Comments of the Zero Emission Transportation Association
(Docket ID: NHTSA-2025-0491)

The Zero Emission Transportation Association (ZETA) is a federal coalition committed to enacting policies that drive electric vehicle (EV) adoption, create hundreds of thousands of jobs, and maintain American EV manufacturing dominance. The Association's members span the entire EV supply chain—including vehicle manufacturers, charging infrastructure manufacturers, network operators, battery manufacturers and recyclers, electricity providers, and critical minerals producers, among others. ZETA submits these comments urging the National Highway Traffic Safety Administration (NHTSA) not to finalize the proposed CAFE amendments, *The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule III for Model Years 2022 to 2031 Passenger Cars and Light Trucks*, 90 Fed. Reg. 56,438 (Dec. 5, 2025) (Proposed Rule). The proposal would impermissibly weaken CAFE standards for model years 2022 through 2031 and is arbitrary, capricious, contrary to law, contrary to the record before the Agency, and unconstitutional.

DISCUSSION

ZETA urges NHTSA not to finalize the Proposed Rule. While ZETA supports efforts to simplify the administration of the CAFE program as well as manufacturer compliance, the proposal is deficient and undermines the CAFE program for several reasons.[1] First, the proposal is unlawful: the new standards are impermissibly retroactive, are not the "maximum feasible," improperly exclude EVs from the baseline calculation, and otherwise violate EPCA's energy conservation objectives. Second, the elimination of credit trading contravenes the longstanding recognition that credit trading advances Congress's purpose in the Energy Policy and Conservation Act (EPCA) and eases manufacturers' compliance burden. It also ignores ZETA members' serious reliance interests in multiple respects. Third, the technical analyses underpinning the proposal are flawed because, among other things, they use faulty assumptions and inputs and do not grapple with the record before the Agency.

I. The Current Proposal Is Unlawful Several Times Over.

A. The Proposal Is Impermissibly Retroactive.

NHTSA's proposal reaches back to make the fuel economy standards for Model Year (MY) 2022 onward less stringent than MY 2021 levels, even though (as NHTSA acknowledges) MYs 2022–2025 were, at the time of proposal, closed or wrapping up production,[2] with MY 2025 now completely out of production, and even though manufacturers and suppliers have relied on existing standards to make investments. In short, the proposal "attaches new legal consequences to events completed before its [promulgation]."[3]

NHTSA's retroactive rulemaking violates fundamental administrative law principles. It is blackletter law that "a statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms."[4] Here, NHTSA has not identified any express statutory grant of authority for retroactive rulemaking, and there is none. Rather, NHTSA infers the power to issue retroactive rules from statutory silence.[5] That does not suffice, nor is there any plausible rationale for rescinding already implemented standards.

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[1] The following comments address ZETA's concerns with the current proposal. If NHTSA were to reissue a proposal limited to vehicle classification and off-cycle credit reforms, ZETA would support it, provided all manufacturers receive uniform treatment.
[2] 90 Fed. Reg. at 56,524, 56,461.
[3] *Landgraf v. USI Film Prods.*, 511 U.S. 244, 270 (1994); *see Nat'l Mining Ass'n v. Dep't of Labor*, 292 F.3d 849, 857–59 (D.C. Cir. 2002) (similar).
[4] *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988).
[5] *See* 90 Fed. Reg. at 56,582 (relying on the notion that "the statute does not contain any language . . . limit[ing] the model years for which standards may be amended").

In fact, EPCA *bars* NHTSA from setting new standards for MYs 2022–2027. The statute requires the agency to provide 18 months' lead time before a new standard takes effect.[6] MYs 2022–2026 have already passed or are available on the market, so it is impossible to provide the requisite lead time. Even under 49 C.F.R. § 523.2, which defines the model year as beginning on October 1 of the year prior, MY 2027 begins on October 1, 2026. That date is less than 18 months away, so NHTSA cannot meet the required lead time for that year either. Indeed, the earliest model year for which NHTSA could realistically provide adequate lead time is MY 2029, assuming any rule is final after April 1, 2026.

NHTSA claims authority to violate the statutory requirement because it says it is amending the standards to make them less stringent.[7] While Section 32902(c) allows NHTSA to "amend[] the standard . . . for a model year to a level that the Secretary decides is the maximum feasible average fuel economy level for that model year,"[8] the proposed rule is not such an amendment. That amendment provision allows for only one-time adjustments for a single model year. This proposal, by contrast, is a repudiation of multiple standards and methodologies, designed to "reset" the CAFE program. And, because the proposed standards for past years are less stringent than the standards achieved in practice, they cannot be the "maximum feasible," *see infra* Section I.B, and so subsection (c) cannot provide authority for such an "amendment."

Moreover, as NHTSA has long understood, its ability to amend standards to make them less stringent cannot be applied to model years that have already passed.[9] Agency rulemaking is ordinarily prospective only.[10] And, limiting amendments to the beginning of the model year "provide[s] certainty and finality for all parties concerned with regard to the levels of standards," as it "permit[s] planning by the manufacturers and the agency through cutting off amendments once a model year has begun."[11] That interpretation, which was issued shortly after EPCA's promulgation and "remained consistent over time," is "especially useful" in determining EPCA's meaning.[12] NHTSA has not adequately explained its departure from that longstanding interpretation. It nowhere engages with the primary reasons for its prior interpretation—including statutory context and structure, legislative history, and the mandates of the Administrative Procedure Act (APA). NHTSA suggests that the "the statute does not contain any language suggesting [its preexisting] reading,"[13] but that inverts the analysis. A statutory grant of authority is presumptively prospective only; to claim retroactive authority, the agency must point to affirmative language conveying such authority.[14]

NHTSA has also not articulated any "good reasons" for the new policy.[15] NHTSA claims—without citation to authority—that Congress would not want NHTSA to leave in place standards that NHTSA now believes violate EPCA.[16] But that bare assertion cannot override the statute and blackletter administrative-law principles. NHTSA further suggests that amendments to the CAFE civil penalty provision support its action,[17] but that doesn't work either. Congress's prospective revision of the civil penalty amount (and not any other provision) says nothing about whether Congress would permit NHTSA to engage in retroactive rulemaking.[18] Plus, "the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one."[19] Finally, NHTSA's about-face on the lead-time requirement and revision of past standards

[6] *See* 49 U.S.C. § 32902(a), (g)(2).
[7] *See* 90 Fed. Reg. at 56,582.
[8] 49 U.S.C. § 32902(c).
[9] *See, e.g.*, *Light Truck Average Fuel Economy Standards Model Years 1985–86*, 49 Fed. Reg. 41,250, 41,254–55 (Oct. 22, 1984); *Gen. Motors Corp. v. NHTSA*, 898 F.2d 165 (D.C. Cir. 1990).
[10] *See* 5 U.S.C. § 551(4) (defining a rule as an "agency statement of general or particular applicability and future effect").
[11] *See* 49 Fed. Reg. at 41,255.
[12] *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394 (2024).
[13] 90 Fed. Reg. at 56,582.
[14] *See Bowen*, 488 U.S. at 208.
[15] *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016) (quotation marks omitted).
[16] *See* 90 Fed. Reg. at 56,582.
[17] *See id.* at 56,582 n.377.
[18] One Big Beautiful Bill Act, Pub. L. No. 119-21, § 40006, 139 Stat. 72, 136 (2025).
[19] *United States v. Price*, 361 U.S. 304, 313 (1960).

is arbitrary and capricious because it does not account for the "reliance interests" of vehicle manufacturers, who depend on the limitation on post-model-year amendments to make investments in fuel economy.[20]

NHTSA's proposal to retroactively make fuel economy standards less stringent would also violate due process and constitute an unconstitutional taking, because it arbitrarily deprives certain manufacturers (including ZETA members) of the value of credits that they *already* earned for outperforming CAFE standards for model years that have *already* been produced or sold. Existing credits have considerable value. They may be used to satisfy obligations for up to three years in the past or carried forward up to five years in the future.[21] They may also be traded to other manufacturers. By retroactively reducing the stringency of fuel economy standards, thereby depriving manufacturers of the full value of the credits they have earned, NHTSA "has forced a considerable financial burden" on EV manufacturers.[22] It has also "substantially interfere[d] with [EV manufacturers'] reasonable investment-backed expectations," reaching back to change fuel economy standards (and thus credit value) for model years that EV manufacturers reasonably believed to be settled.[23] What's more, NHTSA's action here is "quite unusual"—indeed, unprecedented—and "implicates fundamental principles of fairness," by changing the rules of the road after regulated parties already complied.[24] For all those reasons, NHTSA's retroactive action amounts to a regulatory taking and is arbitrary and irrational in violation of due process.[25]

Finally, NHTSA justifies beginning its new standards in MY 2022 by asserting that MY 2022 is "the earliest model year for which NHTSA has not concluded compliance proceedings,"[26] but that, too, is unlawful. The only reason NHTSA has not concluded compliance proceedings for MY 2022 onward is because NHTSA has flouted the statutory and regulatory requirement to assess compliance annually and then issued an interpretive rule earlier this year that unlawfully suspended continued enforcement of the CAFE program.[27] NHTSA cannot now use its unlawful delays and suspension of binding regulations to justify reaching back to re-promulgate CAFE standards for which it was obligated to determine compliance years ago.[28]

B. The Proposal Violates EPCA's "Maximum Feasibility" Provisions.

EPCA provides that each fuel economy standard shall be established at "the maximum feasible average fuel economy level that the Secretary decides the manufacturers can achieve" in a given model year.[29] When making that determination, NHTSA "shall consider technological feasibility, economic practicability, the effect of other motor vehicle standards of the Government on fuel economy, and the need of the United States to conserve energy."[30] While "NHTSA has discretion to balance th[ose] oft-conflicting factors," "NHTSA cannot set fuel economy standards that are contrary to Congress's purpose in enacting the EPCA—energy conservation."[31] NHTSA likewise cannot engage in an "unreasonable balancing of EPCA's policies."[32] The Proposed Rule disregards EPCA's energy-conservation purpose, sets standards that are not the "maximum feasible," and improperly applies and balances the statutory "maximum feasibility" factors.

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[20] *Encino Motorcars*, 579 U.S. at 222 (quotation marks omitted); *see infra* Section I.D; App'x § V, David L. Greene, *Report on the Proposed Fuel Economy Standards for Light-Duty Vehicles 2022-2031* (Feb. 4, 2026) (hereinafter "App'x").
[21] 49 U.S.C. § 32903(a)(2).
[22] *E. Enters. v. Apfel*, 524 U.S. 498, 529 (1998) (plurality op.).
[23] *Id.* at 532.
[24] *Id.* at 537.
[25] *See id.* at 538 (retroactive statute was a regulatory taking); *id.* at 539 (Kennedy, J., concurring) (statute violated due process).
[26] 90 Fed. Reg. at 56,582.
[27] *See Resetting the Corporate Average Fuel Economy Program*, 90 Fed. Reg. 24,518, 24,526 (June 11, 2025); Brief for Petitioner Zero Emission Transportation Association at 10–12, *California v. NHTSA*, No. 25-8019 (1st Cir. Nov. 12, 2025).
[28] *See, e.g.*, 49 U.S.C. § 32903(b)(1); 49 C.F.R. § 536.5(d)(1).
[29] 49 U.S.C. § 32902(a).
[30] *Id.* § 32902(f).
[31] *Ctr. for Biological Diversity v. NHTSA*, 538 F.3d 1172, 1197 (9th Cir. 2008).
[32] *Ctr. for Auto Safety v. NHTSA*, 793 F.2d 1322, 1340 (D.C. Cir. 1986).

i. The Proposal Is Contrary to EPCA's Energy Conservation Objectives.

NHTSA proposes "maximum feasible" standards that are less stringent than those that applied in MY 2022 and that have been achieved in practice since.[33] That dramatic rollback of fuel economy standards contravenes Congress's express objective for the CAFE program "to provide for improved energy efficiency of motor vehicles."[34] EPCA's legislative history reinforces that Congress intended the word "conservation" to mean using less fuel.[35] While paying lip service to the need to improve fuel economy over time,[36] NHTSA's proposal revises standards to levels that result in increased gasoline use—and thus in increased energy consumption.[37] The proposal appears motivated in part by NHTSA's view that liquid fuel conservation is no longer a worthwhile objective.[38] But that decision is for Congress, not NHTSA.

ii. The Proposed Standards Are Not the "Maximum Feasible."

Moreover, the statute requires "maximum feasible" fuel economy standards, indicating Congress's intent to push fuel economy as high as feasible. And the statute does not mandate that NHTSA establish standards at a level that "every manufacturer" or "each manufacturer" can achieve; instead, NHTSA must assess the capability of "the manufacturers" collectively.[39] NHTSA must therefore establish the maximum feasible average fuel economy level that the industry "can achieve" overall, and it may establish fuel economy standards at a level that certain individual manufacturers cannot meet.[40]

NHTSA's proposed standards are not the "maximum feasible." As NHTSA admits, manufacturers are already "over-complying with required fuel economy levels."[41] NHTSA's own analysis shows that internal combustion engine (ICE) manufacturers have exceeded, or are projected to exceed, the proposed standards in every single model year and vehicle category—in one year, by more than 10 mpg. Indeed, in every model year through MY 2031, NHTSA proposes to require less stringent fuel economy than ICE manufacturers already achieved in MY 2024; in other words, the new standards would require no industry-level improvements in fuel economy at all.[42] There is also no factual basis for NHTSA to limit annual stringency increases to 0.5% per year when, as the Agency has recognized, automaker performance has long exceeded that level.[43] That a couple of outlier and very low-volume manufacturers might still choose not to comply[44] does not suggest otherwise. NHTSA's job is not to set standards at levels that are achievable by everyone.

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[33] 90 Fed. Reg. at 56,448, 56,524.
[34] Energy Policy and Conservation Act, Pub. L. No. 94–163, 89 Stat. 871 (1975).
[35] *See, e.g.*, S. Rep. No. 94–179, at 2 (1975) ("[I]mprovements in fuel economy . . . will lead to an overall reduction in gasoline demand[.]"); H.R. Rep. No. 94–340, at 1 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 1762, 1763 (the bill will "prevent growth in gasoline consumption" and "reduce existing demand levels" of gasoline).
[36] *See, e.g.*, 90 Fed. Reg. at 56,446.
[37] *See id.* at 56,515 ("Resetting CAFE standards would increase domestic consumption of gasoline compared to the regulatory baseline[.]").
[38] *Id.* at 56,608.
[39] *See* 49 U.S.C. § 32902(a). Congress's authorization of credit trading confirms the CAFE program's focus on industry-wide fuel economy improvements. Assuming a well-functioning trading system, there is no difference from an economic perspective between regulating many firms individually with tradable credits and regulating the industry as if it were a single firm.
[40] A subsequent subsection confirms that NHTSA need not establish fuel economy standards at a level achievable by every manufacturer: the statute authorizes a small manufacturer (one that produces fewer than 10,000 automobiles per year) to obtain an exemption from a fuel economy standard "only if the Secretary … finds that the applicable standard … is more stringent than the maximum feasible average fuel economy level that the manufacturer can achieve." 49 U.S.C. § 32902(d)(1). If NHTSA were obligated to establish standards at a level that every manufacturer could achieve, this exemption provision would be superfluous.
[41] 90 Fed. Reg. at 56,448 & tbl. I-2.
[42] *See id.*
[43] *See id.* at 56,522 (recounting history of automakers achieving between 1 and 5.7% annual fuel economy increases).
[44] *See id.* at 56,600–01 tbls. V-5 & V-6.

iii. NHTSA Incorrectly Interprets and Applies the "Maximum Feasibility" Factors.

In balancing the factors, NHTSA failed to provide reasoned explanations, relied on factors that Congress did not intend it to consider, ignored important aspects of the problem EPCA aims to address, offered explanations that are contrary to the evidence, and reached conclusions that are facially implausible.[45]

Technological feasibility. NHTSA improperly conflates this factor with economic practicability.[46] NHTSA also unreasonably applies this factor to result in no technology forcing at all—indeed, to result in a dramatic rollback of standards to levels that manufacturers easily exceed.[47] That is inconsistent with EPCA: fuel economy standards are "intended to be technology forcing" because "market forces . . . may not be strong enough to bring about the necessary fuel conservation which a national energy policy demands."[48] NHTSA also fails to explain what technologies it does and does not consider, saying only that it is "unnecessary" to account for every technology because "many technologies address fuel economy in similar ways."[49] That is inadequate: NHTSA fails to explain what it means by "similar ways," and why the fact that technologies might improve fuel economy in "similar ways" fulfills NHTSA's obligation to consider the availability of different technologies, especially given cost differences among them.

Economic practicability. NHTSA's economic practicability analysis is also deficient. NHTSA puts an unreasonable amount of weight on consumer choice and demand.[50] Though NHTSA can consider consumer demand, it cannot do so "to such an extent that it ignore[s] the overarching goal of fuel conservation."[51] Here, NHTSA impermissibly elevates its distorted view of consumer demand and choice over the need to conserve energy. The Agency has also unlawfully defined safety as a "subcomponent of economic practicability," concluding that "implementation of fuel-saving technology necessarily comes at the expense of investing in . . . safety technology."[52] But NHTSA provides no support for that assertion, and it is not necessarily true that there is a tradeoff between investing in safety and fuel economy.[53]

Even on its own terms, NHTSA's analysis is deficient. NHTSA contends that "[m]any of the gasoline- and diesel-powered vehicle models most popular with American families would be unsustainable for manufacturers to produce under the existing standards, and it is unlikely that an EV alternative could provide the same performance, utility, or recreational value at a comparable price (or at all)."[54] Yet some of the most popular and high-performing vehicles in the United States are EVs: the Tesla Model Y, for example, has been one of America's best-selling vehicles, and models by Tesla, Rivian, and Lucid are consistently among the highest performing, safest cars on the road.[55]

Effect of other motor vehicle standards of the Government. NHTSA proposes not to consider EPA's greenhouse-gas emissions standards due to EPA's "proposed rescission" of them.[56] NHTSA cannot disregard still-effective regulations based on another agency's proposal to rescind them and must issue its

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[45] *See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *see also* App'x § II.
[46] *See* 90 Fed. Reg. at 56,585 (stating that "the crucial question on the technological feasibility factor is not whether technologies exist to meet the standards," but "[r]ather, . . . how much existing technology should be required to be added to new cars and trucks to conserve fuel, and how appropriately to balance any additional fuel conserved against the additional cost the mileage requirements will impose on new vehicles").
[47] *See supra* Section I.B.ii.
[48] *Ctr. for Auto Safety*, 793 F.2d at 1339 (internal quotation marks omitted).
[49] 90 Fed. Reg. at 56,585.
[50] *See, e.g.*, *id.* at 56,444 (setting standards to be achievable "without the implementation of technologies not demanded by consumers"); *id.* at 56,446 ("Maximum feasible fuel economy standards . . . should *never* incentivize manufacturers to add technology that consumers reject[.]" (emphasis added)).
[51] *Ctr. for Auto Safety*, 793 F.2d at 1340.
[52] 90 Fed. Reg. at 56,586.
[53] *See* App'x § VI.
[54] 90 Fed. Reg. at 56,594.
[55] *See, e.g.*, Ins. Inst. for Highway Safety, *2025 Top Safety Picks*, https://www.iihs.org/ratings/top-safety-picks [https://perma.cc/BSR6-5ZDX] (last visited Feb. 2, 2026); Shane Wilkinson, *Fastest-Accelerating Cars 2026: Quickest 0–60mph Production Cars*, Auto Express (Aug. 27, 2025), https://www.autoexpress.co.uk/best/fastest-0-60-car [https://perma.cc/5LUH-QQYR].
[56] 90 Fed. Reg. at 56,586.

NPRM based on existing, not anticipated, law. As of the date the proposal was published, the greenhouse gas emissions are still "other motor vehicle standards of the Government." A proposed rule standing alone has no legal consequence.[57] Should EPA's rescission be finalized but later struck down, NHTSA's failure to consider those standards would independently render this rule arbitrary and capricious.

Need of the United States to conserve energy. As already noted, NHTSA impermissibly de-emphasizes this factor in a manner that contradicts the statutory scheme.[58] In addition, NHTSA intimates that it will no longer consider environmental effects as part of this factor.[59] Since the earliest days of the CAFE program, NHTSA has considered environmental issues, both under EPCA and NEPA, as relevant to its standard-setting.[60] That approach is correct. Congress enacted EPCA as a "direct, comprehensive response to the energy crisis precipitated" by the Arab oil embargo of 1973, with the statute including various measures designed to "reduc[e] demand for energy."[61] Consistent with that goal, Congress enacted broad statutory language, directing NHTSA to consider "the need of the United States to conserve energy."[62] One reason, of course, why the United States "need[s] to conserve energy" is to avoid the devastating environmental and health effects associated with lower vehicle fuel economy and higher fuel consumption.[63]

For similar reasons, NHTSA's decision to "not include monetized estimates of changes in so-called greenhouse gas (GHG) emissions" is arbitrary and unlawful.[64] In the proposal, NHTSA "set[s] the social cost of carbon at zero."[65] That is inconsistent with *Center for Biological Diversity v. NHTSA*, which requires NHTSA to consider the effects of carbon emissions reductions.[66] NHTSA's zeroing-out of the social cost of carbon is also an unexplained and unjustified departure from past federal actions.[67] The decision distorts NHTSA's analysis by ignoring the very real harms from increased greenhouse gas emissions—and the benefits to reducing them. Noting that there are "many uncertainties" related to monetizing the impacts of GHG emissions[68] does not fulfill NHTSA's obligation to analyze the relevant factors and provide a reasoned explanation. Thus, NHTSA ignores a significant aspect of EPCA's purpose by failing to meaningfully consider GHG impacts—a central concern when Congress reauthorized CAFE in 2007.[69]

NHTSA asserts that "the need of the U.S. to conserve energy is significantly less than it was at earlier points in the history of the program" because of the "rapid growth in U.S. oil production."[70] As a result, NHTSA discounts the national balance of payments and foreign policy considerations.[71] That, too, is not the product of reasoned decisionmaking. For one, the U.S. still imports approximately 8 million barrels of oil *per day*[72]—and so is still exposed to global oil price fluctuations. What's more, higher domestic oil output does

[57] *See, e.g., Sweet v. Sheahan*, 235 F.3d 80, 87 (2d Cir. 2000) ("[P]roposed regulations[] have no legal effect[.]").
[58] *See supra* Section I.B.i.
[59] *See* 90 Fed. Reg. at 56,587–88.
[60] *See Passenger Automobile Average Fuel Economy Standards for Model Years 1989 and 1990*, 53 Fed. Reg. 33,080, 33,096 (Aug. 29, 1988); *Passenger Automobile Average Fuel Economy Standards for Model Year 1989*, 53 Fed. Reg. 39,275, 39,302 (Oct. 6, 1988); *Ctr. for Auto Safety*, 793 F.2d at 1325 n.12; *Public Citizen v. NHTSA*, 848 F.2d 256, 262–63 n.27 (D.C. Cir. 1988); *Ctr. for Biological Diversity*, 538 F.3d at 1214–15.
[61] *Nat. Res. Def. Council v. Abraham*, 355 F.3d 179, 185 (2d Cir. 2004).
[62] 49 U.S.C. § 32902(f).
[63] *See* App'x § II.c.
64 *See* 90 Fed. Reg. at 56,515.
[65] NHTSA, *Draft Technical Support Document: The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule III for Model Years 2022 to 2031 Passenger Cars and Light Trucks* 1-4 (Dec. 2025), https://www.regulations.gov/document/NHTSA-2025-0491-0007 [https://perma.cc/CC32-AL56]; *see* 90 Fed. Reg. at 56,457.
[66] *Ctr. for Biological Diversity*, 538 F.3d at 1198–1203.
[67] *See, e.g.*, *Corporate Average Fuel Economy Standards for Passenger Cars and Light Trucks for Model Years 2027 and Beyond and Fuel Efficiency Standards for Heavy-Duty Pickup Trucks and Vans for Model Years 2030 and Beyond*, 89 Fed. Reg. 52,540, 52,680–81 (June 24, 2024).
[68] 90 Fed. Reg. at 56,515.
[69] S. Rep. No. 110-278, at 1 (2008) ("The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 357) to improve passenger automobile fuel economy and safety, reduce greenhouse gas emissions, reduce dependence on foreign oil, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.").
[70] 90 Fed. Reg. at 56,587.
[71] *See id.* at 56,587–88.
[72] *Id.* at 56,588.

not insulate *consumers* against oil price volatility, because the price of oil (whether produced domestically or overseas) is still vulnerable to volatility in global oil markets. Indeed, the Administration has emphasized the importance of securing additional oil resources to address growing energy demands.

iv. NHTSA's "Maximum Feasibility" Analysis Uses Bad Assumptions.

NHTSA's "maximum feasibility" analysis rests on outdated assumptions and selective data interpretation that mischaracterize the current state of electric vehicle technology and markets. The Agency's concerns about EV cost of ownership, performance capabilities, municipal charging infrastructure expenses, and lithium battery fires are contrary to empirical evidence and real-world data.

Cost of Ownership. EVs are now attractive on a total cost-of-ownership basis, even without subsidies. Atlas Public Policy found that even with no federal incentive, the Tesla Model Y and Chevrolet Equinox EV were more cost-effective compared to similar gasoline models.[73] The International Council on Clean Transportation found that 300-mile-range EVs beat comparable ICE vehicles on a total cost-of-ownership basis over a six-year period.[74] Battery costs have driven this transformation. BloombergNEF documents battery pack prices declining by over 90% since 2010 to $108 per kWh in 2024.[75] Because batteries represent 30–50% of a vehicle's value, these cost reductions have led to cheaper vehicles for consumers.[76] EV operational costs are lower too.[77] For consumers with home chargers, EVs offer dramatically lower fueling costs than gasoline counterparts; maintenance costs are also lower, because EVs eliminate oil changes, minimize brake service through regenerative braking, require no spark plug replacement, and have fewer moving parts.[78] Modern EV batteries can now meet or exceed typical ICE vehicle longevity, with warranties increasingly surpassing 100,000 miles under EPA's durability performance standards.[79] In contrast, EPA durability requirements for conventional vehicles cover only certain engine and transmission failures through 80,000 miles, effectively transferring more long-term cost risk to ICE owners.[80]

Vehicle Performance. Consumer experience validates that EV performance meets or exceeds that of conventional vehicles. EV driving performance ranks among the top three reasons cited for choosing an EV, alongside lower charging costs and environmental benefits.[81] And 94% of current EV owners will definitely or probably consider an EV for their next purchase—reflecting exceptional owner satisfaction.[82]

Charging Infrastructure Costs. Charging infrastructure has been built predominantly through private sector investment, not municipal expenditures. National Electric Vehicle Infrastructure (NEVI) program

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[73] Dan Wilkins & Nick Nigro, Atlas Pub. Policy, *Comparing the Cost of Owning the Most Popular Vehicles in the United States: 2025 Update* (June 2025), https://atlaspolicy.com/wp-content/uploads/2025/07/Comparing-the-Cost-of-Owning-the-Most-Popular-Vehicles-in-the-United-States-2025-Update.pdf [https://perma.cc/2YXZ-PE23].

[74] Aaron Isenstadt & Kelli Pennington, Int'l Council on Clean Transp., *Tax Credits or No Tax Credits, EV Costs Are Projected to Keep Dropping* (July 2025), https://theicct.org/tax-credits-or-no-tax-credits-ev-costs-are-projected-to-keep-dropping-jul25/ [https://perma.cc/N853-G3YG].

[75] Press Release, BloombergNEF, *Lithium-Ion Battery Pack Prices Fall to $108 per Kilowatt-Hour Despite Rising Metal Prices* (Dec. 9, 2025), https://about.bnef.com/insights/clean-transport/lithium-ion-battery-pack-prices-fall-to-108-per-kilowatt-hour-despite-rising-metal-prices-bloombergnef/ [https://perma.cc/QN3L-ZCWF].

[76] Liz Najman, Recurrent Auto, *New Data: How Long Do EV Batteries Last?* (Nov. 11, 2025), https://www.recurrentauto.com/research/how-long-do-ev-batteries-last [https://perma.cc/CG24-U9C5].

[77] *See* Argonne Nat'l Laboratory, *EV Consumer Interest and Satisfaction*, https://www.anl.gov/ev-facts/consumer-satisfaction [https://perma.cc/UQG6-SM8B] (last visited Feb. 2, 2026).

[78] Aaron Isenstadt & Kelli Pennington, Int'l Council on Clean Transp., *Tax Credits or No Tax Credits, EV Costs Are Projected to Keep Dropping* (July 2025), https://theicct.org/tax-credits-or-no-tax-credits-ev-costs-are-projected-to-keep-dropping-jul25/ [https://perma.cc/N853-G3YG].

[79] Liz Najman, Recurrent Auto, *New Data: How Long Do EV Batteries Last?* (Nov. 11, 2025), https://www.recurrentauto.com/research/how-long-do-ev-batteries-last [https://perma.cc/CG24-U9C5].

[80] *See* 40 C.F.R. § 85.2103(c)(1).

[81] Deloitte, *2026 Global Automotive Consumer Study* (Jan. 2026), https://www.deloitte.com/us/en/insights/industry/retail-distribution/global-automotive-consumer-study.html [https://perma.cc/B3WL-NF4L].

[82] J.D. Power, *EV Sales Down But Not Out: U.S. Consumer Interest Continues to Grow, Led by Current EV Lessees Coming Back to Market* (Nov. 7, 2025), https://www.jdpower.com/business/resources/ev-sales-down-not-out-us-consumer-interest-continues-grow-led-current-ev-lessees [https://perma.cc/2KMZ-KQJA].

connectors represented approximately 3% of new fast-charging ports in 2025.[83] NEVI stations totaled just 146 by year-end in 2025—a small fraction of the nationwide public charging network.[84] The U.S. public charging network more than doubled to over 230,000 connectors by end of 2025, compared to around 100,000 in 2021.[85] This market-driven development demonstrates that charging buildout does not impose the municipal cost burden NHTSA suggests. And even though most charging infrastructure is funded through private investment, courts have ruled that recent cuts in NEVI funding were unlawful, such that NEVI will continue to reduce the burden on municipal expenditures for charging infrastructure.[86]

Fire Safety. NHTSA's own commissioned study concluded that "the propensity and severity of fires and explosions . . . in Li-ion battery systems are anticipated to be somewhat comparable to or perhaps slightly less than those for gasoline or diesel vehicular fuels."[87] Comprehensive fire incident data confirm ICE vehicles present substantially greater fire risks. The National Fire Protection Association reports ICE vehicle fires occur on average every two to three minutes.[88] U.S. data show 25 fires per 100,000 EVs sold versus 1,500 fires per 100,000 gas-powered vehicles—a sixty-fold difference.[89] International data are equally compelling. Sweden has very high EV adoption, with EVs making up more than half of new passenger car sales.[90] Sweden's Civil Contingencies Agency documented 23 fires in 611,000 EVs versus 3,400 fires in 4.4 million gasoline and diesel vehicles.[91] In Norway, which has the world's highest EV adoption rate, emergency services recorded 403 vehicle fires in the first half of 2025: 359 combustion vehicles, 12 hybrids, and only 30 fully electric cars. EV fires accounted for 7.4% of incidents despite EVs comprising 28.3% of the fleet. Per 1,000 vehicles, the fire rate was 0.034 for EVs versus 0.195 for combustion vehicles—meaning ICE cars catch fire almost six times more often.[92] Further, extensive research and testing confirm that electric vehicle fire risks are effectively addressed through sophisticated response methods, with water remaining the primary and most effective extinguishing agent for battery fires when applied using proper techniques and equipment. Comprehensive, research-based training programs are now widely available to equip first responders with specialized knowledge.[93]

National Security Considerations. The proposal's suggestion that EV production undermines national security is unsupported. To be sure, EVs rely on critical minerals, which are broadly important to domestic manufacturing. But investment in domestic production of these minerals is increasing and has been

[83] Paren, *State of the Industry Report: U.S. EV Fast Charging Full Year 2025* (Jan. 28, 2026), https://www.paren.app/reports/state-of-the-industry-report-us-ev-fast-charging-full-year-2025 [https://perma.cc/CAE5-52HR].
[84] *See id.*
[85] U.S. Dep't of Energy, *Electric Vehicle Charging Infrastructure Growth*, https://driveelectric.gov/stations-growth [https://perma.cc/LW6D-UZNE] (last visited Feb. 2, 2026).
[86] Order on Motions for Summary Judgment, *Washington v. U.S. Dep't of Transp.*, No. 2:25-cv-848-TL (W.D. Wash. Jan. 23, 2026).
[87] D. Stephens et al., Nat'l Highway Traffic Safety Admin., U.S. Dep't of Transp., *Lithium-Ion Battery Safety Issues for Electric and Plug-In Hybrid Vehicles*, Report No. DOT HS 812 418, at 11-1 (2017), https://www.nhtsa.gov/sites/nhtsa.gov/files/documents/12848-lithiumionsafetyhybrids_101217-v3-tag.pdf [https://perma.cc/W6FJ-Z4W7].
[88] Nat'l Fire Prot. Ass'n, *Electric Vehicle Safety*, https://www.nfpa.org/education-and-research/electrical/electric-vehicles [https://perma.cc/F9WW-SR9T] (last visited Feb. 2, 2026).
[89] Kaif Shaikh, *Do Electric Vehicles Really Catch Fire More Than Gas Cars? Global Data Answers*, Interesting Eng'g (Dec. 19, 2025), https://interestingengineering.com/transportation/do-electric-vehicles-really-catch-fire-more [https://perma.cc/Q56G-FWAK].
[90] Joel Jaeger, World Res. Inst., *These Countries Are Adopting Electric Vehicles the Fastest* (Dec. 5, 2025), https://www.wri.org/insights/countries-adopting-electric-vehicles-fastest [https://perma.cc/8SE3-J378] (reporting that according to the International Energy Agency, EVs made up 58% of passenger vehicle sales in Sweden in 2024).
[91] Laurelle Stelle, *New Study Uncovers Stunning Misconception Surrounding Electric Car Fires — Here's What Most People Get Wrong*, The Cool Down (June 17, 2023), https://www.thecooldown.com/green-tech/electric-car-fires-gas-hybrid-ban/ [https://perma.cc/8YG5-MUR7] (last visited Jan. 22, 2026) (reporting on Swedish Civil Contingencies Agency 2023 study).
[92] New Mobility Association, *Norway Debunks the Myth of EV Fires: Combustion Cars Catch Fire Up to Six Times More Often* (Aug. 13, 2025), https://psnm.org/2025/information/norwegia-obala-mit-o-pozarach-elektrykow-auta-spalinowe-plona-nawet-6-razy-czesciej/?lang=en [https://perma.cc/6TKP-BYLF].
[93] UL Fire Safety Research Inst., *Fire Safety Academy*, https://training.fsri.org [https://perma.cc/H9S8-U83K] (last visited Feb. 2, 2026); Nat'l Fire Prot. Ass'n, *Responding to Electric Vehicle Fires*, https://www.nfpa.org/education-and-research/emergency-response/responding-to-electric-vehicle-fires [https://perma.cc/N88B-QQSS] (last visited Jan. 27, 2026); Nat'l Volunteer Fire Council, *NVFC Electric Vehicle/Alternative Fuel Vehicle Train-the-Trainer Course*, https://www.nvfc.org/afvtrainer/ [https://perma.cc/4DL8-SJM9] (last visited Feb. 2, 2026); Int'l Ass'n of Fire Fighters, *Now Available: IAFF Energy Hazard Guide* (June 20, 2025), https://www.iaff.org/news/now-available-iaff-energy-hazard-guide/ [https://perma.cc/VDC8-H943].

supported by the Administration.[94] And increased dependence on oil has national security implications too.[95] The proposal provides no detailed analysis balancing the national security risks of petroleum dependence against risks of critical mineral dependence, as it must to support its national security claim.

C. NHTSA Improperly Excludes EVs From the Baseline.

NHTSA must base its standards on accurate baselines—*i.e.*, what the regulated fleet would look like in the absence of new fuel economy standards. As NHTSA itself explains, the agency must "identify a 'no action' baseline: what would the world will [sic] be like if the proposed rule is not adopted."[96] In the Proposed Rule, NHTSA proposes to exclude EVs from the baseline, but that is unlawful, arbitrary, and capricious.

NHTSA's interpretation breaks with decades-long agency practice.[97] Since the early days of the CAFE program, NHTSA has calculated the real-world baseline and then determined achievable improvements.[98] Until this proposal, NHTSA consistently maintained it can and must consider EVs manufacturers are already deploying to set an accurate baseline fleet.[99] NHTSA also maintained that it may consider manufacturers' existing credit banks when simulating compliance with the baseline (even though it may not consider such credits as a compliance mechanism in standard-setting years).[100] NHTSA has also consistently maintained that without accurately characterizing the no-action baseline, it cannot set standards ensuring fuel-saving improvements and effectuating EPCA's purposes.[101] Indeed, as recently as 2025, NHTSA asserted that the baseline must be premised on the real-world capabilities of the existing fleet.[102]

NHTSA's longstanding approach is correct. The world without new CAFE standards still includes EVs. For that reason, NHTSA must include in the baseline any EVs that manufacturers already plan to incorporate in their fleets (*e.g.*, in response to cost effectiveness, market demand, and other regulatory requirements).[103] Omitting EVs from the baseline calculation assumes a counterfactual scenario where EVs do not exist. This improperly skews the fleet's average fuel economy by artificially lowering the fleet average, making the fleet appear less efficient than it is and the proposed standards more stringent than they are. This creates absurd results and constitutes an inadequately explained departure from NHTSA's decades-long practice.[104]

The proposal is wrong that EPCA, specifically section 32902(h), mandates the exclusion of EVs from the baseline. To start, the Proposed Rule provides no reasoned analysis supporting NHTSA's new interpretation of EPCA. NHTSA relies exclusively on a June 2025 rule as the basis for its new reading of the statute.[105] But that rule was invalidly issued without following required APA procedures and therefore cannot lawfully be used to justify the Agency's new and otherwise unsupported interpretation of EPCA. In any event, while

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[94] *See, e.g.*, Press Release, Dep't of Energy, *Energy Department Announces $355 Million to Expand Domestic Production of Critical Minerals and Materials* (Nov. 14, 2025), https://www.energy.gov/articles/energy-department-announces-355-million-expand-domestic-production-critical-minerals-and [https://perma.cc/VMJ4-ZE46]; Exec. Order. 14,154, *Unleashing American Energy*, 90 Fed. Reg. 8,353 (Jan. 20, 2025).
[95] *See, e.g.*, *supra* at pp. 6–7; *infra* at p. 10.
[96] 90 Fed. Reg. at 56,592 n.459 (citing E.O. 12866 and OMB Circular A-4).
[97] *See Loper Bright*, 603 U.S. at 386.
[98] *See* Final Rule, 42 Fed. Reg. 33,535 (June 30, 1977); Passenger Automobile Average Fuel Economy Standards for Model Years 1987-88, 51 Fed. Reg. 35,594, 35,603 (Oct. 6, 1986).
[99] *See, e.g.*, 90 Fed. Reg. 24,521 (describing rules finalized in 2012, 2020, 2022, and 2024).
[100] *See id.* at 24,521, 24,523.
[101] *See, e.g.*, 89 Fed. Reg. at 52,611.
[102] As NHTSA correctly noted in a 2025 brief, excluding EVs from the baseline would lead to absurd results—standards so weak that "manufacturers would already have achieved average fleet fuel economy well above that level, [and] it would be unnecessary for them to make any improvements at all to achieve compliance, thus nullifying Congress's fuel-economy program . . . . [Such] standards at that point would not even be effective in preventing automakers from downgrading their gasoline-powered vehicles to less expensive and less efficient technology." Resp. Br. 32, *In re NHTSA*, No. 24-7001 (6th Cir. Jan. 17, 2025).
[103] *See, e.g.*, 89 Fed. Reg. at 52,552; *Corporate Average Fuel Economy Standards for Model Years 2024–2026 Passenger Cars and Light Trucks*, 87 Fed. Reg. 25,710, 25,747, 25,778–79 (May 2, 2022); *The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks*, 85 Fed. Reg. 24,174, 24,314, 25,899 (Apr. 30, 2020).
[104] *See Loper Bright*, 603 U.S. at 386.
[105] *See* 90 Fed. Reg. at 56,592.

subsection 32902(h) limits NHTSA's considerations in determining feasible fuel economy improvements, it does not limit NHTSA's ability to include EVs in the calculation of the baseline level of fuel economy the fleet would achieve in the absence of regulation. Properly interpreted, NHTSA's rulemaking process occurs in two distinct steps.[106] First, the agency determines the reference fleet or baseline to which standards will be applied. That reference fleet appropriately includes those "automobiles" to which the standards will apply.[107] EVs are plainly "automobiles" to which standards apply, [108] and are thus properly considered part of the reference fleet or baseline. Next, once the baseline is determined, 49 U.S.C. § 32902(h)(1)–(2) bars NHTSA from "consider[ing] the fuel economy of dedicated automobiles" and requires the agency to "consider dual fuel automobiles to be operated only on gasoline or diesel fuel" when it determines the feasibility of increases in the fuel economy standards automakers can achieve.[109] Subsection 32902(h) thus ensures NHTSA sets standards manufacturers can meet without adding EV technologies. But it does not require NHTSA to disregard the actual fuel economy of existing fleets in doing so. The limitation on consideration of the "fuel economy of dedicated automobiles" applies only at the standard-setting step—when evaluating what improvements manufacturers can make. The limitation does not apply at the first step of determining the baseline fleet of vehicles to which the standards apply.

This interpretation is supported by subsection 32902(h)'s limited scope. Subsection 32902(h) expressly applies only when NHTSA is "carrying out subsections (c), (f), and (g)" of Section 32902.[110] None of these three subsections concern the regulatory baseline; they instead concern NHTSA's authority to amend previously promulgated standards and its consideration of the four statutory "maximum feasibility" factors. If Congress intended NHTSA to not account for EVs anywhere in the CAFE standard-setting process (including as part of the baseline), Congress would have included subsections (a), (b), (d), and (e) in its cross-reference. Because Congress did not include those subsections in the cross-reference, the best reading of the statute is that the prohibition on considering EVs does not apply to the baseline.[111]

This reading aligns with statutory purpose and EPCA's technology-forcing scheme. Congress enacted EPCA after the 1973 oil crisis to "decrease dependence on foreign imports, enhance national security, achieve the efficient utilization of scarce resources, and guarantee the availability of domestic energy supplies at prices consumers can afford."[112] To effectuate those goals, EPCA drives ongoing improvements in fuel economy over time: Each new set of standards must be set at the "maximum feasible" level that NHTSA determines manufacturers "can achieve" based on additional improvements to the nation's existing fleet.[113] For the CAFE program to drive genuine fuel-conservation improvements beyond business-as-usual, the starting point of NHTSA's "maximum feasible" analysis must be the real-world baseline fleet, not a contrived fleet made up only of ICE vehicles. That is because, when NHTSA excludes existing EVs from the baseline, manufacturers can then meet the resulting fuel-economy standards by counting those same EVs toward compliance and leaving their ICE vehicles to perform well below maximum feasible efficiency.[114] In other words, the exclusion of EVs from the baseline necessarily results in standards below maximum feasible, in contravention of EPCA.

The incorrectness of NHTSA's approach is underscored by the statute's explicit requirement that NHTSA "shall include" fuel economy values for EVs when calculating a manufacturer's average fuel economy to

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[106] *Cf. Ctr. for Biological Diversity*, 538 F.3d at 1198 (noting that when determining maximum feasible standards, NHTSA begins with fuel economy baselines, *then* adds fuel saving technologies to each manufacturer's fleet to determine the maximum feasible standard).
[107] 49 U.S.C. § 32902(a) (requiring the Secretary to "prescribe by regulation average fuel economy standards for automobiles").
[108] The definition of "automobile" is a "4-wheeled vehicle that is propelled by fuel, or by alternative fuel, manufactured primarily for use on public streets, roads, and highways" and meeting certain weight limits. 49 U.S.C. § 32901(a)(3).
[109] 49 U.S.C. § 32902(h)(1)–(2).
[110] 49 U.S.C. § 32902(h).
[111] *See Nat'l Ass'n of Mfrs v. Dep't of Def.*, 583 U.S. 109, 126 (2018) (giving effect to Congress's choice to include cross-references to some subsections and not others).
[112] S. Rep. No. 94–516, at 117 (1975) (Conf. Rep.), *as reprinted in* 1975 U.S.C.C.A.N. 1956, 1957.
[113] 49 U.S.C. § 32902(a).
[114] *See* App'x § III.

determine compliance with the standards.[115] It is logically incoherent to require that EVs be included when calculating compliance but exclude them when setting the baseline against which compliance is measured.

D. NHTSA's Proposal Is Otherwise Unlawful.

Even setting aside the myriad errors identified above, NHTSA's proposal would still be unlawful, arbitrary, and capricious for several reasons.

NHTSA sets standards for more years than permitted by statute. By statute, NHTSA cannot set standards for more than 5 model years at a time.[116] But the proposal would set standards for 10 model years. NHTSA is wrong that the "5-year maximum applies only to rulemakings establishing new standards, and not to—as in this case—the amendment of existing standards."[117] By its plain terms, Section 32902(b)(3)(B)'s five-year maximum applies whenever NHTSA "issue[s] regulations under this title prescribing average fuel economy standards." The proposed rule falls within that statutory text: It is a regulation, under EPCA, and it "prescrib[es]" fuel economy standards for ten different model years. NHTSA's concerns about the "waste of resources" that would result from "issu[ing] two separate rulemakings" instead of one[118] cannot override the plain statutory text.[119]

NHTSA does not satisfy statutory minimum mpg requirement. EPCA requires NHTSA to set standards equivalent to 35 mpg by 2020.[120] The new proposal would achieve 34.5 mpg in 2031—well after the 2020 deadline—and thus flouts that statutory command.[121] Indeed, NHTSA nowhere even acknowledges the requirement that it set standards equivalent to 35 mpg by 2020—which itself is arbitrary and capricious.[122]

NHTSA misconstrues NEPA. NHTSA misunderstands its obligations in preparing an environmental impact statement (EIS) under the National Environmental Policy Act (NEPA). NHTSA suggests that, in an EIS, it need not take into account "certain potential environmental effects from sectors that EPCA does not delegate authority to NHTSA to regulate."[123] That misconstrues the Supreme Court's decision in *Seven County Infrastructure Coalition v. Eagle County*.[124] Under that decision, while "[a]n agency may decline to evaluate environmental effects from *separate* projects upstream or downstream from the project at issue," agencies must evaluate "the environmental effects of the project itself."[125] NHTSA goes even a step further to suggest it might not need to prepare an EIS at all.[126] That is wrong too: CAFE standard-setting is a "major Federal action[] significantly affecting the quality of the human environment,"[127] so an EIS is required. NHTSA's failure to take full account of the environmental effects of the CAFE program skews the "maximum feasible" analysis, *see supra* Section I.B, and results in artificially low fuel economy standards.

The Proposed Rule's provisions are not severable. The Proposed Rule's provisions are not severable because they are not functionally independent.[128] Thus, if any one provision is found invalid, the entire rule should be set aside. The proposed rule is plainly intended to operate as an integrated whole, and its provisions would make no sense in isolation. To take but a couple examples, the MY 2027–2031 standards

[115] 49 U.S.C. § 32904(a)(2)(B).
[116] *See* 49 U.S.C. § 32902(b)(3)(B).
[117] 90 Fed. Reg. at 56,582.
[118] *Id.*
[119] *See Utility Air Regul. Grp. v. EPA*, 573 U.S. 302, 325 (2014) ("An agency has no power to 'tailor' legislation to bureaucratic policy goals by rewriting unambiguous statutory terms.").
[120] *See* 49 U.S.C. § 32902(b)(2)(A).
[121] *See* 90 Fed. Reg. at 56,447.
[122] *See Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 682 (2020) (failure to "look to [statutory] requirements" may render a rule "arbitrary and capricious for failing to consider an important aspect of the problem").
[123] 90 Fed. Reg. at 56,592.
[124] 605 U.S. 168 (2025).
[125] *Id.* at 190–91.
[126] *See* 90 Fed. Reg. at 56,592.
[127] 42 U.S.C. § 4332(C).
[128] *See Carlson v. Postal Regul. Comm'n*, 938 F.3d 337, 351–52 (D.C. Cir. 2019).

are premised on percentage-point increases from the revised standards for MYs 2022–2026;[129] and the elimination of the credit trading program is predicated on NHTSA's new approach to the baseline.[130]

NHTSA ignores ZETA's reliance interests. NHTSA does not engage with the serious reliance interests of ZETA members on the CAFE program as it currently exists.[131] EV manufacturers have relied on the previously promulgated standards to make substantial irreversible investments in the EV supply chain, including multi-billion-dollar commitments to facilities and technologies designed around current standards. Indeed, the CAFE program was designed to encourage manufacturers to exceed efficiency standards by rewarding superior performance with tradeable compliance credits.[132] Revoking the previously promulgated standards and prohibiting the use of existing credits for inter-manufacturer trading beginning with MY28 penalizes automakers who led in innovation and rewards those who failed to invest. It thereby undermines ZETA members' investments, including by changing the fleet mix against which EV manufacturers will compete, as well as by devaluing the credits that EV manufacturers have earned and will earn and eliminating their ability to trade those credits.[133]

NHTSA improperly relies on the elimination of credit trading when setting standards. NHTSA improperly used the elimination of the credit trading program to justify reducing the stringency of the fuel economy standards for MY 2028 onward. EPCA prohibits NHTSA from "consider[ing], when prescribing a fuel economy standard, the trading, transferring, or availability of credits."[134] While NHTSA formally disclaims consideration of compliance credits in setting standards,[135] that is belied by the record. In NHTSA's proposal, fuel economy standards increase by 0.5 percent per year through MY 2026, but then drop to 0.25 percent per year starting in MY 2028 (with MY 2027 acting as a bridge).[136] In short, NHTSA slows the rate of increase in MY 2028, the *very* year that it proposes to eliminate the credit trading program.[137] NHTSA admits that those "reduced stringency increases in later years[] . . . are intended to . . . enabl[e] the industry to adapt to the proposed substantial recalibration of the CAFE program"[138]—in other words, to the elimination of inter-manufacturer credit trading.[139] That violates EPCA's prohibition on considering "the trading . . . of credits" when setting fuel economy standards.

NHTSA's proposal is procedurally defective. NHTSA has capped comments at 15 pages, though "there is no limit" on attaching "necessary additional documents."[140] There is no basis to impose a page limit on comments, and it is especially inappropriate here in light of the magnitude, complexity, and number of issues raised in the Proposed Rule. To comply with NHTSA's instructions, ZETA has summarized its comments in 15 pages and has attached technical analysis as supporting material. NHTSA must consider the entirety of ZETA's comments.[141] ZETA notes that it would be arbitrary and capricious for NHTSA to penalize ZETA for any perceived lack of specificity in its comments, given NHTSA's unlawful page limit.

NHTSA's proposal is prejudged and pretextual. NHTSA appears to have prejudged the outcome of its proposed changes to the CAFE program, in violation of due process,[142] and to have given pretextual

[129] *See* 90 Fed. Reg. at 56,445.
[130] *See id.* at 56,621.
[131] *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).
[132] *See* App'x § IV.
[133] *See infra* Section II.
[134] 49 U.S.C. § 32902(h)(3).
[135] *See, e.g.*, 90 Fed. Reg. at 56,621.
[136] *See id.* at 56,438, 56,446.
[137] *See id.* at 56,621.
[138] *Id.* at 56,438.
[139] While NHTSA proposes other changes to the CAFE program that start in MY 2028, NHTSA nowhere explains why those changes—but not the elimination of the credit trading program—justify the reduced stringency increases.
[140] 90 Fed. Reg. at 56,623.
[141] *See* 5 U.S.C. § 553(c).
[142] *Miss. Comm'n on Env't Quality v. EPA*, 790 F.3d 138, 183 (D.C. Cir. 2015) (quoting *Air Transp. Ass'n of Am., Inc. v. Nat'l Mediation Bd.*, 663 F.3d 476, 487 (D.C. Cir. 2011) (agency rulemaking violates due process when a decisionmaker "has an unalterably closed mind on matters critical to the disposition of the proceeding").

reasons for them, in violation of the reasoned explanation requirement of administrative law.[143] The public record makes clear that NHTSA approached this rulemaking not with an open mind as to whether modifications to CAFE standards were warranted, but with a predetermined objective to neuter the program.[144] And the Agency's proffered reasons for the rule are pretextual cover for the Administration's true objective, which is to advance the oil industry at the expense of others.[145]

II. NHTSA Should Retain the Credit Trading Program.

ZETA urges NHTSA to retain the inter-manufacturer credit trading program. There is no sound reason to eliminate credit trading, which reduces overall compliance costs for the CAFE program. What's more, manufacturers have longstanding reliance interests on the trading program; its abrupt removal will cause them serious financial harm and undermine EPCA's goals. For those reasons, NHTSA's proposal would, if finalized, be arbitrary and capricious.

Since MY 2011, NHTSA has permitted manufacturers to trade CAFE credits amongst themselves to meet their compliance obligations.[146] As NHTSA has long noted, such "credit trading gives more flexibility" and can "lower compliance costs for manufacturers."[147] Credit trading is a win-win: it allows NHTSA to ensure compliance with Congress's purposes in enacting EPCA—to improve the overall fuel economy of the nation's fleet—while allowing manufacturers to purchase credits where doing so is more cost-effective than refitting production lines, designing new technologies, and the like. Further, credit trading incentivizes manufacturers to develop cost-effective new technologies, a factor Congress understood from the National Research Council report preceding the 2007 CAFE revisions, which recognized that inter-manufacturer trading drives innovation to reduce fuel use and enhance efficiency.[148]

Indeed, the economic literature overwhelmingly supports credit trading programs as efficient, cost-effective mechanisms for achieving regulatory compliance. Trading programs provide a continuing incentive for innovation for any manufacturer that already meets the standards.[149] They also reduce overall compliance costs by allowing manufacturers who exceed standards to sell credits to those facing higher marginal abatement costs, thereby achieving the same environmental and fuel economy outcomes at lower aggregate cost to the industry and consumers.[150]

Eliminating trading would force a return to less flexible, command-and-control regulation that economic consensus recognizes as inferior and that imposes additional costs on manufacturers and consumers. Further, it would destroy the investment-backed expectations of EV manufacturers, for whom CAFE credits are an important source of revenue. EV manufacturers have long earned compliance credits for exceeding applicable standards and have executed contracts to sell those credits, generating billions of dollars in

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[143] *Dep't of Com. v. New York*, 588 U.S. 752, 785 (2019) ("The reasoned explanation requirement of administrative law[] . . . is meant to ensure that agencies offer genuine justifications for important decisions, reasons that can be scrutinized by courts and the interested public.").

[144] Since day one, the Administration has made clear its intent to "eliminat[e]" what it views as "ill-conceived government-imposed market distortions that favor EVs." 90 Fed. Reg. at 8,353.

[145] In an earlier rule, NHTSA spelled out its true reasons for "resetting" the CAFE program: "to promote the production, distribution, and use of reliable domestic energy supplies, including oil" and to "eliminate the 'electric vehicle (EV) mandate.'" 90 Fed. Reg. at 24,520.

[146] *See Average Fuel Economy Standards Passenger Cars and Light Trucks Model Year 2011*, 74 Fed. Reg. 14,196, 14,206 (Mar. 30, 2009).

[147] *Id.* at 14,387; *see also* 87 Fed. Reg. at 25,975 (credit trading allows automakers "to optimize their compliance strategies and reduce costs").

[148] Transp. Research Bd. & Nat'l Research Council, Effectiveness and Impact of Corporate Average Fuel Economy (CAFE) Standards 5, 90–91, 113 (2002), https://www.nationalacademies.org/read/10172/chapter/1 [https://perma.cc/9JSH-8HUZ].

[149] *See* Ronald H. Coase, *The Problem of Social Cost*, 3 J.L. & Econ. 1 (1960); A. Denny Ellerman, Paul L. Joskow & David Harrison, Jr., *Emissions Trading in the U.S.: Experience, Lessons, and Considerations for Greenhouse Gases* (Pew Ctr. on Global Climate Change, May 2003), http://web.mit.edu/globalchange/www/PewCtr_MIT_Rpt_Ellerman.pdf [https://perma.cc/DL26-WQZ2]; Joseph E. Aldy & Robert N. Stavins, *The Promise and Problems of Pricing Carbon: Theory and Experience* (Nat'l Bureau of Econ. Rsch., Working Paper No. 17845, 2011), https://www.nber.org/system/files/working_papers/w17569/w17569.pdf [https://perma.cc/NUN4-7L2T]; Robert N. Stavins, *The Problem of the Commons: Still Unsettled After 100 Years* (Harvard Kennedy Sch. Faculty Rsch. Working Paper Series, RWP12-004, Feb. 2012), https://www.hks.harvard.edu/publications/problem-commons-still-unsettled-after-100-years [https://perma.cc/AXQ2-RWMA].

[150] *See* Jonathan Rubin, Paul Leiby & David Greene, *Tradable Fuel Economy Credits: Competition and Oligopoly*, 58 J. Env't Econ. & Mgmt. 315, 324 tbl.2 (2009) (estimating that inter-manufacturer credit trading reduces compliance costs by 12-16%); Sonia Yeh et al., *Tradable Performance Standards in the Transportation Sector*, 102 Energy Econ. 105490 (2021).

revenue that has incentivized the development of innovative fuel-efficient technologies.[151] Continued allowance of credit trading sustains these market incentives for technological innovation.[152]

To change course in this fashion, NHTSA "must show that there are good reasons for the new policy" and must consider "serious reliance interests" engendered by the old policy.[153] NHTSA does neither. NHTSA points to no good reason for the new policy. The proposed rule justifies its about-face by saying "fuel economy values for EVs have been artificially high" because of "the multiplier in the PEF" and "EV manufacturers' generating FCIVs for AC efficiency and OC technologies that are not representative of real-world fuel savings."[154] But NHTSA separately proposes to remove many of those features.[155] Regardless, that would at most be a justification for correcting fuel economy values—not for eliminating the credit trading program outright. NHTSA also suggests that the credit trading program "creates market distortion" by "effectively subsidizing the production of EVs."[156] NHTSA fails to support this statement. And there is nothing distortive about a credit trading program; it is the most economically efficient path to compliance.

The proposal also fails to adequately account for manufacturers' reliance interests. NHTSA does not even acknowledge in its brief discussion of reliance interests[157] that EV manufacturers have relied on the credit trading program to generate billions of dollars in revenue, and that the Proposed Rule will result in substantial lost revenue.[158] The proposal thus fails to grapple with the potentially devastating impacts of removal of the credit trading program on the still-nascent domestic EV industry.

Further, NHTSA also must—and did not—consider reasonable, less disruptive alternatives.[159] For example, NHTSA did not consider simply modifying the trading program to eliminate supposedly "artificially high"[160] fuel economy values; limiting the amounts of credits manufacturers can purchase; and/or delaying the elimination of the program by several years.

It is also arbitrary and capricious for NHTSA to eliminate the credit trading program starting in MY 2028. Vehicle manufacturers plan their fleets several years in advance—historically, seven years in advance, although development cycles have been reduced in recent years.[161] Thus, by the time any rule is finalized, vehicle manufacturers will have already planned their fleets for MY 2028 as well as the other years of this rulemaking, and will have done so on the understanding that credit trading would be available.

In addition to ending credit trading in 2028, the proposal would preclude manufacturers from using credits purchased before 2028 in 2028 and beyond, effectively cutting short those credits' lifespan. This creates three problems. First, shortening traded credits' lifespan conflicts with EPCA's text. The statute explicitly states that credits "may be applied" to "any of the 5 consecutive model years immediately after the model

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[151] *See, e.g.*, Michael Reale, Xavier Demeulenaere, & Xi Wang, *Automotive regulatory credit trading*, IHS Markit (2022), https://cdn.ihsmarkit.com/www/prot/pdf/0222/IHS-Markit_AUT_Credit-Trading_Whitepaper.pdf [https://perma.cc/245Z-H3MP] (noting EV manufacturers have generated billions of dollars from credit trading); Ashby Lincoln, *EV makers lose millions as Trump administration delays fuel economy enforcement*, CBT News (Aug. 15, 2025), https://www.cbtnews.com/ev-makers-lose-millions-as-trump-administration-delays-fuel-economy-enforcement/ [https://perma.cc/VWZ2-9ZMA] (noting significant revenue associated with existing CAFE standards).

[152] *See, e.g.*, Declaration of Christopher Nevers, Ex. C to Pet. for Review ¶¶ 7–14, *ZETA v. NHTSA*, No. 25-1167 (D.C. Cir. filed Aug. 6, 2025); Declaration of Ashlee Ramanathan, Ex. D. to Pet. for Review ¶¶ 7–12, *ZETA v. NHTSA*, No. 25-1167 (D.C. Cir. filed Aug. 6, 2025) (documenting EV manufacturers' reliance interests in credit contracts premised on the pre-existing CAFE standards).

[153] *Fox Television Stations, Inc.*, 556 U.S. at 515.

[154] 90 Fed. Reg. at 56,620.

[155] *Id.* at 56,444.

[156] *Id.* at 56,621.

[157] *See id.* at 56,620–21.

[158] *See supra* at nn.150–51.

[159] *See State Farm*, 463 U.S. at 43; *Allied Loc. & Reg'l Mfrs. Caucus v. EPA*, 215 F.3d 61, 80 (D.C. Cir. 2000) ("To be regarded as rational, an agency must also consider significant alternatives to the course it ultimately chooses.").

[160] 90 Fed. Reg. at 56,620.

[161] Kimberly Borden et al., McKinsey, *Automotive Product Development: Accelerating to New Horizons* (Aug. 19, 2025), https://www.mckinsey.com/capabilities/operations/our-insights/automotive-product-development-accelerating-to-new-horizons [https://perma.cc/BNH9-3FRR]; Eric Zayer et al., Bain & Company, *When Less Is More: Shifting Gears in Automotive R&D* (Feb. 2025), https://www.bain.com/insights/when-less-is-more-shifting-gears-in-automotive-r-and-d/ [https://perma.cc/FBN7-2865].

year for which the credits are earned," without limitation on whether the credits have been traded.[162] Second, it would constitute impermissibly retroactive rulemaking. EV manufacturers invested in new technologies expecting to earn and sell credits usable for five years. While NHTSA claims ending credit trading in 2028 provides "adequate transition time,"[163] cutting short pre-2028 credits' lifespan provides, in some cases, no lead time. Credits earned and traded in 2024 and 2025 would have lifespans of only three and two years—far less than the statutory five years. This retroactively shortens the timeframe: when these credits were earned and traded, NHTSA's regulations stated they "may be held or applied for up to five model years after the year in which the credits were earned."[164] Finally, it undermines the reliance interests of companies who purchased credits expecting to bank and use them for future compliance.

III. NHTSA's Technical Analysis Is Flawed.

NHTSA's technical analysis in support of the Proposed Rule departs dramatically from past analyses and accepted economic and scientific standards. The Agency relies on erroneous and unsupported assumptions, model constraints, and inputs, and does not provide the data necessary to verify or replicate its analysis. ZETA here summarizes the major flaws in NHTSA's modeling. ZETA has also attached as an appendix the expert report of Dr. David L. Greene, Research Professor in the Department of Civil and Environmental Engineering at the University of Tennessee, dated February 4, 2026, which provides necessary analysis and evidence in support of ZETA's comments. The report and all sources cited therein are hereby incorporated by reference in their entirety and should be considered part of the administrative record in this matter.

Dr. Greene's report identifies several interdependent flaws in NHTSA's technical analysis that render the Proposed Rule arbitrary, capricious, unlawful, and contrary to the evidence before the Agency. First, NHTSA's own modeling demonstrates that manufacturers will readily exceed the proposed standards, proving they are not "maximum feasible." Second, NHTSA's baseline—in which it deletes all EVs—is fictitious, contrary to OMB requirements, and makes it mathematically impossible to set truly maximum feasible standards for conventional vehicles. Third, NHTSA's elimination of credit trading is economically inefficient and will increase industry and consumer costs and reduce consumer choice. Fourth, NHTSA's retroactive changes to the standards disrupt manufacturers' product plans and devalue billions of dollars in banked credits. Fifth, NHTSA introduces speculative "implicit opportunity costs," which have an outsized impact on NHTSA's cost-benefit analysis, and are inconsistent with economic theory and lack empirical support. Sixth, NHTSA relies on outdated hybrid cost estimates that are markedly higher than current market prices, inflating the Proposed Rule's projected costs by billions of dollars.

Taken together, NHTSA's analytical choices—many of which depart from past practice—appear calculated to result in legally and empirically unjustified reductions in the stringency of fuel economy standards. That is not a genuine consideration of the relevant factors; it is reverse engineering an analysis to reach a predetermined policy outcome. Such "contrived" analysis does not comport with administrative law's "reasoned explanation" requirement.[165]

CONCLUSION

ZETA appreciates the opportunity to share its perspective on NHTSA's proposal. As drafted, the proposal contravenes NHTSA's statutory authority, ignores longstanding reliance interests, is inadequately supported by scientific and technical evidence, and is procedurally defective, among other things. ZETA therefore urges NHTSA not to finalize the current proposal.

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[162] 49 U.S.C. § 32903(a)(2).
[163] 90 Fed. Reg. at 56,621.
[164] 49 C.F.R. § 536.6(b).
[165] *Dep't of Comm.*, 588 U.S. at 785.