comments received and that New Jersey's revised diesel idling rule is enforceable and approvable as a control strategy to attain and maintain the national ambient air quality standards, as consistent with section 110(a)(2) of the Clean Air Act, 42 U.S.C. 7410(a)(2).

II. Proposed EPA Action

EPA is proposing to approve the revisions to New Jersey's diesel idling rule as part of New Jersey's ozone and particulate matter SIPs.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 19, 2008.

Alan J. Steinberg,

Regional Administrator, Region 2.

[FR Doc. E8–23246 Filed 10–1–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2005–0161; FRL–8723–4]

RIN 2060–AO80

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to take action on amendments to the Renewable Fuel Standard program requirements. Following publication of the final rule promulgating the Renewable Fuel Standard regulations, EPA discovered a number of technical errors and areas within the regulations that could benefit from clarification or modification. This proposed rule would amend the regulations to make the appropriate corrections, clarifications and modifications. In the ''Rules and Regulations'' section of this **Federal Register**, we are amending the Renewable Fuel Standard program requirements as a direct final rule without a prior proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule.

DATES: Written comments must be received by November 3, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2005–0161, by mail to Air and Radiation Docket, Docket No. EPA–HQ–OAR–2005–0161, Environmental Protection Agency, Mailcode: 6406J, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of 2 copies. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Megan Brachtl, Compliance and Innovative Strategies Division, Office of Transportation and Air Quality, Mail Code: 6406J, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 343–9473; fax number: (202) 343–2802; e-mail address: *brachtl.megan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Why Is EPA Issuing This Proposed Rule?

This document proposes to take action on amendments to the Renewable Fuel Standard program requirements. We have published a direct final rule which amends the Renewable Fuel Standard program requirements in the ''Rules and Regulations'' section of this **Federal Register** because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We would address all public comments in any subsequent final rule based on this proposed rule. If we receive adverse comment on a distinct provision of this rulemaking, we will publish a timely withdrawal in the **Federal Register** indicating which provisions we are withdrawing. The provisions that are not withdrawn will become effective on the date set out above, notwithstanding adverse comment on any other provision.

We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

II. Does This Action Apply to Me?

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

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

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

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

III. What Should I Consider as I Prepare My Comments for EPA?

A. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

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

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

IV. Renewable Fuel Standard Program Amendments

Following publication of the final Renewable Fuel Standard (RFS) program regulations (72 FR 23900, May 1, 2007), EPA discovered a number of areas within the RFS regulations at 40 CFR Part 80, Subpart K that were in error, were unclear, or otherwise could benefit from modification. We have attempted to clarify some ambiguities in our Question and Answer document for the RFS program.[1] However, in some cases we believe it is appropriate to modify the regulations. As a result, we are proposing to make the following amendments to the RFS regulations in Subpart K.

A. Summary of Amendments

Below is a table listing the provisions that we are proposing to amend. Many of the amendments address grammatical or typographical errors, or provide minor clarifications. A few amendments are being made in order to assist regulated entities in complying with the RFS program requirements and to lessen regulatory requirements where possible without compromising the goals of the RFS program. We have provided additional explanation for several of these amendments in sections IV.B through IV.H below.

[1] See *''Questions and Answers on the Renewable Fuel Standard Program''* at *http://www.epa.gov/otaq/renewablefuels/index.htm#comp.*

RFS PROGRAM AMENDMENTS

Section	Description
80.1101(d)(2)	Corrected typographical error.
80.1101(d)(3)	Clarified that no more than 5 volume percent denaturant may be included in the volume of ethanol produced, imported or exported for purposes of determining compliance with the requirements under this subpart. See Section IV.B.
80.1107(c)	Clarified that the gasoline products to be included in an obligated party's Renewable Volume Obligation (RVO) calculation should not be double-counted.
80.1126(a)(1)	Clarified that this provision pertains to Renewable Identification Number (RIN) generation, not RIN transfers.
80.1126(b)	Clarified that renewable fuel producers that are below the 10,000 gallon threshold are exempt from the attest engagement requirements in 80.1164 as well as other reporting and recordkeeping requirements.
80.1126(d)(1)	Clarified that the RIN that must be generated for each batch of renewable fuel that is produced or imported is a ''batch-RIN.''
80.1127(b)(2)	Corrected typographical error in deficit carryover equation.
80.1128(a)(5) (ii) and (iii); removed (a)(5) (iv) & (v).	Revised this paragraph to allow parties to use an equivalence value of 2.5 RINs per gallon for any renewable fuel for purposes of calculating the end-of-quarter check. See Section IV.C.
80.1128(a)(6); removed (a)(7)	Deleted. Based on experience with the program to date, we believe this requirement is not necessary to fulfill the goals of the program. See Section IV.D. (§ 80.1128(a) has also been renumbered to adjust for this change.)
80.1129(b)(1) and (b)(8)	Revised to clarify that a party with a small refinery or small refiner exemption may only separate RINs that have been assigned to a volume of renewable fuel that the party blends into motor vehicle fuel.
80.1129(b)(2)	Revised to clarify that up to 2.5 gallon-RINs may be separated when a volume of renewable fuel is blended into gasoline.
80.1129(b)(4)	Revised to allow any party to separate the RINs from renewable fuel that it produces or markets for use in motor vehicles in neat form, or uses in motor vehicles in neat form. An oversight in the current regulations only allows this for renewable fuel producers and importers.
80.1129(b)(6)	Revised to provide that this provision applies only to neat fuel for which an obligated party generates RINs. See Section IV.E.
80.1129(d)	Revised to delete the requirement that a separated RIN may not be transferred on a product transfer document that is used to transfer a volume of renewable fuel, since it will be clear from other information required on the product transfer document whether or not any assigned RINs have also been transferred with the fuel.
80.1131(a)(8); removed (b)(4)	Moved the text in paragraph (b)(4) to a new paragraph (a)(8) in order to clarify that a RIN that is transferred to two or more parties is considered an invalid RIN.
80.1132(a), (b) and (c)	Revised to clarify that the requirements of § 80.1132 apply to fuel that has been disposed of as well as fuel that has been spilled. See Section IV.F.
80.1141(a)(1), 80.1142(a)(1)	Amended to clarify that a refinery with an approved small refinery exemption or a refiner with a small refiner exemption is exempt from requirements that apply to obligated parties during the period of time that the small refinery or small refiner exemption is in effect.
80.1141(a)(1)	Corrected calendar year reference.
80.1141(a)(4), 80.1142(a)(4)	Revised to clarify that the small refinery and small refiner exemptions only apply to refineries or refiners that process crude oil, or feedstocks derived from crude oil, through refinery processing units.
80.1141(b)(2)(ii)	Revised in order to clarify that small refinery status can be transferred with the sale of a refinery. Section 80.1141(b)(2)(ii) currently requires the owner of a small refinery to submit a letter stating that the company owned the refinery as of the applicable date for eligibility for small refinery status. This provision has been revised to require the letter only to state that the refinery was small as of the applicable date. Thus, any refinery that qualifies for small refinery status retains its status even if the refinery is sold to another company.
80.1142(e)	Revised to clarify that a refiner who is disqualified as a small refiner must notify EPA in writing no later than 20 days following the disqualifying event.
80.1151(a)(3)(i), (b)(4)(i) and (d)(3)(i).	Deleted requirement to retain records of ''expired RINs,'' since it is apparent when a RIN has expired from the date of the RIN and information regarding expired RINs is not required to be reported to EPA. See Section IV.G.
80.1152(c)(1) (iii) and (v), (c)(2)	Deleted requirement to report ''expired RINs,'' since it will be apparent when a RIN has expired from other information provided in the reports. Paragraph (c)(2) has also been renumbered. See Section IV.G. Deleted provisions relating to the submission of transaction and quarterly gallon-RIN reports on a facility-by-facility basis, since RIN trading activities are conducted on a company basis.
80.1153(a)(5)	Revised to clarify the language required to be included on product transfer documents for transfers of fuel with no assigned RINs.
80.1154(a)(4) and (b)	Revised to clarify that producers who produce less than 10,000 gallons of renewable fuel per year are exempt from the attest engagement requirements as well as the other recordkeeping and reporting requirements.
80.1160(a), (b)(1), and (f)	Revised to clarify specific acts that are prohibited under the RFS program.
80.1164	Revised to clarify the attest engagement requirements, and, where possible, to modify the requirements to make them less burdensome. See Section IV.H.
80.1165, 80.1166, 80.1167	Corrected typographical errors.

B. Amount of Denaturant in Ethanol

Section 80.1101(d)(3) specifies that ethanol must contain a denaturant to be covered by the definition of ''renewable fuel'' under the RFS rule. For purposes of compliance with the RFS, a volume of ethanol includes the volume of denaturant contained in the ethanol. Under § 80.1107(d), renewable fuel,

including denatured ethanol, is excluded from the volume of gasoline produced or imported for purposes of calculating an obligated party's RVO. Under § 80.1130, any denatured ethanol that is exported is included in the volume of renewable fuel exported for purposes of calculating the exporter's RVO. However, the regulations do not specify a maximum limit on the amount of denaturant that may be included in the volume of ethanol produced, imported or exported for purposes of these compliance calculations and other requirements under the RFS rule.

In promulgating the RFS regulations, we assumed that the amount of denaturant included in a volume of ethanol normally would not exceed the industry maximum specification under ASTM D–4806, which is 5 percent. Since the rule was published, it has come to our attention that larger amounts of gasoline are sometimes used in ethanol as a denaturant. We believe it is appropriate to limit the amount of gasoline in ethanol that may be counted as a denaturant to an amount that reflects the ASTM specification. As indicated above, under the current regulations, any volume of gasoline contained in ethanol as a denaturant is excluded from an obligated party's volume of gasoline produced or imported for purposes of calculating the party's RVO. As a result, an obligated party is not prohibited from adding large amounts of gasoline to imported ethanol to avoid including the gasoline in its RVO calculation, and, at the same time, increase the volume of renewable fuel for which RINs could be generated. Therefore, we are proposing to amend the RFS regulations to specify a limit of 5 volume percent denaturant that may be included in a volume of ethanol for purposes of determining compliance with requirements under the RFS rule.

C. Equivalence Values for End-of-Quarter Check

Section 80.1128(a)(5) provides that any party who owns assigned RINs must demonstrate that the sum of all assigned gallon-RINs that the party owns at the end of a quarter does not exceed the sum of all volumes of renewable fuel the party owns at the end of the quarter multiplied by their respective equivalence values. Section 80.1128(a)(4) allows a party to transfer to another party up to 2.5 assigned RINs per gallon of any renewable fuel. Therefore, in some cases, a party could receive fuel with more assigned RINs than would be calculated for that volume of fuel using its equivalence value. As a result, the party could be out of compliance with the end-of-quarter check requirement in § 80.1128(a)(5), unless the party had enough fuel to sell with the excess RINs by the end of the quarter. For example, a marketer that receives a gallon of biodiesel with 2.5 assigned gallon-RINs must calculate compliance with § 80.1128(a)(5) based on the equivalence value of the biodiesel, which is 1.5. If this were the marketer's only transaction, the marketer would be out of compliance at the end of the quarter since he would have an excess of 1.0 assigned gallon-RINs. To remedy this situation, we are proposing to amend § 80.1128(a)(5) to allow an equivalence value of 2.5 to be used for any volume of renewable fuel for purposes of calculating compliance with the end-of-quarter check requirement in § 80.1128(a)(5).

D. RIN Transfer Requirements for Producers and Importers

The RFS program allows any party that receives assigned RINs with renewable fuel to thereafter transfer anywhere from zero to 2.5 gallon-RINs with each gallon of renewable fuel. This provision provides the flexibility to transfer more assigned RINs with some volumes and fewer assigned RINs with other volumes depending on the business circumstances of the transaction and the number of RINs that the seller has available.

However, this level of flexibility could contribute to short-term hoarding on the part of producers and importers of renewable fuel. As a result, we implemented a provision at § 80.1128(a)(6) that requires producers and importers to transfer assigned gallon-RINs with gallons such that the ratio of assigned gallon-RINs to gallons is equal to the equivalence value for the renewable fuel. In effect, this requires renewable fuel producers and importers to transfer every single batch of renewable fuel with all assigned RINs generated for that batch. We have interpreted this provision as applying only to producers and importers who only sell renewable fuel that they produce or import themselves. It does not apply to producers or importers that are also marketers of renewable fuel produced or imported by another party.

Since the start of the RFS program, there have been numerous circumstances in which parties who purchase renewable fuel from a producer or importer wanted to avoid the registration, recordkeeping, and reporting requirements of the program. To do this, they had to avoid taking ownership of RINs. In some cases the producer or importer has accommodated such parties by taking ownership of renewable fuel from another party, thereby becoming a marketer who is not subject to § 80.1128(a)(6). However, this has not always been possible, and in such cases the purchaser has been forced to seek out alternative sources of renewable fuel. This latter outcome is inconsistent with one of our goals for the RFS program—structuring the program so it would have only a minimal effect on common business practices.

After further consideration, we do not believe that producers and importers of renewable fuel should be required to transfer all RINs generated with every batch of renewable fuel that is produced. Instead, we believe that it should be sufficient that they comply with the end-of-quarter check in § 80.1128(a)(5) and the restriction in that section on the number of gallon-RINs that can be transferred with each gallon. This change would recognize that most producers and importers can already avoid the limitations of § 80.1128(a)(6) by buying a small quantity of renewable fuel from another party and thereby becoming a marketer. The change would also have minimal impact on the transfer of RINs with volume, as producers and importers would be limited in the number of RINs they could hold onto given the end-of-quarter check. As a result, we are proposing to amend the regulations to delete the provisions contained in § 80.1128(a)(6).

E. RINs That an Obligated Party Generates

Section 80.1129(b)(1) provides that an obligated party must separate any RINs that have been assigned to a volume of renewable fuel that the obligated party owns. An exception to this requirement is provided in § 80.1129(b)(6) for obligated parties who also generate RINs. Under this section, an obligated party who generates RINs may separate such RINs from volumes of renewable fuel only up to the level of gallon-RINs of the party's RVO. The limitation in § 80.1129(b)(6) was included in the regulations to prevent a renewable fuel producer from importing a small amount of gasoline, which would qualify the producer as an obligated party, in order to separate the RINs from all of the renewable fuel that the party produced.

It has come to our attention that the limitation in § 80.1129(b)(6) may be problematic in situations where a party imports gasoline that contains renewable fuel. Under § 80.1126(d), RINs must be generated for any renewable fuel that is imported, including any renewable fuel contained in imported gasoline. For example, if a

party imports 100 gallons of E10, the party would be required to generate RINs for the volume of ethanol in the E10, which would be 10 gallon-RINs. The party also would calculate its RVO based on the applicable RFS standard, which for 2008 is 7.76%. The standard as applied to the gasoline part of the volume of imported E10 in the example would result in an RVO of 6.98 gallon-RINs (7.76% × 90 gallons). Since the party would be able to separate RINs only up to the party's RVO, or 6.98 gallon-RINs, the party would have 3.02 assigned gallon-RINs which could not be separated. Under § 80.1128(a)(5), each party that owns assigned RINs must demonstrate that the party does not own more assigned gallon-RINs at the end of each quarter than the amount of renewable fuel in the party's inventory, multiplied by its equivalence value. In the example above, the party would own 3.02 assigned gallon-RINs at the end of the quarter, but would not have any renewable fuel in its inventory. As a result, the party would not be in compliance with the requirement in § 80.1128(a)(5).

To address this situation, this rule would modify the regulations to apply the limitation in § 80.1129(b)(6) only to neat renewable fuel for which the party generates RINs and not to renewable fuel already blended in gasoline. Thus, in the example above, the party would generate 10 gallon-RINs for the ethanol contained in the E10 and the party's RVO would be 6.98 gallon-RINs, but the party would be able to separate all of the 10 gallon-RINs from the fuel. The party then would have no assigned RINs at the end of the quarter and would not be in violation of the requirement in § 80.1128(a)(5). If the party in our example imported 100 gallons of non-ethanol gasoline and 10 gallons of neat renewable fuel, the party would generate 10 gallon-RINs, but could only separate RINs up to the party's RVO, which be 7.76 gallon-RINs (7.76% × 100 gallons). As a result, the party would have 2.24 assigned gallon-RINs left, but would also have10 gallons of renewable fuel in its inventory, and, therefore, the party would be in compliance with the requirement in § 80.1128(a)(5).

F. Renewable Fuel That Has Been Disposed of

Under § 80.1132, in the event of a spillage of renewable fuel that is required by a federal, state or local authority to be reported, the owner of the renewable fuel must retire an appropriate number of gallon-RINs. Since the RFS rule was promulgated, it has come to our attention that disposal of renewable fuel may also be required to be reported to a government authority. We believe it is appropriate to treat such disposals of renewable fuel in the same manner as spillages of renewable fuel, since in both situations the fuel will not ultimately be used in motor vehicle fuel. As a result, we are proposing to amend § 80.1132 to apply to reportable disposals of renewable fuel as well as reportable spillages of renewable fuel.

G. Elimination of Expired RIN Category

Under § 80.1127(a)(3), RINs may only be used to demonstrate compliance with the RVO for the calendar year in which they were generated or the following year. Therefore, after two years, RINs have no value and are deemed to have expired. The regulations currently require information regarding expired RINs to be retained and included in the reports submitted to EPA. However, since EPA will know from the information contained in the RIN when the RIN was generated, EPA will also know when the RIN has expired. Therefore, we have determined that the requirements to retain records of expired RINs and to include information regarding expired RINs in the reports submitted to EPA are unnecessary, and, as a result, we are proposing to amend the regulations to eliminate the requirements to retain records and report information regarding expired RINs.

H. Attest Engagements

This rule proposes to make several revisions to the attest engagement provisions in § 80.1164 in order to correct minor technical errors, clarify the procedures required to be fulfilled by the attest auditor, and, where possible, revise the procedures to make them less burdensome without compromising the goals of the program. For audits of the obligated party compliance demonstration reports, the rule proposes to require the attest auditor to calculate the total number of RINs used for compliance by year of generation and reconcile that total with the information reported to EPA rather than calculating and reporting as a finding all RINs used for compliance. For audits of the RIN transaction and RIN activity reports, the rule proposes to clarify the type of documentation that is required to be provided to the attest auditor for purposes of verifying the information contained in the reports. The rule also proposes to require the attest auditor to review product transfer documents (PTDs) for a representative sample of RINs used for compliance and a representative sample of renewable fuel batches that any party sells to another party. Under the current regulations, the auditor is required to review PTDs for each batch of renewable fuel produced or imported by a renewable fuel producer or importer, which we believe is unnecessarily burdensome, and does not require review of PTDs generated by other parties. In addition, the rule proposes to provide that the documentation required for the attest audit of the RIN activity reports must include, for owners of assigned RINs, the volume of renewable fuel owned at the end of the quarter in order to verify the accuracy of information relating to compliance with the end-of-quarter inventory check in § 80.1128(a)(5). The rule proposes to add a requirement that a company representative must provide the attest auditor with a written representation that the copies of the EPA reports provided to the auditor are complete and accurate copies of the reports. This is a requirement for attest procedures under other fuels programs and omission of this requirement in the RFS rule was an oversight. The rule also proposes to include a provision which requires the attest auditor to identify the commercial computer program used by the regulated party to track the data required for purposes of compliance with the RFS requirements.

V. Relationship to the Energy Independence and Security Act of 2007

The Energy Independence and Security Act of 2007 (EISA) amended Clean Air Act section 211(o) in many respects, including requiring a substantially greater volume of renewable fuel use in the future. EPA is currently developing implementing regulations for this new legislation. EISA also included language addressing the transition period between its enactment and the time when new regulations are promulgated. EISA Section 210(a)(2) provides that ''[u]ntil January 1, 2009, the Administrator of the Environmental Protection Agency shall implement section 211(o) of the Clean Air Act and the rules promulgated under that section in accordance with the provisions of that section as in effect before the enactment of this Act and in accordance with the rules promulgated before the enactment of this Act,'' with certain exceptions. EPA believes that the intent of this transition provision of EISA was to maintain the fundamental program components and requirements of the existing regulations, but that it does not limit EPA's ability to make minor programmatic changes that ease the administration and implementation of the current program. Accordingly, EPA views the changes proposed today

to the 211(o) regulations to be ''in accordance'' with the regulations in effect when EISA was enacted, and will implement the finalized regulations upon their effective date.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

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

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

It has been determined that this action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review. This proposed rule simply makes minor technical changes to the RFS regulations and modifies the requirements to make them less burdensome for regulated parties where possible.

B. Paperwork Reduction Act

This action does not propose to impose any new information collection burden. This action proposes to make minor technical corrections to the regulations and modifies certain requirements to lessen the burden on related parties while maintaining the overall goals of the program. None of the changes in the rule require any additional information collection burdens. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations 40 CFR part 80, subpart K, under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0600. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

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

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This action proposes to make minor technical corrections to the regulations and modifies certain requirements to lessen the burden on regulated parties while maintaining the overall goals of the program. We have therefore concluded that today's proposed rule will relieve regulatory burden for affected small entities.

D. Unfunded Mandates Reform Act

This proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This action makes minor technical corrections to the RFS regulations and modifies certain provisions to lessen the requirements for regulated parties. As a result, this proposed rule will have the overall effect of reducing the burden of the RFS regulations on regulated parties. Thus, this proposal is not subject to the requirements of sections 202 or 205 of UMRA.

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

E. Executive Order 13132 (Federalism)

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

This proposed rule does not have federalism implications. It would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action proposes to make minor technical corrections and modifications to existing regulations in order to lessen the burden on related parties. Thus, Executive Order 13132 does not apply to this rule.

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

This proposed rule does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It applies to gasoline and renewable fuel producers, importers, distributors and marketers. This action makes minor corrections and modifications to the RFS regulations, and does not impose any

enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this action.

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

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

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

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

I. National Technology Transfer and Advancement Act

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

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

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

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

List of Subjects in 40 CFR Part 80

Environmental protection, Fuel additives, Gasoline, Imports, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: September 25, 2008.

Stephen L. Johnson,

Administrator.

[FR Doc. E8–23130 Filed 10–1–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 07–2854; MB Docket No. 07–125; RM–11375]

Radio Broadcasting Services; Oolitic, IN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by Bruce Quinn, requesting the allotment of Channel 231A at Oolitic, Indiana. The coordinates for Channel 231A at Oolitic, Indiana, are 38–59–16 NL and 86–37–47 WL. There is a site restriction of 13.2 kilometers (8.2 miles) northwest of the community. Proposed Channel 231A is short-spaced to the licensed site of Station WQKC–FM, Channel 229B, Seymour, Indiana. However, Station WQKC–FM's license was modified to specify operation on Channel 230A at Sellersburg, Indiana in MB Docket No. 03–98 and the FM Table of Allotments was amended to reflect this change. Therefore, no protection is afforded to this license site. A Petition for Reconsideration of the letter dismissal of this Petition is dismissed as moot.

DATES: Comments must be filed on or before November 3, 2008, and reply comments on or before November 17, 2008.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Bruce Quinn, 1217 Lafayette Avenue, Columbus, Indiana 47201.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rulemaking*, MB Docket No. 07–125, adopted June 27, 2007, and released June 29, 2007. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 800–378–3160 or *http://www.BCPIWEB.com*. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows: