

August 15, 2008

To: Docket ID No. NHTSA-2008-0060 (Electronic Submittal)

RE: Draft Environmental Impact Statement for New Corporate Average Fuel Economy Standards, Passenger Cars and Light Trucks, MY 2011-2015

NESCAUM (Northeast States for Coordinated Air Use Management) submits the following comments on NHTSA's Draft Environmental Impact Statement (DEIS). NESCAUM is an association of state air pollution control agencies in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont. Please note that NESCAUM recently submitted comments to the docket<sup>1</sup> on the NHTSA's Proposed Rule for Average Fuel Economy Standards. NESCAUM incorporates by reference our previous comments pertaining to the DEIS in that proposed rule.

In our previous comments, we noted that the Proposed Rule was published on May 2, 2008 with a deadline for comments of July 1, 2008, but NHTSA did not release the DEIS until June 24, 2008. Consequently, there was little opportunity to consider the DEIS while reviewing and developing comments on the Proposed Rule. The applicable federal regulations state, "NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken."<sup>2</sup> 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." Unfortunately, by separating the review periods for these two actions, the public involvement processes, both for the Proposed Rule and for the DEIS, were not well served.

NESCAUM's primary concern with the DEIS is with how it addresses cumulative effects, defined as "the impact on the environment which results from the incremental impact of the action when added to other past, present, and *reasonably foreseeable* future actions regardless of what agency (Federal or non-federal) or person undertakes such other actions." (emphasis added)<sup>3</sup>. Noteworthy in this regard is the official NEPA guidance document, Considering the Cumulative Effects under the National Environmental Policy Act,<sup>4</sup> which makes a number of important points, including:

- The analyst's primary goal is to determine the magnitude and significance of the environmental consequences of the proposed action in the context of the cumulative effects of other past, present, and future actions.

<sup>1</sup> Docket ID No. NHTSA-2008-0089

<sup>2</sup> 40 CFR 1500.1 & 1500.2

<sup>3</sup> 40 CFR § 1508.7

<sup>4</sup> <http://www.nepa.gov/nepa/ccenepa/ccenepa.htm>

- The effects of a proposed action on a given resource, ecosystem, and human community include the present and future effects added to the effects that have taken place in the past.
- Individual effects from disparate activities may add up to or interact to cause additional effects not apparent when looking at the individual effects one at a time.

The DEIS, inconsistent with the regulations and policy guidance on cumulative effects, evaluates the effects of new CAFE standards without consideration of other important factors. For example, while NHTSA asserts the DEIS fully addresses foreseeable impacts through the year 2100, it errs by incorporating an assumption that technological improvements in fuel economy cease after model year 2020.<sup>5</sup> In reality and in contrast with this approach, technology-forcing requirements historically have spurred technological innovation to meet and even exceed environmental benchmarks. This interrelationship between policy initiatives and technology advancement has been well documented by numerous researchers<sup>6</sup> for more than thirty years and has even been given a name; *induced technological change*. There is little question that policies and legislative initiatives aimed at reducing carbon emissions are in our future, and these programs will create economic disincentives to continued business as usual, relative to consumption of fossil fuels in the transportation sector. Consequently and according to the principles of induced technological change, business and government will respond by engaging in more extensive research and development, including in the fuel economy arena, with a goal of reducing reliance on conventional fuels. As these research and development efforts bear fruit, technological progress will follow.

Given this principle of induced technological change, coupled with the underlying legislative requirement (i.e., the Energy Policy and Conservation Act – EPCA) for NHTSA to take a technology-forcing approach to future fuel economy requirements, further improvements beyond model year 2020 are, in fact, *reasonably foreseeable*. Thus, the approach taken in the DEIS disregards both precedent and the law. It is also important to note that economics by itself will play a future role, inducing technological change to improve fuel economy. The U.S. Energy Information Administration in its 2008 Annual Energy Outlook projects in its “high economic growth–high fuel price” scenario that between 2008 and 2030, energy use in the light duty vehicle sector will grow by 13 percent while at the same time, the price of gasoline will grow by 18 percent. As this scenario unfolds, there will be further incentives for investment into research and development for improving fuel economy. Therefore, NHTSA would do well to incorporate such economic factors into its cumulative effects analysis.

Despite these developments which call for bold policy steps to actively pursue significant improvements in fuel economy, NHTSA has chosen to pursue a very conservative course in setting near-term standards. We made this point in our comments submitted on the Proposed

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<sup>5</sup> NHTSA’s apparent rationale is that the Energy Information and Security Act (EISA) mandates a fuel economy target that extends only through model year 2020.

<sup>6</sup> As a prime example, see Goulder, L.H., et al., Induced Technological Change and the Attractiveness of CO<sub>2</sub> Abatement Policies, *Resource and Energy Economics*, 21 (1999) 211-253.

Rule, noting NHTSA's initial consideration of seven different fuel economy stringency scenarios (ranging from no-action to technology exhaustion alternatives), and ultimate choice of an "optimized" alternative that maximized net benefits from an economic standpoint. In settling on this alternative for which there is little to no impetus for forcing technology, NHTSA's actions will have a dampening effect on progress toward long term improvements to fuel economy and by extension to progress addressing the environmental impacts brought about by climate change.

The DEIS, in its assessment of global benefits, also disregards the principle of technology transfer. If U.S. industries develop technology that markedly improves fuel economy, it's very unlikely that the technology will remain confined to the U.S. fleet. Ultimately, fleets worldwide will incorporate the same technologies. According to the World Resources Institute, energy consumption accounts for 61 percent of total GHG emissions and transport accounts for 22 percent of all energy consumption-related GHG emissions. U.S. transportation, according to the Energy Information Administration, accounts for 18 percent of global GHG emissions from petroleum consumption. Clearly, an aggressive program in the U.S. to markedly improve fuel economy, coupled with technology transfer, can be a key strategy for reducing GHG emissions globally.

The DEIS disregards these factors and NHTSA concludes that the standards will have a negligible impact on climate change. Quoting from the DEIS:

*...because EISA requires average fuel economy of the passenger car and light truck fleet to reach a combined 35 mpg by 2020, the MY 2016-2020 CAFE standards are a reasonably foreseeable future action. Accordingly, the cumulative impacts analysis assumes the minimum MY 2016-2020 CAFE standards necessary to get to 35 mpg by 2020... Overall, the emission reductions for the MY 2011-2015 CAFE alternatives have a small impact on climate change. The emission reductions and resulting climate impacts for the MY 2011-2020 standards are larger, though they are still relatively small in absolute terms.*

NHTSA's approach with the DEIS is unfortunately consistent with EPA's discredited argument in *Massachusetts v. EPA* 127 S. Ct. 1438 (2007) as to why that federal agency should not regulate GHGs emissions from new motor vehicles. EPA's rationale was that such regulations would have an insignificant effect on mitigating climate change. The Supreme Court rejected EPA's argument, pointing out that, "Agencies, like legislatures, do not generally resolve massive problems in one fell regulatory swoop. ('[A] reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind' [internal citation omitted].)... And reducing domestic automobile emissions is hardly a tentative step... [T]he United States transportation sector emits an enormous quantity of carbon dioxide into the atmosphere."

In summary, NHTSA has an obligation to pursue a technology-forcing approach, as envisioned under EPCA, and address all *reasonably foreseeable* cumulative effects. The approach taken by NHTSA provides insufficient information to fully evaluate the fuel economy scenarios in the

DEIS. The DEIS overlooks the environmental harm of the less aggressive technology scenarios (including NHTSA's preferred option) caused by foregoing more technology-forcing alternatives having greater climate benefits. The failure to fully consider the reasonably foreseeable broad dissemination of advanced fuel efficient technologies is an informational lapse that needs to be more fully addressed. If you have any questions, feel free to contact Eric Skelton of my staff at (617) 259-2028 or [eskelton@nescalum.org](mailto:eskelton@nescalum.org).

Sincerely,

A handwritten signature in cursive script, appearing to read "Arthur N. Marin".

Arthur N. Marin  
Executive Director

Cc: NESCAUM Directors