ORAL ARGUMENT SCHEDULED FOR SEPTEMBER 15, 2020

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

TRUCK TRAILER MANUFACTURERS ASSOCIATION, INC., *et al.*, *Petitioners*, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, *et al.*, *Respondents*, and CALIFORNIA AIR RESOURCES BOARD, *et al.*, *Respondent-Intervenors*.	No. 16-1430

CORRECTED FINAL BRIEF OF RESPONDENT-INTERVENOR PUBLIC HEALTH AND ENVIRONMENTAL ORGANIZATIONS

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), Respondent-Intervenor Public Health and Environmental Organizations hereby certify as follows:

(A) Parties and Amici

(i) Parties, Intervenors, and Amici Who Appeared in the District Court

This case is a petition for review of final agency action, not an appeal from the ruling of a district court.

(ii) Parties to this Case

Petitioner:

The petitioner is the Truck Trailer Manufacturers Association, Inc.

Respondents:

The respondents are the United States Environmental Protection Agency, Andrew R. Wheeler in his official capacity as Administrator of the Environmental Protection Agency, the National Highway Traffic Safety Administration, and James C. Owens in his official capacity as Acting Administrator of the National Highway Traffic Safety Administration.

Intervenors:

Intervenor-Respondents are the California Air Resources Board, Center for Biological Diversity, Environmental Defense Fund, Natural Resources Defense Council, Sierra Club, Union of Concerned Scientists, and the States of

Connecticut, Iowa, Massachusetts, Oregon, Rhode Island, Vermont, and Washington.

(iii) Amici in this Case

None at present.

(iv) Circuit Rule 26.1 Disclosures

See separate disclosure form.

(B) Rulings Under Review

Petitioners seek review of the final actions taken by the United States Environmental Protection Agency and the National Highway Traffic Safety Administration at 81 Fed. Reg. 73,478 (Oct. 25, 2016), entitled "Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2."

(C) Related Cases

This case was not previously before this Court or any other court. This case was previously consolidated with *Racing Enthusiasts & Suppliers Coalition v. EPA*, No. 16-1447. On December 26, 2019, this Court unconsolidated the two cases and ordered that Case No. 16-1447 remain in abeyance.

RESPONDENT-INTERVENOR PUBLIC HEALTH AND ENVIRONMENTAL ORGANIZATIONS' RULE 26.1 STATEMENT

Environmental Defense Fund

Non-Governmental Corporate Party to this Action: Environmental Defense Fund ("EDF").

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: EDF is a 501(c)(3) non-profit membership organization incorporated under the laws of the State of New York. EDF relies on science, economics, and law to protect and restore the quality of our air, water, and other natural resources, and to support policies that mitigate the impacts of climate change.

Center for Biological Diversity

Non-Governmental Corporate Party to this Action: Center for Biological Diversity ("Center").

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: The Center for Biological Diversity is a non-profit corporation organized and existing under the laws of the State of California that works through science, law, and advocacy to secure a future for all species,

great and small, hovering on the brink of extinction, with a focus on protecting the lands, waters, and climate that species need to survive.

Natural Resources Defense Council

Non-Governmental Corporate Party to this Action: Natural Resources Defense Council ("NRDC").

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: NRDC, a corporation organized and existing under the laws of the State of New York, is a national non-profit organization dedicated to improving the quality of the human environment and protecting the nation's endangered natural resources.

Sierra Club

Non-Governmental Corporate Party to this Action: Sierra Club

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: Sierra Club is a non-profit corporation organized under the laws of the State of California. Sierra Club's mission is to explore, enjoy, and protect the wild places of the Earth; to practice and promote the responsible use of the Earth's resources and ecosystems; to educate and enlist

humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives.

Union of Concerned Scientists

Non-Governmental Corporate Party to this Action: Union of Concerned Scientists ("UCS").

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: UCS is a 501(c)(3) non-profit membership organization incorporated under the laws of the District of Columbia. UCS uses rigorous, independent science to solve our planet's most pressing problems. Joining with people across the country, UCS combines technical analysis and effective advocacy to create innovative, practical solutions for a healthy, safe, and sustainable future.

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GLOSSARY OF ABBREVIATIONS

Act	Clean Air Act
Agencies	EPA and NHTSA
EPA	United States Environmental Protection Agency
NHTSA	National Highway Traffic Safety Administration
Rule	*Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2*, 81 Fed. Reg. 73,478, 73,480–81 (Oct. 25, 2016)
TTMA	Truck Trailer Manufacturers Association, Inc.

STATEMENT OF ISSUES[1]

1. Did the Environmental Protection Agency ("EPA") permissibly conclude that tractor-trailers are "motor vehicles" subject to regulation under the Clean Air Act ("Act")?
2. Did EPA permissibly conclude that manufacturers of trailers, which significantly contribute to pollution emitted by tractor-trailers, are motor vehicle "manufacturers" subject to certification responsibilities under the Act?

STATUTES AND REGULATIONS

Relevant statutes and regulations are reproduced in the Addendum to this brief.

INTRODUCTION

Heavy-duty trucks, including the ubiquitous "18-wheeler" tractor-trailers that transport goods across our highways, consume large quantities of fuel and substantially contribute to the nation's greenhouse gas emissions. Under the Clean Air Act, EPA is obligated to reduce these dangerous emissions. Following

[1] In this brief, Public Health and Environmental Respondent-Intervenors address the standard of review for each agency's action and EPA's independent authority to regulate greenhouse gas emissions from tractor-trailers. Public Health and Environmental Respondent-Intervenors fully support the arguments made in State Respondent-Intervenors' brief regarding the National Highway Traffic Safety Administration's independent authority to regulate fuel consumption by tractor-trailers, and the ability of each agency's standards to operate independently.

extensive engagement with industry and the public, and after building a massive factual record, EPA worked with the National Highway Traffic Safety Administration ("NHTSA") (together, the "Agencies") to establish coordinated standards for medium- and heavy-duty trucks, including tractor-trailers. These standards significantly reduce pollution and fuel use based on cost-effective, proven technologies.

But as the rest of the trucking industry got to work reducing greenhouse gas emissions and fuel consumption, one group of manufacturers refused. EPA's standards include requirements for the freight trailers used in combination with tractors, which are responsible for a significant portion of the tractor-trailer's emissions. The trade group representing freight trailer manufacturers ("TTMA"), however, contends that Congress did not permit EPA to regulate the 18-wheeler tractor-trailers that actually haul the nation's freight, but only the tractor cab where the driver sits. TTMA is incorrect. Nothing in the Clean Air Act suggests, much less compels, a conclusion that Congress intended to leave an enormous hole in EPA's regulatory authority. To the contrary, Congress granted EPA broad authority to reduce dangerous pollution from motor vehicles, including tractor-trailers. EPA properly interpreted that authority to allow emissions standards for both halves of the tractor-trailer.

BACKGROUND

The transportation sector is the nation's largest emitter of greenhouse gases and a significant consumer of its fuel, with medium- and heavy-duty vehicles accounting for almost a quarter of the sector's emissions and fuel use. *See* EPA, *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2018, Data Highlights*, at 3, EPA-430-K-20-001 (2020), https://www.epa.gov/sites/production/files/2020-04/documents/us-ghg-inventory-1990-2018-data-highlights.pdf. Class 7 and 8 combination tractor-trailers account for 60 percent of medium- and heavy-duty vehicles' emissions and fuel consumption. 81 Fed. Reg. 73,478, 73,485 (Oct. 25, 2016). The trailer half of the tractor-trailer "indisputably contribute[s] to the motor vehicle's [greenhouse gas] emissions." 80 Fed. Reg. 40,138, 40,170 (July 13, 2015).

The Clean Air Act requires the EPA Administrator to issue "standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare." 42 U.S.C. § 7521(a)(1). In 2007, the Supreme Court ruled in *Massachusetts v. EPA* that EPA must regulate greenhouse gases from the transportation sector under the Clean Air Act if it determined that they endanger public health and welfare. 549 U.S. 497, 533 (2007). The Court also held that that

NHTSA's authority to set fuel economy standards "in no way licenses EPA to shirk its environmental responsibilities." *Id.* at 532.

In 2009, EPA determined that greenhouse gas emissions pose grave and potentially catastrophic threats to human health and welfare, by (among many other impacts) intensifying droughts, heatwaves, and storms; spreading infectious disease; and raising sea levels. 74 Fed. Reg. 66,496, 66,534–35 (Dec. 15, 2009). EPA further concluded that the transportation sector, including "heavy-duty trucks," was "a major source of greenhouse gas emissions" that endanger public health and welfare by driving global climate change. *Id.* at 66,499, 66,537. At the time, EPA understood the heavy-duty class to include trailers, and considered the nationwide emissions impact of tractor-trailers in use.[2]

Soon thereafter, EPA and NHTSA began coordinating their efforts to develop and implement greenhouse gas emissions and fuel efficiency standards, respectively, for our nation's vehicle fleet. Over the course of four rulemakings setting standards for both light-duty and heavy-duty vehicles, including the standards now under review, the Agencies have implemented a coordinated

[2] Climate Change Div., EPA, *Technical Support Document for Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act*, at 183 (2009) (J.A.286) (noting that the "increased volume of total freight movement" had resulted in a 78.6 percent increase in greenhouse gas emissions from heavy-duty trucks between 1990 and 2007).

program that meets both Agencies' statutory obligations while seeking to harmonize requirements for the regulated manufacturers.

A tractor-trailer is composed of two segments: the tractor cab, in which the driver sits, and the trailer, which holds the freight. Because trailers contribute significantly to tractor-trailers' overall greenhouse gas emissions and fuel consumption, the Agencies expressed their intent to set standards for both halves of the tractor-trailer in 2011. 76 Fed. Reg. 57,106, 57,362 (Sept. 15, 2011). The Agencies ultimately issued initial standards only for the tractor cab, delaying trailer standards to allow more time to collect information and develop a test protocol. *Id.*

In 2016, following years of technical research and engagement with the heavy-duty industry and other stakeholders, the Agencies finalized standards for model year 2018 and later heavy-duty vehicles, including tractor-trailers. 81 Fed. Reg. 73,478, 73,480–81 (Oct. 25, 2016) ("Rule") (J.A.1-281). Through this process, the Agencies concluded that "[t]railers indisputably contribute to the motor vehicle's [greenhouse gas] emissions … and [that] these emissions can be reduced through various means," including the same types of aerodynamic improvements and tire upgrades used on the tractor. 80 Fed. Reg. at 40,170.

The final EPA and NHTSA standards are premised on the use of commercially available technologies that have, for well over a decade, formed the basis of EPA's voluntary SmartWay Program. 81 Fed. Reg. at 73,504, 73,640,

73,662. In setting the standards, the Agencies considered technical studies regarding the feasibility and effectiveness of trailer technologies, including reports from the National Academy of Sciences and the International Council on Clean Transportation, a leading research organization. *Id.* at 73,489, 73,649–50. These technologies, like aerodynamic side skirts and low-rolling-resistance tires, "significantly reduce" emissions, accounting for up to one-third of the total reduction of emissions from tractor-trailers that the Rule achieves. *Id.* at 73,504, 73,516 n.89. Trailer aerodynamic devices may be responsible for two-thirds of tractor-trailer aerodynamic benefits. Assessment & Standards Div., EPA, *Peer Review of the Greenhouse Gas Emissions Model (GEM)*, at 37, EPA-420-R-15-009 (2015) (J.A.325).

Of the dozens of types of freight trailers on our highways, the Rule's standards apply to the four that the Agencies determined can achieve the greatest reductions in emissions and fuel use at the lowest cost: box trailers, tank trailers, flatbed trailers, and container chassis. 81 Fed. Reg. at 73,645–46. Even among this subset of trailers, the Rule phases in over a period of nine years with significant flexibilities to facilitate compliance. *Id.* at 73,647–48. The standards set targets in grams of CO_2 per ton-mile without dictating how they are to be met. As the picture below depicts, they are premised on the use of "bolt-on" technologies that do not entail any redesign of a trailer and pay for themselves in fuel savings in just two

years. 81 Fed. Reg. at 73,483, 73,669. EPA estimated that per-vehicle costs range from $850 to $1,110, a mere 3–4% of the typical cost of a trailer. *Id.* at 73,482.

Aerodynamic Side Skirt

The standards were intentionally set at levels that do not require weight reduction. *Id.* at 73,653–54. *Contra* TTMA Br. 10, ECF No. 1827990. What is more, all non-box trailers, and even some types of box trailers, can comply with the standards for the life of the program without ever deploying aerodynamic devices. 81 Fed. Reg. at 73,648. Adopting tire technologies alone will achieve compliance for these vehicles, *id.*, belying TTMA's suggestion that multiple efficiency technologies "must" be used, TTMA Br. 9–10.[3]

[3] Although TTMA attempts to cast doubt on the efficacy of the standards in its Statement of the Case, TTMA Br. 10–11, it did not sufficiently raise any claim that the standards are arbitrary and capricious in its opening brief and has thereby "forfeited" any such claim. *Am. Wildlands v. Kempthorne*, 530 F.3d 991, 1001 (D.C. Cir. 2008).

The Rule garnered broad support from the industry, with hundreds of companies that make, use, or rely upon heavy-duty trucks calling for stronger heavy-duty standards than the Agencies had initially proposed. *See, e.g.*, Testimony of Ceres, EPA-HQ-OAR-2014-0827-1424 (Aug. 18, 2015) (J.A.334-36). This chorus of voices included a major trailer manufacturer and TTMA member, Wabash National, which "support[ed] the objectives of the Phase 2 Proposed Rule and agree[d] that sensibly reducing [greenhouse gas] emissions … can result in important economic and environmental benefits." Comments of Wabash Nat'l Corp., at 3, EPA-HQ-OAR-2014-0827-1242 (Oct. 1, 2015) (J.A.361) ("Wabash comments").

In the face of this otherwise broad support, TTMA has steadfastly opposed any requirements that trailer manufacturers do their part to reduce emissions and fuel consumption, and now asks this Court to vacate the trailer standards.

SUMMARY OF ARGUMENT

Tractor-trailers are "motor vehicles" as defined under the Clean Air Act: they are "self-propelled vehicle[s] designed for transporting persons or property on a street or highway." 42 U.S.C. § 7550(2). TTMA's argument hinges on chopping the motor vehicle in half, focusing solely on the tractor and ignoring the 8-wheel trailer segment of the 18-wheeler. But a tractor is not designed to transport either persons or property by itself; a tractor only transports property on the highway in

combination with a trailer. Both halves of the vehicle are necessary to move freight, and both contribute to the dangerous greenhouse gas emissions that Congress sought to control. TTMA's view would create an enormous hole in the Clean Air Act, permitting EPA to address only half of the vehicle and only a portion of the vehicle's emissions. That Congress could have intended "such a large and obvious loophole" strains credulity. *County of Maui v. Haw. Wildlife Fund*, ---S. Ct.---, No. 18-260, 2020 WL 1941966, at *7 (Apr. 23, 2020). EPA properly concluded that it had authority to regulate both halves of the "motor vehicle" at issue here: the tractor-trailer.

Trailer manufacturers are likewise motor vehicle "manufacturer[s]" as defined in the Clean Air Act. 42 U.S.C. § 7550(1). TTMA attempts to evade responsibility for certifying compliance for the trailer merely because tractors and trailers are manufactured separately. But Congress's broad definition of manufacturer plainly contemplates that a motor vehicle may have more than one manufacturer. And the only entity that could practicably certify compliance with trailer standards and perform the other Congressionally-assigned tasks is the trailer manufacturer. That the manufacturer of the trailer, the manufacturer of the tractor, and the entity that ultimately assembles the vehicle are three separate entities cannot dictate the scope of EPA's authority to set and ensure compliance with standards under the Clean Air Act. EPA properly concluded that trailer

manufacturers are manufacturers of a tractor-trailer subject to certification requirements under the Act.

STANDARD OF REVIEW

This case is governed by the standard set forth in *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). Under this deferential standard, agencies and courts "must give effect to the unambiguously expressed intent of Congress." *Id.* at 842–43. If the statute is silent or ambiguous with respect to the issue, however, the agency's interpretation must be upheld if it is "based on a permissible construction of the statute." *Id*.

Chevron applies wherever Congress has delegated interpretive authority to an agency and the agency exercises that authority "in a manner (and through a process) evincing an exercise of its lawmaking authority." *Guedes v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 920 F.3d 1, 22 (D.C. Cir. 2019) (internal quotation marks omitted). Here, the Agencies have clearly exercised their lawmaking authority by engaging in legislative rulemaking through the notice and comment process. *See id.* at 20–21, 23. And, contrary to TTMA's assertion, Br. 26, 48, the Agencies invoked *Chevron* in defending the Rule. Resp'ts' Br. 14, ECF No. 1839164. Nor can deference be forfeited through agency reconsideration; if it could, agencies could effectively withdraw a rule without completing a new rulemaking. *Guedes*, 920 F.3d at 23. Accordingly, *Chevron* applies.

ARGUMENT

EPA's trailer standards reflect how motor vehicles operate in the real world. Tractor-trailers, not tractors, move freight on the nation's highways, and contribute to dangerous greenhouse gas pollution. Trailers are thus integral to the "motor vehicle" Congress directed EPA to regulate. EPA's assertion of authority to regulate trailers reflects the best reading of the Clean Air Act, and, at a minimum, is a permissible interpretation. *Chevron*, 467 U.S. at 842–43. The structure, purpose, and legislative history of the Act, as well as basic logic, leave no doubt that tractor-trailers are "motor vehicles" subject to Clean Air Act standards, and that trailer manufacturers are "manufacturers" of those motor vehicles responsible for ensuring compliance.[4]

I. A Tractor-Trailer Is a Motor Vehicle Subject to Regulation Under the Act.

A. Tractor-trailers are self-propelled vehicles designed for transporting property on a street or highway.

The Clean Air Act defines "motor vehicles" subject to regulation with reference both to their attributes and their intended use. A "motor vehicle" is "any self-propelled vehicle designed for transporting persons or property on a street or

[4] Contrary to TTMA's bold assertion, this Court did not "previously conclude[] in granting a stay [that] EPA lacks statutory authority to regulate trailers." TTMA Br. 14. Decisions to grant stays are not "tantamount to decisions on the underlying merits," *Univ. of Texas v. Camenisch*, 451 U.S. 390, 394 (1981), and are "often based on incomplete evidence and a relatively hurried consideration of the issues," *Nat. Res. Def. Council v. Pena*, 147 F.3d 1012, 1022–23 (D.C. Cir. 1998) (citation omitted).

highway." 42 U.S.C. § 7550(2). EPA correctly concluded that "[t]here is no question" that tractor-trailers are motor vehicles subject to regulation under the Act. 81 Fed. Reg. at 73,513.

First, tractor-trailers are "self-propelled." 42 U.S.C. § 7550(2). When a driver steps on the gas, the entire tractor-trailer unit is propelled forward. Second, tractor-trailers are "designed for transporting … property." *Id.* Trailers are "an essential part of the tractor-trailer," whose "sole purpose is to serve as the cargo-hauling part of the vehicle." 80 Fed. Reg. at 40,170. Indeed, what TTMA deems the entire "motor vehicle"—the tractor cab—is not, by itself, "designed for transporting persons or property"; only the combined tractor-trailer is. *Id.* (the "motor vehicle needs both … to accomplish its intended use").[5] Third, tractor-trailers operate on "street[s] or highway[s]." Eighteen-wheelers, like those operated by Walmart or Coca-Cola, are ubiquitous on our nation's highways. Consequently, as EPA correctly determined, "[c]onnected together, a tractor and trailer constitute 'a self-propelled vehicle designed for transporting … property on a street or highway.'" *Id.*

Statutory context, common sense, and record facts support EPA's conclusion. The Act gives EPA the authority to define the relevant "classes of new

[5] Nor is the tractor cab "designed for transporting persons." Although a person sits in the cab to drive it, the purpose of the tractor is to transport property in combination with a trailer.

motor vehicles" that cause endangerment for purposes of emissions control, and grants EPA broad authority to establish such classes of heavy-duty vehicles based on "appropriate factors." 42 U.S.C. § 7521(a)(1), (3)(A)(ii); *see id.* § 7601(a)(1) (authorizing EPA to prescribe regulations necessary to carry out its functions). EPA must then issue standards for "any" such class of new motor vehicles that emits dangerous air pollution, *id*. § 7521(a)(1), and those motor vehicles include "any" self-propelled vehicle designed to transport people and property on roads, *id.* § 7550(2). Congress "underscore[d] [its] intent" to broadly authorize regulation of dangerous pollution "through the repeated use of the word 'any.'" *Massachusetts*, 549 U.S. at 529.

Indeed, there is nothing in the text, context, or legislative history of the Clean Air Act to suggest that when Congress directed EPA to regulate heavy-duty vehicles, it intended to deny EPA the authority to define a class of heavy-duty vehicles encompassing tractor-trailers. Rather, the legislative history shows Congress considered broad, commonsense categories like "automobiles, trucks, and buses." *See, e.g.*, S. Rep. No. 89-192, at 5 (1965). Tractor-trailers fit naturally into this taxonomy; when most people think of heavy-duty "trucks," the natural image is of an 18-wheeler, not a tractor cab alone, divorced of the trailer essential for the vehicle to haul goods.

Record evidence also demonstrates that the tractor and trailer halves of the tractor-trailer are inextricably linked both in their operation and in their production of emissions. Neither the tractor nor the trailer "can fulfill the function of the vehicle without the other." 81 Fed. Reg. at 73,521. A tractor engine's size is optimized to haul a cargo-loaded trailer. 76 Fed. Reg. at 57,138–39. "From a design, engineering, and operational standpoint, heavy-duty tractors and trailers function as an integrated vehicle, designed to haul cargo together." Decl. of Michael Walsh, App'x to Intvn'r Pub. Health & Envt'l Orgs.' Opp. to Mot. for Stay at 39, ECF 1698824 (Oct. 12, 2017) ("Stay Opp. App'x"). Because trips without a trailer are not typically made for commercial purposes, trucking companies usually require operators to have their own separate insurance to cover such trips. Comments of Envt'l Def. Fund at 22, EPA-HQ-OAR-2014-0827-1312 (J.A.368); *see also* Stay Opp. App'x at 40 ("[O]perating a tractor without a trailer is inefficient, costly, and potentially dangerous, and companies endeavor to eliminate any such operation.").

Likewise, emissions reduction opportunities are increased when the tractor-trailer is considered as a unit. Wabash comments, Exhibit 2, at 8, 16 (J.A.363-64) (devices that reduce the gap between tractor and trailer save fuel, as does "matching [the] tractor and trailer," through "greater collaboration" between manufacturers). The height of the tractor is designed to correspond to the height of

the trailer, achieving optimal aerodynamic performance only when aligned. 76 Fed. Reg. at 57,138–39.

Consistent with these facts, and because the emissions of tractor-trailers are *different from*—and significantly *greater than*—those of the tractor half alone, both EPA's first standards for tractor-trailer greenhouse gas emissions in 2011 and this Rule account for the emissions of the *entire* vehicle, including the trailer. *See* 40 C.F.R. § 1037.501 (describing the physical features of a "standard trailer" for use in tractor compliance testing and modeling for both standards). Recognizing that the weight of the entire vehicle in-use affects the work the engine needs to do and thus its emissions, EPA's decades-long regulation of tractor-trailer diesel emissions has likewise accounted for the effect of the whole tractor-trailer on the engine, "simulat[ing] the operation of an engine in a vehicle on the road" in testing compliance. 45 Fed. Reg. 4,136, 4,139 (Jan. 21, 1980) (describing hydrocarbon, carbon monoxide, and nitrogen oxide emissions test procedure for 1984 and later heavy-duty engines). *See also* 70 Fed. Reg. 34,594, 34,595 (June 14, 2005) (establishing in-use testing program for model year 2007 and later vehicles, measuring emissions "with a normal payload, over its regular driving route").

With respect to its use on the highway to transport property, and the greenhouse gas emissions it releases, the tractor-trailer functions as a single unit,

together constituting a "motor vehicle." The Rule properly seeks to reduce the trailer's contribution to those emissions through specific standards for trailers.

B. TTMA's arguments arbitrarily sever the tractor from the trailer.

TTMA's argument that only half of the tractor-trailer can be regulated depends on ignoring half of the Clean Air Act's definition of "motor vehicle." A statute must "be so construed that, if it can be prevented, no clause, sentence, or word shall be … insignificant." *New Process Steel*, *L.P. v. NLRB*, 560 U.S. 674, 680 (2010) (internal citation omitted). A motor vehicle must be not only "self-propelled," but also "designed for transporting people or property on a street or highway." 42 U.S.C. § 7550(2). TTMA wrongly assumes that the tractor alone is the entire "motor vehicle," an assumption that not only defies the statutory definition, but muddles the Clean Air Act's distinction between "engines" and "motor vehicles." Then, TTMA distorts EPA's use of the phrase "incomplete vehicles," conflating the term with a part or component.

TTMA argues that trailers are not motor vehicles because they do not contain engines and therefore are not self-propelled. TTMA Br. 19–20. This position wrongly assumes that the relevant unit for regulation is the tractor alone, rather than the tractor-trailer. But a tractor, even if "self-propelled," cannot be the entire "motor vehicle" because it is not designed for transporting persons or property except in combination with a trailer. Thus, TTMA's argument sidesteps

the relevant issue: whether EPA can regulate *tractor-trailers*, rather than tractor cabs alone, as "motor vehicles" under the Act.[6]

Furthermore, TTMA's argument mischaracterizes how vehicles are propelled and produce emissions. *Engines* create propulsive power and produce emissions. By TTMA's theory, tractors (i.e., the body, chassis, frame, and wheels separate from the engine) would not be "self-propelled" either, as they do not independently generate power or produce emissions any more than trailers do. TTMA assumes that tractors inherently include the engines (and the tires and frames) that allow for self-propulsion, but that tractor-trailers—which, unlike tractor cabs alone, are actually "designed for transporting … property"—do not. There is no basis for this distinction.

The Clean Air Act expressly allows EPA to regulate "vehicles" separately from "engines." 42 U.S.C. § 7521(a)(1). Both the design of the vehicle and the design of the engine influence the emissions that the engine produces. *See* 76 Fed. Reg. at 57,115 (tractor design "determines the amount of power that the engine must produce in moving the truck down the road," while the engine design

[6] TTMA draws a misguided analogy to a horse-and-buggy. TTMA Br. 22. The fact that wagons are sometimes attached to horses does not render wagons "incomplete horse[s]," *id.*, but a wagon is a critical component of a "horse-and-buggy," without which the horse-and-buggy cannot perform its intended use. Once again, the analogy merely begs the question of what is the proper unit of analysis. (Moreover, a horse has many uses beyond pulling a wagon, while a tractor's *only* purpose is to pull a trailer; without a trailer a tractor is, in fact, "incomplete.")

"determines the basic GHG emissions and fuel consumption performance of the engine for the variety of demands placed on the engine, regardless of the characteristics of the [tractor]."). [7] The engine's greenhouse gas emissions depend upon the design of the vehicle in which it is installed. In the case of tractor-trailers, the attributes of the tractor and the attributes of the trailer that influence those emissions—the weight of materials used, aerodynamic design of the frame, resistance of the tires—are fundamentally the same. 81 Fed. Reg. at 73,491. To say that a tractor somehow produces emissions while a trailer does not is to ignore the reality of how emissions are produced and muddle the Act's distinction between vehicles and vehicle engines.

Next, TTMA misconstrues EPA's use of the phrase "incomplete vehicle" by conflating the term with motor vehicle "parts" or "components," which the Clean Air Act addresses separately from motor vehicles. TTMA Br. 19, 24 (contending that there is no distinction between a trailer and a tire or other component, and that if EPA could regulate "portions" of the vehicle there would be no need to separately authorize regulation of engines). But a trailer—which represent one half of the tractor-trailer vehicle, enables it to "transport … property," and significantly impacts its overall emissions—is not merely a part or component, as EPA correctly

[7] *Cf.* 42 U.S.C. § 7521(a)(3)(B)(i) (allowing EPA to revise heavy duty truck standards based on "the effect of air pollutants emitted from … vehicles or engines and from other sources of mobile source related pollutants").

determined. 81 Fed. Reg. at 73,515. The Act itself separately regulates vehicle "part[s]" and "component[s]," which Congress understood to be "installed in or on motor vehicles or motor vehicle engines." 42 U.S.C. § 7550(9), *infra* pp. 28–29. TTMA does not contend that a trailer is a "part," apparently preferring that it be neither vehicle nor part. *See infra* pp. 28–29. In any event, a trailer is not a part "installed in or on" a motor vehicle, but a completed half of the tractor-trailer that works interdependently with the tractor to haul cargo. Likewise, EPA's authority to regulate incomplete vehicles in addition to engines is not redundant because incomplete vehicles approximate complete vehicles in their design, function, and impact on overall emissions. The separate authorization of standards for engines reflects their distinct function and influence on emissions.

Finally, TTMA contends that EPA cannot regulate the tractor-trailer as a unit because different tractors will pull different trailers during their useful life. TTMA Br. 22. But this does not change the fact that a tractor-trailer functions as a single pollution-producing unit on the highway and that neither half can serve its purpose without the other. *See supra* pp. 14–15. The fact that some tractors are paired with different trailers over the course of their useful lives is of no legal relevance: what matters is that they are *always* paired with *some* trailer when hauling cargo. 81 Fed. Reg. at 73,521 (neither tractor nor trailer "can fulfill the function of the vehicle without the other"). To that end, the Rule regulates not all

trailers, but only those "used in combination with … tractors." *Id.* at 73,478. In terms of "design[] for transporting … property," tractors without trailers are also "incomplete." *Id.* at 73,521.

TTMA has not identified anything in the text or history of the Act that forecloses EPA's authority to regulate tractor-trailers. On the contrary, as discussed *supra* § IA, the statute's text and history demonstrate that Congress explicitly delegated EPA broad authority to define classes of motor vehicles and regulate dangerous emissions from them.[8] TTMA provides no evidence that Congress intended to "creat[e] loopholes that undermine the statute's basic federal regulatory objectives." *County of Maui*, 2020 WL 1941966, at *10; *see also Util. Air Regulatory Grp. v. EPA*, 573 U.S. 302, 321 (2014) ("[R]easonable statutory interpretation must account for both the specific context in which language is used and the broader context of the statute as a whole." (internal quotation marks omitted)). Far from being compelled by the statute, TTMA's crabbed and incomplete interpretation of "motor vehicle" contravenes both the Act's purpose and the reality of tractor-trailer operation.

[8] As Federal Respondents explain, the Clean Air Act is concerned with the pollution produced by the tractor-trailer unit. Resp'ts' Br. 36–38. Unrelated federal statutes that provide authority for regulating vehicles "drawn by mechanical power," and criminal statutes that consider stealing both tractor and trailer a "larger misdeed," TTMA Br. 20–23, reveal nothing about what Congress intended in the Clean Air Act.

II. A Trailer Manufacturer Is a "Manufacturer" of a Motor Vehicle Subject to Regulation Under the Clean Air Act.

As explained *supra*, the Clean Air Act authorizes EPA to promulgate greenhouse gas emissions standards for tractor-trailers. EPA also correctly determined that manufacturers of trailers are "motor vehicle manufacturers" who must certify compliance with those standards.

Indeed, TTMA appears to concede that if an entire tractor-trailer were manufactured and sold by the same entity, EPA could promulgate emissions standards premised in part on improvements to the trailer and require the tractor-trailer manufacturer to certify compliance. But TTMA argues that because trailers are "sold completely separately" and "someone other than the tractor or trailer manufacturer assembles the tractor-trailer by attaching the trailer to the tractor," TTMA Br. 21, 24, trailer manufacturers fall nowhere within the ambit of the Act. *See* 81 Fed. Reg. at 73,512 (noting TTMA's assertion that "the party that joined the trailer to the tractor" should be responsible for certifying compliance with the trailer standards). Thus, in TTMA's view, tractor-trailers should be regulated completely differently than the closely-related vocational vehicles, like United Parcel Service trucks, wherein the cargo-holding compartment is indivisible from the cab. 81 Fed. Reg. at 73,693 (contemplating improved tire rolling resistance, tire pressure monitoring or inflation systems, and aerodynamic technologies for compliance with vocational vehicle standards). TTMA's attempt to deflect

responsibility contravenes the Act's plain text and would "creat[e] loopholes that undermine the statute's basic federal regulatory objectives." *County of Maui*, 2020 WL 1941966, at *10.

A. The Act contemplates that a motor vehicle may have more than one manufacturer.

The Clean Air Act defines the term "manufacturer" as "any person engaged in the manufacturing or assembling of new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines, or importing such vehicles or engines for resale, or who acts for and is under the control of any such person in connection with the distribution of new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines." 42 U.S.C. § 7550(1).

This expansive definition encompasses a wide variety of entities and individuals. First, it refers to "[a]ny person." The word "any" is broad and inclusive. *See Dep't of Hous. & Urban Dev. v. Rucker*, 535 U.S. 125, 131 (2002); *see also* 81 Fed. Reg. at 73,516 n. 87 (citing cases). Second, manufacturers include persons "engaged" in "manufacturing or assembling … or importing" engines or vehicles. "Engaged" likewise signals inclusivity, extending the definition to all those "involved," "occupied or employed" in an "affair or enterprise." *Engaged*, Webster's Third New International Dictionary of the English Language, Unabridged, at 751 (1967). Third, the repeated use of the conjunction "or" makes plain that any person "engaged" in any one of the named activities (manufacturing,

assembling, importing, or distribution) may be a manufacturer. The plain language of the definition contemplates that a broad range of types of entities fall under the category of "manufacturer" for purposes of the Act.

Similarly, the structure of the definition shows that multiple entities can be treated as the manufacturer of a single motor vehicle. The definition includes both vehicle and engine manufacturers. A single heavy-duty vehicle thus may have at least two manufacturers because many heavy-duty vehicles have engines that are manufactured by a different entity than the manufacturer of the tractor that houses that engine. 81 Fed. Reg. at 73,516. Likewise, "manufacturer" includes "any person … who acts for … any such person," clearly indicating Congress's intent that both an agent and a principal could be considered "manufacturers" of the same motor vehicle. 42 U.S.C. § 7550(1). As EPA correctly determined, "[i]t appears plain that this definition was not intended to restrict the definition of 'manufacturer' to a single person per vehicle." 81 Fed. Reg. at 73,515.

The concept of regulating more than one manufacturer of the same vehicle or equipment is not new to this Rule. When EPA has determined that standards could be implemented most efficiently if multiple parties had certification or other compliance responsibilities, the agency has structured its regulations accordingly. For example, in 2008, EPA issued emission standards for certain new non-road engines. 73 Fed. Reg. 59,034 (Oct. 8, 2008); *see* 81 Fed. Reg. at 73,515 n. 86. The

sections of the Act defining "manufacturer" and establishing testing, certification, warranty, and recordkeeping obligations apply equally to these non-road standards as to the tractor-trailer standards. *See* 42 U.S.C. § 7547(d). These 2008 standards included requirements for both engine manufacturers and manufacturers of fuel lines and tanks. This was because EPA understood that "the engine manufacturers do not produce complete fuel systems and therefore are not in a position to do all the testing and certification work necessary to cover the whole range of products that will be used." 73 Fed. Reg. at 59,115; *see* 40 C.F.R. § 90.127 (codifying requirements for fuel line manufacturers).

Likewise, EPA and the Department of Justice have previously taken the position that a given vehicle introduced into commerce can have multiple manufacturers, each responsible for compliance with Clean Air Act standards. Most recently, in the 2017 lawsuit over the illegal sale of non-compliant Ram 1500 trucks and Jeep Grand Cherokees, the Department of Justice named FCA US LLC; V.M. Motori S.p.A.; V.M. North America, Inc.; and Fiat Chrysler Automobiles N.V., the corporate parent of those entities, all as defendants. The suit specifically identified each as "manufacturers" under the Act, and alleged liability as "manufacturers" of the noncompliant vehicles. *See* Complaint, *United States v. FCA*, No. 17-cv-11633 (E.D. Mich. May 23, 2017).

The Act thus contemplates that a vehicle may have more than one manufacturer.

B. Tractor, trailer, and engine manufacturers are all "manufacturers" under the Clean Air Act.

By imposing requirements on manufacturers of both halves of the tractor-trailer, the Rule follows EPA's established "principle … that the entity with most control over the particular vehicle segment due to producing it is usually the most appropriate entity to test and certify." 81 Fed. Reg. at 73,515. Here, EPA properly applied Congress's expansive definition of "manufacturer" to the realities of the heavy-duty trucking industry, where vehicles are frequently manufactured and assembled by multiple entities. *Id.* at 73,515–16. For tractor-trailers, one entity manufactures the tractor, another the trailer, and often a third the engine that powers the tractor-trailer. *Id.* at 73,516. The tractor manufacturer never possesses the trailer; rather, an end-user determines the ultimate configuration of the tractor-trailer by pairing a trailer with a tractor. TTMA Br. 24. The trailer manufacturer is heavily "engaged" in manufacturing the tractor-trailer, determining all of the design specifications affecting the tractor-trailer's ability to carry a load, including specifications that affect the greenhouse gas emissions associated with it. *See* 81 Fed. Reg. at 73,516. EPA thus correctly (and pragmatically) determined that "trailer manufacturers [are] persons engaged in the manufacture of a motor vehicle"—the tractor-trailer. *Id.*

TTMA asserts—without elaboration or examples—that recognizing trailer manufacturers as motor vehicle manufacturers under the Act "makes the various certification, enforcement, and warranty provisions incoherent." TTMA Br. 25. In fact, the opposite is true: to read the statute as contemplating only one manufacturer for each motor vehicle would effectively nullify critical statutory enforcement mechanisms.

For instance, the Act requires EPA and manufacturers to test vehicles for compliance with standards, 42 U.S.C. § 7525, and manufacturers must "establish and maintain records, … make reports and provide information the Administrator may reasonably require to determine whether the manufacturer or other person has acted … in compliance with [the statute] and regulations thereunder," *id.* § 7542. To enforce the vehicle testing and compliance provisions, EPA may, for example, "enter … any plant or other establishment of such manufacturer, for the purpose of conducting tests of vehicles or engines in the hands of the manufacturer." *Id.* § 7525 Likewise, the Act's warranty provisions require new motor vehicle manufacturers among other things, to "warrant to the ultimate purchaser and each subsequent purchaser that such vehicle … is (A) designed, built, and equipped so as to conform at the time of sale with applicable regulations under section 202 [42 U.S.C. § 7521], and (B) free from defects in materials and workmanship." *Id.* § 7541.

With respect to tractor-trailers, TTMA's "single manufacturer" theory would render each of these provisions inert; they simply cannot function unless the "manufacturer" is the entity with direct knowledge and control of the design and manufacture of the vehicle that is being tested, certified, or warranted. Here, only the trailer manufacturer has this knowledge and control, as it determines all design specifications affecting the trailer, its ability to carry a load, and its contribution to greenhouse gas emissions. Because the tractor and trailer are sold separately to an end-user—a result of the way the industry is organized—no other entity can certify compliance or be the subject of an EPA investigation or records request as the Act requires. Thus, it is TTMA's argument, not EPA's, that would render the Act's enforcement provisions incoherent.

C. TTMA's attempt to absolve trailer manufacturers of any responsibility would upend Congress's regulatory scheme.

TTMA's position would create a significant and inexplicable gap in Congress's comprehensive regulatory scheme. *County of Maui*, 2020 WL 1941966, at *10. In crafting the Act's vehicles program, Congress contemplated independent obligations for motor vehicle, motor vehicle engine, and motor vehicle part manufacturers. It also granted EPA a range of means by which to regulate vehicles, engines, and parts: from mandating incorporation of specific control devices; to setting per-vehicle or per-engine pollutant limits; to ensuring that use of a part will not result in a failure to comply with standards; to setting

fleet-wide standards that are not determined by the emissions of any one particular motor vehicle at all. *See, e.g.*, 42 U.S.C. §§ 7521(a)(1), (b)(1)(A), (m)(1)(A); 7541.

TTMA now suggests that a trailer's status as a "component sold completely separately … that may later be attached to a motor vehicle," TTMA Br. 21, immunizes it from regulation altogether. But it beggars belief that Congress intended to exclude from the Act's broad-ranging regulatory scheme half of the largest heavy-duty vehicle ubiquitously used to "transport … property." Indeed, because trailers contribute significantly to the vehicle's emissions, it would be impossible to effectively regulate tractor-trailers without addressing the trailer.

TTMA's "component" argument suggests trailers *could* be regulated under the Act as vehicle "parts." Yet TTMA conveniently avoids this conclusion, hoping to insulate its members from the responsibilities that EPA can impose on parts manufacturers under the Act. 42 U.S.C. §§ 7541, 7542. In any event, it would not be sensible for EPA to regulate trailers as "parts." As discussed *supra* p. 19, unlike a tire or a wheel, a trailer is not a motor vehicle "part"—it is not "installed in or on a motor vehicle," *id.* § 7550; 81 Fed. Reg. at 73,515. Nor does it make sense that Congress would desire a trailer manufacturer to certify that its product—constituting fully half of the vehicle—would not cause the tractor-trailer to fall short of its emission standards. 42 U.S.C. § 7541 (requiring parts manufacturers to so certify). As EPA rightly explained, "the trailer manufacturer is not analogous to

the manufacturer of a vehicle part or component, like a tire manufacturer, or to the manufacturer of a side skirt. The trailer is a significant, integral part of the finished motor vehicle ….” 81 Fed. Reg. at 73,516.

TTMA’s view assumes that Congress intended trailers to entirely slip through the regulatory cracks notwithstanding their significant contribution to dangerous pollution. Congress’s comprehensive regulatory program belies such a conclusion. EPA properly regulated trailer manufacturers as “motor vehicle manufacturers” under the Act.

CONCLUSION

For the foregoing reasons, Respondent-Intervenors urge this Court to deny TTMA’s Petition for Review.

DATED: June 23, 2020 Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing **Corrected Final Brief of Intervenor-Respondent Public Health and Environmental Organizations** was printed in a proportionally spaced font of 14 points and that, according to the word-count program in Microsoft Word 2016, it contains 6,485 words.

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing **Corrected Final Brief of Intervenor-Respondent Public Health and Environmental Organizations** on all parties through the Court's electronic case filing (ECF) system.

DATED: June 23, 2020

/s/ *Susannah L. Weaver*

Susannah Landes Weaver

STATUTORY AND REGULATORY ADDENDUM

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42 U.S.C. § 7521

§ 7521. Emission standards for new motor vehicles or new motor vehicle engines

(a) Authority of Administrator to prescribe by regulation.

Except as otherwise provided in subsection (b)—

(1) The Administrator shall by regulation prescribe (and from time to time revise) in accordance with the provisions of this section, standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare. Such standards shall be applicable to such vehicles and engines for their useful life (as determined under subsection (d), relating to useful life of vehicles for purposes of certification), whether such vehicles and engines are designed as complete systems or incorporate devices to prevent or control such pollution.

(2) Any regulation prescribed under paragraph (1) of this subsection (and any revision thereof) shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

(3)

(A) In general.—

(i) Unless the standard is changed as provided in subparagraph (B), regulations under paragraph (1) of this subsection applicable to emissions of hydrocarbons, carbon monoxide, oxides of nitrogen, and particulate matter from classes or categories of heavy-duty vehicles or engines manufactured during or after model year 1983 shall contain standards which reflect the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the model year to which such standards apply, giving appropriate consideration to cost, energy, and safety factors associated with the application of such technology.

(ii) In establishing classes or categories of vehicles or engines for purposes of regulations under this paragraph, the Administrator may base such classes or categories on gross vehicle weight, horsepower, type of fuel used, or other appropriate factors.

(B) Revised standards for heavy duty trucks.—

(i) On the basis of information available to the Administrator concerning the effects of air pollutants emitted from heavy-duty vehicles or engines and from other sources of mobile source related pollutants on the public health and welfare, and taking costs into account, the Administrator may promulgate regulations under paragraph (1) of this subsection revising any standard promulgated under, or before the date of, the enactment of the Clean Air Act Amendments of 1990 (or previously revised under this subparagraph) and applicable to classes or categories of heavy-duty vehicles or engines.

* * *

(b) Emissions of carbon monoxide, hydrocarbons, and oxides of nitrogen; annual report to Congress; waiver of emission standards; research objectives.

(1)

(A) The regulations under subsection (a) applicable to emissions of carbon monoxide and hydrocarbons from light-duty vehicles and engines manufactured during model years 1977 through 1979 shall contain standards which provide that such emissions from such vehicles and engines may not exceed 1.5 grams per vehicle mile of hydrocarbons and 15.0 grams per vehicle mile of carbon monoxide. The regulations under subsection (a) applicable to emissions of carbon monoxide from light-duty vehicles and engines manufactured during the model year 1980 shall contain standards which provide that such emissions may not exceed 7.0 grams per vehicle mile. The regulations under subsection (a) applicable to emissions of hydrocarbons from light-duty vehicles and engines manufactured during or after model year 1980 shall contain standards which require a reduction of at least 90 percent from emissions of such pollutant allowable under the standards under this section applicable to light-duty vehicles and engines manufactured in model year 1970. Unless waived as provided in paragraph (5), regulations under subsection (a) applicable to emissions of carbon monoxide from light-duty vehicles and engines manufactured during or after

the model year 1981 shall contain standards which require a reduction of at least 90 percent from emissions of such pollutant allowable under the standards under this section applicable to light-duty vehicles and engines manufactured in model year 1970.

* * *

(m) Emissions Control Diagnostics.

(1) Regulations. Within 18 months after November 15, 1990, the Administrator shall promulgate regulations under subsection (a) requiring manufacturers to install on all new light duty vehicles and light duty trucks diagnostics systems capable of—

(A) accurately identifying for the vehicle's useful life as established under this section, emission-related systems deterioration or malfunction, including, at a minimum, the catalytic converter and oxygen sensor, which could cause or result in failure of the vehicles to comply with emission standards established under this section,

* * *

42 U.S.C. § 7525

§ 7525. Motor vehicle and motor vehicle engine compliance testing and certification

(a) Testing and issuance of certificate of conformity.

(1) The Administrator shall test, or require to be tested in such manner as he deems appropriate, any new motor vehicle or new motor vehicle engine submitted by a manufacturer to determine whether such vehicle or engine conforms with the regulations prescribed under section 7521 of this title. If such vehicle or engine conforms to such regulations, the Administrator shall issue a certificate of conformity upon such terms, and for such period (not in excess of one year), as he may prescribe. In the case of any original equipment manufacturer (as defined by the Administrator in regulations promulgated before November 15, 1990) of vehicles or vehicle engines whose projected sales in the United States for any model year (as determined by the Administrator) will not exceed 300, the Administrator shall not require, for purposes of determining compliance with regulations under section 7521 of this title for the useful life of the vehicle or engine, operation of any vehicle or engine manufactured during such model year for more than 5,000 miles or 160 hours, respectively, unless the Administrator, by regulation, prescribes otherwise. The Administrator shall apply any adjustment factors that the Administrator deems appropriate to assure that each vehicle or engine will comply during its useful life (as determined under section 7521(d) of this title) with the regulations prescribed under section 7521 of this title.

* * *

(c) Inspection.

For purposes of enforcement of this section, officers or employees duly designated by the Administrator, upon presenting appropriate credentials to the manufacturer or person in charge, are authorized (1) to enter, at reasonable times, any plant or other establishment of such manufacturer, for the purpose of conducting tests of vehicles or engines in the hands of the manufacturer, or (2) to inspect, at reasonable times, records, files, papers, processes, controls, and facilities used by such manufacturer in conducting tests under regulations of the Administrator. Each such inspection shall be commenced and completed with reasonable promptness.

* * *

42 U.S.C. § 7541

§ 7541. Compliance by vehicles and engines in actual use

(a) Warranty; certification; payment of replacement costs of parts, devices, or components designed for emission control.

(1) Effective with respect to vehicles and engines manufactured in model years beginning more than 60 days after the date of the enactment of the Clean Air Amendments of 1970 [enacted Dec. 31, 1970], the manufacturer of each new motor vehicle and new motor vehicle engine shall warrant to the ultimate purchaser and each subsequent purchaser that such vehicle or engine is (A) designed, built, and equipped so as to conform at the time of sale with applicable regulations under section 202 [42 U.S.C. § 7521], and (B) free from defects in materials and workmanship which cause such vehicle or engine to fail to conform with applicable regulations for its useful life (as determined under section 202(d) [42 U.S.C. § 7521(d)]. In the case of vehicles and engines manufactured in the model year 1995 and thereafter such warranty shall require that the vehicle or engine is free from any such defects for the warranty period provided under subsection (i).

(2) In the case of a motor vehicle part or motor vehicle engine part, the manufacturer or rebuilder of such part may certify that use of such part will not result in a failure of the vehicle or engine to comply with emission standards promulgated under section 202 [42 U.S.C. § 7521]. Such certification shall be made only under such regulations as may be promulgated by the Administrator to carry out the purposes of subsection (b). The Administrator shall promulgate such regulations no later than two years following the date of the enactment of this paragraph [enacted Aug. 7, 1977].

* * *

42 U.S.C. § 7542

§ 7542. Information collection

(a) Manufacturer's responsibility.

Every manufacturer of new motor vehicles or new motor vehicle engines, and every manufacturer of new motor vehicle or engine parts or components, and other persons subject to the requirements of this part or part C, shall establish and maintain records, perform tests where such testing is not otherwise reasonably available under this part and part C (including fees for testing), make reports and provide information the Administrator may reasonably require to determine whether the manufacturer or other person has acted or is acting in compliance with this part and part C and regulations thereunder, or to otherwise carry out the provision of this part and part C, and shall, upon request of an officer or employee duly designated by the Administrator, permit such officer or employee at reasonable times to have access to and copy such records.

* * *

42 U.S.C. § 7547

§ 7547. Nonroad engines and vehicles

* * *

(d) Enforcement.

The standards under this section shall be subject to sections 7525, 7541, 7542, and 7543 of this title, with such modifications of the applicable regulations implementing such sections as the Administrator deems appropriate, and shall be enforced in the same manner as standards prescribed under section 7521 of this title. The Administrator shall revise or promulgate regulations as may be necessary to determine compliance with, and enforce, standards in effect under this section.

42 U.S.C. § 7550

§ 7550. Definitions

As used in this part—

(1) The term "manufacturer" as used in sections 7521, 7522, 7525, 7541, and 7542 of this title means any person engaged in the manufacturing or assembling of new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines, or importing such vehicles or engines for resale, or who acts for and is under the control of any such person in connection with the distribution of new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines, but shall not include any dealer with respect to new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines received by him in commerce.

(2) The term "motor vehicle" means any self-propelled vehicle designed for transporting persons or property on a street or highway.

(3) Except with respect to vehicles or engines imported or offered for importation, the term "new motor vehicle" means a motor vehicle the equitable or legal title to which has never been transferred to an ultimate purchaser; and the term "new motor vehicle engine" means an engine in a new motor vehicle or a motor vehicle engine the equitable or legal title to which has never been transferred to the ultimate purchaser; and with respect to imported vehicles or engines, such terms mean a motor vehicle and engine, respectively, manufactured after the effective date of a regulation issued under section 7521 of this title which is applicable to such vehicle or engine (or which would be applicable to such vehicle or engine had it been manufactured for importation into the United States).

(4) The term "dealer" means any person who is engaged in the sale or the distribution of new motor vehicles or new motor vehicle engines to the ultimate purchaser.

(5) The term "ultimate purchaser" means, with respect to any new motor vehicle or new motor vehicle engine, the first person who in good faith purchases such new motor vehicle or new engine for purposes other than resale.

(6) The term "commerce" means (A) commerce between any place in any State and any place outside thereof; and (B) commerce wholly within the District of Columbia.

(7) Vehicle curb weight, gross vehicle weight rating, light-duty truck, light-duty vehicle, and loaded vehicle weight.—

The terms “vehicle curb weight”, “gross vehicle weight rating” (GVWR), “light-duty truck” (LDT), light-duty vehicle,[1] and “loaded vehicle weight” (LVW) have the meaning provided in regulations promulgated by the Administrator and in effect as of November 15, 1990. The abbreviations in parentheses corresponding to any term referred to in this paragraph shall have the same meaning as the corresponding term.

(8) Test weight.—

The term “test weight” and the abbreviation “tw” mean the vehicle curb weight added to the gross vehicle weight rating (gvwr) and divided by 2.

(9) Motor vehicle or engine part manufacturer.—

The term “motor vehicle or engine part manufacturer” as used in sections 7541 and 7542 of this title means any person engaged in the manufacturing, assembling or rebuilding of any device, system, part, component or element of design which is installed in or on motor vehicles or motor vehicle engines.

(10) Nonroad engine.—

The term “nonroad engine” means an internal combustion engine (including the fuel system) that is not used in a motor vehicle or a vehicle used solely for competition, or that is not subject to standards promulgated under section 7411 of this title or section 7521 of this title.

(11) Nonroad vehicle.—

The term “nonroad vehicle” means a vehicle that is powered by a nonroad engine and that is not a motor vehicle or a vehicle used solely for competition.

42 U.S.C. § 7601

§ 7601. Administration

(a) Regulations; delegation of powers and duties; regional officers and employees.

(1) The Administrator is authorized to prescribe such regulations subject to section 307(d) [42 U.S.C. § 7607(d)] as are necessary to carry out his functions under this Act. The Administrator may delegate to any officer or employee of the Environmental Protection Agency such of his powers and duties under this Act, except the making of regulations, as he may deem necessary or expedient.

* * *

40 C.F.R. § 1037.501

§ 1037.501. General testing and modeling provisions.

This subpart specifies how to perform emission testing and emission modeling required elsewhere in this part.

* * *

(g) Apply this paragraph (g) whenever we specify the use of standard trailers. Unless otherwise specified, a tolerance of ± 2 inches applies for all nominal trailer dimensions.

(1) The standard trailer for high-roof tractors must meet the following criteria:

(i) It is an unloaded two-axle dry van 53.0 feet long, 102 inches wide, and 162 inches high (measured from the ground with the trailer level).

(ii) It has a king pin located with its center 36 +/- 0.5 inches from the front of the trailer and a minimized trailer gap (no greater than 45 inches).

(iii) It has a simple orthogonal shape with smooth surfaces and nominally flush rivets. Except as specified in paragraph (g)(1)(v) of this section, the standard trailer does not include any aerodynamic features such as side fairings, rear fairings, or gap reducers. It may have a scuff band no more than 0.13 inches thick.

(iv) It includes dual 22.5 inch wheels, standard tandem axle, standard mudflaps, and standard landing gear. The centerline of the tandem axle assembly must be 145 +/- 5 inches from the rear of the trailer. The landing gear must be installed in a conventional configuration.

(v) For the Phase 2 standards, include side skirts meeting the specifications of this paragraph (g)(1)(v). The side skirts must be mounted flush with both sides of the trailer. The skirts must be an isosceles trapezoidal shape. Each skirt must have a height of 36 +/- 2 inches. The top edge of the skirt must be straight with a length of 341 +/- 2 inches. The bottom edge of the skirt must be straight with a length of 268 +/- 2 inches and have a ground clearance of 8 +/- 2 inches through that full length. The sides of the skirts must be straight. The rearmost point of the skirts must be mounted 32 +/- 2 inches in front of the centerline of the trailer tandem axle assembly. We may approve your request to use a skirt with different dimensions if these specified values

are impractical or inappropriate for your test trailer, and you propose alternative dimensions that provide an equivalent or comparable degree of aerodynamic drag for your test configuration.

(2) The standard trailer for mid-roof tractors is an empty two-axle tank trailer 42 +/- 1 feet long by 140 inches high and 102 inches wide.

(i) It has a 40 +/- 1 feet long cylindrical tank with a 7000 +/- 7 gallon capacity, smooth surface, and rounded ends.

(ii) The standard tank trailer does not include any aerodynamic features such as side fairings, but does include a centered 20 inch manhole, side-centered ladder, and lengthwise walkway. It includes dual 24.5 inch wheels.

(3) The standard trailer for low-roof tractors is an unloaded two-axle flatbed trailer 53 +/- 1 feet long and 102 inches wide.

(i) The deck height is 60.0 +/- 0.5 inches in the front and 55.0 +/- 0.5 inches in the rear. The standard trailer does not include any aerodynamic features such as side fairings.

(ii) It includes an air suspension and dual 22.5 inch wheels on tandem axles.

(h) Use a standard tractor for measuring aerodynamic drag of trailers. Standard tractors must be certified at Bin III (or more aerodynamic if a Bin III tractor is unavailable) for Phase 1 or Phase 2 under § 1037.520(b)(1) or (3). The standard tractor for long trailers is a Class 8 high-roof sleeper cab. The standard tractor for short trailers is a Class 7 or Class 8 high-roof day cab with a 4 x 2 drive-axle configuration.

40 C.F.R. § 90.127

§ 90.127. Fuel line permeation from nonhandheld engines and equipment.

The following permeation standards apply to new nonhandheld engines and equipment with respect to fuel lines:

(a) Emission standards and related requirements. New nonhandheld engines and equipment with a date of manufacture of January 1, 2009 or later that run on a volatile liquid fuel (such as gasoline) must meet the emission standards specified in paragraph (a)(1) or (a)(2) of this section as follows:

(1) New nonhandheld engines and equipment must use only fuel lines that meet a permeation emission standard of 15 g/m<2>/day when measured according to the test procedure described in 40 CFR 1060.515.

(2) Alternatively, new nonhandheld engines and equipment must use only fuel lines that meet standards that apply for these engines and equipment in California for the same model year (see 40 CFR 1060.810). This may involve SHED-based measurements for equipment or testing with fuel lines alone. If this involves SHED-based measurements, all elements of the emission control system must remain in place for fully assembled engines and equipment.

(3) The emission standards in this section apply with respect to discrete fuel line segments of any length. Compliance may also be demonstrated using aggregated systems that include multiple sections of fuel line with connectors, and fittings. The standard applies with respect to the total permeation emissions divided by the wetted internal surface area of the assembly. Where it is not practical to determine the wetted internal surface area of the assembly, the internal surface area per unit length of the assembly may be assumed to be equal to the ratio of internal surface area per unit length of the hose section of the assembly.

(4) The emission standards in this section apply over a useful life of five years.

(5) Starting with the 2010 model year, fuel lines must be labeled in a permanent and legible manner with one of the following approaches:

(i) By meeting the labeling requirements that apply for these engines and equipment in California.

(ii) By identifying the certificate holder's corporate name or trademark, or the fuel line manufacturer's corporate name or trademark, and the fuel line's permeation level. For example, the fuel line may identify the emission standard from this section, the applicable SAE classification, or the family number identifying compliance with California standards. A continuous stripe or other pattern may be added to help identify the particular type or grade of fuel line.

(6) The requirements of this section do not apply to auxiliary marine engines.

(b) Certification requirements. Fuel lines subject to the requirements in this section must be covered by a certificate of conformity. Fuel line manufacturers or equipment manufacturers may apply for certification. Certification under this section must be based on emission data using the appropriate procedures that demonstrate compliance with the standard, including any of the following:

(1) Emission data demonstrating compliance with fuel line permeation requirements for model year 2008 equipment sold in California. You may satisfy this requirement by presenting an approved Executive Order from the California Air Resources Board showing that the fuel lines meet the applicable standards in California. This may include an Executive Order from the previous model year if a new certification is pending.

(2) Emission data demonstrating a level of permeation control that meets any of the following industry standards:

(i) R11A specifications in SAE J30 as described in 40 CFR 1060.810.

(ii) R12 specifications in SAE J30 as described in 40 CFR 1060.810.

(iii) Category 1 specifications in SAE J2260 as described in 40 CFR 1060.810.

(iv) Emission data demonstrating compliance with the fuel line permeation standards in 40 CFR 1051.110.

(c) Prohibitions.

(1) Except as specified in paragraph (c)(2) of this section, introducing engines or equipment into U.S. commerce without meeting all the requirements of this section violates § 90.1003(a)(1).

(2) It is not a violation to introduce your engines into U.S. commerce if equipment manufacturers add fuel lines when installing your engines in their equipment. However, you must give equipment manufacturers any appropriate instructions so that fully assembled equipment will meet all the requirements in this section, as described in § 90.128.