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# United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

RICHARD M. RUSSELL, MAJORITY STAFF DIRECTOR  
MARY FRANCES REPKO, MINORITY STAFF DIRECTOR

May 1, 2018

The Honorable Elaine L. Chao  
Secretary  
U.S. Department of Transportation  
1200 New Jersey Ave. SE  
Washington, DC 20590

The Honorable Scott Pruitt  
Administrator  
Environmental Protection Agency (EPA)  
1200 Pennsylvania Ave., NW  
Washington, DC 20004

Dear Secretary Chao and Administrator Pruitt:

I write to convey my deep concerns about a draft of a proposed rule obtained by my office from a non-governmental source that seeks to dramatically weaken vehicle fuel economy and greenhouse gas tailpipe standards. The document also states that California's authority to set and enforce its own greenhouse gas tailpipe standards (as well as that of the 12 additional states, including Delaware, that have adopted them) is preempted by law.

Such a proposal, if finalized, would harm U.S. national and economic security, undermine efforts to combat global warming pollution, create regulatory and manufacturing uncertainty for the automobile industry and unnecessary litigation, increase the amount of gasoline consumers would have to buy, and runs counter to statements that both of you have made to Members of Congress. I urge you to immediately disavow this proposal and instead work to negotiate a 'win-win' solution on federal fuel economy and greenhouse gas tailpipe standards that can be supported by both the automobile industry and the State of California.

In 2010 and again in 2012, EPA and the National Highway Traffic Safety Administration (NHTSA) announced national fuel economy and tailpipe standards that were supported by major automakers, environmental and consumer organizations, the United Auto Workers, and the State of California. Taken together, these car and light-duty truck standards were projected to almost double the fuel economy of cars and light-duty trucks by 2025, reduce the amount of oil we import by 2 million barrels per day, and save American drivers nearly \$1.7 trillion in gasoline they would no longer have to buy over the lifetime of the vehicle standards program. Early implementation of these standards occurred during the seven years of unprecedented growth and record sales in 2016, adding roughly 700,000 direct auto sector jobs since 2009.

Administrator Pruitt recently announced<sup>1</sup> that EPA and NHTSA would propose and finalize weaker standards for model years (MYs) 2022-25. You have both indicated to Congress that your intention is to propose standards that can be supported by the State of California as well as the automobile industry. For example, last week, Administrator Pruitt stated<sup>2</sup> in Congressional testimony that he wasn't considering removing California's authority to regulate greenhouse gas

<sup>1</sup> <https://www.epa.gov/newsreleases/epa-administrator-pruitt-ghg-emissions-standards-cars-and-light-trucks-should-be>

<sup>2</sup> <https://www.nytimes.com/2018/04/26/climate/scott-pruitt-congress-hearing.html>

emissions from vehicles "at present" and stated "We are working very diligently and diplomatically with California to find an answer on this issue," adding that "It's important we work together to achieve ... a national standard." In March, Secretary Chao told<sup>3</sup> me that "In fact, we have held almost daily meetings at the White House with EPA and the Department of Transportation on this issue, and California. In fact, I have had the Acting NHTSA Administrator, Heidi King, fly out to California several times in an effort on our part to try to come together and understand and work together with California. From our point of view, I feel quite confident that we have really tried." However, California officials have indicated that all discussions thus far have been non-substantive,<sup>4</sup> and not 'diligent and diplomatic' efforts to 'really try' to undertake a successful negotiation.

The draft document shared with my office by a non-governmental source makes clear that the Administration is planning to recommend a proposal that is dramatically weaker than any automobile manufacturer has requested. The proposal also deliberately sets the Administration on a legal collision course with the State of California that automakers, lawmakers and the State of California have all repeatedly urged the Administration to avoid. This document is hundreds of pages long, appears to consist of a very advanced draft of a rulemaking proposal and associated analyses, and is described as a document that will be submitted to the White House Office of Management and Budget (OMB) jointly by NHTSA and EPA. What follows is a non-exhaustive description of its contents:

### **Dramatically Weaker Proposed Standards**

The preferred regulatory approach for new standards listed in the proposal keeps "Existing standards through MY 2020, then 0%/year increases for both passenger cars and light trucks, for MYs 2021-2026." It also proposes that beginning in MY 2021, "air conditioning refrigerant leakage, nitrous oxide and methane emissions are no longer included with the tailpipe CO<sub>2</sub> for compliance with tailpipe CO<sub>2</sub> standards." This proposal is dramatically weaker than both the current standards as well as what automakers have sought, and will, if finalized, harm the environment, consumers, and the many automotive, refrigerant and other companies that have invested in fuel-efficient technologies. This proposal would take the average fleet fuel economy standard from its current projected level of 46.8 miles per gallon in MY 2026<sup>5</sup> and reduce it to 37 miles per gallon.

This proposal is also projected to result in the use of 206 billion gallons of gasoline more than what would have been used between 2020-2050 had the standards remained unchanged, and would increase vehicle CO<sub>2</sub> emissions by 11 percent in the year 2100 compared to the amount of such emissions had the standards remained unchanged. In 2025, the emissions increases would be approximately equivalent to the annual emissions from 9,180,000 vehicles. This proposal to

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<sup>3</sup> [https://www.epw.senate.gov/public/\\_cache/files/4/f/4fa932cf-9a97-42bc-959e-1e1e5536e197/C03D6C188C459DAE0ADA8B8CA9695A06.spw-030118.pdf](https://www.epw.senate.gov/public/_cache/files/4/f/4fa932cf-9a97-42bc-959e-1e1e5536e197/C03D6C188C459DAE0ADA8B8CA9695A06.spw-030118.pdf)

<sup>4</sup> <https://www.ecnews.net/climatewire/stories/1060080255?https%3A%2F%2Fwww.ecnews.net%2Fstories%2F1060080255>

<sup>5</sup> The document assumes that NHTSA's MY 2026 fuel economy standard would be the same as the MY 2025 standard in the "no-action alternative", and appears to have updated the projected MY 2025 standard to reflect the latest sales data, which brings the 2025 projected fleet average to 46.8 miles per gallon.

maintain identical standards for MYs 2020-26 would, if finalized, be highly unlikely to meet NHTSA's statutory requirement to set the "maximum feasible" standard<sup>6</sup> for each model year, as the proposal apparently assumes that automotive technology and innovation will come to a complete halt for the better part of a decade. Proposing a zero percent per year stringency increase for seven consecutive model years also stands in stark contrast to past NHTSA actions, beginning during the Bush Administration which proposed an average 4.5 percent per year stringency increase for MY 2011-15<sup>7</sup>, and extending into the Obama Administration which promulgated an average 4.3 percent per year stringency increase for MY 2012-16,<sup>8</sup> an average 3.8-3.9 percent per year stringency increase for cars and average 2.5-2.7 percent per year stringency increase for light trucks for MY 2017-21<sup>9</sup>, and an estimated average 4.7 percent per year stringency increase for MY 2022-25<sup>10</sup>.

### **Preemption**

The document's preemption analysis asserts that "States may not adopt or enforce tailpipe greenhouse gas emissions standards when such standards relate to fuel economy standards and are therefore preempted under EPCA [Energy Policy and Conservation Act], regardless of whether EPA granted any waivers under the Clean Air Act (CAA)." It additionally concludes that "the California ZEV [zero-emissions vehicle] mandate is expressly and impliedly preempted by EPCA." The document proposes an addition to the fuel economy regulations that concludes by stating that "(1) Any state law or regulation regulating or prohibiting tailpipe carbon dioxide emissions from automobiles is impliedly preempted under 49 U.S.C. Chapter 329. (2) A state law or regulation having the direct effect of regulating or prohibiting tailpipe carbon dioxide emissions or fuel economy is impliedly preempted under 49 U.S.C. Chapter 329."

These assertions are starkly contradicted by the body of case law interpreting the interplay between EPCA, CAA, State waivers under the CAA, and the legislative history of both acts. That history affirms that EPCA's preemption provisions simply do not apply to any of EPA's authorities to regulate greenhouse gases from new motor vehicles under the CAA. The document also does not cite the clear Congressional intent on this point expressed by three of the principal<sup>11</sup> authors<sup>12</sup> of the fuel economy provisions of EPCA during their December, 2007 consideration on the House and Senate Floors that also refute the preemption proposal's premise.

### **Weak Alternative Standards**

In addition to the preferred standards, the proposal includes seven alternative scenarios it is seeking public comments on. Each of these scenarios is far weaker than the current EPA and projected

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<sup>6</sup> 49 U.S.C. § 32902

<sup>7</sup> [https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/cafe\\_11-15\\_nprm\\_april\\_21.pdf](https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/cafe_11-15_nprm_april_21.pdf)

<sup>8</sup> <https://www.gpo.gov/fdsys/pkg/FR-2010-05-07/pdf/2010-8159.pdf>

<sup>9</sup> [https://one.nhtsa.gov/staticfiles/rulemaking/pdf/cafe/2017-25\\_CAFE\\_Final\\_Rule.pdf](https://one.nhtsa.gov/staticfiles/rulemaking/pdf/cafe/2017-25_CAFE_Final_Rule.pdf)

<sup>10</sup> [https://one.nhtsa.gov/staticfiles/rulemaking/pdf/cafe/2017-25\\_CAFE\\_Final\\_Rule.pdf](https://one.nhtsa.gov/staticfiles/rulemaking/pdf/cafe/2017-25_CAFE_Final_Rule.pdf)

<sup>11</sup> <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

<sup>12</sup> <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

NHTSA standards for MYs 2022-25. Five of the seven scenarios propose to weaken standards starting in MY 2021, and two propose to weaken standards starting in MY 2022. All proposals extend to MY 2026. All seven scenarios eliminate the “air conditioning refrigerant leakage, nitrous oxide and methane emissions...for compliance with tailpipe CO<sub>2</sub> standards,” and two of the seven scenarios additionally phase out the NHTSA air-conditioning efficiency and off-cycle compliance credits.

The weakest alternative scenario calls for a 0.5 percent per year stringency increase for both cars and light trucks for MYs 2021-26, while the least weak alternative scenario calls for a 2 percent per year increase for cars and a 3 percent per year increase for light trucks for MYs 2021-26 (while also phasing out or eliminating air conditioning and other compliance credits in both agencies’ rules). These alternative proposals would take the average fleet fuel economy standard from its current projected level of 46.8 miles per gallon in MY 2026<sup>13</sup> and reduce it to between 38.1 – 44.3 miles per gallon in MY 2026, depending on the scenario modeled (and noting that some of these scenarios allow for and factor in the use of air-conditioning and other compliance credits, while others do not).

All alternative proposals are projected to result in more gasoline used over 2020-2050 compared to what would have been used had the standards remained unchanged, ranging from 56-192 billion additional gallons of gasoline.

### **Energy and Global Warming**

Although the document recognizes that the original purpose of the fuel economy standards law was to protect consumers from the negative effects of the 1973 oil embargo<sup>14</sup>, and that indeed, energy conservation is a required factor to be considered in the statute<sup>15</sup>, it seemingly and shortsightedly abandons continued consideration of this requirement. For example, the document states that “it appears much more likely today that oil prices will rise only moderately in the future, and that price shocks are less likely,” that “NHTSA tentatively concludes that the need of the U.S. to conserve energy may no longer function as assumed in previous considerations of what CAFE standards would be maximum feasible,” and that “the world has changed, and the need of the U.S. to conserve energy may no longer be infinite.” The document goes on to argue that oil imports would not increase as a result of weakened standards, citing a recent decline in oil imports that the document inexplicably does not attribute directly to higher fuel economy standards, as well as an increase in domestic oil production.

The document also minimizes the impact of increasing fuel economy standards on greenhouse gas emissions and climate change, employing facile calculations designed to describe the relatively small impact of the relatively small number of model years contemplated in these standards on global temperatures, atmospheric concentrations of CO<sub>2</sub>, sea level rise and other impacts in 2100.

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<sup>13</sup> The document assumes that NHTSA’s MY 2026 fuel economy standard would be the same as the MY 2025 standard in the “no-action alternative”, and appears to have updated the projected MY 2025 standard to reflect the latest sales data, which brings the 2025 projected fleet average to 46.8 miles per gallon.

<sup>14</sup> <https://history.state.gov/milestones/1969-1976/oil-embargo>

<sup>15</sup> 49 U.S.C. § 32902

Mitch Bainwol, the President and CEO of the Alliance of Automobile Manufacturers, recently wrote<sup>16</sup> that “Carbon reductions by our sector already approach the Paris Climate Accord goals for 2025. Automakers may well have done more than any other industry sector to reduce carbon emissions, because we believe climate change is real, and we have a responsibility to reduce greenhouse gases.” Nothing in this document reflects a similar commitment to or recognition of the importance of continuing to reduce levels of global warming pollution.

### **Flawed Safety Analysis**

The proposal describes several outdated and disproven assumptions about vehicle safety and driving habits, all of which are used to justify the less stringent standards that are being proposed. These assumptions include the use of a 20 percent value for the rebound effect (a measure of how much increased driving consumers will do if it costs them less to fuel their vehicles because their vehicles use less gasoline), rather than the 10 percent value that had been used in the existing MY 2012-25 rules and analysis and the 15 percent value that had been used in the standards proposed<sup>17</sup> (but never finalized) by the Bush Administration. As a result of the increased driving consumers are projected to do as vehicles are made more fuel-efficient, more traffic accidents, injuries and deaths are projected to occur under the current MY 2022-25 standards as well as under the least weakened alternative scenarios proposed in this document. This proposal seemingly rejects research indicating that as consumers grow wealthier or spend more time in traffic, they increasingly value the time it takes them to travel, which is why a lower rebound effect number has been recently used.

The document also cites NHTSA’s conclusion that “reducing mass in light trucks generally improves safety, while reducing mass in passenger cars generally reduces safety.” This leads NHTSA to conclude that the increased stringency of standards would lead to an overall reduction in safety even though a more recent study disproves<sup>18</sup> the argument that fuel economy standards result in more traffic fatalities. The proposal additionally fails to note other industry analysis<sup>19</sup> that shows that most of the mass reductions the industry is undertaking to improve fuel economy is being planned to occur in light trucks (which therefore, even by NHTSA’s own flawed argument, should be projected to result in an overall reduction in traffic fatalities).

Finally, this proposal assumes that vehicles that meet more stringent fuel economy standards will be so expensive that consumers will not purchase them, and will instead continue to drive in less safe and less fuel-efficient vehicles for longer. This assumption runs counter to a recent study<sup>20</sup> that found that “new car prices have remained relatively flat over the past 20 years, and used car prices have actually fallen, while fuel economy continued to increase.”

### **Unjustified Costs of Fuel-Efficient Technologies**

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<sup>16</sup> <https://morningconsult.com/opinions/automakers-addressing-climate-change/>

<sup>17</sup> See page 201 of [https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/cafe\\_11-15\\_nprm\\_april\\_21.pdf](https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/cafe_11-15_nprm_april_21.pdf)

<sup>18</sup> [https://www.washingtonpost.com/news/energy-environment/wp/2017/05/03/scientists-just-debunked-one-of-the-biggest-arguments-against-fuel-economy-standards-for-cars/?noredirect=on&utm\\_term=.b872ce952443](https://www.washingtonpost.com/news/energy-environment/wp/2017/05/03/scientists-just-debunked-one-of-the-biggest-arguments-against-fuel-economy-standards-for-cars/?noredirect=on&utm_term=.b872ce952443)

<sup>19</sup> [http://www.drivealuminum.org/wp-content/uploads/2017/10/Ducker-Public\\_FINAL.pdf](http://www.drivealuminum.org/wp-content/uploads/2017/10/Ducker-Public_FINAL.pdf)

<sup>20</sup> <https://consumersunion.org/news/cu-car-affordability-report/>

In 2017, EPA found<sup>21</sup> that the costs of the technologies it projected would be needed to comply with the MY 2022-25 fuel economy and greenhouse gas tailpipe standards “are costing less, and are more effective,” than EPA had anticipated in 2012. That led EPA to conclude that the average –per-vehicle projected costs of complying with the standards had declined from about \$1,100 (projected in 2012) to \$875 (projected in 2017). NHTSA also projected per-vehicle compliance costs of \$1,245 in 2016<sup>22</sup>.

This proposal states, by contrast, that “vehicle prices will be nearly \$1,900” higher if the standards remain unchanged, but does not provide any specific justification or analysis that describes why these projected costs more than doubled since EPA’s determination that was made just a little over a year ago, and why they also greatly exceed NHTSA’s 2016 estimate.

### **Increased Air Pollution**

The proposal also includes an analysis of the adverse air quality impacts associated with the less fuel-efficient vehicles the standards propose to allow. This analysis includes a discussion not just of the potential for increases in emissions in some criteria pollutants such as CO, NO<sub>x</sub> and volatile organic compounds, but also the potential for increases in emissions of toxic air pollutants such as DPM, formaldehyde and benzene. The document describes a complex model for how these impacts could both increase in some years and decrease in others due to changes not just in vehicle technology but also in consumer automobile purchasing and driving decisions.

However, the document states that all the proposed options “would result in increased adverse health impacts (mortality, acute bronchitis, respiratory emergency room visits, and work-loss days) nationwide compared to the No Action Alternative as a result of increases in emissions of PM<sub>2.5</sub>, DPM, and SO<sub>x</sub>.” It additionally says that “emissions of some criteria and hazardous air pollutants are predicted to increase in some air quality nonattainment areas in some years, and to decrease in other areas and years. Minority and low-income populations could be more vulnerable to the adverse consequences of increases in emissions in certain nonattainment areas.” The document also says that “Emissions increases would be largest under Alternative 1 [the preferred and weakest option] for all criteria pollutants (except CO). By 2050, these increases would range from less than 1 percent for PM<sub>2.5</sub> to 9 percent for SO<sub>2</sub>.”

This summary is by no means an exhaustive analysis of the draft of a proposed rule obtained by my office from a non-governmental source. It does, however, describe the Administration’s plans to undertake a legally questionable, frivolous and fundamentally irresponsible path forward on an issue that is of vital importance to the environment, consumers, industry, and hundreds of thousands of auto workers across the country. It also represents a clear departure from your stated commitments to Congress and the stated goals of automakers and the State of California for an

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<sup>21</sup> <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100QQ91.pdf>

<sup>22</sup> <https://www.nhtsa.gov/staticfiles/rulemaking/pdf/cafe/Draft-TAR-Final.pdf>

inclusive negotiation. I urge you in the strongest possible terms to abandon this extreme and reckless approach, and to put the Administration on a more responsible path.

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.

With best personal regards, I am,

Sincerely yours,

  
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Tom Carper  
Ranking Member