GREG WALDEN, OREGON
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

MEMORANDUM

December 9, 2017

To: Subcommittee on Digital Commerce and Consumer Protection and Subcommittee on Environment Democratic Members and Staff

Fr: Committee on Energy and Commerce Democratic Staff

Re: Hearing on "Update on the Corporate Average Fuel Economy Program (CAFE) and Greenhouse Gas Emissions Standards for Motor Vehicles"

On **Tuesday, December 12, 2017, at 10:00 a.m. in room 2123 of the Rayburn House Office Building**, the Subcommittee on Digital Commerce and Consumer Protection and the Subcommittee on Environment will hold a joint hearing titled "Update on the Corporate Average Fuel Economy Program (CAFE) and Greenhouse Gas Emissions Standards for Motor Vehicles."

I. BACKGROUND

Congress enacted CAFE standards in 1975 to reduce energy consumption by increasing passenger car and light truck fuel economy.[1] In addition, the Environmental Protection Agency (EPA) sets standards for greenhouse gas (GHG) emissions for those same vehicles under the Clean Air Act.[2]

In 2007, Congress passed the Energy Independence and Security Act (EISA), which required the National Highway Traffic Safety Administration (NHTSA) to increase fuel economy standards.[3] Before EISA, the law required every manufacturer to meet the same sales-weighted average for all of its cars in a given model year (MY). Now, the CAFE program allows

[1] Energy and Policy Conservation Act of 1975, Pub. L. No. 94-163.

[2] Congressional Research Service, *Automobile and Truck Fuel Economy (CAFE) and Greenhouse Gas Standards* (Sept. 11, 2012) (R42721).

[3] Energy Independence and Security Act of 2007, Pub. L. No. 110-140.

for differences in the size and attributes of the vehicles within a manufacturer's fleet. Generally, the larger the vehicle, the lower the fuel economy target level is for that vehicle. Instead of a uniform CAFE standard, each manufacturer now has a unique CAFE standard. A manufacturer must meet its unique fleet-wide average based on the vehicles it chooses to produce and sales volume of each model.[4]

Following passage of EISA, NHTSA developed joint standards with EPA that addressed both fuel economy and GHG emissions requirements. Standards for light duty vehicles were finalized in May 2010 for MY 2012-2016 and in October 2012 for MY 2017-2025.[5] NHTSA and EPA jointly produced "one national program" with the goal of ensuring that manufacturers could build a single fleet that would comply with both NHTSA fuel economy and EPA emissions standards.[6] In addition, the one national program ensured automakers did not have to comply with different state emissions laws such as those established in California. Various stakeholders, including automakers, supported the one national program.[7] Although one national program created a streamlined system, NHTSA and EPA have different statutory authority and, therefore, have two separate sets of standards with important differences. The GHG reduction target can be met by reducing vehicle GHG emissions through mechanisms other than improved fuel economy.[8]

One major difference in the standards is the ability to get credits for changes in air conditioning systems or use of off-cycle technologies. Off-cycle credits relate to the use of technologies that can reduce emissions or improve fuel economy, but that are not captured by current testing procedures.[9] These credits are permissible under GHG standards but not under CAFE standards. The fuel economy achievable through these technologies, however, has already been factored into NHTSA's standards.

---

[4] Environmental Protection Agency, *Fact Sheet: EPA and NHTSA Finalize Historic National Program to Reduce Greenhouse Gases and Improve Fuel Economy for Cars and Trucks* (Apr. 2010).

[5] Environmental Protection Agency and Department of Transportation, *Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards*, 75 Fed. Reg. 25324 (May 7, 2010) (final rule); Environmental Protection Agency and Department of Transportation, *2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards*, 77 Fed. Reg. 62624 (Oct. 15, 2012) (final rule).

[6] *See* The White House, Presidential Memorandum Regarding Fuel Efficiency Standards (May 21, 2010) (obamawhitehouse.archives.gov/the-press-office/presidential-memorandum-regarding-fuel-efficiency-standards).

[7] Environmental Protection Agency, 2011 Commitment Letters for 2017-2025 Light-Duty National Program (July 2011) (www.epa.gov/regulations-emissions-vehicles-and-engines/2011-commitment-letters-2017-2025-light-duty-national).

[8] *See* Note 6.

[9] Examples of off-cycle technologies include stop-start ignition systems that can turn off an engine at a traffic light and active aerodynamic systems like grille shutters that close to reduce drag and open only when the engine needs cooling.

NHTSA set its fuel economy goals based on what would be achievable by traditional "tailpipe technologies" alone. The standards are, therefore, less stringent than had NHTSA included fuel economy gains made possible through other technologies. When it set standards in 2010, NHTSA expressly stated that including these other technologies would necessitate more stringent CAFE standards to ensure they reflected the "maximum feasible" fuel economy contemplated by the law.[10]

II. MIDTERM EVALUATION OF MY 2022-2025 STANDARDS

As part of its 2012 rulemaking regarding GHG emissions, NHTSA and EPA committed to conduct a formal three-step Midterm Evaluation (MTE) of the standards it had set for MY 2022-2025. All three steps have been completed: (1) the agencies issued the July 2016 Draft Technical Assessment Report (TAR) and sought public comment; (2) EPA made a proposed determination in November 2016 and sought public comment; and (3) EPA made a final determination before April 2018.[11]

EPA used the TAR to make a final determination, issued in January 2017, to maintain its current 2022-2025 standards. In March 2017, under the Trump Administration, NHTSA and EPA announced that they were reopening the MTE and EPA was reconsidering the January final determination. A new final determination is expected by April 2018. In July 2017, NHTSA issued a notice of intent to prepare an environmental impact statement for MY 2022-2025 CAFE standards.[12]

III. RESPONSE OF AUTOMAKERS

Although automakers entered into an agreement to support the 2012 rules, they have expressed concerns about the feasibility of meeting the included GHG emission reduction targets and CAFE standards. Among their concerns are the costs associated with fuel economy and emission performance improvement technologies, and the level of consumer interest in fuel economy relative to other vehicle features. In February 2017, the automakers petitioned EPA to

[10] Environmental Protection Agency and Department of Transportation, *Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards*, 75 Fed. Reg. 25324 (May 7, 2010) (final rule).

[11] Environmental Protection Agency, *Midterm Evaluation of Light-duty Vehicle GHG Emission Standards for Model Years 2022-2025* (www.epa.gov/regulations-emissions-vehicles-and-engines/midterm-evaluation-light-duty-vehicle-greenhouse-gas) (accessed Dec. 7, 2017).

[12] National Highway Traffic Safety Administration, *Notice of Intent to Prepare an Environmental Impact Statement for MYs 2022-2025 Corporate Average Fuel Economy Standards*, 82 Fed. Reg. 34740 (July 26, 17); National Highway Traffic Safety Administration, *Notice to Extend the Public Comment Period for the Notice of Intent to Prepare an Environmental Impact Statement for Model Year 2022-2025 Corporate Average Fuel Economy Standards*, 82 Fed. Reg. 41306 (Aug. 30, 2017).

reconsider its final determination on the GHG emission standards, and asked for the determination to be withdrawn.[13]

Automakers are also seeking other avenues for achieving CAFE credits through means that do not necessarily address fuel economy. For example, automakers seek to include air conditioning efficiency credits in the fleet fuel economy levels calculation.[14] In addition, some have proposed receiving CAFE credits for safety improvements already planned for upcoming model years.[15]

The 2010 and 2012 standards helped with integration of CAFE and GHG standards, as well as similar state GHG standards. Nevertheless, automakers continue to seek "harmonization" with other state vehicle programs that promote the production of zero emission vehicles (ZEV). These state programs have no federal counterpart. The state ZEV requirements are designed to create a market for electric and other zero emission vehicles. While these programs are not CAFE or GHG standard-setting programs, ZEV sales help auto manufacturers comply with the federal CAFE and GHG standards.

IV. LEGISLATION

In October 2017, Representatives Upton (R-MI) and Dingell (D-MI) introduced H.R. 4011, the "Fuel Economy Harmonization Act," to modify provisions of NHTSA's CAFE program to expand automobile manufacturers' ability to bank and use credits. Eligible credits would include credits from earlier years when standards were less stringent and expired credits under existing law. Senator Blunt (R-MO) introduced a similar bill, S.1273.

Specifically, H.R. 4011 would lengthen the time that credits can carry forward from five years under current law to eleven years. Manufacturers would be able to apply any credits earned after MY 2009 to MY 2016-2021. The carry-forward period then reverts back to five years.

---

[13] Letter from Auto Alliance to Scott Pruitt, Administrator, Environmental Protection Agency (Feb. 21, 2017); Letter from Global Automakers to Scott Pruitt, Administrator, Environmental Protection Agency (Feb. 21, 2017).

[14] The Alliance of Automobile Manufacturers and the Association of Global Automakers submitted a petition to NHTSA on June 20, 2016, seeking a number of changes to the CAFE standards related to compliance flexibility and credit issues. NHTSA agreed to initiate a rulemaking proceeding to address requests within its jurisdiction and powers. National Highway Traffic Safety Administration, *Corporate Average Fuel Economy Standards; Credits*, 81 Fed. Reg. 95553 (Dec. 28, 2016).

[15] *See* House Committee on Energy and Commerce, *Hearing on NHTSA Oversight*, 114th Cong. (Apr. 14, 2016); Congressional Research Service, *Automakers Seek to Align Fuel Economy and Greenhouse Gas Regulations* (Aug. 8, 2016) (www.fas.org/sgp/crs/misc/IN10550.pdf).

In addition, H.R. 4011 relaxes restrictions on within-fleet credit transfers. Currently, manufacturers can transfer credits from one vehicle category in their fleet to another. They can, for example, apply credits earned by fuel-efficient cars to less fuel-efficient trucks. The statute, however, caps such transfers at a two miles per gallon maximum. Under H.R. 4011, the credit transfer cap would increase over the next four years to a six miles per gallon maximum. It would also allow manufacturers to transfer credits earned any time after 2009, one year earlier than the current law. Finally, the bill allows manufacturers to apply the off-cycle credits built into EPA's GHG emission standards toward NHTSA's fuel economy standards.

V. WITNESSES

The following witnesses have been invited to testify:

John Bozzella
President and CEO
Global Automakers

Mitch Bainwol
President and CEO
Alliance of Automobile Manufacturers

Forrest McConnell
President
McConnell Honda & Acura
National Automobile Dealers Association

David Cooke
Senior Vehicles Analyst
Union of Concerned Scientists