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## BIODIESEL TAX ADVISORY NOTICE NATIONAL BIODIESEL BOARD

*April 25, 2007  
Jefferson City, Missouri*

The National Biodiesel Board (NBB) has worked to achieve successful implementation of the biodiesel tax credit that Congress passed as a part of the American Jobs Creation Act of 2004. Since the tax credit became effective in January 2005, it has been very successful in achieving its energy, agricultural, environmental, and fiscal policy goals. Since enactment, approximately 80 biodiesel plants have been built throughout the country, for a total of 105. It can now be affirmatively demonstrated that all of the benefits that were put forward by Congress during their years of deliberation to pass the biodiesel tax credit are being realized. The tax credit has indeed stimulated investment in new plants, new jobs and rural development, enhanced energy security by adding refinery capacity and fuel to our nation's energy supply, and benefited America's farmers.

Because the tax credit has been so effective in achieving its intended policy goals, and its continuation is so important to the further success of those goals, the NBB remains committed to effective implementation of that program. As such NBB is committed to addressing any potential fraud and abuse of this program. The NBB has been advised of a potential abuse of this program and is determined to see that it is addressed in an expedient manner. Based on discussions with federal tax authorities, blenders and shippers, there is a suspicion that claims for the tax credit may have been submitted or are intended to be submitted in a way that we believe would constitute an improper use of the tax credit. Anecdotal evidence exists which suggests that foreign companies may be sending or planning to send tanker shipments of biodiesel into US ports, adding a small amount of diesel fuel, claiming the blenders credit on all biodiesel gallons in the shipment, and then exporting the shipment outside the United States.

This type of "re-exporting" activity was clearly not intended by the legislative policy and is an inappropriate use of the tax credit. The National Biodiesel Board believes that the credit may not be available for biodiesel involved in such a "re-exporting" transaction under the existing statutory and regulatory provisions. Taxpayers should be advised that the NBB will aggressively pursue legislation and/or regulatory rulemaking which would clarify any ambiguity and clearly state that biodiesel involved in such re-exporting transactions is not eligible for the credit. We will seek this remedy through legislative means. Entities should be aware the nature of some legislative vehicles could potentially be retroactive to the date of original enactment.

Consistent with the National Biodiesel Board's Fuel Compliance and Enforcement Policy, NBB will work with federal tax authorities to encourage vigorous investigation and enforcement against any companies who may be making improper claims for credits.

In addition to the "re-export" situation, there are two other compliance criteria for which tax enforcement officials have confirmed will be audited, investigated and enforced. All gallons claimed under the biodiesel tax credit must be certified to meet the commercial specification ASTM D 6751, and also must be certified to meet the registration requirements for fuels and additives established by the Environmental Protection Agency under Section 211 of the Clean Air Act. All biodiesel tax credit claimants will be held responsible for meeting both of these statutory eligibility requirements. Any taxpayers who submit claims based on material that does not meet both of these criteria could be found guilty of filing a false claim, among other offenses, and could be subject to civil and criminal penalties. Claimants will also be held accountable for adequately documenting the eligibility of all gallons claimed. We have been advised that these compliance requirements will be rigorously enforced.

The National Biodiesel Board also encourages anyone who has any information regarding questionable claims for biodiesel tax credits to contact the Internal Revenue Service at 213-576-3837. Anyone with information regarding violation of EPA registration requirements is encouraged to contact the EPA at 202-564-2260.

*April 25, 2007*