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Joint Comments of Center for Biological Diversity, Earthjustice, Environmental Law and Policy Center, Natural Resources Defense Council, Public Citizen, Inc., Safe Climate Campaign, Sierra Club, Southern Environmental Law Center, and Union of Concerned Scientists Re: The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Year 2021-2026 Passenger Cars and Light Trucks: Draft Environmental Impact Statement

The Center for Biological Diversity, Earthjustice, Environmental Law and Policy Center, Natural Resources Defense Council, Public Citizen, Inc., Safe Climate Campaign, Sierra Club, Southern Environmental Law Center, and Union of Concerned Scientists (“Joint Commenters”) hereby submit these comments on the Draft Environmental Impact Statement (“DEIS”) prepared by the National Highway Safety Administration (“NHTSA”) regarding the proposed rulemaking, the Safer Affordable Fuel-Efficient (SAFE) Vehicle Rule for Model Year 2021-2026 Passenger Cars and Light Trucks (the “Proposal”), issued jointly with the Environmental Protection Agency (“EPA”). The Joint Commenters will also submit additional joint and separate comments to this docket on other subjects relating to the Proposal.

As the Joint Commenters state in comments to be submitted to the Proposal’s docket, NHTSA-2018-0067; EPA-HG-OAR-2018-0283, the proposed rulemaking suffers from fundamental legal and technical errors. In direct violation of its Congressional mandate to conserve energy and set the maximum feasible fuel efficiency standards for the nation’s passenger and light truck vehicle fleet, NHTSA proposes to weaken its own augural standards for model year (“MY”) 2022-2025 vehicles (the “Augural Standards”), in addition to the standard for MY2021 currently in effect. The Proposal would result in increased fuel consumption and increased emissions of greenhouse gases and other pollutants. The DEIS, if finalized as proposed, would be in direct conflict with the National Environmental Policy Act (“NEPA”) and the Energy Policy and Conservation Act (“EPCA”), as amended by the Energy Independence and Security Act (“EISA”), and would violate the Administrative Procedure Act. On behalf of our millions of members, we ask that

NHTSA withdraw the DEIS and prepare a new DEIS that is consistent with applicable laws and make it available for a new round of public comments.

In summary, the DEIS should be withdrawn because, among other flaws, it:

- fails to consider a reasonable range of alternatives, including alternatives that increase the stringency of the Augural Standards;
- is based on faulty modeling and unsupported assumptions designed to reach a predetermined outcome;
- unlawfully declares that energy conservation is no longer necessary, a pronouncement neither legally permissible nor factually accurate;
- unlawfully attempts to nullify, by administrative fiat, Congress' intent to conserve energy and set maximally feasible fuel efficiency standards as required by EPCA and EISA;
- fails to take a hard look at the direct, indirect, and cumulative impacts of the Proposal and its alternative;
- fails to disclose or discuss any rationale for proposing to vastly increase greenhouse gas emissions from the nation's largest source while acknowledging that without steep reductions of greenhouse gas emissions, temperatures will increase beyond any tolerable range by 2100; and
- fails to consider reasonably available mitigation measures.

The DEIS and the accompanying Preliminary Regulatory Impact Analysis comprise thousands of pages containing numerous errors and shortcomings. Yet, in the NPRM, NHTSA states that "comments must not be more than 15 pages long." The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks, 83 Fed. Reg. 42,986, 43,470 (Aug. 24, 2018). In support of this statement, NHTSA cites 49 C.F.R § 553.21 (which also states that attachments may be appended to comments without regard to the 15-page limit). We note, however, that no page limitation applies to the "[e]xternal review of draft environmental impact statements" according to 49 C.F.R § 520.25. Thus, to the extent that NHTSA seeks to apply a 15-page limit to the DEIS comments, such limit would be unlawful on its face and as applied to this case as inconsistent with NEPA itself and basic principles of administrative law. However, in an abundance of caution, we are structuring our detailed comments as an attachment. All references cited therein will be uploaded to EPA's and NHTSA's dockets on the Proposal and the DEIS (Docket ID Nos. EPA-HQ-OAR-2018-0283, NHTSA-2018-0067, The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks; Proposed Rule).

We note that, even though NHTSA extended the comment deadline by 33 days, the time permitted under the extension is insufficient to fully analyze the DEIS. Joint Commenters and numerous other parties, *including* the auto industry, requested NHTSA to extend the DEIS comment deadline by 60 days after the deadline for comments set forth when the Proposal was published in the Federal Register. The many parties seeking an extension did so because the Proposal and the DEIS rely heavily on numerous technical changes to the Volpe model that cannot be fully understood and analyzed in the mere 63 days NHTSA has now allowed for comment. Moreover, NHTSA has yet to provide crucial evidence requested by the California Air Resources Board that is necessary to understand the agency's Proposal and its effect on the

environment. NHTSA has incorporated entirely new assumptions and modules into the Volpe model, including, among other things, a novel scrappage module purporting to document the relationship between the price of new vehicles and the retirement of used vehicles, a dynamic driving many of the justifications for the dramatic decrease in vehicle fuel efficiency NHTSA proposes. NHTSA's failure to allow sufficient time for the public to analyze and comment on the DEIS and its interrelated but opaque technical changes and new assumptions has denied the public the opportunity to fully understand and meaningfully comment on the environmental impacts of the Proposal, in violation of NEPA's fundamental requirements: "Federal agencies shall to the fullest extent possible ... [e]ncourage and facilitate public involvement in decisions which affect the quality of the human environment" and "[m]ake diligent efforts to involve the public in preparing and implementing their NEPA procedures." 40 C.F.R. §§ 1500.2(d), 1506.6(a).

For this and the other reasons discussed in the attachment, the DEIS is unlawful, arbitrary and capricious. The agencies must withdraw the DEIS, issue a new draft EIS responsive to the comments submitted, and allow additional comment on the new document.

Sincerely,

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