109TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
109–475

CAFE STANDARDS FOR PASSENGER AUTOMOBILES

MAY 22, 2006.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BARTON of Texas, from the Committee on Energy and Commerce, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 5359]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 5359) to amend the automobile fuel economy provisions of title 49, United States Code, to authorize the Secretary of Transportation to set fuel economy standards for passenger automobiles based on one or more vehicle attributes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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49–006

PURPOSE AND SUMMARY

H.R. 5359 is designed to provide the Secretary of Transportation with the authority to reform the fuel economy program for passenger automobiles based on one or more vehicle attributes related to fuel economy.

BACKGROUND AND NEED FOR LEGISLATION

In 1975, in response to the 1973–74 Arab oil embargo, Congress passed the "Energy Policy Conservation Act" (P.L. 94–163) which added an automobile efficiency title to the Motor Vehicle Information and Cost Savings Act and established Corporate Average Fuel Economy (CAFE) standards for passenger cars and light trucks.

The CAFE law requires each manufacturer selling vehicles in the United States to achieve a harmonically-averaged level of fuel economy, or miles per gallon (mpg), for all specified vehicles manufactured in a given model year (MY). The statute distinguishes passenger cars from light trucks and requires separate calculations for both.

The Secretary of Transportation has delegated authority over the CAFE program to the Administrator of the National Highway Traffic Safety Administration (NHTSA). By rule, NHTSA sets the CAFE standard for light trucks, which is currently at 22.2 for the 2007 MY. The current standard for passenger cars is 27.5 mpg which is set by statute.

In setting a CAFE standard, NHTSA must set standards at the "maximum feasible" level considering four factors: (1) technological feasibility; (2) economic practicability; (3) the effect of other standards on fuel economy; and (4) the need of the nation to conserve energy. NHTSA has also considered safety and the effects on employment in setting a maximum achievable CAFE standard.

While NHTSA has clear authority to set CAFE standards for light trucks, its authority to set passenger car CAFE standards is more ambiguous. The passenger car CAFE standard is currently set in statute at 27.5 mpg (49 U.S.C. § 32902(b)). The statute provides that if NHTSA amends the standard above 27.5 mpg or below 26.0 mpg, either Body of Congress may exercise a legislative veto to prevent the amended standard from becoming law. However, a U.S. Supreme Court case, *INS* v. *Chadha,* 462 U.S. 919 (1983), found the legislative veto to be unconstitutional. There is no severability clause contained in the Energy Policy Conservation Act of 1975. Following the *Chadha* decision, NHTSA did not raise the fuel economy standards for passenger cars above 27.5 mpg or below 26.0 mpg, so the issue of whether NHTSA has the statutory authority to amend the fuel economy standards for such vehicles has not been litigated.

Today's passenger car CAFE standard was set in statute at 27.5 mpg in 1990. Passenger car standards were established for MY 1978 (18 mpg); MY 1979 (19 mpg); MY 1980 (20 mpg); and for MY 1985 and thereafter (27.5 mpg). For the post-1985 period, Congress provided for the continued application of the 27.5 mpg standard for passenger cars, but gave the Department of Transportation the authority to set higher or lower standards (not above 27.5 mpg or below 26.0 mpg), with both Bodies of Congress retaining the ability to "veto" the rulemaking. From 1986 through 1989, the passenger car standards were actually lowered because fuel prices fell along with consumer demand for vehicles with high fuel economy.

In March 2006, NHTSA reformed the light truck CAFE program. Between the 2008–2010 model years, light truck manufacturers may comply with the CAFE law under the preexisting CAFE program, or under the reformed program. Beginning in MY 2011, all light truck manufacturers must comply with the reformed CAFE program. Under the reformed CAFE program, fuel economy standards are restructured so that they are based on a measure of vehicle size called "footprint," the product of multiplying a vehicle's wheelbase by its track width. A target level of fuel economy is established for each one-tenth of a square foot increment in a vehicle's footprint. This produces a continuous curve whereby each discrete vehicle model size is essentially given its own CAFE standard. As long as all models in a manufacturer's fleet meet the harmonically averaged CAFE standard, it will be compliant with the law.

The reformed CAFE program for light trucks will save nearly 262 million barrels, or 11 billion gallons, of oil over the lifetime of the light trucks sold during 2008–2011 MYs. In fact, under the reformed CAFE program, some light trucks will have CAFE standards higher than the passenger car standard.

The reform of the light truck rule has sparked debate about whether the passenger car CAFE system should be modeled on the "continuous curve" reformed CAFE system NHTSA created for light trucks. NHTSA, however, has no authority to reform the passenger car program without a change in the statute.

HEARINGS

The Committee on Energy and Commerce held a hearing on H.R. ———, a Committee Print Authorizing the National Highway Traffic Safety Administration to Set Passenger Car Fuel Economy Standards on May 3, 2006. The Committee received testimony from: The Honorable Sherwood Boehlert, Member, U.S. House of Representatives; The Honorable Norman Mineta, Secretary, United States Department of Transportation; Mr. Frederick Webber, President, Alliance of Automobile Manufacturers; The Honorable Philip R. Sharp, President, Resources for the Future; Dr. William Pizer, Senior Fellow, Resources for the Future; and Mr. Alan Reuther, Legislative Director, United Automobile Workers.

COMMITTEE CONSIDERATION

On Wednesday May 10, 2006, the Full Committee met in open markup session and ordered a Committee Print entitled to amend the automobile fuel economy provisions of title 49, United States Code, to authorize the Secretary of Transportation to set fuel economy standards for passenger automobiles based on one or more vehicle attributes, favorably reported to the House, amended, by a record vote of 28 yeas and 26 nays, a quorum being present. A request by Mr. Barton to allow a report to be filed on a bill to be introduced by Mr. Barton, and that the actions of the Committee be deemed as actions on that bill, was agreed to by unanimous consent.

Committee Votes

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The following are the recorded votes taken on amendments offered to the measure, including the names of those Members voting for and against. A motion by Mr. Barton to order the Committee Print reported to the House, amended, was agreed to by a record vote of 28 yeas and 26 nays.

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 116

Bill: Committee Print, to amend the automobile fuel economy provisions of title 49, United States Code, to authorize the Secretary of Transportation to set fuel economy standards for passenger automobiles based on one or more vehicle attributes.

AMENDMENT: An amendment by Mr. Stearns, No. 2, as amended by unanimous consent, to require the National Highway Traffic Safety Administration to complete a study within 180 days of enactment regarding the two-fleet mandate contained in 49 USC 32904(b).

DISPOSITION: **AGREED TO**, by a roll call vote of 27 yeas to 23 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton	X			Mr. Dingell		X	
Mr. Hall	X			Mr. Waxman		X	
Mr. Bilirakis	X			Mr. Markey		X	
Mr. Upton	X			Mr. Boucher		X	
Mr. Stearns	X			Mr. Towns		X	
Mr. Gillmor				Mr. Pallone		X	
Mr. Deal	X			Mr. Brown		X	
Mr. Whitfield	X			Mr. Gordon		X	
Mr. Norwood	X			Mr. Rush			
Ms. Cubin	X			Ms. Eshoo		X	
Mr. Shimkus	X			Mr. Stupak		X	
Ms. Wilson	X			Mr. Engel		X	
Mr. Shadegg	X			Mr. Wynn			
Mr. Pickering	X			Mr. Green		X	
Mr. Fossella	X			Mr. Strickland			
Mr. Blunt				Ms. DeGette		X	
Mr. Buyer	X			Ms. Capps		X	
Mr. Radanovich	X			Mr. Doyle		X	
Mr. Bass	X			Mr. Allen		X	
Mr. Pitts	X			Mr. Davis			
Ms. Bono	X			Ms. Schakowsky		X	
Mr. Walden	X			Ms. Solis		X	
Mr. Terry	X			Mr. Gonzalez		X	
Mr. Ferguson	X			Mr. Inslee		X	
Mr. Rogers		X		Ms. Baldwin		X	
Mr. Otter	X			Mr. Ross		X	
Ms. Myrick	X						
Mr. Sullivan	X						
Mr. Murphy							
Mr. Burgess	X						
Ms. Blackburn	X						

5/10/2006

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 117

Bill: Committee Print, to amend the automobile fuel economy provisions of title 49, United States Code, to authorize the Secretary of Transportation to set fuel economy standards for passenger automobiles based on one or more vehicle attributes.

AMENDMENT: An amendment by Mr. Markey, No. 3, to require the National Highway Traffic Safety Administration to ensure that in each model year after 2015 that the fuel economy of the combined fleet of cars and light trucks is not less than 33 miles per gallon.

DISPOSITION: **NOT AGREED TO,** by a roll call vote of 17 yeas to 36 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell		X	
Mr. Hall		X		Mr. Waxman	X		
Mr. Bilirakis	X			Mr. Markey	X		
Mr. Upton		X		Mr. Boucher		X	
Mr. Stearns		X		Mr. Towns		X	
Mr. Gillmor		X		Mr. Pallone	X		
Mr. Deal		X		Mr. Brown	X		
Mr. Whitfield		X		Mr. Gordon		X	
Mr. Norwood		X		Mr. Rush		X	
Ms. Cubin		X		Ms. Eshoo	X		
Mr. Shimkus	X			Mr. Stupak		X	
Ms. Wilson		X		Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering		X		Mr. Green		X	
Mr. Fossella		X		Mr. Strickland			
Mr. Blunt				Ms. DeGette	X		
Mr. Buyer		X		Ms. Capps	X		
Mr. Radanovich		X		Mr. Doyle		X	
Mr. Bass		X		Mr. Allen	X		
Mr. Pitts		X		Mr. Davis			
Ms. Bono	X			Ms. Schakowsky	X		
Mr. Walden		X		Ms. Solis	X		
Mr. Terry		X		Mr. Gonzalez		X	
Mr. Ferguson		X		Mr. Inslee	X		
Mr. Rogers		X		Ms. Baldwin	X		
Mr. Otter		X		Mr. Ross		X	
Ms. Myrick		X					
Mr. Sullivan		X					
Mr. Murphy							
Mr. Burgess		X					
Ms. Blackburn		X					

5/10/2006

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 118

Bill: Committee Print, to amend the automobile fuel economy provisions of title 49, United States Code, to authorize the Secretary of Transportation to set fuel economy standards for passenger automobiles based on one or more vehicle attributes.

MOTION: Motion by Mr. Barton to order the Committee Print reported to the House, as amended.

DISPOSITION: **AGREED TO**, by a roll call vote of 28 yeas to 26 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton	X			Mr. Dingell		X	
Mr. Hall	X			Mr. Waxman		X	
Mr. Bilirakis	X			Mr. Markey		X	
Mr. Upton	X			Mr. Boucher		X	
Mr. Stearns	X			Mr. Towns		X	
Mr. Gillmor	X			Mr. Pallone		X	
Mr. Deal	X			Mr. Brown		X	
Mr. Whitfield	X			Mr. Gordon		X	
Mr. Norwood				Mr. Rush		X	
Ms. Cubin	X			Ms. Eshoo		X	
Mr. Shimkus	X			Mr. Stupak		X	
Ms. Wilson	X			Mr. Engel		X	
Mr. Shadegg	X			Mr. Wynn		X	
Mr. Pickering	X			Mr. Green		X	
Mr. Fossella	X			Mr. Strickland		X	
Mr. Blunt				Ms. DeGette		X	
Mr. Buyer	X			Ms. Capps		X	
Mr. Radanovich	X			Mr. Doyle		X	
Mr. Bass	X			Mr. Allen		X	
Mr. Pitts	X			Mr. Davis		X	
Ms. Bono	X			Ms. Schakowsky		X	
Mr. Walden	X			Ms. Solis		X	
Mr. Terry	X			Mr. Gonzalez		X	
Mr. Ferguson	X			Mr. Inslee		X	
Mr. Rogers	X			Ms. Baldwin		X	
Mr. Otter	X			Mr. Ross		X	
Ms. Myrick	X						
Mr. Sullivan	X						
Mr. Murphy							
Mr. Burgess	X						
Ms. Blackburn	X						

5/10/2006

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a legislative hearing and made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goals and objectives of H.R. 5359 is to provide the Secretary of Transportation with the authority to reform the fuel economy program for passenger automobiles based on one or more vehicle attributes related to fuel economy.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 5359, a bill to amend the automobile fuel economy provisions of title 49, United States Code, to authorize the Secretary of Transportation to set fuel economy standards for passenger automobiles based on one or more vehicle attributes, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 18, 2006.

Hon. JOE BARTON,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5359, a bill to amend the automobile fuel economy provisions of title 49, United States Code, to authorize the Secretary of Transportation to set fuel economy standards for passenger automobiles based on one or more vehicle attributes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Gregory Waring (for federal costs), Emily Schlect (for federal revenues), and Craig Cammarata (for the impact on the private sector).

Sincerely,

DONALD B. MARRON,
Acting Director.

Enclosure.

H.R. 5359—A bill to amend the automobile fuel economy provisions of title 49, United States Code, to authorize the Secretary of Transportation to set fuel economy standards for passenger automobiles based on one or more vehicle attributes

CBO estimates that implementing H.R. 5359 would have no significant impact on federal spending. Enacting the bill might lead to a change in federal revenues, but that would depend on future decisions by the Secretary of Transportation that CBO cannot predict.

The Secretary of Transportation is currently authorized to set corporate average fuel economy (CAFE) standards for cars and light trucks sold in the United States. H.R. 5359 would authorize the Secretary to set varying CAFE standards for cars based on size, class, or other characteristics that affect fuel consumption. Under current law, a single CAFE standard for cars applies to the average fuel efficiency of all cars sold by manufacturers, regardless of size or other characteristics. (The CAFE standards for light trucks were recently revised and are now based on vehicle size.)

The National Highway Traffic Safety Administration (NHTSA), within the Department of Transportation, administers the fuel economy program. Based on information from the agency, CBO estimates that implementing H.R. 5359 would have no significant impact on the agency's workload. CBO cannot predict whether the Administration would develop a new CAFE standard under current law, under the bill, or both. In any event, we expect that NHTSA's costs would not be affected significantly.

If NHTSA chose to modify the CAFE standards for cars as authorized by the bill, the average fuel economy of new vehicles sold in the United States might rise above the levels already anticipated under current law. (Even without a change in law, average fuel economy will probably increase somewhat in response to higher fuel prices.) A change in the CAFE standards could affect fuel consumption, excise tax revenues, and penalties imposed on manufacturers for not complying with the standard. If the overall fuel economy of automobiles was increased above that which would be realized under current law, reductions in fuel usage would yield reduced excise taxes on motor fuels. However, some firms might find it preferable to pay penalties instead of complying with the higher fuel economy standards, which would increase revenues from penalties. In any case, any change in federal revenues would probably not occur for several years because it would take time for NHTSA to assess the options and adopt the new standards, and because changes in fuel economy standards in the past have been structured to provide automakers with time to adjust to the new standards.

Fuel efficiency improvements can have substantial effects on excise taxes from motor fuels. For example, whether caused by a change in CAFE standards or rising fuel prices, an increase in the fuel efficiency of all new cars beginning in 2010 of one mile per gallon above the amount expected under current law could reduce excise tax revenues by $300 million a year by 2016. That amount would increase over time as consumers purchase new vehicles. Penalties that automakers pay for violations of CAFE standards have amounted to tens of millions of dollars in recent years. Thus, in most cases, CBO would expect a binding increase in CAFE standards to result in a net reduction of federal revenues.

H.R. 5359 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no direct costs on state, local, or tribal governments. The bill could impose a private-sector mandate, as defined in UMRA, on manufacturers of passenger automobiles if the Secretary implements CAFE standards that are higher than what would have been imposed under current law. Because regulations to set any new standard have not been established and DOT's plans, if any, to amend the CAFE standard under current law are unknown, CBO cannot determine whether the bill would result in new private-sector mandates. Therefore, CBO cannot determine whether the aggregate direct cost of complying with such private-sector mandates would exceed the annual threshold established by UMRA ($128 million in 2006, adjusted annually for inflation).

The CBO staff contacts for this estimate are Gregory Waring (for federal costs), Emily Schlect (for federal revenues), and Craig Cammarata (for the impact on the private sector). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

Federal Mandates Statement

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

Advisory Committee Statement

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

Constitutional Authority Statement

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

Applicability to Legislative Branch

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

Section-by-Section Analysis of the Legislation

Section 1. CAFE standards for passenger automobiles

Section 1(a)(1) amends subsection (c) of 49 U.S.C. § 32902 by giving the Secretary of Transportation the explicit authority to prescribe fuel economy regulations for passenger cars. If the Secretary does not prescribe regulations for any given model year, the standard for the preceding model year will apply for such model year and each model year thereafter.

Section 1(a)(2) requires the Department of Transportation to set the passenger car fuel economy standard at the "maximum feasible" average fuel economy level that the Secretary decides the manufacturers can achieve in that model year. Additionally, the Secretary may establish a standard based on one or more vehicle attributes related to fuel economy. The Committee is aware of the March 29, 2006 rule the Department of Transportation released regarding the fuel economy standards for light trucks. The Department adopted an approach for light trucks based on vehicle size, or footprint. This language is intended to give the Department the same authority to reform the fuel economy program for passenger cars.

Section 1(b) makes the amendments made by section 1(a) effective upon enactment. The Secretary is directed to complete a rulemaking under its new authority no later than December 30, 2008. Such regulations must consider the standard automobile industry design and production processes. This Act only requires that the Department complete its rulemaking by 2008, but it does not require that it affect the very next model year. The design and production process in the automobile industry can range between three and seven years. The Committee expects that any new rule will be phased-in over a series of years and that new passenger car fuel economy standards will affect the 2013 model year.

Under current law, the CAFE statute contains a "two-fleet rule" for passenger cars. A vehicle, irrespective of who manufacturers the passenger car, is considered as part of the "domestic fleet" if 75% or more of the cost of the content is U.S., Canadian, or Mexican in origin. If not, it is considered an import vehicle.

Section 1(c) requires the Administrator of the National Highway Traffic Safety Administration (NHTSA) to conduct a study on the two-fleet requirement of separate fuel economy calculations for automobiles manufactured domestically and not domestically as required by 49 U.S.C. 32904(b). The study shall: (1) assess the effects of such requirement on employment within the automobile industry in the United States; (2) assess the effects of such requirement on overall passenger automobile fuel economy; (3) determine the degree to which such requirement encourages manufacturers to alter their automobiles in order to meet automobile fuel efficiency standards for both domestic and foreign manufactured automobiles; (4) examine the effect of requirements of the North American Free Trade Agreement on the operation of such requirement; (5) determine whether such requirement has resulted in additional costs to automobile consumers; and (6) determine whether such requirement has promoted increased manufacturing of smaller, more fuel-efficient cars in the United States. Not later than 180 days after the date of enactment, NHTSA must transmit a report to Congress and to the Administrator of the Environmental Protection Agency.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 32902 OF TITLE 49, UNITED STATES CODE

§ 32902. Average fuel economy standards

(a) * * *

* * * * * * *

[(c) AMENDING PASSENGER AUTOMOBILE STANDARDS.—(1) Subject to paragraph (2) of this subsection, the Secretary of Transportation may prescribe regulations amending the standard under subsection (b) of this section for a model year to a level that the Secretary decides is the maximum feasible average fuel economy level for that model year. Section 553 of title 5 applies to a proceeding to amend the standard. However, any interested person may make an oral presentation and a transcript shall be taken of that presentation.

[(2) If an amendment increases the standard above 27.5 miles a gallon or decreases the standard below 26.0 miles a gallon, the Secretary of Transportation shall submit the amendment to Congress. The procedures of section 551 of the Energy Policy and Conservation Act (42 U.S.C. 6421) apply to an amendment, except that the 15 calendar days referred to in section 551(c) and (d) of the Act (42 U.S.C. 6421(c), (d)) are deemed to be 60 calendar days, and the 5 calendar days referred to in section 551(f)(4)(A) of the Act (42 U.S.C. 6421(f)(4)(A)) are deemed to be 20 calendar days. If either House of Congress disapproves the amendment under those procedures, the amendment does not take effect.]

(c) AMENDING PASSENGER AUTOMOBILE STANDARDS.—

(1) REGULATIONS.—The Secretary of Transportation may prescribe regulations amending the standard under subsection (b) of this section for a model year. If the Secretary does not prescribe regulations under this subsection for a given model year, the standard in effect for the preceding model year shall apply to such model year and each model year thereafter.

(2) MAXIMUM FEASIBLE AVERAGE FUEL ECONOMY.—The standard prescribed under this subsection shall be the maximum feasible average fuel economy level that the Secretary decides the manufacturers can achieve in that model year. In amending such standard for a model year, the Secretary, consistent with the Secretary's authority under this section for prescribing standards, may establish a standard based on one or more vehicle attributes related to fuel economy.

* * * * * * *

(g) REQUIREMENTS FOR OTHER AMENDMENTS.—(1) * * *

(2) When the Secretary of Transportation prescribes an amendment under this section that makes an average fuel economy standard more stringent, the Secretary shall prescribe the amendment [(and submit the amendment to Congress when required under subsection (c)(2) of this section)] at least 18 months before the beginning of the model year to which the amendment applies.

* * * * * * *

DISSENTING VIEWS OF REPRESENTATIVES JOHN D. DINGELL, HENRY A. WAXMAN, EDWARD J. MARKEY, RICK BOUCHER, EDOLPHUS TOWNS, FRANK PALLONE, JR., SHERROD BROWN, BART GORDON, BOBBY L. RUSH, ANNA G. ESHOO, BART STUPAK, ELIOT L. ENGEL, ALBERT R. WYNN, GENE GREEN, TED STRICKLAND, DIANA DEGETTE, LOIS CAPPS, MICHAEL F. DOYLE, TOM ALLEN, JIM DAVIS, JAN SCHAKOWSKY, HILDA L. SOLIS, CHARLES A. GONZALEZ, JAY INSLEE, TAMMY BALDWIN, AND MIKE ROSS

This is a flawed bill that has resulted from a flawed legislative process. All 26 Democratic Members of the Committee on Energy and Commerce voted against the Committee Print. It delegates vague and over-broad authority to the Secretary of Transportation, the consequences of which are not fully understood. By deviating from fleet-wide averaging, it may result in a rollback of existing environmental regulation and may undermine existing incentives for manufacturers to produce small cars in the United States. Moreover, there is no question that the Committee Print will not reduce gas prices in the near-term.

Process

The Subcommittee on Energy and Air Quality held no hearings and did not consider any legislative proposals in open markup. The Committee held one hearing on May 3, 2006, the first hearing on Corporate Average Fuel Economy (CAFE) standards in over a decade. Six witnesses testified with divergent views on how best to reform the system that regulates the fuel economy of automobiles, and the official record of the hearing remains open for additional information. While high gasoline prices have brought about a rush of legislation to the House floor, all witnesses at the hearing, including the Secretary of Transportation, agreed that legislation increasing CAFE standards will not affect gas prices in the near-term. The Committee did not receive any expert testimony supporting the bill, nor did it have the benefit of the Administration's views. The Department of Transportation did submit its own different legislative proposal a few hours prior to the Committee's consideration of the Committee Print.

Authority to increase passenger car CAFE standards

The Secretary of Transportation is already authorized under Title 49 U.S. Code Section 32902(c) to increase passenger automobile fuel economy standards above 27.5 miles per gallon or below 26.0 miles per gallon. In response to a question from Chairman Barton, Secretary Mineta stated, "there is no question that we have authority to set the stringency of the CAFE standard, in other words, the miles per gallon." Consequently, the primary purpose of the Committee Print is to grant the Department authority to reform the CAFE system for passenger automobiles.

Over-broad and vague delegation of authority

The Committee Print includes different legislative language authorizing the reform of CAFE for passenger automobiles than the statutory authority the Secretary used to reform CAFE for non-passenger automobiles. The discrepancy was not explained, and it is not clear what the consequences of the new language may be. The Committee Print authorizes the Secretary to set a standard based on one or more vehicle attributes related to fuel economy. Few elements of a motor vehicle are not related to vehicle fuel economy. In response to questions from Rep. Dingell, committee counsel conceded that an attribute could include fuel type, external ornamentation, number of doors, the type of tires, and numerous other features.

Fleet-wide averaging

By permitting the Secretary to set standards based upon one or more vehicle attributes, the current system requiring manufacturers to satisfy an overall fleet-wide average could be eliminated. Without fleet-wide averaging, the separate foreign and domestic fleet requirements would no longer require manufacturers to produce small vehicles domestically. In a May 10, 2006, letter opposing the Committee Print, the United Automobile Workers (UAW) states that "the legislation would directly threaten the jobs of tens of thousands of American workers employed in plants that assemble or produce parts for small cars." The lack of a fleet-wide average could also decrease the overall fuel economy of vehicles sold in the United States. The UAW notes, "auto companies could simply up-weight or up-size their vehicles, yet still satisfy lower overall CAFE requirement for larger vehicles. In our judgment, Congress should not give its blessing to any overhaul of the CAFE system that could hurt fuel economy, the environment and our nation's energy security."

CAFE requirement for foreign and domestic fleets

All Democratic Members of the Committee present at the time of the vote voted against an amendment offered by Rep. Stearns to re-evaluate the requirement that manufacturers comply with CAFE standards separately for vehicles produced domestically and overseas. Efforts to undermine the distinction between foreign and domestic fleets, or the requirement that manufacturers comply with a fleet-wide average, could reduce domestic production of small vehicles and reduce overall fuel economy of our vehicles. This would be a negative result for American manufacturing, American workers, and the environment.

Conclusion

This hastily crafted bill will do nothing to reduce gasoline prices, grants over-broad authority to the Secretary of Transportation, may result in poorer fuel economy for passenger vehicles, and threatens American jobs. It should be defeated.

JOHN D. DINGELL.

HENRY A. WAXMAN.
EDWARD J. MARKEY.
RICK BOUCHER.
EDOLPHUS TOWNS.
FRANK PALLONE, Jr.
SHERROD BROWN.
BART GORDON.
BOBBY L. RUSH.
ANNA G. ESHOO.
BART STUPAK.
ELIOT L. ENGEL.
ALBERT R. WYNN.
GENE GREEN.
TED STRICKLAND.
DIANA DEGETTE.
LOIS CAPPS.
MICHAEL F. DOYLE.
TOM ALLEN.
JIM DAVIS.
JAN SCHAKOWSKY.
HILDA L. SOLIS.
CHARLES A. GONZALEZ.
JAY INSLEE.
TAMMY BALDWIN.
MIKE ROSS.

ADDITIONAL DISSENTING VIEWS OF CONGRESSMAN EDWARD J. MARKEY, OTHERS

There is nothing in this bill that will result in higher fuel economy standards for passenger automobiles. In fact, by allowing the Department of Transportation to set "attribute-based" standards in the absence of a minimum fleet-wide average fuel economy, this bill may actually result in lower fuel economy standards. This is because manufacturers will only be required to ensure that each model they manufacture meets the fuel economy standard required for its attribute-based class. If the manufacturer chooses to alter the composition of its fleet (i.e. to produce more models with attributes that are required to meet lower fuel economy standards), then its fleet-wide fuel economy performance could actually be lower than the 27.5 miles per gallon standard it is required to achieve under current law.

The Markey amendment, which failed on a 36–17 vote, would have ensured that the average fleet-wide fuel economy for cars and light trucks would reach 33 miles per gallon after model year 2015, and would have ensured that each manufacturer's foreign and domestic fleets separately meet that average minimum requirement.

The Markey amendment CAFE goal is consistent with the 2001 report by the National Academy of Sciences (NAS) entitled "Effectiveness and Impact of CAFE Standards." During the only hearing the Committee held on this issue, the Secretary of Transportation also expressed his interest in this important report, saying that he intended to study it going forward. While it is encouraging that the Administration is interested in this report, it is unacceptable that they would offer it up now as an excuse *not* to set a strong CAFE standard, 5 years after the report was issued.

The NAS report forms the technical basis for the Markey amendment, and should provide confidence that reaching a 33 mpg standard using today's technologies is both feasible and economic. The NAS analysis developed 3 different 'technology paths' (see Chapter 3, in particular pages 35–39) that could be used to improve the fuel economy of passenger cars and light trucks. All technology paths assumed $1.50/gallon of gas, the cost of available technologies at the time, and all assumed a 5% weight increase as a result of the addition of new CAFE and/or safety technology. Obviously, these assumptions yield conservative estimates of achievable increases to CAFE standards because the much higher cost of gas would imply that more technologies would now be cost-effective by comparison, and in addition, because more technologies have presumably been developed in the past 5 years since the analysis was performed.

The NAS report lists numerous technologies which could be incorporated for each size class of vehicle and for each technology pathway. The fuel economy improvements deemed possible for each of the second technology pathway technologies add up to a range of achievable fuel economy improvement of 34–65.5%. Using the lower bound of this range, or a 34% improvement in CAFE standards, one arrives at a new achievable CAFE standard of 33 miles per gallon.

This is the basis for the amendment, and for H.R. 3762, the Boehlert-Markey CAFE bill. It is based on the most conservative interpretation of the middle-of-the-road technology pathway described by the NAS in 2001. Clearly, we can do much better than this. Passage of the Markey amendment would have guaranteed that we do not do worse.

Had the Markey amendment been adopted, it would have ensured an oil savings of 500,000 barrels per day (an amount equal to what the United States currently imports from Iraq) by 2015, and an oil savings of 2.1 million barrels per day by 2025.

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