

111TH CONGRESS
1ST SESSION

S. 1148

To amend the Clean Air Act to modify a provision relating to the renewable fuel program.

IN THE SENATE OF THE UNITED STATES

MAY 21, 2009

Mr. GRASSLEY (for himself, Mrs. McCASKILL, Mr. BOND, and Mr. THUNE) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Clean Air Act to modify a provision relating to the renewable fuel program.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Renewable Fuel Stand-
5 ard Improvement Act”.

6 **SEC. 2. RENEWABLE FUEL STANDARD IMPROVEMENT.**

7 Section 211(o) of the Clean Air Act (42 U.S.C.
8 7545(o)) is amended—

9 (1) in paragraph (1)—

1 (A) in subparagraph (B)(i), by striking
2 “the Administrator” and inserting “the Sec-
3 retary of Agriculture, the Secretary of Energy,
4 and the Administrator”;

5 (B) in subparagraph (C)—

6 (i) by striking “The term” and insert-
7 ing the following:

8 “(i) IN GENERAL.—The term”;

9 (ii) in clause (i) (as designated by
10 clause (i))—

11 (I) by striking “the Adminis-
12 trator” and inserting “the Secretary
13 of Energy”; and

14 (II) by striking “in 2005” and
15 inserting “during calendar year
16 2008”; and

17 (iii) by adding at the end the fol-
18 lowing:

19 “(ii) UPDATES.—For purposes of
20 clause (i), the Secretary of Energy shall
21 update, for calendar year 2011 and every
22 3 calendar years thereafter, the baseline
23 lifecycle greenhouse gas emissions using
24 the date that is 3 years after the baseline

1 date used for the preceding 3-year pe-
2 riod.”;

3 (C) by striking subparagraph (D) and in-
4 serting the following:

5 “(D) BIOMASS-BASED DIESEL.—

6 “(i) IN GENERAL.—The term ‘bio-
7 mass-based diesel’ means renewable fuel
8 that is biodiesel (as defined in section
9 312(f) of the Energy Policy Act of 1992
10 (42 U.S.C. 13220(f))).

11 “(ii) INCLUSION OF CERTAIN FUEL.—
12 The term ‘biomass-based diesel’ includes
13 renewable fuel produced by a facility that
14 commenced construction after December
15 19, 2007, only if the renewable fuel has
16 lifecycle greenhouse gas emissions, as de-
17 termined by the Secretary of Agriculture
18 and the Secretary of Energy, after notice
19 and opportunity for comment, that are at
20 least 50 percent less than the baseline
21 lifecycle greenhouse gas emissions.

22 “(iii) ADVANCED BIOFUEL.—Notwith-
23 standing clauses (i) and (ii), a renewable
24 fuel derived from coprocessing biomass
25 with a petroleum feedstock shall be consid-

1 ered to be an advanced biofuel if the re-
2 newable fuel—

3 “(I) meets the requirements of
4 subparagraph (B); but

5 “(II) is not biomass-based die-
6 sel.”;

7 (D) in subparagraph (E), by striking “the
8 Administrator” and inserting “the Secretary of
9 Agriculture and the Secretary of Energy”;

10 (E) in subparagraph (G), by striking the
11 second sentence; and

12 (F) by striking subparagraphs (H) and (I)
13 and inserting the following:

14 “(H) LIFECYCLE GREENHOUSE GAS EMIS-
15 SIONS.—

16 “(i) IN GENERAL.—The term ‘lifecycle
17 greenhouse gas emissions’ means the ag-
18 gregate quantity of direct greenhouse gas
19 emissions relating to the full fuel lifecycle,
20 as determined by the Secretary of Agri-
21 culture and the Secretary of Energy based
22 on—

23 “(I) measurements taken using
24 the most recent observable data; and

1 “(II) consideration of regional
2 differences of renewable fuel produc-
3 tion.

4 “(ii) INCLUSIONS.—The term
5 ‘lifecycle greenhouse gas emissions’ in-
6 cludes greenhouse gas emissions from all
7 stages of fuel and feedstock production and
8 distribution, from feedstock generation or
9 extraction through the distribution and de-
10 livery and use of the finished fuel to the
11 ultimate consumer, where the mass values
12 for all greenhouse gases are adjusted to ac-
13 count for the relative global warming po-
14 tential of the greenhouse gases.

15 “(iii) PEER REVIEW AND MODEL.—
16 The Secretary of Agriculture and the Sec-
17 retary of Energy shall—

18 “(I) carry out a peer review of
19 any model used in measuring lifecycle
20 greenhouse gas emissions; and

21 “(II) make the results of the peer
22 review and model publicly available
23 before any public comment period pro-
24 vided in connection with the deter-

1 mination made under this subpara-
2 graph.

3 “(I) RENEWABLE BIOMASS.—The term ‘re-
4 newable biomass’ means—

5 “(i) materials, precommercial
6 thinnings, or invasive species from Na-
7 tional Forest System land and public lands
8 (as defined in section 103 of the Federal
9 Land Policy and Management Act of 1976
10 (43 U.S.C. 1702)) that—

11 “(I) are byproducts of preventive
12 treatments that are removed—

13 “(aa) to reduce hazardous
14 fuels;

15 “(bb) to reduce or contain
16 disease or insect infestation; or

17 “(cc) to restore ecosystem
18 health;

19 “(II) would not otherwise be used
20 for higher-value products; and

21 “(III) are harvested in accord-
22 ance with—

23 “(aa) applicable law and
24 land management plans; and

1 “(bb) the requirements
2 for—

3 “(AA) old-growth main-
4 tenance, restoration, and
5 management direction of
6 paragraphs (2), (3), and (4)
7 of subsection (e) of section
8 102 of the Healthy Forests
9 Restoration Act of 2003 (16
10 U.S.C. 6512); and

11 “(BB) large-tree reten-
12 tion of subsection (f) of that
13 section; and

14 “(ii) any organic matter that is avail-
15 able on a renewable or recurring basis
16 from non-Federal land or land belonging to
17 an Indian or Indian tribe that is held in
18 trust by the United States or subject to a
19 restriction against alienation imposed by
20 the United States, including—

21 “(I) renewable plant material, in-
22 cluding—

23 “(aa) feed grains;

24 “(bb) other agricultural
25 commodities;

1 “(cc) other plants and trees;

2 and

3 “(dd) algae; and

4 “(II) waste material, including—

5 “(aa) crop residue;

6 “(bb) other vegetative waste

7 material (including wood waste

8 and wood residues);

9 “(cc) animal waste and by-

10 products (including fats, oils,

11 greases, and manure); and

12 “(dd) food waste and yard

13 waste.”;

14 (2) in paragraph (2)—

15 (A) in subparagraph (A)—

16 (i) by striking “the Administrator”

17 each place it appears and inserting “the

18 Secretary of Agriculture, the Secretary of

19 Energy, and the Administrator”;

20 (ii) in clause (ii)(I), by striking “pro-

21 mulgates” and inserting “promulgate”;

22 and

23 (iii) in clause (iv), by striking “does

24 not promulgate” and inserting “fail to pro-

25 mulgate”; and

1 (B) in subparagraph (B)—

2 (i) in clause (ii)—

3 (I) by striking “the Adminis-
4 trator, in coordination with the Sec-
5 retary of Energy and the Secretary of
6 Agriculture” and inserting “the Sec-
7 retary of Agriculture, the Secretary of
8 Energy, and the Administrator”; and

9 (II) in the matter following sub-
10 clause (VI), by striking “The Admin-
11 istrator” and inserting “The Sec-
12 retary of Agriculture, the Secretary of
13 Energy, and the Administrator”; and

14 (ii) in clause (iv), by striking “the Ad-
15 ministrator” each place it appears and in-
16 serting “the Secretary of Agriculture, the
17 Secretary of Energy, and the Adminis-
18 trator”;

19 (3) in paragraph (3)—

20 (A) in subparagraphs (A) and (B), by
21 striking “the Administrator of the Environ-
22 mental Protection Agency” each place it ap-
23 pears and inserting “the Secretary of Agri-
24 culture, the Secretary of Energy, and the Ad-

1 administrator of the Environmental Protection
2 Agency”; and

3 (B) in subparagraph (C), by striking “the
4 Administrator” and inserting “the Secretary of
5 Agriculture, the Secretary of Energy, and the
6 Administrator of the Environmental Protection
7 Agency”;

8 (4) in paragraph (4)—

9 (A) by striking “Administrator” each place
10 it appears and inserting “Secretary of Agri-
11 culture, the Secretary of Energy, and the Ad-
12 ministrator”;

13 (B) by striking subparagraphs (D) and (E)
14 and inserting the following:

15 “(D) 5-YEAR REVIEW.—Not later than 5
16 years after the date on which the Secretary of
17 Agriculture, the Secretary of Energy, and the
18 Administrator make an adjustment under this
19 paragraph, the Secretary of Agriculture, the
20 Secretary of Energy, and the Administrator
21 shall review and revise (based on the same cri-
22 teria and standards as required for the initial
23 adjustment) the regulations establishing the ad-
24 justed level.

25 “(E) SUBSEQUENT ADJUSTMENTS.—

1 “(i) IN GENERAL.—Except as pro-
2 vided in subparagraph (D), after the Sec-
3 retary of Agriculture, the Secretary of En-
4 ergy, and the Administrator have promul-
5 gated a final rule under the last sentence
6 of paragraph (2)(A)(i) with respect to the
7 method of determining lifecycle greenhouse
8 gas emissions, the Secretary of Agri-
9 culture, the Secretary of Energy, and the
10 Administrator may adjust the percent
11 greenhouse gas reduction levels only if the
12 Secretary of Agriculture, the Secretary of
13 Energy, and the Administrator determine
14 that there has been a significant change in
15 the analytical methodology used for deter-
16 mining the lifecycle greenhouse gas emis-
17 sions.

18 “(ii) EFFECT OF DETERMINATION.—
19 If the Secretary of Agriculture, the Sec-
20 retary of Energy, and the Administrator
21 make a determination described in clause
22 (i), the Secretary of Agriculture, the Sec-
23 retary of Energy, and the Administrator
24 may adjust the 20-, 50-, or 60-percent re-
25 duction levels pursuant to a rulemaking

1 using the criteria and standards described
2 in this paragraph.”;

3 (C) in subparagraph (F), by striking “re-
4 vises” and inserting “revise”; and

5 (D) in subparagraph (G)—

6 (i) by striking “adjusts, or revises, a
7 percent level referred to in this paragraph
8 or makes” and inserting “adjust or revise
9 a percent level referred to in this para-
10 graph, or make”; and

11 (ii) by striking “effective date of such
12 adjustment, revision, or change” and in-
13 serting “date of enactment of the Energy
14 Independence and Security Act of 2007
15 (Public Law 110–140; 121 Stat. 1492)”;

16 (5) in paragraph (5)(E), by striking “Adminis-
17 trator” each place it appears and inserting “Sec-
18 retary of Agriculture, the Secretary of Energy, and
19 the Administrator”;

20 (6) in paragraph (6)(B), by striking “the Ad-
21 ministrator of the Environmental Protection Agen-
22 cy” and inserting “the Secretary of Agriculture, the
23 Secretary of Energy, and the Administrator of the
24 Environmental Protection Agency”;

25 (7) in paragraph (7)—

1 (A) in subparagraph (A)—

2 (i) in the matter preceding clause

3 (i)—

4 (I) by striking “Administrator, in
5 consultation with the Secretary of En-
6 ergy and the Secretary of Agri-
7 culture,” and inserting “Secretary of
8 Agriculture, the Secretary of Energy,
9 and the Administrator”; and

10 (II) by striking “the Adminis-
11 trator on his own motion” and insert-
12 ing “the Secretary of Agriculture, the
13 Secretary of Energy, and the Admin-
14 istrator on a joint motion”; and

15 (ii) in clauses (i) and (ii), by striking
16 “the Administrator” each place it appears
17 and inserting “the Secretary of Agri-
18 culture, the Secretary of Energy, and the
19 Administrator”;

20 (B) in subparagraph (B)—

21 (i) by striking “Administrator, in con-
22 sultation with the Secretary of Energy and
23 the Secretary of Agriculture,” and insert-
24 ing “Secretary of Agriculture, the Sec-

1 retary of Energy, and the Administrator”;
2 and

3 (ii) by striking “the Administrator”
4 and inserting “the Secretary of Agri-
5 culture, the Secretary of Energy, and the
6 Administrator”;

7 (C) in subparagraph (D)—

8 (i) by striking “the Administrator”
9 each place it appears and inserting “the
10 Secretary of Agriculture, the Secretary of
11 Energy, and the Administrator”;

12 (ii) in clause (i), in the second sen-
13 tence, by striking “makes such a reduc-
14 tion” and inserting “make such a reduc-
15 tion”;

16 (iii) in clause (ii), by striking “re-
17 duces” and inserting “reduce”; and

18 (iv) in clause (iii), in the fourth sen-
19 tence—

20 (I) by striking “deems” and in-
21 serting “determine to be”; and

22 (II) by striking “determines” and
23 inserting “determine”;

24 (D) in subparagraph (E)—

1 (i) by striking “Administrator, in con-
2 sultation with the Secretary of Energy and
3 the Secretary of Agriculture,” each place it
4 appears and inserting “Secretary of Agri-
5 culture, the Secretary of Energy, and the
6 Administrator”;

7 (ii) in clause (ii)—

8 (I) in the first sentence, by strik-
9 ing “the Administrator determines”
10 and inserting “the Secretary of Agri-
11 culture, the Secretary of Energy, and
12 the Administrator determine”; and

13 (II) in the second sentence, by
14 striking “the Administrator makes”
15 and inserting “the Secretary of Agri-
16 culture, the Secretary of Energy, and
17 the Administrator make”; and

18 (iii) in clause (iii), by striking “the
19 Administrator determines” and inserting
20 “the Secretary of Agriculture, the Sec-
21 retary of Energy, and the Administrator
22 determine”; and

23 (E) in subparagraph (F)—

24 (i) in the matter preceding clause (i),
25 by striking “the Administrator waives”

1 and inserting “the Secretary of Agri-
2 culture, the Secretary of Energy, and the
3 Administrator waive”; and

4 (ii) in the matter following clause (ii),
5 by striking “the Administrator” each place
6 it appears and inserting “the Secretary of
7 Agriculture, the Secretary of Energy, and
8 the Administrator”;

9 (8) in paragraph (8)—

10 (A) in subparagraph (A), by striking “the
11 Secretary of Energy shall conduct for the Ad-
12 ministrator” and inserting “the Secretary of
13 Agriculture and the Secretary of Energy shall
14 conduct”;

15 (B) in subparagraph (C), by striking “the
16 Secretary of Energy shall make specific rec-
17 ommendations to the Administrator” and in-
18 serting “the Secretary of Agriculture and the
19 Secretary of Energy shall make specific rec-
20 ommendations”; and

21 (C) in subparagraph (D)—

22 (i) by striking “the Administrator”
23 each place it appears and inserting “the
24 Secretary of Agriculture, the Secretary of
25 Energy, and the Administrator”; and

1 (ii) in clause (i), by striking “by the
2 Secretary of Energy”;

3 (9) in paragraph (9)—

4 (A) in subparagraph (A), by striking
5 clause (ii) and inserting the following:

6 “(ii) EXTENSION OF EXEMPTION.—

7 “(I) STUDY.—Not later than De-
8 cember 31, 2008, the Secretary of Ag-
9 riculture and the Secretary of Energy
10 shall conduct a study to determine
11 whether compliance with the require-
12 ments of paragraph (2) would impose
13 a disproportionate economic hardship
14 on small refineries.

15 “(II) EXTENSION OF EXEMP-
16 TION.—In the case of a small refinery
17 that the Secretary of Agriculture and
18 the Secretary of Energy determine
19 under subclause (I) would be subject
20 to a disproportionate economic hard-
21 ship if required to comply with para-
22 graph (2), the Secretary of Agri-
23 culture, the Secretary of Energy, and
24 the Administrator shall extend the ex-
25 emption under clause (i) for the small

1 refinery for a period of not less than
2 2 additional years.”;

3 (B) in subparagraph (B)—

4 (i) in clause (i), by striking “the Ad-
5 ministrator” and inserting “the Secretary
6 of Agriculture, the Secretary of Energy,
7 and the Administrator”;

8 (ii) in clause (ii), by striking “the Ad-
9 ministrator, in consultation with the Sec-
10 retary of Energy,” and inserting “the Sec-
11 retary of Agriculture, the Secretary of En-
12 ergy, and the Administrator”; and

13 (iii) in clause (iii), by striking “The
14 Administrator” and inserting “The Sec-
15 retary of Agriculture, the Secretary of En-
16 ergy, and the Administrator”; and

17 (C) in subparagraphs (C) and (D), by
18 striking “the Administrator” each place it ap-
19 pears and inserting “the Secretary of Agri-
20 culture, the Secretary of Energy, and the Ad-
21 ministrator”;

22 (10) in paragraph (10)(B), by striking “the Ad-
23 ministrator” and inserting “the President”; and

24 (11) in paragraph (11), in the matter preceding
25 subparagraph (A), by striking “the Administrator”

- 1 and inserting “the Secretary of Agriculture, the Sec-
- 2 retary of Energy, and the Administrator”.

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