

## ENERGY ALERT

### ENERGY POLICY ACT OF 2005

#### TITLE XV - ETHANOL AND MOTOR FUELS



The following provides a brief review and summary of some of the major provisions in Title XV, Ethanol and Motor Fuels, of the Energy Policy Act of 2005 (Act). Title XV is divided into three subtitles, as is the summary below.

#### SUBTITLE A: GENERAL PROVISIONS

##### RENEWABLE FUEL PROGRAM

The Energy Policy Act of 2005 contains provisions that will vastly increase the renewable fuel content of gasoline by requiring that a specified amount of renewable fuel be included in motor vehicle fuel sold or dispensed in the contiguous United States. The program sets forth specified volumes of renewable fuel to be included in gasoline and sets up a credit trading program for refiners, blenders and importers of gasoline. It also contains a state waiver provision, a temporary exemption for small refiners and a requirement for an annual ethanol production market concentration study.

**Applicable Volume.** Specific aggregate volumes of renewable fuels are required to be included in motor vehicle fuel. Starting in 2006, the applicable volume is 4.0 billion gallons. That volume will grow until, in 2012, a volume of 7.5 billion gallons of renewable fuel is included. The administrator of the Environmental Protection Agency (EPA) is required to publish by November 30 of the preceding year the renewable fuel obligation necessary to meet the aggregate limits that are applicable to refiners, blenders and importers of gasoline.

**Definition of Renewable Fuel.** The term “renewable fuel” means motor fuel that is produced from a variety of sources – grain; starch; oilseeds; vegetable; animal or fish materials, including fats, greases and oils; sugarcane; sugar beets; sugar components; tobacco; potatoes; other biomass; or natural gas produced from a biogas source, including a landfill, sewage waste treatment plant, feedlot or other place where decaying organic material is found – and is used to replace or reduce the quantity of fossil fuel present in a fuel mixture used to operate a motor vehicle. The term includes cellulosic biomass ethanol, “waste derived ethanol,” biodiesel and any blending components derived from renewable fuel.

**Credit Program.** A credit program is established under the Renewable Fuel Program that allows for the generation of credits by any person who refines, blends or imports gasoline containing an amount of renewable fuel greater than the quantity required by such person. The generator of the credits may use them or transfer all or a portion of them to another person for the purpose of complying with the program. The EPA administrator is directed to promulgate regulations implementing the credit program.

**Waivers.** The EPA administrator may waive the requirements of the Renewable Fuel Program in response to a petition by one or more states if he determines that either “implementation of the requirement would severely harm the economy or environment of a state, a region or the United States” or “there is an inadequate domestic supply.”

**Small Refiners.** Defined as refineries with average daily crude oil throughput that does not exceed 75,000 barrels, small refiners are exempted from the requirements of the program until calendar year 2011. A small refiner may waive the exemption and generate credits as discussed above, if it chooses to do so.

**Ethanol Market Concentration Study.** The Federal Trade Commission is required to perform an annual market concentration analysis of the ethanol production industry to determine whether there is sufficient competition among industry participants to avoid price setting and other anticompetitive behavior, and to report to Congress annually its analysis.

#### **METHYL TERTIARY BUTYL ETHER (MTBE)**

Unlike previous versions of this legislation, the Energy Policy Act of 2005 does not include provisions that prohibit the use of the oxygenate methyl tertiary butyl ether (MTBE) in gasoline, provide safe harbor protection for MTBE and renewable fuel producers from defective product suits, or provide transition assistance for manufacturers who must cease production of MTBE.

**Findings.** The Act includes “findings” that (1) since 1979, MTBE has been used nationwide at low levels in gasoline to replace lead as an octane booster or anti-knocking agent, (2) the Clean Air Act established a fuel oxygenate standard requiring that reformulated gasoline must contain at least 2 percent oxygen by weight and (3) the fuel industry responded to the Clean Air Act requirement by making substantial investments in MTBE production capacity and systems to deliver MTBE-containing gasoline to the market.

**Claims Removed to U.S. District Court.** Claims for legal actions filed after the date of enactment related to allegations of MTBE contamination may be removed to the appropriate U.S. district court.

#### **ELIMINATION OF OXYGEN CONTENT REQUIREMENT FOR REFORMULATED GASOLINE**

**Elimination of Requirement.** This provision deletes the Clean Air Act requirement that the oxygen content of reformulated gasoline shall meet or exceed 2 percent by weight. The provision takes effect 270 days after enactment of the Act, except that for states granted a waiver from federal emissions standards, the provision takes effect on the date of enactment of the Act.

**Maintenance of Toxic Air Pollution Emission Reductions.** Within 270 days following enactment of the Act, the EPA administrator is required to establish maximum baseline standards of toxic air pollution emissions for each refiner or importer of reformulated fuel in order to maintain the level of such emissions at amounts emitted by such refiner or importer during calendar years 2001 and 2002.

**Credit Program.** The EPA administrator is required to establish a credit program for emissions of toxic air pollutants in the same manner as provided in the Clean Air Act.

***Analyses of Public Health Effects of Fuels and Fuels Additives, and Vehicle Fuel Changes Required by the Act.***

Not later than two years after enactment of the Act, the EPA administrator is required to report to Congress on a study of the effects on public health of specified fuel additives. Not later than five years after enactment of the Act, the administrator is required to study and report to Congress on the changes in emissions of air pollutants and air quality due to the use of fuels and fuel additives resulting from implementation of the Act.

**ANALYSIS OF MOTOR VEHICLE FUEL CHANGES AND CHANGES TO EMISSIONS MODEL**

***Analysis of Motor Vehicle Fuel Changes.*** Within four years, the EPA must analyze changes in emissions of air pollutants and air quality resulting from amendments made by this title. The administrator must produce a final report within five years, after providing for reasonable opportunity for comment.

***Changes to Emissions Model.*** The EPA administrator is required to make changes to the emissions model that reflect the effects of gasoline characteristics or components on emissions from vehicles in the motor vehicle fleet during calendar year 2007.

**DATA COLLECTION AND STUDIES**

This title includes a number of provisions that require various analyses, data collection and studies, including a:

- Renewable Fuels Survey, to be published monthly, containing a range of demand, production, pricing and related data.
- Fuel System Requirements Harmonization Study, which will assess the effects of various federal, state, regional and local fuel requirements on a range of economic and environmental parameters. The study will also assess the feasibility of developing national or regional fuel slates. The EPA and Department of Energy are required to submit a report to Congress by June 1, 2008, on the results of the study and including recommendations for legislative and administrative actions.

**OTHER BIOMASS PROVISIONS**

The following provisions are included in the title to stimulate production of ethanol from cellulosic biomass:

***Commercial Byproducts From Municipal Solid Waste and Cellulosic Biomass Loan Guarantee Program.*** A program will be established to provide federal loan guarantees for the construction of facilities for processing and conversion of municipal solid waste and cellulosic biomass into fuel ethanol and other commercial byproducts.

***Resource Center and Grants.*** For each of fiscal years 2005 to 2007, \$4 million will be authorized for a resource center to further develop bioconversion technology using low-cost biomass for production of ethanol at the Center for Biomass-Based Energy at the University of Mississippi and the University of Oklahoma. In addition, \$25 million for each of fiscal years 2006 to 2010 will be authorized for grants to research and develop renewable fuel production technologies in states that are required to utilize reformulated gasoline but have low rates of ethanol production.

**Cellulosic Biomass and Waste-Derived Ethanol Conversion Assistance.** Grants are authorized for merchant producers of ethanol derived from cellulosic biomass and from agricultural residues or municipal solid agricultural byproducts.

**Advanced Biofuel Technologies Program.** The EPA administrator, in consultation with the Department of Agriculture, shall establish the Advanced Biofuel Technologies Program and fund programs to demonstrate advanced technologies for the production of alternative transportation fuels, particularly from feedstocks that represent 10 percent or less of ethanol or biodiesel fuel in production in the United States during the prior year.

**Waste-Derived Ethanol and Biodiesel.** The definition of biodiesel is amended to include “animal wastes, including poultry wastes, and other materials; or municipal solid waste and sludges and oils derived from wastewater and the treatment of wastewater.”

**Sugar Ethanol Loan Guarantee Program.** Establishes program of demonstration projects supported by loan guarantees for production of ethanol derived from sugarcane, sugarcane bagasse and other sugarcane byproducts.

#### **BLENDING OF COMPLIANT REFORMULATED GASOLINES**

A gasoline retailer may blend at a retail location batches of ethanol-blended and non-ethanol-blended reformulated gasoline under specified conditions.

#### **SUBTITLE B: UNDERGROUND STORAGE TANK COMPLIANCE**

This subtitle amends provisions of the Resource Conservation and Recovery Act that regulate underground storage tanks (USTs):

**Trust Fund Distribution.** The EPA must distribute to the states at least 80 percent of the funds appropriated each year from the Leaking Underground Storage Tank Trust Fund. The states may use these funds to pay for the reasonable costs of: (1) enforcement of corrective actions, (2) necessary administrative costs of state assurance funds or (3) enforcement of a state or local program. This provision also provides for the allocation of funds to states by the administrator.

**Inspection of Underground Storage Tanks.** Within two years following enactment of the Act, states must conduct on-site inspections of all USTs that have not undergone an inspection since December 22, 1998, and conduct periodic inspections of all USTs every three years. The EPA administrator is directed to conduct a study on compliance assurance programs that could serve as an alternative to this inspection program and to submit such report to Congress no later than four years after enactment of the Act.

**Operator Training.** Within two years following enactment of the Act, the EPA administrator must publish guidelines, after notice and comment, that specify methods for training operators of USTs. Within two years following publication of such guidelines, states are required to develop and implement a strategy for training them. The EPA administrator may provide a grant of up to \$200,000 to states that develop and implement a UST operator training strategy.

**Remediation of Oxygenated Fuel Additives.** The EPA administrator and states are authorized to carry out remediation of releases of a fuel containing an oxygenated fuel additive that presents a threat to human health or welfare or the environment.

**Use of Funds for Release Prevention and Compliance.** This provision stipulates a range of measures intended to promote and enhance the compliance and prevention of releases from underground storage tanks through a combination of mechanisms.

**Federal Facilities.** Each federal department or agency with authority over USTs or the land on which they are located must comply with all federal, state, interstate and local requirements regarding same. In addition, each federal department or agency with authority over USTs or the land on which they are located must provide a report to Congress with specified information about the status and location of such USTs.

## SUBTITLE C: BOUTIQUE FUELS

### REDUCING THE PROLIFERATION OF STATE FUEL CONTROLS

**Temporary Waiver During Supply Emergency.** The EPA administrator may temporarily waive a control or prohibition respecting use of a fuel or fuel additive prescribed by a state implementation plan if the administrator determines that extreme or unusual fuel or fuel additive supply circumstances exist, such circumstances are the result of a natural disaster or another event that could not reasonably have been foreseen or prevented, and that it is in the public interest to grant the waiver. Such waiver must apply to the smallest geographic area necessary, and is effective for a period of 20 days or less. The administrator is required to promulgate regulations to implement this authority.

**Limit on Number of Boutique Fuels.** The EPA administrator shall have no authority to approve a state implementation plan (SIP), or SIP revision, if the effect of such approval increases the total number of fuels approved as of September 1, 2004, in all SIPs. The administrator is required to publish a list of all such fuels approved as of that date, and may not thereafter approve a new fuel, unless there has been a reduction in the number of listed fuels and unless the administrator finds, in consultation with the secretary of Energy, that the proposed fuel control or prohibition will not cause fuel supply or distribution interruptions or have a significant adverse impact on fuel production in the area or contiguous areas.

**Study.** The EPA, in cooperation with the Department of Energy, is required to conduct a study of the projected effects on air quality, the proliferation of fuel blends, fuel availability and fuel costs of providing a preference for reformulated gasoline and low RVP gasoline blends. The study is required to be submitted to Congress not later than 12 months following enactment of the Act.

## CONTACT INFORMATION

If you have any questions or would like to learn more about this topic, please contact the partner who normally represents you, or:

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