FEDERAL REGISTER

Vol. 79 Friday,
No. 138 July 18, 2014

Part II

Environmental Protection Agency

40 CFR Part 80
RFS Renewable Identification Number (RIN) Quality Assurance Program; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2012–0621; FRL–9906–55–OAR]

RIN 2060–AR72

RFS Renewable Identification Number (RIN) Quality Assurance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under the Renewable Fuel Standard (RFS) program, producers and importers of renewable fuel generate Renewable Identification Numbers (RINs) that are used by petroleum refiners and importers to demonstrate compliance with their renewable fuel volume obligations. Several cases of fraudulently generated RINs, however, led to inefficiencies and a significant reduction in the overall liquidity in the RIN market, resulting in greater difficulty for smaller renewable fuel producers to sell their RINs. Today's action finalizes additional regulatory provisions that are intended to assure reasonable oversight of RIN generation and promote greater liquidity in the RIN market, which in turn helps ensure the use of the required renewable fuel volumes. The rule includes a voluntary quality assurance program and related provisions intended to meet these goals. The program also includes elements designed to make it possible to verify the validity of RINs from the beginning of 2013. Additionally, we are finalizing a number of new regulatory provisions to ensure that RINs are retired for all renewable fuel that is exported and to address RINs that become invalid downstream of a renewable fuel producer.

DATES: The provisions of this regulatory action become effective September 16, 2014. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of September 16, 2014.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2012–0621. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Deborah Adler-Reed, Office of Transportation and Air Quality, Compliance Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; Telephone number: 734–214–4223; Fax number: 734–214–4051; Email address: *adlerreed.deborah@epa.gov,* or the information line for the Office of Transportation and Air Quality Compliance Division; telephone number (734) 214–4343; Email address *complianceinfo@epa.gov.*

SUPPLEMENTARY INFORMATION:

Does this action apply to me?

Entities potentially affected by this final rule are those involved with the production, distribution, and sale of transportation fuels, including gasoline and diesel fuel or renewable fuels such as ethanol and biodiesel. Potentially regulated categories include:

Category	NAICS [1] codes	SIC [2] codes	Examples of potentially regulated entities
Industry	324110	2911	Petroleum Refineries.
Industry	325193	2869	Ethyl alcohol manufacturing.
Industry	325199	2869	Other basic organic chemical manufacturing.
Industry	424690	5169	Chemical and allied products merchant wholesalers.
Industry	424710	5171	Petroleum bulk stations and terminals.
Industry	424720	5172	Petroleum and petroleum products merchant wholesalers.
Industry	454319	5989	Other fuel dealers.

[1] North American Industry Classification System (NAICS).
[2] Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that the EPA is now aware could be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your activities would be regulated by this action, you should carefully examine the applicability criteria in 40 CFR part 80. If you have any questions regarding the applicability of this action to a particular entity, consult the EPA contact person listed in the preceding section.

Outline of This Preamble

I. Executive Summary

The Renewable Fuel Standard (RFS) program began in 2006 pursuant to the requirements in Clean Air Act (CAA) section 211(o) which were added through the Energy Policy Act of 2005 (EPAct). The statutory requirements for the RFS program were subsequently modified through the Energy Independence and Security Act of 2007 (EISA), resulting in the publication of major revisions to the regulatory requirements on March 26, 2010.[1]

The RFS program requires that specified volumes of renewable fuel be used as transportation fuel, home heating oil, or jet fuel each year. To accomplish this, the EPA publishes applicable percentage standards annually that apply to the sum of all gasoline and diesel produced or imported into the United States. The percentage standards are set so that if every obligated party (refiners and importers of gasoline or diesel transportation fuel) meets the percentages, then the amount of renewable fuel, cellulosic biofuel, biomass-based diesel, and advanced biofuel used are projected to meet the volumes required on a nationwide basis.

Obligated parties demonstrate compliance with the renewable fuel volume standards in one of two ways. Obligated parties can demonstrate compliance either by acquiring the required volumes of renewable fuels together with the associated Renewable Identification Numbers (RINs), which are assigned by the renewable fuel producer or importer to every batch of renewable fuel produced or imported, or by acquiring just the RINs without the associated fuel. Validly generated RINs show that a certain volume of qualifying renewable fuel was produced or imported. The RFS program also includes provisions stipulating the conditions under which RINs are invalid, the liability carried by a party that transfers or uses an invalid RIN, and how invalid RINs must be treated. In general, all regulated parties are liable for transferring or using invalid RINs. As a result, all regulated parties are responsible to take the steps they deem appropriate to verify that the RINs they acquire are valid. This is generally referred to as a ''buyer beware'' approach to RIN validity for the obligated parties.

[1] 75 FR 14670.

A. Purpose of This Final Action

Several cases of fraudulently generated RINs in the last few years[2] led some obligated parties to limit their RIN purchases to renewable fuel produced by those parties that they are confident are generating valid RINs. In order to ensure that RINs are validly generated, individual obligated parties began conducting their own audits of renewable fuel production facilities. The time and effort to conduct such activities, as well as the large overall number of renewable fuel producers and importers, resulted in greater difficulty for some of the smallest renewable fuel producers to sell their RINs. Initially, the overall liquidity of the RIN market was significantly reduced. These circumstances also created inefficiencies in the RIN market, as some RINs have been treated as having more value and less risk than others. The purpose of today's final action is to address these issues by finalizing changes to the regulations that assure reasonable oversight of the validity of RIN generation, promote greater liquidity in the RIN market, and assure the use of the required renewable fuel volumes.

In today's final action we are finalizing a voluntary quality assurance program intended to provide regulated parties a structured way to ensure that RINs entering commerce are valid. The program provides an affirmative defense against liability for civil violations under certain conditions for the transfer or use of invalidly generated RINs, and specifies both the conditions under which invalid RINs must be replaced with valid RINs, and by whom. Quality assurance programs enable smaller renewable fuel producers to demonstrate that their RINs are valid, reducing the risk that obligated parties believe is associated with such RINs. We are finalizing, consistent with the proposal, provisions applicable to RINs generated in 2013 through December 31, 2014.

In today's final action, in consideration of comments received on the notice of proposed rulemaking (NPRM),[3] we are also addressing export issues and circumstances in which RINs may become invalid subsequent to the renewable fuel producer's introduction of the RINs into commerce. For instance, exporters of renewable fuel

[2] The EPA's Criminal Investigation Division and Office of Civil Enforcement issued three Notices of Violation in 2011–2012 which helped lead to criminal convictions against the fraudulent actors. EPA continues to vigilantly investigate cases of potential generation of fraudulently generated RINs as they arise.

[3] 78 FR 12158, February 21, 2013.

may not have been retiring an appropriate number and type of RINs as required under the current regulations. In some cases parties may have exported diesel fuel containing amounts of biodiesel below levels that are currently required to be reported in other contexts, and are merely labeled as diesel fuel. Such exports would not have been reported as containing renewable fuel, and thus no RINs would have been retired. In other cases, exporters may have reported that renewable fuel had been exported, but might sell any RINs received and then go out of business before RINs are retired. The result of these circumstances could be a disparity between the RINs generated and the renewable fuel volume consumed in the U.S. We are finalizing modifications to the regulations pertaining to exporters of renewable fuel to address these issues. We are also finalizing a number of other modifications intended to address cases in which parties transfer or use RINs that have become invalid after the producer has introduced them into commerce.

B. Summary of Major Provisions

Today's final action includes a voluntary third-party quality assurance program option for RINs that regulated parties may exercise as a supplement to the ''buyer beware'' liability as prescribed under existing regulations. The program provides a means for ensuring that RINs are properly generated through audits of renewable fuel production conducted by independent third-parties using quality assurance plans (QAPs), provides an affirmative defense for the transfer or use of invalid RINs that had been verified under an approved QAP, defines the conditions when RINs must be replaced, and a process for determining who will replace the RINs.

For the interim period only, which runs from February 21, 2013 through December 31, 2014, we are finalizing both of the proposed QAP programs, QAP A and QAP B.

Beginning January 1, 2015, after the interim period is over, the program will consist of a single QAP, with its associated verified RINs referred to as Q–RINs. To this end, we are finalizing the following for the single QAP:

- Minimum requirements for a QAP, including such things as verification of feedstocks, verification that volumes produced are consistent with amount of feedstocks processed, and verification that RINs generated are appropriately categorized and match the volumes produced
- Qualifications for independent third-party auditors
- Requirements for audits of renewable fuel production facilities, including minimum frequency, site visits, review of records, and reporting
- Conditions under which a regulated party could assert an affirmative defense to civil liability for transferring or using an invalid RIN
- Identification of the party or parties who are responsible for replacing invalid RINs with valid RINs and the timing of such replacement
- A two percent limited exemption for calendar years 2014, 2015, and 2016 that exempts a small fraction of a party's Renewable Volume Obligation (RVO) from the requirement of replacement of invalid RINs used for compliance if they were RINs verified through a QAP
- Changes to the EPA Moderated Transaction System (EMTS) that would accommodate the quality assurance program

We are finalizing certain provisions exclusive to QAP A in the interim period, such as the RIN replacement mechanism that provides for invalid A–RINs to be replaced, the RIN replacement cap for auditor replacement of invalid A–RINs, and the elements of an affirmative defense specific to A–RINs. Additionally, we are finalizing provisions exclusive to QAP B in the interim period, such as the elements of an affirmative defense specific to B–RINs, and a two percent limited exemption for B–RINs for calendar years 2013 and 2014.

We are also finalizing modifications to the exporter provisions of the RFS program. These modifications will help ensure that an appropriate number and type of RINs are retired whenever renewable fuel is exported. Finally, we are finalizing a number of changes to other aspects of the RFS regulations governing the transfer and use of RINs that become invalid downstream of the producer.

C. Impacts

We anticipate that the quality assurance program will help to reduce the number of invalidly generated RINs in distribution, and thus help ensure that valid RINs are traded and used for compliance. As a result, it will help to ensure that the renewable fuel volumes mandated by Congress are actually used. In this respect, then, there will be no change to the expected impacts of the RFS program as projected in the March 2010 RFS final rulemaking [4] in terms of volumes of renewable fuel consumed or the associated GHG or energy security benefits. The primary impacts of the quality assurance program will be improved liquidity and efficiency in today's RIN market and improved opportunities for smaller renewable fuel producers to sell their RINs.

Likewise, the changes to the regulations governing export of renewable fuel will ensure that the appropriate number and type of RINs are retired for every gallon of renewable fuel exported, consistent with the intent of the program.

The quality assurance program that we are finalizing in today's action will be voluntary. Even though the program is voluntary, there will likely be costs associated with an individual party's participation in the quality assurance program, and in Section IV we have provided estimates of some elements of the costs of participation. However, the fact that the quality assurance program will be voluntary means that a decision to participate will be made independently by each regulated party. Making the program voluntary allows the regulated parties to choose whether any costs incurred by participating will be less than the current costs in the marketplace resulting from efforts to verify, acquire, trade, and use RINs and the risk of buying fraudulent RINs associated with such activities. Although we cannot say that the voluntary QAP provisions will reduce the cost of the RFS program, we expect that parties will only choose to use these voluntary provisions if they believe doing so will reduce their risk of purchasing fraudulent RINs and possibly save them money when compared to the oversight actions they are currently implementing.

II. Description of the Regulatory Provisions for QAPs and Response to Comments Received

A. QAP Framework

1. Finalization of a Single QAP Option

The NPRM proposed two new compliance options (''Option A'' and ''Option B'') in addition to the existing ''buyer beware'' approach. Each of the two proposed options contained provisions for: A quality assurance plan (''QAP'') that would be created and applied by an independent third-party auditor to verify the validity of RIN generation; an affirmative defense to civil liability for transfer or use of a verified but invalidly generated RINs; identification of the party responsible for replacement of verified but invalidly generated RINs, and limitations on the extent of that responsibility. Under both options, verification under an EPA-

[4] 75 FR 14670, March 26, 2010.

approved QAP would provide the basis for the defense to civil liability for any prohibited acts premised on the RIN's invalidly generated status. In today's rule, we are finalizing a single QAP closely resembling the proposed Option B, with its associated verified RINs referred to as Q–RINs. Option A and Option B are only being finalized with respect to interim period RINs, which are addressed in section II.B of this preamble.

Under the proposal for Option A, the QAP requirements were very stringent, requiring for example continuous monitoring of renewable fuel production facilities and documentation of RIN generation. Also under Option A, the QAP auditor would be responsible for replacing any invalidly generated RINs it had verified, if the RIN generator itself failed to replace. The auditor's liability for replacement would be capped at two percent of the A–RINs it had verified in that compliance year and the previous four compliance years, and the auditor would be required to maintain a RIN replacement mechanism capable of immediately replacing any invalid RINs up to the amount of the auditor's potential liability at any given point in time. Under Option B, the QAP requirements were less stringent, requiring quarterly site monitoring and document review, among other features. Also under Option B, the obligated party bore the responsibility to retire or (if already transfered or retired for compliance) to replace any invalidly generated B–RINs, but only if the number of such invalid RINs exceeded two percent of the obligated party's RVO for the compliance year in which the invalid RINs were generated. A major difference between Option A and Option B, then, was the identification of and parameters for the replacement of RINs that were invalidly generated but nonetheless verified under an EPA-approved QAP. Under Option A, the replacement responsibility rested on the QAP auditor, effectively eliminating any risk of replacing invalid verified RINs for the obligated party, while under option B, the obligated party bore the risk of having to replace invalid verified RINs if the quantity of such RINs was greater than two percent of its RVO. There were also some important differences in the requirements of the audit program.

During the period between publication of the NPRM and this final rulemaking, the EPA worked with a number of potential QAP auditors as they developed proposals for their QAPs and began implementation of their auditing services. To facilitate the verification of RINs generated in 2013 prior to the final rule's effective date, the EPA developed an informal pre-registration process. The EPA reviewed auditors' registration information and proposed QAPs, and provided guidance on whether the plans appeared to satisfy the proposed requirements. The EPA identified those auditors whose submissions were consistent with the requirements in the proposed regulations as part of this informal pre-registration process. RINs audited prior to the effective date of the final rule through a QAP which the EPA had informally pre-registered could be informally verified by the auditor, but they would only be formally verified after the final rule goes into effect, and after the EPA approved the QAP that was used in the audit process. Several auditors made use of this informal process.

Based on these ongoing interactions, the EPA collected significant data on the potential utility and feasibility of both Option A and Option B QAPs. For many auditors, a major barrier to development of an Option A QAP was the expense and risk associated with establishment and maintenance of an acceptable RIN replacement mechanism. The NPRM required, for instance, that the RIN replacement mechanism be outside of the sole operational control of the QAP auditor, requiring a third party's involvement and control. As discussed in the NPRM, many traditional forms of financial assurance would not be suitable for a RIN replacement mechanism and those that would fulfill the program requirements would likely be very expensive for auditors to maintain. These difficulties were clearly borne out in the experience of auditors attempting to set up Option A QAPs in the interim period. One of the informally pre-registered Option A QAP providers suggested that if a producer could not afford to have all its RINs audited as A–RINs, the same A–RIN protocols minus the RIN replacement mechanism should be counted as a B–RIN audit.[5] This comment underscores the significant expense associated with the RIN replacement mechanism and the auditors' perspective that many producers will not be able to utilize the Option A system simply because of this expense. In addition to the expense of the RIN replacement mechanism, one commenter also asserted that the RIN replacement mechanism could artificially skew demand for RINs and drive market prices up, if an auditor were to stockpile RINs (instead of a cash escrow) to fulfill the replacement mechanism requirement. Looking beyond the RIN replacement mechanism, the additional oversight and review required in QAP A also inflates the cost of providing Option A auditing services, when compared to the less onerous Option B QAP requirements. The challenge of installing a continuous monitoring system requires significant capital investment and ongoing time and financial resources.

Of the four auditors informally pre-registering Option A QAPs, only one actually used the Option A QAP to informally verify RINs in the interim period. Further, out of nearly 480 million RINs informally verified or pending informal verification through February 2014, less than 20 percent of them were Option A RINs (by the one informally pre-registered Option A auditor). This demonstrates a lower level of buy-in and lower utility of the Option A QAP when compared to the Option B QAP.

Most obligated party comments on Option A were consistent with auditors' experiences in attempting to set up the Option A QAPs. They asserted that given the increased stringency of the Option A auditing requirements and the replacement mechanism, the cost of these expenses would be passed through and reflected in the price of A–RINs. While A–RINs would indeed be seen as less risky than B–RINs or non-audited RINs, the decreased risk might not be worth the cost. Many commenters stated that the stringency of QAP B would be sufficient to guarantee the validity of audited RINs and the increased stringency of A was ''overly rigorous'' and not worth the additional expense.

Many small biodiesel producers also commented that they feared the Option A QAP would be too expensive for them to utilize. As discussed in the NPRM, the EPA hoped that the Option A QAP would improve liquidity for small producers on the RIN market, because the auditor replacement feature would eliminate any fear of a replacement obligation for RIN purchasers. Given the increased costs required to set up and run an Option A QAP program, however, many small producers do not expect they would be able to afford the cost of these services, even considering the speculative potential of increased value that A–RIN status might give to their RINs.

Given the difficulty experienced by auditors in setting up Option A QAPs, the apparent lack of use of the Option A QAP in the interim period, and the overwhelmingly negative comments regarding Option A by producers and obligated parties alike, we are not

[5] See docket document EPA–HQ–OAR–2012–0621–0040 at page 9.

finalizing Option A as a compliance alternative for use after the interim period.[6] Instead, we are finalizing a single QAP for use after the interim period that closely resembles the proposed Option B. The full description of the terms and conditions of this compliance program is found in sections II.A.2 and II.E of this preamble.

In addition to the issues raised by parties in comment, the EPA also considered the higher implementation costs for the Agency to administer both QAP A and QAP B. While this was not the Agency's primary consideration in reaching this decision we do note that directionally this decision will also reduce the cost to the government to implement and provide ongoing maintenance of and support for QAP A. Lastly, we would note that many of the financial features of QAP A can be offered through private contracts and financial instruments without the need for EPA involvement.

2. Description of the Affirmative Defense, Replacement Obligation, and Limited Exemption for the Single QAP

a. Affirmative Defense

Based on the reasoning and discussion detailed below, for the single QAP for use after the interim period (with its associated verified RINs referred to as Q–RINs), the Agency is finalizing an affirmative defense to civil liability for RIN owners like was proposed for QAP B in the NPRM, except for the notification element which we increased from one to five business days. See § 80.1473(e) of the regulations for more details.

The affirmative defense in this final rule will be modeled from the proposed affirmative defense for QAP B.[7] Note that there will be an affirmative defense for A–RINs and B–RINs informally verified during the interim period. See § 80.1473 (c) and (d) of the regulations for more details.

The affirmative defense will only be available to RIN owners for RINs that were verified by an independent third-party auditor using an EPA-approved QAP.

Additionally, it is our intent that the affirmative defenses will not be available to the generator of an invalid RIN. Since the quality assurance program will be voluntary, parties could still purchase RINs not verified by an EPA-approved QAP and transfer or use these unverified RINs, but they could not assert an affirmative defense if the RINs were found to be invalid, regardless of their level of good faith.

Once a RIN has been verified by the auditor, any person, other than the generator of the RIN, who transfers or uses that verified RIN will be eligible to assert an affirmative defense if the RIN was invalidly generated and the person then transferred it to another party or used it for compliance purposes. The QAPs will be designed to verify valid generation of RINs, and the assertion of an affirmative defense will be limited to the prohibited acts of transferring and using invalidly generated RINs. The affirmative defense addresses violations of 40 CFR 80.1460(b)(2) and the use violation of 40 CFR 80.1460(c)(1). 40 CFR 80.1460(b)(2) prohibits any person from transferring to any other person a RIN that is invalid. 40 CFR 80.1460(c)(1) provides that no person shall use invalid RINs to meet the person's RVO, or fail to acquire sufficient RINs to meet the person's RVO. The affirmative defense will apply to violations arising from a person's use of invalid RINs whether or not his/her use of the invalid RINs caused them to fail to acquire sufficient RINs to meet their RVOs.

We finalized new regulations in Section III.B to ensure that properly generated RINs cannot become invalid downstream of the RIN generator. It should again be noted that an affirmative defense is not available for a RIN that was not verified under an EPA-approved QAP. In other words, the ''buyer beware'' system as it exists under the current regulations will continue to be an option for obligated parties who do not wish to purchase RINs verified through a QAP.

When we proposed an affirmative defense in the NPRM, the Agency stated that the affirmative defense mechanism would allow any party, other than the generator of an invalid RIN, who holds invalidly generated RINs verified through a QAP to avoid civil liability for a prohibited act involving the transfer or use of invalid RINs for purposes of fulfilling an RVO. This approach is similar but not identical to the defense mechanisms used in other fuels regulation programs, such as the Diesel Fuel Sulfur Control regulations, 40 CFR 80.613(a), and the Reformulated Gasoline regulations, 40 CFR 80.79(b)(1). In order to establish this affirmative defense under the QAP, a party will be required to prove six elements by a preponderance of evidence. This means that each element was more likely than not to have been met. A person asserting an affirmative defense also must submit a written report to the EPA, along with any necessary supporting documentation, demonstrating that the elements have been met. The written report will need to be submitted within 30 days of the person discovering the invalidity of the RIN. An affirmative defense is a defense that precludes liability even if all of the elements of a claim are proven, and generally is asserted in an administrative or judicial enforcement proceeding. We have included an explicit reporting requirement to allow the EPA to evaluate affirmative defense claims before deciding whether or not to commence an enforcement action.

In the event that invalidly generated Q–RINs are transferred or used, the elements that must be established for an affirmative defense to the prohibited act of transferring or using the invalid Q–RINs for compliance with an RVO are as follows and are described in § 80.1473:

1. The RINs in question were verified in accordance with an EPA-approved QAP as defined in the EPA regulations in § 80.1469;

2. The RIN owner 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. The QAP provider or RIN owner informs the Agency via the EMTS technical support line (support@epamts-support.com) within five business days of discovering that the RINs in question were invalidly generated;

4. The RIN owner did not cause the invalidity;

5. The RIN owner did not have a financial interest in the company that generated the invalid RIN; and

6. If the RIN owner used the invalid RINs for compliance, the RIN owner adjusted its records, reports, and compliance calculations in which the invalid RIN was used as required by regulations (see § 80.1431), unless the RIN generator replaced the RIN pursuant to § 80.1474.

Further rationale for several of the elements required for asserting an affirmative defense are discussed in more depth below. In regard to element 2, owners of verified Q–RINs must not have known nor had reason to know of the invalidity of the RIN at the time they either transferred a RIN or used a RIN for compliance purposes unless the RIN generator had replaced the RIN per the

[6] As discussed in section II.C, Option A will be available for RINs generated during the interim period, as discussed at the proposal. This recognizes that there has been some informal use of this option during the interim period to date, even if limited. Finalizing Option A for just the interim period will avoid penalizing the parties who have informally verified RINs under this option to date, and the parties who have purchased such RINs.

[7] For more information regarding the rationale as to why an affirmative defense is being offered, please see the NPRM (78 FR 12176–12177 (February 21, 2013)).

regulations. See 40 CFR 80.1474. Since the obligated party has the replacement obligation under the QAP, it would not be appropriate for it to knowingly commit a prohibited act but still have an affirmative defense to civil liability. Similarly, we do not believe it would be appropriate to allow a RIN owner to transfer an invalid RIN to a third party if it knew the RIN was invalid. A transfer of the RIN with such knowledge would subvert the purpose of the quality assurance program, which is to help ensure the integrity of the RINs used for compliance purposes and to promote greater liquidity in the market. Knowing transfer of invalid RINs is inconsistent with these purposes. For these reasons, the owner of an invalid but verified Q–RIN cannot assert an affirmative defense if it knows or has reason to know of its invalidity at the time it transfers or uses the RIN for compliance purposes.

In regard to element 3, any party attempting to establish an affirmative defense will be required to inform the Agency within five business days of identifying that RINs were invalidly generated. This requirement should allow a reasonable and adequate amount of time for RIN owners to communicate this information internally first before communicating the discovery to the EPA while minimizing the amount of time available to capitalize on any incentives or financial advantages that might be gained from intentionally hiding invalidity or waiting to report. The Agency's primary goal to maintain and meet the annual RFS volume mandates would be frustrated by delayed reporting of invalidly generated RINs. The reporting requirement will therefore be both an element of good faith and a practical safeguard to meet the annual RFS volume mandates.

In regard to element 5, requiring that the RIN owner did not have any financial interest in the RIN generator's company ensures that the RIN owner did not receive and had no intention of receiving a financial benefit from the generation of invalid RINs. In regard to element 6, we have determined that the affirmative defense for Q–RINs should be contingent upon obligated parties taking the invalid Q–RINs out of the system or demonstrating that the producer implemented a remedial action [8] by retiring an equivalent number of replacement Q–RINs. This will help the Agency efficiently ensure that the environmental goals of the RFS program are achieved.

Finally, two requirements of an affirmative defense are that the RIN was verified under an approved QAP, element 1, and that the party did not cause the invalidity of the RIN in question, element 4.

The Agency did receive comments regarding the affirmative defense provision. All comments were supportive of including an affirmative defense to civil liability for RIN owners.

Some biofuel producers commented that the affirmative defense should be available to RIN generators as well because RINs may be generated improperly through no fault of the producer due to feedstock supplier issues as well as the general complexity of the regulations. The EPA is not extending the affirmative defense to RIN generators. The affirmative defense provides protection from civil liability in the event that RIN owners performed adequate oversight by way of implementing a QAP, yet a RIN was deemed invalid nonetheless. This is appropriate as the person who owns the RIN after it has been generated generally has no control over the actual production of the renewable fuel. Renewable fuel producers, however, have control over the actual production of fuel and are in a much better position to know if the RINs associated with that fuel are valid. With this greater control comes greater responsibility and the associated liability to ensure valid generation of the RINs. Renewable fuel producers still have remedial actions at their disposal to correct certain errors that occur in regard to RIN generation.

Some obligated parties commented that an affirmative defense should be available to unverified RINs as well. This would undermine efforts to minimize the generation of fraudulent RINs, of which the QAP program is an important element. The structured parameters of the QAP provide a framework for a specified degree of oversight of RIN generation by RIN owners when it comes to the RINs they purchase. The Agency defined this framework and determined that if this degree of oversight and the other elements of the affirmative defense are met, then an affirmative defense to RIN owners for RINs that have been verified through an Agency-designed system is appropriate. RINs outside of that system can be subjected to whatever degree of oversight the RIN owner may view as appropriate for their own risk management. It would not be appropriate to provide an affirmative defense to unverified RINs that do not meet the specified degree of oversight provided by the QAP, and have not gone through the process that the EPA has established for efficient administration of the affirmative defense. For example, auditors and their QAP plans must be approved by the EPA, and the EPA can monitor compliance by auditors with their responsibilities, providing confidence that the oversight will be implemented in practice. This does not occur outside of the RIN verification process established in this rule. It should be noted that the EPA considers a number of factors when deciding what action, if any, to take against a person who transfers or uses unverified invalid RINs.

Multiple commenters suggested that the EPA extend the timeframe to notify the Agency of discovery of a RIN that was invalidly generated. In element (3), the timeframe for notification was proposed to be within the next business day. The EPA agrees with extending the timeframe. The EPA acknowledges that it may take some time for a RIN owner to adequately communicate within its organizational structure that it is in possession of an invalid RIN. Therefore, the EPA is extending the notification timeframe to five business days. This should allow enough time for the corporate officers to be informed while providing prompt notification to the Agency to guard against any incentives for delaying reporting for illicit gains. There is an administrative process detailed in Section II.A.3 that deals with many of the concerns of commenters regarding whether a RIN is ''potentially'' invalid. Element (3) of the affirmative defense arises upon discovery that the RIN in possession has definitively been deemed ''invalid'' and it is then that the QAP provider or RIN owner must notify the Agency for the purposes of the affirmative defense. The QAP provider and renewable fuel producer still have the ability to correct any errors and/or perform a remedial action prior to the RIN being deemed ''invalid'' and the RIN owner being made aware of this fact.

b. Replacement Obligation for Invalid Q–RINs

Based on the discussion below and the comments received, the Agency is finalizing a QAP where invalid Q–RINs may not be used to demonstrate compliance with a Renewable Volume Obligation (RVO), just as invalid RINs may not be used under the current ''buyer beware'' program for unverified RINs. It should be noted that the Agency is also finalizing an administrative process for replacement of invalidly

[8] A remedial action is an action taken by a party to remedy certain specific RIN violations of the RFS2 regulations. See the following link to the RFS2 Remedial Action Guidance page of the EPA Web site for further information on remedial actions as well as specific instructions: *http://www.epa.gov/otaq/fuels/renewablefuels/compliancehelp/rfs2remedialactions.htm.*

generated RINs where the RIN generator is initially responsible for replacement of invalidly generated RINs. The administrative process details who has the responsibility to replace invalidly generated RINs and when those responsibilities begin. For RINs that have been retired for compliance, obligated parties must replace invalidly generated RINs when the RIN generator has not fulfilled their replacement obligation under the administrative process in order to remain in compliance. See § 80.1474 of the regulations for further details on the administrative process.

Regulated parties that purchase Q–RINs will not be subject to liability for a civil violation if a Q–RIN transferred or used for compliance purposes was later found to have been invalidly generated, if the elements of an affirmative defense were successfully asserted. See Section II.A.2.a. However, obligated parties will be responsible for replacing any invalidly generated Q–RINs used for compliance purposes. Obligated parties will be free to contract with producers, independent third-party auditors, or other parties, such as brokers, to limit their exposure for replacement of invalidly generated Q–RINs. Obligated parties will not be permitted to transfer or use Q–RINs they know or have reason to know have been invalidly generated. Any such transfer or use will be a prohibited act, pursuant to § 80.1460.

The QAP provides flexibility for obligated parties, producers, and third-party auditors to minimize the cost of verification services for RINs. Obligated parties that want the protection of an affirmative defense but would rather contract on their own terms regarding replacement of invalidly generated RINs should find this approach more flexible and appealing. Additionally, smaller producers could be drawn to this because the cost to participate in the quality assurance program under the QAP would be relatively small.

The Agency received comments from obligated parties and their trade associations that they should never have to replace invalid RINs that were a result of another party's malfeasance. The EPA is rejecting this approach, as retaining the replacement obligation is important to both ensure compliance with the renewable fuel volumes specified by Congress and to ensure that obligated parties take responsibility to make sure compliant fuel is purchased and introduced into commerce by either introducing compliant fuel themselves or by validating RIN integrity before buying RINs. QAP RIN replacement by obligated parties is meant to create the same ''buyer beware'' type of scrutiny of third-party auditor performance by obligated parties. By retaining the replacement obligation under the QAP, obligated parties have the incentive to provide significant robust oversight of the quality of third-party auditors, which in turn increases the likelihood of valid RINs and compliant fuel being introduced into the marketplace.

The Agency also received numerous comments mirroring the EPA's view on replacement obligation discussed above. Commenters noted that for the RFS program to properly function, the obligated parties needed to retain the obligation to replace invalid RINs, which would ensure that their individual RVOs would be met as well as the renewable fuel volumes specified by Congress.

c. Limited Exemption for Q–RINs

Based on the discussion below and the comments received, we are finalizing a two percent limited exemption for the QAP as was proposed for QAP B, except for the fact that it will only apply in calendar years 2014, 2015, and 2016.

The limited exemption exempts a small fraction of a party's RVO from the requirement for RIN replacement if QAP RINs up to the limit later turn out to be invalid. Given the perceived concerns about RINs generated by the smallest producers, a limited exemption, during the beginning of the program while auditors are learning to implement QAPs, could make obligated parties more willing to buy RINs from smaller, less well known biofuel producers. The limited exemption will be available only to obligated parties that are required to replace invalid RINs, not renewable fuel producers that are required to replace invalid RINs.

As described at proposal, we are setting the limit on the limited exemption for invalid Q–RIN replacement at two percent based on the uncertainty inherent in the gasoline/diesel production market as determined by comparing EIA's Short Term Energy Outlook projections versus actual production of the same year.[9] We have concluded this level of exemption is both rational relative to the uncertainty inherent in the standards process and sufficient to incentivize the use of QAPs.

The limited exemption will apply separately to each of the four standards under the RFS program: cellulosic biofuel; biomass-based diesel; advanced biofuel; and total renewable fuel.

The limited exemption will apply separately to each obligated party that is responsible for replacing invalid Q–RINs rather than to the industry as a whole. For instance, an obligated party would apply the two percent limited exemption to each of its four Renewable Volume Obligations (RVOs) to determine the number of Q–RINs of each of the four types that would not need to be replaced should they be found to be invalidly generated.

The limited exemption is a threshold below which invalid RINs will not be required to be replaced; it is not a trigger that determines when all invalid RINs must be replaced. Under this threshold approach, an obligated party will know at the beginning of each year that two percent of the RINs needed to meet each of its RVOs will not need to be replaced if those RINs were Q–RINs and were determined to be invalidly generated. Under this threshold approach, the number of Q–RINs that an obligated party will be required to replace will be those in excess of the applicable limited exemption (LE) as calculated. See § 80.1474(f) for more details on calculation of the limited exemption.

Finally, the limited exemption will be applicable for Q–RINs verified under the QAP during the calendar years of 2014, 2015, and 2016 of the quality assurance program. We think the limited exemption is an important incentive, but at the same time we also recognize it may reduce the total volume of renewable fuel produced under the program. As noted below, we intend to monitor the use of the provision during these years and will propose to extend its use in the future if we decide, based on the experience gained from 2014–2016, that the limited exemption, on balance, is valuable to the overall success of the RFS program.

Generally, obligated parties and small producers supported the limited exemption and its methodology. Other comments the Agency received regarding a limited exemption included: The limited exemption should apply to unverified RINs as well, and the limited exemption should be made permanent as the uncertainty it is based on will not cease after two years. The Agency did receive a comment from a producer trade association that said that the limited exemption exceeded the EPA's authority and would effectively be a waiver.

The Agency believes that it would not be appropriate to apply the limited exemption to RINs that are not verified by an EPA-approved independent auditor. The limited exemption for RIN

[9] For a more detailed description of the calculation of the 2% limited exemption, see the NPRM ((78 FR 12184–12187 (February 21, 2013)).

replacement is a useful component of the voluntary QAP process and other measures aimed at achieving a regulatory structure that facilitates reasonable oversight of RIN generation, adequate assurance that invalid RINs will be replaced, and a market for RINs where the opportunity to produce and sell RINs is spread broadly across producers, including small producers. Outside of the QAP program, the limited exemption does not facilitate any of the functions and benefits achieved by the QAP process. Outside the QAP program, obligated parties retain full discretion to conduct the oversight they deem appropriate, and to establish appropriate contract indemnification or other risk reduction measures. There is no clear reason that a limited exemption is needed under these circumstances to provide relief to obligated parties, and providing the limited exemption outside the QAP program would provide none of the benefits from facilitating the introduction period of the QAP program. Thus the EPA is not expanding the limited exemption outside of the QAP program.

Additionally, in response to making the limited exemption permanent, we expect regulated parties to be working to optimize implementation of the quality assurance program for several years. The limited exemption can help to ensure that the RIN market is more liquid as the program starts up. But as the program matures, we believe that there will be much less need for a limited exemption as obligated parties will gain experience in the first few years of the program with the QAP, and we would expect their confidence in the validity of Q–RINs to grow over this timeframe as well. Accordingly, the Agency sees the work needed by industry to optimize implementation of the QAP continuing for some time past the proposed 2014 sunset, but not permanently. The Agency is committed to monitoring the situation surrounding the limited exemption and its use. We will assess whether the provision is working as intended and whether it has encouraged the use of small producer RINs. We will evaluate based on the circumstances whether it is appropriate to extend the limited exemption past 2016. In response to the comment that the limited exemption exceeded the EPA's authority because it would effectively be a waiver, the Agency views implementing a limited exemption over several years as falling under the Agency's ability to use reasonable discretion to ensure that volume mandates are met. There remains an obligation on the renewable fuel producer to replace the RIN. A limited exemption will properly incentivize obligated parties to use the QAP, which in turn will increase the likelihood of valid RINs and compliant fuel being introduced into the marketplace. This is a reasonable way to ensure compliance with the volume mandates. It is not a waiver of a national volume or a waiver of the standards; instead it is a reasonable, temporary mechanism for determining compliance by an individual party with their individual RVO.

3. Administrative Process for Replacement of Invalidly Generated RINs

Based on the discussion below and the comments received, the Agency is finalizing the administrative process for replacement of invalidly generated RINs as proposed with minor changes and clarification. The Agency is changing the notification window from 24 hours to ''within five business days''. The Agency understands that identification may occur on a weekend, a holiday, or other period of time when the responsible corporate official is unavailable. This revision accounts for those situations where notification within 24 hours would not be practicable. Additionally, the Agency is clarifying that it is only asking for email notification of potentially invalid RINs (''PIRs'') via the EMTS support line (*support@epamts-support.com*), along with a brief initial explanation of why the RIN is believed to be a PIR. The Agency understands that resolution of the problem will take additional time in most instances, thus the requirement that the RIN generator has 30 days upon self-identification or notification by the QAP auditor of a PIR to take a corrective action, which still includes the remedial actions currently available to industry. See § 80.1474 of the regulations for details of the administrative process for replacement of invalid RINs.

The administrative process for replacement of invalid RINs places initial responsibility to replace invalidly generated RINs on the RIN generator responsible for causing the invalidity, regardless of who actually owns the invalid RINs at the time that the invalidity is discovered. In the event that the RIN generator does not replace the invalidly generated RINs according to the administrative process, the obligated party will be required to replace the invalid RINs if the RINs were verified under the QAP or were unverified. Thus, for invalidly generated RINs verified by a QAP and for unverified RINs, the obligated party who owns the RINs will bear the replacement responsibility. 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, or the fuels regulations at 40 CFR part 80. Thus, in the event that regulated parties fail to implement the administrative process for replacement of any RINs, the EPA could bring an enforcement action seeking injunctive relief and civil penalties against any or all of the parties that were required to replace the invalid RINs. The EPA understands obligated parties would retain the ability to contest the invalidity of RINs in any enforcement action commenced.

As an example, the process (fully detailed in the regulations in § 80.1474) for replacing invalidly generated RINs, whether Q–RINs or unverified, is outlined below. In general, verified potentially invalid RINs cannot be transferred or used for compliance purposes.

In the event that the EPA or the independent third-party auditor identifies a RIN that may have been invalidly generated, the RIN will be a PIR. The RIN generator will be required to take one of three possible corrective actions within 30 days of being notified of the PIR:

- If the RIN generator no longer has the PIR in its possession, it must retire a valid RIN of the same D-code as the PIR, either by purchasing it or by generating a new valid RIN and separating it from the physical volume it represents;
- If the RIN generator still has the PIR in its possession, it must retire the PIR; or
- If the RIN generator believes the PIR was in fact validly generated, it must submit a written demonstration providing a basis for its claim of validity to the third-party auditor and the EPA. If the third-party auditor determines that the demonstration is sufficient, the RIN will no longer be a PIR, and will not need to be replaced; however, the EPA will reserve the right to make a determination regarding the validity of the RIN. If the EPA determines that the demonstration is sufficient, the RIN will not need to be replaced. However, if the third-party auditor determines the demonstration is not sufficient and if the EPA confirms that determination, or if the EPA determines the demonstration is not sufficient, it will notify the RIN generator of that finding and again require the RIN generator to replace the invalid RIN within 30 days.

In order to allow a producer to replace a PIR with a new valid RIN from

renewable fuel that it has generated, we are finalizing a new provision in § 80.1429 that will permit producers to separate RINs from volume they produced for the specific purpose of retiring RINs to replace a PIR deemed invalid. If the RIN generator retired a valid RIN to replace a PIR deemed invalid, the invalid RIN that it replaced can continue to be transferred or used for compliance by any party. However, if the RIN generator for any reason failed to replace the PIR deemed invalid, the RIN owner will be notified of the failure and will be required to retire the invalid RIN within 60 days. If the PIR deemed invalid had already been used for compliance with its RVO, the obligated party will be required instead to correct its compliance reports by removing the invalid RINs from its reports and replacing the invalid RINs with valid RINs. Unless and until the PIR deemed invalid is replaced, either by the RIN generator or the obligated party, it will remain an invalid RIN and cannot be transferred or used for compliance purposes.

When an auditor or the EPA determines that a PIR is invalid, the RIN generator will be notified directly. At this point, the process of retiring an appropriate valid RIN will begin.

There will be two forms of invalid RIN replacement:

(1) If a party that is required to replace an invalid verified RIN owns the RIN in question, it may be retired through EMTS in the same way that invalid RINs under the current regulations are retired.

(2) If a party that is required to replace an invalid verified RIN does not own the RIN in question, or the RIN has already been used for compliance, the party will be required to acquire a valid RIN and retire it in place of the invalid RIN. In this case, since it will be a valid RIN that is being retired, a new retirement code reason has been created in EMTS for this purpose.

The Agency received multiple comments regarding one particular element of the administrative process for replacement of invalidly generated RINs. In the administrative process, RIN generators and independent third-party auditors are required to notify the EPA of their identification of PIRs within 24 hours. The commenters felt that 24-hour notice of PIRs to the EPA was too short of a window and did not allow sufficient time for proper investigation of the PIR and subsequent resolution of the problem. Commenters suggested being allowed anywhere between three and 30 days to notify the EPA of a PIR. The Agency's goal of this element is simply identification and notification of the PIR to the EPA, not resolution of the problem, if one exists, with the PIR. Therefore, the Agency is changing the notification window from 24 hours to ''within five business days''. The Agency understands that identification may occur on the weekend or holidays or while the responsible corporate official is unavailable. This revision accounts for those situations where notification within 24 hours would not be practicable.

Multiple commenters suggested that the administrative process should revolve around ''confirmed'' problems with RIN validity as opposed to ''potential'' problems with RIN validity. Commenters reasoned that if it applied to ''confirmed'' problems as opposed to ''potential'' problems, auditors and producers would have time to fix any associated problems and that many ''potential'' problems do not result in invalid RINs. The Agency is clarifying that it is only asking for email notification of PIRs via the EMTS support line, along with a brief initial explanation of why the RIN is believed to be a PIR. The goal of this element is simply identification and notification of the PIR to the EPA, not resolution of the problem, if one exists, with the PIR. The Agency understands that resolution of the problem will take additional time in most instances; thus the requirement that the RIN generator has 30 days upon identification or notification of a PIR to take a corrective action, which still includes the remedial actions currently available to industry. Additionally, only once the ''potential'' problem is ''confirmed'' and the RIN is invalid would the owner of that RIN be notified, so there will be no effect on liquidity in the market or any market disruptions for notifying the EPA of potential problems with RIN validity.

Additionally, the Agency originally proposed that an invalid verified RIN must be replaced by a valid verified RIN of the same D code. After receiving and reviewing several comments that any valid RIN, whether verified or unverified, should be able to replace an invalid verified RIN as long as they were of the same D code, the Agency agrees with this assessment. The purpose of replacement of invalid RINs is to ensure that a valid RIN has been retired in its stead to meet an RVO. The key is the validity of the RIN, not whether it was verified or not. Therefore, the Agency is finalizing that replacement of invalid verified RINs may be completed with either valid verified RINs of the same D code or valid unverified RINs of the same D code.

4. Producer Separation of RINs

We did not propose but requested comment on a regulatory change in which renewable fuel producers would be prohibited from separating RINs. Based on the discussion below and comments received, the Agency is keeping the separation provisions of the regulations as currently written, and producers will retain the ability to separate RINs under the limited circumstances specified in § 80.1429(b)(4).

Under the current regulations, RINs generally cannot be separated from the wet gallons they represent until the point of fuel blending or fuel purchase by an obligated party. However, a renewable fuel producer can separate RINs from their associated volumes of renewable fuel under the limited conditions specified in § 80.1429(b)(4), including where the fuel in question has been designated for a conforming use (i.e., for transportation fuel, heating oil or jet fuel) and is in fact used for such a conforming use, without further blending. In this circumstance, any owner of the RIN and associated gallon (including the producer of the fuel) may separate the RIN from the fuel. The intent of this provision was to avoid situations in which RINs were never separated from renewable fuel due to its use in neat form or some atypical blend.

In the fraud cases that occurred in 2011–2012, some registered biodiesel producers exploited this provision and generated, separated, and sold invalid RINs without an associated volume of renewable fuel. Some have argued that removing this option and prohibiting producers from separating RINs from the volumes they produce would reduce the ability of producers to generate fraudulent RINs without the knowledge of other parties in the RIN market.

While this mechanism might reduce the problem of producer fraud (of the type already seen), it would not eliminate the number of other ways invalid RINs could be generated at the point of production. Moreover, it could create new concerns, as legitimate cases of producers separating RINs from volume would be prohibited. This would only be a partial solution to the problem of fraud and invalid RIN production. We solicited comment on the benefits of producers' ability to separate RINs from wet gallons in the limited circumstances that are currently permitted, and whether these benefits outweigh the potential added risk of fraudulent RINs in the market.

The Agency received comments from obligated parties that removing producers' ability to separate RINs

would greatly reduce the ability of producers to generate fraudulent RINs. The Agency also received comments from producers, particularly small producers, as well as their trade associations, that the ability of small producers to separate RINs is vital to their livelihood. These comments stated that many of the gallons sold by small producers, particularly in local and regional markets, are sold to end-users who use the biodiesel directly and are not obligated parties under the RFS and do not want to be in the business of owning or selling RINs. These small producers often sell fuel directly to farmers or municipalities, and separate the RIN from the wet gallon so the buying party does not have to deal with the RIN. The producer comments also noted that allowing producers to separate RINs allows for easier compliance with the RFS volume requirements as the fuel can be used locally rather than shipped to obligated parties. The Agency agrees that allowing producers, particularly small producers, to separate RINs under certain circumstances is critical to their keeping their businesses viable.

The Agency notes that the percentage of RIN separations for neat use is extremely small when compared to the percentage of RIN separations by obligated parties and blenders. For example, through September 2013, for biomass-based diesel (D4 RINs), the percentage of RIN separations attributed to neat use was 1.7%, while the percentage of RIN separations attributed to obligated parties and blenders was 92.2%. Additionally, the implementation of QAPs will provide an added layer of scrutiny on producers to ensure they are producing actual gallons of fuel with the associated RINs. Overall, the EPA believes the benefits of continuing to allow producer separation of RINs under the conditions specified in the regulations outweighs the reduction in risk of invalid RIN generation.

B. Treatment of Interim Period RINs

In the proposed rulemaking, the EPA set forth guidelines for an informal ''pre-registration'' process to facilitate the development and implementation of QAPs in the interim period between publication of the NPRM and the final rule's effective date. The EPA reviewed auditors' registration information and proposed QAPs, and provided guidance on whether the plans appeared to satisfy the proposed requirements. The EPA identified those auditors whose submissions were consistent with the requirements in the proposed regulations as part of this informal pre-registration process. RINs audited prior to the effective date of the final rule through a QAP which the EPA had informally pre-registered could be informally verified by the auditor, but they would only be formally verified after the final rule goes into effect, and after the EPA approved the QAP that was used in the audit process. Several auditors made use of this informal process. The names of those auditors and QAPs whose submissions were consistent with the applicable requirements in the proposed regulations were published on the EPA's Web site (*http://www.epa.gov/otaq/fuels/renewablefuels/qap.htm*).

Furthermore, given the short time period of RIN generation at issue in the period between publication of the NPRM and the final rule's effective date and the desire to have QAP plans start up as quickly as possible, the EPA allowed auditors to verify RINs generated before the date the audit was completed. This ''retrospective'' RIN verification was only available prior to the effective date of the final rule, was only allowed for auditors whose QAPs were already in place and fully operational, and could only be performed once per producer. In other words, the one-time retrospective audit, if used, had to be completed prior to the effective date of the final rule. These limitations were intended to ensure that auditors were not inappropriately misusing this flexibility by doing all retrospective audits until the final rule's effective date. Instead, they were encouraged to get QAP-based audits up and running in their intended prospective form as soon as possible, while allowing reasonable flexibility to account for the start-up lag.

The EPA's review of proposed QAPs and the informal pre-registration process was not a final agency decision or approval of any auditor or QAP. The EPA's initial review of auditors' proposed QAPs provided guidance as to whether the EPA had any concerns about the plans and whether they were consistent with the requirements in the proposed regulations. Publication of the auditors' names and available QAPs was intended to provide useful information for outside parties who were evaluating the risk associated with RINs audited prior to the effective date of the final rule. The EPA's guidance or feedback to the auditors conferred no legal rights or privileges to the auditors, or to the production facilities and RINs they reviewed prior to the final rule's effective date.

Through this pre-registration process, the auditors began to market their QAP services and review RINs for purchasers, with a great deal of confidence that those RINs would receive all the benefits of QAP-verified RINs after the final rule became effective. We noted in the NPRM that if the requirements or structure of the QAP program should be altered in the final rule, we expected that RINs reviewed by auditors prior to the final rule according to the requirements set out in the NPRM would still be eligible for treatment as QAP-verified RINs.

Since publication of the NPRM, the EPA received and reviewed a number of QAP plans from prospective auditors and informally pre-registered six of them. These auditors have been developing a clientele of producers and RIN purchasers and applying their QAP procedures to RINs. The review and development of the proposed QAPs has been an iterative process between the EPA and the potential auditors. This process has been extremely useful both for the auditors in developing a QAP that is consistent with the NPRM's standards and also for the EPA in developing the final rule. Both QAP A and QAP B procedures were developed and applied to RINs during this period, with the vast majority being QAP B RINs.

As further discussed in section II.A.1 of this preamble, we are finalizing only a single QAP for use as of January 1, 2015, with RIN owners retaining replacement obligation for invalid verified RINs. However, any RINs audited and informally verified according to a QAP A or QAP B as proposed in the NPRM prior to the final rule's effective date will still receive the treatment proposed for QAP A or QAP B RINs in the NPRM if the auditor's registration and QAP are approved by the EPA after the final rule is effective. The EPA will review all pre-registered QAPs after the final rule's effective date and any RINs that were informally verified under a pre-registered QAP by a registered auditor will be treated consistently with the proposed provisions for A–RINs and B–RINs in the NPRM. Also, any RINs generated from the effective date of the final rule through December 31, 2014 that are audited and verified according to a registered QAP A or B will also receive the treatment proposed for QAP A or QAP B RINs in the NPRM. In other words, all RINs verified by a QAP that is registered as an A or B QAP after the effective date of the final rule and that are generated prior to January 1, 2015, are considered ''interim RINs'' because the ''interim period'' is defined as the period from publication of the NPRM through December 31, 2014. We determined that in order to facilitate a

smooth transition to EMTS and allow sufficient time for user testing and development, the interim period (in which auditors can continue to verify RINs according to an Option A or Option B QAP) would have to be extended beyond the effective date of the final rule. Auditors applying Option A and Option B QAPs will continue to maintain records of their activities and of RINs verified through their QAPs, just as they did in the period before the final rule's effective date. A–RINs and B–RINs will not be reflected in any way in EMTS reporting. If the EMTS system is capable of fully handling the ''tagging'' of RINs as Q–RINs prior to the end of the interim period, the EPA may offer auditors the opportunity to begin verifying RINs under the final ''Q–RIN'' protocol prior to January 1, 2015.

For A–RINs generated in the interim period, the applicable provisions, discussed further in section II.C of this preamble, include an affirmative defense to civil penalties for owners of invalid QAP-verified RINs who unknowingly transferred or retired the RINs for compliance with their RVOs. They also include the auditor's replacement responsibility for any invalid verified A–RINs that are not replaced by the producer up to a two percent cap, and the RIN owner's corresponding lack of replacement responsibility for those RINs. Auditors who verified these interim period A–RINs are obligated to maintain the replacement mechanism sufficient to meet their potential replacement responsibility, as set forth in the NPRM. Auditors who marketed and applied Option A QAP procedures during the interim period are not required to submit their QAP as an Option A QAP after the final rule, but may submit it as an Option B QAP. This may be preferable if, for instance, the auditor does not wish to maintain the replacement mechanism responsibility for the required 5 year period. The Option A QAP requirements set out in the NPRM were inclusive of all Option B requirements, so any QAP fulfilling the Option A requirements would also fulfill the Option B requirements.

RINs audited and informally verified according to a QAP B during the interim period will receive the treatment proposed for B–RINs in the NPRM, which is the same treatment proscribed generally for verified ''Q–RINs'' in the final rule. Once the EPA registers a QAP B auditor and approves their QAP, then any RINs that were informally verified during the interim period by that auditor using that QAP will be treated as QAP B verified RINs under the final rule, and will receive the benefits for QAP B verified RINs, including an affirmative defense to civil penalties for owners of invalid B–RINs who unknowingly transferred or retired the RINs for compliance with their RVOs. They also include a limited exemption for the RIN owner's obligation to replace up to two percent of the invalid verified RINs, if the producer does not replace them first. These provisions are further described in section II.D of this Preamble.

C. Provisions of RIN Verification Under QAP A During the Interim Period

Given that there will be only a single QAP finalized, the provisions and elements of QAP A that were proposed in the NPRM will be finalized for a QAP A used in the interim period. A number of comments were raised regarding QAP A which has led the Agency to not finalize it outside of the interim period. However, in considering those same comments for the interim period, we have concluded that it is appropriate to finalize QAP A as proposed since any benefits to changing QAP A in response to comments would not be outweighed by the significant complexity it would entail. This is especially true when considering parties have already implemented QAP A as proposed during the interim period. The discussion for why only a single QAP is being finalized is discussed in Section II.A.1.

We are finalizing the provisions of RIN verification under a QAP A used during the interim period as was proposed in the NPRM except for one element of the affirmative defense.[10] For consistency in affirmative defense elements of QAP A and the single QAP after the effective date of this final rule, the Agency is increasing the notification timeframe for QAP A from ''within 24 hours'' to ''within five business days'' as it did for the single QAP. A QAP A used during the interim period will include an affirmative defense (see § 80.1473(c) of the regulations), a RIN replacement mechanism held by the auditor (see § 80.1470(b) of the regulations), a cap on auditor replacement of invalid A–RINs (see § 80.1470(c) of the regulations), and a process for determining who will replace any invalid RINs (see § 80.1474 of the regulations).

With regard to the required RIN replacement mechanism, it must provide coverage for two percent of each D code of A–RINs verified by an auditor in the current year and (up to) the previous four years. For example, the RIN replacement mechanism for A–RINs verified during the interim period in 2013 should be capable of replacing those A–RINs until the end of 2017. Likewise, the RIN replacement mechanism for A–RINs verified during the interim period in 2014 should be capable of replacing those A–RINs until the end of 2018. Note that the interim period for verifying RINs under QAP A ends December 31, 2014. However, the RIN replacement mechanism must be capable of replacement of A–RINs until the aforementioned dates.

We also believe it is appropriate to cap the number of A–RINs that each auditor must replace at two percent of the A–RINs it has verified in the interim period. In other words, the RIN replacement cap should be equal to the minimum replacement coverage required for Option A auditors. Given that QAP A is only available during the interim period and will cease after December 31, 2014, the cap will apply to all A–RINs that have been verified by an auditor during the interim period.

D. Provisions of RIN Verification Under QAP B During the Interim Period

Given that there will be only a single, new QAP finalized after the interim period, the provisions and elements of QAP B that were proposed in the NPRM will be finalized for a QAP B used during the interim period. The majority of commenters did not address individual elements of QAP B, and were in favor of the affirmative defense and limited exemption provisions. For consistency in affirmative defense elements of QAP B and the single QAP after the effective date of this final rule, the Agency is increasing the notification timeframe for QAP B from ''within 24 hours'' to ''within five business days'' as it did for the single QAP. As a result, in the final rule, the Agency is finalizing a single new QAP that incorporates the majority of the characteristics of QAP B (there will be one additional verification component under RIN generation). The finalization of QAP B for the interim period reflects the fact that parties have already implemented QAP B as proposed during the interim period. The discussion for why only a single QAP is being finalized is discussed in Section II.A.1.

Again, we are finalizing the provisions of RIN verification under a QAP B used during the interim period as was proposed in the NPRM.[11] A QAP B used during the interim period will include an affirmative defense (see § 80.1473(d) of the regulations), a two percent limited exemption in calendar

[10] Please see 78 FR 12158 (February 21, 2013) for a detailed description of QAP A as proposed.

[11] Please see 78 FR 12158 (February 21, 2013) for a detailed description of QAP B as proposed.

years 2013 and 2014 (see § 80.1474(e) of the regulations), and a process for determining who will replace any invalid RINs (see § 80.1474 of the regulations).

E. Provisions for RIN Verification Under the QAP

1. Elements of the QAP

We are finalizing the elements for the QAP based on QAP B as proposed with one additional element. See Section II.E.1.c, RIN generation-related components, for this additional element. We are also removing the requirement that the production process is consistent with the D code being used. The existence of the element requiring that the production process is consistent with what is reported in EMTS (see Table II.D.1.b–1, element 2–1) renders it unnecessary. The QAP will be used by EPA-approved independent third-party auditors to audit renewable fuel production. The QAP will have to include a list of elements that the auditor will check to verify that the RINs generated by a renewable fuel producer or importer are appropriate given the feedstock, production process and fuel for which RINs were generated. Therefore, each QAP must identify the specific RIN-generating pathway from Table 1 to § 80.1426 or a petition granted pursuant to § 80.1416 that it is designed to audit.

We requested comment on these proposed elements, including detailed descriptions of any elements not mentioned below. We also requested comment on whether quarterly monitoring is appropriate, or whether different components could or should be subject to different schedules (e.g., monthly, biannually, etc.), and what those schedules should be, and why. Some commenters were against the quarterly requirement for various components of the QAP, stating that there is no reason to review documentation more frequently than annually if it does not change regularly. The EPA disagrees with these comments, as verifying quarterly that procedures and processes have not changed is an essential part of the QAP. Since RINs will be verified only for the period following an audit, allowing more time between reviews may increase the likelihood of fraud and reduce the effectiveness of the QAP. The one exception to this is the annual attest report, which is submitted annually, and therefore can be reviewed annually. Other comments expressed concern over the QAP covering elements of production that were not required under RFS2. We feel that the requirements are balanced and give assurance that the production process from feedstock to RIN generation was performed appropriately, and thus, are finalizing all requirements for the single, new QAP as were proposed for QAP B.

Additional comments and the required elements of the QAP are discussed below.

a. Feedstock-Related Components

There are eight required elements in the QAP designed to ensure that the feedstocks used in the production of renewable fuel qualify to generate RINs. First, for each batch of renewable fuel, the QAP must verify that feedstocks meet the definition of ''renewable biomass,'' and identify which renewable biomass per § 80.1401.

There are specific required elements depending on the type of feedstock. For instance, if the feedstock is separated yard waste, separated food waste, or separated MSW, the QAP must verify that a separation plan has been submitted and accepted or approved, as applicable, as part of the registration requirements under § 80.1450, and meets the requirements of § 80.1426(f)(5), and that all feedstocks being processed meet the requirements of the separation plan. If the renewable fuel producer claims that the feedstocks qualify under the aggregate compliance approach, the QAP will verify that the feedstocks are planted crops or crop residue that meet the requirements of § 80.1454(g).

The QAP must verify that the feedstocks used to produce renewable fuel are valid for the D code being claimed under § 80.1426 (or have an approved petition under § 80.1416) and must be consistent with the information reported in EMTS. The QAP will verify that the feedstock used to produce renewable fuel is not a renewable fuel from which RINs were already generated, unless the fuel is produced pursuant to an EPA-approved petition under § 80.1416 and the petition and approval includes an enforceable mechanism to prevent double counting of RINs.

Finally, the QAP must verify the accuracy of all feedstock-related factors used in calculation of the feedstock energy used under § 80.1426(f)(3)(vi) or (f)(4), as applicable, including the average moisture content of the feedstock, in mass percent, and the energy content of the components of the feedstock that are converted to renewable fuel, in Btu/lb. The feedstock-related elements required for the QAP are shown in the table below. All items will be required to be monitored on a quarterly basis.

TABLE II.E.1.A–1—QAP MONITORING FREQUENCY—FEEDSTOCK-RELATED

	Component
1–1	Feedstocks are renewable biomass.
1–2	Separation plan for food or yard waste submitted and accepted.
1–3	Separation plan for municipal solid waste submitted and approved.
1–4	Feedstocks meet separation plan.
1–5	Cropand/or crop residue feedstocks meet land use restrictions.
1–6	Feedstock valid for D code, consistent with EMTS.
1–7	Feedstock is not renewable fuel where RINs generated.
1–8	Accuracy of feedstock energy calculation.

b. Production Process-Related Components

There are four required elements in the QAP designed to ensure that the renewable fuel production process is appropriate for the RINs being generated. Auditors submitting QAPs for EPA approval will be required to provide a list of specific steps they will take to audit all four elements.

First, the QAP must verify that production process technology and capacity used matches information reported in EMTS and in the facility's RFS2 registration. The QAP also must verify that the production process is capable of producing, and is producing, renewable fuel of the type being claimed, i.e., is consistent with the D code being used as permitted under Table 1 to § 80.1426 or a petition approved through § 80.1416.

For each batch of renewable fuel, the QAP requires mass and energy balances of the production process, and must verify that the results match expectations for the type of facility being audited (e.g., biodiesel from soybean oil may have different expectations than biodiesel from non-food grade corn oil) based on typical values from prior input/output values, or similar facilities if prior values are not available. Energy inputs from on-site energy creation (e.g., propane, natural gas, coal, biodiesel, heating oil, diesel, gasoline, etc.) and/or energy bills, and mass inputs/outputs such as feedstocks, additional chemicals, water, etc., are required as part of the mass and energy balances.

Finally, the QAP must verify the accuracy of all process-related factors used in calculation of the feedstock energy (FE) under § 80.1426(f)(3)(vi) or (f)(4), as applicable. The production process-related elements for the QAP are shown in the table below. All items shall be monitored on a quarterly basis.

TABLE II.E.1.B–1—QAP MONITORING FREQUENCY—PRODUCTION PROCESS-RELATED

	Component
2–1	Production process consistent with EMTS.
2–2	Mass and energy balances appropriate.
2–3	Accuracy of process-related factors used in feedstock energy (FE) calculation.

c. RIN Generation-related Components

There are eight required elements in the QAP designed to ensure that the renewable fuel being produced qualifies to generate RINs, and that the number of RINs generated is accurate. In finalizing the elements for the QAP, we have added one requirement to the regulations that we proposed. The additional requirement is that auditors must verify that RIN generation is consistent with wet gallons produced. See the discussion below for more information.

For each batch of renewable fuel, the QAP must verify that volumes of renewable fuel for which RINs are being generated are designated for use as transportation fuel, heating oil, or jet fuel in the 48 contiguous states and Hawaii. This verification should also take into account the additional Product Transfer Document (PTD) designation requirements for all renewable fuels, and registration, reporting and recordkeeping requirements for fuels not typically used as transportation fuel, heating oil, or jet fuel. See section III.B.1 of this preamble for further discussion of these additional requirements.

The QAP must verify a number of things related to the fuel type. For instance, the QAP will include verification of the existence of certificates of analysis demonstrating that the renewable fuel being produced meets any applicable specifications and/or definitions in § 80.1401, and verify contracts with lab(s) for certificates of analysis, unless a facility has an on-site laboratory. If on-site, the QAP must verify lab procedures and test methods. The QAP must verify that renewable fuel being produced at the facility and that can be produced, matches information in RFS2 registration in terms of chemical composition, and must sample and test the final fuel and compare to any applicable specifications. The QAP must verify that renewable fuel being produced matches the D code being claimed under § 80.1426, or approved petition under § 80.1416.

The QAP must verify a number of things related to the volume of renewable fuel produced, including a check to ensure that volume temperature correction procedures are followed correctly. The QAP must verify that the volume of renewable fuel produced matches expectations for the amount of feedstock being processed. The QAP also must verify the accuracy of all fuel-related factors used in calculation of the feedstock energy, as applicable, including equivalence value for the batch of renewable fuel and the renewable fraction of the fuel as measured by a carbon-14 dating test method.

The QAP must verify that the production volume being claimed matches storage and/or distribution capacity and that actual volume production capacity matches the value specified in the facility's RFS registration. Finally, the QAP must verify that appropriate RIN generation calculations are being followed under § 80.1426(f)(3), (4), or (5) as applicable, and that RIN generation was consistent with wet gallons produced. We are also specifying in the regulations that the auditor must verify that RIN generation was consistent with wet gallons produced. While this was discussed in the proposal (see 78 FR 12182), it was not explicit in the regulations. We are making it explicit in the final regulations. The RIN generation-related elements for QAPs are shown in the table below. All items will be required to be monitored on a quarterly basis.

TABLE II.E.1.C–1—QAP MONITORING FREQUENCY—RIN GENERATION-RELATED

	Component
3–1	Renewable fuel designated for qualifying uses.
3–2	Certificates of analysis.
3–3	Renewable fuel matches D code or petition.
3–4	Renewable content R is accurate.
3–5	Equivalence value EV is accurate, appropriate.
3–6	Volume production capacity is consistent with registration.
3–7	RIN generation calculations.
3–8	RIN generation consistent with wet gallons.

d. RIN Separation-Related Components

There are three required elements in the QAP to verify that RINs were separated properly. First, under the limited circumstances where a renewable fuel producer or importer separates RINs, the QAP will be required to verify that any RIN separation being done by the producer was done according to the requirements of § 80.1429, was reported to EMTS accurately and in a timely manner, and is supported by records. The QAP will be required to ensure that renewable fuel producers who export renewable fuel, or cause the export of renewable fuel, do not generate RINs, or alternatively that any RINs generated were appropriately retired. Finally, the QAP must verify the accuracy of the annual attestation.

The RIN separation-related elements for the QAP are shown in the table below. All items must be monitored on a quarterly basis, except for the annual attestation review, which must be monitored yearly.

TABLE II.E.1.D–1—QAP MONITORING FREQUENCY—RIN SEPARATION-RELATED

	Component
4–1	Verify RIN separation.
4–2	Exported fuel not used to generate RINs.
4–3	Verify accuracy of annual attestation.

2. Approval and Use of QAPs

a. Approval of QAPs

A third-party auditor choosing to verify RINs under the quality assurance program must submit a QAP to the EPA for approval. A separate QAP is required for each different feedstock/production process/fuel type combination (i.e., pathway). A QAP for a given pathway may be used for multiple facilities for which that pathway applies. A QAP must be submitted for approval annually. A QAP will be deemed valid for one year from the date the EPA notifies the submitting party that its QAP has been approved. Only an EPA-approved QAP can be used by a third-party auditor to provide audit services to renewable fuel producers.

b. Frequency of Updates/Revisions to QAPs

We are finalizing a ''general'' and ''pathway-specific'' QAP arrangement, where the general QAP will cover the common elements of the QAP and the pathway-specific QAP will cover elements that require additional verification steps outside of the general QAP. We are also finalizing that QAP plans are pathway-specific, and auditors may verify RINs for any facility that uses a pathway for which they have been approved. This is consistent with what was proposed in the NPRM, and is simply a clarification of the method for implementation.

We requested comment on what changes would require a new QAP to be submitted for approval. Specifically, we requested comment on whether a new QAP should be required to be submitted to the EPA if the audited facility changes operations, feedstock, fuel type, etc. Based on comments received, we would like to clarify the process for updating and/or revising a QAP.

Potential QAP auditors must submit a ''general'' QAP to the agency that outlines the plan for verifying each of the elements of the QAP. In addition to the general QAP, a ''pathway-specific'' QAP must be submitted for each of the pathways they intend to audit. For example, a general QAP might outline the steps the auditor will use to verify that equivalence value is appropriate for all producers, whereas a pathway-specific QAP may outline the steps to verify that a separated food waste plan has been submitted for producers using used cooking oil as a feedstock to produce biodiesel. If an auditor feels that a section of the general or pathway-specific QAP does not apply, they may indicate ''Not Applicable'' in that section of their QAP. An example might be an auditor that does not intend to audit any facilities that require testing of renewable content according to § 80.1426(f)(9), and would therefore indicate in the general QAP that it did not apply.

Once general and pathway-specific plans have been approved for a potential auditor by the agency, the auditor may verify production for any facility using one of their approved pathways. The auditor does not need to submit any additional information to the agency if they add producers who use a pathway for which they are approved. If, however, a producer chooses to use a pathway for which the auditor does not have approval, then any RINs generated by that producer will not be verified until the auditor submits an application for that pathway, and it is subsequently approved. Renewable fuel produced prior to the acceptance of a pathway for a QAP auditor may later be verified, as long as the QAP auditor followed the verification steps outlined in the submitted pathway-specific QAP, and the fuel is still within the eligible RIN generation window.

If an auditor finds that it is necessary to make a change to their QAP, they may submit an updated plan to the EPA for approval. In an effort to avoid penalizing producers for being proactive in their ongoing QAP development, submitting a change to the EPA will not affect the status of any current QAP plans. Rather, the change will be queued, and the current QAP will remain in effect until approval or rejection of the updated submittal. If the agency chooses to reject the update, the existing QAP will remain in place and be unaffected by the attempt to update. If no QAP is in place, then RINs may not be verified until the QAP is approved.

3. Importers and the Use of a QAP

We are finalizing that foreign producers may participate in the QAP under the same production requirements as a domestic producer, although the method of implementation for each of the requirements may vary based on circumstances for each producer, domestic or foreign.

We requested comment on the likelihood of such producers participating in the quality assurance program, any difficulties to participating they might encounter, and any issues that could affect the integrity of the proposed program.

The quality assurance program will also apply to RINs generated for foreign-produced renewable fuel. Foreign producers of renewable fuel must be approved by the EPA and must meet all requirements applicable to non-foreign producers, i.e., the provisions of Subpart M. Such producers can engage a registered third-party auditor to audit their facility in accordance with the proposed quality assurance program. However, RINs generated from imported fuel will only be considered verified under the quality assurance program if both the associated foreign renewable fuel production facility, and the corresponding importer, are audited under the same EPA-approved QAP. If multiple auditors are involved in the verification process, the procedure for verification must be explicitly spelled out in a single associated QAP. In addition, the party submitting the QAP must accept responsibility for the entire QAP process, even if sections are performed by a partner organization. If a pre-determined arrangement is not a part of the QAP, then RINs from foreign producers may not be audited by multiple parties (for example, Auditor A verifies the foreign renewable fuel production and Auditor B verifies the importer RIN generation).

Some commenters indicated that foreign producers should be allowed to use existing documentation to prove the validity of fuel produced. While the EPA does not intend to place any additional burdens on foreign producers above what is required for domestic producers, we do intend to require foreign producers to be bound by the same QAP guidelines and verification requirements as domestic producers, although implementation for these elements (such as the verification of RIN generation) may vary considerably. For example, an auditor verifying production for a foreign RIN generating producer will need to ensure that the recordkeeping and bond requirements under §§ 80.1466 and 80.1467 are being met. It will also include verifying any certificates of fuel transfer, as well as port of entry testing, none of which are required for domestic RIN generation. This is by no means an exhaustive list, but rather an example to show that there may be significant differences in the requirements to verify a RIN, based on the location of the producer and the type of RIN generation. With these additional requirements, we believe foreign-produced RINs verified through a QAP can be treated in the same manner as any RINs verified from domestically produced fuel.

F. Auditor Requirements

In the NPRM, we outlined a number of proposed requirements for the independent third-party auditors that use approved quality assurance plans (QAPs) to audit renewable fuel production to verify that RINs were validly generated by the producer. We recognized that qualified, independent third-party auditors are integral to the successful implementation of the quality assurance program. Therefore, based on feedback from public comments and reasons discussed below, we are finalizing several requirements for third-party auditors in today's rulemaking. First, all third-party auditors are required to annually register with the EPA. We also will require that third-party auditors have professional liability errors and omissions insurance (E&O insurance). After the EPA has approved a QAP and registered the third-party auditor, the auditor can flag RINs in EMTS as verified and notify the EPA of potentially invalid RINs as QAPs are implemented. Finally, in order to ensure that QAPs are appropriately implemented, we are also finalizing recordkeeping, reporting, and attest engagement requirements on third-party auditors consistent with similar requirements on other parties in RFS.

1. Who can be an auditor?

One key element of the QAP process is the minimum qualifications that the auditors conducting facility visits must have. In the NPRM, we proposed three minimum qualifications for an auditor in order to implement a QAP and verify RINs. First, as is required of independent third-parties that conduct engineering reviews for renewable fuel

producers under RFS, we proposed that auditors be independent of the renewable fuel producers that they are auditing. Second, we proposed that auditors have the professional expertise to effectively implement QAPs by having a professional engineer participate in the implementation of an EPA-approved QAP. Third, we proposed that third-party auditors carry E&O insurance. The EPA continues to believe that these key qualifications provide reasonable assurances that auditors can successfully implement QAPs and help avoid the generation of invalid RINs at the fuel producer level.

a. Independence

One of the most important requirements for auditors is that they remain independent of renewable fuel producers. Independence of the auditor from RIN generators is necessary to ensure that RINs are not inappropriately validated due to a conflict of interest between the third-party auditor and the renewable fuel producer. In the NPRM, we proposed that third-party auditors be subject to the same independence definition that exists for independent professional engineers that conduct engineering reviews. In the March 2010 RFS final rule, we defined an independent third-party as a party that was not operated by the renewable fuel producer (or any subsidiary or employee of the producer) and free from any interest in the renewable fuel producer's business (See 75 FR 14670, March 26, 2010).

Recognizing the importance of preventing conflicts of interest to the successful implementation of the QAP program, we sought comment on whether our proposed definition of independence should be expanded to ensure that third-party auditors were free from interests from other parties regulated by the RFS (e.g., RIN owners and obligated parties). We also sought comment on whether we should preclude parties that have performed other services, like engineering reviews, attest engagements or acting as an agent for the RIN generator, from also implementing QAPs for the same RIN generator. For example, we recognized that portions of the QAP may involve investigating previous services provided by a third-party auditor to RIN generators, and third-party auditors may be hesitant to highlight issues that call into question their professional reputations creating a potential conflict of interest. We did not propose further requirements, however, as we did not believe they were necessary, they could interfere with existing efforts to ensure compliance, and there could be problems given the limited number of parties that could be available for approval as an auditor.

Public comments overwhelmingly agreed that ensuring the independence of third-party auditors is paramount to the successful implementation of effective QAPs. Commenters noted that third-party auditors that had conflicts of interests with audited producers and importers or direct or indirect financial interest in RIN markets more generally could undermine the QAP program and potentially the entirety of the RFS program by failing to report potential issues and potentially participating in the perpetuation of fraudulent activities. Commenters noted that the EPA should do whatever it could to ensure that third-party auditors remained independent by providing meaningful oversight and limiting the services that third-party auditors may provide for audited RIN generators.

We received several comments asking that we expand the scope of independence to include independence from various parties and activities outside of audited RIN generators. Almost all comments that addressed the question of third-party auditor independence stated that the third-party auditors should be precluded from owning and trading RINs. Many commenters expressed concerns that RIN ownership may provide a clear financial incentive for third-party auditors to not report potential issues, especially if they owned RINs from facilities they are auditing. Additionally, commenters argued that allowing third-party auditors to own RINs would add one more source of uncertainty in an already turbulent RIN market and that the EPA should preclude third-party auditors from owning and trading RINs. Some commenters argued further that third-party auditors should not only be precluded from owning RINs, but should also be free from interest in parties that own RINs since an auditor could improperly verify RINs to allow the owners of those RINs to enjoy the benefits of the QAP program despite the fact that those RINs may be invalid. On the other hand, one commenter urged the EPA to allow third-party auditors to trade RINs since that would make them statutorily responsible for the validity of the RINs. The commenter argued that the potential civil liabilities from being convicted of RIN fraud would outweigh the EPA's conflict of interest concerns.

We agree with commenters that allowing third-party auditors to own or trade RINs could lead to a potential conflict of interest that may inhibit an auditor's ability to effectively implement a QAP. The benefits to the auditor from allowing third-party auditors to own and trade RINs does not outweigh our conflict of interest concerns since third-party auditors are in the best position to identify potentially invalid RINs and without the proper implementation of a QAP, invalid or fraudulent RINs may never be identified, especially if the third-party auditor has an incentive to ignore potential issues because they have a financial interest in whether RINs are valid. Third-party auditors could also use their access to confidential business information for a number of RIN generators to speculate on unverified RINs from audited RIN generators. Therefore, we are finalizing requirements that preclude third-party auditors from owning and trading of RINs.

Some commenters argued that the EPA should expand the independence criterion for third-party auditors to include conflicts of interest with obligated parties. In the NPRM, the EPA suggested that it did not want to interfere with existing efforts by obligated parties or other intermediaries that may ensure compliance with RFS requirements and that such interference may hamper existing efforts by industry to mitigate invalid RIN generation. One commenter argued against this by pointing out that the EPA initially created the QAP program to be voluntary so that obligated parties could decide between the level of assurance in the quality of RINs outside the QAP program (i.e. under ''buyer beware'') or participate in the QAP program. They conclude that in order to promote consistency in the review for which an affirmative defense is available, third-party auditors must be independent even from obligated parties. We also received comments that suggested that we should allow the quality assurance efforts of an obligated party to be used in lieu of a QAP provided by an independent third-party auditor if the obligated party's quality assurance efforts satisfied all the elements of a QAP.

Although we recognize that obligated parties have historically implemented similar downstream quality assurance programs with great success, we also recognize the potential for conflict of interests to arise if obligated parties implemented a QAP for a producer or importer. If we treated RINs verified outside of a QAP by the obligated parties themselves the same as RINs verified by an approved QAP, there is a clear potential for the obligated party to verify RINs that are invalid to take advantage of the affirmative defense

elements and take advantage of, and possible even exploit, the flexibility of the limited exemption for RIN replacement. This is not an appropriate situation, and the EPA is not providing for it. Under the voluntary program adopted in this rulemaking, obligated parties will have to determine whether their existing quality assurance measures provide them adequate assurance to purchase RINs under the ''buyer beware'' program or in the alternative they can contract the services of independent third-party auditors to provide QAP services and take advantage of today's QAP program. For the same reasons, we are requiring that QAP auditors be independent from obligated parties the same way they are required to be independent from the RIN generator.

We also specifically sought comment on whether third-party auditors could act as agents for RIN generators that they were auditing.[12] We received many comments across the spectrum of support for auditor agency. Many commenters argued that allowing such a relationship between third-party auditors and audited RIN generators could increase the likelihood for the verification of invalid RINs. Some commenters pointed out that an auditor acting as an agent for an audited RIN generator could over generate RINs in collusion with the RIN generator since there may be little policing of QAP providers and the QAP provider could financially gain from the sale of the additional RINs. Other commenters stated that providing these services on behalf of RIN generators financially tied third-party auditors too closely to the continued success and potentially expansion of audited RIN generators, which may inhibit the ability for third-party auditors to impartially implement a QAP.

Other comments supported the notion that third-party auditors should be allowed to serve as agents for audited RIN generators since being an associated agent would allow the third-party auditor to have full access to oversee RIN generation data to compare with ongoing QAP implementation. This access would also allow third-party auditors to help producers with corrective actions as they are identified via QAPs. This would allow producers to reduce compliance costs. Some commenters argued even further suggesting that the EPA require that third-party auditors serve as agents to take advantage of the benefits of being an associated agent for an audited RIN generator.

Some commenters suggested that the EPA stop short of allowing third-party auditors to act as agents in a RIN generating capacity for audited RIN generators, but allow third-party auditors to submit compliance reports on behalf of audited RIN generators so long as the RIN generator signs off on the report. Such an approach would avoid the potential for collusion by allowing third-party auditors to generate RINs while saving time and reducing costs for audited RIN generators.

We believe, and one commenter also noted, that third-party auditors need not be agents of audited RIN generators to obtain access to RIN generation data since we can provide ''read-only'' access to auditors in EMTS which should provide enough information for auditors to effectively implement a QAP. Additionally, in the NPRM, we identified serious concerns about whether third-party auditors would be free from conflicts of interest if they were allowed to generate RINs for audited RIN generators. However, the EPA recognizes that submitting compliance reports, with assurances from the RIN generator of the accuracy and authenticity of required reported information, may provide an opportunity to reduce overall compliance costs for RIN generators without jeopardizing the independence of third-party auditors. Therefore, we are not allowing third-party auditors to generate RINs for audited RIN generators, but we are allowing third-party auditors to submit periodic compliance reports on behalf of audited RIN generators.

Some commenters noted that however the EPA designs the QAP program, auditors have an inherent conflict of interest since RIN generators must pay third-party auditors to enjoy the benefits of the program. This creates an incentive for auditors to ensure that their customers continue to produce RINs by not reporting potential issues arising from audits. The comment suggested that we should expand our definition to include that auditors should avoid even the appearance of a conflict of interest.

One commenter suggested that we adopt the conflict of interest standard outlined under rule 101 of the American Institute of CPAs. The commenter stated that the central articulation of this rule is that an auditor may have no direct or material indirect financial interest in the client. They argued that this clear and well-established requirement should be observed since it would better preserve the integrity of the QAP program compared to the proposed requirement.

We agree that today's QAP program imposes an implicit conflict of interest since third-party auditors' services are paid for by RIN generators, or for that matter any similar situation that applies to any independent party required under the RFS regulations (e.g. engineering reviews and attest engagements). We do not agree that the independence criterion for third-party auditors should be limited to strictly direct and indirect financial conflicts of interest. We believe by interpreting conflict of interest more broadly, we will raise the standard of independence in the QAP program to a higher level than that seen in other portions of the EPA regulations, especially considering the importance of maintaining an effective QAP. Therefore, we are modifying the independence requirements for third-party auditors to preclude the appearance of a conflict of interest. This does not preclude third-party auditors from being paid by RIN generators to provide auditing services. An example of a situation that serves as a potential appearance of a conflict of interest is if a third-party auditor has provided consultative engineering services in the development and construction of a renewable fuel production facility and then later is selected to implement a QAP at the same facility. Several elements of the QAP would require the third-party auditor to verify services previously provided to the producer that owned the facility and would appear to be a conflict of interest since the third-party auditor may not wish to tarnish its reputation by reporting potential issues related to its previous engineering services. Furthermore, as discussed in greater detail below, we are finalizing requirements to try to mitigate the inherent conflict of interest in the QAP program to provide both the EPA and third-party oversight of third-party auditors.

We received many comments that addressed the potential for conflict of interests to arise from a singular party that offered a variety of services including a QAP for a RIN generator. Some commenters pointed out that many parties that may serve as third-party auditors have acted or currently act as consultants for RIN generators and this would equate to a vested interest by the auditor in the continued success of the RIN generators being audited. Other commenters highlighted that some potential third-party auditors have provided numerous services to a single RIN generator including initial engineering reviews, annual attest

[12] For purposes of this preamble, agents are persons that act on behalf of a regulated party, in this case RIN generators, to complete requirements under the RFS program (e.g. generate RINs, submit periodic compliance reports, etc.).

engagements, the submission of periodic compliance reports on behalf of RIN generators, and serving as an agent to generate RINs on behalf of the RIN generator. These comments argue that allowing a single party to provide ''cradle to grave'' services that will now include the verification of RINs via a QAP for a RIN generator provides a substantial financial incentive for third-party auditors to ignore potential issues that may have occurred during prior services and identified through a QAP. A third-party auditor that reported such potential issues may call into question the validity of all prior work for other RIN generators creating a possibility for cascading losses for the auditor and RIN generators. Ultimately, these commenters concluded that such incentives could possibly undermine the QAP program and lead to more RIN fraud.

The commenters generally offered two suggestions for the EPA in the final rule. First, these comments suggested that the EPA limit the services a third-party auditor can from provide a RIN generator if they are implementing a QAP for a RIN generator. Comments varied on which services an auditor should be precluded from providing. For example, some comments suggested that third-party auditors not be allowed to have conducted the initial engineering review. Others suggested that different independent parties should provide each separate requirement in RFS that calls for an independent third-party to conduct an action. Other comments argued even further that auditors only be allowed to implement a QAP and therefore, not allowed to provide any other service involving RFS requirements for a RIN generator. This would include providing consultation services to aid RIN generators with registration paperwork, submitting compliance reports to the EPA or otherwise acting as an agent for RIN generators.

Second, these comments generally advocated that the EPA ensure that a system of checks and balances or a ''check the checker'' program exist to help ensure that auditors are appropriately implementing QAPs and free from conflicts of interest.

On the other hand, other comments argued that RIN generators that participate in the QAP program should receive relief from requirements that they believed would be duplicated by the implementation of a QAP at a facility. For example, many commenters felt that the burdensome periodic facility audits and documentation reviews should displace existing requirements for the triennial engineering reviews and annual attest engagements since much of the information gleaned from these activities will be available through QAP implementation at a facility. These commenters pointed out that providing relief for these requirements would decrease overall compliance costs to facilities participating in the QAP program which may ultimately increase participation by facilities in the QAP program. One commenter suggested that the EPA not go as far as to eliminate triennial engineering review requirements, but rather allow third party auditors to incorporate the engineering review within periodic facility audits to reduce some of the compliance burden on audited RIN generators.

Commenters also alluded to the EPA's stated concern in the NPRM that excluding third-party auditors that had conducted initial engineering reviews for a facility from providing auditing services would limit the number of qualified independent-third parties with appropriate knowledge of the RFS program, which may delay the adoption of QAPs by facilities. Some comments pointed out that this may harm existing third parties and provide an advantage to late entry third parties since many of the most knowledgeable third-party firms have historically provided engineering review and/or annual attest requirements. These comments concluded that establishing new relationships with third-party auditors with limited RFS expertise could increase compliance costs for participating RIN generators and decrease the overall quality of assurance provided by the QAP program.

We are not removing the annual attest engagement and triennial engineering review requirements for audited producers and importers. We believe, as some commenters pointed out, that these requirements differ substantially from QAP audits enough that there is significant value in the information provided in these activities that are not captured as part of a QAP.

We continue to be concerned that allowing one party to perform most if not all regulatory requirements involving a separate party including engineering reviews, attest engagements, and QAP implementation will tie an auditor's financial interests too closely to the RIN generators being audited. We do not want a program that incentivizes third-party auditors to fail to report potentially invalid RINs. Furthermore, even if a third-party did not intend to verify a potentially invalid RIN due to a potential conflict of interest, having more than one independent party provide required services under RFS serves to ''check the checker'' promoting better quality assurance and ensuring that the goals of the RFS continue to be met. However, we also want to promote the participation of RIN generators in this program because we believe that an effectively implemented QAP will also help fulfill RFS goals. Additionally, we do not want to exclude potential third-party auditors that have significant knowledge of the RFS program and renewable fuel production facilities from participating in the QAP program by establishing provisions that exclude such parties from implementing QAPs.

Therefore, in general we are not precluding third-party auditors from providing QAP services to a RIN generator such as initial engineering reviews and annual attest engagements. We are, however, prohibiting third-party auditors from continuing to provide both annual attest engagements and QAP implementation to the same audited RIN generator. This means that annual attest engagements and QAP implementation must be performed by two separate independent parties, i.e. the QAP auditor can perform one but not both of these services. For initial and triennial engineering reviews, a third-party auditor may conduct engineering reviews and QAP auditing services to the same RIN generator, and to reduce costs to the RIN generator, the third-party auditor may perform engineering reviews as part of a site visit required under the QAP.

For the reasons discussed above, we are finalizing independence requirements for third-party auditors based on the proposal with some amendments. We are expanding the independence requirement to include a prohibition on the buying and trading of RINs by third-party auditors. We are also modifying the definition of conflict of interest to include even the appearance of a conflict of interest between a third-party auditor and an audited RIN generator. This modified definition of conflict of interest will preclude third-party auditors from generating RINs for audited RIN generators. However, third-party auditors may still submit periodic compliance reports. Additionally, in order to both ''check the checker'' and preclude a single entity from providing all RFS services to a producer or importer, third-party auditors shall not be the same party that provides annual attest engagement services to producers or importers under § 80.1464. Having previously provided an attest engagement for a producer or importer does not preclude the third-party auditor from implementing a QAP for

that producer or importer. Third-party auditors can continue to provide engineering review services for audited producers and importers and may integrate those services with QAP implementation to the same producer or importer to reduce costs. We feel that this approach strikes the correct balance of maintaining auditors that are truly independent from producers and importers being audited while not excluding knowledgeable and capable potential third-party auditors from providing valuable QAP services.

b. Professionally Qualified to Implement a QAP

Another key element to ensure the effective implementation of QAPs at renewable fuel production facilities is that auditors have the necessary professional expertise and credentials. We require that each renewable fuel production facility undergo an engineering review by a licensed professional engineer as part of registration. In the NPRM, we proposed a similar requirement for auditors since the verification of production capabilities of a quality assurance program should be similar to the type of review conducted in the engineering review process for RFS registration. We proposed that independent third-party auditors would demonstrate that they possess the required professional expertise during registration. We also proposed to not require that companies that register as a third-party auditor be solely constituted of professional engineers to implement an EPA-approved QAP and conduct facility audits; however, a licensed professional engineer must supervise and or work in a team with other employees of the third-party auditing company. We also sought comment on whether we should require additional expertise (e.g. have third-party auditors have a certified public accountant on staff or under contract) and whether to establish a RFS competency requirement similar to requirements outlined in voluntary consensus standards (established by a voluntary consensus standards body) for greenhouse gas verification.

One commenter suggested that the QAP audits be designed by a professional engineer while the audit can be conducted by a team supervised by a professional engineer. While many commenters pointed out that although some portions of the facility site visits require similar expertise to engineering reviews (i.e. would require the services of a certified professional engineer), reviewing bills of lading and other records would require the expertise of a certified public accountant. Other commenters suggested that having a breadth of expertise on audit teams will increase the overall effectiveness of third-party auditors' ability to implement QAPs. Some argued further that the periodic hiring of a third-party auditor to help supervise or conduct site visits would be prohibitively costly to audited producers and importers. On the other hand, one commenter expressed concern about allowing the third-party auditor to only be required to have a professional engineer design the audits, but not supervise or attend the audit. This commenter highlighted that such a responsibility may be delegated to personnel not qualified to successfully implement a QAP and ultimately undermine the integrity of a QAP.

We agree that there are certain elements of the QAPs that would better be served by third-party auditors with appropriate professional backgrounds in recordkeeping auditing such as a certified public accountant. Some of the elements required as a part of a QAP resemble, but do not mimic entirely, elements that are currently part of annual attest engagements, for which we require an independent certified public accountant. However, some elements more closely resemble the elements required under engineering reviews and thus necessitating a professional engineer. Since an effective QAP involves the technical experiences of both professional engineers and certified public accountants, we are finalizing requirements that third-party auditors have both the qualifications of a professional engineer and a certified public accountant.

We also recognize that third-party auditors may incur substantial cost if they have to tender the services of both a professional engineer and a certified public accountant for every periodic site visit or records review.[13] We did not intend that every member of a team be constituted of professional engineers or certified public accountants, but rather that these qualified professionals would oversee the development and conducting of site visits and record reviews. We believe that qualified professionals will naturally take an active interest and participate in auditing activities since it is their professional reputations on the line and they may be liable for potential violations specified in the prohibited activities section at § 80.1460 and for making false statements to the government under 18 U.S.C. 1001. Therefore, although we are not requiring qualified professionals on-site to conduct audits at facilities, they do need to certify audit reports generated from those site visits.

One commenter suggested that each member of audit teams have a four-year college degree. We disagree with this comment since professional licensure and E&O insurance requirements for those supervising should serve as a check to help ensure that auditing teams are composed of competent personnel. The technical nature of auditing in general and auditing renewable fuel production facilities under RFS necessitates an appropriate educational background.

One commenter suggested that audit teams collectively have at least 20 years experience in RFS or related fields to perform audits. Although we feel that it is most beneficial to the program to have experience in RFS or related fields to perform audits, a 20 year experience requirement would be very difficult to monitor and enforce. The existing professional engineer requirements already include language that a professional engineer must have professional experience in the chemical engineering field or related to renewable fuel production. Based on our experience with third-party auditors that have informally pre-registered through the interim period and discussions with other potential third-party auditors, we believe that any third-party auditor would have to have a significant amount of experience in RFS or related fields to simply put together a QAP that satisfies today's requirements. Therefore, we are not adopting a minimum experience threshold for third-party auditor qualification.

A few commenters supported requiring third-party auditors to adhere to a standards established by a voluntary consensus standard body[14] or that the Agency create its own third-party auditor competency standard. Others noted that EPA could develop a periodic examination of RFS standards to gauge the expertise of third-party auditors. However, while supportive, many commenters noted that the development of such a standard, which currently does not exist, could significantly delay the implementation of the QAP program. As we noted in the NPRM, ''several independent third-parties have developed sufficient expertise with RFS to provide useful

[13] For this preamble, qualified professionals refers to certified professional engineers and certified public accountants that work for or that are acting on behalf of a third-party auditor to implement a QAP.

[14] For example, ISO 17024 provides a standard for the professional certification of greenhouse gas emissions.

validation services. . .and we believe that there exist adequate incentives for parties to ensure that third-party auditors understand the RFS program sufficiently.'' [15] We believe that based on our experience informally pre-registering third-party auditors, that most potential auditors have an appropriate amount of experience to successfully implement a QAP. In addition, while we believe that it is generally good to have professional competency standards, it would take a significant amount of time to develop such standards, which would hinder the development of today's QAP program. Therefore, we will continue to monitor the quality and expertise of third-party auditors that register to implement QAPs, and may revisit the idea of establishing a professional competency standard or exam in the future.

For reasons discussed above, we are finalizing professional licensure qualifications to include that third-party auditors have access to both a professional engineer and certified public accountant. We feel that this combination of expertise would allow third-party auditors to most effectively implement QAPs. We are also not finalizing other professional competency standards at this time (i.e. those specified in a standard established by a voluntary consensus standard body). We will continue to monitor the effectiveness of third-party auditors through the annual registration renewable process discussed below, and may revisit the idea of incorporating additional third-party auditor professional qualifications or competency exams if necessary.

c. Errors and Omissions Insurance

Based on the comments received and the discussion below, the Agency is finalizing a requirement of Errors and Omissions (''E&O'') insurance for independent third-party auditors from an insurance provider 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). Auditors will obtain coverage as they see fit to cover their professional liability exposure. Additionally, auditors will be required to disclose the level of E&O coverage they possess in a clause in every contract they enter into when providing RIN verification services.

We proposed that to ensure the effective implementation of QAPs at renewable fuel production facilities, independent third-party auditors would be required to maintain professional liability insurance (commonly known as E&O insurance) if offering a QAP. The amount of insurance was proposed to be, at a minimum, equal to two percent of the RINs the auditor verifies in a year to cover the replacement of any RINs verified by an auditor that turn out to be invalid as a result of auditor error, omission, or negligence. Additionally, we proposed that independent third-party auditors would be required to 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). We explained that requiring E&O insurance would help to achieve the level of professionalism necessary for the quality assurance program to work as intended. Possession of E&O insurance would lend business and financial credibility to a potential QAP auditor.

The Agency received multiple comments in support of the requirement that auditors maintain E&O insurance. There were several comments regarding the levels at which it should be maintained and how those levels should be calculated. One comment suggested a minimum of $1,000,000 in E&O insurance, with increases in coverage tied to increases in the number of RINs an auditor verifies. Another commenter suggested that E&O coverage be grouped into ''buckets''. For example, if an auditor verifies less than 10MM RINs, coverage should be $2MM, and if the auditor verifies between 10MM and 50MM RINs, coverage should be $5MM, etc. Commenters suggested that given the volatility in the prices of RINs, the amount of coverage should be tied to number of RINs verified as opposed to an amount equal to a percentage of RINs verified, which would vary based on the current price of RINs. The Agency agrees with this comment that any specified coverage would be better tied to the number of RINs verified as opposed to a set percentage of RINs verified.

In response to comments, the Agency sees the possession of E&O insurance primarily as an additional layer of auditor scrutiny. In order to obtain E&O insurance, auditors will have to undergo a robust underwriting examination that will look at the auditor's business expertise and financial status, among other factors. It may be that not all prospective auditors will be able to obtain a policy from an insurance provider with the required financial strength rating. This will help ensure that the auditors that do provide QAP services are qualified and have a track record of success as a company. Moreover, the Agency views E&O coverage as a market business decision that should be in the hands of the participants in the market. Auditors can assess the level of professional liability insurance they feel comfortable maintaining and their customers can judge that level accordingly in deciding whether to employ their service or choosing another competing auditor. The Agency feels it is best that it does not prescribe a certain level of E&O coverage, but rather simply require that a QAP provider disclose the level of E&O coverage they possess in a clause in every contract they enter into when providing RIN verification services. Customers of QAPs will be fully informed at the time of entering into a service agreement exactly what level of professional liability the QAP provider possesses. The disclosure of the level of coverage would increase transparency of auditors and boost the integrity of the burgeoning RIN verification market. Finally, by only requiring possession of E&O coverage, the Agency will not be tasked with continually calculating and monitoring the level of E&O coverage maintained by auditors offering a QAP, and will thus be better able to focus on effective implementation of other key parts of the quality assurance program.

2. Registration Requirements

In order to implement and enforce the new quality assurance program, we proposed that third-party auditors become regulated parties under the RFS program. To do this, we proposed registration, recordkeeping, and reporting requirements on third-party auditors to ensure that appropriate QAPs are executed according to the requirements specified in the regulations. This would allow the EPA and affected parties to monitor and have confidence that third-party auditors are implementing QAPs appropriately. These requirements are similar to those that we require for other regulated parties under the RFS program. We proposed that during initial registration third-party auditors would provide basic company information, copies of E&O insurance policies, certification of professional qualifications, QAPs for EPA approval, and a signed affidavit that states that the third-party auditor is independent of and free from any conflicts of interest with any renewable fuel producer for which they intend to verify RINs. We also proposed that during registration third-party auditors would also identify which facilities they intended to audit, if known, and that auditors would update their registration

[15] See 78 FR 12188 (February 21, 2013).

information each time they intend to provide QAP services for a new facility.

Recognizing that foreign third-party auditors may have unique challenges compared with domestic third-party auditors, we proposed additional registration requirements for foreign third-party auditors. In the March 2010 RFS rulemaking (75 FR 14670, March 26, 2010), we outlined a number of requirements that applied to foreign RIN owners (see 40 CFR 80.1467). These additional requirements are designed to ensure enforcement of RFS regulations at the foreign RIN owner's place of business and are similar to requirements for foreign parties under other fuels regulations. For example, foreign RIN owners must submit reports in English and provide translated documents in English upon demand from the EPA inspectors or auditors, must submit themselves to administrative and judicial enforcement powers and provisions of the United States without limitation based on sovereign immunity, and post a bond covering a portion of the gallon-RINs that a foreign RIN owner owns.

We also proposed that third-party auditors would have to renew their registration on an annual basis. The effectiveness of this program is contingent on the integrity of the third-party auditors and their ability to competently implement approved QAPs. The registration process is designed to help ensure that QAPs are implemented by competent, qualified and independent third-party auditors. A third-party auditor may only verify RINs under the voluntary quality assurance program if the auditor is registered with the EPA. The renewed registration submissions must include updates to information required for initial registration and an affidavit by the auditor that it is in full compliance with applicable QAP regulations. The affidavit would include a specific certified statement that the third-party auditor: (1) Has only verified RINs that it reviewed under an EPA-approved QAP, (2) has informed the EPA and RIN generators of all potentially invalid RINs that it discovered, and (3) has fulfilled its RIN replacement obligation if applicable. Third-party auditors that fail to accurately and completely renew their registrations will no longer be registered and therefore can no longer implement QAPs and verify RINs.

Finally, we proposed requirements that would preclude the hiring by third-party auditors of persons that had formerly been employed by a third-party auditor whose registration had been revoked. We believed that such a provision was necessary to ensure that third-party auditors employed competent persons of integrity. We also reserved the right to revoke a third-party auditor's registration at any time if we determine that the third-party auditor has failed to meet its regulatory requirements.

We received a number of comments on all aspects of the registration process for third-party auditors. Several commenters were concerned that the annual registration renewal process for third-party auditors would overburden the Agency and that the Agency would have difficulty approving many auditors before the start of new calendar years. This could potentially disrupt the verification of RINs at facilities that had an EPA-approved QAP implemented by a previously registered third-party auditor. These commenters suggested that the EPA should alter the requirements to automatically approve registration renewals for third-party auditors if the auditor had not heard back from the Agency after a period of time, for example 30 or 60 days. This would help ensure the continued implementation of QAPs and the verification of RINs. We agree that this would provide more certainty to audited RIN generators and third-party auditors; therefore, we are modifying the annual registration renewal requirements to automatically approve third-party auditor registration renewals if a previously registered third-party auditor has not received notice of a deficiency from the EPA regarding its registration renewal materials.

Many commenters noted that in most ways foreign third-party auditors should be treated similarly to domestic third-party auditors. Several comments called upon the EPA to recognize foreign credentials (i.e., foreign professional engineer certifications) of potentially third-party auditors. Others supported the EPA's proposal to have similar bonding and English language requirements to those required by foreign RIN owners. We agree that foreign professional credentials can be used to satisfy the professional competency requirements outlined above, and we are finalizing the additional foreign third-party auditor requirements as proposed.

One commenter suggested that the requirement for third-party auditors to submit a signed affidavit declaring their independence from audited RIN generators is superfluous. Another commenter suggested that we expand the affidavit requirement to include any documentation to support statements in the affidavit and make clear that the affidavit must be under oath. Such an approach would allow the EPA to go under the covers of the affidavit statements to ensure that all potential conflicts of interest are disclosed.

The affidavit requirement declaring independence is an important piece of registration and potentially valuable if we have to pursue actions arising from alleged conflicts of interests. We also recognize that there are concerns that some parties that have informally pre-registered during the interim period contract or subcontract out significant amount of auditing services, and that a simple affidavit that only applies to the third-party auditor's company may not cover the parties responsible for actually conducting much of the QAP implementation work. Therefore, we are expanding the independence affidavit requirement to include that third-party auditors assert that contractors and subcontractors employed to facilitate QAP implementation also adhere to the same conflict of interest standards in today's action.

One commenter asked for clarification about the list of facilities that needed to be supplied during registration that an auditor intended to audit. The commenter correctly noted that it would be unreasonable for a third-party auditor to anticipate all facilities they may audit during a year since they may sign up new clients. To clarify, we intend for the auditor to report at the time of registration only facilities that they know they will audit and for which they are seeking to have an EPA-approved QAP. Auditors will make updates to their registration information in accordance with the regulations when they sign up new clients and report that information during annual registration renewals.

Some commenters expressed concerns about the ability of the EPA to deny the registration of third-party that employ persons that were previously employed by an auditor whose registration was revoked. These commenters were worried that the EPA would unduly deny the registration of third-party auditors simply for hiring employees previously employed by an auditor with a revoked QAP even though the person in question may have had nothing to do with the circumstances that resulted in the revocation of the a registration for a previous employer. These commenters suggested further that the EPA only deny registrations for third-party auditors if a third-party auditor hires an employee where the preponderance of data demonstrates that the person was directly responsible for the revocation of the previous third-party auditor's QAP.

We agree that some employees of former third-party auditors whose registrations had been revoked may not

have had any direct involvement in the questionable activities that led to the revocation of the former third-party auditor's registration. The purpose of this provision was to ensure through registration that qualified professionals or other employees that were responsible for the EPA revoking a third-party auditor's QAP or registration did not simply go work for another third-party auditor. However, we believe that we have enough flexibility through our authority to revoke registrations and QAPs for cause, e.g. if a third-party auditor and its employees or contractors fail to appropriately implement a QAP, to help ensure that only reputable and qualified third-party auditors are registered to implement a QAP. Additionally, we believe that the potential liability for violations of RFS requirements of third-party auditors and its contractors and subcontractors will also adequately deter third-party auditors from failing to meet their applicable requirements. Therefore, for reasons discussed above, the EPA is not finalizing regulatory language granting it the discretion to deny the registration of a third-party auditor for the hiring or contracting with prior employees or contractors of auditors whose registrations were revoked.

3. Other Responsibilities of Auditors

a. Notifying the Agency When There Are Problems

As discussed in section II.A.4, we are requiring that third-party auditors notify the EPA and the renewable fuel producer of potentially invalid RINs, including but not necessarily limited to fraud, errors, and/or omissions, by the next business day after a problem has been identified.

b. Identifying Verified RINs in EMTS

In the NPRM, we proposed to require that third-party auditors be responsible for tagging RINs as having been ''verified'' in a way that is clearly visible in EMTS after they have been generated. In the NPRM, we explained that third-party auditors needed to identify RINs as having been verified so that downstream parties could know which RINs have been subjected to review by an auditor and thus can be eligible for an affirmative defense. We also proposed that the verification of a RIN in EMTS would be prospective, meaning that a RIN can only be verified after an auditor has audited a facility in accordance with an approved QAP and that RINs generated during the interim period will not be flagged as verified in EMTS. Finally, we proposed that third-party auditors would have the ability to stop verification of newly generated RINs should a problem arise during the QAP implementation process. Since third-party auditors are in the best position to identify potentially invalid RINs, allowing third-party auditors this flexibility is necessary to ensure that problems with invalid RINs are quickly identified and corrected.

In general, comments received regarding the identification of RINs as verified in EMTS were supportive. Several commenters expressed the desire for the EPA to have EMTS fully functional by the effective date of the rulemaking and ensure that EMTS development provides an opportunity for affected parties to beta test and provide feedback on the development and deployment of EMTS. In recognition of these concerns, verified A–RINs and B–RINs may still be generated outside of EMTS through December 31, 2014. Additionally, once EMTS is able to accommodate Q–RIN transactions, parties will have the ability to generate and input verified Q–RINs within EMTS. Based on current development pace, this should occur prior to the January 1, 2015 single QAP start date.

One commenter suggested that we should not require third-party auditors to verify RINs in EMTS since this would further distinguish between RINs generated from small producers, which they anticipated would be verified through a QAP, and larger producers, which they argued would not be verified through a QAP. The comment argued further that the EMTS currently allows parties wishing to buy and sell RINs to specify which producers they would like to purchase or sell to and that verification in EMTS is unnecessary. We disagree with this comment. Partially based on our experience with the informal verification of RINs through the interim period, keeping track of verified RINs outside of EMTS is quite burdensome on third-party auditors and obligated parties that wish to purchase verified RINs and on the Agency when we need to follow up on potential issues. We believe that ''flagging'' RINs in EMTS is the most cost effective way for obligated parties to quickly know that RINs being purchased have been verified by an EPA-approved QAP and will promote the use of the QAP program.

Therefore, we are finalizing requirements that third-party auditors verify RINs in EMTS as proposed.

c. Recordkeeping, Reporting, and Attest Engagements

i. Recordkeeping Requirements

We proposed that third-party auditors would be required to maintain records of all verification and validation activities related to the implementation of a quality assurance program. We explained that these records would serve to demonstrate that a QAP was appropriately implemented if invalid RINs are reported at a later date.

Although most comments were generally supportive of requiring third-party auditors to maintain records similar to other regulated parties under RFS requirements, one comment sought clarification of the proposed recordkeeping requirements. This comment argued that as proposed, the recordkeeping requirements would be too broad, would include potentially confidential business information and that much of this information would be duplicative of records already maintained by other regulated parties under RFS (e.g. RIN generators).

We believe that renewable fuel producers and importers can address concerns about the inappropriate disclosure of confidential information obtained by a third-party auditor through a QAP through private agreements with the third-party auditor. We also recognize that some information may be duplicative of records already maintained by other regulated parties. However, most recordkeeping requirements will not be kept by other regulated parties under RFS since they are specific to the QAP implementation activities of third-party auditors. Therefore, we are finalizing third-party auditor recordkeeping requirements as proposed.

ii. Reporting Requirements

Under the existing RFS program, obligated parties, exporters of renewable fuel, producers and importers of renewable fuels, and any party who owns RINs must report appropriate information to the EPA on a regular (e.g. quarterly and/or annual) basis. Similarly, the third-party auditors are required to submit quarterly reports, in line with RFS quarterly reporting deadlines, identifying how many RINs the auditor has verified the previous quarter. In addition, independent third-party auditors must include the facilities audited and the dates of those audits. This information allows the EPA to compare a third-party auditor's reported activity to information gleaned from EMTS to ensure that third-party auditors are appropriately implementing QAPs.

Most comments we received supported quarterly reporting requirements for third-party auditors. One comment also expressed concerns that third-party auditor quarterly reporting was overly burdensome and that the information we proposed to require that third-party auditors report is duplicative of information already reported to the EPA via reports from other parties.

We continue to believe that periodic reports provides a useful compliance tool to better ensure that third-party auditors are effectively implementing QAPs since failure to fulfill reporting requirements constitutes a violation to the Clean Air Act and may subject the responsible party to the penalties discussed below. Although third-party auditor reporting requirements may partially overlap with some information already reported by other parties, much of the information reported by third party auditors (e.g., the dates facilities were audited, the number of RINs verified by a third-party auditor, etc.) is specific to auditing activities that currently are not captured in existing reports. Therefore, we are still going to require that third-party auditors submit quarterly reports that will capture their auditing activities. However, due to the addition of an annual attest engagement requirement for third-party auditors (discussed below) and to accommodate the flexibility of allowing third-party auditors to use a representative sample of batches to implement QAPs (also discussed below), we needed to make minor revisions to third-party auditors' quarterly reporting requirements. Thus, we are finalizing quarterly reporting requirements for third-party auditors as proposed with minor modifications.

iii. Attest Engagements

In the NPRM, we sought comment on whether to require third-party auditors to have an annual attest engagement similar to those required of other parties required under § 80.1464.[16] We explained that attest engagements may be an appropriate means of verifying the accuracy of the information reported to us by the third-party auditors similar to those we require of other parties in RFS.

The public comments we received generally supported the imposition of annual attest engagement requirements on third-party auditors. Many comments highlighted the utility to the Agency with additional oversight of third-party auditors through an annual attest requirement. Such measures would help ''check the checker'' and would overall increase the reliability of verified RINs. Other commenters noted that since the EPA is creating a new regulated party in the RFS program, they should have similar requirements including annual attest requirements to that of other parties regulated under RFS. Lastly, one comment suggested that the EPA should outline the attest engagement procedure for third-party auditors in more detail in the final rulemaking.

One commenter suggested that third-party auditor annual attest requirements and more broadly a ''check the checker'' program was not necessary and overly burdensome. The commenter did not provide explanation on why such a requirement was unnecessary or too burdensome.

We agree with comments that third-party auditors should undergo an annual attest engagement by an independent third-party. This will help improve the Agency's oversight of third-party auditors. Having another third-party conduct the annual attest engagement for the third-party auditor will mitigate some of the conflict of interests concerns with third-party auditors providing additional services (e.g. engineering reviews and completing quarterly compliance reports for RIN generators) discussed above, which will help ensure that verified RINs under the QAP program are valid.

Therefore, consistent with the nearly overwhelming response from public comments, in today's final rulemaking we are including a requirement that third-party auditors undergo annual attest engagements similar to that of other parties regulated under RFS. The attest engagements will consist of an outside certified public accountant following procedures outlined in § 80.1464 to determine whether underlying records, reported items, and transactions agree.

d. Prohibited Activities for Third-Party Auditors

Since third-party auditors are integral to the successful implementation of voluntary quality assurance programs, we proposed new prohibition and liability provisions applicable to third-party auditors. The prohibitions and liability provisions on third-party auditors are similar to those for other parties in the RFS and other fuels programs. Specifically, we proposed the following prohibited acts: Failing to properly implement an EPA-approved QAP; failing to timely notify RIN generators and the EPA of potentially invalid RINs; failing to replace invalid RINs, if applicable; and verifying RINs that are invalid.

We also proposed that third-party auditors subject to an affirmative requirement under this rule be liable for a failure to comply with the requirement. For example, third-party auditors would be liable for separate violations for failing to comply with the registration, reporting and recordkeeping requirements. Like other fuels programs, if the third-party auditor causes another person to violate a prohibition or fail to comply with a requirement, the third-party auditor may be found liable for the violation. Finally, we noted that third-party auditors would be subject to the penalty and injunction provisions in section 211(d) of the Clean Air Act and third-party auditors may be subject to civil penalties of $37,500 for every day of each such violation and for the amount of economic benefit or savings resulting from the violation. We sought public comment on the proposed prohibited activities and liability provisions specific for third-party auditors.

We received few public comments on the prohibited activities for third-party auditors and those public comments generally supported the proposed prohibited activities. However, one public comment noted that the proposed regulatory language at § 80.1460(i)(3), which proposed to hold third-party auditors liable for verifying RINs that were later determined to be invalid under § 80.1431, was too broad. The comment argued that such broad-based language unfairly imposed liability on third-party auditors that may have been misled by undetectably false information or documentation provided by a RIN generator. The comment concluded that imposing such a potential liability on third-party auditors may deter qualified auditing and accounting firms from participating in the QAP program.

We agree with concerns that the proposed language at § 80.1460(i)(3) is overly broad and we are therefore modifying the proposed language to more fairly hold third-party auditors liable for verifying invalid RINs. In the NPRM, we proposed that third-party auditors would be prohibited from ''identify[ing] a RIN as verified in accordance with § 80.1471(e) that is invalid under § 80.1431.'' The intent of this language was to help ensure that third-party auditors reported all potentially invalid RINs uncovered by an approved QAP to the EPA. Under Option A, we were concerned that third-party auditors would verify RINs that may have been invalid to avoid the potential of having to replace those RINs

[16] Attest engagements are used in many of the Agency's fuels programs and are similar to financial audits. Attest engagements consist of an independent, professional review of compliance records and reports.

since such a cost would be quite high. In light of our decision to not place a replacement obligation on third-party auditors, we are modifying the language of this prohibited act to prohibit third-party auditors from verifying a RIN without ensuring that every applicable requirement in an approved QAP was met. We believe the newly worded prohibited activities focuses more on the activities of the auditor instead of punishing the auditor for misleading information and documentation supplied by audited RIN generators.

For reasons discussed above, the EPA is finalizing the proposed prohibited activities with modification to the proposed regulatory language at § 80.1460(i)(3). The final prohibitive activities coupled with the provisions that require third-party auditors to register annually and the authority we have to revoke an auditor's QAP for cause will ensure that third-party auditors will appropriately implement EPA-approved QAPs.

G. Audit Requirements

Under the quality assurance program, an auditor will use an approved QAP as the basis for the verification of renewable fuel produced and RINs generated at a facility. In order to verify production, the auditor must review documents, monitor facility activity, and conduct on-site visits. These components, when taken together, are what constitute an audit of the facility. An on-site visit to a facility is not in and of itself an audit. Rather, an audit encompasses all the elements of a QAP, i.e., document review, monitoring of facility activity, the on-site visit (when required), etc. The elements of the QAP are discussed in some detail in section II.E. The following provides some additional detail on the elements of an audit. As with other provisions of the RFS program, the use of a QAP and the associated audit will also be available to foreign producers of renewable fuel.

1. Document Review and Monitoring

The auditor must ensure that the producer has fulfilled all applicable record-keeping requirements of § 80.1454. We expect the auditor to evaluate quarterly reports submitted to the EPA, and that the reports be year-to-date, as applicable, and from the previous year, for comparison. These include Activity Reports, RIN transaction reports, RIN generation reports, and Renewable Fuel producer Co-product reports. The third-party engineering review and annual attestation report must also be reviewed.

Reports submitted to the EPA must be cross-checked with other records. For instance, the auditor must have access to certificates of analysis. The auditor must check recent feedstock receipts (if the producer uses a variety of feedstocks, then the auditor should be provided with receipts for each feedstock). Integrated facilities may not have internal sales receipts for feedstock use, so an alternative paper trail will likely be required. Similar to the feedstock document review and crosscheck, renewable fuel and co-product delivery documentation must be part of any audit.

For all documentation reviews, we expect the auditor to analyze reports to determine whether a producer is reporting volumes consistently, and to require (from the producer) explanation for missing or inaccurate reports. The auditor must investigate discrepancies between volumes reported and processed. Other reports the auditor must consider as part of its review include the EIA M22 Survey, any state reports, federal and state tax returns, and association dues reports. The auditor must also determine if there is any import or foreign biofuel producer documentation.

Of prime concern to the quality assurance program is the verification of RINs, and there are many aspects to this part of the audit. The auditor must evaluate monthly RIN generation reports submitted through EMTS, verify that RINs generated match wet gallons sold, determine if the facility purchases or separates RINs, and review product transfer documents for all RIN activity. We are finalizing that verification elements for the audit may be checked for a representative sample of batches of renewable fuel according to the sampling requirements in § 80.127. However, based on the documentation provided by the producer, the auditor can decide to review all documentation for all batches. We requested comment on the level of detail required for document review. A number of commenters indicated that requiring 100% document review would negatively impact producers and that a high confidence level could be achieved through random sampling. We agree with the spirit of these comments, and are finalizing the program using the criteria for the representative sampling of batches of renewable fuel in accordance with sampling guidelines that have already been established in § 80.127, and are effectively used as part of the annual attest report.

Furthermore, and in order to ensure that renewable fuel producers will maintain their records in a manner that will allow third-party auditors and the EPA to efficiently evaluate whether RINs were properly generated, we are amending § 80.1426 to state that RINs may only be generated for fuel that the producer has demonstrated, pursuant to all applicable recordkeeping requirements of § 80.1454, was produced in accordance with the applicable pathway listed in Table 1 to § 80.1426(f) or a petition approved by the EPA pursuant to § 80.1416. Furthermore, RIN generation is only appropriate for renewable fuels that carry the appropriate designation on their product transfer documents, according to the new provisions of § 80.1453(a)(12). See Section III of this preamble for further discussion of PTD requirements.

2. Buyer/Seller Contacts

We are finalizing a flexibility that allows for the random sampling of feedstock supplier invoices and contracts to provide a representative sample of renewable fuel batches, according to § 80.127. This is an appropriate method for feedstock verification, as it gives high confidence that the producer was in fact purchasing renewable biomass as feedstock. We are also finalizing that random sampling of product transfer documents and other sales-related receipts for a representative sample of batches of renewable fuel, according to § 80.127, is an appropriate method for ensuring that the renewable fuel was sold for transportation purposes.

We proposed that at the end of an audit, the auditor should know all customers of and suppliers to the facility, and all parties that distribute feedstock to and fuel from the facility. We proposed that the auditor contact all of the customers and suppliers in order to verify sales and purchases in accordance with the requirements under the QAP. We envisioned this proposed requirement as a ''spot check;'' the auditor should be able to provide a reason for such calls regarding the entity called, questions asked, etc.

We received numerous comments, particularly from biodiesel producers who collect used cooking oil from thousands of restaurants, that contacting every supplier would be especially burdensome. Some commenters indicated that feedstock suppliers who have multiple auditors contact them for verification may be less willing to sell feedstock to parties participating in the RFS2 program. Since these suppliers are not regulated under RFS2, they are under no obligation to provide this information, which could place an auditor in a difficult situation. We also received comments indicating that aggregate compliance is sufficient, and

records such as EMTS transactions, receipts, and product transfer documents would further prove that appropriate feedstocks were used and sales were completed properly. Moreover, there was not a single comment in favor of this provision. Therefore, the Agency is not finalizing the requirements of direct contact with all feedstock suppliers and direct contact with all purchasers of renewable fuel but rather a representative sample of contacts.

3. On-Site Visits

The goal of the on-site visit is to verify that the plant has the technology to produce, store, and blend biofuels at registered levels, is operating in accordance with the facility's registration, and that the RINs generated since the last visit are valid. The auditor will likely use plant maps and photos as part of this analysis, and should compare and contrast the plant's infrastructure with the third-party engineering review reports on file with the EPA. The auditor should note the size and number of storage and blending tanks, and observe the measurement of volume in the tanks. The auditor should determine whether the process rate is consistent with annual and quarterly production of the facility, and whether the facility has quality process controls in place (e.g., are ASTM International specifications being followed where appropriate).

We believe that mass and energy balances on the facility are critical components of any audit. Because integrated facilities will likely have energy use that is not directly related to biofuel production, the auditor should have alternate means of assessing and correlating energy use to production. We proposed that an auditor conduct at least four (4) on-site visits per year for QAP B, or every three (3) months.[17]

The majority of commenters indicated that quarterly on-site visits would impose an undue burden on both the auditor as well as the producer. They noted that the cost of such visits would be excessively high, and there would be little to no benefit, given the amount of other data collected as part of the audit process. Other commenters recommended a tiered system that consisted of more frequent audits during the first year, followed by some form of phase-out for site visits thereafter. A few commenters indicated that quarterly on-site visits were appropriate. In considering these comments, the agency determined that the cost for the producer of adhering to a rule that required quarterly visits outweighed the benefits provided by the additional on-site visits. Therefore, for the single new QAP, we are finalizing that the auditor must conduct at least two on-site visits per year or at least one on-site visit along with ongoing remote monitoring.

If an auditor elects to conduct remote monitoring as a substitute for one of the two required on-site visits per year, the remote monitoring procedures must be approved by EPA prior to use. The remote monitoring setup may include equipment such as video cameras, tank level sensors and/or infrared cameras that clearly show tank levels where level sensors are not in place. Modifications may not be done to remote monitoring systems after the EPA review, unless the EPA has pre-authorized the changes in writing. In no instance shall a facility go more than 380 days between physical on-site visits overseen by a licensed professional engineer. For new production facilities, the first on-site visit must be part of an audit, and the audit must be completed prior to the verification of RINs.

We expect that each on-site visit could take from one to several days, depending on the size and complexity of the facility, the availability of records, changes since the last audit, etc. Auditors are free to perform more on-site visits than the minimum required if deemed necessary.

4. RIN Verification

RINs will be verified only for a specified period *following* an audit. Although an audit of any entity usually certifies what *was* done, audits are prospective in that the audits are verifying that past practices and procedures have been followed, and are currently in place for future RINs that will be generated. RINs generated after the completion of the audit can then be verified until the next audit is completed, but for no longer than 100 days after completion of the previous audit. (Note that there may not be more than 200 days between on-site visits, unless remote monitoring is used, in which case there may not be more than 380 days between on-site visits). We believe this prospective approach is appropriate for the quality assurance program because the audit would be verifying the starting point from which future RINs would be generated. In that sense, the upcoming period of RIN generation is starting with a verified set of conditions. In addition, it could place a serious impediment in the market for RINs if their verification followed RIN generation by any significant period of time.[18]

To allow for some flexibility around the standard audit schedule (i.e., quarterly, or roughly every 90 days), RINs generated for up to 100 days after the last audit can be verified, unless the real time monitoring data or other information obtained by the QAP auditor prior to the on-site audit indicated that RINs were invalid. If another audit was not conducted within 100 days, RINs could no longer be verified for that facility until a new audit was conducted.

We are finalizing that the on-site visit schedule remain the same, regardless of findings during the audit. Some commenters indicated that lower audit frequency levels should be allowed after a significant period of time with no invalidly generated RINs. We feel that by reducing the overall number of audits required, it sufficiently decreases the burden on auditors and producers, while at the same time, maintains the integrity of the program.

III. Additional Changes Related to the Definition and Treatment of Invalid RINs

A. Export and Exporter Provisions

In the NPRM, we proposed a number of regulatory changes regarding how RINs should be handled when renewable fuel is exported. Our intent was to ensure that exported renewable fuel is not included in meeting the mandated domestic annual renewable fuel volume requirement. We received a number of comments, primarily in support of these changes, and have made some minor changes to the proposed amendments in this final rule.

1. Exporter RVO (ERVO)

A volume of any renewable fuel which is exported, either neat or blended, requires the exporter to calculate an RVO and retire a like number and type of RINs as were generated for the exported renewable fuel. We proposed and are finalizing a minor change to the regulations to address concerns that some regulated parties may be misinterpreting the existing regulations and only establishing an RVO for exported renewable fuel that is in its neat form or blended with gasoline or diesel. The opening clause of 40 CFR 80.1430(a) provides that an RVO must be satisfied by any party that exports ''any amount

[17] Note that there are 4 site visits for a QAP A or QAP B used during the interim period. See § 80.1472(b) of the regulations.

[18] The only exception to the issuance of verified RINs only after the audit has occurred is the limited provision for verification of RINs issued prior to the audit, during the interim period, as discussed in section II.B.

of renewable fuel,'' and 40 CFR 80.1430(f) also states that ''each exporter of renewable fuel'' must satisfy an RVO. The portion of § 80.1430(a) stating that the regulation applies ''whether [the exported renewable fuel] is in its neat form or blended with gasoline or diesel'' was intended to point out through specific examples that the regulation applies to both neat and blended renewable fuels, not to limit the fuel blends to gasoline and diesel. It was not intended to exclude other exported renewable fuel blends, such as biodiesel blended into fuel oils, from the scope of the regulation. We are amending 40 CFR 80.1430(a) to simply state that the requirement to establish an RVO applies whether the exported renewable fuel is in its neat form or blended. Commenters on the proposed rule unanimously supported this change.

We also sought comment on whether the EPA should eliminate exporter RVO obligations in two situations: (1) Where exporters can document that no RINs were generated for the exported fuel, or (2) where exporters can demonstrate that any RINs generated for the fuel were previously retired ''upstream'' of the exporter. Regarding the first situation, most commenters supported the idea that renewable fuel for which RINs were not generated should not create an RVO for the fuel exporter. The EPA believes this change is consistent with the fundamental purpose of the exporter RVO; i.e., RINs are retired so the RINs generated for the fuel do not artificially inflate the RIN market and misrepresent the amount of renewable fuel produced for domestic use. If the renewable fuel is never intended for domestic use and no RINs are generated for it, then there is no reason for RINs to be retired upon export. Renewable fuel produced in the U.S. for export only can be clearly labeled as such on product transfer documents and RINs need not be generated for it. An exporter who exports renewable fuel for which RINs were never generated will not incur an RVO for such export, provided certain conditions are met. This final rule amends 40 CFR 80.1430 to set out this allowance, and to add the conditions that any exporter who does not incur an RVO for exported renewable fuel because no RINs were generated for it only does so for volumes purchased directly from the fuel producer. Further, the exporter must be able to show that no RINs were generated for the exported renewable fuel. This demonstration is made through fulfillment of the conforming recordkeeping requirement at 40 CFR 80.1454(a)(6) that the exporter must maintain an affidavit or affidavits from the renewable fuel producer of the RIN-less exported fuel, attesting that no RINs were generated for the specific volume of exported fuel. These requirements are intended to further the programmatic goal of generating RINs only for fuel that is intended for domestic production and retiring any RINs associated with renewable fuel that is ultimately exported.

Regarding the second situation, while one commenter supported the idea of eliminating the RVO where the exporter can document that RINs were already retired (but not retired for compliance with an RVO) for the exported volume, another commenter asserted that such an allowance would complicate the RIN-tracking system and make it more difficult for the EPA to establish how much renewable fuel is being exported. The EPA believes such a provision would also complicate the retirement and compliance reporting requirements. Also, it is unlikely, given the functioning of the RIN market, that RINs would be retired by someone upstream of the exporter but not for compliance with an RVO. For these reasons, the EPA has decided not to add a provision allowing an exemption from the exporter RVO for renewable fuel for which RINs have already been retired (but not for compliance with an RVO) upstream.

In summary, the exporter RVO is incurred only for fuel for which RINs were generated and must be fulfilled only by the exporter and not by any upstream parties.

2. Require Identification of Renewable Fuel Content

Pursuant to Section 205 of the EISA, fuel blends containing up to five percent biodiesel or up to five percent biomass-based diesel, and that meet ASTM D975 (''Standard Specification for Diesel Fuel Oils''), need not be labeled as containing biofuel. Fuel blends containing more than five but less than twenty percent biodiesel or biomass-based diesel must be labeled ''contains biomass-based diesel or biodiesel in quantities between 5 percent and 20 percent'' and blends containing more than twenty percent must be labeled ''contains more than 20 percent biomass-based diesel or biodiesel.'' [19] Under current FTC regulations, blends containing more than 20 percent biodiesel or biomass-based diesel must also be labeled with the precise blend level.[20] Since all renewable fuel volumes for which RINs were generated, including any quantity blended into conventional fuel, trigger an RVO on export, exporters must be aware if any part of their fuel volume is renewable fuel. Given the lack of disclosure for blends of up to five percent and the non-specific disclosure for 5–20 percent blends, there is growing concern that renewable fuel may be exported without the required exporter RVO being calculated and fulfilled.

In the NPRM, we proposed that a person transferring any biomass-based diesel blend or biodiesel blend to any other person (including blends of less than five percent) shall include in the PTD a disclosure of the specific renewable fuel blend level. The PTD disclosure would include the name of the transferor, the name of the transferee, the date of transfer, the volume in gallons of the product transferred, and either the volume in gallons or the percentage of biomass-based diesel or biodiesel that is contained in the blended product.

We received a number of comments on this issue. Many commenters opposed the mandatory disclosure of renewable content blend level, asserting that it would disrupt the existing fuel transportation and pipeline system in place and prove costly, impractical, and unnecessary. Currently, some blended renewable fuel is shipped through fungible distribution systems, such as a common carrier pipeline. This diesel has some percentage of renewable fuel in it, as allowed by ASTM D975 and the pipeline's specification requirements, but the precise amount of renewable fuel is immaterial to the quality of the fuel. If the proposed PTD provisions were finalized, these commenters generally argued that the carriers could have to ship distinct, segregated batches of fuel based on different renewable fuel content ratings. This could be both expensive (requiring additional holding tanks and other physical improvements to the system, as well as requiring additional testing of the fuel) and time consuming (delaying shipments downstream). Commenters also suggested that the proposed PTD requirements would be contrary to the idea of allowing blended diesel to operate as a drop-in fuel, which encourages the development and purchase of biodiesel. Commenters also stated that it is not easy, at the terminal level, to determine the precise content of a blend and would cause delay and a ripple effect of increased costs to the terminal operators and downstream buyers.

[19] *See* EISA, section 205(b).

[20] *See* 73 FR 40155 (July 11, 2008), ''Federal Trade Commission Automotive Fuel Ratings, Certification and Posting; Final Rule.''

Some commenters supported the idea of requiring a general label of renewable fuel content if less than five percent, but still opposed disclosure of the specific blend level. One commenter supported the disclosure of blend level, but suggested that residential heating oil should be exempt from the requirement because heating oil trucks would be unable to print all the required information on the tickets they generate for fuel sold. Some commenters suggested that below a de minimis level, e.g., one percent or some other level, the renewable fuel content should not need to be disclosed on the PTD or that disclosure should only be required where a party has actual knowledge of the renewable fuel content. Commenters also noted that the proposal lacks specificity as to how the requirements would be enforced, what degree of accuracy is required for testing the blend level, and the specific language to be used on the PTDs.

Other commenters supported the proposal to require disclosure of precise renewable fuel blend level in PTDs. These commenters stated that such disclosure would improve the safety of the marketplace for buyers, both with respect to RIN validity and the physical properties of the fuel. If a renewable fuel blend of five percent or less is not labeled, a blender might add in up to five percent more biodiesel or biomass-based diesel and sell it onward still without a label, though the resulting blend would be greater than five percent. This process could theoretically occur multiple times, resulting in significant concentrations of biodiesel or biomass-based diesel in diesel without notice to purchasers. Such concentrations would also result in the missed retirement of RINs for such renewable content upon export.

Having considered all comments on this issue, we are not finalizing the requirements for disclosure of specific blend levels for any blend volume of any renewable fuel beyond what is already required by EISA and other regulations, noted above. This will relieve the potential burden and disruptions that may have occurred in the fuel distribution system and marketplace.

However, since the underlying purpose of these proposed requirements was to ensure that exporters are aware of their responsibility to fulfill an exporter RVO by making them aware of the renewable fuel content of their exports, we are taking this opportunity to remind exporters of their obligations under 40 CFR § 80.1430(e). If followed appropriately, this paragraph already provides the needed structure and directions for exporters to determine the renewable fuel content of their exported volumes and calculate their RVOs, regardless of whether the blend level is specified in PTDs of the fuel they receive. 40 CFR 80.1430(e) states that the exporter shall determine the volume of renewable fuel blended with other fuel at the time of export by one of three methods. The regulation makes it clear that this is not a discretionary determination by the exporter, and the exporter must use one of these three methods for determining renewable fuel content of any exported fuel blend.

First, the type of renewable fuel and blend level may be specified in documents provided by the seller, according to § 80.1430(e)(1). This will usually be in the form of a product transfer document. For example, as discussed above, renewable diesel and biodiesel blends above 20 percent will most likely contain the specific blend level, per current FTC requirements, and blends between one percent and 20 percent may be labeled with the specific blend level, though this specific disclosure is not required by regulation or law. If the blend type and level is specifically stated by the supplier, the exporter may rely on such a statement to determine the volume of renewable fuel being exported and the exporter RVO.

The second way the renewable fuel content may be determined by the exporter is by testing the fuel for renewable fuel content using method B or C of ASTM 6866 or an alternative test method as approved by the EPA, per § 80.1430(e)(2).

The third way the exporter may determine the renewable fuel content of any exported fuel is by assuming the fuel contains the maximum concentration of renewable fuel allowed by law and/or regulation, per § 80.1430(e)(3). Therefore, for diesel that is not labeled as containing renewable fuel, the exporter must assume the volume contains five percent biodiesel or biomass-based diesel because that is the maximum concentration currently allowed without label by regulation. For diesel labeled as containing between five percent and 20 percent renewable diesel or biodiesel, the exporter must assume the fuel contains 20 percent because 20 percent is the maximum concentration that could be contained in that volume. If the exporter does not wish to assume the maximum percentage allowed by law (be it five percent or 20 percent), then it can use the testing method allowed in § 80.1430(e)(2) to determine the precise fuel content. Importantly, and as noted above, the exporter is responsible for determining the renewable fuel content, even when the content is not necessarily stated on the PTD for diesel.

Regardless of which method is used to determine the renewable fuel content of exported volumes, the exporter must report their exported volume and RVO annually, per the existing regulations at 40 CFR 80.1451(a). Records demonstrating the method used to reach that determination (including any applicable testing results) must be maintained per 40 CFR 80.1454(a).

By clarifying that the exporter RVO is five percent of the exported volume for diesel not carrying a renewable fuel content label and is 20 percent of the exported volume for diesel labeled as containing between five percent and 20 percent renewable diesel or biodiesel, we have greater confidence that the underlying policy goal—to retire an appropriate number and type of RINs for any volume of exported renewable fuel—will be fulfilled. At the same time, if the exporter does not want to assume that maximum level, he or she can test the fuel at the time of export to determine if there is no renewable fuel content or some content less than five percent or less than 20 percent, and accordingly reduce the exporter RVO. Keeping the burden on exporters to determine the volume of renewable fuel they export and clarifying that they must assume the maximum percentage allowed by law where no percentage is specifically labeled on the PTD documents is the most straightforward way to remove RINs associated with exported fuel from the marketplace while alleviating the concerns expressed regarding the proposed specific blend-level PTD disclosure.

3. RIN Retirement Requirements

The current RFS regulations require exporters to demonstrate compliance with their ERVOs on an annual basis, in the same way that obligated parties fulfill their RVOs. We proposed in the NPRM that a shorter deadline for exporters' fulfillment of their RVOs and eliminating the deficit carryover provision [21] for exporters may ease concerns related to uncertainty in the export market. Reducing the amount of time available for exporters to meet their RVOs is intended to discourage ''shell companies'' being formed for the purpose of exporting renewable fuel without retiring appropriate RINs and then folding before the retirement deadline in order to avoid the cost of

[21] Under § 80.1427(b), an obligated party or exporter of renewable fuel may under certain conditions carryover a renewable volume obligation deficit until the end of the following compliance year.

meeting the RVO. They would also reduce incentives for exporters to profit from selling RINs received with renewable fuel to obligated parties at a time of high RIN prices and then purchasing and retiring RINs to meet their RVO when prices drop. We also suggested, as an option, that exporters could be required simply to demonstrate on a quarterly basis that they have acquired RINs sufficient to cover their RVO in that quarter.

We received a number of comments regarding these suggestions, the majority of which were in favor of eliminating the deficit carryover allowance for exporters and reducing the time available for compliance with the RVO after export. Some commenters suggested the RVO should be met ''immediately'' upon export, while others suggested thirty days, quarterly, sixty days or annual retirement to meet the exporter's RVO. Some suggested that RINs still attached to exported fuel should be immediately retired, whereas for fuel purchased without RINs still attached, the exporter should be given more time to fulfill its RVO. Many commenters cited ongoing concerns of exporters gaming the system by retiring RINs late (if at all) and suggested that shortening the time frame for compliance would tighten up this ''loose'' area of the RIN market and improve all other participants' understanding of what RINs are available for purchase at a given point in time. Other commenters suggested leaving the exporter RVO provisions as they are, because the exporter market has ''calmed down'' and exporters need the flexibility to carryover RIN retirement obligations to the next compliance year if needed.

Having considered all the comments on this issue, the EPA believes the advantages of requiring more immediate and ongoing fulfillment of the exporter RVO and elimination of the deficit carryover provision for exporters far outweigh the potential disadvantages and burdens on exporters. While the EPA does not believe that ''immediate'' retirement is required upon export, we believe 30 days is a reasonable deadline by which to require the retirement of RINs of the same number and type as were originally generated for the exported renewable fuel. This final rule therefore includes a provision at 40 CFR 80.1430(f) to set the retirement deadline for fulfilling the exporter's RVO at thirty (30) days from the date of export. It also removes the deficit carryover provision for exporters from the RVO formulae at § 80.1430(b) and from 80.1427. In order to ensure that 2014 ERVOs incurred after December 31, 2013 and prior to the effective date of the final rule are still fulfilled, the final rule also includes a new provision at § 80.1430(g) that all 2014 ERVOs existing and unfulfilled as of the effective date of the final rule must be satisfied by the compliance demonstration deadline for the 2013 compliance period. This will give exporters sufficient time to retire RINs in fulfillment of their existing ERVOs, which may include previously reported carryover ERVOs from the previous year. The requirement for exporters to report all such retirements in quarterly reports and annual reports remains the same as is currently written in 40 CFR 80.1451(c)(2) and 80.1451(a)(1), respectively.

B. ''Downstream'' Invalidation and Product Transfer Documents

In the NPRM, the EPA proposed to clarify and expand existing requirements regarding the designation of qualifying renewable fuel, in response to concerns that properly generated RINs may become invalid if the fuel is not ultimately used in or as transportation fuel, heating oil, or jet fuel. We also proposed additional PTD and tracking requirements for renewable fuels that are not generally expected to be used for a qualifying purpose, i.e., as transportation fuel, heating oil or jet fuel. We received numerous comments regarding these changes, and are finalizing them as proposed with only minor changes.

1. Designation of Intended Renewable Fuel Use

In the NPRM we proposed that all renewable fuel producers and importers must designate all RIN-generating renewable fuel as transportation fuel, heating oil or jet fuel on the PTDs prepared to accompany a fuel shipment. The NPRM stated that designations of intended use must be made in good faith; in other words, parties designating fuel for a qualifying use who in fact know or have reason to know that the fuel would likely not be used in or as transportation or jet fuel or heating oil would be in violation of the regulation, and subject to civil penalties.

Many commenters supported these PTD requirements, while some suggested that fuel traditionally used for conforming purposes (e.g. biodiesel) should not be required to meet the additional PTD designation requirements. Some commenters believed the extra language on PTDs would cause unnecessary expense and burden on producers and others involved in further transfers of the renewable fuel, and that the language was especially unnecessary if the PTD was also required to include a disclosure of any renewable fuel content, as discussed above in section III.A.2.

After considering these comments, the EPA believes the additional PTD designations of intended use will cause minimal burden on regulated parties while providing useful information to blenders and end users downstream of the producer. Given that we are not finalizing the provisions requiring disclosure of specific blend levels for all renewable fuels, this basic PTD language will provide at least a basic disclosure that a blended fuel contains renewable content. There is therefore no redundancy in the disclosure, and it provides useful information to all potential purchasers.

We have made two minor adjustments in the required PTD language in the final rule. First, we removed any implication that there are negative consequences for the fuel's end user if the fuel is used for an improper purpose, i.e., not as transportation fuel, heating oil or jet fuel. The purpose of the PTD is to state the fuel's intended and appropriate end use and creates no burden or obligation on the end user. The second change is the addition of a sentence declaring that any person exporting the renewable fuel is subject to the provisions of § 80.1430. This statement creates no new right or obligation for exporters, but simply gives exporters additional notice that they are subject to the RFS, specifically the provisions requiring retirement of RINs for any RIN-generating fuel they export.

In addition to the PTD requirements, we also proposed that parties generating RINs for any renewable fuel not typically sold for use in or as transportation fuel, jet fuel, or heating oil must collect and submit documents certifying the fuel's appropriate end use. The EPA believes that denatured ethanol, biodiesel, and renewable diesel that meets ASTM 975–13a Grade No. 1–D or No. 2–D specifications are highly likely to be used as transportation fuel, heating oil or jet fuel and are therefore not subject to the additional documentation requirements. For all other renewable fuels, we proposed limiting the opportunity for RIN generation to circumstances where the RIN generator has taken actions to ensure that the fuel is used for transportation fuel, heating oil or jet fuel. Where the producer or importer has fulfilled the applicable registration requirements, at § 80.1450(b)(1)(ix), RINs generated for such fuel will remain valid regardless of the fuel's ultimate use. In the final rule, we are adding

renewable gasoline to the list of fuels that are highly likely to be used for a conforming purpose and renewable gasoline is therefore not subject to the additional requirements for all other RIN-generating renewable fuels.

There are two ways for the RIN generator to demonstrate that the fuel is sold for use as transportation fuel, heating oil or jet fuel. First, if the RIN generator uses the fuel itself as a blendstock or additive for gasoline or diesel fuel, it must maintain contemporaneous records demonstrating that it used the fuel as a blendstock or additive and that the final product is a transportation fuel, heating oil or jet fuel that met all applicable standards. Second, if the RIN generator does not use the fuel itself as a blendstock or additive for gasoline or diesel fuel, it may enter into a sales contract (or show a string of contracts) that requires the ultimate purchaser to use the fuel as a blendstock or additive for gasoline or diesel fuel, and that meets certain requirements designed to assure that the end user does, in fact, use the fuel as a blendstock or additive in a transportation fuel, heating oil or jet fuel that meets all applicable standards.

We sought comment on these requirements generally, and also how these new registration requirements should apply to currently registered entities.

One commenter agreed that the proposed requirements would help ensure that the fuels are used for the appropriate RFS purposes and no other purposes, and suggested that the requirements should apply immediately to currently registered entities who should update their registrations as soon as practicable. Other commenters, however, disagreed with the proposal, stating that the producers' involvement with the fuel should end at the time of sale and that such tracking is beyond the appropriate scope of the QAP system. Another commenter suggested that providing affidavits of appropriate use should be a burden placed on the end user, not the producer or RIN generator. Another commenter stated that these requirements only complicate an already complicated system.

After considering all comments, the EPA is finalizing the proposed registration, reporting and recordkeeping requirements for fuels not typically used as transportation fuel, heating oil or jet fuel as proposed. We believe that the RIN-generators are in the best position to collect and submit information regarding end use, because they are already regulated and registered parties, and they are the ones receiving the financial benefits of RIN generation. Therefore, it is appropriate to require RIN generators to be able to demonstrate, through the affidavits of third-party end users, that the renewable fuel they produce is indeed being used or is intended for use for a qualifying purpose. While we recognize that this will require additional paperwork collection and submission, the benefits of such additional work outweigh the potential burdens on RIN generators.

Given the lag time between publication of this rule and the effective date of the final rule, we have determined that for parties already registered to generate RINs for these fuels, registrations must be updated as of the effective date of this rule. This should provide sufficient time for the initial collection of end user affidavits.

In determining which fuels are typically sold for use in or as transportation fuel, jet fuel, or heating oil, we realized that some fuels currently meeting the definition of ''renewable diesel'' should be subject to the same additional requirements to demonstrate appropriate end use. Some renewable fuel producers are currently generating RINs for fuel that they claim meets the existing definition of renewable diesel, but which is not chemically equivalent to a petroleum diesel fuel and is therefore not a drop-in fuel. This product is primarily composed of triglycerides that have not been chemically converted to a hydrocarbon, through simple filtration of vegetable oils. It cannot be used as a drop-in transportation fuel but can only be used at blend levels with diesel fuel that are approved under 40 CFR part 79. To address this issue, we proposed to amend the definition of ''non-ester renewable diesel'' so that qualifying fuels must be approved under 40 CFR part 79 at specific blend levels with diesel fuel. This would explicitly allow those renewable fuels that are not fungible in their neat form with petroleum-based fuels to qualify as renewable diesel, while specifying that the end product must be fungible with petroleum diesel.

We also suggested that in order to differentiate between the two types of renewable diesel (''drop in'' and other) we could limit the definition of renewable diesel to fuels that meet the ASTM D 975 Grade No. 1–D or No. 2–D specifications, and that are homogenous hydrocarbons. We could then refer to all other fuels that meet the current definition of renewable diesel as viscous non-ester renewable diesel, effectively removing these ''other'' fuels from the definition of renewable diesel.

We received a number of comments in support of altering the definition to distinguish between renewable diesel that is fungible with conventional diesel and that which is not. One commenter additionally suggested that fuel not qualifying under the limited definition of renewable diesel should not qualify for RIN generation at all, or should have to petition for a new pathway in order to generate RINs. Other commenters suggested that triglycerides should never be considered renewable fuel capable of generating RINs.

After considering all comments on this issue, we determined that it is clearer to distinguish between fungible drop-in renewable diesels meeting ASTM D 975–13a Grade No. 1–D or No. 2–D specifications and other renewable fuels that can be blended at levels allowed under 40 CFR part 79 to create a product fungible with transportation fuel (petroleum diesel). However, the final rule creates this distinction within the definition of ''renewable diesel'' instead of creating a new definition of ''viscous non-ester renewable diesel,'' to avoid further complicating the system and creating a new class of renewable fuel. We are therefore amending the definition of renewable diesel to include two classes of renewable diesel, one that meets ASTM D975–13a Grade No. 1–D or No. 2–D specifications and one that does not. Both classes of renewable diesel must not be mono-alkyl esters. The first class of renewable diesel must meet the ASTM D 975–13a Grade No. 1–D or No. 2–D specifications and must be suitable for use in an engine designed to operate on conventional diesel. The second class of renewable diesel must be a fuel or fuel additive registered under 40 CFR part 79 and be intended for use in an engine designed to operate on conventional diesel. As discussed above, any renewable diesel that does not meet the ASTM D975–13a Grade No. 1–D or No. 2–D specifications, i.e. that is in the second class of the new definition of renewable diesel, is subject to the additional registration, recordkeeping and reporting requirements for fuels not typically sold for an RFS qualifying use. We do not find it necessary, as some suggested, to prohibit RIN generation for renewable diesel not meeting an ASTM specification. The increased recordkeeping and tracking requirements for renewable diesel not meeting the ASTM D975–13a Grade No. 1–D or 2–D specifications are designed to ensure the fuel is used for an RFS qualifying use and therefore is properly eligible for RIN generation.

In the NPRM, we also proposed new requirements at § 80.1433 for any party

selling or transferring a volume of renewable fuel for which RINs were generated, if that party knew or had reason to know that the volume would ultimately be used for a non-conforming purpose. We proposed that such a party would be obligated to redesignate the fuel (by removing the PTD designation of intended use) and to retire a like quantity and type of RINs as were originally generated for the volume. We also proposed a new prohibited act provision at § 80.1460(g) that established a failure to retire RINs when the designation of an RFS intended use was removed as a prohibited act. Upon further consideration, we have determined that these new retirement and redesignation requirements and the associated prohibited act provision are not needed to meet the program goal of ensuring that RIN-generating renewable fuel is used for an RFS qualifying fuel use, i.e., as transportation fuel, heating oil or jet fuel in the United States. Having added the requirements for 'intended use' PTD language to accompany all volumes of renewable fuel for which RINs were generated and new requirements for tracking and recordkeeping of actual end use for fuels not traditionally used for a qualifying use, we feel that the program goal of ensuring appropriate end use is already addressed and managed through the regulations. We are therefore not finalizing the proposed § 80.1433 and conforming prohibited act provision for sellers and transferors of RIN-generating renewable fuel.

2. Required Actions Regarding Fuel for Which RINs Have Been Generated That Is Redesignated for a Non-Qualifying Fuel Use

Section 80.1429(f) of the existing regulations provides that any person who uses or designates a renewable fuel for an application other than transportation fuel, heating oil or jet fuel (i.e., a non-qualifying fuel use) must retire any RINs *received* with that renewable fuel. This approach, however, places the burden of using fuel for a qualifying use on the end user (who may under the existing regulations have no idea of the appropriate use requirements) when the fuel already should have been redesignated upstream and the use restriction removed. In other words, once the fuel reaches the end user, it should be clearly designated either for use as a transportation fuel, heating oil or jet fuel and sold as such, or should have been redesignated for a non-qualifying fuel use and the redesignator should have retired an appropriate number of RINs. Redesignation in this context simply means the removal of the PTD statement of intended end use required under section 1453(a)(12). A party removing this designation might also include a statement that the fuel is intended for some other specific use, but such additional or other specifications are not required under the regulations.

As noted above in section III.B.1, a transferor who uses the PTD language designating the fuel for use as transportation fuel, heating oil or jet fuel must not know or have reason to know that the fuel will be used for some other purpose. To do so would be a prohibited act and subject the transferor to civil penalties. Any person redesignating fuel for which RINs have been generated for a non-qualifying use must make the RIN system whole by retiring an equivalent number and type of RINs. The end user, on the other hand, has no obligation under the RFS to use fuel in a particular way or to retire RINs if the fuel is used for a non-qualifying purpose. The original producer or RIN generator for the fuel is similarly protected under this system, because the RINs are not invalidated by an improper end use. If RINs were generated for the fuel and it is sold for use as a transportation fuel, heating oil, or jet fuel (and any other additional requirements are met for special fuel types, see section III.B.1 of this Preamble), then the RINs generated for that fuel are valid and cannot be invalidated by any action of the end user.

To ensure that RINs generated with renewable fuels are retired if the fuel is redesignated for a non-qualifying fuel use, we proposed and are finalizing new requirements for any party that redesignates a renewable RIN-generating fuel for a non-qualifying fuel use. To accomplish this, we are removing and reserving § 80.1429(f) of the regulations and adding a new § 80.1433 to require parties that designate fuel for which RINs were generated for a non-qualifying fuel use, i.e. for something other than transportation fuel, heating oil, or jet fuel, to retire an appropriate number and type of RINs. We are also adding a new § 80.1460(g) which prohibits a person from designating a qualifying renewable fuel for which RINs were generated for a non-qualifying fuel use, unless the requirements of § 80.1433 have been met, i.e. an appropriate number and type of RINs were retired when the fuel was redesignated. These changes will relieve end users of the obligation to retire RINs.

Commenters on this issue supported the proposed changes for redesignators and removal of the retirement requirement for end users. Based on our initial rationale and the lack of any comments to the contrary, we are finalizing these changes as proposed. One commenter considered the proposed 10 day retirement deadline too short and suggested it should be extended to 15 days, starting on the date the fuel is re-designated or sold. The EPA foresees no harm in extending the deadline for § 80.1433 retirements, so is finalizing a 15 day deadline.

3. RIN Generation for Fuel Made With Renewable Fuel Feedstock

The existing regulations do not provide a pathway for the generation of RINs for a fuel produced using another renewable fuel as a feedstock. Parties seeking to do so, however, may submit a petition requesting approval pursuant to § 80.1416. 40 CFR 80.1426(c)(6)(ii) sets forth certain prohibitions that would apply if, in the future, the EPA approved a pathway that allowed a party to generate RINs for a fuel that was produced using another renewable fuel as a feedstock. These prohibitions are designed to prevent parties from generating more than one RIN for the same volume of renewable fuel. In the NPRM, the EPA proposed to modify § 80.1426(c)(6) to prohibit a party from generating RINs for a fuel made from a renewable fuel feedstock, where the feedstock was produced by another party, unless the EPA approves a petition under § 80.1416 and the petition and approval include an enforceable mechanism to prevent double counting of RINs. Having received no adverse comments on this proposal, we are finalizing the new paragraph as proposed.

We also proposed to amend § 80.1426(f)(4) to address the potential for ''double discounting'' for non-renewable feedstocks when renewable fuel is produced by co-processing renewable biomass and non-renewable feedstocks to produce a fuel that is partially renewable. To correct this problem, we proposed to add a new paragraph (f)(4)(iii) so that for purposes of § 80.1426(f)(4) only, the equivalence value does not include a discount for non-renewable feedstocks. Having received no adverse comments on this proposal, we are finalizing the new paragraph as proposed.

4. Use of Renewable Fuel in Ocean-Going Vessels

Another issue the Agency is aware of concerns the use of renewable fuel-containing Motor Vehicle, Nonroad, Locomotive and Marine diesel fuel (MVNRLM) in ocean-going vessels. The definition of ''transportation fuel'' specifically excludes ''fuel for use in

ocean-going vessels''. See 40 CFR 80.1401. In the preamble to the March 26, 2010 RFS rule, the Agency stated that '''fuels for use in ocean-going vessels' means residual or distillate fuels other than MVNRLM intended to be used to power large ocean-going vessels.'' 75 FR 14670, 14721 (March 26, 2010). The rule also defines ''fuel for use in ocean going vessels'' as including ECA marine fuel. See 40 CFR 80.1401. Some parties have questioned whether MVNRLM that is blended into ECA marine fuel is ''fuel for ocean going vessels'' such that RINs generated for the renewable fuel component of MVNRLM become invalid upon that use. It is the Agency's interpretation that the definition of ''fuel for use in an ocean-going vessel'' in § 80.1401 does not include MVNRLM that is blended into ECA marine fuel. This is based on the definitions of fuel for use in an ocean-going vessel and of ECA marine fuel, as explained in the March 2010 rulemaking.[22] Therefore, RINs that have been or are properly generated for any renewable fuel component of MVNRLM that is blended to produce ECA fuel remain valid. The EPA notes that the vast majority of MVNRLM is used for qualifying RFS purposes, and that only a trivial quantity of such fuels is used to produce ECA fuel for ocean-going vessels. Given the complexity and regulatory burden that would be involved in tracking trivial quantities of MVNRLM that may be used in ECA fuel, the RFS regulations appropriately treat all properly generated RINs for renewable fuel blended into MVNRLM as valid, regardless of the possible downstream blending of MVNRLM with ECA fuel. In addition, new regulatory requirements designed to ensure that renewable fuel is put to a qualifying use would be imposed on certain types of renewable fuel, as discussed above. These new requirements would further limit the quantity of renewable fuel that could ultimately be blended with ECA fuel used in ocean going vessels.

We sought comment on whether our interpretation of ''fuel for use in an ocean-going vessel'' created any potential problems. The Agency received several supportive comments and no comments against the proposed interpretation of ''fuel for use in an ocean-going vessel''. Therefore, the Agency is finalizing the proposed interpretation.

[22] This does not change the fact that the blend of fuel that results from blending MVNRLM or NRLM with ECA marine fuel would still be ECA marine fuel and subject to the sulfur limits that apply to such fuel.

5. Treatment of Improperly Separated RINs

Under existing regulations, a RIN that was improperly separated pursuant to § 80.1429 is invalid and obligated parties may not use any invalid RINs for compliance purposes. In the NPRM, the EPA proposed to remove the provision that improperly separated RINs are invalid, and to add a provision identifying the improper separation of RINs as a prohibited act. The net effect of these changes would allow obligated parties to use RINs that were improperly separated for compliance purposes, since the RINs would no longer be considered invalid. However, improper RIN separation would continue to be a prohibited act under the regulations. We received a number of comments in support of this approach and therefore are finalizing it as written.

The EPA sought comment on whether the RFS regulations should instead maintain § 80.1431(a)(1)(viii), but also require a more comprehensive and robust mechanism to allow parties that acquire separated RINs and the EPA to evaluate whether the RINs were properly separated and used in or for a qualifying fuel. We received one comment in support of the proposal but a number of comments in opposition to this alternative idea, asserting that the RIN-related regulations are already complex and this would add additional complexity without a significant benefit in return. The simpler proposed alternative (above) was widely favored. The EPA is therefore not finalizing any additional requirements for tracking of separation events and separated RINs.

Additionally, the EPA requested comment on whether we should require RIN separators to include with their quarterly reports additional records related to qualifying separation events that are already required to be reported in basic form in quarterly reports. Enhanced reporting requirements for RIN separators could facilitate the EPA's ability to investigate and prosecute persons who engage in RIN separation violations. The EPA sought comment on the type and scope of reporting that would most likely assist the EPA in identifying RIN separation violators. We received no comments on this issue and are not prepared at this time to finalize additional reporting requirements regarding RIN separation. We intend to continue to evaluate this question and will take up the issue in a subsequent action if we determine it is warranted. As we are not finalizing a change, RIN separators will continue to be required to provide in quarterly reports a list and certain details of all RIN separation events occurring in that quarter, per 40 CFR 80.1451(c)(1).

C. Treatment of Confidential Business Information

1. Proposed Disclosure of Certain Registration and Reported Information

Due to the high level of interest in RFS compliance information since implementation of the RFS program, the EPA proposed to make certain RFS registration and reporting information public. The release of this information was intended to improve the integrity of information submitted for RFS compliance and deter fraudulent behavior, and was part of a broader effort to increase transparency and provide information to the public that would promote greater liquidity in the RIN market. We solicited comments on all aspects of the proposed information releases, and in particular whether there are unique circumstances where disclosing this information would cause substantial harm to a company's competitive position.

We received a substantial number of comments on our proposed Confidential Business Information (CBI) determination, many of which raised legitimate concerns regarding the appropriateness and lawfulness of the EPA releasing the proposed information. Given our desire to finalize the proposed QAP program in a timely manner and the significant serious issues raised on the CBI question, we are not finalizing a CBI determination in this action. We intend to continue to evaluate the issues raised in comment and if appropriate will make a CBI determination in a future action.

The EPA proposed to summarize and publish two classes of information: Registration information and information from quarterly reports. First, we proposed to publish registration and QAP information required under 40 CFR 80.1450(b), (c), and (g) from independent third-party auditors and renewable fuel producers and importers registered with the RFS program, by facility and on a monthly basis. For each facility, we would publish the company name, facility name, facility type/fuel product, total permitted capacity, production volume, production process type, feedstocks, D-Code, and any co-products. After publishing these monthly registration reports, we proposed to summarize and update the information in quarterly and annual registration reports of the same type of information.

Second, we proposed to publish monthly, quarterly and/or annual report of information reported to the EPA

under 40 CFR § 80.1452(b) by renewable fuel producers and importers, on a facility-by-facility basis. This information included:

- The name of the renewable fuel producer or importer and associated registration information (i.e., name, address, feedstock, process, fuel type, D-Code).
- The EPA company and facility registration numbers and the associated registration information of the renewable fuel producers, foreign ethanol producers and importers that generated RINs in EMTS during the applicable time period(s).
- The D-code of RINs generated by the facility during the time period (40 CFR 80.1452(b)(6)). For each D-code generated at a facility, the number of RINs generated (40 CFR 80.1452(b)(12)), volume of fuel produced (40 CFR 80.1452(b)(10)), fuel type (40 CFR 80.1452(b)(9)), production process (40 CFR 80.1452(b)(7)), feedstocks (40 CFR 80.1452(b)(13)), and co-products (40 CFR 80.1452(b)(15)).
- The volume of denaturant (for ethanol), applicable equivalence value, and whether all the feedstocks used during the time period were claimed to have met the definition of renewable biomass (40 CFR 80.1452(b)(11) and 80.1452(b)(14)).

The EPA believed that these data were not entitled to confidential treatment because we believed much of this information was already publicly available and widely known, for example renewable fuel producers' company names, facility names, RIN-generating names, locations, production years, fuel product types, RIN D-Codes, production volumes, production process types, feedstocks, equivalence values, and number of RINs generated. We also believed that disclosing this information was not likely to cause substantial harm to the competitive position of the business required to report these information elements under Part 80 because these elements of information do not reveal any proprietary information, or any other information that would likely provide insight for competitors to gain an advantage. Furthermore, because these information elements would be aggregated to the facility level and further aggregated for the time period of the EPA-published report, we did not believe the information could be used by a competitor to gain a competitive advantage.

We received a number of comments on this proposal. Many commenters noted that the most sensitive aspects of the information proposed for release are not already publicly available or widely known. The EPA's assumption on this point was mistaken. Further, many commenters discussed at length the ways in which release of the data could cause competitive harm. For example, release of actual production volumes over time could reveal a company's market share and position, percent capacity production rate, marketing strategy and business partnerships with other entities such as feedstock suppliers. Feedstock type and production process type, in concert with other released data, could be reverse-engineered to reveal the producers' process efficiencies, feedstock use rates and other proprietary information. Some commenters asserted that release of the data would have a disproportionately large negative impact on small producers, whose processes and business relationships are typically more sensitive and guarded than large producers'.

Given the recognition that much of this information is not already public or widely available and the many concerns expressed about potential harm to competitive position, the EPA is not finalizing the proposed release of registration and reported information. The decision not to finalize the proposed release of data is not a determination that the information proposed for release necessarily deserves confidential treatment, for example in response to a FOIA request. Such requests will continue to be evaluated on a case-by-case basis. The EPA will continue its current practice to treat as CBI any registration or reported information claimed as confidential, unless a specific determination to the contrary is made in a given case. Today's decision is simply a determination that, at this time, we are not prepared to make a class determination that the information proposed for release in the NPRM is not CBI.

2. Treatment of QAPs and Independent Engineering Reviews

For QAP plans and independent engineering reviews that are claimed as CBI, the EPA proposed to require submission of two versions of those documents: One clearly marked ''CBI version,'' with appropriate areas denoted as CBI, and a second ''public version,'' with CBI information redacted. Based on the Agency's experience with the RFS program, the EPA noted that certain information should not fall under a claim of CBI because it is generally available to the public or widely-known within the industry, and disclosure would not likely cause harm to the competitive position of any submitting renewable producer, importer, or any other party to a RIN transaction. If the EPA receives a Freedom of Information Act (FOIA) request for the CBI version of an engineering review or QAP plan, the EPA would process the FOIA request pursuant to its CBI regulations under 40 CFR part 2, subpart B. Submission of the two versions of QAP plans and engineering reviews (CBI and public versions) would allow the Agency to clearly understand what information is claimed as CBI, and would also allow the Agency to make public versions available to the public without unnecessary delay. We received no adverse comments on this approach and are finalizing as proposed.

D. Proposed Changes to Section 80.1452—EPA Moderated Transaction System (EMTS) Requirements—Alternative Reporting Method for Sell and Buy Transactions for Assigned RINs

In the NPRM, we suggested alternative reporting and PTD requirements found in §§ 80.1452 and 80.1453, respectively, which would allow buyers and sellers of assigned RINs flexibility concerning the invoice date reported to EMTS through the use of a unique identifier identified in advance between buying and selling parties. Some buyers and sellers of assigned RINs have expressed concerns with these requirements, stating they have difficulty determining the date of transfer since title of the renewable fuel is not transferred until the fuel physically reaches the buyer. Some transactions, for example those by rail or barge, may take several weeks, and their current accounting systems do not include a means for capturing the buyer's receipt date. We noted that such an alternative method would require substantial modification to the EMTS to accept such transactions.

We received a number of comments in support of adding flexibility in the reporting and PTD requirements. However, we did receive one comment from an obligated party stating that they and other parties had spent a substantial amount of resources in developing accounting systems to implement the current regulatory provisions and that such a change in flexibility would necessitate a major overhaul of accounting systems that have been functioning adequately for the past several years at significant cost to industry.

We believe that it is important to note that such changes to EMTS incur significant costs to both the Agency and industry. We also understand both the need for flexibility and the potential

costs to industry when we allow new flexibility in our reporting systems. While we agree that there may be some value in adding flexibility to make buying and selling transaction function more smoothly in EMTS, we are not prepared at this time to institute such a change to EMTS. Nor do we wish to disrupt the significant cost borne by industry to comply with existing reporting and PTD requirements. Therefore, we are not finalizing the proposed changes to the reporting and PTD requirements in §§ 80.1452 and 80.1453. However, we may consider further action on this at a later date.

IV. Impacts

The quality assurance program that we are finalizing in today's final rulemaking provides a voluntary mechanism for regulated parties to verify that RINs are validly generated, provides an affirmative defense against violations if a regulated party transfers an invalidly generated RIN or uses it for compliance, and provides clarity regarding the responsibility of regulated parties to replace invalidly generated RINs. The program does not change the volume requirements of the RFS program, but instead helps to ensure that those volume requirements are met. Likewise, the changes to the regulations governing export of renewable fuel, separation of RINs from wet gallons, and qualifying uses of renewable fuel are also intended to ensure that the RFS volume requirements are met with qualifying renewable fuel. As a result, there is no change to the expected impacts of the RFS program in terms of volumes of renewable fuel consumed or the associated GHG or energy security benefits. Instead, the primary impacts of the quality assurance program will be improved liquidity in the RIN market and improved opportunities for smaller renewable fuel producers to sell their RINs.

The quality assurance program finalized today is voluntary. As a result, there are no obligatory costs. There will be costs associated with an individual party's participation in the quality assurance program. However, the fact that the quality assurance program is voluntary means that a decision to participate will be made independently by each regulated party. Furthermore, any costs incurred will only be borne if the industry believes that those costs are less than current costs in the marketplace resulting from efforts to verify, acquire, and trade RINs.

Regulated parties face high costs if they unintentionally purchase invalid RINs (including civil penalties as well as the cost of purchasing additional RINs to meet their RVOs). Although they may make expenditures to implement the QAPs, they are making that investment to reduce the risk of incurring those future costs. As rational actors, the EPA anticipates that regulated parties will not spend more on QAPs than the costs they intend to avoid. Therefore, the EPA estimates that this rule will result in a net reduction in social costs.

As of June 2014, there are 559 biofuel producers operating more than 754 biofuel production facilities. Of these, there are 244 biomass-based diesel producers operating 261 biomass-based diesel production facilities. These numbers are expected to increase as the biofuel market expands. While it is unlikely that all biofuel producers will opt to participate in the quality assurance program, that was the assumption for the upper cost estimate range in order to reflect the maximum potential cost of the program.

The EPA staff consulted with a variety of parties who are expected to be involved in developing RIN validation programs for the biofuels industry. These parties include current and potential RIN auditors, conventional and biofuel industry groups, and obligated parties which have been affected by RIN fraud. These parties all provided informal estimates of the costs associated with this type of quality assurance program which were used to inform our cost calculations.

For those biofuel producers who opt into the quality assurance program, each biofuel production facility must be visited and assessed as part of any audit conducted under the quality assurance program. An auditor will use an approved QAP as the basis for the verification of biofuel produced and RINs generated at a facility. In order to verify production, the auditor must conduct site visits, review documents, and contact entities that do business with the facility. The proposed components of audits are described in Section II.

For producers choosing to take advantage of the QAPs, we require that production facilities be visited on a semi-annual basis. New production facilities shall be visited prior to verification of any RINs and subsequently according to the RFS QAP schedule. We estimate that each visit could take from one to several days, depending on the size and complexity of the facility, the availability of records, changes since the last audit, etc.

Tables IV–1, IV–2, and IV–3 below itemize the activities anticipated for each biofuel production facility audit. The estimates include costs incurred by the biofuel producer (Table IV–1), the auditor (Table IV–2), and the EPA (Table IV–3). While we project costs for the QAP auditors, we expect they will recoup their costs by charging the producers in most cases for their audit and RIN verification services.

TABLE IV–1—COSTS TO THE BIOFUEL PRODUCER FOR IMPLEMENTING A QAP

Category	Manager time	Prof./tech. time	Clerical time	Number per yr.	Capital $	Total hours	Total $
Site Visit	1	16	4	2		42	3,588
Reporting	2	12	4	2		36	3,040
Recordkeeping	0	0	2	2		*4*	*148*
Total						82	6,776

TABLE IV–2—COSTS TO THE QAP AUDITOR FOR IMPLEMENTING A QAP

Category	Manager time	Prof./tech. time	Clerical time	Number per yr.	Capital $	Total hours	Total $
Auditor							
Contract Init	4	4	2	1	530	10	1,428
Site Visit	4	16	0	1	1,060	20	3,036
Follow-up	2	24	10	2	1,060	72	5,778

TABLE IV–2—COSTS TO THE QAP AUDITOR FOR IMPLEMENTING A QAP—Continued

Category	Manager time	Prof./tech. time	Clerical time	Number per yr.	Capital $	Total hours	Total $
Monitoring	2	50	0			52	5,020
Consultants				1	1,000		1,000
Reporting	0	4	12	2		32	1,656
QAP Prep	2	8	4	2		28	2,272
EMTS	0	25	0			25	2,400
Recordkeeping	0	12	25			*37*	*2,077*
Total						276	24,667

TABLE IV–3—COSTS TO THE EPA FOR IMPLEMENTING A QAP

Category	Manager time	Prof./tech. time	Clerical time	Capital $	Total hours	Total $
Implementation		3			3	267
EMTS Data Management		1			*1*	*89*
Total		4			4	356

A. Time and Cost Assumptions

The specific times estimated for each task are shown in Tables IV–1, IV–2, and IV–3. These estimates are based on a number of basic assumptions. An initial site visit of the facility to be audited is assumed to require two days, and include estimated travel and per diem costs. For simplicity, we have estimated an average $600 for airfare, $150 for lodging, and $80 for the per diem expenses. It is assumed that a plant manager would meet briefly with the auditor, and that a plant chemist or other professional would escort the auditor throughout the visit. Some clerical support would be required to locate files for the related document reviews.

It was assumed that an auditor would travel and spend half a day on contract initiation. Any follow up site visits were assumed to be shorter in duration, as the auditor would now be familiar with the facility and its normal operation. A substantial amount of the auditor's time would be spent in follow up documentation of the facility, such as checking feedstock suppliers, process fuel suppliers, doing volume and mass balances, and monitoring the ongoing operation of the facility. It was assumed that an auditor would employ a specialized consultant and/or local agent to perform some portion of the audit support.

In addition to tracking facility operation, an auditor would also be responsible for preparing the QAP, maintaining recordkeeping, monitoring and/or brokering activities on EMTS, and assisting with RFS reporting requirements.

B. Labor Cost Assumptions

The labor costs used in this cost estimation are average mean wages for each labor category, as provided in the Bureau of Labor and Statistics Report dated May 2011. Based on this data, we used the following hourly wages for each employee type:

Managerial $55.04 per hour
Technical/Professional $47.81 per hour
Clerical $18.35 per hour

Doubling to account for company overhead and benefits, and for convenience, rounding to the dollar, gives the following hourly rates:

Managerial $110 per hour
Technical/Professional $96 per hour
Clerical $37 per hour

For the Agency costs, the work was assumed to be performed by a GS–13 technical employee, doubled and rounded up, for an hourly rate of $89.

C. Cost Estimate Results

We considered two scenarios to provide a range of cost estimates with the first estimate assuming that all currently registered biofuel production facilities participate in the program and the second estimate assuming that just the biomass-based diesel production facilities participate. The first estimate represents our maximum total cost estimate based on the number of registered biofuel producers as of June 2014. This assumption of total participation by all biofuel producers equates to 559 RIN generators with 754 biofuel production facilities. This results in a maximum total cost for the program, including recordkeeping and reporting costs, of $22,386,702. If all parties are participating in the program and all RINs are verified, this results in a per-RIN cost of less than $0.01. However, we do expect that the per-RIN cost would vary depending on the number of RINs generated by each fuel producer since the effort involved in validating many aspects of renewable fuel production is the same regardless of the size of the facility.

We do not expect that the costs of participation in the quality assurance program will vary significantly by the D code of RINs. While RINs with different D codes may command different prices in the market, the verification process for each RIN is expected to be similar regardless of D code, with the biggest cost differences in feedstock verification. For this reason we use the same estimated unit costs for the second estimate, where we assume that only the biomass-based diesel production facilities participate in the QAP program. There are currently 244 biomass-based diesel producers operating 261 biomass-based diesel production facilities. The total cost for the program, including recordkeeping and reporting costs, if just these facilities participated is estimated to be $8,091,431.

V. Public Participation

Many interested parties participated in the rulemaking process that culminates with this final rule. This process provided an opportunity for submitting written public comments following the proposal that we published on February 21, 2013 (78 FR 12158). We also held a public hearing on April 18, 2013, at which a number of parties provided both verbal and written testimony. All comments received, both verbal and written, are

available in the EPA docket EPA–HQ–OAR–2012–0621 and were considered in developing the final rule. Public comments and the EPA responses are discussed throughout this preamble.

VI. Statutory and Executive Order Review

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because it raises novel legal and policy issues. Accordingly the EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 and any changes made in response to OMB recommendations have been documented in the docket for this action.

This action is being finalized today as a result of several cases of fraudulently generated RINs. As discussed above, several biodiesel production companies have been identified as having generated RINs that did not represent qualifying renewable fuel. While these invalid RINs represented a very small amount (about five percent) of the nationwide biodiesel volume in the 2009–2011 timeframe, the net result is that this fraud has impacted the liquidity of the biodiesel RIN market as some biodiesel RINs are perceived as having less value than others. In addition, as a result of fraudulent activities, obligated parties have been subject to monetary penalties and the additional cost of purchasing new RINs to cover the invalid RINs, even though they purchased the original RINs in good faith believing that they were valid. The EPA believes it is necessary to put in place an additional regulatory mechanism that provides an alternative, voluntary way to assure that RINs used for compliance are valid to restore confidence in the RIN market and level the playing field for large and small producers.

B. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. The Information Collection Request (ICR) document prepared by the EPA has been assigned EPA ICR number 2473.02, OMB control number 2060–0688. The information collection requirements are not enforceable until OMB approves them.

The RFS program requires that specified volumes of renewable fuel be used as transportation fuel, heating oil, and/or jet fuel each year. Obligated parties demonstrate compliance with the RFS standards through the acquisition of unique Renewable Identification Numbers (RINs) assigned by the producer or importer to every batch of renewable fuel produced or imported. Validly generated RINs show that a certain volume of qualifying renewable fuel was produced or imported. The RFS program also includes provisions stipulating the conditions under which RINs are invalid, the liability carried by a party that transfers or uses an invalid RIN, and how invalid RINs must be treated.

In this action we are promulgating a voluntary quality assurance program intended to provide a more structured way to assure that the RINs entering commerce are valid. The voluntary quality assurance program for RINs provides a means for regulated parties to ensure that RINs are properly generated, through audits of production facilities conducted by independent third parties using quality assurance plans (QAPs).

The annual public reporting and recordkeeping burden for this collection is estimated to be 320 hours per response. A document entitled ''Supporting Statement for Renewable Fuels Standard (RFS2) Voluntary RIN Quality Assurance Program (Final Rule)'' has been placed in the public docket. The supporting statement provides a detailed explanation of the Agency's estimates by collection activity. The EPA did not receive any comment on the proposed burden collection. The estimates contained in the supporting statement are briefly summarized here:

Total No. of Respondents: 559.

Total Burden Hours: 74,386.

Total Cost to Respondents: $ 4,596,774.

Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201 (see table below); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. The following table provides an overview of the primary SBA small business categories potentially affected by this regulation:

Industry	Defined as small entity by SBA if:	NAICS [a] codes
Petroleum refineries	≤1,500 employees	324110

[a] North American Industrial Classification System.

The program finalized in today's action is a voluntary quality assurance program intended to provide a more structured way to assure that RINs entering commerce are valid. As a result of the fraud issue, obligated parties have been reluctant to purchase RINs from smaller refiners because of the uncertainty of their validity. While this voluntary program may be beneficial for both larger and smaller refineries, it will be particularly beneficial for smaller petroleum refineries if they choose to participate. In the current climate, these smaller producers have been forced to offer their RINs at a significant discount relative to RINs from larger producers, assuming they can find obligated parties or distributors willing to purchase them at all. While there is some cost to opt into the program, we believe these costs will be offset by leveling the playing field between larger producers and small producers, allowing small

producers to effectively compete in the market.

After considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action will not impose any requirements on small entities.

D. Unfunded Mandates Reform Act

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The agency has determined that this action does not contain a Federal mandate that may result in expenditures of $100 million or more for the private sector in any one year. Because the program outlined in this rule is optional, entities subject to this rule have the flexibility to participate or not. Thus, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of the UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This action does not have federalism implications. It does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule applies to manufacturers of transportation fuels and not to state or local governments. Thus, Executive Order 13132 does not apply to this action.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule will be implemented at the Federal level and impose compliance costs only on fuel producers who elect to participate in the program. Thus, Executive Order 13175 does not apply to this rule.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211 (Energy Effects)

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. We have concluded that any energy impacts of this rule will be negligible because the voluntary QAP audit process will ensure that the volume consumption goals of the statute are met while addressing the unique features of the RFS program that have resulted in inefficiencies and poor liquidity in the RIN market.

I. National Technology Transfer Advancement Act

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

This rulemaking involves technical standards. The EPA has decided to use ASTM International (''ASTM'') D 975–13a, entitled ''Standard Specification for Diesel Fuel Oils'' approved on December 1, 2013, to change its definition of renewable diesel in the RFS program. The rationale for this action is discussed in section III.B.1. of this preamble. Information about this standard may be obtained through the ASTM Web site (*http://www.astm.org*) or by calling ASTM at (610) 832–9585.

This rulemaking does not change this voluntary consensus standard, and does not involve any other technical standards. Therefore, the EPA is not considering the use of any voluntary consensus standards other than the one described above.

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

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

Today's action finalizes a voluntary set of regulatory provisions that provide regulated parties with a specific mechanism for demonstrating that they have conducted due diligence to verify the validity of RINs. Therefore, the EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations.

K. Congressional Review Act

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

''major rule'' as defined by 5 U.S.C. 804(2).

VII. Statutory Authority

Statutory authority for the rule finalized today can be found in section 211 of the Clean Air Act, 42 U.S.C. 7545. Additional support for the procedural and compliance related aspects of today's rule, including the recordkeeping requirements, come from Sections 114, 208, and 301(a) of the Clean Air Act, 42 U.S.C. 7414, 7542, and 7601(a).

List of Subjects in 40 CFR Part 80

Administrative practice and procedure, Air pollution control, Diesel fuel, Environmental protection, Fuel additives, Gasoline, Imports, Incorporation by reference, Oil imports, Petroleum.

Dated: July 2, 2014.

Gina McCarthy,

Administrator.

For the reasons set forth in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

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

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

Subpart M—[Amended]

■ 2. Section 80.1401 is amended as follows:

■ a. By revising the definition of ''Non-ester renewable diesel''.

■ b. By adding the definitions of ''A–RIN'', ''B–RIN'', ''Independent third-party auditor'', ''Interim period'', ''Non-qualifying fuel use'', ''Q–RIN'', ''Quality assurance audit'', ''Quality assurance plan'', and ''Verified RIN'' in alphabetical order.

The added and revised text read as follows:

§ 80.1401 Definitions.

* * * * *

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.

* * * * *

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.

* * * * *

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.

* * * * *

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.

* * * * *

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.

* * * * *

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.

* * * * *

■ 3. Section 80.1426 is amended as follows:

■ a. By revising paragraph (a)(1).

■ b. By revising paragraphs (c)(1) and (c)(6).

■ c. By revising paragraphs (f)(4)(i)(A)(*1*) and (f)(4)(i)(B).

■ d. By adding paragraph (f)(4)(iii).

■ e. By revising paragraph (f)(12).

■ f. By revising paragraph (f)(14).

The additions and revisions read as follows:

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

(a) * * *

(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) Was produced in compliance with the registration requirements of § 80.1450, the reporting requirements of § 80.1451, the recordkeeping requirements of § 80.1454, and all other applicable requirements 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).

* * * * *

(c) * * *

(1) Fuel producers and importers may not generate RINs for fuel that does not satisfy the requirements of paragraph (a)(1) of this section.

* * * * *

(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.

* * * * *

(f) * * *

(4) * * *

(i) * * *

(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.

* * * * *

(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.

* * * * *

(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.

* * * * *

(12)(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:

(*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 a 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; or

(*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]

(iii) [Reserved]

* * * * *

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

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

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

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

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

(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.

* * * * *

■ 4. Section 80.1427 is amended as follows:

■ a. By revising paragraph (a)(1) and the introductory text of paragraph (b)(1).

■ b. By adding paragraph (c).

§ 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.

* * * * *

(b) * * *

(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:

* * * * *

(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 is subject to the provisions of paragraphs (a)(2), (a)(3), (a)(6), and (a)(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.

■ 5. Section 80.1429 is amended by adding paragraph (b)(10) and removing and reserving paragraph (f) to read as follows:

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

* * * * *

(b) * * *

(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.

* * * * *

(f) [Reserved]

* * * * *

■ 6. Section 80.1430 is amended as follows:

■ a. By revising paragraph (a).

■ b. By revising paragraph (b).

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

■ d. By revising paragraph (f).

■ e. By adding paragraph (g).

§ 80.1430 Requirements for exporters of renewable fuel.

(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 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 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.

* * * * *

(e) For renewable fuels that are in the form of a blend at the time of export, the exporter shall determine the volume of exported renewable fuel based on one of the following:

* * * * *

(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).

■ 7. Section 80.1431 is amended by removing and reserving paragraph (a)(1)(viii) and revising paragraph (b) introductory text to read as follows:

§ 80.1431 Treatment of invalid RINs.

(a) * * *

(1) * * *

(viii) [Reserved]

* * * * *

(b) Except as provided in § 80.1473, the following provisions apply in the case of RINs that are invalid:

* * * * *

■ 8. Section 80.1450 is amended as follows:

■ a. By adding paragraph (b)(1)(xii).

■ b. By revising paragraph (g).

The revisions and additions read as follows:

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

* * * * *

(b) * * *

(1) * * *

(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.

* * * * *

(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 § 80.76, 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 producer's registration information on file with the EPA must update its registration information and submit a copy of an updated QAP on file with the EPA at least 60 days prior to producing the new type of renewable fuel.

(ii) Any independent third-party auditor who makes any other changes to a QAP that will affect the third-party auditor'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 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 uses a new pathway.

(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 their 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.

■ 9. Section 80.1451 is amended as follows:

■ a. By adding and reserving paragraph (a)(1)(xv).
■ b. By adding paragraphs (a)(1)(xvi) through (xviii).
■ c. By revising paragraph (b)(1)(ii)(T).
■ d. By revising paragraphs (c)(2)(x) through (xvi).
■ e. By adding paragraphs (c)(2)(xvii) and (c)(2)(xviii).
■ f. By revising paragraph (g).
■ g. By revising paragraphs (h)(1) through (5).
■ h. By adding paragraph (i).

The revisions and additions read as follows:

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

(a) * * *

(1) * * *

(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).

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(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.

(c) * * *

(2) * * *

(x) The total current-year RINs retired that are invalid as defined in § 80.1431(a).

(xi) The total prior-year RINs retired.

(xii) The total prior-year RINs retired that are invalid as defined in § 80.1431(a).

(xiii) The number of current-year RINs owned at the end of the quarter.

(xiv) The number of prior-year RINs owned at the end of the quarter.

(xv) The number of RINs generated.

(xvi) The volume of renewable fuel (in gallons) owned at the end of the quarter.

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

(xviii) Any additional information that the Administrator may require.

* * * * *

(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 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 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) * * *

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

■ 10. Section 80.1453 is amended as follows:

■ a. By revising paragraph (a) introductory text.

■ b. By adding paragraph (a)(12).

The revisions and additions read as follows:

§ 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 or separated RINs subject to this subpart, the transferor must provide to the transferee documents that include all of the following information, as applicable:

* * * * *

(12) Except as provided in § 80.1433, 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.''.

* * * * *

■ 11. Section 80.1454 is amended as follows:

■ a. By adding paragraphs (a)(6)(i) and (ii).

■ b. By adding paragraph (b)(9).

■ c. By revising paragraphs (l) through (p).

■ d. By adding paragraphs (q) and (r).

The revisions and additions read as follows:

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

(a) * * *

(6) * * *

(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) * * *

(9) Records, including contracts, related to the implementation of a QAP under § 80.1469.

* * * * *

(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) and (f) through (l) 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 foreign producer not generating RINs for its renewable fuel.

(r) Copies of all reports required under § 80.1464.

■ 12. Section 80.1460 is amended by adding paragraphs (h) and (i) to read as follows:

§ 80.1460 What acts are prohibited under the RFS program?

* * * * *

(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.

■ 13. Section 80.1461 is amended by revising paragraphs (a)(1) and (a)(2) to read 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 § 80.1460(g) through (h) 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 (h) is liable for a violation of § 80.1460(e).

* * * * *

■ 14. Section 80.1464 is amended by adding and reserving paragraph (h), and adding paragraph (i), to read as follows:

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

* * * * *

(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.

■ 15. Section 80.1468 is amended by adding paragraph (b)(8) as follows.

§ 80.1468 Incorporation by reference.

* * * * *

(b) * * *

(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).

■ 16. A new § 80.1469 is added to subpart M to read as follows:

§ 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, 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) 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 § 80.127 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 the EPA according to paragraph (e) of this section 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.

■ 17. A new § 80.1470 is added to subpart M to read as follows:

§ 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.

■ 18. A new § 80.1471 is added to subpart M to read as follows:

§ 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 the next business day, 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).

■ 19. A new § 80.1472 is added to subpart M to read as follows:

§ 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 auditor shall conduct an on-site visit at the renewable fuel 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 the EPA remote monitoring system is in place at the renewable fuel production facility. 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.

(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).

■ 20. A new § 80.1473 is added to subpart M to read as follows:

§ 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.

■ 21. A new § 80.1474 is added to subpart M to read as follows:

§ 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.

[FR Doc. 2014–16487 Filed 7–17–14; 8:45 am]

BILLING CODE 6560–50–P