

111th CONGRESS
1st Session
January 22, 2009

Bill S. 306: To promote biogas production, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. NELSON of Nebraska (for himself, Mr. CRAPO, Mr. WYDEN, Mr. THUNE, Mr. BROWN, Mr. JOHANNIS, and Ms. STABENOW) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To promote biogas production, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ‘Biogas Production Incentive Act of 2009’.

SEC. 2. CREDIT FOR PRODUCTION OF BIOGAS FROM CERTAIN RENEWABLE FEEDSTOCKS.

(a) In General- Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 45Q the following new section:

‘SEC. 45R. BIOGAS PRODUCED FROM CERTAIN RENEWABLE FEEDSTOCKS.

(a) General Rule- For purposes of section 38, the qualified biogas production credit for any taxable year is an amount equal to the product of--

(1) \$4.27, and

(2) each million British thermal unit (mmBtu) of biogas--

(A) produced by the taxpayer--

(i) from qualified energy feedstock, and

(ii) at a qualified facility during the 10-year period beginning on the date the facility was originally placed in service, and

(B) either--

(i) sold by the taxpayer to an unrelated person during the taxable year, or

(ii) used by the taxpayer during the taxable year.

(b) Definitions-

(1) BIOGAS- The term 'biogas' means a gas that--

(A) is derived by processing qualified energy feedstock, and

(B) contains at least 50 percent methane.

(2) QUALIFIED ENERGY FEEDSTOCK-

(A) IN GENERAL- The term 'qualified energy feedstock' means--

(i) manure of agricultural livestock, including litter, wood shavings, straw, rice hulls, bedding material, and other materials incidentally collected with the manure,

(ii) any nonhazardous, cellulosic, or other organic agricultural or food industry by-product or waste material that is derived from--

(I) renewable biomass,

(II) harvesting residues,

(III) wastes or byproducts from fermentation processes, ethanol production, biodiesel production, slaughter of agricultural livestock, food production, food processing, or food service, or

(IV) other organic wastes, byproducts, or sources,

(iii) solid wood waste materials, including waste pallets, crates, dunnage, manufacturing and construction wood wastes, and landscape or right-of-way tree trimmings, or

(iv) landfill waste, sewage waste treatment materials, or other organic materials.

(B) RENEWABLE BIOMASS- The term 'renewable biomass' means--

(i) materials from pre-commercial thinning or invasive species from National Forest System land and public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)) that--

(I) are byproducts of preventive treatments that are removed to reduce or contain disease or insect infestation to restore ecosystem health,

(II) would not otherwise be used for higher-value products, and

(III) are harvested in accordance with applicable law and land management plans and the requirements for old-growth maintenance, restoration, and management direction of paragraphs (2), (3), and (4) of subsection (e) of section 102 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6512) and large tree retention of subsection (f) of that section, or

(ii) any organic matter that is available on a renewable or recurring basis from non-Federal land or land belonging to an Indian or Indian tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States, including--

(I) renewable plant material (such as feed grains, other agricultural commodities, other plants and trees, and algae), and

(II) waste material (such as crop residue, other vegetative waste material (including wood waste and wood residues), animal waste and byproducts (including fats, oils, greases, and manure), food waste, and yard waste).

(C) AGRICULTURAL LIVESTOCK- The term ‘agricultural livestock’ means poultry, cattle, sheep, swine, goats, horses, mules, and other equines.

(3) QUALIFIED FACILITY- The term ‘qualified facility’ means a facility that--

(A) uses anaerobic digesters, gasification, or other biological, chemical, or thermal processes to convert qualified energy feedstock into biogas,

(B) is owned by the taxpayer,

(C) is located in the United States,

(D) is originally placed in service before January 1, 2017, and

(E) the biogas output of which is--

(i) marketed through interconnection with a gas distribution or transmission pipeline, or

(ii) reasonably expected to be used in a quantity sufficient to offset the consumption of 5,000 mmBtu annually of commercially marketed fuel derived from coal, crude oil, natural gas,

propane, or other fossil fuels.

(c) Special Rules- For purposes of this section--

(1) PRODUCTION ATTRIBUTABLE TO THE TAXPAYER- In the case of a facility in which more than 1 person has an ownership interest, except to the extent provided in regulations prescribed by the Secretary, production from the qualified facility shall be allocated among such persons in proportion to their respective ownership interests in the gross sales from such qualified facility.

(2) RELATED PERSONS- Persons shall be treated as related to each other if such persons would be treated as a single employer under the regulations prescribed under section 52(b). In the case of a corporation which is a member of an affiliated group of corporations filing a consolidated return, such corporation shall be treated as selling biogas to an unrelated person if such biogas is sold to such a person by another member of such group.

(3) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS- Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

(4) COORDINATION WITH CREDIT FROM PRODUCING FUEL FROM A NONCONVENTIONAL SOURCE- The amount of biogas produced and sold or used by the taxpayer during any taxable year which is taken into account under this section shall be reduced by the amount of biogas produced and sold by the taxpayer in such taxable year which is taken into account under section 45K.

(5) CREDIT ELIGIBILITY IN THE CASE OF GOVERNMENT-OWNED FACILITIES- In the case of any facility which produce biogas and which is owned by a governmental unit, subparagraph (B) of subsection (b)(3) shall be applied by substituting 'is leased or operated by the taxpayer' for 'is owned by the taxpayer'.

(d) Special Rule for Public-Private Partnerships-

(1) IN GENERAL- In the case of facility which is owned by a public-private partnership, any qualified public entity which is a member of such partnership may transfer such entity's allocation of the credit under subsection (a) to any non-public entity which is a member of such partnership, except that the aggregate allocations of such credit claimed by such non-public entity shall be subject to the limitations under subsections (b) and (c) and section 38(c).

(2) QUALIFIED PUBLIC ENTITY- For purposes of this subsection, the term 'qualified public entity' means a Federal, State, or local government entity, or any political subdivision thereof, or a cooperative organization described in section 1381(a).

(3) VERIFICATION OF TRANSFER OF ALLOCATION- A qualified public entity that makes a transfer under paragraph (1), and a non-public entity that receives an allocation under such a transfer, shall provide verification of such transfer in such manner and at such time as the

Secretary shall prescribe.

(e) Adjustment Based on Inflation-

(1) IN GENERAL- The \$4.27 amount under subsection (b)(1) shall be adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. If any amount as increased under the preceding sentence is not a multiple of 0.1 cent, such amount shall be rounded to the nearest multiple of 0.1 cent.

(2) COMPUTATION OF INFLATION ADJUSTMENT FACTOR-

(A) IN GENERAL- The Secretary shall, not later than April 1 of each calendar year, determine and publish in the Federal Register the inflation adjustment factor in accordance with this paragraph.

(B) INFLATION ADJUSTMENT FACTOR- The term ‘inflation adjustment factor’ means, with respect to a calendar year, a fraction the numerator of which is the GDP implicit price deflator for the preceding calendar year and the denominator of which is the GDP implicit price deflator for calendar year 2008. The term ‘GDP implicit price deflator’ means the most recent revision of the implicit price deflator for the gross domestic product as computed and published by the Department of Commerce before March 15 of the calendar year.’.

(b) Credit Treated as Business Credit- Section 38(b) of the Internal Revenue Code of 1986 is amended by striking ‘plus’ at the end of paragraph (34), by striking the period at the end of paragraph (35) and inserting ‘, plus’, and by adding at the end the following new paragraph:

(36) the qualified biogas production credit under section 45R(a).’.

(c) Coordination With Credit for Production Electricity From a Renewable Resource- Section 45(e) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

(12) COORDINATION WITH CREDIT FOR PRODUCTION OF BIOGAS- The term ‘qualified facility’ shall not include any facility which produces electricity from biogas the production from which is allowed a credit under section 45R for such taxable year or any prior taxable year.’.

(d) Credit Allowed Against AMT- Section 38(c)(4)(B) of the Internal Revenue Code of 1986 is amended by redesignating clauses (vi) through (viii) as clauses (vii) through (ix), respectively, and by inserting after clause (v) the following new clause:

(vi) the credit determined under section 45R.’.

(e) Clerical Amendment- The table of sections for subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 45Q the following new item:

‘Sec. 45R. Biogas produced from certain renewable feedstocks.’.

(f) Effective Date- The amendments made by this section shall apply to biogas produced and sold or used in taxable years beginning after the date of the enactment of this Act.