



ENVIRONMENTAL LAW & POLICY CENTER

Protecting the Midwest's Environment and Natural Heritage

October 19, 2022

Docket Management Facility:
U.S. Department of Transportation
1200 New Jersey Avenue SE
West Building Ground Floor, Room W12-140
Washington, DC 20590-0001

RE: Environmental Law & Policy Center's Comments on Docket No. NHTSA-2022-0076, Notice of Intent to Prepare an Environmental Impact Statement for Model Years 2030 and Beyond New Medium- and Heavy-Duty Fuel Efficiency Improvement Program Standards, 87 Fed. Reg. 57,248 (Sept. 19, 2022)

The Environmental Law & Policy Center (ELPC) submits these comments in response to the National Highway Traffic Safety Administration's (NHTSA) Notice of Intent to issue an environmental impact statement (EIS) for its fuel efficiency standards for model years 2030 and beyond. ELPC is a nonprofit organization that advocates and litigates across the Midwest and Great Lakes region to protect public health and the environment. ELPC develops and leads successful strategic advocacy campaigns to improve environmental quality and protect our natural resources. ELPC's multidisciplinary staff of talented and experienced public interest attorneys, environmental business specialists, public policy advocates, and communications specialists brings a strong and effective combination of skills to solve environmental problems.

The Council on Environmental Quality's regulations implementing the National Environmental Policy Act (NEPA) require that an agency start the EIS process with a notice of intent that requests public comment on the scope of the environmental review. 40 C.F.R. § 1501.9. ELPC appreciates that NHTSA is accordingly "request[ing] public input on the scope of NHTSA's NEPA analysis including the alternatives considered and the significant environmental issues relating to more stringent FE [fuel efficiency] standards for HD [heavy-duty] vehicles" that the agency intends to issue by January 2025. 87 Fed. Reg. at 57,250.

The Energy Independence and Security Act of 2007 (EISA), requires NHTSA's heavy-duty fuel efficiency standards program to be "designed to achieve the maximum feasible improvement." 49 U.S.C. § 32902(k)(2). In accordance with that statutory command, NHTSA must consider a range of alternatives that includes very protective standards which will help avert the worst impacts of the climate crisis and reduce threats to human health from climate change, near-road vehicle pollution, and fossil fuel extraction and refining. Given the dire and increasing threat that climate change poses to our nation's public health, economy, and energy security, the most important impacts for

35 East Wacker Drive, Suite 1600 • Chicago, Illinois 60601
(312) 673-6500 • www.ELPC.org

Harry Drucker, Chairperson • Howard A. Learner, Executive Director
Chicago, IL • Columbus, OH • Des Moines, IA • Grand Rapids, MI • Indianapolis, IN
Minneapolis, MN • Madison, WI • North Dakota • South Dakota • Washington, D.C.

NHTSA to consider in its EIS are climate change impacts and other human health and environmental impacts.

Specific Comments on Alternatives and Scope of Review

NHTSA's EIS should set the agency up to build on its history of increasingly stringent fuel efficiency standards from Phase 1 and Phase 2 in the upcoming rulemaking for Phase 3 heavy duty standards. For this next round of standard-setting, ELPC urges NHTSA to continue the trajectory to a cleaner future for the trucks that provide services including carrying goods across our country and into our neighborhoods, bringing children to and from school, and serving public transit riders daily.

NHTSA should place great weight on energy conservation, environmental considerations, and human health when determining the upper and lower bounds for the range of standards it will consider in the EIS. Transportation-related pollution, including particulate matter, ozone, and nitrogen oxides, directly harms human health. The transportation sector has now surpassed the electricity sector as the leading source of U.S. emissions contributing to climate change.¹ Climate change is currently causing devastating heat waves, floods, droughts, and wildfires that all threaten public health and economic productivity.

The United Nations' Intergovernmental Panel on Climate Change's (IPCC) Sixth Assessment Report makes clear both climate change's human causes and its devastating impacts.² The report notes that human influence has warmed the climate at a rate that is unprecedented in at least the last 2,000 years.³ Climate change is already affecting every inhabited region across the globe, with central and eastern North America experiencing increased heavy precipitation and western North America experiencing increases in extreme heat and drought.⁴ Climate change is a critical concern in the Midwest and Great Lakes region, which is also the crossroads of U.S. ground transportation and home to many intermodal facilities and logistics facilities.

The transportation sector contributes 27% of total greenhouse gas emissions in the U.S.—more than any other sector.⁵ Freight trucks account for 26% of total transportation sector greenhouse gas emissions.⁶ Any increased fuel economy therefore has the potential to drastically reduce oil consumption and our nation's climate-changing emissions. Because of this, NHTSA should work to qualitatively and, where appropriate, quantitatively explain the effect its new standards are

¹ U.S. Environmental Protection Agency, *EPA 430-R-21-005, Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990–2019*, ES-27 (April 2021), <https://www.epa.gov/sites/default/files/2021-04/documents/us-ghg-inventory-2021-main-text.pdf?VersionId=yu89kg1O2qP754CdR8Qmyn4RRWc5iodZ>.

² IPCC, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Aug. 2021), <https://www.ipcc.ch/report/ar6/wg1/#FullReport>.

³ IPCC, 2021: Summary for Policymakers at SPM-7. In: *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*.

⁴ *Id.* at SPM-12.

⁵ U.S. Environmental Protection Agency, *EPA 430-R-22-003, Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990–2020*, ES-21, 2-35 (April 2022), <https://www.epa.gov/system/files/documents/2022-04/us-ghg-inventory-2022-main-text.pdf>

⁶ *Id.* at 2-35.

expected to have on climate change, including warming, increased precipitation, and other harmful effects. NHTSA should also communicate these effects to the public in a way that does not unfairly diminish their magnitude, such as by presenting the expected emissions reductions solely in context of global emissions on a 100-year scale. NHTSA can do more to ensure the public can understand and evaluate a range of standards in a meaningful context, including how these standards will contribute toward meeting President Biden's goal of reducing U.S. greenhouse gas emissions by 50% by 2030.⁷

In determining the range of alternatives to consider and the "maximum feasible" standards, NHTSA should incorporate accurate baseline assumptions about the fuel efficiency of vehicles that will be on the road in 2030 and beyond absent any strengthening of the standards. The heavy-duty vehicle industry is rapidly innovating and shifting toward more fuel-efficient vehicles. The recently passed Inflation Reduction Act (IRA) and the Infrastructure Investment and Jobs Act (IIJA) contain numerous provisions intended to jumpstart this transition to cleaner heavy-duty vehicles.

The Environmental Protection Agency, which is separately progressing with its Phase 3 rulemaking on greenhouse gas and criteria pollutant emissions from heavy-duty vehicles, has recognized the important impacts the IRA is anticipated to have on the heavy-duty vehicle industry and recently announced that it would be issuing a supplemental proposal to consider these effects.⁸ For example, the IIJA funded the Clean School Bus Program at EPA with \$5 billion over 5 years, including \$2.5 billion dedicated toward electric school buses and \$2.5 covering electric and other bus technologies. The IIJA also includes the National Electric Vehicle Infrastructure (NEVI) program to accelerate the buildout of a national charging network. In addition, the IRA includes tax credits such as the New Commercial Clean Vehicle Credit that will make electric heavy-duty vehicles more competitive. NHTSA has historically underestimated the pace at which manufacturers and the market are moving toward cleaner vehicles, and it is important that the agency not do so again here.

The required purpose and need statement for NHTSA's EIS should also acknowledge that the main purpose of this rulemaking is to select a strong standard "designed to achieve the maximum feasible improvement" in fuel efficiency, which will contribute to energy security. In line with that purpose and need, and current realities, NHTSA should select ambitious standards as its strictest alternative because drastically increased fuel economy is very likely to swiftly become both entirely feasible and economically practicable. Examining a range of alternatives that includes strong fuel efficiency standards is necessary to meet the climate change and public health challenges facing our country. Moving toward cleaner, more fuel-efficient heavy-duty vehicles is also the right thing to do for our country's economy and energy security.

NHTSA should also thoroughly examine the effect its rules will have on air quality and human health. In particular, NHTSA should examine the effects of reduced emissions of ozone

⁷ *FACT SHEET: President Biden Sets 2030 Greenhouse Gas Pollution Reduction Target Aimed at Creating Good-Paying Union Jobs and Securing U.S. Leadership on Clean Energy Technologies* (Apr. 22, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/22/fact-sheet-president-biden-sets-2030-greenhouse-gas-pollution-reduction-target-aimed-at-creating-good-paying-union-jobs-and-securing-u-s-leadership-on-clean-energy-technologies/>.

⁸ David Shepardson, *Exclusive: U.S. EPA to Consider Tougher Emissions Rules for Heavy Trucks*, Reuters (Sept. 21, 2022), <https://www.reuters.com/business/sustainable-business/exclusive-us-epa-consider-tougher-emissions-rules-heavy-trucks-2022-09-21/>.

precursors, nitrogen oxides, and particulate matter, all of which turn urban areas into toxic zones and can trigger chronic health problems and emergency room visits for sensitive populations, like children with asthma.

The selective catalytic reduction technology that is used to reduce diesel trucks' emission of nitrogen oxides work more efficiently when trucks are travelling at higher speeds; this means that when a truck is driving in urban areas at low speeds, it may be emitting up to 100 times the amount of nitrogen oxide pollution that a passenger car would emit.⁹ The times when trucks are traveling at low speeds or idling—in urban areas, at stoplights, and near logistics facilities—and thus emitting more pollution are also the times that trucks are likely to be closest to people. Because low income communities and communities of color are often the most exposed to vehicle pollution and suffer the greatest resulting health burden, NHTSA should also consider the environmental justice and equity impacts of reducing near-road pollution in overburdened communities impacted by highways, logistics facilities, or oil refineries.

Finally, NHTSA should take seriously the requirement for its EIS to consider “cumulative effects,” which are those effects that “can result from individually minor but collectively significant actions taking place over a period of time,” including cumulative ecological, social, and health effects. 40 C.F.R. § 1508.1(g)(3), (4). The harms caused by climate-changing and health-damaging air pollution are necessarily cumulative, and NHTSA should fully account for the impacts to communities impacted by oil extraction, oil refining, and near-road pollution, as well as those communities on the front lines of climate change impacts.

Conclusion

The Midwest and Great Lakes region, which is currently suffering from the effects of climate change and poor air quality, has much to gain if fuel use by and pollution from heavy-duty vehicles is reduced. NHTSA should examine a range of alternatives including strong standards that deliver the greatest possible fuel savings and pollution reductions consistent with the urgency called for by the IPCC's report and with President Biden's goal of reducing U.S. greenhouse gas emissions by 50% by 2030.

ELPC appreciates the opportunity to provide these comments.

⁹ Huzeifa Badshah et al., The International Council on Clean Transportation, *Current State of NOx Emissions from In-Use Heavy-Duty Diesel Vehicles in the United States* at i, 7 (Nov. 2019), https://theicct.org/sites/default/files/publications/NOx_Emissions_In_Use_HDV_US_20191125.pdf.