



October 16, 2023

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The Honorable Ann Carlson
Acting Administrator
National Highway Traffic Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue SE
West Building, Ground Floor, Rm. W12-140,
Washington, DC 20590

Re: Corporate Average Fuel Economy Standards for Passenger Cars and Light Trucks for Model Years 2027-2032 and Fuel Efficiency Standards for Heavy-Duty Pickup Trucks and Vans for Model Years 2030-2035, 88 Fed. Reg. 56128

Dear Acting Administrator Carlson,

Our associations represent producers, blenders, and sellers of renewable fuel, as well as the farmers who grow renewable fuel feedstocks. We submit these comments in response to the U.S. National Highway Traffic Safety Administration's (NHTSA's) Proposed Rule "Corporate Average Fuel Economy Standards for Passenger Cars and Light Trucks For Model Years 2027-2032 and Fuel Efficiency Standards for Heavy-Duty Pickup Trucks and Vans for Model Years 2030-2035."¹

Renewable fuels materially lower gasoline's carbon footprint. If properly incentivized, these technologies' capability to reduce emissions can continue to grow alongside other decarbonization technologies such as clean electricity. Pursuing one solution does not require abandoning others.

¹ National Highway Traffic Safety Administration, Department of Transportation, "Model Years 2027 and Beyond Corporate Average Fuel Economy Standards and Model Years 2030 and Beyond Heavy-Duty Pickup Trucks and Vans Fuel Efficiency Improvement Program Standards" 88 FR 56128 (August 17, 2023) *available at* <https://www.govinfo.gov/content/pkg/FR-2023-08-17/pdf/2023-16515.pdf%20> [hereinafter the "Proposed Rule"].

Our associations support action by NHTSA to improve our nation's energy security and reduce greenhouse gas emissions. However, as we will explain in this letter and in our associations' respective comments, we have concerns with the proposed rule as written. Because of inadequate consideration of Congressional direction on diversity in energy solutions, incomplete analysis of energy security concerns, and an improper approach in using this rulemaking to address vehicle electrification, our associations urge NHTSA to revisit and repropose this rule. If our nation is to reach its energy security goals and net-zero greenhouse gas emissions, we will need more efficient, cleaner cars *and* more efficient, cleaner fuels.

In particular, NHTSA must carefully consider the consequences and legality of its approach to incorporating electrification of new vehicles into proposed standards. A technology-neutral approach to improving fuel economy, in which all fuels and technologies are treated equally, will create the most positive and immediate outcomes while upholding the intent of the law. The Proposal does not do this, but instead tilts the scale towards electric vehicles ("EVs") by improperly incorporating EVs into the analysis and misinterpreting the fundamental objective of the CAFE standards, which is to enhance energy security and improve fuel economy.

Accordingly, NHTSA should recognize that CAFE is not the only tool Congress provided to improve our energy security and fuel economy while lowering carbon emissions. Congress has taken a multi-pronged approach that also relies on renewable fuels as a home-grown way to reduce our dependence on foreign oil, moderate price shocks from oil market disruptions, and decrease the transportation sector's emissions of greenhouse gases and other air pollutants.

Our associations look forward to working with NHTSA to improve fuel economy standards in a manner that is fair, transparent, and technology-neutral. Thank you for the opportunity to provide these comments.

1. Battery Electric Vehicles are Alternative Fuel Vehicles and Are Improperly Included in Analysis Supporting Maximum Feasibility Determination

The Energy Policy and Conservation Act specifically prohibits NHTSA from considering the fuel economy of dedicated alternative fuel automobiles (including electric vehicles) when deciding maximum feasible average fuel economy for light-duty vehicles. 49 U.S.C. § 32902(h)(1). NHTSA violated this prohibition by including a significant number of Battery Electric Vehicles (BEVs) in the analysis supporting its proposed maximum feasibility determination. Including zero emission vehicles (ZEVs) in the analysis violates the direction Congress provided on the treatment of BEVs and other dedicated alternative fuel vehicles. The language in 49 U.S.C. § 32902(h)(1) is plain and mandatory. When "carrying out" its obligation to decide the maximum feasible average fuel economy for the PC/LDT fleets, NHTSA "may not consider the fuel economy of dedicated vehicles." "Dedicated vehicle" is defined as "an automobile that operates only on alternative fuel" and "alternative fuel" is defined to include "electricity." Simply put, Congress forbade NHTSA from accounting for the fuel economy of

any electric vehicle, from any model year, for any purpose, when setting average fuel economy standards for light-duty vehicles.

The proposal attempts to get around this Congressional limitation on NHTSA's analysis by misinterpreting the 32902(h) prohibition as "preventing NHTSA from setting CAFE standards that effectively require additional application of dedicated alternative fueled vehicles in response to those standards" and argues that it does not prevent NHTSA "from being aware of the existence of dedicated alternative fueled vehicles that are already being produced for other reasons besides the CAFE standards."² In direct contrast to the methodology used in the proposed standards, statute requires that NHTSA "may not consider the fuel economy of dedicated vehicles." The Agency's injudicious statutory interpretation is plainly a violation of Congressional intent. As such, the underlying analysis used to determine fuel economy standards should be revised to eliminate consideration of electric vehicles.

2. NHTSA Should Recognize Where CAFE Standards Fit in a Diverse Portfolio of Policies for Decarbonization and Energy Security

NHTSA's analysis should also recognize, as Congress has, that we need a multi-pronged approach to address fuel economy and energy security. The CAFE Program is not our only tool. For almost two decades, this multi-pronged approach has included increased use of renewable fuels, including in 2007 when Congress enacted the Energy Independence and Security Act to "move the United States toward greater energy independence and security [and] to increase the production of clean renewable fuels."³ Title I, "Energy Security Through Improved Vehicle Fuel Economy," amended the CAFE Program, and Title II, "Energy Security Through Increased Production of Biofuels," expanded the Renewable Fuel Standard (RFS) program, which was originally established under the Energy Policy Act of 2005. Congress has also enacted tax credits and grant programs to encourage renewable fuels production, doing so as recently as 2022 in the Inflation Reduction Act.

When reconsidering this Proposed Rule, NHTSA should be mindful of the role CAFE standards play in this policy landscape. This means staying within the spirit of the law by sufficiently considering energy security concerns and the propriety or sufficiency of assumptions about EV adoption. With this in mind, we encourage NHTSA to revisit the Proposed Rule, make needed corrections, and redesign the rule in a way that is consistent with the spirit and intent of the law.

² Fed. Reg. at 56,319.

³ See, e.g., IRA § 13201 extended tax credits for alternative fuels in 26 U.S.C. §§ 6426(d) and (e) and 6427(e); IRA § 13704 extended the Clean Fuel Production Credit in 26 U.S.C. § 45Z; IRA § 22203 funded grants through the Higher Blend Infrastructure Incentive Program to increase sales and use of higher blends of ethanol and biodiesel.

3. The proposed CAFE standards miss the mark when reviewed for economic practicability and overall cost effectiveness.

Neither the proposed standards nor the less stringent regulatory alternative (labeled alternatives PC2LT4 and PC1LT3) are economically feasible for passenger cars given NHTSA's own projection that each would have net societal disbenefits of \$4 to \$5 billion, net personal disbenefits of \$5.7 to \$5.8 billion, and per vehicle regulatory costs exceeding fuel savings over the life of the vehicle. As proposed, the standards are not economically practicable and would dramatically limit consumer access to affordable transportation solutions.

4. Critical Materials Needed for Electric Vehicles Are a National Energy Security Concern

As our country makes decisions about the pace and extent of increased vehicle electrification, we need to account for the fact that critical minerals pose a vulnerability to our national security. Electrification of the vehicle fleet introduces new, substantial energy security challenges. While increasing electrification reduces petroleum demand, it dramatically increases demand for imported critical minerals, batteries, and other BEV components.

The CAFE standards were enacted into law as part of an effort to improve domestic energy security. NHTSA should analyze the energy security issues associated with critical minerals and factor the results into its rulemaking. It should exercise its independent judgment about feasibility before finalizing standards that would incorporate state ZEV mandates. Merely "monitoring the availability of critical minerals used in electrified powertrains and whether any shortage of such materials could emerge as an additional energy security concern" is insufficient, just as it would be insufficient to merely monitor the availability of crude oil or other petroleum products. NHTSA should also analyze the energy security vulnerabilities tied to the critical minerals needed for the electric vehicles it includes in its analyses. To the extent NHTSA continues to consider BEVs in its maximum feasibility determinations despite Congressional intent, it should also explain how it factors critical minerals energy security vulnerabilities into those determinations.

Sincerely,

National Association of Convenience Stores
National Corn Growers Association
NATSO, Representing America's Travel Plazas and Truckstops
National Farmers Union
Renewable Fuels Association
SIGMA: America's Leading Fuel Marketers