

## **Additional Questions for the Record**

**Subcommittee on Consumer Protection and Commerce  
Subcommittee on Environment and Climate Change  
Hearing on  
“Driving in Reverse: The Administration’s Rollback of Fuel Economy and Clean Car  
Standards”  
June 20, 2019**

**The Honorable James C. Owens, Acting Administrator,<sup>1</sup>  
National Highway Traffic Safety Administration, U.S. Department of Transportation**

### **The Honorable Frank Pallone (D-NJ)**

1. What consideration, if any, has NHTSA given to the potential consequences of transportation conformity issues for infrastructure projects receiving federal dollars from the Department of Transportation? Why were transportation conformity implications not addressed in the Notice of Proposed Rulemaking?

**NHTSA RESPONSE:** The transportation conformity requirements under Federal law apply to activities carried out pursuant to Title 23 of the United States Code, as well as to Chapter 53 of Title 49 of the United States Code. As this rulemaking is carried out pursuant to Chapter 32 of Title 49 of the United States Code, transportation conformity requirements do not apply.

2. On July 25, 2019, California and four automakers announced a voluntary framework that will, among other things, require increasing stringency of greenhouse gas standards at a nationwide average annual rate of 3.7% year-over-year, with 1% of that annual stringency achievable through advanced technology multiplier credits. The deal also extended the availability of technology multipliers and raised the cap on off-cycle menu credits. Were any terms of this voluntary framework, or similar terms, proposed by California during discussions with the federal government about revisions to the existing regulatory program?

**NHTSA RESPONSE:** The Federal government and representatives of the California Air Resources Board (CARB) held several discussions in 2017 and 2018 leading up to and after publication of the SAFE Vehicles Rule proposal. While it has long been NHTSA’s intention to maintain one national standard based on a sound regulation, unfortunately at no time during these discussions did CARB representatives provide a suggested rulemaking approach that recognizes market conditions or realities, or respected the need for transparency. As part of the rulemaking process, NHTSA has

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<sup>1</sup> The witness, Deputy Administrator Heidi R. King, is no longer with NHTSA. These questions are being responded to on behalf of NHTSA Acting Administrator James C. Owens.

diligently reviewed all comments and information submitted to the Federal Register in order to ensure the final rule incorporates the best possible science and data. That review includes comments submitted by CARB. NHTSA appreciates CARB's thoughtful comments that were submitted and has sought to incorporate suggestions where appropriate.

**The Honorable Cathy McMorris-Rodgers (R-WA)**

1. Administrator King, how do the California greenhouse gas emissions limits and zero emission vehicle mandates interfere with federal regulation of fuel economy?

NHTSA RESPONSE: Fuel economy and tailpipe greenhouse gas emissions are physically and mathematically linked. In fact, since 1975, Federal Law has effectively required that fuel economy be tested by measuring the amount of tailpipe greenhouse gas emissions emitted from a vehicle's tailpipe. Zero emission vehicle mandates require a certain portion of an automaker's new car sales have zero tailpipe greenhouse gas emissions—the equivalent to infinite fuel economy. Effectively, regulation of tailpipe greenhouse gas emission standards and zero emission vehicle mandates result in the regulation of fuel economy.

The Energy Policy and Conservation Act of 1975 (EPCA) requires NHTSA to set national fuel economy standards, applicable to an automaker's entire national new car fleet. Similarly, the Environmental Protection Agency (EPA), in coordination with NHTSA's fuel economy standards, sets national tailpipe greenhouse gas emission standards applicable to an automaker's entire national new car fleet. These Federal standards also include balancing factors required by statute. For instance, NHTSA must consider economic practicability in setting standards—determining the impact that standards will have on the economic wellbeing of the country, automakers, and consumers. The standards NHTSA sets are calibrated with this specifically in mind. If a State could set a standard that is more stringent than the Federal standard, it would add costs that are not factored into NHTSA's balancing.

When a state regulates fuel economy/tailpipe greenhouse gas emissions, it introduces external factors that cannot be accounted for through the Federal standards. This is why Congress, in passing EPCA, prohibited States and local governments from setting fuel economy standards, and even went so far as to prohibit States and local governments from setting standards "related to" fuel economy standards.

2. Administrator King, can you please explain how this Administration considered safety with respect to the proposed SAFE Vehicles Rule?

NHTSA RESPONSE: NHTSA's mission is to improve safety on public roads and the agency has a long history of considering safety in fuel economy rulemakings. With the SAFE Vehicles Rule, NHTSA and EPA are fully recognizing the safety implications of cost increases necessary to meet unrealistically stringent standards.

As vehicle prices increase, fewer people can afford to purchase today's safer vehicles—meaning they will stay in older, less safe vehicles and reduce the speed of fleet turnover. Given that the fleet is already approaching an average vehicle age of 12 years, we have a responsibility to ensure safety and affordability are appropriately considered in setting fuel economy standards.

In the proposal, NHTSA considered safety as related to and even part of its consideration of economic practicability—which is a required factor to consider in setting maximum feasible fuel economy standards. NHTSA examines the effect that vehicle lightweighting has on safety (generally, as it relates to crashes between two vehicles, reducing weight on larger vehicles improves safety, and lightweighting smaller cars increases safety risks). NHTSA also examined the safety impacts of the well-recognized “rebound” effect (when the cost to drive decreases—either due to cheaper fuel or more fuel efficient vehicles—people drive more), measuring the safety impacts of additional miles driven due to cheaper driving costs. Further, NHTSA examined the impact that higher prices have on the ability of consumers to afford newer, safer vehicles.

Effectively, NHTSA found that the combination of slowed introduction of newer and safer vehicles, additional “rebound” driving, and lightweighting of smaller vehicles to achieve the unreasonably stringent standards set in 2012 would result in thousands of additional fatalities over the lifetime of the vehicles affected by the standards.

- a. Did the prior Administration similarly consider safety? If no, please explain.

NHTSA RESPONSE: The 2012 rulemaking to establish standards through model year 2025 did not quantify the safety effect of increased prices slowing down new vehicle sales. It also did not consider the safety impact of additional driving due to affordability. The 2012 rulemaking did consider the impact of lightweighting on safety, and measured the safety benefits of lightweighting larger vehicles, but introduced an assumption that automakers would not reduce weight of smaller vehicles. This had the effect of artificially constraining consideration of negative safety impacts and only considering positive safety impacts.

3. Administrator King, can you explain how the proposed SAFE Vehicles Rule is expected to reduce the average cost of new vehicles?

NHTSA RESPONSE: Fuel economy standards are more stringent than they have ever been, and will continue to rise significantly through the 2020 model year regardless of the standards set in the Final SAFE Vehicles Rule. While technology exists to increase fuel economy, it comes at a cost. And as the cost-effective fuel saving technologies are already being installed on today's vehicles, the low-hanging fruit is already picked. This means that very expensive fuel saving technologies will need to be installed to meet the standards set in 2012. Setting more reasonable standards will significantly reduce the costs to comply. It is also noteworthy that fuel

economy benefits experience diminishing marginal returns, so that doubling fuel economy from 30 to 60 MPG will return only half as much in fuel savings as doubling fuel economy from 15 to 30 MPG, while the cost of achieving higher fuel economy standards grows significantly.

**The Honorable Michael C. Burgess, M.D. (R-TX)**

1. On January 13, 2016, just a few short days before President Trump was inaugurated, the Environmental Protection Agency (EPA) unexpectedly released the final draft of the One National Program mandate. These changes were made outside of the regular rulemaking process and were made with no consideration from the National Highway Traffic Safety Administration (NHTSA). These mandates would have resulted in increased auto prices, the loss of consumer choice, and little benefit to the environment.

How has NHTSA conducted the promulgation of the Safer Affordable Fuel-Efficient (SAFE) Vehicles standards?

NHTSA RESPONSE: NHTSA worked closely with EPA to develop a Notice of Proposed Rulemaking examining a wide range of options that could be selected for a Final Rule, published a Draft Environmental Impact Statement and Preliminary Regulatory Impact Analysis, published the underlying model used as part of the analysis, gave more than 60 days for public comment, and held three public hearings in locations across the country, including California, Michigan, and Pennsylvania.

- a. Was this done through the normal rule making process or have these new standards been rushed in any way?

NHTSA RESPONSE: The proposal, modeling, and analysis were developed over several years. The agencies went to great length to maximize transparency and allow for public input, and adhered to the requirements of the Administrative Procedures Act. The agencies will continue to prioritize following all applicable standards governing the rulemaking process.

- b. How does your agency take to into consideration the comments submitted for the SAFE Vehicles standards? What impact do these comments have on the final result?

NHTSA RESPONSE: The agencies jointly received more than 750,000 public comments. Every comment is evaluated and considered. In response to these comments, NHTSA and Environmental Protection Agency (EPA) are in the process of updating the analysis and analytical tools. The reason that the agencies have gone to such great lengths to hear from the public is so that we can make improvements to our analysis and understanding of the issues

underlying the rulemaking. These comments play a significant role in this rulemaking effort.

- c. Given the expedited nature of the One National Program's promulgation, how were stakeholder concerns taken into consideration?

NHTSA RESPONSE: To NHTSA's knowledge, it is not clear that major stakeholder concerns were appropriately addressed during the 2016 Mid-Term Review final determination. EPA's analysis was developed in partnership with the California Air Resources Board. Thus, in this rulemaking the agencies have been taking a fresh look at all relevant data and analysis to inform the best possible rule.

- d. How have your agencies' processes for the promulgation of the SAFE Vehicle Standards compare to the processed used to release the finalized One National Program mandate under the Obama EPA?

NHTSA RESPONSE: The agencies are focused on a transparent rulemaking process in accordance with applicable law, pursuant to the Administrative Procedures Act.

### **The Honorable Markwayne Mullin (R-OK)**

1. come from a very rural, very poor district where the median income is roughly \$40,000. What's the average going rate of a new car?

NHTSA RESPONSE: The average price of a new vehicle continues to climb. We have seen average prices for new vehicles exceed \$37,000 this year.<sup>2</sup>

- a. If we had continued with the Obama administration mandates, what would that do to the price of the car?

NHTSA RESPONSE: The analysis in the SAFE Vehicles Rule proposal indicated that the average new vehicle price would have increased \$1,850, and total ownership costs increasing by \$2,340 between 2020 and 2029 under the standards set in 2012 compared to the preferred alternative discussed in the proposal.<sup>3</sup>

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<sup>2</sup> See Kelley Blue Book, "Average New-Car Prices Up Nearly 4 Percent Year-Over-Year for May 2019, According to Kelley Blue Book," June 3, 2019. Available at <https://mediaroom.kbb.com/2019-06-03-Average-New-Car-Prices-Up-Nearly-4-Percent-Year-Over-Year-for-May-2019-According-to-Kelley-Blue-Book> (last accessed Oct. 2, 2019).

<sup>3</sup> See SAFE Rule NPRM, Table VII-72, "Impacts to the Average Consumer of a MY 2030 Vehicle under CAFE Program, 7% Discount Rate," at 83 Fed. Reg. 42986, 43324 (Aug. 24, 2018).

- b. People in my district already hold onto their vehicle longer than the national average 13.7 years versus 11.6 nationally. What are the safety implications of older cars on the road?

NHTSA RESPONSE: Newer vehicles today are incredibly safe, not only protecting occupants from accidents, but increasingly avoiding accidents altogether. The quicker we renew the light duty fleet and take older vehicles off the road, the sooner our society can enjoy the remarkable safety benefits of today's new vehicle safety technologies. NHTSA released a report in 2018 comparing safety outcomes from serious crashes, and the data demonstrate that the fatality rate in older vehicles is significantly higher than with newer vehicles.<sup>4</sup>

- c. In the Midterm review, assumed there would be more EV's on the road. Was this a correct assumption?

NHTSA RESPONSE: While we see more EVs on the road today than in 2012, they only make up a miniscule proportion of light duty sales. While EV sales have increased significantly from a near-zero base in 2012, those sales have been heavily subsidized by tax and regulatory incentives, and it is noteworthy that the average EV buyer is significantly wealthier than the average new vehicle buyer, and sales trends indicate that only about half of EV buyers will buy another EV when they shop for new vehicles.

- d. The market for electric vehicles in my district is basically non-existent. However, my colleagues on the other side of the aisle want to subsidize EV's on the back of Rural Americans. Do you know who disproportionately subsidizes the West Coast elites' electric cars?

NHTSA RESPONSE: While every automaker is situated differently, a recent report by McKinsey & Company indicated that most automakers do not make a profit when selling EVs, and that EVs cost approximately \$12,000 per vehicle more to produce than comparable internal combustion engine vehicles.<sup>5</sup> This cost is spread across the automaker's fleet, but generally worked into higher-margin vehicles such as pickup trucks and sport utility vehicles (SUV), or by selling regulatory credits to another automaker, who in turn likely recoup costs for the credits by marking up prices of other vehicles.

Another compounding factor is that many EVs are leased at heavily subsidized rates, which means the lessor of the EV (generally an affiliate of

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<sup>4</sup> See U.S. DOT/NHTSA, Traffic Safety Facts, Research Note: Passenger Vehicle Occupant Injury Severity by Vehicle Age and Model Year in Fatal Crashes, DOT HS 812528, April 2018. Available at <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812528> (last accessed Oct. 2, 2019).

<sup>5</sup> See Yeon Baik, Russell Hensley, Patrick Hertzke, and Stefan Knupfer, "Making Electric Vehicles Profitable," March 2019. Available at <https://www.mckinsey.com/industries/automotive-and-assembly/our-insights/making-electric-vehicles-profitable> (last accessed Oct. 2, 2019).

the manufacturer) will take possession of the vehicle at the end of the lease. Used EVs are selling at very low prices compared to non-EVs (for instance a 2015 new Ford Focus BEV had a manufacturer's suggested retail price (MSRP) of \$29,170 (5-door hatchback electric) and now has a value of roughly \$8,700. A new 2015 non-BEV Ford Focus had an MSRP of \$18,960 (5-door hatchback SE FWD) and now has a value of roughly \$9,200.)<sup>6</sup> These losses are, likewise, spread across the automaker's other vehicles.

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<sup>6</sup> [www.kbb.com](http://www.kbb.com) search based on private party transaction.