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Mr. Joseph Goffman  
Principal Deputy Assistant Administrator  
U.S. Environmental Protection Agency  
Office of Transportation and Air Quality  
Mail Code 28221T  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

RE: Proposed Rule Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles (Docket Number: EPA-HQ-OAR-2022-0829)

Dear Mr. Goffman:

Western Energy Alliance is struck by the magnitude of the proposed rule on tailpipe emissions standards and the breathtaking assumption of power as EPA seeks to transform a major portion of the transportation sector fundamentally with this rule along with its heavy-duty companion. Further, EPA is rushing forward even as a related rule on Corporate Average Fuel Economy (CAFE) from the National Highway Traffic Safety Administration (NHTSA), which has a substantially similar scope, has not yet been released. The public is being denied the opportunity to comment holistically on both rules in tandem to understand how the Biden Administration is attempting to so radically change the mobility choices of all Americans as well as the foundation for the delivery of goods and services throughout the entire economy in an unrealistically disruptive amount of time.

Western Energy Alliance represents 200 companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas across the West. The Alliance represents independents, the majority of which are small businesses with an average of fourteen employees.

### **Transition to Electric Vehicles**

Congress did not give EPA authority to mandate the electrification of the vehicle fleet. The Energy Policy Act and Clean Air Act do not allow EPA to set standards that cannot be met with an internal combustion engine vehicles (ICEV). EPA does not have the authority to compel the transition to completely new vehicle types under the guise of setting tailpipe standards for ICEVs. Electric vehicles (EV) do not have a tailpipe, and although their emissions should be evaluated over the full lifecycle and not assumed to be zero as EPA does with this proposed rule, EPA only has authority to consider tailpipe emissions from ICEVs with this rule. EVs are technically not subject to the standards and thus ineligible for the fleet averaging scheme.

The proposed rule would require 60% of new car sales to be battery-powered electric vehicles by 2030 and 67% by 2032, compared to 5.8% in 2022. With this rule, EPA is running afoul of the Supreme Court's

ruling in *West Virginia v. EPA*. Congress nowhere provided authorization for EPA to effectively mandate a shift from ICEVs to electric vehicles (EV). Further, attempting to interfere with the market and compel market penetration up ten-fold in less than ten years is simply unrealistic.

EPA attempts to subvert the major questions doctrine by citing its authority under the Clean Air Act 202(a) to tighten emissions standards. Carbon Dioxide (CO<sub>2</sub>) emissions from vehicles constitute more than 95% of all tailpipe GHG emissions (75 FR 25326), yet there has not yet been invented a technology to control or capture these CO<sub>2</sub> emissions from vehicles. In the absence of such a technology, the only means to meet the standards in the proposed rule is by switching to a so-called zero-emissions vehicle (ZEV). We encourage EPA to discard the use of the term “ZEV” in the rule, as no vehicle is zero emissions but merely transfers its emissions from the tailpipe to the power plant. I realize that EPA acknowledges that in its definition of ZEV, but that subtlety is largely lost on the public and serves as legerdemain. As we find EPA’s use of BEVs, PEVs, PHEVs, and ZEVs to be inconsistent and at times interchangeable throughout the rule, we will use the simple term “EV” throughout these comments.

With its logic, EPA is equating emissions control technology to a EV, but an electric vehicle is not akin to a pollution control device. EPA cannot use its authority to control emissions under the CAA to treat EVs as pollution control devices, as doing so is an artifice that does not pass the major questions doctrine test and is arbitrary and capricious.

Despite finding that:

“...the standards proposed herein are consistent with EPA’s responsibilities under the CAA and appropriate under CAA section 202(a). EPA has carefully considered the statutory factors, including technological feasibility and cost of the proposed standards and the available lead time for manufacturers to comply with them...Based on our analysis, it is our assessment that the proposed standards are appropriate and justified under section 202(a) of the CAA. Our analysis for this proposal supports the preliminary conclusion that the proposed standards are technologically feasible and that the costs of compliance for manufacturers would be reasonable.” (p. 29187)

it is hard to fathom how EPA comes to that conclusion. The electric grid is in no way capable of handling the huge increase in electricity demand that the rule would require, the United States does not have access to the critical minerals required for such a high market penetration of EVs, nor is the increased wind and solar energy generation available now nor in the foreseeable future to make supposedly ZEVs actually ZEVs. EPA has failed to adequately consider the impact of this rule on grid reliability. EPA should analyze grid reliability in this rulemaking and reference the large body of work raising concerns about how increased EVs will destabilize the grid.<sup>1</sup> Without the grid capability and the critical minerals, EPA’s

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<sup>1</sup> For example see [Electric Vehicle Dynamic Charging Performance Characteristics during Bulk Power System Disturbances](#), North American Electric Grid Reliability Corp. et al., April 2023; [Testimony](#) of Federal Energy Regulatory Commissioners Willie Phillips, Mark Christie, and James Danly before the Senate Energy & Natural Resources Committee, May 4, 2023, warning: “We face unprecedented challenges to the reliability of our nation’s electric system.”...the U.S. electric grid is “heading for a very catastrophic situation in terms of reliability...” and there is a “looming reliability crisis in our electricity markets.”

statement on technical feasibility is logically flawed, as current and projected grid infrastructure cannot support the goal of the proposed rule.

EPA must reconsider its analysis on technical feasibility by considering a full range of data on grid reliability. The Rapid Energy Policy Evaluation and Analysis Toolkit Domestic, a project of Princeton University, projects electricity demand would need to increase 18% by 2030 and 38% by 2035 to meet the president's EV goals.<sup>2</sup> Many are warning of the lack of infrastructure to support the EV goals. The nation would need to spend \$20 billion to \$30 billion annually on new transmission lines for the increased demand, but is spending next to nothing.<sup>3</sup>

Further, it is not at all clear that the proposed rule will reduce GHGs as planned. Pure plug-in battery-powered vehicles can create more emissions than hybrid EVs (HEV) and even more than some traditional ICEVs for a variety of reasons including the fuel mix of the electrical grid where the EV is being charged and the large GHG footprint for producing the battery. The manufacture of a battery can produce GHGs equivalent to driving 24,000 miles, in the case of a Nissan Leaf up to 60,000 miles in the case of a Tesla Model S.<sup>4</sup> Those numbers are before a single mile is driven by the supposed ZEV with its associated GHGs from the electricity used. When CO<sub>2</sub> emissions linked to the production of batteries and the energy mix are considered, a study in Germany found EVs emit 11% to 28% more than their diesel counterparts.<sup>5</sup> Volvo reports that in comparing a gas-burning model with its fully electric equivalent, with both vehicles built in the same factory, on the same assembly line, and sharing a large number of components, it found the electric version results in 70% more emissions.<sup>6</sup>

EPA needs better analysis of the GHG reductions by EVs. The assumption that they are "zero emission" must be tested using a more comprehensive analysis of full lifecycle emissions sources from EVs.

### Relevant Considerations

While acknowledging that EPA must:

"consider issues of technological feasibility, the cost of compliance, and lead time. EPA also may consider other factors, and in previous vehicle standards rulemakings, as well as in this proposal, has considered the impacts of potential standards on emissions of air pollutants and associated public health and welfare effects, impacts on the automotive industry, impacts on the vehicle purchasers/consumers, oil

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<sup>2</sup> [Preview: Final REPEAT Project Findings on the Emissions Impacts of the Inflation Reduction Act and Infrastructure Investment and Jobs Act](#), Rapid Energy Policy Evaluation and Analysis Toolkit, Princeton University, April 2023.

<sup>3</sup> Rob Gramlich, founder and president of Grid Strategies, a transmission policy group, as quoted in "[Why the electric vehicle boom could put a major strain on the U.S. power grid](#)," *CNBC*, July 1, 2023.

<sup>4</sup> "[A Data-Driven Greenhouse Gas Emission Rate Analysis for Vehicle Comparisons](#)," SAE International, *Journal of Electrified Vehicles*, V132-14EJ, April 13, 2022.

<sup>5</sup> [Kohlemotoren, Windmotoren und Dieselmotoren: Was zeigt die CO<sub>2</sub>-Bilanz?](#), Christoph Buchal et al., Ifo Institut, 2019.

<sup>6</sup> "[Building An EV Produces 70% More Emissions Than ICE, Says Volvo](#)," *InsideEVs*, Andrei Nedelea, November 20, 2021.

conservation, energy security and other energy impacts, safety, and other relevant considerations.” p. 29186

it does not appear that EPA has actually done so. EPA’s logic is often flawed in the analysis and the information relied on is biased or incomplete. We address some of these below.

Energy Security: EPA makes the specious assertion that the energy security benefits of the rule will include, “...reductions in energy security externalities caused by U.S. petroleum consumption and imports...” p. 29199 Given the huge supply of American oil and the fact that the United States is the number one oil producer in the world, EPA strains its credibility by justifying the proposed rule in such a way. Unlike the ICEV fleet with its majority consumption of American oil, EV batteries are sourced from minerals largely mined unsustainably in China and Africa, as are the minerals required for wind turbines and solar panels. Further, the U.S. lacks copper and aluminum smelting capacity required to expand the grid and it takes years to develop new mines. Without expansion, the grid is susceptible to reliability issues.

EPA’s cost-benefit analysis regarding energy security is troublesome, finding that the proposed rule delivers \$21 billion to \$42 billion in energy security benefits from reduced oil imports, but ignoring the security implications of the huge foreign mineral needs arising from the proposed rule. With huge domestic reserves of oil and the fact that Canada is the primary exporter to the United States, our country enjoys an energy security benefit in terms of oil. The supposed benefit EPA finds from reduced imports pales in comparison to the overwhelming security cost of the rule from forcing the country to becoming nearly 100% dependent on China and Africa for EVs and the minerals in them. Figure 28 of the proposed rule makes the case for us, as it shows the foreign sources of minerals, yet EPA does not analyze the security implications. In fact, EPA waves away the data on the lack of domestic sourcing with the statement that:

“...the development of mining and processing capacity in the U.S. is a primary focus of efforts on the part of both industry and the Administration toward building a robust domestic supply chain for electrified vehicle production and will be greatly facilitated by the provisions of the BIL and the IRA as well as large private business investments that are already underway and continuing.”

As with the expansion of the grid required to achieve the aggressive EV targets, government policy that wishes to expand domestic capacity is unlikely to achieve its intended goal, given the track record of the country over the past several decades in permitting mines, long processing times for National Environmental Policy Act (NEPA) analysis, and other environmental laws that will continue to slow new mining projects. Further the very actions of this administration to constrain domestic supplies of minerals, such as EPA denying the water permit for the Pebble Mine in Alaska and the Interior Secretary withdrawing 225,594 acres in Cook, Lake, and Saint Louis counties of Minnesota from mineral leasing, belie EPA’s sanguinity for domestic supply. Replicating anywhere near an equivalent for critical minerals as our current vast reserves of oil is nothing short of a fantasy, particularly by the year 2030 or 2032. The fact that the president and Congress wish to support domestic supply chains for critical minerals does not mean it will be so.

EPA attempts to wave away this dependency problem on page 29323:

“Finally, it is important to note that utilization of critical minerals is different from the utilization of foreign oil, in that oil is consumed as a fuel while minerals become a constituent of manufactured vehicles. That is, mineral security is not a perfect analogy to energy security.”

EPA dismisses serious concerns on the viability of critical mineral access with hopes for long-term contracts, manufacturing flexibility in substituting one mineral for another as their availability ebbs and flows, and effective mineral recycling. EPA ignores the mineral needs of the grid expansion that would be necessary for this rule. However, even assuming that EPA has a point that mineral security is not the same as energy security, then there should be a corresponding quantification of the mineral security costs in the cost/benefits analysis of the rule. There should be an entry in Table 156 right along with the “Energy Security Benefits” itemized as “Critical Minerals Benefits.” Were EPA to perform such an analysis, it would find a huge cost to national security from critical mineral insecurity that would easily dwarf EPA’s finding of an energy security benefit from the proposed rule.

Safety: It does not appear that EPA is taking into consideration the added weight of EVs. With their large batteries, they are generally one third heavier than a similarly sized vehicle of a similar body style. Section 9.4.2 of the DRIA dealing with vehicle weight does not take the increased battery weight into account, and therefore, needs to be updated before it can make the conclusion that “there is no statistically significant change in the estimated risk of fatalities per distance traveled...” and “...virtually no change in fatality risk as a result of the proposed standards...” (p. 29345)

Likewise, it does not appear that EPA has considered the risk of EV battery fires. It is well known that EVs carry an increased risk of fire because of the nature of their batteries and that these chemical fires are extremely hot and hard to put out.<sup>7</sup> Firefighters have reported the difficulty of extinguishing EV fires, which burn much more intensely than ICEV fires because of the batteries and require 40 times the amount of water needed to contain an ICEV.<sup>8</sup> Firefighters report that that there is no obtainable extinguishing agent available to them. EPA’s analysis on safety is deficient in failing to consider the impact of battery fires on safety.

Refueling Time: EPA makes the unfounded claim that the benefits of the rule will include, “...the value of reduced refueling time needed to refuel vehicles” (p. 29199) Assuming “...time spent refueling vehicles would be reduced due to the lower fuel consumption of new vehicles...” (p. 29200) is simply absurd. EPA seems to be willfully twisting the well-know disadvantage of long EV charging times. Whereas an ICEV takes a matter of minutes to refuel, charging times can be over an hour. Even fast charging stations, if available without a long wait due to their scarcity, require 30 minutes for 125 miles and an hour for 250 miles, well in excess of ICEV refueling times but with vastly less range.<sup>9</sup>

<sup>7</sup> [“We’re not putting this out:’ F-150 Lightning fire melts EV trucks,”](#) *Detroit Free Press*, April 21, 2023.

<sup>8</sup> [“Firefighters have to blast 40 times more water at burning Tesla than other cars,”](#) *The Hill*, August 17, 2021.

<sup>9</sup> [“How Long Does It Take to Charge an Electric Car?”](#), J.D. Power, March 26, 2020.

Limited charging infrastructure could drag refueling times to hours beyond what is needed by the driver. Further, were EPA's projection that 67% of new sales of light-duty and 46% of medium-duty vehicles will be EVs by 2032 attained, the strain on the grid would mean governments and utilities would likely enforce refueling times after hours, well past when a driver would need. Californians, just days after learning of the state's ban on ICEVs by 2035, were asked not to charge their EVs during the peak hours of 4 – 9pm because of the strain on the grid.<sup>10</sup> Rather than being a benefit, EPA should consider how this rule would limit Americans mobility, as limited electricity capacity would cause drivers to run out of fuel when they need it for vital activities such as driving to work and school while making long roadtrips impractical. Even though EPA finds a net cost regarding refueling times, the value for that cost is likely much lower, given the assumptions EPA makes in the analysis.

Technical Infeasibility and Impracticalities for Consumers: EPA uses flawed analysis about the technical feasibility of the rule, but the behavior aspects are also seriously deficient. There is little evidence that EVs are being accepted by consumers other than a small niche of high-end, wealthy individuals who can afford to purchase an expensive vehicle with limited range.<sup>11</sup> Given the long refueling times and battery drain when operating the heater or air conditioning, only those who can afford a second or third vehicle for exclusive use in-town are currently purchasing EVs. There has been no evidence to date that these problems of limited range and functionality will be overcome soon to achieve the high market penetration EPA hopes with this rule.

EPA's assertion is simply not supported by facts:

“The year-over-year growth in U.S. PEV sales suggests that an increasing share of new vehicle buyers are concluding that a PEV is the best vehicle to meet their needs. Many of the zero-emission vehicles already on the market today cost less to operate than ICE vehicles, offer improved performance and handling, have a driving range similar to that of ICE vehicles, and can be charged at a growing network of public chargers as well as at home.” (p. 29189)

At only 5.8% of new vehicle sales, EVs has a long way to go to meet the targets EPA is setting of 67%, a more than ten-fold increase that is a far goal from the “increasing share of new vehicle buyers...” Further, asserting that the range is similar to an ICEV is preposterous, especially in anything less than the most favorable mild weather conditions, as EVs lose range in cold and hot weather.<sup>12</sup>

The most fuel-efficient car on the market is the Toyota Prius, but even it would not meet the proposed standards. With this proposed rule EPA is squeezing out the Prius' successful hybrid technology. The Prius MY 2032 standard is less than half the CO<sub>2</sub> emissions per mile of MY 2023, which range from 155 g/mi to 179 g/mi. To comply with the proposed rule, the fleet-average CO<sub>2</sub> emissions of Toyotas in MY 2032 would have to be 52 to 60% lower than that of today's Prius, forcing Toyota to rapidly increase the

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<sup>10</sup> [“California asks residents not to charge electric vehicles, days after announcing gas car ban,”](#) John Clark, August 31, 2022.

<sup>11</sup> The Energy Information Administration (EIA) shows that 2/3 of households with EVs have incomes over \$100,000. [Electrified vehicles continue to see slow growth and less use than conventional vehicles](#), EIA, May 2018.

<sup>12</sup> [Winter & Cold Weather EV Range Loss in 7,000 Cars](#), Recurrent, December 12, 2022.

percentage of EVs sells, regardless of consumer choice. Clearly EPA is stepping well beyond its authority by advancing a technically infeasible rule that attempts to reshape the entire vehicle marketplace. The historical record of governments attempting to plan an entire economy or sector has not been a successful one. EPA should abandon this rule.

Affordability/Environmental Justice: EPA is assuming that although the retail price of EVs is typically higher than for comparable ICEVs at this time, the price difference will narrow or disappear as the cost of batteries and other components fall in the coming years. EPA is taking a huge leap of faith in the ability of EV manufacturers to innovate in time for the arbitrary deadlines imposed by the president and EPA through this rule. Market projections six months from now are difficult, much less nine years into the future.

But recent evidence suggests that EPA's assumption is well off the mark. EV battery costs soared in 2022 due to rising raw material and battery component costs. As countries around the world attempt to reach similar arbitrary targets for EVs and renewable energy, the competition for limited supplies of raw materials will likewise grow.<sup>13</sup> Prices for rare earth minerals have increased between 60% and 400% while prices for lithium have increased by over 300% since 2020.<sup>14</sup> Further, a U.K. study has found that EVs depreciate at a rate of 51% compared to 37% for gasoline cars, losing £15,220 (\$18,786) versus £9,901 (\$12,400).<sup>15</sup> Clearly EPA's estimate that "...the average upfront per-vehicle cost to meet the proposed standards to be approximately \$1,200 in MY 2032, as shown in Table 7.131..." is greatly underestimated. EPA mentions but then dismisses the impact on low-income households by just assuming that manufacturers, "will continue to offer a variety of models at different price points..." and that they will save on fuel costs.

EPA's analysis that EVs have significantly reduced operating costs and would save owners \$12,000 versus ICEVs over the life of the vehicle seems to be lacking several aspects. Further, the information EPA relies on to arrive at that number seems cherry picked. First, EPA is not looking at the full refueling costs. Studies call into question EPA's assumption that recharging costs will be lower than the costs of gasoline.<sup>16</sup>

We wonder at the arrival of EPA's \$12,000 lower operating costs, given a Department of Energy study that looked comprehensively at the total cost of ownership and found that after 15 years and found a much lower cost differential. The DOE study compared EV costs to similar gasoline-only models, factoring in the price, maintenance, financing, repairs, *federal tax break* and fuel costs (emphasis added).<sup>17</sup> While it is disingenuous to include subsidies in the calculation, since such are at taxpayer expense, nevertheless the EV version of a small SUV costs \$0.4508 per mile, \$0.0219 less than the

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<sup>13</sup> "[EV battery costs have soared in 2022, hampering EV affordability](#)," Stephen Edelstein, *Green Car Reports*, December 8, 2022.

<sup>14</sup> [Current Strategic Metals Prices](#), Strategic Metals Invest and [Daily Metals Prices](#), both accessed July 5, 2023.

<sup>15</sup> "[Electric cars losing value twice as fast as petrol vehicles - drivers may lose £25,000](#)," Felix Reeves, *Express*, May 3, 2023.

<sup>16</sup> [Comparison: Real World Cost of Fueling EVs and ICE Vehicles](#), Anderson Economic Group, October 21, 2021.

<sup>17</sup> [Comprehensive Total Cost of Ownership Quantification for Vehicles with Different Size Classes and Powertrains](#), Argonne National Laboratories, U.S. Department of Energy, April 2021.

\$0.4727 per mile rate of a similar gasoline-based model. Based on the average lifespan of a car of 200,000 miles, the cost of a gasoline-fueled car would be \$94,540 while a similar EV would be \$90,160. The difference of \$4,380 is well short of \$12,000. The DRIA references this DOE study but appears to have discounted it. But even assuming EPA is correct about the \$12,000 lower operating costs, the \$18,000 higher initial cost still results in a net cost to the owner.<sup>18</sup>

### **Arbitrary and Capricious**

The proposed rule is arbitrary and capricious because EPA relies on incomplete facts, biased studies, and mistaken assumptions in an attempt to restructure the entire vehicle market. The rule exposes the country to severe grid instability and increases the chances for electricity blackouts and brownouts. EPA's reasoning and justification for the rule are similarly flawed, based on a market assessment that is faulty.

EPA relies on rosy market projections, citing a Bloomberg New Energy Finance analysis suggesting that, "under current policy and market conditions, and prior to the IRA, the U.S. was on pace to reach 40 to 50 percent PEVs by 2030. When adjusted for the effects of the Inflation Reduction Act, this estimate increases to 52 percent." (p. 29189) EPA also cites the International Council on Clean Transportation as projecting an increase in new car sales of 67%. EPA should conduct a more robust market analysis with less biased sources if it is to avoid the charge of being arbitrary and capricious.

However, with the generous assumption that the market penetration numbers are correct, then why does EPA need to move forward with this rule at all? If EPA is right and EV sales will increase to 67% by 2032 anyway, why is the rule necessary? We are inclined to think that a more robust market analysis would reach another conclusion, especially as market penetration increases and the effects from the strain on the electrical grid would become apparent. Given the fundamental lack of authority to force this transition, EPA's own analysis of market penetration by 2032 suggests the rule is unwise.

Foreign Justification: Further, EPA cites to other countries as justification for the proposed rule:

"Globally, at least 20 countries, as well as numerous local jurisdictions, have announced targets for shifting all new passenger car sales to zero-emission vehicles in the coming years, including Norway (2025); Austria, the Netherlands, Denmark, Iceland, India, Ireland, Israel, Scotland, Singapore, Sweden, and Slovenia (2030); Canada, Chile, Germany, Thailand, and the United Kingdom (2035); and France, Spain, and Sri Lanka (2040)...In addition, in February 2023 the European Union gave preliminary approval to a measure to phase out sales of ICE passenger vehicles in its 27 member countries by 2035." (p. 29188)

Fundamentally, the fact that foreign countries are dictating EVs is not legitimate justification for U.S. rulemaking. But even were we to concede any relevance to this rulemaking, EPA surely should acknowledge the backtracking on these initiatives as many countries recognize the impracticality of such

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<sup>18</sup> "[Why Are Electric Cars So Expensive?](#)" *U.S. News*, Cherise Threewitt, November 3, 2022.



mandates. While politicians like to decree certain things far into the future, that does not mean such diktats will become reality. There are many examples throughout history of centrally planned economies and nationalized industrial sectors failing, with Venezuela providing the most recent sad example.

EPA has referenced, in footnotes 28 and 29, Reuters articles discussing European Union legislation to ban ICEV sales and mandate new EV car sales goals. In the final rule, EPA must likewise reference the Reuters article shortly thereafter discussing how quickly this legislation was overturned by seven member companies.<sup>19</sup> Germany joined France, Italy, Poland, and others in demanding the EU scrap the plan to ban ICEVs and mandate EVs. Insofar as EPA relied on the actions of other countries and the EU in particular to justify this rule, such justification must be reversed in the final rule and references to the EU mandate removed or at least supplemented by the fact that the mandate was nullified. We provide a reference for convenience.

New Legislation: EPA also cites the impact of the Bipartisan Infrastructure Law (BIL) and Inflation Reduction Act (IRA) to show increased market penetration of EVs. While it is a simple statement of fact that, “These measures represent significant Congressional support for investment in expanding the manufacture, sale, and use of zero emission vehicles ...” (p. 29195), the existence of these laws to fund EV infrastructure and subsidize their sale is not akin to giving EPA authority to compel carmakers to manufacture more EVs and consumers to buy them.

Further, EPA unwittingly offers the counter argument for this rule. With the BIL and IRA, Congress spoken clearly on the desire specifically to *incentivize* EVs, not compel their use. Coupled with the lack of authority in the Clean Air Act to reorient an entire industry and with the Supreme Court’s ruling in *West Virginia v. EPA*, EPA must reverse the justification in Section I. A. iii for the proposed rule that relies on these two laws. The reasoning is arbitrary and capricious.

Market Assessment: Likewise in I.A.ii EPA’s justification follows the logic that because EV market penetration has increased and carmakers are increasing their investments and innovating, therefore EPA needs to regulate. EPA even makes the absurd statement that, “The proposed standards will also provide regulatory certainty to support the many private automaker announcements and investments in zero-emission vehicles that have been outlined in the preceding paragraphs.” (p. 29195) The absurd logic is that because the private sector is making advancements and investments, the government needs to support them with regulation.

Government’s role with regulation is to correct so-called market flaws, not promote markets. Insofar as there are opportunities for businesses to benefit from subsidies, federal loans, tax credits, and grants for EVs, such as those contained in BIL and IRA, carmakers that are so inclined can tap into those taxpayer resources. They do not need another agency to force them to use them. It’s simply the nature of an incentive. EPA should not go down the path of regulating for the supposed benefit of carmakers to help them increase their EV market share, as they already have government incentives to do so. Unlike government assistance and grants, EPA regulation is inherently contradictory to the task of promoting carmakers’ self interest.

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<sup>19</sup> [“Germany rejects EU plan for ban on new fossil-fuel cars from 2035,” Reuters, June 21, 2023;](#) [“EU was set to ban internal combustion engine cars. Then Germany suddenly changed its mind,” CNN, March 27, 2023.](#)

Likewise, if EPA's analysis is correct and, "The year-over-year growth in U.S. PEV sales suggests that an increasing share of new vehicle buyers are concluding that a PEV is the best vehicle to meet their needs" then why is the rule necessary? If the market is working, the rule is unnecessary by EPA's own unwitting admission.

We appreciate the opportunity to comment but strongly urge EPA to desist with this rule as exceeding its authority based on arbitrary and capricious legal and technical justification. At a minimum, we urge EPA to keep this comment period open until the close of the companion NHTSA CAFE rule. Thank you.

Sincerely,



Kathleen M. Sgamma  
President