

109TH CONGRESS
1ST SESSION

H. R. 1493

To amend the Clean Air Act to reduce the proliferation of boutique fuels,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 6, 2005

Mr. BLUNT (for himself, Mr. RYAN of Wisconsin, Mr. GREEN of Wisconsin, Mr. ROGERS of Michigan, Mr. PETRI, Mr. SENSENBRENNER, Mr. KIRK, Mr. NEY, Mr. BRADY of Texas, Mr. ENGLISH of Pennsylvania, Mr. WICKER, Mr. BONILLA, Mr. SHADEGG, Mr. CANTOR, Mr. ISSA, Mr. SESSIONS, Mr. AKIN, and Mr. HERGER) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Clean Air Act to reduce the proliferation
of boutique fuels, and for other purposes.

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 “Boutique Fuels Elimini-

5 nation Act of 2005”.

1 **SEC. 2. REDUCING THE PROLIFERATION OF BOUTIQUE**
2 **FUELS.**

3 (a) TEMPORARY WAIVERS DURING SUPPLY EMER-
4 GENCIES.—Section 211(c)(4)(C) of the Clean Air Act (42
5 U.S.C. 7545(c)(4)(C)) is amended by inserting “(i)” after
6 “(C)” and by adding the following new clauses at the end
7 thereof:

8 “(ii) The Administrator may temporarily waive a con-
9 trol or prohibition respecting the use of a fuel or fuel addi-
10 tive required or regulated by the Administrator pursuant
11 to subsection (c), (h), (i), (k), or (m) of this section or
12 prescribed in an applicable implementation plan under sec-
13 tion 110 approved by the Administrator under clause (i)
14 of this subparagraph if, after consultation with, and con-
15 currence by, the Secretary of Energy, the Administrator
16 determines that—

17 “(I) extreme and unusual fuel or fuel additive
18 supply circumstances exist in a State or region of
19 the Nation which prevent the distribution of an ade-
20 quate supply of the fuel or fuel additive to con-
21 sumers;

22 “(II) such extreme and unusual fuel and fuel
23 additive supply circumstances are the result of a
24 natural disaster, an Act of God, a pipeline or refin-
25 ery equipment failure, or another event that could
26 not reasonably have been foreseen or prevented and

1 not the lack of prudent planning on the part of the
2 suppliers of the fuel or fuel additive to such State
3 or region; and

4 “(III) it is in the public interest to grant the
5 waiver (for example, when a waiver is necessary to
6 meet projected temporary shortfalls in the supply of
7 the fuel or fuel additive in a State or region of the
8 Nation which cannot otherwise be compensated for).

9 “(iii) If the Administrator makes the determinations
10 required under clause (ii), such a temporary extreme and
11 unusual fuel and fuel additive supply circumstances waiver
12 shall be permitted only if—

13 “(I) the waiver applies to the smallest geo-
14 graphic area necessary to address the extreme and
15 unusual fuel and fuel additive supply circumstances;

16 “(II) the waiver is effective for a period of 20
17 calendar days or, if the Administrator determines
18 that a shorter waiver period is adequate, for the
19 shortest practicable time period necessary to permit
20 the correction of the extreme and unusual fuel and
21 fuel additive supply circumstances and to mitigate
22 impact on air quality;

23 “(III) the waiver permits a transitional period,
24 the exact duration of which shall be determined by
25 the Administrator, after the termination of the tem-

1 porary waiver to permit wholesalers and retailers to
2 blend down their wholesale and retail inventory;

3 “(IV) the waiver applies to all persons in the
4 motor fuel distribution system; and

5 “(V) the Administrator has given public notice
6 to all parties in the motor fuel distribution system,
7 local and State regulators, public interest groups,
8 and consumers in the State or region to be covered
9 by the waiver.

10 The term ‘motor fuel distribution system’ as used in this
11 clause shall be defined by the Administrator through rule-
12 making.

13 “(iv) Within 180 days of the date of enactment of
14 this clause, the Administrator shall promulgate regula-
15 tions to implement clauses (ii) and (iii).

16 “(v) Nothing in this subparagraph shall—

17 “(I) limit or otherwise affect the application of
18 any other waiver authority of the Administrator pur-
19 suant to this section or pursuant to a regulation
20 promulgated pursuant to this section; and

21 “(II) subject any State or person to an enforce-
22 ment action, penalties, or liability solely arising from
23 actions taken pursuant to the issuance of a waiver
24 under this subparagraph.”.

1 (b) LIMIT ON NUMBER OF BOUTIQUE FUELS.—Sec-
2 tion 211(c)(4)(C) of the Clean Air Act (42 U.S.C.
3 7545(c)(4)), as amended by subsection (a), is further
4 amended by adding at the end the following:

5 “(v)(I) The Administrator shall have
6 no authority, when considering a State im-
7 plementation plan or a State implementa-
8 tion plan revision, to approve under this
9 paragraph any fuel included in such plan
10 or revision if the effect of such approval
11 would be to increase the total number of
12 fuels approved under this paragraph as of
13 September 1, 2004 in all State implemen-
14 tation plans;

15 “(II) The Administrator, in consulta-
16 tion with the Secretary of Energy, shall de-
17 termine the total number of fuels approved
18 under this paragraph as of September 1,
19 2004, in all State implementation plans
20 and shall publish a list of such fuels, in-
21 cluding the states and Petroleum Adminis-
22 tration for Defense District in which they
23 are used, in the Federal Register for public
24 review and comment no later than 90 days
25 after enactment.

1 “(III) The Administrator shall remove
2 a fuel from the list published under sub-
3 clause (II) if a fuel ceases to be included
4 in a State implementation plan or if a fuel
5 in a State implementation plan is identical
6 to a Federal fuel formulation implemented
7 by the Administrator, but the Adminis-
8 trator shall not reduce the total number of
9 fuels authorized under the list published
10 under subclause (II).

11 “(IV) Subclause (I) shall not limit the
12 Administrator’s authority to approve a
13 control or prohibition respecting any new
14 fuel under this paragraph in a State imple-
15 mentation plan or revision to a State im-
16 plementation plan if such new fuel:

17 “(aa) completely replaces a fuel
18 on the list published under subclause
19 (II); or

20 “(bb) does not increase the total
21 number of fuels on the list published
22 under paragraph (II) as of September
23 1, 2004.

24 In the event that the total number of fuels
25 on the list published under subclause (II)

1 at the time of the Administrator’s consid-
2 eration of a control or prohibition respect-
3 ing a new fuel is lower than the total num-
4 ber of fuels on such list as of September
5 1, 2004, the Administrator may approve a
6 control or prohibition respecting a new fuel
7 under this subclause if the Administrator,
8 after consultation with the Secretary of
9 Energy, publishes in the Federal Register,
10 after notice and comment, a finding that,
11 in the Administrator’s judgment, such con-
12 trol or prohibition respecting a new fuel
13 will not cause fuel supply or distribution
14 interruptions or have a significant adverse
15 impact on fuel producibility in the affected
16 area or contiguous areas.

17 “(V) Except for a fuel with a sum-
18 mertime Reid Vapor Pressure of 7.0
19 pounds per square inch, the Administrator
20 shall have no authority under this para-
21 graph, when considering any particular
22 State’s implementation plan or a revision
23 to that State’s implementation plan, to ap-
24 prove any fuel unless that fuel was, as of
25 the date of such consideration, approved in

1 at least one State implementation plan in
2 the applicable Petroleum Administration
3 for Defense District.

4 “(VI) Nothing in this clause shall be
5 construed to prohibit a State from requir-
6 ing the use of an alcohol or bio-diesel fuel
7 additive registered in accordance with sub-
8 section (b), including any alcohol or bio-
9 diesel fuel additive registered after the en-
10 actment of this subclause; however, this
11 clause shall be construed to prohibit a
12 State from requiring the use of any other
13 fuel additive registered in accordance with
14 subsection (b), including any other fuel ad-
15 ditive registered after the enactment of
16 this subclause.”.

17 (c) SENSE OF THE CONGRESS.—It is the sense of the
18 Congress that States should seek to maximize the environ-
19 mental benefits available from the fuels authorized under
20 subsection (b).

21 (d) STUDY AND REPORT TO CONGRESS ON BOU-
22 TIQUE FUELS.—

23 (1) JOINT STUDY.—The Administrator of the
24 Environmental Protection Agency and the Secretary
25 of Energy shall undertake a study of the effects on

1 air quality, on the number of fuel blends, on fuel
2 availability, on fuel fungibility, and on fuel costs of
3 the State plan provisions adopted pursuant to sec-
4 tion 211(c)(4)(C) of the Clean Air Act (42 U.S.C.
5 7545(c)(4)(C)).

6 (2) FOCUS OF STUDY.—The primary focus of
7 the study required under paragraph (1) shall be to
8 determine how to develop a Federal fuels system
9 that maximizes motor fuel fungibility and supply,
10 preserves air quality standards, and reduces motor
11 fuel price volatility that results from the prolifera-
12 tion of boutique fuels, and to recommend to Con-
13 gress such legislative changes as are necessary to
14 implement such a system. The study should include
15 the impacts on overall energy supply, distribution,
16 and use as a result of the legislative changes rec-
17 ommended. In addition, the study shall examine the
18 need for additional, cleaner motor fuel reformula-
19 tions to assist states in complying with the ozone
20 National Ambient Air Quality Standard.

21 (3) RESPONSIBILITY OF ADMINISTRATOR.—In
22 carrying out the study required by this section, the
23 Administrator shall coordinate obtaining comments
24 from affected parties interested in the air quality
25 impact assessment portion of the study. The Admin-

1 istrator shall use sound and objective science prac-
2 tices, shall consider the best available science, and
3 shall consider and include a description of the
4 weight of the scientific evidence.

5 (4) RESPONSIBILITY OF SECRETARY.—In car-
6 rying out the study required by this section, the Sec-
7 retary shall coordinate obtaining comments from af-
8 fected parties interested in the fuel availability,
9 number of fuel blends, fuel fungibility and fuel costs
10 portion of the study.

11 (5) PUBLIC PARTICIPATION.—The Adminis-
12 trator and the Secretary shall appoint a task force
13 of interested parties, including but not limited to
14 representatives of Federal, State and local govern-
15 ments, fuel manufacturers, suppliers, and marketers
16 and public interest groups, to provide information to
17 the Administrator and the Secretary and to assist in
18 the development of the recommendations to be in-
19 cluded in the report to Congress under paragraph
20 (5).

21 (6) REPORT TO CONGRESS.—The Administrator
22 and the Secretary jointly shall submit the results of
23 the study required by this section in a report to the
24 Congress not later than 12 months after the date of
25 the enactment of this Act, together with any rec-

ommended regulatory and legislative changes. Such report shall be submitted to the Committee on Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(7) AUTHORIZATION OF APPROPRIATIONS.—

There is authorized to be appropriated jointly to the Administrator and the Secretary \$500,000 for the completion of the study required under this subsection.

(e) DEFINITIONS.—In this section:

(1) The term “Administrator” means the Administrator of the Environmental Protection Agency.

(2) The term “Secretary” means the Secretary of Energy.

(3) The term “fuel” means gasoline, diesel fuel, and any other liquid petroleum product commercially known as gasoline and diesel fuel for use in highway and non-road motor vehicles.

(4) The term “a control or prohibition respecting a new fuel” means a control or prohibition on the formulation, composition, or emissions characteristics of a fuel that would require the increase or decrease of a constituent in gasoline or diesel fuel.

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