

**Testimony of
Ali Mirzakhali
on behalf of the
National Association of Clean Air Agencies
before the
U.S. Environmental Protection Agency
and the
National Highway Traffic Safety Administration
on the
Safer Affordable Fuel-Efficient Vehicles Rule for
Model Years 2021-2026 Passenger Cars and Light Trucks
Docket ID Nos. EPA-HQ-OAR-2018-0283 & NHTSA-2018-0067**

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Fresno, California**

Good morning. I am Ali Mirzakhali, Administrator of the Air Quality Division of Oregon's Department of Environmental Quality. I am here today in my capacity as Co-Vice President of NACAA – the National Association of Clean Air Agencies – and appreciate this opportunity to provide NACAA's testimony on the U.S. Environmental Protection Agency's (EPA) and National Highway Traffic Safety Administration's (NHTSA) Notice of Proposed Rulemaking (NPRM), the *Safer Affordable Fuel-Efficient Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks*, as published in the *Federal Register* on August 24, 2018 (83 Fed. Reg. 42,817). NACAA is the national, non-partisan, non-profit association of air pollution control agencies in 41 states, including 116 local air agencies, the District of Columbia and four territories. The air quality professionals in our member agencies have vast experience dedicated to improving air quality in the U.S. This testimony is based upon that experience. The views expressed in this testimony do not represent the positions of every state and local air pollution control agency in the country.

NACAA opposes this proposed rule. Many of the provisions of this significant rulemaking would have adverse consequences. NACAA is still in the process of analyzing the thousands of pages of technical detail in this NPRM package and will provide greater detail regarding our concerns in written comments. In today's testimony, I will focus on two major concerns that are most central to the proposal. First, the proposed conclusion that the greenhouse gas (GHG) emission standards for MYs 2021-2025 and augural Corporate Average Fuel Economy (CAFE) standards for MYs 2022-2024 – included in EPA's and NHTSA's joint 2012 rule – are no longer appropriate. Second, the proposal to preempt California's authority under Section 209 of the Clean Air Act (CAA) and other states' rights under Section 177 of the CAA by withdrawing California's waivers for the GHG and Zero Emission Vehicle (ZEV) components of the state's Advanced Clean Car (ACC) program and prohibiting other states that adopted those standards from enforcing them.

The U.S. transportation sector has surpassed the manufacturing and power generation sectors as the largest source of GHG emissions in the nation. In most regions of the country the transportation sector contributes at least one-third, and in many cases 40 percent, of GHG emissions. Light-duty vehicles are a key component of that, reinforcing the need for a low-carbon path for these vehicles. That is why NACAA

supported and advocated for the tighter light-duty GHG emission and CAFE standards established by EPA and NHTSA in 2012 for MYs 2017 through 2025.

Many states, cities and counties across the nation are counting on this rule – with its current standards and implementation dates – to meet their air pollution and state- or locality-specific GHG reduction goals. The rule, as adopted in 2012, would deliver substantial GHG emission reductions and improved fuel economy as well as an impressive overall cost-benefit ratio and cost savings to consumers.

It is important to note that improving light-duty vehicle efficiency not only reduces GHGs, but also reduces criteria pollutants and toxic air pollutants. The impact of this proposal on emissions of these pollutants is important to NACAA members – in fact, many areas of the country are depending on these reductions to attain and maintain National Ambient Air Quality Standards. These benefits are derived primarily from reduced air pollution from fuel production and distribution. Any improvement in vehicle efficiency will reduce fuel demand which, in turn, will reduce emissions from petroleum extraction, refining and distribution of motor vehicle fuels. Further, emissions of some pollutants, like sulfur dioxide, are proportional to fuel consumption – less fuel consumption, therefore, means lower emissions.

The current emission standards are harmonized with California's and, when promulgated, were agreed to by all stakeholders, including auto manufacturers. Those standards are supported by a strong technical and analytical record in the form of the 2016 draft Technical Assessment Report that was informed by a robust stakeholder outreach effort during the Mid-Term Evaluation that concluded with a Final Determination in January 2017.

The technologies needed to meet the MY 2021-2025 standards are already available and cost-effectively in use today, and technologies not even contemplated in 2012 now provide tremendous opportunities for the current rule, and even for post 2025. Further, through the leadership of domestic automakers, there is every reason to believe that even more technologies will emerge in the next couple of years. As NACAA has previously commented, the MY 2021-2025 standards could be made even more stringent than they currently are, although we are not now advocating for that.

These are among the several reasons why NACAA is concerned that EPA and NHTSA have proposed to freeze emission standards at MY 2020 levels for six years beginning with MY 2021. Such weakening of these national standards is contrary to clear, compelling and well-founded technical evidence as well as the statutory obligations of the two agencies as established by Congress in the CAA and the Energy Policy Conservation Act (EPCA). Freezing standards at MY 2020 levels would ignore the technological development that has already entered the market and stifle the innovation that would drive further reductions.

Second, at the very core of this regulatory proposal is an issue on which NACAA is unwavering: the issue of states' rights. California has long-standing authority under Section 209 of the Clean Air Act to adopt its own more stringent clean car standards, subject to an EPA waiver. EPA's authority to deny a waiver request is narrowly constrained. If California determines that its standards, in the aggregate, will be at least as protective of public health and welfare as applicable federal standards, EPA must grant the waiver unless EPA finds 1) that California's determination was arbitrary and capricious, 2) that California does not need state standards to meet compelling and extraordinary conditions or 3) that state standards and accompanying enforcement procedures are not consistent with the CAA.

While other states in the nation cannot adopt their own separate clean car standards – thereby creating a so-called “third car” – under Section 177 of the CAA, states can adopt and enforce California’s tailpipe standards. The enabling authority under CAA Sections 209 and 177 has been consistently respected by EPA administrators on a bipartisan basis for decades. Yet, in this proposal, EPA and NHTSA seek, for the first time ever, to withdraw waivers appropriately granted to California for the state’s GHG emission standards and ZEV program and to nullify the critically important state authorities for adopting and enforcing these programs.

This is not just a dispute between California and EPA, and it is not about California setting standards for the rest of the country. Twelve other states and the District of Columbia have exercised their Section 177 authority to adopt the GHG and criteria pollutant emission standards established by California under its Advanced Clean Cars program; nine of the 12 states have adopted the ZEV Regulation – the third prong of the California program. California and Section 177 states together represent 113 million Americans and comprise one-third of the new car sales market in the U.S. The California program is vitally important to the Section 177 states and is also vitally important to many non-177 states, which benefit from the emission reductions that accrue when California and Section 177 states lead the way. A cleaner, low-emissions transportation sector is essential to achieve state and local climate goals and meet and sustain federal air quality standards. These states and localities will not accomplish this without increasingly more protective GHG vehicle emission standards and the ZEV program. If the federal government makes the transportation sector off limits, reductions will have to come from other stationary sources, potentially including power plants and industry. But in some areas, there simply are no other sources; reaching or maintaining clean air goals relies entirely on adequately addressing mobile source emissions.

A national rule harmonized with California’s provides market stability, which benefits consumers in all states in the form of broader product availability; vehicle dealers and distributors in the form of nationwide options for placing and trading vehicles; and manufacturers in the form of certainty and the ability to produce and deliver any vehicle anywhere. This is a view shared by auto manufacturers, who have also requested a national rule harmonized with California’s. Moreover, the public health and environmental benefits of a harmonized rule accrue nationwide. California accepted a national rule less stringent than its own in recognition of the many benefits of harmonization. However, a harmonized rule is only preferable if it is based on standards that become increasingly more protective year after year and yield substantial emission reductions over time as states and localities work to meet clean air goals.

EPA and NHTSA assert that California’s GHG and ZEV standards are preempted and that the waivers for these essential components of California’s vehicle program should be revoked. Such claims depart from half a century of EPA practice and are squarely at odds with core principles of cooperative federalism. Even more to the point, claims of EPCA preemption have been flatly rejected by two federal courts. Also compelling is the opinion of the U.S. Supreme Court in *Massachusetts v. EPA*: “But that DOT sets mileage standards in no way licenses EPA to shirk its environmental responsibilities [with respect to the regulation of carbon dioxide]. 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.”

One final point: We are disappointed that EPA and NHTSA, on Friday, denied all requests – including a joint request by NACAA, the National Governors Association, Environmental Council of the

States, Association of Air Pollution Control Agencies and National Association of State Energy Officials – for an extension of the comment period for this rule. This is a major rulemaking of over 500 pages in length with nearly 3,000 more pages of analyses. Stakeholders should be given adequate time – a full 120 days – to thoroughly review these documents and prepare meaningful comments to inform the agencies’ deliberations. We urge you to reconsider your decision to deny the extension requests,

NACAA will continue to study this proposal and offer further comments in writing. In the meantime, we appreciate the chance to provide comments today. Thank you.