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EPA Docket Center (EPA/DC)
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1200 Pennsylvania Avenue, NW
Washington, DC 20460
Docket No. EPA-HQ-OAR-2018-0283

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

Comments on the Proposed Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks, *Docket Nos. NHTSA-2018-0067, EPA-HQ-OAR-2018-0283*

These comments are written on behalf of the undersigned coalition of consumer, environmental, and public health groups, to highlight the many legal and technical errors in the proposed Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021 - 2026 Passenger Cars and Light Trucks issued by the Environmental Protection Agency (EPA) and National Highway Traffic Safety Administration (NHTSA).

Collectively, we have millions of members residing across the United States, who will be injured by the harmful air pollution and increase in climate change injuries that this dangerous and unlawful proposal will bring. This proposal is anything but “safe.” Our detailed analysis (attached as Appendix A), explains how the proposal unlawfully ignores the looming climate crisis, violates both agencies’ statutory mandates, and is arbitrary and capricious for numerous other reasons. The fatal errors in this proposal include:

1) Disregarding evidence of a fast-approaching climate crisis.

The Proposal arbitrarily disregards the known facts about climate change. The agencies nowhere attempt to justify their proposal to vastly increase greenhouse gas emissions from the transportation sector – the largest-emitting sector of the nation’s economy. The agencies callously disregard the demonstrated need to reduce emissions sharply over the next decade if severe impacts of a destabilized climate are to be avoided. The Proposal’s neglect of the central health and environmental threats implicated by the proposed actions violates the agencies’ respective statutory mandates and is arbitrary and capricious.

2) Violating the Administrative Procedure Act.

The proposal flouts the agencies’ basic administrative law obligations to take action supported by substantial evidence when considering the record as a whole, explain the record basis for the proposed change in policy, and abide by important procedural protections. The proposal’s conclusions are based on deeply flawed analysis, particularly exemplified by the erroneous modeling on scrappage and sales, as well as projections of increased vehicle miles traveled, which inform the proposal’s conclusions regarding

safety. These novel and untested new models were never subject to peer review, contrary to the agencies' own policies. EPA did not abide by its own rules in releasing an unfounded Revised Final Determination to weaken its existing standards. The agencies unlawfully undermined public comment by failing to release crucial materials and analyze environmental justice impacts, and short-changing required public engagement efforts.

3) EPA violating the Clean Air Act and proposing an action that is arbitrary and capricious.

Adoption of the proposal would violate Clean Air Act Section 202 and would be arbitrary and capricious. The proposal would vastly increase emissions of a gravely harmful pollutant – a course of action antithetical to EPA's statutory obligation to protect the public. The justifications EPA offers are untethered from the statute and based on flawed analysis. Further, EPA has failed to exercise its independent judgment, impermissibly delegating its responsibilities to NHTSA. At minimum, the proposal unreasonably fails to consider relevant EPA information. Finally, the proposed elimination of non-CO₂ GHGs from the standards is unreasonable and would leave EPA in violation of its statute.

4) NHTSA violating the Energy Policy and Conservation Act (EPCA) and proposing action that is arbitrary and capricious.

NHTSA has failed to comply with EPCA's mandate of prioritizing energy conservation and improving the energy efficiency of motor vehicles. The proposal disregards that mandate, and allows continued production of less-efficient vehicles, despite ample evidence showing existing standards remain technologically feasible and cost-effective. This increases the vulnerability of the United States to instability in global oil markets, and increases carbon dioxide and criteria pollutant emissions, putting already vulnerable communities at even greater risk. In addition, this NHTSA-directed proposal fails to consider or address information supplied by EPA on the continued feasibility of existing standards. Finally, the proposal uses the incorrect "CAFE penalty" rate of \$5.50 in its analysis of technological feasibility and costs, undercutting the accuracy of the agency's analysis.

5) The agencies' proposal to revoke state authority is illegal, and arbitrary and capricious.

The agencies' unprecedented proposals to revoke state authority are arbitrary and capricious, and beyond their respective authorities. The statute does not grant EPA authority to revoke a preemption waiver once granted to California, nor can EPA invoke inherent authority to do so. Moreover, the high bar section 209(b) of the Clean Air Act sets for waiver denial has not been met: California needs a separate motor vehicle emissions program to meet compelling and extraordinary conditions, and California's standards are technologically feasible. Nor does NHTSA's proposed interpretation of EPCA justify waiver revocation. And the proposal to limit Clean Air Act section 177 only to criteria emissions is contrary to statute.

NHTSA similarly lacks authority to preempt California's authority, or to determine whether existing statutes preempt that authority. Further, EPCA does not preempt California emission standards for which EPA has issued a preemption waiver under the CAA. EPCA preserves California's longstanding authority to set its own emission standards for all pollutants, and the State's GHG and ZEV standards pose no

obstacle to automakers' ability to achieve the minimum average fuel-economy standard developed by NHTSA under statutory constraints that do not apply to EPA and California under the CAA.

In sum, NHTSA has no authority to preempt state law, EPCA does not effect such a preemption, and EPA has no authority to revoke a preexisting waiver on that basis.

6) Finalizing a proposal that is unlawful, arbitrary and capricious for many other reasons.

The sales and scrappage models are fatally flawed - The agencies' new, non-peer-reviewed models projecting vehicle sales and scrappage are an unjustified departure from previous agency analysis, fundamentally flawed, and inconsistent with the agencies' (and the federal government's) analysis of prior GHG emissions and fuel efficiency rules and policies. Until this NPRM, the agencies have considered "turnover" effects – specifically, the standards' transfer of driving from newer, safer vehicles to older, less safe vehicles through a reduction in vehicle sales. Now the agencies claim to use such analysis as a central justification for weakening the standards – but fail to actually conduct that analysis. Instead, the agencies have two wholly unconnected and deeply flawed models, one projecting the effects of a change in new vehicle prices on vehicle sales, and another projecting the effects of a change in new vehicle prices on the value of existing vehicles and the rate of scrappage of those vehicles. As numerous experts, as well as EPA, have pointed out, both models are so flawed as to be unusable for policy analysis, and reliance on them would be arbitrary and capricious.

The proposal is justified by reference to a projected reduction in traffic fatalities that is analytically and substantively bankrupt – The agencies based their proposal to roll back the existing standards on the assertion that by doing so they can achieve significant reductions in traffic fatalities. In fact, the agencies' own analysis shows that the standards have no statistically significant effect on the safety of vehicles. Rather, the great majority of the fatalities the agencies claim to be reducing are the mathematical result of their (deeply flawed and inexplicable) projections that individuals will choose to drive many more miles under the existing standards than under this roll back proposal. Even if there was some rational basis for the wildly inflated estimates of increased driving – and there is not – the agencies cannot evade their Congressional mandates by reference to a choice by individuals to assume the risk of traffic accidents that comes with driving.

The proposal does not address concerns raised by agency experts – This rulemaking process was driven largely, if not entirely, by NHTSA, and despite the extensive record underlying existing standards, the data offered by EPA countering the foundation of this rollback, and the many objections EPA made along the way, NHTSA pushed forward with this proposal without fully accounting for contrary evidence or explaining its rationale for disregarding such evidence. This proposed action violates the law and is arbitrary and capricious.

The proposal violates applicable regulations and is procedurally flawed – The process by which the agencies issued this proposal was fatally flawed in multiple respects that would make it unlawful to finalize it. EPA's Revised Final Determination that existing emissions standards violated the agency's own regulations governing the Mid-Term Evaluation process by, among other things, failing to make available for public review and comment the technical basis for EPA's determination, failing to make

“detailed” assessments of the prescribed factors, and failing to justify abrupt reversals of position on numerous key issues – all of which deprived stakeholders of information they should have had in order to evaluate any proposed changes to the standards. NHTSA and EPA, without any valid justification, rejected requests for extensions of the comment period from a wide range of stakeholders, including auto manufacturers, states, and public interest organizations, all of whom pointed out that at least 60 additional days were required in order to meaningfully analyze and comment upon the elaborate and often novel technical analyses set forth in the proposals. The agencies further violated core procedural requirements by failing to provide the public with key technical information necessary to evaluate the proposals, including information concerning EPA’s OMEGA model, and by dumping other information in the docket shortly before the comment due date, making it impossible for commenters meaningful to review and utilize the information in timely comments. The entire process was conducted in a manner to obstruct, rather than facilitate, meaningful public comment, including the thoroughly unreasonably 15-page NHTSA limit on public comments on this vast proposal.

The agencies’ proposal is inconsistent with Executive Order 12898 – In the Proposal, EPA and NHTSA conclude that the proposed rollback will not have disproportionately high and adverse human health or environmental effects on minority populations and low-income populations. This conclusion is not supported by an adequate justification and is incorrect on several grounds. First, EPA and NHTSA have failed to meet their mandate to assess and address the environmental justice implications of their proposed rollback under Executive Order 12898 and their own policies. Second, the agencies’ claim that this action will exert no disproportionate climate impacts on these populations is based on faulty economics and junk science, and contradicts the agencies’ own recognition that communities of color and low-income communities are more vulnerable to the effects of climate change. Third, the agencies’ conclusion that their proposal will not adversely affect these populations due to increased conventional air pollution is the result of faulty modeling assumptions that greatly underestimate the harmful impacts from their proposal, and ignores or misrepresents the literature on the environmental justice implications of proximity to refineries and roadways. If they finalize the standards as they have proposed, the agencies will be in violation of Executive Order 12,898.

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We appreciate the opportunity to comment on the notice of proposed rulemaking. The proposal has numerous and fatal legal and technical flaws and must be withdrawn.

Sincerely,

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