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RE: Statement of Amit Narang, Regulatory Policy Advocate, Public Citizen  
Submitted to: Scientific Advisory Board of the U.S. Environmental Protection Agency  
May 31, 2018

Members of the Board, thank you for the opportunity to testify today. I am Amit Narang, regulatory policy advocate for Public Citizen, where I focus on federal agency compliance with the rulemaking process including testifying in Congress numerous times on issues related to oversight of the Executive Branch rulemaking process. I am here to discuss various procedural defects in the EPA's current rulemaking regarding the repeal of Phase 2 emission requirements for so-called "glider" trucks. I applaud the Board's interest in reviewing the scientific and technical basis for this rulemaking.

EPA's proposal to repeal the Phase 2 emission requirements for gliders is almost entirely devoid of any evidentiary foundation. Instead, EPA claims that scientific, economic, and other technical evidence, data, and analyses are not required for this rulemaking since it is simply a re-interpretation of the Clean Air Act's application to glider trucks. This ignores the legal requirement that EPA must demonstrate its rule is the product of reasoned decision-making and provide a rational basis for the rule that comports with the relevant statutory factors in the Clean Air Act regarding protection of public health and the environment. Given the EPA's stance, it is not surprising that the EPA has failed to provide any scientific basis to justify the rule, or to dispute the findings from the Phase 2 rulemaking that glider trucks could provide up to one third of all nitrous oxide and particulate matter emissions from heavy duty trucks by 2025 if left unregulated.<sup>1</sup>

According to internal agency research not released until after EPA published this proposal, a new 2017 glider truck can emit up to 450 times the particulate matter (PM) pollution, and up to 43 times the nitrous oxide (NOx) pollution, of model year 2014 and 2015 trucks. The only scientific study that EPA cited in its proposal, provided by a glider truck manufacturer which successfully petitioned for the proposal, has since been withdrawn and disavowed by the academic institution that conducted the study.

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<sup>1</sup> 81 Fed. Reg. at 73,943 (Oct. 25, 2016).

Turning to non-scientific evidence and analyses, EPA also failed to provide any regulatory impact analysis to accompany the proposal. Such regulatory impact analyses routinely accompany economically significant rules of this nature and provide the public with an understanding of projected impacts of the rule, including the costs and benefits or economic impact of the rule. In the absence of a regulatory impact analysis, EPA also likely failed to comply with section 317 of the Clean Air Act that requires the Administrator to analyze, and consider in some manner in the text of the rule, specific economic impacts in five categories for rulemakings undertaken under section 202 of the Clean Air Act. EPA did place an abridged version of the analysis separately in the rulemaking docket but that analysis makes clear that “EPA did not, however, consider this economic impact assessment itself in proposing the action.”<sup>2</sup>

According to reports, EPA’s failure to provide a regulatory impact analysis for its draft final rule has resulted in the Office of Information and Regulatory Affairs (OIRA) declining to review the draft final rule until such an analysis is provided. Yet, it is unclear why OIRA allowed EPA to publish the proposal without such an analysis while now insisting that one is required. A close examination of the changes OIRA made to EPA’s draft proposed rule<sup>3</sup> reveals that the rule’s designation was changed from “economically significant” to “significant” on the final day of the OIRA review period likely in order to allow EPA to propose the rule without a regulatory impact analysis. On EPA’s spring 2018 regulatory agenda, the rule is now listed as “economically significant” where it was previously just listed as “significant” in the preceding regulatory agenda. It is critical that EPA and OIRA be transparent with the public as to why EPA was allowed to propose this rule without any regulatory impact analysis, and without the section 317 economic analysis, given its current designation as “economically significant.”

Finally, EPA cannot simply cure these substantial procedural defects by including new data and analysis at the final rule stage. Instead, if EPA seeks to continue with this rulemaking, it must provide any new data and analysis by re-proposing the rule in order to give fair notice to the public and allow the public an opportunity to comment on the new information and to avoid additional legal vulnerability. If the Board elects to review the rule, EPA should postpone any re-proposal of the rule in order to incorporate the Board’s finding. Once again, thank you for the opportunity to testify today.

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<sup>2</sup> <https://www.regulations.gov/document?D=EPA-HQ-OAR-2014-0827-2407>

<sup>3</sup> <https://www.regulations.gov/document?D=EPA-HQ-OAR-2014-0827-2403>