

October 26, 2021

ATTORNEY GENERAL RAOUL URGES NHTSA TO ADOPT MORE STRINGENT FUEL ECONOMY STANDARDS FOR LIGHT-DUTY VEHICLES

Chicago — Attorney General Kwame Raoul, as part of a multistate coalition, today urged the National Highway Transportation Safety Administration (NHTSA) to increase the stringency of corporate average fuel economy (CAFE) standards for model year 2024 to 2026 vehicles. Under the Energy Policy Conservation Act, the NHTSA is required to set standards to improve fuel economy and reduce the energy consumption of passenger cars and light-duty trucks to the maximum extent feasible. Strong fuel economy standards have saved consumers hundreds of dollars each, reduced harmful emissions and helped protect the health of communities. In today's comment letter, Raoul and the coalition argue that the NHTSA's proposed standards – unlike the existing rules the coalition is currently challenging in court – are supported by science, reason and the law.

"The NHTSA's proposed standards will reduce greenhouse gas emissions, which is essential to slowing climate change and limiting the impact of climate change on the environment and public health," Raoul said. "I urge the NHTSA to implement these standards that will help states combat the effects of climate change, which disproportionately impact low-income communities and communities of color."

The Energy Policy and Conservation Act requires the NHTSA to establish "maximum feasible" fuel economy standards and, in doing so, to consider "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." Under the previous administration, the NHTSA abdicated this responsibility with its so-called "SAFE" rules, which rolled back the nation's Clean Car Standards. The changes to the CAFE standards alone were expected to "result in 1.9 to 2.0 additional billion barrels of fuel consumed," and reverse consumer savings through increased fuel expenditure. All in all, the NHTSA estimated that the net benefits of their final rules "straddle[d] zero."

[In today's comments.](#) Raoul and the coalition express their support for the NHTSA's proposal to set more stringent fuel economy standards for model years 2024 to 2026. Improved fuel economy saves consumers money, improves national security by reducing dependence on imported oil, counters climate change, improves air quality and benefits public health. For example, the NHTSA expects these standards to reduce multiple types of harmful air pollution, including particulate matter. Studies also show that air pollution may increase individuals' vulnerability to contracting COVID-19 and may increase the severity of, and mortality risk from, contracting the virus. Importantly, the impacts of the NHTSA's proposed standards are likely to be magnified in low-income communities and communities of color, which are often located in transportation corridors and are disproportionately impacted by pollution and the resulting health consequences.

Joining Raoul in filing the comments are the attorneys general of California, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Washington and Wisconsin, and the cities of Denver, Los Angeles, New York, Oakland, California, San Francisco, and San Jose, California.

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

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Submitted via www.regulations.gov

Dr. Steven Cliff, Ph.D., Acting Administrator
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Docket ID No. NHTSA-2021-0053
Docket Management Facility, M-30
U.S. Department of Transportation
West Building, Ground Floor, Rm. W12-140
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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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