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Acting Administrator Andrew Wheeler
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Docket ID No. EPA-HQ-OAR-2018-0283

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

Docket ID No. NHTSA-2018-0067

Re: Comments on the Proposed Safer Affordable Fuel-Efficient Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks

Dear Acting Administrator Wheeler and Deputy Administrator King:

The Green Energy Institute at Lewis & Clark Law School, Northwest Environmental Defense Center, Neighbors for Clean Air, Columbia Riverkeeper, Oregon Chapter Sierra Club, Oregon Environmental Council, Climate Solutions, and Oregon Physicians for Social Responsibility respectfully yet strongly urge the U.S. Environmental Protection Agency and the National Highway Traffic Safety Administration to withdraw the proposed Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule and reject EPA's proposal to withdraw the 2013 Clean Air Act preemption waiver for California's Advanced Clean Car standards.¹

I. Comments on the SAFE Rule's Proposal to Freeze Vehicle Greenhouse Gas Emissions Standards and Corporate Average Fuel Economy Standards

Carbon dioxide (CO₂) emissions from new vehicles contribute to global climate change that endangers the health and welfare of current and future generations. Recognizing the significant impacts that passenger vehicle use has on global climate change, the federal government, California, and major automakers came together to establish and implement uniform emissions

¹ The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks, 83 FED. REG. 42,986 (Aug. 24, 2018) [hereinafter SAFE NOPR].

and fuel economy standards for light-duty vehicles. For the last six years, automakers have been designing cars and light trucks that are more fuel-efficient and emit fewer emissions than previous model years, yet continue to meet stringent quality and safety standards.² Electric and hybrid-electric vehicle technologies have improved dramatically and increased in popularity during this period.³ Today, the American passenger vehicle fleet is cleaner and more efficient than ever before, and these gains and benefits will continue to increase over the next decade if the current federal greenhouse gas (GHG) emissions and fuel economy standards remain in effect.

All Americans benefit from clean air and a healthy climate. Americans also want to save money at the fuel pump. Yet despite these shared priorities and values, the U.S. Environmental Protection Agency (EPA) and the National Highway Traffic Safety Administration (NHTSA) have proposed to freeze GHG emissions standards and federal Corporate Average Fuel Economy (CAFE) standards for model years 2021–2026. The proposed Safer Affordable Fuel-Efficient Vehicles Rule (SAFE Rule) represents an unwarranted departure from the current federal standards that will increase costs to consumers, threaten public health, and dramatically increase the United States' contribution toward manmade climate change.

The proposed SAFE Rule will dramatically increase GHG emissions compared to the current standards. Compared to the current standards, EPA and NHTSA project that vehicles subject to the SAFE Rule's weakened standards will emit an additional 872 million metric tons of CO₂ over the vehicles' lifetimes⁴ and increase U.S. CO₂ emissions by **3.8 billion tons** by 2050.⁵ This proposal completely disregards the overwhelming international scientific consensus that humans must rapidly and dramatically reduce anthropogenic GHG emissions to prevent catastrophic climate change.

The proposed SAFE Rule will dramatically increase fuel consumption, which will offset most of the proposed rule's estimated cost savings. Under the current CAFE standards, model year 2025 passenger vehicles must achieve an average fuel economy of 46.7 miles per gallon.⁶ The proposed SAFE Rule reduces this CAFE standard to 37 miles per gallon.⁷ EPA estimates that American drivers will consume an additional **500,000 barrels of oil a day** under the

² According to EPA, model year 2016 vehicles had record-low CO₂ emissions and record-high fuel efficiencies. U.S. Environmental Protection Agency, *Highlights of CO₂ and Fuel Economy Trends*, <https://www.epa.gov/fuel-economy-trends/highlights-co2-and-fuel-economy-trends>.

³ For example, approximately 280,000 electric cars were sold in the U.S. in 2017, a 75% increase from the 160,000 electric cars sold in the U.S. in 2016. Claudia Assis, *Record Sales for Electric Cars are Being Overshadowed by Supply Risks*, MARKETWATCH.COM (Aug. 7, 2018), <https://www.marketwatch.com/story/record-sales-for-electric-cars-are-being-overshadowed-by-supply-risks-2018-08-06>.

⁴ NAT'L HIGHWAY TRANSPORTATION SAFETY ADMIN., PRELIMINARY REGULATORY IMPACT ASSESSMENT OF PROPOSED SAFE RULE at 1,464 (July 2018), <https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/ld-cafe-co2-nhtsa-2127-al76-epa-pria-180823.pdf> [hereinafter SAFE RIA].

⁵ Presentation by Bill Charmley, Director, EPA Assessment and Standards Division, Office of Transportation and Air Quality, to the Clean Air Act Advisory Committee, Sept. 26, 2018, https://www.epa.gov/sites/production/files/2018-09/documents/caaac_presentation_on_safe_nprm_sept_26_2018_final.pdf.

⁶ U.S. DEPT. OF TRANSPORTATION & U.S. ENV'T'L PROTECTION AGENCY, MY'S 2021–2026 CAFE PROPOSAL – BY THE NUMBERS (2018), <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100V26H.pdf>.

⁷ *Id.*

proposed SAFE Rule and consume an additional **152 billion gallons** of gasoline as compared to the existing standards.⁸ EPA and NHTSA estimate that consumers will be forced to pay approximately \$1,850 per vehicle in additional fuel costs,⁹ which will offset most of the projected cost savings associated with the proposed rule. If fuel prices increase over the next decade, the proposed rule could end up costing consumers far more than the existing standards.

The proposed SAFE Rule threatens auto industry jobs. The vehicle emissions and fuel economy standards currently in effect are projected to create thousands of jobs within the automotive industry. A 2018 analysis by Synapse Energy Economics estimated that the current standards would create 100,000 new jobs by 2025 and more than 250,000 new jobs by 2035.¹⁰ In contrast, EPA estimated that the automotive industry would **lose 64,000 jobs** under the proposed Safe Rule by model year 2029.¹¹

Fuel economy and vehicle safety have both increased over the past 40 years and will continue to increase under the current standards. EPA and NHTSA estimate that the proposed SAFE Rule will prevent an additional 12,000 vehicle-related fatalities through model year 2029.¹² However, this estimate is largely based on unsupported assumptions regarding vehicle safety. EPA and NHTSA assume that under the current standards, automakers will be forced to produce lighter vehicles that sacrifice vehicle safety.¹³ In reality, however, there is little to no correlation between fuel economy and vehicle safety. Over the past 40 years, per-capita vehicle fatalities decreased by 50%,¹⁴ while average fuel efficiency doubled.¹⁵

Contrary to EPA’s and NHTSA’s assumptions, weaker emissions standards and reductions in fuel economy will not lead to reductions in air pollution and increased vehicle safety. EPA and NHTSA claim the proposed SAFE rule will result in billions of dollars in “societal net benefits,” but these benefit calculations are largely based on the unsupported assumption that the proposed standards will deter people from driving.¹⁶ EPA and NHTSA argue that the proposed rule’s weakened fuel economy standards will force consumers to consume more fuel, and consumers will attempt to reduce their fuel costs by driving less. This is known as the “rebound effect.” By assuming that increased fuel consumption will cause consumers to drive less, EPA and NHTSA estimate that the proposed rule will reduce air pollution and reduce traffic accidents and associated fatalities.¹⁷ However, the government’s own data shows that fuel costs have little

⁸ SAFE RIA, *supra* note 4, at 1,465.

⁹ Presentation by Bill Charmley, *supra* note 5.

¹⁰ Ali Allison, Jamie Hall, & Frank Ackerman, PhD, Cleaner Cars and Job Creation: Macroeconomic Impacts of Federal and State Vehicle Standards (2018), <http://www.synapse-energy.com/sites/default/files/Cleaner-Cars-and%20Job-Creation-17-072.pdf>.

¹¹ Presentation by Bill Charmley, *supra* note 5.

¹² U.S. Dept. of Transportation & U.S. Env’t Protection Agency, MYs 2021–2026 CAFE Proposal – By the Numbers (2018), <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockkey=P100V26H.pdf>.

¹³ SAFE NOPR, *supra* note 1, at 42,991.

¹⁴ Insurance Inst. for Highway Safety, *General Statistics: Fatality Facts*, <https://www.iihs.org/iihs/topics/t/general-statistics/fatalityfacts/overview-of-fatality-facts>.

¹⁵ Pew, *Driving to 54.5 MPG* (2011), <https://www.pewtrusts.org/en/research-and-analysis/factsheets/2011/04/20/driving-to-545-mpg-the-history-of-fuel-economy>.

¹⁶ SAFE NOPR, *supra* note 1, at 42,996.

¹⁷ *Id.*

impact on driving trends.¹⁸ Most drivers have no feasible transportation alternatives to car travel and do not have the luxury of staying home from work or school to save money on gas. Because the proposed rule will likely have little to no impact on vehicles miles traveled, EPA and NHTSA should remove its assumptions regarding the impacts of the “rebound effect” and recalculate the proposed rule’s estimated societal costs and benefits.

EPA placed undue and unwarranted emphasis on industry costs and consumer preferences in determining that the GHG standards are no longer “appropriate” under the Clean Air Act. In January 2017, EPA issued its mid-term review of the GHG standards, in which EPA determined that the tailpipe GHG standards for model years 2022–2025 remained “appropriate” under the Clean Air Act.¹⁹ Two months later, President Trump directed EPA to repeat the mid-term review to determine whether the GHG standards needed to be weakened to “protect the economic viability of the U.S. automotive industry.”²⁰ EPA subsequently concluded that the current standards are too stringent and therefore no longer appropriate.²¹ To support this determination, EPA considered factors such as consumer preferences and compliance costs, giving “particular consideration” to the costs to automakers.²² In the preamble to the proposed SAFE Rule, EPA noted that consumers care more about vehicle “infotainment” systems than they care about fuel economy.²³ However, the primary purpose of the Clean Air Act’s vehicle emissions standards provisions is to protect public health and welfare. Section 202(a) of the Clean Air Act directs EPA to consider the availability of emissions control technologies and associated compliance costs when establishing appropriate phase-in periods for vehicle emissions standards.²⁴ These considerations enable EPA to establish phase-in periods for new emissions standards that provide automakers with sufficient lead-time to develop compliant technologies. However, the CAA does not authorize EPA to weaken or indefinitely freeze existing emissions standards due to industry costs or consumer preferences.²⁵ EPA therefore has no justifiable basis under CAA section 202(a) to indefinitely freeze the current tailpipe GHG standards. EPA also lacks a reasonable justification for extending the phase-in period for the current standards, because compliant technologies currently exist and are already commercially available.²⁶ Moreover, given the growing public concern surrounding climate change and the increasing popularity of low- and zero-emissions vehicles,²⁷ it seems likely that many consumers

¹⁸ U.S. Energy Info. Admin., *Gasoline Prices Tend to Have Little Effect on Demand for Car Travel* (Dec. 15, 2014), <https://www.eia.gov/todayinenergy/detail.php?id=19191>.

¹⁹ U.S. ENV’T L PROTECTION AGENCY, FINAL DETERMINATION ON THE APPROPRIATENESS OF THE MODEL YEAR 2022–2025 LIGHT-DUTY VEHICLE GREENHOUSE GAS EMISSIONS STANDARDS UNDER THE MIDTERM EVALUATION, docket no. EPA-420-R-17-001 (Jan. 2017), <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100QQ91.pdf>.

²⁰ SAFE NOPR, *supra* note 1, at 42,987.

²¹ *Id.* at 43,231.

²² *Id.* at 42,987.

²³ *Id.* at 42,993.

²⁴ 42 U.S.C. § 7521(a).

²⁵ *Id.*

²⁶ According to EPA data, 26% of model year 2017 vehicles met or exceeded the existing 2020 GHG emissions standards and 5% of model year 2017 vehicles could meet the 2025 emissions standards. U.S. Env’t Protection Agency, *Highlights of CO₂ and Fuel Economy Trends*, <https://www.epa.gov/fuel-economy-trends/highlights-co2-and-fuel-economy-trends>.

²⁷ Approximately 280,000 electric cars were sold in the U.S. in 2017, a 75% increase from the 160,000 electric cars sold in the U.S. in 2016. Claudia Assis, *Record Sales for Electric Cars are Being Overshadowed by Supply Risks*, MARKETWATCH.COM (Aug. 7, 2018), <https://www.marketwatch.com/story/record-sales-for-electric-cars-are-being-overshadowed-by-supply-risks-2018-08-06>.

would prefer to purchase fuel efficient, low-emissions vehicles over a less-efficient vehicles with a fancy infotainment centers.

II. Comments on the Proposal to Withdraw the 2013 Clean Air Act Preemption Waiver

EPA has no legally justifiable basis for withdrawing the waiver for California’s Advanced Clean Car program, Zero Emissions Vehicle (ZEV) mandate, and Greenhouse Gas (GHG) standards applicable to model years 2021–2025. In issuing the January 9, 2013 waiver, EPA correctly determined that a) California’s standards were at least as stringent as comparable federal standards, b) California’s standards were necessary to meet compelling and extraordinary conditions, and c) California’s standards and accompanying enforcement provisions were consistent with section 202(a) of the Clean Air Act.²⁸ Because these criteria were met, EPA lacked discretion to deny California a waiver under section 209(b) of the Clean Air Act and similarly lacks discretion to withdraw California’s waiver through the current proposed rule.

In promulgating section 209(b) of the Clean Air Act, Congress intended to give California broad discretion to adopt its own motor vehicle emissions standards and intentionally limited EPA’s authority to deny California a preemption waiver. After describing the Clean Air Act’s waiver provision as a “fundamental and unnecessary complication in the currently-existing regulatory framework,” EPA has proposed to eliminate California’s preemption waiver and establish “one national standard—a standard that is set exclusively by the Federal government.”²⁹ This declaration completely disregards the purpose of the Clean Air Act’s preemption waiver provision. In promulgating section 209(b), Congress recognized that California faced serious and unique air quality challenges and intentionally authorized California to adopt motor vehicle emissions standards that are more stringent than the federal standards.³⁰ Congress then intentionally mandated that EPA issue a preemption waiver for any California emissions standards that meet the criteria established under section 209(b).³¹ In 2013, EPA correctly determined that California’s standards complied with section 209(b)’s criteria and issued a waiver. EPA does not have authority under the Clean Air Act to withdraw the 2013 waiver through the current proposed rulemaking.

California’s Advanced Clean Car standards are necessary to meet compelling and extraordinary conditions resulting from air pollution. California’s Advanced Clean Car Program established emissions standards for several types of air pollutants, including GHGs, particulate matter, and nitrogen oxides.³² Due to California’s unique topography, geography, and climatic conditions, emissions of these air pollutants have significant adverse effects on public health and welfare and threaten the state’s natural ecosystems. For example, as a result of climate change, California faces unprecedented risks associated with droughts, wildfires, and sea level

²⁸ California State Motor Vehicle Pollution Control Standards; Notice of Decision Granting a Waiver of Clean Air Act Prevention, 78 FED. REG. 2,112 (Jan. 9, 2013).

²⁹ SAFE NOPR, *supra* note 1, at 42,999.

³⁰ California State Motor Vehicle Pollution Control Standards; Notice of Decision Granting a Waiver of Clean Air Act Prevention, 78 FED. REG. 2,112, 2,113 (Jan. 9, 2013).

³¹ 42 U.S.C. § 7543(b).

³² California State Motor Vehicle Pollution Control Standards; Notice of Decision Granting a Waiver of Clean Air Act Prevention, 78 FED. REG. 2,112, 2,114 (Jan. 9, 2013).

rise. California's GHG emissions standards are necessary to reduce the state's climate impacts. Similarly, California suffers from some of the worst localized air pollution in the country, and the low-emission vehicle standards established through the state's Advanced Clean Car Program directly target emissions that adversely impact air quality. EPA's June 9, 2009 and January 9, 2013 waivers correctly determined that California's emissions program as a whole is necessary to meet compelling and extraordinary conditions.³³ As EPA previously noted, Congress did not intend for section 209(b) to limit California's discretion to address certain types of air pollution (such as GHG emissions) or to prevent California from addressing air pollution problems that extend beyond the state's geographic borders.³⁴ California continues to face compelling and extraordinary conditions resulting from air pollution and climate change, and the state's Advanced Clean Car Program is necessary to address these conditions.

California's Advanced Clean Car standards are technologically feasible and are consistent with section 202(a) of the Clean Air Act. To justify its proposal to withdraw the 2013 waiver, EPA argues that California's standards are technologically infeasible because the standards do not provide automakers with sufficient lead-time to develop technologies that comply with the standards.³⁵ However, compliant vehicles have already been available for many years, both within and outside of California. Since 2010, more than 400,000 zero-emissions vehicles and plug-in hybrids have been registered in California.³⁶ Moreover, EPA's own data showed that 26% of model year 2017 vehicles met or exceeded the existing 2020 GHG emissions standards and 5% of model year 2017 vehicles could meet the 2025 emissions standards.³⁷ EPA's proposed waiver withdrawal therefore fails to demonstrate that California's standards are technologically infeasible.

Congress intended to give other states the option to adopt and enforce California's vehicle emissions standards, and EPA's proposal to prohibit other states from adopting California's GHG standards directly violates section 177 of the Clean Air Act. Section 177 expressly allows other states to adopt and enforce vehicle emissions standards that are identical to California's standards that have received a waiver from EPA.³⁸ Our home state of Oregon has chosen to adopt California's GHG emissions standards for passenger vehicles as authorized by CAA section 177.³⁹ Despite the text and purpose of section 177, EPA is proposing to prohibit other states from adopting California's tailpipe GHG emissions standards. To justify this proposal, EPA contends that section 177 only applies to standards designed to control emissions of criteria air pollutants in areas that are in nonattainment of the National Ambient Air Quality Standards.⁴⁰ This interpretation directly conflicts with the text of section 177, which only mandates that other states adopt standards that are identical to California's standards.⁴¹ Section

³³ *Id.* at 2,125, 2,126.

³⁴ *Id.* at 2,127.

³⁵ SAFE NOPR, *supra* note 1, at 43,240.

³⁶ CAL. AIR RESOURCES BD., THE ZERO EMISSION VEHICLE (ZEV) REGULATION, https://www.arb.ca.gov/msprog/zevprog/factsheets/zev_regulation_factsheet_082418.pdf.

³⁷ U.S. Environmental Protection Agency, *Highlights of CO₂ and Fuel Economy Trends*, <https://www.epa.gov/fuel-economy-trends/highlights-co2-and-fuel-economy-trends>.

³⁸ 42 U.S.C. § 7507.

³⁹ OR. ADMIN. R. § 340-257-0010 *et seq.*

⁴⁰ SAFE NOPR, *supra* note 1, at 43,240.

⁴¹ 42 U.S.C. § 7507.

177 does not impose any restrictions on the types of emissions standards other states may adopt or on the applicable pollutants covered by such standards.⁴² EPA's proposed interpretation is therefore arbitrary and capricious and infringes on states' rights to follow California's lead to address vehicle emissions.

The undersigned organizations are very concerned that the proposed SAFE Rule would adversely impact local air quality and impede Oregon's efforts to reduce transportation-related GHG emissions. We strongly urge EPA and NHTSA to withdraw the proposed SAFE Rule and maintain the existing tailpipe CO₂ emissions standards and CAFE standards for model years 2021–2026 passenger cars and light-duty trucks. The existing vehicle standards will reduce oil consumption and reduce GHG emissions without compromising vehicle safety, while helping to mitigate the U.S. transportation sector's climate impacts. To protect public health and welfare, it is imperative that EPA and NHTSA maintain the existing vehicle emissions and CAFE standards and withdraw the proposed SAFE Rule.

Sincerely,

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Mark Riskedahl,
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⁴² *Id.*