



EPA Staff Crafts New Analysis Of Flaws, Possible Fixes For Vehicle GHG Plan

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EPA staff has prepared a new draft review that includes possible remedies for widely criticized assumptions in the Trump administration's proposed freeze of vehicle greenhouse gas and fuel economy standards, assumptions that critics say artificially boost the safety, cost and other benefits of the proposal while understating its environmental impacts.

It is not clear whether the analysis will significantly alter the pending joint rulemaking with the Transportation Department (DOT), amid numerous signs that the administration is poised to finalize a near-freeze of the Obama-era standards and that protracted litigation with states and environmentalists appears inevitable.

But it also could ultimately provide fresh fodder for future legal challenges of the rulemaking, with critics already arguing the plan faces significant legal risk. Even automakers are expressing unease and are largely avoiding public support for the rollback.

Sources familiar with the EPA staff work say it builds upon already public analyses -- from agency staff and many outside groups -- identifying shortcomings in the proposal, including claimed safety benefits that disappear after addressing modeling anomalies related to driving habits, "vehicle miles traveled," and other controversial assumptions from the proposal.

"There is a new paper," says one source, referencing the draft staff analysis that outlines alleged modeling weaknesses in the proposal on safety and the cost of the current standards.

This source says the analysis has gone to the Office of Management & Budget (OMB) as well as DOT, but there are not indications that it is prompting a major change in the plan.

A second source following the issue describes the analysis as a technical tear down of the DOT-spearheaded proposal, as well as ways to "improve and fix" the rule.

Another knowledgeable source refers to the analysis as a "draft technical report" that represents a more in-depth and comprehensive critique of the assumptions behind the proposal, and potential fixes, than what is already public.

Whether and how the analysis might alter -- or merely tweak -- the final vehicle GHG rule rollback is not clear, but the third source suggests it is more likely to create an "honest accounting" of the issues that could factor into likely court fights on the regulation.

EPA Administrator Andrew Wheeler [in an April 11 Reuters interview](#) suggested the administration is unlikely to moderate its rollback enough to avert a massive legal battle with California and its allies, though Wheeler said the final rule would not freeze the GHG rules at model year 2020 levels through MY26 as the proposal did.

"Our final regulation is not going to be the same as the proposal," he said, expressing hope that the final rule will be something everybody can "get behind and support."

The article quotes two U.S. officials as predicting a "small increase" in yearly fuel economy gains, while also indicating a final rule is months away, perhaps coming out in mid June. This is in line with prior remarks from Wheeler that the rule might not come out until early summer.

The practical effect of any change in stringency depends as much on the details as the top-line targets, including the extent that the rule retains or bolsters flexibility mechanisms, including credit for vehicle technologies automakers are already expected to install.

Withering Critiques

The expected small increase in the required vehicle fuel economy improvements appears unlikely to avert a major legal battle, as EPA is also continuing to say it will rescind California's waiver of federal preemption to implement tougher GHG rules than the federal limits.

The administration's proposal, dubbed the Safer Affordable Fuel Efficient (SAFE) Vehicles rule, has already been the subject of withering criticism by EPA staff and others of the plan's underlying analysis, including its claims of thousands of lives saved and assertions that the current rules are too costly.

Such critiques include prior EPA staff [briefing materials](#) drafted for April and June 2018 pre-proposal meetings at OMB. Among other conclusions, these briefings state the proposal would be “detrimental to safety rather than beneficial,” assuming that apparent flaws in DOT's modeling are not corrected. Those flaws include improperly assuming reduced driving will occur under the proposal compared to the current program.

Since then, an array of groups -- and even the industry itself -- have offered similar critiques of the safety, cost, and other assumptions in the proposal.

Such critiques include the Association of Global Automakers' [formal October comments](#) citing “anomalies” in DOT's assumptions of old vehicle scrappage. When removed, these assumptions result in the plan's safety benefits becoming “negligible.”

Other comments from the Environmental Defense Fund (EDF) claim that the proposal understates its environmental effects in terms of both GHGs and criteria pollutants. EDF says the proposal would result in cumulative premature deaths from fine particle pollution of between 14,500 and 32,000 through 2050, which translates to between \$89 billion and \$197 billion in damages that the group claims were “totally ignored” in the proposal.

Capitol Hill Democrats, meanwhile, have been [ramping up questioning](#) of Wheeler's recent public statements that the rule will result in GHG emissions comparable to those under the Obama-era rules.

Rep. Doris Matsui (D-CA) at an April 9 House hearing noted that such claims appear wholly inconsistent with [a September EPA presentation](#) to the Clean Air Act Advisory Committee stating that the proposed freeze would result in 3.8 billion tons of cumulative additional carbon emissions through 2050.

And House Energy & Commerce environment panel Chairman Paul Tonko (D-NY) pressed Wheeler on “internal” EPA analysis that would undercut the rule's safety claims. A Hill source says Tonko was referring to the 2018 pre-proposal briefing materials for OMB.

Sources indicate that the more recent EPA analysis updates and expands upon the agency's prior analysis.

Such analyses are typically made public after the conclusion of the rulemaking process, but the third knowledgeable source expresses some doubt on when and whether EPA political staff will “let it see the light of day.”

Credit Provisions

Multiple sources have been suggesting in recent weeks to *InsideEPA/climate* that the final rule could require between a 0.5 and 1 percent annual improvement in fuel economy. [An April 11 New York Times report](#) suggests the rule will require “about” a 1 percent improvement while also allowing credits for advanced refrigerant use in air conditioning, which would cut releases of high global warming potential chemicals.

The latter issue suggests a possible change from the proposal that did not count air conditioning leakage toward tailpipe emissions compliance, though one observer says it is not clear precisely how that might work given that DOT is limited in factoring such GHG credits into its fuel economy program.

Also unclear is the extent to which the final rule will include additional flexible credit provisions -- or allow more benefits -- from air conditioning or other “off-cycle” technologies than the plan envisioned. These details could affect the claimed benefits or real-world stringency of the program based on factors including whether the credits spur vehicle improvement or merely ratify technologies the industry is already adopting.

In addition, regulators have already projected some continued improvement in the vehicle fleet over time as the industry moves to compete in global markets with increasingly tough fuel economy and electric vehicle requirements.

One industry source also cites some indication that the final rule will rein in fees for noncompliance with the fuel economy program, after prior DOT attempts to delay an Obama-era fee increase were blocked by an appellate court.

The *Times* report also says automakers are bracing for the disruption of potentially having to meet the requirements of two different emissions standards -- one for California and the states that follow its rules, and another for the remainder of the country subject to EPA rules.

Such an outcome would be theoretically blocked by EPA's preemption provisions, though there are major questions about whether the agency successfully defend those in court.

Given no real sign of any deal that could avert a court battle, industry is increasingly raising this issue of bifurcated markets as part of ongoing meetings with the White House, according to the *Times*.

Trump officials during these meetings with individual auto companies have been **pressing the industry** to support its rollback.

The *Times* article also quotes Alliance of Automobile Manufacturers' Gloria Bergquist raising the prospect that states with stricter standards might have to create new rules against buying cars from other states. "Because this is all such new territory, no one's quite sure how this is going to work," she said. "We're trying to figure it out. But it's going to be a headache."

It also cites former EPA transportation air quality chief Margo Oge as saying automakers "will have to choose between Trump and California."

An industry source attributes at least part of the reticence by automakers on whether to back the rollback to not knowing key parts of the final rule.

"How are you going to support something when you don't know what it is?" the source said. -- *Doug Obey* (dobey@iwpnews.com)

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