

Major Automakers Finalize “Framework Agreements on Clean Cars” with California

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Five major automobile manufacturers – BMW of North America, Ford, Honda, Volkswagen Group of America, and Volvo – and the California Air Resources Board (CARB) recently entered into voluntary [framework agreements](#) to reduce vehicle greenhouse gas (GHG) emissions annually through model year 2026. This follows the agreement-in-principle that CARB and the automakers reached in [July 2019](#) in anticipation of the Trump Administration’s plans to promulgate less-restrictive light-duty vehicle GHG emissions standards.

The Federal SAFE Rule

The U.S. Environmental Protection Agency (EPA) and the National Highway Traffic Safety Administration finalized in [September 2019](#) the first part of the Safer, Affordable, Fuel-Efficient (SAFE) Vehicles Rule. Specifically, Part I of the SAFE Rule withdrew California’s 2013 Clean Air Act Section 209(b) waiver, which permitted California to establish GHG emissions standards and Zero-Emission Vehicle (ZEV) mandates. This rule is currently being challenged by 24 states and environmental groups.

EPA and NHTSA finalized the remaining part of the SAFE Rule in [March 2020](#), establishing new standards for corporate average fuel economy (CAFE) and GHG emissions for model year 2021-2026 passenger cars and light trucks. Under Part II of the SAFE Rule, the CAFE and GHG standards will increase in stringency by 1.5 percent per year from model year 2020 levels for model years 2021-2026, which is significantly lower than the 5 percent annual increase in stringency required by the Obama Administration’s rule. Part II of the SAFE rule is also being challenged by 24 states and environmental groups.

The CARB "Framework Agreements on Clean Cars"

The respective framework agreements between the automakers and CARB require yearly decreases of around 4 percent of GHG emissions for passenger cars and light trucks, closer to the level initially

contemplated under the Obama Administration. Among other things, the 2025 model year standard was extended to 2026 and upstream GHG emissions are not required to be considered as part of the GHG emissions calculation for an automaker's fleet compliance. The agreements also provide incentives for expediting the development and production of ZEVs as well as flexibility by extending and increasing the advanced technology vehicle multiplier for hybrid and electric vehicles. The automakers have also made confidential electrification commitments to promote and further develop electrification technology, including charging infrastructure expansion.

In addition, the automakers have agreed not to challenge or undermine these framework agreements or the model year 2021-2026 California standards, and CARB has agreed to enforce the terms of the agreement solely in accordance with the respective agreements' enforcement provisions and remedies (*i.e.*, contract remedies), as opposed to using all available enforcement mechanisms. The Section 177 States (the 13 states that follow California's emissions standards) have similarly agreed to exercise enforcement discretion.

Outlook

The uncertainty associated with the legal challenges to the SAFE Rule, and the possibility of having to comply with two different U.S. GHG regulatory regimes – the more stringent California and Section 177 States standards and the less stringent SAFE Rule Part II standards in the rest of the United States – led these five major automakers to enter into these agreements voluntarily with CARB. According to the automakers, doing so will: “(i) make long-term product planning decisions and investments with confidence; (ii) satisfy market demand and production realities; and (iii) comply with regulatory requirements during this time.” Settlement Agreement ¶ 25. The agreements are also intended to provide the automakers “compliance flexibility” and “greater certainty to plan” for their nationwide fleets. *Id.* Whether these agreements achieve these objectives, how California and the Section 177 States exercise their enforcement discretion, and the ultimate fate of Parts I and II of the SAFE rule warrant following closely.

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