

[DISCUSSION DRAFT]

JULY 16, 2009

111TH CONGRESS  
1ST SESSION

**H. R.** \_\_\_\_\_

To amend the Clean Air Act to include algae-based biofuel in the renewable fuel program and amend the Internal Revenue Code of 1986 to include algae-based biofuel in the cellulosic biofuel producer credit.

IN THE HOUSE OF REPRESENTATIVES

Mr. BILBRAY introduced the following bill; which was referred to the Committee on \_\_\_\_\_

**A BILL**

To amend the Clean Air Act to include algae-based biofuel in the renewable fuel program and amend the Internal Revenue Code of 1986 to include algae-based biofuel in the cellulosic biofuel producer credit.

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. INCLUSION OF ALGAE-BASED BIOFUEL IN RE-**  
4 **NEWABLE FUEL PROGRAM.**

5 Section 211(o)(1) of the Clean Air Act (42 U.S.C.  
6 7545(o)(1)) is amended—

1 (1) in subparagraph (E) by adding at the end  
2 the following “The term ‘cellulosic biofuel’ also in-  
3 cludes algae-based biofuel.”, and

4 (2) by adding the following new subparagraph  
5 at the end thereof:

6 “(M) ALGAE-BASED BIOFUEL.—The term  
7 ‘algae-based biofuel’ means liquid fuel—

8 “(i) derived from the biomass of  
9 single- or multi-cellular organisms which  
10 are inherently aquatic and classified as  
11 non-vascular plants (including microalgae,  
12 blue-green algae (cyanobacteria), and  
13 macroalgae (seaweeds)); and

14 “(ii) that has lifecycle greenhouse gas  
15 emissions, as determined by the Adminis-  
16 trator, that are at least 60 percent less  
17 than the baseline lifecycle greenhouse gas  
18 emissions.”.”.

19 **SEC. 2. INCLUSION OF ALGAE-BASED BIOFUEL IN DEFINI-**  
20 **TION OF CELLULOSIC BIOFUEL.**

21 (a) CELLULOSIC BIOFUEL PRODUCER CREDIT.—

22 (1) GENERAL RULE.—Paragraph (4) of section  
23 40(a) of the Internal Revenue Code of 1986 is  
24 amended by inserting “and algae-based” after “cel-  
25 lulosic”.

1           (2) DEFINITIONS.—Paragraph (6) of section  
2           40(b) of such Code is amended—

3                   (A) by inserting “AND ALGAE-BASED”  
4           after “CELLULOSIC” in the heading,

5                   (B) by striking subparagraph (A) and in-  
6           serting the following:

7                   “(A) IN GENERAL.—The cellulosic and  
8           algae-based biofuel producer credit of any tax-  
9           payer is an amount equal to the applicable  
10          amount for each gallon of—

11                   “(i) qualified cellulosic biofuel produc-  
12          tion, and

13                   “(ii) qualified algae-based biofuel pro-  
14          duction.”,

15                   (C) by redesignating subparagraphs (F),  
16          (G), and (H) as subparagraphs (I), (J), and  
17          (K), respectively,

18                   (D) by inserting “AND ALGAE-BASED”  
19          after “CELLULOSIC” in the heading of subpara-  
20          graph (I), as so redesignated,

21                   (E) by inserting “or algae-based biofuel,  
22          whichever is appropriate,” after “cellulosic  
23          biofuel” in subparagraph (J), as so redesign-  
24          ated,

1 (F) by inserting “and qualified algae-based  
2 biofuel production” after “qualified cellulosic  
3 biofuel production” in subparagraph (K), as so  
4 redesignated, and

5 (G) by inserting after subparagraph (E)  
6 the following new subparagraphs:

7 “(F) QUALIFIED ALGAE-BASED BIOFUEL  
8 PRODUCTION.—For purposes of this section,  
9 the term ‘qualified algae-based biofuel produc-  
10 tion’ means any algae-based biofuel which is  
11 produced by the taxpayer, and which during the  
12 taxable year—

13 “(i) is sold by the taxpayer to another  
14 person—

15 “(I) for use by such other person  
16 in the production of a qualified algae-  
17 based biofuel mixture in such other  
18 person’s trade or business (other than  
19 casual off-farm production),

20 “(II) for use by such other per-  
21 son as a fuel in a trade or business,  
22 or

23 “(III) who sells such algae-based  
24 biofuel at retail to another person and

1 places such algae-based biofuel in the  
2 fuel tank of such other person, or

3 “(ii) is used or sold by the taxpayer  
4 for any purpose described in clause (i).

5 The qualified algae-based biofuel production of  
6 any taxpayer for any taxable year shall not in-  
7 clude any alcohol which is purchased by the  
8 taxpayer and with respect to which such pro-  
9 ducer increases the proof of the alcohol by addi-  
10 tional distillation.

11 “(G) QUALIFIED ALGAE-BASED BIOFUEL  
12 MIXTURE.—For purposes of this paragraph, the  
13 term ‘qualified algae-based biofuel mixture’  
14 means a mixture of algae-based biofuel and gas-  
15 oline or of algae-based biofuel and a special fuel  
16 which—

17 “(i) is sold by the person producing  
18 such mixture to any person for use as a  
19 fuel, or

20 “(ii) is used as a fuel by the person  
21 producing such mixture.

22 “(H) ALGAE-BASED BIOFUEL.—For pur-  
23 poses of this paragraph—

24 “(i) IN GENERAL.—The term ‘algae-  
25 based biofuel’ means any liquid fuel, in-

1 cluding gasoline, diesel, aviation fuel, and  
2 ethanol, which—

3 “(I) is produced from the bio-  
4 mass of algal organisms, and

5 “(II) meets the registration re-  
6 quirements for fuels and fuel additives  
7 established by the Environmental Pro-  
8 tection Agency under section 211 of  
9 the Clean Air Act (42 U.S.C. 7545).

10 “(ii) ALGAL ORGANISM.—The term  
11 ‘algal organism’ means a single- or multi-  
12 cellular organism which is primarily aquat-  
13 ic and classified as a non-vascular plant,  
14 including microalgae, blue-green algae  
15 (cyanobacteria), and macroalgae (sea-  
16 weeds).

17 “(iii) EXCLUSION OF LOW-PROOF AL-  
18 COHOL.—Such term shall not include any  
19 alcohol with a proof of less than 150. The  
20 determination of the proof of any alcohol  
21 shall be made without regard to any added  
22 denaturants.”.

23 (3) CONFORMING AMENDMENTS.—

24 (A) Subparagraph (D) of section 40(d)(3)  
25 of such Code is amended—

1 (i) by inserting “AND ALGAE-BASED”  
2 after “CELLULOSIC” in the heading,

3 (ii) by inserting “or (b)(6)(F)” after  
4 “(b)(6)(C)” in clause (ii), and

5 (iii) by inserting “or algae-based”  
6 after “such cellulosic”.

7 (B) Paragraph (6) of section 40(d) of such  
8 Code is amended—

9 (i) by inserting “AND ALGAE-BASED”  
10 after “CELLULOSIC” in the heading, and

11 (ii) by striking the first sentence and  
12 inserting “No cellulosic and algae-based  
13 biofuel producer credit shall be determined  
14 under subsection (a) with respect to any  
15 cellulosic or algae-based biofuel unless such  
16 cellulosic or algae-based biofuel is produced  
17 in the United States and used as a fuel in  
18 the United States.”

19 (C) Paragraph (3) of section 40(e) of such  
20 Code is amended by inserting “AND ALGAE-  
21 BASED” after “CELLULOSIC” in the heading.

22 (D) Paragraph (1) of section 4101(a) of  
23 such Code is amended—

24 (i) by inserting “or algae-based” after  
25 “cellulosic”, and

1 (ii) by inserting “and 40(b)(6)(H), re-  
2 spectively” after “section 40(b)(6)(E)”.

3 (b) SPECIAL ALLOWANCE FOR CELLULOSIC BIOFUEL  
4 PLANT PROPERTY.—Subsection (l) of section 168 of the  
5 Internal Revenue Code of 1986 is amended—

6 (1) by inserting “AND ALGAE-BASED” after  
7 “CELLULOSIC” in the heading,

8 (2) by inserting “and any qualified algae-based  
9 biofuel plant property” after “qualified cellulosic  
10 biofuel plant property” in paragraph (1),

11 (3) by redesignating paragraphs (4) through  
12 (8) as paragraphs (6) through (10), respectively,

13 (4) by inserting “or qualified algae-based  
14 biofuel plant property” after “cellulosic biofuel plant  
15 property” in paragraph (7)(C), as so redesignated,

16 (5) by striking “with respect to” and all that  
17 follows in paragraph (9), as so redesignated, and in-  
18 serting “with respect to any qualified cellulosic  
19 biofuel plant property and any qualified algae-based  
20 biofuel plant property which ceases to be such quali-  
21 fied property.”,

22 (6) by inserting “or qualified algae-based  
23 biofuel plant property” after “cellulosic biofuel plant  
24 property” in paragraph (10), as so redesignated, and

1           (7) by inserting after paragraph (3) the fol-  
2           lowing new paragraphs:

3           “(4) QUALIFIED ALGAE-BASED BIOFUEL PLANT  
4           PROPERTY.—The term ‘qualified algae-based biofuel  
5           plant property’ means property of a character sub-  
6           ject to the allowance for depreciation—

7                   “(A) which is used in the United States  
8                   solely to produce algae-based biofuel,

9                   “(B) the original use of which commences  
10                  with the taxpayer after December 31, 2008,

11                  “(C) which is acquired by the taxpayer by  
12                  purchase (as defined in section 179(d)) after  
13                  December 31, 2008, but only if no written bind-  
14                  ing contract for the acquisition was in effect on  
15                  or before such date, and

16                  “(D) which is placed in service by the tax-  
17                  payer before January 1, 2013.

18           “(5) ALGAE-BASED BIOFUEL.—

19                   “(A) IN GENERAL.—The term ‘algae-based  
20                   biofuel’ means any liquid fuel which is produced  
21                   from the biomass of algal organisms.

22                   “(B) ALGAL ORGANISM.—The term ‘algal  
23                   organism’ means a single- or multi-cellular or-  
24                   ganism which is primarily aquatic and classified  
25                   as a non-vascular plant, including microalgae,

1 blue-green algae (cyanobacteria), and  
2 macroalgae (seaweeds).”.

3 (c) EFFECTIVE DATES.—

4 (1) CELLULOSIC BIOFUEL PRODUCER CRED-  
5 IT.—The amendments made by subsection (a) shall  
6 apply to fuel produced after December 31, 2008.

7 (2) SPECIAL ALLOWANCE FOR CELLULOSIC  
8 BIOFUEL PLANT PROPERTY.—The amendments  
9 made by subsection (b) shall apply to property pur-  
10 chased and placed in service after December 31,  
11 2008.