

Testimony of Mr. John W. Burke, III

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Conservation, Credit, Energy and Research

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*The Role of America's Forest Resources
and
The Renewable Fuel Standard*

Thank you for this opportunity to testify regarding the role of America's forest resources in connection with the Renewable Fuel Standard under the Energy Independence and Security Act of 2007.

Mr. Chairman and other members of the House Committee on Agriculture's Subcommittee on Conservation, Credit, Energy and Research, my name is John Burke. I am a private landowner in Caroline County, Virginia. I manage forest land that my wife and I own and also manage forest land for a number of family limited partnerships. In addition, I practice law in Richmond, Virginia and am active in forestry related organizations at the state and national level. Our tree farm contains planted trees, such as pine, bald cypress, green ash and other hardwood species, as well as naturally regenerated pine and hardwood. In a moment you will see why this diversity in our woodlands is relevant to my testimony.

The wise management of forest resources is critically important to the health of a forest and to many benefits that the public enjoys, including habitat for various wildlife species, protection of water quality through management of critical watersheds, and the enhancement of air quality and green space around our cities and urban areas. Stewardship and management by forest landowners for future sustainability cannot, however, occur in a vacuum. It must occur in the context of real world markets and the challenges and risks facing family forest owners.

Family forest owners currently face difficult economic times and the challenging task of maintaining the health of their forests. Today there are nearly five million family forest owners in the United States who own nearly two-thirds of the nation's productive

forest land. It is this forest resource that supplies the bulk of the forest products used for wood and paper manufacturing. Today this group of landowners faces many challenges in managing their forests and planning for the succession of their forests to future generations.

Now that you know my interests and bias, I would like to share some thoughts in connection with the definition of “renewable biomass” as it appears in the Renewable Fuel Standard of the Energy Independence and Security Act of 2007. Allow me to direct your particular attention to two subparts contained in the definition of “renewable biomass”. These are subparts (ii) and (iv). In sum, the definition of “renewable biomass” appears too narrow and restrictive. It does not allow us to reach out to the broad, diverse forest resources that can sustainably provide a renewable source of biomass for transportation fuels. As we drill down on the particulars of this definition, I will share with you those areas where I believe the definition contains unnecessary and inappropriate limitations.

There are three goals or statements which I believe most of America’s voters will support:

(1) Encouraging healthy forests is a good thing;

(2) Sustainably increasing the inventory of available renewable biomass is a good thing; and

(3) Increasing and strengthening markets for the forest products coming from land of forest owners is a good thing.

We will now examine whether, and to what extent, the definition of “renewable biomass” furthers these goals and, equally important, the goals of the Energy Independence and Security Act of 2007.

Subparagraph (ii) of the definition of “renewable biomass” contains a number of unnecessary restrictions or limitations. For example, the requirement of “planted trees” and “tree plantations” could exclude from the definition of “renewable biomass” materials from naturally regenerated forests. Further, this definition’s limitation of “land cleared at any time prior to the enactment of this sentence” is an unnecessary timing limitation, apparently intended to impact what some view as inappropriate land conversion.

I will punctuate the impact of the “planted trees” limitation with two examples from our woodlands. On one of our naturally regenerated hardwood stands, we conducted a pre-harvest thinning. This is a management technique used to remove inferior species, small diameter competition and trees that will not survive until the harvest. This technique improves the health of the forest and improves the genetic makeup of the under story. In this way, when the future harvest occurs, the resulting next stand of hardwood trees will have larger trees, of better quality with a higher percentage of the desired tree species. In carrying out this healthy forest practice, the wood that comes from our pre-harvest thinning should be able to flow into the renewable biomass market. Under this definition, it appears that this thinned material would not, because these were not “planted trees”. Naturally regenerated stands are a very large and important component of the overall makeup of America’s forest resource. Further, the wide geographic availability of naturally regenerated forests means that they will usually be

part of a local supply, thereby reducing transportation costs for this cellulosic feed stock. On our tree farm, we try to maintain a balance between naturally regenerated stands and planted stands. As you can see, this important component of America's forests and the good management techniques needed for these naturally regenerated forests could be ignored by the existing definition of "renewable biomass" and therefore not eligible for inclusion in the Fuel Standard.

Further, it appears that the definition is intended to capture only material from planted tree plantations. Another example from our family forest will highlight the problem with this limitation. One of our pine stands consists of approximately 100 acres of loblolly pine. This stand was established following a harvest that my father conducted. After the harvest, we did site preparation through a control burn, planted pines on most of the stand (more on that later) and then sprayed the stand during the second year of its life to control competition. One unique feature of this stand, however, was the presence of an area of approximately 30 acres where loblolly pines were naturally regenerating. My father did not plant this area, but allowed the naturally regenerated pines to develop along with the other planted pines on the rest of the stand. Over a three year period we conducted, by hand, an initial thinning on that area of the stand that was naturally regenerated because these trees were too densely populated. Then, at approximately the 16th year of this stand's life we had the entire stand mechanically thinned to remove the weaker trees and to allow the crop trees better spacing (more access to water, nutrients and sunlight) so as to be more resistant to insect and disease attack, and to grow bigger and better for future timber harvesting and the other collateral benefits of a healthy forest. All of these practices are consistent

with healthy forest management. Under the present definition, however, it is not clear whether and to what extent material from this later thinning would be considered renewable biomass. In other words, the pines which we allowed to regenerate naturally may not be considered “planted trees”. So this definition may either (1) exclude the materials we thinned from this stand from the renewable energy pipeline or, in the alternative, (2) require a very difficult identification and sorting process to separate out those trees which were thinned from planted trees versus those trees which were thinned from naturally regenerated trees. As you can see from this fact pattern, the definition is unnecessarily limited and could require complex and probably unworkable tracking mechanisms.

An additional concern arises as I study the definition and the limitations contained in subparagraph (ii). In particular, a hyper-technical reading could exclude from the renewable biomass pipeline even those trees thinned from a planted stand, because in many instances the trees thinned are not “planted trees”, but naturally regenerated competition growing up in the planted stand. It is my assumption and my hope that this is not the case and I am offering this to you so that it will be part of the legislative history as rules are written and as courts attempt to adjudicate what these words mean.

The timing limitation also contained in subparagraph (ii) requires that for wood products to qualify they must come from “land cleared at any time prior to the enactment of this sentence.” This “prior to” requirement unnecessarily restricts the inventory of available renewable biomass. If the goal is to control land conversion, then it should be addressed directly at the state or local level and not buried in this definition. Our free

market has worked quite well in the past and we should continue to allow it to work in connection with a forest landowner's decision with regard to his or her land and what types of trees or crops will be grown there.

Subparagraph (iv) of the definition of "renewable biomass" also includes unnecessary limitations on the inventory of biomass available to the renewable energy pipeline. In particular, it appears to be limited to only "slash and pre-commercial thinnings" and it has an exclusion based on "old growth forests" or "late successional forests". First, there is no scientific basis for limiting the feed stocks that qualify for renewable energy to only "pre-commercial thinnings" as opposed to any type of thinning. A landowner and his or her consulting forester should be allowed to make the decision whether, based on the health of the forest, landowner objectives and market conditions, to allow materials from any thinning to flow into the renewable energy pipeline. Further, the concepts of "old growth forests" and "late successional forests" are hot buttons in forestry. Many people disagree about the validity and meaning of these terms. To exclude products coming from these types of areas creates its own problems. First, there are mechanisms at certain state and local levels to protect these types of rare stands where, on the unique facts at hand, a particular type of tree may be very difficult to reestablish if it is lost. This legislation is not the place for that activity. Second, sorting out which thinnings come from one type of stand versus another will create an implementation headache that is likely to discourage the availability of renewable biomass inventory.

Limitations such as "tree plantations" and "old growth forests" reveal the footprints of special interests. This, in and of itself is not necessarily bad; however, the

limitations contained in the definition of “renewable biomass” are counterproductive to the goals of the legislation and counterproductive to the three goals discussed above. Further, these limitations will likely lead to disputes and unnecessary complexities as the regulations are written to implement this law. Moreover, these limitations will lead to disputes and complexities as the law and the regulations are implemented on the ground, thereby reducing the available inventory of renewable biomass. Further, litigation may result as parties with diverse interests try to understand what these unclear words mean. Such litigation will work its way through the trial and appellate courts of our federal system. At some point, we will look back and say, “This law was a great idea. Why didn’t it work?” The definition of “renewable biomass” needs to be simplified and streamlined and the limitations and restrictions need to be removed from it so that the working definition of “renewable biomass” is not the reason for our failure to accomplish the goals of this legislation, and other goals important to the health of our forests.

Some may argue that a broad definition of “renewable biomass” may overlap with existing markets for pulpwood and wood chips and that, in these hard economic times, we should not sacrifice one market for another. First, I concur that these are difficult economic times and that family forest owners feel the stress of these difficult economic conditions. Family forest owners are faced with tight and ever-shrinking markets for the wood that we choose to sell. No one – least of all me – would want simply to gain one market for my low-value wood and lose another at the same time. The answer, however, is not to limit the definition of “renewable biomass” for biofuels, but rather to broaden the definition and to use the “biorefinery bridge.” In particular, our existing pulp

and paper industry has a world class procurement system and it is in the best position of all of us to become a major player in the production of fuel from renewable biomass. This industry's mills are almost always close to the wood and their manufacturing processes already include systems that could be adapted for biofuel production. So it is time to broaden, not to limit, the definition of "renewable biomass" for biofuels.

The overall benefits of the Renewable Fuel Standard under the Energy Independence and Security Act of 2007 dovetail with the benefits available under the Energy Title of the Farm Bill. However, these two provisions, meant to be bookends to encourage renewable energy, do not work well together. The definition of "renewable biomass" contained in the Farm Bill is broad and will permit many projects; however, the definition of "renewable biomass" in the Renewable Fuel Standard appears narrow and will cause a bottleneck as those products try to find their way to market.

In conclusion, the definition of "renewable biomass", as contained in the Renewable Fuel Standard under the Energy Independence and Security Act of 2007 is too limited and exclusionary. First, this definition could exclude from the renewable energy fuel pipeline many appropriate sources of biomass. These limitations are, therefore, counterproductive to the goals of the legislation. In particular, much appropriate biomass from naturally regenerated family forests may not be available as a feed stock to qualified renewable energy fuels. Second, the definition fails to encourage healthy forest practices. For example, the thinning of naturally regenerated stands is, in many instances, a proper forest management tool and materials from these thinnings should qualify as an input to the renewable energy pipeline. Third, the limitations

appear counterproductive to providing more and stronger markets for the forest products coming from the land of family forest owners.

I urge that the definition of “renewable biomass” under the Energy Independence and Security Act of 2007 be broadened and expanded by new legislation amending this title. In the alternative, it is my request that these concerns be taken into consideration as part of the rule-making process, so as to broaden, and to make more inclusive, the definition of “renewable biomass”.