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GENERAL COUNSEL

The Honorable James M. Inhofe
Ranking Member
Committee on Environment & Public Works
U.S. Senate
Washington, DC 20510

Dear Senator Inhofe:

The Department of Defense (DoD) supports S. 2827, a bill "to repeal a requirement with respect to the procurement and acquisition of alternative fuels." The bill would repeal section 526 of the Energy Independence and Security Act of 2007. Section 526 has the potential to generate significant problems for DoD in its procurement of fuels for the national defense. It creates uncertainty about what fuels DoD can procure and will discourage the development of new sources, particularly reliable domestic sources, of energy supplies for the Armed Forces. The following is representative of the Department's concerns.

The Department believes section 526 is overly broad both in design and application. The law's terms are not defined and some may argue that it covers a very broad range of fuels commonly purchased by DoD. As written, section 526 could apply to alternative and synthetic fuels, including E85 (fuel that is 85% ethanol) and B20 (diesel fuel that contains 20% biofuels), that the Department is encouraged or required to use under other statutes.

Section 526 applies to "an alternative or synthetic fuel, including a fuel produced from nonconventional petroleum sources." The provision opens the Department up to court or administrative challenges to every fuel purchase it makes, with the inherent potential for an adverse decision that would cover fuels the military already relies on as well as potential reliable sources of fuel that could be developed in the future. Such a decision could cause significant harm to the readiness of the Armed Forces because these fuels may be widely used and particularly important in certain geographic areas.

Section 526 applies worldwide, not just to purchases within the United States. There are no means to accurately and authoritatively determine the lifecycle greenhouse gas emissions from non-domestically produced fuels because we do not track all of the fuel inputs in other countries and many producing countries lack the infrastructure or institutional control necessary to reliably track these inputs. For example, our military aircraft used over 6 million gallons of Canadian jet fuel in 2007 while exercising with the Canadian Armed Forces, conducting joint operations along the Distant Early Warning Line, and refueling at Canadian commercial airports. Canadian fuels include a mix of fuels including those produced from tar sands crude at various percentages. If these fuels were subject to section 526, and fuel suppliers were unable to authoritatively certify the lifecycle greenhouse gas emissions associated with the fuel, our military aircraft may be required to stop refueling in Canada, potentially affecting our national security.




Section 526 requires an analysis that may never be possible. The source of a fuel informs the greenhouse gas emissions footprint. Fuels, including conventional petroleum, are produced from numerous sources and often mixed together. Current standards for determining emissions of fuels from various origins are determined on averages. However, section 526 could be interpreted to require an analysis of individual fuel purchases for lifecycle greenhouse gas emissions, even though determining the emissions footprint for any individual batch of fuel may be impossible. For example, conventional fuel derived from oil produced in Venezuela or Nigeria is more likely to have a larger footprint than domestic oil because of the energy used transporting the oil to the United States. Foreign and domestic oil may be mixed together at a refinery. Once foreign and domestic oils are mixed together, the oils cannot be differentiated from one another. Therefore, the footprint of the resulting fuel cannot be determined accurately or authoritatively.

Finally, even a narrow interpretation of section 526 in an effort to reduce the uncertainty and the scope of section 526 still could limit the Department's flexibility in making emergency fuel purchases, overseas fuel purchases, and purchases at commercial stations and airports. Currently, there is no method for determining whether fuel purchased at these locations meets the requirements of section 526.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely,


Daniel J. Dell'Orto
Acting

cc: The Honorable Barbara Boxer
Chairman
Committee on Environment
& Public Works

The Honorable Pete V. Domenici
Ranking Member
Energy & Natural Resources
Committee

The Honorable Jeff Bingaman
Chairman
Energy & Natural Resources
Committee