

## Textual Analysis of the Proposed Amendment to Exempt Animal Fats from National Tax Credit and Standards Programs

The proposed amendment would make changes to three statutory provisions relating to federal government policy on renewable energy, two of which provide tax credits for renewable fuels and the other that establishes national renewable fuel standards. Each of the three changes in the amendment would simply exempt fuels derived from animal fats from the application of the credits or the standard. In short, such fuels would not get to take advantage of the tax credits, and biofuel sellers would not be required to use such fuels to meet the standards. The effect of the amendments will be to re-establish a competitive open market for the marketing of the extremely inelastic supplies of animal fats. The amendment would have no adverse effect on the use of expandable agricultural crops to provide feed stocks for biodiesel production. Biofuel producers could continue to purchase animal fats in the reestablished competitive, free and open market.

Subsection (a) of the amendment would amend section 40A of the Internal Revenue Code of 1986 (26 U.S.C. 40A), which provides a \$1 per gallon tax credit on the sale of biodiesel, and a 10 cents per gallon credit to small producers of agri-biodiesel (which is defined as diesel derived from virgin plant oils and animal fats).

Subsection (a) would amend the definition of "biodiesel," as used in the section 40A, by adding a caveat at the end of the definition that the term does not include biodiesel derived solely or partially from animal fats. The effect of this change is to bar the granting of the biodiesel tax credit to such biodiesel derived from animal fats.

Subsection (a) would also amend the definition of "agri-biodiesel," as used in the section, by deleting that part of the definition that states that the term means biodiesel derived from animal fats. The effect of this change similarly will bar the granting of the agri-biodiesel tax credit to animal fats-based biodiesel.

Subsection (b) of the amendment would amend section 6426 of the Code (26 U.S.C. 6426), which provides an excise tax credit for renewable fuels, including biodiesel and "alternative fuel" mixtures. With respect to the former—that is, biodiesel—animal fats-based biodiesel would be excluded from the excise tax credit by operation of the change made by subsection (a) of the amendment. This is because paragraph (5) of subsection (c) of section 6426 (which subsection establishes the credit for biodiesel mixtures) provides that, for purposes of the subsection, the terms used therein have the meaning given them in section 40A of the Code.

What subsection (b) does is address the inclusion of animal fats-based liquid fuel in the definition of "alternative fuel" also eligible for an excise tax credit by amending subsection (d) of section 6426, which establishes the alternative fuel credit.

An Internal Revenue Service notice issued in 2007 (Notice 2007-97) states that the term "alternative fuel" includes liquids derived from rendered fat. Under this notice, then, if the animal fats-based liquid fuel is not biodiesel (subsection (d)(1) of section 6426 excludes biodiesel from the definition of "alternative fuel"), the alternative fuel is eligible for the credit.

The amendment will revise the definition of "alternative fuel" for purposes of the credit to exclude any liquid fuel derived from animal fat. This change will prevent the award of the excise tax credit for such animal fats-based fuel.

Subsection (c) of the amendment would amend subsection (o) of section 211 of the Clean Air Act (42 U.S.C. 7545), which establishes renewable fuel standards. The current renewable fuel standards are a revision made in 2007 of standards established earlier, and are known by the acronym "RFS2."

Under the RFS2, all biofuels marketed in the United States annually must cumulatively contain the following volumes of biomass-based biodiesel: in 2009, 500 million gallons; in 2010, 650 million gallons; in 2011, 800 million gallons; and in 2012, 1 billion gallons.

Subsection (o) of section 211 defines "biomass-based diesel" to mean renewable fuel that is biodiesel; it defines "renewable fuel" to mean fuel that is produced from renewable biomass; and it defines "renewable biomass" to include "animal waste material and animal byproducts."

The amendment made by subsection (c) would limit the term "animal byproducts" to those byproducts that have no commercial value. The effect of this change is to exclude from the term animal fats used in commerce; and in turn the effect of revised term would be that animal fats would not be considered renewable biomass. With that, biomass-based diesel made from animal fats would not be part of the RFS2.