

Rollback of Greenhouse Gas Emissions Standards Announced by EPA

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Last week, on March 30, 2020, the U.S. Environmental Protection Agency (the “EPA”) and the National Highway Traffic Safety Administration (“NHTSA”), on behalf of the U.S. Department of Transportation (the “DOT”), finalized Part II of the Safer Affordable Fuel-Efficient (“SAFE”) Vehicles Rule to adopt and modify standards regulating corporate average fuel economy and greenhouse gas emission standards for passenger cars and light trucks.

With the transportation sector emerging as the top source of greenhouse-gas emissions in the United States, the new fuel economy and emissions standards will have a considerable impact on the nation’s carbon footprint.

The SAFE Vehicles Rule Part II is nearly 2,000 pages and will be published in the Federal Register in the coming days. While the final rule is slated to go into effect sixty days after its publication, implementation of the regulatory rollback is uncertain because the SAFE Vehicles Rule Part II will most certainly be challenged in court by states and environmental groups.

Overview of the SAFE Vehicles Rule Part II:

The SAFE Vehicles Rule Part II requires automakers to increase the corporate average fuel economy of passenger cars and light trucks by 1.5% each year for the model years 2021 to 2026, ultimately arriving at an average of approximately 40 mpg.^[1]

The new requirements are significantly less stringent than the standards set by the Obama Administration in 2012. The Obama-era standards mandated a 5% annual increase in fuel economy, with the goal of arriving at about 54 mpg in the 2025 model year cars, and were projected to cut carbon emissions by 6 billion metric tons over their lifetime.

NHTSA and the DOT explained the rollback in part by noting, “[The] cost to both industry and automotive consumers would have been too high under the standards set forth in 2012.”^[2] The agencies estimate that the new rule will decrease regulatory costs by \$86 to \$126 billion through 2029 and reduce the amount consumers pay for new vehicles by around \$1,000 per vehicle.^[3] The Trump Administration has lauded the SAFE Vehicles Rule as the “largest deregulatory initiative of this administration,”^[4] although the move does not go as far as the Trump Administration had initially intended.

The Trump Administration’s original plan was to freeze the year-over-year gains in fuel economy standards at the 2020 levels through model year 2026. ^[5] NHTSA’s analysis of the proposed mileage freeze projected “the environmental impact, on net, would be relatively minor.”^[6] However, the State Energy and Environmental Impact Center at the New York University School of Law

projected that a mileage standards freeze would increase greenhouse-gas emissions by 16 to 37 million metric tons, the equivalent of an additional 3.4 million and 7.8 million cars on the road.^[7] After receiving more than 700,000 comments from the public and the industry, NHTSA and the EPA abandoned the emissions freeze position and adjusted the fuel economy standards to include what they deem a “realistic and achievable” fuel standards increase.^[8]

Background:

In September of 2019, the Trump Administration released the SAFE Vehicles Rule Part I, entitled the One National Program Rule. It vested the DOT the ability to set national fuel economy standards and announced a new interpretation of its preemption authority based on the Energy Policy and Conservation Act of 1975. The SAFE Vehicles Rule Part I also rescinded a waiver previously provided to California pursuant to the Clean Air Act, which allowed California (and other states that opt into California’s program) to adopt and enforce more stringent greenhouse gas emission standards.

California has historically set its own tougher car pollution rules under the waiver. New York, Massachusetts, Vermont, Maine, Pennsylvania, Connecticut, Rhode Island, Washington, Oregon, New Jersey, Maryland, Delaware, and Colorado have all adopted California’s greenhouse gas emissions standards under Clean Air Act § 177.^[9] Canada has also pledged to align its gas mileage targets to match California’s standards.^[10] The stricter emissions rules from this bloc of states and Canada proved to be an obstacle for the Trump Administration’s desired rollback as automakers were confronted with varied standards.

The SAFE Vehicles Rule Part I drew an immediate legal challenge from the state of California, along with 23 other states, the District of Columbia, New York City, and Los Angeles, who jointly filed a complaint for declaratory and injunctive relief. The states asserted that the preemption regulation exceeded NHTSA’s authority, that the regulation contravened the Energy Policy and Conservation Act and the Clean Air Act, and that NHTSA failed to consider the regulation’s environmental impacts as required by the National Environmental Policy Act. That case is *California v. Chao*, Case No. 1:19-cv-02826-KBJ (D. D.C. Sept. 20, 2019) and it is still pending.^[11]

Significance:

The SAFE Vehicles Rule Part II is likely to face protracted litigation before it can take effect, leaving automakers in regulatory uncertainty while the battle between the Trump administration and the California led contingent of states and environmental groups over greenhouse gas emissions plays out in court.

For more information, please contact a member of [Benesch’s Energy Practice Group](#).

^[1] See The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026

Passenger Cars and Light Trucks, Final Rule (web version) Executive Summary at page 6. Available at:

https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/final_safe_preamble_web_version_200330.pdf

^[2] See *Id.* at page 7.

[3] See *id.* at page 8.

[4] See <https://www.nytimes.com/2020/03/31/climate/trump-pollution-rollback.html> ; See also <https://www.winknews.com/2020/03/31/trump-administration-to-roll-back-fuel-efficiency-standards/>

[5] See Overview of Final Rule Part A. Summary of Proposal available at https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/final_safe_preamble_web_version_200330.pdf

[6] See *id.*

[7] See

<https://www.washingtonpost.com/climate-environment/2019/07/25/major-automakers-strike-climate-deal-v>

[8] See

<https://www.usatoday.com/story/news/politics/2020/03/31/trump-eases-up-obama-era-fuel-efficiencies-rule/>

[9] See <https://www.jdsupra.com/legalnews/trump-administration-issues-second-part-94777/>

[10] See

<https://www.washingtonpost.com/climate-environment/2019/07/25/major-automakers-strike-climate-deal-v>

[11] The complaint is available at:

<http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/20>