EPA Issues Final Determination That No Adjustments to GHG Standards for Model Years 2022-2025 Will Be Made, but Questions Remain

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Clean Technology, Renewable Energy, Energy Litigation, Environmental Litigation, Litigation, and Artificial Intelligence + Robotics

Client Alert

On January 12, the U.S. Environmental Protection Agency (EPA) finalized its determination not to change greenhouse gas (GHG) emission standards for cars and light trucks manufactured in model years (MYs) 2022-2025. This means that regulations requiring automakers to limit carbon dioxide emissions by increasing fuel efficiency and other means will continue to become more demanding over the next eight years.

While EPA's "Midterm Evaluation" of its GHG emission standards is now complete, the standards face an uncertain future given the potential for opposition from a Republican-controlled Congress, legal challenges, and the agenda of the incoming Administration. Additionally, interested parties should stay tuned to ongoing regulatory review by the National Highway Traffic Safety Administration (NHTSA) of its Corporate Average Fuel Economy (CAFE) standards, the California Air Resources Board's (CARB) review of California's Advanced Clean Cars Program, and other agency evaluations of petitions to amend federal standards.

The Final Determination

EPA and NHTSA established existing federal GHG emissions and corporate average fuel economy (CAFE) for light-duty vehicles, including cars and trucks, in 2012. At that time, EPA committed to conduct a Midterm Evaluation of the GHG standards to determine if adjustments should be made to those set for MY 2022-2025 light-duty vehicles.

EPA completed its Midterm Evaluation last Friday, following the November 2016 release of EPA's Proposed Determination and the July 2016 release of a Draft Technical Assessment Report issued jointly by EPA, NHTSA, and the California Air Resources Board.

EPA's Final Determination keeps in place GHG reduction targets for MYs 2022-2025. If all reductions were achieved exclusively through fuel economy improvements, these standards would demand new cars to average 51.4 mpg by 2025. However, because automobile manufacturers may meet GHG reduction targets through other means that do not improve fuel economy, such as by improving the efficiency of air conditioning systems, the actual fuel economy required of MY 2025 vehicles is projected to be lower. Specifically, EPA projects that the GHG standards could be met if automobile manufacturers achieve a "real world" average fuel economy of 36 mpg by 2025. This represents an improvement of 10 mpg over the next 10 years, or about one mpg per year.

EPA's Justifications for Not Changing GHG Standards

EPA offered many justifications for its rule, which align with the statutory criteria relevant to setting GHG emissions standards under section 202(a) of the Clean Air Act. Four rationales figured most prominently in EPA's Determination.
First, EPA found keeping GHG standards in place appropriate because they will achieve significant reductions in carbon dioxide emissions and oil consumption. EPA estimated that the MY2022-2025 standards will reduce GHG emissions by 540 million metric tons and reduce oil consumption by 1.2 billion barrels over the lifetime of the regulated vehicles.

Second, EPA found that compliance with the GHG standards is “feasible at reasonable cost, without need for extensive electrification” of the vehicle fleet. EPA estimated that the per-vehicle cost of the standards likely will be lower than projected in 2012, or at least comparable.

Third, EPA concluded that the standards will provide significant benefits to consumers and to the public. The Determination projects that the net benefits of the MY2022-2025 standards are nearly $100 billion, which EPA says “far exceed the costs of the program.” According to EPA, consumers would realize net savings of $1,650 over the lifetime of a new vehicle, mostly through fuel savings.

Fourth, EPA concluded that “the auto industry is thriving and meeting the standards more quickly than required.” EPA observed that manufacturers are over-complying with standards applicable to MY2015, even though fuel prices are low, which might be expected to decrease consumer demand for fuel-efficient vehicles.

While it found that lowering standards was not merited, EPA left open the door to raising them, noting that “the current record . . . could support a proposal, and potentially an ultimate decision, to adopt more stringent standards for MY2022-2025.” However, the EPA declined to raise standards at this time, citing the need to provide certainty to the auto industry and allow for advanced planning.

Remaining Review

While EPA's Midterm Evaluation is now complete, additional review relevant to the GHG emission standards remains pending before NHTSA, the California Air Resources Board, and EPA.

Unlike EPA's authority to regulate emissions from vehicles under the Clean Air Act, which has no time restrictions, NHTSA lacks statutory authority to finalize CAFE standards for more than five years at a time. For that reason, while EPA finalized GHG emissions standards through MY 2025 back in 2012, NHTSA only provided "augural" or expected standards for MYs 2022-2025. As EPA acknowledged in its Final Determination, NHTSA still must establish CAFE standards for MYs 2022-2025 at least 18 months before the beginning of each model year. This will require NHTSA to complete a full notice and comment rulemaking process. In 2012, EPA expressed intent to issue a final determination regarding its Midterm Evaluation concurrently with NHTSA's final rule adopting fuel economy standards for MY2022-2025. EPA explained in its Final Determination that it ultimately did not do so in order to allow "NHTSA to fully account for the GHG standards" and ensure that the auto industry has sufficient lead time to plan for and achieve compliance.

The California Air Resources Board (CARB) also continues to review California's Advanced Clean Cars Program, including the Low and Zero Emission Vehicle regulations, Particulate Matter (PM) Standards, and GHG regulations. A report on the "Midterm Review" is expected to be released by CARB staff and made available for public comment before consideration by the Board.

In addition to these reviews, EPA's Final Determination recognizes that a petition submitted by auto industry trade associations on June 20, 2016, remains pending before the EPA. The petition asks EPA and NHTSA to harmonize GHG standards and CAFE standards, focusing primarily on CAFE standards for MYs 2010-2021, which the trade associations
state “could force manufacturers to pay CAFE fines despite being able to meet the GHG standards.” NHTSA partially granted the petition on December 21, 2016, while recognizing that NHTSA was not speaking for EPA.

Interested parties will want to participate in NHTSA's rulemaking process for CAFE standards, CARB's review of California's Advanced Clean Cars Program, and EPA's evaluation of the pending petition for rulemaking.

Uncertainties Ahead

Several questions remain about the GHG standards’ future.

First, a Republican-controlled Congress could move to reverse the Final Determination under the Congressional Review Act, which enables Congress, through a filibuster-proof process, to disapprove of regulations adopted within the previous 60 legislative days. The ability of Congress to use the Congressional Review Act is uncertain given that the Final Determination is not itself a regulation but instead a decision not to adjust an existing regulation. Additionally, it is possible that President-elect Trump and/or a majority of Congress will not want to resort to use of the Congressional Review Act. This is because a resolution of disapproval under the Act has the effect of prohibiting agencies from issuing a rule in “substantially the same form” again without the approval of Congress.

Second, existing GHG standards could be reviewed and amended once President-elect Trump takes office. To change the current GHG rules, EPA would need to initiate and complete a new rulemaking, which would take time. Even then, the EPA would need to provide a reasoned explanation for changing its mind in order to survive judicial scrutiny, which may be difficult given the technical analysis and review the agency has completed to date. Similarly, while NHTSA has not completed its rulemaking process for MY 2022-2025 CAFE standards, the agency would need to explain any departures from EPA's conclusions in the Final Determination and the underlying findings of the July 2016 technical assessment report that NHTSA issued jointly with EPA.

Finally, some vehicle manufacturers have expressed discontent with EPA's Final Determination, including the expedited review process through which it was issued and certain estimates, such as consumer demand for low-emission vehicles, upon which it was based. Such auto-industry interests could file suit to set aside EPA's Determination, and would need to do so within 60 days after the date the Determination first appears in the Federal Register. While the Trump Administration might decide not to defend the EPA's determination, other stakeholders could intervene and seek to uphold EPA's decision against the challenge. If such a lawsuit were successful, it would send the agency back to the drawing board and thus provide the Trump Administration with a cleaner slate on which to decide next steps.

Learn more about EPA's Final Determination.