

**ORAL ARGUMENT NOT YET SCHEDULED**

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

STATE OF CALIFORNIA, *et al.*,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, *et al.*,

Respondents.

No. 18-1114

(consolidated with 18-1118,  
18-1139, 18-1162)

**BRIEF FOR *AMICUS CURIAE* CONSUMER FEDERATION OF AMERICA  
IN SUPPORT OF PETITIONERS**

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Dated: February 14, 2019

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**STATEMENT REGARDING CONSENT TO FILE, SEPARATE BRIEFING,  
AUTHORSHIP, AND MONETARY CONTRIBUTIONS**

All parties have consented to the filing of this brief. Pursuant to Fed. R. App. P. 29(a), amicus curiae states that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amicus curiae or its counsel made a monetary contribution to its preparation or submission.

Pursuant to D.C. Circuit Rule 29(d), amicus curiae certifies that no other brief of which it is aware provides its consumer-focused perspective on the impact of the agency action under review.

## CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and D.C. Cir. Rule 26.1, amicus curiae Consumer Federation of America (CFA) submits the following corporate disclosure statement:

CFA is a non-profit, non-stock corporation. CFA has no parent corporations, and no publicly traded corporations have an ownership interest in CFA. CFA is an association of more than 250 nonprofit consumer groups that was established in 1968 to advance the consumer interest through research, advocacy, and education.

Date: February 14, 2019

/s/ Joseph R. Palmore

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**GLOSSARY**

Consumer Federation of America	CFA
Corporate Average Fuel Economy	CAFE
National Highway Traffic Safety Administration	NHSTA
Environmental Protection Agency	EPA
Department of Transportation	DOT
California Air Resources Board	CARB
Technical Assessment Report	TAR
Administrative Procedure Act	APA
Greenhouse Gas	GHG
Model Year	MY



## INTEREST OF AMICI CURIAE

Amicus curiae Consumer Federation of America (CFA) submits this brief in support of petitioners and vacatur of the U.S. Environmental Protection Agency's withdrawal of the January 12, 2017 "Final Determination" concerning the "Mid-Term Evaluation of Greenhouse Gas Emissions Standards for Model Year 2022-2025 Light-Duty Vehicles."

CFA brings a unique and critical viewpoint to this case. The cost of transportation fuels—the consumer expense most directly affected by the regulations at issue—is a major household expenditure. Indeed, transportation fuel consumption is one of the most important consumer pocketbook issues that policymakers must tackle. Efficiency standards deliver massive pocketbook savings to consumers, which in turn aid economic growth. Regulatory reform that threatens to stymie the implementation and enforcement of current fuel economy, energy efficiency, public health, and environmental protection standards would cause severe harm to the public. Stakes for consumers are enormous. Over the past forty years, fuel economy standards have delivered trillions of dollars in consumer net pocketbook savings, growth for the economy, and environmental benefits. Given this strong record of success, a freeze and rollback of current standards and failure to adopt beneficial future standards would cost consumers,

the economy, and the nation billions of dollars. In short, CFA and its members have a strong interest in maintaining and improving the fuel economy standards at issue in this case and would be adversely affected by any action taken to delay implementation of these standards or to make them less stringent. CFA and its members also have a strong interest in ensuring that any changes to these laws, regulations, and rules are made in a procedurally sound manner, rather than as part of a slapdash and ill-considered administrative process that would undermine critical consumer benefits.

CFA is an association of more than 250 nonprofit consumer groups that was established in 1968 to advance the consumer interest through research, advocacy, and education. CFA has been a vigorous and continuous participant in the process of establishing regulations to improve the efficiency of energy-using consumer durables and to lower the cost of energy borne by consumers. Indeed, CFA has participated in every round of rulemaking for fuel economy standards since the passage of the Energy Independence and Security Act, which rebooted and reformed the Corporate Average Fuel Economy (CAFE) program. In doing so, CFA conducts extensive public opinion polling, reviews technical economic studies, and analyzes evidence on the market performance of consumer products to determine whether there are significant potential consumer savings that would result from a higher standard.

CFA has been particularly active on the matters and standards at issue in this case. CFA has filed comments on the fuel consumption of vehicles at the National Highway Traffic Safety Administration (NHTSA),<sup>1</sup> the U.S. Environmental Protection Agency (EPA),<sup>2</sup> EPA and NHTSA acting jointly,<sup>3</sup> the Department of Transportation (DOT),<sup>4</sup> and the California Air Resources Board (CARB).<sup>5</sup> In addition, CFA testified before the EPA<sup>6</sup> and the Committee on Energy and Commerce on the Midterm Review for Motor Vehicles.<sup>7</sup> CFA has also been active

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<sup>1</sup> Consumer Federation of America, Comments on Notice of Intent to Prepare an Environmental Impact Statement, 82 Fed. Reg. 34,740 (July 26, 2017) (hereafter, “CFA EIS Comments”).

<sup>2</sup> Consumer Federation of America, Comments on Proposed Determination on the Appropriateness of the Model Year 2022-2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation, 81 Fed. Reg. 87,927 (December 30, 2016) (hereafter “CFA Determination Comments”).

<sup>3</sup> Consumer Federation of America, Comments on Notice of Availability of Midterm Evaluation Draft Technical Assessment Report for Model Year 2022–2025 Light Duty Vehicle GHG Emissions and CAFE Standards, 81 Fed. Reg. 49,217, (July 26, 2016) (hereafter “CFA TAR Comments”).

<sup>4</sup> Consumer Federation of America, Comments on Transportation Infrastructure: Notice of Review of Policy, Guidance and Regulation, 82 Fed. Reg. 26,734, (June 8, 2017) (hereafter, “CFA DOT Infrastructure Comments”).

<sup>5</sup> Consumer Federation of America, Comments of the Consumer Federation of America on the California Air Resources Board Mid-Term Review, (March 24, 2017) (here after, “CFA CARB Comments”).

<sup>6</sup> Jack Gillis, Director of Public Affairs, Consumer Federation of America, Public Hearing Statement Before the U.S. Environmental Protection Agency on the Reconsideration of the Final Determination of the Mid-term Evaluation of Greenhouse Gas Emissions Standards for Model Years 2022-2025 Light-duty Vehicles (September 6, 2017) (hereafter “CFA EPA Reconsideration Testimony”).

<sup>7</sup> *Midterm Review and an Update on the Corporate Average Fuel Economy Program and Greenhouse Gas Emissions Standards for Motor Vehicles Before the Committee on Energy and Commerce Subcommittee on Commerce*,

in regulatory proceedings dealing with medium and heavy duty trucks<sup>8</sup> and published a paper that explains why the fuels used by medium and heavy duty trucks to provide intermediate services to business and industry are an important consumer pocketbook issue.<sup>9</sup> CFA has also participated in complementary activities dealing with energy efficiency standards at the Department of Energy.<sup>10</sup>

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*Manufacturing, and Trade, Subcommittee on Energy and Power*, 114th Cong. 142-154 (2016) (testimony of Dr. Mark Cooper, Director of Research, Consumer Federation of America) (hereafter, “CFA Mid-term Congressional Testimony”).

<sup>8</sup> Consumer Federation of America, Comments on Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium and Heavy-Duty Engines and Vehicles, Phase 2; 80 Fed. Reg. 40,137 (July 13, 2015) (hereafter “CFA Work Trucks, 2015”); Consumer Federation of America, Comments on Notice of Intent to Prepare an Environmental Impact Statement for New Medium- and Heavy-duty Vehicle Fuel Economy Standards, 79 Fed. Reg. 38,842 (July 9, 2014) (hereafter, “CFA Work Trucks, 2014”).

<sup>9</sup> Mark Cooper, *Paying the Freight: The Consumer Benefits of Increasing the Fuel Economy of Medium and Heavy Duty Trucks*, Consumer Federation of America, (February 2014); CFA Work Trucks, 2014.

<sup>10</sup> Consumer Federation of America, Comments on Reducing Regulation and Controlling Regulatory Costs, before the Department of Energy, Exec. Order Nos. 13771, 13777, 13778, 82 Fed. Reg. 9,339 (July 14, 2017) (hereafter, “CFA, DOE Deregulation”); Consumer Federation of America, et al., Joint Comments on Notice of Proposed Rulemaking for Energy Conservation Standards for Residential Furnaces, 10 C.F.R. § 430 (2015) (hereafter, “CFA Furnaces, 2015”).

## INTRODUCTION

In April 2018, after a change in federal administrations, the Environmental Protection Agency (EPA) issued a revised final determination withdrawing the Obama administration's 2017 determination on fuel economy standards for model year 2022-2025 vehicles (Revised Final Determination, or Revised FD).<sup>11</sup>

The Revised FD claims that the Obama administration's 2017 determination (Prior Final Determination, or Prior FD)<sup>12</sup> relied on "outdated information" and that "changes in trends" in the intervening months justified its withdrawal of the Prior FD.<sup>13</sup> In preparing the Revised FD, EPA did not produce a new Technical Assessment Report or any other supporting analysis.

Petitioners have highlighted the many defects of the Revised FD. This brief will focus on certain consumer-oriented aspects of those defects.

**(1) Consumer Savings:** The administrative record does not support EPA's conclusion that the Revised FD helps consumers. In stark contrast to the Revised FD's conclusion, the record shows that the Revised FD hurts consumers by

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<sup>11</sup> Mid-Term Evaluation of Greenhouse Gas Emissions Standards for Model Year 2022-2025 Light-Duty Vehicles, 83 Fed. Reg. 16,077, 16,087 (Apr. 13, 2018).

<sup>12</sup> EPA, FINAL DETERMINATION ON THE APPROPRIATENESS OF THE MODEL YEAR 2022-2025 LIGHT-DUTY VEHICLE GREENHOUSE GAS EMISSIONS STANDARDS UNDER THE MIDTERM EVALUATION, 1, 10-11 (2017) (hereafter "EPA Prior Final Determination").

<sup>13</sup> 83 Fed. Reg. at 16,077, 16,079.

eliminating billions of dollars in critical consumer benefits. *See Butte Cty., Cal. v. Hogen*, 613 F.3d 190, 194 (D.C. Cir. 2010) (stating that an administrative “agency cannot ignore evidence contradicting its position.”). The agency’s reference to fuel price fluctuations does not aid the Revised FD’s conclusion on consumer benefits. If anything, the reality of fuel price volatility *supports* heightened fuel economy standards from the consumer perspective, as reflected in the analysis supporting the Prior FD.

(2) **Consumer Preferences:** EPA based its decision to withdraw the Prior FD in part on the premise that consumer preferences concerning fuel economy standards have fundamentally changed since the time of the Prior FD. Not so. The agency’s conclusion runs directly counter to the administrative record, which reveals that consumers strongly prefer heightened fuel economy standards. *See Motor Vehicle Mfrs. Ass’n of United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (explaining that an agency action will be regarded as arbitrary if the agency “offered an explanation for its decision that runs counter to the evidence before the agency.”); *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 513 (2009).

(3) **Low-Income Consumers:** The agency’s characterization of the Revised FD as a win for low-income consumers is not supported by the weight of evidence in the administrative record. In fact, low-income consumers are particularly

disadvantaged by the Revised FD, as they spend more on gasoline than on vehicles themselves.

## ARGUMENT

### I. THE REVISED FINAL DETERMINATION WOULD ELIMINATE BILLIONS OF DOLLARS IN CONSUMER BENEFITS

EPA bases the Revised FD in part on the premise that “the current [greenhouse gas] program for MY 2022-2025 vehicles presents difficult challenges for auto manufacturers and *adverse impacts on consumers*.”<sup>14</sup> This conclusion directly contravenes the facts set forth in the administrative record. The current greenhouse gas (GHG) program for MY 2022-2025 does not negatively impact consumers—it helps them. In fact, the withdrawal would eliminate over \$100 billion in consumer benefits.<sup>15</sup>

#### A. The Prior Final Determination

The Prior FD’s calculation of the economic benefits of the standards was supported by a robust analysis.<sup>16</sup> EPA evaluated extensive technical information, considered over 300,000 comments from organizations and individuals, and worked jointly with NHTSA and CARB to ensure access to a range of viewpoints and sources of information.<sup>17</sup> This lengthy, holistic analysis resulted in the Prior

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<sup>14</sup> 83 Fed. Reg. at 16,078, 16,087 (emphasis added); *see generally id.* 16,083-16,086.

<sup>15</sup> EPA Prior Final Determination at 1, 6, 10-11.

<sup>16</sup> *Id.* at 6.

<sup>17</sup> *See id.* at 1, 10.



FD's finding that consumers would benefit from \$1,650 average net savings in total fuel costs over the lifetime of a MY 2025 vehicle.<sup>18</sup>

As CFA explained in its comments on the proposed reconsideration of the Prior FD, the Prior FD substantially *underestimated* the total net economic benefits of the MY 2022-2025 standards.<sup>19</sup> The standards would provide closer to \$214 billion in net economic benefits for consumers and the American public at large.

### **B. The Revised Final Determination**

In the Revised FD, EPA attempts to discount its earlier finding by highlighting fuel price fluctuations, arguing that “lifetime fuel savings to consumers can change by almost 200 percent per vehicle” depending on future gas prices.<sup>20</sup> The Revised FD further states that “[m]any of the key assumptions EPA relied upon in its January 2017 Determination, including gas prices and the consumer acceptance of advanced technology vehicles, were optimistic or have significantly changed and thus no longer represent realistic assumptions.... [F]uel price estimates used by EPA in the original rulemaking are very different from

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<sup>18</sup> *Id.* at 7.

<sup>19</sup> Consumer Federation of America, Comments on the Reconsideration of the Final Determination of the Mid-Term Evaluation of Greenhouse Gas Emissions Standards for Model Year 2022-2025 Light-Duty Vehicles and Model Year 2021 Greenhouse Gas Emissions Standards, 49 CFR pts. 523, 531, 533, 536, 537 and 40 CFR pt. 86, 7-8, (October 5, 2017) (hereafter, “CFA Comment on DOT EPA Fuel Economy Reconsideration”)

<sup>20</sup> 83 Fed. Reg. at 16,084.

recent [Energy Information Administration] forecasts....”<sup>21</sup> “Lower fuel prices[,]” according to the Revised FD, “mean lower incentives for consumers to purchase fuel efficient vehicles, because the fuel cost savings they get from doing so are also lower.”<sup>22</sup>

### C. Defects in the Revised Final Determination

The Revised FD’s conclusion ignores central features of the Prior FD’s calculus: even with the lowest fuel prices projected by Annual Energy Outlook (\$2 per gallon), the net consumer benefits of the MY 2022-2025 fuel standards far exceed the costs of the program.<sup>23</sup> Consumer benefits would break even with costs only if gasoline prices dove to \$0.75 per gallon.<sup>24</sup> As CFA’s analysis further demonstrates, American consumers support heightened fuel economy standards in spite of low gas prices. Because consumers recognize the inevitability of gasoline price fluctuations, they desire more fuel efficient vehicles as a buffer against price spikes.<sup>25</sup> In this way, fuel price fluctuations support (rather than undermine) the Prior FD.

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<sup>21</sup> *Id.* at 16,078.

<sup>22</sup> *Id.* at 16,084.

<sup>23</sup> EPA Prior Final Determination at 6-7.

<sup>24</sup> Consumer Federation of America, Comments on National Highway Transportation Safety Administration’s Notice of Intent to Prepare an Environmental Impact Statement, 9 (Sept. 25, 2017) (hereafter, “CFA NHTSA-EIS Comments”).

<sup>25</sup> CFA Comment on DOT EPA Fuel Economy Reconsideration at 10.

The Revised FD also fails to properly account for the impact of gasoline prices and auto loan payments on a consumer's overall monthly cash flow. When a consumer buys a vehicle with more fuel saving technology, the cost of the vehicle increases and the monthly loan payment goes up. At the same time, however, the consumer's monthly spending on gasoline goes down because the consumer can drive the same distance on less gasoline. If the savings on gasoline exceed the increase in the loan payment, the consumer is better off overall. In fact, for the typical consumer who finances the purchase of a vehicle with a five year auto loan, the investment in more fuel saving technology is cash flow positive from the first month.<sup>26</sup>

EPA's Revised FD would rob consumers of billions of dollars in net benefits by freezing GHG emission standards at 2021 levels, with the lost savings reaching \$1,650 per vehicle.<sup>27</sup> Despite the prevalence of this evidence in the Prior FD and the administrative record as a whole, the Revised FD does not acknowledge it, much less justify jettisoning this consumer benefit. In doing so, EPA ignores record evidence contradicting its position in the Revised FD—a quintessential violation of the Administrative Procedure Act (APA). *See Butte Cty.*, 613 F.3d at 194 (stating that an administrative “agency cannot ignore evidence contradicting its position.”); *Motor Vehicle Mfrs. Ass'n*, 463 U.S. 29; *Fox Television*, 556 U.S. at

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<sup>26</sup> CFA Determination Comments at 3.

<sup>27</sup> *Id.* at 3, 12.

516 (noting that “a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy.”).

## **II. CONSUMER PREFERENCE FOR HEIGHTENED FUEL ECONOMY HAS NOT MATERIALLY CHANGED FROM THE PRIOR FINAL DETERMINATION IN 2017 TO THE REVISED FINAL DETERMINATION IN 2018**

### **A. The Prior Final Determination**

The Prior FD was based in part on a comprehensive analysis of consumers’ purchases of vehicles and levels of acceptance of new fuel efficiency technologies.<sup>28</sup> EPA’s extensive evaluation found no evidence of consumer reluctance to purchase new, fuel efficient motor vehicles.<sup>29</sup> Instead, vehicle sales reached record highs after the passage of the Final Rule for Model Year 2012 - 2016 Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards (2012 Final Rule), with annual increases for seven straight years for the first time since the 1920s.<sup>30</sup> Moreover, professional auto reviews found the existence of new fuel efficiency technologies to have generally positive consumer associations.<sup>31</sup>

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<sup>28</sup> EPA Prior Final Determination at 25-26.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 26.

## B. The Revised Final Determination

EPA grounds the Revised FD partially on the proposition that “key assumptions ... including ... consumer acceptance ... were optimistic or have significantly changed.”<sup>32</sup> “[C]onsumers’ preferences[,]” according to the Revised FD, “are not necessarily aligned to meet emission standards” because “current trends do not indicate an acceptance by consumers of the increased costs and tradeoffs in other desirable vehicle attributes that are needed to comply with more stringent GHG standards going forward.”<sup>33</sup>

The Revised FD contends further that “[s]lower or decreased consumer adoption of new lower emitting cars...would result in decreased effectiveness of the program” since “consumer preference changes and/or the [increased] cost of new cars” may cause consumers to be “less willing to purchase new vehicles and thus phase out the higher-emitting older cars.”<sup>34</sup>

## C. Defects in the Revised Final Determination

EPA’s assertion that consumer preference and acceptance has significantly changed—in only fourteen months—is without merit. Over the course of more than a decade, CFA has sampled public opinion about fuel economy standards and

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<sup>32</sup> 83 Fed. Reg. at 16,087.

<sup>33</sup> *Id.* at 16,082-83.

<sup>34</sup> *Id.* at 16,084.

shared its results with both the EPA and the NHTSA.<sup>35</sup> Data consistently show that large majorities of American consumers support heightened fuel economy standards.<sup>36</sup> Support cuts across geographic location and political orientation of respondents.<sup>37</sup> Contrary to the Revised FD's conclusion, these policies enjoy broad public and bipartisan support.<sup>38</sup> The Revised FD fails to demonstrate how these consumer preferences have changed in the last year.

Consumers understand that the technology to increase fuel economy costs money, and therefore may increase the overall vehicle cost. Data show that three out of five consumers support increased fuel economy standards if they would see a return on their investment in just three years.<sup>39</sup> Even with a 10-year payback period, the majority of consumers still prefer increased fuel economy standards.<sup>40</sup>

In order to better understand consumers' willingness to pay for increased fuel economy standards, CFA analyzed consumer response to the changing fuel

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<sup>35</sup> CFA Comment on DOT EPA Fuel Economy Reconsideration at 10-14.

<sup>36</sup> *Id.*; Consumer Federation of America et al., Comments on Proposed Rule 2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards, Docket Nos. EPA-HQ-OAR-2010-0799; FRL-9495-2 NHTSA-2010-0131, 2, 4, 23-26 (Feb. 13, 2012).

<sup>37</sup> Consumer Federation of America, Comments on Notification of Regulatory Review: 14 CFR Chapters I, II, and III, 23 CFR Chapters I, II, and III, 46 CFR Chapter II, 48 CFR Chapter 12, 49 CFR Chapters I, II, III, V, VI, VII, VIII, X, and XI, Docket No. DOT-OST-2017-0069, 10-12 (Dec. 1, 2017).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> Consumer Federation of America et al., Comments on Proposed Rule 2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards, at 24-25.

efficiency in SUVs, pickups, and crossovers. This research supports EPA's analysis in the Prior FD and directly contradicts the conclusory statements in the Revised FD. Between 2011-2017, auto manufacturers saw a 70% increase in sales of SUVs, pickups, and crossovers that increased their fuel economy by greater than 15%. But sales of SUVs, pickups, and crossovers that failed to increase their fuel economy by 15% did not do nearly as well—in fact, a full 20% less than their more fuel efficient counterparts.<sup>41</sup> Thus, as demonstrated in the administrative record, consumers have been and remain willing to pay for increased fuel efficiency.

Consumers want and benefit from increased fuel economy standards, regardless of fuel price fluctuations. The Revised FD bases its conclusions in part on the premise that “the reach and success of the program is significantly limited when consumers do not purchase new vehicles with low GHG emissions ... because they are ... unwilling to spend additional money on advanced fuel-saving technologies.”<sup>42</sup> This argument is not supported by the evidence.

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<sup>41</sup> CFA Comment on DOT EPA Fuel Economy Reconsideration, Appendix B: Richard Eckman and Jack Gillis, *An Analysis of Consumer Savings and Automaker Progress On the Road to CAFE Standards*, Consumer Federation of America, 9-12 (July 24, 2017).

<sup>42</sup> 83 Fed. Reg. at 16,087.

Consumers consistently support increased fuel economy standards.<sup>43</sup>

Variations in consumer support can vary with fluctuations in gas prices, but only slightly: support increases slightly when gas prices rise and declines slightly when gas prices are low.<sup>44</sup> The data do not reflect a strong relationship between fuel prices and consumer views on fuel economy standards. Instead, the administrative record makes clear that consumers expect gas prices to rise,<sup>45</sup> and consumers react adversely to price volatility.<sup>46</sup>

In 2007, consumer support for federal fuel economy standards stood at 55%.<sup>47</sup> Support rose to 85% by 2013 and stayed roughly steady through 2017.<sup>48</sup> Support for increased fuel economy standards, in spite of the gas price fluctuations from 2013-2017, shows that consumers are aware of fluctuations in gasoline prices, and want more fuel efficient vehicles as a buffer against higher gas prices.<sup>49</sup> CFA survey results over the last decade have also shown overwhelming support

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<sup>43</sup> See e.g. Consumer Federation of America et al., Comments on Proposed Rule 2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards, at 2, 4, 23-26.

<sup>44</sup> CFA Comment on DOT EPA Fuel Economy Reconsideration at 10.

<sup>45</sup> EPA, *Draft Technical Assessment Report: Midterm Evaluation of Light-Duty Vehicle Greenhouse Gas Emission Standards for Model Years 2022-2025*, EPA-420-D-16-900, 2-7 (July 2016) (hereafter “EPA Draft TAR”).

<sup>46</sup> CFA Comment on DOT EPA Fuel Economy Reconsideration , at 10

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*



for fuel efficiency standards, as well as great concern about fuel costs and the U.S. dependency on foreign oil.<sup>50</sup>

The Revised FD grossly mischaracterizes consumer preferences on fuel economy standards. Consumers strongly prefer heightened fuel economy standards—regardless of where fuel prices stand. As noted above, the agency cannot ignore the weight of the administrative record on these issues without compelling, new data. *See Motor Vehicle Mfrs. Ass'n*, 463 U.S. at 43 (explaining that an agency action will be regarded as arbitrary if the agency “offered an explanation for its decision that runs counter to the evidence before the agency.”); *Fox Television Stations*, 556 U.S. at 513.

### **III. LOW-INCOME CONSUMERS ARE PARTICULARLY DISADVANTAGED BY THE REVISED FINAL DETERMINATION**

#### **A. The Prior Final Determination**

The Prior FD carefully considered the impacts of MY 2022-2025 standards on low-income consumers. EPA’s analysis highlighted the consequences of climate change on vulnerable populations, such as human health consequences for low-income individuals in particular.<sup>51</sup> EPA recognized that the standards would have some effect on the price of new vehicles but found that the standards would

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<sup>50</sup> *Id.*; Consumer Federation of America et al., Comments on Proposed Rule 2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards, at 2, 4, 23,-26.

<sup>51</sup> EPA Prior Final Determination at 15.

“not significantly reduce the availability of vehicle model choices for consumers at any particular price point, including the lowest price vehicle segment.”<sup>52</sup>

Indeed, as CFA explained in its comments on the proposed reconsideration of the Prior FD, the Prior FD would help rather than hurt low-income Americans. Low-income individuals, who primarily purchase used cars, will benefit from fuel efficient new cars as they cycle into the used car market.<sup>53</sup>

### **B. The Revised Final Determination**

In the Revised FD, EPA argues that “[f]or consumers, especially low-income consumers, moderate increases to the cost of cars can result in significant impacts to disposable income.”<sup>54</sup>

The Revised FD concludes that the Prior FD “did not give appropriate consideration to the effect on low-income consumers. The Administrator believes that affordability of new cars across the income spectrum, and especially among low-income consumers, is an important factor, both because of its equity impacts and because of its potential impacts on the total energy savings delivered by the standards.”<sup>55</sup>

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<sup>52</sup> *Id.* at 25.

<sup>53</sup> CFA Comment on DOT EPA Fuel Economy Reconsideration at 11.

<sup>54</sup> 83 Fed. Reg. at 16,084.

<sup>55</sup> *Id.*

### C. Defects in the Revised Final Determination

EPA's conclusion on low-income Americans runs counter to a mountain of evidence in the administrative record. First, low-income households are generally not in the new car market at all. Households with income lower than \$20,000 per year account for only 2 percent of money spent on new vehicles.<sup>56</sup> Instead, low-income consumers overwhelmingly buy in the used car market.<sup>57</sup> Thus, low-income households are more affected by the impact of fuel economy standards on the used vehicle market than on the new vehicle market.

Second, low-income households spent 7.3 times as much on gasoline as on new car payments in one year.<sup>58</sup> For low-income Americans, the cost of driving accounts for a significantly larger share of household expenditures.<sup>59</sup> The 2013 Consumer Expenditure Survey data indicate that lower income households on average spend over three times more on gasoline (\$2,154) than on vehicles (\$670).<sup>60</sup> Further, as more fuel efficient new cars cycle into the used car market, low income households will get the benefit of the lower total cost of driving.

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<sup>56</sup> Consumer Federation of America et al., Comments on Proposed Rule 2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards, at 11.

<sup>57</sup> CFA Determination Comments at 35.

<sup>58</sup> Consumer Federation of America et al., Comments on Proposed Rule 2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards, at 6-16.

<sup>59</sup> CFA Comment on DOT EPA Fuel Economy Reconsideration at 11.

<sup>60</sup> EPA Draft TAR at 6-16.

Higher fuel economy standards would thus help rather than hurt low-income Americans.<sup>61</sup>

Low-income households are also more likely to be harmed by the negative environmental and public health consequences of the Revised FD. They live in neighborhoods that suffer more pollution, and they are less able to reduce exposure or obtain treatment.<sup>62</sup>

In sum, the fuel economy standards do not price many low-income households out of the new vehicle market because few of them are in that market to begin with. And the far more critical consideration for low-income households is how much they spend at the gas station. With the Revised FD, EPA threatens to make this weekly expense significantly more burdensome for low-income Americans.

## CONCLUSION

For these reasons, CFA supports petitioners' challenge to the Revised FD.

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<sup>61</sup> CFA Comment on DOT EPA Fuel Economy Reconsideration at 11.

<sup>62</sup> CFA Comment on DOT EPA Fuel Economy Reconsideration at 11

Dated: February 14, 2019

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## CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitations of Fed. R. App. P. 29(a)(5) because it contains 4,170 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii) and D.C. Cir. Rule 32(e)(1), as determined by the word-counting feature of Microsoft Word.

This brief complies with the typeface requirement of Fed. R. App. P. 32(a)(5) and the type style requirements of the Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface, including serifs, using Microsoft Word 2010 in Times New Roman 14-point font.

Date: February 14, 2019

/s/ Joseph R. Palmore  
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**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the CM/ECF.

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