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Date offered:	<i>4/13/05</i>
Disposition:	<i>Agreed to by VV</i>

[Barton/Blunt Amendment]

AMENDMENT TO COMMITTEE PRINT

OFFERED BY MR. ~~BARTON~~ OF TEXAS
Blunt

Page 85, strike line 22 and all that follows down through line 23 on page 95 and insert:

1 **SEC. 1541. REDUCING THE PROLIFERATION OF BOUTIQUE**
2 **FUELS.**

3 (a) TEMPORARY WAIVERS DURING SUPPLY EMER-
4 GENCIES.—Section 211(c)(4)(C) of the Clean Air Act (42
5 U.S.C. 7545(c)(4)(C)) is amended by inserting “(i)” after
6 “(C)” and by adding the following new clauses at the end
7 thereof:

8 “(ii) The Administrator may temporarily waive a con-
9 trol or prohibition respecting the use of a fuel or fuel addi-
10 tive required or regulated by the Administrator pursuant
11 to subsection (c), (h), (i), (k), or (m) of this section or
12 prescribed in an applicable implementation plan under sec-
13 tion 110 approved by the Administrator under clause (i)
14 of this subparagraph if, after consultation with, and con-
15 currence by, the Secretary of Energy, the Administrator
16 determines that—

17 “(I) extreme and unusual fuel or fuel additive
18 supply circumstances exist in a State or region of



1 the Nation which prevent the distribution of an ade-
2 quate supply of the fuel or fuel additive to con-
3 sumers;

4 “(II) such extreme and unusual fuel and fuel
5 additive supply circumstances are the result of a
6 natural disaster, an Act of God, a pipeline or refin-
7 ery equipment failure, or another event that could
8 not reasonably have been foreseen or prevented and
9 not the lack of prudent planning on the part of the
10 suppliers of the fuel or fuel additive to such State
11 or region; and

12 “(III) it is in the public interest to grant the
13 waiver (for example, when a waiver is necessary to
14 meet projected temporary shortfalls in the supply of
15 the fuel or fuel additive in a State or region of the
16 Nation which cannot otherwise be compensated for).

17 “(iii) If the Administrator makes the determinations
18 required under clause (ii), such a temporary extreme and
19 unusual fuel and fuel additive supply circumstances waiver
20 shall be permitted only if—

21 “(I) the waiver applies to the smallest geo-
22 graphic area necessary to address the extreme and
23 unusual fuel and fuel additive supply circumstances;

24 “(II) the waiver is effective for a period of 20
25 calendar days or, if the Administrator determines



1 that a shorter waiver period is adequate, for the
2 shortest practicable time period necessary to permit
3 the correction of the extreme and unusual fuel and
4 fuel additive supply circumstances and to mitigate
5 impact on air quality;

6 “(III) the waiver permits a transitional period,
7 the exact duration of which shall be determined by
8 the Administrator, after the termination of the tem-
9 porary waiver to permit wholesalers and retailers to
10 blend down their wholesale and retail inventory;

11 “(IV) the waiver applies to all persons in the
12 motor fuel distribution system; and

13 “(V) the Administrator has given public notice
14 to all parties in the motor fuel distribution system,
15 and local and State regulators, in the State or re-
16 gion to be covered by the waiver.

17 The term ‘motor fuel distribution system’ as used in this
18 clause shall be defined by the Administrator through rule-
19 making.

20 “(iv) Within 180 days of the date of enactment of
21 this clause, the Administrator shall promulgate regula-
22 tions to implement clauses (ii) and (iii).

23 “(v) Nothing in this subparagraph shall—

24 “(I) limit or otherwise affect the application of
25 any other waiver authority of the Administrator pur-



1 suant to this section or pursuant to a regulation
2 promulgated pursuant to this section; and

3 “(II) subject any State or person to an enforce-
4 ment action, penalties, or liability solely arising from
5 actions taken pursuant to the issuance of a waiver
6 under this subparagraph.”.

7 (b) LIMIT ON NUMBER OF BOUTIQUE FUELS.—Sec-
8 tion 211(c)(4)(C) of the Clean Air Act (42 U.S.C.
9 7545(e)(4)), as amended by subsection (a), is further
10 amended by adding at the end the following:

11 “(v)(I) The Administrator shall have
12 no authority, when considering a State im-
13 plementation plan or a State implementa-
14 tion plan revision, to approve under this
15 paragraph any fuel included in such plan
16 or revision if the effect of such approval in-
17 creases the total number of fuels approved
18 under this paragraph as of September 1,
19 2004, in all State implementation plans

20 “(II) The Administrator, in consulta-
21 tion with the Secretary of Energy, shall de-
22 termine the total number of fuels approved
23 under this paragraph as of September 1,
24 2004, in all State implementation plans
25 and shall publish a list of such fuels, in-



1 including the states and Petroleum Adminis-
2 tration for Defense District in which they
3 are used, in the Federal Register for public
4 review and comment no later than 90 days
5 after enactment.

6 “(III) The Administrator shall remove
7 a fuel from the list published under sub-
8 clause (II) if a fuel ceases to be included
9 in a State implementation plan or if a fuel
10 in a State implementation plan is identical
11 to a Federal fuel formulation implemented
12 by the Administrator, but the Adminis-
13 trator shall not reduce the total number of
14 fuels authorized under the list published
15 under subclause (II).

16 “(IV) Subclause (I) shall not limit the
17 Administrator’s authority to approve a
18 control or prohibition respecting any new
19 fuel under this paragraph in a State imple-
20 mentation plan or revision to a State im-
21 plementation plan if such new fuel:

22 “(aa) completely replaces a fuel
23 on the list published under subclause
24 (II); or



1 “(bb) does not increase the total
2 number of fuels on the list published
3 under subclause (II) as of September
4 1, 2004.

5 In the event that the total number of fuels
6 on the list published under subclause (II)
7 at the time of the Administrator’s consid-
8 eration of a control or prohibition respect-
9 ing a new fuel is lower than the total num-
10 ber of fuels on such list as of September
11 1, 2004, the Administrator may approve a
12 control or prohibition respecting a new fuel
13 under this subclause if the Administrator,
14 after consultation with the Secretary of
15 Energy, publishes in the Federal Register
16 after notice and comment a finding that, in
17 the Administrator’s judgment, such control
18 or prohibition respecting a new fuel will
19 not cause fuel supply or distribution inter-
20 ruptions or have a significant adverse im-
21 pact on fuel producibility in the affected
22 area or contiguous areas.

23 “(V) The Administrator shall have no
24 authority under this paragraph, when con-
25 sidering any particular State’s implementa-



1 tion plan or a revision to that State's im-
2 plementation plan, to approve any fuel un-
3 less that fuel was, as of the date of such
4 consideration, approved in at least one
5 State implementation plan in the applica-
6 ble Petroleum Administration for Defense
7 District. However, the Administrator may
8 approve as part of a State implementation
9 plan or State implementation plan revision
10 a fuel with a summertime Reid Vapor
11 Pressure of 7.0 psi. In no event shall such
12 approval by the Administrator cause an in-
13 crease in the total number of fuels on the
14 list published under subclause (II).

15 “(VI) Nothing in this clause shall be
16 construed to have any effect regarding any
17 available authority of States to require the
18 use of any fuel additive registered in ac-
19 cordance with subsection (b), including any
20 fuel additive registered in accordance with
21 subsection (b) after the enactment of this
22 subclause.”.

23 (c) STUDY AND REPORT TO CONGRESS ON BOU-
24 TIQUE FUELS.—



1 (1) JOINT STUDY.—The Administrator of the
2 Environmental Protection Agency and the Secretary
3 of Energy shall undertake a study of the effects on
4 air quality, on the number of fuel blends, on fuel
5 availability, on fuel fungibility, and on fuel costs of
6 the State plan provisions adopted pursuant to sec-
7 tion 211(c)(4)(C) of the Clean Air Act (42 U.S.C.
8 7545(c)(4)(C)).

9 (2) FOCUS OF STUDY.—The primary focus of
10 the study required under paragraph (1) shall be to
11 determine how to develop a Federal fuels system
12 that maximizes motor fuel fungibility and supply,
13 preserves air quality standards, and reduces motor
14 fuel price volatility that results from the prolifera-
15 tion of boutique fuels, and to recommend to Con-
16 gress such legislative changes as are necessary to
17 implement such a system. The study should include
18 the impacts on overall energy supply, distribution,
19 and use as a result of the legislative changes rec-
20 ommended.

21 (3) RESPONSIBILITY OF ADMINISTRATOR.—In
22 carrying out the study required by this section, the
23 Administrator shall coordinate obtaining comments
24 from affected parties interested in the air quality
25 impact assessment portion of the study. The Admin-



1 administrator shall use sound and objective science prac-
2 tices, shall consider the best available science, and
3 shall consider and include a description of the
4 weight of the scientific evidence.

5 (4) RESPONSIBILITY OF SECRETARY.—In car-
6 rying out the study required by this section, the Sec-
7 retary shall coordinate obtaining comments from af-
8 fected parties interested in the fuel availability,
9 number of fuel blends, fuel fungibility and fuel costs
10 portion of the study.

11 (5) REPORT TO CONGRESS.—The Administrator
12 and the Secretary jointly shall submit the results of
13 the study required by this section in a report to the
14 Congress not later than 12 months after the date of
15 the enactment of this Act, together with any rec-
16 ommended regulatory and legislative changes. Such
17 report shall be submitted to the Committee on En-
18 ergy and Commerce of the House of Representatives
19 and the Committee on Environment and Public
20 Works of the Senate.

21 (6) AUTHORIZATION OF APPROPRIATIONS.—
22 There is authorized to be appropriated jointly to the
23 Administrator and the Secretary \$500,000 for the
24 completion of the study required under this sub-
25 section.



1 (d) DEFINITIONS.—In this section:

2 (1) The term “Administrator” means the Ad-
3 ministrator of the Environmental Protection Agency.

4 (2) The term “Secretary” means the Secretary
5 of Energy.

6 (3) The term “fuel” means gasoline, diesel fuel,
7 and any other liquid petroleum product commercially
8 known as gasoline and diesel fuel for use in highway
9 and nonroad motor vehicles.

10 (4) The term “a control or prohibition respect-
11 ing a new fuel” means a control or prohibition on
12 the formulation, composition, or emissions character-
13 istics of a fuel that would require the increase or de-
14 crease of a constituent in gasoline or diesel fuel.

