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.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 1, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Volatile organic compounds.

Dated: September 24, 2008.

Walter W. Kovalick Jr,

Acting Regional Administrator, Region 5.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart KK—Ohio

■ 2. Section 52.1885 is amended by adding paragraph (gg) to read as follows:

§ 52.1885 Control strategy: Ozone.

* * * * *

(gg) Approval—EPA is approving requests submitted by the State of Ohio on April 4, 2005, and supplemented on May 20, 2005, February 14, 2006, May 9, 2006, October 6, 2006, and February 19, 2008, to discontinue the vehicle inspection and maintenance (I/M) program in the Cincinnati-Hamilton and Dayton-Springfield areas. The submittal also includes Ohio's demonstration that eliminating the I/M programs in the Cincinnati-Hamilton and Dayton-Springfield areas will not interfere with the attainment and maintenance of the ozone NAAQS and the fine particulate NAAQS and with the attainment and maintenance of other air quality standards and requirements of the CAA. We are further approving Ohio's request to modify the SIP such that I/M is no longer an active program in these areas and is instead a contingency measure in these areas' maintenance plans.

[FR Doc. E8–23245 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–8723–3]

RIN 2060–AO80

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final 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 direct final rule amends the regulations to make the appropriate corrections, clarifications and modifications.

DATES: This direct final rule is effective on December 1, 2008 without further notice, unless EPA receives adverse comment by November 3, 2008. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

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

- *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov*, Attention Air and Radiation Docket ID No. EPA–HQ–OAR–2005–0161.
- *Mail:* Air and Radiation Docket, Docket No. EPA–HQ–OAR–2005–0161, Environmental Protection Agency, Mailcode: 6406J, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of 2 copies.
- *Hand Delivery:* EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460, Attention Air and Radiation Docket, ID No. EPA–HQ–OAR–2005–0161. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

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

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly

available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: 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 Using a Direct Final Rule?

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

This rule will be effective on December 1, 2008 without further notice except to the extent we receive adverse comment by November 3, 2008. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the portion of the rule on which adverse comment was received will not take effect. Any distinct amendment, paragraph, or section of today's rule for which we do not receive adverse comment will become effective on the date set out above, notwithstanding any adverse comment on any other distinct amendment, paragraph, or section of this rule. We will address all public comments in any subsequent final rule based on the proposed rule.

II. Does This Action Apply to Me?

Entities potentially affected by this action include those involved with the production, distribution and sale of 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 making the following amendments to the RFS regulations in Subpart K.

A. Summary of Amendments

Below is a table listing the provisions that we are amending. Many of the amendments address grammatical or typographical errors, or provide 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.

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) and (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 in § 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.

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

RFS PROGRAM AMENDMENTS—Continued

Section	Description
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 amending 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 amending § 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 recognizes 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 amending 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 provision, 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 modifies 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 have 10 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, § 80.1132 has been amended 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 amending the regulations to eliminate the requirements to retain records and report information regarding expired RINs.

H. Attest Engagements

This rule makes 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 is revised 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 is revised 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 is also revised to require the attest auditor to review product transfer documents (PTDs) for a representative sample of RINs used for compliance and for 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 is revised 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 adds 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 includes 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 made today to the 211(o) regulations to be ''in accordance'' with the regulations in effect when EISA was enacted, and will implement the amended 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 direct final 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 impose any new information collection burden. This action makes 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 direct final 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 makes 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 direct final rule will relieve regulatory burden for affected small entities.

D. Unfunded Mandates Reform Act

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

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. It only applies to gasoline 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 direct final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action makes 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 direct final 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 action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

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

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 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 action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

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

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

K. Congressional Review Act

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

L. Clean Air Act Section 307(d)

This rule is subject to Section 307(d) of the CAA. Section 307(d)(7)(B) provides that ''[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review.'' This section also provides a mechanism for the EPA to convene a proceeding for reconsideration, ''[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration to the EPA should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Director of the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

List of Subjects in 40 CFR Part 80

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

Dated: September 25, 2008.

Stephen L. Johnson,

Administrator.

■ 40 CFR part 80 is amended as follows:

PART 80—REGULATION OF FUEL AND FUEL ADDITIVES

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

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

■ 2. Section 80.1101 is amended by revising paragraphs (d)(2) and (d)(3) to read as follows:

§ 80.1101 Definitions.

* * * * *

(d) * * *

(2) The term ''Renewable fuel'' includes cellulosic biomass ethanol, waste derived ethanol, biodiesel (mono-alkyl ester), non-ester renewable diesel, and blending components derived from renewable fuel.

(3) Ethanol covered by this definition shall be denatured as required and defined in 27 CFR parts 20 and 21. Any volume of denaturant in ethanol in excess of 5 volume percent shall not be included in the volume of ethanol for purposes of determining compliance with the requirements under this subpart.

* * * * *

■ 3. Section 80.1107 is amended by revising paragraph (c) introductory text to read as follows:

§ 80.1107 How is the Renewable Volume Obligation calculated?

* * * * *

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

* * * * *

■ 4. Section 80.1126 is amended by revising paragraphs (a)(1), (b) and (d)(1) to read as follows:

§ 80.1126 How are RINs generated and assigned to batches of renewable fuel by renewable fuel producers and importers?

(a) * * *

(1) Except as provided in paragraph (b) of this section, a batch RIN must be generated by a renewable fuel producer or importer for every batch of renewable fuel produced by a facility located in the contiguous 48 states of the United States, or imported into the contiguous 48 states.

* * * * *

(b) *Volume threshold.* Renewable fuel producers located within the United States that produce less than 10,000 gallons of renewable fuel each year, and importers that import less than 10,000 gallons of renewable fuel each year, are not required to generate and assign RINs to batches of renewable fuel. Such producers and importers are also exempt from the registration, reporting, and recordkeeping requirements of §§ 80.1150–80.1152, and the attest engagement requirements of § 80.1164. However, for such producers and importers that voluntarily generate and assign RINs, all the requirements of this subpart apply.

* * * * *

(d) * * *

(1) Except as provided in paragraph (b) of this section, the producer or importer of a batch of renewable fuel must generate a batch-RIN for that batch, including any renewable fuel contained in imported gasoline.

* * * * *

■ 5. Section 80.1127 is amended by revising paragraph (b)(2) to read as follows:

§ 80.1127 How are RINs used to demonstrate compliance?

* * * * *

(b) * * *

(2) A deficit is calculated according to the following formula:

$$D_i = RVO_i = [(\Sigma RINNUM)_i + (\Sigma RINNUM)_{i-1}]$$

Where:

D_i = The deficit, in gallons, generated in calendar year i that must be carried over to year i+1 if allowed to do so pursuant to paragraph (b)(1)(i) of this section.

RVO_i = The Renewable Volume Obligation for the obligated party or renewable fuel exporter for calendar year i, in gallons.

$(\Sigma RINNUM)_i$ = Sum of all acquired gallon-RINs that were generated in year i and are being applied towards the RVO_i, in gallons.

$(\Sigma RINNUM)_{i-1}$ = Sum of all acquired gallon-RINs that were generated in year i-1 and are being applied towards the RVO_i, in gallons.

■ 6. Section 80.1128 is amended as follows:

■ a. By revising paragraphs (a)(5)(ii) and (a)(5)(iii).

■ b. By removing paragraphs (a)(5)(iv) and (a)(5)(v).

■ c. By revising paragraph (a)(6).

■ d. By removing paragraph (a)(7).

§ 80.1128 General requirements for RIN distribution.

(a) * * *

(5) * * *

(ii) The equivalence value EVi for use in the equation in paragraph (a)(5)(i) of this section for any volume of renewable fuel shall be 2.5.

(iii) The applicable dates are March 31, June 30, September 30, and December 31. For 2007 only, the applicable dates are September 30 and December 31.

(6) Any transfer of ownership of assigned RINs must be documented on product transfer documents generated pursuant to § 80.1153.

(i) The RIN must be recorded on the product transfer document used to transfer ownership of the RIN and the volume to another party; or

(ii) The RIN must be recorded on a separate product transfer document transferred to the same party on the same day as the product transfer document used to transfer ownership of the volume of renewable fuel.

* * * * *

■ 7. Section 80.1129 is amended as follows:

■ a. By revising paragraphs (b)(1), (b)(2), (b)(4) and (b)(6).

■ b. By adding paragraph (b)(8).

■ c. By revising paragraph (d).

§ 80.1129 Requirements for separating RINs from volumes of renewable fuel.

* * * * *

(b) * * *

(1) Except as provided in paragraphs (b)(6) and (b)(8) of this section, a party that is an obligated party according to § 80.1106 must separate any RINs that have been assigned to a volume of renewable fuel if they own that volume.

(2) Except as provided in paragraph (b)(5) of this section, any party that owns a volume of renewable fuel must separate any RINs that have been assigned to that volume once the volume is blended with gasoline or diesel to produce a motor vehicle fuel. A party may separate up to 2.5 RINs per gallon of fuel that is blended.

* * * * *

(4) Any person that produces, imports, owns, sells or uses a volume of renewable fuel may separate any RINs that have been assigned to that volume of renewable fuel if the person designates the renewable fuel as motor vehicle fuel and the renewable fuel is used as a motor vehicle fuel.

* * * * *

(6) For RINs that an obligated party generates from renewable fuel that has not been blended into gasoline, 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.

* * * * *

(8) For a party that has received a small refinery exemption under § 80.1141 or a small refiner exemption under § 80.1142, during the period of time that the small refinery or small refiner exemption is in effect, the party may only separate RINs that have been assigned to volumes of renewable fuel that the party blends into motor vehicle fuel.

* * * * *

(d) Upon and after separation of a RIN from its associated volume, product transfer documents used to transfer ownership of the volume must continue

to meet the requirements of § 80.1153(a)(5)(iii).

* * * * *

■ 8. Section 80.1131 is amended by adding paragraph (a)(8) and removing paragraph (b)(4) to read as follows:

§ 80.1131 Treatment of invalid RINs.

(a) * * *

(8) In the event that the same RIN is transferred to two or more parties, all such RINs will be deemed to be invalid, unless EPA in its sole discretion determines that some portion of these RINs is valid.

* * * * *

■ 9. Section 80.1132 is amended as follows:

■ a. By revising the section heading.

■ b. By revising paragraph (a).

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

■ d. By revising paragraph (c).

§ 80.1132 Reported spillage or disposal of renewable fuel.

(a) A reported spillage or disposal under this subpart means a spillage or disposal of renewable fuel associated with a requirement by a federal, state or local authority to report the spillage or disposal.

(b) Except as provided in paragraph (c) of this section, in the event of a reported spillage or disposal of any volume of renewable fuel, the owner of the renewable fuel must retire a number of gallon-RINs corresponding to the volume of spilled or disposed of renewable fuel multiplied by the lesser of its equivalence value or the number of RINs received with the spilled or disposed fuel, not to exceed 2.5 RINs per gallon.

* * * * *

(c) If the owner of a volume of renewable fuel that is spilled or disposed of and reported establishes that no RINs were generated to represent the volume, then no gallon-RINs shall be retired.

* * * * *

■ 10. Section 80.1141 is amended by revising paragraph (a)(1), adding paragraph (a)(4), and revising paragraph (b)(2)(ii) to read as follows:

§ 80.1141 Small refinery exemption.

(a)(1) Gasoline produced at a refinery by a refiner, or foreign refiner (as defined at § 80.1165(a)), is exempt from the renewable fuel standards of § 80.1105 and the requirements that apply to obligated parties under this subpart if that refinery meets the definition of a small refinery under § 80.1101(g) for calendar year 2004.

* * * * *

(4) This exemption shall only apply to refineries that process crude oil, or feedstocks derived from crude oil, through refinery processing units.

(b) * * *

(2) * * *

(ii) A letter signed by the president, chief operating or chief executive officer of the company, or his/her designee, stating that the information contained in the letter is true to the best of his/her knowledge, and that the refinery was small as of December 31, 2004.

* * * * *

■ 11. Section 80.1142 is amended by revising paragraph (a)(1) introductory text, adding paragraph (a)(4), and revising paragraph (e) to read as follows:

§ 80.1142 What are the provisions for small refiners under the RFS program?

(a)(1) Gasoline produced by a refiner, or foreign refiner (as defined at § 80.1165(a)), is exempt from the renewable fuel standards of § 80.1105 and the requirements that apply to obligated parties under this subpart if the refiner or foreign refiner does not meet the definition of a small refinery under § 80.1101(g) but meets all of the following criteria:

* * * * *

(4) This exemption shall only apply to refineries that process crude oil, or feedstocks derived from crude oil, through refinery processing units.

* * * * *

(e) A refiner who qualifies as a small refiner under this section and subsequently fails to meet all of the qualifying criteria as set out in paragraph (a) of this section will have its small refiner exemption terminated effective January 1 of the next calendar year.

(1) In the event such disqualification occurs, the refiner shall notify EPA in writing no later than 20 days following the disqualifying event.

(2) Disqualification under this paragraph (e) shall not apply in the case of a merger between two approved small refiners.

* * * * *

■ 12. Section 80.1151 is amended by revising paragraphs (a)(3)(i), (b)(4)(i), and (d)(3)(i) to read as follows:

§ 80.1151 What are the recordkeeping requirements under the RFS program?

(a) * * *

(3) * * *

(i) A list of the RINs owned, purchased, sold, or retired.

* * * * *

(b) * * *

(4) * * *

(i) A list of the RINs owned, purchased, sold, or retired.

* * * * *

(d) * * *

(3) * * *

(i) A list of the RINs owned, purchased, sold or retired.

* * * * *

■ 13. Section 80.1152 is amended by removing and reserving paragraph (c)(1)(iii), and revising paragraphs (c)(1)(v) and (c)(2) to read as follows:

§ 80.1152 What are the reporting requirements under the RFS program?

* * * * *

(c) * * *

(1) * * *

(iii) [Reserved]

* * * * *

(v) Transaction type (RIN purchase, RIN sale, retired RIN).

* * * * *

(2) A quarterly gallon-RIN activity report shall be submitted to EPA according to the schedule specified in paragraph (d) of this section. Each report shall summarize gallon-RIN activities for the reporting period, separately for RINs assigned to a renewable fuel volume and RINs separated from a renewable fuel volume. The quarterly gallon-RIN activity report shall include all of the following information:

(i) The submitting party's name.

(ii) The party's EPA company registration number.

(iii) The number of current-year gallon-RINs owned at the start of the quarter.

(iv) The number of prior-year gallon-RINs owned at the start of the quarter.

(v) The total current-year gallon-RINs purchased.

(vi) The total prior-year gallon-RINs purchased.

(vii) The total current-year gallon-RINs sold.

(viii) The total prior-year gallon-RINs sold.

(ix) The total current-year gallon-RINs retired.

(x) The total prior-year gallon-RINs retired.

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

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

(xiii) For parties reporting gallon-RIN activity under this paragraph for RINs assigned to a volume of renewable fuel, the total volume of renewable fuel (in gallons) owned at the end of the quarter.

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

* * * * *

■ 14. Section 80.1153 is amended by revising paragraph (a)(5)(iii) to read as follows:

§ 80.1153 What are the product transfer document (PTD) requirements for the RFS program?

(a) * * *

(5) * * *

(iii) If no assigned RINs are being transferred with the renewable fuel, the PTD which is used to transfer ownership of the renewable fuel shall state ''No assigned RINs transferred''.

* * * * *

■ 15. Section 80.1154 is amended by adding paragraph (a)(4) and revising paragraph (b) to read as follows:

§ 80.1154 What are the provisions for renewable fuel producers and importers who produce or import less than 10,000 gallons of renewable fuel per year?

(a) * * *

(4) The attest engagement requirements of § 80.1164.

(b) Renewable fuel producers and importers who produce or import less than 10,000 gallons of renewable fuel each year and that generate and/or assign RINs to batches of renewable fuel are subject to the provisions of §§ 80.1150 through 80.1152, and § 80.1164.

■ 16. Section 80.1160 is amended by revising paragraphs (a) and (b)(1), and by adding paragraph (f) to read as follows:

§ 80.1160 What acts are prohibited under the RFS program?

(a) *Renewable fuel producer or importer violation.* Except as provided in § 80.1154, no person shall produce or import a renewable fuel without generating a batch-RIN as required under § 80.1126.

(b) * * *

(1) Improperly generate a RIN (e.g., generate a RIN for which the applicable renewable fuel volume was not produced).

* * * * *

(f) *Failure to meet a requirement.* No person shall fail to meet any requirement that applies to that person under this subpart.

■ 17. Section 80.1164 is amended as follows:

■ a. By revising paragraphs (a)(1)(ii) through (a)(1)(v).

■ b. By adding paragraphs (a)(1)(vi) through (a)(1)(viii).

■ c. By revising paragraphs (a)(2)(i) and (a)(2)(ii).

■ d. By adding paragraph (a)(2)(iii).

■ e. By revising paragraph (a)(3)(ii).

■ e. By revising paragraphs (b)(1)(ii) through (b)(1)(iv).

■ f. By revising paragraphs (b)(2)(i) and (b)(2)(ii).

■ g. By adding paragraph (b)(2)(iii).

■ h. By revising paragraph (b)(3)(ii).

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

■ j. By adding paragraph (c)(1)(iii).

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

■ l. By adding paragraphs (e) and (f).

§ 80.1164 What are the attest engagement requirements under the RFS program?

* * * * *

(a) * * *

(1) * * *

(ii) Obtain documentation of any volumes of renewable fuel used in gasoline at the refinery or import facility or exported during the reporting year; compute and report as a finding the total volumes of renewable fuel represented in these documents.

(iii) Compare the volumes of gasoline reported to EPA in the report required under § 80.1152(a)(1) with the volumes, excluding any renewable fuel volumes, contained in the inventory reconciliation analysis under § 80.133, and verify that the volumes reported to EPA agree with the volumes in the inventory reconciliation analysis.

(iv) Compute and report as a finding the obligated party's or exporter's RVO, and any deficit RVO carried over from the previous year or carried into the subsequent year, and verify that the values agree with the values reported to EPA.

(v) Obtain the database, spreadsheet, or other documentation for all RINs used for compliance during the year being reviewed; calculate the total number of RINs used for compliance by year of generation represented in these documents; state whether this information agrees with the report to EPA and report as a finding any exceptions.

(vi) Identify a representative sample, selected in accordance with the guidelines in § 80.127, of RINs used for compliance during the year being reviewed.

(vii) Obtain contracts, invoices or other documentation for RINs in the representative sample obtained in paragraph (a)(1)(vi) of this section, and the product transfer documents for the RINs in the representative sample; state whether the information in these documents agrees with the information in the party's report to EPA and report as a finding any exceptions.

(viii) Verify that the product transfer documents for the representative sample of RINs used for compliance contain the applicable information required under § 80.1153 and report as a finding any product transfer document that does not contain the required information; verify the accuracy of the information contained in the product transfer documents for the representative sample and report as a finding any exceptions.

(2) * * *

(i) Identify a representative sample, selected in accordance with the guidelines in § 80.127, separately for each RIN transaction type (RINs purchased, RINs sold, RINs retired) included in the RIN transaction reports required under § 80.1152(a)(2) for the compliance year.

(ii) Obtain contracts, invoices, or other documentation for each of the representative samples of RIN transactions, and the product transfer documents for each of the representative samples of RIN transactions; compute the transaction types, transaction dates, and RINs traded; state whether the information agrees with the party's reports to EPA and report as a finding any exceptions.

(iii) Verify that the product transfer documents for the representative sample of RINs sold and the representative sample of RINs purchased contain the applicable information required under § 80.1153 and report as a finding any product transfer document that does not contain the required information; verify the accuracy of the information contained in the product transfer documents for the representative samples and report as a finding any exceptions.

(3) * * *

(ii) Obtain the database, spreadsheet, or other documentation used to generate the information in the gallon-RIN activity reports; compare the RIN transaction samples reviewed under paragraph (a)(2) of this section with the corresponding entries in the database or spreadsheet and report as a finding any discrepancies; compute the total number of current-year and prior-year gallon-RINs owned at the start and end of the quarter, purchased, sold and retired, and for parties that reported gallon-RIN activity for RINs assigned to a volume of renewable fuel, the volume of renewable fuel owned at the end of the quarter, as represented in these documents; and state whether this information agrees with the party's reports to EPA.

(b) * * *

(1) * * *

(ii) Obtain production data for each renewable fuel batch produced or imported during the year being reviewed; compute the RIN numbers, production dates, types, volumes of denaturant and applicable equivalence values, and production volumes for each batch; state whether this

information agrees with the party's reports to EPA and report as a finding any exceptions.

(iii) Verify that the proper number of RINs were generated and assigned for each batch of renewable fuel produced or imported, as required under § 80.1126.

(iv) Identify a representative sample, selected in accordance with the guidelines in § 80.127, of renewable fuel batches produced or imported during the year being reviewed; obtain product transfer documents for the representative sample; verify that the product transfer documents contain the applicable information required under § 80.1153; verify the accuracy of the information contained in the product transfer documents; report as a finding any product transfer document that does not contain the applicable information required under § 80.1153.

(2) * * *

(i) Identify a representative sample, selected in accordance with the guidelines in § 80.127, separately for each transaction type (RINs purchased, RINs sold, RINs retired) included in the RIN transaction reports required under § 80.1152(b)(2) for the compliance year.

(ii) Obtain contracts, invoices, or other documentation for each of the representative samples of RIN transactions, and the product transfer documents for each of the representative samples of RIN transactions; compute the transaction types, transaction dates, and the RINs traded; state whether this information agrees with the party's reports to EPA and report as a finding any exceptions.

(iii) Verify that the product transfer documents for the representative sample of RINs sold and the representative sample of RINs purchased contain the applicable information required under § 80.1153 and report as a finding any product transfer document that does not contain the required information; verify the accuracy of the information contained in the product transfer documents for the representative samples and report as a finding any exceptions.

(3) * * *

(ii) Obtain the database, spreadsheet, or other documentation used to generate the information in the gallon-RIN activity reports; compare the RIN transaction samples reviewed under paragraph (b)(2) of this section with the corresponding entries in the data base or spreadsheet and report as a finding any discrepancies; compute the total number of current-year and prior-year gallon-RINs owned at the start and end of the quarter, purchased, sold and retired, and for parties that reported gallon-RIN activity for RINs assigned to a volume of renewable fuel, the volume of renewable fuel owned at the end of the quarter, as represented in these documents; and state whether this information agrees with the party's reports to EPA.

(c) * * *

(1) * * *

(i) Identify a representative sample, selected in accordance with the guidelines in § 80.127, separately for each RIN transaction type (RINs purchased, RINs sold, RINs retired) included in the RIN transaction reports required under § 80.1152(c)(1) for the compliance year.

(ii) Obtain contracts, invoices, or other documentation for the representative samples of RIN transactions, and the product transfer documents for the representative samples of RIN transactions; compute the transaction types, transaction dates, and the RINs traded; state whether this information agrees with the party's reports to EPA and report as a finding any exceptions.

(iii) Verify that the transfer documents for the representative sample of RINs sold and the representative sample of RINs purchased contain the applicable information required under § 80.1153 and report as a finding any product transfer document that does not contain the required information; verify the accuracy of the information contained in the product transfer documents for the representative samples and report as a finding any exceptions.

(2) * * *

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

* * * * *

(e) The party conducting the procedures under this section shall obtain a written representation from a company representative that the copies of the reports required by this section are complete and accurate copies of the reports filed with EPA.

(f) The party conducting the procedures under this section shall identify and report as a finding the commercial computer program used by the party to track the data required by the regulations in this subpart, if any.

■ 18. Section 80.1165 is amended by revising paragraphs (f)(1)(vi) and (o)(2) to read as follows:

§ 80.1165 What are the additional requirements under this subpart for a foreign small refiner?

* * * * *

(f) * * *

(1) * * *

(vi) Inspections and audits by EPA may include interviewing employees.

* * * * *

(o) * * *

(2) Signed by the president or owner of the foreign refiner company, or by that person's immediate designee, and shall contain the following declaration:

I hereby certify: (1) That I have actual authority to sign on behalf of and to bind [insert name of foreign refiner] with regard to all statements contained herein; (2) that I am aware that the information contained herein is being Certified, or submitted to the United States Environmental Protection Agency, under the requirements of 40 CFR part 80, subpart K, and that the information is material for determining compliance under these regulations; and (3) that I have read and understand the information being Certified or submitted, and this information is true, complete and correct to the best of my knowledge and belief after I have taken reasonable and appropriate steps to verify the accuracy thereof. I affirm that I have read and understand the provisions of 40 CFR part 80, subpart K, including 40 CFR 80.1165 apply to [insert name of foreign refiner]. Pursuant to Clean Air Act section 113(c) and 18 U.S.C. 1001, the penalty for furnishing false, incomplete or misleading information in this certification or submission is a fine of up to $10,000 U.S., and/or imprisonment for up to five years.

■ 19. Section 80.1166 is amended by revising paragraph (o)(2) to read as follows:

§ 80.1166 What are the additional requirements under this subpart for a foreign producer of cellulosic biomass ethanol or waste derived ethanol?

* * * * *

(o) * * *

(2) Signed by the president or owner of the foreign producer company, or by that person's immediate designee, and shall contain the following declaration:

I hereby certify: (1) That I have actual authority to sign on behalf of and to

bind [insert name of foreign producer] with regard to all statements contained herein; (2) that I am aware that the information contained herein is being Certified, or submitted to the United States Environmental Protection Agency, under the requirements of 40 CFR part 80, subpart K, and that the information is material for determining compliance under these regulations; and (3) that I have read and understand the information being Certified or submitted, and this information is true, complete and correct to the best of my knowledge and belief after I have taken reasonable and appropriate steps to verify the accuracy thereof. I affirm that I have read and understand the provisions of 40 CFR part 80, subpart K, including 40 CFR 80.1165 apply to [insert name of foreign producer]. Pursuant to Clean Air Act section 113(c) and 18 U.S.C. 1001, the penalty for furnishing false, incomplete or misleading information in this certification or submission is a fine of up to $10,000 U.S., and/or imprisonment for up to five years.

■ 20. Section 80.1167 is amended by revising paragraph (e) introductory text and paragraph (j)(2) to read as follows:

§ 80.1167 What are the additional requirements under this subpart for a foreign RIN owner?

* * * * *

(e) *Bond posting.* Any foreign entity shall meet the requirements of this paragraph (e) as a condition to approval as a foreign RIN owner under this subpart.

* * * * *

(j) * * *

(2) Signed by the president or owner of the foreign RIN owner company, or by that person's immediate designee, and shall contain the following declaration:

I hereby certify: (1) That I have actual authority to sign on behalf of and to bind [insert name of foreign RIN owner] with regard to all statements contained herein; (2) that I am aware that the information contained herein is being Certified, or submitted to the United States Environmental Protection Agency, under the requirements of 40 CFR part 80, subpart K, and that the information is material for determining compliance under these regulations; and (3) that I have read and understand the information being Certified or submitted, and this information is true, complete and correct to the best of my knowledge and belief after I have taken reasonable and appropriate steps to verify the accuracy thereof. I affirm that I have read and understand the provisions of 40 CFR part 80, subpart K, including 40 CFR 80.1167 apply to [insert name of foreign RIN owner]. Pursuant to Clean Air Act section 113(c) and 18 U.S.C. 1001, the penalty for furnishing false, incomplete or misleading information in this certification or submission is a fine of up to $10,000 U.S., and/or imprisonment for up to five years.

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DEPARTMENT OF THE INTERIOR

43 CFR Part 11

RIN 1090–AA97

Natural Resource Damages for Hazardous Substances

AGENCY: Department of the Interior.

ACTION: Final rule.

SUMMARY: This final rule amends certain parts of the natural resource damage assessment regulations for hazardous substances. The regulations provide procedures that natural resource trustees may use to evaluate the need for and means of restoring, replacing, or acquiring the equivalent of public natural resources that are injured or destroyed as a result of releases of hazardous substances. The Department of the Interior has previously developed two types of natural resource damage assessment regulations: Standard procedures for simplified assessments requiring minimal field observation (the Type A Rule); and site-specific procedures for detailed assessments in individual cases (the Type B Rule).

This final rule revises the Type B Rule to emphasize resource restoration over economic damages. It also responds to two court decisions addressing the regulations: *State of Ohio* v. *U.S. Department of the Interior*, 880 F.2d 432 (DC Cir. 1989) (*Ohio* v. *Interior*); and *Kennecott Utah Copper Corp.* v. *U.S. Department of the Interior*, 88 F.3d 1191 (DC Cir. 1996) (*Kennecott* v. *Interior*), and includes a technical revision to resolve an apparent inconsistency in the timing provisions for the assessment process set out in the rule.

EFFECTIVE DATE: The effective date of this final rule is November 3, 2008.

FOR FURTHER INFORMATION CONTACT: Frank DeLuise at (202) 208–4143.

SUPPLEMENTARY INFORMATION: This preamble is organized as follows:

I. What The Natural Resource Damage Regulations Are About

The regulations describe how to conduct a natural resource damage assessment for hazardous substance releases under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601, 9607) (CERCLA) and the Federal Water Pollution Control Act (33 U.S.C. 1251, 1321) (Clean Water Act). CERCLA required the President to promulgate these regulations. 42 U.S.C. 9651(c). The President delegated this rulemaking responsibility to the Department of the Interior (DOI). E.O. 12316, as amended by E.O. 12580. The regulations appear in the Code of Federal Regulations (CFR) at 43 CFR Part 11.

A natural resource damage assessment is an evaluation of the need for, and the means of securing, restoration of public natural resources following the release of hazardous substances or oil into the environment. The regulations we are revising only cover natural resource damage assessments for releases of hazardous substances under CERCLA and the Clean Water Act. There are also natural resource damage assessment regulations at 15 CFR Part 990 that cover oil spills under the Oil Pollution Act, 33 U.S.C. 2701 (the OPA regulations). The current hazardous substance natural resource damage assessment and restoration regulations, this preamble, and the revisions to the regulations use ''restoration'' as an umbrella term for all types of actions that the natural resource damage provisions of CERCLA and the Clean Water Act authorize to address injured natural resources, including restoration,