

109TH CONGRESS
1ST SESSION

S. 1859

To amend the Clean Air Act to provide for a Federal Fuels List, and
for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 7 (legislative day, OCTOBER 6), 2005

Mr. BURR (for himself, Mr. ALLEN, Mr. DEMINT, and Mr. TALENT) 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 provide for a Federal Fuels
List, 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 “Affordable and Reli-
5 able Gas Act of 2005”.

6 **SEC. 2. LIST OF FUELS.**

7 (a) LIST OF FUELS.—Section 211(c)(4)(C) of the
8 Clean Air Act (42 U.S.C. 7545(c)(4)(C)) (as amended by
9 the Energy Policy Act of 2005 (Public Law 109–58; 119

1 Stat. 1106)) is amended by striking the second clause (v)
2 and inserting the following:

3 “(vi)(I) The Administrator shall have no authority,
4 when considering a State implementation plan or a State
5 implementation plan revision, to approve under this para-
6 graph any fuel included in such plan or revision if the ef-
7 fect of such approval would be to increase the total num-
8 ber of fuels approved under this paragraph as of Sep-
9 tember 1, 2004 in all State implementation plans.

10 “(II) The Administrator, in consultation with the
11 Secretary of Energy, shall determine the total number of
12 fuels approved under this paragraph as of September 1,
13 2004, in all State implementation plans and shall publish
14 a list of such fuels, including the states and Petroleum
15 Administration for Defense District in which they are
16 used, in the Federal Register no later than 90 days after
17 enactment.

18 “(III) The Administrator shall remove a fuel from the
19 list published under subclause (II) if a fuel ceases to be
20 included in a State implementation plan or if a fuel in
21 a State implementation plan is identical to a Federal fuel
22 formulation implemented by the Administrator and shall
23 reduce the total number of fuels authorized under the list
24 published under subclause (II) appropriately.

1 “(IV) Subclause (I) shall not limit the Administra-
2 tor’s authority to approve a control or prohibition respect-
3 ing any new fuel under this paragraph in a State’s imple-
4 mentation plan or a revision to that State’s implementa-
5 tion plan after the date of enactment of this Act if such
6 new fuel completely replaces a fuel on the list published
7 under subclause (II).

8 “(V) The Administrator shall have no authority
9 under this paragraph, when considering any particular
10 State’s implementation plan or a revision to that State’s
11 implementation plan, to approve any fuel unless that fuel
12 was, as of the date of such consideration, approved in at
13 least one State implementation plan in the applicable Pe-
14 troleum Administrator for Defense District. However, the
15 Administrator may approve as part of a State implementa-
16 tion plan or State implementation plan revision a fuel with
17 a summertime Reid Vapor Pressure of 7.0 psi. In no event
18 shall such approval by the Administrator cause an increase
19 in the total number of fuels on the list published under
20 subclause (II) as of the date of consideration.

21 “(VI) Nothing in this clause shall be construed to
22 have any effect regarding any available authority of States
23 to require the use of any fuel additive registered in accord-
24 ance with subsection (b), including any fuel additive reg-

1 istered in accordance with subsection (b) after the enact-
2 ment of this subclause.

3 “(vii)(I) The provisions of clause (vi), including the
4 limitations of the authority of the Administrator and the
5 cap on the total number of fuels permitted, shall remain
6 in effect until the harmonization of fuels under subclause
7 V of this clause is accomplished. Once such harmonization
8 has been accomplished, clause (v) shall sunset and the lim-
9 itations of the authority of the Administrator under sub-
10 clause (IV) of this clause shall apply.

11 “(II) The Administrator, in coordination with the
12 Secretary of Energy (hereinafter in this clause referred
13 to as the ‘Secretary’), shall identify and publish in the
14 Federal Register, within 12 months after the enactment
15 of this subclause and after notice and opportunity for pub-
16 lic comment, a list of 5 gasolines and diesel fuels to be
17 used in States that have not received a waiver under sec-
18 tion 209(b) of this Act. The list shall be referred to as
19 the ‘Federal Fuels List’ and shall include one Federal on-
20 road diesel fuel (which shall grandfather the sulfur phase
21 down in the Administrator’s ultra low sulfur diesel fuel
22 regulations in effect as of the date of enactment and shall
23 permit the implementation of one alternative diesel fuel,
24 approved under this subparagraph before enactment of
25 this subclause for a State that has not received a section

1 209(b) waiver, only in the State in which it was approved
2 prior to enactment), one conventional gasoline for ozone
3 attainment areas, one reformulated gasoline (RFG) meet-
4 ing the requirements of subsection (k), and 2 additional
5 gasolines with Reid vapor pressure (RVP) controls for use
6 in ozone attainment areas of varying degrees of severity.
7 None of the fuels identified under this subclause shall con-
8 trol fuel sulfur or toxics levels beyond levels required by
9 regulations of the Administrator.

10 “(III) Gasolines and diesel fuels shall be included on
11 the Federal Fuels List based on the Administrator’s anal-
12 ysis of their ability to reduce ozone emissions to assist
13 States in attaining established ozone standards under this
14 Act, and on an analysis by the Secretary that the adoption
15 of the Federal Fuels List will not result in a reduction
16 in supply or in producibility, including that caused by a
17 reduction in domestic refining capacity as a result of the
18 adoption of the Federal Fuels List. In the event the Sec-
19 retary concludes that adoption of the Federal Fuels List
20 will result in a reduction in supply or in producibility, the
21 Administrator and the Secretary shall report that conclu-
22 sion to Congress, and suspend implementation of this
23 clause. The Administrator and the Secretary shall conduct
24 the study required under section 1541(c) of the Energy
25 Policy Act of 2005 on the timetable required in that sec-

1 tion to provide Congress with legislative recommendations
2 for modifications to the proposed Federal Fuels List only
3 if the Secretary concludes that adoption of the Federal
4 Fuels List will result in a reduction in supply or in
5 producibility.

6 “(IV) Upon publication of the Federal Fuels List, the
7 Administrator shall have no authority, when considering
8 a State implementation plan or State implementation plan
9 revisions, to approve under this subparagraph any fuel in-
10 cluded in such plan or plan revision if the proposed fuel
11 is not one of the fuels on the Federal Fuels List; or to
12 approve a State’s plan or plan revision to move from one
13 fuel on the Federal Fuels List to another unless, after con-
14 sultation with the Secretary, the Administrator publishes
15 in the Federal Register, after notice and opportunity for
16 public comment, a finding that, in the Administrator’s
17 judgment, such plan or plan revision to adopt a different
18 fuel on the Federal Fuels List will not cause fuel supply
19 or distribution disruptions in the affected area or contig-
20 uous areas. The Administrator’s finding shall include an
21 assessment of reasonably foreseeable supply or distribu-
22 tion emergencies that could occur in the affected area or
23 contiguous area and how adoption of the particular fuel
24 revisions would effect alternative supply options during
25 reasonably foreseeable supply or distribution emergencies.

1 “(V) The Administrator, in consultation with the Sec-
2 retary, shall develop a plan to harmonize the currently ap-
3 proved fuels in State implementation plans with the fuels
4 included on the Federal Fuels List and shall promulgate
5 implementing regulations for this plan not later than 18
6 months after enactment of this subclause. This harmoni-
7 zation shall be fully implemented by the States by Decem-
8 ber 31, 2008.”.

9 (b) BOUTIQUE FUELS.—Section 1541 of the Energy
10 Policy Act of 2005 (Public Law 109–58; 119 Stat. 1106)
11 is amended by striking subsection (c) and inserting the
12 following:

13 “(c) STUDY AND REPORT TO CONGRESS ON BOU-
14 TIQUE FUELS.—

15 “(1) JOINT STUDY.—The Administrator of the
16 Environmental Protection Agency and the Secretary
17 of Energy shall undertake a study of the effects on
18 air quality, on the number of fuel blends, on fuel
19 availability, on fuel fungibility, and on fuel costs of
20 the State plan provisions adopted pursuant to sec-
21 tion 211(c)(4)(C) of the Clean Air Act (42 U.S.C.
22 7545(e)(4)(C)).

23 “(2) FOCUS OF STUDY.—The primary focus of
24 the study required under paragraph (1) shall be to
25 determine how to develop a Federal fuels system

1 that maximizes motor fuel fungibility and supply,
2 preserves air quality standards, and reduces motor
3 fuel price volatility that results from the prolifera-
4 tion of boutique fuels, and to recommend to Con-
5 gress such legislative changes as are necessary to
6 implement such a system. The study should include
7 the impacts on overall energy supply, distribution,
8 and use as a result of the legislative changes rec-
9 ommended. The study should include an analysis of
10 the impact on ozone emissions and supply of a man-
11 datory reduction in the number of fuel blends to 5,
12 including one on-road Federal diesel fuel (which
13 shall grandfather the sulfur phase down in the Ad-
14 ministrators' ultra low sulfur diesel fuel regulations
15 and shall permit the implementation of, one alter-
16 native diesel fuel, blend approved under this sub-
17 paragraph before enactment of this subclause for a
18 State that has not received a section 209(b) waiver,
19 only in the State in which it was approved prior to
20 enactment), one conventional gasoline for ozone at-
21 tainment areas, one reformulated gasoline (RFG)
22 meeting the requirements of subsection (k), and 2
23 additional gasolines blends with Reid vapor pressure
24 (RVP) controls for use in ozone attainment areas of
25 varying degrees of severity.

1 “(3) CONDUCT OF STUDY.—In carrying out
2 their joint duties under this section, the Adminis-
3 trator and the Secretary shall use sound science and
4 objective science practices, shall consider the best
5 available science, shall use data collected by accepted
6 means and shall consider and include a description
7 of the weight of the scientific evidence. The Adminis-
8 trator and the Secretary shall coordinate the study
9 required by this section with other studies required
10 by the act and shall endeavor to avoid duplication of
11 effort with regard to such studies.

12 “(4) RESPONSIBILITY OF ADMINISTRATOR.—In
13 carrying out the study required by this section, the
14 Administrator shall coordinate obtaining comments
15 from affected parties interested in the air quality
16 impact assessment portion of the study. The Admin-
17 istrator shall use sound and objective science prac-
18 tices, shall consider the best available science, and
19 shall consider and include a description of the
20 weight of the scientific evidence.

21 “(5) RESPONSIBILITY OF SECRETARY.—In car-
22 rying out the study required by this section, the Sec-
23 retary shall coordinate obtaining comments from af-
24 fected parties interested in the fuel availability,

1 number of fuel blends, fuel fungibility and fuel costs
2 portion of the study.

3 “(6) REPORT TO CONGRESS.—The Adminis-
4 trator and the Secretary jointly shall submit the re-
5 sults of the study required by this section in a report
6 to the Congress not later than 12 months after the
7 date of the enactment of this Act, together with any
8 recommended regulatory and legislative changes.
9 Such report shall be submitted to the Committee on
10 Energy and Commerce of the House of Representa-
11 tives and the Committee on Environment and Public
12 Works of the Senate.

13 “(7) AUTHORIZATION OF APPROPRIATIONS.—
14 There is authorized to be appropriated jointly to the
15 Administrator and the Secretary \$500,000 for the
16 completion of the study required under this sub-
17 section.”.

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