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The Honorable Jonathan Morrison
Administrator
National Highway Traffic Safety Administration
1200 New Jersey Avenue, SE
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Submitted via https://www.regulations.gov

Re: The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule III for Model Years 2022 to 2031 Passenger Cars and Light Trucks, 90 Fed. Reg. 56438 (Dec. 5, 2025) (Docket No. NHTSA-2025-0491)

Dear Administrator Morrison:

On behalf of the Commonwealth of Kentucky, the State of West Virginia, and the 22 undersigned States, we appreciate the chance to comment on the National Highway Traffic Safety Administration's Proposed Rule, *The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule III for Model Years 2022 to 2031 Passenger Cars and Light Trucks*, 90 Fed. Reg. 56,438 (Dec. 5, 2025) (Proposed Standards).

Recent years saw NHTSA abandon its statutory mission in favor of President Biden's whole-of-government climate agenda, which included an unlawful and ill-advised demand for the electrification of American automobiles. That approach resulted in overly stringent fuel-economy standards meant to force manufacturers to phase out conventional internal-combustion engine vehicles and replace them with electric ones, well before market conditions demanded that shift. But electrification is *not* part of NHTSA's standard-setting mission—the relevant statute forbids consideration of the fuel economy of alternative-fuel vehicles in several ways. And even if those old standards could have passed statutory muster, unaffordable electric vehicles (EVs) are not what American consumers demand from automakers.

Put plainly, President Biden's fuel-economy standards stray badly from both NHTSA's enabling statute and the on-the-ground economic realities for automakers

and consumers. So the Proposed Standards offer a much-needed "recalibration." 90 Fed. Reg. at 56,444. They represent one of several regulatory steps towards restoring NHTSA to its core mission: making the cars and trucks that Americans depend on safer and more energy efficient. The undersigned States wholeheartedly support finalizing the Proposed Standards.

BACKGROUND

In the Energy Policy and Conservation Act of 1975 (EPCA), Congress directed the Secretary of Transportation to set corporate average fuel-economy (CAFE) standards for "automobiles" at the "maximum feasible" level for each model year. 49 U.S.C. § 32902(b)(1)(A), (b)(2)(B). The Secretary has delegated that task to NHTSA. 49 C.F.R. § 1.95(a). NHTSA traditionally undertook this role jointly with the Environmental Protection Agency (EPA), which issued separate greenhouse gas (GHG) emissions standards. *See* 85 Fed. Reg. 24,174 (April 30, 2020); 77 Fed. Reg. 62,624 (Oct. 15, 2012). EPA, however, proposed to chart its own course in 2021, decoupling the CAFE and GHG standards. *See* 86 Fed. Reg. 43,726, 43,755 (Aug. 10, 2021). EPA now intends "to rescind all [GHG] emissions standards for light-duty, medium-duty, and heavy-duty vehicles and engines." *See* 90 Fed. Reg. 36,288, 36,289 (Aug. 1, 2025). So NHTSA will be the only federal agency setting fuel standards for the auto industry, either directly or indirectly.

NHTSA's determination of the maximum feasible fuel-economy standards is guided by mandatory statutory factors. 49 U.S.C. § 32902(f). Yet the EPCA's text places tight limits on how NHTSA considers those factors. NHTSA "may not consider the fuel economy of dedicated automobiles," *id.* § 32902(h)(1), a category including EVs, *id.* § 32901(a)(1)(J), (a)(8). It "shall consider dual fueled automobiles"—like plug-in hybrids—"to be operated only on gasoline or diesel fuel." *Id.* 32902(h)(2). And it cannot consider "the trading, transferring, or availability of [CAFE] credits under section 32903." *Id.* § 32902(h)(3).

Put together, these restrictions mean that fuel-economy standards "must be feasible and practicable for gas-powered vehicles without regard to any reliance on non-gas-powered alternatives or compliance credits." NHTSA, *Resetting the Corporate Average Fuel Economy Program*, 90 Fed. Reg. 24,518, 24,523 (June 11, 2025) (Interpretive Rule).[1] So "NHTSA cannot, in *any* respect and at *any* point in the process, consider these elements when setting fuel economy standards. *Id.* at 24,524 (emphasis added).

[1] The Interpretive Rule is subject to a pending challenge in which several States, including Kentucky and West Virgina, have intervened in support of NHTSA. *See* Motion to Intervene, *In re: MCP No. 197*, No. 25-8019 (1st Cir. July 22, 2025). That challenge is in abeyance pending this rulemaking.

Under President Biden, NHTSA's standard-setting attempt strayed from those mandatory constraints. *See* NHTSA, *Corporate Average Fuel Economy Standards for Passenger Cars and Light Trucks for Model Years 2027 and Beyond and Fuel Efficiency Standards for Heav- Duty Pickup Trucks and Vans for Model Years 2030 and Beyond*, 89 Fed. Reg. 52,540 (June 24, 2024) (2024 Standards).[2] This regulatory misadventure was rooted in President Biden's now-rescinded directive that NHTSA and EPA set fuel-economy and GHG emission standards designed to electrify the fleet of cars and light trucks available to Americans. Executive Order 14037, 86 Fed. Reg. 43,583 (Aug. 10., 2021), *rescinded by* Executive Order 14148, 90 Fed. Reg. 8,237 (Jan. 28, 2025).

For NHTSA, satisfying President Biden's unrealistic goal meant including EVs in its analysis. The Biden Administration's mandates required NHTSA to model "application in the model years either before or after the standard-setting years." Interpretative Rule, 90 Fed. Reg. at 24,522. NHTSA also assumed in its modeling "that manufacturers would apply dedicated alternative fueled vehicle technology in the absence of CAFE standards if that technology recouped fuel savings for the consumer within 30 months." *Id.* And NHTSA "assumed significant numbers of EVs would continue to be produced regardless of the standards set by the agency" based on then-existing state and federal policies. *Id.* NHTSA likewise considered plug-in hybrid technology "outside of the standard-setting years or for reasons other than in direct response to NHTSA's CAFE standards." *Id.* at 24,523. And NHTSA considered manufacturers' use of compliance credits in years "prior to the standard-setting years." *Id.* That gambit intentionally set gas- and diesel-powered vehicles up for failure against EVs—the fleet thus far "is unable to comply" with the strict standards, with "noncompliance increas[ing] in each successive model year." 90 Fed. Reg. at 56,593. Each step of this analysis was flatly inconsistent with the EPCA.

On top of the mistaken reading of the EPCA, complying with President Biden's directive meant NHTSA had to reach the wrong conclusion about automakers and American consumers. For multiple automakers, NHTSA called noncompliance with the 2024 Standards "almost inevitable," predicting $774 million in penalties for passenger-car manufacturers and over $1 billion in penalties for light-truck manufacturers. *See* 2024 Standards, 89 Fed. Reg. at 52,793–94; 52,807–08; 52,862; 52,864. And the averages achieved by the 2024 Standards "ultimately depend[ed] on manufacturers' and consumers' responses to standards, technology developments, economic conditions, fuel prices, and other factors." *Id.* at 52,549. Those factors were,

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[2] A 26-State Coalition challenged the 2024 Standards alongside several groups of petitioners. *See* Corrected Initial Joint Brief of Industry and State Petitioners, *In re: MCP No. 189 Corporate Average Fuel Economy*, No. 24-7001 (6th Cir. Nov. 20, 2024). That challenge is in abeyance pending this rulemaking.

at best, rife with uncertainty when the 2024 Standards were finalized—especially as to consumers' responses. *See id.* at 52,598 (acknowledging that "the amount of technology that consumers are willing to pay for is subject to much debate").

Given these problems—and many others—President Trump quickly rescinded President Biden's unlawful effort to force electrification. *See* Executive Order 14148, *supra*. He also directed the Executive Branch to "remov[e] regulatory barriers to motor vehicle access," "ensur[e] a level playing field for consumer choice in vehicles," and consider eliminating "ill-conceived government-imposed market distortions that favor EVs over other technologies and effectively mandate their purchase by individuals, private businesses, and government entities alike by rendering other types of vehicles unaffordable." Executive Order 14154, 90 Fed. Reg. 8,353 (Jan. 29, 2025). Secretary of Transportation Duffy promptly acted on that order and directed NHTSA to bring the fuel-economy standards back in line with the EPCA and Executive Branch policy.

That directive first led NHTSA to "affirm[]" that it "cannot consider the section 32902(h) factors for *any purpose* and *at any point* in the process of setting fuel economy standards." Interpretive Rule, 90 Fed. Reg. at 24,519 (emphasis added). With that proper statutory foundation, NHTSA announced its intention to finalize the Proposed Standards. They propose to increase fuel-economy standards by 0.5% per year through model year 2026, followed by 0.25% per year through model year 2031. 90 Fed. Reg. at 56,445. The proposal is rooted in the considerations required by EPCA, with proper attention to what automakers can produce and what American consumers want to purchase. These common-sense changes are much needed, and the undersigned States support their finalization.

DISCUSSION

NHTSA's assessment of the basic problem with President Biden's fuel-economy standards is spot-on: the fuel-economy standards program, which is "intended to push manufacturers to improve fuel economy while preserving their ability to design and produce vehicles that meet market demands," "has spun off its axis and requires recalibration." 90 Fed. Reg. at 56,444.

Rather than promote fuel efficiency as Congress intended, NHTSA's recent fuel-economy standards pursued the unrealistic and unlawful electrification-above-all approach demanded by President Biden's whole-of-government climate agenda. Those ends were misguided because NHTSA departed from the driving purpose of EPCA's fuel-economy standards program *and* from the reality that American consumer demand for electric vehicles had not kept pace with the tremendous market shift that meeting President Biden's electrification goals would require. What's more,

the means were unlawful because NHTSA considered expressly forbidden factors at key steps in its analysis.

The Proposed Standards cure those serious defects, so the undersigned States support NHTSA's effort in full. Below, we offer two reasons that NHTSA should finalize the Proposed Standards without delay.

I. The Proposed Standards stay in their lane by respecting the constraints set by Congress.

When an agency acts, it must do so consistent with the directions given by Congress. So "when Congress directs an agency to consider only certain factors in reaching an administrative decision, the agency is not free to trespass beyond the bounds of its statutory authority by taking other factors into account." *Murray Energy Corp. v. EPA*, 936 F.3d 597, 623 (D.C. Cir. 2019) (citation omitted). Put another way, "[e]nabling legislation is generally not an open book to which the agency may add pages and change the plot line." *West Virginia v. EPA*, 597 U.S. 697, 723 (2022) (cleaned up). That's especially true when "Congress has *forbidden* an agency from taking an action." *Judge Rotenberg Educ. Ctr., Inc. v. FDA*, 3 F.4th 390, 399 (D.C. Cir. 2021) (emphasis added).

The EPCA is an enabling statute that tightly limits what the agency may consider. It directs the agency to take specific actions—setting (and amending) fleetwide fuel-economy standards to "the maximum feasible average fuel economy level" for each model year. 49 U.S.C. § 32902(a), (c). To determine maximum feasibility, NHTSA *must* consider (1) "technological feasibility," (2) "economic practicability," (3) "the effect of other motor vehicle standards of the Government on fuel economy," and (4) "the need of the United States to conserve energy." *Id.* § 32902(f). But it "*may not* consider" the fuel economy of dedicated vehicles (like EVs) or the trading, transferring, or availability of CAFE credits; and it must consider dual-fueled vehicles (like plug-in hybrids) to be gas- or diesel-powered vehicles. *Id.* § 32902(h) (emphasis added). Another off-limits consideration is state-level standards, to the extent that they might be relevant. In other words, only the "standards of the Government," i.e., the federal government, are relevant. *Id.* § 32902(f).

The interpretation of those limits adopted in the Proposed Standards is the correct one. *See* 90 Fed. Reg. at 56,588 (describing the limits in 49 U.S.C. § 32902(h)); *id.* at 56,586–87 (explaining how the EPCA's preemption provisions and applications support limiting consideration to federal fuel-economy standards). These limits bar consideration of the impermissible topics "in any respect and at any point in the process of setting fuel economy standards." Interpretive Rule, 90 Fed. Reg. at 24,519. That's because they apply when NHTSA is "carrying out subsections (c), (f), and (g),"

49 U.S.C. § 32902(h), and NHTSA is doing so every time it "decid[es] maximum feasible average fuel economy under" Section 32902 or decides whether to amend standards, *id.* § 32902(c), (f), (g). Put another way, those limits apply to every exercise of NHTSA's standard-setting authority under Section 32902—without exceptions for decision points along the way. This "statutory prohibition was clear at the time of enactment and has remained clear." 90 Fed. Reg. at 56,588.

Limiting the real-world facts that an agency may consider is nothing new. *See, e.g.*, 20 U.S.C. § 7273(d)(3)(B); 42 U.S.C. § 300gg-111(c)(5)(D); 49 U.S.C. § 41734(h). The simple fact is that Congress, in its judgment, may limit the universe of what is relevant to the tasks it assigns to agencies. It had good reasons for doing so here. Congress created incentives for automakers to introduce alternative-fuel vehicles in their fleets, and it established Section 32902(h)'s guardrails "to ensure that manufacturers taking advantage of the incentives offered" didn't "find [the agency] including those incentive increases in the manufacturer's 'maximum fuel economy capability.'" Interpretive Rule, 90 Fed. Reg. at 24,522 (citation omitted). That balance—between incentivizing new technology and increasing fuel economy for gas-powered vehicles—is for Congress, not NHTSA, to strike.

It follows that NHTSA was very wrong to substitute its own preferences in its standard-setting decisions under President Biden. By considering EV-related "policies and commitments . . . when developing the regulatory reference baseline and considering years after the standard-setting time frame," 2024 Standards, 89 Fed. Reg. at 52,834, NHTSA charted a course at odds with the EPCA by substituting its policy judgment for Congress's. Those forbidden inputs no doubt matter to the feasibility determination in subsection 32902(f), so the limits in subsection 32902(h) apply with full force. NHTSA cannot "circumvent specific statutory limits on its actions by relying on separate, general rulemaking authority." *Air All. Hous. v. EPA*, 906 F.3d 1049, 1061 (D.C. Cir. 2018). The "specific statutory directive[s]" that "define[] the relevant functions of" NHTSA in setting fuel-economy standards must control. *See Am. Petroleum Inst. v. EPA*, 52 F.3d 1113, 1119 (D.C. Cir. 1995).

It's worth noting that, before President Biden tasked it with fulfilling his whole-of-government climate agenda, NHTSA once acknowledged these statutory limits. *See* 71 Fed. Reg. 17,566, 17,582 (Apr. 6, 2006) (recognizing that its "baseline projections cannot reflect" the "improve[d] . . . fuel economy performance" of "alternative fuel vehicles" because "section 32902(h) prohibits us from taking such benefits into consideration."). The agency is right to do so again.

Indeed, the undersigned States welcome NHTSA's return to the "best reading" of the EPCA. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024). Even without "'power to control'" the ultimate question, NHTSA's reading carries "particular 'power to persuade.'" *Id.* at 402 (citation omitted). That NHTSA now

acknowledges the statutory limits of its standard-setting authority—an acknowledgment that necessarily cedes back some discretionary authority it once claimed—is refreshing and is the very essence of good government. We fully support the Proposed Standards as a faithful application of the EPCA.

II. The Proposed Standards help make vehicles safer and more affordable.

Bringing fuel-economy standards back in line with the EPCA is reason enough to finalize the Proposed Standards. But the Proposed Standards also restore the fuel-economy program to its primary mission: ensuring that Americans are driving safe, efficient, and affordable vehicles.

The key here is how NHTSA weighed "technological feasibility" and "economic practicability" when deciding the appropriate fuel-economy standards. 49 U.S.C. § 32902(f). It is well settled that those factors "are each broad enough to encompass" NHTSA's consideration of consumer demand in making its decision. *Ctr. for Auto Safety v. NHTSA*, 793 F.2d 1322, 1338 (D.C. Cir. 1986). Consumer demand cannot be NHTSA's be-all-end-all, *id.* at 1340, but the EPCA nowhere prohibits its appropriate weight in the "balancing process specifically committed to the agency by Congress," *id.* at 1341. Same for NHTSA's "consideration of the likelihood of economic hardship within its assessment of 'economic practicability.'" *Pub. Citizen v. NHTSA*, 848 F.2d 256, 264 (D.C. Cir. 1988).

In the Proposed Standards, NHTSA's economic-practicability determination depends on "expected availability of capital to make investments in new technologies and production facilities; manufacturers' expected ability to sell vehicles with certain technologies;" and "likely consumer choices," among other factors. 90 Fed. Reg. at 56,585. These factors go hand-in-hand: automakers can only sell technologies that they are capable of developing and producing. And at the end of the day, "consumers prefer vehicles with fuel economy technologies added only if fuel savings exceed the technology costs within a fairly short period." *Id.* at 56,515.

NHTSA badly misjudged economic practicability in its 2024 Standards. It downplayed how "changes in per-vehicle costs" might "affect vehicle sales and thus employment," and it somehow labeled "concern about alleged lack of consumer interest" in EVs as "not relevant here." 89 Fed. Reg. at 52,813–14. But the concern was real—only 29% of Americans would "very or somewhat seriously consider purchasing" an EV in May 2024, a number that grew only to 33% by May 2025. *See Americans' Interest in Purchasing Electric and Hybrid Vehicles*, Pew Research Center (June 5, 2025), https://perma.cc/ZE9P-J4VF. Even that low figure might be soft, given the difficult (and still unanswered) questions about financing, infrastructure for both transportation and charging, and supply-chain challenges.

What's more, the long-term consequences of forced electrification (and its associated increased costs) would be serious for everyday Americans. NHTSA recently posited that "those most harmed" by recent fuel-economy standards "are lower-income Americans who cannot afford to buy an EV or to pay more for a gas-powered vehicle." Interpretive Rule, 90 Fed. Reg. at 24,525. Its fulsome analysis proved that statement right.

As NHTSA identified, for "nearly two decades," a "constant increase in standards has been accompanied by a rise in both the costs of new vehicles and the age of the on-road fleet." 90 Fed. Reg. at 56,504. Those increases would have continued apace with increasingly stringent fuel-economy standards. In that scenario, American consumers would have fewer and more-expensive options for their transportation needs. If the gas-powered vehicles "most popular with American families would be unsustainable for manufacturers to produce under the existing standards," consumers of new vehicles are left with EV alternatives. *Id.* at 56,594. But because 'it is unlikely that an EV alternative could provide the same performance, utility, or recreational value at a comparable price (or at all)," *id.*, the *real* alternative for most consumers would be used vehicles. That means "driv[ing] or purchas[ing] older, less safely used vehicles." *Id.* at 56,586. So rather than safety and conservation, Americans would be stuck with less fuel-efficient and more dangerous vehicles.

Recognizing the better path, NHTSA in the Proposed Standards "considered how manufacturers might weigh offering and improving vehicle attributes that consumers want against how manufacturers may change different attributes in response to fuel economy standards." *Id.* at 56,595.[3] In an uncertain environment, driven in part by its previous efforts to force electrification, NHTSA rightly wants "standards at a level where all manufacturers can respond to market demand, consider affordability, and consider safety." *Id.* at 56,596. That leaves manufacturers "free to invest in the production of EVs in response to market demand" but not "compelled to do so by NHTSA's fuel economy standards." *Id.* at 56,594. And consumers will have more opportunities to purchase what they "would prefer," with incentives rightly aligned. *Id.* at 56,598.

Finally, the Proposed Standards allow manufacturers to make better vehicles at a lower price. The Proposed Standards accomplish their cost goals by "reduc[ing] the up-front costs that consumers must pay for new vehicles due to [fuel-economy]

[3] In doing so, NHTSA is right to use a model with "social cost of carbon" set at zero and without "monetized estimates of changes in so-called [GHG] emissions in the central analysis." 90 Fed. Reg. at 56,457; 56,515.

standards." *Id.* at 56,603. On average, NHTSA predicts over $900 in technology-cost reductions by model year 2031. *Id.* It also expects automakers to gain more "ability to improve vehicle attributes that they were not able to improve given the former overly aggressive imperative to improve vehicle fuel economy." *Id.* And, perhaps most importantly, "getting Americans into newer, safer vehicles is beneficial for safety." *Id.* at 56,607. Across the board, American drivers are better off under the Proposed Standards. The undersigned States endorse NHTSA's return to common-sense consideration of technological feasibility and economic practicability.

CONCLUSION

The Proposed Standards bring NHTSA back in line with its congressional mandate to set fuel economy standards that promote improving fuel economy within market demands, not to force electrification on automakers and American consumers. Finalizing the Proposed Standards is one of many important steps NHTSA should take to correct the misguided policies it once adopted to further President Biden's whole-of-government climate agenda.

Sincerely,

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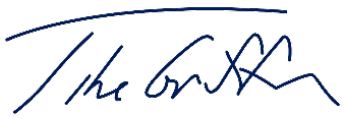

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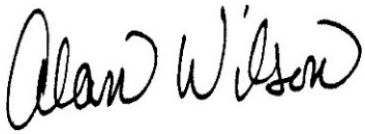

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