Supporting Statement for the Recordkeeping and Reporting Requirements for the Renewable Fuel Standard (RFS) Program: RFS Annual Rules

1. Identification of the Information Collection

1(a) Title of the Information Collection

Renewable Fuel Standard (RFS) Program: RFS Annual Rules, EPA ICR No. 2691.02, OMB Control Number 2060-0740.

1(b) Short characterization:

This ICR is for a final rule that makes a variety of amendments to the Renewable Fuel Standard (RFS) regulations, including amendments that will permit biointermediates into the RFS program. A "biointermediate" is produced from renewable biomass at a biointermediate production facility and is not itself a renewable fuel; the biointermediate will be processed into a renewable fuel at a subsequent renewable fuel production facility. EPA published a proposed rule entitled "Renewable Fuel Standard (RFS) Program: RFS Annual Rules" in the Federal Register on December 21, 2021 (86 FR 72436). Prior to this action, the RFS regulation did not include biointermediates, but we have concluded that there are economic and practical reasons that parties may wish to use them. The party who produces a biointermediate at their facility is a "biointermediate producer" and the party who processes the biointermediate into renewable fuel at their subsequent facility is a "renewable fuel producer."

The new regulations include new information collection burdens that are related to allowing biointermediates into the RFS program. The recordkeeping and reporting requirements allow the EPA to monitor compliance from biointermediate producers, biointermediate importers, and renewable fuel producers who use biointermediates. Biointermediate producers (who have recordkeeping and reporting requirements) and biointermediate importers (who have recordkeeping requirements) are new regulated parties under the rule. Renewable fuel producers are pre-existing regulated parties. More parties may register as renewable fuel producers (e.g., as new registrants who wish to make renewable fuel from biointermediates). Under this final rule, renewable fuel producers will be subject to additional recordkeeping and reporting associated with their biointermediate use. Biointermediate producers and renewable fuel producers require: third party engineering reviews of their processes and facilities, a quality assurance plan (QAP) performed by an independent QAP provider, and attest engagements performed as a check on their records and compliance report by a third-party auditor. Biointermediate importers will need to engage a third party to provide a certification of volumes they import. The engineering review, QAP requirements, audit requirements, and volume certifications are "purchased services" for purposes of this ICR and are discussed in greater detail below.

This information collection request is related to the following approved information collection requests for the RFS program: 2060-0723 (expiring 11/30/2022), 2060-0725 (expiring

08/31/2022) and 2060-0728 (expiring 12/31/2023). EPA recently published a Federal Register notice on February 11, 2022 (87 FR 8013) to renew these existing collections together under the single control number of 2060-0725. It may be helpful for interested parties to look at these existing ICRs, and the referenced notice, since renewable fuel producers are existing respondents under these collections and have certain existing recordkeeping and reporting items described in each of these ICRs. The existing information collection requests are available at the OMB Paperwork Reduction Act page (https://www.reginfo.gov/public/do/PRAMain) and are searchable by their OMB control numbers (e.g., 2060-0725).

2. Need For, and Use of, the Collection

2(a) Authority for the Collection

Sections 114 and 208 of the Clean Air Act (CAA), 42 U.S.C. §§ 7414 and 7542, authorize EPA to require recordkeeping and reporting regarding enforcement of the provisions of Title II of the CAA.

2(b) Practical Utility/Uses of the Data

The recordkeeping and reporting requirements of this regulation will allow EPA to monitor compliance from biointermediate producers, biointermediate importers, and renewable fuel producers under the RFS program.

3. Non-duplication, Consultation, and other Collection Criteria

3(a) Non-duplication

Efforts have been made to eliminate duplication in this information collection and EPA is only requesting information necessary to implement a working biointermediate program. We are not seeking to collect information readily available to us in any other manner. The information requested is often claimed as confidential business information (CBI) by the submitter and, as such, is not readily or publicly available.

3(b) Public Notice

Public notice of this ICR was included with the proposed rule. We did not receive any comments upon the estimates. Comments related to the design of the program, including recordkeeping and reporting have been addressed with the final rule.

3(c) Consultations

We have drawn upon our experience with RFS implementation and with similar fuels regulations to develop the estimates in this supporting statement. We encourage interested parties and those who may be respondents to this ICR to provide comment on these estimates.

3(d) Effects of Less Frequent Data Collection

We have designed the reporting schedule to coincide with existing RFS reporting deadlines applicable to all parties regulated under the RFS program. Compliance reporting is typically quarterly or annual. Reporting of transactions within EMTS are done on-occasion/as needed, when a respondent engages in a RIN transaction. Initial registration and setting up initial system access typically are a one-time event; however, parties are responsible for updating their registrations on-occasion/as needed (e.g., if they change their address or the activities they engage in under the program). Engineering reviews are initially required and must be updated every three years. Less frequent collection of data would make it impossible to carry out the provisions of the CAA.

3(e) General Guidelines

This information collection activity complies with 5 CFR 1320.6, except respondents are required to keep certain records for longer than three years. Specifically, parties would be required to keep product transfer documents (PTDs) and records related to the production, transfer, and use of biointermediates and renewable fuels for five years, and parties would be required to keep their compliance records (e.g., copies of periodic reports) for five (5) years. Five years is the applicable statute of limitations for other EPA fuels programs. *See* 28 U.S.C. 2462. Many records such as PTDs (e.g., bills of lading, invoices, etc.) and fuel production records should be kept by parties under normal business practice. Therefore, the recordkeeping requirements under the requirements of this rule should impose little additional burden.

3(f) Confidentiality

We inform respondents that they may assert claims of CBI for information they submit. Any information claimed as confidential would be treated in accordance with 40 CFR part 2 and established EPA procedures. Information that is received without a claim of confidentiality may be made available to the public without further notice to the submitter under 40 CFR 2.203.

3(g) Sensitive Information

This information collection does not require submission of any sensitive information (e.g., social security numbers, dates of birth, etc.).

4. <u>The Respondents and the Information Requested</u>

4(a) Respondents with NAICS/SIC Codes

The respondents to this information collection fall into the following general industry categories: petroleum refineries (324110/2911), ethyl alcohol manufacturers (325193/2869), other basic organic chemical manufacturing (325110/2869), chemical and allied products merchant wholesalers (426990/5169), petroleum bulk stations and terminals (422710/5171), petroleum and petroleum products merchant wholesalers (422720/5172), and other fuel dealers (454319/5989).

We have assumed the following classes of party, which are covered by this supporting statement.

- Biointermediate producers
- RIN Generators – specifically, renewable fuel producers who use biointermediates
- Biointermediate importers
- Third parties, including third party engineers, attest auditors, QAP providers, and independent parties who provide purchased professional services to the parties listed above.

4(b) Information Requested

The information requested is listed in detail in Appendix A and may be summarized, by respondent, as follows:

Biointermediate Producers (Table I) and RIN Generators - Renewable Fuel Producers (Table II) who use biointermediates:

1. Reporting requirements including registration and periodic compliance reports. These parties must engage the services of independent third parties to provide engineering reviews (a part of registration that describes the process or making the biointermediate and related aspects of the facility in which is produced), QAP (a process of independent verification of feedstocks and renewable fuels), and attest engagements (an independent auditing requirement). These parties have periodic compliance reporting requirements. This information collection includes a new biointermediate batch reporting form (RFS4000) and adds fields to existing forms to accommodate renewable fuels made with biointermediates. All forms are listed with regulatory citations in Appendix A, Tables 1 and 2, for these parties.
2. Recordkeeping requirements that include keeping copies of all records that support compliance reports and the use and retention of product transfer documents (PTDs).

Biointermediate Importers (Table III):

1. No reporting requirements.
2. Recordkeeping requirements that include keeping copies of PTDs and retaining/using volume certification records. These parties must engage the services of an independent third party to perform volume certification.

5. <u>The Information Collected, Agency Activities, Collection Methodology, and Information Management</u>

5(a) Agency Activities

- All reports and registrations will be reviewed by the EPA for completeness and for potential violations.
- Potential violations will be referred to enforcement personnel.
- Registration numbers will be issued for new registrants.
- The EPA will contact reporting parties if there is a problem with their submission.

5(b) Collection Methodology and Management

The EPA will continue to receive all reports, registrations, initial registrations, and updates via existing reporting systems, which are grouped under the name of TeRRA and include DCFUEL and EMTS modules. EPA utilizes the Central Data Exchange (CDX), which is a secure portal, for many submissions. Information claimed as CBI will be stored in appropriately controlled areas. The EPA will provide Guidance Documents, Report Instructions, and Report Templates at: https://www.epa.gov/fuels-registration-reporting-and-compliance-help/list-all-quarterly-and-annual-reports-renewable.

5(c) Small Entity Flexibility

This collection would not adversely affect small entities and may benefit small entities who are either biointermediate producers or renewable fuel producers.

5(d) Collection Schedule

Registrations are received on a rolling basis. Updates may be sent in at any time after initial registration. New parties may enter the regulated industry at any time, triggering registration requirements. Reports are submitted to the EPA as needed or on quarterly and annual basis.

6. Estimating the Burden and Cost of Collection

6(a) Estimating the Respondent Universe

We drew upon experience implementing similar regulations among the same entities to develop estimates of the burden associated with this collection. Detailed burden estimates for each party are in Appendix A. The following parties are identified as part of this collection with the number of each category of respondent in parentheticals:

- Biointermediate producers – For the proposed rule, we estimated 60 new biointermediate producers (of which we apportioned 50 as domestic and10 as foreign); for the final rule we have increased this estimate to 240 (of which 200 are domestic and 40 are foreign). We have increased this estimate, as we believe it to be more accurate given the great interest expressed in the notice of proposed rulemaking and the provisions of this final rule. As with other new participants due to this final rule, we expect the number of new registrants to “plateau” after the initial three-year period of the ICR. We have assumed six total pathway petitioners

during the three-year period of this ICR. (Table I of Appendix A)

- RIN Generators - renewable fuels producers who use biointermediates – For the proposed rule, we estimated that there will be 40 existing renewable fuel producers who will choose to use biointermediates, and 20 new registrants. For the final rule, we have increased this estimate to 90 total, of which 70 are existing and 20 are new renewable fuel producers. We have increased this estimate because we believe it to be more accurate given the interest in the notice of proposed rulemaking and the provisions in the final rule, and this correspondents with the adjustment we made for biointermediate producers, as described above. (Table II of Appendix A)
- Biointermediate importers – we estimate 15 biointermediate importers (per year). In the notice of proposed rulemaking, we estimate five (5) per year. To make the final rule method consistent, we will use the total number of parties for the three-year period of the ICR and will annualize the hourly and cost burdens. Table III of Appendix A.)
- Third parties, including third party engineers, attest auditors, and QAP providers – we estimate 10 third party engineers, 10 attest auditors, five (5) QAP providers, and four (4) independent parties who provide volume certification to biointermediate importers. These are the outside parties whom biointermediate producers, renewable fuel producers who use biointermediates, and biointermediate importers must purchase services from to accomplish certain recordkeeping and reporting tasks. (Table IV of Appendix A.)

Biointermediate producers and biointermediate importers are new respondents under this regulation and this ICR. Renewable fuels producers are existing respondents, but we anticipate that they may grow in number due to the inclusion of biointermediates in RFS and our estimates in Appendix A reflect this expectation.

To assign the costs to the parties who bear them, and to avoid double counting, this ICR assigns the responses, hours, and costs to the respondents in Tables I-III who engage the services of third parties to submit information on their behalf (and who purchase those services). However, to properly count all respondents, Table IV includes the third parties in the total number of respondents. Please refer to Appendix A for the detailed estimates and explanations.

6(b) Estimating the Respondent Burden and Cost

The burden estimates are provided in Appendix A. Four labor categories are involved in these estimates: managerial, technical, clerical, and legal. The estimates are based on the Bureau of Labor Statistics figures from “National Industry-Specific Occupational Employment & Wage Estimate: Petroleum and Coal Products Manufacturing” (March 2020). Using this method, the following wages and benefits apply by category:

Labor Costs*				
Labor Type	*Labor Cost/hour Dollars*	*Labor + Overhead/ hour*[a]	*Portion attributed/hour*	*Employer Cost/hour Dollars*
Managerial	104.23	209	0.05	10.45
Technical/Professional	38.29	77	0.7	53.90
Clerical	21.75	44	0.2	8.80

Legal	83.03	167	0.05	8.35
Total Employer Cost/hour				$ 82.00
Purchased Services[b]				$ 164.00

[a] Overhead is calculated to be equal to the cost of labor.

[b] The cost of purchased services (for example, cost of attest auditors) is calculated at twice the Total Employer Cost. This figure makes for an easily understandable estimate and matches feedback we received from industry on the actual cost of such services.

6(c) Estimating the Agency Burden and Costs

The EPA would generate company and facility registration number(s) for new registrants and notify them of these numbers, which would appear on reports. EPA would also process pathway applications and examine registration materials, such as engineering reviews. Report formats and instructions/guidance would be prepared by EPA personnel. Reports would be processed by contractors and must be reviewed by EPA personnel using automated processes to the greatest extent practical. Reporting parties would be contacted if there is a problem with their submission. We must develop forms for the reporting requirements for many of the parties covered in the rulemaking. We provided sample reporting templates as an attachment to this document in the docket for the proposed rulemaking; and have docketed final versions with this final rule.

This supporting statement considers all EPA costs associated with accepting new registrants and new reports associated with the rule. Using the RFS-related ICRs as a guide in developing these initial estimates, we anticipate that the rule will require the equivalent labor of the equivalent of two full-time GS-13 technical employee for a total of $216,000 labor cost and one-eighth of a GS-15 management employee for a total of $32,000 labor cost.[1]

Since we are using CDX, some costs incurred by the EPA will be tied to the number of registrants who send us reports. Specifically, there is an annual "subscription cost" associated with the use of CDX that is passed on to the EPA program office and we estimate that registrants due to the RFS program would increase by approximately $33,000 per year because of the rule. We anticipate an increase of $50,000 in annual contract costs related to registration and reporting activities related to the RFS program. We anticipate increased IT development and testing costs at $250,000. Adding the following values results in an annual estimated EPA burden associated with this information collection, as follows:

[1] These estimates are derived from "OPM Salary Table 2021-DCB," effective January 2021. This table may be found at https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2021/DCB.pdf. The extreme of step 10 was assumed for all categories. We have assumed a quarter-time GS-13 technical worker, and a GS-15 manager working one-eighth of his/her time managing this project (0.125). All values were multiplied by 1.6 (which is a common factor utilized in ICRs to account for overhead costs) to determine labor cost. They were then rounded to the nearest $ 500.

Three GS-13 technical employee (full-time) = $ 648,000
One GS-15 manager (1/8 time) = 34,500
Annual CDX subscription fee = 33,000
Annual contract costs = 50,000
Testing and development= 250,000
TOTAL = 1,103,500

As with all items in this supporting statement, we strongly encourage comment on the estimated EPA burden and on EPA activities associated with this information collection.

6(d) Estimating the Respondent Universe

We estimated the number of regulated entities for this ICR by drawing upon our experience regulating the same or similar entities under the RFS program. Where possible, we used estimates based on parties that have expressed interest in a particular portion of the rule.

6(e) Bottom Line Burden Hours and Costs

From the tables, we estimate the following annual totals:

TOTAL NUMBER OF RESPONDENTS	5,052
TOTAL NUMBER OF RESPONSES	172,359
TOTAL BURDEN HOURS	167,385
TOTAL COST TO RESPONDENTS[2]	$ 9,262,146

6(f) Burden Statement

The annual public reporting and recordkeeping burden for this collection of information is estimated to be approximately one hour per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a

[2] This is the total non-labor costs, all of which is purchased services for this ICR. This is the amount that is included in the OMB inventory. The total including labor and non-labor cost for this ICR is $17,286,140. Please refer to summary tab of Appendix A.

person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers the EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

To comment on the EPA's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this ICR under Docket ID No. EPA-HQ-OAR-2021-0324, which is available for online viewing at www.regulations.gov, or in-person viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC). The docket is in the William Jefferson Clinton Building West, 1301 Constitution Avenue, NW, Room 3334, Washington, DC, and is open from 8:30 a.m. to 4:30 p.m., Eastern Standard Time, Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566-1742.

An electronic version of the public docket is available at www.regulations.gov. This site can be used to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select "search," then key in the Docket ID No. identified above. Also, you can send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, D.C. 20503, Attention: Desk Officer for EPA. Please include the EPA Docket ID No. EPA-HQ-OAR-2021-0324 and OMB Control Number 2060-0740 in any correspondence.

Appendix A – Detailed Burden Estimates