4. Amend § 17.106 by:
   a. Revising paragraph (c)(4).

The revisions and additions read as follows:

§ 17.106 VA collection rules; third-party payers.

(a) * * * * *

(c) * * * *

(4) A third-party payer may not, without the consent of a U.S. Government official authorized to take action under 38 U.S.C. 1729 and this part, offset or reduce any payment due under 38 U.S.C. 1729 or this part on the grounds that the payer considers itself due a refund from a VA facility. A written request for a refund must be submitted within 18 months from the original payment date and adjudicated separately from any other claims submitted to the third-party payer under 38 U.S.C. 1729 or this part. If third-party payers do not submit requests for a refund within this 18-month time frame, VA will not provide a refund to third-party payers for a paid claim for any reason.

(f) * * * *

(2) * * *

(viii) A provision in a third-party payer’s plan that directs payment for care or services be refused or lessened because the billing is not presented in accordance with a specified methodology (such as a line item methodology) is not by itself a permissible ground for refusing or reducing third-party payment.

ACTION: Proposed rule.

SUMMARY: In a July 29, 2019 notice of proposed rulemaking, Environmental Protection Agency (EPA) proposed percentage standards for four categories of renewable fuel that would apply to obligated parties in 2020 under the Renewable Fuel Standard. This action takes into consideration certain comments received in response to the proposed rule. Based on these comments and additional information, EPA is issuing a supplemental proposal and requests comment on adjustments to the percentage standards for 2020 that result from the amended definitions of two of the terms used to calculate the percentage standards. We are proposing to project the volume of gasoline and diesel that will be exempt in 2020 due to small refinery exemptions based on a three-year average of the relief recommended by the Department of Energy (DOE). From 2016–2018 the relief recommended by the DOE would have resulted in a reduction to the renewable volume obligation of approximately 770 million RINs per year. The amended definitions proposed in this rule would effectively increase the percentage standards that apply to non-exempt obligated parties to offset future small refinery exemptions and help ensure that the required volumes are met.

DATES: Comments: Comments must be received on or before November 29, 2019.

Public Hearing: EPA will hold a public hearing will be held on October 30, 2019, at the location noted below under ADDRESSES. The hearing will begin at 9:00 a.m. and end when all parties present who wish to speak have had an opportunity to do so. Parties wishing to testify at the hearing should notify the contact person listed under FOR FURTHER INFORMATION CONTACT by October 24, 2019. Additional information regarding the hearing appears below under SUPPLEMENTARY INFORMATION.

ADDRESSES: You may send your comments, identified by Docket ID No. EPA–HQ–OAR–2019–0136, by any of the following methods:

   • Federal eRulemaking Portal: http://www.regulations.gov (our preferred method) Follow the online instructions for submitting comments.
   • Hand Delivery/Courier: EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center’s hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to https://www.regulations.gov, including any personal information provided. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit http://www.epa.gov/dockets/commenting-epa-dockets.

Hearing: The hearing will be held at the following location: Ann Arbor Marriott Ypsilanti at Eagle Crest, 1275 S. Huron St., Ypsilanti, MI 48197 (telephone number (734) 487–2000). A complete set of documents related to the proposal will be available for public inspection through the Federal eRulemaking Portal: http://www.regulations.gov; Docket ID No. EPA–HQ–OAR–2019–0136. Documents can also be viewed at the EPA Docket Center, located at 1301 Constitution Avenue NW, Room 3334, Washington, DC between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Julia MacAllister, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4131; for questions regarding this proposed action, email address: RFS-Rulemakings@epa.gov; for information regarding the public hearing and to register for the public hearing, email address: RFS-Hearing@epagov.

SUPPLEMENTARY INFORMATION: Entities potentially affected by the July 29, 2019,
proposed rule, should it become final, are those involved with the production, distribution, and sale of transportation fuels, including gasoline and diesel fuel or renewable fuels such as ethanol, biodiesel, renewable diesel, and biogas.

Potentially regulated categories include:

<table>
<thead>
<tr>
<th>Category</th>
<th>NAICS codes</th>
<th>SIC codes</th>
<th>Examples of potentially regulated entities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Industry</td>
<td>324110</td>
<td>2911</td>
<td>Petroleum Refineries.</td>
</tr>
<tr>
<td>Industry</td>
<td>325199</td>
<td>2869</td>
<td>Ethyl alcohol manufacturing.</td>
</tr>
<tr>
<td>Industry</td>
<td>424690</td>
<td>5169</td>
<td>Chemical and allied products merchant wholesalers.</td>
</tr>
<tr>
<td>Industry</td>
<td>424710</td>
<td>5171</td>
<td>Petroleum bulk stations and terminals.</td>
</tr>
<tr>
<td>Industry</td>
<td>424720</td>
<td>5172</td>
<td>Petroleum and petroleum products merchant wholesalers.</td>
</tr>
<tr>
<td>Industry</td>
<td>221210</td>
<td>4925</td>
<td>Manufactured gas production and distribution.</td>
</tr>
<tr>
<td>Industry</td>
<td>454319</td>
<td>5989</td>
<td>Other fuel dealers.</td>
</tr>
</tbody>
</table>

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to engage in activities that may be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your entity would be affected by this action, you should carefully examine the applicability criteria in 40 CFR part 80. 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.

Hearing: The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposal (which can be found at https://www.epa.gov/renewable-fuel-standard-program/regulations-and-volume-standards-under-renewable-fuel-standard). EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing. Written comments must be received by the last day of the comment period, as specified in this notice.

Outline

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A. Proposed Changes to the Projected Volume of Gasoline and Diesel for Exempt Small Refineries

B. Projecting the Exempted Volume of Gasoline and Diesel in 2020

C. Example Calculation of Proposed Percentage Standards for 2020

III. Statutory and Executive Order Reviews

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

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

C. Paperwork Reduction Act (PRA)

D. Regulatory Flexibility Act (RFA)

E. Unfunded Mandates Reform Act (UMRA)

F. Executive Order 13132: Federalism

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

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

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

J. National Technology Transfer and Advancement Act (NTTAA)

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

IV. Statutory Authority

On July 29, 2019, EPA proposed “Renewable Fuel Standard Program: Standards for 2020 and Biomass-Based Diesel Volume for 2021, Response to the Remand of the 2016 Standards, and Other Changes” (“the July 29 proposal”). We proposed reductions in the statutory volume targets for cellulosic biofuel, advanced biofuel, and total renewable fuel using the cellulosic waiver authority in Clean Air Act (CAA) section 211(o)(7)(D). We also proposed percentage standards that would apply to obligated parties in 2020 for each of the four categories of renewable fuel (cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuel) based on the proposed volumes and a projection of the volume of gasoline and diesel used in the U.S. in 2020.

In response to the July 29 proposal, a number of stakeholders provided comments on the proposed percentage standards for 2020. Some of these parties requested that we change our interpretation of two terms used to calculate the percentage formula: The amount of gasoline projected to be produced by exempt small refineries and small refiners (collectively, “exempt small refineries”), and the amount of diesel projected to be produced by exempt small refineries. Rather than interpreting these terms to refer to the projected production of gasoline and diesel produced by refineries that have been exempted from their 2020 RFS obligations at the time the 2020 annual rule is finalized, many commenters stated that EPA should instead project the volumes of gasoline and diesel that will be exempted for the 2020 compliance year and use these projected volumes in calculating the percentage standards for 2020. In the July 29 proposal, we informed the public that these issues were beyond the scope of that proposal. On further consideration, we are issuing this supplemental proposal of a method to address these issues.

Since the July 29 proposal, EPA has granted small refinery exemptions (“SREs”) for 31 small refineries for the 2018 compliance year. We believe these comments and the 2018 SREs are germane to our approach for calculating the percentage standards for 2020. In light of this additional information, and SREs granted and the volume of RINs not required to be retired as a result of those exemptions can be found at https://www.epa.gov/fuels-registration-reporting-and-compliance-help/rfs-small-refinery-exemptions.
in order to give all stakeholders an opportunity to consider potential changes to the calculation of the percentage standards, we are issuing this supplemental proposal. We are proposing to amend the definitions of “GE,” “DE,” in the RFS percentage standard formula at 40 CFR 80.1405(c) to represent the projected volumes of exempt gasoline and diesel in the compliance year (this case 2020), regardless of whether EPA has adjudicated exemption petitions by the time of the final rule establishing the percentage standards for that compliance year. These changes are intended to help ensure that the renewable fuel volumes established in the action that we take with regard to the July 29 proposal and this supplemental proposal (the “final rule”) are achieved. We request additional comment on this proposed change. This action does not solicit comment on any other aspect of the formula at 40 CFR 80.1405(c) or the July 29 proposal, nor are we soliciting comment on increasing the required volume of renewable fuel to account for the reductions in the required renewable fuel volumes that resulted from SRE decisions issued prior to the 2020 compliance year.

II. Consideration of Proposed Adjustments to the Percentage Standard Calculations for 2020

In the July 29 proposal, we proposed percentage standards for each of the four categories of renewable fuel based on the volumes that resulted from the exercise of the cellulosic waiver authority and projections of the volume of gasoline and diesel used in the U.S. in 2020.6 We received comments on that proposal suggesting that, in determining the percentage standards for 2020, we should project the volume of gasoline and diesel produced by small refineries that will be exempted from their renewable volume obligations in 2020.7 In light of these comments and the recent SREs, we are proposing new definitions for two of the terms used in calculating the percentage standards for 2020 to account for the projected volume of gasoline and diesel produced by small refineries that will be exempted from their renewable volume obligations in 2020.

A. Proposed Changes to the Projected Volume of Gasoline and Diesel for Exempt Small Refineries

The renewable fuel standards are expressed as volume percentages and those volume percentages are used by each obligated party to determine their Renewable Volume Obligations (RVOs). These percentage standards are calculated by EPA using the volumes of renewable fuel established in the annual rules following any reductions made using the cellulosic waiver authority and/or the general waiver authority. The formulas used to calculate the percentage standards applicable to producers and importers of gasoline and diesel are provided in 40 CFR 80.1405(c). The formulas rely on estimates of the volumes of gasoline and diesel fuel, for both highway and nonroad uses, which are projected to be used in the year in which the standards will apply. The formula for the percentage standard calculation for total renewable fuel, including the definitions of the terms, is shown below. The formulas for the other three percentage standards follow the same format, with the numerator of the fraction replaced with the annual volume of cellulosic biofuel, biomass-based diesel, and advanced biofuel, respectively.

\[
Std_{RF,i} = 100 \times \frac{RFV_{RF,i}}{(G_i - RG_i) + (GS_i - RGS_i) - GE_i + (D_i - RD_i) + (DS_i - RDS_i) - DE_i}
\]

Where:

- \(Std_{RF,i}\) = The fuel renewable standard for year \(i\), in percent.
- \(RFV_{RF,i}\) = Annual volume of renewable fuel required by 42 U.S.C. 7545(o)(2)(B) for year \(i\), in gallons.
- \(G_i\) = Amount of gasoline projected to be used in the 48 contiguous states and Hawaii, in year \(i\), in gallons.
- \(D_i\) = Amount of diesel projected to be used in the 48 contiguous states and Hawaii, in year \(i\), in gallons.
- \(RG_i\) = Amount of renewable fuel blended into gasoline that is projected to be consumed in the 48 contiguous states and Hawaii, in year \(i\), in gallons.
- \(GS_i\) = Amount of gasoline projected to be used in Alaska or a U.S. territory, in year \(i\), if the state or territory has opted-in or opts-in, in gallons.
- \(RD_i\) = Amount of renewable fuel blended into diesel that is projected to be consumed in the 48 contiguous states and Hawaii, in year \(i\), in gallons.
- \(RGS_i\) = Amount of renewable fuel blended into gasoline that is projected to be consumed in Alaska or a U.S. territory, in year \(i\), if the state or territory has opted-in or opts-in, in gallons.

6 See Section VIII of the July 29 proposal for more detail on the proposed percentage standard calculations.


8 The percentage standards for 2018 were established in December 2017 (82 FR 58486, December 12, 2017).
percentage standard formula.\(^\text{10}\) Many commenters requested that these terms should refer to a projection of the exempted volume of gasoline and diesel produced by small refineries, regardless of whether EPA had already adjudicated such exemption petitions by the time of the final rule. These commenters argued that this interpretation of the regulations is reasonable and better implements the statutory requirement that EPA must “ensure” the renewable fuel volumes are met. Some commenters suggested that adjusting the percentage standards formula is more important now than in earlier years of the program as we have recently granted exemptions for more significant volumes of gasoline and diesel, resulting in applicable volumes that are not being met at the time of compliance.\(^\text{11}\)

The comments described above raise issues similar to those raised by a pending petition for administrative reconsideration.\(^\text{12}\) That petition, filed by parties who also commented on the July 29 proposal, also asked EPA to reconsider its approach to accounting for exempted volumes through the formula at 40 CFR 80.1405(c). In response to this petition, EPA is undertaking a process to reconsider this issue; however, we are doing so under our inherent authority to revise or amend a rulemaking.\(^\text{13}\)

We are proposing to change the definitions of the two terms in the percentage standard formula at 40 CFR 80.1405(c), GE, and DE, to represent a projection of the exempted volume of gasoline and diesel, regardless of whether we have adjudicated exemptions for that year by the time of the final rule establishing the percentage standards for the four renewable fuel types. We propose that the term “GE”, representing the volume of exempt gasoline, be defined as “the total amount of gasoline projected to be exempt in year i, in gallons, per §§ 80.1441 and 80.1442.” We similarly propose that the term “DE”, representing the volume of exempt diesel, be defined as “the total amount of diesel projected to be exempt in year i, in gallons, per §§ 80.1441 and 80.1442.”

While the statute does not specifically require EPA to redistribute exempted volumes in this manner, we believe that this is a reasonable interpretation of our authority pursuant to the statute under Chevron v. NRDC,\(^\text{14}\) especially in light of our authority to “ensure” that the renewable fuel volumes are met.\(^\text{15}\) We also acknowledge that this supplemental proposal, if finalized, would reflect a change in policy direction as described in FCC v. Fox.\(^\text{16}\)

We believe the newly proposed definitions are a reasonable measure to appropriately account for volumes that may become exempted after the promulgation of the final rule establishing the percentage standards and furthers Congressional intent to “ensure” the renewable fuel volumes are met. In other words, should we grant SREs without accounting for them in the percentage formula, those exemptions would effectively reduce the volumes of renewable fuel required by the RFS program, potentially impacting the volume of renewable fuel used in the U.S. By contrast, were we to adopt this proposed change to the percentage standards for 2020, the percentage standard for each category of renewable fuel would increase (see Section II.C for example calculations). These higher percentage standards would have the effect of ensuring that the volumes of renewable fuel are met when small refineries are granted exemptions from their 2020 obligations, provided EPA’s projection of the amount of gasoline and diesel produced by exempt small refineries in 2020 is accurate. We acknowledge the uncertainty in the projection, a topic we discuss further in the next section.

We also believe that accounting in the percentage formula for a projection of volumes that would be exempted after the final rule is particularly appropriate where these volumes are projected to constitute a significant portion of the total volume of obligated fuel as established in the final rule. This has occurred in recent years but did not occur in the first years of the program when we first established the regulatory definitions and interpretations.

We solicit comment on other formulations of these definitions in order to accurately describe our intent that these terms represent a projection of the volume of gasoline and diesel produced by exempt small refineries, regardless of whether EPA had already adjudicated those exemptions by the time of the final rule.

### B. Projecting the Exempted Volume of Gasoline and Diesel in 2020

Adoption of the proposed revised definitions of the terms referring to the amount of gasoline and diesel produced by exempt small refineries, as discussed in Section II.A, would require that we determine how to project the exempted volumes of these fuels in 2020. Although subject to uncertainty, this projection would affect the percentage standards and thus the actual volume of renewable fuel required to be used in 2020. If we over-project the volume of gasoline and diesel produced by exempt small refineries in 2020, the actual required volumes of renewable fuel will be higher than the volumes used in calculating the percentage standards. By contrast, if we under-project the volume of exempted gasoline and diesel, the actual required volumes of renewable fuel will be lower than the volumes used in calculating the percentage standards.

We acknowledge that there is uncertainty with projecting the exempted volume for 2020, as petitions for 2020 SREs have not yet been submitted to or evaluated by the Department of Energy (DOE) or EPA.

EPA independently evaluates SRE petitions while taking DOE’s recommendation into account and has discretion to provide relief that is different than the DOE recommendation. In 2020 we anticipate granting partial exemptions where such exemptions are appropriate. This is an approach we could have taken in response to recommendations from DOE in recent years, which included partial exemption recommendations on some applications. We therefore believe it is appropriate to consider the exempt volumes of gasoline and diesel in previous years had EPA followed DOE’s recommendations without deviation. We believe the approach described...
above is appropriate for two
two independent reasons.

First, in prior years, EPA has taken
taken different approaches in evaluating
evaluating petitions. For instance, in the EPA final
final action, the August 9, 2019,
2019 Memorandum Decision, we granted or
declared denied 36 then-pending SRE petitions
petitions for the 2018 compliance year.17 We
got granted full exemptions to petitioners
petitioners where DOE either recommended full or
full or 50% relief. That is, in cases where DOE
found a small refinery experienced
small refinery experienced either disproportionate impacts or
either disproportionate impacts or viability impairment, EPA found the
small refinery experienced disproportionate economic hardship
hardship and granted a full exemption. By
contrast, in earlier years of the program, we denied petitions and provided no
exemption in certain cases where DOE
recommended a 50% exemption,
50% exemption in certain cases where DOE
denied petitions and provided no
exemption where DOE either recommended full or
full exemptions to petitioners
petitioners. For instance, in the EPA final
final action, the August 9,
2019 Memorandum Decision, we granted or
declared denied 36 then-pending SRE petitions
petitions for the 2018 compliance year.17 We
got granted full exemptions to petitioners
petitioners where DOE either recommended full or
full or 50% relief. That is, in cases where DOE
found a small refinery experienced
small refinery experienced either disproportionate impacts or
either disproportionate impacts or viability impairment.18 The proposed approach
to projection, then, takes a middle
ground between these prior approaches, and
is a reasonable estimate of the
aggregate expected exempted volume in 2020.
Second, this approach approximates
our intended approach for adjudicating
2020 SRE petitions. The statute directs
EPA to make an independent decision
as to SRE petitions based on DOE's
recommendation and other economic factors. While final decisions on 2020
SREs must await EPA's receipt and
judicating of those petitions, we
generally have the statutory authority to
isssue a final decision consistent with
DOE's recommendation following our
own review of the
2019 Memorandum Decision.

Third, this reading of the statute is consistent with
congressional guidance to DOE.20 and
EPA.21 Consistent with that guidance
and since 2014, DOE has also
recommended 50% exemptions as it
did deemed appropriate.

We acknowledge that in the August 9
Memorandum Decision, we stated that the "best interpretation" of the statute
of that was EPA should either grant or
deny petitions in full, and "not grant
partial relief." Specifically, we observed
that the statute provided for exemptions
as an "extension of the exemption under
paragraph (A)," where subparagraph
(A) stated that the RFS program
requirements "shall not apply to small
refineries under calendar year 2011." 22 We
had implemented the statutory pre-
2011 exemption as a full exemption for
all qualifying small refineries. Thus, we
concluded that, under this
interpretation, "when Congress
authorized the Administrator to provide
an 'extension' of that exemption for the
reason of [disproportionate economic
hardship], Congress intended that
to projection, then, takes a middle
ground between these prior approaches, and
is a reasonable estimate of the
aggregate expected exempted volume in 2020.

Second, this approach approximates

17 "Decision on 2018 Small Refinery Exemption
Petitions," Memorandum from Anne Ideal, Acting
Assistant Administrator, Office of Air and Radiation
to Sarah Dunham, Director, Office of Transportation and
Air Quality, August 9, 2019 ("August 9
Memorandum Decision").

18 See, e.g., Hermes Consol., LLC v. EPA, 787 F.3d
568, 575 (D.C. Cir. 2015).

19 EPA retains the authority to deviate from DOE's
recommendation based upon "other economic factors,"
refinery-specific information, and other
persuasive evidence that EPA should reach a
different outcome. See CAA section 211(o)(9)(B)(i).

20 See Consolidated Appropriations Act, 2016,
Public Law 114–113 (2015), Explanatory Statement to
Senate amendment to H.R. 2029 Military
Construction and Veterans Affairs and Related
Agencies Appropriations Act, 2016, Division D-
Energy and Water Development and Related
Agencies Appropriations Act, 2016, available at
https://docs.house.gov/meetings/RU/RU00/
20151216/104298/IMTG-114-RU00-20151216-
SD005.pdf. Congress in this Statement directed
DOE, under certain circumstances, "to recommend
to the EPA Administrator a 50 percent waiver of

21 556 U.S. at 515.
22 CAA section 211(o)(9)(B); CAA section
211(o)(9)(A).
23 August 9 Memorandum Decision at 2.

August 9 Memorandum Decision.

24 It could also be appropriate for EPA to deny an
exemption in some cases where DOE recommends
50% relief, as we did in earlier years of the
program.

25 EPA solicits comment on whether the
interpretation set forth in the August 9
Memorandum Decision is indeed the "best"
interpretation. EPA notes in this regard that the
ultimate question is whether the statutory
interpretation under which it operates is a
reasonable one.

26 See Chevron, 467 U.S. at 842–44.
27 August 9 Memorandum Decision at 2. See FCC,
556 U.S. at 515.
28 See supra notes 20 and 21.
adjudicating 2020 SRE petitions, this approach to projection nonetheless provides a reasonable estimate of the aggregate exempted volume at this time. All projections are inherently uncertain, but this projection reflects a reasonable projection of the future.

Further, although we acknowledge the difficulty of making a precise projection, this inherent uncertainty does not preclude us from taking the approach set forth in this supplemental proposal. To the extent our prior statements suggested we did not believe such a projection was appropriate, we propose to change course. The statute impliedly contemplates EPA’s authority to make this projection, as it requires EPA to promulgate standards by November 30 of the prior year to “ensure [...] that the renewable fuel volumes are met,” but authorizes small refineries to petition for an exemption based on disproportionate economic hardship “at any time.” This projection, moreover, is hardly unique in the RFS program as Congress required EPA to make numerous projections to implement the program.

Today’s approach, moreover, avoids the problems we previously identified with projecting small refinery exemptions. Notably, we are projecting the aggregate exempted volume in 2020. We thus need not wrestle with the difficulties of predicting precisely which refineries will apply or the economic circumstances of specific refineries in 2020. We only need to estimate the total exempted volume. Moreover, we retain authority to adjust the standards as appropriate should our approach to 2020 small refinery exemptions significantly change from what we anticipate it will be as it is set forth here. Finally, we have the benefit of additional experience administering the RFS program, knowledge of the inherently high levels of exempted volumes in prior years, and a proposed approach for how we intend to adjudicate 2020 small refinery exemption petitions that allows us to anticipate with a high degree of probability that there will be a non-zero aggregate exempted volume as a result of those petitions. Each of these developments independently support making a non-zero projection of the exempted volume in 2020.

To project the exempted volume under this methodology, it is instructive to look back at what the exempted volumes of gasoline and diesel in previous years would have been had EPA followed DOE’s recommendations, including granting partial exemptions. These volumes, along with the Renewable Volume Obligation (RVO) that would have been exempted, are shown in Table II.B–1.

As demonstrated in Table II.B–1, the volume of gasoline and diesel that would have been exempted if EPA had followed DOE’s recommendations has varied significantly in previous years. This is because there are many factors that affect the number of SREs that are granted in a given year and those factors are inherently difficult to estimate with precision. We believe that it is appropriate to use an average volume of the gasoline and diesel that would have been exempted over a three-year period as our projection for evaluating the 2020 SRE petitions. While we cannot predict with certainty the approach that we will in fact take once we have received and reviewed petitions, at this time, we anticipate our evaluation will result in an exempted volume that is on the aggregate consistent with DOE’s recommendations. The average volume of these fuels that would have been exempted in 2016–2018 if EPA had followed DOE’s recommendations is 4,240 and 3,020 million gallons, for gasoline and diesel fuel, respectively. These exempted volumes would have resulted in an average reduction to the RVO of approximately 580 million RINs as our projection for the exempted volumes of gasoline and diesel in 2020. We note that if for any reason we anticipate a different approach to evaluating SRE petitions by the time of the final rule, we may also consider adjusting our methodology for projecting the exempted volumes of gasoline and diesel accordingly.

**C. Example Calculation of Proposed Percentage Standards for 2020**

As described in Section II.A, the calculation of the applicable percentage

<table>
<thead>
<tr>
<th>Compliance year</th>
<th>Estimated exempted volume of gasoline (million gallons)</th>
<th>Estimated exempted volume of diesel (million gallons)</th>
<th>Estimated RVO exempted (million RINs)</th>
</tr>
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<tbody>
<tr>
<td>2015</td>
<td>1,590</td>
<td>1,450</td>
<td>290</td>
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<tr>
<td>2016</td>
<td>2,450</td>
<td>1,930</td>
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<tr>
<td>2017</td>
<td>5,650</td>
<td>3,870</td>
<td>1,020</td>
</tr>
<tr>
<td>2018</td>
<td>4,620</td>
<td>3,270</td>
<td>840</td>
</tr>
</tbody>
</table>

30 See FFC, 556 U.S. at 515.
31 See 49 C.F.R. § 31505.07.
32 CAA section 211(c)(3)(B)(i).
33 CAA section 211(c)(9)(B)(i).
34 See, e.g., CAA section 211(c)(9)(B)(i) (projection of the volume of cellulosic biofuel production); (o)(3)(A) (projection of the volume of transportation fuel, biomass-based diesel, and cellulosic biofuel).
35 See, e.g., Ams. for Clean Energy v. EPA, 864 F.3d 691, 718 (D.C. Cir. 2017) (upholding EPA’s authority to promulgate late renewable fuel requirements so long as EPA reasonably balances the burdens and benefits of its approach).
standards would differ from that described in the July 29 proposal only in the definition and values of those terms representing projections of gasoline and diesel production by exempt small refineries. Rather than being assigned a value of zero as in the July 29 proposal, they would be assigned a value equal to our projection of the exempted volume of gasoline and diesel as discussed in Section II.B in accordance with our proposed definitions for GE, and DE. The values of all the variables used to calculate the applicable percentage standards are shown in Table II.C–1 for both the proposed approach to estimating 2020 SREs as well as the alternative on which we are seeking comment. All formulas for calculating the percentage standards are provided in 40 CFR 80.1405(c), subject to this action’s proposed revision.

### TABLE II.C–1—EXAMPLE VALUES FOR TERMS IN CALCULATION OF 2020 STANDARDS 36

<table>
<thead>
<tr>
<th>Term</th>
<th>Description</th>
<th>Proposed values based on average of 2016–2018 estimated exemptions</th>
<th>Alternative values based on average of 2015–2017 estimated exemptions</th>
</tr>
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<tbody>
<tr>
<td>RFV&lt;sub&gt;CB&lt;/sub&gt;</td>
<td>Required volume of cellulosic biofuel</td>
<td>0.54</td>
<td>0.54</td>
</tr>
<tr>
<td>RFV&lt;sub&gt;BBD&lt;/sub&gt;</td>
<td>Required volume of biomass-based diesel</td>
<td>2.43</td>
<td>2.43</td>
</tr>
<tr>
<td>RFV&lt;sub&gt;AB&lt;/sub&gt;</td>
<td>Required volume of advanced biofuel</td>
<td>5.04</td>
<td>5.04</td>
</tr>
<tr>
<td>RFV&lt;sub&gt;RF&lt;/sub&gt;</td>
<td>Required volume of renewable fuel</td>
<td>20.04</td>
<td>20.04</td>
</tr>
<tr>
<td>G</td>
<td>Projected volume of gasoline</td>
<td>142.49</td>
<td>142.49</td>
</tr>
<tr>
<td>D</td>
<td>Projected volume of diesel</td>
<td>56.77</td>
<td>56.77</td>
</tr>
<tr>
<td>RG</td>
<td>Projected volume of renewables in gasoline</td>
<td>14.58</td>
<td>14.58</td>
</tr>
<tr>
<td>RD</td>
<td>Projected volume of renewables in diesel</td>
<td>2.48</td>
<td>2.48</td>
</tr>
<tr>
<td>GS</td>
<td>Projected volume of gasoline for opt-in areas</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>RGS</td>
<td>Projected volume of renewables in gasoline for opt-in areas</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>DS</td>
<td>Projected volume of diesel for opt-in areas</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>RDS</td>
<td>Projected volume of renewables in diesel for opt-in areas</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>GE</td>
<td>Projected volume of exempt gasoline</td>
<td>4.24</td>
<td>3.23</td>
</tr>
<tr>
<td>DE</td>
<td>Projected volume of exempt diesel</td>
<td>3.02</td>
<td>2.42</td>
</tr>
</tbody>
</table>

As described in Section II.B, the values for GE and DE in Table II.C–1 do not represent the SREs actually granted in the years cited, but rather the SREs that would have been granted had EPA followed, without deviation, the recommendations received from DOE following their independent assessment of the information provided by each small refinery. We updated the projected volumes of total gasoline and diesel, and the renewable fuels contained within them, since the July 29 proposal to use volumes derived from values in the September 2019 version of EIA’s Short-Term Energy Outlook. An estimate of fuel consumed in Alaska, derived from the June 28, 2019, release of EIA’s State Energy Data System and based on the 2017 volumes contained therein, was subtracted from the nationwide volumes. The required volumes of renewable fuel used in Table II.C–1 are based on the July 29 proposal.

These volumes have not been updated to reflect data available since the July 29 proposal; however, we intend to adjust these volumes to account for more recent information in the final rule.

Using the volumes shown in Table II.C–1, we have calculated two versions of revised proposed applicable percentage standards for 2020 as shown in Table II.C–2. We have also included the percentage standards from the July 29 proposal.

### TABLE II.C–2—EXAMPLE PERCENTAGE STANDARDS FOR 2020

<table>
<thead>
<tr>
<th>Term</th>
<th>Proposed values in the July 29 proposal (percent)</th>
<th>Proposed values based on average of 2016–2018 estimated exemptions (percent)</th>
<th>Alternative values based on average of 2015–2017 estimated exemptions (percent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cellulosic biofuel</td>
<td>0.29</td>
<td>0.31</td>
<td>0.31</td>
</tr>
<tr>
<td>Biomass-based diesel</td>
<td>1.99</td>
<td>2.08</td>
<td>2.06</td>
</tr>
<tr>
<td>Advanced biofuel</td>
<td>2.75</td>
<td>2.88</td>
<td>2.85</td>
</tr>
<tr>
<td>Renewable fuel</td>
<td>10.92</td>
<td>11.46</td>
<td>11.35</td>
</tr>
</tbody>
</table>

The percentage standards in the final rule will depend upon not only the value of projected volume of exempt gasoline and diesel, which could differ from those used above, but also the projected volumes of gasoline and diesel produced by all refineries as well as the volume requirements for renewable fuel. Our determination of all of these values will be informed by the comments we received on the July 29 proposal and this supplemental proposal, as well as other information that may become available.

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III. Statutory and Executive Order Reviews

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 to OMB recommendations have been documented in the docket.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is expected to be an Executive Order 13771 regulatory action. There are no quantified cost estimates for this supplemental proposed rule because it does not change the applicable volumes proposed in the July 29 proposal.

C. 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 numbers 2060–0637 and 2060–0640. The proposed revisions will not impose new or different reporting requirements on regulated parties than already exist for the RFS program.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule.

The small entities directly regulated by the RFS program are small refiners, which are defined at 13 CFR 121.201. This supplemental proposed rule does not change the applicable volumes proposed in the July 29 proposal. Nor does it change the compliance flexibilities currently offered to small entities under the RFS program (including the SRE provisions we continue to implement). We have therefore concluded that this action will have no net regulatory burden for directly regulated small entities.

E. 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.

F. 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.

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

This action does not have tribal implications as specified in Executive Order 13175. This action will be implemented at the Federal level and affects transportation fuel refiners, blenders, marketers, distributors, importers, exporters, and renewable fuel producers and importers. Tribal governments will be affected only to the extent they produce, purchase, or use regulated fuels. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health Risks 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 implements specific standards established by Congress in statutes (CAA section 211(o)) and does not concern an environmental health risk or safety risk.

I. 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. The RFS program and this rule are designed to achieve positive effects on the nation’s transportation fuel supply, by increasing energy independence and security and lowering lifecycle GHG emissions of transportation fuel.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). This regulatory action does not affect the level of protection provided to human health or the environment by applicable air quality standards. This action does not relax the control measures on sources regulated by the RFS regulations.

IV. Statutory Authority

Statutory authority for this action comes from sections 114, 203–05, 208, 211, and 301 of the Clean Air Act, 42 U.S.C. 7414, 7522–24, 7542, 7545, and 7601.

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.


Andrew R. Wheeler, Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR part 80 as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

§ 80.1405 What are the Renewable Fuel Standards?

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 § 80.1405 by revising the equation in paragraph (c) definitions of GE, DE, and E to read as follows:

§ 80.1405 What are the Renewable Fuel Standards?

* * * * * *

(c) * * *

GE = The total amount of gasoline projected to be exempt in year i, in gallons, per §§ 80.1441 and 80.1442.
A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:
- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. What should I consider as I prepare my comments for EPA?

1. Submitting CBI. Do not submit this information to EPA through regulations.gov or email. 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.

2. Tips for preparing your comments. When preparing and submitting your comments, see the commenting tips at http://www.regulations.gov/docs/.

3. Environmental justice. EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the Agency taking?

EPA is announcing receipt of a pesticide petition filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the request before responding to the petitioner. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petition described in this document contains data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petition. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition that is the subject of this document, prepared by the petitioner, is included in a docket. EPA has created for this rulemaking. The docket for this petition is available at http://www.regulations.gov.

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

A. Amended Tolerances for Non-Inerts