

AMENDMENT NO. _____ Calendar No. _____

Purpose: To provide for increased production and use of renewable fuel.

IN THE SENATE OF THE UNITED STATES—109th Cong., 1st Sess.

S. _____

To enhance the energy security of the United States, and for other purposes.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. TALENT (for himself, Mr. JOHNSON, Mr. DORGAN, and Mr. SALAZAR) to Title II—Renewable Energy (FLO05767.LC)

Viz:

1 On page 8, between lines 18 and 19, insert the following:
2

3 **SEC. 204. RENEWABLE CONTENT OF MOTOR VEHICLE FUEL.**

4 (a) DEFINITIONS.—In this section:

5 (1) CELLULOSIC BIOMASS ETHANOL.—The
6 term “cellulosic biomass ethanol” means ethanol derived from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring
7 basis, including—
8
9

- 1 (A) dedicated energy crops and trees;
- 2 (B) wood and wood residues;
- 3 (C) plants;
- 4 (D) grasses;
- 5 (E) agricultural residues; and
- 6 (H) fibers.

7 (2) RENEWABLE FUEL.—

8 (A) IN GENERAL.—The term “renewable
9 fuel” means motor vehicle fuel that—

10 (i)(I) is produced from grain, starch,
11 oilseeds, sugar cane, sugar beets, sugar
12 components, tobacco, potatoes, or other
13 biomass; or

14 (II) is natural gas produced from a
15 biogas source, including a landfill, sewage
16 waste treatment plant, feedlot, or other
17 place where decaying organic material is
18 found; and

19 (ii) is used to replace or reduce the
20 quantity of fossil fuel present in a fuel
21 mixture used to operate a motor vehicle.

22 (B) INCLUSIONS.—The term “renewable
23 fuel” includes—

24 (i) cellulosic biomass ethanol;

25 (ii) waste derived ethanol;

1 (iii) biodiesel (as defined in section
2 312(f) of the Energy Policy Act of 1992
3 (42 U.S.C. 13220(f)); and

4 (iv) any blending components derived
5 from renewable fuel, except that only the
6 renewable fuel portion of the blending com-
7 ponent shall be considered part of the ap-
8 plicable volume under the renewable fuel
9 program established by this section.

10 (3) SMALL REFINERY.—The term “small refin-
11 ery” means a refinery for which average aggregate
12 daily crude oil throughput for the calendar year (as
13 determined by dividing the aggregate throughput for
14 the calendar year by the number of days in the cal-
15 endar year) does not exceed 75,000 barrels.

16 (4) WASTE DERIVED ETHANOL.—The term
17 “waste derived ethanol” means ethanol derived
18 from—

19 (A) animal wastes, including poultry fats
20 and poultry wastes, and other waste materials;

21 or

22 (B) municipal solid waste.

23 (b) RENEWABLE FUEL PROGRAM.—

24 (1) IN GENERAL.—

1 (A) REGULATIONS.—Not later than 1 year
2 after the date of enactment of this Act, the Sec-
3 retary shall issue regulations ensuring that
4 motor vehicle fuel sold or dispensed to con-
5 sumers in the contiguous United States, on an
6 annual average basis, contains the applicable
7 volume of renewable fuel specified in paragraph
8 (2).

9 (B) COMPLIANCE.—Regardless of the date
10 of issuance, the regulations shall contain com-
11 pliance provisions for refiners, blenders, and
12 importers, as appropriate, to ensure that the re-
13 quirements of this section are met, but shall not
14 restrict where renewable fuel can be used, or
15 impose any per-gallon obligation for the use of
16 renewable fuel.

17 (C) NO REGULATIONS.—If the Secretary
18 does not issue the regulations, the applicable
19 percentage referred to in paragraph (3), on a
20 volume percentage of gasoline basis, shall be
21 3.2 in 2006.

22 (2) APPLICABLE VOLUME.—

23 (A) CALENDAR YEARS 2006 THROUGH
24 2012.—For the purpose of paragraph (1), the
25 applicable volume for any of calendar years

1 2006 through 2012 shall be determined in ac-
2 cordance with the following table:

“Applicable volume of renewable fuel

Calendar year:	(In billions of gallons)
2006	4.0
2007	4.7
2008	5.4
2009	6.1
2010	6.8
2011	7.4
2012	8.0

3 (B) CALENDAR YEARS 2013 AND THERE-
4 AFTER.—For the purpose of paragraph (1), the
5 applicable volume for calendar year 2013 and
6 each calendar year thereafter shall be deter-
7 mined by the Secretary, in coordination with
8 the Secretary of Agriculture and the Adminis-
9 trator of the Environmental Protection Agency,
10 based on a review of the implementation of the
11 program during calendar years 2006 through
12 2012, including a review of—

13 (i) the impact of the use of renewable
14 fuels on the environment, air quality, en-
15 ergy security, job creation, and rural eco-
16 nomic development; and

17 (ii) the expected annual rate of future
18 production of renewable fuels, including
19 cellulosic ethanol.

20 (C) LIMITATION.—An increase in the ap-
21 plicable volume for a calendar year under sub-

1 paragraph (B) shall be not less than the prod-
2 uct obtained by multiplying—

3 (i) the number of gallons of gasoline
4 that the Secretary estimates will be sold or
5 introduced into commerce during the cal-
6 endar year; and

7 (ii) the quotient obtained by
8 dividing—

9 (I) 8,000,000,000; by

10 (II) the number of gallons of gas-
11 oline sold or introduced into com-
12 merce during calendar year 2012.

13 (c) NONCONTIGUOUS STATE OPT-IN.—

14 (1) IN GENERAL.—On the petition of a non-
15 contiguous State, the Secretary may allow the re-
16 newable fuel program established under this subtitle
17 to apply in the noncontiguous State at the same
18 time or any time after the Secretary issues regula-
19 tions under subsection (b).

20 (2) OTHER ACTIONS.—The Secretary may—

21 (A) issue or revise regulations under sub-
22 section (b);

23 (B) establish applicable percentages under
24 subsection (d);

1 (C) provide for the generation of credits
2 under subsection (f); and

3 (D) take such other actions as are nec-
4 essary to allow for the application of the renew-
5 able fuels program in a noncontiguous State.

6 (d) APPLICABLE PERCENTAGES.—

7 (1) PROVISION OF ESTIMATE OF VOLUMES OF
8 GASOLINE SALES.—Not later than October 31 of
9 each of calendar years 2006 through 2011, the Ad-
10 ministrator of the Energy Information Administra-
11 tion shall provide to the Secretary an estimate of the
12 volumes of gasoline that will be sold or introduced
13 into commerce in the United States during the fol-
14 lowing calendar year.

15 (2) DETERMINATION OF APPLICABLE PERCENT-
16 AGES.—

17 (A) IN GENERAL.—Not later than Novem-
18 ber 30 of each of calendar years 2006 through
19 2011, based on the estimate provided under
20 paragraph (1), the Secretary shall determine
21 and publish in the Federal Register, with re-
22 spect to the following calendar year, the renew-
23 able fuel obligation that ensures that the re-
24 quirements under subsection (b) are met.

1 (B) REQUIRED ELEMENTS.—The renew-
2 able fuel obligation determined for a calendar
3 year under subparagraph (A) shall—

4 (i) be applicable to refiners, blenders,
5 and importers, as appropriate;

6 (ii) be expressed in terms of a volume
7 percentage of gasoline sold or introduced
8 into commerce; and

9 (iii) subject to paragraph (3)(A), con-
10 sist of a single applicable percentage that
11 applies to all categories of persons speci-
12 fied in clause (i).

13 (3) ADJUSTMENTS.—In determining the appli-
14 cable percentage for a calendar year, the Secretary
15 shall make adjustments—

16 (A) to prevent the imposition of redundant
17 obligations to any person specified in paragraph
18 (2)(B)(i); and

19 (B) to account for the use of renewable
20 fuel during the previous calendar year by small
21 refineries that are exempt under subsection (i).

22 (e) EQUIVALENCY.—For the purpose of subsection
23 (b), 1 gallon of either cellulosic biomass ethanol or waste
24 derived ethanol shall be considered to be the equivalent
25 of 1.5 gallons of renewable fuel.

1 (f) CREDIT PROGRAM.—

2 (1) REGULATIONS.—The regulations issued to
3 carry out this section shall provide for—

4 (A) the generation of an appropriate
5 amount of credits by any person that refines,
6 blends, or imports gasoline that contains a
7 quantity of renewable fuel that is greater than
8 the quantity required under subsection (b);

9 (B) the generation of an appropriate
10 amount of credits for biodiesel fuel; and

11 (C) if a small refinery notifies the Sec-
12 retary that the small refinery waives the exemp-
13 tion provided by this section, the generation of
14 credits by the small refinery beginning in the
15 year following the notification.

16 (2) USE OF CREDITS.—A person that generates
17 credits under paragraph (1) may use the credits, or
18 transfer all or a portion of the credits to another
19 person, for the purpose of complying with subsection
20 (b).

21 (3) LIFE OF CREDITS.—A credit generated
22 under this paragraph shall be valid to demonstrate
23 compliance for the calendar year in which the credit
24 was generated.

1 (4) INABILITY TO PURCHASE SUFFICIENT
2 CREDITS.—The regulations issued to carry out this
3 section shall include provisions permitting any per-
4 son that is unable to generate or purchase sufficient
5 credits to meet the requirement under subsection (b)
6 to carry forward a renewable fuels deficit if, for the
7 calendar year following the year in which the renew-
8 able fuels deficit is created—

9 (A) the person achieves compliance with
10 the renewable fuels requirement under sub-
11 section (b); and

12 (B) generates or purchases additional re-
13 newable fuels credits to offset the renewable
14 fuels deficit of the preceding year.

15 (g) SEASONAL VARIATIONS IN RENEWABLE FUEL
16 USE.—

17 (1) STUDY.—For each of calendar years 2006
18 through 2012, the Administrator of the Energy In-
19 formation Administration shall conduct a study of
20 renewable fuels blending to determine whether there
21 are excessive seasonal variations in the use of renew-
22 able fuels.

23 (2) REGULATION OF EXCESSIVE SEASONAL
24 VARIATIONS.—If, for any calendar year, the Admin-
25 istrator of the Energy Information Administration,

1 based on the study under subparagraph (A), makes
2 the determinations specified in paragraph (3), the
3 Secretary shall issue regulations to ensure that 35
4 percent or more of the quantity of renewable fuels
5 necessary to meet the requirements under subsection
6 (b) is used during each of the periods specified in
7 paragraph (4) of each subsequent calendar year.

8 (3) DETERMINATIONS.—The determinations re-
9 ferred to in paragraph (2) are that—

10 (A) less than 35 percent of the quantity of
11 renewable fuels necessary to meet the require-
12 ments under subsection (b) has been used dur-
13 ing 1 of the periods specified in paragraph (4)
14 of the calendar year;

15 (B) a pattern of excessive seasonal vari-
16 ation described in subparagraph (A) will con-
17 tinue in subsequent calendar years; and

18 (C) issuing regulations or other require-
19 ments to impose a 35 percent or more seasonal
20 use of renewable fuels will not—

21 (i) prevent or interfere with the at-
22 tainment of national ambient air quality
23 standards; or

24 (ii) significantly increase the price of
25 motor fuels to the consumer.

1 (4) PERIODS.—The 2 periods referred to in this
2 paragraph are—

3 (A) April through September; and

4 (B) January through March and October
5 through December.

6 (5) EXCLUSIONS.—For any State that has re-
7 ceived a waiver under section 209(b) of the Clean
8 Air Act (42 U.S.C. 7543(b)), if the Administrator
9 determines that the issuance of regulations under
10 paragraph (2) would prevent or interfere with the
11 attainment or maintenance of national ambient air
12 quality standards, the Administrator shall issue reg-
13 ulations that—

14 (A) require the use of renewable fuels dur-
15 ing either of the 2 periods described in para-
16 graph (4); and

17 (B) include a maximum percentage of re-
18 newable fuels allowable without preventing or
19 interfering with the attainment or maintenance
20 of national ambient air quality standards.

21 (h) WAIVERS.—

22 (1) IN GENERAL.—The Secretary, in consulta-
23 tion with the Secretary of Agriculture and the Ad-
24 ministrator of the Environmental Protection Agency,
25 may waive the requirements under subsection (b), in

1 whole or in part, on a petition by 1 or more States
2 by reducing the national quantity of renewable fuel
3 required under this section—

4 (A) based on a determination by the Sec-
5 retary, after public notice and opportunity for
6 comment, that implementation of the require-
7 ment would severely harm the economy or envi-
8 ronment of a State, a region, or the United
9 States; or

10 (B) based on a determination by the Sec-
11 retary, after public notice and opportunity for
12 comment, that there is an inadequate domestic
13 supply to meet the requirement.

14 (2) PETITIONS FOR WAIVERS.—Not later than
15 90 days after the date on which a petition is re-
16 ceived by the Secretary under paragraph (1), the
17 Secretary, in consultation with the Secretary of Ag-
18 riculture and the Administrator of the Environ-
19 mental Protection Agency, shall approve or dis-
20 approve the petition.

21 (3) TERMINATION OF WAIVERS.—A waiver
22 granted under paragraph (1) shall terminate on the
23 date that is 1 year after the date on which the wai-
24 ver was granted, but may be renewed by the Sec-
25 retary, after consultation with the Secretary of Agri-

1 culture and the Administrator of the Environmental
2 Protection Agency.

3 (i) SMALL REFINERIES.—

4 (1) IN GENERAL.—Subsection (b) shall not
5 apply to small refineries until the first calendar year
6 beginning more than 5 years after the first year set
7 forth in the table in subsection (b)(2)(A).

8 (2) STUDY.—Not later than December 31,
9 2008, the Secretary shall complete a study to deter-
10 mine whether the requirements under subsection (b)
11 would impose a disproportionate economic hardship
12 on small refineries.

13 (3) SMALL REFINERIES AND ECONOMIC HARD-
14 SHIP.—For any small refinery that the Secretary de-
15 termines would experience a disproportionate eco-
16 nomic hardship, the Secretary shall extend the small
17 refinery exemption for the small refinery for not less
18 than 2 additional years.

19 (4) ECONOMIC HARDSHIP.—

20 (A) EXTENSION OF EXEMPTION.—A small
21 refinery may at any time petition the Secretary
22 for an extension of the exemption from the re-
23 quirements under subsection (b) for the reason
24 of disproportionate economic hardship.

1 (B) EVALUATION.—In evaluating a hard-
2 ship petition, the Secretary, in consultation
3 with the Administrator and Secretary of Agri-
4 culture, shall consider the findings of the study
5 in addition to other economic factors.

6 (C) DEADLINE FOR ACTION ON PETI-
7 TIONS.—The Secretary shall act on any petition
8 submitted by a small refinery for a hardship ex-
9 emption not later than 90 days after the receipt
10 of the petition.

11 (5) CREDIT PROGRAM.—Subsection (f)(1)(C)
12 shall apply to each small refinery that waives an ex-
13 emption under this paragraph.

14 (6) OPT-IN FOR SMALL REFINERS.—A small re-
15 finery shall be subject to subsection (b) if the small
16 refinery notifies the Secretary that the small refinery
17 waives the exemption under paragraph (3).

18 (j) CELLULOSIC BIOMASS AND CANE SUGAR LOAN
19 GUARANTEE PROGRAM.—

20 (1) IN GENERAL.—Subject to the availability of
21 appropriations, funds shall be made available, and
22 remain available until expended, to pay the cost (as
23 defined in the Federal Credit Reform Act of 1990
24 (2 U.S.C. 661 et seq.)) of loan guarantees issued
25 under section 19 of the Federal Nonnuclear Energy

1 Research and Development Act of 1974 (42 U.S.C.
2 5919) to carry out commercial demonstration
3 projects for cellulosic biomass and sucrose-derived
4 ethanol.

5 (2) DEMONSTRATION PROJECTS.—

6 (A) IN GENERAL.—The Secretary shall
7 issue loan guarantees under this section to
8 carry out projects to commercially demonstrate
9 the feasibility and viability of converting cel-
10 lulosic biomass derived from agricultural res-
11 idue such as corn stover or straw or cane sugar
12 and related products into ethanol.

13 (B) DESIGN CAPACITY.—Each project shall
14 have a design capacity to produce at least
15 15,000,000 gallons of cellulose ethanol each
16 year.

17 (3) APPLICANT ASSURANCES.—An applicant for
18 a loan guarantee under this section shall provide as-
19 surances, satisfactory to the Secretary, that—

20 (A) the project design has been validated
21 through the operation of a continuous process
22 facility with a cumulative output of at least
23 50,000 gallons of ethanol;

24 (B) the project has been subject to a full
25 technical review;

1 (C) the project is covered by adequate
2 project performance guarantees;

3 (D) the project, with the loan guarantee, is
4 economically viable; and

5 (E) there is a reasonable assurance of re-
6 payment of the guaranteed loan.

7 (4) LIMITATIONS.—

8 (A) MAXIMUM GUARANTEE.—Except as
9 provided in subparagraph (B), notwithstanding
10 section 19(e)(2)(A) of the Federal Nonnuclear
11 Energy Research and Development Act of 1974
12 (42 U.S.C. 5919(e)(2)(A)), a loan guarantee
13 under this section may be issued for up to 80
14 percent of the estimated cost of a project, but
15 may not exceed \$250,000,000 for a project.

16 (B) ADDITIONAL GUARANTEES.—

17 (i) IN GENERAL.—The Secretary may
18 issue additional loan guarantees for a
19 project to cover up to 80 percent of the ex-
20 cess of actual project cost over estimated
21 project cost but not to exceed 15 percent
22 of the amount of the original guarantee.

23 (ii) PRINCIPAL AND INTEREST.—Sub-
24 ject to subparagraph (A), the Secretary
25 shall guarantee 100 percent of the prin-

1 cipal and interest of a loan made under
2 subparagraph (A).

3 (5) EQUITY CONTRIBUTIONS.—To be eligible
4 for a loan guarantee under this section, an applicant
5 for the loan guarantee shall have binding commit-
6 ments from equity investors to provide an initial eq-
7 uity contribution of at least 20 percent of the total
8 project cost.

9 (6) EFFECT OF OTHER LAWS.—The following
10 provisions are inapplicable to a loan guarantee made
11 under this section:

12 (A) Subsections (m) and (p) of section 19
13 of the Federal Nonnuclear Energy Research
14 and Development Act of 1974 (42 U.S.C.
15 5919).

16 (B) The first, third, and fourth sentences
17 of section 19(g)(4) of that Act.

18 (7) APPLICATION.—An application for a loan
19 guarantee under this section shall be approved or
20 disapproved by the Secretary not later than 90 days
21 after the application is received by the Secretary.

1 **SEC. 205. FEDERAL AGENCY ETHANOL-BLENDED GASOLINE**
2 **AND BIODIESEL PURCHASING REQUIRE-**
3 **MENT.**

4 Title III of the Energy Policy Act of 1992 is amended
5 by striking section 306 (42 U.S.C. 13215) and inserting
6 the following:

7 **“SEC. 306. FEDERAL AGENCY ETHANOL-BLENDED GASO-**
8 **LINE AND BIODIESEL PURCHASING REQUIRE-**
9 **MENT.**

10 “(a) ETHANOL-BLENDED GASOLINE.—The head of
11 each Federal agency shall ensure that, in areas in which
12 ethanol-blended gasoline is reasonably available at a gen-
13 erally competitive price, the Federal agency purchases eth-
14 anol-blended gasoline containing at least 10 percent eth-
15 anol rather than nonethanol-blended gasoline, for use in
16 vehicles used by the agency that use gasoline.

17 “(b) BIODIESEL.—

18 “(1) DEFINITION OF BIODIESEL.—In this sub-
19 section, the term ‘biodiesel’ has the meaning given
20 the term in section 312(f).

21 “(2) REQUIREMENT.—The head of each Fed-
22 eral agency shall ensure that the Federal agency
23 purchases, for use in fueling fleet vehicles that use
24 diesel fuel used by the Federal agency at the loca-
25 tion at which fleet vehicles of the Federal agency are
26 centrally fueled, in areas in which the biodiesel-

1 blended diesel fuel described in subparagraphs (A)
2 and (B) is available at a generally competitive
3 price—

4 “(A) as of the date that is 5 years after
5 the date of enactment of this paragraph, bio-
6 diesel-blended diesel fuel that contains at least
7 2 percent biodiesel, rather than nonbiodiesel-
8 blended diesel fuel; and

9 “(B) as of the date that is 10 years after
10 the date of enactment of this paragraph, bio-
11 diesel-blended diesel fuel that contains at least
12 20 percent biodiesel, rather than nonbiodiesel-
13 blended diesel fuel.

14 “(3) REQUIREMENT OF FEDERAL LAW.—The
15 provisions of this subsection shall not be considered
16 a requirement of Federal law for the purposes of
17 section 312.

18 “(c) EXEMPTION.—This section does not apply to
19 fuel used in vehicles excluded from the definition of ‘fleet’
20 by subparagraphs (A) through (H) of section 301(9).”.

21 **SEC. 206. DATA COLLECTION.**

22 Section 205 of the Department of Energy Organiza-
23 tion Act (42 U.S.C. 7135) is amended by adding at the
24 end the following:

1 “(m)(1) In order to improve the ability to evaluate
2 the effectiveness of the renewable fuels mandate of the
3 United States, the Administrator shall conduct and pub-
4 lish the results of a survey of renewable fuels demand in
5 the motor vehicle fuels market in the United States
6 monthly, and in a manner designed to protect the con-
7 fidentiality of individual responses.

8 “(2) In conducting the survey, the Administrator
9 shall collect information both on a national and regional
10 basis, including—

11 “(A) information on—

12 “(i) the quantity of renewable fuels pro-
13 duced;

14 “(ii) the quantity of renewable fuels blend-
15 ed;

16 “(iii) the quantity of renewable fuels im-
17 ported; and

18 “(iv) the quantity of renewable fuels de-
19 manded; and

20 “(B) market price data.”.

21 **SEC. 207. SUGAR CANE ETHANOL PROGRAM.**

22 (a) DEFINITION OF PROGRAM.—In this section, the
23 term “program” means the Sugar Cane Ethanol Program
24 established by subsection (b).

1 (b) ESTABLISHMENT.—There is established within
2 the Department a program to be known as the “Sugar
3 Cane Ethanol Program”.

4 (c) PROJECT.—

5 (1) IN GENERAL.—Subject to the availability of
6 appropriations under subsection (d), in carrying out
7 the program, the Secretary shall establish a project
8 that is—

9 (A) carried out in multiple States—

10 (i) in each of which is produced cane
11 sugar that is eligible for loans under sec-
12 tion 156 of the Federal Agriculture Im-
13 provement and Reform Act of 1996 (7
14 U.S.C. 7272), or a similar subsequent au-
15 thority; and

16 (ii) at the option of each such State,
17 that have an incentive program that re-
18 quires the use of ethanol in the State; and

19 (B) designed to study the production of
20 ethanol from cane sugar, sugarcane, and sugar-
21 cane byproducts.

22 (2) REQUIREMENTS.—A project described in
23 paragraph (1) shall—

24 (A) be limited to the production of ethanol
25 in the States of Florida, Louisiana, Texas, and

1 Hawaii in a way similar to the existing program
2 for the processing of corn for ethanol to dem-
3 onstrate that the process may be applicable to
4 cane sugar, sugarcane, and sugarcane byprod-
5 ucts;

6 (B) include information on the ways in
7 which the scale of production may be replicated
8 once the sugar cane industry has located sites
9 for, and constructed, ethanol production facili-
10 ties; and

11 (C) not last more than 3 years.

12 (d) AUTHORIZATION OF APPROPRIATIONS.—There is
13 authorized to be appropriated to carry out this section
14 \$36,000,000, to remain available until expended.

15 **SEC. 208. MODIFICATION OF COMMODITY CREDIT COR-**
16 **PORATION BIOENERGY PROGRAM.**

17 Section 9010(a)(3)(A) of the Farm Security and
18 Rural Investment Act of 2002 (7 U.S.C. 8108(a)(3)(A))
19 is amended by inserting “potatoes, sugarcane, sugar beets,
20 products of sugarcane or sugar beets,” after “sesame
21 seed,”.