6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA-HQ-OAR-2012-0223; FRL–9900-89-OAR]

RIN: 2060-AR87

Regulation of Fuels and Fuel Additives:

Modifications to Renewable Fuel Standard Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this final rule EPA is amending the definition of "heating oil" in the regulations for the Renewable Fuel Standard (RFS) program under section 211(o) of the Clean Air Act. This amendment expands the scope of renewable fuels that can be used to show compliance with the RFS renewable fuel volume obligations by adding an additional category of compliant renewable fuel referred to as "fuel oils," produced from qualifying renewable biomass and used to generate heat to warm buildings or other facilities where people live, work, recreate, or conduct other activities. Producers or importers of fuel oil that meets the amended definition of heating oil will be allowed to generate Renewable Identification Numbers (RINs), provided that the fuel oil meets all other requirements specified in the RFS regulations. Fuel oils used to generate process heat, power, or other functions are not included in this additional category of heating oil. All fuels previously included in the definition of heating oil continue to be included as heating oil for purposes of the RFS program.

We are also finalizing specific registration, reporting, product transfer document, and recordkeeping requirements applicable specifically to these fuel oils, necessary to demonstrate

that the fuel oil volume for which RINs were generated was or will be used to heat buildings for climate control for human comfort prior to generating RINs.

The final rule is being adopted with only minor changes from the rule proposed on October 9, 2012, and responses to public comments are provided.

DATES: This rule is effective on **[insert date 60 days after publication in the *Federal Register*]**.

ADDRESSES: EPA established a docket for this action under the Docket ID No. EPA-HQ-OAR-2012-0223. All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information may not be publicly available (e.g., CBI or other information whose disclosure is restricted by statute). Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at www.regulations.gov or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC, 20460. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742. You may be charged a reasonable fee for photocopying docket materials, as provided for in 40 CFR part 2.

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SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose

This final rule expands the regulatory definition of "heating oil" for purposes of the RFS program. This expansion of the types of fuel that can be considered heating oil under the RFS program furthers the goals of the Energy Independence and Security Act of 2007 (EISA) to reduce the use of fossil fuels and encourage increased production of renewable fuels. The EPA expects this rule to allow for the generation of additional advanced and cellulosic RINs, which will help enable obligated parties under the RFS to meet their renewable fuel obligations and offer their customers more alternative fuel products.

B. Summary of Today's Rule

This rule amends the definition of "heating oil" in 40 CFR 80.1401 in the RFS program promulgated under section 211(o) of the Clean Air Act (CAA). This amendment expands the scope of renewable fuels that can generate RINs as heating oil by adding an additional category of fuel oils that will be used to generate heat to warm buildings or other facilities where people live, work, recreate, or conduct other activities. Fuel oils used to generate process heat, power, or other functions are not included in this additional category of heating oil. This rule will allow producers or importers of fuel oil that meets the amended definition of heating oil to generate RINs, provided that other requirements specified in the regulations are met. These include new registration, reporting, product transfer document, and recordkeeping requirements applicable specifically to these fuel oils, necessary to demonstrate that the fuel oil volume was or will be used to heat buildings for climate control for human comfort prior to generating RINs.

The amendment expands the fuels included in the definition of heating oil for purposes of the RFS program. All fuels previously included in the definition of heating oil continue to be included as heating oil under 40 CFR 80.1401 for purposes of the RFS program.

C. Costs and Benefits

This amendment provides new opportunities for RIN generation under the RFS program. Therefore, EPA believes that this amendment will impose no new direct costs or burdens on regulated entities beyond the minimal costs associated with reporting and recordkeeping requirements. At the same time, EPA does not believe that this amendment will adversely impact emissions.

II. Does This Action Apply to Me?

Entities potentially affected by this action include those involved with the production, distribution and sale of transportation fuels, including gasoline and diesel fuel, or renewable fuels such as ethanol and biodiesel, as well as those involved with the production, distribution and sale of other fuel oils that are not transportation fuel. Regulated categories and entities affected by this action include:

Category	NAICS Codes[a]	SIC Codes[b]	Examples of Potentially Regulated Parties
Industry	324110	2911	Petroleum refiners, importers.
Industry	325193	2869	Ethyl alcohol manufacturers.
Industry	325199	2869	Other basic organic chemical manufacturers.
Industry	424690	5169	Chemical and allied products merchant wholesalers.
Industry	424710	5171	Petroleum bulk stations and terminals.
Industry	424720	5172	Petroleum and petroleum products merchant wholesalers.
Industry	454319	5989	Other fuel dealers.

[a]North American Industry Classification System (NAICS).
[b]Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could be potentially regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria of Part 80, subpart M of title 40 of the Code of Federal Regulations. If you have any questions regarding applicability of this action to a particular entity, consult the person in the preceding "FOR FURTHER INFORMATION CONTACT" section above.

III. Amendments to the Renewable Fuel Standard Program

A. Amended Definition of Heating Oil

EPA is issuing this final rule to amend the definition of heating oil in 40 CFR 80.1401 in the RFS program promulgated under section 211(o) of the CAA.[1] This amendment will expand

[1] The Energy Independence and Security Act of 2007 (EISA) amended section 211(o) of the Clean Air Act, which was originally added by the Energy Policy Act of 2005 (EPAct).

the scope of renewable fuels that can generate RINs as heating oil to include fuel oil that will be used to generate heat to warm buildings or other facilities where people live, work, recreate, or conduct other activities. This rule will allow producers or importers of fuel oil that meets the amended definition of heating oil to generate RINs, provided that other requirements specified in the regulations are met, including new registration, reporting, product transfer document, and recordkeeping requirements being finalized in this action that are applicable specifically to these fuel oils. Fuel oils used to generate process heat, power, or other functions will not be approved for RIN generation under the amended definition of heating oil, as these fuels are not within the scope of "home heating oil" as that term is used in EISA, for the RFS program. All fuels previously included in the definition of heating oil continue to be included as heating oil under 40 CFR 80.1401 for purposes of the RFS program.

The RFS program requires the production and use of renewable fuel to replace or reduce the quantity of fossil fuel present in transportation fuel. Under EPA's RFS program, producers or importers of qualified renewable fuel generate RINs which represent the volume of renewable fuel that has been produced or imported. RINs are transferred to the producers or importers of gasoline and diesel transportation fuel who then use the RINs to demonstrate compliance with their renewable fuel volume obligations. RINs also serve the function of credits under the RFS program for regulated parties who exceed their annual volume obligation.

Congress provided that EPA could establish provisions for the generation of credits by producers of certain renewable fuel that was not used in transportation fuel, called "additional renewable fuel."[2] Additional renewable fuel is defined as fuel produced from renewable biomass that is used to replace or reduce the quantity of fossil fuel present in home heating oil or jet fuel.[3]

[2] 75 FR 14670, 14686 (March 26, 2010).
[3] *See* CAA sections 211(o)(1)(A) and (o)(5)(E).

In essence, additional renewable fuel has to meet all of the requirements applicable to qualify it as renewable fuel under the regulations, with the only difference being that it is blended into or is home heating oil or jet fuel instead of transportation fuel. This does not change the volume requirements of the statute itself, but it can provide an important additional avenue for parties to generate RINs for use by obligated parties, thus promoting the overall cost-effective production and use of renewable fuels.

EPA addressed the provision for additional renewable fuels in the final rule published on March 26, 2010 (74 FR 14670), specifically addressing the category of "home heating oil." EPA determined that this term was ambiguous, and defined it by incorporating the existing definition of heating oil at 40 CFR 80.2(ccc). EPA stated that:

> EISA uses the term "home heating oil" in the definition of "additional renewable fuel." The statute does not clarify whether the term should be interpreted to refer only to heating oil actually used in homes, or to all fuel of a type that can be used in homes. We note that the term 'home heating oil' is typically used in industry in the latter manner, to refer to a type of fuel, rather than a particular use of it, and the term is typically used interchangeably in industry with heating oil, heating fuel, home heating fuel, and other terms depending on the region and market. We believe this broad interpretation based on typical industry usage best serves the goals and purposes of the statute. If EPA interpreted the term to apply only to heating oil actually used in homes, we would necessarily require tracking of individual gallons from production through ultimate [use] in homes in order to determine eligibility of the fuel for RINs. Given the fungible nature of the oil delivery market, this would likely be sufficiently difficult and potentially expensive so as to discourage the generation of RINs for renewable fuels used as home heating oil. This problem would be similar to that which arose under RFS1 for certain renewable fuels (in particular biodiesel) that were produced for the highway diesel market but were also suitable for other markets such as heating oil and non-road applications where it was unclear at the time of fuel production (when RINs are typically generated under the RFS program) whether the fuel would ultimately be eligible to generate RINs. Congress eliminated the complexity with regards to non-road applications in RFS2 by making all fuels used in both motor vehicle and nonroad applications subject to the renewable fuel standard program. We believe it best to interpret the Act so as to also avoid this type of complexity in the heating oil context. Thus, under today's regulations, RINs may be generated for renewable fuel used as "heating oil," as defined in existing EPA regulations at §80.2(ccc). In addition to simplifying implementation

> and administration of the Act, this interpretation will best realize the intent of EISA to reduce or replace the use of fossil fuels.[4]

The existing definition of heating oil at 40 CFR 80.2(ccc) is "any #1, #2, or non-petroleum diesel blend that is sold for use in furnaces, boilers, and similar applications and which is commonly or commercially known or sold as heating oil, fuel oil, or similar trade names, and that is not jet fuel, kerosene, or MVNRLM [Motor Vehicle, Non-Road, Locomotive and Marine] diesel fuel."[5] The existing definition of non-petroleum diesel at 40 CFR 80.2(sss) is "a diesel fuel that contains at least 80 percent mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats." Thus, under the existing definitions, RINs may be generated for heating oil that is either a #1 or #2 fuel oil or a non-petroleum diesel blend containing at least 80 percent mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, as well as meeting all other requirements of the RFS regulations for renewable fuels.

The existing regulations do not allow a party to generate RINs for a non-petroleum fuel that is used as a heating oil unless the fuel contains at least 80 percent mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats. Since the promulgation of the March 26, 2010 rule, we have received a number of requests from producers to consider expanding the scope of the home heating oil provision to include additional fuel oils that are produced from qualifying renewable biomass but do not meet the regulatory definition of heating oil because they are not #1 or #2 diesel and are not non-petroleum diesel containing at least 80 percent mono-alkyl esters. Parties raising this issue have suggested that limiting "home heating oil" to the fuel types defined in 40 CFR 80.2(ccc) disqualifies certain types of renewable fuel oils

[4] 75 FR 14670, 14687 (March 26, 2010).

[5] The reference to "stationary diesel engines" was removed from the definition of 40 CFR 80.2(ccc) as part of EPA's final rule concerning oceangoing vessels. 75 FR 22896 (April 30, 2010). Deleting this example from the definition avoids confusion that otherwise might arise, given the requirements under 40 CFR 60.4207 for use of ultra low sulfur diesel fuel in certain stationary diesel engines. *See* 40 CFR 60.4207, applicable beginning with model year 2007.

that could be used for home heating and that this limitation does not align with our reasoning in the preamble to take a broad interpretation of the term "home heating oil" in CAA section 211(o).

EPA considered this issue further and issued a direct final rule and parallel proposed rule to amend the definition of heating oil in the RFS program to expand the scope of fuels that can generate RINs as heating oil under the RFS program.[6] EPA received adverse public comment and withdrew the direct final rule.[7]

After considering the public comments, EPA is revising the definition of heating oil for purposes of the RFS program to include an additional category of fuel oil, as proposed. RINs may be generated for an additional category of renewable fuel that is fuel oil used to heat interior spaces of homes or buildings to control ambient climate for human comfort. This additional category will not include fuel oils used to generate process heat, power, or other functions. The fuel oil must be used to generate heat to warm buildings or other facilities where people live, work, recreate, or conduct other activities. The fuel oil must only be used in heating applications, where the sole purpose of the fuel is for heating and not for any other combined use such as process energy use. This is in addition to the fuel oils previously included in the definition of heating oil at 40 CFR 80.1401, which refers to section 80.2(ccc). All fuels previously included in the definition of heating oil continue to be included as heating oil under 40 CFR 80.1401 for purposes of the RFS program.

EPA believes this expansion of the scope of the home heating oil provision is appropriate and authorized under CAA section 211(o). As EPA described in the RFS final rule, Congress did not define the statutory term "home heating oil," and it does not have a fixed or definite

[6] 77 FR 61281 (October 9, 2012); 77 FR 61313 (October 9, 2012).
[7] 77 FR 72746 (December 6, 2012).

commercial meaning. In the March 26, 2010 final rule, EPA focused on whether the provision was limited to heating oil actually used in homes. EPA noted that the term home heating oil is usually used in the industry to refer to one type of fuel, and not to a specific use for the fuel. Given this more general usage of the term, EPA defined home heating oil by identifying the types of fuel oils that are typically used to heat homes. EPA determined this was a reasonable interpretation of an ambiguous statutory provision that simplified implementation and administration of the Act and promoted achievement of the goals of the RFS program.

The expansion of the definition adopted in this rulemaking will add a category to the definition to include two types of fuel oils not included in the original definition of heating oil in section 80.1401. First, the new category will include additional fuel oils that do not meet the definition of heating oil in section 80.2(ccc) but are actually used to heat homes.

Second, the new category will include fuel oils that are used to heat facilities other than homes to control ambient climate for human comfort. Under the original definition of heating oil in section 80.1401, a fuel oil meets the definition of heating oil based on its physical properties, not whether it is actually used to heat a home. In the new category added in the amended definition, the additional qualifying fuel oils will be used for heating places where people live, work, or recreate, and not just their homes. It focuses more on what is getting heated – people – and not where the people are located. EPA believes this is a reasonable interpretation of the phrase "home heating oil." This interpretation recognizes the ambiguity of the phrase used by Congress, which is not defined and does not have a clear and definite commercial meaning. It gives reasonable meaning to the term home heating oil, both by limiting the additional fuel oils to fuel oils used for heating facilities that people will occupy, and excluding the additional fuel oils when used for other purposes such as generation of energy used in the manufacture of

products. It also focuses on the aspect of home that is most important here – the heating of people. This interpretation also promotes the purposes of the EISA in that it will increase the production and use of renewable fuels by introducing new sources of fuel producers to the RFS program. It will specifically promote the RFS programmatic goals by facilitating the generation of RINs for renewable fuels that reduce emissions of greenhouse gases compared to fossil fuels. For example, EPA has received information from Envergent Technologies (an alliance of Ensyn and UOP/Honeywell) that such an expanded definition of heating oil would result in nearly immediate production of 3.5 million gallons from their existing facilities, with an additional projected production of up to 45 million gallons per year within 24 months following regulatory action. Based on this information from Envergent Technologies and other parties who commented on the proposed rule, the application of the expanded definition of heating oil to the entire industry would result in the production of many more million additional gallons of RIN-generating renewable fuel.

B. Lifecycle Greenhouse Gas Assessment of the Amended Definition of Heating Oil

EPA has also evaluated whether any revisions will need to be made to Table 1 to 40 CFR 80.1426. Table 1 lists the applicable D codes for each fuel pathway for use in generating RINs in the RFS regulations in light of the additional fuel oils included in the expanded definition of heating oil. As discussed below, EPA has determined that the existing D code entries for heating oil in Table 1 to 40 CFR 80.1426 will continue to be appropriate and will not need to be revised in light of the expanded definition of heating oil.

Under the RFS program, EPA must assess lifecycle greenhouse gas (GHG) emissions to determine which fuel pathways meet the GHG reduction thresholds for the four required renewable fuel categories. The RFS program requires a 20% reduction in lifecycle GHG

emissions for conventional renewable fuel (except for grandfathered facilities and volumes), a 50% reduction for biomass-based diesel or advanced biofuel, and a 60% reduction for cellulosic biofuel. For the final March 2010 RFS rule, EPA assessed the lifecycle greenhouse gas emissions of multiple renewable fuel pathways and classified pathways based on these GHG thresholds, as compared to the EISA statutory baseline.[8] In addition, EPA has added several pathways since the final rule was published. Expanding the definition of heating oil does not affect these prior analyses.

The fuel pathways consist of fuel type, feedstock, and production process requirements. GHG emissions are assessed at all points throughout the lifecycle pathway. For instance, emissions associated with sowing and harvesting of feedstocks and in the production, distribution and use of the renewable fuel are examples of what are accounted for in the GHG assessment. A full accounting of emissions is then compared with the petroleum baseline emissions for the conventional fuel being replaced. The lifecycle GHG emissions determination is one factor used to determine compliance with the regulations.

There are currently several fuel pathways that list heating oil as a fuel type with various types of feedstock and production processes used, qualifying the heating oil pathways as either biomass-based diesel, advanced, or cellulosic. The determinations for these different pathways were based on the current definition of heating oil. The pathways also include several types of distillate product including diesel fuel, jet fuel and heating oil.

The lifecycle calculations and threshold determinations are based on the GHG emissions associated with production of the fuel and processing of the feedstock. Converting biomass feedstocks such as triglycerides (if oils are used as feedstock) or hemi-cellulose, cellulose, lignin, starches, etc. (if solid biomass feedstock is used) into heating oil products can be accomplished

[8] *See* Table 1 to 40 CFR § 80.1426.

through either a biochemical or thermochemical process converting those molecules into a fuel product. The existing heating oil pathways were based on the original definition of heating oil in section 80.1401, and were based on a certain level of processing to produce #1, #2, or a non-petroleum diesel blend and the related energy use and GHG emissions that were part of the lifecycle determination for those fuel pathways.

The main difference between the original definition of heating oil, which refers to #1, #2, or a non-petroleum diesel blend, and the new category added in the expanded definition adopted in this rulemaking is that the new category will include heavier types of fuel oil with larger molecules. Based on the type of conversion process, producing these heavier fuel oil products versus the #1, #2, or a non-petroleum diesel blend will affect the amount of energy used and therefore the GHG emissions from the process. There are two main paths for producing a fuel oil product from biomass. In one the biomass is converted into a biocrude which is further refined into lighter products. In this case, producing a heavier fuel oil product will require less processing energy and have lower GHG emissions than converting the same feedstock into a #1, #2, or non-petroleum diesel blend.

In the other type of process, the compounds in the biomass are changed into a set of intermediary products, such as hydrogen (H) and carbon monoxide (CO).[9] These compounds are then either catalytically or biochemically converted into the fuel product. In this case, the vast majority of the energy is associated with breaking down the feedstock into the set of intermediary compounds. The process used and the energy needed for it does not vary based on the type of fuel that is then produced from these intermediary compounds. The type of fuel could affect the type of catalyst or biological process used to change the intermediary

[9] This describes the Fischer-Tropsch process. Other processes rely on forming different sets of compounds from the biomass, and then producing the fuel product from the set of compounds.

compounds into the fuel product, but based on EPA calculations and assessments developed as part of the March 26, 2010 RFS rulemaking,[10] this will have no real impact on the energy used or the GHG emissions associated with converting the biomass into a different fuel product.

Based on these considerations, EPA believes the GHG emissions associated with producing the additional fuel oils included in the expanded definition will be the same or lower than the GHG emissions associated with producing a #1, #2, or non-petroleum diesel blend. Therefore, the original lifecycle analyses for heating oil support applying the existing pathways for heating oil in the RFS regulations to the expanded definition of heating oil. Once the regulatory change to the definition of heating oil is final, all of the pathways currently applicable to heating oil under Table 1 to 40 CFR 80.1426 will apply to the expanded definition of heating oil.

C. Additional Registration, Reporting, Product Transfer Document, and Recordkeeping Requirements

An important issue to address is how to implement such an expanded definition. EPA recognized in the March 26, 2010 rule that it would be difficult and expensive to track heating oil to make sure it was actually used in homes, and so decided to define home heating oil as a type of fuel with certain characteristics, rather than a fuel used in a certain way. This approach avoided the need to track heating oil to its actual end use, and the definition of heating oil at 40 CFR 80.1401 simply referred back to the 40 CFR 80.2(ccc) technical definition.

The expansion of the definition raises this same issue but in a more significant way. The original definition does not provide a way to assure that RINs are only generated for fuel oils

[10] "Regulation of Fuel and Fuel Additives; Changes to Renewable Fuel Standard Program," 75 FR 14670, *available at* http://www.gpo.gov/fdsys/pkg/FR-2010-03-26/pdf/2010-3851.pdf. *See also*, EPA's summary factsheet, "EPA Lifecycle Analysis of Greenhouse Gas Emissions from Renewable Fuels," *available at* http://www.epa.gov/otaq/renewablefuels/420f10006.pdf.

used to heat buildings for climate control for human comfort, and not for those used to generate process heat or other purposes. Therefore, for the additional fuel oils other than those qualifying as heating oil based on the definition in 40 CFR 80.2(ccc), EPA is requiring that the renewable fuel producer or importer have adequate documentation to demonstrate that the fuel oil volume for which RINs were generated was or will be used to heat buildings for climate control for human comfort as a condition for generating RINs.

EPA recognizes that for fuels meeting the original definition of heating oil in section 80.1401, no tracking or other documentation of end use is required, and some heating oils that meet the original definition could end up being used for other purposes. However, fuel qualifying as heating oil under the original definition has to have the physical or other characteristics that make it the type of fuel oil normally used to heat homes. The additional fuel oils qualifying as heating oil under the new category of the expanded definition will be identified as heating oil not by their chemical specifications but instead by their actual use for heating for the purposes of climate control for human comfort. EPA is not requiring physical specifications for the additional fuel oil category, beyond the requirement that it be a "fuel oil", meaning that it is a liquid at 60 degrees Fahrenheit and one atmosphere of pressure and contains no more than 2.5% mass solids. Solid or gaseous fuels, for example wood chips or unrefined waste fats or gases, would not qualify as heating oil capable of generating RINs under the RFS.

For informational purposes, there are industry standard specifications for fuel oils that could qualify as heating oils under the expanded definition of heating oil. For example, ASTM D396 covers grades of fuel oil intended for use in fuel oil burning equipment, ASTM D7666 covers two grades of burner fuel consisting of triglycerides and naturally occurring constituents of triglycerides including monoglycerides, diglycerides, and free fatty acids and distinguished by

the pour point, and ASTM D7544 covers grades of pyrolysis liquid biofuel produced from biomass intended for use in fuel oil burner equipment. These and other fuel oils would also have to meet the requirements related to use of the fuel oil for heating, as well as any other regulatory requirements applicable under the RFS program.

In order to verify that the fuel oils are actually used to generate heat for climate control purposes, EPA is adopting the following registration, recordkeeping, product transfer document (PTD) and reporting requirements. These requirements will not apply to *fuels* qualifying under the original part of the 40 CFR 80.1401 definition, i.e., they would not apply to fuels that meet the definition of heating oil in section 80.2(ccc). These requirements will only apply to the additional *fuel oils* qualifying under the new category of the expanded definition in 40 CFR 80.1401. If those fuel oils are designated for but not actually used to generate heat for climate control purposes, the end user of that fuel oil is subject to and liable for violations of the RFS regulations and the CAA, as are as any parties that caused that violation. Also, pursuant to the existing regulation in § 80.1460(c)(2), the end user in this situation would not be allowed to retire RINs still associated with the fuel oil for RVO compliance purposes or transfer such RINs to any other party. Finally, since the additional category of fuel oils is defined as heating oil in terms of its use instead of its physical characteristics, EPA must ensure as far as is practicable that the RIN-generating renewable fuel is actually used for the proper purpose by the end user. We believe it is reasonable to require that the RIN-generating renewable fuel producer or importer document that the appropriate end use of the fuel is certified by an end user. As further discussed below, the RIN generator must submit proof of such assurances to EPA in its registration and quarterly reports.

Once the fuel producer has the appropriate affidavit from the end user certifying that it has used or intends to use the fuel for the proper purpose, the fuel producer may validly generate RINs for the fuel. We emphasize that subsequent improper end use would not invalidate any RINs generated by the fuel producer for that volume of fuel oil. We are not requiring that the RIN-generating producer track the fuel's actual end use; only that the fuel be sold for use as a heating oil and that the fuel producer receives the appropriate affidavit from the end user attesting that the fuel has or will actually be used as a heating oil prior to RIN generation. A RIN will not be considered valid unless the renewable producer can demonstrate by the end user's affidavit that the fuel has or will actually be used as heating oil. Parties that purchase RINs generated by renewable fuel producers that rely on this new definition will be able to evaluate whether the proper use requirement is met by examining these affidavits. Therefore, while there is a slight chance that the fuel associated with a validly generated RIN may be improperly used, once the appropriate certification is made, the RIN may be generated and will remain valid regardless of the actual end use.

1. Registration

For the purpose of registration, EPA is allowing the producer of the expanded fuel oil types to establish its facility's baseline volume in the same manner as all other producers under the RFS program, e.g., based on the facility's permitted capacity or actual peak capacity. Additionally, we are requiring producers of the new category fuel oils to submit affidavits in support of their registrations, including a statement that the RIN generating fuel will be used for the purposes of heating interior spaces of homes or buildings to control ambient climate for human comfort, and no other purpose. We also require that producers submit secondary affidavits from the existing end users to verify that the fuel oil is actually being used for or is

intended for a qualifying purpose. We are also adopting new reporting, product transfer documents (PTD), and recordkeeping requirements, discussed below, that will help assure that the qualifying fuel oil is being used in an approved application. These requirements are necessary to provide assurance that the fuel oil used to generate RINs is actually used for a qualifying purpose because these types of fuel may not have previously been used as heating oil, and may not be readily identifiable by their physical characteristics. Without such safeguards, EPA could not be confident that the fuel oil is used as heating oil, and end users might not have adequate notice that the fuel oil must be used as heating oil. EPA believes these requirements will place a small but necessary burden on producers and end users, and greatly benefit the integrity of the program.

2. Reporting, Product Transfer Documents and Recordkeeping Requirements

For the purpose of continued verification after registration, EPA is adopting additional requirements for reporting in § 80.1451(b)(1)(ii)(T), PTDs in § 80.1453(d), and recordkeeping in § 80.1454(b), for the new category of fuel oils qualifying as heating oil.

The reporting, PTD, and recordkeeping requirements will help ensure that the new category of fuel oils used to generate RINs are actually used for the appropriate purpose of heating interior spaces for human comfort. For reporting, producers are required to file quarterly reports with EPA that identify certain information about the volume of fuel oil produced and used as heating oil. The additional reporting requirements stipulate that the producer of fuel oils submit affidavits to EPA reporting the total quantity of the fuel oils produced, the total quantity of the fuel oils sold to end users, and the total quantity of fuel oils sold to end users for which RINs were generated. Additionally, affidavits from each end user must be obtained by the producer and reported to EPA, describing the total quantity of fuel oils received from the

producer, the total amount of fuel oil used for qualifying purposes, the date the fuel oil was received from the producer, the blend level of the fuel oil, quantity of assigned RINs received with the renewable fuel, and quantity of assigned RINs that the end user separated from the renewable fuel, if applicable.

The additional product transfer document requirement associated with the new category of heating oil is that a PTD must be prepared and maintained between the fuel oil producer and the final end user for the legal transfer of title and custody of a specific volume of fuel oil that is designated for use only for the purpose of heating interior spaces of buildings to control ambient climate for human comfort. This additional PTD requirement requires that the PTD used to transfer ownership and custody of the renewable fuel must contain the statement: "This volume of renewable fuel oil is designated and intended to be used to heat interior spaces of homes or buildings to control ambient climate for human comfort. Do NOT use for process heat or any other purpose, as these uses are prohibited pursuant to 40 CFR 80.1460(g)." EPA believes that this PTD requirement will help to ensure that each gallon of fuel oil that is transferred from the producer to the end user is used for qualifying purposes under the expanded definition of heating oil. If the fuel oil is used for some non-qualifying purpose instead of for generating heat for climate control purposes, then the end user of that fuel oil is subject to and liable for violations of the RFS regulations and the CAA, as are any parties that caused that violation.

The additional recordkeeping requirement for the new category of heating oil is that producers must keep copies of the contracts which describe the fuel oil under contract with each end user. If the producer is not selling the fuel oil directly to the end user, this may require the collection of one or more intermediate contracts showing the chain of custody of the fuel oil from the producer to the end user. Consistent with existing regulations, producers are required to

maintain all documents and records submitted for registration, reporting, and PTDs as part of the producer's recordkeeping requirements. EPA believes the producer's maintenance of these records will allow for continued tracking and verification that the end use of the fuel oil is consistent with the meaning of "heating oil" intended under EISA.

IV. Summary and Analysis of Comments

EPA has provided a summary of the comments received and its response. EPA has developed a more thorough Response to Comments document that addresses each comment specifically and addresses requests for clarification to the extent appropriate for this rule.[11]

Clarification on Existing Definition of Heating Oil

Comment

Several commenters sought a variety of clarifications on changes being made to the existing definition of heating oil in section 80.1401.

Response

As explained in this final rule and the October 9, 2012 proposal, this amendment does not modify, limit, or in any way change the inclusion of fuels covered by the existing definition of heating oil at section 80.1401. All fuels included in the original definition of heating oil at section 80.1401 (i.e., those fuels that meet the definition of heating oil at section 80.2(ccc)) will continue to be included as heating oil for purposes of section 80.1401 and the RFS program.

Need For the Expanded Definition of Heating Oil

[11] Regulation of Fuels and Fuel Additives: Modifications to Renewable Fuel Standard Program Response to Comments, *available in the docket at* http://www.regulations.gov.
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Comment

Several commenters expressed support for the expanded definition of heating oil. These commenters noted that the current definition is overly restrictive and inconsistent with the goals of the RFS program, and stated that the expanded definition will spur production of cellulosic biofuel from woody, biomass-based resources. Also, these commenters believe that the expanded definition will drive tens of millions of dollars of local investment and create jobs.

Response

As explained in greater detail above, EPA believes this expansion of the scope of the definition of heating oil for purposes of the RFS program is appropriate and authorized under CAA section 211(o).

Fuel Quality Standards

Comment

Commenters noted that the expanded definition of heating oil will not reference fuel quality standards, which they believed may present environmental and safety concerns. Specifically, one commenter (Global Renewable Strategies and Consulting (GRSAC)) asserted that the definition fails to consider the environment or safety, and should reference ASTM standards for fuel oils.

Response

Section 211(o) of the Clean Air Act, as amended by EISA, requires all renewable fuels used in the RFS program to be derived from renewable biomass and to meet specified thresholds for reductions in lifecycle greenhouse gas emissions compared to a baseline fossil fuel. Adding fuel quality specifications for the fuel oils added to the definition of “heating oil” in this rule

would not affect whether the fuel oil was derived from renewable biomass, and would not affect the analysis of lifecycle greenhouse gas emissions associated with the heating oils. Thus the additional specifications suggested by the commenters are not relevant to the issues needed to determine whether the fuel oils would qualify as renewable fuel for purposes of the RFS program.

The purpose this regulation is to further define what types and uses of renewable fuel qualify for RIN generation, not to set safety standards or limitations for renewable heating oil. Such standards and limitations may be imposed by other regulations and regulatory entities, and through private sales agreements, by manufacturers of heating equipment, and so on. For example, we expect that many of these fuel oils will meet ASTM specifications for fuel oils (e.g., ASTM D396, ASTM D7666, and ASTM D7544). The ASTM fuel oil specifications not only provide fuel quality specifications, they also indicate appropriate uses for the fuel oils meeting the specification. Because the specific use of a particular fuel oil is often dependent upon the fuel oil conforming to the ASTM specification for that fuel oil, industry specification and use would provide a de facto application of fuel oil specifications for fuel oil used as heating oil. This de facto control would occur naturally within the course of business; an added regulatory requirement in the RFS regulations would not add value or provide any benefit, and as noted above is not relevant to the issues needed to determine whether the fuel oil is a renewable fuel for purposes of the RFS program.

Power Generation

Comment

Several commenters recommended that the expanded definition of heating oil should also include fuel oils used for power generation.

Response

The restriction on use for the additional fuel oils is necessary so that the additional fuel oils can reasonably be considered "home heating oil." Congress allowed "home heating oil", not any and all fuel oils, to be considered an additional renewable fuel for purposes of the RFS program. EPA's expanded definition of heating oil includes fuel oils that are used for heating places where people live, work, or recreate, and not just their homes. EPA believes this is a reasonable interpretation of the phrase "home heating oil" and recognizes the ambiguity of the phrase used by Congress, which is not defined and does not have a clear and definite commercial meaning. It gives reasonable meaning to the term home heating oil by limiting them to fuel oils used for heating of facilities that people will occupy, and excludes fuel oils used for other purposes such as generation of energy used in the manufacture of products. It also focuses on the aspect of home that is important here – the heating of people – recognizing that EPA has already determined that fuel oil can be included in the scope of home heating oil even if it is not actually used to heat a home.

Need for Compliance Provisions Associated with the Expanded Definition

Comment

We received several comments regarding the compliance provisions associated with the expanded definition, including the affidavit requirement for RFS registration, reporting requirements, PTD requirements, and end use tracking required for recordkeeping. Commenters who are ready to produce renewable fuel oils for use as heating oil expressed their understanding

of the need for affidavits and their ability to comply with the requirements based on existing and prospective customers.

Other commenters believe that these requirements are not necessary and that they will not be able to comply with the affidavit requirements. For example, two biomass-based diesel producers asserted that they would be unable to submit affidavits because their fuel product does not currently qualify as heating oil under the RFS. These producers also commented that many of their potential customers will not sign the required affidavits out of fear of potential legal ramifications. At the same time, parties interested in blending No.4 and No.6 diesel to be used as heating oil asserted that the affidavit requirements will be unworkable for their existing commercial arrangements, which tend to be informal, with small customers whose employees are not sophisticated enough to comply with the tracking requirements.

Response

EPA believes that the compliance provisions added by this final rule are necessary and appropriate to ensure, as far as is practicable, that the additional fuel oils under the expanded definition meet the requirements of heating oil for purposes of the RFS program. Fuel oils that generate RINs under this expanded definition are those that actually heat places where people live, work, or recreate, and are not used for other purposes such as generating process energy. These additional fuel oils are not readily identifiable based on their physical characteristics, so the additional registration, recordkeeping and reporting requirements are designed to ensure they in fact meet the expanded definition of heating oil as far as can practically be determined at the time of RIN generation. These requirements are tailored to be the least restrictive possible while reasonably ensuring compliance with the amended definition of heating oil.

Such requirements are necessary to ensure RFS programmatic integrity, specifically, that RINs generated for the additional fuel oils represent fuel oils that qualify under the amended definition. Therefore, EPA is requiring producers to identify the end users of their fuel oil at the time of registration. Producers who have not identified any end users for their product will not be able to produce fuel oil for use as heating oil and generate RINs. EPA is aware of producers who have customers willing to sign such affidavits. EPA believes it is reasonable and producers typically will be able to comply with such requirements. If a producer cannot meet the affidavit requirements, that producer should not attempt to generate RINs using the amended definition of heating oil.

Similarly, the PTD requirements are necessary and tailored to be as least restrictive as possible while ensuring compliance. If a producer cannot meet the PTD requirements, that producer should not attempt to generate RINs using the amended definition of heating oil. PTDs must accompany the fuel oil from production to end use; sale contracts are not interchangeable with PTDs but are additionally required for recordkeeping.

RIN Generation

Comment

One commenter suggested that the heating oil definition should identify feedstocks and applicable pathways for RIN generation.

Response

EPA's existing pathways that refer to heating oil as the final RIN-generating renewable fuel, identified in Table 1 to 40 CFR 80.1426, continue to apply without change. This final rule

does not change those pathways or add a new pathway. It merely adds a new category of fuel oils that can qualify as heating oil.

Pipeline Concerns

Comment

One commenter expressed concern that the new definition will create additional segregations of heating oil which will promote inefficiencies in the distribution system.

Response

Based on the information we have received from renewable fuel oil producers, the renewable fuel oil qualifying under the expanded definition is likely to be a drop-in fuel. As such, it would not be distributed through the pipeline system and therefore EPA does not believe the amended definition will create any new inefficiencies for the pipeline distribution system.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq*. The information collection requirements are not enforceable until OMB approves them.

This action contains recordkeeping and reporting requirements (including registration and product transfer documentation) that may affect parties who produce or import renewable fuel oils subject to the revised definition of heating oil at 40 CFR 80.1401. EPA expects that very few parties will be subject to additional recordkeeping and reporting. We estimate that up to 11 parties (i.e., RIN generators, consisting of up to 10 producers and one importer) may be subject to the proposed information collection over the next several years.[12] We estimate an average annual reporting and recordkeeping burden of 31 hours and $2,205 per respondent.[13] Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review the instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transit or otherwise disclose the information. Burden is as defined at 5 CFR § 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the Federal Register to display the OMB control number for the approved information collection requirements contained in this final rule.

[12] We project that the number of affected parties will remain essentially constant over time.
[13] This includes the time to train staff, formulate and transmit responses, and other miscellaneous compliance related activities.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any significant new requirements on small entities.

D. Unfunded Mandates Reform Act

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. We have determined that this action will not result in expenditures of $100 million or more for the above parties and thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. It only applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers and makes relatively minor corrections and modifications to the RFS regulations.

E. Executive Order 13132 (Federalism)

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action only applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers and makes relatively minor corrections and modifications to the RFS regulations. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)

This rule does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249 (November 9, 2000)). It applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers. This action makes relatively minor corrections and modifications to the RFS regulations, and does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

EPA interprets EO 13045 (62 FR 19885 (April 23, 1997)) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (‘‘NTTAA’’), Public Law 104–113, 12(d) (15 U.S.C. § 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so will be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

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

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

K. Congressional Review Act

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

VI. Statutory Provisions and Legal Authority

Statutory authority for the rule finalized today can be found in section 211(o) of the Clean Air Act, 42 U.S.C. 7545. Additional support for the procedural and compliance related

aspects of today's rule, including the recordkeeping requirements, come from sections 114, 208, and 301(a) of the Clean Air Act, 42 U.S.C. 7414, 7542, and 7601(a).

List of Subjects in 40 CFR Part 80

Environmental protection, Administrative practice and procedure, Agriculture, Air pollution control, Confidential business information, Diesel, Energy, Forest and Forest Products, Fuel additives, Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Petroleum, Reporting and Recordkeeping requirements.

Dated: September 24, 2013.

Gina McCarthy,

Administrator.

For the reasons set forth in the preamble, 40 CFR part 80 is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

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

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

Subpart M—[Amended]

2. Section 80.1401 is amended by revising the definition of "Heating oil" to read as follows:

§ 80.1401 Definitions.

* * * * *

Heating oil means:

(1) A fuel meeting the definition of heating oil set forth in §80.2(ccc); or

(2) A fuel oil that is used to heat interior spaces of homes or buildings to control ambient climate for human comfort. The fuel oil must be liquid at 60 degrees Fahrenheit and 1 atmosphere of pressure, and contain no more than 2.5% mass solids.

* * * * *

3. Section 80.1426 is amended by adding a new paragraph (c)(7) to read as follows:

§ 80.1426 How are RINs generated and assigned to batches of renewable fuel by renewable fuel producers or importers?

* * * * *

(c) * * *

(7) For renewable fuel oil that is heating oil as defined in paragraph (2) of the definition of heating oil in §80.1401, renewable fuel producers and importers shall not generate RINs unless they have received affidavits from the final end user or users of the fuel oil as specified in §80.1451(b)(1)(ii)(T)(3).

* * * * *

4. Section 80.1450 is amended by adding a new paragraph (b)(1)(xi) to read as follows:

§ 80.1450 What are the registration requirements under the RFS program?

* * * * *

(b) * * *

(1) * * *

(xi) For a producer of fuel oil meeting paragraph (2) of the definition of heating oil in §80.1401:

(A) An affidavit from the producer of the fuel oil stating that the fuel oil for which RINs have been generated will be sold for the purposes of heating interior spaces of homes or buildings to control ambient climate for human comfort, and no other purpose.

(B) Affidavits from the final end user or users of the fuel oil stating that the fuel oil is being used or will be used for purposes of heating interior spaces of homes or buildings to control ambient climate for human comfort, and no other purpose, and acknowledging that any other use of the fuel oil would violate EPA regulations and subject the user to civil penalties under the Clean Air Act.

* * * * *

5. Section 80.1451 is amended as follows:

a. By redesignating paragraph (b)(1)(ii)(T) as paragraph (b)(1)(ii)(U).

b. By adding a new paragraph (b)(1)(ii)(T).

§ 80.1451 What are the reporting requirements under the RFS program?

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(T) Producers of fuel oil that meets paragraph (2) of the definition of heating oil in §80.1401, shall report, on a quarterly basis, all the following for each volume of fuel oil:

(1) Total volume of fuel oil produced and sold, in units of U.S. gallon, and the lower heating value of the fuel oil, in units of BTU per U.S. gallon.

(2) Total volume of fuel oil for which RINs were generated, in units of U.S. gallon, and the respective quantities of fuel oil sold, organization names and locations of the buildings in which the fuel oil was used, and the RIN numbers assigned to each batch of fuel oil.

(3) For each batch of fuel oil for which RINs are generated that the renewable fuel producer claims meets paragraph (2) of the definition of heating oil in §80.1401 and that is sold for the purposes specified in paragraph (2), affidavits from end user or users of the fuel oil that include the following information:

(i) Quantity of fuel oil received from producer.

(ii) Quantity of fuel oil used or to be used for heating interior spaces of homes or buildings to control ambient climate for human comfort, and for no other purpose.

(iii) Date the fuel oil was received.

(iv) Blend level of the fuel oil in petroleum based fuel oil when received (if applicable).

(v) Quantity of assigned RINs received with the fuel oil, if applicable.

(vi) Quantity of assigned RINs that the end user separated from the fuel oil, if applicable.

* * * * *

6. Section 80.1453 is amended by adding a new paragraph (d) to read as follows:

§ 80.1453 What are the product transfer document (PTD) requirements for the RFS program?

* * * * *

(d) For fuel oil meeting paragraph (2) of the definition of heating oil in §80.1401, the PTD of the fuel oil shall state: "This volume of renewable fuel oil is designated and intended to be used to heat interior spaces of homes or buildings to control ambient climate for human comfort. Do NOT use for process heat or any other purpose, as these uses are prohibited pursuant to 40 CFR 80.1460(g).".

7. Section 80.1454 is amended by adding a new paragraph (b)(8) to read as follows:

§ 80.1454 What are the recordkeeping requirements under the RFS program?

* * * * *

(b) * * *

(8) A producer of fuel oil meeting paragraph (2) of the definition of heating oil in §80.1401 shall keep copies of all contracts which describe the fuel oil under contract with each end user.

* * * * *

8. Section 80.1460 is amended by adding a new paragraph (g) to read as follows:

§ 80.1460 What acts are prohibited under the RFS program?

* * * * *

(g) Failing to use a renewable fuel oil for its intended use. No person shall use fuel oil that meets paragraph (2) of the definition of heating oil in §80.1401 and for which RINs have been generated in an application other than to heat interior spaces of homes or buildings to control ambient climate for human comfort.

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