

Regulation of Fuels and Fuel Additives: Modifications to Renewable Fuel Standard Program

Response to Comments

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Compliance Division
Office of Transportation and Air Quality
U.S. Environmental Protection Agency

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EPA-HQ-OAR-2012-0223

Response to Comments Received

I. Overview

This rule was originally issued on October 9, 2012 as a direct final rule and parallel proposed rule including an amendment to the definition of heating oil in the RFS program.¹ EPA received adverse public comment and withdrew the direct final rule on December 6, 2012, finalizing only the parts of the rule not related to the new definition of heating oil.² This document summarizes and responds to all comments received in relation to the heating oil provision of the proposed rule. The public comments summarized in this document can be viewed online at www.regulations.gov. The public docket for this rulemaking is docket number EPA-HQ-OAR-2012-0223. EPA appreciates all comments received on this issue, and has taken all of them into consideration in development of the final rule.

In the proposed rule, EPA amended 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 fuels included in the definition of heating oil to include any fuel oil produced from qualifying renewable biomass 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. Producers or importers of fuel oil that meets the amended definition of

¹ See Direct Final Rule, EPA-HQ-OAR_2012-0223; FRL 9733-3, at 77 FR 61281 (October 9, 2012); and see parallel Proposed Rule, EPA-HQ-OAR-2012-0223; FRL 9733-4, at 77 FR 61313 (October 9, 2012).

² See Withdrawal of direct final rule, EPA-HQ-OAR-2012-0223; FRL-9758-8, at 77 FR 72746 (December 6, 2012).

heating oil will be allowed to generate Renewable Identification Numbers (“RINs”) for the heating oil, provided that their product meets all other requirements specified in the RFS regulations. All fuels previously included in the definition of heating oil continue to be included as heating oil for purposes of the RFS program.

II. Supportive Comments

Commenter: Ensyn
Document Number: EPA-HQ-OAR-2012-0223-0012

Summary: Ensyn is currently producing a renewable fuel oil (RFO) used in industrial boilers, district heating and steam loops, and similar systems that control space heat. Ensyn has an existing stock of over 3 million gallons. Ensyn believes this will be the first certification and sale of any commercial scale cellulosic RIN-generating renewable fuel. Ensyn has plans to develop multiple facilities in US and Canada to produce RFO, and if this rule is finalized, will be able to generate more cellulosic RINs. Each facility will create 125 construction jobs and 189 permanent jobs in economically depressed regions, and will add value to US domestic timber and pulp and paper industries. The ability to generate RINs is needed so that RFO has long-term viability. Ensyn supports the rule’s compliance provisions as a quality control measure that will support the integrity of the RIN market. Ensyn hopes for a streamlined and efficient registration process.

Commenter: Crane & Co.
Document Number: EPA-HQ-OAR-2012-0223-0009

Summary: Crane is a manufacturer of cotton-based paper products and has tested RFO from Envergent to fire boilers that heat facilities and power industrial processes. Testing has encouraging results. Crane believes RFO use reduces GHG emissions by 80% compared to petroleum fuel and has no noxious emissions. Under the new rule, Crane’s use of RFO will positively impact its business because RINs will add value and reduce energy costs, could stabilize the company’s fuel costs, and would allow Crane to spend locally for fuel. Crane hopes for a streamlined and efficient registration process.

Commenter: Red Arrow Products
Document Number: EPA-HQ-OAR-2012-0223-0013

Summary: Red Arrow is a food flavor producer that also generates liquid fuels from a conversion of biomass, and is also a consumer of RFO. Red Arrow has partnered with Ensyn Corporation to produce RFO that it believes will qualify as renewable fuel under the revised definition of

heating oil in this rule. Red Arrow estimates that it could produce 1.5 million gallons of RFO in 2013. Red Arrow has used RFO in its facilities for ambient temperature control and is using other by-products from the renewable fuel production process for temperature control. The company considers these temperature control processes both cost effective and energy efficient.

Commenter: Fagen Inc.
Document Number: EPA-HQ-OAR-2012-0223-0014

Summary: Fagen is a green energy design-builder that contracts for renewable energy and renewable fuel facilities. Fagen is considering projects that would begin construction as a result of this rule, and estimates such activities would create 125 near-term construction jobs and almost 200 permanent jobs per project.

Commenter: Seven Islands Land Company
Document Number: EPA-HQ-OAR-2012-0223-0015

Summary: Seven Islands is a major landowner in the Northeast and believes woody cellulosic waste products can be turned into fuels. This rule would add significant potential value to the forest product and timber service chain. Seven Islands is considering partnering with Ensyn on development and construction of facilities to produce RFO. The partnership could bring up to \$100 million of direct investment to the region, 125 near-term construction jobs and almost 200 permanent jobs. The rule would also reduce reliance on petroleum products, reduce greenhouse gas emissions and provide an economic boost to the timber industry.

Commenter: Green Diamond
Document Number: EPA-HQ-OAR-2012-0223-0017

Summary: Green Diamond is considering development of facilities with Ensyn that could bring up to \$100 million of direct investment to the region, 125 near-term construction jobs and almost 200 permanent jobs. Ensyn has an existing stock of over 3 million gallons.

Commenter: Chevron
Document Number: EPA-HQ-OAR-2012-0223-0016

Summary: Chevron is an obligated party under the RFS, as well as a refiner and marketer of petroleum products. Chevron believes the current heating oil definition is overly restrictive and this amendment will allow for greater innovation and competition within the renewable fuels industry. The expanded definition would enable obligated parties to offer alternative fuel products to their customers. Chevron is encouraged by the quality control measures offered by the proposed rule's reporting, PTD, and recordkeeping requirements. Chevron remains concerned about other issues in the RSF2 program but supports this action.

Commenter: Envergent Technologies, LLC

Document Number: EPA-HQ-OAR-2012-0223-0018

Summary: Envergent is a joint venture of Ensyn and UOP (a Honeywell subsidiary). Its mission is to commercialize a technology called rapid thermal pyrolysis (RTP), which converts non-food based feedstock into renewable fuel oil (RFO). Envergent's modular refining units can produce renewable fuels and heating oil. With upgrades, these units could produce economically competitive transportation fuel. UOP and Ensyn are ready to produce millions of gallons of renewable cellulosic fuels. The amendment would level the playing field for RFO with No. 1, No. 2, and non-petroleum diesel blends currently qualifying as heating oil. The amendment would advance commercialization of RFO and lead to a higher volume of cellulosic biofuels in the market. Envergent supports compliance regulations that ensure integrity of RINs and hopes for a streamlined and efficient RIN program.

Commenter: Boise, Inc.

Document Number: EPA-HQ-OAR-2012-0223-0019

Summary: Boise is interested in seeing woody, biomass-based resources used to produce cellulosic fuel. Boise believes the technology to use lower-grade wood feedstocks for renewable fuel is within reach. This process would not involve the higher-quality whitewood grades used in papermaking. Boise believes a biorefining facility can drive tens of millions of dollars in local investment and create significant numbers of jobs. Boise has a prospective partner who currently produces RFO at a commercial scale that would qualify for the generation of cellulosic RINs.

Commenter: Honeywell

Document Number: EPA-HQ-OAR-2012-0223-0020

Summary: Honeywell and UOP (its wholly-owned subsidiary) support the expanded definition of heating oil. The expanded definition corrects unnecessary limitations imposed by the current definition and would spur cellulosic biofuel production and the generation of RINs from such fuel. The modified definition would advance the goals of EISA, spur innovation in the market, and increase production and use of renewable fuels. Deployment of Honeywell's RTP technology and similar technologies would introduce new sources of fuel production, create domestic jobs, and secure America's energy independence. Honeywell supports EPA's approach to assure compliance as a reasonable framework for quality control and to build integrity and trust in the market.

Commenter: Biomass Thermal Energy Council (BTEC)

Document Number: EPA-HQ-OAR-2012-0223-0036

Summary: BTEC is an association of biomass fuel producers, appliance manufacturers, supply chain companies, and non-profit organizations that promotes biomass thermal energy. BTEC believes that in the Northeast, the best and most cost-effective way to achieve the RFS goals is to reduce reliance on #2 heating oil by substituting it with locally-produced biofuels, including

solid biofuels made from biomass. The Midwest and Northwest would benefit also. In the Northeast, consumers use 84% of the entire U.S. supply of heating oil. The region consumes 5.5 billion gallons of heating oil each year. The Northeast could reduce its heating oil consumption by 1.14 billion gallons annually by converting 25% of thermal energy generated from oil to woody and non-woody biomass and other renewable sources. This opportunity exists without the need for additional infrastructure.

Commenter: Representative Suzanne Bonamici, Congress of the United States,
House of Representatives

Document Number: EPA-HQ-OAR-2012-0223-0038

Summary: Representative Bonamici believes the amended definition of heating oil would benefit multiple industries and constituencies in Oregon. The amended definition achieves Congressional intent “to move the United States toward greater energy independence and security (and) to increase the production of clean renewable fuels.” This rule encourages innovation and investment in renewable fuels and also adds value to a struggling timber and wood-products industry.

Response:

EPA appreciates the support received from these commenters during the development of the final rule. By expanding the types of fuel that are considered “heating oil” and that can generate RINs, we believe this rule will promote the goals of the RFS program, including the increased production and use of fuels that reduce emissions of greenhouse gases compared to fossil fuels.

In response to BTEC’s comments, we point out that the final rule specifies only liquid fuels are included in the expanded definition of heating oil. Solid and semi-solid fuels would not qualify as “heating oil” and therefore, for RFS purposes, would not be renewable fuels capable of generating RINs.

III. Clarification or Non-responsive Comments

Commenter: B. Partanen

Document Number: EPA-HQ-OAR-2012-0223-0010

Summary: Mr. Partanen states that there are over 10,000 buildings in New York City that burn #6 fuel oil, but this fuel oil will not qualify for RINs because the proposed definition of heating oil requires that the fuel oil be capable of flowing at 60 degrees F and 1 atmosphere of pressure. Industrial applications are also eliminated by this regulation. Mr. Partanen questions why the definition of fuel oil is so restricted.

Response: Renewable fuel oils qualifying as heating oil under the new definition must be “fuel oil”, i.e. a liquid substance, and may not be solid or gaseous substances. The restrictions in the definition (that it be a liquid at 60 degrees and one atmosphere of pressure and contain no more than 2.5% solids) are needed to make sure that the products used are indeed a “fuel oil” as that term is commonly defined. It is important to note that it is likely that most of the #6 fuel oil referred to by this commenter currently being used in New York buildings is not produced from renewable sources and therefore would not qualify for RIN generation even if it met all other elements of the definition.

Commenter: L. Geraci
Document Number: EPA-HQ-OAR-2012-0223-0011

Summary: Mr. Geraci requests EPA remove or suspend the requirement for 10% ethanol in fuel.

Response: This comment is not responsive to this rulemaking.

IV. Adverse Comments

Commenter: Global Renewable Strategies and Consulting, LLC (GRSAC)
Document Number: EPA-HQ-OAR-2012-0223-0022

Summary: GRSAC is a new compliance and consulting company. While agreeing that the modified definition of heating oil is warranted, GRSAC submits a number of comments and specific suggestions regarding the amended definition of heating oil. GRSAC asserts that the affidavit requirement is excessive and EPA does not have sufficient resources to administer the additional reporting requirements. Producers/refiners cannot determine end use at the time of production. The documentation required from an end user for registration and RIN generation is, thus, not relevant and not warranted. The end use of the fuel will displace petroleum and reduce CO₂ emissions, so use should not be restricted. EPA should allow fuel oils to be used for power generation. All parties who transfer the fuel should be liable for improper end use, not just the producer. EPA should require any party who transfers fuel designated as heating fuel to report to EPA. The definition should clarify the feedstocks and pathways that apply, i.e., how RINs will be generated. The proposed definition may jeopardize life, safety, and the environment and should reference ASTM standards for fuel oils.

GRSAC makes a number of specific suggestions for regulatory language, all of which were considered by EPA in the development of the final rule. These suggestions include: adding references to ASTM fuel oil standards; a third definition suggestion; and defining “end user,” “documents,” and “provider.”

Response: Regarding tracking fuel use and recordkeeping, EPA has identified numerous reasons for tracking end use of fuel oils used as heating oil. The affidavit requirement ensures proper use

as heating oil and must be traceable to the producer because the producer is the party who is responsible. Producers will need to put into place sufficient controls on these fuel oil products in order to use the expanded definition. EPA is statutorily required to restrict the use of these fuels to heating or fuels sold as heating oil, so the definition cannot be expanded to include any and all end uses. Producers of renewable fuel oil to be used as heating oil must identify existing customers at the time of registration. While this tracking places a recordkeeping and reporting burden on producers, it is absolutely necessary for EPA to ensure that the fuel oils are used for the proper purpose.

Regarding the suggestion to expand compliance provisions to parties other than the RIN generator, EPA believes that since this definition is a restriction on a fuel producer's ability to generate RINs, the fuel producer alone is responsible for tracking actual end use. Placing this responsibility on additional intermediary parties is unnecessary and does not make sense in the context of the program.

Regarding the applicable pathway(s) for the expanded definition of heating oil and concerns regarding fuel quality, any approved heating oil pathway can be used for RIN generation. This is further discussed in the preamble to the final rule. The CAA, as amended by EISA, defines the renewable fuels in terms of their feedstock and their lifecycle greenhouse gas emissions relative to the fossil fuel they replace. Additional environmental assessment of fuel oil for use as heating oil would not be relevant to determining compliance with the CAA requirements for meeting the RFS definition of renewable fuel. EPA does not believe it appropriate to limit use of fuel oils as heating oils to only those fuel oils that meet ASTM specifications, for the same reasons, as such a limitation is not relevant to determining compliance with the CAA requirements for meeting the definition of renewable fuel – that the fuel is derived from renewable biomass and meets the appropriate lifecycle assessment threshold. The specifications adopted by EPA are solely for the purpose of restricting the renewable fuel to a heating oil, as compared to a solid or gaseous fuel. This is to be consistent with the term Congress used, home heating oil.

Regarding the suggestion that the newly allowed fuel oil should not be restricted to use as heating oil, this restriction is a necessary control measure for this expansion because this type of fuel oil is not commonly known or sold as heating oil. The only reason such a restriction is not placed on the types of fuel currently covered by the definition of heating oil is that those fuels are commonly known as and sold for use as heating oil, so additional control and compliance measures are not required.

Commenter: Colonial Pipeline Company
Document Number: EPA-HQ-OAR-2012-0223-0023

Summary: Colonial Pipeline Company (“Colonial”) is concerned that the new definition of heating oil will create additional segregations of fuel meeting the same specification

requirements. The designation of home use (versus commercial use) would have to be tracked from the point of blending to the end user. Colonial believes that using a single specification for heating oil would add significant efficiencies to the distribution system, and that the requirement of use in homes is overly restrictive.

Response: The use of the fuel oil for heating spaces is not restricted to “homes”, but could apply to a number of structures where people live, work, and recreate. While using a single specification for heating oil might make tracking through the distribution system simpler, it would not fulfill Congress’ limitation of renewable fuel to “home heating oil.” As discussed in the preamble to the final rule, EPA is reasonably interpreting this term as including fuel oils used to heat homes or other spaces occupied by people. Expanding it to include all commercial fuel oils would not be consistent with this limitation. Furthermore, we expect that much if not most of the fuel oil that will meet the expanded definition of heating oil will be drop-in fuel and will therefore not have an adverse effect on the efficiency of fuel pipelines or cause designation and tracking confusion.

Commenter: Viesel Fuel
Document Number: EPA-HQ-OAR-2012-0223-0024

Summary: Viesel Fuel (“Viesel”) is a biomass-based diesel producer that uses restaurant waste grease as a feedstock. Viesel’s product does not meet the ASTM D6751 standard. Viesel supports the expanded definition of heating oil because it will expand the pool of biofuel technologies and increase the volume of biofuels. However, it has concerns about the requirement that the fuel producer show evidence of “existing customers” through affidavits.

Viesel presumes that regulation requiring affidavits from “existing customers” simply means “final end users.” Viesel also believes this affidavit requirement poses potential confusion and that many customers will not sign affidavits for fear of legal ramifications that, for example, a calculation could be off and lead to RIN invalidation. Large institutional customers (universities, hospitals, government entities) have expressed concerns over signing affidavits. Fuel distributors will not want to make their customers sign affidavits and customers will not be knowledgeable enough to provide the required information. Trying to maintain records of the fuel’s use would be nearly impossible. Viesel recommends that instead of affidavits from end users, the product transfer document (PTD) associated with the fuel containing a statement restricting the fuel’s use should suffice as a restriction on end use.

Viesel states that the quarterly reporting requirements (including quarterly affidavits from end users) would be “nearly impossible”. Even large institutional customers will find the quarterly reports overly burdensome and will refuse to sign affidavits. PTDs regarding the volume of fuel transferred and the percent blended should be sufficient to ensure the fuel is being properly used. If PTDs are not between producers and end users, contracts should be a sufficient alternative means of proof.

Response: The new registration provisions require producers to identify “existing end users” (not “customers”) at the time of registration. This assures the Agency that the party who will be consuming the fuel is using it or intends to use it for the proper purpose and therefore that RINs generated from production of that fuel are valid. The affidavit requirement also provides a mechanism for EPA to follow up and track actual end use if necessary. 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.

This does not mean that the end users must exist at this point in time; only that they exist at the time the fuel producer submits its registration for the fuel oil to EPA. If a producer cannot obtain the affidavits from the end users, it must be prepared to retire the RINs generated for the fuel. EPA knows of producers who have customers who are the end users and are willing to sign such affidavits. Based on knowledge of those relationships, EPA believes producers will be able to comply with this requirement, although it may make registration somewhat more burdensome than it would be without this requirement. These requirements are necessary and tailored to be as least restrictive as possible while ensuring compliance. The PTD requirement for fuel oil is not in itself sufficient to ensure that the end user has complete notice and has accepted its responsibility to use the fuel oil for the appropriate heating application only.

Similarly, EPA has found that the additional reporting requirements (including quarterly affidavits from end users) are necessary and tailored to be as least restrictive as possible while ensuring compliance. PTDs must accompany the fuel oil from production to end use; contracts are not interchangeable with PTDs but are additionally required for recordkeeping.

Commenter: Triton Energy, LLC
Document Number: EPA-HQ-OAR-2012-0223-0033

Summary: Triton Energy is a biomass based biodiesel producer in Indiana whose fuel does not meet ASTM D6751. Triton generally supports the proposed expanded definition of heating oil, but expresses the same concerns as Viesel regarding the identification of and record-keeping and reporting requirements for final end users.

Response: These comments are virtually identical to those of Viesel Fuel. See above EPA responses to Viesel’s comments.

Commenter: Independent Fuel Terminal Operators Association (IFTOA)
Document Number: EPA-HQ-OAR-2012-0223-0035

Summary: IFTOA is an association of petroleum marketers that own and operate terminals and most are obligated parties under the RFS program. IFTOA supports the expanded definition of heating oil but opposes the provisions of the regulation designed to verify the appropriate end

use of the newly qualifying fuel oil. IFTOA believes the verification requirements are burdensome and unworkable and should therefore be eliminated or simplified.

IFTOA states that No.4 and No.6 fuel oil is used to heat many facilities, including small apartment buildings with as few as 5 units, nursing homes, childcare centers, retail stores, and churches. Marketers provide fuel to several hundred of these types of locations with only a few larger buildings included in the total. Purchasers usually do not enter into a written contract with a supplier; instead, the product is sold on a load-by-load basis and buildings rely on several suppliers using informal commercial arrangements. Many purchasers do not keep formal records and are not sophisticated businesses, but are usually a single individual or small business. IFTOA believes the regulations requiring affidavits from and contracts with all end users are overly burdensome and unworkable. End users will not be willing or able to produce affidavits, because they are not all large institutions and given the potentially thousands of end users that can be associated with a single marketer, collecting affidavits from each end user is overly burdensome.

IFTOA recommends that RINs generated with renewable fuels for blending with No.4 and No.6 and used for heating purposes should be retired if the fuel is used for process heat, power, or other functions. Verification of appropriate use can be accomplished by quarterly reports from producers and statements from marketers to producers, promising that the purchased fuel will be used for heating purposes.

Response: EPA is aware that the additional reporting and recordkeeping requirements associated with the expanded definition require additional paperwork of producers, marketers, and end-users. However, these requirements are not overly burdensome. We are aware of producers who are able to meet the new requirements. Furthermore, the requirements are carefully tailored to provide the required level of assurance that the fuel oil in question meets the newly expanded definition. Any fewer or less extensive requirements would not provide the assurance needed for compliance with EPA's statutory mandate. Any producer who wishes to make use of this provision to generate RINs for fuel oil used as heating oil must be prepared to comply with the registration, reporting, and recordkeeping requirements. Nothing in this regulation limits a producer's ability to continue to produce and sell #4 or #6 heating oil; these additional requirements are only required for those producers who generate and sell RINs with their product.

Commenter: James Schell

Document Number: EPA-HQ-OAR-2012-0223-0037

Summary: Mr. Schell supports the expanded definition of heating oil, but believes the PTD and recordkeeping requirements should be more stringent than those proposed. It is unclear to him how the PTD and recordkeeping requirements will be transferred to and applied to the end user. The "end user" should be defined so that end use is the placement of fuel into a storage container that is linked only to a furnace that will burn the fuel to produce heat designated for ambient air

temperature control. This would require more precise recordkeeping by transporters and users and would minimize violations.

Response: EPA believes the proposed recordkeeping and reporting requirements are sufficient to assure the fuel oil under the expanded definition is used appropriately. Transporters and end users are responsible for supplying appropriate affidavits and using the PTD associated with the fuel. The PTD follows the fuel from the point of production all the way to the final end user. The recordkeeping and reporting requirements are the responsibility of the fuel producer, though some of the records (e.g., affidavits of end users) will be generated by others. We do not therefore believe that any additional recordkeeping or reporting requirements are necessary to provide the assurance needed regarding appropriate end use.

Commenter: Advanced Biofuels Association (ABFA)
Document Number: EPA-HQ-OAR-2012-0223-0027

Summary: ABFA supports the expanded definition of heating oil, which will offer new opportunities, allow a broader range of fuels to participate in RFS, promote technology neutrality, and level the playing field across renewable fuel producers. However, it believes the documentation requirements are too onerous and will limit participation. Specifically, the end use tracking will impose significant costs on the distribution system, be difficult to achieve, chill use of the expanded fuels, and raise litigation concerns. Also, ABFA believes the additional requirements for fuels qualifying under the expanded definition will create a cost avoidance incentive for production of the mono-alkyl esters allowed in the first paragraph of the new rule. The current recordkeeping requirements provide sufficient documentation without requiring end user affidavits.

Response: EPA believes that the tracking requirements for fuel oils used as heating oil are appropriate and necessary because these fuel oils are not traditionally limited to providing heating to warm buildings or other facilities where people live, work, recreate, or conduct other activities, and are not readily identifiable as heating oil based on their physical characteristics. Although the added requirements for fuel oils impose some burden and may restrict to an extent their use in the heating oil market, EPA believes such requirements are no more limiting than necessary to ensure programmatic compliance.

Commenter: Minnesota Soybean Processors (with NBB)
Document Number: EPA-HQ-OAR-2012-0223-0028

Summary: MnSP is a soybean processor and biodiesel producer. MnSP believes both the proposed rule and direct final rule have created confusion in the biodiesel industry and suggests that a better and clearer definition of heating oil is needed. MnSP is concerned that the fuel oils allowed under the expanded definition are not held to a uniform quality standard, which gives them an unfair competitive advantage compared to biodiesel. Also, use of the new fuel oil may have a detrimental effect on the sale of biodiesel if the new fuel oils perform poorly, because of

consumer confusion. It is unclear to MnSP whether the new proposed oils exhibit detrimental health effects, and MnSP therefore recommends that health effects testing should be required of the newly-allowed fuel oils. MnSP is extremely concerned about the tracking requirements; it is nearly impossible for a biodiesel producer to track use. Finally, MnSP believes the tracking and affidavit requirements in the rule are unworkable and irrational for biodiesel producers.

Response: The expanded definition was intended to allow fuel oils that do not fit into the traditional categories of #1 or #2 heating oil but that are nonetheless produced from renewable biomass to be eligible for RIN generation. The addition of this new category is intended to remedy what EPA now believes was an overly restrictive definition. Instead of defining the new category of eligible fuel oils by their chemical composition, EPA intentionally defined them by their end use. EPA's revised definition does not impose quality standards, as they are not relevant to the factors EPA considers in determining what fuels qualify as home heating oil – the scope of the term used by Congress, and the requirement that the fuel be derived from renewable biomass and achieve the required lifecycle reductions in greenhouse gas emissions. Additional quality controls are not part of the definitions adopted by Congress and not part of the RFS program.

EPA is fuel neutral and does not express a preference between RIN generating biodiesel used as heating oil and RIN generating fuel oil used as heating oil. It would not be appropriate for EPA to limit the use of fuel oils that otherwise meet the definition of additional renewable fuel to prevent competition within the heating oil market or to avoid potential damage to the commercial reputation of biodiesel.

EPA requires health effects testing for fuels that are designated under the Fuel and Fuel Additive Registration Program. To date, EPA has designated motor vehicle diesel fuels and has not designated home heating oil for such testing. Any further designations of fuels for such health effects testing is outside the scope of this rulemaking. EPA has not been presented with any evidence demonstrating a cause for concern related to health impacts of fuel oil used as heating oil.

Finally, the new registration and recordkeeping requirements apply only to the new category of fuel oil, not to #1 or #2 heating oils, which are defined for RFS purposes by their chemical composition, not by their end use. EPA's final rule does not change the prior definition of heating oil. The final rule adds a new category of fuel oil to the definition but does not remove or modify the definition with respect to heating oil that was previously included in the definition.

Commenter: National Biodiesel Board (NBB)

Document Number: EPA-HQ-OAR-2012-0223-0030

Summary: NBB is a trade organization representing the biodiesel industry and coordinating research and development on biodiesel. NBB believes that the proposed rule has caused confusion in the industry regarding what fuels and fuel oils will be qualified as “heating oil” under the new definition. Specifically, NBB is concerned that the proposed addition of fuel oils to the definition of heating oil does not include any fuel quality control standards, and that some fuels now qualifying as heating oil may become non-qualifying under the new definition.

Regarding the newly added fuel oils, NBB is concerned that the lack of quality specifications might allow substances used as fuels that are not otherwise subject to industry standards under section 80.2(ccc) to qualify as heating oil. The introduction of low-quality fuel oils to the market might damage the public perception of all biofuels, and give a competitive advantage to producers of these low-quality fuel oils. NBB also requests EPA clarify that feedstocks for the new fuel oils are not limited to “vegetable oil” or “animal fat”. The definition should include a broader category of feedstocks, including all natural oils producing a mono alkyl ester of long chain fatty acids (e.g., cooking oils, algal oils).

NBB is also concerned that the new definition might limit the generation of RINs for biodiesel currently qualifying as heating oil, including that which is used in stationary sources and/or for process heat or power generation. Additionally, biodiesel producers must be able to separate and sell RINs generated based on their own use of biodiesel used as heating oil or for process heat or power.

Response: Regarding the lack of fuel specifications for the new fuel oil category of heating oil, EPA purposefully constructed the amended definition to be based on actual end use instead of the chemical properties of the fuel oils. EPA’s revised definition does not impose quality standards, as they are not relevant to the factors EPA considers in determining what fuels qualify as home heating oil – the scope of the term used by Congress, and the requirement that the fuel be derived from renewable biomass and achieve the required lifecycle reduction in greenhouse gas emissions. Adding fuel quality specifications would not affect whether the fuel was derived from renewable biomass, and would not affect the analysis of lifecycle GHG emissions associated with the heating oils.

With respect to the feedstocks that can be used to produce this new category of fuel oil, EPA is only changing what fuels are included in the definition of heating oil. This does not change the pathways that are approved for producing RIN generating heating oil. The pathways approved for production of heating oil are not changed by this final rule, just the scope of fuels that are included in the term heating oil. Thus this rule does not change the feedstocks that may be used to produce heating oil.

The amended definition does not limit, reduce, or change the use of fuels currently covered under the definition of heating oil, or track or restrict their actual end use to heating. The new restrictions on actual end use apply only to the newly added category of fuel oils. EPA confirms

that inclusion of the new heating oil provision for fuel oils does not impact the current definition and use of biodiesel as heating oil, even where that biodiesel is used for process heat, power generation, or in stationary sources. EPA confirms that biodiesel producers can (and must) separate the RINs from wet gallons when used by the producer as heating oil or for process heat or power.

Commenter: Renewable Energy Group (“REG”)
Document Number: EPA-HQ-OAR-2012-0223-0031

Summary: REG is a biodiesel producer that supports the expansion of the definition of heating oil. However, REG is concerned that EPA has not set or established fuel quality specifications for the newly-allowed fuel oils, which it believes could invite abuse and adversely impact uninformed customers. REG is concerned that the new definition may limit the current use of biodiesel for power generation, for instance in stationary combustion turbines.

Response: Regarding the lack of fuel quality standards for the newly added fuel oils, EPA does not believe it appropriate or necessary to qualify fuel oils by fuel quality standards for the reasons discussed above. For reasons identified elsewhere (see, e.g. response to comments from NBB and preamble to the final rule), EPA believes that defining these fuel oils in terms of their end use and tracking such actual end use will prevent adverse impacts on customers or “market confusion”.

The amended definition of heating oil does not modify or limit fuel included in the existing definition of heating oil. EPA confirms that the expansion of the heating oil definition to include fuel oils does not impact the existing definition, and therefore does not impact the generation of RINs for biodiesel sold as heating oil. As such, the amended definition of heating oil should not impact REG’s current production and marketing of its biodiesel products for use as heating oil where it is ultimately used for process heat or power generation. The limitation on actual end use for heating purposes only will apply only to the newly-added fuel oils (paragraph 2 of the new definition) and not to those fuels that fall under the existing definition (paragraph 1 of the new definition).