States of California, Connecticut, Delaware, Hawaii, Iowa, Illinois, Maine, Maryland, Minnesota, North Carolina, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, and Washington, the Commonwealths of Massachusetts, Pennsylvania, and Virginia, the District of Columbia, and the Cities of Oakland, Los Angeles, San Francisco, San Jose and New York

October 26, 2018

Submitted via www.regulations.gov

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Re: Comments on the Proposed Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks
Docket IDs: NHTSA-2018-0067; EPA-HQ-OAR-2018-0283
RIN: 2127-AL76; RIN 2060-AU09

Dear Deputy Administrator King and Acting Administrator Wheeler:

The undersigned State Attorneys General and City Attorneys (collectively "the States and Cities") respectfully submit these comments, including the attachments hereto, in opposition to the United States Environmental Protection Agency's (EPA) and the National Highway Traffic Safety Administration's (NHTSA) (together, the "Agencies") Proposed "SAFE" Vehicles Rule for Model Year 2021-2026 Passenger Cars and Light Trucks, 83 Fed. Reg. 42,986 (Aug. 24, 2018) (the "Proposed Rollback" or "Proposal").[1]

[1] The States and Cities are submitting these comments and the more detailed comments attached (Detailed Comments), as well as three Appendices: (i) an Appendix of Climate Impacts (States' Appx. A); (ii) an Appendix of ZEV Penetration and Infrastructure Beyond California (States' Appx. B); and (iii) an Appendix of Reference Materials (States' Appx. C). The Detailed Comments document and Appendices A and B are being

As summarized below and discussed in detail in the attached detailed comments, EPA and NHTSA's Proposal to roll back the greenhouse gas (GHG) emissions and fuel economy standards for model year 2021-2026 passenger cars and light-trucks is arbitrary and capricious and unlawful in multiple respects. Among other things, (i) the Agencies' Proposal contravenes their mandates from Congress under the Clean Air Act and EPCA, respectively, to protect the public from air pollution and to conserve energy; (ii) the Agencies' Proposal is based on assumptions and modeling that are wholly unsupported and lead to illogical and unlikely, even impossible results; (iii) the Agencies have ignored solid and substantial evidence, including evidence already in their possession or readily available to them, that runs counter to their rollback objective; and (iv) the Agencies have failed to provided the "good reasons" required for their numerous reversals of positions on factual, technical, or legal issues. If adopted, the Proposed Rollback would increase (not decrease) vehicle ownership costs. It also would increase emissions of GHGs and other air pollutants, which, in turn, would exacerbate climate change and harm human health. Finally, contrary to the Agencies' representations, it will not make Americans safer.

The existing federal regulations for fuel economy and greenhouse gas (GHG) emissions from passenger cars and light-duty trucks (collectively "light-duty vehicles") for 2017—2025 (the "National Program" or "existing standards") are the product of extensive analysis and negotiations among all stakeholders, including the Agencies, the California Air Resources Board (CARB), automakers, and others. This National Program is working: automakers are exceeding the fleet-wide requirements for both fuel economy and GHG emissions with a wide range of popular models, including top-sellers such as the Toyota Camry and Ford F-150 pickup, which are also generating generous profits; and, as a result, the light-duty vehicle fleet is emitting fewer GHGs and criteria pollutants, states have realized increased public health and environmental benefits, consumers are saving money at the pump and the U.S. automobile industry has become a global leader in advanced vehicle technologies and manufacturing. In addition, the National Program, coupled with State programs that require or incentivize the adoption of zero emission vehicles (ZEVs), are spurring unprecedented innovation such that an American company is the acknowledged global leader in electric vehicles. And, 35 countries, which together with the United States represent 80 percent of the worldwide automobile market, have moved in the same direction, adopting GHG emissions or fuel-economy standards that increase in stringency year-over-year. At the same time, driving a car continues to get safer as a result of advances in vehicle safety technology as well as roadway construction and design.

Under this Administration, however, NHTSA and EPA have embarked on a dramatic reversal of course that would, under their preferred alternative, roll back the

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submitted via www.regulations.gov, and Appendix C is being submitted on electronic media via overnight mail. We also note that while EPA has no limit on the page length of comments, NHTSA has set a 15-page limit to comments (but not to attachments) (83 Fed. Reg. at 43,470) that would be arbitrary and unlawful to the extent it is applied to this rulemaking. See Detailed Comments at Section III.B.5. Regardless, our Detailed Comments are submitted in the attachment.

federal standards to require zero improvements in light-duty vehicles' fuel economy and GHG emissions for a period of six years, from model year 2021 through model year 2026. Even the Agencies' non-preferred alternatives would severely weaken the existing standards. The Proposed Rollback, however, does not stop there. Rather, EPA proposes to take the unprecedented (in its 40-plus-year history) step of revoking parts of a five-year-old waiver granted to California under Section 209 of the Clean Air Act and, eventually to, prohibit the dozen other States that have adopted California's standards from continuing to implement them.

The Proposed Rollback would result in 1) extended production of less fuel-efficient vehicles, which, in turn, would extend U.S. dependence on foreign oil; 2) more frequent and more expensive trips to gas pumps for American consumers; 3) an increase in future emissions leading to a degradation of public health and the environment; and 4) a loss of competitiveness for the U.S. automobile industry as an innovator in advanced vehicle technologies and manufacturing. As discussed below and in the Detailed Comments submitted herewith, EPA and NHTSA's proposed actions are unlawful.

First, the administrative process the Agencies have engaged in is deeply flawed. Under former Administrator E. Scott Pruitt, EPA issued a "revised Mid-Term Evaluation," in April 2018, that deemed the existing standards for model year 2022—2025 light-duty vehicles no longer "appropriate," revoking an appropriateness finding by the agency from January 2017. EPA's revised final determination is devoid of new data or substantive analysis, selectively abandons or ignores the existing administrative record, and does not present the type of detailed justification required for a reversal of an agency's prior determination.[2] From there, the Agencies proceeded to issue a notice of proposed rulemaking and accompanying documents that, while thousands of pages in total, failed to include essential information regarding the modeling, data and assumptions relied on by the Agencies.[3] Further, the Agencies permitted only 63 days for public comment—despite receiving requests for additional time from most of the undersigned States and Cities, as well as from CARB, 32 U.S. Senators, the National Governors Association, the National Coalition for Advanced Transportation, and the Alliance of Automobile Manufacturers, among others. As discussed further in Part III.B. of the attached Detailed Comments, the Agencies' conduct in this rulemaking plainly violates the Administrative Procedure Act.

Second, EPA's proposal to roll back the GHG emissions standards constitutes a wholesale abdication of its statutory responsibility under the Clean Air Act to reduce the emissions of air pollutants that endanger human health and the environment. In 2009, EPA found that vehicle GHG emissions endanger the public health and welfare. As

[2] As EPA knows, many of our States have challenged the revised final determination in the D.C. Circuit, and that case is pending. *See California v. U.S. EPA*, Case No. 18-1114 (and consolidated cases), U.S. Court of Appeals for the District of Columbia Circuit.

[3] While the Agencies provided some additional information to CARB at the last minute (three days before the close of the comment period), that information was incomplete and, plainly, too late. Along the same lines, the Agencies have yet to respond to a request from the Attorney General of the State of New York for documentation related to the federalism consultations with States required under Executive Order 13132.

discussed in Parts II.B. and C. of the attached Detailed Comments, since that time an immense record of climate science has confirmed the acceleration and gravity of the threat. The federal government's own scientists confirmed in 2017 that global mean temperatures have already warmed 1.8°F and warned that the actions we take today and in the next 20 years or less will be "irreversible on human timescales."[4] Just this month, the leading international body of climate scientists—the Nobel-prize-winning Intergovernmental Panel on Climate Change (IPCC)—issued a new report finding that, absent substantial reductions by 2030 and net zero emissions by 2050, warming above 2.7°F is likely, and would bring wide-ranging and devastating consequences.[5] Those consequences include more intense extreme weather events (from hurricanes to droughts and forest fires), increased heat-related hospitalizations and mortalities, the spread of tropical infectious diseases, rising levels of species extinction, ocean warming and acidification, sea level rise, and reduced snowpack and water supply in the Western United States. Despite these facts, EPA's expressed preference is to abandon year-over-year reductions of 4.4% for model year 2022—2025 vehicles to 0% reductions for model year 2021—2026 vehicles. Given the U.S. light-duty vehicle fleet's share of global emissions, that is equivalent to the nation of Germany or other large economies failing to require any year-over-year GHG emission reductions from its entire economy for a period of six years. As discussed further in Part III.C. of the attached Detailed Comments, EPA's proposed action cannot be squared with its legal mandate to protect public health and welfare.

For its part, NHTSA's proposal is equally inconsistent with its mandate from Congress to set "maximum feasible" fuel economy standards. NHTSA's reinterpretations of the statutory factors set forth in the Energy Policy Conservation Act (EPCA) are contrary to EPCA's plain language and congressional intent and are also unreasonable. And NHTSA's analysis under those factors is unquestionably arbitrary and capricious. As to "technological feasibility," NHTSA concedes that the automobile manufacturers can achieve the existing standards (83 Fed. Reg. at 43,216), though NHTSA's analysis incorporates assumptions that inflate the estimated cost of doing so in ways that are inconsistent with its own recent analysis and ignore the available evidence. NHTSA alters its longstanding interpretation of "economic practicability" to turn the focus away from manufacturers' economic wherewithal to meet the standards (which is strong), and instead presents a new, faulty analysis focused on short-term over long-term consumer savings. In another break with longstanding practice concerning its obligation to consider "the effects of other motor vehicle standards of the Government on fuel economy standards" (49 U.S.C. § 32902(f) (2007)), NHTSA refuses to consider

[4] States' Appx. C-17, at 394, DeAngelo, B.J., et al., 2017, Perspectives on Climate Change Mitigation, at 393. In Climate Science Special Report: Fourth National Climate Assessment, Vol. I. U.S. Global Change Research Program, Washington, D.C., USA (USGCRP), doi: 10.7930/JIM32SZG.

[5] States' Appx. C-2, IPCC, Global Warming of 1.5°C; an IPCC special report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty (Oct. 6, 2018).

California's duly adopted vehicle emissions regulations (which received a waiver from EPA). And, NHTSA redefines "the need of the United States to conserve energy" in a way that renders the central purpose of EPCA virtually meaningless. In Part III.D. of the attached Detailed Comments, we detail these and other ways in which NHTSA's interpretation and application of EPCA are unlawful.

EPA and NHTSA attempt to bolster their new legal positions with the results of a new Corporate Average Fuel Economy (CAFE) model that purports to show that the Proposed Rollback is needed to prevent a drop in vehicle sales, to avoid thousands of highway fatalities over the life of model year 2021—2026 vehicles, and to substantially reduce manufacturers' and consumers' technology costs. But, the new CAFE model (which has not been peer-reviewed and was unveiled for the first time with this rulemaking proposal), together with the assumptions and other model inputs on which the Agencies rely, suffers from profound errors—both latent and obvious—that render the Agencies' analysis and conclusions arbitrary and capricious. For example, the new CAFE model estimates that the existing standards would lead to 9 million more cars on the road in 2035 than under the Proposed Rollback, even though it also predicts fewer new car sales under the existing standards as compared to the Proposed Rollback. The new CAFE model also predicts that total vehicle miles traveled would rise substantially under the existing standards—based not on an increased need for transportation, but by inexplicably inflating the number of older cars on the road and the number of miles driven in new cars. The results are contrary to peer-reviewed studies and empirical data and when corrected for, virtually erase or even flip into the negative column the Agencies' purported safety and economic benefits. In Part III.E. of the attached Detailed Comments we discuss the flaws in the new CAFE model and in the Agencies' assumptions and model inputs, and we also incorporate by reference the comments of CARB and numerous experts.

In separate comments, we address the flaws in NHTSA's Draft Environmental Impact Statement (DEIS), which are briefly discussed in Part III.F. of the attached Detailed Comments. One core NEPA requirement that NHTSA's DEIS fails to meet is the obligation to review a reasonable range of alternatives, which would include at least one option that is more stringent than the existing standards. Another core obligation is to discuss in detail all reasonable mitigation measures, but NHTSA fails to do so, claiming its "hands are tied." NHTSA fails to discuss federal actions such as creating tax breaks or increasing federal funding for transit and biking, requiring vehicle miles traveled (VMT) as a performance measure for federal funding, and providing NEPA guidance on evaluating VMT impacts of federal projects. Additionally, the Draft EIS misstates the air quality impacts and obscures the significance of the GHG emission impacts of the Proposed Rollback.

As noted above, EPA and NHTSA not only are proposing to roll back federal GHG and fuel-economy standards but also have launched an unprecedented attack on the ability of California to retain its GHG and ZEV standards. In turn, this threatens the ability of States that have exercised their option to adopt California's standards (collectively representing well over one-third of the U.S. vehicles market) to continue to enforce them. For its part, NHTSA proposes to find that California's GHG and ZEV standards are preempted by EPCA. As an initial matter, NHTSA has not been delegated

authority by Congress to make such a determination. Further, NHTSA's perfunctory analysis of preemption is contradicted by two federal courts that have already addressed the issue. As we discuss in Part IV.A. of the attached Detailed Comments, the statutory language and legislative history of EPCA foreclose NHTSA's conclusion.

EPA's proposal to revoke the Clean Air Act Section 209(b) waiver as it applies to California's GHG and ZEV standards for model years 2021-2025 is also unlawful. As we explain in Part IV.B. of the attached Detailed Comments, EPA's proposal has no basis in the text, structure, or purpose of the Clean Air Act; is entirely unsupported by evidence; contravenes congressional intent and the cooperative federalism model established by Congress; and would interfere with California's ability to protect its people and its resources from the threat of climate change. "The history of congressional consideration of the California waiver provision . . . indicates that Congress intended the State to continue and expand its pioneering efforts at adopting and enforcing motor vehicle emission standards different from and in large measure more advanced than the corresponding federal program; in short, to act as a kind of laboratory of innovation." *Motor & Equip. Mfrs. Ass'n, Inc. v. EPA*, 627 F.2d 1095, 1108 (D.C. Cir. 1979). What Congress did not intend was to subject California's ability to regulate dangerous vehicle emissions to the changing priorities of federal administrations. So, too, as discussed in Part IV.C. of the attached Detailed Comments, EPA's anticipated attack on a dozen States' ability to implement California's program is unwarranted and unlawful.

In sum, EPA's and NHTSA's Proposed Rollback presents a significant threat to the health and safety of our citizens and our environment. The legal and technical foundations of the Proposed Rollback are deeply flawed, and its attack on our States' vehicle programs is entirely unjustified. Therefore, we urge EPA and NHTSA to promptly withdraw their Proposed Rollback.

If we can provide additional information that would be helpful in considering these comments, or if you wish to discuss any issue raised above with us, please do not hesitate to contact the undersigned.

Sincerely,

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