

Mobility Matters Quarterly

November 2026

In this issue:

- Shifting Gears: Pentagon Turns to Automotive Suppliers to Expand Defense Industrial Base
- FCC Prohibits Advanced Robotic Devices and Uncrewed Aircraft Systems that Do Not Meet Buy American Act Requirements
- NHTSA Recalibrates Fuel Economy Standards
- NHTSA Utilizes Negotiated Rulemaking Tool and Plans to Update Federal Lighting Standard to Accommodate Autonomous Vehicles
- Rules or Orders? Courts Continue to Weigh EPA's Use of the Congressional Review Act Against California's Clean Air Act Waivers

Shifting Gears: Pentagon Turns to Automotive Suppliers to Expand Defense Industrial Base

By Andrés M. Vera and Amaiya Johnson

In the face of reported munitions shortages, the federal government is increasingly looking to the automotive industry to help expand U.S. defense manufacturing capacity. Senior Pentagon officials have met with major automakers about producing weapons and military hardware, and the opportunity is not limited to original equipment manufacturers (OEMs). Tier 1, Tier 2, and Tier 3 suppliers that make components, systems, and materials may also find a place in the defense supply chain. This could be an extremely lucrative opportunity for automotive suppliers, though companies new to government contracting should note that this market comes with a compliance framework unlike anything in commercial automotive. Here is what suppliers should know.

Pentagon Outreach and Procurement Priorities

In April 2026, the Pentagon confirmed that it is turning to automakers and other U.S. manufacturers to expand weapons production as a matter of national security. Senior defense officials have held discussions with executives at General Motors and Ford, among others, about using their personnel and factory capacity to produce munitions and other military supplies. According to a Department of War (DOW) official, the goal is to leverage available commercial solutions and technologies to deliver production at scale and build resiliency across supply chains. The Pentagon's $1.5 trillion budget request includes funding for munitions and drone manufacturing, and officials have asked companies to identify barriers to taking on defense work, including contracting and compliance requirements as well as bidding and procurement processes.

Defense officials have identified munitions and tactical hardware, including missiles and counter-drone technology, as priorities, and the Pentagon's budget request specifically funds procurement in these areas to support the American warfighter. The government is also seeking manufacturing services, materials, and related supply chain support. Automakers are being courted because many of these products rely on capabilities the automotive supply base already has, such as precision machining and casting, electric motors and actuators, batteries and power electronics, wire harnesses, sensors, and high-volume, quality-controlled production. Although most suppliers are likely to initially enter the market as subcontractors to established defense prime contractors rather than contracting directly with the government, the long-term vision is to have major automakers occupy a key role in the defense industrial base.

The FAR Overhaul and the Value of Commerciality

Most federal purchasing is governed by the Federal Acquisition Regulation (FAR), which the DOW supplements with the Defense Federal Acquisition Regulation Supplement (DFARS). This dense set of regulations makes government contracting one of the most highly regulated industries in the world, covering compliance obligations that address quality control, procurement integrity, employment, country-of-origin requirements, and myriad other public-policy driven requirements that can involve costly compliance mechanisms. While the government has been attempting to reduce barriers to entry and compliance concerns through its recent Revolutionary FAR Overhaul, federal contractors continue to face substantial compliance burdens. However, the DOW has engaged in a decided effort to address these issues, including through recent directives to give preference to commercial solutions. The DOW's November 2025 Acquisition Transformation Strategy builds on these efforts and calls for maximizing purchases of commercial products and working directly with suppliers throughout the industrial base, not just the large prime contractors.

For automotive suppliers, the key concept is "commerciality." A type of product customarily used by the general public, including one with minor modifications to meet government requirements, can qualify as a "commercial product," and FAR Part 12 directs agencies to buy commercial products when they meet the government's needs. Commercial purchases are generally exempt from many of the most onerous compliance requirements, including the Cost Accounting Standards (CAS) and carry far fewer mandatory contract clauses. A product's classification can determine which rules apply, so suppliers should assess and document commerciality early.

Government Contracting Is Lucrative, But Compliance Is Intense

Even with streamlining, a government contract is not just another purchase order. Suppliers should be prepared for the following:

- *Cost accounting.* Larger negotiated contracts that are not commercial can require suppliers to follow the CAS (FAR Part 30), an accounting standard significantly more onerous than GAAP, and to disclose detailed cost or pricing data to the government. Recent legislation has narrowed when these rules apply, but many commercial accounting systems were not built for them.
- *Cybersecurity and CMMC.* Suppliers that handle sensitive government information must meet federal cybersecurity standards and report cyber incidents to the DOW. Under the Cybersecurity Maturity Model Certification (CMMC) program (32 C.F.R. Part 170), contractors and subcontractors must verify their compliance and obtain third-party certification as a condition of award. Meeting these standards can take months and involve substantial overhaul of IT and cybersecurity systems, so preparation should begin well before bidding.
- *Supply chain requirements.* Defense contracts often impose domestic sourcing rules that commercial customers rarely require (DFARS Part 225), such as restrictions on where certain metals are produced and on batteries from certain Chinese manufacturers.
- *Mandatory flow-down clauses.* Prime contractors must pass many of these obligations down the supply chain, so a Tier 3 supplier may be bound by terms in a prime contract it may never see.
- *Liability risk.* Inaccurate certifications, including cybersecurity self-assessments, can create liability under the False Claims Act, which can entitle the government to three times the value paid to a contractor under the affected contract plus penalties. This risk can be existential, and false certifications are more common than contractors may think.

Implications and Key Takeaways

The government's outreach to the automotive industry presents a substantial growth opportunity even in a period of economic uncertainty, but entry into this market requires preparation. Before pursuing defense work, suppliers should identify which products fit defense priorities, assess commerciality, evaluate cybersecurity and accounting readiness, and review customer contracts for defense-related flow-down terms that may already apply. Our Government Contracts and Automotive & Mobility teams are monitoring these developments and can help suppliers evaluate opportunities and prepare appropriately.

FCC Prohibits Advanced Robotic Devices and Uncrewed Aircraft Systems that Do Not Meet Buy American Act Requirements

By Francesca M.S. Guerrero, Joel D. Eagle and Kristina Shcheglazova

In 2019, the Federal Communications Commission (FCC) established the Covered List, which effectively banned the sale of any listed communications equipment in the United States. The initial list included only certain telecommunications equipment made by specific Chinese manufacturers. The FCC has since added to the Covered List new categories of equipment that directly affect the mobility industry: foreign-produced uncrewed aircraft systems (UAS) and UAS critical components in December 2025 and advanced robotic devices on July 28, 2026.

These additions reflect a new FCC trend of making broad designations of banned items rather than naming specific entities and devices on the Covered List. Broad designations affect companies in the automotive and mobility industries because even U.S. companies manufacturing domestically but importing foreign components may be required to seek FCC authorization of Covered List items. There is a process for seeking Conditional Approval of items that would otherwise be banned.

Scope of Devices Covered

For mobility clients, the key Covered List items are foreign-produced "advanced robotic devices" and UAS (colloquially referred to as drones).

An advanced robotic device is a ground-mobile device weighing over 4.4 pounds that operates at a distance from a human operator and contains an environmental sensor, network connectivity of at least 200 kBps, and software controlling autonomous navigation, data collection, or remote command-and-control. Of particular significance to the mobility sector, the definition excludes connected vehicles (on-road connected vehicles as defined in 15 CFR § 791.301 of any gross weight), rail vehicles, and FDA-classified mobility assistive devices.

A UAS is defined under 47 CFR § 88.5 as an "Uncrewed Aircraft and its associated elements (including an uncrewed aircraft station, communication links, and the components not on board the UA that control the UA) that are required for the safe and efficient operation of the UA in the airspace of the United States."

Whether a U.S.-manufactured Covered List item requires FCC authorization depends on the product's classification as either a domestic end product or foreign-produced under the Buy American Act standard (48 CFR § 25.101(a)). Under the Buy American Act standard, a product is a domestic end product if (1) it is manufactured in the United States; and (2) the cost of domestic components exceeds 65% (75% for items starting in calendar year 2029). Foreign-produced means any article that is not a domestic end product. If the product is a domestic end product, then it is exempt from the FCC ban. The key implication for mobility clients is that even if products are manufactured in the United States, they may still be considered foreign-produced if they do not meet domestic content thresholds, requiring FCC authorization to sell the products in the U.S.

Existing Authorizations and Conditional Approval

Parties caught by the broad FCC Covered List designations may apply for Conditional Approval from the DOW. The application requires ownership information, a detailed bill of materials with country-of-origin data, and a time-bound U.S. onshoring plan. Conditional Approval allows devices to be exempt from the Covered List and receive FCC equipment authorization through the normal pathways.

Authorizations existing at the time product categories were added to the Covered List remain valid. An FCC waiver permits many software and firmware (but not hardware) modifications to devices with prior authorization through at least January 1, 2029. Parties may apply for, and the FCC may grant, other waivers on a case-by-case basis.

Implications and Key Takeaways

A manufacturer should identify products that fall within the broad definitions subject to FCC Covered List prohibitions, which may require conducting a Buy America Act analysis. If products are subject to these new restrictions, the company should consider plans to maintain authorization for pre-existing products that will need component updates and other changes that may take them out of "grandfathering." The company should also determine whether it should seek

Conditional Approval to enable marketing and sale of new or updated products.

Our International Trade and Automotive & Mobility teams are tracking these developments and actively working with companies to analyze their products and seek Conditional Approval as needed. We successfully obtained the first approvals for robotic devices and are currently providing strategic advice to many other companies seeking Conditional Approvals.

David Chieng also contributed to this article. David is a Thompson Hine law clerk; he is not admitted to the practice of law.

NHTSA Recalibrates Fuel Economy Standards

By Christie Iannetta and Will Godfrey

On September 30, the National Highway Traffic Safety Administration (NHTSA) published the SAFE Vehicles Rule III (91 Fed.Reg. 61988). NHTSA says the rule's overarching goal is to "substantially recalibrate the Corporate Average Fuel Economy (CAFE) program to bring the program into compliance with the law." Aside from resetting and lowering fuel economy targets for model years (MY) 2022-2031, the final rule has important implications for other aspects of the program.

First, the updated rule eliminates inter-manufacturer trading of earned CAFE credits beginning in MY 2028. Credits earned through MY 2027 can still be traded and used for up to five model years; for example, MY 2027 credits can be used through MY 2032. In justifying the elimination of the trading program, NHTSA stated it has "resulted in a windfall for EV-exclusive manufacturers" when that capital "could be invested toward improving the fuel economy performance or other desirable attributes of their traditional fleets" and thus inflating the fuel economy requirements for traditional gas- and diesel-powered vehicle fleets. Manufacturers will still be able to transfer credits among different categories of vehicles within their own fleet. However, while the inter-manufacturer credit trading program will remain in place until MY 2028, since civil penalties associated with CAFE shortfalls were reduced to $0 in July 2025, this effectively eliminates the need and market for CAFE credits, an outcome that is currently being challenged by some in the EV industry.

The final rule also makes major structural changes to the vehicle classification aspects of the program. Under the final rule, NHTSA eliminates front and rear axle clearance as a factor indicating the vehicle is capable of off-highway operation and thus could be classified as a non-passenger automobile (i.e., light-duty truck). Beginning with MY 2030, to be classified as a non-passenger automobile under CAFE based on off-highway characteristics, a vehicle must now meet all four of the remaining dimensional criteria, including approach angle and running clearance. The effect of this significant update will be that many light-duty trucks and crossover-type vehicles will be reclassified from the light truck fleet to the passenger car fleet beginning with MY 2030. While not explicitly stated in the rule, the overhaul of the vehicle classification criteria will also have a spillover effect on vehicle classification for purposes of the Federal Motor Vehicle Safety Standards.

NHTSA Utilizes Negotiated Rulemaking Tool and Plans to Update Federal Lighting Standard to Accommodate Autonomous Vehicles

By Christie Iannetta and Will Godfrey

NHTSA recently took steps to update certain outdated Federal Motor Vehicle Safety Standards (FMVSS) and continue the modernization of the FMVSS to account for vehicles equipped with automated driving systems (ADS).

In October, NHTSA published an intention to conduct a negotiated rulemaking to modernize FMVSS 108. (91 Fed.Reg. 64463, October 8, 2026). If the committee reaches consensus, NHTSA will propose a rule consistent with it for public comment. Topics for committee consideration include headlamp glare, semiautomatic beam switching, and upper and lower beam photometry. In addition to these efforts to modernize FMVSS 108, NHTSA also published a proposal to update the standard to, among other things, accommodate ADS-equipped vehicles. (91 Fed.Reg. 67244, October 26, 2026). These steps include a non-mandatory option to include cyan-colored ADS marker lamps and eliminate the need for vehicle lighting controls such as self-cancelling turn signals and upper beam switching devices in vehicles without manually operated driving controls. If adopted, some of the proposals could implicate preemption issues with state laws on vehicle

lighting, particularly those with specific requirements around ADS-equipped vehicles.

The proposal also indicates that NHTSA would no longer read FMVSS 108 to bar automatic hazard signal activation simply because the operating unit must be "driver" controlled. Automatic activation of the hazard warning signal would still be assessed on a case-by-case basis where it occurs outside situations where hazard lamps are typically activated to assess impairment of required lighting.

Lastly, NHTSA announced its intention to conduct a negotiated rulemaking to modernize tire FMVSS requirements and test procedures. (91 Fed.Reg. 67647, October 27, 2026). The proposal states the committee will address topics such as whether the tire strength (plunger energy), bead unseating resistance, and endurance tests are still necessary and effective, and modernization of tire markings.

Rules or Orders? Courts Continue to Weigh EPA's Use of the Congressional Review Act Against California's Clean Air Act Waivers

By Joel D. Eagle and Aren K. Olson

Can EPA rescind California's vehicle emission waivers by reclassifying them as "rules"? A federal judge in Washington has preliminarily held that it cannot, and EPA has appealed to the D.C. Circuit. The outcome will determine whether standards adopted by California and many other states remain a stable baseline for automakers, engine manufacturers, and fleets, or become subject to rescission by a simple congressional majority.

2025: Congress Rescinds Three Waivers

For decades, California has held unique authority under the Clean Air Act to set its own vehicle emission standards upon receipt of EPA "waivers," including traditional criteria pollutants, and more recently, for greenhouse gases and a zero-emission vehicle program. The first Trump administration revoked the state's waiver for passenger vehicles in 2019, which the Biden administration restored in 2022. In 2025, EPA took a new approach. It treated three waivers (Advanced Clean Trucks, Advanced Clean Cars II, and Omnibus Low NOx) as "rules" and sent them to Congress to review, and ultimately rescind, through Congressional Review Act (CRA) resolutions that the president signed. That move departed from EPA's own past practice and from the views of the Government Accountability Office and the Senate parliamentarian, both of which treated waivers as adjudicatory orders, not rules. California's challenge to the 2025 rescissions remains pending in the Northern District of California.

2026: A Court Halts the Second Attempt

EPA repeated its strategy in 2026. In June and July, it relabeled six older waivers as rules, including the 2009 greenhouse gas and 2013 Advanced Clean Cars I waivers, and sent them to Congress. Republican senators introduced CRA resolutions in August; this time, however, a court stepped in pre-consideration. On September 2, Judge Beryl Howell of the U.S. District Court for the District of Columbia preliminarily enjoined EPA's reclassification of the four June waivers (followed by a second injunction on September 12), holding that the CRA reaches only agency rules of general applicability, that the waivers expressly state they are not rules, and that EPA sidestepped the Administrative Procedure Act. She ordered EPA to restore the status quo and warned that "fudging" what counts as a rule is "gamesmanship" that could cut both ways. EPA has appealed to the D.C. Circuit (No. 26-5330), arguing that the CRA bars judicial review, that the reclassifications are not final agency action, and that California lacks standing.

What the Ruling Means for the Industry

For the transportation industry, the long-term stakes of Judge Howell's order are significant. If the ruling is upheld, EPA could likely not use the CRA to send California's waivers to Congress and would instead need to proceed through its own administrative process, in which California could respond. If the ruling is reversed, by contrast, past waivers could be reclassified as rules and rescinded by a simple congressional majority. Either way, the outcome will shape the durability of California's standards and the many state programs built on them for years to come. In the near term, though, the practical effect is limited. The order is preliminary and does not resolve the 2025 rescissions, which are being challenged separately in the Northern District of California, a court not bound by the decision. With the D.C. Circuit appeal pending, the California case unresolved, and Supreme Court review possible, final

answers may be years away, and the legal landscape could shift more than once before then.

For now, automakers, engine manufacturers, and fleets should expect continued uncertainty and plan for more than one outcome, particularly for product, compliance, and purchasing decisions tied to California-based standards. Our team is available to help clients assess how these developments affect their operations.

FOR MORE INFORMATION

For more information, please contact:

Joel D. Eagle
Partner, Environmental and Automotive & Mobility
216.566.5938 | Joel.Eagle@ThompsonHine.com

Francesca M.S. Guerrero
Partner, International Trade and Automotive & Mobility
202.973.2774 | Francesca.Guerrero@ThompsonHine.com

Christie Iannetta
Partner, Transportation and Automotive & Mobility
202.973.2759 | Christie.Iannetta@ThompsonHine.com

Aren K. Olson
Counsel, Environmental
614.469.3329 | Aren.Olson@ThompsonHine.com

Andrés M. Vera
Senior Managing Associate, Government Contracts
202.973.2795 | Andres.Vera@ThompsonHine.com

Kristina Shcheglazova*
Managing Associate, International Trade
312.998.4277 | Kristina.Shcheglazova@ThompsonHine.com

Amaiya Johnson
Associate, Government Contracts
202.973.2762 | Amaiya.Johnson@ThompsonHine.com

Will Godfrey**
Director, Mobility, Automation and Safety, Automotive & Mobility, Transportation, Product Liability Litigation and Environmental
202.263.4119 | Will.Godfrey@ThompsonHine.com

**Licensed in MO only, not IL; limited to federal practice only*
***Not licensed to practice law*

This advisory bulletin may be reproduced, in whole or in part, with the prior permission of Thompson Hine LLP and acknowledgment of its source and copyright. This publication is intended to inform clients about legal matters of current interest. It is not intended as legal advice. Readers should not act upon the information contained in it without professional counsel.

This document may be considered attorney advertising in some jurisdictions.

© 2026 THOMPSON HINE LLP. ALL RIGHTS RESERVED.