

March 31, 2020

## **EPA AND NHTSA FINALIZE NEW STANDARDS FOR AUTOMOBILE FUEL ECONOMY AND GHG EMISSIONS**

To Our Clients and Friends:

On March 31, 2020, the U.S. Environmental Protection Agency (EPA) and the National Highway Traffic Safety Administration (NHTSA) issued new standards for automobile fuel economy and greenhouse gas (GHG) emissions for model year (MY) 2021 through MY 2026 vehicles. The final rule, the *Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks*, requires an annual 1.5% increase in the standards for passenger cars and light-duty trucks sold through MY 2026.[1]

### **Background**

The regulatory landscape for fuel economy and tailpipe GHG emissions has experienced significant changes in recent years. In 1975, Congress passed the Energy Policy and Conservation Act (EPCA), which granted the Department of Transportation (DOT) the authority to regulate automobile fuel economy.[2] DOT delegated this authority to NHTSA, which regulates fuel economy through the Corporate Average Fuel Economy (CAFE) program.[3] Although state regulations of fuel economy are preempted by EPCA,[4] California and several other states moved to regulate tailpipe GHG emissions in the early 2000s. The EPA was also poised to begin regulating tailpipe GHG emissions at the federal level after the Supreme Court's 2007 decision in *Massachusetts v. EPA*.[5]

Against this backdrop, the Obama Administration negotiated the "One National Program" agreement in 2009. Under the agreement, the EPA and NHTSA agreed to jointly issue fuel economy and GHG emissions regulations and California agreed to defer to the federal standards.

In 2012, the EPA and NHTSA issued joint regulations for vehicles sold in MYs 2017–2025, requiring a 5% annual increase in the stringency of the standards.[6] But the agencies also committed to conduct "a comprehensive midterm evaluation and agency decision-making process for MYs 2022–2025 standards" by April 1, 2018.[7] The final rule released today is the culmination of the Trump Administration's midterm evaluation of the Obama Administration's standards.[8]

The EPA and NHTSA announced this planned regulation via a notice of proposed rulemaking (NPRM), published on August 24, 2018. That NPRM had two primary components. First, the NPRM proposed freezing the federal CAFE and GHG standards at their MY 2020 levels through MY 2026.[9] Second, it proposed regulations that would make the federal government the sole regulator of fuel economy and tailpipe GHG emissions.[10] The latter rulemaking, determining that state GHG and zero-emission vehicle standards are preempted by federal law and withdrawing California's separate authority to establish such standards under the Clean Air Act, was issued in September 2019.[11]

# GIBSON DUNN

Part two of the joint rulemaking, released today, deals with the stringency of the fuel economy and tailpipe GHG emission standards and the applicable compliance mechanisms.

## **The New Standards**

The final rulemaking includes several important developments of interest for the automotive industry, and departs in several ways from the action proposed in the August 2018 NPRM.

- **Stringency.** The final rule requires an annual 1.5% increase in the stringency of fuel economy and tailpipe GHG emissions standards for vehicles sold in MYs 2021–2026. This is an increase from the standards proposed in the NPRM (0% annual increase), but a decrease from the Obama Administration’s 2012 standards (5% annual increase). The agencies project that the new standards will require automakers to achieve, on an average industry fleet-wide basis, 201 grams per mile (g/mi) of CO<sub>2</sub> and 40.5 miles per gallon (mpg) by MY 2030.[12] Factoring in compliance flexibilities, however, the “real-world” requirement is expected to be 33.2 mpg.[13]
- **Compliance Flexibilities.** The final rule includes several changes to the programs’ compliance mechanisms.
  - First, the rule extends through MY 2026 a credit that classifies electric vehicles as zero-emissions vehicles, even if the charging sources for those vehicles are GHG-emitting.[14]
  - Second, the rule continues to give automakers credits for reducing GHG leaks from air conditioning systems and for lowering methane and nitrous oxide emissions.[15]
  - Third, the rule removes incentives for advanced technologies in full-size pickup trucks. Starting in MY 2022, automakers will no longer receive credits for producing hybrid, or otherwise over-performing, full-size pickup trucks.[16]
- **Cost-Benefit Analysis.** The regulatory analysis published with the final rule projects a range of costs and benefits associated with the rule. In sum, the agencies project the societal net benefits of the rule to “straddle zero.”[17] Benefits from the new CAFE and GHG standards are projected to range between \$16.1 billion to negative \$13.1 billion and between \$6.4 billion to negative \$22 billion, respectively.[18] These figures use the projections for the existing 2012 standards as the baseline and project costs and benefits over the lifetime of vehicles sold through MY 2029.
  - *Cheaper vehicles.* The agencies project that average per-vehicle purchase prices will be reduced by \$977 to \$1,083.[19]
  - *Increased fuel consumption.* The agencies project that total fuel consumption will increase by 1.9 to 2.0 billion barrels.[20]
  - *Lower technology costs.* The agencies project that required technology costs will decrease by \$86 to \$126 billion.[21]

- *Safer vehicles.* The agencies project that automakers will produce safer vehicles under the new standards, leading to as many as 3,244 fewer fatalities and approximately 400,000 fewer injuries.[22]
- *Environmental costs.* The agencies project that the new standards will increase CO2 emissions by 867 to 923 million metric tons.[23]

The rule will be published in the *Federal Register* in approximately one week and will become effective 60 days after its publication.

Litigation surrounding the final rule is a near certainty—indeed, California has already signaled its intent to challenge the rule in federal court.

---

[1] *The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks* (March 31, 2020) (Final Rule).

[2] Pub. L. No. 94-163, 89 Stat. 871 (1975).

[3] 49 U.S.C. § 32902(a).

[4] 49 U.S.C. § 32919.

[5] 549 U.S. 497 (2007).

[6] *2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards*, 77 Fed. Reg. 62,624, 62,628 (Oct. 15, 2012).

[7] *Id.*

[8] *Mid-Term Evaluation of Greenhouse Gas Emissions Standards for Model Year 2022–2025 Light-Duty Vehicles*, 83 Fed. Reg. 16,077 (Apr. 13, 2018).

[9] *The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks, Notice of Proposed Rulemaking*, 83 Fed. Reg. 42,986 (Aug. 24, 2018).

[10] *Id.*

[11] *The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program*, 84 Fed. Reg. 51,310 (Sept. 27, 2019). The ONP Rule is currently being challenged in the U.S. Court of Appeals for the D.C. Circuit, where Gibson Dunn represents a coalition of automotive manufacturers as Intervenors in support of the rule. See *Union of Concerned Scientists v. NHTSA*, No. 19-1230 (D.C. Cir.).

[12] Final Rule at 7.

# GIBSON DUNN

[13] Final Rule at 23.

[14] Final Rule at 51-55.

[15] *Id.*

[16] *Id.*

[17] Final Rule at 9.

[18] Final Rule at 8-9.

[19] Final Rule at 8.

[20] *Id.*

[21] *Id.*

[22] Final Rule at 15-16.

[23] Final Rule at 8.



*Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding these developments. Please contact the Gibson Dunn lawyer with whom you usually work, any member of the firm's **Environmental Litigation and Mass Tort Group** practice group, or the authors:*

*Raymond B. Ludwiszewski - Washington, D.C. (+1 202-955-8665, [rludwiszewski@gibsondunn.com](mailto:rludwiszewski@gibsondunn.com))  
Rachel Levick Corley - Washington, D.C. (+1 202-887-3574, [rcorley@gibsondunn.com](mailto:rcorley@gibsondunn.com))*

## ***Environmental and Mass Tort Group:***

### ***Washington, D.C.***

*Stacie B. Fletcher (+1 202-887-3627, [sfletcher@gibsondunn.com](mailto:sfletcher@gibsondunn.com))  
Raymond B. Ludwiszewski (+1 202-955-8665, [rludwiszewski@gibsondunn.com](mailto:rludwiszewski@gibsondunn.com))  
Michael K. Murphy (+1 202-955-8238, [mmurphy@gibsondunn.com](mailto:mmurphy@gibsondunn.com))  
Daniel W. Nelson - (+1 202-887-3687, [dnelson@gibsondunn.com](mailto:dnelson@gibsondunn.com))  
Peter E. Seley - (+1 202-887-3689, [pseley@gibsondunn.com](mailto:pseley@gibsondunn.com))*

### ***Los Angeles***

*Matthew Hoffman (+1 213-229-7584, [mhoffman@gibsondunn.com](mailto:mhoffman@gibsondunn.com))  
Thomas Manakides (+1 949-451-4060, [tmanakides@gibsondunn.com](mailto:tmanakides@gibsondunn.com))*

# GIBSON DUNN

## ***New York***

*Andrea E. Neuman (+1 212-351-3883, [aneuman@gibsondunn.com](mailto:aneuman@gibsondunn.com))  
Anne M. Champion (+1 212-351-5361, [achampion@gibsondunn.com](mailto:achampion@gibsondunn.com))*

## ***San Francisco***

*Peter S. Modlin (+1 415-393-8392, [pmodlin@gibsondunn.com](mailto:pmodlin@gibsondunn.com))*

© 2020 Gibson, Dunn & Crutcher LLP

*Attorney Advertising: The enclosed materials have been prepared for general informational purposes only and are not intended as legal advice.*