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Summary of EPA's Mid-Term Evaluation of Greenhouse Gas Emissions Standards for Model Year 2022-2025 Light-duty Vehicles

On April 2, 2018, the Environmental Protection Agency (EPA) released its reconsideration of the Mid-Term Evaluation of Greenhouse Gas (GHG) Emissions Standards for Model Year (MY) 2022-2025 Light Duty Vehicles ("Determination") in which EPA explains that the Administrator has determined that the current standards are "based on outdated information, and that more recent information suggests that the current standards may be too stringent." Thus, EPA is withdrawing the previous Final Determination released by the Obama Administration on January 12, 2017 and will initiate a rulemaking to further consider the appropriate standards for MY 2022-2025.

Of note, EPA states that this Determination is "not final agency action." It explains that while "a determination to maintain the current standards would be final agency action…a determination that the standards are not appropriate would lead to the initiation of a rulemaking to adopt new standards, and it is the conclusion of that rulemaking that would constitute a final agency action and be juridically reviewable as such."[1]

Background

In 2009, EPA and the National Highway Transportation Safety Administration (NHTSA) announced that they would initiate a joint rulemaking to adopt federal vehicle GHG emissions standards. This announcement was the result of an agreement among EPA, NHTSA, California, and the auto industry for the federal agencies to harmonize their GHG and Corporate Average Fuel Economy (CAFE) standards for model year 2012 to 2016 light duty vehicles, as well as California's agreement to revise its program for model years 2012 to 2016 such that compliance with the Federal GHG standards would be deemed to be compliance with California's GHG standards. In 2010, EPA and NHTSA issued their final rule for these standards. In addition, in 2012, EPA and NHTSA issued final emission and CAFE standards for model year 2017 to 2025 light-duty vehicles.

These federal standards and California's Advanced Clean Cars Program started a process of convergence between the two programs—both set similar fleet-wide GHG targets equivalent to 54.5 miles per gallon by 2025. Additionally, both programs included a Mid-term Evaluation to assess whether the standards remain "appropriate." Under the Obama Administration, EPA and California completed their reviews in early January 2017, determining that their respective standards remained appropriate and that no rulemaking to modify regulations was required.

[1] In the 2012 rule, EPA made clear that a final decision that the GHG standard are appropriate would be final agency action. EPA also stated that "[w]here EPA decides that the standards are not appropriate, EPA will initiate a rulemaking to adopt standards that are appropriate under section 202(a), which could result in standards that are either less or more stringent. In this rulemaking EPA will evaluate a range of alternative standards that are potentially effective and reasonably feasible, and the Administrator will propose the alternative that in her judgment is the best choice for a standard that is appropriate under section 202(a). If EPA initiates a rulemaking, it will be a joint rulemaking with NHTSA. Any final action taken by EPA at the end of that rulemaking is also judicially reviewable. The MY2022–2025 GHG standards will remain in effect unless and until EPA changes them by rulemaking."

However, on March 15, 2017, the Trump Administration officially announced its intention to reconsider the Mid-term Evaluation of the GHG standards for model years 2021 and 2022 to 2025. The Determination released on April 2, 2018 is the result of this reconsideration process.

EPA's Rationale

In the Determination, EPA outlines the factors underlying the Administrator's assessment on why the standards for MY 2022-2025 are not appropriate.

Availability and Effectiveness of Technology; Appropriate Lead Time; and Feasibility and Practicability of Standards

First, EPA finds that the January 2017 Determination was "optimistic in its assumptions and projections with respect to the availability and effectiveness of technology and the feasibility and practicality of the standards." This finding is based on: 1) the changes in trends of electrification since the January 2017 Determination; 2) reliance on future technology advances; and 3) the acceptance rate of the necessary technology by consumers. EPA cites its Office of Transportation and Air Quality January 2018 report to note that starting in MY 2016, many companies relied on credits to comply with the program and are expected to continue to do so for MY 2017. EPA also notes that electrified light-duty vehicles sales have decreased, both in absolute numbers and as a percentage of all light-duty sales. Citing comments from the Alliance of Automobile Manufacturers (Alliance) and Global Automakers, EPA concludes that consumer adoption of advanced technology vehicles remains very low.

Additionally, EPA states that it received comments from auto manufacturers that it should "exclude technologies that are protected by intellectual property rights and have not been introduced and certified to Tier 3 emission requirements." However, EPA also notes that other commenters submitted information about specific technologies available to meet the standards. Thus, EPA explains that "it is appropriate that the EPA continue to evaluate these and other technology developments in the forthcoming rulemaking." However, EPA concludes that "there is significant uncertainty both in the pace of development of these technologies and in the degree of efficiency improvements that will ultimately be able to deliver", which "further supports its determination to reconsider the current standards."

With respect to acceptance by consumers, the Determination states that the Alliance and Global Automakers commented that the "current trends do not indicate an acceptance by consumers of the increased costs and tradeoffs in other desirable vehicle attributes that are needed to comply with more stringent GHG standards going forward." EPA notes that "impacts on new vehicle sales and fleet turnover are important factors that were not adequately considered in the January 2017 Determination." Thus, EPA plans to consider these factors in the forthcoming rulemaking and "explore new analytical tools to look at new vehicle sales and fleet turnover as part of its decision-making record for the new rule."

New Motor Vehicle or Engine Costs for Producers and Purchasers

The Determination explains that the Alliance and Global Automakers identified areas that EPA had underestimated costs related to direct technology costs, indirect cost multipliers, and cost learning curves. Further, EPA states that the 2017 Determination did not appropriately consider the effect of the standards on low-income consumers. EPA, therefore, concludes that affordability concerns and impact on new vehicle sales should be more thoroughly assessed.

Impact on Emission Reductions, Oil Conservation, Energy Security, and Fuel Savings

The Determination notes that consumer adoption of lower emitting cars, the cost of fuel, and potential rebound effects can impact emissions, oil conservation, energy security, and fuel savings. Given EPA's concerns about a

decrease in adoption of new cars, the emission reductions and oil conservation may be less than originally estimated, and thus "warrant consideration." Additionally, the lower fuel costs projected by the Energy Information Administration compared to those used in the 2012 rule suggests that there are now "lower incentives for consumers to purchase fuel efficient vehicles." These considerations, EPA finds, support the determination that the "current standards are inappropriate and should be reconsidered in a new rulemaking." EPA also notes that it received a range of comments on the potential for increase in driving resulting from a lower marginal cost of driving due to greater fuel efficiency (i.e., the "rebound effect"), and EPA intends to fully consider this effect in the new rulemaking.

EPA also notes that National Association of Clean Air Agencies commented that the standards would lead to NOx reductions; however, EPA states that "the standards are supposed to be based on GHG emissions and that while co-benefits exist with respect to emissions…, using GHG emission standards as criteria pollutant control measures is likely a less efficient mechanism to decrease criteria pollutant and those issues are already handled through the [national ambient air quality standards] implementation processes."

Impact for the Automobile Industry

The Determination states that the "Administrator finds, based on the current record, that the standards potentially impose unreasonable per vehicle costs resulting in decreased sales and potentially significant impact to both automakers and auto dealers." While some commenters expressed concern that cost increases could reduce sales and employment, others noted "the important of the standards in maintaining the competitive advantage U.S. companies currently have in the global marketplace." Thus, EPA finds that a "more rigorous analysis of job gains and losses is needed to determine the net effects of alternate levels of the standards on employment and believes this is an important factor to consider in adopting appropriate standards."

Automobile Safety

The Determination notes that fleet turnover is important to safety as newer cars tend to be safer and more efficient. EPA states that it intends to further assess the scope of its safety analysis.

Impact on CAFE Standards and a National Harmonized Program

EPA notes that many commenters noted the important of maintaining a "National Program" for GHG emissions and CAFE standards." EPA further states that it "believes that a national harmonized program is very important and will continue to work toward maintaining a national harmonized program through MY 2025 and beyond" though a coordinated rulemaking process with NHTSA.

Other Relevant Factors

In terms of business certainty, the Determination recognizes that regulatory certainty can increase the efficiency of business planning and investment cycles but is "reconsidering its conclusion that maintaining the current standards is the best way to provide such certainty." EPA explains that industry cannot comply with the GHG standards until it knows the outcome of the NHTSA rulemaking for MY 2022-2025. The Determination notes that EPA and NHTA, in partnership, will undertake a new rulemaking to ensure that the "resulting standards are harmonized to the greatest degree possible."

Next Steps

The timing for a new rulemaking by EPA and NHTSA remains unclear, but the current standards remain in place until EPA finalizes any new standards. Although EPA indicates that the Determination is not final agency action, it is expected that states and stakeholders opposing this new Determination may look to challenge the action as final agency action.

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