

September 11, 2019

VIA ELECTRONIC SUBMISSION

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**Attn: Docket No. NHTSA-2018-0067**  
**Docket No. NHTSA-2017-0069**  
**Docket No. EPA-HQ-OAR-2018-0283**

**Re: Supplemental Public Comment on Proposed Rule, “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)**

Environmental Defense Fund respectfully submits this supplemental comment in the above dockets because the information herein is “of central relevance to the rulemaking,”<sup>1</sup> *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) (“Proposed Rule”).

As we set forth in detailed legal comments, EPA’s proposed revocation of California’s waiver, NHTSA’s proposal to preempt the California standards, and the agencies’ weakening of the federal standards are unlawful.<sup>2</sup> However, notwithstanding the flawed justifications the agencies offered in support of that proposed action, statements from White House officials, including official statements by President Trump, provide evidence that the rationales for these actions offered in the Proposed Rule are pretextual. The motivations for these actions are political in nature, and dictated by an animus toward the State of California, now accompanied by a desire to

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<sup>1</sup> 42 U.S.C. § 7607(d)(4)(B)(i). See also id. § 7607(d)(7)(A) (providing that such material forms part of the administrative record for judicial review).

<sup>2</sup> See *Comments of Center for Biological Diversity, Conservation Law Foundation, Environmental Defense Fund, Earthjustice, Environmental Law and Policy Center, Natural Resources Defense Council, Public Citizen, Inc., Sierra Club, and Union of Concerned Scientists on the SAFE Rule*, Appendix A at 19 (Oct. 26, 2018), Docket ID EPA-HQ-OAR-2018-0283-5070.

retaliate against the State for working with automakers to continue making meaningful progress in reducing greenhouse gas emissions from cars and light trucks.<sup>3</sup>

The evidence includes the following:

1. A February 7, 2017 email from Trump transition team member David Schnare to then-acting EPA General Counsel Kevin Minoli describes a White House order to “take steps to reopen and reconsider the Corporate Average Fuel Economy standards for 2025 and notice of an intent to withdraw the associated California waiver.”<sup>4</sup> Mr. Schnare states in his email that “[White House aide Andrew] Bremberg has directed us to have a notice ready to go into the Federal Register as soon as next week.”<sup>5</sup> This direction from the White House came just weeks after President Trump took office, before former EPA Administrator Scott Pruitt’s announcement that he would reconsider EPA’s January 2017 Final Determination that the standards remained appropriate, and long before any reasoned assessment of the current standards and waiver could have been undertaken.
2. On July 25, 2019, following the announcement of California’s voluntary framework with four automakers, EPA spokesman Michael Abboud responded by reflexively rejecting any consideration of this clear evidence that more protective greenhouse gas standards are eminently reasonable, instead replying, “Today’s announcement from CARB has no impact on EPA’s regulation of greenhouse gas emissions under the Clean Air Act. This voluntary framework is a PR stunt that does nothing to further the one national standard that will provide certainty and relief for American consumers.”<sup>6</sup>
3. On August 20, 2019, citing three sources, the New York Times reported that President Trump “went so far as to propose scrapping his own rollback plan and keeping the Obama regulations, while still revoking California’s legal authority to set its own standards,” and that “[t]he president framed it as a way to retaliate against both California and the four automakers in California’s camp.”<sup>7</sup> The same article reported, according to sources, that the president is “enraged by California’s deal,” and “has demanded that his staff members step up the pace to complete his plan.”

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<sup>3</sup> See California Air Resources Board, *California and major automakers reach groundbreaking framework agreement on clean emission standards* (July 25, 2019), <https://ww2.arb.ca.gov/news/california-and-major-automakers-reach-groundbreaking-framework-agreement-clean-emission>.

<sup>4</sup> Email from David Schnare to Kevin Minoli (February 7, 2017), available at [http://blogs.edf.org/climate411/files/2018/07/Page-286-from-Production-Set-3-May-11\\_2018-MTE-FOIA.pdf](http://blogs.edf.org/climate411/files/2018/07/Page-286-from-Production-Set-3-May-11_2018-MTE-FOIA.pdf). This email was uncovered through a Freedom of Information Act request submitted by the Environmental Defense Fund on April 21, 2017 for records related to EPA’s Notice of Intention to Reconsider the Final Determination of the Mid-Term Evaluation of Greenhouse Gas Emissions Standards for Model Year 2022-2025 Light Duty Vehicles, Tracking Number EPA-HQ-2017-006421. (Attachment A)

<sup>5</sup> *Id.*

<sup>6</sup> See, e.g., David Shepardson, *Four automakers, California strike compromise on vehicle emissions*, Automotive News (July 25, 2019), <https://www.autonews.com/regulation-safety/four-automakers-california-strike-compromise-vehicle-emissions>. (Attachment B)

<sup>7</sup> Coral Davenport and Hiroko Tabuchi, *Trump’s Rollback of Auto Pollution Rules Shows Signs of Disarray* (August 20, 2019), available at <https://www.nytimes.com/2019/08/20/climate/trump-auto-emissions-rollback-disarray.html?action=click&module=Top%20Stories&pgtype=Homepage>. (Attachment C)

4. On August 21, 2019, in a series of tweets, President Trump attacked California and automakers for working together constructively:

My proposal to the politically correct Automobile Companies would lower the average price of a car to consumers by more than \$3000, while at the same time making the cars substantially safer. Engines would run smoother. Very little impact on the environment! Foolish executives!<sup>8</sup> The Legendary Henry Ford and Alfred P. Sloan, the Founders of Ford Motor Company and General Motors, are “rolling over” at the weakness of current car company executives willing to spend more money on a car that is not as safe or good, and cost \$3,000 more to consumers. Crazy!<sup>9</sup> Henry Ford would be very disappointed if he saw his modern-day descendants wanting to build a much more expensive car, that is far less safe and doesn’t work as well, because execs don’t want to fight California regulators. Car companies should know<sup>10</sup> that when this Administration’s alternative is no longer available, California will squeeze them to a point of business ruin. Only reason California is now talking to them is because the Feds are giving a far better alternative, which is much better for consumers!<sup>11</sup>

Statements made by the President through his official Twitter account are official policy statements.<sup>12</sup> With these tweets, among others,<sup>13</sup> the President reveals an animus toward California, and a profoundly unsound perception of the State’s legitimate policies and goals.

Regarding pretextual decision-making, the U.S. Supreme Court has recently made clear that “an explanation for agency action that is incongruent with what the record reveals about the agency’s

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<sup>8</sup> Donald Trump (@realDonaldTrump), Twitter (Aug. 21, 2019, 7:38 AM), <https://twitter.com/realDonaldTrump/status/1164169890917433346?s=20>. (Attachment D)

<sup>9</sup> Donald Trump (@realDonaldTrump), Twitter (Aug 21, 2019, 4:50 PM), <https://twitter.com/realDonaldTrump/status/1164308814759260161>. (Attachment E)

<sup>10</sup> Donald Trump (@realDonaldTrump), Twitter (Aug 21, 2019, 5:01 PM), <https://twitter.com/realDonaldTrump/status/1164311594081247233>. (Attachment F)

<sup>11</sup> Donald Trump (@realDonaldTrump), Twitter (Aug 21, 2019, 5:01 PM), <https://twitter.com/realDonaldTrump/status/1164311597587685376>. (Attachment F)

<sup>12</sup> See, e.g. *Trump v. Hawaii*, 138 S. Ct. 2392, 2417 (2018) (treating President Trump’s tweets as official statements of the President). See also *Int’l Refugee Assistance Project v. Trump*, 857 F.3d 554, 594 (4th Cir. 2017) (treating presidential tweets as appropriate records for judicial review).

<sup>13</sup> See, e.g., Miranda Green and Timothy Cama, *Trump attacks California over water, fire management*, The Hill (October 23, 2018), <https://thehill.com/policy/energy-environment/412811-trump-attacks-california-over-water-fire-management> (reporting that President Trump attacked California’s water practices and fire management, incorrectly attributing forest fires to state forest management, and threatening to withhold federal aid) (Attachment G); Donald Trump (@realDonaldTrump), Twitter (Nov. 10, 2018, 1:08 AM), <https://twitter.com/realdonaldtrump/status/1061168803218948096?lang=en> (incorrectly characterizing a deadly California wildfire as being the result of poor forest management) (Attachment H); Donald Trump (@realDonaldTrump), Twitter (Jan. 20, 2019, 6:35 AM), <https://twitter.com/realdonaldtrump/status/1086980606955794433?lang=en> (referring to San Francisco streets as “disgusting”) (Attachment I).

priorities and decisionmaking process” cannot satisfy the reasoned decision-making requirements of federal administrative law.<sup>14</sup> As a result, EPA and NHTSA must not finalize the Proposed Rule.

Please contact Alice Henderson if you have any questions regarding the concerns raised in this letter.

Sincerely,

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<sup>14</sup> *Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2575 (2019).