



Tax

Cellulosic Biofuels Credit and Black Liquor

On March 18, legislative text of the “new” health care bill was released, which uses the industry exemption from the cellulosic biofuels credit as a pay-for beginning on January 1, 2010.

Recall that the recently-passed Senate tax extenders bill (H.R. 4213) - which includes a one-year, retroactive extension of the Section 45 tax credit for existing facilities - also includes the provision to eliminate black liquor from the \$1.01/gal cellulosic biofuels credit, effective on date of enactment. This provision is also in the FY11 Obama budget and the original House-passed health care bill. On a related note, on March 17, an amendment was offered by House Ways and Means Committee Ranking Member Dave Camp (R-MI) during markup on a small business tax bill (H.R. 4849). The amendment would have provided a 17-percent deduction for qualifying small business income in 2010 and 2011 and is offset by black liquor. The amendment was defeated.

At this point, timing is uncertain about the possible date of enactment for legislation containing the cellulosic provision that excludes black liquor. The tax extender bill is awaiting action by the House (or a conference committee) and the new health care reconciliation “sidecar” bill would have to be passed by both the House and Senate before being signed by the President. Health care votes could occur as early as this weekend, but vote counts are fluid. Until anything is

signed into law, speculation (from the Hill, analysts, etc.) will likely continue about whether or not the industry is eligible for the credit and if so, during which period of time. It’s important to keep in mind that the law (IRC sec. 40(b) (6)) says that for biomass fuel to qualify for the cellulosic biofuels credit, it must meet EPA registration requirements under the Clean Air Act. As far as AF&PA is aware, EPA has not said that black liquor meets these requirements. As an association, our position remains that the industry is not advocating for eligibility nor do we believe that EPA will find the industry is eligible for the credit.

Contact: Erik Heilman (202-463-2792)

Section 45

AF&PA is drafting a strategy to ensure that the extension of the Section 45 existing facilities provision, which was included in the Senate tax extenders bill but not the House version, is included in the final extenders bill. The goal is to have industry and members of congress advocate to specific House Ways and Means Committee members, particularly Chairman Levin, and House Democratic Leadership (Reps Pelosi, Hoyer, and Clyburn) to maintain the extension. House Ways and Means Committee Chairman Levin has indicated the possibility of a conference on the legislation but timing is uncertain; it may be considered after the upcoming two-week recess (March29-April11). Because the Senate extenders measures are paid for with some of the same provisions used in the newest version of the House health care bill, Ways and Means will not consider the extenders package until after the health care bill has been resolved. That vote is currently

scheduled for Sunday, March 21. A one-year extension of unemployment insurance, COBRA benefits for the jobless, satellite television licenses, flood insurance and other programs are also tied up in House-Senate talks on the tax extenders bill. Senate Majority Leader Reid is seeking a 30-day extension of those programs while differences are worked out. AF&PA is preparing talking points specific to the Sec 45 extension and will get those and the strategy to Members shortly.

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Climate

On Wednesday, AF&PA President & CEO Donna Harman joined several other industry association heads in a meeting with Senators Kerry, Graham, and Lieberman to further discuss the three Senator's plan to craft a climate change bill. The Senators handed a multi-page outline to everyone detailing concepts and provisions of a bill. Based on that discussion we understand the outline included:

- An economy-wide cap on carbon emissions that would begin in 2012, with a target of reducing carbon pollution 17 percent by 2020 and 80 percent by 2050;
- Separate caps on carbon emissions by the electric utilities and manufacturing sectors, which would have to buy pollution permits from the federal government;
- A straight fee or tax, paid by consumers at the pump, on transportation fuels. The levy would be linked to the carbon content of the fuel and the price of carbon in the other markets;
- A combination for the regulated sectors of a cap-and-trade model, under which polluters could trade pollution permits on an open market, and a "cap and dividend" model, which would return revenue from the sale of permits directly to consumers;

- Direct rebates to consumers of half the revenue from the sale of pollution permits;
- Delay until 2016 in starting the phase-in of carbon caps on manufacturers;
- Application of a "carbon tariff" to imports of goods from countries that do not regulate their carbon emissions;
- A "hard collar" on the price of emission permits of no less than \$10 per ton of carbon emitted and no more than \$30 per ton. The government would keep a strategic reserve of 4 billion credits and would flood the market if the carbon price exceeded \$30 per ton. The price would be indexed to inflation rates and would rise over time;
- A threshold of 25,000 tons of carbon per year before a polluter would be subject to regulation;
- A single federal system to cap emissions, pre-empting separate state limits; and
- Sections or titles devoted to oil refining, farming, coal, clean energy innovation, and increasing production of nuclear energy and oil and natural gas drilling.

The Senators asked those at the meeting to provide suggestions, legislative text, proposals, etc. early next week in an effort to put together a full legislative draft by the end of the week. At this point it remains unclear how AF&PA and other EITE groups will respond to this request. AF&PA has submitted legislative text to the three Senators' staffs detailing a preferred definition of biomass (which contains the exclusion for commonly recycled paper and residues or byproducts from wood, pulp, or paper products facilities) and at this point we believe it has been received positively. We will continue to work closely to keep everyone apprised of our efforts.

Contact: Erik Heilman (202-463-2792) or Rhea Hale (202-463-2709)

FERC Oversight Hearing

On March 23, the Energy and Commerce Committee's Subcommittee on Energy and Environment will hold a FERC oversight hearing. This hearing was supposed to occur in February but was postponed due to weather conditions. AF&PA joined a statement at that time supporting the oversight hearing, but requesting that the Subcommittee hold another hearing to focus on the performance of the RTOs/ISOs. We recently signed a slightly updated letter, which is on the [Members Only](#) website. AF&PA will report on what occurs at the hearing.

Contact: Jerry Schwartz (202-463-2581)

Boiler MACT

AF&PA, member companies, and participants in the MACT coalition efforts on Boiler MACT continue on the Hill. The focus remains on trying to recruit Members to sign group or individual letters to EPA. Two Democratic Senators (Klobuchar-MN and Casey-PA) have sent separate, strong letters to EPA asking for Administrator Jackson to respond to questions about the upcoming Boiler MACT proposal. Senator Voinovich has drafted a letter as well and efforts continue to try to get Senator Brown to join him in a bipartisan effort. More help is needed with Senator Brown's office so AF&PA encourages members to continue contact with that office. We believe a bipartisan letter would quickly get a number of cosigners.

Other Senators that need further follow-ups include Bayh (D-IN), Webb (D-VA), McCaskill (D-MO), Warner (D-VA), Stabenow (D-MI), Pryor (D-AR), Hagan (D-NC), and maybe Mikulski (D-MD) and Lincoln (D-AR). On the House side work is continuing to get letters from Minnick (ID), Butterfield (NC), Ross (AR) as well as others. AF&PA is meeting March 19th with OMB to press for changes prior to

the release of the proposal emphasizing their legal discretion. Other groups are scheduling meetings in the next two weeks with OMB.

Contact: Tim Hunt (202-463-2588) or Paul Noe (202-463-2777)

Interior and Agriculture Appropriations

The Senate and House Interior Appropriations Subcommittees scheduled hearings for this week and next week respectively. The Federal Forest Policy Coalition, which is composed of AF&PA and several state and regional trade associations that follow federal timber issues, met with the Forest Service, USDA, House and Senate subcommittee staff, and key members to express concern with the President's budget proposal for the Forest service. Tom Partin of ADR will testify at the House hearing on behalf of the coalition as well.

As previously reported, the President's budget would eliminate a separate line for the timber sale program and instead combine this fund with the funding for vegetation and wildlife management into a line called "Integrated Resource Restoration." The proposal contains no sale volume target and slashed funding for new road construction. The Coalition's message's include a sale volume target of 3 billion board feet and increase funding for the program by \$57 million over FY 2010, employ all available tools to accomplish this goal, and put funding back for roads. From the meetings it is clear that agency is hearing these concerns from the Hill as well and that adjustments are likely.

Contact: Chip Murray (202-463-2782)

USGBC Petition

The Sustainable Forestry Initiative (SFI) has launched an online petition urging the United States Green Building Council (USGBC) to recognize all forest certification standards used in North America, including SFI, American Tree Farm System (ATFS), Canadian Standards Association (CSA), and

the Programme for the Endorsement of Forest Certification (PEFC). SFI and other organizations, including AF&PA, have circulated this petition asking that people add their names and/or send it to their memberships and employees. Please take one minute to add your name and send this alert to your employees. Since its launch on Wednesday, March 18 the petition has received over 2,000 signatures. Strength is in numbers so let's try to get over 5,000 signatures. For more details and to sign the petition please visit - www.growthevote.org

Contact: Anita Peduzzi (202-463-2755)

Upcoming Meetings & Events

March 26, GARC Meeting, 9:30 a.m., AF&PA

April 16, GARC Meeting, 9:30 a.m., AF&PA

April 23, GARC Meeting, 9:30 a.m., AF&PA

Contact:

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