U.S. Chamber of Commerce

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Docket Management Facility, M–30
U.S. Department of Transportation
West Building, Ground Floor, Rm. W12–140
1200 New Jersey Avenue SE, Washington, DC 20590

Re: Proposed Rule, National Highway Traffic Safety Administration; Corporate Average Fuel Economy Standards for Passenger Cars and Light Trucks for Model Years 2027–2032 and Fuel Efficiency Standards for Heavy-Duty Pickup Trucks and Vans for Model Years 2030–2035 (88 Fed. Reg. 56,128-56,390, August 17, 2023)

To Whom it May Concern:

The U.S. Chamber of Commerce appreciates the opportunity to provide comments on NHTSA's proposed rule concerning corporate average fuel economy (CAFE) standards for passenger cars, light trucks, and certain heavy-duty pickup trucks and vans.

The Chamber and its members are proud of our longstanding role as a collaborative partner with federal and state regulators to develop and deploy advanced technologies and vehicles that have contributed to America's steady progress improving fuel economy and reducing emissions from passenger vehicles. Consider that:[1]

- According to the Alliance for Automotive Innovation, in 2023, automakers are expected to achieve a record-high CAFE of nearly 37 miles per gallon for newly sold vehicles. This represents more than a 35% increase in efficiency since 2005—an achievement that is especially remarkable given that it has occurred during a period in which consumer preferences have shifted heavily toward larger and more capable vehicles.
- This increased fuel efficiency has helped to drive a 6% reduction in transportation sector carbon dioxide emissions, even as overall vehicle miles traveled have increased by about 10%.
- More than 90 models of vehicles currently achieve over 40 miles per gallon in fuel efficiency.
- Availability of electric vehicle options has increased dramatically, with 150 different models expected to be available within the next few years.

[1] Sources: Alliance for Automotive Innovation, Department of Transportation, and Environmental Protection Agency

- Automakers have announced plans to invest at least $115 billion in domestic EV manufacturing and battery production by the end of the decade.
- Nitrogen oxide (NOx) emissions from model year 2025 vehicles will be 57% lower than vehicles sold in 2004, and 95% lower than those sold in 1994—a major contributor to the more than 20% reduction in ozone levels during that time period.

We strongly support the continued transition to cleaner and more fuel-efficient vehicles, and are committed to partnering with NHTSA, EPA other federal and state stakeholders to facilitate continued progress.

For regulatory measures seeking to accelerate this transition to be successful, they must be technologically achievable, flexible, cost-effective and attentive to practical market and real-world considerations that affect consumer vehicle preferences. They also must recognize the vital importance of a healthy auto sector to the national economy. According to the Alliance for Automotive Innovation, auto manufacturing, sales and service supports a total of 9.6 million American jobs and generates more than $1 trillion of economic activity each year.

The Chamber has strong concerns that NTHSA's proposed rule fails to meet these criteria by going too far, too fast, and would impose incrementally large costs on consumers during a period of growing uncertainty for not just automakers, but the broader economy. We call attention to the following specific issues and concerns:

Need for unified federal approach

The Chamber has long called for vehicle fuel economy requirements to be coordinated through a single national standard. The current patchwork of multiple and sometimes conflicting federal requirements alongside numerous disparate state mandates is unnecessarily complex and costly. Returning to a unified and compatible regulatory system under which automobile manufacturers can sell a single national fleet of new vehicles would ease compliance burdens while significantly reducing vehicle design, development, supply chain, and distribution costs. Unfortunately, the proposal falls short of this important and widely supported goal due to inconsistencies with other regulations, particularly EPA's proposed greenhouse gas standards for light-duty vehicles. NHTSA and EPA should work together to properly harmonize their respective standards to ensure that automakers in compliance with one agency's standard are in automatic compliance with the other agency's standard, and that any automaker in compliance with EPA GHG standards do not have to pay civil penalties associated with the CAFE standard.

Stringency and use of electric vehicles in standard-setting

NHTSA's proposal seeks to revise fuel economy standards for the five-year model year period beginning in 2027. The agency's preferred scenario would require a 2% annual

improvement in fuel efficiency for passenger cars, and a 4% annual improvement for light trucks and SUVs each year through 2032. These would result in an average fleet fuel economy of 58 miles per gallon by model year 2032.

Sustaining annual fuel efficiency improvements at the pace proposed is unrealistic, particularly for the light truck and SUV segment of the market. Even still, the proposed annual percentage requirements greatly *understate* the stringency of the rule, because NHTSA has incorporated rapid adoption of electric vehicles into the baseline of its projected compliance pathway. Doing so hides from the public the full compliance costs of achieving the proposed standards. As a result of the rule's stringent annual mandates, the proposed standards cannot be met with technological improvements that improve fuel economy using liquid fuels. Rather, they can only be achieved by including electric vehicle adoption as part of the overall fuel economy calculation—an approach expressly prohibited by Congress in the Energy Policy and Conservation Act (EPCA).

Cost and economic considerations

The impact of higher vehicle prices on consumers and the economy is an important consideration that must be balanced in developing sound fuel economy regulations. According to Kelley Blue Book, the average transaction price of a new vehicle in September 2023 exceeded $48,000—about 25% higher than the average of $38,000 just five years ago— and average finance payments are now $725 per month.[2] According to NHTSA's own projections, the proposed rule would significantly exacerbate these trends, adding $2,000 to the cost of passenger cars and $3,500 to the cost of light trucks and SUVs in 2032. These estimates also overlook the costs of the EVs that were incorporated into the baseline as discussed above. These increased costs not only depress vehicle sales and negatively impact the economic health of the auto sector, but deter consumers from purchasing more fuel-efficient vehicles, incentivizing them to drive older cars for longer periods of time—a key factor contributing to the fact that the average age of on-road passenger vehicles is now at a record 12.5 years.

Feasibility and projected compliance penalties

Based on NHTSA's own analysis, almost one-third of the projected compliance costs associated with the proposed rule—about $14 billion—is attributed to civil penalties paid by manufacturers unable to meet the aggressive standards. According to the American Automotive Policy Council, these projected fines would entail a major escalation in financial penalties, dwarfing the *combined* total of all civil fines paid in the approximately 50-year history of the CAFE program, which is just $1.5 billion. Moreover, as NHTSA openly acknowledges in the proposal, those fines on auto manufacturers "are fully passed through

[2] https://www.autosinnovate.org/posts/papers-reports/Reading%20the%20Meter%2010-6-2023.pdf

to new car and truck buyers in the form of higher prices," so that the standards will "not be accomplishing what they set out to accomplish" in terms of fuel economy improvements.

While NHTSA unfairly characterizes these projected fines as the consequences of manufacturers' simply "choosing to pay civil penalties rather than apply additional technology," NHTSA's own analysis highlights a key challenge inherent in fuel economy standards: compliance is determined based on the products that consumers *buy*, not what automakers *manufacture* and send to dealer showrooms. Clearly, factors other than vehicle mileage are driving consumer behavior, such as safety, performance, family needs, and more. These real-world practical implementation issues necessitate greater attention as NHTSA's considers statutory requirements that were established by Congress.

Specifically, EPCA requires NHTSA to set standards at a "maximum feasible" level based on four underlying statutory factors: technological feasibility, economic practicability, the effect of other standards of the government on fuel economy, and the need of the nation to conserve energy. The circumstances detailed above—particularly (1) the inability to meet the standards based on technological improvements to vehicles' liquid fuel economy; and (2) the economic impracticality evidenced by NHTSA's own projection that compliance shortfalls would incur financial penalties that drive up vehicle prices without accomplishing efficiency goals—demonstrate that the proposed stringency of the rule exceeds the maximum feasible standard requirement set forth in EPCA.

Finally, on September 21, 2023, the White House released guidance to federal agencies encouraging employment of the Social Cost of Greenhouse Gases (SC-GHG) estimates to calculate penalties for regulatory non-compliance.[3] It appears that applying the SC-GHG estimates on top of NHTSA's current penalty rate could result in steep additional penalties of anywhere between $14 and $260 per ton of excess emitted CO_2, $670 and $8,200 per ton of excess methane, and $5,800 and $88,000 per ton of excess N_2O[4] News reports on the announcement cite NHTSA's CAFE program as a possible candidate for the additional penalties, which, as in the case of EPCA civil penalties, would be passed on to consumers in the form of higher vehicle prices.[5] The Chamber urges NHTSA to expressly assure stakeholders, both in guidance and in any forthcoming final rule, that it will not incorporate SC-GHG climate metrics into CAFÉ penalty calculations.

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[3] FACT SHEET: Biden-Harris Administration Announces New Actions to Reduce Greenhouse Gas Emissions and Combat the Climate Crisis, September 21, 2023, https://www.whitehouse.gov/briefing-room/statements-releases/2023/09/21/fact-sheet-biden-harris-administration-announces-new-actions-to-reduce-greenhouse-gas-emissions-and-combat-the-climate-crisis/

[4] Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990, Interagency Working Group on Social Cost of Greenhouse Gases, United States Government, February 2023, https://www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf

[5] Biden admin floats idea of adding climate impacts to fines, penalties. Politico, October 4, 2023. Available at https://subscriber.politicopro.com/article/eenews/2023/10/04/white-house-floats-idea-of-adding-climate-impacts-to-fines-penalties-00119197

Outside-the-vehicle factors that exacerbate compliance challenges

Because NHTSA relied heavily on electric vehicle deployment in designing the proposed standards (despite the aforementioned statutory prohibition on doing so), it is worth bearing in mind that a number of outside-the-vehicle factors threaten to slow EV adoption in a manner that would only exacerbate the compliance challenges associated with the proposed rule.

The Chamber identified the following specific challenges pertaining to this in earlier comments on EPA's proposed GHG standards for light duty vehicles:

- **Underdeveloped and unsecure supply chains for electric vehicle batteries and other components.** Electric vehicles need approximately six times more minerals than a conventional vehicle, and the International Energy Agency estimates that EV-related demand for these minerals will increase almost 30-fold through 2050. The auto industry and other sectors facing growing supply chain concerns are working with the mining sector to address projected shortfalls of these critical minerals and associated refining and processing needs, but the challenge is immense.

  Successfully ramping up these efforts will take several years under even the most optimistic scenarios. This is a major reason why aggressive EV deployment mandates may not be realistically achievable and could in fact exacerbate energy security issues associated with China's current dominance of global critical mineral supply chains. While recently enacted R&D programs and tax incentives are certain to help attract battery manufacturing and assembly investments necessary for the downstream end of the supply chain, a more comprehensive approach including faster permitting is needed. In particular, the Chamber urges the Administration to provide robust support for domestic mining projects required to source the raw materials necessary for manufacturing EV batteries on the scale envisioned by this proposal. This would require not only reversing course on the Administration's opposition to a number of important projects, but supporting reform to permitting laws and regulations that all too often stand in the way of efficiently utilizing U.S. natural resources to facilitate the energy transition.

- **Inadequate EV charging infrastructure**. It is widely regarded that consumer acceptance of and interest in electric vehicles are highly dependent on the existence of a sufficient nationwide network of EV charging infrastructure. As noted in the proposed rule, the bipartisan Infrastructure Investment and Jobs Act provides $7.5 billion of Federal Highway Administration funding for charging infrastructure deployment efforts that provide an important start for this effort. However, implementation of these programs has barely begun, and there is ample evidence that

even their successful and on-time execution would leave the U.S. far short of the number of charging stations necessary to support the proposal's expectation of nearly 70% EV sales in 2032. Addressing this shortcoming is fundamental to overcoming consumer reluctance to EV adoption. The Chamber encourages the Administration to work with automakers, utilities, the Department of Energy, and state governments to adjust phase-in timelines of this rulemaking to correspond to realistic expectations of EV charging infrastructure buildout. In addition, the Council on Environmental Quality and other agencies involved in setting permitting policy and revising regulations under various statutes such as the National Environmental Policy Act should promote regulatory and other policies that would truly streamline the permitting process, heeding input from the community of regulated parties who have ample concrete experience with how well-intentioned policy and regulatory changes can lead to adverse consequences.

In summary, the Chamber is eager to work with NHTSA and other federal stakeholders on behalf of its membership to ensure continued improvements to the fuel economy of America's passenger vehicle fleet. This progress should be informed by a sensible and coordinated framework that takes into account costs, technological achievability, and the practical market impacts of any regulatory program. Standards that go too far, too fast—as NHTSA's proposal would do—threaten to harm not only the U.S. auto sector, but American consumers and the broader U.S. economy.

For these reasons, we urge NHTSA to revise the standards, consistent with EPCA's Congressional direction, while also working to ensure that various federal programs are harmonized and to allow automakers to build a single fleet of compliant vehicles with sufficient lead time and regulatory certainty. In particular, NHTSA should remove its incorporation of electric vehicles into calculation of fuel economy requirements, and place greater weight on EPCA's technological feasibility and economic practicality requirements.

Thank you for the opportunity to share comments on this proposal.

Sincerely,

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U.S. Chamber of Commerce