

## **SUPPORTING STATEMENT FOR FORM EIA-22M and EIA-22S**

### *Monthly Biodiesel Production Survey and Supplement to the EIA-22M Biodiesel Production Survey* OMB No. 1905-NEW

#### **INTRODUCTION**

The Energy Information Administration (EIA) of the U.S. Department of Energy (DOE) requests approval from the Office of Management and Budget (OMB) to conduct a new information collection survey using Form EIA-22M, *Monthly Biodiesel Production Survey*, and a one-time attached Form EIA-22S, *Supplement to the EIA-22M Biodiesel Production Survey*. This report is mandatory and required pursuant to the authority granted to the Department of Energy (DOE) by the Federal Energy Information Administration Act of 1974 (Public Law 93-275).

The purpose of the survey is to collect information from biodiesel producers regarding the following:

- Plant location, capacity, and operating status
- Biodiesel and co-product production
- Inputs to production
- Sales for end-use and resale
- Sales Revenue
- Biodiesel stocks

The objectives of the *Monthly Biodiesel Production Survey* and the *Supplement to the EIA-22M Biodiesel Production Survey* are as follows:

1. Comply with Section 503 of the Energy Policy Act of 1992 (EPACT1992) that requires DOE to estimate consumption of alternative and replacement fuels annually.
2. Comply with Section 1508 of the Energy Policy Act of 2005 (EPACT2005) that directs EIA to conduct a survey of “renewable fuels demand in the motor fuels market,” which includes biodiesel. Section 1508 specifies that EIA shall collect monthly data, on a national and regional basis for fuel production, quantity of fuel blended, fuel imports, fuel consumption, fuel market prices, and any other data the EIA determines are necessary to achieve the purpose of this section. Section 1508 also specifies that EIA shall collect or estimate annual production data, on a national and regional basis, for the 5 years prior to implementation of the survey.
3. Satisfy requests for information on biodiesel producers from offices within DOE, other governmental agencies, industry trade groups, the private sector, and the general public.
4. Provide Congress with a measure of the extent to which the objectives of EPACT1992 and EPACT2005 are being achieved.
5. Provide a statistically reliable, comprehensive, and publicly accessible source of annual and monthly data. At the current time, there are no sources of statistical data to monitor the size or direction of growth in the biodiesel industry.

The information collection proposed in this supporting statement has been reviewed in light of applicable information quality guidelines. It has been determined that the information would be collected, maintained, and used in a manner consistent with the OMB, DOE, and EIA information quality guidelines.

## **A. JUSTIFICATION**

### **A-1. Legal Authority**

The following provisions provide the authority for this data collection:

15 U.S.C. §772(b), of the Federal Energy Administration Act of 1974 (FEA Act), Public Law 93-275, outlines the types of individuals subject to the information collection authority delegated to the [Secretary] and the general parameters of the type of data which can be required. Section 772(b) states:

“All persons owning or operating facilities or business premises who are engaged in any phase of energy supply or major energy consumption shall make available to the [Secretary] such information and periodic reports, records, documents, and other data relating to the purposes of this Act, including full identification of all data and projections as to source, time, and methodology of development, as the [Secretary] may prescribe by regulation or order as necessary or appropriate for the exercise of functions under the Act.”

The functions of the FEA Act are set forth in 15 U.S.C. §764(b), of the FEA Act, which states that the Administrator shall, to the extent he is authorized by Section 764(a) of the FEA Act,

"...(2) assess the adequacy of energy resources to meet demands in the immediate and longer range future for all sectors of the economy and for the general public;...

(4) develop plans and programs for dealing with energy production shortages;

(5) promote stability in energy prices to the consumer, promote free and open competition in all aspects of the energy field, prevent unreasonable profits within the various segments of the energy industry, and promote free enterprise;

(6) assure that energy programs are designed and implemented in a fair and efficient manner so as to minimize hardship and inequity while assuring that the priority needs of the Nation are met;... ”

(9) collect, evaluate, assemble, and analyze energy information on reserves, production, demand, and related economic data;...

As the authority for invoking Section 764(b) above, 15 U.S.C. §764(a), of the FEA Act in turn states:

"Subject to the provisions and procedures set forth in this Act, the [Secretary] shall be responsible for such actions as are taken to assure that adequate provision is made to meet the energy needs of the Nation. To that end, he shall make such plans and direct and conduct such programs related to the production, conservation, use, control, distribution, rationing, and allocation of all forms of energy as are appropriate in connection with only those authorities or functions ...

(1) specifically transferred to or vested in him by or pursuant to this Act;...

(3) otherwise specifically vested in the Administrator by the Congress."

Additional authority for this information collection is provided by 15 U.S.C. §790a of the FEA Act, which states that the Administrator:

"...[Shall] establish a National Energy Information System...[which] shall contain such information as is required to provide a description of and facilitate analysis of energy supply and consumption...

(b) ...the System shall contain such energy information as is necessary to carry out the Administration's statistical and forecasting activities..., and such energy information as is required to define and permit analysis of-

(1) the institutional structure of the energy supply system, including patterns of ownership and control of mineral fuel and nonmineral energy resources and the production, distribution, and marketing of mineral fuels and electricity;

(2) the consumption of mineral fuels, nonmineral energy resources, and electricity by such classes, sectors, and regions as may be appropriate for the purposes of this Act;

(3) the sensitivity of energy resource reserves, exploration, development, production, transportation, and consumption to economic factors, environmental constraints, technological improvements, and substitutability of alternate energy sources; . . .

(5) industrial, labor, and regional impacts of changes and patterns of energy supply and consumption..."

Section 503 of the Energy Policy Act of 1992, Pub. L. No. 102-486 (EPACT1992), (42 U.S.C. § 13253) directs DOE to estimate consumption of alternative and replacement fuels annually. Since 1994, EIA has published replacement fuel consumption data annually in *Alternatives to Traditional Transportation*

*Fuels*.<sup>1</sup> Biodiesel consumption (estimated by EIA based on secondary sources) has been included since 2000.

The Energy Policy Act of 2005 (EPACT2005), Pub. L. No. 109-058, (42 U.S.C. § 15801) specifies in greater detail how EIA should monitor biodiesel. Section 42 U.S.C. § 7135(m)(1) states:

“In order to improve the ability to evaluate the effectiveness of the Nation’s renewable fuels mandate, the [Administrator] shall conduct and publish the results of a survey of renewable fuels demand in the motor vehicle fuels market in the United States monthly, and in a manner designed to protect the confidentiality of individual responses. In conducting the survey, the Administrator shall collect information both on a national and regional basis, including each of the following:”

- (A) The quantity of renewable fuels produced
- (B) The quantity of renewable fuels blended
- (C) The quantity of renewable fuels imported
- (D) The quantity of renewable fuels demanded
- (E) Market price data
- (F) Such other analyses or evaluations as the Administrator finds necessary to achieve the purposes of this section.

42 U.S.C. § 7135(m)(2) also provides:

“The Administrator shall also collect or estimate information both on a national and regional basis, pursuant to subparagraphs (A) through (F) of paragraph (1), for the 5 years prior to implementation of this subsection.”

## **A-2. Needs for and Uses of the Data**

The purpose of the proposed Forms EIA-22M and EIA-22S is to collect data from biodiesel producers in order to meet EIA’s Congressional mandate and energy stakeholders’ and users’ needs. Presently, there is no information source for all of the items listed above in Section 1508 for the biodiesel industry. In addition to fulfilling the Congressional mandate, this information will be crucial for making informed policy decisions in the growing renewable fuels market. Environmental and National security concerns have been raised across the Government in the transportation fuels industry, with biodiesel seen as a possible replacement for diesel fuel that is currently produced from imported petroleum. Information collected through this survey would be widely used by Federal and State agencies, industry and financial analysts, environmental groups, and the general public to monitor changes in the renewable fuels sector, and by the Congress to inform legislative debate.

Section 3A of the form collects B100 (pure biodiesel) production, stock changes, and sales. This enables EIA to provide biodiesel data consistent with currently published production and distribution data for ethanol and all other transportation fuels.

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<sup>1</sup>[http://www.eia.doe.gov/cneaf/alternate/page/atftables/afvtransfuel\\_II.html](http://www.eia.doe.gov/cneaf/alternate/page/atftables/afvtransfuel_II.html)

Data on co-products of biodiesel production, collected in Section 3B, enter into the Annual Energy Outlook's projection of biodiesel use, which is based on a comparison of the cost of biodiesel and the cost of petroleum diesel. Glycerol from biodiesel production is assumed to offset part of the biodiesel production cost, resulting in a lower net cost than if glycerol were not considered. Data on biodiesel co-products other than glycerol are not currently included in the Annual Energy Outlook analysis. Survey responses will be used to determine if the biodiesel industry is producing substantial quantities of other co-products and if the analysis should be extended to include them. The quantity of co-products from biodiesel production also impacts EIA's estimate of the balance of energy production and consumption in the *Monthly Energy Review*, *Annual Energy Review*, and the *Annual Energy Outlook*. In order to balance inputs and outputs, a term called "Losses and Co-Products" is calculated. For policy analysis, the survey responses to questions on glycerol and other co-product production will enable EIA to accurately split co-products from energy lost in production.

Inputs to biodiesel production, including the type and amount of feedstocks, are data collected in Section 3C. They will be used in developing EIA's energy balance for renewable energy, to analyze the economics of biodiesel production and consumption, and by EIA forecasters to develop the sales (consumption) forecast. Among other uses, the forecast will be used by the Environmental Protection Agency (EPA) to develop its annual Renewable Fuel Standard.

In Section 4, EIA collects information on first sales of biodiesel from the producer. Sales volumes and revenue from sales, of biodiesel and biodiesel blends, will be identified according to whether or not certain Federal tax credits were taken by the producer. The purpose of collecting volume and revenue data is to enable EIA to estimate a "plant gate" price which biodiesel producers receive for their product. In some circumstances the biodiesel producer claims the tax credits and in other circumstances the biodiesel purchaser claims the tax credits. It is necessary to isolate production with and without the credit to get consistent prices both with and without credits claimed.

Information on biodiesel blending and sales for resale and end-use also collected in section 4, will monitor to what degree producers are marketing B100 for blending downstream (B100 is rarely used in vehicles), as well as to determine the sales (revenue) price of pure biodiesel (B100) with and without tax credits. Market price and quantities blended are required by Section 1508 of EPACT2005. By being able to isolate B98-B100 Sales (revenue), it will be possible to compute an accurate average sales price of B100 (the small percentage of petroleum diesel in these blends will not affect the calculation of a reliable B100 "plant gate" price). Information on petroleum diesel contained in biodiesel blend categories will enable EIA to refine exactly the amount of biodiesel in each category.

Because EPACT Section 1508 is focused on renewable motor vehicle fuels, Section 4 also asks for end-use sales (sales from producers directly to end users) to be broken out into their final use.

It should be noted that EIA and EPA use the word "sales" differently. On Form EIA-22M, "sales" refers to first, or producer, sales. In the EPA's Renewable Fuels Standard rule, "sales" refers to final consumption: i.e., Sales = production + imports – exports + stock changes.

Using information reported on Form EIA-22M, EIA would publish monthly reports providing national, regional, and, if not limited by confidentiality provisions, state data on the following: plant location, capacity, and operating status; biodiesel and co-product production; feedstock inputs; sales volume; revenue; and monthly stock (inventory) information. The data collected would also be used to improve the forecast of biodiesel production and consumption in future issues of the *Annual Energy Outlook*.

### **EPA's Use of Biodiesel Production Data**

Based upon FRL-8742-5 (Vol. 73. No. 226, p. 70643) and discussions with EPA, the information being collected on the proposed EIA-22 survey is appropriate for developing the biodiesel information EPA requires to set annual Renewable Fuel Standards (RFS). What EPA requires is *projections* of biodiesel and renewable diesel *sales by feedstock*. On other survey forms, EIA will capture renewable diesel production from refineries. At this time, this is the only known source of renewable diesel.

The EIA-22M survey will provide *historical* biodiesel *production*. To convert to sales, EIA short-term forecasting staff will need to calculate the following:

$$\text{Sales} = \text{production} + \text{imports} - \text{exports} + \text{stock changes.}$$

The stock changes in the above equation should be total stock changes throughout the biodiesel supply system. The EIA-22M collects data on stock changes only at the producer level. If blender stock changes of biodiesel and renewable diesel are to be tracked, it will be on surveys that monitor the distribution of biodiesel downstream from the producer. No EIA survey collects data on imports or exports of renewable diesel or biodiesel—importers and exporters of biodiesel would not necessarily be biodiesel producers, so asking producers for their imports and exports would be an unnecessary reporting burden. The Bureau of the Census has indicated a willingness to consider creating codes that would permit us to track biodiesel foreign trade.

One other point regarding EPA requirements of EIA is that EPA may require sales forecasts excluding Alaska. Since the EIA-22 proposes to collect information by State, EIA-22 will provide appropriate inputs to the forecast to meet this requirement, unless there is a confidentiality issue.

Aggregate statistics, based on the Form EIA-22M, would be published monthly and used in the production of several other EIA information products. They would be used:

- (1) to develop and make available to the Congress, the States, other government agencies and the public a timely and accurate quantified assessment of current biodiesel production and market data;
- (2) as input to other EIA statistical information products, such as the *Monthly Energy Review* and the *State Energy Data System*;
- (3) to provide input to supply, demand, and price forecasting models, such as the *Short-Term Energy Outlook (STEO)*, and the *Annual Energy Outlook*; and
- (4) to respond to Congressional, inter-Departmental and inter-Agency requests for analysis of the biodiesel industry in the United States and analysis of biodiesel policy and regulatory issues.

EIA's renewable statistics are also published in newspapers, trade journals, and technical reports as well as cited and republished in reports by consulting firms, financial institutions, and numerous others.

### **A-3. Efforts to Utilize Technology to Reduce Burden on Respondents**

EIA will institute an internet-based data collection system for the Forms EIA-22M and EIA-22S that allows respondents to submit data electronically. This reduces the respondents' burden of completing and mailing paper survey forms. A significant feature of the web-based system is that some data fields are pre-populated with information from the previous month, so that the respondent needs only to verify and make updates to the pre-filled information, rather than entering new information. For example, plant name, location and capacity will be pre-filled into the form and only changed if the respondent deems it necessary. The electronic system also provides online instructions, drop-down menus, and automatic data validation (editing) features that significantly reduce the time needed to complete the form. The internet data collection system also issues automatic reminder notices and sign-on instructions, which are intended to make the system as user friendly as possible.

EIA encourages all its EIA-22M and EIA-22S respondents to use the electronic system. If a respondent does not have internet access, they may fill out a paper form and respond by fax or e-mail.

### **A-4A. Efforts to Identify Duplication**

EIA has conducted a review which indicates that while a few other surveys of biodiesel producers are conducted, including some under support from other parts of the Federal Government, no other survey collects complete monthly data on plant location, capacity and operating status, biodiesel and co-product production, inputs to production, sales for end use and resale, revenue, and end of month stocks on a regional and national basis. Other surveys collect only a small subset of the information that EIA is proposing to collect, or information that is similar to what EIA proposes, but not exactly the same. Some of the other sources of data are not collected in the same time frame as the EIA proposal. Because EIA is unable to verify the identity of respondents to other entities' surveys, it is impossible to accurately integrate data from other surveys of biodiesel producers with EIA's data. Any analyses resulting from an integration of multi-source data would be necessarily unreliable.

For example, the Environmental Protection Agency (EPA) requires that all producers<sup>2</sup> of renewable fuels report their production to them under authority from EPACT2005 on the forms entitled Renewable Fuel Standard Compliance Report Forms. The EPA program is designed to track Renewable Identification Numbers (RINs) that are generated by producers, and not specifically to track market activities such as production, sales, etc. The EPA data are collected on a quarterly basis, two months after the end of the quarter. The Census Bureau collects data on consumption of some types of fats and oils used to produce methyl esters (biodiesel) via its Current Industrial Reports, form M311K - Fats and Oils: Production, Consumption, and Stocks. However, these data are not collected on all types of oils that are used in biodiesel. Census Bureau confidentiality rules do not allow EIA access to either the identity of

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<sup>2</sup> All producers in the lower 48 states are required to report on this form.

respondents or the more detailed data that would be necessary for EIA to identify the size of the data gap. Finally, the National Biodiesel Board maintains a plant list of its members. The information it collects on these plants includes location, nameplate capacity and primary feedstocks used. However, these data are not collected via a statistical survey, nor are they complete, as not all biodiesel producers are members of the National Biodiesel Board. This source also does not always track changes in feedstocks and/or capacities on a timely basis.

#### **A-4B. Comparisons with Similar Data**

The EPA RINs data can be used as a basis to estimate production because the generated RINs are based on production volumes. The Census Bureau data can measure the volumes of some inputs to biodiesel production. However, neither source measures biodiesel production specifically and directly. Only the proposed EIA survey will collect complete inputs and production from each producer. EIA will be unable to compare its own data with Census Bureau's because of confidentiality rules that prohibit the Census Bureau from divulging the companies it is surveying. It may be possible to compare yearly production totals with the EPA. However, there is no other survey that collects data on capacity and operating status, co-product production, catalyst usage, sales for end use and resale, revenue, and stocks. All of these data items are needed by EIA to fully respond to the mandate in EPACT2005, as well as to satisfy public requests for biodiesel information and provide data that can be used for analysis and forecasting.

#### **A-5. Provisions for Reducing Burden on Small Business**

The small business response burden for this survey is expected to be minimal since most of the data requested are necessary for normal business operations. Also, some data items are already reported to other entities, as noted above.

Respondents are given flexibility concerning how Forms EIA-22M and EIA-22S data are to be submitted to EIA. Small businesses can use the internet data collection system that reduces reporting burden. For reporting on the EIA-22S, respondents are asked much less detailed questions than on the EIA-22M, therefore reducing the burden of obtaining detailed data from prior years.

#### **A-6. Results of Collecting Data Less Frequently**

Section 1508 of EPACT2005 mandates the monthly collection of the data. Due to the volatility and rapidly changing nature of the biodiesel industry, it is important to monitor the progress of biodiesel production on a monthly basis.

#### **A-7. Special Circumstances**

There are no special circumstances that would require the *Monthly Survey of Biodiesel Production* and the *Supplement to the EIA-22M Biodiesel Production Survey* to be conducted in a manner inconsistent with the guidelines in 5 CFR 1320.5.



## A-8. Summary of Consultations Outside the Agency

The EIA conducted two public comment periods to solicit comments on biodiesel data collection requirements mandated by the EPACT2005. The first, in April 2008, is known as the “60-day” comment period. The second, in October 2008, is referred to as the “30-day” comment period. The summarized comments and EIA’s responses are included in this section.

### Results of the “30-day” Comment Period

Comments received by the OMB and EIA in response to the October 22, 2008, (73 FR 62973) notice, and responses to those comments, are summarized below.

**1) Comment:** Do not collect data on glycerin production. It is not required by EPACT 2005 and is unrelated to the intent of that act.

Comment received from: Minnesota Soybean Processors (MnSP) and National Biodiesel Board (NBB).

#### EIA Response:

The term “glycerin” will be changed to “glycerol” in order to clarify that respondents should report this co-product without water and alcohol content. Respondents will be asked to identify if the glycerol product data was obtained by laboratory analysis. Glycerol comes out of a biodiesel plant in solution with water; this solution is known as crude glycerin. Glycerin may be sold in crude form, refined to a higher grade, or used to make other chemicals. The instructions to Form 22M will clarify that chemicals produced by the reaction of glycerol are “other co-products” and should not be reported as glycerol. Data on co-products of biodiesel production enter into the *Annual Energy Outlook’s* projection of biodiesel use, which is based on a comparison of the cost of biodiesel and the cost of petroleum diesel. Glycerol from biodiesel production is assumed to offset part of the biodiesel production cost, resulting in a lower net cost than if glycerol were not considered. The projected consumption of biodiesel is constrained to the minimum levels of biodiesel consumption set by the Energy Independence and Security Act of 2007 but may be higher if the relative economics are favorable.

Data on biodiesel co-products other than glycerol are not currently included in the *Annual Energy Outlook* analysis. If survey responses indicate that the biodiesel industry is producing substantial quantities of other co-products, the analysis could be extended to include the other co-products.

For its forecasts of biodiesel use, EIA currently estimates the yield of glycerol based on a rule of thumb published by the National Biodiesel Board. Forms 22M and 22S will provide real-world quantitative information on the production of glycerol in conjunction with biodiesel. The quantity of glycerol and exact composition of the biodiesel yielded will depend on the kinds of vegetable oil or fat and alcohol used as inputs. The yield of glycerol according to raw material can be estimated from laboratory studies, but chemical reactions carried out at industrial scale often behave very differently than the same reaction carried out on a laboratory bench top. Thus, EIA’s current estimates may not be accurate for any particular feedstock.

The quantity of co-products from biodiesel production also impacts EIA’s estimation of the balance of energy production and consumption in the *Monthly Energy Review*, *Annual Energy Review*, and the *Annual Energy Outlook*. Currently, the inputs to biodiesel production include vegetable oil, fat, alcohol, natural gas and electricity. The only output that is explicitly accounted for is the biodiesel itself. In order to balance inputs and outputs, a term called “Losses and Co-Products” is calculated. The survey responses to questions on glycerol production and other co-product production will enable EIA to accurately split co-products from energy lost in production, for use in lifecycle and other policy analysis.

A Yes or No question as to whether the glycerol output was confirmed by laboratory analysis at least once during the reporting cycle will be added. Some producers perform laboratory analysis to determine how much glycerol is contained in the glycerin that is coming out of their plant, while others do not. EIA does not intend to force biodiesel producers to do laboratory tests

that they would not otherwise have carried out. EIA would, however, like to be able to separate the responses that were determined by laboratory analysis. This subset of responses will be used to determine average glycerol yield according to the type of vegetable oil or fat used.

Collection of data for these purposes is authorized under 15 U.S.C. §790(a), of the Federal Energy Administration Act of 1974 (FEA Act), Public Law 93-275. See Section A-1, which describes the legal authority for data collection under Public Law 93-275.

MnSP notes that ethanol producers are not required to report distiller's dry grain (DDG) production on EIA's Oxygenate Survey (EIA-819M). This is true, but it ignores the fact that EIA-819M was first fielded in a dramatically different regulatory and economic climate. EIA is considering adding DDG production to EIA-819M when it comes up for reauthorization.

**2) Comment:** If collected, glycerin production should be reported in pounds, not gallons.

Comment received from: MnSP and NBB

**EIA Response:** The form will be changed to allow glycerol reporting in either pounds or gallons.

**3) Comment:** EIA proposes to collect sales volume and revenue to obtain retail and wholesale pricing information. These data can be obtained by other means, specifically by purchasing through commercial sources or through a phone survey of retailers and wholesalers.

Comment received from: MnSP

**EIA Response:** MnSP and NBB claim that the data on producer revenue that EIA proposes to collect will not meet the statutory requirement to collect market prices of biodiesel. The term "market" encompasses retail, wholesale, and plant gate prices of biodiesel. The proposed volume and revenue data will be used to identify volume weighted plant gate prices, which are the most relevant for energy policy analysis. Volume weighted average prices are a more accurate measure of market conditions than simple arithmetic means. The current period weighted average price method used by EIA will take the reference month's sales volumes and the revenue for the reference month to calculate a weighted average price for that month. Posted or spot prices do not reflect the extensive contribution of contract transaction in determining the retail and wholesale price, nor do they indicate how much volume is purchased or sold at that price (i.e. no product may have been sold at all at a particular posted price). Private commercial data sources collect price data from a limited number of suppliers that have a data link with credit companies and generally do not apply statistical methods. The market coverage of the price data from commercial sources is also incomplete in some regions. Private commercial data sources do not provide any measures of accuracy or data quality for the data they sell. Another problem exists with wholesale price data from private commercial sources. It is not always clear whether a quoted price is gross or net of the applicable tax credits. It is our understanding that in some circumstances the biodiesel producer claims the tax credits and in other circumstances the biodiesel purchaser claims the tax credits. EIA needs to know who is claiming the tax credit in order to estimate the price of biodiesel at the plant gate.

**4) Comment:** Requiring producers to report sales volume and revenue as "subject to tax credit" and "not subject to tax credit" will allow outside parties access to confidential taxpayer information. EIA has not produced evidence of methods for safeguarding taxpayer information from public access.

Comment received from: MnSP

**EIA Response:**

After the 60-day comment period, EIA eliminated collection of tax credit data in order to overcome respondents' concerns about disclosure of company-specific tax data. EIA determined that the general purposes of the Energy Policy Act could be achieved if sales revenue data are categorized as with or without credit incentives. Thus, the EIA is not asking respondents to report specific tax data.

EIA will protect the survey values reported on Forms EIA-22M and EIA-22S from any unauthorized disclosures to the public. The reported data are stored in a secured physical facility and access to the secured servers where the data reside is

restricted to a small group of staff who work on the survey. No EIA staff are allowed to take any company level data outside of the building and employees may not access company level data from remote off-site locations. The data will be used by EIA only for generating statistical aggregate estimate for complying with the Section 205 of the Department of Energy organization Act. Company level data will not be released to the public

The information reported on Forms EIA-22M and EIA-22S will be protected and not disclosed to the public to the extent that it satisfies the criteria for exemption under the Freedom of Information Act (FOIA), 5 U.S.C. §552, the Department of Energy (DOE) regulations, 10 C.F.R. §1004.11, implementing the FOIA, and the Trade Secrets Act, 18 U.S.C. §1905. The Federal Energy Administration Act requires the EIA to provide company-specific data to other Federal agencies when requested for official use. The information reported on this form may also be made available, upon request, to another DOE component; to any Committee of Congress, the Government Accountability Office, or other Federal agencies authorized by law to receive such information. A court of competent jurisdiction may obtain this information in response to an order. The information may be used for any non-statistical purposes such as administrative, regulatory, law enforcement, or adjudicatory purposes.

EIA uses written data sharing agreements with each federal agency that requests access. The written agreements state the conditions for sharing the information, the purpose of the data sharing, and the procedures for protecting the data, restrictions on disclosing company level information, and destruction of data upon terminating the agreement. Each agency must comply with EIA's conditions for protecting the information including no disclosure of company identifiable information in the reports that use EIA data and abiding by EIA's requirements relating to data security and restricted access. In response to a request for company level data based on request under the Freedom of Information Act, EIA would deny the FOIA request based on the grounds that this information is protected from release under the exemptions for FOIA and the release of the company level information would cause substantial harm to the competitive position of the respondent who reported the information.

5) **Comment:** The term "tax credit" is never defined.

Comment received from: Minnesota Soybean Processors and National Biodiesel Board

**EIA Response:** EIA will add instructions to define "tax credit" as the Federal blending and income tax credits for biodiesel. The terminology on the survey form will be changed from Sales "Subject To Credit" to "Sales For Which Producer Claimed Tax Credit."

6) **Comment:** Reporting volume and revenue subject to, or not subject to, tax credit has potential to result in public disclosure of company-specific tax-related information, according to EIA's confidentiality policy. This is inconsistent with confidentiality protections in Section 6103 of the Internal Revenue Code. Furthermore, these data will not provide accurate market price data.

Comment received from: NBB

**EIA Response:**

No reasons were cited for why the information needed protection or how the release of the information would cause any competitive harm. The sole reason provided for the need to protect the information was that some of the data elements collected on the form are related to taxes and some of the information is also reported to the Internal Revenue Service.

EIA is required by law to share energy information with other federal agencies that is consistent with their official purpose pursuant to Section 12 of the Federal Energy Administration Act of 1974, section 11 of the Energy Supply and Environmental Coordination Act of 1974, and section 205 of the Department of the Energy Organization Act of 1977. The laws governing the use of energy data that EIA collects are different than the specific statutory protections that Congress provided to the Internal Revenue Service. There is no comparable legislation that applies to EIA like section 6103 of the Internal Revenue Code applies to the Internal Revenue Service. Section 6103 only applies to IRS data and does not apply to data collected by EIA.

7) **Comment:** Do not require the reporting of methanol and other catalysts used in biodiesel production. It is not needed to meet the intent and spirit of the statutory requirements of Section 1508 of P.L. 109-58.

Comment received from: National Biodiesel Board

**EIA Response:** Alcohols and catalysts used in biodiesel production will be used in energy forecasting models, the results of which are published in EIA’s *Annual Energy Outlook*.

Collection of these data is authorized under 15 U.S.C. §772(b), of the Federal Energy Administration Act of 1974 (FEA Act), Public Law 93-275. See Section A-1, which describes the legal authority for data collection under Public Law 93-275.

MnSP states that there is no requirement to report ethanol, if it is used as an input to biodiesel production. EIA expects that most biodiesel will be produced using methanol, but MnSP is correct in that ethanol may be used instead. This line will be changed from “Methanol Used in Production” to “Alcohol Used in Production”. Any ethanol used must be reported there. This will be clarified in the form instructions.

The term “other catalysts” will be changed to “catalysts” to clarify that all catalysts should be reported in this line.

## Results of the “60-day” Comment Period

The EIA received three responses to the April 28, 2008, (73 FR 22941) notice.

Specific comments are addressed below. In the commenter section, MnSP refers to the Minnesota Soybean Processors (a biodiesel producer), NBB refers to the National Biodiesel Board (a trade association) and EL refers to an unidentified data user.

Comments	Commenter	Response
<b>Items collected</b>		
Do not require reporting of glycerin production. If collected, glycerin production should be reported in pounds.	MnSP NBB	Co-product production will be used to monitor the U.S. Energy balance, which is published in EIA publications, such as the <i>Annual Energy Review</i> and the <i>Monthly Energy Review</i> . Collection of these data is authorized under the Federal Energy Administration (FEA) Act of 1974, Public Law 93-275. EIA has determined, to the best of its ability, that volume in gallons, is the industry standard for glycerin co-products. Thus, the proposed form uses a gallons metric for this question because it would be the least burdensome for most respondents.
Do not require reporting of other co-product production	NBB	Same as above.
Do not duplicate collection of B100 production in Sections 3a and 3b.	NBB	Duplication has been removed from the survey form.
Allow feedstock inputs to be reported in either pounds or gallons.	NBB	In order to minimize reporting errors, respondents will be asked to report volumes in pounds only.
Combine sales of B100 and B98-99.9	MnSP, NBB	These two lines will be combined on the form. Respondents will report sales of B98-B100.
Do not require reporting of	MnSP	A line will be added to collect catalysts other than

methanol consumption. If reporting of methanol is required, also collect all other reactants and catalysts.		methanol, so that all catalysts will be covered. Catalysts used in biodiesel production will be used in energy forecasting models, the results of which are published in EIA's <i>Annual Energy Outlook</i> . Collection of these data is authorized under the Federal Energy Administration (FEA) Act of 1974, Public Law 93-275.
Do not require reporting of methanol consumption	NBB	Same as above.
Add type and volume of catalyst used in process	EL	Same as above.
Collect data on the volume of water used in process	EL	This question will not be added. Upon review, it was determined that this data is not needed in order to achieve the purposes of the Energy Policy Act or to meet other objectives of this data collection. Requesting this information would impose unnecessary burden on respondents.
Do not collect sales revenue data.	NBB	These questions will remain, but will be revised. These data are needed in order to achieve the purposes of the Energy Policy Act, which charges the Energy Information Administration with collecting data related to renewable motor fuels demanded and their market price. Respondents will be asked to report separate revenues for sales subject to the biodiesel tax credits and sales not subject to the biodiesel tax credits.
Do not require the reporting of information pertaining to tax credits.	MnSP NBB	These data will not be collected. Instead, respondents will be asked to report additional data on sales revenue (see above). Upon review, it was determined that, at this time, the general purposes of the Energy Policy Act can be achieved without specific and quantifiable tax credit data if sales revenue data are categorized as with or without credit incentives. This will overcome respondents' concerns about disclosure of company-specific tax data.
Be more specific about type of tax information sought.	MnSP	Tax data will not be collected.
Ask if the facility is BQ-9000 accredited	EL	This question will not be added. These data are not needed in order to achieve the purposes of the Energy Policy Act or to meet other objectives of this data collection. Additionally, a list of BQ-9000 accredited facilities is available from other sources. Requesting this information would impose unnecessary burden on respondents.

Ask when the facility consistently met the ASTM D-6751-07B specifications	EL	This question will not be added. After consideration, it was determined that these data are not needed in order to achieve the purposes of the Energy Policy Act or to meet other objectives of this data collection. Requesting this information would impose unnecessary burden on respondents.
Ask where fuel samples were tested (i.e. in-house vs independent lab testing) and the turn-around time of the fuel spec testing.	EL	This question will not be added. Upon review, it was determined that these data are not needed in order to achieve the purposes of the Energy Policy Act or to meet other objectives of this data collection. Requesting this information would impose unnecessary burden on respondents.
The definition of “blender” should be changed.	NBB	This term will be removed from the glossary because it is not used on the survey form or in the instructions.
The definition of “canola oil” should be changed.	NBB	This definition will be revised in the form instructions.
The definition of “Federal Blender’s credit” should be changed.	NBB	This definition will be eliminated from the glossary because no data on the Federal Blender’s credit will be collected.
The definition of “Federal Small Producer Tax Credit” should be changed.	NBB	This definition will be eliminated from the glossary because no data on the Federal Small Producer Tax credit will be collected.
The definition of “leased to another company” should be changed.		This definition will be revised in the form instructions.
<b>Data Submission</b>		
Extend the 20-day submission period to 25 days.	MnSP	The 20-day submission period will be retained because it does not appear to be an industry-wide concern. Only one potential respondent identified this as a problem. Lengthening the period would interfere with monthly processing, resulting in unnecessary delays making timely data available to the public. The 20-day submission period is consistent with EIA monthly surveys that will collect data on ethanol.
Prevent other parties from submitting low quality data.	MnSP	All respondents are subject to mandatory reporting requirements and enforcement procedures specified in the Federal Energy Administration Act of 1974. Respondents will be encouraged to submit data through an internet data collection system that will include automatic edit checks at respondents’ point of entry. Respondents may also submit data via a non-electronic back-up system. Federal staff will

		apply the automatic edit checks to responses received through the back-up system. In addition, data will be subjected to other quality control and assurance procedures performed by Federal staff. Additional individual follow-up will be performed on responses that do meet quality standards.
The estimated reporting burden for the EIA-22M (2-hours) is too low.	MnSP NBB	This estimate is raised to 3 hours based on a review of the final questionnaire and the estimated data submission processes of the Internet data collection system.
1-hour estimate for EIA-22S burden is too low.	MnSP NBB	This estimate is raised to 3 hours based on a review of the final questionnaire and the estimated data submission processes of the Internet data collection system.
Substantial expense will be incurred to compile and submit data.	MnSP	Elimination of reporting requirements for tax credit data and for separation of B98-B99.9 blends should significantly reduce the burden of data compilation. Additionally, the ability to complete responses via an Internet data collection system, should minimize the time and expense of data submission.
A simple electronic submission process is desired	MnSP	Data on this form will be collected via an internet data collection system that will include automatic quality checking procedures. The internet system facilitates data collection by editing data at the point of entry and reducing calls to respondents to ensure data quality. All respondents are encouraged to use the electronic submission system. A back-up system for non-electronic filers will be available.
Have a check box to opt out of Section E (end use sales by type of use)	MnSP	This procedure will be automatic in the Internet data collection system. Survey instructions will clarify this procedure for non-electronic filers.
Instructions indicate that a respondent can report several plants on one form. It is unclear how this can be done.	NBB	This capability will be included in the internet data collection system and in any paper-based or other alternative reporting procedures.
Respondents should be able to submit by mail.	NBB	Data on this form will be collected via a web-based data collection system. All respondents are encouraged to use the electronic submission system. A back-up process for non-electronic filers will be available and explained in the survey instructions.
<b><i>Confidentiality</i></b>		
No one should be able to identify specific producer or seller from the data submitted.	MnSP	The information reported on Forms EIA-22M and EIA-22S will be protected and not disclosed to the public to the extent that it satisfies the criteria for

Need to address how individual data will be protected		exemption under the Freedom of Information Act (FOIA), 5 U.S.C. §552, the Department of Energy (DOE) regulations, 10 C.F.R. §1004.11, implementing the FOIA, and the Trade Secrets Act, 18 U.S.C. §1905. The Federal Energy Administration Act requires the EIA to provide company-specific data to other Federal agencies when requested for official use. The information reported on this form may also be made available, upon request, to another DOE component; to any Committee of Congress, the Government Accountability Office, or other Federal agencies authorized by law to receive such information. A court of competent jurisdiction may obtain this information in response to an order. The information may be used for any nonstatistical purposes such as administrative, regulatory, law enforcement, or adjudicatory purposes. Aggregate statistics will be published monthly through EIA information products.
Guarantee that all data will be kept confidential and only aggregated data will be released.	MnSP	Same as above.

**A-9. Remuneration:** No payment or gift will be given to respondents for completing the survey.

**A-10. Provisions for Confidentiality of Information**

The information reported on form EIA-22M and EIA-22S will be protected and not disclosed to the public to the extent that it satisfies the criteria for exemption under the Freedom of Information Act (FOIA), 5 U.S.C. §552, the Department of Energy regulations, 10 C.F.R. §1004.11, implementing the FOIA, and the Trade Secrets Act, 18 U.S.C. §1905.

The Federal Energy Administration Act requires EIA to provide company-specific data to other Federal agencies when requested for official use. The information reported on this form may also be made available, upon request, to another component of the Department of Energy (DOE); to any Committee of Congress, the Government Accountability Office, or other Federal agencies authorized by law to receive such information. A court of competent jurisdiction may obtain this information in response to an order. The information may be used for any nonstatistical purposes such as administrative, regulatory, law enforcement, or adjudicatory purposes.

Disclosure limitation procedures are applied to the statistical data published from EIA-22M and EIA-22S



survey information to ensure that the risk of disclosure of identifiable information is very small.

### **A-11. Justification for Sensitive Questions**

No sensitive questions are asked on the *Monthly Survey of Biodiesel Production* or the *Supplement to the EIA-22M Biodiesel Production Survey*.

### **A-12. Estimate of Respondent Burden Hours and Cost**

The total average monthly respondent burden for Form EIA-22M is approximately 450 hours, calculated as follows:

Approximately 150 Biodiesel Producers (respondents) x 3 hours per respondent = 450 hours per month

Total Annual Burden = 450 hours per month x 12 months = 5400 hours

The total average one-time respondent burden for Form EIA-22S is approximately 450 hours, calculated as follows:

Approximately 150 respondents x 3 hours per response = 450 hours. The hours averaged over the three-year approval period is 450 divided by 3 years = 150 hours annually

The total annual burden, therefore, is estimated at **5,550 hours**. (5400 hours for the EIA-22M + 150 hours per year for the EIA-22S).

NOTE: When the information collection request is resubmitted in three years, assuming it will be approved this year, the annual burden hours for the EIA-22S will be eliminated since one-time submittal will be retrieved the first year (2009) the survey is activated, to collect data for 2006, 2007, and 2008.

### **A-13. Annual Reporting and Record keeping - Cost Burden to Respondents**

The total annual cost for all respondents is approximately \$344,100, calculated as follows:

\$62\* per hour x 5400 hours = \$334,800 (The annual respondent cost for Form-22M) + \$9,300 (The average one-time respondent cost for Form EIA-22S is approximately \$9,300 per year, calculated as \$62\* per hour x 450 hours = \$27,900 divided by 3 (years of approval)).

After the first year, the approximate cost to respondents will be reduced significantly because most of the one-time responses to the EIA-22S will have already been captured.

\*An average cost per hour of \$62 is used because that is the average loaded (salary plus benefits) cost for an EIA employee. EIA assumes that the survey respondent workforce completing surveys for EIA is comparable with the EIA workforce.

There are likely no additional (a) total capital and start-up costs or (b) total operation and maintenance and purchase of services components associated with this collection. EIA believes that the only cost to the respondent is for the time to retrieve the requested information from existing information systems and

to then report that information to EIA. However, if respondents do incur any costs, EIA believes they would likely be small.

#### **A-14. Estimate of Costs to the Federal Government**

The annual cost to the Government for EIA-22M is estimated at \$217,000. The estimated costs for EIA-22M include funds for data collection (including initial development of an internet data collection system and database, as well as the initial development of an automated data and information publication system), follow-up data processing, non-response adjustment/imputation, survey documentation, data analysis, and preparation of data reports. The one-time, all inclusive, cost to the Government for EIA-22S is estimated at \$25,000.

#### **A-15. Changes in Respondent Burden**

The proposed new survey will be an increase of 5,550 hours annually.

#### **A-16. Schedule for Collecting and Publishing Data**

The results of the EIA-22M and EIA-22S will be published by EIA in reports along with additional data obtained through other EPACT2005 data collection programs. The time schedule for data collection and related analysis activities for the 2009 data year (from the EIA-22M with January as a monthly example) is summarized below. The time schedule for data collection and related analyses for data years 2006-2008 (from the EIA-22S) is also found below.

#### **Schedule for Data Collection and Analysis for EIA-22M**

<u>Activity</u>	<u>Estimated Completion Date</u>
Open Internet Data Collection System	February 2, 2009
Survey Due Back	February 23, 2009
Begin Follow-up Contact with Respondents	February 23, 2009
End Follow-up Contact with Respondents	March 19, 2009
Complete Data Collection	March 19, 2009
Data Analysis and Preliminary Data Report	March 26, 2009
Publish Survey Results	April 9, 2009

## Schedule for Data Collection and Analysis for EIA-22S

<u>Activity</u>	<u>Estimated Completion Date</u>
Open Internet Data Collection System	February 2, 2009
Survey Due Back	February 23, 2009
Begin Follow-up Contact with Respondents	February 23, 2009
End Follow-up Contact with Respondents	February 15, 2010
Complete Data Collection	February 15, 2010
Data Analysis and Preliminary Data Report	February 22, 2010
Publish Survey Results	March 8, 2010

### **A-17. Expiration Date**

The expiration date will be displayed on the form.

### **A-18. Certification Statement**

There are no exceptions to the Certification Statement requirement.

## **B. STATISTICAL METHODS**

### **B-1. Description of Survey Design**

The respondent universe for the EIA-22M, “*Monthly Biodiesel Production Survey*,” and EIA-22S, “*Supplement to the EIA-22M Biodiesel Production Survey*,” includes: entities that produce biodiesel for commercial purposes.

The survey frame consists of biodiesel producers who are registered with the Environmental Protection Agency (EPA) and report their fuel properties under the form “Fuel Manufacturer Annual Report for Motor Vehicle Gasoline or Diesel Fuel.”<sup>3</sup> Individual biodiesel producers who do not introduce biodiesel

<sup>3</sup> <http://epa.gov/otaq/regs/fuels/forms/3520-12a.pdf>

into commerce are not required to report. To maintain an up-to-date survey frame and create a list of annual changes to the survey frame, EIA will use EPA's weekly updated list of registered biodiesel producers and National Biodiesel Board's (NBB) list of biodiesel producers, as well as information on respondent ownership and operating status (i.e., company was sold or merged, went out of business, etc.) that are reported on the EIA-22M. Each plant is considered an individual reporting unit.

### Description of Form EIA-22M, *Monthly Biodiesel Production Survey*

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The EIA "Monthly Biodiesel Production Survey" is divided into 4 sections. Section 1 will collect producer identification data, including contact information. Section 2 will collect plant location, capacity, and operating status. The purpose of collecting location is to allow EIA to publish price and production information by region and state, if allowable due to confidentiality concerns. Operating status will collect information on any merger or sale information regarding facilities. Section 3 asks for plant biodiesel production, inputs, stocks, and sales. Inputs to biodiesel production figures are gathered by feedstock type and volume. Sales figures are collected by volume and total revenue for various end-uses and resale. The purpose of this section is to discern market price data. Finally, Section 4 is for explaining answers given or reasons why answers cannot be given.

EIA requests approval of the collection of the following data in the Form EIA-22M:

1. Respondent identification data and contacts.
2. Plant information, including location and capacity.
3. Plant operating status (active, inactive, permanently ceased, sold, leased, or merged.)
4. Biodiesel and co-product production (by volume.)
5. Inputs to biodiesel production (by input type and volume.)
6. Sales of biodiesel to end-user (by end-use type, volume, and revenue) and for resale (by volume and revenue.)
7. End of month stocks (by volume.)
8. Tax credit information (actual or estimated in dollars) from federal, state, and local tax regulations

EIA will provide Form EIA-22M and EIA-22S respondents detailed instructions, reporting requirements, and definitions of all elements in the form. The forms and instructions are designed to allow their efficient use while the respondent is completing a filing and to lessen respondent burden.

Respondents would be expected to complete the EIA-22M and EIA-22S survey and submit subsequent revisions as necessary to correct errors in previously reported information.

## **B-2. Sampling Methodology, Estimation Procedures, and Data Collection Procedures**

### **B-2a. Sampling Methodology**

Forms EIA-22M and EIA-22S are required to be submitted by all biodiesel producers who are registered with the EPA, and therefore this survey is a universe, not a sample. EIA will update the list of producers continually using weekly lists of registered biodiesel producers from EPA and plant status information

(i.e., sold or merged, went out of business, etc.) that is reported on the EIA-22M.

### **B-2b. Estimation Procedures**

Published statistics from the forms EIA-22M and EIA-22S will represent the sum of actual counts reported by respondents. The actual counts will be stratified by reporting region and various characteristics. Nonresponse will be handled by follow-up telephone, letter, and e-mail data requests to the respondents, as well as data element imputation where data requests are unsuccessful.

In the first month of the survey, data will be imputed for any nonrespondents to the EIA-22M using the following method: If the respondent completed the EIA-22S, the data for 2007 capacity will be used in the EIA-22M. Production in the EIA-22S will be divided by 12, and used as the production values. If the respondent did not complete the EIA-22S or the EIA-22M, capacity data will be obtained from the National Biodiesel Board or other reliable source. Production values will be estimated using capacity data. Stocks and B100 losses/adjustment will be set at zero. B100 sales will be assumed to equal B100 production. Feedstock used in Production will be set equal to B100 production and will be split equally between Soybean Oil and Yellow Grease. Methanol Used in Production will equal 10 percent of B100 Production. Sales to End Users will be assumed to equal zero. Thus, Sales for Resale will equal B100 sales determined above. Sales of biodiesel blends will be set at zero. All other items will be left blank.

The following imputation method will be used in the second month and all subsequent months: when there is a non-respondent, the previous month's data for that plant will be used. If the previous month's data were imputed, then the imputed data will be carried forward.

There will be a one-time imputation for nonresponses to the EIA-22S prior to final publication of the data, which is expected to occur in March of 2010. This imputation will employ methods consistent with the monthly imputation methods described above.

These imputation procedures will be reexamined in later years once actual data have been analyzed.

### **B-2c. Data Collection Procedures**

All of the data will be obtained from respondents reporting via electronic submission, fax or e-mail. Respondents are encouraged to respond by electronic submission using an interactive, web-based survey form. Instructions and guidelines on submitting the data electronically are provided with the initial data call. Respondents are instructed to contact the EIA survey program manager if they have further questions. Respondents are given approximately 20 days from the initial data call to submit electronically or to return the form to EIA via e-mail or fax.

### **B-3. Maximizing the Response Rate**

After the deadline for submitting the completed form, companies that did not respond, or failed to

complete the survey form will be contacted by email or telephone and instructed to provide the requested information. For respondents that use electronic submission, the system will automatically notify any respondent who has not reported after the deadline. Nonrespondents are contacted for a period of approximately 85 days in a prioritized fashion based on prior year production.

#### **B-4. Tests of Procedures**

EIA has conducted site visits to biodiesel producers and conducted discussions at the Biodiesel Conference held from February 3-7, 2008. Pretests may be conducted for the Forms EIA-22M and EIA-22S, and/or the Internet data collection system, to discover and discuss producer reporting issues and concerns.

#### **B-5. Name and Telephone Number**

Questions or comments on Form EIA-22M or Form EIA-22S can be directed to Mary Joyce at (202) 586-1468. Questions regarding the clearance request overall may be directed to Grace Sutherland, (202) 586-6264.