Attorneys General of New York, Connecticut, the District of Columbia, Iowa, Maine, Maryland, Massachusetts, North Carolina, Oregon, Pennsylvania, Vermont and Washington

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Via Federal eRulemaking Portal
E. Scott Pruitt
Administrator, United States Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460

Elaine Chao
Secretary, United States Department of Transportation
National Highway Traffic Safety Administration
1200 New Jersey Ave., SE
Washington, DC 20590

RE: Comments on Reconsideration of Final Determination of the Mid-Term Evaluation of Greenhouse Gas Emissions Standards for Model Year 2022-2025 Light-Duty Vehicles and Comment on Model Year 2021 Greenhouse Gas Emissions Standards
Docket ID No. EPA-HQ-OAR-2015-0827

Dear Administrator Pruitt and Secretary Chao:

The undersigned Attorneys General submit these comments in response to the Environmental Protection Agency (EPA) and National Highway Traffic Safety Administration's (Highway Administration) joint Request for Comment on Reconsideration of the Final Determination of the Mid-Term Evaluation of Greenhouse Gas Emissions Standards for Model Year 2022-2025 Light-Duty Vehicles; Request for Comment on Model Year 2021 Greenhouse Gas Emissions Standards. 82 Fed. Reg. 39551 (Aug. 21, 2017) (Request).

Summary

The model year 2022-2025 greenhouse gas emissions standards under reconsideration are the heart of the national program established in 2009 as part of the National Fuel Efficiency Policy. That Policy responded to our country's critical security needs to address global climate change and reduce oil consumption, which have grown more urgent in the intervening years. In January of this year, the U.S. Energy Information Administration (EIA) announced: "on a twelve-month rolling total basis, electric power sector [carbon dioxide] emissions are now *regularly below* transportation sector CO2 emissions for the first time since the late 1970s."[1] In other words, the transportation sector is now the largest source of U.S. greenhouse gas emissions,

[1] *See* U.S. EIA, *Power sector carbon dioxide emissions fall below transportation sector emissions*, https://www.eia.gov/todayinenergy/detail.php?id=29612 (emphasis added) (last visited Oct. 3, 2017).

and it continues to grow, at an average rate of 2.0 percent annually since 1990.[2] In 2015, light duty vehicles comprised sixty percent of U.S. transportation sector emissions.[3] Globally, the transportation sector is the fastest growing source of dangerous greenhouse gas pollution,[4] and it is the primary driver for U.S. oil dependence, including on foreign imports of oil.[5] The 2022-2025 standards will reduce emissions by more than 540 million metric tons of carbon dioxide, as well as reduce oil consumption by more than 1.2 billion barrels.

Cars and trucks also emit the criteria pollutants that create smog and cause or worsen public health problems. Oxides of nitrogen, for example, contribute to the ground-level ozone air pollution that exacerbates respiratory conditions such as asthma and emphysema.[6] Jurisdictions across the country, including the signatory states here, continue to suffer the effects of automotive pollution in the form of elevated levels of ozone, among other pollutants, in the air. Reducing pollutants from automotive emissions will improve our citizens' public health.

In the Final Determination of the Mid-Term Evaluation (Final Det.), EPA found that not only do the 2022-2025 standards remain technologically achievable, but that "the current state of technology, and the pace of technology development and implementation, could support a proposal, and potentially an ultimate decision, to adopt more stringent standards for MY 2022-2025." Final Det. at ES-8. EPA and the Highway Administration's joint technical assessment found that automakers were *over-complying* with the first several years of their joint National Program because a wider range of cost-effective technologies exists than the agencies had originally projected in 2012 when they first set the standards.

Therefore, as explained in a letter that our group of Attorneys General sent to Administrator Pruitt on June 8, 2017, reconsideration of the current standards is unwarranted. (A copy of that letter is annexed here as Exh. A). To the extent that EPA is considering changing the standards at all, however, the agency should evaluate strengthening—rather than weakening—the current standards in light of the readily available and cost-effective means to do so and the urgent need to reduce greenhouse gas emissions from the transportation sector.

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[2] *See* U.S. Department of Transportation, *Transportation GHG Emissions and Trends*, https://www.transportation.gov/sustainability/climate/transportation-ghg-emissions-and-trends (last viewed Oct. 3, 2017).

[3] *See* U.S. DOT, *supra*, n.2.

[4] *See* Benoit Lefevre & Angela Enriques, *Transport Sector Key to Closing the World's Emissions Gap*, WRI, http://www.wri.org/blog/2014/09/transport-sector-key-closing-world%E2%80%99s-emissions-gap (last viewed Oct. 3, 2017).

[5] *See* David L. Greene, Howard Baker, and Steven E. Plotkin, *Reducing Greenhouse Gas Emissions from U.S. Transportation*, Pew Center on Global Climate Change, http://www-cta.ornl.gov/cta/Publications/Reports/Reducing_GHG_from_transportation[1].pdf (last visited Oct. 3, 2017).

[6] *See* U.S. EPA, *Nitrogen Dioxide Pollution*, https://www.epa.gov/no2-pollution/basic-information-about-no2#Effects (last visited Aug. 10, 2017).

Background for the Model Year 2022-2025 Greenhouse Gas Emissions Standards

In 2010, EPA and the Highway Administration established the National Program, the first nationwide joint greenhouse gas emissions/Corporate Average Fuel Economy (CAFE) standards, for vehicles sold in model years 2012 to 2016. 75 Fed. Reg. 25324 (May 7, 2010). Building on the success of the 2012-2016 standards, EPA and the Highway Administration, in a joint 2012 rulemaking, respectively adopted final greenhouse gas emissions standards and final CAFE standards for model years 2017-2025. 77 Fed. Reg. 62624. As with the earlier standards, the two agencies harmonized their standards so that the greenhouse gas emissions standards set by EPA may be met by complying with the Highway Administration's CAFE standards, which reduce carbon dioxide emissions and improve fuel economy, and through vehicle air conditioning refrigerant improvements, which reduce greenhouse gas emissions, but do not improve fuel economy. 77 Fed. Reg. 62624.

Because the 2022-2025 standards were adopted well in advance, the implementing regulations provided for a Mid-Term Evaluation—to be completed by no later than April 2018—to confirm that the standards remained appropriate under § 202(a)(1) of the Clean Air Act, taking into consideration the following factors:

> (i) The availability and effectiveness of technology, and the appropriate lead time for introduction of technology;
> (ii) The cost on the producers or purchasers of new motor vehicles or new motor vehicle engines;
> (iii) The feasibility and practicability of the standards;
> (iv) The impact of the standards on reduction of emissions, oil conservation, energy security, and fuel savings by consumers;
> (v) The impact of the standards on the automobile industry;
> (vi) The impacts of the standards on automobile safety;
> (vii) The impact of the greenhouse gas emission standards on the Corporate Average Fuel Economy standards and a national harmonized program; and
> (viii) The impact of the standards on other relevant factors.

40 C.F.R. § 86.1818-12(h)(1)(i)-(viii).

In accordance with the requirements in § 86.1818-12(h)(2), EPA, together with the Highway Administration and the California Air Resources Board, issued a draft Technical Assessment Report (Technical Assessment) in July 2016. The agencies based their 1,200-page assessment on a comprehensive and exhaustive record, including state-of-the-art research; input from stakeholders; information from technical conferences; published literature; and studies, including the National Academy of Sciences 2015 Report on fuel economy technologies. Technical Assessment at ES-3. EPA and the Highway Administration each provided its own initial technical assessment of the technologies available to meet the model year 2022-2025 standards, and each provided its own different, and reasonable, compliance pathway. NHTSA and EPA also performed multiple sensitivity analyses that demonstrated additional compliance pathways. *Id.*

Both EPA and the Highway Administration reached the same conclusion. The auto industry is, on average, *over-complying* with the first several years of the harmonized national standards. This is because a wider range of technologies exists, at similar or lower costs, than the agencies had originally projected in the 2012 rule. Technical Assessment at ES-2.

In addition, when the California Air Resources Board adopted its Advanced Clean Cars program in 2012, it committed to participating in the Midterm Evaluation with EPA and the Highway Administration. California's Advanced Clean Cars Midterm Review, Jan. 18, 2017, at ES-1.[7] Like EPA and the Highway Administration, the Air Resources Board found that manufacturers are over-complying with the greenhouse gas emission requirements and are already offering various vehicles on the road *now* that are able to comply with standards for *future* model years. *Id*. at ES-2. Specifically, the Air Resources Board found that 23 types of trucks, 23 types of sport utility vehicles, and 26 types of passenger cars meet 2020 or later greenhouse gas emission standards with a conventional gasoline powertrain. *Id*.

In 2016, EPA provided an opportunity for public comment period on the draft Technical Assessment and, where appropriate, updated its analysis in response to the comments and to incorporate the most recent data. *Id.* at 1. EPA is not reopening the Technical Assessment for comment in this reconsideration. Notice, 82 F.R at 39553.

Based on the Technical Assessment, EPA issued a Proposed Determination in November 2016 concluding that the 2022-2025 greenhouse gas emissions standards remain appropriate. During the public comment period on the Proposed Determination, EPA received over 100,000 comments.

Based on the above record and because none of the information in the public comments materially called its analysis into question, EPA made a Final Determination that the model year 2022-2025 greenhouse gas standards remain appropriate under Mid-Term Evaluation factors set out in 40 C.F.R. § 86.1818-12(h)(1). Final Det. at 8. Indeed, EPA concluded that it would be feasible to adopt *more* rigorous greenhouse gas standards than the original 2022-2025 standards:

> The Administrator did consider whether it would be appropriate to propose to amend the standards to increase their stringency. In her view, the current record, including the current state of technology and the pace of technology development and implementation, could support a proposal, and potentially an ultimate decision, to adopt more stringent standards for MY 2022-2025.

Final Det. at 8. In the end, however, EPA decided to maintain the original standards to promote regulatory certainty. Final Det. at 8.

Despite its conclusions that the auto industry is more than technologically able to meet the 2022-2025 standards, and that consumers, the environment, and energy security will all benefit from the standards, EPA nonetheless published the Notice of Intention to Reconsider the

[7] Available at https://www.arb.ca.gov/msprog/acc/acc-mtr.htm (last viewed Sep. 27, 2017).

Final Determination of the Mid-Term Evaluation of Greenhouse Gas Emissions Standards for Model Year 2022–2025 Light Duty Vehicles, 82 Fed. Reg. 14671 (Mar. 22, 2017) (Notice). In the Request for comment on the Notice, EPA and the Highway Agency also introduced several new factors that the agencies contend—without explanation—are "relevant" to reconsideration of the standards. *See* 82 Fed. Reg. 39551, 39553. Included in this list are several, such as "the extent to which consumers value fuel savings from greater efficiency of vehicles," and "the appropriate reference fleet," which appear impermissibly to be designed to enable the agencies to equate consumer demand or preference with factors such as emissions reduction, technology, and cost that are firmly grounded in Clean Air Act § 202(a) and 40 C.F.R. § 86.1818-12(h)(1)(i)-(viii). *Id*.

Finally, in the Request, EPA, with little explanation, also solicited comment on whether the greenhouse gas standards for model year 2021 remains appropriate. 82 Fed. Reg. 39551, 39552. Unlike the 2022-2025 standards, the model year 2021 standard is not part of the Mid-Term Evaluation. EPA and the Highway Administration issued that model year's standards as a Final Rule in 2012. 77 Fed. Reg. 62624 (Oct. 15, 2012).

Discussion

The Model Year 2022-2025 Greenhouse Gas Emissions Standards Are Appropriate Under Clean Air Act Section 202(a) and Midterm Evaluation Factors.

In the Final Determination, EPA found that the model year 2022-2025 standards are appropriate under Clean Air Act § 202(a)(1) as well as the Midterm Evaluation factors. Specifically, EPA found the standards technologically feasible at reasonable cost, with manufacturers achieving compliance largely through improved gasoline technologies that are already in commercial production, or could feasibly be in production by 2025, rather than extensive electrification of their fleets. Final Det. at ES-2 (discussing factors (h)(i)-(h)(iii)). Indeed, the estimated cost for the gasoline technologies is lower than what EPA had initially predicted; in 2012, EPA had projected a per vehicle cost of $1,100, but in the Final Determination the agency estimated a cost range of $800 to $1,115. Final Det. at ES-4-5 (discussing factor (h)(ii)).

EPA's conclusion, moreover, does not account for potentially significant developments such as the recent announcement by a coalition of global corporations, including the shipping company DHL, to accelerate a shift towards electric vehicles by committing to replacing part or all of their vehicle fleets with hydrogen-powered or plug-in electric cars or building the charging stations needed by electric cars.[8] Since half of the cars on the road are company cars, this action could have a potentially large impact. *Id.* Electric vehicles, however, are only a small part of the compliance pathways modeled by EPA and the Highway Administration, *see* Final Det. at ES-4-5; thus, any acceleration in the wider use of electric vehicles would make compliance with the 2022-2025 standards easier than predicted.

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[8] *See* https://insideclimatenews.org/news/19092017/electric-cars-ev100-coalition-charging-fleet-ikea-dhl (last viewed Oct. 3, 2017).

In addition, several auto manufacturers have recently announced plans to substantially bolster their hybrid and electric product lines. Mercedes-Benz owner Daimler is investing $10.8 billion to bring more than 10 new electric cars to market by 2022.[9] Volvo announced in June that it will introduce only hybrid or battery powered car models starting in 2019.[10] Last month, Volkswagen said it will invest $20 billion to develop at least one battery-based electric offering for every model sold by VW, Audi, and its other brands,[11] while BMW will introduce more than two dozen all-electric cars or hybrids by 2025, and Jaguar/Land Rover's entire fleet of new vehicles will be electric or hybrid starting in 2020.[12] And just this week, GM announced its commitment to abandon all gas- and diesel-powered vehicles in favor of an all-electric fleet, beginning with dramatic expansion of its long-range electric battery vehicles cars by 2023.[13]

The Final Determination also found that the 2022-2025 standards will result in significant carbon dioxide and oil consumption reductions, with their corresponding environmental, fuel economy and national security benefits. Final Det. at ES-6 (discussing factor (h)(iv)). EPA estimated that the 2022-2025 standards will result in reduction of 540 million metric tons of carbon dioxide. Because the standards are met in part by improving fuel economy, enabling drivers to travel the same distance using less fuel, the standards will also reduce oil consumption by 1.2 billion barrels. *Id.* at ES-6.

EPA also found that the standards will provide significant cost-savings benefits to consumers and the general public. Notably, EPA found that the benefits of the standards, not including fuel savings, exceeded the costs, and that the fuel savings alone also exceeded the costs of the program. *Id.* at ES-6-7 (discussing factor (h)(iv)). In considering the average payback period of a MY 2025 vehicle, as compared to a MY 2021 vehicle, EPA's analysis showed that consumers who financed their cars with five-year loans would see payback within the first year, and consumers who paid cash would see payback in five years. Overall, consumers would realize a net savings of $1,650 over the lifetime of a new vehicle.

In evaluating factor (h)(v), the impact of the standards on the automobile industry, the Final Determination Found that the average cost per vehicle, which EPA and the Highway Administration had initially projected to be $1,100, had dropped to $875. *Id.* at ES-24-25. Because the agencies considered the originally projected estimate of $1,100 to be reasonable, the observed increase of only $875 is necessarily reasonable. *Id.* at ES-25. EPA further noted that,

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[9] *See* http://www.reuters.com/article/us-daimler-agm/daimler-accelerates-electric-car-program-idUSKBN1700N7 (last viewed Oct. 3, 2017).

[10] *See* https://www.bloomberg.com/news/articles/2017-09-11/vw-ceo-vows-to-offer-electric-version-of-all-300-models-by-2030 (last viewed Oct. 3, 2017).

[11] *See* https://www.bloomberg.com/news/articles/2017-09-11/vw-ceo-vows-to-offer-electric-version-of-all-300-models-by-2030 (last viewed Oct. 3, 2017).

[12] *See* https://www.nytimes.com/2017/07/05/business/energy-environment/volvo-hybrid-electric-car.html?_r=0 (last viewed Oct. 3, 2017).

[13] *See* https://www.nbcnews.com/business/autos/gm-going-all-electric-will-ditch-gas-diesel-powered-cars-n806806 (last viewed Oct. 3, 2017).

for the first time in 100 years, vehicle sales were strong for seven straight years, through 2016. While the standards affect the price of new vehicles, EPA found that they did not reduce the availability of vehicle choices for consumers at any point, including the lowest price vehicle segment. *Id.* Moreover, as noted above, compliance with the standards will not require extensive electrification of the fleet; the Final Determination concluded that multiple routes to compliance exist, all requiring 3 percent or less strong hybrids and electric vehicles. *Id.*

On the issue of the effect of the model year 2022-2025 standards on automobile safety, factor (h)(vi), EPA used an updated analysis based on the most recently available crash data and concluded that the standards can be met with no net increase in fatalities. *Id.* at ES-26-27.

With respect to factor (h)(vii), the effect of the greenhouse gas emissions standards on the CAFE standards and a national harmonized program, EPA stated that providing its determination at that time (January 2017) would enable the Highway Administration to take the greenhouse gas standards into account in when it proposes the final 2022-2025 CAFE standards and thus fully align both agencies' standards. *Id.* at ES-27.

With regard to the last factor, "other relevant factors," EPA considered only regulatory certainty relevant. *Id.* at ES-28. As noted above, EPA found that "the automakers' response to technology development and deployment . . . has exceeded EPA's projections set out in the original 2012 rule." *Id.* However, EPA concluded that changing the standards at the midterm point could disrupt the industry's planning for future product lines and investments, and decided to maintain the original 2022-2025 standards. *Id.*

To the Extent that EPA Decides that Revision of the Standards is Appropriate, the Record Supports <u>Strengthening</u> the Standards.

The Applicable Legal Standard under the Clean Air Act.

Any decision by EPA to reconsider the Model Year 2022-2025 Greenhouse Gas standards must be driven by the agency's statutory directive to protect the public health and welfare. Section 202(a)(1) of the Clean Air Act directs EPA to promulgate standards for new motor vehicles to control the emission of air pollutants that the agency has found "cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare." 42 U.S.C. § 7521(a)(1), CAA § 202(a)(1). EPA has concluded that public health and welfare are endangered by carbon dioxide emissions from motor vehicles. *See* Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act ("Endangerment Finding"), 74 Fed. Reg. 66496 (Dec. 15, 2009). The Endangerment Finding has been upheld on judicial review. *Coalition for Responsible Regulation, Inc. v. E.P.A.*, 684 F.3d 102, 119 (D.C. Cir. 2012) (upholding EPA's finding that greenhouse gases may "reasonably be anticipated to endanger public health or welfare" and agency's issuance of emission standards for cars and light trucks), *aff'd in part, rev'd in part sub nom. Util. Air Regulatory Grp. v. E.P.A.*, 134 S. Ct. 2427 (2014), and *amended sub nom. Coal. for Responsible Regulation, Inc. v. Envtl. Prot. Agency*, 606 F. App'x 6 (D.C. Cir. 2015).

While § 202(a)(2) states that emission standards promulgated under 202(a)(1) "shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period[,]" 42 U.S.C.A. § 7521(a)(2), EPA's statutory mandate remains "protecting the public's 'health' and 'welfare[.]'" *Massachusetts v. EPA*, 549 U.S. 497, 532 (2007). Thus, while EPA may give "appropriate consideration" to factors such as technological feasibility, lead time, and cost, those factors cannot outweigh the agency's statutory directive and the goal of the Clean Air Act.

In *Husqvarna AB v. E.P.A.*, 254 F.3d 195, 200 (D.C. Cir. 2001), for example, the U.S. Court of Appeals for the D.C. Circuit construed another provision, § 213, of the Clean Air Act. That provision directs EPA to adopt emissions standards for non-road engines and vehicles that will "achieve the greatest degree of emission reduction achievable[,]" while "giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology." *Id.* at 200, citing 42 U.S.C. § 7547(a)(3). In rejecting a manufacturer's claim that the emission standards EPA adopted did not represent the "best balance" of these factors for the industry, the court held that:

> EPA did not deviate from its statutory mandate or frustrate congressional will by placing primary significance on the "greatest degree of emission reduction achievable" and by considering cost, noise, energy, and safety factors as important but secondary factors. *The overriding goal of the section is air quality and the other listed considerations, while significant, are subordinate to that goal.*

Id. (emphasis added).

Similarly, in *Center for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172 (9th Cir. 2008), the Ninth Circuit also considered how an agency balances the factors to be "considered" in achieving the overall purpose of the statute. At issue in *Center for Biological Diversity* was § 32902(f) of Energy Policy and Conservation Act (EPCA), which directs the Secretary of Transportation to set "maximum feasible average fuel economy standards" while taking into consideration "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.A. § 32902(f). The Ninth Circuit concluded that: "[t]he EPCA clearly requires the agency to consider these four factors, but it gives NHTSA discretion to decide how to balance the statutory factors – as long as NHTSA's balancing does not undermine the fundamental purpose of the EPCA: energy conservation." *Center for Biological Diversity*, 538 F.3d at 1195.

The legislative history of the Clean Act further reinforces that public health and welfare concerns must be paramount. The Senate Committee that approved the proposed bill stated that:

> The proposed bill would require [the Department of Health Education and Welfare (HEW), EPA's predecessor] to make a judgment on the contribution of

> moving sources to deterioration of air quality and establish emission standards *which would provide the required degree of control*. [HEW] is expected to press for the development and application of improved technology rather than be limited by that which exists. In other words, *standards should be a function of the degree of control required*, not the degree of technology available today.

S. Rep. No. 91-1196, at 24 (1970) (emphasis added). In short, it is imperative that public health and welfare drive the level of technology required.

More Stringent Greenhouse Gas Standards Are Urgently Needed to Reduce Greenhouse Gas Emissions and Improve Public Health.

As discussed above, the greenhouse gas standards are a critical part of the National Program, which was promulgated to address our country's urgent needs to reduce greenhouse gas emissions and reduce oil consumption. These needs have become even more critical in the intervening years. The scientific evidence is overwhelming that the burning of fossil fuels is causing climate change.[14] Global average temperature has been steadily rising with the growth in industrialization and fossil fuel use; since the nineteenth century, global average surface temperatures have increased about 2 degrees Fahrenheit.[15] Most of the warming has occurred in the past thirty-five years, and sixteen of the past seventeen warmest years on record have occurred since 2001.[16] As a direct result of greenhouse gas pollution, we also are experiencing more frequent and increasingly extreme and costly storms, often bringing unprecedented volumes of precipitation; flooding; longer and more frequent and severe heat waves; rising sea-levels; and ocean acidification.[17] The economic and public health harms – including lives lost – from these changes are felt throughout the United States and its territories, from the droughts and wildfires in the West, to the extreme heat, precipitation and flooding in the Midwest, to the rising sea levels along our coasts.[18] And as recent events have demonstrated, climate change is increasing the likelihood and severity of hurricane disasters. Rising sea levels increase storm surge, and the intensity of future hurricanes is expected to increase.[19]

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[14] *See* U.S. Energy Information Administration, Greenhouse Gases' Effect on the Climate, https://www.eia.gov/energyexplained/index.cfm?page=environment_how_ghg_affect_climate ("Emissions of several important greenhouse gases that result from human activity have increased substantially since large-scale industrialization began in the mid-1800s. Most of these human-caused (anthropogenic) greenhouse gas emissions were carbon dioxide (CO2) from burning fossil fuels. . . . Scientists know with virtual certainty that increasing greenhouse gas concentrations tend to warm the planet.") (last visited Oct. 3, 2017).

[15] *See* NASA, https://www.nasa.gov/press-release/nasa-noaa-data-show-2016-warmest-year-on-record-globally.

[16] *Id*.

[17] *See* U.S. Global Change Research Program, *Climate Change Impacts in the United States*, 2014 U.S. National Climate Assessment, http://nca2014.globalchange.gov/ (last visited on Aug. 10, 2017) (*Climate Change Impacts*).

[18] *See* https://climate.nasa.gov/effects/ (last visited Aug. 19, 2017).

[19] U.S. Global Change Research Program, *supra*, n.17.

Transportation is now the largest source of greenhouse gas emissions in the United States, and the only sector where carbon dioxide emissions *increased* in 2016, according to the U.S. Energy Information Agency.[20] Based on the most recent EPA Inventory Data, cars and light trucks made up 62 percent of the sector's emissions.[21] As discussed above, EPA estimated that the current model years 2022-2025 standards will result in the reduction of 540 million metric tons of carbon dioxide, Final Det. at ES-6; more stringent standards will result in greater reductions.

The critical need to reduce greenhouse gas emissions, which falls squarely within EPA's mandate under the Clean Air Act, together with EPA's own finding that "the current state of technology and the pace of technology development and implementation, could support a proposal . . . to adopt more stringent standards for MY 2022-2025[,]" Final Det. at 8, compel the conclusion that more stringent greenhouse gas standards for model years 2022-2025 are appropriate.

In addition to reducing greenhouse gas emissions, more stringent model years 2022-2025 standards would also reduce the criteria pollutants that create smog and cause or worsen public health problems. Cars and trucks emit oxides of nitrogen, which contribute to the ground-level ozone air pollution that exacerbates respiratory conditions such as asthma and emphysema.[22] Likewise, particulate matter lodges in lungs and can cause or worsen pulmonary and cardiac health problems.[23] Indeed, jurisdictions across the country, including the signatory states here, continue to suffer the effects of automotive pollution in the form of elevated levels of both ozone and particulate matter in the air. Reducing pollutants from automotive emissions will improve our citizens' public health.

Finally, more stringent standards will also further reduce the country's oil consumption. The current 2022-2025 standards will reduce oil consumption by 1.2 billion barrels, Final Det. at ES-6, a figure that will increase with the standards' stringency.

Several Factors Listed in the Notice have No Statutory or Regulatory Basis

Several of the newly coined factors listed in EPA's Notice and request for comments focus on consumer preference, including "the extent to which consumers value fuel savings from greater efficiency of vehicles"; "the distributional consequences on households"; "the availability of realistic technological concepts for improving efficiency in automobiles that consumers demand"; and "the impact of the standards on consumer behavior." 82 Fed. Reg. at 39553.

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[20] *See* https://www.eia.gov/todayinenergy/detail.php?id=30712 (last visited Aug. 24, 2017).

[21] *See 2015 Inventory of U.S. Greenhouse Gas Emissions and Sinks*, United States EPA, https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks (last visited Aug. 10, 2017).

[22] U.S. EPA, *supra* n.6.

[23] *See* U.S. EPA, *Particulate Matter Pollution*, available at https://www.epa.gov/pm-pollution/particulate-matter-pm-basics#PM (last visited Aug. 10, 2017).

These factors, however, have no statutory or regulatory basis for inclusion in any EPA reconsideration.

As discussed above, § 202(a)(1) directs EPA to protect public health and welfare by setting vehicle emission standards with a compliance timeline based on technological feasibility and cost, and subject to the requirement that compliance with the standards cannot pose an unreasonable safety risk. 42 U.S.C. § 7521(a)(1), (2), (4). While the statute directs EPA to consider the cost of compliance, which affects both manufacturers and consumers, consumer preference is not a listed factor. Nor can it be read into the statute. When Congress intended for EPA to consider consumer preference or demand in setting an air quality standard, it explicitly so stated. 42 U.S.C. § 7511b(e)(2), which directs EPA to set criteria for emissions from volatile organic compound sources, specifically states that EPA, in establishing these criteria, "shall take into consideration the uses, benefits and commercial demand of consumer and commercial products." *Id.* at §7511b(e)(2)(B). Congress made no such statement in § 202(a). EPA may not properly inject such considerations here.

Several of the factors listed 40 C.F. R. § 86.1818-12(h)(1) similarly reflect § 202(a)(1)'s goals and considerations. *See, e.g.,* 40 C.F. R. § 86.1818-12(h)(1)(i)-(iii), (v), (vi) (availability of technology, lead time cost on producers and purchasers, feasibility and practicability of standards, safety). The remaining factors in § 86.1818-12(h) reflect the fact that EPA and the Highway Administration now adopt joint, harmonized standards. EPA therefore also considers the impact of its standards on EPCA's goals, *see* § 86.1818-12(h)(1)(iv), as well as on the CAFE standards and the national program itself. *Id.* at (h)(1)(iv), (vii). While the last factor, (h)(1)(viii), allows EPA to consider the impact of the standards on "other relevant factors," EPA in the Mid-Term Evaluation used this subsection to consider regulatory certainty. There is no explicit regulatory provision for considering consumer preference or demand.

There is no Factual or Legal Basis to Revise the 2021 Standard

EPA states that its decision to reconsider the 2022-2025 standards was based on its contention that the Mid-Term Evaluation was legally flawed. 82 Fed. Reg. 14671. Setting aside the validity of that position, which we strongly dispute, the 2021 standards were not legally required to be considered in the Mid-Term Review. *See* § 86.1818-12(h). EPA and the Highway Administration issued the 2021 standards as part of their joint Final Rule for model years 2017-2021, issued in 2012. 77 Fed. Reg. 62624. EPA has identified no legal or factual basis to justify re-opening of the model year 2021 standards or to broaden the scope of its improper re-opening of the Mid Term Review to include them.

including the current state of technology and the pace of technology development and implementation, could support a proposal, and potentially an ultimate decision, to adopt more stringent standards for MY 2022-2025[,]" any change of the standards should be to adopt *more stringent* greenhouse gas standards for model years 2022-25 that will address the urgent need to reduce greenhouse gas emissions from cars and trucks.

Respectfully submitted,

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York

By: Yueh-ru Chu
YUEH-RU CHU
Chief, Affirmative Litigation Section
CHANNING JONES
Public Interest Fellow
New York State Department of Law
Environmental Protection Bureau
120 Broadway
New York, New York 10271-0332
(212) 416-8446

FOR THE STATE OF CONNECTICUT

GEORGE JEPSEN
Attorney General
Matthew I. Levine
Scott N. Koschwitz
Assistant Attorneys General
Office of the Attorney General
P.O. Box 120, 55 Elm Street
Hartford, CT 06141-0120
(860) 808-5250

FOR THE DISTRICT OF COLUMBIA

KARL A. RACINE
Attorney General
ROBYN R. BENDER
Deputy Attorney General
Public Advocacy Division
BRIAN CALDWELL
Assistant Attorney General
Public Integrity Section
Office of the Attorney General
of the District of Columbia
441 Fourth St. NW Ste. 600-S
Washington, D.C. 20001
(202) 724-6610

FOR THE STATE OF CONNECTICUT

GEORGE JEPSEN
Attorney General
Matthew I. Levine
Scott N. Koschwitz
Assistant Attorneys General
Office of the Attorney General
P.O. Box 120, 55 Elm Street
Hartford, CT 06141-0120
(860) 808-5250

FOR THE DISTRICT OF COLUMBIA

KARL A. RACINE
Attorney General
ROBYN R. BENDER
Deputy Attorney General
Public Advocacy Division
BRIAN CALDWELL
Assistant Attorney General
Public Integrity Section
Office of the Attorney General
of the District of Columbia
441 Fourth St. NW Ste. 600-S
Washington, D.C. 20001
(202) 724-6610

FOR THE STATE OF IOWA

THOMAS J. MILLER
Attorney General
JACOB LARSON
Assistant Attorney General
Office of Iowa Attorney General
Hover State Office Building
1305 E. Walnut Street, 2nd Floor
Des Moines, Iowa 50319
(515) 281-4341

FOR THE STATE OF MAINE

JANET T. MILLS
Attorney General
GERALD D. REID
Assistant Attorney General
Chief, Natural Resources Division
Office of the Attorney General
6 State House Station
Augusta, ME 04333-0006
(207) 626-8545

FOR THE STATE OF MAINE

JANET T. MILLS
Attorney General
GERALD D. REID
Assistant Attorney General
Chief, Natural Resources Division
Office of the Attorney General
6 State House Station
Augusta, ME 04333-0006
(207) 626-8545

FOR THE COMMONWEALTH OF
MASSACHUSETTS

MAURA HEALEY
Attorney General
CAROL IANCU
Assistant Attorney General
Environmental Protection Division
One Ashburton Place, 18th Flr.
Boston, MA 02108
(617) 963-2428

FOR THE STATE OF NORTH CAROLINA

JOSHUA STEIN
Attorney General
BLAKE THOMAS
Deputy General Counsel
North Carolina Department of Justice
114 W. Edenton St.
Raleigh, NC 27603
(919) 716-6400

FOR THE COMMONWEALTH OF PENNSYLVANIA

JOSH SHAPIRO
Attorney General
STEVEN J. SANTARSIERO
Chief Deputy Attorney General
Environmental Protection Section
OFFICE OF ATTORNEY GENERAL
21 South 12th Street,
Philadelphia, PA 19107
Direct Dial: 215-560-2380
Cell Phone: 267-449-6639

FOR THE STATE OF WASHINGTON

ROBERT W. FERGUSON
Attorney General
KATHARINE G. SHIREY
Assistant Attorney General
Washington State Attorney General's Office
PO Box 40117
Olympia, WA 98504
(360) 586-6769

FOR THE STATE OF OREGON

ELLEN F. ROSENBLUM
Attorney General
PAUL GARRAHAN
Attorney-in-Charge
Natural Resources Section
Oregon Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
(503) 947-4593

FOR THE STATE OF VERMONT

THOMAS J. DONOVAN, JR.
Attorney General
NICHOLAS F. PERSAMPIERI
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609
(802) 828-3186

EXHIBIT A

Attorneys General of New York, Connecticut, Delaware, the District of Columbia, Hawaii, Iowa, Maine, Maryland, Massachusetts, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington and the Secretary of the Commonwealth of Pennsylvania Department of Environmental Protection

June 8, 2017

E. Scott Pruitt
Administrator, United States Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460

Re: Midterm Evaluation of Emission Standards for Passenger Cars and Light Duty Trucks for Model Years 2022-25

Dear Administrator Pruitt:

The undersigned Attorneys General and the Secretary of the Commonwealth of Pennsylvania Department of Environmental Protection submit this letter in response to your letter to California Governor Brown dated May 2, 2017, regarding the Environmental Protection Agency's midterm evaluation of the current federal standards for greenhouse gas emissions from cars and light-duty trucks. We write to express our strong disagreement with your contention that EPA's midterm evaluation process was legally flawed. If you seek to roll back these important standards, we intend to pursue appropriate legal action to defend them in court.

Background

The federal standards for model years 2022-25—together with the parallel standards California enacted and many of our states voluntarily adopted—will substantially cut the greenhouse gas emissions that cause climate change as well as reduce the pollutants that cause smog and foul the air that people breathe. Cars and light-duty trucks emit about 20 percent of greenhouse gases (mostly carbon dioxide) from fossil fuel combustion in this country. All told, these vehicles emit well over a trillion tons in greenhouse gases each year from their tailpipes, emissions that are raising the amount of carbon dioxide in the atmosphere to levels that are already producing increasingly intense climate-change impacts such as sea-level rise, extreme weather, and ocean acidification.

In 2009, the principal U.S. automotive regulators—EPA, the California Air Resources Board, and the Department of Transportation's National Highway Traffic Safety Administration (NHTSA)—partnered with the auto industry and other stakeholders to assess how best to reduce greenhouse gas emissions using readily available and affordable technologies. This cooperation resulted in the 2012 rulemaking, which set increasingly stringent standards for greenhouse gas emissions from cars and light-duty trucks for the 2017-25 model years. 77 Fed. Reg. 62,624 (Oct. 15, 2012). In addition to substantially cutting carbon pollution—by the equivalent of the annual emissions of 422 million cars currently on the road—these standards limit nitrogen oxide and other smog-forming emissions that trigger asthma attacks. And by improving the fuel economy of these vehicles, the standards will reduce our country's dependence on foreign oil.

To confirm achievability of the more stringent standards for model years 2022-25, EPA agreed to complete a midterm evaluation by April 2018. 40 C.F.R. § 86.1818-12(h). EPA had to

consider several factors in its evaluation, including the availability and effectiveness of technology, the costs to manufacturers and consumers, and the impact of the standards on emission reductions, energy security, fuel savings, and automobile safety. *Id.*, § 86.1818-12(h)(1).

EPA followed the process set forth in its regulations. First, after extensive research, EPA issued a draft Technical Assessment Report (TAR) jointly with NHTSA and CARB last summer, which found that the existing standards for model years 2022-25 can be met using existing available technology. EPA provided a 60-day public comment period, assessed those comments, and issued a draft final decision to maintain the current standards. EPA subsequently provided a 30-day comment period on the draft final decision and considered those public comments prior to issuing its final determination affirming the standards in January 2017. EPA concluded that the current standards are feasible at reasonable cost, will achieve significant carbon dioxide emissions reductions, and will provide significant economic and environmental benefits to consumers.

Indeed, even though EPA concluded that the record regarding the automakers' fuel economy technologies supported making the standards *more* stringent, it decided that regulatory certainty weighed in favor of keeping the current standards in place.

<u>EPA's Midterm Evaluation Complied with Applicable Law and is Consistent with the Facts</u>

In light of these facts, the characterization in your May 2 letter that EPA "circumvented" the required legal and scientific processes in its midterm evaluation is erroneous and inconsistent with your stated desire to "follow the letter of the law." First, although your letter contends there was insufficient opportunity for public comment during the process, EPA followed the regulatory requirements for seeking and considering public comments on both the draft TAR and the draft decision to maintain the current standards. *See* 40 C.F.R. § 86.1818-12(h)(2)(ii), (iii).

Second, your assertion that EPA deviated from the "required process" by not submitting these draft documents to the Office of Management and Budget (OMB) or the Department of Transportation is completely unfounded. Neither OMB nor DOT review is required for the midterm evaluation under the 2012 rule. *See* 40 C.F.R. § 86.1818-12(h).

Third, your argument that EPA acted prematurely by completing the midterm evaluation over a year ahead of the deadline finds no support in the language of the regulations. With respect to both the publication of the draft TAR and the final decision, the regulations prescribe deadlines by which the agency must act. *See id.*, § 86.1818-12(h)(1) (requiring EPA to issue its final determination by "[n]o later than April 1, 2018") and (h)(3) (requiring EPA to publish its draft TAR by "no later than November 15, 2017"). Although EPA is often faulted for *missing* deadlines, we are unfamiliar with any occasion on which the EPA Administrator has criticized his own agency for fulfilling its regulatory obligations *ahead* of schedule.

More fundamentally, it would have served no purpose for EPA to delay issuing its final decision until the last possible moment. As Governor Brown pointed out to you in his letter dated March 15, 2017, there are at least three separate reports by scientists, engineers, and other

experts analyzing the standards and concluding that they are feasible. The record is clear that appropriate technology exists *now* for automakers to achieve the current standards for model years 2022-25 at a reasonable cost. The timing of EPA's action reflected the reality that, as a result of their technological resourcefulness, automakers were already ahead of schedule in complying with the standards to date and that conditions were ripe to assess the technology available for the later model years. The reasonableness of EPA's determination was further confirmed by the decision reached by CARB in March that its parallel standards—which many of our states have adopted—are readily achievable by automakers. *See* California Air Resources Board, Resolution No. 17-3 (March 24, 2017), pp. 7, 15-16, https://www.arb.ca.gov/board/res/2017/res17-3.pdf.

In his March 15 letter, Governor Brown said California was prepared to take all necessary steps to preserve the current standards. In our view, EPA's midterm evaluation was lawful and fully supported by the record. And in light of the critical public health and environmental benefits the standards will deliver, if EPA acts to weaken or delay the current standards for model years 2022-25, like California, we intend to vigorously pursue appropriate legal remedies to block such action.

Ultimately, we are hopeful that you meant what you said in your opening in your letter to Governor Brown—that you too seek "cleaner and more efficient vehicles" and that you are committed to "the principles of cooperative federalism underlying environmental statutes." No environmental statute embodies those principles of cooperative federalism more fully than the Clean Air Act. And few steps would be simpler to ensure cleaner and more efficient vehicles than EPA's keeping in place its current standards for greenhouse gas emissions for cars and light duty trucks.

Sincerely,

Eric T. Schneiderman
Attorney General of New York

Karl A. Racine
Attorney General of the District of Columbia

Tom Miller
Attorney General of Iowa

Janet T. Mills
Attorney General of Maine

Ellen F. Rosenblum
Attorney General of Oregon

Brian Frosh
Attorney General of Maryland

George Jepsen
Attorney General of Connecticut

Peter F. Kilmartin
Attorney General of Rhode Island

Josh Shapiro
Attorney General of Pennsylvania

Bob Ferguson
Attorney General of Washington

Patrick McDonnell
Secretary of the Commonwealth of Pennsylvania Department of Environmental Protection

Maura Healey
Attorney General of Massachusetts

Matthew P. Denn
Attorney General of Delaware

T.J. Donovan
Attorney General of Vermont

Douglas S. Chin
Attorney General of Hawaii