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US EPA Issues Proposal to Freeze Tailpipe Emission Standards

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The United States Environmental Protection Agency (US EPA) and the National Highway Traffic Safety Administration (NHTSA) issued a proposed rule regarding existing Corporate Average Fuel Economy (CAFE) and tailpipe greenhouse gases (GHG) emission standards for passenger cars and light-duty trucks on August 24, 2018. With this proposal, US EPA's goal is to finalize a rule that would freeze standards rather than provide for increasingly stringent standards, which was the plan set by the previous rule under the Obama Administration. The proposed rule would also revoke California's authority to set its own GHG emissions standards for passenger cars and light-duty trucks more stringent than federal standards.

[We previously reported](#) on the lawsuit filed by a number of states in response to US EPA's announcement that it would be rolling back tailpipe emission standards. Eighteen states petitioned the D.C. Circuit Court of Appeals for review of US EPA's determination that it would revise the GHG standards. US EPA's decision to do so was a reversal of its initial determination, made pursuant to the mid-term evaluation prescribed by rule, that the GHG standards remained appropriate for the period through model year (MY) 2025.

In response, US EPA filed a [motion to dismiss](#) the case for lack of jurisdiction, arguing that judicial review would be improper because US EPA's decision to initiate a rulemaking concerning the emission standards did not constitute final agency action. Petitioners argued in [response](#) that the Agency was attempting to skirt judicial review and simply "wipe the administrative slate clean."

On November 21, 2018, the court [announced](#) that it would review the Petitioners' challenge to US EPA's determination to revise the standards on the merits.

Proposed SAFE Rule

On August 24, 2018, US EPA and NHTSA [proposed](#) their revised plan, the Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule. The rollback plan includes a proposal to freeze GHG emissions standards at MY 2020 levels. The rule would also revoke California's authority to enforce its own GHG emission standards. The comment period closed on October 23, 2018 with more than 600,000 comments submitted.

SAFE proposes eight alternatives, including one "no-action" alternative. The no-action alternative would apply the GHG standards announced in 2012 for MY 2021-2025. The agencies' preferred alternative proposes freezing standards at MY 2020 levels through MY 2026. The remaining alternatives would increase the stringency of standards annually by varying amounts in terms of percent-increases in CAFE and greenhouse gas restriction.

Agencies' Preferred Alternative

The agencies based the proposed freeze at MY 2020 on several different rationales. First, they explain that fuel-saving and emissions-reducing technologies have not resulted in the reductions originally anticipated. Consumer demand has driven manufacturers to innovate in ways that improve attributes other than fuel economy, such as "zero to 60" performance or towing ability. As a result, the agencies assert there have been fewer fuel efficiency

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improvements than previously assumed. The rule states that manufacturers are finding it increasingly difficult to sell light vehicles with lower emissions, pointing to low fuel prices coupled with diminishing returns on fuel economy benefits as the underlying causes. Further, more stringent emissions standards mean that as newer, more efficient vehicles get more expensive, consumers are keeping older and less efficient vehicles longer (the “scrappage” problem). The agencies anticipate in the rule that a freeze on emissions standards will result in fewer fatalities because consumers will be able to afford newer, safer vehicles.

Elimination of California’s Waiver

In 2013, US EPA granted a [waiver](#) to California under the Clean Air Act that allowed it to adopt GHG emissions standards more stringent than the federal standards. A number of other states adopted California’s standards, as allowed under the Clean Air Act. The SAFE rule would withdraw this waiver and asserts that California’s GHG standards conflict with CAFE standards and are preempted by the Energy Policy and Conservation Act of 1975 (EPCA). The EPCA, which authorizes NHTSA to set CAFE standards, preempts state regulation of fuel economy standards and does not contain a provision to allow waiver of preemption like the Clean Air Act. The rule states that withdrawing California’s authority to set more stringent GHG standards will result in benefits to consumers by simplifying regulatory requirements for manufacturers and allowing them to develop vehicles in response to market demand rather than by regulatory mandate.

Industry Comments

Automakers largely [opposed](#) the freeze, though most of their comments advocated for less stringent standards than those set by the Obama Administration. Many industry comments called into question the modeling assumptions underlying the plan’s purported benefits and warned that the freeze could have negative impacts on industry innovation. The Association of Global Automakers asserted in its [comment](#) that none of the alternatives proposed would offer an “acceptable pathway for meaningful fuel economy improvements” and emission reductions. Global Automakers recommended a unified national program that would include steadily more stringent yearly standards, a range of compliance options, and would provide for a continuation of California’s authority to set its own emission standards. It also criticized the rule’s “scrappage” model, reporting it contained anomalies that undermined its reliability. The Alliance of Automobile Manufacturers similarly [called](#) for increased flexibility for manufacturers in complying with standards and recommended that federal agencies work in coordination with the states rather than pursue preemption.

Potential Impacts

The Trump Administration and California officials have [reportedly](#) been meeting to explore a deal that would avoid litigation, and the chance of successful negotiations has likely increased as a result of the November 6, 2018 midterm elections and the D.C. Circuit Court of Appeals’ recent decision. Whether or not the parties are able to reach a compromise regarding the waiver, it remains to be seen what form SAFE, if finalized, will take. If the freeze on standards is finalized, requirements for the auto industry would be unchanged through MY 2020 and there would be no new compliance costs, though costs already incurred in preparation for compliance with the plan previously in place may not yield predicted benefits. Based on industry comments, the rule may incorporate additional compliance mechanisms that would afford automakers with increased flexibility. However, if the D.C. Circuit agrees with the petitioners’ argument and orders US EPA to reconsider its determination to undertake new rulemaking, the timeline for finalizing a rule will likely be extended significantly and bring increased regulatory uncertainty. We will continue to monitor this issue as it develops.

Nicole Bothwell authored this post.

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