



U.S. Department
of Transportation
**National Highway
Traffic Safety
Administration**

1200 New Jersey Avenue SE.
Washington, DC 20590

Matthew B. Nelson
Office of Senator Diane Feinstein
United States Senate
Washington, DC 20510

FEB 19 2010

Re: Response to Inquiry concerning Potential Impact of Murkowski
Resolution on NHTSA's CAFE Rulemaking

Dear Matthew:

On February 1, you sent an e-mail to Curtis Johnson (Governmental Affairs) raising a number of questions as to how, if at all, the National Highway Traffic Safety Administration's (NHTSA's) rulemaking to establish Corporate Average Fuel Economy (CAFE) standards for light duty vehicle model years 2012-2016 might be affected by the passage of the resolution introduced by Senator Murkowski (the Murkowski Resolution) on January 22. Mr. Johnson forwarded your inquiry to NHTSA, and I am responding on behalf of the agency.

As a strictly legal matter, the Murkowski Resolution does not directly impact NHTSA's independent statutory authority to set fuel economy standards under the Energy Policy and Conservation Act (EPCA), as amended by the Energy Independence and Security Act of 2007 (EISA). However, passage of the Murkowski Amendment would have profoundly adverse effects on the national economy, national environmental and energy security objectives, and the economically distressed automobile manufacturing industry. While NHTSA's promulgation of independent, stand alone CAFE standards would make important contributions, its standards could not avoid those adverse effects.

President Obama's National Fuel Efficiency Plan, announced in May 2009, involves the adoption of harmonized and consistent national greenhouse gas emissions (GHG) standards by the United States Environmental Protection Agency (EPA) and CAFE standards by NHTSA. The plan garnered the unprecedented support of a diverse group of stakeholders (*i.e.*, states, environmental groups, automobile manufacturers and labor unions) which had been at odds for years. It did so by replacing a patchwork of state and federal rules governing fuel economy and GHG emissions that were inadequate, uncertain, potentially conflicting, and in a constant state of flux. The National Plan also was crafted to resolve contentious and longstanding litigation and



to deliver numerous additional benefits to consumers and the nation as a whole. These include:

- Delivering substantial fuel savings to consumers (*e.g.*, over \$3,000 worth of fuel over the life of a 2016 regulated vehicle);
- Implementing one clear and consistent set of standards that an economically distressed industry could satisfy by building a single national fleet, instead of the pre-existing patchwork of standards that would have required companies to build separate fleets for different states;
- Reducing GHG emissions by 950 million metric tons over the life of the regulated vehicles; and
- Saving an estimated 1.8 billion barrels of petroleum over the life of the regulated vehicles.

If NHTSA were forced to proceed on its own, many of these benefits would substantially erode. Moreover, given EPA's grant of the California waiver request in 2009, California and the States that adopted the California standards could move forward to enforce standards that are inconsistent with the Federal standards, thus creating confusion, encouraging renewed litigation, and driving up the cost of compliance to automobile manufacturers and consumers alike. (The benefits of adopting the National Plan are set out in greater detail in the USEPA and DOT Notice of Upcoming Joint Rulemaking to Establish Vehicle GHG Emissions and CAFE Standards, 74 Fed. Reg. 24007 (May 22, 2009) and in the Agencies' Proposed Rulemaking to Establish Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards, 74 Fed. Reg. 49454 (Sept. 28, 2009)).

With this important background in mind, we provide the following responses to the questions you posed:

Q. Can NHTSA issue a vehicles rule on time if Murkowski passes?

- A. NHTSA is obligated by statute to promulgate standards for model year 2012 vehicles by no later than April 1, 2010 (*i.e.*, 18 months prior to the start of a new model year). At this late date, it is unlikely that NHTSA would have sufficient time to decouple its rulemaking from the joint rulemaking effort in time to meet the April 1 deadline.

Q. Because NHTSA issued a draft rule jointly with EPA, wouldn't NHTSA have to issue its own freestanding draft rule before issuing a final, freestanding rule?

A. No. Because NHTSA and EPA independently justified their proposed standards under their respective statutory authorities and the final standards will be logical outgrowths of the proposed standards, either NHTSA or EPA could finalize its proposed standards without action by the other agency. However, as explained above, such an approach would lead to a number of serious, adverse consequences.

Q. Would NHTSA have the ability and the authority to reanalyze what is “maximum feasible” if Murkowski passed?

A. A re-analysis would be unnecessary. Passage of the Murkowski Resolution would not require or encourage NHTSA to revisit or reanalyze what constitutes “maximum feasible” fuel economy standards. As noted in the answer to the previous question, NHTSA must determine “maximum feasible” based on a balancing of specified statutory criteria and consideration of currently available data and public comments. This determination was made independent of EPA’s justification and would not be affected by EPA’s inability to act.

Q. If NHTSA does not get a vehicle rule out 18 months ahead of the model year 2012, would that mean that NHTSA would be in violation of the Ten in Ten Fuel Economy Act?

A. Yes. EPCA/EISA requires NHTSA to issue the final rule for a particular model year not less than 18 months in advance of that model year. If NHTSA fails to meet that deadline, it would be in technical violation of the statute.

Q. Bottom line: What is NHTSA’s plan in order to comply with the Ten in Ten Fuel Economy Act in the event that Senator Murkowski’s resolution of disapproval passed?

A. NHTSA is opposed to passage of the Murkowski Resolution for the reasons stated above. NHTSA remains committed to finalizing CAFE standards for model years 2012-2016 by April 1. Nonetheless, if the Murkowski Resolution were to be adopted, NHTSA would endeavor to fulfill its statutory obligation to finalize a CAFE rule as quickly as practicably possible under the circumstances.

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In sum, while passage of the Murkowski Resolution would not directly affect NHTSA's independent legal authority, it would have serious, adverse consequences for the Nation's economy, its energy independence and security, and the public health and welfare.

Sincerely,

A handwritten signature in black ink, appearing to read "O. Kevin Vincent". The signature is fluid and cursive, with the first name "O. Kevin" and the last name "Vincent" clearly distinguishable.

O. Kevin Vincent
Chief Counsel