

EPA's Mid-Term Evaluation of Vehicle Greenhouse Gas Emissions Standards

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The One National Program

In 2009, the Obama Administration—through authorities provided to the National Highway Traffic Safety Administration (NHTSA) and the Environmental Protection Agency (EPA)—developed joint standards for fuel economy and greenhouse gas (GHG) emissions for new light-duty vehicles (defined generally as [passenger cars and light trucks](#)). The standards (referred to as the "One National Program") were established in two phases: [Phase 1](#) for vehicle model years (MY) 2012-2016, finalized on May 7, 2010; and [Phase 2](#) for MY2017-2025, finalized on October 15, 2012. The agencies promulgated the joint rulemakings with the support of an array of stakeholders—including auto manufacturers, labor unions, the environmental community, the state of California, and other states—and intended them to provide industry with a single regulatory voice (to avoid conflicting regulations within the federal government and among the states) and a long-term regime (to provide greater certainty for product planning and engineering).

For a review of the requirements, authorities, and the reported benefits and costs of the One National Program, see CRS Report R42721, [Automobile and Truck Fuel Economy \(CAFE\) and Greenhouse Gas Standards](#).

The Mid-Term Evaluation

As part of the Phase 2 rulemaking, the agencies made a commitment to conduct a Mid-term Evaluation (MTE) for the MY2022-2025 standards ([40 C.F.R. 86.1818-12\(h\)](#)). The agencies deemed an MTE appropriate given the long time frame at issue in setting the standards and given NHTSA's and California's competing statutory obligations. (That is, EPA, California, and some other states—through their authorities under the Clean Air Act ([40 U.S.C. 7521\(a\)](#)) and [AB 1493](#), respectively—have finalized GHG emissions standards for MY2017-2025. Under the MTE, the agencies are deciding whether to revise them. NHTSA, through its authorities under the Energy Policy and Conservation Act ([49 U.S.C. 32902\(b\)\(3\)\(B\)](#)), has finalized standards for MY2017-2021 and requires de novo rulemaking for the period MY2022-2025.)

Through the MTE, EPA was to determine whether their standards for MY2022-2025 were still appropriate given the latest available data and information. A final determination could result in strengthening, weakening, or retaining the

current standards. If EPA determined that the standards were appropriate, the agency would "announce that final decision and the basis for that decision." If EPA determined that the standards should be changed, EPA and NHTSA would be required to "initiate a rulemaking to adopt standards that are appropriate." Throughout the process, the MY2022-2025 standards were to "remain in effect unless and until EPA changes them by rulemaking."

The Phase 2 rulemaking laid out several formal steps in the MTE process, including:

- a Draft Technical Assessment Report (TAR) issued jointly by EPA, NHTSA, and the California Air Resources Board (CARB) with opportunity for public comment no later than November 15, 2017;
- a Proposed Determination on the MTE, with opportunity for public comment; and
- a Final Determination, no later than April 1, 2018.

The Draft Technical Assessment Report

EPA, NHTSA, and CARB jointly issued the [Draft TAR](#) for public comment on [July 27, 2016](#). The Draft TAR was a technical report, not a decision document, and examined a wide range of technology, marketplace, and economic issues relevant to the MY2022-2025 standards. The findings included that:

- automakers are innovating in a time of record sales and fuel economy levels;
- the MY2022-2025 standards could be met largely with more efficient gasoline powered cars and with only modest penetration of hybrids and electric vehicles; and
- the standards preserve consumer choice, even as they protect the environment and reduce fuel consumption.

The Proposed Determination

On November 30, 2016, EPA released a [proposed determination](#) stating that the MY2022-2025 standards remained appropriate and that a rulemaking to change them was not warranted. EPA based its findings on a [Technical Support Document](#), the previously released Draft TAR, and input from the auto industry and other stakeholders. The proposed determination opened a [public comment period](#) through December 30, 2016, at which point "the Administrator will decide whether she has enough information to make a final determination on the model year 2022-2025 standards."

It is not clear whether EPA has time to finalize the determination before the change in administrations on January 20, 2017, though [sources](#) have reported that agency officials are hoping to do so. The proposed action has significantly accelerated the stated timeline for the MTE, and EPA announced it separately from any NHTSA or CARB process. [EPA noted](#) its "discretion" in issuing a final determination, stating that the agency "recognizes that long-term regulatory certainty and stability are important for the automotive industry and will contribute to the continued success of the national program." If EPA finalizes the determination, NHTSA would presumably "issue its final rule [for MY2022-2025] concurrently with the EPA determination," in accordance with provisions in the Phase 2 rulemaking. Similarly, California has previously stated its intent to conduct a mid-term evaluation of its own program under its [CAA preemption waiver](#) and would presumably proceed with its own [MY2017-2025 standards as promulgated](#).

Reactions

Reactions to EPA's proposed determination were swift.

[Critics of the standards reportedly vowed](#) to work with the new Administration to revisit EPA's determination—citing a "rush to judgment" that they argued contradicted the objectives of the One National Program. The avowed revisions have been circulated by some [sources in the automotive sector](#), some [Members of Congress](#), and some [members of the President-elect's transition team since the release of the Draft TAR](#), if not before. They include efforts to better harmonize the existing EPA/NHTSA/CARB standards, ease the MY2022-2025 standards, and/or eliminate them entirely.

[Proponents of the standards reportedly suggested](#) that the determination would set up procedural hurdles against efforts to weaken the standards. They argued that any attempt to overturn them would require new technical analysis and new rulemaking. Further, they claimed that [EPA's depiction](#) of the proposal as an "adjudicatory determination"—and not a

rulemaking—would arguably make the action exempt from review under the [Congressional Review Act](#).