

ORAL ARGUMENT NOT YET SCHEDULED  
No. 22-1080 (and consolidated cases)

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IN THE  
**United States Court of Appeals  
for the District of Columbia Circuit**

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NATURAL RESOURCES DEFENSE COUNCIL, *et al.*,  
*Petitioners,*

– v. –

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, *et al.*,  
*Respondents.*

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On Petition for Review of a Final Rule  
Issued by the Department of Transportation,  
National Highway Traffic Safety Administration

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**FINAL BRIEF OF THE INSTITUTE FOR POLICY INTEGRITY  
AT NEW YORK UNIVERSITY SCHOOL OF LAW AS *AMICUS  
CURIAE* IN SUPPORT OF RESPONDENTS**

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## **STATEMENT AS TO PARTIES, RULINGS, & RELATED CASES**

As required by Circuit Rule 28(a)(1), counsel for the Institute for Policy Integrity at New York University School of Law certify as follows:

- (1) All parties, amici, and intervenors appearing in this case are listed in Respondents' brief.
- (2) References to the final agency action under review and related and consolidated cases appear in Respondents' brief.

## **RULE 26.1 DISCLOSURE STATEMENT**

The Institute for Policy Integrity (Policy Integrity) is a nonpartisan, not-for-profit organization at New York University School of Law.\* No publicly held entity owns an interest in Policy Integrity. Policy Integrity does not have any members who have issued shares or debt securities to the public.

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\* This brief does not purport to represent the views, if any, of New York University School of Law.

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## GLOSSARY OF ACRONYMS & ABBREVIATIONS

Pursuant to Circuit Rule 28(a)(3), the following is a glossary of acronyms and abbreviations used in this brief:

CAFE	corporate average fuel economy
EPA	Environmental Protection Agency
EPCA	Energy Policy and Conservation Act of 1975
NHTSA	National Highway Traffic Safety Administration
Fuel Mfrs. Br.	Brief of Petitioner American Fuel & Petrochemical Manufacturers and State Petitioners

## **INTEREST OF *AMICUS CURIAE* & AUTHORITY TO FILE**

The Institute for Policy Integrity at New York University School of Law (Policy Integrity) is a nonpartisan, not-for-profit think tank dedicated to improving the quality of government decisionmaking through advocacy and scholarship in the fields of administrative law, economics, and public policy, focusing on environmental issues.<sup>1</sup>

Policy Integrity publishes scholarship on the use of economic analysis in agency decisionmaking, including on cost-benefit analysis of vehicle emissions regulations. Policy Integrity submitted comments in the administrative proceeding below on the economic analysis of the National Highway Traffic Safety Administration (NHTSA). *See* Inst. for Pol’y Integrity, Comment Letter on Corporate Average Fuel Economy Standards for Model Years 2024–2026 Passenger Cars and Light Trucks (Oct. 26, 2021), <https://perma.cc/2EPK-4SJU>. And it has filed amicus briefs in prior challenges to NHTSA’s regulations. *See, e.g.*, Brief of the Inst. for Pol’y Integrity as Amicus Curiae Supporting Petitioners, *Competitive Enter. Inst. v. NHTSA*, No. 20-1145 (D.C. Cir. Jan. 21, 2021).

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<sup>1</sup> Per Federal Rule of Appellate Procedure 29(a)(4)(E), no party’s counsel authored this brief wholly or partly, and no person contributed money intended to fund its preparation or submission.



Policy Integrity’s expertise in environmental and administrative law, especially regarding economic analysis in agency decisionmaking, provides a unique perspective on this case. Policy Integrity submits this *amicus curiae* brief to address arguments of the American Fuel & Petrochemical Manufacturers and State Petitioners (Petitioners) regarding NHTSA’s approach to establishing a baseline for its rulemaking.

All parties have consented to the filing of this brief. A single joint *amicus curiae* brief is not practicable in this case due to the numerous and complicated legal issues involved.

### **SUMMARY OF ARGUMENT**

When setting the corporate average fuel economy (CAFE) standards here, NHTSA prepared, as agencies often do, a baseline or “no-action alternative.” The parties’ dispute centers primarily on whether the Energy Policy and Conservation Act (EPCA) prohibits NHTSA from including electric vehicles in that baseline. As Respondents explain, it doesn’t. Rather than rehash those arguments, this brief explains why Respondents’ interpretation of EPCA aligns with standard agency practice as well as NHTSA’s past practice for setting CAFE baselines.

I. Longstanding administrative guidance and case law direct agencies to develop baselines that reflect, to the extent possible, their best assessment of the real world absent any new agency action. In this context, that meant NHTSA needed to project how many and what kinds of vehicles—including electric (and plug-in hybrid electric) vehicles—would be built and sold if it did not issue new CAFE standards. NHTSA adhered to well-established guidance and case law in doing just that.

II. NHTSA has also consistently prepared baselines for prior CAFE standards in this manner. Even under the Trump Administration, which, like Petitioners, preferred weaker CAFE standards, NHTSA included 38 electric vehicle models in its baseline—something that would have been unlawful under Petitioners’ reading of EPCA.

Petitioners’ interpretation would thus require NHTSA to depart from not only standard agency practice, but also its own past practice. Respondents’ interpretation, in contrast, aligns with both.

## **ARGUMENT**

### **I. NHTSA’s Baseline Aligns With Administrative Guidance And Case Law.**

Petitioners do not dispute that NHTSA needed to create a baseline or no-action alternative as part of the rulemaking here—they dispute

only what NHTSA should have included in that baseline. But longstanding government-wide guidance, namely the Office of Management and Budget's Circular A-4, and agency-specific guidance as well as relevant case law instruct agencies on how to properly develop a baseline as part of any rulemaking. That administrative guidance and case law consistently require baselines to reflect as much as possible the real world as it would exist absent the new agency action, including by incorporating legal obligations affecting regulated entities. That guidance and case law thus required NHTSA to create a baseline incorporating the fuel economy of electric (and plug-in hybrid electric) vehicles that would exist regardless of any new CAFE standards.

Petitioners dismiss this longstanding guidance as a mere "Circular [that] cannot trump a statute." Fuel Mfrs. Br. 40. As Respondents' brief extensively explains, however, there is no conflict between EPCA's requirements and the baseline NHTSA constructed in accordance with well-established administrative guidance and case law. Resp'ts' Br. 29–55. In the absence of such conflict, it would be exceedingly odd (if not arbitrary and capricious) for NHTSA to have prepared a baseline that does *not* accord with standard agency practice and case law.

**A. Longstanding guidance directs agencies to develop baselines that reflect the real world absent agency action.**

Agencies develop baselines for a wide range of reasons. For example, agencies may develop a baseline to comply with executive orders requiring an economic analysis, including a cost-benefit analysis, of new rules, *see, e.g., Nat'l Ass'n of Homebuilders v. EPA*, 682 F.3d 1032, 1040–41 (D.C. Cir. 2012) (discussing baseline prepared as part of economic analysis to estimate rule's benefits); to comply with statutes requiring assessments of environmental impacts, *see, e.g., Ctr. for Biological Diversity v. Bernhardt*, 982 F.3d 723, 734–35 (9th Cir. 2020) (discussing baseline prepared as part of an environmental impact statement); or to comply with other statutory obligations, *see, e.g., Am. Equity Inv. Life Ins. Co. v. SEC*, 613 F.3d 166, 178 (D.C. Cir. 2010) (discussing baseline prepared to comply with statutory obligation to assess the impact of securities regulations on competition, efficiency, and capital formation).

Regardless of the reason for creating a baseline, administrative guidance consistently directs agencies to prepare a baseline that reflects the real world as much as possible. Most prominent among these

guidance documents is Circular A-4, which the Office of Management and Budget “designed to assist analysts in the regulatory agencies by defining good regulatory analysis . . . and standardizing the way benefits and costs of Federal regulatory actions are measured and reported.” Office of Mgmt. & Budget, Circular A-4 at 1 (2003), <https://perma.cc/L296-TGJQ>.

Circular A-4 was originally intended to provide guidance for conducting the cost-benefit analysis of new rules that Executive Order 12866 requires. *Id.* But agencies also look to Circular A-4 more generally for guidance when performing other economic analyses. *See, e.g.*, SEC, Memorandum RE: Current Guidance on Economic Analysis in SEC Rulemakings 3–4 (Mar. 16, 2012), <https://perma.cc/9PTK-WW92>.

Here, for example, NHTSA looked to Circular A-4 when preparing the baseline or no-action alternative for its new CAFE standards, not just when conducting a cost-benefit analysis of those new standards. *See, e.g.*, Corporate Average Fuel Economy Standards for Model Years 2024–2026 Passenger Cars and Light Trucks, 87 Fed. Reg. 25710, 25745 (May 2, 2022) (discussing role of Circular A-4 and other guidance in NHTSA’s rulemaking). That decision was consistent with guidance from NHTSA’s parent agency, the Department of Transportation, which looks to

Circular A-4 to guide economic analyses, even those that are not conducted pursuant to Executive Order 12866 (e.g., analyses for discretionary grants). *See* U.S. Dep’t of Transp., *Benefit-Cost Analysis Guidance for Discretionary Grant Programs* 5, 11, 49 (2023), <https://perma.cc/NWP5-ZW8C>.

As relevant here, Circular A-4 directs agencies to “measure the benefits and costs of a rule against a baseline.” Circular A-4, *supra*, at 15. And it further instructs that a “baseline should be the best assessment of the way the world would look absent the proposed action.” *Id.* Achieving that best assessment “may require consideration of a wide range of potential factors, including . . . evolution of the market, changes in external factors . . . , and changes in regulations promulgated by the agency or other government entities.” *Id.* And though “[i]t may be reasonable to forecast that the world absent the regulation will resemble the present,” the “baseline should [still] reflect the future effect of current government programs and policies.” *Id.*

Comparable guidance from other agencies echoes these basic points. For example, guidance from the Environmental Protection Agency (EPA) similarly defines a baseline “as the best assessment of the

world absent the proposed regulation or policy action.” EPA, Guidelines for Preparing Economic Analyses 5-1 (2010), <https://perma.cc/M6VA-S8NC>. But “[t]his does not necessarily mean that no change in current conditions will take place, since the economy will change even in the absence of regulation.” *Id.* EPA’s guidance also stresses that the “baseline serves as a primary point of comparison for an analysis of a proposed policy action.” *Id.* And “a well-specified baseline should address exogenous changes in the economy, industry compliance rates, other concurrent regulations, and behavioral responses.” *Id.* at 5-16.

The Securities and Exchange Commission similarly directs its staff to measure the economic consequences of proposed rules against a baseline, “which is the best assessment of how the world would look in the absence of the proposed action.” SEC Memorandum, *supra*, at 6. “The baseline,” the guidance notes, “serves as a primary point of comparison for an analysis of the proposed regulation.” *Id.* And the guidance further explains that the “baseline includes both the economic attributes of the relevant market and the existing regulatory structure, including (where relevant) state law.” *Id.* at 7.

**B. For a baseline to reflect the real world, it must incorporate existing state and federal obligations.**

As the above guidance demonstrates, a crucial step in preparing a proper baseline involves incorporating regulated entities' existing legal obligations: Because baselines often measure how regulated entities would operate over time in the absence of a proposed regulation, they must be projected forward to "reflect the future effect of current government programs and policies." Circular A-4, *supra*, at 15. For this reason, "regulations that have been finalized clearly belong in the baseline for a proposed rule." EPA, Guidelines for Preparing Economic Analyses, *supra*, at 5-11.

This Court's case law similarly requires that, when agencies prepare a baseline, they must incorporate existing state and federal regulations. For example, this Court vacated a rule from the Securities and Exchange Commission extending the securities laws (and their disclosure requirements) to fixed indexed annuity contracts because the agency "did not assess the baseline level of price transparency and information disclosure [for these contracts] under state law." *Am. Equity Inv. Life Ins. Co.*, 613 F.3d at 178. The following year, the Court again vacated a rule regulating the proxy voting process when the Securities



and Exchange Commission “failed adequately to address whether the regulatory requirements of [other federal laws] reduce the need for, and hence the benefit to be had from,” the rule. *Business Roundtable v. SEC*, 647 F.3d 1144, 1154 (D.C. Cir. 2011).

Consistent with both cases, this Court later upheld a rule from the Commodity Futures Trading Commission because, “unlike the [Securities and Exchange Commission] in the other two cases, [the Commodity Futures Trading Commission] *did* consider whether [registered investment companies] were otherwise regulated, and concluded that [its] regulation was necessary’ despite the existing . . . regime.” *Inv. Co. Inst. v. CFTC*, 720 F.3d 370, 378 (D.C. Cir. 2013) (quoting *Inv. Co. Inst. v. CFTC*, 89 F. Supp. 2d 162, 217 (D.D.C. 2012)) (emphasis in original).

**C. NHTSA’s baseline adheres to this longstanding administrative guidance and case law.**

In accordance with the guidance and case law discussed above, NHTSA endeavored to prepare a baseline reflecting its best assessment of the world absent new CAFE standards. More specifically, NHTSA’s baseline consists of two components: (1) the most recent model year fleet for which data was available (here, 2020), and (2) projections of the new

vehicle fleet during the simulation period if NHTSA took no action, e.g., by incorporating the effect of existing regulations on manufacturers' future production. *See, e.g.*, 87 Fed. Reg. at 25756 (“[T]he MY 2020 light duty fleet was selected as the baseline for further evaluation of the effects of different fuel economy standards.”). NHTSA sometimes uses (1) “baseline fleet” or “analysis fleet” and (2) “reference fleet” to refer to these two components of its baseline or no-action alternative. *See, e.g.*, EPA & NHTSA, Joint Technical Support Document 1-1 (Aug. 2012) (explaining the difference between the “baseline and reference vehicle fleets”), <https://perma.cc/R6X3-XP3M>; 87 Fed. Reg. at 25755 (equating the “analysis fleet” with the “baseline fleet”).<sup>2</sup>

Petitioners object to both components of NHTSA’s baseline, i.e., they object to NHTSA’s including the fuel economy of electric vehicles, as well as plug-in hybrid electric vehicles, in *both* the baseline fleet or analysis fleet (again, model year 2020) *and* the reference fleet. *See, e.g.*, Fuel Mfrs. Br. 35–36, 61. On that score, Petitioners tellingly do not contend that NHTSA’s baseline fails to reflect the real world absent new

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<sup>2</sup> Respondents also sometimes refer to the baseline or analysis fleet as the “pre-existing fleet.” *See, e.g.*, Resp’ts’ Br. 29.

CAFE standards. Rather, Petitioners object to NHTSA's baseline precisely because it reflects the real world all too well. But that is exactly what longstanding administrative guidance and case law direct agencies to do.

## **II. NHTSA's Baseline Aligns With Not Only Standard Practice, But Also Its Own Past Practice.**

Not only do Petitioners' arguments conflict with the standard practice for developing a proper baseline described above, they also conflict with how NHTSA has developed the baseline for past CAFE standards: NHTSA's baselines have consistently included the fuel economy of electric vehicles and plug-in hybrid electric vehicles, and they have also incorporated existing federal and state regulations.

### **A. Past CAFE baselines included the fuel economy of electric vehicles.**

Starting with electric vehicles, Petitioners' reading of EPCA conflicts with NHTSA's practice over three presidential administrations: As electric vehicles have increasingly become a part of the nation's vehicle fleet, NHTSA has included them in its baseline. The reason for this is simple: As NHTSA explained under the Trump Administration, "[t]he more accurate the analysis fleet is, the more accurate the modeling

of what technologies could be applied will be.” The Safer Affordable Fuel-Efficiency (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks, 85 Fed. Reg. 24174, 25267 (Apr. 30, 2020).

True, the prevalence of electric vehicles in sizeable numbers is a relatively recent development. As early as the 2010 CAFE rulemaking, however, NHTSA’s baseline included electric vehicles. *See* NHTSA, 2008–2016 Baseline Reference Data, data tab, col. N (fuel), row 94 (listing at least one electric vehicle model in the baseline fleet, which was model year 2008) (Sept. 28, 2009).<sup>3</sup>

NHTSA continued this practice through the 2020 rulemaking under the Trump Administration, with NHTSA noting that “the [CAFE] analysis continues to include dedicated [alternative fueled vehicles] that already exist in the [baseline] fleet (and their projected future volumes).” 85 Fed. Reg. at 24314. The 2020 rulemaking is especially noteworthy because the Trump Administration, like Petitioners, preferred weaker CAFE standards. *See, e.g., id.* at 25102, 25127 (reducing Obama Administration CAFE standards from 5% to 1.5% annual increase). Yet

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<sup>3</sup> This citation is an excel spreadsheet available at <https://www.regulations.gov/document/EPA-HQ-OAR-2009-0472-0085>.

even the Trump Administration did not interpret EPCA to prohibit the inclusion of electric vehicles in the baseline, as Petitioners do.

To the contrary, data from NHTSA's 2020 rulemaking show that its baseline fleet (model year 2017) included 38 different electric vehicle models from 12 automakers. NHTSA, Central Analysis for 2020 Final Rule for Model Years 2021–2026 Passenger Cars and Light Trucks, vehicles tab, col. W (fuel share (E) set to 1) (filtering for electric vehicles).<sup>4</sup> Those electric vehicles accounted for over 100,000 vehicles in the baseline fleet. *Id.*, vehicles tab, cols. W (filtering for electric vehicles), Z (revealing sales of electric vehicles). Among the electric vehicles included in the baseline fleet were over 26,000 Chevy Bolts and over 46,000 Teslas. *Id.* vehicles tab, cols. W (filtering for electric vehicles), Z (revealing sales of electric vehicles), rows 2596, 2931–45. The 2020 rulemaking's inclusion of these electric vehicles in the baseline would have had the same effect of raising the baseline fleet's average fuel economy that Petitioners object to here. Fuel Mfrs. Br. 34–35.

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<sup>4</sup> This citation is a compressed excel spreadsheet available by clicking on Central Analysis under 2020 Final Rule for Model Years 2021–2026 Passenger Cars and Light Trucks at <https://www.nhtsa.gov/corporate-average-fuel-economy/cape-compliance-and-effects-modeling-system>.

**B. Past CAFE baselines also included the fuel economy of plug-in hybrid electric vehicles.**

Although Petitioners devote most of their brief to electric vehicles, they also object to including in the baseline the elevated fuel economy of plug-in hybrid electric vehicles when operated as dual-fueled automobiles, arguing that NHTSA was required to include in the baseline the fuel economy of these hybrids when operated only on gasoline or diesel fuel. Fuel Mfrs. Br. 18, 61.

Here, too, however, the data for the 2020 rulemaking under the Trump Administration shows that NHTSA's baseline fleet (model year 2017) included 38 models of dual-fueled plug-in hybrid electric vehicles that were *not* assumed to run only on gasoline or diesel. NHTSA, *Central Analysis for 2020 Final Rule, supra*, vehicles tab, col. W (fuel share (E) set to greater than 0 but less than 1) (filtering for plug-in hybrid electric vehicles).<sup>5</sup> These vehicles, such as the Hyundai Sonata plug-in hybrid and Toyota Prius Prime plug-in hybrid, accounted for over 120,000 of the vehicles in the baseline fleet. *Id.*, vehicles tab, cols. W (fuel share (E) set to greater than 0 but less than 1) (filtering for plug-in hybrid electric

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<sup>5</sup> The 2020 rulemaking's baseline coincidentally included 38 electric vehicle models and 38 plug-in hybrid electric vehicle models.

vehicles), Z (revealing sales of plug-in hybrid electric vehicles). Once again, NHTSA's inclusion of plug-in hybrid electric vehicles without assuming they were run only on gas or diesel would have had the same effect of raising the average fuel economy for the 2020 rulemaking's baseline fleet that Petitioners object to here. Fuel Mfrs. Br. 61.

As Respondents note, NHTSA erroneously included the elevated fuel economy of plug-in hybrid electric vehicles when setting the CAFE standards, i.e., when determining the maximum feasible average fuel-economy level for model years 2024–2026. Resp'ts' Br. 27, 73–74 & n.15. But that is distinct from NHTSA's including the elevated fuel economy of plug-in hybrid electric vehicles in the baseline, which was proper under both EPCA, Resp'ts' Br. 29–48, 76–77, and administrative guidance and case law, *see supra* Part I.

**C. Past CAFE baselines incorporated existing state and federal regulations.**

Much of Petitioners' brief focuses on NHTSA's inclusion in its baseline of electric vehicles that manufacturers are expected to produce in response to certain state requirements, not just those that they are expected to produce for other reasons (e.g., to satisfy market demand).

Yet NHTSA has also consistently included in its baseline vehicles that would be manufactured and sold as a result of existing regulations.

As a general matter, NHTSA has long noted the need for “analysis of the effects of compliance with emission, safety, noise, or damageability standards on fuel economy capability and thus on average fuel economy.” 85 Fed. Reg. at 25136; *see also* Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule, 75 Fed. Reg. 25324, 25555 (May 7, 2010); 2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards, 77 Fed. Reg. 62624, 63017 (Oct. 15, 2012). And NHTSA has for decades incorporated into its baseline existing legal requirements that affect manufacturer behavior. This has included vehicle emissions standards from state and other federal agencies.

For example, in 2003, NHTSA’s CAFE standards highlighted “the impact of a number of vehicle related emissions standards on fuel economy,” including both EPA’s and California’s emissions standards. *See* Light Truck Average Fuel Economy Standards Model Years 2005–2007, 68 Fed. Reg. 16868, 16895–96 (Apr. 7, 2003). The same occurred in



2006, Average Fuel Economy Standards for Light Trucks Model Years 2008–2011, 71 Fed. Reg. 17566, 17642–43 (Apr. 6, 2006), and again in 2009, when NHTSA explicitly noted that, to the extent EPA and California standards “are completely phased in before [model year] 2011[, they] are already accounted for in the agency’s baseline,” Average Fuel Economy Standards Passenger Cars and Light Trucks Model Year 2011, 74 Fed. Reg. 14196, 14381–82 (Mar. 30, 2009).

In 2010, NHTSA incorporated into its baseline both EPA’s and California’s greenhouse gas emissions standards but concluded that their impacts “are neither positive nor negative” because of existing consistency among NHTSA, EPA, and California rules. 75 Fed. Reg. at 25607. NHTSA reached a similar conclusion in 2012. 77 Fed. Reg. at 63018.

NHTSA’s most recent rule, promulgated in 2020 under the Trump Administration, continued the trend. 85 Fed. Reg. at 25136–38. There, NHTSA incorporated into its baseline the impact of various EPA emissions standards, including “EPA’s ‘Tier 3’ standards for criteria pollutants,” noting that “it is appropriate for NHTSA to coordinate with and look to EPA’s actions.” *Id.* And though the 2020 standards did not

incorporate legal obligations stemming from California’s emissions standards, that omission was premised on very different circumstances: The preemption waiver for the relevant California standards had recently been partially withdrawn, and so they were no longer legally binding. *Id.* at 25140; *see generally*, The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program, 84 Fed. Reg. 51310 (Sept. 27, 2019) (withdrawing California’s waiver as it applied to greenhouse gas emissions standards). By contrast, when NHTSA issued its 2022 rule, the relevant California standards were in effect. California State Motor Vehicle Pollution Control Standards, 87 Fed. Reg. 14332 (Mar. 14, 2022).<sup>6</sup>

In short, NHTSA has consistently incorporated a wide range of existing rules and regulations that would affect regulated manufacturer plans and thus the baseline.

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<sup>6</sup> As Respondents note, NHTSA’s 2022 baseline conservatively omitted the effects of certain greenhouse gas emission standards “because of technical limitations . . . and to ensure that the model would not simulate the production of any new dedicated automobiles in response to EPCA’s fuel-economy standards.” Resp’ts’ Br. 54 n.10.

## CONCLUSION

Because Petitioners' critiques of NHTSA's approach to establishing a baseline conflict with not only standard practice but also NHTSA's past practice, the Court should reject those critiques and deny their petition.

April 4, 2023

Respectfully submitted,

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<sup>7</sup> Policy Integrity gratefully acknowledges Robert Graham and Maxwell Jenkins-Goetz, students in New York University School of Law's Regulatory Policy Clinic, for assisting in the preparation of this brief.

## CERTIFICATE OF COMPLIANCE

This *amicus curiae* brief complies with the type-volume limitations of Fed. R. App. P. 29(a)(5) because this brief contains 3,625 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f), as counted by counsel's word processing system.

This *amicus curiae* brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Century Schoolbook 14-point font.

DATED: April 4, 2023

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of April 2023, a true and correct copy of the foregoing Final Brief of the Institute for Policy Integrity at New York University School of Law as Amicus Curiae in Support Respondents was filed with the Clerk of the United States Court of Appeals for the District of Columbia Circuit via the Court's CM/ECF system. Counsel for all parties are registered CM/ECF users and will be served by the appellate CM/ECF system.

DATED: April 4, 2023

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