



REPORT

Southern California Association of Governments
900 Wilshire Boulevard, Suite 1700, Los Angeles, California 90017
October 3, 2019

To: Energy & Environment Committee (EEC)
Regional Council (RC)

From: Rongsheng Luo, Program Manager II, Planning Division
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Subject: Final Federal Safer, Affordable, Fuel-Efficient Vehicles Rule
Part I (**Supplemental Report**)

**EXECUTIVE DIRECTOR'S
APPROVAL**

RECOMMENDED ACTION FOR EEC:
For Information Only – No Action Required.

RECOMMENDED ACTION FOR RC:
Receive and File

STRATEGIC PLAN:
This item supports the following Strategic Plan Goal 2: Advance Southern California’s policy interests and planning priorities through regional, statewide, and national engagement and advocacy.

EXECUTIVE SUMMARY:
As Part I of the final Safer, Affordable, Fuel-Efficient Vehicles (SAFE) Vehicles Rule, the U.S. Department of Transportation’s National Highway Traffic Safety Administration (NHTSA) and the U.S. Environmental Protection Agency (EPA) issued a widely anticipated and highly political and controversial final “One National Program Rule” (Rule) on September 19, 2019. The final Rule is designed to preempt state and local tailpipe greenhouse gas emissions standards, zero emission vehicle mandates, and fuel economy for automobiles and light duty trucks. The rule preempts California’s Advanced Clean Car Regulations and may potentially impact SCAG’s Connect SoCal under development, the upcoming 2021 Federal Transportation Improvement Program (FTIP), and transportation projects in the SCAG region.

This supplemental staff report under separate cover includes additional background information, a summary of the major actions in the final Rule, its transportation conformity implications, SCAG staff’s effort to date, and anticipated next steps.

OUR MISSION
To foster innovative regional solutions that improve the lives of Southern Californians through inclusive collaboration, visionary planning, regional advocacy, information sharing, and promoting best practices.

OUR VISION
Southern California’s Catalyst for a Brighter Future

OUR CORE VALUES
Be Open | Lead by Example | Make an Impact | Be Courageous

BACKGROUND:**Proposed Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule**

On August 24, 2018, the U.S. Environmental Protection Agency (EPA) and the U.S. Department of Transportation's National Highway Traffic Safety Administration (NHTSA) jointly published in the Federal Register a notice of proposed rulemaking entitled, "The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks." The proposed rule is designed to roll back the federal Corporate Average Fuel Economy (CAFÉ) and vehicle greenhouse gas (GHG) emissions standards promulgated under the Obama Administration.

In the Federal Register Notice, EPA proposed new tailpipe GHG emission standards and NHTSA proposed new CAFE standards for model years (MY) 2021 to 2026 light duty vehicles. The proposal included a "preferred alternative" to lock-in the MY 2020 GHG/CAFE standards for model years 2021 through 2026. The proposal also took comment on a wide range of options, including an option to retain the existing the stringency of the standards year-over-year.

Separate from the proposed standards, the two federal agencies also proposed to take two actions needed to ensure the existence of one federal program for light vehicles. First, NHTSA proposed to determine that the federal Energy Policy and Conservation Act's (EPCA) preemption of state regulation related to fuel economy has the effect of preempting state programs to regulate tailpipe GHG emissions, as well as state zero-emission vehicle (ZEV) programs. NHTSA also proposed regulatory text implementing its statutory authority to set nationally applicable fuel economy standards that made explicit that those State programs would also be preempted under NHTSA's authorities. Second, EPA proposed to determine that it has authority to reconsider past grants of waivers from federal Clean Air Act (CAA) preemption, and to withdraw the January 2013 EPA waiver of CAA preemption previously provided for California's Advanced Clean Car (ACC) program with respect to that program's GHG and ZEV elements.

Major Actions in One National Program Rule

On September 27, 2019, EPA and NHTSA jointly published in the Federal Register a notice of final rulemaking entitled, "The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program" to finalize elements of the proposed SAFE Vehicles Rule. Effective November 26, 2019, the Part I action is enabling the federal government to provide nationwide uniform fuel economy and GHG emission standards for automobiles and light duty trucks. The action is affirming that federal law preempts state and local vehicle fuel economy, tailpipe GHG emissions standards as well as ZEV requirements. Specifically, NHTSA is affirming that its statutory authority to set nationally applicable fuel economy standards under the express preemption provisions of the EPCA

dictates that such state and local programs are preempted; and that EPA is withdrawing the CAA preemption waiver that it granted to the State of California in January 2013 as it relates to California's GHG and ZEV programs. However, California's ability to enforce its Low Emission Vehicle program and other clean air standards to address harmful ozone-forming vehicle emissions is not affected by this action.

NHTSA and EPA are continuing work to finalize the remaining portions of the SAFE Vehicles Rule and anticipate issuing a final rule on the federal fuel economy and GHG vehicle emissions standards in the near future.

Transportation Conformity Implications

Effective November 26, 2019, the "One National Program Rule" will have very significant transportation conformity implications.

First, the final rule may impact regional transportation conformity determinations for SCAG's Connect SoCal, the 2020 Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS), under development and the upcoming 2021 Federal Transportation Improvement Program (FTIP). Pursuant to CAA and federal Transportation Conformity Regulations, SCAG's RTP/SCS and FTIP are required to demonstrate transportation conformity. As an essential part of the demonstration, an official emission factors (EMFAC) model developed by the California Air Resources Board (ARB) and approved by EPA is required to be used for the transportation conformity analysis.

However, as explained in the ARB's written comments on the proposed SAFE Vehicles Rule, the waiver withdrawal will invalidate ARB's EMFAC models that have been previously approved by EPA. The reason is that the waiver withdrawal has the effect of invalidating ARB's ACC Regulations which are incorporated into the previously approved EMFAC models. Without a valid EMFAC model, SCAG would not be able to perform the required transportation conformity analysis to demonstrate transportation conformity for Connect SoCal first and then 2021 FTIP.

If the transportation conformity determination for Connect SoCal would not be approved by the Federal Highway Administration/Federal Transit Administration (FHWA/FTA) by June 1, 2020, a 12-month transportation conformity lapse grace period would be triggered. During the conformity lapse grace period, all projects in the 2016 RTP/SCS and 2019 FTIP as amended can still receive federal approval; however, no new projects may be added and no changes may be made to the projects in the transportation plan or program, with the exception of exempt (mainly safety projects) and committed transportation control measure (TCM) (committed HOV lanes, transit, active transportation, and ITS projects in approved air plans) projects.

If the underlying issues would not be resolved in time, transportation conformity lapse would occur after the grace period. A conformity lapse impacts non-exempt projects (mainly mixed-flow capacity expansion projects) as well as TCM projects not in an approved air plan unless these projects have received federal authorization prior to the lapse. Specifically, these impacted projects can neither receive federal funding, federal approval, nor be amended into the regional transportation plan or program.

Without a valid EMFAC model, related but different from the regional transportation conformity, the project-level transportation conformity would also be impacted. Specifically, project lead agencies would not be able to demonstrate new project-level transportation conformity. As a result, these projects would not be able to receive federal approval or funding regardless of the regional transportation conformity status.

The final rule could also trigger a transportation conformity freeze or highway sanctions because the same problems would arise in the air quality planning arena. Without a valid EMFAC model, any air plans that require the EMFAC model could not be prepared or submitted per statutory deadlines. In addition, previously submitted air plans or control measures may be disapproved because of the final rule. A transportation conformity freeze occurs upon some air plan disapprovals without a protective finding by EPA. A transportation conformity freeze has the same effect as a transportation conformity lapse grace period.

A failure to submit a required air plan, a disapproval of a submitted air plan or control measure, or a failure to implement a required element of an approved air plan would trigger a 24-month highway sanctions clock. If the underlying issues are not resolved, highway sanctions would be imposed by EPA after 24 months. Once EPA imposes highway sanctions, the FHWA may not approve or award any grants in the sanctioned area except those that are specifically exempted including safety programs and projects, seven congressionally-authorized activities (mainly TCM type of projects), and air quality improvement projects that would not encourage single occupancy vehicle capacity. In other words, highway sanctions restrict federal funding to projects that expand highway capacity, nonexempt project development activities, and any other project that does not explicitly meet exemption criteria.

Note that the final SAFE vehicles rule may also impact SB 1 funding for transportation projects in addition to the above potential transportation conformity impacts. For the same reason, without a valid EMFAC model, SCAG would not be able to demonstrate that Connect SoCal achieves the regional GHG emissions reduction targets. Without an approved SCS, some nonattainment areas in the SCAG region may not be able to compete for funding under SB 1's Trade Corridor Enhancement Program (TCEP) and Solutions for Congested Corridors (SCCP) Programs.

Highlights of SCAG Efforts

Because the stakes are very high, SCAG staff has been making a great effort to understand the rule, figure out potential impacts, and take appropriate actions. First, we have been actively undertaking on-going interagency consultation to closely track, monitor, and seek clarification and guidance through SCAG's Transportation Conformity Working Group (TCWG). TCWG was established almost two decades ago to fulfil the CAA required interagency consultation on matters related to transportation conformity through the monthly TCWG meeting. Consisting of staff representatives from federal, state, and regional transportation and air agencies, TCWG is an ideal forum for involved agencies to discuss about and address transportation conformity implications of the SAFE Vehicles Rule. Interagency consultation also has been sought separately through the California Federal Programming Group (CFPG) meetings as well as the Planning Directors meetings of four major California metropolitan planning organizations (MPOs).

To prevent possible immediate impact after publication of the proposed rule, SCAG staff expedited the preparation, the RC adoption, and the final federal approval of the required transportation conformity re-determination for the 2016 RTP/SCS and 2019 FTIP under the new 2015 federal ozone ambient air quality standards about three months ahead of the statutory deadline. Should the EMFAC model have been officially invalidated before the federal approval of the conformity re-determination, a transportation conformity lapse grace could have been triggered as early as August 3, 2019.

The SAFE Vehicles Rule is a statewide and highly political issue, so there are many state-wide efforts to oppose the rule. SCAG has been actively participating in these efforts. For example, in recognition of the potential significant impacts, the California Transportation Commission and ARB held a joint public workshop in May 2019 to oppose then the proposed SAFE Vehicles Rule. Teaming up with our fellow MPOs and Caltrans for a joint presentation, Chief Operating Officer Darin Chidsey made a strong testimony at the joint public workshop highlighting potential serious and broad consequences in our region. SCAG staff also has been providing assistance such as preparing preliminary lists of potentially impacted transportation projects to the outreach efforts led by CALCOG to the federal agencies and the Congress.

In addition, SCAG staff has been providing on-going status update to our regional partners especially the County Transportation Commissions and the Subregional Councils of Governments.

Next Steps

Despite the publication of the final rule, many uncertainties remain. Therefore, SCAG staff will continue interagency consultation to seek further clarification and guidance especially from US EPA, ARB, FHWA/FTA, and Caltrans. EPA is the agency responsible for approving or disapproving any air plans, control measures such as the ACC Regulations, and the EMFAC model. ARB is the agency responsible for submitting air plans, developing mobile source measures including the ACC, and developing EMFAC models. FHWA/FTA is the agency responsible for approving our conformity determination while Caltrans is the agency responsible for allocating our funding. These key agencies' interpretation, guidance, and actions as related to the final SAFE Vehicles Rule will determine how any of the potential impacts will play out and by when.

ARB plans to form a working group in response to the final SAFE Vehicles Rule. Details about the working plan are not available at this time. SCAG staff will certainly actively participate in such working group to advocate for timely resolution of all the potential transportation impacts.

On September 20, 2019, California, in coordination with 22 states, the District of Columbia, and two cities, filed a lawsuit in U.S. District Court for the District of Columbia requesting the court grant permanent injunctive relief by declaring the preemption portion of the final rule unlawful. If California would win the lawsuit, all the potential transportation conformity issues would go away. However, it is anticipated that the litigation may reach the Supreme Court. Staff will keep track of the lawsuit.

At their next Joint meeting on October 10, 2019, the California Transportation Commission and the ARB Board will hear an update on the SAFE Vehicles Rule from staff of ARB, CALCOG, and Caltrans. SCAG staff plans to participate in the high-level joint meeting.

The SAFE Vehicles Rule will not become effective until November 26, 2019 and any follow-up rule-making is likely to take additional time. So if it is necessary and appropriate, staff will try to expedite the on-going FTIP amendments.

Despite the potential impacts, SCAG staff will continue development of Connect SoCal including the associated transportation conformity analysis. It will be very challenging but staff will work proactively and closely with all involved agencies with the ultimate goal of resolving the underlying issues before our current transportation conformity determination will expire on June 2, 2020.

Staff will provide regular updates to RC and/or Policy Committees as appropriate.



FISCAL IMPACT:

Work associated with this item is included in the FY 2019-20 Overall Work Program under project number 025.0164.01: Air Quality Planning and Conformity.

ATTACHMENT:

PowerPoint Presentation: SAFE Vehicles Rule Part I

The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program Rule

Overview, Potential Transportation Impacts, and Status Update

Rongsheng Luo, Air Quality and Conformity Program Manager
Department of Compliance and Performance Monitoring
Energy and Environment Committee Meeting, October 3, 2019

www.scag.ca.gov



Background



Proposed SAFE Vehicles Rule

- Proposed by US DOT's NHTSA and US EPA on August 24, 2018
- Applies to Model Years 2021–2026 Passenger Cars and Light Trucks
- Proposed Actions to Roll back Federal CAFÉ and Vehicle GHG Emissions Standards Promulgated under Obama Administration:
 - ✓ Determination that federal law preempts state and local tailpipe GHG emissions standards and ZEV mandates
 - ✓ Withdrawal of CAA preemption waiver granted to California in 2013
 - ✓ New or amended Vehicle GHG Emissions and CAFE standards

SAFE Rule Part One - Overview

Final Actions

- Published in Federal Register by US DOT's NHTSA and US EPA on September 27, 2019
- Effective November 26, 2019
- Actions:
 - ✓ Federal law preempts state and local tailpipe GHG emissions standards and ZEV mandates
 - ✓ Withdrawal of CAA preemption waiver granted to California in 2013
- Continue to work on Part Two: CAFÉ & Vehicle GHG Emissions Standards

SAFE Rule Part One – Potential Transportation Impacts

1. Potential Impacts on Regional Transportation Conformity

- Invalidate ARB's Advanced Clean Car (ACC) Regulations
- Invalidate ARB's EMFAC2014/EMFAC2017 Models
- Without Approved EMFAC2014/EMFAC2017 Models:
 - ✓ SCAG would not be able to demonstrate new regional transportation conformity for RTP/SCS and FTIP
 - ✓ May trigger 12-month transportation conformity lapse grace period and lead to conformity lapse afterwards
 - ✓ Many transportation projects may not be amended, receive federal approval or funding

SAFE Rule Part One – Potential Transportation Impacts (con't)

2. Potential Impacts on Project-Level Transportation Conformity

- Invalidate ARB's Advanced Clean Car (ACC) Regulations
- Invalidate ARB's EMFAC2014/EMFAC2017
- Without Approved EMFAC2014/EMFAC2017:
 - ✓ Project lead agency would not be able to demonstrate new project-level transportation conformity
 - ✓ As a result, such transportation projects may not receive federal approval or funding

SAFE Rule Part One – Potential Transportation Impacts (con't)

3. Potential Transportation Conformity Freeze and Highway Sanctions

- Invalidate ARB's Advanced Clean Car (ACC) Regulations
- Invalidate ARB's EMFAC2014/EMFAC2017 Models
- Cause failure to submit or disapproval of required air plan or control measure, thus trigger transportation conformity freeze (same effect as conformity lapse grace period) and 24-month highway sanctions clock
- If not resolved, highway sanctions would be imposed after 24 months
- Under highway sanctions:
 - ✓ Federal funding would be withheld for many highway projects in impacted area

SAFE Rule Part One – Potential Transportation Impacts (con't)

4. Potential Impacts on SB 1 Funding

- Invalidate ARB's Advanced Clean Car (ACC) Regulations
- Invalidate ARB's EMFAC2014/EMFAC2017 Models
- Without Approved EMFAC2014/EMFAC2017 Models:
 - ✓ SCAG would not be able to demonstrate meeting regional GHG emissions reduction targets
 - ✓ Some nonattainment areas may be unable to compete for funding under SB 1 Trade Corridor Enhancement Program (TCEP) and Solutions for Congested Corridors (SCCP) Programs

SAFE Rule Part One – Status Update

1. Highlights of SCAG Efforts

- Active on-going interagency consultation to track, monitor, and seek clarification and guidance through SCAG's Transportation Conformity Working Group (TCWG) and other statewide working groups
- Expedited preparation, RC adoption, & federal approval of 2016 RTP/SCS and 2019 FTIP Conformity Re-determination for 2015 Ozone standards
- Active participation in statewide efforts to oppose proposed rule
 - Testimony at Joint CTC/ARB Public Workshop in May
 - Assistance in CALCOG's outreach efforts
- On-going status update to regional partners especially CTCs

SAFE Rule Part One – Status Update (con't)

2. Next Steps

- Continue interagency consultation to seek further clarification and guidance especially from US EPA, ARB, FHWA/FTA, and Caltrans
- Actively participate in planned ARB working group to address potential transportation impacts timely
- Keep track of a lawsuit filed by California and other states/entities
- Participate in State-level Joint CTC/ARB Meeting on October 10, 2019
- Expedite regular FTIP amendment(s) as necessary
- Continue development of Connect SoCal
- Provide update to RC and/or Policy Committees as appropriate

Thanks

Questions?

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