



Comment on Environmental Protection Agency Proposed Rule –
Multi-Pollutant Emissions Standards for Model Years 2027 and Later
Light-Duty and Medium-Duty Vehicles
Docket ID No. EPA-HQ-OAR-2022-0829-0451

Comment submitted by:
Institute for Energy Research
1155 15th St NW Suite 525
Washington, DC 20005

Kenneth Stein, Vice President for Policy
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This proposed rule on tailpipe emissions standards from the Environmental Protection Agency (EPA) is a massive overreach, using a novel application of EPA motor vehicle authorities in an attempt to force a transition in the motor vehicles market to products that align with the ideological preferences of the Biden administration. This rule is a de facto electric vehicle mandate. Congress has not given EPA the authority to require the purchase or production of certain types of motor vehicles or outlaw the purchase or production of other types of vehicles. Congress has not given EPA the authority to require the purchase or production of electric vehicles. EPA's attempt to infer such power is contrary to longstanding administrative practice and contrary to recent Supreme Court precedent. Thus this rulemaking must be withdrawn and modified to fit within the motor vehicle regulatory authority granted by Congress.

EPA openly states that the intent of this rulemaking is to force a transition to electric vehicles

In this rulemaking and press announcements surrounding it, EPA repeatedly makes clear that the intent of this rulemaking is to transition the motor vehicles market to electric vehicles, pollution reduction is merely an aside. For example, the first sentence of EPA's press release announcing the rulemaking states "Today, the U.S. Environmental Protection Agency (EPA) announced new proposed federal vehicle emissions standards that will accelerate the ongoing transition to a clean vehicles future."¹ The rulemaking itself extensively focuses on trends in electric vehicle manufacturing and announced plans from automakers and state governments regarding electric vehicles. But EPA's mandate from Congress is to reduce criteria pollutants

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<https://www.epa.gov/newsreleases/biden-harris-administration-proposes-strongest-ever-pollution-standards-cars-and>

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from vehicles, not to pick and choose what type of vehicles can be sold. EPA cites an executive order from the Biden administration as impetus for this de facto electric vehicle mandate, but an executive order does not create new authority. Congress never intended the Clean Air Act motor vehicle regulations to be used to mandate or ban certain classes of product, it was always intended and has always been interpreted to give EPA the power to reduce pollution from those classes products. Yet EPA openly states that this rulemaking is meant to force a transition to electric vehicles.

EPA's statutory authority is to control emissions of vehicles, not to require the manufacture and sale of entirely different vehicles

Congress has not directed EPA to force the adoption of electric vehicles, EPA is claiming this mandate unilaterally. The Clean Air Act directs EPA to reduce pollutant emissions from vehicles themselves, by for example requiring emissions control devices like catalytic convertors. Electric vehicles are entirely separate products, they are not an emissions control device for internal combustion powered vehicles. EPA is thus for the first time seeking to mandate substitution of a different product in order to comply with its tailpipe emissions standards. This is a novel application of existing authority, and is frankly illegal. This illegality is made clear by an alternative scenario where EPA mandates the use of mass transit rather than individual motor vehicles. This would certainly reduce emissions from motor vehicles, but would be transparently beyond EPA's regulatory authority.

There is no authority to eliminate internal combustion engines or to require the sale of electric vehicles in the plain language of the Clean Air Act. That EPA is now claiming such authority raises a major question of whether Congress has in fact given EPA such authority. Without a clear statement from Congress, this claim of new authority cannot be assumed by administrative fiat.

EPA is attempting to hide its illegal electric vehicles mandate behind a "fleetwide" average

EPA is setting fleetwide average standards for vehicles rather than setting individual standards for specific classes of vehicles as a means of hiding its de facto electric vehicle mandate. While these two actions may appear indistinguishable in many applications, the distinctness is put on clear display by the EPA's proposed rulemaking here. Setting fleetwide average standards at reasonable levels allows for the inclusion of new emissions control technologies in new vehicles. This has similar effect to setting a reasonable emissions standard for each specific class of vehicles.

However, setting a fleetwide average at an unreasonably low level, as this rulemaking does, disguises that there is no means of compliance through new control technologies, the only means of compliance is transitioning to a different product. If EPA set the same unreasonably low standard for a given class of vehicles, it would effectively outlaw that class of vehicles. If EPA

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were to directly say that a class of vehicles was illegal and require that an alternative replacement must be purchased, that would be clearly acknowledged as beyond EPA's authority. Congress has given EPA no such power. But using the "fleetwide" average set at an unreasonably low rate, EPA can pretend it is not outlawing the manufacture or sale of any class of products, while it is effectively requiring carmakers to produce and sell an alternative product (electric vehicles) as that is the only way to comply with the unreasonable low standard. But hiding behind a "fleetwide" average to attempt to disguise this kind of impermissible mandate does not suddenly give EPA the power to impose such a mandate.

EPA's claimed authority contradicts recent Supreme Court precedent

EPA's asserted power to force a transition is an impermissible claim of new authority. The Supreme Court made clear in the various cases around the Clean Power Plan, culminating with *West Virginia v. EPA*, that such forced shifting (in that case from coal to natural gas or renewables) is a claim of new authority, and thus needs clear statutory mandate from Congress. Just like in the *West Virginia* case, EPA is seeking to force a shift from one product to another. Thus this rulemaking raises the same major question issues as the Clean Power Plan. Absent express authorization from Congress, EPA cannot claim this power to shift the motor vehicle industry from internal combustion-powered to electric-powered engines.