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OCT 2 6 2018

Mr. Andrew Wheeler
Acting Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460-1101A

Ms. Heidi King
Deputy Administrator
National Highway Traffic Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

RE: NHTSA-2018-0067-5679; EPA–HQ–OAR–2018–0283

Dear Acting Administrator Wheeler and Deputy Administrator King:

In New York State, we value health and prosperity; hard work today for the safety of tomorrow; and preparing for impacts of climate change while addressing and stopping the causes. It is because of these values that New York State rejects the very premise of the "SAFE" Rule and oppose the implementation of any regulations that weaken federal emission standards. If finalized, the Rule will roll back federal emission standards for motor vehicles, resulting in devastating impacts to public health and environmental quality.

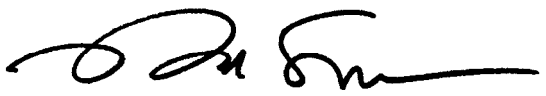
The misnamed "SAFE" proposal is anything but safe for the American public, environment and economy. It is unsafe to the American people, particularly our youth, who will bear the ruinous impacts of wildfires, droughts, extreme heat and unprecedented storms resulting from out-of-control climate change. It is unsafe to all Americans, particularly the elderly and children and low income residents of our inner cities, who will be sickened by the continuing unchecked pollution from the burning of fossil fuels. And it is unsafe to American workers and businesses who will spend more on gasoline, and lose jobs as the United States falls further behind the rest of the world in building the clean energy future.

In proposing this Rule, the Trump administration is taking a huge step backward and is abandoning its responsibility to protect all Americans from the climate change crisis that threatens our citizens, our economy, and our future. New Yorkers know firsthand the devastating impact of the extreme weather events that are clearly linked to the changes in our climate. Hurricane Sandy caused unprecedented damage across New York State and we are not alone. Virtually every state or territory in our Nation – from

California to Puerto Rico – has been struck by hurricanes and other extreme storms worsened by climate change or record breaking wildfires caused by extreme heat and drought. While these events highlight the urgent need to increase our commitment to addressing climate change, the Trump administration is moving in the opposite direction by proposing standards that will allow emissions from transportation – the nation's largest emission sector – to increase, admittedly contributing to a projected seven-degree increase in global temperatures.

In addition to the dire environmental consequences of this proposal, the Rule ignores settled law and fundamental principles of federalism in proposing to preclude California, New York and other states from continuing to implement standards that protect the environment and protect our own residents from the worsening impacts of climate change and harmful air pollution. Enclosed please find our detailed comments on this egregious proposal. New York will not stand by and sacrifice our prosperous future to the short-term interests of the fossil fuel industry. I urge you to do the right thing and abandon this irresponsible, illegal and immoral proposal.

Sincerely,



Basil Seggos
Commissioner

Enclosures

Comments on EPA/NHTSA Proposed Rulemaking

The record from the mid-term review and Technical Assessment Report clearly shows that the existing greenhouse gas (GHG) and corporate average fuel economy (CAFE) standards are technologically and economically feasible and achievable today and the proposed rollback is arbitrary and capricious. NHTSA and EPA (the "agencies") state "CAFE and CO_2 standards have the power to transform the vehicle fleet and affect Americans' lives in significant, if not always obvious, ways."[1] As explained below, the deleterious impacts on the Americans' lives from the proposed Rule are, in fact, obvious and significant, and entirely preventable.

Failure to Comply with Climate Change Obligations

Under the Supreme Court's decision in Massachusetts v EPA, 549 U.S. 497 (2007), and the endangerment decision that followed, EPA is obligated to establish standards to protect public health and welfare from the threat of climate change caused by increasing GHG levels. This proposal abdicates that responsibility.

The recent report of the International Panel on Climate Change, Global Warming of 1.5° C, demonstrates the urgency of accelerated action now to prevent potentially calamitous impacts of climate change.[2] If the United States and other nations do not take the climate threat seriously, we will face a future of flooding amid rising sea levels, wildfires and drought, more extreme storms, and dangerous heat waves within a few decades. The federal agencies ignore this existential threat in issuing this proposal that will increase, not reduce, the threat of climate change.

The proposed rule – combined with the ongoing attempted rollback of EPA's other GHG mitigation regulations – is not designed to mitigate these climate change impacts. Instead of reducing emissions, the proposed alternative would increase GHG emissions from the transportation sector – the nation's largest emission sector -- by 9.5% compared to the No Action Alternative. Because this proposal does nothing to mitigate the threat of climate change, it does not meet EPA's statutory obligations under the Act and the Endangerment Finding.

As explained more fully below in the appended comments on the Draft Environmental Impact Statement (DEIS), the agency justifies its inaction by a distorted analysis attempting to show that the climate impacts of the proposal will make a *de minimis* contribution to the temperature increases that will be experienced if the rest of the world fails to take action to address climate change. Put simply, EPA assumes that global temperatures will increase by 7 degrees anyway – a level that will be catastrophic to the planet – so the additional contribution of this proposal does not matter. This analysis suffers from many defects. First, the transportation sector is the largest emission sector in the United States, the world's second largest source of emissions. Reducing emissions from the transportation system in the United States is therefore one of the most substantial ways of addressing climate change and preventing the global catastrophe that would accompany a global GHG concentration of more than 700 ppm. Conversely, a 9.5% increase in emissions from this globally significant sector is among the more substantial steps backward that can be envisioned. Second, EPA errs by viewing this action in isolation from other actions to address climate change, including its own rollback of the Clean Power Plan and methane regulations, and its abandonment of efforts to address hydrofluorocarbon emissions. Third,

[1] U.S. EPA and NHTSA Notice of Proposed Rulemaking (NPRM). The Safer Affordable Fuel-Efficient Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks. August 2, 2018. Pg 6.

[2] IPCC Special Report on Global Warming of 1.5ºC (SR15) http://www.ipcc.ch/report/sr15/

because United States manufacturers sell vehicles worldwide, the deceleration of technology development in the United States will have impacts far beyond an increase in emissions from the United States transportation sector.

In addition, EPA attempts to justify its rollback by greatly understating the benefit of emission reductions measured by the social cost of carbon. By not considering the global impacts of carbon dioxide (CO_2), a global pollutant, EPA is signaling to other nations not to consider the benefits of their emission-reducing actions on the United States. This shortsighted approach will ensure that emission reductions globally are undervalued, leading to the global catastrophe forecasted by EPA's assumption of 7 degrees warming. In addition, EPA's use of a 7 % discount rate devalues the benefit of action now, placing more of a burden on future generations. More detail on the proposal's illogical and shortsighted analysis is in the appended comments on the Draft Environmental Impact Statement (DEIS).

Even NHTSA's own assessment in Preliminary Regulatory Impact Analysis (PRIA) shows cumulative GHG emission increases, in addition to CO_2-specific emission increases. In particular, the estimated cumulative GHG emissions through model year (MY) 2029, in Table 10-82, shows that in addition to CO_2 emissions increasing by 872 million metric tons, methane emissions will increase by 1,520 thousand metric tons, and nitrous oxide emissions will increase by 10.7 thousand metric tons. These non-CO_2 emissions will result in substantial damage to the environment and society. While the societal costs of GHG emissions are not presented, these emissions will have costs to society as a whole.[3] Additionally, methane emissions lead to tropospheric ozone formation, an impact that is not captured in the DEIS or PRIA. NHTSA/EPA fails to properly explain the full impact of the proposal because of the lack of an assessment that utilizes the global societal costs of all GHG emissions, and does not evaluate the impact of emissions beyond those covered by societal costs.

The proposal appears to result in the lock-in of existing technologies by not promoting development of more efficient propulsion systems. With MY2021-2026 vehicles apparently remaining in service for up to 40 years[4], these vehicles will continue to emit greenhouse gases in greater amounts than those in the No Action alternative. This proposal will cause a delay in the transition to more efficient vehicles which will only need to occur more rapidly in the future and at a greater cost if society intends to avoid the most severe impacts of climate change.

NHTSA and EPA Failure to Meet Statutory Requirements

With this proposal, EPA and NHTSA are shirking their statutory responsibilities under the Clean Air Act (CAA) and EPCA. The agencies take great liberties with statutory and case law, proceeding in contradiction with federal court decisions - squarely on point with the issues raised - that have been the law of the land for the last 10 years, including the Supreme Court's decision in Massachusetts. Their unreasonable, strained, and simply incorrect interpretation of both EPCA and the CAA is "arbitrary, capricious, or manifestly contrary to the statute."[5]

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[3] For simplicity, if the emissions happen in the year 2030 and the social cost of methane is $1600 (2007$) per ton at 3% discount rate, this would result in costs exceeding 2.4 billion dollars and another 200 million dollars related to nitrous oxide emissions.

[4] Vehicle lifetime is described in multiple variations through the proposal from being 40 years to an average of 15 years to being split into first owner lifetime to used vehicle lifetime replacement for new vehicle. This shifting between definitions calls into question the reasonableness of the various models used in the notice as they appear to be based on different definitions of vehicle lifetime.

[5] Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc. 467 U.S. 837, at 844 (1984).

NHTSA is statutorily obligated by Congress under EPCA and the Energy Independence and Security Act (EISA) to prescribe "maximum feasible" CAFE standards.[6] NHTSA is instructed "...to consider technological feasibility, economic practicability, the effect of other motor vehicle standards of the Government on fuel economy, and the need of the United States to conserve energy."[7] In the Notice of Proposed Rulemaking (NPRM), NHTSA recognizes that its decision must "support the overarching purpose of EPCA, energy conservation, while balancing these [other] factors."[8]

NHTSA seeks to circumvent EPCA's energy conservation goal by stating "...it seems reasonable to consider what the need of the United States to conserve oil is today and going forward."[9] The agencies suggest that since the U.S. is meeting increased fractions of its petroleum need with domestically produced oil, and that the price of oil has not increased at the rates previously anticipated, the need to conserve energy is somehow minimized. The agencies disregard that the price of oil, be it domestic or foreign produced, is volatile, based on a wide range of parameters outside the purview of these agencies. In addition, this approach fails to recognize the intrinsic value of conserving a finite natural resource, benefits to the environment and public health associated with reductions in greenhouse gases, criteria pollutants and toxic contaminants, the societal benefits of a diversified energy supply and the national security imperative of reducing reliance on imported oil. By devaluing these elements, NHTSA reaches a balance that is severely skewed, resulting in a conclusion that favors the burning of more gasoline.

NHTSA attempts to justify its disregard of the lead time and stability requirements of EPCA on the grounds that those requirements are inapplicable to a weakening of the standards, which it presumes industry would welcome. In reaching this novel interpretation, however, NHTSA fails to consider that the automobile industry, which has invested in the development of new, cleaner vehicles in reliance on the existing standards, does not support this proposed rollback. In addition, CAFE standards also provide benefits and protections to the public. Further, while the statute is silent as to the timing in the event of a reduction in stringency, that may be because Congress did not anticipate that EPA and NHTSA would claim that a reduction in standards represents maximum feasibility.

NHTSA has further exceeded its authority by proposing CAFE standards for 6 model years, rather than the statutorily permissible maximum 5 years. Couching the proposed standards as a "revision" to existing model year 2021 standards and *de novo* standards for model years 2022-2026 does not change the fact that NHTSA is proposing new standards that apply to 6 model years.

EPA, in turn, is statutorily obligated by Congress under the CAA to establish emission standards for motor vehicles for "...any air pollutant...which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare."[10] In addition, the National Environmental Policy Act (NEPA) requires federal agencies to evaluate the environmental impact of a proposed action before making any decisions by preparing a detailed Environmental Impact Statement (EIS), which should assess the impacts of any proposed action as well as any alternatives.

In Massachusetts, the Supreme Court ruled that CO_2 is a pollutant within the meaning of the Act. Therefore, once EPA makes an endangerment finding, it must regulate CO_2 tailpipe emissions. The Court explained, "[the fact] that DOT sets mileage standards in no way licenses EPA to shirk its environmental

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[6] 49 USC §32902(a)
[7] 49 USC §32902(f)
[8] NPRM. Pg 455.
[9] NPRM. Pg 481.
[10] 42 USC §7521

responsibilities. EPA has been charged with protecting the public's 'health' and 'welfare,' ... a statutory obligation wholly independent of DOT's mandate to promote energy efficiency....The two obligations may overlap, but there is no reason to think that the two agencies cannot both administer their obligations and yet avoid inconsistency."[11] EPA and NHTSA ignore the Court's finding regarding the very matter at the heart of this rulemaking; that is, whether or not EPA and California - and by extension § 177 states - are preempted by EPCA in setting CO_2 standards for new motor vehicles. Rather, EPA and NHSTA strain to avoid the conclusion that EPA was, and remains, obligated under the CAA to regulate tailpipe emissions and is unfettered by NHTSA's coexistent obligation to set fuel economy standards to reduce fuel consumption.

In addition to Massachusetts, EPA and NHTSA disagree with two seminal federal court decisions concerning states' ability to adopt GHG standards, claiming that those decisions ignored NHTSA's "long held" belief that EPCA preempted such standards and was non-binding on NHTSA because the agency did not participate in the decisions.[12] In fact, the United States did participate in the Green Mountain litigation by filing an Amicus Curiae brief in the subsequent appeal of the district court decision.[13]

NHTSA has overstepped its authority by dictating environmental regulatory and policy matters to another agency in contravention of NEPA. Although NHTSA states "...it seems unreasonable to conclude Congress intended EPA to dictate CAFE stringency," superseding NHTSA's authority under EPCA, that is precisely what NHTSA is doing regarding EPA and its authority under the CAA.[14] The agencies' argument that NHTSA has primacy relies on their erroneous limitation of EPA's legal obligation to only the mitigation of CO_2 emissions, contrary to the actual endangerment finding, which remains in place.[15] The Endangerment Finding begins with the statement that, "the Administrator finds that six greenhouse gases..." are associated with air pollution. The existing GHG standards include GHGs other than CO_2 that have significant global warming potential, such as oxides of nitrogen, methane, and mobile air conditioning refrigerants including hydrofluorocarbons (HFC). EPA's attempt to promulgate CO_2-only standards defies the findings in Massachusetts, and the subsequent endangerment finding that compels EPA to address these emissions under the CAA. Per the Supreme Court's decision, once EPA recognized these gases as air pollutants, EPA became statutorily compelled to address them under the Act section 202(a). Omitting non-CO_2 gases from this rule will result in EPA having no regulation in place to address these pollutants, contrary to the endangerment finding.

Furthermore, EPA recently released guidance that it would not pursue controls on the refrigerants in question under Section 612 of the Act, known as the Significant New Alternatives Policy (SNAP) rules.[16] Those rules would have prohibited the use of these refrigerants in light-duty vehicles starting with model year 2021. The schedule defined in that rule used the analysis EPA conducted for the National Program. Based on the original equipment manufacturer (OEM) redesign cycle and comments from industry groups, EPA concluded that, due to the National Program, it expected "to have transitioned 90% of the fleet by MY2021." However, as EPA has ceased enforcement of CAA section 612 and SNAP,

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[11] Massachusetts, at 532.

[12] See Green Mountain Chrysler Plymouth v Crombie (Green Mountain), 508 F.Supp.2d 295 (2007), Central Valley Chrysler-Jeep v Goldstene (Central Valley), 529 F.Supp.2d 1151 (2007/2008).

[13] NPRM. Pg 43236

[14] NPRM. Pg 465.

[15] In the Executive Summary of the proposed rule, EPA and NHTSA state that "EPA has made an 'endangerment finding' that the pollutant in question – in this case, CO_2..." contributes to air pollution. [https://www.epa.gov/sites/production/files/2016-08/documents/federal_register-epa-hq-oar-2009-0171-dec.15-09.pdf]

[16] See EPA–HQ–OAR–2014–0198.

and has not proposed an alternative, the effect of the current proposal will be the effective removal of any controls on these GHGs in new vehicles, despite the direction put forth in the 2009 Endangerment Finding. In the absence of either the National Program or SNAP provisions for these refrigerants, it is unlikely that OEMs will continue to seek this transition

EPA appears to have interpreted its role as a "cooperating" agency under NEPA to absolve it of its core mission to protect human health and the environment, contrary to the Supreme Court's finding that "NHTSA and EPA are obligated by Congress to exercise their own independent judgment in fulfilling their statutory missions, even though both agencies' regulations affect both fuel economy and CO_2 emissions...but both agencies must be able to defend their programs on their own merits (emphasis added)."[17] EPA has failed to meet this obligation.

The Proposal's Safety Rationale is Baseless

The agencies' proposal compromises achievable environmental protections in order to meet vague goals supposedly related to safety and consumer costs. NHTSA's primary rationale for lowering CAFE standards is that more fuel-efficient vehicles are lighter and that lighter-weight vehicles are at a greater risk from traffic accidents. Initially, the agencies' estimates regarding the number of hypothetical deaths that will occur if the current standards remain in place are inconsistent. The agencies first claim the existing standards will result in the premature deaths of 12,720 individuals[18]. They later contradict that figure by claiming the existing standards will result in 15,680 deaths[19].

Neither of these calculations are reasonable. The agency's safety rationale is unsupported by NHTSA's recent announcement that traffic deaths dropped 1.8 percent in 2017 relative to 2016, and are down an additional 3.1 percent in the first half of 2018[20]. Vehicles are safer than ever, proving that improved fuel economy and lower emissions do not impair vehicle safety. More importantly, risky driving behavior, which has equal or greater impact on traffic deaths relative to vehicle miles traveled (VMT), is being mitigated through campaigns to increase seat belt usage and discourage drunk and distracted driving.

The proposal makes no serious attempt to address the incidence of traffic accidents or the potential correlation to lighter-weight vehicles. The proposal does not regulate the size of vehicles, or otherwise guarantee that OEMs would make vehicles heavier or safer through other means. NHTSA's calculations regarding the safety of light-duty vehicles also incorrectly presumes that the relative weight of heavy-duty vehicles could not be mitigated, including through improved fuel economy standards for heavy-duty vehicles. Additionally, even if the agencies' safety concerns were justified, safety is not the primary target of the EPA's emissions standards under the CAA. The federal government has the ability to address the actual causes of any safety or cost concerns directly, rather than indirectly at the cost of environmental protection. Unlike potential policies and programs that could directly impact safety and consumer costs, EPA's authority and obligation to address motor vehicle GHG emissions is the only alternative for controlling GHG emissions associated with light-duty vehicles.

The agencies also ignore that allowing vehicle standards to be met using the full suite of GHG emission reduction measures would actually increase compliance flexibility. For example, while agencies focus on the supposed negative effects of light-weighting on safety, this light-weighting has been a strategy to reduce fuel use and thereby CO_2 emissions. The other non-CO_2 GHGs, however, can be reduced through the use of tailpipe control technology (nitrous oxide and methane) or redesign of the air conditioning

[17] NPRM. Pg 465.
[18] NPRM. Pg 25.
[19] NPRM. Pg 517.
[20] https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812603

systems (GHG refrigerants). Additionally, air conditioning and off-cycle compliance flexibilities may be useful flexibility mechanisms to absorb potential shocks to the market, or other unanticipated disruptions, so long as the flexibilities impart real energy efficiencies, reduce GHG emissions, and are limited compared to the overall reductions.[21] Overall, the ability to utilize non-CO_2 GHG emission reduction measures would increase compliance flexibility for OEMs while maintaining or improving the overall emission reduction effectiveness of the program. However, increasing flexibilities while adopting the proposed alternative to lower emission standards is contrary to EPA's obligation to address GHGs.

The agencies' assumptions regarding light-weighting of vehicles suffer from internal inconsistencies. The agencies state "...the analysis discerns a historical relationship between vehicle mass, size, and safety, it is reasonable to assume these relationships will continue in the future."[22] In contrast, the agencies counter this assumption by stating "...because lightweight vehicle designs are introducing fundamental changes to the structure of the vehicle, there is some concern that historical safety trends may not apply."[23] The agencies then proceeded to discount this emerging trend in the sensitivity analysis in an attempt to support their assumption that the historical size, mass, and safety relationship still applied.

Furthermore, lower horsepower, lower weight, and higher prices have not historically correlated strongly with MPG or GHG emission rates.[24] The PRIA itself, under section 11.1, includes multiple statements that point to weight not being a significant factor in safety, and instead being outweighed by other factors such as road conditions. Regardless, consumer and manufacturer preferences seem to be driving vehicles toward higher weights under existing standards.[25] Finally, if safety or consumer costs were truly the priorities, then the light weighting of trucks should be promoted by keeping standards in place for this vehicle class to reduce external costs.

Issues with the Untested NHTSA CAFE Model

EPA staff appear to have attempted to notify NHTSA staff on several occasions that numerous, significant discrepancies, inconsistencies, and errors existed within the CAFE model as used in the proposed rulemaking. These issues include, but are in no way limited to, assumptions dealing with the rebound effect, vehicle populations, and the availability and feasibility of technology.

EPA staff alerted NHTSA staff to discrepancies regarding NHTSA's rebound effect assumptions and claims prior to publication of the proposed standards. The rebound effect presumes that consumers will drive more if operating expenses decrease due to increased fuel economy. Conversely, consumers will drive less if operating expenses increase. EPA discovered inconsistencies in CAFE model inputs for total VMT estimates and NHTSA's selection of a 20% rebound effect on VMT. NHTSA's CAFE modeling apparently assumed a constant rebound effect of 20% regardless of changes to the cost of driving.[26] NHTSA's selection of a 20% rebound effect is twice the estimate in the midterm review. It is also refuted by numerous findings that the rebound effect is significantly less than 20%.

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[21] PRIA page 1552.
[22] NPRM. Pg 270.
[23] NPRM. Pg 313.
[24] See figure 2 of Congressional Research Service 7-5700 R45204 Vehicle Fuel Economy and Greenhouse Gas Standards: Frequently Asked Questions May 2018.
[25] U.S. EPA and NHTSA Preliminary Regulatory Impact Analysis (PRIA). The Safer Affordable Fuel-Efficient Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks. August 2, 2018. Pg 1349.
[26] EPA Memo. EPA Further Review of CAFE Model & Inputs. June 18, 2018. Pg 7.

Many of the agencies' purported "benefits" resulting from the proposed standards hinge on a reduction in vehicle miles traveled (VMT). The agencies assert, without supporting evidence, that the existing standards have resulted in a rebound effect on VMT of 20 percent. In fact, the increase in VMT from 2016 to 2017 appears to be 1.2 percent, which is significantly less than the 2.5 percent increase from 2015 to 2016.[27] The agencies rely on the alleged huge increase in VMT resulting from this inflated rebound effect to support their counterintuitive claim that the existing standards actually increase GHG emissions. Under this flawed logic, the proposed standards purportedly will solve this alleged problem by requiring new vehicles to have lower fuel economy, which will reduce the rebound effect on VMT. According to the agencies' logic, vehicle owners will drive fewer miles due to the increased cost of operation (i.e. fuel cost). There will also allegedly be decreased traffic congestion and associated road noise since it will be too costly to operate the cheaper new vehicles under the proposed standards. This increased cost of operation will also theoretically increase the amount of fuel taxes collected, resulting in increased funding to construct or maintain road infrastructure. Basically, consumers will be able to purchase a less expensive and less efficient new vehicle, but will not afford to drive it.

EPA staff also notified NHTSA staff that a disconnect existed between the dynamic fleet share model and the vehicle scrappage model, which had been added to NHTSA's CAFE model. The scrappage model assumes that as new vehicle prices increase under the existing standards, new vehicle sales will decline by 1.2 million vehicles from 2020-2030.[28] Increasing new vehicle prices are projected to cause an increase in used vehicle prices and lead to decreased scrappage of used vehicles. The scrappage model predicts that each new vehicle replaces two to four existing vehicles. The result is an overestimation of the overall fleet size outweighing sales reductions. The result is an overestimation of an additional 7 million vehicles being added to the total fleet.[29] NHTSA's scrappage model significantly overstates the cost of technologies under the augural CAFE standards. NHTSA also failed to link the scrappage model to the dynamic fleet share model, which results in unrealistic future fleet sizes and substantially increased VMT.

An additional area of concern in the memo was the CAFE model's prioritization and application of CO_2 reduction technology packages. EPA staff determined the CAFE model routinely selected and applied technology packages "...where the value of CO_2 credits (to the manufacturer) most exceeds the net cost of the technology package...the frequency with which the As-Received CAFE model applies packages that are several thousand dollars more expensive than other available packages is striking."[30]

In addition, the agencies appear to believe that the price of fuel will remain static for the duration of the proposed rulemaking timeframe. The average retail price of regular gasoline nationwide as of October 1, 2018 is $2.866/gallon, an increase of $0.30/gallon or 11.7 percent from this time last year. The average retail price in New York state for the same timeframe is $2.899/gallon, an increase of $0.23/gallon or 8.6 percent.[31] The average retail price of regular gasoline in 2017 averaged $2.41/gallon, which was an increase of $0.27/gallon, or 13 percent, from 2016.[32] Despite periodic fluctuations, the trend for retail gasoline prices appear to be generally increasing.[33] In addition to

[27] https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812603
[28] 83 Fed. Reg. at 43,263-64, Table VII-
[29] EPA Memo. EPA Further Review of CAFE Model & Inputs. June 18, 2018. Pg 5.
[30] EPA Memo. EPA Further Review of CAFE Model & Inputs. June 18, 2018. Pg 12.
[31] https://www.eia.gov/petroleum/gasdiesel/
[32] https://www.eia.gov/todayinenergy/detail.php?id=34392
[33] https://www.eia.gov/petroleum/gasdiesel/gaspump_hist.php

existing trends, current global politics are likely to play a major role in negatively impacting fuel supply and fuel price volatility and such impacts may dwarf those of this rulemaking.

It is unclear, based on the abbreviated opportunity to review and comment provided by the rulemaking, if any of these and other significant, and potentially fatal, flaws in NHTSA's CAFE modeling assumptions were corrected prior to publication. These flaws, if unaddressed, significantly overestimate the fleet size, accompanying VMT, cost of compliance, and traffic fatalities while simultaneously underestimating the availability and effectiveness of CO_2 reduction technology. These oversights reinforce New York's contention that NHTSA, as lead agency, started with a predetermined conclusion and crafted a narrative and utilized distorted data to support said conclusion. It also appears that EPA, as a cooperating agency, deferred its statutory obligations under the CAA to NHTSA, and by doing so, failed to conduct an independent review of the proposed rulemaking. The flawed assumptions and internal errors apparently present in the CAFE model show that is not suitable for estimating the environmental impact of the proposed standards.

EPA and NHTSA started with a conclusion that deaths would decrease under the proposed standards, and then arbitrarily and capriciously selected data and changed accepted modeling procedures to craft a narrative to fit that predetermined outcome. EPA then concluded that "from a cost/benefit perspective [] the foregone GHG emission reduction benefits from the proposed standards are warranted."[34] The easily foreseeable, and preventable, adverse health and environmental impacts are clearly not warranted and are unacceptable.

Technology Availability and Feasibility

The agencies' technology assessment erroneously found that technology development did not support the current standards. The agencies apparently believe that technology development will come to a standstill and the best we can hope for over the next 8 years is meeting model year 2020 standards. In reaching this conclusion, the proposal discounts the use of widely deployed and emerging technologies, while overstating the amount of fleet electrification required to achieve compliance with the existing 2021-2025 standards. The proposal concedes, however, that OEMs are meeting the requirements with a vast array of advanced technology available today and are providing a range of vehicles to meet the needs of consumers, as recognized in the current NPRM: "...in today's market American consumers have more options for fuel-efficient new vehicles...Manufacturers have responded to fuel economy standards and to consumer demand over the last decade to offer a wide array of fuel efficient vehicles in different segments and with a wide array of features."[35] This statement is clearly at odds with the proposed determination that the existing standards must be relaxed due to technological feasibility and lack of consumer acceptance.

EPA reached a contrary conclusion in 2017 after a thorough technical analysis. EPA's technical assessment report (TAR) and the initial final determination in 2017 clearly demonstrated that the original GHG standards for 2021-2025 and the augural CAFE standards for 2022-2025 were in fact achievable and feasible: "This analysis demonstrates that compliance can be achieved through a number of different technology pathways reflecting predominantly the application of technologies in commercial production. The EPA also considered further developments in technologies where there is reliable evidence that those technologies could be feasibly deployed by 2025. The standards are devised so as not to force manufacturers into a single compliance path, and the analysis showing

[34] NPRM. Pg 514.
[35] NPRM. Pg 479.

multiple compliance pathways indicates that the standards provide each manufacturer with the flexibility to apply technologies in the way it views best to meet the needs of its consumers."[36]

The agencies found in 2017 that OEMs have a vast array of established and emerging technologies available to achieve compliance, meet consumer needs, and support their business decisions: "...the MY 2022-2025 standards can be met largely through advances in gasoline vehicle technologies, such as improvements in engines transmissions, light-weighting, aerodynamics, and accessories, and, as noted, that there are multiple available compliance pathways based on the predominant use of these technologies."[37] Specific technologies currently in use, or expected to be in use within 2022-2025 timeframe, include, but are not limited to, hybrid electric vehicle (HEV) Atkinson cycle engines, non-HEV Atkinson cycle engines, turbocharging and engine downsizing, Miller cycle engines, direct injection Miller cycle engines, improved turbochargers, cylinder deactivation, variable geometry valvetrain systems, continuously variable transmissions, dual clutch transmissions, 48-volt mild HEVs, improved and higher gear-count automatic transmissions, low-friction lubricants, electrified accessories, and low-leak and higher efficiency air conditioning systems.[38]

The agencies' 2017 determination also concluded that the current standards would provide significant environmental and consumer benefits in addition to OEM compliance flexibility. The existing standards were estimated to reduce GHG emissions by 540 million metric tons, save 1.2 billion barrels of oil and save consumers almost $100 billion through reduced operating expenses.[39] These estimates stand in stark contrast to the massive increases in GHG emissions and oil consumption that would follow adoption of the agencies' proposal.

In the NPRM, the agencies concede that automakers have had no difficulty meeting progressively more stringent standards: "The EPA standards are designed to require reductions of CO_2 emissions over time from the vehicle fleet as a whole but also to provide sufficient flexibility to the automotive manufacturers so that firms can produce vehicles which serve the needs of their customers. EPA believes the past several model years in the market place show the benefits of this approach. Automotive companies have been able to reduce their fleet-wide CO_2 emissions while continuing to produce and sell the many diverse products that serve the needs of consumers in the market, e.g., full-size pickup trucks with high towing capabilities, minivans, cross-over vehicles, SUVs, and passenger cars; vehicles with off-road capabilities; luxury/premium vehicles, supercars, performance vehicles, entry level vehicles, etc."[40] In short, the existing standards are technologically feasible, economically practicable, and serve the needs of consumers. There is no compelling reason to weaken them.

Now, in this proposal, the agencies seem to be looking for a single silver bullet technology, stating that there "...remains no single technology that the majority of vehicles made by the majority of manufacturers can implement at low cost without affecting the other vehicle attributes that consumers

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[36] U.S. EPA. Final Determination on the Appropriateness of the Model Year 2022-2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation. January 2017. Pg 4.
[37] U.S. EPA. Final Determination on the Appropriateness of the Model Year 2022-2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation. January 2017. Pg 4.
[38] U.S. EPA. Proposed Determination on the Appropriateness of the Model Year 2022-2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation: Technical Support Document. November 2016. Pg 2-5.
[39] U.S. EPA. Final Determination on the Appropriateness of the Model Year 2022-2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation. January 2017. Pg 6.
[40] NPRM. Pg 514.

value more than fuel economy and CO_2 emissions."[41] The existing GHG standards are intended to be technology neutral. Any technology examples provided in prior rulemakings were intended to show possible compliance paths utilizing feasible technology. These individual examples were never intended to represent, or need to be, a sole technology pathway to compliance.

The NPRM goes on to claim that OEMs will universally adopt extreme light-weighting of vehicles across all models and market segments as a cost-effective compliance strategy.[42] This assumption is clearly inconsistent with historical industry practice and the statement regarding the unavailability and use of a single compliance technology. In addition, the OEMs are individual, independent entities that are making business decisions on how best to meet consumer needs and to maximize profits. There are risks and rewards to any decision they make. It is highly unlikely that they would embrace a command economy that is the logical progression of the agencies' "silver bullet" argument.

While a feasibility analysis can certainly consider numerous factors, it is difficult to comprehend how multiple emission control technologies deployed in vehicles designs today can possibly represent the maximum feasible technology scenario for model year 2026 -- 8 years in the future. The proposal does not appropriately value, or consider, technology advancement and innovation by OEMs and automotive parts suppliers. In this highly competitive industry innovation is imperative: innovation in design, performance, materials, manufacturing, and marketing. Innovation has achieved lightweight materials, hybrid vehicles, advanced batteries, battery and fuel cell electric vehicles of over 200-mile range, and will soon bring driverless vehicles. Manufacturing innovation continuously works to constrain the cost of each new technology.

The automobile industry is truly a global marketplace. Global market manufacturers would prefer to apply technological advancements across as many platforms as possible to streamline international manufacturing and to reduce corporate-wide costs. Since many nations have GHG standards comparable to those that NHTSA and EPA are now proposing to abandon, the innovation and technology development will still occur, but less likely here in the United States if the current standards are weakened. In fact, the U.S. will cede development of advanced technology vehicles to countries such as China that are actively pursuing electric vehicle policies.

One of the key arguments that the agencies make in the NPRM and PRIA to justify the proposed decrease in fuel efficiency is that stricter standards increase new vehicle prices, forcing consumers to defer purchasing new, safer vehicles. Deferred purchases of new vehicles with better safety features will result in greater risk of crashes and traffic related fatalities. In the PRIA, the agencies explain "the analysis holds most other attributes of new cars and light trucks produced in future model years fixed at their levels during the model year (2016) used to represent its base year fleet."[43] The idea that vehicle manufacturers will not update features of their models in future years is highly unlikely. These vehicle model updates, unaccounted for in the agencies' analysis, will result in increased prices and increased deaths under the proposed alternatives. The result is a miscalculation of the cost-benefit analysis in favor of costs lower than they will really be.

In addition, they fail to consider that consumers value fuel efficiency and are willing to pay more for vehicles with improved fuel efficiency. Studies demonstrate that informed consumers are willing to pay

[41] NPRM. Pg 14.
[42] NPRM. Pg 270.
[43] PRIA. Pg 933.

approximately $690 more for each additional MPG, on average, when buying a vehicle and over $10,000 to save $1,000/year in fuel costs. Younger consumers and consumers considering more expensive vehicles value fuel efficiency more, as do people who are looking to buy cars with traditionally low fuel efficiencies like large SUVs and pickup trucks. The presence of federally mandated fuel-economy labels also has a greater effect on the willingness-to-pay of consumers.[44] When people know the required fuel economy levels, and see that they are federally mandated, they are more willing to pay for increased fuel economy. The proposed plans to reduce fuel economy levels will have a negative impact on consumers' willingness-to-pay for improved fuel efficiency. The value placed on increased fuel efficiency shows that consumers will still be willing to buy new and used vehicles with increased fuel efficiency even if prices increase, which contradicts the agencies' claims in the PRIA.

The agencies repeatedly, and without supporting evidence, attribute all vehicle price increases to fuel economy-improving technology and exclude, or minimize the impact of, any other plausible sources for the price increases. New vehicle purchase prices have increased annually, as well as the role that mandatory safety requirements play in the increased price. Vehicle prices have also increased in part due to the proliferation of vehicle infotainment systems, greater horsepower and add-ons such as larger diameter wheels. Average transaction prices for new vehicles increased 1.6 percent from December 2016 to December 2017 and achieved a record high of $36,113.[45] This continues a trend of increased year-over-year sales and record high average transaction prices.[46] The agencies go on to state: "Manufacturers have long cross-subsidized vehicle models in their lineup in order to recoup costs in cases where they do not believe they can pass the full cost of development and production forward as price increases for the vehicle model in question."[47] This has always been the case in the automotive industry, from light trucks subsidizing the development of hybrid and electric vehicles to luxury vehicles subsidizing compact vehicles.

It is also clear from the rulemaking documents that NHTSA has abdicated its regulatory and enforcement roles to the very stakeholders it is allegedly regulating. OEMs have stretched regulatory definitions regarding what qualifies as a light truck as to make the term meaningless. The same applies to definitions of flat floors, ground clearance, and axle height among others. OEMs have gamed the system and claimed obvious on-road passenger vehicles are off-road capable light trucks so they can produce vehicles with lower fuel economy. NHTSA has shown a glaring inability to enforce its own regulations and defers to industry requests to define obvious on-road passenger cars as off-road capable light trucks. Any confusion about truck-like characteristics lies entirely with NHTSA for not putting an end to this practice years ago. NHTSA must close this loophole and enforce the attribute based fuel economy curves for passenger cars and light trucks.

An additional area of concern regarding what qualifies as a light-duty truck centers on passenger car/light-duty truck fleet percentages and the required 2020 model year fuel economy for the combined fleet. EPCA mandates that in 2020 the combined fleet must achieve 35.0 miles per gallon (mpg).[48] NHTSA currently projects that passenger cars will have a required CAFE of 43.7 mpg, while light-duty trucks will have a CAFE of 31.3 mpg. By some measures, light-duty trucks constitute 67% of current new vehicle sales. If the light-duty truck share exceeds 70.5%, the statutory requirement of 35.0 mpg will not

[44] https://consumersunion.org/wp-content/uploads/2018/06/FINAL-Kormos-and-Sussman-2018-%E2%80%93-Auto-buyers-valuation-of-fuel-economy.pdf

[45] http://www.autodealermonthly.com/news/story/2018/01/kbb-average-new-vehicle-prices-rise-to-record-high-in-december.aspx

[46] http://www.autodealermonthly.com/news/list/tag/transaction-prices.aspx

[47] NPRM. Pg 495.

[48] 49 USC 32902(b)(2)

be met. Classifying more passenger cars as light-duty trucks will only serve to increase the percentage of light-duty trucks, widening the passenger car/light-duty truck split, and potentially leading to nonattainment of the 2020 model year CAFE requirement.

The Agencies' Cost-Benefit Analysis is Flawed

Multiple analyses of the standards for MY 2021-2025 demonstrate fuel savings that the proposed rollback would threaten. EPA's own midterm evaluation estimated that consumers would collectively save $98 billion dollars after factoring in the cost of the cleaner and more efficient technology to meet the 2021-25 standards.[49] Increasing the disposable income to consumers through less gasoline consumption will have a greater impact on economic growth than more profits to vehicle manufacturers. Another estimate concluded consumers would save $6,000 over the life of a vehicle that meets the 2025 standards compared to the average vehicle on the road today even after accounting for the increased cost of cars and trucks with advanced fuel-saving technology. By 2030, the improved fuel efficiency of the increasing standards between MY2017-2025 would save consumers $50 billion to spend locally to stimulate their own economies rather than benefiting large oil companies.[50] The agencies' proposal will harm consumers and their local economies to the benefit of vehicle manufacturers and oil companies.

The efficiency standards from MY2017 to MY2025 have been estimated to create 650,000 jobs throughout the U.S. economy by 2030, with 50,000 of those in light-duty vehicle manufacturing.[51] Another analysis of the 2017-2025 standards estimated that they would add more than 100,000 jobs in 2025 and 250,000 jobs in 2035.[52] Strong fuel efficiency standards are necessary for continued innovation and job creation in the United States. Increased efficiency allows consumers to spend less money on gasoline which they can spend in other, more productive, sectors of the economy. Freezing the standards would force consumers to spend more of their disposable income on gasoline, hurting job creation throughout the economy.

Over 288,000 people in the United States are employed building clean fuel-efficient vehicle technology in more than 1,200 facilities across 48 U.S. states. In New York, 36 facilities employed over 6,000 people working on fuel-efficient vehicle technologies in 2017.[53] Job creation in recent years in the automotive sector has in part been due to the increased need for innovation to improve fuel efficiency following the standards put in place in 2010. These jobs rely on strong standards that help drive innovation. The proposed rollback of the fuel efficiency and emission standards will threaten these jobs and result in the stagnation or decline of new job creation as the demand for greater innovation disappears or moves overseas. Without increasing standards, the car manufacturers will reduce their investments in improving fuel efficiency, which will negatively impact companies further down the supply chain, resulting in job losses.

The agencies' analysis is also marred by logical and factual inconsistencies. One significant inconsistency concerns the discussion of the auto manufacturers' costs and benefits.[54] The agencies assert the

[49] https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100QQ91.pdf
[50] https://www.ucsusa.org/sites/default/files/images/reports/vehicles/cv-factsheet-fuel-economy-income.pdf
[51] https://www.ucsusa.org/sites/default/files/attach/2016/06/Fuel-Economy-Standards-2017-2025-summary.pdf
[52] http://www.synapse-energy.com/sites/default/files/Cleaner-Cars-and%20Job-Creation-17-072.pdf
[53] https://www.nrdc.org/sites/default/files/supplying-ingenuity-clean-vehicle-technologies-report.pdf
[54] NPRM. Pg 169.

proposed standards are necessary to ensure the continued economic viability of the automobile manufacturing industry. The agencies postulate that the OEMs will benefit through lower compliance costs and can avoid CAFE fines. On the other hand, the agencies further state that all their cost savings will be transferred to consumers in the form of lower prices and that OEMs will voluntarily forego profits on balance, but will be financially unaffected. These two positions are diametrically opposed.

In the NPRM, the agencies assume that OEMs will be unwilling to pay civil fines for non-compliance with the CAFE standards. The NPRM states all OEMs are expected to comply with purchased CAFE credits through 2025 except for one. That OEM is expected to demonstrate compliance using purchased credits and payment of fines. OEMs collectively went only 1 model year following CAFE credit banking and trading in 2010 without paying fines. Paying civil fines for violations of the CAFE standards has been, and most likely will continue to be, a valid compliance mechanism for many manufacturers. As stated previously, each OEM is an individual business that will make business decisions regarding consumer demand and profits. Some OEMs will be averse to paying fines while others will see it as a cost of doing business as they have done in the past. The agencies definitively state how the industry will react regarding payment of civil fines, but in several other parts of the NPRM and PRIA the agencies state that it is difficult, if not impossible, to predict how any entity will react to the proposed standards.

The Proposed Withdrawal of the California Waiver is Unlawful

The CAA specifically grants California authority to regulate motor vehicle emissions provided certain limited conditions are met, and a presumptive waiver of federal preemption is granted by EPA. EPA granted the waiver to California for its Advanced Clean Cars program in 2013. CAA § 177 provides that other states can adopt the California standards, and New York and several other States have done so.

A leading court decision explained: "There are overwhelming indications in the legislative history that Congress intended California to enjoy the broadest possible discretion is selecting a complete program of emissions control...."[55] "[T]he history of congressional consideration of the California waiver provision, from its original enactment up through 1977, indicates that Congress intended the State [California] to continue and expand its pioneering efforts at adopting and enforcing motor vehicle emissions standards different from and in large measure more advanced that the corresponding federal program; in short, to act has a kind of laboratory for innovation."[56] EPA itself has taken the position that "Congress has described the program as a "key aspect" of the strategies available to States under the Act to reduce air pollution," quoting the Congressional Record 123 Cong. Rec. H8662 (August 4, 1977) (Clarifying Statement). Brief for the U.S. as Amicus Curiae in MVMA v DEC 93-7974 and 93-7974, pg. 3 (November 8, 1993).

In 1977, as Congress sought to revise § 209 by adding "in the aggregate", one House Committee found "[t]he Committee amendment is intended to ratify and strengthen the California waiver provision and to affirm the underlying intent of that provision, i.e. to afford California the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare."[57] Congress additionally added § 177 that year reflecting the growing understanding about the role motor vehicles played in air pollutant emissions.

The Act clearly permits California to adopt its own emissions standards, including for GHGs, and other states have, at their option, the authority to adopt such standards. As the U.S. Supreme Court clearly

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[55] The Motor and Equipment Manufacturers Assn, Inc. v Environmental protection Agency (MEMA), 627 F.2d 1095 at 1108, fn. 22 (1979).

[56] MEMA, at 1111.

[57] House Committee on Interstate and Foreign Commerce Report, pg. 302.

enunciated in Massachusetts, there is no basis for a claim that EPCA preempts EPA, California, or states adopting California new motor vehicle emission standards pursuant to § 177 of the Act. Two district court cases cited above affirm that conclusion.

In addition to disregarding this clear case law, EPA and NHTSA strain credulity with their attempts to justify the withdrawal of the existing California waiver, thereby prohibiting other states from enforcing the relevant standards. NHTSA and EPA go beyond the § 209 statutory mandate in making this determination. The language is presumptive, as it clearly requires EPA to issue the waiver unless California does not meet certain criteria.

EPA's interpretation that it possesses the authority to withdraw a legally granted waiver is strained and overreaching. California has made no changes to its standards. Since EPA initially granted the waiver encompassing California's GHG standards, conditions in California have worsened – not improved -- due to climate change. In addition, the technical feasibility of many motor vehicle emissions control designs has improved since California first instituted its GHG standards. EPA's and NHTSA's claim that EPA has the right to withdraw the waiver because California no longer complies with the conditions of the waiver is baseless. In fact, California's waiver for its standards preceded the "national" 2012 standards and EPA determined that the 2012 regulation revisions were "within the scope" of the existing waiver.

EPA and NHTSA misconstrue California's waiver submission to claim that California is no longer focusing on smog forming pollutants. The program, however, has regulated criteria pollutants and GHGs since 2004, as has EPA since 2012. Now, 14 years after California (and § 177 states) have adopted meaningful regulations, and 6 years after the federal agencies began adopting its regulation, EPA and NHSTA, in a further attempt to obscure the purpose of § 209 of the Act, make the claim that the original Congressional intent for § 209 was to regulate "smog forming" pollutants. However, this clearly leaves out other pollutants such as particulate matter and carbon monoxide, in addition to GHGs. Where the statutory language is clear, there is no need to resort to interpretation. The Act permits California to set standards "for the control of emissions from motor vehicles".[58] Nowhere in the statute are limitations on the types of emissions California may regulate and the Supreme Court clearly identified GHGs as a pollutant subject to regulation in Massachusetts. The NPRM discusses California's "complication" of its regulation of smog forming pollutants, making the claim that was the original purpose of § 209 and baldly states that a "state program that combines regulation of the two groups of pollutants is preempted to the extent that the program relates to fuel economy." Taken to an illogical and extreme conclusion, the agencies' novel interpretation could effectively eviscerate California's authority under Section 209 because improved fuel efficiency tends to reduce smog-causing pollutants. Clearly, that is not what Congress intended and the Supreme Court rejected any such conflict in Massachusetts.

EPA and NHTSA continue this line of argument by extending it further to § 177 of the Act. They claim, without legal basis, that § 177 was only intended to cover criteria pollutants. A reading of the plain language of the statute indicates no restrictions on the type of pollutant that § 177 states could regulate. It merely states that § 177 states, such as New York, must adopt standards identical to California. The same reasoning that permits California to regulate GHGs applies here, as § 177 states derive their standards from California's authority.

There is no legal basis for EPA to withdraw the waiver because of the novel view that a zero emission vehicle (ZEV) mandate is preempted because it regulates both criteria pollutants and GHGs. California and New York have had a ZEV mandate since the 1990s. At the very beginning of the program, the standards regulated criteria pollutants and were not confined to smog-forming pollutants as EPA claims.

[58] § 209 (b)(1).

As science evolved, just as Congress anticipated that it would, and Massachusetts confirmed, these standards were updated to include GHG pollutant standards to best protect the environment and public health and welfare. The ZEV mandate reduces criteria, mobile source air toxics, and GHG emissions. EPA and NHSTA state the "proposal does not directly involve pollutants such as carbon monoxide, smog-forming pollutants (nitrogen oxides and unburned hydrocarbons) fine particles, or 'air toxics' (e.g. formaldehyde, acetaldehyde, benzene)."[59] To the contrary, withdrawal of the waiver for the ZEV mandate would do just that. Such a vacatur would directly impact all the above-mentioned pollutants and in a very negative manner.

Conclusion

In closing, New York reiterates its opposition to the technically unsupported, arbitrary standards proposed by EPA and NHTSA for model years 2021-2026. The standards as proposed will significantly increase emissions of GHG, criteria, and toxic pollutants; significantly increase fuel consumption; cause fiscal harm to consumers; adversely impact human health; and harm the environment. We strongly urge the federal agencies to reconsider this counterproductive proposal and start anew, in conjunction with California, § 177 states, and the auto industry, to find a path forward that provides the GHG reductions vital to continued economic and environmental prosperity. Should the agencies persist with this misguided rulemaking, New York will pursue all remedies to stop this action to protect the health and welfare of our citizens and the global environment.

[59] Fed Reg 83 pg 43324

ADDENDUM

Additional Comments on Draft Environmental Impact Statement

Pursuant to 40 CFR 1502.1, the primary purpose of an EIS is to serve as an action-forcing device to ensure that the policies and goals defined in the Act are infused into the ongoing programs and actions of the federal government. An EIS should provide full and fair discussion of significant environmental impacts and should inform decision makers and the public of the reasonable alternatives that would avoid or minimize adverse impacts or enhance the quality of the human environment. An EIS is more than a disclosure document. It should be used by federal officials in conjunction with other relevant material to plan actions and make decisions.

This DEIS fails to meet these requirements. EPA and NHTSA failed to take the requisite hard look at alternatives, environmental impacts of making the standards less stringent, and costs, including social costs, among other items. EPA and NHTSA also failed to perform a proper environmental justice (EJ) analysis.

The GHG standards proposed by EPA and NHTSA will have adverse environmental impacts for criteria and toxic pollutants, in addition to a dramatic increase in GHG emissions. The agencies state that the proposed standards will result in an additional 872 million metric tons of CO_2 emitted along with imprecise increases or decreases in criteria and toxic emissions. The agencies cannot provide an accurate estimate for these increases because they failed to take the requisite hard look as required under NEPA.

There are several areas in New York either categorized as non-attainment or maintenance areas under National Ambient Air Quality Standards (NAAQS). The proposed standards will result in significant increases in emissions of volatile organic compounds (VOC), sulfur dioxide (SO_2), NO_x, fine particulate matter ($PM_{2.5}$) among others[1]. This will make it difficult, if not impossible, for New York to achieve and maintain its air quality goals as required by the NAAQS and its State Implementation Plan (SIP) commitments. This proposal will lead to increased cardiovascular and respiratory related illness, hospitalization, and deaths. Indeed, EPA and NHTSA concede that the proposed standards will cause the premature deaths of up to 300 people per year due to entirely preventable, and foreseeable, increased criteria and toxic pollutant emissions

Failure to Take "Hard Look"

EPA and NHTSA fail to take the requisite "hard look" at the adverse environmental impacts of their proposed GHG standards as required by NEPA. In the NPRM, as well as the PRIA and DEIS, the agencies only considered the "no action" or baseline alternative (i.e., the current standards) and 8 alternatives, all of which were less stringent than the no action alternative. There was no consideration given to alternatives that were more stringent than the existing baseline standards. There is no discussion of what the agencies learned from the DEIS, nor how it informed their decisions regarding the roll back of existing GHG standards in the NPRM and PRIA. Clearly, the agencies began with a predetermined conclusion to weaken existing standards and the entire rulemaking process is merely window dressing used to justify their arbitrary pre-judgement.

All the non-preferred alternatives (i.e., alternatives 2-8) would severely weaken the existing GHG and augural CAFE standards for model years 2022-2025. Alternatives 2, 4-6, and 8 offer minimal percentage increases in stringency per year far below the existing standards, but eliminate provisions for air

[1] DEIS. Pg 4-34.

conditioning efficiency and off-cycle emissions. Alternatives 3 and 7 offer the same minimal increases in stringency as alternatives 2, 4-6, and 8, while phasing out air conditioning efficiency and off-cycle provisions. Again, not a single alternative scenario considered by the agencies evaluated the effect of standards more stringent than the baseline scenario.

Further evidence that EPA and NHTSA did not take the requisite hard look at environmental impacts of the proposed standards is shown in NHTSA's discussion of the impacts on conformity rules in the DEIS. NHTSA essentially states that the proposed standards will have no effect on conformity; and even if there were to be an adverse impact, NHTSA is in no way responsible for this obviously foreseeable and entirely preventable outcome.

Additionally, NHTSA concluded that the proposed standards will result in nearly universal reductions of toxic air emissions for years 2025, 2030, and 2050, with the sole exception of diesel exhaust particulate matter in 2050.[2] There is no discussion of how NHTSA arrived at this conclusion, nor the data used to support this conclusion. NHTSA further fails to explain how toxic emissions are lower under the proposed standards than the augural standards, despite the fact that upstream emissions will increase due to a significant increase in refining to meet the increased fuel consumption resulting from the proposed standards.

NHTSA bases the economic impact of the proposed GHG standards on assumptions that vehicle manufacturers, consumers, and drivers will react in specific ways. When it assesses the environmental impact, however, NHTSA states that these same entities cannot be forced to react in specific ways and even if they do, then the agencies are not responsible for the resulting adverse impact and inability of states to meet conformity requirements. These conclusions are clearly arbitrary, capricious, and highlight the internal inconsistencies prevalent in the rulemaking documents.

Preemption of California's ZEV mandate is an integral part of this proposal. This aspect of the proposed action receives no consideration beyond a statement that tailpipe criteria pollutant emissions will not be affected because (presumably) California's LEV 3 tailpipe standards would remain unchanged. NHTSA and EPA must consider and discuss the local impacts that preempting the ZEV mandate would have on localities where ZEV sales are currently concentrated, and localities where they will likely concentrate as the program matures. Specifically, these include the major metropolitan areas of California, and the other States that have adopted the ZEV mandate pursuant to section 177 of the Act. In these areas, it can reasonably be foreseen that under the agencies' proposal some amount of VMT that would have been electrified will instead be fueled by internal combustion engines. This will lead to increases in criteria pollutant and toxics emissions in these major metropolitan areas, even if statewide criteria pollutant emissions levels are unchanged.

NHTSA also assumes that plug-in electric vehicles (PEVs) are charged using a national average electricity generating fuel mix. This is certainly not the case today. The electrical grid in states with high concentrations of PEVs is cleaner than the national average, and this disparity will only grow in future years.[3] The use of an outdated average overestimates the upstream emissions from PEVs under the baseline no action alternative.

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[2] DEIS. Pg 4-38.

[3] https://blog.ucsusa.org/laura-wisland/charging-electric-cars-from-the-grid-a-good-choice-or-the-best-choice-for-lowering-global-warming-emissions. See also studies done by EPRI and NRDC on quantifying the regional emissions benefits of EVs due to cleaner electric grids in ZEV states. https://www.nrdc.org/experts/luke-tonachel/electric-vehicles-can-benefit-all-utility-customers.

Undervaluation of Climate Impacts

The NHTSA and EPA proposed rule and "supporting" DEIS have failed to take a hard look at the weighing of supposed costs and benefits. The analysis is completely inconsistent with the United States' international commitments and with the actions of many state and local governments to address climate change on behalf of their citizens. In the DEIS, NHTSA states that U.S. GHG emissions are equal to 14% of current worldwide emissions and that transportation is the "single leading source." But the DEIS ignores actions to lower GHG emissions, including the National Program that the proposal seeks to undermine. It would significantly affect global GHG emission rates, resulting concentrations of GHG in the atmosphere, and thereby the projected impacts from climate change. The harms caused to states, including New York, because of these impacts are actual and imminent, as acknowledged by the U.S. Supreme Court in Massachusetts.

NHTSA indicates in the DEIS that it lacks technical and scientific expertise to draw its own conclusions regarding climate change, and instead relied on governmental, or peer-reviewed, reports including EPA's 2009 Endangerment Finding and the IPCC's 2013 5th Assessment Report. But the agencies' proposal indicates that, because new information was available, a 'de novo' analysis was needed to evaluate the need for GHG standards. The ironic result is that NHTSA appears to rely on authoritative reports when discussing the impacts of climate change, but on new unverified analyses or statements[4], to suggest that the impact of this rule on climate change is minimal. These new 'analyses' do not allow for a reasoned reconsideration of the standards.

The background information on GHGs in the DEIS does not reference the set of 6 GHGs that EPA assessed as part of the Endangerment Finding, or even the full list of over 100 GHG assessed by the Intergovernmental Panel on Climate Change (IPCC). It instead paraphrases from a different section of the IPCC that is not directly relevant to the explanation of GHGs, explaining for example, the relative role of ozone and clouds.[5] The DEIS refers interchangeably to the U.S. Energy Information Administration's (EIA) outlooks for 2017 and 2018, which are intentionally conservative and may not reflect transformative trends. Finally, although NHTSA states that it uses either governmental or peer-reviewed sources in its assessment of climate change, 'WRI 2018' is cited extensively in 5.2.1 and is neither an authoritative source nor a peer-reviewed report.

Despite its limitations, even the flawed DEIS demonstrates that the impacts of marginal GHG emissions are reasonably foreseeable and impose severe risks on the public. Yet, NHTSA concludes that the GHG emission increases associated with all alternatives – along with the lack of any other meaningful regulatory action by EPA to mitigate GHG emissions from the same sources – will have minimal impacts on the public. The minimization of impacts and the federal government's willingness to leave the public unprotected from the worst effects of climate change is completely unacceptable and at odds with the scientific consensus in multiple scientific reports including the most recent IPCC report.

The most obvious issue is that the agencies refer to a baseline atmospheric concentration of CO_2 that can only align with the worst-case scenario for global climate change (i.e. more than 700ppm; van Vuuren et al 2011). They then claim that the additional contribution of GHG emissions from this

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https://www.epri.com/#/search/regional%20emissions%20benefits%20of%20electric%20vehicles/?to=1542716626829&from=725574973170

[4] See, e.g., DEIA section 5.4.1.1 (unqualified description of technology innovation and adoptionin the last paragraph).

[5] NHTSA Draft Environmental Impact Statement NHTSA-2017-0069 Chapter 5 section 5.1.2 and figure 5.1.2-1.

proposal will have a minimal impact on these extremely high GHG levels. That error is compounded by the unreasonable base case assumption that 2025 standards will remain flat in future years, rather than becoming more stringent year after year, in accordance with EPA's obligation to address the endangerment of climate change. In truth, transportation emissions are the largest source of GHG emissions in the United States, which is second only to China in total GHG emissions. Reducing emissions from the transportation system in the United States is therefore one of the most substantial ways of addressing climate change, and preventing the global catastrophe that would accompany a global GHG concentration of more than 700 ppm.

Under the high-emissions scenario referenced in the DEIS, the United States and New York State would have significant adverse impacts. For example, this scenario is likely to result in more than 6 feet of sea-level rise in Manhattan and elsewhere along the State's tidal coast.[6] These and other impacts would unquestionably impose unacceptable economic and environmental burdens on New York and surrounding states. The use of this apocalyptic scenario as a future baseline is unacceptable and this scenario should primarily be used to illustrate the need for GHG emission reductions. A more refined assessment would focus on identifying how this decision fits into long term needs to reduce GHG emissions from transportation and other sectors over time, and would include a description of the limitations of the 5-year policy decision. Instead, the DEIS seems to surrender to the hopeless inevitability of severe climate change through 2100 and beyond.

While the global emission scenarios are useful in identifying the global scale and worldwide impacts, the global level analysis is not the best method to evaluate an individual action such as the proposed alternative. The comparison of a portion of one country's emissions to global emissions over the next 80 years is not an effective method of protecting the environment. The DEIS could articulate short term policy decisions with long term goals by showing how the decisions conform to a pathway or step down to reach long term goals generally considered to be solutions to climate change. This for example could be part of efforts for the national government to reduce GHGs in line with pledges made by every other country in the world or by coalitions of states.[7] The technology exists and it will be economical during MY 2021 through MY 2026 to make meaningful emissions reductions in the transportation sector of the United States.

The overall approach to minimize the importance of the GHG emission standards for vehicles with regards to the impacts of climate change is inconsistent with basic, publicly available data on the sources of GHG emissions in the U.S. The EPA has publicly reported an annual GHG emission inventory since 1990, per the U.S. obligation as a signatory to the United Nations Framework Convention on Climate Change.[8] In 2016, the most recent year of reporting, U.S. emissions were equal to 38% of all emissions from developed countries. Transportation is the second largest source of emissions in the U.S. after electricity – and road transportation alone is responsible for 23% of all US emissions. Furthermore, not only are U.S. emissions not declining, U.S. emissions are higher today than they were in 1990 and transportation sector emissions have increased 20%.

The existing NHTSA and EPA regulatory programs addressed in the proposed rule have as their clear purposes to reduce fuel combustion and GHG emissions. But the proposed rule makes clear that the federal government now puts unbalanced emphasis on supposed short term costs, rather than overall long-term benefits. If the NHTSA had referenced appropriate authoritative literature regarding cost-benefit analysis as it relates to delayed action on greenhouse gas emissions, it would have found that

[6] 6 NYCRR Part 490.

[7] https://www.usclimatealliance.org/

[8] http://di.unfccc.int/detailed_data_by_party

any short-term costs of action to address climate change are much less than the significant long-term costs of inaction. A good place to start is the IPCC 5th Assessment Report cited in the DEIS.[9]

Furthermore, the foregone climate benefits shown in tables II-25 through 28 and subsequent summaries do not adequately describe the impact of this proposal. Costs and impacts of the rule will be felt by the entire planet not just the car manufacturers, vendors, and users of vehicles. Utilizing the full social costs of greenhouse gases is a more equitable method than merely relying on 'domestic' social costs when identify impacts of greenhouse gases. While social costs of greenhouse gases do not address all costs (such as possible tipping points of global warming and feedback or secondary ground level ozone formation) they are reasonable tools to use to make informed decisions about policy. This is particularly true when addressing decisions that affect entire sectors of the economy, perhaps more so for transportation emissions as they represent a very large portion of the nation's emissions and there are no other national standards to limit greenhouse gas emissions from these vehicles. As road transportation emissions make up 23% of all U.S. emissions, it is unlikely that the U.S. could reduce a commensurate amount of emissions from other sources. This is particularly true as the EPA is simultaneously seeking to roll back policies that reduce emissions from other major sources, including power plants, oil and gas production, solid waste, and ozone-depleting substance substitutes.

The use of a 'domestic' social cost of carbon by the NHTSA results in a failure to consider the true costs and damage that GHG emissions have on the United States economy. GHG emissions have global impacts so using anything less than the global social cost of carbon will result in damages not being calculated. The use of this 'domestic' social cost of carbon deliberately reduces the costs faced by increased GHG emissions by reducing them to as little as $7 or $1 depending on the use of a 3% or 7% discount rate respectively in 2020. These estimates are far too low and recent research suggests that the true global social cost of carbon is between $177/ton of CO_2 and $805/ton of CO_2 with a median of $417/ton of CO_2 (Ricke et al. 2018). The EPA and NHTSA are using a global social cost of carbon that is much lower than many economists believe and further reducing it in an attempt to minimize the full costs of additional GHG emissions. This recent work by Ricke et al. even goes as far as to estimate a 'domestic' social cost of carbon for the United States of $48/ton of CO_2, nearly 7 times the EPA's figure at a 3% discount rate. The proposal's use of a 'domestic' social cost of carbon alters the cost-benefit calculations by reducing the true costs while also reducing the benefits of approaches that reduce more emissions.

The use of a 7% discount rate in the social cost of carbon calculations is inappropriate when trying to calculate the multi-generational effects of GHG emissions and climate change. A 7% discount rate might be appropriate for cost-benefit analysis that occur over a decade or two but GHG emissions have costs that last hundreds of years so such a high discount rate will fail to properly account for the lasting impact of increased emissions. The EPA has previously used discount rates of 5%, 3%, 2.5%, and 3% at the 95th percentile when calculating the social cost of carbon because the Interagency Working Group on Social Cost of Carbon (IWG) and the OMB had both agreed that "the climate change problem is highly unusual".[10] The EPA has previously accepted the IWG argument that GHG emissions are a global externality that damage the entire world not just the United States and therefore the only appropriate

[9] IPCC 2014 Summary Report for Policyholders, Table SPM.2.

[10] U.S. Government Interagency Working Group on Social Cost of Greenhouse Gases. Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866. August 2016. Pg 17.

figure to use is the full global social cost of carbon when calculating the damages.[11] This argument should still hold because the damage of climate change in other countries can still have an impact on the United States due to changes in trade and agriculture.

Fighting climate change is a global problem that requires global cooperation and by using a 'domestic' social cost of carbon it signals that the United States is not willing to work with the global community as it has in the past to try and solve this problem threatening the planet. If the EPA and NHTSA insist on using a 'domestic' social cost of carbon they send a signal to other countries that they too should only focus on the emissions that effect their country which will result in the failure to stop the damaging effects of climate change. This 'domestic' social cost of carbon also only focuses on the damage GHG emissions in the United States do to the United States and ignores the fact the United States is being impacted by emissions from other countries. If the EPA and NHTSA insist on using this figure they are encouraging other countries to do the same, with the result that actions taken by any nations to address climate change will be severely undervalued.

Given the statutory obligation and the need to properly inform the public regarding the rulemaking, EPA and NHTSA must include the full societal costs of the non-CO_2 GHG in their regulatory evaluation. Nitrous oxide, methane, and the GHG refrigerants, along with CO_2, are all associated with the operation of vehicles in the covered size classes. Each of these pollutants has been previously addressed by the OEMs through technological improvements driven by compliance requirements. The agencies' evaluation of the proposed rule only includes the damages from the social cost of CO_2 and ignores the costs of these other GHG emissions that will also increase. The social cost of methane and social cost of nitrous oxide that the EPA has calculated in the past are much higher than the social cost of CO_2, so ignoring them in the cost calculations greatly reduces the actual costs to society of the proposal. Although EPA and NHTSA find fault with the mechanisms used to incorporate these pollutants, removing controls entirely from this program would be unjustified and would result in significant increases in GHG emissions and leaving them out of cost benefit calculations results in costs that are much lower than the true costs faced by society.

Inadequate Environmental Justice Analysis

EPA and NHTSA's environmental justice analysis in the NPRM and DEIS is based on a factually incorrect position and falls far short of EPA's own guidelines for analyzing environmental justice. First, EPA and NHTSA present their analysis as if the proposed rulemaking is new, and not as an attempt to abandon the original final rule for MY2017-2025. In their environmental justice analysis, EPA and NHTSA rely on potential general air quality improvements to conclude that low-income and minority populations will disproportionately benefit from the proposal, ignoring their own assertions that the preferred alternative will decrease emission reduction benefits and increase expected pollution and associated health impacts. Additionally, EPA and NHTSA's environmental justice analysis fails to consider disproportionate impacts, ignores contributors of susceptibility, and does not include meaningful participation of low-income and minority populations in contrast to the goals of Executive Order 12898, EPA's environmental justice strategic plan, and EPA's guidance materials for environmental justice.

First, EPA and NHTSA begin their environmental justice analysis from a false position leading to a contradictory conclusion as to whether there are disproportionate impacts on low-income populations and minority populations from the proposed rulemaking. EPA recognized in its original final rule for

[11] U.S. Government Interagency Working Group on Social Cost of Greenhouse Gases. Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866. August 2016. Pg 18.

MY2017-2025 that fuel efficiency standards provide substantial benefits in reducing harmful air pollutants associated with the transportation sector including PM, NOx, and VOCs. [12] Additionally, EPA recognized that reducing these pollutants also reduces the public health problems they cause.[13] The current NPRM briefly mentions that people who live or attend school near major roadways, and directly impacted by tailpipe emissions, are more likely to be non-white, Hispanic ethnicity, and/or low-income. In their flawed analysis, EPA and NHTSA contend that decreases in tailpipe emissions would then most benefit low-income and minority populations in terms of emission reductions because of this proximity to tailpipe emissions. But this proposed rulemaking is not new and is an attempt to abandon the long-term fuel economy standards previously established for MY2017-2025. Weakening the MY2021-2026 standards from those established in EPA's original final rule would increase the number of asthma attacks, aggravate chronic lung disease, and lead to earlier deaths. Following EPA's above proximity analysis, low-income populations and minority populations will disproportionately bear the burden of the decreased emission reduction benefits and the increase in expected pollution and associated health impacts leading to a clear environmental justice concern.

Next, EPA and NHTSA's environmental justice analysis does not meet EPA's own environmental justice goals and guidelines. Executive Order 12898: "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" directs federal agencies to make environmental justice part of their mission, to the greatest extent possible, by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the U.S. EPA developed environmental justice (EJ) policies, programs, and guidelines consistent with Executive Order 12898 including their most recent strategic plan, the EJ 2020 Action Agenda (EJ 2020).

EPA's EJ 2020 sets forth goals and objectives as part of its strategic plan to advance environmental justice. Specifically, one of EPA's objectives is to ensure environmental justice is appropriately analyzed, considered and addressed in EPA rules.[14] To ensure this objective is met, EPA provides training and guidance for agency rule writers including the Guidance on Considering Environmental Justice During the Development of an Action (EJ Action Guide) and the Technical Guidance on Assessing for Environmental Justice in Regulatory Analysis (Technical Guidance). In fact, EJ 2020 establishes that "EPA will implement the Guidance on Considering Environmental Justice During the Development of a Regulatory Action and Technical Guidance on Assessing for Environmental Justice in Regulatory Analysis".[15] However, EPA's analysis in the NPRM does not follow the EJ Action Guide or the Technical Guidance and contradicts its established environmental justice goals and objectives.

The EJ Action Guide defines a potential environmental justice concern as "disproportionate and adverse impacts on minority populations, low-income populations, and/or indigenous peoples that may exist prior to or that may be created by the proposed regulatory action" including instances where a proposed action will "present opportunities to address existing disproportionate impacts on minority populations, low-income populations, and/or indigenous peoples...." In the NPRM and DEIS, EPA and NHTSA acknowledge that environmental hazards are more prevalent in communities with greater percentages of low-income populations and minority populations and that these same populations face disparities in exposures to near roadway pollution levels.[16] Despite recognizing that an existing

[12] 77 Fed. Reg. at 62,930-62,938.

[13] Id.

[14] EPA EJ 2020 Action Agenda (https://www.epa.gov/environmentaljustice/environmental-justice-2020-action-agenda)

[15] Id.

[16] 40 CFR Parts 85 and 86

disproportionate impact exists, EPA does not further consider the impacts of the proposed rulemaking on minority or low-income populations in contravention to the EJ Action Guide. Similarly, EPA and NHTSA briefly discuss the existence of pre-existing health disparities in minority communities but do not acknowledge a potential EJ concern.[17] Instead, the NPRM and DEIS rely on general potential air quality improvements to conclude the EJ discussion.

However, relying on expected general air quality improvements negates the objective of Executive Order 12898, EPA's EJ 2020, and EPA's Technical Guidance. First, both Executive Order 12898 and EJ 2020 focus on disproportionate effects of agency action.[18] Additionally, the Technical Guidance discourages relying on expectations of reduced overall environmental burden.[19] Most importantly, EPA's reliance on general air quality improvements begins from a factually incorrect position and leads to a conclusion in contradiction to its own guidance for EJ in rulemaking.

Additionally, EPA and NHTSA fail to consider contributors of susceptibility as provided for in EPA's Technical Guidance as part of an EJ analysis. EPA's EJ 2020, EJ Action Guide, and Technical Guidance all discuss at length the disparity in health outcomes and the potential impact of agency actions contributing to these outcomes.[20] However, EPA briefly touches on the disparity in health outcomes experienced in low-income populations and minority populations but the NPRM and DEIS do not discuss the impact of their rulemaking nor the increase in pollution with known health impacts on low-income and minority populations more susceptible to pollution triggered health issues due to pre-existing health concerns.

EPA and NHTSA also sparsely discuss the impact of climate change projections on low-income and minority populations and do not follow through with an EJ analysis including contributors to susceptibility. EPA estimates that global CO_2 concentrations will increase by 0.65 parts per million (ppm) and concludes that "the potential increases in climate change impacts resulting from this rule are so small that the impacts are not considered 'disproportionately high and adverse'" on low-income and minority populations. However, this conclusion is short sighted and does not reflect the global scale of climate change and related impacts nor the pre-existing vulnerabilities of low-income populations and minority populations. EPA recognized that low-income communities and communities of color are likely to be disproportionately affected by, and be less resilient in absorbing and adapting to, the impacts of climate change in EJ 2020. Also, EPA's Technical Guidance discusses climate change using the analysis from the prior final rule for MY2017-2025. In this example, localized effects of heat and severe weather events are analyzed as part of addressing EJ concerns.[21] EPA and NHTSA touch on urban heat island effect in one sentence of the DEIS but do not engage in an EJ analysis of the disproportionate impact of their climate change projections on low-income and minority populations.

Finally, EPA and NHTSA do not provide for meaningful participation of low-income populations and minority populations in the NPRM and DEIS. EPA defines EJ as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies. Meaningful involvement means that: (1) potentially affected populations have an appropriate opportunity to participate in decisions about a proposed activity (i.e., rulemaking) that may affect their

[17] Id. at 718 - 719

[18] See Executive Order 12898 and EPA EJ 2020 Action Agenda

[19] See EPA Technical Guidance for Assessing Environmental Justice in Regulatory Analysis

[20] See EPA EJ 2020 Action Agenda, Guidance on Considering Environmental Justice During the Development of Regulatory Actions, and Technical Guidance for Assessing Environmental Justice in Regulatory Analysis

[21] Technical Guidance for Assessing Environmental Justice in Regulatory Analysis at C-4

environment and/or health; (2) the populations' contributions can influence the EPA's rulemaking decisions; (3) the concerns of all participants involved will be considered in the decision-making process; and (4) the EPA will seek out and facilitate the involvement of populations potentially affected by the EPA's rulemaking process.[22] EPA and NHTSA did not consult with near road communities nor communities with low-income populations and minority populations before proposing to weaken the standards established in their prior final rule for MY2017-2025. Additionally, EPA and NHTSA are holding only three public hearings, all at 10am during week days, and accepting comments for only 60 days. Given the extensive impact of the proposed weakening of the standards established in its prior final rule, EPA must provide a longer comment period and engage with low-income and minority populations following the guidelines in the EJ Action Guide.

[22] See Part 3, EPA Environmental Justice Action Guide