conduct data gathering and analysis, including annual identification of the aggregate amount of cropland, pastureland, and land that is equivalent to U.S. Conservation Reserve Program land, needed for the annual EPA evaluation specified in § 80.1454(g)(1), and whether the data, analyses, and methodologies are publicly available.

(2) [Reserved]

(b) Any petition and all supporting materials submitted under paragraph (a) of this section must be submitted both in English and its original language (if other than English), and must include all of the following or an explanation of why it is not needed for EPA to consider the petition:

(1) Maps or electronic data identifying the boundaries of the land for which the petitioner seeks approval of an aggregate compliance approach.

(2) The total amount of land that is cropland, pastureland, or land equivalent to U.S. Conservation Reserve Program land within the geographic boundaries specified in paragraph (b)(1) of this section that was cleared or cultivated prior to December 19, 2007 and that was actively managed or fallow and nonforested on that date, and

(3) Land use data that demonstrates that the land identified in paragraph (b)(1) of this section is cropland, pastureland or land equivalent to U.S. Conservation Reserve Program land that was cleared or cultivated prior to December 19, 2007, and that was actively managed or fallow and nonforested on that date, which may include any of the following:

(i) Satellite imagery or data.

(ii) Aerial photography.

(iii) Census data.

(iv) Agricultural survey data.

(v) Agricultural economic modeling data.

(4) Historical land use data for the land within the geographic boundaries specified in paragraph (b)(1) of this section to the current year, which may include any of the following:

(i) Satellite imagery or data.

(ii) Aerial photography.

(iii) Census data.

(iv) Agricultural surveys.

(v) Agricultural economic modeling data.

(5) A description of any applicable laws, agricultural practices, economic considerations, or other relevant factors that had or may have an effect on the use of agricultural land within the geographic boundaries specified in paragraph (b)(1) of this section, including information regarding the efficacy and enforcement of relevant laws and regulations.

(6) A plan describing how the petitioner will identify a credible and reliable entity who will, on a continuing basis, conduct data gathering, analysis, and submittal to assist EPA in making an annual determination of whether the criteria specified in paragraph (a) of this section remains satisfied.

(7) A letter, signed by a national government representative at the ministerial level or equivalent, confirming that the petition and all supporting data have been reviewed and verified by the ministry (or ministries) or department(s) of the national government with primary expertise in agricultural land use patterns, practices, data, and statistics, that the data support a finding that planted crops and crop residue from the specified country

meet the definition of renewable biomass and will continue to meet the definition of renewable biomass, and that the responsible national government ministry (or ministries) or department(s) will review and verify the data submitted on an annual basis to facilitate EPA's annual evaluation of the 2007 baseline area of land specified in § 80.1454(g)(1) for the country in question.

(8) Any additional information the Administrator may require.

(c) EPA will issue a FEDERAL REGISTER notice informing the public of receipt of any petition submitted pursuant to this section and will provide a 60-day period for public comment. If EPA approves a petition it will issue a FEDERAL REGISTER notice announcing its decision and specifying an effective date for the application of the aggregate compliance approach to planted crops and crop residue from the country. Thereafter, the planted crops and crop residue from the country will be covered by the aggregate compliance approach set forth in § 80.1454(g), or as otherwise specified pursuant to paragraph (d) of this section.

(d) If EPA grants a petition to establish an aggregate compliance approach for planted crops and crop residue from a foreign country, it may include any conditions that EPA considers appropriate in light of the conditions and circumstances involved.

(e)(1) EPA may withdraw its approval of the aggregate compliance approach for the planted crops and crop residue from the country in question if:

(i) EPA determines that the data submitted pursuant to the plan described in paragraph (b)(6) of this section does not demonstrate that the amount of cropland, pastureland and land equivalent to U.S. Conservation Reserve Program land within the geographic boundaries covered by the approved petition does not exceed the 2007 baseline area of land;

(ii) EPA determines based on other information that the criteria specified in paragraph (a) of this section is no longer satisfied; or

(iii) EPA determines that the data needed for its annual evaluation has not been collected and submitted in a timely and appropriate manner.

(2) If EPA withdraws its approval for a given country, then producers using planted crops or crop residue from that country will be subject to the individual recordkeeping and reporting requirements of § 80.1454(b) through (d) in accordance with the schedule specified in § 80.1454(g).

[75 FR 76829, Dec. 9, 2010]

§§ 80.1458–80.1459 [Reserved]

§ 80.1460 What acts are prohibited under the RFS program?

(a) *Renewable fuels producer or importer violation.* Except as provided in § 80.1455, no person shall produce or import a renewable fuel without complying with the requirements of § 80.1426 regarding the generation and assignment of RINs.

(b) *RIN generation and transfer violations.* No person shall do any of the following:

(1) Generate a RIN for a fuel that is not a renewable fuel, or for which the applicable renewable fuel volume was not produced.

(2) Create or transfer to any person a RIN that is invalid under § 80.1431.

(3) Transfer to any person a RIN that is not properly identified as required under § 80.1425.

(4) Transfer to any person a RIN with a K code of 1 without transferring an appropriate volume of renewable fuel to the same person on the same day.

(5) Introduce into commerce any renewable fuel produced from a feedstock or through a process that is not described in the person's registration information.

(6) Generate a RIN for fuel for which RINs have previously been generated.

(7) Generate a RIN for fuel that fails to meet all the conditions set forth in an approval document for a pathway petition submitted under § 80.1416.

(c) *RIN use violations.* No person shall do any of the following:

(1) Fail to acquire sufficient RINs, or use invalid RINs, to meet the person's RVOs under § 80.1427.

(2) 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).

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

(d) *RIN retention violation.* No person shall retain RINs in violation of the requirements in § 80.1428(a)(5).

(e) *Causing a violation.* No person shall cause another person to commit an act in violation of any prohibited act under this section.

(f) *Failure to meet a requirement.* No person shall fail to meet any requirement that applies to that person under this subpart.

(g) *Failing to use a renewable fuel oil for its intended use.* No person shall use fuel oil that meets paragraph (2) of the definition of ''heating oil'' in § 80.1401 and for which RINs have been generated in an application other than to heat or cool interior spaces of homes or buildings to control ambient climate for human comfort.

(h) *RIN separation violations.* No person shall do any of the following:

(1) Identify separated RINs in EMTS with the wrong separation reason code.

(2) Identify separated RINs in EMTS without having a qualifying separation event pursuant to § 80.1429.

(3) Separate more than 2.5 RINs per gallon of renewable fuel that has a valid qualifying separation event pursuant to § 80.1429.

(4) Separate RINs outside of the requirements in § 80.1452(c).

(5) Improperly separate RINs in any other way not listed in paragraphs (h)(1)–(4) of this section.

(i) *Independent third-party auditor violations.* No person shall do any of the following:

(1) Fail to fully implement a QAP approved under § 80.1469.

(2) Fail to fully, accurately, and timely notify all appropriate parties of potentially invalid RINs under § 80.1474(b).

(3) Verify a RIN under § 80.1471(e) without verifying every applicable requirement in § 80.1469 and verifying each element in an approved QAP.

(j) *Redesignation violations.* No person may exceed the balance requirements at § 80.1408(a)(2)(i) without incurring an RVO.

[75 FR 14863, Mar. 26, 2010, as amended at 75 FR 26047, May 10, 2010; 77 FR 1357, Jan. 9, 2012; 78 FR 62471, Oct. 22, 2013; 79 FR 42119, July 18, 2014; 85 FR 7080, Feb. 6, 2020]

EFFECTIVE DATE NOTE: At 87 FR 39671, July 1, 2022, § 80.1460 was amended by revising paragraphs (b)(5) and (6) and adding paragraphs (b)(8) and (k), effective Aug. 30, 2022. For the convenience of the user, the added and revised text is set forth as follows:

§ 80.1460 What acts are prohibited under the RFS program?

* * * * *

(b) * * *

(5) Introduce into commerce any renewable fuel produced from a feedstock, biointermediate, or through a process that is not described in the person's registration information.

(6) Generate a RIN for fuel for which RINs have previously been generated unless the RINs were generated under § 80.1426(c)(6).

* * * * *

(8) Generate a RIN for fuel that was produced from a biointermediate for which the fuel and biointermediate were not audited under an EPA-approved quality assurance plan.

* * * * *

(k) *Biointermediate-related violations.* No person may do any of the following:

(1) Introduce into commerce for use in the production of a renewable fuel any biointermediate produced from a feedstock or through a process that is not described in the person's registration information.

(2) Produce a renewable fuel at more than one facility unless the person uses a biointermediate or the renewable biomass is not substantially altered. Form changes of renewable biomass such as bleaching through adsorption, rendering fats, chopping, crushing, grinding, pelletizing, filtering, compacting/compression, centrifuging, degumming, dewatering/drying, melting, triglycerides resulting from deodorizing, or the addition of water to produce a slurry do not constitute substantial alteration.

(3) Transfer a biointermediate from a biointermediate production facility to a facility

other than the renewable fuel production facility specified in the biointermediate producer's registration under § 80.1450(b)(1)(ii)(B)(*1*).

(4) Isolate or concentrate non-characteristic components of the feedstock to yield a biointermediate not identified in a registration accepted by EPA.

(5) No person may transfer a biointermediate without complying with the PTD requirements in § 80.1453(f)

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

(a) *Liability for violations of prohibited acts.* (1) Any person who violates a prohibition under § 80.1460(a) through (d) or § 80.1460(g) through (j) is liable for the violation of that prohibition.

(2) Any person who causes another person to violate a prohibition under § 80.1460(a) through (d) or § 80.1460(g) through (j) is liable for a violation of § 80.1460(e).

(b) *Liability for failure to meet other provisions of this subpart.* (1) Any person who fails to meet a requirement of any provision of this subpart is liable for a violation of that provision.

(2) Any person who causes another person to fail to meet a requirement of any provision of this subpart is liable for causing a violation of that provision.

(c) *Parent corporation liability.* Any parent corporation is liable for any violation of this subpart that is committed by any of its subsidiaries.

(d) *Joint venture liability.* Each partner to a joint venture is jointly and severally liable for any violation of this subpart that is committed by the joint venture operation.

[75 FR 14863, Mar. 26, 2010, as amended at 79 FR 42119, July 18, 2014; 85 FR 7080, Feb. 6, 2020]

EFFECTIVE DATE NOTE: At 87 FR 39671, July 1, 2022, § 80.1461 was amended by revising paragraphs (a)(1) and (2) and adding paragraph (e), effective Aug. 30, 2022. For the convenience of the user, the added and revised text is set forth as follows:

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

(a) * * *

(1) Any person who violates a prohibition under § 80.1460(a) through (d) or (g) through (k) is liable for the violation of that prohibition.

(2) Any person who causes another person to violate a prohibition under § 80.1460(a) through (d) or (g) through (k) is liable for a violation of § 80.1460(e).

* * * * *

(e) *Biointermediate liability.* When a biointermediate contained in any storage tank at any facility owned, leased, operated, controlled, or supervised by any biointermediate producer, biointermediate importer, renewable fuel producer, or foreign ethanol producer is found in violation of a prohibition described in § 80.1460(k)(1) and (3), the following persons shall be deemed in violation:

(1) Each biointermediate producer, biointermediate importer, renewable fuel producer, renewable fuel importer, or foreign ethanol producer who owns, leases, operates, controls, or supervises the facility where the violation is found.

(2) Each biointermediate producer, biointermediate importer, renewable fuel producer, renewable fuel importer, or foreign ethanol producer who manufactured, imported, sold, offered for sale, dispensed, offered for supply, stored, transported, or caused the transportation of any biointermediate that is in the storage tank containing the biointermediate found to be in violation.

(3) Each carrier who dispensed, supplied, stored, or transported any biointermediate that was in the storage tank containing the biointermediate found to be in violation, provided that EPA demonstrates, by reasonably specific showings using direct or circumstantial evidence, that the carrier caused the violation.

§ 80.1462 [Reserved]

§ 80.1463 What penalties apply under the RFS program?

(a) Any person who is liable for a violation under § 80.1461 is subject 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.

(c) Any person liable under § 80.1461(b) for failure to meet, or causing a failure to meet, a requirement of any provision of this subpart is liable for a separate day of violation for each day such a requirement remains unfulfilled.

(d) Any person liable under § 80.1461(a) for a violation of § 80.1460(b)(1) through (4), (6), or (7) is subject to a separate day of violation for each day that an invalid RIN remains available for an obligated party or exporter of renewable fuel to demonstrate compliance with the RFS program.

[75 FR 14863, Mar. 26, 2010, as amended at 75 FR 26047, May 10, 2010; 79 FR 42165, July 18, 2014; 85 FR 7080, Feb. 6, 2020]

EFFECTIVE DATE NOTE: At 87 FR 39671, July 1, 2022, § 80.1463 was amended by revising paragraph (d), effective Aug. 30, 2022. For the convenience of the user, the revised text is set forth as follows:

§ 80.1463 What penalties apply under the RFS program?

* * * * *

(d) Any person liable under § 80.1461(a) for a violation of § 80.1460(b)(1) through (4) or (6) through (8) is subject to a separate day of violation for each day that an invalid RIN remains available for an obligated party or exporter of renewable fuel to demonstrate compliance with the RFS program.

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

The requirements regarding annual attest engagements in 40 CFR 1090.1800, also apply to any attest engagement procedures required under this subpart M. In addition to any other applicable attest engagement procedures, such as the requirements in §§ 80.1465 and 80.1466, the following annual attest engagement procedures are required under this subpart.

(a) *Obligated parties and exporters of renewable fuel.* The following attest procedures shall be completed for any obligated party (as described at § 80.1406(a)) or exporter of renewable fuel (as described at § 80.1430):

(1) *Annual compliance demonstration report.* (i) Obtain and read a copy of the annual compliance demonstration report required under § 80.1451(a)(1) which contains information regarding all the following:

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

(B) RVOs.

(C) RINs used for compliance.

(ii) Obtain documentation of any volumes of renewable fuel used in products listed in § 80.1407(c) and (e) at the refinery or import facility or exported during the reporting year; compute and report as a finding the total volumes of renewable fuel represented in these documents.

(iii) For obligated parties, compare the volumes of products listed in § 80.1407(c), (e), and (f) reported to EPA in the report required under § 80.1451(a)(1) with the volumes, excluding any renewable fuel volumes, contained in the inventory reconciliation analysis under 40 CFR 1090.1810 and the volume of non-renewable diesel produced or imported. Verify that the volumes reported to EPA agree with the volumes in the inventory reconciliation analysis and the volumes of non-renewable diesel produced or imported, and report as a finding any exception.

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

(A) Obtain the database, spreadsheet, or other documentation that the exporter of renewable fuel maintains for all exported renewable fuel.

(B) Compare the volume of products identified in these documents with the volumes reported to EPA.

(C) Verify that the volumes reported to EPA agree with the volumes identified in the database, spreadsheet, or other documentation, and report as a finding any exception.

(D) Select sample batches in accordance with the guidelines in 40 CFR 1090.1805 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 of renewable fuel calculated an advanced biofuel or cellulosic biofuel RVO for these fuels pursuant to § 80.1430(b)(1) or (3).

(v) Compute and report as a finding the RVOs for the obligated party or exporter of renewable fuel, and any deficit RVOs carried over from the previous year or carried into the subsequent year, and verify that the values agree with the values reported to EPA.

(vi) Obtain the database, spreadsheet, or other documentation for all RINs by type of renewable fuel used for compliance during the year being reviewed; calculate the total number of RINs associated with each type of renewable fuel used for compliance by year of generation represented in these documents; state whether this information agrees with the report to EPA and report as a finding any exceptions.

(vii) For obligated parties that redesignate certified NTDF as MVNRLM diesel fuel under § 80.1408, perform the additional attest engagement procedures described at § 80.1475 and report any findings in the report described in paragraph (d) of this section. Parties that do not incur an RVO under § 80.1408(a)(2)(i) and do not otherwise need to complete an attest engagement under this paragraph (a) do not need to arrange for the additional attest engagement procedures under § 80.1475 to be performed.

(2) *RIN transaction reports and product transfer documents.* (i) Obtain and read copies of a representative sample, selected in accordance with the guidelines in 40 CFR 1090.1805, of each RIN transaction type (RINs purchased, RINs sold, RINs retired, RINs separated, RINs reinstated) included in the RIN transaction reports required under § 80.1451(a)(2) for the compliance year.

(ii) Obtain contracts, invoices, or other documentation for the representative samples of RIN transactions; compute the transaction types, transaction dates, and RINs traded; state whether the information agrees with the party's reports to EPA and report as a finding any exceptions.

(iii) Verify that the product transfer documents for the representative samples under paragraph (a)(2)(i) of this section of RINs sold and the RINs purchased contain the applicable information required under § 80.1453 and report as a finding any product transfer document that does not contain the required information.

(iv) Verify the accuracy of the information contained in the product transfer documents reviewed pursuant to paragraph (a)(2)(iii) of this section and report as a finding any exceptions.

(3) *RIN activity reports.* (i) Obtain and read copies of all quarterly RIN activity reports required under § 80.1451(a)(3) for the compliance year.

(ii) Obtain the database, spreadsheet, or other documentation used to generate the information in the RIN activity reports; compare the RIN transaction samples reviewed under paragraph (a)(2) of this section with the corresponding entries in the database or spreadsheet and report as a finding any discrepancies; compute the total number of current-year and prior-year RINs owned at the start and end of each quarter, purchased, separated, sold, retired and reinstated, and for parties that reported RIN activity for RINs assigned to a volume of renewable fuel, the volume and type of renewable fuel (as defined in § 80.1401) owned at the end of each quarter; as represented in these documents; and state whether this information agrees with the party's reports to EPA.

(4) *RIN holdings.* (i) Obtain and read copies of the RIN holdings calculations performed under § 80.1435 for the party and any corporate affiliates and the applicable database, spreadsheet, or other documentation the party maintains.

(ii) Select sample calculations in accordance with the guidelines in § 80.127; compute and report as a finding the results of these calculations and verify that the results agree with the values reported to EPA.

(iii) Identify any date(s) where the aggregated calculation exceeded the RIN holding threshold(s) specified in § 80.1435. Compute and state as a finding whether this information agrees with the party's reports (notification of threshold exceedance) to EPA.

(5) *Affiliates.* Review reports and records related to corporate and contractual affiliates and state whether this information agrees with the party's reports to EPA, and report as a finding any exceptions.

(6) *Exemption.* Review and confirm the existence of records supporting an exemption from aggregation claimed

by the party under § 80.1435(e), and report as a finding any exceptions.

(b) *Renewable fuel producers and RIN-generating importers.* The following attest procedures shall be completed for any RIN-generating renewable fuel producer or importer:

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

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

(iii) Verify that the proper number of RINs were generated and assigned pursuant to the requirements of § 80.1426 for each batch of renewable fuel produced or imported. For RINs generated for ethanol produced from corn starch at a facility using a pathway in Table 1 to § 80.1426 that requires the use of one or more of the advanced technologies listed in Table 2 to § 80.1426, verify that the required advanced technology or technologies were employed in accordance with the specifications in Tables 1 and 2 to § 80.1426, including any requirement for application to 90% of the production on a calendar year basis.

(iv) Obtain product transfer documents for a representative sample, selected in accordance with the guidelines in 40 CFR 1090.1805, of renewable fuel batches produced or imported during the year being reviewed; verify that the product transfer documents contain the applicable information required under § 80.1453; verify the accuracy of the information contained in the product transfer documents; report as a finding any product transfer document that does not contain the applicable information required under § 80.1453.

(v)(A) Obtain documentation, as required under § 80.1451(b), (d), and (e) associated with feedstock purchases for a representative sample, selected in accordance with the guidelines in 40 CFR 1090.1805, of renewable fuel batches produced or imported during the year being reviewed.

(B) Verify that feedstocks were properly identified in the reports and met the definition of renewable biomass in § 80.1401.

(2) *RIN transaction reports and product transfer documents.* (i) Obtain and read copies of a representative sample, selected in accordance with the guidelines in 40 CFR 1090.1805, of each transaction type (RINs purchased, RINs sold, RINs retired, RINs separated, RINs reinstated) included in the RIN transaction reports required under § 80.1451(b)(2) for the compliance year.

(ii) Obtain contracts, invoices, or other documentation for the representative samples of RIN transactions; compute the transaction types, transaction dates, and the RINs traded; state whether this information agrees with the party's reports to EPA and report as a finding any exceptions.

(iii) Verify that the product transfer documents for the representative samples under paragraph (b)(2)(i) of this section of RINs sold and the RINs purchased contain the applicable information required under § 80.1453 and report as a finding any product transfer document that does not contain the required information.

(iv) Verify the accuracy of the information contained in the product transfer documents reviewed pursuant to paragraph (b)(2)(iii) of this section and report as a finding any exceptions.

(3) *RIN activity reports.* (i) Obtain and read copies of the quarterly RIN activity reports required under § 80.1451(b)(3) for the compliance year.

(ii) Obtain the database, spreadsheet, or other documentation used to generate the information in the RIN activity reports; compare the RIN transaction samples reviewed under paragraph (b)(2) of this section with the corresponding entries in the database or spreadsheet and report as a finding any discrepancies; report the total number of each RIN generated during each quarter and compute and report the total number of current-year and prior-year RINs owned at the start and

end of each quarter, purchased, separated, sold, retired and reinstated, and for parties that reported RIN activity for RINs assigned to a volume of renewable fuel, the volume of renewable fuel owned at the end of each quarter, as represented in these documents; and state whether this information agrees with the party's reports to EPA.

(4) *Independent Third Party Engineering Review*. (i) Obtain documentation of independent third party engineering reviews required under § 80.1450(b)(2).

(ii) Review and verify the written verification and records generated as part of the independent third party engineering review.

(5) *RIN holdings*. (i) Obtain and read copies of the RIN holdings calculations performed under § 80.1435 for the party and any corporate affiliates and the applicable database, spreadsheet, or other documentation the party maintains.

(ii) Select sample calculations in accordance with the guidelines in § 80.127; compute and report as a finding the results of these calculations and verify that the results agree with the values reported to EPA.

(iii) Identify any date(s) where the aggregated calculation exceeded the RIN holding threshold(s) specified in § 80.1435. Compute and state as a finding whether this information agrees with the party's reports (notification of threshold exceedance) to EPA.

(6) *Affiliates*. Review reports and records related to corporate and contractual affiliates and state whether this information agrees with the party's reports to EPA, and report as a finding any exceptions.

(7) *Exemption*. Review and confirm the existence of records supporting an exemption from aggregation claimed by the party under § 80.1435(e), and report as a finding any exceptions.

(c) *Other parties owning RINs*. The following attest procedures shall be completed for any party other than an obligated party or renewable fuel producer or importer that owns any RINs during a calendar year:

(1) *RIN transaction reports and product transfer documents*.

(i) Obtain and read copies of a representative sample, selected in accordance with the guidelines in 40 CFR 1090.1805, of each RIN transaction type (RINs purchased, RINs sold, RINs retired, RINs separated, RINs reinstated) included in the RIN transaction reports required under § 80.1451(c)(1) for the compliance year.

(ii) Obtain contracts, invoices, or other documentation for the representative samples of RIN transactions; compute the transaction types, transaction dates, and the RINs traded; state whether this information agrees with the party's reports to EPA and report as a finding any exceptions.

(iii) Verify that the product transfer documents for the representative samples under paragraph (c)(1)(i) of this section of RINs sold and RINs purchased contain the applicable information required under § 80.1453 and report as a finding any product transfer document that does not contain the required information.

(iv) Verify the accuracy of the information contained in the product transfer documents reviewed pursuant to paragraph (c)(1)(iii) of this section and report as a finding any exceptions.

(2) *RIN activity reports*.

(i) Obtain and read copies of the quarterly RIN activity reports required under § 80.1451(c)(2) for the compliance year.

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

(3) *RIN holdings*. (i) Obtain and read copies of the RIN holdings calculations performed under § 80.1435 for the party and any corporate affiliates and the applicable database, spreadsheet, or other documentation the party maintains.

(ii) Select sample calculations in accordance with the guidelines in § 80.127; compute and report as a finding the results of these calculations and verify that the results agree with the values reported to EPA.

(iii) Identify any date(s) where the aggregated calculation exceeded the RIN holding threshold(s) specified in § 80.1435. Compute and state as a finding whether this information agrees with the party's reports (notification of threshold exceedance) to EPA.

(4) *Affiliates*. Review reports and records related to corporate and contractual affiliates and state whether this information agrees with the party's reports to EPA, and report as a finding any exceptions.

(5) *Exemption*. Review and confirm the existence of records supporting an exemption from aggregation claimed by the party under § 80.1435(e), and report as a finding any exceptions.

(d) *Report submission deadlines*—(1) *Obligated parties*. (i) Except as specified in paragraph (d)(1)(ii) of this section, for obligated parties, annual attest engagement reports must be submitted to EPA by whichever of the following dates is latest:

(A) June 1 of the subsequent calendar year.

(B) The next June 1 annual attest engagement reporting deadline after the annual compliance reporting deadline under § 80.1451(f)(1)(i)(A).

(ii)(A) For obligated parties that meet the requirements for a small refinery under § 80.1441(e)(2)(iii), for the 2019 compliance year, annual attest engagement reports must be submitted to EPA no later than the next June 1 annual attest engagement reporting deadline after the annual compliance reporting deadline under § 80.1451(f)(1)(i)(B)(*1*).

(B) For obligated parties, for the 2020 compliance year, annual attest engagement reports must be submitted to EPA no later than the next June 1 annual attest engagement reporting deadline after the annual compliance reporting deadline under § 80.1451(f)(1)(i)(B)(*2*).

(C) For obligated parties, for the 2021 compliance year, annual attest engagement reports must be submitted to EPA no later than the next June 1 annual attest engagement reporting deadline after the annual compliance reporting deadline under § 80.1451(f)(1)(i)(B)(*3*).

(D) For obligated parties, for the 2022 compliance year, annual attest engagement reports must be submitted to EPA no later than the next June 1 annual attest engagement reporting deadline after the annual compliance reporting deadline under § 80.1451(f)(1)(i)(B)(*4*).

(2) *All other parties*. All parties other than obligated parties must submit annual attest engagement reports to EPA by June 1 of the subsequent calendar year.

(3) *Deadline publication*. The annual attest engagement reporting deadline will be calculated in accordance with paragraph (d)(1) of this section and published on EPA's website.

(e) The party conducting the procedures under this section shall obtain a written representation from a company representative that the copies of the reports required under this section are complete and accurate copies of the reports filed with EPA.

(f) The party conducting the procedures under this section shall identify and report as a finding the commercial computer program used by the party to track the data required by the regulations in this subpart, if any.

(g)–(h) [Reserved]

(i) *Independent third-party auditors*. The following attest procedures shall be completed for any independent third-party auditor that implements a quality assurance plan in a calendar year:

(1) *Comparing RIN verification reports with approved QAPs*.

(i) Obtain and read copies of reports required under § 80.1451(g)(1).

(ii) Obtain and read copies of any quality assurance plans approved under § 80.1469.

(iii) Confirm that the independent third-party auditor only verified RINs covered by approved QAPs under § 80.1469. Identify as a finding any discrepancies.

(2) *Checking third-party auditor's RIN verification*.

(i) Obtain and read copies of reports required under § 80.1451(g)(2).

(ii) Obtain all notifications of potentially invalid RINs submitted to the EPA under § 80.1474(b)(3).

(iii)(A) Obtain the database, spreadsheet, or other documentation used to generate the information in the RIN verification reports;

(B) Obtain all underlying documents that the QAP provider relied upon to verify the RINs;

(C) Review the documents that the QAP auditor relied on to prepare the reports obtained in paragraph (d)(2)(i) of this section, verify that the underlying documents appropriately reflect the information reported to the EPA, and identify as a finding any discrepancies between the underlying documents and the information in the RIN verification reports;

(D) Compute the total number of current-year RINs and current-year potentially invalid RINs verified at the start and end of each quarter, as represented in these documents; and state whether this information agrees with the party's reports to the EPA; and

(E) Verify that all parties were appropriately notified under § 80.1474(b)(3) and report any missing notifications as a finding.

[75 FR 14863, Mar. 26, 2010, as amended at 75 FR 26048, May 10, 2010; 75 FR 79978, Dec. 21, 2010; 77 FR 1357, Jan. 9, 2012; 78 FR 49830, Aug. 15, 2013; 79 FR 34244, June 16, 2014; 79 FR 23655, Apr. 28, 2014; 79 FR 42119, July 18, 2014; 79 FR 46356, Aug. 8, 2014; 80 FR 77518, Dec. 14, 2015; 84 FR 27024, June 10, 2019; 85 FR 7080, Feb. 6, 2020; 85 FR 78467, Dec. 4, 2020; 86 FR 17078, Apr. 1, 2021; 87 FR 5702, Feb. 2, 2022]

EFFECTIVE DATE NOTE: At 87 FR 39671, July 1, 2022, § 80.1464 was amended by:

a. Removing ''§ 80.127'' everywhere it appears and adding ''40 CFR 1090.1805'' in its place;

b. Revising paragraph (a)(3)(ii);

c. Adding paragraph (a)(7);

d. Revising paragraph (b)(1)(v)(A);

e. Adding paragraph (b)(1)(v)(C);

f. Revising paragraphs (b)(3)(ii) and (b)(4)(i);

g. Adding paragraphs (b)(4)(iii) and (b)(8);

h. Revising paragraphs (c) introductory text and (c)(2)(ii);

i. Adding paragraphs (c)(6) and (7) and (h); and

j. Revising the heading of paragraph (i)(1), paragraphs (i)(1)(i) and (iii), the heading of paragraph (i)(2), and paragraphs (i)(2)(i) and (ii).

This amendments are effective Aug. 30, 2022. For the convenience of the user, the added and revised text is set forth as follows:

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

* * * * *

(a) * * *

(3) * * *

(ii) Obtain the database, spreadsheet, or other documentation used to generate the information in the RIN activity reports; compare the RIN transaction samples reviewed under paragraph (a)(2) of this section with the corresponding entries in the database or spreadsheet and report as a finding any discrepancies; compute the total number of current-year and prior-year RINs owned at the start and end of each quarter, and for parties that reported RIN activity for RINs assigned to a volume of renewable fuel, the volume and type 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.

* * * * *

(7) *Compliance reports.* Compare the list of compliance reports submitted to EPA during the compliance period to the reporting requirements for the entity in § 80.1451. Report as a finding any reporting requirements that were not completed.

(b) * * *

(1) * * *

(v)(A) Obtain documentation, as required under § 80.1451(b), (d), and (e), associated with feedstock and biointermediate purchases for a representative sample of feedstocks and biointermediates separately, selected in accordance with the guidelines in 40 CFR 1090.1805, of renewable fuel batches produced or imported during the year being reviewed.

* * * * *

(C) Verify that biointermediates were properly identified in the reports, as applicable.

* * * * *

(3) * * *

(ii) Obtain the database, spreadsheet, or other documentation used to generate the information in the RIN activity reports; compare the RIN transaction samples reviewed under paragraph (b)(2) of this section with the corresponding entries in the database or spreadsheet and report as a finding any discrepancies; report the total number of each RIN generated during each quarter and

compute and report the total number of current-year and prior-year RINs owned at the start and end of each quarter, and for parties that reported RIN activity for RINs assigned to a volume of renewable fuel, the volume of renewable fuel owned at the end of each quarter, as represented in these documents; and state whether this information agrees with the party's reports to EPA.

(4) * * *

(i) Obtain documentation of independent third-party engineering reviews required under § 80.1450(b)(2). Such documentation must include the date of the last engineering review along with date of the actual site visit by the professional engineer.

* * * * *

(iii) Verify that independent third-party engineering reviews conducted under § 80.1450(d)(3) occurred within the three-year cycle. Report as a finding if the engineering review was not updated as part of the three-year cycle under § 80.1450(d)(3).

* * * * *

(8) *Compliance reports*. Compare the list of compliance reports submitted to EPA during the compliance period to the reporting requirements for the entity in § 80.1451. Report as a finding any reporting requirements that were not completed.

(c) *Other parties owning RINs*. Except as specified in paragraph (c)(6) of this section, the following attest procedures must be completed for any party other than an obligated party or renewable fuel producer or importer that owns any RINs during a calendar year:

* * * * *

(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, 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.

* * * * *

(6) *Low-volume RIN owner exemption*. Any party who meets all the following criteria in a given compliance period is not required to submit an attest engagement for that compliance period:

(i) The party must be solely registered as a party owning RINs (*i.e.*, a ''RIN Owner Only'') and must not also be registered in any other role under § 80.1450 (*e.g.*, the party must not also be an obligated party, exporter of renewable fuel, renewable fuel producer, RIN generating importer, etc.).

(ii) The party must have transacted (*e.g.*, generated, bought, sold, separated, or retired) 10,000 or fewer RINs in the given compliance period.

(iii) The party has not exceeded the RIN holding threshold(s) specified in § 80.1435.

(7) *Compliance reports*. Compare the list of compliance reports submitted to EPA during the compliance period to the reporting requirements for the entity in § 80.1451. Report as a finding any reporting requirements that were not completed.

* * * * *

(h) *Biointermediate producers*. The following attest reports must be completed for any biointermediate producer that produces a biointermediate in a compliance year:

(1) *Biointermediate production reports*. (i) Obtain and read copies of the quarterly biointermediate production reports required under § 80.1451(i); compare the reported information to the requirements under § 80.1451(i); and report as a finding any missing or incomplete information in the reports.

(ii) Obtain any database, spreadsheet, or other documentation used to generate the information in the biointermediate production reports; compare the corresponding entries in the database or spreadsheet and report as a finding any discrepancies.

(iii) For a representative sample of biointermediate batches, selected in accordance with the guidelines in 40 CFR 1090.1805, obtain records required under § 80.1454(i); compare these records to the corresponding batch entries in the reports procured in paragraph (h)(1)(i) of this section and report as a finding any discrepancies.

(iv) Obtain the list of designated renewable fuel production facilities under § 80.1450(b)(1)(ii)(B)(*1*); compare the list of registered designated renewable fuel production facilities to those identified in the biointermediate production report; and report as a finding any discrepancies.

(v) Provide the list of renewable fuel producers receiving any transfer of biointermediate batches and calculate the total volume from the batches received.

(2) *Independent third-party engineering review*. (i) Obtain documentation of independent third-party engineering reviews required under § 80.1450(b)(2).

(ii) Review and verify the written verification and records generated as part of

the independent third-party engineering review.

(iii) Provide the date of the submission of the last engineering review along with the date of the actual site visit by the professional engineer. Report as a finding if the engineering review was not updated as part of the three-year cycle under § 80.1450(d)(3).

(iv) Compare and provide the total volume of produced biointermediate during the compliance year as compared to the production capacity stated in the engineering review and report as a finding if the volume of produced biointermediate is greater than the stated production capacity.

(3) *Product transfer documents.* (i) Obtain contracts, invoices, or other documentation for each batch in the representative sample under paragraph (h)(1)(iii) of this section and the corresponding copies of product transfer documents required under § 80.1453; compare the product transfer documents with the contracts and invoices and report as a finding any discrepancies.

(ii) Verify that the product transfer documents obtained in paragraph (h)(3)(i) of this section contain the applicable information required under § 80.1453 and report as a finding any product transfer document that does not contain the required information.

(iii) Verify the accuracy of the information contained in the product transfer documents reviewed pursuant to paragraph (h)(3)(ii) of this section with the records obtained and reviewed under paragraph (h)(1)(iii) of this section and report as a finding any exceptions.

(i) * * *

(1) *Comparing RIN and biointermediate verification reports with approved QAPs.* (i) Obtain and read copies of reports required under § 80.1451(g)(1). Compare the list of compliance reports submitted to EPA during the compliance period to the reporting requirements for the entity in § 80.1451. Report as a finding any reporting requirements that were not completed.

* * * * *

(iii) Confirm that the independent third-party auditor only verified RINs and biointermediates covered by approved QAPs under § 80.1469. Identify as a finding any discrepancies.

(2) *Checking third-party auditor's RIN and biointermediate verification.* (i) Obtain and read copies of reports required under § 80.1451(g)(2). Compare the list of compliance reports submitted to EPA during the compliance period to the reporting requirements for the entity in § 80.1451. Report as a finding any reporting requirements that were not completed.

(ii) Obtain all notifications of potentially invalid RINs and potentially improperly produced biointermediate submitted to the EPA under §§ 80.1474(b)(3) and 80.1477(d)(2) respectively.

* * * * *

§ 80.1465 [Reserved]

§ 80.1466 What are the additional requirements under this subpart for foreign renewable fuel producers and importers of renewable fuels?

(a) *Applicability.* This section only applies to foreign renewable fuel producers that are located outside the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (collectively referred to in this section as ''the United States'').

(b) *General requirements.* A registered foreign renewable fuel producer under this section must meet all requirements that apply to renewable fuel producers under this subpart.

(c) *Designation, RIN-generating foreign producer certification, and product transfer documents.* (1) Any registered foreign renewable fuel producer must designate each batch of such renewable fuel as ''RFS–FRRF'' at the time the renewable fuel is produced.

(2) On each occasion when RFS–FRRF is transferred for transport to a vessel or loaded onto a vessel or other transportation mode for transport to the United States, the RIN-generating foreign producer shall prepare a certification for each batch of RFS–FRRF; the certification shall include the report of the independent third party under paragraph (d) of this section, and all the following additional information:

(i) The name and EPA registration number of the company that produced the RFS–FRRF.

(ii) The identification of the renewable fuel as RFS–FRRF.

(iii) The identification of the renewable fuel by type, D code, and number of RINs generated.

(iv) The volume of RFS–FRRF, standardized per § 80.1426(f)(8), being transported, in gallons.

(3) On each occasion when any person transfers custody or title to any RFS–FRRF prior to its being imported into the United States, it must include all the following information as part of

the product transfer document information:

(i) Designation of the renewable fuel as RFS–FRRF.

(ii) The certification required under paragraph (c)(2) of this section.

(d) *Load port independent testing and producer identification.* (1) On each occasion that RFS–FRRF is loaded onto a vessel for transport to the United States the RIN-generating foreign producer shall have an independent third party do all the following:

(i) Inspect the vessel prior to loading and determine the volume of any tank bottoms.

(ii) Determine the volume of RFS–FRRF, standardized per § 80.1426(f)(8), loaded onto the vessel (exclusive of any tank bottoms before loading).

(iii) Obtain the EPA-assigned registration number of the foreign renewable fuel producer.

(iv) Determine the name and country of registration of the vessel used to transport the RFS–FRRF to the United States.

(v) Determine the date and time the vessel departs the port serving the RIN-generating foreign producer.

(vi) Review original documents that reflect movement and storage of the RFS–FRRF from the RIN-generating foreign producer to the load port, and from this review determine all the following:

(A) The facility at which the RFS–FRRF was produced.

(B) That the RFS–FRRF remained segregated from Non-RFS–FRRF and other RFS–FRRF produced by a different foreign producer.

(2) The independent third party shall submit a report to the following:

(i) The RIN-generating foreign producer, containing the information required under paragraph (d)(1) of this section, to accompany the product transfer documents for the vessel.

(ii) The Administrator, containing the information required under paragraph (d)(1) of this section, within thirty days following the date of the independent third party's inspection. This report shall include a description of the method used to determine the identity of the foreign producer facility at which the renewable fuel was produced, assurance that the renewable fuel remained segregated as specified in paragraph (j)(1) of this section, and a description of the renewable fuel's movement and storage between production at the source facility and vessel loading.

(3) The independent third party must:

(i) Be approved in advance by EPA, based on a demonstration of ability to perform the procedures required in this paragraph (d);

(ii) Be independent under the criteria specified in 40 CFR 1090.1805; and

(iii) Sign a commitment that contains the provisions specified in paragraph (f) of this section with regard to activities, facilities and documents relevant to compliance with the requirements of this paragraph (d).

(e) *Comparison of load port and port of entry testing.* (1)(i) Any RIN-generating foreign producer and any United States importer of RFS–FRRF shall compare the results from the load port testing under paragraph (d) of this section, with the port of entry testing as reported under paragraph (k) of this section, for the volume of renewable fuel, standardized per § 80.1426(f)(8), except as specified in paragraph (e)(1)(ii) of this section.

(ii) Where a vessel transporting RFS–FRRF offloads the renewable fuel at more than one United States port of entry, the requirements of paragraph (e)(1)(i) of this section do not apply at subsequent ports of entry if the United States importer obtains a certification from the vessel owner that the requirements of paragraph (e)(1)(i) of this section were met and that the vessel has not loaded any renewable fuel between the first United States port of entry and the subsequent ports of entry.

(2)(i) If the temperature-corrected volumes, after accounting for tank bottoms, determined at the port of entry and at the load port differ by more than one percent, the number of RINs associated with the renewable fuel shall be calculated based on the lesser of the two volumes in paragraph (e)(1)(i) of this section.

(ii) Where the port of entry volume is the lesser of the two volumes in paragraph (e)(1)(i) of this section, the importer shall calculate the difference between the number of RINs originally assigned by the RIN-generating foreign

producer and the number of RINs calculated under § 80.1426 for the volume of renewable fuel as measured at the port of entry, and acquire and retire that amount of RINs in accordance with paragraph (k)(3) of this section.

(f) *Foreign producer commitments.* Any foreign renewable fuel producer shall commit to and comply with the following provisions as a condition to being registered as a foreign renewable fuel producer under this subpart:

(1) Any EPA inspector or auditor must be given full, complete, and immediate access to conduct inspections and audits of the foreign renewable fuel producer facility.

(i) Inspections and audits may be either announced in advance by EPA, or unannounced.

(ii) Access will be provided to any location where:

(A) Renewable fuel is produced;

(B) Documents related to renewable fuel producer operations are kept; and

(C) Renewable fuel is stored or transported between the foreign renewable fuel producer and the United States, including storage tanks, vessels and pipelines.

(iii) EPA inspectors and auditors may be EPA employees or contractors to EPA.

(iv) Any documents requested that are related to matters covered by inspections and audits must be provided to an EPA inspector or auditor on request.

(v) Inspections and audits may include review and copying of any documents related to the following:

(A) The volume of renewable fuel.

(B) The proper classification of renewable fuel as being RFS–FRRF.

(C) Transfers of title or custody to renewable fuel.

(D) Work performed and reports prepared by independent third parties and by independent auditors under the requirements of this section, including work papers.

(vi) Inspections and audits by EPA may include interviewing employees.

(vii) Any employee of the foreign renewable fuel producer must be made available for interview by the EPA inspector or auditor, on request, within a reasonable time period.

(viii) English language translations of any documents must be provided to an EPA inspector or auditor, on request, within 10 working days.

(ix) English language interpreters must be provided to accompany EPA inspectors and auditors, on request.

(2) An agent for service of process located in the District of Columbia shall be named, and service on this agent constitutes service on the foreign renewable fuel producer or any employee of the foreign renewable fuel producer for any action by EPA or otherwise by the United States related to the requirements of this subpart.

(3) The forum for any civil or criminal enforcement action related to the provisions of this section for violations of the Clean Air Act or regulations promulgated thereunder shall be governed by the Clean Air Act, including the EPA administrative forum where allowed under the Clean Air Act.

(4) United States substantive and procedural laws shall apply to any civil or criminal enforcement action against the foreign renewable fuel producer or any employee of the foreign renewable fuel producer related to the provisions of this section.

(5) Applying to be an approved foreign renewable fuel producer under this section, or producing or exporting renewable fuel under such approval, and all other actions to comply with the requirements of this subpart relating to such approval constitute actions or activities covered by and within the meaning of the provisions of 28 U.S.C. 1605(a)(2), but solely with respect to actions instituted against the foreign renewable fuel producer, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign renewable fuel producer under this subpart, including conduct that violates the False Statements Accountability Act of 1996 (18 U.S.C. 1001) and section 113(c)(2) of the Clean Air Act (42 U.S.C. 7413).

(6) The foreign renewable fuel producer, or its agents or employees, will not seek to detain or to impose civil or criminal remedies against EPA inspectors or auditors for actions performed within the scope of EPA employment

or contract related to the provisions of this section.

(7) The commitment required by this paragraph shall be signed by the owner or president of the foreign renewable fuel producer company.

(8) In any case where renewable fuel produced at a foreign renewable fuel production facility is stored or transported by another company between the production facility and the vessel that transports the renewable fuel to the United States, the foreign renewable fuel producer shall obtain from each such other company a commitment that meets the requirements specified in paragraphs (f)(1) through (7) of this section, and these commitments shall be included in the foreign renewable fuel producer's application to be an approved foreign renewable fuel producer under this subpart.

(g) *Sovereign immunity*. By submitting an application to be an approved foreign renewable fuel producer under this subpart, or by producing and exporting renewable fuel to the United States under such approval, the foreign renewable fuel producer, and its agents and employees, without exception, become subject to the full operation of the administrative and judicial enforcement powers and provisions of the United States without limitation based on sovereign immunity, with respect to actions instituted against the foreign renewable fuel producer, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign renewable fuel producer under this subpart, including conduct that violates the False Statements Accountability Act of 1996 (18 U.S.C. 1001) and section 113(c)(2) of the Clean Air Act (42 U.S.C. 7413).

(h) *Bond posting*. Any RIN-generating foreign producer shall meet the following requirements as a condition to approval as a RIN-generating foreign producer under this subpart:

(1) The RIN-generating foreign producer shall post a bond of the amount calculated using the following equation

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

Where

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

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

(2) Bonds shall be posted by any of the following methods:

(i) Paying the amount of the bond to the Treasurer of the United States.

(ii) Obtaining a bond in the proper amount from a third party surety agent that is payable to satisfy United States administrative or judicial judgments against the foreign producer, provided EPA agrees in advance as to the third party and the nature of the surety agreement.

(3) Bonds posted under this paragraph (h) shall:

(i) Be used to satisfy any judicial judgment that results from an administrative or judicial enforcement action for conduct in violation of this subpart, including where such conduct violates the False Statements Accountability Act of 1996 (18 U.S.C. 1001) and section 113(c)(2) of the Clean Air Act (42 U.S.C. 7413);

(ii) Be provided by a corporate surety that is listed in the United States Department of Treasury Circular 570 ''Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds''; and

(iii) Include a commitment that the bond will remain in effect for at least five years following the end of latest annual reporting period that the RIN-generating foreign producer produces renewable fuel pursuant to the requirements of this subpart.

(4) On any occasion a RIN-generating foreign producer bond is used to satisfy any judgment, the RIN-generating foreign producer shall increase the bond to cover the amount used within 90 days of the date the bond is used.

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

(j) *Prohibitions.* (1) No person may combine RFS–FRRF with any Non-RFS–FRRF, and no person may combine RFS–FRRF with any RFS–FRRF produced at a different production facility, until the importer has met all the requirements of paragraph (k) of this section.

(2) No foreign renewable fuel producer or other person may cause another person to commit an action prohibited in paragraph (j)(1) of this section, or that otherwise violates the requirements of this section.

(3) No foreign renewable fuel producer or importer may generate RINs for the same volume of renewable fuel.

(4) A foreign renewable fuel producer is prohibited from generating RINs in excess of the number for which the bond requirements of this section have been satisfied.

(k) *Requirements for United States importers of RFS–FRRF.* Any United States importers of RFS–FRRF shall meet all the following requirements:

(1) Renewable fuel shall be classified as RFS–FRRF according to the designation by the RIN-generating foreign producer if this designation is supported by product transfer documents prepared by the foreign producer as required in paragraph (c) of this section.

(2) For each renewable fuel batch classified as RFS–FRRF, any United States importer shall have an independent third party do all the following:

(i) Determine the volume of renewable fuel, standardized per § 80.1426(f)(8), in the vessel.

(ii) Use the RIN-generating foreign producer's RFS–FRRF certification to determine the name and EPA-assigned registration number of the RIN-generating foreign producer that produced the RFS–FRRF.

(iii) Determine the name and country of registration of the vessel used to transport the RFS–FRRF to the United States.

(iv) Determine the date and time the vessel arrives at the United States port of entry.

(3) Where the importer is required to retire RINs under paragraph (e)(2) of this section, the importer must report the retired RINs in the applicable reports under § 80.1451.

(4) Any importer shall submit reports within 30 days following the date any vessel transporting RFS–FRRF arrives at the United States port of entry to all the following:

(i) The Administrator, containing the information determined under paragraph (k)(2) of this section.

(ii) The RIN-generating foreign producer, containing the information determined under paragraph (k)(2)(i) of this section, and including identification of the port at which the product was offloaded, and any RINs retired under paragraph (e)(2) of this section.

(5) Any United States importer shall meet all other requirements of this subpart for any imported renewable fuel that is not classified as RFS–FRRF under paragraph (k)(1) of this section.

(l) *Truck imports of RFS–FRRF produced by a RIN-generating foreign producer.* (1) Any RIN-generating foreign producer whose RFS–FRRF is transported into the United States by truck may petition EPA to use alternative procedures to meet all the following requirements:

(i) Certification under paragraph (c)(2) of this section.

(ii) Load port and port of entry testing under paragraphs (d) and (e) of this section.

(iii) Importer testing under paragraph (k)(2) of this section.

(2) These alternative procedures must ensure RFS–FRRF remains segregated from Non-RFS–FRRF until it is imported into the United States. The petition will be evaluated based on whether it adequately addresses all of the following:

(i) Contracts with any facilities that receive and/or transport RFS–FRRF that prohibit the commingling of RFS–FRRF with Non-RFS–FRRF or RFS–FRRF from other foreign renewable fuel producers.

(ii) Attest procedures to be conducted annually by an independent third party that review loading records and import

documents based on volume reconciliation to confirm that all RFS–FRRF remains segregated.

(3) The petition described in this section must be submitted to EPA along with the application for approval as a RIN-generating foreign producer under this subpart.

(m) *Additional attest requirements for producers of RFS–FRRF.* The following additional procedures shall be carried out by any producer of RFS–FRRF as part of the attest engagement required for renewable fuel producers under this subpart M.

(1) Obtain listings of all tenders of RFS–FRRF. Agree the total volume of tenders from the listings to the volumes determined by the third party under paragraph (d) of this section.

(2) For each tender under paragraph (m)(1) of this section, where the renewable fuel is loaded onto a marine vessel, report as a finding the name and country of registration of each vessel, and the volumes of RFS–FRRF loaded onto each vessel.

(3) Select a sample from the list of vessels identified in paragraph (m)(2) of this section used to transport RFS–FRRF, in accordance with the guidelines in 40 CFR 1090.1805, and for each vessel selected perform all the following:

(i) Obtain the report of the independent third party, under paragraph (d) of this section, and of the United States importer under paragraph (k) of this section.

(A) Agree the information in these reports with regard to vessel identification and renewable fuel volume.

(B) Identify, and report as a finding, each occasion the load port and port of entry volume results differ by more than the amount allowed in paragraph (e) of this section, and determine whether the importer retired the appropriate amount of RINs as required under paragraph (e)(2) of this section, and submitted the applicable reports under § 80.1451 in accordance with paragraph (k)(4) of this section.

(ii) Obtain the documents used by the independent third party to determine transportation and storage of the RFS–FRRF from the RIN-generating foreign producer's facility to the load port, under paragraph (d) of this section. Obtain tank activity records for any storage tank where the RFS–FRRF is stored, and activity records for any mode of transportation used to transport the RFS–FRRF prior to being loaded onto the vessel. Use these records to determine whether the RFS–FRRF was produced at the RIN-generating foreign producer's facility that is the subject of the attest engagement, and whether the RFS–FRRF was mixed with any Non-RFS–FRRF or any RFS–FRRF produced at a different facility.

(4) Select a sample from the list of vessels identified in paragraph (m)(2) of this section used to transport RFS–FRRF, in accordance with the guidelines in 40 CFR 1090.1805, and for each vessel selected perform the following:

(i) Obtain a commercial document of general circulation that lists vessel arrivals and departures, and that includes the port and date of departure of the vessel, and the port of entry and date of arrival of the vessel.

(ii) Agree the vessel's departure and arrival locations and dates from the independent third party and United States importer reports to the information contained in the commercial document.

(5) Obtain a separate listing of the tenders under this paragraph (m)(5) where the RFS–FRRF is loaded onto a marine vessel. Select a sample from this listing in accordance with the guidelines in 40 CFR 1090.1805, and obtain a commercial document of general circulation that lists vessel arrivals and departures, and that includes the port and date of departure and the ports and dates where the renewable fuel was offloaded for the selected vessels. Determine and report as a finding the country where the renewable fuel was offloaded for each vessel selected.

(6) In order to complete the requirements of this paragraph (m) an auditor shall:

(i) Be independent of the RIN-generating foreign producer;

(ii) Be licensed as a Certified Public Accountant in the United States and a citizen of the United States, or be approved in advance by EPA based on a demonstration of ability to perform the procedures required in 40 CFR 1090.1800, § 80.1464, and this paragraph (m); and

(iii) Sign a commitment that contains the provisions specified in paragraph (f) of this section with regard to activities and documents relevant to compliance with the requirements of 40 CFR 1090.1800, § 80.1464, and this paragraph (m).

(n) *Withdrawal or suspension of foreign renewable fuel producer approval.* EPA may withdraw or suspend a foreign renewable fuel producer's approval where any of the following occur:

(1) A foreign renewable fuel producer fails to meet any requirement of this section.

(2) A foreign government fails to allow EPA inspections or audits as provided in paragraph (f)(1) of this section.

(3) A foreign renewable fuel producer asserts a claim of, or a right to claim, sovereign immunity in an action to enforce the requirements in this subpart.

(4) A foreign renewable fuel producer fails to pay a civil or criminal penalty that is not satisfied using the foreign renewable fuel producer bond specified in paragraph (h) of this section.

(o) *Additional requirements for applications, reports, and certificates.* Any application for approval as a foreign renewable fuel producer, alternative procedures under paragraph (l) of this section, any report, certification, or other submission required under this section shall be:

(1) Submitted in accordance with procedures specified by the Administrator, including use of any forms that may be specified by the Administrator.

(2) Signed by the president or owner of the foreign renewable fuel producer company, or by that person's immediate designee, and shall contain the following declarations:

(i) ''I hereby certify:

(A) That I have actual authority to sign on behalf of and to bind [NAME OF FOREIGN RENEWABLE FUEL PRODUCER] with regard to all statements contained herein;

(B) That I am aware that the information contained herein is being Certified, or submitted to the United States Environmental Protection Agency, under the requirements of 40 CFR part 80, subpart M, and that the information is material for determining compliance under these regulations; and

(C) That I have read and understand the information being Certified or submitted, and this information is true, complete and correct to the best of my knowledge and belief after I have taken reasonable and appropriate steps to verify the accuracy thereof.''

(ii) ''I affirm that I have read and understand the provisions of 40 CFR part 80, subpart M, including 40 CFR 80.1465 apply to [NAME OF FOREIGN RENEWABLE FUEL PRODUCER]. Pursuant to Clean Air Act section 113(c) and 18 U.S.C. 1001, the penalty for furnishing false, incomplete or misleading information in this certification or submission is a fine of up to $10,000 U.S., and/or imprisonment for up to five years.''.

(p) *Requirements for non-RIN-generating foreign producer.* Any non-RIN-generating foreign producer must comply with the requirements of this section beginning on the effective date of the final rule or prior to EPA acceptance, whichever is later.

[75 FR 14863, Mar. 26, 2010, as amended at 77 FR 1357, Jan. 9, 2012; 85 FR 7081, Feb. 6, 2020; 85 FR 78467, Dec. 4, 2020]

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

(a) *Foreign RIN owner.* For purposes of this subpart, a foreign RIN owner is a person located outside the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (collectively referred to in this section as ''the United States'') that has been approved by EPA to own RINs.

(b) *General requirement.* An approved foreign RIN owner must meet all requirements that apply to parties who own RINs under this subpart.

(c) *Foreign RIN owner commitments.* Any person shall commit to and comply with the provisions contained in this paragraph (c) as a condition to being approved as a foreign RIN owner under this subpart.

(1) Any United States Environmental Protection Agency inspector or auditor must be given full, complete, and immediate access to conduct inspections and audits of the foreign RIN owner's place of business.

(i) Inspections and audits may be either announced in advance by EPA, or unannounced.

(ii) Access will be provided to any location where documents related to RINs the foreign RIN owner has obtained, sold, transferred or held are kept.

(iii) Inspections and audits may be by EPA employees or contractors to EPA.

(iv) Any documents requested that are related to matters covered by inspections and audits must be provided to an EPA inspector or auditor on request.

(v) Inspections and audits by EPA may include review and copying of any documents related to the following:

(A) Transfers of title to RINs.

(B) Work performed and reports prepared by independent auditors under the requirements of this section, including work papers.

(vi) Inspections and audits by EPA may include interviewing employees.

(vii) Any employee of the foreign RIN owner must be made available for interview by the EPA inspector or auditor, on request, within a reasonable time period.

(viii) English language translations of any documents must be provided to an EPA inspector or auditor, on request, within 10 working days.

(ix) English language interpreters must be provided to accompany EPA inspectors and auditors, on request.

(2) An agent for service of process located in the District of Columbia shall be named, and service on this agent constitutes service on the foreign RIN owner or any employee of the foreign RIN owner for any action by EPA or otherwise by the United States related to the requirements of this subpart.

(3) The forum for any civil or criminal enforcement action related to the provisions of this section for violations of the Clean Air Act or regulations promulgated thereunder shall be governed by the Clean Air Act, including the EPA administrative forum where allowed under the Clean Air Act.

(4) United States substantive and procedural laws shall apply to any civil or criminal enforcement action against the foreign RIN owner or any employee of the foreign RIN owner related to the provisions of this section.

(5) Submitting an application to be a foreign RIN owner, and all other actions to comply with the requirements of this subpart constitute actions or activities covered by and within the meaning of the provisions of 28 U.S.C. 1605(a)(2), but solely with respect to actions instituted against the foreign RIN owner, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign RIN owner under this subpart, including conduct that violates the False Statements Accountability Act of 1996 (18 U.S.C. 1001) and section 113(c)(2) of the Clean Air Act (42 U.S.C. 7413).

(6) The foreign RIN owner, or its agents or employees, will not seek to detain or to impose civil or criminal remedies against EPA inspectors or auditors, whether EPA employees or EPA contractors, for actions performed within the scope of EPA employment related to the provisions of this section.

(7) The commitment required by this paragraph (c) shall be signed by the owner or president of the foreign RIN owner business.

(d) *Sovereign immunity*. By submitting an application to be a foreign RIN owner under this subpart, the foreign entity, and its agents and employees, without exception, become subject to the full operation of the administrative and judicial enforcement powers and provisions of the United States without limitation based on sovereign immunity, with respect to actions instituted against the foreign RIN owner, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign RIN owner under this subpart, including conduct that violates the False Statements Accountability Act of 1996 (18 U.S.C. 1001) and section 113(c)(2) of the Clean Air Act (42 U.S.C. 7413).

(e) *Bond posting*. Any foreign entity shall meet the requirements of this paragraph (e) as a condition to approval as a foreign RIN owner under this subpart.

(1) The foreign entity shall post a bond of the amount calculated using the following equation:

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

Where:

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

G = The total of the number of gallon-RINs the foreign entity expects to obtain, sell, transfer or hold during the first calendar year that the foreign entity is a RIN owner, plus the number of gallon-RINs the foreign entity expects to obtain, sell, transfer or hold during the next four calendar years. After the first calendar year, the bond amount shall be based on the actual number of gallon-RINs obtained, sold, or transferred so far during the current calendar year plus the number of gallon-RINs obtained, sold, or transferred during the four calendar years immediately preceding the current calendar year. For any year for which there were fewer than four preceding years in which the foreign entity obtained, sold, or transferred RINs, the bond shall be based on the total of the number of gallon-RINs sold or transferred so far during the current calendar year plus the number of gallon-RINs obtained, sold, or transferred during any immediately preceding calendar years in which the foreign entity owned RINs, plus the number of gallon-RINs the foreign entity expects to obtain, sell or transfer during subsequent calendar years, the total number of years not to exceed four calendar years in addition to the current calendar year.

(2) Bonds shall be posted by any of the following methods:

(i) Paying the amount of the bond to the Treasurer of the United States.

(ii) Obtaining a bond in the proper amount from a third party surety agent that is payable to satisfy United States administrative or judicial judgments against the foreign RIN owner, provided EPA agrees in advance as to the third party and the nature of the surety agreement.

(3) All the following shall apply to bonds posted under this paragraph (e); bonds shall:

(i) Be used to satisfy any judicial judgment that results from an administrative or judicial enforcement action for conduct in violation of this subpart, including where such conduct violates the False Statements Accountability Act of 1996 (18 U.S.C. 1001) and section 113(c)(2) of the Clean Air Act (42 U.S.C. 7413).

(ii) Be provided by a corporate surety that is listed in the United States Department of Treasury Circular 570 ''Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds''.

(iii) Include a commitment that the bond will remain in effect for at least five years following the end of latest reporting period in which the foreign RIN owner obtains, sells, transfers, or holds RINs.

(4) On any occasion a foreign RIN owner bond is used to satisfy any judgment, the foreign RIN owner shall increase the bond to cover the amount used within 90 days of the date the bond is used.

(f) *English language reports.* Any document submitted to EPA by a foreign RIN owner shall be in English, or shall include an English language translation.

(g) *Prohibitions.* (1) A foreign RIN owner is prohibited from obtaining, selling, transferring, or holding any RIN that is in excess of the number for which the bond requirements of this section have been satisfied.

(2) Any RIN that is obtained, sold, transferred, or held that is in excess of the number for which the bond requirements of this section have been satisfied is an invalid RIN under § 80.1431.

(3) Any RIN that is obtained from a person located outside the United States that is not an approved foreign RIN owner under this section is an invalid RIN under § 80.1431.

(4) No foreign RIN owner or other person may cause another person to commit an action prohibited in this paragraph (g), or that otherwise violates the requirements of this section.

(h) *Additional attest requirements for foreign RIN owners.* The following additional requirements apply to any foreign RIN owner as part of the attest engagement required for RIN owners under this subpart M.

(1) The attest auditor must be independent of the foreign RIN owner.

(2) The attest auditor must be licensed as a Certified Public Accountant in the United States and a citizen of the United States, or be approved in advance by EPA based on a demonstration of ability to perform the procedures required in 40 CFR 1090.1800 and § 80.1464.

(3) The attest auditor must sign a commitment that contains the provisions specified in paragraph (c) of this

section with regard to activities and documents relevant to compliance with the requirements of 40 CFR 1090.1800 and § 80.1464.

(i) *Withdrawal or suspension of foreign RIN owner status.* EPA may withdraw or suspend its approval of a foreign RIN owner where any of the following occur:

(1) A foreign RIN owner fails to meet any requirement of this section, including, but not limited to, the bond requirements.

(2) A foreign government fails to allow EPA inspections as provided in paragraph (c)(1) of this section.

(3) A foreign RIN owner asserts a claim of, or a right to claim, sovereign immunity in an action to enforce the requirements in this subpart.

(4) A foreign RIN owner fails to pay a civil or criminal penalty that is not satisfied using the foreign RIN owner bond specified in paragraph (e) of this section.

(j) *Additional requirements for applications, reports and certificates.* Any application for approval as a foreign RIN owner, any report, certification, or other submission required under this section shall be:

(1) Submitted in accordance with procedures specified by the Administrator, including use of any forms that may be specified by the Administrator.

(2) Signed by the president or owner of the foreign RIN owner company, or by that person's immediate designee, and shall contain the following declaration:

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

[75 FR 14863, Mar. 26, 2010, as amended at 77 FR 1358, Jan. 9, 2012; 85 FR 78467, Dec. 4, 2020]

§ 80.1468 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Environmental Protection Agency (EPA) must publish notice of change in the FEDERAL REGISTER and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* This material is also available for inspection at the EPA Docket Center, Docket No. EPA–HQ–OAR–2005–0161, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington DC. The telephone number for the Air Docket is (202) 566–1742. Also, this material is available from the source listed in paragraph (b) of this section.

(b) American Society for Testing and Materials, 100 Barr Harbor Drive, P.O. Box C–700, West Conshohocken, Pennsylvania 19428 (1–800–262–1373, *www.astm.org*).

(1) ASTM D 1250–08 (''ASTM D 1250''), Standard Guide for Use of the Petroleum Measurement Tables, Approved 2008; IBR approved for § 80.1426(f)(8)(ii)(B).

(2) ASTM D 4442–07 (''ASTM D 4442''), Standard Test Methods for Direct Moisture Content Measurement of Wood and Wood-Base Materials, Approved 2007; IBR approved for § 80.1426(f)(7)(v)(B).

(3) ASTM D 4444–08 (''ASTM D 4444''), Standard Test Method for Laboratory Standardization and Calibration of Hand-Held Moisture Meters, Approved 2008; IBR approved for § 80.1426(f)(7)(v)(B).

(4) ASTM D 6751–09 (''ASTM D 6751''), Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels, Approved 2009; IBR approved for § 80.1401.

(5) ASTM D 6866–08 (''ASTM D 6866''), Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples Using Radiocarbon Analysis, Approved 2008; IBR approved for §§ 80.1426(f)(9)(ii) and 80.1430(e)(2).

(6) ASTM E 711–87 (''ASTM E 711''), Standard Test Method for Gross Calorific Value of Refuse-Derived Fuel by the Bomb Calorimeter, Reapproved 2004; IBR approved for § 80.1426(f)(7)(v)(A).

(7) ASTM E 870–82 (''ASTM E 870''), Standard Test Methods for Analysis of Wood Fuels, Reapproved 2006); IBR approved for § 80.1426(f)(7)(v)(A).

(8) ASTM D 975–13a, Standard Specification for Diesel Fuel Oils, Approved December 1, 2013; IBR approved for §§ 80.1401, 80.1426(f), 80.1450(b), 80.1451(b), and 80.1454(l).

[75 FR 14863, Mar. 26, 2010, as amended at 79 FR 42119, July 18, 2014]

EFFECTIVE DATE NOTE: At 87 FR 39673, July 1, 2022, § 80.1468 was revised, effective Aug. 30, 2022. For the convenience of the user, the revised text is set forth as follows:

§ 80.1468 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at U.S. EPA and at the National Archives and Records Administration (NARA). Contact U.S. EPA at: U.S. EPA, Air and Radiation Docket and Information Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20460; (202) 566–1742. For information on the availability of this material at NARA, email *fr.inspection@nara.gov*, or go to *www.archives.gov/federal-register/cfr/ibr-locations.html*. The material may be obtained from the source(s) in the following paragraph(s) of this section.

(b) ASTM International, 100 Barr Harbor Dr., P.O. Box C700, West Conshohocken, PA 19428–2959; (877) 909–2786; *www.astm.org*.

(1) ASTM D975–21, Standard Specification for Diesel Fuel, approved August 1, 2021 (''ASTM D975''); IBR approved for §§ 80.1401; 80.1426(f); 80.1450(b); 80.1451(b); 80.1454(l).

(2) ASTM D1250–19e1, Standard Guide for the Use of the Joint API and ASTM Adjunct for Temperature and Pressure Volume Correction Factors for Generalized Crude Oils, Refined Products, and Lubricating Oils: API MPMS Chapter 11.1, approved May 1, 2019 (''ASTM D1250''); IBR approved for § 80.1426(f).

(3) ASTM D4442–20, Standard Test Methods for Direct Moisture Content Measurement of Wood and Wood-Based Materials, approved March 1, 2020 (''ASTM D4442''); IBR approved for § 80.1426(f).

(4) ASTM D4444–13 (Reapproved 2018), Standard Test Method for Laboratory Standardization and Calibration of Hand-Held Moisture Meters, reapproved July 1, 2018 (''ASTM D4444''); IBR approved for § 80.1426(f).

(5) ASTM D6751–20a, Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels, approved August 1, 2020 (''ASTM D6751''); IBR approved for § 80.1401.

(6) ASTM D6866–22, Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples Using Radiocarbon Analysis, approved March 15, 2022 (''ASTM D6866''); IBR approved for §§ 80.1426(f); 80.1430(e).

(7) ASTM E711–87 (R2004), Standard Test Method for Gross Calorific Value of Refuse-Derived Fuel by the Bomb Calorimeter, reapproved 2004 (''ASTM E711''); IBR approved for § 80.1426(f).

(8) ASTM E870–82 (Reapproved 2019), Standard Test Methods for Analysis of Wood Fuels, reapproved April 1, 2019 (''ASTM E870''); IBR approved for § 80.1426(f).

§ 80.1469 Requirements for Quality Assurance Plans.

This section specifies the requirements for Quality Assurance Plans (QAPs).

(a) Option A QAP Requirements, for Option A QAPs that were performed during the interim period.

(1) *Feedstock-related components.* (i) Components requiring ongoing monitoring:

(A) Feedstocks are renewable biomass as defined in § 80.1401.

(B) Feedstocks are being separated according to a separation plan, if applicable under § 80.1426(f)(5)(ii).

(C) Crop and crop residue feedstocks meet land use restrictions, or alternatively the aggregate compliance provisions of § 80.1454(g).

(D) If applicable, verify that feedstocks with additional recordkeeping requirements meet requirements of § 80.1454(d).

(E) Feedstocks are valid for the D code being used, and are consistent with information recorded in EMTS.

(F) Feedstock is consistent with production process and D code being used as permitted under Table 1 to § 80.1426 or a petition approved through § 80.1416.

(G) Feedstock is not renewable fuel for which RINs were previously generated.

(ii) Components requiring quarterly monitoring:

(A) Separated food waste or separated yard waste plan is accepted and up to date, if applicable under § 80.1426(f)(5)(ii).

(B) Separated municipal solid waste plan is approved and up to date, if applicable under § 80.1426(f)(5)(ii).

(C) Contracts or agreements for feedstock acquisition are sufficient for facility production.

(D) Feedstock processing and storage equipment are sufficient and are consistent with the most recent engineering review under § 80.1450(b)(2).

(E) If applicable, accuracy of feedstock energy FE calculation factors related to feedstocks, including average moisture content m and feedstock energy content E.

(2) *Production process-related components.* (i) Components requiring ongoing monitoring:

(A) Production process is consistent with that reported in EMTS.

(B) Production process is consistent with D code being used as permitted under Table 1 to § 80.1426 or a petition approved through § 80.1416.

(C) Certificates of analysis verifying fuel type and quality, as applicable.

(ii) Components requiring quarterly monitoring:

(A) Mass and energy balances are appropriate for type and size of facility.

(B) Workforce size is appropriate for type and size of facility, and sufficient workers are on site for facility operations.

(C) If applicable, process-related factors used in feedstock energy FE calculation are accurate, in particular the converted fraction CF.

(D) Verify existence of quality process controls designed to ensure that fuel continues to meet applicable property and quality specifications.

(E) Volume production is consistent with that reported to the EPA and EIA, as well as other federal or state reporting.

(F) Volume production is consistent with storage and distribution capacity.

(G) Volume production capacity is consistent with RFS registration.

(3) *RIN generation-related components.* (i) Components requiring ongoing monitoring:

(A) Standardization of volumes pursuant to § 80.1426(f)(8) are accurate.

(B) Renewable fuel type matches the D code being used.

(C) RIN generation is consistent with wet gallons produced or imported.

(D) Fuel shipments are consistent with production volumes.

(E) If applicable, renewable content R is accurate pursuant to § 80.1426(f)(9).

(F) Equivalence value EV is accurate and appropriate.

(G) Renewable fuel was intended and sold for qualifying uses as transportation fuel, heating oil, or jet fuel.

(H) Verify that appropriate RIN generation calculations are being followed under § 80.1426(f)(3), (f)(4), or (f)(5), as applicable.

(ii) Components requiring quarterly monitoring:

(A) Registration, reporting and recordkeeping components.

(B) [Reserved]

(4) *RIN separation-related components.* (i) Components requiring ongoing monitoring:

(A) If applicable, verify that RIN separation is appropriate under § 80.1429(b)(4).

(B) If applicable, verify that RINs were retired for any fuel that the producer produced and exported.

(ii) Components requiring quarterly monitoring:

(A) Verify that annual attestation report is accurate.

(B) [Reserved]

(b) Option B QAP Requirements, for Option B QAPs that were performed during the interim period. All components specified in this paragraph (b) require quarterly monitoring, except for paragraph (b)(4)(iii) of this section, which must be done annually.

(1) *Feedstock-related components.* (i) Feedstocks are renewable biomass as defined in § 80.1401.

(ii) If applicable, separated food waste or separated yard waste plan under § 80.1426(f)(5)(ii) is accepted and up to date.

(iii) If applicable, separated municipal solid waste plan under § 80.1426(f)(5)(ii) is approved and current.

(iv) Feedstocks are being separated according to a separation plan, if applicable under § 80.1426(f)(5)(ii).

(v) Crop and crop residue feedstocks meet land use restrictions, or alternatively the aggregate compliance provisions of § 80.1454(g).

(vi) Feedstock is consistent with production process and D code being used as permitted under Table 1 to § 80.1426 or a petition approved through § 80.1416, and is consistent with information recorded in EMTS.

(vii) Feedstock is not renewable fuel for which RINs were previously generated.

(viii) If applicable, accuracy of feedstock energy FE calculation factors related to feedstocks, including average moisture content m and feedstock energy content E.

(2) *Production process-related components.* (i) Production process is consistent with that reported in EMTS.

(ii) Production process is consistent with D code being used as permitted under Table 1 to § 80.1426 or a petition approved through § 80.1416.

(iii) Mass and energy balances are appropriate for type and size of facility.

(iv) If applicable, process-related factors used in feedstock energy FE calculation are accurate, in particular the converted fraction CF.

(3) *RIN generation-related components.* (i) Renewable fuel was intended and sold for qualifying uses as transportation fuel, heating oil, or jet fuel.

(ii) Certificates of analysis verifying fuel type and quality, as applicable.

(iii) Renewable fuel type matches the D code being used.

(iv) If applicable, renewable content R is accurate pursuant to § 80.1426(f)(9).

(v) Equivalence value EV is accurate and appropriate.

(vi) Volume production capacity is consistent with RFS registration.

(vii) Verify that appropriate RIN generation calculations are being followed under § 80.1426(f)(3), (f)(4), or (f)(5), as applicable.

(4) *RIN separation-related components.* (i) If applicable, verify that RIN separation is appropriate under § 80.1429(b)(4).

(ii) Verify that fuel that is exported was not used to generate RINs, or alternatively that were generated but retired.

(iii) Verify that annual attestation report is accurate.

(c) *QAP Requirements.* All components specified in this paragraph (c) require quarterly monitoring, except for paragraph (c)(4)(iii) of this section which must be done annually.

(1) *Feedstock-related components.* (i) Feedstocks are renewable biomass as defined in § 80.1401.

(ii) If applicable, plans under § 80.1426(f)(5)(ii) are accepted and up to date.

(iii) If applicable, separated municipal solid waste plan under § 80.1426(f)(5) is approved and current.

(iv) Feedstocks are being separated according to a separation plan, if applicable under § 80.1426(f)(5).

(v) Crop and crop residue feedstocks meet land use restrictions, or alternatively the aggregate compliance provisions of § 80.1454(g).

(vi) Feedstock is consistent with production process and D code being used as permitted under Table 1 to § 80.1426 or a petition approved through § 80.1416, and is consistent with information recorded in EMTS.

(vii) Feedstock is not renewable fuel for which RINs were previously generated.

(viii) If applicable, accuracy of feedstock energy FE calculation factors related to feedstocks, including average moisture content m and feedstock energy content E.

(2) *Production process-related components.* (i) Production process is consistent with that reported in EMTS.

(ii) Mass and energy balances are appropriate for type and size of facility.

(iii) If applicable, process-related factors used in feedstock energy FE calculation are accurate, in particular the converted fraction CF, pursuant to § 80.1426(f)(3).

(3) *RIN generation-related components.* (i) Renewable fuel was designated for

qualifying uses as transportation fuel, heating oil, or jet fuel in the 48 contiguous states or Hawaii pursuant to § 80.1453.

(ii) Certificates of analysis verifying fuel type and quality, as applicable.

(iii) Renewable fuel type matches the D code being used.

(iv) If applicable, renewable content R is accurate pursuant to § 80.1426(f)(9).

(v) Equivalence value EV is accurate and appropriate.

(vi) Volume production capacity is consistent with RFS registration.

(vii) Verify that appropriate RIN generation calculations are being followed under § 80.1426(f)(3), (f)(4), or (f)(5), as applicable.

(viii) RIN generation is consistent with wet gallons produced or imported.

(4) *RIN separation-related components.* (i) If applicable, verify that RIN separation is appropriate under § 80.1429(b)(4).

(ii) Verify that fuel that is exported was not used to generate RINs, or alternatively that were generated but retired pursuant to § 80.1430.

(iii) Verify that annual attestation report is accurate.

(5) *Representative sampling.* Independent third-party auditors may use a representative sample of batches of renewable fuel in accordance with the procedures described in 40 CFR 1090.1805 for all components of this paragraph (c) except for paragraphs (c)(1)(ii), (c)(1)(iii), (c)(2)(ii), (c)(3)(vi), (c)(4)(ii), and (c)(4)(iii) of this section.

(d) In addition to a general QAP encompassing elements common to all pathways, for each QAP there shall be at least one pathway-specific plan for a RIN-generating pathway as provided in Table 1 to § 80.1426 or as approved by the Administrator pursuant to § 80.1416, and shall contain elements specific to particular feedstocks, production processes, and fuel types as applicable.

(e) *Submission and approval of a QAP.* (1) Each independent third-party auditor shall annually submit a general and at least one pathway-specific QAP to the EPA which demonstrates adherence to the requirements of paragraphs (a) and (d), (b) and (d), or (c) and (d) of this section, as applicable, and request approval on forms and using procedures specified by the Administrator.

(2) No third-party independent auditor may present a QAP as approved by the EPA without having received written approval from the EPA.

(3) A QAP is approved on the date that the EPA notifies the third-party independent auditor of such approval.

(4) The EPA may revoke its approval of a QAP for cause, including, but not limited to, an EPA determination that the approved QAP has proven to be inadequate in practice.

(5) The EPA may void *ab initio* its approval of a QAP upon the EPA's determination that the approval was based on false information, misleading information, or incomplete information, or if there was a failure to fulfill, or cause to be fulfilled, any of the requirements of the QAP.

(f) *Conditions for revisions of a QAP.* (1) A new QAP shall be submitted to EPA according to paragraph (e) of this section and the third-party auditor shall update their registration according to § 80.1450(g)(9) whenever any of the following changes occur at a production facility audited by a third-party independent auditor and the auditor does not possess an appropriate pathway-specific QAP that encompasses the changes:

(i) Change in feedstock.

(ii) Change in type of fuel produced.

(iii) Change in facility operations or equipment that may impact the capability of the QAP to verify that RINs are validly generated.

(2) A QAP ceases to be valid as the basis for verifying RINs under a new pathway until a new pathway-specific QAP, submitted to the EPA under this paragraph (f), is approved pursuant to paragraph (e) of this section.

[79 FR 42119, July 18, 2014, as amended at 85 FR 7083, Feb. 6, 2020; 85 FR 78467, Dec. 4, 2020]

EFFECTIVE DATE NOTE: At 87 FR 39673, July 1, 2022, § 80.1469 was amended by revising the introductory text and paragraphs (c)(1)(vi) and (vii), (c)(2)(i), (c)(3)(i), (c)(5), and (f)(1) and (2), effective Aug. 30, 2022. For the convenience of the user, the revised text is set forth as follows:

§ 80.1469 Requirements for Quality Assurance Plans.

This section specifies the requirements for Quality Assurance Plans (QAPs) for renewable fuels and biointermediates.

* * * * *

(c) * * *

(1) * * *

(vi) Feedstock(s) and biointermediate(s) are consistent with production process and D code being used as permitted under the approved pathway and is consistent with information recorded in EMTS.

(vii) Feedstock(s) and biointermediate(s) are not renewable fuel for which RINs were previously generated unless the RINs were generated under § 80.1426(c)(6). For renewable fuels that have RINs generated under § 80.1426(c)(6), verify that renewable fuels used as a feedstock meet all applicable requirements of this paragraph (c)(1).

* * * * *

(2) * * *

(i) Production process is consistent with the renewable fuel producer or biointermediate producer's registration under § 80.1450(b).

* * * * *

(3) * * *

(i) If applicable, renewable fuel was designated for qualifying uses as transportation fuel, heating oil, or jet fuel in the covered location pursuant to § 80.1453.

* * * * *

(5) *Representative sampling*. Independent third-party auditors may use a representative sample of batches of renewable fuel or biointermediate in accordance with the procedures described in 40 CFR 1090.1805 for all components of this paragraph (c) except for paragraphs (c)(1)(ii) and (iii), (c)(2)(ii), (c)(3)(vi), and (c)(4)(ii) and (iii) of this section. If a facility produces both a renewable fuel and a biointermediate, the independent third-party auditor must select separate representative samples for the renewable fuel and biointermediate.

* * * * *

(f) * * *

(1) A new QAP must be submitted to EPA according to paragraph (e) of this section and the independent third-party auditor must update their registration according to § 80.1450(g)(9) whenever any of the following changes occur at a renewable fuel or biointermediate production facility audited by an independent third-party auditor and the auditor does not possess an appropriate pathway-specific QAP that encompasses the change:

(i) Change in feedstock or biointermediates.

(ii) Change in type of fuel or biointermediate produced.

(iii) Change in facility operations or equipment that may impact the capability of the QAP to verify that RINs are validly generated or biointermediates are properly produced.

(2) A QAP ceases to be valid as the basis for verifying RINs or a biointermediate under a new pathway until a new pathway-specific QAP, submitted to the EPA under this paragraph (f), is approved pursuant to paragraph (e) of this section.

§ 80.1470 RIN replacement mechanisms for Option A independent third party auditors.

(a) *Applicability*. This section applies to independent third-party auditors using a QAP approved under Option A pursuant to § 80.1469(a) and (d) during the interim period.

(b) *Requirements*. An independent third party auditor must establish or participate in the establishment of a RIN replacement mechanism. The RIN replacement mechanism must fulfill, at a minimum, all the following conditions:

(1) The RIN replacement mechanism must be capable of fulfilling the independent third party auditor's RIN replacement responsibility, as described in § 80.1474(b)(5)(i).

(2) The independent third party auditor is responsible for calculating and maintaining the minimum coverage afforded by the RIN replacement mechanism at all times.

(3) RINs held by the RIN replacement mechanism (if any) must be identified in a unique EMTS account designated for the exclusive use of the replacement mechanism.

(4) Distribution and removal of RINs from the replacement mechanism may not be under the sole operational control of the third-party auditor.

(5) An originally signed duplicate of the agreement or contract establishing the RIN replacement mechanism must be submitted to the EPA by the independent third party auditor in accordance with § 80.1450(g)(7).

(6) Any substantive change to the agreement establishing the RIN replacement mechanism must be submitted to the EPA within 30 days of the change.

(c) *Cap on RIN replacement for independent third party auditors of A–RINs.* (1) If required to replace invalid A–RINs pursuant to paragraph (b) of this section, the independent third party auditor shall be required to replace no more than the percentage specified in paragraph (c)(2) of this section of each D code of A–RINs verified by the auditor in the current calendar year and four previous calendar years.

(2) The cap on RIN replacement for auditors of A–RINs shall be two percent for A–RINs generated in the interim period.

(3) The auditor's potential replacement responsibility for a given RIN will expire at the end of the fourth calendar year after the calendar year in which the RIN was verified.

(d) *Applicability of the RIN replacement cap.* The cap on RIN replacement does not apply when invalid verified RINs are a result of auditor error, omission, negligence, fraud, collusion with the renewable fuel producer, or a failure to implement the QAP properly or fully.

[79 FR 42121, July 18, 2014]

§ 80.1471 Requirements for QAP auditors.

(a) QAP audits conducted pursuant to § 80.1472 must be conducted by an independent third-party auditor.

(b) To be considered an independent third-party auditor under paragraph (a) of this section:

(1) The independent third-party auditor and its contractors and subcontractors shall not be owned or operated by the renewable fuel producer or foreign ethanol producer, or any subsidiary or employee of the renewable fuel producer or foreign ethanol producer.

(2) The independent third-party auditor and its contractors and subcontractors shall not be owned or operated by an obligated party or any subsidiary or employee of an obligated party as defined in § 80.1406.

(3) The independent third-party auditor shall not own, buy, sell, or otherwise trade RINs unless required to maintain a financial assurance mechanism for a QAP implemented under QAP Option A pursuant to § 80.1469(a) during the interim period or to replace an invalid RIN pursuant to § 80.1474.

(4) The independent third-party auditor and its contractors and subcontractors shall be free from any interest or the appearance of any interest in the renewable fuel producer or foreign renewable fuel producer's business.

(5) The renewable fuel producer or foreign renewable fuel producer shall be free from any interest or the appearance of any interest in the third-party auditor's business and the businesses of third-party auditor's contractors and subcontractors.

(6) The independent third-party auditor and its contractors and subcontractors shall not have performed an attest engagement under § 80.1464 for the renewable fuel producer or foreign renewable fuel producer in the same calendar year as a QAP audit conducted pursuant to § 80.1472.

(7) The independent third-party auditor and its contractors and subcontractors must not be 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.

(c) Independent third-party auditors shall maintain professional liability insurance, as defined in 31 CFR 50.5(q). Independent third-party auditors shall use insurance providers that possess a financial strength rating in the top four categories from either Standard & Poor's or Moody's, i.e., AAA, AA, A or BBB for Standard & Poor's and Aaa, Aa, A, or Baa for Moody's. Independent third-party auditors shall disclose the level of professional liability insurance they possess when entering into contracts to provide RIN verification services.

(d)(1) In the event that an independent third-party auditor identifies a RIN that may have been invalidly generated, the independent third-party auditor shall, within five business days, send notification of the potentially invalidly generated RIN to the EPA and the renewable fuel producer that generated the RIN.

(2) The independent third-party auditor shall provide the notification required under paragraph (d)(1) of this section in writing (which includes email or facsimile) and, if requested by the party being notified of a potentially invalidly generated RIN, by telephone.

(e) The independent third-party auditor shall identify RINs generated from a renewable fuel producer or foreign renewable fuel producer as having been verified under a QAP.

(1) For RINs verified under QAP Option A pursuant to § 80.1469(a) during the interim period, RINs shall be designated as A–RINs.

(2) For RINs verified under QAP Option B pursuant to § 80.1469(b), during the interim period, RINs shall be designated as B–RINs.

(3) For RINs verified under a QAP pursuant to § 80.1469(c), RINs shall be designated as Q–RINs and shall be identified as having been verified under a QAP in EMTS.

(4) The independent third-party auditor shall not identify RINs generated from a renewable fuel producer or foreign renewable fuel producer as having been verified under a QAP if a revised QAP must be submitted to and approved by the EPA under § 80.1469(f).

(f)(1) Except as specified in paragraph (f)(2) of this section, auditors may only verify RINs that have been generated after the audit required under § 80.1472 has been completed.

(i) For A–RINs, ongoing monitoring must have been initiated.

(ii) Verification of RINs may continue for no more than 200 days following an on-site visit or 380 days after an on-site visit if a previously the EPA-approved remote monitoring system is in place at the renewable fuel production facility.

(2) Auditors may verify RINs that were generated before the audit required under § 80.1472 has been completed, under the following conditions:

(i) The RINs in question were generated during the interim period.

(ii) The audit is completed during the interim period.

(iii) The audit is performed in accordance with the elements specified in a QAP that has been approved by the EPA per § 80.1469(e).

(iv) The audit requirements of § 80.1472 are met for every batch of renewable fuel for which RINs were generated and are being verified.

(v) The auditor may not perform more than one audit under this subparagraph for any single RIN generator.

(g) The independent third-party auditor shall permit any representative of the EPA to monitor at any time the implementation of QAPs and renewable fuel production facility audits.

(h) Any person who fails to meet a requirement under of this section shall be subject to a separate violation pursuant to § 80.1460(f).

[79 FR 42122, July 18, 2014, as amended at 80 FR 9098, Feb. 19, 2015]

EFFECTIVE DATE NOTE: At 87 FR 39674, July 1, 2022, § 80.1471 was amended by:

a. Revising paragraphs (b)(1), (4), (5), and (6) and (c);

b. Adding paragraph (e)(5); and

c. Revising paragraphs (f)(1) introductory text, (f)(1)(ii), and (g).

The amendments are effective Aug. 30, 2022. For the convenience of the user, the added and revised text is set forth as follows:

§ 80.1471 Requirements for QAP auditors.

* * * * *

(b) * * *

(1) The independent third-party auditor and its contractors and subcontractors must not be owned or operated by the renewable fuel producer, foreign renewable fuel producer, or biointermediate producer or any subsidiary or employee of the renewable fuel producer, foreign ethanol producer, or biointermediate producer.

* * * * *

(4) The independent third-party auditor and its contractors and subcontractors must be free from any interest or the appearance of any interest in the renewable fuel producer, foreign renewable fuel producer, or biointermediate producer's business.

(5) The renewable fuel producer, foreign renewable fuel producer, or biointermediate producer must be free from any interest or the appearance of any interest in the third-party auditor's business and the businesses of third-party auditor's contractors and subcontractors.

(6) The independent third-party auditor and its contractors and subcontractors must not have performed an attest engagement under § 80.1464 for the renewable fuel producer, foreign renewable fuel producer, or

biointermediate producer in the same calendar year as a QAP audit conducted pursuant to § 80.1472.

* * * * *

(c) Independent third-party auditors must maintain professional liability insurance. Independent third-party auditors must use insurance providers that possess a financial strength rating in the top four categories from Standard & Poor's or Moody's (*i.e.*, AAA, AA, A, or BBB for Standard & Poor's and Aaa, Aa, A, or Baa for Moody's), or a comparable rating acceptable to EPA. Independent third-party auditors must disclose the level of professional liability insurance they possess when entering into contracts to provide RIN verification services.

* * * * *

(e) * * *

(5) The independent third-party auditor must not identify RINs generated for renewable fuel produced using a biointermediate as having been verified under a QAP unless the biointermediate used to produce the renewable fuel was verified under an approved QAP pursuant to § 80.1477.

(f)(1) Except as specified in paragraph (f)(2) of this section, auditors may only verify RINs that have been generated after the audit required under § 80.1472 has been completed. Auditors may only verify biointermediates that were produced after the audit required under § 80.1472 has been completed. Auditors must only verify RINs generated from renewable fuels produced from biointermediates after the audit required under § 80.1472 has been completed for both the biointermediate production facility and the renewable fuel production facility.

* * * * *

(ii) Verification of RINs or biointermediates may continue for no more than 200 days following an on-site visit or 380 days after an on-site visit if a previously the EPA-approved remote monitoring system is in place at the renewable fuel production facility.

* * * * *

(g) The independent third-party auditor must permit any representative of the EPA to monitor at any time the implementation of QAPs and renewable fuel and biointermediate production facility audits.

* * * * *

§ 80.1472 Requirements for quality assurance audits.

(a) *General requirements.* (1) An audit shall be performed by an auditor who meets the requirements of § 80.1471.

(2) An audit shall be based on either an Option A QAP per § 80.1469(a) during the interim period, an Option B QAP per § 80.1469(b) during the interim period, or a QAP per § 80.1469(c).

(3) Each audit shall verify every element contained in an applicable and approved QAP.

(4) Each audit shall include a review of documents generated by the renewable fuel producer.

(b) *On-site visits*—(1) *Option A QAP during the interim period.* (i) The auditor shall conduct an on-site visit at the renewable fuel production facility at least 4 times per calendar year.

(ii) The on-site visits specified in paragraph (b)(1)(i) of this section shall occur at least 60 days apart. The 60-day period shall start the day after the previous on-site ends.

(iii) The on-site visit shall include verification of all QAP elements that require inspection or evaluation of the physical attributes of the renewable fuel production facility, except for any physical attribute that is verified through remote monitoring equipment per the applicable QAP.

(2) *Option B QAP during the interim period.* (i) The auditor shall conduct an on-site visit at the renewable fuel production facility at least 4 times per calendar year.

(ii) The on-site visits specified in paragraph (b)(2)(i) of this section shall occur at least 60 days apart. The 60-day period shall start the day after the previous on-site ends.

(iii) The on-site visit shall include verification of all QAP elements that require inspection or evaluation of the physical attributes of the renewable fuel production facility.

(3) *QAP.* (i) The independent third-party auditor shall conduct an on-site visit at the renewable fuel production facility or foreign ethanol production facility:

(A) At least two times per calendar year; or

(B) In the event an auditor uses a remote monitoring system approved by

the EPA, at least one time per calendar year.

(ii) An on-site visit specified in paragraph (b)(3)(i) of this section shall occur no more than:

(A) 200 days after the previous on-site visit. The 200-day period shall start the day after the previous on-site visit ends; or

(B) 380 days after the previous on-site visit if a previously approved (by EPA) remote monitoring system is in place at the renewable fuel production facility or foreign ethanol production facility, as applicable. The 380-day period shall start the day after the previous on-site visit ends.

(iii) An on-site visit shall include verification of all QAP elements that require inspection or evaluation of the physical attributes of the renewable fuel production facility or foreign ethanol production facility.

(iv) The on-site visit shall be overseen by a professional engineer, as specified in § 80.1450(b)(2)(i)(A) and (b)(2)(i)(B).

[79 FR 42122, July 18, 2014, as amended at 85 FR 7083, Feb. 6, 2020]

EFFECTIVE DATE NOTE: At 87 FR 39674, July 1, 2022, § 80.1472 was amended by revising paragraphs (a)(4), (b)(3)(i) introductory text, (b)(3)(ii)(B), and (b)(3)(iii), effective Aug. 30, 2022. For the convenience of the user, the revised text is set forth as follows:

§ 80.1472 Requirements for quality assurance audits.

(a) * * *

(4) Each audit shall include a review of documents generated by the renewable fuel producer or biointermediate producer.

(b) * * *

(3) * * *

(i) As applicable, the independent third-party auditor shall conduct an on-site visit at the renewable fuel production facility, foreign ethanol production facility, or biointermediate production facility:

* * * * *

(ii) * * *

(B) 380 days after the previous on-site visit if a previously approved (by EPA) remote monitoring system is in place at the renewable fuel production facility, foreign ethanol production facility, or biointermediate production facility, as applicable. The 380-day period shall start the day after the previous on-site visit ends.

(iii) An on-site visit shall include verification of all QAP elements that require inspection or evaluation of the physical attributes of the renewable fuel production facility, foreign ethanol production facility, or biointermediate production facility, as applicable.

* * * * *

§ 80.1473 Affirmative defenses.

(a) *Criteria.* Any person who engages in actions that would be a violation of the provisions of either § 80.1460(b)(2) or (c)(1), other than the generator of an invalid RIN, will not be deemed in violation if the person demonstrates that the criteria under paragraphs (c), (d), or (e) of this section are met.

(b) *Applicability of affirmative defenses.* The following provisions apply to affirmative defenses asserted under paragraph (a) of this section:

(1) Affirmative defenses only apply to RINs that were invalidly generated and verified through a quality assurance audit using an EPA-approved QAP.

(2) Affirmative defenses only apply in situations where an invalidly generated verified RIN is either transferred to another person (violation of § 80.1460(b)(2)) or used for compliance for an obligated party's RVO (use violation of § 80.1460(c)(1)).

(3) Affirmative defenses do not apply to the generator of an invalid RIN.

(c) *Asserting an affirmative defense for invalid A–RINs verified during the interim period.* To establish an affirmative defense to a violation of § 80.1460(b)(2) or (c)(1) involving invalid A–RINs, the person must meet the notification requirements of paragraph (f) of this section and prove by a preponderance of evidence all of the following:

(1) The RIN in question was verified through a quality assurance audit pursuant to § 80.1472 using an approved Option A QAP as defined in § 80.1469(a).

(2) The person did not know or have reason to know that the RINs were invalidly generated prior to being verified by the independent third-party auditor.

(3) If the person self-identified the RIN as having been invalidly generated, the person notified the EPA within five business days of discovering the invalidity.

(4) The person did not cause the invalidity.

(5) The person did not have a financial interest in the company that generated the invalid RIN.

(d) *Asserting an affirmative defense for invalid B–RINs verified during the interim period.* To establish an affirmative defense to a violation of § 80.1460(b)(2) or (c)(1) involving invalid B–RINs, the person must meet the notification requirements of paragraph (f) of this section and prove by a preponderance of evidence all of the following:

(1) The RIN in question was verified through a quality assurance audit pursuant to § 80.1472 using an approved Option B QAP as defined in § 80.1469(b).

(2) The person did not know or have reason to know that the RINs were invalidly generated at the time of transfer or use for compliance, unless the RIN generator replaced the RIN pursuant to § 80.1474.

(3) If the person self-identified the RIN as having been invalidly generated, the person notified the EPA within five business days of discovering the invalidity.

(4) The person did not cause the invalidity.

(5) The person did not have a financial interest in the company that generated the invalid RIN.

(6) If the person used the invalid B–RIN for compliance, the person adjusted its records, reports, and compliance calculations in which the invalid B–RIN was used as required by § 80.1431, unless the RIN generator replaced the RIN pursuant to § 80.1474.

(e) *Asserting an affirmative defense for invalid Q–RINs.* To establish an affirmative defense to a violation of § 80.1460(b)(2) or (c)(1) involving invalid Q–RINs, the person must meet the notification requirements of paragraph (f) of this section and prove by a preponderance of evidence all of the following:

(1) The RIN in question was verified through a quality assurance audit pursuant to § 80.1472 using an approved QAP as defined in § 80.1469(c).

(2) The person did not know or have reason to know that the RINs were invalidly generated at the time of transfer or use for compliance, unless the RIN generator replaced the RIN pursuant to § 80.1474.

(3) If the person self-identified the RIN as having been invalidly generated, the person notified the EPA within five business days of discovering the invalidity.

(4) The person did not cause the invalidity.

(5) The person did not have a financial interest in the company that generated the invalid RIN.

(6) If the person used the invalid Q–RIN for compliance, the person adjusted its records, reports, and compliance calculations in which the invalid Q–RIN was used as required by § 80.1431, unless the RIN generator replaced the RIN pursuant to § 80.1474.

(f) *Notification requirements.* A person asserting an affirmative defense to a violation of § 80.1460(b)(2) or (c)(1), arising from the transfer or use of an invalid A–RIN, B–RIN, or Q–RIN must submit a written report to the EPA via the EMTS support line (*support@epamts-support.com*), including all pertinent supporting documentation, demonstrating that the requirements of paragraphs (c), (d), or (e) of this section were met. The written report must be submitted within 30 days of the person discovering the invalidity.

[79 FR 42123, July 18, 2014]

EFFECTIVE DATE NOTE: At 87 FR 39674, July 1, 2022, § 80.1473(f) was amended by removing the text ''*support@epamts-support.com*'' and adding, in its place, the text ''*fuelsprogramsupport@epa.gov*'', effective Aug. 30, 2022.

§ 80.1474 Replacement requirements for invalidly generated RINs.

(a) *Responsibility for replacement of invalid verified RINs.* (1) The generator of the A–RIN and the independent third-party auditor that verified the A–RIN are required to replace invalidly generated A–RINs with valid RINs pursuant to the procedures specified in paragraph (b) of this section.

(2) The generator of the B–RIN and the obligated party that owns the B–RIN are required to replace invalidly generated B–RINs with valid RINs pursuant to the procedures specified in paragraph (b) of this section.

(3) The generator of the Q–RIN and the obligated party that owns the Q–RIN are required to replace invalidly generated Q–RINs with valid RINs pursuant to the procedures specified in paragraph (b) of this section.

(4) The generator of an unverified RIN and the obligated party that owns an unverified RIN are required to replace invalidly generated and unverified RINs pursuant to the procedures specified in paragraph (b) of this section.

(b) *Identification and treatment of potentially invalid RINs (PIRs).* (1) Any RIN can be identified as a PIR by the RIN generator, an independent third-party auditor that verified the RIN, or the EPA.

(2) For PIRs identified by the RIN generator, the generator is required to notify the EPA via the EMTS support line (*support@epamts-support.com*) within five business days of the identification, including an initial explanation of why the RIN is believed to be invalid, and is required to take any of the following corrective actions within 30 days:

(i) Retire the PIR.

(ii) Retire a valid RIN meeting the requirements of paragraph (d) of this section.

(3) For PIRs identified by the independent third-party auditor that verified the RIN, the independent third-party auditor is required to notify the EPA via the EMTS support line (*support@epamts-support.com*) and the RIN generator in writing within five business days of the identification, including an initial explanation of why the RIN is believed to be invalid.

(4) Within 30 days of being notified by the EPA or the independent third-party auditor that verified the RIN that a RIN is a PIR, the RIN generator is required to take one of the following actions:

(i) In the event that the EPA identifies a RIN as a PIR, do one of the following:

(A) Retire the PIR.

(B) Retire a valid RIN following the requirements of paragraph (d) of this section.

(C) Submit a demonstration in writing to the EPA via the EMTS support line (*support@epamts-support.com*) that the PIR is valid.

(*1*) If the EPA determines that the demonstration is satisfactory, the RIN will no longer be considered a PIR.

(*2*) If the EPA determines that the demonstration is not satisfactory, the PIR will be deemed invalid and the PIR generator must retire the PIR or a valid RIN following the requirements of paragraph (d) of this section within 30 days of notification by the EPA.

(ii) In the event that the independent third-party auditor identifies a RIN as a PIR, do one of the following:

(A) Retire the PIR.

(B) Retire a valid RIN following the requirements of paragraph (d) of this section.

(C) Submit a demonstration in writing to the independent third-party auditor and the EPA via the EMTS support line (*support@epamts-support.com*) that the PIR is valid.

(*1*) If the independent third-party auditor determines that the demonstration is satisfactory, the PIR will be deemed to be a valid RIN; however, the EPA reserves the right to make a determination regarding the validity of the RIN.

(*2*) If the independent third-party auditor determines that the demonstration is not satisfactory, the EPA will then make a determination whether the demonstration is not satisfactory, and if so, the PIR will be deemed invalid and the PIR generator must retire the PIR or a valid RIN following the requirements of paragraph (d) of this section within 30 days of notification by the EPA.

(5) Within 60 days of receiving a notification from the EPA that a PIR generator has failed to perform a corrective action required pursuant to this section:

(i) For A–RINs, the independent third-party auditor that verified the PIR is required to retire valid RINs meeting the requirements of paragraph (d) of this section.

(ii) For Q–RINs, B–RINs, and unverified RINs, the party that owns the invalid RIN is required to do one of the following:

(A) Retire the invalid RIN.

(B) If the invalid RIN has already been used for compliance with an obligated party's RVO, correct the RVO to subtract the invalid RIN.

(c) *Failure to take corrective action.* Any person who fails to meet a requirement under paragraph (b)(4) or (b)(5) of this section shall be liable for full performance of such requirement, and each day of non-compliance shall be deemed a separate violation pursuant to § 80.1460(f). The administrative process for replacement of invalid RINs does not, in any way, limit the ability of the United States to exercise any other authority to bring an enforcement action under section 211 of the Clean Air Act, the fuels regulations at 40 CFR part 80, or any other applicable law.

(d) The following specifications apply when retiring valid RINs to replace PIRs or invalid RINs:

(1) When a RIN is retired to replace a PIR or invalid RIN, the D code of the retired RIN must be eligible to be used towards meeting all the renewable volume obligations as the PIR or invalid RIN it is replacing, as specified in § 80.1427(a)(2).

(2) The number of RINs retired must be equal to the number of PIRs or invalid RINs being replaced, subject to paragraph (e) or (f) of this section if applicable, and § 80.1470(c).

(e) *Limited exemption for invalid B–RINs verified during the interim period.* (1) In the event that an obligated party is required to retire or replace an invalid RIN that is a B–RIN pursuant to paragraph (b) of this section, the obligated party will be afforded a ''limited exemption'' (LE) equal to two percent of its annual Renewable Volume Obligation (RVO) for calendar years 2013 and 2014 during the interim period.

(2) Limited exemptions are calculated as follows:

$$LE_{CB,i} = 0.02 \times RVO_{CB,i}$$
$$LE_{BBD,i} = 0.02 \times RVO_{BBD,i}$$
$$LE_{AB,i} = 0.02 \times RVO_{AB,i}$$
$$LE_{RF,i} = 0.02 \times RVO_{RF,i}$$

Where:

$LE_{CB,i}$ = Limited exemption for cellulosic biofuel for year i.

$LE_{BBD,i}$ = Limited exemption for biomass-based diesel for year i.

$LE_{AB,i}$ = Limited exemption for advanced biofuel for year i.

$LE_{RF,i}$ = Limited exemption for renewable for year i.

$RVO_{CB,i}$ = The Renewable Volume Obligation for cellulosic biofuel for the obligated party for calendar year i, in gallons, pursuant to § 80.1407.

$RVO_{BBD,i}$ = The Renewable Volume Obligation for biomass-based diesel for the obligated party for calendar year i after 2010, in gallons, pursuant to § 80.1407.

$RVO_{AB,i}$ = The Renewable Volume Obligation for advanced biofuel for the obligated party for calendar year i, in gallons, pursuant to § 80.1407.

$RVO_{RF,i}$ = The Renewable Volume Obligation for renewable fuel for the obligated party for calendar year i, in gallons, pursuant to § 80.1407.

(3) If the number of invalidly generated B–RINs required to be retired or replaced in a calendar year is less than or equal to LE as calculated in paragraph (d)(2) of this section, the entire RIN retirement obligation is excused.

(4) If the number of invalidly generated B–RINs required to be retired or replaced in a calendar year is greater than LE as calculated in paragraph (d)(2) of this section, the retirement of a number of B–RINs equal to two percent of the obligated party's RVO is excused.

(5) The limited exemption for B–RINs applies only in calendar years 2013 and 2014 during the interim period.

(f) *Limited exemption for invalid Q–RINs.* (1) In the event that an obligated party is required to retire or replace an invalid RIN that is a Q–RIN pursuant to paragraph (b) of this section, the obligated party will be afforded a ''limited exemption'' (LE) equal to two percent of its annual Renewable Volume Obligation (RVO) for calendar years 2014, 2015, and 2016.

(2) Limited exemptions are calculated as follows:

$$LE_{CB,i} = 0.02 \times RVO_{CB,i}$$
$$LE_{BBD,i} = 0.02 \times RVO_{BBD,i}$$
$$LE_{AB,i} = 0.02 \times RVO_{AB,i}$$
$$LE_{RF,i} = 0.02 \times RVO_{RF,i}$$

Where:

$LE_{CB,i}$ = Limited exemption for cellulosic biofuel for year i.

$LE_{BBD,i}$ = Limited exemption for biomass-based diesel for year i.

$LE_{AB,i}$ = Limited exemption for advanced biofuel for year i.

$LE_{RF,i}$ = Limited exemption for renewable for year i.

$RVO_{CB,i}$ = The Renewable Volume Obligation for cellulosic biofuel for the obligated party for calendar year i, in gallons, pursuant to § 80.1407.

$RVO_{BBD,i}$ = The Renewable Volume Obligation for biomass-based diesel for the obligated party for calendar year i after 2010, in gallons, pursuant to § 80.1407.

$RVO_{AB,i}$ = The Renewable Volume Obligation for advanced biofuel for the obligated party for calendar year i, in gallons, pursuant to § 80.1407.

$RVO_{RF,i}$ = The Renewable Volume Obligation for renewable fuel for the obligated party for calendar year i, in gallons, pursuant to § 80.1407.

(3) If the number of invalidly generated Q–RINs required to be retired or replaced in a calendar year is less than or equal to LE as calculated in paragraph (d)(2) of this section, the entire RIN retirement obligation is excused.

(4) If the number of invalidly generated Q–RINs required to be retired or replaced in a calendar year is greater than LE as calculated in paragraph (d)(2) of this section, the retirement of a number of Q–RINs equal to two percent of the obligated party's RVO is excused.

(5) The limited exemption for Q–RINs applies only in calendar years 2014, 2015, and 2016.

(g) All parties who retire RINs under this section shall use the forms and follow the procedures prescribed by the Administrator.

[79 FR 42123, July 18, 2014]

EFFECTIVE DATE NOTE: At 87 FR 39674, July 1, 2022, § 80.1474(b) was amended by by removing the text ''*support@epamts-support.com*'' wherever it appears and adding, in its place, the text ''*fuelsprogramsupport@epa.gov*'', effective Aug. 30, 2022.

§ 80.1475 What are the additional attest engagement requirements for parties that redesignate certified NTDF as MVNRLM diesel fuel?

(a) *General requirements.* (1) In addition to the attest engagement requirements under § 80.1464, all obligated parties required to arrange for additional attest engagement procedures under § 80.1464(a)(1)(vii) must have an annual attest engagement conducted by an auditor using the minimum attest procedures specified in this section.

(2) All applicable requirements and procedures outlined in §§ 80.125 through 80.127 and § 80.130 apply to the auditors and attest engagement procedures specified in this section.

(3) Obligated parties must include any additional information required under this section in the attest engagement report under § 80.1464(d).

(4) Report as a finding if the party failed to either incur or satisfy an RVO if required.

(b) *EPA reports.* Auditors must perform the following:

(1) Obtain and read a copy of the obligated party's reports filed with EPA as required by § 80.1451(a)(1)(xix) for the reporting period.

(2) In the case of an obligated party's report to EPA that represents aggregate calculations for more than one facility, obtain the facility-specific volume and property information that was used by the refiner to prepare the aggregate report. Foot and crossfoot the facility-specific totals and agree to the values in the aggregate report. The procedures in paragraphs (b) and (c) of this section are then performed separately for each facility.

(3) Obtain a written representation from a company representative that the report copies are complete and accurate copies of the reports filed with EPA.

(4) Identify, and report as a finding, the name of the commercial computer program used by the refiner or importer to track the data required by the regulations in this part, if any.

(c) *Inventory reconciliation analysis.* Auditors must perform the following:

(1) Obtain an inventory reconciliation analysis for the facility for the reporting period for each of the following and perform the procedures at paragraphs (c)(2) through (4) of this section separately for each of the following products:

(i) The volume of certified NTDF that was redesignated as MVNRLM diesel fuel.

(ii) The volume of MVNRLM diesel fuel that was redesignated to a non-transportation use.

(iii) The volume of MVNRLM diesel fuel owned when the fuel was received at the facility and acquired at the facility during the compliance period.

(iv) The volume of MVNRLM diesel fuel owned and sold or transferred to

other parties at the facility during the compliance period.

(v) The volume of certified NTDF received.

(vi) The volume of certified NTDF delivered.

(2) Foot and crossfoot the volume totals reflected in the analysis.

(3) Agree the beginning and ending inventory amounts in the analysis to the facility's inventory records.

(4) If the obligated party delivered more MVNRLM diesel fuel than received, agree the annual balance with the reports obtained at § 80.1475(b)(1) and verify whether the obligated party incurred and satisfied its RVO under § 80.1408(a)(2)(i).

(5) Report as a finding each of the volume totals along with any discrepancies.

(d) *Listing of tenders.* Auditors must perform the following:

(1) For each of the volumes listed in paragraphs (b)(1)(iii) through (b)(1)(vi) of this section, obtain a separate listing of all tenders from the refiner or importer for the reporting period. Each listing should provide for each tender the volume shipped and other information as needed to distinguish tenders.

(2) Foot to the volume totals per the listings.

(3) Agree the volume totals on the listing to the tender volume total in the inventory reconciliation analysis obtained in paragraph (b) of this section.

(4) For each of the listings select a representative sample of the tenders in accordance with the guidelines in § 80.127, and for each tender selected perform the following:

(i) Obtain product transfer documents associated with the tender and agree the volume on the tender listing to the volume on the product transfer documents.

(ii) Note whether the product transfer documents include the information required by 40 CFR 1090.1115 and, for tenders involving the transfer of certified NTDF, the information required by § 80.1453(e).

(5) Report as a finding any discrepancies.

[85 FR 7083, Feb. 6, 2020, as amended at 85 FR 78468, Dec. 4, 2020]

EFFECTIVE DATE NOTE: At 87 FR 39674, July 1, 2022, § 80.1475 was amended by:

a. In paragraph (a)(2), removing the text ''§§ 80.125 through 80.127 and § 80.130'' and adding, in its place, the text ''40 CFR 1090.1800 through 1090.1850'';

b. Revising the first sentence of paragraph (d)(1) and revising paragraph (d)(3); and

c. In paragraph (d)(4) introductory text, removing the text ''§ 80.127'' and adding, in its place, the text ''40 CFR 1090.1805''.

The amendments are effective Aug. 30, 2022. For the convenience of the user, the revised text is set forth as follows:

§ 80.1475 What are the additional attest engagement requirements for parties that redesignate certified NTDF as MVNRLM diesel fuel?

* * * * *

(d) * * *

(1) For each of the volumes listed in paragraphs (c)(1)(iii) through (vi) of this section, obtain a separate listing of all tenders from the refiner or importer for the reporting period. * * *

* * * * *

(3) Agree the volume totals on the listing to the tender volume total in the inventory reconciliation analysis obtained in paragraph (c) of this section.

* * * * *

§ 80.1476 Requirements for biointermediate producers.

Biointermediate producers must comply with the following requirements:

(a) *Registration.* No later than 60 days prior to the transfer of any biointermediate to be used in the production of a renewable fuel for which RINs may be generated, biointermediate producers must register with EPA pursuant to the requirements of § 80.1450(b).

(b) *Reporting.* Biointermediate producers must comply with the reporting requirements in § 80.1451(j).

(c) *Recordkeeping.* Biointermediate producers must comply with the recordkeeping requirements in § 80.1454(i).

(d) *PTDs.* Biointermediate producers must comply with the PTD requirements in § 80.1453(f).

(e) *Quality Assurance Plans.* Prior to the transfer of any biointermediate to be used in the production of a renewable fuel for which RINs may be generated, biointermediate producers

must have an approved quality assurance plan pursuant to § 80.1477(b) and the independent third-party auditor must have conducted a site visit of the biointermediate production facility under § 80.1472.

(f) *Attest engagements.* Biointermediate producers must comply with the annual attest engagement requirements in § 80.1464(h).

(g) *Limitations on biointermediate transfers and production.* (1) A biointermediate producer must transfer all biointermediates produced from a single biointermediate facility to a single renewable fuel production facility as designated under § 80.1450(b)(1)(ii)(B)(*1*).

(2)(i) Except as specified in paragraph (g)(2)(ii) of this section, a batch of biointermediate must be segregated from other batches of biointermediate (even if it is the same type of biointermediate), other feedstocks, foreign ethanol, and renewable fuels from the point that the batch of biointermediate is produced to the point where the batch of biointermediate is received at the renewable fuel production facility designated under § 80.1450(b)(1)(ii)(B)(*1*).

(ii)(A) Batches of biointermediate may be commingled between the biointermediate production facility and the designated renewable fuel production facility as long as each batch is produced at the same biointermediate production facility, is the same type of biointermediate, and no other feedstocks, biointermediates, foreign ethanol, or renewable fuels are comingled.

(B) A renewable fuel producer may commingle batches of biointermediate at an off-site storage tank if all the following conditions are met:

(*1*) Only batches of the same type of biointermediate are commingled and no other feedstocks, biointermediates, foreign ethanol, or renewable fuels are comingled in the off-site storage tank.

(*2*) The renewable fuel producer owns or is the sole position holder in the off-site storage tank.

(3) Renewable fuel producers that receive biointermediate at a renewable fuel production facility may not be a biointermediate producer.

(4) A biointermediate must not be used to make another biointermediate.

(5) A foreign biointermediate producer must not transfer biointermediate to a non-RIN-generating foreign producer.

(h) *Batch numbers and volumes.* (1) Each batch of biointermediate produced at a biointermediate production facility must be assigned a number (the ''batch number''), consisting of the EPA-assigned company registration number, the EPA-assigned facility registration number, the last two digits of the year in which the batch was produced, and a unique number for the batch, beginning with the number one for the first batch produced each calendar year and each subsequent batch during the calendar year being assigned the next sequential number (*e.g.*, 4321–54321–95–000001, 4321–54321–95–000002, etc.).

(2) For biointermediates measured on a volume basis, the volume of each batch of biointermediate must be adjusted to a standard temperature of 60 °F as specified in § 80.1426(f)(8).

(i) *Designation.* Each batch of biointermediate produced at a biointermediate production facility must be designated for use in the production of a renewable fuel in accordance with the biointermediate producer's registration under § 80.1450. The designation for the batch of biointermediate must be clearly indicated on PTDs for the biointermediate as described in § 80.1453(f)(1)(vi). The same batch or a portion of a batch may not be designated as both a biointermediate and a renewable fuel.

[87 FR 39675, July 1, 2022]

EFFECTIVE DATE NOTE: At 87 FR 39675, July 1, 2022, § 80.1476 was added, effective Aug. 30, 2022.

§ 80.1477 Requirements for QAPs for biointermediate producers.

(a) Independent third-party auditors that verify biointermediate production must meet the requirements of § 80.1471(a) through (c) and (f) through (h), as applicable.

(b) QAPs approved by EPA to verify biointermediate production must meet the requirements in § 80.1469(c) through (f), as applicable.

(c) Quality assurance audits, when performed, must be conducted in accordance with the requirements in § 80.1472(a) and (b)(3).

(d)(1) If an independent third-party auditor identifies a potentially improperly produced biointermediate, the independent third-party auditor must notify EPA, the biointermediate producer, and the renewable fuel producer that may have been transferred the biointermediate within five business days of the identification, including an initial explanation of why the biointermediate may have been improperly produced.

(2) If RINs were generated from the potentially improperly produced biointermediate, the RIN generator must follow the applicable identification and treatment of PIRs as specified in § 80.1474.

(e) For the generation of Q–RINs for renewable fuels that were produced from a biointermediate, the biointermediate must be verified under an approved QAP as described in paragraph (b) of this section and the RIN generating facility must be verified under an approved QAP as described in § 80.1469.

[87 FR 39675, July 1, 2022]

EFFECTIVE DATE NOTE: At 87 FR 39675, July 1, 2022, § 80.1477 was added, effective Aug. 30, 2022.

§ 80.1478 Requirements for foreign biointermediate producers and importers.

(a) *Foreign biointermediate producer.* For purposes of this subpart, a foreign biointermediate producer is a person located outside the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (collectively referred to in this section as ''the United States'') that has been approved by EPA to produce biointermediate for use in the production of renewable fuel by a RIN-generating renewable fuel producer.

(b) *Foreign biointermediate producer requirements.* Any foreign biointermediate producer must meet all requirements that apply to biointermediate producers under this subpart as a condition of being approved as a foreign biointermediate producer under this subpart.

(c) *Foreign biointermediate producer commitments.* Any foreign biointermediate producer must commit to the following provisions as a condition of being registered as a foreign biointermediate producer under this subpart:

(1) Any EPA inspector or auditor must be given full, complete, and immediate access to conduct inspections and audits of the foreign biointermediate producer facility.

(i) Inspections and audits may be either announced in advance by EPA, or unannounced.

(ii) Access will be provided to any location where:

(A) Biointermediate is produced.

(B) Documents related to foreign biointermediate producer operations are kept.

(C) Biointermediate is stored or transported between the foreign biointermediate producer and the renewable fuel producer, including storage tanks, vessels, and pipelines.

(iii) EPA inspectors and auditors may be EPA employees or contractors to EPA.

(iv) Any documents requested that are related to matters covered by inspections and audits must be provided to an EPA inspector or auditor on request.

(v) Inspections and audits may include review and copying of any documents related to the following:

(A) The volume of biointermediate produced or delivered to renewable fuel production facilities.

(B) Transfers of title or custody to the biointermediate.

(C) Work performed and reports prepared by independent third parties and by independent auditors under the requirements of this section, including work papers.

(vi) Inspections and audits by EPA may include interviewing employees.

(vii) Any employee of the foreign biointermediate producer must be made available for interview by the EPA inspector or auditor, on request, within a reasonable time period.

(viii) English language translations of any documents must be provided to an EPA inspector or auditor, on request, within 10 business days.

(ix) English language interpreters must be provided to accompany EPA inspectors and auditors, on request.

(2) An agent for service of process located in the District of Columbia must

be named, and service on this agent constitutes service on the foreign biointermediate producer or any employee of the foreign biointermediate producer for any action by EPA or otherwise by the United States related to the requirements of this subpart.

(3) The forum for any civil or criminal enforcement action related to the provisions of this section for violations of the Clean Air Act or regulations in this title promulgated thereunder must be governed by the Clean Air Act, including the EPA administrative forum where allowed under the Clean Air Act.

(4) United States substantive and procedural laws apply to any civil or criminal enforcement action against the foreign biointermediate producer or any employee of the foreign biointermediate producer related to the provisions of this section.

(5) Applying to be an approved foreign biointermediate producer under this section, or producing or exporting biointermediate under such approval, and all other actions to comply with the requirements of this subpart relating to such approval constitute actions or activities covered by and within the meaning of the provisions of 28 U.S.C. 1605(a)(2), but solely with respect to actions instituted against the foreign biointermediate producer, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign biointermediate producer under this subpart, including conduct that violates the False Statements Accountability Act of 1996 (18 U.S.C. 1001) and section 113(c)(2) of the Clean Air Act (42 U.S.C. 7413).

(6) The foreign biointermediate producer, or its agents or employees, will not seek to detain or to impose civil or criminal remedies against EPA inspectors or auditors for actions performed within the scope of EPA employment or contract related to the provisions of this section.

(7) The commitment required by this paragraph (c) must be signed by the owner or president of the foreign biointermediate producer company.

(8) In any case where the biointermediate produced at a foreign biointermediate production facility is stored or transported by another company between the production facility and the vessel that transports the biointermediate to the United States, the foreign biointermediate producer must obtain from each such other company a commitment that meets the requirements specified in paragraphs (c)(1) through (7) of this section, and these commitments must be included in the foreign biointermediate producer's application to be an approved foreign biointermediate producer under this subpart.

(d) *Sovereign immunity*. By submitting an application to be an approved foreign biointermediate producer under this subpart, or by producing and exporting biointermediate fuel to the United States under such approval, the foreign biointermediate producer, and its agents and employees, without exception, become subject to the full operation of the administrative and judicial enforcement powers and provisions of the United States without limitation based on sovereign immunity, with respect to actions instituted against the foreign biointermediate producer, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign biointermediate producer under this subpart, including conduct that violates the False Statements Accountability Act of 1996 (18 U.S.C. 1001) and section 113(c)(2) of the Clean Air Act (42 U.S.C. 7413).

(e) *English language reports*. Any document submitted to EPA by a foreign biointermediate producer must be in English or must include an English language translation.

(f) *Withdrawal or suspension of foreign biointermediate producer approval*. EPA may withdraw or suspend a foreign biointermediate producer's approval where any of the following occur:

(1) A foreign biointermediate producer fails to meet any requirement of this section.

(2) A foreign government fails to allow EPA inspections or audits as provided in paragraph (c)(1) of this section.

(3) A foreign biointermediate producer asserts a claim of, or a right to

claim, sovereign immunity in an action to enforce the requirements in this subpart.

(g) *Additional requirements for applications, reports, and certificates.* Any application for approval as a foreign biointermediate producer, any report, certification, or other submission required under this section shall be:

(1) Submitted in accordance with procedures specified by the Administrator, including use of any forms that may be specified by the Administrator.

(2) Signed by the president or owner of the foreign biointermediate producer company, or by that person's immediate designee, and must contain the following declarations:

(i) *Certification.*

''I hereby certify:

That I have actual authority to sign on behalf of and to bind [NAME OF FOREIGN BIOINTERMEDIATE PRODUCER] with regard to all statements contained herein;

That I am aware that the information contained herein is being Certified, or submitted to the United States Environmental Protection Agency, under the requirements of 40 CFR part 80, subpart M, and that the information is material for determining compliance under these regulations; and

That I have read and understand the information being Certified or submitted, and this information is true, complete and correct to the best of my knowledge and belief after I have taken reasonable and appropriate steps to verify the accuracy thereof.''

(ii) *Affirmation.*

''I affirm that I have read and understand the provisions of 40 CFR part 80, subpart M, including 40 CFR 80.1478 apply to [NAME OF FOREIGN BIOINTERMEDIATE PRODUCER]. Pursuant to Clean Air Act section 113(c) and 18 U.S.C. 1001, the penalty for furnishing false, incomplete or misleading information in this certification or submission is a fine of up to $10,000 U.S., and/or imprisonment for up to five years.''

(h) *Requirements for biointermediate importers.* Any biointermediate importer must meet all the following requirements:

(1) For each biointermediate batch, any biointermediate importer must have an independent third party do all the following:

(i) Determine the volume of biointermediate in the truck, railcar, vessel, or other shipping container.

(ii) Determine the name and EPA-assigned registration number of the foreign biointermediate producer that produced the biointermediate.

(iii) Determine the name and country of registration of the truck, railcar, vessel, or other shipping container used to transport the biointermediate to the United States.

(iv) Determine the date and time the truck, railcar, vessel, or other shipping container arrives at the United States port of entry.

(2) Any biointermediate importer must submit documentation of the information determined under paragraph (h)(1) of this section within 30 days following the date any truck, railcar, vessel, or other shipping container transporting biointermediate arrives at the United States port of entry to all the following:

(i) The foreign biointermediate producer.

(ii) The renewable fuel producer.

(3) The biointermediate importer and the independent third party must keep records of the audits and reports required under paragraphs (h)(1) and (2) of this section for five years from the date of creation.

[87 FR 39675, July 1, 2022]

EFFECTIVE DATE NOTE: At 87 FR 39675, July 1, 2022, § 80.1478 was added, effective Aug. 30, 2022.

Subparts N–O [Reserved]

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FINDING AIDS

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List of CFR Sections Affected

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For changes to this volume of the CFR prior to this listing, consult the annual edition of the monthly List of CFR Sections Affected (LSA). The LSA is available at *www.govinfo.gov*. For changes to this volume of the CFR prior to 2001, see the ''List of CFR Sections Affected, 1949–1963, 1964–1972, 1973–1985, and 1986–2000'' published in 11 separate volumes. The ''List of CFR Sections Affected 1986–2000'' is available at *www.govinfo.gov*.

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80.27 (a)(2)(ii) table amended 26359, 60678, 60890
80.1405 Regulation at 81 FR 89804 eff. date delayed to 3-21-17 8499
(a)(9) added 58527

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80 Notification 22593
80.27 (a)(2)(ii) table amended 53588
80.1401 Amended 37746
80.1405 (a)(10) added 63744
80.1426 (f)(1) Table 1 amended 37746

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80.27 (d)(2) revised 27021
80.27 (a)(2)(ii) table amended 49474
80.28 (g)(6)(iii), (8) introductory text, and (ii) revised 27021
80.70 (j)(3) revised 2456

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80.590 Heading and (a) introductory text revised; (a)(7)(viii) added 69341
80.598 (a)(2)(i)(G) and (b)(8)(iii) revised 69341
80.602 Heading, (a), and (b)(4)(i) revised 69341
80.605 Added 69341
80.1401 Amended; eff. 7-10-19 27021
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80.1435 Added; eff. 7-10-19 27022
80.1451 (c)(2) introductory text revised; (c)(2)(i) through (xviii) redesignated as (c)(2)(i)(A) through (R); new (c)(2)(i) introductory text and new (ii) added; eff. 7-10-19 27023
80.1452 (c)(12) revised; (c)(15) added; eff. 7-10-19 27024
80.1454 (i)(1), (2), (u), and (v) added; eff. 7-10-19 27024
80.1464 (a)(4), (5), (6), (b)(5), (6), (7), (c)(3), (4), and (5) added; eff. 7-10-19 27024
80.1503 (a)(1)(vi)(C), (b)(1)(vi)(C), (D), and (E) removed; (a)(1)(vi)(B) and (b)(1)(vi)(B) revised 27025
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80.26 Removed; eff. 1-1-22 78467
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80.33 Removed; eff. 1-1-22 78467
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80.125—80.135 (Subpart F) Removed; eff. 1-1-22 78467
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80.855 (c)(2) revised 7073
80.800—80.1045 (Subpart J) Removed; eff. 1-1-22 78467
80.1100—80.1167 (Subpart K) Removed; eff. 1-1-22 78467
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80.1429 (b)(3) revised 7076
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80.1442 (i) revised 7077
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80.1451 (a)(1)(i), (v), (4), (b) introductory text, (1)(ii)(D), (I), (g)(1)(ii)(D), and (I) revised; (i) and (j) redesignated as (j) and (k); (a)(1)(xix) and new (i) added 7079

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80.1465 Removed 78467
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80.1501 Heading, (b)(3)(i), and (5)(i) revised; (b)(5)(ii) removed 7084

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80.1500—80.1509 (Subpart N) Removed; eff. 1-1-22 78467
80.1600 Amended 7084
80.1603 (d)(1) revised; (d)(2) redesignated as (d)(3); new (d)(2) added; (f)(1) amended 7084
80.1609 (a) amended 7084
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80.1650 (b)(3), (e)(1)(iii)(A), and (g)(1)(iii)(A) revised 7085
80.1652 (a)(7) introductory text revised; (a)(7)(v) and (vi) added 7085
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80.1600—80.1667 (Subpart O) Removed; eff. 1-1-22 78467
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80.1451 (a)(1)(xiv)(E) and (F) added 17077
80.1464 (g)(7), (8), and (9) added 17078

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80.11 Added; eff. 8-30-22 39659
80.1401 Amended; eff. 8-30-22 39659
80.1402 Revised; eff. 8-30-22 39661
80.1405 (a)(11) revised; (a)(12) and (13) added; eff. 8-30-22 39661
80.1407 (f)(1) revised; eff. 8-30-22 39661
80.1408 (a)(2)(i)(B) and (ii)(B) amended; eff. 8-30-22 39661
80.1415 (c)(2)(ii) and (iii) revised; eff. 8-30-22 39661
80.1416 (b)(1)(ii) and (iii) revised; eff. 8-30-22 39662

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80.1426 (a)(4), (c)(8), (f)(4)(iv), (17) heading added; (c)(2) heading and (3) heading removed; (f)(1), (3)(vi), (4) heading, (5), (7)(v)(A), (B), (8)(ii)(B), (9)(ii), (15)(i) introductory text, (16)(iii), (17)(i) introductory text, (B)(*1*), and (*2*) revised; table 1, (f)(4)(i)(A)(*1*) amended; eff. 8-30-22 39662

80.1428 (b)(2) revised; eff. 8-30-22 39664

80.1429 (b)(9) introductory text revised; eff. 8-30-22 39664

80.1430 (e)(2) revised; eff. 8-30-22 39665

80.1431 (a)(3) added; eff. 8-30-22 39665

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80.1451 (a)(1) introductory text and (f) introductory text revised; (a)(1)(xiv) removed; (f)(1), (2) heading, and (3) heading added 5702

80.1451 (b)(1)(ii)(K), (L), (T), (U) introductory text, (g)(1)(i), (ii) introductory text, (A), (B), (C), (K), (L), (2)(vii) and (viii) revised; (b)(1)(ii)(R) amended; (g)(2)(x), (j) and (k) redesignated as (g)(2)(xi), (k) and (l); new (g)(2)(x), new (j) added; eff. 8-30-22 39668

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80.1452 (b)(16) redesignated as (b)(18); new (b)(16) and (17) added; eff. 8-30-22 39669

80.1453 (f) added; eff. 8-30-22 39669

80.1454 (n) through (q) and (w) removed; (b)(3)(vii) through (xii), (l)(3), (m)(10), and (s) through (v) redesignated as (b)(3)(viii) through (xiii), (l)(4), (m)(11) and new (n) through (q); new (b)(3)(vii), (k) heading, new (l)(3), new (m)(10), new (s) through (v) added; (b)(6), (i), (j) introductory text, (l) introductory text, (l)(1), new (n) introductory text, (r) revised; (d)(4), (m) introductory text amended; eff. 8-30-22 39670

80.1460 (b)(5) and (6) revised; (b)(8), (k) added; eff. 8-30-22 39671

80.1461 (a)(1) and (2) revised; (e) added; eff. 8-30-22 39671

80.1463 (d) revised; eff. 8-30-22 39671

80.1464 (d) revised; (g) and (i) removed 5702

80.1464 Amended; (a)(3)(ii), (b)(1)(v)(A), (3)(ii), (4)(i), (c) introductory text, (2)(ii), (i)(1) heading, (i)(1)(i) and (iii), (i)(2) heading, (i)(2)(i) and (ii) revised; (a)(7), (b)(1)(v)(C), (4)(iii), (8), (c)(6), (7) and (h) added; eff. 8-30-22 39671

80.1468 Revised; eff. 8-30-22 39673

80.1469 Introductory text, (c)(1)(vi), (vii), (2)(i), (3)(i), (5), (f)(1) and (2) revised; eff. 8-30-22 39673

80.1471 (b)(1), (4), (5), (6), (c), (f)(1) introductory text, (ii), (g) revised; (e)(5) added; eff. 8-30-22 39674

80.1472 (a)(4), (b)(3)(i) introductory text, (ii)(B), (iii)revised; eff. 8-30-22 39674

80.1473 (f) amended; eff. 8-30-22 39674

80.1474 (b) amended; eff. 8-30-22 39674

80.1475 (a)(2), (d)(1), (4) amended; (d)(3) revised eff. 8-30-22 39674

80.1476 Added; eff. 8-30-22 39675

80.1477 Added; eff. 8-30-22 39675

80.1478 Added; eff. 8-30-22 39675

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