

**INTERNAL DELIBERATIVE DOCUMENT OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY
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Jackie
Krieger/DC/USEPA/US
06/15/2007 11:43 AM

To Erica Watkins
cc Bryan Wood-Thomas, Karen Orehowsky, Rebecca White
bcc
Subject Re: briefing materials for 6_15_07 Johnson Pre-brief

Will you bring copies to the briefing?

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06/14/2007 05:10 PM

To Jackie Krieger/DC/USEPA/US@EPA
cc Karen Orehowsky/DC/USEPA/US@EPA, Bryan
Wood-Thomas/DC/USEPA/US@EPA, Rebecca
White/DC/USEPA/US@EPA
Subject briefing materials for 6_15_07 Johnson Pre-brief

Jackie,
Attached are the briefing materials for the pre-brief with Administrator Johnson.

 SJ Briefing CA_GHG Status June 15.ppt
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Erica D. Watkins
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EPA-3466

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President's GHG Rule:
Status Briefing

Briefing for Administrator Johnson
June 15, 2007

Agenda

- The California Waiver Request
- Vehicles Updates
- Fuels Updates
- Schedule

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California GHG Waiver Overview

- Chronology
- Waiver Criteria
- Record/Comments to Date
- EPA's Administrative Process
- Schedule

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Chronology

- Supreme Court decision in *Mass v EPA* issued on April 2, 2007
- April 30, 2007, EPA published a notice of a public hearing and opening of comment period regarding California's request
- EPA hearings – May 22, 2007 in Crystal City, VA and May 30, 2007 in Sacramento, CA
- Written Comment Period Closes June 15, 2007
 - Requests for an extension of comment period received from the Alliance of Automobile Manufacturers (May 9 and May 23, and June 11); AIAM, NADA and Utility Air Regulatory Group
 - June 8, 2007 – EPA letter restating the comment period deadline of June 15, 2007

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Waiver of Preemption – Clean Air
Act Criteria

- Waiver review will be guided by Section 209(b) – Requires EPA to grant CA a waiver unless any of 3 specified criteria are found by EPA
- EPA shall waive the preemption in 209(a) unless:
 - California was "substantially and completely" in determining that its standards will be, in the aggregate, at least as protective of public health or welfare as applicable federal standards;
 - California does not need such state standards to meet compelling and extraordinary conditions; or
 - Such standards are not consistent with section 202(a) of the Act
- Additional comment sought on 3 questions relating to 209(b) criteria
 - Does that CA's regulations relate to global climate change should that affect EPA's evaluation of the 3 statutory criteria?
 - Whether the *Mass v. EPA* Supreme Court decision is relevant to EPA's evaluation of the 3 statutory criteria?
 - Whether the Energy Policy and Conservation Act (EPCA) fuel economy provisions are relevant to EPA's consideration of CA's petition or to CARB's authority to implement its vehicle GHG regulations?

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Record/Comments to Date

- Expect most comments to be submitted on June 15th deadline
- Docket: 33,000 plus mass mailing comments, initial comments of the Alliance of Automobile Manufacturers dated June 5, 2007
- EPA hearings
 - Approximately 30 testifiers in Virginia and over 50 in CA
 - Variety of state and local governments, environmental and public health organizations, academia, industry, and others
 - Overwhelming support for granting the waiver
 - Only opposition came from auto makers (no individual companies testified)
 - Key messages/evidence presented
 - CA has compelling need for their program
 - Impact on snowpeak, NOx and VOC, rising sea levels, etc
 - Important/Trial step
 - No legal or technical rationale to deny waiver
 - Fuel waiver practices demands approval
 - Auto: CA has not demonstrated that program will make any difference in future temperature estimates and thereby raised a few policy issues
 - OTCAD initial assessment from May 11th briefing – CA met the statutory criteria for a waiver; interim assessment based on waiver record to date also supports this conclusion

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Proposed Schedule

- Comment period closes June 15
 - Expect significant amount of written comments, especially from auto industry
 - Will conduct overview of comments received to see if proposed schedule is realistic and to identify on a broad basis the scope of technical and legal issues
 - Targeting summary of written comments for 30 days after close
 - Likely to get follow-up comments as well
 - Comment summary/issues briefings for the Administrator
- Approximately an additional 45 days for OAR, OGC drafting of decision document
- Decision Document review by senior management - October 1
- Signature - October 15

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Coordination on Vehicles with NHTSA

- Staff level technical teams have begun meeting this week
- Joint teams on key issues: including technical feasibility, costs, economic impacts, vehicle program design
 - All day meeting at EPA's Ann Arbor Laboratory yesterday
- We've stressed the importance of more rigorous and extensive analysis of technologies and costs
- NHTSA's inability to respond to our repeated request for auto companies product plans and access to VOLPE modeling tool (due to confidentiality) is severely hampering the teams ability to make progress
 - Auto companies future product plans are a key input to NHTSA's historic CAFE analysis, and should be carefully reviewed and considered in the GHG rule development

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GHG Rule: Vehicle Program Analysis Underway

- GHG rule requires analysis of many elements to develop a comprehensive and defensible program
- Key areas for program development include:
 - Program structure
 - Basis/form of standard
 - Credit trading & implementation mechanisms
 - Regulatory test cycle & procedures
 - Technological feasibility assessment
 - Stringency
 - Safety
 - Leadtime
 - Cost analysis
 - Benefits analysis
 - GHGs & air quality analysis
 - Energy impacts, energy security
 - Economic impact assessment

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Areas of Concern

- Proposed NHTSA time line for data development not credible
 - Trying to have model runs completed by June 27th
- Importance of evaluating other and newer credible sources of information on technology and cost (i.e. CA submission and VT case)
 - NHTSA reliance on old data (i.e. 2001 NAS study)
- Delay tactics on access to product plans and access to VOLPE modeling tool
 - Auto companies have submitted detailed future product plans, technology and cost information to NHTSA in response to a recent Request for Comment notice
 - This material is confidential, and key input to our vehicle standards development
 - We have been working with NHTSA for 3 weeks to obtain copies
 - NHTSA has provided the material to DOE, based on a one paragraph request letter
- If we continue to operate under these conditions we will not be able to issue a defensible rule

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Stakeholder Outreach with Auto Industry

- Together with NHTSA, we've begun intensive stakeholder outreach with key auto companies to get their early input in shaping the vehicle GHG program
- Have already met with:
 - GM
 - Chrysler
 - Ford
 - Honda
- Meetings next with:
 - Toyota
 - Nissan
 - Mercedes
- Autos are providing early input on:
 - Design of the program
 - Feasibility, costs, leadtime
 - Credit trading (including trading across fuels & vehicles)
 - Flexible implementation mechanisms
- Outreach (in coordination with NHTSA) will continue throughout development of the proposed rule

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Fuel Rule Update

- Fuel Program Structure
- Stakeholder Outreach
- Analysis Plans and Interagency Collaboration

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Fuel Program

- Facing dual goals
 - Volume targets of the SOTU
 - GHG std resulting from the Supreme Court decision
- Executive Order asks us to accomplish these goals under our existing authority

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How to Meet Both Volume and GHG Goals?

- 211(c) provides authority for the RFS program
 - Renewable fuel volumes only - cannot include CTL, GTL, CNG, etc.
 - Restrictions on credit life, gasoline only, 48 state, highway fuel, limited waiver authority
 - 211(c) doesn't go away - have to at least maintain 7.5 Bgal and other aspects specified
 - Have to put in place renewable fuel standards for 2013+
- 211(c) provides general authority for fuel standards
 - If such fuel or fuel additive causes or contributes to air pollution which may reasonably be anticipated to endanger public health or welfare - in this case GHG
 - Broad flexibility, can include alternative fuels
- Can utilize both authorities to meet both volume and GHG objectives
 - Minimum renewable volumes under 211(c)
 - Larger volumes and more flexible credit trading under a 211(c) based GHG std
- Could be developed as a parallel program
- Goal is to work with stakeholders to design as an integrated program
 - One implementation structure (e.g., RIN system) with two standards
 - Believe one hybrid program is practicable, at least if stds are such that the 211(c) std is not constraining - just a minimum

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Stakeholder Outreach

- Have begun meeting with individual companies at both the OD and staff levels
 - Marathon, Chevron, Exxon and Koch
 - RFA, API, NPRA
- Positive responses for working with EPA in developing the program
- Others meetings planned
 - ACE, NBB, ConocoPhillips, Aventine, ADM, Abengoa, Petrobras, Cargill, Governor's Ethanol Coalition, NRDC, Natural gas vehicle coalition
- Goal is to quickly put together another "Staff Draft Program Framework" built off these early interactions with stakeholders that can be used as a starting point for building consensus on a program structure

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Feasibility Analysis

- The 20-in-10 program includes an explicit target for 35 Bgal of renewable and alternative fuels by 2017
- Extremely aggressive
- Under CAA authority we need to demonstrate the feasibility of the standard
 - Feedstocks
 - Production capacity
 - Distribution capacity
 - Use
 - Economics
 - Leadtime
- 4 Possible outcomes considered
 - Feasibility analysis concludes 35 Bgal is feasible in 2017 and set the std accordingly
 - Set a stretch goal standard at or near 35 Bgal but provide associated safety valves (e.g., technology reviews, waivers)
 - Set standard less than 35 Bgal in 2017 - the level determined to be feasible
 - Could value some fuels more than 1:1 to still set a standard at 35 B "equivalent" gallons
 - Set std at 35 Bgal, but at a future year when determined to be feasible

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Fuels Analysis

- Building off the analysis for the RFS rule, but
 - Not only does feasibility have to be demonstrated but volume targets make the impacts much larger and analysis more difficult
- Full RIA
 - Feasibility Analysis and Volume Scenarios for Analysis
 - Refinery modeling
 - Co-pollutant Inventory, Air Quality, and Benefits
 - Ag sector modeling
 - Economic Impacts
 - Energy Security
 - GHG Lifecycle Analysis, Inventory and Benefits
 - Water and Soil Impacts
- Collaborating with both DOE and USDA in real time
 - Picking up where we left off on RFS
 - Kickoff meetings last week with DOE and this week with USDA
 - But almost daily interactions on a range of technical aspects with a range of staff
- Building their input and expertise into the analysis up front and throughout
 - Relying on their data and analyses whenever possible
- OMB wants to weigh in early on certain aspects (e.g., Energy Security)

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Schedule

- Key Milestones
 - Inter-Agency dialogue now & ongoing
 - Stakeholder outreach now & ongoing
 - Draft Rule Package July - October
(Preamble, Regulatory Impact Analysis, Regulations)
 - NPRM cleared by OMB for signature November 15
 - FRM October 2008

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