

REPORT OF THE LEGISLATION AND REGULATORY REFORM COMMITTEE

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I. INTRODUCTION

As the Committee reported one year ago, a five-year process finally yielded passage of a lengthy and comprehensive national energy policy bill during 2005. Given this feat, few expected the extent to which Congress would revisit energy issues in 2006. Nevertheless, Congress addressed three major energy issues in the second session of the 109th Congress.

II. PIPELINE SAFETY

On December 29, 2006, the President signed into law H.R. 5782, the "Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006" (Act), also known as the "PIPES Act."¹ The Act was passed by Congress in the last week of the lame duck session that closed the 109th Congress. The Act reauthorizes and amends the Department of Transportation's (DOT) natural gas and oil pipeline safety programs, and it authorizes appropriations for DOT pipeline safety oversight from fiscal years 2007 through 2010. Pipeline safety regulation under the Act will largely be carried out through DOT's Pipeline and Hazardous Materials Safety Administration.

The Act includes several key provisions that will enhance pipeline safety. DOT is required to take several actions, many of which must be completed by December 31, 2007, approximately one year from passage of the Act. The provisions generally fall under the following categories: (1) increased regulation of low-pressure pipelines; (2) excavation-related prohibitions and penalties; (3) increased transparency of DOT enforcement; (4) other rulemakings and similar actions; (5) expanded DOT enforcement and other authority; (6) studies and reports; (7) grants and research and development; and (8) waivers from DOT regulation.

A. *Increased Regulation of Low-Stress Pipelines*

The Act directs DOT to issue regulations by December 31, 2007, that will increase the regulation of low-stress hazardous oil pipelines by subjecting such pipelines to the same standards as other hazardous pipelines, with limited exceptions.² This section was enacted in the wake of the much-publicized leak of a low-pressure pipeline operated by BP in the Prudhoe Bay, Alaska oil field, which resulted in a partial shutdown of the pipeline in 2006. Under the Act, DOT's new regulations must extend heightened regulation to the same type of low-pressure pipeline as was operated by BP in the Prudhoe Bay incident.

B. *Excavation-Related Prohibitions and Penalties*

The Act creates certain prohibitions and penalties with respect to pipeline excavation-related damage prevention. An excavator must first use a state's "one-call notification system . . . to establish the location of underground facilities"³ before excavation can occur. Excavation may not proceed in disregard of pipeline operator markings, and pipeline facility damage must be reported promptly.⁴ A pipeline "owner or operator [that] fails to respond to a location request,"⁵ or to ensure accurate marking of a pipeline location, will be subject to a civil action or a civil penalty.

1. Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006, Pub. L. No. 109-468, 120 Stat. 3486.

2. *Id.* § 4.

3. Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 § 2.

4. *Id.*

5. Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 § 5.

C. Increased Transparency of DOT Enforcement

The Act requires transparency of DOT enforcement.⁶ By December 31, 2007, DOT must begin posting on its website summaries of all of its gas and hazardous liquid pipeline enforcement actions.⁷ Enforcement action summaries must be posted monthly, and the information provided must include operator name, violation type, case status updates, proposed penalties, final penalty assessment, and reasons for any reduction in a final penalty.⁸ DOT must also provide a means for named pipeline operators to make information available to the public that the operators believe is responsive to DOT's enforcement action.⁹

D. Other Rulemakings and Similar Actions

The Act also requires DOT to promulgate several rulemakings and to make changes to its other regulations. By December 31, 2007, DOT must establish "minimum standards for [distribution] integrity management programs for [gas] distribution pipelines."¹⁰ The standards are to include a requirement that excess flow valves be installed on gas lines that serve single-family residences in certain circumstances. DOT must also issue regulations by June 1, 2008, that require operators of gas or hazardous liquid pipelines to develop a human-factors management plan that will "reduce [the] risks [in pipeline control rooms] associated with human factors, including fatigue"¹¹ By December 31, 2007, DOT must also "issue regulations providing that . . . if [DOT concludes] that a pipeline facility has a condition that poses a pipeline integrity risk to public safety, property, or the environment [then DOT] may [require] the operator . . . to take . . . corrective action"¹² pursuant to a safety order.

DOT is required to issue standards by June 1, 2008, that implement various National Transportation Safety Board (NTSB) recommendations, as set forth in the NTSB's report, "Supervisory Control and Data Acquisition (SCADA) in Liquid Pipelines."¹³ DOT must establish procedures that require senior executive officers of pipeline companies to certify the companies' integrity management program performance reports.¹⁴ DOT must amend accident-reporting forms to require pipeline operators to provide data related to controller fatigue.¹⁵ Furthermore, with respect to incident reporting, DOT must review the reporting requirements for gas pipeline operators and modify the criteria to

6. *Id.* § 6.

7. Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006, Pub. L. No. 109-468, 120 Stat. 3486.

8. *Id.*

9. Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 § 6.

10. *Id.* § 9.

11. Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 § 12.

12. *Id.* § 13.

13. Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006, Pub. L. No. 109-468, § 19, 120 Stat. 3486.

14. *Id.* § 16.

15. Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 § 20.

ensure that the incident reporting data gathered accurately reflects incident trends.¹⁶

E. Expanded DOT Enforcement and Other Authority

The Act expands DOT's enforcement authority by authorizing DOT to conduct proceedings regarding an integrity management program that fails to comply with statutory requirements or regulations, has been inadequately implemented, or does not provide for safe pipeline facility operation.¹⁷ DOT is authorized to work with other federal, state, and private entities to facilitate restoration of pipeline operations that have been, or may be, disrupted by disasters.¹⁸ When a pipeline operator requests DOT's review, DOT is authorized to require reimbursement of DOT costs for facility safety design reviews associated with the construction or expansion of liquefied natural gas facilities.¹⁹ Further, the Act includes certain statutory amendments, which bring natural gas sales laterals within DOT's safety jurisdiction.²⁰

F. Studies and Reports

The Act directs DOT to conduct certain studies and issue reports. DOT, along with the Department of Energy (DOE), must conduct periodic studies to identify areas where unplanned loss of pipeline facilities may produce shortages and price disruptions.²¹ DOT and DOE must submit a report to Congress by June 1, 2008, providing recommendations on reducing the likelihood of shortages and price disruptions. Following DOT's review of internal corrosion control regulations for adequacy to ensure pipeline facilities do not present a hazard to the public or environment, DOT must submit a report to Congress of DOT's findings and recommendations.²² By December 31, 2007, DOT must provide a leak-detection technology report to Congress, which will address pipelines' leak detection systems, the systems' inadequacies, and what improvements are needed.²³

DOT must also review the Comptroller General's report issued under the Pipeline Safety Improvement Act of 2002.²⁴ Not later than sixty days after enactment of the Act, or by February 27, 2007, DOT must provide any associated legislative recommendations to Congress that may be needed to implement the conclusions of the Comptroller General's report.²⁵ By December 31, 2007, the Inspector General of DOT must assess the actions DOT has taken

16. *Id.* § 15.

17. Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 § 14.

18. *Id.* § 11.

19. Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006, Pub. L. No. 109-468, § 17, 120 Stat. 3486.

20. *Id.* § 7.

21. Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 § 8.

22. *Id.* § 22.

23. Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 § 21.

24. *Id.*

25. Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006, Pub. L. No. 468, § 25, 109 Stat. 3486.

to implement the annex to the September 28, 2004, Memorandum of Understanding between DOT and the Department of Homeland Security regarding pipeline security. In addition, the Inspector General must assess the roles, responsibilities, adequacy, and authority of DOT with respect to pipeline security. The Inspector General must provide its assessment report to Congress by December 31, 2007, and periodic status reports must also be provided to Congress.²⁶

G. Grants and Research and Development

The Act authorizes DOT to provide grants to states, universities, and others regarding pipeline safety. The authorized funding includes grants for technical assistance,²⁷ damage prevention programs,²⁸ and public education and awareness.²⁹ The Act also authorizes research and development on “corrosion detection and . . . , best practices, and technologies for identifying, . . . preventing, and managing . . . corrosion and other safety risks”³⁰

H. Waivers from DOT Regulation

Lastly, the Act allows certain waivers from DOT’s pipeline safety regulation. In non-emergency situations, upon request by an owner or operator of a pipeline, and after notice and opportunity for comment, DOT may waive compliance with any part of a standard in the Act if DOT determines that the waiver is not inconsistent with pipeline safety. In emergency situations, DOT may by order waive compliance with any part of the Act, without prior notice and comment, if DOT determines that waiver is in the public interest, not inconsistent with pipeline safety, and is necessary to address an actual or impending emergency.³¹

III. OUTER CONTINENTAL SHELF RESOURCES DEVELOPMENT LEGISLATION

A. The Outer Continental Shelf and Its Resource Potential

The Outer Continental Shelf (OCS) is home to a vast supply of energy resources. The U.S. Minerals Management Service (MMS), estimates that America’s deep ocean resources on the OCS could be as high as some 420 trillion cubic feet of natural gas (the U.S. consumes 23 TCF per year)³² and 86

26. *Id.* § 23.

27. Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 §§ 5, 24.

28. *Id.* § 2

29. Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006.

30. *Id.* § 26.

31. Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006, Pub. L. No. 468, § 10, 109 Stat. 3486.

32. *Outer Continental Shelf Oil and Gas Assessment 2006*, Minerals Mgmt. Res. Evaluation, U.S. Dept. of the Interior, Oct. 19, 2006, <http://www.mms.gov/revaldiv/RedNatAssessment.htm>; *see generally Natural Gas Consumption by End Use*, Energy Info. Admin., Feb. 13, 2007, http://www.eia.doe.oiaf/aeo/supplemnt/pdf/suptab_105.pdf.

billion barrels of oil (the U.S. imports 4.5 billion per year).³³ Accordingly, the record-high oil and natural gas prices in 2006 provided a renewed interest in these resources.

B. The Bans on Resource Production

Two bans currently prevent resource development on most of the OCS. The first ban is a Presidential moratorium,³⁴ which was put into place by President George H.W. Bush and extended to 2012 by President Clinton. A Presidential moratorium may be modified or eliminated at any time by the President in his discretion. The second ban is a Congressional moratorium. It is an annual appropriations rider on the Interior Appropriations Bill, expires every year, and must be renewed annually by Congress. These moratoria are particularly noteworthy because, despite the increased competition for energy in the global market and the fact that energy imports make up one-third of America's trade deficit,³⁵ the United States remains the only developed nation in the world that forbids resource production on a large portion of its OCS.

C. Action by Both the House and the Senate

Two divergent trains of thought were prevalent in the 109th Congress in relationship to America's oil and natural gas future: one was to increase domestic energy production, and the other was to decrease consumption dramatically. As this debate moved forward in 2006, both the House and the Senate passed bills dealing with domestic energy production on the OCS. Congressman Bobby Jindal (R-LA), introduced H.R. 4761, the Deep Ocean Energy Resources Act of 2006 (DOER), on February 15, 2006. H.R. 4761 was passed in the House by a vote of 232 to 187, on June 29, 2006.³⁶ On the Senate side, Senator Pete Domenici (R-NM), Chairman of the Senate Energy and Natural Resources Committee, introduced S. 3711—the Gulf of Mexico Energy Security Act of 2006,³⁷—on July 20, 2006. S. 3711 was passed in the Senate on August 1, 2006, with a seventy-one to twenty-five vote.³⁸ Both H.R. 4761 and S. 3711 were the topic of long and drawn out debates that culminated in passage

33. *Outer Continental Shelf Oil and Gas Assessment 2006*, Minerals Mgmt. Res. Evaluation, U.S. Dept. of the Interior, Oct. 19, 2006, <http://www.mms.gov/revaldiv/RedNatAssessment.htm>; *see generally U.S. Net Imports by Country*, Energy Info. Admin., Feb. 13, 2007, <http://www.eia.doe.gov/emeu/aer/txt/ptb0603.html>.

34. "President Bush issued a Presidential Directive in 1990 that enacted a blanket moratorium until 2000 on all unleased areas offshore Northern and Central California, Southern California except for 87 tracts, Washington, Oregon, the North Atlantic coast, and the Eastern Gulf of Mexico coast. Separate from the annual moratoria in appropriations legislation, this [Presidential] directive meant that no leasing or pre-leasing activities were allowed to occur in these areas during the entire period. In 1998 President Clinton extended the moratorium through 2012." OFFICE OF OIL AND GAS, ENERGY INFO. ADMIN., U.S. DEP'T OF ENERGY 11 (2005), http://www.eia.doe.gov/pub/oil_gas/natural_gas/feature_articles/2005/offshore.pdf.

35. JAMES K. JACKSON, U.S. TRADE DEFICIT AND THE IMPACT OF RISING OIL PRICES (2006), <http://www.fpc.state.gov/documents/organization/68823.pdf>.

36. Deep Ocean Energy Res. Act of 2006, H.R. 4761, 109th Cong. (2006).

37. *Id.*; *see generally*, Gulf of Mexico Energy Security Act of 2006, S. 3711, 109th Cong. (2006); To Restore and Make Permanent the Exclusion of Gross Income for Amounts Received Under Qualified Group Legal Servs. Plans and to Increase the Maximum Amount of the Exclusion, H.R. 897, 109th Cong. (2006).

38. S. 3711.

of a final package, containing the Senate language, as a part of H.R. 6111,³⁹ the Tax Relief and Health Care Act of 2006.⁴⁰

D. Significant Differences Between H.R. 4761 and S. 3711

H.R. 4761 was far more expansive than S. 3711, permitting the opening of the entire OCS to resource exploration and production and providing for the exercise of state authority in all development decisions within 100 miles of a state's coastline for all states with OCS adjacent coastlines. This provision is particularly significant as, at present, federal authority over submerged lands more than three miles from shore is exclusive.

S. 3711, in contrast, dealt primarily with the Lease 181 Area⁴¹ of the Eastern Gulf of Mexico, a tract of about 5.9 million acres, by instructing the Secretary of the U.S. Department of the Interior to offer the 181 Area and the 181 South Area for oil and gas leasing, notwithstanding the prior omission of them from the Interior Department's OCS leasing program. Additionally, S. 3711 subjected any area east of the Military Mission Line⁴² in the Gulf of Mexico, and any area in the Eastern Planning Area within 125 miles of the Florida Coastline, or specified areas within the Central Planning Area and within 100 miles of the Florida coastline, to a statutory moratorium on resource development.

H.R. 4761 would have prohibited leasing on the OCS in any area within fifty miles of the coastline that had historically been withdrawn from leasing, unless and until a state requested leasing within the first fifty miles and upon coordination requirements with adjacent states. The legislation would have given states one year from the date of enactment to decide whether to permit or deny natural gas leasing in the area between fifty and one-hundred miles off their coastlines, and if the state did not act, natural gas, but not oil, leasing could occur.⁴³ Concerning oil leasing, states would have had until June 30, 2009, to enact a prohibition on activities in the area between fifty miles and one hundred miles from the coast. Simple votes by the state legislature would have allowed extending prohibitions in five-year increments. Additionally, it would have prohibited all leasing within twenty-five miles of the coastline of a neighboring state that did not support leasing within its adjacent zone and would have prohibited issuing an oil and gas lease within fifty miles of the coastline of a neighboring state that did not support leasing. In essence, the House bill would have given states rights to determine whether or not oil and gas leasing could

39. Tax Relief and Health Care Act of 2006, Pub. L. No. 109-432, 120 Stat. 2922.

40. Tax Relief and Health Care Act included language expanding health savings accounts, extension and expansion of certain tax relief credits, and Medicare provider language.

41. S. 3711; "The area of Lease Sale 181 is in deepwater off Alabama and Louisiana. The area lies 100+ miles from any portion of the Florida coast; for example, its northern border is more than 100 miles from Pensacola, Florida, and the eastern edge is 285 miles from the shores of Tampa Bay." MINERALS MGMT. SERV., U.S. DEP'T OF THE INTERIOR, EASTERN GULF OF MEXICO SALE 181 INFORMATION 1 (2007), <http://www.gomr.mms.gov/homepg/offshore/egom/sale181.html>.

42. S. 3711 § 2 (a north-south line at 86° 41.031 W. longitude).

43. Deep Ocean Energy Res. Act of 2006, H.R. 4761, 109th Cong. § 8(g)(1) (2006).

occur in the federal waters offshore their coasts, a matter that is presently the subject of an exclusive federal domain.⁴⁴

Both bills provided for the sharing of offshore revenues with the states (the general practice in the past has been that leasing revenues have accrued exclusively to the federal treasury). The allocation mechanism was, however, entirely different in the two bills. H.R. 4761 provided for sharing seventy-five percent of OCS revenues arising from the area between state waters (three miles typically) and twelve miles offshore, and a sharing—increasing to fifty percent overtime—of OCS revenues with adjacent states and nearby producing states.⁴⁵ For certain qualified leases, the Secretary of the Interior would have been required to share revenues with states for leases beyond four marine leagues and completely within one-hundred miles, starting at 4.6 percent in 2006 and phased in to 42.5 percent in 2022. Other language in the bill would have required certain leases to qualify for shared revenues on differing scales with ranges from 4.6 percent to 63.75 percent.⁴⁶

S. 3711 contained a far less complex program for allocating OCS revenues. The Senate bill would have allocated fifty percent of the revenues to the general fund of the Treasury and fifty percent of the revenues to a special Treasury account. Of the fifty percent allocated to the special treasury account, twenty-five percent would go to the States Land and Water Conservation Fund, and seventy-five percent to each Gulf producing state in proportion to the respective distances between the point on the coastline of each Gulf producing State and the applicable leased tract.⁴⁷ In essence, only Florida, Alabama, Mississippi, and Texas would have been eligible for revenue sharing under the Senate bill.⁴⁸

H.R. 4761 would have required that the Secretary of the Interior renegotiate leases in the Central and Western Gulf of Mexico that were entered into during the period January 1, 1998, to December 31, 1999.⁴⁹ This provision would have been significant in that it would have resolved the problem with leases issued during the Clinton Administration that excluded price thresholds from royalty relief for oil and natural gas development. H.R. 4761 would have addressed this issue by giving the Secretary of the Interior the authority to renegotiate contracts with willing companies. If 1998-1999 leaseholders were unwilling to renegotiate, a new “Conservation of Resources” fee would have been levied upon each unit of production of oil and natural gas.

The House-passed legislation also would have made significant contributions to furthering education and environmental protections. H.R. 4761 included additional language creating a new Federal Energy Natural Resources Enhancement Fund, Federal Energy and Mineral Resources Professional Development Fund, and National Geo Fund.⁵⁰ Revenues shared with the states could have been spent on a number of programs including education,

44. *Id.*

45. H.R. 4761 § 6.

46. *Id.* § 7.

47. Gulf of Mexico Energy Security Act of 2006, S. 3711, 109th Cong. § 5 (2006).

48. *Id.*

49. H.R. 4761 § 2.

50. Tax Relief and Health Care Act of 2006, Pub. L. No. 109-432, 120 Stat. 2922.

transportation, coastal, environmental and wildlife restoration, energy infrastructure and projects, alternative energy development, energy efficiency and conservation, hurricane and natural disaster insurance programs, tax reduction, and other similar efforts.

E. Politics Behind The OCS Bills

No attempts were made in the fall of 2006 to reconcile the divergent House and Senate bills through the traditional conference process. In the November 2006, elections the Democrats won control of both the House and the Senate, effective in January 2007. Congress convened after the election in a lame duck session.

In the lame duck session, it was clear that the Senate would not accept the broader House bill or any variation of it. Moreover, House Republicans looked into 2007 and realized that the House in the 110th Congress might well pass no bill pertaining to the OCS. As a result, on December 8, 2006, the House passed the Senate OCS language (S. 3711) by a vote of 367 to 45 as part of a comprehensive package of other measures denominated H.R. 6111. On December 9, 2006, the Senate also approved, by a seventy-nine to nine vote, H.R. 6111, a package that included tax, healthcare, and OCS language.

IV. ENERGY TAX PROVISIONS

The Tax Relief and Health Care Act of 2006 (Act) contains a variety of provisions concerning energy taxes that amend related provisions in the Internal Revenue Code of 1986 (Code).⁵¹ Some of the Act's provisions extend through 2008 tax provisions that otherwise would expire at the end of 2007; other provisions modify other aspects of energy taxes.

A. Credit for Electricity Produced from Certain Renewable Sources (Code section 45(d))

The Act extends the renewable energy credit to apply to qualified facilities placed in service before January 1, 2009.⁵² Qualified facilities generate power from wind, biomass, geothermal, solar, small irrigation, landfill gas, trash combustion, refined coal, hydropower, and Indian coal production.⁵³

B. Credit to Holders of Clean Renewable Energy Bonds (Code section 54)

The Act extends the clean renewable energy bonds credit to include bonds issued before January 1, 2009.⁵⁴ It also raises the caps on the amount of bonds that may be issued and the amount that may be used to finance projects of governmental bodies.⁵⁵ This provision applies to bonds issued after December 31, 2006, or to allocations or reallocations after that date.⁵⁶

51. *Id.*

52. Tax Relief and Health Care Act of 2006 § 201.

53. *Id.*

54. Tax Relief and Health Care Act 2006 § 202.

55. *Id.*

56. Tax Relief and Health Care Act 2006, Pub. L. No. 109-432, § 202, 120 Stat. 2922.

C. Performance Standards for Sulfur Dioxide Removal in Advanced Coal-Based Generation Technology Units Designed to Use Subbituminous Coal (Code section 48)

The Act adds a performance standard for sulfur dioxide removal in electric generation units designed to use subbituminous coal determined on a thirty-day average.⁵⁷ This provision applies with respect to Code section 46A(d)(2) applications for certification submitted after October 2, 2006.⁵⁸

D. Deduction for Energy Efficient Commercial Buildings (Code section 179D)

The Act extends the deduction for energy efficient commercial buildings for one year, to include property placed in service before January 1, 2009.⁵⁹ The provision is effective for property placed in service after December 31, 2007.⁶⁰ Energy efficient commercial building property is installed on or in any qualified building as part of interior lighting, heating, cooling, ventilation, or hot water systems.⁶¹

E. Credit for New Energy Efficient Homes (Code section 45L(g))

For homes acquired by December 31, 2008, the Act extends the credit for new energy efficient homes for one year.⁶² The provision is effective for qualified new energy efficient homes acquired after December 31, 2007.⁶³

F. Credit for Residential Energy Efficient Property (Code section 25D)

The Act extends the credit for residential energy efficient property for one year, through December 31, 2008.⁶⁴ The Act also clarifies the term “qualified photovoltaic property expenditures” by replacing it with “qualified solar electric property expenditures,” but does not change the definition of the term.⁶⁵ The credit extension is effective for property placed in service after December 31, 2007.⁶⁶

G. Energy Credit (Code section 48)

The Act extends for one year, through December 31, 2008, the energy credit for: (1) equipment that uses solar energy to generate electricity, to heat or cool a structure, or to provide solar process heat; (2) equipment that uses solar energy to illuminate the inside of a structure using fiber-optic distributed

57. *Id.* § 203.

58. Tax Relief and Health Care Act of 2006.

59. *Id.* at § 204.

60. Tax Relief and Health Care Act 2006 § 204.

61. *Id.*

62. Tax Relief and Health Care Act 2006, Pub. L. No. 109-432, § 205, 120 Stat. 2922.

63. *Id.*

64. Tax Relief and Health Care Act 2006 § 206.

65. *Id.*

66. Tax Relief and Health Care Act of 2006 § 206.

sunlight; (3) qualified fuel cell property; and (4) qualified microturbine property.⁶⁷

H. Special Rule for Qualified Methanol or Ethanol Fuel (Code section 4041(b))

The Act extends through December 31, 2008, both the reduced excise tax rate on qualified methanol or ethanol fuel sold for use in, or used in, a motor vehicle or motorboat, and the specially applicable blender rate for purposes of that reduced excise tax rate.⁶⁸ Thus, for purposes of that reduced excise tax rate, the applicable blender rate for sales or uses during calendar years 2001 through 2008 is one-tenth of the blender amount applicable under the alcohol fuels credit for ethanol blenders.⁶⁹

I. Special Depreciation Allowance for Cellulosic Biomass Ethanol Plant Property (Code section 168)

The Act provides an additional first-year depreciation allowance for depreciable property used in the United States solely to produce cellulosic biomass ethanol.⁷⁰ This additional allowance, in the amount of fifty percent of the property's adjusted basis, is allowed for the taxable year in which the property is placed in service after the date of the enactment. To claim the allowance, the taxpayer must acquire and use the property after the date of enactment and place the property in service before 2013.⁷¹

The property's adjusted basis is reduced by the deduction amount before computing the otherwise allowable depreciation deduction for that taxable year and later taxable years. The allowance does not apply to alternative depreciation property or to tax-exempt bond financed property. Taxpayers may elect out of the additional allowance with respect to any class of property for any taxable year. For purposes of determining alternative minimum taxable income, the additional depreciation allowance is allowed in full.⁷²

J. Expenditures Permitted from the Leaking Underground Storage Tank Trust Fund (Code section 9508)

The Act authorizes, effective on the date of enactment, the 0.1 cent per-gallon Leaking Underground Storage Tank (LUST) Trust Fund tax amounts on each gallon of motor fuel sold nationwide to be used to carry out the following provisions of the Solid Waste Disposal Act (as in effect on January 10, 2006):⁷³

- section 9003(i) (relating to measures to protect ground water);
- section 9003(j) (relating to compliance of government-owned tanks);
- section 9004(f) (relating to 80 percent distribution requirement for State enforcement efforts);

67. *Id.* § 207.

68. Tax Relief and Health Care Act of 2006, Pub. L. No. 109-432, § 208, 120 Stat. 2922.

69. *Id.*

70. Tax Relief and Health Care Act of 2006 § 209.

71. *Id.*

72. Tax Relief and Health Care Act of 2006 § 209.

73. *Id.* § 210.

- section 9005(c) (relating to inspection of underground storage tanks);
- section 9010 (relating to operator training);
- section 9011 (relating to funds for release prevention and compliance);
- section 9012 (relating to the delivery prohibition for ineligible tanks/guidance/compliance); and
- section 9013 (relating to strategy for addressing tanks on tribal lands).^{74 75}

The Code continues to authorize the use of amounts in the LUST Trust Fund to carry out the purposes of section 9003(h) of the Solid Waste Disposal Act (as in effect on January 10, 2006, the date of enactment of Pub. L. No. 109-168, 119 Stat. 3580).⁷⁶

K. Treatment of Coke and Coke Gas (Code section 45K(g)(2))

The Act provides that the phase-out provision of section 45K (the non-conventional fuel source credit) is inapplicable to facilities producing coke or coke gas.⁷⁷ Further, the Act excepts facilities producing coke or coke gas from petroleum based products from the definition of qualifying facilities.⁷⁸ Section 211 is effective as if included in the Energy Policy Act of 2005 (extension of credit for producing fuel from a non-conventional source for facilities producing coke or coke gas).⁷⁹

74. Tax Relief and Health Care Act of 2006, Pub. L. No. 109-432, § 210, 120 Stat. 2922.

75. Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992k (2000) (provisions in effect on Jan. 10, 2006).

76. *Id.*

77. Tax Relief and Health Care Act of 2006 § 211.

78. *Id.*

79. Tax Relief and Health Care Act of 2006, Pub. L. No. 109-432, § 211, 120 Stat. 2922.

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