

Comments of States of California, Connecticut, Delaware, Hawaii, Iowa, Illinois, Maine, Maryland, Minnesota, North Carolina, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Washington, the Commonwealths of Massachusetts, Pennsylvania, and Virginia, the District of Columbia, and the Cities of Los Angeles, New York, Oakland, San Francisco, and San Jose

October 26, 2018

Heidi King
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Docket Management Facility, M-30
U.S. Department of Transportation
West Building, Ground Floor, Room W12-140
1200 New Jersey Avenue, SE
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Attention: Docket No. NHTSA-2017-0069

**Re: Comments on the Draft Environmental Impact Statement for the
“SAFE” Vehicles Rule for Model Year 2021-2026 Passenger Cars and
Light Trucks
Docket ID: NHTSA-2017-0069**

Dear Deputy Administrator King:

The undersigned Attorneys General, the California Air Resources Board (CARB), and municipalities (collectively the States and Cities) respectfully submit these comments, including the Detailed NEPA Comments attached hereto,¹ on the Draft Environmental Impact Statement (DEIS) prepared by the National Highway Traffic Safety Administration (NHTSA) for the Safer Affordable Fuel-Efficient (SAFE) Vehicles

¹ Citing 49 § C.F.R 553.21, NHTSA states that “comments must not be more than 15 pages long.” 83 Fed. Reg. at 43,470. No page limitation applies to the “external review of draft environmental impact statements” (49 C.F.R § 520.25); however, to the extent that NHTSA seeks to apply a 15-page limit to the DEIS comments, that limit does not apply to the Detailed NEPA Comments and Appendices attached hereto (see 49 C.F.R § 553.21). The Appendices submitted are: (i) an Appendix of Climate Impacts (States’ Appx. A); (ii) an Appendix of ZEV Penetration and Infrastructure Beyond California (States’ Appx. B); and (iii) an Appendix of Reference Materials (States’ Appx. C). The materials are also filed with the States and Cities’ comments on the Proposal.

Rule for Model Year 2021-2026 Passenger Cars and Light Trucks, 83 Fed. Reg. 42,986 (Aug. 24, 2018), (the “Proposed Rollback”), Docket No. NHTSA-2017-0069.

As a threshold matter, the DEIS is procedurally deficient under the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4347 in two respects. *First*, even with a thirty-day extension of the comment period, NHTSA has not provided sufficient time for review of and public comment on the DEIS, which expressly relies upon and incorporates by reference the 515-page text of the Proposed Rollback in the *Federal Register* and its 1,600-page preliminary regulatory impact analysis. For example, the DEIS concedes that the economic assumptions embedded in the Corporate Average Fuel Economy (CAFE) model “play a significant role in determining the impacts on fuel consumption, changes in emissions of criteria and toxic air pollutants and GHGs, and resulting economic costs and benefits of alternative standards.”² Partly by necessity, but mostly due to NHTSA’s design choices, the analysis presented in the DEIS is complex. It involves cross modeling of many societal, economic, safety, and scientific factors. To evaluate the validity and accuracy of NHTSA’s analysis requires substantially more time than NHTSA has allowed.³ *Second*, and relatedly, NHTSA has waited until three days before the close of the comment period to release some, but not all, of the missing technical studies and data requested by CARB.⁴ Either of these two deficiencies renders the DEIS legally inadequate. See States and Cities’ Detailed NEPA Comments, Section I.

In the time the States and Cities have had to evaluate the DEIS and without the missing requested information, we have nonetheless identified multiple substantive flaws that render the document legally insufficient. To begin, 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 to 2025 vehicles (the “augural standards”), in addition to the standard for model year 2021 currently in effect. The Proposed Rollback would result in increased fuel consumption and increased emissions of air pollutants. Because NHTSA has ignored its statutory mandate under the Energy Policy and Conservation Act (EPCA) and interpreted EPCA and the factors to be considered in a way that eviscerates the energy conservation purposes of EPCA, the DEIS’s definition of the purpose and need for the Proposed Rollback is fatally flawed. See States and Cities’ Detailed NEPA Comments, Section II.A.

Further, NHTSA relies on a technical analysis that lacks scientific integrity and distorts the environmental impacts of the Proposed Rollback. NHTSA’s modeling used

² DEIS at 2-15.

³ See Letter from Eighteen States to Andrew K. Wheeler and Heidi King, dated August 27, 2018 (Docket ID EPA-HQ-OAR-2018-0283-0792)

⁴ See Letter from Ellen M. Peter to Andrew K. Wheeler and Heidi King, dated September 11, 2018 (Docket ID: EPA-HQ-OAR-2018-0283).

for the DEIS, to the extent it is ascertainable at this time, is defective. Rather than applying the scientifically valid methods used in prior rulemakings, the DEIS's modeling uses a new speculative analytical model feature that relies on unfounded categories of economic assumptions regarding new vehicle sales, the scrappage of old vehicles, the rebound effect, and the social cost of carbon. NHTSA's reliance on fundamentally flawed modeling and assumptions undermines NHTSA's assertions in the DEIS and elsewhere regarding fuel consumption, emissions of criteria and toxic air pollutants and greenhouse gases, and resulting economic costs and benefits of the Proposed Rollback as compared to maintaining the model year 2021 standard and the aural standards. It further casts doubt on the DEIS' analysis of alternatives and environmental impacts by relying on data that lack professional and scientific integrity. See States and Cities' Detailed NEPA Comments, Section II.B.

Just as fundamentally, the DEIS fails to include and analyze a reasonable range of alternatives, including alternatives that are more stringent than the aural standards. "The agency must look at every reasonable alternative within the range dictated by the nature and scope of the proposal. The existence of reasonable but unexamined alternatives renders an EIS inadequate." *Ilio 'Ulaokalani Coalition v. Rumsfeld*, 464 F.3d 1083, 1095 (9th Cir. 2006). Here, NHTSA has narrowly interpreted "maximum feasible" in a manner that contravenes EPCA such that only one set of alternatives – the less stringent alternatives – would achieve the goals. But, more stringent standards are consistent with NHTSA's statutory charge of energy conservation, are technologically feasibly and economically practicable, and would reduce the significant impacts of the Proposed Rollback. NHTSA must also analyze "all possible approaches" to the proposed action, which includes an analysis of all action alternatives under a scenario in which EPA and California's vehicle emissions standards remain in effect.⁵ Failing to do so obscures the degree of environmental harm of the Proposed Rollback by not informing the public of the emission reductions that would otherwise occur if EPA and California's vehicle emission standards remain in effect. The alternatives section "is the heart of the environmental impact statement," 40 C.F.R. § 1502.14(a), and yet, NHTSA's analysis falls far short. See States and Cities' Detailed NEPA Comments, Section II.C.

Nor does NHTSA's DEIS meet another core obligation of NEPA, to take a "hard look" at the environmental impacts of the proposed action and alternatives as well as measures to mitigate those impacts. Relying on NHTSA's flawed modeling, the DEIS erroneously concludes that the Proposed Rollback will result in negligible impacts on air quality. Indeed, CARB's modeling shows that, contrary to the DEIS's findings, the

⁵ See *Mass v. EPA*, 549 U.S. 497, 531-532 (2007) ("EPA has been charged with protecting the public's "health" and "welfare," 42 U.S.C. § 7521(a)(1), a statutory obligation wholly independent of DOT's mandate to promote energy efficiency. See Energy Policy and Conservation Act, § 2(5), 89 Stat. 874, 42 U.S.C. § 6201(5). The two obligations may overlap, but there is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency.".)

Proposed Rollback will substantially increase air pollution. Compounding its lack of transparency in air quality modeling, NHTSA proposes to essentially eviscerate one of the significant federal climate measures, without adequately disclosing the magnitude of that change to the public, and without providing any mitigation for the increased greenhouse gas emissions it would cause. Nor does the DEIS adequately analyze the impacts of the Proposed Rollback on environmental justice communities. The DEIS also fails to analyze the impacts of the Proposed Rollback on endangered species and historic resources. See States and Cities’ Detailed NEPA Comments, Section II.D.

Further, NHTSA dedicates a mere four sentences in the 500-page DEIS to mitigation measures, perfunctorily claiming its hands are jurisdictionally tied. At a minimum, NHTSA must include a thorough discussion of all reasonable mitigation measures and detail the appropriate agencies that could implement such measures. One obvious mitigation measure that NHTSA can identify is recommending that EPA—a cooperating agency in the drafting of the DEIS—not act to weaken its greenhouse gas emission standards for vehicles. See States and Cities’ Detailed NEPA Comments, Section II, E.

In conclusion, we ask that NHTSA withdraw its inadequate DEIS, correct the multiple errors identified to date, and consider the new results in formulating a new joint proposed rule and DEIS. Absent such a course, we urge NHTSA to adopt the no action alternative to maintain the current CAFE standards for MY 2021 and finalize the augural standards for MY 2022-2026. As further detailed in the States and Cities’ Detailed NEPA Comments and our comments on the Proposed Rollback, the MY 2021 standard and MY 2022-2026 augural standards are technologically feasible, economically practicable, and consistent with NHTSA’s statutory mandate of energy conservation. Maintaining the fuel efficiency standards that NHTSA previously deemed “maximum feasible” would also help keep our country, and the world, closer to the path necessary to forestall the most severe climate change risks.

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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