NOT YET SCHEDULED FOR ORAL ARGUMENT

No. 18-1114 (and consolidated cases)

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

STATE OF CALIFORNIA, ET AL.

Petitioners

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ET AL.

Respondents.

ON PETITION FOR REVIEW OF AN ACTION OF THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

INITIAL BRIEF FOR RESPONDENTS

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DATED: April 8, 2019

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), the undersigned counsel certifies as follows:

A. Parties and Amici.

Petitioners: In case number 18-1114, the petitioners are the States of California (by and through its Governor Gavin Newsom, Attorney General Xavier Becerra and California Air Resources Board), Connecticut, Delaware, Illinois, Iowa, Maine, Maryland, Minnesota (by and through its Minnesota Air Pollution Control Agency and Minnesota Department of Transportation), New Jersey, New York, Oregon, Rhode Island, Vermont, and Washington, the Commonwealth of Massachusetts, Pennsylvania (by and through its Department of Environmental Protection and Attorney General Josh Shapiro), and Virginia, and the District of Columbia.

In case number 18-1118, the petitioner is National Coalition for Advanced Transportation.

In case number 18-1139, the petitioners are Center for Biological Diversity, Conservation Law Foundation, Environmental Defense Fund, Natural Resources Defense Council, Public Citizen, Inc., Sierra Club, and the Union of Concerned Scientists.

In case number 18-1162, the petitioners are Consolidated Edison Company of New York, Inc., National Grid USA, New York Power Authority, and the City of Seattle, by and through its City Light Department.

Respondents: United States Environmental Protection Agency and Andrew Wheeler, Administrator, Environmental Protection Agency.

Intervenors: Alliance of Automobile Manufacturers and the Association of Global Automakers, Inc.

Amici Curiae: The State of Colorado; Advanced Energy Economy; Consumer Federation of America; Lyft, Inc.; South Coast Air Quality Management District; the National League of Cities, the U.S. Conference of Mayors; the City of New York, NY; Los Angeles, CA; Chicago, IL; King County, WA; County of Santa Clara, CA; San Francisco, CA; Baltimore, MD; Oakland, CA; Minneapolis, MN; Boulder County, CO; Pittsburgh, PA; Ann Arbor, MI; West Palm Beach, FL; Santa Monica, CA; Coral Gables, FL; and Clarkston, GA.

B. Rulings Under Review. The agency action under review is: "Mid-Term Evaluation of Greenhouse Gas Emissions Standards for Model Year 2022-25 Light-Duty Vehicles," published in the Federal Register at 83 Fed. Reg. 16,077 (April 13, 2018).

C. Related Cases. Respondents are not aware of any related cases.

s/ *Eric G. Hostetler*
ERIC G. HOSTETLER

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TABLE OF AUTHORITIES

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GLOSSARY

CAFE	Corporate Average Fuel Economy
EPA	Environmental Protection Agency
EPCA	Energy Policy and Conservation Act
JA	Joint Appendix
NHTSA	National Highway Traffic Safety Administration

INTRODUCTION

Within the Clean Air Act, Congress directed the United States Environmental Protection Agency ("EPA") to establish emission standards for certain air pollutants emitted by new motor vehicles and to revise those standards from "time to time" as appropriate. 42 U.S.C. § 7521(a). Consistent with this statutory responsibility, EPA is in the midst of a rulemaking to reconsider greenhouse-gas emission standards for model year 2022-2025 light-duty vehicles (cars and light trucks). Although in January 2017, EPA had determined that the existing standards were appropriate, the Agency subsequently reconsidered that finding and in April 2018 issued a revised preliminary decision that the standards were not appropriate—the "Determination" that led to the current rulemaking. EPA issued a proposed rule in August 2018 and closed the comment period on the rulemaking proposal in October 2018. EPA is conducting rulemaking jointly with the National Highway Traffic Safety Administration ("NHTSA"), which has proposed related fuel economy standards for these vehicles pursuant to separate authority under the Energy Policy and Conservation Act ("EPCA"). EPA expects to take final action later this year.

Petitioners oppose EPA's rulemaking proposal and prefer that EPA retain the existing standards. But instead of waiting to challenge EPA's final action concluding the pending rulemaking, Petitioners brought this challenge to EPA's preliminary decision in April 2018 to *initiate* a rulemaking. This Court's jurisdiction under the Clean Air Act, however, extends only to "final" agency actions. 42 U.S.C.

§ 7607(b)(1). The challenged Agency decision to begin a rulemaking is unmistakably not final. That decision did not mark the consummation of the Agency's deliberative process concerning the proposed modification of emission standards, or amend those standards. Indeed, the April 2018 decision marked an initial step in EPA's deliberative process, which continued with the issuance of a proposed rule and will conclude with EPA's final action expected later this year.

When EPA takes final action on its August 2018 proposal, Petitioners will be free to pursue judicial review. Meanwhile, Petitioners have been able to bring all of the same kinds of concerns they raise here to the Agency's attention directly through their comments on EPA's proposed rule. Under Clean Air Act rulemaking procedures, EPA will have an obligation to respond to significant comments. 42 U.S.C. § 7607(d)(6)(B). But only after EPA has applied its scientific, technical, and policy expertise in a completed rulemaking process will the Court have jurisdiction under the Clean Air Act to review EPA's final action.

While the lack of statutory jurisdiction alone dooms these cases, Article III jurisdiction is absent as well. Petitioners' professed injuries are neither imminent nor caused by the preliminary decision challenged. Instead, those injuries turn on speculation as to the outcome of the pending rulemaking. Nor can this Court provide meaningful relief in this proceeding to redress such speculative injuries. Contrary to Petitioners' argument, the challenged decision was not a legal prerequisite to rulemaking. EPA has authority under Section 7521 to modify emission standards at

any time it deems such modification appropriate. EPA has issued a proposed rule to modify the standards, and that proposal is pending. EPA's future final action on that proposal is not before the Court. Petitioners lack standing to obtain the requested advisory opinion on the merits of an EPA action that was even more preliminary than its subsequent rulemaking proposal.

In short, the Court should dismiss the petitions for lack of jurisdiction.

STATEMENT OF JURISDICTION

As explained in Argument I below, the Court lacks jurisdiction over this challenge. EPA's decision to initiate a rulemaking to possibly revise emission standards is not a final agency action that is within this Court's jurisdiction under 42 U.S.C. § 7607(b)(1). Petitioners additionally lack Article III standing to challenge EPA's decision to initiate rulemaking, because they cannot identify any imminent, non-hypothetical, injury caused by that decision that could be redressed.

STATEMENT OF THE ISSUES

Section 202(a) of the Clean Air Act, 42 U.S.C. § 7521(a), directs EPA to prescribe, and from time to time revise, emission standards for air pollutants emitted from new motor vehicles that may reasonably be anticipated to endanger public health or welfare. Consistent with that authority, EPA decided in April 2018 that it was appropriate to initiate a rulemaking to propose possible revisions to its greenhouse-gas emission standards for model year 2022-2025 light-duty vehicles. EPA subsequently promulgated a notice of proposed rulemaking. EPA is considering

public comments on its proposal. Against this background of pending regulatory activity, this case presents the following issues:

1. Is the April 2018 EPA decision to initiate a rulemaking to possibly revise the model year 2022-2025 light-duty vehicle standards a final agency action, where EPA remains in the midst of its decision-making process and has yet to make any final decision on whether or how to amend the standards?
2. Have Petitioners identified any non-hypothetical and redressable injury caused by EPA's April 2018 decision to initiate a rulemaking process, where Petitioners' alleged injuries are closely tied to a conjectural outcome of the pending rulemaking and where EPA has clear statutory authority to conduct that rulemaking without regard to the April 2018 decision?
3. Is the EPA decision to initiate a rulemaking prudentially ripe for review, where EPA expects to conclude its rulemaking and issue a final action later this year?
4. Did EPA satisfy public participation requirements in its 2012 rule requiring the "Mid-Term Evaluation" of model year 2022-2025 standards, where EPA exceeded those requirements by providing three opportunities for comment prior to the conclusion of the Evaluation?
5. Was EPA's decision to initiate a rulemaking to possibly revise the existing emission standards arbitrary and capricious, where EPA considered all of the relevant factors set forth in its 2012 "Mid-Term Evaluation" rule and

reasonably explained why some adjustment of the standards might be warranted, subject to further analysis, deliberation, and public participation?

PERTINENT STATUTES AND REGULATIONS

Pertinent statutes and regulations are reproduced in the addendum to this brief.

STATEMENT OF THE CASE

A. Statutory Background

1. The Clean Air Act and Light-Duty Vehicle Emission Standards

The purpose of the Clean Air Act, 42 U.S.C. §§ 7401-7671q, is "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." Id. § 7401(b). Title II of the Act, id. §§ 7521-7590, establishes a regulatory framework for controlling air pollution from motor vehicles and other mobile sources.

Section 7521(a)(1), in particular, directs EPA to prescribe, and then "from time to time revise," emission standards for air pollutant emissions from new motor vehicles and engines that in the EPA Administrator's judgment "cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare." Id. § 7521(a)(1). Section 7521(a) emission standards apply to such vehicles "for their useful life." Id.

Section 7521(a) emission standards or revisions thereof are to take effect only "after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the

cost of compliance within such period." Id. § 7521(a)(2). Other than this requirement to provide adequate lead time for the development of technology, considering compliance costs, Congress elected not to provide any further direction to EPA regarding what factors to consider in promulgating standards, or regarding how to weigh relevant factors.[1] Thus, Congress granted EPA broad discretion to identify relevant factors and choose an appropriate balance among them. See Nat'l Ass'n of Clean Air Agencies v. EPA, 489 F.3d 1221, 1230 (D.C. Cir. 2007) (finding similar provision at 42 U.S.C. § 7571 confers "broad discretion to the Administrator to weigh various factors in arriving at appropriate standards," and refusing to "infer from congressional silence an intention to preclude the agency from considering factors other than those listed in a statute.").[2]

In setting Section 7521(a) standards for greenhouse gases, EPA has identified several relevant factors for it to consider and weigh in setting standards. See generally 83 Fed. Reg. 42,986, 43,228-29 (Aug. 24, 2018). In addition to technological feasibility and compliance costs, factors identified by EPA have included, but are not

[1] Section 7521 prescribes additional requirements applying to certain specific pollutants emitted by light-duty vehicles that are not at issue here, including carbon monoxide, hydrocarbons, and nitrogen oxides. See, e.g., 42 U.S.C. § 7521(b).

[2] The expansive degree of discretion provided in Section 7521(a) stands in contrast to the more prescriptive direction provided in Section 7521(a)(3)(A) for certain pollutant standards for new heavy-duty vehicles. Those standards must reflect "the greatest degree of emission reduction achievable," considering specified factors. See also 42 U.S.C. § 7547(a)(3) (similarly providing that EPA standards for certain nonroad vehicles "shall achieve the greatest degree of emission reduction achievable").

limited to, technology cost-effectiveness, degree of reductions of greenhouse gases and other pollutants, impacts on energy use and security, impacts on automobile safety, and costs and other impacts on consumers. Id.

EPA interprets Section 7521(a)'s requirements on lead time and technological feasibility to allow it, but not to *require* it, to establish "technology-forcing" standards under Section 7521(a), if EPA concludes that industry can develop needed technology in the available time. 77 Fed. Reg. 62,624, 62,673 (Oct. 15, 2012). Accordingly, EPA may elect to establish standards that are less stringent than the outer edge of technological possibility in view of costs, adverse safety impacts, or other relevant considerations. Id.

2. The Energy Policy and Conservation Act

The Energy Policy and Conservation Act ("EPCA") has a purpose different from that of the Clean Air Act. While the Clean Air Act is directed at reducing air pollution, EPCA's purpose is fuel conservation. EPCA directs the Secretary of Transportation to prescribe corporate average fuel economy (CAFE) standards for new automobiles. 49 U.S.C. § 32902(a). The Secretary has delegated that authority to NHTSA. 49 C.F.R. § 1.95(a).

NHTSA promulgates average fuel economy standards applicable to each manufacturer's fleet of vehicles. Such standards "shall be the maximum feasible average fuel economy level that the Secretary decides the manufacturers can achieve"

in a model year. 49 U.S.C. § 32902(a). Separate corporate average fuel economy standards for passenger cars and light trucks must be set by regulation for each model year, and must be promulgated at "least 18 months before the beginning of each model year." Id. NHTSA is directed by statute to set fuel economy standards for "at least 1, but not more than 5, model years" at a time. Id. § 32902(b)(3)(B).

B. Factual Background

1. Greenhouse Gas Vehicle Emission Standards

EPA has determined, pursuant to Section 7521(a)(1), that elevated atmospheric concentrations of six well-mixed greenhouse gases may reasonably be anticipated to endanger public health and welfare, and that emissions from new motor vehicles contribute to such air pollution. 74 Fed. Reg. 66,496, 66,516, 66,536 (Dec. 15, 2009) ("Endangerment Finding").[3] Based on this Endangerment Finding, EPA has promulgated rules establishing greenhouse-gas emission standards for different categories of new motor vehicles and different sets of model years. These rules include the standards that were the subject of the Determination—greenhouse-gas emission standards for model year 2022-2025 light-duty vehicles. These standards are

[3] The greenhouse gases that are defined as the relevant air pollution for purposes of the Endangerment Finding include carbon dioxide, methane, nitrous oxide, hydrofluorcarbons, perfluorcarbons, and sulfur hexafluoride. 74 Fed. Reg. at 66,516. Carbon dioxide is the principal greenhouse gas emitted by motor vehicles.

the second phase of standards for model year 2017-2025 light-duty vehicles adopted in 2012. 77 Fed. Reg. 62,624 (Oct. 15, 2012).[4]

In view of the inherently close relationship between vehicle greenhouse-gas emissions and fuel economy, EPA has promulgated greenhouse gas standards through joint rulemakings with NHTSA, which has simultaneously promulgated fuel economy standards for new vehicles pursuant to its authority under EPCA. See Massachusetts v. EPA, 549 U.S. 497, 531-32 (2007) (discussing overlap between EPA's obligations under Clean Air Act and NHTSA's obligations under EPCA). Such joint rulemaking has furthered a federal policy (the "National Program") of establishing consistent, harmonized, and streamlined federal requirements that both reduce greenhouse gas emissions and improve fuel economy. See 77 Fed. Reg. at 62,626-27.

2. Model Year 2017-2025 Light-Duty Vehicle Standards

The greenhouse-gas emission standards for model year 2017-2025 light-duty vehicles generally require each manufacturer to meet its own fleet-wide emission standard for cars, and separately, for light trucks. Id. at 62,638. These manufacturer-specific fleet-wide standards are based on the vehicles that the manufacturer chooses to produce each year. Id. at 62,628. These standards are based on a carbon dioxide

[4] EPA has also promulgated greenhouse-gas standards for model year 2012-2016 light-duty vehicles, 75 Fed. Reg. 25,324 (May 7, 2010); "Phase 1" standards for medium- and heavy-duty vehicles (large trucks and buses), 76 Fed. Reg. 57,106 (Sept. 15, 2011); and "Phase 2" standards for such vehicles, 81 Fed. Reg. 73,478 (Oct. 25, 2016).

emissions target for each vehicle in a manufacturer's fleet. The vehicle-specific targets are calculated based on the size of each vehicle, with larger vehicles having less stringent emission targets. Id. at 62,631. The fleet-wide standard applicable to a manufacturer is then set as a production-weighted average of each manufacturer's vehicle fleet. Id. at 62,639. The standards require increasingly stringent levels of carbon dioxide control for each model year from 2017 through 2025. Id. at 62,780.

At the same time that EPA promulgated the model year 2017-2025 greenhouse-gas emission standards in 2012, NHTSA simultaneously promulgated consistent fuel economy standards under EPCA for model year 2017-2021 vehicles. Because NHTSA may not promulgate new fuel economy standards for more than five model years at a time, NHTSA did not promulgate fuel economy standards for model year 2022-2025 vehicles in 2012, but left that task for a future rulemaking. NHTSA did identify in the 2012 rule nonbinding fuel economy standards for model year 2022-2025 vehicles that were consistent with EPA's promulgated standards for those model years. 77 Fed. Reg. at 62,629-30. The 2012 rule referred to these nonbinding standards as "augural" standards.

3. EPA's Commitment to Perform a Mid-Term Evaluation

In the 2012 rulemaking, EPA recognized that it was establishing greenhouse gas standards far in advance of when manufacturers would actually implement some of them (up to 13 years in advance), as well as in advance of when NHTSA would first have statutory authority to promulgate fuel economy standards for model year

2022-2025 vehicles. EPA further understood that projections of technology development and associated costs upon which the standards were based might not play out as forecast over that long compliance period. Accordingly, EPA as part of the 2012 rule made a formal regulatory commitment that it would conduct, by April 1, 2018, a "Mid-Term Evaluation" of the continued appropriateness of the standards for model years 2022-2025 (the standards that would be implemented some 10 to 13 years in the future). 77 Fed. Reg. at 62,628, 62,784-88. This regulatory commitment to conduct a "Mid-Term Evaluation" is set forth at 40 C.F.R. § 86.1818-12(h) (hereafter "the Evaluation Rule").

EPA and NHTSA expressed their intent to coordinate on the Mid-Term Evaluation. 77 Fed. Reg. at 62,652. To maintain a joint national program, the agencies planned for NHTSA to issue its final rule setting fuel economy standards for model years 2022-2025 concurrently with the EPA determination, should EPA determine in the Mid-Term Evaluation that its standards should not change. Id. If EPA were to determine that its standards should change, the agencies planned to issue a joint notice of proposed rulemaking and a joint final rule. Id.

EPA explained that its Mid-Term Evaluation would be based on an updated record and a holistic assessment of a multitude of relevant factors pertinent to setting Section 7521(a) greenhouse gas standards, including the feasibility and practicability of the standards, costs to vehicle manufacturers and consumers, impacts on the

automobile industry, emissions impacts and safety impacts. Id. at 62,784.[5] EPA stated that it would not assign decisive weighting to any one factor, but would instead give the factors "the weight that is appropriate in light of all of the circumstances." Id. at 62,786. EPA committed that if, as a result of the Mid-Term Evaluation, it were to determine that existing model year 2022-2025 standards are "not appropriate," it would then proceed to initiate a rulemaking "to revise the standards, to be either more or less stringent as appropriate." 40 C.F.R. § 86.1818-12(h). EPA stated that in any new rulemaking, it would "evaluate a range of alternative standards that are potentially effective and reasonably feasible." 77 Fed. Reg. at 62,784.

In the Evaluation Rule, EPA expressly recognized that if it were to make a final decision following the Mid-Term Evaluation to *retain* the existing standards, such decision would be a final agency action subject to judicial review, as that would be the end of EPA's decision-making process. Id. at 62,784-85. But conversely, if EPA were to make a decision to engage in further rulemaking to adjust the standards, only

[5] The Evaluation Rule identifies the following eight categories of factors to be considered: "(i) The availability and effectiveness of technology, and the appropriate lead time for introduction of technology; (ii) The cost on the producers or purchasers of new motor vehicles or new motor vehicle engines; (iii) The feasibility and practicality of the standards; (iv) The impact of the standards on reduction of emissions, oil conservation, energy security, and fuel savings by consumers; (v) The impact of the standards on the automobile industry; (vi) The impacts of the standards on automobile safety; (vii) The impact of the greenhouse gas emission standards on the Corporate Average Fuel Economy standards and a national harmonized program; and (viii) The impact of the standards on other relevant factors." 40 C.F.R. § 86.1818-12(h)(1).

the conclusion of that further rulemaking would be judicially reviewable as a final agency action. Id.

EPA committed to certain procedures in conducting the Mid-Term Evaluation. These included making its determination based upon a record that included a "draft Technical Assessment Report" (to be prepared no later than November 15, 2017), public comments on that draft report, and public comments on whether the model year 2022-2025 standards are "appropriate" under Section 7521(a). 40 C.F.R. § 86.1818-12(h)(2).

In comments during the 2012 rulemaking, automakers strongly supported the Mid-Term Evaluation, and many expressly predicated their support of the standards on EPA's committing to the Evaluation. 77 Fed. Reg. at 62,636, 62,652, 62,785. They stressed the importance of reassessing the progress of technology development and cost and of revisiting the accuracy of the agencies' assumptions due to the long time-frame of the rule. Id.

EPA and NHTSA stated in the preamble to the Evaluation Rule that they expected "to conduct the mid-term evaluation in close coordination with the [California Air Resources Board], consistent with the agencies' commitment to

maintaining a single national framework for regulation of fuel economy and [greenhouse gas] emissions." Id. at 62,965.[6]

4. The Mid-Term Evaluation

As a first formal step in the Mid-Term Evaluation process, EPA, NHTSA and the California Air Resources Board collaborated on a draft Technical Assessment Report, which they jointly issued for public comment in July 2016. 81 Fed. Reg. 49,217 (July 27, 2016); EPA-HQ-OAR-2015-0827-0926, JA___. The draft report was a "technical report, not a policy or decision document," and the agencies stated that the draft report and comments received thereon would help inform their policy decisions. Report at ES-1-ES-2, JA ___-___.

On November 30, 2016, EPA issued a proposed adjudicatory determination that the greenhouse gas standards adopted in the 2012 rule establishing model year 2017-2025 standards remain "appropriate" and should not be amended to be made either more or less stringent. Proposed Determination, EPA-HQ-OAR-2015-0827-

[6] Presently, California may enforce its own greenhouse-gas emission standards for light-duty vehicles through model year 2025, pursuant to a waiver of preemption that EPA granted to California for these and other standards under Section 209 of the Clean Air Act, 42 U.S.C. § 7543. 78 Fed. Reg. 2112 (Jan. 9, 2013). A number of other states have adopted California's greenhouse gas standards pursuant to Clean Air Act Section 177, 42 U.S.C. § 7507. See State Br. at 6. As part of their 2018 joint proposed rule, NHTSA and EPA have proposed to conclude that California's greenhouse gas standards for certain model years are preempted by EPCA and may not be enforced. 83 Fed. Reg. at 43,232-39. Similarly, EPA has also proposed to withdraw California's waiver for certain model years and proposed to determine that Section 7507 does not apply to California's greenhouse gas standards. Id. at 43,240-53.

5942, JA ___. EPA sought public comment on that proposed determination. 81 Fed. Reg. 87,927 (Dec. 6, 2016). The comment period closed on December 30, 2016.

On January 12, 2017, shortly before the change in presidential Administrations, EPA issued a determination that the existing greenhouse gas standards for model year 2017-2025 light-duty vehicles remain appropriate (the "January 2017 determination"). EPA-HQ-OAR-2015-0827-6270, JA ___-___. Although EPA in 2012 had stated its intent to reach any determination that the standards should not be changed concurrently with final NHTSA rulemaking establishing fuel economy standards, see 77 Fed. Reg. at 62,652, EPA elected to proceed in January 2017 without waiting for such NHTSA rulemaking.

In a cover letter, EPA's Administrator stated the Agency's determination "neither precludes nor prejudices the possibility of a future rulemaking" to make appropriate revisions. Id., JA ___-___. Specifically, she acknowledged the possibility of providing "additional incentives for very clean technologies or flexibilities that could assist manufacturers with longer term planning without compromising the effectiveness of the current program." Id.

Automobile manufacturers petitioned EPA to reconsider the January 2017 determination. EPA-HQ-OAR-2015-0827-6283, JA ___-___, and EPA-HQ-OAR-2015-0827-6284, JA ___-___. They charged that it was "riddled with indefensible assumptions, inadequate analysis, and a failure to engage with contrary evidence." EPA-HQ-OAR-2015-0827-6283 at 5, JA ___.

On March 22, 2017, the new EPA Administrator granted their request and announced his intention to reconsider the determination in close coordination with NHTSA (which at that point had not yet commenced a rulemaking to promulgate fuel economy standards for model years 2022-2025). 82 Fed. Reg. 14,671 (Mar. 22, 2017). EPA subsequently issued a Federal Register notice in August 2017 inviting stakeholders to submit by October 5, 2017, any comments, data, and information that they believed to be relevant to the Agency's reconsideration. 82 Fed. Reg. 39,551 (Aug. 21, 2017). EPA also held a public hearing on September 6, 2017 to receive oral comments. 82 Fed. Reg. 39,976 (Aug. 23, 2017).

In April 2018, EPA determined that the existing greenhouse gas standards for model year 2017-2025 light-duty vehicles should be further considered and revised as appropriate through a process beginning with a proposed rulemaking. 83 Fed. Reg. 16,077 (Apr. 13, 2018) ("the Determination"). In reaching the Determination, EPA considered and explained its assessment of each of the factors specified in the Evaluation Rule at 40 C.F.R. § 86.1818-12(h)(1)(i)-(viii). 83 Fed. Reg. at 16,077-87.

EPA announced that it would initiate a rulemaking process, in collaboration with NHTSA, to further consider the appropriate level of the emission standards for model years 2022-2025. Id. at 16,087. EPA reiterated—consistent with its representations in promulgating the Evaluation Rule—that until the new rulemaking is completed, the existing standards remain in effect. Id. EPA explained that its decision to engage in further rulemaking therefore did not change the legal rights and

obligations of any stakeholders and was not a final agency action subject to judicial review. Id.

5. The Proposed SAFE Rule

Following the April 2018 Determination, EPA and NHTSA jointly proposed in August 2018 the Safer Affordable Fuel-Efficient ("SAFE") Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks ("the Proposed Rule"). 83 Fed. Reg. 42,986 (Aug. 24, 2018). The Proposed Rule contains proposed amended EPA greenhouse gas standards for model year 2021-2026 light-duty vehicles. The Proposed Rule also contains proposed amended NHTSA fuel economy standards for model year 2021 and new fuel economy standards for model years 2022 through 2026.

The Proposed Rule identifies a "preferred" alternative to maintain the model year 2020 standards through model year 2026 across both regulatory programs. Id. at 42,986. The Proposed Rule additionally seeks comment on a range of alternatives, representing seven different stringency combinations for passenger cars and light trucks, as well as the "baseline/no action" alternative of retaining the existing EPA greenhouse gas standards and finalizing the "augural" NHTSA fuel economy standards. Id. at 42,988, 42,990 (Table I-4).

EPA and NHTSA's joint notice of proposed rulemaking spans 515 pages in the Federal Register and contains substantial new and updated analyses and explanation related to relevant factors beyond that set forth by EPA in its earlier decision to

initiate rulemaking.[7] EPA and NHTSA held three public hearings on the proposed rule in September 2018. 83 Fed. Reg. 42,817 (Aug. 24, 2018). The comment period for the Proposed Rule closed on October 26, 2018, and hundreds of thousands of comments have been submitted. See Docket No. EPA-HQ-OAR-2018-0283-0756, *available at* https://www.regulations.gov. EPA and NHTSA are considering these comments and expect to take final action on the proposal later this year.

On October 1, 2018, EPA separately proposed certain technical corrections to the light-duty model year 2017-2025 greenhouse-gas emission standards promulgated in 2012. 83 Fed. Reg. 49,344 (Oct. 1, 2018). EPA expects to take final action on those corrections later this year.

SUMMARY OF ARGUMENT

The petitions for review are premature and should be dismissed for three independent reasons.

First, this Court has statutory jurisdiction to consider petitions challenging "final" EPA actions under the applicable Clean Air Act judicial review provision, 42 U.S.C. § 7607(b)(1). But the challenged agency decision is not a final action because it is only the first step in a rulemaking process that is ongoing. The Determination meets neither prong of the familiar finality standard set forth in Bennett v. Spear, 520 U.S. 154, 177-78 (1997). EPA's decision to initiate a rulemaking process did not

[7] EPA and NHTSA have issued clerical corrections to certain information in the proposed rule. 83 Fed. Reg. 53,204 (Oct. 22, 2018).

consummate EPA's decision-making process with respect to the potential revision of emission standards. Nor did EPA's decision determine any rights or obligations of any State or regulated party, because it left the existing emission standards in place.

Second, Petitioners cannot demonstrate Article III standing. Petitioners' alleged injuries are not imminent or attributable to the decision challenged. Instead, they are closely tied to a conjectural outcome of EPA's pending rulemaking. Moreover, these alleged injuries are not redressable. EPA has authority to conduct its ongoing rulemaking regardless of whether the Determination remains in place.

Third, the petition should be dismissed because Petitioners raise claims that are not prudentially ripe for review. EPA is in the midst of a rulemaking to revise the emission standards at issue, and Petitioners have brought their concerns to EPA's attention during the comment period. EPA expects to conclude that rulemaking later this year. The administrative process should be allowed to run its course prior to judicial review of a preliminary decision that will soon be moot.

Should the Court reach the merits, the petitions should be denied. EPA's decision to initiate rulemaking comported with all of the procedural requirements set forth within the Evaluation Rule. EPA provided required opportunities for public comment. The Agency's decision was based upon a record that included the draft Technical Assessment Report and public comments. And EPA set forth in detail the bases for the Determination, including its assessment of each of the factors specified in the Evaluation Rule.

Even if it were judicially reviewable, EPA's decision to continue its deliberative process through rulemaking was not arbitrary or capricious under the particularly deferential standard of review that applies to this kind of preliminary decision. EPA reasonably decided that it would be appropriate to engage in a more rigorous assessment of certain relevant factors, such as impacts on new vehicle sales, driving rates, safety, and employment, prior to taking final action. EPA further reasonably concluded that existing standard levels may not be feasible or appropriate in view of a potential misalignment between consumers' preferences and the degree of reduction required, and in view of various potential negative effects associated with anticipated higher vehicle costs—all topics that are being further considered in the pending joint rulemaking.

STANDARD OF REVIEW

At all stages of the case, Petitioners bear the burden of demonstrating that subject-matter jurisdiction exists. Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994). This includes the burden to demonstrate that agency action challenged under the judicial review provision of the Clean Air Act, 42 U.S.C. § 7607(b)(1), is a "final" action of the Agency; American Petroleum Institute v. EPA, 684 F.3d 1342 (D.C. Cir. 2012). This also includes the burden to establish constitutional standing to sue. Carbon Sequestration Council v. EPA, 787 F.3d 1129, 1132-33 (D.C. Cir. 2015).

On the merits, courts may set aside EPA action only if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).[8] This standard is narrow, and courts may not substitute their judgment for EPA's. Bluewater Network v. EPA, 370 F.3d 1, 11 (D.C. Cir. 2004). Where EPA has considered the relevant factors and articulated a rational connection between the facts found and the choices made, such choices must be upheld. Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co., 463 U.S. 29, 43 (1983). That is true even if the evidence in the record may also support other conclusions that are inconsistent with the Agency's. Lead Indus. Ass'n v. EPA, 647 F.2d, 1130, 1160 (D.C. Cir. 1980).

ARGUMENT

I. The Case Is Not Justiciable Because Petitioners Challenge an Action That is Not Final, Petitioners Cannot Demonstrate Standing, and the Claims Are Not Prudentially Ripe.

A. EPA Has Not Taken Any Reviewable Final Action.

Judicial review of EPA action under the Clean Air Act is governed by 42 U.S.C. § 7607(b)(1). That provision, in pertinent part, authorizes judicial review of "*final* action taken, by the Administrator" (emphasis added). Thus, in the absence of final agency action under the Clean Air Act, this Court "lack[s] jurisdiction to hear an administrative challenge." Sierra Club v. EPA, 873 F.3d 946, 951 (D.C. Cir. 2017); see

[8] The standard of review set forth at Section 307(d)(9) of the Clean Air Act, 42 U.S.C. § 7607(d)(9), does not apply here because this was not a rulemaking under Section 307(d)(1) of the Act, 42 U.S.C. § 7607(d)(1).

also John Doe, Inc. v. DEA, 484 F.3d 561, 565 (D.C. Cir. 2007) (when review is sought under a specific statute prescribing finality as a prerequisite of judicial review, the requirement is jurisdictional).

The Court's finality inquiry is governed by the familiar two-part test described in Bennett v. Spear, 520 U.S. 154 (1997). "First, the action must mark the consummation of the agency's decisionmaking process—it must not be of a merely tentative or interlocutory nature. And second, the action must be one by which rights or obligations have been determined, or from which legal consequences will flow." Id. at 177-78 (internal quotation marks and citations omitted); see also Whitman v. American Trucking Ass'ns, 531 U.S. 457, 478 (2001) (holding that "the phrase 'final action' . . . bears the same meaning in [Section 7607(b)(1)] that it does under the Administrative Procedure Act"). Each of the two Bennett prongs must be satisfied. Soundboard Ass'n v. FTC, 888 F.3d 1261, 1267 (D.C. Cir. 2018).

The challenged Determination does not meet either of Bennett's criteria. EPA's decision to *initiate* a notice-and-comment rulemaking process to consider revising emission standards as appropriate does not mark the *consummation* of the Agency's decision-making process. The Determination also does not determine the rights or obligations of any State or regulated party, as it leaves the existing emission standards in place pending further Agency deliberations.

1. EPA Has Not Consummated Its Deliberative Process Over Whether or How to Amend Emission Standards.

The Agency decision-making process at issue concerns whether, and if so how, EPA should revise its greenhouse-gas emission standards for model year 2022-2025 light-duty vehicles. That decision-making process did not conclude with the Determination. To the contrary, the Agency has commenced a notice-and-comment rulemaking and is immersed in an ongoing deliberative process, including consideration of comments by Petitioners. EPA will respond to significant comments and reach a final decision concerning any revision of the emission standards at the conclusion of that rulemaking.

This Court "has never considered an agency decision to continue the rulemaking process to be a 'final agency action.'" Portland Cement Ass'n v. EPA, 665 F.3d 177, 194 (D.C. Cir. 2011); see also In re Murray Energy Corp., 788 F.3d 330, 336 (D.C. Cir. 2015) ("Put simply, the consummation of the agency's decisionmaking process with respect to a rule occurs when the agency issues the rule.").

To be sure, the Determination marked the end of one stage of EPA's deliberative process (whether to proceed to drawing up a proposal), just as the Agency's subsequent notice of proposed rulemaking marked the end of another stage (what proposal to issue). That, of course, does not mean that either step marks the conclusion of EPA's *entire* deliberative process. Both preliminary actions reflect milestones along the Agency's deliberative path towards a final decision. As EPA

itself put it, the Determination "is not a final agency action." 83 Fed. Reg. at 16,087. Its effect is "rather to initiate a rulemaking process whose outcome will be a final agency action." Id.

This Court's decisions confirm that the Determination is unreviewable. For example, this Court in Clean Air Council v. Pruitt, 862 F.3d 1, 6 (D.C. Cir. 2017) explained that EPA's decision to grant reconsideration of a Clean Air Act rule under 42 U.S.C. § 7607(d)(7)(B) was not by itself a final agency action, because the decision "merely begins a process that could culminate in no change to the rule." In contrast, the Court concluded that EPA's separate action imposing a stay of a rule's compliance deadlines pending reconsideration was indeed final action, because that separate action was "tantamount to amending or revoking a rule." 862 F.3d at 6. Here, the Determination falls into the former box. It simply continues a deliberative process that could ultimately culminate in some changes to the relevant regulatory standards—or not—without itself amending those standards. Accordingly, the Determination is not reviewable.

The Court's decision in Portland Cement Ass'n, 665 F.3d at 193-94, supports the same result. In that case, environmental petitioners challenged a final Clean Air Act rule setting new source performance standards for Portland cement facilities. Specifically, petitioners challenged EPA's failure to adopt greenhouse-gas emission standards as part of the promulgated standards. EPA had explained in its rule that it did not yet have adequate information sufficient to set such standards but that it was

working towards a proposal for setting them. This Court held that because EPA had not yet reached a final decision concerning the establishment of greenhouse-gas standards, there was no final action to challenge. It explained that there is "nothing final in EPA's decision to collect additional information before proposing greenhouse emission standards." Id. at 193.

The Court's decision in In re Murray Energy Corp. is also instructive. That case involved a similar flurry of premature cases endeavoring to block EPA from issuing a final rule concerning greenhouse gas emissions. The Murray Energy petitioners, "champing at the bit" to attack an anticipated EPA final rule, jumped the gun by seeking review of the contents of the Agency's proposed rule, in which EPA had "repeatedly and unequivocally" made statements about the scope of its legal authority. 788 F.3d at 335. The Court dismissed those petitions on finality grounds, and the same result should apply here. Indeed, these petitions are even more premature than those in Murray Energy, as EPA had not even issued a rulemaking proposal when these petitions were filed.

The Court's decision in Natural Resources Defense Council v. EPA, 706 F.3d 428 (D.C. Cir. 2013), is also informative. In that case, EPA asserted that petitioners' challenges to two Clean Air Act rules were untimely because EPA had previously articulated—within a preamble to an earlier rule—the challenged statutory interpretations. The Court explained that those previous statements were not final because EPA had expressed its intent to engage in rulemaking. Id. at 433. Similarly

here, EPA has expressed an intent to engage in rulemaking. It has not presented its last word on the amendment of vehicle emission standards.

In short, EPA has not concluded its deliberative process. Petitioners offer no reason for concluding otherwise. In the single brief that includes some argument on the finality issue, State Petitioners contend that the Determination constitutes final action because it marked the consummation of the Mid-Term Evaluation. State Br. at 30. But the consummation of the Mid-Term Evaluation did not end EPA's deliberative process with respect to potential standard revision any more than EPA's subsequent notice of proposed rulemaking. Both the Determination and the proposed rule marked preliminary steps towards a final action with actual legal consequences. Neither is final, however, simply because it "consummates" *something*.

Indeed, this superficial logic as to what action is "final" would render the "consummation" prong meaningless: after all, *any* agency action marks the consummation of *some* aspect of decision-making. Otherwise, it would not be an agency "action" at all. See Whitman, 531 U.S. at 478 ("The bite in the phrase 'final action' . . . . is not in the word 'action,' which is meant to cover comprehensively every manner in which the agency may exercise its power," but "rather in the word 'final,' which requires that the action . . . mark the consummation of the agency's decisionmaking process." (internal citations and quotations omitted)).

State Petitioners highlight isolated language within the Evaluation Rule in support of their argument that the Determination is final, State Br. at 30, but that language does not improve their position. As Petitioners note, the Evaluation Rule calls for EPA to make a "determination" by April 30, 2018, as to whether existing standards remain "appropriate." The Rule, however, further provides that a "not appropriate" determination will be followed by the initiation of a rulemaking. 40 C.F.R. § 86.1818-12(h). Thus, the Evaluation Rule could not be clearer as to when the deliberative process will continue and when it will end: a determination that standards are not appropriate necessitates further deliberation through a proposed rulemaking, leading to final action when that rulemaking concludes.

Furthermore, contrary to State Petitioners' assertion, State Br. at 1, the Determination did not reflect a final decision that the standards "must" be revised. EPA retains full discretion following rulemaking either to revise the standards or not to revise them. Indeed, EPA's proposed rule explicitly requests comment on a range of potential alternative standard levels, including a "no action" alternative that would retain the current standard levels. 83 Fed. Reg. at 42,988, 42,990 (Table I-4).[9]

[9] For their part, Public Interest Petitioners assert in drive-by fashion, as part of their standing argument, that certain social media posts of the prior Administrator "confirm[]" finality. Public Interest Br. at 9, n.6. The cited social media posts are not part of the record for judicial review. Regardless, they do not "confirm[]" finality. Nothing in the cited posts contradicts what EPA plainly stated within the body of the Determination itself: it "is not a final agency action." 83 Fed. Reg. at 16,087.

2. EPA's Decision to Initiate a Rulemaking Does Not Determine the Rights or Obligations of any State or Regulated Party.

The Determination also fails the second prong of the Bennett finality test: the Determination does not "determine" any rights or obligations of any State or regulated party because it does not revise the existing model year 2022-2025 emission standards or any other standards. The existing standards remain in place unless and until EPA concludes the pending rulemaking by revising them. The Determination simply reflects that EPA will conduct a rulemaking proceeding, without dictating any particular rulemaking outcome. See 40 C.F.R. § 86.1818-12(h). Even so, Petitioners argue that the second Bennett prong is satisfied inasmuch as EPA's "not appropriate" finding triggered a requirement *for EPA* to engage in rulemaking. State Br. at 30-31. But as Petitioners recognize, id. at 29, courts "must examine finality in a flexible and pragmatic way." Soundboard, 888 F.3d at 1275 (internal quotation marks and citation omitted). If the sole legal consequence of an action is that EPA must *continue* a deliberative process through a proposal, that consequence only underscores the lack of any finality.

Petitioners argue that such a legal consequence for the Agency alone is sufficient. State Br. at 31 (citing to Center for Auto Safety v. NHTSA, 452 F.3d 798, 806-07 (D.C. Cir. 2006); Nat'l Envtl. Dev. Ass'ns Clean Air Project v. EPA, 752 F.3d 999, 1006 (D.C. Cir. 2014)). But the cited cases address situations where EPA guidance documents were alleged to constitute binding rules with legal consequences

for regulated parties—an allegation notably lacking here. Thus, in the cited cases, whether the documents bound the Agency informed the question of whether the documents imposed binding norms on regulated parties. These cases offer no support to the proposition that an agency decision merely binding the Agency to continue its own deliberative process by issuing a proposal meets the second prong of the Bennett test.

The provision of the Clean Air Act at 42 U.S.C. § 7607(d)(7)(B) is instructive by way of analogy. Under that provision, if EPA determines (1) that it was impracticable for a petitioner seeking reconsideration of a rule to raise an objection during the rule's public comment period and (2) that the objection is of central relevance to the outcome of the rule, that determination triggers an obligation for EPA to "convene a proceeding for reconsideration of the rule." But even though such reconsideration determinations have that legal consequence for EPA, the determinations are still non-final. See Clean Air Council, 862 F.3d at 5 (holding that a decision to grant reconsideration under Section 7607(d)(7)(B) is not reviewable final agency action). The same is true here.

Petitioners also miss the mark in suggesting that because a converse "appropriate" determination would be final, EPA's "not appropriate" determination must also be final. State Br. at 32. This is a false corollary. A final determination that the emission standards "are appropriate" marks the end of EPA's deliberations on whether the standards should be retained (absent any reconsideration proceeding).

Thus, EPA sensibly recognized that such an appropriateness determination was properly a final action subject to judicial review. But an EPA determination that standards are "not appropriate" results directly in further deliberations through a proposed rulemaking. There is, therefore, a clear distinction between the two paths the Agency may take. Moreover, this sort of dichotomy—i.e., where one agency decision may be final although the opposite is not—is not unusual. See, e.g., 42 U.S.C. § 7661d(b)(2) (authorizing judicial review of the Agency's decision to *deny* a petition to object to an operating permit, but not of the converse decision to *grant* such a petition).

The Determination also did not create any "legal consequences" for States. State Br. at 31. The Determination does not impose any obligations on States or "force[]" States to act. Id. To the extent that certain States are taking anticipatory actions based on the *possibility* that EPA might act, at the conclusion of rulemaking, to amend the current standards, those actions are voluntary and not compelled. Cf. Clapper v. Amnesty Int'l USA, 568 U.S. 398, 416 (2013) (holding that plaintiffs "cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending."). Furthermore, Petitioners overlook that EPA has statutory authority to proceed to revise the current emission standards through rulemaking *whenever* EPA concludes rulemaking to be appropriate. 42 U.S.C. § 7521(a) (providing the Administrator with authority to "from time to time revise" emission standards). The Evaluation Rule does not

constrain this statutory authority. Rather, it merely established one specific date by which EPA committed to review the existing standards. Thus, even if the initial January 2017 determination had remained in place, the petitioners would lack any definitive "assurance" that the existing standards would remain in place prior to implementation. State Br. at 31.[10]

In short, the challenged Determination is not a "final" agency action, and therefore, this Court lacks jurisdiction to review it under 42 U.S.C. § 7607(b)(1).

B. Petitioners Lack Standing.

For the foregoing reasons, this Court need not reach Petitioners' constitutional standing. If the Court does reach this issue, Petitioners lack standing for many of the same reasons that support dismissal on finality grounds.

The Supreme Court has explained the "irreducible constitutional minimum" that petitioners seeking to invoke a federal court's jurisdiction must establish. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992). A petitioner must show an "injury in fact" that is "concrete and particularized" and "actual or imminent, not conjectural or hypothetical"; (2) that their injury is fairly traceable to the challenged

[10] Petitioners assert that if EPA were hypothetically to revise the emission standards, and if those standards hypothetically were then to be set aside on judicial review, there would be "regulatory uncertainty" regarding the existing standards arising from the Determination. State Br. at 30. To the extent there is any regulatory uncertainty under this hypothetical, the uncertainty would not result from the Determination. Under that scenario, the requirement in the Evaluation Rule to "initiate a rulemaking" would have already been fulfilled, and the Determination would be moot.

action of the respondent; and (3) that it is "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision." Id. (internal quotations and citations omitted). To demonstrate an injury in fact for purposes of the standing inquiry, a threatened injury must be "*certainly* impending." Clapper, 568 U.S. at 409. "Allegations of *possible* future injury are not sufficient." Id. Likewise, "'predictions of future events'" are "too speculative to support a claim of standing." Turlock Irrigation Dist. v. FERC, 786 F.3d 18, 25 (D.C. Cir. 2015).

Petitioners collectively advance a hodgepodge of standing theories, but none withstands close scrutiny. They fail in large part because they rely heavily on two defective premises: first, that the Determination represents a "binding decision to weaken the standards," Industry Br. at 9; and second, that the Determination is a "critical legal predicate" for EPA to exercise rulemaking authority, id. at 10. Neither premise is correct.

As for the first, the Determination does not bind or commit EPA to amend the standards at all, much less to amend the standards in any particular manner. The Determination commits EPA to initiate a rulemaking, but it does not itself change existing emission standards, dictate the outcome of further rulemaking, or otherwise change any pertinent rights or obligations. And any injury alleged to flow from the *possible* amendment of the standards through further rulemaking is inherently speculative and contingent on future events.

Indeed, this Court has made clear that "Article III standing requires more than the possibility of potentially adverse regulation," such that a requirement to conduct notice-and-comment rulemaking that may result in a "new, stricter rule" does not confer standing. Defenders of Wildlife v. Perciasepe, 714 F.3d 1317, 1324-25 (D.C. Cir. 2013); see also Utility Air Regulatory Group v. EPA, 320 F.3d 272, 278 (D.C. Cir. 2003) (EPA's announcement of what it "'hopes to implement in future rulemakings or adjudications'" does not injure petitioner "in any imminent or redressable manner" (quoting Pac. Gas & Elec. Co. v. Fed. Power Comm'n, 506 F.2d 33, 38 (D.C. Cir. 1974)). As the Court has noted, parties potentially adversely affected by a rulemaking have the opportunity to *participate* in the rulemaking—by making any objections they may have and attempting to persuade the agency to alter or not to finalize the proposal—and then to seek judicial review if the proposed rule is finalized in a manner that genuinely harms their interests. Alternative Research & Devel. Found. v. Veneman, 262 F.3d 406, 411 (D.C. Cir. 2001).

As to the second premise, the Determination is also not a necessary "legal predicate" for EPA to exercise rulemaking authority. Industry Br. at 10. Contrary to Petitioners' apparent belief, EPA's statutory authority to initiate rulemaking to revise the standards at any time is not constrained by the Evaluation Rule. Thus, EPA's proposed rule is not dependent upon the validity of the Determination. EPA based its August 2018 proposed rule on a more developed record than was before EPA at

the time of the Determination, as well as further analysis, and EPA has statutory authority to take final action on its proposed rule.

The record that will be before EPA at the time of a final rule will also be different from the record that was before EPA at the time of the Determination. This Court can neither anticipate that record nor opine on a hypothetical final action that has not yet occurred. Anything the Court might conclude about the merits of the more preliminary Determination would be purely advisory in nature. And none of Petitioners' purported immediate injuries tied to the potential for standard revision could be redressed by such an advisory decision.

Put simply, none of the Petitioners can meet their burden to demonstrate standing. We briefly address each of Petitioners' specific standing theories below.

Health and Welfare Interests/Sovereign and Quasi-Sovereign Interests: Public Interest Petitioners contend that the initiation of rulemaking to revise emission standards injures the health and welfare of Petitioners' members. Public Interest Br. at 8-9. State Petitioners similarly allege an injury to sovereign and quasi-sovereign interests. State Br. at 28-29. However, any alleged injury to these interests is neither imminent nor caused by the Determination. The Determination leaves the existing standards in place. The asserted injuries are therefore contingent on EPA's later acting to amend the standards in some particular adverse manner in a final rule.

Economic Interests: Industry Petitioners allege that the Determination has had an adverse impact on the market for compliance credits because "[c]redit demand

and prices correlate positively with the standards' stringency," and "the Revised Determination represents a binding decision to weaken the standards." Industry Br. at 8-9. In fact, the Determination does not represent a "binding decision" to revise the standards so this theory relies on a defective premise. Moreover, the Determination is not a "legal predicate" for the rulemaking. Id. at 10. Regardless, even if Industry Petitioners could demonstrate some immediate economic injury arising from the mere *possibility* of the standards being revised through rulemaking, that injury cannot be redressed here, as the proposed rule is not before the Court. For example, the professed regulatory "uncertainty" that is allegedly undermining confidence in "market projections" "to determine the appropriate level of investment" in electric vehicle infrastructure would persist regardless of any decision here, because the proposed rule would remain pending. See Declaration of Paul Lau ¶ 8, Industry Br. Addendum at 9-10.

California's Interest in the National Program: California contends that EPA breached a commitment to the State that was allegedly "codified" in the Evaluation Rule. State Br. at 25-26. The Evaluation Rule, however, does not codify any commitment to California or provide the State with legal rights beyond those held by other stakeholders. Instead, under the Evaluation Rule's plain language and Section 7521, the decision to initiate a rulemaking to modify emission standards falls within the exclusive discretion of EPA. While EPA anticipated some degree of coordination with California in performing its review, the Rule does not require the

State's concurrence or guarantee the State that EPA will weigh the evidence in the manner preferred by the State. Thus, while California might disagree with the Determination, that disagreement does not distinguish the State from any of the other Petitioners, all of whom lack standing.

District of Columbia's Proprietary Interests: The District of Columbia contends that it "can no longer rely" on maintenance of the emission standards and that it has expended resources to take administrative and regulatory actions to ensure it can enforce California standards. State Br. at 27-28. To the extent that the District is taking certain administrative actions, it is not compelled to do so. See Clapper, 568 U.S. at 409 (standing cannot be manufactured through self-inflicted harm based on fears of hypothetical future agency action). Moreover, the District's alleged proprietary injury cannot be redressed, as the District presumably would elect to take all of the same actions to ensure that it can enforce California's standards, based on EPA's subsequent proposed rule to amend the federal standards, even if the Determination were vacated. EPA's proposed rule is not before the Court.

Informational and Procedural Interests: Finally, Petitioners fail to demonstrate standing based on an alleged informational or procedural injury. Public Interest Br. at 5-9; State Br. at 26-27; Industry Br. at 10. A petitioner "suffers sufficiently concrete and particularized informational injury where" it "alleges that: (1) it has been deprived of information that, on its interpretation, a statute requires the government or a third party to disclose to it, and (2) it suffers, by being denied access

to that information, the type of harm Congress sought to prevent by requiring disclosure." Friends of Animals v. Jewell, 828 F.3d 989, 992 (D.C. Cir. 2016) (citing FEC v. Akins, 524 U.S. 11 (1998)). To establish procedural injury standing, a petitioner must show: that EPA violated a procedural right designed to protect a threatened concrete interest, and that the violation resulted in injury to their concrete, particularized interest. Center for Law & Educ. v. Dep't of Educ., 396 F.3d 1152, 1156 (D.C. Cir. 2005).

In the present case, Petitioners fail to identify any "informational injury" that meets the standard set forth in Friends of Animals. EPA has already fully disclosed the record upon which the Determination was based, see EPA's certified index to the administrative record, ECF No. 1736370, and it has fully explained the bases for its Determination. Petitioners identify no pertinent statutory or regulatory requirement compelling the disclosure of information beyond that. To be sure, Petitioners contest the *substance* of the Determination, but their contention that the Determination was flawed does not amount to an *informational* injury. Furthermore, Petitioners' requested remedy—reinstatement of EPA's initial January 2017 determination—would not require the provision of any additional information. Under that requested remedy, Petitioners would have exactly the same information that they have now.

Likewise, Petitioners fail to identify any required procedure that EPA failed to perform. Petitioners allege that EPA failed to provide opportunities for public comment required by the Evaluation Rule, State Br. at 26; however, as set forth

below, EPA *did* provide required public comment opportunities. See Argument II, infra. Moreover, the remedy requested by Petitioners—reinstatement of the initial January 2017 determination—would not result in any additional opportunity for public comment. That remedy would not disable EPA from proceeding with its ongoing rulemaking under the authority delegated to it in Section 7521(a), and EPA intends to conclude the rulemaking it has already initiated. A judgment in this case would also not determine the merits of EPA's final action in that rulemaking (which will be premised on a different administrative record).[11]

C. The Controversy is Not Ripe for Review.

Alternatively, for related reasons, this case is not ripe as a prudential matter. In appropriate cases, the Court may defer judicial review pending completion of administrative proceedings. See, e.g., American Petroleum Inst. v. EPA, 683 F.3d 382 (D.C. Cir. 2012) (holding challenge to EPA rule under the Resource Conservation and Recovery Act concerning hazardous materials was prudentially unripe in light of a proposed rulemaking to revise that rule). If the Court had jurisdiction (which it does not), then this would be just such an appropriate case.

[11] Petitioners must demonstrate standing for each claim that they seek to press. Washington Alliance of Tech. Workers v. U.S. Dep't of Homeland Sec., 892 F.3d 332, 339 (D.C. Cir. 2018). Thus, if Petitioners cannot identify any procedural injury, they could not then rely on a "procedural injury" theory of standing to pursue their substantive challenges.

In assessing ripeness generally, the Court focuses on two aspects: (1) the fitness of the issues for judicial decision, and (2) the extent to which withholding a decision will cause a hardship to the parties. Here, both aspects support dismissal.

The issues presented by Petitioners are unfit for decision. First, as discussed above, the Determination is not a final action. The preliminary conclusions reached by EPA within the Determination are subject to further consideration and may be revised through ongoing notice-and-comment rulemaking.

Second, the Determination will be irrelevant once that rulemaking concludes. EPA expects to take final action on its proposed rule later this year. Significantly, EPA's authority to revise Section 7521 emission standards does not depend on the validity of the Determination. EPA may amend Section 7521 standards at any time through its general rulemaking authority, whether or not a "not appropriate" determination under the Evaluation Rule is in place. See 42 U.S.C. § 7521(a). Accordingly, once a final rule is issued, then any live controversy will properly focus on whether that final rule meets the applicable deferential standard of review under 42 U.S.C. § 7607(d)(9) (i.e., review will focus on whether the final rule is arbitrary and capricious or otherwise contrary to law). The final rule will be reviewed based on its own terms and administrative record, including any comments from Petitioners. Therefore, even if Petitioners had standing to challenge the Determination to begin with (which we dispute, see Argument I.B., supra), this case would still be moot once EPA finalizes its rule.

In American Petroleum Institute, this Court addressed a somewhat similar situation. The Court held that EPA's issuance of a notice of proposed rulemaking rendered a pending challenge to an earlier rule unripe. It explained that in "the context of agency decision making, letting the administrative process run its course before binding parties to a judicial decision prevents courts from entangling themselves in abstract disagreements over administrative policies," and "protect[s] the agencies from judicial interference in an ongoing decision-making process." 683 F.3d at 386 (internal quotation marks and citation omitted). The Court also explained that "declining jurisdiction over a dispute while there is still time for the challenging party to convince the agency to alter a tentative position provides the agency an opportunity to correct its own mistakes and to apply its expertise, potentially eliminating the need for (and costs of) judicial review." Id. at 387 (internal quotation marks and citation omitted). "Put simply, the doctrine of prudential ripeness ensures that Article III courts make decisions only when they have to, and then, only once." Id.

These same concerns fully apply here. Petitioners were free to bring their concerns regarding potential revision of the standards to EPA's attention during the pending rulemaking. Any final EPA action will need to take into consideration Petitioners' comments. See 42 U.S.C. § 7607(d)(6)(B) (requiring promulgated rule to be accompanied by "response to each of the significant comments, criticisms, and new data submitted in written or oral presentations during the comment period"). This Court should decline to disturb that ongoing rulemaking process.

Petitioners' claims also are not appropriately characterized as "purely legal" in nature. State Br. at 32. See Nat'l Ass'n of Home Builders v. U.S. Army Corps of Eng'rs, 417 F.3d 1272, 1281 (D.C. Cir. 2005) (the fitness of an issue for judicial decision depends on whether it is purely legal, whether consideration of the issue would benefit from a more concrete setting and whether the agency's action is sufficiently final). Whether vehicle emission standards should be revised or not, and if so how, involves consideration of highly technical and fact-intensive analyses. Petitioners implicitly concede this point, as their merits arguments are premised largely on the position that the Administrator should have delved more deeply into certain technical issues as part of his rationale for initiating a rulemaking.

Petitioners contend that this Court must review the issues presented based on a "closed administrative record." State Br. at 33. This argument, however, ignores entirely the prudential interests protected by the ripeness doctrine: "It would hardly be sound stewardship of judicial resources to decide" this case now, when the claims will be mooted by new final EPA action, based upon an updated administrative record, within a matter of months. American Petroleum Inst., 683 F.3d at 388. Petitioners seek to deprive EPA of the "full opportunity to apply its expertise and to correct errors or modify positions in the course of a proceeding." Pub. Citizen Health Research Group. v. Comm'r, FDA, 740 F.2d 21, 31 (D.C. Cir. 1984).

Nor can Petitioners demonstrate hardship arising from the postponement of judicial review. Unless and until EPA actually revises the light-duty vehicle standards

after completing the rulemaking process, the existing standards established in 2012 remain in place, and the legal rights and obligations of stakeholders have not changed. If EPA were to revise the standards in a final action, then Petitioners will have a full opportunity to contest that action. At that point, Petitioners will be able to raise the same sorts of concerns that they seek to raise now regarding whether there is reason for amending the present emission standards. Their concerns, however, could be evaluated based upon a record that would include EPA's *final* judgments, including EPA's responses to any significant comments.

In short, this Court lacks jurisdiction because the Determination is not final action and because Petitioners lack Article III standing. Alternatively, the case should be dismissed as not prudentially ripe for review.

II. EPA Fulfilled the Procedural Requirements Set Forth in EPA's Regulation at 40 C.F.R. § 86.1818-12(h).

If the merits are reached (and they should not be), the Determination should be upheld. Contrary to Petitioners' argument, the Determination comports with the procedural requirements set forth in EPA's Evaluation Rule at 40 C.F.R. § 86.1818-12(h). EPA provided opportunities for public comment beyond those set forth in the regulation. In explaining the bases for the Determination, moreover, EPA addressed each relevant factor identified in the Evaluation Rule.

A. EPA Provided the Required Opportunities for Public Comment.

EPA fulfilled the public participation requirements of the Evaluation Rule. EPA provided three opportunities for public comment leading up to the Determination. First, in July 2016, EPA sought comments on the draft Technical Assessment Report. 81 Fed. Reg. 49,217 (July 27, 2016). Second, in December 2016, EPA requested comments on a proposed determination. 81 Fed. Reg. 87,927 (Dec. 6, 2016). Third, in August 2017, EPA solicited comments on the reconsideration of the initial January 2017 determination. 82 Fed. Reg. 39,551 (Aug. 21, 2017). These three rounds of public comment fully satisfied the public participation requirements of the Evaluation Rule, which directs EPA to provide an opportunity for public comment on two topics: (1) the draft Technical Assessment Report and (2) the appropriateness of the model year 2022-2025 standards. 40 C.F.R. § 86.1818-12(h)(2)(ii) and (iii). EPA provided opportunities to comment on both. Nothing in the Rule required EPA to provide for an additional round of public comment prior to concluding reconsideration. In addition, the public has had an additional opportunity for comment on EPA's subsequent proposed rule. 83 Fed. Reg. at 42,986.

Petitioners' efforts to identify some public participation defect are unavailing. Petitioners contend first that the Evaluation Rule obliged EPA to prepare a new or revised Technical Assessment Report prior to concluding reconsideration, and then allow for additional public comment on that revised report. State Br. at 35. Not so. The Evaluation Rule in pertinent part provides that EPA is to issue a "draft Technical

Assessment Report" by no later than November 15, 2017, and then make a Determination based upon a record that includes, among other materials, that draft Report and the public comments thereon. 40 C.F.R. § 86.1818-12(h). EPA did so. Nothing in the Evaluation Rule requires the preparation of multiple draft Reports or even a "final" Report.

Petitioners fault EPA for not seeking comment on a specific revised proposed determination during the reconsideration period. Public Interest Br. at 10. Nothing in the Evaluation Rule, however, required EPA to issue a proposed determination at any point, much less during reconsideration. The Rule in pertinent part provides that EPA will consider "public comment on whether the standards established for the 2022 through 2025 model years are appropriate." 40 C.F.R. § 86.1818-12(h)(2)(iii). EPA did so.

Petitioners' contention that a proposal was required appears to presume mistakenly that the Determination was subject to the public participation requirements for *rulemakings*, such as those in the Administrative Procedure Act. See 5 U.S.C. § 553 (requiring a notice of proposed rulemaking to include the terms or substance of the proposed rule); see also 42 U.S.C. § 7607(d)(3) (specifying requirements for certain Clean Air Act rulemakings). But the Determination was not a rulemaking—it was an informal adjudication. See January 2017 Determination at 11 n.20 ("the determination is not a rulemaking"), EPA-HQ-OAR-2015-0827-6270, JA ___; see also SEC v. Chenery Corp., 332 U.S. 194, 203 (1947) (the choice between

proceeding by rule or adjudication is one that "lies primarily in the informed discretion of the administrative agency"); POM Wonderful, LLC v. FTC, 777 F.3d 478, 497 (D.C. Cir. 2015) (reaffirming that choice lies within agency's discretion).[12]

Because the Determination was an informal adjudication, the only applicable public participation requirements are those to which EPA specifically committed to adhere to within the Evaluation Rule itself. See Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, 435 U.S. 519, 524 (1978) ("Agencies are free to grant additional procedural rights in the exercise of their discretion, but reviewing courts are generally not free to impose them if the agencies have not chosen to grant them"); Pension Benefit Guar. Corp. v. LTV Corp., 496 U.S. 633, 653, 655 (1990) ("[T]he APA establishes the maximum procedural requirements a reviewing court may impose on agencies."). Here, the Evaluation Rule provided for some additional procedures beyond the minimal requirements for informal adjudications that are set forth at 5 U.S.C. § 555, but those additional procedures do not include any commitment to release a proposed decision.

Likewise, because the Determination was an informal adjudication, EPA was not required to respond to comments solicited and received. Nothing in the

[12] Because Petitioners have not argued that EPA erred in proceeding via an adjudication, any argument contesting EPA's decision to exercise adjudicatory authority cannot be advanced for the first time on reply. Board of Regents v. EPA, 86 F.3d 1214, 1221 (D.C. Cir. 1996) (arguments not raised until reply brief are waived).

Evaluation Rule provides otherwise. Quoting from the 2012 Rule preamble, Petitioners assert that EPA committed to "respond to comments" in the Determination, but this incomplete quotation is inaccurate. See State Br. at 10 (citing 77 Fed. Reg. at 62,784). The partially quoted sentence states more fully that the "agencies will carefully consider comments and information received and respond to comments *in their respective subsequent final actions*." 77 Fed. Reg. at 62,784 (emphasis added). EPA then clarified that the intended "final action" in the context of a "not appropriate" determination would occur at the conclusion of the rulemaking. Id. at 62,784-85. Thus, EPA did not state within the Evaluation Rule or otherwise that in the event of a "not appropriate" determination, it was committing to provide responses to comments prior to the rulemaking stage.[13]

Petitioners additionally are mistaken in contending that EPA erred procedurally by considering "evidence never made available for comment." State Br. at 36. The Evaluation Rule does not compel EPA to make all materials that it considered available for public comment prior to an ultimate determination. Instead, the Rule more narrowly requires that EPA solicit public comment on two topics: (1) whether

[13] EPA provided responses to comments as part of the January 2017 Determination because that "appropriate" determination—prior to its reconsideration—was a final agency action subject to judicial review. EPA's converse April 2018 Determination, however, was not a final agency action. See supra at 29-30 (discussing why the two paths diverge as to finality).

the standards should be revised, and (2) the draft Technical Assessment Report. EPA did so.

The pertinent language in paragraph 12(h)(2)(iv) of the Evaluation Rule confirms that Petitioners are misreading the Rule. That paragraph provides that EPA may permissibly consider "[s]uch other materials" that it deems appropriate, without any limiting language specifying that there be public comment on those other materials. 40 C.F.R. § 86.1818-12(h)(2)(iv). This omission of any reference to public comment on "other materials" contrasts with the other provisions in paragraph (h)(2), which require the record to include a draft Technical Assessment Report, public comment thereon, and public comment on whether the existing standards are appropriate. If EPA had intended for the Evaluation Rule to require public comment on all materials within the record for decision before it, then EPA would have drafted (h)(2)(iv) in precisely the same form as (h)(2)(i)-(ii), and specified that there would also be an opportunity for public comment on "[s]uch other materials the [Agency] deems appropriate."

Significantly, EPA did make available the entire docket when it requested public comment in August 2017 on its reconsideration of the initial January 2017 determination. See 82 Fed. Reg. at 39,552 ("[m]aterials related to the Mid-Term Evaluation are available in the public docket noted above"). The docket made publicly available included the complete administrative record for the January 2017 determination as well as additional materials added after that date. The gist of

Petitioners' complaint is not that they lacked access to the docket generally; rather, it is that they were unable to comment on the data and information submitted by *other* stakeholders if they were submitted towards the end of the reconsideration comment period. The Evaluation Rule, however, does not require that stakeholders be provided with that kind of opportunity to comment on everyone else's comments.

In short, EPA fully satisfied the public participation requirements of the Evaluation Rule.

B. EPA Detailed the Bases for Its Determination, Including Assessing All of the Factors Listed in the Evaluation Rule.

Petitioners also fail to identify any other kind of procedural defect in reaching the Determination. The Evaluation Rule provides that in making the determination, EPA shall "consider the information available" pertaining to various specified relevant factors, and then "set forth in detail the bases for the determination . . . including [EPA's] assessment of each of the" listed factors. 40 C.F.R. § 86.1818-12(h). EPA did set forth in detail the bases for its determination, including its assessment of each of the specified factors. 83 Fed. Reg. at 16,079-87.

EPA also identified the administrative record upon which the Determination was based. See ECF No. 1736370 (containing EPA's certified index to the administrative record). The certified administrative record encompasses all of the materials that EPA is required to consider under the Evaluation Rule, including the draft Technical Assessment Report, the public comments on that Report, public

comments on whether the standards are appropriate under the Act, and such other materials deemed appropriate by EPA.

To be sure, Petitioners contest the *substance* of EPA's Determination. Those substantive arguments raised by Petitioner also lack merit, and we address them in the next section. But Petitioners cannot bootstrap a procedural claim onto their substantive arguments. EPA's Determination comports with all of the procedural requirements set forth in the Evaluation Rule. The Court is not free to impose additional procedural requirements above and beyond those EPA chose to afford. Vermont Yankee, 435 U.S. at 524.

III. EPA Reasonably Decided to Conduct Further Analysis and Initiate a Rulemaking Process.

Petitioners' substantive challenges to the Determination should be rejected as well. In the Determination, EPA identified numerous sound reasons, based on the information in the record before it, for electing to continue the Agency's decision-making process by initiating a notice-and-comment rulemaking.

A. If EPA's Decision to Initiate Rulemaking is Reviewable, Then That Review Must Be Extraordinarily Deferential.

As an initial matter, if EPA's Determination to initiate rulemaking were subject to review notwithstanding its lack of finality (which it is not), then an especially deferential review standard would apply. The preliminary nature of the Agency's decision and the broad degree of discretion possessed by EPA under Section 7521 warrant a particularly high degree of deference.

As discussed above (supra at 5-6), Section 7521 provides EPA with authority to establish new vehicle emission standards and to revise those standards "from time to time" as appropriate. Under Section 7521, EPA must ensure that such standards provide sufficient lead-time to permit the development of requisite technology, considering compliance costs. 42 U.S.C. § 7521(a)(2). Beyond that requirement, however, Section 7521 does not specify what factors should be considered in selecting an appropriate level of standard stringency. Nor does Section 7521 specify how EPA should properly weigh relevant factors. Accordingly, Section 7521 provides EPA with an enormous degree of discretion in identifying the factors relevant to standard selection and in deciding how to balance judiciously those relevant factors. Cf. Hermes Consol., LLC v. EPA, 787 F.3d 568, 575 (D.C. Cir. 2015) ("[S]tatutory silence about the particular factors that an agency must consider conveys nothing more than a refusal to tie the agency's hands.") (internal quotation marks and citation omitted).

Furthermore, this Court has made clear that numerical standards need only fall within a "zone of reasonableness" in the absence of more specific statutory direction. Hercules Inc. v. EPA, 598 F.2d 91, 106-07 (D.C. Cir. 1978). The Court does not demand that such standards be "precisely right." Id. at 107. "A principal rationale for the 'zone of reasonableness' concept" is that "allows an agency discretion to adapt a general formula or methodology to the aspects of a particular case." Id. In other words, applying this concept, there normally should exist a *range* of numerical standard levels that could reflect a permissible exercise of agency judgment.

This should certainly be the case with emission standards established under Section 7521. Because Section 7521 provides discretion to EPA to identify and weigh relevant factors as it sees fit, Congress inherently left room for judgment. Thus, even if different EPA Administrators had before them precisely the same body of evidence, they might reasonably reach different conclusions concerning the appropriate degree of standard stringency, depending on how they each opt to weigh relevant factors and to otherwise exercise judgment. In short, this is not a situation where there will likely be a "precisely right" level of regulation. Id. at 107.

In this kind of situation where "administrative judgment plays a key role" in the standard setting process, and where there is almost certainly no single precisely correct regulatory result, "this court must proceed with particular caution, avoiding all temptation to direct the agency in a choice between rational alternatives." Environmental Defense Fund Inc. v. Costle, 578 F.2d 337, 339 (D.C. Cir. 1978). See also Nat'l Ass'n of Home Builders v. EPA, 682 F.3d 1032, 1038, 1043 (D.C. Cir. 2012) (a revised rulemaking based "on a reevaluation of which policy would be better in light of the facts" is "well within an agency's discretion," and a "'change in administration brought about by the people casting their votes is a perfectly reasonable basis for an executive agency's reappraisal of the costs and benefits of its programs and regulations'"); Lead Indus. Ass'n v. EPA, 647 F.2d at 1160 ("That the evidence in the record may also support other conclusions, even those that are

inconsistent with the Administrator's, does not prevent [the court] from concluding that his decisions were rational and supported by the record.").

B. EPA's Decision to Engage in Further Rulemaking was Reasonable.

Against this backdrop of extraordinarily deferential review, EPA provided an adequate explanation for its decision to initiate rulemaking that *may* result in some revision of the emission standards. EPA detailed its assessment of each of the factors specified in the Evaluation Rule, and identified sound reasons for continuing the Agency's deliberations through a notice-and-comment rulemaking process. Among other things, EPA pointed to the following significant considerations weighing in favor of further deliberation:

- Following the January 2017 determination, regulated automobile manufacturers submitted new data and information questioning the feasibility and appropriateness of the model-year 2022-2025 standards. 83 Fed. Reg. 16,079-87; see also, e.g., EPA-HQ-OAR-2015-0827-9194 (Alliance of Automobile Manufacturers' comments). JA___-___; EPA-HQ-OAR-2015-0827-9728, JA ___-___ (Global Automakers' comments). That information, along with EPA's latest data, suggested that compliance with the existing standards may become increasingly difficult for manufacturers, due in part to flagging consumer demand for vehicles equipped with fuel-efficient technologies. 83 Fed. Reg. at 16,081-82. EPA concluded that this information raised "greater uncertainty as to whether technology will be available to meet the standards on

the timetable established in the regulations," and it warranted further assessment. Id. at 16,079.

- Regulated automobile manufacturers in reconsideration comments identified areas where EPA had allegedly underestimated costs. Id. at 16,084; see also, e.g., EPA-HQ-OAR-2015-0827-9194 at 45-47, JA___-___ (Alliance of Automobile Manufacturers' Comments). In view of the concerns raised about EPA's cost calculations, EPA concluded that the impact of the standards on vehicle affordability should be assessed further, with this factor perhaps being given greater weight in selecting a standard level than it received in the January 2017 Determination. 83 Fed. Reg. at 16,084.
- Relatedly, EPA concluded that new analytical tools should be explored to further assess the standards' impacts on "fleet turnover"—i.e., to further assess the degree to which consumers will spend their discretionary income purchasing more expensive vehicles with fuel-efficient technologies, versus continuing to drive higher emitting cars. Id. at 16,083. EPA noted that fleet turnover rates impact automobile safety, as newer cars tend to be safer and more efficient than older cars due to safety technology innovation and regulatory requirements. Id. at 16,086.
- EPA received a range of views and assessments in reconsideration comments regarding how the "rebound effect" should be measured—i.e., how to properly

assess the degree to which consumers will drive their cars more if those cars are fuel-efficient, thereby partially offsetting the reduction in emissions that would otherwise be obtained. Id. at 16,085. EPA concluded that it was important to more fully consider and accurately measure such effects. Id.

- EPA received new evidence on reconsideration indicating the existing standards would result in diminished vehicle sales. Id. EPA concluded that it was important to more fully consider potential adverse impacts on the automobile industry. Id. at 16,085-86.
- EPA noted that only further rulemaking would ensure harmonization of EPA standards with NHTSA's fuel economy standards, which have yet to be promulgated for model year 2022-2025 vehicles. Id. at 16,086.

These key considerations, along with others set forth within the Determination, are collectively more than ample to support EPA's decision to continue its decision-making process by initiating a rulemaking. Thus, should the Determination be reviewed, it should be upheld as a reasonable exercise of discretion.

C. Petitioners' Substantive Attacks on the Determination Fail to Demonstrate That EPA's Exercise of Discretion Was Arbitrary and Capricious.

Petitioners offer a host of substantive attacks on specific elements of EPA's analysis, but none undermines the overall reasonableness of its decision to continue the Agency's deliberative process.

1. EPA Properly Took Into Account the Potential Value of Considering Additional Information and Analyses.

To begin with, Petitioners' arguments rest in very substantial part on a defective interpretation of EPA's Evaluation Rule. Under their interpretation, the Rule deprives EPA of any ability, in making the Determination, to consider the utility of gathering additional information and performing additional analyses prior to making a final regulatory decision. See State Br. at 44; Public Interest Br. at 13. As elaborated below, however, the Rule does no such thing.

Petitioners focus on the fact that the Evaluation Rule provides for a determination to be made "in light of the record then before the [Agency]." 40 C.F.R. § 86.1818-12(h). But that direction to consider the record before it does not preclude EPA from reasonably identifying and considering *gaps* or *uncertainties* in that "record then before [it]," and the Agency's ability to address such gaps or uncertainties during rulemaking.

In support of their flawed interpretation, Petitioners miscast the purpose of the Evaluation Rule. Petitioners claim that its purpose is to "require[] EPA to develop an updated technical record and analyze that record before making a decision to upend the standards." State Br. at 24. But this statement is only partially correct.

The Rule certainly provides for the standards to be re-evaluated by April 2018 based on an updated technical record. It does so, however, because EPA understood that projections of technology development and associated costs upon which the

standards were based might not play out as forecast. Thus, a primary purpose of the required re-evaluation is to ensure that any decision to *retain* the standards will be supported by an updated technical record. But the Evaluation Rule does not, in any way, limit EPA's existing statutory authority to propose amendments to Section 7521 standards whenever, at any time, EPA deems such rulemaking appropriate, whether or not a Determination that the existing standards are "not appropriate" has been issued. That is, EPA is not required to go through the Evaluation Rule process at all prior to revising the standards. The Evaluation Rule simply guarantees that EPA will re-evaluate at least once the appropriateness of the standards under Section 7521 and initiate a rulemaking to revise the standards if EPA concludes that it is appropriate to proceed to propose potential revisions to the standards through rulemaking.

Consistent with its statutory authority to amend standards whenever appropriate, EPA reasonably construes the Rule as enabling the Agency to consider gaps and uncertainties in the record before it, and to consider the potential value of addressing them through rulemaking. EPA's interpretation of its own Rule is sensible. It is consistent with the Rule's plain text, with the scope of EPA's statutory authority under the Act, and with the intent of EPA in promulgating the Rule.[14]

[14] EPA's invocation of uncertainty in the existing record and desire to reduce it is not an "artifice." State Br. at 42, 44-45. It is hardly irrational for the Agency to conclude that some further analyses are warranted prior to potentially finalizing a major set of emission standards that will have significant economic and environmental impacts.

In short, the Evaluation Rule does not straightjacket the Agency in the manner that Petitioners suggest. EPA properly took into account the potential value of gathering further information and conducting additional analyses prior to making a final decision.

2. EPA's Determination Was Sufficiently Detailed in View of Its Preliminary Nature.

Petitioners also fault the Determination for not including what they view as sufficient detail supporting EPA's preliminary conclusions. State Br. at 38; Public Interest Br. at 11. The level of detail provided, however, was commensurate with the preliminary nature of the action at issue and sufficient for purpose of supporting the decision to continue the deliberative process. To reiterate, EPA was not making any final decision regarding the proper level of emission standards; it was deciding only to continue a decision-making process through rulemaking.

The level of detail provided by EPA was sufficient for that purpose. The Agency acknowledges that a final action to amend emission standards likely would take a deeper dive into technical matters that at this point are still being evaluated, particularly if greater examination of such issues would provide relevant information regarding a revised standard level. Indeed, the notice of proposed rulemaking that followed the Determination spans a full 515 pages in the Federal Register and contains significantly more detailed discussion of technical issues. 83 Fed. Reg. at 42,986-43,500. But for the limited purpose of explaining its preliminary

Determination, EPA simply identified a number of sensible reasons for continuing the deliberative process through rulemaking.

Petitioners' reliance on FCC v. Fox Television Stations, Inc., 556 U.S. 502, 515 (2009) is unavailing. First, as required by Fox, EPA *did* "display awareness that it [was] changing position" and did demonstrate that there were "good reasons" for the change in position. Id. at 515; see also, e.g., 83 Fed. Reg. at 16,087 (summarizing reasons for change in position). Having displayed awareness that it was changing positions, EPA had no obligation to show "that the reasons for the new policy" (i.e., proceeding with rulemaking) "were better than the reasons for the old one." 556 U.S. at 515. It was sufficient for EPA to show that the "new policy is permissible under the statute, that there are good reasons for it, and that the agency *believes* it to be better, which the conscious change of course adequately indicates." Id. (emphasis in original).

Moreover, EPA's decision to undertake further rulemaking did not rest upon "factual findings that contradict those which underlay its prior policy," inasmuch as the Agency made clear that all factual matters remain under deliberation. Id. Indeed, EPA premised the decision to continue the deliberative process in large part on its desire to conduct and consider additional analyses. Accordingly, because all factual matters remain under active deliberation, EPA was not obligated to engage at this

preliminary stage in the deliberative process to engage in the sort of point-by-point refutation of prior technical findings that Petitioners demand.[15]

Relatedly, as discussed above, EPA had no obligation to respond to the comments received by the Agency during reconsideration. See supra at 45-46; Public Interest Br. at 17-19. Again, this was a preliminary informal adjudication, not a rulemaking; in promulgating the Evaluation Rule, EPA did not commit to respond to comments prior to making the appropriateness determination. EPA did provide a reasoned explanation for deciding to continue its deliberative process, and nothing more was required to satisfy the applicable deferential standard of review.

3. EPA's Assessment of Each of the Individual Evaluation Rule Factors Was Sufficiently Detailed.

Contrary to Petitioners' arguments, EPA also sufficiently detailed and explained its assessment of each of the individual factors identified in the Evaluation Rule. We briefly summarize the Agency's core reasoning with respect to each factor below:

Availability and Effectiveness of Technology (Factor 1) & Feasibility and Practicality (Factor 3): EPA reasonably concluded that there was "greater uncertainty as to whether technology will be available to meet the standards on the

[15] Petitioners' citation, State Br. at 52-53, of Encino Motorcars, LLC v. Navarro, 136 S. Ct. 2117 (2016), is likewise off-base. In this case, there was no "longstanding" policy that "engendered serious reliance interests." Id. at 2125. The initial January 2017 Determination was released within weeks of an impending change of Administration, and EPA's new Administrator announced his intent to reconsider that determination less than three months later.

timetable established," based on information developed since the initial January 2017 determination, including extensive comments and analyses submitted by vehicle manufacturers. 83 Fed. Reg. at 16,079-83.

Petitioners attack EPA's judgment on grounds that it assertedly should not have given such weight to the information provided by vehicle manufacturers in finding some "uncertainty." State Br. at 42. While EPA did accord great weight to vehicle manufacturers' comments in concluding there remained some "uncertainty," that reflected a reasonable judgment at this preliminary stage in the deliberative process. Vehicle manufacturers have considerable expertise with respect to the technologies that they may be able to employ in vehicles and the marketability of those technologies. These manufacturers are also important stakeholders in ensuring the success of the program. They will bear compliance responsibility with emission standards, and the degree of standard stringency will significantly affect their industry. It was therefore reasonable for EPA to take manufacturers' substantial concerns seriously and to elect to examine them more closely, as well as those raised by other stakeholders, further through a full rulemaking process.

EPA also did not "ignore[]" the draft Technical Assessment Report. State Br. at 17. The Report was considered as part of the record before the Agency, and the Determination reasonably explains why EPA elected to engage in further analysis through rulemaking. 83 Fed. Reg. at 16,087. EPA additionally did not "block[]" "input or analysis from CARB." State Br. at 37-38. CARB had at least the same

ability as other stakeholders to submit comments during the reconsideration process. As CARB acknowledges, moreover, it submitted comments and directed attention to its own mid-term review of the standards. Id. at 16.

The cost on the producers or purchasers of new motor vehicles (factor 2). EPA reasonably determined that, in its judgment, the "January 2017 Determination did not give appropriate consideration to" the standards' impacts on the "affordability of new cars across the income spectrum, and especially among low-income consumers." 83 Fed. Reg. at 16,084. EPA pointed to several comments recommending that it revisit such affordability concerns. Id. Such comments noted that expected price increases arising from the standards could disproportionately impact low-income households and prevent some consumers from buying new vehicles. Id. EPA agreed that it should "more thoroughly assess" this issue and "reconsider the importance of this factor" in selecting an appropriate standard level. Id.

EPA did not err in deciding to more thoroughly assess vehicle affordability issues, which have cross-cutting implications across a number of the factors identified in the Evaluation Rule. Petitioners attack the Agency's judgment on grounds that the Rule does not allow for any further study of the issue. State Br. at 45-46. But that interpretation of the Rule is misplaced. See supra at 55-57.

The impact of the standards on reduction of emissions, oil conservation, energy security, and fuel savings by consumers (factor 4). EPA observed that

the impact of the standard on emissions, oil conservation, energy security and fuel savings is significantly affected by many key assumptions, including the rate of consumer adoption of new lower emitting cars, the cost of fuel, and the "rebound effect" (i.e, the increase in driving resulting from lower marginal cost of driving due to greater fuel efficiency). 83 Fed. Reg. at 16,084. EPA additionally noted that it had received a range of views and assessments pertaining to these considerations during the comment period. EPA reasonably concluded that it should more fully consider these assumptions as part of the forthcoming rulemaking. Id. at 16,084-85. [16] Contrary to Petitioners' position, State Br. at 46-47, EPA did not err in exercising discretion to assess these important considerations more thoroughly.

The impact of the standards on the automobile industry (factor 5). EPA noted that the current standards could potentially result in decreased vehicle sales, adversely affecting manufacturers and dealers. 83 Fed. Reg. at 16,085. EPA called attention, for example, to a new analysis submitted by a group of economic consultants during reconsideration. That analysis found that the model year 2022-2025 standards would reduce vehicle sales over those four years by 1.3 million vehicles, due to higher vehicle prices. 83 Fed. Reg. at 16,085; EPA-HQ-OAR-2015-

[16] For example, economic consultants on behalf of automobile manufacturers contested EPA's use of a 10 percent rebound effect in the initial January 2017 determination, and recommended, based on a review of the literature, that a 20 percent rebound effect be applied instead. EPA-HQ-OAR-2015-0827-9825 at 2, 8-12 (JA ___, ___-___).

0827-9825 at 2, 16-20, JA ___, JA ___-___. EPA also pointed to significant unresolved concerns regarding the impacts of the standards on auto industry employment. 83 Fed. Reg. at 16,085. The Agency reasonably concluded that a more rigorous analysis of job gains and losses should be considered. Id. at 16,086. Again, EPA reasonably exercised its discretion to assess these important considerations more thoroughly in a subsequent rulemaking procedure.

The impact on auto safety (factor 6): EPA explained that it considers safety to be an important factor in the reconsideration. 83 Fed. Reg. at 16,086. It also noted that newer vehicles tend to be safer and more efficient than older ones due to technology innovation and regulatory requirements. Id. Thus, the rate of fleet turnover has significant implications for safety impacts. For that reason, EPA concluded that the scope of the Agency's safety analysis should be further assessed in the upcoming rulemaking in conjunction with the Agency's planned further analysis of fleet turnover issues. Id. This, too, was a reasonable judgment.

Impact on NHTSA's fuel economy standards and other relevant factors (factors 7 and 8): EPA pledged to work in collaboration with NHTSA on a joint rulemaking, such that any revision of greenhouse-gas emission standards for model year 2022-2025 vehicles could accompany NHTSA's promulgation of fuel economy standards for those same model years. 83 Fed. Reg. at 16,086. As EPA explained, this "coordination will ensure that [greenhouse gas] emission standards and [fuel economy] standards are as aligned as much as possible given EPA and NHTSA's

different statutory authorities." Id. This was a sensible explanation, as there would have been a clear risk of EPA and NHTSA standards being inconsistent if EPA had *declined* to revisit its standards, leaving NHTSA on its own to establish fuel economy standards for model years 2022-2025.

EPA acknowledged that promoting regulatory certainty is a relevant consideration that had been considered in the initial January 2017 Determination. 83 Fed. Reg. at 16,087. But EPA reasonably explained that continued uncertainty for the regulated industry could not be avoided merely by making an "appropriate" determination, as NHTSA had not yet begun its rulemaking process to establish 2022-2025 fuel economy standards. As EPA noted, coordination with NHTSA would ensure that the two agencies' standards are harmonized to the greatest extent possible.

In short, EPA adequately assessed each of the individual factors identified in the Evaluation Rule and, based on the totality of the circumstances, made a reasonable overall judgment to initiate a rulemaking that could result in some revision of model year 2022-2025 vehicle greenhouse-gas standards.

CONCLUSION

The petitions do not challenge a final agency action and should be dismissed for lack of jurisdiction. If the Court does reach the merits, however, the challenged action should be upheld.

Respectfully submitted,

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April 8, 2019

CERTIFICATE OF COMPLIANCE WITH
FEDERAL RULE OF APPELLATE PROCEDURE 32(A)

I hereby certify that this brief complies with the requirements of Fed. R. App. P. 32(a)(5) and (6) because it has been prepared in 14-point Garamond, a proportionally spaced font.

I further certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) and this Court's order of January 11, 2019 (ECF 1768141) because it contains 15,551 words, excluding the parts of the brief exempted under Rule 32(a)(7)(B)(iii), according to the count of Microsoft Word.

s/ *Eric G. Hostetler*
ERIC G. HOSTETLER

CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2019, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system.

The participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

s/ *Eric G. Hostetler*
ERIC G. HOSTETLER

STATUTORY AND REGULATORY ADDENDUM

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5 U.S.C.A. § 553

§ 553. Rule making

Currentness

(a) This section applies, according to the provisions thereof, except to the extent that there is involved--

(1) a military or foreign affairs function of the United States; or

(2) a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.

(b) General notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include--

(1) a statement of the time, place, and nature of public rule making proceedings;

(2) reference to the legal authority under which the rule is proposed; and

(3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

Except when notice or hearing is required by statute, this subsection does not apply--

(A) to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or

(B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(c) After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation. After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general

ADD1

statement of their basis and purpose. When rules are required by statute to be made on the record after opportunity for an agency hearing, sections 556 and 557 of this title apply instead of this subsection.

(d) The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except--

(1) a substantive rule which grants or recognizes an exemption or relieves a restriction;

(2) interpretative rules and statements of policy; or

(3) as otherwise provided by the agency for good cause found and published with the rule.

(e) Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.

CREDIT(S)

(Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 383.)

EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 12044

Ex. Ord. No. 12044, Mar. 23, 1978, 43 F.R. 12661, as amended by Ex. Ord. No. 12221, June 27, 1980, 45 F.R. 44249, which related to the improvement of Federal regulations, was revoked by Ex. Ord. No. 12291, Feb. 17, 1981, 46 F.R. 13193, formerly set out as a note under section 601 of this title.

Notes of Decisions (1385)

5 U.S.C.A. § 553, 5 USCA § 553
Current through P.L. 116-5. Also includes P.L. 116-8. Title 26 current through 116-9.

United States Code Annotated
Title 5. Government Organization and Employees (Refs & Annos)
Part I. The Agencies Generally
Chapter 5. Administrative Procedure (Refs & Annos)
Subchapter II. Administrative Procedure (Refs & Annos)

5 U.S.C.A. § 555

§ 555. Ancillary matters

Currentness

(a) This section applies, according to the provisions thereof, except as otherwise provided by this subchapter.

(b) A person compelled to appear in person before an agency or representative thereof is entitled to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative. A party is entitled to appear in person or by or with counsel or other duly qualified representative in an agency proceeding. So far as the orderly conduct of public business permits, an interested person may appear before an agency or its responsible employees for the presentation, adjustment, or determination of an issue, request, or controversy in a proceeding, whether interlocutory, summary, or otherwise, or in connection with an agency function. With due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it. This subsection does not grant or deny a person who is not a lawyer the right to appear for or represent others before an agency or in an agency proceeding.

(c) Process, requirement of a report, inspection, or other investigative act or demand may not be issued, made, or enforced except as authorized by law. A person compelled to submit data or evidence is entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that in a nonpublic investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony.

(d) Agency subpenas authorized by law shall be issued to a party on request and, when required by rules of procedure, on a statement or showing of general relevance and reasonable scope of the evidence sought. On contest, the court shall sustain the subpena or similar process or demand to the extent that it is found to be in accordance with law. In a proceeding for enforcement, the court shall issue an order requiring the appearance of the witness or the production of the evidence or data within a reasonable time under penalty of punishment for contempt in case of contumacious failure to comply.

(e) Prompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceeding. Except in affirming a prior denial or when the denial is self-explanatory, the notice shall be accompanied by a brief statement of the grounds for denial.

CREDIT(S)

(Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 385.)

ADD3

5 U.S.C.A. § 706

§ 706. Scope of review

Currentness

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall--

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be--

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

CREDIT(S)

(Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 393.)

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)
Subchapter I. Programs and Activities
Part A. Air Quality and Emissions Limitations (Refs & Annos)

42 U.S.C.A. § 7401

§ 7401. Congressional findings and declaration of purpose

Currentness

(a) Findings

The Congress finds--

(1) that the predominant part of the Nation's population is located in its rapidly expanding metropolitan and other urban areas, which generally cross the boundary lines of local jurisdictions and often extend into two or more States;

(2) that the growth in the amount and complexity of air pollution brought about by urbanization, industrial development, and the increasing use of motor vehicles, has resulted in mounting dangers to the public health and welfare, including injury to agricultural crops and livestock, damage to and the deterioration of property, and hazards to air and ground transportation;

(3) that air pollution prevention (that is, the reduction or elimination, through any measures, of the amount of pollutants produced or created at the source) and air pollution control at its source is the primary responsibility of States and local governments; and

(4) that Federal financial assistance and leadership is essential for the development of cooperative Federal, State, regional, and local programs to prevent and control air pollution.

(b) Declaration

The purposes of this subchapter are--

(1) to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population;

(2) to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution;

(3) to provide technical and financial assistance to State and local governments in connection with the development and execution of their air pollution prevention and control programs; and

(4) to encourage and assist the development and operation of regional air pollution prevention and control programs.

(c) Pollution prevention

A primary goal of this chapter is to encourage or otherwise promote reasonable Federal, State, and local governmental actions, consistent with the provisions of this chapter, for pollution prevention.

CREDIT(S)

(July 14, 1955, c. 360, Title I, § 101, formerly § 1, as added Pub.L. 88-206, § 1, Dec. 17, 1963, 77 Stat. 392, and renumbered § 101 and amended Pub.L. 89-272, Title I, § 101(2), (3), Oct. 20, 1965, 79 Stat. 992; Pub.L. 90-148, § 2, Nov. 21, 1967, 81 Stat. 485; Pub.L. 101-549, Title I, § 108(k), Nov. 15, 1990, 104 Stat. 2468.)

EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 10779

Ex. Ord. No. 10779, Aug. 21, 1958, 23 F.R. 6487, which related to cooperation of Federal agencies with State and local authorities, was superseded by Ex. Ord. No. 11282, May 26, 1966, 31 F.R. 7663, formerly set out under section 7418 of this title.

EXECUTIVE ORDER NO. 11507

Ex. Ord. No. 11507, Feb. 4, 1970, 35 F.R. 2573, which provided for the prevention, control, and abatement of air pollution at Federal facilities was superseded by Ex. Ord. No. 11752, Dec. 17, 1973, 38 F.R. 34793, formerly set out as a note under section 4331 of this title.

EXECUTIVE ORDER NO. 11752

Ex. Ord. No. 11752, Dec. 17, 1973, 38 F.R. 34793, formerly set out as a note under section 4331 of this title, provided for the prevention, control, and abatement of environmental pollution at Federal facilities.

MEMORANDA OF PRESIDENT

PRESIDENTIAL MEMORANDUM

<April 12, 2018, 83 F.R. 16761>

Promoting Domestic Manufacturing and Job Creation_Policies and Procedures Relating to Implementation of Air Quality Standards

Memorandum for the Administrator of the Environmental Protection Agency

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)
Subchapter I. Programs and Activities
Part D. Plan Requirements for Nonattainment Areas
Subpart 1. Nonattainment Areas in General (Refs & Annos)

42 U.S.C.A. § 7507

§ 7507. New motor vehicle emission standards in nonattainment areas

Currentness

Notwithstanding section 7543(a) of this title, any State which has plan provisions approved under this part may adopt and enforce for any model year standards relating to control of emissions from new motor vehicles or new motor vehicle engines and take such other actions as are referred to in section 7543(a) of this title respecting such vehicles if--

(1) such standards are identical to the California standards for which a waiver has been granted for such model year, and

(2) California and such State adopt such standards at least two years before commencement of such model year (as determined by regulations of the Administrator).

Nothing in this section or in subchapter II of this chapter shall be construed as authorizing any such State to prohibit or limit, directly or indirectly, the manufacture or sale of a new motor vehicle or motor vehicle engine that is certified in California as meeting California standards, or to take any action of any kind to create, or have the effect of creating, a motor vehicle or motor vehicle engine different than a motor vehicle or engine certified in California under California standards (a "third vehicle") or otherwise create such a "third vehicle".

CREDIT(S)

(July 14, 1955, c. 360, Title I, § 177, as added Pub.L. 95-95, Title I, § 129(b), Aug. 7, 1977, 91 Stat. 750; amended Pub.L. 101-549, Title II, § 232, Nov. 15, 1990, 104 Stat. 2529.)

Notes of Decisions (13)

42 U.S.C.A. § 7507, 42 USCA § 7507
Current through P.L. 116-5. Also includes P.L. 116-8. Title 26 current through 116-9.

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)
Subchapter II. Emission Standards for Moving Sources
Part A. Motor Vehicle Emission and Fuel Standards (Refs & Annos)

42 U.S.C.A. § 7521

§ 7521. Emission standards for new motor vehicles or new motor vehicle engines

Currentness

(a) Authority of Administrator to prescribe by regulation

Except as otherwise provided in subsection (b) of this section--

(1) The Administrator shall by regulation prescribe (and from time to time revise) in accordance with the provisions of this section, standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare. Such standards shall be applicable to such vehicles and engines for their useful life (as determined under subsection (d) of this section, relating to useful life of vehicles for purposes of certification), whether such vehicles and engines are designed as complete systems or incorporate devices to prevent or control such pollution.

(2) Any regulation prescribed under paragraph (1) of this subsection (and any revision thereof) shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

(3)(A) In general

(i) Unless the standard is changed as provided in subparagraph (B), regulations under paragraph (1) of this subsection applicable to emissions of hydrocarbons, carbon monoxide, oxides of nitrogen, and particulate matter from classes or categories of heavy-duty vehicles or engines manufactured during or after model year 1983 shall contain standards which reflect the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the model year to which such standards apply, giving appropriate consideration to cost, energy, and safety factors associated with the application of such technology.

(ii) In establishing classes or categories of vehicles or engines for purposes of regulations under this paragraph, the Administrator may base such classes or categories on gross vehicle weight, horsepower, type of fuel used, or other appropriate factors.

(B) Revised standards for heavy duty trucks

(i) On the basis of information available to the Administrator concerning the effects of air pollutants emitted from heavy-duty vehicles or engines and from other sources of mobile source related pollutants on the public health and welfare, and taking costs into account, the Administrator may promulgate regulations under paragraph (1) of this subsection revising any standard promulgated under, or before the date of, the enactment of the Clean Air Act Amendments of 1990 (or previously revised under this subparagraph) and applicable to classes or categories of heavy-duty vehicles or engines.

(ii) Effective for the model year 1998 and thereafter, the regulations under paragraph (1) of this subsection applicable to emissions of oxides of nitrogen (NO_x) from gasoline and diesel-fueled heavy duty trucks shall contain standards which provide that such emissions may not exceed 4.0 grams per brake horsepower hour (gbh).

(C) Lead time and stability

Any standard promulgated or revised under this paragraph and applicable to classes or categories of heavy-duty vehicles or engines shall apply for a period of no less than 3 model years beginning no earlier than the model year commencing 4 years after such revised standard is promulgated.

(D) Rebuilding practices

The Administrator shall study the practice of rebuilding heavy-duty engines and the impact rebuilding has on engine emissions. On the basis of that study and other information available to the Administrator, the Administrator may prescribe requirements to control rebuilding practices, including standards applicable to emissions from any rebuilt heavy-duty engines (whether or not the engine is past its statutory useful life), which in the Administrator's judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare taking costs into account. Any regulation shall take effect after a period the Administrator finds necessary to permit the development and application of the requisite control measures, giving appropriate consideration to the cost of compliance within the period and energy and safety factors.

(E) Motorcycles

For purposes of this paragraph, motorcycles and motorcycle engines shall be treated in the same manner as heavy-duty vehicles and engines (except as otherwise permitted under section 7525(f)(1) of this title) unless the Administrator promulgates a rule reclassifying motorcycles as light-duty vehicles within the meaning of this section or unless the Administrator promulgates regulations under subsection (a) of this section applying standards applicable to the emission of air pollutants from motorcycles as a separate class or category. In any case in which such standards are promulgated for such emissions from motorcycles as a separate class or category, the Administrator, in promulgating such standards, shall consider the need to achieve equivalency of emission reductions between motorcycles and other motor vehicles to the maximum extent practicable.

(4)(A) Effective with respect to vehicles and engines manufactured after model year 1978, no emission control device, system, or element of design shall be used in a new motor vehicle or new motor vehicle engine for purposes of complying

with requirements prescribed under this subchapter if such device, system, or element of design will cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function.

(B) In determining whether an unreasonable risk exists under subparagraph (A), the Administrator shall consider, among other factors, (i) whether and to what extent the use of any device, system, or element of design causes, increases, reduces, or eliminates emissions of any unregulated pollutants; (ii) available methods for reducing or eliminating any risk to public health, welfare, or safety which may be associated with the use of such device, system, or element of design, and (iii) the availability of other devices, systems, or elements of design which may be used to conform to requirements prescribed under this subchapter without causing or contributing to such unreasonable risk. The Administrator shall include in the consideration required by this paragraph all relevant information developed pursuant to section 7548 of this title.

(5)(A) If the Administrator promulgates final regulations which define the degree of control required and the test procedures by which compliance could be determined for gasoline vapor recovery of uncontrolled emissions from the fueling of motor vehicles, the Administrator shall, after consultation with the Secretary of Transportation with respect to motor vehicle safety, prescribe, by regulation, fill pipe standards for new motor vehicles in order to insure effective connection between such fill pipe and any vapor recovery system which the Administrator determines may be required to comply with such vapor recovery regulations. In promulgating such standards the Administrator shall take into consideration limits on fill pipe diameter, minimum design criteria for nozzle retainer lips, limits on the location of the unleaded fuel restrictors, a minimum access zone surrounding a fill pipe, a minimum pipe or nozzle insertion angle, and such other factors as he deems pertinent.

(B) Regulations prescribing standards under subparagraph (A) shall not become effective until the introduction of the model year for which it would be feasible to implement such standards, taking into consideration the restraints of an adequate leadtime for design and production.

(C) Nothing in subparagraph (A) shall (i) prevent the Administrator from specifying different nozzle and fill neck sizes for gasoline with additives and gasoline without additives or (ii) permit the Administrator to require a specific location, configuration, modeling, or styling of the motor vehicle body with respect to the fuel tank fill neck or fill nozzle clearance envelope.

(D) For the purpose of this paragraph, the term "fill pipe" shall include the fuel tank fill pipe, fill neck, fill inlet, and closure.

(6) Onboard vapor recovery

Within 1 year after November 15, 1990, the Administrator shall, after consultation with the Secretary of Transportation regarding the safety of vehicle-based ("onboard") systems for the control of vehicle refueling emissions, promulgate standards under this section requiring that new light-duty vehicles manufactured beginning in the fourth model year after the model year in which the standards are promulgated and thereafter shall be equipped with such systems. The standards required under this paragraph shall apply to a percentage of each manufacturer's fleet of new light-duty vehicles beginning with the fourth model year after the model year in which the standards are promulgated. The percentage shall be as specified in the following table:

ADD10

IMPLEMENTATION SCHEDULE FOR ONBOARD VAPOR RECOVERY REQUIREMENTS

Model year commencing after standards promulgated	Percentage*
Fourth	40
Fifth	80
After Fifth	100

*Percentages in the table refer to a percentage of the manufacturer's sales volume.

The standards shall require that such systems provide a minimum evaporative emission capture efficiency of 95 percent. The requirements of section 7511a(b)(3) of this title (relating to stage II gasoline vapor recovery) for areas classified under section 7511 of this title as moderate for ozone shall not apply after promulgation of such standards and the Administrator may, by rule, revise or waive the application of the requirements of such section 7511a(b)(3) of this title for areas classified under section 7511 of this title as Serious, Severe, or Extreme for ozone, as appropriate, after such time as the Administrator determines that onboard emissions control systems required under this paragraph are in widespread use throughout the motor vehicle fleet.

(b) Emissions of carbon monoxide, hydrocarbons, and oxides of nitrogen; annual report to Congress; waiver of emission standards; research objectives

(1)(A) The regulations under subsection (a) of this section applicable to emissions of carbon monoxide and hydrocarbons from light-duty vehicles and engines manufactured during model years 1977 through 1979 shall contain standards which provide that such emissions from such vehicles and engines may not exceed 1.5 grams per vehicle mile of hydrocarbons and 15.0 grams per vehicle mile of carbon monoxide. The regulations under subsection (a) of this section applicable to emissions of carbon monoxide from light-duty vehicles and engines manufactured during the model year 1980 shall contain standards which provide that such emissions may not exceed 7.0 grams per vehicle mile. The regulations under subsection (a) of this section applicable to emissions of hydrocarbons from light-duty vehicles and engines manufactured during or after model year 1980 shall contain standards which require a reduction of at least 90 percent from emissions of such pollutant allowable under the standards under this section applicable to light-duty vehicles and engines manufactured in model year 1970. Unless waived as provided in paragraph (5), regulations under subsection (a) of this section applicable to emissions of carbon monoxide from light-duty vehicles and engines manufactured during or after the model year 1981 shall contain standards which require a reduction of at least 90 percent from emissions of such pollutant allowable under the standards under this section applicable to light-duty vehicles and engines manufactured in model year 1970.

(B) The regulations under subsection (a) of this section applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during model years 1977 through 1980 shall contain standards which provide that such emissions from such vehicles and engines may not exceed 2.0 grams per vehicle mile. The regulations under subsection (a) of this section applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during the model year 1981 and thereafter shall contain standards which provide that such emissions from such vehicles and engines may not exceed 1.0 gram per vehicle mile. The Administrator shall prescribe standards in lieu of those required by the preceding sentence, which provide that emissions of oxides of nitrogen may not exceed 2.0 grams per vehicle mile for any light-duty vehicle manufactured during model years 1981 and 1982 by any manufacturer whose

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)
Subchapter II. Emission Standards for Moving Sources
Part A. Motor Vehicle Emission and Fuel Standards (Refs & Annos)

42 U.S.C.A. § 7543

§ 7543. State standards

Currentness

(a) Prohibition

No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No State shall require certification, inspection, or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

(b) Waiver

(1) The Administrator shall, after notice and opportunity for public hearing, waive application of this section to any State which has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, if the State determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. No such waiver shall be granted if the Administrator finds that--

(A) the determination of the State is arbitrary and capricious,

(B) such State does not need such State standards to meet compelling and extraordinary conditions, or

(C) such State standards and accompanying enforcement procedures are not consistent with section 7521(a) of this title.

(2) If each State standard is at least as stringent as the comparable applicable Federal standard, such State standard shall be deemed to be at least as protective of health and welfare as such Federal standards for purposes of paragraph (1).

(3) In the case of any new motor vehicle or new motor vehicle engine to which State standards apply pursuant to a waiver granted under paragraph (1), compliance with such State standards shall be treated as compliance with applicable Federal standards for purposes of this subchapter.

(c) Certification of vehicle parts or engine parts

Whenever a regulation with respect to any motor vehicle part or motor vehicle engine part is in effect under section 7541(a)(2) of this title, no State or political subdivision thereof shall adopt or attempt to enforce any standard or any requirement of certification, inspection, or approval which relates to motor vehicle emissions and is applicable to the same aspect of such part. The preceding sentence shall not apply in the case of a State with respect to which a waiver is in effect under subsection (b) of this section.

(d) Control, regulation, or restrictions on registered or licensed motor vehicles

Nothing in this part shall preclude or deny to any State or political subdivision thereof the right otherwise to control, regulate, or restrict the use, operation, or movement of registered or licensed motor vehicles.

(e) Nonroad engines or vehicles

(1) Prohibition on certain State standards

No State or any political subdivision thereof shall adopt or attempt to enforce any standard or other requirement relating to the control of emissions from either of the following new nonroad engines or nonroad vehicles subject to regulation under this chapter--

(A) New engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower.

(B) New locomotives or new engines used in locomotives.

Subsection (b) of this section shall not apply for purposes of this paragraph.

(2) Other nonroad engines or vehicles

(A) In the case of any nonroad vehicles or engines other than those referred to in subparagraph (A) or (B) of paragraph (1), the Administrator shall, after notice and opportunity for public hearing, authorize California to adopt and enforce standards and other requirements relating to the control of emissions from such vehicles or engines if California determines that California standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. No such authorization shall be granted if the Administrator finds that--

(i) the determination of California is arbitrary and capricious,

(ii) California does not need such California standards to meet compelling and extraordinary conditions, or

(iii) California standards and accompanying enforcement procedures are not consistent with this section.

(B) Any State other than California which has plan provisions approved under part D of subchapter I of this chapter may adopt and enforce, after notice to the Administrator, for any period, standards relating to control of emissions from nonroad vehicles or engines (other than those referred to in subparagraph (A) or (B) of paragraph (1)) and take such other actions as are referred to in subparagraph (A) of this paragraph respecting such vehicles or engines if--

(i) such standards and implementation and enforcement are identical, for the period concerned, to the California standards authorized by the Administrator under subparagraph (A), and

(ii) California and such State adopt such standards at least 2 years before commencement of the period for which the standards take effect.

The Administrator shall issue regulations to implement this subsection.

CREDIT(S)

(July 14, 1955, c. 360, Title II, § 209, formerly § 208, as added Pub.L. 90-148, § 2, Nov. 21, 1967, 81 Stat. 501, renumbered and amended Pub.L. 91-604, §§ 8(a), 11(a)(2)(A), 15(c)(2), Dec. 31, 1970, 84 Stat. 1694, 1705, 1713; Pub.L. 95-95, Title II, §§ 207, 221, Aug. 7, 1977, 91 Stat. 755, 762; Pub.L. 101-549, Title II, § 222(b), Nov. 15, 1990, 104 Stat. 2502.)

Notes of Decisions (56)

42 U.S.C.A. § 7543, 42 USCA § 7543
Current through P.L. 116-5. Also includes P.L. 116-8. Title 26 current through 116-9.

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)
Subchapter II. Emission Standards for Moving Sources
Part A. Motor Vehicle Emission and Fuel Standards (Refs & Annos)

42 U.S.C.A. § 7547

§ 7547. Nonroad engines and vehicles

Currentness

(a) Emissions standards

(1) The Administrator shall conduct a study of emissions from nonroad engines and nonroad vehicles (other than locomotives or engines used in locomotives) to determine if such emissions cause, or significantly contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare. Such study shall be completed within 12 months of November 15, 1990.

(2) After notice and opportunity for public hearing, the Administrator shall determine within 12 months after completion of the study under paragraph (1), based upon the results of such study, whether emissions of carbon monoxide, oxides of nitrogen, and volatile organic compounds from new and existing nonroad engines or nonroad vehicles (other than locomotives or engines used in locomotives) are significant contributors to ozone or carbon monoxide concentrations in more than 1 area which has failed to attain the national ambient air quality standards for ozone or carbon monoxide. Such determination shall be included in the regulations under paragraph (3).

(3) If the Administrator makes an affirmative determination under paragraph (2) the Administrator shall, within 12 months after completion of the study under paragraph (1), promulgate (and from time to time revise) regulations containing standards applicable to emissions from those classes or categories of new nonroad engines and new nonroad vehicles (other than locomotives or engines used in locomotives) which in the Administrator's judgment cause, or contribute to, such air pollution. Such standards shall achieve the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the engines or vehicles to which such standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology. In determining what degree of reduction will be available, the Administrator shall first consider standards equivalent in stringency to standards for comparable motor vehicles or engines (if any) regulated under section 7521 of this title, taking into account the technological feasibility, costs, safety, noise, and energy factors associated with achieving, as appropriate, standards of such stringency and lead time. The regulations shall apply to the useful life of the engines or vehicles (as determined by the Administrator).

(4) If the Administrator determines that any emissions not referred to in paragraph (2) from new nonroad engines or vehicles significantly contribute to air pollution which may reasonably be anticipated to endanger public health or

welfare, the Administrator may promulgate (and from time to time revise) such regulations as the Administrator deems appropriate containing standards applicable to emissions from those classes or categories of new nonroad engines and new nonroad vehicles (other than locomotives or engines used in locomotives) which in the Administrator's judgment cause, or contribute to, such air pollution, taking into account costs, noise, safety, and energy factors associated with the application of technology which the Administrator determines will be available for the engines and vehicles to which such standards apply. The regulations shall apply to the useful life of the engines or vehicles (as determined by the Administrator).

(5) Within 5 years after November 15, 1990, the Administrator shall promulgate regulations containing standards applicable to emissions from new locomotives and new engines used in locomotives. Such standards shall achieve the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the locomotives or engines to which such standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology.

(b) Effective date

Standards under this section shall take effect at the earliest possible date considering the lead time necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period and energy and safety.

(c) Safe controls

Effective with respect to new engines or vehicles to which standards under this section apply, no emission control device, system, or element of design shall be used in such a new nonroad engine or new nonroad vehicle for purposes of complying with such standards if such device, system, or element of design will cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function. In determining whether an unreasonable risk exists, the Administrator shall consider factors including those described in section 7521(a)(4)(B) of this title.

(d) Enforcement

The standards under this section shall be subject to sections 7525, 7541, 7542, and 7543 of this title, with such modifications of the applicable regulations implementing such sections as the Administrator deems appropriate, and shall be enforced in the same manner as standards prescribed under section 7521 of this title. The Administrator shall revise or promulgate regulations as may be necessary to determine compliance with, and enforce, standards in effect under this section.

CREDIT(S)

(July 14, 1955, c. 360, Title II, § 213, as added Pub.L. 93-319, § 10, June 22, 1974, 88 Stat. 261; amended Pub.L. 101-549, Title II, § 222(a), Nov. 15, 1990, 104 Stat. 2500.)

Notes of Decisions (9)

42 U.S.C.A. § 7547, 42 USCA § 7547

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Subchapter II. Emission Standards for Moving Sources
Part B. Aircraft Emission Standards

42 U.S.C.A. § 7571

§ 7571. Establishment of standards

Effective: October 9, 1996
Currentness

(a) Study; proposed standards; hearings; issuance of regulations

(1) Within 90 days after December 31, 1970, the Administrator shall commence a study and investigation of emissions of air pollutants from aircraft in order to determine--

(A) the extent to which such emissions affect air quality in air quality control regions throughout the United States, and

(B) the technological feasibility of controlling such emissions.

(2)(A) The Administrator shall, from time to time, issue proposed emission standards applicable to the emission of any air pollutant from any class or classes of aircraft engines which in his judgment causes, or contributes to, air pollution which may reasonably be anticipated to endanger public health or welfare.

(B)(i) The Administrator shall consult with the Administrator of the Federal Aviation Administration on aircraft engine emission standards.

(ii) The Administrator shall not change the aircraft engine emission standards if such change would significantly increase noise and adversely affect safety.

(3) The Administrator shall hold public hearings with respect to such proposed standards. Such hearings shall, to the extent practicable, be held in air quality control regions which are most seriously affected by aircraft emissions. Within 90 days after the issuance of such proposed regulations, he shall issue such regulations with such modifications as he deems appropriate. Such regulations may be revised from time to time.

(b) Effective date of regulations

Any regulation prescribed under this section (and any revision thereof) shall take effect after such period as the Administrator finds necessary (after consultation with the Secretary of Transportation) to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

(c) Regulations which create hazards to aircraft safety

Any regulations in effect under this section on August 7, 1977, or proposed or promulgated thereafter, or amendments thereto, with respect to aircraft shall not apply if disapproved by the President, after notice and opportunity for public hearing, on the basis of a finding by the Secretary of Transportation that any such regulation would create a hazard to aircraft safety. Any such finding shall include a reasonably specific statement of the basis upon which the finding was made.

CREDIT(S)

(July 14, 1955, c. 360, Title II, § 231, as added Pub.L. 91-604, § 11(a)(1), Dec. 31, 1970, 84 Stat. 1703; amended Pub.L. 95-95, Title II, § 225, Title IV, § 401(f), Aug. 7, 1977, 91 Stat. 769, 791; Pub.L. 104-264, Title IV, § 406(b), Oct. 9, 1996, 110 Stat. 3257.)

Notes of Decisions (4)

42 U.S.C.A. § 7571, 42 USCA § 7571
Current through P.L. 116-5. Also includes P.L. 116-8. Title 26 current through 116-9.

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)
Subchapter III. General Provisions

42 U.S.C.A. § 7607

§ 7607. Administrative proceedings and judicial review

Currentness

(a) Administrative subpenas; confidentiality; witnesses

In connection with any determination under section 7410(f) of this title, or for purposes of obtaining information under section 7521(b)(4) or 7545(c)(3) of this title, any investigation, monitoring, reporting requirement, entry, compliance inspection, or administrative enforcement proceeding under the [1] chapter (including but not limited to section 7413, section 7414, section 7420, section 7429, section 7477, section 7524, section 7525, section 7542, section 7603, or section 7606 of this title),, [2] the Administrator may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and he may administer oaths. Except for emission data, upon a showing satisfactory to the Administrator by such owner or operator that such papers, books, documents, or information or particular part thereof, if made public, would divulge trade secrets or secret processes of such owner or operator, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of Title 18, except that such paper, book, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter, to persons carrying out the National Academy of Sciences' study and investigation provided for in section 7521(c) of this title, or when relevant in any proceeding under this chapter. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person under this subparagraph [3], the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Administrator to appear and produce papers, books, and documents before the Administrator, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) Judicial review

(1) A petition for review of action of the Administrator in promulgating any national primary or secondary ambient air quality standard, any emission standard or requirement under section 7412 of this title, any standard of performance or requirement under section 7411 of this title,, [2] any standard under section 7521 of this title (other than a standard required to be prescribed under section 7521(b)(1) of this title), any determination under section 7521(b)(5) of this title, any control or prohibition under section 7545 of this title, any standard under section 7571 of this title, any rule issued under section 7413, 7419, or under section 7420 of this title, or any other nationally applicable regulations promulgated, or final action taken, by the Administrator under this chapter may be filed only in the United States Court of Appeals for the District of Columbia. A petition for review of the Administrator's action in approving or promulgating any implementation plan under section 7410 of this title or section 7411(d) of this title, any order under section 7411(j) of this title, under section 7412 of this title, under section 7419 of this title, or under section 7420 of this title, or his action under section

1857c-10(c)(2)(A), (B), or (C) of this title (as in effect before August 7, 1977) or under regulations thereunder, or revising regulations for enhanced monitoring and compliance certification programs under section 7414(a)(3) of this title, or any other final action of the Administrator under this chapter (including any denial or disapproval by the Administrator under subchapter I of this chapter) which is locally or regionally applicable may be filed only in the United States Court of Appeals for the appropriate circuit. Notwithstanding the preceding sentence a petition for review of any action referred to in such sentence may be filed only in the United States Court of Appeals for the District of Columbia if such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination. Any petition for review under this subsection shall be filed within sixty days from the date notice of such promulgation, approval, or action appears in the Federal Register, except that if such petition is based solely on grounds arising after such sixtieth day, then any petition for review under this subsection shall be filed within sixty days after such grounds arise. The filing of a petition for reconsideration by the Administrator of any otherwise final rule or action shall not affect the finality of such rule or action for purposes of judicial review nor extend the time within which a petition for judicial review of such rule or action under this section may be filed, and shall not postpone the effectiveness of such rule or action.

(2) Action of the Administrator with respect to which review could have been obtained under paragraph (1) shall not be subject to judicial review in civil or criminal proceedings for enforcement. Where a final decision by the Administrator defers performance of any nondiscretionary statutory action to a later time, any person may challenge the deferral pursuant to paragraph (1).

(c) Additional evidence

In any judicial proceeding in which review is sought of a determination under this chapter required to be made on the record after notice and opportunity for hearing, if any party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such terms and conditions as to [4] the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence.

(d) Rulemaking

(1) This subsection applies to--

(A) the promulgation or revision of any national ambient air quality standard under section 7409 of this title,

(B) the promulgation or revision of an implementation plan by the Administrator under section 7410(c) of this title,

(C) the promulgation or revision of any standard of performance under section 7411 of this title, or emission standard or limitation under section 7412(d) of this title, any standard under section 7412(f) of this title, or any regulation under section 7412(g)(1)(D) and (F) of this title, or any regulation under section 7412(m) or (n) of this title,

(D) the promulgation of any requirement for solid waste combustion under section 7429 of this title,

(E) the promulgation or revision of any regulation pertaining to any fuel or fuel additive under section 7545 of this title,

(F) the promulgation or revision of any aircraft emission standard under section 7571 of this title,

(G) the promulgation or revision of any regulation under subchapter IV-A of this chapter (relating to control of acid deposition),

(H) promulgation or revision of regulations pertaining to primary nonferrous smelter orders under section 7419 of this title (but not including the granting or denying of any such order),

(I) promulgation or revision of regulations under subchapter VI of this chapter (relating to stratosphere and ozone protection),

(J) promulgation or revision of regulations under part C of subchapter I of this chapter (relating to prevention of significant deterioration of air quality and protection of visibility),

(K) promulgation or revision of regulations under section 7521 of this title and test procedures for new motor vehicles or engines under section 7525 of this title, and the revision of a standard under section 7521(a)(3) of this title,

(L) promulgation or revision of regulations for noncompliance penalties under section 7420 of this title,

(M) promulgation or revision of any regulations promulgated under section 7541 of this title (relating to warranties and compliance by vehicles in actual use),

(N) action of the Administrator under section 7426 of this title (relating to interstate pollution abatement),

(O) the promulgation or revision of any regulation pertaining to consumer and commercial products under section 7511b(e) of this title,

(P) the promulgation or revision of any regulation pertaining to field citations under section 7413(d)(3) of this title,

(Q) the promulgation or revision of any regulation pertaining to urban buses or the clean-fuel vehicle, clean-fuel fleet, and clean fuel programs under part C of subchapter II of this chapter,

(R) the promulgation or revision of any regulation pertaining to nonroad engines or nonroad vehicles under section 7547 of this title,

ADD21

(S) the promulgation or revision of any regulation relating to motor vehicle compliance program fees under section 7552 of this title,

(T) the promulgation or revision of any regulation under subchapter IV-A of this chapter (relating to acid deposition),

(U) the promulgation or revision of any regulation under section 7511b(f) of this title pertaining to marine vessels, and

(V) such other actions as the Administrator may determine.

The provisions of section 553 through 557 and section 706 of Title 5 shall not, except as expressly provided in this subsection, apply to actions to which this subsection applies. This subsection shall not apply in the case of any rule or circumstance referred to in subparagraphs (A) or (B) of subsection 553(b) of Title 5.

(2) Not later than the date of proposal of any action to which this subsection applies, the Administrator shall establish a rulemaking docket for such action (hereinafter in this subsection referred to as a "rule"). Whenever a rule applies only within a particular State, a second (identical) docket shall be simultaneously established in the appropriate regional office of the Environmental Protection Agency.

(3) In the case of any rule to which this subsection applies, notice of proposed rulemaking shall be published in the Federal Register, as provided under section 553(b) of Title 5, shall be accompanied by a statement of its basis and purpose and shall specify the period available for public comment (hereinafter referred to as the "comment period"). The notice of proposed rulemaking shall also state the docket number, the location or locations of the docket, and the times it will be open to public inspection. The statement of basis and purpose shall include a summary of--

(A) the factual data on which the proposed rule is based;

(B) the methodology used in obtaining the data and in analyzing the data; and

(C) the major legal interpretations and policy considerations underlying the proposed rule.

The statement shall also set forth or summarize and provide a reference to any pertinent findings, recommendations, and comments by the Scientific Review Committee established under section 7409(d) of this title and the National Academy of Sciences, and, if the proposal differs in any important respect from any of these recommendations, an explanation of the reasons for such differences. All data, information, and documents referred to in this paragraph on which the proposed rule relies shall be included in the docket on the date of publication of the proposed rule.

(4)(A) The rulemaking docket required under paragraph (2) shall be open for inspection by the public at reasonable times specified in the notice of proposed rulemaking. Any person may copy documents contained in the docket. The Administrator shall provide copying facilities which may be used at the expense of the person seeking copies, but the Administrator may waive or reduce such expenses in such instances as the public interest requires. Any person may request copies by mail if the person pays the expenses, including personnel costs to do the copying.

(B)(i) Promptly upon receipt by the agency, all written comments and documentary information on the proposed rule received from any person for inclusion in the docket during the comment period shall be placed in the docket. The transcript of public hearings, if any, on the proposed rule shall also be included in the docket promptly upon receipt from the person who transcribed such hearings. All documents which become available after the proposed rule has been published and which the Administrator determines are of central relevance to the rulemaking shall be placed in the docket as soon as possible after their availability.

(ii) The drafts of proposed rules submitted by the Administrator to the Office of Management and Budget for any interagency review process prior to proposal of any such rule, all documents accompanying such drafts, and all written comments thereon by other agencies and all written responses to such written comments by the Administrator shall be placed in the docket no later than the date of proposal of the rule. The drafts of the final rule submitted for such review process prior to promulgation and all such written comments thereon, all documents accompanying such drafts, and written responses thereto shall be placed in the docket no later than the date of promulgation.

(5) In promulgating a rule to which this subsection applies (i) the Administrator shall allow any person to submit written comments, data, or documentary information; (ii) the Administrator shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions; (iii) a transcript shall be kept of any oral presentation; and (iv) the Administrator shall keep the record of such proceeding open for thirty days after completion of the proceeding to provide an opportunity for submission of rebuttal and supplementary information.

(6)(A) The promulgated rule shall be accompanied by (i) a statement of basis and purpose like that referred to in paragraph (3) with respect to a proposed rule and (ii) an explanation of the reasons for any major changes in the promulgated rule from the proposed rule.

(B) The promulgated rule shall also be accompanied by a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations during the comment period.

(C) The promulgated rule may not be based (in part or whole) on any information or data which has not been placed in the docket as of the date of such promulgation.

(7)(A) The record for judicial review shall consist exclusively of the material referred to in paragraph (3), clause (i) of paragraph (4)(B), and subparagraphs (A) and (B) of paragraph (6).

(B) Only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. If the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within such time or if the grounds for such objection 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 Administrator shall 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. If the Administrator refuses to convene such a proceeding, such person may seek review of such refusal in the United States court of appeals for the appropriate circuit (as provided in subsection (b)

of this section). Such reconsideration shall not postpone the effectiveness of the rule. The effectiveness of the rule may be stayed during such reconsideration, however, by the Administrator or the court for a period not to exceed three months.

(8) The sole forum for challenging procedural determinations made by the Administrator under this subsection shall be in the United States court of appeals for the appropriate circuit (as provided in subsection (b) of this section) at the time of the substantive review of the rule. No interlocutory appeals shall be permitted with respect to such procedural determinations. In reviewing alleged procedural errors, the court may invalidate the rule only if the errors were so serious and related to matters of such central relevance to the rule that there is a substantial likelihood that the rule would have been significantly changed if such errors had not been made.

(9) In the case of review of any action of the Administrator to which this subsection applies, the court may reverse any such action found to be--

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; or

(D) without observance of procedure required by law, if (i) such failure to observe such procedure is arbitrary or capricious, (ii) the requirement of paragraph (7)(B) has been met, and (iii) the condition of the last sentence of paragraph (8) is met.

(10) Each statutory deadline for promulgation of rules to which this subsection applies which requires promulgation less than six months after date of proposal may be extended to not more than six months after date of proposal by the Administrator upon a determination that such extension is necessary to afford the public, and the agency, adequate opportunity to carry out the purposes of this subsection.

(11) The requirements of this subsection shall take effect with respect to any rule the proposal of which occurs after ninety days after August 7, 1977.

(e) Other methods of judicial review not authorized

Nothing in this chapter shall be construed to authorize judicial review of regulations or orders of the Administrator under this chapter, except as provided in this section.

(f) Costs

In any judicial proceeding under this section, the court may award costs of litigation (including reasonable attorney and expert witness fees) whenever it determines that such award is appropriate.

(g) Stay, injunction, or similar relief in proceedings relating to noncompliance penalties

In any action respecting the promulgation of regulations under section 7420 of this title or the administration or enforcement of section 7420 of this title no court shall grant any stay, injunctive, or similar relief before final judgment by such court in such action.

(h) Public participation

It is the intent of Congress that, consistent with the policy of subchapter II of chapter 5 of Title 5, the Administrator in promulgating any regulation under this chapter, including a regulation subject to a deadline, shall ensure a reasonable period for public participation of at least 30 days, except as otherwise expressly provided in section [5] 7407(d), 7502(a), 7511(a) and (b), and 7512(a) and (b) of this title.

CREDIT(S)

(July 14, 1955, c. 360, Title III, § 307, as added Pub.L. 91-604, § 12(a), Dec. 31, 1970, 84 Stat. 1707; amended Pub.L. 92-157, Title III, § 302(a), Nov. 18, 1971, 85 Stat. 464; Pub.L. 93-319, § 6(c), June 22, 1974, 88 Stat. 259; Pub.L. 95-95, Title III, §§ 303(d), 305(a), (c), (f)-(h), Aug. 7, 1977, 91 Stat. 772, 776, 777; Pub.L. 95-190, § 14(a)(79), (80), Nov. 16, 1977, 91 Stat. 1404; Pub.L. 101-549, Title I, §§ 108(p), 110(5), Title III, § 302(g), (h), Title VII, §§ 702(c), 703, 706, 707(h), 710(b), Nov. 15, 1990, 104 Stat. 2469, 2470, 2574, 2681-2684.)

Notes of Decisions (353)

Footnotes

1 So in original. Probably should be “this”.

2 So in original.

3 So in original. Probably should be “subsection,”.

4 So in original. The word “to” probably should not appear.

5 So in original. Probably should be “sections”.

42 U.S.C.A. § 7607, 42 USCA § 7607

Current through P.L. 116-5. Also includes P.L. 116-8. Title 26 current through 116-9.

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)
Subchapter V. Permits (Refs & Annos)

42 U.S.C.A. § 7661d

§ 7661d. Notification to Administrator and contiguous States

Currentness

(a) Transmission and notice

(1) Each permitting authority--

(A) shall transmit to the Administrator a copy of each permit application (and any application for a permit modification or renewal) or such portion thereof, including any compliance plan, as the Administrator may require to effectively review the application and otherwise to carry out the Administrator's responsibilities under this chapter, and

(B) shall provide to the Administrator a copy of each permit proposed to be issued and issued as a final permit.

(2) The permitting authority shall notify all States--

(A) whose air quality may be affected and that are contiguous to the State in which the emission originates, or

(B) that are within 50 miles of the source,

of each permit application or proposed permit forwarded to the Administrator under this section, and shall provide an opportunity for such States to submit written recommendations respecting the issuance of the permit and its terms and conditions. If any part of those recommendations are not accepted by the permitting authority, such authority shall notify the State submitting the recommendations and the Administrator in writing of its failure to accept those recommendations and the reasons therefor.

(b) Objection by EPA

(1) If any permit contains provisions that are determined by the Administrator as not in compliance with the applicable requirements of this chapter, including the requirements of an applicable implementation plan, the Administrator shall, in accordance with this subsection, object to its issuance. The permitting authority shall respond in writing if the Administrator (A) within 45 days after receiving a copy of the proposed permit under subsection (a)(1) of this section, or (B) within 45 days after receiving notification under subsection (a)(2) of this section, objects in writing to its issuance

as not in compliance with such requirements. With the objection, the Administrator shall provide a statement of the reasons for the objection. A copy of the objection and statement shall be provided to the applicant.

(2) If the Administrator does not object in writing to the issuance of a permit pursuant to paragraph (1), any person may petition the Administrator within 60 days after the expiration of the 45-day review period specified in paragraph (1) to take such action. A copy of such petition shall be provided to the permitting authority and the applicant by the petitioner. The petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting agency (unless the petitioner demonstrates in the petition to the Administrator that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period). The petition shall identify all such objections. If the permit has been issued by the permitting agency, such petition shall not postpone the effectiveness of the permit. The Administrator shall grant or deny such petition within 60 days after the petition is filed. The Administrator shall issue an objection within such period if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of this chapter, including the requirements of the applicable implementation plan. Any denial of such petition shall be subject to judicial review under section 7607 of this title. The Administrator shall include in regulations under this subchapter provisions to implement this paragraph. The Administrator may not delegate the requirements of this paragraph.

(3) Upon receipt of an objection by the Administrator under this subsection, the permitting authority may not issue the permit unless it is revised and issued in accordance with subsection (c) of this section. If the permitting authority has issued a permit prior to receipt of an objection by the Administrator under paragraph (2) of this subsection, the Administrator shall modify, terminate, or revoke such permit and the permitting authority may thereafter only issue a revised permit in accordance with subsection (c) of this section.

(c) Issuance or denial

If the permitting authority fails, within 90 days after the date of an objection under subsection (b) of this section, to submit a permit revised to meet the objection, the Administrator shall issue or deny the permit in accordance with the requirements of this subchapter. No objection shall be subject to judicial review until the Administrator takes final action to issue or deny a permit under this subsection.

(d) Waiver of notification requirements

(1) The Administrator may waive the requirements of subsections (a) and (b) of this section at the time of approval of a permit program under this subchapter for any category (including any class, type, or size within such category) of sources covered by the program other than major sources.

(2) The Administrator may, by regulation, establish categories of sources (including any class, type, or size within such category) to which the requirements of subsections (a) and (b) of this section shall not apply. The preceding sentence shall not apply to major sources.

(3) The Administrator may exclude from any waiver under this subsection notification under subsection (a)(2) of this section. Any waiver granted under this subsection may be revoked or modified by the Administrator by rule.

(e) Refusal of permitting authority to terminate, modify, or revoke and reissue

If the Administrator finds that cause exists to terminate, modify, or revoke and reissue a permit under this subchapter, the Administrator shall notify the permitting authority and the source of the Administrator's finding. The permitting authority shall, within 90 days after receipt of such notification, forward to the Administrator under this section a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The Administrator may extend such 90 day period for an additional 90 days if the Administrator finds that a new or revised permit application is necessary, or that the permitting authority must require the permittee to submit additional information. The Administrator may review such proposed determination under the provisions of subsections (a) and (b) of this section. If the permitting authority fails to submit the required proposed determination, or if the Administrator objects and the permitting authority fails to resolve the objection within 90 days, the Administrator may, after notice and in accordance with fair and reasonable procedures, terminate, modify, or revoke and reissue the permit.

CREDIT(S)

(July 14, 1955, c. 360, Title V, § 505, as added Pub.L. 101-549, Title V, § 501, Nov. 15, 1990, 104 Stat. 2643.)

Notes of Decisions (19)

42 U.S.C.A. § 7661d, 42 USCA § 7661d
Current through P.L. 116-5. Also includes P.L. 116-8. Title 26 current through 116-9.

End of Document

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

United States Code Annotated
Title 49. Transportation (Refs & Annos)
Subtitle VI. Motor Vehicle and Driver Programs
Part C. Information, Standards, and Requirements (Refs & Annos)
Chapter 329. Automobile Fuel Economy (Refs & Annos)

49 U.S.C.A. § 32902

§ 32902. Average fuel economy standards

Effective: December 20, 2007
Currentness

(a) Prescription of standards by regulation.--At least 18 months before the beginning of each model year, the Secretary of Transportation shall prescribe by regulation average fuel economy standards for automobiles manufactured by a manufacturer in that model year. Each standard shall be the maximum feasible average fuel economy level that the Secretary decides the manufacturers can achieve in that model year.

(b) Standards for automobiles and certain other vehicles.--

(1) In general.--The Secretary of Transportation, after consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, shall prescribe separate average fuel economy standards for--

(A) passenger automobiles manufactured by manufacturers in each model year beginning with model year 2011 in accordance with this subsection;

(B) non-passenger automobiles manufactured by manufacturers in each model year beginning with model year 2011 in accordance with this subsection; and

(C) work trucks and commercial medium-duty or heavy-duty on-highway vehicles in accordance with subsection (k).

(2) Fuel economy standards for automobiles.--

(A) Automobile fuel economy average for model years 2011 through 2020.--The Secretary shall prescribe a separate average fuel economy standard for passenger automobiles and a separate average fuel economy standard for non-passenger automobiles for each model year beginning with model year 2011 to achieve a combined fuel economy average for model year 2020 of at least 35 miles per gallon for the total fleet of passenger and non-passenger automobiles manufactured for sale in the United States for that model year.

(B) Automobile fuel economy average for model years 2021 through 2030.--For model years 2021 through 2030, the average fuel economy required to be attained by each fleet of passenger and non-passenger automobiles manufactured for sale in the United States shall be the maximum feasible average fuel economy standard for each fleet for that model year.

(C) Progress toward standard required.--In prescribing average fuel economy standards under subparagraph (A), the Secretary shall prescribe annual fuel economy standard increases that increase the applicable average fuel economy standard ratably beginning with model year 2011 and ending with model year 2020.

(3) Authority of the Secretary.--The Secretary shall--

(A) prescribe by regulation separate average fuel economy standards for passenger and non-passenger automobiles based on 1 or more vehicle attributes related to fuel economy and express each standard in the form of a mathematical function; and

(B) issue regulations under this title prescribing average fuel economy standards for at least 1, but not more than 5, model years.

(4) Minimum standard.--In addition to any standard prescribed pursuant to paragraph (3), each manufacturer shall also meet the minimum standard for domestically manufactured passenger automobiles, which shall be the greater of--

(A) 27.5 miles per gallon; or

(B) 92 percent of the average fuel economy projected by the Secretary for the combined domestic and non-domestic passenger automobile fleets manufactured for sale in the United States by all manufacturers in the model year, which projection shall be published in the Federal Register when the standard for that model year is promulgated in accordance with this section.

(c) Amending passenger automobile standards.--The Secretary of Transportation may prescribe regulations amending the standard under subsection (b) of this section for a model year to a level that the Secretary decides is the maximum feasible average fuel economy level for that model year. Section 553 of title 5 applies to a proceeding to amend the standard. However, any interested person may make an oral presentation and a transcript shall be taken of that presentation.

(d) Exemptions.--(1) Except as provided in paragraph (3) of this subsection, on application of a manufacturer that manufactured (whether in the United States or not) fewer than 10,000 passenger automobiles in the model year 2 years before the model year for which the application is made, the Secretary of Transportation may exempt by regulation the manufacturer from a standard under subsection (b) or (c) of this section. An exemption for a model year applies only if the manufacturer manufactures (whether in the United States or not) fewer than 10,000 passenger automobiles in the model year. The Secretary may exempt a manufacturer only if the Secretary--

(A) finds that the applicable standard under those subsections is more stringent than the maximum feasible average fuel economy level that the manufacturer can achieve; and

(B) prescribes by regulation an alternative average fuel economy standard for the passenger automobiles manufactured by the exempted manufacturer that the Secretary decides is the maximum feasible average fuel economy level for the manufacturers to which the alternative standard applies.

(2) An alternative average fuel economy standard the Secretary of Transportation prescribes under paragraph (1)(B) of this subsection may apply to an individually exempted manufacturer, to all automobiles to which this subsection applies, or to classes of passenger automobiles, as defined under regulations of the Secretary, manufactured by exempted manufacturers.

(3) Notwithstanding paragraph (1) of this subsection, an importer registered under section 30141(c) of this title may not be exempted as a manufacturer under paragraph (1) for a motor vehicle that the importer--

(A) imports; or

(B) brings into compliance with applicable motor vehicle safety standards prescribed under chapter 301 of this title for an individual under section 30142 of this title.

(4) The Secretary of Transportation may prescribe the contents of an application for an exemption.

(e) Emergency vehicles.--(1) In this subsection, "emergency vehicle" means an automobile manufactured primarily for use--

(A) as an ambulance or combination ambulance-hearse;

(B) by the United States Government or a State or local government for law enforcement; or

(C) for other emergency uses prescribed by regulation by the Secretary of Transportation.

(2) A manufacturer may elect to have the fuel economy of an emergency vehicle excluded in applying a fuel economy standard under subsection (a), (b), (c), or (d) of this section. The election is made by providing written notice to the Secretary of Transportation and to the Administrator of the Environmental Protection Agency.

(f) Considerations on decisions on maximum feasible average fuel economy.--When deciding maximum feasible average fuel economy under this section, the Secretary of Transportation shall consider technological feasibility, economic practicability, the effect of other motor vehicle standards of the Government on fuel economy, and the need of the United States to conserve energy.

(g) Requirements for other amendments.--(1) The Secretary of Transportation may prescribe regulations amending an average fuel economy standard prescribed under subsection (a) or (d) of this section if the amended standard meets the requirements of subsection (a) or (d), as appropriate.

(2) When the Secretary of Transportation prescribes an amendment under this section that makes an average fuel economy standard more stringent, the Secretary shall prescribe the amendment (and submit the amendment to Congress when required under subsection (c)(2) of this section) at least 18 months before the beginning of the model year to which the amendment applies.

(h) Limitations.--In carrying out subsections (c), (f), and (g) of this section, the Secretary of Transportation--

(1) may not consider the fuel economy of dedicated automobiles;

(2) shall consider dual fueled automobiles to be operated only on gasoline or diesel fuel; and

(3) may not consider, when prescribing a fuel economy standard, the trading, transferring, or availability of credits under section 32903.

(i) Consultation.--The Secretary of Transportation shall consult with the Secretary of Energy in carrying out this section and section 32903 of this title.

(j) Secretary of Energy comments.--(1) Before issuing a notice proposing to prescribe or amend an average fuel economy standard under subsection (a), (c), or (g) of this section, the Secretary of Transportation shall give the Secretary of Energy at least 10 days from the receipt of the notice during which the Secretary of Energy may, if the Secretary of Energy concludes that the proposed standard would adversely affect the conservation goals of the Secretary of Energy, provide written comments to the Secretary of Transportation about the impact of the standard on those goals. To the extent the Secretary of Transportation does not revise a proposed standard to take into account comments of the Secretary of Energy on any adverse impact of the standard, the Secretary of Transportation shall include those comments in the notice.

(2) Before taking final action on a standard or an exemption from a standard under this section, the Secretary of Transportation shall notify the Secretary of Energy and provide the Secretary of Energy a reasonable time to comment.

(k) Commercial medium- and heavy-duty on-highway vehicles and work trucks.--

(1) Study.--Not later than 1 year after the National Academy of Sciences publishes the results of its study under section 108 of the Ten-in-Ten Fuel Economy Act, the Secretary of Transportation, in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, shall examine the fuel efficiency of commercial medium- and heavy-duty on-highway vehicles and work trucks and determine--

(A) the appropriate test procedures and methodologies for measuring the fuel efficiency of such vehicles and work trucks;

(B) the appropriate metric for measuring and expressing commercial medium- and heavy-duty on-highway vehicle and work truck fuel efficiency performance, taking into consideration, among other things, the work performed by such on-highway vehicles and work trucks and types of operations in which they are used;

(C) the range of factors, including, without limitation, design, functionality, use, duty cycle, infrastructure, and total overall energy consumption and operating costs that affect commercial medium- and heavy-duty on-highway vehicle and work truck fuel efficiency; and

(D) such other factors and conditions that could have an impact on a program to improve commercial medium- and heavy-duty on-highway vehicle and work truck fuel efficiency.

(2) Rulemaking.--Not later than 24 months after completion of the study required under paragraph (1), the Secretary, in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, by regulation, shall determine in a rulemaking proceeding how to implement a commercial medium- and heavy-duty on-highway vehicle and work truck fuel efficiency improvement program designed to achieve the maximum feasible improvement, and shall adopt and implement appropriate test methods, measurement metrics, fuel economy standards, and compliance and enforcement protocols that are appropriate, cost-effective, and technologically feasible for commercial medium- and heavy-duty on-highway vehicles and work trucks. The Secretary may prescribe separate standards for different classes of vehicles under this subsection.

(3) Lead-time; regulatory stability.--The commercial medium- and heavy-duty on-highway vehicle and work truck fuel economy standard adopted pursuant to this subsection shall provide not less than--

(A) 4 full model years of regulatory lead-time; and

(B) 3 full model years of regulatory stability.

CREDIT(S)

(Added Pub.L. 103-272, § 1(e), July 5, 1994, 108 Stat. 1059; amended Pub.L. 110-140, Title I, §§ 102, 104(b)(1), Dec. 19, 2007, 121 Stat. 1498, 1503.)

MEMORANDA OF PRESIDENT

PRESIDENTIAL MEMORANDUM

<Jan. 26, 2009, 74 F.R. 4907>

KeyCite Yellow Flag - Negative Treatment
Proposed Regulation

Code of Federal Regulations
Title 40. Protection of Environment
Chapter I. Environmental Protection Agency (Refs & Annos)
Subchapter C. Air Programs
Part 86. Control of Emissions from New and in–Use Highway Vehicles and Engines (Refs & Annos)
Subpart S. General Compliance Provisions for Control of Air Pollution from New and in–Use Light–Duty Vehicles, Light–Duty Trucks, and Heavy–Duty Vehicles (Refs & Annos)

40 C.F.R. § 86.1818–12

§ 86.1818–12 Greenhouse gas emission standards for light-duty vehicles, light-duty trucks, and medium-duty passenger vehicles.

Effective: December 27, 2016
Currentness

(a) Applicability.

(1) This section contains standards and other regulations applicable to the emission of the air pollutant defined as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. This section applies to 2012 and later model year LDV, LDT and MDPV, including multi-fuel vehicles, vehicles fueled with alternative fuels, hybrid electric vehicles, plug-in hybrid electric vehicles, electric vehicles, and fuel cell vehicles. Unless otherwise specified, multi-fuel vehicles must comply with all requirements established for each consumed fuel. The provisions of this section, except paragraph (c), also apply to clean alternative fuel conversions as defined in 40 CFR 85.502, of all model year light-duty vehicles, light-duty trucks, and medium-duty passenger vehicles. Manufacturers that qualify as a small business according to the requirements of § 86.1801–12(j) are exempt from the emission standards in this section. Manufacturers that have submitted a declaration for a model year according to the requirements of § 86.1801–12(k) for which approval has been granted by the Administrator are conditionally exempt from the emission standards in paragraphs (c) through (e) of this section for the approved model year.

(2) The standards specified in this section apply for testing at both low-altitude conditions and high-altitude conditions. However, manufacturers must submit an engineering evaluation indicating that common calibration approaches are utilized at high altitude instead of performing testing for certification, consistent with § 86.1829. Any deviation from low altitude emission control practices must be included in the auxiliary emission control device (AECD) descriptions submitted at certification. Any AECD specific to high altitude requires engineering emission data for EPA evaluation to quantify any emission impact and determine the validity of the AECD.

(b) Definitions. For the purposes of this section, the following definitions shall apply:

(1) Passenger automobile means a motor vehicle that is a passenger automobile as that term is defined in 49 CFR 523.4.

(B) Information regarding ownership relationships with other manufacturers, including details regarding the application of the provisions of § 86.1838–01(b)(3) regarding the aggregation of sales of related companies,

(5) Alternative standards. Upon receiving a complete application, the Administrator will review the application and determine whether an alternative standard is warranted. If the Administrator judges that an alternative standard is warranted, the Administrator will publish a proposed determination in the Federal Register to establish alternative standards for the manufacturer that the Administrator judges are appropriate. Following a 30 day public comment period, the Administrator will issue a final determination establishing alternative standards for the manufacturer. If the Administrator does not establish alternative standards for an eligible manufacturer prior to 12 months before the first model year to which the alternative standards would apply, the manufacturer may request an extension of the exemption under § 86.1801–12(k) or an extension of previously approved alternative standards, whichever may apply.

(6) Restrictions on credit trading. Manufacturers subject to alternative standards approved by the Administrator under this paragraph (g) may not trade credits to another manufacturer. Transfers between car and truck fleets within the manufacturer are allowed, and the carry-forward provisions for credits and deficits apply.

(h) Mid-term evaluation of standards. No later than April 1, 2018, the Administrator shall determine whether the standards established in paragraph (c) of this section for the 2022 through 2025 model years are appropriate under section 202(a) of the Clean Air Act, in light of the record then before the Administrator. An opportunity for public comment shall be provided before making such determination. If the Administrator determines they are not appropriate, the Administrator shall initiate a rulemaking to revise the standards, to be either more or less stringent as appropriate.

(1) In making the determination required by this paragraph (h), the Administrator shall consider the information available on the factors relevant to setting greenhouse gas emission standards under section 202(a) of the Clean Air Act for model years 2022 through 2025, including but not limited to:

(i) The availability and effectiveness of technology, and the appropriate lead time for introduction of technology;

(ii) The cost on the producers or purchasers of new motor vehicles or new motor vehicle engines;

(iii) The feasibility and practicability of the standards;

(iv) The impact of the standards on reduction of emissions, oil conservation, energy security, and fuel savings by consumers;

(v) The impact of the standards on the automobile industry;

(vi) The impacts of the standards on automobile safety;

(vii) The impact of the greenhouse gas emission standards on the Corporate Average Fuel Economy standards and a national harmonized program; and

(viii) The impact of the standards on other relevant factors.

(2) The Administrator shall make the determination required by this paragraph (h) based upon a record that includes the following:

(i) A draft Technical Assessment Report addressing issues relevant to the standard for the 2022 through 2025 model years;

(ii) Public comment on the draft Technical Assessment Report;

(iii) Public comment on whether the standards established for the 2022 through 2025 model years are appropriate under section 202(a) of the Clean Air Act; and

(iv) Such other materials the Administrator deems appropriate.

(3) No later than November 15, 2017, the Administrator shall issue a draft Technical Assessment Report addressing issues relevant to the standards for the 2022 through 2025 model years.

(4) The Administrator will set forth in detail the bases for the determination required by this paragraph (h), including the Administrator's assessment of each of the factors listed in paragraph (h)(1) of this section.

Credits

[75 FR 25686, May 7, 2010; 76 FR 19874, April 8, 2011; 76 FR 39521, July 6, 2011; 76 FR 57377, Sept. 15, 2011; 77 FR 63156, Oct. 15, 2012; 79 FR 23725, April 28, 2014; 81 FR 73985, Oct. 25, 2016]

AUTHORITY: 42 U.S.C. 7401–7671q.

Current through April 5, 2019; 84 FR 13554.

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