June 9, 2010

VIA ELECTRONIC FILING

Air and Radiation Docket
Docket No. EPA-HQ-OAR-2005-0161
Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, D.C. 20460
a-and-r-docket@epa.gov

RE: EPA-HQ-OAR-2005-0161: FRL-9147-6
Environmental Protection Agency Direct Final Rule to Amend Regulation of Fuels
and Fuel Additives: Modifications to Renewable Fuels Standard Program

The Renewable Fuels Association (“RFA”) respectfully submits the following comments on the
Environmental Protection Agency’s (EPA) direct final rule regarding modifications to the
referred to as the “direct final rule”). RFA is the national trade association for the domestic
ethanol industry. Our membership includes ethanol producers and suppliers, gasoline marketers,
agricultural organizations and state agencies dedicated to the continued expansion and promotion
of fuel ethanol.

While RFA agrees with and supports most of the amendments contained in the direct final rule,
we are requesting a slight modification to the amendment clarifying the degree to which
advanced technologies must be implemented in order to enable the generation of Renewable
Identification Numbers (RINs). We are also seeking clarification on the amendments made to
§80.1426(f)(12), which focuses on the use of biogas for process heat at renewable fuel facilities.
Finally, we restate our support for EPA’s renewable biomass aggregate compliance approach.

I. In Regard to the Advanced Technologies Requirements for Renewable Fuel
Pathways, EPA Should Not Require “Corn Oil Fractionation” and “Corn Oil
Extraction” to Apply to All Corn Processed or All Thin Stillage/Distillers Grains
with Solubles (DGS) Produced.

The amended Table 2 to §80.1426 requires that advanced technologies, as defined in §80.1401,
apply to 100% of a plant’s production process for the purpose of RIN generation. While it is true
that these technologies are typically applied to nearly all of a plant’s production, there are instances where these technologies may be temporarily idled for maintenance, repair, or other operational reasons, without interrupting fuel ethanol production operations. In particular, it is unlikely that corn oil (germ) fractionation will always be applied to all of a plant’s corn processed or that corn oil extraction will always be applied to all of a plant’s thin stillage/DGS produced.

Temporary shutdowns of corn oil extraction and corn oil (germ) fractionation units may occur independently of fuel ethanol production operations. That is, these technologies may be temporarily bypassed in the fuel ethanol production process. It is unclear whether EPA considered temporary idling of these and other advanced technologies for operational reasons. However, a strict reading of the language suggests the technologies must apply to 100% of corn processed (fractionation) or stillage/DGS produced (extraction). Thus, we are recommending that EPA adjust the advanced technology requirement pertaining to corn oil extraction and corn oil (germ) fractionation such that it applies to 90% of a plant’s production. This would provide flexibility by allowing temporary interruptions of unit operations due to maintenance, repair or other operational reasons.

II. RFA Seeks Clarification on the Amendments Made to §80.1426(f)(12), Which Focus on the Use of Biogas for Process Heat at Renewable Fuel Facilities.

It is our understanding that the intent of the amendments to §80.1426(f)(12) is to establish separate conditions for 1.) the use of biogas directly transported to the facility without being placed in a commercial distribution system, and 2.) the use of biogas that has been gathered, processed and injected into a common carrier pipeline. It is our understanding that §80.1426(f)(12)(i) applies to biogas that would be delivered directly to the renewable fuel facility via a dedicated (i.e., a non-common carrier pipeline) pipeline. Because §80.1426(f)(12)(i) apparently applies to biogas that did not enter a commercial distribution system (i.e., a common carrier pipeline), we are confused as to why the required conditions include reference to the biogas being placed in a common carrier pipeline (%80.1426(f)(12)(i)(D)). We are requesting clarification on this issue.

III. RFA Supports the Renewable Biomass Aggregate Compliance Approach as Amended in the Direct Final Rule

In the direct final rule, §80.1451 and 80.1454 discuss requirements for renewable fuel producers to report and maintain records affirming that their feedstocks meet the definition of renewable biomass. The amendments to these sections effectively clarify EPA’s intent that producers who use crops or crop residue from existing U.S. agriculture land are covered by the renewable biomass aggregate compliance approach, as described in §80.1454(g). According to EPA,
renewable fuel producers utilizing the aggregate compliance approach “…need not keep detailed records or report to EPA…” RFA strongly supports this approach. We believe the approach provides sufficient protections of non-agricultural lands and strongly discourages expansion of agricultural lands beyond 2007 levels. Further, the approach provides flexibility for renewable fuel producers by allowing them to comply with the renewable biomass requirements without needing to prepare, submit, and maintain detailed and costly feedstock tracking reports. EPA should disregard adverse comments submitted in response to this direct final rule, or other actions outside of the direct final rulemaking, that encourage the agency to reconsider the aggregate compliance approach.

* * *

RFA appreciates the opportunity to comment on this important matter. Please feel free to contact me at (202) 289-3835 with any questions or comments.

Sincerely,

Bob Dinneen
President & CEO
Renewable Fuels Association