



Comments for Docket ID No. EPA-HQ- OAR-2005-0161

Energy Independence & Security Act of 2007 (EISA)
***Regulation of Fuels and Fuel Additives: Changes to Renewable Fuel
Standard Program***
Environmental Protection Agency Federal Register Notice of May 26,
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The Council of Western State Foresters represents the combined interests of seventeen western States and six Pacific Island Territories in the United States.

We appreciate the opportunity to comment on the draft Regulations of Fuels and Fuel Additives: Changes to the Renewable Fuels Standard Program, and request that you consider our comments as you finalize your rulemaking. Specific comments for each of the sections of the federal register notice are provided below.

The Council of Western State Foresters recognizes that the specific language in the Energy Independence and Security Act of 2007 (EISA 2007) puts restrictions on what material qualifies as “renewable biomass.” However, a broad interpretation of woody material included in the definition of “renewable biomass” will help to meet our country’s need for large amounts cellulosic biofuels, while accomplishing important forest management, hazardous fuels, and landfill diversion goals. Using woody biomass in a productive manner for bioenergy also reduces potential GHG emissions associated with alternative fates such as emissions from a wildfire, slash pile burning, and decomposition in a landfill. For a large portion of the western U.S. the ability to help offset costs of hazardous fuels and forest restoration activities, and the ability to help diversify forest-based economies will be foregone if the definition of “renewable biomass” excludes major sources of available woody biomass feedstocks.

A significant portion of currently available woody biomass (estimates recently updated for the DOE/USDA Biofuels Feedstock Assessment) is excluded from the definition of renewable biomass in the EISA 2007. This is especially true for the Western U.S. with large areas of federal forests. For example a recent biomass study conducted by Oregon Forest Resources Institute identified that 70 percent of the woody biomass supply in Oregon where treatments are needed is located on federal lands.¹ Although this does not preclude producing cellulosic biofuels from these non-qualified feedstocks, it significantly reduces the likelihood that biofuels production facilities will be built if they do not qualify for biofuels production tax credits for the majority of their feedstock.

Furthermore, having a diversity of markets for materials produced as a by-product of forest management activities helps to maintain economic incentives for private forest landowners to keep their lands as working forests. Many forest landowners are choosing to convert their forested lands to other uses, including development, because their working forest can no longer compete with development land values. The loss of growing, carbon-sequestering forested landscapes runs counter to the life cycle and environmental goals of the Renewable Fuels Standard (RFS2). Biomass removal practices that preserve soils, and improve health of residual forests, and restore forest health, and reduce wildfire risk should be considered for renewable fuels feedstocks, not only biomass from planted forests.

Finally, land use restrictions for state and private lands included in the draft regulations could put further restrictions on utilization of biomass from legal forest management activities conducted by private landowners and state forest managers.

Please see below for our detailed comments related to provisions of the draft RFS2 regulation.

Pete Anderson

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Detailed comments on provisions of the draft RFS2 Regulations:

Feedstocks included in RFS2 as “renewable biomass”

In order to meet the RFS2 targets and associated environmental benefits, the EPA should interpret as broadly as possible the feedstocks for inclusion in the renewable biomass definition. In many cases, the language of the law was interpreted narrowly in the draft regulations, rather than broadly. Specific suggestions/recommendations are offered below.

- WUI- and “areas at risk of wildfire” The woody material removed to reduce fire risk to communities must be included in the definition of “renewable biomass”. The definition should be consistent with the definition of WUI and areas at risk of wildfire that are currently in legislation, specifically the Healthy Forests Restoration Act of 2003. This definition is provided below. *(Page 78 Section iv Biomass Obtained from Certain Areas at Risk from Wildfire)*
- Municipal Solid Waste (MSW) should be included in the definition of renewable biomass. MSW is some of the most economically available woody feedstock material that is increasingly being banned from landfills. Its inclusion can increase diversity of sources and volume for biofuels production facilities that will most likely be in or near communities. Multiple feedstock sources will also reduce the risk of feedstock shortages, especially during winter months. *(Page 22 Change in How Renewable Fuel is Defined and page 206-208)*
- Old Growth- EPA should use the US Forest Service definition of old-growth (see below) and provide for biomass removal that helps achieve ecological restoration or that helps maintain ecological integrity of these forests. The definition should not include reference to tree age (200 year old) or “virgin” forests. *(Page 77 Old Growth)*
- Natureserve and State Natural Heritage databases are proposed by EPA for using these designations to identify “ecologically sensitive lands” where slash and pre-commercial thinnings could not be used as feedstock for production of renewable fuel. The CWSF are concerned about land use restrictions for state and private lands included in the draft regulations that could put further restrictions on utilization of biomass from legal forest management activities conducted by private landowners and state forest managers. Furthermore, biomass removal may be fully consistent and appropriate for addressing conservation threats and restoration needs for some of the identified “ecologically sensitive” forest lands, especially where returning the system to a more traditional fire regime is part of the system’s ecology and where fire suppression has contributed to the current condition. New bioenergy markets could help make restoration efforts on these lands more economical. We recommend not automatically excluding Nature Serve areas from potentially contributing to renewable biomass. *(Page 75-77 Slash and Precommercial Thinnings)*

Direct and Indirect international land use impacts in life-cycle assessment

As the EPA states in the preamble, the science to determine indirect international land use impact in the biofuel life cycle is still developing. There are large uncertainties and lack of evidence to support theoretical scenarios of how changing U.S. biofuels production can be linked in a cause and effect to land use changes in other countries. There are a large number of factors that affect land use change that go beyond biofuels. To try to attribute changes only to biofuels production in the U.S. would have a high level of uncertainty and inaccuracy. The Energy Independence and Security Act requires the National Academies of Science to produce a study and report on this topic along with other associated environment effects, which may provide some valuable insight into how to consider this issue. Therefore EPA should consider this issue when reviewing and updating the RFS in five years rather than incorporating this issue now when large questions about the scientific basis remain. *(Page 268-270 Section VI Impacts of the Program on Greenhouse Gas Emissions)*

GHG emissions associated with land conversion

Wood products produced as a result of forest land conversion should be accounted for in GHG emissions associated with different types of land conversion. Many of these products store sequestered carbon long after they are removed from the landscape’s terrestrial carbon pool, and should be considered as carbon release happening over time rather than just a one-time release of carbon when the land is converted to a non-forest use.

This analysis should not include foregone carbon sequestration associated with forest lands converted to other uses as an indirect effect of biofuels production. If the converted land was once undisturbed then the system was likely mature and in equilibrium and not necessarily sequestering additional carbon if left alone. If the converted land was previously disturbed, there is high probability it will be disturbed again and the accumulated carbon released into the atmosphere and/or stored in forest products. (*Page 295-296 GHG Emissions Associated with Different Types of Land Conversion*)

Verification or Certification of “Renewable Biomass”

Chain of custody tracking system, records and documents proving that woody feedstocks meet the criteria for renewable biomass will be problematic because most of these materials are not part of an existing commodity market. This will be particularly challenging because there will be a large portion of available woody material within any selected supply shed that is excluded from the definition of “renewable biomass”. Segregation of the various sources of woody biomass will be necessary but difficult to accomplish and/or verify biomass under the proposed interpretation of the definition. The complexity of certifying that forest lands have been managed since December 2007 goes beyond sales records or management plans. The proposed use of written receipts creates an unrealistic burden on landowners to comply and could lead to qualified feedstocks not being utilized due to the cost and difficulty in certifying renewable materials. If a landowner has not taken part in federal, state, or local government planning efforts, and their management has not involved purchase or sale of trees they would not have the proposed documentation.

We agree with EPA that there is currently no third-party forest certification system that incorporates all of the complexities of the highly restrictive RFS2 “renewable biomass” definition. However, there are forestry certification systems available that represent accepted sustainable forestry practices. We recommend utilizing existing systems that have been developed and tested over time. All parties who will participate in the verification system should be involved in designing a system that integrated and utilizes existing business documents as much as possible to meet the RFS2 documentation requirements. (*Page 89 Review of Existing Programs*)

Access to databases- cooperation with other federal agencies (satellite data) and tracking of land conversion

The narrow and complex definition of “renewable biomass” in the RFS2 creates significant challenges in using satellite data and existing land classification systems. The CWSF recommends an interpretation that would allow for use of these systems and data.

Definitions

The Draft proposed Rule creates new definitions that are likely to complicate implementation. We recommend that existing, well-established definitions or those already enacted in other related legislation be used whenever possible rather than creating definitions unique to the RFS2.

Forested Land: From Forest Inventory and Analysis (FIA) program in Section 3(e) of the Forest and Rangeland Renewable Resources Research Act of 1978, P.L. 95-307, 16 USC 1641). The definition of forestland should be consistent with the definition used by the FIA program. The FIA definition of forest is as follows:

“ Land at least 120 feet wide and 1 acre in size with at least 10 percent cover (or equivalent stocking) by live trees of any size, including land that formerly had such tree cover and that will be naturally or artificially regenerated. Forest land includes transition zones, such as areas between forest and nonforest lands that have at least 10 percent cover (or equivalent stocking) with live trees and forest areas adjacent to urban and built-up lands. Roadside, streamside, and shelterbelt strips of trees must have a crown width of at least 120 feet and continuous length of at least 363 feet to qualify as forest land. Unimproved roads and trails, streams, and clearings in forest areas are classified as forest if they are less than 120 feet wide or an acre in size. Tree-covered areas in agricultural production settings, such as fruit orchards or tree-covered areas in urban settings such as city parks, are not considered forest land.”

Source: Smith, W. Brad, tech. coord.; Miles, Patrick D., data coord.; Perry, Charles H., map coord.; Pugh, Scott A., Data CD coord. 2009. Forest Resources of the United States, 2007. Gen. Tech. Rep. WO-78. Washington, DC: U.S. Department of Agriculture, Forest Service, Washington Office. 336 p.

Tree Plantation: should not be restricted to 1 or 2 species. The expected climate change impacts on forests requires that we plant trees with a consideration for climate change, which may suggest planting multiple species rather than monocultures. Suggest changing the definition to “A stand of no less than one acre in area with trees of a similar age.”

Forest: See forestland.

Planted tree: Reword the definition to: “trees from stands established by planting, artificial or natural seeding, or coppice.” This wording efficiently conveys the meaning implied by the proposed definition.

Tree Residue: See slash.

Pre-commercial Thinning: The CWSF agrees with EPA that reference to “having no commercial value” should be removed from the definition of pre-commercial thinning. We recommend not having a diameter limit for this definition because the market situation needs to evolve to allow material to move between markets depending on local economic conditions. We support including diseased or insect-infested trees, trees killed by fire, flood, wind and other extreme events in the definition of pre-commercial thinning for the reasons contained in the proposed rules. We do not support a maximum diameter, as this would necessarily be an arbitrary limit and would unnecessarily complicate implementation. Pre-commercial thinning is conducted for numerous purposes and can target vegetation of different species, crown sizes, condition, stand position etc. Placing a diameter limit would not only be arbitrary, but could work at cross-purposes for the thinning itself, including removal of diseased or infested trees to maintain stand health. Suggested definition: “Removal of trees from a stand of trees in order to reduce stocking to improve overall stand vigor, concentrate future growth on more desirable trees, and in fire prone ecosystems, reduce the potential of stand loss to fire.”

Old Growth and Late Successional Forests: Biomass removal that helps achieve ecological restoration or that helps maintain ecological integrity of late successional forests should be included in the definition of renewable biomass. The definition should not include reference to tree age (200 year old) or “virgin” forests. There are numerous definitions of old growth in literature and policy. FAO lists 98 definitions for old growth (<http://www.fao.org/docrep/005/y4171e/Y4171E34.htm>). The USFS has developed specific technical old-growth definitions for each of the major forest types found in the United States, a generic definition of old growth is as follows:

“Old growth encompasses the later stages of stand development that typically differ from earlier stages in a variety of characteristics which may include tree size, accumulations of large dead woody material, number of canopy layers, species composition, and ecosystem function. “

Nonforest land: Use the definition used by the US FS Forest Inventory and Analysis program and RPA Assessment provided below:

nonforest land—“Land that has never supported forests and lands formerly forested where use of timber management is precluded by development for other uses”. (Note: Includes area used for crops, improved pasture, residential areas, city parks, improved roads of any width and adjoining clearings, powerline clearings of any width, and 1- to 4.5-acre areas of water classified by the Bureau of the Census as land. If intermingled in forest areas, unimproved roads and nonforest strips must be more than 120 feet wide, and clearings, etc., must be more than 1 acre in area, to qualify as nonforest land.)

Source: Smith, W. Brad, tech. coord.; Miles, Patrick D., data coord.; Perry, Charles H., map coord.; Pugh, Scott A., Data CD coord. 2009. Forest Resources of the United States, 2007. Gen. Tech. Rep. WO-78. Washington, DC: U.S. Department of Agriculture, Forest Service, Washington Office. 336 p.

Use the SAF Dictionary of Forestry definition of plantation provided below:

Plantation: (see Tree Plantation)

Slash: The CWSF agrees with EPA that the term “slash” is more descriptive than “tree residue,” and yet in practice means the same thing. Using the term “slash” rather than “tree residue” makes sense and will be less confusing. Also the definition of slash should clarify that slash can include tree bark and can be the result of any natural disaster, including flooding.

Wildland Urban Interface- Areas at Risk from Wildfire: Use definition that is already in the Healthy Forests Restoration Act of 2003.

Healthy Forests Restoration Act of 2003 (PL 108-148 and HR1904). Specifically:

WILDLAND-URBAN INTERFACE.—The term “wildland-urban interface” means—

- (A) an area within or adjacent to an at-risk community that is identified in recommendations to the Secretary in a community wildfire protection plan; or
- (B) in the case of any area for which a community wildfire protection plan is not in effect—
 - (i) an area extending 1/2-mile from the boundary of an at-risk community;
 - (ii) an area within 1 1/2 miles of the boundary of an at-risk community, including any land that—
 - (I) has a sustained steep slope that creates the potential for wildfire behavior endangering the at-risk community;
 - (II) has a geographic feature that aids in creating an effective fire break, such as a road or ridge top; or
 - (III) is in condition class 3, as documented by the Secretary in the project-specific environmental analysis; and
 - (iii) an area that is adjacent to an evacuation route for an at-risk community that the Secretary determines, in cooperation with the at-risk community, requires hazardous fuel reduction to provide safer evacuation from the at-risk community.

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