



Statement of

Linda Tsang
Legislative Attorney

Before

Committee on Science, Space, and Technology
Subcommittees on Oversight & Environment
U.S. House of Representatives

Hearing on

“Examining the Underlying Science and Impacts of Glider Truck Regulations”

September 13, 2018

Congressional Research Service

7-5700

www.crs.gov

Chairman Abraham, Chairman Biggs, Ranking Member Beyer, Ranking Member Bonamici, and Members of the Subcommittees:

My name is Linda Tsang. I am a Legislative Attorney in the American Law Division of the Congressional Research Service (CRS). Thank you for inviting me to testify regarding the U.S. Environmental Protection Agency's (EPA's) emission requirements for glider vehicles, glider engines, and glider kits. My testimony will address the rulemaking process EPA used to adopt emission standards for gliders pursuant to its rule, *Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2* (Phase 2 Rule) and to propose to repeal them (Proposed Repeal). My testimony will address the specific procedural requirements for rulemaking under the Clean Air Act (CAA). It will not address the substantive requirements, legal arguments, policy considerations, or scientific data relating to the Phase 2 Rule or the Proposed Repeal.

As discussed in more detail below, Congress established procedures in Section 307(d) of the CAA that govern EPA's promulgation or revision of new motor vehicle or engine emission regulations. In addition to the CAA requirements, EPA must also comply with various rulemaking requirements imposed by statutes and executive orders.

Recent Clean Air Act Rulemakings Related to Glider Kits, Engines, and Vehicles

Section 202(a) of the CAA directs EPA to establish standards for air pollutant emissions from new motor vehicles and engines that "cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare."¹ On October 25, 2016, EPA and the National Highway Traffic Safety Administration (NHTSA) jointly published the second phase of greenhouse gas (GHG) emissions and fuel efficiency standards for medium- and heavy-duty vehicles and engines.² The Phase 2 Rule set emission standards for most commercial long-haul tractor-trailers, vocational vehicles, and heavy-duty pickup trucks and vans, and provided for their phase-in between model year (MY) 2018 and MY 2027.³ As part of the Phase 2 Rule, EPA regulated glider kit, glider engine, and glider vehicle emissions.⁴ EPA defined a glider kit as a chassis for a tractor-trailer with a frame, front axle, interior and exterior cab, and brakes. It becomes a glider vehicle when an engine, transmission, and rear axle are added.⁵ The final manufacturer of the glider vehicle (i.e., the entity that assembles the parts) is typically not the original manufacturer of the glider kit.⁶ NHTSA did not include glider vehicles under its Phase 2 fuel efficiency standards.⁷

¹ 42 U.S.C. § 7521(a)(1).

² *Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2*; Final Rule, 81 Fed. Reg. 73,478 (Oct. 25, 2016) [hereinafter *Phase 2 Rule*]. For additional information on the Phase 2 Rules, see CRS In Focus IF10927, *Phase 2 Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles*, by Richard K. Lattanzio. The Phase 2 Rule expands on the Phase 1 Rule issued in 2011 for model year 2014 through 2018 motor vehicles. *Greenhouse Gas Emissions Standards and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles*; Final Rule, 76 Fed. Reg. 57,106 (Sept. 15, 2011).

³ *Phase 2 Rule*, 81 Fed. Reg. 73,478 (Oct. 25, 2016)

⁴ 81 Fed. Reg. at 73,941-46.

⁵ *Id.* at 73,512-13.

⁶ *Id.*

⁷ *Id.* at 73,526 n.130.

Petitions for Reconsideration of the Glider Provisions

After EPA issued the Phase 2 Rule, representatives of the glider vehicle assembler industry submitted a joint petition pursuant to CAA Section 307(d)(7)(B) requesting that EPA reconsider the glider vehicle, glider engine, and glider kit regulations.⁸ The petitioners argued, among other things, that CAA Section 202(a) does not authorize EPA to regulate glider kits, vehicles, or engines because glider vehicles are not “new motor vehicles,” glider engines are not “new motor vehicle engines,” and glider kits are not self-propelled “motor vehicles” under the CAA.⁹ The petitioners also argued that the Phase 2 Rule glider regulations relied on “unsupported assumptions” regarding glider vehicle emissions.¹⁰

EPA responded to the glider industry joint petition, stating that it “raises significant questions regarding the EPA’s authority under the CAA to regulate gliders as well as the soundness of the EPA’s technical analysis used to support the requirements.”¹¹ Based on the petition, EPA decided to revisit the Phase 2 Rule glider regulations.¹²

Proposed Repeal of the Glider Provisions

On November 16, 2017, EPA proposed to repeal the Phase 2 Rule emission standards and regulations for heavy-duty glider vehicles, engines, and kits.¹³ In the Proposed Repeal, EPA determined that its previous statutory interpretation of its authority over glider engines, vehicles, and kits was “incorrect” and “not the best reading” of the CAA.¹⁴ EPA proposed to interpret the CAA definitions of “new motor vehicles” and “new motor vehicle engines” to exclude glider vehicles and engines, respectively. Consistent with this interpretation of the scope of “new motor vehicle,” EPA further proposed that it has no authority to treat glider kits as “incomplete” motor vehicles under CAA Section 202(a).

Rulemaking Procedures Under the Clean Air Act

While the Administrative Procedure Act (APA) generally governs agency rulemaking procedures,¹⁵ Congress established procedures under CAA Section 307(d) to govern EPA’s promulgation of specific CAA regulations, including regulations for new motor vehicles or engines under Section 202(a).¹⁶ These

⁸ See, e.g., Petition from Tommy C. Fitzgerald, President, Fitzgerald Glider Kits, LLC et al. to E. Scott Pruitt, Admin., EPA (July 10, 2017), <https://www.epa.gov/sites/production/files/2017-07/documents/hd-ghg-frfitzgerald-recons-petition-2017-07-10.pdf> [hereinafter *Petition*]. Other petitions for reconsideration and EPA’s responses to the petitions are available at <https://www.epa.gov/regulations-emissions-vehicles-and-engines/petitions-reconsideration-phase-2-ghg-emissions-and-fuel>. Under Section 307(d)(7)(B), EPA must convene a reconsideration proceeding if the objection could not have been raised during the public comment period for the proposed rule, and the EPA Administrator concludes that the objection is centrally relevant to the rule. *Id.* EPA must “provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed.” *Id.*

⁹ *Petition* at 3–4.

¹⁰ *Id.* at 4.

¹¹ Letter from E. Scott Pruitt, Admin., EPA, to Tommy C. Fitzgerald, President, Fitzgerald Glider Kits, LLC (Aug. 17, 2017), <https://www.epa.gov/sites/production/files/2017-08/documents/hd-ghg-phase2-fitzgerald-glidens-ltr-2017-08-17.pdf>.

¹² *Id.*

¹³ Repeal of Emission Requirements for Glider Vehicles, Glider Engines, and Glider Kits; Proposed Rule, 82 Fed. Reg. 53,442 (Nov. 16, 2017) [hereinafter *Proposed Repeal*].

¹⁴ *Id.* at 53,444–45.

¹⁵ 5 U.S.C. § 551(1). The APA broadly defines agency as “each of authority of the Government of the United States . . .,” but specifically exempts certain entities including “Congress” and the “courts of the United States.” *Id.* The APA also governs agency adjudications. See *id.* §§ 555–57.

¹⁶ 42 U.S.C. § 7607(d)(1)(K). In addition to new motor vehicle regulations, Section 307(d) procedures apply to the promulgation or revision of specific CAA standards and requirements listed in Section 307(d)(1). *Id.* § 7607(d)(1). Section 307 permits judicial

procedures require EPA, among other things, to establish a public rulemaking docket, publish a notice of the proposed rulemaking (NOPR) in the *Federal Register*, allow at least 30 days for public comment, and provide an opportunity for a public hearing.¹⁷ In the *Federal Register* NOPR, EPA must provide a statement (known as the preamble) that describes the basis and purpose of the proposed rule, factual data supporting it, methodology used to obtain and analyze the data, legal interpretations and policy considerations, and other supporting information.¹⁸ During the rulemaking, EPA must also consider all public comments it receives and other relevant information.¹⁹ After considering public comments on the proposed rule, EPA must publish the final rule in the *Federal Register* with a new preamble responding to “significant” comments and identifying any changes to the rule since its proposal.²⁰

CAA Section 307(d) rulemaking procedures governed EPA’s promulgation of the Phase 2 Rule glider provisions.²¹ For the Phase 2 Rule, EPA took the following rulemaking actions:²²

- EPA and NHTSA established dockets, Docket ID No. EPA–HQ–OAR–2014–0827 and NHTSA–2014–0132, respectively, which are accessible at www.regulations.gov.²³
- EPA and NHTSA published a joint proposed Phase 2 Rule in the *Federal Register* on July 13, 2015.²⁴
- EPA and NHTSA provided a public comment period from July 13, 2015 to October 1, 2015²⁵ and held two public hearings on the proposed Phase 2 Rule.²⁶
- EPA provided a statement of basis and purpose for the proposed Phase 2 Rule, including data, legal interpretations, policy considerations, and other information supporting, among other things, the proposed requirements for glider kits, engines, and vehicles.²⁷ Because EPA issued the glider provisions pursuant to its authority under the CAA, NHTSA did not participate in promulgating those provisions.²⁸

review of procedures used to promulgate a final rule if the procedural objections were raised during the public comment period. *Id.* § 7607(d)(7)(B). If the procedural objection was impracticable to raise during the public comment (but within the time specified for judicial review) and centrally relevant to the outcome of the rule, EPA must convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed. *Id.*

¹⁷ *Id.* at § 7607(d)(2)-(5)

¹⁸ *Id.* at § 7607(d)(3).

¹⁹ *Id.* at § 7607(d)(4).

²⁰ *Id.* at § 7607(d)(3), (6)(B).

²¹ 42 U.S.C. § 7607(d)(1)(K). EPA procedures used for the Phase 2 Rule were not judicially challenged. Other substantive provisions related to tractor-trailers were challenged in court. *Truck Trailer Mfr. Ass’n v. EPA*, Nos. 16-1430 (D.C. Cir. Dec. 22, 2016).

²² This list of rulemaking actions is not a complete list of all rulemaking actions associated with the Phase 2 Rule. Documents related to the Phase 2 Rule rulemaking are provided in the two dockets, Docket ID No. EPA–HQ–OAR–2014–0827 and NHTSA–2014–0132, which can be accessed at www.regulations.gov.

²³ Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2; Proposed Rule, 80 Fed. Reg. 40,138 (July 13, 2015) [hereinafter *Proposed Phase 2 Rule*].

²⁴ *Id.*

²⁵ See Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2; Extension of Comment Period, 80 Fed. Reg. 53,756 (Sept. 8, 2015) (extending the comment period for the proposed rule from September 17, 2015 to October 1, 2015).

²⁶ See Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2; Public Hearings, 80 Fed. Reg. 44,863 (July 28, 2015) (scheduling public hearings on August 2 and 18, 2015).

²⁷ *Proposed Phase 2 Rule*, 80 Fed. Reg. 40,138, 40,329, 40,527-30 (July 13, 2015).

²⁸ *Phase 2 Rule*, 81 Fed. Reg. 73,478, 73,526 n.130 (Oct. 25, 2016).

- EPA posted supporting documents and public comments relating to its proposed glider provisions to the docket.²⁹
- EPA and NHTSA published the final Phase 2 Rule, which included a statement of basis and responses to significant comments, in the *Federal Register* on October 25, 2016.³⁰ In the statement of basis, EPA responded to comments related to the glider provisions.³¹

CAA Section 307(d) requires EPA to follow the same procedures that it uses to promulgate rules to revise them.³² Consequently, to remove the glider provisions from the Phase 2 Rule,³³ EPA had to comply with CAA Section 307(d) rulemaking procedures. For the Proposed Repeal, EPA took the following rulemaking actions:³⁴

- EPA used the existing Phase 2 Rule docket, Docket ID No. EPA–HQ–OAR–2014–0827, which is accessible at www.regulations.gov, for the Proposed Repeal.³⁵
- EPA published the Proposed Repeal in the *Federal Register* on November 16, 2017.³⁶
- EPA provided a public comment period from November 16, 2017 to January 5, 2018 and held a public hearing on the Proposed Repeal on December 4, 2017.³⁷
- EPA provided a statement of basis and purpose of the Proposed Repeal, including legal interpretations and other supporting information.³⁸
- EPA posted public comments and supporting documents related to the Proposed Repeal to the docket.³⁹
- Among the public comments and supporting documents on the docket, EPA posted a report issued by the EPA National Vehicle & Fuel Emissions Laboratory, entitled “Chassis Dynamometer Testing of Two Recent Model Year Heavy-Duty On-Highway Diesel Glider Vehicles,” dated November 20, 2017, which reported the results of “emissions testing of a 2016 model year (MY) Peterbilt 389 sleeper cab tractor and a 2017 MY Peterbilt 579 sleeper cab tractor that were produced as glider vehicles.”⁴⁰

²⁹ See, e.g., Memorandum from David Choi, Office of Transp. & Air Quality, EPA, *Emissions Modeling Files for Glider Analysis* (July 28, 2016), <https://www.regulations.gov/document?D=EPA-HQ-OAR-2014-0827-2232> (posting emission modeling files used to estimate impacts of gliders for the Phase 2 Rule).

³⁰ *Phase 2 Rule*, 81 Fed. Reg. 73,478 (Oct. 25, 2016).

³¹ *Id.* at 73,526.

³² 42 U.S.C. § 7607(d)(1)(K).

³³ 82 Fed. Reg. at 53,448-49. Because EPA issued the glider provisions pursuant to its authority under the CAA, NHTSA did not participate in the rulemaking repealing those provisions.

³⁴ This list of rulemaking actions is not a complete list of all rulemaking actions associated with the Proposed Repeal. Documents related to the Proposed Repeal rulemaking are provided in Docket ID No. EPA–HQ–OAR–2014–0827, which can be accessed at www.regulations.gov.

³⁵ *Proposed Repeal*, 82 Fed. Reg. 53,442 (Nov. 16, 2017).

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 53,442-48.

³⁹ See Public Submission folder in Docket ID No. EPA–HQ–OAR–2014–0827, <https://www.regulations.gov/docketBrowser?rpp=25&so=DESC&sb=commentDueDate&po=0&dct=PS&D=EPA-HQ-OAR-2014-0827>.

⁴⁰ EPA NATIONAL VEHICLE & FUEL EMISSIONS LABORATORY, CHASSIS DYNAMOMETER TESTING OF TWO RECENT MODEL YEAR HEAVY-DUTY ON-HIGHWAY DIESEL GLIDER VEHICLES (Nov. 20, 2017), <https://www.regulations.gov/document?D=EPA-HQ-OAR-2014-0827-2417>.

As of the date of this testimony, EPA has not issued a final rule on the Proposed Repeal.

Statutory and Executive Order Requirements for Rulemakings

Beyond the CAA Section 307(d) rulemaking requirements, EPA must comply with various statutes and executive orders on rulemaking. This section highlights several rulemaking requirements that may apply to the Phase 2 Rule and the Proposed Repeal, and identifies some of the actions that EPA took pursuant to these requirements.⁴¹

Executive Order 12866

Executive Order (E.O.) 12866 provides the White House with an opportunity to review and clear proposed regulatory actions of federal agencies.⁴² E.O. 12866 requires federal agencies to submit “significant” regulatory actions at both the proposed and final rule stages to the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) for review.⁴³ E.O. 12866 defines a “significant regulatory action,” in part, as having an “annual effect on the economy of \$100 million or more or adversely affect[ing] in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.”⁴⁴ An agency is prohibited, “except to the extent required by law,” from issuing a rule while OIRA review is pending.⁴⁵ In addition, E.O. 12866 directs agencies to perform a cost-benefit analysis for regulatory actions determined to be “economically significant” and “adopt a regulation only upon a reasoned determination that the benefits” of the rule “justify its costs.”⁴⁶ Failure of an agency to comply with E.O. 12866 is not subject to judicial review.⁴⁷

For the Phase 2 Rule, EPA and NHTSA determined that the rulemaking was an “economically significant” regulatory action and submitted the rule on June 3, 2016 to OMB for review pursuant to E.O. 12866.⁴⁸ The agencies prepared an analysis of the potential costs and benefits associated with this action and posted the analysis, the “Regulatory Impact Analysis—Heavy-Duty GHG and Fuel Efficiency Standards” to the Phase 2 Rule docket.⁴⁹ OMB completed its review of the final Phase 2 Rule on August 16, 2016.⁵⁰

⁴¹ This section does not address all executive orders or other statutory requirements related to the Phase 2 Rule or the Proposed Repeal. For additional information regarding executive orders and statutes affecting the federal rulemaking process, see CRS Report R41546, *A Brief Overview of Rulemaking and Judicial Review*, by Todd Garvey, CRS Report RL32240, *The Federal Rulemaking Process: An Overview*, coordinated by Maeve P. Carey, and CRS Report RL32397, *Federal Rulemaking: The Role of the Office of Information and Regulatory Affairs*, coordinated by Maeve P. Carey.

⁴² See, e.g., Exec. Order No. 12866, 58 Fed. Reg. 51735 (Oct. 4, 1993).

⁴³ Exec. Order No. 12866 §§ 3, 6.

⁴⁴ *Id.* at § 2(f). A “significant regulatory action” is also defined as any regulatory action that is likely to result in a rule that may create a serious inconsistency or interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs; or raise novel legal or policy issues. *Id.*

⁴⁵ *Id.* at § 8.

⁴⁶ *Id.* at § 1(b).

⁴⁷ *Id.* at § 10.

⁴⁸ Information regarding OMB’s review of the Phase 2 Rule is available on the OMB website at <https://www.reginfo.gov/public/do/eoDetails?rrid=126415> and <https://www.reginfo.gov/public/do/eoDetails?rrid=125029>.

⁴⁹ EPA & NHTSA, GREENHOUSE GAS EMISSIONS AND FUEL EFFICIENCY STANDARDS FOR MEDIUM- AND HEAVY-DUTY ENGINES AND VEHICLES - PHASE 2 REGULATORY IMPACT ANALYSIS (Aug. 16, 2016), <https://nepis.epa.gov/Exe/ZyPDF.cgi/P100P7NS.PDF?Dockey=P100P7NS.PDF>.

⁵⁰ Information regarding OMB’s review of the Phase 2 Rule is available on the OMB website at <https://www.reginfo.gov/public/do/eoDetails?rrid=126415> and <https://www.reginfo.gov/public/do/eoDetails?rrid=125029>.

For the Proposed Repeal, EPA determined that the repeal was a “significant regulatory action” under E.O. 12866 and submitted a draft of the Proposed Repeal to OMB for review on October 20, 2017.⁵¹ OMB comments on the draft Proposed Repeal and EPA’s responses to those comments are posted in the docket.⁵² OMB concluded its review on the Proposed Repeal on November 8, 2017, determining that it was “consistent” with OMB recommendations.⁵³ Based on a search of the docket, EPA did not appear to publish a regulatory impact analysis with the Proposed Repeal.⁵⁴ According to OMB’s regulatory review information, EPA has not submitted a final glider repeal rule to OMB for review.⁵⁵

Rulemaking Requirements Concerning Small Businesses

Federal agencies must also review rulemaking impacts on small businesses. The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the APA or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.⁵⁶ EPA and NHSTA determined that the Phase 2 Rule could potentially have a significant economic impact on small entities.⁵⁷ Specifically, the agencies identified glider vehicle assemblers as one of the four categories of directly regulated small businesses that could be impacted.⁵⁸

In addition to preparing a regulatory flexibility analysis, Section 609(b) of the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), directs specific federal agencies, including EPA, to conduct additional outreach to small entities that may be affected by a rule.⁵⁹ Pursuant to the SBREFA requirements, EPA convened a Small Business Advocacy Review Panel (Panel) to obtain advice and recommendations from representatives of the small entities that potentially would be subject to the Phase 2 Rule’s requirements.⁶⁰ The preamble to the final Phase 2 Rule summarizes the Panel’s recommendations and EPA’s changes to the Phase 2 Rule based on those recommendations.⁶¹

⁵¹ The status of the OMB review of the Proposed Repeal is available on the OMB website at <https://www.reginfo.gov/public/do/eoDetails?rrid=127648>.

⁵² See, e.g., Email from Chad Whiteman, Senior Policy Analyst, OIRA, OMB to Benjamin Hengst, EPA (Oct. 24, 2017, 10:16 EDT), <https://www.regulations.gov/document?D=EPA-HQ-OAR-2014-0827-2406>.

⁵³ Information on the OMB review of the Proposed Repeal is available on the OMB website at <https://www.reginfo.gov/public/do/eoDetails?rrid=127648>.

⁵⁴ Several news outlets reported that OMB requested that EPA perform a regulatory impact analysis for the final repeal. See, e.g., Dawn Reeves, *EPA’s Planned Glider Truck Repeal Appears ‘Stuck’ Absent Political Pressure*, INSIDE EPA (June 12, 2018), <https://insideepa.com/daily-news/epas-planned-glider-truck-repeal-appears-stuck-absent-political-pressure>; Michael Bastasch, *SOURCES: EPA’s Effort To Save An Industry From Obama Regulations Is Being Held Up By Bureaucratic Delays*, THE DAILY CALLER (May 2, 2018), <http://dailycaller.com/2018/05/02/epa-obama-era-regulation-repeal-glider-kits/>. Based on publicly available information, it does not appear that OMB has issued a public request regarding a regulatory impact analysis for the Proposed Repeal.

⁵⁵ The status of the OMB review of the Proposed Repeal is available on the OMB website at <https://www.reginfo.gov/public/do/eoDetails?rrid=127648>.

⁵⁶ See generally 5 U.S.C. §§ 601–612. For additional information on RFA, see CRS Report RL32240, *The Federal Rulemaking Process: An Overview*, coordinated by Maeve P. Carey.

⁵⁷ *Phase 2 Rule*, 81 Fed. Reg. 73,478, 73,526 (Oct. 25, 2016).

⁵⁸ *Id.* The agencies explained that “vehicles produced by installing a used engine into a new chassis are commonly referred to as ‘gliders,’ ‘glider kits,’ or ‘glider vehicles.’” *Id.*

⁵⁹ 5 U.S.C. § 609(b), (d).

⁶⁰ *Id.*

⁶¹ See *id.* (discussing certain regulatory flexibilities included in the final rule to minimize impacts to glider vehicle assemblers and other small entities). See also SMALL BUSINESS ADVOCACY REVIEW PANEL ON EPA’S PLANNED PROPOSED RULE GREENHOUSE GAS EMISSIONS AND FUEL EFFICIENCY STANDARDS FOR MEDIUM- AND HEAVY-DUTY ENGINES AND VEHICLES: PHASE 2 (Jan. 15, 2015), https://www.epa.gov/sites/production/files/2015-08/documents/report-sbarpanel_heavydutyengines2.pdf (detailing the

In the Proposed Glider Repeal, the EPA Administrator certified that repeal would not have “a significant economic impact on a substantial number of small entities” under the SBREFA.⁶² An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves a regulatory burden, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule.⁶³ Because small glider manufacturers would be able to produce glider vehicles without meeting Phase 2 Rule motor vehicle emission standards, EPA concluded that the Proposed Repeal would have no adverse regulatory impact for any directly regulated small entities.⁶⁴

EPA Science Advisory Board Review

As part of the rulemaking process, EPA must provide notice of its proposed rules to its Science Advisory Board (SAB).⁶⁵ Congress directed EPA to establish the SAB to provide scientific advice to EPA and specific congressional committees.⁶⁶ The Environmental Research, Development, and Demonstration Authorization Act of 1978 requires EPA to provide the SAB with its proposed regulations and supporting scientific and technical information.⁶⁷ While the SAB may advise the EPA Administrator on the adequacy of the scientific and technical basis of the proposed action, it may not impose requirements on EPA.⁶⁸

EPA provided the proposed Phase 2 Rule to the SAB on June 11, 2014.⁶⁹ According to EPA, the SAB discussed its working group’s recommendations on the proposed rule and agreed that no further SAB consideration of the rule or its supporting science was merited.⁷⁰

For the Proposed Repeal, the SAB decided to review the “adequacy of the supporting science” of the proposal on June 21, 2018.⁷¹ The SAB noted key questions that merit review, including:

- “What are the emission rates of glider trucks for GHGs, nitrogen oxides, particulate matter, and other pollutants of concern? What are the key sources of variability and uncertainty in these rates?”
- How do these emission rates compare to those of conventionally manufactured trucks that are: (a) new; and (b) used at prices comparable to the purchase price of a ‘new’ glider truck? What are key sources of variability and uncertainty in the comparisons?”
- What is the range of possible market penetration of glider trucks into the on road heavy duty vehicle stock? What is the effect of glider truck penetration into the market on fleet

review and recommendations of Small Business Advocacy Review Panel on the Phase 2 Rule).

⁶² *Proposed Repeal*, 82 Fed. Reg. 53,442, 53,448 (Nov. 16, 2017).

⁶³ 5 U.S.C. § 605(b).

⁶⁴ 82 Fed. Reg. at 53,448.

⁶⁵ 42 U.S.C. § 4365(c).

⁶⁶ *See id.* § 4365(a) (requiring EPA to establish a “Science Advisory Board which shall provide such scientific advice as may be requested by the Administrator, the Committee on Environment and Public Works of the United States Senate, or the Committee on Science, Space, and Technology, on Energy and Commerce, or on Public Works and Transportation of the House of Representatives”).

⁶⁷ *Id.*; Environmental Research, Development, and Demonstration Authorization Act of 1978, Pub. L. 95-155, 91 Stat. 1257 (1978).

⁶⁸ 42 U.S.C. § 4365(c).

⁶⁹ *Phase 2 Rule*, 81 Fed. Reg. 73,478, 73,969 (Oct. 25, 2016).

⁷⁰ *Id.*

⁷¹ Letter from Michael Honeycutt, Chair, Science Advisory Board to E. Scott Pruitt, Admin., EPA (June 21, 2018), [https://yosemite.epa.gov/sab/sabproduct.nsf/0/E7CB10891C8CAD8F852582B3006EFAF7/\\$File/EPA-SAB-18-002+.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/0/E7CB10891C8CAD8F852582B3006EFAF7/$File/EPA-SAB-18-002+.pdf).

level emissions at national, regional, and local scales in the near-term and long-term, compared to the status quo?

- What are implications of changes in emissions in the near-term and long-term from the penetration of glider trucks regarding GHG emissions, air quality, air quality attainment, and human health, compared to the status quo?”⁷²

The SAB indicated that the review may begin with existing EPA documents, such as EPA’s “November 20, 2017 test report in which emissions of gliders and conventionally manufactured trucks were compared, and focus on areas where updates are needed.”⁷³ The SAB did not indicate a timeline for its review.

Conclusion

CAA Section 307(d) provides detailed procedures that EPA must follow to promulgate, revise, or repeal certain CAA regulations. These procedures apply to the Phase 2 Rule and the Proposed Glider Repeal. In addition to CAA rulemaking requirements, EPA must also comply with various statutes and executive orders relating to rulemaking.

⁷² *Id.* at 3.

⁷³ *Id.*; see also EPA NATIONAL VEHICLE & FUEL EMISSIONS LABORATORY, CHASSIS DYNAMOMETER TESTING OF TWO RECENT MODEL YEAR HEAVY-DUTY ON-HIGHWAY DIESEL GLIDER VEHICLES (Nov. 20, 2017), <https://www.regulations.gov/document?D=EPA-HQ-OAR-2014-0827-2417>.