

provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a safety zone.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under

### ADDRESSES.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard is amending 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

■ 2. A new temporary § 165.T08-0872 is added to read as follows:

#### § 165.T08-0872 Natchez Fireworks Safety Zone; Lower Mississippi River, Mile Marker 365.5 to Mile Marker 363, Natchez, MS

(a) *Location.* The following area is a safety zone: those waters of the Lower

Mississippi River, beginning at mile marker 363 and ending at mile marker 365.5, extending the entire width of the river.

(b) *Effective dates.* This section is effective from 8 p.m. through 8:30 p.m., local time, on September 28, 2010.

(c) *Regulations.* (1) In accordance with the general regulations of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Lower Mississippi River or a designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the Captain of the Port Lower Mississippi River or a designated representative. They may be contacted on VHF-FM channels 16 or by telephone at (901) 521-4822.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Lower Mississippi River and designated personnel. Designated personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(d) *Informational Broadcasts:* The Captain of the Port, Lower Mississippi River will inform the public when safety zones have been established via Broadcast Notice to Mariners.

Dated: September 16, 2010.

**Michael Gardiner,**

*Captain, U.S. Coast Guard, Captain of the Port, Lower Mississippi River.*

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### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 80

[EPA-HQ-OAR-2010-0133; FRL-9207-1]

RIN 2060-AQ35

#### Supplemental Determination for Renewable Fuels Produced Under the Final RFS2 Program From Canola Oil

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** On March 26, 2010, the Environmental Protection Agency published final changes to the Renewable Fuel Standard (RFS) program as required by the Energy Independence and Security Act (EISA) of 2007. In the preamble to the final rule, EPA indicated that it had not completed the lifecycle greenhouse gas (GHG) emissions impact analysis for several specific biofuel production pathways but that this work would be completed through a supplemental final

rulemaking process. This supplemental final rule describes a final GHG analysis for canola oil biodiesel. It also finalizes our regulatory determination that canola oil biodiesel meets the biomass-based diesel and advanced biofuel GHG reduction thresholds of 50% as compared to the baseline petroleum fuel it will replace, petroleum diesel. This final rule will allow producers or importers of canola oil biodiesel fuel to generate biomass-based diesel Renewable Identification Numbers (RINs), providing that the fuel meets other definitional criteria for renewable fuel (e.g., produced from renewable biomass as defined in the RFS2 regulations, and used to reduce or replace petroleum-based transportation fuel, heating oil or jet fuel). In addition, this rule includes a new regulatory provision establishing a temporary and limited means for producers or importers of canola oil biodiesel to generate RINs for qualifying biofuel produced or imported between July 1, 2010, and the effective date of this rule.

**DATES:** This final rule is effective on September 28, 2010.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2010-0133. All documents in the docket are listed on the <http://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004. 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:

Doris Wu, Office of Transportation and Air Quality, Transportation and Climate Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: 734-214-4923; fax number: 734-214-4958; e-mail address: [wu.doris@epa.gov](mailto:wu.doris@epa.gov).

#### SUPPLEMENTARY INFORMATION:

**I. General Information**

*A. Does this action apply to me?*

Entities potentially affected by this action 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. Regulated categories include:

Category	NAICS <sup>1</sup> codes	SIC <sup>2</sup> 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 merchant wholesalers.
Industry .....	424720	5172	Petroleum and petroleum products merchant wholesalers.
Industry .....	454319	5989	Other fuel dealers.

<sup>1</sup> North American Industry Classification System (NAICS).

<sup>2</sup> 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 the RFS2 program. This table lists the types of entities that EPA is now aware of that could potentially be regulated under the program. To determine whether your activities would be regulated, you should carefully examine the applicability criteria in 40 CFR part 80, Subpart M. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section.

**Outline of This Preamble**

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  - G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
  - H. Executive Order 13211: Actions 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 Provisions and Legal Authority

**I. Executive Summary**

On March 26, 2010, the Environmental Protection Agency published final changes to the Renewable Fuel Standard (RFS) program as required by the Energy Independence and Security Act (EISA) of 2007. EISA increased the volume of renewable fuel required to be blended into transportation fuel to 36 billion gallons by 2022. Furthermore, the Act established new eligibility requirements for four categories of renewable fuel, each with their own annual volume mandates. The eligibility requirements include minimum lifecycle greenhouse gas (GHG) reduction thresholds for each category of renewable fuel. EPA conducted lifecycle GHG analyses for a number of biofuel feedstocks and production pathways for the final rule. In the preamble to that final rule, EPA indicated that it had not completed the lifecycle greenhouse gas emissions impact analysis for certain biofuel production pathways but that this work would be completed through a supplemental final rulemaking process. This supplemental final rule describes a final GHG analysis for canola oil biodiesel. It also finalizes our regulatory determination that canola oil biodiesel qualifies as biomass-based biodiesel and advanced biofuel under RFS2 regulatory provisions, providing that the fuel meets other definitional criteria for renewable fuel (e.g., produced from renewable biomass as defined in the RFS2 regulations, and used to reduce or replace petroleum-based transportation fuel, heating oil or jet fuel). EPA currently intends to issue additional supplemental final rules to address other biofuel production pathways, including those involving palm oil, woody biomass and sorghum.

We issued a notice of data availability (NODA) on July 26, 2010 which described the methodology and modeling assumptions, and proposed lifecycle GHG assessment, for canola oil biodiesel. EPA provided a 30-day public comment period on the NODA. In addition, we sought input from several stakeholders during the development of this rule and have worked closely with other Federal agencies, in particular the U.S. Departments of Energy and Agriculture. In general, the public comments received supported our proposed lifecycle analysis, and we are finalizing the proposal without modification.

The agency continues to recognize that lifecycle GHG assessment of biofuels is an evolving discipline. As we noted in the final RFS2 rule, EPA will revisit our lifecycle analyses in the future as new information becomes available. In addition, EPA is moving forward with plans to ask the National Academy of Sciences to make recommendations for these future lifecycle GHG assessments. This current canola analysis and subsequent supplemental analysis being conducted will continue to use the same lifecycle modeling approach as used for the RFS2 final rule and will be revisited along with other fuels as part of any future lifecycle updates as appropriate.

In addition, on July 20, 2010, EPA issued a Notice of Proposed Rulemaking (NPRM) for the 2011 renewable fuel standards.<sup>1</sup> This NPRM included a proposed provision to allow the temporary and limited generation of “delayed RINs” by renewable fuel producers using fuel production pathways approved for RIN generation on or after July 1, 2010 and before January 1, 2011. Under the proposal, delayed RINs could be generated after the effective date of a rule adding a new

<sup>1</sup> 75 FR 42238.

pathway to Table 1 to § 80.1426 for qualifying fuel produced between July 1, 2010 and the effective date of that rule, even if the fuel had been transferred to another party. In addition, the proposed rule included provisions allowing fuel producers who are grandfathered under the provisions of § 80.1403 to exchange higher-value delayed RINs for RINs generated under the grandfathering provisions that have a D code of 6. We are finalizing this provision in today's rule. Since the only pathway we are approving in today's action is biodiesel and renewable diesel produced from canola oil, the delayed RINs provision will only be applicable to this pathway.

Today's rule does not add significant environmental or economic impacts beyond those already addressed in the final RFS2 rule published on March 26, 2010. The new delayed RINs provision provides additional flexibility to certain biofuel producers, and the new canola oil biodiesel pathway provides an additional basis for biofuel producers to generate RINs. Today's actions will not increase overall burdens on any regulatory party and will impose no additional costs.

## II. Lifecycle Analysis of Greenhouse Gas Emissions for Canola Oil Biodiesel

### A. Methodology and Key Assumptions

EISA establishes specific lifecycle greenhouse gas (GHG) emissions reduction thresholds for each of four categories of renewable fuels (i.e., 60% for cellulosic biofuel, 50% for biomass-based diesel and advanced biofuel, and 20% for other renewable fuels). EPA employed the methodology described in the RFS2 final rule (published March 26, 2010) to analyze the lifecycle GHG emissions of the canola oil biodiesel pathway, as described in the NODA issued on May 26, 2010. This section briefly describes the methodological approach as well as the key assumptions that were used in the lifecycle modeling of canola oil biodiesel.

The public comments received on the canola oil biodiesel NODA generally supported our proposed lifecycle GHG analysis. For instance, several commenters stated that they support the determination that canola oil biodiesel meets or exceeds the 50% biomass-based diesel lifecycle GHG reduction requirement and requested that EPA formally approve canola for RIN generation as expeditiously as possible.<sup>2</sup>

<sup>2</sup> See comments EPA-HQ-OAR-2010-0133-0079 (Embassy of Canada), EPA-HQ-OAR-2010-0133-0080 (Sustainable Biodiesel Alliance), EPA-HQ-OAR-2010-0133-0082 (Washington State

Responses to comments that were critical of certain elements of the proposal are included in the following sections. EPA has decided to finalize the proposed lifecycle GHG assessment for canola oil biodiesel without modification.

#### 1. Models

The analysis EPA has prepared for canola oil biodiesel uses the same set of models that was used for the final RFS2 rule, including the Forestry and Agricultural Sector Optimization Model (FASOM) developed by Texas A&M University and others and the Food and Agricultural Policy and Research Institute international models as maintained by the Center for Agricultural and Rural Development (FAPRI-CARD) at Iowa State University. The models require a number of inputs that are specific to the pathway being analyzed, for example, inputs include projected yield of feedstock per acre planted, projected fertilizer use, energy use in feedstock processing and energy use in fuel production. The docket includes detailed information on model inputs, assumptions, calculations, and the results of our modeling for canola oil biodiesel.

#### 2. Volume Scenarios Modeled

The RFS2 final rulemaking established reference and control cases to assess the impacts of an increase in renewable fuel volume from business-as-usual. That is, EPA compared what is likely to have occurred without EISA to the increased volume necessary to meet the EISA mandates. For the canola biodiesel assessment, we determined that an incremental impact of an increase of 200 million gallons of biodiesel from canola per year in 2022 was an appropriate volume to model. This assumed a 2022 reference case of zero canola oil biodiesel volume and a 2022 control case of 200 million gallons canola oil biodiesel volume. For more detail on our rationale for volumes modeled (which were based in part on consultation with USDA experts and industry representatives) please refer to the inputs and assumptions document that is available through the docket. We did not receive any comments on our proposed use of this volume scenario and are therefore using the same volume scenario for our final modeling.

#### 3. Year of Analysis

We received a comment disagreeing with our proposal to use the year 2022 to model and evaluate GHG emissions

Department of Commerce), EPA-HQ-OAR-2010-0133-0083 (U.S. Canola Association).

associated with canola oil biodiesel, as we had done for other biofuels in the RFS2 final rule. The commenter stated that use of 2022 is inappropriate since that is "the year that the RFS ends" and that GHGs are emitted in the present as the feedstock and fuel is produced and combusted. The commenter suggested that EPA instead use a year for its analyses that better reflects the "average performance of the RFS," such as 2012, with a commitment to update the analysis regularly to reflect documented changes in technologies and practices, as well as better information on trends in land use and associated emissions.

In response, EPA first notes that the commenter is incorrect in assuming that the RFS program ends in 2022. That is the year when the full 36 billion gallons specifically required by EISA is to be used, but EPA is directed to set renewable fuel volume requirements, and implement associated percentages standards, indefinitely into the future after 2022. Thus, no single year can reasonably be assumed to reflect an "average performance" of a fuel under the RFS program.

As described in our final RFS2 rule, there were two main reasons for our focus on 2022.<sup>3</sup> The first reason is that it is appropriate to select a single year to analyze. The lifecycle GHG analysis is based on the use of various economic models, both domestic and international. These models estimate economic impacts on relevant sectors over a multi-year time period, and rely on assumptions or projections as to the various biofuel volumes out into the future. The results are dependent in part on the biofuel volumes that are used, and the modeling requires a stable prediction of the specific volumes and types of fuels used from year to year. This reflects the current status of the models available to perform this analysis. If there were changes in volumes in interim years in the modeling, this would have impacts on the later years of the modeling. The lack of a stable projection or assumption in the year to year fuel volumes would make it impossible to accurately model the predicted lifecycle GHG reductions for the different fuels. Analytically it would not be possible to model in advance the GHG impacts and make lifecycle determinations on biofuels for different years over the life of the program.

Thus it would not be possible using our current methodology to use more

<sup>3</sup> See Renewable Fuel Standard Program (RFS2) Summary and Analysis of Comments, EPA-420-R-10-003, February 2010, see page 7-18, 7-19 & 7-31. Also, see preamble to final RFS2 rule in Chapter V. Lifecycle Analysis of Greenhouse Gas Emissions.

than one year to determine the life-cycle assessment, as recommended by the commenter. They recommend that we assess biofuel GHG performance early in the RFS2 implementation schedule, using a year such as 2012 as the year, and then make periodic GHG impact reassessments prior to 2022 with threshold determinations on the basis of these reassessments. However, if a biofuel met a certain GHG performance threshold in some years while not in others, this would affect the volumes of different types of fuels produced to meet RFS2 requirements. A change in a threshold determination would lead to changes in investments and in the market, producing a new mix of biofuels that we are not able to predict and use in the lifecycle modeling. This use of more than one year can lead to changes in the interim years' biofuel volumes that we are not in a position to model or project. Based on the inability to determine the impact of these iterative changes in the market resulting from changes in the GHG threshold decision over time, we would be unable to develop a valid year by year projection of biofuel volumes for the subsequent lifecycle modeling. EPA is also concerned that this approach would produce significantly increased uncertainty in the biofuels industry and could affect investment decisions and thus the ability of the industry to produce sufficient complying biofuels to meet the goals of EISA. This increased uncertainty about future decisions is not warranted in a situation where the modeling tools available to the agency could not be used to produce consistent results over multiple years when biofuel volume predictions are not stable due to changing threshold determinations from year to year. As such, EPA's position is that it is more appropriate to rely on modeling centered on a single year.

The second reason to focus on 2022, the final year of ramp up in the required volumes of renewable fuel, is that modeling that uses the year 2022 allows the total fuel volumes specified in EISA to be incorporated into the analysis. Modeling an early year such as 2012 would result in almost all of the volume being made up of traditional biofuels such as ethanol from corn or biodiesel from soy. We note also that much of the 2012 production capacity is already in place and thus allowed to meet the overall renewable fuel standard under its grandfathering provisions (for which no GHG assessment if required). We are more interested in modeling the GHG performance of future production capacity likely to come on board after 2012. Additionally, assessment of the

impact of biofuels on land use in an early year such as 2012 would underestimate the full land use impact of the greater biofuel volumes required in later years. Additionally, such an early assessment would not reflect the anticipated technology changes and expanded use of valuable co-products such as DGS. In this way, an early analysis would give a false picture of the anticipated emission reductions from individual biofuels. In contrast, EPA feels that the 2022 analysis represents an appropriate estimate of GHG impacts as it represents the full adoption of statutorily-prescribed biofuel volumes and thus their feedstock demand on land use and otherwise appropriately assesses the GHG impacts of the program when fully implemented. An earlier assessment year would underestimate the full volumes required by EISA and therefore not appropriately account for the full impact of the program. Furthermore, we note that the RFS2 requirements do not end in 2022, rather it would continue in years to follow. Since trends which might impact a 2022 assessment compared to earlier years such as improvements in crop yield or production technology would be expected to continue after 2022, selecting 2022 as a preferred year of assessment represents a more reasonable single year for assessment of the expected GHG performance of a biofuel during the RFS2 program than an assessment early in the program such as 2012. Finally, a 2022 assessment for canola oil biodiesel is consistent with the 2022 assessments for all other biofuel pathways adopted in RFS2. EPA believes that it is best to use similar assessment techniques across all biofuel pathways.

#### 4. Biodiesel Processing Assumptions

We analyzed the lifecycle GHG emission impacts of producing biodiesel using canola oil as a feedstock assuming the same biodiesel production facility designs and conversion efficiencies as modeled for biodiesel produced from soybean oil. Canola oil biodiesel is produced using the same methods as soybean oil biodiesel, therefore plant designs are assumed to not significantly differ between these two feedstocks. As was the case for soybean oil biodiesel, production technology for canola oil biodiesel is mature and we have not projected in our assessment of canola oil biodiesel any significant improvements in plant technology. Unanticipated energy saving improvements would further improve GHG performance of the fuel pathway. Refer to the docket for more details on these model inputs and

assumptions. The inputs and assumptions are based on our understanding of the industry, analysis of relevant literature, public comments, and recommendations of experts within the canola and biodiesel industries and those from USDA as well as the experts at Texas A&M and Iowa State Universities who have designed the FASOM and FAPRI models.

The glycerin produced from canola oil biodiesel production is equivalent to the glycerin produced from the existing biodiesel pathways (based on soy oil, etc.) that were analyzed as part of the RFS2 final rule. Therefore the same assumptions and co-product credit was applied to canola oil biodiesel as was used for the biodiesel pathways modeled for the RFS2 final rule. The assumption is that the GHG reductions associated with the replacement of residual oil on an energy equivalent basis represents an appropriate mid-range co-product credit of biodiesel produced glycerin. The U.S. Canola Association supported this approach in its comments, stating that "EPA properly considered glycerin as a co-product, and conservatively assumed that the glycerin would be used as a fuel source in place of residual oil." However, we also received comments that this approach overestimates the GHG reduction benefits of glycerin co-product because the glycerin would actually replace less than an energy equivalent amount of residual oil. The commenter, Clean Air Task Force (CATF), makes the argument that while the glycerin use would lower the demand for residual oil, it would also reduce the price of residual oil fuel, and this lowered price would increase somewhat the demand and use of residual oil above the levels we assumed in our analysis. According to the commenter, this assumed rebound effect should decrease the credit we provide in our analysis for biodiesel-produced glycerin.

EPA feels that the proposed approach, which it is finalizing today, provides an appropriate estimate of credit for the glycerin co-product produced from the canola biodiesel pathway. As part of our RFS2 proposal we assumed the glycerin would have no value and would effectively receive no co-product credits in the soy biodiesel pathway. We received numerous comments, however, as part of the RFS2 final rule stating that the glycerin would have a beneficial use and should generate co-product benefits. Therefore, the biodiesel glycerin co-product determination made as part of the RFS2 final rule took into consideration the possible range of co-product credit results. The actual co-

product benefit will be based on what products are replaced by the glycerin, or what new uses the co-product glycerin is applied to. The total amount of glycerin produced from the biodiesel industry will actually be used across a number of different markets with different GHG impacts. This could include for example, replacing petroleum glycerin, replacing fuel products (residual oil, diesel fuel, natural gas, etc.), or being used in new products that don't have a direct replacement, but may nevertheless have indirect effects on the extent to which existing competing products are used. The more immediate GHG reductions from glycerin co-product use will likely range from fairly high reductions when petroleum glycerin is replaced to lower reduction credits if it is used in new markets that have no direct replacement product, and therefore no replaced emissions. EPA does not have sufficient information (and the commenter supplied none) on which to allocate glycerin use across the range of likely uses. Also, if additional residual oil is used as predicted by the commenter, its use would presumably replace some other product (e.g., perhaps replacing coal in some cases) which would also have a secondary GHG impact which could be in a positive direction (*i.e.*, a lowering of GHG emissions). Again, EPA does not have sufficient information on which to base such market movements and their GHG impact. Therefore, EPA believes that its proposed approach of picking a surrogate use for modeling purposes in the mid-range of likely glycerin uses, and focusing on the more immediate GHG emissions results tied to such use, is reasonable. The replacement of an energy equivalent amount of residual oil is a simplifying assumption determined by EPA to reflect the mid-range of possible glycerin uses in terms of GHG credits, and EPA believes that it is appropriately representative of GHG reduction credit across the possible range without necessarily biasing the results toward high or low GHG impact.

EPA feels that the comments from the CATF do not change the appropriateness of using at this time an assumption of residual oil replaced on an energy equivalent basis (without any adjustment for possible global rebound effect) as a representative biodiesel glycerin co-product credit. Since we are not actually assuming all of the biodiesel glycerin produced replaces residual oil (it will likely replace a mix of products with a range of GHG impacts but residual oil is used as the representative GHG reduction credit),

any potential rebound impact in the residual oil market would not occur to the extent described in the CATF comment as they assumed the total amount of glycerin would be used as a residual oil replacement. Furthermore, while including rebound effects and other indirect impacts for residual oil that is replaced by biodiesel co-product glycerin could possibly lower reduction credits, that would not be true for all replacement products. For example, including indirect impacts for glycerin that is used in new markets could tend to increase estimated emission reductions. Without indirect impacts the co-product assessment for glycerin used in new markets would assume that it did not have a replacement value and would therefore generate no credits. If indirect impacts were taken into account it could be that the new products would actually have impacts in other markets that were not direct replacements but generate GHG benefits. Given the varying impacts of including the type of factors CATF mentions in their comments would have across the full range of possible glycerin replacements, and the fundamental difficulty of predicting possible glycerin uses and impacts of those uses many years into the future under different market conditions, EPA believes it is reasonable to finalize its more simplified approach to calculating co-product GHG benefit associated with glycerin production.

##### 5. Other Assumptions

We received comments from the U.S. Canola Association supported by the State of Washington Department of Commerce that the GHG impacts of canola oil biodiesel as proposed in our Notice of Data Availability overestimated the GHG emissions of canola production and therefore canola oil biodiesel has a greater than 50% lifecycle GHG reduction compared to the baseline petroleum diesel fuel baseline. The U.S. Canola Association plans to submit more detailed technical analysis to EPA for consideration in any updated analysis of canola oil biodiesel. Because comments suggesting that EPA overestimated lifecycle GHG emissions from canola oil biodiesel do not impact today's regulatory determination that canola oil biodiesel achieves at least a 50% lifecycle GHG reduction, and because those who submitted such comments have asked that EPA expedite its qualification action for canola oil biodiesel under RFS2, we believe it is most appropriate that EPA consider these comments in detail at such time as we prepare an updated analysis of canola oil biodiesel. We worked closely

with the canola industry on the lifecycle analysis performed for this rulemaking and will continue to work with them on any future analysis. The state of Washington specifically referenced a concern with the diesel fuel consumption rate in our analysis. The concern is that the total change in diesel use divided by the total acreage change across the entire U.S. agricultural sector as a result of an increase in canola oil biodiesel production results in a diesel use figure that is higher than the rate of diesel fuel used to produce canola. The commenter indicates that this appears to represent an error in the EPA lifecycle analysis. EPA disagrees that this represents an error in the modeling. As mandated by EISA, and as was done for the other biofuels analyzed as part of the RFS2 final rule, EPA's lifecycle analysis takes into account the full direct as well as significant indirect impacts of canola oil biodiesel production. As described in the RFS2 final rulemaking, this means that for the agricultural sector we consider the full impacts across the entire sector due to canola oil biodiesel production including not only the impacts on canola acres and diesel fuel input, but also the impacts of crop shifting and changes in livestock production with associated impacts on feed crops and other crop production with associated diesel fuel use. Therefore the diesel fuel use figure that the state of Washington cites does not represent just the change from canola acres but shifts in all crop acres across all regions as described in the agricultural sector model results included in the docket to this rulemaking. The shifts of all these different crop acres with associated diesel fuel use results in the correct diesel use figure used by EPA.

The state of Washington also has comments specifically referencing regional data on canola production that is not reflective of the national and international analysis that EPA performed for canola oil biodiesel, as mandated by EISA and as was done for all feedstocks considered as part of the final RFS2 rulemaking. While regional specific data was included in the analysis the full lifecycle impacts of canola oil biodiesel as mentioned above were determined based on comprehensive national and international changes in agriculture and associated GHG impacts and therefore the data described in the State of Washington comments would not impact our determination that canola oil biodiesel qualifies under the 50% GHG threshold for biomass-based diesel and advanced biofuel. Furthermore, the

State of Washington comments encourage EPA to extend this rulemaking to other oilseeds in the family Brassicaceae such as camelina. Today's action is limited to canola, so this comment raises issues beyond the scope of this rulemaking. Parties seeking EPA analysis of additional fuel pathways are urged to follow the petition process specified in 40 CFR 80.1416.

We received comment from the Clean Air Task Force objecting to EPA's assumptions regarding likely improvements in canola yields in the future. According to the commenter, there is "recent evidence [which] significantly undermines any expectation that crop yields will increase in the future." The commenter bases this statement on a study suggesting that "the effects of climate change could decrease agricultural yields" and "further research is needed to identify how crop yields will respond to increased levels of carbon dioxide". However, we note that the authors of the study cited by commenters do not draw definitive conclusions, but phrase their statements cautiously, including, for examples, statements such as yields "may have reached their ceiling." In the study, the authors look principally at two crops, wheat and rice, as these crops have had declined gains in yield. However, the study also notes that maize has "maintained the rate of increase of the 1970s and 1980s into the most recent decade." This seems to go against the commenter's point that "recent evidence significantly undermines any expectation that crop yields will increase in the future." For crops that are not part of these three most important grains, no comparison has been made in the study. Thus, the study does not directly address canola. Finally, we note that the thrust of the

paper is that past approaches to increasing yields may be reaching the ceiling of potential effectiveness, but the author notes many other avenues that the author believes can and should be pursued to increase yield. Thus, even for the crops that have experienced a drop in yield increases, the study does not necessarily suggest that this will remain the case if appropriate research as suggested by the paper is conducted. Given the uncertain nature of scientific advancement and possible future effects related to climate change, EPA believes that its approach of looking at yield trends on a crop by crop basis based on past historical and verifiable data provides the most reasonable approach available at this time to predicting future yields.

EPA bases its crop yields on projecting long-term trends based on historical data for each crop using the same methodology. EPA's approach is consistent with USDA's future projections of crop yield changes over time. On the other end of the spectrum, we note that during the proposal to the final RFS2 rule we received comments that EPA's crop yields were actually too low and that yields will continue to increase due to improvements in seed technology.<sup>4</sup> Those commenters would argue that higher yields than used by EPA should be adopted. We believe that our assumptions are reasonably justifiable and do not differ from past long-term trend yield performance.

The docket includes a useful memorandum which summarizes relevant materials used for the canola biodiesel pathways analysis including detailed information on the assumptions used in our lifecycle modeling. Described in the memorandum, for example, are the input and assumptions

<sup>4</sup> See RFS2 Summary and Analysis of Comments, e.g., pg. 7-17, 7-37, 7-149.

document (e.g., crop yield projections, fertilizer use, agricultural energy use, etc.) and detailed results spreadsheets (e.g., foreign agricultural impacts, foreign agricultural energy use, FASOM and FAPRI model results) used to generate the results presented above.

#### *B. Threshold Determination and Assignment of Pathways*

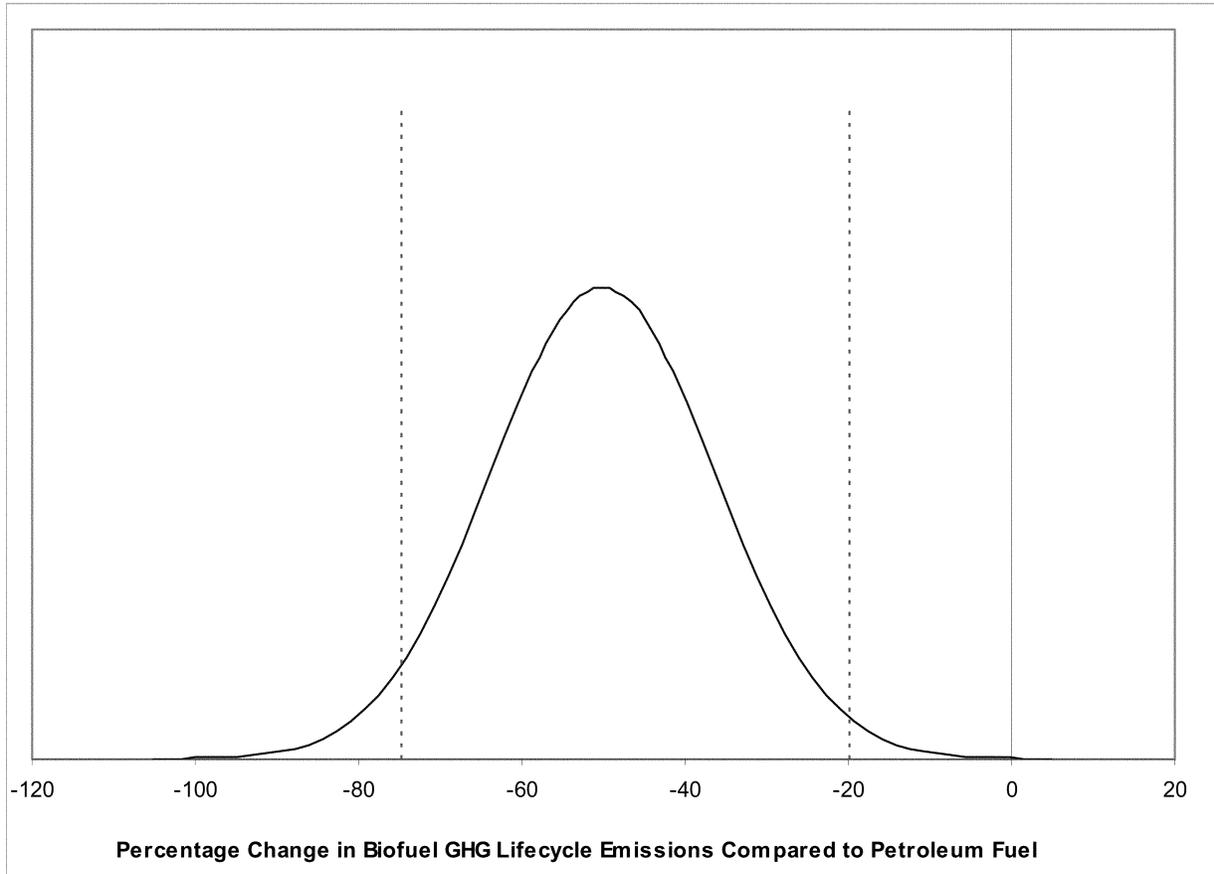
As part of this final rule, EPA is making a lifecycle GHG threshold determination based on its final lifecycle GHG analysis for canola oil biodiesel. Figure II-1 shows the results of the modeling. It shows the percent difference between lifecycle GHG emissions for 2022 canola oil biodiesel as compared to the 2005 petroleum diesel fuel baseline. In the figure, the zero on the x-axis represents the lifecycle GHG emissions equivalent to the 2005 petroleum diesel fuel baseline. The y-axis on the chart represents the likelihood that possible results would have a specific GHG reduction value shown. The area under the curve represents all the possible results. The results for canola biodiesel are that the midpoint of the range of results is a 50% reduction in GHG emissions compared to the diesel fuel baseline. The 95% confidence interval around that midpoint results in range of a 20% reduction to a 75% reduction compared to the 2005 petroleum diesel fuel baseline. These results justify authorizing the generation of biomass-based diesel RINs for fuel produced by the canola oil biodiesel pathway modeled, assuming that the fuel meets the other definitional criteria for renewable fuel (e.g., produced from renewable biomass, and used to reduce or replace petroleum-based transportation fuel, heating oil or jet fuel) specified in EISA.

**BILLING CODE 6560-50-P**

**Figure II-1.**

**Distribution of Results for Canola Oil Biodiesel**

**Typical 2022 plant; natural gas**



**BILLING CODE 6560-50-C**

Table II-1 breaks down by stage the lifecycle GHG emissions for canola oil biodiesel and the 2005 diesel baseline. The biodiesel production process reflected in this table assumes that natural gas is used for process energy and accounts for co-product glycerin displacing residual oil. This table demonstrates the contribution of each stage and its relative significance.

As a sensitivity case, we also looked at the use of biomass as an energy source and determined that this would further improve the GHG lifecycle

emissions profile compared to natural gas use. Thus, the GHG emissions threshold determination would apply to facilities using biomass or natural gas as an energy source. We have clarified in the Table 1 to 80.1426 that canola oil biodiesel facilities seeking to generate biomass-based diesel or advanced biofuel RINs must use either natural gas or biomass. Other process energy sources (such as coal) have not been modeled, but are likely to result in additional GHG emissions that would result in the pathway failing to provide

50% lifecycle GHG emissions as compared to baseline fuel. This is also true for biodiesel pathways using soybean oil and other feedstocks. However, at this time we are not amending Table 1 to § 80.1426 to specify the required process energy source(s) for soybean oil and other biodiesel feedstocks because this rule is focused on canola. We commit to updating Table 1 to § 80.1426 at a future time to include this energy use stipulation for other biodiesel feedstocks.

**TABLE II-1—LIFECYCLE GHG EMISSIONS FOR CANOLA OIL BIODIESEL, 2022**  
[kgCO<sub>2</sub>e/mmBTU]

Fuel type	Canola oil biodiesel	2005 Diesel baseline
Net Domestic Agriculture (w/o land use change) .....	8	.....
Net International Agriculture (w/o land use change) .....	0	.....
Domestic Land Use Change .....	3	.....
International Land Use Change, Mean (Low/High) .....	31 (7/61)	.....

TABLE II-1—LIFECYCLE GHG EMISSIONS FOR CANOLA OIL BIODIESEL, 2022—Continued  
[kgCO<sub>2</sub>e/mmBTU]

Fuel type	Canola oil biodiesel	2005 Diesel baseline
Fuel Production .....	3	18
Fuel and Feedstock Transport .....	2	*
Tailpipe Emissions .....	1	79
Total Emissions, Mean (Low/High) .....	48 (25/78)	97

\* Emissions included in fuel production stage.

Based on the above analyses, canola oil biodiesel has been found to comply with the lifecycle GHG reduction

thresholds (50%) applicable to the biomass-based diesel and advanced biofuel categories and are therefore

eligible for the D-Codes specified in Table II-2.

TABLE II-2—D-CODE DESIGNATIONS

Fuel type	Feedstock	Production process requirements	D-Code
Biodiesel .....	Canola oil .....	Trans-Esterification using natural gas or biomass for process energy.	4 (biomass-based diesel).

**III. Delayed RIN Generation for New Pathways**

In a Notice of Proposed Rulemaking (NPRM) published on July 20, 2010 (75 FR 42238), we proposed a new regulatory provision that would allow RINs to be generated for fuel produced on or after July 1, 2010 representing certain fuel pathways that were not in Table 1 to § 80.1426 as of July 1, 2010, but were added to Table 1 by January 1, 2011. Under the proposal, RINs could be generated only if the pathways were indeed approved as valid RIN-generating pathways, and only for volumes of fuel produced between July 1, 2010 and the effective date of a new pathway added to Table 1 to § 80.1426. In today’s rule, we are finalizing regulatory provisions for “delayed RINs” with certain modifications as described below only for biodiesel produced from canola oil since today’s action adds only this new RIN-generating pathway to Table 1 to § 80.1426.

For the RFS2 final rule (75 FR 14670), we attempted to evaluate and model as many pathways as possible so that producers and importers could generate RFS2 RINs beginning on July 1, 2010. However, we were not able to complete the evaluation of all pathways that we had planned. In the final RFS2 rulemaking we announced our intention to complete the evaluation of three specific pathways after release of the RFS2 final rule: Grain sorghum ethanol, pulpwood biofuel, and palm oil biodiesel (see Section V.C of the RFS2 final rule, 75 FR 14796). To this list we added biodiesel produced from canola oil as this biofuel was produced under

RFS1 and was also expected to participate in the RFS2 program at the program’s inception.

Following release of the final RFS2 rule, we determined that the lifecycle assessments for these additional pathways would not be completed by July 1, 2010, the start of the RFS2 program. While some producers of these biofuels could continue to generate RINs under the RFS2 “grandfathering” provisions, they would have no approved means for generating higher-value RINs (i.e. cellulosic biofuel, biomass-based diesel, or advanced biofuel)<sup>5</sup>. Knowing that this circumstance had the potential to adversely impact these producers as well as to reduce the number of RINs available in the market relative to biofuel volume, in the July 20, 2010 NPRM, we proposed a new regulatory provision for delayed RINs that would allow certain renewable fuel producers to generate higher-value RINs for all fuel they produce and sell between July 1, 2010, and the effective date of the new pathway, if applicable pathways are ultimately approved for RIN generation after July 1, 2010 and by December 31, 2010. This proposed provision was designed to allow biofuel producers to participate in the RFS2 program as fully as possible as it gets underway even though we were not able to complete the evaluation of a number of pathways prior to July 1. However, we also

<sup>5</sup> Grandfathered facilities could generate renewable fuel RINs with a D code of 6 beginning on July 1, 2010, but many of these producers believed that their biofuel should be qualified for generating RINs with D codes other than 6.

indicated in the preamble to the proposal that we intended to apply the delayed RINs provision to only the four pathways under consideration prior to July 1, 2010 (grain sorghum ethanol, pulpwood biofuel, palm oil biodiesel, and canola oil biodiesel) if any of these pathways are determined to meet the applicable GHG thresholds prior to January 1, 2011, and the provision would apply only for renewable fuel produced in 2010.

In response to the NPRM, most commenters supported such a provision. However, the American Petroleum Institute and the National Petrochemical Refiners Association opposed the proposal, stating that retroactively applicable actions are inappropriate and that delayed RINs would create more uncertainty for obligated parties. However, we continue to believe that the delayed RINs provision is both appropriate and will actually help obligated parties to comply with the applicable standards. Since the delayed RINs provision will increase the likelihood that higher-value RINs will be generated in 2010, more such RINs may be available to obligated parties for compliance purposes. Delayed RINs can be bought and sold independently of renewable fuel volumes, making them more easily marketable and more directly available to obligated parties than RINs assigned to renewable fuel. In addition, while this provision will allow RINs to be generated after the associated renewable fuel has been produced and sold, it does not constitute an impermissibly retroactive provision. Producers who

generate delayed RINs will do so voluntarily, and after the effective date of the new pathway. No additional burdens will be placed upon obligated parties and the rule will have no impact on any settled transactions of an obligated party. Moreover, RINs already generated and accepted in EMTS will not be affected. The D code assigned to any given RIN will not change, and RINs owned by any party can be retained by them for compliance purposes or sold as they wish.

Finally, to the extent that the provision could be seen as having retroactive impacts, EPA believes its action is authorized by CAA section 211(o)(2)(A)(iii), providing that “regardless of the date of promulgation, the regulations \* \* \* shall contain compliance provisions applicable to refineries, blenders, distributors, and importers, as appropriate, to ensure that the requirements” of the Act relating to use of specified volumes of renewable fuel are satisfied. The delayed RINs provision is a “compliance provision” because it relates to RINs, and RINs are the currency by which obligated parties demonstrate compliance. The delayed RINs provision relates to ensuring that the volumes of renewable fuel specified in the statute are met, by allowing producers to generate appropriate RINs for canola oil biodiesel that reflects its proper identification as biomass based diesel under the statute.

Two commenters requested that the provision for delayed RINs be made applicable to other pathways as well, such as pathways utilizing camelina and winter barley. Since the only new pathway that we approving for RIN generation in today’s action is biodiesel produced from canola oil, we are finalizing the delayed RINs provision only for this pathway in today’s action. The application of delayed RINs to other pathways does not need to be addressed in this action, as it does not affect the decision on delayed RINs for biodiesel produced from canola oil.

Several commenters responded to our proposed 30-day deadline for generation of delayed RINs by saying that additional time is necessary to allow grandfathered producers to acquire and retire an appropriate number of general renewable fuel (D code of 6) RINs. We proposed the 30-day limit because we believe that the deadline for the generation of delayed RINs should be set such that they are entering the market as close as possible to the date of production of the renewable fuel that they represent. However, we agree with the commenters that 60-days is a reasonable timeframe consistent with this consideration, and that it is

appropriate to allow producers additional time to complete necessary transactions. Therefore, today’s final rule provides that all delayed RINs for a given pathway must be generated within 60-days of the effective date of either a qualifying rule adding that pathway to Table 1 to § 80.1426, or of a qualifying action on a petition pursuant to § 80.1416.

As described in the RFS2 final rule, grandfathered producers can generate RINs for their renewable fuel starting on July 1, 2010, but must designate the D code as 6 for such fuel, and they must transfer those RINs with renewable fuel they sell. Under today’s rule, such grandfathered producers who qualify for the generation of delayed RINs, and who wish to avail themselves of the opportunity, will be required to acquire and retire RINs from the open market with a D code of 6 prior to the generation of delayed RINs. The number of RINs retired in this fashion must be no greater than the number they generated in 2010 in the time period between July 1, 2010 and the effective date of the new approved pathway for biodiesel made from canola oil. Once those RINs are retired, an equivalent number of delayed RINs with a different D code can be generated and sold. One commenter requested that the regulations allow delayed RINs to be generated and sold before, rather than after, the producer retires an equivalent number of RINs with a D code of 6. The commenter argued that this approach would allow producers to generate and sell delayed RINs as quickly as possible, and would also allow the producer to use the proceeds from the sale of delayed RINs to purchase and retire RINs with a D code of 6. However, despite these advantages to producers, we continue to believe that delayed RINs should only be generated after RINs with a D code of 6 are retired. In order to ensure that the number of RINs in the market accurately reflects biofuel produced or imported to represent those RINs, the number of delayed RINs generated must be equivalent to the number of RINs with a D code of 6 that are retired. If a producer were to generate and sell delayed RINs prior to retiring RINs with a D code of 6, the producer would be forced to estimate the appropriate number of delayed RINs to generate, and there would be no recourse for correcting an overestimation. By requiring RINs with a D code of 6 to be retired first, the producer will know exactly how many delayed RINs he is permitted to generate.

#### IV. Public Participation

Many interested parties participated in the rulemaking process that culminates with this final rule. The public had an opportunity to submit both written and oral comments on the proposed RFS2 final rule published on May 26, 2009 (74 FR 24904), and has had an opportunity to submit additional comments following publication of the Notice of Data Availability (NODA) for canola oil biodiesel that was published on July 26, 2010 (75 FR 43522). We have considered these comments in developing today’s final rule.

One commenter on the canola oil biodiesel NODA objected to “EPA’s finalization of a petition process to generate RINs for additional fuels or additional fuel pathways without providing an adequate opportunity for notice and comment.” The comment apparently relates to the process established in the RFS2 final rule, in § 80.1416, for parties to petition EPA to evaluate the lifecycle GHG reductions associated with additional biofuel production pathways beyond those already covered in Table 1 to § 80.1426. EPA notes that today’s action on canola oil biodiesel was not made pursuant to this petition process, so this comment is not relevant to this proceeding. The commenter also states, more generally, that EPA is required “to conduct a notice and comment rulemaking before approving any biofuel under EISA,” and that although the commenter appreciates that EPA has provided through issuance of the NODA an opportunity for public comment with respect to the canola oil biodiesel analysis, that “EPA was required to comply with the full procedural requirements of section 307(d) of the Clean Air Act.” EPA responds here only to these comments as they relate to today’s final action with respect to canola oil biodiesel. EPA’s proposed RFS2 rule would have qualified all “biodiesel made from “soybean oil and other virgin plant oils” through a transesterification process as renewable fuel with a D code of 4. See proposed Table 1 to § 80.1426 (74 FR 25119, May 26, 2009). Canola oil is a virgin plant oil within the scope of this proposal. The public was afforded an opportunity to submit written comments on this proposal, and also an opportunity to present oral comments during a public hearing held on June 9, 2009. In the final RFS2 rule published on March 26, 2010, EPA did not take final action on the component of its proposal that related to “other virgin plant oils” such as canola biodiesel. See final Table 1 to § 80.1426 (75 FR 14872). Instead it has

conducted additional analytical work and provided an additional opportunity for comment on that work as described in the NODA EPA views this final action as a continuation of the rulemaking process initiated in the May 26, 2009 proposal, and believes it has fully complied with all procedural requirements of Section 307(d) of the Clean Air Act.

## V. Statutory and Executive Order Reviews

### A. Executive Order 12866: Regulatory Planning and Review

This action is not a “significant regulatory action” under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) because it is not likely to have an annual effect on the economy of \$100 million or more, not likely to create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, not likely to materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs, and not likely to raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the EO. Therefore, this rule is not subject to review under the EO.

### B. Paperwork Reduction Act

This action does not impose any new information collection burden. Parties who are affected by today’s regulation are already covered by the registration, recordkeeping and reporting provisions of the RFS2 regulations. The new canola oil biodiesel pathway provides an additional means for generating RINs, but does not add any new information collection burden. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the RFS2 regulations at 40 CFR Part 80, subpart M, under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned the following OMB control numbers 2060–0637 (“Renewable Fuels Standard Program, Petition and Registration”) and 2060–0640 (“Renewable Fuels Standard”). The OMB control numbers for EPA’s regulations in 40 CFR are listed in 40 CFR part 9.

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant

economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today’s rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration’s (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today’s rule on small entities, we certify that this proposed action will not have a significant economic impact on a substantial number of small entities. This rule does not impose a new burden but creates a new opportunity to generate RINs. Therefore, there should be no adverse impacts on small businesses. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives “which minimize any significant economic impact of the rule on small entities.” 5 U.S.C. 603 and 604. Thus, 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, or otherwise has a positive economic effect on all of the small entities subject to the rule.

### D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, requires Federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year.

This rule is not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or

uniquely affect small governments. EPA has determined that this rule imposes no enforceable duty on any State, local or tribal governments. In addition this rule will not result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year.

### E. Executive Order 13132: Federalism

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that 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.”

This final rule 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, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this rule.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule will be implemented at the Federal level and impose compliance costs only on transportation fuel refiners, blenders, marketers, distributors, importers, and exporters. 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 and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks and because it implements specific provisions established by Congress in statutes.

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

This rule is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it only provides new opportunities for RIN generation, and thus is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, we have concluded that this rule is not subject to the EO.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rulemaking does not adopt or change any technical standards, so the EO is not applicable to this rule.

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

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing,

as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this rulemaking since the Agency is implementing specific standards established by Congress in statutes. Although EPA lacks authority to modify today’s regulatory action on the basis of environmental justice considerations, EPA nevertheless determined that this rule does not have a disproportionately high and adverse human health or environmental impact on minority or low-income populations.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

**VI. Statutory Provisions and Legal Authority**

Statutory authority for the rule finalized today can be found in section 211 of the Clean Air Act, 42 U.S.C. 7545. Additional support for the procedural and compliance related aspects of today’s rule, including the

recordkeeping requirements, come from Sections 114, 208, and 301(a) of the Clean Air Act, 42 U.S.C. 7414, 7542, and 7601(a).

**List of Subjects in 40 CFR Part 80**

Environmental protection, Administrative practice and procedure, Agriculture, Air pollution control, Confidential business information, Diesel fuel, Energy, Forest and forest products, Fuel additives, Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Petroleum, Reporting and recordkeeping requirements.

Dated: September 22, 2010.

**Lisa P. Jackson,**  
*Administrator.*

■ For the reasons set forth in the preamble, 40 CFR part 80 is amended as follows:

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

■ 2. Section 80.1426 is amended by revising paragraph (e)(1) and Table 1 to § 80.1426 following paragraph (f)(1), and adding paragraph (g) to read as follows:

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

\* \* \* \* \*

(e) \* \* \*

(1) Except as provided in paragraph (g) of this section for delayed RINs, the producer or importer of renewable fuel must assign all RINs generated to volumes of renewable fuel.

\* \* \* \* \*

(f) \* \* \*

(1) \* \* \*

TABLE 1 TO § 80.1426—APPLICABLE D CODES FOR EACH FUEL PATHWAY FOR USE IN GENERATING RINS

Fuel type	Feedstock	Production process requirements	D-Code
Ethanol .....	Corn starch .....	All of the following: Dry mill process, using natural gas, biomass, or biogas for process energy and at least two advanced technologies from Table 2 to this section.	6
Ethanol .....	Corn starch .....	All of the following: Dry mill process, using natural gas, biomass, or biogas for process energy and at least one of the advanced technologies from Table 2 to this section plus drying no more than 65% of the distillers grains with solubles it markets annually.	6
Ethanol .....	Corn starch .....	All of the following: Dry mill process, using natural gas, biomass, or biogas for process energy and drying no more than 50% of the distillers grains with solubles it markets annually.	6

TABLE 1 TO § 80.1426—APPLICABLE D CODES FOR EACH FUEL PATHWAY FOR USE IN GENERATING RINS—Continued

Fuel type	Feedstock	Production process requirements	D-Code
Ethanol	Corn starch	Wet mill process using biomass or biogas for process energy.	6
Ethanol	Starches from crop residue and annual covercrops	Fermentation using natural gas, biomass, or biogas for process energy.	6
Biodiesel, and renewable diesel.	Soy bean oil; Oil from annual covercrops; Algal oil; Biogenic waste oils/fats/greases; Non-food grade corn oil	One of the following: Trans-Esterification Hydrotreating Excluding processes that co-process renewable biomass and petroleum	4
Biodiesel	Canola oil	Trans-Esterification using natural gas or biomass for process energy.	4
Biodiesel, and renewable diesel.	Soy bean oil; Oil from annual covercrops; Algal oil; Biogenic waste oils/fats/greases; Non-food grade corn oil	One of the following: Trans-Esterification Hydrotreating Includes only processes that co-process renewable biomass and petroleum	5
Ethanol	Sugarcane	Fermentation	5
Ethanol	Cellulosic Biomass from crop residue, slash, pre-commercial thinnings and tree residue, annual covercrops, switchgrass, and miscanthus; cellulosic components of separated yard waste; cellulosic components of separated food waste; and cellulosic components of separated MSW.	Any	3
Cellulosic Diesel, Jet Fuel and Heating Oil.	Cellulosic Biomass from crop residue, slash, pre-commercial thinnings and tree residue, annual covercrops, switchgrass, and miscanthus; cellulosic components of separated yard waste; cellulosic components of separated food waste; and cellulosic components of separated MSW.	Any	7
Butanol	Corn starch	Fermentation; dry mill using natural gas, biomass, or biogas for process energy.	6
Cellulosic Naphtha	Cellulosic Biomass from crop residue, slash, pre-commercial thinnings and tree residue, annual covercrops, switchgrass, and miscanthus; cellulosic components of separated yard waste; cellulosic components of separated food waste; and cellulosic components of separated MSW.	Fischer-Tropsch process	3
Ethanol, renewable diesel, jet fuel, heating oil, and naphtha.	The non-cellulosic portions of separated food waste.	Any	5
Biogas	Landfills, sewage waste treatment plants, manure digesters.	Any	5

\* \* \* \* \*

(g) *Delayed RIN generation.* (1) Parties who produce or import renewable fuel may elect to generate delayed RINs to represent renewable fuel volumes that have already been transferred to another party if those renewable fuel volumes meet all of the following criteria.

(i) The renewable fuel is biodiesel that is made from canola oil and described by a pathway in Table 1 to § 80.1426; and

(ii) The fuel was produced or imported between July 1, 2010, and September 28, 2010 inclusive.

(2) Delayed RINs must be generated no later than the following deadline:

(i) For renewable fuel that is biodiesel that is made from canola oil and described by a pathway in Table 1 to § 80.1426, no later than 60 days after September 28, 2010.

(ii) [Reserved]

(3) A party authorized pursuant to paragraph (g)(1) of this section to

generate delayed RINs, and electing to do so, who generated RINs pursuant to 80.1426(f)(6) and transferred those RINs with renewable fuel volumes between July 1, 2010 and September 28, 2010 inclusive, must retire a number of gallon-RINs prior to generating delayed RINs.

(i) The number of gallon-RINs retired by a party pursuant to this paragraph must not exceed the number of gallon-RINs originally generated by the party to represent fuel described in paragraph (g)(1)(i) of this section that was produced or imported, and transferred to another party, between July 1, 2010 and September 28, 2010 inclusive.

(ii) Retired RINs must have a D code of 6.

(iii) Retired RINs must have a K code of 2.

(iv) Retired RINs must have been generated in 2010.

(4) For parties that retire RINs pursuant to paragraph (g)(3) of this section, the number of delayed gallon-RINs generated shall be equal to the number of gallon-RINs retired.

(5) A party authorized pursuant to paragraph (g)(1) of this section to generate delayed RINs, and electing to do so, who did not generate RINs pursuant to 80.1426(f)(6) for renewable fuel produced or imported between July 1, 2010 and September 28, 2010 inclusive, may generate a number of delayed gallon-RINs for that renewable fuel in accordance with paragraph (f) of this section.

(i) The standardized volume of fuel ( $V_s$ ) used by a party to determine the RIN volume ( $V_{RIN}$ ) under paragraph (f) of this section shall be the standardized volume of the fuel described in paragraph (g)(1)(i) of this section that was produced or imported by the party, and transferred to another party,

between July 1, 2010 and September 28, 2010 inclusive

(ii) [Reserved]

(6) The renewable fuel for which delayed RINs are generated must be described by the new pathway described in paragraph (g)(1) of this section.

(7) All delayed RINs generated by a renewable fuel producer or importer must be generated on the same date.

(8) Delayed RINs shall be generated as assigned RINs in EMTS, and then immediately separated by the RIN generator.

(9) The D code that shall be used in delayed RINs shall be the D code which corresponds to the new pathway.

[FR Doc. 2010-24310 Filed 9-27-10; 8:45 am]

BILLING CODE 6560-50-P

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

**44 CFR Part 67**

[Docket ID FEMA-2010-0003]

**Final Flood Elevation Determinations**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

**SUMMARY:** Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

**ADDRESSES:** The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-3461, or (e-mail) roy.e.wright@dhs.gov.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Federal Insurance and Mitigation Administrator has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at

selected locations in each community are shown.

*National Environmental Policy Act.* This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

*Regulatory Flexibility Act.* As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601-612, a regulatory flexibility analysis is not required.

*Regulatory Classification.* This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

*Executive Order 13132, Federalism.* This final rule involves no policies that have federalism implications under Executive Order 13132.

*Executive Order 12988, Civil Justice Reform.* This final rule meets the applicable standards of Executive Order 12988.

**List of Subjects in 44 CFR Part 67**

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

**PART 67—[AMENDED]**

■ 1. The authority citation for part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 67.11 [Amended]**

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) Modified	Communities affected
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**Napa County, California, and Incorporated Areas  
Docket No.: FEMA-B-1072**

Napa Creek .....	At the confluence with the Napa River .....	+18	City of Napa.
	Approximately 100 feet upstream of Jefferson Street .....	+34	
Napa River (With Levee) .....	Approximately 715 feet west of the State Route 121/East Avenue intersection.	+27	City of Napa, Unincorporated Areas of Napa County.
	Approximately 1,530 feet southwest of the intersection of State Route 121 and Woodland Drive.	+29	
Napa River (Without Levee) .....	Approximately 0.5 mile downstream of Imola Avenue .....	+12	City of Napa, Unincorporated Areas of Napa County.