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VIA ELECTRONIC SUBMISSION

Heidi King
Deputy Administrator
National Highway Traffic Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

Andrew R. Wheeler
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Attn: Docket No. NHTSA-2018-0067
Docket No. NHTSA-2017-0069
Docket No. EPA-HQ-OAR-2018-0283

Re: Supplemental Comments of Environmental Defense Fund, Environmental Law & Policy Center, Natural Resources Defense Council, and Sierra Club on the Environmental Protection Agency's and National Highway Traffic Safety Administration's Proposed Rule: The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks, 83 Fed. Reg. 42,986 (Aug. 24, 2018)

Environmental Defense Fund (“EDF”), Environmental Law & Policy Center, Natural Resources Defense Council, and Sierra Club (“Commenters”) respectfully submit this supplemental comment and attachment on the Environmental Protection Agency’s (“EPA”) and the National Highway Traffic Safety Administration’s (“NHTSA”) Proposed Rule: The Safer Affordable Fuel-Efficient (“SAFE”) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks, 83 Fed. Reg. 42,986 (Aug. 24, 2018) (“Proposed Rule” or “Proposal”). The supplemental comment and attached materials must be considered as part of this ongoing rulemaking as they contain material that is “of central relevance to the rulemaking.”¹

This comment reviews relevant information that emerged from the June 20, 2019, hearing of the House of Representatives Committee on Energy and Commerce: “Driving in Reverse: The Administration’s Rollback of Fuel Economy and Clean Car Standards.” Commenters also submit the attached preliminary hearing transcript to the docket.²

¹ 42 U.S.C. § 7607(d)(4)(B)(i); *see also id.* § 7607(d)(7)(A) (providing that such material forms part of the administrative record for judicial review); Proposed Rule, 83 Fed. Reg. 42,986, 43,471 (Aug. 24, 2018) (citing 49 C.F.R. § 553.23 (committing that “[l]ate filed comments will be considered to the extent practicable”).

² The final, official transcript has not yet been published by the committee. In the interest of urgency, Commenters are submitting the preliminary transcript. *See* U.S. House of Representatives Committee Repository, Joint Hearing:

1. Former EPA Assistant Administrator Wehrum³ admitted that he and EPA Administrator Wheeler were briefed by EPA staff about flaws in the Proposed Rule.

At the House Energy and Commerce Committee hearing, upon questioning by Representative Pallone, Mr. Wehrum stated that he and EPA Administrator Andrew Wheeler were “briefed on the memo written by the Office of Transportation and Air Quality detailing the problems with the proposed rule.”⁴

EPA Office of Transportation and Air Quality (OTAQ) staff have repeatedly raised concerns with the flawed analysis in the proposal. OTAQ staff presented such concerns to the Office of Management and Budget as early as April 2018.⁵ That presentation included results from EPA’s OMEGA model that are “of central relevance to the rulemaking,”⁶ but the Proposed Rule fails to address them—though Commenters have repeatedly asked the agency to release the model and consider its results.⁷ And recently, OTAQ staff presented senior EPA leadership with a detailed report specifying the fundamental flaws in the technical analysis underlying the proposal.⁸ EPA has refused to make this memo public, despite requests from congressional leaders⁹ and advocacy organizations.¹⁰

Such an analysis by EPA staff of the Proposed Rule must be included in the administrative record for this rulemaking. Furthermore, Mr. Wehrum’s acknowledgment that he has been

“Driving in Reverse: The Administration’s Rollback of Fuel Economy and Clean Car Standards” (containing the “Unedited Transcript” added June 28, 2019), <https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=109670>.

³ Mr. Wehrum announced his resignation from his position as Assistant Administrator of EPA’s Office of Air and Radiation on June 26, 2019. See Juliet Eilperin & Brady Dennis, *Top EPA official resigns amid scrutiny over possible ethics violations*, WASH. POST (June 26, 2019), <https://www.washingtonpost.com/climate-environment/2019/06/26/epas-top-air-policy-official-steps-down-amid-scrutiny-over-possible-ethics-violations>.

⁴ *Driving in Reverse: The Administration’s Rollback of Fuel Economy and Clean Car Standards: Hearing Before the H. Comm. on Energy and Commerce*, 116th Cong. at 67, lines 1493-1499 (June 20, 2019) (hereinafter “Hearing Transcript”).

⁵ E.O. 12866 Review Materials, File: “Email 5- Email from William Charmley to Chandana Achanta,” at 113 -- Memo: “EPA review of CAFE model with ‘GHG’ settings (08-Mar ver.),” (Apr. 16, 2018), <https://www.regulations.gov/document?D=EPA-HQ-OAR-2018-0283-0453>.

⁶ 42 U.S.C. § 7607(d)(4)(B)(i).

⁷ See, e.g., Letter from EDF, NRDC, Safe Climate Campaign, & UCS, to EPA Assistant Administrator William Wehrum (Mar. 20, 2018), <https://www.regulations.gov/document?D=EPA-HQ-OAR-2018-0283-5705>; FOIA Request from Irene Gutierrez, NRDC & Erin Murphy, EDF, to EPA, Request No. EPA-HQ-2018-010465 (July 25, 2018); Letter from EDF, NRDC, Safe Climate Campaign, & UCS, to EPA Assistant Administrator William Wehrum (Sept. 20, 2018), <https://www.regulations.gov/document?D=EPA-HQ-OAR-2018-0283-5705>; Complaint, *NRDC v. EPA*, No. 18-cv-11227 (S.D.N.Y., filed Dec. 3, 2018).

⁸ See Doug Obey, *EPA Staff Crafts New Analysis Of Flaws, Possible Fixes For Vehicle GHG Plan*, INSIDE EPA (Apr. 15, 2019) (submitted as attachment).

⁹ Letter from Senator Tom Carper and Representative Frank Pallone, Jr., to EPA Administrator Andrew Wheeler (May 23, 2019), <https://bit.ly/2NDOI6v>.

¹⁰ FOIA Request for EPA Staff Analysis Regarding the Clean Car Standards and the “SAFE” Rulemaking to Roll Back Those Standards, submitted by Environmental Defense Fund to EPA, Request No. EPA-HQ-2019-005200 (Apr. 22, 2019) (submitted as attachment).

briefed on OTAQ staff’s critique of the proposal is yet another demonstration that these staff analyses are centrally relevant to the rulemaking and must be addressed in any final rule.

2. Former EPA Assistant Administrator Wehrum stated that NHTSA drafted the Proposed Rule’s Regulatory Impact Analysis.

EPA and NHTSA jointly issued a Proposed Regulatory Impact Analysis (PRIA) shortly after the publication of the Proposed Rule,¹¹ but at the June 20, 2019 House Energy and Commerce Committee hearing, then-EPA Assistant Administrator William Wehrum stated that the PRIA “was a document drafted by NHTSA. It wasn’t drafted by us.”¹² He reiterated that the PRIA is “a document drafted by NHTSA and not by EPA.”¹³

Mr. Wehrum’s statements affirm that EPA failed to conduct its own analysis, and instead unlawfully delegated its duty to NHTSA, a separate agency.¹⁴ As made clear in earlier comments, EPA must withdraw its proposed rollback of its GHG emission standards for vehicles.¹⁵

3. David Schwietert, Interim Chief Executive Officer, Alliance of Automobile Manufacturers, stated that automakers do not support the Proposed Rule.

Mr. Schwietert stated in his hearing testimony: “No auto maker has asked for flat standards. . . . No auto maker is asking for flat standards”¹⁶ Additionally, Mr. Schwietert stated that automakers are investing “tens of billions” of dollars to meet the existing Clean Car Standards.¹⁷ Mr. Schwietert, speaking on behalf of 12 automakers representing over 70% of new passenger vehicles sold in the U.S., also acknowledged the importance of strong federal standards to drive innovation. He described the Clean Car Standards as “a core baseline” that “spurs that R&D investment—those plant expansions, those development[s] that lead to jobs and the innovative products that I think everybody comes to expect.”¹⁸

Mr. Schwietert’s comments are yet another indication that the administration’s proposed course of action is deeply harmful and unlawfully disregards this rollback’s destructive consequences.

¹¹ NHTSA & EPA, Preliminary Regulatory Impact Analysis, The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Year 2021-2026 Passenger Cars and Light Trucks (July 2018, updated Aug. 23, 2018), Docket IDs EPA-HQ-OAR-2018-0283-3041 and NHTSA-2018-0067-1972.

¹² Hearing Transcript at 50, lines 1093-95.

¹³ *Id.* at 51, lines 1099-1100.

¹⁴ See *Motor Vehicles Mfrs. Ass’n v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983); *U.S. Telecom Ass’n v. FCC*, 359 F.3d 554, 565-66 (D.C. Cir. 2004); *Deutsch v. U.S. Atomic Energy Commission*, 401 F.2d 404, 407 (D.C. Cir. 1968).

¹⁵ See Comments of Center for Biological Diversity, Conservation Law Foundation, Environmental Defense Fund, Earthjustice, Environmental Law and Policy Center, Natural Resources Defense Council, Public Citizen, Inc., Sierra Club, and Union of Concerned Scientists on the SAFE Rule, Appendix A at 19 (Oct. 26, 2018), Docket ID EPA-HQ-OAR-2018-0283-5070.

¹⁶ Hearing Transcript at 228, lines 5119, 5128.

¹⁷ *Id.* at 239, line 5398.

¹⁸ *Id.* at 253, lines 5719-24.

4. NHTSA Deputy Administrator King wrongly stated that the Proposed Rule will have very little effect on pollution.

Deputy Administrator King stated that the Proposed Rule would yield “no noticeable impact to net emissions of smog-forming or other criteria air pollutants,” and that “there is very, very little climate impact associated with this rulemaking.”¹⁹ Ms. King’s statement contrasts directly with her own agency’s analysis, which concluded that climate pollution through 2100 would increase by 7.4 billion tons under the preferred alternative.²⁰ And an independent analysis by EDF—using NHTSA’s own model—concluded that climate pollution, toxics, and criteria pollutant emissions will increase even more than the agency acknowledges under the proposed rollback.²¹ NO_x emissions, for example, would increase by over 63,000 million metric tons per year by 2050 under the administration’s proposal—more than six times as much as the agency admits.²² Ms. King’s erroneous presentation of basic facts of the administration’s proposal is a further example that the administration’s reasoning underlying the rollback is arbitrary and capricious.

5. Former EPA Assistant Administrator Wehrum and NHTSA Deputy Administrator King stated that their agencies have not made “final decisions” about the rule.

At the hearing on June 20, 2019, Mr. Wehrum and Ms. King asserted that no final decisions on the Proposed Rule have been made.²³ Ms. King stated that the agencies “are reading the public comments” and “are considering all public comments we receive before [we] make decisions in the final rulemaking.”²⁴ Accordingly, as both agencies continue with their rulemaking, supplemental comments that have been submitted on the Proposed Rule must be properly considered as part of the agencies’ rulemaking.²⁵

* * *

Commenters respectfully submit the information contained herein into the SAFE rulemaking docket and reiterate that the agencies must withdraw the fatally flawed Proposed Rule. Please

¹⁹ *Id.* at 105, lines 2395-97; *id.* at 131, lines 3018-19.

²⁰ NHTSA, Draft Environmental Impact Statement for the Proposed SAFE Rule, Summary at S-18, (July 2018), Docket ID NHTSA-2017-0069-0179.

²¹ See Comment of Environmental Defense Fund on EPA & NHTSA’s Proposed SAFE Rule, Appendix A at 48-49, Docket ID EPA-HQ-OAR-2018-0283-5775 (Oct. 26, 2018); Comment of Environmental Defense Fund on NHTSA’s Draft Environmental Impact Statement for the Proposed SAFE Rule at 6, Docket ID EPA-HQ-OAR-2018-0283-5764 (Oct. 26, 2018).

²² See Comment of Environmental Defense Fund on EPA & NHTSA’s Proposed SAFE Rule, Appendix A at 48-49, Docket ID EPA-HQ-OAR-2018-0283-5775 (Oct. 26, 2018).

²³ Hearing Transcript at 50, line 1085 (statement of William Wehrum (“[N]o final decisions have been made.”)); at 96, lines 2201-02 (statement of William Wehrum (“We are working hard on finalizing the SAFE Rule”), (“the proposed SAFE Rule that should be finalized sometime soon”)); at 144, lines 3333-34 (statement of Heidi King, Deputy Administrator, National Highway Traffic Safety Administration).

²⁴ *Id.* at 144, lines 3333-34.

²⁵ See Proposed Rule, 83 Fed. Reg. 42,986, 43,471; 49 C.F.R. § 553.23 (“Late filed comments will be considered to the extent practicable.”).

contact Erin Murphy, emurphy@edf.org, 202-572-3525, if you have any questions regarding this comment.

Respectfully submitted,

ENVIRONMENTAL DEFENSE FUND
ENVIRONMENTAL LAW & POLICY CENTER
NATURAL RESOURCES DEFENSE COUNCIL
SIERRA CLUB

Attachments:

1. Transcript (Preliminary & Unedited), House Energy and Commerce Committee Hearing: *Driving in Reverse: The Administrations Rollback of Fuel Economy and Clean Car Standards*, June 20, 2019.
2. FOIA Request for EPA Staff Analysis Regarding the Clean Car Standards and the “SAFE” Rulemaking to Roll Back Those Standards, submitted by Environmental Defense Fund to EPA, Request No. EPA-HQ-2019-005200 (Apr. 22, 2019).
3. Doug Obey, *EPA Staff Crafts New Analysis Of Flaws, Possible Fixes For Vehicle GHG Plan*, INSIDE EPA (Apr. 15, 2019).