



**Testimony of Joan Claybrook, President, Public Citizen,
before the
U.S. Senate Committee on
Commerce, Science and Transportation
Submitted May 9, 2006**

Thank you, Mr. Chairman and members of the Committee for the opportunity to be here today. My name is Joan Claybrook and I am the President of Public Citizen, a public interest organization with 130,000 members nation-wide. I was the Administrator of the National Highway Traffic Safety Administration (NHTSA) from 1977 to 1981, and as Administrator, I issued the first fuel economy standards for cars and light trucks. In total, I have worked to improve motor vehicle safety and fuel economy for more than 40 years.

The fuel economy standard for passenger cars has not been raised since I issued the 27.5 miles-per-gallon (mpg) standard in 1977 under the Energy Policy and Conservation Act (EPCA) of 1975. The standard has not changed since 1990, when it was revised back to 27.5 after being lowered in 1986. The current standard is still 27.5 mpg and was first achieved in 1985 as the law required; more than twenty years of lost opportunities to increase fuel economy have been squandered by inaction. If the car standard were an extremely reasonable 35 mpg today, we would save approximately 1.1 million barrels of oil each and every day. If the standard was an achievable fleet-wide average of 40 mpg, we would save approximately 3.4 million barrels of oil a day.¹ Over the course of a year, these savings would total approximately 1.24 billion barrels, a quantity almost one-and-a-half times greater than our current annual imports from the Persian Gulf.

Increasing the fuel economy of passenger vehicles would lower gas prices within a few years by reducing demand substantially. It would also bolster national security, improve safety, conserve natural resources, reduce pollution and help slow the effects of global warming. It is critical that Congress act to ensure an increase in fuel economy standards for passenger cars, which account for approximately 25 percent of our total oil consumption.²

I would like to urge Congress to take the following actions to improve car fuel economy:

1. Congress should clarify whether NHTSA has the authority to raise the fuel economy standards for passenger vehicles in the absence of the Congressional veto, which the Supreme Court declared unconstitutional in Public Citizen's lawsuit, *INS v. Chadha* in 1983.³

¹ Analysis by Therese Langer, Transportation Program Director, American Council for an Energy-Efficient Economy.

² *Ibid.*

³ See *INS v. Chadha*, 462 U.S. 919 (1983).

2. Congress should require an increase in passenger car fuel economy standards.
3. To assure immediate improvements in fuel savings, Congress should statutorily set the fuel economy standard at 31 mpg for 2008 cars and 32.5 mpg for 2009 cars and direct NHTSA to set higher standards for later model year passenger vehicles through 2015.
4. Congress should direct NHTSA to promulgate a single mpg requirement rather than a sliding-scale standard, like the light truck fuel economy standard the agency just issued on April 6, 2006. I will make the case that, contrary to arguments otherwise, increases in the single mpg fuel economy standard for cars would improve, not harm, safety, and a sliding-scale system for car fuel economy is not needed to ensure fair competition among manufacturers.
5. Congress should lock in the minimum miles per gallon at 27.5 through a backstop measure that increases the minimum miles per gallon as the fuel economy standard is increased.

One of the hotly debated issues regarding the car fuel economy standard is whether clarification of NHTSA's authority to increase the standard is needed for the agency to act. While some legal experts say that it is not necessary, others say it is likely required. To avoid almost-certain litigation over this issue, Congress should clarify NHTSA's legal obligation to raise fuel economy standards for passenger cars given the removal of the Congressional veto.

Such a clarification should also provide a mandate to act. The current law states only that the Secretary "may" raise fuel economy standards.⁴ Any reasonable clarification of this standard would require that the Secretary "shall" raise fuel economy standards for cars by a certain date consistent with achievement of the maximum feasible average as defined in the current law. This would provide a new mechanism for agency accountability should NHTSA fail to act.

NHTSA agrees that clarification of its authority would be useful. The position of NHTSA, as articulated by Department of Transportation (DOT) General Counsel Jeffrey Rosen at a hearing by the House of Representatives' Energy and Commerce Committee on May 3, 2006, was that "the statute had provided the authority subject to a legislative veto and that's why it would be good to clarify" it. In its rulemaking notices, NHTSA has stated only that it has authority to "change" the standards on the right showing of need under the statute. However, the only "change" NHTSA has ever made to the 27.5 mpg standard was to lower it in 1986 to 26 mpg, which is consistent with the agency's citation of case law concerning NHTSA's authority to *lower* the standard under the current statute.⁵ The standard subsequently returned in 1990 to 27.5 mpg where it has stagnated for the past 16 years.

Because of the urgent need to address high fuel prices, Congress should also avoid needless delay in payoff from increased car fuel economy by statutorily setting the standard for model years 2008 and 2009. This would provide the necessary lead-time for rulemaking by allowing NHTSA to set higher standards for later model year passenger vehicles. Under the current law, NHTSA must provide 18 months of lead time prior to a model year to allow

⁴ See 49 U.S.C. § 32902(c)(1).

⁵ See *CEI v. NHTSA*, 901 F.2d 107 (1990); *CEI v. NHTSA*, 956 F. 2d 312 (1992); *CEI v. NHTSA*, 45 F.3d 481 (1995).

automakers to form or adjust product plans. The light truck standard beginning in model year 2008 was just issued by NHTSA on April 6, 2006 – 18 months prior to the start of that model year. If Congress were to act quickly, it would provide virtually 18 months notice for automakers regarding the passenger vehicle standard for model year 2008 and substantially more notice for model year 2009. However, the agency should be encouraged to issue future standards with greater lead time to allow companies to meet more demanding standards.

According to data from the Environmental Protection Agency, which files an annual report tracking trends in vehicle fuel economy, automakers experience, on average, fuel efficiency gains of 1.9 mpg in each model year. These are the result of innovation and progress in vehicle and technology design and manufacturing.⁶ In the absence of meaningful fuel economy requirements, most of this added efficiency in cars and light trucks has been used for bulking up vehicle weight, acceleration and torque.

It has been over twenty years since automakers have been told to use this increase for fuel economy purposes. Last week, the Department of Transportation (DOT) admitted that the average car fleet fuel economy today is about 30 mpg, but some manufacturers are still below the 1985 standard.⁷ Many existing cost-effective fuel-saving technologies, such as six-speed transmissions, have been allowed to molder on the shelf. Based on the existing standard, an increase of 1.9 mpg per year consistent with EPA's calculated fuel efficiency increases would predict achievable fuel economy of at least 30.3 mpg in 2008 and 32.2 mpg in 2009. Given the use of hybrid and other advanced technologies, manufacturers could easily meet fuel economy standards of 31 mpg for 2008 model year cars and 32.5 mpg for 2009 model year cars. Congress should mandate these increases to avoid rulemaking delays while allowing NHTSA to set the standard through notice-and-comment rulemaking for model year 2010 and later.

Congress should also specify that the car standard be a single standard rather than a sliding-scale system. Congress could do this by adding the phrase "a single standard" to the mandate. There is no need for the passenger car standard to incorporate a restructuring of the current system. The agency's stated concerns about the safety effects of down-weighting in response to a single standard are unfounded. Another common argument for a sliding-scale system is that it may help to assure there is fair competition among manufacturers.

This argument was used by NHTSA in support of the new light truck fuel economy standards for model years 2008 through 2011, which is based on a sliding scale that requires larger vehicles to comply with less stringent standards. The measure used by the agency is vehicle "footprint," or the space occupied by the vehicle on the highway – essentially, the length times the width of the vehicle between tires, or wheelbase. This system is intended to insulate full-line manufacturers from a disadvantage in competing with manufacturers that make smaller light trucks and can therefore more easily meet fuel economy standards.

⁶ U.S. Environmental Protection Agency, "Light-Duty Automotive Technology and Fuel Economy Trends: 1975 Through 2003," EPA420-R03-006, April 2003.

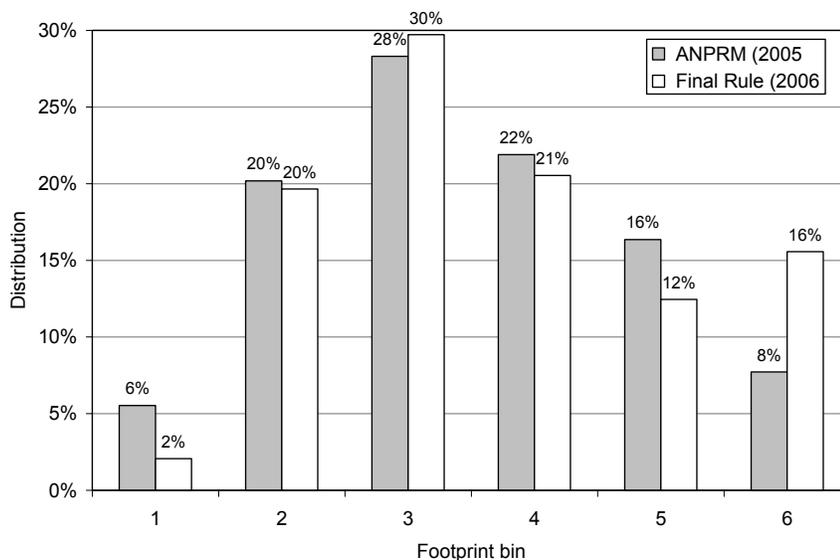
⁷ See Juliet Eilperin, "Resistant Lawmakers Now Back Higher Gas Mileage Standards," *Washington Post*, May 4, 2006 and Matthew Wald, "Plan to Reshape Mileage Standards Could Buoy Detroit," *New York Times*, May 7, 2006.

This circumstance does not apply to the car marketplace, as most manufacturers now make a full line of vehicles. For instance, using EPA's four car classes – subcompact, compact, midsize and large – seven of eleven major manufacturers produce a large sedan and nine of eleven produce a subcompact. Moreover, relative differences in fuel economy between light and heavy cars are not nearly as great as they are between trucks.

In contrast, any restructured system that creates a sliding scale, such as the recent light truck and SUV fuel economy standards, raises serious concerns that oil savings will erode, or even evaporate, over time due to the risk that manufacturers will up-size vehicles to qualify for less stringent standards. Figure A, below, examines manufacturers' product plans, as submitted to NHTSA, for the light truck fleet at the time the light truck fuel economy standard was proposed and compares them with manufacturers' plans at the time the final rule was issued. The chart shows a significant reduction in the number of vehicles with the smallest footprint classification, or Bin 1 in the chart, and a significant increase in the number of vehicles with the largest footprint classification in just the brief period of time between the issuance of the advanced notice of proposed rulemaking (ANPRM) on August 30, 2005, and issuance of the final rule on April 6, 2006. This shows that automakers will, as they confessed to *Automotive News*, alter product plans and the footprint of vehicles in response to fuel economy-related incentives from NHTSA.⁸

Figure A⁹

Distribution of light trucks by footprint bin



10

⁸ See Harry Stoffer, "New CAFE Rules Could Backfire," *Automotive News*, April 3, 2006.

⁹ Source: NHTSA, "Average Fuel Economy Standards for Light Trucks Model Years 2008–2011," Federal Register, Vol. 71, No. 66, April 6, 2006, Figures 9 and 10.

¹⁰ Bin 1 encompasses vehicles with footprints ranging from 34 to 43 square feet. Bin 2 encompasses vehicles with footprints ranging from 44 to 47 square feet. Bin 3 encompasses vehicles with footprints ranging from 48 to 51 square feet. Bin 4 encompasses vehicles with footprints ranging from 52 to 56 square feet. Bin 5 encompasses vehicles with footprints ranging from 57 to 64 square feet. Bin 6 encompasses vehicles with footprints ranging from 65 to 79 square feet.

Indeed, NHTSA's recent light truck fuel economy final rule projects only oil savings "estimates" due to the unpredictability of potential changes in manufacturers' future product plans for model years 2008 through 2011. Without a backstop or ratchet mechanism that would be triggered when oil savings fail to materialize, a sliding-scale passenger car standard would leave the nation's level of oil savings at the mercy of profit-driven decisions by automakers, which may choose to "game" the car standard in the same way they are evidently now responding to the light truck rule. The incentive to upsize that comes with a sliding-scale system may also lead to larger and more aggressive vehicles, reducing overall safety.

NHTSA's rather blithe assurances in this regard cannot be relied upon. While the agency claimed that oil savings from the rule would total 10.7 billion gallons over the lifetime of model year 2008-2011 vehicles, its public statements failed to note that it never modeled the automakers' likely choices regarding the various options available under the rule. Instead, the agency counted oil savings for "best case" compliance scenarios not actually required by the rule. Moreover, the agency's oil savings estimate of 10.7 billion gallons included gains from changes in automakers' product plans made long before issuance of the agency's final rule. In sum, the oil savings numbers from NHTSA were fictional.

Congress should include a "no backsliding" measure locking in the minimum miles per gallon for the car fleet at 27.5 mpg, or for model years 2008 and 2009, the congressionally mandated new standard. The measure would require a fleet-wide fuel economy average for each manufacturer so that overall fuel economy gains are not lost because vehicles qualify for a less stringent based on their footprints. A "no backsliding" measure would ensure a base level of oil savings, reducing the risk of fleet erosion and incentive for gaming, and remove some manufacturer caprice from the equation. The minimum miles per gallon in the "no backsliding" measure should also be increased with each future increase in the fuel economy standard for cars.

Finally, I would like to emphasize that both car and light truck fuel economy can be improved without sacrificing safety. A common concern promoted by auto manufacturers is that fuel economy improvements result in down-weighting and thus affect safety. However, the large number of fuel-saving technologies gathering dust on the shelf means that Congress need not fear any safety risks from vehicle down-weighting in response to higher fuel economy standards.

Historically, manufacturers have relied primarily on fuel-saving technologies, not changes in weight, to improve vehicle fuel economy. In fact, after the passenger car CAFE standard were issued in 1977, according to the Department of Energy, 85 percent of fuel economy gains came from gas-saving technologies and not from reducing vehicle weight. For the other 15 percent, automakers decreased the weight of only the *heaviest* vehicles, as investing in redesign of those vehicles paid the largest dividends in fuel savings.

For lighter vehicles, the payoff for removing weight is minimal and requires an expensive vehicle redesign. It is not, as some have wrongly asserted, cheap to accomplish. Therefore, weight changes are reserved as a fuel economy tool for only the heaviest vehicles in a manufacturer's fleet.

In addition, since 1985, when the 1977 fuel economy standard fully took effect at 27.5 mpg, auto companies have vastly increased the weight and engine power of automobiles, using fuel-saving technologies not to improve fuel economy, but to offset the increases in vehicle weight and engine power and maintain compliance with the 1985 standard. As I mentioned earlier, data from the Environmental Protection Agency show that automakers experience, on average, fuel efficiency gains of 1.9 mpg in each model year. But such gains have been used to make vehicles bigger and faster, not to improve fuel economy. Significant fuel economy savings could be easily achieved through installation of sensible engines and some accompanying down-weighting in the largest and heaviest vehicles.

In sum, given the current availability of fuel-saving technologies, as in the 1970s, any weight changes in response to a more stringent fuel economy standard would be concentrated, for economic reasons, in the heaviest part of the car fleet. Reducing weight in this segment of the vehicle fleet is both productive for fuel economy and beneficial in terms of safety for others on the road. No such reduction occurred.

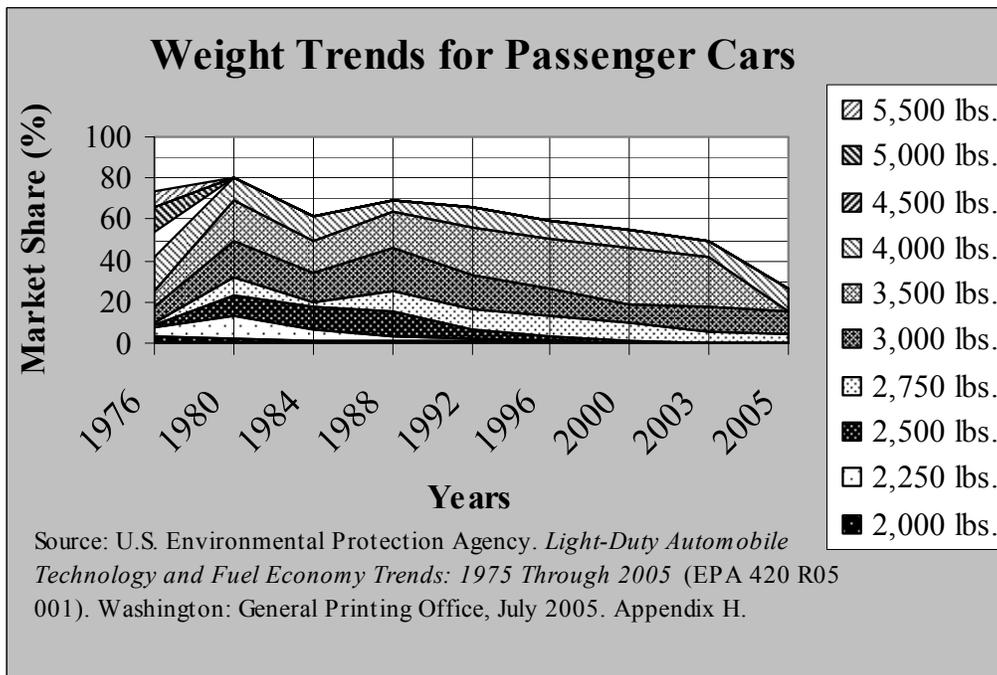
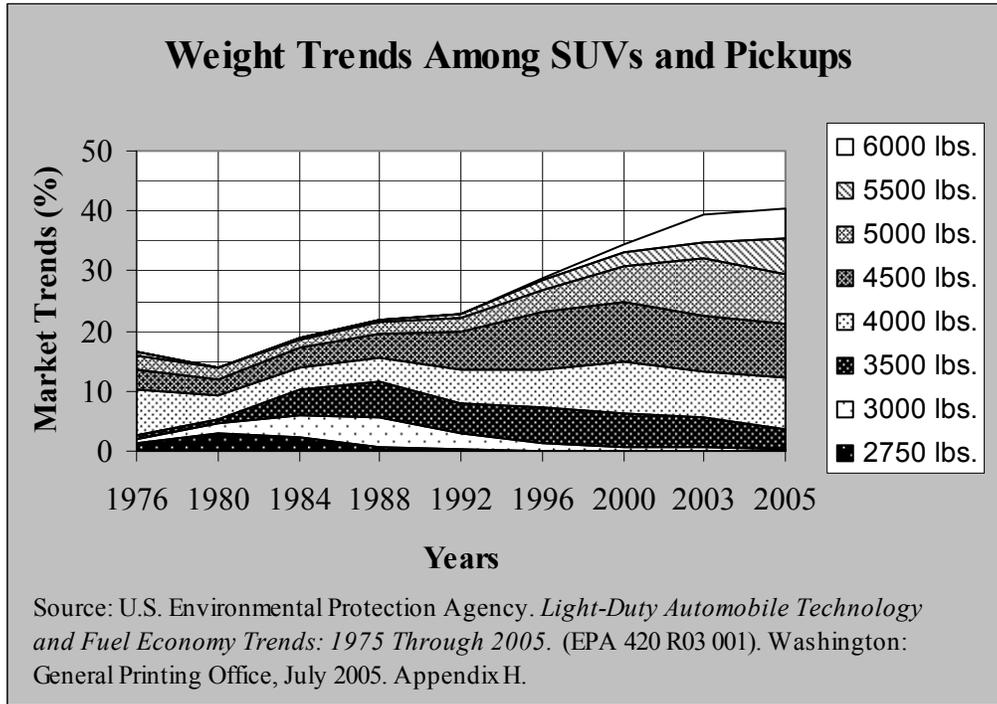
NHTSA's Kahane study, which is the basis for the National Academy of Sciences (NAS) study on the relationship between fuel economy and safety, posits a negative safety impact as a result of fuel economy increases. The study, however, wrongly assumes that fuel economy standards cause an across-the-board reduction in vehicle weights of 100 lbs. removed from each vehicle.

Additionally, the NAS report estimating that CAFE caused thousands of additional deaths in 1993 was wrong. That estimate was hotly disputed in a written dissent by two of the NAS panel members. In Figure B, below, the numbers for 1993 vehicle weights show that there was no across-the-board reduction by 100 pounds of vehicle weight. Instead the impact of CAFE had long been absorbed and the vehicle fleet normalized.

Even in earlier years, there was no down-weighting of vehicles on the lightest end of the vehicle fleet and no explosion of tiny vehicles. For example, between 1976 and 2003, the market share for heavier new cars weighing 3,000-3,500 lbs. nearly doubled, rising from 15 percent to a 37 percent total market share in 2003. Meanwhile, at just over 10 percent in 2003, the market share of lighter new cars weighing 2,000-2,750 lbs. is half what it was in 1976. The largest cars, weighing more than 4,000 lbs, all but disappeared and only reappeared in the most recent years.

Thus, there has been a homogenization of automobiles in terms of weight, which the GAO reported in the 1990s is an asset for safety because the behemoths of the 1970s were a hazard to others on the highway. An across-the-board 100-lbs. reduction in vehicle weight did not happen after the CAFE standards were issued in 1977, and will not happen in the future for the cost-effectiveness reasons explained above.

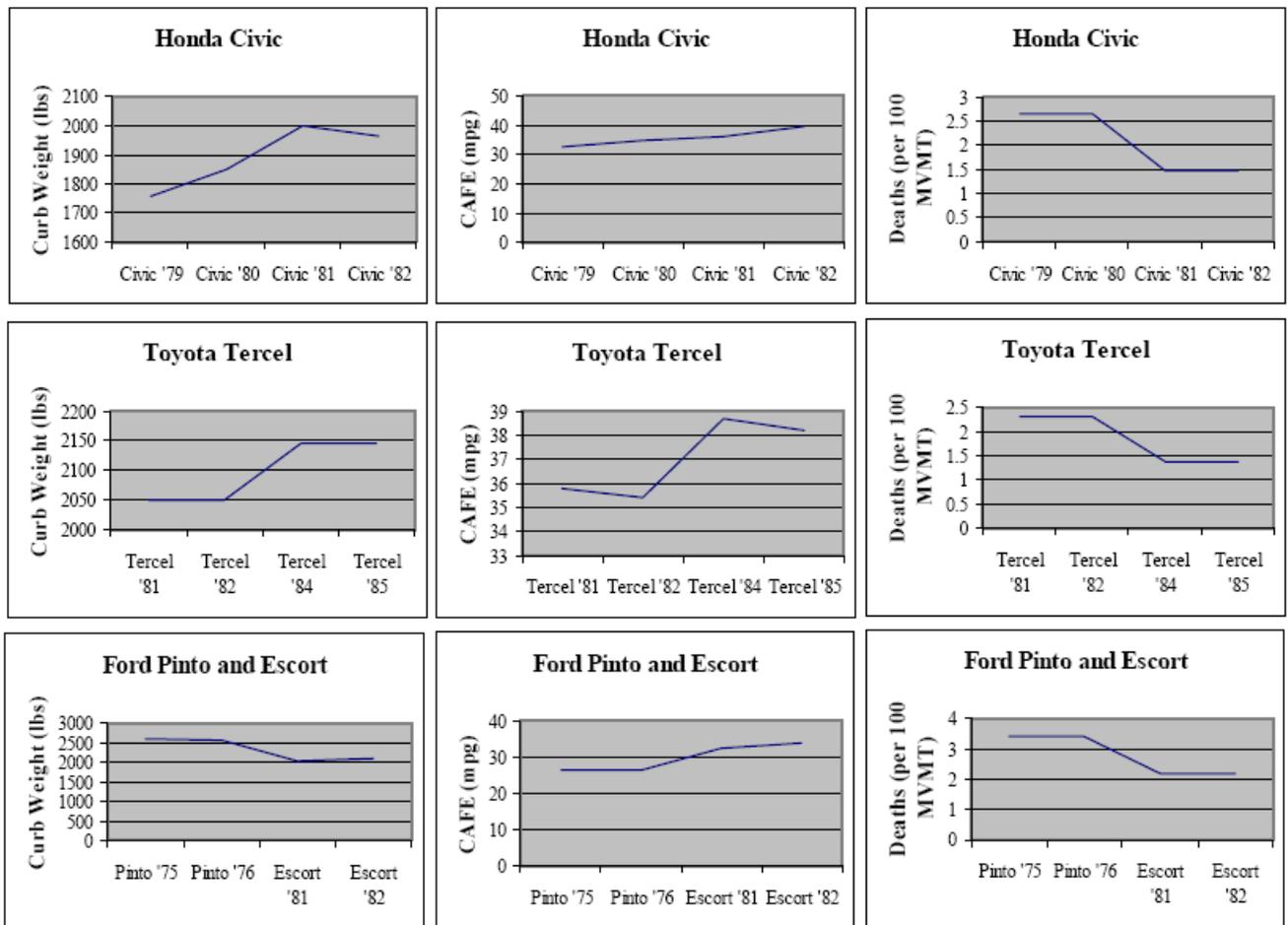
Figure B



Comparing historical fact with Kahane's 100-lb. assumption demonstrates why the NAS's use of Kahane's results has produced a widespread and unfortunate misunderstanding concerning safety and fuel economy.

In addition, the most important factor for safety is good vehicle design. Vehicle structure, crashworthiness and interior protections, as well as compatibility with other vehicles on the road, are all critical. The most significant step Congress could take to increase vehicle compatibility would be to require the agency to issue a compatibility safety standard in upcoming legislation. The 2001 and 2002 models of Honda Civics, for instance, have a far lower driver death rate than many much heavier cars.¹¹ Moreover, longitudinal studies by Clarence Ditlow of the Center for Auto Safety, shown below in Figure C, of particular vehicles affected by the 1970s CAFE rules show through matched-pairs analysis that vehicles were brought into compliance with CAFE rules at the same time that they were made safer.

Figure C



¹¹ Source: Insurance Institute for Highway Safety, "Risk of Dying in One Vehicle Versus Another," *Status Report*, Vol. 40, No. 3, March 19, 2005. Available at http://www.iihs.org/news/2005/iihs_sr_031505.pdf.

In summary, Congress should take the following steps to improve car fuel economy:

1. Congress should clarify NHTSA's authority to raise the fuel economy standard for passenger cars with a single corporate average fuel economy by providing a mandate to do so consistent with the agency's obligation to achieve maximum feasible fuel economy, as defined in current law.
2. Congress should require an increase in passenger car fuel economy standards.
3. Congress should statutorily set the fuel economy standard at 31 mpg for 2008 cars and 32.5 mpg for 2009 cars and direct NHTSA to set higher standards for later model year passenger vehicles through 2015.
4. Congress should direct NHTSA to promulgate a single mpg requirement rather than a sliding-scale standard.
5. Congress should lock in the minimum miles per gallon at 27.5 through a backstop measure that increases the minimum miles per gallon as the fuel economy standard is increased.

Congress should also address several other issues critical to improving vehicle fuel economy. Congress should provide increased funding to the CAFE program to ensure its effectiveness. The program should receive at minimum \$30,000,000 — approximately the inflation-adjusted equivalent of the amount of \$10 million that the CAFE program received to implement the first standards in 1977 — and twenty staff members. Only with sufficient resources can the agency adequately research and support its decisions.

Congress should also consider eliminating the CAFE credits for production of flex-fuel vehicles, which only undermine fuel economy achievements, and instead substitute a mandate for production of flex-fuel vehicles capable of running on ethanol and other alternative fuels. And lastly, Congress should revise the statutory definition of passenger and non-passenger vehicles to reflect changes in the vehicle fleet since 1975 when EPCA was enacted. SUVs and minivans are currently classified as non-passenger vehicles despite their use to primarily transport people. The definitions should be updated to reflect current driving habits.

As the former Administrator of NHTSA charged with issuing the nation's first fuel economy standards in the 1970s, I urge the Congress to act to improve car fuel economy.