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VIA ELECTRONIC SUBMISSION

DEPARTMENT OF  
TRANSPORTATION

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DOCKET OPERATIONS

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

**Re: Supplemental Public Comment on “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”)**

The undersigned organizations respectfully submit these supplemental comments to the above-listed Environmental Protection Agency (“EPA”) and National Highway Traffic Safety Administration (“NHTSA”) dockets for the Proposed Rule. These comments concern the EPA Science Advisory Board (“SAB”) draft report “Consideration of Scientific and Technical Basis of the EPA’s Proposed Rule Titled *The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks*” [hereinafter SAB Draft Report].<sup>1</sup> These supplemental comments must be placed in the record and considered in this ongoing rulemaking because the SAB’s draft report contains information “of central relevance to the rulemaking”<sup>2</sup> that became available to the public between December 31, 2019 and January 17, 2020, after the close of the public comment period.<sup>3</sup>

The SAB draft report is the latest of many authorities to alert the agencies of foundational flaws in the Proposed Rule’s scientific and technical basis. The draft report concludes that “the weaknesses [in the Proposed Rule] are sufficiently important that they could reverse the sign of the result [of the cost-benefit analysis], indicating that the [existing clean car] standards provide a better

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<sup>1</sup> The draft report is attached as Exhibit 1 to this comment and is available online at [https://yosemite.epa.gov/sab/sabproduct.nsf/ea5d9a9b55cc319285256cbd005a472e/3bd8a1aea4943223852584e1005463dc/\\$FILE/SAFE%20SAB%20Draft%20Review%2010%2016%2019.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/ea5d9a9b55cc319285256cbd005a472e/3bd8a1aea4943223852584e1005463dc/$FILE/SAFE%20SAB%20Draft%20Review%2010%2016%2019.pdf).

<sup>2</sup> 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).

<sup>3</sup> See Proposed Rule, 83 Fed. Reg. at 42,986 (requesting comments by October 23, 2018).

outcome than the proposed revision.”<sup>4</sup> Remarkably, EPA and NHTSA have transmitted their draft final rule to the White House Office of Management (“OMB”) and Budget for interagency review without considering the serious concerns raised in the draft SAB report. The agencies took this step before the SAB’s January 17 proceedings to further consider this expert input and move toward finalizing the report, further demonstrating their intent to finalize the rule without a full and accurate understanding of its deeply harmful consequences for public health, the economy, and the environment.

In this comment, we highlight the analytic flaws in the Proposed Rule raised by the SAB and others, as well as the procedural deficiencies shown by EPA’s delay of and response to the SAB’s review. These analytic and procedural issues add to an alarming pattern of unlawful and irrational rejection of public input and expert warnings that has plagued this rule’s development. Fully addressing both the analytic and procedural issues is a prerequisite to lawful rulemaking.

We first summarize the SAB’s findings, which address only a portion of the flaws in the analysis supporting the Proposed Rule, as the SAB has acknowledged.<sup>5</sup> We also summarize technical comments submitted by several of the undersigned organizations and other experts. We then discuss the serious procedural deficiencies related to the SAB’s review and EPA’s response. Finally, we underscore that the agencies must (1) add the draft SAB report to the rulemaking dockets and (2) withdraw the proposal in light of these (and other) serious deficiencies. If the agencies move ahead to make any changes to the clean car standards for model years 2021–2026, they must issue a new proposal, along with an updated preliminary regulatory impact analysis that fully addresses the issues raised by the SAB, and provide the public with an opportunity to comment on the updated analysis.

## **I. Technical Issues Raised in the SAB Draft Report**

The SAB reviews and provides advice on the scientific and technical basis of planned EPA actions pursuant to the Environmental Research, Development, and Demonstration Authorization Act of 1978 (“ERDDAA”).<sup>6</sup> Although SAB approval of proposed regulations is not required,<sup>7</sup> EPA has a duty to explain its reasons for rejecting the “significant comments, criticisms, and new data” it receives from the SAB and other commenters.<sup>8</sup> Both EPA and NHTSA have a general duty to explain their consideration of this and other highly relevant expert input, as well as their departure

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<sup>4</sup> SAB Draft Report at 34.

<sup>5</sup> See *id.* at page 1 of transmittal letter (“Given limited available time, the SAB review focused on several areas where there appear to be significant weaknesses in the analysis supporting the 2018 notice of proposed rulemaking (NPRM).”); *id.* at 34 (“[I]t should be noted that the scope of this review was tightly constrained by time and resources. It focused on the most critical aspects of the 2018 NPRM and is not in any way a complete peer review of the analysis.”).

<sup>6</sup> See Pub.L. 95-155 § 9(e), 91 Stat. 1260 (1978), codified at 42 U.S.C. § 4365(c).

<sup>7</sup> *Am. Petroleum Inst. v. Costle*, 665 F.2d 1176, 1188 (D.C. Cir. 1981).

<sup>8</sup> 42 U.S.C. § 7607(d)(6)(B). Although this provision applies only to comments received “during the comment period,” EPA is required to consider and place in the record late comments “of central relevance to the rulemaking.” 42 U.S.C. § 7607(d)(4)(B)(i); *id.* § 7607(d)(7)(A). Moreover, the delay in the availability of the SAB’s analysis is due to EPA’s own unlawful actions, as discussed below, and therefore cannot justify refusal to consider the draft report.

from previous analysis and findings in the 2016 Draft Technical Assessment Report prepared during the agencies' Mid-term Evaluation of the existing standards.<sup>9</sup>

#### *A. Summary of the SAB Draft Report*

The SAB's draft report identifies several "significant weaknesses in the scientific analysis of the proposed rule."<sup>10</sup> The SAB found that collectively, these analytic weaknesses "are of sufficient magnitude that the estimated net benefit of the proposed revision may be substantially overstated," and could even reverse the result of the Proposed Rule's technical analysis, "indicating that the [existing] augural standards provide a better outcome than the proposed revision."<sup>11</sup>

The primary issues discussed by SAB relate to: (1) the Proposed Rule's reliance on NHTSA's flawed CAFE model, which produced "implausible results regarding the overall size of the vehicle fleet" that "drive[] many of the costs and benefits reported in the analysis"<sup>12</sup>; (2) the agencies' illogical method of estimating manufacturers' costs of complying with existing standards; and (3) the use of an unrealistically high rebound rate.

##### *i. CAFE Model*

In the Proposed Rule, both agencies relied on NHTSA's CAFE model to estimate the costs and benefits of different regulatory options. EPA did not rely on its own model, OMEGA, which it had previously used in parallel with NHTSA's CAFE model analysis. The SAB expressed valid and deep concern over this choice for several reasons.

First, the CAFE model was developed to address NHTSA's aims, responsibilities, and limitations in regulating fuel economy under the Energy Policy and Conservation Act, which differ from those faced by EPA in setting greenhouse-gas emission standards under the Clean Air Act.<sup>13</sup> Second, the SAB discussed critical flaws in two major modules that were recently added to the CAFE model for this rulemaking. These new modules address how new vehicle sales and scrappage rates (the rates at which vehicles are added to and removed from the fleet) respond to changes in vehicle prices.

The SAB found that the vehicle sales and scrappage modules "have important weaknesses in both their theoretical underpinnings and their econometric implementation."<sup>14</sup> As a consequence, "the

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<sup>9</sup> EPA, NHTSA & Cal. Air Res. Bd., *Draft Technical Assessment Report: Midterm Evaluation of Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards for Model Years 2022–2025* (2016).

<sup>10</sup> SAB Draft Report at page 1 of transmittal letter.

<sup>11</sup> *Id.* at 34.

<sup>12</sup> *Id.* at page 2 of transmittal letter.

<sup>13</sup> See *id.* at 5 ("NHTSA and EPA have distinct responsibilities, as the statutes governing the programs differ and allow for different degrees of flexibility."); Comments of Center for Biological Diversity et al., Appendix A, at 23–25 (Oct. 26, 2018), Docket ID EPA-HQ-OAR-2018-0283-5070 [hereinafter NGO Legal Comments] ("The Volpe [CAFE] and OMEGA models have an overarching difference in their structure—one where the Volpe modeling approach is designed to match NHTSA's statutory authority, but not EPA's.").

<sup>14</sup> SAB Draft Report at 1.

new modules generate implausible results regarding the overall size of the vehicle fleet”<sup>15</sup> that in turn “drive[] many of the costs and benefits reported in the analysis.”<sup>16</sup>

*ii. Compliance Costs*

The SAB also expressed concern over the Proposed Rule’s unrealistic estimates for manufacturers’ costs of complying with existing standards. It noted that “the 2018 [Proposed Rule] reports compliance costs for the [existing] augural standards relative to the 2016 reference vehicle fleet that are more than twice those reported in the 2016 [Technical Assessment Report].”<sup>17</sup> The SAB discussed several of the factors that contributed to this disparity and recommended changes that would bring the figure used in the Proposed Rule more in line with the previous analysis, such as fully accounting for manufacturers’ use of flexibility mechanisms to avoid overstating compliance costs.<sup>18</sup>

*iii. Rebound Rate*

A third major concern addressed in the draft SAB report is the Proposed Rule’s use of an unrealistically high rebound rate. The rebound rate is a measure of increased vehicle use due to greater fuel efficiency reducing the cost of driving. The Proposed Rule used a rebound rate of 20%, which is double the rate used in previous analysis. As the SAB notes, the 20% figure is based on an incomplete survey of relevant studies, which overlooks several of the most recent and high-quality studies and does not adequately consider “the relative saturation of demand for [vehicle use],” which tends “to reduce the degree of rebound.”<sup>19</sup> The inflated rebound rate causes the analysis to understate the reductions in fuel consumption and emissions that result from improvements in fuel efficiency under the existing standards. To correct this error, the SAB recommended a rebound estimate that “account[s] for the broader literature,” and that is “determined through a full assessment of the quality and relevance of the individual studies rather than a simple average of results.”<sup>20</sup>

*B. Summary of Technical Comments to the SAB*

A group that includes many of the undersigned organizations submitted technical comments on the draft report to the SAB.<sup>21</sup> The technical comments expressed general agreement with the SAB’s assessment of several deficiencies in the Proposed Rule’s analysis, but they also noted numerous additional concerns raised in previous comments that the SAB did not address. This is unsurprising given the extremely limited time the SAB was given for its review. The SAB thrice emphasized

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<sup>15</sup> *Id.* at 1.

<sup>16</sup> *Id.* at page 2 of transmission letter; *see also id.* at 24 (“Fixing the fleet-turnover model in the final rule is crucial, since this modeling influences strongly the estimated impacts on GHG emissions, conventional pollutants and safety outcomes.”).

<sup>17</sup> *Id.* at 10.

<sup>18</sup> *Id.* at 17–18.

<sup>19</sup> *Id.* at 26.

<sup>20</sup> *Id.* at 27.

<sup>21</sup> Letter from American Council for an Energy-Efficient Economy et al. to Dr. Thomas Armitage, Designated Federal Officer for the EPA Science Advisory Board, *Comments for the EPA Science Advisory Board Jan. 22, 2020 Teleconference* (Jan. 10, 2020) [hereinafter NGO Comments to SAB] (attached as Exhibit 2).

the “limited available time” it had to review the “extensive” 1,625-page preliminary regulatory impact analysis for the Proposed Rule.<sup>22</sup> Any rulemaking to modify the existing standards must address the issues raised in the NGOs’ technical comments, as well as those raised by SAB, and allow for public comment on the updated analysis.<sup>23</sup>

The NGOs’ technical comments highlight several of the additional deficiencies that the SAB draft report failed to incorporate. For example, the technical comments discuss fundamental flaws in the way the CAFE model reflects manufacturers’ compliance strategies.<sup>24</sup> The CAFE model places “numerous, unreasonable constraints on technology deployment” that are belied by real-world applications, unrealistically and inefficiently ranks compliance technologies based on “Effective Cost” rather than cost-effectiveness, and relies on “demonstrably inaccurate projections of efficiency values for technologies.”<sup>25</sup> These errors each contribute to the Proposed Rule’s overestimate of compliance costs under the existing standards.

Similarly, the technical comments explain that the proposal relies on the unfounded “assumption that automakers will apply fuel-saving technologies that pay for themselves in 2 ½ years absent regulatory requirements.”<sup>26</sup> The SAB described this assumption as “a relatively small change from the prior approach,”<sup>27</sup> but the technical comments explain that this is factually incorrect.<sup>28</sup> In fact, NHTSA’s previous analyses assumed manufacturers would apply technologies with a 1-year payback period in the absence of the existing standards, so the 2 ½-year figure in the Proposed Rule represents a significant increase.<sup>29</sup> And EPA had previously assumed that “no technology would be voluntarily applied in the absence of regulatory pressure, regardless of payback period,” which is strongly supported by the historical evidence.<sup>30</sup> Thus, “EPA’s assumption in the proposed rule that any technology will be voluntarily applied absent regulatory pressure is entirely novel and constitutes a dramatic departure from the agency’s prior approach.”<sup>31</sup> This assumption “grossly warps the cost-benefit analysis” by causing “all the most cost-effective technology to be included in every modeled alternative.”<sup>32</sup> As a consequence, “the fuel savings and emissions reductions associated with those technologies still accrue even in the rollback scenario, making the rollback look less detrimental than it in fact is.”<sup>33</sup>

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<sup>22</sup> SAB Draft Report at 1, 34, page 2 of transmission letter.

<sup>23</sup> See *id.* at 1 (warning against “creating the misperception that the issues discussed in the SAB Draft Report are the only analytical problems that must be addressed to put any final action on the Proposed Rule on a solid foundation.”).

<sup>24</sup> *Id.* at 5–7.

<sup>25</sup> *Id.* at 5–6.

<sup>26</sup> *Id.* at 7.

<sup>27</sup> SAB Draft Report at 11. Although the SAB is mistaken on this point, it does express “concern[] that the 2018 NPRM is taking analytically inconsistent positions on consumer willingness to pay for fuel efficiency gains.” *Id.* at 21.

<sup>28</sup> NGO Comments to SAB at 7–8.

<sup>29</sup> *Id.* at 8.

<sup>30</sup> *Id.* at 8–9 (citing EPA & NHTSA, *2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards*, 77 Fed. Reg. 62,624, 62,843–44, 62,915 (Oct. 15, 2012); Comment of the International Council on Clean Transportation, Docket # EPA-HQ-OAR-2018-0283-5456; and other comments).

<sup>31</sup> *Id.* at 8.

<sup>32</sup> *Id.* at 8.

<sup>33</sup> *Id.* at 8–9.

Representatives of several environmental and public health organizations, including some of the undersigned organizations, also gave oral testimony at the SAB's January 17 proceedings. The oral testimony emphasized that the SAB's draft report addresses some—but not all—of the serious analytic problems that other reviewers have previously identified, and that the agencies must re-propose a revised rule to allow for public comment and expert review after addressing the problems raised by the SAB and others.<sup>34</sup> Chet France, former Director of EPA's Assessment and Standards Division, underscored in his testimony that “the scientific and technical basis for the EPA proposed rule includes widespread foundational flaws not addressed by the SAB,” and that these flaws “demonstrate[] the pitfalls of basing a regulatory proposal upon unproven, nontransparent, improvised methods and analysis.”<sup>35</sup>

The draft SAB report, as well as numerous previously-submitted comments to the rulemaking dockets, show that the Proposed Rule cannot be justified by its severely flawed technical analysis. In light of the fundamental issues raised in the draft SAB report and elsewhere, the agencies must withdraw their proposal to amend the clean car standards.

## **II. Procedural Issues**

We also note that impermissible procedural irregularities attended the SAB's review of the Proposed Rule and the agencies' response. In particular, EPA unlawfully delayed and undermined SAB review of the Proposed Rule at several stages. Additionally, EPA Administrator Andrew Wheeler has indicated that the final rule will not address the SAB's findings, unreasonably declining to consider this expert input. These procedural flaws add to this rulemaking's pattern of short-changing procedural protections that are essential to ensure the agencies' technical analysis is on sound footing. They must be cured before the agencies proceed with any final rule amending the clean car standards.

### **A. Unlawful Delay**

EPA unlawfully impeded the SAB's review of the Proposed Rule by (1) failing to promptly submit its proposal to the SAB, and (2) waiting ten months before responding to the SAB's request to review the proposal. First, EPA failed to promptly submit the proposal to the SAB when required to do so under ERDDAA. As discussed in previous comments, ERDDAA required EPA to submit the Proposed Rule, “together with relevant scientific and technical information in the possession of the [EPA]” to the SAB when it provided the proposed regulation “to any other Federal agency for formal review and comment.”<sup>36</sup> And under procedures that EPA and the SAB have adopted to implement this statutory requirement, EPA provides the SAB with a description of major actions that it has planned but not yet proposed, along with a summary of relevant issues of potential

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<sup>34</sup> See *Oral Statement from Chet France on SAB's Draft Report on the Proposed SAFE Vehicles Rule* (Jan. 17, 2020) (attached as Exhibit 3), available at [https://yosemite.epa.gov/sab/sabproduct.nsf/B16B14FFC283374F852584F2005A3673/\\$File/France+Oral+Statement.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/B16B14FFC283374F852584F2005A3673/$File/France+Oral+Statement.pdf). Other speakers emphasized similar points, including Jeff Alston of the Environmental Protection Network, Albert Rizzo of the American Lung Association, and Therese Langer of the American Council for an Energy-Efficient Economy.

<sup>35</sup> *Id.*

<sup>36</sup> NGO Legal Comments at 199–200 (quoting 42 U.S.C. § 4365(c)(1)).

scientific concern.<sup>37</sup> But it appears that EPA did not provide any notice of the proposal or its supporting materials to the SAB, either before formal proposal or upon submission to other federal agencies—NHTSA and OMB—for formal review and comment.<sup>38</sup>

Second, EPA delayed for ten months before responding to the SAB's notice of its intent to review the proposed rollback. The SAB notified EPA of its intent to review the rollback on June 21, 2018.<sup>39</sup> Administrator Wheeler did not respond to SAB's notice until April 19, 2019.<sup>40</sup> By that time, the comment period for the Proposed Rule had been closed for over five months. EPA's unjustified delay precluded the public from evaluating and commenting on the SAB's analysis during the public comment period, and it "tightly constrained" the time available for SAB to review the proposal at all.<sup>41</sup> A former SAB member has opined that EPA sought to effectively exclude the SAB from the rulemaking process altogether by "foot-dragging to let the clock run out and hope the SAB doesn't get its act together to do anything."<sup>42</sup>

Additionally, the public release of the draft SAB report was inexplicably delayed by roughly one and a half months during key stages of rulemaking development. The draft report is dated October 16, 2019, but it was not published on EPA's website until December 31. We note that under ERDAA, the SAB is required to "make every effort . . . to maximize public participation and transparency, including making the scientific and technical advice of the [SAB] . . . publically available in electronic form on the website of the [EPA]."<sup>43</sup> The as yet unexplained delay in publication severely prejudiced the public's ability to participate in the rulemaking by making the draft SAB report unavailable as the agencies' plans to finalize the rollback progressed through critical stages. It also made it easier for EPA to disregard SAB advice. Less than a week after the draft report was released, Administrator Wheeler told reporters "[w]e have pretty much finished our part of [the final rule]."<sup>44</sup> The following week, EPA and NHTSA submitted a final version of

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<sup>37</sup> *Id.* at 199 (citing Memorandum from Michael Goo, Glenn Paulsen, and Vanessa Vu, *Identifying EPA Planned Actions for Science Advisory Board (SAB) Consideration of the Underlying Science — Semi-annual Process* (Dec. 27, 2012); Memorandum from SAB Chair James Mihelcic to Members of the Chartered SAB and Liaisons, at 1 (Nov. 12, 2013)).

<sup>38</sup> Letter from Dr. Michael Honeycutt, SAB Chairman, to Scott Pruitt, EPA Administrator, at 2 (June 21, 2018) (attached as Exhibit 4) (recommending review of the revised Mid-term Evaluation Final Determination but providing no indication of receipt of the Proposed Rule, nearly one month after commencement of formal interagency review of the proposal); *see* NGO Legal Comments at 199 (discussing EPA's failure to timely submit the proposal to the SAB).

<sup>39</sup> *Id.* (recommending review of the revised Final Determination, which was the precursor to the Notice of Proposed Rulemaking). The SAB's letter also emphasized that "more complete and timely information is required from the Agency to make recommendations and decisions regarding the science supporting planned actions." *Id.* at 5–6. The SAB's concern is epitomized by EPA's failure to give the SAB complete and timely information about the proposed rollback.

<sup>40</sup> Letter from Andrew Wheeler, EPA Administrator, to Dr. Michael Honeycutt, SAB Chairman, at 6 (April 19, 2019) (attached as Exhibit 5).

<sup>41</sup> SAB Draft Report at 34.

<sup>42</sup> Maxine Joselow, *Science Advisory Board to Review Clean Car Rollback*, E&E News, June 12, 2019 (attached as Exhibit 6) (quoting Chris Frey, environmental engineering professor at North Carolina State University and former SAB member).

<sup>43</sup> 42 U.S.C. § 4365(h).

<sup>44</sup> Doug Obey & Lee Logan, *Citing Changes, Wheeler Rejects SAB Critique on Auto GHG Rollback*, InsideEPA, Jan. 6, 2020 (attached as Exhibit 7).

the rule to OMB.<sup>45</sup> Thus, by the time the draft SAB report became public, EPA had apparently reached a near-final decision, and the window for public participation and agency consideration of the SAB's analysis was rapidly closing.

### *B. Failure to Consider SAB Analysis*

Recent events suggest that the agencies intend to shortchange consideration of the SAB's expert input because it is coming too late. This position is indefensible in light of EPA's role in repeatedly delaying SAB review of the Proposed Rule.

After the SAB draft report's release, Administrator Wheeler suggested that EPA does not intend to consider or address the SAB draft report's analysis in its final rule. He told reporters "I'm not sure how useful it is for [the SAB] to be taking a look at the DOT model today," given the agencies' plans to imminently finalize the rule.<sup>46</sup> The agencies further indicated that they did not plan to incorporate the SAB's input when they submitted a draft final rule for OMB review just two weeks after the draft SAB report was made public, prior to an upcoming SAB public teleconference on the draft report, and before any issuance of a final SAB report. The agencies clearly could not have addressed the significant issues raised by the SAB in such a short time.

Wheeler's comments offered two rationales for declining to consider the SAB's concerns, neither of which can justify finalizing the rule without reissuing a proposal that corrects the fatal analytic flaws and providing for public comment on and peer review of the updated analysis. First, Wheeler suggested that the SAB is weighing in too late to be considered in the final rule.<sup>47</sup> But EPA's unlawful delays are the reason why the SAB's report was not available sooner, as discussed above. EPA cannot use a timing problem of its own creation as an excuse not to consider the fundamental analytic flaws discussed by the SAB. Moreover, these flaws are so significant that it would be arbitrary and capricious for EPA to finalize a rulemaking without addressing them, no matter how late in the rulemaking process EPA was alerted to them.

Second, Wheeler indicated the final rule will rely on a technical analysis that is substantially different from the one that the SAB evaluated. He said the SAB "did not get 'additional information from DOT' beyond what was in the proposal, 'and a lot has changed in the proposed regulation. You will see that when it goes final.'"<sup>48</sup> But if the changes are indeed substantial enough to address the SAB's significant and wide-ranging concerns, then applicable law requires the agencies to reissue the updated proposal to allow for public comment.<sup>49</sup> In addition, the agencies must follow all applicable OMB, EPA, and Department of Transportation peer review

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<sup>45</sup> Maxine Joselow, *Part 2 of Rollback Arrives at White House*, E&E News, Jan. 15, 2020 (attached as Exhibit 8).

<sup>46</sup> See Alex Guillén, *Wheeler: Vehicle Emissions Rule Won't Address Science Advisers' Concerns*, Politico Pro, Jan. 6, 2020 (attached as Exhibit 9) (reporting Administrator Wheeler's statement that "[i]f we're going to be going final with SAFE in the next month or so, I'm not sure how useful it is for them to be taking a look at the DOT model today, but we of course welcome any input from the SAB."); Obey & Logan, *supra* note 44 (same).

<sup>47</sup> Guillén, *supra* note 46 ("Asked if EPA would have a chance to address SAB's concerns in the final rule, Wheeler said, 'I doubt it . . . . The ideal time for them . . . would have been for them to comment on [the Proposed Rule] last year.'").

<sup>48</sup> Obey & Logan, *supra* note 44 (quoting Administrator Wheeler).

<sup>49</sup> *Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158, 174 (2007) ("[T]he final rule the agency adopts must be 'a logical outgrowth of the rule proposed'" (citation omitted)).



requirements for new information and analysis critical to the rulemaking.<sup>50</sup> To the extent the agencies have made major changes to the analysis, they appear to have already violated the terms of this administration's recent memo, which underscored that proper peer review includes "that agencies peer review complex models underlying economically significant regulations *before* submitting those draft regulations to [OMB] under Executive Order 12866."<sup>51</sup>

### III. Conclusion

The draft SAB report raises serious analytic issues with the Proposed Rule that must be fully considered and addressed before any lawful, nonarbitrary rulemaking decision can be finalized. Additionally, EPA's response to the draft report and its role in delaying the SAB's review highlight violations of ERDDAA as well as foundational requirements of reasoned decision-making. In light of these serious deficiencies, the agencies must (1) add the draft SAB report to the rulemaking docket and (2) withdraw the proposal. If the agencies move ahead with any changes to the standards for model years 2021–2026, they must issue a new proposal along with an updated analysis that fully addresses the issues raised by the SAB and fully abides by pertinent procedural requirements, including those respecting public comment and peer review. Given the significant changes to the technical analysis required to address the problems raised by the SAB and other commenters, we respectfully submit that finalizing the rule without taking these steps would be plainly unlawful.

Please contact Jim Dennison, [jdennison@edf.org](mailto:jdennison@edf.org), (303) 447-7219, if you have any questions regarding the concerns raised in this letter.

Respectfully submitted,

Center for Biological Diversity  
Chesapeake Bay Foundation  
Communities for a Better Environment  
Environment America  
Environmental Law and Policy Center  
Environmental Defense Fund  
Natural Resources Defense Council  
Public Citizen, Inc.  
Sierra Club  
Union of Concerned Scientists

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<sup>50</sup> See Information Quality Act (Treasury and General Government Appropriation Act for Fiscal Year 2001, Pub. L. No. 106- 554, § 515 Appendix C, 114 Stat. 2763A-153); OMB, *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated by Federal Agencies* (2002); OMB, *Final Information Quality Bulletin for Peer Review*, 70 Fed. Reg. 2664 (Jan. 14, 2005); OMB, *Memorandum on Improving Implementation of the Information Quality Act*, M-19-15 (April 24, 2019); EPA, *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity, of Information Disseminated by the Environmental Protection Agency*, EPA/260R-02-008 (Oct. 2002); EPA, *Peer Review Handbook*, EPA/100/B-15/001 (Oct. 2015); Department of Transportation, *Information Dissemination Quality Guidelines* (Aug. 2002).

<sup>51</sup> OMB, *Memorandum on Improving Implementation of the Information Quality Act*, M-19-15 at 4 (April 24, 2019) (emphasis added).