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Office of Transportation, Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

National Highway Traffic Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590
(submitted via regulations.gov)

Re: Request for Comment on The Safer Affordable Fuel-Efficient Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks

To Whom it May Concern:

On behalf of the Energy Strategy Coalition,¹ we are submitting these comments in response to the request for comment on the Environmental Protection Agency's (EPA's) and National Highway Traffic Safety Administration's (NHTSA's) (together, the Agencies) proposal to amend certain existing Corporate Average Fuel Economy (CAFE) and greenhouse gas (GHG) emissions standards for passenger cars and light trucks and establish new standards, covering model years (MY) 2021 through 2026 ("proposed standards" in the "proposed rule"). These standards propose to: 1) amend existing standards finalized on October 15, 2012 by EPA establishing GHG standards for MYs 2017 through 2025; and 2) final fuel economy standards, set by NHTSA for MYs 2017 through 2021 and augural standards for MYs 2022 through 2025 ("existing standards").²

Our companies operate and manage fossil-fuel, nuclear, hydropower, solar, wind, and other renewable generation as well as electricity and natural gas transmission and distribution systems across the United States. We are committed to reducing GHG emissions and other air pollution consistent with federal, state, and regional programs and goals. We continue to support a consistent national program that sets meaningfully GHG emissions standards for transportation and provides a long-term investment signal for clean energy technologies and infrastructure. Based on our experience, we can make investments in clean energy while improving electric system efficiency, increasing reliability, and maintaining quality of service to our customers.

¹ This letter is submitted on behalf of the following electric power companies and electric utilities: Austin Energy; Consolidated Edison Company of New York, Inc.; Exelon's six utilities: Atlantic City Electric, Baltimore Gas & Electric (BG&E), Commonwealth Edison (ComEd), Delmarva Power, PECO, and Pepco; Los Angeles Department of Water and Power (LADWP); National Grid; New York Power Authority (NYPA); Seattle City Light; and Sacramento Municipal Utility District (SMUD).

² 2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards, 77 Fed. Reg. 62,624 (Oct. 15, 2012), available at <https://www.gpo.gov/fdsys/pkg/FR-2012-10-15/pdf/2012-21972.pdf>.

However, achieving GHG emission and air pollution goals requires sustained action across many sectors of the economy, including the transportation sector.³ As of 2016, transportation was the largest source of GHG emissions in the nation, accounting for 1,854 million tons of GHG (carbon dioxide equivalent), or 28.5 percent of national GHG emissions.⁴ Meaningful standards on light-duty vehicles that lead to decreasing emissions over MY 2021 through 2026, and beyond, are an appropriate, essential, and widely supported component of national efforts to reduce emissions. Such standards are critical to provide regulatory certainty and send a long-term investment signal to promote low-carbon, low-emitting transportation technologies necessary to achieve emissions reductions.

EPA Must Address Greenhouse Gas Emissions from Motor Vehicles, and the Proposed Rule Fails To Do So.

Courts have held that EPA has a requirement to address GHG emissions from motor vehicles.⁵ The D.C. Circuit explained in *Coalition for Responsible Regulation, Inc. v. EPA* that “in the Endangerment Finding, EPA determined that motor-vehicle emissions contribute to greenhouse gas emissions that, in turn, endanger public health and welfare; the agency therefore was in no position to ‘avoid taking further action,’ by deferring promulgation of the Tailpipe Rule.”⁶ The Court found that EPA’s interpretation of its responsibilities under the Clean Air Act to set emission standards for cars and light trucks as “unambiguously correct.” Additionally, D.C. Circuit judges who are on the *en banc* panel that heard oral argument in the cases concerning the Clean Power Plan reaffirmed this obligation when the Court partially granted EPA’s request for abeyance of the litigation, reminding the agency that “in 2009, EPA promulgated an endangerment finding, which we have sustained... That finding triggered an affirmative statutory obligation to regulate greenhouse gases.”⁷ Given the transportation sector’s significant contribution to GHG emissions, EPA should not take any actions counter to this statutory obligation and the emission reduction opportunities from motor vehicles.

The Supreme Court has recognized that that the Clean Air Act creates an obligation to regulate GHGs from transportation, and that that obligation is independent of the Department of Transportation’s. The Energy Policy and Conservation Act (EPCA) requires NHTSA, a department of the Department of Transportation (DOT), to set CAFE standards based on “the maximum feasible average fuel economy level that the Secretary decides the manufacturers can achieve in that model year,” considering the factors of “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.”⁸ While EPCA prohibits states or political subdivisions from adopting or enforcing fuel economy standards for automobiles covered by federal standards, the Supreme Court has

³ U.S. Global Change Research Program, *U.S. National Climate Assessment* (2014), available at <http://nca2014.globalchange.gov/report/response-strategies/mitigation#narrative-page-17162>; White House Council on Environmental Quality, *U.S. Mid-century Strategy for Deep Decarbonization* (November 2016), available at https://unfccc.int/files/focus/long-term_strategies/application/pdf/us_mid_century_strategy.pdf; Intergovernmental Panel on Climate Change, *Climate Change 2014, Synthesis Report: Summary for Policymakers* (2014), available at https://www.ipcc.ch/pdf/assessment-report/ar5/syr/AR5_SYR_FINAL_SPM.pdf.

⁴ U.S. EPA, *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2016* (2018), at 2-25 (Table 2-10), available at https://www.epa.gov/sites/production/files/2018-01/documents/2018_complete_report.pdf

⁵ *Coalition for Responsible Regulation, Inc. v. EPA*, 684 F.3d 102 (D.C. Cir. 2012); *Massachusetts v. Environmental Protection Agency*, 549 U.S. 497 (2007).

⁶ *Coalition for Responsible Regulation, Inc. v. EPA*, 684 F.3d 102 (D.C. Cir. 2012).

⁷ Order, *West Virginia v. EPA*, No. 15-1363 (D.C. Cir. Aug. 8, 2017) ECF No. 1687838 (Tatel, Cir. J., and Millett, Cir. J., concurring in the order granting further abeyance).

⁸ Energy Policy and Conservation Act §502, 49 U.S.C §32902 (1975).

recognized that that the Clean Air Act “creates a statutory obligation wholly independent of DOT’s mandate to promote energy efficiency.”⁹

EPA and NHTSA’s proposed standards do not reduce GHG emissions or improve the fuel economy of motor vehicles. Instead, they would roll back the requirement that emissions be reduced beyond the levels achieved in MY 2020.¹⁰ EPA’s projections in the proposed rule estimate that fuel consumption, and the associated emissions of carbon dioxide (CO₂), per year would increase over the 2012 standards by 4 percent per year by 2025 and 9.1 percent by 2035 compared to the existing standards.¹¹ These standards fail to meet EPA’s statutory requirement to address emissions of GHGs from motor vehicles and would abdicate EPA’s duty to regulate such emissions. Rather than retreat from any meaningful regulation of such emissions and the imperative to address the endangerment they pose, EPA should continue to fulfill the Clean Air Act’s requirement and build on the progress across the electric and transportation sectors to reduce GHG emissions.

Furthermore, EPA is obligated to regulate GHG emissions from motor vehicles, independent of NHTSA’s requirement to set CAFE standards. We agree with EPA that, due to the fact that fuel economy and GHG standards both apply to vehicles, it may be reasonable for EPA and NHTSA to coordinate in setting these standards. However, EPA has an independent obligation under the Clean Air Act to address the endangerment of public health and welfare created by GHG emissions (including but not limited to CO₂), irrespective of NHTSA’s establishment of CAFE standards under EPCA. Because EPA’s statutory obligation to address emissions is distinct, its regulations are as well. In the past, as EPA notes in the proposed rule, GHG standards and CAFE standards have in fact differed in the credits offered to certain technologies and in the scope of the regulatory coverage due to the two different statutes. For example, EPA has historically incentivized deployment of electric vehicles (EVs) because of the potential for that technology to dramatically reduce vehicle GHG emissions going forward. EPA’s standards are also set in part based on the potential to reduce the leakage of air conditioning refrigerants that are potent GHGs and to replace those refrigerants with less potent alternatives. While NHTSA’s regulation of fuel economy and EPA’s regulation of GHGs can be harmonized to facilitate efficient manufacturer compliance, the former does not displace or supplant EPA’s obligations to promulgate the later.

When Congress enacted EPCA, it clearly intended and provided for NHTSA to promulgate and implement strong fuel economy standards that would interact with EPA vehicle emission standards. It expressly noted that EPA had the continued authority to determine “[e]missions standards under section 202 of the Clean Air Act, and emissions standards applicable by reason of section 209(b) of such Act.”¹² It also required EPA to conduct fuel economy tests that should, “to the extent practicable...be conducted in conjunction with emissions tests conducted under section 206 of the Clean Air Act.”¹³ Congress clearly intended that EPA continue to implement emissions standards under the Clean Air Act and that nothing in EPCA’s preemption of state or local fuel economy standards removed or reduced EPA’s and California’s authority to regulate emissions under section 209. The

⁹ 549 U.S. 497, 533 (2007).

¹⁰ The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks, 83 Fed. Reg. 42,986, 42,989, Table 1-3 (Aug. 24, 2018).

¹¹ 83 Fed. Reg. 42,327

¹² Energy Policy and Conservation Act, §502(d)(3)(D).

¹³ Energy Policy and Conservation Act, §502(d)(1).

Supreme Court’s decision in *Massachusetts v. EPA* and the decisions of two district courts affirm this with respect to both EPA’s and California’s authority and EPA’s obligation to establish standards for GHG emissions.¹⁴

The Clean Air Act standards address GHG emissions from vehicles while also considering upstream emissions from electricity generation of electric and partially-electric vehicles.¹⁵ However, the Agencies have suggested that vehicle GHG standards are fundamentally equivalent to fuel economy standards because the predominant means of reducing GHG emissions from vehicles is to reduce fuel consumption by improving fuel economy. While that may be true at this moment in time, climate change mitigation projections consistently indicate that alternative technologies such as EVs and biofueled vehicles will be central to reducing GHG emission from vehicles. With such technologies, upstream emissions associated with the production of electricity and biofuels will be the focus of vehicle emission standards as tailpipe emissions increasingly become zero or carbon neutral. These technologies are by statute excluded from NHTSA’s consideration in setting maximum feasible fuel economy standards. The fact that there is now an overlap between technologies that can improve fuel economy and reduce GHG emissions does not support a finding of preemption when that overlap is incomplete today and will continue to diverge going forward.

The fundamental distinction between the Clean Air Act’s vehicle emission standards and the NHTSA fuel economy standards is further underscored by the regulatory effect on the power sector under the Clean Air Act. The standards look to accelerate the deployment of EVs because of the critical role of electrification in decarbonizing the transportation sector. Because upstream emissions will “count” against compliance with the emission standards, the value of EVs toward meeting the standards will depend on the carbon intensity of the electric grid—but will be irrelevant to the pursuit of fuel economy.

These Clean Air Act and EPCA statutory provisions are distinct, and in enacting EPCA, Congress gave no suggestion that it intended to preempt the federal and state vehicle emission standards under the Clean Air Act that address vehicle emissions endangering public health and welfare.

There Are a Wide Range of Technologies to Reduce Emissions

The Clean Air Act requires EPA to address the emissions of any “air pollutant from any...new motor vehicles or new motor vehicle engines, which in his judgement cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare.”¹⁶ Congress “expected [EPA] to press for the development and application of improved technology rather than be limited by that which exists today.”¹⁷ Similarly, EPCA requires NHTSA to determine the maximum feasible stringency by considering four statutory factors of technological feasibility.

As enumerated in EPA’s Draft Technical Assessment Report (TAR), published July 2016, and EPA’s Final Determination on the Appropriateness of the Model Year 2022-2025 Light Duty Vehicle Standards, published

¹⁴ See, *Green Mountain Chrysler Plymouth Dodge Jeep v. Crombie*, 508 F.Supp.2d 295 (D. Vt. 2007); *Central Valley Chrysler-Jeep, Inc. v. Goldstene*, 529 F. Supp.2d 1151, 1174 (E.D. Cal. 2007) (“just as the Massachusetts Court held EPA's duty to regulate greenhouse gas emissions under the Clean Air Act overlaps but does not conflict with DOT's duty to set fuel efficiency standards under EPCA, so too California's effort to regulate greenhouse gas emissions through the waiver of preemption provisions of the Clean Air Act overlaps, but does not conflict with DOT's activities under EPCA.”).

¹⁵ See, e.g., 77 Fed. Reg. 62,811.

¹⁶ Clean Air Act §202(a), 42 U.S.C. §7521.

¹⁷ *NRDC v. EPA*, 655 F.2d 318, 328 (D.C. Cir. 1981) (quotation omitted) (citing S.Rep.No.1196, 91st Cong., 2d Sess. 24 (1970); H.R.Rep.No.294, 95th Cong., 1st Sess. 273 (1977)).

January 2017, there exist a wide range of technologies that are feasible and currently being applied that can reduce GHG emissions from light-duty vehicles. This analysis found that the technologies projected to be used to comply with the existing standards were continuing to be adopted and expand in the market, in some cases beyond levels assumed in determining that the standards, promulgated in 2012, were reasonable and technologically feasible.

The Agencies’ prior analyses demonstrated the availability of multiple compliance pathways relying on conventional internal combustion engine technologies. Recent industry statements indicate that they are already moving beyond conventional technologies to expand the deployment of EVs, which will facilitate compliance further. For example, General Motors CEO Mary Barra has stated, “we believe in an all electric future;” the company will launch 20 new battery EVs globally by 2023.¹⁸ Daimler Group, owner of Mercedes and the SmartCar brands, has said that it is “all systems go” on an electric future, bringing more than ten different battery EVs to market by 2022 and electrifying the entire Mercedes-Benz portfolio, leading to more than 50 electric options for customers overall.¹⁹ Volkswagen Group is going to make everything electric “in some shape or form” by 2030.²⁰ Ford is investing \$11 billion to bring 40 total EVs to market by 2022, including seven to the U.S. market.²¹ Finally, Volvo Cars has announced that every Volvo it launches from 2019 will have an electric motor, in its words “marking the historic end of cars that only have an internal combustion engine (ICE) and placing electrification at the core of its future business.”²² As such, on technological grounds, it remains appropriate and reasonable to support and maintain meaningful, decreasing standards, rather than freezing standards as proposed under the proposed rule.

EPA also enumerated the strength of the market for technologies to reduce emissions in previous rulemaking documents. For example, in the Draft TAR, EPA noted that under the existing standards, “each manufacturer could chose a pathway based on many factors, but most manufacturers are beginning to widely use the technologies outlined in the 2012 [final rulemaking].”²³ In addition, many of the technologies assumed in the 2012 rulemaking were already available on vehicles for sale in 2012, and EPA noted that “meeting future standards would require manufacturers to adopt the technologies on a more widespread basis across their fleets. This is, in fact, exactly what is happening” as of 2016.²⁴ These advancing and increasingly broadly deployed technologies (some approaching 100 percent penetration in the market) that reduce GHG emissions include gasoline direct injection engines, turbocharged engines, stop start systems, and improved transmission

¹⁸ Maya Berry, We believe in an all-electric future, here’s what we’re doing today to get there (Sept. 5, 2018), <https://www.linkedin.com/pulse/we-believe-all-electric-future-heres-what-were-doing-today-mary-barra/>

¹⁹ Daimler, Plans for more than ten different all-electric vehicles by 2022: All systems are go, <https://media.daimler.com/marsMediaSite/en/instance/ko/Plans-for-more-than-ten-different-all-electric-vehicles-by-2022-All-systems-are-go.xhtml?oid=29779739>

²⁰ Zac Estrada, VW to electrify entire 300-car lineup by 2030, The Verge (Sep. 11, 2017), <https://www.theverge.com/2017/9/11/16289292/vw-electrify-entire-300-car-lineup-2030>

²¹ Ford Motor Company, Twitter (Apr. 28, 2018), <https://twitter.com/Ford/status/990323423783149570>; Keith Naughton et al., Ford Goes ‘All In’ on Electric Cars, Bloomberg (Jan. 14, 2018), <https://www.bloomberg.com/news/articles/2018-01-14/ford-doubling-electric-vehicle-spending-to-11-billion-by-2022>.

²² Volvo Car Group, Volvo Cars to go all electric (Jul. 5, 2017), <https://www.media.volvocars.com/global/en-gb/media/pressreleases/210058/volvo-cars-to-go-all-electric>.

²³ U.S. Environmental Protection Agency, National Highway Traffic Safety Administration, and California Air Resources Board, Draft Technical Assessment Report: Midterm Evaluation of Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards for Model Years 2022-2025 (July 2016) 3-11, <https://nepis.epa.gov/Exe/ZyPDF.cgi/P100OXEO.PDF?Dockey=P100OXEO.PDF> [hereinafter TAR].

²⁴ TAR 3-12.

technologies. Further, EPA noted that technological development had continued beyond what the 2012 rulemaking had projected, due to the “automotive industry [] innovating and bringing new technology to market at a brisk pace” and that due to these developments “neither the GHG nor the CAFE analysis reflect all of the latest and emerging technology” since the 2012 rulemaking.²⁵ The analysis released in support of the rollback proposal fails to examine these emerging technologies, or others that have emerged since the TAR, in violation of the technology-forcing mandate of section 202.

In its Final Determination based on this and other assessments, EPA noted that in total, “updated information also shows that some of the technologies we did anticipate in 2012 are costing less, and are more effective, than we anticipated at that time.”²⁶ In fact, EPA states, since the 2012 final rule, “vehicle sales have been strong... auto manufacturers have over-complied with the GHG program...and technologies that reduce GHG emissions are entering the market at rapid rates.”²⁷ The current proposal does not explain the agencies’ departure from these recent factual findings.

In addition to these technologies, our companies have particular experience and involvement in the expansion of the EV market, which continues to experience strong growth throughout our service areas. EV markets are still growing, but market projections and trends, policies throughout our states, and statements from automaker executives make it clear that strong growth is a far more reasonable assumption than not.

Our companies and the states in which we operate have also made commitments to additional investments to support EVs and this growing market. National Grid, for example, in addition to significant company- and service-area wide initiatives to support EVs, recently received approval from Massachusetts and Rhode Island regulators to invest nearly \$25 million in charging infrastructure and other programs to support existing and new EV drivers and to help meet state goals. Austin Energy provides up to \$1,200 rebates to support customers to installing EV charging stations in their homes and up to \$4,000 for chargers at workplaces. PG&E has been approved and has started investing more than \$380 million in infrastructure and programs to support light and heavy duty EVs. Seattle City Light has been approved to invest \$3 million in installing, owning and operating 20 public fast charging stations across Seattle and lower the costs of home charger installations for customers. Los Angeles Department of Water and Power will invest nearly \$150 million in the coming years on a variety of programs, including charging installation and rebates, electrification of ports, buses, and other heavy-duty vehicles, and education and awareness building for customers. Exelon's utilities have filed EV programs in Maryland, New Jersey, Delaware, and the District of Columbia totaling over \$60 million of investment and 5,400 publicly accessible charging stations. These programs support a wide variety of programs, including charging infrastructure investments and educational programs that support the expansion of the EV market. These investments reflect the commitment of our companies, as many others, and the competitive and technological conclusion that EVs will continue to grow and play a critical part in the U.S. transportations sector.

We appreciate the Agencies’ efforts to design a rule that allows for flexibility of companies to deploy the most feasible and cost-effective technologies to comply with GHG standards and other environmental regulations. However, the proposed rule does not appropriately reflect the wide range of technologies available to reduce GHG emissions nor the growth and potential of these technologies in the near future, due to clear market trends as

²⁵ TAR 5-1.

²⁶ U.S. Environmental Protection Agency, Final Determination on the Appropriateness of the Model Year 2022-2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation (Jan. 2018) 4, <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockkey=P100QQ91.pdf> [hereinafter Final Determination].

²⁷ Final Determination 13

well as ongoing investments and policy choices across the U.S. The Agencies must use rigorous, well-tested methodologies and analytical tools to ensure that standards are set taking into account this important market information.

Cleaner, More Efficient Vehicles Provide Significant Benefits to Customers

Our companies have made significant investments in reducing emissions, both criteria and GHG, from our power plants and operations. The benefits of these investments are reflected in industry-wide trends of reducing emissions and the deployment of clean generating technologies. As enumerated in detail in the proposed rule, these emissions can have significant health effects, and our customers have benefited from the resulting air quality improvements. Similarly, our customers benefit from more efficient and lower emitting vehicles. However, the proposed standards would forego these benefits.

Furthermore, the proposal obscures important emissions effects of the proposed standards in focusing its discussion on the aggregation of upstream (i.e., fuel production, refining, and distribution) and downstream (tailpipe) emissions impacts. The proposal states that the proposed modifications to “light duty vehicle CAFE scenarios would result in reductions of NO_x, VOC, and CO, and increases in PM_{2.5} and SO_x.” However, it is important to emphasize that *all* upstream criteria pollutants emissions are projected to increase due to “greater fuel consumption than the baseline” causing “upstream emissions associated with fuel refining and distribution increase.”²⁸ Because the impact of criteria pollutants is largely local, these upstream emissions increases have the potential to have a significant impact on air quality around refineries, distribution centers, and other upstream sources. They could also hamper our companies’ efforts to reduce local pollution as required under national ambient air quality standards (NAAQS), Regional Haze, and Cross State Air Pollution Regulations, leading to increased customer costs and health impacts from poor air quality. These emission impacts of the proposed rule in comparison to the existing standards should be carefully evaluated.

In addition, EVs, in particular, can provide significant benefits to consumers in addition to health impacts of lower emissions. Switching to EVs in the light-duty fleet results in lower operating costs for consumers, reduced GHG emissions, and lower costs for utility customers. An analysis of eight states (representing just under 22 percent of the national light-duty vehicle market) shows that by just 2030, net annual benefits per EV will range from around \$150 to \$275, for a total of \$3.11 billion in cumulative benefits. Around \$720 million of this accrues to EV drivers in lower maintenance and fuel costs, while \$910 million of net benefit is achieved through reduced GHG emissions.²⁹ These benefits would be even larger if applied to all 50 states. Again, without a strong signal for investment in EV technology and other emissions reducing measures, the proposed standards undermine the achievement of these significant benefits.

The Proposed Standards and Proposed Waiver Revocation Harm Businesses

As companies and utilities in the electric industry, we understand the importance of business and market certainty to our operations. Given the lead time necessary for investment in research and development and eventual deployment of new technologies, we need regulatory certainty that allows us to anticipate future challenges and opportunities and invest in solutions to meet them. In 2012, EPA, working with NHTSA and the California Air Resources Board, sought to do just that—by aligning standards and creating consistency across the three agencies and by creating standards that extend over the investment horizon. Adjusting these standards, as proposed, would

²⁸ 83 Fed. Reg. 43,330-43,332

²⁹ M.J. Bradley & Associates, Electric Vehicle Cost-Benefit Analyses (Feb. 14, 2017), <https://mjbradley.com/sites/default/files/NE%20PEV%208%20state%20Summary%2009nov17.pdf>

create company and investor challenges for those that have longer investment timeframes and who are already planning for compliance with, and supporting the compliance of, the existing standards.

Revoking California's waiver, and the section 177 state standards, would further disrupt state air pollution planning and industry investments. The waiver process is similar to many other Clean Air Act processes whereby EPA issues operating permits to specific sources once applications are appropriately submitted and the permits trigger certain requirements. For example, our industry will make investments in control technologies for electric generating units based on federal and state requirements and our resulting air permits. In both cases, sources and states rely on these approvals to make investments and implement plans and policies to reduce emissions. Given the considerable reliance on these approvals, it is inappropriate to interpret the Clean Air Act to allow for such approvals to be revoked assuming the approved permit or plan is being implemented according to its terms. It is similarly inappropriate to interpret the waiver authority to allow EPA to revoke a waiver once it has been granted, particularly in the notable absence of any statutory language granting such an authority.

As EPA concluded when the waiver was granted, California's standards fulfill the requirements for the receipt of a waiver.³⁰ First, they meet the requirement that the state impose standards "at least as protective of public health and welfare as applicable federal standards." Second, they were designed to meet compelling and extraordinary circumstances, including air quality concerns resulting from mobile source emissions. In the publication granting a waiver regarding California's standards in 2009, EPA described how the burden of proof based on the Clean Air Act is on opponents of a waiver to demonstrate that the conditions of granting a waiver have *not* been met. EPA determined that the "opponents of the waiver have not met their burden in demonstrating why evidence such as the impacts of climate change on existing ozone conditions in California along with the cumulative impacts identified by proponents of the waiver (e.g., impacts on snow melt and water resources and agricultural water supply, wildfires, coastal habitats, ecosystems, etc.) is not compelling and extraordinary."³¹ This remains true. Third, they are consistent with the requirements of Clean Air Act section 202(a), including, as discussed above, being technologically feasible and give "appropriate consideration to cost, energy, and safety factors."³²

Additionally, other states have the clear authority to adopt standards identical to the California standards under section 177.³³ First, EPA's legal reasoning that states' ability to only adopt California standards that are designed to control criteria pollutants and address NAAQS nonattainment is not supported by the statutory language. Further, while the California standards do in fact help the states address nonattainment concerns, the statute's use of the term "*any* model year standard" (emphasis added) must be read to make clear that states have the express authority to adopt *any* California standards for which California has received a waiver.

In conclusion, reducing emissions from the transportation sector will be critical to meeting our states' mid- and long-term criteria and GHG emissions reductions obligations. The existing standards helped to create a process to cost-effectively make adjustments and investments to set states on this path. In contrast, the proposed standards would delay this action, making it more likely that future investments and changes would have to occur on a

³⁰ See 42 U.S.C. § 7543(b).

³¹ California State Motor Vehicle Pollution Control Standards; Notice of Decision Granting a Waiver of Clean Air Act Preemption for California's 2009 and Subsequent Model Year Greenhouse Gas Emission Standards for New Motor Vehicles, 74 Fed. Reg. 32,744 (July 8, 2009), available at: <https://www.gpo.gov/fdsys/pkg/FR-2009-07-08/pdf/E9-15943.pdf>.

³² 42 U.S.C. §7521(a).

³³ 42 U.S.C. §7507.

compressed timeline, increasing costs and closing off options for some of the most efficient and cost-effective reductions strategies.

We appreciate the opportunity to submit this letter and these comments on EPA and NHTSA's proposed rule. We continue to urge the Agencies to maintain the standards as they were established in the 2012 final rule and validated in the January 2017 Final Determination in order to ensure meaningful GHG reductions from light-duty vehicles. We are committed to reducing GHG emissions and prepared to support continued market penetration of low-carbon transportation technology such as EVs.

If you have any questions, please do not hesitate to contact me or Carrie Jenks at cjenks@mjbbradley.com.

Sincerely,

A handwritten signature in black ink that reads "Michael Bradley". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Michael Bradley

President

M.J. Bradley & Associates LLC