



# COMPLIANCE AND ENFORCEMENT

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# ATTEST ENGAGEMENTS

- An attest engagement is an audit of the underlying documentation that forms the basis of the reports submitted to EPA
- The purpose is to verify the accuracy of the information contained in the reports
- Parties subject to attest engagement requirement
  - Obligated parties and exporters of renewable fuel
  - Renewable fuel producers and importers
  - Any party that takes ownership of RINs



# ATTEST ENGAGEMENTS

## Cont'd

- The attest engagement must be conducted by a CPA or certified internal auditor (CIA)
- Reports subject to attest engagement
  - Annual compliance report (verify volume of gasoline produced, RVO, RINs used for compliance)
  - RIN generation report (verify renewable fuel production, RINs assigned, PTDs)
  - RIN transaction reports (verify information for a representative sample of RIN transactions)
  - Quarterly gallon-RIN report (verify total gallon-RINs owned, purchased, sold, expired and retired)



# ATTEST ENGAGEMENTS Cont'd

- Date Due
  - May 31 of the year following compliance year
  - Attest engagement report for 2007 may be submitted with the 2008 attest engagement report



# PRODUCERS OF CELLULOSIC BIOMASS OR WASTE DERIVED ETHANOL

- A producer of cellulosic biomass or waste derived ethanol must arrange for an independent third party (state licensed Chemical Engineer) to review records to support claim that
  - The facility has the capability of producing cellulosic biomass or waste derived ethanol
  - The ethanol producer produces cellulosic biomass or waste derived ethanol
- Independent third party must provide ethanol producer with written verification of such production

See regulations at: §80.1155



# PRODUCT TRANSFER DOCUMENTS (PTDS)

- Required when *ownership* of a renewable fuel is transferred to another party
- PTDS may be in any form of documentation such as an invoice that evidences transfer of *ownership* of the renewable fuel
- A bill of lading normally would not be the PTD unless it transfers ownership as well as custody of the fuel



# PRODUCT TRANSFER DOCUMENTS (PTDs) Cont'd

- The transferor of the renewable fuel must provide the transferee with a PTD which includes the following information
  - Name and address of transferor and transferee
  - Transferor's and transferee's EPA company registration numbers
  - Volume of renewable fuel being transferred
  - Date of transfer

(product codes may be used to convey the information in the above four items)



# PRODUCT TRANSFER DOCUMENTS (PTDS) Cont'd

- Transfer of ownership of RINs assigned to the fuel also must be documented on a PTD
- Assigned RINs may be transferred on the same PTD used to transfer ownership of the fuel or on a separate PTD
  - If the RINs are transferred on the same PTD the RINs must be listed on the PTD
  - If the RINs are transferred on a separate PTD, the PTD transferring the fuel must state the number of gallon-RINs being transferred and a reference to the PTD which is transferring the RINs





# PRODUCT TRANSFER DOCUMENTS (PTDS) Cont'd

- A PTD which separately transfers the RINs must be transferred to the same party on the same day as the PTD used to transfer ownership of the renewable fuel
- A PTD which separately transfers the RINs may be in the form of a spreadsheet or other type of list
- If no assigned RINs are transferred with the renewable fuel the PTD must state “No RINs transferred”



# PROHIBITIONS

- No renewable fuel producer or importer may
  - Produce or import a renewable fuel without assigning the proper equivalence value or identifying it by a proper RIN number
- No person may transfer a RIN that
  - Is improperly generated (i.e., RIN for which the applicable volume was not produced)
  - Is an invalid RIN (i.e., duplicate, expired, based on incorrect equivalence value, does not represent fuel that meets definition of renewable fuel, based on volume not standardized to 60 degrees, obtained from foreign entity not approved by EPA) See §80.1131.



# PROHIBITIONS Cont'd

- Is not identified by a proper RIN number
- Has a K code of 1 without transferring an appropriate volume of renewable fuel to the same person on the same day
- No obligated party may
  - Fail to acquire sufficient RINs or use invalid RINs to meet the party's RVO
  - Use a validly generated RIN to meet the party's RVO or separate and transfer a validly generated RIN where the party ultimately uses the renewable fuel in a heater or boiler



# PROHIBITIONS Cont'd

- No person may fail to meet the requirement that at the end of each quarter the party must not own more assigned RINs ( $K=1$ ) than gallons of renewable fuel (adjusted for equivalence value)  
See §80.128(a)(5).
- No person may cause another person to commit a prohibited act



# LIABILITY

- Persons liable for a violation of a prohibited act
  - Any person who commits a prohibited act
  - Any person who causes another person to commit a prohibited act
- Persons liable for failing to meet a requirement
  - Any person who fails to meet a requirement
  - Any person who causes another person to fail to meet a requirement
- Parent corporation liability
  - A parent corporation is liable for violations committed by its subsidiaries



# LIABILITY Cont'd

- Joint venture liability
  - Each partner to a joint venture is jointly and severally liable for violations committed by the joint venture
- Liability for use of invalid RINs
  - Invalid RINs cannot be used to achieve compliance regardless of a party's good faith belief that the RINs were valid at the time they were acquired
  - Penalties will normally be sought from the person responsible for creating the invalid RINs where such person can be identified
  - Parties are encouraged to sign contracts with indemnity provisions to protect RIN purchases



# PENALTIES

- Similar to other fuels programs
- Civil penalties
  - *Up to \$32,500* for each day or each violation and the amount of economic benefit
- Failure to meet RVO
  - Any person found liable for failure to meet its RVO or causing another person to fail to meet its RVO is subject to a separate day of violation for each day in the annual averaging period



# PENALTIES Cont'd

- Failure to meet a requirement
  - Any person liable for a failure to meet or causing another person to fail to meet any requirement is liable for a separate day of violation for each day the requirement remains unfulfilled





# FOREIGN ENTITIES

- Foreign entities who may participate in the RFS program
  - Small refiners
  - Producers of cellulosic bio-mass and waste derived ethanol
  - RIN owners
- Participation is voluntary



# FOREIGN ENTITIES Cont'd

- To participate in the RFS program a foreign entity must
  - Submit an application and register with EPA
  - Comply with all requirements applicable to domestic entities
  - Comply with additional conditions and requirements designed to ensure enforcement at the foreign facility is not compromised (e.g., posting bond)

See regulations at: §80.1165, §80.1166,  
§80.1167