

October 25, 2018

Elaine Chao, Secretary  
United States Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590

Andrew Wheeler, Acting Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460

Re: Safer Affordable Fuel-Efficient Vehicles Rule Proposal  
Docket Nos. NHTSA-2018-0067; EPA-HQ-OAR-2018-0283

Dear Secretary Chao and Acting Administrator Wheeler:

The Northeast States for Coordinated Air Use Management (NESCAUM) writes to express its strong opposition to the proposed Safer Affordable Fuel-Efficient Vehicles Rule for Model Years 2021 through 2026 (the “SAFE Vehicles Rule” or “Proposed Rule”), which was issued by your agencies on August 1, 2018 and published in the Federal Register on August 24, 2018 (83 *Fed. Reg.* 42,986).

NESCAUM is the regional association of the state air pollution control agencies in the six New England states, New Jersey and New York.<sup>1</sup> NESCAUM serves as a technical and policy advisor to our member states on a range of air quality and climate issues, and facilitates multi-state initiatives to improve air quality and address climate change. For more than three decades, NESCAUM and its member states have been working collaboratively with California and other states outside our region, the U.S. Environmental Protection Agency (EPA), and the automobile industry to promote low emission vehicles.

As proposed, the SAFE Vehicles Rule would roll back existing federal light-duty vehicle (LDV) greenhouse gas (GHG) emission standards for model years (MYs) 2021 through 2025. EPA further proposes an unprecedented curtailment of long-standing state authority under §§ 209(b) and 177 of the Clean Air Act (CAA) to adopt vehicle emission standards that are more stringent than federal standards by: (1) finding that the Energy Policy Conservation Act (EPCA) preempts California, and by extension Section 177 States, from adopting more stringent GHG emission standards; (2) revoking the waiver EPA issued to California in 2013 for its existing GHG standards and ZEV regulation; and (3) finding that state authorization under § 177 to adopt more stringent motor vehicle emission standards is limited in scope to adoption of standards designed to control criteria pollutants.

NESCAUM strongly opposes the SAFE Vehicles Rule in its entirety. Given the unmistakable evidence that impacts from a changing climate are worsening – from record-breaking heat waves, to mega-forest fires in the West, to extreme hurricanes – EPA’s proposed rollback of what is effectively the federal government’s biggest climate mitigation program would pose a real threat to public health and welfare,<sup>2</sup> in direct contravention of the Clean Air Act’s fundamental purpose. In addition to weakening federal GHG standards, EPA further proposes to handicap state efforts to control emissions by departing from its longstanding

<sup>1</sup> The views expressed herein represent the majority consensus of NESCAUM’s member states and not necessarily the views of all individual member states.

<sup>2</sup> See, Intergovernmental Panel on Climate Change, *Global Warming of 1.5 °C, Special Report*, Oct. 2018 (available at <https://www.ipcc.ch/report/sr15/>).

interpretation of state authority under the Clean Air Act as allowing states to adopt and enforce more stringent motor vehicle emission standards in lieu of the federal standards.

As discussed in more detail below, the proposed weakening of the existing federal MY 2021-2026 LDV GHG and augural fuel economy standards would lead to significant increases in oil consumption, GHG emissions and consumer expenditures at the pump and is in direct conflict with EPA's comprehensive July 2016 technical assessment and January 2017 original Final Determination, which concluded that the existing GHG standards are appropriate and achievable. The federal agencies' various proposals to declare California and the Section 177 States preempted by EPCA, or otherwise without authority under the Clean Air Act to regulate motor vehicle GHG emissions, are based on flawed statutory interpretation and are contrary to federal court decisions that have considered EPCA's effect on regulation of motor vehicle GHG emissions and state authority under the Clean Air Act.

### **I. THE EXISTING GHG STANDARDS ARE APPROPRIATE, ACHIEVABLE AND FULLY SUPPORTED BY A COMPREHENSIVE RECORD**

EPA's proposed rollback of the GHG standards for MY 2021-2025 passenger cars and light-duty trucks is in direct conflict with its own draft Technical Assessment Report (TAR) – the comprehensive midterm technical and economic assessment completed a little more than two years ago in July 2016, which supported EPA's January 2017 Final Determination that the existing standards are appropriate and achievable. The TAR concluded that the technologies needed to meet the standards are here today, that automakers are well positioned to meet the standards at lower costs than previously estimated, and that even more stringent GHG emission standards for MY 2022-2025 vehicles are feasible. The current standards were supported by the major automakers, and are the result of a landmark 2012 agreement between EPA, the National Highway Traffic Safety Administration (NHTSA), and California to limit GHG emissions from MY 2017 through 2025 LDV vehicles through a single national program that harmonized the federal and California GHG standards. The reasonableness of EPA's January 2017 Final Determination is reinforced by California's separate, but parallel midterm evaluation that led the California Air Resources Board (ARB) to also conclude in March 2017 that its existing harmonized standards are readily achievable by automakers.<sup>3</sup> Nothing has changed in the two intervening years that warrants EPA's proposed relaxation of the standards.

The existing national program is working exactly as intended – providing market stability, broader product availability for consumers and dealers, regulatory certainty for the industry, and nationwide public health and environmental benefits.

A chief reason offered by EPA for weakening the standards is one that has been advanced by the auto industry – that the standards are not aligned with recent consumer preferences for SUVs and other larger vehicles. The standards, however, are intentionally flexible to accommodate industry and consumer preferences, with less stringent emission targets for classes of vehicles with larger footprints. And the most recent surveys indicate that consumers continue to place a high value on fuel efficient vehicles of all types.<sup>4</sup> Given recent consumer preferences for larger vehicles, maximizing fuel efficiency and GHG emission reductions in larger footprint vehicles is even more important.

---

<sup>3</sup> See California Air Resources Board, Resolution No. 17-3 (March 24, 2017), pp. 7, 15-16.

<sup>4</sup> See, e.g., *Report on Consumer Attitudes Toward Fuel Economy Standards*, Consumer Federation of America, September 25, 2018 (finding that nearly 70% of Americans on a bipartisan basis support the current fuel economy standards and 60% are willing to accept a three-year payback on higher purchase prices associated with more fuel-efficient vehicles).

Moreover, although EPA concluded that the existing standards are achievable without heavy reliance on electrification, rapid advancement of electric vehicle technology provides additional opportunities and flexibilities to comply with the current standards. In the United States, automakers are currently offering more than 50 different plug-in hybrid electric vehicle (PHEV), battery electric vehicle (BEV), and fuel cell electric vehicle (FCEV) models that are designed to meet the needs of consumers across a range of market segments. At least 78 hybrid, PHEV, and BEV model variants meet 2020 or later standards.<sup>5</sup> Nationally, sales of electric vehicles through September 2018 are up 64 percent over 2017 sales for that same time period, reflecting growing consumer acceptance of the technology. Since 2013, sales of electric vehicles have increased five-fold in the Northeast Section 177 States. This steady upward trend in EV sales is occurring despite the low availability of electric vehicle models in the Northeast Section 177 States and the auto industry's continuing failure to actively market electric vehicles, factors that are discussed in Section V.B below.

NHTSA's further asserted justification for the Proposed Rule – that freezing the 2020 standards through 2026 would result in 1,000 fewer highway fatalities each year – is disputed by EPA's technical staff based on their identification of flaws in NHTSA's analysis. EPA staff contend the Proposed Rule would actually result in an *increase* in annual fatalities. In addition, NHTSA prepared the Draft Environmental Impact Statement and Regulatory Impact Analysis using a model that EPA has never before used for its motor vehicle rulemakings. We do not expand on these points, which raise significant concerns about the integrity of the analysis supporting the Proposed Rule, because others with relevant expertise will comment much more extensively on these problematic aspects of the Proposed Rule.

## **II. IMPLEMENTATION OF THE SAFE VEHICLES RULE WOULD LEAD TO SIGNIFICANT EMISSION INCREASES**

The transportation sector is the largest and fastest growing contributor to GHG emissions and a major source of ozone forming pollutants as reflected by increases in vehicle registrations and the number of vehicle miles traveled. In Connecticut, for example, the transportation sector emits 43% of statewide GHG emissions and 65% of ozone-forming NOx emissions. Similarly, New Jersey's transportation sector contributes 42% of the state's GHG emissions. Within the transportation sector, light-duty vehicles are by far the largest contributor to GHG emissions. Deep reductions from the nation's fleet of passenger cars and light-duty trucks are needed on an accelerated time frame in order to avoid the worst effects of climate change.

Our states recognize the urgent need to reduce GHG emissions across all sectors of our economy. Many of our states have committed to an 80 percent reduction in GHG emissions by 2050, and have set interim 2030, 2035 or 2040 goals that require deep reductions in transportation sector emissions.<sup>6</sup> Most of our states have adopted the California Advanced Clean Cars Program, including the ZEV regulation. Our states have been working collaboratively with California and other Section 177 States to accelerate adoption of electric vehicles and development of a robust charging/fueling network through actions such as development and implementation of the Multi-State ZEV Action Plan and the Northeast Corridor Regional Electric Vehicle Infrastructure Strategy. As described in Attachment 1, our states have implemented a broad range of incentive programs and other market-enabling initiatives in order to accelerate market growth, including: consumer vehicle and charging/fueling infrastructure purchase incentives; fleet purchase incentives; fleet

---

<sup>5</sup> *Id.*

<sup>6</sup> For example, Connecticut has set GHG emission reduction goals of 45% below 2001 levels by 2030 and 80% by 2050. Massachusetts is *required* by the state's Global Warming Solutions Act to reduce statewide emissions 80% below 1990 levels by 2050, and New York has set 2030 and 2050 GHG reduction goals of 40% and 80% below 1990 levels, respectively. Other Northeast and Section 177 States have adopted equivalent or similar targets.

electrification goals; workplace charging programs; residential “time-of-use” electricity rates to reduce charging costs for consumers; elimination of public utility regulatory barriers to growth of private sector charging providers; and a joint government/industry funded multi-media consumer education campaign, *Drive Change. Drive Electric.*<sup>7</sup>

While our states are taking concrete actions to reduce transportation sector GHG emissions, effectively combatting climate change requires GHG reductions on a national and international scale. Maintaining an aggressive downward trend in transportation sector GHG emissions will not occur in the absence of strong national GHG emission reductions and ZEV standards to drive the development and adoption of electric and other advanced clean vehicle technologies.

The existing motor vehicle GHG emission standards have set the nation on a clear path toward a low carbon transportation sector. EPA projected that over the lifetime of MY 2022 – 2025 passenger cars and trucks, the existing GHG standards would reduce the nation’s oil consumption by 1.2 billion barrels of oil and GHG emissions by 540 MMTs.<sup>8</sup> These reductions, while significant, are only a down payment on the much deeper reductions needed to avoid the worst effects of climate change.

The proposed SAFE Vehicles Rule, in contrast, would reverse the nation’s course and lead to significant increases in oil consumption and GHG emissions. EPA estimates that its current proposal to freeze 2020 GHG standards through 2026 would lead to a cumulative increase in domestic petroleum consumption of nearly 79 billion barrels over the lifetime of the vehicles produced from MY 1977 through 2029,<sup>9</sup> and cumulative increases in upstream and tailpipe CO<sub>2</sub> emissions of 159 MMT and 713 MMT,<sup>10</sup> respectively.

EPA seeks comment on its proposal to discontinue the current option that allows automakers to receive compliance credit for CO<sub>2</sub>-equivalent improvements associated with air conditioning refrigerants and leakage and nitrous oxide and methane emission reductions after MY 2020. EPA also seeks comment on whether to retain this credit mechanism. Because this credit trading mechanism provides automakers with additional compliance flexibility, we do not support terminating the trading program or ending the availability of credits for reductions in emissions of air conditioning refrigerants and leakage, or nitrous oxide and methane.

### **III. WEAKENING THE STANDARDS WOULD BE COSTLY TO CONSUMERS AND DISADVANTAGE THE AUTO INDUSTRY**

The current GHG and fuel economy standards are projected to save the average new car buyer approximately \$6,000 over the life of a vehicle after paying the cost of fuel saving technology.<sup>11</sup> In the aggregate, the existing standards are projected to save Americans approximately \$50 billion dollars in fuel costs by 2030.<sup>12</sup> These savings at the pump can be invested to benefit other sectors of our state economies, generating new jobs in the service, sales and manufacturing sectors. In contrast, under the Proposed Rule, EPA’s preferred option to freeze 2020 GHG standards through 2026 could increase consumer spending at the pump by nearly \$20 billion in 2025 and approximately \$46 billion by 2035.<sup>13</sup> While all consumers will be affected, low-

<sup>7</sup> *Drive Change. Drive Electric.* <https://driveelectricus.com/>.

<sup>8</sup> *Final Determination on the Appropriateness of the MY 2022 – 2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation*, U.S. Environmental Protection Agency, January 2017, page 6.

<sup>9</sup> 83 Fed. Reg. at 43,329.

<sup>10</sup> *Id.*

<sup>11</sup> *Fuel Efficiency, Consumers and Income*, Union of Concerned Scientists, August 2017.

<sup>12</sup> *Id.*

<sup>13</sup> *Giving Back Half the Gains*, Synapse Energy Economics, Inc., September 25, 2018.

income and rural consumers with long commutes, who spend a higher percentage of their income on transportation costs, will be hit hardest by increases in fuel consumption that will result from implementation of the Proposed Rule.

Similarly, the automobile industry stands to lose ground if the SAFE Vehicles Rule is implemented as proposed. Automobile manufacturing is now a global industry that is trending toward the adoption of increasingly more stringent motor vehicle emission and fuel economy requirements. In the European Union, for example, a CO<sub>2</sub> emission limitation of 95 grams per kilometer (g/km) – the equivalent of 57.4 mpg – takes full effect in 2021. Norway has set a goal to restrict sales of new vehicles to electric or plug-in hybrid models by 2025. France and Britain have pledged to end the sale of gas and diesel cars by 2040, and in China, 8 percent of new car sales are required to be zero emission vehicles, increasing to 12 percent in 2020. Weaker GHG standards would erode U.S. leadership and place the U.S. auto industry at a competitive disadvantage in the global market.

A rollback in the standards could also cause a shift in new technology investments to other countries that have committed to progressively tighter standards that foster the development of alternative fuel and advanced powertrain technologies. Such a shift could have a detrimental impact on U.S. suppliers of emission control technology and equipment, a sector which employs nearly 300,000 people, and other automotive supply chain sectors.

#### **IV. EPCA DOES NOT PREEMPT CALIFORNIA’S GHG STANDARDS OR THE ZEV REGULATION**

In the Proposed Rule, NHTSA asserts that EPCA, enacted by Congress in 1975, expressly and impliedly preempts California’s GHG standards and the ZEV regulation – a claim that federal courts rejected a decade ago. EPCA § 509(a) prohibits a state or political subdivision from adopting or enforcing a law or regulation “related to fuel economy standards” for automobiles covered by an average fuel economy standard. Under NHTSA’s unreasonably expansive view of the phrase “related to,” the California GHG standards and the ZEV regulation are preempted by EPCA based on a correlation between fuel consumption and tailpipe CO<sub>2</sub> emissions. NHTSA asserts that because CO<sub>2</sub> emission standards have an impact on fuel consumption, they are “related to” fuel economy standards, and are thus preempted under § 509.<sup>14</sup> NHTSA’s interpretation of § 509 has no foundation in the statutory text or legislative history, cannot be squared with the U.S. Supreme Court’s decision in *Massachusetts vs. EPA*, 549 U.S. 497 (2007), and is contrary to two federal district court decisions that considered this exact issue.

##### **A. California’s GHG standards are not “related to” EPCA fuel economy standards.**

EPA’s regulation of GHG emissions under the Clean Air Act and EPCA’s regulation of fuel economy are two entirely distinct regulatory schemes that serve different purposes. Where under EPCA, NHTSA is directed to set maximum feasible fuel economy levels to promote energy conservation, EPA, and by extension California, regulate GHGs under the Clean Air Act to protect public health and welfare. California’s GHG standards do not mention fuel economy or attempt to regulate fuel economy. The impact of California GHG standards on fuel economy is an incidental one. Moreover, such impacts are not unique to CO<sub>2</sub>. Tailpipe emissions of other pollutants, such as NOx, also correlate with fuel consumption – lower fuel consumption results in lower emissions. Any number of tailpipe standards could be subject to the same preemption argument. The Supreme Court has pointed out the danger of reading “related to” too broadly when considering state preemption:

---

<sup>14</sup> 83 Fed. Reg. at 43,234.

If “relate to” were taken to extend to the furthest stretch of its indeterminacy, then for all practical purposes pre-emption would never run its course, for “[r]eally, universally, relations stop nowhere.” But that, of course, would be to read Congress’s words of limitation as mere sham, and to read the presumption against pre-emption out of the law whenever Congress speaks to the matter with generality.

*N.Y. State Conference of Blue Cross & Blue Shield Plans v. Travelers Insurance Co.*, 514 U.S. 645, 655.

### B. EPCA’s text and legislative history foreclose any claim of preemption.

In enacting EPCA, Congress directed NHTSA, when setting fuel economy standards, to give consideration to other federal motor vehicle standards, including California standards adopted pursuant to § 209(b). EPCA § 502(e)(3) requires NHTSA to consider the effect of other Federal motor vehicle standards on fuel economy.<sup>15</sup> EPCA § 502(d)(3)(D), the only provision that defined “federal standards,” expressly included standards adopted by California under § 209(b) of the Clean Air Act. (“Each of the following is a category of Federal standards: (i) [e]missions standards under section 202 of the Clean Air Act, and *emissions standards applicable by reason of section 209(b) of such Act.*”) (emphasis added) This express inclusion of California standards makes clear that Congress did not intend EPCA to preempt California’s authority under § 209(b).<sup>16</sup>

Nor is there any suggestion in EPCA’s legislative history that Congress intended to preempt emission standards that have an impact on fuel economy, or alter California’s authority under § 209(b). In fact, the 1977 Clean Air Act Amendments, which post-dated EPCA’s enactment, amended § 209(b) to “broaden and strengthen California’s authority to prescribe and enforce separate new motor vehicle emission standards,” notwithstanding concerns about whether it was “possible to achieve continued reductions in automobile emissions standards while meeting the automobile fuel economy standards established . . . by the Energy Policy Conservation Act.” H.R. Rep. No. 95-294, at 23, 233 (Conf. Rep.) (1977). Congress has repeatedly made clear its “intent to provide California with the broadest possible discretion in setting regulations it finds protective of the public health and welfare” under the waiver provisions of the Clean Air Act. *Motor & Equip. Mfrs’ Ass’n v. EPA*, 627 F.2d 1095, 1122 (D.C. Cir. 1979). It is simply not logical that Congress would confer such broad foundational authority on California to regulate motor vehicle emissions under the Clean Air Act, only to retract its authority for a particular pollutant in such an obfuscated manner, particularly where California’s authority was subsequently enhanced and expanded in the 1977 Amendments to the Clean Air Act, and retained again in the 1990 Amendments.

Moreover, the 2007 Emergency Independence and Security Act (“EISA”), Pub. L. No. 110-140, which postdated the decision in *Green Mountain Chrysler Plymouth Dodge Jeep v. Crombie*, 508 F. Supp. 2d 295 (D. Vt. 2007) (holding that California’s GHG standards are not expressly or impliedly preempted by EPCA) by less than three months, confirms this understanding of congressional intent. Section 3 of EISA provides that “nothing in this Act or an amendment made by this Act supersedes, limits the authority provided or responsibility conferred by, or authorizes any violation of any provision of law (including a regulation), including any energy or environmental law or regulation.” In a floor statement expressly addressing this

---

<sup>15</sup> The current codification of EPCA provides that NHTSA shall consider “the effect of other motor vehicles standards of the Government on fuel economy.”

<sup>16</sup> In the NPRM, NHTSA argues that this definition of “Federal standards” applied only to a narrow subsection of EPCA relating to 1978-1980 CAFE standards, and the language was removed as obsolete surplusage in the 1994 recodification of EPCA. While it is true that the term “Federal standards” was left undefined for the remaining portions of EPCA, there is no indication that Congress intended that language to have any different meaning elsewhere in EPCA.

provision, Representative Markey explained that “[t]he laws and regulations referred to in section 3 include, but are not limited to, the Clean Air Act and any regulations promulgated under Clean Air Act authority. It is the intent of Congress to fully preserve existing federal and state authority under the Clean Air Act.” H14443 (Dec. 6, 2007).

In *Massachusetts vs. EPA*, 549 U.S. 497 (2007), the U.S. Supreme Court considered the relationship between EPA’s regulation of GHGs under the Clean Air Act and NHTSA’s regulation of fuel economy under EPCA. The Court determined that the two regulatory schemes were not in conflict, but rather were overlapping and complementary.

EPA has been charged with protecting the public’s “health” and “welfare,” a statutory obligation wholly independent of DOT’s mandate to promote energy efficiency. The two obligations may overlap, but there is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency. *Id.*, 549 U.S. at 531-329 (*internal citations omitted*).

While not expressly addressing California’s authority to regulate GHG emissions under CAA § 209(b), the same logic the Supreme Court applied to EPA’s regulation of GHGs under CAA § 202 applies to California GHG standards authorized under CAA § 209(b).

In addition to the Supreme Court’s decision in *Massachusetts vs. EPA*, which can be viewed as dispositive of the issue, two federal district courts have specifically rejected auto industry claims that California’s GHG standards are preempted by EPCA, finding that EPA-approved California standards were federal standards that EPCA requires NHTSA to take into consideration in setting fuel economy standards. *Green Mountain Chrysler Plymouth Dodge Jeep v. Crombie*, 508 F. Supp. 2d 295, 346 (D. Vt. 2007). (“[I]n 1975 when EPCA was passed, Congress unequivocally stated that federal standards included EPA-approved California emissions standards.”); *Central Valley Chrysler-Jeep, Inc. v. Goldstene*, 529 F. Supp. 2d 1151, 1173 (E.D. Cal. 2008) (“[T]here is nothing in statute or in case law to support the proposition that a regulation promulgated by California and granted waiver of preemption under section 209 is anything other than a ‘law of the Government’ whose effect on fuel economy must be considered by NHTSA...”).

Finally, the California GHG standards and ZEV regulation do not, as NHTSA asserts,<sup>17</sup> conflict with or otherwise stand as an obstacle to EPCA’s objectives, and are not, therefore, preempted by implication. The goals and objectives of the Clean Air Act to protect public health and welfare are aligned with EPCA’s goal to establish maximum feasible fuel economy standards.

## **V. THERE IS NO LEGAL BASIS FOR REVOCATION OF CALIFORNIA’S EXISTING GHG WAIVER**

In recognition of California’s longstanding and pioneering program, Congress uniquely empowered the state, subject to a presumptive waiver from EPA, to continue to establish its own emissions standards for new automobiles. If California determines that its standards, in the aggregate, will be at least as protective of public health and welfare as applicable federal standards, under § 209(b) EPA must grant the waiver unless EPA finds: (1) that California’s determination was arbitrary and capricious, (2) that California does not need state standards to meet compelling and extraordinary conditions, or (3) that state standards and accompanying enforcement procedures are not consistent with the Clean Air Act. Neither the text of

---

<sup>17</sup> 83 Fed. Reg. at 43,237 – 238.

§ 209(b), nor the legislative history support EPA’s authority to revoke a waiver that has been granted to California; nor has EPA ever revoked a waiver.

Ironically, despite having no clear authority to revoke a waiver, EPA applies the same criteria the agency relied on to approve the waiver to now justify revocation of the waiver. Namely, that there are no “compelling and extraordinary conditions” unique to California for which the GHG standards and ZEV Rule provide a remedy, and that the GHG standards and ZEV regulation are technologically infeasible, and therefore, inconsistent with § 202(a). EPA also states its intention to revoke California’s existing waiver in the event NHTSA makes a determination that California’s GHG standards and ZEV regulation are preempted by EPCA.<sup>18</sup>

Even assuming for the sake of argument that Congress empowered EPA to revoke an existing waiver, the burden of justifying revocation rests with EPA. The United States Court of Appeals for the District of Columbia has explained that EPA “is not to overturn California’s judgment lightly,” that California must have “the broadest possible discretion in selecting the best means to protect the health of its citizens,” and may “blaze its own trail with a minimum of federal oversight.” *Motor & Equip. Mfrs’ Ass’n v. Nichols*, 142 F.2d 449, 463 (D.C. Cir. 1998). California’s standards clearly satisfy the § 209 (b) criteria, and as EPA has previously acknowledged, it lacks authority to consider EPCA preemption in acting on a waiver request.

#### **A. California is not required to make a GHG-specific demonstration of “compelling and extraordinary conditions.”**

EPA proposes to revoke California’s GHG emission waiver on the basis that § 209(b) requires a demonstration of compelling and extraordinary conditions that justify state regulation of GHG emissions. EPA asserts that: (1) the atmospheric level of GHGs in California is not affected by local conditions; (2) the impacts of global climate change in California are similar to the impacts in the rest of the nation; and (3) the California GHG standards and ZEV regulation will not meaningfully address the global problem, thereby precluding such a demonstration.<sup>19</sup>

First, EPA’s authority to regulate GHG emissions from new motor vehicles was definitively settled more than a decade ago by the United States Supreme Court in *Massachusetts v. EPA*, 549 U.S. 497 (2007). Under CAA § 209(b), California’s authority to regulate emissions from new motor vehicles is at least as broad as EPA’s authority. There is nothing in the statutory text of § 209(b) that suggests otherwise.

Second, in proposing a pollutant-specific approach to determining the existence of compelling and extraordinary conditions that justify a waiver, EPA has abandoned its decades-old interpretation of § 209(b) as requiring consideration of the need for California’s standards “*in the aggregate*.” Under that section, California is entitled to a waiver if the state’s standards “will be, *in the aggregate*, at least as protective of public health and welfare as applicable federal standards.”

EPA has consistently interpreted § 209(b) to preclude conditioning a waiver on a pollutant-specific demonstration of compelling and extraordinary conditions. 78 Fed. Reg. 58,090, 58,100-01 (Sept. 20, 2013). In EPA’s own words: “to find that the ‘compelling and extraordinary conditions’ test should apply to each pollutant would conflict with the amendment to section 209 in 1977 allowing California to select standards ‘in the aggregate’ at least as protective as federal standards.” 49 Fed. Reg. 18,887, 18,890 (May 3, 1984). The current EPA proposal offers no reasonable basis for this fundamental deviation from the Agency’s past

---

<sup>18</sup> 83 Fed. Reg. at 43,240.

<sup>19</sup> 83 Fed. Reg. at 43,245.

interpretation and practice of considering California's need for its clean cars program as a whole when determining eligibility for a pollutant-specific waiver.

Third, EPA wrongly asserts that California's GHG emission standards and ZEV regulation cannot meaningfully address climate change. It is true that the effects of climate change are global, and that no one state (or nation), acting alone, can solve the entire problem. The causes of climate change, however, operate on a much smaller scale, requiring collective action by multiple levels of government to reduce emissions of pollutants that contribute to this problem. In this regard, California's motor vehicle GHG emission standards, which have been adopted by 12 other states, serve as a paradigm for the kind of collective state government action that is needed to address climate change. Under EPA's logic, it would be futile for any local government, state, or even country, to attempt any action to address climate change. The fact that national and subnational governments around the world have committed to take action is proof that EPA's view is not widely shared.

EPA's assertion that California's GHG standards and ZEV regulation would have only a *de minimis* effect on climate change understates the impact that collective action by California and the Section 177 States can have on GHG emissions. These 13 states represent 118 million people, collectively have the third largest economy in the world with a GDP of \$8.1 trillion, and comprise more than one-third of the U.S. new car market. Light-duty vehicles are the largest contributor to GHG emissions in these states. Further, the California GHG standards and ZEV regulation will provide economies of scale that demonstrate the viability of electric and other advanced vehicle technologies for future application in the international market, thereby resulting in an even greater global impact.

**B. California's GHG standards and ZEV regulation are technologically feasible, and therefore, consistent with § 202(a).**

EPA asserts that the existing California GHG standards do not satisfy § 209 (b)(1)(C) because they are technologically infeasible, and therefore, inconsistent with CAA § 202(a). EPA further claims that California's waiver application emphasized the importance of ZEV technologies in meeting the GHG standards, but because market penetration of ZEV technologies has not occurred at the projected rate, automakers have not been provided with adequate lead-time to meet the standards.<sup>20</sup>

First, as discussed above in Section I, EPA's July 2016 Technical Assessment Report (TAR) and California's midterm review fully support the technical feasibility of the existing GHG standards without heavy reliance on electric vehicle technology.

Second, the GHG standards have been on the books since 2012, providing significant notice to automobile manufacturers to ramp up production and sales of electric vehicles. For the first half of 2018, plug-in electric vehicles represented 6.2 percent of light-duty vehicle sales in California. Using the mid-range scenario from California's Advanced Clean Car Midterm Review, the estimated sales percentage of ZEVs needed to comply with this regulation across all 10 ZEV States is 7.5 percent of total new light-duty vehicle sales in 2025. Consequently, California is already 80 percent of the way there.

Current sales rates for ZEVs in the Section 177 States do not render the existing GHG standards technologically infeasible, nor do they affect the ability of automakers to achieve compliance with the existing standards. As noted above, EPA's technical assessment concluded that automakers could achieve compliance with the existing standards *without* heavy reliance on electric vehicle technologies. That said,

---

<sup>20</sup> 83 Fed. Reg. at 43,250.

lower sales of ZEVs in the Section 177 States relative to California are largely attributable to two factors that are within the control of automakers – the lack of availability of ZEV models in the Section 177 States, and the failure of automakers to meaningfully invest in marketing their electric vehicles in these states.

NESCAUM has periodically tracked and documented availability of ZEVs in key Northeast and California markets. See Attachment 2 for the most recent availability analysis. These assessments have consistently shown that many electric vehicle models have either not been available at all in Northeast markets, or are available only in very low numbers. The historic lack of availability is attributable in significant part to the “travel provision” in the ZEV regulation, which until its expiration at the end of 2017, provided automakers with compliance credits in all Section 177 States for battery electric vehicles (BEVs) placed in California. (The travel provision remains in effect for hydrogen fuel cell vehicles through 2025.) With the expiration of the travel provision for BEVs, automakers now have the same regulatory incentive to sell ZEVs in the Section 177 States as they do in California.

Even as automakers continue to expand their electric vehicle offerings, the industry has failed to make a meaningful investment in marketing these advanced technology cars. NESCAUM’s comparative analysis of automaker advertising expenditures on top-selling gasoline cars and electric vehicles based on 2015 data and updated with 2017 data (Attachment 3), reveals a continuing dramatic disparity between advertising expenditures on gasoline and electric models. There is no reason to expect that the current geographic sales differential will continue once electric vehicles become widely available for sale and are effectively marketed in the Section 177 States.

### **C. EPA is without authority to revoke California’s waiver based on EPCA preemption.**

EPA also proposes to revoke California’s waiver in the event of a final determination by NHTSA that California’s GHG standards and ZEV regulation are preempted by EPCA. If, in fact, Congress has implicitly authorized EPA to revoke an existing waiver, such revocation could only be based on grounds that would justify denial of a waiver in the first instance.

The narrow grounds on which EPA is authorized to deny a waiver request under § 209(b) do not include preemption under other federal laws. As the D.C. Circuit has explained in the context of § 209(b), “there is no such thing as a ‘general duty’ on an administrative agency to make decisions based on factors other than those Congress expressly or impliedly intended the agency to consider.” *Motor & Equipment Mfrs’ Ass’n v. EPA*, 627 F.2d 1095, 1116 (D.C. Cir. 1979). It is a basic principle of administrative law that an agency action is “arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider.” *Motor Vehicle Mfrs’ Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

Although the 1977 Amendments to the Clean Air Act expressly cross-referenced EPCA in various waiver provisions,<sup>21</sup> Congress omitted any reference to EPCA in the 1977 Amendments to § 209(b). Indeed, EPA has previously acknowledged that consideration of EPCA in conjunction with a waiver request is outside the scope of its permissible review under the Clean Air Act. *See, e.g.,* 78 Fed. Reg. 2,112, 2, 145 (Jan. 9, 2013) (“evaluation of whether California’s GHG standards are preempted, either explicitly or implicitly, under EPCA, is not among the criteria listed under section 209(b).”); 74 Fed. Reg. at 32,783 (July 8, 2009) (“EPA may only deny waiver requests based on the criteria in section 209(b), and inconsistency with EPCA is not one of those criteria.”). EPA has offered no explanation for its departure from its past interpretation and practice.

---

<sup>21</sup> *See, e.g.*, for example, § 202(b)(3)(C) (NOx waiver conditioned on potential to meet or exceed average fuel economy standard under EPCA).

EPA can cite no legal authority authorizing it to revoke California's CAA waiver request on the basis of EPCA preemption and none exists. That is dispositive: The Supreme Court has explained that at least two requirements must be met for an agency to preempt state law: "First, an agency literally has no power to act, let alone pre-empt the validly enacted legislation of a sovereign State, unless and until Congress confers power upon it. Second, the best way of determining whether Congress intended the regulations of an administrative agency to displace state law is to examine the nature and scope of the authority granted by Congress to the agency." *City of New York v. FCC*, 486 U.S. 57, 66 (1988). Here, EPA has no statutory authority to decline to issue (or to revoke) a CAA waiver on the basis of claimed preemption under EPCA, and the "nature and scope of the authority granted by Congress" to EPA further indicate that EPA lacks such authority.

## **VI. SECTION 177 OF THE CLEAN AIR ACT DOES NOT LIMIT THE ABILITY OF STATES TO ADOPT CALIFORNIA GHG STANDARDS**

Enacted as part of the 1977 Amendments to the Clean Air Act, § 177 provides states with authority to control motor vehicle emissions – authority previously reserved to the federal government and California. Section 177 is an important component of the suite of Clean Air Act tools that provides states with enhanced flexibility and authority to address their air pollution challenges. It allows states to avail themselves of tougher California motor vehicle standards by "promulgat[ing] regulations requiring vehicles sold in their state to be in compliance with California's emission standards or to 'piggyback' onto California's preemption exemption." See H.R. Rep. No. 294, 309 (1977).

Unlike much of the Clean Air Act that authorizes EPA to oversee state implementation, § 177 is carefully drawn to empower states to decide for themselves whether to adopt California's standards, without giving EPA any additional oversight role. No waiver or other approval from EPA is needed and states, not EPA, are responsible for implementing and enforcing the standards. This authority has been in place for more than 40 years and has been a key component of Northeast state air pollution control programs, in some cases for decades, enabling states to more effectively tackle transportation sector emissions.

Through adoption of the SAFE Vehicles Rule, EPA now proposes a major retraction of state authority over transportation sector GHG emissions by declaring that the scope of § 177 is limited to standards "designed to control criteria pollutants to address NAAQS nonattainment."<sup>22</sup> EPA bases this argument on a superficial and strained contextual reading of § 177's title and placement within the nonattainment planning provisions of Part D of Title I, while ignoring the plain language of § 177 and the broader structure and purpose of the Clean Air Act.

### **A. There is no textual limitation on regulation of GHG emissions in § 177.**

The text of § 177 contains no limitation on the types of pollutants for which motor vehicle emission standards are authorized. Rather, it permits regulation of any automotive emissions that are regulated under Title II of the Act ("Emission Standards for Moving Sources"). Section 177 provides:

§7507. New motor vehicle emission standards in nonattainment areas

Notwithstanding section 7543(a) of this title, any State with plan provisions approved under this part [Title I, Part D (Plan Requirements for Nonattainment Areas)] may adopt and

---

<sup>22</sup> 83 Fed. Reg. at 43,253.

enforce for any model year *standards relating to control of emissions from new motor vehicles or new motor vehicle engines* and take such other actions as are referred to in section 7543(a) of this title respecting such vehicles if--

- (1) such standards are identical to the California standards for which a waiver has been granted for such model year, and
- (2) California and such State adopt such standards at least two years before commencement of such model year (as determined by regulations of the Administrator). (emphasis added)

While Congress limited state authority under § 177 to places with plan provisions approved under Part D, Congress did not impose any limitations on the type of pollutants subject to regulation. The plain language of § 177 clearly allows for such states to adopt motor vehicle regulations promulgated by California, so long as such standards are identical to California's and adopted with sufficient lead-time. Nothing in the text of § 177 suggests that states are barred from adopting California's GHG standards.

Moreover, Congress employed the same language in § 177 that it utilized to authorize California's regulation of motor vehicle emissions in § 209(b)(1) ("standards... for the *control of emissions from new motor vehicles or new motor vehicle engines*"), providing a clear indication that it intended co-extensive grants of authority to California and the Section 177 States.<sup>23</sup> These parallel grants of state authority to regulate motor vehicle emissions under §§ 209(b) and 177, are in turn, governed by § 202 of the Clean Air Act. In that regard, the Supreme Court's decision in *Massachusetts v. E.P.A.* has left no doubt that § 202 authorizes the regulation of GHG emissions from motor vehicles. Thus, in addition to ignoring the plain text of § 177, EPA overlooks the statutory backdrop and interplay between §§ 177, 209(b) and 202, and incorrectly concludes that § 177 does not apply to GHGs.<sup>24</sup>

## **B. The title and location of § 177 address geographic areas combatting pollution, not pollutants.**

Nor does the title of § 177 ("New motor vehicle emission standards in nonattainment areas") provide support for EPA's newly adopted narrow interpretation of state authority under § 177. The title's reference to "standards in nonattainment areas" does not, as EPA contends, operate as a limitation on the types of pollutants that states may regulate, but rather as a limitation on state geographic areas for which the adoption of California motor vehicle emission standards is authorized in the first instance. Under § 177, states with an approved State Implementation Plan to achieve or maintain a NAAQS are eligible to adopt California's standards. This includes states that are currently in nonattainment, states that were, but are no longer in nonattainment, and states in the Ozone Transport Region established under § 184 of the Act. The abbreviated reference to "nonattainment areas" in the title is merely a shorthand way of referencing states that are, have

---

<sup>23</sup> Where Congress intended to limit the types of pollutants subject to particular regulatory requirements, it did so. See, e.g., 42 U.S.C. § 7412 ("hazardous air pollutants"); 42 U.S.C. § 7476 ("other pollutants"). In contrast to Section 177, in other sections of the Act that discuss nonattainment, Congress has specifically addressed certain pollutants. See 42 U.S.C. § 7407 ("Air quality control regions") (discussing ozone, carbon monoxide, PM-10, lead, and regional haze).

<sup>24</sup> This textual reading is consistent with the case law interpreting § 177 on this issue. In 1994, the Second Circuit rejected challenges to New York's adoption of California's standards requiring the sale of certain numbers of zero emission vehicles. *Motor Vehicle Mfrs. Ass'n v. NYSDEC*, 17 F.3d 521, 536-37 (2d Cir. 1994). More recently, another court observed that Vermont and other Section 177 States permissibly adopted California's GHG emission standards pursuant to § 177. *Green Mountain Chrysler Plymouth Dodge Jeep v. Crombie*, 508 F. Supp. 2d 295, 302 & n.5, 338 (D. Vt. 2007). EPA does not acknowledge, much less distinguish, these earlier decisions addressing the scope of § 177.

been, or are treated as if they are in nonattainment. EPA has impermissibly read “nonattainment pollutants” into a statutory title that discusses “nonattainment areas.”<sup>25</sup>

Likewise, the location of § 177 in Title I, Part D, rather than in Title II, is not dispositive of the types of pollutants states may regulate under § 177. The more harmonious logic is found in that placement’s bearing on *which states* may regulate any pollutant from motor vehicles in their state. While the location of a section within the statutory framework may provide some context as to congressional intent, courts are bound to take a broader view in interpreting statutes. *Food and Drug Admin. v. Brown and Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (a court must interpret a statute as a “symmetrical and coherent regulatory scheme and fit, if possible, all parts into a harmonious whole”).

In fact, a similar waiver provision located in § 209(e) authorizes states with approved Title I Part D plan provisions to “adopt and enforce standards relating to control of emissions from nonroad vehicles or engines.” EPA does not explain how it reconciles its interpretation of § 177 authority with the § 209(e) waiver provision. Presumably, under EPA’s logic, § 209 would permit regulation of GHGs because it is located in Title II (“Emissions Standards for Moving Sources”), but this would lead to the absurd result that states could regulate GHG emissions from nonroad vehicles, but not light-duty vehicles, a result that Congress could not have intended.

EPA has, in fact, overlooked a perfectly logical reason for the placement of § 177 in Part D of Title I that is unrelated to limitations on the types of pollutants that states may regulate. It is simply that Congress intended to confer state authority to regulate motor vehicle emissions on states with plans approved under Part D. Thus, it is reasonable and entirely appropriate that Congress would choose to locate such authority in the Title I provisions relating to state nonattainment plans.

### C. The Proposed Rule may violate § 177 by resulting in the creation of a “third car.”

By prohibiting states from adopting California’s GHG standards, the SAFE Vehicles Rule could have the effect of creating a “third car,” an outcome that is expressly prohibited by § 177. In the 1990 amendments to the Clean Air Act, Congress added new language to § 177 that reinforces the “identicality” requirement and ensures that states cannot adopt or enforce California’s standards in a way that would result in more than “two types of cars in this country.” *Am. Auto. Mfrs. Ass’n v. Comm’r, Massachusetts Dep’t of Envtl. Prot.*, 998 F. Supp. 10, 13 (D. Mass. 1997), *aff’d sub nom. Ass’n of Int’l Auto. Mfrs., Inc. v. Comm’r, Mass. Dep’t of Envtl. Prot.*, 208 F.3d 1 (1st Cir. 2000) (“In short, there can only be two types of cars in this country: “California” cars or “federal” cars.”). The so-called “third-vehicle” prohibition provides:

Nothing in [section 177 or in subchapter II (emissions standards for moving sources)] shall be construed as authorizing any such State. . . to take any action of any kind to create, or have the effect of creating, a motor vehicle or motor vehicle engine different than a motor vehicle or engine certified in California under California standards (a “third vehicle”) or otherwise create such a “third vehicle.” 42 U.S.C. § 7507 (emphasis added).

---

<sup>25</sup> Even if EPA’s reading of the title of § 177 was somehow correct, it is a well-established principle of statutory construction that the titles and headings of a statute cannot override the plain meaning of statutory text. *Whitman v. Am. Trucking Associations*, 531 U.S. 457, 483 (2001) (citing *Bhd. of R. R. Trainmen v. Baltimore & O. R. Co.*, 331 U.S. 519, 528–29 (1947) (“Factors of this type have led to the wise rule that the title of a statute and the heading of a section cannot limit the plain meaning of the text.”)).

In the event that EPA and NHTSA’s other arguments attacking California’s authority fail, the Proposed Rule would prohibit Section 177 States from adopting California GHG standards pursuant to § 177. Accordingly, the Proposed Rule creates the potential for three sets of cars: (1) those regulated under the federal standards; (2) those regulated under the California standards; and (3) those regulated under Section 177 State standards for non-GHG pollutants. This would have the absurd result of preventing Section 177 States from adopting *any* of the California standards, an outcome that is patently contrary to Congressional intent.

For all of these reasons, EPA’s novel interpretation of § 177 as restricting the right of states to adopt California’s GHG standards does not comport with the statutory text, congressional intent, or purpose of the Clean Air Act.

#### **D. State GHG standards are designed, in part, to control criteria pollutants.**

Finally, even if EPA were to prevail in its interpretation of § 177 as limiting states to adoption of standards that are designed to control criteria pollutants, EPA still could not preclude state regulation of GHG emissions because of the established link between higher atmospheric temperatures caused by GHG emissions and the formation of ozone. Decades of technical analysis, including EPA studies, show that a reduction in GHGs does, in fact, have a beneficial effect on addressing NAAQS nonattainment. Moreover, as discussed below, the ZEV regulation requires production and sale of vehicles with reduced or no tailpipe criteria emissions.

In the Proposed Rule, EPA suggests that California’s GHG regulations are not designed to control criteria pollutants to address NAAQS nonattainment. 83 Fed. Reg. 43,253. In fact, California has specifically designed its GHG standards, in part, to address nonattainment of ambient air quality standards for criteria pollutants. California has frequently referenced the science to support GHG standards as a necessary method for controlling ozone and particulate matter pollution, and recognized that the State’s ability to reduce nonattainment days for ozone and wildfire-caused particulate matter depends on its ability to reduce GHG emissions. *See, e.g., California Air Resources Board, Reconsideration of Previous Denial of a Waiver of Preemption*, Docket No. EPA-HQ-OAR-2006-0173-9006 (Apr 6, 2009) (“[C]limate change will likely slow progress toward attainment of health based air quality standards and increase pollution control costs by accentuating the potential for high ozone and high particulate days...”); *EPA Public Comment Hearing Regarding Waiver Request for California’s Advanced Clean Car Program*, Docket No. EPA-HQ-AOR-2012-0562 at 17-19 (Sep 19, 2012) (addressing the exacerbating effect of GHGs on ozone and particulate matter pollution); *Public Hearing, In the Matter of California State Motor Vehicle Pollution Control Standards; Request for Waiver of Federal Preemption*, Docket No. EPA-HQ-OAR-2006-0173 (May 30, 2007) at 27 (“Even at the low to mid-range projections for global warming temperature increases California faces dozens of extra unhealthy days conducive to ozone formation”).

EPA has repeatedly expressed its own understanding that GHG standards should be viewed as a strategy to control criteria pollutants to address NAAQS nonattainment. EPA has previously asserted that “[c]limate change is expected to increase regional ozone pollution, with associated risks in respiratory illnesses and premature death.” 74 Fed. Reg. 66,525 (“There is now consistent evidence from models and observations that 21st century climate change will worsen summertime surface ozone in polluted regions of North America compared to a future with no climate change.”); ([W]hile ozone, “is a local or regional air pollution problem, the impacts of global climate change can nevertheless exacerbate this local air pollution problem.”).

EPA has also previously acknowledged that California’s GHG standards are appropriately designed and intended to reduce levels of criteria pollutants. *See, e.g.*, 74 Fed. Reg. at 32,763 (“There is a logical link between the local air pollution problem of ozone and California’s desire to reduce GHGs as one way to

address the adverse impact that climate change may have on local ozone conditions. Given the clear deference that Congress intended to provide California on the mechanisms it chooses to use to address its air pollution problems, it would be appropriate to consider its GHG standards as designed in part to help address a local air pollution problem....").

Moreover, apart from the impact of GHG emission reductions on atmospheric temperatures that contribute to the formation of ozone, state ZEV regulations adopted pursuant to § 177 have a direct impact on air quality by lowering or eliminating altogether, tailpipe emissions of smog-forming pollutants and particulate matter. EPA's current strategic plan for 2018 – 2021 places a high priority on reducing the number of ozone and other nonattainment areas in the nation.<sup>26</sup> Ironically, EPA's proposed curtailment of state authority to adopt motor vehicle GHG standards and ZEV requirements eliminates an important tool to achieve EPA's stated goal.

Even if an inquiry into the relationship between GHG emission reductions and ozone nonattainment was relevant, for all of the above reasons, EPA's assertion that GHG standards are not designed to address NAAQS nonattainment is without any foundation and cannot be a basis to preclude state adoption of GHG standards under § 177.

## VII. CONCLUSION

Addressing the threat of climate change is no longer theoretical – it is a current and omnipresent fact of life. In our states and across the nation, transportation sector GHG emissions stand as the single biggest hurdle to avoiding the worst effects of climate change. Our states are committed to mitigate this threat with all the tools that are available. State authority to regulate GHG emissions under §§ 209(b) and 177 of the Clean Air Act is clear and is a critical component of our states' climate action strategy. The SAFE Vehicles Rule would reverse the nation's progress toward a clean, low-carbon transportation sector, and is a direct challenge to the state sovereignty of California and the Section 177 States. For all the reasons discussed above, we urge EPA and NHTSA to withdraw the Proposed Rule.

Sincerely,



Arthur N. Marin  
Executive Director

---

<sup>26</sup> *Working Together, FY 2018-2022 U. S. EPA Strategic Plan*, February 2018 ("Strategic Measure-1: [b]y September 30, 2022, reduce the number of nonattainment areas from 166 to 101").

## **Attachment 1**

### **Partial List of State Policies and Programs to Promote ZEVs**

#### **Connecticut:**

- ZEV Program
- CHEAPR (Connecticut Hydrogen and Electric Automobile Purchase Rebate): This program offers incentives of up to \$5,000 for Connecticut residents who purchase or lease a new eligible battery electric, plug-in hybrid electric or fuel cell electric vehicle. There are currently over 30 eligible vehicles available and the list continues to grow as manufacturers release new models.
- EV Connecticut Charger Incentives: Funds are made available for municipalities, state agencies and private businesses to install EV chargers.
- Connecticut Green Bank, in partnership with select local lenders and car dealerships, offers low-interest financing to help you go electric with your next car.
- Clean Energy Communities: Cities and towns that have joined the Clean Energy Communities program are eligible to qualify for “Bright Idea Grants” and to earn and redeem their energy efficiency and renewable energy points to help pay for energy projects such as EV charging station equipment.
- Reduced Registration Fee for Electric Vehicles: Electric vehicles are eligible for a reduced biennial vehicle registration fee.
- Public Electric Vehicle Supply Equipment (EVSE) Requirements: Owners and operators of public EVSE that require payment must allow multiple payment options that allow access by the public and should not require users to pay a subscription fee or obtain a membership of any kind. Owners and operators can impose restrictions on the amount of time a vehicle can use the EVSE. (Connecticut General Statutes 16-19ggg)

#### **Maine:**

- ZEV Program
- Maine’s Revised Statutes Title 35-A Section 3143 provides for deployment and integration into the electric system of advanced electric storage and peak-reduction technologies, including plug-in electric and hybrid electric vehicles.
- EV Charging RFP: Through this RFP, Efficiency Maine seeks to create the core of an EV fast-charging infrastructure in Maine through public-private partnerships to build EV fast-charging stations at three selected service plazas on I-95 and in four priority locations on major state roads that connect I-95 to New Hampshire and Quebec along Maine’s western border.

#### **Massachusetts:**

- ZEV Program: The population of electric vehicles (EVs) in Massachusetts has increased 732% from July 31, 2015 to June 30, 2018, from 3,333 to 15,111 EVs.

- Massachusetts Offers Rebates for Electric Vehicles (MOR-EV): This program provides rebates of up to \$2,500 for the purchase or lease of zero-emission and plug-in hybrid light-duty vehicles. Since 2014, the MOR-EV program has provided \$20.7595 million in rebates for 10,210 vehicles.
- Massachusetts Electric Vehicle Incentive Program (MassEVIP) Fleets: Administered by Massachusetts Department of Environmental Protection, this open grant program provides incentives to Massachusetts cities, towns, state agencies, and public colleges and universities to acquire electric vehicles and charging stations. Grants help offset the higher initial costs of these advanced technologies. Since 2013, the MassEVIP Fleets effort has utilized \$2.66 million to fund 267 electric vehicles (EVs) and 92 publicly accessible EV charging stations.
- Massachusetts Electric Vehicle Incentive Program (MassEVIP) Workplace Charging: Provides incentives to employers with 15 or more employees across the Commonwealth for the acquisition of Level 1 and Level 2 EV charging stations. Since 2014, the MassEVIP Workplace Charging Program has utilized \$1.3 million to fund 523 EV Charging Stations with 892 ports at 257 separate street addresses.
- Mass Drive Clean campaign: This campaign is the first in the nation state sponsored ZEV test drive program to help educate consumers about the specific benefits of these vehicles and provide opportunities for drivers to experience ZEVs first-hand.
- Public Electric Vehicle Supply Equipment (EVSE) Requirements: Owners and operators of public EVSE that require payment must provide payment options that allow access by the public and should not require users to pay a subscription fee or obtain a membership of any kind. (*An Act Promoting Zero Emission Vehicle Adoption*, The Acts of 2016, Chapter 448, approved January 13, 2017,  
<https://malegislature.gov/Laws/SessionLaws/Acts/2016/Chapter448>)
- Zero Emission Vehicle (ZEV) Parking Space Regulations: A city or town may restrict certain parking areas for ZEVs, which includes all-electric vehicles, plug-in hybrid electric vehicles, and fuel cell vehicles. (*An Act Promoting Zero Emission Vehicle Adoption*, The Acts of 2016, Chapter 448, approved January 13, 2017,  
<https://malegislature.gov/Laws/SessionLaws/Acts/2016/Chapter448>)
- “MassEVolves” is a public/private partnership recently begun aimed at recognizing leaders in the transition to clean transportation in the Commonwealth of Massachusetts  
[\(http://www.massevolves.org/\)](http://www.massevolves.org/).

## New Hampshire:

- Executive Order 2016-03 – Directs state agencies to pursue opportunities to procure electric vehicles (EV) and plug-in hybrid vehicles for use in the state fleet and by installing EV charging infrastructure or supply equipment (EVSE) for use by state agencies.
- New Hampshire Revised Statutes Annotated (NH RSA) 236:133 – Establishes requirements for uniform EV charging directional signage and universal consumer access and payment options, exempts EVSE providers from regulation as utilities and directs the New Hampshire Public Utilities Commission to consider time-of-use rates and other issues related to deployment of EVSE.
- NH RSA 236:134 – Establishes prohibitions and restrictions on parking spaces equipped with charging stations and assessment of EVSE network subscription or membership fees to ensure broad consumer access to charging stations.

- NH RSA 4-G:1 – Establishes Electric Vehicle Charging Stations Infrastructure Commission to develop recommendations on a range of state policy and funding initiatives to foster development of a robust state EVSE charging network.

## New Jersey

- ZEV Program Sales Tax Exemption for ZEVs: The New Jersey Sales and Use Tax Act provides a sales and use tax exemption for ZEVs.
- It Pays to Plug In Workplace Charging Grant Program: provides grants to employers to offset the cost of purchasing and installing electric vehicle charging stations. This program is designed to support and encourage employees to purchase and drive electric vehicles to work, which reduces vehicle emissions. Up to \$250 per Level 1 charging station and up to \$5,000 per single port Level 2 charging station or \$6000 per dual port Level 2 charging station.
- High Occupancy Vehicle (HOV) Lane Exemption: drivers of a qualifying hybrid engine vehicle can use the stretch of HOV lane from Interchange 11 (in the Township of Woodbridge) to Interchange 14 (in the City of Newark), regardless of how many passengers are in the car.
- NJ Charging Challenge - Electrify Your Workplace: This program recognizes employers in New Jersey that are making their workplaces “Electric Vehicle-Ready,” celebrates their successes, and encourages other employers to follow their lead.

## New York:

- ZEV Program
- Drive Clean Rebate for Plug-In Electric Cars: This program offers electric car buyers a rebate of up to \$2,000 for new purchases.
- ChargeNY: This program is helping to get more plug-in hybrid and battery-powered cars on the road, by supporting the installation of charging stations. The State aims to install 10,000 EV charging ports to support an expected 30,000-40,000 EVs on the road by 2021.
- Charge Ready NY: Through this program, the New York State Energy Research and Development Authority (NYSERDA) provides rebates of \$4,000 per charging port for Level 2 charging stations installed at public, workplace, and multi-unit dwelling parking lots.
- Clean Fleets NY: This program will ensure that at least 50% of new, administrative-use vehicles will be ZEVs, including battery electric, plug-in electric hybrid, or hydrogen fuel cell vehicles.
- Municipal ZEV Rebate Program: This program provides rebates for costs associated with the purchase or lease (for at least 36 months) of eligible clean vehicles, and installation of eligible infrastructure that supports public use of clean vehicles. To be eligible, the primary purpose of a facility must be the charging or fueling of clean vehicles by the public.
- Clean Pass Program: This program allows eligible low-emission, energy-efficient vehicles to use the 40-mile Long Island Expressway High Occupancy Vehicle (LIE/HOV) lanes, regardless of the number of occupants in the vehicle.
- Green Pass Program: This multi-state New York, New Jersey and Pennsylvania program offers a toll discount for electric vehicles.

- EVolveNY: This New York Power Authority program will invest up to \$250 million in EV infrastructure, primarily DC fast chargers, by 2025.
- New York VW Beneficiary Mitigation Plan: This draft plan for expenditure of VW Appendix D settlement funds includes up to \$19.2 million for light-duty electric vehicle charging infrastructure.
- Electric Vehicle Charging Station Tax Credit: This state tax credit, provides a 50% tax credit up to \$5,000 per EV charging station.
- Electric Vehicle Research and Development: NYSERDA is investing \$12 million in electric vehicle research and development efforts between 2017 and 2021.
- The Green Pass Program: This program provides a 10% discount on NYS Thruway tolls for eligible low-emission, energy-efficient vehicles.

## **Rhode Island:**

- ZEV Program
- Charge Up!: This program offers incentives to state agencies and municipalities interested in installing electric vehicle supply equipment (EVSE or charging stations) at publicly-accessible facilities, and supports the purchase or lease of electric vehicles (EVs) for integration into public sector fleets. Qualified public sector applicants may be eligible to receive a total award of up to \$75,000 to support their adoption of clean transportation solutions.
- Electric Vehicle Emissions Inspection Exemption: Vehicles powered exclusively by electricity are exempt from state emissions control inspections.
- Zero Emission Vehicle (ZEV) Acquisition Requirements: By 2025, 25% of state motor vehicle acquisitions must be ZEVs.
- Plug-In Electric Vehicle (PEV) Charging Parking Restriction: No person can stop, stand, or park a vehicle in a parking space where there is a PEV charging station and signage indicating that parking is for PEV charging only, unless the vehicle is connected to the charging equipment.

## **Vermont:**

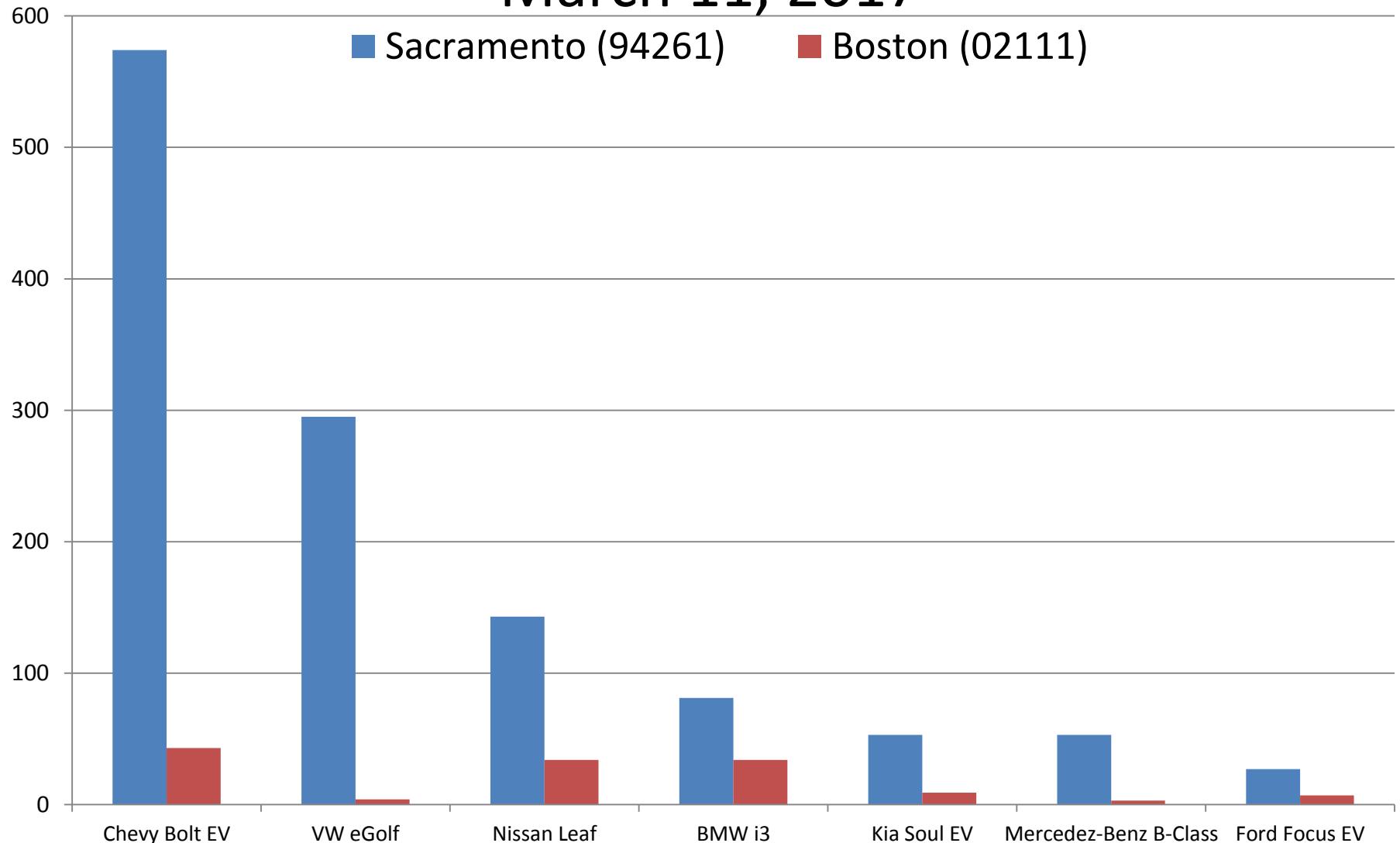
- ZEV Program
- Vermont ZEV Action Plan: In 2013, Vermont and seven other states agreed to create a collaborative Zero Emission Vehicle program aimed at putting 3.3 million ZEVs on the road by 2025. A Vermont Zero Emission Vehicle Action Plan has been created in response, which includes Vermont-specific actions that address the goals put forth in the eight-state action plan. As a result of the Vermont ZEV Action Plan, the Guidance for Requirements to be Included in State Grants for Publicly Funded Electric Vehicle Supply Equipment (EVSE) was created.
- Drive Electric Vermont (DEV): A statewide coalition of stakeholders from the business, nonprofit, and government sectors dedicated to promoting the spread of electric transportation in Vermont. DEV provides information (buying guides, incentives, charging station locator, etc.) and hosts events and demo days around the state to educate Vermonters about electric vehicle technology and its benefits to Vermont's transportation sector.

- EV-Ready Buildings: Vermont's Building Stretch Code, requires multifamily developments greater than 10 units to make 4% of parking spaces EV-ready (level 1 or level 2 outlets) and commercial establishments must meet varied EV ready requirements for parking depending on the type of commercial activity and total parking spaces.
- Tier III requirements: To meet their Vermont Renewable Energy Standard Tier III obligations to reduce customer fossil fuel use, electric utilities are offering a variety of purchase incentives for electric vehicles and charging equipment.
- EVSE Grant Program: This program offers grants for Level 2 and DCFC stations for downtowns and village centers, highway corridors, public transit stops, major tourist destinations, colleges and universities, hospitals, public park-and-rides, workplaces and multi-family housing.

# **Attachment 2**

# New Vehicles Available within 100 miles:

## March 11, 2017

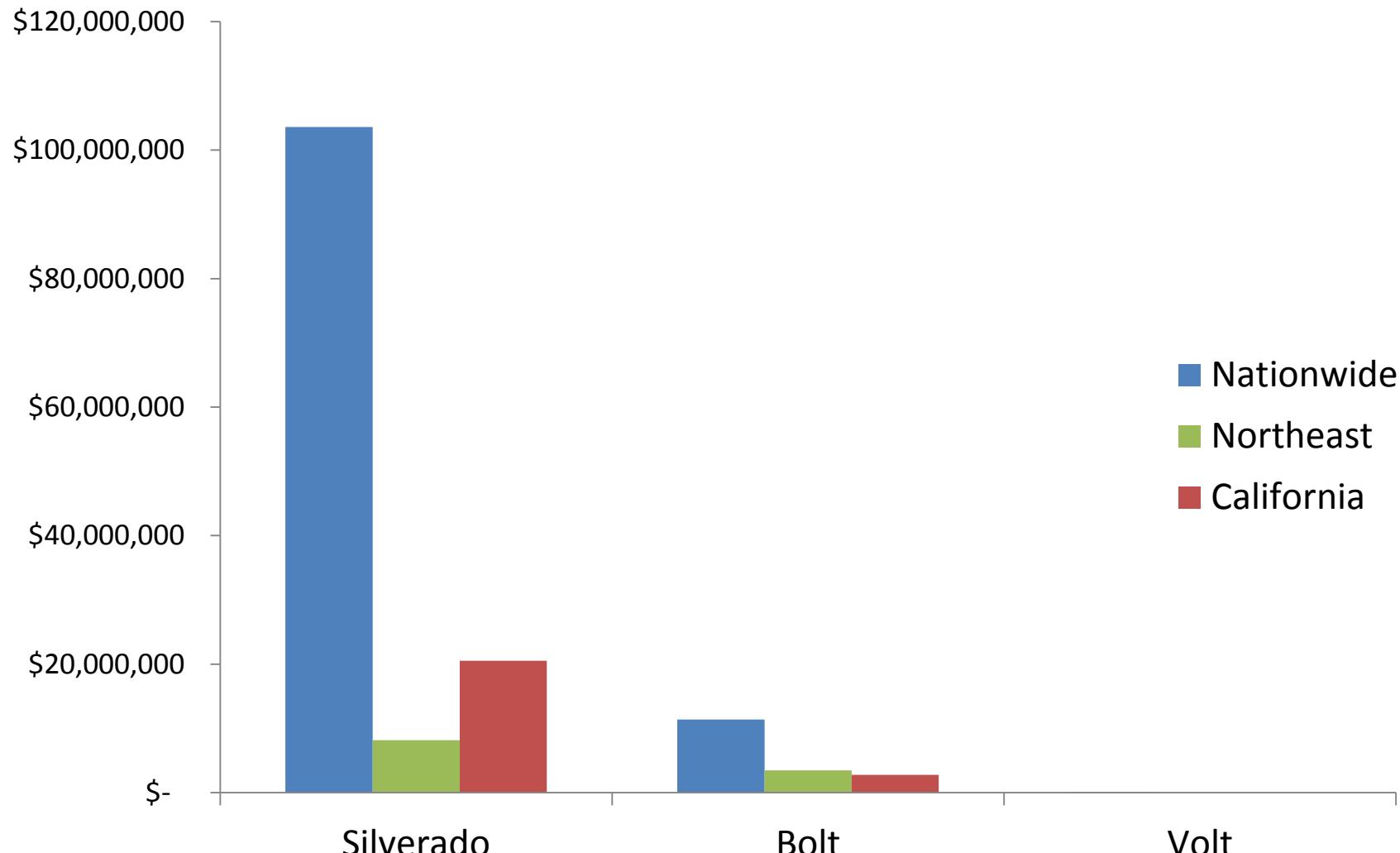


Source: Cars.com, accessed 03/11/17, 1-2pm



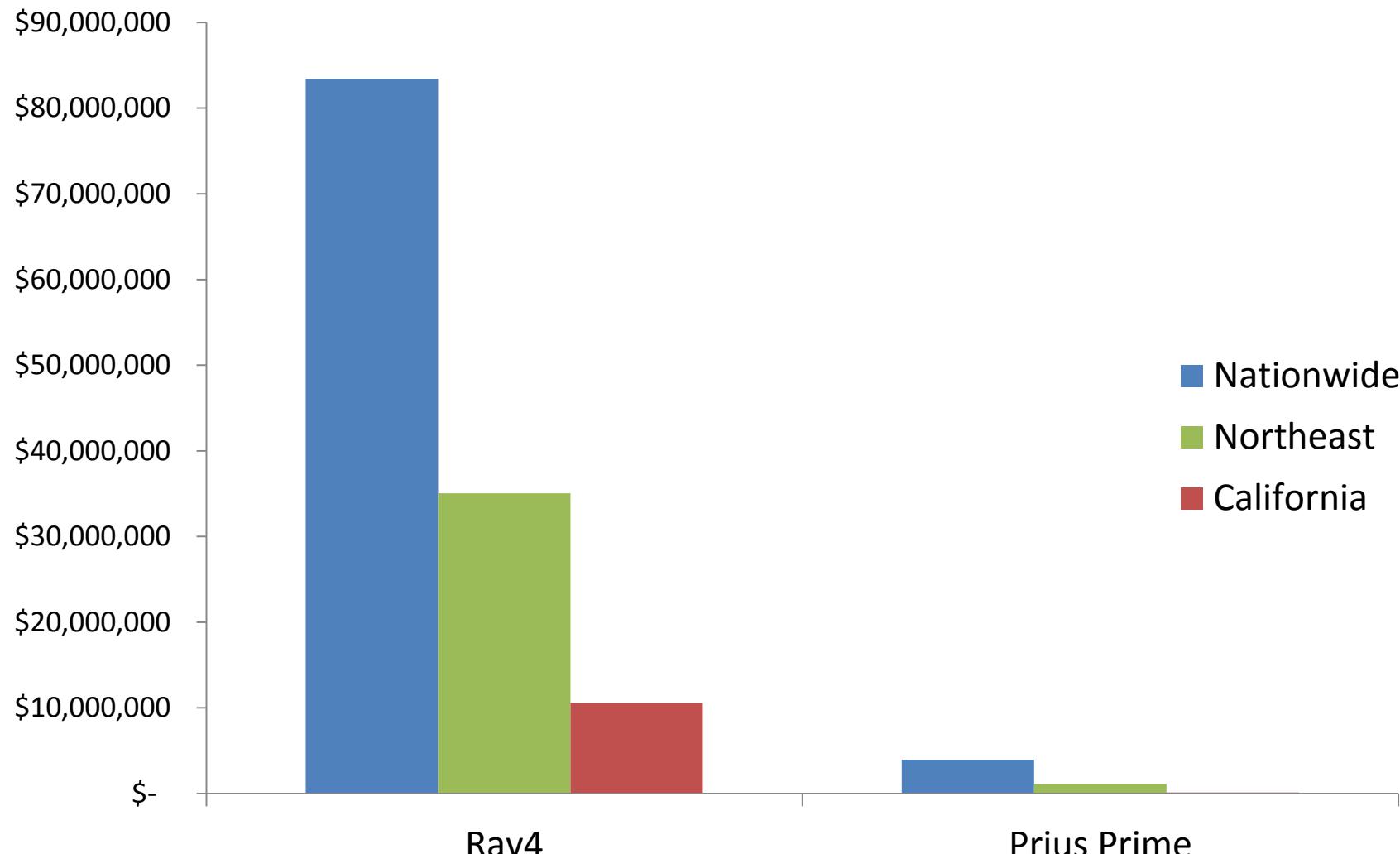
## Attachment 3

## General Motors 2017 Ad Spending, Selected Models



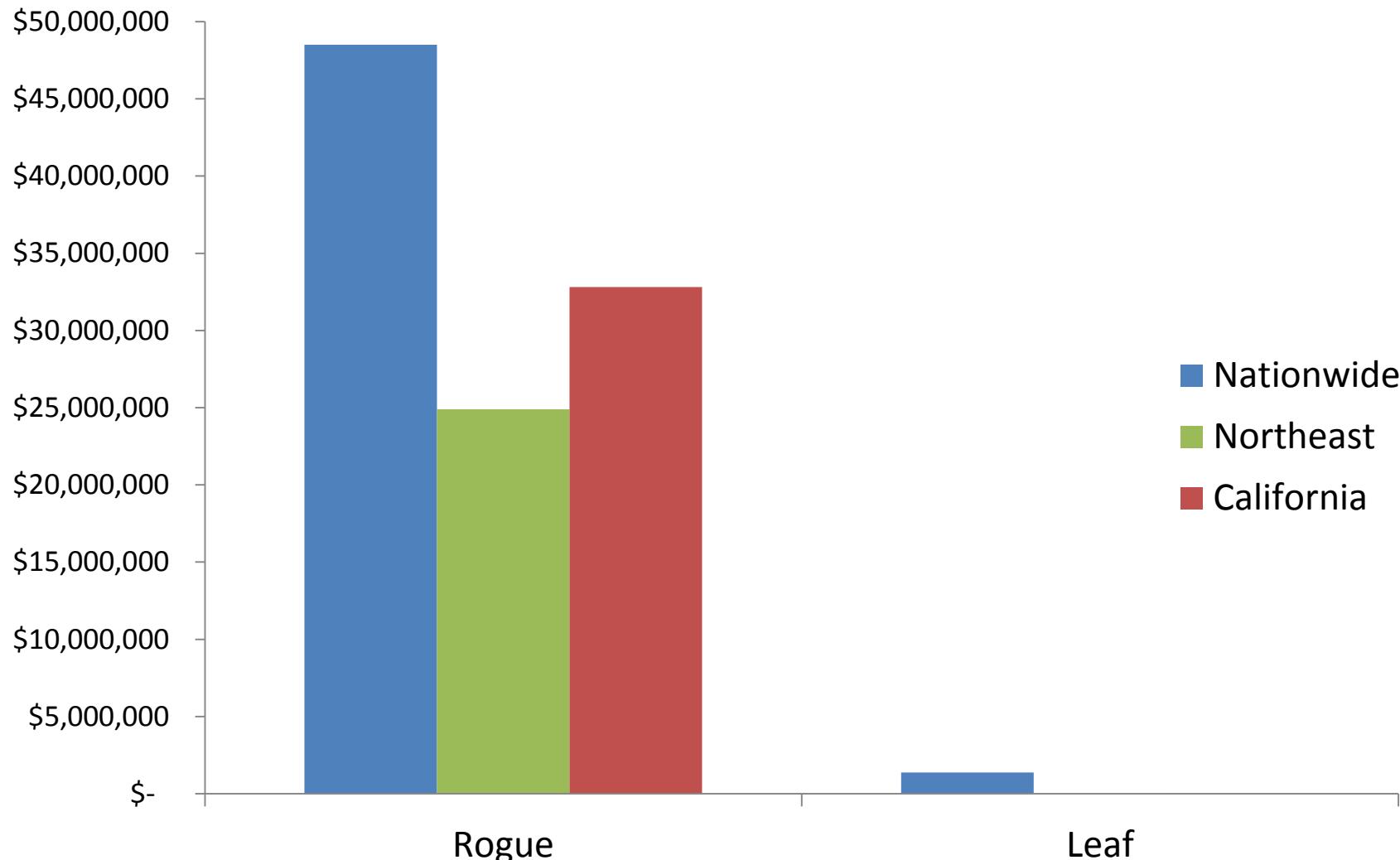
Source data: CompetiTrack. Estimated expenditures for ads run Nationwide and for those in Designated Marketing Areas in California (Bakersfield, Fresno, Los Angeles, Monterey, Palm Springs, Sacramento, San Diego, San Francisco, and Santa Barbara); and Northeast States (Albany, Baltimore, Bangor, Binghamton, Boston, Burlington, Hartford, New York City, Portland, Providence, Rochester, Springfield, Syracuse, and Washington, D.C.). Includes TV, radio, print, and online advertising.

## Toyota 2017 Ad Spending, Selected Models



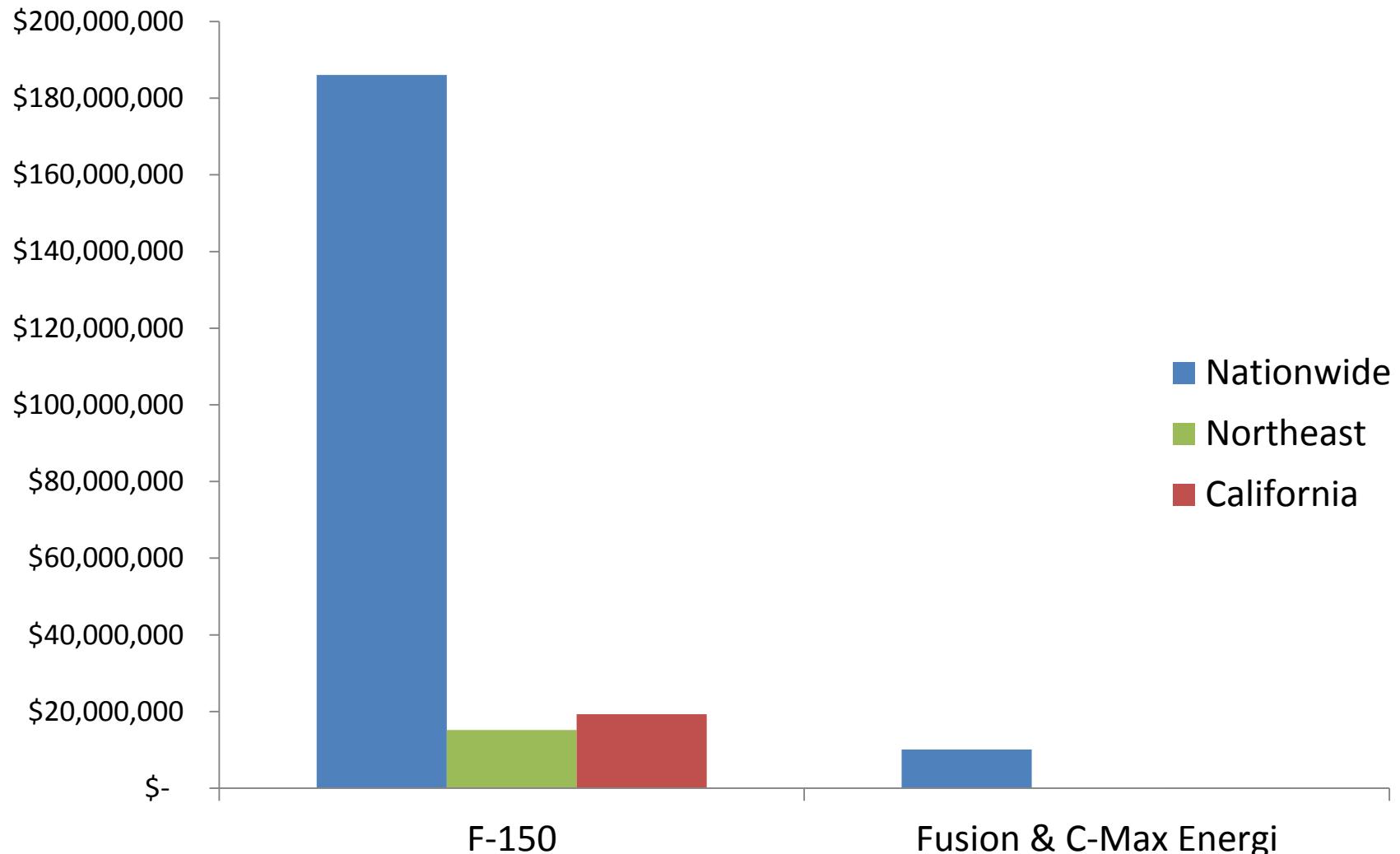
Source data: CompetiTrack. Estimated expenditures for ads run Nationwide and for those in Designated Marketing Areas in California (Bakersfield, Fresno, Los Angeles, Monterey, Palm Springs, Sacramento, San Diego, San Francisco, and Santa Barbara); and Northeast States (Albany, Baltimore, Bangor, Binghamton, Boston, Burlington, Hartford, New York City, Portland, Providence, Rochester, Springfield, Syracuse, and Washington, D.C.). Includes TV, radio, print, and online advertising.

## Nissan 2017 Ad Spending, Selected Models



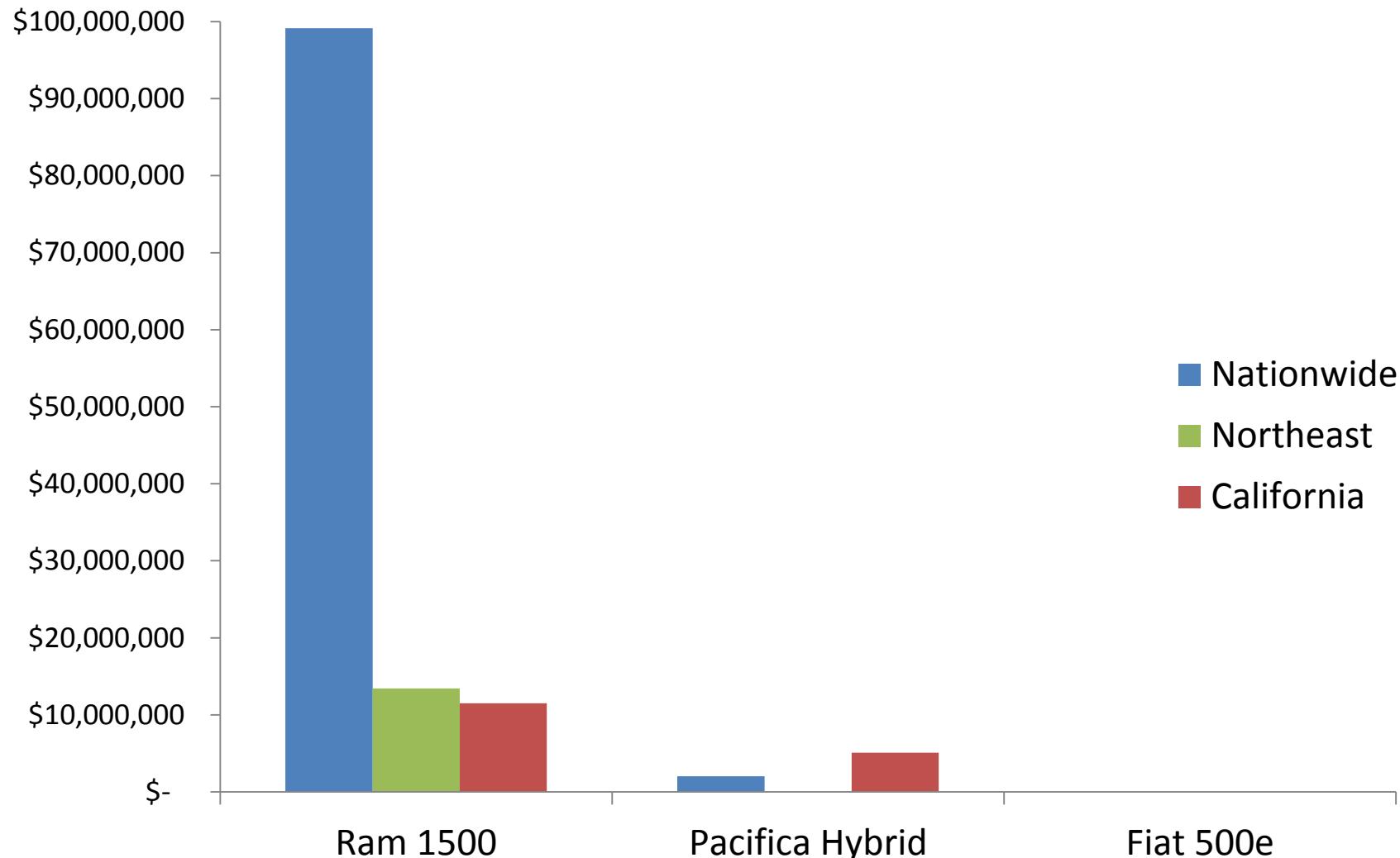
Source data: CompetiTrack. Estimated expenditures for ads run Nationwide and for those in Designated Marketing Areas in California (Bakersfield, Fresno, Los Angeles, Monterey, Palm Springs, Sacramento, San Diego, San Francisco, and Santa Barbara); and Northeast States (Albany, Baltimore, Bangor, Binghamton, Boston, Burlington, Hartford, New York City, Portland, Providence, Rochester, Springfield, Syracuse, and Washington, D.C.). Includes TV, radio, print, and online advertising.

## Ford 2017 Ad Spending, Selected Models



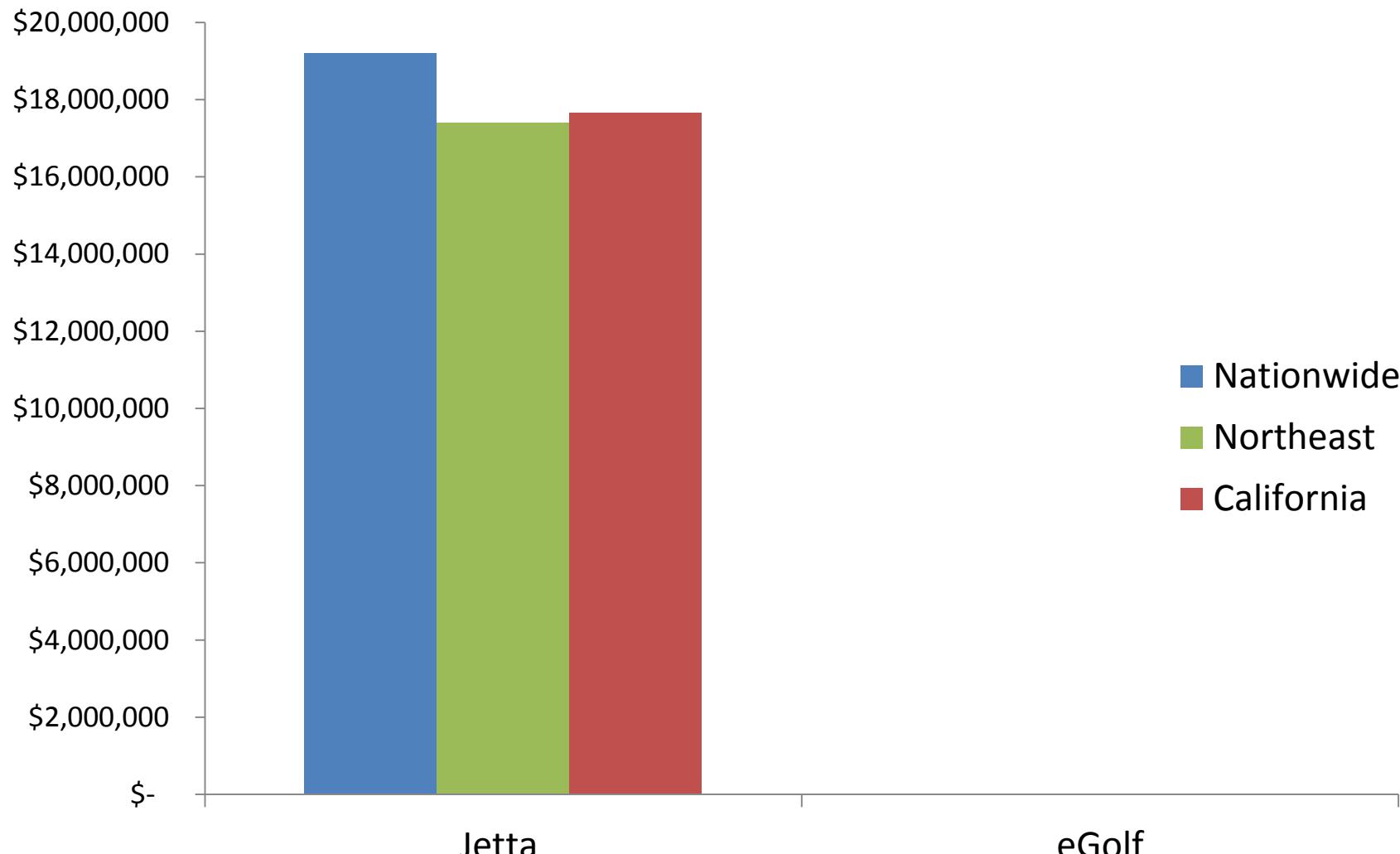
Source data: CompetiTrack. Estimated expenditures for ads run Nationwide and for those in Designated Marketing Areas in California (Bakersfield, Fresno, Los Angeles, Monterey, Palm Springs, Sacramento, San Diego, San Francisco, and Santa Barbara); and Northeast States (Albany, Baltimore, Bangor, Binghamton, Boston, Burlington, Hartford, New York City, Portland, Providence, Rochester, Springfield, Syracuse, and Washington, D.C.). Includes TV, radio, print, and online advertising.

## FiatChrysler 2017 Ad Spending, Selected Models



Source data: CompetiTrack. Estimated expenditures for ads run Nationwide and for those in Designated Marketing Areas in California (Bakersfield, Fresno, Los Angeles, Monterey, Palm Springs, Sacramento, San Diego, San Francisco, and Santa Barbara); and Northeast States (Albany, Baltimore, Bangor, Binghamton, Boston, Burlington, Hartford, New York City, Portland, Providence, Rochester, Springfield, Syracuse, and Washington, D.C.). Includes TV, radio, print, and online advertising.

## Volkswagen 2017 Ad Spending, Selected Models



Source data: CompetiTrack. Estimated expenditures for ads run Nationwide and for those in Designated Marketing Areas in California (Bakersfield, Fresno, Los Angeles, Monterey, Palm Springs, Sacramento, San Diego, San Francisco, and Santa Barbara); and Northeast States (Albany, Baltimore, Bangor, Binghamton, Boston, Burlington, Hartford, New York City, Portland, Providence, Rochester, Springfield, Syracuse, and Washington, D.C.). Includes TV, radio, print, and online advertising.