



UNIVERSITY OF
OREGON

School of Law

Submitted via: www.regulations.gov

October 26, 2018

Environmental Protection Agency
EPA Docket Center (EPA/DC)
Air and Radiation Docket, Mail Code 28221T
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Docket No. EPA-HQ-OAR-2018-0283

National Highway Traffic Safety Administration
Docket Management Facility, M-30
U.S. Department of Transportation
West Building, Ground Fl., Rm. W12-140
1200 New Jersey Avenue, SE
Washington, DC 20590
Docket No. NHTSA-2018-0067



**Comments to The Safer Affordable Fuel-Efficient (SAFE)
Vehicles Rule for Model Years 2021-2026 Passenger Cars and
Light Trucks, Docket Nos. NHTSA-2018-0067, EPA-HQ-OAR-
2018-0283**

I am an Assistant Professor of Law at the University of Oregon School of Law, and a faculty member in its Environmental and Natural Resources Law Center. I have worked on clean air policy for more than two decades. Prior to my current appointment, I was the Vice President for Energy and Environmental Policy at the Center for American Progress, a leading Washington, DC think tank. Prior to that I worked for Rep. Henry A. Waxman in the U.S. House of Representatives on energy and environmental policy for more than 18 years, holding senior positions on the House Oversight Committee and the House Energy and Commerce Committee. I worked extensively on the Energy Independence and Security Act of 2007.

I am writing to provide comments on the Environmental Protection Agency's (EPA) and National Highway Traffic Safety Administration's

FACULTY OFFICES

1515 Agate Street, 1221 University of Oregon, Eugene OR 97403-1221

T (541) 346-3837 F (541) 346-1564 www.law.uoregon.edu

An equal-opportunity, affirmative-action institution committed to cultural diversity and compliance with the Americans with Disabilities Act



(NHTSA) proposed Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021 - 2026 Passenger Cars and Light Trucks. My comments relate to EPA's authority to regulate greenhouse gas emissions under section 202 of the Clean Air Act and California's authority to do so pursuant to section 209(b) of the Clean Air Act.

NHTSA and EPA propose to conclude that California is preempted from establishing greenhouse gas emissions standards for cars and trucks even when federal preemption has been waived pursuant to section 209(b) of the Clean Air Act. To reach this incorrect conclusion, the agencies ignore the most recent dozen years of determinative, clear and relevant legislative history.

In 2007, after extensive and public deliberation, Congress chose to craft the Energy Independence and Security Act (EISA) to explicitly protect EPA's authority to regulate greenhouse gas emissions under section 202 of the Clean Air Act and California's authority to do so pursuant to section 209(b) of the Clean Air Act. Congress rejected multiple proposals to revoke or interfere with California's authority.

Since EISA was enacted, opponents of greenhouse gas regulation in Congress have demonstrated their understanding that EISA's explicit protection for these EPA and state authorities is effective by repeatedly attempting to pass legislation to revoke the authorities. None of these efforts to revoke or interfere with EPA or California authorities have been successful.

The attached appendices provide details and supporting documents on this topic.



UNIVERSITY OF OREGON

In light of this information, the agencies should not finalize the conclusion that California is preempted from establishing and enforcing greenhouse gas emissions standards pursuant to section 209(b) of the Clean Air Act.

Sincerely,



Greg Dotson

Congress has Protected California’s Authority to Set Greenhouse Gas Emissions Standards for Cars and Trucks

Table of Contents

| | | |
|------|---|----|
| I. | INTRODUCTION | 2 |
| II. | LEGISLATIVE HISTORY OF THE ENERGY INDEPENDENCE AND SECURITY ACT | 3 |
| | A. THE ROLE OF <i>MASSACHUSETTS V. EPA</i> IN CONGRESSIONAL DELIBERATIONS | 3 |
| | B. CONGRESS REJECTED A PROPOSAL TO DIRECTLY REVOKE EPA AND STATE AUTHORITY | 4 |
| | C. CONGRESS REJECTED A PROPOSAL TO INDIRECTLY REVOKE EPA AND STATE AUTHORITY | 8 |
| | D. EXPLICIT PROTECTION FOR EPA AND STATE AUTHORITY INCLUDED IN LEGISLATION | 11 |
| | E. CONGRESS REJECTED BEHIND-THE-SCENES EFFORTS TO WEAKEN OR CONSTRAIN EPA AND STATE AUTHORITIES..... | 12 |
| | F. FLOOR DEBATE REFLECTS LEGISLATIVE INTENT TO PROTECT EPA AND STATE AUTHORITY | 13 |
| III. | CONGRESS HAS REPEATEDLY DEMONSTRATED ITS UNDERSTANDING THAT EPA AND STATE AUTHORITY WERE PROTECTED BY EISA | 17 |
| | A. THE 2010 RESOLUTION OF DISAPPROVAL ATTEMPTED TO UNDERMINE EPA’S AUTHORITY | 18 |
| | B. THE ENERGY TAX PREVENTION ACT OF 2011 SOUGHT TO REPEAL EPA AND STATE AUTHORITY | 19 |
| IV. | THE AGENCIES HAVE MISINTERPRETED LEGISLATIVE HISTORY REGARDING QUALIFICATION OF STATE TAILPIPE STANDARDS AS “OTHER MOTOR VEHICLE STANDARDS OF THE GOVERNMENT” | 23 |
| V. | CONCLUSION | 24 |

I. Introduction

The National Highway Traffic Safety Administration (NHTSA) and the Environmental Protection Agency (EPA) have proposed the “Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks” (NHTSA/EPA Proposal). This proposal incorrectly concludes that California is preempted from establishing greenhouse gas emissions standards pursuant to a waiver under section 209 of the Clean Air Act and relatedly that other states may not adopt California greenhouse gas emissions standards pursuant to section 177 of the Clean Air Act. To reach this incorrect conclusion, the agencies ignore the most recent dozen years of determinative, clear and relevant legislative history.

The NHTSA/EPA Proposal claims that the Energy Policy and Conservation Act (EPCA), as amended by Energy Independence and Security Act of 2007 (EISA), preempts California from establishing and enforcing greenhouse gas emissions standards even when those standards satisfy the criteria for and receive a waiver of preemption pursuant to section 209(b) of the Clean Air Act.¹ However, the agencies omit from their proposal an examination of the extensive and enlightening legislative history from 2007 when Congress considered and enacted the Energy Independence and Security Act (EISA).

As described in detail below, after an extensive and public deliberation, Congress chose to craft EISA to explicitly protect EPA’s authority to regulate greenhouse gas emissions under section 202 of the Clean Air Act and California’s authority to do so pursuant to section 209(b) of the Clean Air Act. Congress rejected multiple proposals to either directly or indirectly interfere with the authority of California to establish greenhouse gas standards for light duty cars and trucks pursuant to section 209 of the Clean Air Act.

Since EISA was enacted in 2007, opponents of greenhouse gas regulation in Congress have demonstrated their understanding that these EPA and state authorities are valid by repeatedly attempting to pass legislation to revoke the authorities.

¹ Safer Affordable Fuel-Efficient Vehicles Rule, 83 Fed. Reg. 43232 (proposed Aug. 24, 2018)(relying on enactment of H.R. 1758, 103rd Cong. (1994)).

II. Legislative History of the Energy Independence and Security Act

During consideration of EISA, there was perhaps no other issue that received more deliberative focus by members of Congress and stakeholders than the twin issues of whether EPA could establish greenhouse gas emissions standards pursuant to section 202 of the Clean Air Act and whether California could establish its own greenhouse gas standards pursuant to a waiver of preemption under section 209(b) of the Clean Air Act.

Congress was cognizant of the relationship between EPCA and the Clean Air Act when crafting EISA. While some members of Congress proposed to repeal both EPA's and California's authority to set greenhouse gas standards for motor vehicles, this position did not prevail. Instead, the status of these authorities was vigilantly monitored and protected by Congressional leadership, Members of Congress, Governors, state Attorneys General, state and local air pollution regulators and the environmental protection advocacy organizations. Accordingly, the enacted text of EISA explicitly protected the authority of both EPA and the State of California. During floor debate as the legislation received final approval in Congress, legislators voiced the view that both EPA and California retained their preexisting authority to establish and enforce tailpipe standards for greenhouse gases. Those views went un rebutted.

A. The Role of *Massachusetts v. EPA* in Congressional Deliberations

Throughout 2007, Congress labored to develop and pass an energy bill. In April 2007, the Supreme Court handed down its ruling in *Massachusetts v. EPA*.² *Massachusetts* was a landmark decision which clarified that greenhouse gases were pollutants subject to regulation under the Clean Air Act and laid the foundation for EPA to establish greenhouse gas emissions standards for light duty cars and trucks. The Supreme Court decision was of great interest to Members of Congress and immediately became a topic of discussion in the development of EISA. This was not an obscure legal development. In May 2007, President George W. Bush held a rose garden press event³ to announce his

² *Mass. v. Env'tl. Prot. Agency*, 549 U.S. 497 (2007).

³ The White House, *President Bush Discusses CAFE and Alternative Fuel Standards* (May 14, 2007) <https://georgewbush-whitehouse.archives.gov/news/releases/2007/05/20070514-4.html>.

efforts to comply with what the New York Times called the “one of [the Court’s] most important environmental decisions in years.”⁴

The Democratic majority in the Congress and President Bush were in agreement that the energy bill should mandate greater fuel efficiency under the corporate average fuel economy (CAFE) laws. Since this area of the law has a relationship with emission standards under the Clean Air Act, the possibility of disturbing the Supreme Court’s ruling and affecting EPA’s and the states’ authority over greenhouse gases – perhaps even inadvertently – was an obvious risk of which all the relevant participants in the deliberations were well aware.

B. Congress Rejected a Proposal to Directly Revoke EPA and State Authority

The first effort to overturn *Massachusetts v. EPA* and revoke state authority was clearly not inadvertent. On June 1, 2007, the Chairman of the Energy and Air Quality Subcommittee of the House Energy and Commerce Committee released a draft proposal to govern regulation of fuels and vehicles with regard to greenhouse gases. This “discussion draft” proposal had two elements that are relevant to the current regulatory proposal.

First, the June 2007 legislative proposal would have provided that the U.S. EPA could no longer regulate greenhouse gas emissions from cars and trucks under section 202 of the Clean Air Act.⁵

Second, the June 2007 legislative proposal would have amended section 209 of the Clean Air Act to ensure that waivers could not be provided for California standards “designed to reduce greenhouse gas emissions.”⁶

⁴ Linda Greenhouse, *Justices Rule Against Bush Administration on Emissions*, New York Times (April 2, 2007) <https://www.nytimes.com/2007/04/02/washington/02cnd-scotus.html>.

⁵ Discussion Draft, Subcomm. on Energy and Air Quality, H. Energy and Commerce Comm., 110th Cong. 29 (June 1, 2007) (Subsection (c) EPA Vehicle Regulations). http://web.archive.org/web/20070703025326/http://energycommerce.house.gov/energy_110/Title%20%20-%20Fuels%20060107_xml.pdf.

⁶ Discussion Draft, Subcomm. on Energy and Air Quality, H. Energy and Commerce Comm., 110th Cong. 29 (June 1, 2007) (Subsection (d) State Waivers). http://web.archive.org/web/20070703025326/http://energycommerce.house.gov/energy_110/Title%20%20-%20Fuels%20060107_xml.pdf.

The opposition to this proposal was swift and unequivocal. On June 5, 2007, Speaker of the House Nancy Pelosi issued a press release that stated in full:

Washington, D.C. – Speaker Nancy Pelosi released the following statement today on legislation addressing energy independence and global warming:

‘Any legislation that comes to the House floor must increase our energy independence, reduce global warming, invest in new technologies to achieve these goals and create good jobs in America.

‘Any proposal that affects California’s landmark efforts to reduce greenhouse gas emissions or eliminate the EPA’s authority to regulate greenhouse gas emissions will not have my support.’⁷

This alone amounted to a death knell for the proposal, given the authority of the Speaker to determine what legislation is considered in the House of Representatives. However, concern about the proposal quickly spread to other numerous stakeholders. The Governors of eight states wrote to the Chairman of the Energy and Air Quality Subcommittee to express their strong opposition to the proposal. They wrote:

We are writing to express our strong opposition to the June 1, 2007, discussion draft of Alternative Fuels, Infrastructure and Vehicles. This legislation preempts our states’ critical efforts to combat climate change by enacting regulations that reduce greenhouse gas emissions. While Federal action is necessary and long overdue on climate change, Congress must not deny states the right to pursue solutions in the absence of federal policy.

Specifically, this bill will preempt California’s passenger vehicles and light duty truck emission standards, which will reduce greenhouse gas emissions by 30 percent. Our states, which collectively represent over one-third of the automobile market, have either adopted or will adopt California’s standards. Not only does this bill deny our right to adopt California’s vehicle emissions standards – a right granted by the federal Clean Air Act – it eliminates the Environmental Protection

⁷ Pelosi Statement on Legislation Addressing Energy Independence and Global Warming (June 5, 2007), <https://www.democraticleader.gov/newsroom/pelosi-statement-legislation-addressing-energy-independence-global-warming/>.

Agency's regulatory authority over greenhouse gases as a pollutant. This amounts to an about-face reversal of the Supreme Court decision identifying CO₂ as a pollutant within the scope of the Clean Air Act (*Massachusetts v. EPA*). Finally, we are opposed to the bill's delegation of regulatory authority to the National Highway Traffic Safety Administration.

Our states are at the forefront of the effort to reduce greenhouse gas emissions and our nation's dependency on carbon-based fuels. Climate change is real and it impacts the public health and welfare of every American. Congress must preserve states' ability to fight greenhouse gas emissions now. Going forward, states and the federal government must collaborate to take even stronger actions against the continuing threat of climate change.

We urge you to pursue legislation that instead enhances and complements the efforts already underway in our states.⁸

Additionally, the Attorneys General of 14 states wrote to the Chairman and Ranking Member of the House Energy and Commerce Committee to express their strong opposition to how the June 2007 proposal would regulate motor vehicle emissions.⁹ The Attorneys General stated first that "the bill would eliminate the authority that the Clean Air Act has provided EPA for decades to regulate greenhouse gas emissions, as the U.S. Supreme Court recently recognized." The Attorneys General also stated:

Second, the bill would eliminate EPA's ability to grant a waiver of preemption for California state motor vehicle standards for greenhouse gases. As you are aware, other states are currently free to adopt those standards pursuant to Section 177 of the Clean Air Act. A total of twelve of our states have adopted the California standards, with others currently considering them. The bill would eliminate the statutory right of states to do so, thereby upsetting the longstanding cooperative federalism established by the Act. The current system of allowing two, but only

⁸ Letter from Gov. Arnold Schwarzenegger, Cal., Gov. Deval Patrick, Mass., Gov. Christine O. Gregoire, Wash., Gov. Bill Richardson, N. M., Gov. Theodore R. Kulongoski, Or., Gov. Edward G. Rendell, Pa., Gov. Janet Napolitano, Ariz., Gov. Eliot Spitzer, N. Y. to the Honorable Rick Boucher, Chair, Energy and Air Quality Subcomm., H. Committee on Energy and Commerce Comm. (June 7, 2007).

⁹ Letter from the Attorneys General of the Commonwealth of Mass. and the States of Cal., Conn., Del., Iowa, Me., Md., Minn., N. J., N. M., N. Y., Or., R. I., and Vt., and the Corporation Counsel for the City of New York to the Honorable John D. Dingell, Chair, H. Energy and Commerce Comm. and the Honorable Joe Barton, Ranking Member, H. Energy and Commerce Comm. (June 6, 2007).

two, sets of motor vehicle standards has worked well over the last four decades. Indeed, most of the technological innovations needed to reduce air pollutant emissions have been because of California's standards.

The National Association of Clean Air Agencies (NACAA) also wrote to the Energy and Air Quality Subcommittee Chair and Ranking Member to vigorously object to the language.¹⁰ NACAA represented the air pollution control agencies in 54 states and territories and more than 165 metropolitan areas across the country. The letter explained that to prohibit state greenhouse gas emissions standards for motor vehicles as the June 2007 proposal would do "would be an inappropriate revocation of states' rights." NACAA also objected to revoking EPA's authority to regulate transportation-related greenhouse gas emissions. NACAA concluded by stating, "NACAA urges that you not only remove the aforementioned provisions from this Discussion Draft, but that you also work to ensure that any energy bill that proceeds through Congress be free of language that would limit state or federal authority to address global warming."

Environmental groups also announced their opposition to the proposal, strongly objecting to the revocation of federal authority and the preemption of state law to address global warming pollution from vehicles.¹¹

Twelve members of the Energy and Commerce Committee formally expressed their opposition to the proposal in a letter to the Chairs of the full committee and subcommittee. Noting that the proposal would overturn *Massachusetts v. EPA* and block the efforts of 12 states to address greenhouse gas emissions from cars and trucks, the members wrote, "The last thing we should do is attempt to stop important progress being made by the states. The draft's preemption provision has no place in either this draft or any subsequent global warming legislation the Committee will consider." They

¹⁰ Letter from S. William Becker, Exec. Dir., Nat'l Ass'n of Clean Air Agencies, to the Honorable Rick Boucher, Chair, Subcomm. on Energy and Air Quality, H. Committee on Energy and Commerce Comm., and the Honorable J. Dennis Hastert, Ranking Member, Subcomm. on Energy and Air Quality, H. Committee on Energy and Commerce Comm. (June 6, 2007).

¹¹ Letter from Betsy Loyless, National Audubon Society, Robert Dewey, Def. of Wildlife, Erich Pica, Friends of the Earth, John Passacantando, Greenpeace, Tiernan Sittenfeld, League of Conservation Voters, Karen Steuer, National Environmental Trust, Karen Wayland, Nat. Res. Def. Council, Joan Claybrook, Pub. Citizen, Debbie Sease, Sierra Club, Alden Meyer, Union of Concerned Scientists, Anna Aurilio, U.S. PIRG, Linda Lance, The Wilderness Soc'y to U.S. Representatives (June 5, 2007).

stated that they strongly opposed the proposal and urged the chairs to abandon the harmful policies that had been proposed.¹²

As a result of this strong opposition, the legislative proposal did not advance. It was not introduced as a formal bill. It was never marked up in subcommittee or full committee, nor was it considered on the floor of either chamber of Congress.

C. Congress Rejected a Proposal to Indirectly Revoke EPA and State Authority

After the proposal to directly revoke EPA and State authority failed, a subsequent legislative proposal could have indirectly undermined *Massachusetts v. EPA*. H.R. 2927, was introduced on June 28, 2007. This proposal would neither have amended the Clean Air Act nor explicitly referenced any Clean Air Act authority. However, it directed that CAFE standards established by the Department of Transportation “shall be expressed in terms of average miles per gallon of fuel and in terms of average grams per mile of carbon dioxide emissions, such that the specified average grams per mile of carbon dioxide emissions is equivalent to the average miles per gallon of fuel specified in the standard for that model year.”¹³ While the proponents of the legislation stated that they had no intent to affect EPA or the States’ authorities to regulate greenhouse gas emissions from motor vehicles, members of Congress and many stakeholders were concerned that the proposal, if enacted, could potentially resuscitate the claim, previously rejected by courts, that CAFE standards preempted California’s greenhouse gas emissions standards for vehicles and interfere with EPA’s ability to establish such standards.

Environmental groups wrote to members of Congress expressing opposition to H.R. 2927 stating that the legislation would “interfere with EPA authority under the Clean Air Act to set vehicle pollution standards and the *Massachusetts v. EPA* decision, inviting

¹² Letter from Reps. Henry A. Waxman, Edward J. Markey, Anna G. Eshoo, Eliot L. Engel, Lois Capps, Thomas H. Allen, Janice D. Schakowsky, Hilda L. Solis, Jay Inslee, Anthony D. Weiner, Tammy Baldwin and Albert R. Wynn to the Honorable John D. Dingell, Chair, H. Energy and Commerce Comm. and the Honorable Rick Boucher, Chair, Subcomm. on Energy and Air Quality, H. Committee on Energy and Commerce Comm. (June 7, 2007).

¹³ H.R. 2927, 110th Cong. (2007).

future litigation of vehicles standards.”¹⁴ They stated that it would undermine “states’ progress in addressing global warming.”

Rep. Henry A. Waxman, who considered *Massachusetts v. EPA* to be a great victory and carefully monitored the energy bill’s development to protect EPA and state authorities, wrote to all the members of the House to explain:

H.R.2927, the Hill-Terry Corporate Average Fuel Economy (CAFE) bill, threatens to overturn these victories. By directing the Department of Transportation (DOT) to express CAFE requirements as CO₂ limits, the bill reinvigorates the claim that DOT’s CAFE standards preempt state and EPA global warming standards for vehicles, which the Supreme Court rejected in *Massachusetts v. EPA*.

The interaction between EPA’s authority to regulate air pollution and DOT’s authority to establish CAFE standards was a key issue in *Massachusetts v. EPA*. In its decision, the Supreme Court held that DOT’s and EPA’s “obligations may overlap, but there is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency.”

H.R.2927 amends the CAFE law to blur the line between fuel economy and greenhouse gas emissions standards, reopening and strengthening the claim rejected by the Supreme Court. It requires DOT’s CAFE standards to be expressed both in miles per gallon and “in terms of average grams per mile of carbon dioxide emissions.”

This provision would provide opponents of action on global warming with a new argument that Congress had decided to unify fuel economy standards and greenhouse gas emissions standards under DOT.¹⁵

A group of state Attorneys General joined together again and wrote in opposition to the legislation.

¹⁴ Letter from Karen Steuer, Vice President, Gov’t Affairs, Nat’l Envtl Trust, Dan Lashof, Science Dir., Climate Center, Nat. Res. Def. Council, Dan Becker, Dir., Global Warming program, Sierra Club, Michelle Robinson, Dir., Clean Vehicles Program, Union of Concerned Scientists, Anna Aurilio, Dir., Washington DC Office, U.S. PIRG to U.S. Representatives (July 5, 2007).

¹⁵ Letter from Rep. Henry A. Waxman to all Members of the House of Representatives (July 26, 2007).

We write today to voice our strong opposition to H.R. 2927 which contains troublesome language that may be used to eliminate existing Clean Air Act authority to address global warming, including California’s landmark greenhouse gas emissions standards. Our understanding is that H.R. 2927 may be voted on in the coming days as an amendment to the House of Representative’s energy bill.

While providing only modest increases in federal fuel economy standards, the bill includes language that has the potential to disrupt the statutory framework for controlling carbon dioxide emissions that was endorsed by the U.S. Supreme Court in *Massachusetts v. Environmental Protection Agency (EPA)*, 549 U.S. _____, 127 S.Ct. 1438 (2007). As currently drafted, the bill would require the Secretary of Transportation to issue fuel economy standards in terms of both “miles per gallon” and “grams per mile of carbon dioxide emissions.” The Department of Transportation has never set emission standards – its mandate is to promote energy efficiency by setting mileage standards. *See Massachusetts v. EPA*, 127 S. Ct. at 1462 (citing 49 U.S.C. § 6201(5)).

In contrast, EPA’s statutory mandate is to prescribe standards applicable to “emissions of any air pollutant from any class or classes of new motor vehicle[s] . . .” 42 U.S.C. § 7521(a)(1); *see also Massachusetts v. EPA*, 127 S. Ct. at 1447. As the Supreme Court recently observed, these two statutory mandates are “wholly independent.” *Massachusetts v. EPA*, 127 S.Ct. at 1462. The inclusion of language referring to carbon dioxide *emissions* appears to serve no legitimate statutory purpose.

We are concerned that the language will be used by those challenging the state greenhouse gas emission standards originally adopted by California (the Pavley regulations). Thirteen States have now adopted those standards, and many others are considering adoption. These thirteen States – representing over 40% of the American population – have adopted them because the Clean Air Act’s cooperative federalism structure allows them to do so, and their citizens are seeking action on global warming. The current system of allowing two (and only two) sets of motor vehicle emission standards has worked well over the last four

decades. Indeed, most of the technological innovations needed to reduce air pollutant emissions have been made because of California's standards.¹⁶

The *Washington Post* editorialized against the proposal on July 26, 2007, stating that the legislation would undermine California's greenhouse gas tailpipe standards, by "getting the Department of Transportation which deals with fuel economy, into the business of regulating carbon emissions, which the Supreme Court ruled in the spring is within the purview of the Environmental Protection Agency."¹⁷

Because of the strong opposition to H.R. 2927, it was never voted upon in subcommittee, committee or on the floor of either chamber of Congress.

D. Explicit Protection for EPA and State Authority Included in Legislation

When the Senate had passed its omnibus energy bill in July of 2007, it had included in the legislation a prominent provision entitled "Relationship to Other Law" that was drafted to ensure that nothing in the legislation relating to automobiles or fuel economy would inadvertently impact EPA's or the states' authority to address greenhouse gases. The provision stated:

Except to the extent expressly provided in this Act or an amendment made by this Act, nothing in this Act or an amendment made by this Act supersedes, limits the authority provided or responsibility conferred by, or authorizes any violation of any provision of law (including a regulation), including any energy or environmental law or regulation.¹⁸

The text of this provision remained unchanged as the legislation ping ponged back and forth between the House and Senate and would ultimately become section 3 in the enacted law.¹⁹ With this provision, Congress provided that the new law did not supersede or limit the authority of any other provision of law unless expressly stated.

¹⁶ Letter from the Attorneys General of the States of Cal., Ariz., Conn., Del., Ill., Iowa, Me., Md., Mass., N. M., N. Y., Or., R. I., and Vt., and the Corp. Counsel for the City of N. Y. to the Honorable Nancy Pelosi, Speaker of the House (August 1, 2007).

¹⁷ Editorial, "Leadership Needed; Higher fuel economy standards may be doomed without Nancy Pelosi's support," THE WASHINGTON POST (July 26, 2007).

¹⁸ Sec. 2 in the Senate Amendment passed on July 3, 2007.

¹⁹ Sec. 3, H.R. 6, (110th Cong.) (2007).

EISA does not contain language that expressly supersedes or limits either section 202 or section 209 of the Clean Air Act.

E. Congress Rejected Behind-the-Scenes Efforts to Weaken or Constrain EPA and State Authorities

In addition to the legislative efforts described above that could have directly or indirectly revoked the EPA's authority to regulate greenhouse gas emissions under section 202 of the Clean Air Act and California's authority to do so pursuant to section 209(b) of the Clean Air Act, there were also multiple behind-the-scenes efforts to weaken or constrain EPA and state authorities during congressional consideration of EISA.

The Senate passed an omnibus energy bill in June 2007. The House passed its omnibus energy bill in August 2007, and then a lengthy informal, bipartisan House-Senate negotiation began. In this informal process, opponents of EPA and State authorities to regulate greenhouse gases made at least two efforts to get congressional negotiators to agree to legislative language that would weaken or constrain EPA or the States.

First, in late 2007, negotiators rejected a proposal that was supported by the automobile industry, some members of Congress and the Bush Administration.²⁰ This proposal would have made three major changes. First, it would have changed the decision-making criteria of Clean Air Act Section 202(a) to mirror those of EPCA §32902. Second, it would have required the EPA Administrator to coordinate intensively with NHTSA when setting greenhouse gas emission standards. Third, it would have limited states to regulating the greenhouse gas emissions of vehicles acquired for a state's own use.²¹ This amendment was not included EISA.

Additionally, in December 2007, Sen. Carl Levin attempted one last "11th hour gambit" to add language to ensure that any EPA emission standard was "fully consistent" with NHTSA's CAFE standards.²² This proposal was rejected. The press reported at the time

²⁰ See Letter from Sens. Tom Carper, Dianne Feinstein, and Edward J. Markey to Sec'y Elaine L. Chao and Acting Administrator Andrew Wheeler (October 25, 2018).

²¹ Attachment entitled "Draft Amendment" (dated November 20, 2007) to Letter from Sens. Tom Carper, Dianne Feinstein, and Edward J. Markey to Sec'y Elaine L. Chao and Acting Administrator Andrew Wheeler (October 25, 2018).

²² Ben Geman and Alex Kaplun, *Senate energy showdown on tap this morning*, E&E DAILY (Dec. 13, 2007). <https://www.eenews.net/eedaily/stories/59807/>.

that “Levin's unsuccessful push came after a week in which the White House has threatened to veto the energy bill in part over the jurisdictional issue, and after several industry groups likewise pushed lawmakers to alter the energy bill on that issue.”²³

F. Floor Debate Reflects Legislative Intent to Protect EPA and State Authority

As the legislative process on EISA drew to a close, members explained during floor debate that the legislation protected EPA’s authority to regulate greenhouse gas emissions under section 202 of the Clean Air Act and states’ authority to do the same pursuant to sections 209 and 177 of the Clean Air Act.

On December 6, 2007, the House passed the near final version of H.R. 6. (technically a House amendment to the Senate amendment of H.R. 6).²⁴ During floor consideration of this amendment, Rep. Waxman briefly explained the strengths of the bill. As a member who had bird-dogged the issue of authority to establish greenhouse gas emissions standards for cars and trucks throughout consideration of the bill, he praised the final outcome:

With this bill, we will turn from the past to the future. We have begun the process of adopting energy policies that recognize the science of global warming and the threat to our Nation's energy security.

This legislation will finally give Americans the fuel-efficient automobiles they want, saving families \$700 to \$1,000 a year. That is money we won't be sending to dangerous regimes in the Middle East....

And there are some things this legislation will not do. It won't diminish the EPA's authority to address global warming, which the Supreme Court has recognized. It won't seize authority from the States to act on global warming.²⁵

The Bush White House objected to this approach. The White House issued a Statement of Administration Policy (SAP) highlighting seven areas of concern with the legislation

²³ *Id.*

²⁴ See, Congressional Research Service, Energy Independence and Security Act of 2007: A Summary of Major Provisions (Dec. 21, 2007) <https://www.everycrsreport.com/reports/RL34294.html>.

²⁵ Statement of Rep. Henry A. Waxman Page H14430 (Dec. 6, 2007).

and stating that the President’s advisors would recommend that he veto the House-passed legislation. The SAP expressed concern about the House provisions to establish a Renewable Energy Standard as well as certain energy tax provisions. The SAP also identified EPA’s authority to regulate greenhouse gas emissions as an area of concern:

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.²⁶

President Bush’s Press Secretary called upon the Senate to “take a more cooperative approach.”²⁷

The Senate did, in fact, respond to some of the president’s concerns, but it did not amend the language governing tailpipe standards, nor the provision governing “Relationship to Other Law.” Instead, the Senate removed other provisions identified in the SAP that were unrelated to EPA’s authority over tailpipe greenhouse gas emissions. Specifically, the Senate stripped out tax incentives for energy efficiency and renewable energy as well as the provisions that would have established a Renewable Energy Standard. The Senate also removed provisions that would have repealed subsidies for oil and natural gas producers.²⁸

²⁶ Executive Office of the President, Office of Mgmt. and Budget, Statement of Admin. Policy, H.R. 6 – Energy Independence and Security Act of 2007 (Dec. 6, 2007) https://georgewbush-whitehouse.archives.gov/omb/legislative/sap/110-1/hr6sap-h_2.pdf.

²⁷ Statement by the Press Secretary on Energy Security (Dec. 6, 2007) <https://georgewbush-whitehouse.archives.gov/news/releases/2007/12/20071206-13.html>.

²⁸ See, Congressional Research Service, Energy Independence and Security Act of 2007: A Summary of Major Provisions (Dec. 21, 2007) <https://www.everycrsreport.com/reports/RL34294.html>.

As the Senate took final action to approve EISA, Sen. Levin, whose amendment to require EPA standards be “fully consistent” with the NHTSA’s standards was rejected, acknowledged that EPA and California retained their authorities. He stated that the EPA “has authority under the Clean Air Act to regulate greenhouse gas emissions from vehicles and to delegate that authority, as the agency deems appropriate, to the State of California. This authority was recently upheld by the U.S. Supreme Court, and it is not our purpose today to attempt to change that authority or to undercut the decision of the Supreme Court.”²⁹

²⁹ See Statement of Sen. Carl Levin, CONGRESSIONAL RECORD S1519 (Mar. 4, 2008) (partially recapping the series of statements from Dec. 13, 2007). Sen. Levin requested and obtained consent to place a colloquy in the record between himself, Sen. Daniel Inouye, then-Chair of the Senate Commerce Committee, and Sen. Dianne Feinstein, the author of the Senate legislation to improve fuel economy. In this colloquy, the Senators briefly discuss fuel economy standards. Both Sens. Inouye and Feinstein agreed that “all Federal regulations in this area be consistent.” Sen. Levin subsequently stated during floor debate over EISA that he “was assured this morning by both Senator Inouye and Senator Feinstein that it is indeed the intent of the law they wrote that EPA regulations be consistent with NHTSA.” Statement of Sen. Carl Levin, CONGRESSIONAL RECORD S15427 (Dec. 13, 2007). Later that same day, Sen. Inouye and Sen. Feinstein explained what they meant by consistency. Colloquy entitled “Agency Management,” CONGRESSIONAL RECORD S15386 (Dec. 13, 2007). Sen. Inouye stated, “The DOT and the EPA have separate missions that should be executed fully and responsibly.” Sen. Feinstein stated:

The legislation increasing the fuel economy standards of vehicles by 10 miles per gallon over 10 years does not impact the authority to regulate tailpipe emissions of the EPA, California, or other states, under the Clean Air Act.

The intent was to give NHTSA the ability to regulate fuel efficiency standards of vehicles, and increase the fleetwide average to at least 35 miles per gallon by 2020.

There was no intent in any way, shape, or form to negatively affect, or otherwise restrain, California or any other State’s existing or future tailpipe emissions laws, or any future EPA authority on tailpipe emissions.

The two issues are separate and distinct.

As the Supreme Court correctly observed in *Massachusetts v. EPA*, the fact “that DOT sets mileage standards in no way licenses EPA to shirk its environmental responsibilities. EPA has been charged with protecting the public’s health and welfare, a statutory obligation wholly independent of DOT’s mandate to promote energy efficiency. The two obligations may overlap, but there is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency.”

I agree with the Supreme Court’s view of consistency. There is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency.

The U.S. District Court for the Eastern District of California in *Central Valley Chrysler-Jeep v. Goldstone* has reiterated this point in finding that if approved by EPA, California’s standards are not preempted by the Energy Policy Conservation Act.

Title I of the Energy Security and Independence Act of 2007, H.R. 6, provides clear direction to the Department of Transportation, in consultation with the Department of Energy and the Environmental Protection Agency, to raise fuel economy standards.

Rep. Markey provided the most detailed articulation of the adopted provisions during the final debate in the House. He said:

As the principal House proponent of the fuel economy Title in this legislation, I also wish to briefly discuss several of its provisions in order to more fully explain the statutory language and to provide context for what we are accomplishing with this historic energy bill.

Section 3 of the bill states: “Except to the extent expressly provided in this Act, or in an amendment made by this Act, nothing in this Act or an amendment made by this act supersedes, limits the authority or responsibility conferred by, or authorizes any violation of any provision of law (including a regulation), including any energy or environmental law or regulation.”

The laws and regulations referred to in section 3 include, but are not limited to, the Clean Air Act and any regulations promulgated under Clean Air Act authority. It is the intent of Congress to fully preserve existing federal and State authority under the Clean Air Act.

In addition, Congress does not intend, by including provisions in Title I of the bill that reform and alter the authority of the Secretary of Transportation to increase fuel economy standards for passenger automobiles, non-passenger automobiles, work trucks, and medium and heavy duty trucks, to in any way supersede or limit the authority and/or responsibility conferred by sections 177, 202, and 209 of the Clean Air Act. For section 202 of the Clean Air Act, this includes but is not limited to the authority and responsibility affirmed by the Supreme Court's April 2, 2007 decision in *Massachusetts v. EPA*, No. 05-1120. For sections 177 and 209 of the Clean Air Act, this includes but is not limited to the authority affirmed by the September 12, 2007 decision of the U.S. District Court for the District of Vermont

By taking this action, Congress is continuing DOT's existing authority to set vehicle fuel economy standards. Importantly, the separate authority and responsibility of the U.S. Environmental Protection Agency to regulate vehicle greenhouse gas emissions under the Clean Air Act is in no manner affected by this legislation as plainly provided for in Section 3 of the bill addressing the relationship of H.R. 6 to other laws.

I fought for Section 3. I have resisted all efforts to add legislative language requiring “harmonization” of these EPA and NHTSA standards. This language could have required that EPA standards adopted under section 202 of the Clean Air Act reduce only the air pollution emissions that would already result from NHTSA fuel economy standards, effectively making the NHTSA fuel economy standards a national ceiling for the reduction of pollution. Our legislation does not establish a NHTSA ceiling. It does not mention the Clean Air Act, so we certainly do not intend to strip EPA of its wholly separate mandate to protect the public health and welfare from air pollution.

To be clear, federal standards can avoid inconsistency according to the Supreme Court, while still fulfilling their separate mandates.

in *Green Mountain Chrysler Dodge Jeep et al. v. Crombie et al.*, No. 2:05-cv-302, and the December 11, 2007 decision of the United States District Court for the Eastern District of California in *Central Valley Chrysler-Jeep, Inc. et al. v. Goldstone, et al.*, No. 1:04-cv-06663-AWIGSA.³⁰

On December 19, 2007, President George W. Bush signed EISA into law. In signing the legislation, the President said, “We make a major step toward reducing our dependence on oil, confronting global climate change, expanding the production of renewable fuels, and giving future generations of our country a nation that is stronger, cleaner, and more secure.”³¹ The President touted the attribute-based standards that NHTSA would now use to set CAFE standards, but he did not assert that either state or federal authorities under the Clean Air Act were affected.

III. Congress Has Repeatedly Demonstrated its Understanding that EPA and State Authority Were Protected by EISA

Professor Lisa Heinzerling of Georgetown Law Center testified before Congress in 2008 that the “Relationship to Other Law” language was effective at preserving the regulatory authority described by *Massachusetts*. She said:

EISA does not in any way change EPA’s obligations on remand from *Massachusetts v. EPA*. EISA affects neither EPA’s legal obligations with respect to determining whether greenhouse gases may reasonably be anticipated to endanger public health or welfare or the regulatory obligations that flow from such a determination.³²

³⁰ Statement of Rep. Edward J. Markey (Dec. 18, 2007) [Page H16750](#)

³¹ Pres. George W. Bush, Remarks on Signing the Energy Independence and Security Act of 2007 (December 19, 2007) <http://www.presidency.ucsb.edu/ws/index.php?pid=76194&st=&st1=>

³² Testimony of Lisa Heinzerling Before the Select Committee on Energy Independence and Global Warming, U.S. House of Representatives, *Massachusetts v. U.S. EPA* Part II: Implications of the Supreme Court Decision (March 13, 2008) <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?referer=http://legal-planet.org/2017/07/24/guest-blogger-gregory-dotson-is-scott-pruitt-calling-for-an-amendment-to-the-clean-air-act/&httpsredir=1&article=1065&context=cong>.

The Administration understood this. In May 2010, EPA promulgated greenhouse gas emissions standards for cars and trucks.³³ In November 2010, EPA proposed standards for medium and heavy duty vehicles.³⁴

Congress also understood that EPCA, as amended by EISA, did not revoke EPA's authority to regulate greenhouse gas emissions under section 202 of the Clean Air Act, nor did it interfere with the authority of California to establish greenhouse gas standards for light duty cars and trucks pursuant to section 209(b) of the Clean Air Act. This has been demonstrated by the legislation Congress has chosen to consider since enactment of EISA. Two examples of such bills are a 2010 resolution of disapproval and a set of companion bills in 2011. Both examples are discussed below.

A. The 2010 Resolution of Disapproval Attempted to Undermine EPA and State Authority

In January 2010, Sen. Lisa Murkowski introduced a resolution of disapproval, pursuant to the Congressional Review Act, relating to EPA's endangerment finding and the cause or contribute findings for greenhouse gases under section 202(a) of the Clean Air Act. These findings are a prerequisite for issuing emissions standards for cars and trucks under section 202 of the Clean Air Act.³⁵

In June 2010, Sen. Murkowski moved to proceed to consideration of the resolution on the Senate floor. In arguing for the Senate to pass the resolution, she explained her view that EPA regulations would be expensive, inefficient, and better suited for a congressional response. She argued against EPA's authority to set emissions standards for greenhouse gases and explained that disapproving EPA's endangerment finding and cause or contribute findings would also prevent states from regulating. Sen. Murkowski said:

The EPA does not need to take over this process, and it should not be allowed to do so under a law that was never intended to regulate fuel economy. I understand concerns about a patchwork of standards and how difficult it would be for the

³³ Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards, 75 Fed. Reg. 25324 (May 7, 2010).

³⁴ Greenhouse Gas Emissions Standards and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles, 75 Fed. Reg. 74152 (November 30, 2010).

³⁵ S.J.Res 26, 111th Cong. (2010).

industry to comply. But while we had one national standard at the start of 2009, we now have two national standards set by two Federal agencies driven by California's standards. I have a letter from the National Automobile Dealers Association dated just yesterday that spells this out quite clearly. They indicate that it in no way helps us to have, again, two national standards set by two Federal agencies. The best way to avoid a messy patchwork would be to pass our disapproval resolution, revoke California's waiver, and allow one Federal agency to set one standard that works for all 50 States.³⁶

If this motion had passed both chambers of Congress and been signed by the President, then EPA's findings would have been overturned and the predicate for its greenhouse gas emissions standards would have been removed. However, the motion to proceed to vote on the resolution of disapproval was defeated on a vote of 47 yeas to 53 nays.³⁷ Therefore Congress did not disapprove of the key findings for EPA to regulate greenhouse gas emissions from cars and trucks. This event demonstrates that three years after passage of EISA, it was understood in the Senate that if one wished to remove EPA and California authority to regulate greenhouse gas emissions, legislation would be necessary. There was no suggestion that EPCA or EISA had revoked these authorities.

B. The Energy Tax Prevention Act of 2011 Sought to Repeal EPA and State Authority

When control of the House of Representatives changed hands after the 2010 elections, the new Republican majority repeatedly attempted to prevent the EPA from abiding by the *Massachusetts v. EPA* ruling and further regulating greenhouse gas emissions.

In 2011, Congressional Republicans advanced legislation called the "Energy Tax Prevention Act" to overturn *Massachusetts v. EPA* and to thoroughly excise authority to

³⁶ Statement of Sen. Lisa Murkowski, [Page S4791](#)

³⁷ Roll call vote 184, 111th Cong. (June 10, 2010)

https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=111&session=2&vote=00184.

address greenhouse gases from the Clean Air Act.³⁸ This legislation was introduced in both the House and the Senate.³⁹

The legislation recognized that both EPA and the states had adopted greenhouse gas standards for cars and trucks. If enacted, the Energy Tax Prevention Act would have terminated both federal and state authority to establish tailpipe standards for greenhouse gases after vehicle model year 2016.

The legislation would have created a new section 330 of the Clean Air Act to establish a sweeping prohibition on using the Clean Air Act to address climate change. The proposed section 330(b)(1)(A) stated, “The Administrator may not, under this Act, promulgate any regulation concerning, take action relating to, or take into consideration the emission of a greenhouse gas to address climate change.”

The majority in Congress understood that this was a significant change in the law and included a provision to provide a transition from a world in which EPA was authorized to regulate greenhouse gas emissions from cars and trucks to a world in which the agency was prohibited from doing so. The proposed section 330(b)(2)(A) prevents “further revision” of the 2010 greenhouse gas tailpipe standards. Those standards apply to vehicle model years 2012 to 2016. Thus, if the legislation had been enacted, there would have been no federal greenhouse gas tailpipe standards for cars and trucks after model year 2016.

The Energy Tax Prevention Act, in section 3, also included an amendment to section 209 of the Clean Air Act. This amendment would have added a new paragraph to section 209 to prohibit EPA from granting a waiver of preemption for state greenhouse gas emissions standards for cars and trucks. The proposed new paragraph provided as follows:

Section 209(b) of the Clean Air Act (42 U.S.C. 7543) is amended by adding at the end the following:

³⁸ The legislation had a misleading name as it contained no tax provisions and “would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.” H.R. Rep. No. 112-50, 29 (2011-2012) <https://www.congress.gov/congressional-report/112th-congress/house-report/50>.

³⁹ H.R. 910, 112th Cong. (2011). S. 482, 112th Cong. (2011).

“(4) With respect to standards for emissions of greenhouse gases (as defined in section 330) for model year 2017 or any subsequent model year new motor vehicles and new motor vehicle engines—

“(A) the Administrator may not waive application of subsection (a); and

“(B) no waiver granted prior to the date of enactment of this paragraph may be construed to waive the application of subsection (a).”⁴⁰

This proposal would not have been necessary if California had been preempted by EPCA, as amended by EISA, from setting its own greenhouse gas emission standards with a Section 209 waiver from EPA.

The House Committee report for the Energy Tax Prevention Act revealingly explains that the proposed legislation would allow the greenhouse gas emissions standards agreed to by EPA, NHTSA and the State of California in 2009 to remain in effect. That constituted a clear acknowledgment – from members who were not supporters of greenhouse gas regulation either by EPA or states – that existing law allowed both EPA and states to regulate vehicular greenhouse gas emissions. The House bill would have left already-adopted EPA and California regulations in place, but it did not offer any additional authority for the standards to be adopted or go into effect. The report states:

H.R. 910 explicitly exempts these new light duty fuel efficiency standards, which the Administration agreed in 2009 to promulgate pursuant to an agreement between EPA, the National Highway Traffic Safety Administration (NHTSA) and the State of California. Under H.R. 910, these provisions, which are applicable to Model Years 2012 through 2016, will still go into force as planned, as will EPA’s proposed standards for medium and heavy duty engines and vehicles for Model Years 2014 through 2018. Thus, any energy savings from these new standards are preserved by H.R. 910.⁴¹

In sum, rather than arguing that EPA lacked statutory authority to establish greenhouse gas emissions standards, the Committee report stated that EPA was exercising its

⁴⁰ Sec. 3, H.R. 910, 112th Cong. (2011). Sec. 3, S. 482, 112th Cong. (2011).

⁴¹ H.R. Rep. No. 112-50, at 8 (2011-2012) <https://www.congress.gov/congressional-report/112th-congress/house-report/50>.

authority in a manner that the majority of the Committee believed to be unwise as a matter of policy:⁴²

Proponents of EPA's agenda have stated that the Supreme Court's decision should be the last word, but this is incorrect. The Supreme Court did not mandate that the EPA make an endangerment finding and indeed no administration whether Democrat or Republican has ever made such an unprecedented finding. While it is the role of the Supreme Court to interpret existing legislation such as the CAA, Congress is free to amend or clarify that legislation if it believes the Supreme Court concluded wrongly or that circumstances necessitate a change in the law. Indeed, the current Congress would be remiss if it ignored the deleterious impact of EPA's regulatory agenda in favor of a highly controversial 5 to 4 Supreme Court decision and its interpretation of Congressional intent when the CAA which was enacted--decades before global warming emerged as an issue.⁴³

The Committee's majority did not want EPA to use the Clean Air Act to address global warming, but it does not assert that such action was preempted by EPCA or EISA or make a claim that EPA and California lacked authority to regulate greenhouse gas emissions. To the contrary, even members of Congress who opposed greenhouse gas regulation understood that EISA had protected EPA's authority to regulate greenhouse gas emissions from cars and trucks and the related ability of states to regulate those emissions pursuant to section 209(b) of the Clean Air Act.

The Energy Tax Prevention Act passed the House of Representatives on April 7, 2011.⁴⁴ The Senate rejected the legislation when Sen. Mitch McConnell offered it as an amendment to a small business bill on April 6, 2011.⁴⁵ In offering the amendment, Sen. McConnell argued that greenhouse gas emissions standards were unwise but he made

⁴² It is unclear that EPA could have chosen not to issue an endangerment finding after *Massachusetts v. EPA* given the scientific understanding of climate change.

⁴³ H.R. Rep. No. 112-50, at 14-15 (2011-2012) <https://www.congress.gov/congressional-report/112th-congress/house-report/50>. The Committee appears to be unaware of a report on global warming Commissioned by President Lyndon B. Johnson that was communicated to the Congress in 1965. See, Statement by the President in Response to Science Advisory Committee Report on Pollution of Air, Soil, and Waters (Nov. 6, 1965) <https://www.presidency.ucsb.edu/documents/statement-the-president-response-science-advisory-committee-report-pollution-air-soil-and>.

⁴⁴ Roll Call 249, (April 7, 2011) (approved on a vote of 255-172) <http://clerk.house.gov/evs/2011/roll249.xml>.

⁴⁵ S.Amdt.183 to S.493, 112th Cong. (2011).

no indication that he believed – or that anyone believed – that the EPA and state regulations he was seeking to overturn were invalid.⁴⁶ The Energy Tax Prevention Act was not enacted.

IV. The Agencies have Misinterpreted Legislative History Regarding Qualification of State Tailpipe Standards as “Other Motor Vehicle Standards of the Government”

The NHTSA/EPA Proposal also proposes to conclude that State tailpipe standards (whether for greenhouse gases or for other pollutants) do not qualify as “other motor vehicle standards of the Government” under 49 U.S.C. 32902(f). In order to reach this conclusion, the agencies rely upon a House Committee Report from 1994 when Congress codified transportation provisions of title 49 United States Code.⁴⁷ The agencies’ argue that the legislative history associated with this 1994 law supports their proposed conclusion. However, the agencies are wrong to rely upon this legislation as providing any useful legislative history.

The legislation enacted in 1994 was a part of Congress’ ongoing effort to establish a positive law codification of existing law.⁴⁸ This effort is carried out by the Office of the Law Revision Counsel (OLRC). The codification process is a time-consuming, consensus-building process designed to ensure that the original policy, intent, and purpose of the legislation is not changed at all. The OLRC website explains:

Positive law codification by the Office of the Law Revision Counsel is the process of preparing and enacting a codification bill to **restate existing law** as a positive law title of the United States Code. The restatement **conforms to the policy, intent, and purpose of Congress in the original enactments**, but the organizational structure of the law is improved, obsolete provisions are eliminated, ambiguous provisions are clarified, inconsistent provisions are resolved, and technical errors are corrected. ⁴⁹

⁴⁶ Statement of Sen. McConnell on amendment 183 <https://www.congress.gov/congressional-record/2011/03/15/senate-section/article/S1620-2>.

⁴⁷ Safer Affordable Fuel-Efficient Vehicles Rule, 83 Fed. Reg. 43210 (proposed Aug. 24, 2018)(relying on enactment of H.R. 1758, 103rd Cong. (1994)).

⁴⁸ H.R. 1758, 103rd Cong. (June 10, 1994) (effective July 5, 1994).

⁴⁹ Positive Law Codification, Office of the Law Revision Counsel, <http://uscode.house.gov/codification/legislation.shtml> (accessed on October 21, 2018)(emphasis added).

The title of the 1994 legislation the agencies rely upon explicitly states that the purpose of the legislation is “To revise, codify, and enact ***without substantive change*** certain general and permanent laws....”⁵⁰ Therefore, the agencies are simply wrong to conclude that Congress intended to change federal policy regarding this matter in 1994 and are wrong to rely upon this bill to provide any useful legislative history that could guide interpretation of EPCA.

V. Conclusion

Preserving EPA’s authority as interpreted by the Supreme Court was not Congress’ only auto-sector policy response in EISA. Congress was not unsympathetic to the fact that the automobile industry would need to improve the vehicles it brought to market due to the CAFE and Clean Air Act requirements. Pollution would be curbed and consumers would save money at the pump, but capital investments would be required.

Accordingly, EISA contained provisions to offer federal financial assistance to the automakers. The legislation included grants to modernize existing domestic manufacturing facilities to make less polluting, more efficient vehicles; loan guarantees for advanced battery and fuel-efficient parts manufacturing; and a new incentive program for advanced technology vehicles manufacturing. These provisions made billions of dollars in assistance available for the automakers. As an important side note, these provisions helped Ford avoid bankruptcy during the economic downturn of 2008 and were important in the early years of Tesla.

Since the *Massachusetts* ruling, Congress has affirmatively enacted legislation to protect the ruling, provided incentives for industry to retool for lower emitting vehicles, and rejected numerous proposals to limit or overturn it.

Therefore, the agencies should not finalize the conclusion that California is preempted from establishing and enforcing greenhouse gas emissions standards pursuant to section 209 of the Clean Air Act.

⁵⁰ H.R. 1758, 103rd Cong. (1994)(emphasis added).

Appendix B

Selected Cited Documents

- DISCUSSION DRAFT, SUBCOMM. ON ENERGY AND AIR QUALITY, H. ENERGY AND COMMERCE COMM., 110TH CONG. 29 (JUNE 1, 2007)
- PELOSI STATEMENT ON LEGISLATION ADDRESSING ENERGY INDEPENDENCE AND GLOBAL WARMING (JUNE 5, 2007)
- LETTER FROM GOV. ARNOLD SCHWARZENEGGER, CAL., GOV. DEVAL PATRICK, MASS., GOV. CHRISTINE O. GREGOIRE, WASH., GOV. BILL RICHARDSON, N. M., GOV. THEODORE R. KULONGOSKI, OR., GOV. EDWARD G. RENDELL, PA., GOV. JANET NAPOLITANO, ARIZ., GOV. ELIOT SPITZER, N. Y. TO THE HONORABLE RICK BOUCHER, CHAIR, ENERGY AND AIR QUALITY SUBCOMM., H. COMMITTEE ON ENERGY AND COMMERCE COMM. (JUNE 7, 2007)
- LETTER FROM THE ATTORNEYS GENERAL OF THE COMMONWEALTH OF MASS. AND THE STATES OF CAL., CONN., DEL., IOWA, ME., MD., MINN., N. J., N. M., N. Y., OR., R. I., AND VT., AND THE CORPORATION COUNSEL FOR THE CITY OF NEW YORK TO THE HONORABLE JOHN D. DINGELL, CHAIR, H. ENERGY AND COMMERCE COMM. AND THE HONORABLE JOE BARTON, RANKING MEMBER, H. ENERGY AND COMMERCE COMM. (JUNE 6, 2007).
- LETTER FROM S. WILLIAM BECKER, EXEC. DIR., NAT'L ASS'N OF CLEAN AIR AGENCIES, TO THE HONORABLE RICK BOUCHER, CHAIR, SUBCOMM. ON ENERGY AND AIR QUALITY, H. COMMITTEE ON ENERGY AND COMMERCE COMM., AND THE HONORABLE J. DENNIS HASTERT, RANKING MEMBER, SUBCOMM. ON ENERGY AND AIR QUALITY, H. COMMITTEE ON ENERGY AND COMMERCE COMM. (JUNE 6, 2007).
- LETTER FROM BETSY LOYLESS, NATIONAL AUDOBON SOCIETY, ROBERT DEWEY, DEF. OF WILDLIFE, ERICH PICA, FRIENDS OF THE EARTH, JOHN PASSACANTANDO, GREENPEACE, TIERNAN SITTENFELD, LEAGUE OF CONSERVATION VOTERS, KAREN STEUER, NATIONAL ENVIRONMENTAL TRUST, KAREN WAYLAND, NAT. RES. DEF. COUNCIL, JOAN CLAYBROOK, PUB. CITIZEN, DEBBIE SEASE, SIERRA CLUB, ALDEN MEYER, UNION OF CONCERNED SCIENTISTS, ANNA AURILIO, U.S. PIRG, LINDA LANCE, THE WILDERNESS SOC'Y TO U.S. REPRESENTATIVES (JUNE 5, 2007).
- LETTER FROM REPS. HENRY A. WAXMAN, EDWARD J. MARKEY, ANNA G. ESHOO, ELIOT L. ENGEL, LOIS CAPPS, THOMAS H. ALLEN, JANICE D. SCHAKOWSKY, HILDA L. SOLIS, JAY INSLEE, ANTHONY D. WEINER, TAMMY BALDWIN AND ALBERT R. WYNN TO THE HONORABLE JOHN D. DINGELL, CHAIR, H. ENERGY AND COMMERCE COMM. AND THE HONORABLE RICK BOUCHER, CHAIR, SUBCOMM. ON ENERGY AND AIR QUALITY, H. COMMITTEE ON ENERGY AND COMMERCE COMM. (JUNE 7, 2007).

Selected Cited Documents (cont.)

- LETTER FROM KAREN STEUER, VICE PRESIDENT, GOV'T AFFAIRS, NAT'L ENVTL TRUST, DAN LASHOF, SCIENCE DIR., CLIMATE CENTER, NAT. RES. DEF. COUNCIL, DAN BECKER, DIR., GLOBAL WARMING PROGRAM, SIERRA CLUB, MICHELLE ROBINSON, DIR., CLEAN VEHICLES PROGRAM, UNION OF CONCERNED SCIENTISTS, ANNA AURILIO, DIR., WASHINGTON DC OFFICE, U.S. PIRG TO U.S. REPRESENTATIVES (JULY 5, 2007).
- LETTER FROM REP. HENRY A. WAXMAN TO ALL MEMBERS OF THE HOUSE OF REPRESENTATIVES (JULY 26, 2007)
- LETTER FROM SENS. TOM CARPER, DIANNE FEINSTEIN, AND EDWARD J. MARKEY TO SEC'Y ELAINE L. CHAO AND ACTING ADMINISTRATOR ANDREW WHEELER WITH ATTACHMENTS (OCTOBER 25, 2018).

[DISCUSSION DRAFT]

JUNE 1, 2007

1

TITLE I—FUELS

2

SEC. 101. ALTERNATIVE FUELS PROGRAM.

3

(a) IN GENERAL.—Section 211 of the Clean Air Act

4

(42 U.S.C. 4575) is amended by adding the following new

5

subsection at the end thereof:

6

“(t) ALTERNATIVE FUEL PROGRAM.—

7

“(1) DEFINITIONS.—In this section—

8

“(A) ALTERNATIVE FUEL.—

9

“(i) IN GENERAL.—The term ‘alter-

10

native fuel’ means the portion of any

11

motor vehicle or nonroad fuel, as measured

12

by volume, that consists of—

13

“(I) renewable fuel;

14

“(II) methanol, denatured eth-

15

anol, butanol, and other alcohols;

16

“(III) natural gas, including liq-

17

uid fuels domestically produced from

18

natural gas;

19

“(IV) liquefied petroleum gas;

20

“(V) hydrogen;

21

“(VI) qualifying coal-derived liq-

22

uid fuel;

2

1 “(VII) fuels (not including a fuel
2 that consists of alcohol) derived from
3 biological materials (including bio-
4 diesel);

5 “(VIII) electricity provided from
6 the electric power transmission and
7 distribution system; and

8 “(IX) any other fuel that the Ad-
9 ministrator determines, by rule, is not
10 derived from crude oil and would yield
11 energy security benefits or environ-
12 mental benefits.

13 “(ii) QUALIFYING COAL-DERIVED LIQ-
14 UID FUEL.—The term ‘qualifying coal-de-
15 rived liquid fuel’ means liquid fuel pro-
16 duced by a project that—

17 “(I) converts coal to one or more
18 liquid or gaseous transportation fuels;

19 “(II) demonstrates the capture,
20 and sequestration or disposal or use
21 of, the carbon dioxide produced in the
22 conversion process; and

23 “(III) on the basis of a carbon
24 dioxide sequestration plan prepared by
25 the applicant, is certified by the Ad-

1 administrator, in consultation with the
2 Secretary of Energy, as producing
3 fuel with life cycle carbon dioxide
4 emissions at or below the average life
5 cycle carbon dioxide emissions for the
6 same type of fuel produced at tradi-
7 tional petroleum based facilities with
8 similar annual capacities.

9 “(iii) BLENDING COMPONENTS.—The
10 term ‘alternative fuel’ includes any portion
11 of a blending component that is derived
12 from an alternative fuel.

13 “(B) NONROAD FUEL.—The term ‘nonroad
14 fuel’ means fuel that is used, intended for use,
15 or made available for use as a fuel in a nonroad
16 engine or a nonroad vehicle.

17 “(C) OBLIGATED PARTY.—The term ‘obli-
18 gated party’ means any refiner, blender, or im-
19 porter of motor vehicle, or nonroad, gasoline or
20 diesel fuel, that is designated an obligated party
21 under regulations issued by the Administrator
22 for purposes of this subsection.

23 “(D) OTHER TERMS.—The terms used in
24 this subsection have the same meaning as when
25 used in subsection (o).

4

1 “(2) ALTERNATIVE FUEL REGULATIONS.—

2 “(A) STANDARD.—Not later than 2 years
3 after the date of enactment of this subsection,
4 and from time to time thereafter, the Adminis-
5 trator shall promulgate regulations to ensure
6 that motor vehicle and nonroad fuel sold or in-
7 troduced into commerce in the United States,
8 on an annual average basis, contains the appli-
9 cable volume of alternative fuel determined in
10 accordance with this subsection.

11 “(B) PROVISIONS OF REGULATIONS.—Re-
12 gardless of the date of promulgation, the regu-
13 lations promulgated under subparagraph (A)___

14 “(i) shall contain compliance provi-
15 sions applicable to refiners, blenders, dis-
16 tributors, and importers, as appropriate, to
17 ensure that the requirements of this para-
18 graph are met; but

19 “(ii) shall not—

20 “(I) restrict geographic areas in
21 which alternative fuel may be used; or

22 “(II) impose any per-gallon obli-
23 gation for the use of alternative fuel.

24 “(3) APPLICABLE VOLUME.—For the purpose
25 of the regulations under this subsection, the applica-

5

1 ble volume (in billions of gallons) shall be deter-
2 mined under this paragraph.

3 “(A) CALENDAR YEARS 2013 THROUGH
4 2025.—The applicable volume (in billions of gal-
5 lons) for the calendar years 2013 through 2025
6 shall be as provided in the following table:

| calendar year | applicable volume |
|---------------|-------------------|
| 2013 | 14 |
| 2014 | 15 |
| 2015 | 16 |
| 2016 | 17 |
| 2017 | 18 |
| 2018 | 19 |
| 2019 | 20 |
| 2020 | 21 |
| 2021 | 23 |
| 2022 | 26 |
| 2023 | 29 |
| 2024 | 32 |
| 2025 | 35 |

7 “(B) CALENDAR YEAR 2026 AND THERE-
8 AFTER.—Except as otherwise provided in this
9 paragraph, the applicable volume for calendar
10 year 2026 and each calendar year thereafter
11 shall be determined by rule by the Adminis-
12 trator, in coordination with the Secretary of
13 Agriculture and the Secretary of Energy, based
14 on a review of the implementation of the pro-
15 gram under this subsection during calendar
16 years 2020 through 2025, including a review of
17 each of the following:

6

1 “(i) The impact of the use of alter-
2 native fuels on the energy security of the
3 United States.

4 “(ii) The impact of the use of alter-
5 native fuels on public health and the envi-
6 ronment, including air and water quality.

7 “(iii) The expected annual rate of fu-
8 ture production of alternative fuels.

9 “(iv) The impact of alternative fuels
10 on the infrastructure of the United States,
11 including the deliverability of materials,
12 goods, and products other than alternative
13 fuels, and the sufficiency of the infrastruc-
14 ture to deliver alternative fuel.

15 “(v) The impact of the use of alter-
16 native fuels on job creation, the price and
17 supply of agricultural commodities, and
18 rural economic development.

19 “(C) MINIMUM APPLICABLE VOLUME FOR
20 CALENDAR YEAR 2026 AND THEREAFTER.—For
21 the purpose of subparagraph (B), the minimum
22 applicable volume for calendar year 2026 and
23 each calendar year thereafter shall be equal to
24 the product obtained by multiplying the number

7

1 obtained under clause (i) by the ratio obtained
2 under clause (ii).

3 “(i) The number of gallons of motor
4 vehicle and nonroad fuel that the Adminis-
5 trator estimates will be sold or introduced
6 into commerce in the calendar year.

7 “(ii) The ratio that—

8 “(I) 35,000,000,000 gallons of
9 alternative fuel bears to

10 “(II) the number of gallons of
11 motor vehicle and nonroad fuel sold or
12 introduced into commerce in calendar
13 year 2025.

14 “(4) ALTERNATIVE FUEL PERCENTAGES.—

15 “(A) PROVISION OF ESTIMATE OF VOL-
16 UMES OF MOTOR VEHICLE AND NONROAD FUEL
17 SALES.—Not later than October 31, 2012, and
18 annually thereafter, the Administrator of the
19 Energy Information Administration shall pro-
20 vide to the Administrator of the Environmental
21 Protection Agency an estimate, with respect to
22 the following calendar year, of the volumes of
23 motor vehicle and nonroad fuel projected to be
24 sold or introduced into commerce in the United
25 States during the following calendar year.

1 “(B) DETERMINATION OF PERCENT-
2 AGES.—Not later than November 30 of each
3 calendar year after 2012, based on the estimate
4 provided under subparagraph (A), the Adminis-
5 trator shall determine and publish in the Fed-
6 eral Register, with respect to the following cal-
7 endar year, the percentage of the projected vol-
8 ume of motor vehicle and nonroad fuel that
9 must be alternative fuel in order to ensure that
10 the applicable volume requirements of para-
11 graph (3) are met.

12 “(C) REQUIRED ELEMENTS.—The alter-
13 native fuel obligation determined for a calendar
14 year under subparagraph (B) shall—

15 “(i) be applicable to refiners, blenders,
16 and importers of motor vehicle and
17 nonroad gasoline and diesel fuel, as appro-
18 priate;

19 “(ii) be expressed in terms of a vol-
20 ume percentage of motor vehicle and
21 nonroad fuel sold or introduced into com-
22 merce in the United States; and

23 “(iii) subject to clause (i), consist of a
24 single applicable percentage that applies to

1 all categories of persons specified in clause
 2 (i).

3 “(D) ADJUSTMENTS.—In determining the
 4 alternative fuel percentage for a calendar year,
 5 the Administrator shall make adjustments to
 6 prevent the imposition of redundant obligations
 7 on any obligated party.

8 “(5) COMPLIANCE VALUES.—

9 “(A) TABLE.—The Administrator shall as-
 10 sign a compliance value for each alternative fuel
 11 in accordance with the following table to be
 12 used as a multiplier to determine the extent to
 13 which each gallon or other specified unit of the
 14 alternative fuel will satisfy the alternative fuel
 15 volume obligation under this subsection:

| “Fuel type | Compli- ance Val- ues, Years 2013-2015 | Compli- ance Val- ues, Years 2016-2020 | Compli- ance Val- ues, Years After 2020 |
|--|--|--|--|
| Ethanol (non-Cellulosic) | 1.0 | 1.0 | 1.0 |
| Ethanol (Cellulosic) | 2.5 | 1.0 | 1.0 |
| Biodiesel | 1.4 | 1.4 | 1.4 |
| Gas-to-Liquid Diesel Fuel | 1.5 | 1.5 | 1.5 |
| Coal-to-Liquid Diesel Fuel | 1.5 | 1.5 | 1.5 |
| Compressed Natural Gas (78 standard cubic feet) | 1.0 | 1.0 | 1.0 |

| "Fuel type | Compliance Val- ues, Years 2013-2015 | Compliance Val- ues, Years 2016-2020 | Compliance Val- ues, Years After 2020 |
|---|---|---|--|
| Liquefied Natural Gas | 1.0 | 1.0 | 1.0 |
| Liquefied Petroleum Gas | 1.1 | 1.1 | 1.1 |
| Electricity (6.4 kilowatt-hours) | 2.5 | 2.5 | 1.0 |
| Gaseous Hydrogen (132 stand- ard cubic feet) | 2.5 | 2.5 | 1.0 |
| Liquid Hydrogen | 2.3 | 2.3 | 0.8 |
| Methanol | 0.8 | 0.8 | 0.8 |
| Butanol | 1.3 | 1.3 | 1.3 |
| Bio-Butanol | 1.3 | 1.3 | 1.3 |

1 All values are expressed in terms of gallons un-
2 less otherwise specified.

3 "(B) AUTHORITY OF THE ADMINIS-
4 TRATOR.—

5 "(i) IN GENERAL.—In accordance
6 with the requirements described in clause
7 (ii), the Administrator may by rule—

8 "(I) add fuel types to the table
9 contained in subparagraph (A);

10 "(II) revise any fuel type or com-
11 pliance value referred to in the table
12 contained in subparagraph (A); and

13 "(III) assign each new or revised
14 category or subcategory of an alter-

11

1 native fuel type an appropriate com-
 2 pliance value.

3 “(ii) CALCULATION OF COMPLIANCE
 4 VALUES.—When the Administrator assigns
 5 or revises the compliance value for an al-
 6 ternative fuel type, the Administrator shall
 7 establish that compliance value equal to
 8 the ratio of the energy content of the alter-
 9 native fuel to the energy content of eth-
 10 anol. No compliance value for the years
 11 2013 through 2020 may be revised by the
 12 Administrator under this subparagraph for
 13 electricity, gaseous hydrogen, or liquid hy-
 14 drogen or for the years 2013 through 2015
 15 for cellulosic ethanol.

16 “(6) COMPLIANCE WITH STANDARD; USE OF
 17 IDENTIFICATION NUMBERS.—

18 “(A) GENERATION AND ASSIGNMENT.—
 19 Regulations promulgated under this subsection
 20 shall provide that the producer or importer of
 21 any alternative fuel shall generate and assign to
 22 each batch or other quantifiable unit (as deter-
 23 mined by the Administrator) a unique identi-
 24 fication number (except as provided in subpara-
 25 graph (B)).

12

1 “(B) ELECTRICITY.—The regulations of
2 the Administrator under this subsection shall
3 establish a process for generating and assigning
4 identification numbers for the amount of elec-
5 tricity from the electric power transmission and
6 distribution system expected to be used as a
7 motor vehicle or nonroad fuel. For vehicles
8 manufactured prior to 2020 or such later time
9 as the Administrator finds that the producers
10 of the electricity used as a motor vehicle or
11 nonroad vehicle fuel can be determined, the reg-
12 ulations shall provide that the identification
13 numbers for electricity shall be assigned to the
14 manufacturer or importer of motor vehicles or
15 nonroad vehicles fueled by electricity from the
16 electric power transmission and distribution
17 system.

18 “(C) BASIS.—The identification numbers
19 referred to in this paragraph shall be based on
20 the volume of the alternative fuel and the com-
21 pliance values established under paragraph (5).

22 “(D) COMPLIANCE WITH THE STAND-
23 ARD.—Obligated parties shall demonstrate com-
24 pliance with the standard under this subsection

1 by surrendering identification numbers in an
2 appropriate quantity to the Administrator.

3 “(E) DURATION.—An identification num-
4 ber generated under this subsection shall be
5 valid to show compliance for the 12 months as
6 of the date of generation. The Administrator
7 shall interpret this subparagraph the same way
8 as section 211(o)(5)(C) of this Act is inter-
9 preted.

10 “(F) TRADING.—Identification numbers
11 may be held by any individual or entity and
12 transferred by any individual or entity to any
13 other individual or entity.

14 “(G) INABILITY TO GENERATE OR PUR-
15 CHASE.—The regulations promulgated under
16 this paragraph shall include provisions allowing
17 any obligated party that is unable to generate
18 or purchase sufficient identification numbers to
19 meet the standard under paragraph (2) to carry
20 forward an alternative fuel deficit on condition
21 that the obligated party in the calendar year
22 following the year in which the deficit is cre-
23 ated—

24 “(i) achieves compliance with the
25 standard under paragraph (2); and

14

1 “(ii) generates or purchases additional
2 alternative fuel identification numbers to
3 offset the alternative fuel deficit of the pre-
4 vious year.

5 “(H) PROPERTY.—An identification num-
6 ber generated under this subsection does not
7 constitute a property right. Nothing in this sub-
8 section or in any other provision of law shall be
9 construed to limit the authority of the United
10 States to terminate or limit such an identifica-
11 tion number.

12 “(I) IDENTIFICATION NUMBERS FROM RFS
13 PROGRAM.—To demonstrate compliance for the
14 year 2013, the Administrator shall permit the
15 use of identification numbers generated and as-
16 signed under the regulations under subsection
17 (o) to the same extent that subsection (o) would
18 have allowed their use in 2013. Deficits under
19 subsection (o) for the year 2012 may be carried
20 forward to the year 2013 if the requirements of
21 subsection (o)(5)(D) of this section and sub-
22 paragraph (G) of this paragraph are met.

23 “(7) WAIVERS.—

24 “(A) IN GENERAL.—Based on a petition
25 by a State, an obligated party, or on the Ad-

1 administrator's own motion, the Administrator, in
2 consultation with the Secretary of Agriculture
3 and the Secretary of Energy, may waive the re-
4 quirements of paragraph (2) in whole or in part
5 by reducing the national quantity of alternative
6 fuel required under paragraph (3) if the Admin-
7 istrator, after public notice and opportunity for
8 comment, determines that—

9 “(i) implementation of the require-
10 ments would severely harm the economy or
11 environment of a State, a region, or the
12 United States; or

13 “(ii) there is an inadequate domestic
14 supply.

15 “(B) PETITIONS.—The Administrator shall
16 approve or disapprove a petition for a waiver
17 within 90 days after the date on which the peti-
18 tion is received by the Administrator.

19 “(C) TERMINATION OF WAIVERS.—A waiv-
20 er granted under subparagraph (A) shall termi-
21 nate after 1 year, but may be renewed by the
22 Administrator after consultation with the Sec-
23 retary of Agriculture and the Secretary of En-
24 ergy.”.

16

1 (b) PENALTIES AND ENFORCEMENT.—Section
2 211(d) of the Clean Air Act (42 U.S.C.7545(d)) is amend-
3 ed as follows:

4 (1) In paragraph (1)___

5 (A) in the first sentence, by striking “or
6 (o)” each place it appears and inserting “(o), or
7 (u)”;

8 (B) in the second sentence, by striking “or
9 (o)” and inserting “(o), or (u)”;

10 (2) in the first sentence of paragraph (2), by
11 striking “and (o)” each place it appears and insert-
12 ing “(o), and (u)”.

13 (c) RENEWABLE FUEL PROGRAM.—

14 (1) TERMINATION.—Subparagraph (B) of sec-
15 tion 211(o)(2) of the Clean Air Act (42 U.S.C.
16 4575(o)(2)(B)) is amended by striking all after
17 clause (i).

18 (2) 2009 THROUGH 2012 REQUIREMENTS.—The
19 items relating to the years 2009 through 2012 in
20 the table in clause (i) of such subparagraph (B) are
21 amended as follows:

22 (A) Strike “6.1” and insert “10”.

23 (B) Strike “6.8” and insert “11”.

24 (C) Strike “7.4” and insert “12”.

25 (D) Strike “7.5” and insert “13”.

1 **SEC. 102. LOW CARBON FUEL STANDARD AND MOTOR VEHI-**
2 **CLE CARBON REPORTING.**

3 (a) REQUIREMENTS FOR CONTROL OF GREENHOUSE
4 GASES.—The Clean Air Act (42 U.S.C. 7401 and fol-
5 lowing) is amended by adding the following new title at
6 the end thereof:

7 **“TITLE VII—CONTROL OF**
8 **GREENHOUSE GAS EMIS-**
9 **SIONS FROM MOBILE**
10 **SOURCES**

11 **“SEC. 701. DEFINITIONS.**

12 “As used in this title:

13 “(1) GREENHOUSE GAS.—The term ‘greenhouse
14 gas’ means any of carbon dioxide,
15 hydrofluorocarbons, methane, nitrous oxide,
16 perfluorocarbons, and sulfur hexafluoride.

17 “(2) CARBON DIOXIDE EQUIVALENT.—With re-
18 spect to each greenhouse gas, the term ‘carbon diox-
19 ide equivalent’ means the amount of the greenhouse
20 gas that traps the same amount of heat as one met-
21 ric ton of carbon dioxide, as determined by the Ad-
22 ministrator.

1 **“Subtitle A—Control of Greenhouse**
2 **Gas Emissions From Motor Ve-**
3 **hicle and Nonroad Fuels**

4 **“SEC. 711. DEFINITIONS.**

5 “(a) IN GENERAL.—The terms ‘nonroad engine’,
6 ‘nonroad fuel’, ‘nonroad vehicle’ and other terms used in
7 this subtitle have the same meaning as when used in title
8 II of this Act, except as otherwise provided in this subtitle.

9 “(b) OTHER TERMS.—As used in this subtitle:

10 “(1) OBLIGATED PARTY.—The term ‘obligated
11 party’ means those parties designated as obligated
12 parties by the Administrator under regulations pro-
13 mulgated under this subtitle.

14 “(2) LIFECYCLE GREENHOUSE GAS EMIS-
15 SIONS.—The term ‘lifecycle greenhouse gas emis-
16 sions’ means, with respect to a motor vehicle or
17 nonroad fuel, greenhouse gases emitted (directly or
18 indirectly, including from land use changes) during
19 the production, feedstock production or extraction,
20 distribution, marketing, and use of the fuel.

21 “(3) CARBON INTENSITY.—The term ‘carbon
22 intensity’ means, with respect to any fuel, the
23 lifecycle greenhouse gas emissions produced by that
24 fuel divided by a unit of energy produced by that
25 fuel.

1 “(4) AVERAGE CARBON INTENSITY.—The term
2 ‘average carbon intensity’ means, with respect to any
3 fuel or group of fuels, the total lifecycle greenhouse
4 gas emissions produced by that fuel or group of
5 fuels divided by the total amount of energy produced
6 by that fuel or group of fuels.

7 “(5) BASELINE AVERAGE CARBON INTEN-
8 SITY.—The ‘baseline average carbon intensity’
9 means, with respect to any fuel or group of fuels,
10 the average carbon intensity that fuel or group of
11 fuels had in calendar year 2004.

12 **“SEC. 712. LOW CARBON FUEL PROGRAM.**

13 “(a) REGULATIONS.—Not later than 24 months after
14 the date of enactment of this subtitle, the Administrator
15 shall promulgate, and from time to time thereafter modify,
16 regulations under section 211(c) requiring that the aver-
17 age carbon intensity of all motor vehicle and nonroad fuel
18 sold or introduced into commerce in the United States be
19 reduced beginning in the calendar year 2013. The regula-
20 tions under this subtitle shall contain standards and com-
21 pliance provisions applicable to obligated parties and to
22 distributors of motor vehicle or nonroad fuel, as well as
23 to such other persons as the Administrator identifies as
24 appropriate to ensure compliance with this subtitle. Such

1 regulations shall not impose geographic or per-gallon car-
2 bon constraints on any fuel.

3 “(b) ANNUAL AVERAGE CARBON INTENSITY STAND-
4 ARDS.—

5 “(1) IN GENERAL.—The regulations under sec-
6 tion 211(c) and this subtitle shall require that the
7 average carbon intensity of all motor vehicle and
8 nonroad fuel sold or distributed in the contiguous
9 United States in each calendar year after 2012 shall
10 not exceed the average carbon intensity standard es-
11 tablished by the Administrator for the calendar year
12 concerned. The average carbon intensity standard
13 for the calendar year 2013 may not be greater than
14 the baseline average carbon intensity.

15 “(2) AVERAGE CARBON INTENSITY STAND-
16 ARD.— For each year after 2012, the average car-
17 bon intensity standard established by the Adminis-
18 trator under this subsection shall be equal to the av-
19 erage carbon intensity of all motor vehicle and
20 nonroad fuel projected to be sold or distributed in
21 that calendar year assuming that gasoline and diesel
22 fuel have the same average carbon intensity as in
23 2004 and assuming that the alternative fuel stand-
24 ard under section 211(t) is met as follows:

1 “(A) 12,000,000,000 gallons of the alter-
2 native fuel required by that standard will have
3 a carbon intensity equal to 80 percent of the
4 carbon intensity of gasoline.

5 “(B) Of the remainder of the alternative
6 fuel required by that standard for that year__

7 “(i) 50 percent will have a carbon in-
8 tensity equal to 50 percent of the carbon
9 intensity of gasoline; and

10 “(ii) 50 percent will have a carbon in-
11 tensity equal to 25 percent of the carbon
12 intensity of gasoline.

13 “(3) ADJUSTMENT BY ADMINISTRATOR.—The
14 Administrator may adjust the average carbon inten-
15 sity standard to a level other than that prescribed by
16 paragraph (2) based on a consideration of energy,
17 environmental, economic, and safety factors; the
18 time necessary for the development and application
19 of the requisite technology, giving appropriate con-
20 sideration to the cost of compliance and the cost to
21 consumers; and the extent to which the average car-
22 bon intensity standard will assist motor vehicle man-
23 ufacturers in complying with fuel or carbon effi-
24 ciency standards established by the Secretary of
25 Transportation. The Administrator may not lower

1 the average carbon intensity standard below that
2 prescribed by paragraph (2) unless he finds that a
3 lower average carbon intensity is technologically fea-
4 sible. The Administrator may not raise the average
5 carbon intensity standard above that prescribed by
6 paragraph (2) unless he finds that the average car-
7 bon intensity calculated under paragraph (2) is tech-
8 nologically infeasible.

9 **“SEC. 713. ADDITIONAL REQUIREMENTS FOR REGULA-**
10 **TIONS.**

11 “(a) IN GENERAL.—The regulations under section
12 211(c) and this subtitle shall__

13 “(1) define ‘obligated party’ to include any re-
14 finer, importer, or blender of gasoline or diesel fuel;
15 any fuel producer that produces fuel with an average
16 carbon intensity greater than the average carbon in-
17 tensity standard established by the Administrator;
18 and such other fuel producers as the Administrator
19 determines appropriate to aid in the implementation,
20 and assure the enforceability, of the standards estab-
21 lished under this subtitle;

22 “(2) require each obligated party to meet the
23 average carbon intensity standard established under
24 section 712;

1 “(3) modify the identification number system
2 established under section 211(o) so that identifica-
3 tion numbers can be used to track greenhouse gas
4 emissions or carbon intensity and to determine com-
5 pliance with the standards established under this
6 subtitle;

7 “(4) establish a trading system for identifica-
8 tion numbers;

9 “(5) allow each obligated party to comply with
10 the standard established under section 712 through
11 the use of identification numbers described in sec-
12 tion 714;

13 “(6) establish methods for calculating the aver-
14 age carbon intensity of an obligated party’s fuel;

15 “(7) establish default values for the carbon in-
16 tensity of different fuels using different production
17 and extraction processes, feedstocks, and fuel type
18 combinations; and

19 “(8) establish procedures pursuant to which a
20 fuel provider may seek the Administrator’s approval
21 to use a carbon intensity value other than a default
22 value.

23 “(b) LIMITATIONS.—The regulations promulgated
24 under this subtitle shall not—

1 vide that the identification numbers for electricity shall be
2 assigned to the manufacturer or importer of motor vehi-
3 cles or nonroad vehicles fueled by electricity from the elec-
4 tric power transmission and distribution system.

5 “(c) BASIS.—The identification numbers referred to
6 in this section shall contain information reflecting the car-
7 bon intensity of the batch or other quantifiable unit of
8 fuel concerned and such other information as the Adminis-
9 trator deems appropriate.

10 “(d) COMPLIANCE WITH STANDARD.—No later than
11 April 30 of each year, the Administrator shall require each
12 obligated party to demonstrate compliance with the stand-
13 ard established under section 712 for the previous cal-
14 endar year. Identification numbers used to demonstrate
15 compliance shall be surrendered to the Administrator.

16 “(e) DURATION OF IDENTIFICATION NUMBERS.—
17 The identification numbers generated under this subtitle
18 in any calendar year after 2012 may be used by obligated
19 parties to demonstrate compliance with the average carbon
20 intensity standard under this subsection for that calendar
21 year or any calendar year thereafter, subject to record-
22 keeping requirements, regardless of the calendar year in
23 which the fuel is used. The Administrator shall limit the
24 duration of identification numbers as necessary to ensure
25 the integrity of the program. The time period for which

1 identification numbers may be used shall be limited to the
2 time period for which reliable records are kept.

3 “(f) TRADING.—Identification numbers may be held
4 by any individual or entity and transferred to any other
5 individual or entity.

6 “(g) INABILITY TO GENERATE OF PURCHASE SUFFI-
7 CIENT IDENTIFICATION NUMBERS.—The regulations pro-
8 mulgated under this section shall include provisions allow-
9 ing any person that is unable to generate or purchase suf-
10 ficient identification numbers to meet the standard under
11 this subtitle to carry forward a carbon deficit on condition
12 that the person, in the calendar year following the year
13 in which the carbon deficit is created—

14 “(1) achieves compliance with the standard;
15 and

16 “(2) generates or purchases additional identi-
17 fication numbers to offset the deficit of the previous
18 year.

19 “(h) PROPERTY.—An identification number gen-
20 erated under this subsection does not constitute a property
21 right. Nothing in this subsection or in any other provision
22 of law shall be construed to limit the authority of the
23 United States to terminate or limit such an identification
24 number.

1 **“Subtitle B—Greenhouse Gases**
2 **From Motor Vehicles**

3 **“SEC. 721. DEFINITIONS.**

4 “As used in this subtitle:

5 “(1) TITLE II TERMS.—The terms used in this
6 subtitle have the same meaning as when used in title
7 II of this Act, except as otherwise provided in this
8 subtitle.

9 “(2) The term ‘lifetime carbon emissions’
10 means the total projected greenhouse gas emissions
11 from operation of a motor vehicle over the vehicle’s
12 useful life.

13 **“SEC. 722. REPORTS ON FULL USEFUL LIFE CARBON EMIS-**
14 **SIONS.**

15 “(a) REGULATIONS.—Effective with respect to model
16 year 2013 and thereafter, the regulations under section
17 202(a) of title II with respect to greenhouse gas emissions
18 shall contain provisions requiring each motor vehicle man-
19 ufacturer to report on the lifetime carbon emissions of
20 each model of new motor vehicle it sells in the United
21 States, as well as the total lifetime carbon emissions for
22 the entire new motor vehicle fleet it sells.

23 “(b) REPORTING FOR VEHICLES SUBJECT TO TIER
24 2.—The Administrator shall issue regulations no later
25 than 18 months after the enactment of this subtitle, and

1 from time to time thereafter, requiring motor vehicle man-
2 ufacturers to report the projected lifetime carbon emis-
3 sions from new motor vehicles subject to the Tier 2 motor
4 vehicle standards promulgated under title II of this Act.
5 The regulations shall require that each manufacturer re-
6 port emissions for each vehicle model and for the manufac-
7 turer's fleet. These regulations shall take into account
8 lifecycle greenhouse gas emissions of motor vehicle fuel,
9 and shall assume that fuel providers meet alternative fuel
10 and low carbon fuel standards set under this Act.

11 “(c) REPORTING FOR VEHICLES NOT SUBJECT TO
12 TIER 2.—No later than 36 months after the date of the
13 enactment of this subtitle, and from time to time there-
14 after, the Administrator shall issue regulations requiring
15 manufacturers of motor vehicles and motor vehicle engines
16 not covered under subsection (a) to report the lifetime car-
17 bon emissions from each vehicle or engine model and from
18 the manufacturer's fleet or shall issue a final action ex-
19 plaining why it is impracticable to require such reports.”.

20 (b) EPA FUEL REGULATIONS.—Section 211(c) of
21 the Clean Air Act (42 U.S.C. 7545) is amended by adding
22 the following at the end thereof:

23 “(5) The authority of the Administrator to pro-
24 mulgate regulations under this Act regarding green-

1 house gas emissions from motor vehicle and nonroad
2 fuel is limited to the authority under title VII.”.

3 (c) EPA VEHICLE REGULATIONS.—Section 202 of
4 the Clean Air Act (42 U.S.C. 7521) is amended by adding
5 the following new subsection at the end thereof:

6 “(n) CONTROL OF GREENHOUSE GAS EMISSIONS.—
7 The authority of the Administrator to promulgate regula-
8 tions under this Act regarding greenhouse gas emissions
9 from new motor vehicles is limited to the authority under
10 title VII.”.

11 (d) STATE WAIVERS.—Section 209(b)(1) of the
12 Clean Air Act (42 U.S.C. 7543) is amended—

13 (1) in subparagraph (B), by striking “or” at
14 the end;

15 (2) in subparagraph (C), by striking the period
16 and inserting “, or”; and

17 (3) by adding at the end the following subpara-
18 graph:

19 “(D) such State standards are designed to
20 reduce greenhouse gas emissions.”

21 **SEC. 103. STANDARD SPECIFICATIONS FOR BIODIESEL.**

22 Section 211 of the Clean Air Act is amended by add-
23 ing the following new subsection after subsection (t) (as
24 added by this Act):

1 “(u) STANDARD SPECIFICATIONS FOR BIODIESEL.—
 2 Not later than 270 days after the date of enactment of
 3 this subsection, the Administrator shall promulgate regu-
 4 lations establishing a series of uniform per gallon fuel
 5 standards for categories of biodiesel fuel and designate an
 6 identification number for fuel meeting each standard in
 7 each such category so that vehicle manufacturers are able
 8 to design engines to use biodiesel fuel meeting one or more
 9 of such standards.”.

10 **SEC. 104. GRANTS FOR CELLULOSIC ETHANOL PRODUC-**
 11 **TION.**

12 Subsection (r) of section 211 of the Clean Air Act
 13 (as added by section 1512 of the Energy Policy Act of
 14 2005), relating to conversion assistance for cellulosic bio-
 15 mass, waste-derived ethanol, and approved renewable
 16 fuels, is redesignated as subsection (p) and amended as
 17 follows:

18 (1) By adding the following new subparagraphs
 19 at the end of paragraph (3):

20 “(D) \$500,000,000 for fiscal year 2009.

21 “(E) \$500,000,000 for fiscal year 2010.”.

22 (2) By adding the following new paragraph at
 23 the end thereof:

24 “(5) CRITERIA.—In awarding grants under this
 25 section, the Secretary shall give priority to applica-

1 tions that promote feedstock diversity and the geo-
2 graphic dispersion of production facilities.”

3 **TITLE II—ALTERNATIVE FUELS**
4 **INFRASTRUCTURE**

5 **SEC. 201. ALTERNATIVE FUELS INFRASTRUCTURE DEVEL-**
6 **OPMENT.**

7 (a) DEFINITION.—For purposes of this section, the
8 term “alternative fuel” has the meaning given that term
9 in section 211(t)(1)(A) of the Clean Air Act, and includes
10 E-85 gasoline.

11 (b) INFRASTRUCTURE DEVELOPMENT GRANTS.—
12 The Secretary of Energy shall establish a program for
13 making grants for providing assistance to retail and
14 wholesale motor fuel dealers or other entities for the in-
15 stallation, replacement, or conversion of motor fuel storage
16 and dispensing infrastructure to be used exclusively to
17 store and dispense alternative fuel. Such infrastructure
18 may include equipment used in the blending, distribution,
19 and transport of such fuels.

20 (c) RETAIL TECHNICAL AND MARKETING ASSIST-
21 ANCE.—The Secretary of Energy shall enter into contracts
22 with entities with demonstrated experience in assisting re-
23 tail fueling stations in installing refueling systems and
24 marketing alternative fuels nationally, for the provision of

1 technical and marketing assistance to recipients of grants
2 under this section. Such assistance shall include—

3 (1) technical advice for compliance with applica-
4 ble Federal and State environmental requirements;

5 (2) help in identifying supply sources and se-
6 curing long-term contracts; and

7 (3) provision of public outreach, education, and
8 labeling materials.

9 (d) ALLOCATION.—The Secretary of Energy may re-
10 serve funds appropriated for carrying out this section to
11 support alternative fuels infrastructure development
12 projects with a cost of greater than \$1,000,000, that are
13 of national significance. The Secretary shall reserve funds
14 appropriated for the alternative fuels infrastructure devel-
15 opment grant program for technical and marketing assist-
16 ance described in subsection (c).

17 (e) SELECTION CRITERIA.—Not later than 12
18 months after the date of enactment of this Act, the Sec-
19 retary shall establish criteria for evaluating applications
20 for grants under this section that will maximize the avail-
21 ability and use of the alternative fuel, and that will ensure
22 that alternative fuels are available across the country.
23 Such criteria shall provide for—

24 (1) consideration of the public demand for each
25 alternative fuel in a particular geographic area based

- 1 on State registration records showing the number of
2 automobiles that can be operated with alternative
3 fuel;
- 4 (2) consideration of the opportunity to create or
5 expand corridors of alternative fuel stations along
6 interstate or State highways;
- 7 (3) consideration of the experience of each ap-
8 plicant with previous, similar projects;
- 9 (4) consideration of population, number of vehi-
10 cles that can operate on E-85, number of diesel
11 powered vehicles, number of retail fuel outlets, and
12 saturation of vehicles capable of operating on alter-
13 native fuels; and
- 14 (5) priority consideration to applications that—
- 15 (A) are most likely to maximize displace-
16 ment of petroleum consumption, measured as a
17 total quantity and a percentage;
- 18 (B) are best able to incorporate existing
19 infrastructure while maximizing, to the extent
20 practicable, the use of alternative fuels; and
- 21 (C) demonstrate the greatest commitment
22 on the part of the applicant to ensure funding
23 for the proposed project and the greatest likeli-
24 hood that the project will be maintained or ex-

1 panded after Federal assistance under this sec-
2 tion is completed.

3 (f) COMBINED APPLICATIONS.—States and local gov-
4 ernment entities and nonprofit entities may apply for as-
5 sistance under this section on behalf of a group of retailers
6 within a certain geographic area, or to carry out regional
7 or multistate deployment projects. Any such application
8 shall certify the availability and details of a program to
9 match the Federal grant as required under subsection (g)
10 and list the retail locations that would receive the funds.

11 (g) LIMITATIONS.—Assistance provided under this
12 section shall not exceed—

13 (1) 33 percent of the estimated cost of the in-
14 stallation, replacement, or conversion of motor fuel
15 storage and dispensing infrastructure; or

16 (2) \$180,000 for a combination of equipment at
17 any one retail outlet location.

18 (h) OPERATION OF ALTERNATIVE FUEL STA-
19 TIONS.—The Secretary shall establish rules that set forth
20 requirements for grant recipients under this section that
21 include providing to the public the alternative fuel, estab-
22 lishing a marketing plan that informs consumers of the
23 price and availability of the alternative fuel, clearly label-
24 ing the dispensers and related equipment, and providing
25 periodic reports on the status of the alternative fuel sales,

1 the type and amount of the alternative fuel dispensed at
2 each location, and the average price of such fuel.

3 (i) NOTIFICATION REQUIREMENTS.—Not later than
4 the date on which each alternative fuel station begins to
5 offer alternative fuel to the public, the grant recipient that
6 used grant funds to construct or upgrade such station
7 shall notify the Secretary of Energy of such opening. The
8 Secretary of Energy shall add each new alternative fuel
9 station to the alternative fuel station locator on its
10 Website when it receives notification under this sub-
11 section.

12 (j) INELIGIBILITY.—No person may receive assist-
13 ance under this section and receive a credit under section
14 30C of the Internal Revenue Code of 1986.

15 (k) AUTHORIZATION OF APPROPRIATIONS.—There
16 are authorized to be appropriated to the Secretary of En-
17 ergy for carrying out this section \$200,000,000 for each
18 of the fiscal years 2008 through 2014, and such sums as
19 may be necessary thereafter.

20 **SEC. 202. PROHIBITION ON FRANCHISE AGREEMENT RE-**
21 **STRICTIONS RELATED TO ALTERNATIVE**
22 **FUEL INFRASTRUCTURE.**

23 (a) IN GENERAL.—Title I of the Petroleum Mar-
24 keting Practices Act (15 U.S.C. 2801 et seq.) is amended
25 by adding at the end the following:

1 **“SEC. 107. PROHIBITION ON RESTRICTION OF INSTALLA-**
2 **TION OF ALTERNATIVE FUEL PUMPS.**

3 **“(a) DEFINITION.—**In this section:

4 **“(1) ALTERNATIVE FUEL.—**The term ‘alter-
5 native fuel’ means any fuel—

6 **“(A)** at least 85 percent of the volume of
7 which consists of ethanol, natural gas, com-
8 pressed natural gas, liquefied natural gas, lique-
9 fied petroleum gas, hydrogen, or any combina-
10 tion of those fuels; or

11 **“(B)** any mixture of biodiesel (as defined
12 in section 40A(d)(1) of the Internal Revenue
13 Code of 1986) and diesel fuel (as defined in
14 section 4083(a)(3) of the Internal Revenue
15 Code of 1986), determined without regard to
16 any use of kerosene and containing at least 20
17 percent biodiesel.

18 **“(2) FRANCHISE-RELATED DOCUMENT.—**The
19 term ‘franchise-related document’ means—

20 **“(A)** a franchise under this Act; and

21 **“(B)** any other contract or directive of a
22 franchisor relating to terms or conditions of the
23 sale of fuel by a franchisee.

24 **“(b) PROHIBITIONS.—**

25 **“(1) IN GENERAL.—**Notwithstanding any provi-
26 sion of a franchise-related document in effect on the

1 date of enactment of this section, no franchisee or
2 affiliate of a franchisee shall be restricted from—

3 “(A) installing on the marketing premises
4 of the franchisee an alternative fuel pump;

5 “(B) converting an existing tank and
6 pump on the marketing premises of the
7 franchisee for alternative fuel use;

8 “(C) advertising (including through the
9 use of signage or logos) the sale of any alter-
10 native fuel; or

11 “(D) selling alternative fuel in any speci-
12 fied area on the marketing premises of the
13 franchisee (including any area in which a name
14 or logo of a franchisor or any other entity ap-
15 pears).

16 “(2) ENFORCEMENT.—Any restriction de-
17 scribed in paragraph (1) that is contained in a fran-
18 chise-related document and in effect on the date of
19 enactment of this section—

20 “(A) shall be considered to be null and
21 void as of that date; and

22 “(B) shall not be enforced under section
23 105.

24 “(c) EXCEPTION TO 3-GRADE REQUIREMENT.—No
25 franchise-related document that requires that 3 grades of

1 gasoline be sold by the applicable franchisee shall prevent
2 the franchisee from selling an alternative fuel in lieu of
3 1 grade of gasoline.”.

4 (b) CONFORMING AMENDMENTS.—

5 (1) IN GENERAL.—Section 101(13) of the Pe-
6 troleum Marketing Practices Act (15 U.S.C.
7 2801(13)) is amended by adjusting the indentation
8 of subparagraph (C) appropriately.

9 (2) TABLE OF CONTENTS.—The table of con-
10 tents of the Petroleum Marketing Practices Act (15
11 U.S.C. 2801 note) is amended—

12 (A) by inserting after the item relating to
13 section 106 the following:

“Sec. 107. Prohibition on restriction of installation of alternative fuel pumps.”;
and

14 (B) by striking the item relating to section
15 202 and inserting the following:

“Sec. 202. Automotive fuel rating testing and disclosure requirements.”.

16 **SEC. 203. ALTERNATIVE FUEL DISPENSER REQUIREMENTS.**

17 (a) MARKET PENETRATION REPORTS.—The Sec-
18 retary of Energy, in consultation with the Secretary of
19 Transportation, shall determine and report to Congress
20 annually on the market penetration for flexible-fuel vehi-
21 cles in use within geographic regions to be established by
22 the Secretary of Energy.

1 (b) REQUIREMENT.—Not later than 18 months after
2 the date of enactment of this Act, the Secretary of Energy
3 shall issue regulations requiring motor fuel retailers in a
4 region where flexible-fuel vehicle market penetration
5 reaches 15 percent of light-duty motor vehicles, as deter-
6 mined under subsection (a), to install an E-85 compatible
7 dispenser and related systems at their retail fuel facilities
8 on a schedule and priority to be determined by the Sec-
9 retary. In establishing the schedule and priority for the
10 installation of such systems, the Secretary shall—

11 (1) require E-85 fuel compatible dispenser in-
12 stallation consistent with flexible-fuel vehicle market
13 penetration in that region;

14 (2) consider the commercial availability of E-85
15 fuel and the number of competing E-85 wholesale
16 suppliers in the region;

17 (3) consider the level of financial assistance
18 provided on an annual basis by the Federal Govern-
19 ment, State governments, and nonprofit entities for
20 the installation of E-85 compatible infrastructure;

21 (4) exempt retailers who operate only 2 under-
22 ground storage tank dispensers and whose retail lo-
23 cations are unable to support an additional system;

24 (5) provide for waivers for retailers who can
25 demonstrate economic hardship; and

1 (6) provide sufficient time for retailers to make
2 necessary arrangements to comply with the require-
3 ment, including securing necessary funding.

4 (c) CIVIL PENALTY.—A person who violates this sec-
5 tion or the requirements established by the Secretary of
6 Energy under this section shall be liable to the Secretary
7 for a civil penalty to be determined by the Secretary but
8 not to exceed \$500 for each day of such violation.

9 (d) STUDY AND REPORT.—Not later than 1 year
10 after the date of enactment of this Act, the Secretary of
11 Energy shall conduct a study and report to Congress on
12 the feasibility and expense of converting existing motor
13 fuel infrastructure to transport and dispense E-85 fuel.

14 **SEC. 204. PIPELINE FEASIBILITY STUDY.**

15 (a) IN GENERAL.—The Secretary of Energy, in con-
16 sultation with the Secretary of Transportation, shall con-
17 duct a study of the feasibility of the construction of dedi-
18 cated ethanol pipelines.

19 (b) FACTORS.—In conducting the study, the Sec-
20 retary shall consider—

21 (1) the quantity of ethanol production that
22 would make dedicated pipelines economically viable;

23 (2) existing or potential barriers to dedicated
24 ethanol pipelines, including technical, siting, financ-
25 ing, and regulatory barriers;

1 (3) market risk (including throughput risk) and
2 means of mitigating the risk;

3 (4) regulatory, financing, and siting options
4 that would mitigate risk in those areas and help en-
5 sure the construction of 1 or more dedicated ethanol
6 pipelines;

7 (5) financial incentives that may be necessary
8 for the construction of dedicated ethanol pipelines,
9 including the return on equity that sponsors of the
10 initial dedicated ethanol pipelines will require to in-
11 vest in the pipelines;

12 (6) technical factors that may compromise the
13 safe transportation of ethanol in pipelines, identi-
14 fying remedial and preventative measures to ensure
15 pipeline integrity; and

16 (7) such other factors as the Secretary con-
17 siders appropriate.

18 (e) REPORT.—Not later than 15 months after the
19 date of enactment of this Act, the Secretary shall submit
20 to Congress a report describing the results of the study
21 conducted under this section.

22 **TITLE III—VEHICLES**

23 **SEC. 301. AVERAGE FUEL ECONOMY STANDARDS.**

24 (a) INCREASED FUEL ECONOMY STANDARDS.—Sec-
25 tion 32902 of title 49, United States Code, is amended—

1 (1) in subsection (a)—

2 (A) in the subsection heading, by inserting
3 “MANUFACTURED BEFORE MODEL YEAR
4 2012” after “NON-PASSENGER AUTOMOBILES”;
5 and

6 (B) by adding at the end the following:
7 “This subsection shall not apply to automobiles
8 manufactured after model year 2012.”;

9 (2) in subsection (b)—

10 (A) in the subsection heading, by inserting
11 “MANUFACTURED BEFORE MODEL YEAR
12 2012” after “PASSENGER AUTOMOBILES”;

13 (B) by striking “Except as provided for in
14 this section, the” and inserting “The”; and

15 (C) by inserting “and before model year
16 2012” after “1984”;

17 (3) by amending subsection (c) to read as fol-
18 lows:

19 “(c) AUTOMOBILES MANUFACTURED AFTER MODEL
20 YEAR 2011.—

21 “(1) PASSENGER AUTOMOBILES.—(A) Not later
22 than 18 months before the beginning of each model
23 year after model year 2011, the Secretary of Trans-
24 portation shall prescribe, by regulation, average fuel

1 economy standards for passenger automobiles manu-
2 factured by a manufacturer in that model year.

3 “(B) Each standard shall be at the maximum
4 feasible average fuel economy level that the Sec-
5 retary decides the manufacturers can achieve in that
6 model year. Each standard shall be expressed in
7 terms of average miles per gallon of fuel and in
8 terms of average grams per mile of carbon dioxide
9 emissions, such that the specified average grams per
10 mile of carbon dioxide emissions is equivalent in
11 stringency to the average miles per gallon of fuel
12 specified in the standard for that model year.

13 “(C) Except as provided in this section, the av-
14 erage standard for passenger automobiles manufac-
15 tured by a manufacturer in a model year after model
16 year 2021 shall be no less than 36 miles per gallon.

17 “(2) NON-PASSENGER AUTOMOBILES.—(A) Not
18 less than 18 months before the beginning of each
19 model year after model year 2011, the Secretary of
20 Transportation shall prescribe, by regulation, aver-
21 age fuel economy standards for non-passenger auto-
22 mobiles manufactured by a manufacturer in that
23 model year.

24 “(B) Each standard shall be at the maximum
25 feasible average fuel economy level that the Sec-

1 retary decides the manufacturers can achieve in that
2 model year. Each standard shall be expressed in
3 terms of average miles per gallon of fuel and in
4 terms of average grams per mile of carbon dioxide
5 emissions, such that the specified average grams per
6 mile of carbon dioxide emissions is equivalent in
7 stringency to the average miles per gallon of fuel
8 specified in the standard for that model year.

9 “(C) Except as provided in this section, the av-
10 erage standard for non-passenger automobiles manu-
11 factured by a manufacturer in a model year after
12 model year 2024 shall be no less than 30 miles per
13 gallon.

14 “(3) AUTHORITY OF THE SECRETARY.—(A) In
15 prescribing standards under this subsection, the Sec-
16 retary may prescribe standards based on one or
17 more vehicle attributes that relate to fuel economy,
18 which includes carbon efficiency for purposes of this
19 chapter.

20 “(B) Notwithstanding the maximum feasible
21 average fuel economy level established by regulations
22 prescribed under this subsection, for any model year
23 in which the Secretary prescribes attribute-based
24 standards for passenger automobiles, the minimum
25 fleetwide average fuel economy standard for pas-

1 senger automobiles manufactured by a manufacturer
2 in that model year for that manufacturer's domestic
3 fleet and foreign fleet, as calculated under section
4 32904 of this chapter as in effect before the enact-
5 ment of this section, shall be the greater of:

6 “(i) 27.5 miles per gallon; or

7 “(ii) 92 percent of the average fuel econ-
8 omy projected by the Secretary for the com-
9 bined domestic and foreign fleets manufactured
10 by all manufacturers in that model year, which
11 projection shall be published in the Federal
12 Register not later than 18 months before the
13 beginning of that model year.”; and

14 (4) in subsection (g)(1), by striking “subsection
15 (a) or (d)” each place it appears and inserting “sub-
16 section (a), (b), (c), or (d)”.

17 (b) CIVIL PENALTIES.—Section 32912 of title 49,
18 United States Code, is amended—

19 (1) in subsection (b), by striking “\$5” and in-
20 serting “\$10”;

21 (2) by adding a new subsection at the end
22 thereof:

23 “(e) FUND FOR DOMESTIC COMMERCIALIZATION
24 AND PRODUCTION OF ADVANCED TECHNOLOGY VEHI-
25 CLES AND COMPONENTS.—(1) There shall be established

1 in the Treasury of the United States a separate account
2 to fund domestic commercialization and production of ad-
3 vanced technology vehicles and vehicle components. Civil
4 penalties obtained under this section from any manufac-
5 turer that violates a standard prescribed for a model year
6 under section 32902 of this chapter shall be credited to
7 the separate account.

8 “(2) Amounts in the separate account shall be avail-
9 able, subject to annual appropriation, without regard to
10 fiscal year limitation. Additional amounts may be appro-
11 priated to the account.

12 “(3) The Secretary is authorized to make grants from
13 the separate account to automobile manufacturers and
14 component suppliers to pay a portion of the cost to reequip
15 or expand an existing manufacturing facility in the United
16 States to produce advanced technology vehicles or compo-
17 nents.

18 “(4) The Secretary shall deposit at the end of each
19 fiscal year, in the United States Treasury as miscellaneous
20 receipts, amounts in the separate account that the Sec-
21 retary decides are in excess of the needs of the account.
22 The Secretary may carry over funds to the following fiscal
23 year, if the Secretary decides that the continued avail-
24 ability of the funds will be necessary to carry out the pur-
25 poses of this subsection.

1 “(5) The Secretary shall promulgate regulations im-
 2 plementing this subsection in consultation with the Sec-
 3 retary of Energy and the Administrator of the Environ-
 4 mental Protection Agency.”.

5 **SEC. 302. FLEXIBLE FUEL VEHICLE PRODUCTION.**

6 (a) PRODUCTION REQUIREMENTS.—Chapter 329 of
 7 title 49, United States Code, is amended by inserting after
 8 section 32904 the following new section:

9 “§ 32904A. Flexible fuel vehicle production require-
 10 ments

11 “(a) PRODUCTION REQUIREMENTS.—Beginning in
 12 model year 2012, each manufacturer of new motor vehicles
 13 (as defined under section 30(c)(2) of the Internal Revenue
 14 Code of 1986) shall ensure that the percentage of such
 15 vehicles manufactured in a particular model year that are
 16 dual fueled automobiles shall not be less than the percent-
 17 age set forth in the following table:

| “For model year: | The percentage of dual fueled automobiles shall be: |
|------------------|--|
| 2012 | 45 |
| 2013 | 50 |
| 2014 | 55 |
| 2015 | 60 |
| 2016 | 65 |
| 2017 | 70 |
| 2018 | 75 |
| 2019 | 80 |
| 2020 | 85 |

1 “(b) EXCEPTION.—The Secretary of Transportation
2 may temporarily exclude certain automobiles with certain
3 engine types from the production requirements in sub-
4 section (a) if the Secretary determines, in consultation
5 with the Administrator of the Environmental Protection
6 Agency and the Secretary of Energy, that it is techno-
7 logically infeasible for the engines to have dual fuel capa-
8 bility.”.

9 (b) B20 BIODIESEL AS ALTERNATIVE FUEL FOR
10 PURPOSES OF DUAL FUELED AUTOMOBILES.—Section
11 32901(a) of title 49, United States Code, is amended—

12 (1) in paragraph (1), by redesignating subpara-
13 graphs (J) and (K) as subparagraphs (K) and (L),
14 respectively, and inserting after subparagraph (I)
15 the following:

16 “(J) B20 biodiesel blend;” and

17 (2) by redesignating paragraphs (7) through
18 (16) as paragraphs (9) through (18), respectively,
19 and insert after paragraph (6) the following:

20 “(7) ‘biodiesel’ means the monoalkyl esters of
21 long chain fatty acids derived from plant or animal
22 matter which meet—

23 “(A) the registration requirements for
24 fuels and fuel additives established by the Envi-

1 environmental Protection Agency under section 211
2 of the Clean Air Act (42 U.S.C. 7545); and

3 “(B) the requirements of the American So-
4 ciety of Testing and Materials D6751.

5 “(8) ‘B20 biodiesel blend’ means a mixture of
6 biodiesel and diesel fuel meeting any standards es-
7 tablished under section 211(u) of the Clean Air Act
8 approximately 20 percent of the content of which is
9 biodiesel, and commonly known as ‘B20’.”.

10 **SEC. 303. CONSUMER AWARENESS.**

11 (a) CONSUMER EDUCATION CAMPAIGN RELATING TO
12 DUAL FUELED AUTOMOBILES.—The Secretary of Trans-
13 portation, in consultation with the Secretary of Energy,
14 shall carry out an education program to inform people
15 about which automobiles are dual fueled automobiles (as
16 defined in section 32901(a)(8) of title 49, United States
17 Code) and how to exercise their opportunity to choose al-
18 ternative fuels. The Secretary is authorized to obtain from
19 the automobile manufacturers the list of first purchasers
20 of each dual fueled automobile it produced under section
21 30117(b) of title 49, United States Code, and other appro-
22 priate databases maintained by automobile manufacturers
23 for the purpose of identifying the owners of dual fueled
24 automobiles for purposes of notifying them of where alter-
25 native fuels are sold in their area.

1 (b) FUEL CONSERVATION EDUCATION PROGRAM.—

2 (1) PARTNERSHIP.—The Secretary of Trans-
3 portation shall enter into a partnership with inter-
4 ested industry groups, including groups from the
5 automotive, gasoline refining, and oil industries, and
6 groups representing the public interest and con-
7 sumers to establish a public education campaign
8 that provides information to United States drivers
9 about immediate measures that may be taken to
10 conserve transportation fuel.

11 (2) ACCESSIBILITY.—The public information
12 campaign under this section shall be targeted to
13 reach the widest audience possible. The education
14 campaign may include television, print, Internet
15 website, or any other method designed to maximize
16 the dissemination of transportation fuel savings in-
17 formation to drivers.

18 (3) COST SHARING.—The Secretary shall pro-
19 vide no more than 50 percent of the cost of the cam-
20 paign created under this section. The Secretary is
21 authorized to accept private funds to augment funds
22 made available under this paragraph.

23 (4) AUTHORIZATION OF APPROPRIATIONS.—
24 There are authorized to be appropriated to the Sec-

1 retary of Transportation such sums as may be nec-
2 essary to carry out this subsection.

3 **SEC. 304. TIRE FUEL EFFICIENCY CONSUMER INFORMA-**
4 **TION.**

5 (a) IN GENERAL.—Chapter 323 of title 49, United
6 States Code, is amended by inserting after section 32304
7 the following new section:

8 **“§ 32304A. Tire Fuel Efficiency Consumer Informa-**
9 **tion**

10 “(a) RULEMAKING.—(1) Not later than 18 months
11 after the date of enactment of this section, the Secretary
12 of Transportation shall, after notice and opportunity for
13 comment, promulgate rules establishing a national tire
14 fuel efficiency consumer information program for replace-
15 ment tires designed for use on motor vehicles to educate
16 consumers about the effect of replacement tires on auto-
17 mobile fuel efficiency.

18 “(2) ITEMS INCLUDED IN RULE.—The rulemaking
19 shall include each of the following:

20 “(A) A national tire fuel efficiency rating sys-
21 tem for motor vehicle replacement tires to assist
22 consumers in making more educated tire purchasing
23 decisions.

24 “(B) Requirements for providing information to
25 consumers, including information at the point of sale

1 of replacement tires and other potential information
2 dissemination methods, including the internet.

3 “(C) Specifications for test methods for tire
4 manufacturers to use in assessing and rating re-
5 placement tires to avoid variation among test equip-
6 ment and manufacturers.

7 “(D) A national tire maintenance consumer
8 education program including, information on tire in-
9 flation pressure, alignment, rotation, and tread wear
10 to maximize fuel efficiency.

11 “(3) APPLICABILITY.—This section shall not apply to
12 tires excluded from coverage under section 575.104(e)(2)
13 of title 49, Code of Federal Regulations, as in effect on
14 date of enactment of this section.

15 “(b) CONSULTATION.—The Secretary shall consult
16 with the Secretary of Energy and the Administrator of
17 the Environmental Protection Agency on the means of
18 conveying tire fuel efficiency consumer information.

19 “(c) REPORT TO CONGRESS.—The Secretary shall
20 conduct periodic assessments of the rules promulgated
21 under this section to determine the utility of such rules
22 to consumers, the level of cooperation by industry, and the
23 contribution to national goals pertaining to energy con-
24 sumption. The Secretary shall transmit periodic reports
25 detailing the findings of such assessments to the Com-

1 mittee on Energy and Commerce of the House of Rep-
2 resentatives and the Committee on Commerce, Science,
3 and Transportation of the Senate.

4 “(d) TIRE MARKING.—The Secretary shall not re-
5 quire permanent labeling of any kind on a tire for the pur-
6 pose of tire fuel efficiency information.

7 “(e) PREEMPTION.—When a requirement under this
8 section is in effect, a State or political subdivision of a
9 State may adopt or enforce a law or regulation on tire
10 fuel efficiency consumer information only if the law or reg-
11 ulation is identical to that requirement. Nothing in this
12 section shall be construed to preempt a State or political
13 subdivision of a State from regulating the fuel efficiency
14 of tires not otherwise preempted under this chapter.”.

15 (b) ENFORCEMENT.—Section 32308 of such chapter
16 is amended by adding at the end the following:

17 “(e) SECTION 32304A.—Any person who fails to
18 comply with the national tire fuel efficiency consumer in-
19 formation program under section 32304A is liable to the
20 United States Government for a civil penalty of not more
21 than \$50,000 for each violation.”.

22 (c) TABLE OF CONTENTS.—The table of contents for
23 chapter 301 of title 49 is amended by adding the following
24 new item after the item relating to section 32304:

“32304A. Tire fuel efficiency consumer information.”.

1 **SEC. 305. ADVANCED BATTERY LOAN GUARANTEE PRO-**
2 **GRAM.**

3 (a) ESTABLISHMENT OF PROGRAM.—The Secretary
4 of Energy shall establish a program to provide guarantees
5 of loans by private institutions for the construction of fa-
6 cilities for the manufacture of advanced vehicle batteries
7 that are developed and produced in the United States, in-
8 cluding advanced lithium ion batteries.

9 (b) REQUIREMENTS.—The Secretary may provide a
10 loan guarantee under subsection (a) to an applicant if—

11 (1) without a loan guarantee, credit is not
12 available to the applicant under reasonable terms or
13 conditions sufficient to finance the construction of a
14 facility described in subsection (a);

15 (2) the prospective earning power of the appli-
16 cant and the character and value of the security
17 pledged provide a reasonable assurance of repayment
18 of the loan to be guaranteed in accordance with the
19 terms of the loan; and

20 (3) the loan bears interest at a rate determined
21 by the Secretary to be reasonable, taking into ac-
22 count the current average yield on outstanding obli-
23 gations of the United States with remaining periods
24 of maturity comparable to the maturity of the loan.

1 (c) CRITERIA.—In selecting recipients of loan guar-
2 antees from among applicants, the Secretary shall give
3 preference to proposals that—

4 (1) meet all applicable Federal and State per-
5 mitting requirements;

6 (2) are most likely to be successful; and

7 (3) are located in local markets that have the
8 greatest need for the facility.

9 (d) MATURITY.—A loan guaranteed under subsection
10 (a) shall have a maturity of not more than 20 years.

11 (e) TERMS AND CONDITIONS.—The loan agreement
12 for a loan guaranteed under subsection (a) shall provide
13 that no provision of the loan agreement may be amended
14 or waived without the consent of the Secretary.

15 (f) ASSURANCE OF REPAYMENT.—The Secretary
16 shall require that an applicant for a loan guarantee under
17 subsection (a) provide an assurance of repayment in the
18 form of a performance bond, insurance, collateral, or other
19 means acceptable to the Secretary in an amount equal to
20 not less than 20 percent of the amount of the loan.

21 (g) GUARANTEE FEE.—The recipient of a loan guar-
22 antee under subsection (a) shall pay the Secretary an
23 amount determined by the Secretary to be sufficient to
24 cover the administrative costs of the Secretary relating to
25 the loan guarantee.

1 (h) FULL FAITH AND CREDIT.—The full faith and
2 credit of the United States is pledged to the payment of
3 all guarantees made under this section. Any such guar-
4 antee made by the Secretary shall be conclusive evidence
5 of the eligibility of the loan for the guarantee with respect
6 to principal and interest. The validity of the guarantee
7 shall be incontestable in the hands of a holder of the guar-
8 anteed loan.

9 (i) REPORTS.—Until each guaranteed loan under this
10 section has been repaid in full, the Secretary shall annu-
11 ally submit to Congress a report on the activities of the
12 Secretary under this section.

13 (j) AUTHORIZATION OF APPROPRIATIONS.—There
14 are authorized to be appropriated such sums as are nec-
15 essary to carry out this section.

16 (k) TERMINATION OF AUTHORITY.—The authority of
17 the Secretary to issue a loan guarantee under subsection
18 (a) terminates on the date that is 10 years after the date
19 of enactment of this Act.

20 **SEC. 306. DOMESTIC MANUFACTURING CONVERSION**
21 **GRANT PROGRAM.**

22 Section 712 of the Energy Policy Act of 2005 (42
23 U.S.C. 16062) is amended—

24 (1) in subsection (a)—

1 (A) by inserting “and components thereof”
2 after “sales of efficient hybrid and advanced
3 diesel vehicles”;

4 (B) by inserting “, plug-in electric hybrid,
5 flexible-fuel,” after “production of efficient hy-
6 brid”; and

7 (C) by adding at the end the following:
8 “Priority shall be given to the refurbishment or
9 retooling of manufacturing facilities that have
10 recently ceased operation or will cease operation
11 in the near future.”; and

12 (2) by striking subsection (b) and inserting the
13 following:

14 “(b) COORDINATION WITH STATE AND LOCAL PRO-
15 GRAMS.—The Secretary may coordinate implementation of
16 this section with State and local programs designed to ac-
17 complish similar goals, including the retention and retrain-
18 ing of skilled workers from the such manufacturing facili-
19 ties, including by establishing matching grant arrange-
20 ments.

21 “(c) AUTHORIZATION OF APPROPRIATIONS.—There
22 are authorized to be appropriated to the Secretary such
23 sums as may be necessary to carry out this section”.

Pelosi Statement on Legislation Addressing Energy Independence and Global Warming

Washington, D.C. – Speaker Nancy Pelosi released the following statement today on legislation addressing energy independence and global warming:

'Any legislation that comes to the House floor must increase our energy independence, reduce global warming, invest in new technologies to achieve these goals and create good jobs in America.

'Any proposal that affects California's landmark efforts to reduce greenhouse gas emissions or eliminate the EPA's authority to regulate greenhouse gas emissions will not have my support.'



SHARE ON FACEBOOK



SHARE ON TWITTER



SHARE VIA EMAIL



Enter your email address to get the newsletter

SUBMIT



CALIFORNIA
NEW MEXICO
ARIZONA

MASSACHUSETTS
OREGON
NEW YORK

WASHINGTON
PENNSYLVANIA

June 7, 2007

The Honorable Rick Boucher
Chairman, Subcommittee on Energy and Air Quality
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, D.C. 20515

RE: Discussion Draft -- Alternative Fuels, Infrastructure and Vehicles

Dear Representative Boucher:

We are writing to express our strong opposition to the June 1, 2007, discussion draft of Alternative Fuels, Infrastructure and Vehicles. This legislation preempts our states' critical efforts to combat climate change by enacting regulations that reduce greenhouse gas emissions. While federal action is necessary and long overdue on climate change, Congress must not deny states the right to pursue solutions in the absence of federal policy.

Specifically, this bill will preempt California's passenger vehicles and light duty truck emission standards, which will reduce greenhouse emissions by 30 percent. Our states, which collectively represent over one-third of the automobile market, have either adopted or will adopt California's standards. Not only does this bill deny our right to adopt California's vehicle emissions standards—a right granted by the federal Clean Air Act—it eliminates the Environmental Protection Agency's regulatory authority over greenhouse gasses as a pollutant. This amounts to an about-face reversal of the Supreme Court decision identifying CO₂ as a pollutant within the scope of the Clean Air Act (Massachusetts v. EPA). Finally, we are opposed to the bill's delegation of regulatory authority to the National Highway Traffic Safety Administration.

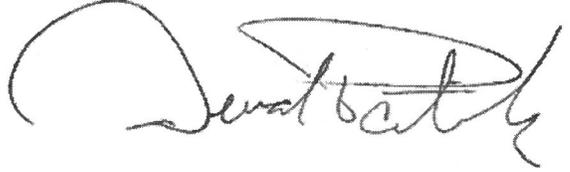
Our states are at the forefront of the effort to reduce greenhouse gas emissions and our nation's dependency on carbon-based fuels. Climate change is real and it impacts the public health and welfare of every American. Congress must preserve states' ability to fight greenhouse gas emissions now. Going forward, states and the federal government must collaborate to take even stronger actions against the continuing threat of climate change.

We urge you to pursue legislation that instead enhances and complements the efforts already underway in our states.

Sincerely,



Governor Arnold Schwarzenegger
California



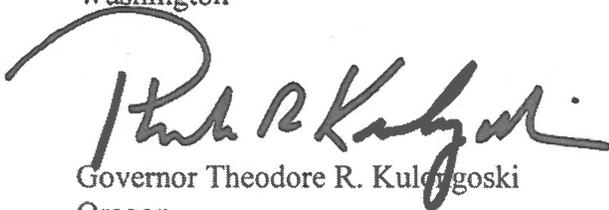
Governor Deval Patrick
Massachusetts



Governor Christine O. Gregoire
Washington



Governor Bill Richardson
New Mexico



Governor Theodore R. Kulongoski
Oregon



Governor Edward G. Rendell
Pennsylvania



Governor Janet Napolitano
Arizona



Governor Eliot Spitzer
New York

**Attorneys General of the Commonwealth of Massachusetts and the States of California,
Connecticut, Delaware, Iowa, Maine, Maryland, Minnesota, New Jersey,
New Mexico, New York, Oregon, Rhode Island, and Vermont, and
the Corporation Counsel for the City of New York**

June 6, 2007

The Honorable John D. Dingell, Chair
House Energy & Commerce Committee
2328 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Joe Barton, Ranking Member
House Energy & Commerce Committee
2109 Rayburn House Office Building
Washington, D.C. 20515

Re: June 1, 2007 Discussion Draft of Motor Vehicle Bill

Dear Chairman Dingell & Ranking Member Barton:

We write today to state our strong opposition to a legislative proposal that Congressman Rick Boucher, Chairman of the Energy & Air Quality Subcommittee, unveiled on June 1, 2007, regarding the regulation of motor vehicle emissions. *See* attached discussion draft. We understand that this proposed bill is going to be the subject of a hearing scheduled for tomorrow before Chairman Boucher's Subcommittee.

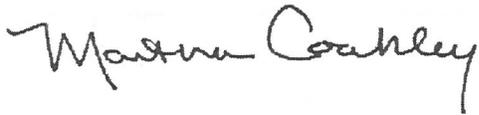
While requiring only incremental increases in federal motor vehicle fuel economy standards, the proposed bill would amend the Clean Air Act in two fundamentally short-sighted ways. First, the bill would eliminate the authority that the Clean Air Act has provided EPA for decades to regulate greenhouse gas emissions, as the U.S. Supreme Court recently recognized. We acknowledge that Congress is, of course, free to amend the underlying statutory framework that the Court reviewed in *Massachusetts v. EPA*. Nevertheless, now is the time for aggressive action to combat the harmful emissions that cause climate change, and we urge Congress not to turn the clock backwards in the proposed manner.

Second, the bill would eliminate EPA's ability to grant a waiver of preemption for California state motor vehicle emission standards for greenhouse gases. As you are aware, other states are currently free to adopt those standards pursuant to Section 177 of the Clean Air Act. A total of twelve of our states have adopted the California standards, with others currently considering them. The bill

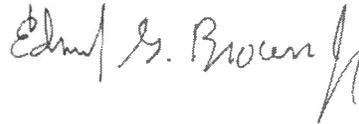
would eliminate the statutory right of states to do so, thereby upsetting the longstanding cooperative federalism established by the Act. The current system of allowing two, but only two, sets of motor vehicle emission standards has worked well over the last four decades. Indeed, most of the technological innovations needed to reduce air pollutant emissions have been because of California's standards.

We urge you to not support this proposal.

Sincerely,



Martha Coakley
Attorney General of Massachusetts



Edmund G. Brown, Jr.
Attorney General of California



Richard Blumenthal
Attorney General of Connecticut



Joseph R. Biden, III
Attorney General of Delaware



Thomas J. Miller
Attorney General of Iowa



G. Steven Rowe
Attorney General of Maine



Douglas F. Gansler
Attorney General of Maryland



Stuart Rabner
Attorney General of New Jersey



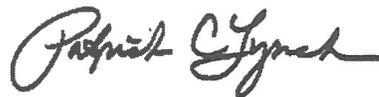
Gary K. King
Attorney General of New Mexico



Andrew M. Cuomo
Attorney General of New York



Hardy Myers
Attorney General of Oregon



Patrick C. Lynch
Attorney General of Rhode Island



William H. Sorrell
Attorney General of Vermont



Lori Swanson
Attorney General of Minnesota

Michael A. Cardozo (S2)

Michael A. Cardozo
Corporation Counsel
City of New York

cc. Committee Members

BOARD OF DIRECTORS

Co-Presidents

Shelley Kaderly
Nebraska

Ursula Kramer
Tucson, AZ

Co-Vice Presidents

Andrew Ginsburg
Oregon

Christine Robinson
Clark County, NV

Co-Treasurers

Arturo J. Blanco
Houston, TX

Colleen Cripps
Nevada

Past Co-Presidents

John Paul
Dayton, OH

Eddie Terrill
Oklahoma

Directors

Joyce E. Epps
Pennsylvania

Larry Greene
Sacramento, CA

G. Vinson Hellwig
Michigan

James Hodina
Cedar Rapids, IA

Lynne A. Liddington
Knoxville, TN

Keith Overcash
North Carolina

Nancy L. Seidman
Massachusetts

David J. Shaw
New York

Don Vidrine
Montana

Executive Director

S. William Becker

June 6, 2007

The Honorable Rick Boucher
Chairman
Subcommittee on Energy and Air Quality
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable J. Dennis Hastert
Ranking Member
Subcommittee on Energy and Air Quality
Committee on Energy and Commerce
U.S. House of Representatives
2322-A Rayburn House Office Building
Washington, DC 20515

Dear Chairman Boucher and Ranking Member Hastert:

The National Association of Clean Air Agencies (NACAA) – which represents the air pollution control agencies in 54 states and territories and more than 165 metropolitan areas across the country – strongly urges you to strike language from draft energy legislation that would inappropriately strip states and EPA of their authorities to regulate motor vehicle-related greenhouse gas emissions. The provisions to which we vigorously object are contained in Subtitle B of a Discussion Draft on Alternative Fuels, Infrastructure, and Vehicles, released last Friday, June 1, 2007, by the House Energy and Commerce Subcommittee on Energy and Air Quality.

First, the draft legislative language would prohibit state enforcement of motor vehicle emission standards designed to reduce greenhouse gas emissions, undercutting the ability of states to combat global warming. In 2005, the State of California adopted greenhouse gas emission standards for motor vehicles. Since that time, 11 additional states have exercised their statutory authority under Section 177 of the Clean Air Act (CAA) to “opt in” to California’s greenhouse gas emission standards, and several others are considering such action. However, neither California nor any of the opt-in states may enforce these standards until EPA grants a waiver of federal preemption to California under Section 209(b)(1) of the CAA. California submitted its request for a waiver to EPA in December 2005; the agency is

currently accepting public comment on this request. However, the Discussion Draft would bar EPA from granting waivers for such programs. NACAA urges that the provisions of the Discussion Draft at Section 722(d) be struck in their entirety; to enact them into law would be an inappropriate revocation of states' rights.

Second, the draft legislative language would also revoke EPA's statutory authority to promulgate regulations to control transportation-related greenhouse gas emissions, thus overriding the recent decision of the United States Supreme Court in *Massachusetts v. EPA*, in which the Court affirmed this Clean Air Act authority. NACAA urges that the Discussion Draft provisions affecting these changes be struck as well.

The Discussion Draft on Alternative Fuels, Infrastructure, and Vehicles will be the subject of an Energy and Air Quality Subcommittee hearing tomorrow, with markup to follow shortly thereafter. NACAA urges that you not only remove the aforementioned provisions from this Discussion Draft, but that you also work to ensure that any energy bill that proceeds through Congress be free of language that would limit state or federal authority to address global warming.

Sincerely,

A handwritten signature in black ink, consisting of a stylized initial 'W' followed by a long horizontal line extending to the right.

S. William Becker

cc: The Honorable John D. Dingell, Chairman, House Committee on Energy and Commerce
The Honorable Joe Barton, Ranking Member, House Committee on Energy and Commerce
Members, House Committee on Energy and Commerce

**Audubon • Defenders of Wildlife • Friends of the Earth • Greenpeace •
League of Conservation Voters • National Environmental Trust •
Natural Resources Defense Council • Public Citizen • Sierra Club •
Union of Concerned Scientists • U.S. PIRG • The Wilderness Society**

June 5, 2007

Dear Representative,

At a time when Americans are paying record prices at the gas pump, global warming is accelerating, and our national security is held hostage by our dependence on oil, it is incumbent upon this Congress to enact legislation that leads America forward with smart energy solutions. The draft legislation that was introduced on June 1st fails to provide these solutions. Instead, it takes America backwards by repealing and preempting federal and state environmental authorities, ignoring rising energy prices, promoting highly polluting fuel sources, requiring a large biofuels production increase without necessary public health and environmental safeguards, and failing to set strong standards to improve fuel economy and promote clean sources of energy. On behalf of our millions of members and supporters nationwide, we urge you to oppose this legislation and support efforts, both in committee and on the floor, to promote the kind of clean energy policy Americans deserve.

A sound energy policy for America would move the country forward by aggressively pursuing energy-saving efficiency measures, boosting fuel economy standards, establishing a national Renewable Electricity Standard, and developing a market for clean, sustainable, low-carbon fuels. Taking these steps would save consumers billions of dollars on their energy bills, cut our dependence on oil and other dangerous energy sources, curb global warming, and create hundreds of thousands of new good jobs across the country.

We object strongly to the following provisions in the draft legislation:

1. **Repeals Federal Clean Air Act Authority and Pre-empt's State Laws:** The draft legislation would repeal the Environmental Protection Agency's Clean Air Act authority to regulate global warming pollution from vehicles and substantially limit its authority for cleaner fuels by legislatively overturning the Supreme Court ruling in *Massachusetts v. EPA*. Moreover, the draft would block at least 12 states from going forward with adopted clean car standards that limit global warming emissions from vehicles. Under the Clean Air Act, California has always been authorized to go beyond federal minimum air pollution standards, and other states may adopt the California standards - in their entirety. California's newest emissions standard - for greenhouse gases - is currently waiting for a waiver from EPA to proceed; EPA has routinely granted over 40 similar waivers over the past 30 years. This bill, if passed, would prevent EPA from granting California the necessary waiver to implement its program, as well as the eleven

other states around the country that follow California's standards. Preserving EPA and state authority to control global warming pollution will not lead to a 'patchwork' of state standards, as some have argued. Since the early 1990s, the Clean Air Act has recognized two vehicle emissions standards in the United States - Federal and California standards. This system has worked smoothly and will not be altered when global warming pollutants are controlled. The draft provisions are a blatant attempt to undermine states' rights and prevent states from moving forward with policies to protect their citizens from the impacts of global warming. **(Title VII, Sec. 122)**

Solution: Protect state and federal authority under the Clean Air Act by striking these provisions and affirmatively defending the rights of EPA and the states to regulate greenhouse gas emissions from both stationary and mobile sources.

- 2. Fuel Economy Targets Are Too Little, Too Late, and May be Nothing at All:** The technology exists today to make all new vehicles – from sedans to pickups to SUVs – go farther on a gallon of gas. Since these vehicles consume over 9 million barrels of oil per day and are the source of 20% of the nation's heat-trapping pollution that causes global warming, any serious effort to cut oil consumption and reduce global warming emissions must include efforts to increase the fuel economy of new vehicles. The draft legislation sets fuel economy targets of 36 miles per gallon for passenger cars by 2021 and 30 miles per gallon for light trucks by 2024. These targets are woefully inadequate and dramatically underestimate the ability of existing fuel-saving technology to increase the fuel economy of all new vehicles. Not only are these targets weaker and effective at a later date than what the National Academy of Sciences reported in 2002, they are also dramatically weaker than the plan articulated by President Bush in this year's State of the Union to raise fuel economy standards 4 percent per year for the next ten years. Adding insult to injury, as drafted, the bill sets a fuel economy goal but then allows NHTSA to set significantly lower standards based on current faulty agency practices. **(Title III, Sec. 301)**

Solution: Raise fuel economy standards 4% per year for new vehicles as called for by H.R. 1506, the Markey-Platts *Fuel Economy Reform Act*. When fully phased-in, this policy would reduce America's oil consumption by 3.1 million barrels per day – more than we currently import from the entire Persian Gulf. At the same time, it would save consumers over \$31 billion per year at the gas pump and prevent over 500 million tons of heat-trapping global warming emissions.

- 3. Liquid Coal is Not a Clean Energy Solution:** The Alternative Fuel Standard opens the door to liquid coal fuels and other nonrenewable alternatives, and fails to include safeguards to ensure that these fuels produce substantially less global warming pollution than the fuels we use today. Together with the liquid coal incentives in the broader bill, which lack clear limits on emissions, the bill would propel the development of a liquid coal fuels industry, with only a plan in place, but no guarantee of global warming

emissions reductions. While the Low-Carbon Fuel Standard is a step in the right direction, but it is too weak and its benefits could be undermined by the failure to include jet fuel. Furthermore, the use of high-emission fuels under the Alternative Fuels Standard could force EPA to weaken the presumptive Low Carbon Fuel Standard. **(Title I, Sec. 101)**

Solution: Reject any provisions of the bill that would encourage the development and expansion of dirty liquid coal; require every alternative fuel to produce at least 20% less global warming lifecycle pollution than conventional fuels; and include jet fuel in the low carbon fuel standard. Overall, these Low Carbon Fuel Standards must be strengthened so that the standards are consistent with an 80% reduction in global warming emissions below 1990 levels by 2050.

4. **Alternative Fuels Standard and Low Carbon Fuels Standard Lacks Necessary Environmental and Public Health Safeguards:** These standards would dramatically increase biofuels and other alternative fuels production in the U.S. without also establishing the necessary safeguards to ensure this increase does not cause substantial harm to the environment and public health. Done right, biofuels hold great potential to help reduce pollution and America's dangerous dependence on oil. The draft legislation, however, fails to include necessary environmental safeguards to protect air, land, and water quality as we dramatically expand biofuels and other alternative fuels production. Forests, conservation lands, wildlife habitat, agricultural lands, and waterways here and abroad would be badly threatened by pressures from the major increase in biofuels production required by the bill.

Solution: To protect public health and the environment, the standards should include safeguards that 1) require that fuel feedstocks are not extracted from environmentally sensitive areas, 2) ensure that the standards not increase any air pollutant over the amounts currently attributable to gasoline, and 3) direct EPA, in consultation with appropriate other agencies to conduct a study and report to Congress on the impacts of the standards, and give EPA authority to waive the Alternative Fuels Standard, if necessary, until the impacts can be mitigated.

5. **Lacks a Strong Renewable Electricity Standard:** The draft legislation fails to increase production of clean, renewable energy by setting a national Renewable Electricity Standard (RES). This standard would boost production of clean, renewable energy sources like wind, biomass, geothermal and solar power. Already, over twenty states across the country have adopted RES policies. Similar proposals have also passed the Senate on three separate occasions. This is a proven policy which must be included in any energy legislation.

Solution: Establish a national Renewable Energy Standard requiring utilities to produce 20 percent of electricity from renewable energy sources by 2020 as required by H.R. 969, the Udall-Platts legislation. Adopting this standard would create over 355,000 new jobs, save over \$12.6 billion on energy bills, and provide

over \$70 billion in new capital investments across the country. At the same time, it would reduce global warming emissions by over 500 million tons.

When Americans voted for a change in Congress, they made it clear that business as usual was no longer acceptable and they demanded real solutions to the problems facing our country. The draft legislation before the House Energy and Commerce committee betrays their trust. It does not guarantee relief for consumers at the pump or real reductions in oil consumption and global warming pollution. We urge Congress to reject this draft legislation and support new legislation that would solve America's energy and global warming crisis by relying on American ingenuity, 21st century technology, and proven standards and safeguards.

Sincerely,

Betsy Loyless
Senior Vice President Public Policy
National Audubon Society

Robert Dewey
Vice President
Government Relations & External Affairs
Defenders of Wildlife

Erich Pica
Director
Domestic Campaigns
Friends of the Earth

John Passacantando
Executive Director
Greenpeace USA

Tiernan Sittenfeld
Legislative Director
League of Conservation Voters

Karen Steuer
Vice President
Government Affairs
National Environmental Trust

Karen Wayland
Legislative Director
Natural Resources Defense Council

Joan Claybrook
President

Public Citizen

Debbie Sease
National Campaign Director
Sierra Club

Alden Meyer
Director of Strategy and Policy
Union of Concerned Scientists

Anna Aurilio
Director
Washington DC Office
U.S. Public Interest Research Group (PIRG)

Linda Lance
Vice President for Public Policy
The Wilderness Society



Congress of the United States

House of Representatives

Washington, DC 20515

June 7, 2007

The Honorable John D. Dingell
Chairman
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Rick Boucher
Chairman
Subcommittee on Energy and Air Quality
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Dingell and Chairman Boucher:

Addressing our nation's energy challenges is one of the most important goals we could achieve as members of the House Energy and Commerce Committee. Our country is burdened by its dependence on oil and our economy, national security, and environment are threatened by impending consequences of unchecked global climate change.

One guiding principle should be that any energy policy Congress enacts recognizes and addresses global warming. We must work to reduce our nation's emissions of greenhouse gases at the same time that we move toward greater energy independence. We need to shift from lagging behind the international community to leading the way.

This is why we are so disappointed by the discussion draft circulated last Friday. Although the Subcommittee has done commendable work at holding hearings and building a record for action, the discussion draft would lead the nation in the wrong direction.

This legislation, if enacted, would overturn the recent Supreme Court decision *Massachusetts v. EPA*. As you know, this landmark decision ruled that greenhouse gases are air pollutants and that EPA has the authority under the Clean Air Act to regulate emissions of greenhouse gases from motor vehicles to protect the public health and welfare. The discussion draft would rescind this authority.

Moreover, the discussion draft would block the efforts by 12 states to regulate and reduce global warming pollution from automobiles. While the federal government has failed to act in

The Honorable John D. Dingell
The Honorable Rick Boucher
June 7, 2007
Page 2

recent years, the states have moved forward. The last thing we should do is attempt to stop important progress being made by the states. The draft's preemption provision has no place in either this draft or any subsequent global warming legislation the Committee will consider.

The discussion draft fails to recognize the importance of reducing the nation's dependence on oil. Rather than immediately increasing the fuel efficiency of the nation's automobile fleet, the draft postpones the first tangible goal for efficiency improvement until 2022, and even then adopts comparatively weak fuel economy targets.

The draft also creates a dangerous risk of coal-based liquid fuels becoming a significant element of our nation's aviation fuel stream. In combination with the discussion draft released last month, this proposal would provide taxpayer subsidies to promote the use of these fuels, which have the potential to be vastly more polluting than traditional petroleum-based fuels.

We have serious concerns about the direction in which the Committee is currently heading and must strongly oppose the draft legislation that has been circulated. We urge you to rethink your approach and produce a bill that will help address the serious threat of global warming and reduce the nation's dependence on oil.

Specifically, we urge you to include the following policies in our Committee's bill:

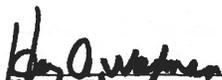
- Mandatory federal policies can significantly increase the efficiency of the transportation sector. Passenger cars and trucks are not nearly as efficient as current technology allows. Increasing the efficiency of these fleets will pay dividends for years to come by reducing both our dependence on oil and our greenhouse gas emissions. We can't wait 15 years to get started.
- Renewable sources of electricity should be an essential part of our energy future. Renewable electricity technology is ready for mass deployment, but without the proper federal requirements they could languish under-utilized. If we attempt to rely upon carbon controls alone to promote renewable energy, we are likely to face unintended consequences, such as overdependence on natural gas.
- One of the least expensive and most readily available sources of energy is the electricity that is currently wasted. While a discussion draft does include some energy efficiency measures, the Committee should establish national, aggressive efficiency targets to reinvigorate electric utility demand-side reduction programs and capitalize on this valuable resource.
- The recent discussion draft contains language to promote alternative fuels and provide assurances about the carbon content of these fuels. However, the Committee

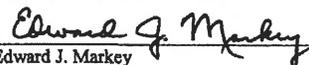
The Honorable John D. Dingell
The Honorable Rick Boucher
June 7, 2007
Page 3

should adopt policies to more comprehensively reduce our reliance on high carbon fuels and ensure that biofuels are sustainably produced. Plug-in hybrids and advanced cellulosic ethanol would not only achieve this purpose, but would also allow us to decrease our dependence on foreign sources of energy.

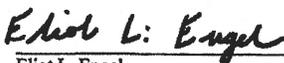
We urge you to abandon the harmful policies that have recently been proposed and carefully consider the policies we suggest above. The Committee has an opportunity to take a bold step to address global warming. We urge you to make it a step in the right direction.

Sincerely,


Henry A. Waxman


Edward J. Markey


Anna G. Eshoo


Eliot L. Engel


Lois Capps


Thomas H. Allen


Janice D. Schakowsky


Hilda L. Solis


Jay Bybee


Anthony D. Weiner


Tammy Baldwin


Albert R. Wynn

National Environmental Trust • Natural Resources Defense Council • Sierra Club
Union of Concerned Scientists • U.S. PIRG

DON'T GET DRIVEN OFF THE ROAD

Oppose the Hill-Terry 'Fig Leaf' Fuel Economy Legislation (HR 2927)

July 5, 2007

Dear Representative,

As Americans across the country celebrated our country's independence day, they were also looking to Congress to move the country toward energy independence. Now more than ever, America needs cars and light trucks that go farther on a gallon of gas. On behalf of our millions of members across the country, we urge you to raise fuel economy standards, as the Senate has done, to 35 miles per gallon over the next decade – the proven method to reducing America's oil consumption, curbing transportation global warming pollution, and saving consumers billions of dollars at the gas pump. Unfortunately, the recently introduced Hill-Terry legislation (H.R. 2927) delays progress, extends loopholes, and keeps America dependent on oil. **We urge you to oppose the Hill-Terry 'Fig Leaf' fuel economy legislation.**

The technology exists today to make all vehicles – from sedans to SUVs to pickup trucks – dramatically more fuel-efficient. Last month, the Senate approved legislation by voice vote that raises fuel economy standards for cars and light trucks to 35 miles per gallon by 2020 – an increase of close to 4 percent per year. President Bush also laid out a goal in this year's State of the Union to increase fuel economy standards 4 percent per year.

The Hill-Terry bill is weaker than the President's plan, the recently passed Senate energy bill, the NAS recommendations, and other bipartisan fuel economy bills in the House. H.R. 2927 sets a fuel economy *target* of just 32 miles per gallon in model year 2022 – a level achieved by the Senate bill nearly 6 years earlier. It would cap future standards at no more than 35 miles per gallon in 2022, even if new fuel-saving technology comes on the market. It would also extend and expand a loophole in the CAFE law for flexible fuel vehicles that will significantly erode the oil savings benefits and allow automakers to make less fuel-efficient vehicles than required by the standard.

Compared to a 4 percent annual increase to 35 mpg in 2018, the weak fuel economy targets in **the Hill-Terry legislation would force consumers to spend an additional \$26 billion dollars at the gas pump, increase America's oil dependence by 1.1 million barrels of oil per day, and release an additional 179 million metric tons of heat trapping global warming pollution** into the atmosphere, in the year 2020 alone.

The Hill-Terry legislation would also codify the administration's anemic fuel economy standard for light trucks, blocking an ongoing state challenge in the courts. It would also

interfere with EPA authority under the Clean Air Act to set vehicle pollution standards and the *Massachusetts v. EPA* decision, inviting future litigation of vehicles standards.

Locking in weak standards and creating more loopholes and roadblocks to a meaningful improvement in fuel economy performance over the next decade does nothing to help the domestic auto industry regain competitiveness. The industry and the nation stand to benefit from advancing fuel-efficient vehicles into the market that will reduce our dependence on oil and curb global warming pollution. Even the industry publication *Automotive News* stated in a recent editorial entitled, *CAFE fight is over; let's get to work on fuel efficiency*, that, "automakers that meet consumer expectations will win. There's no reason why the Detroit 3 can't be winners. This is an opportunity, not just a challenge."

It is time to embrace the American can-do spirit. Congress has the opportunity right now to send a serious "energy independence" bill to the President's desk that would take the critical step of raising fuel economy standards to 35 miles per gallon over the next decade. The bipartisan Markey-Platts Fuel Economy Reform Act (H.R. 1506) would deliver real results, while the Hill-Terry legislation would do little to make progress while creating new loopholes and undermining states' progress in addressing global warming. **We strongly urge you to oppose the Hill-Terry 'Fig Leaf' legislation (H.R. 2927).**

Sincerely,

Karen Steuer
Vice President
Government Affairs
National Environmental Trust

Dan Lashof
Science Director
Climate Center
Natural Resources Defense Council

Dan Becker
Director
Global Warming Program
Sierra Club

Michelle Robinson
Director
Clean Vehicles Program
Union of Concerned Scientists

Anna Aurilio
Director
Washington DC Office
U.S. PIRG

Congress of the United States
Washington, DC 20515

H.R. 2927 Threatens to Preempt States, Block EPA Action, and Overturn the Supreme Court case Massachusetts v. EPA on CO2 Pollution from Cars and Trucks

July 26, 2007

Dear Colleague:

Earlier this year, the Supreme Court decided the landmark case *Massachusetts v. EPA*, which determined that the Environmental Protection Agency (EPA) has the authority to regulate greenhouse gases from motor vehicles.¹ This decision also supported the right of states to adopt the California standards for greenhouse gases from motor vehicles.

H.R. 2927, the Hill-Terry Corporate Average Fuel Economy (CAFE) bill, threatens to overturn these victories. By directing the Department of Transportation (DOT) to express CAFE requirements as CO₂ limits, the bill reinvigorates the claim that DOT's CAFE standards preempt state and EPA global warming standards for vehicles, which the Supreme Court rejected in *Massachusetts v. EPA*.

The interaction between EPA's authority to regulate air pollution and DOT's authority to establish CAFE standards was a key issue in *Massachusetts v. EPA*. In its decision, the Supreme Court held that DOT's and EPA's "obligations may overlap, but there is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency."²

H.R. 2927 amends the CAFE law to blur the line between fuel economy and greenhouse gas emissions standards, reopening and strengthening the claim rejected by the Supreme Court. It requires DOT's CAFE standards to be expressed both in miles per gallon and "in terms of average grams per mile of carbon dioxide emissions."³

This provision would provide opponents of action on global warming with a new argument that Congress had decided to unify fuel economy standards and greenhouse gas emissions standards under DOT. The automakers are in court today trying to overturn the state limits on motor vehicle greenhouse gas emissions adopted by California, Connecticut, Florida, Maine, Massachusetts, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington. They would certainly make the argument that this new CAFE language preempts state authority. The Administration would likely also claim that this language removes EPA's authority to regulate greenhouse gases from motor vehicles.

The sponsors of the bill state that this is not their intent. Yet at best, the outcome would be years of litigation and delay before either the states or EPA would be able to reduce global warming pollution from motor vehicles. At worst, the courts might rule that this language does in fact preempt the states and block EPA action on global warming. Either way, this bill would increase the harm from global warming and the risk of catastrophic warming occurring.

We must not pass legislation that would have the effect of delaying or blocking action on global warming. I urge you not to cosponsor H.R. 2927 and to oppose it if it comes to the floor.

Sincerely,



Henry A. Waxman
Chairman, Committee on Oversight
and Government Reform

¹ *Massachusetts v. EPA*, U.S. Slip Op. No. 05-1120 (Apr. 2007) (online at <http://www.supremecourtus.gov/opinions/06pdf/05-1120.pdf>).

² *Id.*

³ H.R. 2927, sec. 1(a).

United States Senate

WASHINGTON, DC 20510

October 25, 2018

The Honorable Elaine L. Chao
Secretary
U.S. Department of Transportation
1200 New Jersey Ave. SE
Washington, DC 20530

The Honorable Andrew Wheeler
Acting Administrator
Environmental Protection Agency
1301 Constitution Ave. NW
Washington, DC 20460

Dear Secretary Chao and Acting Administrator Wheeler:

We write regarding your proposals to dramatically weaken the fuel economy and greenhouse gas tailpipe standards for cars and light trucks. These proposals additionally seek to remove California's authority to set and enforce its own greenhouse gas tailpipe standards, wrongly asserting that California's authority is preempted by the Energy Policy and Conservation Act (EPCA), as amended by the 2007 Energy Independence and Security Act (EISA).

As elected officials who were deeply involved in the negotiation of the fuel economy provisions of EISA, we can attest to Congress' intent that California's authority under the Clean Air Act be preserved. Not only did Congress include a broadly worded savings clause that expressly retains all authorities conferred by environmental laws,¹ we did so in rejection of several alternative proposals to preempt California's authority. This intent was clearly expressed by two² of us³ during the provisions' December, 2007 consideration on the House and Senate Floors.

This letter transmits contemporaneous emails and other documents that demonstrate unequivocally that in the month before EISA was enacted, there were repeated efforts on the part of the automobile industry, some Members of Congress and the Bush Administration to preempt, limit or otherwise constrain both EPA's and California's authority under the Clean Air Act. All of these efforts were rejected, and were not included in the enacted law.

Specifically, these materials (also attached) include:

- Several draft legislative proposals shared by representatives of Cerberus⁴ in late-November, 2007 that sought to constrain EPA's authority to set greenhouse gas tailpipe standards for cars and light trucks, and remove California's authority to do the same.
- A November 30, 2007 press release that describes the Congressional agreement on the fuel economy provisions of EISA.

¹ See 42 USC 17002.

² <https://www.gpo.gov/fdsys/pkg/CREC-2007-12-06/pdf/CREC-2007-12-06-pt1-PgH14434-2.pdf>. See page 10 for the remarks of then-Congressman Edward J. Markey

³ <https://www.gpo.gov/fdsys/pkg/CREC-2007-12-13/pdf/CREC-2007-12-13-pt1-PgS15385.pdf>. See page 2 for the remarks of Senator Feinstein and the late Senator Inouye

⁴ At the time, Cerberus had purchased Chrysler, and hired Patton Boggs to represent them. See, for example, <http://www.pressreader.com/usa/the-detroit-news/20070718/282651798082147>

trucks in order to abrogate the Supreme Court's decision earlier that year in *Massachusetts v. EPA*.

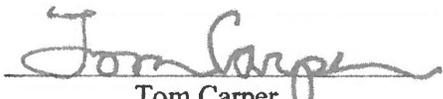
- Draft legislative language proposed in mid-December, 2007 that sought to prevent EPA from setting more stringent greenhouse gas tailpipe standards for cars and light trucks than the fuel economy standards that would be set by the Department of Transportation.
- A press release issued on the date EISA was signed into law acknowledging that the new law did not include any provisions that impacted EPA's or California's authority to set greenhouse gas tailpipe standards for cars and light trucks.

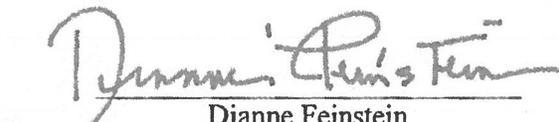
Your Agencies' proposals that assert that California's Clean Air Act authority is preempted by EPCA (as amended by EISA) are starkly contradicted by the body of case law interpreting the interplay between EPCA, Clean Air Act⁵, State waivers under the Clean Air Act, and the legislative history of both acts. That history affirms that EPCA's preemption provisions simply do not apply to pollution standards applicable to new motor vehicles, including greenhouse gas pollution standards, set by EPA or by California acting pursuant to a Clean Air Act waiver. The documents we are transmitting today also make clear that Congress considered, and ultimately rejected, language that would have eliminated or otherwise constrained this authority, even when faced with two Presidential veto threats. We urge you to abandon your legally flawed proposal, and instead support efforts to identify and finalize a consensus approach to fuel economy and greenhouse gas tailpipe standards that has the support, and preserves the authority of, the State of California.

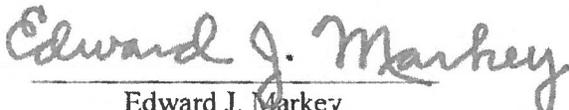
Thank you very much for your attention to this important matter. If you have any questions or concerns, please have your staff contact Michal Freedhoff of the Environment and Public Works Committee staff, at 202-224-8832, Trevor Higgins of Senator Feinstein's staff, at 202-224-3841 or Morgan Gray of Senator Markey's staff, at 202-224-2742.

With best personal regards, we are,

Sincerely yours,


Tom Carper
United States Senator


Dianne Feinstein
United States Senator


Edward J. Markey
United States Senator

⁵ See for example *Massachusetts v. E.P.A.*, 549 U.S. 497, 532 (2007), which stated that the two statutory directives "may overlap, but there is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency", and *Central Valley Chrysler-Jeep, Inc. v. Goldstene*, 529 F. Supp. 2d 1151, 1177 (E.D. Cal. 2007); *Green Mountain Chrysler Plymouth Dodge Jeep v. Crombie*, 508 F. Supp. 2d 295 (D. Vt. 2007), which both held that EPCA does not preempt California's standards.

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.DOC;DOC
Importance: High

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

-----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.

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.

Attachment to 11/20/07 4:38 PM email

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

DISCLAIMER:

This e-mail message contains confidential, privileged information intended solely for the addressee. Please do not read, copy, or disseminate it unless you are the addressee. If you have received it in error, please call us (collect) at (202) 457-6000 and ask to speak with the message sender. Also, we would appreciate your forwarding the message back to us and deleting it from your system. Thank you.

This e-mail and all other electronic (including voice) communications from the sender's firm are for informational purposes only. No such communication is intended by the sender to constitute either an electronic record or an electronic signature, or to constitute any agreement by the sender to conduct a transaction by electronic means. Any such intention or agreement is hereby expressly disclaimed unless otherwise specifically indicated. To learn more about our firm, please visit our website at <http://www.pattonboggs.com>.

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

Importance: High

[REDACTED]

[REDACTED]

> *****

>

>

> What was proffered:

>

> 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)."

>

DISCLAIMER:
This e-mail message contains confidential, privileged information intended solely for the addressee. Please do not read,
copy, or disseminate it unless you are the addressee. If you have received it in error, please call us (collect) at (202) 457-

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.

###



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.

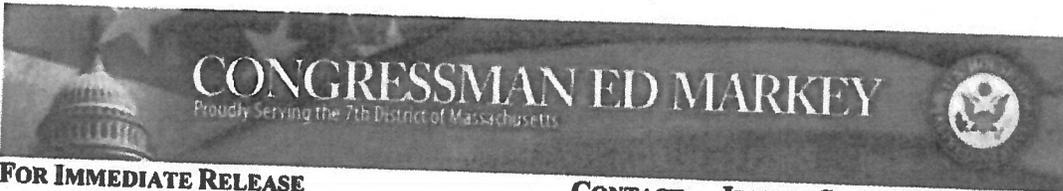
Davis-Bacon: H.R. 6 is contrary to the Administration's long-standing policy of opposing any statutory attempt to expand or contract the applicability of Davis-Bacon prevailing wage requirements. One example, among others, is Section 136, which would impose a new Davis-Bacon requirement for loans made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

#

.....
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.

* * * * *

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."

- 30 -