



February 15, 2022

Hon. Michael Regan
Administrator
Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Re: Request for Reconsideration of Revised 2023 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions Standards (86 FR 74434, Docket # EPA-HQ-OAR-2021-0208)

Dear Mr. Regan,

The Competitive Enterprise Institute (CEI) and four individuals¹—Anthony Kreucher, Walter M. Kreucher, James Leedy and Marc Scribner—hereby request a stay and reconsideration of the final EPA rule titled “Revised 2023 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions Standards,” published on Dec. 30, 2021 at 86 FR 74434. Our request for reconsideration is being made under the Clean Air Act (“CAA”), section 307(d)(7)(B), codified at 42 U.S. Code § 7607(d)(7)(B).

This statute specifies that “if the grounds for such objection [to a final rule] arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule, the [EPA] Administrator shall convene a proceeding for reconsideration of the rule.” The word “shall” means that the convening of such a proceeding for reconsideration is mandatory for an objection that is of central relevance to the rule and that occurs after the public comment period but before the time specified for judicial review.

Our objection is based on the fact that on February 11, 2022, after the close of the public comment period but within the time specified for judicial review, Judge James D. Cain, United States District Judge of the Western District of Louisiana, in *Louisiana v. Biden*, Case No. 2:21-CV-01074, found that the social cost of carbon evaluation relied upon by EPA in this final rule was likely unlawful and ordered EPA not to rely upon it. Specifically, he prohibited EPA and a number of other agencies and federal officials from:

¹ CEI and these individuals are petitioners in *Competitive Enterprise Institute v. NHTSA and EPA*, Docket No. 20-1145 (D.C. Cir., filed May 1, 2020). This case, and the cases consolidated with it, are currently stayed pending the issuance of new fuel economy standards.

- (1) adopting, employing, treating as binding, or relying upon the work product of the Interagency Working Group (“IWG”);
- (2) independently relying upon the IWG’s methodology considering global effects, discount rates, and time horizons;
- (3) adopting, employing, treating as binding, or relying upon any Social Cost of Greenhouse Gas estimates based on global effects or that otherwise fails to comply with applicable law;
- (4) adopting, employing, treating as binding, or relying upon any Social Cost of Greenhouse Gas estimates based on global effects or that otherwise fails to comply with applicable law;
- (5) adopting, employing, treating as binding, or relying upon any estimate of Social Cost of Greenhouse Gases that does not utilize discount rates of 3 and 7 percent or that otherwise does not comply with Circular A-4;
- (6) relying upon or implementing Section 5 of Executive Order 13990 in any manner.

Instead, Judge Cain ordered EPA and the other defendants to return to the guidance of Circular A-4 in conducting regulatory analysis. See the attached court order.

EPA relied on the IGW’s social cost of carbon estimates in formulating its emissions rule. For instance, in section VII of the rule, which analyzes its impact, EPA states that it

“estimate[s] the global social benefits of CO₂, CH₄, and N₂O emission reductions expected from the final rule using the SC-GHG estimates presented in the February 2021 Technical Support Document (TSD): Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under E.O. 13990 (IWG 2021).”

86 FR 74503; *see also* 86 FR 74510 (in which EPA’s core cost-benefit analysis is described as using “four interim social cost of GHG (SC–GHG) values estimated by the interagency working group”); EPA Technical Support Document 3-30 (in which EPA specifies that the IWG values are the ones EPA is using in this rulemaking).

According to the final rule: (1) the total present value of non-emission benefits are \$21 billion at a 3% discount rate, or \$11 billion at a 7% discount rate. Table 45, 86 FR 74510; and (2) the “climate benefits from reductions in GHG emissions” have a present value of \$31 billion at 5% discount rate, and \$130 billion at 3% discount rate. and Table 47, 86 FR 74511. In other words, the final rule claims the climate benefits, based upon the IGW’s social cost of carbon values, dwarf the non-emission benefits.

EPA itself touted how the “Benefits [of this rule] include reduced impacts of climate change.” EPA, EPA Finalizes Greenhouse Gas Standards for Passenger Vehicles, Paving Way for a Zero-Emissions Future (Dec. 20, 2021), <https://www.epa.gov/newsreleases/epa-finalizes-greenhouse-gas-standards-passenger-vehicles-paving-way-zero-emissions>. EPA also touted the total net benefits of its rule. *Id.* However, if EPA’s cost-benefit analysis were to be corrected in accordance with the judge’s order, it would actually show *a total net harm*, not benefit.

Given the magnitude of the GHG benefits claimed by this rule, those claims are of central relevance to the outcome of the rule. None of the IGW numbers can be relied upon by EPA while it is under the current court order.

CEI, along with 14 other organizations, raised the problems with the IGW numbers in our filed comments on the draft rule. Comment No. EPA-HQ-OAR-2021-0208-0292 (Sept. 27, 2021). As CEI noted, “Absent those biases,” many of which the court has now concluded are real, “the IWG’s SCC estimates could fall to zero dollars or below.” CEI argued that EPA should use a 7% discount rate as is traditionally done under Circular A-4. Under the new court order, 7% is the discount rate that it must now use. We reiterate and incorporate by reference the problems with the central SCC numbers that were raised in our comments.

Even ignoring the IGW global warming numbers, EPA is also prohibited by the order from considering the global harms of CO₂ in its rulemakings.

In describing what had changed from the SAFE Rule (2018) analysis, EPA identified the global social cost of carbon as one of the major factors. Under the court order, however, this factor can no longer be considered by the agency. For this reason alone, EPA should consider returning to the SAFE rule’s analysis and conclusion.

Because EPA is now under a court order to no longer rely upon the GHG estimates that it used, and because this development occurred after the close of the public comment period but within the time specified for judicial review, we request Administrator Regan to convene a proceeding for reconsideration of the rule as required by law.

Sincerely,

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION**

STATE OF LOUISIANA ET AL

CASE NO. 2:21-CV-01074

VERSUS

JUDGE JAMES D. CAIN, JR.

JOSEPH R BIDEN JR ET AL

MAGISTRATE JUDGE KAY

ORDER

For the reasons set forth in the Memorandum Ruling,

IT IS ORDERED that the Motion for Preliminary Injunction (Doc. 53) is hereby **GRANTED**.

IT IS THEREFORE ORDERED that the Defendants,¹ Cecilia Rouse, Shalanda Young, Kei Koizumi, Janet Yellen, Deb Haaland, Tom Vilsack, Gina Raimondo, Xavier Becerra, Pete Buttigieg, Jennifer Granholm, Brenda Mallory, Michael S. Regan, Gina McCarthy, Brian Deese, Jack Danielson, U.S. Environmental Protection Agency, U.S. Department of Energy, U.S. Department of Transportation, U.S. Department of Agriculture, U.S. Department of Interior, National Highway Traffic Safety Administration, and the Interagency Working Group on Social Cost of Greenhouse Gases are ENJOINED and RESTRAINED from:

- (1) adopting, employing, treating as binding, or relying upon the work product of the Interagency Working Group (“IWG”); (2) enjoining Defendants from independently relying upon the IWG’s methodology considering global effects,

¹ With the exception of President Biden as he is not an agency under the Administrative Procedures Act.

- discount rates, and time horizons; and (3) ordering Defendants to return to the guidance of Circular A-4 in conducting regulatory analysis;
- (2) Adopting, employing, treating as binding, or relying upon any Social Cost of Greenhouse Gas estimates based on global effects or that otherwise fails to comply with applicable law;
- (3) Adopting, employing, treating as binding, or relying upon any estimate of Social Cost of Greenhouse Gases that does not utilize discount rates of 3 and 7 percent or that otherwise does not comply with Circular A-4; and
- (4) Relying upon or implementing Section 5 of Executive Order 13990 in any manner.

IT IS FURTHER ORDERED that this Order shall become effective immediately and shall remain in effect, pending the final resolution of this case or until further orders of this Court, the United States Court of Appeals for the Fifth Circuit, or the United States Supreme Court.

IT IS FURTHER ORDERED that no security bond shall be required under Federal Rule of Civil Procedure 65.

THUS DONE AND SIGNED in Chambers on this 11th day of February, 2021.


JAMES D. CAIN, JR.
UNITED STATES DISTRICT JUDGE