

Environmental Protection Agency

§ 80.1160

fuel each year, and importers who import less than 10,000 gallons of renewable fuel each year, are not required to generate RINs or to assign RINs to batches of renewable fuel. Such producers and importers that do not generate and/or assign RINs to batches of renewable fuel are also exempt from all the following requirements of this subpart K, except as stated in paragraph (b) of this section:

(1) The registration requirements of § 80.1150.

(2) The recordkeeping requirements of § 80.1151.

(3) The reporting requirements of § 80.1152.

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

[72 FR 24000, May 1, 2007]

§ 80.1155 What are the additional requirements for a producer of cellulosic biomass ethanol or waste derived ethanol?

(a) A producer of cellulosic biomass ethanol or waste derived ethanol (hereinafter referred to as “ethanol producer” under this section) is required to arrange for an independent third party to review the records required in § 80.1151(c) and provide the ethanol producer with a written verification that the records support a claim that:

(1) The ethanol producer’s facility is a facility that has the capability of producing cellulosic biomass ethanol as defined in § 80.1101(a) or waste derived ethanol as defined in § 80.1101(b); and

(2) The ethanol producer produces cellulosic biomass ethanol as defined in § 80.1101(a) or waste derived ethanol as defined in § 80.1101(b).

(b) The verifications required under paragraph (a) of this section must be conducted by a Professional Chemical Engineer who is based in the United States and is licensed by the appropriate state agency, unless the ethanol producer is a foreign producer subject to § 80.1166.

(c) To be considered an independent third party under paragraph (a) of this section:

(1) The third party shall not be operated by the ethanol producer or any subsidiary of employee of the ethanol producer.

(2) The third party shall be free from any interest in the ethanol producer’s business.

(3) The ethanol producer shall be free from any interest in the third party’s business.

(4) Use of a third party that is debarred, suspended, or proposed for debarment pursuant to the Government-wide Debarment and Suspension regulations, 40 CFR part 32, or the Debarment, Suspension and Ineligibility provisions of the Federal Acquisition Regulations, 48 CFR, part 9, subpart 9.4, shall be deemed noncompliance with the requirements of this section.

(d) The ethanol producer must obtain the written verification required under paragraph (a)(1) of this section by February 28 of the year following the first year in which the ethanol producer claims to be producing cellulosic biomass ethanol or waste derived ethanol.

(e) The verification in paragraph (a)(2) of this section is required for each calendar year that the ethanol producer claims to be producing cellulosic biomass ethanol or waste derived ethanol. The ethanol producer must obtain the written verification required under paragraph (a)(2) of this section by February 28 for the previous calendar year.

(f) The ethanol producer must retain records of the verifications required under paragraph (a) of this section, as required in § 80.1151(c)(5).

(g) The independent third party shall retain all records pertaining to the verification required under this section for a period of five years from the date of creation and shall deliver such records to the Administrator upon request.

[72 FR 24000, May 1, 2007]

§§ 80.1156–80.1159 [Reserved]

§ 80.1160 What acts are prohibited under the RFS program?

(a) *Renewable fuels producer or importer violation.* Except as provided in

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§ 80.1154, no person shall produce or import a renewable fuel without assigning the proper RIN value or identifying it by a RIN number as required under § 80.1126.

(b) *RIN generation and transfer violations.* No person shall do any of the following:

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

(2) Create or transfer to any person a RIN that is invalid under § 80.1131.

(3) Transfer to any person a RIN that is not properly identified as required under § 80.1125.

(4) Transfer to any person a RIN with a K code of 1 without transferring an appropriate volume of renewable fuel to the same person on the same day.

(c) *RIN use violations.* No person shall do any of the following:

(1) Fail to acquire sufficient RINs, or use invalid RINs, to meet the party's renewable fuel volume obligation under § 80.1127.

(2) Fail to acquire sufficient RINs to meet the party's renewable fuel volume obligation under § 80.1130.

(3) Use a validly generated RIN to meet the party's renewable fuel volume obligation under § 80.1127, or separate and transfer a validly generated RIN, where the party ultimately uses the renewable fuel volume associated with the RIN in a heater or boiler.

(d) *RIN retention violation.* No person shall retain RINs in violation of the requirements in § 80.1128(a)(5).

(e) *Causing a violation.* No person shall cause another person to commit an act in violation of any prohibited act under this section.

[72 FR 24003, May 1, 2007]

§ 80.1161 Who is liable for violations under the RFS program?

(a) *Persons liable for violations of prohibited acts.* (1) Any person who violates a prohibition under § 80.1160(a) through (d) is liable for the violation of that prohibition.

(2) Any person who causes another person to violate a prohibition under § 80.1160(a) through (d) is liable for a violation of § 80.1160(e).

(b) *Persons liable for failure to meet other provisions of this subpart.* (1) Any

person who fails to meet a requirement of any provision of this subpart is liable for a violation of that provision.

(2) Any person who causes another person to fail to meet a requirement of any provision of this subpart is liable for causing a violation of that provision.

(c) *Parent corporation liability.* Any parent corporation is liable for any violation of this subpart that is committed by any of its subsidiaries.

(d) *Joint venture liability.* Each partner to a joint venture is jointly and severally liable for any violation of this subpart that is committed by the joint venture operation.

[72 FR 24003, May 1, 2007]

§ 80.1162 [Reserved]

§ 80.1163 What penalties apply under the RFS program?

(a) Any person who is liable for a violation under § 80.1161 is subject to a civil penalty of up to \$32,500, as specified in sections 205 and 211(d) of the Clean Air Act, for every day of each such violation and the amount of economic benefit or savings resulting from each violation.

(b) Any person liable under § 80.1161(a) for a violation of § 80.1160(c) for failure to meet a renewable volume obligation, or § 80.1160(e) for causing another party to fail to meet a renewable volume obligation, during any averaging period, is subject to a separate day of violation for each day in the averaging period.

(c) Any person liable under § 80.1161(b) for failure to meet, or causing a failure to meet, a requirement of any provision of this subpart is liable for a separate day of violation for each day such a requirement remains unfulfilled.

[72 FR 24004, May 1, 2007]

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

The requirements regarding annual attest engagements in §§ 80.125 through 80.127, and 80.130, also apply to any attest engagement procedures required under this subpart. In addition to any other applicable attest engagement procedures, the following annual attest