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Public Comment on U.S. EPA's Repeal of the 2009 Endangerment Finding and Vehicle GHG Standards

Public Comment
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Interest of Commentor

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Introduction

The U.S. Environmental Protection Agency (EPA) has requested comment on its proposed rule, "Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards," 90 Fed. Reg. 36288, and specifically requested comments on reliance interests on its prior regulatory provisions for greenhouse gas (GHG) emission standards found in Title 40 of the Code of Federal Regulations (CFR) parts 85, 86, 1036, and 1,037, with minor conforming adjustments to unrelated emission standards for new motor vehicles and engines in 40 CFR parts 600 and 1,039. This commentor asserts that American consumers and manufacturers have not substantially relied on the current regulatory provisions. Any purported reliance by non-American residents is irrelevant to EPA rulemaking because the agency's obligations are to U.S. citizens, not the world.

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Nothing lasts forever, and in the administrative law context, "regulatory agencies do not establish rules of conduct to last forever."[1] The Clean Air Act requires that the "[EPA] Administrator . . . prescribe *(and from time to time revise)* . . . standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare."[2] New presidential administrations typically review and revise executive agency programs and regulations.[3] And the sea change in administrative law in recent years[4] made substantial downstream regulatory effects inevitable.

[1] *Motor Vehicle Mfrs. Ass'n v. State Farm*, 463 U.S. 29, 42 (1983) (citing *American Trucking Ass'n, Inc. v. Atchison T. & S.F.R. Co.*, 387 U.S. 397, 416 (1967)).
[2] 42 U.S.C. § 7521 (2025) (emphasis added).
[3] *State Farm*, 463 U.S. 29, 59 (1983) (Rehnquist, J., concurring in part and dissenting in part).
[4] *See, e.g.*, *West Virginia v. EPA*, 597 U.S. 697 (2022); *Loper Bright v. Raimondo*, 603 U.S. 369 (2024).

I. Consumers and manufacturers have resisted, not relied upon, EPA's regulation.

Prior EPA analyses of GHG emissions standards recognized, but ignored, that many consumers prefer internal combustion engine vehicles over electric vehicles (EVs), for a variety of reasons. Insisting that consumers do not know what is good for them, prior EPAs mistakenly disregarded market signals that indicate the public does not rely on EPA GHG emissions regulations when making vehicle purchase decisions.

a. Forced reliance is not "substantial reliance."

Since its 2009 findings on GHG emissions, EPA has repeatedly asserted there was an "energy paradox" or "energy efficiency gap" such that existing technologies that reduce fuel consumption are not widely adopted even though the alleged benefits of these technologies supposedly outweigh the costs to buyers.[5] Indeed, "[t]he topic of the 'energy paradox' or 'energy efficiency gap' has been extensively discussed in many previous vehicle GHG standards' analyses," and this "paradox"[6] has been deemed an "*apparent market failure*."[7]

Confounded by the disconnect between regulatory expectations and market behavior, EPA pushed its EV-acceptance agenda by rationalizing: "If the benefits to vehicle buyers outweigh the costs to those buyers of the new technologies, conventional economic principles suggest that automakers would provide them, and people would buy them."[8] As a result, "[EPA's GHG] analysis [has] assume[d] that new car shoppers are somewhat myopic—and that an 'energy paradox' exists in the case of fuel economy."[9] Regulators further assumed that American "[consumers] put[] little emphasis on future fuel savings compared to up-front costs (a form of 'myopic loss aversion'), not having a full understanding of potential cost savings, or not prioritizing fuel consumption in the complex process of selecting a vehicle."[10] So, when consumers did not "act appropriately," EPA decided to choose for them, by issuing regulatory controls.

EPA adopted the questionable "apparent market failure" theory and contrived a "market failure" by discounting the preferences of American consumers and contending that the market had failed

[5] *See, e.g.,* Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles, 89 Fed. Reg. 27842, 28136–37 (April 18, 2024).
[6] Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles, 89 Fed. Reg. 27842, 28316 (April 18, 2024).
[7] Revised 2023 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions Standards, 86 Fed. Reg. 74434, 74501 (December 30, 2021).
[8] Revised 2023 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions Standards, 86 Fed. Reg. 74434, 74500 (December 30, 2021).
[9] Corporate Average Fuel Economy Standards for Model Years 2024-2026 Passenger Cars and Light Trucks, 87 Fed Reg 25710, 25856 (May 2, 2022).
[10] Revised 2023 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions Standards, 86 Fed. Reg. 74434, 74501 (December 30, 2021).

simply because Americans did not take advantage of the fact that "fuel savings quickly outweigh the costs in the absence of standards."[11]

But Congress never authorized EPA to use this nebulous and malleable "market failure" concept to impose its will upon consumers and manufacturers. Congress specifically limited EPA's considerations to "cost, energy, and safety factors associated with the application of [available] technology."[12] And the only statutes that reference "market failures" do so in the context of industry annual reports or foreign investments.[13] As a result, an alleged "market failure"—or "energy paradox" or "energy efficiency gap"—is inappropriate for EPA to consider when analyzing "costs" of regulating vehicle emissions.

The Office of Management and Budget (OMB) has warned against relying heavily on "market failures," and with good reason: "Government actions can be unintentionally harmful, and even useful regulations can impede market efficiency," which is why it has imposed "a presumption against certain types of regulatory action" on that basis.[14] Economists have long cautioned government officials not to "point to instances of apparently imperfect markets and assume that government . . . regulation can seamlessly perfect them."[15] Nevertheless, EPA plowed forward, imposing its will upon American consumers. And by forcing standards that may cause Americans to "value fuel-saving technology differently *when their choices are constrained to more fuel-efficient options*,"[16] EPA created a "forced reliance," which is not the requisite "substantial reliance" that might justify retaining a regulation.

b. Plateaued consumer demand for EVs shows consumers are not relying on the existing regulation.

Consumer demand for EVs has plateaued and is falling,[17] with over 80 percent of Americans saying that they do not want them.[18] Prohibitive costs may be one reason why. EVs cost between 15 percent and 25 percent more than their gasoline-powered counterparts.[19] Electric heavy duty pickup trucks and utility vehicles can cost up to three times as much as comparable internal combustion engine vehicles,[20] making any transition to EVs financially infeasible even over

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[11] Revised 2023 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions Standards, 86 Fed. Reg. 74434, 74501 (December 30, 2021). *Accord* Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles, 89 Fed. Reg. 27842, 28136–37 (April 18, 2024).
[12] 42 U.S.C. § 7521(3)(A)(i).
[13] *See, e.g.*, 12 U.S.C. 635g-1; 22 U.S.C. 9621.
[14] OMB Circular A-4 (2003).
[15] *See* Ryan Bourne, **How "Market Failure" Arguments Lead to Misguided Policy**, Cato Institute Policy Analysis, No. 863 (January 22, 2019).
[16] Corporate Average Fuel Economy Standards for Model Years 2024-2026 Passenger Cars and Light Trucks, 87 Fed. Reg. 25710, 25855 (May 2, 2022).
[17] *See, e.g.*, ***Why are EV sales slowing?***, Goldman Sachs, May 21, 2024.
[18] *See* Kristopher J. Brooks, ***Electric vehicle prices are tumbling. Here's how they now compare with gas-powered cars***, CBS News, June 26, 2024.
[19] *See* Bart Ziegler, ***Commercial Trucks are a Key Part of EV Adoption. What's Holding them Back?***, The Wall Street Journal, July 23, 2023.
[20] *Id.*

multiple years. Concerns about battery life and charging stations outweigh perceived advantages and only compound consumer reluctance, further curtailing EV demand.[21]

Automakers are preparing for EV demand to bottom out and have abandoned plans to produce all-electric fleets in the coming years.[22] Mercedes Benz, for example, has postponed its goal for EVs and hybrids to comprise 50 percent of sales by 2025 until 2030.[23] General Motors "is pulling back on its plan to build 400,000 EVs by mid-2024," and scrapped plans to work with Honda to create more affordable EVs.[24] Ford, which has lost $12 billion in its electric vehicle division since 2023, is scaling back billions of dollars in EV investment and putting plans for a new battery plant on hold.[25] These reconfigurations are the market's recognition that despite Tesla's early success and EPA's prior misguided insistence, EVs are not for everyone.

c. EPA should discount automakers' reliance claims.

Some automakers may claim that they have invested heavily in EV technology in reliance on EPA's prior GHG regulations. But EPA should discount such assertions because (1) the current rule bails out some automakers' bad EV investments; (2) the automakers' investments predate the current regulation; and (3) automakers are already retreating from EV production without the proposed repeal.

First, because the current EPA rule ultimately forces consumers to buy EVs made to meet extremely strict (and unrealistic) emissions standards, it provides some automakers with a competitive advantage over others that did not gamble as heavily on EV production—effectively bailing out poor management. For example, Ford began investing significant sums in new EV production facilities in 2022, almost exactly two years before EPA promulgated the current rule.[26] That investment has largely failed. In the first half of 2025 alone, Ford's EV sales have declined 12 percent at a loss of more than $2.2 billion, bringing its total electric vehicle division losses to $12 billion since 2023.[27] By contrast, Toyota and Honda each produce multiple hybrid-engine vehicles, but only one EV.[28] Their hybrid vehicles have proven more popular than EV options and their read of the consumer market has been more accurate.[29] Honda's sales rose 32 percent in

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[21] *See* Peter Lyon, ***EV Sales Slow As Buyers Want 20-Minute Charging And 350-Mile Range***, Forbes, March 24, 2024.
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *See* Neal Boudette, ***Ford Rejigs E.V. Plans After Suffering Billions in Losses***, The New York Times, August 11, 2025.
[26] *See* ***Ford Takes Bold Steps Toward All-Electric Future in Europe; 7 New Connected EVs Support Plans to Sell 600K+ EVs Annually by 2026***, Ford, March 22, 2022; Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles, 89 Fed. Reg. 27842 (April 18, 2024).
[27] *See* Neal Boudette, ***Ford Rejigs E.V. Plans After Suffering Billions in Losses***, The New York Times, August 11, 2025.
[28] *See* **Peter Lyon, EV Sales Slow As Buyers Want 20-Minute Charging And 350-Mile Range**, Forbes, March 24, 2024.
[29] *See* Aparna Narayanan, ***Hybrid Cars Retake The Limelight As EV Sales Slow. What It Means For Ford, GM, Tesla.***, Investor's Business Daily, April 5, 2024.

2023 over 2022, and Toyota's gained 16 percent in the same period.[30] Ford's "reliance" on the current rule is rooted in its interest in Washington rescuing it from a bad investment—not an uncommon occurrence in the auto industry, which already receives billions of dollars in subsidies and tax incentives to help prop up EVs and was "saved" with an $80 billion bailout after the 2008 financial crisis.[31]

Second, automakers cannot claim reliance on regulations that *followed* their heavy EV investments. Ford's heavy EV investments, for instance, preceded the current regulation by two years, and although EPA acknowledges that some "manufacturers, importers, and sellers have expended resources complying with GHG emission standards for [model years] 2012 through 2026,"[32] that is not enough to support a substantial reliance claim, which requires "*decades* of industry reliance on [an agency's] prior policy."[33]

Third, given the flagging demand for EVs, many automakers have already curtailed their EV manufacturing, which means they no longer rely on the current rule. Ford, Mercedes Benz, General Motors, and Honda have postponed or abandoned their EV production and sales goals and expectations, even before the administration issued the proposed rule.[34] These abandonments foreclose any argument that automakers substantially rely on the current rule.[35]

II. Global climate change analyses are legally irrelevant and too speculative to merit significant reliance.

First, EPA lacks the statutory authority to consider the supposed reliance interests of non-citizens. As the Supreme Court has explained, "Congress generally legislates with domestic concerns in mind."[36] Such "domestic concerns" include the Clean Air Act, the declared purpose of which is "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population."[37] That directive extends to the Administrator's authority to prescribe "standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger

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[30] Peter Lyon, ***EV Sales Slow As Buyers Want 20-Minute Charging And 350-Mile Range***, Forbes, March 24, 2024.

[31] *See* ***U.S. Dep't of Energy, Biden-Harris Administration Announces $15.5 Billion to Support a Strong and Just Transition to Electric Vehicles, Retooling Existing Plants, and Rehiring Existing Workers***, presidency.ucsb.edu, August 31, 2024; Braden Goyette, ***What Is Obama's Actual Record on Creating Jobs?***, ProPublica, October 5, 2011.

[32] Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards, 90 Fed. Reg. 36288, 36297 (proposed Aug. 1, 2025).

[33] *Food & Drug Admin. v. Wages & White Lion Invs., L.L.C.*, 604 U.S. 542, 585 (2025) (citing *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 222 (2016) (emphasis added).

[34] *See* **Peter Lyon, EV Sales Slow As Buyers Want 20-Minute Charging And 350-Mile Range**, Forbes, March 24, 2024.

[35] *See also* Edward Snitkoff, **Here's Every Ford EV Project Canceled Or Delayed In 2024**, fordauthority.com, December 26, 2024.

[36] *RJR Nabisco v. Eur. Cmty.*, 579 U.S. 325, 336 (2016) (quoting *Smith v. United States*, 507 U.S. 197, 204, n. 5 (1993)).

[37] 42 U.S.C. § 7401(b)(1).

public health or welfare."[38] Such prescription must also comply with OMB's universal instruction that an agency's analysis "should focus on benefits and costs that accrue to citizens and residents of the United States."[39] Thus, taking account of foreign or global concerns would be "in excess of statutory [ ] authority" under the APA.[40]

Second, EPA must base its GHG emissions standards on a proper cost-benefit analysis, which requires a reliable "social cost of carbon" estimate—which does not exist. In 2008, the initial Interagency Working Group Report estimated that the social cost of greenhouse gases ranged from $30 to $46 per ton for 2025.[41] The first Trump administration, which "only factored in domestic damages as opposed to global impacts," estimated such costs to range from $1 to $7 per ton.[42] In 2020, the New York State Department of Conservation calculated the cost per ton at $125, which the Biden administration reduced to $53 per ton.[43] Those fluctuations indicate wild speculation, not science, rendering them useless as a meaningful economic or analytical input.

Third, EPA estimates that "the best available data indicate that GHG emissions from light- and medium-duty vehicles in the United States amounted to approximately 1.8 percent of global GHG emissions in 2022."[44] This de minimis amount must be weighed against increased global industrialization producing more GHG emissions and the practical limits of American rulemaking. The current rule ignores the American motorist's minor role in any global climate change. The new proposed rule corrects that mistake.

Any consideration of extraterritorial reliance on EPA rules affecting 1.8 percent of global GHG emissions would exaggerate reliance inappropriately and at the U.S. consumer's expense. Federal agencies exist to protect the rights and interests of Americans, not non-citizens living around the world.[45]

Conclusion

EPA's proposed rule changes will require automakers to sell their EVs according to merit, not mandates. Rather than relying on federal mandates to help them sell unpopular or under-selling models, automakers will have to differentiate their products and appeal to consumer preferences and needs. As with Tesla's recent rise, consumers, not government, will drive innovation and change. Accordingly, there are no significant reliance interests in the current GHG emissions standards, and EPA's proposed repeal is appropriate and necessary.

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[38] 42 U.S.C. § 7521(a)(1).
[39] OMB Circular A-4 (2003).
[40] 5 U.S.C. § 706.
[41] *See* Mimi Drozdetski & Samir Qadir, **Social Cost of Carbon: Seven Takeaways About the Most Important Climate Policy Metric You've Never Heard Of**, PHE, August 24, 2022.
[42] *Id.*
[43] *Id.*
[44] Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards, 90 Fed. Reg. 36288, 36297, 36311 (proposed Aug. 1, 2025).
[45] 58 C.F.R. 190 (1993).

About The Buckeye Institute

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