

**EXECUTIVE SUMMARY OF COMMENTS OF
THE RENEWABLE FUELS ASSOCIATION ON
EPA’S PROPOSED REGULATIONS TO IMPLEMENT THE
EXPANDED RENEWABLE FUELS PROGRAM
UNDER THE
ENERGY INDEPENDENCE AND SECURITY ACT OF 2007
74 FED. REG. 24,904 (MAY 26, 2009)**

Tomorrow, the Renewable Fuels Association (RFA), the national trade association for the domestic ethanol industry with membership including ethanol producers and suppliers, gasoline marketers, agricultural organizations, and state agencies, will file comments on EPA’s proposed regulations to implement the expanded renewable fuel standard (RFS) program enacted by Congress in the Energy Independence and Security Act (EISA) in 2007. Congress intended the RFS to increase the use of renewable fuels in the United States to

- (1) improve our energy security by reducing dependence on foreign oil;
- (2) create a strong U.S. biofuel industry and reap the benefits of a strong rural economy; and
- (3) recognize the biofuel reductions in greenhouse gases (GHGs) to help combat climate change.

RFA appreciates the extensive work that EPA put into this proposal. However, RFA believes that the proposed rule minimizes, and even ignores, the benefits of renewable fuels for energy security and GHG reductions. The proposal needs substantial revisions to fulfill Congress’ intent and comport with its plain direction to the EPA regarding how to implement the program. RFA stands ready to work with EPA to achieve a timely and accurate final rule that fulfills the intent of Congress. The following summarizes the key points that will be included in the comments filed by the RFA tomorrow:

- 1. *EPA Should Exclude International Indirect Land Use Changes (ILUC) Since Congress Did Not Intend for Them to Be Included in the Lifecycle Analysis.*** While EISA does specify that significant indirect GHG emissions be considered, the statute clearly does not require that EPA consider *international* indirect emissions. Even assuming Congress contemplated that EPA consider international ILUC, which was not included in any biofuels lifecycle analyses prior to enactment of the EISA, the statute also seems to preclude consideration of international ILUC. Congress’ intent was that (1) emissions must be related to the “fuel” lifecycle; (2) indirect emissions must be significant and indirect land use change emissions must be significant themselves; and (3) there must be a credible causal link between the biofuel and the effects caused. These aspects clearly limit EPA’s authority to consider speculative international ILUC, and bear even more emphasis given the uncertainty and inaccuracies in EPA’s proposed ILUC analyses.
- 2. *EPA Should Not Rely on Economic Models that Are Not Transparent to the Public or Replicable.*** The economic modeling framework that generated the overwhelming majority of land use emissions attributed to biofuels in EPA’s analysis was not available for public use as

configured and used by EPA. Stakeholders, to date, have been unable to replicate EPA's work. Other models were made available to the public, but were constrained in a way that disallowed sensitivity analysis by stakeholders. This lack of transparency is inconsistent with Administrator Jackson's commitment to operate in a transparent way, particularly with respect to scientific decisionmaking like that at issue here.

3. *To the Extent that EPA Addresses ILUC, It Should Revise Its Analysis Because an Accurate Evaluation Shows that Corn Ethanol Will Have Negligible, if Any, ILUC Impacts. The Following Specific Revisions Are Necessary:*

- *EPA should abandon its current method of projecting future crop yields, which uses basic 30-year trend analysis.* EPA should adopt an approach that recognizes the 1) more recent rate of increase in corn yields driven by broad commercialization of genetically modified hybrids, and 2) overwhelming consensus in the agronomic research community that growth in crop yields will continue to increase at an accelerated (non-linear) rate due to new plant breeding techniques, new applications of biotechnology, improved farming practices and other advancements.
- *EPA should revise its modeling inputs on the land use credits from corn ethanol feed co-products to reflect the greater-than-assumed feed value of distillers grains and soybean meal displacement.* Research shows that distillers grains replace conventional feed at a rate of 1 lb. replacing 1.25 lb. rather than EPA's estimate of 1 lb. replacing 1 lb. This factor has significant bearing on ILUC modeling results.
- *EPA should revise the U.S. land inventories included in its models to account for all lands that may be available for potential conversion.* For instance, EPA should ensure idle cropland and cropland pasture are available for conversion in its models, particularly as these are the most likely types of land to be converted if expansion is necessary.
- *The EPA analysis should not constrain cropland that may be available in the future from the Conservation Reserve Program.*
- *The EPA analysis should account for pasture intensification in Brazil.*
- *EPA should not rely on satellite-based data to estimate the types of land that are converted and the associated emissions.* EPA's reliance on Winrock satellite data from the 2001-2004 timeframe renders the entire analysis arbitrary in that EPA is suggesting that land use changes that occurred for any reason serve as an appropriate proxy for land use changes resulting from U.S. biofuel expansion under the RFS. Moreover, the Winrock analysis has been shown not to reflect what actually happened in 2001-2004 so its accuracy is in question.
- *The rule should eliminate the assumption that all forests sequester carbon consistently for 80 years.* EPA incorrectly assumes that converted forests would have otherwise sequestered carbon at maximum uptake rates for 80 years.

- *While the 100-year impact time frame should be retained, the rule should eliminate the use of a discount rate, which is inappropriate for calculating GHG emissions.* A discount rate is an economic consideration that is more appropriate when considering the value of the benefits of a regulation. In this context, a discount rate other than 0 is completely arbitrary.
4. ***RFA Supports EPA’s Conclusion that GHG Emissions for Corn Ethanol Production Excluding Indirect Land Use Change Are 60% Below Baseline Gasoline. RFA Provides Additional Analysis Showing that Corn Ethanol’s Direct GHG Emissions Benefits Are Even Greater than EPA’s Estimate.*** Researchers at the University of Nebraska found that, “Direct effect GHG emissions were estimated to be equivalent to a 48% to 59% reduction compared to gasoline, a twofold to threefold greater reduction than reported in previous studies.” When those direct GHG reductions are coupled with the other GHG reductions resulting from EPA’s consequential lifecycle analysis, total GHG emissions benefits would be greater than 60%.
 5. ***EPA’s lifecycle analysis must recognize that biofuels produced under the RFS will displace marginal liquid fuels (such as gasoline from tar sands), not average gasoline and diesel fuel.*** While the statute requires EPA to establish a 2005 baseline for gasoline and diesel fuel, EPA should develop a mechanism for comparing the lifecycle GHG emissions of biofuels to the lifecycle GHG emissions of the fuels that are the most likely being displaced. EPA should credit 2022 biofuels for the avoided GHG emissions associated with the marginal, unconventional fuels that would have been used in the absence of biofuels.
 6. ***With Respect To the Requirement That Renewable Fuels Be Produced From Renewable Biomass:***
 - EPA should delete the requirement that it added to the statute that land be “continuously” actively managed after December 19, 2007 because Congress did not include that requirement in the statute.
 - EPA should not adopt its proposed verification system regarding whether feedstocks are grown on existing agricultural land and thereby qualify as renewable biomass.
 7. ***To Encourage Companies to Reduce Their GHG Footprint, EPA Should Allow Facilities To Present Facility-Specific Lifecycle Analysis.*** No two bio-refineries are the same. Yet, EPA analyzed a limited number of ethanol production pathways and appears to assume all bio-refineries will “fit” into one of the pathways. EPA should develop a system that allows new ethanol facilities that don’t necessarily conform to one of the established pathways to demonstrate the carbon footprint of their operation through site-specific lifecycle analysis.
 8. ***If EPA Does Not Grandfather Existing Plants, It Should Adopt the Proposed Volumetric Approach with a 10% Productivity Allowance to Permit Plants to Maximize Production Based on Current Design.***

9. ***EPA should use the current RIN System to implement the new program and should adopt the proposed more efficient RIN-validation system with an EPA-moderated transaction system and expanded registration process. However, EPA should modify its proposal to eliminate the:***

- proposed 20 percent rollover cap
- equivalence values
- requirement for an on-site engineering review
- obligation to report RIN price information
- requirement to submit annual production outlook reports

As a final matter, RFA emphasizes that implementing the renewable fuel volumes of the EISA in 2010 is critical. EPA has a statutory mandate to ensure that the RFS volumes are met *each year*, including 2010. For 2009, EPA implemented the new volumes and it should do the same for 2010, regardless of whether this complex proposal can be finalized in time for 2010 implementation of the full RFS2 program. This approach makes sense because EPA has already recognized that corn ethanol produced in 2009 will meet the RFS2 requirements, and the same holds true for ethanol produced in 2010. It is important for EPA to issue an accurate final rule, even if that delays issuance until sometime in 2010. In such a case, the Agency should begin all elements of the new program on January 1, 2011.