

States of California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Rhode Island, Vermont, Washington, and Wisconsin; the Commonwealths of Massachusetts and Pennsylvania; the District of Columbia; the Cities and Counties of Denver and San Francisco; and the Cities of Los Angeles, New York, Oakland, and San Jose

October 26, 2021

Submitted via www.regulations.gov

Dr. Steven Cliff, Ph.D., Acting Administrator
National Highway Traffic Safety Administration
Docket ID No. NHTSA-2021-0053
Docket Management Facility, M-30
U.S. Department of Transportation
West Building, Ground Floor, Rm. W12-140
1200 New Jersey Avenue SE
Washington, DC 20590

Re: Comments on the Proposed Corporate Average Fuel Economy Standards for Model Years 2024-2026 Passenger Cars and Light Trucks, Docket ID Nos. NHTSA-2021-0053 & NHTSA-2021-0054

Dear Acting Administrator Cliff:

The undersigned States and Cities respectfully submit these comments, including the attachments hereto, in response to the National Highway Traffic Safety Administration's (NHTSA) notice of proposed rulemaking: Corporate Average Fuel Economy Standards for Model Years 2024-2026 Passenger Cars and Light Trucks, 86 Fed. Reg. 49,602 (Sept. 3, 2021) (Proposal).¹ We welcome NHTSA's reconsideration of its Safer Affordable Fuel-Efficient Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks (SAFE 2) (85 Fed. Reg. 24,174 (Apr. 30, 2020)), and we strongly support increasing the stringency of NHTSA's corporate average fuel economy (CAFE) standards.

The Energy Policy and Conservation Act (EPCA) requires NHTSA to establish "maximum feasible" fuel economy standards. 49 U.S.C. § 32902(f). Congress enacted this statute to ensure that NHTSA take action to conserve fuel. NHTSA's SAFE 2

¹ The States and Cities are submitting these comments along with more detailed comments (detailed comments) attached as Appendix A, an index attached as Appendix B, and reference materials attached as Appendix C. All materials are being submitted via www.regulations.gov.

standards are unlawful because, among other things, they contravene this mandate. In SAFE 2, NHTSA unlawfully interpreted and applied the statutory factors articulated in EPCA, improperly balanced those factors, included non-statutory factors in its balancing, and ultimately failed to set standards at the “maximum feasible” level EPCA requires. This analysis resulted in standards that increase vehicle ownership costs, increase the emissions of GHGs and other air pollutants, and result in the consumption of more oil.

In the present proposal NHTSA presents three “action” alternatives, all of which represent fuel economy standards for model years 2024 to 2026 that are more stringent than the SAFE 2 standards. 86 Fed. Reg. at 49,744-49,756. As discussed at length in the detailed comments attached hereto as an appendix, NHTSA has properly returned, in this proposal, to its historic interpretation of the statutory factors required under EPCA: “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.” 49 U.S.C. § 32902(f). NHTSA also correctly “acknowledges the priority of energy conservation,” in determining “maximum feasible” standards. 86 Fed. Reg. at 49,793-49,796. The agency finds that Alternative 2, its preferred alternative, will result in fuel savings greater than the increased cost of more fuel efficient vehicles, will protect consumers from price shocks, and will decrease consumption of oil which will have positive impacts on the national balance of payments, U.S. foreign policy, and the environment. *Id.* NHTSA also correctly concludes that the technology needed to meet the preferred alternative already exists, and those standards are therefore achievable. 86 Fed. Reg. at 49,792, 49,804, 49,810. And it clearly establishes that the proposed standards are well within the financial capability of the industry and are therefore “economically practicable.”

NHTSA has thus properly recognized that it is departing and should depart from the conclusions reached one year ago in the SAFE 2 rulemaking. The SAFE 2 standards were never justified, as they rested on an error-ridden analysis and unlawful interpretations of Congress’s commands. Our States and Cities agree that a new analysis and a rebalancing—based on a return to a proper understanding of the statute—is appropriate. By adopting more stringent standards, NHTSA will save drivers money on gas, promote stable fuel prices, reduce pollution, and help counter the climate crisis that is already wreaking havoc on our States and Cities.

The preferred alternative standards—Alternative 2—are technologically feasible, economically practicable, and effectuate the purpose of EPCA to conserve energy. Based on that and the analysis presented in the Notice of Proposed Rulemaking, “maximum feasible” standards must be at least as stringent as Alternative 2. However, NHTSA should consider, based on the full record before it, whether even more stringent standards—up to and including Alternative 3—are “maximum feasible.” As laid out in the detailed comments, NHTSA’s analysis should be updated in a number of key respects, which would aid in that consideration, including: (1) adjusting the measure of rebound driving from fifteen to ten percent; (2) revising in the value of new vehicle demand elasticity from -1.0 to -0.34; (3) correcting to the per-mile marginal cost of congestion; (4) adopting the fatality rate per mile as the best measure of the safety of driving; (5) removing unsupported restrictions on the availability of high compression ratio technology in compliance modeling; and (6) changing the calculation of the social

cost of greenhouse gases. We urge NHTSA to make those further improvements to its analysis and to finalize the most stringent standards it reasonably can—in other words, the “maximum feasible” standards.

Finally, these States and Cities agree that if EPA reinstates the waiver for California’s Zero Emission Vehicle (ZEV) and GHG standards before NHTSA takes final action on this proposal, including these standards in NHTSA’s No Action baseline is reasonable. 86 Fed. Reg. at 49,793. It is plainly reasonable for an agency to include the preexisting legal obligations of regulated parties in No Action baselines, since these baselines aim to capture, as accurately as possible, how regulated parties would behave but for the regulatory changes under consideration.

For the reasons explained in more detail in the attached detailed comments, we urge NHTSA to expeditiously strengthen CAFE standards for model years 2024 to 2026 and to adopt the most stringent standards it reasonably deems technologically feasible and economically practicable.

If we can provide additional information that would be helpful in considering these comments, or if you wish to discuss any issue raised above with us, please do not hesitate to contact the undersigned.

Sincerely,

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