

United States Senate

WASHINGTON, DC 20510

March 15, 2024

VIA ELECTRONIC TRANSMISSION

The Honorable Michael S. Regan
Administrator
Environmental Protection Agency

Dear Administrator Regan:

In April 2023, the Environmental Protection Agency (EPA) proposed a rule imposing new vehicular emissions standards for criteria pollutants and greenhouse gases (EV Rule).¹ These new standards extend the EPA's existing emissions standards for passenger cars and light trucks for model years 2023 through 2026.² The EPA expects that by 2030, compliance with these new standards will result in at least 60% of new passenger vehicles sold in the U.S. being electric vehicles.³ The EPA's legal authority to propose this rule is questionable and it has been recently revealed that its cost to the taxpayer is much higher than anticipated.

However, these are not the first concerns I have raised regarding this EV Rule. I wrote to the EPA multiple times last year expressing my concerns. For instance, I wrote to the EPA on June 23, 2023, inquiring into the human rights and national security implications of this rule.⁴ Namely, that an increased demand for lithium-ion batteries would increase the demand for production in foreign mines that consistently exploit workers (often children) and would increase our dependence on China, which produces 77% of the world's batteries.⁵ When EPA failed to answer my questions in their response, I sent a follow-up letter on September 27, 2023.⁶ The EPA has failed to respond to that letter.

I also wrote to the EPA on June 27, 2023, expressing my concern about the inconsistencies between this proposed rule and the EPA's proposed power plant rule.⁷ With one rule the EPA seeks to increase the burden on our power grid and with the other, it limits the grid's reliability. When EPA failed to answer my questions in their response, I sent a follow-up letter on September 19, 2023.⁸ However, EPA failed to answer my questions in its December 11, 2023, response.⁹

¹ Multi-Pollutant Emissions Standards for Model Years 2027 and Late Light-Duty and Medium-Duty Vehicles, 88 Fed. Reg. 87 (proposed May 5, 2023) (to be codified at 40 C.F.R. pt. 19, 86, 523, 600, 1066, and 1867).

² These new standards pertain to light-duty vehicles and Class 2b and 3 ("medium-duty") vehicles. The proposed standards would phase-in over model years 2027 through 2032. *Id.*

³ *White House Proposes Strict New Auto Emission Limits To Boost Electric Vehicle Sales*, CBS NEWS, (Apr. 12, 2023), <https://www.cbsnews.com/news/auto-emission-limits-epa-electric-vehicle-sales-biden-administration>.

⁴ Letter from Senator Charles E. Grassley, Ranking Member, Senate Budget Committee, to Michael Regan, Administrator, Environmental Protection Agency, (June 23, 2023) (on file with Comm. staff).

⁵ *Id.*

⁶ Letter from Senator Charles E. Grassley, Ranking Member, Senate Budget Committee, to Michael Regan, Administrator, Environmental Protection Agency, (Sep. 27, 2023) (on file with Comm. staff).

⁷ Letter from Senator Charles E. Grassley, Ranking Member, Senate Budget Committee, to Michael Regan, Administrator, Environmental Protection Agency, (June 27, 2023) (on file with Comm. staff).

⁸ Letter from Senator Charles E. Grassley, Ranking Member, Senate Budget Committee, to Michael Regan, Administrator, Environmental Protection Agency, (Sep. 19, 2023) (on file with Comm. staff).

⁹ Letter from Tim Del Monico, Associate Administrator, Environmental Protection Agency, to Senator Charles E. Grassley, Ranking Member, Senate Budget Committee, (Dec. 11, 2023) (on file with Comm staff).

And now, new information has come to light that causes additional concern about this proposed rule. The Congressional Budget Office (CBO) released its ten-year budget and economic outlook on February 7, 2024, which projected a \$224 billion increase in the cumulative deficit caused by higher electric vehicle tax credit claims and reduced gas tax revenues.¹⁰ CBO made sure to note that EPA's market-shifting EV Rule is the largest factor contributing to these revisions.¹¹

Many are recognizing these and other issues and have called for the EPA to change course from enacting this EV Rule. For example, over 4,000 auto dealerships wrote to President Biden in November 2023, asking him to “slow down [his] proposed regulations mandating battery electric vehicle (BEV) production and distribution.”¹² They wrote, “[w]ith each passing day, it becomes more apparent that this attempted electric vehicle mandate is unrealistic based on current and forecasted customer demand. Already, electric vehicles are stacking up on our lots which is our best indicator of customer demand in the marketplace.”¹³ Allegedly, President Biden failed to respond to the dealers’ letter.¹⁴ Further, a new letter from nearly 4,700 dealerships reads, “Mr. President, our letter in November asked that you tap the brakes on the electric vehicle mandate. We now ask that you hit the brakes. It is uncontested that the combination of fewer tax incentives, a woefully inadequate charging infrastructure, and insufficient consumer demand makes the proposed [EV Rule] completely unrealistic.”¹⁵ Even EPA’s once-supportive United Auto Worker base has expressed its disapproval.¹⁶

Finally, it is chiefly concerning that the EPA is proposing this rule apparently without clear legal authority. Just two years ago, the Supreme Court held that EPA did not have the legal authority under the Clean Air Act to pass its power plant rule, which was a similar attempt to force the market where EPA wanted it to go.¹⁷ Chief Justice Roberts and the majority wrote that the EPA was attempting to “substantially restructure”¹⁸ the energy market and could not “point to ‘clear congressional authorization’ to regulate in that manner”¹⁹ to satisfy the “major questions doctrine.”²⁰ The Court held that “[a] decision of such magnitude and consequence rests with

¹⁰ Congressional Budget Office, *The Budget and Economic Outlook: 2024-2034*, (Feb. 2024) <https://www.cbo.gov/system/files/2024-02/59710-Outlook-2024.pdf>.

¹¹ CBO explicitly breaks down the rule’s budgetary consequences. Namely, the proposed EV Rule is expected to rob the Highway Trust Fund of fuel tax revenue by \$151 billion in the next ten years that is specifically and desperately needed to maintain our nation’s roads and bridges. The rule will also yield an additional \$73 billion in federal outlays due to an increase of tax credits for electric vehicles. *Id.* at 86.

¹² Voice of the Customer, *A Letter to the President*, EVVOICEOFTHECUSTOMER.COM, (Nov. 2023), <https://44308654.fs1.hubspotusercontent-na1.net/hubfs/44308654/EV%20Letter%201.pdf>.

¹³ *Id.*

¹⁴ Voice of the Customer, *A New Letter from Auto Dealers to the President*, EVVOICEOFTHECUSTOMER.COM, (last accessed Mar. 11, 2024) <https://evvoiceofthecustomer.com/>.

¹⁵ *Id.*

¹⁶ Coral Davenport, *E.P.A. Lays Out Rules to Turbocharge Sales of Electric Cars and Trucks*, THE NEW YORK TIMES, (APR. 12, 2023), <https://www.nytimes.com/2023/04/12/climate/biden-electric-cars-epa.html> (Noting that United Auto Workers “grew uneasy about publicly supporting [the EV Rule...and] Administrator Regan acknowledged that some auto executives and leaders of the United Auto Workers had expressed anxiety over the proposals....”).

¹⁷ *W. Virginia v. Env’t Prot. Agency*, 142 S.Ct. 2587 (2022).

¹⁸ *Id.* at 2610.

¹⁹ *Id.* at 2614 (quoting *Utility Air Regulatory Group v. EPA*, 573 U.S. 302, 324 (2014)).

²⁰ *Id.* at 2610.

Congress itself, or an agency acting pursuant to a clear delegation from that representative body.”²¹ The Chief Justice wrote that, “Congress certainly has not conferred a like authority upon EPA anywhere else in the Clean Air Act.”²²

The American taxpayers have not voted for and can’t afford the EPA’s proposed EV Rule. Accordingly, for Congress to better understand the Biden administration’s plan to take responsibility for the consequences of its proposed rule, please provide answers to the following questions by March 29, 2024:

1. What legal authority and “clear delegation” from Congress is EPA relying on to propose this EV Rule? Explain in detail.
2. How does the Biden administration intend to make-up the \$151 billion revenue loss caused by the EPA’s EV Rule? Provide all calculations and records.
3. How does the Biden administration intend to make-up for the \$73 billion in additional EV tax credit spending? Provide all calculations and records.

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Budget

²¹ *Id.* at 2616.

²² *Id.* at 2613.