



National Biodiesel Board
605 Clark Ave.
PO Box 104898
Jefferson City, MO 65110-4898
(800) 841-5849 phone
(573) 635-7913 fax

National Biodiesel Board
1331 Pennsylvania Ave., NW
Suite 512
Washington, DC 20004
(202) 737-8801 phone
www.biodiesel.org

June 11, 2012

Via Electronic Mail

Ms. Sylvia Norris
U.S. Energy Information Administration
Office of Petroleum and Biofuels Statistics
U.S. Department of Energy
1000 Independence Ave. SW., EI-25
Washington, DC 20585
Sylvia.Norris@eia.gov

Re: U.S. Energy Information Administration's Monthly Biodiesel Production Survey (EIA-22M); Agency Information Collection Activities: Information Collection Extension With Change; Comment Request, 77 Fed. Reg. 21,756 (April 11, 2012)

Dear Ms. Norris:

The National Biodiesel Board (NBB) appreciates having the opportunity to comment on the Petroleum Supply Reporting System in general and, more specifically, the Monthly Biodiesel Production Survey (EIA-22M). The Energy Information Administration (EIA) is seeking to extend its survey of the U.S. petroleum supply system for three years and is seeking comment on whether the proposed collection of information is necessary for the proper performance of the functions of the agency, the accuracy of the agency's estimate of the burden of the proposed collection of information, ways to enhance the quality, utility, and clarity of the information to be collected, and ways to minimize the burden of the collection of information on respondents.

We appreciate the work of the Energy Information Administration (EIA) and support EIA's effort to aggregate industry data. The National Biodiesel Board has previously offered comment (see NBB comments from December 12, 2011) on the 22M Monthly Biodiesel Production Survey however offers the following comments to reaffirm our position to ensure the robustness of the information collected.

As background, NBB is the national trade association representing the biodiesel industry as the coordinating body for research and development in the United States. Since its founding in 1992, NBB has developed into a comprehensive industry association that coordinates and interacts with a broad range of cooperators including industry, government, and academia. NBB's membership is comprised of biodiesel producers; state, national, and international feedstock and feedstock processor organizations; fuel marketers and distributors; and technology providers.

Regulatory Burdens on Biodiesel Producers

Regulatory reporting is a burden for biodiesel producers and already our industry provides production data to EPA. NBB requests that EIA work cooperatively with EPA regarding the types of information currently collected to minimize the reporting burden on U.S. biodiesel producers.

The Supporting Statement submitted by EIA outlines its efforts to identify duplication with respect to the burdens placed on the biodiesel industry. It references the Renewable Fuel Standard Compliance Report Forms submitted to the U.S. Environmental Protection Agency (EPA) under the Energy Policy Act of 2005 to track compliance with the Renewable Fuel Standard (RFS) program. However, it is unclear whether EIA has assessed all of the reporting requirements under EPA's RFS program. In 2010, EPA revised its regulations implementing the RFS program based on amendments by the Energy Independence and Security Act of 2007 (EISA). U.S. biodiesel producer members must both register and submit routine reports with EPA as part of the revised RFS program (RFS2). As noted on the EPA website,

The Renewable Fuel Standard (RFS1) program was expanded under the Energy Independence and Security Act (EISA) of 2007. As of July 1, 2010, the RFS2 regulations require renewable fuel producers and importers, gasoline and diesel refiners, renewable fuel exporters, Renewable Identification Number (RIN) owners, and any other RFS2 regulated party to submit all RIN generation information and other RIN transactions to EPA Moderated Transaction System (EMTS). Using data generated from EMTS, EPA provides aggregated monthly data on RIN generation and renewable fuel volume production for specific fuel categories.

EPA, *RFS2 EMTS Informational Data*, <http://www.epa.gov/otaq/fuels/rfsdata/index.htm>. As such, NBB's producer members currently report production information to EPA. NBB requests that EIA work cooperatively with EPA regarding the types of information currently collected to minimize the reporting burden on U.S. biodiesel producers.

Needs for and Uses of the Data with EIA-22M

EIA collects production inputs via the EIA-22M reporting form; primarily feedstock information. NBB noted in previous comments submitted to EIA there are currently few sources of aggregated feedstock usage data and this information, when reported routinely, would be beneficial.

To better effectuate this use, NBB does recommend modification of Section 3, subsection C, "Inputs to Production" in the 22M survey form. During the three (3) year time horizon of the survey, additional feedstock sources than those currently listed in subsection C will be utilized by biodiesel producers. NBB recommends the feedstocks listed in subsection C of Section 3, to the extent possible, should match the feedstocks approved or in the approval process by U.S.

EPA as an Advanced Biofuel. Examples of feedstocks that should be incorporated in subsection C include camelina oil, pennycress oil, and distiller's corn oil (sometimes referred to as inedible corn oil). In addition, there are some feedstocks currently listed in subsection C that are not approved pathways with the RFS2 Program and therefore, would most likely not be used as a feedstock for biodiesel production. Those feedstocks should be eliminated from the list. When non-approved RFS2 feedstocks are included in a report to EIA, presumably under the "Other" category, we encourage EIA to inform EPA that non-approved feedstocks have been used in the production of biofuels.

U.S. EPA also is taking action to eliminate ambiguity regarding canola and rapeseed by replacing the term "canola" with "canola/rapeseed" on program tables.¹ For consistency purposes, similar modifications by EIA in its reference of this feedstock would be appropriate. Among the goals of the RFS program is to diversify the feedstocks used to produce renewable fuels, and it would be useful for the industry and users of the information have reporting of feedstocks consistent with those approved under the RFS2 program.

Production, Inputs, Stocks and Sales of B100

In our view, on page 3, question 3, under 'Production, Inputs, Stocks and Sales,' it doesn't make much sense to include line 3.A.d. where you ask for "Total B100 included in Sales of Biodiesel Blends." Producers simply start with B100 inventory, produce B100 during the month, sell B100 (in some form) during the month, and end up with an ending inventory. We are not sure of the logic in asking the amount of B100 contained in a blend.

Biomass-based Diesel as a Category

EIA's survey should be consistent with the approved fuel types under the RFS2 program, particularly those that utilize the same feedstocks being tracked by EIA for biodiesel. The title "Monthly Biodiesel Production Survey" should be changed to "Monthly Biomass-based Diesel Production Survey." In Section 2, the categories should align with approved facilities under the RFS2 Biomass-based Diesel program, including Biodiesel, Renewable Diesel and any other approved pathways qualifying for RFS2 program.

EISA amended the RFS program by, among other things, establishing specific mandates for biomass-based diesel, advanced biofuels and cellulosic biofuels. 42 U.S.C. §7545(o)(2)(A)(i), (B)(i)(II-IV), (B)(ii). Biomass-based diesel and cellulosic biofuel are subcategories of advanced biofuels.² *Id.* §7545(o)(1)(B)(ii)(IV), (VII). In the 2010 RFS2 rule, EPA approved pathways for biodiesel and renewable diesel using various feedstocks, such as soybean oil, algal oil, and

¹ EPA proposed this change in a July 1, 2011 Notice of Proposed Rulemaking. 76 Fed. Reg. 38,844, 38,877 (July 1, 2011).

² EIA is required to provide EPA with estimates of transportation fuel, biomass-based diesel and cellulosic biofuel projected to be sold or introduced into commerce in the United States. 42 U.S.C. §7545(o)(3).

waste oils, under these categories.³ 40 C.F.R. §80.1426, Table 1; 75 Fed. Reg. 14,670, 14,872 (Mar. 26, 2010).⁴ EPA's recent direct final rule also attempts to clarify which of these fuels and feedstocks are currently approved. To the extent EIA does not already collect the information and consistent with EIA authority, EIA should also require reporting from those companies that are registered or produce additional fuels EPA has approved under the RFS2 program that utilize the same feedstocks included on the biodiesel survey or may also be considered biomass-based diesel under the RFS2 program.⁵ These fuels include renewable diesel, jet fuel, home heating oil and cellulosic diesel. Each can be considered biomass-based diesel or advanced biofuel under the RFS2 program, and the same reasons behind EIA's survey of biodiesel production apply equally to these fuels. With the expansion of the program as a result of EISA, EPA's revised RFS2 regulations and EPA's clarifications of November 30, 2011, EIA should consider expansion of its survey form and those required to provide responses.

EIA has authority to request such information in addition to biodiesel production. The Energy Policy Act gives EIA authority to conduct surveys of "renewable fuels" regarding the renewable fuels mandate. 42 U.S.C. §7135(m). EPA defines "non-ester renewable diesel" as renewable fuel which is: (1) registered as a motor vehicle fuel or fuel additive under 40 C.F.R. Part 79, if the fuel or fuel additive is intended for use in a motor vehicle; and not a mono-alkyl ester. 40 C.F.R. §80.1401. Although 42 U.S.C. §7135(m) refers to renewable fuel used in the motor vehicle market, EISA allows jet fuel and home heating oil to be treated as "additional renewable fuel" under the RFS2 program, 42 U.S.C. §7545(o)(1)(A), and EPA has provided for the generation of Renewable Identification Numbers for jet fuel and home heating oil as biomass-based diesel, advanced biofuels, and cellulosic biofuels for approved pathways. Moreover, companies may not be able to break out their production numbers by the ultimate intended use.

NBB believes there are few companies currently producing these additional fuels types, and so their inclusion in the survey would not add significantly to the burdens identified by EIA in support of this survey.⁶ The inclusion of these fuels would provide benefits to EIA, EPA, the industry and the public in better understanding production and use of these fuels.

³ EPA refers to "cellulosic diesel" as "any renewable fuel which meets both the definitions of cellulosic biofuel and biomass-based diesel, as defined in this section 80.1401. Cellulosic diesel includes heating oil and jet fuel made from cellulosic feedstocks." 40 C.F.R. §80.1401.

⁴ Based on EISA, biodiesel and renewable diesel produced through the co-processing of biomass and petroleum cannot be considered biomass-based diesel, but only advanced biofuels. By statute, biomass-based diesel excludes "renewable fuel derived from co-processing biomass with a petroleum feedstock." 42 U.S.C. §7545(o)(1)(D). For purposes of the RFS2 program, EPA only counts the portion of such fuels produced from the biomass feedstock. 40 C.F.R. §80.1426(f)(4); 75 Fed. Reg. at 14,714.

⁵ "[A] diesel fuel produced from cellulosic feedstocks that meet the 60% GHG threshold could qualify as either cellulosic biofuel or biomass-based diesel." 75 Fed. Reg. at 14,685.

⁶ EPA has estimated "that 150 mill gallons of renewable diesel could be produced in 2012." 76 Fed. Reg. at 38,857.

Finally, there is a finite list of facilities that are registered with EPA and that qualify for the Biomass-based Diesel program. The facilities may be domestic or foreign facilities and they may produce biodiesel, renewable diesel, or some other approved fuel pathway. At any rate, every facility registered with EPA under the Biomass-based Diesel category (RIN code of D4 or D5) should be required to report production and feedstock for this report. To the extent companies do not report, then EIA should indicate how many of the more than 200 registered facilities actually reported in any given month. Even if the volume is zero, a report should be completed. The marketplace is in need of useful data and the EIA-22M monthly production survey can assist in better understanding data relating to Biomass-based Diesel feedstock and production.

Needs for and Uses of the Data with EIA-805 and EIA-815

For the purpose of clarity, NBB recommends that EIA-815, Part 3, Terminal and Blending Activity, be modified to identify biodiesel as a distinct fuel for product code 203 (versus Biomass-based Diesel fuel). Multiple fuel technologies can be utilized to comply with the Biomass-based Diesel fuel definition and changing product code 203 to biodiesel will help eliminate potential confusion for survey respondents.

EIA is also proposing to incorporate changes to EIA-805, “Weekly Bulk Terminal and Blender Report”. NBB recommends that EIA-805 incorporate biodiesel into Part 3, Terminal Blender Activity as an item description.

Again, NBB appreciates the opportunity to comment on the final survey submitted by EIA to OMB for its review. If you have any questions regarding these comments, please do not hesitate to contact me.

Sincerely,

Larry H. Schafer

Larry Schafer
Senior Advisor
National Biodiesel Board