



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY
40 CFR Part 80**

[EPA-HQ-OAR-2015-0049; FRL-9924-71-OAR]

RIN 2060-AS48

Regulation of Fuels and Fuel Additives: Cellulosic Waiver Credit Price and Minor Amendments to Renewable Fuel Standard Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to clarify our regulations related to the data sources used to establish the cellulosic waiver credit (CWC) price. We are also removing references to CWC prices from the renewable fuel standard regulations, and instead intend to post the prices on EPA's website. The direct final rule also indicates what the CWC prices for 2014 and 2015 would be using the data sources and methodology contained in the rule; however these prices will not be established until they are posted on our website following the effective date of the rule. In addition, we are making minor amendments to the renewable fuel standard program regulations to reinsert sections inadvertently overwritten by the Quality Assurance Program final rule published on July 18, 2014.

DATES: This rule is effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** without further notice, unless EPA receives relevant adverse comment by **[INSERT DATE 30 DAYS AFTER**

DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If EPA receives relevant adverse comment, we will publish in the **Federal Register** a timely withdrawal of the portions of this direct final rule on which adverse comment was received informing the public that those portions of the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2015-0049, by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.
- Email: a-and-r-docket@epa.gov.
- Mail: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW, Washington, DC 20460.
- Hand Delivery: EPA Docket Center, EPA WJC West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2015-0049. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an “anonymous access” system, which means EPA will not know your identity or contact

information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting comments, go to Section I.B of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the www.regulations.gov index.

Although listed in the index, some information is not 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 in www.regulations.gov or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA WJC West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. 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.

FOR FURTHER INFORMATION CONTACT: Julia MacAllister, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor MI 48105; Telephone number: 734-214-4131; Fax number: 734-214-4816; E-mail address: macallister.julia@epa.gov, or the public information line for the Office of Transportation and Air Quality; telephone number (734) 214-4333; E-mail address: OTAQ@epa.gov.

SUPPLEMENTARY INFORMATION:

Why is EPA Issuing a Direct Final Rule?

EPA is publishing this rule without a prior proposed rule because we view this as a noncontroversial action and we anticipate no adverse comment. This action clarifies our regulations related to the data sources used to establish the price for cellulosic waiver credits (CWC). EPA is also removing the CWC prices from our regulations so as to allow the prices to be established in a more expeditious manner. The CWC prices will instead be published on EPA's "Renewable Fuels: Regulations & Standards" website (<http://www.epa.gov/otaq/fuels/renewablefuels/regulations.htm>). The action also reinserts regulatory provisions in the renewable fuel standard (RFS) program regulations that were inadvertently overwritten by the Quality Assurance Program (QAP) final rule (79 FR 42078, July 18, 2014).

Clarifying the data sources used in calculating the CWC price will eliminate uncertainty regarding EPA's process in establishing the CWC prices, will enable stakeholders to better predict the annual CWC price before it is established, and will allow EPA to establish the CWC price in a more timely manner. This action does not

change the formula used to establish the CWC price (listed in our regulations at 40 CFR 80.1456(d)).

In the “Proposed Rules” section of today’s Federal Register, we are publishing a separate document that will serve as the proposed rule to make the changes described herein if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If EPA receives relevant adverse comment or a request for a public hearing, we will publish a timely withdrawal in the Federal Register informing the public of the portions of this direct final rule that will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule.

Does this Action Apply to Me?

Entities potentially affected by this direct final rule are those involved with the production, distribution, and sale of transportation fuels, including gasoline and diesel fuel or renewable fuels such as ethanol and biodiesel. Potentially regulated categories include:

Category	NAICS ¹ Codes	SIC ² Codes	Examples of Potentially Regulated Entities
Industry	324110	2911	Petroleum Refineries
Industry	325193	2869	Ethyl alcohol manufacturing
Industry	325199	2869	Other basic organic chemical manufacturing
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

¹ North American Industry Classification System (NAICS)

² 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 potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your activities would be regulated by this action, you should carefully examine the applicability criteria in 40 CFR part 80. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in **FOR**

FURTHER INFORMATION CONTACT.

Outline of this Preamble

- I. Executive Summary
- II. Clarifications Related to CWC Price Calculation
- III. CWC Price Calculations for 2014 and 2015
- IV. Reinsertion of Inadvertently Overwritten Language
- V. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
 - B. Paperwork Reduction Act
 - C. Regulatory Flexibility Act
 - D. Unfunded Mandates Reform Act
 - E. Executive Order 13132: Federalism
 - F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
 - G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

- H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
 - I. National Technology Transfer and Advancement Act
 - J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
 - K. Congressional Review Act
- VI. Statutory Authority

I. Executive Summary

For any calendar year for which the projected volume of cellulosic biofuel production is less than the applicable volume of cellulosic biofuel set forth in CAA 211(o)(2)(B)(III), EPA must reduce the required volume of cellulosic biofuel for that year to the projected volume, and must provide obligated parties the opportunity to purchase cellulosic waiver credits (CWC). The price of these credits is determined using a formula specified in the CAA.¹ The cellulosic waiver credit price is the greater of \$0.25 or \$3.00 minus the wholesale price of gasoline, where both the \$0.25 and \$3.00 are adjusted for inflation. In this action we are clarifying the data sources we use to calculate the inflation adjustments used in this formula. This will eliminate potential uncertainty regarding EPA's approach to establishing the CWC prices. We are not making any modifications to the formula used to calculate the CWC price.

Additionally, in order to provide more certainty to the market through timely publication of CWC prices, EPA is also amending the procedure it uses to announce CWC prices. To date, we have established the prices by rulemaking and published them in the Code of Federal Regulations. To allow more expeditious publication of these prices, EPA is removing references to CWC prices from the CFR. The prices will instead be posted by the Office of Transportation and Air Quality within the Office of Air and

¹ CAA 211(o)(7)(D)(ii)

Radiation on EPA's "Renewable Fuels: Regulations & Standards" website (<http://www.epa.gov/otaq/fuels/renewablefuels/regulations.htm>).

We are also making minor amendments to the regulations to reinsert language applicable to biofuel producers using *Arundo donax* or *Pennisetum purpureum* as feedstock, which was inadvertently overwritten by the Quality Assurance Program (QAP) final rule (79 FR 42078, July 18, 2014), and to make minor conforming changes to the numbering of other regulatory provisions.

II. Clarifications Related to CWC Price Calculation

EPA is taking action to clarify sections of the regulations related to the CWC price calculation. These changes are consistent with the CWC price formula set forth in the statute, and more specifically, with the statutory direction to adjust certain terms in the formula for inflation. We believe the regulations as amended will more clearly articulate the data sources that EPA will use in calculating the CWC price for each year.

The regulations that outline the process used by EPA to calculate the CWC price are set forth in 40 CFR 80.1456(d). The regulations currently state that "the wholesale price of gasoline used in the CWC calculation will be calculated by averaging the most recent twelve monthly values for U.S. Total Gasoline Bulk Sales (Price) by Refiners as provided by the Energy Information Administration (EIA) that are available as of September 30 of the year preceding the compliance period."² In practice, given the publication schedule for the referenced EIA publication, this means that EPA calculates the wholesale price of gasoline using data from the 12 months prior to July of the year preceding the compliance period (i.e., July 2011 – June 2012 data for the 2013 CWC price). We are not making any modifications to this portion of the regulations.

² 40 CFR 80.1456(d)(2)

The regulations also currently state that the inflation adjustment used in calculating the CWC price will be calculated at the time EPA sets the cellulosic biofuel standard.³ In an effort to provide certainty to the market in relation to the CWC price as soon as reasonably practical, EPA believes it would be preferable to announce the CWC price as soon as the relevant data on the wholesale price of gasoline is available. Therefore, we are amending these regulations to calculate the inflation adjustment using data from June of the year preceding the compliance period. We believe this is appropriate as it is the most recent month within the time period over which we calculate the average wholesale price of gasoline. We are also amending our regulations to eliminate the regulatory references to CWC prices. Instead we intend to announce the CWC price in a notice on our “Renewable Fuels: Regulations & Standards” website by November of the year preceding the compliance period. Consistent with previous CWC calculations, EPA will continue to base the inflation adjustment on the Consumer Price Index for All Urban Consumers (CPI-U): U.S. City Average, Unadjusted Index for All Items expenditure category as provided by the Bureau of Labor and Statistics. We are amending our regulations in this action to clarify that we are using the unadjusted price index, rather than the seasonally adjusted price index, to calculate the inflation adjustment. We believe this is appropriate as the unadjusted index most accurately reflects the prices consumers actually pay and do not change, whereas the seasonally adjusted indexes are subject to revision for up to five years after their release.⁴ We are also clarifying that we are using “US City Average” data, as opposed to data for geographic subsets of the country. This is appropriate in light of the nation-wide

³ 40 CFR 80.1456(d)(3)

⁴ For more information on Seasonally Adjusted vs. Unadjusted Indexes see <http://www.bls.gov/cpi/cpisapage.htm>

applicability of the RFS program. Both of these changes simply clarify EPA's current practice, and are designed to promote regulatory certainty and understanding by stakeholders.

We are also amending the section of our regulations where the CWC price for previous years is listed.⁵ EPA has included the prices for 2010, 2011, 2012, and 2013 CWCs in our regulations. Promulgating prices in our regulations, however, requires EPA to undertake a rulemaking, which we believe may unnecessarily delay the announcement of the CWC price. Furthermore, we believe the CWC price need not be established by rulemaking, for the following reasons. First, the formula and all data sources for the CWC price are specified in our regulations, so the actual price calculation is a procedural action that will not benefit from a notice and comment rulemaking. Second, CWCs are purchased from EPA, and EPA can ensure that the correct price is paid for them. Finally, the publication of the CWC price in the CFR is not necessary for informational purposes as EPA intends to promptly post the CWC prices on our website.

Therefore, in this action EPA is deleting the sections of our regulations containing the CWC prices for previous years and is instead including a statement in the regulations indicating that the CWC price for each year will be posted on EPA's "Renewable Fuels: Regulations & Standards" website (<http://www.epa.gov/otaq/fuels/renewablefuels/regulations.htm>). Adopting this approach will allow EPA to announce the CWC prices at the earliest opportunity. We believe this will benefit both cellulosic biofuel producers and obligated parties. EPA will post the CWC prices for 2013, 2014, and 2015 on our website following the effective date of this rule.

⁵ 40 CFR 80.1405(d)

III. CWC Price Calculations for 2014 and 2015

To illustrate the derivation of CWC prices pursuant to the statutory formula, and with the data sources specified in this direct final rule, we explain in this section the derivation of CWC prices for 2014 and 2015.⁶ EPA determined the average wholesale (refinery gate) price of gasoline using the monthly average prices for the 12 months prior to July of the year preceding each compliance period. In this calculation EPA uses the U.S. Total Gasoline Bulk Sales Price by Refiners (Dollars per Gallon) as reported by the U.S. Energy Information Administration (EIA). The data are shown below in Table 1 and Table 2 for the calculations for 2014 and 2015, respectively, and can be found at: (http://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=EMA_EPM0_PBR_NUS_DPG&f=M).

⁶ The calculations for the 2013 CWC were explained in a memo to the docket for our rulemaking establishing the 2013 standards (EPA-HQ-OAR-2012-0546-0134). The 2013 CWC price was calculated in accordance with the methodology and data sources described in this rule, with one minor difference. To calculate the Inflation Factor the August 2012 Index (230.037) was used rather than the June 2012 Index (229.815). Using the June 2012 Index in place of the August 2012 Index does not change the CWC waiver credit price for 2013 of \$0.42. EPA will therefore confirm the 2013 CWC price in the announcement on our website following the effective date of this rule.

Table 1 – Wholesale Gasoline Prices for 2014 CWC Calculation

Month	Average Price in \$
July 2012	2.703
August 2012	2.961
September 2012	3.133
October 2012	2.922
November 2012	2.622
December 2012	2.554
January 2013	2.668
February 2013	2.892
March 2013	2.963
April 2013	2.822
May 2013	2.824
June 2013	2.817

Table 2 – Wholesale Gasoline Prices for 2015 CWC Calculation

Month	Average Price in \$
July 2013	2.879
August 2013	2.916
September 2013	2.831
October 2013	2.610
November 2013	2.496
December 2013	2.551
January 2014	2.598
February 2014	2.650
March 2014	2.763
April 2014	2.829
May 2014	2.853
June 2014	2.924

The average monthly price in dollars for the calculation of the 2014 CWC price is 2.823.

The average monthly price in dollars for the calculation of the 2015 CWC price is 2.742.

The CAA requires that EPA adjust for inflation the comparison values of twenty-five cents (\$0.25) and three dollars (\$3.00) in the CWC price formula. EPA must compare the inflated twenty-five cent value with the amount the inflated three dollar

value exceeds the average wholesale price of gasoline. EPA is required to use the greater of the two values as the price for the cellulosic biofuel waiver credits.

EPA evaluated inflation by using the Unadjusted Index values from the Consumer Price Index for All Urban Consumers (CPI-U): U.S. City Average, for the All Items expenditure category as provided by the Bureau of Labor and Statistics, for the months of January 2009 (the first comparable value after 2008) and June 2013 and June 2014, as discussed in Section II of this preamble. These unadjusted indexes are used to calculate an Inflation Factor for each year, as shown in Table 4 below. Finally, we compare \$0.25 (inflation adjusted) to \$3.00 (inflation adjusted) minus the wholesale price of gasoline for each year. The greater of these values is the price for the cellulosic waiver credits.

Table 3 – Inflation Adjustments

Month	Unadjusted Index	Source
January 2009	211.143	http://www.bls.gov/cpi/cpid0901.pdf (Table 1)
June 2013	233.504	http://www.bls.gov/cpi/cpid1306.pdf (Table 1)
June 2014	238.343	http://www.bls.gov/cpi/cpid1406.pdf (Table 1)

Table 4 – Inflation Factors

Months	Equation	Inflation Factor
Jan. 2009 – June 2013	$1+(233.504-211.143)/211.143$	1.106
Jan. 2009 – June 2014	$1+(238.343-211.143)/211.143$	1.129

Table 5 – Cellulosic Waiver Credit Price Calculations

Year	\$0.25 (Inflation Adjusted)	\$3 – Wholesale Price of Gasoline (Inflation Adjusted)	CWC Price (Larger of the two values, rounded to the nearest cent)
2014	$\$0.25 * 1.106 = \0.28	$(\$3.00 * 1.106) - \$2.823 = \$0.4947$	\$0.49
2015	$\$0.25 * 1.129 = \0.28	$(\$3.00 * 1.129) - \$2.742 = \$0.6445$	\$0.64

As shown in Table 5, using the data sources for the inflation adjustment that are specified in this direct final rule results in a CWC price of \$0.49 for 2014 and \$0.64 for 2015. These prices, along with the CWC price for 2013 (\$0.42) will be posted on EPA's website after the effective date of this rule.

EPA notes that in this action we are not making a determination regarding whether CWCs will actually be offered. As required by statute, CWCs are only made available for sale if EPA lowers the required cellulosic biofuel volume requirement below the applicable volume set forth in the Act. EPA will decide whether or not it will lower the required cellulosic biofuel volumes in future rules establishing the 2014 and 2015 cellulosic biofuel percentage standards. At that time EPA will determine if CWCs will be sold. If so, they will be sold at the prices indicated above. However EPA notes that it has offered CWCs for every year since 2010, the first year for which a separate cellulosic biofuel standard was established. Given the anticipated shortfall in cellulosic biofuel production, as compared to statutory volumes, in these years it is probable that CWCs will be offered.

IV. Reinsertion of Inadvertently Overwritten Language

In the RFS RIN Quality Assurance Program final rule (79 FR 42078, July 18, 2014), we moved the previous 40 CFR 80.1426(f)(12) (regarding process heat produced from biogas) to 40 CFR 80.1426(f)(14) as we had proposed on February 21, 2013 (78 FR 12158). When we moved 40 CFR 80.1426(f)(12) to 40 CFR 80.1426(f)(14), however, we inadvertently overwrote the previous 40 CFR 80.1426(f)(14) (regarding renewable fuel produced from giant reed (*Arundo donax*) or napier grass (*Pennisetum purpureum*)) that had been finalized in a separate final rule which was published on July 11, 2013 (78

FR 41703). The new 40 CFR 80.1426(f)(12) finalized in the RFS RIN Quality Assurance Program final rule dealt with additional requirements for producers and importers when generating RINs. In today's action, we are amending the regulations to undo our inadvertent elimination of the regulatory provisions related to giant reed and napier grass. Specifically, we are: 1) re-inserting the inadvertently eliminated language as 40 CFR 80.1426(f)(14) (See 78 FR 41714, July 11, 2013); 2) moving the current 40 CFR 80.1426(f)(14) (process heat produced from biogas) back to 40 CFR 80.1426(f)(12), where it existed prior to the RFS RIN Quality Assurance Program final rule (See 75 FR 79977, December 21, 2010); and 3) moving the current 40 CFR 80.1426(f)(12) to a new 40 CFR 80.1426(f)(17).

V. Statutory and Executive Order Reviews

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the PRA. The changes made to the regulations as a result of this action impose no new or different reporting requirements on regulated parties.

C. Regulatory Flexibility Act

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An

agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This action clarifies the data sources and methodology used by EPA to establish the CWC price, establishes these prices for 2014 and 2015, and reinserts inadvertently overwritten regulatory language. The impacts of the RFS2 program on small entities were already addressed in the RFS2 final rule promulgated on March 26, 2010 (75 FR 14670), and this rule will not impose any additional requirements on small entities beyond those already analyzed. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action implements mandate(s) specifically and explicitly set forth in Clean Air Act section 211(o) without the exercise of any policy discretion by the EPA.

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.

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

This action does not have tribal implications, as specified in Executive Order 13175. This rule will be implemented at the Federal level and potentially impacts gasoline, diesel, and renewable fuel producers, importers, distributors, and marketers. Tribal governments would be affected only to the extent they purchase and use regulated fuels. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets EO 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks and because it implements specific standards established by Congress in statutes (section 211(o) of the Clean Air Act).

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

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

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

This rule is a technical correction and does not concern an environmental health or safety risk. Therefore, Executive Order 12898 does not apply.

K. Congressional Review Act

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

VI. Statutory Authority

Statutory authority for this action comes from section 211 of the Clean Air Act, 42 U.S.C. 7545.

List of Subjects in 40 CFR Part 80

Environmental protection, Administrative practice and procedure, Air pollution control, Diesel fuel, Fuel additives, Gasoline, Imports, Oil imports, Petroleum, Renewable Fuel.

Dated: March 24, 2015.

Gina McCarthy,

Administrator

For the reasons set forth in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as set forth below.

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, 7521, 7542, 7545, and 7601(a).

Subpart M – Renewable Fuel Standard

2. Section 80.1405 is amended by revising paragraph (d) to read as follows:

§ 80.1405 What are the Renewable Fuel Standards?

* * * * *

(d) The price for cellulosic biofuel waiver credits will be calculated in accordance with § 80.1456(d) and published on EPA’s website.

3. Section 80.1426 is amended by revising paragraphs (f)(12) and (f)(14), and adding paragraph (f)(17) to read as follows:

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

* * * * *

(f) * * *

(12) For purposes of Table 1 of this section, process heat produced from combustion of gas at a renewable fuel facility is considered derived from biomass if the gas is biogas.

(i) For biogas directly transported to the facility without being placed in a commercial distribution system, all of the following conditions must be met:

(A) The producer has entered into a written contract for the procurement of a specific volume of biogas with a specific heat content.

(B) The volume of biogas was sold to the renewable fuel production facility, and to no other facility.

(C) The volume and heat content of biogas injected into the pipeline and the volume of gas used as process heat are measured by continuous metering.

(ii) For biogas that has been gathered, processed and injected into a common carrier pipeline, all of the following conditions must be met:

(A) The producer has entered into a written contract for the procurement of a specific volume of biogas with a specific heat content.

(B) The volume of biogas was sold to the renewable fuel production facility, and to no other facility.

(C) The volume of biogas that is withdrawn from the pipeline is withdrawn in a manner and at a time consistent with the transport of fuel between the injection and withdrawal points.

(D) The volume and heat content of biogas injected into the pipeline and the volume of gas used as process heat are measured by continuous metering.

(E) The common carrier pipeline into which the biogas is placed ultimately serves the producer's renewable fuel facility.

(iii) The process heat produced from combustion of gas at a renewable fuel facility described in paragraph (f)(12)(i) of this section shall not be considered derived from biomass if any other party relied upon the contracted volume of biogas for the creation of RINs.

* * * * *

(14) A producer or importer of renewable fuel using giant reed (*Arundo donax*) or napier grass (*Pennisetum purpureum*) as a feedstock may generate RINs for that renewable fuel if:

(i) The feedstock is produced, managed, transported, collected, monitored, and processed according to a Risk Mitigation Plan approved by EPA under the registration procedures specified in § 80.1450(b)(1)(x)(A); or,

(ii) EPA has determined that there is not a significant likelihood of spread beyond the planting area of the feedstock used for production of the renewable fuel. Any determination that *Arundo donax* or *Pennisetum purpureum* does not present a significant likelihood of spread beyond the planting area must be based upon clear and compelling evidence, including information and supporting data submitted by the producer. Such a determination must be made by EPA as specified in § 80.1450(b)(1)(x)(B).

* * * * *

(17)(i) For purposes of this section, any renewable fuel other than ethanol, biodiesel, or renewable diesel that meets the ASTM D 975-13a Grade No. 1-D or No. 2-D specifications (incorporated by reference, see §80.1468) is considered renewable fuel and the producer or importer may generate RINs for such fuel only if all of the following apply:

(A) The fuel is produced from renewable biomass and qualifies for a D code in Table 1 to this section or has been otherwise approved by the Administrator.

(B) The fuel producer or importer maintains records demonstrating that the fuel was produced for use as a transportation fuel, heating oil or jet fuel by any of the following:

(1) Blending the renewable fuel into gasoline or diesel fuel to produce a transportation fuel, heating oil or jet fuel that meets all applicable standards.

(2) Entering into a written contract for the sale of the renewable fuel, which specifies the purchasing party shall blend the fuel into gasoline or diesel fuel to produce a transportation fuel, heating oil or jet fuel that meets all applicable standards.

(3) Entering into a written contract for the sale of the renewable fuel, which specifies that the fuel shall be used in its neat form as a transportation fuel, heating oil or jet fuel that meets all applicable standards.

(C) The fuel was sold for use in or as a transportation fuel, heating oil, or jet fuel, and for no other purpose.

(ii) [Reserved]

* * * * *

4. Section 80.1456 is amended by revising paragraph (d)(3) to read as follows:

§ 80.1456 What are the provisions for cellulosic biofuel waiver credits?

* * * * *

(d) * * *

(3) The inflation adjustment will be calculated by comparing the Consumer Price Index for All Urban Consumers (CPI-U): U.S. City Average, Unadjusted Index for All Items expenditure category as provided by the Bureau of Labor Statistics for June of the year preceding the compliance period to the comparable value reported for January 2009.

* * * * *

[FR Doc. 2015-07476 Filed: 4/2/2015 08:45 am; Publication Date: 4/3/2015]