



## **Comments of the Regulatory Action Center**

Re: The Safer Affordable Fuel-Efficient Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks

Docket ID: EPA-HQ-OAR-2018-0283-0756

&

NHTSA-2018-0067-2151

October 26, 2018

The Regulatory Action Center at FreedomWorks Foundation is dedicated to educating Americans about the impact of government regulation on economic prosperity and individual liberty. FreedomWorks Foundation is committed to lowering the barrier between millions of FreedomWorks citizen activists and the rule-making process of government bureaus to which they are entitled to contribute.

---

On behalf of over 5.7 million activists nationwide, FreedomWorks Foundation appreciates the opportunity to submit comments to the Environmental Protection Agency (EPA) and the National Highway Transportation Safety Administration (NHTSA) regarding the proposed The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks. The proposed SAFE rule modifies existing and implements new Corporate Average Fuel Economy (CAFE) standards and tailpipe carbon dioxide and other greenhouse gas emissions standards for passenger cars and light duty trucks for model years 2021-2026 to retain the model year 2020 standards each year.

Under current rules, CAFE standards increase from 2020 to 2021. Presumptive, although not finalized, CAFE targets for 2022-2025 increase each year while progressively stringent greenhouse gas (GHG) emissions targets are finalized and set through 2025. This proposed freeze in overall CAFE and GHG standards will have positive safety, economic, and environmental, impacts. However, if halting the increase of these standards will yield net

positives regarding these critical criteria, then EPA and NHTSA ought to consider the potentially greater positive impact of setting standards less aggressive than even the model year 2020 levels.

In addition to the new and revised CAFE and GHG standards, EPA proposes to also revoke California's 2013 waiver under the Clean Air Act (CAA) regarding its Advanced Clean Car regulations. FreedomWorks Foundation strongly supports this proposal. The California Waiver allows for the state to exert inappropriate and outsized influence over national automobile fuel economy standards. Individual state fuel economy standards are explicitly preempted under the federal law establishing the national CAFE standards, the Energy Policy and Conservation Act. Further, granting California the authority to regulate vehicle GHG emissions above and beyond federal standards does not align with the purpose of the authority to grant California a waiver to implement more aggressive pollution standards under the CAA.

### **Background and Legality**

CAFE standards are a regulatory product of the Energy Policy and Conservation Act (EPCA) of 1975. EPCA was a direct response to the energy crisis of 1973, coinciding with the Organization of Petroleum Exporting Countries (OPEC) embargo of the United States. While the crisis itself was the product of many factors, including domestic price controls on crude oil, the public perception was, and remains to this day, that the nation's reliance on foreign sources of oil was a significant vulnerability. EPCA, as its name suggests, was thus focused on domestic energy independence, in part through increased conservation and efficiency across the economy. Congress explicitly instructed NHTSA under Title V of EPCA to set "Average Fuel Economy Standards Applicable to Each Manufacturer" for passenger cars and light trucks through 1985, reaching 27.5 miles per gallon (mpg). CAFE standards are the regulatory incarnation of this mandate. In 2007, again motivated by concerns over America's reliance on oil imports, Congress

passed the Energy Independence and Security Act (EISA). Title I of EISA, in part, amended EPCA to tighten CAFE standards beyond the 1985 level, providing guidance through 2030. Under the current statute, CAFE for model year 2020 must be a minimum of 35 mpg.

While EPCA and EISA are both related primarily to energy conservation and efficiency, CAFE standards are now promulgated simultaneously with vehicle GHG emissions standards from EPA. EPA regulates GHG emissions from vehicles under the Clean Air Act (CAA). While there is an extensive and controversial history regarding EPA's authority to regulate GHG emissions, as it is not explicitly authorized to do so under CAA, vehicle GHG emissions are currently regulated by EPA and have substantially influenced CAFE standards since model year 2012. While CAFE and GHG standards are not statutorily linked, GHG emissions for conventional gas-powered vehicles are intrinsically linked to fuel efficiency. Lowering vehicle energy intensity, which is synonymous with improving vehicle mpg minus increasing the number of passengers per vehicle (not to be confused with passenger capacity), is the only solution listed in the International Panel on Climate Change's (IPCC) Fifth (and latest) Assessment Report to reduce transportation related GHG emissions that does not involve some form or combination of mass transportation, fuel switching, or deterring people from utilizing powered transportation.<sup>1</sup> Reducing a conventional gas-powered vehicle's GHG emissions is intrinsically a function of reducing how much fuel it burns. In 2009, President Barack Obama

---

<sup>1</sup> Sims R., R. Schaeffer, F. Creutzig, X. Cruz-Núñez, M. D'Agosto, D. Dimitriu, M. J. Figueroa Meza, L. Fulton, S. Kobayashi, O. Lah, A. McKinnon, P. Newman, M. Ouyang, J. J. Schauer, D. Sperling, and G. Tiwari, 2014: Transport. In: *Climate Change 2014: Mitigation of Climate Change. Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* [Edenhofer, O., R. Pichs-Madruga, Y. Sokona, E. Farahani, S. Kadner, K. Seyboth, A. Adler, I. Baum, S. Brunner, P. Eickemeier, B. Kriemann, J. Savolainen, S. Schlömer, C. von Stechow, T. Zwickel and J.C. Minx (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA [https://www.ipcc.ch/pdf/assessment-report/ar5/wg3/ipcc\\_wg3\\_ar5\\_chapter8.pdf](https://www.ipcc.ch/pdf/assessment-report/ar5/wg3/ipcc_wg3_ar5_chapter8.pdf)

directed EPA and NHTSA to develop CAFE and GHG standards in tandem beginning with model year 2012.<sup>2</sup>

The coordinated rulemaking also included the California Air Resources Board (CARB). CARB, a state government agency, was given equal—if not greater—footing in influencing vehicle CAFE and GHG emissions as EPA and NHTSA for model year 2012 and beyond. CARB achieved this position through an interpretation of a special clause of CAA.

Any state that already had motor vehicle emissions standards in place that were at least equal to those included in the CAA before a specific date could apply for a waiver to implement more stringent standards than those of the federal government. California is the only state that qualifies. This provision, commonly referred to as the California Waiver, was created in acknowledgement of unique economic, geographic, and weather conditions impacting California at the time.<sup>3</sup>

Once GHG became regulated under CAA, CARB could also request a waiver that would permit the state to regulate GHG without federal preemption. The Obama administration granted such a waiver in 2009 and again in 2013. CARB has subsequently been included in the joint rulemaking process with EPA and NHTSA and has been able to exert significant pressure on finalized national standards given the size of its market. If the national CAFE and GHG standards do not satisfy CARB, California can issue its own standards. In addition to the fact that California is the largest state in terms of population and economy, under the CAA other states can implement more stringent air pollution regulations than the federal standards but only if they

---

<sup>2</sup> Press Release: “President Obama Announces National Fuel Efficiency Policy,” The White House, May 19, 2009. <https://obamawhitehouse.archives.gov/the-press-office/president-obama-announces-national-fuel-efficiency-policy>

<sup>3</sup> Sivas, Deborah A., Q&A with Sharon Driscoll, “Rolling Back Green Energy Standards?” Stanford Law School, April 4, 2018 <https://law.stanford.edu/2018/04/04/rolling-back-green-energy-standards/>

are identical to California's. New York, Massachusetts, Vermont, Maine, Pennsylvania, Connecticut, Rhode Island, Washington, Maryland, Oregon, New Jersey, and Delaware have all adopted California's standards, putting over one-third of the US auto market under vehicle emissions standards set by CARB.<sup>4</sup> Given this significant market share, should CARB not accept the national GHG standards, it can simply implement its own and effectively force automakers to build to its standards given that the higher of the two standards would be permissible in the entire US auto market versus less-than two-thirds of it. In addition, CARB's GHG standards are enforced as a fleet-average standard, identical to how CAFE functions. In short, CARB does not set standards for specific vehicles but instead forces manufacturers to hit a target averages for all vehicles sold within the market. Given any number of inherent differences between all 13 of the different states that have chosen to adopt California's GHG standards, automakers could be subject to just as many different targets. It is effectively impossible for the auto industry at its current scale to comply with such a regulatory patchwork. This threat essentially gives CARB veto power over national standards so long as California possesses CAA waiver authority.

Unsurprisingly, current national CAFE and GHG regulations are more aggressive than required under statute. EISA only sets explicit CAFE targets through 2020 and provides NHTSA certain parameters and discretion to determine the targets through 2030. The explicit target for 2020 is 35 mpg. Under the current CAFE regulations, the 2020 target is 38.9 mpg, rising to 41 mpg in 2021 and projected to reach 49.7 mpg by 2025 to keep pace with finalized EPA GHG targets.

---

<sup>4</sup> Lattanzio, Richard K., Linda Tsang, and Bill Canis, "Vehicle Fuel Economy and Greenhouse Gas Standards: Frequently Asked Questions," Congressional Research Service, May 24, 2018. <https://fas.org/sgp/crs/misc/R45204.pdf>

The statute makes clear that, at a minimum, CAFE standards for model year 2021 and beyond are flexible to a lower limit of 27.5 mpg. In evaluating appropriate CAFE standards for 2021 through 2030, NHTSA may weigh important safety, economic, and environmental concerns. This lower 27.5 mpg limit would allow NHTSA to reduce CAFE standards going forward well below the 38.9 mpg target set under the proposed SAFE rule, granting exceptional flexibility to automakers whose fleets currently target the model year 2019 standard of 37.7 mpg at a minimum. NHTSA and EPA are not bound by statute to enforce any minimum GHG standard as those standards are entirely a product of regulatory and not statutory construction.

### **Rationale For Eliminating the California Waiver**

Revoking California's current CAA waiver is critical to implementing the other goals of the proposed SAFE rule. As noted above, California can effectively veto the proposed SAFE rule by threatening to impose its own standards in excess of the national standards. This would subject automakers to the outright regulatory chaos of complying with, at a minimum, 13 different averages from over one-third of the nation's automobile market. Given the size of that market, any federal standards CARB is not satisfied with will be rendered effectively meaningless to the industry, as they seek to comply with the higher of the two regulatory standards in order to remain viable in the entire national market.

In addition to the threat of regulatory chaos presented by California's current CAA waiver, there are serious practical and constitutional issues presented by CARB's outsized power to influence national regulatory standards.

The first issue relates to the intent of the California Waiver provision in CAA. California was given special power under CAA due to unique and local concerns relating to the explicit

pollutants listed in the CAA statute. Regulation of GHG has been subsequently implied from the statute by EPA and the Courts. To this end, there is simply no way that Congress intended for California to have unique authority over GHG. This is compounded by the fact that the rationale for GHG regulation is the impact these pollutants have on a global scale. If GHG-induced anthropogenic climate change does present a threat, these threats are not unique to California and California is not uniquely positioned to mitigate the impacts of climate change on its citizens through GHG regulation given its relatively small GHG footprint compared to global emissions. The entire United States accounts for 15 percent of global GHG emissions, half that of China.<sup>5</sup> Transportation accounts for just 14 percent of global GHG emissions.<sup>6</sup> California's total GHG emissions represent only about 6 percent of total US emissions.<sup>7</sup> In short, granting California unique authority to regulate GHGs beyond federal levels does not grant California unique advantages in combatting the impacts of GHG pollution.

California's CAA waiver also raises constitutional questions. EPCA explicitly preempts states from imposing regulations "related to fuel economy standards." While it is true that California's GHG vehicle emissions standards are not pure fuel economy standards like those imposed federally under EPCA and CAFE, the structure of California and CARB's GHG regulations is based on fleet average, which is unlike other CAA emission regulations that are vehicle specific<sup>8</sup> — yet identical to the existing CAFE standards. Further, as mentioned above,

---

<sup>5</sup> EPA Global Greenhouse Gas Emissions Data. Accessed at: <https://www.epa.gov/ghgemissions/global-greenhouse-gas-emissions-data>

<sup>6</sup> *Ibid.*

<sup>7</sup> Baker, David R., "California slashes emissions, hits greenhouse gas goal years early," San Francisco Chronicle, July 11, 2018. <https://www.sfchronicle.com/business/article/California-hits-2020-greenhouse-gas-reduction-13066821.php>

Based on the reported 429.4 million metric tons over total US GHG emissions reported in 2016 at 6,511 million metric tons accessed here: <https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions>

<sup>8</sup> Particulate Matter is regulated on a per-vehicle basis.

improving fuel economy is the only significant solution for reducing vehicle GHG emissions that is specific to the vehicle and does not require fuel switching. It seems clear that CARB's GHG standards are indeed significantly related to fuel economy standards of the kind created nationally and state-preempted under EPCA.<sup>9</sup> The Supremacy Clause of the Constitution puts force behind EPCA's preemption.

California's current CAA waiver is an abuse of the provision. It is being used to regulate pollutants that do not present a unique issue for California, gives CARB effectively national regulatory authority, and jeopardizes any effort by EPA and NHTSA to adjust national GHG and CAFE standards within the authority granted to the agencies by Congress. For these reasons, revoking the waiver is entirely appropriate within the scope of the proposed SAFE rule.

### **Safety Impact of CAFE Standards**

As an organization representing the interests of millions of activists across the country, FreedomWorks Foundation is primarily concerned with the vehicle safety impact of progressively stringent vehicle fuel economy standards. The Draft Technical Assessment Report from 2016, produced by both the EPA and NHTSA suggests our concerns are well-founded. It concludes there is a clear link between vehicle mass and vehicle safety. It also admits that there is another clear, inverse link between vehicle safety and vehicle mass.<sup>10</sup> In general and based on the report's findings, a heavier vehicle is a safer one and a lighter vehicle is a more fuel-efficient one. Therefore, to the extent new vehicles are lighter than they would be compared to those produced at a lower or absent efficiency standard, they are that much less safe.

---

<sup>9</sup> Lewis Jr., Marlo, "Will Trump Auto Rule End California's Regulation of Fuel Economy?" Competitive Enterprise Institute, August 1, 2018. <https://cei.org/blog/will-trump-auto-rule-end-californias-regulation-fuel-economy>

<sup>10</sup> United States. Environmental Protection Agency/National Highway Traffic Safety Administration. Draft Technical Assessment Report. Washington, DC, 2016.

Antonio Bento, an environmental economics researcher of the University of Southern California, disputes that conclusion however. Bento claims that the influx of lighter vehicles, and reduction of heavier vehicles, that will result from these changes will decrease the fatality rates of automobile accidents in America.<sup>11</sup> Bento acknowledges the lack of environmental benefits of heightened CAFE standards, but argues that they are critically important because of the positive effect they will have on safety.

However, Bento's conclusion rests upon faulty assumptions. He assumes that more light vehicles mean fewer high mass vehicles. This assumption is directly contradicted by the results of a study conducted by Arthur A. van Benthem of the Wharton School at the University of Pennsylvania, and Mark R. Jacobsen, of the University of California, San Diego.<sup>12</sup> They found that although newer, lighter vehicles would be produced, the demand for older, high mass vehicles would also increase, not decrease. Demand rises for older vehicles as the result of the price impact of CAFE on new vehicles, discussed below.

CAFE not only increases the lethality of automobile collisions but also increases their likelihood. The influx of substantially lighter new vehicles over time and increased retention of heavier vehicles would increase the likelihood of a collision between the former and the latter, which would produce much higher fatality rates for the occupants of the lighter vehicle. In addition, increasing demand for older vehicles means fewer vehicles on the road will possess modern safety features, primarily those that prevent accidents altogether by limiting and correcting driver error.

---

<sup>11</sup> Bento, Antonio, Kenneth Gillingham, and Kevin Roth. "The Effect of Fuel Economy Standards on Vehicle Weight Dispersion and Accident Fatalities." NBER Working Papers, April 2017. doi:10.3386/w23340.

<sup>12</sup> Jacobsen, Mark, and Arthur Van Benthem. "Vehicle Scrappage and Gasoline Policy." American Economic Review 105, no. 3 (March 2015): 1312-338. Accessed October 24, 2018. doi:10.3386/w19055.

The safety impact is not negligible. Indeed, the proposed SAFE rule recognizes that freezing the standards at 2020 levels could save an estimated 12,700 lives over the course of vehicle lifetimes through model year 2029. However, if EPA and NHTSA admit the 2020 standards at 38.9 mpg will save this many lives, the question is naturally raised as to why the proposed SAFE rule does not go further and continue to lower CAFE standards to the greatest extent permissible by statute, potentially as low as 27.5 mpg.

### **Economic and Environmental Impact of CAFE Standards**

The current CAFE standards came with lofty expectations. The Obama administration claimed it would spur domestic job growth, save consumers money at the gas pump, and cut down on pollution that would lead to more rapid climate change. In fact, the Union of Concerned Scientists, a group founded by scientists at the Massachusetts Institute for Technology (MIT), claim that these fuel efficiency standards will cut U.S. oil consumption in half over 20 years.

However, there are some hidden, indirect effects that the current fuel efficiency standards will have, once they are fully implemented, which will serve to undermine their initial purpose. The study conducted by van Benthem and Jacobsen cited above backs up that conclusion. Some of the effects on the market will, in some areas, increase emissions and fuel consumption. One of the primary findings of this study is that drivers with more fuel-efficient cars will actually take advantage of this by driving more than they normally would. Van Benthem refers to this phenomenon as the “rebound effect.” The study finds that drivers will drive ten percent more miles if they double their fuel efficiency. Granted, this is not enough to completely offset the Obama administration’s projected savings, but it will put a dent in it, and lead to added congestion on the roads, reducing overall mpg.

The CAFE standards will also have a profound impact on the market for used vehicles that are less fuel-efficient. The study notes that new cars that meet the new standards will become more expensive because of the costs associated with the technology used to make them. This, in turn, drives up the demand for used vehicles, which were not manufactured under the current efficiency standards. Thus, the Obama-era regulations would likely have the unintended consequence of keeping more inefficient vehicles on the road, and for longer periods of time.

Indeed, in analyzing vehicle scrappage, van Benthem and Jacobsen find that cars with higher fuel efficiency will be “scrapped” far sooner than those with low efficiency. The expected effect of this will be to drive up the total volume of greenhouse gas emissions from the used, inefficient vehicles. The van Benthem and Jacobsen study also approximates that increased usage in gasoline by inefficient used cars could offset the projected fuel savings of the existing CAFE standards by 15 percent. They concluded that offering better efficiency is not an effective way to discourage fuel consumption.

Furthermore, Kenneth A. Small, of the University of California at Irvine, found that the existing projections of fuel savings are dubious. He concludes that there are significant, irreducible uncertainties that come from these projections.<sup>13</sup> It means simply adding more research cannot narrow the projection down. It is very possible that the Obama administration grossly overestimated the savings from its CAFE standards, and those that may exist will be offset by the market effects described in the study conducted by van Benthem and Jacobsen.

---

<sup>13</sup> Small, Kenneth A. "The Elusive Effects of CAFE Standards." *Transportation Policy and Economic Regulation*, April 20, 2018, 251-310. Accessed October 24, 2018. doi:10.1016/b978-0-12-812620-2.00011-0.

## Conclusion

FreedomWorks Foundation appreciates the opportunity to submit these comments on the proposed SAFE rule. The proposal make significant improvements over the current and projected standards under the current regulatory structure. However, EPA and NHTSA should ultimately reduce CAFE requirements to the greatest extent permissible under law in order to maximize the recognized mitigation of all of the CAFE program's unintended consequences and other shortcomings.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Patrick Hedger". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Patrick Hedger  
Director of Policy

&

Daniel Savickas  
Federal Affairs Manager

FreedomWorks Foundation  
111 K Street NE, Suite 600  
Washington, DC, 20002