

# EPA and NHTSA Finalize Rollback of Vehicle Fuel Economy and GHG Standards

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## Key Takeaways

- **Regulatory Action:** Vehicle fuel economy and greenhouse gas emissions standards will increase in stringency by 1.5 percent per year from Model Years (MY) 2021-2026, as compared to MY 2020 levels. But this increase is far less than the 5 percent annual increase under the Obama Administration's rule. It is also less than the 3.7 percent per year reduction in greenhouse gas emissions required under a 2018 voluntary agreement between California and four major automakers.
- **Key Issues for Regulated Entities:**
  - Compliance flexibilities largely remain in place: automakers can continue to take advantage of credits for electric and natural gas vehicles, for example.
  - Because the rule inevitably will be challenged, OEMs face significant regulatory uncertainty as they must presently design vehicle models to satisfy the potentially applicable future standards.
- **Timeline:** The final rule becomes effective 60 days after publication in the *Federal Register*. States, environmental groups, and trade groups will seek judicial review.

## SAFE Rule

On March 31, 2020, the U.S. Environmental Protection Agency (EPA) and the National Highway Traffic Safety Administration (NHTSA) [finalized new standards](#) for corporate average fuel economy

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(CAFE) and greenhouse gas (GHG) emissions for MY 2021 through 2026 passenger cars and light trucks.

This final rule is Part II of the Safer Affordable Fuel-Efficient (SAFE) Rule. As detailed in [our earlier alert](#), Part I was finalized in September 2019 and rescinded EPA-issued waivers authorizing California to set more stringent GHG standards and to enforce its Zero Emission Vehicles (ZEV) mandate. Part I also posited that state GHG and ZEV regulations are preempted by federal law. Litigation brought by twenty-four states and environmental groups challenging Part I is ongoing. States and environmental groups have already pledged to also challenge Part II.

## **New CAFE and GHG Standards**

The CAFE and GHG emissions standards established by the final SAFE rule will increase in stringency by 1.5 percent per year from MY 2020 levels over MYs 2021-2026. But these standards are less stringent than the 5 percent annual increase required by the rule promulgated during the Obama Administration, although more stringent than the 0 percent increase in the proposed SAFE Rule. According to EPA and NHTSA, the standards “fit the pattern of gradual, tough, but feasible stringency increases that take into account real world performance, shifts in fuel prices, and changes in consumer behavior toward crossovers and SUVs and away from more efficient sedans.”

EPA and NHTSA project that the new standards will require automakers to achieve fleet averages of 201 grams per mile (g/mi) of CO<sub>2</sub> and 40.5 miles per gallon (mpg) by MY 2030. The agencies note that real-world CO<sub>2</sub> is typically 25 percent higher and real-world fuel economy is typically 20 percent lower due to compliance flexibilities and limitations of regulatory test procedures. Accordingly, the agencies project a real-world average of 33.2 mpg versus about 39 mpg under the Obama-era rule.

## **Changes to Compliance Flexibilities**

EPA is not changing the vast majority of existing compliance flexibilities, which allow automakers to achieve compliance with the CAFE and GHG standards through use of clean technologies, credit trading, and other mechanisms. Notably, the new rule:

- Continues to offer credits for reducing leakage of air conditioning GHGs.
- Extends the “0 grams/mile” assumption for electric vehicles through MY 2026. This means EPA will not count the upstream emissions caused by the electricity usage of electric vehicles.
- Ends credits for producing full-size pickup trucks that are hybrids or otherwise outperform their GHG targets starting in MY 2022.
- Adds a 2.0 credit multiplier for natural gas vehicles through MY 2026. The 2.0 credit multiplier allows automakers to double count these vehicles for emissions compliance calculations. The rule does not extend the credit multipliers for electric vehicles and fuel cell vehicles that are scheduled to phase out after MY 2021.

## **Outlook**

Part II of the SAFE Rule will go into effect sixty days after publication in the *Federal Register*. States

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and environmental groups have already pledged to challenge the final rule in court.

Litigation of the SAFE Rule will lead to ongoing regulatory uncertainty. Automakers who elect to disregard the California GHG and ZEV standards and rely exclusively on the new CAFE and GHG standards do so at their own risk. Should there be a change in administration or should litigation ultimately invalidate the rules, automakers may find themselves left scrambling to comply with stricter standards given the long lead times for vehicle development and production.

Automakers would face a significant challenge if a court upheld only Part II of the SAFE Rule but not Part I. In that scenario, the California waiver would be left intact, allowing California—and the 13 states that have adopted California standards—to impose stricter GHG standards than the rest of the country. This would be an unfavorable outcome for automakers who have strived for years to ensure that California's standards are harmonized with the federal standard to maintain one national standard.

As [we detailed earlier](#), the uncertain future of the SAFE Rule and desire for predictability in meeting California's requirements have already spurred Volkswagen, Ford, Honda, and BMW to enter a voluntary agreement with California requiring GHG reductions at a compromise level of 3.7 percent per year through MY 2026. The agreement's credit multipliers also differ from those in the SAFE Rule in that the agreement allows double credit for battery and fuel cell electric vehicles and 1.6x credit for plug-in hybrid electric vehicles through MY 2024. It remains to be seen whether states that have adopted California standards will pursue similar agreements and whether additional automakers will seek to join those agreements. At any rate, automakers must now evaluate numerous litigation and rulemaking scenarios in determining their fuel economy and GHG compliance strategies.

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