

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA-R05-OAR-2009-0368; FRL-8950-8]

**Approval and Promulgation of Air Quality Implementation Plans; Ohio; Clean Air Interstate Rule****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a revision to the Ohio State Implementation Plan (SIP), based on submittals dated July 15, 2009, and August 13, 2009, that would address the requirements of EPA's Clean Air Interstate Rule (CAIR). EPA previously approved an "abbreviated SIP" for Ohio, primarily consisting of rules governing allocation of allowances to electric generating units (EGUs) for use in the trading programs established pursuant to CAIR and providing for voluntary opt-in to these programs. The abbreviated SIP was implemented in conjunction with a Federal Implementation Plan (FIP) that specified requirements for emissions monitoring, permit provisions, and other elements of the CAIR programs. EPA is now proposing to approve the addition of non-EGUs to the CAIR nitrogen oxides (NO<sub>x</sub>) Ozone Season Trading Program, and EPA is proposing to issue a "full SIP" approval under which the various CAIR implementation provisions would be governed by State rules rather than FIP rules. Final action would also cause the CAIR Federal Implementation Plans (CAIR FIPs) concerning sulfur dioxides (SO<sub>2</sub>), NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season emissions by Ohio sources to be automatically withdrawn.

**DATES:** Comments must be received on or before October 26, 2009.**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R05-OAR-2009-0368 by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
2. *E-mail*: [mooney.john@epa.gov](mailto:mooney.john@epa.gov).
3. *Fax*: (312) 692-2551.
4. *Mail*: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery*: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago,

Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:** John Summerhays, (312) 886-6067, or by e-mail at [summerhays.john@epa.gov](mailto:summerhays.john@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: August 19, 2009.

**Walter W. Kovalick Jr.,***Acting Regional Administrator, Region 5.*

[FR Doc. E9-23256 Filed 9-24-09; 8:45 am]

**BILLING CODE 6560-50-P****DEPARTMENT OF TRANSPORTATION****National Highway Traffic Safety Administration****49 CFR Parts 523, 531, 533, 534, 536 and 537**

[Docket No. NHTSA-2009-0059]

**Notice of Availability of a Draft Environmental Impact Statement (DEIS) for New Corporate Average Fuel Economy Standards; Notice of Public Hearing****AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).**ACTION:** Notice of Availability of a Draft Environmental Impact Statement (DEIS); notice of public hearing.

**SUMMARY:** NHTSA has prepared a DEIS to disclose and analyze the potential environmental impacts of proposed Corporate Average Fuel Economy (CAFE) standards for model year (MY) 2012-2016 passenger cars and light trucks, which NHTSA recently proposed pursuant to the Energy Independence and Security Act of 2007, and a reasonable range of alternative standards. To inform decisionmakers and the public, the DEIS compares the potential environmental impacts of the proposed standards and alternative standards reflecting a full range of stringencies, and it analyzes direct, indirect, and cumulative impacts in proportion to their significance. The DEIS provides a detailed analysis of potential impacts on energy resources, air quality, and climate. The DEIS uses climate modeling and NHTSA's own computer model (known as the "Volpe model") to provide quantitative estimates of potential impacts on air quality, carbon dioxide (CO<sub>2</sub>) emissions, global mean surface temperature, precipitation, and sea level rise. The DEIS provides a qualitative analysis of resources that may be impacted by changes in climate, such as freshwater resources, terrestrial ecosystems, coastal ecosystems, land use, human health, and environmental justice. It examines these impacts on the U.S. and on a global scale. In addition, the DEIS analyzes potential environmental impacts unrelated to climate change.

**DATES: Public Hearing:** The public hearing will be held on Friday, October 30, 2009 from 9 a.m. to 5 p.m. at the National Transportation Safety Board Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594. NHTSA recommends that all persons attending the hearing arrive at least 45 minutes early in order to facilitate entry into the

Conference Center. If you wish to attend or speak at the hearing, you must register in advance no later than Monday, October 19, 2009, by following the instructions in the Procedural Matters section of this notice. NHTSA will consider late registrants to the extent time and space allows, but NHTSA cannot ensure that late registrants will be able to speak at the hearing.

*Comments:* To ensure that NHTSA has an opportunity to consider comments on the DEIS, NHTSA must receive written comments within 45 days of the date the U.S. Environmental Protection Agency (EPA) publishes a Notice of Availability of the DEIS in the **Federal Register**. NHTSA anticipates that EPA will publish that Notice on Friday, September 25, 2009, in which case NHTSA must receive written comments on the DEIS by Monday, November 9, 2009. NHTSA will try to consider comments received after that date to the extent the NEPA and rulemaking schedules allow, but NHTSA cannot ensure that it will be able to do so.

**FOR FURTHER INFORMATION CONTACT:** Mr. Peter Prout or Ms. Angel Jackson, Telephone: 1-202-366-0846, 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. E-mail: [nhtsa.nepa@dot.gov](mailto:nhtsa.nepa@dot.gov). Information about the CAFE rulemaking and the NEPA process is also available at <http://www.nhtsa.dot.gov>.

**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 1-800-647-5527.

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

**SUPPLEMENTARY INFORMATION:** NHTSA has prepared a DEIS to disclose and analyze the potential environmental impacts of proposed CAFE standards for MY 2012–2016 passenger cars and light trucks and a reasonable range of alternative standards.<sup>1</sup> NHTSA invites Federal, State, and local agencies, Indian tribes, and the public to submit written comments and participate in a public hearing on the DEIS using the instructions set forth in this notice. As described in the Procedural Matters section of this notice, each speaker should anticipate speaking for approximately ten minutes, although we may need to adjust the time for each speaker if there is a large turnout. To facilitate review of the DEIS, NHTSA has posted the DEIS on its Web site, and it will be available in the Docket identified by the docket number at the beginning of this notice.<sup>2</sup> Copies in hard copy or electronic (CD-ROM) form have been sent to all stakeholders on NHTSA's National Environmental Policy Act (NEPA) mailing list for the proposed CAFE standards, and NHTSA will mail a CD-ROM containing the DEIS and its Appendices to any other interested party who requests one. NHTSA will consider the public comments received on the DEIS in preparing final NEPA documents to support final CAFE standards for MY 2012–2016 passenger cars and light trucks, which NHTSA plans to issue early next year. The agency's NEPA analysis is informing NHTSA's development of those standards.

NHTSA is proposing standards pursuant to amendments made by the Energy Independence and Security Act of 2007 (EISA) to the Energy Policy and Conservation Act of 1975 (EPCA).<sup>3</sup> To inform decisionmakers and the public, the DEIS analyzes the potential environmental impacts of the proposed standards and alternative standards reflecting a range of stringencies, and it analyzes direct, indirect, and cumulative impacts in proportion to their significance. The DEIS provides a detailed analysis of potential impacts on energy resources, air quality, and

climate. The DEIS uses climate modeling and NHTSA's Volpe model to provide quantitative estimates of potential impacts on air quality, CO<sub>2</sub> emissions, global mean surface temperature, precipitation, and sea level rise. The DEIS provides a qualitative analysis of resources that may be impacted by changes in climate, such as freshwater resources, terrestrial ecosystems, coastal ecosystems, land use, human health, and environmental justice. It examines impacts on the U.S. and on a global scale. In addition, the DEIS analyzes potential environmental impacts unrelated to climate change.

*Background.* EPCA sets forth extensive requirements concerning the rulemaking to establish MY 2012–2016 CAFE standards. It requires the Secretary of Transportation<sup>4</sup> to establish average fuel economy standards at least 18 months before the beginning of 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.” When setting “maximum feasible” fuel economy standards, 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.”<sup>5</sup> NHTSA construes the statutory factors as including environmental and safety considerations.<sup>6</sup> NHTSA also considers environmental impacts under NEPA when setting CAFE standards.

As recently amended, EPCA further directs the Secretary, after consultation with the Secretary of Energy (DOE) and the EPA Administrator, to establish separate average fuel economy standards for passenger cars and for light trucks 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.”<sup>7</sup> In doing so, the Secretary of Transportation is required to increase average fuel economy standards for MY 2011–2020 vehicles through “annual

<sup>1</sup> See National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4347, and implementing regulations issued by the Council on Environmental Quality (CEQ), 40 CFR 1500–1508, and NHTSA, 49 CFR part 520.

<sup>2</sup> The DEIS is available at <http://www.nhtsa.dot.gov/>.

<sup>3</sup> EISA is Public Law 110–140, 121 Stat. 1492 (Dec. 19, 2007). EPCA is codified at 49 U.S.C. 32901 et seq.

<sup>4</sup> NHTSA is delegated responsibility for implementing the EPCA fuel economy requirements assigned to the Secretary of Transportation. 49 CFR 1.50, 501.2(a)(8).

<sup>5</sup> 49 U.S.C. 32902(a), 32902(f).

<sup>6</sup> 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)).

<sup>7</sup> 49 U.S.C.A. 32902(b)(1), 32902(b)(2)(A).

fuel economy standard increases.”<sup>8</sup> The standards for passenger cars and light trucks must be “based on 1 or more vehicle attributes related to fuel economy.” In any single rulemaking, standards may be established for not more than five model years.<sup>9</sup> EPCA also mandates a minimum standard for domestically manufactured passenger cars.<sup>10</sup>

Pursuant to EISA, on April 22, 2008, NHTSA proposed CAFE standards for MY 2011–2015 passenger cars and light trucks in a Notice of Proposed Rulemaking (NPRM).<sup>11</sup> On March 21, 2008, NHTSA issued a Notice of Intent (NOI) to prepare an EIS for the MY 2011–2015 CAFE standards.<sup>12</sup> On October 10, 2008, NHTSA submitted to the EPA its Final Environmental Impact Statement, Corporate Average Fuel Economy Standards, Passenger Cars and Light Trucks, Model Years 2011–2015. EPA published a Notice of Availability of the Final Environmental Impact Statement (FEIS) in the **Federal Register** on October 17, 2008.<sup>13</sup> On January 7, 2009, the DOT announced that the Bush Administration would not issue the final rule.<sup>14</sup>

In the context of calls for the development of new national policies to prompt sustained domestic and international actions to address the closely intertwined issues of energy independence, energy security, and climate change, President Obama issued a memorandum on January 26, 2009 to the Secretary of Transportation and the NHTSA Administrator.<sup>15</sup> The memorandum requested that NHTSA divide the MY 2011–2015 rulemaking into two parts: (1) MY 2011 standards, and (2) standards for MY 2012 and beyond.

The request that the final rule establishing CAFE standards for MY 2011 passenger cars and light trucks be

prescribed by March 30, 2009 was based on two factors. One was the requirement that the final rule regarding fuel economy standards for a given model year must be adopted at least 18 months before the beginning of that model year (49 U.S.C. 32902(g)(2)). The other was that the beginning of MY 2011 is considered for the purposes of CAFE standard setting to be October 1, 2010.

For MYs 2012 and beyond, the President requested that, before promulgating a final rule concerning the model years after model year 2011, NHTSA

[C]onsider the appropriate legal factors under the EISA, the comments filed in response to the Notice of Proposed Rulemaking, the relevant technological and scientific considerations, and to the extent feasible, the forthcoming report by the National Academy of Sciences mandated under section 107 of EISA.

In addition, the President requested that NHTSA consider whether any provisions regarding preemption are appropriate under applicable law and policy.

On April 1, 2009, NHTSA published a NOI to prepare an EIS for the MY 2012–2016 CAFE standards. The NOI described the statutory requirements for the standards, provided initial information about the NEPA process, and initiated scoping<sup>16</sup> by requesting public input on the scope of the environmental analysis to be conducted.<sup>17</sup>

*The Proposed Action and Possible Alternatives:* Concurrent with this DEIS, NHTSA and EPA are each announcing joint proposed rules whose benefits would address the urgent and closely intertwined challenges of energy independence and security and global warming. These proposed rules call for a strong and coordinated federal greenhouse gas and fuel economy program for passenger cars, light-duty-trucks, and medium-duty passenger vehicles (hereafter light-duty vehicles), referred to as the National Program. The proposed rules can achieve substantial improvements in fuel economy and reductions of greenhouse gas (GHG) emissions from the light-duty vehicle part of the transportation sector, based on technology that is already being commercially applied in most cases and

that can be incorporated at a reasonable cost.

The joint proposed standards are consistent with the President's announcement on May 19, 2009 of a National Fuel Efficiency Policy of establishing consistent, harmonized, and streamlined requirements that would improve fuel economy and reduce greenhouse gas emissions for all new passenger cars and light trucks sold in the United States.<sup>18</sup> The National Program holds out the promise of delivering additional environmental and energy benefits, cost savings, and administrative efficiencies on a nationwide basis that might not be available under a less coordinated approach. The proposed National Program also offers the prospect of regulatory convergence by making it possible for the standards of two different federal agencies and the standards of California and other states to act in a unified fashion in providing these benefits. This would allow automakers to produce and sell a single fleet nationally. Thus, it may also help to mitigate the additional costs that manufacturers would otherwise face in having to comply with multiple sets of federal and state standards. This joint notice is also consistent with the Notice of Upcoming Joint Rulemaking signed by DOT and EPA on May 19<sup>19</sup> and responds to the President's January 26, 2009 memorandum on CAFE standards for model years 2011 and beyond.<sup>20</sup>

Under the proposed standards, each vehicle manufacturer's required level of CAFE would be based on target levels of average fuel economy set for vehicles of different sizes and on the distribution of that manufacturer's vehicles among those sizes. Size would be defined by vehicle footprint.<sup>21</sup> The level of the performance target for each footprint is intended to reflect the technological and economic capabilities of the industry.

<sup>8</sup> 49 U.S.C.A. 32902(b)(2)(C).

<sup>9</sup> 49 U.S.C.A. 32902(b)(3)(A), 32902(b)(3)(B).

<sup>10</sup> 49 U.S.C.A. 32902(b)(4).

<sup>11</sup> Notice of Proposed Rulemaking for Average Fuel Economy Standards, Passenger Cars and Light Trucks—Model Years 2011–2015, 73 FR 24352 (May 2, 2008). At the same time, NHTSA requested updated product plan information from the automobile manufacturers. See Request for Product Plan Information, Passenger Car Average Fuel Economy Standards—Model Years 2008–2020 and Light Truck Average Fuel Economy Standards—Model Years 2008–2020, 73 FR 21490 (May 2, 2008).

<sup>12</sup> 73 FR 16615 (Mar. 28, 2008).

<sup>13</sup> 73 FR 38204 (Jul. 3, 2008).

<sup>14</sup> The January 7, 2008 statement from the U.S. Department of Transportation can be found at: <http://www.dot.gov/affairs/dot0109.htm> (last accessed Jun. 9, 2009).

<sup>15</sup> Memorandum for the Secretary of Transportation and the Administrator of the National Highway Traffic Safety Administration, 74 FR 4907 (Jan. 26, 2009).

<sup>16</sup> Scoping, as defined under NEPA, is an early and open process for determining the scope of issues to be addressed in an EIS and for identifying the significant issues related to a proposed action. See 40 CFR 1501.7.

<sup>17</sup> See Notice of Intent to Prepare an Environmental Impact Statement for New Corporate Average Fuel Economy Standards, 74 FR 14857 (Apr. 1, 2009).

<sup>18</sup> President Obama Announces National Fuel Efficiency Policy, The White House, May 19, 2009. Available at: [http://www.whitehouse.gov/the\\_press\\_office/President-Obama-Announces-National-Fuel-Efficiency-Policy/](http://www.whitehouse.gov/the_press_office/President-Obama-Announces-National-Fuel-Efficiency-Policy/) (last accessed August 18, 2009). Remarks by the President on National Fuel Efficiency Standards, The White House, May 19, 2009. Available at: [http://www.whitehouse.gov/the\\_press\\_office/Remarks-by-the-President-on-national-fuel-efficiency-standards/](http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-on-national-fuel-efficiency-standards/) (Last accessed August 18, 2009).

<sup>19</sup> 74 FR 24007 (May 22, 2009).

<sup>20</sup> Available at: [http://www.whitehouse.gov/the\\_press\\_office/Presidential\\_Memorandum\\_Fuel\\_Economy/](http://www.whitehouse.gov/the_press_office/Presidential_Memorandum_Fuel_Economy/) (last accessed on August 18, 2009)

<sup>21</sup> A vehicle's "footprint" is generally defined as "the product of track width [the lateral distance between the centerlines of the base tires at ground, including the camber angle] \* \* \* times wheelbase [the longitudinal distance between front and rear wheel centerlines] \* \* \* divided by 144 \* \* \*." 49 CFR 523.2.

The specific target for each footprint is the same for all manufacturers, regardless of differences in their overall fleet mix. Compliance would be determined by comparing a manufacturer's harmonically averaged fleet fuel economy levels in a model year with a required fuel economy level calculated using the manufacturer's actual production levels and the targets for each footprint of the vehicles that it produces.

NEPA requires an agency to compare the potential environmental impacts of its proposed action and a reasonable range of alternatives. In developing the proposed standards and the alternatives, NHTSA considered the four EPCA factors underlying maximum feasibility (technological feasibility, economic practicability, the effect of other standards of the Government on fuel economy, and the need of the nation to conserve energy) as well as relevant environmental and safety considerations. NHTSA is also guided by President Obama's memorandum to DOT on January 26, 2009, as described in *Background*.

Section 1501.6 of the CEQ regulations emphasize agency cooperation early in the NEPA process and allow a lead agency (in this case, NHTSA) to request the assistance of other agencies that either have jurisdiction by law or have special expertise regarding issues considered in an EIS. NHTSA invited EPA to be a cooperating agency, pursuant to the CEQ regulations, because of its special expertise in the areas of climate change and air quality.<sup>22</sup> On May 12, 2009, the EPA accepted NHTSA's invitation and agreed to become a cooperating agency. NHTSA also consulted with DOE.

The Preferred Alternative requires approximately a 4.3-percent average annual increase in mpg, resulting in an estimated required MY 2016 fleetwide 38.0 mpg for passenger cars and 28.3 mpg for light trucks.<sup>23</sup> The Preferred Alternative also results in a combined estimated required fleetwide 34.1 mpg in MY 2016. The agency's Preferred Alternative represents the required fuel economy level that we have tentatively determined to be the maximum feasible under EPCA, based on our balancing of statutory considerations. A full discussion regarding the agency's

tentative conclusion that Alternative 4 represents the "maximum feasible" average fuel economy level that the Secretary has decided the manufacturers can achieve, considering the statutory and other relevant factors, and is therefore the agency's Preferred Alternative, can be found in Section IV.F of the joint preamble of the Notice of Proposed Rulemaking.

This alternative, along with EPA's proposed standards, form the National Program and together are consistent with the National Fuel Efficiency Policy announced by President Obama on May 19, 2009. Under the National Program, the overall light-duty vehicle fleet would reach 35.5 mpg in MY 2016, if all reductions were made through fuel economy improvements. In considering further action on the proposed standards and reasonable alternatives, NHTSA also will consider its NEPA analysis.

In addition to the proposed standards, NHTSA has considered several regulatory alternatives for purposes of both Executive Order 12866<sup>24</sup> and its NEPA analysis, which includes a "no action" alternative as required by NEPA. The alternatives, in order of increasing stringency, are:

(1) A "no action" alternative, which assumes, strictly for purposes of NEPA analysis, that no action would occur under CAFE (or under the National Program). Under that alternative, NHTSA would not issue a rule regarding CAFE standards for MY 2012–2016. The No Action Alternative assumes that average fuel economy levels in the absence of CAFE standards beyond MY 2011 would equal the higher of the agencies' collective market forecast or the manufacturers' required level of average fuel economy for MY 2011. The MY 2011 fuel economy level represents the standard NHTSA believes manufacturers would continue to abide by, assuming NHTSA does not issue a rule. NEPA requires agencies to consider a "no action" alternative in their NEPA analyses and to compare the effects of not taking action with the effects of the reasonable action alternatives to demonstrate the different environmental effects of the action alternatives. The recent amendments to EPCA direct NHTSA to set new CAFE standards and do not permit the agency to take no action on fuel economy.<sup>25</sup>

NHTSA refers to this as the "No Action Alternative" or as a "no increase" or "baseline" alternative.

(2) A 3-percent average annual increase in mpg, resulting in a required MY 2016 fleetwide 35.6 mpg for passenger cars and 26.6 mpg for light trucks. The 3-Percent Alternative results in a combined required fleetwide 32.0 mpg in MY 2016.

(3) A 4-percent average annual increase in mpg, resulting in a required MY 2016 fleetwide 37.4 mpg for passenger cars and 27.9 mpg for light trucks. The 4-Percent Alternative results in a combined required fleetwide 33.6 mpg in MY 2016.

(4) An approximately 4.3-percent average annual increase in mpg, resulting in an estimated required MY 2016 fleetwide 38.0 mpg for passenger cars and 28.3 mpg for light trucks. The Preferred Alternative results in a combined estimated required fleetwide 34.1 mpg in MY 2016.

(5) A 5-percent average annual increase in mpg, resulting in a required MY 2016 fleetwide 39.3 mpg for passenger cars and 29.3 mpg for light trucks. The 5-Percent Alternative results in a required achieved fleetwide 35.2 mpg in MY 2016.

(6) The "MNB Alternative," in which the Volpe model applies technologies to the vehicle market forecast until marginal benefits are estimated to equal marginal costs and net benefits are maximized. In this case, the model continues to include technologies until the marginal cost of adding the next technology exceeds the marginal benefit. This alternative requires approximately a 5.9-percent average annual increase in mpg, resulting in a required MY 2016 fleetwide 40.9 mpg for passenger cars and 30.6 mpg for light trucks. The MNB Alternative results in a combined required fleetwide 36.8 mpg in MY 2016.

(7) A 6-percent average annual increase in mpg, resulting in a required MY 2016 fleetwide 41.1 mpg for passenger cars and 30.7 mpg for light trucks. The 6-Percent Alternative results in a combined required fleetwide 36.9 mpg in MY 2016.

(8) A 7-percent average annual increase, resulting in a required MY 2016 fleetwide 43.1 mpg for passenger cars and 32.2 mpg for light trucks. The

alternatives. It is also an example of a reasonable alternative outside the jurisdiction of the agency which must be analyzed. [See 40 CFR 1502.14(c).] \* \* \* Inclusion of such an analysis in the EIS is necessary to inform Congress, the public, and the President as intended by NEPA. [See 40 CFR 1500.1(a).] "Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 46 FR 18026 (1981) (emphasis added).

<sup>22</sup> 40 CFR 1501.6.

<sup>23</sup> NHTSA notes that it cannot set out the precise level of CAFE that each manufacturer would be required to meet for each model year under the proposed standards, because the level for each manufacturer would depend on that manufacturer's final production figures and fleet mix for a particular model year. That information will not be available until the end of each model year.

<sup>24</sup> Exec. Order 12,866, "Regulatory Planning and Review," 58 FR 51735, Oct. 4, 1993, as amended.

<sup>25</sup> CEQ has explained that "[T]he regulations require the analysis of the no action alternative *even if the agency is under a court order or legislative command to act*. This analysis provides a benchmark, enabling decisionmakers to compare the magnitude of environmental effects of the action

7-Percent Alternative results in a combined required fleetwide 38.7 mpg in MY 2016.

(9) The “TCTB Alternative,” in which the Volpe model applies technologies to the vehicle market forecast until total cost equals total benefit. In this case, the model increases the standard to a point where essentially total costs of the technologies added together over the baseline equals total benefits added over the baseline. This alternative requires approximately a 6.7-percent average annual increase in mpg, resulting in a required MY 2016 fleetwide 42.7 mpg for passenger cars and 31.5 mpg for light trucks. The TCTB Alternative results in a combined required fleetwide 38.1 mpg in MY 2016.

Of the eight action alternatives that NHTSA is proposing, Alternative 2 (3-Percent Alternative), Alternative 3 (4-Percent Alternative), Alternative 5 (5-Percent Alternative), Alternative 7 (6-Percent Alternative), and Alternative 8 (7-Percent Alternative), require the average fuel economy for the industry-wide combined passenger car and light truck fleet to increase, on average, by a specified percentage for each model year from 2012–2016. Because the percentage increases in stringency are “average” increases, they may either be constant throughout the period or may vary from year to year.

Three of the alternatives were added to the list of alternatives first proposed in the NOI to prepare an EIS for MY 2012–2016—the agency’s Preferred Alternative (Alternative 4), an alternative that maximizes net benefits (MNB) (Alternative 6), and an alternative under which total costs equal total benefits (TCTB) (Alternative 9). The agency’s Preferred Alternative represents the required fuel economy level that we have tentatively determined to be maximum feasible under EPCA, based on our balancing of statutory and other considerations. *See Background.* The other two alternatives, MNB and TCTB, represent fuel economy levels that are dependent on the agency’s best estimate of relevant economic variables (e.g., gasoline prices, social cost of carbon, the discount rate, and rebound effect). The MNB Alternative and TCTB Alternative provide the decisionmaker and the public with useful information about where the standards would be set if costs and benefits were balanced in two different ways. All three alternatives (Preferred Alternative, MNB Alternative, and TCTB Alternative) are placed in context by identifying the approximate, on average annual percentage fuel economy increase, so that the public is able to see where they fall on the

continuum of alternatives. See Section Three of NHTSA’s Preliminary Regulatory Impact Analysis for a more detailed description of the MNB and TCTB Alternatives.

NHTSA’s decision process must balance the four EPCA factors and be informed by the environmental considerations of NEPA. In developing its reasonable range of alternatives, NHTSA identified alternative stringencies that represent the full spectrum of potential environmental impacts and safety considerations.<sup>26</sup>

*The NEPA Process and the DEIS.* Under NEPA, a federal agency must analyze environmental impacts if the agency implements a proposed action, provides funding for an action, or issues a permit for that action. Specifically, NEPA directs that “to the fullest extent possible,” federal agencies proposing “major federal actions significantly affecting the quality of the human environment” must prepare “a detailed statement” on the environmental impacts of the proposed action (including alternatives to the proposed action). To inform its development of the new MY 2012–2016 CAFE standards required under EPCA, as amended by EISA, NHTSA prepared this draft EIS to analyze and disclose the potential environmental impacts of a proposed preferred alternative and other proposed alternative standards. To inform its development of the new MY 2012–2016 CAFE standards required under EPCA, as amended by EISA, NHTSA prepared the DEIS to analyze and disclose the potential environmental impacts of a proposed preferred alternative and other proposed alternative standards pursuant to CEQ NEPA implementing regulations, DOT Order 5610.1C, and NHTSA regulations.<sup>27</sup> The DEIS compares the potential environmental impacts among

<sup>26</sup> Given EPCA’s mandate that NHTSA consider specific factors in setting CAFE standards and NEPA’s instruction that agencies give effect to NEPA’s policies “to the fullest extent possible,” NHTSA recognizes that a large number of alternative CAFE levels are potentially conceivable and that the alternatives described above essentially represent several of many points on a continuum of alternatives. Along the continuum, each alternative represents a different way in which NHTSA conceivably could assign weight to each of the four EPCA factors and NEPA’s policies. CEQ guidance instructs that “[w]hen there are potentially a very large number of alternatives, only a reasonable number of examples, covering the *full spectrum* of alternatives, must be analyzed and compared in the EIS.” CEQ, *Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations*, 46 FR 18026, 18027, Mar. 23, 1981 (emphasis original).

<sup>27</sup> NEPA is codified at 42 U.S.C. 4321–4347. CEQ NEPA implementing regulations are codified at 40 CFR Parts 1500–1508, and NHTSA’s NEPA implementing regulations are codified at 49 CFR Part 520.

alternatives, including a no action alternative. It also analyzes direct, indirect, and cumulative impacts and discusses impacts in proportion to their significance.

In April 2009, NHTSA issued a NOI to prepare an EIS for the MY 2012–2016 CAFE standards and opened the NEPA “scoping” process.<sup>28</sup> The purpose of this notice was to request from the public its views and comments on the scope of the NEPA analysis, including the impacts and alternatives the DEIS should address, and to inform NHTSA of any available studies that would assist in the impact analysis for global climate-change issues. NHTSA mailed both **Federal Register** notices to hundreds of stakeholders and developed a mailing list of interested parties, including Federal agencies with environmental expertise, the Governors of every U.S. territory and State (or State NEPA contacts they identified), Indian tribes, organizations representing state and local governments and tribes, the automobile industry, environmental organizations, and other stakeholders interested in the CAFE program. NHTSA received seven responses to its scoping notice. Comments were provided by federal and state agencies, one automobile trade association, one environmental advocacy group, and three individuals. NHTSA reviewed and considered the public scoping comments and the studies commenters suggested. The predominant request by commenters during the scoping process was that NHTSA focus the DEIS on the standards’ possible impacts on both air quality and global climate change.

NHTSA consulted with various federal agencies in the development of this DEIS, including the EPA, Bureau of Land Management, Centers for Disease Control and Prevention, Minerals Management Service, National Park Service, U.S. Army Corps of Engineers, U.S. Forest Service, Advisory Council on Historic Preservation. NHTSA is also currently exploring its Section 7 obligations under the Endangered Species Act with the U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration Fisheries Service.

NHTSA used the scoping process to help determine “the range of actions, alternatives, and impacts to be considered” in the DEIS and to identify the most important issues for analysis.<sup>29</sup> The DEIS consists of a Summary and

<sup>28</sup> *See* Notice of Intent to prepare an Environmental Impact Statement for New Corporate Average Fuel Economy Standards, 74 FR 14857 (Apr. 1, 2009).

<sup>29</sup> *See* 40 CFR 1500.5(d), 1501.7, 1508.25.

nine chapters: (1) Purpose and Need for the Proposed Action; (2) The Proposed Action and Alternatives; (3) Affected Environment and Consequences; (4) Cumulative Impacts; (5) Mitigation; (6) Preparers; (7) References; (8) Distribution List; and (9) Index. Five appendices include: sources identified in scoping comments (Appendix A); agency consultation letters (Appendix B); modeling data for air emissions and climate modeling (Appendix C); NHTSA's Preliminary Regulatory Impact Assessment (Appendix D); and EPA's Draft Regulatory Impact Assessment (Appendix E).

The DEIS devotes the most detailed analysis to direct, indirect and cumulative impacts of the proposed standards and the alternatives on energy, air quality, and climate. Key findings concerning estimated potential impacts on CO<sub>2</sub> emissions, global mean surface temperature, rainfall, and sea level rise include the following:

- **Global CO<sub>2</sub> Emissions Reductions.** Over the 2012 to 2100 timeframe, the range of alternatives NHTSA analyzed would reduce global CO<sub>2</sub> emissions (from all sources) by about 19 to 42 billion metric tons of CO<sub>2</sub> (based on global emissions of 5.29 trillion metric tons of CO<sub>2</sub>) from the emissions projected under the No Action Alternative. The alternatives would slow the expected increase in GHG emissions from the transportation sector over this period. Under all of the alternatives analyzed, growth in the number of passenger cars and light trucks in use throughout the United States, combined with assumed increases in their average use (annual vehicle miles traveled per vehicle), is projected to result in growth in total passenger car and light truck travel. This growth in travel overwhelms improvements in fuel economy such that, despite increases in fuel economy, total fuel consumption by U.S. passenger cars and light trucks is projected to increase under each of the action alternatives. Because CO<sub>2</sub> emissions are a direct consequence of total fuel consumption, the same result is projected for total CO<sub>2</sub> emissions from passenger cars and light trucks.

- **CO<sub>2</sub> Concentration and Global Mean Surface Temperature:** Estimates for CO<sub>2</sub> atmospheric concentrations and global mean surface temperature vary considerably, depending on which global emissions scenario is used as a reference case. Temperature increases are sensitive to climate sensitivity. Yet, projected differences among the CAFE alternatives are small—i.e., CO<sub>2</sub> concentrations as of 2100 range from 779.0 ppm under the most stringent

alternative (TCTB) to 783.0 ppm under the No Action Alternative. For 2030 and 2050, the range is even smaller. Temperatures are within 0.007 °C to 0.015 °C across alternatives—regardless of reference scenario and climate sensitivity.

- **Precipitation:** The CAFE alternatives reduce temperature increases slightly and thus reduce increases in precipitation slightly, compared to the No Action Alternative.

- **Impact on Sea Level Rise:** The impacts on sea level rise across the alternatives in 2100 range from 38.00 centimeters under the No Action Alternative to 37.86 centimeters under the TCTB Alternative, for a maximum reduction of 0.14 centimeters by 2100 from the No Action Alternative.

These conclusions are not meant to be interpreted as expressing NHTSA's views that CO<sub>2</sub> impacts on global mean surface temperature, precipitation, or sea-level rise are not areas of concern for policymakers. Under NEPA, the agency is obligated to discuss "the environmental impact[s] of the proposed action." 42 U.S.C. Sec. 4332(2)(C)(i) (emphasis added). The EIS analysis is intended to fulfill NHTSA's obligations in this regard. The DEIS provides a qualitative analysis of resources that may be impacted by changes in climate, such as freshwater resources, terrestrial ecosystems, coastal ecosystems, land use, human health, socioeconomic and environmental justice. It examines impacts on the U.S. and on a global scale. In addition, the DEIS qualitatively examines the alternatives' non-climate-change-related direct, indirect and cumulative impacts on potentially affected resources. Such resources include water resources, biological resources, land use, hazardous materials, safety, noise, historic and cultural resources, and environmental justice.

Throughout the DEIS, NHTSA's analysis relies extensively on findings of the United Nations Intergovernmental Panel on Climate Change (IPCC) and the U.S. Climate Change Science Program (USCCSP), including those presented in the IPCC's *Fourth Assessment Report: Climate Change 2007* and the USCCSP's *Scientific Assessments of the Effects of Global Change on the United States and Synthesis and Assessment Products*.<sup>30</sup> The DEIS also uses applicable CEQ regulations to acknowledge uncertainty and incomplete or unavailable

<sup>30</sup> See generally <http://www.ipcc.ch/ipccreports/assessments-reports.htm> (last visited June 25, 2008) and <http://www.climate-science.gov> (last visited June 25, 2008).

information relevant to NHTSA's NEPA analysis.<sup>31</sup>

**Procedural Matters:** The hearing will be open to the public with advanced registration for seating on a space-available basis. Individuals wishing to register to assure a seat in the public seating area should provide their name, affiliation, phone number, and e-mail address to Mr. Peter Prout or Ms. Angel Jackson using the contact information in the **FOR FURTHER INFORMATION CONTACT** section at the beginning of this notice no later than Monday October 19, 2009. Should it be necessary to cancel the hearing due to an emergency or some other reason, NHTSA will take all available means to notify registered participants by e-mail or telephone.

The hearing will be held at a site accessible to individuals with disabilities. Individuals who require accommodations such as sign language interpreters should contact Mr. Peter Prout or Ms. Angel Jackson using the contact information in the **FOR FURTHER INFORMATION CONTACT** section above no later than Monday October 19, 2009. Any written materials NHTSA presents at the hearing will be available electronically on the day of the hearing to accommodate the needs of the visually impaired. A transcript of the hearing and information received by NHTSA at the hearing will be placed in the docket for this notice at a later date.

#### **How long will I have to speak at the public hearing?**

Once NHTSA learns how many people have registered to speak at the public hearing, NHTSA will allocate an appropriate amount of time to each participant, allowing time for lunch and necessary breaks throughout the day. For planning purposes, each speaker should anticipate speaking for approximately ten minutes, although we may need to adjust the time for each speaker if there is a large turnout. To accommodate as many speakers as possible, NHTSA prefers that speakers not use technological aids (e.g., audio-visuals, computer slideshows). However, if you plan to do so, you must let Mr. Peter Prout or Ms. Angel Jackson know by Monday October 19, 2009, using the contact information in the **FOR FURTHER INFORMATION CONTACT** section above. You also must make arrangements to provide your presentation or any other aids to NHTSA in advance of the hearing in order to facilitate set-up. During the week of October 19th, NHTSA will post information on its Web site (<http://www.nhtsa.dot.gov>) indicating the

<sup>31</sup> 40 CFR 1502.22; see 40 CFR 1502.21.

amount of time allocated for each speaker and each speaker's approximate order on the agenda for the hearing.

#### How can I get a copy of the DEIS?

The DEIS is available on NHTSA's Web site at <http://www.nhtsa.dot.gov/>, and it will be available in the Docket identified by the docket number at the beginning of this notice. To request a CD-ROM containing the DEIS and its Appendices, please contact Mr. Peter Prout or Ms. Angel Jackson using the contact information in the **FOR FURTHER INFORMATION CONTACT** section above.

#### How do I prepare and submit written comments?

It is not necessary to attend or to speak at the public hearing to be able to comment on the issues. NHTSA invites the submission of written comments on the DEIS, which the agency will consider in preparing the final NEPA documents to support the new CAFE standards for MY 2012–2016 passenger cars and light trucks. Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number at the beginning of this notice in your comments.

Your primary comments may not exceed 15 pages.<sup>32</sup> However, you may attach supporting documents to your

primary comments. There is no limit to the length of the attachments.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** at 65 FR 19477, April 11, 2000, or you may visit <http://www.regulations.gov>.

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

#### How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, send three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Include a cover letter supplying the information specified in our confidential business information regulation (49 CFR part 512).

In addition, send two copies from which you have deleted the claimed confidential business information to Docket Management, 1200 New Jersey Avenue, SE., West Building, Room W12–140, Washington, DC 20590, or submit them electronically, in the manner described at the beginning of this notice.

#### Will the agency consider late comments?

NHTSA will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent the NEPA and rulemaking schedules allow, NHTSA will try to consider comments that Docket Management receives after that date, but we cannot ensure that we will be able to do so.<sup>33</sup>

Please note that even after the comment closing date, we will continue to file relevant information in the docket as it becomes available. Further, some commenters may submit late comments. Accordingly, we recommend that you periodically check the docket for new material.

Issued: September 22, 2009.

**Ronald Medford,**

*Acting Deputy Administrator.*

[FR Doc. E9–23199 Filed 9–22–09; 4:15 pm]

**BILLING CODE 4910–59–P**

<sup>32</sup> 49 CFR 553.21.

<sup>33</sup> See 49 CFR 553.23.