



JONES DAY
WHITE PAPER

THE RENEWABLE FUEL STANDARD PROGRAM: FIRST STEPS TO ADDRESS *MASSACHUSETTS v. EPA*

Hailed as the Bush Administration's first step to address global warming, the Environmental Protection Agency ("EPA") published the Renewable Fuel Standard ("RFS") program as a final rule on May 1, 2007. Regulation of Fuels and Fuel Additives: Renewable Fuel Standard Program, 72 Fed. Reg. 23,900 (May 1, 2007) (to be codified at 40 C.F.R. pt. 80).¹ The RFS program implements the Energy Policy Act of 2005 ("the Energy Act"). Energy Policy Act of 2005, 42 U.S.C. § 15801. The Energy Act sets out the requirements of the RFS program, including the required total volumes, the timing of the obligation, the obligated parties, the definition of renewable fuel, and the general framework for a credit trading program. Generally, the RFS program requires corn-based ethanol or other renewable fuels to represent at least 4.02 percent of the gasoline sold in the contiguous 48 states. Renewable Fuel Standard Program, 72 Fed. Reg. at 23,993.

The Energy Act amends Section 211(o) of the Clean Air Act and provides the statutory basis for the RFS program. The EPA states that the RFS program is designed first and foremost to increase the use of renewable fuels in motor vehicle fuel consumed in the United States. *Id.* at 23,902–03. EPA expects the RFS program will reduce dependence on foreign sources of petroleum, increase domestic sources of energy, and diversify the United States energy portfolio. *Id.* at 23,903. EPA also believes the expanded use of renewable fuels will provide reductions in carbon dioxide emissions that contribute to climate change and in air toxics emissions, such as benzene. *Id.* Unfortunately, EPA also projects that emissions such as hydrocarbons and nitrogen oxides will increase. *Id.*² Finally, EPA believes the RFS program will increase the market for agricultural products such as corn and soybeans and offset any possible loss in demand for

1. See Steven D. Cook, *Target for Renewable Fuel in Gasoline Set at 4 Percent in 2007 in EPA Final Rule*, DAILY ENV'T REPORT, April 11, 2007, at A-1.

2. See also Arnold W. Reitze, *Should the Clean Air Act be Used to Turn Petroleum Addicts into Alcoholics?*, 36 ELR 10745 (Oct. 2006) (article discussing pitfalls of increased ethanol use).

renewable fuels created by the Energy Act's repeal of the Reformulated Gasoline program's oxygen content mandate. *Id.*³ This White Paper will discuss the program structure and definitions; the basics of compliance, including recordkeeping and reporting; and liability issues. Finally, we will briefly outline the Bush Administration's "Twenty in Ten" energy initiative and the technological issues that pose real challenges to the desire to address the nation's hydrocarbon dependence and climate change.

PROGRAM STRUCTURE AND DEFINITIONS

Program Structure. The Energy Act requires the 48 contiguous states to use 4.7 billion gallons of ethanol or other cleaner-burning biofuels in 2007. EPA's 2007 target of 4.02 percent is intended to meet that requirement. Beginning with the 2008 compliance period, EPA will calculate the standard and publish it on November 30 of the preceding year. *Id.* at 23,993. The renewable fuel standard is calculated by using the following equation:

$$RFStd_i = 100 * RFV_i - Cell_i (G_i - R_i) + (GS_i - RS_i) - GE_i$$

Id. The abbreviations in the equation have the following meaning:

- RFStd_i = Renewable Fuel Standard, in year i, in percent
- RFV_i = Nationwide annual volume of renewable fuels required by Section 211(0)(2)(B) of the Clean Air Act for year i, in gallons
- G_i = Amount of gasoline projected to be used in the 48 contiguous states, in year i, in gallons
- R_i = Amount of renewable fuel blended into gasoline that is projected to be used in the 48 contiguous states, in year i, in gallons
- GS_i = Amount of gasoline projected to be used in non-contiguous states or territories (if the state or territory opts in), in year i, in gallons

- RS_i = Amount of renewable fuel blended into gasoline that is projected to be used in noncontiguous states or territories (if the state or territory opts in), in year i, in gallons
- GE_i = Amount of gasoline projected to be produced by exempt small refineries and small refiners, in year i, in gallons (through 2010 only, except to the extent a small refinery exemption is extended pursuant to § 80.1141(e)).
- Cell_i = Beginning in 2013, the amount of renewable fuel that is required to come from cellulosic sources, in year i, in gallons.

Id. at 23,994. Beginning in compliance year 2013, EPA will calculate the annual cellulosic standard and publish it on November 30 of the preceding year. *Id.*

Key Definitions. The Energy Act defines renewable fuel primarily on the basis of its feedstock. *Id.* at 23,903. A renewable fuel is defined in the Energy Act as a motor vehicle fuel that is produced from plant or animal products or wastes, as opposed to fossil fuel sources. Renewable fuels include ethanol, biodiesel, and other motor vehicle fuels made from renewable sources. The regulation defines renewable fuel as "motor vehicle fuel that is used to replace or reduce the quantity of fossil fuel present in a fuel mixture used to operate a motor vehicle and which is produced from any of the following grain, starch, oil seeds, vegetable, animal, or fish materials including fats, greases, and oils, sugarcane, sugar beets, sugar components, tobacco, potatoes, other biomass, or natural gas produced from a biogas source, including a landfill, sewage waste treatment plant, feedlot, or other place where decaying organic material is found." *Id.* at 23,992. Renewable fuels include cellulosic biomass ethanol, waste derived ethanol,⁴ biodiesel, non-ester renewable diesel, and blending components derived from renewable fuel. *Id.* Small-volume additives, excluding denaturants, less than 1.0 percent of the total volume of a renewable fuel, shall be counted as part of the total renewable fuel volume. *Id.* Fuel that is used in boilers or heaters is not a renewable fuel, even if produced by renewable fuel producers. *Id.*

3. The Reformulated Gasoline ("RFG") program was implemented in 1995. It set stringent controls on the emissions performance of gasoline, which were designed to significantly reduce summertime ozone precursors and year-round air toxics emissions. The RFG program required that RFG meet an oxygen-content standard. In addition, certain areas exceeding the national ambient air quality standard ("NAAQS") for carbon monoxide were required to meet an oxygen-content standard during the winter to reduce carbon monoxide emissions. At the same time Congress was developing the Energy Act, several states banned the use of MTBE in gasoline, causing refiners that supplied RFG in those states to switch to ethanol in order to meet the oxygen-content mandate for RFG, which in turn led to a sudden increase in demand. *Id.*

4. Ethanol covered in this definition shall be denatured as required and defined in Distribution and Use of Denatured Alcohol and Rum, 27 C.F.R. pt. 20 (2003) and Formulas for Denatured Alcohol and Rum, 27 C.F.R. pt. 21 (2003).

Cellulosic biomass ethanol means ethanol derived from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis, including dedicated energy crops and trees, wood and wood residues, fibers, animal wastes and other waste materials, and municipal solid waste. *Id.* Cellulosic biomass ethanol also includes ethanol produced in facilities where animal wastes or other waste materials are digested or otherwise used to displace 90 percent or more of the fossil fuel normally used in the production of ethanol. *Id.* Waste-derived ethanol means ethanol derived from either animal wastes, including poultry fats and poultry wastes, and other waste materials or municipal solid waste. *Id.* Biodiesel means a motor vehicle fuel or fuel additive that is registered as a motor vehicle fuel or fuel additive, a non-alkyl ester, meets ASTM D-6751-07, intended for use in engines that are designed to run on conventional diesel fuel, and derived from nonpetroleum renewable resources. *Id.* Non-ester renewable diesel means a motor vehicle fuel or fuel additive that registers as a motor vehicle fuel or fuel additive under the federal regulations,⁵ not a mono-alkyl ester, intended for use in engines that are designed to run on conventional diesel fuel, and derived from nonpetroleum renewable resources. *Id.*⁶

Obligated Parties' Requirements. Any party that produces gasoline for use in the 48 contiguous states, including refiners, importers, and blenders, is considered an obligated party under the RFS program. *Id.* at 23,994.⁷ Beginning in compliance year 2007, all obligated parties, with two exceptions, are expected to meet the Renewable Volume Obligation ("RVO"). *Id.* Small refiners and small refineries are exempt from meeting the renewable fuel requirements through 2010, and all gasoline producers located in Alaska, Hawaii, and noncontiguous United States territories are exempt from the RFS program indefinitely, unless the states and territories opt-in

to the program. *Id.* at 23,994, 23,999. Each obligated party must determine its own RVO based on the standard and the gasoline it produced or imported and any deficit carryover. *Id.* at 23,994, 23,998.⁸ Beginning in the 2008 compliance year, no more than 20 percent of the RVO can be met using the previous-year Renewable Identification Numbers ("RIN"). *Id.* at 23997. Obligated parties must acquire RINs from any party with assigned RINs or purchase unassigned RINs on the open RIN market. *Id.* at 23,996-98. Each obligated party must demonstrate that it has sufficient RINs to cover its RVO. *Id.* at 23,996. Every gallon-RIN covers one gallon of the obligated party's RVO. *Id.* The compliance period for 2007 is September 1 through December 31, and beginning in 2008, the compliance period is January 1 through December 31. *Id.* at 23,994.

The Renewable Identification Number. The RIN is the currency for the RFS program. A RIN is a unique number that represents a volume of renewable fuel. *Id.* at 23,993. RINs must be generated for all renewable fuel produced or imported on or after September 1, 2007. *Id.* at 23,995. The RIN is a 38-character numeric code. The format for the RIN is KYYYYCCCCFFFFFBBBBBRDSSSSSSSEEEEEEE.

Id. The meaning of the code is set out below:

- K= RIN assignment code; 1 = assigned; 2 = unassigned.
- YYYY = Year batch is produced/imported.
- CCCC = Company registration ID
- FFFFF = Facility registration ID.
- BBBB = Producer assigned batch number.
- RR = Equivalence Value for the renewable fuel.
- D = renewable type code, 1 = cellulosic; 2 = non-cellulosic.
- SSSSSSS = RIN block starting number.
- EEEEEEE = RIN block ending number.

5. See Registration of Fuels and Fuel Additives, 40 C.F.R. pt. 79 (2006).

6. Nonpetroleum renewable resources include, but are not limited to, plant oils, animal fats and animal wastes, including poultry fats and poultry wastes, and other waste materials, municipal solid waste and sludges, and oils derived from wastewater and the treatment of wastewater. *Id.* at 23,993.

7. A party that simply adds renewable fuel to gasoline, reformulated gasoline, conventional gasoline, reformulated gasoline blendstock ("RBOB"), conventional gasoline blendstock ("CBOB"), blendstock, including butane and gasoline treated as blendstock ("GTAB"), or any gasoline or unfinished gasoline that becomes finished with the addition of oxygenate, that is produced or imported to comply with a state or local fuels program, is not an obligated party. *Id.*

8. Gasoline volumes include: finished gasoline, RBOB, CBOB, blendstocks for oxygenate blending that are designed to comply with California state fuel requirements ("CARBOB"), gasoline treated as blendstock ("GTAB"), and blendstocks added to gasoline, such as MTBE or butane. *Id.* at 23,900, 23,994, 23,998. All renewable fuel is excluded. *Id.*

Id. A gallon-RIN represents a single gallon of renewable fuel. *Id.* at 23,993. A batch-RIN is a RIN that represents multiple gallon RINs. *Id.* A batch is defined as less than 100 million gallon-RINs and less than or equal to one calendar month's production. *Id.* at 23,996. RINs are valid for purposes of compliance with an RVO for the calendar year generated, the YYYY code or the following year. *Id.*

The Equivalence Value. The Equivalence Value ("EV") indicates how many gallon-RINs can be generated for each gallon of renewable fuel. The Energy Policy Act specifies that 1 gallon of cellulosic ethanol counts as 2.5 gallons for compliance purposes. *Id.* at 23,995. EPA calculated the Equivalence Value for several renewable fuels using volumetric energy content in comparison to ethanol, adjusted for renewable content. Corn ethanol has the EV of 1.0; biodiesel has the EV of 1.5; renewable diesel has the EV of 1.7; biobutanol has the EV of 1.3. *Id.* Thus 2,000 gallons of corn ethanol produced with an EV of 1.0 equates to 2,000 gallon-RINs generated. If 2,000 gallons of cellulosic ethanol is produced, it equates to 5,000 gallon-RINs generated because cellulosic ethanol has an EV of 2.5. EPA provided a process for calculating EV for other renewable fuels. *Id.*

BASICS OF COMPLIANCE

Producers and Importers. Producers and importers of renewable fuel are obligated parties and must generate RINs for a batch of renewable fuel, including renewable fuel in imported gasoline. *Id.* at 23,996. Renewable fuel producers that produce less than 10,000 gallons of renewable fuel each year, and importers that import less than 10,000 gallons of renewable fuel each year, are not required to generate and assign RINs to batches of renewable fuel. *Id.* They are also not required to participate in the registration, reporting, and recordkeeping requirements of 40 C.F.R. Section 80.1150 to 80.1152. *Id.* If those same producers and importers voluntarily participate, they must follow all requirements. *Id.*

Producers and importers may generate RINs for product owned on September 1, 2007, and for product generated or imported after that date. *Id.* The total number of gallon-RINs

generated is determined from the EV. *Id.* at 23,995. An assigned RIN cannot be transferred to another party without simultaneously transferring a volume of renewable fuel to that same party. *Id.* at 23,997. In addition, the K code in the RIN must be 1 to indicate it is assigned. *Id.* A producer or importer is not required to transfer ownership of a volume of renewable fuel without simultaneously transferring ownership of gallon-RINs if it can demonstrate that 1) it is a small-volume producer exempt from the RFS program, 2) the producer or importer received an equivalent volume of renewable fuel from another party without accompanying RINs, or 3) the producer or importer has generated RINs for cellulosic biomass ethanol or waste-derived ethanol with an EV of 2.5, and the producer or importer has chosen to specify a number of gallon-RINs as unassigned. *Id.*⁹

Marketers and Others Who Own Renewable Fuel. The requirements for marketers are designed to ensure that RINs generated are transferred to the obligated parties who need them. *Id.* In general, RINs must travel with the renewable fuel. *Id.* No more than 2.5 assigned gallon-RINs with a K code of 1 can be transferred to another party with every gallon of renewable fuel transferred to that same party. *Id.* Transfer means a change in ownership, not simply a change in custody. *Id.* Parties that take custody of renewable fuel, such as a company that stores or transports, but not ownership, have no recordkeeping or reporting responsibilities. *Id.* Any party can transfer renewable fuel without RINs, subject to the end-of quarter check. *Id.* At the end of each quarter, the sum of assigned gallon-RINs must be less than or equal to the volume of renewable fuel owned, multiplied by the EV per volume. *Id.* The equation would be as follows:

$$\text{Gallon-RINs} \cdot \text{Volume of Renewable Fuel} * \text{EV}$$

Id. The end-of-quarter requirement ensures the RINs have been transferred with the renewable fuel and that obligated parties will have the opportunity to obtain RINs. *Id.*

Blenders Compliance Issues. The regulatory definition of a refiner includes gasoline blenders. *Id.* at 23,994. Any party that produces gasoline from nonrenewable feedstocks or

9. The producer or importer must assign at least one gallon-RIN to each gallon of cellulosic biomass ethanol or waste-derived ethanol, representing the first 1.0 portion of the EV. *Id.* at 23,996.

blendstocks is an obligated party under the RFS program. *Id.* This includes gasoline blenders unless their sole activity is adding renewable fuels to conventional gasoline. *Id.* Parties that blend MTBE or other blendstocks into gasoline are gasoline producers and thus are obligated parties. *Id.* Blenders must separate RINs from volumes of renewable fuel upon blending with diesel or gasoline. *Id.* at 23,998. Separation of a RIN from a volume of renewable fuel means termination of the assignment of the RIN to a volume of renewable fuel. *Id.* This means changing the K code from 1 to 2. *Id.* The blender can then transfer or trade the RINs to any party without simultaneously transferring a volume of renewable fuel. *Id.*

Exporters of Renewable Fuel. EPA requires that a RIN go out of circulation if some volume of renewable fuel is exported. *Id.* Any party that exports renewable fuel from the 48 states is assigned an RVO based on the volume exported. The RVO for exporters is determined based on the following equation:

$$\text{RVO} = \text{Volume} * \text{EV} (+ \text{deficit carryover}).$$

Id. Most of the recordkeeping and reporting requirements applicable to obligated parties also apply to exporters of renewable fuel. *Id.* at 24,002.

Compliance Period. The annual compliance period is January 1 through December 31. *Id.* The first quarter (“Q1”) is January 1 to March 31. *Id.* Compliance reports are due May 31. *Id.* The second quarter (“Q2”) is April 1 to June 30. *Id.* Compliance reports are due August 31. *Id.* The third quarter (“Q3”) is July 1 to September 30. *Id.* Compliance reports are due November 30. *Id.* The fourth quarter (“Q4”) is October 1 to December 31. *Id.* Compliance reports are due February 28. *Id.* Annual reports are due February 28. *Id.*

In 2007, the first quarter of the program is Q3, and the first compliance report is due November 30. *Id.* The 2007 annual compliance reports are due February 28, 2008. *Id.* The 2007 list of RINs used to demonstrate compliance are due May 31, 2008. *Id.*

PAPERWORK

REGISTRATION

Registration is necessary prior to engaging in RIN generation, transactions, or owning RINs. *Id.* at 24,001. Registration forms may be submitted any time after May 1, 2007. *Id.* Obligated parties and renewable fuel exporters must register with EPA to receive an assigned company ID. *Id.* Facilities are assigned IDs based on their physical location. *Id.* Registration forms are posted on the OTAQ website. *Id.*¹⁰ For RIN generation, the company must have an EPA-assigned company ID or facility ID. *Id.* at 24,002. If a company or facility is already registered with EPA under another program, it does not have to re-register, but the information must be updated within 30 days of a change. *Id.* at 24,001.

RECORDKEEPING

Records must be retained for five years from the date they were created, and for records related to a transaction, records must be retained five years from the transaction date. *Id.* at 24,001. Either electronic or paper records are acceptable. *Id.* If EPA requests it, the documents must be made available and include the equipment or software needed to read electronic records; if requested by EPA, they must be converted to paper documents. *Id.* The regulations do not specify the form of product transfer documents (“PTDs”), one of the records obligated parties and exporters must maintain. *Id.* at 24,003. PTDs must generally identify a transfer of ownership of a volume of renewable fuel, which typically means an invoice rather than a bill of lading, which typically does not transfer ownership. *Id.* The RIN must appear in its entirety on the PTD. *Id.* PTD can be electronic. *Id.*

Assigned RINs may be transferred on the same PTD used to transfer ownership of the fuel or on a separate PTD. *Id.* A PTD that separately transfers the RINs must be transferred to the same party on the same day as the PTD used to transfer ownership of the renewable fuel. A PTD that separately transfers the RINs may be in the form of a spreadsheet or other type of list. If no assigned RINs are transferred with the renewable fuel, the PTD must state “No RINs transferred.” *Id.*

10. Form 3520-20A is the company/entity registration form, Form 3520-20B is the facility registration form for gasoline and ethanol, and Form 3520-20B1 is the diesel facility registration form. *Id.* at 24,001. Forms and instructions are linked to EPA's RFS page at <http://www.epa.gov/otaq/renewablefuels/>. *Id.*

REPORTING AND EPA'S CENTRAL DATA EXCHANGE ("CDX")

CDX. The CDX is an established portal through which electronic data are submitted. All registered parties have to first register with CDX to receive a CDX registration number. Registering with CDX is not the same as registering under Section 80.1150. A link to register is at the RFS web site at <http://www.epa.gov/otaq/renewablefuels>. Reports may be produced with software or using spreadsheets following instructions at the RFS web site.

RIN Transaction Report. Each RIN transaction must be reported on a separate RIN transaction report. *Id.* at 24,002. The report must be submitted to EPA by the end of the second month after the quarter in which the transaction occurred. *Id.* Transfers of RINs between parties must be included on some type of product transfer documentation. *Id.* A RIN transaction report that reports a retired RIN must describe the reason for retiring the RIN. *Id.*¹¹

Attest Engagements. Obligated parties, producers, exporters and importers of renewable fuel, and any party who owns RINs are all subject to the attest engagement requirements. *Id.* at 24,004. The attest engagement is an audit of the underlying documentation that forms the basis of the reports submitted to EPA. *Id.* The purpose is to verify the accuracy of the information contained in the reports. The parties subject to the requirements are obligated parties and exporters of renewable fuel, renewable fuel producers and importers, and any party that takes ownership of RINs. *Id.* The audit must be conducted by a CPA or certified internal auditor. *Id.* The reports subject to attest engagement are the annual compliance report, RIN generation report, RIN transaction reports, and quarterly gallon-RIN report. *Id.* The attest engagement is due May 31. The attest engagement report for 2007 may be submitted with the 2008 attest engagement report. *Id.*

Prohibitions. No renewable fuel producer or importer may produce or import a renewable fuel without assigning the proper equivalence value or identifying it by a proper RIN number. *Id.* No person may transfer a RIN that:

- Is improperly generated (*i.e.*, RIN for which the applicable volume was not produced);
- Is an invalid RIN (*i.e.*, duplicate, expired, based on incorrect equivalence value, does not represent fuel that meets definition of renewable fuel, based on volume not standardized to 60 degrees, obtained from foreign entity not approved by EPA);
- is not identified by a proper RIN number; or
- has a K code of 1 without transferring an appropriate volume of renewable fuel to the same person on the same day.

Id. Further, no obligated party may

- fail to acquire sufficient RINs or use invalid RINs to meet the party's RVO; or
- use a validly generated RIN to meet the party's RVO or separate and transfer a validly generated RIN where the party ultimately uses the renewable fuel in a heater or boiler.

Id. In addition, no person may fail to meet the requirement that at the end of each quarter, the party must not own more assigned RINs than gallons of renewable fuel. *Id.* at 23,997, 24,004. Finally, no person may cause another person to commit a prohibited act. *Id.* at 24,004.

LIABILITY

Persons are liable for violating prohibited acts or failing to meet a requirement. *Id.* Any person who causes another person to commit a prohibited act or causes another person to fail to meet a requirement is liable for violating the program. *Id.* A parent corporation is liable for violations committed by its subsidiaries. *Id.* Each partner to a joint venture is jointly and severally liable for violations committed by the joint venture. *Id.* Invalid RINs cannot be used to achieve compliance regardless of a party's good-faith belief that the RINs were valid at the time they were acquired. *Id.* Penalties will normally be sought from the person responsible for creating the invalid RINs, where such person can be identified.

11. Potential reasons for retirement include reportable spills, import volume corrections, renewable fuel used in boiler or heaters, RINs that are invalid, and RINs required to be retired in the context of an enforcement action. *Id.*

Penalties. Any person who commits the prohibited acts is liable for up to \$32,500 for each day or each violation and the amount of economic benefit. *Id.* Any person found liable for failure to meet its RVO or causing another person to fail to meet its RVO is subject to a separate day of violation for each day in the annual averaging period. *Id.* Any person liable for a failing to meet or causing another person to fail to meet any requirement is liable for a separate day of violation for each day the requirement remains unfulfilled. *Id.*

CONCLUSION

The publication of the RFS program appears to be the initial steps toward a flurry of future legislation and regulation. Shortly after the publication of the new RFS program, President Bush issued an executive order addressing the Supreme Court decision in *Massachusetts v. EPA*, which concluded EPA must regulate greenhouse gas emissions from motor vehicles or justify its failure to do so. 27 S.Ct. 1438 (2007). The executive order requires the EPA and Departments of Transportation, Energy, and Agriculture to cooperate in protecting “the environment with respect to greenhouse gas emissions from motor vehicles, nonroad vehicles, and nonroad engines, in a manner consistent with sound science, analysis of benefits and costs, public safety, and economic growth.” Exec. Order No. 13432, 72 Fed. Reg. 27,717 (May 16, 2007).¹² President Bush directed these agencies to take the first steps toward greenhouse gas emission reductions for motor vehicles using his “Twenty in Ten” plan. Another press conference outlining the Administration’s “New International Climate Change Framework” relating in part to renewable fuels occurred on May 31, 2007. A New International Climate Change Framework, 43 WEEKLY COMP. PRES. DOC. 711-12 (May 31, 2007).¹³

The President announced the “Twenty in Ten” goal during his 2007 State of the Union address, in which he challenged Congress to implement legislation that would reduce gasoline consumption by 20 percent within 10 years. Address Before a Joint Session of the Congress on the State of the Union, 43 WEEKLY COMP. PRES. DOC. 57 (January 23, 2007). He outlined a plan that would require an increase in the supply of alternative fuels and increase the fuel economy standards for cars. *Id.* The President’s goal is to conserve up to 8.5 billion more gallons of gasoline by 2017. *Id.*¹⁴ During a press conference announcing the May 14, 2007, Executive Order, he stated that the RFS program and the corporate average fuel economy (“CAFE”) standard for cars will contribute to his goal to reduce gasoline consumption by 20 percent by 2017. Remarks on Fuel Economy and Alternative Fuel Standards, 43 WEEKLY COMP. PRES. DOC. 630 (May 14, 2007). President Bush announced during the press conference that he has directed members of his administration to complete this process by the end of 2008. Remarks on Fuel Economy and Alternative Fuel Standards, 43 WEEKLY COMP. PRES. DOC. 630 (May 14, 2007). EPA Administrator Johnson told reporters in a press briefing that same day that the agencies will be ready to release a proposed rule in the fall with a final rule to be completed by the end of 2008.¹⁵

Currently there are 72 bills pending in the House and Senate relating to the CAFE standard and the use of renewable fuels. While there are clearly a plethora of initiatives and legislation to decrease the nation’s dependence on fossil fuels and increase the use of renewable fuels, the American Petroleum Institute (“API”) released a statement commenting that although ethanol will play role in the nation’s energy policy, its role will be limited by technology. Press Release, API, API Statement on White House Comments on Alternative Fuel

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12. See also, Statement on the Energy Information Administration’s Report, 43 Weekly Comp. Pres. Doc. 670 (May 24, 2007). (“We are effectively confronting the important challenge of global climate change through regulations, public-private partnerships, incentives, and strong economic investment.”).
 13. The Administration stated it is expanding the use of hybrid and clean diesel vehicles and biodiesel fuel, continuing to invest in new methods of producing ethanol—using everything from wood chips to grasses to agricultural wastes.
 14. The Administration outlines three steps to meeting the Twenty in Ten goal following the 2007 State of the Union Address: 1) increasing the supply of renewable and alternative fuels by setting a mandatory fuels standard of 35 billion gallons of renewable and alternative fuels in 2017, which is nearly five times the 2012 target of 7.5 billion gallons set in the Energy Act; 2) reforming and modernizing the CAFE standards for cars, which is 27.5 miles per gallon, and extending the current light truck rule, which is 21.6 miles per gallon; and 3) Congress must reform CAFE, allowing NHTSA to set standards based on their size. White House Office of Comm’n, STATE OF THE UNION POLICY INITIATIVES, <http://www.whitehouse.gov/stateoftheunion/2007/initiatives/print/index.html>.
 15. See Steven D. Cook, *Bush Orders Agencies to Write Rules to Limit Car Emissions, Cut Gasoline Use*, DAILY ENV’T REPORT, May 15, 2007, at A-12.

Plan (May 14, 2007) (on file with author). API noted further, “The timing of such breakthroughs is highly speculative. . . . It is critical that any alternative fuels standard include regular technology and feasibility reviews that would trigger appropriate adjustments to mandates to ensure companies and consumers are not penalized due to obstacles that might prevent meeting usage targets.” *Id.* Thus, while the motivation to make these changes may be high, the desire for change must be met with an equal financial commitment by Congress, the White House, and the private sector alike.

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