



Institute *for*  
Policy Integrity

NEW YORK UNIVERSITY SCHOOL OF LAW

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Environmental Protection Agency  
National Highway Traffic Safety Administration

Subject: Docket ID Nos. EPA-HQ-OAR-2014-0827 and NHTSA-2014-0132, Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2

The Institute for Policy Integrity at NYU School of Law<sup>1</sup> is a non-partisan think tank dedicated to improving the quality of government decisionmaking through advocacy and scholarship in the fields of administrative law, economics, and public policy. Together with NRDC, EDF, and the Union of Concerned Scientists, Policy Integrity has submitted separate comments on the use of the social cost of carbon and the proposed use of the social cost of methane in assessing the benefits of the proposed greenhouse gas and fuel efficiency standards for heavy-duty vehicles. Policy Integrity submits these separate, additional comments on a few key points.

**Consumer Labels:** In our comments on the Phase 1 standards for heavy-duty vehicles, Policy Integrity explained why informational failures justify some additional labeling requirements for heavy-duty vehicles. EPA and NHTSA have developed sophisticated labels for light-duty vehicles to help consumers directly and easily compare vehicle options by their fuel efficiency, estimated fuel costs, and estimated emissions. No such labels exist for heavy-duty vehicles. While many consumers of heavy-duty vehicles are commercial actors that, compared to average individuals, might have better access to information and more time and resources to make informed choices on their own, at least some heavy-duty vehicles are purchased by individuals (certain pickups, vans, mobile homes, and recreational vehicles). Moreover, there is no reason to assume that many government entities, non-profit entities, small businesses, and other commercial actors that purchase heavy-duty vehicles would not also benefit from easier access to clearer information.

Policy Integrity was not alone in suggesting improved consumer labels during the Phase 1 rulemaking. A group of 18 U.S. Senators, New York State, and NACAA, as well as ACEEE, the American Lung Association, the Clean Air Task Force, EDF, the International Council on Clean Transportation, Sierra Club, and the Union of Concerned Scientists, all supported consumer labels. In response, they agencies noted that they “agreed” with the recommendation, but insisted that a label would be “too complicated” to finish during the Phase 1 rulemaking. They promised to

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<sup>1</sup> No part of this document purports to present NYU’s views, if any.

“consider a consumer label in the context of our efforts with stakeholders to begin work on a second phase of this regulation.”<sup>2</sup>

Contrary to this promise, there is no discussion of a consumer label in the Phase 2 proposed rulemaking. Instead, EPA proposes scaling back the emission-control labels (which contain some limited information helpful for monitoring and enforcement, but are not designed to inform consumer comparisons of vehicle efficiency or emissions). Instead, the agencies should follow through on their promise to consider more informative consumer labels. If labels cannot be designed without delaying the final Phase 2 rule, the agencies should initiate a separate rulemaking specifically on labels. For more on the agencies’ statutory authority to create such labels and suggestions on the design of such labels, see our 2011 comments.<sup>3</sup>

***Upstream Emissions and Electric and Natural Gas Vehicles:*** The agencies propose phasing out the advanced technology credits. In our comments on the Phase 1 rulemaking, Policy Integrity explained the problems of treating advanced electric vehicles as if they had zero emissions, especially in combination with applying a 1.5 multiplier to electric vehicle credits. Phasing out the credits partly addresses this concern. However, the agencies continue to treat electric vehicles as if they have zero emissions, focusing only on the tailpipe and ignoring upstream emissions from electricity generation. Somewhat contradictorily, the agencies are also considering a lifecycle approach to natural gas vehicles that would count upstream emissions.

To accurately compare the greenhouse gas emissions associated with different vehicle types, the agencies must consider lifecycle emissions for *all* power sources. By contrast, limiting the analysis to downstream emissions or considering upstream emissions for only some power sources will undermine the efficacy of the standards by irrationally favoring vehicles whose climate impacts occur upstream. See our previous comments on lifecycle emissions analysis in the context of efficiency standards.<sup>4</sup>

***GWP Values for Credit Programs:*** The agencies ask whether they should continue using the IPCC 4<sup>th</sup> Assessment Report values for relative global warming potentials on a 100-year timescale to calculate the credits for non-carbon dioxide gases. They should not. Under Executive Orders 12,866 and 13,563, agencies are required to use the “best available science” in rulemaking.<sup>5</sup> The 4<sup>th</sup> Assessment Report is outdated and no longer reflects the global scientific consensus about relative global warming potentials. At a minimum, the agencies should update the values to reflect the IPCC 5<sup>th</sup> Assessment Report. Moreover, focusing solely on the 100-year timescale overlooks the more potent effects of some greenhouse gases, like methane, in the short term. The agencies should consider the 20-year timescale estimates. One option to consider might be averaging the 20-year and 100-year estimates.

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<sup>2</sup> *Accord*. 76 Fed. Reg. 57,106, 57,119 (Sept. 15, 2011); see EPA Response to Comments Document for Joint Rulemaking <http://www3.epa.gov/otaq/climate/documents/420r11004.pdf>, at 3-13 to 3-15 (2011) (exact quote above).

<sup>3</sup> [http://policyintegrity.org/files/publications/2211\\_Regulatory\\_Report\\_2011\\_Heavy\\_Trucks\\_Rule.pdf](http://policyintegrity.org/files/publications/2211_Regulatory_Report_2011_Heavy_Trucks_Rule.pdf)

<sup>4</sup> See [http://policyintegrity.org/documents/10.19\\_10\\_Comments\\_on\\_DOE\\_Full\\_Fuel\\_Cycle\\_.pdf](http://policyintegrity.org/documents/10.19_10_Comments_on_DOE_Full_Fuel_Cycle_.pdf), at 4 (arguing that ignoring upstream emissions “arbitrarily tips the scales in favor of power sources with superior downstream efficiency over those with superior upstream efficiency”).

<sup>5</sup> Exec. Order No. 13,563 §1(a) (Jan. 18, 2011).

***Stringency:*** The agencies have proposed a technology-forcing standard with compelling net social benefits. However, Alternative 4 would generate even higher net social benefits than the agencies' preferred alternative. And, for most vehicle classes and under most methodological assumptions, Alternative 5 would generate even greater net benefits. Unless the agencies have good reason to believe that their estimates of costs and benefits for these alternatives are wrong, they are under-regulating by failing to select Alternative 4 or Alternative 5.

***Support for Other Changes:*** The agencies have made several changes to the Phase 2 rule that are consistent with our previous comments. Notably, the Phase 2 proposal includes standards for trailers. Small businesses are no longer completely exempt, but rather are subject to the standards with a slight delay and other minor modifications to ease compliance. The explanation of the "energy efficiency paradox" also is consistent with many of our points on the first-mover disadvantage and the general lack of reliable information available to consumers. Finally, the agencies have now proposed air conditioning leakage standards for vocational vehicles (though, regrettably, still no air conditioning efficiency standards or credits). For more on Policy Integrity's views on heavy-duty vehicle regulation, see our comments on the Phase 1 rulemaking.<sup>6</sup>

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<sup>6</sup> [http://policyintegrity.org/files/publications/2211\\_Regulatory\\_Report\\_2011\\_Heavy\\_Trucks\\_Rule.pdf](http://policyintegrity.org/files/publications/2211_Regulatory_Report_2011_Heavy_Trucks_Rule.pdf)