September 22, 2025

VIA REGULATIONS.GOV

The Honorable Lee Zeldin
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: EPA-HQ-OAR-2025-0194 / RIN 2060-AW71 — "Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards"

Dear Administrator Zeldin,

I. INTRODUCTION

The National Association of Convenience Stores ("NACS") and the Energy Marketers of America ("EMA") appreciate the opportunity to submit these comments to the Environmental Protection Agency ("EPA") in response to the above-referenced rulemaking, which proposes several potential bases for repealing EPA's current greenhouse gas ("GHG") emission standards for light-duty, medium-duty, and heavy-duty motor vehicles.[1] The result of an arbitrary and capricious rulemaking, these standards (the "GHG Standards") amount to a national electric vehicle ("EV") mandate that far exceeds EPA's authority to regulate vehicular GHG emissions under Section 202 of the Clean Air Act ("CAA").[2] For those reasons, they must be repealed.

NACS is the leading global trade association dedicated to advancing the convenience and fuel retailing industry. It represents the interests of more than 152,000 convenience stores in the United States, which conduct approximately 160 million transactions every day. NACS members range from small independent operators to large national chains. EMA is a federation of 48 state and regional trade associations representing family-owned and operated small business energy marketers across the United States. EMA members supply 80% of all finished motor and heating fuels sold nationwide, operating approximately 60,000 retail motor fuel stations and providing motor fuels to an additional 40,000 stations.

Fundamental to the success of these businesses is their ability and commitment to lawfully sell the legal products consumers want. That guiding principle informs the perspective of NACS

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[1] See proposed rule at 90 Fed. Reg. 36288-36365 (Fri., Aug. 1, 2025).

[2] For clarity and consistency, these comments cite to the Clean Air Act itself, rather than its codification at Title 42, Chapter 85 of the U.S. Code.

and EMA (the "Associations" or "we") on the myriad legislative and regulatory issues confronting the industry, including the current GHG Standards and EPA's proposed action here.

More than 80% of U.S. convenience stores sell motor fuel, and those stores in turn account for more than 80% of the retail sales of motor fuels—a highly competitive marketplace in which our members must respond decisively to economic and policy signals. As such, our member companies are heavily invested in the transportation energy technologies required to meet the current and future needs of the motoring public. Today those include various types and grades of traditional petroleum-based fuel, renewable and other alternative liquid fuels, hydrogen, and electricity.

Nobody knows how those technologies—and others—might further develop to reduce pollutants, improve efficiency, and enhance performance of motor vehicles. So, from a regulatory policy perspective, the most effective way to manage vehicular emissions is by the adoption of truly technology-neutral standards that spur the deployment of capital for research and development in the competitive market. This is how existing technologies are improved, and how new technologies are born—and that is where EPA has erred. By effectively mandating one technology, EVs, the GHG Standards pick winners and losers at the expense of innovation, adding inflationary pressures for consumers while stunting investment in other technologies that could reduce emissions more rapidly and sustainably.

Repealing the current GHG Standards is a necessary step to ensure the full array of new and existing technologies—rather than EVs alone—can develop to grow the economy, protect consumer choice, and control emissions. We welcome EPA's attention to these concerns as it determines its final action in this rulemaking.

II. GENERAL COMMENTS

The Associations offer the following analysis as their general comments in response to EPA's proposal to repeal the current GHG Standards. We agree with EPA that, under the text of the Clean Air Act and controlling Supreme Court precedent, the current GHG Standards are *ultra vires* of its Section 202 authority to regulate GHG emissions from motor vehicles. We also set forth alternative grounds for repealing the GHG Standards as the product of an arbitrary and capricious rulemaking, in which EPA unreasonably ignored EV emissions, refused to consider liquid fuel alternatives, and relied on a flawed cost-benefit analysis.

A. *Ultra Vires* Standards: EPA exceeded its statutory authority in prescribing the current GHG Standards, as both the major questions doctrine and a plain reading of the Clean Air Act make clear.

Title II of the Clean Air Act commits to EPA the exclusive but constrained authority to regulate the emission of air pollutants from motor vehicles. Specifically, Section 202 enables EPA to prescribe "standards applicable to the emission of any air pollutant from any class or classes of

new motor vehicles" where certain conditions are met, while Section 209 preempts the state and local adoption of any such standards.[3]

If EPA determines the Section 202 conditions are satisfied and undertakes to prescribe standards in response, those standards must operate within the bounds of the law. The current GHG Standards fail that test. First, they run afoul of the Supreme Court's major questions doctrine by imposing a national EV mandate without clear authorization to do so. Second, they contravene the Congress's plain language by adopting a system of fleetwide averaging that incorporates a zero-emissions factor for EVs. Either failure is sufficient grounds for EPA to repeal the GHG Standards as a regulatory action in excess of its statutory authority and limitations.[4]

1. Whether to mandate a shift to EVs is a major policy question, which EPA has no clear Congressional authorization to answer.

The current GHG Standards are so stringent that they are unachievable by internal combustion engines ("ICEs"), effectively mandating a nationwide transition to EVs.[5] In so doing, EPA has claimed "unprecedented power over American industry" that must be scrutinized under the major questions doctrine.[6] That analysis requires a statutory statement of "clear congressional authorization," which is glaringly absent here.[7] EPA must rescind the GHG Standards accordingly.

Economically, the significance of the GHG Standards is "staggering by any measure."[8] By EPA's own projection, the direct compliance costs would exceed $800 billion through 2025.[9] More broadly, an EV mandate would upend the domestic automobile and liquid fuel industries, which together support millions of American jobs and generate trillions of dollars in U.S. economic activity. This easily places the GHG Standards among the most economically consequential regulatory interventions in the history of the American administrative state.

So too politically. Whether to mandate greater electrification of the vehicle fleet has been the subject of ongoing policy debate, with passionate and widely divergent viewpoints. In Congress, the matter has been repeatedly considered—and, thus far, rejected—since at least the

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3 The statutory conditions that must be met range from a threshold "endangerment" and "cause or contribute" finding under Section 202(a)(1), through a final assessment under Section 202(a)(2) that "the requisite technology" can be developed and applied before any standards may take effect.

4 See CAA § 307(d)(9)(C) (providing for judicial reversal of any action under Section 202 that is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right").

5 This is similar to the unlawful generation-shifting approach in *West Virginia v. EPA*, in which EPA sought to regulate the market share of energy sources in the power sector, mandating a shift away from coal-fired plants in favor of other technologies like natural gas, wind, and solar. See 597 U.S. 697 (2022). There, as here, EPA has attempted to force a sector-wide transformation by stretching the bounds of the statutory regime in search of particular technologies.

6 *West Virginia*, 597 U.S. at 728

7 Id.

8 *Biden v. Nebraska*, 600 U.S. 477, 502 (2023) (citing *West Virginia*).

9 89 Fed. Reg. at 28105, 28108.

1970 amendments to the Clean Air Act and continuing through present.[10] And at the state level, some have pursued aggressive measures to accelerate EV adoption, while others have opposed such efforts with similar vigor. Two such measures, an attempt by California to mandate EV cars and EV trucks, were recently blocked by Congress under the Congressional Review Act, attracting significant debate in itself.[11]

In such cases, the major questions doctrine requires that EPA "point to 'clear congressional authorization' to regulate in that manner."[12] It cannot point to any such authorization here. Nothing in the Clean Air Act suggests—let alone clearly states—that Congress intended to authorize EPA to impose an EV mandate. The authority on which EPA relies, Section 202, merely authorizes the agency to prescribe motor vehicle emission standards as detailed above. That is a far cry from the "clear congressional authorization" it would need to force a market-wide transition from ICEs to EVs.[13] The major questions doctrine demands more.

2. The text of the Clean Air Act forecloses both the use of fleetwide averaging and the incorporation of EVs into such averages.

Supposing the major questions doctrine was no obstacle, however, the mechanics of the GHG Standards still cannot be squared with the text of the Clean Air Act itself. To effectuate the national EV mandate EPA sought to impose, the GHG Standards take two steps: adopting standards for a fleetwide average rather than a standard that individual vehicles must meet, and inflating the stringency of those standards with a growing number of "zeroes" for EVs. EPA lacks the authority to do either.

To begin, the words and structure of Title II foreclose the use of fleetwide averaging. The comprehensive enforcement provisions set forth in the statute are designed with individual vehicles in mind, not the average of an entire fleet. For example, Section 206 requires a certificate of conformity before a motor vehicle may be sold, but conformity with fleetwide average standards cannot be determined until the end of the model year. Similarly, Section 205 imposes penalties "with respect to each motor vehicle" that violates applicable emission standards, but no one vehicle can violate standards that apply to the average of the whole fleet. By contrast, Congress did expressly authorize EPA to prescribe standards for "average annual aggregate emissions" elsewhere in Title II; if it had intended to do so here, it would have said so.[14]

Moreover, EPA cannot include EVs with supposedly zero emissions in a system of fleetwide averaging, even if such a system were permissible. Section 202 authorizes only standards for "the emission of any air pollutant" from motor vehicles, which would require such vehicles to

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[10] See, e.g., 116 Cong. Rec. 19238-19240 (1970) (amendment to Section 202 that would have incrementally banned internal combustion engines, debated and rejected); Zero-Emission Vehicles Act of 2019, H.R. 2764, 116th Cong. (2019) (amendment to Title II that would have mandated EV penetration roughly equal to the 2030 target in the current GHG Standards, not enacted).

[11] See H.J. Res. 87 (Pub. L. No. 119-15) and H.J. Res. 88 (Pub. L. No. 119-16).

[12] *West Virginia*, 597 U.S. at 732 (quoting *Utility Air*, 573 U.S. at 324).

[13] Id.

[14] CAA § 211(k)(1)(B)(ii) (regarding emission reductions for reformulated gasoline).

actually emit a pollutant in the first place.[15] By definition, a non-tailpipe-emitting vehicle simply does not qualify for regulation under that authority. Other portions of Section 202 confirm this result, including its focus on "emission-related systems" and "diagnostic systems" to ensure vehicular emissions conform to prescribed standards—again presupposing the regulated vehicles in fact have emissions to monitor.[16]

B. Arbitrary & Capricious Rulemaking: In the process of prescribing the current GHG Standards, EPA unreasonably ignored EV emissions and liquid fuel alternatives while relying on a flawed cost-benefit analysis.

Even if EPA did not exceed its statutory authority in adopting them, the GHG Standards should be repealed because they rest upon a rulemaking that was arbitrary and capricious in at least three material respects. First, EPA treated EVs as having zero emissions, despite the significant emissions from producing electric batteries and the electricity that powers them. Second, EPA failed to consider liquid fuel technologies as an alternative to EVs, despite the documented availability of renewable fuels and high-octane fuels to address pollution from motor vehicle emissions. Third, EPA produced a cost-benefit analysis with serious flaws on both sides of the ledger. Again, any one of these issues—and certainly all three taken together—are sufficient grounds for EPA to repeal the current GHG Standards as the product of an arbitrary and capricious rulemaking.[17]

1. EVs generate significant off-board emissions from power generation and manufacturing inputs, while innovative liquid fuels present an obvious and viable alternative.

While EPA focused only on tailpipe emissions for the GHG Standards, EVs generate off-board emissions that cannot reasonably be ignored. Among those are the significant emissions from generating electricity to repeatedly charge and continuously power these vehicles. With the majority of American electricity coming from fossil fuels that produce GHG emissions, recent EPA estimates suggest current EVs generate *more* upstream emissions than comparable ICE vehicles.[18] That estimate does not include the lifecycle emissions related to producing and disposing of EV batteries, which are also significant. EPA inexplicably chose to ignore these realities, despite previously recognizing that upstream emissions should be addressed in emission standards.[19]

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15 Id. at § 202(a)(1).

16 Id. at § 202(m)(1).

17 See CAA § 307(d)(9)(A) (providing for judicial reversal of any action under Section 202 that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law").

18 Independent research confirms this conclusion as to overall lifecycle emissions, too. See, e.g., "Lifecycle Analysis Comparison: Electric and Internal Combustion Engine Vehicles," Fuels Institute at 43 (Jan. 2022) (showing that hybrid vehicles produced lower lifetime carbon emissions than EVs did in states as diverse as Texas, Iowa, Tennessee, and West Virginia, among others).

19 See 77 Fed. Reg. 62817 ("given the current electricity upstream emissions profile…, the full potential for zero or near-zero GHG emissions from EVs will only be realized if and when the electricity sector is transformed so that upstream emissions are lower").

With this myopic and unreasonable focus on tailpipe emissions, EPA also failed to assess alternative liquid fuels like higher-octane gasoline, ethanol, biodiesel, and synthetic fuels. Current and ongoing innovations with these fuels could substantially reduce lifecycle GHG emissions versus conventional petroleum products—often as a drop-in or retrofit to existing ICE vehicles, rather than requiring consumers to purchase a costly new vehicle as with EVs. And given its mandate to increase the amount of renewable fuels blended into the national fuel supply under the Renewable Fuel Standard ("RFS"), EPA's failure to consider these options as an alternative to an EV mandate is all the more glaring.

2. The cost-benefit analysis for EPA's current GHG Standards materially understated the costs and overstated the benefits of EVs versus liquid fuels.

In its model to estimate EV costs, EPA's inputs were far too low for important components like EV batteries and motors. This led EPA to claim that its GHG Standard would increase vehicle technology costs by a couple thousand dollars, while the actual cost differential for EVs versus ICEs has been well into the five figures for some U.S. manufacturers. To our knowledge, EPA has never been able to explain this discrepancy.

EPA's estimated benefits were also wrong; they were inflated based on a supposed market failure the GHG Standards would purportedly address. Specifically, EPA claimed the current GHG Standards would result in a *trillion* dollars in pretax fuel savings for consumers. But if this were so, rational consumers would have long ago demanded—and the market would have dutifully supplied—a shift to EVs without any need for a regulatory mandate. Again, we are not aware of any evidence from EPA to back this assumption as to a massive market failure. In reality, consumers consider a variety of factors in determining which vehicles—and therefore which fuels—to buy. Fuel economy is one of those factors, but it is certainly not the only one.

III. SPECIFIC RESPONSES

In addition to inviting general comments on this rulemaking, EPA has enumerated certain key aspects of its proposal and solicited responses to those items specifically.[20] In this section, we address several of those where we believe our experience and perspective may be of most value. Our responses are presented in numerical order according to the identifiers assigned by EPA.

A. C-1: Comments on all aspects of EPA's proposed rulemaking

Solicitation C-1 seeks comment on "[a]ll aspects" of the proposed rulemaking, including but not limited to "legal and scientific developments that are being subject to public comment for the first time."

The Associations incorporate the preceding Sections I and II of these comments as their response to solicitation C-1 generally. With respect to legal developments newly subject to public

[20] See 90 Fed. Reg. 36324-36325.

comment, we further reference our briefs in the pending *Kentucky* and *Nebraska* cases on appeal to the D.C. Circuit, which expound on the arguments presented here.[21]

B. C-6 / C-7: Reliance interests in the GHG Standards

Solicitations C-6 and C-7 seek comments on whether stakeholders other than motor vehicle manufacturers have reliance interests in the GHG Standards, including interests in national uniformity and preemption.

As discussed in Section I above, fuel distributors and convenience retailers respond to both market and policy signals when determining how best to allocate their limited capital. To that end, they tend to support a consistent and predictable policy environment. In contrast, changing and conflicting regulatory interventions into the market often lead to inefficiency and even stranded investments as consumer behaviors artificially shift in response. While these considerations do not support maintaining the current GHG Standards, which are untenable, a uniform and preemptive national policy is important to the Associations and their members as a general matter.

C. C-10: The continued preemptive effect of the Clean Air Act

Solicitation C-10 seeks comment on the continued preemptive effect of the Clean Air Act under two scenarios: (1) if EPA finalizes its proposed rescission, or (2) if EPA otherwise concludes that it lacks the authority to regulate GHG emissions under the Clean Air Act.

As mentioned in our Section II.A analysis above, we agree with EPA that it has the authority to prescribe standards for GHG emissions from motor vehicles, provided the statutory requisites are satisfied. We likewise agree that such authority remains exclusive to EPA, with Section 209 preempting state or local regulation of GHG emissions from motor vehicles, regardless of the final action in this rulemaking.[22]

D. C-21: Cost-benefit analysis for the GHG Standards

Solicitation C-21 seeks comment on EPA's proposed cost-benefit analysis, and whether a cost-benefit analysis is an appropriate and lawful basis for repealing the GHG Standards.

As discussed in our Section II.B analysis above, the GHG Standards are already based on a fatally flawed cost-benefit analysis. That EPA believes the analysis has been further undermined by intervening developments is even more reason to repeal them. We agree that the early retirement of Inflation Reduction Act tax credits and the Congressional Review Act repeal of California's EV mandate are both important considerations in assessing costs and benefits in the current market.

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[21] See *Kentucky v. EPA*, Case No. 24-1087 (D.C. Cir.), Initial Brief for Private Petitioners, Doc. No. 2073654 (Sep. 6, 2024); *Nebraska v. EPA*, Case No. 24-1129 (D.C. Cir.), Brief for Private Petitioners, Doc. No. 2080266 (Oct. 16, 2024).

[22] See 90 Fed. Reg. 36315 ("Because new motor vehicles and engines currently subject to GHG emission standards would remain subject to Title II of the CAA, the statute would continue to preempt 'any' State or local 'standard relating to the control of emissions.'").

E. C-25: Analyzing an EV mandate under *Massachusetts*.

Solicitation C-25 seeks comment on whether the current GHG Standards, by imposing an EV mandate, went beyond what the Supreme Court anticipated in *Massachusetts* and requires a new analysis under the major questions doctrine.

In *Massachusetts*, the Supreme Court held that "EPA has the statutory authority to regulate the emission of [GHGs] from new motor vehicles" under Section 202.[23] Nothing in that holding requires or sanctions the use of Section 202 to impose a national EV mandate. Indeed, on the record before it, the Court had no occasion to address the bounds or contours of any emission standards that might be premised on an endangerment finding.[24] Taking *Massachusetts* together with *West Virginia*, the current GHG Standards cannot survive a major questions doctrine analysis.

IV. CONCLUSION

For the reasons discussed, EPA should repeal its current GHG Standards, and ensure any future regulatory interventions better enable meaningful competition among the full range of transportation energy technologies to deliver the best possible outcomes for American consumers and their environment.

Sincerely,

National Association of Convenience Stores ("NACS")

Energy Marketers of America ("EMA")

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[23] *Massachusetts v. EPA*, 549 U.S. 497, 532 (2007).

[24] Id. at 534.