NESCAUM
www.nescaum.org

The Clean Air Association of the Northeast States
101 Merrimac Street, 10th Floor Boston, MA 02114
Phone 617-259-2000 Fax 617-742-9162
Arthur N. Marin, Executive Director

July 1, 2008

To: Docket ID No. NHTSA-2008-0089 (Electronic Submittal)

RE: Average Fuel Economy Standards, Passenger Cars and Light Trucks, Model Years 2011-2015; Proposed Rule

NESCAUM (Northeast States for Coordinated Air Use Management) submits the following comments on NHTSA's Proposed Rule for "Average Fuel Economy Standards, Passenger Cars and Light Trucks, Model Years 2011-2015." NESCAUM is an association of state air pollution control agencies in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont.

Emissions from light duty vehicles and their fuels contribute significantly to elevated air pollution levels in the Northeast. There is a correlation between motor vehicle fuel consumption and regional air quality problems. Therefore, the NESCAUM states support a rulemaking effort designed to achieve a maximum feasible level of fuel economy for the light duty vehicle fleet. In this regard, we offer the following comments.

Stringency of Standards

As a general observation, we note that NHTSA has taken a rather conservative approach towards setting fuel economy standards. The proposal emphasizes "available technologies" for achieving fuel economy improvements and reflects a rather strong preoccupation with the ability of individual auto manufacturers to meet more stringent standards, compared to what is proposed. Further, NHTSA's optimized standards are couched almost exclusively in economic terms; emphasizing a perceived need for "maximizing net societal benefits…where the estimated benefits to society exceed the estimated cost of the rule by the highest amount." NHTSA appears very reluctant to propose more ambitious standards if the effect would be to reduce the consumer payback by any amount. NHTSA even attempts to reduce purely to economic terms such ancillary benefits as increased energy security achieved through reduction in foreign oil imports and climate change benefits achieved through reduction in greenhouse gas emissions.

The original statute (Energy Policy and Conservation Act, adopted in 1975) governing the setting of fuel economy standards was intended to be technology-forcing.[1] This fact was acknowledged by NHTSA in its 2003 rulemaking for fuel economy standards for Model Year 2005-2007 light trucks. Nowhere does the statute suggest that fuel economy standards should be established according to the economic model used by NHTSA in this rulemaking. While in our comments we are not proposing specific alternatives to the proposed fuel economy standards, we urge NHTSA to reevaluate its proposal, taking more of a technology forcing approach to setting standards. Further, we urge NHTSA to consider fuel consumption reducing technologies that by

[1] The technology-forcing nature of EPCA is pointed out in at least two federal court decisions; the 1986 D.C. Circuit U.S. Court of Appeals decision in *Center for Auto Safety v. NHTSA* and the 2007 U.S. District Court for the District of Vermont decision referenced in the NHTSA proposed rule.

virtue of NHTSA's conservative cost-analysis approach have not been given due consideration. For example, NHTSA notes that "some manufacturers have made public statements regarding hopes to offer plug-in HEVs before MY 2015, but such vehicles are not represented in our analysis." We contend that the prospect for widespread deployment of plug-in HEVs in the near term is more than a simple hope. For example, both Toyota and Chevrolet have announced plans for plug-in HEVs to be available around 2010.[2]

Fuel Cost Assumptions

NHTSA acknowledges that the price of gasoline has the greatest impact on the cost analysis for the standards. Yet, NHTSA assumes fuel prices ranging from $2.26 per gallon in 2016 to $2.51 per gallon in 2030. These numbers are unrealistically low. Currently, the average price of a gallon of gasoline exceeds $4.00 and the principal reason given is high global demand in a supply constricted market. There is little expectation that the gap between supply and demand will be narrowed in the foreseeable future. Therefore, assuming this reasoning is correct, the price of gasoline should remain high; certainly well above the mid-$2.00 range. We urge NHTSA to reevaluate the effect of a wider range of gasoline prices to the $4.00 per gallon level and above. We would expect the results to show that there are more fuel savings technologies capable of cost-effectively achieving greater overall average fuel economy, even according to NHTSA's conservative "net societal benefit" cost-analysis approach.

Preemption of Standards Addressing CO_2 Emissions

Throughout the proposal, NHTSA goes to great lengths to present a case that fuel economy standards and CO_2 emission standards are synonymous. As a case in point, when the industry-wide levels for projected average fuel economy are presented for first time in the document, the equivalent gram/mile CO_2 tailpipe emissions are presented side-by-side. Neither the Energy Policy and Conservation Act nor the Energy Information and Security Act requires or even suggests that NHTSA make this connection when setting average fuel economy standards. NHTSA's motivation in this regard is finally made clear near the end of the proposal in the section addressing federalism:

> *Given that a State regulation for tailpipe emissions of CO_2 is the functional equivalent of a CAFE standard, there is no way that NHTSA can tailor a fuel economy standard so as to avoid preemption.*

NHTSA does not need to express its views on preemption of state standards in order to fulfill its statutory obligations to set fuel economy standards. Moreover, NHTSA's position contradicts recent federal court decisions addressing the same issue. We therefore urge NHTSA to delete its opinions on the preemption issue from the proposed rule.

National Environmental Policy Act

In conjunction with the proposed rulemaking, NHTSA has stated its intent to follow procedures outlined in the National Environmental Policy Act (NEPA). Federal regulations state, "NEPA

[2] http://www.nytimes.com/2008/01/14/business/14plug.html?_r=1&oref=slogin

procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken."[3] Further, these regulations require federal agencies to "[i]ntegrate the requirements of NEPA with other planning and environmental review procedures…so that all such procedures run concurrently rather than consecutively." In so doing, the effect is to "[e]ncourage and facilitate public involvement in decisions which affect the quality of the human environment."

In the context of these stated purposes of NEPA, we take note of the fact that the notice of proposed rulemaking was published on May 2, 2008 with a deadline for comments of July 1, 2008. However, NHTSA did not release the Draft Environmental Impact Statement until June 24, 2008, and NESCAUM did not receive a copy of the DEIS from NHTSA until June 30, 2008, which is only one day before the rulemaking comment deadline. Consequently, NESCAUM and other public commentators have essentially no opportunity to consider the environmental impacts, as stated by NHTSA, while reviewing and developing comments on the proposed rule. To be consistent with legislative intent and regulations implementing NEPA, NHTSA should provide an additional comment period on the proposed rule after the DEIS becomes final.

NHTSA's selection of the $7 per ton value for the social cost of carbon emissions is one example of how the absence of concurrent processes hinders efforts to provide fully informed comments and make better informed decisions. It would have been beneficial to have had the DEIS in hand while assessing the appropriateness of this figure. Considering the late release of the DEIS relative to the comment period for the proposed rule, there simply is not enough time to adequately formulate a comment in this regard.

Discounting Future Benefits and Costs

NHTSA's stated intent is to use a 7 percent rate for discounting future benefits from increased CAFE standards. We believe this rate is too high and therefore inappropriately devalues the technologies designed to achieve increased fuel economy. In contrast, for the rulemaking on Tier 2 Motor Vehicle Emissions Standards,[4] EPA used a discount rate of 5 percent. We recommend that NHTSA use a discount rate of no greater than 5 percent and perhaps consider an even lower discount rate if appropriate.

References to Technologies in the NESCCAF Report

Information from a 2004 NESCCAF[5] study entitled "Reducing Greenhouse Gas Emissions from Light-Duty Motor Vehicles" is cited in the NHTSA proposal. Some of this information is reported in a way that is either confusing or incorrect. For example, NHTSA applies a 1.5 retail price equivalent (RPE) factor to the manufacturer costs presented in Appendix C of the NESCCAF report, and at other times uses a 1.4 RPE – and presents both costs as NESCCAF costs. In the report, NESCCAF only used a 1.4 RPE. The reporting of costs using the 1.5 multiplier as NESCCAF costs is incorrect and leads to uncertainty as to how the costs were

[3] See 40 CFR 1500.1 & 1500.2
[4] FR/Vol. 65, No. 28, February 10, 2000
[5] NESCCAF is the Northeast States Center for a Clean Air Future, an affiliate organization of NESCAUM.

developed. A specific case is the cost of a turbocharger. NHTSA states the NESCCAF turbocharger cost is $600. In this case, NHTSA applied a 1.5 RPE factor to manufacturer costs presented in Appendix C of the NESCCAF report to arrive at the $600 cost. This is different from the cost that NESCCAF developed. Conversely, on page 24369 of the Federal Register notice, NHTSA accurately states the NESCCAF cylinder deactivation costs ranged from $161 to $210. This cost accurately reflects manufacturer costs presented in Appendix C of the NESCCAF report, multiplied by the 1.4 retail price equivalent used by NESCCAF.

In some cases, information about what specific components were included in the NESCCAF study assumptions is reported incorrectly by NHTSA. For example, the NESCCAF study did not conclude that an air pump is required as part of a turbocharged system, in contrast to NHTSA's statement that NESCCAF assumed a $90 air pump is needed with the turbocharger.

Another example is the statement on p. 24375 of the Federal Register notice that the NESCCAF study included costs for high efficiency generators ($56) but failed to account for costs for the electrification of other accessories. In reality, Appendix C of the NESCCAF report assigns a cost of $70 for electrified accessories for a total cost of $126, which is within the range of costs for these technologies cited from a National Academy of Sciences report and used by NHTSA.

We recommend that all reported costs and benefits, attributed to NESCCAF by NHTSA, be reviewed carefully for errors and amended accordingly.

Conclusion

The Energy Independence and Security Act of 2007 provides the Department of Transportation with an important opportunity to implement a federal motor vehicle strategy, embracing stringent, technology-forcing CAFE standards and thereby ultimately improving the energy security situation in the United States and improving air quality. The current proposal in many respects falls short of what could be achieved and instead relies upon a very conservative cost approach that among other things fails to take into account the expected long-term costs of motor vehicle fuels. Further, the proposal unnecessarily delves into legal questions regarding the relationship between fuel economy and carbon dioxide tailpipe emissions. NESCAUM therefore urges NHTSA to substantially revise its proposal along the lines suggested in the paragraphs above. If you have any questions, please feel free to contact Eric Skelton of my staff at (617) 259-2028 or eskelton@nescaum.org.

Sincerely,

Arthur N. Marin
Executive Director

Cc: NESCAUM Directors