

US EPA ARCHIVE DOCUMENT

**ROBERT J. MEYERS
PRINCIPAL DEPUTY ASSISTANT ADMINISTRATOR
OFFICE OF AIR AND RADIATION
U.S. ENVIRONMENTAL PROTECTION AGENCY**

**BEFORE THE COMMITTEE ON ENERGY AND COMMERCE
U.S. HOUSE OF REPRESENTATIVES
MAY 6, 2008**

Mr. Chairman and members of the Committee, I appreciate the opportunity to come before you today to testify on implementation of the renewable fuel provisions of the recently enacted Energy Independence and Security Act of 2007 (EISA). The Act's aggressive new renewable fuel standards (RFS) will further our nation's goals of achieving energy security and reducing greenhouse gases by building on the successful RFS program established by the Energy Policy Act of 2005 (EPACT 2005).

Renewable fuels are a key element of a national strategy for addressing our energy security and the challenge of global climate change. Through his "Twenty in Ten" initiative, the President has committed the United States to take the lead in reducing greenhouse gas emissions by pursuing new, quantifiable actions. Congress has agreed by approving new fuel and vehicle fuel economy standards as part of the Energy Independence and Security Act of 2007. These national standards will reduce emissions of greenhouse gases in the transportation sector and improve our energy security. The changes brought about by EISA are expected to prevent billions of metric tons of greenhouse gases emissions into the atmosphere over the next several decades.

The Environmental Protection Agency is responsible for implementing the RFS program, and we are proud of our success to date in working with stakeholders in industry, states and the environmental community to build an effective program for increasing the volumes of renewable fuel used by the transportation sector. In April 2007 we announced final regulations for implementing the RFS Program under EPACT 2005. The Agency worked very closely with both our federal partners and stakeholders to develop broad and early support for the program. This program was officially launched in September 2007. We believe our success is grounded on our close collaboration with stakeholders on the design and implementation of the program. The Agency continues to work with these parties to refine certain aspects of this program.

Since EISA was signed into law on December 19, 2007, the Agency has been working diligently to review its provisions and develop regulations to implement the new RFS program, commonly called RFS2, established by that legislation. In this regard, our first and most pressing task was to issue a new renewable volume standard for 2008. The RFS program established by EPACT 2005 required 5.4 billion gallons of renewable fuel in 2008. The EISA legislation increases the standard to 9 billion gallons in 2008, with further yearly increases in mandated volumes resulting in 36 billion gallons being required in 2022. We published a notice implementing the 2008 volume requirement in the Federal Register on February 14 of this year.

Looking beyond 2008, we are conducting an in-depth evaluation of all mid and long term actions required under the RFS provisions of EISA. While the RFS program

established under EPCACT 2005 provides a solid foundation from which to begin developing the new regulations, RFS2 includes new elements which add complexity to the program. As a result, the new EISA provisions require careful evaluation and considerable new analysis.

In this new undertaking, the Agency is following much of the same approach we used in developing the first RFS program. This includes obtaining critical input from our stakeholders early and throughout the rulemaking process. Using a collaborative approach will help the Agency gather important information quickly and facilitate EPA's development and promulgation of regulations to implement the legislative provisions enacted by Congress. Since EISA was enacted less than five months ago, the Agency has met with more than thirty different stakeholders, including renewable fuel producers, technology companies, petroleum refiners and importers, agricultural associations, environmental groups, gasoline and petroleum marketers, pipeline owners and fuel terminal operators. Agency technical staff have participated in numerous conferences and workshops, which have allowed us to reach a broad range of technical, programmatic and policy issue experts. We continue to meet regularly with the Departments of Energy and Agriculture. Through these meetings, EPA has sought input on the key RFS2 program design elements as highlighted in this testimony.

While EPA will draw from its experience in developing the original RFS regulations, it is important to understand that EISA made a significant number of changes to the RFS program. First, as mentioned previously, RFS2 increases the total renewable

fuel volumes mandated to 36 billion gallons a year by 2022. This is nearly a five fold increase over the 7.5 billion gallons a year mandated under EPACT 2005 for 2012, and constitutes a 10-year extension of the schedule provided for in that legislation. EPA believes that the implications of the volume expansion of the program are not trivial. Development of infrastructure capable of delivering, storing and blending these volumes in new markets and expanding existing market capabilities will be needed. In addition, the market's absorption of increased volumes of ethanol will ultimately require new “outlets” beyond E10 blends (i.e., gasoline containing 10% ethanol by volume). A rule of thumb estimate is that E10 blends, if used nationwide, would utilize approximately 15 billion gallons of ethanol. Accommodating approximately an additional 20 billion gallons of ethanol-blended fuel is expected to require an expansion of the number of flexible-fuel E85 vehicles and their utilization of E85 and/or other actions.

Second, beyond the significant increase in the volume mandate, EISA extended the RFS program to include both non-road gasoline and diesel fuel volumes. Under the regulations implementing EPACT 2005, RFS volume requirements were applied only to producers and importers of on-road gasoline. RFS2's extension of this program to both non-road gasoline and diesel fuel volumes is a significant change that may affect new parties, including a number of small businesses that have not been regulated under this program in the past.

Third, EISA has established new categories of renewable fuel. EPACT 2005 established standards for two categories of renewable fuels: one standard for the total

volume of renewable fuel; and a second standard for cellulosic ethanol requiring 250 million gallons beginning in 2013. RFS2 increased the number of renewable fuel categories and standards from the current two to a total of four, including total renewable fuel and three new categories within that, each with their own required volumes: advanced biofuels, biomass-based diesel and cellulosic biofuels. Industry will be required to demonstrate compliance with the four separate fuel standards. This will likely require the obligated parties, producers and importers, to forge new business relationships and contracts that are necessary to guarantee their compliance with the new standards. Establishing the necessary systems to track and verify the production and distribution of these fuels and demonstrate compliance with four separate standards also will require sufficient lead time to design and implement these new tracking systems. As in the current program under EPACT 2005, in the near term, some parties may not be able to comply by blending the renewable fuels, and thus may need to purchase or trade credits for the appropriate number and category of fuels to satisfy their volume obligations. It will be very important to conduct effective outreach with these parties to help assure smooth implementation.

As part of its restructuring of the renewable fuel mandate, EISA increased the cellulosic biofuel mandate from 250 million to 1.0 billion gallons by 2013, with additional yearly increases to 16 billion gallons in 2022, and provided a new definition of this fuel. Implementing these requirements will entail additional work by EPA as it develops its upcoming regulation. For example, the Act authorizes EPA in certain circumstances to adjust the cellulosic biofuel standard to a level lower than that specified

in the law, however it requires in this circumstance that the Agency also make credits available for compliance purposes and provides instructions on how to establish a specific price for these credits. The Agency will therefore need to address several critical issues, such as how many credits will be generated, to whom they will be available, the extent to which they can be traded, and what the life of the credit will be.

RFS2 also established for the first time minimum volume standards for biomass based diesel fuel. These standards begin in 2009 at a half billion gallons and ramp up to one billion gallons per year in 2012 and there after. To qualify as biomass based diesel, the renewable fuel portion of the biodiesel blend must result in greenhouse gas emissions that are at least 50 percent lower than the baseline GHG emissions for petroleum based diesel fuel (RFS2 established the baseline year as 2005).

Fourth, new provisions were included in EISA requiring the Agency to apply lifecycle greenhouse gas (GHG) performance threshold standards to each category of renewable fuel. The Agency has done a substantial amount of work on lifecycle analysis over the past year, and has made significant advances, honing the overall methodology, updating data inputs and incorporating new inputs for assessment of land use change. However, even with these advances, additional new and improved analyses will be necessary to implement the statute's lifecycle GHG performance standards. Given our experience in this area and the statute's utilization of lifecycle GHG performance standards as part of the definitions of different renewable fuels mandated in the Act, we would anticipate extensive comment from all stakeholders on both lifecycle analysis

inputs and methodology. In addition, certain requirements in RFS2 pertain only to renewable fuel production facilities that commence construction after the bill was passed. EPA will need to carefully consider how the terms in this new provision should be interpreted and defined in the context of the new law.

Fifth, RFS2 added a number of other new provisions, including changing the definition of renewable fuel feedstocks in a fundamental manner. The new law limits the crops and crop residues used to produce renewable fuel to those grown on land cleared or cultivated at any time prior to enactment of EISA, that is either actively managed or fallow, and non-forested. Developing appropriate and enforceable regulations addressing this provision will require extensive dialogue with USDA, USTR, the agricultural community and renewable fuel producers to better understand current practices and changes in practices that can be developed, implemented and enforced consistent with our international obligations. The Agency has started these discussions and plans to continue this dialogue throughout the regulatory process. EISA also requires that forest-related slash and tree thinnings used for renewable fuel production pursuant to the Act be harvested from non-federal forest lands.

Finally, in support of the rulemaking, we will be assessing the many impacts of the EISA renewable fuel program including on emissions and air quality, greenhouse gases, water quality, land use, the economy, and energy security. These analyses will provide important information to the public and Congress on the many anticipated impacts of the new legislation.

As you are probably aware, Texas Governor Rick Perry sent a letter to EPA Administrator Johnson on April 25 requesting a partial waiver of the 2008 RFS volume obligations required by EISA. Governor Perry requests the volume requirement be reduced by 50 percent, from 9 billion gallons in 2008 to 4.5 billion gallons. This waiver request states that the mandate is having an “unnecessarily negative impact on Texas’ otherwise strong economy while driving up global food prices”. Under authority and direction provided in EPCA 2005 and EISA 2007, the Agency has 90 days from the date of receipt of this request to issue a decision. We are in the process of evaluating the information and analysis that will be needed for the Administrator to reach a decision. We will be issuing a federal register notice in the near future requesting public comment on this request. Of course, EPA will fully consult with our colleagues at the Departments of Agriculture and Energy and elsewhere within the Executive Branch on this waiver request.

In closing, the Agency is moving forward with the development of regulations implementing the RFS2 provisions and is utilizing the successful approach we employed in developing the regulations for the original RFS program. We look forward to working closely with members of Congress and our many other stakeholders during this process. We are confident that together we can develop implementing regulations that enhance both our energy security and our environment.

Thank you, Mr. Chairman, and members of the Committee for this opportunity.
This concludes my prepared statement. I would be pleased to answer any questions that
you may have.