

# Regulation of Fuels and Fuel Additives: Renewable Fuel Standard Program

## Summary and Analysis of Comments

### Chapter 5 Compliance Program and Renewable Identification Numbers (RINs)

Assessment and Standards Division  
Office of Transportation and Air Quality  
U.S. Environmental Protection Agency



## **RFS Summary and Analysis of Comments**

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### **5 COMPLIANCE PROGRAM AND RENEWABLE IDENTIFICATION NUMBERS (RINS)**

#### *What We Proposed:*

The comments in this section correspond mainly to Sections III.D through III.E of the preamble to the proposed rule, and are therefore targeted at Renewable Identification Numbers (RINs). A summary of the comments received, as well as our response to those comments, are located below.

#### **5.1 Compliance Program Structure**

##### **5.1.1 The Use of RINs as Credits and as the Means for Tracking Renewable Fuel**

#### *What Commenters Said:*

Several commenters expressed their support for credit trading in the RFS program. The National Restaurant Association expressed support for the Notice of Proposed Rulemaking (NPRM) language establishing the credit trading program. Environmental Defense pointed to the ability of credit programs to deliver environmental benefits in cost-efficient ways with maximum flexibility. The Missouri Department of Natural Resources (MDNR) commented that it believes that credit trading provides uniformity and continuity from region to region, but also indicated that the trading provisions must be clear and precise and allow for fair and equitable economic treatment among regulated parties that keeps costs to a minimum.

Other commenters expressed support more specifically for the proposed program structure in which RINs operate as credits. Environmental Defense commented that the introduction of the RIN will allow easy trading and tracking of biofuels produced and used. The National Biodiesel Board pointed to RINs as an effective and flexible means for determining compliance with the standard. API expressed support for the assignment of RINs by renewable fuel producers, the use of RINs as the basic mechanism for compliance demonstration by obligated parties, and the use of RINs as the mechanism for fulfilling the credit trading provision in the EPA Act.

#### Letters:

American Petroleum Institute (API) OAR-2005-0161-0185

Environmental Defense OAR-2005-0161-0172, -0223

Missouri Department of Natural Resources (MDNR) OAR-2005-0161-0217

National Restaurant Association (NRA) OAR-2005-0161-0174

National Biodiesel Board (NBB) OAR-2005-0161-0212

#### *Our Response:*

Commenters generally supported the overall structure of our proposed program, in which unique RINs are generated for each batch of renewable fuel produced or imported, and RINs are then acquired by obligated parties for use in demonstrating compliance with the standard. We chose this approach to the design of the RFS program as the best way to fulfill the requirement of Section 211(o) of the Clean Air Act for a credit trading program, and to preserve the natural market forces and blending practices that keep renewable fuel costs to a minimum. With some small modifications as described in the preamble for the final rule, we are finalizing the program structure as proposed.

### 5.1.2 Renewable Fuel Production Is a Reasonable Surrogate for Consumption

#### *What Commenters Said:*

Commenters generally supported the assignment of RINs at the producer/importer level. ExxonMobil commented that the assignment of RINs by renewable fuel producers is essential, while the Methanol Institute went further to state that RINs should not be assigned at the point of renewable fuel blending into motor vehicle fuel.

However, SIGMA and NACS questioned the appropriateness of the proposed approach. They urged EPA to study the federal motor fuels excise tax program for an example of how well "rack-level" enforcement can work. Rather than create an entirely new mechanism for tracking RINs, they suggested that it be laid on top of the existing IRS excise tax credit system. According to SIGMA and NACS, this approach would be more efficient.

#### Letters:

ExxonMobil Refining & Supply Co. OAR-2005-0161-0197

Methanol Institute (MI) OAR-2005-0161-0171

Society of Independent Gasoline Marketers of America and National Association of Convenience Stores (SIGMA/NACS) OAR-2005-0161-0234

#### *Our Response:*

Once renewable fuels are produced or imported, there is very high confidence they will in fact be blended into gasoline or otherwise used as motor vehicle fuels, except for exports. The use of RINs allows the Agency to measure and track renewable fuel volumes starting at the point of their production rather than at the point when they are blended into conventional fuels. As a result, compliance and enforcement is greatly simplified.

We did investigate the possibility for using the IRS program based on excise tax credits. However, we concluded that the IRS program was inadequate to meet the needs of the RFS program. It applies only to ethanol and biodiesel, and ignores neat fuels, and does not permit a distinction between cellulosic and corn-based ethanol. A focus on

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blending as the point in time when evidence of compliance is generated or when credits are generated might also compel some refiners to significantly change their business or production practices to take greater control of ethanol blending and, therefore, the mechanism for compliance with the RFS program. Thus an IRS-based program would run counter to the normal business practices that keep fuel costs to a minimum, and would thus have a tendency to increase fuel costs. Finally, tracking renewable fuel volumes to identify the date, place, and volume of blending into gasoline would maximize the number of regulated parties involved, overly complicating the compliance system. There are more than 1200 blenders in the U.S. who blend ethanol into gasoline, in addition to those that blend biodiesel into conventional diesel fuel. Many of these parties are small businesses that have not been regulated in an EPA fuel program before. Compliance efforts would necessarily be placed on them, imposing upon them the primary burden of accurately documenting the volumes of renewable fuel that are blended into gasoline even though under the RFS program we are not making them obligated to meet the standard. In contrast, under our program blenders would only need to keep records of RINs acquired with batches, a much simpler requirement. It is our expectation that in most cases obligated parties will separate the RINs from batches before those batches are transferred to blenders. Therefore, blenders will only have to keep records of RINs for a fraction of the renewable fuel produced and many blenders will be able to avoid any compliance burden entirely.

### **5.1.3 Participation in the RIN Trading Market**

#### *What Commenters Said:*

Sutherland Asbill Brennan expressed concern that the design of the RFS program relies on the assumption of an abundance of RINs available to buyers. This commenter pointed to the possibility that, if supply of renewable fuel is very close to the demand generated by the renewable fuel standard, trading of RINs could be constrained either intentionally or unintentionally, making it difficult or more costly for obligated parties who need RINs to obtain them from parties who have excess. By disallowing distributors of renewable fuels from separating RINs from volumes of renewable fuel, this commenter expressed concern that control over most RINs would be left to a small number of obligated parties and/or blenders.

In addition, the commenter suggested that the program was flawed because oxygenate blenders may not have a sufficient incentive to participate in the trading program. It is possible that the cost of their participation might be seen as outweighing the benefits, and that the prospect of having to defend a potential enforcement proceeding may deter small blenders from entering into the RIN trading program.

#### Letters:

Sutherland Asbill Brennan    OAR-2005-0161-0210

#### *Our Response:*

The design of the RFS program was not predicated on a surplus of renewable fuel in the market<sup>1</sup>. Based on discussions with stakeholders, the final program design takes into account the many and varied ways that renewable fuels may be produced in the future, and the total volumes relative to the required volumes. As described below, the program will operate effectively regardless of whether supply of renewable fuel significantly exceeds the annual volume requirements or not.

The RFS program creates an open market in which any party, including blenders, refiners, distributors, and brokers, can own and trade RINs. This approach not only ensures that RINs have many avenues through which they can make their way to the obligated parties that need them for compliance, but it also maximizes competition within the market and thus minimizes cost. However, as described in Section III.E of the preamble, we also believe that the RIN transfer mechanism should focus first on facilitating compliance by refiners and importers, and doing so in a way that imposes minimum burden on other parties and minimum disruption of current mechanisms for distribution of renewable fuels. As a result, we have limited the circumstances under which RINs can be separated from volumes of renewable fuel to focus on obligated parties at the time of ownership of renewable fuel, and blenders at the time of blending.

The final RFS program does not force any party, including blenders, to sell RINs they own. However, the final rule now requires, rather than simply permits, oxygenate blenders to separate RINs from any batches of renewable fuel that they own and blend. They will thus be subject to all the recordkeeping and reporting requirements that apply to any other owner of RINs, and any additional regulatory burdens associated with the sale of RINs to other parties would be minimal.

We recognize that an oxygenate blender, as well as any other non-obligated party, can decide not to sell RINs that it owns for a variety of reasons. However, we do not believe that it would be appropriate to require oxygenate blenders or other parties holding excess RINs to sell all the RINs that they separate from renewable fuel, since the regulations governing such sales would need to cover a wide variety of business practices that the Agency has never regulated in the past and are best left to the market. For instance, if the oxygenate blender used an auction to sell RINs, it could still essentially withhold RINs from the market by setting the selling price too high. Thus the sale of RINs would require a regulatory prohibition against setting a minimum price for the RINs or a minimum number of bidders. Other aspects of the RIN transfer would also need to be regulated, such as requiring written confirmation of the RIN transfer, minimum RIN block sizes, frequency of auctions and the means through which they are made public, and conditions for rolling unsold RINs to subsequent auction cycles. All of these regulatory controls could unduly influence the operation of the market.

Any party that owns separated RINs will have an incentive to sell them if their sale price warrants the effort. If they do not sell their RINs, in general this is because

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<sup>1</sup> We do acknowledge that the cost of the program is essentially zero so long as the predicted surplus continues.

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there are excess RINs available in the market and the sale price of the RINs is low. Thus we do not believe that obligated parties will have a difficult time acquiring RINs.

### **5.1.4 Renewable Fuel Costs in the Absence of Credit Trading**

#### *What Commenters Said:*

MDNR expressed concern that the absence of a credit trading program in 2007 could force refineries in some states to ship renewable fuel long distances in order to blend them into gasoline and thus meet the renewable fuel standard. MDNR pointed out that this may add to transportation fuel costs given the general lack of access to renewable fuel resources in the absence of the credit-trading program to certain obligated parties.

#### Letters:

Missouri Department of Natural Resources (MDNR)

OAR-2005-0161-0217

#### *Our Response:*

The full compliance and trading program will be operational starting on September 1, 2007. Starting on this date, obligated parties that do not have access to renewable fuels will be able to purchase RINs from other parties that have excess RINs. There will be no need for obligated parties to transport volumes of renewable fuel long distances in order for them to acquire RINs for compliance. Contrary to MDNR's comment, compliance with the standard is not based on a requirement that refiners show that they blend renewable fuels. It is based instead on a requirement that refiners obtain RINs, which are evidence that such renewable fuel has been blended into gasoline by some party. There is no need for a refiner to show that they performed such blending.

### **5.1.5 RFS Program Cannot Constrain Distribution and Blending of Renewable Fuels**

#### *What Commenters Said:*

Some commenters emphasized that the RFS program must not place new constraints on the distribution of renewable fuels or the locations or conditions of blending. The American Coalition for Ethanol wanted to ensure that the RFS rule does not consolidate all ethanol blending at the terminal level, but instead continued to allow splash blending outside the pipeline or refinery terminal. Similarly, BioSelect encouraged EPA to ensure that the biodiesel industry will be able to take advantage of existing distribution, blending, refueling, and retailing practices as it matures.

#### Letters:

American Coalition for Ethanol (ACE)

OAR-2005-0161-0218



Galveston Bay Biodiesel (BioSelect) OAR-2005-0161-0206

*Our Response:*

As we worked with stakeholders during the development of the RFS program, one of our guiding principles was to ensure to the degree possible that the market mechanisms that keep production and distribution costs of renewable fuel to a minimum are preserved. To this end, the RFS program does not compel ethanol or any other renewable fuel to be blended at any particular point in the distribution system. Renewable fuels can continue to be blended into gasoline or diesel to make motor vehicle fuel by any party at any location, and RINs can be separated from volumes of renewable fuel by any party that owns the renewable fuel at the time of blending. Other aspects of the fuels distribution system should likewise be able to adjust to changes in the amount and types of renewable fuel without undue influence from the RFS program.

## **5.2 Structure of RINs and RIN Generation**

### **5.2.1 RIN Components**

#### **5.2.1.1 Batch Volume Codes and Batch Definition**

*What Commenters Said:*

A number of commenters requested that the RIN volume codes SSSSSS and EEEEEEE be expanded to accommodate larger batch volumes. FutureFuel pointed out that the RIN volume codes need to take into account such circumstances as continuous processing in which distinct tankfulls are not generated, and barge and ship movements of renewable fuel that can easily have volumes greater than the proposed limit of 1 million gallons per batch. Ethanol Products pointed out that larger batch volumes would decrease the number of unique batch codes in the RIN. Archer Daniels Midland Company (ADM) pointed to the fact that different types of storage or shipping containers will have different volumes, and thus the volumes codes in the RIN should be expanded to cover them all.

Letters:

American Petroleum Institute (API) OAR-2005-0161-0185  
Archer Daniels Midland Company (ADM) OAR-2005-0161-0227  
Ethanol Products OAR-2005-0161  
Flint Hills Resources (FHR) OAR-2005-0161-0222  
FutureFuel OAR-2005-0161-0198  
Marathon Petroleum Company (MPC) OAR-2005-0161-0175  
Neste Oil OAR-2005-0161-0191  
Shell Oil Company/Motiva Enterprises OAR-2005-0161-0215

*Our Response:*

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In the final rule, the RIN codes SSSSSSSS and EEEEEEEE together identify the "RIN block" which delineates the number of gallons of renewable fuel that the batch represents in the context of compliance. In the NPRM we assigned six digits to the RIN block codes to allow batches up to a million gallons in size. Based on comments received, we have decided to expand the number of digits to eight to accommodate batches up to 99,999,999 gallons in size. Although it is highly unlikely that a single tank would hold this volume, we are adding a definition of "batch" to our final regulations that would allow this high volume to be counted as a single batch for the purposes of generating RINs.

The final rule defines a batch of renewable fuel as a volume that has been assigned a unique batch-RIN. This simple and flexible definition of a batch allows renewable fuel producers and importers to construct each batch-RIN based on the particular circumstances associated with the batch. In this context, a batch is not confined to the volume that can be held in a tank, but instead can include all the renewable fuel produced by a party over a period of time. However, we are placing two limits on the volumes of renewable fuel that are identified as a single batch. First, the RIN contains only enough digits to permit the assignment of 99,999,999 gallon-RINs to a single batch. For corn-ethanol with an Equivalence Value of 1.0, this means that a single batch can be comprised of up to 99,999,999 gallons of ethanol. In contrast, for biodiesel with an Equivalence Value of 1.5, a single batch can contain up to 66,666,666 gallons of biodiesel. Second, in order to provide more clarity in the event that an investigation of a party's volume and RIN generation records is conducted, we are also limiting a batch to the volume that is produced within a calendar month. Within these two limits, producers and importers can define batches of renewable fuel according to their own discretion and practices, including using individual tankfulls to represent each batch.

### **5.2.1.2 RIN Codes Representing Location**

#### *What Commenters Said:*

Some commenters suggested that the RIN be expanded to include more information about where the associated renewable fuel was produced, blended, and used. CHS said that this type of information, though not necessary for RFS compliance, could enhance the future use of RINs in other contexts. They also argued that it could be used to ensure that the RFS program is working.

Gary Williams Energy Corporation went further, saying that EPA should incorporate into the RINs multi-digit ID numbers of two or more digits to identify the PADD or state where the ethanol was produced and where it was actually blended. They argued that this information could be used as the basis for subsequent analysis of the renewable fuels program by the Department of Energy.

#### Letters:

CHS Inc.      OAR-2005-0161-0203

Gary-Williams Energy Corporation (GWEC)

OAD-2005-0161-0207

*Our Response:*

Information on the state and PADD where a batch of renewable fuel was produced is available through the registration number of the production facility which is a required part of the RIN. However, we have not required any information to be incorporated into the RIN to indicate where the renewable fuel is blended. Not only will RINs often be separated from renewable fuel prior to blending by obligated parties, but our final program allows RINs to be completely interchangeable with one another so that the RIN traveling with a gallon of renewable fuel at the point of blending may not be the same RIN that was generated to represent that particular gallon. There will also be cases in which there is not a 1:1 ratio of gallon-RINs to gallons for a volume of renewable fuel, and this ratio may also be different at the point of blending than it was at the point of production. Thus within the context of our final RFS program design, information about the blending of renewable fuels cannot be added to RINs in any unambiguous way.

### **5.2.1.3 RIN Code Representing Date**

*What Commenters Said:*

The Renewable Fuels Association suggested that year code YYYY should be expanded to include the specific day that the renewable fuel in question was produced. They indicated that such information would assist in tracking and compliance.

Letters:

Renewable Fuels Association (RFA) OAR-2005-0161-0192, -0228 (hearing

*Our Response:*

We believe that it is unnecessary to include the specific day of production in the RIN, and would unduly lengthen the RIN. Compliance with the standard is determined on a calendar year basis, and the year of RIN generation is necessary in order to ensure that RINs are used for compliance purposes only in the calendar year generated or the following year. The full RIN generation date, while a potentially useful piece of information in the context of potential enforcement activities, is not necessary as a component of the RIN since recordkeeping requirements contain this same information and can be consulted for enforcement.

### **5.2.1.4 RIN Is Too Long**

*What Commenters Said:*

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Some commenters said that the proposed 34-character RIN was longer than it needed to be. IFTOA expressed concern that the length of the RIN could cause problems with recordkeeping and PTDs due to current computer fields that may not have sufficient space for a 34-character code. The commenter indicated that it would be costly and time-consuming to modify software systems to accommodate a 34-character RIN.

Although the Renewable Fuels Association did not express concerns about the RIN being too long, the commenter did state that it could be shorter. The commenter suggested that the RIN could be shortened by the use of special codes to represent certain components of the RIN. Specifically, the commenter suggested that the facility identification number could be reduced to 2 or 3 digits, rather than 4, if "alpha" codes were used.

### Letters:

Independent Fuel Terminal Operators Association (IFTOA) OAR-2005-0161-0213

Renewable Fuels Association (RFA) OAR-2005-0161-0192, -0228 (hearing)

### *Our Response:*

The RIN is a unique identification number generated to represent renewable fuel, and the information contained in the RIN must be unambiguous. We continue to believe that all the codes contained within a RIN are critical to the enforceability of the RFS program, and none of these codes were specifically challenged by commenters. Indeed, we have decided to lengthen the RIN to allow for larger batch volumes on the basis of requests from a number of commenters. As a result, the final RIN is now 38 characters long, compared to the 34 characters in the proposal. We have not received any comments from renewable fuel producers, refiners, or other parties indicating that the length of the RIN would be problematic from the standpoint of recordkeeping or PTDs. IFTOA did not provide any information indicating why its member's systems would be unable to accommodate long RINs, and did not suggest specific ways in which the information incorporated into the RIN could be retained with fewer characters. Therefore, we are finalizing the 38 character RIN as described in Section III.D of the preamble.

Although the RIN must always appear in its entirety, special product codes may be used to convey other information as long as the codes are clearly understood by each transferee. In addition, we are finalizing a more flexible approach to product transfer documents (PTD) that allows RINs to be transferred through a PTD that is separate from the PTD used to transfer the volume of renewable fuel.

Regarding RFA's suggested use of alpha codes, the use of 4 and 5 digit registration codes in the RIN for facilities and companies, respectively, is consistent with the approach taken in past fuel programs. The use of the same number of digits in the RFS program allows previous registrations to be used in the RFS program as well. Although the use of special codes to represent company or facility registration numbers might reduce the length of the RIN, the reduction would be very minor (1 - 2 digits out of

the 38 being finalized) and would introduce other complications. For instance, there would need to be a universal key that linked the alpha codes with the actual registration numbers, and the existence of two sets of codes identifying companies and facilities could generate confusion unnecessarily. We do not believe that the Information Technology systems being used by parties regulated under the RFS program will gain any advantage from the use of alpha codes.

### 5.2.2 Generating RINs

#### 5.2.2.1 Cases Where Different Types Of Renewable Fuel Are Mixed

##### *What Commenters Said:*

DuPont raised the question of how RINs would be generated and assigned for cases in which a party produces renewable fuel through multiple processes or from multiple feedstocks, each of which might warrant a different Equivalence Value. The commenter suggested that it might be appropriate to provide RINs for such a mixed batch based on the percentage of the batch that would be assigned a given Equivalence Value. The commenter's specific example was for a producer which made biofuels from cellulosic and non-cellulosic sources.

##### Letters:

DuPont            OAR-2005-0161-0168

##### *Our Response:*

Although cellulosic biomass ethanol can be produced from a cellulosic feedstock, Section 211(o) of the Clean Air Act also allows ethanol to be designated as cellulosic biomass ethanol if 90% of the fossil fuel energy normally used to produce the ethanol is replaced by waste sources. This determination must necessarily be based on an evaluation of a whole facility, not portions of a facility. As a result, a designation of "cellulosic biomass ethanol" can only be made if all of the ethanol produced at a given facility meets the 90% criterion or a cellulosic feedstock is used. A producer cannot designate a portion of its ethanol as cellulosic biomass ethanol based on the energy displacement criterion if less than 90% the fossil fuel energy normally used to produce the ethanol is replaced by waste sources.

However, if a producer makes ethanol from two different feedstocks at the same facility, such as cellulose and corn, the final product may indeed be a mixture of two different categories of ethanol, each of which should be assigned a separate Equivalence Value. There are two possible ways to address this situation. If RINs can be generated separately for each type of renewable fuel with a unique Equivalence Value, then multiple RINs can be assigned to a single batch comprised of a mixture of renewable fuels with different Equivalence Values. Alternatively, we have created a regulatory

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mechanism through which the producer may submit a petition to the Agency describing the renewable fuel, its feedstock and production process, and the calculation of its Equivalence Value. See 40 CFR 80.1115. The Agency will review the petition and approve an appropriate Equivalence Value for the mixed batch based on the information provided.

### **5.2.2.2 Volumes in Inventory at Program Startup**

#### *What Commenters Said:*

Some commenters recommended that we take steps to ensure that every gallon of renewable fuel in the distribution system has an assigned RIN, particularly at the start of the program. The Renewable Fuel Association recommended that RIN generation and assignment by the renewable fuel producers should begin at least 30 to 60 days prior to the renewable fuel obligation so that all gallons at every point in the distribution system will have assigned RINs when refiners and other obligated parties demand them. Ethanol Products went further to suggest that RIN generation begin 90 days prior to the date on which the renewable fuel standard becomes applicable to obligated parties. Ethanol Products also suggested that we could permit the generation of temporary RINs by all parties in the distribution system for renewable fuel in inventory at program startup.

ADM asked for clarification on whether RINs will be assigned to renewable fuel residing in the distribution system at program startup.

#### Letters:

Archer Daniels Midland Company (ADM) OAR-2005-0161-0227  
Renewable Fuels Association (RFA) OAR-2005-0161-0192, -0228 (hearing)  
Ethanol Products OAR-2005-0161

#### *Our Response:*

Aside from program startup, there are a variety of reasons that there may be volumes in the distribution system that do not have assigned RINs. These include the following:

- RINs can be separated from renewable fuel by obligated parties or blenders, and the renewable fuel continue on in the distribution system
- Small volume renewable fuel producers are exempt from generating and assigning RINs to their product
- Batch volumes can swell due to temperature changes
- Volume metering imprecision

We are also permitting renewable fuel distributors the flexibility to determine how many gallon-RINs to transfer with each gallon, up to a maximum of 2.5. As a result, program startup represents only one of several circumstances in which there may be

volumes in the distribution system without corresponding RINs, and our final program design is intended to accommodate them all.

We believe it would be inordinately cumbersome to provide every owner of renewable fuels the ability to generate RINs for product in inventory at the start of the program. Doing so would extend the RIN-generating functions far beyond renewable fuel producers and importers who are the only parties otherwise allowed to generate RINs. In addition, we do not believe it is necessary to ensure that every gallon of renewable fuel in inventory at program startup is assigned a RIN. Obligated parties have until May 31, 2008 to acquire 2007 RINs for their 2007 compliance demonstrations, so that any delays they may experience in acquiring RINs at program startup will not affect their ability to comply.

We have modified our regulations to allow renewable fuel producers and importers to generate RINs for renewable fuel in their inventory as of September 1, 2007, essentially treating this as new production at the start of the program. It is a natural extension of the RIN-generating requirements that they already have, and is also consistent with the ongoing RIN provisions which allow producers and importers flexibility in when they deem a batch of renewable fuel to have been produced (i.e., upon physical generation of a batch, or upon transfer of that batch to another party). The provision will cover a significant portion of the renewable fuel in inventory at program startup, and thus will help to ensure a smooth transition at the start of the program.

### 5.2.2.3 Small Volume Producers

#### *What Commenters Said:*

Some commenters opposed our proposal to exempt renewable fuel producers that produce less than 10,000 gallons/year from the requirement that they register with the Agency and assign RINs to renewable fuel that they produce. Shell/Motiva argued that the provision would result in fewer RINs being available to obligated parties unless the first purchaser of the renewable fuel was given the responsibility of generating and assigning RINs to product received from a small producer. The National Petrochemical and Refiners Association (NPRO) argued that the presence of renewable fuel without RINs in the distribution system would result in confusion, complexity, and enforcement problems. If the exemption for small volume producers remained, NPRO suggested that it be required to notify EPA of their identity, specific location of operations, and its intent to distribute renewable fuels without RINs, and that this information should then be publicly released by EPA to inform blenders and obligated parties.

#### Letters:

National Petrochemical and Refiners Association (NPRO) OAR-2005-0161-0170, -0232  
Shell Oil Company/Motiva Enterprises OAR-2005-0161-0215

#### *Our Response:*

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As described above in the response to comments in Section 5.2.2.2, our final program design is intended to accommodate all cases in which some volumes of renewable fuel in the distribution system may not have assigned RINs. In fact, the regulatory provisions governing distribution of renewable fuel have been simplified in comparison to the proposal, and in this context the treatment of renewable fuel from exempt small volume producers will be considerably more straightforward than it would have been under the proposed program. See further discussion in Section III.E.1.b of the preamble.

Furthermore, small volume producers are not expected to contribute meaningfully to the nationwide pool of renewable fuel, and we do not believe that the very small business operations involved should be subject to the burden of recordkeeping and reporting. The commenters did not provide compelling evidence that the exemption would create a problem in the distribution system or provide an unfair advantage to small producers, and as described above our final regulations have been modified to simply accommodate all cases in which volumes in the distribution system may not have assigned RINs. As a result we are finalizing the exemption for small volume producers as proposed. Note that if a small producer chooses to register as a renewable fuel producer under the RFS program, they will be subject to all the regulatory provisions that apply to all producers, including the requirement to assign RINs to batches. Thus if there is a market demand for more RINs, there is a straightforward mechanism for these small producers to opt into the renewable fuel program and increase the supply of RINs.

### **5.2.3 Other Comments Related to RINs**

#### **5.2.3.1 Treatment of RINs for Invalid Renewable Fuel**

##### *What Commenters Said:*

MDNR commented that the proposal was unclear about the fate of RINs in cases where an associated volume of renewable fuel is found not to meet the regulatory definition of renewable fuel. The commenter specifically pointed to the possibility that a volume of renewable fuel may not meet certain performance standards or ASTM specifications.

##### Letters:

Missouri Department of Natural Resources (MDNR)

OAR-2005-0161-0217

##### *Our Response:*

RINs generated must represent renewable fuels that are valid for compliance purposes under the RFS program. If a volume of fuel for which RINs have been generated is found to not be a valid renewable fuel under the RFS program, then the associated RINs are likewise deemed invalid. See 40 CFR 80.1131.



### 5.2.3.2 Disallowing RIN Generation in Certain Cases

#### *What Commenters Said:*

The National Wildlife Federation requested that the right to generate RINs be predicated on certain other factors not considered in the NPRM. For instance, the commenter requested that the generation of RINs be disallowed if the feedstocks were grown on land not previously used for agriculture, or if the renewable fuel production facility violated existing air and water regulations.

#### Letters:

National Wildlife Federation (NWF) OAR-2005-0161-0209

#### *Our Response:*

Section 211(o) of the Clean Air Act provides a definition of "renewable fuels," and fuels meeting this definition count towards meeting the annual volume requirements. This definition is based primarily on the type of feedstock used to make renewable fuel. The definition of renewable fuel in the final rule is consistent with the provisions in the Act.

## 5.3 Assigning RINs to Batches

### 5.3.1 Extra-Value RINs

#### *What Commenters Said:*

With regard to extra-value RINs (those RINs with EVs exceeding 1.0), a number of commenters stated that they believe that these RINs should flow with and remain attached to the renewable fuel until separated by an obligated party or a blender, similar to how standard-value RINs are treated. Many of these commenters expressed concern with the proposed provision allowing extra-value RINs to remain with renewable fuel producers (at §80.1128 in the NPRM), stating that renewable fuel producers could manipulate the RIN market by withholding extra-value RINs from the marketplace and increase renewable fuel demand (and thus increase the ultimate costs to the consumer). Some commenters also noted that they believe that extra-value RINs are more likely to serve as production incentives if obligated parties receive the full RIN value (standard plus extra-value).

API also commented that it believes that if extra-value RINs are allowed to be separated by any party, the complexity and administrative burden of the RFS program would be greatly increased. IFTOA further commented that it believes that requiring extra-value RINs to remain attached to the renewable fuel would make RINs available to a broader group of entities—creating greater liquidity and easier compliance.

## **RFS Summary and Analysis of Comments**

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Shell and Motiva also recommended that partial-value RINs and extra-value RINs be reflected in the RIN code. Neste Oil further commented that it believes that requiring extra-value RINs to remain attached to the renewable fuel would create maximum market efficiencies, as it would allow the extra-value digit to be used as a volume digit and could help allow obligated parties to more efficiently manage their RIN accounts.

However, some commenters stated that they agree with the proposed provision that extra-value RINs need not be assigned to a batch of renewable fuel or placed on PTDs. DuPont commented that it supports allowing extra-value RINs to remain with the renewable fuel producer. The commenter stated that it believes it is important to allow the market to most efficiently allocate appropriate incentives to both biofuels producers and consumers to facilitate expansion of the biofuels market. The commenter also stated that it believes that producers of high performance biofuels and market mechanisms could most effectively determine the economically efficient way of distributing the value of excess RINs to provide those incentives, as EPA proposed.

FutureFuel also commented that it agrees with the proposed provision. However, the commenter questioned why an excess RIN need not be attached to the batch to which the underlying RIN is attached (or at least be identified with the batch number). The commenter stated that it believes that an excess RIN should be assigned to the same batch as the underlying RIN.

### Letters:

American Petroleum Institute (API) OAR-2005-0161-0185  
BP Products North America OAR-2005-0161-0221, -0230  
DuPont OAR-2005-0161-0168  
ExxonMobil OAR-2005-0161-0197  
Flint Hills Resources (FHR) OAR-2005-0161-0222  
FutureFuel OAR-2005-0161-0198  
Independent Fuel Terminal Operators Association (IFTOA) OAR-2005-0161-0213  
Marathon Petroleum Company (MPC) OAR-2005-0161-0175  
National Petrochemical and Refiners Association (NPRA) OAR-2005-0161-0170, -0232  
Neste Oil OAR-2005-0161-0191  
Shell Oil Company/Motiva Enterprises OAR-2005-0161-0215  
Society of Independent Gasoline Marketers of America and National Association of Convenience Stores (SIGMA/NACS) OAR-2005-0161-0234

### *Our Response:*

Our proposed approach to extra-value RINs was based primarily on our desire to ensure that every gallon of renewable fuel had one assigned gallon-RIN as that gallon moved through the distribution system. We were concerned that the assignment of extra-value RINs to volumes would mean that the number of gallon-RINs assigned to a batch could be greater than the number of gallons in that batch, and that this could complicate the distribution system. This was of particular concern for ethanol, since a tank could contain both corn-ethanol and cellulosic ethanol, making the reassignment of RINs to

batches withdrawn from the tank ambiguous. We also indicated our belief that producers and importers of renewable fuel could maximize the value of the extra-value RINs if they were given the flexibility to either assign them to batches or to trade them independently. The primary concern on the part of commenters was that some producers may not release extra-value RINs, if given the choice, in an effort to drive up demand for renewable fuel.

As described in Section III.E.1 of the preamble, we are modifying our program design in several ways to make RINs more fungible. In this context, we have determined that in most cases there is no need to treat extra-value RINs differently from standard-value RINs in terms of whether each should be assigned to batches of renewable fuel by the renewable fuel producer or importer when they transfer ownership of the batch. Therefore, for most renewable fuels we are finalizing a requirement that all RINs be assigned to batches of renewable fuel by the producer or importer. Since each renewable fuel with a different Equivalence Value is a distinct fuel (with the exception of cellulosic biomass ethanol as described below), producers and importers will still receive the added value of extra-value RINs that are assigned to volumes of renewable fuel if those volumes are priced appropriately in comparison to other renewable fuels with different Equivalence Values. Since extra-value RINs and standard-value RINs are treated identically under our final program, the distinction between the two is no longer necessary. The total number of gallon-RINs that can be generated for a given batch of renewable fuel will be determined directly by its Equivalence Value, and all such gallon-RINs will be summarized in a single batch-RIN assigned to a batch. In cases where the Equivalence Value is greater than 1.0, there will be more gallon-RINs assigned to a batch of renewable fuel than gallons in that batch. The only exception to this is cellulosic ethanol. Producers of cellulosic ethanol may have difficulty marketing their product at prices different than that for corn ethanol given the fungible distribution system for ethanol. Therefore, for the case of cellulosic ethanol we are maintaining the ability of the producer to retain the extra value and not assign these RINs to the renewable fuel that they represent. As a result, a producer of cellulosic ethanol can separate 1.5 gallon-RINs from every 2.5 gallon-RINs generated for a gallon of ethanol, and market that 1.5 gallon-RINs separately.

### 5.3.2 Use of Fractional RINs

#### *What Commenters Said:*

MPC commented that it believes that the proposal to have only a portion of a batch carry RINs when the renewable equivalence number is less than 1.0 is unworkable—the commenter believes that each gallon should carry a partial RIN. API also commented that it believes that this approach will cause accounting confusion. The commenter stated that for accuracy, understanding, and accountability, it believes that an appropriate fractional value should be assigned to every gallon of a renewable with an equivalence value less than 1.0.

#### Letters:

## **RFS Summary and Analysis of Comments**

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American Petroleum Institute (API) OAR-2005-0161-0185

Marathon Petroleum Company (MPC) OAR-2005-0161-0175

### *Our Response:*

The use of fractional RINs as suggested by these commenters is meant to ensure that there is a one-to-one correspondence between gallon-RINs and gallons in every batch of renewable fuel, regardless of the Equivalence Value for that fuel. In the context of our proposed program, this suggestion may have helped to simplify the assignment of RINs to batches during batch splits and mergers. However, for the final rule we have modified our approach to the distribution of RINs assigned to volumes of renewable fuel to permit RINs to be more fungible. As a result, the batch-splitting and batch-merging protocols have become largely irrelevant, and thus the transfer of renewable fuels having an Equivalence Value less than 1.0 has become greatly simplified. We are therefore finalizing our proposed approach in which renewable fuels having an Equivalence Value less than 1.0 result in fewer assigned gallon-RINs than gallons in a batch. This approach ensures that every gallon-RIN represents one gallon of renewable fuel for purposes of a compliance demonstration irrespective of the Equivalence Value for the renewable fuel that lead to generation of the RIN.

### **5.3.3 Assigning RINs to Udenatured Ethanol**

#### *What Commenters Said:*

Shell and Motiva commented that it is their understanding that EPA's intent was to require importers of renewable fuels, such as ethanol, to register with the Agency and to assign the RINs to the renewable fuels. The commenters asked that EPA clarify at what point the RIN is assigned. The commenters recommended that EPA clarify that importers of udenatured ethanol are required to assign RINs after a batch of ethanol is denatured, and that the volume of ethanol for purposes of the RIN is the volume of the ethanol and the denaturant combined. The commenters stated that they believe this approach is consistent with the approach that EPA has taken for domestic ethanol producers.

#### Letters:

Shell Oil Company/Motiva Enterprises OAR-2005-0161-0215

### *Our Response:*

In response to this comment, we note that a RIN is assigned to a volume of renewable fuel when ownership of the RIN is transferred along with the transfer of ownership of the volume of renewable fuel, pursuant to §80.1128(a). Our final program requires that ethanol must be denatured before it is assigned a RIN, and that all denatured ethanol must be assigned a RIN (with an exception for small volume producers). The number of gallon-RINs assigned to a batch of denatured ethanol is based on its Equivalence Value and the volume of the ethanol including the denaturant.

### 5.3.4 Assignment of RINs by Importers

#### *What Commenters Said:*

IFTOA commented that it believes that EPA should require an obligated party/purchaser of imported gasoline, which subsequently acquires renewable fuels and blends those fuels into an equivalent volume of gasoline, to transfer the associated RINs to its supplier/importer of record. The commenter noted that this requirement would only apply if the importer of record has a long-term contractual agreement to import gasoline for that obligated party/purchaser. The commenter stated that it believes that this would provide a more equitable allocation of RINs, would be readily verifiable by EPA, and would be consistent with the objective of preserving existing business practices for the production and distribution of conventional and renewable fuels.

#### Letters:

Independent Fuel Terminal Operators Association (IFTOA) OAR-2005-0161-0213

#### *Our Response:*

The RFS program places the renewable volume obligation on parties based on ownership of the gasoline at the refiner or importer level. The commenter identifies the "obligated party/purchaser" of the imported gasoline as the obligated party. However, the purchaser of the gasoline is not the obligated party. Rather, the importer of the gasoline (the owner of the gasoline at the time of importation) is the obligated party. We believe this approach is the most effective way to implement and enforce the renewable fuels requirement, and is consistent with our other fuels programs as far as placing the obligation on the importer of the fuel. We also believe it is appropriate to allow parties who add the renewable fuel to gasoline, including blenders (in this case, the "obligated party/purchaser" referred to by the commenter) to separate RINs from the renewable fuel volume and to have the right to sell those RINs to any party. Individual parties may agree that, in certain situations, it would be appropriate for the RINs to be transferred from the renewable fuels blender to the importer of the gasoline. In such cases, the parties may make contractual arrangements for the transfers. We do not believe it would be appropriate or workable for EPA to require such transfers.

## 5.4 RIN Distribution and Trading

### 5.4.1 Transfers of Volumes of Renewable Fuel

#### 5.4.1.1 Custody Transfers

#### *What Commenters Said:*

## **RFS Summary and Analysis of Comments**

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Some commenters expressed confusion over the distinction between custody and ownership in the context of the requirement to transfer RINs with volumes of renewable fuels. FutureFuel commented that it interpreted the proposed regulations to mean that RINs are not transferred to a bulk storage operator who merely stores or throughputs renewable fuels through its facility and does not take ownership of the product. The commenter stated that if that is the case, it agrees with that approach, but requested that this be explicitly stated in the final rule, to avoid any confusion on the part of the terminal operator.

Similarly, Ethanol Products commented that it believes the mechanics of the proposed rule posed some unintended complications for entities such as theirs, which take ownership of renewable fuel between the producer and the blender, especially in scenarios where the renewable fuel is passing through a bulk storage location.

### Letters:

Ethanol Products      OAR-2005-0161

FutureFuel      OAR-2005-0161-0198

### *Our Response:*

Our final program is based on the ownership of renewable fuels, not custody. The transfer of custody of a volume of renewable fuel has no implications in terms of compliance, recordkeeping, or reporting for RINs. In Section III.E.1.b of the preamble to the final rule we clarify that parties taking custody of a volume of renewable fuel but not ownership of that volume would have no responsibilities with regard to the transfer of RINs. Likewise the regulations specify that the requirements for transfers of assigned RINs are tied to transfers of ownership of volumes of renewable fuel. See 40 CFR 80.1128.

We are also finalizing some additional flexibilities in the final rule that should simplify the transfer of ownership of volumes of renewable fuel. For instance, the product transfer document (PTD) which is used to transfer ownership of assigned RINs can be separate from the PTD used to transfer ownership of the volume. We are also finalizing a modified approach to RIN transfers ensuring that RINs are fungible, interchangeable, and can be transferred with renewable fuel in ratios of up to 2.5 gallon-RINs per gallon.

### **5.4.1.2 Transfer of Renewable Fuel Without RINs**

#### *What Commenters Said:*

Ethanol Products commented that it wants to ensure that there are no penalties for transferring gallons without RINs attached to them, in the case of inventory gains or the program startup period.

Letters:

Ethanol Products      OAR-2005-0161

*Our Response:*

There are a variety of legitimate reasons that a party may acquire or own more gallons of renewable fuel than gallon-RINs acquired or owned. See our response to comments under Section 5.2.2 above. Our final program provides the flexibility for any party to transfer gallons without RINs so long as the number of gallon-RINs owned at the end of a quarter does not exceed the number of gallons owned at the end of that quarter (adjusted for the Equivalence Value).

### **5.4.2 Batch Splits and Batch Mergers**

*What Commenters Said:*

FutureFuel commented that, in the case of batch mergers, it supports a first in/first out (FIFO) approach and, given the two-year life of RINs, believe that this should be mandatory so as not to lose RINs in the market place.

CHS commented that it believes that there are issues about tracking RINs after ethanol storage if different batches were placed in a holding tank, as the RINs may have different EVs going in but might be mixed coming out. The commenter urged EPA not to require segregating ethanol by EVs.

API commented that in proposed §80.1128(b)(4) it does not believe that there is a clear rationale for limiting the splitting of renewable batches into only two pieces; the commenter noted that §80.1128(a)(3) implies a batch can be split into more than two pieces. The commenter suggested that “two” be replaced with “any number of” in §80.1128(b)(4).

Letters:

American Petroleum Institute (API) OAR-2005-0161-0185

CHS Inc.      OAR-2005-0161-0203

FutureFuel      OAR-2005-0161-0198

*Our Response:*

The need for protocols for batch splits and batch mergers was directly related to the NPRM's approach to the distribution of RINs with volumes of renewable fuel. As described in Section III.E.1.b of the preamble, we are modifying our approach to permit assigned RINs to be more fungible. As a result, there is no need for the regulations to specify any batch splitting or batch merging protocols, including a FIFO protocol.

## **RFS Summary and Analysis of Comments**

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Under our final regulations, parties taking ownership of volumes of renewable fuel with assigned RINs will simply retain an inventory of all assigned RINs owned. As volumes of renewable fuel are then transferred to other parties, an appropriate number of assigned gallon-RINs are generally withdrawn from the party's inventory and transferred along with the renewable fuel. Assigned RINs cannot be transferred without also transferring renewable fuel, and at the end of a quarter a party has to show that the number of assigned gallon-RINs owned does not exceed the number of gallons owned (adjusted for the Equivalence Value) at the end of that quarter. There is no need for the party to determine which RINs were originally assigned to the volume being transferred. For parties handling both ethanol and biodiesel, it would be reasonable to transfer RINs with volumes in a manner consistent with the Equivalence Value of the renewable fuel, but this would not be required for parties downstream of producers and importers of renewable fuel.

The referenced provision in §80.1128 governing the splitting of unassigned batch-RINs has been modified to permit a single parent batch-RIN to be split into any number of daughter batch-RINs. This provision is specific to RINs not assigned to renewable fuel.

### **5.4.3 Market for Separated RINs**

#### **5.4.3.1 Restrictions on Owning and Trading RINs**

*What Commenters Said:*

##### **Support for Open Trading**

IFTOA, Magellan, FutureFuel, and Sutherland Asbill Brennan all commented that they support the provision to allow for an open trading system that would not limit either the number of trades or restrict trades between certain parties. The commenters stated that they believe that an open trading system would increase liquidity and allow for greater market flexibility. Sutherland Asbill Brennan also pointed to the sulfur credit trading programs as examples of flexible and successful programs that EPA should look to in designing the final RFS trading program.

Shell and Motiva also commented that they support the proposal to allow any party that registers with the Agency to participate in the RIN trading market. The commenters stated that they believe that increasing the number of participants in the RIN market will likely increase transparency and liquidity in the RIN market.

NPRA also commented that it agrees that there should not be a limit on the number of times that a RIN could be traded.

##### **Opposes Open Trading**



NACS and SIGMA commented that they do not support EPA's proposal to permit any party to trade RINs. The commenters requested that RIN trading be restricted to obligated parties and parties that gain ownership of RINs through blending physical gallons of renewable fuels into gasoline and diesel fuel. The commenters stated that they believe that renewable fuel producers should be restricted from owning RINs because they have an economic interest in increasing demand for their products and could withhold RINs from the market. The commenters further stated that they believe that permitting any party to trade RINs will lead undoubtedly to speculation in RINs by parties outside of the motor fuel production and distribution system, potentially increasing RIN costs and, as a result, motor fuel costs to consumers. The commenters also expressed concern that the proposal would not protect consumers and the marketplace in a future scenario in which demand for RINs exceeded supply.

ExxonMobil, FHR, NPRA, and Valero commented that, to avoid the potential for distortion of the RIN market by speculators, only obligated parties and oxygenate blenders should be allowed to hold RINs, and that all trading of RINs should be with obligated parties only. FHR and NPRA added their concern that allowing non-obligated parties to transact RINs would create a new industry of buyers and re-sellers that are not needed to maintain efficient distribution of RINs in the marketplace. Some of these commenters also stated that they believe brokers should be allowed to set up sales on a negotiated fee basis (serving as an arbitrator), but should not be allowed to be a RIN owner. According to Valero, allowing outside parties or speculators to purchase fuel credits is not necessary and could lead to price volatility and potentially higher prices as speculators have an unfair advantage over regulated parties that must purchase credits in order to demonstrate compliance.

### Letters:

ExxonMobil OAR-2005-0161-0197

Flint Hills Resources (FHR) OAR-2005-0161-0222

FutureFuel OAR-2005-0161-0198

Independent Fuel Terminal Operators Association (IFTOA) OAR-2005-0161-0213

Magellan Midstream Partners OAR-2005-0161-0208

National Petrochemical and Refiners Association (NPRA) OAR-2005-0161-0170, -0232

Shell Oil Company/Motiva Enterprises OAR-2005-0161-0215

Society of Independent Gasoline Marketers of America and National Association of Convenience Stores (SIGMA/NACS) OAR-2005-0161-0234

Sutherland Asbill Brennan OAR-2005-0161-0210

Valero Energy Corporation OAR-2005-0161-0167

### *Our Response:*

We continue to believe that there is a need to provide for more open trading in the RFS program, including an allowance for non-obligated parties to own separated RINs. Unlike other programs where credits are generally supplemental to the means of compliance, under the RFS program RINs are the fundamental unit for compliance. As a result, the trading structure must maximize the fluidity of those RINs. A wider RIN

## **RFS Summary and Analysis of Comments**

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market will make it easier for obligated parties to get access to RINs, and thus a unique approach to the RIN market is warranted for this rule.

Additionally, obligated parties are typically not the ones producing the renewable fuels and generating the RINs, nor blending the renewable fuels into gasoline, so there is a need for trades to occur between obligated parties and non-obligated parties. If we prohibited anyone except obligated parties from holding RINs after they have been separated from a batch, non-obligated parties seeking avenues for releasing their RINs would have fewer opportunities to do so. For instance, a potentially large number of oxygenate blenders, many of which will be small businesses, will be looking for ways to market their RINs. Instead of participating in the RIN market with the attendant recordkeeping requirements, these oxygenate blenders might opt not to transfer their RINs at all. Allowing other non-obligated parties such as brokers to own and transfer RINs may create a more fluid and free market that would increase the venues for RINs to be acquired by the obligated parties that need them. In contrast, limiting RIN trading to and among obligated parties could make it more difficult for RINs to eventually be transferred to the obligated parties that need them.

Some commenters were concerned that an open RIN market could lead to price volatility and potentially higher prices as non-obligated speculators enter the market expressly to profit from the sale of RINs. According to commenters, these speculators would hold an unfair advantage over obligated parties that must purchase credits for compliance since speculators can hold onto RINs indefinitely, driving up their price. However, by expanding the number of parties that can hold RINs, we minimize the potential for any one party to exercise market power, and thus we do not believe that such activity on the part of speculators is likely to substantively affect the availability of RINs or their price. Moreover, we do not believe that a given party will hold a RIN indefinitely simply to increase profit because RINs have a limited life and new RINs will be generated and will enter the market continuously.

Based on our review of the comments received, we did not find compelling evidence that an open market for RINs would create particular difficulties for obligated parties seeking RINs, or would limit the enforceability of the program, or that an open market would not provide the expected benefits described above. As a result we are finalizing a RIN trading program that permits any party to hold RINs, and for RINs to be traded any number of times.

### **5.4.3.2 Promoting Wider Geographic Distribution of Ethanol**

*What Commenters Said:*

Two commenters suggested ways that the RFS program could be modified to promote the movement of renewable fuels into geographic locations where they are currently not used, to produce a more even distribution of renewable fuels around the U.S. CHS suggested that RINs be tradable only within defined geographic areas—for

example by PADD. The commenter stated that it believes that this would result in more actual renewable fuel being shipped to the coastal states, thus relieving the severity of any glut. The commenter added that while it believes potential market forces can become the conduit to help move renewable fuel products out of the Mid-continent, those forces would be energized if EPA established restrictions on where RINs could be traded.

Similarly, Gary Williams Energy Corporation (GWEC) commented that, to encourage more even distribution and use of ethanol across the country, it believes that EPA should establish ethanol use volume percentages on a refinery basis, rather than the company-wide basis that was proposed; and this approach should be reflected in the RIN program.

Letters:

CHS Inc. OAR-2005-0161-0203

Gary-Williams Energy Corporation (GWEC) OAR-2005-0161-0207

*Our Response:*

Section 211(o) of the Clean Air Act specifically prohibits us from restricting the geographic areas in which renewable fuel may be used, and the required credit trading program is specifically designed to ensure that obligated parties who do not have access to renewable fuels can still comply. As a result we do not believe that the RFS program should have any geographic components other than the requirement that the required volumes be consumed within the continental 48 states, or Alaska, Hawaii, or a U.S. territory that opts in. The sulfur credit program, in contrast, was founded on the requirement that vehicles in every area of the country need access to ultra low sulfur fuel. This is not the case for renewable fuels, thus we do not believe it would be appropriate to limit trading of RINs within PADDs to compel a minimum amount of renewable fuel to be used in each PADD.

One of our guiding principles in designing the RFS program was to preserve the market mechanisms that keep renewable fuel costs to a minimum. Mandating geographic usage of renewable fuels would interfere with this goal, forcing renewable fuels to be distributed to locations where they would not otherwise go. We do not believe that the "glut" of renewable fuels will occur, since an excess of renewable fuel in one area will simply result in the movement of the excess to other areas.

Regarding the suggestion that the application of the standard to individual refineries instead of refiners would encourage more even distribution and use of ethanol across the country, we do not believe that this would be the case. Since compliance under the RFS program is based on RINs which are freely transferable between refineries and refiners, a given refiner need not acquire and blend physical gallons of renewable fuel. As described in Section III.D of the preamble, the acquisition of RINs is deemed to be evidence that the renewable fuel represented by those RINs was indeed used as motor vehicle fuel somewhere, but that use need not be in the same region as the refiner who acquires the RIN.

### **5.5 Separation of RINs from Batches**

*Note: Comments related to extra-value RINs are addressed in Section 5.3.1*

#### **5.5.1 Parties Who Separate RINs from Batches**

*What Commenters Said:*

A number of commenters stated that they support the proposed provision that RINs must accompany the renewable fuel and may only be separated by a blender or obligated party. Additionally, ExxonMobil suggested that distributors of neat renewable fuels for use as motor vehicle fuel be treated in a manner similar to oxygenate blenders.

Letters:

American Petroleum Institute (API) OAR-2005-0161-0185

BP Products North America OAR-2005-0161-0221, -0230

ExxonMobil Refining & Supply Co. OAR-2005-0161-0197

Flint Hills Resources (FHR) OAR-2005-0161-0222

National Petrochemical and Refiners Association (NPRA) OAR-2005-0161-0170, -0232

Shell Oil Company/Motiva Enterprises OAR-2005-0161-0215

*Our Response:*

These comments are generally supportive of our proposed approach of allowing only obligated parties and parties that blend renewable fuel into gasoline or diesel to separate RINs from volumes of renewable fuel. We took this approach to facilitate compliance by obligated parties with their renewable fuel obligation, with the intention of giving obligated parties the power to market the renewable fuel separately from the RIN originally assigned to it. We are finalizing this approach, along with the special treatment of renewable fuels used in their neat form and biodiesel as described in Sections 5.5.4 and 5.5.5 below.

#### **5.5.2 Alternative Blender-Based Approach**

*What Commenters Said:*

Some commenters stated that they had concerns with the proposed provision to allow refiners and importers to separate RINs from batches as soon as they take ownership of the batch (i.e., prior to the blending of the renewable fuel into gasoline or diesel fuel). The commenters expressed concern that this could give rise to RIN hoarding, fraud, and confusion as renewable fuels with and without RINs circulate through the motor fuel distribution system. The commenters suggested that RINs only be separable from batches when the renewable fuel is actually blended into gasoline or

diesel. They also suggested that EPA look to the RFG program as the best example of how refiners could handle this requirement.

RFA went further, stating its belief that under the proposed approach, an obligated party may separate RINs upon purchase of renewable fuel with no assurances that such fuel is actually blended for consumer use. There is nothing under the proposed approach that would require actual blending by an obligated party, leaving the system open to manipulation by any one refiner. The commenter also stated that it believes that RINs should only be removed by blenders of the finished consumer fuel, not, for example, parties that only add ethanol to gasoline or biodiesel to diesel fuel in small quantities.

Letters:

ExxonMobil Refining & Supply Co. OAR-2005-0161-0197

Renewable Fuels Association (RFA) OAR-2005-0161-0192, -0228 (hearing)

Society of Independent Gasoline Marketers of America and National Association of Convenience Stores (SIGMA/NACS) OAR-2005-0161-0234

*Our Response:*

Our final program design is based on the expectation that essentially all renewable fuels will eventually be consumed as fuel, primarily through blending with gasoline or diesel. As described in Section III.D of the preamble, we do not believe that a compliance system requiring verification of blending is necessary, given that, with the exception of exports, virtually every gallon of renewable fuel produced in or imported into the U.S. is used as fuel in the U.S. This is a foundational principle of the use of a RIN-based program design that enjoyed widespread support among stakeholders and widespread recognition that it accurately describes real world practices. Commenters appear to either agree with this factual predicate, or object but do not provide information that would undercut the validity of this assumption. Their main concern seems to be a lack of an enforceable mechanism to ensure the ultimate blending. However such an enforceable mechanism is not needed given the very high likelihood that the blending will occur without such a mechanism, and the very large increase in burden on various parties that would be occur by requiring an enforceable demonstration of such blending. As a result, we do not believe that it is necessary to verify that blending has actually occurred in order to provide a program that adequately ensures it occurs.

There are many reasons that renewable fuels with and without RINs will circulate through the motor fuel distribution system. For instance, at the start of the program, not all the renewable fuel in inventory will have RINs assigned. In addition, we are exempting small volume producers from generating RINs, renewable fuels with equivalence values less than 1.0 may have fewer RINs than gallons, and volume swell and metering discrepancies can all contribute to situations in which batches legitimately do not have assigned RINs. As described in Section III.E of the preamble, we have modified our compliance program to more flexibly account for such circumstances. The fact that obligated parties can separate a RIN from a batch prior to blending therefore introduces no additional complications to the distribution system.

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We do not believe that market power could be exercised by any one refiner who separates RINs from batches of renewable fuel prior to blending, given that RINs can be transferred freely between any parties any number of times, and access to those RINs is not limited geographically in any way. There are about 140 gasoline-producing refineries in the U.S., and the largest refinery accounts for only a few percent of nationwide gasoline production. In addition, RINs that have been separated from their assigned batches by oxygenate blenders represent an additional safety valve in the RIN market, providing additional assurances that no one refiner could exercise market power in the RIN market.

If verification of blending were required before a RIN could be separated from a batch, both obligated parties and blenders would be subject to additional recordkeeping and paperwork burdens. The Agency would be compelled to enforce activities at the blender level, adding at least 1200 parties to the list of those subject to enforcement under our final program. Although we agree that the reformulated gasoline program could act as a model from which to construct such a recordkeeping and enforcement system, we continue to believe that such a system would be both unnecessary and burdensome.

Commenters supporting a requirement that RINs be separated only at the point of blending offered no other arguments that hoarding or fraud would likely occur under our proposed approach. Therefore, we are finalizing an approach that permits obligated parties to separate RINs from batches at the point of ownership.

### **5.5.3 Ownership of RINs Separated Upon Blending**

#### *What Commenters Said:*

MDNR commented that independent or unbranded wholesalers and resellers often purchase gasoline on the spot market and do not accept ownership of such product until it is blended at the bulk terminal rack. The commenter stated that, under the proposal, it is unclear as to how obligated parties (particularly branded refineries or refiners) are credited for the distribution of RIN-assigned renewables if such product is acquired by an independent party at or below the blending rack.

CHS commented that it believes that various reasons have contributed to the phenomenon of renewable fuel producers selling directly to retail motor fuel outlets/retail stations (71 FR 55590). The commenter stated that it believes that it is important for EPA to appreciate the consequences of such actions on its RFS program and to introduce procedures to reduce them. The commenter stated that it appears that a situation could result where RINs are not available to obligated parties because renewable fuel producers are selling directly to retail outlets, and RINs could be hoarded. The commenter noted that it believes that if renewable fuel producers sell renewable fuel directly to retail outlets, those outlets should be required to register, record PTDs, and report to EPA as

would an obligated party; otherwise, the commenter believes that EPA will not be able to validate any blending by them.

Letters:

CHS Inc. OAR-2005-0161-0203

Missouri Department of Natural Resources (MDNR)

OAR-2005-0161-0217

*Our Response:*

The final rule allows the RIN to be separated from a volume of renewable fuel when that volume is blended into gasoline or diesel, but the RIN can only be separated by the party that owns that volume of renewable fuel at the time of blending. There may be occasions in which a downstream customer is the owner of the volume of renewable fuel when it is blended into gasoline or diesel, and thus he will own the separated RINs and be subject to all the registration, recordkeeping, and reporting requirements. In the case of a blender and a downstream customer who might both lay claim to the right to separate any assigned RINs (for instance, if transfer of ownership occurred simultaneous with blending), these two parties would need to come to agreement between themselves regarding which party will own the separated RINs.

Our final program also allows a producer to separate the RIN from a volume of renewable fuel if the producer designates it for use only as a motor vehicle fuel in its neat form and it is in fact only used as such. This approach would recognize that the neat form of the renewable fuel is valid for compliance purposes under the RFS program, as described in Section III.B of the preamble. In effect, it places neat fuel producers in the same category as blenders, in that they are producing motor vehicle fuel.

### 5.5.4 Neat Renewable Fuels

*What Commenters Said:*

In its comments, API suggested that distributors of neat renewable fuels for use as motor vehicle fuel be treated in a manner similar to oxygenate blenders.

IRI commented that it agrees with the proposal of allowing producers of non-ester renewable diesel, methanol for use in a dedicated methanol vehicle, and biogas for use in a CNG vehicle to separate the standard-value RIN when the fuel is sold in neat form. The commenter stated that it believes that such sales directly promote the use of renewable fuels even though those fuels will probably never be sold to an obligated party. The commenter further stated that providing producers of such fuels with the opportunity to sell the standard-value RINs encourages the production of these fuels and can lower the cost of use to end-users.

The West Park Associates commented that it supports the proposal allowing any party to separate a RIN from a batch if that party designates it for use only as a motor

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vehicle fuel in its neat form and it is only used as such (71 FR 55590). The commenter stated that it believes that this would result in an expansion of possible outlets for sale of a neat (100%) non-ester renewable diesel to be used as a neat motor vehicle fuel (e.g., dedicated sale of non-ester renewable diesel at a dedicated pump/tank at truck stops). The commenter requested that EPA explicitly designate the non-ester renewable diesel producer as one of the parties that could separate the RINs from a batch of non-ester renewable diesel.

### Letters:

American Petroleum Institute (API) OAR-2005-0161-0185

Imperium Renewables, Inc. (IRI) OAR-2005-0161-0178

West Park Associates OAR-2005-0161-0202

### *Our Response:*

These comments are supportive of our proposed approach to permitting a producer to separate the RIN from a volume of renewable fuel if the producer designates it for use only as a motor vehicle fuel in its neat form and it is in fact only used as such. Our proposed approach was designed to recognize that the neat form of the renewable fuel is valid for compliance purposes under the RFS program, as described in Section III.B of the preamble. Our approach reduces the possibility that the assigned RIN would never become available to an obligated party for RFS compliance purposes. In effect, it would place neat fuel producers in the same category as blenders, in that they are producing motor vehicle fuel. We are therefore finalizing this provision as proposed.

### **5.5.5 Biodiesel**

#### *What Commenters Said:*

With regard to biodiesel, we received comments which expressed concerns with the proposed provision that only blends of 80 percent biodiesel (B80) and below could be considered biodiesel blends under the RFS program. Several commenters stated that they believe that blends above 80%, like B99 or biodiesel in its “neat” form should be allowed as well. Some commenters stated that they believe that if biodiesel is being used in quantities greater than B80 (including in its neat form), then it is satisfying the purpose of the statute and the RIN should therefore be separated when the blending occurs or when the neat form is used as motor fuel. Other commenters stated that they believe that the biodiesel producer should be allowed to separate RINs, as this is allowed for producers of other renewable fuels.

Some commenters described the circumstances under which high percentage biodiesel blends are produced. For instance, FutureFuel noted that it sells B99 because some of its customers do not want to file the paperwork to collect the \$1 tax credit and/or wait on their money. IRI indicated that approximately 20% of its biodiesel is used in



concentrations of 80 volume percent biodiesel or more, with the potential for this number to increase.

IRI further commented that it believes that EPA's treatment of blends of biodiesel B80 and above will result in the inability to use associated RINs for compliance purposes when a producer sells the biodiesel to anyone but an obligated party. The commenter indicated that providing producers of neat fuels with the opportunity to sell the standard-value RINs encourages the production of these fuels and can lower the cost of use to end-users. The commenter further stated that it believes that EPA's justification for the treatment of biodiesel is incorrect and not consistent with the Congressional purpose; and that, even if the amount of its biodiesel used in its blends above B80 were atypical, it believes that does not justify making a distinction that is unsupported by the Energy Policy Act. The commenter stated that it believes that the Act clearly includes biodiesel as a renewable fuel without any qualifications as to concentration.

Sutherland Asbill Brennan also commented that it believes EPA inexplicably excluded B100 producers—if future market conditions change and B100 becomes economically preferable, a significant source of RINs would be lost. The commenter also suggested that if EPA elects to retain the 80% blend requirement for biodiesel, the application should be clarified. The commenter noted that currently, only parties authorized to separate RINs under the proposed regulations are specifically subject to the 80% blend requirement in §80.1129(a)(2)(v).

API further commented that it believes that the proposed regulatory provisions, which would require tracking of RINs all the way to fuel blending, should make the same valid assumption for biodiesel as for ethanol (i.e., that once produced, biodiesel will be used for motor fuel).

MPC also commented that it believes that RIN removal by the owner should be allowed.

### Letters:

American Petroleum Institute (API) OAR-2005-0161-0185

FutureFuel OAR-2005-0161-0198

Imperium Renewables, Inc. (IRI) OAR-2005-0161-0178

Marathon Petroleum Company (MPC) OAR-2005-0161-0175

National Biodiesel Board (NBB) OAR-2005-0161-0212

Sutherland Asbill Brennan OAR-2005-0161-0210

### *Our Response:*

We believe that biodiesel blended with diesel fuel at any concentration, including biodiesel in its neat form, should be available for compliance purposes under the RFS program. However, the design of the RFS program must be focused on facilitating compliance for obligated parties. To avoid claims by non-obligated parties that very high concentrations of biodiesel count as a blended product, and that therefore any party could

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separate RINs from volumes of renewable fuel, we proposed that biodiesel must be blended into conventional diesel at a concentration of 80 volume percent or less before the RIN can be separated from the volume.

In the nonroad diesel final rulemaking (71 FR 25709, May 1, 2006), we specified that diesel fuel composed of at least 80 percent non-petroleum diesel such as biodiesel can be designated as non-petroleum diesel. This provision allowed us to accommodate high concentration biodiesel blends that do not satisfy the specifications for #1D or #2D diesel fuel in the context of that rule. Consistent with the nonroad rule, we have determined that the 80 volume percent limit remains a valid means for ensuring that the separation of RINs from biodiesel is consistent with its common use at low blend levels, and that RINs are generally separated at the point in time when the biodiesel can be deemed to be motor vehicle fuel. This treats biodiesel in a consistent manner with ethanol. However, based on comments received, we also believe that the treatment of biodiesel should be changed for the final rule in two ways.

First, obligated parties should have the right to separate RINs from volumes of biodiesel at the point when they gain ownership of the biodiesel, not when they blend biodiesel with conventional diesel fuel. This approach is more consistent with our treatment of the RIN separation rights for obligated parties for other renewable fuels. Any non-obligated parties that blend biodiesel into conventional diesel fuel at a concentration of 80 volume percent or less would continue to have the right to separate the RIN from the biodiesel, as proposed.

Second, we have determined that a biodiesel producer should be given the right to separate a RIN from a volume of biodiesel that it produces if it designates the volume of biodiesel specifically for use as motor vehicle fuel, and the biodiesel is in fact used as motor vehicle fuel. In general this demonstration would require that the producer track the volume of biodiesel to the point of its final use. This approach to the treatment of biodiesel at high concentrations is consistent with how we are treating other renewable fuels used in their neat form.

### **5.5.6 Other RIN Separation Issues**

#### **5.5.6.1 Market Share by Obligated Parties**

*What Commenters Said:*

Ethanol Feed and Fuel commented that it believes that, as defined, the RIN process will put a few obligated parties in control of a significant portion of the RINs produced. The commenter stated that, with the proposal allowing compliance to be met through the mechanism of acquiring RINs, it believes that the producer of the RINs should be allowed to reap the economic benefit. The commenter stated that it believes that forcing RINs to follow through part of the distribution network, but not all of the network, pushes the economical value to network locations that do not produce that

value, resulting in an artificial influence on the entire industry. The commenter believes that this indicates a bias of the proposed regulation in favor of existing technologies, large scale production facilities and obligated parties. The commenter stated that it believes that further advancements should be expected, but the regulation should not dampen small business initiatives by favoring the larger entrenched operations (producers or obligated parties).

Letters:

Ethanol Feed and Fuel            OAR-2005-0161-0180

*Our Response:*

We continue to believe that the RFS program should be focused primarily on facilitating compliance for obligated parties. As a result, the RIN assignment and distribution provisions are designed to ensure that obligated parties have control over a significant number of the RINs produced. Nevertheless, we also believe that producers and importers will receive the added value of RINs assigned to batches of renewable fuel if those volumes are priced appropriately. Furthermore, we believe that the large number of renewable producers, obligated parties, and oxygenate blenders will ensure a competitive market for RINs. The commenter provided no information to indicate that the design of the RFS program would create an economic bias against small producers of renewable fuel.

### **5.5.6.2 Fuels Intended for Use in Boilers and Heaters**

*What Commenters Said:*

IRI commented that it believes that the statement, “A fuel produced by a renewable fuel producer *that is used* in boilers or heaters is not a motor vehicle fuel, and therefore, is not a renewable fuel,” appears to create an after-the-fact standard of actual use, rather than potential use. The commenter stated that it believes that such a standard is unworkable and would be onerous and expensive for any producer or obligated party. The commenter noted that extra-value RINs are generated at a time when the fuel qualifies as “renewable fuel,” and often these extra-value RINs may be sold even before the biodiesel was transferred from the producer’s facility. The commenter stated that these extra-value RINs, under a possible interpretation of this rule, could disappear if the fuel from which they derived is ultimately burned for heat instead of transportation, even though the buyer of such RINs might have no means of knowing that this has occurred. The commenter stated that it believes that purchasers of extra-value RINs should be able to rely on them for compliance purposes without concern that they may be rendered invalid by the ultimate use of the fuel.

ExxonMobil requested that EPA clarify that any RINs attached to, or associated with, renewable fuel blending into distillate fuel intended for use in space heaters or as furnace fuel must also be retired.

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### Letters:

ExxonMobil Refining & Supply Co. OAR-2005-0161-0197

Imperium Renewables, Inc. (IRI) OAR-2005-0161-0178

### *Our Response:*

As described above in Section 5.3, for most renewable fuels we are finalizing a requirement that all RINs be assigned to batches of renewable fuel by the producer or importer. The producer or importer will no longer be able to retain any extra-value RINs generated. The only exception to this is cellulosic ethanol due to the difficulty that marketers might have in pricing cellulosic ethanol differently than corn ethanol for otherwise identical product.

The fact that all RINs are required to be transferred along with volumes of biodiesel until acquired by an obligated party or blended into diesel fuel<sup>2</sup> means it is unlikely that a volume of biodiesel will be used as heating oil while the RINs generated for that volume are used for compliance purposes by an obligated party. In the event that it does occur - for instance, if an obligated party re-enters a volume of biodiesel into the distribution system after separating the RINs from it - the RINs themselves would still be valid for compliance purposes. We believe it would be overly burdensome to require the tracking of renewable fuels after RINs have been separated, and thus there are no regulatory mechanisms to determine if a volume of renewable fuel is used for purposes other than motor vehicle fuel after RINs have been separated. However, we believe that such cases will be extremely rare and thus will not interfere with the program's ability to meet the statutorily required annual volumes.

### **5.5.6.3 Separation of RINs by Obligated Parties that Import or Produce Renewable Fuels**

#### *What Commenters Said:*

Sutherland Asbill Brennan commented that it supports the proposed provision to allow obligated parties to separate RINs from batches they own. However, the commenter stated that there appears to be a disconnect between the rights of an obligated party and renewable fuel importers' duty to assign RINs to a batch. The commenter noted that under proposed §80.1126(d), a renewable fuel importer would assign RINs when placed on a PTD (when the importer transfer ownership of the batch to another party), but the commenter believes that the language in §80.1126(d)(3) seems to conflict with an obligated party's ability to use RINs generated from its importation of renewable fuels. The commenter stated that it believes that if an obligated party chooses to import renewable fuels, EPA should allow the entity to benefit from that importation and detach

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<sup>2</sup> As described in the response to comments at Section 5.5.5, a biodiesel producer is also given the right to separate a RIN from a volume of biodiesel that it produces if it designates the volume of biodiesel specifically for use as motor vehicle fuel, and the biodiesel is in fact used as motor vehicle fuel.

RINs from renewable fuel batches they import. They also requested that EPA clarify the process for obligated parties to assign and subsequently detach RINs from imported renewable fuel batches.

Letters:

Sutherland Asbill Brennan OAR-2005-0161-0210

*Our Response:*

The proposed regulatory language at §80.1126(d) was not clear in regards to obligated parties who are also importers or producers of renewable fuel. We have modified the language for the final rule to explicitly permit an obligated party who is also a producer or importer of renewable fuels to separate RINs generated for renewable fuel that it produces or imports.

### 5.5.6.4 Inventory Losses

*What Commenters Said:*

Ethanol Products commented that it would like to ensure there are no repercussions from trading RINs that have been separated from the renewable fuel by an owner, but not a blender, in the case of experiencing inventory losses where the gallons are not available to sell any longer, but the RINs appropriately exist.

ADM asked for clarification on the process for retiring RINs in the case of accidents during fuel distribution, and the implications for EPA's efforts to enforce the program. The commenter also asked for clarification of the appropriate steps to take in the inevitable cases where volumes of renewable change by small amounts in the distribution system.

Letters:

Archer Daniels Midland Company (ADM) OAR-2005-0161-0227

Ethanol Products OAR-2005-0161

*Our Response:*

For cases in which a spill, leak, or other accident occurs in which a significant volume of renewable fuel is lost, we have created a provision for a party to retire the RINs associated with the lost volume. EPA can then ensure that these retired RINs are not used by any obligated party for compliance purposes. Any gaps in sequential RINs generated due to the retiring of RINs due to accidents will not affect EPA enforcement efforts.

For other circumstances where volume is lost (e.g. evaporation, minor spills, volume metering imprecision), the RINs associated with the lost volume will continue to

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be treated as valid for RFS compliance purposes. Since our final rule allows parties to transfer up to 2.5 gallon-RINs with every gallon of renewable fuel, these small volume losses can, if desired, be accommodated by simply transferring more gallon-RINs with a given volume of renewable fuel.

### **5.5.6.5 Volume Threshold for Qualification as an Obligated Party**

#### *What Commenters Said:*

Sutherland Asbill Brennan commented that the proposed rule did not specify a de minimis amount of gasoline production (or importation) that is needed to qualify an entity as an obligated party. The commenter stated that this is a concern because it creates the opportunity for a dominant renewable fuels producer to qualify to separate RINs with little effort and to then amass a large inventory of RINs to manipulate the credit market. The commenter asked that the right to separate RINs be qualified.

#### Letters:

Sutherland Asbill Brennan OAR-2005-0161-0210

#### *Our Response:*

This is a valid concern that was not addressed in the NPRM. We have added a provision to §80.1129 in our final rule that limits the number of gallon-RINs that an obligated party can separate to account for cases in which a renewable fuel producer produces or imports a small amount of gasoline. Specifically, for RINs that an obligated party generates, the obligated party can only separate such RINs from volumes of renewable fuel if the number of gallon-RINs separated is less than or equal to its annual RVO. Obligated parties can continue to separate as many RINs from volumes of renewable fuel as they wish if they did not generate those RINs.

## **5.6 RIN Valid Life**

### **5.6.1 Two-Year Limit on RIN Life**

#### *What Commenters Said:*

API, ExxonMobil, Shell/Motiva, FutureFuel, NPRA, and MPC commented that they support the definition of RIN life to include the current year and the year following.

ACE commented that it believes that EPA has loosely interpreted the Act's credit life language and developed a complex RIN-based system that stretches the life of a credit well beyond the 12 months envisioned by Congress. ACE commented that it is concerned that allowing paper credits to be stockpiled for use in this fashion will result in less renewable fuel used than what is required by the statute; which could place farmer and ethanol producer investments at serious risk. ACE commented that it does not

believe that the proposed rollover cap is an adequate remedy. ACE recommended that EPA adopt a "retrospective" approach to credits to avoid the need for a rollover cap. The commenter stated that it prefers this approach to the approach proposed by EPA, as it believes that EPA's approach will lead to an unduly long credit lifespan and development of a complex RIN-based system. ACE urged EPA to comply with what it believes is the Act's clear language calling for a 12-month credit lifespan by applying a retrospective system to ensure that minimum volumes of renewable fuel are used on an annual basis.

In contrast, BIO IES commented that it believes that unused credits should be valid for 36 months to allow for greater flexibility in the market place.

IFTOA commented that it believes that EPA should include in the final rule the proposed limited life (12 months) for RINs to obligated parties, so that the maximum volume of RINs is readily available, throughout the life of the program.

### Letters:

American Coalition for Ethanol (ACE) OAR-2005-0161-0218  
American Petroleum Institute (API) OAR-2005-0161-0185  
Biotechnology Industry Organization Industrial and Environmental Section (BIO IES)  
OAR-2005-0161-0199  
ExxonMobil Refining & Supply Co. OAR-2005-0161-0197  
FutureFuel OAR-2005-0161-0198  
Independent Fuel Terminal Operators Association (IFTOA) OAR-2005-0161-0213  
Marathon Petroleum Company (MPC) OAR-2005-0161-0175  
National Petrochemical and Refiners Association (NPRA) OAR-2005-0161-0170, -0232  
Shell Oil Company/Motiva Enterprises OAR-2005-0161-0215

### *Our Response:*

We continue to believe that Section 211(o) of the Clean Air Act is ambiguous on this point and should be interpreted to allow RINs to be valid for compliance purposes for the year generated or the following year. According to the Act, credits represent renewable fuel volumes in excess of what an obligated party needs to meet their annual compliance obligation. Thus credits would come into existence after a party demonstrates compliance for a given compliance year, and they must be valid for compliance purposes for the year after the year in which the renewable fuel that they represent was produced. In the context of the RFS program, RINs not used in the year generated become excess RINs, equivalent to credits as defined in Section 211(o). Thus excess RINs must be available for compliance purposes in the year following the year in which they came into existence. This approach to the valid life of RINs is thus consistent with the letter and intent of the Act, and commenters provided no compelling evidence to the contrary.

Commenters who supported the retrospective approach to the Act's 12-month credit life provision argued that Section 211(o) could have been written to explicitly allow a valid life of multiple years if that had been Congress' intent. However, the Act explicitly indicates that obligated parties may either use the credits they have generated or transfer them. For a

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party to be able to use credits generated, such credit use must necessarily occur in a compliance year other than the one in which the credit was generated. Thus we do not believe that a retrospective approach to the Act's 12-month credit life provision is consistent with the explicit credit provisions of the Act. In addition, we believe that an interpretation leading to a valid life of one year after the year in which the RIN was generated is most consistent with the program as a whole. In comparison to a single-year valid life for RINs, our approach provides some additional compliance flexibility to obligated parties as they make efforts to acquire sufficient RINs to meet their RVOs each year. This flexibility will have the effect of keeping fuel costs lower than they would otherwise be.

It is true that the use of RINs generated in one compliance period to satisfy obligations in a subsequent compliance period could result in less renewable fuel used in a given year than is set forth in the statute. Nevertheless, we believe this approach is most consistent with the Act, as described above. The Act clearly set up a credit program with a credit life, meaning Congress intended parties to use credits in some cases instead of blending renewable fuel. The Act is best read to harmonize all of its provisions. In addition, we note that other provisions of the Act may lead to less renewable fuel use in a given year than the statutorily-prescribed volumes, but Congress adopted them and intended that they could be used. For instance, the deficit carryover provision allows any obligated party to fail to meet its RVO in one year if it meets the deficit and its RVO in the next year. If many obligated parties took advantage of this provision, it could result in the nationwide total volume obligation for a particular calendar year not being met. In a similar fashion, the statutory requirement that every gallon of cellulosic biomass ethanol be treated as 2.5 gallons for the purposes of compliance means that the annually required volumes of renewable fuel could be met in part by virtual, rather than actual, volumes. Finally, the calculation of the renewable fuel standard is based on projected nationwide gasoline volumes provided by EIA (see Section III.A of the preamble). If the projected gasoline volume falls short of the actual gasoline volume in a given year, the standard will fail to create the demand for the full renewable fuel volume required by the Act for that year. The Act contains no provision for correcting for underestimated gasoline volumes. The comment concerning the rollover cap is discussed below.

### **5.6.2 Definition of "Current Year"**

#### *What Commenters Said:*

SilvaGas commented that it believes that EPA needs to clarify the definition of "current year" in order to allow equal treatment for transactions in all months. The commenter stated that the provision allowing RINs to be used in the year in which they were generated plus one additional calendar year will mean that any activities or transactions that take place in December of one calendar year will have half the useful life of any activities or transactions that take place in January of the next calendar year. The commenter stated that the proposed approach could result in transactions will be pushed from December to January. The commenter suggested that EPA use a rolling



twelve-month year for each month, and noted that it believes that the proposed tracking code allows for this.

Letters:

SilvaGas, Inc. OAR-2005-0161-0161

*Our Response:*

We do not believe that renewable fuel producers will defer production of renewable fuel from December to January to maximize the valid life of RINs generated. RINs must be generated by the time a volume of renewable fuel is transferred to another party. A producer is very unlikely to slow or stop production in December, or to build up significant inventories in December, simply to gain the right to use the next year on the RINs generated, since the value of lost product sales in December will be much greater than any value he could receive from starting the RIN life in the next year.

RINs are always valid for compliance purposes for two full compliance years, even if they are generated in December. At the beginning of each year, obligated parties will have an opportunity to acquire RINs generated the previous December and apply those RINs to their RVO. Thus there is little incentive for a renewable fuel producer to delay production simply to change the two-year time period in which the RIN is valid for compliance.

### **5.6.3 Impact of RIN Valid Life on Market Power**

*What Commenters Said:*

One commenter stated his concern that allowing refiners to use RINs for an additional year after the year in which the RIN was generated could give the established petroleum industry the ability to control the fuels market and cause volatility in the ethanol market. The commenter highlighted the need for a stable domestic fuels market that protects investments by farmers and ethanol producers.

Letters:

Private Citizen OAR-2005-0161-0236

*Our Response:*

Although we have set the valid life of RINs at two years, including the year in which the RIN was generated, we do not believe that this provision will give obligated parties excessive control over the fuels market. As described in Section III.D.3.c, the number of previous-year RINs that can be used for current-year compliance is capped at 20 percent. Thus a minimum of 80 percent of a given year's standard must be met with RINs generated, and thus renewable fuel produced, in that year. We believe that the 20 percent cap provides the appropriate balance between, on the one hand, allowing

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legitimate RIN carryovers and protecting against potential supply shortfalls that could limit the availability of RINs, and on the other hand ensuring an annual demand for renewable fuels as envisioned by the Act.

Moreover, the use of a valid life of two years is consistent with other provisions of the Act that may lead to less renewable fuel use in a given year than the statutorily-prescribed volumes. This includes deficit carryovers and imprecision in the standard based on projected gasoline volumes.

### **5.7 RIN Rollover Cap**

#### **5.7.1 Level of the Cap**

*What Commenters Said:*

##### **No Cap Needed/20% Is Too Low**

A number of commenters stated that they did not believe that a cap on rollover RINs is necessary. The commenters generally stated that they believe the intent of the program can be met without a cap; that the cap removes legitimate renewable fuel from the RFS obligation. ExxonMobil commented that if a cap is finalized, it should be as large as possible to provide flexibility for response to potential ethanol shortages arising from drought conditions. MPC, BP, API, NPRA, and Shell/Motiva urged EPA to raise the cap to 30% if a cap is finalized. Some commenters further stated that this increase would give obligated parties an additional buffer zone in the case of a more severe drought (than previously on record) or the event that renewable fuel production is constrained in any way, and would reduce the probability of the RIN market going short and thus reduce the chance of RIN price spikes that could adversely impact U.S. consumers by pushing up fuel prices. NPRA also commented that, if EPA believes that a rollover cap is justified and necessary to facilitate compliance planning by obligated parties, it recommends that the cap should be fixed for all years and not reset annually. API also stated that it believes that a cap that is too generous would have few negative consequences besides a large RIN bank; however, the commenter stated, a cap that is too small to compensate for unforeseen circumstances could result in severe economic consequences because the RIN market will be unable to match supply and demand.

Sutherland Asbill Brennan commented that it agrees with EPA's rationale for imposing a cap, beginning in 2009, on the number of RINs from the preceding year that an obligated party may use to comply with its RVO. However, the commenter stated that it disagrees with the decision to cap obligated parties' use of rolled-over RINs at 20%. The commenter recommended that the cap be increased to at least 30% of an obligated party's current-year RVO. The commenter stated that it believes that a larger cap will promote regulatory certainty by reducing the probability that EPA will have to address the cap on an ad hoc basis in the future.

##### **20% is Too High**

Some commenters stated that they believe that the proposed 20% cap is too high. CHS further commented that it believes that the proposed 20% cap is unnecessary. The commenter stated that it believes that EPA's justification for this value is a 21% ethanol shortage in 1995—the commenter considers this amount to be a mathematical outlier. ACE recommended that the cap be reduced from 20 percent to 10 percent, at a minimum, to more adequately address rollover concerns. The commenter stated that it believes that the Act provided for the use of physical gallons of renewable fuel to satisfy annual obligations. In light of this requirement, the commenter believes that a reduced cap of 10 percent is more defensible and would more consistently ensure that the purpose of the law is achieved.

RFA commented that it believes that EPA did not provide any evidence to indicate that there is even a risk of inadequate supply or even any scenarios that would result in a 20 percent loss of production under current conditions. The commenter noted that for 2008 to 2012, the NPRM's estimated "excess" production is below the 20 percent cap. The commenter thus stated that it believes that the 20 percent cap would allow additional credits to carry forward that would not otherwise have been allowed by increasing the excess credits available. The commenter stated that it believes that a cap of 10 percent would limit this "rollover" of 2007 credits into later years, should be more than sufficient, while also limiting the potential reduction of actual volumes sold each year.

### Other

IFTOA commented that it believes that the proposed 20% allowance to use prior-year RINs to meet an RVO should be changed to 25%. The commenter stated that it believes that such a limitation makes sense, but the use of "20%" has caused a significant amount of confusion in the industry with the Diesel Sulfur rules. The commenter stated that it recognizes that this rule deals with gasoline, not diesel, but believes that another rule with an "80/20" allowance could cause problems within the regulated community; and thus EPA should avoid the used of another "80/20" provision.

### Letters:

American Coalition for Ethanol (ACE) OAR-2005-0161-0218  
American Petroleum Institute (API) OAR-2005-0161-0185  
BP Products North America OAR-2005-0161-0221, -0230  
CHS Inc. OAR-2005-0161-0203  
ExxonMobil Refining & Supply Co. OAR-2005-0161-0197  
Independent Fuel Terminal Operators Association (IFTOA) OAR-2005-0161-0213  
Marathon Petroleum Company (MPC) OAR-2005-0161-0175  
National Petrochemical and Refiners Association (NPRA) OAR-2005-0161-0170, -0232  
Renewable Fuels Association (RFA) OAR-2005-0161-0192, -0228 (hearing)  
Shell Oil Company/Motiva Enterprises OAR-2005-0161-0215  
Sutherland Asbill Brennan OAR-2005-0161-0210

## **RFS Summary and Analysis of Comments**

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### *Our Response:*

To be consistent with the Act's requirement that RINs have a limited life, we believe that the rollover issue must be addressed in our regulations. In the NPRM we proposed a 20 percent cap on the amount of an obligated party's Renewable Volume Obligation (RVO) that can be met using previous-year RINs. We received many comments in support of both higher and lower limits (as summarized above). After review of the comments we received on the NPRM, we have decided to finalize this provision as proposed.

We believe that the 20 percent cap provides the appropriate balance between, on the one hand, allowing legitimate RIN carryovers to fulfill the function of credit generation and use under 211(o) and protecting against potential renewable fuel supply shortfalls that could limit the availability of RINs, and on the other hand ensuring a consistent annual demand for renewable fuels as envisioned by the Act. Given the competing needs expressed by renewable fuel producers and refiners, a rollover cap of 20 percent reasonably balances the risk taken by producers of renewable fuels expecting a guaranteed demand to cover their expanded production capacity investments and the risk taken by obligated parties who need a guaranteed supply in order to meet their regulatory obligations under this program. We believe this approach also provides the certainty that all parties desire in implementing the program.

Comments submitted in response to the NPRM did not provide compelling evidence that 20 percent is not an appropriate value for the cap. The level of 20 percent is consistent with past ethanol market fluctuations. As described in Section III.D.3.c of the preamble, the largest single-year drop in ethanol supply occurred in 1996 and resulted in 21% less ethanol being produced than in 1995. While future supply shortfalls may be larger or smaller, the circumstances of 1996 provide one example of their potential magnitude. In any event, EPA has authority to waive the required renewable fuel volumes in whole or in part in the event of inadequate domestic supply.

IFTOA highlights the fact that using 20% as the cap in the RFS program has the potential to create some confusion with the use of 20% in other regulations. However, we do not believe that this warrants changing this program. They are distinct programs with different purposes, and any confusion should be minimal.

### **5.7.2 Tracking of RINs Under The Rollover Cap**

#### *What Commenters Said:*

CHS commented that it believes that carryovers are cumbersome. The commenter questioned how obligated parties would be able to keep track of which RINs are within the 20% limit or not. The commenter stated that it does not believe that the bookkeeping and potential for abuse or honest mistakes are worth the risk. The commenter suggested that EPA drop the 20% approach and that every RIN be given a shelf life of 15 months.

Letters:

CHS Inc. OAR-2005-0161-0203

*Our Response:*

The 20% cap is not applicable to the total number of available RINs in the nation, but rather to an individual obligated party's RVO. Moreover, to meet the 20% cap, obligated parties will not need to keep track of which specific RINs acquired are within the limit. Instead, an obligated party need only show that the total number of RINs used for compliance is equal to or greater than its RVO, and that no more than 20% of the RINs being used for compliance were generated in the previous year. Since the year of generation is included in each RIN, compliance with the 20% cap will be straightforward.

Since the renewable fuel standard applies on an annual basis, RINs cannot be valid for only part of a year. Limiting the valid life of a RIN to 15 months would overly complicate the program and is unnecessary.

### **5.7.3 Start Date/Applicability**

*What Commenters Said:*

Some commenters stated that they believe that the RIN rollover cap should be applied in the first year that a carryover of RINs is possible. Thus, these commenters believe that EPA should apply the rollover cap in 2008. RFA also stated its belief that, to the extent that the renewable fuel obligation is prorated based on the effective date of the rule for 2007, the cap should also be adjusted.

However, NPRA commented that it believes that a rollover cap should not be effective before 2009 (if EPA believes that a rollover cap is justified at all). The commenter stated that it believes that this rollover cap should not be effective in 2008 since the RFS program will not be in place for the entire 2007 calendar year.

Letters:

American Coalition for Ethanol (ACE) OAR-2005-0161-0218  
National Petrochemical and Refiners Association (NPRA) OAR-2005-0161-0170, -0232  
Renewable Fuels Association (RFA) OAR-2005-0161-0192, -0228 (hearing)

*Our Response:*

The rollover cap is designed to prevent the rollover of RINs generated two years ago from being used for compliance purposes in the current year. No RINs were generated in 2006 when the default standard of 2.78 percent was in effect, so the first year in which RINs will be generated is 2007. Consequently, the first year in which there could be the rollover of

## **RFS Summary and Analysis of Comments**

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RINs generated two years previously would be 2009. Therefore, we proposed that the cap would not be effective until compliance year 2009.

Commenters pointed out that starting the cap in 2009 could under some scenarios lead to a situation in which more than 20 percent of the RINs used for compliance purposes in 2008 were actually generated in the previous year, 2007. They requested that we impose the cap starting in 2008 to prevent such an occurrence. We do not believe that starting the cap in 2008 will have any meaningful effect in-use. Given the projected demand for renewable fuels, and the startup of the program in mid-2007 instead of January, applying the limit to 2008 is unlikely to be constraining. Consequently, in order to simplify the regulations that would otherwise have an exception for 2008, we are finalizing the 20 percent cap to apply to all years, including 2008.

### **5.7.4 Alternatives to Rollover Cap**

*What Commenters Said:*

RFA commented that it believes that the most practical way to avoid rollover issues is to read the Act to allow the 12-month life to apply only to the compliance year in which the credit was generated. The commenter stated that, under this reading, there should be no carryover into the next year, and thus no rollover into subsequent years.

Letters:

Renewable Fuels Association (RFA) OAR-2005-0161-0192, -0228 (hearing)

*Our Response:*

Limiting the valid life of a RIN to the year in which it was generated would indeed eliminate the need to address the rollover issue. However, as described in Section 5.6, we believe that the Act's limit of a 12-month life for credits should be interpreted to mean that RINs should be available for compliance purposes in the year generated or the next. The RIN rollover issue is a consequence of allowing credits generated in one year to be used in the next, but we believe that a cap of 20% adequately addresses the issue.

### **5.7.5 Flexibility in Cap Limit**

*What Commenters Said:*

FutureFuel commented that it believes that the Agency should adopt a provision allowing the cap to be raised in the event that supply shortfalls overwhelm the 20% cap. The commenter stated that it believes that this additional temporary flexibility could help deal with extraordinary events such as droughts.

Letters:

FutureFuel OAR-2005-0161-0198

*Our Response:*

Although we did not propose this provision, we requested comment on whether the Agency should adopt a provision allowing the cap to be raised in the event that supply shortfalls overwhelmed the 20 percent cap. Under this conditional provision, the Agency would monitor standard indicators of agricultural production and renewable fuel supply to determine if sufficient volumes of renewable fuel could be produced to meet the RFS program requirements in a given year. Prior to the end of a compliance period, if the Agency determined that a supply shortfall was imminent, it could raise the cap to permit a greater number of previous-year RINs to be used for current-year compliance. Although this approach would not change the required volumes, it could create some additional temporary flexibility.

Commenters did not provide compelling evidence that such a provision was necessary. In addition, the Agency already has the authority to waive the required renewable fuel volumes in whole or in part in the event of inadequate domestic supply, after consultation with both the Department of Agriculture and the Department of Energy. We also have the authority to revise our regulations if needed, which could occur under expedited circumstances if appropriate. Thus there would be adequate mechanisms to address these circumstances in the future if they were to arise, and we do not need to finalize a provision now allowing the 20% cap to be raised.

### **5.7.6 LIFO Approach**

*What Commenters Said:*

NPRA commented that it does not support a “last-in, first-out” (LIFO) approach for addressing the RIN rollover issue (71 FR 55584). While the commenter agreed that the LIFO concept is a demonstrated, justified, and accepted procedure for product inventory accounting purposes, the commenter does not believe that it is applicable in the context of the RIN rollover issue. The commenter further stated its belief that a LIFO approach would be confusing and complicated to implement as part of the RIN rollover model. The commenter stated that it believes that a cap on the use of the last year’s RINs would maintain RFS credit simplicity with the flexibility to bank some RINs.

Letters:

National Petrochemical and Refiners Association (NPRA) OAR-2005-0161-0170, -0232

*Our Response:*

Although we described this alternative approach to addressing the RIN rollover issue, we did not propose it. No commenters supported it, and we do not believe it is needed, therefore we have not finalized it.

### **5.7.7 Expiration of Rollover RINs**

#### *What Commenters Said:*

SilvaGas commented that it believes the proposal to cap the use of excess RINs is a “cap and expire” program that troubles them. The commenter stated its belief that a “cap and expire” program applied to the RIN rollover issue amounts to an attempt to address a problem that does not exist with a solution that they felt is sure to create serious problems. The commenter stated its belief that if the ethanol industry is consistently overproducing on a year-to-year basis, the best solution is to raise the RFS requirement rather than try to choke off excess production by devaluing excess RINs.

#### Letters:

SilvaGas, Inc. OAR-2005-0161-0161

#### *Our Response:*

The RIN rollover issue is a critical issue that must be addressed. The use of previous year RINs to meet current year compliance obligations creates an opportunity for effectively circumventing the valid life limit for RINs. This can occur in situations wherein the total number of RINs generated each year for a number of years in a row exceeds the number of RINs required under the RFS program for those years. The excess RINs generated in one year could be used to show compliance in the next year, leading to the generation of new excess RINs in the next year, causing the total number of excess RINs in the market to accumulate over multiple years despite the limit on RIN life. The rollover issue would in such circumstances essentially make the applicable valid life for RINs virtually meaningless in practice, and would undermine the ability of a limit on credit life to guarantee a market for renewable fuels.

Prior to 2013, EPA does not have the authority to raise the required annual volumes of renewable fuel above the levels specified in the Act. We have determined that a 20% cap on the use of previous year RINs for current year compliance is a straightforward approach to addressing the rollover issue. We do not believe that the cap on rollover of excess RINs will choke off excess production. The excess production is driven by market demand, and the rollover cap should have no effect one way or the other on the market forces that lead to excess production of renewable fuels compared to what is required under Section 211(o).

### **5.8 Deficit Carryovers**

#### *What Commenters Said:*



ACE commented that it believes the rule should provide a tighter framework to address the deficit carryover provisions. The commenter noted that the Act specifically states that there must be an "inability" to generate or purchase sufficient credits for obligated parties to use this provision. The commenter stated that it believes that EPA should establish standards that obligated parties must meet before they are allowed to use this provision.

ExxonMobil and API both supported the deficit carryforward provision as proposed so long as the obligation carried forward and the following year obligation are both fully met the following year. However, ExxonMobil added its concern that any deficit carried forward must eventually be satisfied with credits, no matter what the cost and subject to the vagaries of what is presently an unknown and untested credit market. The commenter stated its belief that the deficit carryover provision assumes that the trading program will operate as intended.

Letters:

American Coalition for Ethanol (ACE) OAR-2005-0161-0218

American Petroleum Institute (API) OAR-2005-0161-0185

ExxonMobil Refining & Supply Co. OAR-2005-0161-0197

*Our Response:*

The deficit carryover provision we are finalizing in today's rule implements Section 211(o) of the Clean Air Act's provision, which allows an obligated party to carry a deficit forward from one year into the next if it cannot generate or purchase sufficient credits to meet its RVO. However, the Act specifies that the deficit must be met in the next year. Thus deficits cannot be carried over two years in a row. EPA does not have authority to expand the flexibility given with regard to deficit carryovers. Nevertheless, the two-year valid life of RINs should permit obligated parties who have carried over a deficit to acquire sufficient RINs to meet both their obligation and their deficit.

The Act indicates that deficit carryovers are to occur due to "inability" to generate or purchase sufficient credits. We believe that obligated parties will make a determined effort to satisfy their RVO on an annual basis, and that the existence of a deficit will reasonably be enough of a demonstration that there was an inability to generate or purchase sufficient credits. Thus, we did not propose requiring that any particular demonstration of "inability" be a prerequisite to the ability of obligated parties to carry deficits forward. Commenters provided no suggestions regarding how a demonstration of inability could be established.

The deficit carryover provision could result in less renewable fuel being consumed in a given year than is required by the Act, especially if many obligated parties took advantage of it at the same time. However, in any given year some parties may be making up deficits from a prior year, while other parties might be generating deficits. This fact will tend to reduce the net effect in any given year, and regardless, the deficit in demand in one year will by regulatory requirement be made up in the following year. Finally, any threshold we could set to demonstrate an obligated party's inability to

## **RFS Summary and Analysis of Comments**

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generate or purchase sufficient credits would likely require a comprehensive investigation of their opportunities to acquire RINs. We do not believe that such investigations are warranted. Therefore, we have not set any thresholds in the final rule.