

Questions and Answers on the Renewable Fuel Standard Program

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Introduction

The final rulemaking for the Renewable Fuel Standard (RFS) program was signed by the EPA Administrator on April 10, 2007 and published in the Federal Register on May 1, 2007 [72 FR 23900]. Since the program begins on September 1, 2007, regulated parties will need to design and implement their information technology (IT) systems in a relatively short period of time. To assist these regulated parties, we have collected questions pertaining to a variety of implementation issues and generated responses to those questions.

This document was prepared by EPA's Office of Transportation and Air Quality (OTAQ). It includes new questions not addressed in a previous version of this document (see EPA document EPA420-F-07-041, May 2007). We will continue to update this document periodically as new questions arise.

Regulated parties may use this document to aid in achieving compliance with the RFS program regulations. However, this document does not in any way alter the requirements of these regulations. While the answers provided in this document represent the Agency's interpretation and general plans for implementation of the regulations at this time, some of the responses may change as additional information becomes available, or as the Agency further considers certain issues.

This question and answer document does not establish or change legal rights or obligations. It does not establish binding rules or requirements and is not fully determinative of the issues addressed. Agency decisions in any particular case will be made applying the law and regulations on the basis of specific facts and actual action.

While we have attempted to include answers to all of the questions submitted to us, the necessity for policy decisions and/or resource constraints may have prevented the inclusion of certain questions. Questions not answered in this document will be answered in subsequent updates. Questions that merely require a justification of the regulations, or that have been previously answered in the preamble to the regulations and require no further elaboration have been omitted.

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List of Acronyms

BBBBB	RIN code identifying the batch number
BOL	Bill of lading
CDX	Central Data Exchange
CFR	Code of Federal Regulations
E85	Blend of 85% ethanol and 15% gasoline
ETBE	Ethyl tertiary butyl ether
EV	Equivalence Value
K	RIN code indicating that the RIN is assigned or unassigned
NRLM	Nonroad locomotive and marine diesel fuel
PTD	Product Transfer Document
RIN	Renewable Identification Number
RR	RIN code identifying the Equivalence Value
RVO	Renewable Volume Obligation
YYYY	RIN code identifying the year renewable fuel was produced or imported

New and Revised Questions

Questions added or revised since the **May 2007** version are as follows: 1.4, 2.4-2.6, 2.17-2.24, 3.3-3.4, 3.8-3.15, 4.2, 4.6, 4.11-4.16, 5.4, 5.7-5.10, 6.1, 6.5-6.6, 7.5-7.7, 8.7-8.13, 9.7-9.13, 10.6-10.14, 11.1-11.2, and 11.5-11.13.

1. Valid renewable fuels and Equivalence Values

1.1 If I have a renewable fuel that was assigned a specific Equivalence Value in regulation Section 80.1115, but I don't think that Equivalence Value is right for my product, what options do I have?

A: *Producers or importers of renewable fuel may submit a petition to the EPA requesting a different Equivalence Value from that assigned in the regulations. However, the petition must use the calculation methodology described in regulation Section 80.1115(d). In short, if the energy content or renewable content of a producer's or importer's product differs from the values used by EPA to calculate the Equivalence Values specified in regulation Section 80.1115(b), the party may be entitled to an alternative Equivalence Value.*

1.2 I will be making renewable gasoline from renewable crude. Section 80.1115(b)(6) of the regulations says I must use an Equivalence Value of 1.0 even though renewable gasoline clearly warrants a higher Equivalence Value. Can I submit a petition?

A: *Yes. See regulation Section 80.1115(c)(2). However, for renewable fuels other than renewable diesel which are made from renewable crudes, information on the energy content and/or renewable content may be difficult to obtain. This is why we designated the Equivalence Value for such fuels as 1.0, and specified that the applicable volumes must be measured according to the volume of renewable crude rather than the volume of the final product. In cases where information on the energy content and renewable content can be determined precisely, a different Equivalence Value may be warranted.*

In addition, regulation Section 80.1126(d)(6) allows a party to petition EPA to use the volume of the renewable fuel produced as the basis for generating RINs rather than the volume of the renewable crude used to make that product.

1.3 What is the Equivalence Value for E85? Is it 0.85 since its renewable content is only 85 percent?

A: *No. Equivalence Values are generated and apply to renewable fuel at the point of production or importation, not at the point of blending. Thus it is denatured ethanol, not E85 (nor E10) to which the Equivalence Value applies. A party blending denatured ethanol into gasoline to produce E85 may receive assigned RINs with the denatured ethanol. Since the party is producing motor vehicle fuel from the renewable fuel (analogous to an*

oxygenate blender), he will separate the RINs from the volume of ethanol received and can then retain or transfer those RINs to any other party.

1.4 Do the regulations spell out the petition process to be used to determine Equivalence Values for fuels not identified in the rule?

A: *Yes. The provision is described in regulation Section 80.1115(c).*

2. Generating RINs and assigning them to batches of renewable fuel

2.1 Ethanol is imported on an undenatured basis. Do we assign the RINs to the denatured volume or the undenatured volume?

A: *Denatured. See regulation Sections 80.1101(d)(3) and 80.1115(b)(2).*

2.2 We are importers who import ethanol without denaturant, but with the intent to use it as motor fuel. When the RIN is generated, we maintain ownership of the ethanol, but we do not have custody and we do not add the denaturant. Would we include our company ID number and use the facility number of the denaturing facility (i.e. they would have to be registered)?

A: *The owner of the denaturing facility would not necessarily be a registered party under the regulations. The company and facility IDs of the importing party who owns the renewable fuel at the time a RIN is generated (based on the volume of renewable fuel with denaturant) are the company and facility IDs that must be included in the RIN. (The owner of the renewable fuel should know the volume of the fuel coming out of the denaturing facility since it owns and will either sell or use the denatured fuel.) The importing company that owns the fuel would need to register the facility, typically leased tankage, with which it has contracted to store and denature the renewable fuel (i.e., has custody) as one of its own facilities with its own facility ID number. This means that a facility owned by a company that simply leases tankage may never be a registered party but several registered importers may have a separate facility ID for that tankage facility. This scenario would not apply to domestic producers because ethanol intended to be used as motor fuel would be denatured at the facility where it was produced.*

2.3 A refinery can produce non-ester renewable diesel by processing renewable feedstock through a distillate hydrotreater. In this situation, the refinery must assign RINs based on the feed volume. I assume the refinery can follow the rules for defining a batch (i.e. a batch can be up to the production volume of a month as long as the batch total volume is less than 100 million gallons).

A: *Yes. However, it is the total number of gallon-RINs, not the total volume, that must be less than 100 million. See regulation Section 80.1126(c).*

2.4 When a plant determines the volume of ethanol for a first and last gallon of a RIN, what's the reference point? Gallons at load-out through a metering system like Determan Brownie? (Since this is the point where they're adjusting the gallons to 60 degrees F)?

A: *Renewable fuel producers and importers have flexibility in terms of the specific means through which they measure volumes for purposes of generating RINs. However, the approach should ensure that gallons are neither systematically ignored nor systematically double-counted. Also, approaches that provide consistent volumes for both the RFS program and other contexts such as reporting to the Energy Information Administration are preferred. To the degree that measuring volumes at load-out through a Determan Brownie metering system meets these criteria, it would be acceptable.*

Under the regulations, RINs must be generated for a volume of renewable fuel by the time that that volume is transferred to another party (at which time, the RINs are “assigned” to the renewable fuel pursuant to regulation Section 80.1126(e)(2)). Thus the volume measurement used as the basis of RIN generation can occur as the renewable fuel is produced, as it resides in a tank awaiting transfer from the producer/importer, or as it is pumped to a new owner. The method used must be consistent over time for a facility.

2.5 Within the RIN, D = 2 for non-cellulosic biomass ethanol and D = 1 for cellulosic biomass ethanol. How is biodiesel coded?

A: *All renewable fuels that cannot be categorized as cellulosic biomass ethanol should be assigned RINs with a D code value of 2. Thus biodiesel would have D = 2. See regulation Section 80.1125(g).*

2.6 Can an ethanol or biodiesel plant keep a RIN?

A: *In general, producers of renewable fuel must assign all RINs that they generate to volumes of renewable fuel and transfer those RINs with the renewable fuel to another party. However, there are some exceptions. First, producers of cellulosic or waste-derived ethanol can retain RINs generated in excess of an Equivalence Value of 1.0 (see regulation Section 80.1126(e)(4)). Second, a renewable fuel producer who is also an obligated party can retain RINs generated up to the level of their annual RVO (see regulation Section 80.1129(b)(6)). Lastly, producers can acquire an unlimited number of unassigned RINs through the open RIN market.*

2.7 No Equivalence Value was provided for ETBE. What value do I use for generating RINs for ETBE?

A: *The RFS program prohibits a party from generating RINs if the renewable feedstock used to make the renewable fuel was acquired from another party. Any RINs acquired with the renewable feedstock (e.g., ethanol) must be assigned to the renewable fuel product (e.g., ETBE) made from that feedstock.*

If the ethanol used to make ETBE does not have RINs associated with it (i.e. the RINs have been properly separated prior to receipt of the ethanol by the ETBE producer), then the ETBE producer would neither generate RINs for the ETBE it produces, nor assign any RINs to that ETBE. Thus there is no need for an Equivalence Value for ETBE. See regulation Section 80.1126(d)(8).

2.8 I will be making ethanol from both cellulosic feedstocks and corn in my plant. How do I know what Equivalence Value to use, and how do I assign RINs to batches?

A: There are two possible ways to address this situation. If the volume of each type of ethanol can be measured independently and precisely (for example, in a facility where the conversion of cellulosic feedstocks to ethanol occurs through separate equipment from that used to convert corn to ethanol), RINs can be generated separately for each type of ethanol with a unique Equivalence Value. The same batch number (RIN code BBBB) can be used to represent all the gallon-RINs generated, but the gallon-RINs representing the cellulosic ethanol will need to be listed separately from the gallon-RINs representing the corn-ethanol, since the two groups of RINs will have different RR codes (representing different Equivalence Values).

Alternatively, we have created a regulatory mechanism through which the producer may submit a petition to the Agency describing the renewable fuel, its feedstock and production process, and the calculation of its Equivalence Value. See regulation Section 80.1115. This petition process can be used to identify an appropriate Equivalence Value for mixtures of renewable fuels.

2.9 Are RINs generated at the end of the month based on actual quantities for that period, or are they established at the beginning of the month based on estimates of production that month (i.e. "x" gallons, and once "x" gallons are exceeded the RIN starts over?)

A: All RINs represent actual production, not estimates. However, there is no need to wait until the end of a month to generate RINs. Each producer and importer should decide what the batch number (the BBBB code in the RIN) will represent. The regulations require only that each batch represent no more than the volume produced or imported within a calendar month, and less than 100 million gallon-RINs. One party may decide to assign each week's production a unique batch number, while another may decide to assign each tankfull a unique batch number. Regardless, gallon-RINs can be generated as volumes are produced and transferred. As more volume of renewable fuel is produced, additional gallon-RINs are generated within the same batch, up to the self-imposed

or regulatory limit for that batch. Then a new batch with a new BBBB code begins.

- 2.10 If a plant establishes RINs at the beginning of the month and defines it as one month's production estimate (e.g. 8 million gallons), what happens if the plant produces more than 8 million gallons by the end of the month? Does the plant then start issuing a new batch number for the next 8 million gallon RIN? What if this happens in the middle of filling a rail car?

A: RINs are not generated at the beginning of a month. Rather, gallon-RINs must have been generated by the time a volume of renewable fuel is transferred from the producer or importer to another party (at which point the RINs are assigned to that volume). See regulation Section 80.1126(e)(2). A producer or importer of renewable fuel can decide on its preferred approach of designating batch numbers (the BBBB code in the RIN), and then put this batch number into all gallon-RINs generated up to a calendar month's production or 100 million gallon-RINs, whichever comes first.

If a producer/importer had predefined a specific volume limit (such as 8 million gallons) for each batch, and this limit was exceeded in the middle of filling a rail car, the producer/importer would have two options. Since the 8 million gallon limit is self-imposed, he could simply exceed this limit for this particular batch. Alternatively, he could generate a new set of gallon-RINs having a new batch number for the volume that exceeded 8 million gallons. In this latter case, the renewable fuel in the rail car would be transferred along with two separate batch-RINs, which differ only in the batch number (i.e. the BBBB code) and the number of gallon-RINs they represent.

- 2.11 Do batch numbers have to be sequential? Do they have to correspond to the month that they represent (i.e. 1 - 12)?

A: Batch numbers need not be sequential and need not represent a full month. They need only be unique within a calendar year. Each producer or importer of renewable fuel can define a batch in whatever way it chooses, so long as each batch represents less than 100 million gallon-RINs and no more than one calendar month's production. See regulation Sections 80.1125(e) and 80.1126(c). Examples of permissible batch numbering schemes include individual tankfulls, calendar day production, weekly production, and volume sold to each customer each month.

- 2.12 When the program starts, will renewable fuels in the distribution system on September 1, 2007 be valid for RFS compliance purposes?

A: *In some cases, yes. Renewable fuels that are valid for RFS compliance purposes are those for which RINs have been generated. Under regulation Sections 80.1104 and 80.1126(d)(1), RINs must be generated to represent renewable fuels that are produced or imported on or after September 1, 2007. However, our regulations do not define the point at which production occurs. It could be the point of physical production, loading into a tank, or transfer to another party. Thus, under regulation Section 80.1126(d)(2), RINs can also be generated for renewable fuel that a producer or importer owns on September 1, 2007 even if that renewable fuel had been physically produced or imported prior to September 1. Since some renewable fuel will be in the distribution system while remaining under the ownership of a producer or importer on September 1, 2007, it may be assigned RINs even though it has already physically left the originating production or importation facility. In such cases, renewable fuel in the distribution system on September 1, 2007 may have assigned RINs.*

Parties other than renewable fuel producers and importers are not allowed to generate RINs at any time (including for renewable fuel in the distribution system on September 1, 2007). Renewable fuel producers and importers may generate RINs for renewable fuel they own on September 1, 2007 that was produced or imported earlier, and must generate RINs for renewable fuel produced or imported on or after September 1, 2007.

2.13 Can a producer aggregate multiple shipments into a single batch up to a threshold quantity as long as the batch is within one calendar month?

A: *Yes. In the context of generating RINs and specifying the BBBBBB code, producers and importers have the option to define a batch as being comprised of several discreet shipments within a calendar month, so long as the total number of gallon-RINs assigned a unique batch number is less than 100 million. See regulation Sections 80.1125(e) and 80.1126(c).*

2.14 When is a RIN generated for ethanol that is imported into the U.S.?

A: *Ethanol imported for use as motor vehicle fuel would typically be downloaded from a ship into on-shore tankage and then denatured. (Ethanol shipped to the United States from other countries is not typically denatured prior to or during shipment.) Importers should generate RINs for imported ethanol when the denaturant is added at the off-loading tankage. Thus, the facility number used to create these RINs would be the tankage facility where the denaturant is added. See also question 2.2.*

2.15 Regulation Section 80.1126(d)(1), which says "must," seems in conflict with Section 80.1126(d)(2) which says "may". Is the correct reading that any volume

of renewable fuel that leaves a producer's gate on or after 9/1/07 MUST have RINs assigned?

A: *Renewable fuel producers and importers may generate RINs for renewable fuel they own on September 1, 2007 that was produced or imported earlier, and must generate RINs for renewable fuel produced or imported on or after September 1, 2007. Thus at the beginning of the program, it is possible that some volumes of renewable fuel being transferred by a renewable fuel producer or importer may not have assigned RINs. However, this will not be the case in the longer term, since all renewable fuel imported or produced must have assigned RINs.*

2.16 What's the difference between generating a RIN and assigning it?

A: *Generating a RIN refers to the process of creating a new RIN to represent a particular type and volume of renewable fuel. See regulation Section 80.1126(d). Assignment occurs when the producer or importer of the renewable fuel transfers a RIN to another party along with a volume of renewable fuel. See regulation Section 80.1126(e).*

Note that the regulations do not specify the point when generation of RINs must occur. Under regulation Section 80.1126(e)(2), it is only at the point when a volume of renewable fuel leaves the production or importation facility where it originated that RINs must have been generated for, assigned to, and transferred with that volume. Since the EPA does not specifically define the point of production or importation, a producer can generate RINs as the renewable is being physically produced, as it sits in a tank awaiting transfer to another party, or even while the renewable fuel is being transferred to another party.

2.17 Assume a plant decides to define a batch as 10 million gallons. He starts the batch on September 1 and hits the 10 million gallon mark on September 20. He then starts the second batch, but doesn't hit the 10 million gallon mark until October 10. Since each batch is less than 31 day's worth of production, is this OK?

A: *No. A batch of renewable fuel must meet both of the following criteria: 1) a batch must represent less than 100,000,000 gallon-RINs, and 2) a batch must represent no more than one calendar month's worth of production. Thus a batch cannot represent production that spans two calendar months, such as September and October. Even though the producer decides to define a batch as 10 million gallons, if the end of a calendar month is reached before the 10 million gallon mark is reached, a new batch must be started at the beginning of the next calendar month.*

2.18 All I do is produce corn ethanol and sell it all to X Company, which is an ethanol marketer. Do I have to do anything, or can X Company generate the RINs for me?

A: *Each producer of renewable fuel is responsible for generating the RINs that represent that renewable fuel. This function cannot be delegated or assigned to any other party, including a party to whom a producer sells its product.*

2.19 What happens to gallons of ethanol that are in the system August 31 without assigned RINs?

A: *The answer depends on who holds those gallons of ethanol. Only producers or importers of renewable fuel can generate RINs for any renewable fuel they own on September 1, 2007. See regulation section 80.1126(d)(2). Any volumes of renewable fuel in the distribution system as of September 1, 2007 for which RINs were not generated by a producer or importer, or which were not owned by a producer or importer on September 1, 2007, will not have assigned RINs. Under the regulations, a marketer can transfer a volume of renewable fuel without associated RINs so long as the end-of-quarter check of RINs held and volumes held has been met. See regulation section 80.1128(a)(5).*

2.20 The following is a two-part question:

a. We are a petroleum refiner and recognize that we are an obligated party under the regulation. We are considering importing ethanol that has not been denatured. We will hold title to the un-denatured ethanol. Title and custody will pass to another party who will denature the ethanol and transfer title back to us. We will sell it for use as a motor fuel. Are we an importer of renewable fuel under the RFS program?

A: *Un-denatured ethanol is not a renewable fuel. See 80.1101(d)(3). Under the described scenario, the party to whom custody is transferred and who denatures the ethanol would be producer of the renewable fuel.*

b. How would RINs be generated?

A: *Under the described scenario, RINs would be generated by the party who denatures the ethanol and produces the renewable fuel. See 80.1126(d). If the petroleum refiner wishes to generate RINs, then the petroleum refiner would have to keep title to the ethanol throughout the described transaction.*

2.21 We are a marketer with an inventory of denatured ethanol stored at various commercial facilities and terminals. We do not produce or import ethanol. We are registered as a party who owns RINs. On September 1, 2007, do we assign RINs to our stored inventory?

A: No. Only a producer or importer of renewable fuel may generate RINs for volumes of renewable fuel that it owns on September 1, 2007. See 80.1126(d)(2).

2.22 Section 80.1151(b)(3)(vii) requires retention of additional information related to the details of RIN generation. What does this mean?

A: Companies vary in their internal recordkeeping practices and not all similar records will take identical form. Therefore, in several places in the recordkeeping section (80.1151) we have required that "additional" information be retained. We certainly do not wish to dictate how a company keeps each and every record, as this would present an unnecessary compliance burden. However, since one reason for retaining company records is to be able to produce them should an enforcement question arise, it is in a company's best interest to retain "additional information" that may fully explain the details of RIN generation as reported to EPA. These records must be presented to EPA upon request.

2.23 We are a producer of ethanol. If we have 10,000 gallons in inventory on September 1, 2007 and 25,000 came from our production facility A, 25,000 came from our production facility B, and the other 50,000 we own but received from various other producers, how do we assign RINs to the other 50,000?

A: As an ethanol producer or importer, you may assign RINs to the product you own on September 1, 2007. As far as how to handle the facility identification number fields in the RIN, you will want to consistently document and assign the other 50,000 RINs to one of your registered facilities as of September 1, 2007.

2.24 We are a producer of ethanol. We have ownership of renewable fuel that is in transit on September 1, 2007. How do we assign a RIN to that fuel?

A: As long as you actually own the fuel on September 1, 2007, it does not matter that it is in transit. As a producer, you may assign RINs to product you own on September 1, 2007. You may assign the RINs for ethanol that you own but that is in transit to one of your registered facilities.

3. **Transferring RINs with renewable fuel**

3.1 The final rule on page 23909 (Federal Register, volume 72) states that any non-obligated party that takes ownership of the renewable fuel with RINs will be required to transfer those RINs with a volume of renewable fuel. Does this refer to oxygenate blenders?

A: No, as long as the blender actually blends the renewable fuel into gasoline or diesel. In that case, the blender would be required to separate the assigned RINs from the blended renewable fuel, and could then transfer the RINs to any party without simultaneously transferring a volume of renewable fuel. See regulation Sections 80.1128(a)(3) and 80.1129(b)(2).

3.2 If an oxygenate blender must transfer RINs with a volume of renewable fuel, who are they transferring to, if they are the final/end-user?

A: If any oxygenate blender blends renewable fuel into gasoline or diesel, he is no longer required to transfer RINs and renewable fuel together.

3.3 Do third party marketers like X Company need to track RINs from the ethanol plant to the buyer?

A: If X Company takes ownership of ethanol along with assigned RINs, it would be required to register with the EPA and would be subject to the recordkeeping, reporting, product transfer document and attest engagement requirements of regulation Sections 80.1151(d), 80.1152(c), 80.1153 and 80.1164(c). The tracking required under the RFS rule involves only transfers of title (ownership), not transfers of custody. If X Company never takes ownership of ethanol with assigned RINs and does not participate in other ways in the RFS program (for example, through the purchase and sale of unassigned RINs), it would not be required to register with, or report to, EPA under the RFS program.

3.4 Will ethanol and biodiesel plants have to track the RIN all the way to the refiner, or just to the next owner of the renewable fuel?

A: Refer to the response to Question 3.3. Each party that owns assigned or unassigned RINs, including an ethanol or biodiesel production plant, is required only to keep records of and report transfers of ownership of those RINs its receives and that it passes to the next owner. See sections 80.1151 and 80.1152 of the regulation.

3.5 The RIN is too long to fit onto my bill of lading. What are my options?

- A: *An assigned RIN must appear in its entirety on product transfer documents (PTDs) identifying a transfer of ownership of a volume of renewable fuel. Substitute codes are not permitted. See regulation Section 80.1153. (In general PTDs would not include bills-of-lading, which are used for transfers of custody rather than transfers of ownership.) However, the PTD transferring the RINs can be a separate and parallel PTD from that used to transfer the renewable fuel to which those RINs are assigned. In this case, the PTD transferring the renewable fuel must include the number of gallon-RINs being transferred and a unique reference to the PTD which is transferring the assigned RINs, but need not list the actual RINs. See regulation Section 80.1153(a)(5)(ii). PTDs can be electronic, including computer spreadsheets.*
- 3.6 How do owners of the ethanol account for product samples taken at the plant and downstream relative to RINs? Likewise, how is standard product shrinkage (i.e. when ethanol is transferred to a terminal) handled relative to RINs?
- A: *In general, the RINs associated with small volumes removed for sampling and testing, or lost due to evaporation, leakage, or metering imprecision, remain valid for RFS compliance purposes. Small volume losses can be accommodated through the regulatory provision which allows up to 2.5 gallon-RINs to be transferred with each gallon of renewable fuel. See regulation Section 80.1128(a)(4). For larger volumes losses resulting from spills or other accidents, a provision exists for retiring the associated RINs. See regulation Section 80.1132.*
- 3.7 How does a marketer split RINs that go to downstream buyers (i.e. next owners like a refiner)?
- A: *Parties such as marketers that are required to transfer assigned RINs with renewable fuel are not required to align the number of gallon-RINs transferred with the number of gallons transferred for every transaction. Rather, the regulations require only that the number of assigned gallon-RINs (with a K code of 1) transferred with each gallon of renewable fuel be no more than 2.5. See regulation Section 80.1128(a)(4) and preamble discussion at page 23939, column 3. Within this limit, a marketer is free to allocate gallon-RINs to volumes of renewable fuel in whatever way he chooses, so long as an end-of-quarter check on the balance of RINs versus renewable fuel in inventory is met. See regulation Section 80.1128(a)(5).*
- 3.8 Does regulation Section 80.1128(a)(4) allow a marketer to change the K code from 1 to 2 and then not transfer the RIN with the renewable fuel as long as he sells the RINs to anyone by the end of the quarter?
- A: *Marketers who buy and sell renewable fuel without blending it into gasoline or diesel cannot separate RINs from volumes, and thus cannot*

change the K code from 1 to 2. All conditions under which a party can separate RINs from volumes are set forth in regulation Section 80.1129(b). However, a marketer can indeed decide not to transfer a particular RIN with a volume of renewable fuel so long as the end-of-quarter check described in regulation Section 80.1128(a)(5) is fulfilled.

3.9 Will non-obligated parties that can hold title to RINs be required to balance them each quarter?

A: Every party that owns assigned RINs must comply with the end-of-quarter check described in regulation Section 80.1128(b)(5). This provision ensures that RINs must be transferred with renewable fuel as renewable fuel moves through the distribution system. However, this provision applies to assigned RINs only (with a K code of 1). Any party can own any number of unassigned RINs (with a K code of 2) and unassigned RINs are not subject to any end-of-quarter check.

3.10 What happens if a marketer sells a batch with one RIN to two different refiners? Can he divide the RIN? If so, how?

A: The basic unit of compliance in the RFS program is the gallon-RIN. However, for shorthand we allow multiple sequential gallon-RINs to be represented by a single batch-RIN through the appropriate designation of the start (SSSSSSSS) and end (EEEEEEEE) codes in the RIN. As physical volumes of renewable fuel are split or merged, the assigned batch-RINs can likewise be split or merged in various ways, with the primary restriction being that no more than 2.5 assigned RINs can be transferred with every physical gallon of renewable fuel (see regulation Section 80.1128(a)(4)). See also question 3.7.

3.11 How can a marketer transfer RINs with a K code of 1 and fulfill the requirement that "No person may transfer a RIN that has a K code of 1 without transferring an appropriate volume of renewable fuel to the same person on the same day"?

A: A party may transfer any volume of renewable fuel to any other party without simultaneously transferring any assigned RINs to that same party. However, assigned RINs can only be transferred to another party in association with the transfer of a volume of renewable fuel. Under regulation Section 80.1128(a)(4), the ratio of assigned RINs transferred to gallons transferred can be anywhere between zero and 2.5.

3.12 The following is a two-part question:

a. We are a wholesaler of E100 and B100. We do not do any blending. We purchase and sell E100 and B100 and sell it to anyone who needs it. What in the RIN code must be changed to document the change of ownership?

A: Nothing changes in the RIN code to document a change of ownership.

b. What would the wholesaler put on his PTDs when he transfers title to another party?

A: Section 80.1153 describes the requirements for PTDs, which generally include the name and address of the transferor and transferee, the company registration number of each, the volume of renewable fuel being transferred, the date of the transfer, and information about any assigned RINs.

3.13 The following is a two part question. We are a marketer of ethanol products. Sometimes personnel at ethanol plants make mistakes as to the number of gallons being loaded or produced. How do we "recall" erroneous RINs if:

a. the number of gallons we receive exceeds the number of RINs?

A: PTD documents may be corrected to reflect the appropriate volume associated with the volume received. The additional volume with assigned RINs may be addressed with a second PTD.

b. the number of RINs exceeds the number of gallons we receive?

A: The parties (producers) selling ethanol to you have an obligation to transfer appropriate RINs to you. A producer who is also a marketer may assign up to 2.5 RINs per gallon of renewable fuel. A producer who is not a marketer may only assign RINs up to the renewable equivalence value (EV). If a company receives an excess number of RINs assigned to a gallon, then the producer would be in violation. To rectify this, a producer may ask a recipient to retire the excess RINs. There is a retirement code on the reporting form for RINs generated in error and that code should be used.

3.14 The following is a two part question.

a. We would describe ourselves as an ethanol marketer, but we import gasoline into one of the 48 contiguous United States. Does this make us an obligated party and, as an obligated party, are we able to separate RINs?

A: If a party is an importer of gasoline into the 48 contiguous United States, then that party is an obligated party. Section 80.1129(b)(6) allows an

obligated party to separate RINs they generated from volumes of renewable fuel, if the number of gallon-RINs separated is less than or equal to the annual RVO. This section applies to assigned RINs generated by the obligated party through the production or importation of renewable fuel. Section 80.1129(b)(6) does not cover marketers who buy renewable fuel with assigned RINs since these RINs were not generated by the obligated party. Therefore, an obligated party who also markets renewable fuel, must separate assigned RINs, not generated by the obligated party, from any renewable fuel acquired as stated in Section 80.1129(b)(1). The obligated party may use the separated RINs or transfer them.

However, if an obligated party is a marketer and is also an importer (or producer) of renewable fuel, per section 80.1129(b)(6), they may separate RINs which they generate when importing or producing the renewable fuel, only up to the associated RVO.

b. If the answer to part a. is "no," may I use my minority ownership in a cooperative refinery to be considered an obligated party, able to separate RINs?

A: *With regard to the second part of the question, the answer is "no." Typically, obligated parties are registered on a corporate level. Therefore, the obligated party would be the refinery on a corporate level rather than on an individual shareholder level.*

3.15 Are companies that are both producers and marketers of ethanol subject to the RIN transfer requirements of 40 CFR 80.1128(a)(5), or the more stringent requirements of 80.1128(a)(6)? These issues have surfaced because a number of independent gasoline marketers who blend ethanol as part of their normal business practices have indicated that they would rather not take ownership of RINs and not participate in the RFS program. Presumably, if such parties never take ownership of RINs, they would not have to register as regulated parties with the Environmental Protection Agency (EPA) as required under the RFS regulations and would, therefore, not be subject to RFS reporting requirements or to other enforcement-related requirements of the regulations, such as attest engagements (audits) and record-keeping requirements. We would like confirmation from EPA regarding this interpretation of the regulations, and also seek clarification as to whether companies that both produce and market ethanol are able to transfer ethanol with zero assigned RINs in the same manner as companies that are only involved in marketing operations.

A: *Under section 80.1128(a) of the RFS regulations, a party owning ethanol with assigned RINs cannot, (unless they are an obligated party, renewable fuel exporter, a person that converts renewable fuel into motor vehicle fuel, or a cellulosic ethanol producer), transfer RINs without transferring a volume of ethanol. This section also places a maximum number of RINs*

(2.5) that can be transferred with any gallon of renewable. The regulations, however, do not prohibit the transfer of ethanol from a marketer to another party, for example, an independent gasoline marketer, with no RINs attached. In other words, a marketer can transfer ethanol with anywhere from zero to 2.5 RINs attached to each gallon of renewable fuel. If a transaction is made where the marketer sells ethanol without RINs attached, the party purchasing the ethanol need not be registered with EPA as a regulated party if that party never owns any RINs during the course of the reporting period. Therefore, if an independent gasoline marketer who blends ethanol purchases ethanol without RINs from an ethanol marketer, and never owns RINs during a reporting period, then that gasoline marketer/blender need not be registered with EPA and need not comply with the reporting requirements and other enforcement requirements applicable to RIN owners, such as attest engagements (audits) and recordkeeping requirements as outlined in the regulations.

It is important to note however, that ethanol marketers are responsible to assure that RINs will be passed along to ethanol purchasers over the course of a reporting period, typically one quarter of a year. Any party owning ethanol with assigned RINs and covered under section 80.1128(a), typically a marketer of ethanol, must meet the RIN inventory requirements at section 80.1128(a)(5). These essentially oblige the ethanol marketer to transfer all RINs acquired during a quarter with an associated renewable fuel volume, except for the RINs associated with the volume which is held in the marketer's inventory at the end of the quarter. In other words, all RINs acquired by the marketer must be transferred to some purchaser during the quarter, except for those RINs associated with end-of-quarter inventory.

Unlike marketers, ethanol producers have certain additional responsibilities regarding the transfer of RINs with product. Under section 80.1128(a)(6), producers (and importers) of renewable fuels must transfer ownership of the RINs associated with a volume of renewable fuel whenever that renewable fuel is sold. Accordingly, it is not possible for an ethanol producer to transfer ethanol without associated RINs, and all parties to whom they transfer ethanol must be registered with EPA to participate in the RFS program.

You asked for clarification regarding the RIN-transfer requirements that apply to a company that both produces and markets ethanol. EPA believes that the RFS regulations are ambiguous in this regard. In interpreting the regulations at this time, EPA is mindful of both the original purpose of the more restrictive RIN-transfer requirements applicable to producers, which was to minimize the possibility of short-term hoarding, and the benefits to marketers and distributors of ethanol that is reflected in the more flexible requirements of 40 CFR 80.1128(a)(5). See 72 Fed. Reg. 23939 - 23942.(May 1, 2007), EPA is

also cognizant of the concerns of some gasoline marketers who may wish to purchase ethanol without associated RINs, so as to avoid the costs associated with the registration, reporting and attest engagement requirements of the RFS program. Finally, EPA's wish throughout the implementation of the RFS program has been to minimize disruption of currently-established business patterns. Accordingly, EPA does not wish its program to act as a disincentive to firms that wish to both produce and market ethanol. Balancing these various concerns, EPA is interpreting the RFS regulations to allow any producer that is also in business as an ethanol marketer, to utilize the more flexible RIN-transfer requirements of 40 CFR 80.1128(a)(5) for all of the ethanol that they sell. In order to qualify for this treatment, the producer must market ethanol of other producers as well as its own. Thus, producers who only market and sell the ethanol that they produce must comply with the RIN transfer requirements of 40 CFR 80.1128(a)(6). Producers who market and sell their own ethanol and that of others must comply with the RIN-transfer requirements of 40 CFR 80.1128(a)(5).

Given our view of the regulations as explained above, we believe there is more than sufficient flexibility for gasoline marketer/blenders who do not want to participate in the RFS program to purchase ethanol without RINs. Such companies would therefore not have to participate in the registration/reporting requirements and other enforcement requirements of the RFS program. EPA also recognizes that there are many gasoline marketers that blend ethanol who are very enthusiastic about participating in the RFS program. Nothing in this clarification of the regulations changes their ability to participate now or in the future.

4. Separating RINs from renewable fuel

4.1 Does blending biodiesel into agricultural diesel (or other nonroad diesel such as NRLM diesel) allow the RIN to be separated?

A: *EPA believes that most fuel that can be used as motor vehicle fuel and which otherwise meets the definition of “renewable fuel” (such as biodiesel and ethanol) will ultimately be used as motor vehicle fuel. Therefore, producers of such products can assume that they meet the definition of “renewable fuel” and can assign RINs to them without tracking their ultimate use.*

However, if fuel with assigned RINs is actually blended into gasoline or diesel that is known to be destined for use in a nonroad application such as agricultural equipment, the presumption that led the fuel producer to assign RINs to the product is no longer valid. Such fuel cannot be considered a motor vehicle fuel and thus is not in fact a “renewable fuel” that is valid for RFS compliance purposes. In such cases, the blender should treat the RINs associated with the blended fuel in the same way as for fuel with assigned RINs that is used in a heater or boiler (see question 4.2). See also preamble Section III.B.1 and Summary and Analysis of Comments Sections 3.1.2 and 3.1.4.

4.2 If renewable fuel is produced (or imported) and sold as motor vehicle fuel, what happens if it is actually used in a heater or boiler? What if, instead of a heater or boiler, the fuel is actually used in a non-road vehicle?

A: *Renewable fuel is defined as “motor vehicle fuel” and does not include fuel used in heaters and boilers or in non-road vehicles. However, due to the operation of reasonable presumptions, RINs may be generated for fuel that is ultimately used in a heater, boiler or non-road vehicle, and use of those RINs for compliance purposes depends on the circumstances.*

If a producer or importer transfers fuel to another party with the intent or expectation that it will be used in a heater, boiler or non-road vehicle, the producer or importer cannot generate RINs for that volume. Likewise, fuel used onsite in a boiler or heater by a renewable fuel producer or importer is not a renewable fuel in the context of the RFS program, and thus no RINs can be generated for that volume.

However, if a producer or importer transfers fuel to another party with the intent or expectation that it will be used as a motor vehicle fuel, and such fuel otherwise meets the definition of “renewable fuel,” RINs will

legitimately be generated to represent that volume. Nevertheless, it is possible that the fuel would subsequently be used in a heater, boiler, or non-road vehicle. Since such fuel is not considered motor vehicle fuel or, therefore, renewable fuel, in general the RINs generated to represent that fuel should not be used for RFS compliance purposes. If the party who used the renewable fuel in a heater, boiler or non-road vehicle did not receive RINs with the renewable fuel (for example, if RINs were separated from the fuel upstream), we would not require any further action from the party who used the renewable fuel in a heater or boiler and the separated RINs could be used for compliance purposes by the upstream party that separated them or to whom they were transferred, provided that they were not aware that the fuel would ultimately be used in a heater, boiler or non-road vehicle. However, if the party that used the fuel in a heater, boiler or non-road vehicle received assigned RINs with that fuel, the party cannot use the RINs for compliance purposes or transfer those RINs to any other party. Such RINs would be considered "invalid" under regulation Sections 80.1131(a)(6) and 80.1101(d)(5) and should be retired according to 80.1129(e).

4.3 Can an oxygenate blender separate RINs from batches of renewable fuel and participate in trading?

A: Yes, if the blender actually blends renewable fuel that it owns into gasoline or diesel. Separated RINs then become unassigned RINs that can be traded without renewable fuel. See regulation Section 80.1129(b)(2). See also questions 3.1 and 3.2.

4.4 A refinery can produce non-ester renewable diesel by processing renewable feedstock through a distillate hydrotreater. In this situation, the refinery must assign RINs based on the feed volume. The refiner is then both an obligated party and a renewable fuel producer and as such can separate the RIN immediately. Is this correct?

A: Yes, since under regulation Section 80.1129(b)(1) all obligated parties must separate RINs from batches they own. However, an obligated party can only separate RINs that it generates from volumes of renewable fuel if the number of gallon-RINs separated is less than or equal to its annual RVO. See regulation Section 80.1129(b)(6).

4.5 Do we have to keep some type of spreadsheet listing the assigned RINs and the "flipping" of the K code to designate that we stripped them?

A: Under the regulations at Section 80.1151, a party that separates RINs from volumes of renewable fuel is subject to certain recordkeeping requirements. There is no specific recordkeeping requirement to show the timing or conditions under which the K code for a RIN was changed from

1 to 2. However, RINs received with a K code of 1 that were separated by a party should be reported with K codes of 2. The format of records (e.g. spreadsheets versus paper records) is left to the discretion of the party.

4.6 Since they receive 1.5 RINs per gallon, can a biodiesel plant separate the RIN from a physical gallon?

A: No. Producers and importers of renewable fuel must assign all RINs generated to renewable fuel, and transfer those RINs when transferring volumes of renewable fuel to another party. See section 80.1126(e)(1) of the regulation. There are limited exceptions to this rule that do not apply to biodiesel, including the exception for producers or importers of cellulosic biomass ethanol or waste-derived ethanol. See section 80.1126(e)(4) and the response to Question 2.6.

4.7 I am a small refiner who is exempt from meeting the standard. Am I allowed to separate RINs from batches of renewable fuel?

A: Exempt small refiners and refineries are not obligated parties. As a result, they cannot separate assigned RINs from volumes of renewable fuel upon ownership of the renewable fuel. However, if the exempt small refiner/refinery blends renewable fuel into gasoline or diesel, they are operating as a blender and can separate the RINs associated with the renewable fuel added to the blended product. A small refiner/refinery that waives its exemption becomes an obligated party and must also separate assigned RINs from volumes of renewable fuel upon ownership.

4.8 If I import ethanol for someone else, and they blend the ethanol into gasoline, do I get the RINs?

A: In general, all rights and responsibilities under the RFS program that are tied to renewable fuel are based on ownership of fuel, not custody. Thus if you own the ethanol even though another party blends it into gasoline, then you would separate the RINs associated with the ethanol and would retain or transfer them to another party depending on the situation. If, however, your involvement was only to physically supply the ethanol while never taking ownership of it, then you would not own the RINs and could not separate them upon blending - that would be the responsibility of the owner of the ethanol.

4.9 At our terminal, we transfer ownership of ethanol to our customers simultaneously with blending that ethanol into gasoline. Who owns the RINs?

A: A RIN assigned to a volume of renewable fuel is separated by the party that owns that volume of renewable fuel at the time of blending. If a downstream customer is the owner of the volume of renewable fuel when it

is blended into gasoline or diesel, he will own the separated RINs and be subject to all the registration, recordkeeping, and reporting requirements. In the case of a blender and a downstream customer who might both lay claim to the right to separate any assigned RINs, these two parties would need to come to agreement between themselves regarding which party will own the separated RINs.

4.10 Are refiners required to separate RINs from renewable fuel? If a refiner doesn't want the RINs, why can't he just let the blender have them?

A: Obligated parties are required to separate a RIN from a volume of renewable fuel if they take ownership of that volume. See regulation Section 80.1129(b)(1) and the limited exception in regulation Section 80.1129(b)(6). The requirement to separate RINs, rather than merely giving obligated parties the right to separate RINs, is intended to promote the availability of RINs on the open RIN market. Given that most ethanol is consumed in the midwest, the program is intended to promote access to RINs by obligated parties elsewhere that may lack access to renewable fuel.

An obligated party that separates a RIN from a volume of renewable fuel has the option of transferring that RIN to a blender in parallel with a transfer of renewable fuel. However, in this case, the RIN would be an unassigned RIN with a K code of 2, and would be transferred on a PTD separate and independent from that used to transfer the renewable fuel.

4.11 I am a marketer and a blender. If I receive 10,000 RINs with 10,000 gallons of ethanol that I buy from a producer, can I sell 5000 gallons without RINs and blend 5000 gallons but, in essence, give (from me as a marketer) all 10,000 RINs to me (as a blender)?

A: Yes, under section 80.1128(a)(4) of the regulation, you may transfer anywhere from zero to 2.5 assigned RINs with each gallon of renewable fuel transferred to another party. We interpret the regulations to also allow a party that is both a marketer and a blender of renewable fuel to blend renewable fuel with zero to 2.5 RINs per gallon. Therefore, referring to your example, you may transfer 5000 gallons of renewable fuels to others with zero RINs. You may also blend 5000 gallons of renewable fuel with 2.5 assigned RINs per gallon. Upon blending the renewable fuel, the assigned RINs must, pursuant to section 80.1129(b)(2), be separated and may be traded separately. At the end of the quarter, you will have met your inventory obligations under section 80.1128(a)(5), since all the assigned RINs associated with the original 10,000 gallons will have become separated, and you will own no more assigned RINs than your renewable fuel inventory (which is zero in your example).

4.12 If a marketer purchases E100 or B100 and becomes the blender, does he retain the RIN? Can that marketer trade those RINs on the open market? What other purpose would those RINs serve the marketer if they cannot be traded?

A: A party that converts renewable fuel such as B100 or E100 (which in reality will be E95 due to the presence of a denaturant) into motor vehicle fuel through blending with conventional gasoline or diesel must separate the RINs associated with the renewable fuel. See regulation Section 80.1129(b)(2). The blender must change the K code in the RINs from 1 to 2 to re-designate the RINs as unassigned RINs which can be freely traded without renewable fuel.

4.13 Under regulation at Section 80.1129(b)(6), if an obligated party generates some RINs, his RVO determines the maximum number of self-generated RINs that he can separate. However, the RVO isn't determined until the end of the year while the separation of RINs occurs throughout the year. Will EPA consider it a violation if an obligated party separates too many self-generated RINs because he overestimated his RVO in the middle of a year?

A: Yes. Obligated parties should take into account the uncertainty in RVO estimates prior to the end of the year. However, if an unforeseen disruption to gasoline production results in a refiner's estimated RVO being significantly different from its actual RVO, EPA may consider extenuating circumstances in exercising enforcement discretion.

4.14 If a company imports gasoline into the 48 contiguous United States, then it is an obligated party. If the company also imports renewable fuel (e.g. ethanol), then it generates RINs. For purposes of this question, assume that the company separates RINs by blending the ethanol into its own imported gasoline. The company can only separate RINs that it generates up to the level of its RVO. Assuming the company imports much more ethanol than gasoline, its RVO will be much smaller than the number of RINs it generates. What happens to the RINs the company cannot separate?

A: RINs that cannot be separated by the company per regulation section 80.1129(b)(6) can be transferred with volumes of ethanol when the company transfers that ethanol to another party. This is consistent with the requirements applicable to parties that only import ethanol: such parties cannot separate any RINs they generate for imported volumes, and must transfer those RINs when the party transfers ethanol to the next owner. (Also see Question 3.14.)

4.15 The following is a two-part question:

a. We are a blender. If we purchase a load of B100 (100% biodiesel) over the quarter and sell 200 loads of B5 (5% biodiesel), what is the easiest way for us to complete the RIN activity report as it relates to separation of RINs?

A: *Please refer to the RFS Activity Report, Form Number RFS0100, posted at <http://www.epa.gov/otaq/regs/fuels/rfsforms.htm>. Detailed instructions for completing the form are available on our website.*

b. Our quarterly report would indicate the purchase of the load of B100. What if we decide to blend 50% of that B100 with dyed (non-road) diesel. How do we document the retirement of those RINs?

A: *Retirement of those RINs is part of the information supplied on both the RFS Activity Report, Form Number RFS0100 and the RIN Transaction Report, Form Number RFS0200. Detailed instructions for completing the form are posted at <http://www.epa.gov/otaq/regs/fuels/rfsforms.htm>.*

4.16 Should a biodiesel blender who blends B5 into diesel for a party that they know will use it for a non-road use separate or retire the associated RINs?

A: *The RINs should be retired. Renewable fuel is defined as “motor vehicle fuel,” and does not include fuel intended for non-road uses. Also refer to the Question 4.2 and our response.*

5. Market for separated RINs

5.1 Will non-obligated parties in possession of RINs create a RIN shortage?

A: *The in-use production volumes of renewable fuel are expected to exceed the requirements of the RFS program by a substantial margin. As a result, we expect there to be a surplus of RINs for at least the first few years of the program, and this surplus means it is highly unlikely that non-obligated parties could acquire and retain enough RINs to cause a shortage. In addition, we expect refiners and other obligated parties to take ownership of renewable fuel with assigned RINs directly from producers in a majority of cases. Nevertheless, EPA will monitor program implementation to ensure that RINs that have been generated are making their way to the obligated parties that need them.*

5.2 If blenders either opt not to trade or are not allowed to trade, who will be responsible for tracking these RINs through the system?

A: *The blender must submit quarterly RIN transaction reports to EPA that will document all RIN transactions, including RIN purchases, RIN sales, and expired RINs. RINs that are reported purchased and thereafter are not sold will be identifiable through these reports. See regulation Section 80.1152(c).*

5.3 Which non-obligated parties are allowed to participate in the credit trading program? Producers (with extra value RINs), oxygenate blenders, marketers?

A: *Anyone can participate in the RIN trading program, subject to the requirement that the party first register with the EPA and then adhere to other regulatory requirements, including submitting required reports (such as quarterly reports on RINs held).*

5.4 Can RINs at a plant expire? Or does expiration only refer to RINs held by obligated parties?

A: *Expiration of a RIN is tied to the amount of time that has elapsed since the RIN was generated by the producer and not to who owns the RIN. RINs are valid for compliance purposes for the compliance year in which they were generated (i.e. the YYYY code in the RIN) or the following year. No matter who owns a RIN at the end of its valid life, it expires if it is not used for compliance purposes for the year generated or the following year. See regulation Section 80.1127(a)(3). Since non-obligated parties (other than renewable fuel blenders) must transfer assigned RINs with renewable fuel*

(see section 80.1128(a)(3)-(5)), it is expected that most RINs that expire will do so in the hands of obligated parties and renewable fuel blenders.

This question raises the associated issue of when a RIN is generated. RINs are generated when a batch is created by the producer and are assigned when the batch is transferred. See section 80.1126(d)-(e) of the regulation. Since when a batch is created is entirely under the control of the producer, we expect that producers will create batches in a timely manner that will not result in their expiration prior to their transfer to downstream parties.

5.5 A RIN generated in 2007 is valid for compliance purposes for both 2007 and 2008, but obligated parties are given until February, 2009 to demonstrate compliance for 2008. How do they use a 2007 RIN that expired at the end of 2008 for compliance purposes if they don't acquire that 2007 RIN until January of 2009?

A: *The expiration date of a RIN refers only to the calendar year for which it can be used for compliance. There is no limitation or expiration date for trading purposes other than the deadline for the obligated party's annual compliance demonstration report. Thus a RIN generated in 2007 can continue to be traded in 2009, but if acquired in 2009 by an obligated party it could only be used for a 2008 compliance demonstration.*

5.6 Who reports expired RINs?

A: *Every party must report RINs owned that have expired as of the end of the fourth quarter of each year. This report is due on February 28 of the following year and will identify RINs that expired in the fourth quarter of the previous calendar year. Since RINs always expire at the end of a calendar year, all expired RINs will be reported.*

Since obligated parties have until February 28 to submit their annual compliance demonstrations to EPA (or, for 2007 compliance only, May 31), we allow RINs to be traded between January 1 and February 28 even if they were generated two year previous. This means that RINs that are reported by a party as expired on December 31 can still be transferred to another party after December 31. Designating a RIN as expired is only a means of categorizing the RIN and does not mean that the RIN has been relinquished, frozen, or surrendered to the EPA. Since this requirement may cause some confusion, we intend to promulgate a technical correction to the RFS rule to eliminate the requirement that RINs be reported as "expired."

5.7 Can a non-cellulosic ethanol producer have unassigned RINs?

A: *Any party can own unassigned RINs (with a K code of 2). However, only producers or importers of cellulosic ethanol can designate a RIN as unassigned immediately upon generating that RIN. In this case, the producer or importer is limited in the number of RINs they can designate as unassigned. See regulation Section 80.1126(e)(4).*

5.8 A tank of ethanol has become contaminated and must be disposed of. How would we treat this situation for RIN reporting under the RFS program?

A: *The RFS regulation envisions various scenarios under which RINs might be retired. The reporting section in the regulation names a few examples: retirement in satisfaction of enforcement action, spill, and use in a boiler or heater. We recognize that there are various other situations where RINs may need to be retired. Ethanol that has become contaminated and that requires disposal is one such situation where the RINs would be retired. The reporting forms contain a field for retired RINs. Reporting forms and instructions are now available on our website at <http://www.epa.gov/otaq/regs/fuels/rfsforms.htm>.*

5.9 Can anyone own RINs and participate in the RIN market?

A: *There is no restriction on who may own RINs. Anyone can own RINs, including private citizens. However, parties who own or intend to own RINs must register with us under 80.1150(c) and recordkeeping, reporting and attest engagement requirements related to RIN transactions apply. See 80.1151(d), 80.1152(c) and 80.1164(c).*

5.10 Biodiesel may be blended into non-road diesel or denatured ethanol may be blended into gasoline designated for non-road use. How are the RINs retired and reported to EPA by the blender?

A: *The blender would report the RIN purchase transaction and then would report the RINs as retired when he blends the renewable fuel associated with the RINs into the non-road fuel. The appropriate forms to use are the RFS Activity Report, Form Number RFS0100, and the RFS RIN Transaction Report, Form Number RFS0200. These forms and instructions are located on our website at <http://www.epa.gov/otaq/regs/fuels/rfsforms.htm>. Also refer to the regulation at sections 80.1152(c)(1)(x) and (c)(2)(xii) for guidance on retirement of RINs. In the case of the same RINs transferred, mistakenly or otherwise, to two or more parties, all such RINs, by all parties holding them, should be reported as retired unless EPA determines that some portion of them are valid..*

6. Obligated and nonobligated parties

6.1 Are gasoline blenders no longer considered obligated parties? I have seen references to gasoline refiners and importers only. Gasoline refiners may also serve as blenders.

A: *Any party that produces gasoline (broadly defined at 80.1107(c)) from non-renewable feedstocks or blendstocks is an obligated party under the RFS program. This would include gasoline blenders unless their sole activity is adding renewable fuels to gasoline. See sections 80.1106(a)(1) of the regulation. For more information about small refiners, see the answer to Question 6.6 below.*

6.2 I am a small volume renewable fuel producer, and so should be exempt from the requirement to generate RINs and assign them to renewable fuel that I produce. Do I need to submit a form to EPA proving that I produce less than 10,000 gallons a year?

A: *No. Small volume producers are automatically exempt. However, if a small volume producer chooses to register as a renewable fuel producer under the RFS program, they will be subject to all the regulatory provisions that apply to all renewable fuel producers, including the requirement to assign RINs to batches. See regulation Section 80.1126(b).*

6.3 Who is a renewable fuel producer? Will the EPA recognize ethanol marketing companies as producers? Can the term "producer" apply to a marketing company who represents various producing plants?

A: *Renewable fuel producers are parties that produce renewable fuel (i.e. convert a renewable feedstock into a renewable fuel). RINs must be generated by the producer and assigned to renewable fuel by the time title to the renewable fuel is transferred from the producer to another party such as a marketer. See regulation Sections 80.1126(d)(1) and (e)(2). In turn, the marketer must transfer assigned RINs to the party to whom the marketing company sells the ethanol.*

Marketing companies who "represent" renewable fuel producers are not producers unless the marketing company produces renewable fuel, and such a company would only generate RINs for that part of the renewable fuel that they actually produced. Ethanol marketing companies that do not produce or import renewable fuels are not renewable fuel producers or importers and cannot generate RINs.

6.4 Is an ethanol plant that splash blends into gasoline an obligated party?

A: *If a facility only blends ethanol into gasoline, they are not an obligated party and thus do not have a Renewable Volume Obligation (RVO). However, they are still regulated parties and are thus subject to the registration, recordkeeping, and reporting requirements.*

6.5 The following is a two-part question about the responsibilities of exporters.

a. We are a foreign company that markets ethanol. We do not produce ethanol, nor do we import it into the U.S. What is our obligation when we move product (export) out of the U.S.?

A: *Section 80.1130 describes the responsibilities of exporters. Note that if any party owns renewable fuel that is exported from the region described in 80.1126(a) [currently the 48 contiguous United States, although Hawaii has requested to opt in], sufficient RINs must be acquired to offset an RVO representing the exported fuel. There are also registration, recordkeeping, reporting, and attest engagement requirements applicable to exporters, and set forth at 40 CFR 80.1150(a), 80.1151(a), 80.1152(a) and 80.1164(a).*

b. How do we figure out batch and facility numbers for reporting purposes?

A: *Batch numbers are 5-digit numbers that are part of the RIN and are described in 80.1125(e). Unless you are an importer or producer of renewable fuel, you do not need a facility number. Renewable fuel exporters do, however, require a company identification number. See 40 CFR 80.1150 (a)&(c).*

6.6 We are best described as a "terminal blender" or "terminal refiner." We do not operate a distillation tower and we do not process crude oil. We produce gasoline from blending components that have been previously certified by another refiner and that are not considered "gasoline" under EPA's definition. We produce less than 75,000 barrels per day and are not owned or affiliated with anyone else. Are we a "small refinery" under the RFS regulation and not an obligated party until 2011, unless we opt into the program?

A: *No. You are an obligated party now. EPA's definition of "small refinery" is identical to the definition used in EPCRA, as it was intended to implement the EPCRA provisions. EPCRA clearly treats refineries separately from blenders. (See EPCRA sections 211(o)(3)(B)(ii)(I) and (o)(2)(A)(iii)(I) for examples of this separate treatment.) EPA reads the EPCRA definition of "small refinery" to specifically exclude entities such as yours that produce gasoline solely through blending.*

7. **Renewable Volume Obligations (RVO)**

7.1 If a specific refinery is the producer of renewable diesel, I assume they need a facility ID number, but we can use the RINs for aggregate company compliance.

A: *Yes. The facility ID number is used to generate the RIN, but the RIN can be separated and used for compliance on a company-wide aggregate basis, subject to any applicable restrictions in the regulations such as regulation Sections 80.1106(c) and 80.1129(b)(6).*

7.2 If an ethanol producer imports a truckload of gasoline, they are an obligated party and have an RVO. Does this mean that they can separate RINs from all the ethanol they produce?

A: *Not necessarily. Obligated parties can only separate RINs they generated for renewable fuel they produced or imported up to the level of their RVO. They are not allowed to separate additional RINs that they generated. However, obligated parties must separate all RINs from renewable fuel that they own if they did not generate those RINs. See regulation Sections 80.1129(b)(1) and (b)(6).*

7.3 Who actually calculates the RVO? The refinery or EPA?

A: *Each obligated party calculates the RVO itself, based on its annual gasoline volume. See regulation Sections 80.1152(a)(1)(v) and (vi).*

7.4 CARBOB doesn't appear in the list of fuels comprising the RVO (regulation Section 80.1107). However, in the Preamble, EPA mentions RBOB and CBOB. Is CARBOB considered a subset of RBOB?

A: *The regulations include in the list of products to be included in the volume used to calculate the RVO "Any gasoline, or any unfinished gasoline that becomes finished gasoline upon the addition of oxygenate, that is produced or imported to comply with a state or local fuels program." CARBOB would fall under this category. See regulation Section 80.1107(c)(6).*

7.5 To whom does the 20% limit on previous year RINs apply?

A: *This limit applies only to obligated parties. Under regulation Section 80.1127(a)(2), no more than 20% of the gallon-RINs used by an obligated party to meet its RVO can be previous-year RINs (having a YYYY code that is one year earlier than the year for which the RIN is being used to show compliance with an RVO).*

7.6 What happens if, after submitting his annual compliance demonstration report, a refiner discovers that he exceeded the 20% cap on the use of previous-year RINs in meeting his RVO? Is he required to replace those RINs with new valid RINs at the old market price?

A: *Annual compliance demonstrations must include a showing that the RINs used to comply with the RVO include no more than 20% previous-year RINs. If it is determined that this showing was incorrect due to either a mathematical error or the discovery that some of the current-year RINs were invalid, or for any other reason, the obligated party must revise the compliance demonstration by adding additional current-year RINs to the compliance demonstration until the 20% maximum is met. If sufficient current-year RINs are not already owned by the obligated party, he will need to acquire them through transfers from other parties. If the obligated party cannot acquire sufficient additional current-year RINs to meet the 20% criterion, he may be able to reduce the number of previous-year RINs used below the 20% level and then carry a deficit into the next year.*

If a party discovers an error and must submit a corrected report, it may download the appropriate form and instructions from our website at <http://www.epa.gov/otaq/regs/fuels/rfsforms.htm>. There is a field that the reporting party marks for resubmissions.

7.7 It appears we are creating an automatic non-compliance period for September, 2007. If I own ethanol on September 1, 2007, it will not have assigned RINs. As an obligated party, I will be blending this ethanol into gasoline at my terminal, but I won't be getting any RINs for that ethanol.

A: *It may be the case that some ethanol blended into gasoline at the beginning of the program will not have assigned RINs. However, the RVO is determined annually, not quarterly or monthly, and in general ethanol purchased after September 1, 2007 will have assigned RINs. Obligated parties can also acquire RINs in the first few months of 2008 that can be used to demonstrate compliance with their 2007 RVO.*

8. Company and Facility Registration

8.1 When will the EPA registration forms be ready to obtain the plant and facility ID numbers?

A: Registration forms may be submitted any time after May 1, 2007, the publication date of the final RFS rules. See regulation Section 80.1150(a). Registration forms and instructions are linked to our RFS page at <http://www.epa.gov/otaq/renewablefuels/>. Potential registrants can fill the form out on the web site, submit it electronically to EPA and print out a copy which then must be signed by the responsible corporate officer and sent to EPA (directions for sending are on the forms). When EPA receives the signed copy of the registration, EPA will email the registrant with confirmation of registration and an appropriate ID number.

8.2 If my company and facilities are already registered with EPA under another program, do I have to register for RFS?

A: No, but you are responsible for updating your company or facility information within 30 days of a change. See regulation Section 80.76(e)(1). Registration forms and instructions are linked to our RFS page at <http://www.epa.gov/otaq/renewablefuels/>.

8.3 If my company or facility information changes, how do I correct that in the EPA registration system?

A: You are responsible for notifying EPA of any changes to your information. You may do so by filing the online registration form indicating that you are updating an existing registration, and mailing a printed copy of the form to the EPA.

8.4 How will I know that my registration has been processed by EPA?

A: EPA will provide you with company and facility ID numbers after we have received a mailed copy of your registration form(s). Since you need these numbers prior to engaging in transactions involving RINs, it is advisable to register as early as possible.

8.5 Will third party marketers have different registration forms to complete than producers?

A: No. The registration form for third party marketers is the same form as the producer registration form. However, third party marketers are only

required to obtain an EPA company identification number and not a facility identification number.

8.6 Could a marketing company register as a producer with the EPA to represent multiple plants?

A: No. Each renewable fuel producer must register and is responsible for generating RINs (with an exception for some producers/importers that produce or import less than 10,000 gallons of renewable fuel each year).

8.7 What business activity should producers and marketers register under?

A: Producers and marketers should register as RIN owners and, as appropriate as an ethanol producer/importer, biodiesel producer/importer, and under any other category that applies to them. Registration is available on-line at <http://www.epa.gov/otaq/regs/fuels/fuelsregistration.htm>. If a party is unsure how to register after reviewing the forms and instructions, we have staff who can assist them and their contact information is given on the webpage.

8.8 Are plants blending E-85 considered oxygenate blenders?

A: Such parties should register as RIN owners. See our response to Question 8.7 regarding availability of registration forms, instructions, and assistance.

8.9 Must an importer of renewable fuels register with EPA for each facility that it imports to?

A: Yes. Such a party should register each import facility or the facility where the denaturant is added. See section 80.1150(b) of the regulation.

8.10 What qualifies as a facility for an importer – e.g., the receiving port, the storage tank, or both?

A: In order to be registered, the facility must have a name and a physical street address. For example, one cannot register its facility as “Port of Baltimore,” but may register a terminal facility located at an address within the Port of Baltimore. Registration forms, instructions, and staff contacts for assistance are available on our website at <http://www.epa.gov/otaq/regs/fuels/fuelsregistration.htm>.

8.11 If ethanol is imported from Brazil and the denaturant is added in Brazil, does the Brazil facility need to register?

A: *No, but the importer of the ethanol must register.*

8.12 Do terminals need to register?

A: *Terminals do not need to register. However, terminals that engage in activities that require registration must be registered. For example, if the terminal takes ownership of RINs, then it must be registered as a RIN owner.*

8.13 My plant makes ethanol, but only through recycling contaminated batches of existing ethanol ("waste" ethanol), not through fermentation. Do we need to register under the RFS program? Are we subject to reporting requirements?

A: *The RINs for the contaminated ethanol should have been retired. Assuming they have been, then you would be a renewable fuels producer, subject to registration as a producer and responsible for generating and assigning RINs. You would also be subject to recordkeeping, reporting, and attest engagement requirements. Any production claimed as "waste derived" would have to undergo certification, including an engineering review, under section 80.1155 of the regulation.*

9. Recordkeeping and Product Transfer Documents (PTDs)

9.1 How is a Product Transfer Document defined? Must it be an invoice, bill of lading (BOL), or can it be either?

A: *The regulations do not specify the form of a product transfer document (PTD), but do include a list of information that must appear on the PTD. See regulation Section 80.1153(a). In the context of the RFS program, PTDs must identify a transfer of ownership of a volume of renewable fuel. In general this would mean invoices. PTDs would in most cases not include a bill of lading, which is used primarily for a transfer of custody rather than a transfer of ownership.*

9.2 As RINs are transferred, do they have to be attached to a PTD (i.e. printed on a BOL), or can they be transferred in an electronic spreadsheet that references a PTD?

A: *The RIN must appear in its entirety on PTDs identifying a transfer of ownership of a volume of renewable fuel. (In general PTDs would not include BOLs, which are used for transfers of custody rather than transfers of ownership.) However, the PTD transferring the RINs can be a separate and parallel PTD from that used to transfer the renewable fuel to which those RINs are assigned. PTDs can be electronic, including computer spreadsheets. See regulation Section 80.1153(a)(5).*

9.3 If I am an oxygenate blender who purchases directly from a renewable fuels producer, RINs are transferred with ownership of the batch. Therefore, I will be in possession of the RINs. How will these RINs be accounted for in my records?

A: *You must keep a database of all RINs that you take ownership of at any time during a compliance period, and report those RINs to EPA quarterly. See regulation Sections 80.1151(d) and 80.1152(c).*

9.4 The regulations at Section 80.1151(b)(5) say that producers must keep “records related to the production or importation of renewable fuel that the renewable fuel producer or importer designates as motor vehicle fuel and the use of the fuel as motor vehicle fuel.” What does this mean?

A: *This requirement is limited to cases in which a producer or importer wants to separate assigned RINs from a volume of renewable fuel under the provisions at regulation Section 80.1129(b)(4). If the renewable fuel that the producer or importer produces or imports can be used in its neat (unblended) form, it can be designed a motor vehicle fuel without being blended with conventional gasoline or diesel. In order to claim the right to separate the RINs that have been generated and assigned to such fuel,*

the producer or importer must retain records demonstrating that the renewable fuel has been used as motor vehicle fuel in its neat form.

9.5 Can RIN tracking and transfer be handled completely electronically? If so, can we choose the software and the report format?

A: *You may keep the records in any format you wish. However, you must be able to provide readable copies to EPA representatives upon request and you must retain records and the means to read them for at least five (5) years. You must either be able to convert the records to a readable format or provide them in a usable electronic or paper format as requested by EPA. (For the purpose of reporting, you may use any commercially available format or comma delimited-text. Please refer to Section 10 of this Q&A document – Reporting and the EPA’s Central Data Exchange.) Note that on product transfer documents (PTDs) (which are required when ownership of a renewable fuel is transferred to another party), certain information may be conveyed to some parties through the use of product codes; however, information regarding assigned RINs transferred with the renewable fuel must always be included on the PTDs. See regulation Section 80.1153(a)(5) and (b).*

9.6 If there's a partial gallon on the BOL, how do companies handle rounding when tracking RINs?

A: *The number of assigned gallon-RINs being transferred by parties other than renewable fuel producers or importers need not correspond exactly to the number of gallons being transferred. See regulation Section 80.1128(a)(4). Thus in general the presence of a partial gallon on a PTD will not affect the tracking of RINs. For producers and importers of renewable fuel who are required by regulation Section 80.1128(a)(6) to transfer a specified number of gallon-RINs with each gallon of renewable fuel, partial gallons can be rounded to the nearest whole gallon so long as the number of renewable fuel gallons is consistent with the number of gallon-RINs.*

9.7 A marketer communicates RINs transferred to a buyer via the invoice. Is it possible for the invoice to follow the transfer of title to the buyer by a few days? Must the same PTD be used to transfer the RINs and the renewable fuel volume?

A: *The PTD may take the form of an invoice, bill of lading, or other document meeting the requirements of section 80.1153 of the regulation. The PTD identifying the RINs must be transferred to the buyer on the same day as the transfer of title of the fuel. Separate PTDs may be used, but the PTD transferring the fuel must reference the PTD transferring the RINs.*

9.8 Are PTDs given to third party terminals and pipelines by obligated parties and that reflect custody transfers only, required to identify RINs?

A: No, such PTDs are not required to identify RINs. PTDs consistent with 80.1153 are required only for transfers of ownership of renewable fuel.

9.9 The RFS regulation requires that, where RINs are transferred via a separate document from the PTD used to transfer ownership of the renewable fuel, the PTD transferring the fuel must state the number of gallon-RINs being transferred and must also have a unique reference to the PTD which is transferring the assigned RINs. What does EPA require for a "unique reference?" See section 80.1153(a)(5)(ii).

A: There is no EPA-prescribed method for a unique reference. The intent of the unique reference is to tie the two PTDs together - i.e., to join the records for the volume transaction and the RIN transaction in some manner. Some companies who engage in few of these transactions might be able to use simple document names as their unique reference. Those parties with many of these transactions might incorporate date and time or other useful information into their unique reference. Each company is in the best position to determine what they need to do.

9.10 We engage in blending and refining and expect to be purchasing RINs separately from purchases of renewable fuel. The PTD requirements of section 80.1151(d)(1) indicate that a PTD is only required when title to a renewable fuel is transferred. If so, then what document would be sent to us with RINs purchased separately from purchases of renewable fuels?

A: There is no PTD requirement for transfers of separated RINs, but records related to RIN transactions must be kept. The RIN transaction would have to be reported and underlying records must be retained. See 80.1151(d)(3) and 80.1152(c).

9.11 The recordkeeping requirements in section 80.1151 state that we must keep records of the parties involved in each transaction, including the transferor, transferee, and any broker or agent. What identifiers are required for transferor and transferee? Do we need both the EPA issued company and facility ID numbers?

A: For recordkeeping purposes, you want to retain records that help explain what appears on your PTDs and in your reports to EPA. This would include the name of the party and any applicable EPA issued ID numbers, but you may wish to keep additional identifying information in your records as well.

9.12 We sell ethanol by the truck load (870 gallons at a time). Each pick-up is considered a transaction, so if a company picks up 20 loads in a day they send us 20 electronic invoices. Under 80.1128(a)(7)(ii) can we create a new PTD and send the

company a bill at the end of the day showing 20 pick ups but one total each for gallons and RINs?

A: You could create one PTD, but it would have to be transferred to the receiving party on the same day as the transfer of ownership. The single PTD would list all the RINs transferred for the day and the 20 invoices would also have to reference the single PTD document.

9.13 Is a PTD required for transferring an unassigned RIN?

A: No. PTDs are not required when transferring unassigned RINs. However, PTDs are required whenever there is a transfer of ownership of a renewable fuel. Where the fuel is being transferred with assigned RINs, then the PTD must include information relating to the RINs. See section 80.1153 of the regulation. If the renewable fuel is being transferred without the RINs, then the PTD must state "no RINs transferred."

10. Reporting and the EPA's Central Data Exchange (CDX)

10.1 Is the RIN transaction report tracked daily but reported quarterly?

A: *With regard to reporting to EPA, each RIN transaction (i.e., RIN sale or purchase, retired or expired RIN) must be reported on a separate RIN transaction report. The RIN transaction report for each transaction must be submitted to EPA by the end of the second month after the quarter in which the transaction occurred. See regulation Section 80.1152(c) and (d). The reports for RIN transactions that occurred within a quarter may be submitted all together, individually, or in groups at any time, so long as the transaction reports for all transactions that occurred during the quarter are submitted to EPA by the end of the second month after the quarter in which the transactions occurred. With regard to transfer of RINs between parties, such transfers must be included on some type of product transfer documentation as explained in the section of this document dealing with Recordkeeping and Product Transfer Documents (PTDs).*

10.2 For parties that take ownership of assigned RINs and then separate them, do they report those RINs with K code of 1 or 2?

A: *The regulations state that, in most cases, (1) a party that is an obligated party must separate any RINs that have been assigned to a volume of renewable fuel if they own that volume, (2) 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, and (3) the party responsible for separating a RIN from a volume of renewable fuel shall change the K code in the RIN from a value of 1 to a value of 2 prior to transferring the RIN to any other party.*

In the case of an obligated party, Company A, that has accepted a volume of renewable fuel with an assigned RIN, Company A must change the K code from 1 to 2. However, in a transaction report filed by Company A concerning receipt of the RIN, the RIN would be reported with a K code of 1 (i.e., as it was received). If the RIN is transferred to another party by Company A during the reporting period, Company A would report the RIN on a transaction report for that transfer with a K code of 2. If the RIN was used for compliance, Company A would report the RIN with a K code of 2 on its annual compliance report.

In the case of a blender, the RIN would be reported with a K code of 1 for the transaction relating to the receipt of the renewable fuel. After the

blender blends the renewable fuel into motor vehicle fuel, the RIN would be reported with a K code of 2 for a transaction relating to the transfer of the RIN to another party.

In EPA's reporting instructions, it will be made clear how a party should report the K code for any given report.

10.3 What is the process to retire a RIN? Is this a reporting function that is done with the EPA?

A: RINs are retired for reasons specified in the regulations and must be reported to EPA. A retired RIN may not be used for compliance purposes or traded to another party. A retired RIN is reported to EPA in a RIN transaction report and the total number of RINs retired during a quarter is reported to EPA in the gallon-RIN activity report. A RIN transaction report that reports a retired RIN must describe the reason for retiring the RIN. Potential reasons include reportable spills under regulation Section 80.1132, import volume corrections under regulation Section 80.1166(e)(2), renewable fuel used in boiler or heater under regulation Section 80.1129(e), RINs that are invalid (other than expired RINs) or RINs required to be retired in the context of an enforcement action. For reporting requirements, see regulation Section 80.1152.

10.4 I haven't seen a reference to the EPA CDX system. Is the CDX system already established or can we submit reports in our choice of electronic formats?

A: The Central Data Exchange (CDX) is an established portal through which electronic data are submitted. All registered parties will have to first register with CDX in order to receive a CDX registration number. A link to the CDX web site will be provided from our RFS web site at <http://www.epa.gov/otaq/renewablefuels>. RFS reports can be produced by vendor software or by using spreadsheet templates or other data templates following instructions linked to the RFS web site.

10.5 Do I have to register to use CDX and is this a separate registration process?

A: You will have to register with CDX. (Registering with CDX is not the same as registering under regulation Section 80.1150.) Instructions are available via our RFS web page at <http://www.epa.gov/otaq/renewablefuels/>.

10.6 When will the template report forms for all of the RFS-required reports be available; will these be posted on the website?

A: They are available now at <http://epa.gov/otaq/regs/fuels/rfsforms.htm>.

- 10.7 If you have a spill, does the K code change to 2 for the spilled volume?
- A: *No, the K code is not changed as the result of a spill. (Refer to section 80.1132 of the regulation regarding retirement of RINs due to a spill.)*
- 10.8 What recordkeeping and reporting requirements do exempt small refineries and small refiners have?
- A: *Exempt small refineries and small refiners have no recordkeeping and reporting requirements until 2011, unless they choose to own RINs.*
- 10.9 Is there any benefit to aggregating refineries for reporting purposes?
- A: *Aggregation does not provide any “advantage” under our regulation. Whether or not to aggregate refineries for reporting purposes is a practical decision that we have left up to the individual companies. For example, some companies have one integrated recordkeeping and reporting system for all their refineries, whereas others do not.*
- 10.10 If a transaction must be reversed for some reason, does the reversal have to track specific RINs or will fungible RINs work? How is this reported?
- A: *The original transaction (involving the specific RINs) should be nullified and, if already reported to EPA, corrected reports should be submitted. If discovered prior to being reported to EPA, then all associated records must be corrected. If a transaction must be reversed for any reason, then PTDs must be corrected and must track the specific RINs.*
- 10.11 What happens if a party registers with EPA then engages in no activities that must be reported during a given compliance period?
- A: *There is no obligation to report if no activity occurs.*
- 10.12 If an obligated party (a refiner) imports non-denatured ethanol and denatures it, is the refiner considered a renewable fuel producer and is the refiner obligated to establish RIN numbers and file quarterly reports for the ethanol it denatures?
- A: *The party would be identified as a renewable fuel importer rather than a renewable fuel producer, and would need to establish RIN numbers and file reports required of an importer. The party in this example would also be required to file reports required of a refiner.*
- 10.13 Is it correct that an obligated party must still file the quarterly RIN activity report even though all RINs held are separated (or unassigned, with a K code of 2)?

A: *Yes. Although obligated parties are not subject to the end-of-quarter check described in regulation Section 80.1128(a)(5) (because all RINs become unassigned immediately upon ownership by an obligated party), they must still report all of their RIN activities quarterly, including RIN purchases and sales. See regulation Section 80.1152(c).*

10.14 Does a plant have to have their EPA-issued company ID number before they register for CDX?

A: *Yes, this ID will be necessary to complete the CDX registration process. You may look up your company ID number at <http://epa.gov/otaq/regs/fuels/rfs-list.xls> (in Excel spreadsheet format).*

11. Other Questions

11.1 What entity retires the RIN if the same RIN is mistakenly transferred to two or more parties? Does the plant retire the RIN? Does the EPA have to be notified?

A: *Where a RIN is invalid because the same RIN was transferred to two or more parties, all such RINs are deemed invalid unless EPA determines that some portion of them is valid. See regulation Section 80.1131(b)(4). In the absence of such determination by EPA, all parties with such RINs must under regulation Section 80.1131(b)(2), adjust their records, reports and compliance calculations as necessary to reflect the deletion of the invalid RINs. "Deletion" refers to annual compliance reports since an invalid RIN cannot be used to show compliance. In the case of RINs transferred to two or more parties, all such RINs, by all parties holding them, should be reported as retired unless EPA determines that some portion of them are valid.*

11.2 Regulation Section 80.1131(b)(4) states that, 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". What's the process to determine if a portion of RINs are valid?

A: *In many circumstances, EPA will be able to determine whether any of the RINs (or particular gallon-RINs within a batch-RIN) are valid from the information submitted to EPA in the RIN generation and transaction reports. Through these reports, it is possible to track a RIN from the point of generation by the renewable fuel producer or importer through each transaction until the RIN is used for compliance, retired or has expired. If EPA determines that a RIN is invalid, EPA would contact the submitter of the report(s) with the invalid RIN and advise the party how to proceed.*

11.3 If a party buys a batch of ethanol, and through testing determines that the ethanol is synthetic (non-renewable), what happens to the RINs?

A: *If a volume of renewable fuel for which RINs have been generated is found to not be a valid renewable fuel under the RFS program, then the associated RINs are likewise deemed invalid. See regulation Section 80.1131. If a party determines that a batch of fuel that they own does not meet the definition of renewable fuel under the RFS program, the RINs received with such fuel must be deleted from records, reports and compliance demonstrations. See regulation Section 80.1131. In general, RINs received with such fuel must be reported as retired and such invalid RINs must be deleted from any compliance reports. Parties that learn of such a situation should promptly inform EPA. EPA will investigate the source of the fuel and take appropriate action.*

11.4 What metering system does the plant use to measure gallons? Is it a production meter, a load-out meter, etc.?

A: EPA regulations provide flexibility in terms of the specific mechanisms through which producers and importers measure volumes for purposes of generating RINs. However, the approach should ensure that gallons are neither systematically ignored nor systematically double-counted. Also, approaches that provide consistent volumes for both the RFS program and other contexts such as reporting to the Energy Information Administration are preferred.

11.5 Are only owners of small refineries as of January 1, 2004 allowed to claim the small refinery exemption? If so, how is this date justified?

A: Only owners of small refineries as of January 1, 2004 are eligible. As explained in the preamble (see 72 FR 29525) EPA believes that small refinery eligibility should be based on 2004 data rather than on 2005 data, since it was the first full year prior to passage of EPAct. In addition, some refineries' production may have been affected by Hurricanes Katrina and Rita in 2005.

11.6 How is the small refinery verification letter structured?

A: The structure of the letter is left up to the individual. The letter must address the items in section 80.1141(b)(2) of the regulation.

11.7 What is the estimated value of a RIN?

A: There is no way to estimate the "market value" of a RIN, as this will be a changing value and entirely determined by the marketplace.

11.8 What mechanisms exist to suspend RFS program requirements, should renewable supply be limited due to natural disasters?

A: EPAct contains a provision to address unforeseen circumstances that may occur which result in a shortage of renewable fuel and available RINs and we believe that the statutory provision is sufficient to address unforeseen circumstances that may occur on a nationwide or regional scale. Specifically, EPAct provides that on petition by one or more States, EPA, in consultation with the Departments of Agriculture and Energy, may waive the required aggregate renewable fuels volume obligation in whole or in part upon a sufficient showing of economic or environmental harm, or inadequate supply. As explained in the preamble to the rule (see 72 FR

23927) the RFS rule is a flexible program that permits trading of RINs and deficit carryovers.

11.9 Which market indicators will cause EPA to change the RFS standard?

A: *EPA will use information from the Energy Information Agency (EIA) that projects volumes of gasoline and renewable fuel in order to calculate the standard. Please refer to section 80.1105 of the regulation.*

11.10 Since ethanol use is expected to surpass the mandated EPA Act levels, is there any mechanism available to EPA to allow compliance on a national collective basis, as was done under the 2006 default rule?

A: *No. The Energy Policy Act included a specific default provision for 2006 that was to go into effect if the RFS program regulations were not in place. That provision was expressed in general terms, allowing EPA to structure the program for 2006 on a national collective basis. The statute has much more specific requirements for subsequent years. We are required to calculate the annual standard as explained in section 80.1105 of the regulation. Also see the answer to Question 11.9.*

11.11 How do refiners meet blend mandates on the unleaded fuel sold to a wholesaler where the ethanol is blended at a fuel terminal?

A: *The RFS program does not directly mandate blending. Instead, it requires only that obligated parties such as refiners acquire sufficient RINs to offset their Renewable Volume Obligation (RVO). Refiners can purchase ethanol, separate and retain the RINs, and then provide the ethanol to a terminal for blending. However, in the context of the RFS program, the refiner need not track ethanol to the point of blending. If a refiner, as an obligated party, wishes to utilize RINs acquired by an oxygenate blending facility, the refiner could negotiate a contract with the oxygenate blender (wholesaler in the question above) to acquire those RINs.*

11.12 We are an association. Many of our members are blenders who are small and who find the attest engagement (audit) requirement difficult and expensive to comply with. We would like to engage a CPA who would be able to perform the required review of our members' records, in hopes of generating a cost savings to them. The following two part question related to our handling of reporting and attest engagements on behalf of our members:

a. Could we become the delegated authority for submission of reports on behalf of our members?

A: *Individual blenders could rely on your association to submit reports to EPA on their behalf. . However you should understand that if any reports are not submitted or are submitted improperly then responsibility would fall upon the individual blender.*

b. Could we hire a CPA and pay for the annual attest engagements for our members?

A: *We also believe it may be appropriate for individual blenders to pay for CPA services through their association and recognize that this may result in a cost savings to them. Section 80.125(a), which is referenced by 80.1164, says: "Any [blender] subject to to the [attest] requirements shall engage an independent certified public accountant...." Although his provision could be read to require that a blender must have a contract with the CPA, EPA believes that the purpose of the attest requirements is that an attest is performed by an independent CPA that is given access to all necessary records, and in turn submits a report to EPA. Whether the association or the blender pays the CPA is unimportant to EPA and if the association is capable of making a more cost-effective deal on behalf of its members, we believe that is appropriate. However you should understand that if the attest engagement is not performed or is performed improperly, responsibility would fall upon the individual blender (ie., the regulated party).*

11.13 Section 80.1164(a)(1)(ii) of the regulation states that the CPA conducting the attest engagement must obtain documentation of any volumes of renewable fuel used in gasoline during the reporting year; compute and report as a finding the volumes of renewable fuel represented in these documents. What does this mean?

A: *This provision is intended to require the CPA to include in his or her report any volume of renewable fuel actually used in gasoline produced at the refinery or imported by the importer, but is not intended to include renewable fuels added at a terminal downstream. The requirement is part of the attest engagement because renewable fuels are to be excluded from the volume of gasoline used to determine the refiner's or importer's RVO.*

12. Examples of RIN generation, assignment, and transfer

All examples use fictional names, company IDs, and facility IDs. Example RIN codes have been separated by hyphens for clarity.

12.1 Examples of renewable fuel producers and importers

Example A-1

September 1: Producer Jones makes 2000 gallons of denatured ethanol from corn in 2007. He stores all 2000 gallons in a tank.

September 2: Producer Jones generates 2000 gallon-RINs to represent the 2000 gallons.

Equivalence value of 1.0 x 2000 gallons = 2000 gallon-RINs

Batch-RIN: 1-2007-1234-12345-00001-10-2-00000001-00002000

September 3: Producer Jones sells 2000 gallons to Marketer Smith.

Producer Jones uses a single PTD to transfer the volume and also transfer assigned 2000 gallon-RINs, summarized in a single batch-RIN.

Example A-2

September 4: Producer Jones makes another 3000 gallons of denatured ethanol from corn in 2007. As the ethanol is being metered into a tank, he generates 3000 gallon-RINs to represent the 3000 gallons.

Equivalence value of 1.0 x 3000 gallons = 3000 gallon-RINs

Batch-RIN: 1-2007-1234-12345-00001-10-2-00002001-00005000

September 5: Producer Jones sells 1000 gallons to Marketer Smith.

Producer Jones uses a PTD to transfer the volume, indicating that 1000 assigned gallon-RINs will be transferred in parallel, and containing a unique reference to another PTD.

Producer Jones sends a spreadsheet as the parallel PTD to Marketer Smith later on the same day, transferring batch-RIN 1-2007-1234-12345-00001-10-2-00002001-00003000

Example A-3

September 6: Producer Jones makes another 1000 gallons of denatured ethanol from corn in 2007. He stores the 1000 gallons in a tank that already contains 2000 gallons.

September 7: Producer Jones sells 3000 gallons to Marketer Smith.

As the ethanol is being metered into a railcar, Producer Jones generates 1000 gallon-RINs under a new batch number to represent 1000 gallons.

Equivalence value of 1.0 x 1000 gallons = 1000 gallon-RINs

Batch-RIN: 1-2007-1234-12345-00002-10-2-00000001-00001000

Producer Jones uses a single PTD to transfer the 3000 gallons and also transfer 3000 assigned gallon-RINs, summarized in two batch-RINs:

1-2007-1234-12345-00001-10-2-00003001-00005000

1-2007-1234-12345-00002-10-2-00000001-00001000

Example B-1

September 1: Producer Davis makes 2000 gallons of biodiesel in 2007.

He stores all 2000 gallons in a tank.

September 2: Producer Davis makes another 5000 gallons of biodiesel.

He adds the 5000 gallons to the tank already holding the 2000 gallons.

September 3: Producer Davis generates 1500 gallon-RINs to represent 1000 gallons.

Equivalence value of 1.5 x 1000 gallons = 1500 gallon-RINs

Batch-RIN: 1-2007-4321-12345-00003-15-2-00000001-00001500

September 4: Producer Davis sells 1000 gallons to Marketer Johnson.

Producer Davis uses a single PTD to transfer the volume and also transfer 1500 assigned gallon-RINs, summarized in a single batch-RIN.

Example B-2

September 5: Producer Davis generates 9000 gallon-RINs under a new batch number to represent 6000 gallons of biodiesel that were produced in 2007.

Equivalence value of 1.5 x 6000 gallons = 9000 gallon-RINs
Batch-RIN: 1-2007-4321-12345-00005-15-2-00000001-00009000

September 6: Producer Davis sells 4000 gallons to Marketer Johnson.

Producer Davis uses a single PTD to transfer the volume and also transfer 6000 assigned gallon-RINs, summarized in a single batch-RIN:

1-2007-4321-12345-00005-15-2-00000001-00006000

September 7: Producer Davis sells 2000 gallons to Marketer Williams.

Producer Davis uses a PTD to transfer the volume, indicating that 3000 assigned gallon-RINs will be transferred in parallel, and containing a unique reference to another PTD.

Producer Davis sends the parallel PTD to Marketer Williams later on the same day, transferring batch-RIN 1-2007-4321-12345-00005-15-2-00006001-00009000

Example C-1

September 1: Producer Brown makes 4000 gallons of denatured ethanol from cellulosic biomass in 2007. As the ethanol is being metered into a tank, he generates 10,000 gallon-RINs in two separate batches to represent the 4000 gallons.

Equivalence value of 2.5 x 4000 gallons = 10,000 gallon-RINs
First batch-RIN: 1-2007-5678-12345-00001-25-1-00000001-00005000
Second batch-RIN: 1-2007-5678-12345-00002-25-1-00005001-00010000

September 2: Producer Brown sells 1000 gallons to Marketer Miller.

Producer Brown uses a single PTD to transfer the volume to Marketer Miller and also transfer 1000 assigned gallon-RINs, summarized in a single batch-RIN:

1-2007-5678-12345-00002-25-1-00006001-00007000

September 3: Producer Brown sells 1500 unassigned gallon-RINs to Broker Wilson without ethanol. The PTD includes the following two batch-RINs:

2-2007-5678-12345-00001-25-1-00000001-00000700

2-2007-5678-12345-00002-25-1-00007001-00007800

Example C-2

September 4: Producer Brown makes 1000 gallons of denatured ethanol from cellulosic biomass in 2007. He stores 500 gallons in one tank, and 500 gallons in another tank.

September 5: Producer Brown generates 2500 gallon-RINs to represent the 1000 gallons. He adds the gallon-RINs to a pre-existing batch.

Equivalence value of 2.5 x 1000 gallons = 2500 gallon-RINs

Batch-RIN: 1-2007-5678-12345-00001-25-1-00005001-00007500

Producer Brown sells 2000 gallons to Marketer Miller.

Producer Brown uses a single PTD to transfer the volume to Marketer Miller and also transfer 3000 assigned gallon-RINs, summarized in a single batch-RIN:

1-2007-5678-12345-00001-25-1-00004501-00007500

12.2 Examples of marketers and distributors of renewable fuel

Example D-1

September 10: Marketer Moore takes ownership of 5000 gallons of denatured ethanol with 5000 assigned gallon-RINs in a single batch-RIN:

1-2007-8765-12345-00022-10-2-00004055-00009054

September 15: Marketer Moore sells 3000 gallons of ethanol to Blender Taylor without any assigned RINs. The PTD states, "No RINs transferred."

September 30: Marketer Moore verifies that his end-of-quarter gallon-RINs do not exceed his end-of-quarter gallons adjusted for their Equivalence Value.

$5000 \text{ gallon-RINs} \leq 2000 \text{ gallons} \times \text{Equivalence Value of } 2.5$

$5000 \text{ gallon-RINs} \leq 5000 \text{ gallons (adjusted)}$

Example D-2

October 1: Marketer Moore takes ownership of 2000 gallons of biodiesel with 3000 assigned gallon-RINs in two batch-RINs:
1-2007-9876-12345-00022-15-2-00002001-00003000
1-2007-0987-12345-00022-10-2-00012001-00014000

November 15: Marketer Moore takes ownership of 3000 gallons of denatured ethanol with 7500 assigned gallon-RINs in one batch-RIN:
1-2007-1122-12345-00150-15-2-00001001-00008500

December 15: Marketer Moore sells 1000 gallons of biodiesel to Blender Taylor with 1500 gallon-RINs in two batch-RINs:
1-2007-8765-12345-00022-10-2-00004055-00005054
1-2007-9876-12345-00022-15-2-00002001-00002500

December 31: Marketer Moore verifies that his end-of-quarter gallon-RINs do not exceed his end-of-quarter gallons adjusted for their Equivalence Value.

$$14,000 \text{ gallon-RINs} \leq 5000 \text{ gallons} \times \text{Equivalence Value of } 2.5$$
$$+ 1000 \text{ gallons} \times \text{Equivalence Value of } 1.5$$
$$14,000 \text{ gallon-RINs} \leq 14,000 \text{ gallons (adjusted)}$$

Example E-1

January 10: Marketer Anderson takes ownership of 5000 gallons of denatured ethanol with 5000 assigned gallon-RINs in one batch-RIN:
1-2008-6543-12345-00088-10-2-00556701-00561700

February 20: Marketer Anderson sells 2000 gallons of ethanol to Blender Jackson with 5000 assigned gallon-RINs:
1-2008-6543-12345-00088-10-2-00556701-00561700

March 31: Marketer Anderson verifies that his end-of-quarter gallon-RINs do not exceed his end-of-quarter gallons adjusted for their Equivalence Value.

$$0 \text{ gallon-RINs} \leq 3000 \text{ gallons} \times \text{Equivalence Value of } 2.5$$
$$0 \text{ gallon-RINs} \leq 7500 \text{ gallons (adjusted)}$$