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Renewable Fuels and MTBE: A Comparison of Provisions in the Energy Policy Act of 2005 (P.L. 109-58 and H.R. 6)

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Summary

In the Energy Policy Act of 2005 (P.L. 109-58, H.R. 6), Congress established a requirement for the use of renewable fuels and revised Clean Air Act and underground storage tank regulatory requirements to address public health and environmental concerns associated with the use of fuels and fuel additives, especially methyl tertiary butyl ether (MTBE). Much contentious debate centered on the issue of how to address water quality problems associated with MTBE use while preserving air quality benefits of reformulated gasoline and, at the same time, promoting the use of renewable fuels (especially ethanol). This report compares the renewable fuel and MTBE provisions in the House and Senate versions of H.R. 6 with the provisions Congress ultimately agreed to in Title XV of P.L. 109-58.

Among the key fuel-related provisions, the Energy Policy Act of 2005 repealed the Clean Air Act requirement that reformulated gasoline (RFG) contain at least 2% oxygen — a requirement that led refiners and importers to use MTBE and, to a lesser extent, ethanol in their RFG. This provision was advanced by both the House and Senate, largely in response to drinking water contamination problems associated with the use of MTBE.

In place of this requirement, the Act established a Renewable Fuel Standard (RFS) requiring the use of 7.5 billion gallons of renewable fuel by 2012. This requirement is being met primarily through the use of ethanol. Also consistent with the House and Senate bills, P.L. 109-58 requires that the reductions in emissions of toxic substances achieved by RFG be maintained and allows ethanol credit trading among refiners and importers of fuels.

Major issues that the various versions of the bill treated differently include whether to grant MTBE producers a safe harbor from product liability lawsuits (the House version did so, whereas the Senate version and the enacted version did not); whether to phase out continued use of MTBE in motor fuels (both the House and Senate versions would have done so, with exceptions, whereas the enacted bill does not); and whether to require manufacturers of fuels and fuel additives to evaluate their impacts on public health and the environment (the Senate version and the enacted version did so, the House version did not).

The Energy Policy Act also amends the underground storage tank (UST) regulatory program to specifically authorize EPA and states to use funds appropriated from the Leaking Underground Storage Tank (LUST) Trust Fund to address fuel leaks involving MTBE and other oxygenated fuel additives. The law also expands the leak prevention provisions of the UST program and imposes new requirements on states, EPA, and tank owners.

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Renewable Fuels and MTBE: A Comparison of Provisions in the Energy Policy Act of 2005 (P.L. 109-58 and H.R. 6)

Introduction

Enacted August 8, 2005, the Energy Policy Act of 2005 (P.L. 109-58, H.R. 6) established a requirement for the use of renewable fuels and revised Clean Air Act and underground storage tank regulatory requirements to address public health and environmental concerns associated with the use of fuels and fuel additives, especially methyl tertiary butyl ether (MTBE). Considerable debate centered on the issue of how to address drinking water quality problems associated with MTBE use while preserving air quality benefits of reformulated gasoline and, at the same time, promoting the use of renewable fuels (especially ethanol).

This report compares provisions concerning renewable fuel (e.g., ethanol) and the gasoline additive methyl tertiary butyl ether (MTBE) in Title XV of the Energy Policy Act of 2005 with the provisions in Title XV of the House-passed H.R. 6 and the provisions in Title II of the Senate-passed H.R. 6.¹

Under the Clean Air Act Amendments of 1990, gasoline sold in numerous areas of the country with poor air quality was required to contain oxygenates — MTBE, ethanol, or other substances containing oxygen — as a means of improving combustion and reducing emissions of ozone-forming compounds and carbon monoxide. The act had two programs that required the use of oxygenates, but the more significant of the two was the reformulated gasoline (RFG) program, which took effect January 1, 1995. Under the reformulated gasoline program, areas with “severe” or “extreme” ozone pollution (124 counties with a combined population of 73.6 million) must use reformulated gasoline; areas with less severe ozone pollution may opt into the program as well, and many have done so. In all, portions of 17 states and the District of Columbia use reformulated gasoline; a little more than 30% of the gasoline sold in the United States is RFG.

Since the mid-1990s, the addition of MTBE to RFG and its use in conventional gasoline has become increasingly controversial. The additive has caused numerous

¹ This report focuses on provisions that address Clean Air Act, renewable fuel, and underground storage tank leak prevention and cleanup issues. It does not address other provisions of the comprehensive energy bill; for an overview of these provisions, see CRS Report RL33302, *The Energy Policy Act of 2005: Summary and Analysis of Enacted Provisions*, coordinated by Mark Holt and Carol Glover. Of the four authors of this report, James McCarthy handles the Clean Air Act; Brent Yacobucci, renewable fuels; Mary Tiemann, underground storage tank issues. “Safe harbor” provisions are addressed by Aaron Flynn, American Law Division.

incidents of water contamination across the nation. The primary source of MTBE in groundwater and drinking water has been petroleum releases from leaking underground storage tanks. MTBE has been detected in drinking water sources in at least 36 states,² and 25 states have taken steps to ban or regulate its use. The most significant of these bans (in California and New York) took effect at the end of 2003, leading many to suggest that Congress revisit the issue to modify the oxygenate requirement and set more uniform national requirements regarding MTBE and its potential replacements (principally ethanol).

P.L. 109-58 repeals the Clean Air Act requirement that reformulated gasoline contain at least 2% oxygen — the requirement that forces refiners and importers to use MTBE, ethanol, or other oxygenates in their RFG.³ In place of this requirement, it provides a major new stimulus to promote the use of ethanol — a provision that the annual production of gasoline contain at least 7.5 billion gallons of renewable fuel by 2012.

The enacted bill uses the term “renewable fuel” rather than ethanol, so the requirement can be met by other fuels, including natural gas produced from landfills, sewage treatment plants, feedlots, and other decaying organic matter. The renewable fuel definition also encompasses biodiesel, which can be made from soy oil or other cooking oils. However, ethanol is the only renewable motor fuel currently being produced in significant quantities. In 2004, roughly 3.4 billion gallons of ethanol were blended with gasoline.⁴ Biodiesel, the next most significant renewable motor fuel, is currently consumed at a rate of about 50 million gallons annually, less than 2% of the amount of ethanol consumed.⁵

Some provisions of the House- and Senate-passed bills did not survive the conference. The House- and Senate-passed bills would have established a nationwide ban on the use of MTBE (although the deadlines and potential exceptions differed); and both bills would have established a “safe harbor” from product liability lawsuits for producers of ethanol and other renewable fuels. Neither of these provisions was included in the enacted version. The enacted bill also dropped the House bill’s safe harbor for MTBE producers, as well as the transitional assistance for merchant producers of MTBE that was included in both the House- and Senate-passed versions.

² American Water Works Research Foundation, *Occurrence of MTBE and VOCs in Drinking Water Sources of the United States*, 2003.

³ It should be noted that while overall requirements for RFG formulation have significantly reduced the emissions of ozone-forming pollutants, some research indicates that these emissions reductions have resulted from RFG requirements other than the oxygenate standard, and that the benefits of the oxygenate standard alone are questionable.

⁴ This is roughly 2% of total U.S. gasoline demand. Renewable Fuels Association, *Ethanol Industry Outlook 2005*, Washington, D.C., January 2005.

⁵ For additional information on ethanol and biodiesel, see CRS Report RL30758, *Alternative Transportation Fuels and Vehicles: Energy, Environment, and Development Issues*, and CRS Report RL30369, *Fuel Ethanol: Background and Public Policy Issues*.

The enacted bill also amends the underground storage tank (UST) regulatory program under Subtitle I of the Solid Waste Disposal Act (SWDA) to better prevent leaks of petroleum and MTBE from underground tanks. It authorizes EPA and states to use appropriations from the Leaking Underground Storage Tank (LUST) Trust Fund for administering their LUST cleanup programs and enforcing tank leak prevention regulations. Patterned after the House bill, P.L. 109-58, as amended,⁶ authorizes \$1 billion for the cleanup of leaks of fuels containing MTBE or other oxygenates (including ethanol), and another \$1 billion for EPA and states to administer and enforce the current LUST cleanup program. However, the act's tax extension language (§1362) prohibits the use of LUST Trust Fund appropriations for any new purposes. Thus, while the Energy Policy Act of 2005 markedly expands states' leak prevention responsibilities, it prohibits the use of the trust fund money to support state implementation of the new requirements. Among other provisions, the act requires EPA or the state to conduct UST compliance inspections every three years; prohibits fuel delivery to ineligible tanks; directs states to develop training requirements for individuals responsible for tank operation and maintenance; and requires EPA to establish a strategy to address releases on tribal lands.

The remainder of this report provides a side-by-side comparison of the MTBE and renewable motor fuel provisions of the House and Senate bills with the final law, P.L. 109-58. (For additional information on MTBE, see CRS Report RL32787, *MTBE in Gasoline: Clean Air and Drinking Water Issues*, by James E. McCarthy and Mary Tiemann. For information on ethanol, see CRS Report RL30369, *Fuel Ethanol: Background and Public Policy Issues*, and CRS Report RL33290, *Alternative Fuels and Advanced Technology Vehicles: Issues in Congress*, both by Brent D. Yacobucci. For a legal discussion of the safe harbor provisions as proposed, see CRS Report RS21676, *The Safe-Harbor Provision for Methyl Tertiary Butyl Ether (MTBE)*, by Aaron M. Flynn.)

⁶ Technical corrections to the Energy Policy Act were enacted in P.L. 109-168 on January 10, 2006. The only substantial correction to Title XV was the revision of the dates authorizing appropriations for Subtitle I, regarding the regulation of underground storage tanks, from FY2005-FY2009 to FY2006-FY2011.

Side-by-Side Comparison of Fuels and MTBE Provisions in H.R. 6 and P.L. 109-58

Provision	H.R. 6 — Energy Policy Act of 2005, as passed the House	H.R. 6 — Energy Policy Act of 2005, as passed by the Senate	P.L. 109-58 — Energy Policy Act of 2005, as enacted
<p>Renewable Content of Motor Vehicle Fuel</p>	<p>A new §211(o) is added to the Clean Air Act. Beginning in 2005, motor vehicle fuel must contain a certain amount of renewable fuel. In 2005, 3.1 billion gallons of renewable fuel must be sold annually, increasing to 5.0 billion gallons in 2012. After 2012, the percentage of renewable fuel required in the motor fuel pool must be the same as the percentage required in 2012. This standard will largely be met by ethanol, but other renewable fuels, such as biodiesel, are eligible. Ethanol from cellulosic biomass (including from wood and agricultural residue, animal waste, and municipal solid waste) is granted extra credits toward fulfilling the program's requirements (1 gallon of cellulosic ethanol counts as 1.5 gallons of renewable fuel). Further, the bill would establish a credit trading program to provide flexibility to refiners and blenders. [\$1501]</p>	<p>Significant differences from the House version: Requires that 4.0 billion gallons of renewable fuel be used in 2006, increasing to 8.0 billion gallons in 2012. After 2012, the minimum requirement is the ratio of renewable fuel to gasoline in 2012, but EPA has the authority to establish a higher requirement. A gallon of cellulosic ethanol counts as 2.5 gallons of renewable fuel (1.5 gallons in the House version). Further, after 2012, a minimum of 250 million gallons of cellulosic ethanol is required in fuel annually (and would not be subject to the increased credit for cellulosic ethanol). [\$211]</p>	<p>Similar to Senate provision, except that 4.0 billion gallons is required in 2006, increasing to 7.5 billion gallons in 2012. EPA has the authority to establish the requirement in subsequent years, but no lower than the percentage in 2012. A gallon of cellulosic ethanol counts as 2.5 gallons of renewable fuel. After 2012, a minimum of 250 million gallons of cellulosic ethanol is required in fuel annually. [\$1501]</p>

Provision	H.R. 6 — Energy Policy Act of 2005, as passed the House	H.R. 6 — Energy Policy Act of 2005, as passed by the Senate	P.L. 109-58 — Energy Policy Act of 2005, as enacted
Safe Harbor	<p>Renewable fuels, MTBE, or fuels blended with renewable fuels or MTBE cannot be deemed a “defective product.” Applicability of this “safe harbor” would be conditioned upon a party’s compliance with EPA regulations issued under § 211 of the Clean Air Act and any applicable requests for information. Assuming these qualifications were met, any entity within the product chain, from manufacturers to retailers, would be shielded from products liability-based lawsuits, the approach that has been taken in most of the suits filed. Liability based on other grounds, such as negligence or breach of contract, to the extent it applies, would remain intact. [\$1502(a)]</p> <p>The provision would apply retroactively to claims filed on or after September 5, 2003, thereby nullifying numerous pending lawsuits. [\$1502(b)]</p>	<p>Renewable fuels used or intended to be used as a motor vehicle fuel and any motor vehicle fuel containing renewable fuel cannot be deemed defective in design or manufacture. The term “renewable fuels” would be defined by a corresponding amendment to § 211 of the Clean Air Act. Further, ethers, including MTBE, would not be covered by the “safe harbor.” Applicability of the provision would also be conditioned upon a party’s compliance with EPA regulations issued under § 211 of the Clean Air Act and any applicable requests for information. Unlike the House bill, this provision would not apply retroactively, and pertains only to claims filed on after the date of the provision’s enactment. [\$211(a)]</p>	No comparable provision.

Provision	H.R. 6 — Energy Policy Act of 2005, as passed the House	H.R. 6 — Energy Policy Act of 2005, as passed by the Senate	P.L. 109-58 — Energy Policy Act of 2005, as enacted
Claims Filed After Enactment	No comparable provision.	No comparable provision.	Under this provision, any claim or legal action filed after August 8, 2005 that involves possible MTBE contamination may be removed to a federal district court where jurisdiction and venue would otherwise be appropriate. This provision thus allows state law based claims that would otherwise be ineligible for federal court review to be heard by federal judges. The substantive law of the state will still be applied in federal court, although most rules of procedure would be supplied by federal law. [§1503]

Provision	H.R. 6 — Energy Policy Act of 2005, as passed the House	H.R. 6 — Energy Policy Act of 2005, as passed by the Senate	P.L. 109-58 — Energy Policy Act of 2005, as enacted
<p>Ban on Use of MTBE</p> <p>Presidential Determination</p> <p>National Academy of Sciences Review</p>	<p>Not later than December 31, 2014, the use of MTBE in motor vehicle fuel is prohibited except in states that specifically authorize it. EPA may allow MTBE in motor vehicle fuel in quantities up to 0.5% in cases the Administrator determines to be appropriate. [\$1504]</p> <p>Allows the President to make a determination, not later than June 30, 2014, that the restrictions on the use of MTBE shall not take place. [\$1505(b)]</p> <p>Separately, requires the National Academy of Sciences to conduct a review of MTBE's beneficial and detrimental effects on environmental quality or public health or welfare, including costs and benefits. The review shall be completed by May 31, 2014. [\$1505(a)]</p>	<p>Similar provisions, except that the prohibition amends Section 211(c) of the Clean Air Act and would take effect not later than 4 years after the date of enactment. [\$223(c)]</p> <p>No comparable provision.</p> <p>No comparable provision.</p>	<p>No comparable provision.</p> <p>No comparable provision.</p> <p>No comparable provision.</p>

Provision	H.R. 6 — Energy Policy Act of 2005, as passed the House	H.R. 6 — Energy Policy Act of 2005, as passed by the Senate	P.L. 109-58 — Energy Policy Act of 2005, as enacted
MTBE Transition Assistance	Amends §211(c) of the Clean Air Act to authorize \$2 billion (\$250 million in each of FY2005-FY2012) for grants to assist merchant U.S. producers of MTBE in converting to the production of iso-octane, iso-octene, alkylates, renewable fuels, and other fuel additives. Eligible facilities are those that produced MTBE before April 2003 and ceased production after the date of enactment. The Secretary of Energy may make grants available unless EPA determines that such additives may reasonably be anticipated to endanger public health or the environment. [§1503]	Similar provision, except that \$1 billion in grants are authorized (\$250 million in each of FY2005-FY2008). Eligible facilities are those that produced MTBE for consumption in nonattainment areas after the date of enactment. [§223(c)]	No comparable provision.
Protection of Water Quality	No comparable provision.	Amends Section 211(c) of the Clean Air Act to authorize the EPA Administrator to regulate, control, or prohibit the manufacture, introduction into commerce, offering for sale, or sale of any fuel or fuel additive for use in a motor vehicle or engine if it causes or contributes to water pollution. [§223(c)]	No comparable provision.
Oxygen Content	Amends §211(k) of the Clean Air Act to eliminate requirement that reformulated gasoline contain at least 2% oxygen. Provision takes effect 270 days after enactment, except in California, where it takes effect immediately upon enactment. [§1506(a)]	Identical provision. [§224(a)]	Identical provision. [§1504(a)]

Provision	H.R. 6 — Energy Policy Act of 2005, as passed the House	H.R. 6 — Energy Policy Act of 2005, as passed by the Senate	P.L. 109-58 — Energy Policy Act of 2005, as enacted
Toxic Air Pollutants	Amends §211(k)(1) of the Clean Air Act to require that each refinery or importer of gasoline maintain the average annual reductions in emissions of toxic air pollutants <i>achieved</i> by the reformulated gasoline it produced or distributed in 1999 and 2000. This provision is intended to prevent backsliding, since the reductions actually achieved in those years exceeded the regulatory requirements. Establishes a credit trading program for emissions of toxic air pollutants. The anti-backsliding provision applies only to the extent that the quantity produced or imported is less than or equal to the average annual quantity produced or imported in the two base years. [§1506(b)]	Similar anti-backsliding provision, except that the base years for determining allowable emissions are 2001 and 2002. Also provides an exception for California, which has more stringent state requirements. [§224(b)]	Identical to Senate provision. [§1504(b)]
Mobile Source Air Toxics	Requires EPA to promulgate final regulations to control hazardous air pollutants from motor vehicles and their fuels by July 1, 2005. [§1506(b)]	Similar provision, but the deadline for promulgation is July 1, 2007. Also provides that if the promulgated regulations achieve and maintain greater overall reductions in emissions of air toxics from RFG than what would be achieved under the anti-backsliding requirements described above, the anti-backsliding requirements shall be null and void. [§224(b)]	Identical to Senate provision. [§1504(b)]

Provision	H.R. 6 — Energy Policy Act of 2005, as passed the House	H.R. 6 — Energy Policy Act of 2005, as passed by the Senate	P.L. 109-58 — Energy Policy Act of 2005, as enacted
Consolidation of RFG Requirements	Eliminates the less stringent requirements for volatility applicable to reformulated gasoline sold in VOC Control Region 2 (northern states) by applying the more stringent standards of VOC Control Region 1(southern states) to both regions. [\$1506(c)]	Identical provision. [\$224(d)]	Identical provision. [\$1504(c)]
Public Health and Environmental Impacts of Fuels and Additives	No comparable provision.	Amends §211(b) of the Clean Air Act to require manufacturers of fuels and fuel additives to conduct tests of their health and environmental impacts (currently, these tests are at EPA’s discretion and do not include environmental effects). Also requires EPA, within 2 years, to conduct a study of the health and environmental effects of MTBE substitutes, including ethanol-blended RFG. [\$225]	Identical to Senate provision. [\$1505]
Analyses of Fuel Changes	A new §211(p) is added to the Clean Air Act. Within four years of enactment, the Administrator of the Environmental Protection Agency (EPA) must publish a draft analysis of the effects of the fuels provisions in H.R. 6 on air pollutant emissions and air quality. Within five years of enactment, the Administrator is required to publish a final version of the analysis. [\$1507]	Similar to the House provision, except that the Senate version also requires EPA to publish within one year of enactment a study on the effects of ethanol content on fuel permeation through vehicle fuel systems. [\$226]	Identical to Senate provision. [\$1506]

Provision	H.R. 6 — Energy Policy Act of 2005, as passed the House	H.R. 6 — Energy Policy Act of 2005, as passed by the Senate	P.L. 109-58 — Energy Policy Act of 2005, as enacted
RFG Opt-In	No comparable provision.	Allows governors of 12 northeastern states (the Ozone Transport Region) to petition EPA to require RFG use in <i>attainment</i> areas in their states. The Administrator shall do so unless he determines that there is insufficient capacity to produce RFG, in which case the commencement date of the requirement shall be delayed. [\$227]	Identical to Senate provision. [\$1507]
Federal Enforcement of State Standards	No comparable provision.	At the request of a state, allows federal enforcement of state controls on fuels and fuel additives. [\$228]	No comparable provision.
Renewable Fuels Surveys	Requires DOE to collect and publish monthly survey data on the production, blending, importing, demand, and price of renewable fuels, both on a national and regional basis. [\$1508] Not later than December 1, 2006, and annually thereafter, requires EPA Administrator to conduct a survey to determine the market shares of conventional gasoline and RFG containing ethanol and other renewable fuels in conventional and RFG areas in each state. [\$1501(c)]	Similar to House provision, except that DOE must also collect and publish data on production costs. [\$213] Substantially similar to House version. [\$212(b)]	Identical to House provision. [\$1508] Identical to House provision. [\$1501(d)]

Provision	H.R. 6 — Energy Policy Act of 2005, as passed the House	H.R. 6 — Energy Policy Act of 2005, as passed by the Senate	P.L. 109-58 — Energy Policy Act of 2005, as enacted
Reducing the Proliferation of State Fuel Blends	A new provision is added to §211(c)(4) of the Clean Air Act. The EPA Administrator shall not approve a control or prohibition respecting the use of a fuel or fuel additive unless he finds that it will not cause fuel supply or distribution interruptions or have a significant adverse impact on fuel producibility in the affected area or contiguous areas. Within 18 months of enactment, the Administrator shall submit a report to Congress on the effects of providing a preference for RFG or either of two low volatility (7.0 and 7.8 Reid Vapor Pressure) gasolines. [§1509]	No comparable provision.	No comparable provision.
Reducing the Proliferation of Boutique Fuels	<p>The EPA Administrator is permitted to temporarily waive fuel requirements, including state fuel requirements and RFG standards, in the case of a natural disaster, Act of God, pipeline or refinery equipment malfunction, or other unforeseeable event. [§1541(a)]</p> <p>In addition, the Administrator may not approve a fuel standard under a State Implementation Plan if that standard would increase the number of unique state formulations above the number as of September 1, 2004. [§1541(b)]</p>	No comparable provision.	Identical to House provisions. [§1541(a) and §1541(b)]

Provision	H.R. 6 — Energy Policy Act of 2005, as passed the House	H.R. 6 — Energy Policy Act of 2005, as passed by the Senate	P.L. 109-58 — Energy Policy Act of 2005, as enacted
Fuel System Requirements Harmonization Study	The EPA Administrator and the Secretary of Energy are required to conduct a study of federal, state, and local motor fuels requirements. They are required to analyze the effects of various standards on consumer prices, fuel availability, domestic suppliers, air quality, and emissions. Further, they are required to study the feasibility of developing national or regional fuel standards, and to provide recommendations on legislative and administrative actions to improve air quality, increase supply liquidity, and reduce costs to consumers and producers. A report must be submitted to Congress by December 31, 2009. [\$1510]	Substantially similar to the House version, except that the report must include the effects on sensitive populations, and the report must be submitted to Congress by June 1, 2008. [\$229]	Identical to Senate provision, except that the report must also include projected effects on air quality and fuel prices from other federal and state fuel and vehicle emission control programs. [\$1509]

Provision	H.R. 6 — Energy Policy Act of 2005, as passed the House	H.R. 6 — Energy Policy Act of 2005, as passed by the Senate	P.L. 109-58 — Energy Policy Act of 2005, as enacted
<p>Cellulosic Biomass, Municipal Solid Waste, and Sugar Ethanol Loan Guarantees</p>	<p>The Secretary of Energy is required to establish a loan guarantee program for the construction of facilities to produce fuel ethanol and other commercial byproducts from municipal solid waste and cellulosic biomass. Applicants for loan guarantees must provide assurance of repayment (at least 20%) in the form of a performance bond, insurance collateral, or other means. The section authorizes such sums as may be necessary for the program. [\$1511]</p>	<p>The Secretary of Energy is required to establish loan guarantees for no more than four projects to demonstrate the commercial feasibility and viability of converting cellulosic biomass or sucrose into ethanol. Loan guarantees can cover a maximum amount of \$250 million per project, but in no case for more than 80% of a project's estimated cost, as well as up to 80% of project costs in excess of the estimate. No new funding is authorized. [\$212(c)]</p>	<p><i>The enacted law contains three similar provisions in different sections. These various provisions may conflict with each other.</i></p> <p>Identical to House provision. [\$1510]</p> <p>Identical to Senate provision. [\$1511(b)]</p> <p>The Secretary of Energy is required to establish loan guarantees to demonstrate the commercial feasibility and viability of converting sugarcane and sugarcane byproducts into ethanol. Loan guarantees can cover a maximum amount of \$50 million per project, but in no case for more than 80% of a project's estimated cost, as well as up to 80% of project costs in excess of the estimate. No new funding is authorized. [\$1516]</p>

Provision	H.R. 6 — Energy Policy Act of 2005, as passed the House	H.R. 6 — Energy Policy Act of 2005, as passed by the Senate	P.L. 109-58 — Energy Policy Act of 2005, as enacted
Cellulosic Biomass Conversion Assistance	Allows Secretary of Energy to provide grants for the construction of facilities to produce renewable fuels (including ethanol) from cellulosic biomass, agricultural byproducts, agricultural waste, and municipal solid waste. A total of \$750 million is authorized to be appropriated between FY2005 and FY2007. [\$1512]	Similar to the House version, except that only facilities that produce ethanol (and not other renewable fuels) from municipal waste or agricultural residue may qualify. A total of \$650 million is authorized between FY2005 and FY2006. [\$212(f)]	<p><i>The enacted law contains two similar provisions in different sections. These provisions may conflict with each other.</i></p> <p>Identical to Senate provision, except that a total of \$650 million is authorized between FY2006 and FY2007. [\$1511(e)]</p> <p>Substantially similar to House provision, except that \$750 million is authorized for FY2006 through FY2008. [\$1512]</p>
Blending of Compliant Reformulated Gasolines	Retailers may blend batches of reformulated gasoline with and without ethanol, as long as both batches are compliant with the Clean Air Act. In a given year, retailers may only blend batches over two ten-day periods in the summer months. [\$1513]	Retailers may blend batches of reformulated gasoline with and without ethanol as long as the resulting fuel is compliant with the Clean Air Act. There is no limitation on the number of batches or duration of blending. [\$224(c)]	Identical to House provision. [\$1513]

Provision	H.R. 6 — Energy Policy Act of 2005, as passed the House	H.R. 6 — Energy Policy Act of 2005, as passed by the Senate	P.L. 109-58 — Energy Policy Act of 2005, as enacted
Underground Storage Tanks (USTs)	Amends Solid Waste Disposal Act (SWDA) Subtitle I. New §9004(f) directs EPA to allot to the states at least 80% of the funds made available from the Leaking Underground Storage Tank (LUST) Trust Fund under §9014(2)(A). In addition to the current use of funds to carry out the response program for petroleum tank leaks, §9004(f) authorizes states to use funds to pay the reasonable costs incurred for (1) administrative expenses related to state funds or assurance programs; and (2) enforcing state UST programs. Also authorizes EPA to use funds not allotted to states to enforce any Subtitle I regulation. [\$1522]	No comparable provision.	Identical to House provision. [\$1522]
Cost Recovery	New SWDA §9003(h)(6)(E) requires EPA or a state, in determining the portion of cleanup costs to recover from a tank owner or operator, to consider the owner or operator's ability to pay and still maintain basic business operations. [\$1522]	No comparable provision.	Identical to House provision. [\$1522]
Tank Inspections	New SWDA §9005(c) requires states, within 2 years of enactment, as appropriate, to perform on-site compliance inspections of all tanks that have not been inspected since Dec. 1998 (when final UST regulations went into effect). Then, as appropriate, states must conduct inspections of tanks at least once every 3 years. EPA may grant a state a 1-year extension to the first 3-year inspection interval. [\$1523]	No comparable provision.	Identical to House provision. [\$1523]

Provision	H.R. 6 — Energy Policy Act of 2005, as passed the House	H.R. 6 — Energy Policy Act of 2005, as passed by the Senate	P.L. 109-58 — Energy Policy Act of 2005, as enacted
State Compliance Reports	New SWDA §9003(i) requires states to prepare and submit to EPA compliance reports on government-owned tanks in the state. [\$1526(b)] <i>(Note: §1530(a) also adds a new SWDA §9003(i) on additional groundwater protection measures.)</i>	No comparable provision.	Identical to House provision. [\$1526(b)]
LUST Trust Fund Authorization of Appropriations	§9014(2)(C) authorizes the appropriation of \$100 million for each of FY2005-FY2009 to carry out §9003(i), §9004(f), and §9005(c). [\$1531]	No comparable provision.	Identical to House provision. [\$1531]
LUST Trust Fund Authorization of Appropriations for LUST Response Program	New SWDA §9014(2)(A) authorizes the appropriation of \$200 million for each of FY2005-FY2009 from the LUST Trust Fund for EPA and states to carry out §9003(h), the response program for leaking petroleum tanks (except for MTBE and other oxygenated fuel remediation). [\$1531]	No comparable provision.	Identical to House provision. [\$1531] <i>(Note: P.L. 109-168, enacted January 10, 2006, revised the dates authorizing appropriations for Subtitle I, from FY2005-FY2009 to FY2006-FY2011.)</i>
Remediation of MTBE and Other Fuel Additives	New SWDA §9003(h)(12) authorizes EPA and states to use funds from the LUST Trust Fund to remediate underground storage tank releases of fuels containing <i>oxygenated fuel</i> additives (e.g., MTBE, other ethers, and ethanol). [\$1525]	Similar, except that funds may be used to remediate contamination from MTBE and other ether fuel additives (not ethanol); releases need not be from underground storage tanks to be eligible for funding. [\$222(a)]	Identical to House provision. [\$1525]
LUST Trust Fund Authorization of Appropriations	New SWDA §9014(2)(B) authorizes for this purpose the appropriation of \$200 million annually for FY2005-FY2009. [\$1531(a)]	New SWDA §9011(1) authorizes for this purpose the appropriation of \$200 million for FY2005, to remain available until expended. [\$222(a)]	Identical to House provision. [\$1531(a)] <i>(See note above.)</i>

Provision	H.R. 6 — Energy Policy Act of 2005, as passed the House	H.R. 6 — Energy Policy Act of 2005, as passed by the Senate	P.L. 109-58 — Energy Policy Act of 2005, as enacted
Use of LUST Trust Fund for UST Program Enforcement	New SWDA §9011 authorizes EPA and states to use funds from the LUST Trust Fund to conduct inspections, issue orders, or otherwise enforce Subtitle I regulations (UST leak prevention and detection regulations, as well as LUST response program regulations). [§1526(a)]	Adds similar new §9010. [§222(b)]	Identical to House provision. [§1526]
Other UST Requirements and Funding	Subtitle I makes several other changes to the UST regulatory program in SWDA, imposing new requirements on state and federal governments, and tank owners, operators and installers:	No comparable provisions.	Identical to House provision.
UST Operator Training	Revised §9010 requires states to develop operator training requirements, based on EPA guidance (applicable to persons with primary and daily tank operation and maintenance responsibilities, and spill response responsibilities). [§1524]	No comparable provision.	Identical to House provision. [§1524]
Delivery prohibition	New §9012 prohibits product delivery to tanks that EPA or a state determines are ineligible for fuel delivery. Requires EPA and states to develop delivery prohibition rosters. Provides for civil penalties for violations of this prohibition. [§1527]	No comparable provision.	Identical to House provision. [§1527]
Federal Facilities	Amends §9007 to clarify and expand compliance requirements for USTs under the jurisdiction of the federal government. [§1528]	No comparable provision.	Identical to House provision. [§1528]
Tanks under Tribal Jurisdiction	New §9013 requires EPA, with Indian tribes, to develop and implement a strategy to address releases on tribal lands. [§1529]	No comparable provision.	Identical to House provision. [§1529]

Provision	H.R. 6 — Energy Policy Act of 2005, as passed the House	H.R. 6 — Energy Policy Act of 2005, as passed by the Senate	P.L. 109-58 — Energy Policy Act of 2005, as enacted
<p>UST Program: Other Groundwater Protection Measures (Secondary Containment, Financial Responsibility)</p>	<p>New §9003(i) provides that, beginning 18 months after enactment, states that receive funding under Subtitle I must do one of the following: (1) require that newly installed or replaced tanks and piping are secondarily contained and monitored for leaks if the tank or piping is within 1,000 feet of a community water system or potable well; (2) require that UST manufacturers and installers maintain evidence of financial responsibility to pay for corrective actions, and require that persons installing UST systems are certified or licensed, or that their UST system installation is certified by a professional engineer or inspected and approved by the state, or is compliant with a code of practice or other method determined by a state (or EPA) to be no less protective of human health and the environment. [\$1530(a)] <i>(Note: §1526(b) and §1530(a) both create a new §9003(i).)</i></p>	<p>No comparable provision.</p>	<p>Identical to House provision. [\$1530(a)]</p>
<p>LUST Trust Fund Authorization of Appropriations</p>	<p>New SWDA §9014(2)(D) authorizes the appropriation of \$55 million for each of FY2005-FY2009 to carry out §9010 (operator training), §9011 (enforcement), §9012 (delivery prohibition) and §9013 (Indian lands strategy). [\$1531]</p>	<p>New SWDA §9011(2) authorizes the appropriation of \$50 million for FY2005 and \$30 million for each of FY2006-FY2010 to carry out §9010 (enforcement). [\$222(b)]</p>	<p>Identical to House provision. [\$1531] <i>(Note: P.L. 109-58, §1362, a tax extension provision, prohibits the use of LUST Trust Fund appropriations for any new purposes.)</i></p>

Provision	H.R. 6 — Energy Policy Act of 2005, as passed the House	H.R. 6 — Energy Policy Act of 2005, as passed by the Senate	P.L. 109-58 — Energy Policy Act of 2005, as enacted
UST Program: Authorization of Appropriations (General Revenues)	New SWDA §9014(1) authorizes the appropriation of \$50 million for each of FY2005-FY2009 to carry out Subtitle I (except for §9003(h) (LUST cleanup program), §9005(c) (inspections), §9011(enforcement), and §9012 (delivery prohibition). [§1531]	No comparable provision.	Identical to House provision. [§1531]
Resource Center	No comparable provision.	Authorizes \$4 million for the Mississippi State University and Oklahoma State University for each of FY2005-FY2007 for a resource center to further develop bioconversion technology using low-cost biomass for the production of ethanol. [§212(d)]	Identical to Senate provision. [§1511(c)]
Renewable Fuel Production Research and Development Grants	No comparable provision.	Authorizes \$25 million in each of FY2006-FY2010 for research, development, and implementation of renewable fuel production technologies in RFG states with low rates of ethanol production. [§212(e)]	Identical to Senate provision. [§1511(d)]

Provision	H.R. 6 — Energy Policy Act of 2005, as passed the House	H.R. 6 — Energy Policy Act of 2005, as passed by the Senate	P.L. 109-58 — Energy Policy Act of 2005, as enacted
Advanced Biofuels Technology Program	No comparable provision.	Authorizes \$110 million in each of FY2005 through FY2009 for projects to demonstrate new technologies for the production of biofuels. The program must fund at least 4 different technologies for producing cellulosic biomass ethanol and at least 5 technologies for the production of value-added biodiesel fuel coproducts. Preference is given to projects that enhance geographical diversity of alternative fuel production and to projects with feedstocks used in 10 percent or less of annual ethanol and biodiesel production. [\$230]	Identical to Senate provision. [\$1514]
Sugar Cane Ethanol Program	No comparable provision.	Establishes a program to study the production of ethanol from cane sugar, sugarcane, and sugarcane byproducts. The program would be limited to projects in Florida, Louisiana, Texas, and Hawaii. A total of \$36 million is authorized. [\$231]	Substantially similar to the Senate version. [\$208]