

**States of California, Connecticut, Delaware, Iowa, Illinois, Maine, Maryland,
Massachusetts, Minnesota, New Jersey, New York, North Carolina, Oregon, Pennsylvania,
Rhode Island, Vermont, Washington, and the District of Columbia**

August 27, 2018

Andrew K. Wheeler
Acting Administrator, United States
Environmental Protection Agency
Office of the Administrator Code 1101A
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Heidi King
Deputy Administrator
National Highway Traffic Safety Administration
United States Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

**Re: Request for Extension of Comment Period and Additional Public Hearings
Regarding Joint Proposed Rule to Roll Back Vehicle Greenhouse Gas
Emissions and Corporate Average Fuel Economy Standards for Model
Years 2021-2026 Light-Duty Vehicles
Docket IDs: EPA-HQ-OAR-2018-0283 / NHTSA-2018-0067 /
NHTSA-2017-0069**

Dear Acting Administrator Wheeler and Deputy Administrator King:

The undersigned Attorneys General and State Agencies respectfully request that the United States Environmental Protection Agency (EPA) and the National Highway Traffic Safety Administration (NHTSA) extend the comment period for the joint proposed rule referenced above by at least 60 days, to a total of 120 days from the date of publication in the Federal Register. A 120-day comment period would be consistent with past practice for matters of similar importance and complexity, including EPA's 2014 proposal to adopt the Clean Power Plan and its 2017 proposal to repeal the Clean Power Plan.¹ As discussed in more detail below, given the complexity and novelty of the legal and technical issues presented by the Agencies' proposal, the voluminous amount of materials accompanying the joint proposed rule which

¹ We also note that EPA recently extended the initial 30-day comment period on its Proposal to Limit the Use of Scientific Evidence to 115 days.

commenters must review, and the profound potential impacts of the proposal on human health and the environment, a 60-day comment period is wholly inadequate.

Secondly, we request that the deadline for comments on NHTSA's draft Environmental Impact Statement (EIS) for the joint proposed rule be extended from the current deadline of September 24, 2018, to align with the requested 120-day comment period for the joint proposed rule. NHTSA's current 45-day comment period on the draft EIS—which ran for 13 days prior to Federal Register publication of the joint proposed rule—clearly prejudices the public's right to notice and comment. The draft EIS and the joint proposed rule are closely intertwined, yet on the current schedule, an already shorter comment period on the draft EIS has been further truncated by not having the published joint proposed rule and all of its supporting data for nearly a third of those 45 days. Such a schedule is both arbitrary and unfair.²

Third, and relatedly, we request additional public hearings beyond those announced for Fresno, California, Dearborn, Michigan, and Pittsburgh, Pennsylvania. To begin, we ask that EPA, alone or in conjunction with NHTSA, hold an additional public hearing in California devoted exclusively to EPA's unprecedented proposal to withdraw California's Clean Air Act waiver—a subject not mentioned in the hearing announcement. See 83 Fed. Reg. 42,817-42,818. In light of EPA's proposal to revoke California's waiver, we believe that a hearing in California's capitol is warranted. While we dispute if Section 209 of the Clean Air Act authorizes EPA to revoke a waiver, that statute requires a public hearing for granting a waiver and EPA should provide no less process for its proposed revocation. In addition, we request that the hearing locations included in the pre-publication draft of the proposed joint rule and the August 24th published version as well (see 83 Fed. Reg. 42,986 (Aug. 24, 2018))—in Los Angeles and Washington, D.C.—be re-instated. Los Angeles and Washington, D.C. are widely accessible, large population centers with a history of experience and expertise regarding vehicle pollution. Further, we request more than the current single hearing in a state that has adopted California's vehicle emissions standard (Pennsylvania). The States that have adopted California's standards, pursuant to express congressional authorization in section 177 of the Clean Air Act, will be seriously harmed by the withdrawal of California's waiver, if it is finalized. States, who cannot set their own emissions standards for vehicles, and their residents also deserve to be heard by EPA without the need to expend substantial resources to travel to distant meetings and with the ability to address their specific concerns about the dual threat of rolling back the federal standards while withdrawing California's waiver. Specifically, we request additional hearings be scheduled Portland, Oregon and/or Seattle, Washington; New York State; and Baltimore, Maryland.

² While NHTSA has set a September 24, 2018 draft EIS comment deadline, two of the three public hearings announced by EPA and NHTSA post-date the September 24 deadline. See 83 Fed. Reg. 42,817 (Aug. 24, 2018). The Agencies' announcement for the hearings expressly provides that "oral or written testimony" on the draft EIS will be accepted, and further that the Agencies will "keep the official record of each hearing open for 30 days to allow speakers to submit supplementary information" to the dockets. *Id.* at 42,818. Therefore, it is our understanding that, for example, a speaker at the September 26, 2018, hearing in Pittsburgh may offer oral or written testimony on the draft EIS and that speaker will have until October 26, 2018, to submit supplementary information on the draft EIS.

As to the comment period for the joint proposed rule, additional time is called for on several grounds. Each of the three actions proposed here—EPA’s rollback, NHTSA’s rollback, and the waiver revocation—is tremendously significant and would call for a minimum 60-day comment period on their own. Notably, the primary documents describing the proposed actions and their impacts total more than 2,000 pages in their pre-publication form. The preliminary regulatory impact analysis is 1,600 pages, and the draft EIS is 1,300 pages, including its appendices. And that does not account for the enormous volume of technical information to be reviewed, including models and data, some of which is not currently available.³ These proposed actions put our States and our people at risk, and the enormity of the consequences of these proposals alone warrants ensuring that States, and other members of the interested public, have sufficient time to conduct meaningful review and analysis of the available information and to respond fully and completely. Your Agencies’ duty under the APA to afford the public an adequate opportunity to review all of this information and to provide informed comments is clearly not met by provision of a 60-day comment period, and a mere 45 days to review NHTSA’s draft EIS.

Additional time is also called for due to the fact that the modeling, assumptions, and analysis underlying these proposals are dramatically different from that of previous, similar rulemakings. NHTSA has made numerous, significant changes to the CAFE model, identifying at least eleven “key changes,” including multiple new “modules” to the CAFE model as well as many, substantial changes in the inputs, analysis, assumptions, and approaches taken in past rulemakings.⁴ Further, EPA has abandoned the models it used in 2010 and 2012 light-duty

³ Two examples illustrate that some important technical information is currently missing. The NPRM and the PRIA reference ANL’s BatPaC website and indicate the agencies used “an up-to-date version” of ANL’s BatPaC model. See, e.g., 83 Fed. Reg. 43,002 (Aug. 24, 2018). But readers cannot determine which version of BatPaC was used. Similarly, the PRIA references Polk registration data, including survival rates aggregated by model year, calendar year, and body style. These data are needed to verify the coefficients of the new scrappage model, but have not been made available. See, e.g., PRIA at 1010. “In order to allow for useful criticism, it is especially important for the agency to identify and make available technical studies and data that it has employed in reaching the decisions to propose particular rules.” *Connecticut Light & Power Co. v. Nuclear Regulatory Com.*, 673 F.2d 525, 530-531 (D.C. Cir. 1982); see also 42 U.S.C. § 7607(d)(3) (notice of proposed rulemaking “shall be accompanied by a statement of its basis and purpose” including “the factual data on which the proposed rule is based; the methodology used in obtaining and in analyzing the data; and the major legal interpretations and policy considerations underlying the proposed rule.” Courts have found that EPA’s failure to make data relating to the basis for its Clean Air Act regulations publicly available made “meaningful comment on the merits of EPA’s assertions impossible” and constituted reversible error. *Kennecott Corp. v. EPA*, 684 F.2d 1007 (D.C. Cir. 1982); see also *Portland Cement Ass’n v. Ruckelshaus*, 486 F.2d 375, 392-95 (D.C. Cir. 1973) (“It is not consonant with the purpose of a rule-making proceeding to promulgate rules on the basis of inadequate data, or on data that, (in) critical degree, is known only to the agency.”)

⁴ See 83 Fed. Reg. 43,002-43,003 (Aug. 24, 2018).

rulemakings (including ALPHA and OMEGA) in favor of the CAFE model preferred by NHTSA—another development requiring careful consideration and comment from California and other States.⁵ Notably, EPA itself had more than five months (from January to June 2018) to review the changes NHTSA made to the CAFE model, yet still had enough questions and concerns to fill more than a hundred pages.⁶ It is unreasonable for the agencies to expect our States, and our agencies, to evaluate these massive changes in models, approaches, inputs, and analyses in a 60-day comment period. A minimum of an additional 60 days is required, as evident from EPA’s own lengthy review to address NHTSA’s changes.

While in 2010 and 2012, the agencies provided 60-day comment periods for their joint rulemakings setting standards for light-duty vehicles, those rulemakings reflected substantial discussions and information-sharing with CARB prior to the notice of proposed rulemaking. Indeed, both previous, similar rulemakings, in 2010 and 2012, reflected an agreement among the three regulatory agencies—EPA, NHTSA, and CARB—as well as the automobile manufacturers.⁷ No such advance sharing of comprehensive technical data and information occurred here, and no such agreement exists here. Indeed, the agencies have broken their prior agreement to collaborate with California on these standards —both in proposing to roll back the federal standards and in proposing to withdraw California’s waiver. Thus, EPA and NHTSA must allow a minimum of 60 additional days to afford California and the other States adequate opportunity to comment, as required by the APA.

These requests are consistent with important principles of public participation and cooperative federalism. They are, thus, also consistent with the “fishbowl memo” issued by Administrator Wheeler which states that “EPA must provide for the fullest possible public participation in [its] decision making” and must “take affirmative steps to seek out the views of those who will be affected by the decisions, including ... the governments of states, cities and towns.”⁸

⁵ 83 Fed. Reg. 43,000-43,002.

⁶ See EPA Further Review of CAFE Model & Input, June 18, 2018, attached to “Email 5 - Email from William Charmley to Chandana Achanta – June 18, 2018” (available at <https://www.regulations.gov/document?D=EPA-HQ-OAR-2018-0283-0453>).

⁷ See, e.g., 77 Fed. Reg. 62,632 (Oct. 15, 2012) (“As with the MY 2012-2016 final rules, a key element in developing the final rules was the agencies’ collaboration with the California Air Resources Board (CARB) and discussions with automobile manufacturers and many other stakeholders.”)

⁸ See <https://www.epa.gov/sites/production/files/2018-08/documents/wheeler-messageontransparency-august022018.pdf>, last visited August 27, 2018.

If we can provide additional information that would be helpful in considering this request, or if you wish to discuss this request with us, please contact the California Attorney General's Office.

Sincerely,

FOR THE STATE OF CALIFORNIA
AND THE CALIFORNIA AIR
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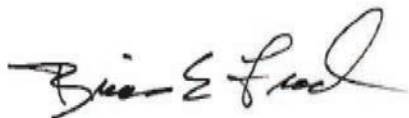
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