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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

RICHARD M. RUSSELL, MAJORITY STAFF DIRECTOR
MARY FRANCES REPKO, MINORITY STAFF DIRECTOR

January 22, 2020

The Honorable Paul Ray
Administrator, Office of Information and Regulatory Affairs (OIRA)
White House Office of Management and Budget
725 17th Street NW
Washington, DC, 20503

Dear Mr. Ray:

I write to convey my deep concerns with the draft final Part 2 of the Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule¹ that was submitted to the White House Office of Information and Regulatory Affairs (OIRA) on January 14, 2020. A copy of this document that was obtained by my office via a non-governmental source indicates that what was submitted to OIRA by the Department of Transportation (DOT) and Environmental Protection Agency (EPA) would dramatically weaken future vehicle fuel economy and greenhouse gas standards, without providing the purported safety or economic benefits that were touted by the Trump Administration. In short, the SAFE Vehicles rule, if finalized in its present form, will lead to vehicles that are neither safer, nor more affordable or fuel-efficient. I urge you to require EPA and DOT to abandon these efforts entirely. At a minimum, the agencies must be required to engage in wholesale revisions to this draft final rule to remedy these significant problems before it is finalized in a manner consistent with the assurances you provided Senators in advance of your confirmation.²

As I have previously noted,^{3,4} the proposed vehicle fuel economy and greenhouse gas standards rule, if finalized, would harm U.S. national and economic security. It would also undermine efforts to combat global warming pollution, create regulatory and manufacturing uncertainty for the automobile industry and unnecessary litigation, and increase the amount of gasoline consumers would have to buy. The August 2018 proposed rule is also replete with numerous questionable legal, procedural and technical assertions. Unfortunately, the draft final rule appears not to have remedied many of these deficiencies, and some of the changes that were made since the rule was proposed have created additional problems.

¹ Part 1, which was finalized in September 2019, unlawfully implemented preemption and revocation of California's authority to set more stringent vehicle greenhouse gas standards.

² <https://www.epw.senate.gov/public/index.cfm/press-releases-democratic?ID=993663F5-F2A4-4830-8A92-3620B9831D95>

³ <https://www.carper.senate.gov/public/index.cfm/2018/5/carper-calls-on-chao-pruitt-to-abandon-draft-proposal-to-weaken-fuel-economy-and-tailpipe-emissions-standards>

⁴ <https://www.carper.senate.gov/public/index.cfm/2018/10/carper-urges-chao-wheeler-to-abandon-plan-to-dismantle-clean-car-standards>

Moreover, the documents reviewed by my office which were characterized⁵ by Trump Administration officials as being close to ready to be finalized in the coming weeks, appear to consist only of the DOT rule's preamble, include some apparent typographical and other errors, and placeholders for analysis and narrative sections that have seemingly not yet been written. It is also my understanding that EPA did not submit a draft final preamble for its rule to OIRA, and that no draft final Regulatory Impact Analysis nor draft Final Environmental Impact Statement have been submitted for interagency review.

Given the incomplete and problematic nature of what OIRA currently has to review, I expect a robust and lengthy inter-agency review period will be needed to ensure that the final rule is both complete and legally defensible – if the rule is to be finalized at all. What follows is a description of some of the most serious concerns with the submitted materials:

1. **The stringency of the standards is dramatically weakened.** The draft final rule would increase the stringency of the standards by 1.5% per year from model years 2021-26, resulting in a projected fuel economy standard of 47.7 miles per gallon for cars, 34.1 miles per gallon for light trucks and SUVs, and 40.5 miles per gallon for the combined fleet by 2030. While this is a less dramatic rollback than the 0% annual stringency increase that was included in the proposed rule, it still falls well short of the historic average 2.4% per year actual tailpipe efficiency standard increases that the fleet has achieved without the use of any credits or other compliance flexibilities.⁶ These stringency levels would thus likely violate the Energy Policy and Conservation Act, as modified by the Energy Independence and Security Act, which requires the 'maximum feasible' fuel economy standard be set each year.⁷
2. **The costs exceed the benefits.** Remarkably, the costs of the Trump Administration's draft final rule *exceed* its benefits to Americans relative to the current vehicle fuel economy and greenhouse gas standards. Specifically, the rule is projected to lead to a net *negative* benefit of \$34.4 billion over the lifetime of the vehicles for DOT's fuel economy standards and a \$41.3 billion net *negative* benefit for EPA's greenhouse gas standards.⁸ This would seem to fly in the face of rational rulemaking, which requires the benefits to exceed the costs, not the other way around. It also conflicts with what you said⁹ your OIRA role would require you to ensure during your confirmation hearing, which was that "What an agency should achieve in cost-benefit analysis is really, really two goals. One is to ensure that the regulation is net beneficial and two its full transparency with the public. And so while it may be enough for the first goal, just to show the benefits of exceed cost, it's not enough for the second..."

⁵ <https://news.bloombergenvironment.com/environment-and-energy/epa-vehicle-emissions-rules-out-in-about-a-month-wheeler-says>

⁶ See the table at the end of <https://www.carper.senate.gov/public/index.cfm/2018/10/carper-urges-chao-wheeler-to-abandon-plan-to-dismantle-clean-car-standards>

⁷ 49 U.S.C. 32902(a)

⁸ The numbers cited assume a 3% discount rate, which is viewed as a more realistic measure than the 7% discount rate that was also modeled in the draft final rule. Net negative benefits are also projected for the fuel economy standards assuming a 7% discount rate, while the greenhouse gas standards are projected to have a very slightly positive net benefit assuming a 7% discount rate.

⁹ <https://plus.cq.com/doc/congressionaltranscripts-5785310?0>

3. **The vehicles are not affordable.** While the draft final rule finds that the per vehicle purchase price would be reduced relative to the Obama rules by \$977 (EPA greenhouse gas standards)/\$1,083 (DOT's fuel economy standards), the draft final rule also projects that the increased gasoline consumers would have to use to operate the less fuel-efficient vehicles would add \$1,461 (EPA greenhouse gas standards)/\$1,423 (DOT fuel economy standards) to these costs.¹⁰ Adding hundreds of dollars to the cost of each vehicle would seem to be the opposite of the more "Affordable" vehicles the SAFE rule promised.
4. **There is no appreciable safety benefit.** While Trump Administration officials said when it transmitted the final rule to OIRA¹¹ that it would save "thousands of lives and reduce the number of Americans seriously injured in car crashes," the draft final rule claims a *total* benefit of 471 lives saved (EPA greenhouse gas standards)/474 lives saved (DOT fuel economy standards) in its cost-benefit analysis, as calculated over a decades-long 1977-2029 time period. However, this number does not include premature mortalities associated with the increase in air pollution that the less-efficient vehicles will emit.¹² Thus, it is difficult to see how the SAFE rule cost-benefit analysis can possibly be used to justify the rollback on the grounds that these vehicles are "Safer."
5. **The vehicles are not more fuel-efficient:** The draft final rule projects that the standards will lead to the use of 78 billion (EPA greenhouse gas standards)/84 billion (DOT fuel economy standards) more gallons of gas and the emission of 867 million (EPA greenhouse gas standards)/923 million (DOT fuel economy standards) additional metric tons of CO₂. Thus, the rules will cause significant damage to the environment without providing any of the purported safety and economic benefits the Trump Administration has cited as the reason for the rule.
6. **The only new compliance flexibilities are those supported by fossil-fuel producers.** While almost every automobile and parts manufacturer and numerous other stakeholders requested that the final rule include new or extensions of compliance credits and other flexibilities, the draft final rule refuses the majority of these requests. Instead the agencies have largely chosen to retain the current rules' compliance mechanisms rather than adopt measures to extend electric vehicle multipliers or allow more compliance credits to be earned for installing so-called off-cycle technologies that have demonstrable environmental benefits. There are only two new compliance mechanisms that the agencies propose to include. First, the agencies have agreed to extend (to 2026) a credit that assigns a value of zero to the upstream emissions from non-zero emitting power

¹⁰ The numbers cited assume a 3% discount rate, which is viewed as a more realistic measure than the 7% discount rate that was also modeled in the draft final rule. The cost increases associated with a 7% discount rate are projected to be \$1,110 (fuel economy standards) and \$1,143 (greenhouse gas standards).

¹¹ <https://www.detroitnews.com/story/business/autos/2020/01/15/trump-administration-moves-finalize-fuel-economy-rollback/4476146002/>

¹² In the Draft Environmental Impact Statement for the proposed rule (see page 161 of https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/ld_cafe_my2021-26_deis_0.pdf), alternative four (the closest alternative to the stringency levels in the draft final rule) was estimated to lead to 64-145 premature deaths each year by 2035 attributable to increased air pollution compared to the Obama rules.

sources used to charge electric vehicles (such as coal-fired or natural gas power plants). Second, the draft final rule includes more compliance credits for dual-fuel natural gas vehicles by codifying an assumption that the vehicles are solely driven using natural gas even if they are not, while also changing the eligibility requirements for these credits in a way that removes any assurance that they will ever be driven using natural gas at all (policy changes that were also repeatedly requested^{13,14} by elected officials close to the Trump Administration). These new flexibilities are unlikely to more than modestly alter the manner in which the standards must be complied with. However, it is notable that of all the many requests for additional compliance flexibility that were made (including requests that would have further incentivized vehicle electrification and the adoption of greenhouse-gas reducing technologies), the only two that were granted were those supported by fossil-fuel interests.

My office's review of the draft final rule indicates that it utterly fails to provide any demonstrable safety, environmental or economic benefit to consumers or the country. It should be abandoned. At a minimum, I seek your commitment that you will not allow the finalization of this extreme and unlawful environmental rollback in any form that even remotely resembles the document submitted to OIRA on January 14.

Thank you for your consideration of this important request. Please provide your response no later than close of business on February 14, 2020. If you have any questions or concerns, please ask your staff to contact Michal Freedhoff (Michal_Freedhoff@epw.senate.gov) of the Environment and Public Works Committee staff.

Sincerely,

A handwritten signature in blue ink that reads "Tom Carper". The signature is fluid and cursive, with the first name "Tom" and last name "Carper" clearly distinguishable.

Thomas R. Carper
Ranking Member
Committee on Environment and
Public Works

¹³ <https://www.regulations.gov/document?D=EPA-HQ-OAR-2018-0283-0294>

¹⁴ <https://www.regulations.gov/document?D=EPA-HQ-OAR-2018-0283-5845>