

## Environmental Protection Agency

## § 80.1467

States importer reports to the information contained in the commercial document.

(5) Obtain a separate listing of the tenders under this paragraph (m)(5) where the RFS-FRRF is loaded onto a marine vessel. Select a sample from this listing in accordance with the guidelines in § 80.127, and obtain a commercial document of general circulation that lists vessel arrivals and departures, and that includes the port and date of departure and the ports and dates where the renewable fuel was offloaded for the selected vessels. Determine and report as a finding the country where the renewable fuel was offloaded for each vessel selected.

(6) In order to complete the requirements of this paragraph (m) an auditor shall:

(i) Be independent of the foreign producer;

(ii) Be licensed as a Certified Public Accountant in the United States and a citizen of the United States, or be approved in advance by EPA based on a demonstration of ability to perform the procedures required in §§ 80.125 through 80.127, 80.130, 80.1464, and this paragraph (m); and

(iii) Sign a commitment that contains the provisions specified in paragraph (f) of this section with regard to activities and documents relevant to compliance with the requirements of §§ 80.125 through 80.127, 80.130, 80.1464, and this paragraph (m).

(n) *Withdrawal or suspension of foreign producer approval.* EPA may withdraw or suspend a foreign producer's approval where any of the following occur:

(1) A foreign producer fails to meet any requirement of this section.

(2) A foreign government fails to allow EPA inspections or audits as provided in paragraph (f)(1) of this section.

(3) A foreign producer asserts a claim of, or a right to claim, sovereign immunity in an action to enforce the requirements in this subpart.

(4) A foreign producer fails to pay a civil or criminal penalty that is not satisfied using the foreign producer bond specified in paragraph (h) of this section.

(o) *Additional requirements for applications, reports and certificates.* Any appli-

cation for approval as a foreign producer, alternative procedures under paragraph (1) of this section, any report, certification, or other submission required under this section shall be:

(1) Submitted in accordance with procedures specified by the Administrator, including use of any forms that may be specified by the Administrator.

(2) Signed by the president or owner of the foreign producer company, or by that person's immediate designee, and shall contain the following declaration: "I hereby certify: (1) That I have actual authority to sign on behalf of and to bind [INSERT NAME OF FOREIGN PRODUCER] with regard to all statements contained herein; (2) that I am aware that the information contained herein is being Certified, or submitted to the United States Environmental Protection Agency, under the requirements of 40 CFR part 80, subpart M, and that the information is material for determining compliance under these regulations; and (3) that I have read and understand the information being Certified or submitted, and this information is true, complete and correct to the best of my knowledge and belief after I have taken reasonable and appropriate steps to verify the accuracy thereof. I affirm that I have read and understand the provisions of 40 CFR part 80, subpart M, including 40 CFR 80.1465 apply to [INSERT NAME OF FOREIGN PRODUCER]. Pursuant to Clean Air Act section 113(c) and 18 U.S.C. 1001, the penalty for furnishing false, incomplete or misleading information in this certification or submission is a fine of up to \$10,000 U.S., and/or imprisonment for up to five years.'".

[75 FR 14863, Mar. 26, 2010, as amended at 77 FR 1357, Jan. 9, 2012]

### **§ 80.1467 What are the additional requirements under this subpart for a foreign RIN owner?**

(a) *Foreign RIN owner.* For purposes of this subpart, a foreign RIN owner is a person located outside the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (collectively referred to in this section as "the United States") that has been approved by EPA to own RINs.

(b) *General requirement.* An approved foreign RIN owner must meet all requirements that apply to parties who own RINs under this subpart.

(c) *Foreign RIN owner commitments.* Any person shall commit to and comply with the provisions contained in this paragraph (c) as a condition to being approved as a foreign RIN owner under this subpart.

(1) Any United States Environmental Protection Agency inspector or auditor must be given full, complete, and immediate access to conduct inspections and audits of the foreign RIN owner's place of business.

(i) Inspections and audits may be either announced in advance by EPA, or unannounced.

(ii) Access will be provided to any location where documents related to RINs the foreign RIN owner has obtained, sold, transferred or held are kept.

(iii) Inspections and audits may be by EPA employees or contractors to EPA.

(iv) Any documents requested that are related to matters covered by inspections and audits must be provided to an EPA inspector or auditor on request.

(v) Inspections and audits by EPA may include review and copying of any documents related to the following:

(A) Transfers of title to RINs.

(B) Work performed and reports prepared by independent auditors under the requirements of this section, including work papers.

(vi) Inspections and audits by EPA may include interviewing employees.

(vii) Any employee of the foreign RIN owner must be made available for interview by the EPA inspector or auditor, on request, within a reasonable time period.

(viii) English language translations of any documents must be provided to an EPA inspector or auditor, on request, within 10 working days.

(ix) English language interpreters must be provided to accompany EPA inspectors and auditors, on request.

(2) An agent for service of process located in the District of Columbia shall be named, and service on this agent constitutes service on the foreign RIN owner or any employee of the foreign RIN owner for any action by EPA or

otherwise by the United States related to the requirements of this subpart.

(3) The forum for any civil or criminal enforcement action related to the provisions of this section for violations of the Clean Air Act or regulations promulgated thereunder shall be governed by the Clean Air Act, including the EPA administrative forum where allowed under the Clean Air Act.

(4) United States substantive and procedural laws shall apply to any civil or criminal enforcement action against the foreign RIN owner or any employee of the foreign RIN owner related to the provisions of this section.

(5) Submitting an application to be a foreign RIN owner, and all other actions to comply with the requirements of this subpart constitute actions or activities covered by and within the meaning of the provisions of 28 U.S.C. 1605(a)(2), but solely with respect to actions instituted against the foreign RIN owner, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign RIN owner under this subpart, including conduct that violates the False Statements Accountability Act of 1996 (18 U.S.C. 1001) and section 113(c)(2) of the Clean Air Act (42 U.S.C. 7413).

(6) The foreign RIN owner, or its agents or employees, will not seek to detain or to impose civil or criminal remedies against EPA inspectors or auditors, whether EPA employees or EPA contractors, for actions performed within the scope of EPA employment related to the provisions of this section.

(7) The commitment required by this paragraph (c) shall be signed by the owner or president of the foreign RIN owner business.

(d) *Sovereign immunity.* By submitting an application to be a foreign RIN owner under this subpart, the foreign entity, and its agents and employees, without exception, become subject to the full operation of the administrative and judicial enforcement powers and provisions of the United States without limitation based on sovereign immunity, with respect to actions instituted against the foreign RIN owner, its agents and employees in any court or other tribunal in the United States for

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conduct that violates the requirements applicable to the foreign RIN owner under this subpart, including conduct that violates the False Statements Accountability Act of 1996 (18 U.S.C. 1001) and section 113(c)(2) of the Clean Air Act (42 U.S.C. 7413).

(e) *Bond posting.* Any foreign entity shall meet the requirements of this paragraph (e) as a condition to approval as a foreign RIN owner under this subpart.

(1) The foreign entity shall post a bond of the amount calculated using the following equation:

$$\text{Bond} = G * \$ 0.01$$

*Where:*

Bond = Amount of the bond in U.S. dollars.  
G = The total of the number of gallon-RINs the foreign entity expects to obtain, sell, transfer or hold during the first calendar year that the foreign entity is a RIN owner, plus the number of gallon-RINs the foreign entity expects to obtain, sell, transfer or hold during the next four calendar years. After the first calendar year, the bond amount shall be based on the actual number of gallon-RINs obtained, sold, or transferred so far during the current calendar year plus the number of gallon-RINs obtained, sold, or transferred during the four calendar years immediately preceding the current calendar year. For any year for which there were fewer than four preceding years in which the foreign entity obtained, sold, or transferred RINs, the bond shall be based on the total of the number of gallon-RINs sold or transferred so far during the current calendar year plus the number of gallon-RINs obtained, sold, or transferred during any immediately preceding calendar years in which the foreign entity owned RINs, plus the number of gallon-RINs the foreign entity expects to obtain, sell or transfer during subsequent calendar years, the total number of years not to exceed four calendar years in addition to the current calendar year.

(2) Bonds shall be posted by any of the following methods:

(i) Paying the amount of the bond to the Treasurer of the United States.

(ii) Obtaining a bond in the proper amount from a third party surety agent that is payable to satisfy United States administrative or judicial judgments against the foreign RIN owner, provided EPA agrees in advance as to the third party and the nature of the surety agreement.

(3) All the following shall apply to bonds posted under this paragraph (e); bonds shall:

(i) Be used to satisfy any judicial judgment that results from an administrative or judicial enforcement action for conduct in violation of this subpart, including where such conduct violates the False Statements Accountability Act of 1996 (18 U.S.C. 1001) and section 113(c)(2) of the Clean Air Act (42 U.S.C. 7413).

(ii) Be provided by a corporate surety that is listed in the United States Department of Treasury Circular 570 "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds".

(iii) Include a commitment that the bond will remain in effect for at least five years following the end of latest reporting period in which the foreign RIN owner obtains, sells, transfers, or holds RINs.

(4) On any occasion a foreign RIN owner bond is used to satisfy any judgment, the foreign RIN owner shall increase the bond to cover the amount used within 90 days of the date the bond is used.

(f) *English language reports.* Any document submitted to EPA by a foreign RIN owner shall be in English, or shall include an English language translation.

(g) *Prohibitions.*—(1) A foreign RIN owner is prohibited from obtaining, selling, transferring, or holding any RIN that is in excess of the number for which the bond requirements of this section have been satisfied.

(2) Any RIN that is obtained, sold, transferred, or held that is in excess of the number for which the bond requirements of this section have been satisfied is an invalid RIN under § 80.1431.

(3) Any RIN that is obtained from a person located outside the United States that is not an approved foreign RIN owner under this section is an invalid RIN under § 80.1431.

(4) No foreign RIN owner or other person may cause another person to commit an action prohibited in this paragraph (g), or that otherwise violates the requirements of this section.

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## 40 CFR Ch. I (7–1–13 Edition)

(h) *Additional attest requirements for foreign RIN owners.* The following additional requirements apply to any foreign RIN owner as part of the attest engagement required for RIN owners under this subpart M.

(1) The attest auditor must be independent of the foreign RIN owner.

(2) The attest auditor must be licensed as a Certified Public Accountant in the United States and a citizen of the United States, or be approved in advance by EPA based on a demonstration of ability to perform the procedures required in §§80.125 through 80.127, 80.130, and 80.1464.

(3) The attest auditor must sign a commitment that contains the provisions specified in paragraph (c) of this section with regard to activities and documents relevant to compliance with the requirements of §§80.125 through 80.127, 80.130, and 80.1464.

(i) *Withdrawal or suspension of foreign RIN owner status.* EPA may withdraw or suspend its approval of a foreign RIN owner where any of the following occur:

(1) A foreign RIN owner fails to meet any requirement of this section, including, but not limited to, the bond requirements.

(2) A foreign government fails to allow EPA inspections as provided in paragraph (c)(1) of this section.

(3) A foreign RIN owner asserts a claim of, or a right to claim, sovereign immunity in an action to enforce the requirements in this subpart.

(4) A foreign RIN owner fails to pay a civil or criminal penalty that is not satisfied using the foreign RIN owner bond specified in paragraph (e) of this section.

(j) *Additional requirements for applications, reports and certificates.* Any application for approval as a foreign RIN owner, any report, certification, or other submission required under this section shall be:

(1) Submitted in accordance with procedures specified by the Administrator, including use of any forms that may be specified by the Administrator.

(2) Signed by the president or owner of the foreign RIN owner company, or by that person's immediate designee, and shall contain the following declaration:

“I hereby certify: (1) That I have actual authority to sign on behalf of and to bind [INSERT NAME OF FOREIGN RIN OWNER] with regard to all statements contained herein; (2) that I am aware that the information contained herein is being Certified, or submitted to the United States Environmental Protection Agency, under the requirements of 40 CFR part 80, subpart M, and that the information is material for determining compliance under these regulations; and (3) that I have read and understand the information being Certified or submitted, and this information is true, complete and correct to the best of my knowledge and belief after I have taken reasonable and appropriate steps to verify the accuracy thereof. I affirm that I have read and understand the provisions of 40 CFR part 80, subpart M, including 40 CFR 80.1467 apply to [INSERT NAME OF FOREIGN RIN OWNER]. Pursuant to Clean Air Act section 113(c) and 18 U.S.C. 1001, the penalty for furnishing false, incomplete or misleading information in this certification or submission is a fine of up to \$10,000 U.S., and/or imprisonment for up to five years.”.

[75 FR 14863, Mar. 26, 2010, as amended at 77 FR 1358, Jan. 9, 2012]

### § 80.1468 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Environmental Protection Agency (EPA) must publish notice of change in the FEDERAL REGISTER and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030 or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html). This material is also available for inspection at the EPA Docket Center, Docket No. EPA-HQ-OAR-2005-0161, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington DC. The telephone number for the Air Docket is (202) 566-1742.