



Emily Schilling

Partner
801.799.5753
Salt Lake City
ecschilling@hollandhart.com

EPA Proposes Lifecycle Greenhouse Gas Emissions Estimates That Could Define the Future of Biofuels

EPA Proposes Lifecycle Greenhouse Gas Emissions Estimates That Could Define the Future of Biofuels

Insight — 5/7/2009

On May 5, 2009, EPA released a pre-publication draft of a proposed rulemaking on the calculation of lifecycle greenhouse gas ("GHG") emissions that has the potential to shape the future of the biofuels industry at the same time the Departments of Agriculture and Energy announced the availability of nearly \$2 billion in funding for advanced biofuels research and development.

The EPA proposal implements the Renewable Fuel Standards ("RFS") mandate in the 2007 Energy Independence and Security Act¹ ("EISA"), which requires EPA to set eligibility requirements for the RFS based on greenhouse gas ("GHG") emission reduction thresholds for the various categories of fuel. These GHG emission reduction thresholds are based on the fuels' "lifecycle" GHG emissions, which the EISA defines as "the aggregate quantity of greenhouse gas emissions (including direct emissions and significant indirect emissions such as significant emissions from land use changes) . . . including all stages of fuel and feedstock production and distribution, from feedstock generation or extraction through distribution and delivery and use of the finished fuel to the ultimate consumer . . .²

EPA's rulemaking proposes a methodology for calculating the lifecycle GHG emissions that ultimately could result in the exclusion of conventional ethanol derived from corn starch from RFS eligibility. Those advanced biofuels that fare the best in the lifecycle analysis are switchgrass ethanol, corn stover ethanol, and waste grease biodiesel.

At the same time as the issuance of the proposed rule, the Departments of Agriculture and Energy announced substantial grant programs designed to jumpstart advanced biofuel development and production. Department of Agriculture Secretary Vilsack characterized ethanol as a "bridge to the next generation of biofuels," which he said USDA would support through \$1.1 billion in funding from the 2008 Farm Bill to construct or convert biofuel refineries and to create new cellulosic crops and products. Energy Secretary Chu also announced the availability of \$786.5 million in grant funding from the American Recovery and Reinvestment Act for the development of advanced biofuels and biofuel refineries. Secretary Vilsack said that these funds would be dispersed within the next 30 days.

EISA substantially expands the 2005 RFS by requiring 36 billion gallons of renewable fuel in the nation's motor vehicle supply by 2022.³ The overarching umbrella of renewable fuels is further defined to include advanced biofuel, cellulosic biofuel, and biomass-based diesel.⁴ Each of these fuels must meet stringent lifecycle GHG emissions reduction in order to be eligible for the RFS.⁵ Any renewable fuel that is produced in a facility that commenced construction after December 19, 2007 (the date of EISA's enactment) must meet a 20% threshold reduction in lifecycle GHG emissions as compared to a 2005 baseline, and EISA requires a 50% reduction in order for fuel to be classified as biomass-based diesel or advanced biofuel, and a 60% reduction in order to be classified as cellulosic biofuel.⁶ The Act does provide EPA with flexibility to reduce these emission reduction targets by up to 10 percentage points, which EPA is proposing to take advantage of as part of the May 5 rulemaking.

The proposed rulemaking will be subject to public comment for 60 days following the date of publication in the Federal Register, and a public hearing will be held in Washington, D.C. on June 9, 2009. The proposed finding will be published in the Federal Register some time in the next few weeks.

Please let us know if you have any questions regarding the proposal or its implications.

-
1. Pub. L. No. 110-140 (2007).
 2. EISA § 201(1)(H), to be codified at 42 U.S.C. § 7545(o).
 3. Id. § 202(a)(2).
 4. Id. § 201(a)(1).
 5. Id. § 201(1)(B)(ii).
 6. Id.

Subscribe to get our Insights delivered to your inbox.

This publication is designed to provide general information on pertinent legal topics. The statements made are provided for educational purposes only. They do not constitute legal or financial advice nor do they necessarily reflect the views of Holland & Hart LLP or any of its attorneys other than the author(s). This publication is not intended to create an attorney-client relationship between you and Holland & Hart LLP. Substantive changes in the law subsequent to the date of this publication might affect the analysis or commentary. Similarly, the analysis may differ depending on the jurisdiction or circumstances. If you have specific questions as to the application of the law to your activities, you should

seek the advice of your legal counsel.
