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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA-HQ-OAR-2011-0542; FRL-9502-1]

RIN 2060-AR07

Regulation of Fuels and Fuel Additives: Identification of Additional Qualifying Renewable Fuel Pathways Under the Renewable Fuel Standard Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is issuing a proposed rule that identifies additional fuel pathways that EPA has determined meet the biomass-based diesel, advanced biofuel or cellulosic biofuel lifecycle greenhouse gas (GHG) reduction requirements specified in Clean Air Act section 211(o), the Renewable Fuel Standard Program, as amended by the Energy Independence and Security Act of 2007 (EISA). This proposed rule describes EPA's evaluation of biofuels produced from camelina oil, energy cane, giant reed, and napiergrass; it also includes an evaluation of renewable gasoline and renewable

gasoline blendstocks, as well as biodiesel from esterification, and clarifies our definition of renewable diesel.

This proposed rule adds these pathways to Table in regulations as pathways which have been determined to meet one or more of the GHG reduction thresholds specified in CAA 211(o), and assigns each pathway a corresponding D-Code. It allows producers or importers of fuel produced pursuant to these pathways to generate Renewable Identification Numbers (RINs), providing that the fuel meets the other requirements specified in the RFS regulations to qualify it as renewable fuel.

DATES: Written comments must be received by [Insert date 30 days from date of publication in the Federal Register]. A request for a public hearing must be received by [Insert date 15 days from date of publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2011-0542, by mail to Air and Radiation Docket, Docket No. EPA-HQ-OAR-2011-0542, Environmental Protection Agency, Mailcode: 6406J, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Vincent Camobreco, Office of Transportation and Air Quality (MC6401A), Environmental Protection Agency, 1200

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SUPPLEMENTARY INFORMATION:

I. Why is EPA Issuing a Proposed Rule?

This document proposes to take action to identify additional qualifying renewable fuel pathways under the Renewable Fuel Standard Program. We have published a direct final rule that describes our rationale for identifying these additional fuel pathways, including GHG lifecycle analyses, in the "Rules and Regulations" section of this Federal Register because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment, we will not take further action on this proposed rule. If EPA receives relevant adverse comment or a hearing request on a distinct provision of this rulemaking, we will publish a timely withdrawal in the Federal Register indicating which portion of the rule is being withdrawn. Any distinct amendment, paragraph, or section of today's rule not withdrawn will become effective on the date set out in the direct final rule. We will address all public comments in any subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this

time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

II. 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 and entities affected by this action include:

Category	NAICS[1] Codes	SIC[2] 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
Industry	424720	5172	Petroleum and petroleum products merchant wholesalers
Industry	454319	5989	Other fuel dealers

[1] North American Industry Classification System (NAICS)

[2] 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 this action. This table lists the types of entities that EPA is now aware could be potentially regulated by this action. Other

types of entities not listed in the table could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria of Part 80, subparts D, E and F of title 40 of the Code of Federal Regulations. If you have any question regarding applicability of this action to a particular entity, consult the person in the preceding **FOR FURTHER INFORMATION CONTACT** section above.

III. What Should I Consider as I Prepare My Comments for EPA?

A. *Submitting information claimed as CBI.* Do not submit information you claim as CBI to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI). In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

B. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
- Follow directions - The agency may ask you to respond to specific

questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

C. *Docket Copying Costs.* You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

IV. Identification of Additional Qualifying Renewable Fuel Pathways Under the Renewable Fuel Standard (RFS) Program

EPA is issuing a proposed rule to identify in the RFS regulations additional renewable fuel production pathways that we have determined meet the greenhouse gas

(GHG) reduction requirements of the RFS program. This proposed rule describes EPA's evaluation of:

Camelina oil (new feedstock)

- Biodiesel and renewable diesel (including jet fuel and heating oil) — *qualifying as biomass-based diesel and advanced biofuel*
- Naphtha and liquefied petroleum gas (LPG) — *qualifying as advanced biofuel*

Energy cane, giant reed, and napiergrass cellulosic biomass (new feedstocks)

- Ethanol, renewable diesel (including renewable jet fuel and heating oil), and naphtha — *qualifying as cellulosic biofuel*

Renewable gasoline and renewable gasoline blendstock (new fuel types)

- Produced from crop residue, slash, pre-commercial thinnings, tree residue, annual cover crops, and cellulosic components of separated yard waste, separated food waste, and separated municipal solid waste (MSW)
- Using the following processes — all utilizing natural gas, biogas, and/or biomass as the only process energy sources — *qualifying as cellulosic biofuel*:
    - Thermochemical pyrolysis
    - Thermochemical gasification
    - Biochemical direct fermentation
    - Biochemical fermentation with catalytic upgrading

- Any other process that uses biogas and/or biomass as the only process energy sources

Esterification (new production process)

- Process used to produce biodiesel from soy bean oil, oil from annual covercrops, algal oil, biogenic waste oils/fats/greases, non-food grade corn oil, Canola/rapeseed oil, and camelina oil – *qualifying as biomass-based diesel and advanced biofuel*

This proposed rule adds these pathways to Table 1 to § 80.1426 and assigns each pathway one or more D-Codes.

Determining whether a fuel pathway satisfies the CAA's lifecycle GHG reduction thresholds for renewable fuels requires a comprehensive evaluation of the lifecycle GHG emissions of the renewable fuel as compared to the lifecycle GHG emissions of the baseline gasoline or diesel fuel that it replaces. As mandated by CAA section 211(o), the GHG emissions assessments must evaluate the aggregate quantity of GHG emissions (including direct emissions and significant indirect emissions such as significant emissions from land use changes) related to the full fuel lifecycle, including all stages of fuel and feedstock production, distribution, and use by the ultimate consumer.

In examining the full lifecycle GHG impacts of renewable fuels for the RFS

program, EPA considers the following:

- Feedstock production – based on agricultural sector models that include direct and indirect impacts of feedstock production
- Fuel production – including process energy requirements, impacts of any raw materials used in the process, and benefits from co-products produced.
- Fuel and feedstock distribution – including impacts of transporting feedstock from production to use, and transport of the final fuel to the consumer.
- Use of the fuel – including combustion emissions from use of the fuel in a vehicle.

Many of the pathways evaluated in this proposal rely on a comparison to the lifecycle GHG analysis work that was done as part of the Renewable Fuel Standard Program (RFS2) Final Rule, published March 26, 2010.

More information on the different pathways evaluated is included below. For additional information on our GHG lifecycle analyses for this proposal, as well as the text of the proposed regulatory changes, see the direct final rule which is located in the Rules section of this **Federal Register.**

Camelina: Current information suggests that camelina has limited niche markets and will be produced on land that would otherwise remain fallow. Therefore, increased production of camelina-based renewable fuel is not expected to result in significant land

use change emissions. For the purposes of this proposed analysis, EPA is projecting there will be no land use emissions associated with camelina production for use as a renewable fuel feedstock.

Taking into account the assumption of no land use change emissions when camelina is used to produce renewable fuel, and considering that other sources of GHG emissions related to camelina biodiesel or renewable diesel production have comparable GHG emissions to biodiesel from soybean oil, we are proposing that camelina-based biodiesel and renewable diesel should be treated in the same manner as soy-based biodiesel and renewable diesel in qualifying as biomass-based diesel and advanced biofuel for purposes of RIN generation since the GHG emission performance of the camelina-based fuels will be at least as good and in some respects better than that modeled for fuels made from soybean oil. EPA found as part of the Renewable Fuel Standard final rulemaking that soybean biodiesel resulted in a 57% reduction in GHG emissions compared to the baseline petroleum diesel fuel. Furthermore, approximately 80%of the lifecycle impacts from soybean biodiesel were from land use change emissions which are assumed to be not significant for the camelina pathway considered. Thus, EPA is proposing to include camelina oil as a potential feedstock under the same biodiesel and renewable diesel pathways for which soybean oil currently qualifies. We are also proposing to include a pathway for jet fuel, naphtha, and LPG produced from camelina oil through hydrotreating. This is based on the fact that our analysis shows that even when all of the co-products are used to generate RINs the lifecycle GHG emissions for RIN-generating co-products including diesel

replacement fuel, jet fuel, naphtha and LPG produced from camelina oil will all meet the 50% GHG emissions reduction threshold.

We are also proposing that two existing pathways for RIN generation in the RFS regulations that list "renewable diesel" as a fuel product produced through a hydrotreating process include jet fuel. This applies to two pathways in Table 1 to §80.1426 of the RFS regulations which both list renewable diesel made from soy bean oil, oil from annual covercrops, algal oil, biogenic waste oils/fats/greases, or non-food grade corn oil using hydrotreating as a process. We are proposing that if parties produce jet fuel from the hydrotreating process and co-process renewable biomass and petroleum they can generate advanced biofuel RINs (D code 5) for the jet fuel produced. We are also proposing that if they do not co-process renewable biomass and petroleum they can generate biomass-based diesel RINs (D code 4) for the jet fuel produced.

§ 80.1401 of the RFS regulations currently defines non-ester renewable diesel as a fuel that is not a mono-alkyl ester and which can be used in an engine designed to operate on conventional diesel fuel or be heating oil or jet fuel. The reference to jet fuel in this definition was added by direct final rule dated May 10, 2010. Table 1 to §80.1426 identifies approved fuel pathways by fuel type, feedstock source and fuel production processes. The table, which was largely adopted as part of the March 26, 2010 RFS2 final rule, identifies jet fuel and renewable diesel as separate fuel types. Accordingly, in light of the revised definition of renewable diesel enacted after the RFS2 rule, there is

ambiguity regarding the extent to which references in Table 1 to “renewable diesel” include jet fuel.

The original lifecycle analysis for the renewable diesel from hydrotreating pathways listed in Table 1 to §80.1426 was not based on producing jet fuel but rather other transportation diesel fuel products, namely a diesel fuel replacement. As discussed in the direct final rule, the hydrotreating process can produce a mix of products including jet fuel, diesel, naphtha, LPG and propane. Also, as discussed, there are differences in the process configured for maximum jet fuel production vs. the process maximized for diesel fuel production and the lifecycle results vary depending on what approach is used to consider co-products (i.e., the allocation or displacement approach).

In cases where there are no pathways for generating RINs for the co-products from the hydrotreating process it would be appropriate to use the displacement method for capturing the credits of co-products produced. This is the case for most of the original feedstocks included in Table 1 to §80.1426. If the displacement approach is used when jet fuel is the primary product produced it results in lower emissions then the production maximized for diesel fuel production. Therefore, since the hydrotreating process maximized for diesel fuel meets the 50% lifecycle GHG threshold for the feedstocks in question, the process maximized for jet fuel would also qualify.

Thus, we are proposing that the references to “renewable diesel” in Table 1 include jet fuel, consistent with our regulatory definition of “non-ester renewable diesel,” since doing so clarifies the existing regulations while ensuring that Table 1 to §80.1426 appropriately identifies fuel pathways that meet the GHG reduction thresholds associated with each pathway.

We note that although the definition of renewable diesel includes jet fuel and heating oil, we are also proposing to list in Table 1 of section 80.1426 of the RFS2 regulations jet fuel and heating oil as specific co-products in addition to listing renewable diesel to assure clarity. This clarification also pertains to all the feedstocks already included in Table 1 for renewable diesel.

Energy grasses: Based on our comparison of switchgrass and the three feedstocks considered here, EPA is proposing that cellulosic biofuel produced from the cellulose, hemicellulose and lignin portions of energy cane, giant reed, and napiergrass has similar or better lifecycle GHG impacts than biofuel produced from the cellulosic biomass from switchgrass. Our proposed analysis suggests that the three feedstocks considered have GHG impacts associated with growing and harvesting the feedstock that are similar to switchgrass. Emissions from growing and harvesting energy cane are approximately 4 kg CO2eq/mmBtu higher than switchgrass, emissions from growing and harvesting giant reed are approximately 2 kg CO2eq/mmBtu lower than switchgrass, and emissions from growing and harvesting napiergrass are approximately

6 kg CO2eq/mmBtu higher than switchgrass. These are small changes in the overall lifecycle, representing at most a 6% change in the energy grass lifecycle impacts in comparison to the petroleum fuel baseline. Furthermore, the three feedstocks considered are expected to have similar or lower GHG emissions than switchgrass associated with other components of the biofuel lifecycle.

As a hypothetical worst case, if the calculated increases in growing and harvesting the new feedstocks are incorporated into the lifecycle GHG emissions calculated for switchgrass, and other lifecycle components are projected as having similar GHG impacts to switchgrass (including land use change associated with switchgrass production), the overall lifecycle GHG reductions for biofuel produced from energy cane, giant reed, and napiergrass still meet the 60% reduction threshold for cellulosic biofuel, the lowest being a 64% reduction (for napiergrass F-T diesel) compared to the petroleum baseline. We believe these are conservative estimates, as use of energy cane, giant reed, or napiergrass as a feedstock is expected to have smaller land-use GHG impacts than switchgrass, due to their higher yields.

Although this analysis assumes energy cane, giant reed, and napiergrass biofuels produced for sale and use in the United States will most likely come from domestically produced feedstock, we also intend for the proposed pathways to cover energy cane, giant reed, and napiergrass from other countries. We do not expect incidental amounts of biofuels from feedstocks produced in other nations to impact our average GHG emissions. Moreover, other countries most likely to be exporting energy

cane, giant reed, or napiergrass or biofuels produced from these feedstocks are likely to be major producers which typically use similar cultivars and farming techniques. Therefore, GHG emissions from producing biofuels with energy cane, giant reed, or napiergrass grown in other countries should be similar to the GHG emissions we estimated for U.S. energy cane, giant reed, or napiergrass, though they could be slightly (and insignificantly) higher or lower. For example, the renewable biomass provisions under the Energy Independence and Security Act would prohibit direct conversion of previously unfarmed land in other countries into cropland for energy grass-based renewable fuel production. Furthermore, any energy grass production on existing cropland internationally would not be expected to have land use impacts beyond what was considered for switchgrass production. Even if there were unexpected larger differences, EPA believes the small amounts of feedstock or fuel potentially coming from other countries will not impact our threshold analysis.

Based on our assessment of switchgrass in the RFS2 final rule and this comparison of GHG emissions from switchgrass and energy cane, giant reed, and napiergrass, we do not expect variations to be large enough to bring the overall GHG impact of fuel made from energy cane, giant reed or napier grass to come close to the 60% threshold for cellulosic biofuel. Therefore, EPA is proposing to include cellulosic biofuel produced from the cellulose, hemicelluloses and lignin portions of energy cane, giant reed, and napiergrass under the same pathways for which cellulosic biomass from switchgrass qualifies under the RFS2 final rule.

Renewable gasoline and renewable gasoline blendstock: Three renewable gasoline and renewable gasoline blendstock pathways were compared to baseline petroleum gasoline, using the same value for baseline gasoline as in the RFS2 final rule analysis. The results of the proposed analysis indicate that the renewable gasoline and renewable gasoline blendstock pathways result in a GHG emissions reduction of 65-129% or better compared to the gasoline fuel it would replace using corn stover as a feedstock. Since the renewable gasoline and renewable gasoline blendstock pathways which use corn stover as a feedstock all exceed the 60% lifecycle GHG threshold requirements for cellulosic biofuel, and since these pathways capture the likely current technologies and since future technology improvements are likely to increase efficiency and lower GHG emissions, we are proposing that all processes producing renewable gasoline or renewable gasoline blendstock from corn stover can qualify if they fall in the following process characterizations:

- Catalytic pyrolysis and upgrading utilizing natural gas, biogas, and/or biomass as the only process energy sources
- Gasification and upgrading utilizing natural gas, biogas, and/or biomass as the only process energy sources
- Direct fermentation utilizing natural gas, biogas, and/or biomass as the only process energy sources
- Fermentation and upgrading utilizing natural gas, biogas, and/or biomass as the only process energy sources

- Any process utilizing biogas and/or biomass as the only process energy sources

As was the case for extending corn stover results to other feedstocks in the RFS2 final rule, we are proposing to extend these results to feedstocks with similar or lower GHG emissions profiles, including the following feedstocks:

- Cellulosic biomass from crop residue, slash, pre-commercial thinnings and tree residue, annual cover crops;
- Cellulosic components of separated yard waste;
- Cellulosic components of separated food waste; and
- Cellulosic components of separated MSW

For more information on the reasoning for extension to these other feedstocks refer to the feedstock production and distribution section or the RFS2 rulemaking (75 FR 14793-14795).

Based on these results, today's proposed rule includes pathways for the generation of cellulosic biofuel RINs for renewable gasoline or renewable gasoline blendstock produced by catalytic pyrolysis and upgrading, gasification and upgrading, direct fermentation, fermentation and upgrading, all utilizing natural gas, biogas, and/or biomass as the only on-site process energy sources or any process utilizing biogas and/or biomass as the only on-site energy sources, and using corn stover as a feedstock or the feedstocks noted above. In order to qualify for RIN generation, the fuel must meet 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 the Clean Air Act and the RFS regulations.

Direct Esterification: Using the same methodology as was used for the yellow grease modeling under RFS2, but using high energy and materials use assumptions and omitting the glycerin co-product credit, we estimate the GHG emissions reduction for the esterification of specified feedstocks with any level of FFA process is -71%. Since the GHG threshold is at -50% for biomass-based diesel and advanced biofuel, we believe that there is a large enough margin in the results to reasonably conclude that biodiesel using esterification of specified feedstocks with any level of FFA content meets the biomass-based diesel and advanced biofuel 50% lifecycle GHG reduction threshold. Therefore, we are proposing to include the process "esterification" as an approved biodiesel production process in Table 1 to §40 CFR 80.1426. In addition, consistent with the modeling conducted for RFS2, we are proposing to interpret the RFS regulations as they existed prior to today's rule as including a direct esterification process as part of the biodiesel pathways for which only "trans-esterification" was specifically referenced in Table 1 to §40 CFR 80.1426.

V. Additional Changes to Listing of Available Pathways in Table 1 of 80.1426

We are also proposing two changes to Table 1 to 80.1426 that were proposed on July 1, 2011(76 FR 38844). The first change adds ID letters to pathways to facilitate

references to specific pathways. The second change adds "rapeseed" to the existing pathway for renewable fuel made from canola oil.

On September 28, 2010, EPA published a “Supplemental Determination for Renewable Fuels Produced Under the Final RFS2 Program from Canola Oil” (FR Vol. 75, No. 187, pg 59622-59634). In the July 1, 2011 NPRM (76 FR 38844) we proposed to clarify two aspects of the supplemental determination. First we proposed to amend the regulatory language in Table 1 to §80.1426 to clarify that the currently-approved pathway for canola also applies more generally to rapeseed. While “canola” was specifically described as the feedstock evaluated in the supplemental determination, we had not intended the supplemental determination to cover just those varieties or sources of rapeseed that are identified as canola, but to all rapeseed. As described in the July 1, 2011 NPRM, we currently interpret the reference to “canola” in Table 1 to §80.1426 to include any rapeseed. To eliminate ambiguity caused by the current language, however, we proposed to replace the term “canola” in that table with the term “canola/rapeseed”. Canola is a type of rapeseed. While the term “canola” is often used in the American continent and in Australia, the term “rapeseed” is often used in Europe and other countries to describe the same crop. We received no adverse comments on our July 1, 2011 proposal but are re-proposing it here in case we receive adverse comment in response to the direct final rule also published today.

Second, we wish to clarify that although the GHG emissions of producing fuels from canola feedstock grown in the U.S. and Canada was specifically modeled as the most likely source of canola (or rapeseed) oil used for biodiesel produced for sale and use in the U.S., we also intended that the approved pathway cover canola/rapeseed oil

from other countries, and we propose to interpret our regulations in that manner. We expect the vast majority of biodiesel used in the U.S. and produced from canola/rapeseed oil will come from U.S. and Canadian crops. Incidental amounts from crops produced in other nations will not impact our average GHG emissions. Therefore, EPA proposes to interpret the approved canola pathway as covering canola/rapeseed regardless of country origin.

VI. 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 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The corrections, clarifications, and modifications to the final RFS2 regulations contained in this rule are within the scope of the information collection requirements submitted to the Office of Management and Budget (OMB) for the final RFS2 regulations.

OMB has approved the information collection requirements contained in the existing 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 OMB control numbers 2060–0637 and 2060-0640. 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 this action on small entities, I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any new requirements on small entities. The relatively minor corrections and modifications this proposed rule makes to the final RFS2 regulations do not impact small entities. We continue to be interested in the potential impacts of the rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. We have determined that this action will not result in expenditures of $100 million or more for the above parties and thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This proposed rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. It only applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers and makes relatively minor corrections and modifications to the RFS2 regulations.

E. Executive Order 13132 (Federalism)

This action 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. This action only applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers and makes relatively minor corrections and modifications to the RFS2 regulations. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials.

F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This proposed rule does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers. This action makes relatively minor corrections and modifications to the RFS regulations, and does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this action. Nonetheless, EPA specifically solicits additional comment on this proposed action from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health Risks 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.

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

This proposed rule is not subject to Executive Order 13211 (66 FR 18355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

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 action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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 has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. These amendments would not relax the control measures on

sources regulated by the RFS regulations and therefore would not cause emissions increases from these sources.

VII. 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: __November 30, 2011._____

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Lisa P. Jackson,

Administrator

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