ORAL ARGUMENT NOT YET SCHEDULED
Case No. 22-1031 (and consolidated cases)

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

STATE OF TEXAS, et al.,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, et al.,

Respondents.

FINAL BRIEF OF STATE AND PUBLIC INTEREST RESPONDENT-INTERVENORS

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to Circuit Rule 28(a)(1), the undersigned counsel provides the following information for all consolidated cases.

A. Parties and Amici

1. All parties, intervenors, and amici appearing in these consolidated cases are listed in the Proof Brief of State Petitioners (ECF No. 1972073), Initial Brief for Private Petitioners (ECF No. 1972107), and the EPA's Proof Answering Brief (ECF No. 1987499), with the exception of the following:

Amici for Respondents:

American Thoracic Society, American Medical Association, American Public Health Association, American College of Occupational and Environmental Medicine, American Academy of Pediatrics, American Association for Respiratory Care, Climate Psychiatry Alliance, American College of Physicians, American College of Chest Physicians, Academic Pediatric Association, and American Academy of Allergy, Asthma and Immunology; Constitutional Accountability Center; the Institute for Policy Integrity at New York University School of Law; Senator Thomas R. Carper and Representative Frank Pallone, Jr.; Margo Oge and John Hannon; the National League of Cities and the U.S. Conference of Mayors; Consumer Reports; and the International Council on Clean Transportation.

2. The Respondent-Intervenor Public Interest Organizations joining this brief are American Lung Association, Clean Air Council, Clean Wisconsin, Conservation Law Foundation, Environmental Defense Fund, Environmental Law & Policy Center, National Parks Conservation Association, Natural Resources Defense Council, Public Citizen, Sierra Club, and Union of Concerned Scientists. All are non-profit public interest organizations; none of them has any parent corporation; and no publicly held entity owns 10 percent or more of any of them.

B. Rulings Under Review

The agency action under review is entitled, "Revised 2023 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions Standards," 86 Fed. Reg. 74,434 (Dec. 30, 2021).

C. Related Cases

There are no related cases within the meaning of Circuit Rule 28(a)(1)(C).

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OTHER AUTHORITIES

GLOSSARY

Act	Clean Air Act, 42 U.S.C. § 7401 *et seq.*
Auto Br.	Answering Brief for Intervenor Alliance for Automotive Innovation
Carper-Pallone Amicus Br.	Brief of Sen. Thomas R. Carper & Rep. Frank Pallone, Jr. as Amici Curiae in support of Respondents
CAC Amicus Br.	Brief of Constitutional Accountability Center as Amicus Curiae in support of Respondents
Consumer Reports Amicus Br.	Brief of Amicus Curiae Consumer Reports in Support of Respondents
Elec. Indus. Br.	Brief for Industry Respondent-Intervenors
EPA	U.S. Environmental Protection Agency
EPA Br.	EPA's Answering Brief
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ICCT Amicus Br.	Brief of Amicus Curiae International Council on Clean Transportation in support of Respondents
JA	Joint Appendix
NOx	oxides of nitrogen
Oge-Hannon Amicus Br.	Brief of Amici Curiae Margo Oge and John Hannon in support of Respondents
Rule	U.S. EPA, "Revised 2023 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions Standards," 86 Fed. Reg. 74,434 (Dec. 30, 2021)
Texas Br.	Brief for State Petitioners

INTRODUCTION

Since 1965, federal motor vehicle standards under Section 202 of the Clean Air Act have been a cornerstone of Congress's efforts to prevent dangerous air pollution. Section 202 tasks EPA with regulating new motor vehicles—one of the nation's largest sources of air pollution—and has empowered EPA to eliminate billions of tons of smog precursors, soot, and greenhouse gases from the nation's air by encouraging the application of cost-effective emission-control technologies.

The emission standards challenged here continue this work using longstanding, statutorily authorized regulatory approaches. The standards use a fleetwide-average structure that EPA has employed in Section 202 rules for almost forty years. That fleetwide average incorporates zero-emission vehicles, including electric vehicles, as has every set of light-duty vehicle emission standards since 2000. The challenged Rule preserves these structural features, which Petitioners now claim are unauthorized, while tightening the standards' stringency to reflect significant progress in emission-control technologies. Because EPA's Section 202 rules have long employed the very regulatory features Petitioners challenge, those challenges are untimely. They are also not exhausted, because Petitioners did not raise their legal objections to these features even in *this* rulemaking.

Nor is this an "extraordinary case[]" of an agency asserting "unprecedented" and "extravagant" powers that the relevant statutes do not clearly provide. *West*

Virginia v. EPA, 142 S.Ct. 2587, 2608-09 (2022). To the contrary, here, EPA exercised authority it has always clearly possessed: updating emission standards applicable to specified types of new motor vehicles to reflect the capabilities of relevant emission-control technologies.

STATUTES AND REGULATIONS

Pertinent statutes and regulations that are not reproduced in the addenda to Petitioners' and Respondents' briefs are reproduced in the addendum to this brief.

STATEMENT OF THE CASE

State and Public Interest Respondent-Intervenors adopt EPA's Statement of the Case.

SUMMARY OF THE ARGUMENT

The petitions should be dismissed because Petitioners' objections are untimely and were not exhausted during the comment period. The two features of the Rule that Petitioners claim are unauthorized—fleetwide-average standards and the incorporation of electric vehicles within those averages—are unchanged from prior light-duty greenhouse gas standards, and no commenter challenged them with reasonable specificity before the agency.

If not dismissed, the petitions should be denied on their merits. Section 202(a) authorizes EPA to set standards that apply to emissions from groups of vehicles—including vehicles designed as "complete systems" to "prevent" pollution—and, in doing so, to consider anticipated and existing emission-control

technologies. 42 U.S.C. § 7521(a)(1)-(2). EPA did exactly that in finalizing fleetwide-average standards that include zero-emission vehicles. Congress did not prescribe a specific structure for Section 202(a) standards. Rather, its directions that EPA apply Section 202(a) authority in diverse ways demonstrate the breadth of regulatory flexibility granted. And, because zero-emission vehicles fit squarely within Congress's definition of "motor vehicle," 42 U.S.C. § 7550(2), they are properly included in the fleetwide-average standards.

Nor does the increased role for zero-emission technologies in controlling pollution implicate the major questions doctrine. EPA has long issued rules under Section 202(a) that reflect and encourage technological progress, and Congress's choice fifty years ago to regulate a significant industry does not indicate any transformation of EPA's authority here. Regardless, Congress provided clear authorization for the Rule.

ARGUMENT

I. THE COURT SHOULD NOT REACH PETITIONERS' STATUTORY AUTHORITY ARGUMENTS

Petitioners press two statutory authority arguments: (1) that EPA may not set fleetwide-average standards, Fuel Br. 38-50; and (2) that EPA may not "require electrification" by including zero-emission vehicles in fleetwide-average standards, *id.* at 50-61. *See also* Texas Br. 14. Neither argument is properly before the Court.

1. Petitioners' arguments are untimely because they challenge aspects of EPA's program that are unchanged from its inaugural greenhouse gas standards adopted in *2010*, and these aspects were not reopened in this rulemaking. EPA Br. 34-39. Many Petitioners here challenged that 2010 rule, but none argued that averaging or including zero-emission vehicles was unauthorized. *See Coal. for Resp. Reg., Inc. v. EPA*, 684 F.3d 102 (D.C. Cir. 2012), *cert. denied*, 571 U.S. 951 (2013). EPA has used fleetwide averaging in emission standards since the 1980s, EPA Br. 13, and has incorporated zero-emission vehicles into emission standards since its "Tier 2" light-duty NOx standards adopted in *2000*. The Tier 2 standards required manufacturers to certify all light-duty vehicles into one of eight emissions profiles, called bins. A sales-weighted average of these bins determined the manufacturer's compliance with a fleet-average NOx standard. 65 Fed. Reg. 6,698, 6,734 (Feb. 10, 2000). Bin "1" represented zero-emission vehicles. *Id.* at 6,746. Including zero-emission vehicles in the average, in EPA's view, "provide[d] a strong incentive" and "a stepping stone to the broader introduction of this technology." *Id*.

Subsequently, zero-emission technologies and fleetwide averaging have appeared together in *all* light-duty standards for greenhouse gases and for other dangerous pollutants, across presidential administrations. 75 Fed. Reg. 25,324, 25,341 (May 7, 2010) (greenhouse gas standards); 77 Fed. Reg. 62,624, 62,849

(Oct. 15, 2012) (greenhouse gas standards); 79 Fed. Reg. 23,414, 23,451, 23,453-4 (Apr. 28, 2014) (Tier 3 standards); 85 Fed. Reg. 24,174, 24,314, 24,469-74 (Apr. 30, 2020) (greenhouse gas standards). EPA did not reopen either issue in those rulemakings; nor did it here. Under 42 U.S.C. § 7607(b)(1), Petitioners' arguments are barred.

2. Separately, Petitioners' arguments may be considered only if they were raised with "reasonable specificity" during the comment period for this Rule. 42 U.S.C. § 7607(d)(7)(B). Petitioners did not do so and identify no commenter who did. EPA Br. 38-39; *see Mossville Env't'l Action Now v. EPA*, 370 F.3d 1232, 1238 (D.C. Cir. 2004) ("Reasonable specificity requires something more than a 'general [challenge] to EPA's approach.'"). The Court applies this exhaustion requirement "strictly" to "ensure that EPA has an opportunity to respond to every challenge to the regulatory regime it administers." *Motor & Equip. Mfrs. Ass'n v. Nichols*, 142 F.3d 449, 462 (D.C. Cir. 1998). Here, EPA had no reason to *sua sponte* defend regulatory approaches that had appeared in earlier rules, without challenge, for more than a decade. EPA Br. 16.

3. Petitioners' double default also disposes of their major questions doctrine arguments. That doctrine does not determine the validity of an agency's action, but only the degree of "skepticism" with which a court evaluates the agency's claim to statutory authority. *West Virginia*, 142 S.Ct. at 2607-09, 2614-15. Because

Petitioners' objections to EPA's authority are time-barred and were not exhausted, no statutory interpretation question is properly before the Court, and their invocations of the major questions doctrine are unavailing.

II. THE RULE FITS SQUARELY WITHIN EPA'S SECTION 202(a) AUTHORITY

If the Court reaches the merits of Petitioners' challenges, it should deny them. The Rule, which updates EPA's program for light-duty vehicles' greenhouse gas emissions, is a straightforward exercise of EPA's authority under Section 202(a). EPA Br. 40-43, 62-65.

A. Section 202(a) Authorizes Fleetwide-Average Standards that Reflect and Encourage Increased Application of Zero-Emission Technologies

Section 202(a) directs EPA to adopt "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 [its] judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare." 42 U.S.C. § 7521(a)(1). In crafting such standards, EPA must assess the state of technology to afford manufacturers lead time to allow "development and application of the requisite technology," with "appropriate consideration" of industry's compliance costs. *Id.* § 7521(a)(2). These provisions authorize the two features of the Rule that Petitioners belatedly target—its encouragement of zero-emission technologies and its use of fleetwide averaging.

1. ***Zero-emission technologies***. Section 202(a) authorizes EPA to set emission standards by reference to both "future advances" and "presently available" technologies that could be applied more broadly. *NRDC v. EPA*, 655 F.2d 318, 328, 330 (D.C. Cir. 1981) (cleaned up); 42 U.S.C. § 7521(a)(2). Thus, in the 1970 amendments, Congress directed EPA to use this Section 202(a) authority to set emission standards at specified levels reflecting then-experimental catalytic converter technology. *Int'l Harvester Co. v. Ruckelshaus*, 478 F.2d 615, 623-24 (D.C. Cir. 1973). Thereafter, EPA has frequently set standards under Section 202(a) that reflect application of emerging technologies as well as wider use of existing technologies across the relevant vehicle classes. *See, e.g.*, 45 Fed. Reg. 14,496, 14,497-98 (Mar. 5, 1980) (trap-oxidizers); 66 Fed. Reg. 5002, 5049-54 (Jan. 18, 2001) (NOx adsorbers); 75 Fed. Reg. at 25,454-55 (hybrid technologies); Oge-Hannon Amicus Br. 17-32.

Moreover, Congress expressly directed EPA to apply its standards to vehicles that "are designed as complete systems," as well as those that "incorporate" additional "devices," to "prevent or control" pollution. 42 U.S.C. § 7521(a)(1). This language squarely includes zero-emission technologies, such as battery-electric or fuel-cell powertrains, which are "complete systems" that entirely "prevent" tailpipe pollution. As this Court has recognized, "Congress expected the Clean Air Amendments to force the industry to broaden the scope of its research—

to study new types of engines and new control systems" beyond the combustion engine. *Int'l Harvester*, 478 F.2d at 634-35.

Thus, in the 1970 amendments, Congress funded research "to develop low emission alternatives to the present internal combustion engine." 42 U.S.C. § 7404(a)(2). And, in the 1990 amendments, Congress required EPA to foster the development of cleaner, alternative-fueled vehicles, including electric vehicles, through a mandate for certain large fleets and a pilot program in California. *Id.* §§ 7581(2), 7586(b), 7589(c). It is implausible to posit, as Petitioners do, that Congress denied EPA the authority to consider technologies whose development and commercialization those programs supported when it regulates vehicle emissions. *See also* EPA Br. 44. And Section 202(a)'s text prohibits such a reading by applying standards to "complete systems" that "prevent" pollution. 42 U.S.C. § 7521(a)(1).

Consistent with this mandate, in this Rule, EPA considered a large menu of available engine, transmission, air-conditioning, and electrification technologies, including battery-electric powertrains. EPA Br. 19-21; 2016 Technical Support Document, EPA-HQ-OAR-2021-0208-0117, pp. 2-12 to 2-13, JA267-68. EPA reasonably predicted manufacturers could apply these technologies at increased rates in the relevant model years and accordingly tightened its greenhouse gas standards by 28% over four years. 86 Fed. Reg. 74,434, 74,441 (Dec. 30, 2021).

For comparison, the "Tier 3" light-duty standards for NOx and particulate emissions tightened the fleetwide average for these pollutants by *80%* and *70%*, respectively. 79 Fed. Reg. at 23,417. Notably, auto manufacturers do not challenge EPA's predictive judgments about the technologies they may feasibly apply. *See* Auto Br. 3-4.

2. ***Fleetwide averaging***. Fleetwide averaging effectuates Congress's direction to EPA in Section 202(a) to reduce dangerous pollution from *groups* of vehicles. EPA Br. 63-65. Congress was concerned with the collective emissions of millions of vehicles, *Int'l Harvester*, 478 F.2d at 622, and accordingly tasked EPA with determining whether emissions from any "class or classes" of new vehicles caused or contributed to dangerous pollution. 42 U.S.C. § 7521(a)(1). Congress likewise required standards be "applicable to" the emissions from such "class or classes." *Id.* And, importantly, Congress did not dictate the structure of standards or the composition of classes, providing EPA with flexibility to tailor its approach to the specific problem being addressed.

Congress purposefully used broad language in Section 202(a) to confer "regulatory flexibility" on EPA. *Massachusetts v. EPA*, 549 U.S. 497, 532 (2007). That flexibility likewise appears in Congress's directions that EPA adopt Section 202(a) standards with diverse structures in specific circumstances. In multiple provisions, Congress instructed EPA to promulgate regulations *under Section*

202(a) that required manufacturers to meet a particular standard with a specified "percentage of [their] sales volumes" in a given vehicle class: *e.g.*, 40% of light-duty vehicles in 1994, 80% in 1995, and 100% in 1996. 42 U.S.C. § 7521(g)(2); *see also id.* § 7521(a)(6), (g)(1), (h), (i). By congressional design, these Section 202(a) regulations did not apply a single standard to every vehicle in a given class; rather, they established enforceable requirements at the *fleet* or *class* level. Congress's instructions as to how EPA should apply its Section 202(a) authority in specific contexts demonstrate the range of regulatory structures available to EPA. *See also* EPA Br. 74-75.

Moreover, fleetwide averaging is consistent with Congress's directions that EPA provide manufacturers lead time for the "development and application of the requisite technology" and give "appropriate consideration" to their "cost of compliance." 42 U.S.C. § 7521(a)(2). As EPA has explained, new technologies cannot always "automatically be incorporated fleet-wide." 75 Fed. Reg. at 25,404; *see also NRDC v. EPA*, 954 F.3d 150, 153 (2d Cir. 2020) (describing the "almost infinite number of technology combinations" for controlling vehicle emissions, each with "its own price tag and lead time requirements"). But as the phase-in provisions above illustrate, Congress did not require EPA to delay regulations—and allow otherwise preventable emissions—until every vehicle in a class could employ such technology. Under a fleetwide-average structure, manufacturers can

add and upgrade technology to vehicles on their own redesign schedules as they bring their fleets into compliance, with substantial cost savings to industry and consumers. 75 Fed. Reg. at 25,332. Providing for fleetwide averaging (and credit banking and trading) is thus a time-tested, efficient, and environmentally sound means for EPA to reduce emissions while building lead time and "appropriate consideration" for costs into its standards. 42 U.S.C. § 7521(a)(2); 45 Fed. Reg. 79,382-83 (Nov. 28, 1980); 54 Fed. Reg. 22,652, 22,665-67 (May 25, 1989).

B. Petitioners' Arguments against Fleetwide Averaging Fail on the Merits

Petitioners contend that the Act "unambiguously *precludes* fleetwide-average emission standards under Section 202(a)." Fuel Br. 38. But this Court long ago rejected that argument. *NRDC v. Thomas*, 805 F.2d 410, 425 (D.C. Cir. 1986). As EPA explains, the Act's text and purposes support EPA's decades-long practice of fleetwide averaging. EPA Br. 62-75.

1. Petitioners argue Section 202(a) authorizes EPA to set standards for "*vehicles*," and emission standards must therefore "apply to individual vehicles, not manufacturers' fleets on average." Fuel Br. 38. But the statute's command is that standards apply to the emissions that *classes*—i.e., groups—of vehicles emit, not that they specify limits for each *individual* vehicle. *Supra* 9-10; *see Lamie v. U.S. Trustee*, 540 U.S. 526, 538 (2004) (courts may not "read an absent word into the statute" in the guise of construing it).

2. Petitioners next point to provisions in Section 202(b) that directed EPA to prescribe standards for specific pollutants in specific model years, using terms that Petitioners interpret as vehicle-specific. Fuel Br. 39-41. Even assuming these provisions are vehicle-specific, *but see* EPA Br. 66-67, congressional directives to use Section 202(a) to set vehicle-specific standards in certain circumstances do not, *sub silentio*, limit EPA's discretion when setting standards outside those circumstances. *See* 42 U.S.C. § 7521(a)(1) (establishing scope of EPA's Section 202(a) authority "[e]xcept as otherwise provided in subsection (b)"). This Court has "consistently recognized" that a "congressional mandate in one section and silence in another often suggests … a decision *not to mandate* any solution in the second context, i.e., to leave the question to agency discretion." *Catawba Cnty. v. EPA*, 571 F.3d 20, 36 (D.C. Cir. 2009) (cleaned up).

To be sure, Section 202(a) *allows* EPA to prescribe standards that each vehicle in a class must meet. But nothing requires that *all* Section 202(a) standards share that characteristic. Rather, Congress directed EPA to adopt Section 202(a) standards with different structures—including the fleet-level phase-in standards directed by Sections 202 (g), (h), and (j)—highlighting the flexibility it gave EPA. *Supra* 9-10.

3. Petitioners wrongly assert that averaging is "incompatible" with provisions regarding testing and certification, warranties, and penalties. Fuel Br.

43-47. But the regulations that have successfully implemented fleetwide-average standards under these very provisions are largely unchanged since the first greenhouse gas standards in 2010,[1] and no one challenged this framework following the 2010, 2012, 2016, or 2020 standards. Petitioners did not make their certification-and-compliance arguments even in *this* rulemaking. Because no challenge was "raised by any party before the agency" during this rulemaking, it "cannot be dispositive here." *Thomas*, 805 F.2d at 425 n.24.[2] And this regulatory framework's successful, longstanding use contradicts Petitioners' claim that fleetwide averaging makes the Act's compliance provisions unworkable.

Far from rendering provisions "pointless," Fuel Br. 42, EPA's certification and compliance framework effectuates EPA's obligation to develop "appropriate" methods to test and certify regulatory compliance for each vehicle sold. 42 U.S.C. § 7525(a)(1); *Thomas*, 805 F.2d at 425 & n.24. Specifically, EPA requires manufacturers to submit production plans before each model year begins, from

[1] 86 Fed. Reg. at 74,456; 75 Fed. Reg. at 25,468-77. The key regulatory provisions that implement the statutory requirements are in 40 C.F.R. §§ 86.1801-01 through 86.1871-12, and in particular §§ 86.1818-12, 86.1848-10 and 86.1865-12, as well as 40 C.F.R. Part 600.

[2] Petitioners observe that in *Thomas*, this Court questioned the compatibility of an earlier fleetwide-average standard with certain legislative history, Fuel Br. 50, but ignore EPA's subsequent answers, *see* 54 Fed. Reg. at 22,665-66; 55 Fed. Reg. 30,584, 30,593-94 (July 26, 1990). And the reason *Thomas* did not resolve the point is equally applicable here: it was not raised before EPA. 805 F.2d at 425 n.24.

which a fleetwide standard is projected. 75 Fed. Reg. at 25,470-71; *see* EPA Br. 11-13. These plans also explain how manufacturers' fleets will comply with the projected standard, by specifying emission levels for each vehicle model that, averaged together, will yield a compliant fleet. 75 Fed. Reg. at 25,471; 40 C.F.R. § 600.514-12(b)(1); EPA Br. 13, 69. Those manufacturer plans, together with consistent testing data from demonstration vehicles, provide the grounds for EPA to issue certifications prior to sale, conditioned on, *inter alia*, the manufacturer's compliance with the fleetwide-average standard at the end of the model year. 75 Fed. Reg. at 25,473; Auto Br. 15-16. These certified emission levels are, in turn, the basis for warranties that each vehicle is "designed, built, and equipped" to conform with regulations under Section 202—*i.e.*, that it is designed to meet an emission level that maintains fleet compliance—and free from defects that may cause noncompliance. 42 U.S.C. § 7541(a)(1); 75 Fed. Reg. at 25,486-87; EPA Br. 69. EPA determines whether an individual vehicle remains in compliance while "in use," as the statute requires, by testing it against its certified emission level, plus a 10% margin for testing variability.[3] 40 C.F.R. § 86.1818-12(d); 75 Fed. Reg. at 25,474, 25,476.

[3] Onboard diagnostic systems may meaningfully measure whether a vehicle's malfunction could result in noncompliance with this in-use standard. *See* 42 U.S.C. § 7521(m)(1); *contra* Fuel Br. 42.

Exercising its express statutory authority to issue certificates of regulatory conformity subject to "such terms" as it "may prescribe," 42 U.S.C. § 7525(a)(1), EPA further conditions each certificate "upon the manufacturer attaining [its] CO_2 fleet average standard." 75 Fed. Reg. at 25,482; 40 C.F.R. § 86.1848-10(c)(9)(i). EPA makes that determination after final production figures for a model year are submitted (taking into account available credits and flexibilities). 75 Fed. Reg. at 25,469. In case of noncompliance, EPA determines "which vehicles caused the fleet average standard to be exceeded," by "designat[ing] as nonconforming those vehicles with the highest emission values first, continuing until a number of vehicles equal to the calculated number of non-complying vehicles … is reached." *Id*. at 25,482. EPA then may impose monetary penalties for each noncomplying vehicle. 42 U.S.C. § 7524(a). This longstanding methodology fully conforms with the Act's compliance and enforcement provisions.

4. Petitioners also assert that certain other statutes and other provisions in the Clean Air Act, which explicitly require averaging or crediting, imply that Section 202(a) must not authorize averaging. Fuel Br. 47-50. But none of those provisions suggests that Congress *prohibited* averaging in Section 202(a). It is "eminently reasonable" to instead interpret Congress's comparative "silence" in Section 202(a) "to convey nothing more than a refusal to tie the agency's hands."

Entergy Corp. v. Riverkeeper, Inc., 556 U.S. 208, 222 (2009).[4] And any inference from these other provisions is particularly weak because none resembles Section 202(a). *City of Columbus v. Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424, 435-36 (2002) (presumption that the presence of a phrase in one provision and its absence in another reveals Congress' design "grows weaker with each difference in the formulation of the provisions under inspection").

5. As EPA observes, Petitioners never argue that fleetwide averaging in itself triggers special judicial skepticism under the major questions doctrine. EPA Br. 62 n.16. At best, Petitioners try to connect fleetwide averaging to their major questions arguments by asserting, without support, and without first presenting the claim to EPA, that EPA can compel greater electric vehicle adoption *only* through averaging. Fuel Br. 17. That assertion is wrong: EPA has repeatedly used Section 202(a) to phase in technology or emission standards using other approaches also permitted by statute, such as fleet-percentage schedules. 42 U.S.C. § 7521(a)(6), (g), (h), (j); 59 Fed. Reg. 16,262, 16,262-63 (Apr. 6, 1994). Even if it were correct,

[4] Petitioners cite EPA's earlier assertion that it "appears" Congress did not "specifically contemplate" an averaging program when it enacted Section 202(a)(1). 48 Fed. Reg. 33,456, 33,458 (July 21, 1983). That assertion, if true, is irrelevant. Congress "might not have appreciated" precisely how statutory language would apply in the future but incorporated enough "regulatory flexibility" into Section 202(a) to keep pace with "changing circumstances." *Massachusetts*, 549 U.S. at 532. In 1990, Congress rejected proposals to restrict averaging and has never seriously entertained a similar proposal in the thirty years since. EPA Br. 18.

Petitioners' assertion still would not suggest that fleetwide averaging is itself transformative, novel, consequential, or politically significant, *see infra* Part III.A-D, so it cannot trigger any rule of extraordinary skepticism for this familiar, longstanding regulatory structure. EPA has been using fleetwide averaging in emission standards since the early 1980s, Auto Br. 6-8, and experience has shown this approach generally *moderates* those standards' economic impacts, *id.* at 14. And no one has seriously contested the practice in decades. Petitioners thus fail to identify, under ordinary *or* extraordinary modes of scrutiny, any basis to find the Rule's fleetwide-average framework unauthorized.

C. Petitioners' Arguments against Including Zero-Emission Vehicles in the Fleet Average Are Contrary to Section 202(a)'s Text

Petitioners contend that, even if EPA can set fleetwide-average standards, it cannot account for zero-emission vehicles in those standards. Fuel Br. 50-61. The Act's text contradicts Petitioners' premise that zero-emission vehicles fall outside Section 202(a)'s scope. Congress defined "motor vehicles" according to their function—"any self-propelled vehicle designed for transporting persons or property on a street or highway"—not their technology or fuel. 42 U.S.C. § 7550(2); EPA Br. 42.

Petitioners' contrary reading asserts Section 202(a) standards may apply only to vehicles that themselves emit pollutants, and thus "cause, or contribute to" dangerous pollution. Fuel Br. 52-55; *but see* EPA Br. 78 (noting plug-in hybrid and

battery-electric vehicles do have associated emissions). But "cause, or contribute" refers to "any class or classes" of vehicles—standards must apply "to the emission of any air pollutant from *any class or classes* of new motor vehicles or new motor vehicle engines, which … *cause, or contribute to*, [dangerous] air pollution," 42 U.S.C. § 7521(a)(1) (italics added)—and it is undisputed that the light-duty vehicle classes emit greenhouse gases. EPA Br. 76. Petitioners' invocation of the "last antecedent" rule, Fuel Br. 54-55, is mistaken: "vehicles" is not one of several antecedents but part of a prepositional phrase modifying "class or classes," 42 U.S.C. § 7521(a)(1), which "hangs together as a unified whole, referring to a single thing." *Cyan, Inc. v. Beaver Cty. Emps. Ret. Fund*, 138 S.Ct. 1061, 1077 (2018); *see also id*. (the Court has "not applied the [last antecedent] rule when the modifier directly follows a concise and 'integrated' clause"). Nor does the last antecedent rule hold where, as here, a comma separates the limiting phrase ("which … cause, or contribute to") and the immediately preceding term ("vehicles or engines"). *Facebook, Inc. v. Duguid*, 141 S.Ct. 1163, 1170 (2021).[5]

Petitioners also contend that the relevant "class" can include only pollution-emitting vehicles. Fuel Br. 55. But, consistent with the Act's functional definition

[5] Petitioners imply this Court adopted their reading in *Truck Trailer Manufacturers Ass'n v. EPA*, 17 F.4th 1198, 1201 (D.C. Cir. 2021). Fuel Br. 55. But that case concluded trailers are not "motor vehicles" because they are not "self-propelled," not because they do not emit pollutants. 17 F.4th at 1201.

of "motor vehicle," *supra* 17, EPA reasonably classified light-duty vehicles according to their size and operation, not their emission profile. EPA Br. 77. The term "class" "could hardly be more flexible," *Ne. Md. Waste Disposal Auth. v. EPA*, 358 F.3d 936, 947 (D.C. Cir. 2004), and "*any* class or classes" all the more so. *Ali v. BOP*, 552 U.S. 214, 219 (2008) ("'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'"). Congress itself grouped light-duty vehicles into one class for certain purposes. 42 U.S.C. § 7521(b)(1)(A)-(B). Petitioners identify no grounds to rewrite EPA's endangerment finding, upheld eleven years ago, to excise zero-emission vehicles from the classes EPA found to contribute to dangerous pollution. *See Coal. for Resp. Reg.*, 684 F.3d at 115.

Nor can the statute be read to exclude from EPA's standards vehicles that eliminate tailpipe pollution. EPA Br. 77-79. Congress expressly ruled out that perverse approach by providing for standards to apply to vehicles designed as "complete systems" that "prevent" (and not just "control") pollution. 42 U.S.C. § 7521(a)(1). Given that instruction, there is nothing unlawful, or even "unusual," Fuel Br. 53, about including zero-emission vehicles in EPA's light-duty standards.

III. INCREASING APPLICATION OF ZERO-EMISSION TECHNOLOGIES DOES NOT IMPLICATE THE MAJOR QUESTIONS DOCTRINE

Petitioners' arguments under the major questions doctrine offer no "reason to hesitate," *West Virginia*, 142 S.Ct. at 2609, in crediting EPA's authority to include zero-emission technologies in its standard-setting. EPA Br. 47-62.

Certainly, the doctrine does not excuse Petitioners' obligations to exhaust their arguments before the agency, bring timely challenges, and rely on record evidence. 42 U.S.C. § 7607(b)(1), (d)(7)(A)-(B); EPA Br. 34-39. Nor does the doctrine transform factual or policy objections judged under the arbitrary and capricious standard into statutory defects. *See* 42 U.S.C. § 7607(d)(9)(A); EPA Br. 49, 51.

The major questions doctrine's clear-authorization requirement is triggered only in "extraordinary" cases where the "history and the breadth of the authority that the agency has asserted," coupled with "the economic and political significance of that assertion," prompt enhanced skepticism. *West Virginia*, 142 S.Ct. at 2608 (cleaned up). Here, Petitioners argue that "forcing" adoption of electric vehicles—*i.e.*, issuing standards that effectively require manufacturers to increase application of zero-emission technologies—is a major question. Fuel Br. 16-18; Texas Br. 14-15. However, neither zero-emission technologies nor their purported impacts raise major questions.

A. Section 202(a) Is One of the Most Significant and Frequently Exercised Authorizations in the Clean Air Act

In *West Virginia*, the Supreme Court concluded that EPA had asserted "extravagant" authority to shift electricity generation from regulated, existing fossil-fueled plants to new wind and solar plants, based on "the vague language of an ancillary provision … that was designed to function as a gap filler and had rarely been used in the preceding decades." 142 S.Ct. at 2609-10. By contrast, EPA

has used Section 202(a) for half a century to do precisely what it did here: regulate emissions of classes of new motor vehicles based on evolving technology. EPA Br. 48; Oge-Hannon Amicus Br. 16-32. And far from "vague language" or "subtle devices," *West Virginia*, 142 S.Ct. at 2609 (cleaned up), Section 202(a) uses "broad language" that "reflects an intentional effort to confer … flexibility," *Massachusetts*, 549 U.S. at 532. EPA's authority to set technology-forcing standards thus derives from exactly the sort of statute one would expect.

B. The Rule Is Consistent with Longstanding Regulatory Practice and Core Agency Expertise

Past regulatory practice and agency expertise inform whether a regulation represents an "unheralded" expansion of agency authority. *West Virginia*, 142 S.Ct. at 2610-12; *see* CAC Amicus Br. 15-16, 18-19. EPA has over fifty years' experience in analyzing vehicular emission control and translating technological progress into increasingly stringent standards. Previous Section 202(a) rules routinely encouraged adoption of innovative technologies, including electrification technologies. *Supra* 7; EPA Br. 16; Oge-Hannon Amicus Br. 18-22, 24-30. And EPA regularly evaluates how vehicle standards impact the auto industry and

interact with adjacent markets, such as fuels,[6] components,[7] and service/repair industries.[8] In particular, the technology menus that EPA uses to simulate manufacturers' compliance with alternative stringency levels, *see* EPA Br. 20, reflect EPA's extensive expertise on vehicle emission-control technologies. *See, e.g.*, 75 Fed. Reg. at 25,449-51. In every round of light-duty greenhouse gas standards, EPA has consistently included zero-emission technologies on these menus, alongside engine, aerodynamics, air-conditioning, and other technologies. EPA Br. 16. Petitioners offer no reason to isolate EPA's consideration of battery-electric technologies—which Congress anticipated even before the 1970 amendments, EPA Br. 9—as triggering special judicial skepticism. EPA Br. 49-51.

[6] *See, e.g.*, 38 Fed. Reg. 1254 (Jan. 10, 1973) (basing unleaded gasoline requirement in part on lead's impairment of catalytic converters required to meet 1975-76 emission standards); 66 Fed. Reg. at 5002 (requiring low-sulfur fuel to support NOx standards based on advanced control devices susceptible to sulfur damage).

[7] *See, e.g.*, 74 Fed. Reg. 57,671, 57,673 (Nov. 9, 2009) (evaluating supply infrastructure for chemical component of heavy-duty truck NOx control technology); 77 Fed. Reg. at 62,809-10 (analyzing supply chain for alternative refrigerant supporting air-conditioning greenhouse gas control technology).

[8] *See, e.g.*, 60 Fed. Reg. 40,474, 40,475-6 (Aug. 9, 1995) (requiring auto manufacturers to distribute information on onboard diagnostic computers to service and repair industry).

C. The Rule's Economic Significance Reflects the Significance of *Congress's* Choice to Require EPA to Regulate Vehicle Pollution

Section 202 effectuates Congress's choice of how to reconcile two "central observations": "The automobile is an essential pillar of the American economy," and "[t]he automobile has had a devastating impact on the American environment." *Int'l Harvester*, 478 F.2d at 622. Many of Petitioners' arguments about economic significance owe to that consequential choice *by Congress*: the auto industry's compliance costs appear large because the auto industry is large. Moreover, Petitioners' assertion that the Rule carries predictable *impacts* on adjacent sectors does not amount to a credible argument that EPA is *regulating* those sectors.

1. The Rule's Projected Costs to the Auto Industry Do Not Indicate a Major Question

"Every effort at pollution control exacts social costs. Congress, not the Administrator, made the decision to accept those costs." *Motor & Equip. Mfrs. Ass'n, Inc. v. EPA*, 627 F.2d 1095, 1118 (D.C. Cir. 1979). The Rule's costs—and its even greater benefits—thus reflect the significance of a choice Congress *already made*.

The major questions doctrine focuses on "separation of powers principles and a practical understanding of legislative intent," not regulatory costs, and the economic impacts of a rule alone do not trigger enhanced scrutiny. *West Virginia*,

142 S.Ct. at 2609; EPA Br. 56-57 (citing cases); CAC Amicus Br. 4, 9-12. Instead, economic significance informs the doctrine only insofar as it indicates Congress meant to "make [the] major policy decisions itself, not leave those decisions to agencies." *West Virginia*, 142 S.Ct. at 2609 (cleaned up). But here, Congress directed EPA to regulate the economically significant auto industry and expressly called on EPA's expert judgment to consider and balance the costs of doing so. 42 U.S.C. § 7521(a)(2).

Those total costs reflect the size of the industry Congress tasked EPA with regulating; on a *per-vehicle* basis, this Rule's costs are lower than in past EPA vehicle rules. EPA Br. 60. Annual U.S. sales of new light-duty vehicles range from 15-17 million vehicles, so the $300 billion cost figure Petitioners cite, Fuel Br. 16, covers 400 million vehicles over nearly three decades of production.[9] Regulating an industry of such scale, as Congress directed, inevitably involves considerable costs and benefits.[10] For example, EPA's 2020 rule weakening light-duty standards was projected to produce $631 billion in *lost* benefits—$56 billion more than

[9] Regulatory Impact Analysis, p. 8-10, JA995; 86 Fed. Reg. at 74,509 ($300 billion represents present value of cumulative costs through 2050).

[10] Vehicle pollution control historically has entailed substantial aggregate industry costs: "when three-way catalytic converters were implemented in 1980-83, the additional cost increment [per vehicle, in 1996 dollars] amounted to approximately $1200." J.R. Mondt, *Cleaner Cars: The History & Technology of Emission Control Since the 1960s* 214 (2000).

avoided costs. 85 Fed. Reg. 40,901, 40,904 (July 8, 2020). In contrast, the public benefits of the current Rule far exceed its costs, by $120-190 billion. 86 Fed. Reg. at 74,443. The auto industry that will bear these costs in the first instance is *defending* the Rule. Auto Br. 1. And to the extent manufacturers pass costs on to purchasers, those purchasers will more than recoup them through reduced fuel expenditures. 86 Fed. Reg. at 74,511-12.

2. State Petitioners' Arguments about Grid Effects and Supply Chains Fail Doctrinally and on the Record

The major questions doctrine's central concern is preventing agencies from regulating outside their delegated authority. *West Virginia*, 142 S.Ct. at 2609. The Rule's potential to impact other sectors like electricity and mining, which State Petitioners emphasize, does not amount to EPA *regulating* outside its delegated authority over the auto industry. EPA Br. 55, 57; Elec. Indus. Br. 5; *see also FERC v. Elec. Power Supply Ass'n*, 577 U.S. 260, 281-82 (2016) (market effects on retail electricity from FERC setting wholesale rates did not amount to *regulation* of retail electricity). Petitioners are wrong to equate a rule that may increase electricity demand (and by only 0.1 to 0.6 percent in the regulated years[11]) with EPA deciding "the Nation's energy independence and relationship with hostile powers," Fuel Br. 31; *see also* Texas Br. 21-22.

[11] Regulatory Impact Analysis, p. 5-16, JA940.

Here, to ensure reasoned consideration of its actions, EPA examined certain effects of its Rule on electricity demand. EPA Br. 58; Elec. Indus. Br. 10-16. Petitioners do not challenge EPA's conclusions as arbitrary or capricious. If, as Petitioners speculate, EPA's future rules go significantly further, *see* Fuel Br. 35-36, that would have to happen on a record showing industry can comply at reasonable cost within the allotted lead time. 42 U.S.C. § 7521(a)(2).

Greater application of zero-emission technologies might well be possible in future rules, given market trends in the auto and electricity sectors, along with Congress's investments in electric vehicle infrastructure, *infra* 28. 86 Fed. Reg. at 74,486 (manufacturer commitments to achieve 50%-100% zero-emission vehicle sales by 2030 or 2035); Consumer Reports Amicus Br. 7-15. Should evidence be presented in those rulemakings that grids might not reliably sustain associated demand, EPA would have to answer any objections and provide evidence to support that rule. The same goes for Petitioners' objections around battery supply chains. *See* Elec. Indus. Br. 19-21. Petitioners fail to show that EPA overstepped in *this* Rule, however.

D. The Rule Does Not Claim for the Agency a Decision of Vast Political Significance

The specific standard-setting decision EPA made here is not of the momentous kind that courts presume "Congress intends to make … itself." *West Virginia*, 142 S.Ct. at 2609. Petitioners mischaracterize the Rule as EPA deciding

by how much and how quickly the nation should transition from gas- and diesel-fueled vehicles to electric vehicles. *See, e.g.*, Fuel Br. 3, 25-26, 29; Texas Br. 18. But, as EPA explains, the Rule is not a mandate that 17% of new vehicles be electric or plug-in hybrids. Br. 54-55; 86 Fed. Reg. at 74,484; ICCT Amicus Br. 15-19 (noting viable compliance pathways without *any* increased production of zero-emission vehicles). Instead, the record shows that *industry* is increasing its zero-emission vehicle production, and that consumer preferences have a strong role in accelerating this shift. 86 Fed. Reg. at 74,485-87. Petitioners offer no grounds to isolate EPA's exercise of authority as exceptionally politically significant within this transition.

Nor does the Rule attempt to enact any policy "conspicuously and repeatedly" rejected by Congress. *West Virginia*, 142 S.Ct. at 2610; *contra* Fuel Br. 31-32. Petitioners point to a few unenacted bills resembling hundreds of others that are introduced on the floor and referred to committee, only to go nowhere, *id.* (citing H.R. 2764, 116th Cong. (2019) and S.3664, 115th Cong. (2018)),[12] and one legislator's failed amendment offered in a floor debate over fifty years ago, *id.* (citing 116 Cong. Rec. 19238-40 (1970)). None of those bills resembles the policy

[12] *See* https://www.congress.gov/bill/116th-congress/house-bill/2764/all-actions (H.R. 2764 referred to committee and never voted on); https://www.congress.gov/bill/115th-congress/senate-bill/3664/all-actions (S.3664 introduced and never voted on).

EPA adopted here, CAC Amicus Br. 20-21, and none evinces an "earnest and profound debate around the country," *West Virginia*, 142 S.Ct. at 2614.[13] If anything, Congress has "repeatedly and conspicuously" *encouraged* greater zero-emission vehicle adoption. EPA Br. 8-10; Carper-Pallone Amicus Br. 28-35. By expanding vehicle-charging infrastructure and reducing the cost of zero-emission technologies for manufacturers and consumers, Congress has set the table for EPA to tighten its standards at reasonable costs, "supplement[ing], rather than supplant[ing], EPA's regulatory authorities." Greg Dotson & Dustin J. Maghamfar, *The Clean Air Act Amendments of 2022: Clean Air, Climate Change, & the Inflation Reduction Act*, 53 ENV. L. REP. 10017, 10034 (2023); *see also id.* at 10018, 10028-29.

E. Congress Provided Clear Authorization for the Rule

Even if *West Virginia*'s enhanced scrutiny applied here, Congress has clearly authorized EPA to base the stringency of its standards on the capabilities of relevant control technologies, including battery-electric and plug-in hybrid technologies. As discussed in Part II, Congress expressly authorized EPA to require manufacturers to apply technologies *more* than they have to date, as long as

[13] In *West Virginia*, by contrast, the Supreme Court cited one of the most high-profile, closely fought legislative battles in recent history; the 2009-2010 Waxman-Markey cap-and-trade bill, H.R. 2454 (111th Cong.), was the subject of massive, protracted legislative debate. *See West Virginia*, 142 S.Ct. at 2614.

EPA provides adequate lead time. 42 U.S.C. § 7521(a)(2). Congress expressly included "vehicles … designed as complete systems" to "prevent … pollution" among such technologies. *Id.* § 7521(a)(1). Congress expressly fostered zero-emission technologies and other combustion-engine alternatives through research, a production- and sales-mandate pilot program, and purchase requirements for large fleets. *Id*. §§ 7404(a)(2), 7586, 7589. And the Act's definition of "motor vehicle" does not distinguish between zero-emission vehicles and combustion-engine vehicles, any more than it distinguishes between gas- and diesel-fueled vehicles. *Id.* § 7550(2).

CONCLUSION

This Court should deny the petitions, if it does not dismiss them.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief complies with the type-volume limitations of the applicable rules and this Court's briefing format order dated September 22, 2022 (ECF No. 1965622). According to Microsoft Word, the portions of this document not excluded by Federal Rule of Appellate Procedure 32(f) and Circuit Rule 32(e)(1) contain 6,369 words. Combined with the word count of the other Respondent-Intervenors briefs, this does not exceed the 14,700 words the Court allocated to all Respondent-Intervenors.

I further certify that this brief complies with the typeface requirements of Federal Rules of Appellate Procedure 32(a)(5) and 32(a)(6) because it has been prepared using a proportionally spaced typeface (Times New Roman) in 14-point font.

Dated: April 27, 2023

/s/ Theodore McCombs

THEODORE MCCOMBS
Attorney for Respondent-Intervenor State of California, by and through its Governor Gavin Newsom, Attorney General Rob Bonta, and the California Air Resources Board

CERTIFICATE OF SERVICE

I hereby certify that on April 27, 2023, I electronically filed the foregoing **FINAL BRIEF OF STATE AND PUBLIC INTEREST RESPONDENT-INTERVENORS** with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the Court's CM/ECF system.

I further certify that all parties are participating in the Court's CM/ECF system and will be served electronically by that system.

Dated: April 27, 2022

/s/ Theodore McCombs
THEODORE MCCOMBS

ORAL ARGUMENT NOT YET SCHEDULED
Case No. 22-1031 (and consolidated cases)

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

STATE OF TEXAS, et al.,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, et al.,

Respondents.

STATE AND PUBLIC INTEREST RESPONDENT-INTERVENORS' STATUTORY AND REGULATORY ADDENDUM

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Except for the following, all applicable statutes, etc., are contained in the EPA's Statutory and Regulatory Addendum, Doc. 1987501.

STATUTES

REGULATIONS

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)
Subchapter II. Emission Standards for Moving Sources
Part A. Motor Vehicle Emission and Fuel Standards (Refs & Annos)

42 U.S.C.A. § 7524

§ 7524. Civil penalties

Currentness

(a) Violations

Any person who violates sections[1] 7522(a)(1), 7522(a)(4), or 7522(a)(5) of this title or any manufacturer or dealer who violates section 7522(a)(3)(A) of this title shall be subject to a civil penalty of not more than $25,000. Any person other than a manufacturer or dealer who violates section 7522(a)(3)(A) of this title or any person who violates section 7522(a)(3)(B) of this title shall be subject to a civil penalty of not more than $2,500. Any such violation with respect to paragraph (1), (3)(A), or (4) of section 7522(a) of this title shall constitute a separate offense with respect to each motor vehicle or motor vehicle engine. Any such violation with respect to section 7522(a)(3)(B) of this title shall constitute a separate offense with respect to each part or component. Any person who violates section 7522(a)(2) of this title shall be subject to a civil penalty of not more than $25,000 per day of violation.

(b) Civil actions

The Administrator may commence a civil action to assess and recover any civil penalty under subsection (a) of this section, section 7545(d) of this title, or section 7547(d) of this title. Any action under this subsection may be brought in the district court of the United States for the district in which the violation is alleged to have occurred or in which the defendant resides or has the Administrator's principal place of business, and the court shall have jurisdiction to assess a civil penalty. In determining the amount of any civil penalty to be assessed under this subsection, the court shall take into account the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator's business, the violator's history of compliance with this subchapter, action taken to remedy the violation, the effect of the penalty on the violator's ability to continue in business, and such other matters as justice may require. In any such action,

subpoenas for witnesses who are required to attend a district court in any district may run into any other district.

(c) Administrative assessment of certain penalties

(1) Administrative penalty authority

In lieu of commencing a civil action under subsection (b), the Administrator may assess any civil penalty prescribed in subsection (a) of this section, section 7545(d) of this title, or section 7547(d) of this title, except that the maximum amount of penalty sought against each violator in a penalty assessment proceeding shall not exceed $200,000, unless the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount is appropriate for administrative penalty assessment. Any such determination by the Administrator and the Attorney General shall not be subject to judicial review. Assessment of a civil penalty under this subsection shall be by an order made on the record after opportunity for a hearing in accordance with sections 554 and 556 of Title 5. The Administrator shall issue reasonable rules for discovery and other procedures for hearings under this paragraph. Before issuing such an order, the Administrator shall give written notice to the person to be assessed an administrative penalty of the Administrator's proposal to issue such order and provide such person an opportunity to request such a hearing on the order, within 30 days of the date the notice is received by such person. The Administrator may compromise, or remit, with or without conditions, any administrative penalty which may be imposed under this section.

(2) Determining amount

In determining the amount of any civil penalty assessed under this subsection, the Administrator shall take into account the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator's business, the violator's history of compliance with this subchapter, action taken to remedy the violation, the effect of the penalty on the violator's ability to continue in business, and such other matters as justice may require.

(3) Effect of Administrator's action

(A) Action by the Administrator under this subsection shall not affect or limit the Administrator's authority to enforce any provision of this chapter; except that any violation,

(i) with respect to which the Administrator has commenced and is diligently prosecuting an action under this subsection, or

(ii) for which the Administrator has issued a final order not subject to further judicial review and the violator has paid a penalty assessment under this subsection,

shall not be the subject of civil penalty action under subsection (b).

(B) No action by the Administrator under this subsection shall affect any person's obligation to comply with any section of this chapter.

(4) Finality of order

An order issued under this subsection shall become final 30 days after its issuance unless a petition for judicial review is filed under paragraph (5).

(5) Judicial review

Any person against whom a civil penalty is assessed in accordance with this subsection may seek review of the assessment in the United States District Court for the District of Columbia, or for the district in which the violation is alleged to have occurred, in which such person resides, or where such person's principal place of business is located, within the 30-day period beginning on the date a civil penalty order is issued. Such person shall simultaneously send a copy of the filing by certified mail to the Administrator and the Attorney General. The Administrator shall file in the court a certified copy, or certified index, as appropriate, of the record on which the order was issued within 30 days. The court shall not set aside or remand any order issued in accordance with the requirements of this subsection unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the Administrator's assessment of the penalty constitutes an abuse of discretion, and the court shall not impose additional civil penalties unless the Administrator's assessment of the penalty constitutes an abuse of discretion. In any proceedings, the United States may seek to recover civil penalties assessed under this section.

(6) Collection

If any person fails to pay an assessment of a civil penalty imposed by the Administrator as provided in this subsection--

(A) after the order making the assessment has become final, or

(B) after a court in an action brought under paragraph (5) has entered a final judgment in favor of the Administrator,

the Administrator shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed (plus interest at rates established pursuant to section 6621(a)(2) of Title 26 from the date of the final order or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of the penalty shall not be subject to review. Any person who fails to pay on a timely basis the amount of an assessment of a civil penalty as described in the first sentence of this paragraph shall be required to pay, in addition to that amount and interest, the United States' enforcement expenses, including attorneys fees and costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. The nonpayment penalty shall be in an amount equal to 10 percent of the aggregate amount of that person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

CREDIT(S)

(July 14, 1955, c. 360, Title II, § 205, as added Pub.L. 89-272, Title I, § 101(8), Oct. 20, 1965, 79 Stat. 994; amended Pub.L. 90-148, § 2, Nov. 21, 1967, 81 Stat. 500; Pub.L. 91-604, § 7(c), Dec. 31, 1970, 84 Stat. 1694; Pub.L. 95-95, Title II, § 219(c), Aug. 7, 1977, 91 Stat. 762; Pub.L. 101-549, Title II, § 228(c), Nov. 15, 1990, 104 Stat. 2508.)

Notes of Decisions (6)

Footnotes

1 So in original. Probably should be “section”.

42 U.S.C.A. § 7524, 42 USCA § 7524

Current through P.L. 117-262. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)
Subchapter II. Emission Standards for Moving Sources
Part C. Clean Fuel Vehicles (Refs & Annos)

42 U.S.C.A. § 7581

§ 7581. Definitions

Currentness

For purposes of this part--

(1) Terms defined in part A

The definitions applicable to part A under section 7550 of this title shall also apply for purposes of this part.

(2) Clean alternative fuel

The term "clean alternative fuel" means any fuel (including methanol, ethanol, or other alcohols (including any mixture thereof containing 85 percent or more by volume of such alcohol with gasoline or other fuels), reformulated gasoline, diesel, natural gas, liquefied petroleum gas, and hydrogen) or power source (including electricity) used in a clean-fuel vehicle that complies with the standards and requirements applicable to such vehicle under this subchapter when using such fuel or power source. In the case of any flexible fuel vehicle or dual fuel vehicle, the term "clean alternative fuel" means only a fuel with respect to which such vehicle was certified as a clean-fuel vehicle meeting the standards applicable to clean-fuel vehicles under section 7583(d)(2) of this title when operating on clean alternative fuel (or any CARB standards which replaces such standards pursuant to section 7583(e) of this title).

(3) NMOG

The term nonmethane organic gas ("NMOG") means the sum of nonoxygenated and oxygenated hydrocarbons contained in a gas sample, including, at a minimum, all oxygenated organic

United States Code Annotated
Title 42. The Public Health and Welfare
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Part C. Clean Fuel Vehicles (Refs & Annos)

42 U.S.C.A. § 7586

§ 7586. Centrally fueled fleets

Currentness

(a) Fleet program required for certain nonattainment areas

(1) SIP revision

Each State in which there is located all or part of a covered area (as defined in paragraph (2)) shall submit, within 42 months after November 15, 1990, a State implementation plan revision under section 7410 of this title and part D of subchapter I to establish a clean-fuel vehicle program for fleets under this section.

(2) Covered areas

For purposes of this subsection, each of the following shall be a "covered area":

(A) Ozone nonattainment areas

Any ozone nonattainment area with a 1980 population of 250,000 or more classified under subpart 2 of part D of subchapter I of this chapter as Serious, Severe, or Extreme based on data for the calendar years 1987, 1988, and 1989. In determining the ozone nonattainment areas to be treated as covered areas pursuant to this subparagraph, the Administrator shall use the most recent interpretation methodology issued by the Administrator prior to November 15, 1990.

(B) Carbon monoxide nonattainment areas

Any carbon monoxide nonattainment area with a 1980 population of 250,000 or more and a carbon monoxide design value at or above 16.0 parts per million based on data for calendar years 1988 and 1989 (as calculated according to the most recent interpretation methodology issued prior to November 15, 1990, by the United States Environmental Protection Agency), excluding those carbon monoxide nonattainment areas in which mobile sources do not contribute significantly to carbon monoxide exceedances.

(3) Plan revisions for reclassified areas

In the case of ozone nonattainment areas reclassified as Serious, Severe, or Extreme under part D of subchapter I with a 1980 population of 250,000 or more, the State shall submit a plan revision meeting the requirements of this subsection within 1 year after reclassification. Such plan revision shall implement the requirements applicable under this subsection at the time of reclassification and thereafter, except that the Administrator may adjust for a limited period the deadlines for compliance where compliance with such deadlines would be infeasible.

(4) Consultation; consideration of factors

Each State required to submit an implementation plan revision under this subsection shall develop such revision in consultation with fleet operators, vehicle manufacturers, fuel producers and distributors, motor vehicle fuel, and other interested parties, taking into consideration operational range, specialty uses, vehicle and fuel availability, costs, safety, resale values of vehicles and equipment and other relevant factors.

(b) Phase-in of requirements

The plan revision required under this section shall contain provisions requiring that at least a specified percentage of all new covered fleet vehicles in model year 1998 and thereafter purchased by each covered fleet operator in each covered area shall be clean-fuel vehicles and shall use clean alternative fuels when operating in the covered area. For the applicable model years (MY) specified in the following table and thereafter, the specified percentage shall be as provided in the table for the vehicle types set forth in the table:

Clean Fuel Vehicle Phase-In Requirements for Fleets

Vehicle Type	MY1998	MY1999	MY2000
Light-duty trucks up to 6,000 lbs.			

GVWR and light-duty vehicles.....	30%	50%	70%
Heavy-duty trucks above 8,500 lbs. GVWR.....	50%	50%	50%

The term MY refers to model year.

(c) Accelerated standard for light-duty trucks up to 6,000 lbs. GVWR and light-duty vehicles

Notwithstanding the model years for which clean-fuel vehicle standards are applicable as provided in section 7583 of this title, for purposes of this section, light duty [1] trucks of up to 6,000 lbs. GVWR and light-duty vehicles manufactured in model years 1998 through model year 2000 shall be treated as clean-fuel vehicles only if such vehicles comply with the standards applicable under section 7583 of this title for vehicles in the same class for the model year 2001. The requirements of subsection (b) shall take effect on the earlier of the following:

(1) The first model year after model year 1997 in which new light-duty trucks up to 6,000 lbs. GVWR and light-duty vehicles which comply with the model year 2001 standards under section 7583 of this title are offered for sale in California.

(2) Model year 2001.

Whenever the effective date of subsection (b) is delayed pursuant to paragraph (1) of this subsection, the phase-in schedule under subsection (b) shall be modified to commence with the model year referred to in paragraph (1) in lieu of model year 1998.

(d) Choice of vehicles and fuel

The plan revision under this subsection shall provide that the choice of clean-fuel vehicles and clean alternative fuels shall be made by the covered fleet operator subject to the requirements of this subsection.

(e) Availability of clean alternative fuel

The plan revision shall require fuel providers to make clean alternative fuel available to covered fleet operators at locations at which covered fleet vehicles are centrally fueled.

(f) Credits

(1) Issuance of credits

The State plan revision required under this section shall provide for the issuance by the State of appropriate credits to a fleet operator for any of the following (or any combination thereof):

(A) The purchase of more clean-fuel vehicles than required under this section.

(B) The purchase of clean fuel[2] vehicles which meet more stringent standards established by the Administrator pursuant to paragraph (4).

(C) The purchase of vehicles in categories which are not covered by this section but which meet standards established for such vehicles under paragraph (4).

(2) Use of credits; limitations based on weight classes

(A) Use of credits

Credits under this subsection may be used by the person holding such credits to demonstrate compliance with this section or may be traded or sold for use by any other person to demonstrate compliance with other requirements applicable under this section in the same nonattainment area. Credits obtained at any time may be held or banked for use at any later time, and when so used, such credits shall maintain the same value as if used at an earlier date.

(B) Limitations based on weight classes

Credits issued with respect to the purchase of vehicles of up to 8,500 lbs. GVWR may not be used to demonstrate compliance by any person with the requirements applicable under this subsection to vehicles of more than 8,500 lbs. GVWR. Credits issued with respect to the purchase of vehicles of more than 8,500 lbs. GVWR may not be used to demonstrate compliance by any person with the requirements applicable under this subsection to vehicles weighing up to 8,500 lbs. GVWR.

(C) Weighting

Credits issued for purchase of a clean fuel[2] vehicle under this subsection shall be adjusted with appropriate weighting to reflect the level of emission reduction achieved by the vehicle.

(3) Regulations and administration

Within 12 months after November 15, 1990, the Administrator shall promulgate regulations for such credit program. The State shall administer the credit program established under this subsection.

(4) Standards for issuing credits for cleaner vehicles

Solely for purposes of issuing credits under paragraph (1)(B), the Administrator shall establish under this paragraph standards for Ultra-Low Emission Vehicles ("ULEV"s) and Zero Emissions Vehicles ("ZEV"s) which shall be more stringent than those otherwise applicable to clean-fuel vehicles under this part. The Administrator shall certify clean fuel[2] vehicles as complying with such more stringent standards, and administer and enforce such more stringent standards, in the same manner as in the case of the otherwise applicable clean-fuel vehicle standards established under this section. The standards established by the Administrator under this paragraph for vehicles under 8,500 lbs. GVWR or greater shall conform as closely as possible to standards which are established by the State of California for ULEV and ZEV vehicles in the same class. For vehicles of 8,500 lbs. GVWR or more, the Administrator shall promulgate comparable standards for purposes of this subsection.

(5) Early fleet credits

The State plan revision shall provide credits under this subsection to fleet operators that purchase vehicles certified to meet clean-fuel vehicle standards under this part during any period after approval of the plan revision and prior to the effective date of the fleet program under this section.

(g) Availability to public

At any facility owned or operated by a department, agency, or instrumentality of the United States where vehicles subject to this subsection are supplied with clean alternative fuel, such fuel shall

be offered for sale to the public for use in other vehicles during reasonable business times and subject to national security concerns, unless such fuel is commercially available for vehicles in the vicinity of such Federal facilities.

(h) Transportation control measures

The Administrator shall by rule, within 1 year after November 15, 1990, ensure that certain transportation control measures including time-of-day or day-of-week restrictions, and other similar measures that restrict vehicle usage, do not apply to any clean-fuel vehicle that meets the requirements of this section. This subsection shall apply notwithstanding subchapter I.

CREDIT(S)

(July 14, 1955, c. 360, Title II, § 246, as added Pub.L. 101-549, Title II, § 229(a), Nov. 15, 1990, 104 Stat. 2520.)

Footnotes

1 So in original. Probably should be “light-duty”.

2 So in original. Probably should be “clean-fuel”.

42 U.S.C.A. § 7586, 42 USCA § 7586
Current through P.L. 117-262. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)
Subchapter II. Emission Standards for Moving Sources
Part C. Clean Fuel Vehicles (Refs & Annos)

42 U.S.C.A. § 7589

§ 7589. California pilot test program

Currentness

(a) Establishment

The Administrator shall establish a pilot program in the State of California to demonstrate the effectiveness of clean-fuel vehicles in controlling air pollution in ozone nonattainment areas.

(b) Applicability

The provisions of this section shall only apply to light-duty trucks and light-duty vehicles, and such provisions shall apply only in the State of California, except as provided in subsection (f).

(c) Program requirements

Not later than 24 months after November 15, 1990, the Administrator shall promulgate regulations establishing requirements under this section applicable in the State of California. The regulations shall provide the following:

(1) Clean-fuel vehicles

Clean-fuel vehicles shall be produced, sold, and distributed (in accordance with normal business practices and applicable franchise agreements) to ultimate purchasers in California (including owners of covered fleets referred to in section 7586 of this title) in numbers that meet or exceed the following schedule:

Model Years	Number of Clean-Fuel Vehicles
1996, 1997, 1998.....	150,000 vehicles
1999 and thereafter.....	300,000 vehicles

(2) Clean alternative fuels

(A) Within 2 years after November 15, 1990, the State of California shall submit a revision of the applicable implementation plan under part D of subchapter I and section 7410 of this title containing a clean fuel plan that requires that clean alternative fuels on which the clean-fuel vehicles required under this paragraph can operate shall be produced and distributed by fuel suppliers and made available in California. At a minimum, sufficient clean alternative fuels shall be produced, distributed and made available to assure that all clean-fuel vehicles required under this section can operate, to the maximum extent practicable, exclusively on such fuels in California. The State shall require that clean alternative fuels be made available and offered for sale at an adequate number of locations with sufficient geographic distribution to ensure convenient refueling with clean alternative fuels, considering the number of, and type of, such vehicles sold and the geographic distribution of such vehicles within the State. The State shall determine the clean alternative fuels to be produced, distributed, and made available based on motor vehicle manufacturers' projections of future sales of such vehicles and consultations with the affected local governments and fuel suppliers.

(B) The State may by regulation grant persons subject to the requirements prescribed under this paragraph an appropriate amount of credits for exceeding such requirements, and any person granted credits may transfer some or all of the credits for use by one or more persons in demonstrating compliance with such requirements. The State may make the credits available for use after consideration of enforceability, environmental, and economic factors and upon such terms and conditions as the State finds appropriate.

(C) The State may also by regulation establish specifications for any clean alternative fuel produced and made available under this paragraph as the State finds necessary to reduce or eliminate an unreasonable risk to public health, welfare, or safety associated with its use or to ensure acceptable vehicle maintenance and performance characteristics.

(D) If a retail gasoline dispensing facility would have to remove or replace one or more motor vehicle fuel underground storage tanks and accompanying piping in order to comply with the provisions of this section, and it had removed and replaced such tank or tanks and accompanying piping in order to comply with subtitle I of the Solid Waste Disposal Act prior to November 15, 1990, it shall not be required to comply with this subsection until a period of 7 years has passed from the date of the removal and replacement of such tank or tanks.

(E) Nothing in this section authorizes any State other than California to adopt provisions regarding clean alternative fuels.

(F) If the State of California fails to adopt a clean fuel program that meets the requirements of this paragraph, the Administrator shall, within 4 years after November 15, 1990, establish a clean fuel program for the State of California under this paragraph and section 7410(c) of this title that meets the requirements of this paragraph.

(d) Credits for motor vehicle manufacturers

(1) The Administrator may (by regulation) grant a motor vehicle manufacturer an appropriate amount of credits toward fulfillment of such manufacturer's share of the requirements of subsection (c)(1) of this section for any of the following (or any combination thereof):

(A) The sale of more clean-fuel vehicles than required under subsection (c)(1) of this section.

(B) The sale of clean fuel [1] vehicles which meet standards established by the Administrator as provided in paragraph (3) which are more stringent than the clean-fuel vehicle standards otherwise applicable to such clean-fuel vehicle. A manufacturer granted credits under this paragraph may transfer some or all of the credits for use by one or more other manufacturers in demonstrating compliance with the requirements prescribed under this paragraph. The Administrator may make the credits available for use after consideration of enforceability, environmental, and economic factors and upon such terms and conditions as he finds appropriate. The Administrator shall grant credits in accordance with this paragraph, notwithstanding any requirements of State law or any credits granted with respect to the same vehicles under any State law, rule, or regulation.

(2) Regulations and administration

The Administrator shall administer the credit program established under this subsection. Within 12 months after November 15, 1990, the Administrator shall promulgate regulations for such credit program.

(3) Standards for issuing credits for cleaner vehicles

The more stringent standards and other requirements (including requirements relating to the weighting of credits) established by the Administrator for purposes of the credit program under 7585(e)[2] of this title (relating to credits for clean fuel[1] vehicles in the fleets program) shall also apply for purposes of the credit program under this paragraph.

(e) Program evaluation

(1) Not later than June 30, 1994 and again in connection with the report under paragraph (2), the Administrator shall provide a report to the Congress on the status of the California Air Resources Board Low-Emissions Vehicles and Clean Fuels Program. Such report shall examine the capability, from a technological standpoint, of motor vehicle manufacturers and motor vehicle fuel suppliers to comply with the requirements of such program and with the requirements of the California Pilot Program under this section.

(2) Not later than June 30, 1998, the Administrator shall complete and submit a report to Congress on the effectiveness of the California pilot program under this section. The report shall evaluate the level of emission reductions achieved under the program, the costs of the program, the advantages and disadvantages of extending the program to other nonattainment areas, and desirability of continuing or expanding the program in California.

(3) The program under this section cannot be extended or terminated by the Administrator except by Act of Congress enacted after November 15, 1990. Section 7507 of this title does not apply to the program under this section.

(f) Voluntary opt-in for other States

(1) EPA regulations

Not later than 2 years after November 15, 1990, the Administrator shall promulgate regulations establishing a voluntary opt-in program under this subsection pursuant to which--

(A) clean-fuel vehicles which are required to be produced, sold, and distributed in the State of California under this section, and

(B) clean alternative fuels required to be produced and distributed under this section by fuel suppliers and made available in California [3]

may also be sold and used in other States which submit plan revisions under paragraph (2).

(2) Plan revisions

Any State in which there is located all or part of an ozone nonattainment area classified under subpart [4] D of subchapter I as Serious, Severe, or Extreme may submit a revision of the applicable implementation plan under part D of subchapter I and section 7410 of this title to provide incentives for the sale or use in such an area or State of clean-fuel vehicles which are required to be produced, sold, and distributed in the State of California, and for the use in such an area or State of clean alternative fuels required to be produced and distributed by fuel suppliers and made available in California. Such plan provisions shall not take effect until 1 year after the State has provided notice of such provisions to motor vehicle manufacturers and to fuel suppliers.

(3) Incentives

The incentives referred to in paragraph (2) may include any or all of the following:

(A) A State registration fee on new motor vehicles registered in the State which are not clean-fuel vehicles in the amount of at least 1 percent of the cost of the vehicle. The proceeds of such fee shall be used to provide financial incentives to purchasers of clean-fuel vehicles and to vehicle dealers who sell high volumes or high percentages of clean-fuel vehicles and to defray the administrative costs of the incentive program.

(B) Provisions to exempt clean-fuel vehicles from high occupancy vehicle or trip reduction requirements.

(C) Provisions to provide preference in the use of existing parking spaces for clean-fuel vehicles.

The incentives under this paragraph shall not apply in the case of covered fleet vehicles.

(4) No sales or production mandate

The regulations and plan revisions under paragraphs (1) and (2) shall not include any production or sales mandate for clean-fuel vehicles or clean alternative fuels. Such regulations and plan revisions shall also provide that vehicle manufacturers and fuel suppliers may not be subject to penalties or sanctions for failing to produce or sell clean-fuel vehicles or clean alternative fuels.

CREDIT(S)

(July 14, 1955, c. 360, Title II, § 249, as added Pub.L. 101-549, Title II, § 229(a), Nov. 15, 1990, 104 Stat. 2525.)

Footnotes

1 So in original. Probably should be “clean-fuel”.

2 So in original. Probably should be “section 7586(f)”.

3 So in original. Probably should be followed by a comma.

4 So in original. Probably should be “part”.

42 U.S.C.A. § 7589, 42 USCA § 7589
Current through P.L. 117-262. Some statute sections may be more current, see credits for details.

End of Document

Code of Federal Regulations
Title 40. Protection of Environment
Chapter I. Environmental Protection Agency (Refs & Annos)
Subchapter Q. Energy Policy
Part 600. Fuel Economy and Greenhouse Gas Exhaust Emissions of Motor Vehicles (Refs & Annos)
Subpart F. Procedures for Determining Manufacturer's Average Fuel Economy and Manufacturer's Average Carbon–Related Exhaust Emissions (Refs & Annos)

40 C.F.R. § 600.514–12

§ 600.514–12 Reports to the Environmental Protection Agency.

Effective: December 14, 2012
Currentness

This section establishes requirements for automobile manufacturers to submit reports to the Environmental Protection Agency regarding their efforts to reduce automotive greenhouse gas emissions.

(a) General Requirements.

(1) For each model year, each manufacturer shall submit a pre-model year report.

(2) The pre-model year report required by this section for each model year must be submitted before the model year begins and before the certification of any test group, no later than December 31 of the calendar year two years before the model year. For example the pre-model year report for the 2012 model year must be submitted no later than December 31, 2010.

(3) Each report required by this section must:

(i) Identify the report as a pre-model year report;

(ii) Identify the manufacturer submitting the report;

(iii) State the full name, title, and address of the official responsible for preparing the report;

(iv) Be submitted to: Director, Compliance and Innovative Strategies Division, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan 48105;

(v) Identify the current model year;

(vi) Be written in the English language; and

(vii) Be based upon all information and data available to the manufacturer approximately 30 days before the report is submitted to the Administrator.

(b) Content of pre-model year reports.

(1) Each pre-model year report must include the following information for each compliance category for the applicable future model year and to the extent possible, two model years into the future:

(i) The manufacturer's estimate of its footprint-based fleet average CO_2 standards (including temporary lead time allowance alternative standards, if applicable);

(ii) Projected total and model-level production volumes for each applicable standard category;

(iii) Projected fleet average CO_2 compliance level for each applicable standard category; and the model-level CO_2 emission values which form the basis of the projection;

(iv) Projected fleet average CO_2 credit/debit status for each applicable standard category;

(v) A description of the various credit, transfer and trading options that will be used to comply with each applicable standard category, including the amount of credit the

manufacturer intends to generate for air conditioning leakage, air conditioning efficiency, off-cycle technology, advanced technology vehicles, hybrid or low-emission full size pickup trucks, and various early credit programs;

(vi) A description of the method which will be used to calculate the carbon-related exhaust emissions for any electric vehicles, fuel cell vehicles and plug-in hybrid vehicles;

(vii) A summary by model year (beginning with the 2009 model year) of the number of electric vehicles, fuel cell vehicles, plug-in hybrid electric vehicles, dedicated compressed natural gas vehicles, and dual fuel natural gas vehicles using (or projected to use) the advanced technology vehicle credit and incentives program, including the projected use of production multipliers;

(viii) The methodology which will be used to comply with N_2O and CH_4 emission standards; and

(ix) Notification of the manufacturer's intent to exclude emergency vehicles from the calculation of fleet average standards and the end-of-year fleet average, including a description of the excluded emergency vehicles and the quantity of such vehicles excluded.

(x) Other information requested by the Administrator.

(2) Manufacturers must submit, in the pre-model year report for each model year in which a credit deficit is generated (or projected to be generated), a compliance plan demonstrating how the manufacturer will comply with the fleet average CO_2 standard by the end of the third year after the deficit occurred.

Credits

[75 FR 25718, May 7, 2010; 77 FR 63187, Oct. 15, 2012]

SOURCE: 41 FR 38685, Sept. 10, 1976; 42 FR 45662, Sept. 12, 1977; 56 FR 55465, Oct. 28, 1991; 59 FR 678, Jan. 6, 1994; 59 FR 39649, Aug. 3, 1994; 71 FR 77926, Dec. 27, 2006; 75 FR 25701, May 7, 2010; 75 FR 25713, May 7, 2010; 76 FR 39524, July 6, 2011; 76 FR 39567, July 6, 2011, unless otherwise noted.

AUTHORITY: 49 U.S.C. 32901—23919q, Pub.L. 109–58.; Sec. 301, Pub.L. 94–163, 89 Stat. 901 (15 U.S.C. 2001, 2003, 2005, 2006).

Current through March 17, 2023, 88 FR 16383. Some sections may be more current. See credits for details.

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