

**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Parts 531 and 533**

**[Docket No. NHTSA-2008-0060]**

**Notice of Intent to Prepare an Environmental Impact Statement for  
New Corporate Average Fuel Economy Standards**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Notice of intent; request for scoping comments.

**SUMMARY:** Pursuant to the National Environmental Policy Act (NEPA), NHTSA plans to prepare an Environmental Impact Statement (EIS) to address the potential environmental impacts of the agency's Corporate Average Fuel Economy program for passenger automobiles (referred to herein as "passenger cars") and non-passenger automobiles (referred to herein as "light trucks"). The EIS will consider the potential environmental impacts of new fuel economy standards for model year 2011-2015 passenger cars and light trucks that NHTSA will be proposing pursuant to the Energy Independence and Security Act of 2007.

To this end, this notice initiates the NEPA scoping process to identify the environmental issues and reasonable alternatives to be examined in the EIS, and requests comments regarding those and others matters related to the scope of NHTSA's NEPA analysis for the new standards. NHTSA will provide further guidance for the public about the scoping process in a separate notice that will be published when the proposal itself is published.

**DATES:** The scoping process will culminate in the preparation and issuance of a Draft EIS, which will be made available for public comment. Interested persons are requested to submit their scoping comments as soon as possible after the issuance of the proposal in order to ensure their consideration and facilitate the agency's prompt preparation of the Draft EIS.

**ADDRESSES:** You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Mail: Docket Management Facility, M-30, U.S. Department of Transportation, West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590.
- Hand Delivery or Courier: U.S. Department of Transportation, West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.
- Fax: 202-493-2251.

Regardless of how you submit your comments, you should mention the docket number of this document.

You may call the Docket at 202-366-9324.

Note that all comments received, including any personal information provided, will be posted without change to <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

For technical issues, contact Carol Hammel-Smith, Fuel Economy Division, Office of International Vehicle, Fuel Economy and Consumer Standards, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590. Telephone: 202-366-5206.

For legal issues, contact Kerry E. Rodgers, Vehicle Safety Standards & Harmonization Division, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590. Telephone: 202-366-5552.

**SUPPLEMENTARY INFORMATION:** NHTSA is preparing a notice of proposed rulemaking (NPRM) to propose Corporate Average Fuel Economy (CAFE) standards for model year (MY) 2011-2015 passenger cars and light trucks pursuant to the amendments made by the Energy Independence and Security Act of 2007, Public Law 110-140, 121 Stat. 1492 (December 19, 2007) (EISA), to the Energy Policy and Conservation Act (EPCA).<sup>1</sup> 49 U.S.C.A. § 32901 et seq. NHTSA intends to prepare an Environmental Impact Statement (EIS) to address the potential environmental impacts of the proposed standards in the context of NHTSA's CAFE program.

This notice of intent initiates the scoping process for the EIS under the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4347, and implementing regulations issued by the Council on Environmental Quality (CEQ), 40 C.F.R. Pt. 1500, and NHTSA, 49 C.F.R. Pt. 520. See 40 C.F.R. §§ 1501.7, 1508.22; 49 C.F.R. § 520.21(g). Specifically, this notice of intent requests public input on the scope of NHTSA's NEPA analysis relating to the CAFE standards for MY 2011-2015

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<sup>1</sup> On February 20, 2008, NHTSA submitted a draft NPRM proposing those standards to the Office of Management and Budget for review pursuant to Executive Order 12,866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), as amended.

automobiles. As a related part of the NEPA scoping process, NHTSA intends to describe proposed standards to meet EPCA's requirements and the possible alternatives NHTSA plans to consider for purposes of its NEPA analysis in its NPRM and in a separate scoping notice that will provide further guidance for the public about the scoping process. See 40 C.F.R. § 1508.22.

EPCA sets forth extensive requirements concerning the rulemaking to establish MY 2011-2015 CAFE standards. It requires the Secretary of Transportation<sup>2</sup> to establish CAFE standards at least 18 months before each model year and to set them at “the maximum feasible average fuel economy level that the Secretary decides the manufacturers can achieve in that model year.” 49 U.S.C.A. § 32902(a). In making decisions about “maximum feasible” levels of fuel economy, the Secretary is required to “consider technological feasibility, economic practicability, the effect of other motor vehicle standards of the Government on fuel economy, and the need of the United States to conserve energy.” 49 U.S.C. §§ 32902(a), 32902(f). In past rulemakings, NHTSA has construed these statutory factors as including environmental and safety considerations.<sup>3</sup> NHTSA also considers environmental impacts under NEPA when setting CAFE standards.

EPCA further directs the Secretary, after consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, to establish separate average fuel economy standards for passenger cars and for light trucks

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<sup>2</sup> NHTSA is delegated responsibility for implementing the EPCA fuel economy requirements assigned to the Secretary of Transportation. 49 C.F.R. §§ 1.50, 501.2(a)(8).

<sup>3</sup> There is case law with respect to the consideration of safety. See, e.g., Competitive Enterprise Inst. v. NHTSA, 956 F.2d 321, 322 (D.C. Cir. 1992) (citing Competitive Enterprise Inst. v. NHTSA, 901 F.2d 107, 120 n.11 (D.C. Cir. 1990)); see also Center for Biological Diversity v. NHTSA, 508 F.3d 508, 547 (9th Cir. 2007).

manufactured in each model year beginning with model year 2011 “to achieve a combined fuel economy average for model year 2020 of at least 35 miles per gallon for the total fleet of passenger and non-passenger automobiles manufactured for sale in the United States for that model year.” 49 U.S.C.A. §§ 32902(b)(1), 32902(b)(2)(A). In doing so, the Secretary of Transportation is required to “prescribe annual fuel economy standard increases that increase the applicable average fuel economy standard ratably beginning with model year 2011 and ending with model year 2020.” 49 U.S.C.A. § 32902(b)(2)(C). The standards for passenger cars and light trucks must be “based on 1 or more vehicle attributes related to fuel economy,” 49 U.S.C.A. § 32902(b)(3)(A). In any single rulemaking, standards may be established for not more than five model years. 49 U.S.C.A. § 32902(b)(3)(B). EPCA also specifies a minimum standard for domestically manufactured passenger cars. 49 U.S.C.A. § 32902(b)(4).

In preparing an EIS for the new MY 2011-2015 CAFE standards, NHTSA intends to consider issues raised in litigation concerning a 2006 final rule, “Average Fuel Economy Standards for Light Trucks, Model Years 2008-2011,” 71 FR 17,566, April 6, 2006 (2006 Rule). NHTSA prepared a final EA for the 2006 Rule after publishing a draft EA for public comment and considering the comments received. Based on the final EA, NHTSA determined that the 2006 Rule would not have a significant effect on the quality of the human environment and that the agency therefore was not required to prepare an EIS. See 71 FR at 17,671; 42 U.S.C. § 4332(2)(C).<sup>4</sup>

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<sup>4</sup> Before preparing an EIS, an agency may prepare a more concise environmental assessment (EA) to present “sufficient evidence and analysis for determining whether to prepare an [EIS] or a finding of no significant impact” and to “[f]acilitate preparation of [an EIS] when one is necessary.” 40 C.F.R. § 1508.9(a)(1), (3). NHTSA’s final EA and Finding of No Significant Impact (FONSI) are available in the docket for the 2006 Rule. See Docket No. NHTSA-2006-24309-0006 (Final Environmental Assessment: NHTSA Corporate Average Fuel Economy (CAFE) Standards, March 29, 2006); Docket No. NHTSA-

In a challenge to the 2006 Rule, petitioners argued in the U.S. Court of Appeals for the Ninth Circuit that NHTSA's EA did not comply with NEPA and that NEPA requires the agency to prepare an EIS. See Center for Biological Diversity v. NHTSA, 508 F.3d 508, 514, 545-58 (9th Cir. 2007).<sup>5</sup> The Court held, among other things, that NHTSA did not prepare an adequate EA under NEPA. 508 F.3d at 548-558. The Court's remedy was to order the agency to prepare an EIS. 508 F.3d 558. The Government is presently seeking rehearing in the Ninth Circuit on the appropriateness of that remedy.

In any event, NHTSA must now propose CAFE standards for MY 2011 and beyond, pursuant to the recent amendments to EPCA, to begin increasing CAFE levels so that the combined fleet of all passenger cars and light trucks in MY 2020 will achieve at least 35 mpg. NHTSA, therefore, now needs to engage in a new analysis, including taking a fresh look at potential environmental impacts under NEPA, and assessing whether or not those impacts are "significant" within the meaning of NEPA law. See 40 C.F.R. § 1508.27.

NHTSA is beginning the EIS process for that rule, which includes light truck standards for one model year previously covered by the 2006 Rule (MY 2011). We are doing so now because a standard for MY 2011 must be issued by the end of March 2009 and achieving an industry-wide combined fleet average of at least 35 miles per gallon for MY 2020 depends, in substantial part, upon setting standards well in

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2006-24309-0003[1] (Finding of No Significant Environmental Impact for Model Year 2008-2011 Light Truck Fuel Economy Standards, March 28, 2006).

<sup>5</sup> The Petitioners also challenged the 2006 Rule under EPCA. See Center for Biological Diversity v. NHTSA, 508 F.3d at 527-45.

advance so as to provide the automobile manufacturers with as much lead time as possible to make the extensive necessary changes to their automobiles.

The scoping process initiated by this notice seeks to determine “the range of actions, alternatives, and impacts to be considered” in the EIS and to identify the most important issues for analysis involving the potential environmental impacts of NHTSA’s CAFE standards. See 40 C.F.R. §§ 1501.7, 1508.25. NHTSA invites stakeholders to participate in the scoping process by submitting written comments to the docket number identified in the heading of this notice using any of the methods described in the ADDRESSES section of this notice. NHTSA believes that the EPCA provisions described above regarding the levels of the standards to be established and NHTSA’s implementation of the CAFE program to date provide sufficient information to begin the scoping process. This assessment is supported by the public comments submitted on the 2005 NPRM that led to the 2006 Rule (70 FR 51414, August 30, 2005).

As noted above, NHTSA plans to publish a separate scoping notice in the Federal Register to provide further information and guidance to facilitate public participation in the scoping process. Based on comments received during scoping, NHTSA expects to prepare a draft EIS for public comment and a final EIS to support a final rule later this year.

Issued: March \_\_, 2008

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Ronald Medford  
Senior Associate Administrator  
for Vehicle Safety

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