NACAA
national association of clean air agencies

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1200 Pennsylvania Avenue, NW
Washington, DC 20460

U.S. Department of Transportation
National Highway Traffic Safety Administration
Docket Management Facility
M-30
Docket ID No. NHTSA-2018-0067
West Building, Ground Floor, Room W12-140
1200 New Jersey Avenue, SE
Washington, DC 20590

To Whom It May Concern:

The National Association of Clean Air Agencies (NACAA) offers the following comments on the U.S. Environmental Protection Agency's (EPA) and National Highway Traffic Safety Administration's (NHTSA) Notice of Proposed Rulemaking (NPRM), the *Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks,* as published in the *Federal Register* on August 24, 2018 (83 Fed. Reg. 42,986). NACAA is the national, non-partisan, non-profit association of air pollution control agencies in 40 states, including 114 local air agencies, the District of Columbia and four territories. The air quality professionals in our member agencies have vast experience dedicated to improving air quality in the U.S. These comments are based upon that experience. The views expressed in these comments do not represent the positions of every state and local air pollution control agency in the country.

NACAA opposes this deeply flawed proposed rule. EPA and NHTSA should withdraw it, retain the existing federal standards under the unified national program and collaborate closely with California, other state and local air agencies, auto manufacturers and other stakeholders to find an approach that can provide the flexibility that industry seeks and, at the same time, ensure the critically important emission reductions that states and localities need to achieve and/or maintain their clean air and public health goals.

We have major concerns with various aspects of the NPRM, among them, two fundamental underpinnings of the proposal: 1) The proposed conclusion that the greenhouse gas (GHG) emission standards for Model Years (MY) 2021-2025 and augural Corporate Average Fuel Economy (CAFE) standards for MYs 2022-2024 – included in EPA's and NHTSA's joint 2012 rule – are no longer appropriate and 2) the proposal to preempt California's authority under Section 209 of the Clean Air Act (CAA) and other states' rights under Section 177 of the CAA by withdrawing California's waivers for the GHG and Zero Emission Vehicle (ZEV) components of the state's Advanced Clean Car (ACC) program and prohibiting other states that adopted those standards from enforcing them. We elaborate on these concerns and others below.

Importance of the Current Standards

In its 2017 *Climate Science Special Report*, the U.S. Global Change Research Program (USGCRP) reinforces EPA's 2009 Endangerment Finding for GHGs. In the *Special Report*, USGCRP

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documents changes to the global climate, in some cases examining data sets observed over more than 100 years, and concludes that "it is extremely likely that human activities, especially emissions of greenhouse gases, are the dominant cause of the observed warming since the mid-20th century."[1] Like the 2009 Endangerment Finding, the *Special Report* acknowledges that the impacts of climate change go beyond temperature increases to encompass more extreme weather events, sea level rise, ocean acidification and wildfires, all of which impose significant adverse impacts throughout the U.S. and around the globe. Indeed, the U.S. is experiencing ever-increasing incidents of these severe impacts. Further, a report released by the United Nations Intergovernmental Panel on Climate Change (IPCC) earlier this month confirms the importance of addressing climate pollution.[2] The IPCC finds that human activities have already warmed the atmosphere to 1.0°C above pre-industrial levels, we are already experiencing the harmful impacts of climate change and these impacts will grow worse without quick and substantial action.

The U.S. transportation sector has surpassed the manufacturing and power generation sectors as the largest source of GHG emissions in the nation. In most regions of the country the transportation sector contributes at least one-third,[3] and in many cases 40 percent, of GHG emissions. Light-duty vehicles are a key component of that – contributing 59 percent of all transportation-related U.S. CO_2 emissions and about 20 percent of total U.S. CO_2 emissions[4] – reinforcing the need for a low-carbon path for these vehicles. That is why NACAA advocated for the tighter light-duty GHG emission and CAFE standards established by EPA and NHTSA in 2012 for MYs 2017 through 2025.

Many states, cities and counties across the nation are counting on this rule – with its current standards and implementation dates – to meet their air pollution and state- or locality-specific GHG reduction goals. The rule, as adopted in 2012, would deliver substantial GHG emission reductions and improved fuel economy as well as an impressive overall cost-benefit ratio and cost savings to consumers.

It is important to note that improving light-duty vehicle efficiency not only reduces GHGs, but also reduces criteria pollutants and toxic air pollutants. The impact of this proposal on emissions of these pollutants is important to NACAA members – in fact, many areas of the country are depending on these reductions to attain and maintain health-based National Ambient Air Quality Standards (NAAQS). The criteria and toxic air pollutant benefits are derived primarily from reduced air pollution from fuel production and distribution. Any improvement in vehicle efficiency will reduce fuel demand which, in turn, will reduce emissions from petroleum extraction, refining and distribution of motor vehicle fuels. Further, emissions of some pollutants, like sulfur dioxide, are proportional to fuel consumption – less fuel consumption, therefore, means lower emissions.

If finalized as proposed, the SAFE Vehicles Rule will result in the loss of these important co-beneficial reductions, including NO_x and VOC reductions that are currently contained in many states' ozone

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[1] *Climate Science Special Report* (Fourth National Climate Assessment, Volume 1), U.S. Global Change Research Program (2017) – https://science2017.globalchange.gov/downloads/CSSR2017_FullReport.pdf

[2] *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,* Intergovernmental Panel on Climate Change *(October 8, 2018)* – http://www.ipcc.ch/report/sr15/

[3] *Draft Environmental Impact Statement* (for the SAFE Vehicles Rule), National Highway Traffic Safety Administration (July 2018), p. S-13 – https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/ld_cafe_my2021-26_deis_0.pdf

[4] Ibid.

State Implementation Plans (SIP). If this occurs, states and localities may need to seek offsetting emission reductions from other sectors, such as utilities and industry, to attain and/or maintain compliance with the NAAQS and meet CAA anti-backsliding requirements.

The proposed rule is largely silent when it comes to the impacts of the potential loss of these co-benefits. EPA and NHTSA note in the proposal that, for the final rulemaking, a national-scale air quality modeling analysis will be performed to analyze the impacts of this rule on future levels of criteria pollutants including ozone. However, it is important that this analysis be completed and made available for public review and comment prior to promulgation of a final rule so that states and localities can understand more specifically, and provide feedback on, the impact this proposed rule would have on future criteria pollutant levels in their respective jurisdictions and EPA can assess how the loss of these co-benefits would affect the ability of states and localities to attain and maintain the NAAQS.

According to EPA and NHTSA, the 2012 rule would provide substantial public health and air quality benefits. However, during 2029, the proposed rule, by the agencies' own estimation, would increase CO_2 emissions by 83 million metric tons and result in the consumption of an additional half-million barrels per day of petroleum relative to the 2012 rule. This substantial rise in oil consumption would bring with it increased emissions of criteria pollutants and toxic air pollutants including known carcinogens. Not only have EPA and NHTSA not conducted any analysis of the public health harms that would result from this proposed rule, the agencies have not quantified, or even mentioned, the emission increases from the additional petroleum consumption in their proposal or analyses.

Appropriateness of the 2012 GHG Emission Standards and Augural CAFE Standards

NACAA takes issue with EPA and NHTSA's proposed conclusion that the GHG emission standards for MYs 2021-2025 and augural CAFE standards for MYs 2022-2024 established in 2012 are no longer appropriate.

The current emission standards are harmonized with California's and, when promulgated, were agreed to by all stakeholders, including auto manufacturers. Those standards are supported by a strong technical and analytical record in the form of the 2016 draft Technical Assessment Report that was informed by a robust stakeholder outreach effort during the Mid-Term Evaluation that concluded with a Final Determination in January 2017. In the proposal, EPA and NHTSA state that "since EPA's 2016 and early 2017 'mid-term evaluation' process, the agencies have gathered new information, and have performed new analysis" that have "led the agencies to the tentative conclusion that holding standards constant at MY 2020 levels through MY 2026 is maximum feasible for CAFE purposes, and appropriate for CO_2 purposes."[5] It is unclear to NACAA how EPA and NHTSA arrived at this conclusion. First, particularly with respect to the proposed CO_2 vehicle emission standards, EPA and NHTSA have not made available the new information and analysis upon which they claim to have relied.

Moreover, the technologies needed to meet the existing MY 2021-2025 emission standards are already available and cost-effectively in use today, and technologies not even contemplated in 2012 now provide tremendous opportunities for the current rule, and even for post 2025. These include technologies

[5] *SAFE Vehicles Rule* – Notice of Proposed Rulemaking, National Highway Traffic Safety Administration and U.S. Environmental Protection Agency (August 24, 2018), 83 Fed. Reg. 42,990-42,991 – https://www.govinfo.gov/content/pkg/FR-2018-08-24/pdf/2018-16820.pdf

such as high-compression, direct-injection engines; Atkinson cycle engines; new ways to get more power from smaller engines including downsized engines with new turbocharger designs; cylinder deactivation; continuously variable transmissions; lightweighting; predictive cruise control; and 48-volt mild hybrid systems. It is anticipated that even more technologies will emerge before 2022 just as those identified above did to meet the current standards. Further, the 2012 rule was predicated on little reliance on hybrid and electric vehicles, and the analyses conducted by EPA, NHTSA and CARB have shown that the MY 2022-2025 standards on the books can be achieved largely through the deployment of more efficient gasoline-powered cars. Increased sales of hybrid and electric vehicles, which many state and local agencies are supporting, will only make the standards easier to achieve, providing co-benefits in the near term and a path to significantly reduced emissions over the long term from the transportation system.

Further, the design of the national program, as established in the 2012 rule, is working to preserve consumer choice while, at the same time, reducing emissions and fuel consumption. We note that the flexibility of the rule allows consumers to purchase the vehicles of their choice while ensuring substantial environmental benefits from all vehicle classes and weights. This important aspect of the rule creates the ability to garner significant, technologically feasible and cost-effective environmental benefits, as well as cost savings to consumers. This will occur even if the mix of vehicle sales changes, as it has since 2012, with more larger vehicles, like SUVs and light-trucks, now being purchased compared to smaller car purchases that were dominating vehicle sales several years ago when fuel prices were higher. The regulatory harmonization of the program among EPA, NHTSA and CARB provides regulatory certainty and streamlining that benefits manufacturers, states and federal regulators.

Through the innovation and leadership of the auto industry, technology has advanced very quickly – at a far greater pace than anticipated when the standards were promulgated in 2012 – and automakers have adopted these technologies into their fleets faster than expected. Moreover there is every reason to believe that even more technologies will emerge in the next couple of years as substantiated, for example, by manufacturers' announcements of new electric and hybrid vehicle models. In addition, manufacturers of emission control and fuel efficiency technology and equipment have made great advances and substantial commitments to R&D and capital investments. As NACAA has previously commented, the MY 2022-2025 standards could be made even more stringent than they currently are, although we are not now advocating for that.

For these reasons, NACAA finds EPA and NHTSA's proposed preferred alternative to freeze emission standards at MY 2020 levels for six years beginning with MY 2021 to be contrary to clear, compelling and well-founded technical evidence as well as the statutory obligations of the two agencies as established by Congress in the CAA and the Energy Policy Conservation Act (EPCA). Freezing standards at MY 2020 levels would not only ignore the technological development that has already entered the market and stifle the innovation that would drive further reductions, but also sacrifice critically important emission reductions that could severely compromise the ability of many states and localities to achieve and/or sustain their clean air goals.

EPA and NHTSA have also proposed six other alternatives (alternatives 2 through 7) in addition to their preferred alternative (alternative 1), all of which are also substantially and inappropriately weaker than the existing rule, which EPA and NHTSA refer to as the "baseline/no-action" alternative. Consistent with our comments that the existing rule is technologically and economically feasible NACAA opposes alternatives 2 through 7 as well as the preferred alternative.

NHTSA Analyses

Another key concern with this NPRM is the analyses prepared to support it, especially as they relate to the environmental impacts of the proposal. Although this is a joint rulemaking between NHTSA and EPA, NHTSA prepared both the *Draft Environmental Impact Statement* (DEIS) and the *Preliminary Regulatory Impact Analysis* (PRIA). NHTSA used its own model – one that EPA has never used for its vehicle rulemakings – and its own assumptions and drew its own conclusions. As evidenced by memoranda filed by EPA's Office of Transportation and Air Quality (OTAQ) in the rulemaking docket EPA technical staff do not agree with NHTSA's approach or many of the conclusions put forth by NHTSA, particularly regarding the PRIA. We are especially concerned that NHTSA conducted the technical analysis for portions of the rule that are strictly under the purview of EPA. Such an abdication of responsibility by EPA is unprecedented and inappropriate and has resulted in a proposal that ignores EPA's obligations under the Clean Air Act as well as detrimental impacts on public health and the environment.

In this joint rulemaking, EPA is responsible for promulgating the GHG tailpipe emission standards. Its obligation is to focus on public health and environmental considerations under the Clean Air Act. NHTSA is responsible for promulgating the CAFE standards. Its obligation is to focus on driver safety. Neither obligation trumps the other. Yet, NHTSA's conclusion that the preferred alternative offered in the NPRM will result in 1,000 fewer crash fatalities per year appears to be the driving justification for weakening the vehicle emission standards set in 2012. At the September 26, 2018 meeting of EPA's Clean Air Act Advisory Committee, Bill Wehrum, Assistant Administrator for EPA's Office of Air and Radiation, explained to the committee that EPA had to give adequate consideration to all impacts of the rule and although EPA's mission is not highway safety the agency cannot ignore this issue and, ultimately, the disbenefit of the NHTSA-claimed 1,000 highway fatalities per year outweighs the benefit of cleaner, more efficient vehicles.

While this justification, itself, is questionable, it does not withstand scrutiny. Even EPA technical staff disputed NHTSA's claim of 1,000 fewer highway fatalities per year. In a June 18, 2018 memorandum to the Office of Management and Budget, William Charmley, Director of the Assessment and Standards Division of EPA's Office of Transportation and Air Quality, conveys findings of a study by EPA technical staff of NHTSA's CAFE model that included conducting an in-depth analysis of the input and output files, running the executable model with alternate settings "which more closely represent the GHG program" and using input files that reflect EPA's technical assessments. Based on this effort, EPA technical staff concluded the following: "Altogether, the effects of our code revisions on the CAFE model outputs are substantial, and resolve several of the most indefensible aspects of the CAFE model's representation of the GHG program. Compared to the results from the As-Received version, our EPA-Revised version provides...safety outcomes that show *the Proposed standards are detrimental to safety, rather than beneficial* as suggested by the As-Received version. In other words, results with our code revisions indicate that the Proposed standards would result in an increase in the fatality rate of deaths per trillion miles driven, and *an average increase of 17 fatalities per year* in CYs 2036-2045 relative to the Augural standards."[6] (*emphasis added*) However, despite EPA's dispute of NHTSA's claim of 1,000 fewer highway fatalities per year included in a draft of the proposed rule, the proposal as released continues to include the same faulty NHTSA conclusions.

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[6]*Materials for today's light-duty GHG NPRM discussion* (memorandum), U.S. Environmental Protection Agency (June 18, 2018), slide 8 and p. 1 – http://www.4cleanair.org/sites/default/files/Documents/EPA_Staff_Memo_to_NHTSA_on_Draft_NPRM-61818.pdf

With respect to jobs, EPA and NHTSA report that the NPRM would result in the reduction of over 60,000 automotive jobs. But this estimate is only a partial picture of the impact of this proposal on employment. In a March 2018 report, Synapse Energy Economics, Inc. shared results of an analysis comparing the macroeconomic impact of implementing the existing light-duty vehicle GHG emission standards for MYs 2017-2025 (as adopted in 2012) to a 2016-technology baseline in which the vehicle standards remain steady at 2016 levels. Synapse found that nationwide employment would grow by more than 100,000 jobs in 2025 and more than 250,000 jobs in 2035 under the existing standards.[7] In September 2018, Synapse extended its analysis to compare the impact of freezing GHG emissions standards at 2020 levels through 2026, as proposed by EPA and NHTSA, to the same 2016-techology baseline and then comparing the two outcomes: employment under the NPRM and employment under the existing standards. The results showed that under the EPA-NHTSA proposal to freeze the standards employment would be reduced by 60,000 in 2025 and more than 120,000 in 2035.[8]

Proposal to Preempt California's Authority Under CAA Section 209 and Other States' Rights Under Section 177 by Withdrawing California's Waivers for the GHG and ZEV Components of the State's ACC Program and Prohibiting Other States That Adopted Those Standards from Enforcing Them

At the very core of this regulatory proposal is an issue on which NACAA is unwavering: the issue of states' rights. California has long-standing authority under Section 209 of the Clean Air Act to adopt its own more stringent clean car standards, subject to an EPA waiver. EPA's authority to deny a waiver request is narrowly constrained. Under the CAA, if California determines that its standards, in the aggregate, will be at least as protective of public health and welfare as applicable federal standards, the waiver must be granted unless EPA finds 1) that California's determination was arbitrary and capricious, 2) that California does not need state standards to meet compelling and extraordinary conditions or 3) that state standards and accompanying enforcement procedures are not consistent with the CAA.

While other states in the nation cannot adopt their own separate clean car standards – thereby creating a so-called "third car" – under Section 177 of the CAA, states can choose to adopt and enforce California's tailpipe standards. The enabling authority under CAA Sections 209 and 177 has been consistently respected by EPA administrators on a bipartisan basis for decades. Yet, in this proposal, EPA and NHTSA seek, for the first time ever, to withdraw waivers appropriately granted to California for the state's GHG emission standards and ZEV program and to nullify the critically important state authorities for adopting and enforcing these programs.

This is not just a dispute between California and EPA, and it is not about California setting standards for the rest of the country. California does not impose its standards on any other jurisdiction. Twelve other states and the District of Columbia have independently exercised their Section 177 authority to adopt the GHG and criteria pollutant emission standards established by California under its ACC program; nine of the 12 states have adopted the ZEV Regulation – the third prong of the California program. California and the Section 177 states together represent 113 million Americans and comprise one-third of the new car sales market in the U.S. The California program is vitally important to the Section 177 states and is also vitally important to many non-177 states, which benefit from the emission reductions

[7] *Cleaner Cars and Job Creation*, Synapse Energy Economics, Inc, (March 27, 2018) – http://www.synapse-energy.com/sites/default/files/Cleaner-Cars-and%20Job-Creation-17-072.pdf

[8] *Giving Back Half the Gains*, Synapse Energy Economics, Inc. (September 25, 2018) – http://www.synapse-energy.com/sites/default/files/Giving-Back-Half-the-Gains-17-072.pdf

that accrue when California and Section 177 states lead the way. A cleaner, low-emissions transportation sector is essential to achieve state and local climate goals and meet and sustain federal air quality standards. These states and localities will not accomplish this without increasingly more protective GHG vehicle emission standards and the ZEV program. If the federal government makes the transportation sector off limits, necessary reductions in vehicle emissions of GHGs, criteria pollutants and/or air toxics will have to come from other stationary sources, potentially including power plants and industry. But in some areas, there simply are no other sources; reaching or maintaining clean air goals relies entirely on adequately addressing mobile source emissions.

A national rule harmonized with California's provides market stability, which benefits consumers in all states in the form of broader product availability; vehicle dealers and distributors in the form of nationwide options for placing and trading vehicles; and manufacturers in the form of certainty and the ability to produce and deliver any vehicle anywhere. This is a view shared by auto manufacturers, who have also requested a national rule harmonized with California's. Moreover, the public health and environmental benefits of a harmonized rule accrue nationwide. California accepted a national rule less stringent than its own in recognition of the many benefits of harmonization. However, a harmonized rule is only preferable if it is based on standards that become increasingly more protective year after year and yield substantial emission reductions over time as states and localities work to meet clean air goals.

EPA and NHTSA assert that California's GHG and ZEV standards are preempted and that the waivers for these essential components of California's vehicle program should be revoked. Such claims depart from half a century of EPA practice and are squarely at odds with core principles of cooperative federalism. Even more to the point, claims of EPCA preemption have been flatly rejected by two federal courts. Also compelling is the opinion of the U.S. Supreme Court in *Massachusetts v. EPA*: "But that DOT sets mileage standards in no way licenses EPA to shirk its environmental responsibilities [with respect to the regulation of carbon dioxide]. EPA has been charged with protecting the public's 'health' and 'welfare,' 42 U. S. C. §7521(a)(1), a statutory obligation wholly independent of DOT's mandate to promote energy efficiency. See Energy Policy and Conservation Act, §2(5), 89 Stat. 874, 42 U. S. C. §6201(5). The two obligations may overlap, but there is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency."[9]

Proposal to Eliminate Credit Flexibilities

The NPRM states that EPA proposes to discontinue the option of CO_2-equivalent improvements associated with air conditioning refrigerants and leakage and nitrous oxide and methane emissions for compliance with the GHG vehicle emission standards after MY 2020 and also seeks comment on whether to retain this credit mechanism. EPA, however, indicates in comments to NHTSA that have been placed in the docket, that, in fact, it does not agree with NHTSA that this credit program should be removed from the GHG standards. NACAA does not support discontinuing this program. Rather, we encourage EPA and NHTSA to work with CARB, other state and local air agencies, auto manufacturers and other stakeholders to seek additional, reasonable, well-defined flexibilities with a clear understanding of the long-term impacts. Industry has requested additional flexibility for compliance with the existing rule and rather than exploring such alternatives EPA and NHTSA have responded with a wholesale revamping of the entire rule and the proposed elimination of flexibilities that were provided.

[9] *Massachusetts v. EPA*, 549 U.S. 497 (2007)

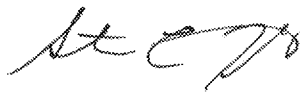
The NPRM also requests comment on the flexibilities through credits for over-compliance that can be traded among market participants. Credits and trading mechanisms are an historic strategy for compliance and one that is appropriately provided in many regulatory programs including the existing rule. Indeed, market participants often request such flexibilities to address changing market and regulatory conditions, while ensuring the overall public health and welfare goals of a given program are met. It is so here. NACAA supports retaining market flexibilities including tradable emission credits.

Conclusion

EPA and NHTSA should withdraw this deeply flawed NPRM, retain the existing federal standards under the unified national program and collaborate closely with California, other state and local air agencies, auto manufacturers and other stakeholders to find an approach that can provide the flexibility that industry seeks and, at the same time, preserve and protect states' rights and ensure the critically important emission reductions that states and localities need to achieve and/or maintain their clean air and public health goals.

If you have questions or would like to discuss this issue, please contact either of us or Nancy Kruger, deputy director of NACAA.

Sincerely,



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