

August 14, 2020

Hon. Andrew R. Wheeler  
Administrator  
Environmental Protection Agency  
1200 Pennsylvania Ave NW  
Washington, DC 20004

**RE: EPA-HQ-OAR-2016-0604, Vehicle Test Procedure Adjustments for Tier 3 Certification Test Fuel**

Administrator Wheeler:

On March 31, 2020, the Environmental Protection Agency (EPA, jointly with the National Highway Traffic Safety Administration) completed a three-year process that dramatically undercut protections to reduce fuel use and greenhouse gas emissions, finalizing a rule for model years 2021-2026 which the administration's own analysis shows costs consumers, by forcing them to pay more at the pump;<sup>1</sup> will result in hundreds of premature deaths due to an increase in oil use;<sup>2</sup> and will pump over 900 billion tons of global warming emissions into the atmosphere,<sup>3</sup> exacerbating the climate crisis. And yet the very next day, EPA proposed an adjustment to the certification tests underpinning those regulations, including a provision that, if finalized, would further erode these environmental protections.

**EPA's proposed adjustment is sound and appropriate**

The Tier 3 emissions regulations appropriately included transitioning away from indolene test fuel, which no consumer can purchase, and to a test fuel (Tier 3 E10) that represents what consumers can purchase at the pump.<sup>4</sup> As part of that process, EPA committed to assessing the impact of such a change on the emissions and fuel usage of the new vehicle fleet. The results of the agency's study is conclusive: switching from Tier 2 to Tier 3 test fuel reduces fuel economy and tailpipe emissions of carbon dioxide.<sup>5</sup>

Owing to the difference in fuels, EPA must adjust its emissions procedure to reflect this new test fuel. If this adjustment is not made, changing a vehicle's test fuel will arbitrarily credit the vehicle with reductions in carbon dioxide emissions despite no changes to the vehicle at all. This amounts to, on average, a further weakening of the greenhouse gas emissions standards of 1.66 percent,<sup>6</sup> eliminating more than one year's worth of stringency under the MY2021-2026 rule.<sup>7</sup> In addition to the

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<sup>1</sup> The net benefits to consumers are -\$678 per vehicle (*Federal Register* 85, 24181).

<sup>2</sup> "The agencies project that the revised final standards will have a negative impact on air quality health outcomes, including a projected increase of 444 to 1,000 premature deaths from increased air pollution over the lifetime of the MY 1977–2029 vehicles on the road ... under EPA's CO2 program" (*Federal Register* 85, 25119).

<sup>3</sup> "Today's final standards are projected to increase CO2 emissions compared to the previously issued standards, by a total of 867 MMT over the lifetime of MY 1977 through MY 2029 vehicles" (*Federal Register* 85, 25111).

<sup>4</sup> "We are updating federal emission test fuel specifications to better match in-use fuel" (*Federal Register* 79, 23525).

<sup>5</sup> "Tier 3 Certification Fuel Impacts Test Program [EPA-420-R-18-004]," EPA-HQ-OAR-2016-0604-0003.

<sup>6</sup> Table IV-1, *Federal Register* 85, 28573.

<sup>7</sup> The CAFE and CO2 emissions standards established by these final rules will increase in stringency at 1.5 percent per year from MY 2020 levels over MYs 2021–2026" (*Federal Register* 85, 24175).

environmental damage it would cause, this reduction in the stringency of standards would also cost consumers at the gas pump at a time when they can least afford it.

### **EPA must not capitulate to industry**

The auto industry has asked EPA for yet another hand-out<sup>8</sup>—this is unacceptable. Automakers must be held responsible for the emissions from their vehicles. A number of automakers explicitly call out the emissions of their vehicles in their own sustainability plans, stressing the need to reduce real-world use emissions in the context of sustainability and addressing climate change.<sup>9</sup> The auto industry's request for EPA not to adjust its own test procedures is not just hypocritical—it would undermine the accuracy of the test procedures needed to ratchet down emissions from the largest source of global warming emissions in the United States,<sup>10</sup> which the industry claims to care about.

The ethanol industry has asked EPA not to make this adjustment as well, essentially asking to relitigate a fight it has already lost.<sup>11</sup> Vehicle test procedures are ultimately aimed at reducing emissions in the real world. This is a critical aspect of EPA's proposal—as the test moves towards the fuel actually used by consumers in the real world, EPA is ensuring both that it reflects those emissions AND that it does not undermine the rules on the books regulating those emissions. The MY2012-2026 greenhouse gas emissions standards were predicated on the basis of vehicle performance on Tier 2 gasoline, E85 ethanol, natural gas, hydrogen, and electricity.<sup>12</sup> While future standards could be set based on the use of additional fuels, including mid-level ethanol blends if they are available to and used by consumers, that has not happened to-date, and the time to consider how additional fuels would affect emissions regulations is exclusively *when those emissions standards are set*, not after the fact.<sup>13</sup>

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<sup>8</sup> "EPA should not attempt to make a CO<sub>2</sub> adjustment factor to address stringency of greenhouse gas rules developed using Tier 2 fuels and technology," Rege, J.M. and G. Ambrozaitis, "Letter to Paul Ray, Acting Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, Dec. 19, 2019."

<sup>9</sup> "Most of our CO<sub>2</sub> emissions are generated during the use phase of the vehicles," *Daimler Sustainability Report 2019*, p. 97. "In terms of overall impact, vehicle use (operation) is the main source of life cycle emissions," *Ford Sustainability Report 2020*, p. 36. "Our Scope 3 product footprint, which consists of our supply chain impacts, use of vehicles produced and management of vehicles' end-of-life, amounts to 94 percent of GM's total GHG emissions for 2019. Our vehicle strategy must then, in effect, become our sustainability strategy," *General Motors 2019 Sustainability Report*, p. 10. "As the world is moving toward the realization of the beyond 2°C scenario, Toyota sees this situation as both a risk and an opportunity and announced the 'New Vehicle Zero CO<sub>2</sub> Challenge.' Toyota will strive to slash average CO<sub>2</sub> emissions per vehicle by 90 percent in comparison with 2010 levels, by 2050," *Toyota Motor Corporation Environmental Report 2019*, p. 19. "Scope 3, category 11 emissions (emissions from use of products sold to Honda customers) account for more than 80% of GHG emissions from Honda's entire value chain. This means finding ways to reduce emissions related to customer use of Honda products is of primary importance in reducing emissions from Honda's value chain," *Honda Sustainability Report 2020*, p. 73.

<sup>10</sup> "Emissions from transportation activities, in aggregate, accounted for the largest portion (28.2 percent) of total U.S. greenhouse gas emissions in 2018," U.S. EPA *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2018*, p. ES-26.

<sup>11</sup> Testimonies of Steven VanderGriend, Urban Air Initiative; Chris Bliley, Growth Energy; and Douglas Durante, Clean Fuels Development Coalition at US EPA Hearing, July 13, 2020.

<sup>12</sup> "The analyses conducted for this rulemaking assumed the use of Tier 3 fuels, where applicable, which are considered directly representative, or a reasonable proxy for, fuels available for consumers to purchase," *Federal Register* 85, 24389.

<sup>13</sup> "To the extent that the agencies consider any additional rulemaking actions related to fuel octane requirements and/or availability, the agencies note that further analysis to set CAFE and CO<sub>2</sub> standards would also reflect any

## **EPA is long overdue to make this adjustment and must act now**

When finalizing the Tier 3 rule, EPA promised to implement this update by the 2020 model year.<sup>14</sup> However, they are now seeking both a delay of this switch, to 2021, and a phase-in.<sup>15</sup> This is simply not needed, and we recommend that EPA move with haste to avoid automakers using this switch in fuels to game the already-weakened greenhouse gas emissions regulations.

Newly certified vehicles have been tested under the Tier 3 fuel for years, and all vehicles are required to be certified for smog-forming emissions beginning with the 2020 model year.<sup>16</sup> This means that manufacturers already have data on the disparity in CO<sub>2</sub> emissions from using Tier 2 and Tier 3 fuel. EPA's own data showed a range of impacts from making the fuel switch<sup>17</sup>—a lengthy phase-in would encourage manufacturers to switch over only those vehicles which would preferentially benefit from having emissions credited under the new fuel, while maintaining status quo compliance costs. EPA should expedite this transition, limit carryover of Tier 2 fuel tests, and minimize any possible gaming by manufacturers.

One possible strategy to eliminate gaming could be to apply a percentage sales requirement on any proposed phase-in, consistent with the approach taken for the Tier 3 NMOG+NO<sub>x</sub>/PM standards.<sup>18</sup> A sales requirement ensures that progress is being made across every manufacturer's fleet, so while it would not fully prevent such certification manipulation, it would at least constrain it. Similarly, a requirement on vehicles not carrying over test data would be both clear and at least offer some constraint on manufacturers' ability to game any transition.

## **The conclusion is clear**

The science is quite clear—EPA can and must finalize the proposed adjustment factor, and not double down on gifts to the auto industry that harm consumers and put the climate and public health at risk. In fact, EPA should accelerate its timetable for adoption in order to ensure that the industry not manipulate the test procedure to erode the already flimsy regulations finalized through 2026—*our climate and our health cannot afford such dithering.*

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potential, related impacts of those potential changes," *ibid.*

<sup>14</sup> "We expect that the mandatory use of any such new adjustments with all Tier 3 certifications would be required for the 2020 MY," *Federal Register* 79, 23533.

<sup>15</sup> "EPA is proposing to reduce the transitional testing burden on manufacturers in three steps, as follows: (1) By delaying the requirements to test with Tier 3 fuel for an additional model year, from MY 2020 until MY 2021); (2) by allowing optional certification on either fuel for model years 2021 and 2022, and allowing manufacturers that previously tested certification vehicles for compliance with the GHG and CAFE standards to "carry over" their existing data; and (3) by allowing carryover data for model years 2023 and 2024, but requiring new certification testing (for new models not eligible to use carryover data) to be done on Tier 3 fuel. Thus, testing of all vehicles on Tier 3 certification test fuel would not be required until model year 2025," *Federal Register* 85, 28565.

<sup>16</sup> "Beginning in MY 2020, all gasoline-fueled models will need to certify on the Tier 3 test fuels for all exhaust emission requirements, regardless of their certification bin," *Federal Register* 79, 23476.

<sup>17</sup> Tables 3.5.4 and 3.5.5, "Tier 3 Certification Fuel Impacts Test Program."

<sup>18</sup> *Federal Register* 79, 23479 and 23485.

Respectfully,

American Council for an Energy-Efficient Economy

Center for Biological Diversity

Consumer Federation of America

Consumer Reports

Environmental Defense Fund

Environmental Working Group

Green Latinos

League of Conservation Voters

Natural Resources Defense Council

Sierra Club

Union of Concerned Scientists