

NOT YET SCHEDULED FOR ORAL ARGUMENT

No. 16-1430

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

TRUCK TRAILER MANUFACTURERS ASSOCIATION, INC.

Petitioner

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ET AL.

Respondents.

ON PETITION FOR REVIEW OF ACTION
BY THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION
AND U.S. ENVIRONMENTAL PROTECTION AGENCY

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), the undersigned counsel certifies as follows:

A. Parties and Amici.

Petitioner is the Truck Trailer Manufacturers Association, Inc. Respondents are the United States Environmental Protection Agency; Andrew R. Wheeler in his official capacity as Administrator of the United States Environmental Protection Agency; National Highway Traffic Safety Administration; and James C. Owens, in his official capacity as Deputy Administrator of the National Highway Traffic Safety Administration. Intervenors are the California Air Resources Board; the Center for Biological Diversity; the Environmental Defense Fund; the Natural Resources Defense Council; the Sierra Club; the Union of Concerned Scientists; and the States of Connecticut, Iowa, Massachusetts, Oregon, Rhode Island, Vermont and Washington.

B. Rulings Under Review.

The agency action under review is “Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2,” 81 Fed. Reg. 73,478 (Oct. 25, 2016).

C. Related Cases.

This case was formerly consolidated with *Racing Enthusiasts & Suppliers Coalition v. EPA*, No. 16-1447, a case involving a challenge to different provisions of the final

rule challenged here. On December 26, 2019, this Court severed this case from *Racing Enthusiasts* and continued to hold that case in abeyance.

s/ Jennifer L. Utrecht

JENNIFER L. UTRECHT

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GLOSSARY

NHTSA	National Highway Traffic Safety Administration
EPA	United States Environmental Protection Agency
CAFE	Corporate Average Fuel Economy

INTRODUCTION

Through the Energy Independence and Security Act and the Clean Air Act, Congress vested in the National Highway Traffic Safety Administration (NHTSA) and the United States Environmental Protection Agency (EPA) the respective authority to promulgate fuel efficiency and greenhouse gas emissions standards for certain vehicles. As this Court has recognized, the agencies' respective regulatory authority overlaps substantially because "any rule that limits tailpipe [greenhouse gas] emissions is effectively identical to a rule that limits fuel consumption," and vice versa. *Delta Constr. Co. v. EPA*, 783 F.3d 1291, 1294 (D.C. Cir. 2015) (alteration in original); see also *Massachusetts v. EPA*, 549 U.S. 497, 531-32 (2007). In recognition of this fact, the agencies have long undertaken a comprehensive effort to coordinate rulemaking and minimize duplicative burdens on affected industries.

This case involves one example of that coordinated effort. In 2016, NHTSA and EPA jointly adopted a final rule setting forth fuel efficiency and greenhouse gas standards for new medium- and heavy-duty vehicles. 81 Fed. Reg. 73,478, 73,479 (Oct. 25, 2016). In that rule, NHTSA and EPA invoked their respective statutory authority to promulgate harmonious, but independent, standards. These standards are designed to promote vehicles that are more fuel efficient and emit less carbon dioxide by encouraging the development and deployment of technologies that reduce fuel consumption. As relevant here, the agencies promulgated standards governing tractor-trailers, including standards for the trailers that complete these vehicles.

Those standards were designed to ensure that trailers broadly utilize aerodynamic devices and other technologies that have a demonstrated ability to improve overall emissions and fuel consumption.

Petitioner here is an association of trailer manufacturers. It claims that the agencies do not have authority to set emissions or fuel efficiency standards for trailers. But the Association's arguments against the challenged rule merely reflect ambiguity in the governing statutes, leaving to the agencies to assert "discretion to fill the consequent statutory gap[s]." *National Cable & Telecommunications Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 996 (2005). In promulgating the challenged rule, the agencies did just that. NHTSA exercised its delegated discretion to conclude that the governing statutes reasonably could be read to provide the agency the authority to establish fuel efficiency standards for trailers. EPA also concluded that it may establish greenhouse gas emissions standards for trailers. The Association has not established that Congress unambiguously precluded the agencies from exercising their authority in this manner or else that the interpretation of their governing statutes was otherwise unreasonable. The petition for review should be denied.

STATEMENT OF JURISDICTION

This Court has jurisdiction pursuant to 42 U.S.C. § 7607(b)(1) and 49 U.S.C. § 32909.

STATEMENT OF THE ISSUES

1. Whether NHTSA's conclusion that both tractor-trailers and standalone trailers are "vehicles" subject to NHTSA's regulatory authority under 49 U.S.C. § 32902(k) should be upheld.
2. Whether EPA's conclusion that tractor-trailers are "motor vehicles" subject to EPA's regulatory authority under the Clean Air Act should be upheld.
3. Whether EPA and NHTSA appropriately concluded that the greenhouse gas emissions standards and the fuel efficiency standards promulgated through this joint rulemaking could function independently and were legally severable.

PERTINENT STATUTES AND REGULATIONS

Pertinent statutes and regulations are reproduced in the addendum to this brief.

STATEMENT OF THE CASE

A. Statutory Background

1. The Energy Policy and Conservation Act and the Energy Independence and Security Act

The National Highway Traffic Safety Administration regulates the fuel economy of motor vehicles pursuant to the authority delegated by the Secretary of Transportation, 49 C.F.R. § 1.50(f), under the Energy Policy and Conservation Act, Pub. L. No. 94-163, § 301, 89 Stat. 871, 901-16 (1975). In 2007, Congress directed NHTSA through the Energy Independence and Security Act, to create, in conjunction with EPA, a new regulatory program to improve the fuel efficiency of work trucks

and commercial medium- and heavy-duty on-highway vehicles. 49 U.S.C.

§ 32902(b)(1)(C), (k).

As a precondition to this regulatory program, Congress directed that NHTSA commission a study from the National Academy of Sciences that examines the fuel efficiency of such vehicles. 49 U.S.C. § 32902(k)(1). Following the publication of that study, NHTSA must consult with EPA regarding “how to implement a commercial medium-and heavy-duty on-highway vehicle and work truck fuel efficiency improvement program designed to achieve the maximum feasible improvement.” 49 U.S.C. § 32902(k)(2). NHTSA must also implement, through notice-and-comment rulemaking, “appropriate test methods, measurement metrics, fuel economy standards, and enforcement protocols that are appropriate, cost-effective, and technologically feasible.” *Id.*

2. The Clean Air Act and Motor Vehicle Standards

Title II of the Clean Air Act, 42 U.S.C. §§ 7401-7671q, directs EPA to prescribe emission standards for air pollutant emissions from “any class or classes of new motor vehicles or new motor vehicle engines” that in the EPA Administrator’s judgment “cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare.” *Id.* § 7521(a)(1). Greenhouse gases qualify as “air pollutants” in these provisions of the Clean Air Act. *See Massachusetts v. EPA*, 549 U.S. 497, 528-29 (2007). EPA has issued an endangerment finding concerning

greenhouse gases. 74 Fed. Reg. 66,496 (Dec. 15, 2009).¹ Therefore, EPA regulates greenhouse gas emissions from various classes of new motor vehicles.

A “motor vehicle” is defined as “any self-propelled vehicle designed for transporting persons or property on a street or highway.” 42 U.S.C. § 7550(2). In setting standards for motor vehicles, EPA considers a variety of factors such as technological feasibility and cost, the degree of emission reduction, impacts on energy use, and impacts on the regulated industry and consumers, and safety. 81 Fed. Reg. at 73,512. To ensure compliance with emission standards, Title II prohibits the sale, offering for sale, introduction into commerce, delivery for introduction into commerce, and importation of any new motor vehicle unless the vehicle “manufacturer” obtains from EPA a certificate of conformity. 42 U.S.C. § 7522(a)(1). The term “manufacturer” includes, among other things, “any person engaged in the manufacturing or assembling of new motor vehicles.” *Id.* § 7550(1). To obtain a certificate of conformity, a manufacturer or EPA must test a representative vehicle and demonstrate that it will meet applicable emission standards. *See id.* § 7525(a). The Clean Air Act additionally prohibits states and political subdivisions from adopting or enforcing standards relating to the control of emissions from new motor vehicles

¹ Greenhouse gases include carbon dioxide, methane, nitrous oxide, hydrofluorcarbons, perfluorcarbons, and sulfur hexafluoride. 74 Fed. Reg. at 66,516. Carbon dioxide is the principal greenhouse gas emitted by motor vehicles.

subject to federal motor vehicle emission and fuel standards, subject to limited exceptions. *Id.* § 7543(a).

B. Regulatory Background

1. Federal Regulation of Motor Vehicle Greenhouse Gas Emissions and Fuel Economy

There is a scientifically recognized, direct mathematical relationship between the combustion of gasoline or diesel fuel (which produces the energy to push the pistons that drive a truck engine) and the amount of carbon emitted at the vehicle's tailpipe. *See Massachusetts*, 549 U.S. at 531-32; *Delta Constr. Co. v. EPA*, 783 F.3d 1291, 1294 (D.C. Cir. 2015). Accordingly, EPA and NHTSA have promulgated greenhouse gas and fuel economy standards for vehicles in close coordination with each other through joint rulemaking in an effort to establish consistent, harmonized, and streamlined federal requirements. *See* 81 Fed. Reg. at 73,487; 77 Fed. Reg. 62,624, 62,626-27 (Oct. 15, 2012).

Since 2010, EPA and NHTSA have promulgated greenhouse gas and fuel economy standards for various categories and model years of new motor vehicles. The agencies have established standards for both "light-duty" vehicles, which include automobiles and light trucks, and medium- and heavy-duty vehicles, which include larger vehicles ranging in size from vans to the largest tractor-trailers. *See, e.g.*, 75 Fed. Reg. 25,324, 25,326 (May 7, 2010) (model year 2012-2016 light-duty vehicles); 76 Fed. Reg. 57,106 (Sept. 15, 2011) (model year 2014-2018 medium- and heavy-duty

vehicles); 77 Fed. Reg. 62,624 (Oct. 15, 2012) (model year 2017-2021 light-duty vehicles); 81 Fed. Reg. 73,478, 73.640 (Oct. 25, 2016) (medium- and heavy-duty vehicles through model year 2027). And consistent with the goal of producing harmonized and streamlined federal requirements, the agencies have coordinated enforcement efforts where possible. Under the Corporate Average Fuel Economy (“CAFE”) standards for passenger cars and light trucks, for example, EPA collects data regarding the fuel economy of newly manufactured vehicles. EPA then shares that data with NHTSA to assist in NHTSA’s enforcement of its fuel economy standards. *See, e.g.*, 49 C.F.R. § 531.6.

In 2011, NHTSA and EPA issued an initial set of greenhouse gas emission and fuel efficiency standards for new model year 2014-2018 medium- and heavy-duty vehicles. 76 Fed. Reg. 57,106 (Sept. 15, 2011).² Among the heavy-duty vehicles regulated in this rule were tractor-trailers—large combination trucks consisting of a “tractor” that is powered by an engine attached to a “trailer” unit that includes a large container or platform for transporting cargo. Tractor-trailers are used for transporting materials and play a major role in freight transport in the United States. Sometimes referred to colloquially as “big rigs” or “18-wheelers,” tractor-trailers emit particularly large quantities of air pollution and consume substantial amounts of

² Prior to these Phase 1 standards, heavy-duty vehicles were required to meet pollution standards for soot and smog-causing air pollutants, but no standards existed for greenhouse gases or fuel efficiency. 81 Fed. Reg. at 73,480.

fuel—approximately 60 percent of the total greenhouse gas emissions and fuel consumption from the heavy-duty sector overall. 81 Fed. Reg. at 73,490.

2. The Challenged Rules

In the 2011 “Phase 1 Rule” for medium- and heavy-duty vehicles, the agencies set fuel efficiency and greenhouse gas emission standards for the tractor component of tractor-trailer vehicles, but postponed setting standards for the trailer component so as to provide the agencies with additional time to assess certain technical and policy issues pertaining to trailers. 76 Fed. Reg. at 57,362. The agencies emphasized that they were “committed to moving forward to create a regulatory program for trailers” in a subsequent rulemaking, recognizing that trailer technologies represent a significant opportunity to reduce fuel consumption and greenhouse gases from tractor-trailer vehicles. *Id.* at 57,111.

In 2015, the agencies proposed a second round of standards for medium- and heavy-duty vehicles to build upon and enhance the existing Phase 1 standards. 80 Fed. Reg. 40,138 (July 13, 2015). Before doing so, the agencies commissioned a study from the National Academy of Sciences and conducted extensive outreach with manufacturers and other stakeholders. This resulted in, as pertinent here, a proposal for a new regulatory program to cover the trailer component of tractor-trailers. *Id.* at 40,253-85. After considering public comments, the agencies then finalized the proposed trailer standards in October 2016 with minor changes intended to simplify and clarify the standards’ implementation. 81 Fed. Reg. at 73,640, 73,649-77.

As the agencies explained in the final rule, approximately one-third of the total achievable greenhouse gas emission reductions and fuel savings from tractor-trailers can be achieved through technologies applied to the trailer portion of the vehicle. 81 Fed. Reg. at 73,516 n.89. A variety of relatively cost-effective technologies applicable to trailers have been demonstrated to significantly reduce overall fuel use from tractor-trailer vehicles, including aerodynamic devices, low rolling resistance tires, tire inflation systems, and weight-reduction technologies. *Id.* at 73,650-61.

Many of these technologies have already been introduced into the market voluntarily, including through trailer manufacturers' participation in EPA's "SmartWay Transport Partnership" program. 81 Fed. Reg. at 73,487-88, 73,504. Under SmartWay—a voluntary public-private program—participating freight shippers, carriers, and other stakeholders commit to assessing, tracking, and improving environmental performance over time by adopting fuel-saving practices and technologies. *Id.* at 73,640. EPA for its part provides technical assistance and recognition incentives to participants so as to encourage the use of best practices. *Id.* However, the widespread adoption of these proven technologies remained limited. 80 Fed. Reg. at 40,161.

In the final rule, the agencies promulgated trailer standards for nine discrete subcategories of trailers. 81 Fed. Reg. at 73,647-48. For "box" trailers, the most common type of trailer, the rule established a performance-based standard. Manufacturers could meet this standards by adopting their preferred combinations of

the technologies that have been demonstrated to reduce overall fuel use. *Id.* at 73,632, 73,643. For regulated non-box trailers, which includes flatbeds, tankers and container chassis, the standards simply require manufacturers to adopt lower rolling resistance tires and tire pressure monitoring systems. *Id.* at 73,654.³ The standards were intended to be phased in over a ten-year period beginning model year 2018.

Consistent with EPA's regulation of other kinds of vehicle manufacturers, manufacturers of new trailers must obtain a certificate of conformity from EPA prior to entering trailers into commerce. *See* 42 U.S.C. §§ 7522(a), 7525(a); 81 Fed. Reg. at 73,642-43. The certification process for trailer manufacturers is similar in basic structure to the process for tractor and engine manufacturers, but has been substantially simplified to meet the circumstances of the trailer industry and to minimize compliance burdens. 81 Fed. Reg. at 73,664-672.

Likewise, consistent with NHTSA's regulation of other vehicles, including the CAFE standards for light trucks and passenger vehicles, NHTSA's regulations require manufacturers of new trailers to submit information regarding the design and performance improvement of their vehicles to the agencies through a designated electronic database. *See* 49 C.F.R. § 535.8(a)(2), (a)(6). NHTSA may periodically conduct audits, verification testing, or field inspections in order to validate the data

³ The agencies elected not to establish standards for most specialty types of non-box trailers. 81 Fed. Reg. at 73,504.

received from the manufacturers. *Id.* § 535.9(a). NHTSA's regulations contemplate that such audits and verification will be performed, when possible, in conjunction with EPA. *Id.*

C. Prior Proceedings

Petitioner Truck Trailer Manufacturers Association ("the Association") filed a petition for review of the final rule in this Court. On August 17, 2017, EPA and NHTSA sent letters to petitioners indicating that they intended to reconsider the final rule's trailer provisions through notice-and-comment rulemaking. The agencies then moved to hold these cases in abeyance pending completion of administrative proceedings regarding the rule. Motion to Continue Abeyance (Sept. 18, 2017), ECF No. 1693423. The Court granted that motion.

In September 2017, the Association filed a motion seeking a stay of EPA's greenhouse gas emissions standards as applied to trailers, which were scheduled to go into effect in 2018. Motion for Stay (Sept. 25, 2017), ECF No. 1694522. In response, EPA represented that it did "not oppose the relief" requested in light of EPA's intent to reconsider the trailer standards, but stated that it "takes no position on the merits" of the Association's arguments. ECF No. 1698457 at 3. The Court entered an order on October 27, 2017, staying EPA's trailer standards, and granting the agencies' request for continued abeyance. ECF No. 1701733.

The Association did not seek a stay of the NHTSA fuel efficiency standards, which go into effect in model year 2021. On December 3, 2019, the Association filed

a motion to lift the abeyance and to set a briefing schedule in the case, so that this Court might decide the case before the onset of mandatory standards for trailers in NHTSA's rule. Motion to Lift Abeyance (Dec. 3, 2019), ECF No. 1818576. The Agencies did not oppose this motion, and this Court entered a briefing schedule.

SUMMARY OF ARGUMENT

The Energy Independence and Security Act authorizes NHTSA to create a “fuel efficiency improvement program” for “commercial medium- and heavy-duty on-highway vehicles.” 49 U.S.C. § 32902. In enacting the final rule here, NHTSA exercised its discretion to determine that this statutory directive is sufficiently broad as to permit the agency to regulate trailers as standalone vehicles as part of a fuel efficiency program for heavy-duty vehicles, and that the statutory directive likewise permits the agency to regulate trailers as integral components of tractor-trailer vehicles. That interpretation of the statute should be upheld.

In arguing against the challenged rule, the Association principally argues that trailers should not be considered “vehicles” in this context because they do not consume fuel. But the statute does not define “vehicles” in this narrow manner, and the Association fails to identify clear evidence that Congress sought to preclude NHTSA from exercising its statutory discretion to regulate trailers. Rather, the Association's arguments merely reflect ambiguity in the statute: Congress did not address the question whether the agency could regulate trailers. Because the statute is ambiguous, and NHTSA's interpretation is a permissible one, the Association's

concerns are properly directed to the agency, which is undertaking further rulemaking to address the issue.

The Clean Air Act likewise authorizes EPA's regulation of greenhouse gas emissions from tractor-trailer vehicles. EPA has found that a tractor-trailer is a "motor vehicle" within the meaning of the Act because it is "self-propelled" and "designed for transporting persons or property on a street or highway." 42 U.S.C. § 7550(2). In establishing emission standards for tractor-trailers, EPA established standards premised on the application of feasible emission-reduction technologies to both halves of the motor vehicle: tractors and trailers. EPA then treated trailer manufacturers as "manufacturer[s]" of tractor-trailers as that term is defined in the Act, because trailer manufacturers are among the set of entities "engaged in the manufacturing" of tractor-trailers. 42 U.S.C. § 7550(1).

Should this Court conclude that either agency did not have statutory authority to regulate tractor-trailers, however, it is clear that the rules are severable. In promulgating the challenged rules, the agencies plainly expressed their intent that the rules were severable and that the "NHTSA fuel consumption standards are independent of the EPA greenhouse gas standards and vice versa." Response to Comments at 486 (JA__). That clear expression of intent represents the fair and considered judgment of the subject-matter experts who designed the rules and who will have the responsibility to enforce them, and demonstrates that the rules are

severable. *See, e.g., K-Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 294 (1988); *Davis Cty. Solid Waste Mgmt. v. EPA*, 108 F.3d 1454, 1459-60 (D.C. Cir. 1997).

STANDARD OF REVIEW

This Court has recognized that the Administrative Procedure Act establishes the standard applicable to NHTSA's rulemaking. *See Competitive Enter. Inst. v. NHTSA*, 45 F.3d 481, 484 (D.C. Cir. 1995) (quoting 5 U.S.C. § 706(2)(A)). The Clean Air Act establishes the standard of review applicable to petitions for review of EPA's rulemaking. 42 U.S.C. § 7607(d)(9). Under both statutes, this Court asks whether the challenged rule was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 42 U.S.C. § 7607(d)(9); 5 U.S.C. § 706(2)(A).

When reviewing an agency's interpretation of a statute it administers, courts apply the two-step framework set forth in *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-45 (1984). First, courts determine "whether Congress has directly spoken to the precise question at issue" by looking to the "traditional tools of statutory construction," including textual analysis, structural analysis, and legislative history. *Id.* at 842, 843 n.9. If so, courts must "give effect to the unambiguously expressed intent of Congress." *Id.* at 842-43. If "the statute is silent or ambiguous with respect to the specific issue," however, "the question for the court is whether the agency's answer is based on a permissible construction of the statute." *Id.* at 843. If so, then the Court should defer to the agency's interpretation.

ARGUMENT

I. NHTSA Reasonably Exercised Its Discretion to Conclude that the Energy Independence and Security Act Authorizes Fuel Efficiency Standards for Trailers

Through the Energy Policy and Conservation Act of 1975, as amended by the Energy Independence and Security Act, Congress tasked NHTSA with creating a “fuel efficiency improvement program” for “commercial medium- and heavy-duty on-highway vehicles and work trucks” “in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency.” 49 U.S.C. § 32902(k). The Act defines a “commercial medium- and heavy-duty on-highway vehicle” as “an on-highway vehicle with a gross vehicle weight rating of 10,000 pounds or more.” *Id.* § 32901(a)(7). The statute directs the agency to determine how to implement a fuel efficiency program for these vehicles that is “designed to achieve the maximum feasible improvement,” and it requires the agency to “adopt and implement appropriate test methods, measurement metrics, fuel economy standards, and compliance and enforcement protocols that are appropriate, cost-effective, and technologically feasible.” *Id.* § 32902(k).

A. In promulgating the final rule here, NHTSA determined that this statutory directive is silent on the question whether NHTSA may regulate trailers. As the agency noted, the Act grants it broad authority to create a “fuel efficiency improvement program” for “commercial medium- and heavy-duty on-highway

vehicles,” but the Act does not expressly define the term “vehicle” or speak to the question whether the term encompasses trailers. 81 Fed. Reg. at 73,521.

In the face of the statute’s ambiguity, NHTSA determined that its authority was sufficiently broad as to permit the agency to regulate trailers as part of a comprehensive regulatory program to improve the fuel efficiency of commercial medium- and heavy-duty on-highway vehicles. After careful analysis, the agency exercised its discretion to conclude that standalone trailers can reasonably be considered “vehicles” within the meaning of the statute, and likewise, that trailers may thus be regulated as part of a broader fuel efficiency program for tractor-trailers, which likewise, can reasonably be considered “vehicles.” *Id.* That reading of the statute is within the range of permissible interpretations of the statute’s text.

First, as NHTSA noted, the term “vehicle” has a broad meaning. *See* 81 Fed. Reg. at 73,521. A “vehicle” is a “conveyance, a form of transport,” in particular, “a means of conveyance or transport on land, having wheels, runners or the like.” “Vehicle,” Oxford English Dictionary, Third Edition (June 2017). That term reasonably can be read to encompass a broad variety of vehicle subtypes, including trailers, which are rated to carry loads within the weight rating specified by the statute’s definition of medium- and heavy-duty vehicles, and are designed primarily for commercial, on-highway hauling of property. *Cf.* 49 U.S.C. § 32902(k).

Further, Congress enacted the statutory reference to “vehicles” against a well-established backdrop of NHTSA’s regulation of trailers as “vehicles” in other

contexts. The Motor Vehicle Safety Act, for example, directs the Secretary of Transportation (NHTSA, through delegation) to promulgate safety standards for “motor vehicles,” which the Act defines as any “vehicle driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways.” 49 U.S.C. § 30102(a)(6). NHTSA has long promulgated safety standards for trailers pursuant to this authority, as trailers are indisputably “vehicle[s] . . . drawn by mechanical power.” *Id.* § 30102(a)(6); *see, e.g.*, 49 C.F.R. pts. 551, 565, 566.

Regulation of trailers is also consistent with the Act’s overall purpose of improving the fuel efficiency of heavy-duty vehicles, which indisputably include tractor-trailers. Although trailers themselves do not independently consume fuel, they “contribute substantially to . . . the diesel fuel consumption” of tractor-trailers as a whole. 81 Fed. Reg. at 73,639. As discussed at length in the rule, trailers are a vital component of tractor-trailers, which are massive vehicles designed to haul cargo. Although only the tractor portion of this articulated vehicle itself consumes fuel, it cannot “fulfill the function of the vehicle” on its own, because it cannot haul cargo unless a trailer is attached. 81 Fed. Reg. at 73,521.

Substantial evidence supports the conclusion that the design and performance of these attached trailers have a significant effect on fuel consumption of tractor-trailers. As the Association acknowledges (Br. 44), the Energy Independence and Security Act preconditions any rulemaking under 49 U.S.C. § 32902(k) on the completion of a report by the National Academy of Sciences “evaluating medium-

duty and heavy-duty truck fuel economy standards.” *See* Pub. L. No. 110-140, § 108, 121 Stat. 1492, 1505 (2007); *see also* 49 U.S.C. § 32902(k). The National Academy of Sciences published its initial report in 2010 after evaluating a “wide range of fuel-saving technologies for these vehicles.” *Technologies and Approaches to Reducing the Fuel Consumption of Medium- and Heavy-Duty Vehicles at 3* (2010 NAS Report) (JA___). In that report, the Academy explained that “the major enabling technologies necessary to achieve” improved fuel efficiency were technologies designed to improve “total vehicle aerodynamics, especially in over-the-road applications like tractor trailers and motor coaches.” *Id.* In particular, “[t]railers, which present an important opportunity for fuel consumption reduction, can benefit from improvements in aerodynamics and tires.” 2010 NAS Report at 8 (JA___).

Likewise, in the second study commissioned by NHTSA, the National Academy of Sciences explained, “the tractor and trailer act as a system, with each part affecting the energy use of the other.” *Reducing the Fuel Consumption and Greenhouse Gas Emissions of Medium- and Heavy-Duty Vehicles, Phase Two* (2014 NAS Report) at 67 (JA___). For this reason, the report explicitly recommended that NHTSA adopt a regulation requiring that all new 53-foot-and-longer dry van and refrigerated van trailers meet certain aerodynamic performance standards. 2014 NAS Report at 83 (JA___). The Academy also recommended that NHTSA further evaluate and determine whether it would be practical and cost-effective to regulate other types of trailers, “as doing so could substantially increase overall fuel savings.” *Id.* (JA___).

NHTSA thus concluded, based in part on the recommendation of the scientific study that Congress established as the basis for the exercise of the agency's statutory authority, that the fuel efficiency of heavy-duty vehicles could be improved by ensuring broad application of technologies designed to improve trailers' design and performance. The Association does not dispute these findings. Thus, the regulation of trailers is consistent with Congress's directive that NHTSA establish a comprehensive program designed to achieve "maximum feasible improvement" in heavy-duty vehicles, and with the overall purpose of the Energy Independence and Security Act.

B. The Association's arguments against the challenged rule focus principally on the fact that trailers do not have engines, and thus do not consume fuel. The Association believes that this fact prohibits NHTSA from regulating trailers entirely. But the Association's arguments do not establish that Congress precluded NHTSA's ability to exercise discretion and interpret the term "vehicle"; those arguments merely confirm the ambiguity in the statute. Congress did not define the term "vehicle," nor did it address the question whether the agency could regulate trailers. It thus left to NHTSA "the discretion to fill the consequent statutory gap." *National Cable & Telecomm. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 996 (2005). In exercising that discretion, the agency's task is "not to find the best meaning of the text, but to formulate legally binding rules to fill in gaps based on policy judgments." *Van Hollen, Jr. v. Federal Election Comm'n*, 811 F.3d 486, 495 (D.C. Cir. 2016). In promulgating the

final rule, NHTSA exercised that discretion to fill the gap left in the Energy Independence and Security Act concerning the meaning of the word “vehicle.” The agency reasonably interpreted that ambiguous term as permitting but not requiring the agency to regulate trailers as part of a broad fuel efficiency improvement program. 81 Fed. Reg. at 73,521.

Crucially, because the Act is silent regarding the question whether NHTSA may regulate trailers, the question for this Court is not whether NHTSA’s position in the final rule is “the best interpretation” of the statute, but only whether that reading is a permissible one. *Van Hollen, Jr.*, 811 F.3d at 494 (emphasis omitted); *see also Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984); *Guedes v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 920 F.3d 1, 17 (D.C. Cir. 2019). The Association has not established that Congress unambiguously precluded NHTSA from regulating trailers, or that NHTSA’s interpretation was otherwise unreasonable. Congress left open and did not specifically resolve whether NHTSA may regulate trailers. NHTSA appropriately exercised its discretion to interpret the statute’s text. This interpretation should be upheld. *See Van Hollen, Jr.*, 811 F.3d at 495.

1. First, as discussed, the agency permissibly exercised its discretion when it reasoned that the term “vehicle” can be read broadly as encompassing a wide variety of vehicle subtypes. Some vehicles consume fuel, others do not, but the unadorned statutory term “vehicles” does not limit the agency’s authority to interpret the term’s meaning. Here, Congress defined the subtype of vehicles to be regulated under 49

U.S.C. § 32902(k) as “commercial medium- and heavy-duty on-highway vehicles.”

Such vehicles are defined in the statute solely by reference to their principal purpose and weight rating, not by reference to whether they consume fuel. *Id.* § 32901(a)(7).

The Association argues (Br. 42) that trailers are “categorically unlike” the other types of vehicles that NHTSA regulates, which consume fuel. But that argument does not prove that Congress unambiguously expressed its intent to preclude NHTSA from considering a range of possible interpretations of the term “vehicle,” including a reading of that ambiguous term that includes trailers. To the contrary, as the Association notes, Congress chose to use the unadorned term “vehicle,” a broad term that permits a range of interpretive choices. By contrast, other statutory provisions reflect a different legislative choice. For example, in addition to the provision at issue here, 49 U.S.C. § 32902(b)(1) directs NHTSA to regulate passenger automobiles and non-passenger automobiles. “Automobiles” are specifically defined as a subtype of vehicle “that is *propelled by fuel*, or by alternative fuel, manufactured primarily for use on public streets, roads, and highways and rated at less than 10,000 pounds gross vehicle weight.” *Id.* § 32901(a)(3) (emphasis added). But Congress used the broader term vehicle here, which does not include the additional fuel-based limitation in the definition of “automobile.”

Furthermore, as the agency noted in the final rule, Congress “demonstrate[d] the ability to exclude” certain vehicles from regulation under 49 U.S.C. § 32902(k). *See* 81 Fed. Reg. at 73,521. The agency noted that work trucks, for example, are

statutorily defined as “a vehicle between 8,500 and 10,000” pounds gross vehicle weight rating “that is not a [medium-duty passenger vehicle].” *Id.*; *see also* 49 U.S.C. § 32901(a)(19) (defining work truck as excluding medium-duty passenger vehicles); 40 C.F.R. § 86.1803-01 (defining medium-duty passenger vehicle).⁴ “In contrast,” the definition of commercial medium- or heavy-duty vehicle “do[es] not explicitly exclude trailers.” 81 Fed. Reg. at 73,521. Instead, the only explicit limitation imposed in the definition is that the vehicles must be above a certain gross vehicle weight rating. Thus, contrary to petitioner’s argument, Congress did not expressly act to “exclude trailers when defining these terms.” *Id.* It instead left the question open and unresolved.

The Association further misunderstands the purpose and import of the consumer information program described in 49 U.S.C. § 32304A when it argues (Br. 40-41) that interpreting the Energy Independence and Security Act to permit regulation of tractor-trailers would render that section “wholly unnecessary.” Section 32304A separately requires NHTSA to create a “national tire fuel efficiency consumer information program” that “educate[s] consumers about the effects of tires on automobile fuel efficiency, safety, and durability.” 49 U.S.C. § 32304A(a)(2), (b). The Association appears to contend that by requiring NHTSA to establish an educational program about the significant effect of tires on fuel efficiency, Congress intended

⁴ NHTSA separately regulates medium-duty passenger vehicles as light-duty vehicles. *See* 49 U.S.C. § 32902(b)(1)(a).

silently to prohibit the agency from considering the impact that tires have when designing programs to improve fuel efficiency. But the statute's requirement to educate consumers does not by its terms limit NHTSA's ability to consider the impact of tires or other vehicle components as part of a broader fuel efficiency improvement program.

The Association's remaining arguments are equally unavailing. The Association notes (Br. 44-45) that Congress has sometimes used the term "truck" interchangeably with the term "vehicle." For example, in directing NHTSA to commission a report from the National Academy of Sciences, Congress specified that the Academy should examine the fuel efficiency of medium- and heavy-duty "trucks," a term that was later codified as medium- and heavy-duty "vehicles." *Compare* Pub. L. No. 110-140, § 108, 121 Stat. at 1505 *with* 49 U.S.C. § 32902(k). But contrary to the Association's argument, the term "truck" is sufficiently broad to encompass the entire tractor-trailer. On the second page of its 2010 report, for example, the Academy explained, "the party responsible for the final truck configuration is often not well defined," because "the tractor and trailer are always made and often owned by different companies." 2010 NAS Report at 2 (JA___).

The Association also argues that the statutory definition of a medium- and heavy-duty vehicle is "irreconcilable" (Br. 45-46) with NHTSA's conclusion that a tractor-trailer is a "vehicle" within the meaning of 49 U.S.C. § 32902. In support of this argument, petitioner notes the Energy Independence and Security Act defines

medium- and heavy-duty on-highway vehicles with respect to their “gross vehicle weight rating,” which “describes the maximum load that can be carried by a vehicle, including the weight of the vehicle itself,” 81 Fed. Reg. at 73,485 n.26, and that NHTSA has occasionally used the term “gross combination weight rating” to refer to the weight of a combined vehicle, such as a combined tractor-trailer, *see* Br. 45-46; *see also* 81 Fed. Reg. at 73,485 n.26; 76 Fed. Reg. at 57,114.

This argument fails to establish that Congress unambiguously expressed its intent to preclude the agency from regulating trailers. Trailers, of course, have gross vehicle weight ratings as standalone vehicles, and the trailers regulated by the final rule consist only of those trailers over the requisite minimum weight rating. Furthermore, petitioner is simply incorrect to assert that by using the phrase “gross vehicle weight rating” Congress sought *sub silentio* to categorically prohibit the agency from regulating tractor-trailers as vehicles. As noted above, in enacting the Energy Independence and Security Act, Congress “demonstrate[ed] the ability to exclude” certain vehicles from the scope of the agency’s regulatory authority under 49 U.S.C. § 32902(k). 81 Fed. Reg. at 73,251; *see supra* p.21-22. Congress did not explicitly exclude trailers or tractor-trailer from regulation under 49 U.S.C. § 32902(k).

2. Because the statute is ambiguous, and NHTSA’s interpretation of the statute is a permissible one, NHTSA’s policy judgment should be upheld. *See Van Hollen, Jr.*, 811 F.3d at 495. The Association’s concerns are therefore properly directed to the agency, not to this Court. Indeed, the Association has already raised its concerns with

NHTSA, which is undertaking a rulemaking to address those issues. In April 2017, the Association sent NHTSA a letter requesting reconsideration of the Phase 2 rulemaking. JA___. Although that petition for reconsideration was untimely, NHTSA treated it as a petition for new rulemaking, which NHTSA decided to grant. *See* 49 C.F.R. § 553.35 (setting a 45-day limit for petition for reconsideration, and noting that petitions filed after that deadline will be treated as petitions for rulemaking under 49 C.F.R. § 552); Letter from Jack Danielson, Acting Deputy Administrator, NHTSA, to Jeffrey M. Sims (Aug. 17, 2017) (JA___). NHTSA accordingly intends to issue a notice of proposed rulemaking in the near future.

The Association is quite wrong to suggest (Br. 48-49) that this Court cannot defer to NHTSA's interpretation simply because the agency has represented that it intends to reconsider the rule under review. In support of its argument, the Association misreads this Court's decision in *Global Tel*Link v. FCC*, 866 F.3d 397, 407-08 (D.C. Cir. 2017). In that case, the FCC had abandoned the challenged legal position entirely, and no longer sought to defend that position in court. This Court concluded that "it would make no sense" to address whether it was appropriate to defer to the agency's reasoned policy judgment, not because the agency had granted a petition for reconsideration but because the agency had abandoned its underlying legal positions. *Id.* Here, however, reconsideration is still occurring.

That discussion, in any event, was not relevant to this Court's disposition of that case. Notably, in a clarification and amendment issued in response to a petition

for rehearing en banc, this Court explained that the contested provisions of the challenged FCC order were “manifestly contrary” to the unambiguously expressed intent of Congress, and thus, “clearly unworthy of deference.” *Id.* at 417; *id.* at 425 (Pillard, J., concurring in part) (describing the discussion of the agency’s change in position as “dicta” because “*Chevron* deference plays no role in an opinion holding [a statute] unambiguous”). By contrast, here the Energy Independence and Security Act is ambiguous as to the question whether NHTSA may properly regulate trailers under 49 U.S.C. § 32902(k). And although petitioner’s argument confirms the genuine ambiguity in the statute, NHTSA’s interpretation in the final rule was not expressly precluded by Congress.

Furthermore, the Association’s interpretation of the dicta in *Global Tel*Link* has been definitively rejected by this Court in more recent cases. *See Guedes*, 920 F.3d at 21-22; *see also SoundExchange, Inc. v. Copyright Royalty Bd.*, 904 F.3d 41, 54 (D.C. Cir. 2018). As this Court recently explained in *Guedes*, if there is ambiguity in a statute, “the meaning of the statute becomes whatever the agency decides to fill the gaps with, as long as the agency’s interpretation is reasonable and ‘speak[s] with the force of law.’” *Guedes*, 920 F.3d at 22 (quoting *United States v. Mead Corp.*, 533 U.S. 218, 229 (2001)). And although an agency’s initial interpretation of an ambiguous statute “is not instantly carved in stone,” *Chevron*, 467 U.S. at 863-64, agencies generally may not “vary the binding nature of a legislative rule . . . without undergoing a new notice-and-

comment rulemaking,” *Guedes*, 920 F.3d at 22-23. Until that happens, the agency’s position is entitled to deference. *Id.*

In enacting the final rule here, NHTSA “plainly believed it was acting in a manner warranting *Chevron* treatment.” *Guedes*, 920 F.3d at 21. The agency enacted the final rule through notice-and-comment rulemaking as an exercise of “delegated legislative power” from Congress, and the rule currently has the “force and effect of law.” *Id.* at 17-18 (citing *American Mining Cong. v. Mine Safety & Health Admin.*, 995 F.2d 1106, 1109 (D.C. Cir. 1993)). Although NHTSA has expressed its intent to revisit its position, it has not retracted the rule or abandoned its previous interpretation regarding the scope of its statutory authority. NHTSA has instead recognized, consistent with this Court’s recent conclusion, that the agency must “use the same procedures” to “amend or repeal [its] rule as [it] used to issue the rule in the first instance,” *id.* at 22-23 (quotation marks omitted) (quoting *Perez v. Mortgage Bankers Ass’n*, 575 U.S. 92, 101 (2015)), here, notice-and-comment rulemaking. None of that, as *Guedes* recognizes, undermines the agency’s exercise of discretion in interpreting an ambiguous statutory term, which continues to have the force of law and is entitled to deference until reconsidered.

II. The Clean Air Act Authorizes the Regulation of Greenhouse Gas Emissions from Tractor-Trailer Vehicles

Independent of NHTSA’s authority to regulate fuel efficiency, the Clean Air Act authorizes EPA’s regulation of greenhouse gas emissions from new tractor-trailer

vehicles. The Act directs EPA to establish emission standards for new “motor vehicles” to be met by the “manufacturers” of such vehicles. 42 U.S.C. §§ 7521, 7525. EPA has found that a tractor-trailer is a “motor vehicle” within the meaning of the Act, *id.* § 7550(2). EPA concluded that trailer manufacturers are “engaged in the manufacturing” of these vehicles and qualify as vehicle “manufacturers.” *Id.* § 7550(1). Accordingly, EPA promulgated emission standards applicable to new trailers to be met by trailer manufacturers.

A. A Tractor-Trailer Falls Within the Act’s Definition of “Motor Vehicle”

The rule promulgates standards applicable to “tractor trailers.” EPA determined that a tractor-trailer meets both prongs of the Clean Air Act’s definition of “motor vehicle” at 42 U.S.C. § 7550(2) because this vehicle is both (a) “self-propelled,” and (b) “designed for transporting persons or property on a street or highway.” 80 Fed. Reg. at 40,170. If the driver of a tractor-trailer turns on the ignition and hits the accelerator, the entire vehicle propels down the highway, its 18 or so wheels spinning in unison and its cargo transported.

The Association itself acknowledged in its rulemaking comments that an assembled tractor-trailer falls within Act’s definition of “motor vehicle.” *See* Association Comments at 3 (“The trailer is not a motor vehicle under CAA statute until it is connected . . . At connection, the combination could then be said to meet the definition for “new motor vehicle””) (JA __). The Association focuses its

argument on the fact that a trailer—before connection to a tractor—is not *yet* part of a “self-propelled” motor vehicle. But that distinction does not prove the Association’s argument.

The Act’s definition of “motor vehicle” reflects Congress’ focus on the intended *use* of a vehicle, not on its particular manner of assembly or number of integral segments. Congress defined a “motor vehicle” as a “self-propelled” vehicle that is “*designed for transporting persons or property on a street or highway.*” 42 U.S.C. § 7550(2) (emphasis added). As pertinent here, a tractor-trailer cannot accomplish its intended purpose of transporting freight without the trailer. 80 Fed. Reg. at 40,170. Consequently, EPA explained, the tractor-trailer as a whole should be considered the pertinent vehicle “designed for transporting persons or property.” *Id.*; 42 U.S.C. § 7550(2).

EPA further explained that the agency has authority to establish separate emission standards applying specifically to both the new tractor and the new trailer segments of a tractor-trailer. 81 Fed. Reg. at 73,514-15. Congress provided that EPA may apply standards to new vehicles that are not “designed as complete systems.” 42 U.S.C. § 7521(a); 81 Fed. Reg. at 73,514-15. Therefore, Congress clearly contemplated that emission controls might be established for portions of a vehicle not necessarily “designed” to be a “complete” system. 81 Fed. Reg. at 73,514. And here, EPA determined that, although a new trailer is not manufactured as a “complete” vehicle, it is designed to serve as an integral component of a complete vehicle—*i.e.*,

the tractor-trailer. 80 Fed. Reg. at 40,170. It is one-half of that overall vehicle, and both parts of that overall vehicle—the tractor and the trailer—must work in tandem for the vehicle to perform its intended freight-bearing function. *Id.* at 40,170. Thus, EPA concluded the fact that tractors and trailers are manufactured separately, and that particular trailers may get attached to various tractors over the course of their useful lives (Br. 22, 24) does not change the legal status of a connected tractor-trailer as a “motor vehicle,” or EPA’s authority to establish appropriate standards for both halves of that “motor vehicle.”⁵

Moreover, cost-effective technologies applicable specifically to the trailer portion of the tractor-trailer can materially reduce the complete vehicle’s greenhouse-gas emissions. 81 Fed. Reg. at 73,649-63. Although the power unit directly generating exhaust emissions is located within the tractor portion of the vehicle, the trailer design necessarily and significantly impacts the volume of those emissions. *Id.* at 73,516. Consequently, setting emission standards for both tractors and trailers facilitates the implementation of cost-effective pollution controls for the entire vehicle and furthers Congress’ intent to protect public health and welfare. *See id.* at 73,486-87, 73,510-12.

⁵ The Association points out that the phrase “incomplete vehicle”—used by EPA to characterize the trailer segment of a tractor-trailer—in not a phrase that appears specifically in the statute. Br. 18. But that phrase is just an alternative way of referring to a vehicle that is not “designed” as a “complete” system. 42 U.S.C. § 7521(a).

Language within Section 7521 provided EPA further contextual support for its view that Congress intended for EPA to have authority to establish emission standards for significant vehicle components, even though such components are not the entire vehicle and may not be themselves self-propelled until installed into the vehicle. 81 Fed. Reg. at 73,514. For example, Section 7521(a)(6) requires EPA to require “onboard vapor recovery systems” for controlling evaporative emissions from the refueling of light-duty vehicles and promulgate standards for such systems, even though such vapor recovery systems are not the entire vehicle and are not themselves “self-propelled.” Likewise, Sections 7521(a)(5) and (k) authorize EPA to set other emission standards for fueling system components that are not themselves the entire vehicle or self-propelled. EPA concluded that these provisions reflect that Congress understood that the authority to promulgate standards for specific vehicle segments or components falls within the scope of the general overarching authority under Section 7521 to establish emission standards for “motor vehicles” in certain circumstances.

In support of its interpretation, EPA explained that taken to the extreme, absurd results could follow from adopting the counter-interpretation advanced by the Association. *See* 81 Fed. Reg. at 73,514-15. Under a counter-interpretation, for example, manufacturers might hypothetically assemble a vehicle missing just one small component needed for self-propulsion—*e.g.*, the ignition switch—and then successfully claim they are unable to be regulated, because they have manufactured a

product that is not self-propelled. *Id.* Of course, the vehicle segment that is at issue in this case—trailers—is not some small and trivial component. Trailers are an essential part of tractor-trailers, comprising the bulk of the vehicle’s overall dimensions and playing an integral role in its functionality.

B. Trailer Manufacturers are Among the Multiple “Manufacturers” of Tractor-Trailers

As EPA further concluded, if a tractor-trailer is a new motor vehicle, both tractor and trailer manufacturers qualify as “manufacturers” of tractor-trailers as that term is defined in the Act. 81 Fed. Reg. at 73,516; Response to Comments at 58-61, (JA__-__). The term “manufacturer” is defined expansively to include:

[a]ny person engaged in the manufacturing or assembling of new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines

42 U.S.C. § 7550(1) (emphasis added). As pertinent here, separate entities manufacture the two principal components of tractor-trailer vehicles. But while tractors and trailers are manufactured separately, both sets of manufacturers are integrally “engaged in the manufacturing” of the overall vehicle interpreted by EPA.

42 U.S.C. § 7550(1). Therefore, both sets of entities qualify as vehicle “manufacturers.” 81 Fed. Reg. at 73,516; Response to Comments at 60-61, (JA__-__).

Furthermore, given the segmentation of production in the industry, EPA determined that the entity with control over design and emissions performance of the

relevant portion of the vehicle should have the responsibility for testing and certifying that portion of the vehicle. Response to Comments at 61, (JA____). As EPA explained, the trailer manufacturer specifies, controls, and assembles all aspects of the trailer portion of the vehicle from inception to completion, just as a tractor manufacturer likewise controls the assembly of the tractor. 81 Fed. Reg. at 73,516. All subcomponents of the trailer—*e.g.*, the tires, axles, flat bed, outside cover, and aerodynamics—are within the trailer manufacturer’s control. After the trailer manufacturer completes work on the trailer portion of a tractor-trailer, nothing more needs to be done with respect to that portion of the vehicle. *Id.* In other words, the trailer manufacturer is uniquely well-positioned to test, certify and warrant performance of the trailer to meet technological standards. *Id.*

EPA’s imposition of responsibility on trailer manufacturers here is also consistent with how EPA has previously treated manufacturers of other significant vehicle components, where those manufacturers were in the best position to test and certify the emissions performance of those components. For example, EPA has previously applied standards to specific fueling system components and required manufacturers of those components to test and certify the emissions performance of their products, even though they do not manufacture the remainder of vehicles and the segments that they manufacture are not self-propelled except as part of the vehicle. *See* 81 Fed. Reg. at 73,515 n.86 (citing 73 Fed. Reg. 59,034, 59,115 (Oct. 8, 2008)).

This is not to suggest that EPA claimed authority under the Act to promulgate separate emission standards for individual motor vehicle components no matter how insignificant or to treat every component manufacturer as a “vehicle” manufacturer. 81 Fed. Reg. at 73,514. In construing the limitations of its authority under the Act, EPA considers the significance of a vehicle component in comparison to the entire vehicle, and the significance of the component with respect to the potential for achieving vehicle emission reductions. *Id.* Thus, EPA believed its authority appropriately limited to regulating significant segments of “motor vehicles” that have a material impact on emissions. Therefore, EPA did not claim “limitless” authority to treat minor component manufacturers as “motor vehicle” manufacturers. Br. 23.⁶

Applying these considerations to trailers, EPA concluded trailers fall within the bounds of permissible regulation. 81 Fed. Reg. at 73,515. Trailers are not some relatively minor component installed onto a tractor-trailer such as a wheel or headlight. Trailers are instead an entire, complete section of a tractor-trailer—one-half of the vehicle. Greenhouse-gas emissions attributable to additional drag from

⁶ While not relevant here, EPA does have some more limited types of authority under the Act pertaining to component manufacturers who do not qualify as “vehicle” manufacturers. *See* 42 U.S.C. § 7522(a)(3)(B) (prohibiting component from interfering with pollution control device); *id.* § 7525(a)(2) (authorizing testing of components); *id.* § 7541(a)(2) (authorizing warranty of components); *id.* § 7542 (requiring recordkeeping by component manufacturers). *See also* 81 Fed. Reg. at 73,517-18; Legal Memorandum at 8-9 (JA ___-___). In the rule under review, EPA treated trailer manufacturers as “vehicle” manufacturers and did not purport to rely exclusively on these more limited authorities.

hauling the trailer constitute approximately one third of the tractor-trailer's total emissions, and there are feasible technologies available to reduce these emissions. *Id.* at 73,516.⁷

The Association suggests that the statute does not allow EPA to regulate trailer manufacturers, and that EPA must instead focus solely on tractors. But EPA reasoned the statute's definition does not require EPA to designate solely one entity as the "manufacturer" or require that a "manufacturer" be involved in the design and assembly of *all* aspects of the vehicle's design and production. 81 Fed. Reg. at 73,515-16. *See also United States v. Gonzales*, 520 U.S. 1, 5 (1997) ("Read naturally, the word 'any' has an expansive meaning, that is 'one or some indiscriminately of whatever kind.'"). Instead, EPA concluded that the phrase "any person," combined with the repeated use of the connecting word "or" between different types of activities, reflects that vehicles may have multiple "manufacturers" who are involved in different aspects of vehicle production. 81 Fed. Reg. at 73,515-16.

The Association's remaining arguments do not demonstrate that EPA lacks authority to set emission standards for new trailers. First, EPA's interpretation does

⁷ EPA exercised care in delineating and cabining the scope of what qualifies as a "trailer" for purposes of the rule. Trailers falling within the scope of the rule are limited to vehicles with "a frame with one or more axles attached" that are "designed for carrying cargo and for being drawn by a tractor when coupled to the tractor's fifth wheel." 40 C.F.R. § 1037.801 (definitions of "vehicle" and "trailer"). EPA also excluded from regulation certain non-box trailers where control technologies have not been demonstrated to be consistently effective. 81 Fed. Reg. at 73,643.

not render the phrase “motor vehicle engine” in Section 7521(a) superfluous. Br. 19. Again, EPA does not claim authority under Section 7521(a) to set emission standards for every component of a motor vehicle, no matter how insignificant. *See supra* p.34. Nor does EPA take the position that minor vehicle component manufacturers qualify as “vehicle” manufacturers. Section 7521(a) explicitly defines “motor vehicle engines” and Section 7550(2) defines the term “manufacturer” to include “engine” manufacturers. EPA read these provisions to provide that emissions standards may be set for engines and that testing and certification requirements may apply to engine manufacturers.

EPA’s interpretation of the term “motor vehicle” is also not precluded by the definition of that term in other federal statutes. *See* Br. 20. The Association cites to various statutes where the term “motor vehicle” is defined somewhat differently, and in a manner that even more explicitly encompasses trailers. But those different statutes do not control here, or demonstrate that EPA’s interpretation of the Clean Air Act is incorrect. The Association, citing to *Megbrig v. KFC Western*, 516 U.S. 479, 485 (1996), contends that Congress would have necessarily included a phrase such as “drawn by mechanical power” within the “motor vehicle” definition if it had intended to authorize EPA’s regulation of trailers in the Clean Air Act. Br. 20. But the situation here bears no resemblance to that in *Megbrig*. That case involved the interpretation of citizen suit provisions in two very closely analogous environmental statutes addressing toxic waste cleanups. Here, the various other statutes containing

“motor vehicle” definitions cited by the Association were enacted at different times and for different purposes.⁸ None of them relate to the control of pollution or are administered by EPA. Nor does the Association point to any legislative history supporting a conclusion that Congress’ omission of the specific phrase “drawn by mechanical power” in the Clean Air Act was intended to preclude regulation of trailers. Thus, those different statutes do not control here, or demonstrate that EPA’s interpretation of the Clean Air Act is incorrect.

The federal criminal code’s chapter addressing stolen property also does not undermine EPA’s interpretation. *See* Br. 22-23 (citing 18 U.S.C. § 2311). To begin with, the definition of “motor vehicle” in the cited portion of the criminal code is not “materially identical” to that in the Clean Air Act. Br. 22. That criminal code section defines a “motor vehicle” as including an “automobile, automobile truck, automobile wagon, motorcycle, or any other self-propelled vehicle designed for running on land but not on rails.” 18 U.S.C. § 2311. In contrast, Section 7550(2) provides that a “motor vehicle” is a self-propelled vehicle “designed for transporting persons or property on a street or highway.” 42 U.S.C. § 7550(2). EPA reasoned that a tractor-

⁸ 40 U.S.C. § 17101(2) relates to the Federal purchase of motor vehicles equipped with appropriate safety equipment. 40 U.S.C. § 17501(2) relates to the collection of data associated with the Federal use of motor vehicles. 49 U.S.C. § 30102(a)(7) relates to a program to promote motor vehicle safety. 49 U.S.C. § 30301(4) relates to a driver registry to assist an effective alcohol safety program. 49 U.S.C. § 32101(7) relates to miscellaneous information standards. 18 U.S.C. § 31(a)(6) relates to certain criminal activities involving vehicles.

trailer cannot fulfill its intended function of transporting property unless both of its components—the tractor and the trailer—are combined together. 80 Fed. Reg. at 40,170.

Regardless, different courts' extrapolation of language from a disparate statute and area of the law are not to be given substantial weight. *Cf. Department of Homeland Sec. v. MacLean*, 574 U.S. 383, 398 (2015) (noting that where two statutes have “different language, different histories, and were enacted in different contexts,” the court’s “interpretation of one” should have “no impact whatsoever on” its “interpretation of the other”). The cited portion of the criminal code serves an entirely different purpose than the Clean Air Act. It is focused on deterring illicit activity associated with stolen property, not on reducing air pollution. Classifying illicit activity associated with the theft of a trailer as a separate criminal offense recognizes that “dealing illicitly with a tractor and trailer, even if the two items are already hooked together when stolen and when moving in interstate commerce, involves a larger misdeed than dealing with a single tractor.” *United States v. Kidding*, 560 F.2d 1303, 1308-09 (7th Cir. 1977). As relevant here, the Association’s preferred interpretation of “motor vehicle” would frustrate the intent of Congress to control air pollution.

EPA also has not definitively adopted different interpretations of its authority in prior rulemakings. The Association points to language from a footnote in the introductory section to the agencies’ proposed Phase 1 Truck Rule, in which the

agencies provided a brief overview of the heavy-duty trucking industry. Br. 22. In the cited footnote, the agencies described the term “gross combined weight rating” as including the “weight of a loaded trailer and the vehicle itself.” 76 Fed. Reg. at 57,114 n.23. The point of the footnote was simply to clarify that the term “gross combined weight rating” was meant to describe the maximum load that can be carried by the vehicle. The agencies were not in that footnote purporting to describe or establish the scope of the agencies’ legal authority over tractor-trailers. *See* 81 Fed. Reg. at 73,521.

EPA’s exercise of regulatory authority over trailers also does not mean that Congress failed to articulate an “intelligible principle” guiding EPA’s discretion. *See* Br. 24 (quoting *Mistretta v. United States*, 488 U.S. 361, 372 (1989)). Congress’s directive to set appropriate emission standards for “new motor vehicles,” which “shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance,” is not an impermissibly vague delegation of regulatory authority. 42 U.S.C. § 7521(a)(1)-(2). Congress permissibly provided EPA with a certain degree of discretion in using its expertise to decide how best to regulate and limit vehicle emissions causing threats to public health and welfare. *See Whitman v. American Trucking Ass’ns, Inc.*, 531 U.S. 457, 475 (2001) (a “certain degree of discretion, and thus of lawmaking, inheres in most executive or judicial action” (quoting *Mistretta*, 488 U.S. at 417 (Scalia, J. dissenting))). Here, Congress has

delineated appropriate limiting principles, and EPA has not exceeded the bounds of reasonable regulation.

EPA acknowledges that this Court granted a stay pending judicial review, and that the Court in evaluating a stay request was called upon to assess the probability of success on the merits. EPA notes, however, that “[t]he foundation for that assessment will be more or less secure depending on the thoroughness of the exploration undertaken by the parties and the court.” *Sole v. Wyner*, 551 U.S. 74, 75 (2007). In this case, EPA consented to a stay based on its intended reconsideration proceeding. *See* Response to Stay Motion, ECF No. 1698457 (Oct. 12, 2017). Thus, until now EPA has not presented its position on the merits for the Court to consider.

In sum, because tractor-trailers qualify as “motor vehicles” and because trailer manufacturers are “engaged in the manufacturing” of these vehicles, EPA has legal authority to require trailer manufacturers to comply with emission standards.

Therefore, the Rule’s greenhouse-gas emission standards should be upheld.

III. The Agencies’ Respective Portions of the Rule Function Independently and Are Severable

As discussed above, EPA and NHTSA both independently determined that they have statutory authority to regulate the greenhouse gas emissions and fuel efficiency of tractor-trailers, respectively. Furthermore, as this Court has recognized, the agencies exercise related regulatory authority over subjects that the courts have repeatedly recognized are linked by scientific principles and policy goals. *See Delta*

Constr. Co., Inc. v. EPA, 783 F.3d 1291, 1297-98 (D.C. Cir. 2015). EPA’s authority to regulate greenhouse gas emissions “intersects with NHTSA’s responsibility to promulgate average fuel efficiency standards,” and “any rule that limits tailpipe [greenhouse gas] emissions is effectively identical to a rule that limits fuel consumption,” and vice versa. *Id.* at 1294. Thus, should this Court find that either agency permissibly found that it has the statutory authority to regulate trailers, that is persuasive evidence that Congress intended the other agency to also have this authority. Accordingly, this Court need not address petitioner’s argument regarding severability. Should this Court nevertheless conclude that either agency did not have statutory authority to regulate tractor-trailers, it should find that any invalid portion of the rule is severable.

A. The Agencies Clearly Expressed their Intent for the Rules to Be Severable and Designed Rules that Function Independently

This Court has consistently explained that “[t]he question whether an agency order is severable turns on the agency’s intent.” *Sierra Club v. FERC*, 867 F.3d 1357, 1366 (D.C. Cir. 2017); *see also, e.g., Davis Cty. Solid Waste Mgmt. v. EPA*, 108 F.3d 1454, 1459-60 (D.C. Cir. 1997). “Severance and affirmance of a portion of an administrative regulation” is proper unless there is “‘substantial doubt’ that the agency would have adopted the severed portion on its own.” *Davis Cty.*, 108 F.3d at 1459. In assessing that question, this Court looks to whether there is any “indication that the regulation would not have been passed but for [the] inclusion of the [invalid]

standards” and whether severance would “impair the function” of the remainder of the rule. *Id.* at 1460.⁹

1. In responding to comments on the jointly proposed rules, the agencies specifically expressed their intent for NHTSA’s fuel efficiency standards to function independently of, and be legally severable from, EPA’s greenhouse gas emissions standards, and vice versa. Response to Comment at 486 (JA__). The agencies explained that they had elected to regulate several different types of vehicles and vehicle components, and that they regarded the standards to be “independent of each other, functioning sensibly on their own.” *Id.* Further, the agencies explained, “the NHTSA fuel consumption standards are independent of the EPA greenhouse gas standards and vice versa. Each standard implements, and is justified by, each agency’s respective and distinct statutory authority.” *Id.* (JA__). As a result, the agencies “regard each of these standards as legally severable.” *Id.* (JA__).

The agencies likewise explained that the rules were “independent” and “legally severable,” *id.* (JA__), thus acknowledging the possibility that they might have to enforce a portion of their respective rules in the other’s absence, and that doing so

⁹ Petitioner’s argument focuses almost entirely on the question whether NHTSA’s portion of the rule is severable. *See* Br. 27-36; *but see* Br. 36 n.3. As discussed *infra*, however, both agencies jointly agreed that each agencies’ rule could function independently and that the rules were legally severable.

was not only possible, but contemplated in the course of promulgating the rule. This statement is dispositive evidence of the agencies' intent.

2. The agencies' conclusion that the rules are not dependent on each other and could function independently is well supported.

The final rule promulgates standards for trailers based on the trailer's overall contribution to greenhouse gas emissions and fuel consumption when attached as an "integral part of the tractor-trailer vehicle." 81 Fed. Reg. at 73,539-40, 73,644; *see also* 49 C.F.R. § 535.5(e). For certain types of trailers—specifically, flatbeds, tankers, and container chassis—the standards require only that the trailer use either rolling resistance tires and automatic tire inflation systems or have a tire pressure monitoring system. 49 C.F.R. § 535.5(e)(2); 40 C.F.R. § 1037.107(a)(4). Although both agencies adopted identical requirements, these requirements are not dependent on the existence of the other's rule. In the absence of EPA's emissions standards, manufacturers of flatbed trailers can adopt automatic tire inflation systems or tire pressure monitoring systems in order to comply with NHTSA's fuel efficiency standards. And likewise, in the absence of NHTSA's fuel efficiency standards, manufacturers could comply with EPA's emissions standards in the exact same manner.

Other trailers—specifically, regulated box trailers—must meet certain performance goals by incorporating "better tires (including tire pressure management)" and "aerodynamic improvements" to the "trailer's aerodynamic drag,

tire rolling resistance, and weight.” 81 Fed. Reg. at 73,640, 73,650; *see also* 49 C.F.R. § 535.5(e)(1); 40 C.F.R. § 1037.107(a)(1)-(3). Here, the agencies did not require trailer manufacturers to adopt particular technologies in order to meet these performance standards. Instead, the agencies developed a standard formula that trailer manufacturers could use to determine whether the particular technology or combination of technologies they elect to use meets the regulations’ requirements. 81 Fed. Reg. at 73,665-66; *see id.* at 73,666 (“The use of the equation quantifies the overall performance of the trailer in terms of CO₂ emissions on a grams per ton-mile basis, which can be converted to fuel consumption on a gallons per 1000 ton-mile basis.”); *see also* 49 C.F.R. § 535.6(e) (“The NHTSA heavy-duty trailers fuel consumption performance rates correspond to the same requirements for EPA as specified in 40 CFR part 1037, subpart F.”).

Again, although both agencies adopted the same standard, the standard is not dependent on the existence of the other agency’s rule. In the absence of EPA’s rule, manufacturers of regulated box trailers can adopt aerodynamic improvements judged against the performance formula in order to comply with NHTSA’s fuel efficiency standards. These requirements function independently of EPA’s rule. Likewise, in the absence of fuel efficiency standards, trailer manufacturers could adopt the same improvements in order to comply with EPA’s emissions standards in the exact same manner.

B. The Association Ignores the Agencies' Expressed Intent

In arguing that the respective tractor-trailer rules are not severable, the Association ignores (Br. 29) the agencies' expressed statement of intent, and fails to provide any persuasive evidence that, contrary to this express statement, either agency would have adopted a different rule if it were regulating independently.

1. First, although the agencies undertook to promulgate a joint regulation, there is no indication that the presence of the other's rule was a necessary condition for rulemaking. To the contrary, the agencies sought to undertake a joint rulemaking as part of their longstanding effort to ensure that manufacturers could “avoid unnecessarily duplicative testing and compliance burdens” and instead, could participate in a single “closely coordinated, harmonized national program.” 81 Fed. Reg. at 73,487.

Put differently, the agencies recognized, as this Court has, that “any rule that limits tailpipe [greenhouse gas] emissions is effectively identical to a rule that limits fuel consumption.” *Delta Constr. Co.*, 783 F.3d at 1294. In other words, a rule limiting tailpipe emissions will likewise limit fuel consumption, and vice versa. Thus, the benefits of either agency promulgating a new regulation overlaps substantially, if not completely, with any benefits accruing from a similar regulation promulgated by the other agency.

In recognition of this fact, the agencies have undertaken a comprehensive effort in this and other rulemakings to generate emissions and fuel consumption

standards that harmonize rules in order to minimize duplicative burdens on the industries affected by these rules. *See* 81 Fed. Reg. at 73,487-88. The result of this effort to minimize compliance burdens was a joint rulemaking in which the agencies worked in “close partnership” and coordination with each other. *See* Br. 30; *see also*, *e.g.*, 81 Fed. Reg. at 73,479, 73,481, 73,484, 73,487. But that does not demonstrate that either agency would have adopted a different regulation but for the other’s rule. To the contrary, the Energy Independence and Security Act requires NHTSA to consult with EPA when promulgating fuel efficiency standards for medium- and heavy-duty vehicles under 49 U.S.C. § 32902(k), just as it does for the regulations of passenger vehicles and light trucks under § 32902(b). Congress has thus long required this interagency cooperation.

Nor is the Association served by its argument (Br. 32) that EPA rejected a proposed alternative approach for calculating greenhouse gas emissions on the basis that such an approach would “likely render it impossible to harmonize the fuel efficiency and GHG emission standards, to the great detriment of [the agencies’] goal of achieving a coordinated program.” 81 Fed. Reg. at 73,500. Again, this statement illustrates that both EPA and NHTSA have prioritized minimizing any duplicative burdens on affected industries. But it does not show that EPA would have promulgated a different rule for trailers in the absence of NHTSA’s rule. To the contrary, in the Response to Comments, EPA explained that the approach to calculating greenhouse gas emissions in the rule has “been in place for decades” and

there was “no reasonable basis in the comments or elsewhere to change fundamentally from this longstanding approach.” Response to Comments at 295 (JA___).

2. Furthermore, the Association is quite wrong to argue (Br. 32) that NHTSA’s fuel consumption standards are dependent on EPA’s rule. Although NHTSA’s codified regulation incorporates the jointly adopted formula by reference to EPA’s codified regulations, *see* 49 C.F.R. § 535.6(e), the applicable formula would continue to apply even in the absence of EPA’s rule. As explained above, the final rule expressly states that the same formula applies to both rules, and thus, neither rule is dependent on the other. *See* 81 Fed. Reg. at 73,666 (“The use of the equation quantifies the overall performance of the trailer in terms of CO₂ emissions on a grams per ton-mile basis, which can be converted to fuel consumption on a gallons per 1000 ton-mile basis.”).

Nor is the Association correct (Br. 32-33) that NHTSA is unable to enforce its fuel efficiency standards in the absence of EPA’s rule. To be sure, consistent with the agencies’ joint goal of creating a single national program to avoid duplicative burdens, NHTSA’s regulations establish a preference for joint enforcement of fuel efficiency and greenhouse gas emissions standards for medium- and heavy-duty vehicles. The regulations state that manufacturers of these vehicles “must submit information electronically through the EPA database system as the single point of entry for all information required for this national program and both agencies will have access to

the information.” 49 C.F.R. § 535.8(a)(2). But that same regulation also contemplates that a single electronic solution may not be possible: “[i]n instances in which EPA has not created an electronic pathway to receive the information, the information should be sent through an electronic portal identified by NHTSA or through the NHTSA CAFE database.” *Id.* § 535.8(a)(6).

Likewise, NHTSA’s regulations state that the agency will conduct audits “in the same manner and, when possible, in conjunction with EPA.” 49 C.F.R. § 535.9. Again, this establishes a preference for ensuring harmonized auditing practices in order to avoid duplicative burdens on the manufacturers of medium- and heavy-duty vehicles. But the regulation’s express acknowledgment that this may not be possible confirms that NHTSA recognized it might have to independently enforce certain portions of its rule, and expressly designed the rule to account for that possibility.

This stands in stark contrast to the cases cited by the Association, in which this Court has declined to sever a portion of a rule because the agency expressly acknowledged that the rule was a “single, integrated proposal” and indicated that its approval of some portion of the rule was contingent on the entire rule remaining. *See, e.g., Sierra Club*, 867 F.3d at 1366; *North Carolina v. FERC*, 730 F.2d 790, 795 (D.C. Cir. 1984).

In *North Carolina v. FERC*, for example, this Court addressed an order that adopted a “comprehensive settlement” of various challenges to previous agency decisions. 730 F.2d at 796. The petitioners in that case challenged the agency’s order

with respect to certain portions of the settlement, and asked that they be severed from the remainder of the order, such that a partial adoption of the settlement would remain in place. *Id.* at 795. This Court rejected that request on the ground that the agency had expressly stated, on multiple occasions, that its order was not severable, and that it was “not at all sure” that it would have promulgated any portion of the order if it were not part of a single “comprehensive” package. *Id.* at 795-98. Here, by contrast, the agencies expressly stated that EPA’s rule and NHTSA’s rule were severable and could function independently.

Likewise, in *MD/DC/DE Broadcasters Association v. FCC*, 236 F.3d 13 (D.C. Cir. 2001), this Court addressed a rule promulgated by the FCC designed to regulate the hiring practices of broadcast licensees with respect to women and minorities. That rule required all licensees to achieve a “broad outreach” in their recruiting efforts, and provided licensees with two ways in which to meet this requirement. *Id.* at 16. This Court determined that one of the two options was unconstitutional, but concluded that it could not leave the remaining option in place, because “severing one alternative” would “make the other mandatory,” contrary to the expressed intent of the agency. *Id.* at 22. This again stands in stark contrast to the challenged rules here, in which the agencies expressly contemplated each rule could function independently.

3. The Association’s remaining arguments identify a handful of places in which NHTSA’s regulations make passing references to EPA-run programs. These references result from the fact that NHTSA has long cooperated with EPA to

improve fuel economy with respect to many types of vehicles, not simply the trailers at issue here. EPA, for example, manages all data collection regarding the fuel economy of passenger cars and light trucks, and it shares that data with NHTSA to assist in NHTSA's efforts to ensure that manufacturers of these vehicles are complying with fuel economy standards. EPA likewise operates the SmartWay program, a voluntary private-public program that helps promote fuel-efficient tractor-trailers by testing fuel-saving technologies and promoting their widespread use. NHTSA's reference to these programs, however, does not suggest that its rule is dependent on EPA's ability to regulate the emissions of trailers. To the contrary, the provisions cited by the petitioner retain their integrity in the absence of EPA's rule or else can be cleanly severed without impairing the overall functioning of NHTSA's rule.

The Association notes, for example, (Br. 29) that under 49 C.F.R. § 535.6(e)(2), trailer manufacturers must “[o]btain preliminary approvals for trailer aerodynamic devices from EPA in accordance with 40 C.F.R. § 1037.150” before calculating compliance under the joint formula. 49 C.F.R. § 535.6(e)(2). This provision can function sensibly in the absence of EPA's authority to promulgate greenhouse gas emissions standards for trailers because the EPA preliminary approval process cited in that rule is both an interim and voluntary process. Under 40 C.F.R. § 1037.150(u), “manufacturers of aerodynamic devices for trailers may ask for preliminary EPA approval of compliance data for their devices based on qualifying for designation

under the SmartWay program” until January 1, 2018. That interim provision does not apply after model year 2020. *Id.*¹⁰ Furthermore, as already discussed, EPA’s voluntary SmartWay program was in effect prior to the challenged rule here, and EPA’s ability to continue to operate it does not depend on EPA’s statutory authority to promulgate greenhouse gas emissions standards for trailers.

The Association also notes (Br. 32) that NHTSA’s regulations state that the agency will assume noncompliance with the fuel consumption standards “[i]f EPA suspends or revoke[s] a certificate of conformity.” 49 C.F.R. § 535.9(a)(10). But that is only one of ten listed standards for enforcement. And if EPA could not issue certificates of conformity for trailers, this portion of the rule could be severed without impairing NHTSA’s overall ability to enforce its fuel efficiency standards.

Furthermore, to the extent that the Association has provided any reason to doubt that NHTSA’s rule can function independently of EPA’s, that concern should be resolved by reference to the agencies’ stated view that the rules function independently. As a general matter, courts “should refrain from invalidating more of the statute [or regulation] than is necessary.” *Alaska Airlines, Inc. v. Brock*, 480 U.S. 678, 684 (1987). With respect to statutes, the Supreme Court has similarly explained,

¹⁰ After model year 2020, the final rule calls for any preliminary approval to utilize the procedures specified in 40 C.F.R. § 1037.211. That process, like the interim provisions discussed above, is a voluntary one. *Id.* § 1037.211(a) (“If you design or manufacture aerodynamic devices for trailers, you may ask us to provide preliminary approval for the measured performance of your devices.”).

“[u]nless it is evident that the Legislature would not have enacted those provisions which are within its power, independently of that which is not, the invalid part may be dropped if what is left is fully operative as a law.” *Id.* (quoting *Buckley v. Valeo*, 424 U.S. 1, 108 (1976)). That same inquiry applies when analyzing regulations. *See K-Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 294 (1988) (holding that “the design of the regulation is such that” the invalid portion is severable because doing so “will not impair the function of the statute as a whole, and there is no indication that the regulation would not have been passed but for its inclusion”).

Here, the agencies plainly expressed that the rules could function independently, and that reasonable understanding represents the fair and considered judgment of the subject-matter experts who designed the rules and who will have the responsibility to enforce them. They are in the best position to determine whether these technical and complex rules can function independently, and this Court should not substitute its policy judgment for theirs.

CONCLUSION

The petition for review should be denied.

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April 21, 2020

**CERTIFICATE OF COMPLIANCE WITH
FEDERAL RULE OF APPELLATE PROCEDURE 32(A)**

I hereby certify that this brief complies with the requirements of Fed. R. App. P. 32(a)(5) and (6) because it has been prepared in 14-point Garamond, a proportionally spaced font.

I further certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 12,649, excluding the parts of the brief exempted under Rule 32(a)(7)(B)(iii), according to the count of Microsoft Word.

/s/ Jennifer L. Utrecht

JENNIFER L. UTRECHT

CERTIFICATE OF SERVICE

I hereby certify that on April 21, 2020, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system.

The participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

/s/ Jennifer L. Utrecht
JENNIFER L. UTRECHT

STATUTORY AND REGULATORY ADDENDUM

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49 U.S.C. § 32901**§ 32901. Definitions**

(a) General.--In this chapter--

* * *

(3) except as provided in section 32908 of this title, “automobile” means a 4-wheeled vehicle that is propelled by fuel, or by alternative fuel, manufactured primarily for use on public streets, roads, and highways and rated at less than 10,000 pounds gross vehicle weight, except--

(A) a vehicle operated only on a rail line;

(B) a vehicle manufactured in different stages by 2 or more manufacturers, if no intermediate or final-stage manufacturer of that vehicle manufactures more than 10,000 multi-stage vehicles per year; or

(C) a work truck.

(4) “automobile manufactured by a manufacturer” includes every automobile manufactured by a person that controls, is controlled by, or is under common control with the manufacturer, but does not include an automobile manufactured by the person that is exported not later than 30 days after the end of the model year in which the automobile is manufactured.

(5) “average fuel economy” means average fuel economy determined under section 32904 of this title.

(6) “average fuel economy standard” means a performance standard specifying a minimum level of average fuel economy applicable to a manufacturer in a model year.

(7) “commercial medium- and heavy-duty on-highway vehicle” means an on-highway vehicle with a gross vehicle weight rating of 10,000 pounds or more.

* * *

(10) “fuel” means--

(A) gasoline;

(B) diesel oil; or

(C) other liquid or gaseous fuel that the Secretary decides by regulation to include in this definition as consistent with the need of the United States to conserve energy.

(11) “fuel economy” means the average number of miles traveled by an automobile for each gallon of gasoline (or equivalent amount of other fuel) used, as determined by the Administrator under section 32904(c) of this title.

* * *

(17) “non-passenger automobile” means an automobile that is not a passenger automobile or a work truck.

(18) “passenger automobile” means an automobile that the Secretary decides by regulation is manufactured primarily for transporting not more than 10 individuals, but does not include an automobile capable of off-highway operation that the Secretary decides by regulation--

(A) has a significant feature (except 4-wheel drive) designed for off-highway operation; and

(B) is a 4-wheel drive automobile or is rated at more than 6,000 pounds gross vehicle weight.

(19) “work truck” means a vehicle that--

(A) is rated at between 8,500 and 10,000 pounds gross vehicle weight; and

(B) is not a medium-duty passenger vehicle (as defined in section 86.1803-01 of title 40, Code of Federal Regulations, as in effect on the date of the enactment of the Ten-in-Ten Fuel Economy Act).

49 U.S.C. § 32902**§ 32902. Average fuel economy standards**

(a) Prescription of standards by regulation.--At least 18 months before the beginning of each model year, the Secretary of Transportation shall prescribe by regulation average fuel economy standards for automobiles manufactured by a manufacturer in that model year. Each standard shall be the maximum feasible average fuel economy level that the Secretary decides the manufacturers can achieve in that model year.

(b) Standards for automobiles and certain other vehicles.--

(1) In general.--The Secretary of Transportation, after consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, shall prescribe separate average fuel economy standards for--

(A) passenger automobiles manufactured by manufacturers in each model year beginning with model year 2011 in accordance with this subsection;

(B) non-passenger automobiles manufactured by manufacturers in each model year beginning with model year 2011 in accordance with this subsection; and

(C) work trucks and commercial medium-duty or heavy-duty on-highway vehicles in accordance with subsection (k).

* * *

(k) Commercial medium- and heavy-duty on-highway vehicles and work trucks.--

(1) Study.--Not later than 1 year after the National Academy of Sciences publishes the results of its study under section 108 of the Ten-in-Ten Fuel Economy Act, the Secretary of Transportation, in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, shall examine the fuel efficiency of commercial medium- and heavy-duty on-highway vehicles and work trucks and determine--

(A) the appropriate test procedures and methodologies for measuring the fuel efficiency of such vehicles and work trucks;

(B) the appropriate metric for measuring and expressing commercial medium- and heavy-duty on-highway vehicle and work truck fuel efficiency performance, taking into consideration, among other things, the work performed by such on-highway vehicles and work trucks and types of operations in which they are used;

(C) the range of factors, including, without limitation, design, functionality, use, duty cycle, infrastructure, and total overall energy consumption and operating costs that affect commercial medium- and heavy-duty on-highway vehicle and work truck fuel efficiency; and

(D) such other factors and conditions that could have an impact on a program to improve commercial medium- and heavy-duty on-highway vehicle and work truck fuel efficiency.

(2) Rulemaking.--Not later than 24 months after completion of the study required under paragraph (1), the Secretary, in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, by regulation, shall determine in a rulemaking proceeding how to implement a commercial medium- and heavy-duty on-highway vehicle and work truck fuel efficiency improvement program designed to achieve the maximum feasible improvement, and shall adopt and implement appropriate test methods, measurement metrics, fuel economy standards, and compliance and enforcement protocols that are appropriate, cost-effective, and technologically feasible for commercial medium- and heavy-duty on-highway vehicles and work trucks. The Secretary may prescribe separate standards for different classes of vehicles under this subsection.

(3) Lead-time; regulatory stability.--The commercial medium- and heavy-duty on-highway vehicle and work truck fuel economy standard adopted pursuant to this subsection shall provide not less than--

(A) 4 full model years of regulatory lead-time; and

(B) 3 full model years of regulatory stability.

42 U.S.C. § 7521**§ 7521. Emissions standards for new motor vehicles or new motor vehicle engines****(a) Authority of Administrator to prescribe by regulation**

Except as otherwise provided in subsection (b)--

(1) The Administrator shall by regulation prescribe (and from time to time revise) in accordance with the provisions of this section, standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare. Such standards shall be applicable to such vehicles and engines for their useful life (as determined under subsection (d), relating to useful life of vehicles for purposes of certification), whether such vehicles and engines are designed as complete systems or incorporate devices to prevent or control such pollution.

(2) Any regulation prescribed under paragraph (1) of this subsection (and any revision thereof) shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

* * *

42 U.S.C. § 7550

§ 7521. Definitions

As used in this part--

(1) The term “manufacturer” as used in sections 7521, 7522, 7525, 7541, and 7542 of this title means any person engaged in the manufacturing or assembling of new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines, or importing such vehicles or engines for resale, or who acts for and is under the control of any such person in connection with the distribution of new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines, but shall not include any dealer with respect to new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines received by him in commerce.

(2) The term “motor vehicle” means any self-propelled vehicle designed for transporting persons or property on a street or highway.

(3) Except with respect to vehicles or engines imported or offered for importation, the term “new motor vehicle” means a motor vehicle the equitable or legal title to which has never been transferred to an ultimate purchaser; and the term “new motor vehicle engine” means an engine in a new motor vehicle or a motor vehicle engine the equitable or legal title to which has never been transferred to the ultimate purchaser; and with respect to imported vehicles or engines, such terms mean a motor vehicle and engine, respectively, manufactured after the effective date of a regulation issued under section 7521 of this title which is applicable to such vehicle or engine (or which would be applicable to such vehicle or engine had it been manufactured for importation into the United States).

(4) The term “dealer” means any person who is engaged in the sale or the distribution of new motor vehicles or new motor vehicle engines to the ultimate purchaser.

(5) The term “ultimate purchaser” means, with respect to any new motor vehicle or new motor vehicle engine, the first person who in good faith purchases such new motor vehicle or new engine for purposes other than resale.

(6) The term “commerce” means (A) commerce between any place in any State and any place outside thereof; and (B) commerce wholly within the District of Columbia.

(7) Vehicle curb weight, gross vehicle weight rating, light-duty truck, light-duty vehicle, and loaded vehicle weight

The terms “vehicle curb weight”, “gross vehicle weight rating” (GVWR), “light-duty truck” (LDT), light-duty vehicle, and “loaded vehicle weight” (LVW) have the meaning provided in regulations promulgated by the Administrator and in effect as of

November 15, 1990. The abbreviations in parentheses corresponding to any term referred to in this paragraph shall have the same meaning as the corresponding term.

(8) Test weight

The term “test weight” and the abbreviation “tw” mean the vehicle curb weight added to the gross vehicle weight rating (gvwr) and divided by 2.

(9) Motor vehicle or engine part manufacturer

The term “motor vehicle or engine part manufacturer” as used in sections 7541 and 7542 of this title means any person engaged in the manufacturing, assembling or rebuilding of any device, system, part, component or element of design which is installed in or on motor vehicles or motor vehicle engines.

(10) Nonroad engine

The term “nonroad engine” means an internal combustion engine (including the fuel system) that is not used in a motor vehicle or a vehicle used solely for competition, or that is not subject to standards promulgated under section 7411 of this title or section 7521 of this title.

(11) Nonroad vehicle

The term “nonroad vehicle” means a vehicle that is powered by a nonroad engine and that is not a motor vehicle or a vehicle used solely for competition.