



## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 600**

**[EPA-HQ-OAR-2020-0314; FRL-10012-24-OAR]**

**RIN 2060-AU89**

### **Technical Correction to the Flex-fuel Vehicle Provisions in CAFE Regulations**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to correct an error in EPA’s regulations for test procedures used in the Corporate Average Fuel Economy (CAFE) program finalized in a 2012 rulemaking. EPA established the procedures under the general provisions of Energy Policy and Conservation Act (EPCA) which authorize EPA to establish test and calculation procedures for CAFE. The correction clarifies the method for how flex-fuel vehicles are accounted for in manufacturer fuel economy calculations in model years 2020 and later. This correction allows the program to be implemented as originally intended in the 2012 rule. This proposed action is not expected to result in any significant changes in regulatory burdens or costs. In the “Rules and Regulations”

section of this *Federal Register*, we are taking direct final action without a prior proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule.

**DATES:** *Comments:* Written comments must be received by **[insert date 45 days after date of publication in the Federal Register]**. If EPA receives a request for a public hearing by **[insert date 7 days after date of publication in the Federal Register]**, we will publish information related to the hearing and new deadline for public comment in a subsequent *Federal Register* document.

*Public hearing:* EPA will not hold a public hearing on this matter unless a request is received by the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble by **[insert date 7 days after date of publication in the Federal Register]**. If EPA receives such a request, we will hold a public hearing. Additional information about the hearing would be published in a subsequent *Federal Register* document.

**ADDRESSES:** You may send comments, identified by Docket ID No. EPA-HQ-OAR-2020-0314, by any of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov/> (our preferred method).  
Follow the online instructions for submitting comments.
- E-mail: [a-and-r-Docket@epa.gov](mailto:a-and-r-Docket@epa.gov). Include Docket ID No. EPA-HQ-OAR-2020-0314 in the subject line of the message.
- Fax: (202) 566-9744 Include Docket ID No. EPA-HQ-OAR-2020-0314 on the cover of the fax.

- Mail: U.S. Environmental Protection Agency, EPA Docket Center, OAR, Docket EPA-HQ-OAR-2020-0314, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- Hand Delivery / Courier: EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m. – 4:30 p.m., Monday – Friday (except Federal Holidays).

*Instructions:* All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov/> or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** Christopher Lieske, Office of Transportation and Air Quality (OTAQ), Assessment and Standards Division (ASD), Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor MI 48105; telephone number: (734) 214-4584; email address: [lieske.christopher@epa.gov](mailto:lieske.christopher@epa.gov) fax number: (734) 214-4816.

## **SUPPLEMENTARY INFORMATION:**

### **I. Why is EPA issuing this proposed rule?**

This document proposes to correct an error in EPA's regulations for test procedures used in the Corporate Average Fuel Economy (CAFE) program finalized in a 2012 rulemaking. The correction clarifies the method for how flex-fuel vehicles are accounted for in manufacturer fuel economy calculations in model years 2020 and later. This correction allows the program to be implemented as originally intended in the 2012 rule.

We have published a direct final rule in the "Rules and Regulations" section of this *Federal Register* because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule; that document also includes draft regulations detailing all the amendments under consideration.

If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will publish a timely withdrawal in the *Federal Register* informing the public that the direct final rule, or the relevant provisions of the rule, will not take effect. We would address all public comments in any subsequent final rule based on this proposed rule.

We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

## II. Does This Action Apply to Me?

This action affects companies that manufacture or sell passenger automobiles (passenger cars) and non-passenger automobiles (light trucks) as defined under NHTSA’s CAFE regulations.<sup>1</sup> Regulated categories and entities include:

<b>Category</b>	<b>NAICS Codes<sup>A</sup></b>	<b>Examples of Potentially Regulated Entities</b>
Industry	336111 336112	Motor Vehicle Manufacturers
Industry	811111 811112 811198 423110	Commercial Importers of Vehicles and Vehicle Components
Industry	335312 811198	Alternative Fuel Vehicle Converters

<sup>A</sup>North American Industry Classification System (NAICS)

This list is not intended to be exhaustive, but rather provides a guide regarding entities likely to be regulated by this action. To determine whether particular activities may be regulated by this action, you should carefully examine the regulations. You may direct questions regarding

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<sup>1</sup> “Passenger car” and “light truck” are defined in 49 CFR part 523.

the applicability of this action to the person listed in **FOR FURTHER INFORMATION CONTACT**.

### **III. Public Participation**

EPA will keep the record open until **[insert date 45 days after date of publication in the Federal Register]**. All information will be available for inspection at the EPA Air Docket No. EPA-HQ-OAR-2020-0314. Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2020-0314, at <https://www.regulations.gov> (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

The EPA is temporarily suspending its Docket Center and Reading Room for public visitors, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform.

We encourage the public to submit comments via <https://www.regulations.gov/> as there may be a delay in processing mail and faxes. Hand deliveries or couriers will be received by scheduled appointment only. For further information and updates on EPA Docket Center services, please visit us online at <https://www.epa.gov/dockets>.

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID-19.

#### **IV. Proposed Provisions**

This proposal would correct a technical error in EPA regulations pertaining to the treatment of model year (MY) 2020 and later E85 flex-fuel vehicles (FFVs) in the Corporate Average Fuel Economy (CAFE) program. These provisions were established in the 2012 final rule “2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards,” where EPA adopted new test procedures for weighting the measured fuel economy of MY 2020 and later FFVs when the vehicles are tested on both E85 and gasoline test fuels.<sup>2</sup> EPA established the procedures under the general provisions of Energy Policy and Conservation Act (EPCA) which authorize EPA to establish test and calculation procedures for CAFE.<sup>3</sup>

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<sup>2</sup> See 77 FR 62830 and 63127, October 15, 2012.

<sup>3</sup> 49 U.S.C. 32904(a), (c).

49 U.S.C. 32905 specifies how the fuel economy of dual fuel vehicles is to be calculated for the purposes of CAFE through the 2019 model year. The basic calculation includes a 50/50 harmonic average weighting of the fuel economy for the alternative fuel and the conventional fuel, irrespective of the actual usage of each fuel. In a related provision, 49 U.S.C. 32906, the amount by which a manufacturer's CAFE value (for domestic passenger cars, import passenger cars, or light-duty trucks) can be improved by the statutory incentive for dual fuel vehicles is limited by EPCA to 1.2 mpg through 2014, and then gradually reduced until it is phased out entirely starting in model year 2020.<sup>4</sup>

Recognizing the expiration of the special calculation procedures in 49 U.S.C. 32905 for dual fuel vehicles, EPA established, in the 2012 rule, calculation procedures for model years 2020 and later FFVs under the general provisions of EPCA noted above authorizing EPA to establish CAFE testing and calculation procedures. EPA regulations at 40 CFR 600.510–12(c)(2)(v) specify weighting the fuel economy measured when an FFV is tested on E85 and gasoline test fuel using the same weighting factor as is used in the greenhouse gas program for weighting CO<sub>2</sub> emissions measured on the two fuels.<sup>5</sup> As part of the 2012 rule, NHTSA modified its regulations at Part 536.10 to limit the applicability of the EPCA limits to MYs 2019 and earlier and to state that for MYs 2020 and beyond a manufacturer must calculate the fuel economy of dual-fuel vehicles in accordance with EPA's regulations at 40 CFR 600.510–12(c)(2)(v).

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<sup>4</sup> 49 U.S.C. 32906.

<sup>5</sup> This weighting factor is commonly referred to as the "F-factor." The F-factor is a value specified by EPA in accordance with 40 CFR 600.510–12(k) based on EPA's assessment of the real-world use of E85 over the life of the FFVs.

The preamble for the 2012 rule summarized EPA’s approach for MY 2020 and later as follow: “EPA is finalizing its proposal, under its EPCA authority, to use the “utility factor” methodology for PHEV and CNG vehicles described above to determine how to apportion the fuel economy when operating on gasoline or diesel fuel and the fuel economy when operating on the alternative fuel. For FFVs under the CAFE program, EPA is using the same methodology it uses for the GHG program to apportion the fuel economy, namely based on actual usage of E85. As proposed, EPA is continuing to use Petroleum Equivalency Factors and the 0.15 divisor used in the MY 2012–2016 rule for the alternative fuels, however with no cap on the amount of fuel economy increase allowed.”<sup>6</sup>

EPA noted in the 2012 preamble “[i]n a related provision, 49 U.S.C. 32906, the amount by which a manufacturer’s CAFE value (for domestic passenger cars, import passenger cars, or light-duty trucks) can be improved by the statutory incentive for dual fuel vehicles is limited by EPCA to 1.2 mpg through 2014, and then gradually reduced until it is phased out entirely starting in model year 2020. With the expiration of the special calculation procedures in 49 U.S.C. 32905 for dual fueled vehicles, the CAFE calculation procedures for model years 2020 and later vehicles need to be set under the general provisions authorizing EPA to establish testing and calculation procedures.”<sup>7</sup> The 2012 rule preamble also notes “NHTSA interprets section 32906(a) as not limiting the impact of dual fueled vehicles on CAFE calculations after MY2019.”<sup>8</sup> The 2012 rule preamble states “we interpret Congress’ statement in section 32906(a)(7) that the maximum increase in fuel economy attributable to dual-fueled automobiles

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<sup>6</sup> 77 FR 62653.

<sup>7</sup> 77 FR 62830.

<sup>8</sup> 77 FR 62830.

is ‘0 miles per gallon for model years after 2019’ within the context of the introductory language of section 32906(a) and the language of section 32906(b), which, again, refers clearly to the statutory credit, and not to dual-fueled automobiles generally. It would be an unreasonable result if the phaseout of the credit meant that manufacturers would be effectively penalized, in CAFE compliance, for building dual-fueled automobiles...’’<sup>9</sup> EPA believes all of these statements from the 2012 final rule make clear EPA’s intent not to apply the 49 U.S.C. 32906 credit limits to CAFE calculations for model year 2020 and later vehicles.

A discrepancy in EPA’s regulations exists in section 40 CFR 600.510–12(h), where prior to the 2012 rule, EPA codified the EPCA limits in EPA’s regulations. These regulations specify that the impact of certain dual-fuel vehicles on a manufacturer’s fleet CAFE calculations is limited to 0.0 for MY 2020 and later. EPA inadvertently did not revise the regulations at 40 CFR 600.510–12(h) to account for the 2012 rule’s treatment of MY 2020 and later FFVs. The existing 40 CFR 600.510–12(h) provisions may be read as applying the EPCA limits to MY 2020 and later FFVs, inconsistent with the clear intent of the 2012 rule. This proposal would correct this error by making narrow revisions to this section of the regulations to clarify that the limits do not apply to MY 2020 and later FFVs, where the emissions of those vehicles are calculated in accordance with 40 CFR 600.510–12(c)(2)(v), consistent with the intent of the 2012 final rule.

For additional discussion of the proposed rule changes, see the direct final rule EPA has published in the ‘‘Rules and Regulations’’ section of today’s *Federal Register*. This proposal incorporates by reference all the reasoning, explanation, and regulatory text from the direct final

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<sup>9</sup> 77 FR 63020.

rule.

## **V. Statutory and Executive Order Reviews**

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

### *B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs*

This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

### *C. Paperwork Reduction Act*

This action does not impose any new information collection burden under the PRA, since it merely clarifies and corrects existing regulatory language. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number of 2060-0104.

### *D. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will

not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This rule merely clarifies and corrects existing regulatory language. We therefore anticipate no costs and therefore no regulatory burden associated with this rule.

*E. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments. Requirements for the private sector do not exceed \$100 million in any one year.

*F. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

*G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*

This action does not have tribal implications as specified in Executive Order 13175. This rule only corrects and clarifies regulatory provisions that apply to light-duty vehicle manufacturers. Tribal governments would be affected only to the extent they purchase and use regulated vehicles. Thus, Executive Order 13175 does not apply to this action.

*H. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks*

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This proposed rule merely corrects and clarifies previously established regulatory provisions.

*I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*J. National Technology Transfer and Advancement Act (NTTAA)*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs agencies to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action modifies existing regulations to correct an error in the regulations and therefore involves technical standards previously established by EPA. The amendments to the regulations do not involve the application of new technical standards. EPA is continuing to use

the technical standards previously established in its rules regarding the light-duty vehicle GHG standards for MYs 2017-2025. See 77 FR 62960 and 85 FR 25265.

*K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). This regulatory action merely corrects previously established provisions that auto manufacturers use to demonstrate compliance for light-duty vehicles.

**List of Subjects in 40 CFR Part 600**

Environmental protection, Administrative practice and procedure, Electric power, Fuel economy, Labeling, Reporting and recordkeeping requirements.

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Andrew Wheeler,  
Administrator.