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Biden Officials Said To Seriously Weigh ‘Decoupling’ EPA, DOT Auto Rules

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Biden officials are seriously weighing whether to create some separation between EPA’s auto greenhouse gas standards and the Transportation Department’s fuel economy rules in an effort to be more aggressive on electrification, according to several sources, though observers disagree about exactly what such a “decoupling” effort would entail.

Supporters of the concept say that separating the two sets of standards, which EPA and the National Highway Traffic Safety Administration (NHTSA) have “harmonized” since EPA first issued GHG limits in model year 2012, could help President-elect Joe Biden achieve his plan to vastly boost sales of electric vehicles (EVs).

Backers note that EPA has much broader authority to cut vehicle GHGs, while NHTSA faces statutory limits including that it is only able to consider technologies that improve the fuel economy of an internal combustion engine.

Existing statutory authority also limits NHTSA from setting standards more than five years in advance, and it only explicitly requires the agency to develop standards through MY30.

The idea is under “serious consideration” by the incoming administration, one source says.

Debate over the matter has intensified since experts affiliated with the Climate 21 Project, a group of former officials who issued a broad set of climate recommendations to the incoming administration, floated the decoupling idea [in November](#).

The group argues that EPA has “the clearest regulatory authority” for vehicle GHG rules and that it can encourage a “bolder approach,” especially for light-duty EVs.

The group also notes that EPA’s Clean Air Act authority operates independently of NHTSA’s fuel economy mandates under the Energy Policy & Conservation Act (EPCA) and the Energy Independence & Security Act (EISA).

Those statutes only require NHTSA to set corporate average fuel economy (CAFE) rules through MY30, a second source notes.

Some sources late last year suggested that decoupling [could be fraught with obstacles](#) including litigation, in part because many believe auto manufacturers prefer to work with NHTSA rather than EPA -- though other sources are now suggesting it may not be such a heavy lift.

During the Obama administration, EPA played a lead role in the “harmonized” rules, which the agencies first issued in 2010 for MY12-16 vehicles and then again in 2012 for MY17-25. NHTSA’s rules largely aligned with EPA’s GHG limits -- with relatively minor differences including EPA’s credits for use of climate-friendly refrigerants. NHTSA also only formally set CAFE rules through MY21 because of the five-year standard-setting limit.

The Trump administration took a different approach, tapping NHTSA to lead its effort to roll back the second round of Obama standards -- with the Trump rules now facing litigation. Multiple sources have said career EPA staff were given a relatively minor role in the joint regulation.

Additionally, the Trump EPA revoked a 2013 air act preemption waiver for California to enforce its stricter GHG and zero-emission vehicle rules, which have been adopted by multiple other states. The waiver action is also being challenged in court.

'Aiming Low'

A third source argues NHTSA "has a long reputation of aiming low," and its staff "seemed to be more than eager to jump on the Trump bandwagon to weaken GHG vehicle standards at the federal level and torpedo California's program. But NHTSA has no authority over tailpipe standards, and EPA during the Trump administration basically allowed it to usurp its authority under the [air law], which may be illegal."

This source also cites tensions between the two agencies during the Obama years, where EPA had to push NHTSA not to weaken the joint rules.

"After that experience, and four years of the Trump administration, where NHTSA was given free rein, there's been a growing sentiment that NHTSA institutionally is just a hindrance to progress and . . . it's time to basically ignore it when it comes to GHG pollution."

The first source argues that decoupling would not take away NHTSA's authority but would simply recognize EPA's authority as "independent." NHTSA can continue to set CAFE standards that establish the "floor" for vehicle improvements, while EPA's rules would be more ambitious and EV-focused. NHTSA's standards would ultimately become irrelevant, this source says.

The second source argues that Biden officials can allow decoupling to "naturally" occur by directing NHTSA to cease setting CAFE standards after it is no longer required to do so by law.

Under this scenario, NHTSA can harmonize its rules with EPA for MY24-25, as the latter agency revises the Trump-era standards. Those could be the last years the rules would have to align. Afterward, EPA could be free to depart from NHTSA, which could maintain its MY25 through MY30.

Under the Clean Air Act, EPA can set GHG rules over the long-term -- as evidenced by its 2012 rule setting limits through MY25 -- which the second source says effectively makes NHTSA's CAFE authority irrelevant.

"Many people argue that NHTSA's main authority is safety and EPA's is focusing on addressing climate change. . . . Under those kinds of arguments, NHTSA could stand down in many people's views, and EPA along with California and other states proceed to address climate change under the Clean Air Act," the source argues, adding that decoupling is probably "a solution for beyond MY25."

EPA and California in this scenario could coordinate on standards from MY26 until MY33 or MY35. That would be "less confusing for industry" because it would give companies significant lead time to meet a single set of rules.

This source believes industry would support such a plan, though that is far from clear.

Industry Views

The new Alliance for Automotive Innovation -- a trade group representing nearly all automakers -- released [a Dec. 15 "innovation agenda"](#) that does not endorse mandates to spur a greater shift to EVs, but it does call for various forms of government assistance to help drive greater sales of such vehicles.

One auto supplier source suggests that decoupling could be part of a deal with automakers -- citing their requests in the report -- but says it is likely to be "quite challenging" because of likely litigation threats by NHTSA supporters.

This source believes some parties would file suit if EPA and NHTSA craft inconsistent standards, and the agencies might not want to allow courts to settle that dispute.

But Dan Becker, a clean vehicle expert with the Center for Biological Diversity, tells *Inside EPA* that NHTSA's role can be considered irrelevant because it "failed to use the authority they had for decades," even since CAFE rules were first written in 1978.

When NHTSA was working with EPA during the Obama years, “they did very little but throw interference” and “came along kicking and screaming almost the entire way. . . . Basically, NHTSA doesn’t deserve to be part of this process.”

Becker adds that when the Obama EPA was developing vehicle GHG rules, it “basically” decoupled the two agencies “without overtly telling NHTSA it had no role.” Instead, Obama “elevated” EPA’s role, though the agencies still had many clashes requiring the White House to referee.

He says NHTSA’s lack of authority to consider alternative vehicle technologies is also “relevant” because “EPA has authority over emissions, which EVs have none. NHTSA has fuel economy authority, which also doesn’t apply to EVs.”

That means EPA could “set standards for the gas-powered part of the fleet,” requiring a big improvement every year that effectively requires increasing sales of EVs. Those could be ramped up so that by 2030, all new vehicles will be electric.

This scenario would mirror what California and Massachusetts are already planning.

Another environmentalist notes that in the past the EPA and NHTSA standards have intentionally been aligned, “but they don’t have to be.” The source suggests decoupling can happen immediately because nothing in either law requires the rules to match.

The agencies can continue to rely on the same technical assessments for gas and diesel vehicles, the source says. But EPA can “look at the full suite of available technologies and come up with an emissions standard that considers all of those, so that naturally gets it to a tighter standard.”

This source does not have a prediction for what the Biden administration will do on decoupling but says all federal agencies will “be looking at all of the actions they can take to address climate change and put the country on a path to zeroing out” carbon emissions. -- Dawn Reeves (dreeves@iwpnews.com)