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ONE HUNDRED TWELFTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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August 11, 2011

The Honorable Kathryn Ruemmler  
Counsel to the President  
The White House  
Washington, D.C. 20500

Dear Ms. Ruemmler:

It has come to my attention that the new Corporate Average Fuel Economy (CAFE) and EPA vehicle greenhouse gas (GHG) standards announced by President Obama and select automobile manufacturers on July 29, 2011, were negotiated in secret<sup>1</sup>, outside the scope of law<sup>2</sup>, and could generate significant negative impacts for consumers. Specifically, I am concerned about the lack of transparency in the process leading up to the agreement, the expected increase in cost per vehicle, and the negative impact these standards could have on the safety of automobiles. Moreover, I remain concerned that the government's ownership interest in General Motors and Chrysler at the time these negotiations were conducted creates a troublesome conflict-of-interest.

As Chairman of the Oversight and Government Reform Committee, it is my duty to investigate circumstances, such as these, where the best interest of the public is subordinated to the special interest of a select few. Accordingly, this Committee will conduct an investigation into the activities of the Administration leading up to the agreement for new CAFE standards for model years (MY) 2017- 2025. I respectfully request the cooperation of the White House in this investigation.

In the first instance, it appears that the input of American consumers—who purchase some 11 million new cars in the United States each year—has not been sought as part of this agreement. According to Jeremy Anwyl, CEO of Edmunds.com, “[T]he Administration has conferred with environmentalists and with automakers, but neglected car buyers—the very consumers who will be asked to buy the new generation of vehicles.”<sup>3</sup> His concern is echoed by analysts from Kelley Blue Book who state, “While it

<sup>1</sup> Letter from Jeremy Anwyl, CEO of Edmunds.com, to Lisa Jackson, Administrator, U.S. Environmental Protection Agency (July 27, 2011).

<sup>2</sup> 49 U.S.C. Sec. 32902(b)(3)(B) (stating, “the Secretary shall... issue regulations under this title prescribing average fuel economy standards for at least 1, but not more than 5, model years.”)

<sup>3</sup> Anwyl, *supra* note 1.

seems that there is something in the proposal for each of the big, organized constituencies — environmentalists, domestic car companies, union labor — one group has been largely ignored — the American consumer.”<sup>4</sup> Like me, they are deeply concerned that a deal has been struck between the Administration and special interests and that the rulemaking process will be a mere formality.<sup>5</sup>

The concern for the violation of the administrative process is shared by others. The Center for Progressive Reform notes that the agreed upon CAFE standards are “the result of raw political wrangling, not the rational rulemaking process.”<sup>6</sup> They go on to say, “This is not how the process is supposed to work. Under the laws passed by Congress, the agencies are supposed to go through a rational scientific process in order to set the standard at the ‘maximum feasible level’.”<sup>7</sup> If in fact the CAFE standards are the result of political haggling and not the application of proven science to the laws passed by Congress, then the Administration stands in violation of the Administrative Procedures Act (APA), as well as the organic statutes upon which the agencies obtained their rulemaking authority.<sup>8</sup> This approach appears to be exactly the type of activity that the APA was designed to prevent. Moreover, the Administration’s unusual insistence that auto manufacturers forsake their statutory right to challenge the final rules before they are even drafted, is startling in light of the obvious procedural and substantive concerns with the Administration’s actions.<sup>9</sup>

The impact of this agreement on the ability of American businesses to create jobs throughout the automotive production and sales chain is also deeply troubling. If consumers do not buy the vehicles that manufacturers are required to produce, sales will fall, production will slow and manufacturers will be forced to eliminate jobs. According to a survey of 1,100 engineers, conducted by Wards Automotive [hereinafter Wards Survey], “most cars will have to be smaller, more expensive and less varied than they are today, with about 90% doubting the goals can be met without sacrifices in vehicle cost, size, safety and choice.”<sup>10</sup> According to another report, vehicle cost increases associated

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<sup>4</sup> LeaseTrader.com, *Top Auto Execs Gather with Obama in Washington to Boast about New Fuel Economy Requirements, But Is Everyone Really Happy?*, (August 1, 2011) (Available at <http://news.lease-trader.com/archive/2011/08/01/Top-Auto-Execs-Gather-with-Obama-in-Washington-to-Boast.aspx>).

<sup>5</sup> Anwyll, *supra* note 1.

<sup>6</sup> Amy Sinden, *White House Flouts Agency Heads, Rolls Out Backroom Deal on Fuel Economy Standard*, Center for Progressive Reform, CPR Blog, (July 29, 2011) (Available at <http://www.progressivereform.org/CPRBlog.cfm?idBlog=7426C8E2-CF0F-8446-72B4F05FF595E94B>).

<sup>7</sup> *Id.*

<sup>8</sup> The APA does provide agencies with the option of conducting a negotiated rulemaking, however, such a process is subject to additional transparency requirements, such as those required under FACA. See, 5 U.S.C. §§ 561-570

<sup>9</sup> Letter from Daniel Akerson, Chairman and Chief Executive Officer, General Motors, to Ray LaHood, Secretary, U.S. Department of Transportation, and Lisa Jackson, Administrator, Environmental Protection Agency (July 29, 2011) (Available at <http://www.epa.gov/otaq/climate/letters/gm-commitment-ltr.pdf>).

<sup>10</sup> Peter Valdes-Dapena, *Auto engineers: Mileage rules will hurt safety*, CNNMoney, (August 3, 2011) (Available at [http://money.cnn.com/2011/08/03/autos/wards\\_auto\\_CAFE\\_engineer\\_survey/](http://money.cnn.com/2011/08/03/autos/wards_auto_CAFE_engineer_survey/)).

with the rule could depress light vehicle sales by 25 percent and result in the loss of as many as 220,000 automotive jobs.<sup>11</sup> Moreover, the Energy Information Administration has reported that the most affordable cars, those costing less than \$20,000, will be essentially regulated out of existence.<sup>12</sup> However, the Obama Administration has so far refused to reveal the estimated increase cost to consumers that will result from compliance with the new rules.<sup>13</sup> Absent an official estimation, one can only rely on the projections made by independent analysts. According to the Center for Automotive Research (CAR), compliance with these higher standards will cost American car buyers between \$4,190 and \$6,435 per vehicle while delivering a lifetime fuel savings of only \$1,690 to \$2,693.<sup>14</sup> This cost increase will have a significant negative economic impact on consumers, as well as the industry.

In addition to increased costs for consumers, I am alarmed that these standards were developed without regard for the impact they will have on the safety of vehicles driven by Americans. It appears that this Administration is willing to forsake the remarkable gains in safety that automobile manufacturers have made over the years at the altar of stringent emissions standards. According to the Wards Survey, "stringent fuel economy requirements like those set for 2025 will be impossible to meet without sacrificing the safety of the vehicles we [wi]ll drive in the future."<sup>15</sup> This disregard for the impact CAFE standards will have on the safety of automobiles is inconsistent with the law. Since Congress first delegated authority to the Administration to set CAFE standards under the Energy Policy and Conservation Act of 1975 (EPCAT), Congress has required the National Highway Traffic Safety Administration (NHTSA)<sup>16</sup> to examine the safety consequences of the CAFE standards in its overall consideration of relevant factors.<sup>17</sup> It is a well known fact that safety regulations usually add weight by requiring additional body structure and more features like airbags and electronics.<sup>18</sup> A key way of increasing fuel economy is by reducing the weight of the vehicle, and EPA and NHTSA contemplate up to a 15 - 25 percent reduction in the mass of the vehicle.<sup>19</sup> Accordingly, efforts to increase fuel economy must take into account the impact on vehicle safety. Yet it does not appear that NHTSA has done so in this instance.

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<sup>11</sup> Defour Group LLC, *STUDY: 56 MPG Standard by MY2025 to Cost 220,000 jobs*, (July 7, 2011) (Available at <http://www.defourgroupp.com>).

<sup>12</sup> Energy Information Administration, *Annual Energy Outlook 2011*, Figure 18 at 27 (April 2011) (Available at [http://www.eia.gov/forecasts/aeo/pdf/0383\(2011\).pdf](http://www.eia.gov/forecasts/aeo/pdf/0383(2011).pdf)).

<sup>13</sup> Environmental Protection Agency and National Highway Traffic Safety Administration briefing for Congressional staff, (July 29, 2011).

<sup>14</sup> Jay Baron, Sean McAlinden, Greg Schroeder, & Yen Chen, *The U.S. Automotive Market and Industry in 2025*, The Center for Automotive Research, (June 2011) (Available at <http://www.cargroup.org/pdfs/ami.pdf>).

<sup>15</sup> Peter Valdes-Dapena, *Auto engineers: Mileage Rules Will Hurt Safety*, CNNMoney, (August 3, 2011) (Available at [http://money.cnn.com/2011/08/03/autos/wards\\_auto\\_CAFE\\_engineer\\_survey/](http://money.cnn.com/2011/08/03/autos/wards_auto_CAFE_engineer_survey/)).

<sup>16</sup> *Competitive Enterprise Institute v. NHTSA* (CEI I), 901 F.2d 107, 120 at n.11 (DC Cir. 1990).

<sup>17</sup> *Competitive Enterprise Institute v. NHTSA* (CEI I), 901 F.2d 107, 120 at n.11 (DC Cir. 1990).

<sup>18</sup> Valdes-Dapena, *supra*, note 19.

<sup>19</sup> *Id.*

In addition to NHTSA's obligation to consider the impact that CAFE standards have on driver safety, NHTSA's authority to promulgate CAFE standards is limited to five year intervals and at all times must consider technological feasibility, economic practicality, effect of other standards on fuel economy, and the need of the nation to conserve energy.<sup>20</sup> At this time, it is impossible for NHTSA to adequately consider economic practicality for fuel standards in MY 2022-25, primarily because car manufacturers themselves do not have product plans for that year, and market conditions are unknown 14 years into the future. For NHTSA to set even "conditional" CAFE standards for those years is outside of the authority delegated to NHTSA by Congress and therefore inappropriate.

In light of these concerns, I respectfully request you provide the following information two weeks after receipt of this letter;

1. A list of all Administration officials who participated in negotiations and the development of CAFE and EPA light duty vehicle greenhouse gas standards MY 2017-2025;
2. All records related to the negotiation for and development of CAFE and EPA light duty vehicle greenhouse gas standards MY 2017-2025;
3. All communications referring or relating to the negotiation and development of CAFE and EPA light duty vehicle greenhouse gas standards MY 2017-2025 between the Administration and automobile manufacturers; ;
4. All communications referring or relating to the negotiation and development of CAFE and EPA light duty vehicle greenhouse gas standards MY 2017-2025 between the Administration and the California Air Resources Board (CARB) ;
5. All technical assessment reports used by your Administration to determine the appropriate CAFE level for automobiles sold in the United States;
6. All studies relied on by the Administration to determine the impact the CAFE and EPA light duty vehicle greenhouse gas standards MY 2017-2025 would have on manufacturers, auto dealers, and consumers. This request includes, but is not limited to, any studies regarding the increased cost of vehicles, either in the aggregate, as well as on a per company basis; the impact the standards would have on vehicle safety; the impact the standards would have on vehicle demand; the impact these standards would have on manufacturing jobs; the impact these standards would have on Automobile dealerships and their employees; and the impact these standards would have on the price of gasoline;

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<sup>20</sup> P.L. 94-163, 42 U.S.C. 6201.

7. All "Model Runs" produced by the Volpe Center for assessing the impact these regulations would have on automobile manufacturers;
8. An explanation as to whether the Administration estimated the number of Americans who will be denied a new car auto loan because of the combined cost of NHTSA and EPA's fuel economy rulemakings for model years 2011-25; please provide all documents related to such an assessment. If no studies were conducted, please explain why this impact was not considered;
9. An explanation of how many Americans will be priced out of the new car market in 2025 because of the combined cost of NHTSA and EPA's fuel economy rulemakings for model years 2011-25;
10. An explanation as to the exact role of the state of California and CARB in these negotiations;
11. An explanation of whether there is "one national standard" or if in fact there is and will continue to be three separate standards issued individually by NHTSA, EPA, and CARB;
12. A chart of the total amount of funds expended by EPA in setting fuel economy standards/mobile source greenhouse gases since 2007 by year;
13. An explanation of the total cost of EPA regulations on the auto industry from January 20, 2009 to the present;
14. An explanation of how many Administration employees are working on regulating fuel economy/mobile source greenhouse gases;

Additionally, please answer the following questions:

15. NHTSA runs different fuel economy program scenarios with a computer program at the Volpe Center in Massachusetts. When the EPA began regulating fuel economy in 2009, EPA decided to create its own separate computer model called Omega.
  - a. Why was it necessary for EPA to re-create its own fuel economy modeling program?
  - b. Why did EPA refuse to use the already existing fuel economy modeling program at the Volpe Center?
  - c. Please explain what additional data and analysis warrants the creation of another fuel economy modeling program.

- d. Please break down by year how much EPA spent on developing and maintaining Omega.
  - e. Were any funds from the American Recovery and Reinvestment Act used to set up the Omega program? If so, please identify such funds.
  - f. What is the total cost associated with the Omega modeling program?
16. Did the threat of a separate California program influence EPA or NHTSA decision-making on the structure and stringency of the MYs 2017-25 rulemaking?
17. Do you believe that when Congress enacted Section 209 of the Clean Air Act, Congress intended California regulators to establish fuel economy standards for the national fleet, despite the express language contained in EPCA, which declares that states “may not adopt or enforce a law or regulation related to fuel economy standards”?<sup>21</sup>
18. Auto manufacturers who sell less than 60,000 vehicles in California, on average for a three-year period, are exempt from the California Air Resources Board’s (CARB) fuel economy/GHG regulation. If Chinese automakers begin to sell vehicles in California next year, will Chinese automakers have a competitive advantage over other automakers (i.e., General Motors, Chrysler) who are regulated?
19. Federal law explicitly preempts States from “adopt[ing] or enforce[ing] a law or regulation related to fuel economy standards...”<sup>22</sup> Since CARB is currently enforcing its own fuel economy/greenhouse gas (GHG) regulation (CA LEV), please state your reason(s) why 49 U.S.C. 32919(a) is not being enforced.
20. California needs a Clean Air Act preemption waiver to enforce its fuel economy/GHG vehicle program for MY 2017-25. Since CARB has predicated not enforcing its “patchwork” fuel economy regulation upon EPA’s future decision to grant a CAA waiver<sup>23</sup>, has the Administration already privately committed to grant California such a waiver even before California has submitted a waiver request? Please explain the precise nature of any agreement between the Administration and the state of California and/or CARB as it relates to the development and or administration of CAFE and EPA light-duty vehicle greenhouse gas standards for MYs 2017-2025.

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<sup>21</sup> 49 U.S.C. § 32919(a) (2000).

<sup>22</sup> 49 U.S.C. 32919(a)

<sup>23</sup> Letter from Mary Nichols, chairman, CARB, to Ray LaHood, Secretary, U.S. Department of Transportation, and Lisa Jackson, Administrator, Environmental Protection Agency (July 28, 2011)(Available at <http://www.epa.gov/otaq/climate/letters/carb-commitment-ltr.pdf>).

21. In the “Supplemental Notice of Intent” issued on July 29, for the first time, NHTSA will be offering “off cycle” credits for installing active grille shutters, electric heat pumps, high efficiency alternators, high efficiency lights, start-stop, solar panel roofs for hybrids etc., and other technologies that are not accounted for in the current test procedure.
  - a. What is the statutory basis for these credits?
  - b. Why did NHTSA fail to “discover” the existence of these credits in all of its previous CAFE rulemakings?
22. EPA sets GHG vehicle emissions standard using criteria specified in the Clean Air Act. NHTSA sets a fuel economy standard under the criteria specified in the Energy Policy and Conservation Act. Yet, except for the regulation of air conditioners, the two standards are remarkably similar, considering both standards were set pursuant to two different laws.

Is “harmonizing” a CAFE standard to EPA’s standard now part of NHTSA’s analysis to set a fuel economy standard at its maximum feasible level?
23. Why has the Administration required the surrendering of legal rights as a precondition for negotiating the new fuel economy standards?<sup>24</sup> Why has the surrendering of these legal rights extended to the trade associations to which the automakers belong?<sup>25</sup> Why does the Administration believe that such an agreement is necessary? Why does the Administration believe such an agreement is appropriate?
24. Fuel economy standards for MY 2017 and later are not due until April 1, 2015. Why is the Administration planning on finalizing fuel economy standards for MY 2017 and later by July 2012, or nearly three years before they are due?
25. The President said, “Cap and trade was just one way of skinning the cat. It was a means, not an end, and I am going to be looking for other means to address this problem.”<sup>26</sup> Since an EPA fuel economy standard of 54.5 mpg by 2025 exceeds the goal in the Waxman-Markey “cap and trade” bill to reduce GHGs emissions by 42% by 2030, is this rulemaking another way of “skinning the cat” – i.e., implementing the goals of the “cap and trade” bill?

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<sup>24</sup> Letter from Daniel Akerson, Chairman and Chief Executive Officer, General Motors, to Ray LaHood, Secretary, U.S. Department of Transportation, and Lisa Jackson, Administrator, Environmental Protection Agency (July 29, 2011) (Available at <http://www.epa.gov/otaq/climate/letters/gm-commitment-ltr.pdf>).

<sup>25</sup> *Id.* (“General Motors Company will use its best efforts to ensure that the trade association(s) to which General Motors Company belongs will not contest the actions discussed in (1) and (3) above.”).

<sup>26</sup> Darren Samuelson and Robin Bravender, *Greens Desperate to Avoid Blame*, Politico, (Nov. 4, 2010).

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26. Did the Administration commit to provide any auto manufacturer with federal assistance, either in the form of grants or loans, in consideration for their cooperation on the development of the CAFE and EPA light duty vehicle greenhouse gas standards for MYs 2017-2025? Please list every offer of assistance made by any member of the Administration to any party to the agreement. Please also provide the Committee with a list of all federal programs that could, in theory, provide funding to the industry.

Thank you in advance for your prompt consideration of this request. If you have any questions, please contact Kristina Moore or Tyler Grimm of my staff at 202-225-5074.

Sincerely,



Darrell Issa  
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Member