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**Select Committee on  
Energy Independence and Global Warming  
U.S. House of Representatives**

June 17, 2008

The Honorable Jim Ports  
Deputy Administrator  
National Highway Traffic Safety Administration (NHTSA)  
1200 New Jersey Avenue, SE  
West Building  
Washington, DC 20590

Dear Mr. Ports:

I am writing to invite you to testify before the Select Committee on Energy Independence and Global Warming on June 26, 2008 at a hearing entitled, "\$4 Gasoline and Fuel Economy: Auto Industry at a Crossroads."

As you know, on December 19, 2007, the President signed the Energy Independence and Security Act (EISA) of 2007, which includes provisions I championed for years that direct NHTSA to promulgate fuel economy standards for cars and light trucks beginning in model year 2011 that will ensure that the fleet attains at least 35 miles per gallon (mpg) by 2020. In order to implement the law, you recently issued a Notice of Proposed Rulemaking (NPRM) that will require that the fleet of cars and light trucks achieve a projected fuel economy average of 31.6 mpg by model year 2015.

I request your appearance before the Select Committee to describe the Administration's efforts to implement EISA and other related matters. In addition to a description of the proposed regulations and process and timeline associated with their finalization, please ensure that your testimony addresses the following questions:

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 use<sup>1</sup> 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?
  - 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?
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?
  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 fleetwide average? If so, why?

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

- 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 fleetwide 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?

To assist the Select Committee in preparing for the hearing, I ask that you respond to the following questions in writing prior to the hearing but in any event no later than 6 pm ET on Wednesday, June 25.

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.
  - 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.
  - 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.
  - 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?
  - 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.
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.

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

With respect to your testimony, you will be asked to make an initial oral presentation of up to 5 minutes summarizing your written testimony, followed by a period of questioning from the Members of the Committee. The Committee's Rules require that witnesses provide written testimony at least two working days in advance of the hearing, and I ask that you to make every effort to meet that deadline. To facilitate this process, please submit your testimony in electronic format (in Word or Wordperfect format, to [Aliya.brotsky@mail.house.gov](mailto:Aliya.brotsky@mail.house.gov)), so that it can be forwarded to Committee Members on a timely basis. The Committee will also make hard-copy duplicates as necessary.

I look forward to your testimony on this important matter.

Sincerely,

  
Edward J. Markey  
Chairman