

Under the Renewable Fuel Standard (RFS2) program, foreign producers of renewable fuel are required to register with EPA pursuant to 40 CFR §80.1450(b). The registration requirements for domestic and foreign producers are the same, including foreign undenatured ethanol producers. However, foreign producers have the option of generating RINs under 40 CFR §80.1466 or allowing the renewable fuel importer to generate the RINs upon import of the renewable fuel under 40 CFR §80.1426(a).

This document explains the required materials that must be sent to and accepted by EPA in order to become a RIN generating foreign renewable fuel producer under 40 CFR §80.1466.

Required Registration Documents

- 1) Bond posting by the RIN generating foreign renewable fuel producer, per §80.1466(h);
- 2) Commitment Letter, signed by the owner or president of the foreign producer company, per §80.1466(f)(7) from the RIN generating foreign renewable fuel producer per, §80.1466(f) including the name of the agent for service of process located in the District of Columbia, per §80.1466(f)(2); and
- 3) Commitment Letter from an independent third party that will be testing the renewable fuel batch when loaded at the port, per §80.1466(d)(3)(iii).

All required documents must be received and approved by EPA prior to the generation of RINs by the foreign producer.

Templates for the Required Registration Documents

- 1) RIN Generator Bond Form - Attachment A
- 2) RIN Generator Commitment Letter - Attachment B
- 3) Third Party Inspector Commitment Letter - Attachment C

Additional Regulation Requirements

1) Pursuant to 80.1466(d)(2): The independent third party meeting requirements under §80.1466(d) shall submit a report to the following:

a. The RIN-generating foreign producer, containing the information required under 80.1466(d)(1), to accompany the product transfer documents for the vessel.

b. The Administrator, containing the information required under 80.1466(d)(1), within thirty days following the date of the independent third party's inspection. This report shall include a description of the method used to determine the identity of the foreign producer facility at which the renewable fuel was produced, assurance that the renewable fuel remained segregated as specified in 80.1466(j)(1), and a description of the renewable fuel's movement and storage between production at the source facility and vessel loading.

The report referenced in (b) can be found on the RFS Reporting Forms webpage (<http://www.epa.gov/otaq/fuels/reporting/rfs.htm>).

2) Pursuant to 80.1466(m): Additional attest requirements for producers of RFS-FRRF.

Additional Regulation Provisions

Any party planning to be a RIN generating renewable fuel producer or importing renewable fuel from a RIN generating renewable fuel producer should familiarize themselves with the RFS regulations, specifically 40 CFR 80.1466, in its entirety. However, some key regulation sections in 80.1466 are cited below.

Prohibitions.

80.1466 (j)

- (1) No person may combine RFS—FRRF with any Non-RFS—FRRF, and no person may combine RFS—FRRF with any RFS—FRRF produced at a different production facility, until the importer has met all the requirements of paragraph (k) of this section.
- (2) No foreign producer or other person may cause another person to commit an action prohibited in paragraph (j)(1) of this section, or that otherwise violates the requirements of this section.
- (3) No foreign producer and importer may generate RINs for the same volume of renewable fuel.
- (4) A foreign producer of renewable fuel is prohibited from generating RINs in excess of the number for which the bond requirements of this section have been satisfied.

Withdrawal or suspension of foreign producer approval.

80.1466(n) 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.

Attachment A

Bond Number _____

Know All Men By These Presents

That we _____, a corporation (?) formed and existing under the laws of _____ (hereinafter called the Principal), and _____, a corporation duly organized and operating under the laws of the State of _____ (hereinafter called the Surety) are hereby and firmly bound unto:

Treasurer of the United States of America
c/o Environmental Protection Agency
Fuels Compliance Center
Mail Stop 64061
1310 L Street NW
Washington, DC 20005

(hereinafter called the Obligee), for the sum of _____ (\$ _____), the payment of which we, the Principal and Surety, bind our corporations, their boards, administrators or trustees, successors and assigns, jointly and severally by these presents.

Sealed and signed this _____ day of _____.

1. On March 26, 2010, the Obligee issued a final rule establishing a renewable fuels standard, including requirements for Renewable Identification Numbers (RIN) generating foreign renewable fuel producers. Specifically the requirement at 40 C.F.R. 80.1466(h) requires that as a condition of being approved by Obligee to own a RIN, a would-be foreign RIN owner shall post a surety bond in the amount calculated by Obligee in accordance with the formula set forth in 40 C.F.R. 80.1466(h). Based upon the formula set forth therein, and as agreed by Principal and Surety, the amount of the requisite bond require to be posted by Principal is \$ _____ and he aggregate liability to the Surety will not exceed the Bond Amount. Any changes or amendments or increases to the Bond cannot be made without the Surety or written consent.
2. This bond is posted under the authority and as required by 40 C.F.R. 80.1466(h) to satisfy any judgments of any court of the United States of America that results from any administrative or judicial enforcement action arising from Principal's conduct in violation of 40 C.F.R. Part 80, Subpart M, and including any conduct that violates Title 18 U.S.C. §1001, Clean Air Act § 113(c) (2), or any other applicable provisions of the Clean Air Act.
3. The liability of Principal and Surety hereunder for any or all of the penal sum (face amount) of this bond shall arise upon the entry of any such judgment referenced above.
4. If, on any occasion, any portion of the bond is used to satisfy any judgment, Principal shall, within 90 days from the date demand is made for payment on the bond, increase the bond to the required bond level set forth in paragraph 1 above.

5. This bond shall be effective beginning at _____ on _____, and shall remain in effect for at least five years following the end of the latest annual reporting period that the Principal produces renewable fuel pursuant to the requirements of this subpart and during the pendency of any judicial or administrative

proceeding that may result in a judgment as set forth in Paragraph 2 above. In the event Principal or Surety desires to terminate this bond, written notice shall first be provided to Obligee, attention:

Director, Fuels Compliance Center,
Environmental Protection Agency,
1200 Pennsylvania Avenue, N. W., Washington, DC 20460,

at least ninety (90) days prior to the effective date of termination as set forth in said notice. Principal and Surety expressly agree that such notice shall not discharge the liability of the Principal and Surety for any judgment which arises from acts or omissions occurring prior to the date of termination, regardless of whether judgment is actually issued prior to the termination date. Liability under this Bond shall not be incurred as a result of cancellation of this Bond.

In witness whereof, Principal and Surety have executed this instrument under seal on the _____ day of _____ 20__.

Principal

_____(Company Name)

_____(Signature) (Seal)

By:
Its:

Surety

_____(Signature) (Seal)

By: Its:

STATE OF _____, COUNTY OF _____ SS,:

I CERTIFY that on _____, 20__,
Personally came before me, _____ and this person acknowledged under oath, to my satisfaction, that:

- (A) This person is the _____ of _____ the corporation named in this document;
- (B) This document was signed and delivered by the corporation as its voluntary act duly authorized by a proper resolution of its Board of Directors;
- (C) This person knows the proper seal of the corporation which was affixed to this document; and
- (D) This person signed this proof to attest to the truth of these facts.

Attachment B (Language below must be printed on company letterhead)

Foreign Producer Commitment Letter

On March 26, 2010, the U.S. EPA issued a final rule establishing a renewable fuels standard, including requirements for Renewable Identification Numbers (RIN) generating foreign renewable fuel producers. Pursuant to 80.1466(f)(7), the foreign renewable fuel producer must sign a commitment letter that contains the provisions specified in paragraph (f).

Herewith «**Insert foreign producer name**» commits to the following in order to comply with the requirements of 80.1466(f).

- (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 producer facility.
 - (i). Inspections and audits may be either announced in advanced by EPA, or unannounced.
 - (ii). Access will be provided to any location where:
 - (A) Renewable fuel is produced;
 - (B) Documents related to renewable fuel producer operations are kept; and
 - (C) RFS-FRRF is stored or transported between the foreign producer and the United States, including storage tanks, vessels and pipelines.
 - (Hi). EPA inspectors and auditors may be 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 may include review and copying of any documents related to the following:
 - (A) The volume of RFS-FRRF.
 - (B) The proper classification of renewable fuel as being RFS-FRRF.
 - (C) Transfers of title or custody to RFS-FRRF.
 - (D) Work performed and reports prepared by independent third parties and 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 producer 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 is «**Insert name of company**», «**Insert address of company**», «**Insert contact information for company**», and service on this agent constitutes service on the foreign producer or any employee of the foreign producer 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 there under shall be governed by the Clean Air Act, including the EPA administrative form 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 producer or any employee of the foreign producer related to the provisions of this section.

(5) Applying to be an approved foreign producer under this section, or producing or exporting renewable fuel under such approval, and all other actions to comply with the requirements of this subpart relating to such approval 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

producer, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign producer 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 producer, or its agents or employees, will not seek to detain or to impose civil or criminal remedies against EPA inspectors or auditors for actions performed within the scope of EPA employment or contract related to the provisions of this section.

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 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.V. 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 5 years.

«**Insert name of President or Owner** »

«**Insert title of President or Owner** »

«**Insert contact information of President or Owner** »

Signature

Date

Attachment C (Language below must be printed on company letterhead)

Third Party Inspector Commitment Letter

On March 26, 2010, the U.S. EPA issued a final rule establishing a renewable fuels standard, including requirements for Renewable Identification Numbers (RIN) generating foreign renewable fuel producers. Pursuant to 80.1466(d)(3)(iii), the independent third party must sign a commitment letter that contains the provisions specified in paragraph (f) of this section with regard to activities, facility and documents relevant to compliance with the requirements of paragraph (d).

Herewith «**Insert independent third party inspector company name**»>> commits to the following in order to comply with the requirements of 80.1466(d)(3)(iii).

1. «**Insert independent third party inspector company name**»>> is independent under the criteria specified in §80.65(e)(2)(iii).

2. «**Insert independent third party inspector company name**»>> will comply with all testing, inspection and reporting procedures required of independent third party inspectors in 40 CFR §80.1466(d).

3. Provisions specified in paragraph (f):

(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 producer facility.

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

(ii). Access will be provided to any location where:

(A) Renewable fuel is produced;

(B) Documents related to renewable fuel producer operations are kept; and

(C) RFS-FRRF is stored or transported between the foreign producer and the United States, including storage tanks, vessels and pipelines.

(iii). EPA inspectors and auditors may be 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 may include review and copying of any documents related to the following:

(A) The volume of RFS-FRRF.

(B) The proper classification of renewable fuel as being RFS-FRRF.

(C) Transfers of title or custody to RFS-FRRF.

(D) Work performed and reports prepared by independent third parties and 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 producer 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 is «**Insert name of company**»», «**Insert address of company**», «**Insert contact information for company**», and service on this agent constitutes service on the foreign producer or any employee of the foreign producer 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 there under shall be governed by the Clean Air Act, including the EPA administrative form 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 producer or any employee of the foreign producer related to the provisions of this section.

(5) Applying to be an approved foreign producer under this section, or producing or exporting renewable fuel under such approval, and all other actions to comply with the requirements of this subpart relating to such approval 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 producer, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign producer 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 producer, or its agents or employees, will not seek to detain or to impose civil or criminal remedies against EPA inspectors or auditors for actions performed within the scope of EPA employment or contract related to the provisions of this section.

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 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.V. 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 5 years.

<<**Insert name of President, Owner, or immediate designee**>>

<<**Insert title of President, Owner, or immediate designee**>>

<<**Insert contact information of President, Owner, or immediate designee**>>

Signature

Date