

111TH CONGRESS  
1ST SESSION

# H. R. 3460

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.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 31, 2009

Mr. BILBRAY (for himself, Mr. INSLEE, Mr. DREIER, Mr. HUNTER, Mrs. DAVIS of California, Mr. CALVERT, Mrs. BONO MACK, Mr. ISSA, and Mr. TEAGUE) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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

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

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

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

“(ii) that has lifecycle greenhouse gas emissions, as determined by the Administrator, that are at least 60 percent less than the baseline lifecycle greenhouse gas emissions.”.

**SEC. 2. INCLUSION OF ALGAE-BASED BIOFUEL IN DEFINITION OF CELLULOSIC BIOFUEL.**

(a) CELLULOSIC BIOFUEL PRODUCER CREDIT.—

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

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,

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

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

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

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

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

“(II) for use by such other person as a fuel in a trade or business, or

“(III) who sells such algae-based 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-

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

“(I) is produced from the biomass of algal organisms, and

“(II) meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545).

“(ii) ALGAL ORGANISM.—The term ‘algal organism’ means a single- or multicellular organism which is primarily aquatic and classified as a non-vascular plant, including microalgae, blue-green algae (cyanobacteria), and macroalgae (seaweeds).

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

(3) CONFORMING AMENDMENTS.—

(A) Subparagraph (D) of section 40(d)(3) 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



(7) by inserting after paragraph (3) the following new paragraphs:

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

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

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

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

“(D) which is placed in service by the taxpayer before January 1, 2013.

“(5) ALGAE-BASED BIOFUEL.—

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

“(B) ALGAL ORGANISM.—The term ‘algal organism’ means a single- or multi-cellular organism which is primarily aquatic and classified 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.

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