

# **THE RENEWABLE FUEL STANDARD: MANAGING AN UNCERTAIN PUBLIC POLICY**

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# THE RENEWABLE FUEL STANDARD

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## Energy Independence and Security Act of 2007 (EISA)

- **“To move the United States toward energy independence and security, to **increase the production** of clean renewable fuels . . .”**



# RFS: LEGISLATIVE HISTORY

## Energy Policy Act of 2005

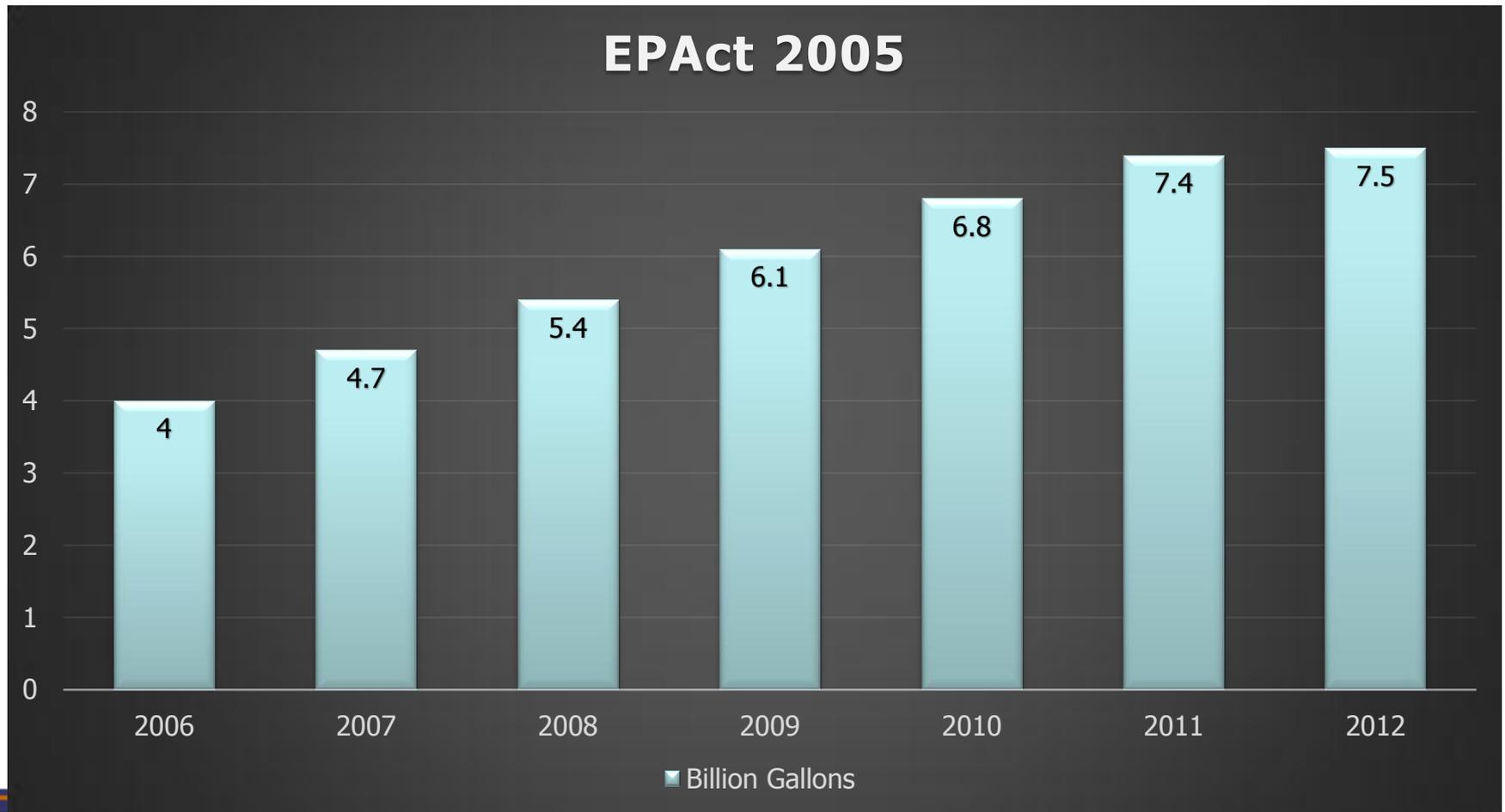
“ . . .to **ensure** that gasoline sold or introduced into commerce . . . **contains** the applicable volume of renewable fuel . . . ”

## EISA 2007

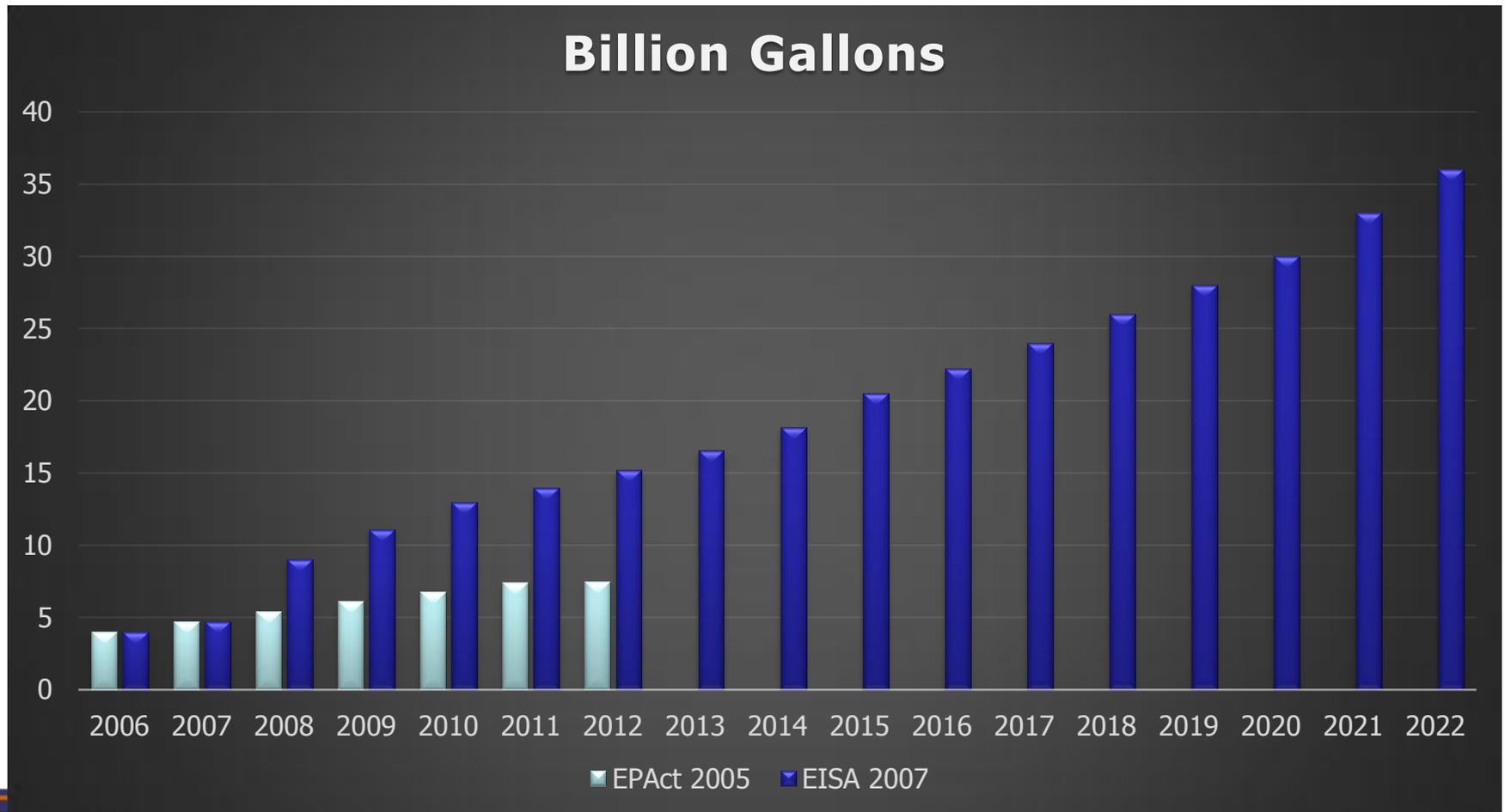
“ . . . to **ensure** that transportation fuel sold or introduced into commerce . . . contains **at least** the applicable volume . . . ”



# RFS: LEGISLATIVE HISTORY



# RFS: LEGISLATIVE HISTORY



# RFS: WAIVER AUTHORITY

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- **EPAct 2005 provided the waiver authority based on either:**
- **Determination RFS “would severely harm the economy or environment”**
- **Determination “that there is inadequate domestic supply”**



# RFS: WAIVER AUTHORITY

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- **EPA claims “inadequate domestic supply” is unclear as to Congressional intent**
- **Permitting EPA to interpret, with deference, to bring in “blend wall”**



# **RFS: WAIVER AUTHORITY**

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## **The Supreme Court on interpretation:**

- ✓ **Not likely Congress intended fundamental revision through “subtle device” such as authority to modify**
- ✓ **Congress does not delegate decisions of “economic and political significance” cryptically**



# **RFS: WAIVER AUTHORITY**

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## **The Supreme Court on interpretation:**

- ✓ **Congress does not “hide elephants in mouseholes” (modest words do not give immense power)**
- ✓ **Agency cannot nullify or render “inoperative” parts of a statute**



# RFS: WAIVER AUTHORITY

## 42 U.S.C. §7545(m)(3)

“Oxygenated fuels” requirements can be waived:

- Upon finding that there is “an inadequate domestic supply of, **or distribution capacity** for . . .”

## 42 U.S.C. §7545(o)(7)

“Renewable fuel program” requirements can be waived:

- Upon determination that “there is an inadequate domestic supply.”



# **RFS: WAIVER AUTHORITY**

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## **What else is EPA likely looking at:**

- ✓ **Congressional authority in (o)(7)(F),  
“Modification of applicable volumes”**
- ✓ **2 years of at least 20% waiver or 1  
year of at least 50% waiver after  
2016 = EPA can modify the RFS**



# RFS: WAIVER AUTHORITY

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## The “Blend Wall” and waiver:

- ✓ **This is not a limit on the industry’s ability to produce the fuel**
- ✓ **Is there “asymmetry” in applying it to renewable fuel industry?**



# **RFS: WAIVER AUTHORITY**

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## **Questions for EPA:**

- ✓ When does it get to be “technology forcing” on an industry?**
- ✓ How (upon what basis) does it decide?**



# **RFS: WAIVER AUTHORITY**

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## **Questions for Industry:**

- ✓ **Will this be a “Pyrrhic Victory”?**
- ✓ **What does the post-court victory world look like?**



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# QUESTIONS?

**THANK YOU.**

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