

From: [REDACTED] <[REDACTED]@PattonBoggs.com>
Sent: Tuesday, November 20, 2007 4:38 PM
To: Freedhoff, Michal
Subject: GHG Amendment
Attachments: WASHINGTON-#4911620-v16-GHG Rulemaking Nov 20.DOCα.DOC
Importance: High

Here you go, will call in a few...

[REDACTED]

-----Original Message-----

From: Freedhoff, Michal [mailto:Michal.Freedhoff@mail.house.gov]
Sent: Tuesday, November 20, 2007 4:37 PM
To: [REDACTED]
Subject: RE: this dear colleague just went out

Great. Talk soon then.

Michal Ilana Freedhoff, Ph.D.
Policy Director
Office of Representative Edward J. Markey (D-MA)
2108 Rayburn House Office Building
Washington, DC 20515
202-225-2836

-----Original Message-----

From: [REDACTED] [mailto:[REDACTED]@PattonBoggs.com]
Sent: Tuesday, November 20, 2007 4:35 PM
To: Freedhoff, Michal
Subject: Re: this dear colleague just went out

You will have it momentarily - and a call from me as well.

[REDACTED]

Sent from my BlackBerry Wireless Handheld

----- Original Message -----

From: Freedhoff, Michal <Michal.Freedhoff@mail.house.gov>
To: [REDACTED]
Sent: Tue Nov 20 16:33:22 2007
Subject: RE: this dear colleague just went out

Happy to do so, I talk to him frequently. But it would help to have language....

Michal Ilana Freedhoff, Ph.D.
Policy Director
Office of Representative Edward J. Markey (D-MA)
2108 Rayburn House Office Building
Washington, DC 20515
202-225-2836

-----Original Message-----

From: [REDACTED] [mailto:[REDACTED]@PattonBoggs.com]
Sent: Tuesday, November 20, 2007 3:14 PM
To: Freedhoff, Michal
Subject: Re: this dear colleague just went out

Please talk to Matt Nelson on GHG rulemaking we talked about, please.

We are finishing with him now.

[REDACTED]

Sent from my BlackBerry Wireless Handheld

----- Original Message -----

From: Freedhoff, Michal <Michal.Freedhoff@mail.house.gov>
Sent: Tue Nov 20 14:42:37 2007
Subject: this dear colleague just went out

November 20, 2007

STUDY: CARS & TRUCKS - SAME SIZE, SAME FUEL ECONOMY

Support the Senate Fuel Economy Provisions

Dear Colleague:

Recently, you may have heard from certain auto industry lobbyists that eliminating the 'light-truck loophole,' which allows cars used for transporting people to be classified as trucks for purposes of fuel economy standards, "is a recipe for disaster." The basis for this assertion is that cars and trucks that are the same size should not have to meet the same fuel economy standard because of the different performance requirements of SUVs, minivans and pickups trucks.

Well guess what? It turns out that cars and trucks that are the same size ALREADY have the same fuel economy. Analysis recently conducted by Meszler Engineering Services plotted the size of EVERY SINGLE 2007 car and light truck against its fuel economy. Result? The "average" car fuel economy differs from the "average" truck fuel economy by only 1 mile per gallon - for every vehicle size.

The complaint raised by the Detroit companies is yet another red herring unsupported in any way by the facts. Don't be fooled. Support the Senate fuel economy language. For a copy of the study or more information, please have your staff contact Michal Freedhoff (Rep.

November 20, 2007

DRAFT AMENDMENT

On page 396, strike lines 1 through 4 and insert:

SEC. 519. GREENHOUSE GAS VEHICLE EMISSIONS REGULATIONS.

Chapter 329 of title 49, United States Code, is amended by adding a new section 32920 as follows:

“§ 32920. Greenhouse Gas Vehicle Emissions Regulations.

“(a) IN GENERAL.--Notwithstanding any other provision of law or regulation, should the Administrator of the Environmental Protection Agency (hereinafter “the Administrator”) promulgate regulations applicable to emissions of greenhouse gases from automobiles, the Administrator shall promulgate regulations subject to the requirements set forth in subsections (b) and (c), and (d). Subject to subsections (b), (c), and (d), the Administrator may amend the regulations subsequent to their initial promulgation.

“(b) CONSULTATIONS.--In promulgating or amending regulations under this section, the Administrator shall consult with the Secretary of Transportation (hereinafter “the Secretary”). Before issuing a notice proposing to prescribe or amend regulations under this section, the Administrator shall give the Secretary at least 30 days from the receipt of the notice during which the Secretary may, if the Secretary concludes the proposed regulations would conflict with fuel economy standards established by the Secretary under section 32902 or vehicle safety standards established by the Secretary under section 30111 of this title, provide written comments to the Administrator regarding those concerns. To the extent that the Administrator does not revise a proposed regulation to take into account the Secretary's comments on any adverse impact of the standard, the Administrator shall include those comments in the notice. Before taking final action on a regulation under this section, the Administrator shall provide the Secretary a reasonable time to comment.

“(c) MAXIMUM FEASIBLE REDUCTIONS.--Any regulations promulgated or amended pursuant to subsection (a) shall result in standards to achieve the maximum feasible reduction of emissions through the use of technology that is or will be available for the model year to which the standards apply. Such standards shall be based on vehicle attributes related to fuel economy and emissions reductions. In determining the maximum feasible reduction of emissions pursuant to this subsection, the Administrator shall consider technological feasibility, economic practicability (including maintaining consumer choice and employment in the domestic automobile industry), the impact of the regulations on fuel economy standards established by the Secretary under section 32902, and the preservation or enhancement of vehicle safety.

“(d) LEAD TIME AND STABILITY.--Any standard promulgated or amended under subsection (a) shall—

“(1) take effect after such period as the Administrator finds necessary to permit the development and application of new technology, giving appropriate consideration to the cost of compliance within such period; and

“(2) apply for a period of no less than 2 model years beginning no earlier than the model year commencing 4 years after such revised standard is promulgated; *provided*, That an amendment that reduces the stringency of a standard may take effect as early as immediately.

“(e) STATE AND POLITICAL SUBVISION AUTOMOBILES.--A State or a political subdivision of a State may prescribe requirements for greenhouse gas emissions for automobiles obtained for its own use.

“(f) DEFINITION.--The term ‘greenhouse gas’ means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.”.

From: [REDACTED]@PattonBoggs.com>
Sent: Wednesday, November 28, 2007 8:34 PM
To: Freedhoff, Michal
Subject: Language - GHG Rulemaking

Here you go: Its my understanding that there may be another iteration that may have been passed along, though not from us.

Chapter 329 of title 49, United States Code, is amended by adding a new section 32920 as follows:

"§ 32920. Greenhouse Gas Vehicle Emissions Regulations.

" IN GENERAL.--Notwithstanding any other provision of law or regulation, should the Administrator of the Environmental Protection Agency (hereinafter "the Administrator") promulgate regulations applicable to emissions of greenhouse gases from automobiles, the Administrator shall ensure that such regulations are fully consistent with Section 32902 of this title and any standards or regulations promulgated or enforced thereunder.

Sent from my BlackBerry Wireless Handheld

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From: [REDACTED]@PattonBoggs.com>
Sent: Thursday, November 29, 2007 12:17 PM
To: Freedhoff, Michal
Subject: GHG Language
Importance: High

[REDACTED]

[REDACTED]

> *****

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> What was proffered:

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> Chapter 329 of title 49, United States Code, is amended by adding a
> new section 32920 as follows:

>

> "> § 32920. Greenhouse Gas Vehicle Emissions Regulations.

>

> "> IN GENERAL.--Notwithstanding any other provision of law or

> regulation, should the Administrator of the Environmental Protection

> Agency (hereinafter "> the Administrator">) promulgate regulations applicable to emissions of greenhouse gases
from automobiles, the Administrator shall ensure that such regulations are fully consistent with Section 32902 of this
title and any standards or regulations promulgated or enforced thereunder.

>

> What we (Patton Boggs) propose as compromise:

>

> "§ 32920. Greenhouse Gas Vehicle Emissions Regulations.

>

> "(a) IN GENERAL.--Notwithstanding any other provision of law or

> regulation, should the Administrator of the Environmental Protection Agency promulgate regulations applicable to
emissions of greenhouse gases from automobiles, the Administrator shall consider the impact of the regulations on fuel
economy standards established by the Secretary under Chapter 329 and any regulations promulgated or enforced
thereunder."

> "(b) STATE AND POLITICAL SUBVISION AUTOMOBILES.--A State or a political subdivision of a State may prescribe
requirements for greenhouse gas emissions for automobiles obtained for its own use.

> "(c) DEFINITION.--The term 'greenhouse gas' means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons,
perfluorocarbons, and sulfur hexafluoride.

> "(d) SAVINGS CLAUSE.--Nothing in this title shall be construed to diminish existing authority of any State or political
subdivision thereof under section 209 of the Clean Air Act (42 USC 7543).".

>

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FOR IMMEDIATE RELEASE:
Friday, November 30, 2007

Contact: Scott Gerber (Feinstein) 202/224-9629
John Gentzel (Snowe) 202-224-8667
Jenilee Keefe (Inouye) 202-224-0411

Landmark Bipartisan Agreement to Increase Fuel Economy Standards Reached

- Agreement would raise fleet-wide fuel economy standards to 35 mpg by 2020 -

Washington, DC – A landmark, bipartisan agreement on increasing fuel economy standards has been reached by key Senate and House negotiators.

“The House and Senate have reached an historic agreement that achieves the first major mileage efficiency increase in two decades. It will increase the mileage of the overall fleet of vehicles by 10 miles per gallon over 10 years,” Senator Feinstein said. “We have been able to reach an agreement with the House that achieves the goal of the 10-in-10 Fuel Economy Act, without affecting the integrity of the bill.

“It is a major milestone and the first concrete legislation to address global warming. Transportation produces about a third of global warming gases in the United States, and this bill addresses cars, light trucks, SUVs, and medium and heavy trucks – which account for the vast majority of transportation emissions. The standards are estimated to remove 192 million metric tons of global warming pollution in 2020, a savings that will continue to increase in subsequent years.

“This agreement is the culmination of years of hard work – and so many people contributed to this effort. I’d like to thank the cosponsors of the Feinstein-Snowe 10-in-10 Fuel Economy Act: Senators Inouye and Stevens, Boxer, Cantwell, Collins, Durbin, Kerry, Lautenberg, Lieberman, Menendez, Bill Nelson, Akaka, Cardin, Dodd, Leahy, Jack Reed, Sanders. I’d also like to thank Senators Alexander, Carper, Corker, Craig, Dole, Dorgan, Hagel, Klobuchar, Lott, Sununu, and Chairman Markey for their contributions to this effort.

Special thanks go to Inouye and Stevens who showed tremendous leadership as Chairman and Vice-Chairman of the Commerce Committee; Speaker Pelosi, who was determined from the very beginning to get this done; Chairman Dingell for the agreement; and all the others who have worked on this issue over the years.

"America's energy policy has been dormant for far too long, and tonight's agreement is a significant step in reviving our nation's commitment to America's

environment and security,” Senator Snowe said. “Improving our fuel efficiency by 40 percent will do immeasurable benefits to mitigating our addiction to oil, and I strongly urge the President and my colleagues in the Senate to expeditiously pass this historic legislation.”

“Increasing fuel economy standards places the country on a bright path toward reducing our nation’s dependence on foreign oil, protecting the environment, and helping consumers deal with rising gas prices,” Senator Inouye said.

The agreed-upon legislation stems from legislation introduced earlier this year by Senators Dianne Feinstein (D-Calif.) and Olympia Snowe (R-Maine) – the “Ten in Ten Fuel Economy Act.”

By 2025, the fuel economy increases for cars and light-duty trucks would:

- **Save 1.1 million barrels of oil saved per year, or nearly half the oil imported by the United States today from the Persian Gulf.** (Union of Concerned Scientists)
- **Remove 192 million metric tons of global warming pollution in 2020, a savings that will continue to increase in subsequent years.** (Union of Concerned Scientists)
- **Save American families \$700 - \$1000 per year at the pump, depending on driving habits, (based on a \$3.00 gas price). By 2020, the standards are estimated to save consumers \$22 billion in net consumer savings in that year alone, a savings that will continue to increase in subsequent years.**

Summary of the Agreement

10-in-10: Increases Fuel Economy Standards for All Vehicles

- Beginning in 2011, the National Highway Traffic Safety Administration (NHTSA) will annually increase the nationwide average fleet fuel economy standards for cars and light trucks to achieve a standard of 35 miles per gallon (mpg) by 2020. This will be the first statutory fuel economy increase for passenger cars since 1975.
- For the years 2021-2030, car and light truck fuel economy standards will increase at the maximum feasible rate.
- For the first time, NHTSA will establish a program for medium and heavy duty trucks under which fuel economy standards will improve at the maximum feasible rate.

- NHTSA will establish a separate fuel economy standard for work trucks that will increase their fuel efficiency at the maximum feasible rate.

Ensures Fuel Economy Standards Will Be Reached

- The compromise eliminates the “off-ramp,” which ensures that NHTSA will mandate a fuel economy standard of 35 mpg by 2020.
- The compromise eliminates the low volume manufacturer exception, which would have allowed any company that sells less than approximately 64,000 cars and trucks a year in the United States to be exempt from the 35 mpg by 2020 fuel economy standard.

Labor Protections

- The compromise inserts domestic car production rules intended to encourage continued production of small cars in the United States.

Manufacturer Flexibility

- The compromise phases out the flexible fuel vehicle (FFV) credit on the following schedule:

2011: 1.2 mpg
2012: 1.2 mpg
2013: 1.2 mpg
2014: 1.2 mpg
2015: 1.0 mpg
2016: 0.8 mpg
2017: 0.6 mpg
2018: 0.4 mpg
2019: 0.2 mpg
2020: 0 mpg

- NHTSA must tailor attainable fuel economy standards based on the physical attributes of particular models of cars and light trucks. Cars and light trucks will be accounted for on a separate basis.
- The compromise gives manufacturers the ability to trade extra fuel economy credits earned between the passenger car and light truck fleets when the performance of either fleet exceeds the standards. The amount of credit traded would be limited.

- Automakers will have the flexibility to borrow against future fuel economy gains up to 3 years in the future and to carry forward earned fuel economy credits earned for up to 5 years.

Improved Consumer Information

- Automakers will be required to provide improved fuel economy and emissions information to consumers. A label will be prominently placed on each vehicle that includes information on the fuel economy of the automobile and the greenhouse gas and other emissions consequences of operating the automobile over its likely useful life.
- The deal also includes improved consumer information on tire fuel efficiency, safety, and durability, and increased consumer awareness of flexible fuel automobiles.

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

December 6, 2007
(House)

STATEMENT OF ADMINISTRATION POLICY

H.R. 6 – Energy Independence and Security Act of 2007

(Rep. Rahall (D) WV and 198 cosponsors)

In his 2007 State of the Union Address, President Bush announced the “Twenty in Ten” Initiative, a plan to reduce projected gasoline usage in the United States by 20 percent in 10 years. “Twenty in Ten” called on Congress to pass legislation that would: (1) establish an Alternative Fuel Standard requiring the equivalent of 35 billion gallons of alternative fuels by 2017; and (2) provide the Department of Transportation (DOT) authority to increase fuel economy standards for cars under a reformed structure (CAFE reform) based on sound science, safety, and cost-benefit analysis.

The Administration appreciates that Congress, in response to the President’s call, has produced a bill including aspects of the “Twenty in Ten” initiative. Unfortunately, the bill contains several highly objectionable provisions that would impose higher costs on American taxpayers, electricity consumers, and businesses. Specifically, the bill raises taxes in a way that will increase energy costs facing consumers. It would also impose a national renewable electricity standard that would ignore the specific energy and economic needs of individual States. If H.R. 6 were presented to the President in its current form, his senior advisors would recommend that he veto the bill.

The Administration’s principal objections to H.R. 6 are described below.

Fuel Economy Standards (CAFE): The Administration supports significant increases in fuel economy standards, and has proposed such increases in the “Twenty in Ten” initiative; it soon will propose such increases by administrative rulemaking. Unfortunately, H.R. 6 leaves ambiguous the role of the Environmental Protection Agency (EPA) in regulating vehicle fuel economy, and as a result would likely create substantial regulatory uncertainty, confusion, and duplication of efforts. The bill could also delay effective implementation of new fuel economy requirements due to inevitable litigation. The double regulation that would result from this failure to clearly identify the relative roles of EPA and DOT in national fuel economy regulations could greatly undermine our shared objective of rapidly reducing gasoline consumption. The bill needs to clarify one agency as the sole entity, after consultation with other affected agencies, to be responsible for a single national regulatory standard for both fuel economy and tailpipe greenhouse gas emissions from vehicles.

Alternative/Renewable Fuel Standards (AFS/RFS): The “Twenty in Ten” initiative contained an ambitious alternative fuel standard to displace 35 billion gallons of gasoline consumption by 2017. H.R. 6’s prescriptions regarding the greenhouse gas content of approved fuels lack flexibility, and would interfere with the bill’s ability to facilitate alternative fuel generation. The

bill would fragment the market by picking and choosing among fuel types instead of relying on market forces to develop new, more advanced technologies and the next generation of fuels with lower greenhouse gas emissions. Additionally, a new alternative fuel standard should include an effective safety valve, should be technology neutral, and should rely on market innovation instead of excessive statutory prescription. The safety valve included in the bill is inadequate to its purpose. Whereas a properly functioning safety valve would limit price distortions arising from an alternative fuel mandate, the safety valve in H.R. 6 would be too limited to function effectively, being triggered only in the event that a single fuel (cellulosic ethanol) fails to meet prescribed production targets. Finally, the AFS/RFS programs established by this legislation must clearly be granted exclusivity over all other Federal, State, and local laws and regulations relating to alternative fuels.

Renewable Electricity Standards: The bill would impose a national renewable electricity standard (RES) for power generation, which the Administration previously has stated would be strongly opposed. A one-size-fits-all Federal RES would result in higher electricity costs for consumers in areas where renewable resources are less available and could place new strains on electricity reliability. Such a Federal RES mandate ignores the specific energy and economic needs of individual States. There are significant regional differences in availability, amount, and types of renewable energy resources, resulting in different regions of the country relying on different fuel mixes for their electric generation needs. As a result, standards are best left to the States' discretion. Efforts created by and tailored to individual States have led to a significant increase in lower-carbon power generation nationwide, including a four-fold increase in wind power from 2000 to 2006. The bill arbitrarily chooses certain technologies with low-carbon emission profiles, while excluding many existing and emerging technologies that perform similarly. Today, almost 30 States have portfolio standards. A Federal RES that is unfair in its applications and prescriptive in its definition will hurt consumers and undercut decisions States have made and are making.

Taxes: The Administration strongly opposes raising taxes in a way that will lead to higher energy costs to U.S. consumers and businesses. Furthermore, the Administration strongly opposes using the Federal tax code to single out specific industries for punitive treatment. For example, repealing the manufacturing deduction for certain oil and gas companies is a targeted tax increase that puts U.S. firms at a disadvantage relative to their foreign competitors. Changes to the foreign tax credit rules related to foreign oil and gas extraction income and foreign oil-related income will also disadvantage U.S.-based companies by reducing their ability to compete for investments in foreign energy-related projects.

As indicated in previous communications, the Administration supports an extension of the Secure Rural Schools program provided it is appropriately offset with spending reductions and that payments are phased out over time, which the provision in this bill does not achieve. The Administration also opposes shifting the Payment in Lieu of Taxes (PILT) program from discretionary to mandatory spending.

H.R. 6 also includes expensive and highly inefficient tax credit bonds for renewable energy production and conservation efforts. Current law already provides sufficient Federal assistance to encourage these efforts.

Davis-Bacon: H.R. 6 is contrary to the Administration's long-standing policy of opposing any statutory attempt to expand or contract the applicability of Davis-Bacon prevailing wage requirements. One example, among others, is Section 136, which would impose a new Davis-Bacon requirement for loans made under the Advanced Technology Vehicles Manufacturing Incentive Program.

High Performance Federal Buildings: The requirements of this subtitle are less flexible, more limiting, and inconsistent with the timelines of the High Performance Buildings goals of Presidential Executive Order 13423. E.O. 13423 includes additional building attributes beyond the energy efficiency and water consumption goals of the subtitle. These additional elements of the E.O., such as daylighting, building materials, and indoor air quality, are important to creating truly sustainable high performance buildings. E.O. 13423 also accounts for possible extenuating circumstances that keep an agency from meeting a goal in a particular year by allowing them to make it up in subsequent years to still achieve the overall goal of 30 percent reduction of energy intensity by 2015.

Additional Concerns: The Administration strongly opposes unnecessary and duplicative new Federal energy efficiency programs. These include provisions that would establish unnecessary new bureaucracies and impose unrealistic deadlines for promulgation of appliance standards, which conflict with existing court orders. Also highly objectionable are provisions that would establish unnecessary and duplicative workforce training programs and provisions that would unnecessarily increase taxpayer-funded subsidies for small business programs. Among the most problematic of these is a provision that would create a renewable fuel investment company program, providing subsidized venture capital where government assistance is not needed, in a manner that is likely to result in high taxpayer cost. The Administration strongly opposes provisions that are inconsistent with Federal credit policy, which would increase risk and displace private sector credit markets at the taxpayers' expense. Finally, the bill contains several provisions that would raise constitutional concerns.

* * * * *

From: Schafer, Jessica
Sent: Friday, December 07, 2007 4:03 PM
Subject: MARKEY: President Threatens to Undo Fuel Economy Deal



FOR IMMEDIATE RELEASE
DECEMBER 6, 2007
<http://markey.house.gov>

CONTACT: JESSICA SCHAFER (MARKEY)
202-225-2836 OR 202-812-8193
EBEN BURNHAM-SNYDER (SELECT CMTE.)
202-225-4081 OR 202-494-4486

MARKEY: PRESIDENT THREATENS TO UNDO FUEL ECONOMY DEAL

*White House Wants to Reverse Supreme Court's Massachusetts v. EPA Global Warming
Tailpipe Decision*

WASHINGTON, D.C. – Today, Representative Edward J. Markey (D-MA), chairman of the Select Committee on Energy Independence and Global Warming and chief House proponent of raising fuel economy standards to 35 miles per gallon, deplored the White House's Statement of Administration Policy on the Energy Bill. The White House threatened to veto the bill unless Congress reverses the landmark Supreme Court decision in *Massachusetts v. EPA* that validated the authority of the EPA to cut heat-trapping emissions from cars, trucks and SUVs. Such a move would also imperil the efforts of 17 states, including Massachusetts, that have used their Clean Air Act authority to establish clean car programs.

"As delegates from almost 200 nations meet in Bali to lay the groundwork for a treaty to combat global warming, and an energy bill is now on the table that would raise fuel economy standards for America's vehicles, President Bush has once again shown his utter disregard for the environment, our economy, and the health of our planet," said Rep. Markey. **"By asking Congress to undo the landmark Supreme Court decision in *Massachusetts v. EPA*, the President has effectively thumbed his nose at the rest of the world.**

"As every other country in the world debates how best to combat the clear and present danger of rising carbon dioxide emissions, the Bush Administration is still trying to make up its mind about whether carbon dioxide emissions pose a danger at all."

On April 2, 2007, the Supreme Court determined in Massachusetts v. EPA that EPA has the authority under the Clean Air Act to regulate carbon dioxide (CO2) emissions from motor vehicles, and that it must do so if it determined that these emissions endangered public health or welfare.

In response to the Supreme Court ruling, the President issued an Executive Order on May 14, 2007, directing EPA to coordinate with the Department of Transportation and other agencies in developing any rule covering greenhouse gas emissions from motor vehicles, and EPA staff have been working hard to conduct the necessary technical analysis and craft a rule by the end of this year.

While the Supreme Court decision said that there was no conflict associated with two agencies having authority over motor vehicle regulations, the President is now threatening to veto the entire energy bill on this question—one that has already been asked and answered by the Supreme Court, and one that would also effectively throw out all of the work the President ordered the EPA to do in May.

The Energy Bill passed by the House of Representatives yesterday directs the Department of Transportation to set fuel economy standards for cars and light trucks of at least 35 miles per gallon by 2020. Despite efforts by auto industry supporters to reverse the April Supreme Court decision, the House chose to preserve EPA's full authority in the bill it passed yesterday.

The White House's December 6, 2007 Statement of Administration Policy on the Energy Bill states that the energy bill "needs to clarify one agency as the sole entity, after consultation with other affected agencies, to be responsible for a single national regulatory standard for both fuel economy and tailpipe greenhouse gas emissions from vehicles."

"The Bush Administration is saying to Congress, 'Please take away the authority I have to cut emissions, so I don't have to,'" concluded Markey. "It follows years of legal wrangling by the White House to avoid any decisive action on global warming, and now they are willing to take down the entire energy bill with their climate inaction scheme."

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Jessica Schafer
Communications Director
Congressman Ed Markey (MA-07)
202.225.2836 ofc
202.812.8193 cell

December 7, 2007

TO THE MEMBERS OF THE UNITED STATES SENATE:

The complexity and broad scope of the energy legislation now under consideration raises several important issues with regard to overlapping regulatory authorities under the Clean Air Act. These issues must be addressed now in order to prevent the unintended triggering of an expansive and costly stationary source control program.

Any effort to establish a low-carbon fuel standard or to control carbon or any other greenhouse gas emissions from vehicles or fuels under the Clean Air Act could cause these substances to be regarded as pollutants subject to regulation more broadly under the Act. Under the provisions of the Act, this in turn would trigger a pre-construction permit program that will affect hundreds of thousands of very small stationary sources that have hitherto not been subject to requirements under the Act. Initial estimates suggest that the majority of small, mid-sized, and large manufacturing businesses—over 300,000 facilities—would potentially become regulated stationary sources. In addition, hundreds of thousands of commercial buildings as well as over a hundred thousand farm operations could be impacted.

The expected transaction and administrative costs of the program for individual sources, states, and the federal government would be unprecedented. Thousands of determinations as to whether the Clean Air Act's regulatory requirements are triggered would be required. Given the potential number of permits and the resulting delay in permit issuance, the construction and modification of plants would likely come to a standstill, causing significant harm to the economy. Even the ability to produce renewable fuels could be hampered through the imposition of lengthy pre-construction permitting requirements.

To address this problem and the broader problem of conflicting and overlapping regulatory authorities, the energy bill now under consideration must do two things. First, the energy legislation must contain explicit language clarifying that nothing in this bill can be construed as triggering the regulation of CO₂ or any other greenhouse gas under the Clean Air Act. This will prevent the unintended and costly regulatory program described above from being triggered.

Second, the legislation must address the potential for duplicating and conflicting regulatory requirements by clarifying that carbon dioxide and other greenhouse gases cannot be regulated under Title II of the Clean Air Act. Title II of the Clean Air Act addresses emissions from fuels and vehicles which are the same sources that are subject to requirements under the energy bill. Directing the National Highway Traffic Safety Administration to establish new fuel economy standards could be undermined if those same sources are required to achieve conflicting standards under the Clean Air Act. Given the extraordinary challenge industry may be asked to address, it is only fair that there be one regulatory body and one set of regulatory requirements. Creating duplicative and potentially conflicting regulatory requirements would almost certainly delay the very technology advances sought by the legislation. The vehicle efficiency improvement standard and the alternative fuels provisions in the President Bush's energy proposals and in the energy legislation are preferred approaches to achieving substantial reductions in greenhouse gas emissions while reducing U.S. reliance on foreign energy sources.

Sincerely,

American Forest & Paper Association
American Gas Association
Association of American Railroads
National Association of Manufacturers
National Mining Association
National Petrochemical and Refiners Association
U.S. Chamber of Commerce

From: Frank O'Donnell <cleanairfrank@cleanairwatch.org>
Sent: Wednesday, December 12, 2007 4:29 PM
To: 'Frank O'Donnell'
Subject: Car industry makes its move! -- Sen. Levin floats energy language to kneecap EPA, California and other states

Importance: High

For the past week, many of you have asked me, "what the heck is going on with all these efforts" (the White House, the car companies, the Chamber of Commerce, etc.) with regard to the energy bill and possible "coordination" of the efforts of EPA and DOT

Well now the truth (at least part of it) can be told.

All these letters apparently were an attempt to soften up the Senate leadership – the airstrikes before the ground invasion. But now the ground attack is on.

Language undoubtedly drafted by car company lobbyists is now floating around the US Senate. (See below.) It reportedly is being shopped not just by car companies, but by senators including Michigan's Carl Levin. (See story below.) We understand that the staff of Senator Ted Stevens of Alaska is making similar noises.

The language would require that any move made by the US EPA that could "affect the fuel economy of new motor vehicle engines or new motor vehicle engines" would have to be "consistent" with fuel economy requirements set by the federal Department of Transportation.

In other words, this is a bid to kneecap EPA and states led by California that seek to enforce tougher greenhouse gas standards for motor vehicles. EPA would become subordinate to the Transportation Department. And states like California would be left out in the cold.

The timing is most ironic, given the federal court decision today in California which shot down the very arguments being made by the car companies and their proponents in the Senate.

Look for California and other states to start pushing back against this ground attack.

**

On page 21, insert after line 4, at the end of section 102 (of the soon to be filed Reid substitute):

"(d) APPLICATION WITH CLEAN AIR ACT. – Chapter 329 of title 49, United States Code, is amended by inserting after section 32919 the following:

"Section 32920. Consistent Standards.

"Notwithstanding any other provision of law or regulation, should the Administrator of the Environmental Protection Agency promulgate carbon dioxide emissions regulations under section 202 of the Clean Air Act (42 U.S.C. 7521) that affect the fuel economy of new motor vehicles or new motor vehicle engines, the Administrator shall adopt regulations that are fully consistent with chapter 329 of this title and any standards or regulations promulgated or enforced thereunder."

"(e) RULE OF CONSTRUCTION – Nothing in the amendments made by this title to chapter 329 of title 49 shall be construed to conflict with the authority provided by section 209 of the Clean Air Act (42 U.S.C. 7543)."

**

Levin Presses CAFE Authority in Energy Debate

By: Geof Koss
CongressNow Staff
Wednesday, December 12, 2007 2:23 PM

Sen. Carl Levin (D-Mich.) is continuing to press for the insertion of language in the Senate energy bill that would clarify the role of two key federal agencies in setting corporate average fuel economy, or CAFE, standards.

"I'm trying to clarify it to make sure there's no conflict," Levin told reporters this afternoon, of the role of the Environmental Protection Agency and the National Highway Transportation Safety Administration, or NHTSA.

The Senate is poised to pass a fleetwide CAFE increase of 35 miles per gallon - the first such increase in 30 years - in the Senate energy bill.

However, lawmakers whose home states are heavy in automobile manufacturing, including Levin and House Energy and Commerce Committee Chairman John Dingell (D-Mich.), as well as the White House, have raised concerns that future EPA rules regulating greenhouse gas emissions from automobiles could cause a conflict with NHTSA, which has historically overseen the CAFE program.

"We've got to try to make it clear that what the EPA is authorized to do is consistent with what everyone agrees should be the number," Levin said of the 35 mpg mandate.

The issue emerged after the Supreme Court earlier this year ruled that EPA has authority under the federal Clean Air Act to regulate greenhouse gas emissions like carbon dioxide.

That landmark ruling has been backed by similar rulings in other federal courts. For instance, a federal judge in California today upheld that state's authority to regulate greenhouse gases under the Clean Air Act in a lawsuit brought by automakers.

The rulings have sparked concerns by the auto industry that they will face conflicting federal CAFE rules as EPA moves to control greenhouse gas emissions from auto tailpipes.

Levin declined to say whether he would withhold support for the larger energy bill over the matter. "For me, it's an important issue," he said.

The White House also raised the issue last week in a Statement of Administration Policy on the energy bill (H.R. 6).

"Unfortunately, H.R. 6 leaves ambiguous the role of the Environmental Protection Agency in regulating vehicle fuel economy, and as a result would likely create substantial regulatory uncertainty, confusion, and duplication of efforts," the statement reads.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

December 13, 2007
(Senate)

STATEMENT OF ADMINISTRATION POLICY

H.R. 6 – Energy Independence and Security Act of 2007 (Reid Amendment)

(Rep. Rahall (D) WV and 198 cosponsors)

The Administration opposes the Reid substitute amendment, which fails to correct many of the highly objectionable provisions identified in previously-issued Statements of Administration Policy on H.R. 6. If H.R. 6 were presented to the President as modified by the Reid substitute amendment, his senior advisors would recommend that he veto the bill.

The Administration strongly opposes the amendment's tax title, which would raise taxes in several ways that will increase energy costs facing consumers. More specifically, the Administration strongly opposes using the Federal tax code to single out specific industries for punitive treatment. Furthermore, the tax increases included in the Reid substitute amendment vastly exceed the amount necessary to offset the estimated revenue reductions arising from the bill's fuel economy provisions. The Administration compliments the Senate for giving the Department of Transportation (DOT) the authority to establish a new CAFE standard, which would both improve fuel economy and reduce tailpipe greenhouse gas emissions. The bill should clarify, however, that DOT should establish this single national regulatory standard, in consultation with the Environmental Protection Agency, and that neither agency should add additional layers of regulation. The Administration also supports an ambitious alternative fuel standard, which should include an effective safety valve, should be technology neutral, and should rely on market innovation instead of statutory prescription. The proposed legislation, however, is excessively prescriptive and fails these tests, picking and choosing among fuel types, and failing to include an adequate safety valve. The Administration also retains several additional concerns previously outlined in the Statements of Administration Policy on the underlying bill. Congress should seize the current opportunity to enact bipartisan legislation to enhance American energy security and to achieve vital goals of the President's "Twenty in Ten" initiative proposed more than ten months ago. The Administration urges Congress to put political considerations aside, to repair the repeatedly noted problems with the energy bill, and to send the President legislation that he can sign.

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From: Energy&CommercePress
Sent: Wednesday, December 19, 2007 7:36 PM
Subject: Dingell on EPA decision

NEWS RELEASE
Committee on Energy and Commerce
Rep. John D. Dingell, Chairman

For immediate release: December 19, 2007
Contact: Jodi Seth, 202-225-2927

Dingell on EPA Decision

Rep. John D. Dingell, Chairman of the Committee on Energy and Commerce, made the following statement in response to EPA's decision regarding the California waiver:

"EPA's decision raises serious and important public policy questions about the roles and responsibilities of different agencies at different levels of government.

"For decades, this Committee has carefully examined these issues and we will continue to monitor the situation going forward.

"The energy bill signed into law by the President today takes measurable and concrete steps to reduce greenhouse gas emissions and energy consumption. While the legislation did not explicitly address policy questions relevant to the EPA's decision, these and other matters must be raised as we craft comprehensive climate change legislation next year."

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