

February 13, 2012

Environmental Protection Agency  
EPA Docket Center (EPA/DC)  
Air and Radiation Docket  
Mail Code 2822T  
1200 Pennsylvania Avenue, NW.  
Washington, DC 20460  
Attention: Docket ID No. EPA-HQ-OAR-2010-0799

Docket Management Facility, M-30  
U.S. Department of Transportation  
West Building, Ground Floor, Rm. W12-140  
1200 New Jersey Avenue, SE.  
Washington, DC 20590  
Attention: Docket ID No. NHTSA-2010-0131

RE: Proposed Rulemaking for 2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards; 76 FR 74854; December 1, 2010

Dear Sir or Madam:

The Association of Global Automakers, Inc.<sup>1</sup> (Global Automakers) is pleased to provide the enclosed comments on the joint Environmental Protection Agency (EPA) and Department of Transportation's National Highway Traffic Safety Administration (NHTSA) proposal for greenhouse gas (GHG) emissions and Corporate Average Fuel Economy (CAFE) standards for the 2017-2025 model years (76 FR 74854; December 1, 2010).

This notice of proposed rulemaking brings us another step closer to the goal of having a long term harmonized national program. Global Automakers and its members have always endorsed a comprehensive and harmonized national approach to reducing GHG emissions and improving fuel economy.

We have been working diligently with the agencies, including the California Air Resources Board, to create a harmonized program that meets our national environmental and energy objectives while providing manufacturers the needed flexibility and lead-time to design and build a full range of advanced technology vehicles that consumers want to buy.

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<sup>1</sup> The Association of Global Automakers, Inc. represents international motor vehicle manufacturers, original equipment suppliers, and other automotive-related trade associations. Our members' market share of both U.S. sales and production is around 40 percent and growing. We work with industry leaders, legislators, regulators, and other stakeholders in the United States to create public policy that improves motor vehicle safety, encourages technological innovation and protects our planet. Our goal is to foster an open and competitive automotive marketplace that encourages investment, job growth, and development of vehicles that can enhance Americans' quality of life. For more information, visit [www.globalautomakers.org](http://www.globalautomakers.org).



Thank you for the opportunity to provide comment on this important rulemaking. If you have any questions, please contact John Cabaniss, our Director, Environment & Energy, at [jcabaniss@globalautomakers.org](mailto:jcabaniss@globalautomakers.org) or (202) 650-5562.

Sincerely,

A handwritten signature in black ink that reads "Michael J. Stanton".

Michael J. Stanton  
President & CEO

Enclosure

## **COMMENTS OF THE ASSOCIATION OF GLOBAL AUTOMAKERS, INC.**

### **REGARDING THE EPA/ NHTSA JOINT PROPOSED GREENHOUSE GAS/FUEL ECONOMY STANDARDS FOR MODEL YEARS 2017-2025 LIGHT VEHICLES**

**February 13, 2012**

The Association of Global Automakers, Inc. (“Global Automakers”) appreciates the opportunity to provide its comments on the proposed model years (MYs) 2017-2025 light vehicle greenhouse gas (GHG) emissions and fuel economy standards. Global Automakers and its members have always endorsed a comprehensive and harmonized national approach to reducing GHG emissions and improving fuel economy. The alternative of having to comply with a patchwork of state requirements would add significant costs resulting in higher vehicle prices, with no corresponding environmental or energy security benefits. We have been working with the Environmental Protection Agency (EPA), Department of Transportation’s (DOT) National Highway Traffic Safety Administration (NHTSA), and California Air Resources Board (ARB) to create a program that meets national environmental and energy objectives while providing manufacturers the flexibility and lead-time necessary to design and build advanced technology vehicles that will provide consumers a full range of vehicle choices. This notice of proposed rulemaking (NPRM) brings us another step closer to the goal of having a long term, single national program.

The standards proposed by the agencies are extremely stringent and are based on a large number of assumptions about technology and the auto market over the next decade. By extending the standards for many years into the future, the agencies provide manufacturers with substantial lead-time, which is of great value in compliance planning. On the other hand, the long time frame means that standards in the later years will be based on relatively long-range projections and assumptions. For this reason, we support the proposed mid-term review to reassess the stringency of the standards, including technology penetration rates, fuel costs, and most importantly, consumer acceptance.

We also support the flexibility mechanisms and credits that the agencies propose to make available. These provisions enhance the ability of manufacturers to meet market demand, while maintaining the emissions and energy security benefits of the program. They also provide another means of dealing with the uncertainty associated with the out year standards. The various credits work in different ways, all of which are important. The credit banking and trading system provides an incentive for manufacturers to implement advanced technologies at early dates. The off-cycle credits provide incentives for manufacturers to pursue technologies that produce benefits in actual on-road driving but are not measured using the Federal Test Procedure (FTP). The advanced technology credits provide an incentive for manufacturers to continue to develop and market these technologies, which have the potential for substantial long term improvements in fuel efficiency and emissions performance. The air conditioning system credits provide manufacturers flexibility in pursuing a variety of enhancements

to system efficiencies and the use of advanced low global warming refrigerants. We see the flexibility mechanisms as an essential part of this program.

We urge the agencies to consider two factors in developing compliance incentives under the GHG and CAFE standards. First, it is important that the agencies harmonize flexibility mechanisms between the GHG and CAFE programs to the maximum possible extent, consistent with the goals of the National Program. This principle of harmonization does not apply, however, to the measurement of GHG emissions that are not efficiency-related, such as air conditioning refrigerant leakage. Second, the agencies should carefully consider the relationship between the creation of incentives under the new standards and the development of alternative test procedures to assess the incentivized technologies. Global Automakers strongly supports incentivizing technologies whose potential benefits are not fully measured under the 1975 CAFE test procedure. Air conditioning efficiency, off-cycle, and advanced technology incentives are justified based on their potential long term, real world benefits. Such incentives will typically take the form of compliance credits that are assessed using alternative test procedures. In developing incentives for the final rule, the agencies need to carefully consider how to reconcile these incentives with the testing procedures required by law.

Our comments regarding detailed aspects of the proposed standards are set forth below.

## **I. The Standards**

### **A. Lower “cutpoint” of light truck standard curve**

We note that the lower “cutpoint” of the truck standards curve is set at the same footprint point (41 square feet) as the passenger car standard. In our view, it would be more appropriate to set that cutpoint at the same sales point (i.e., representing approximately 10 percent of sales) as the passenger car curve. In this way, the same portion of the respective fleets would fall within the flat portions of the footprint curves. The same arguments advanced by the agencies in support of the selection of the lower cutpoint of the passenger car curve apply as well to trucks (small market segment, minimal incentive to downsize, possible disincentives for manufacturers to offer small vehicles if the curve continues to slope downward at the low end). See 76 Federal Register (FR) 74919. We believe that this change should be made for consistency of methodology and that it should have minimal impact on the standards for light trucks. Therefore, we recommend that EPA and NHTSA incorporate this change in the final rule.

### **B. Nitrous oxide and methane standards**

With regard to the standards for nitrous oxide and methane, we support the credit-based compliance option for the nitrous oxide and methane standards, as well as the new “upward adjustment” approach to allow these emissions to be included with carbon dioxide emissions. However, we see no need for the limitation on the use of methodologies under 40 Code of Federal Regulations (CFR) Section 86.1818-12(f) for

nitrous oxide and methane, finalized under the MYs 2012-2016 standards and carried over for MYs 2017-2025. We would like to see an allowance to use different compliance options for methane and/or nitrous oxide and also for passenger car and light truck fleets in the same model year, without the need for prior EPA approval. This restriction limits manufacturers' compliance options but with no clear environmental benefit. We urge EPA to eliminate this restriction in the final rule.

With regard to the proposed requirement for testing to measure nitrous oxide emissions beginning in MY 2017, we urge EPA to reconsider the cost-effectiveness of this requirement. The quantity of these emissions is quite low, and we see no indication that they will become an important factor in climate change in the future. Testing for this substance will require expensive new analyzers, whose performance remains to be determined. We support the comment of one manufacturer at the Detroit public hearing, which noted that the proposed test method for nitrous oxides is neither proven nor developed and that the Non-Dispersive Infrared Analyzer (NDIR) and Fourier Transform Infrared (FTIR) bag analysis methods currently have repeatability, durability and/or practicality concerns.

We urge the agency to allow manufacturers to continue to demonstrate compliance using the pre-MY 2017 analysis-based methodology in 2017 and thereafter. EPA should monitor these emissions and the development of testing analyzers and adopt new test-based requirements in the future should the emissions grow in significance or when the testing technology is ready. For instance, it would be appropriate to review the testing technology as part of the mid-term review and then determine whether testing as part of the regulations should be finalized following the mid-term review.

### C. Safety, Vehicle Mass, and Footprint

On November 28, 2011, NHTSA invited comment on the most recent in its series of analyses of the effect of changes in vehicle size (including mass and footprint) on vehicle safety. It is appropriate for NHTSA to consider this matter in conjunction with the development of new CAFE standards which could lead to changes in fleet size characteristics. With sufficient lead-time, the implementation of vehicle lightweighting strategies can be phased in, making it possible to observe the safety implications in comparison with vehicles in the existing fleet. Providing adequate lead-time for new CAFE and GHG standards facilitates the evolutionary development of strategies for lightweighting vehicles that simultaneously improve both safety and vehicle fuel economy. These strategies should be based on real world experience and in reliance upon laboratory test data to enable manufacturers to incorporate these design strategies at the vehicle development stage.

## **II. Air Conditioning System Credits**

### **A. The AC17 Test**

EPA proposes to use a new air conditioning test procedure (AC17) to evaluate potential credits for system efficiency improvements by manufacturers. However, it is clear that there could be problems resulting from the use of the new test. EPA states that “the appropriateness of the test is still being evaluated” and “EPA believes that more testing and development will be necessary before the new test could be used directly ...” See 76 FR 74938, 74940. Global Automakers has several concerns with AC17 test procedure, which we recommend that EPA address before the test procedure is required by the regulations. For instance, it is not clear if the precision of the AC17 test procedure is high enough to differentiate between the baseline vehicle and the vehicle enhanced with A/C energy saving technologies. If the total precision of the vehicle test is 2 g CO<sub>2</sub>/mi and the enhanced vehicle has A/C-related technologies with menu credits worth that amount or less, the benefit may not be identifiable at all on the vehicle test. Moreover, it is not clear that it would be practicable to use the AC17 test to compare the performance of certain vehicles with and without the individual efficiency improvements from the EPA menu installed, as proposed by EPA. This would be a problem in particular for vehicles that incorporate efficiency improvements as part of a major redesign or full model change. In those situations, it may not be possible to provide a comparable vehicle having an air conditioning system without the efficiency improvements installed. Another issue may result from the comparison of A/C systems when the “baseline” system is already efficient. It may be difficult to demonstrate improvements between two efficient systems, and it is not clear how to obtain credits for changes that resulted in the improved efficiency for the “baseline” system.

We understand the goal of ensuring that credits given on the menu system for A/C technologies actually translate into real-world emissions reduction and fuel savings on the vehicle. There are different methodologies to evaluate the improvement from A/C technologies including menu systems, bench testing, simulation, and vehicle testing. Each of these has its own merits and challenges. One possible improvement that can be made in the current menu system is to put technical specifications relating to efficiency for the individual component technologies. Other options may also be appropriate. Nevertheless, the test procedure concerns should be addressed before implementation.

Due to these potential problems, we urge the EPA to collaborate with the SAE Interior Climate Control Committee to evaluate options to improve the test procedure and to reassess the test procedure as part of the mid-term review. In the interim, we recommend that EPA include in the final rule an “off-ramp” procedure to allow the determination of air conditioning credits without using the AC17 test procedure.

### **B. Availability of HFO-1234yf**

As EPA is aware, manufacturers have been evaluating alternative refrigerants with low global warming potential (GWP) for many years. HFO-1234yf has emerged as a potential alternative that has the potential to be used in new vehicles in the near term.

However, while the outlook for the use of HFO-1234yf is promising, the availability of HFO-1234yf is still highly uncertain. With only two manufacturers and only one plant to produce this refrigerant at this time, there is not yet a guarantee that there will be adequate supplies for the U.S. vehicle market, especially since the European Union is moving ahead to adopt alternative refrigerants prior to the U.S. As part of the determination of the GHG standards, EPA accounts for the expected use of HFO-1234yf, and therefore the likely credits that would be obtained from this use, expecting 100% usage prior to 2025. The GHG standards were developed with these potential credits in mind. If for some reason HFO-1234yf does not reach commercialization, or adequate supplies are not available for all vehicle manufacturers, then it will be necessary for EPA to reassess the GHG standards, taking into account that a 100% usage rate will not be met. Global Automakers recommends that EPA continue to track the progress for HFO-1234yf and reevaluate the potential for 100% usage as part of the mid-term review. Again, if 100% usage is not feasible, then EPA should account for this shortfall through a revision of the standards following the mid-term review.

### **III. Off-Cycle Credits**

Global Automakers supports the availability of credits for technologies that provide on-road efficiency and emissions benefits but whose benefits are not fully measured using the current city-highway test. In a number of cases, these technologies are currently known, as indicated by the “menu” of credits developed by the agencies for the proposed rule. However, given the long time-frame for the proposed standards, it is very possible that additional technologies will be identified which should qualify for off-cycle credits, and the characteristics of these technologies cannot currently be predicted. In order to provide an incentive for manufacturers to pursue the implementation of these technologies and realize the resulting benefits, it is important that the agencies provide maximum flexibility to manufacturers to obtain credits. For these reasons, we urge the agencies to avoid imposing unnecessary restrictions on qualification for off-cycle credits. The proposed rule establishes numerous restrictions on the use of off-cycle credits which appear to be arbitrary and unnecessary to the effective functioning of the GHG and CAFE programs. Therefore, we urge the agencies to eliminate the restrictions described below:

(1) *The pre-approved technology “menu.”* Global Automakers supports the inclusion of the menu in the regulations as a default list of pre-approved technologies, with manufacturers being authorized to petition for larger credit or credits for additional technologies, based on credible data. EPA characterizes the menu credits as being conservative estimates of actual on-road benefits, so we see no reason to limit the availability of the menu credits to MY 2017 and thereafter. Therefore, we request that EPA revise section 86.1866-12(d)(1) to make the menu credits also available in MYs 2012-16.

The agencies should also update the menu list from time-to-time, as they receive information on additional technologies that provide off-cycle benefits. Inclusion of technologies on the pre-approved menu provides a significant incentive for

manufacturers to implement those technologies, so the menu should be as comprehensive as possible. One example of such a technology that is mentioned in the comments on the proposed standards is high efficiency alternators. This technology provides benefits greater than those measured in 2-cycle testing, since its efficiency advantage is applied to the electrical loads of equipment that is operated during typical on-road driving but that is not operated during 2-cycle tests (e.g., lighting, radio, etc.).

(2) *Cap on off-cycle credits.* EPA proposes several caps on off-cycle credits. Under section 86.1866(d)(1)(i)(B), EPA establishes maximum allowed credits for thermal control technologies and advanced glazing. A cap on menu credits of 10 grams per mile is also established (paragraph (d)(1)(ii)). Manufacturers may exceed the 10 gram cap by demonstrating the benefits using 5-cycle testing or analysis. See preamble page 75023. However, since EPA characterizes the menu credits as being based on conservative estimates of benefits, we see no reason to require testing when the menu values exceed the 10 gram limit.

The basis for these maximum credits is not clear. EPA should either provide an explanation for the need for these caps or eliminate them.

(3) *Credits for “integral” technologies.* EPA proposes that technologies that are integral to the basic vehicle design, including engine transmission, mass reduction, passive aerodynamic design, and base tires, are ineligible for credits. See 76 FR 75024. In other words, the credits would only be available for “add-on” technologies. EPA imposes this restriction based on its belief that it would be difficult to establish the credit by making a clear comparison of the vehicle’s performance using baseline and advanced forms of the technology in question. In our view, the difficulty of making a credible demonstration of the benefits of an off-cycle technology should not be judged in advance of any data that might be developed by a manufacturer. It may well be that making a credible demonstration of benefits for some of these integral technologies will be difficult, but that is no reason to deny manufacturers the opportunity to make such a demonstration. If EPA finds such a demonstration to lack credibility, it would of course be able to deny the manufacturer’s credit request.

(4) *Credits for technologies that are included in the agencies’ standard-setting analysis.* EPA states in the preamble to the proposal (76 FR 75023) that technologies that are included in the agencies’ standard-setting analysis may not generate off-cycle credits (with the exception of active aerodynamic devices and engine stop-start systems). EPA states that allowing such credits for these technologies would amount to “double-counting” of benefits. However, there may emerge by 2025 advanced levels for current technologies that are capable of achieving greater benefits than current systems. If a manufacturer can demonstrate that an advanced version of one of the technologies that is included in the standard-setting analysis can achieve greater benefits than projected by the agencies, and those benefits are not captured with the current test procedure, there is no justification for excluding these technologies from the off-cycle credit program.



(5) *Minimum market penetration to qualify for credit.* EPA proposes minimum market penetration rates of 10 percent of the manufacturer's combined car-truck fleet for most of the off-cycle menu technologies, in order to qualify for credits. The minimum penetration rate creates an unnecessary impediment to the introduction of new technologies. The off-cycle technologies may be relatively new items, and consumers may not be familiar with these items. Implementation of these technologies at low levels may, if successful, lead to substantial benefits in the future, and manufacturers should be encouraged to pursue such technologies. A smaller penetration rate would create a correspondingly smaller credit, so we see no problem being created at lower penetration levels. EPA has failed to demonstrate a clear need for the minimum penetration restriction.

EPA should not maintain any of the restrictions on off-cycle credits in the absence of a strong showing of need for the restriction. Additionally, we believe that the agencies should update the off-cycle credits menu in the mid-term review.

#### **IV. Incentives for Advanced Technology/Alternative Fuel Vehicles**

Global Automakers supports the inclusion of advanced technology incentives as an integral part of the MY 2017-25 standards program. As stated in the agencies' proposal, such vehicles have the potential to achieve major emission reductions and improvements in fuel efficiency, but face near-term market barriers relating primarily to price and fueling infrastructure. The incentives proposed by EPA provide a bridge to overcome these near-term obstacles.

EPA has proposed company specific caps on the 0 grams per mile emissions rate for electric and fuel cell vehicles beginning with MY 2022. Global Automakers recommends that EPA reconsider the need for these caps as part of the planned mid-term review of the standards. If EPA decides to adopt company-specific caps, we recommend that it adopt a simple linear function based on vehicle sales levels to establish the caps, rather than using the proposed two-step approach.

EPA invited comments on providing a multiplier incentive for dedicated and/or dual fuel compressed natural gas vehicles. Global Automakers supports such an approach, which would address the near term price and fueling infrastructure obstacles faced by these vehicles in a manner consistent with the approach taken for electric and fuel cell vehicles. Furthermore, Global Automakers supports the extension of multiplier incentives to other alternative fuels as well, such as liquid petroleum gas (LPG) or biodiesel. With regard to dual fueled vehicles in general, we urge the agencies to reconsider the treatment of these vehicles as part of the planned mid-term review of the standards, at which point the need for particular incentives would be clearer. Whatever approach is adopted, we urge that EPA and NHTSA agree on a single, harmonized set of incentives.

The agencies also propose an incentive for "game-changing" technologies used in large pick-up trucks. Also provided as an incentive for larger trucks are certain adjustments

to the slope of the truck curve, to reduce the stringency of standards for those vehicles. The agencies justify these incentives based on what they see as special compliance burdens of these vehicles, including “generally higher payload and towing capabilities and cargo volumes than other light duty vehicles.” See 76 FR 74944. In our view, other classes of vehicles may face similar compliance obstacles, or obstacles that, while different in nature, are still significant. We urge the agencies to consider extending “game-changing credits” to other vehicle classes, such as minivans or SUVs with towing capabilities. These credits should also be reassessed as part of the mid-term review process, to determine whether they should be modified.

## **V. Small Volume Manufacturers**

Global Automakers supports the approach proposed by EPA to establish small volume manufacturer standards on a company-specific basis. The approach provides the compliance flexibility that this small segment of the industry needs while also contributing to the control of GHG emissions. This approach would be most efficiently administered if manufacturers may petition for, and EPA grants, alternative standards for multiple model years in a single proceeding. Such standards should be issued at least 18 months prior to the first affected model year. We also urge EPA and NHTSA to work cooperatively to harmonize CAFE and GHG standards for these small companies.

Also with regard to the issue of small volume manufacturers, Global Automakers strongly supports including regulatory language in the final rules that would amend the existing 40 CFR 86.1838(b) regarding small volume manufacturers to include the criteria set forth in the preamble to this regulatory package at 76 FR 74992 (middle column). These criteria would allow a manufacturer to retain SVM status if it can demonstrate that it is "operationally independent" from another manufacturer that may have an ownership interest in that manufacturer.

Inclusion of the criteria included in the above referenced preamble text would provide necessary flexibility for historically independent small manufacturers, while the criteria are sufficiently stringent (e.g., strict limits on the total vehicles sold in the US, no joint ownership of intellectual property by the manufacturers, separate R&D, testing, and development facilities, independent verification, etc) so that there would be virtually no ability to abuse this provision. In addition, any manufacturer that meets the criteria set forth in the preamble would still need to comply with the provisions applicable to all SVMs.

## **VI. Compliance Issues**

### **A. Third row seats**

NHTSA invites comment on the reclassification of vehicles with a third row of seats that are currently classified as light trucks under NHTSA regulations in title 49 U.S.C. 523.5(a). Global Automakers agrees with NHTSA’s conclusion that there would be no

clear energy savings benefit from reclassifying these vehicles to be passenger automobiles, and we urge the agency to maintain the current classification system. Shifting these vehicles into the passenger automobile category would likely necessitate changes to the auto standards to make the standards less stringent to accommodate these vehicles, potentially reducing fuel savings. Such a shift would also impose significant compliance costs on manufacturers as the stringency of both the auto and truck standards would change. We also reject the argument presented in the proposal that the third row of seats is installed in some crossover vehicles as a gaming strategy, in order to shift vehicles into the truck category. There are substantial cost and weight penalties associated with the addition of third row seats, so installing these seats cannot be justified in the absence of consumer demand for them.

#### B. Base tires

NHTSA also invites comment on its proposed modification to its definition of “base tire,” which affects the determination of footprint size in determining compliance with standards. This change is proposed due to NHTSA’s concern that the current definition lacks specificity, leading to differing interpretations by manufacturers. Global Automakers supports clarification of the definition. We also urge that NHTSA and EPA adopt the same definitions of “base tire,” in order to increase the harmonization of standards under the national standards program.

### **VII. Mid-term Review**

Due to the many uncertainties that are implicit in the technical and economic assumptions that form the basis for the proposed standards, we support the proposed mid-term review of the standards. We also support the recommendation made at the Detroit public hearing that the final rule should specify a clearly defined process for the review, with a designated list of questions to be addressed. In addition, we agree with the recommendation (again at the Detroit public hearing) that the agencies consider a series of more narrow reviews of key aspects of the standards.

The need for a mid-term review finds ample support in both EISA and the Clean Air Act, as both statutes require the promulgation of regulations that are based on the most up-to-date information concerning the costs and benefits of the technologies required to meet the standards. Indeed, because EISA prohibits the promulgation of fuel economy standards past the MY 2021, a mid-term evaluation is required before final CAFE standards can be promulgated for the 2022 through 2025 MYs. EISA provides that the Secretary shall “issue regulations under this title prescribing average fuel economy standards for at least 1, but not more than 5, model years.” 49 U.S.C. § 32902(b)(3)(b). Congress included the 5 year limit, in part, because it recognized that the factors NHTSA must consider in adopting fuel economy standards—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, *see* 49 U.S.C. §32902(f)—are fluid and vary over time. Consequently, any attempt to weigh these

factors today for standards that would not apply until the 2022 MY would be fraught with uncertainty and inherently arbitrary.

The current rulemaking being jointly undertaken by EPA and NHTSA encompasses nine model years (MYs 2017 through 2025). Under the plain terms of the statute, any final fuel economy standards that are issued now and are applicable to a model year after 2021 would be invalid. The Notice of Proposed Rulemaking recognizes this concern and therefore states “[t]he second phase of the CAFE program, from MYs 2022–2025, represents conditional proposed standards . . .” 76 FR at 74,859. NHTSA correctly recognizes that “conditional” rulemaking in this instance “means to say that the proposed standards for MYs 2022–2025 represent the agency’s current best estimate of what levels of stringency would be maximum feasible in those model years, but in order for the standards for those model years to be legally binding a subsequent rulemaking must be undertaken by the agency at a later time.” *Id.*, n.7. According to NHTSA, “[t]he passenger car and light truck CAFE standards for MYs 2022–2025 will be determined with finality in a subsequent, *de novo* notice and comment rulemaking conducted in full compliance with EPCA/EISA and other applicable law . . .” *Id.* at 75,166.

Global Automakers supports the intent expressed in the Notice of Proposed Rulemaking concerning the mid-term evaluation. However, we are concerned that the actual language of the proposed regulations goes too far in adopting final regulations for MY 2022 through 2025. Proposed 49 C.F.R. § 531.5(c) provides that “[f]or model years 2012–2025, a manufacturer’s passenger automobile fleet shall comply with the fleet average fuel economy level calculated for that model year according to Figure 2 . . .” and provides the parameters for the fuel economy targets through the 2025 MY. Viewed in isolation, this provision would constitute final fuel economy standards for the 2022 through 2025 MYs. The standards are ostensibly made conditional through proposed subsection (e), which provides: “For model years 2022–2025, each manufacturer shall comply with the standards set forth in paragraphs (c) and (d) in this section, if NHTSA determines in a rulemaking, initiated after January 1, 2017, and conducted in accordance with 49 U.S.C. 32902, that the standards in paragraphs (c) and (d) are the maximum feasible standards for model years 2022–2025. . . .”

Global Automakers is concerned that the proposed regulatory language is not sufficient to truly make the MY 2022-2025 standards “conditional;” rather, they have all of the hallmarks of final standards that are simply subject to possible revision at a later time. As such, we believe that the proposed regulatory language violates the prohibition against adopting standards for more than five model years found in 49 U.S.C. § 32902(b)(3)(b). Global Automakers suggests that a better—and more legally defensible—approach would be to draft 49 C.F.R. § 531.5(c) to cover only vehicles through MY 2021, and to have MY 2022 through 2025 covered in a separate subsection that explicitly states that the standards for those model years are not final, but rather have been conditionally set at these levels subject to future *de novo* final rulemaking.

Global Automakers believes that a mid-term evaluation of the GHG emission standards is likewise not only permissible under the Clean Air Act, but also required because of the uncertainties inherent in projecting regulatory requirements nine to twelve years into

the future. First, Section 202(a) plainly provides EPA with the authority for a mid-term evaluation. See 42 U.S.C. § 7521(a)(1) (providing that “[t]he Administrator shall by regulation prescribe (**and from time to time revise**)” motor vehicle emission standards) (emphasis added).

Moreover, a mid-term evaluation is required under the Clean Air Act in view of the proposed regulations’ long regulatory horizon. The Clean Air Act requires that standards “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.” 42 U.S.C. § 7521(a)(2). EPA’s determination concerning the appropriate level of stringency for GHG emission standards must be based upon reliable and up-to-date information.

Given the extremely long time-horizon of these proposed mobile source regulations, EPA has conceded a number of uncertainties in the analyses that underlie its current rulemaking. See, e.g., 76 FR at 74,881 (recognizing the “uncertainties regarding the benefit and cost values presented in this proposal”). For example, the NPRM states that EPA and NHTSA “did not consider technologies that are currently in an initial stage of research because of the uncertainty involved in the availability and feasibility of implementing these technologies with significant penetration rates for this analysis. The agencies recognize that due to the relatively long time frame between the date of this proposal and 2025, it is very possible that new and innovative technologies will make their way into the fleet, perhaps even in significant numbers, that we have not considered in this analysis.” *Id.* at 74,922. Global Automakers believes that the converse may also be true, i.e., the proposed standards are based on assumptions concerning the availability and market penetration of technologies up to 12 years into the future that may not prove entirely accurate. Consequently, Global Automakers believes that it would have been arbitrary and capricious for EPA to promulgate GHG emission standards for model years as far into the future as MY 2022-2025 without providing for a mid-term evaluation.

## **VIII. Fuel Quality**

While we understand fuel related issues are outside the scope of the current proposal, we continue to support a systems approach with both vehicle technologies and fuel quality being of paramount importance. Gasoline quality improvements can be instrumental in automakers introducing the advanced technologies needed to comply with these proposed standards. Also a number of advanced vehicle technologies involve significant infrastructure issues. We look forward to working with the agencies on these issues under the upcoming EPA Tier 3 regulations and in other forums, including the mid-term review.