Regulation of Fuels and Fuel Additives: Renewable Fuel Standard Program

Summary and Analysis of Comments

Chapter 2
Renewable Fuel Standard

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

United States
Environmental Protection
Agency

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2 RENEWABLE FUEL STANDARD

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The comments in this section correspond to Section III of the preamble to the proposed rule and pertain to the Renewable Fuel Standard in general. The comments we received and our response to those comments are summarized below.

2.1 Applicability of the Standard in 2007

2.1.1 Prospective Approach vs. Collective Compliance

What Commenters Said:

EPA received a number of comments on the proposed approaches for start-up of the RFS program. Marathon Petroleum Company (MPC), CHS, FutureFuel, BP, ExxonMobil, National Petrochemical and Refiners Association (NPRA), and the American Petroleum Institute (API) commented that they approve of EPA's proposed prospective approach of applying the renewable fuel standard only to those volumes of gasoline produced after the effective date of the final rule. BP commented that the application of the collective compliance approach in 2007 would penalize early movers by not giving credit for proactive use of renewable fuels and would allow obligated parties who do not wish to blend renewable fuels to further delay ethanol and/or biodiesel use. The commenter emphasized that the 2006 default rule provision included in the 2005 Energy Policy Act was not stipulated by Congress to extend into 2007, and thus enactment beginning 60 days after publication in the Federal Register would be more consistent with the original intent of Congress. Shell/Motiva agreed that a default, industry-wide program for 2007 would be contrary to the plain language and intent of the Energy Policy Act of 2005. Furthermore, Shell/Motiva commented that they believe that a default program would negate the individual compliance obligations and the credit trading program that Congress envisioned.

The Missouri Department of Natural Resources (MDNR) raised other questions regarding the collective compliance approach for 2007. Specifically, the commenter questioned how any renewable fuel deficit created on an industry-wide basis in 2007 would be handled on an individual basis in 2008. The commenter also questioned the extent to which the ethanol industry would be held accountable for any shortfall in renewable fuels in 2007 or in any future years. Additionally, MDNR commented that in the absence of a credit-trading program, it may be difficult for parties in regions that lack easy access to renewable fuel supplies, such as in the Northeast, to meet its renewable volume obligation (RVO) through physical throughput without any provisional assistance of the credit-trade.

On the other hand, MDNR, the American Coalition for Ethanol (ACE), and the Renewable Fuels Association (RFA) commented that a prospective approach would not

ensure that the total volume of renewable fuel required to be used in 2007 would in fact be used. ACE and RFA further commented that the Energy Policy Act of 2005 did not specify a particular implementation date for the RFS credit program and noted that the collective compliance approach would not render the credit program null for 2007. ACE and RFA also commented that the collective compliance approach would not need to include carryover of excess volumes generated, noting that where the goal of the program is to ensure an increasing minimum volume of renewable fuel is used each year, the "banking" of credits to reduce compliance costs in later years would undermine the purpose of the Energy Policy Act of 2005. For these reasons, ACE and RFA believed EPA should apply the collective compliance approach for 2007.

Finally, ExxonMobil recommended that if the final rule is delayed and/or lead time requirements of the stakeholders dictate that the effective date be later than July 2007, EPA should revert to the collective compliance approach for 2007, reasoning that a compliance "year" of less than six months imposes too great an accounting and recordkeeping burden for any potential added assurance of meeting the RFS that it provides.

Letters:
American Coalition for Ethanol (ACE) OAR-2005-0161-0218
American Petroleum Institute (API) OAR-2005-0161-0185
BP Products North America OAR-2005-0161-0221, -0230
CHS Inc. OAR-2005-0161-0203
FutureFuel OAR-2005-0161-0198
ExxonMobil Refining & Supply Co. OAR-2005-0161-0197
Marathon Petroleum Company (MPC) OAR-2005-0161-0175
Missouri Department of Natural Resources (MDNR) OAR-2005-0161-0217
National Petrochemical and Refiners Association (NPRA) OAR-2005-0161-0170, -0232
Renewable Fuels Association (RFA) OAR-2005-0161-0192, -0228 (hearing)
Shell Oil Company/Motiva Enterprises OAR-2005-0161-0215

Our Response:

We believe that a collective compliance approach is not appropriate for 2007. The Energy Act requires us to promulgate regulations that provide for the generation of credits by any person who over-complies with their obligation. It also stipulates that a person who generates credits must be permitted to use them for compliance purposes or to transfer them to another party. These credit provisions have meaning only in the context of an individual obligation to meet the applicable standard. Delaying a credit program until 2008 would mean the credit provisions have no meaning at all for 2007, since under a collective compliance approach no person (individual facility or company) would be liable for meeting the applicable standard. Including a "collective" credit or deficit carry-forward as part of a collective compliance program would also not fully implement the credit provisions of the Energy Act.

We recognize that the prospective approach to 2007 compliance will not guarantee by regulation that the total renewable fuel volumes required by the Energy Act for 2007 would actually be used in 2007. However, current projections from the Energy Information Administration (EIA) on the volume of renewable fuel expected to be produced in 2007 indicate that the Energy Act's required volumes will be exceeded by a substantial margin due to the relative economic value of renewable fuels in comparison to gasoline. We are confident that the combined effect of the regulatory requirements for 2007 and the expected market demand for renewable fuels will lead to greater renewable fuel use in 2007 than is called for under the Energy Act.

The comments did not adequately support the contention that a prospective approach to program startup would cause confusion or an undue burden for regulated parties. As described in our response to comments in Section 2.1.2, we believe that the September 1, 2007, start date is feasible and supported by stakeholders. Our final rule therefore implements a prospective approach to program startup in which the renewable fuel standard would apply to those volumes of gasoline produced after September 1, 2007, and Renewable Identification Number (RIN) generation would also begin for renewable fuel volumes produced or imported on or after this date. The prospective compliance approach not only provides obligated parties with the opportunity to generate credits in 2007, but also provides the industry with the certainty they need to comply and is relatively straightforward to implement.

2.1.2 Program Start Date

What Commenters Said:

Several commenters remarked on the start date for the RFS program. RFA, National Corn Growers Association (NCGA), National Council of Farmer Cooperatives (NCFC), and American Farm Bureau Federation (AFBF) commented that, given the complexity of the proposed RFS program, they believe the program start date should be deferred until January 1, 2008, to give renewable fuel producers and obligated parties sufficient time to make the transition from the 2006 collective compliance system, and to cope with the program's new regulatory burdens. RFA further commented that since the RIN trading program is supposed to include credits for small refineries that waive their exemption and such credits are not available until January 1 of the year after notification of waiver is provided, implementing the trading program in 2008 rather than in the middle of 2007 would allow a more complete trading program.

BP and API emphasized that enactment of the final rule should not be delayed to 2008, as some parties suggested at the public hearing on the RFS proposal. NPRA commented that EPA should revise §80.1106(b)(1) and clarify that the RFS program will not be effective for the entire calendar year of 2007. Several commenters, including MPC, NPRA, and BP, agreed with the proposed timing of the renewable fuel standard to begin 60 days after publication of the final rule in the Federal Register. MPC further

recommended that EPA establish a specific start date for the program, such as July 1, 2007.

Flint Hills Resources (FHR) agreed that setting a fixed date for implementation would facilitate planning given the uncertainty of the publication date of the final RFS rule. However, FHR also commented that the proposed 60-day delay between final rule publication and effective date of the program would not provide adequate time for all involved parties to prepare to manage the requirements of the rule. ExxonMobil and API also commented that the final rule should become effective no sooner than 60-120 days after publication to provide sufficient lead time to participants in the new program.

Letters:
American Farm Bureau Federation (AFBF), National Corn Growers Association (NCGA), National Council of Farmer Cooperatives (NCFC) OAR-2005-0161-0188
American Petroleum Institute (API) OAR-2005-0161-0185
BP Products North America OAR-2005-0161-0221, -0230
ExxonMobil Refining & Supply Co. OAR-2005-0161-0197
Flint Hills Resources (FHR) OAR-2005-0161-0222
Marathon Petroleum Company (MPC) OAR-2005-0161-0175
National Petrochemical and Refiners Association (NPRA) OAR-2005-0161-0170, -0232
Renewable Fuels Association (RFA) OAR-2005-0161-0192, -0228 (hearing)

Our Response:

We do not believe that the effective date of the rule should be delayed until 2008. Although we recognize that regulated parties need time to put into place the RIN tracking systems that will be required, comments provided did not support the need to delay program startup until 2008 to complete this preparation. Our close collaboration with stakeholders in development of the program ensures that regulated parties will have enough understanding about the basic requirements of the compliance and enforcement program to permit them to prepare for implementation even before publication of the final rule.

Rather than requiring the program to begin on the effective date of the rule as proposed (60 days following publication in the Federal Register), we are finalizing a start date of September 1, 2007. By setting such a date, industry will be able to plan with confidence to start complying upon signature of the rule, rather than having the start date depend upon the timing of publication of this final rule in the Federal Register. We recognize the concerns expressed in comments that time is needed to prepare Information Technology (IT) systems to comply with the program. However, we believe that a September 1, 2007, start date will provide sufficient time. The final rule is in most respects consistent with the NPRM, and based on discussions with industry, plans for implementation are already underway. Furthermore, a September 1, 2007, start date will likely provide regulated parties some additional time to prepare in comparison to simply setting the start date as the effective date of the rule.

2.1.3 RIN Generation Start Date

What Commenters Said:

EPA received a comment from NPRA on specifying the date when the first RINs may be issued. NPRA questioned whether a renewable fuel producer or importer could begin to generate RINs once they are registered with the Agency and the rule has been promulgated, but before the program compliance start date.

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

Our Response:

Our final rule sets a program start date of September 1, 2007. On this date, accrual of both gasoline volumes subject to the standard and renewable fuel volumes for which RINs must be generated will begin. We are not providing for, nor are we allowing, RINs to be generated prior to September 1, 2007. However, we are allowing renewable fuel producers and importers to generate RINs for product in inventory on September 1, 2007.

2.2 Calculation of the Standard

2.2.1 State/Territory Opt-in

What Commenters Said:

EPA received a comment from MDNR on the proposal for a noncontiguous state or territory to submit a petition to opt in to the RFS program for a given year. The commenter suggested that EPA consider implementing a provision that would allow a state/territory to declare its intentions to file such a petition at least 120 days prior to the deadline date of October 31, claiming that if a petition is received on October 30, it may be difficult for EPA to make appropriate adjustments in the RVO to be published by November 30 for the subsequent year.

The commenter also stated that refineries and importers in Alaska and Hawaii may or may not be subject to the RFS depending on their annual production volume, even if their respective state opts into the program. The commenter therefore posed a question about how EPA will assure that any issues that arise from the RFS program's opt-in provisions for small refineries and state waiver provisions will be reconciled in a uniform and equitable fashion.

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

Our Response:

Regarding the first comment, EPA can only act on (i.e., approve) opt-in petitions that are actually submitted by a state or territory. It would be imprudent to act on "intent," as that may change or not be followed through on. Opt-in petitions may be submitted at any time before the October 31 deadline for the state or territory's inclusion in the RFS program beginning with the next compliance period. Changing the calculated value of the RVO in time for a November 30 publication date is straightforward, and would not be hindered by receipt of an opt-in petition on October 31.

Regarding the second comment, EPA must publish the applicable annual standard by November 30 of the previous year. The deadline for opt-in petitions allows EPA sufficient time to incorporate the opt-in into the calculation of the standard. To do this, EPA only needs information on the total volume of gasoline consumed in the state or territory that has opted in. This information is available from the EIA, the same source that will be used for gasoline consumption in the 48 contiguous states. Volumes of gasoline produced or imported by individual parties located in the opt-in state or territory are not relevant to the calculation of the standard. However, because we have subtracted the volumes of gasoline produced by exempt small refiners and small refineries from the total gasoline produced in the contiguous 48-states in the calculation of the standard, we would do the same for small refineries and small refiners in an opt-in state. However, the impact on the final value of the standard would be small, as the volumes of gasoline in the potential opt-in areas are small, and the volume produced by small refiners and refineries in those areas is even smaller.

2.2.2 Inclusion of Diesel

What Commenters Said:

EPA received a comment from the Union of Concerned Scientists (UCS) on the exclusion of diesel volumes from RFS and renewable volume obligation (RVO) calculations. UCS noted that the RFS program proposal gives renewable credits for biodiesel, but conventional and unconventional diesel consumption numbers are not included in the calculations for yearly renewable fuel standard and yearly RVOs. The commenter expressed concern that if more conventional diesel fuel is used, the renewable fuel volume required by the RFS after 2012 could actually go down or at least grow at a slower rate than highway fuel demand, and UCS recommended that EPA advise Congress on the impacts of their decision to exclude diesel usage in the calculations for the RFS and RVO.

Letters:
Union of Concerned Scientists (UCS) OAR-2005-0161-0226

Our Response:

The Energy Policy Act requires EPA to establish a program (the RFS program) that ensures that the pool of *gasoline* used in the contiguous 48 states contains specific volumes of renewable fuel**.**

2.2.3 Cellulosic Ethanol Standard

What Commenters Said:

EPA received comments pertaining to the cellulosic ethanol standard included in the RFS program. Shell/Motiva commented that it supports EPA's proposed approach to establish a separate obligation for ethanol derived from cellulosic biomass effective in 2013. The National Wildlife Federation (NWF) commented that it supports EPA's intention to repeat the RFS rulemaking as the renewable fuel industry evolves, and suggested that EPA perform an interim assessment to review whether that rulemaking, and a potential increase in renewables goals, should occur before 2013. BlueFire Ethanol believed that the Renewable Fuel Standard formula and EPA's RFC for cellulosic ethanol (RFCell) should require a minimum 2012 standard of 500 million gallons/yr, or suggested that EPA could revise its 2012 minimum 250 million gallon/yr standard for cellulosic ethanol upwards once the industry demonstrates its ability to exceed the 250 million gallon/yr 2012 minimum standard.

Letters:
BlueFire Ethanol OAR-2005-0161-0200, -0224
National Wildlife Federation (NWF) OAR-2005-0161-0209
Shell Oil/Motiva OAR-2005-0161-0215

Our Response:

The Energy Policy Act of 2005, in addition to setting the standards to be adopted through 2012, directed EPA to develop the next set of renewable fuel standards for the years 2013 and beyond, in coordination with the Departments of Agriculture and Energy, based upon the results of a review of the program from 2006-2012. In establishing these minimum levels, EPA is to consider the impact of renewable fuel on the environment, air quality, energy security, job creation, and rural economic development, as well as the expected annual rate of renewable fuel production during those years. Any rulemaking regarding the 2013 RFS standard will have to be undertaken several years prior to 2013, in order to allow time for proposal and comment, and to provide sufficient time for construction in the event that capital improvements by the affected industries are necessary for compliance. That rule will consider the current and projected future state of the renewable fuel industry, the mix of motor vehicle fuels and technologies, and other factors in setting the RFS requirements for 2013 and beyond.

In addition, the President, in his State of the Union address in January 2007, set specific goals for reducing the amount of petroleum fuel used by the transportation sector, specifically recommending the adoption of requirements to use 35 billion gallons of alternative fuel including renewable fuel by 2017. This volume of fuel would likely include significantly higher volumes of renewable fuel compared to the minimum levels required under the Energy Act for the RFS program. Much additional analysis would be required as part of a rulemaking adopting such requirements.

2.2.4 Data Used

What Commenters Said:

We received comments on our use of EIA data for calculating each obligated party's annual RVO. MDNR commented that it believes that EPA should present the data points and data periods to be used in calculating the annual RVO. The commenter stressed that EPA should explain how we intend to mitigate the effect of the lag time and other factors that affect values and figures derived by EIA. NPRA, on the other hand, supported EPA's intent to use the October issue of EIA's monthly Short Term Energy Outlook projection for gasoline demand in 2007 and beyond in order to project next calendar year's gasoline demand in the 48 contiguous states and any EPA-approved RFS opt-in areas.

Letters:

Missouri Department of Natural Resources (MDNR)	OAR-2005-0161-0217
National Petrochemical and Refiners Association (NPRA)	OAR-2005-0161-0170, -0232

Our Response:

In the proposal, we stated that we will use gasoline and renewable projections from the EIA Short Term Energy Outlook (STEO) for October of the year prior to the year for which the standard is being determined, and we continue to believe, absent any other technical input since the proposal, that it provides the best estimate for the coming year. We do not expect that any differences between the October STEO values and any near-term corrected or adjusted future values of gasoline or renewable fuel projections will be significant. Thus no adjustment or mitigation of any effects of lag time or other factors will be needed.

2.2.5 Other Issues Related To the Standard

What Commenters Said:

EPA received general comments on the establishment of the renewable fuel standard. MDNR noted that in order to achieve the desired goals of energy independence and greater diversity in the Lower 48 states' transportation fuel supply through 2012,

larger quantities of ethanol and other renewable fuels may be necessary than what is called for in the RFS program. SilvaGas emphasized that the RFS target production of ethanol gallons per year should be seen as a floor and not as a ceiling on ethanol production, and that the general spirit of EPA's final rule should be to encourage ethanol production, not penalize the industry if it can exceed legislative targets.

Letters:
Missouri Department of Natural Resources (MDNR) OAR-2005-0161-0217
SilvaGas. OAR-2005-0161-0161

Our Response:

The annual volumes of renewable fuel required to be used under the RFS program are specified in the Energy Act. The Energy Act does not give EPA authority to change these required volumes for years 2006 - 2012. The RFS standard is a required minimum; obligated parties are in no way prohibited from exceeding the required levels, and it would certainly be consistent with the purpose and objective of the Act if parties do so. Beginning in the 2013 compliance year, EPA must determine the required annual volumes in a coordinated effort with the Departments of Agriculture and Energy based on a number of criteria specified in the Energy Act and a review of the program during calendar years 2006 through 2012. The Energy Act specifies that this review consider the impact of the use of renewable fuels on the environment, air quality, energy security, job creation, and rural economic development, and the expected annual rate of future production of renewable fuels, including cellulosic ethanol. We intend to conduct another rulemaking as we approach the 2013 timeframe that would include our review of these factors. That rulemaking will present our conclusions regarding the appropriate applicable volume of renewable fuel for use in calculating the renewable fuel standard for 2013 and beyond. The program finalized by today's rule will continue to apply after 2012, though some elements may be modified in the rulemaking setting the standards for 2013 and beyond.

The President's January 2007 State of the Union address recommended the adoption of requirements to use 35 billion gallons of alternative fuel including renewable fuel by 2017. This goal could also affect the level of applicable standards in a future rulemaking.

2.3 Renewable Volume Obligations

2.3.1 Refiner vs. Refinery

What Commenters Said:

EPA received comments related to the applicability of the RFS to refiners versus refineries. Gary-Williams Energy Corporation (GWEC) suggested that to encourage more even distribution and use of ethanol across the country, EPA should establish ethanol use volume percentages on a refinery basis, rather than the company-wide basis

that was proposed. The Ad-Hoc Coalition of Small Business Refiners (Small Refiners) commented that while small refiners generally endorsed EPA's proposed RIN system, they opposed the company-wide, versus individual facility, compliance basis.

Letters:
Ad-Hoc Coalition of Small Business Refiners (Small Refiners)
OAR-2005-0161-0214
Gary-Williams Energy Corporation (GWEC) OAR-2005-0161-0207

Our Response:

We have specified that the RFS provisions must be met by refiners and importers, and not by refinery or point of importation. Thus, the RVO must be met by the refiner over the total gasoline production of all of its refineries, and by the importer for its total volume of gasoline imports regardless of point of entry into the U.S. Furthermore, obligated parties are not required to blend renewable fuel into gasoline they produce or import, but may satisfy their RVO by acquiring RINs associated with blending renewable fuel into the gasoline produced or imported by other obligated parties. Given this "credit trading" component of the RFS program, which is required under the Act, establishing volume percentages on a refinery basis would not necessarily encourage more even distribution and use of ethanol across the country, as the commenter suggests. We note that any company with multiple facilities can choose, of its own accord, to assign responsibility for RIN acquisition to its individual facilities in proportion to their gasoline production or importation.

2.3.2 Products Included in the RVO Calculation

What Commenters Said:

In addition to the comment responded to in Section 2.2.2 of this document, EPA received a few comments on EPA's calculation of obligated parties' annual RVOs. Shell/Motiva agreed with EPA's proposal that the RVO should be based on the amount of gasoline and blendstocks for oxygenate blending (BOBs) that a refiner or importer produces, but noted that in the final rule, EPA should clarify that the terms RBOB and CBOB include CARBOB (California BOB), AZRBOB (Arizona BOB), and LVBOB (Las Vegas BOB). Sutherland Asbill & Brennan commented that EPA should clarify when obligated parties must include gasoline treated as blendstock as part of their RVO, and recommended the approach suggested in the proposal of the importer counting gasoline treated as blendstock (GTAB) when it is blended to produce gasoline. API commented that the requirement to evaluate the term RBx in §80.1107(b) seemed to require tracking all renewables and their volumes to the blend point, and that the RBx term simply should be dropped because §80.1107(d) prevents counting renewables volume as gasoline volume.

ExxonMobil also commented on EPA's definition of the specific gasoline volumes that would serve as the basis for the renewable volume obligation, and the commenter concurred that renewable fuel volumes should not be counted as gasoline for the purpose of calculating the RVO.

Letters:
American Petroleum Institute (API) OAR-2005-0161-0185
Exxon/Mobil OAR-2005-0161-0197
Shell Oil/Motiva OAR-2005-0161-0215
Sutherland Asbill & Brennan OAR-2005-0161-0210

Our Response:

We agree that clarifying that the "BOB" blendstocks are included in the RVO calculation would be helpful, and thus have modified the regulations accordingly.

For purposes of compliance demonstrations, the RFS rule treats GTAB in a manner that is consistent with the reformulated gasoline (RFG) and conventional gasoline (CG) regulations. The importer includes the GTAB in the volume of gasoline used to determine the renewable fuel obligation of the importer in its capacity as a refiner of the GTAB, and excludes the GTAB in the volume of gasoline used to determine the renewable fuel obligation of the importer in its capacity as an importer. The regulations have been clarified with regard to how GTAB is used to determine the GTAB importer's renewable fuels obligation.

The inclusion of the RBx term is used solely to calculate the non-renewable gasoline volume of an obligated party, and it does not refer to, nor is it intended to account for, renewable fuel used downstream of the refinery. Thus there is no obligated party burden for tracking renewable fuel blended with the obligated party's gasoline outside the "refinery gate." Therefore this term is being retained for the final rule.

2.4 Exporters of Renewable Fuel

2.4.1 RINs on Renewable Fuel for Export

What Commenters Said:

EPA received comments from three organizations on the assignment and retirement of RINs for exported renewable fuel. RFA and Archer Daniels Midland Company (ADM) commented that they believe all gallons of renewable fuel should be assigned RINs, including renewable fuel exports, in order to maintain a fungible system and eliminate confusion about which gallons should be assigned RINs and which should not. ExxonMobil commented that RINs associated with renewable fuel produced in the contiguous 48 states and exported to another country or delivered to Alaska or Hawaii

should be retired. The commenter stated that the one exception to this requirement would be if Alaska or Hawaii decides to opt-in to the program.

Letters:
Archer Daniels Midland Company (ADM) OAR-2005-0161-0227
ExxonMobil OAR-2005-0161-0197
Renewable Fuels Association (RFA) OAR-2005-0161-0192, -0228 (hearing)

Our Response:

Regarding the comments from RFA and ADM, our final regulations will require that producers assign RINs to all renewable fuel, regardless of whether it is for export. We also believe that RINs associated with exported volumes of renewable fuel must be retired. In the final rule, exports are defined in §80.1101 to mean any product that is transferred outside the 48 contiguous states, including to locations in Alaska, Hawaii, or a U.S. territory, unless one of these areas has opted into the RFS program.

2.4.2 Renewable Volume Obligation for Exporters

What Commenters Said:

API and Imperium Renewables Inc. (IRI) commented on our proposal to incorporate exporters of renewable fuels into the RFS program. API commented that requirements for exporters of renewable fuels (§80.1130) should apply to the physical product exported from the 48 contiguous States since an exporter could be anywhere in the world.

IRI commented on the proposed requirement that exporters be assigned an RVO equal to the volume of renewable fuel they export adjusted by the equivalence value of that fuel. IRI was concerned that if an exporter acquires a batch of renewable fuel with an equivalence value greater than 1.0 but without extra-value RINs attached, the exporter would be required to purchase RINs on the open market in order to meet their RVO. The commenter argued that this requirement would place an undue burden on exporters. IRI proposed eliminating the need for exporters to retire the extra-value RINs associated with the fuel if such extra-value RINs were not assigned to the fuel when it was received by the exporter, and cited the fact that EPA proposed to allow similar treatment if all RINs had already been separated from the batch when it was received by the exporter and the equivalence value could not be determined. IRI also commented that another alternative would be to increase the obligation placed on refiners, importers, and blenders of gasoline to cover the renewable fuel exported. In this way, the RINs which would have been retired by the exporters would be available for purchase from producers by obligated parties.

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

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

Our Response:

Our final program maintains the requirement that exporters adopt an RVO just as obligated parties do. In the case of exporters, the RVO will be calculated based on the volume of renewable fuel exported, adjusted for the Equivalence Value of that volume. Exporters will therefore need to acquire sufficient RINs to offset their RVO. The final regulations also will require that parties that export renewable fuel from the 48 contiguous States will be subject to an RVO representing the exported product, regardless of the physical location of the exporter.

We do not believe that IRI has provided compelling reasons to place the burden for exported renewable fuel on obligated parties. Not only would this approach have required an estimate of the volume of renewable fuel exported in the next year, but would also mean that every obligated party would share in accumulating RINs to cover the activities of other parties not under their control.

Exported renewable fuel must be accounted for in the RFS program to the degree possible. If the exporter knows the equivalence value associated with the exported renewable fuel, or can determine it through other means, it must use this information in determining its RVO. It would not be a reasonable approach to ensuring that the statutorily required volumes are used in the U.S. to permit exporters to avoid the burden of an RVO in cases where the exported product was not received with RINs.

2.5 Obligated Parties

EPA received several comments regarding the definition of obligated parties under the RFS Program. The Society of Independent Gasoline Marketers of America and the National Association of Convenience Stores (SIGMA/NACS), ExxonMobil, Baker Commodities, Griffin Industries, Methanol Institute (MI), and API agreed with EPA that blenders of products to produce gasoline or diesel fuel are obligated parties under the RFS, while oxygenate blenders or parties that only add ethanol to gasoline or biodiesel to diesel fuel in small quantities are not obligated parties. SIGMA/NACS commented that in the final rule, EPA should clearly distinguish between the terms “blender” and “oxygenate blender” to avoid confusion or misinterpretation when the RFS program is implemented. The commenter also urged EPA to clarify that a party that blends biodiesel into diesel fuel is not considered a "blender," and thus would not be an obligated party under the RFS.

BlueFire Ethanol commented extensively on the principle that blenders should be accorded full flexibility to blend any sub-octane, sub-spec gasoline and approved section 211(f) blending components with ethanol based gasoline at any point in the distribution system. The commenter also supported EPA’s proposal not to require CBOB and GTAB ethanol blenders to register as obligated parties.

Shell/Motiva and API commented that they believe that EPA should clarify that transmix processors are only required to count as their gasoline production the volumes of blendstocks added to finished or unfinished gasoline. API also commented that transmix blending operations (as opposed to transmix processors) should be exempt from RIN obligations when blending at levels not requiring blendstock reporting.

Letters:
American Petroleum Institute (API) OAR-2005-0161-0185
Baker Commodities OAR-2005-0161-0003 through -0006, -0173
BlueFire Ethanol OAR-2005-0161-0200, -0224
ExxonMobil OAR-2005-0161-0197
Griffin Industries, Inc.OAR-2005-0161-0189
Methanol Institute (MI) OAR-2005-0161-0171
Shell Oil/Motiva OAR-2005-0161-0215
Society of Independent Gasoline Marketers of America and National Association of Convenience Stores (SIGMA/NACS) OAR-2005-0161-0234

Our Response:

The regulations at §80.1106 specify that obligated parties are refiners and importers that produce gasoline or import gasoline, including blenders who blend blendstocks into finished gasoline. The regulations do not include as obligated parties those persons who produce, import, or blend diesel fuel, or those parties that only add renewable fuel to gasoline (including RBOB or CBOB).

Under the fuels regulations, any party may blend sub-spec gasoline or other blendstock(s) with ethanol to produce a finished blend of gasoline, however, such party is considered to be a refiner under the fuels regulations. As a refiner, the party is an obligated party under the RFS program, and, as such, is responsible for complying with the renewable fuel obligation with regard to the finished blend of gasoline. Under the RFS program, renewable fuels that are contained in gasoline are not included in the volume used to calculate a refiner's renewable fuel obligation. Therefore, a party that blends only ethanol into finished gasoline is not an obligated party under the RFS program. This is because the finished gasoline portion of the blend would have been included in the volume used to calculate the renewable fuel obligation of the refiner of the finished gasoline, and the ethanol is not subject to the RFS obligation. However, a party that blends sub-spec gasoline or any other blendstock(s) with ethanol to produce a finished blend of gasoline is an obligated party and is responsible for complying with the renewable fuel obligation for the non-ethanol portion of the blend. This is because the sub-spec gasoline or other blendstock(s) in the finished blend would not have been included in the volume used to calculate the renewable fuel obligation of the refiner of the sub-spec gasoline or blendstock(s). Under the RFS program, obligated parties are required to separate the RINs assigned to any ethanol that they purchase, and blenders of renewable fuels are required to separate the RINs assigned to any ethanol that they purchase and blend into gasoline.

Transmix processors and blenders are treated like any other blenders under the RFS rule. Transmix processors are parties that separate the gasoline portion of the transmix from the transmix and either sell the gasoline portion as finished gasoline or blend it with other components to produce gasoline. Transmix processors exclude the gasoline portion of the transmix from the volume that is used to determine the party's renewable fuel obligation, since the gasoline portion of the transmix would have been included in the volume used to determine the renewable fuels obligation of the refiner or importer of the gasoline. In calculating the volume used to determine its renewable fuel obligation, the transmix processor would include any blendstocks (other than renewable fuels) that are added to the transmix. Where the transmix processor combines the gasoline portion of the transmix with purchased finished gasoline, both the gasoline portion of the transmix and the finished gasoline would be excluded, since the finished gasoline would have been included in the volume used to determine the renewable fuels obligation of the refiner or importer of the finished gasoline. Transmix blenders are parties that blend small amounts of unseparated transmix into gasoline. Transmix blenders are not obligated parties if they only blend transmix into finished gasoline. If the transmix blender adds blendstocks to the transmix, the transmix blender would be an obligated party with regard to the volume of blendstocks added. The regulations have been clarified with regard to how the RFS rule applies to transmix processors and blenders.