2010 UCONN Bio-fuels Symposium

Federal Mandates and Incentives

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The EPA and the RFS-2

- RFS-2 Final Rule Issued on February 4, 2010
- Issues:
  - Start Date July 1, 2010
  - 50% GHG Emissions Reduction
  - Feedstock Tracking
  - RIN Program
  - Biodiesel Registration
  - Audits

- We are going to have a new program with new rules and new enforcement mechanisms

- Compliance will be Enforced – Industry must understand and follow the rules
Renewable Volume Obligation = RVO, or the amount of renewable fuels obligated parties are required to use in 2010.

Biodiesel Volume requirements for 2010 = 1.15 billion gallons of Biomass-based Diesel (BBD), or 1.1% of the obligated fuels in 2010.

2010 BBD Statutory Volume Requirement = 650 million gallons
+ 2009 BBD Statutory Volume Requirement = 500 million gallons

FINAL RFS-2 BBD Volume Requirement = 1.15 billion gallons

Obligated Fuels = Gasoline and Diesel Fuel

Diesel fuel is further defined as Motor Vehicle, Non Road, Locomotive and Marine (MVNRLM)
Biomass-based Diesel, as defined in the rulemaking, includes both:

- biodiesel (mono-alkyl esters) and non-ester renewable diesel (including cellulosic diesel).
- The definition is the same very broad definition of “biodiesel” that was in EPAct and in RFS1, with three exceptions.
  
  • First, EISA (Energy Independence and Security Act 2007) requires that such fuel be made from eligible renewable biomass.
  
  • Second, its lifecycle GHG emissions must be at least 50% less than the gasoline or diesel fuel it displaces.
  
  • Third, the statutory definition of “Biomass-based Diesel” excludes renewable fuel derived from co-processing biomass with a petroleum feedstock.
Eligible Renewable Biomass:

- Feedstock grown on land in production prior to December 19, 2007 will qualify as renewable biomass for purposes of the RFS2 program.
- In general, EPA, based on USDA data, will implement an aggregate national certification process.
- EPA will pursue implementation of a specific feedstock tracking and certification process if there is evidence that lands not in production prior to December 19, 2007 are being utilized for agricultural purposes.
Lifecycle GHG Emissions Must Be At Least 50% Less Than Diesel Fuel:

- Generally, biodiesel from
  
  - waste oils;
  - animal fats;
  - corn oil derived from the ethanol production process;
  - vegetable oils derived from soybeans; and
  - secondary annual crops planted on existing cropland

- will exceed the minimum requirement of reducing lifecycle GHG emissions by at least 50% when compared to diesel fuel.

- Thus, they will qualify as Biomass-based Diesel and Advanced Biofuel.
Lifecycle GHG Emissions Must Be At Least 50% Less Than Diesel Fuel:

Biodiesel from Waste Oils, Waste Grease and Animal Fats

= 86% reduction in GHG Emissions

Biodiesel from Soy based oils

= 57% reduction in GHG Emissions
The GHG methodology used in the final rule has been updated to reflect industry comments, and biodiesel produced from domestic soybean oil is assumed to reduce GHG emissions by 57 percent compared to petroleum diesel fuel.

EPA’s uncertainty analysis recognizes that the GHG reduction could be as high as 85 percent.

The rulemaking provides pathways for biodiesel produced from other vegetable oils to qualify for the program.

NBB continues to object to various aspects of EPA’s methodology, particularly its inclusion of and assumptions related to the use of international indirect land use change.

The methodology employed in the final rule represents a significant improvement over the proposed rule.
What are the new compliance requirements for a biodiesel producer?

- Registration with EPA
- RIN Generation
- Reporting
- Record Keeping
EPA’s registration system is available at:
http://www.epa.gov/otaq/regs/fuels/fuelsregistration.htm

Biodiesel producers will be required to register with EPA and provide information about their:

- products,
- Feed stocks and facilities; and
- will be required to complete an on-site engineering review.
EPA-Moderated Trading System (EMTS) is required

- Which will likely require a change to a biodiesel producer’s information technology (IT) systems.

- New reporting requirement includes RIN pricing.

- For additional information on EMTS go to: 
  www.epa.gov/otaq/renewablefuels/epamts.htm
Planted crops (and crop residues):

In response to comments on the proposed rule, the final rule includes a “baseline” approach for crop feedstock from the United States.

As long as total agricultural lands (cropland, CRP, and pastureland) in the United States remains below the baseline identified by EPA as existing on the date of enactment (402 million acres), planted crops from the United States will be deemed renewable biomass.

EPA will review the total agricultural lands each year, and will investigate further if it appears the baseline may be exceeded.

If the baseline is exceeded, certain reporting and recordkeeping requirements to establish feedstock meets the definition will be triggered.

These requirements will apply to crops grown outside the United States, although EPA may consider a similar baseline approach for other countries in the future.
What’s Next?

• We Need Your Assistance

• For Additional information: http://www.epa.gov/otaq/renewablefuels/index.htm
  – Includes Factsheets
  – RFS2 Rulemaking Package
    • Preamble
    • Regulations
    • Regulatory Impact Analysis
  – Links to Other Information
## RFS-2
### Energy Independence and Security Act as Enacted

<table>
<thead>
<tr>
<th>Year</th>
<th>Volume in billions of gallons</th>
<th>Conventional Biofuels (may include all fuels)</th>
<th>Advanced Biofuels</th>
<th>Cellulosic Biofuels</th>
<th>Biomass-Based Diesel</th>
<th>Undifferentiated Advanced Biofuels (All fuels except conventional)</th>
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* Administrator determines minimum use allocation for out years
The Bio-energy Program was authorized under Section 9005 of the 2008 Farm Bill.

Biodiesel industry worked for this program during the Farm Bill and secured $300 million in mandatory funding over 4 years.

USDA published a Notice of Contract Proposal (NOCP), for payments under the Program on June 12, 2009.
Funding schedule under the statute:
- FY09 - $55 million
- FY10 - $55 million
- FY11 - $85 million
- FY12 - $105 million

USDA providing *up to* $30 million in FY09.

Remaining $25 million+ rolled into FY2010.
Bioenergy Payments

• Base and incremental production levels were determined by USDA for each eligible entity.

• Incremental Production payments are 3x base production payments.

• Payments made on a BTU basis.
<table>
<thead>
<tr>
<th>ENERGY TYPE</th>
<th># of AWARDS</th>
<th>BASE BTU</th>
<th>INCREMENTAL</th>
<th>Amount (mil$)</th>
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<tr>
<td>Biodiesel</td>
<td>89</td>
<td>67.4*</td>
<td>12.9*</td>
<td>$19.2</td>
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<td>Ethanol (non-corn)</td>
<td>19</td>
<td>21.8</td>
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<td>Biogas</td>
<td>48</td>
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<td>Wood Pellets</td>
<td>4</td>
<td>5.7</td>
<td>.9</td>
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<td><strong>Total</strong></td>
<td><strong>160</strong></td>
<td><strong>96.7</strong></td>
<td><strong>24.7</strong></td>
<td><strong>$29.7</strong></td>
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</table>

*This equates to 679.6 million gallons of biodiesel production in FY09. NBB records suggest 538.8 million gallons were produced in FY09*
USDA indicated Proposed Rule will mirror the NOCP

Under review by OMB; Could be issued any day

Meeting with OMB/OIRA next week

Will Prepare Industry Comments, focused on:

- Rural Area & domestic ownership requirements
- Equitable treatment for all production
- Application and payment process
Potential factors for biodiesel producers:

- reporting requirements
- emissions caps
- energy/input costs
- offsets markets
- land use impact

Land use is a growing concern – impacts on crop production, food prices, livestock, etc.
Status

• House passed HR 2454 in June 2009: 219-212.
• Senate EPW Committee reported out the Boxer-Kerry draft bill in November 2009.
• Further Senate action delayed to Spring 2010.
• Copenhagen yielded no international accord.
• EPA prefers legislation, but laying groundwork for regulatory action.
• Legislation proposed to stop regulation under CAA.
• **Reporting Rule**
  - Effective 12/29/09 - requires reporting of GHG emissions from large sources (<25,000 tons).

• **Endangerment Finding**
  - Effective 1/14/10 - finds that concentrations of six key GHG’s threaten public health & welfare.
  - Finding does not itself impose requirements on industry; prerequisite for future EPA action.
Outlook

• Senate has little appetite for climate change
• Separate energy bill from climate change?
• Will EPA aggressively move forward?
• International challenges: how to compel China and other developing nations to cooperate?
• Mexico City meeting in December 2010.
**Current Law Tax Incentives**

**Biodiesel Blenders Excise Tax Credit:**

- Biodiesel when blended with diesel fuel and sold is eligible to receive a $1.00 per gallon credit against excise tax liability. Allows for cash refunds to degree that credit exceeds excise tax liability.

- P.L. 110-343 provided $1 for all biodiesel, regardless of feedstock.
Biodiesel Blenders Excise Tax Credit:

- Blenders credit can be claimed on both imported and exported fuels.

- P.L. 110-343 closed “Splash and Dash” loophole effective 5/15/08. Fuel produced outside the U.S. for use outside the U.S. does not qualify for biodiesel tax Incentives.
Small Producer Tax Credit:

- 10 cents per gallon income tax credit. To qualify, facility’s annual production capacity cannot exceed 60 million gallons.

- Credit is capped at 15 million gallons of capacity for a total of $1.5 million per facility per year.

- Credit applicable to only agri-biodiesel production.
The blenders excise tax credit and income tax credits that comprise the biodiesel tax incentive expired after 12/31/09.

One of 73 provisions in the IRC that expired after 12/31/09.
Immediate Priority – Retroactive Extension of Biodiesel Tax Incentive

  - Extended 49 of 73 Expiring Tax Provisions for 1 Year, Including the Biodiesel Tax Incentive.
**Senate Prospects:**

- Senate has approved a retroactive extension of the Bio-diesel tax incentive for one year

**Barriers to Enactment**

- Negotiations must reconcile differences between the House & Senate versions
- Identical bills must be approved by both chambers before being signed by the President
NBB Supports Multiple Year Extension of Credit and Changing to Production Excise Tax Credit, Consistent with NBB Resolutions:

- S. 1589 (Cantwell/Grassley) and H.R. 4070 (Pomeroy/Shimkus)

Broad Elements of Proposal:

- Repeal current law Biodiesel Mixture Income Tax Credit and Biodiesel Blenders Excise Tax Credit.
- Enact Biodiesel Production Excise Tax Credit of Equal Value.
- Multiple Year Extension of Reformed Tax Incentive.
Elements of Proposal:

- Credit can be claimed on production occurring at IRS registered biodiesel production facilities or IRS registered Fuel Terminals. Fuel must be produced domestically to qualify for incentive.
Elements of Proposal:

- Biodiesel becomes a taxable fuel subject to federal 24.3 cents per gallon diesel fuel excise tax without regard to existing Treasury excluded liquids rule.
  - Allow tax-exempt biodiesel sales to fuel terminals registered with the IRS.

- Five year extension of reformed incentive.
Benefits of Reform Proposal:

- Focus incentive on domestic production.
- Administrative/compliance benefits.
- Protects integrity of tax incentive.
Contact Information

National Biodiesel Board

www.biodiesel.org

Biodiesel Hotline

www.bioheatonline.com