



ENVIRONMENTAL LAW & POLICY CENTER

Protecting the Midwest's Environment and Natural Heritage

September 15, 2022

Docket Management Facility:
U.S. Department of Transportation
1200 New Jersey Avenue SE
West Building Ground Floor, Room W12-140
Washington, DC 20590-0001

RE: Environmental Law & Policy Center's Comments on Docket No. NHTSA-2022-0075, Notice of Intent to Prepare an Environmental Impact Statement for Model Years 2027 and Beyond Corporate Average Fuel Economy Standards and Model Years 2029 and Beyond Heavy-Duty Pickup Trucks and Vans Vehicle Fuel Efficiency Improvement Program Standards, 87 Fed. Reg. 50,386 (Aug. 16, 2022)

The Environmental Law & Policy Center (ELPC) submits these comments in response to the National Highway Traffic Safety Administration's (NHTSA) Notice of Intent to issue an environmental impact statement (EIS) for its future model year 2027+ Corporate Average Fuel Economy (CAFE) standards and model year 2029+ heavy-duty pickup trucks and vans fuel efficiency (FE) standards. ELPC is a nonprofit organization that advocates and litigates across the Midwest and Great Lakes region to protect public health and the environment.

The Council on Environmental Quality's regulations implementing the National Environmental Policy Act require that an agency start the EIS process with a notice of intent that requests public comment on the scope of the environmental review. 40 C.F.R. § 1501.9. ELPC appreciates that NHTSA is accordingly "request[ing] public input on the scope of NHTSA's NEPA analysis, including the alternatives considered and the significant environmental issues relating to more stringent CAFE standards for LD and HD pickup trucks and vans" that the agency intends to issue in 2025. 87 Fed. Reg. at 50,389.

NHTSA states that the purpose and need for this action is setting "maximum feasible" fuel efficiency standards, taking into account the list of statutory factors set out in the Energy Policy and Conservation Act of 1975 (EPCA), as amended by the Energy Independence and Security Act of 2007 (EISA). 87 Fed. Reg. at 50,387-88. NHTSA's longstanding interpretation is that EPCA's statutory factor "'the need of the Nation to conserve energy' requires consideration of the consumer cost, national balance of payments, environmental, and foreign policy implications of our need for

35 East Wacker Drive, Suite 1600 • Chicago, Illinois 60601
(312) 673-6500 • www.ELPC.org

Harry Drucker, Chairperson • Howard A. Learner, Executive Director
Chicago, IL • Columbus, OH • Des Moines, IA • Grand Rapids, MI • Indianapolis, IN
Minneapolis, MN • Madison, WI • North Dakota • South Dakota • Washington, D.C.

large quantities of petroleum, especially imported petroleum.”¹ In accordance with the statutory command for NHTSA to set “maximum feasible”² standards, the agency must consider a range of alternatives that includes very protective standards which will help avert the worst impacts of the climate crisis and reduce threats to human health from climate change, near-road vehicle pollution, and fossil fuel extraction and refining. Given the dire and increasing threat that climate change poses to our nation’s public health, economy, and energy security, the most important impacts for NHTSA to consider in its EIS are climate change impacts, along with human health impacts.

Specific Comments on Alternatives and Scope of Review

NHTSA’s EIS should set the agency up to build on its history of increasingly stringent fuel efficiency standards in the upcoming rulemakings. ELPC strongly supported NHTSA’s strengthened model year 2024–26 CAFE standards issued in 2021.³ These standards, along with the separate vehicle emissions standards issued by EPA,⁴ were a crucial step toward reducing our nation’s dependence on climate-damaging fossil fuels. The projected 200 billion gallons of fuel savings through 2050 from NHTSA’s 2024–26 CAFE standards will also save American drivers millions of dollars at the fuel pump.⁵ For this next round of standard-setting, ELPC urges NHTSA to continue the trajectory to a cleaner transportation future.

NHTSA should place great weight on energy conservation, environmental considerations, and human health when determining the upper and lower bounds for the range of standards it will consider in the EIS. Transportation-related pollution, including particulate matter and nitrogen oxides, is directly harming human health. The transportation sector has now surpassed the electricity sector as the leading source of U.S. emissions contributing to climate change.⁶ Climate change is currently causing devastating heat waves, floods, droughts, and wildfires that all threaten public health and economic productivity. The costs of transitioning to cleaner vehicles are vastly outweighed by the costs of failing to take seriously the statutory command to set “maximum feasible” standards that will help lessen the impacts of the climate crisis and prevent more public health harms.

In determining the range of alternatives to consider and the “maximum feasible” standards, NHTSA should incorporate accurate baseline assumptions about the fuel efficiency of vehicles that will be

¹ *Ctr. for Auto Safety v. Nat’l Highway Traffic Safety Admin.*, 793 F.2d 1322, 1325 n.12 (D.C. Cir. 1986) (quoting *Nonpassenger Automobile Average Fuel Economy Standards Model years 1980–81*, 42 Fed. Reg. 63,1384 (Dec. 15, 1977)); 87 Fed. Reg. at 50,387.

² 49 U.S.C. § 32902(b)(2)(B), (f) (requiring agency to set “maximum feasible” light duty standards); 49 U.S.C. § 32902(k)(2)(requiring agency to set heavy duty van and pickup fuel efficiency standards “designed to achieve the maximum feasible improvement”).

³ *Corporate Average Fuel Economy Standards for Model Years 2024–2026 Passenger Cars and Light Trucks*, 84 Fed. Reg. 25,710 (May 2, 2022).

⁴ *Revised 2023 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions Standards*, 86 Fed. Reg. 74,434 (Dec. 30, 2021).

⁵ *USDOT Announces New Vehicle Fuel Economy Standards for Model year 2024–2026*, (Apr. 1, 2022), <https://www.nhtsa.gov/press-releases/usdot-announces-new-vehicle-fuel-economy-standards-model-year-2024-2026>.

⁶ U.S. Environmental Protection Agency, *EPA 430-R-21-005, Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990–2019*, ES-27 (April 2021), <https://www.epa.gov/sites/default/files/2021-04/documents/us-ghg-inventory-2021-main-text.pdf?VersionId=yu89kg1O2qP754CdR8QMyn4RRWc5iodZ>.

on the road in 2027 and beyond absent any strengthening of the standards. The vehicle industry is rapidly innovating and the market is shifting toward more fuel-efficient cars to meet consumer demand for cleaner vehicles and lower fuel costs. The recently passed Inflation Reduction Act and the Infrastructure Investment and Jobs Act contain numerous provisions intended to jumpstart this transition to clean vehicles. NHTSA has historically underestimated the pace at which manufacturers and the market are moving toward cleaner vehicles, and it is important that the agency not do so again here.

Taking current realities into account, NHTSA must select ambitious standards as its strictest alternative because drastically increased fuel economy is very likely to swiftly become both entirely feasible and economically practicable. Examining a range of alternatives that includes strong fuel efficiency standards is necessary to meet the climate change and public health challenges facing our country. Moving toward cleaner, more fuel-efficient vehicles is also the right thing to do for our country's economy and energy security. The U.S. saw gas prices spike to historic highs this spring amid concerns over the international oil market, and consumers are demanding more efficient cars that will save them money at the pump.

The sixth assessment report issued by the United Nations' Intergovernmental Panel on Climate Change (IPCC) makes clear both climate change's human causes and its devastating impacts.⁷ The report notes that human influence has warmed the climate at a rate that is unprecedented in at least the last 2,000 years.⁸ Climate change is already affecting every inhabited region across the globe, with central and eastern North America experiencing increased heavy precipitation and western North America experiencing increases in extreme heat and drought.⁹ Climate change is a critical concern in the Midwest and Great Lakes.

The Transportation sector contributes 29% of total greenhouse gas emissions in the U.S.—more than any other sector.¹⁰ Passenger cars account for 40.5% of U.S. transportation-related greenhouse gas emissions, and light-duty trucks account for 17.2%.¹¹ Any increased fuel economy therefore has the potential to drastically reduce oil consumption and our nation's climate-changing emissions. Because of this, NHTSA should work to qualitatively and, where appropriate, quantitatively explain the effect its new standards are expected to have on climate change, including warming, increased precipitation, and other harmful effects. NHTSA should also communicate these effects to the public in a way that does not unfairly diminish their magnitude, such as by presenting the expected emissions reductions solely in context of global emissions on a 100-year scale. NHTSA can do more to ensure the public can understand and

⁷ IPCC, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Aug. 2021), <https://www.ipcc.ch/report/ar6/wg1/#FullReport>.

⁸ IPCC, 2021: Summary for Policymakers at SPM-7. In: *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*.

⁹ *Id.* at SPM-12.

¹⁰ U.S. Environmental Protection Agency, *EPA 430-R-21-005, Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990–2019*, ES-27 (April 2021), <https://www.epa.gov/sites/default/files/2021-04/documents/us-ghg-inventory-2021-main-text.pdf?VersionId=yu89kg1O2qP754CdR8Qmyn4RRWc5iodZ>.

¹¹ *Id.* at 2-37.

evaluate a range of standards in a meaningful context, including how these standards will contribute toward meeting President Biden’s emissions reductions goals.¹²

NHTSA should also thoroughly examine the effect its rules will have on air quality and human health. In particular, NHTSA should examine the effects of reduced emissions of ozone precursors, nitrogen oxides, and particulate matter, all of which turn urban areas into toxic zones and can trigger chronic health problems and emergency room visits for sensitive populations, like children with asthma. Because low income communities and communities of color are often the most exposed to vehicle pollution and suffer the greatest resulting health burden, NHTSA should also consider the environmental justice and equity impacts of reducing near-road pollution in overburdened communities crossed by highways or dotted with oil refineries.

Finally, NHTSA should take seriously the requirement to consider “cumulative effects,” which are those effects that “can result from individually minor but collectively significant actions taking place over a period of time,” including cumulative ecological, social, and health effects. 40 C.F.R. § 1508.1(g)(3), (4). The harms caused by climate-changing and health-damaging air pollution are necessarily cumulative, and NHTSA should fully account for the impacts to communities impacted by oil extraction, oil refining, and near-road pollution, as well as those communities on the front lines of climate change impacts.

Conclusion

A strong auto industry that is innovating and delivering the cleanest vehicles to consumers is good for the Midwest and for the country as a whole. The Midwest and Great Lakes region, which is currently suffering from the effects of climate change and poor air quality, has much to gain if fuel use and vehicle pollution is reduced. NHTSA should examine a range of alternatives including strong standards that deliver the greatest possible fuel savings and pollution reductions consistent with the urgency called for by the IPCC’s report and with President Biden’s goal of reducing greenhouse gas emissions by 50% by 2030.

ELPC appreciates the opportunity to provide these comments.

¹² *FACT SHEET: President Biden Sets 2030 Greenhouse Gas Pollution Reduction Target Aimed at Creating Good-Paying Union Jobs and Securing U.S. Leadership on Clean Energy Technologies* (Apr. 22, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/22/fact-sheet-president-biden-sets-2030-greenhouse-gas-pollution-reduction-target-aimed-at-creating-good-paying-union-jobs-and-securing-u-s-leadership-on-clean-energy-technologies/>.