VIA ELECTRONIC FILING

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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, August 17, 2023 [Docket No. NHTSA–2023–0022]

Mr. Bayer:

Please see the below comments from the America First Policy Institute (AFPI) regarding the 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, August 17, 2023, Docket No. NHTSA–2023–0022). Thank you for the opportunity to comment.

The America First Policy Institute (AFPI) appreciates the opportunity to comment on the National Highway Traffic Safety Administration's (NHTSA) proposed rule ("the proposal" or "the proposed rule").

The America First Policy Institute

AFPI is a 501(c)(3) nonprofit, non-partisan research institute. AFPI exists to conduct research and develop policies that put the American people first. Our guiding principles are liberty, free enterprise, national greatness, American military superiority, foreign-policy engagement in the American interest, and the primacy of American workers, families, and communities in all we do. One of AFPI's core priorities is ensuring that American consumers enjoy reliable and affordable access to energy and transportation, which is instrumental to a prosperous America.

Introduction

Energy security is a vital component of economic and national security. NHTSA's authority to issue the proposed rule is derived primarily from two laws that were legislated during periods of acute energy insecurity: the Energy Policy Conservation Act of 1975 and the Energy

Independence and Security Act (EISA) of 2007. In addition to fulfilling its statutory function, NHTSA provides several rationales for its proposed rule: enhancing national energy security, reducing consumer fuel costs, and reducing emissions. A close examination of these rationales reveals them to be either disingenuous or beyond the scope of NHTSA's authority when devising corporate average fuel economy (CAFE) standards. Efforts to advance national energy security through more stringent CAFE standards pale in comparison to the current administration's efforts to hinder national energy security by curtailing fossil fuel production. Any consumer savings on fuel that the proposed rule might facilitate are vastly overshadowed by the current administration's policies that raise gas prices. Reducing vehicle emissions is tangential to the scope of the provisions that granted NHTSA the authority to issue CAFE standards. When placed in the broader context of the administration's policies, the proposed rule thus appears to be an effort to retool NHTSA's authority to advance an extraneous objective.

What is the Real Objective of the Proposed Rule?

Exercising its authority under the Energy Policy Conservation Act of 1975, as amended by EISA of 2007, NHTSA is proposing to increase CAFE standards for passenger cars and light trucks for model years 2027-2032. These proposed standards would increase the stringency of fuel economy by 2% year-over-year for passenger cars, and 4% year-over-year for light trucks. According to NHTSA's calculations, "this proposal, if implemented, would reduce gasoline consumption by 88 billion gallons relative to baseline levels for passenger cars and light trucks…through calendar year 2050." Within the proposed rule, NHTSA notes that:

"This proposal responds to NHTSA's statutory obligation to set CAFE…standards at the maximum feasible level that the agency determines vehicle manufacturers can achieve in each MY [model year], in order to improve energy conservation. Improving energy conservation by raising CAFE…standard stringency not only helps consumers save money on fuel, but also improves national energy security and reduces harmful emissions."

While NHTSA is exercising its statutory duty, the three additional rationales that NHTSA provides help to inform NHTSA's objectives through the rule. Assessing each of these rationales, with reference to the current administration's broader policy agenda, reveals them to be either disingenuous or outside of the scope of the provisions that granted NHTSA the authority to issue CAFE standards.

1. **Improving National Energy Security.**

As outlined above, the original authority to establish fuel economy standards was granted in pursuit of improving national energy security, particularly among fossil fuels. Although this objective is listed as part of the proposed rule's rationale, it appears an outlier among the current

administration's policies, which are inconsistent with the broader objectives of the Energy Policy Conservation Act of 1975. For example, the Act sought to advance energy security through supporting fossil fuel production. However, this administration has sought to ban onshore oil and gas leasing on federal lands,[1] curtail offshore leasing,[2] and increase the cost of oil and gas leasing.[3] The Energy Policy Conservation Act of 1975 also sought to develop an emergency stockpile of crude oil. Yet, the current administration decided to reduce that stockpile throughout 2022 to its lowest levels in 40 years, leaving the Nation relatively less energy secure in the event of an actual national crisis.[4]

Increasing the fuel economy of internal combustion engines may help to conserve fossil fuel use, and therefore support national energy security. However, any benefit of this strict standard is contradicted by the administration's broad effort to limit domestic fossil fuel production. If the administration were to prioritize national energy security, it would reverse these policies to support domestic fossil fuel production.

2. Helping Consumers Save Money on Fuel.

Within the notice of proposed rulemaking, NHTSA recognizes that increasing the stringency of fuel economy standards will raise the up-front costs of vehicles for consumers. Under NHTSA's proposed scenario, the estimated average per-vehicle regulatory cost across the light fleet would be $2,367 in 2027, $2,555 in 2028, $2,708 in 2029, $2,790 in 2030, $2,942 in 2031, and $3,008 in 2032.[5] Despite these higher costs, with the benefit of greater fuel economy, NHTSA estimates that, "lifetime fuel savings exceed modeled regulatory costs by roughly $100, on average, for passenger car and light truck buyers of MY 2032 vehicles."

Raising the upfront cost of vehicles is regressive policy; it increasingly places vehicle purchases out of financial reach for the American people and disadvantages lower-income consumers. The estimated potential savings on vehicle operation are thus irrelevant for those who would be unable to purchase a vehicle in the first place. Moreover, the potential savings of only $100 per vehicle across its lifetime use in fuel costs, and only under the most stringent fuel

[1] Bernhardt, David and McPherson-Smith, Oliver (2023). Biden's Plan to Help Evict the Energy Revolution from Federal Land. *The Washington Times*. https://www.washingtontimes.com/news/2023/aug/14/bidens-plan-to-help-evict-energy-revolution-from-f/
[2] Groom, Nichola and Renshaw, Jarrett (2023). Biden Angers All Sides with Scaled Back Offshore Oil Drilling Plan. *Reuters*. https://www.reuters.com/markets/commodities/us-plans-sharp-reduction-offshore-oil-gas-auctions-2023-09-29/
[3] "Biden increases oil royalty rate and scales back lease sales on federal lands," (2023). NPR. https://www.npr.org/2022/04/16/1093195479/biden-federal-oil-leases-royalties
[4] Rollins, Brooke and McPherson-Smith, Oliver (2023). As America Continues to Run on Oil, Foreign Dictators Have Biden Over a Barrel. *The Washington Times.* https://www.washingtontimes.com/news/2023/aug/30/as-america-continues-to-run-on-oil-foreign-dictato/
[5] See row PC2LT4 in 'Table IV–13—Estimated Average Per-Vehicle Regulatory Cost ($), Total Light-Duty Fleet.'

economy standards, constitutes a slim margin. If the administration's objective is to help consumers save money on fuel, a more salient objective would be to lower the cost of fuel itself.

A short calculation illustrates this point. Within their first year on the road, NHTSA estimates that cars drive an average of 15,922 miles, vans and SUVs an average of 16,234 miles, and light pickups an average of 18,964 miles.[6] Together, these light vehicles are driven an average of 17,040 miles in their first year. Under NHTSA's previous rulemaking, economy standards for passenger cars and light trucks would result in a minimum standard of 49 miles per gallon (MPG) for model year 2026,[7] which is the final year before the proposed rule would come into effect. Together, this suggests that a new light vehicle in 2026 would use approximately 347.76 gallons of fuel. To achieve a consumer benefit of $100 in just the first year on the road, fuel prices would thus need to fall by 28.76 cents per gallon.

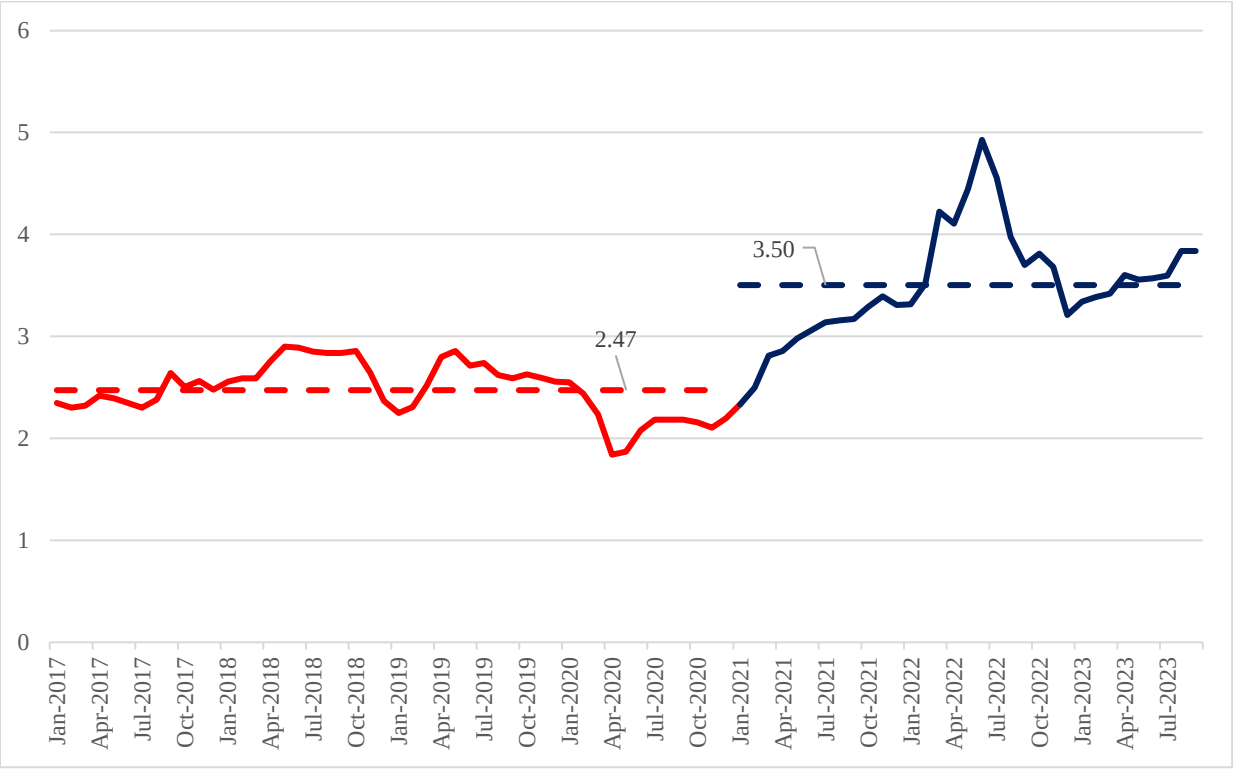
Rather than pursuing a consumer benefit of $100 over the life of a vehicle from 2032, the administration could help consumers save money on fuel by returning to America First energy polices. Creating a regulatory environment that is more amenable to oil production and refining, embodied by the America First agenda,[8] has demonstrably facilitated lower gasoline prices. Figure 1 illustrates variable retail gasoline prices across the current and previous administrations, with dashed lines illustrating their respective average prices. Reducing this differential by just 28% would more than afford consumers the benefit of the proposed rule in just one year, rather than over the lifetime of their vehicles from 2032 onwards.

[6] Data is for 2016 as the baseline year. See Table 4-12. U.S. Department of Transportation, National Highway Traffic Safety Administration. (2023). Draft Technical Support Document: Corporate Average Fuel Economy Standards for Passenger Cars and Light Trucks for Model Years 2027 and Beyond and Fuel Efficiency Standards for Heavy-Duty Pickup Trucks and Vans for Model Years 2030 and Beyond. https://www.regulations.gov/document/NHTSA-2023-0022-0124

[7] U.S. Department of Transportation, National Highway Traffic Safety Administration (2022). Corporate Average Fuel Economy Standards for Model Years 2024–2026 Passenger Cars and Light Trucks. https://www.govinfo.gov/content/pkg/FR-2022-05-02/pdf/2022-07200.pdf

[8] America First Policy Institute (2023). Top America First Actions to Unleash American Energy Abundance. https://assets.americafirstpolicy.com/assets/uploads/files/_Top-10-Brochure-DIGITAL-Energy.pdf

Figure 1. U.S. Regular All Formulations Retail Gasoline Prices (Dollars per Gallon)[9]



3. Reducing Emissions.

The proposed rule advances the current administration's goal of reducing carbon dioxide emissions through two mechanisms. The first is through reducing the use of fossil fuels via more stringent economy standards. However, this rationale is beyond the scope of what the Secretary may consider when determining maximum feasible CAFE standards. Per 49 U.S.C. 32902(f) ("Considerations on Decisions on Maximum Feasible Average Fuel Economy"),

"When deciding maximum feasible average fuel economy under this section, the Secretary of Transportation shall consider technological feasibility, economic practicability, the effect of other motor vehicle standards of the Government on fuel economy, and the need of the United States to conserve energy."

Reducing emissions is thus not an enumerated rationale or factor. The second mechanism for reducing emissions is by incentivizing auto manufacturers to increase their fleet-wide average

[9] Data from the U.S. Energy Information Administration:
https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=pet&s=emm_epmr_pte_nus_dpg&f=m

fuel economy through greater battery electric vehicle (BEV) production, which is beyond NHTSA's legal authority to craft CAFE standards. Per 49 U.S.C. 32902(h) ("Limitations"),

"In carrying out subsections (c), (f), and (g) of this section, the Secretary of Transportation—

(1) may not consider the fuel economy of dedicated automobiles [an automobile that operates only on alternative fuel];

(2) shall consider dual fueled automobiles to be operated only on gasoline or diesel fuel"

Indeed, within its proposed rulemaking, NHTSA recognizes the existence of "statutory constraints that prevent NHTSA from considering the fuel economy of battery electric vehicles (BEVs) in determining maximum feasible CAFE standards."[10] Despite these constraints, NHTSA notes that, "it is entirely possible and reasonable that a vehicle manufacturer will use technology options to meet NHTSA's proposed standards that are significantly different from what NHTSA's analysis for this proposal suggests given the statutory constraints under which it operates." Thus, while NHTSA is prohibited from considering the use of electric vehicles (EVs) to achieve a fleet-wide emissions standard, NHTSA nonetheless implies that manufacturers may produce more EVs to achieve its standards.

The objective of reducing emissions is consistent with the current administration's broader economic and social agenda. For example, Executive Order 14008, "Tackling the Climate Crisis at Home and Abroad," states that,

"Responding to the climate crisis will require both significant short-term global reductions in greenhouse gas emissions and net-zero global emissions by mid-century or before. It is the policy of my Administration that climate considerations shall be an essential element of United States foreign policy and national security."

Despite this broader agenda, the objective of reducing emissions remains outside of the scope of NHTSA's authority when crafting CAFE standards—especially through the production of EVs.

Conclusion

NHTSA's authority to set CAFE standards represents an historic tool for advancing the Nation's energy security. The current administration has provided several rationales to elucidate its exercise of this authority through NHTSA's proposed rule. Two of these goals—improving national energy security and helping consumers save money on fuel—could be more expeditiously achieved through other policies. The conflict with the Administration's broader policy agenda renders them disingenuous. The third—reducing emissions—is outside of the conditions that

[10] 49 U.S.C. 32902(h).

NHTSA shall consider when devising its CAFE standards. With little practical or legal rationale, the proposed rule does not advance the interests of the American people.