



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

December 22, 2016

OFFICE OF
AIR AND RADIATION

The Honorable Bill Schuette
Michigan Attorney General
G. Mennen Williams Building, 7th Floor
525 W. Ottawa Street
P.O. Box 30212
Lansing, Michigan 48909

Dear Mr. Schuette:

Thank you for your letter dated December 9, 2016, to U.S. Environmental Protection Agency Administrator Gina McCarthy, regarding the Midterm Evaluation Proposed Determination. In your letter, you request that the EPA extend the comment period to at least March 15, 2017. The Administrator has asked that I reply on her behalf.

The EPA has considered your request, as discussed below. The EPA continues to believe that the Proposed Determination and the associated 30-day comment period remain appropriate and, therefore, the EPA is denying both the request for withdrawal and the request for an extension of the comment period. In summary, as discussed further below, the EPA regulations governing the Midterm Evaluation set forth a process where the EPA moves forward with a Proposed Determination on the appropriateness of the model year 2022-2025 (MY) greenhouse gas (GHG) emissions standards and only if the determination is that the standards should be changed, is the EPA required to conduct a rulemaking. The regulations make it clear that a Proposed Determination not to amend the MY2022-2025 standards is not a rulemaking. The analysis for the Proposed Determination is consistent with the analysis presented in the July 2016 Draft Technical Assessment Report (TAR), updated to reflect information we received through public comments, and is directly responsive to those comments. The EPA believes the comment period for the Proposed Determination is sufficient in light of the limited new data and information presented therein, and the extensive comments we received on the Draft TAR, which formed the technical underpinnings of the Proposed Determination. The Administrator has moved forward with the Proposed Determination based on an extensive technical record developed over several years of research, analysis, and public input, with the recognition that lead time and regulatory certainty are critical to the auto industry.

Your letter expressed concern that the EPA is not following the process envisioned for the Midterm Evaluation. The Midterm Evaluation process the EPA has followed, including the Proposed Determination and associated comment period, is fully consistent with the EPA regulations governing the Midterm Evaluation. The regulations at 40 CFR 86.1818-12(h)(2) specify that the determination shall be “based upon a record that includes the following:

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

- Public comment on the draft Technical Assessment Report;
- 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
- Such other materials the Administrator deems appropriate.”

The EPA released the Draft TAR, jointly with the National Highway Traffic Safety Administration and the California Air Resources Board, in July 2016 and the Administrator has considered public comments on the Draft TAR in making her Proposed Determination that the standards remain appropriate under section 202(a) of the Clean Air Act. The EPA is now seeking public comment on the Proposed Determination, as required by the regulations.

The structure of the EPA Midterm Evaluation regulations also makes clear that a Proposed Determination not to amend the MY 2022-2025 standards is not rulemaking. The regulation states that “[i]f the Administrator determines that the standards are not appropriate, the Administrator shall initiate a rulemaking to revise the standards.” Section 86.1818-12 (h). The implication is that a decision not to amend is not rulemaking. The distinction between an action determining not to amend the standards and a rulemaking to change them is confirmed by the language of the 2012 preamble adopting that regulation, which states that “[i]f based on the evaluation, the EPA decides that the GHG standards are appropriate under section 202(a), the EPA will announce that final decision and the basis for EPA’s decision” but that “[w]here the EPA decides that the standards are not appropriate, the EPA will initiate rulemaking to adopt standards that are appropriate under section 202(a). . . .” 77 FR 62624, 62784 (Oct. 15, 2012). The EPA thus does not accept the argument that the Proposed Determination is the revision or promulgation of a Clean Air Act Section 202 standard.

With regard to coordination with the NHTSA and CARB, the EPA Midterm Evaluation regulation gives the EPA the exclusive authority to determine the appropriateness of EPA’s model year 2022-2025 greenhouse gas standards. While this is an EPA proposed decision, we consulted with our partners at NHTSA and CARB regarding its contents, and developed the Draft TAR, which serves as a technical underpinning of the Proposed Determination, jointly with NHTSA and CARB. This coordination is in keeping with maintaining a single national car program which, from the beginning, has been critically important to the automotive industry and something to which the EPA, NHTSA and CARB have been, and continue to be, fully committed.

Your letter mentions the finding from the EPA’s Proposed Determination that the average per vehicle cost of meeting the MY2025 standards is projected to be \$875. These costs are significantly less than the costs we had projected in 2012 when these standards were first established; at that time, we had projected an average per-vehicle cost increase of about \$1,100. Moreover, consumers will see a significant benefit from reduced gasoline expenditures. In the Proposed Determination, we estimate that consumers will save \$1,650 over the lifetime of a new MY2025 vehicle (compared to a vehicle meeting the MY2021 standards), even after the up-front vehicle costs are taken into account. For consumers who purchase a new MY2025 vehicle with a 5-year loan, the EPA projects in the Proposed Determination that they would see a positive payback in the first year of ownership, as monthly fuel savings outweigh the incremental increase in loan payment.

Again, thank you for your letter. I appreciate the opportunity to be of service and hope this response has been helpful.

Sincerely,

A handwritten signature in blue ink, appearing to read "Janet G. McCabe". The signature is fluid and cursive, with the first name "Janet" being the most prominent.

Janet G. McCabe
Acting Assistant Administrator