



**U.S. Department of
Transportation**
Office of the Secretary
of Transportation

Under Secretary for Policy

1200 New Jersey Avenue, S.E.
Washington, DC 20590

June 26, 2008

The Honorable Edward J. Markey
Chairman, Select Committee on
Energy Independence and Global Warming
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Markey:

Thank you for your June 17, 2008 letter requesting information on the Department of Transportation's on-going rulemaking process to set fuel economy standards for passenger cars and light trucks. In response to your request, and in preparation for tomorrow's hearing, we are pleased to provide the following information:

1. NHTSA relies on the Energy Information Administration's (EIA's) forecasts for gasoline prices to set its maximum feasible standards for a particular model year. NHTSA calculates the 'maximum feasible' standard in part by comparing the costs of incorporating new fuel efficient technologies to the consumer savings using a projected price of gasoline at the pump. However, EIA's long-term forecasts have been notoriously inaccurate, and in fact, in your NPRM, you've proposed fuel economy standards for model years 2011-15 using EIA's projected gasoline prices that range from \$2.42/gallon in 2016 to \$2.51/gallon in 2030.

These prices seem absurd when compared with today's prices which exceed \$4.00/gallon. On June 11, 2008, EIA Administrator Guy Caruso, in response to a question I asked him at a hearing of the Select Committee, said that if it were up to him, he would use EIA's high gasoline price forecasts to set future fuel economy standards rather than the lower price forecast NHTSA did use¹ in its NPRM.

a. Please discuss NHTSA's plans to make adjustments to its fuel economy regulations in light of this testimony, EIA's pending release of its revised high gasoline price forecast as well as in response to the realities of gasoline prices today. If you do not plan to change the manner in which you calculate the net benefits associated with higher fuel economy standards to consumers, why not?

Response: The Department recognizes the importance of key economic assumptions like the price of gasoline. We solicited comment on all aspects of our proposal, including the methodology, economic assumptions, analysis and tentative conclusions. We stated that,

¹ See <http://www.youtube.com/watch?v=umlei2-F9t8&eurl=http://globalwarming.house.gov/pubs/?id=0043> for the exchange.

based on public comments and other information, including new data and analysis, and updated product plans, the standards we adopt in the final rule could well be different from the ones we proposed. While previous forecasts have been just as likely to overestimate oil prices as they have been to underestimate them, there is little question that EIA is a widely recognized and respected forecaster of oil prices.

b. The NPRM includes proposed standards for model years 2011-15. While I recognize that setting multi-year standards provides regulatory certainty to the auto industry, much can also change over such a long timeframe. If, in addition to any changes you might make to the manner in which you calculate the net benefits associated with higher fuel economy standards to consumers, NHTSA finds that the price of gasoline (and long-term EIA forecasts for the price of gasoline) continues to increase, will NHTSA be willing to subsequently amend the standards for the later model years in order to reflect the increases, and indicate as much in its final regulations? Why or why not?

Response: Setting multi-year standards not only provides regulatory certainty but also enables us to make greater progress in achieving the goals of EISA. If, after completing this rulemaking, the Department receives important new information relating to the stringency of these standards, we would carefully consider it and determine what action might be appropriate. Depending on the nature, importance, and reliability of the information, that action could include rulemaking.

2. Oil prices are not the only factor that could change dramatically over the timeframe of your proposed regulations. Is NHTSA willing to amend its standards for the later model years if new fuel efficient technologies are developed, or if the costs associated with existing technologies decline significantly? Why or why not?

Response: As indicated above, the Department is not only receptive to, but affirmatively interested in, obtaining the latest, most accurate information. If, after completing this rulemaking, the Department receives important new information relating to the stringency of these standards, we would carefully consider it and determine what action might be appropriate.

3. Another potential change to the assumptions made in NHTSA's NPRM relate to the composition of the future fleet. The NPRM proposes standards that ensure that the fleet of cars and light trucks (using information obtained from automobile manufacturers) will attain a fuel economy average of 31.6 mpg in model year 2015. However, in the months since the NPRM was issued, it has become clear that high gasoline prices have contributed to a major consumer shift away from light truck purchases and towards smaller vehicles. Automobile manufacturers have announced changes in their future production plans in response to this shift in consumer preference which will presumably be provided to NHTSA as part of this regulatory process.

a. If a shift to a smaller fleet is projected in updated product submissions provided to you by automobile manufacturers in response to the NPRM, and such a shift would result in a model year 2015 fuel economy average that is higher than 31.6 mpg using your current modeling assumptions (related to the costs and times to phase in fuel efficient technologies, for example), would NHTSA's final regulations result in an alteration of any of those assumptions for the purpose of maintaining the 31.6 mpg projected fleet-wide average? If so, why?

Response: As noted above, based on public comments and other information, including new data and analysis, and updated product plans, the standards the Department adopts in the final rule could well be different from the ones we proposed. One of the most important features of the structure of the proposed rule is that it is flexible in response to changing consumer preferences.

b. Conversely, if a future shift in consumer preference results in a projected fleet that is composed of much larger vehicles that could not, using your current modeling assumptions, attain a fleet-wide average of 35 mpg in model year 2020, would NHTSA alter any of those assumptions in order to comply with EISA? If not, why not?

Response: The Department will take appropriate regulatory action to comply with the law.

4. The NHTSA NPRM preamble as well as a proposed Appendix to the regulations contains text re-asserting NHTSA's view that State regulations to reduce greenhouse gas emissions from motor vehicles such as those promulgated by the State of California using Clean Air Act authority are preempted by the Energy Policy and Conservation Act (EPCA), although two Federal Courts have ruled otherwise.

a. Prior to the release of the NPRM, did NHTSA discuss either the contents of the preamble or the contents of the Appendix with individuals who do not work for the U.S. Government? If so, please provide a list of the names, affiliations, dates of any meetings, conversations or correspondence and the nature of the interaction.

Response: I am not aware of any such discussions taking place.

b. It is my understanding, based on staff conversations, that drafts of the NPRM were shared with the Environmental Protection Agency (EPA) in the months prior to its release. On what date was EPA first provided with this language (both the preamble discussion and the proposed text of the Appendix), and with which individuals and offices at EPA was this language shared? If the drafts of these sections of the NPRM changed over time, please provide copies of each draft that was shared with EPA officials, the date on which the draft was shared, and the names of the individuals and offices at EPA with whom it was shared.

Response: The Department is continuing to analyze questions 4.b., 4.c., 4.e., and 6. Those questions seek information and documents regarding the fuel economy standards rulemaking that are pre-decisional and deliberative in nature and thus implicate Executive Branch confidentiality interests. The preparation of NHTSA's fuel economy NPRM involved substantial interagency consultation in accordance with Executive Orders 12866 and 13432 and long-standing practice in this area.

c. Did EPA provide NHTSA with comments related to this portion of the NPRM (both the preamble and the Appendix)? If so, please provide the Select Committee with copies of materials provided by EPA.

Response: See response to question 4.b, above.

d. In your view, what is the difference, in terms of both content and implication, between the language contained in the preamble and that contained in the proposed Appendix?

Response: The language in the preamble, which provides a short restatement of the preemption position from the April 2006 final rule establishing fuel economy standards for model year 2008-2011 light trucks, is the same language as appears in the appendix.

e. Was the preamble or the Appendix drafted entirely by NHTSA, or were other Executive Branch Agencies or White House offices involved in at least part of its preparation? If so, which Agencies or offices? Please also provide a list of the names, affiliations, dates of any meetings, conversation or correspondence and the nature of the interaction.

Response: See response to question 4.b, above.

5. EISA also contained requirements that NHTSA:

a. As soon as practicable, enter into a contract with the National Academy of Sciences to develop a report examining fuel economy standards for cars and light trucks.

b. As soon as practicable, enter into a contract with the National Academy of Sciences to develop a report examining fuel economy standards for medium and heavy duty trucks.

c. Within 1 year of enactment complete a study and develop recommendations for setting fuel economy standards for work trucks.

d. Within 2 years after the completion of the study in c), promulgate regulations to increase fuel economy standards for work trucks.

- e. Within 1 year after completion of the National Academy of Sciences study on medium and heavy duty trucks in b), complete a study and develop recommendations for setting fuel economy standards for these vehicles.**
- f. Within 2 years after the completion of the study in e), promulgate regulations to increase fuel economy standards for medium and heavy duty trucks.**
- g. Within 2 years after enactment, promulgate regulations establishing a national tire fuel efficiency consumer information program for replacement tires.**

For each of these additional requirements in EISA, please provide a detailed timeline for their completion.

Response:

Light duty vehicle study

NHTSA has been working on revising its existing agreement with NAS to take into account the EISA provisions. The revision will include clarification of the type of analyses needed to complete the study and cover additional issues identified by the NAS Committee during its deliberations. NHTSA expects to finalize the updated agreement by the end of September 2008 with a final report to be published by NAS in September/October 2009.

Medium and heavy duty vehicles and work trucks

NHTSA is currently reviewing relevant studies and literature and discussing this project with NAS. The agency expects to conclude an agreement with NAS by the end of September 2008. NHTSA will coordinate with NAS throughout the process and will structure the study required by the agency under EISA based on the information gathered by the agency and NAS between August 2008 and August 2009. Provided that the NAS study is completed by August 2009, NHTSA will complete its study on medium and heavy duty vehicles and work trucks by August 2010, and issue regulations on medium and heavy duty vehicles, as well as work trucks by August 2012.

National tire fuel efficiency consumer information program for replacement tires

NHTSA is in the process of conducting evaluations to compare the existing test procedures for rolling resistance. The tests are expected to be completed by the end of August 2008. The agency also is beginning further research on other related issues it is required to address in relation to rolling resistance. This additional research should be completed by December 2008. NHTSA expects to issue a regulation establishing a tire fuel efficiency program by December 2009.

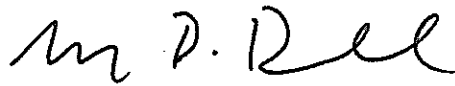
6. Please provide copies of all comments from DOE and EPA that were provided to NHTSA on all drafts of the NPRM.

Response: See response to question 4.b, above.

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If you have any additional questions, please contact me at (202) 366-0582, or Will Otero, Director of Legislative Affairs for NHTSA, at (202) 366-2111.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Tyler D. Duvall". The signature is written in a cursive style with a large initial "T" and "D".

Tyler D. Duvall
Acting Under Secretary