

NHTSA Fuel Proposal May Boost EVs — Given More Chargers

By **Levi McAllister and Mark Fanelli** (August 22, 2023)

On July 28, the National Highway Traffic Safety Administration proposed revised fuel economy standards that, if adopted, would have a substantial impact on legacy automakers that are currently reallocating resources to bring more electric vehicle to market.

Under NHTSA's proposal, which covers model years 2027 through 2032, the agency would require automakers to increase their corporate average fuel economy, or CAFE, requirements for internal combustion engine vehicles by 2% per year for passenger cars, and 4% per year for light-duty trucks.

NHTSA's proposed fuel efficiency standards also call for a 10% per year CAFE increase for heavy-duty pickup trucks and vans, in model years 2030 through 2035.

If adopted, NHTSA's proposed regulations would further implement the Biden administration's directive of cutting greenhouse gas emissions, reducing the U.S.' reliance on hydrocarbons, and prioritizing the sale of more efficient vehicles, which in turn reduces fuel costs.

Simultaneously, NHTSA's more exacting CAFE standards could serve as another catalyst to further the proliferation of the clean energy transportation sector, by placing additional emphasis on the increased market penetration of EVs and hydrogen fuel cell vehicles — but only if consumer concerns over inadequate infrastructure are addressed.

NHTSA's Proposed CAFE Standards

NHTSA's CAFE standards regulate how far vehicles must travel on a gallon of fuel. NHTSA sets CAFE standards for passenger cars and for light trucks — collectively known as light-duty vehicles. Separately, NHTSA sets fuel consumption standards for medium- and heavy-duty trucks and related internal combustion engine, or ICE, vehicles.

In conjunction with the U.S. Environmental Protection Agency, NHTSA also has regulatory oversight of the fuel-economy disclosure portion of Monroney labels affixed to new vehicles sold in the U.S.

NHTSA's July 28 proposal seeks to revise the applicable CAFE standards by altering the fuel economy standards for the five-year model year period beginning in 2027. As noted, NHTSA's proposal includes a 2% per year improvement in fuel efficiency for passenger cars, and a 4% per year improvement for light trucks, beginning in model year 2027 and ramping up through model year 2032, potentially reaching an average fleet fuel economy of 58 miles per gallon by model year 2032.

NHTSA's proposed 10% annual improvement for commercial trucks and vans would affect vehicles with gross vehicle weight ratings of more than 8,500 pounds, and less than 14,001 pounds.



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The most recent adopted CAFE standards were set by NHTSA last year at 49.1 mpg for model year 2026, up from 44.2 mpg for 2024 models. If adopted, the recently proposed CAFE standard would, according to NHTSA's projection, require an industry fleetwide average for light-duty vehicles of roughly 58 mpg in model year 2032, and a fleetwide average for heavy-duty trucks and vans of roughly 2.6 gallons per 100 miles in model year 2038.

The scope of NHTSA's proposed regulations is limited to ICE vehicles. These regulations do not propose fuel economy standards for alternative clean energy sources, such as electric and hydrogen vehicles. However, NHTSA allows automakers to obtain credit for each EV they sell in a model year by reducing its CAFE fleet fuel economy target for all vehicles sold that in that model year.

This being the case, increased sales of EVs or other alternative fuel vehicles will materially assist manufacturers in achieving compliance. Entities whose fleets fall short of the CAFE standard are subject to significant penalties.

How NHTSA's Proposal Highlights Need for More EV and Hydrogen Infrastructure

NHTSA's proposed CAFE standards appear to be only an incremental step for fuel economy, building on prior fuel economy standards finalized by NHTSA in previous years. In that regard, the NHTSA proposal may be viewed as largely uncontroversial, and not warranting additional analysis.

However, it is important to view NHTSA's proposed standards through a lens that considers the broader context of the rapidly evolving vehicular transportation sector. Holistically, the impact and even feasibility of NHTSA's proposal is more intriguing to consider for several reasons.

First, it is unclear the extent to which or whether NHTSA's proposed standards will take effect. Immediately following the issuance of the proposed fuel economy standards, some members of the political class took sharp aim, criticizing the proposal with factually questionable rhetoric describing the substance of the proposal.

With that context, it becomes necessary to consider whether NHTSA will issue a final rule with sufficient timeliness to negate a potential Congressional Review Act disapproval resolution. Under the CRA, Congress can repeal a final rule issued by a federal agency within 60 legislative days of its effective date by a simple majority in both chambers.

Given the current composition of both houses of Congress, a NHTSA final rule should expect to survive a CRA challenge. However, if NHTSA does not act with sufficient time for the 60-legislative day clock to run in the current Congress, then a final rule could be subject to a CRA challenge in a new Congress following the 2024 election cycle.

Second, NHTSA's proposed standards reflect not just an incremental change in fuel economy mandates, but instead another affirmation of the Biden administration's multipronged regulatory push to encourage a clean transportation transition in the U.S. NHTSA's proposal is largely an additive action by the administration, following the new emissions reduction standards that the EPA proposed in April.

These standards would increase in stringency year over year, for a six-year period — from model years 2027 through 2032. The proposed standards for light-duty vehicles call for fleet

average emissions of 82 grams per mile of CO₂ in model year 2032, which represents a 56% reduction from the existing model year 2026 standards.

For medium-duty vehicles, the EPA has proposed an average target of 275 grams per mile of CO₂ by model year 2032, representing a 44% reduction compared to the current model year 2026 standards.

Though the EPA's pollution regulations are, on their face, technology-neutral — meaning that they do not explicitly favor any specific fuel or engine type — they are so stringent that, if adopted, automakers will face significant challenges if they are unable to substantially increase zero-emission options.

It is estimated that under these rules, zero-emissions vehicles will comprise two-thirds of new passenger vehicle sales by approximately 2032, up from about 6% in 2022. Medium-duty vehicles will experience a similar shift, with new ZEV sales expected to rise to 46% by 2032.

Third, and most importantly, the role that EVs, and perhaps hydrogen fuel vehicles, can play in enabling manufacturers to meet NHTSA's proposed fleetwide standards turns substantially on the extent to which consumer anxiety concerning adequate range and infrastructure can be successfully and quickly addressed.

Notwithstanding funding opportunities made available for public charging through the Bipartisan Infrastructure Law — as well as recent private sector commitments to charging infrastructure development — the U.S. remains woefully lacking in sufficient and reliable infrastructure for either EV charging or hydrogen fueling.

Anecdotes abound of EV drivers struggling to locate public chargers, arriving at chargers only to find them inoperable, or being forced to wait for multiple hours to charge their vehicles.

And, although several automakers recently announced their intent to manufacture vehicles that utilize the North American Charging Standard connector — thereby opening access to more public chargers — the additional charger access is still substantially below the several million-charger benchmark that many analysts project the U.S. will require to support projected EV deployment by 2030.

Moreover, the EV public charging market continues to suffer from reliability issues, questions surrounding cybersecurity best practices and standards, supply chain concerns — particularly for chargers that are required to meet federal Buy America requirements — and the absence of an industry standard pro forma site host license/lease agreement between charging station owners and site hosts.

In addition, patchwork rate design and demand charge rate issues make it difficult for private sector developers to financially model the viability of developing a charging station network, and obscure price transparency from consumers — an issue to be resolved by state rather than federal regulators.

Fourth, the hydrogen fueling sector suffers from similar challenges, albeit several years behind EV market participants. An absence of hydrogen fueling infrastructure renders deployment impractical.

Likewise, questions surrounding the most efficient and safest way to transport hydrogen

remain unanswered, and the Bipartisan Infrastructure Law's funding awards for hydrogen hubs continue to be a work in progress. As such, hydrogen-fueled vehicles cannot serve as an immediate solution for manufacturers to satisfy either the proposed NHTSA fuel economy standards or the EPA's emission standards.

The Road Ahead

The Biden administration has fulfilled its campaign promises of reversing the Trump-era rollback on fuel economy standards for ICE vehicles, and has supported legislative and regulatory efforts that have incentivized EV sales in the U.S.

In fact, several automakers have seen their EV sales increase by more than 80%, and have promised that more EVs will be offered in their lineups. Similarly, the logistics industry is making sizeable investments in hydrogen fuel cell technology, to reduce carbon emissions in the commercial sector.

However, the full impact of the push by Congress and the Biden administration toward clean transportation will not be achieved without a serious investment in EV and hydrogen infrastructure.

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