

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA-HQ-OAR-2021-0845; FRL-9075-02-OAR]

RIN 2060-AV55

Renewable Fuel Standard Program: Canola Oil Pathways to Renewable Diesel, Jet Fuel, Naphtha, Liquefied Petroleum Gas, and Heating Oil

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, EPA determines that renewable diesel, jet fuel, heating oil, naphtha, and liquefied petroleum gas (LPG) produced from canola/rapeseed oil via a hydrotreating process all meet the lifecycle greenhouse gas (GHG) emissions reduction threshold of 50 percent required for advanced biofuels and biomass-based diesel (BBD) under the

Renewable Fuel Standard (RFS) program. Based on the analyses described in the earlier notice of proposed rulemaking associated with this action, EPA is adding these pathways to the list of approved pathways in the RFS regulations, making them eligible to generate Renewable Identification Numbers (RINs), provided they satisfy the other definitional and RIN generation criteria for renewable fuel specified in the RFS regulations. EPA is also amending the RFS regulations by adding a new definition of “canola/rapeseed oil.”

DATES: This rule is effective on January 3, 2023.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2021-0845. All documents are listed on the <https://www.regulations.gov> website. 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 electronically through <http://www.regulations.gov>.

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SUPPLEMENTARY INFORMATION:

Does this action apply to me?

Entities potentially affected by this final rule are those involved with the production, distribution, and sale of transportation fuels, including gasoline and diesel fuel or renewable fuels such as biodiesel, heating oil, renewable diesel, naphtha, and LPG. Potentially regulated categories include:

Category	NAICS ¹ code	Examples of potentially affected entities
Industry	111120	Oilseed (except Soybean) Farming.
Industry	324110	Petroleum refineries (including importers).
Industry	325199	Other basic organic chemical manufacturing.
Industry	424690	Chemical and allied products merchant wholesalers.
Industry	424710	Petroleum Bulk Stations and Terminals.
Industry	424720	Petroleum and Petroleum Products Merchant Wholesalers.
Industry	454310	Other fuel dealers.

¹ North American Industry Classification System (NAICS).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated or otherwise affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria in the referenced regulations. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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I. Introduction

Section 211(o) of the Clean Air Act (CAA) establishes the RFS program, under which EPA sets annual percentage standards specifying the total amount of renewable fuel, as well as three subcategories of renewable fuel, that must be used to reduce or replace fossil fuel present in transportation fuel, heating oil, or jet fuel. Non-exempt renewable fuels must achieve at least a 20 percent reduction in lifecycle GHG emissions as compared to a 2005 petroleum baseline. Advanced biofuel and BBD must achieve at least a 50 percent reduction, and cellulosic biofuel must achieve at least a 60 percent reduction.¹

In addition to having to meet the applicable lifecycle GHG reduction requirements, a fuel may only generate RINs if it meets the definitional and other criteria for renewable fuel (e.g., feedstock is a qualifying source of

¹ See, generally, 42 U.S.C. 7545(o)(1).

renewable biomass as defined in the regulations and used to reduce or replace the quantity of fossil fuel present in transportation fuel, heating oil, or jet fuel) in CAA section 211(o) and the RFS regulations at 40 CFR part 80, subpart M.

Only fuels produced using pathways that EPA has approved as meeting all applicable requirements are eligible to generate RINs. There are three critical components of fuel pathways under the RFS program: (1) fuel type; (2) feedstock; and (3) production process. Each approved pathway is associated with a specific “D code” corresponding to whether the fuel meets the requirements for renewable fuel, advanced fuel, cellulosic fuel, or BBD.² Since the formation of the RFS program, EPA has periodically promulgated rules to add new pathways to the regulations.³ In addition, EPA has approved facility-specific pathways through the petition process in 40 CFR 80.1416.

EPA’s lifecycle analyses are used to assess the overall GHG impacts of a fuel throughout each stage of its production and use. The results of these analyses, considering uncertainty and the weight of available evidence, are used to determine whether a fuel meets the necessary GHG reduction threshold required under the CAA. Lifecycle analysis includes an assessment of emissions related to the full fuel lifecycle, including feedstock production, feedstock transportation, fuel production, fuel transportation and distribution, and tailpipe emissions. Per the CAA definition of lifecycle GHG emissions,⁴ EPA’s lifecycle analyses also include an assessment of significant indirect emissions, such as those from land use changes (LUC) and agricultural sector impacts.

EPA conducted lifecycle GHG analyses for several combinations of biofuel feedstocks, production processes, and fuels and promulgated several fuel pathways as part of its March 26, 2010 RFS2 final rule (75 FR 14670) (the “March 2010 RFS2 rule”). In the preamble to that final rule, EPA indicated that it intended to add fuel pathways to the regulations via further notice-and-comment rulemakings. EPA subsequently completed a proposed assessment for canola oil biodiesel; this proposed assessment was published in

the **Federal Register** for notice and comment on July 26, 2010 (75 FR 43522). This proposed assessment evaluated the GHG emissions associated with biodiesel produced from canola oil through a transesterification process. On September 28, 2010, EPA published a rule finalizing our determination that canola oil biodiesel meets the lifecycle GHG emissions reduction threshold of 50 percent required by the CAA and added row G to Table 1 to 40 CFR 80.1426, making canola oil biodiesel produced through a transesterification process eligible for BBD (D-code 4) RINs (75 FR 59622) (the “September 2010 Canola Oil rule”). This final rule did not include determinations for renewable diesel, jet fuel, naphtha, LPG, or heating oil produced from canola oil via a hydrotreating process.⁵ In the 2013 Pathways I final rule (78 FR 14190, March 5, 2013) (the “2013 Pathways I rule”), EPA added rapeseed oil as a feedstock in the existing pathway in row G for renewable fuel made from canola oil because “we had not intended the supplemental determination to cover just those varieties or sources of rapeseed that are identified as canola” (78 FR 14214). In that same rule, for clarity EPA also added “heating oil” to the rows in Table 1 to 40 CFR 80.1426 that already included renewable diesel or biodiesel (78 FR 14201). As in the 2013 Pathways I rule, in this action we are similarly adding new pathways to Table 1 to 40 CFR 80.1426 for biofuels produced from “canola/rapeseed oil” but for simplicity we refer to both canola and rapeseed as “canola” throughout this preamble.

In 2020, the United States Canola Association (USCA) submitted a rulemaking petition to EPA requesting an evaluation of the GHG emissions associated with renewable diesel, jet fuel, naphtha, LPG, and heating oil produced from canola oil via a hydrotreating process, and a determination of the renewable fuel categories, if any, for which such biofuels may be eligible.⁶

In response to the USCA petition, EPA conducted an analysis of the lifecycle GHG emissions associated with these fuel pathways. In April 2022, we published this analysis as part of the notice of proposed rulemaking (87 FR

22823, April 18, 2022) (the “Canola NPRM”) associated with this final rulemaking.⁷

As described in the Canola NPRM preamble, we estimated the lifecycle GHG emissions associated with the production of renewable diesel, naphtha, LPG, and jet fuel via a hydrotreating process. The Canola NPRM preamble discussed these estimates and our consideration of uncertainty in the analysis. Based on this analysis, we proposed to find that these biofuels meet the 50 percent GHG reduction threshold required for advanced biofuel and BBD. In the Canola NPRM, we also proposed a definition of “canola/rapeseed oil” to provide clarity about which feedstocks would qualify under these proposed pathways.

In this final action, EPA is adding to Table 1 of 40 CFR 80.1426 pathways for the production of renewable diesel, jet fuel, naphtha, LPG, and heating oil produced from canola oil via a hydrotreating process, as proposed. Upon the effective date of this action, these fuel pathways are eligible for either BBD (D-code 4) or advanced biofuel (D-code 5) RINs, depending on the fuel type and whether they are produced through a hydrotreating process that co-processes renewable biomass with petroleum. We are also finalizing our proposed definition of “canola/rapeseed oil” and adding this definition to 40 CFR 80.1401.

II. Review and Response to Comments on the Notice of Proposed Rulemaking

A. Comments Received on Our Lifecycle Analysis

EPA requested comment on its lifecycle analysis of the GHG emissions associated with renewable diesel, jet fuel, naphtha, LPG, and heating oil produced from canola oil via a hydrotreating process.

Several commenters expressed support for our lifecycle analysis. Commenters supported EPA’s new modeling of canola oil-based fuels using updated data on canola and canola products.⁸ Commenters also expressed that EPA’s updated modeling of international canola market conditions better simulates and reflects the behavior of the historical and current global canola trade, in particular the

² For additional information see: <https://www.epa.gov/renewable-fuel-standard-program/fuel-pathways-under-renewable-fuel-standard>.

³ See, e.g., 83 FR 37735 (August 2, 2018) approving grain sorghum oil pathways and 78 FR 41703 (July 11, 2013) approving giant reed and Napier grass pathways.

⁴ 42 U.S.C. 7545(o)(1)(H).

⁵ Hydrotreating, the process used to produce the vast majority of renewable diesel, consists of catalytic reactions in the presence of hydrogen. This process produces a “drop-in” fuel with properties virtually identical to petroleum diesel and distinct from biodiesel.

⁶ U.S. Canola Association. (2020). Petition for Pathways for Renewable Diesel from Canola Oil as “Advanced Biofuel” Under the Renewable Fuel Standard Program. EPA-HQ-OAR-2021-0845-0040.

⁷ The full set of modeling results, post-processing spreadsheets and other technical documents describing this analysis are available in the docket for this action.

⁸ See Docket Item No. EPA-HQ-OAR-2021-0845-0053, EPA-HQ-OAR-2021-0845-0055, EPA-HQ-OAR-2021-0845-0057, EPA-HQ-OAR-2021-0845-0066, EPA-HQ-OAR-2021-0845-0068, EPA-HQ-OAR-2021-0845-0069.

dynamics between the U.S. and Canada.⁹ Commenters did not provide any comments on this analysis that indicate it is unreasonable to rely on it for this rulemaking, such as the presence of errors in the analysis, the use of outdated data, or any other scientific deficiencies that might require EPA to conduct new analysis before finalizing our determination. Some commenters stated that EPA's analysis may be overly conservative in the sense that, in the opinion of these commenters, our analysis may overstate the GHG intensity of canola oil-based fuels. Multiple commenters claimed that U.S. canola producers may be able to expand canola production on fallow land or Conservation Reserve Program (CRP) land, or make changes to crop rotations, to provide additional canola seed and oil for biofuel feedstock supply without the need for cultivation of new crop area. Commenters argued that, for these reasons EPA's estimated cropland change emissions impacts may be too high.¹⁰ However, these commenters did not provide data or information that would support specific revisions in our modeling. Regardless, revising our analysis in the manner suggested by these commenters would not materially affect the results of our determination for these canola oil pathways. Since we proposed to determine that the pathways in question be approved to generate RINs under the most valuable renewable fuel categories (*i.e.*, the advanced biofuel and/or BBD pathways) for which they are eligible, further reductions in LUC emissions, were a revised analysis to find such a result, would lead to the same pathway determination. Finally, commenters who made these points did not state that revisions should be made to EPA's analysis before finalizing the proposed pathways. Rather, these commenters instead uniformly supported the finalization of EPA's analysis and determination as proposed. For all of these reasons, we believe no revisions to our lifecycle analysis are appropriate or necessary in response to these comments.

Commenters supported our inclusion of pathways for fuels produced from co-processing canola oil with petroleum feedstocks, *i.e.*, co-processed fuels.¹¹ In their comments, Phillips 66 suggested additional data sources about the

emissions associated with co-processing of canola oil via hydrotreating, which EPA could consider if needed. However, neither Phillips 66 nor any other commenter who addressed co-processing suggested that any revision of this aspect of our analysis was needed. Further, revising our analysis to consider the additional data provided by Phillips 66 would not materially affect the results of our determination for these canola oil pathways. We believe no revisions to our lifecycle analysis are appropriate or necessary in response to these comments.

The American Petroleum Institute (API) observed that lifecycle analysis methodology was the focus of a recent EPA workshop on biofuel GHG modeling.¹² API expressed support for the efforts of EPA to consider new science and data in the context of biofuel lifecycle analysis. However, API also expressed that the scientific discussions at this workshop should not necessitate any revisions to the analysis conducted for the Canola NPRM. Rather, this commenter stated that any such revisions should be considered in the future in the context of more holistic re-examination of RFS pathways, so that they can be applied consistently across all approved pathways.¹³ EPA did not propose to apply a new lifecycle analysis methodology to canola oil, and we are not doing so in this final rule. Any decisions EPA may make about future lifecycle analyses and determinations are outside the scope of this rulemaking.

In the proposed rule we requested comment on our proposed use of an energy allocation approach to evaluate co-products from hydrotreating processes (87 FR 22838). We received two comments on this topic.¹⁴ One of the commenters said they agree with EPA's reasoning and support the energy allocation approach taken. The other commenter did not oppose EPA's use of energy allocation, but believes it is a conservative approach that may not be appropriate in all cases. Based on these comments, and the reasons given in the proposed rule, we are retaining the proposed energy allocation approach to the evaluation of the co-products from hydrotreating processes. Furthermore, for the reasons discussed in the proposed rule, we believe that energy allocation is generally the most appropriate approach for co-products that may be used as transportation fuel.

Unlike the displacement approach, the allocation approach does not depend on which co-products generate RINs (or for which producers request RIN eligibility), which is subject to change based on market and regulatory conditions.

We have determined that no changes to our proposed lifecycle analysis of the GHG emissions associated with renewable diesel, jet fuel, naphtha, LPG, and heating oil produced from canola oil via a hydrotreating process are necessary or appropriate based on the public comments received. However, as discussed in section IV of this action, we are updating emission factors from GREET-2020 to GREET-2021, consistent with our intention as expressed in the Canola NPRM preamble. Further information on our lifecycle analysis is available in the Canola NPRM preamble¹⁵ and the docket for this rulemaking.¹⁶

B. Other Comments Received on Our Proposed Pathway Determinations

EPA received other comments on our determination that renewable diesel, jet fuel, naphtha, LPG, and heating oil meet the 50 percent GHG reduction threshold required for advanced biofuel and BBD, but these comments did not directly address our lifecycle analysis of the proposed canola oil pathways. These comments are summarized below.

Several commenters expressed general support for the finalization of our proposed determination. Commenters associated with the canola production and processing industries expressed an ability to provide feedstock to the biofuel industry to produce fuels under the proposed canola oil pathways.¹⁷ Commenters argued that approval of these pathways would provide several economic and societal benefits, including supporting rural economies,¹⁸ reducing U.S. GHG emissions,¹⁹ providing greater feedstock diversity to the biofuel industry (particularly for renewable diesel and jet fuel),²⁰ and reducing reliance on

¹⁵ See 87 FR 22826-40.

¹⁶ See Docket No. EPA-HQ-OAR-2021-0845.

¹⁷ See, *e.g.*, Docket Item No. EPA-HQ-OAR-2021-0845-0052, EPA-HQ-OAR-2021-0845-0053, EPA-HQ-OAR-2021-0845-0055.

¹⁸ See, *e.g.*, Docket Item No. EPA-HQ-OAR-2021-0845-0053, EPA-HQ-OAR-2021-0845-0055, EPA-HQ-OAR-2021-0845-0068.

¹⁹ See, *e.g.*, Docket Item No. EPA-HQ-OAR-2021-0845-0053, EPA-HQ-OAR-2021-0845-0054, EPA-HQ-OAR-2021-0845-0055, EPA-HQ-OAR-2021-0845-0062, EPA-HQ-OAR-2021-0845-0066, EPA-HQ-OAR-2021-0845-0068.

²⁰ See, *e.g.*, Docket Item No. EPA-HQ-OAR-2021-0845-0054, EPA-HQ-OAR-2021-0845-0055, EPA-HQ-OAR-2021-0845-0057, EPA-HQ-OAR-2021-0845-0062, EPA-HQ-OAR-2021-0845-0065, EPA-HQ-OAR-2021-0845-0068.

⁹ See Docket Item No. EPA-HQ-OAR-2021-0845-0066, EPA-HQ-OAR-2021-0845-0072.

¹⁰ See, *e.g.*, Docket Item No. EPA-HQ-OAR-2021-0845-0053, EPA-HQ-OAR-2021-0845-0055, EPA-HQ-OAR-2021-0845-0063, EPA-HQ-OAR-2021-0845-0066, EPA-HQ-OAR-2021-0845-0076.

¹¹ See, *e.g.*, Docket Item No. EPA-HQ-OAR-2021-0845-0079.

¹² For information regarding this workshop, see Docket No. EPA-HQ-OAR-2021-0921.

¹³ See Docket Item No. EPA-HQ-OAR-2021-0845-0058.

¹⁴ Docket Item No. EPA-HQ-OAR-2021-0845-0079 and EPA-HQ-OAR-2021-0845-0072.

imported petroleum.²¹ Commenters also stated that the lack of a renewable diesel pathway in particular has been an impediment to the canola industry and that approval of this pathway would provide a more level playing field with other renewable diesel feedstocks.²²

Several commenters supported our proposed determination that no invasive species-related risk management measures are appropriate in the context of these canola oil pathways. The Minnesota Canola Council stated in their comments that “[c]anola has been grown throughout the U.S. for decades without posing invasiveness concerns”.²³ Other comments addressing the topic of canola invasiveness potential concurred with this statement.²⁴ We did not receive comment suggesting that canola has any significant potential to become invasive in the United States, nor did any commenters suggest that risk management measures would be appropriate for these canola oil pathways.

Airlines for America provided comments observing that EPA’s proposed revisions to the RFS regulations included certain minor technical errors.²⁵ Specifically, according to the proposed regulations included in the Canola NPRM, the term “Distillers corn oil” would be deleted and replaced with “Non-food grade corn oil” and “Commingled distillers corn oil and sorghum oil” would be deleted entirely from the feedstock column in row H. These changes were unintentional errors. Airlines for America acknowledged in their comments that these errors were likely unintentional and requested that EPA clarify in the preamble of the final rule that this is the case. We clarify here that these proposed changes were in fact unintentional errors. EPA is not finalizing these changes to the regulations.

EPA received comments from the Pet Food Institute (PFI) opposing the proposed pathway on the grounds that approving these canola oil-based pathways would create additional financial hardship for PFI’s member companies, for whom vegetable oils are

an important product input. In their comments, PFI observed that prices for vegetable- and animal-based fats, oils, and greases (FOG) are presently high in 2022. They argued that approving these pathways would create additional upward pressure on FOG prices and reduce FOG availability for their member companies.²⁶ These comments mirrored similar comments submitted by PFI on a separate recent RFS rulemaking, namely the Proposed RFS Standards for 2020, 2021, and 2022.²⁷ EPA’s Response to Comment (RTC) document associated with that rulemaking addresses these comments in the broader context of RFS program impacts on FOG availability and prices, inclusive of impacts attributable to canola oil-based fuels.²⁸ As was discussed in this earlier RTC document, EPA recognizes that prices for these FOG commodities have been relatively high in 2022. However, we also note that several companies, including both renewable diesel producers and other parties, have already begun to respond to this price signal by announcing investment in increased vegetable oil refining capacity.²⁹ Thus, we believe that the market is adjusting to supply the necessary volumes of refined vegetable oil to both the biofuel and food markets, and we do expect that both human and animal food producers will be able to acquire the refined vegetable oil they need in 2022 and future years. In addition, aggregate demand for vegetable oil-based fuels under the RFS program is primarily a function of the annual Renewable Volume Obligations (RVOs), not any individual pathway approval. To the extent that any FOG price impacts may be associated with demand created by the RFS program, EPA believes such impacts would be associated with the decisions about the levels at which RVOs are set, not approvals of individual fuel pathways. PFI does not present evidence that approving additional fuel pathways in and of itself will cause a direct increase in overall consumption of biofuels under the RFS program or cause an increase in FOG prices and we do not believe such outcomes will result from this action. Additionally, several commenters on the Canola NPRM argued the opposite, *i.e.*, that approval of these pathways is

likely to create additional flexibility for biofuel producers, increase economic efficiency, and reduce prices.³⁰ In general, we agree that creating additional flexibility under the RFS program is likely to, if anything, reduce feedstock prices.

Finally, CAA section 211(o)(1) contains the exclusive considerations for evaluating whether a fuel qualifies as BBD or advanced biofuel. As further explained in the response to comments regarding the Endangered Species Act (ESA) below, the statute provides that EPA consider whether the fuel meets the definition of renewable fuel (produced from renewable biomass and used to replace or reduce the quantity of fossil fuel present in a transportation fuel), whether it provides the qualifying lifecycle greenhouse gas reduction as compared to baseline petroleum fuel, and whether the biomass is co-processed with petroleum feedstocks (see CAA section 211(o)(1)(D)). The statutory definitions and scheme leave EPA no discretion to decline to qualify a biofuel as BBD or advanced biofuel under the RFS program based on additional considerations that are not identified in the statute, such as price impacts on canola-oil feedstocks. These factors, again, represent the full range of considerations that EPA is authorized to consider in determining whether a fuel qualifies as BBD or advanced biofuel. In light of this carefully constrained statutory scheme, EPA is without authority to alter this rule based on vegetable oil price considerations, and EPA has no discretion to deny approval of this pathway if the statutory criteria are met. As noted above, to the extent any FOG price impacts may be associated with demand created by the RFS program, we believe such impacts would be associated with decisions made about the levels at which the RVOs are set, not approvals of individual fuel pathways. Thus, we consider PFI’s comments outside the scope of this action.

EPA received comments from the Center for Biological Diversity (CBD) opposing our proposed determination on the grounds that approval of this pathway would increase the production of canola to meet new biofuel demands, which would in turn allegedly cause harmful effects for a least five species³¹

²¹ See, *e.g.*, Docket Item No. EPA-HQ-OAR-2021-0845-0062, EPA-HQ-OAR-2021-0845-0070.

²² See, *e.g.*, Docket Item No. EPA-HQ-OAR-2021-0845-0055, EPA-HQ-OAR-2021-0845-0066, EPA-HQ-OAR-2021-0845-0069.

²³ See Docket Item No. EPA-HQ-OAR-2021-0845-0053.

²⁴ See, *e.g.*, Docket Item No. EPA-HQ-OAR-2021-0845-0055, EPA-HQ-OAR-2021-0845-0063, EPA-HQ-OAR-2021-0845-0066, EPA-HQ-OAR-2021-0845-0072.

²⁵ See Docket Item No. EPA-HQ-OAR-2021-0845-0065.

²⁶ Docket Item No. EPA-HQ-OAR-2021-0845-0077.

²⁷ 86 FR 72436-501. PFI’s comments are available on the docket for this rulemaking, Docket No. EPA-HQ-OAR-2021-0324-0453.

²⁸ See Section 4.2, Renewable Fuel Standard (RFS) Program: RFS Annual Rules—Response to Comments, EPA-420-R-22-009, June 2022.

²⁹ *Id.*

³⁰ See, *e.g.*, Docket Item No. EPA-HQ-OAR-2021-0845-0054, EPA-HQ-OAR-2021-0845-0055, EPA-HQ-OAR-2021-0845-0057, EPA-HQ-OAR-2021-0845-0062, EPA-HQ-OAR-2021-0845-0065, EPA-HQ-OAR-2021-0845-0068.

³¹ The comments identify these species as the Pallid Sturgeon (*Scaphirhynchus albus*), the Whooping Crane (*Grus americana*), the Dakota

listed under the ESA. CBD argues that these alleged effects would cross the “may effect” and/or “likely to adversely affect” thresholds relevant to ESA considerations and thus trigger consultation requirements under the ESA and its implementing regulations. They state that EPA’s approval of the proposed canola oil pathways represents a discretionary programmatic action. On this basis, CBD argues EPA must therefore consult with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (hereinafter collectively referred to as “the Services”) under section 7 of ESA before finalizing these canola oil pathways.

Contrary to CBD’s assertions, for this action, we find that EPA lacks discretion to disapprove this pathway petition on the basis of impacts to listed species or designated critical habitat of such species. Section 7(a)(2) of the ESA requires federal agencies, in consultation with one or both of the Services, to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of federally listed endangered or threatened species or result in the destruction or adverse modification of designated critical habitat of such species.³² Under relevant implementing regulations and case law, section 7(a)(2) applies only to actions where there is discretionary federal involvement or control.³³

In *Defenders of Wildlife*, the Supreme Court evaluated a claim that EPA was required to engage in section 7 consultation in the context of its approval of a state permitting program under the Clean Water Act (CWA). In that case, the Court held that when a Federal agency is required by statute to undertake a particular action without considering species impacts, there is no relevant agency discretion, and thus the requirements of ESA section 7(a)(2) do not apply.³⁴ With regard to EPA’s transfer of CWA permitting authority to a State, the relevant CWA provision specified that EPA “shall approve” a state permitting program if a list of CWA statutory criteria are met. The Court found that the relevant CWA program approval criteria did not include consideration of endangered or threatened species and stated that “[n]othing in the text of [the relevant

CWA provision] authorizes EPA to consider the protection of threatened or endangered species as an end in itself when evaluating [an] application” to transfer a permitting program to a State.³⁵ Accordingly, the Court held that the CWA required EPA to approve the state’s permitting program if the statutory criteria were met; those criteria did not include the consideration of ESA-protected species; and thus, consistent with 50 CFR 402.03, the nondiscretionary action to transfer CWA permitting authority to the state did not trigger ESA section 7 consultation requirements.

Similar to the CWA program approval provision at issue in *Defenders of Wildlife*, the CAA contains detailed provisions specifying the parameters of fuels that qualify under this regulatory program.³⁶ None of those provisions provide EPA the discretion to modify its evaluation of potential qualifying fuels based on extra-statutory criteria. Of relevance here, the CAA includes detailed definitions of the terms “advanced biofuel” and “biomass-based diesel,” and those definitions do not allow for consideration of impacts to threatened or endangered species in this action.

Advanced biofuel is defined as “renewable fuel, other than ethanol derived from corn starch, that has lifecycle greenhouse gas emissions, as determined by the Administrator, after notice and opportunity for comment, that are at least 50 percent less than baseline lifecycle greenhouse gas emissions.”³⁷ This definition includes defined terms within it, including the terms “renewable fuel,” (“[f]uel that is produced from renewable biomass and that is used to replace or reduce the quantity of fossil fuel present in a transportation fuel”), “baseline lifecycle greenhouse gas emissions” (“average lifecycle greenhouse gas emissions . . . for gasoline or diesel . . . sold or distributed as transportation fuel in 2005”), and “lifecycle greenhouse gas emissions”. The term “lifecycle greenhouse gas emissions” means the aggregate quantity of greenhouse gas emissions (including direct emissions and significant indirect emissions such as significant emissions from land use changes), as determined by the Administrator, related to the full fuel lifecycle, including all stages of fuel and feedstock production and distribution, from feedstock generation or extraction through the distribution and delivery and use of the finished fuel to the

ultimate consumer, where the mass values for all greenhouse gases are adjusted to account for their relative global warming potential.³⁸

Thus, in determining if a fuel qualifies as advanced biofuel, EPA must consider whether it meets the definition of renewable fuel—that is, whether it is made from “renewable biomass” as defined in the statute and is “used to replace or reduce the quantity of fossil fuel present in transportation fuel.” EPA must also consider whether a fuel is made from corn starch, and whether it satisfies the requirement that it achieve a 50 percent lifecycle GHG emissions reduction as compared to baseline lifecycle greenhouse gas emissions. These factors represent the full range of considerations that EPA is authorized to consider in determining whether a fuel qualifies as advanced biofuel; it follows that EPA is not authorized to consider impacts to threatened or endangered species in determining what fuels qualify as advanced biofuels under the CAA. In light of this carefully constrained statutory scheme, EPA is without authority to alter this rule based on listed species considerations and is under no obligation to consult with the Services under section 7(a) of the ESA with respect to the advanced biofuel pathways established in this action that utilize canola oil feedstock to produce renewable diesel. EPA has no discretion to deny approval of this pathway if the statutory criteria are met.

The same is true with respect to the pathways approved in this action for the production of BBD from canola oil. The term biomass-based diesel is defined in the CAA as renewable fuel that is biodiesel as defined in section 13220(f) of this title and that has lifecycle greenhouse gas emissions . . . that are at least 50 percent less than the baseline lifecycle greenhouse gas emissions. Notwithstanding the preceding sentence, renewable fuel derived from co-processing biomass with a petroleum feedstock shall be advanced biofuel if it meets the requirements of [42 U.S.C. 7545(o)(1)(B)], but is not biomass-based diesel.³⁹

The term “biodiesel” is defined in 42 U.S.C. 13220(f) to mean “a diesel fuel substitute produced from nonpetroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act [42 U.S.C. 7545]” and “includes biodiesel derived from—(i) animal wastes, including poultry fats and poultry

Skipper (*Hesperia dacotae*), the Western Prairie Fringed Orchid (*Platanthera praeclara*) and the Poweshiek Skipperling (*Oarisma poweshiek*).

³² 16 U.S.C. 1536(a)(2).

³³ 50 CFR 402.03; *National Ass’n of Home Builders v. Defenders of Wildlife*, 127 S. Ct. 2518 (2007) (*Defenders of Wildlife*).

³⁴ *Defenders of Wildlife* at 2536.

³⁵ *Id.* at 2537.

³⁶ 42 U.S.C. 7545(o)(1).

³⁷ 42 U.S.C. 7545(o)(1)(B).

³⁸ 42 U.S.C. 7545(o)(1)(J), (H).

³⁹ 42 U.S.C. 7545(o)(1)(D).

wastes, and other waste materials; or (ii) municipal solid waste and sludges and oils derived from wastewater and the treatment of wastewater.” Thus, in evaluating whether a fuel qualifies as BBD, EPA is authorized to consider only whether the fuel meets the definition of renewable fuel (made from renewable biomass and used to replace or reduce the quantity of fossil fuel present in a transportation fuel), whether it provides a qualifying lifecycle GHG reduction as compared to baseline petroleum fuel, whether the biomass is co-processed with petroleum feedstocks, and whether it meets the registration requirements for fuels and fuel additives established via rulemaking by EPA. These factors, again, represent the full range of considerations that EPA is authorized to consider in determining whether a fuel qualifies as BBD; it follows that EPA is not authorized to consider impacts to threatened or endangered species in determining what fuels qualify as BBD under the CAA. In light of this carefully constrained statutory scheme, EPA is without authority to alter this rule based on listed species considerations and is under no obligation to consult with the Services under section 7(a) of the ESA with respect to the advanced biofuel pathways established in this action that utilize canola oil feedstock to produce BBD. EPA has no discretion to deny approval of this pathway if the statutory criteria are met.

The action EPA is taking today is to determine that renewable diesel, jet fuel, heating oil, naphtha, and LPG produced from canola oil via a hydrotreating process meet the applicable statutory requirements and thus qualify as renewable fuels under the RFS program. EPA is not establishing volume requirements, which would require the use of renewable fuel of various quantities and types (without requiring any particular type of renewable fuel). EPA is currently engaged in consultation with the Services on renewable fuel standards and will consider the future use of canola oil under the RFS program in that context. As discussed in response to comments from PFI, it is the RFS standards that could impact demand for advanced biofuel and biomass-based diesel; this pathway approval simply provides an additional opportunity and flexibility that renewable fuel producers may choose to adopt. Additionally, through the ongoing consultation process, EPA will consider any impacts on species and designated critical habitat as a result of our action setting RFS standards, including any impacts associated with the use of canola oil to

produce renewable fuel within the RFS program, and will also consider any appropriate responses.

III. Definition of Canola/Rapeseed Oil

EPA received comments on its proposed definition of “canola/rapeseed oil.” Joint comments from three Canadian canola industry organizations expressed that they believe “canola and rapeseed are well understood crops in the United States” and that, therefore, they “do not believe definitions are necessary.”⁴⁰ However, these commenters also stated that they “do not necessarily take issue with the proposed definitions, which [they] believe identify the key species being used for canola production in Canada today, so long as EPA makes clear that it does not intend to impose additional requirements on farmers or feedstock providers and that these terms are only intended to be descriptors to distinguish canola and rapeseed based on the distinct treatment of these crops in the U.S.”⁴¹ The USCA expressed similar opinions in their comments. While they believe the relevant market participants fully understand the meaning of “canola oil,” and that, therefore, no definition in the regulations is necessary, USCA also expressed that they do not oppose the addition of this definition to the regulations.⁴²

To clarify, EPA has not proposed, nor are we finalizing, any new registration, recordkeeping, or reporting requirements associated with implementing the canola oil-based pathways or our new definition of canola/rapeseed oil. We are including this definition in the regulations to provide clarity regarding which vegetable oil products qualify under this pathway. This intent is well-aligned with that described by the commenters. We are finalizing the definition largely as proposed, with one minor, clerical edit for readability.

IV. Analysis of Lifecycle GHG Emissions

A. Overview of Lifecycle GHG Emissions Analysis

For the proposed rule, we evaluated the lifecycle GHG emissions of producing renewable diesel and other biofuels from canola oil through a hydrotreating process. We described our methodology for conducting this evaluation, the assumptions and scenarios evaluated using this

methodology, and the results of our analysis. We used the same biofuel lifecycle analysis methodology and modeling framework developed for the March 2010 RFS2 rule, which was adopted after an extensive peer review and public comment process. This methodology was developed to estimate “lifecycle greenhouse gas emissions” as defined in CAA section 211(o)(1)(H). The same methodology and modeling framework were subsequently used for the September 2010 Canola Oil Rule.⁴³ The components of this methodology generally involve the use of agricultural modeling to estimate emissions from land use change, crop production, livestock, and rice methane, as well as application of coefficients and assumptions from the Greenhouse Gases, Regulated Emissions, and Energy use in Technologies (GREET) model⁴⁴ and other sources to evaluate emissions associated with feedstock and fuel transport, processing, and use.

In general, this methodology also involves using two agricultural sector models, FASOM and the FAPRI-CARD model, to estimate U.S. and non-U.S. GHG emissions impacts, respectively. Applying our methodology in the analysis conducted for the Canola NPRM, we modeled and evaluated a hypothetical canola oil demand shock scenario to estimate changes in agricultural production and land use and associated GHG emissions associated with the biofuel pathways under consideration. In the demand shock scenario modeled for our Canola NPRM analysis, U.S. domestic consumption of canola oil-based fuels was assumed to increase by some amount relative to the volume of U.S. domestic consumption in a reference scenario.

This methodology also includes estimating GHG emissions associated with fuel production, distribution and use based on data from GREET and other sources. All of these GHG emissions estimates are added together and divided by the change in the amount of biofuel produced in the scenarios evaluated to estimate the lifecycle GHG emissions associated with fuel produced through the evaluated pathway, in terms of carbon dioxide-equivalent emissions per megajoule (MJ) of fuel produced.

⁴³ For information about our 2010 methodology and analysis see section 2 of the regulatory impact analysis (RIA) for the March 2010 RFS2 rule and the associated lifecycle results (Docket Item No. EPA-HQ-OAR-2005-0161-3173).

⁴⁴ See documentation and description available from Argonne National Lab at <https://greet.es.anl.gov>.

⁴⁰ Docket Item No. EPA-HQ-OAR-2021-0845-0066.

⁴¹ Id.

⁴² Docket Item No. EPA-HQ-OAR-2021-0845-0072.

We stated in section II.C.1 of the Canola NPRM that we would update emissions factor assumptions from GREET–2020 to GREET–2021 for the final rule. We received no public comment on this statement or our intention to update to GREET–2021 for the final rule. We have made these updates for the final rule and describe the impacts of these updates below.

Other than updating particular emissions factors based on GREET–2021 as we committed to do in the proposed rule, we are finalizing our lifecycle GHG analysis as proposed. Detailed information and discussion regarding the other components of our methodology is available in the Canola NPRM preamble⁴⁵ and the docket for this rulemaking.⁴⁶ We summarize the results of our updated lifecycle analysis in section IV.C below.

B. Data Updates Based on GREET–2021

Based on the lifecycle analysis methodology developed for the March 2010 RFS2 rule, our analysis uses data from the GREET model on the emissions per unit of energy or mass associated with particular inputs to the product lifecycle (“emissions factors”). These emissions factors are the estimates from GREET associated with using inputs such as diesel, electricity, and natural gas. In the proposal we said that we would update these data based on GREET–2021, and that we did not expect these updates to have a large enough effect on the lifecycle GHG emissions estimates to change our GHG reduction threshold determinations for the proposed canola oil-based fuel pathways. We have made the data updates based on GREET–2021 and as expected these updates have a relatively small effect on our lifecycle GHG estimates.⁴⁷

The GREET data updates were applied to the following elements:

emissions factors for the production and use of gasoline, diesel, natural gas, LPG, coal, gaseous hydrogen, electricity, fertilizer, herbicide, and insecticide. The emissions factors increased for gasoline, diesel, natural gas, LPG, fertilizer, and pesticide.⁴⁸ The emissions factors decreased for gaseous hydrogen, electricity, limestone, and herbicide. Overall, these updates changed our lifecycle GHG estimates by less than two percent. For canola oil renewable diesel, we now estimate GHG reductions of 64–70 percent relative to the baseline, compared to 63–69 percent in the proposal. For canola oil-based naphtha and LPG we estimate GHG reductions of 63–69 percent, unchanged from the proposal. For canola oil-based renewable jet fuel we estimate GHG reductions of 58–67 percent, compared to 59–67 percent in the proposal.

C. Summary of Analysis of Lifecycle GHG Emissions

Table IV.C–1 reports our estimates of the lifecycle GHG emissions associated with renewable diesel produced from canola oil through a hydrotreating process, and the corresponding percent reduction relative to the petroleum baseline. Three sets of estimates are presented for canola oil renewable diesel. The emissions categories are aggregated to simplify the presentation of the table. Domestic and international agricultural emissions include emissions associated with changes in crop and livestock production. Feedstock processing (*i.e.*, canola seed crushing) and feedstock seed and oil transport emissions are reported together. Downstream and use includes emissions from fuel distribution and fuel use. Land use change emissions include emissions from domestic and international land use changes, including both emissions from direct conversion to cropland and market-

mediated effects such as foregone potential land carbon sequestration. As discussed in section IV.B, we have made minor updates relative to the proposed rule by incorporating more recent emissions factors from the GREET–2021 model. These updates changed our GHG estimates in the tables below for the feedstock transport & crushing, fuel production, and downstream & use lifecycle stages. All other estimates remain unchanged from the NPRM.

Our evaluation considers uncertainty in international land use change emissions based on the methodology used for the March 2010 RFS2 rule. The table includes a range of land use change estimates based on our analysis of this uncertainty. The first column includes results based on our average estimate of international land use change GHG emissions. We also report results for the low and high ends of our 95 percent confidence interval for international land use change emissions. Our calculations include ranges for domestic agriculture, international agriculture, feedstock transport and crushing, and fuel production are based on estimated ranges in the yield of finished fuel (in MJ of fuel produced per pound of canola oil feedstock). However, to simplify the presentation of the results we report the average of the eight estimates.⁴⁹

Another update is that the analysis for the March 2010 RFS2 rule used 100-year global warming potential (GWP) values from the IPCC Second Assessment Report. The analysis for this proposed rule uses 100-year GWP values from the most recent IPCC Fifth Assessment Report.⁵⁰ Based on these updates, the GWP for methane increased from 21 to 30, and the GWP for nitrous oxide decreased from 310 to 265. This update was described in section II.C.1 of the NPRM; we did not receive public comment on this update.

TABLE IV.C–1—LIFECYCLE GHG EMISSIONS ASSOCIATED WITH RENEWABLE DIESEL PRODUCED FROM CANOLA OIL THROUGH A HYDROTREATING PROCESS
[In grams of CO₂ equivalent per MJ]

Emissions category	2005 Diesel baseline	Canola oil renewable diesel
Domestic Agriculture	18	–2.3
International Agriculture	–0.3
Feedstock Transport & Crushing	6.9
Fuel Production	12.4

⁴⁵ See 87 FR 22826–40.

⁴⁶ See Docket No. EPA–HQ–OAR–2021–0845.

⁴⁷ The lifecycle GHG calculations including the updated GREET emissions factors are included in a spreadsheet available in the docket for this action.

⁴⁸ We corrected an underestimate in the proposed rule of the GHG emissions associated with crude oil extraction.

⁴⁹ Using the average or median values results in the same percent GHG reduction relative to the petroleum baseline. We are not taking a position on whether it is more appropriate to use mean or median values in other contexts.

⁵⁰ IPCC, 2014: Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, R.K. Pachauri and L.A. Meyer (eds.)]. IPCC, Geneva, Switzerland, 151 pp.

TABLE IV.C-1—LIFECYCLE GHG EMISSIONS ASSOCIATED WITH RENEWABLE DIESEL PRODUCED FROM CANOLA OIL THROUGH A HYDROTREATING PROCESS—Continued
[In grams of CO₂ equivalent per MJ]

		0.4		
		Mean	Low	High
Downstream & Use	75			
Land Use Change Estimate		13.8	3.2	26.0
Land Use Change		30.9	20.2	43.1
Net Emissions	93	67%	78%	53%
% GHG Reduction Relative to Baseline				

In many cases, when vegetable oils are hydrotreated to produce renewable diesel, there are co-product outputs of naphtha, LPG, and jet fuel. The GHG estimates for these co-product fuels differ slightly from the renewable diesel estimates presented in the table above based on differences in how they are transported to end users and in end use emissions. The results for naphtha and LPG, based on the mean international land use change estimates, are summarized in Table IV.C-2.

TABLE IV.C-2—LIFECYCLE GHG EMISSIONS ASSOCIATED WITH NAPHTHA AND LPG PRODUCED FROM CANOLA OIL THROUGH A HYDROTREATING PROCESS
[In grams of CO₂ equivalent per MJ]

	Naphtha	LPG
Lifecycle GHG Emissions	31.4	31.4
Percent Reduction Relative to Baseline	67%	66%

We do not present separate results of heating oil as it is not reported as an output for any of the hydrotreating processes evaluated. However, renewable diesel could be used as

heating oil if market conditions change substantially (e.g., if heating oil prices were to exceed diesel prices net of government incentives). The GHG emissions associated with heating oil are therefore very similar to renewable diesel, although there may be small differences in GHG emissions associated with fuel distribution and use.

As discussed in the NPRM,⁵¹ canola oil hydrotreating processes that are set up to maximize jet fuel output require more processing and hydrogen, resulting in greater lifecycle GHG emissions. The range of lifecycle GHG estimates for canola oil renewable jet fuel are reported in Table IV.C-3.

TABLE IV.C-3—LIFECYCLE GHG EMISSIONS ASSOCIATED WITH RENEWABLE JET FUEL PRODUCED FROM CANOLA OIL THROUGH A HYDROTREATING PROCESS
[in grams of CO₂ equivalent per MJ]

Emissions category	2005 diesel baseline	Canola oil renewable jet fuel		
Domestic Agriculture	18	-2.3		
International Agriculture		-0.3		
Feedstock Transport & Crushing		6.8		
Fuel Production		15.4		
		0.4		
Downstream & Use	75	Mean	Low	High
Land Use Change Estimate		13.7	3.1	25.9
Land Use Change (LUC)		33.8	23.2	46
Net Emissions	93	63%	75%	50%
% GHG Reduction Relative to Baseline				

V. Summary

Based on our GHG lifecycle evaluation described in the NPRM, we find that renewable diesel, jet fuel, naphtha, LPG, and heating oil produced from canola oil via a hydrotreating process all meet the 50 percent GHG reduction threshold. Based on this finding, we determine that renewable diesel, jet fuel, and heating oil produced from canola oil are eligible for BBD (D-code 4) RINs if they are produced through a hydrotreating process that does not co-process renewable biomass and petroleum, and for advanced

biofuel (D-code 5) RINs if they are produced through a process that does co-process renewable biomass and petroleum. Based on this finding, we also determine that naphtha and LPG production from canola oil through a hydrotreating process are eligible for advanced biofuel (D-code 5) RINs. Based on these determinations, we are adding these pathways to Table 1 of 40 CFR 80.1426.

We are also finalizing our proposed definition of “canola/rapeseed oil” and adding this definition to 40 CFR 80.1401.

VI. Statutory & Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response

⁵¹ See 87 FR 22838 for details.

to OMB recommendations have been documented in the docket. The GHG lifecycle analysis conducted for this proposed determination, “Renewable Fuel Standard Program: Canola Oil Pathways to Renewable Diesel, Jet Fuel, Naphtha, Liquefied Petroleum Gas and Heating Oil,” is available in the docket.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0725. This action creates new pathways by which to generate RINs for renewable fuels under the RFS program but creates no new information collection requirements for these additional pathways.

C. Regulatory Flexibility Act (RFA)

I certify that this action does not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, EPA concludes that the impact of concern for this rule is any significant adverse economic impact on small entities and that the agency is certifying that this rule would not have a significant economic impact on a substantial number of small entities if the rule would have no net burden. This rule enables canola oil producers and producers of biofuels from canola oil to participate in the RFS program if they choose to do so to obtain economic benefits. We have therefore concluded that this action has no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It does 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.

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

This action does not have tribal implications as specified in Executive Order 13175. This rule affects only producers of canola oil and producers of biofuels made from canola oil. 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 Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

This action is not a “significant energy action” because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This rule enables canola oil producers and producers of biofuels from canola oil to participate in the RFS program if they choose to do so. This may create additional supplies of energy, potentially leading to positive impacts on the energy system. This rule would create no new burdens on the distribution or use of energy.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This rule gives renewable fuel producers the ability to generate credits under the RFS program for the production of specified biofuels from canola oil. This rule does not affect the level of protection provided to human health or the environment by applicable air quality standards. EPA recognizes that the RFS program as a whole may have impacts related to environmental justice. These potential

impacts are discussed further in the RFS Annual Rules for 2020, 2021, and 2022, published in June 2022.⁵² Future actions to set biofuel volume requirements may take into consideration the availability of this renewable fuel pathway for the production of biofuel from canola oil and thus may affect GHG emissions, air quality, water or soil quality, or fuel and food prices.⁵³ However, this action does not modify biofuel volume requirements and thus EPA believes that the final rule to approve a new pathway, in and of itself, will not affect human health or the environment.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

VII. Statutory Authority

Statutory authority for this action comes from CAA sections 114, 208, 211, and 301.

List of Subjects in 40 CFR Part 80

Environmental protection, Administrative practice and procedure, Air pollution control, Diesel fuel, Fuel additives, Gasoline, Imports, Oil imports, Petroleum, Renewable fuel.

Michael S. Regan,
Administrator.

For the reasons set forth in the preamble, EPA amends 40 CFR part 80 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, 7521, 7542, 7545, and 7601(a).

Subpart M—Renewable Fuel Standard

■ 2. Amend § 80.1401 by adding in alphabetical order a definition for “Canola/Rapeseed oil” to read as follows:

§ 80.1401 Definitions.

* * * * *

Canola/Rapeseed oil means either of the following:

(1) *Canola oil* is oil from the plants *Brassica napus*, *Brassica rapa*, *Brassica juncea*, *Sinapis alba*, or *Sinapis arvensis* and which typically contains less than

⁵² See 87 FR 39600–77 and Chapter 8, Renewable Fuel Standard (RFS) Program: RFS Annual Rules—Regulatory Impact Analysis, EPA–420–R–22–008, June 2022.

⁵³ Id.

2 percent erucic acid in the component fatty acids obtained.
 (2) *Rapeseed oil* is the oil obtained from the plants *Brassica napus*, *Brassica rapa*, or *Brassica juncea*.

* * * * *

■ 3. Amend § 80.1426 in table 1 to § 80.1426 by revising the entries “G”, “H”, and “I” to read as follows:

§ 80.1426 How are RINs generated and assigned to batches of renewable fuel?
 * * * * *

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
G	Biodiesel, renewable diesel, jet fuel, and heating oil.	Canola/Rapeseed oil	One of the following: Transesterification using natural gas or biomass for process energy, or Hydrotreating; excludes processes that co-process renewable biomass and petroleum.	4
H	Biodiesel, renewable diesel, jet fuel, and heating oil.	Soy bean oil; Oil from annual covercrops; Oil from algae grown photosynthetically; Biogenic waste oils/fats/greases; <i>Camelina sativa</i> oil; Distillers corn oil; Distillers sorghum oil; Commingled distillers corn oil and sorghum oil; Canola/Rapeseed oil.	One of the following: Transesterification with or without esterification pre-treatment, Esterification, or Hydrotreating; includes only processes that co-process renewable biomass and petroleum.	5
I	Naphtha, LPG	<i>Camelina sativa</i> oil; Distillers sorghum oil; Distillers corn oil; Commingled distillers corn oil and distillers sorghum oil; Canola/Rapeseed oil.	Hydrotreating	5

* * * * *
 [FR Doc. 2022–26250 Filed 12–1–22; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122 and 123

[EPA–HQ–OW–2022–0834; FRL–10123–02–OW]

RIN 2040–AG27

NPDES Small MS4 Urbanized Area Clarification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to clarify its National Pollutant Discharge Elimination System (NPDES) Stormwater Phase II regulations due to recent changes made by the Census Bureau. The changes to EPA’s regulations are limited to clarifying that the designation criteria for small municipal separate storm sewer systems (MS4s), which have been used since the promulgation of the regulations in 1999, will remain the same. These clarifications are necessary due to the Census Bureau’s recent decision to discontinue its practice of publishing the location of “urbanized areas” along with the 2020 Census and future

censuses. The clarification in this direct final rule replaces the term “urbanized area” in the Phase II regulations with the phrase “urban areas with a population of at least 50,000,” which is the Census Bureau’s longstanding definition of the term urbanized areas. This change will allow NPDES permitting authorities to use 2020 Census and future Census data in a manner that is consistent with existing longstanding regulatory practice. Because this clarification maintains the current scope of which entities are regulated as small MS4s, it is not expected to generate opposition, and EPA is publishing the clarification in the **Federal Register** as a direct final rule. As is EPA’s practice for direct final rules, EPA is also publishing a parallel proposed rulemaking with the same changes included in this direct final rule if the Agency receives adverse comments.

DATES: This rule is effective on March 2, 2023 without further notice, unless EPA receives adverse comment by January 3, 2023. Comments on this rule must be received on or before January 3, 2023. If EPA receives adverse comment, the Agency will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OW–2022–0834 to [https://](https://www.regulations.gov/)

www.regulations.gov/. Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rule. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Written Comments” heading of the Public Participation section of this document.

FOR FURTHER INFORMATION CONTACT: Heather Huddle, Water Permits Division (MC4203), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington DC 20004; telephone number: (202) 564–7932; email address: huddle.heather@epa.gov.

SUPPLEMENTARY INFORMATION: EPA is publishing this rule without a prior proposed rulemaking because the Agency views this as a noncontroversial action and anticipates no adverse comment. This action is limited to clarifying that EPA will retain the existing threshold for automatic designation of small MS4s for regulation under the Phase II stormwater permitting regulations. The threshold for automatic designation was used following the 2000 and 2010 Censuses and is based on the MS4 being in an urbanized area of 50,000 or more people. This rule will maintain the