

HR 6

(Energy Policy Act of 2005)

SEC. 1345. SMALL AGRI-BIODIESEL PRODUCER CREDIT.

(a) In General- Subsection (a) of section 40A (relating to biodiesel used as a fuel) is amended to read as follows:

` (a) General Rule- For purposes of section 38, the biodiesel fuels credit determined under this section for the taxable year is an amount equal to the sum of--

` (1) the biodiesel mixture credit, plus

` (2) the biodiesel credit, plus

` (3) in the case of an eligible small agri-biodiesel producer, the small agri-biodiesel producer credit.'.

(b) Small Agri-Biodiesel Producer Credit Defined- Section 40A(b) (relating to definition of biodiesel mixture credit and biodiesel credit) is amended by adding at the end the following new paragraph:

` (5) SMALL AGRI-BIODIESEL PRODUCER CREDIT-

` (A) IN GENERAL- The small agri-biodiesel producer credit of any eligible small agri-biodiesel producer for any taxable year is 10 cents for each gallon of qualified agri-biodiesel production of such producer.

` (B) QUALIFIED AGRI-BIODIESEL PRODUCTION- For purposes of this paragraph, the term `qualified agri-biodiesel production' means any agri-biodiesel (determined without regard to the last sentence of subsection (d)(2)) which is produced by an eligible small agri-biodiesel producer, and which during the taxable year--

` (i) is sold by such producer to another person--

` (I) for use by such other person in the production of a qualified biodiesel 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 agri-biodiesel at retail to another person and places such agri-biodiesel in the fuel tank of such other person, or

^ (ii) is used or sold by such producer for any purpose described in clause (i).

^ (C) LIMITATION- The qualified agri-biodiesel production of any producer for any taxable year shall not exceed 15,000,000 gallons.'

(c) Definitions and Special Rules- Section 40A is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

^ (e) Definitions and Special Rules for Small Agri-Biodiesel Producer Credit- For purposes of this section--

^ (1) ELIGIBLE SMALL AGRI-BIODIESEL PRODUCER- The term 'eligible small agri-biodiesel producer' means a person who, at all times during the taxable year, has a productive capacity for agri-biodiesel not in excess of 60,000,000 gallons.

^ (2) AGGREGATION RULE- For purposes of the 15,000,000 gallon limitation under subsection (b)(5)(C) and the 60,000,000 gallon limitation under paragraph (1), all members of the same controlled group of corporations (within the meaning of section 267(f)) and all persons under common control (within the meaning of section 52(b) but determined by treating an interest of more than 50 percent as a controlling interest) shall be treated as 1 person.

^ (3) PARTNERSHIP, S CORPORATION, AND OTHER PASS-THRU ENTITIES- In the case of a partnership, trust, S corporation, or other pass-thru entity, the limitations contained in subsection (b)(5)(C) and paragraph (1) shall be applied at the entity level and at the partner or similar level.

^ (4) ALLOCATION- For purposes of this subsection, in the case of a facility in which more than 1 person has an interest, productive capacity shall be allocated among such persons in such manner as the Secretary may prescribe.

^ (5) REGULATIONS- The Secretary may prescribe such regulations as may be necessary--

^ (A) to prevent the credit provided for in subsection (a)(3) from directly or indirectly benefiting any person with a direct or indirect productive capacity of more than 60,000,000 gallons of agri-biodiesel during the taxable year, or

^ (B) to prevent any person from directly or indirectly benefiting with respect to more than 15,000,000 gallons during the taxable year.

˘ (6) ALLOCATION OF SMALL AGRI-BIODIESEL CREDIT TO PATRONS OF COOPERATIVE-

˘ (A) ELECTION TO ALLOCATE-

˘ (i) IN GENERAL- In the case of a cooperative organization described in section 1381(a), any portion of the credit determined under subsection (a)(3) for the taxable year may, at the election of the organization, be apportioned pro rata among patrons of the organization on the basis of the quantity or value of business done with or for such patrons for the taxable year.

˘ (ii) FORM AND EFFECT OF ELECTION- An election under clause (i) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year. Such election shall not take effect unless the organization designates the apportionment as such in a written notice mailed to its patrons during the payment period described in section 1382(d).

˘ (B) TREATMENT OF ORGANIZATIONS AND PATRONS-

˘ (i) ORGANIZATIONS- The amount of the credit not apportioned to patrons pursuant to subparagraph (A) shall be included in the amount determined under subsection (a)(3) for the taxable year of the organization.

˘ (ii) PATRONS- The amount of the credit apportioned to patrons pursuant to subparagraph (A) shall be included in the amount determined under such subsection for the first taxable year of each patron ending on or after the last day of the payment period (as defined in section 1382(d)) for the taxable year of the organization or, if earlier, for the taxable year of each patron ending on or after the date on which the patron receives notice from the cooperative of the apportionment.

˘ (iii) SPECIAL RULES FOR DECREASE IN CREDITS FOR TAXABLE YEAR- If the amount of the credit of the organization determined under such subsection for a taxable year is less than the amount of such credit shown on the return

of the organization for such year, an amount equal to the excess of--

- ` (I) such reduction, over
- ` (II) the amount not apportioned to such patrons under subparagraph (A) for the taxable year, shall be treated as an increase in tax imposed by this chapter on the organization. Such increase shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.'

(d) Conforming Amendments-

(1) Paragraph (4) of section 40A(b) is amended by striking `this section' and inserting `paragraph (1) or (2) of subsection (a)'

(2) The heading of subsection (b) of section 40A is amended by striking `and Biodiesel Credit' and inserting `, Biodiesel Credit, and Small Agri-biodiesel Producer Credit'

(3) Paragraph (3) of section 40A(d) is amended by redesignating subparagraph (C) as subparagraph (D) and by inserting after subparagraph (B) the following new subparagraph:

- ` (C) PRODUCER CREDIT- If--
 - ` (i) any credit was determined under subsection (a)(3), and
 - ` (ii) any person does not use such fuel for a purpose described in subsection (b)(5)(B), then there is hereby imposed on such person a tax equal to 10 cents a gallon for each gallon of such agri-biodiesel.'

(e) Effective Date- The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.