

Testimony of Jeffrey R. Holmstead
Before the
House Select Committee on Energy Independence and Global Warming
June 26, 2008

Mr. Chairman, my name is Jeff Holmstead. I am a partner in the law firm of Bracewell and Giuliani and the head of the firm's Environmental Strategies Group. This afternoon, however, I am not appearing on behalf of my law firm or any of my firm's clients. I am here solely in my personal capacity as a former EPA official who has spent almost 20 years on working on climate change and air quality issues.

As you know, last year Congress passed an energy bill that will require a substantial increase in fuel economy for motor vehicles – an increase of at least 40 percent by 2020, which will result in a 30 percent reduction in greenhouse gas emissions from motor vehicles. NHTSA estimates that, during the first five years this law is in effect, it will save approximately 55 billion gallons of fuel and reduce greenhouse gas emissions by 521 million metric tons.¹

Not surprisingly, there is a significant up-front cost that must be paid to achieve these improvements. NHTSA estimates that, in model year 2015, new car buyers can expect to pay between about \$650 and \$2000 more for a car and between \$1000 and 1400 more for a new light truck because of the new CAFE program.² All told, NHTSA calculates that consumers will pay between \$36.5 billion and \$67.9 billion more to purchase the vehicles regulated under its proposed rule to implement the CAFE increase.³

It is important to note that buyers will more than recover these costs through greater fuel savings. But even so, they will have to come up with a bigger down payment when they want to purchase a car or light truck, or take out a bigger loan. This is the price that must be paid to achieve greater energy security and reductions in greenhouse gas emissions.

As the Members of this Committee are aware, the new CAFE program was extensively debated in Congress, and the final product passed with large bipartisan majorities in both houses. This law represents a delicate balancing of regional and ideological differences. For example, the CAFE law was carefully drafted to ensure that safety would not be jeopardized, by mandating an attribute-based system. This law also ensures that national economic factors, such as job loss, consumer choice, and market demand would be considered in designing and implementing the new fuel economy standard. As I understand it, compromise agreements were also reached to protect union jobs in the manufacturing sector and to extend the flex fuel credit until model year 2019.

Notwithstanding the extensive debate in Congress, and the compromises reached between many competing interests in order to secure passage of a new CAFE program, there are a number of advocacy groups who argue that Congress did not intend the new CAFE program to be the final word on fuel economy. In their view, provisions added to the Clean Air Act back in 1977 actually require a much more aggressive fuel economy program than the one adopted by Congress last year.

I have enormous respect for EPA officials and their ability to develop effective regulatory programs. But it seems odd to me that Congress would debate a contentious national policy issue like fuel economy standards for many years, reach a compromise on an approach that garners broad support, and then expect EPA to develop a completely separate regulatory program which makes that compromise entirely irrelevant.

Supporters of the view that EPA (and California, pursuant to a Clean Air Act waiver) should be setting policy in this area argue that CAFE is about fuel economy and that the Clean Air Act is about emissions. But Congress well understood, at least by 2007, that when it comes to CO₂ emissions, they are exactly the same thing. NHTSA is responsible for implementing the CAFE program. And how does NHTSA determine whether car companies are meeting the fuel economy requirements of that program? By having EPA measure the CO₂ emissions that come out of those cars. As a matter of basic science, there is no difference between fuel economy and CO₂ emissions. You can

control CO2 emissions by regulating fuel economy, or you can control fuel economy by regulating CO2 emissions. But no one should pretend that they can be viewed independently.

I would think that most Members of Congress would find it troubling to have EPA or California (or both) establish their own regimes for regulating fuel economy/CO2 emissions because neither EPA nor California is required to conform their programs to the CAFE system that was so painstakingly designed by Congress. For example, California is under no legal stricture to adopt an attribute-based system as Congress commands NHTSA to do. Moreover, under the Clean Air Act, EPA does not have to balance the competing interests of fuel economy, safety and jobs.

Considering the huge cost of the new CAFE law, it is legitimate to ask if it is wise to have EPA also regulate fuel economy, or in some states, have California rules compete with federal rules. If NHTSA was refusing to implement the will of Congress, perhaps such a situation would be appropriate. But that is not the case. In this instance, NHTSA's average 4.5 percent a year increase in stringency has surpassed what is required under the new energy bill.

Mr. Chairman, it just doesn't make any sense to have two separate agencies (NHTSA and EPA) governed under two separate statutes (the Energy Policy and Conservation Act and the Clean Air Act), regulating the exact same activity (fuel economy/CO2 emissions). It makes even less sense when you add a separate California program, which may then be adopted by any other state that chooses to follow it, rather than following either EPA or NHTSA.

¹ 73 Fed. Reg. 24,456 (May 2, 2008).

² NHTSA, *Preliminary Regulatory Impact Analysis, Corporate Average Fuel Economy for MY 2011-2015 Passenger Cars and Light Trucks*, April 2008, page. IX-13.

³ 73 Fed. Reg. 24,479 (May 2, 2008).