PETITION FOR FINDING
PREEMPTING STATE LOW-CARBON FUEL STANDARDS

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Lee Zeldin
Administrator
U.S. Environmental Protection Agency
Mail Code: 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

INTRODUCTION AND SUMMARY

The American Energy Association respectfully submits this petition for rulemaking pursuant to the Administrative Procedure Act, 5 U.S.C. § 553(e), and section 211(c)(4)(A)(i) of the Clean Air Act.[1] Specifically, the Administrator should exercise his discretion to find that state regulations controlling fuel lifecycle greenhouse gas emissions aren't "necessary," which would preempt these state regulations.

President Trump has made it a priority to stop state and local "climate change" policies that unreasonably burden American energy or operate beyond a State's borders.[2] State low-carbon fuel standards are a perfect example of such state overreach. These state mandates burden petroleum refiners, including refiners outside the state, with a duty to subsidize "low-carbon" fuels in the state. The regulations seek to control greenhouse gases associated with producing, transporting, and combusting the fuel "all over the world."[3] Left undisturbed, state low-carbon fuel standards will burden American commerce and expropriate billions of dollars from refiners (and ultimately, Americans who buy gasoline and diesel) to subsidize "alternative energy" boondoggles and impose a backdoor electric-vehicle mandate.

Low-carbon fuel regulations are spreading across states. Currently, California, New Mexico, Oregon, and Washington, have low-carbon fuel standards on the books. But other

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[1] 42 U.S.C. § 7545(c)(4)(A)(i).

[2] *Protecting American Energy from State Overreach*, Exec. Order No. 14,260, 90 Fed. Reg. 15,513, 15,514 (Apr. 8, 2025).

[3] James W. Coleman, *Importing Energy, Exporting Regulation*, 83 Fordham L. Rev. 1357, 1381 (2014) ("A low-carbon fuel standard is designed to limit greenhouse gas emissions from production of fuels all over the world.").

states are considering similar programs, including "Hawaii, Illinois, Massachusetts, Michigan, Minnesota, New Jersey, New York and Vermont."[4] States with existing programs are also ratcheting them up, with California, for example, radically tightening its low-carbon fuel standards to indirectly mandate electrification, now that California has lost its power to directly mandate electric vehicles.

The Trump Administration can and should stop this state overreach, which threatens to increase the price of fuel in many regions of the country, contribute to inflation, and harm Americans by creating a backdoor electric-vehicle mandate. Nor are these state regulations a sensible way to improve regional ambient air quality. Rather than focusing on improving local air quality (for example, reducing smog), these state programs target global greenhouse gases, in yet another symbolic attempt to regulate global climate change. There are multiple more cost-effective alternatives to attain national ambient air quality standards.

EPA's Administrator has authority to block these costly and unnecessary state laws. Under section 211(c)(4) of the Clean Air Act, EPA may find that state low-carbon fuel standards are not "necessary" to meet ambient air quality requirements and publish a rule so providing in the Federal Register. That finding would block state low-carbon fuel standards in all states but California, which has a unique carveout under section 211(c)(4)(B).[5]

Ninth Circuit precedent confirms that state low-carbon fuel standards fall within the scope of section 211(c)(4). The Ninth Circuit has held that a state low-carbon fuel standard "falls within" section 211(c)(4) because it is "a control respecting a fuel or fuel additive and was enacted for the purpose of emissions control."[6] And because low-carbon fuel standards target *global* greenhouse gases, not local ambient air pollution, EPA has a compelling basis to determine that these fuel controls are not "necessary" to meet ambient air quality requirements under the Clean Air Act.

Exercising that authority would also be good policy. These laws hamper energy dominance, raise the prices struggling Americans pay at the pump, and are not a cost-effective means of improving regional air quality. This state overreach must be stopped now, before California's disastrous policies spread further.

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[4] David McCullough et al., *Revving Up: Eight States in Gear with Low-Carbon Fuel Standard Legislation*, Pillsbury Alert (2024), https://perma.cc/VR9S-YLDP.

[5] 42 U.S.C. § 7545(c)(4)(B).

[6] *See Rocky Mountain Farmers Union v. Corey*, 703 F.3d 1070, 1106 (9th Cir. 2013) (citation omitted).

AMERICAN ENERGY ASSOCIATION

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BACKGROUND

State Low-Carbon Fuel Standards

California adopted the first state low-carbon fuel standard in 2009. Since then, New Mexico, Oregon and Washington have adopted similar "lifecycle emissions" programs.[7] To explain how these standards work, we discuss the California program by way of example.

A state low-carbon fuel standard generally sets an upper limit on the "carbon intensity" of transportation fuel that is sold in the state, where carbon intensity is defined as "the quantity of life cycle greenhouse gas emissions, per unit of fuel energy, expressed in grams of carbon dioxide equivalent per megajoule (gCO_2e/MJ)."[8] Lifecycle greenhouse gas emissions "means the aggregate quantity of greenhouse gas emissions … including all stages of fuel and feedstock production and distribution, from feedstock generation or extraction through the distribution and delivery and use of the finished fuel [by] the ultimate consumer," even if those "stages" happen in foreign countries or other states.[9]

For example, for California reformulated gasoline blendstock, or "CARBOB," lifecycle emissions would include greenhouse gas emissions associated with extracting crude oil, refining it into gasoline, transporting it to a gas station, and ultimately burning it to propel a car. Although greenhouse gas emissions from burning gasoline are approximately 75 gCO_2e/MJ, the total lifecycle emissions of California gasoline accounting for extraction, refining, and transport sum up to an estimated 100 gCO_2e/MJ.[10]

For liquid fuels, the standard applies to a fuel "producer or importer"—for example, a California refinery producing motor vehicle gasoline or a terminal blender importing gasoline into California.[11] These entities must comply with an annual average carbon-

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[7] Or. Admin. R. 340-253-0000 et seq. (Oregon "Clean Fuel Program"); Wash. Admin. Code § 173-424-100 et seq. (Washington "Clean Fuel Standard"). New Mexico has very recently adopted a low-carbon fuel standard. Order and Statement of Reasons, *In the Matter of Proposed Adoption of 20.2.92 NMAC—Clean Transportation Fuel Program*, EIB 25-23 (R), https://perma.cc/UL8J-PPKK. The rule will be codified at New Mexico Admin. Code § 20.2.92 and effective in April of 2026.

[8] 17 Cal. Code of Regs. § 95481(a)(26).

[9] *Id.* § 95481(a)(88).

[10] *Id.* § 95488.5(e).

[11] *Id.* § 95483.

intensity benchmark set by California's regulators. By design, the carbon-intensity benchmarks are set below the lifecycle emissions of gasoline and diesel, so that producing these fuels results in state-created "deficits."[12] To comply, refiners must therefore offset their deficits by producing alternative fuels with lower carbon intensity (for example, renewable diesel) or buying credits from entities that produce alternative fuels through approved "pathways."[13] Approved pathways include, among others, ethanol, renewable diesel, LNG, hydrogen, and electricity used to charge electric vehicles. A deficit or credit is calculated in a "metric ton" of CO_2-equivalent greenhouse gases generated or avoided.[14]

To calculate a fuel's carbon-intensity, states use a lifecycle emissions modeling tool. California uses a modified version of Department of Energy's "Greenhouse gases, Regulated Emissions, and Energy in Transportation" ("GREET") model, known as "CA-GREET."[15] Other states have also adopted state versions of this GREET model.[16]

State low-carbon fuel standards function as a regulatory cross-subsidy, implicitly taxing some fuels to subsidize others. They raise the cost of producing fuels that generate deficits (e.g., gasoline) to subsidize alternative fuels that generate credits (e.g., electricity).

The cross-subsidy is significant. Overall, the California program alone has transferred some $22 billion in wealth from petroleum products to alternative fuels, costs that are borne, at least in part, by consumers through higher fuel prices.[17] Although corn-based ethanol and biodiesel producers reaped most cross-subsidies early on, electricity has been gaining ground, while credits generated by ethanol and biodiesel have been steadily shrinking. In 2024, for example, ethanol received 3.35 million credits, biodiesel 1.94

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[12] *Compare id.* § 95484, *with id.* § 95488.5(e).

[13] *Id.* § 95485.

[14] *Id.* § 95486.

[15] *See Corey*, 730 F.3d at 1080–84; CARB, *LCFS Life Cycle Analysis Models and Documentation*, https://ww2.arb.ca.gov/es/resources/documents/lcfs-life-cycle-analysis-models-and-documentation (last visited July 23, 2025).

[16] *See Am. Fuel & Petrochemical Mfrs v. O'Keeffe*, 903 F.3d 903, 908 (9th Cir. 2018) (discussing Oregon's OR-GREET model); Or. Admin. R. 340-253-0450(17) (requiring the use of the OR-GREET 4.0 model); Wash. Admin. Code § 173-424-600 (requiring the use of the "WA-GREET" model).

[17] Danny Cullenward, *California's Low Carbon Fuel Standard* 9, Kleinman Ctr. for Energy Pol'y (Oct. 2024), https://perma.cc/6U8D-S8FR.

million credits, while electricity received 7.71 million credits, far more than ethanol and biodiesel combined. Only renewable diesel earned more credits.[18]

The state programs are getting more stringent. Effective July 1, 2025, California has approved amendments that will accelerate and increase the program's targets, with a goal of a 30% carbon-intensity reduction in 2030 ramping up to a stunning 90% reduction by 2045.[19] Even according to California's preliminary economic estimates, from 2031 through 2046, gasoline costs would increase by $1.15 a gallon, and diesel costs would increase by $1.50 a gallon as a result of the amendments.[20] Following backlash, California's bureaucrats have obfuscated the cost,[21] but other analyses support similar estimates.[22] As a result of state low-carbon fuel standards and other state climate policies, California refineries are forced to shut down or convert to making other products, and this trend is expected to continue without significant changes in state policies.[23]

Other states also have increasingly ambitious, and expensive, low-carbon fuel requirements. Oregon requires a 37% carbon-intensity reduction by 2035 and later years, Washington a 45% carbon-intensity reduction by 2038, and New Mexico a 30% reduction by 2040.[24] Gasoline prices will increase accordingly to cross-subsize alternative fuels.

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[18] CARB, *LCFS Data Dashboard*, https://ww2.arb.ca.gov/applications/lcfs-data-dashboard (last visited Mar. 4, 2026).

[19] *Id.* § 95484(b) (gasoline), (c) (diesel), (d) (jet fuel).

[20] 2023 CARB SRIA 18. By comparison, California estimates the program currently adds 14 cents per gallon in costs, or 3% of the total cost. California Energy Comm'n, *Estimated Gasoline Price Breakdown and Margins*, https://www.energy.ca.gov/estimated-gasoline-price-breakdown-and-margins (last visited March 3, 2026).

[21] *Cf.* Request for Audit of the California Air Resources Board (Apr. 23, 2025), https://perma.cc/3TCG-7UN2.

[22] Cullenward, *supra*, at 15.

[23] Letter from Marathon Petroleum to Gavin Newsom et al. (Mar. 9, 2026), https://energynewsbeat.co/wp-content/uploads/2026/03/MPC-Proposed-Cap-and-Invest-Amendments-Concerns_3.09.26.pdf; Letter from Chevron to Gavin Newsom et al. (Mar. 9, 2026), https://www.chevron.com/newsroom/2026/q1/californias-economy-faces-threats-with-new-energy-policy-changes; *Valero California Refinery Idles All Units Ahead of Closure*, Bloomberg (Feb. 25, 2026).

[24] Or. DEQ, *Clean Fuels Program Overview*, https://perma.cc/HG72-6FXJ. Wash. Dep't of Ecology, *Clean Fuel Standard*, https://perma.cc/W84D-U6Y7; New Mex. Order, *supra*, App'x A, 87–88.

The cost of these cross-subsidies will ripple far beyond these states, affecting interstate and international commerce in refined fuel markets. The states that have adopted low-carbon fuel standards import refined petroleum products from other states, so the costs will burden cross-border trade. In Oregon, for example, the carbon-intensity benchmark is set such that "out-of-state entities bear the full brunt of the law's burden, even though all fuel producers (including in-state entities) contribute to greenhouse gas emissions (and consequently global warming)."[25] And by using a lifecycle emissions methodology, these states place economic pressure on entities located in outside jurisdictions to conform to these states' destructive "Green New Deal" agendas.

State low-carbon fuel standards will also increasingly serve as a tool to subsidize electrification, on the backs of ordinary Americans paying for more expensive gasoline and diesel. California estimates that electricity will receive the most implicit subsidy support going forward, while the credit for ethanol will largely disappear.[26] Indeed, most biofuels can't compete with electricity under the modeling used by these states. Although, on average, electricity has greater lifecycle emissions per unit of energy than most other alternative fuels, California uses an "energy-economy ratio" ("EER") to account for the efficiency of battery-electric powertrains.[27] Adjusted for California's EER, electricity has a compliance advantage over most other compliance alternatives. By 2035, most corn ethanol fuel will likely exceed California's carbon-intensity benchmarks, effectively making it ineligible for any credit at all.[28] In other words, state low-carbon fuel standards are becoming tools to punish liquid fuels and cross-subsidize local motor vehicle electrification and the associated overseas supply chain.

Section 211(c)(4) Preemption

Section 211 of the Clean Air Act gives EPA broad authority to control the manufacturing and sale of fuel and fuel additives.[29] Under section 211(c), EPA "may" control or prohibit a fuel if the fuel "or any emission product of such fuel … causes, or contributes, to air pollution or water pollution … that may reasonably be anticipated to endanger the public health or welfare."[30] EPA may also use section 211 to protect a motor

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[25] *O'Keeffe*, 903 F.3d at 919 (N.R. Smith, J., dissenting).

[26] 2023 CARB SRIA 19.

[27] 2023 CARB SRIA 30; 17 Cal. Code of Regs. § 95481 (defining the "Energy Economy Ratio"), *id.* § 95486.1(a)(2) & Tbl. 5 (listing EERs for different powertrains).

[28] 2023 CARB SRIA 30.

[29] *See* 42 U.S.C. § 7545.

[30] *Id.* § 7545(c)(1).

vehicle "emission control device or system" from damage (e.g., EPA regulates sulfur and lead to protect catalytic converters from damage).[31] Before controlling a fuel that endangers public health or welfare, EPA must consider "other technologically or economically feasible means of achieving emission standards under section 7521 of this title," which provides EPA authority to regulate new motor vehicles, themselves.[32] EPA has established extensive fuel regulations under section 211, even apart from the Renewable Fuel Standard ("RFS") program that is codified later in the section.[33]

Section 211(c)(4) includes an express preemption provision relating to fuel controls. It provides:

> *(A) Except as otherwise provided in subparagraph (B) or (C), no State (or political subdivision thereof) may prescribe or attempt to enforce, for purposes of motor vehicle emission control, any control or prohibition respecting any characteristic or component of a fuel or fuel additive in a motor vehicle or motor vehicle engine—*
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> *(i) if the Administrator has found that no control or prohibition of the characteristic or component of a fuel or fuel additive under paragraph (1) is necessary and has published his finding in the Federal Register, or*
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> *(ii) if the Administrator has prescribed under paragraph (1) a control or prohibition applicable to such characteristic or component of a fuel or fuel additive,*
> *unless State prohibition or control is identical to the prohibition or control prescribed by the Administrator.*

Id. § 7545(c)(4)(A).

Subparagraph (B), however, exempts California from the scope of this provision.[34] Subparagraph (C) also exempts from express preemption any state fuel regulations approved by EPA as part of state implementation plan, but EPA may approve such a regulation "only if [EPA] finds that the State control or prohibition is necessary to achieve

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[31] *Id.*

[32] *Id.* § 7545(c)(2)(A); *see Ethyl Corp. v. EPA*, 541 F.2d 1, 10 (D.C. Cir. 1976) (suggesting this requires EPA to prioritize regulating motor vehicles over fuels).

[33] *See generally* 40 C.F.R. pt. 1090 (regulations for fuels, fuel additives, and blendstocks).

[34] *Id.* § 7545(c)(4)(B).

the national primary or secondary ambient air quality standard which the plan implements."[35]

The preemption provision has been litigated in a few cases.[36] But as EPA has largely occupied the field of fuel regulation, and states are limited to regulations that are "identical" to EPA's under section 211(c)(4)(A)(ii), EPA has rarely invoked its authority to forbid state fuel regulations that are, in its view, not "necessary." EPA, for example, invoked this authority in 1992 to propose finding limits on fuel oxygen content not necessary.[37]

Courts have already said that low-carbon fuel standards are subject to preemption under this Clean Air Act provision. *Rocky Mountain Farmers Union v. Corey*, a lawsuit challenging California's low-carbon fuel standard program on dormant Commerce Clause grounds, speaks to the question.[38] In that case, California raised its special exemption from preemption under section 211(c)(4)(B) as an affirmative defense against the plaintiffs' dormant Commerce Clause claims. Addressing this argument, the Ninth Circuit recognized that the California low-carbon fuel standard is a "control . . . respecting any fuel or fuel additive" adopted "for the purpose of motor vehicle emission control," and thus within the proper scope of preemption under section 211(c)(4).[39] California made the same argument in a "conditional cross-petition" to the Supreme Court.[40] There is therefore little question that low-carbon fuel standards are subject to preemption under section 211(c)(4).

ARGUMENT

Under the Clean Air Act, states may regulate fuels to ensure they comply with national air quality standards. But section 211(c)(4) preempts fuel regulations that, in EPA's judgment, are not "necessary" to promote local air quality. Low-carbon fuel standards are not targeted at improving local air quality or meeting national air quality

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[35] *Id.* § 7545(c)(4)(C)(i).

[36] *See, e.g.*, *Oxygenated Fuels Ass'n Inc. v. Davis*, 331 F.3d 665, 673 (9th Cir. 2003); *Exxon Mobil Corp. v. EPA*, 217 F.3d 1246, 1256 (9th Cir. 2000); *Exxon Corp. v. New York*, 548 F.2d 1088, 1092 (2d Cir. 1977).

[37] 57 Fed. Reg. 47,849 (Oct. 20, 1992), 1992 WL 295353.

[38] 730 F.3d 1070 (9th Cir. 2013).

[39] *See Rocky Mountain Farmers*, 730 F.3d at 1070.

[40] Petition for a Writ of Certiorari, *Am. Fuel & Petrochemical Mfrs. Ass'n v. Corey*, No. 13-1148 (Mar. 20, 2014), https://perma.cc/VV6A-GKKL.

standards, nor do they meaningfully advance those goals.[41] They are a symbolic effort to "fight" global climate change. But low-carbon fuel standards do not meaningfully affect the global climate, either. Instead, they burden American commerce, raise the price of gasoline at the pump for American consumers, threaten national security and subsidize "alternative energy" boondoggles and their unsecure foreign supply chains.

EPA should exercise its authority under section 211(c)(4) to preempt state low-carbon fuel standards. Two things must be true for these programs to be preempted. First, the state programs must fall within the scope of section 211(c)(4). Second, EPA must trigger the preemption provision by making the required "finding." We first explain why low-carbon fuel programs fall within the scope of preemption, and we then explain why EPA should find that low-carbon fuels standards are not necessary, thus triggering the prohibition.

Low-Carbon Fuel Standards Fall Within Section 211(c)(4) Express Preemption

Low-carbon fuel standards fall within the scope of section 211(c)(4). Indeed, the Ninth Circuit has already held that a low-carbon fuel standard "falls within" this section, resolving the question (at least in that Circuit).[42]

Section 211(c)(4) is an *expressly* preemptive provision. Where a federal "statute 'contains an express pre-emption clause,'" the Supreme Court has directed that "[courts] do not invoke any presumption against pre-emption but instead 'focus on the plain wording of the clause, which necessarily contains the best evidence of Congress' pre-emptive intent.'"[43] Courts therefore should apply textualist principles and find the best reading of the provision without a thumb on the scale against preemption of state law. To fall within section 211(c)(4)'s preemptive scope, a state regulation must be (1) a "control or

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[41] Today's motor vehicles are already extraordinarily clean, and emissions of criteria pollutants continue to decline. Further, state regulators ignore that electric vehicles increase emissions of particulate matter from tire wear, break wear, and resuspended road dust. *See* Michael Buschbacher & Taylor Meyers, *Electric Cars Emit More Particulate Pollution*, Wall St. J. (Mar. 3, 2024).

[42] *See Rocky Mountain Farmers*, 730 F.3d at 1070 ("The Fuel Standard falls within [section 211(c)(4)] because it is 'a control respecting a fuel or fuel additive and was enacted for the purpose of emissions control'").

[43] *Puerto Rico v. Franklin Cal. Tax-Free Trust*, 579 U.S. 115, 125 (2016) (quoting *Chamber of Com. v. Whiting*, 563 U.S. 582, 594 (2011)); *see also Cal. Rest. Ass'n v. City of Berkeley*, 65 F.4th 1045, 1050 (9th Cir. 2023) (same); *PLIVA, Inc. v. Mensing*, 564 U.S. 604, 622 (2011) (plurality).

prohibition respecting any characteristic or component of a fuel or fuel additive in a motor vehicle or motor vehicle engine," and (2) "for the purpose of motor vehicle emission control." A low-carbon fuel standard qualifies under the best reading of this text.

Low-carbon fuel standards control a characteristic or component of fuel; namely a fuel's carbon

In *Rocky Mountain Farmers*, the Ninth Circuit expressly affirmed the district court's holding that California's low-carbon fuel standard controls "a characteristic or component" of fuel within the meaning of section 211(c)(4), noting that the district court correctly held that that the low-carbon fuel standard "falls within" this section because it is "a control respecting a fuel or fuel additive and was enacted for the purpose of emissions control."[44]

As the district court further explained:

> *Undisputedly, the LCFS is a control respecting fuels. Indeed, it controls several motor fuels, including the components of CARBOB and diesel, and the many reformulations of those fuels. In addition, the LCFS controls fuel carbon.*[45]

This analysis, expressly adopted by the Ninth Circuit, is binding precedent in the Ninth Circuit, including in Oregon and Washington, which, unlike California, are not exempt from preemption.

The analysis is also right. Carbon is an inherent characteristic or component of regulated fuels such as gasoline and diesel (they are mixtures of hydro*carbons*, after all), and controlling the lifecycle emissions from gasoline and diesel, in practice, controls the tailpipe emissions generated from burning that carbon component in the fuel. Indeed, as California explains, the lifecycle emissions of gasoline and diesel are dominated by tailpipe emissions from consuming the fuel's carbon: "75 percent of the GHG emissions from the life cycle of CARBOB occur during combustion in vehicles (tailpipe emissions)."[46]

To be sure, lifecycle emissions include *more* than just the carbon embodied in the fuel itself and emitted at the tailpipe after combustion—lifecycle emissions also include emissions from upstream processes such as refining, which are arguably not characteristics

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[44] 730 F.3d at 1086, 1106 (citation omitted).

[45] *Rocky Mountain Farmers*, 843 F. Supp. 2d at 1061.

[46] CARB, Low Carbon Fuel Standard 17, https://perma.cc/PJS8-NRFA; *see also* CA-GREET 4.0 Calculator (petroleum tab) (showing CARBOB and diesel lifecycle greenhouse gas emissions are dominated by tailpipe emissions).

of gasoline or diesel. But that doesn't matter. Lifecycle emissions include—indeed, are dominated by—emissions from a fuel's carbon. That is enough for preemption. States cannot "avoid … pre-emption simply because the regulation serves several objectives rather than one."[47]

Low-carbon fuel standards are "for the purpose of motor vehicle control"

For many of the same reasons, low-carbon standards are enacted "for the purpose of motor vehicle emission control." Ninth Circuit precedent resolves the question in Oregon and Washington by adopting *California's argument* that a low-carbon fuel standard is covered by section 211(c)(4).[48] The district court's conclusion on this point, later adopted by the Ninth Circuit on appeal, is worth quoting in full:

> *Although Plaintiffs correctly point out that the LCFS controls more than tailpipe combustion emissions, Plaintiffs fail to point out specific evidence to rebut the evidence submitted by Defendants that establishes that the purpose of the LCFS is to control motor vehicle emission. Accordingly, Defendants are entitled to summary adjudication that the LCFS was passed for the purpose of motor vehicle emissions control.*

Id. Indeed, most of the lifecycle greenhouse gas emissions from gasoline and diesel are *motor vehicle* or tailpipe emissions. Lifecycle greenhouse gas emissions of conventional fuels are dominated by motor vehicle (i.e., tailpipe) greenhouse gas emissions: "75 percent of the GHG emissions from the life cycle of CARBOB occur during combustion in vehicles (tailpipe emissions)."[49] Therefore, a low-carbon fuel standard discourages conventional petroleum-based fuels primarily based upon their tailpipe emissions. States may have other purposes, such as reducing greenhouse gases emitted by utilities powering Iowa ethanol plants or by ships traveling from Brazil carrying sugarcane ethanol. But that doesn't matter. States don't get to control motor vehicle emissions just because they have other, non-preempted purposes too.[50]

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[47] *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 106 (1992),

[48] *Rocky Mountain Farmers*, 843 F. Supp. 2d at 1056–57, *aff'd*, 730 F.3d 1070.

[49] CARB, *Low Carbon Fuel Standard* 17, https://perma.cc/PJS8-NRFA; *see also* CA-GREET 4.0 Calculator (petroleum tab) (showing CARBOB and diesel lifecycle greenhouse gas emissions are dominated by tailpipe emissions).

[50] *See Gade*, 505 U.S. at 106–07; *see also Associated Builders & Contractors Fla. E. Coast Chapter v. Miami-Dade Cnty.*, 594 F.3d 1321, 1324 (11th Cir. 2010).

States with existing low-carbon fuel standards agree that the purpose of their programs is to reduce lifecycle greenhouse gas emissions, which includes motor vehicle emissions.[51] Their modeling shows that low-carbon fuel standards aim to reduce greenhouse gas emissions from motor vehicles and, relatedly, to promote electric vehicles with "zero" tailpipe emissions.[52] The state fuel regulations are therefore plainly for the purpose of controlling motor vehicle emissions within the scope of section 211(c)(4).

EPA Should Find That Low-Carbon Fuel Standards Are Not "Necessary"

For preemption to work, EPA must trigger the prohibition by making a finding that state low-carbon fuel standards are not "necessary," and publish that finding in the Federal Register.

EPA has discretion when interpreting this open-ended term. Like the term "appropriate and necessary" in *Michigan v. EPA*, the open-ended term "necessary," accompanied by an express delegation of specific authority to make a finding, vests EPA with "flexibility."[53]

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[51] *See, e.g.,* Or. Admin. R. 340-253-0000(2) ("Purpose. The purpose of the Oregon Clean Fuels Program is to reduce the amount of lifecycle greenhouse gas emissions per unit of energy by a minimum of 10 percent below 2010 levels by 2025.").

[52] *See* Wash. Dep't of Ecology, *Clean Fuel Standard*, https://perma.cc/4Q45-2PS5 (recognizing that a plurality (39.7%) of the reduction in greenhouse gas emissions for Washington is from reducing motor vehicle emissions); *Low Carbon Fuel Standard 2023 Amendments: Standardized Regulatory Impact Assessment (SRIA)*, State of Cal. Res. Bd. 67 (Sept. 8, 2023) (2023 CARB SRIA), https://perma.cc/B9JP-YY5T ("The proposed amendments are designed to increase penetration of low-CI fuels in the California market and support the transition to [Zero-emissions vehicles]"); Or. Dep't of Env't Quality, *Implementing the Clean Fuels Program Electricity 2021 Rulemaking*, https://perma.cc/G3RL-6NRD (recognizing that the 2021 rulemaking will help the Clean Fuels Program "advance transportation electrification" by "encouraging new types of electric vehicles" and "incentivizing the electrification of fleets"); Or. Dep't of Env't Quality, *CFP Expansion 2022 – Listening Session: Oregon Clean Fuels Program* 7 (Oct. 13, 2021), https://perma.cc/L7RH-PF4Y (describing three "illustrative compliance scenarios" that demonstrate Oregon's desire to combine additional Zero-emissions vehicle (ZEV) regulations with biofuel regulations to reduce overall carbon intensity by 2030 and 2035).

[53] *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 395 & n.6 (2024).

In general, "necessary" is "that which is required to achieve a desired goal."[54] "But courts have frequently interpreted the word 'necessary' to mean less than absolutely essential."[55]

"Context is relevant to the interpretation of the term 'necessary.'"[56] First of all, necessary to do what? Here, surrounding provisions clarify the goal. States need fuel controls under the Clean Air Act to meet the Act's goal for states: compliance with federal ambient air quality standards.[57] Section 211(c)(4) itself confirms that. Section 211(c)(4)(C) waives express preemption when EPA "finds that the State control or prohibition is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements."[58] Thus, states may rebut EPA's general finding that a fuel control is not necessary only by making a state-specific showing that the regulation is really necessary to achieve federal air quality standards.

Further, context supports a strict reading of "necessary." To approve an exemption, EPA must find that "no other measures that would bring about timely attainment exist, or if other measures exist and are technically possible to implement, but are unreasonable or impracticable." [59] Therefore, the best reading of "necessary" in this context is that no practicable and reasonable alternatives are available.

Low-carbon fuel standards aren't "necessary" because they are designed to "fight" global climate change, not meet ambient air quality goals

Fuel controls that seek to reduce fuel carbon-intensity fail to meet this test as a matter of law.

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[54] *GTE Serv. Corp. v. FCC*, 205 F.3d 416, 423 (D.C. Cir. 2000).

[55] *Nat. Res. Def. Council, Inc. v. Thomas*, 838 F.2d 1224, 1236 (D.C. Cir. 1988). *AT & T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366, 399 (1999) (Souter, J. concurring in part and dissenting in part) ("If I want to replace a light bulb, I would be within an ordinary and fair meaning of the word 'necessary' to say that a stepladder is 'necessary" to install the bulb, even though I could stand instead on a chair, a milk can, or eight volumes of Gibbon.").

[56] *Cellular Telecommunications & Internet Ass'n v. FCC*, 330 F.3d 502, 510 (D.C. Cir. 2003).

[57] *See* 42 U.S.C. § 7410.

[58] *Id.*§ 7545(c)(4)(C)(i).

[59] 42 U.S.C. § 7545(c)(4)(C)(i).

States cannot dispute that the primary purpose of these programs is to reduce lifecycle greenhouse gas emissions to fight global climate change, not to improve state ambient air quality. Their regulations say so:

- California: "The purpose of this regulation is to implement a low carbon fuel standard, which will reduce the full fuel-cycle, carbon intensity of the transportation fuel pool used in California, pursuant to the California Global Warming Solutions Act of 2006."[60]

- Oregon: "Thee Oregon Legislature has found that climate change poses a serious threat to the economic well-being, public health, natural resources and environment of Oregon. … The Oregon Clean Fuels Program will reduce Oregon's contribution to the global levels of greenhouse gas emissions and the impacts of those emissions in Oregon in concert with other greenhouse gas reduction policies and actions by local governments, other states and the federal government.[61]

- Oregon again: "Purpose. The purpose of the Oregon Clean Fuels Program is to reduce the amount of lifecycle greenhouse gas emissions per unit of energy."[62]

- Washington: "Purpose. This rule establishes requirements for suppliers and consumers of certain transportation fuels in Washington in order to reduce the lifecycle greenhouse gas emissions per unit energy (carbon intensity) of transportation fuels used in the state."

- New Mexico: New Mexico's "objective" is "to reduce the carbon intensity of transportation fuel, as measured in carbon dioxide equivalent units per unit of fuel energy."[63]

That's a problem for the states, because there is no "ambient air quality" standard for greenhouse gases. Indeed, such a standard would be nonsensical, because greenhouse

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[60] 17 Cal. Code of Regs. § 95480.

[61] Or. Admin. R. 340-253-0000(1).

[62] Or. Admin. R. 340-253-0000(2).

[63] New Mex. Order, *supra*, App'x A, 1.

gases become well-mixed in the atmosphere, and are not part of the regional ambient air that can be controlled by state air quality *regions*.[64]

Ancillary changes in ambient air quality that result from low-carbon fuel standards, or so-called co-benefits, don't change this fundamentally poor fit. By design, state low-carbon fuel standards punish or reward the carbon-intensity of a fuel *regardless* of the fuel's ambient air quality consequences, so any predicted ancillary air quality effects are simply outputs of a model and cannot be enforced. Further, these laws are a poor geographic fit: State low-carbon fuel standards seek to control the carbon-intensity of fuel regardless of the location of the associated emissions changes. They are therefore not controls required to achieve federal ambient air quality goals within a state.

Because these programs are not designed to attain federal air quality within the state, but rather to take an expensive (and symbolic) stand on global climate change, they aren't "necessary."

State low-carbon fuel standards also aren't 'necessary" to address global climate change because they have no effect on the climate system and are inefficient

Under a proper reading of section 211(c), the word "necessary" in context doesn't include state efforts to combat global "climate change," but is limited to measures primarily designed to meet federal ambient air quality goals. But even assuming that controls intended to "fight climate change" could be "necessary" under section 211(c)(4), these laws aren't necessary because they don't meaningfully affect the global climate and are an inefficient way of reducing greenhouse gas emissions. Other practicable means are available if state regulators want to raise fuel costs to take symbolic actions.

First, state low-carbon fuel standards will have no detectable effect on global mean surface temperatures or sea-level rise, let alone on downstream local air quality. As EPA has recently concluded, even the economically impossible goal of eliminating all U.S. motor vehicle greenhouse gas emissions overnight would have a *de minimis* effect on climate change, let alone on any downstream air quality effects associated with global climate change.[65] The effects of a patchwork of state low-carbon fuel mandates on global mean surface temperatures or sea-level rise, let alone ozone levels, will be far more trivial

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[64] *See* Andrew R. Wheeler, EPA Administrator, *Denial of Petitions to Establish National Ambient Air Quality Standards for Greenhouse Gases, to Regulate Greenhouse Gases Under Clean Air Act Section 115, and to Regulate Greenhouse Gases as Hazardous Air Pollutants* (Jan. 19, 2021), https://perma.cc/58TM-FVLE.

[65] *See* 91 Fed. Reg. 7,686, 7,729–34 (Feb. 18, 2026).

given the uncertainty in the climate system. Virtue signaling at the public's expense is not "necessary" to comply with the Clean Air Act.

State regulators claim that these programs are reducing greenhouse gas emissions—but whether that is true, let alone how much, is highly disputed.[66] For example, a paper published by authors at the Transportation Sustainability Research Center at the University of California–Berkeley argues that it is uncertain whether these regulations reduce greenhouse gas emissions *at all*.[67] But even taking the claimed reductions in greenhouse gases at face value, they would have no meaningful effect on the global climate.

For example, Oregon claims that "[f]rom the beginning of the program in 2016 through 2020, approximately 5.3 million metric tons of greenhouse gas emissions … have been reduced because of the program," or a little more than one million metric tons each year.[68] That compares to 40 *b*illion metric tons of global carbon dioxide emitted by entities combusting fossil fuels alone each year.[69] This "reduction" can come nowhere close to having any detectable effect on global mean surface temperatures or sea-level rise given the measurement uncertainty in these trends, and so has no significant predictable effect on any outcomes relating to global climate change.

Apart from having no meaningful, predictable effect on the climate system, as many economists have explained, state low-carbon fuel standards are an inherently cost-inefficient, second-best way to reduce greenhouse gas emissions compared to simply pricing (i.e., taxing) carbon.[70] Moreover, state-level rules likely have little total effect: producers of low-carbon fuels simply route their fuels to Oregon or Washington, without much of a net effect on the global carbon-intensity of fuels overall. State politicians and regulators who want to signal their virtue could reduce greenhouse gas emissions far more efficiently by pricing carbon through a local fuel tax.[71]

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[66] Cullenward, *supra*, at 13–14.

[67] Richard J. Plevin et al., *Fuel carbon intensity standards may not mitigate climate change*, 105 Energy Pol'y 93 (2017).

[68] Oregon Clean Fuels Program Review (Feb 1, 2022), http://oregon.gov/deq/ghgp/Documents/CFPProgramReview.pdf.

[69]EPA, Technical Memo 4–5, Dkt. EPA-HQ-OAR-2025-0194-31105, https://www.regulations.gov/document/EPA-HQ-OAR-2025-0194-31105.

[70] Stephen P. Holland et al., *Greenhouse Gas Reductions under Low Carbon Fuel Standards?* 1 Am. Econ. J.: Econ. Pol'y 106 (2009).

[71] Holland et al., *supra*; *see also cf. Cf. O'Keeffe*, 903 F.3d at 919 (N.R. Smith, J., dissenting) ("Oregon could simply adopt a per unit tax on carbon intensity. Such a tax would discourage use

State regulators likely prefer the low-carbon fuel standards' regulatory cross-subsidy as opposed to a simple tax on fuel for two reasons: First, state low-carbon fuel programs are complicated and opaque, so it is easier to hide the cost of the programs from voters. Second, the implicit "subsidy" creates a concentrated interest group that supports the regulations, such as electric utilities, manufacturers in the electric-vehicle supply chain, and some biofuel producers, making it more likely that the program will become politically entrenched. But local regulators' desire to avoid political discipline from voters and foster a regulatory clientele don't make more efficient alternatives—such as a carbon tax—impracticable or unreasonable, just politically inconvenient.[72]

In short, state low-carbon fuel standards have no discernible effect on the climate system and are economically inefficient compared to viable alternatives, so they aren't necessary to reduce the risk of global climate change, even assuming that is a proper goal under 211(c)(4), which, of course, it is not.

The Renewable Fuel Standard supports a determination that low-carbon fuel standards aren't necessary

State low-carbon fuel standards also overlap considerably with the federal Renewable Fuel Standard, which supports EPA finding that state standards aren't necessary. The RFS requires obligated parties to blend into the Nation's transportation fuel specific volumes of renewable fuel categories, including "advanced biofuel" that, by statute, must reduce lifecycle greenhouse gas emissions by "at least 50 percent" compared to "baseline lifecycle greenhouse gas emissions."[73] EPA now has discretion to set these renewable fuel volumes by considering, among other things, "air quality," "climate change," and "the cost to consumers of transportation fuel."[74]

Fuels used to meet the RFS can also be used to meet state-low carbon fuel standards, and vice versa. In this scenario, the state low-carbon fuel standard mandates just ensure that an alternative fuel is routed to a particular state jurisdiction: alternative fuel that would have been sold and blended into the Nation's transportation fuel anyway is routed to

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of carbon intense fuels without artificially shielding in-state interests from any responsibility for their contributions to greenhouse gas emissions.").

[72] 42 U.S.C. § 7545(c)(4)(C)(i).

[73] *Id.* § 7545(o)(1)(B)(i).

[74] *Id.* § 7545(o)(2)(B)(ii); *see also Ctr. for Biological Diversity v. EPA*, 141 F.4th 153, 170 (D.C. Cir. 2025).

Oregon or Washington just to collect an additional regulatory subsidy (credit stacking).[75] But given that greenhouse gases are well-mixed in the atmosphere, that change in location makes no difference to climate change. Credit stacking further supports a finding that state low-carbon fuel standards are inefficient and thus not necessary. To be sure, low-carbon fuel standards target exclusively lifecycle carbon-intensity, while the RFS pursues a wider range of goals. But that doesn't make the overlap any more efficient.

PROPOSED FINDING

Based upon these rationales, EPA, after notice and comment and after explaining the basis and purpose of the finding in a preamble, should make the following finding and publish it in the Federal Register:

- For the reasons stated in this preamble, the Administrator concludes that state low-carbon fuel standards that control gasoline and diesel fuels based upon their carbon-intensity, defined as the quantity of lifecycle greenhouse gas emissions per unit of fuel energy, are not necessary within the meaning of section 211(c)(4)(A)(i).

- Without limitation, that includes the state regulations presently codified in (1) New Mexico Administrative Code 20.2.92 (effective April 1 2026); (2) Oregon Administrative Rules 340-253; and (3) Washington Administrative Code 173-424.

CONCLUSION

For the foregoing reasons, EPA should initiate a proceeding to find, pursuant to section 211(c)(4)(A)(i) of the Clean Air Act, that state low-carbon fuel standards are not necessary for motor vehicle emission control.

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[75] *See* Jarrett Whistance et al., *Interactions between California's Low Carbon Fuel Standard and the National Renewable Fuel Standard*, 101 Energy Pol'y 447 (Feb. 2017). In addition to stacking on top of the RFS, state low-carbon fuel standards also stack on top of federal clean fuel production tax credits, thus increasing the national debt to subsidize blue state priorities.