

## California State Motor Vehicle Pollution Control Standards; Advanced Clean Car Program; Reconsideration of a Previous Withdrawal of a Waiver of Preemption; Opportunity for Public Hearing and Public Comment

The U.S. Environmental Protection Agency (EPA) is soliciting public input on the reconsideration of EPA's actions under the joint EPA/National Highway Traffic Safety Administration (NHTSA) action titled: *The Safer Affordable Fuel-Efficient Vehicles Rule Part One: One National Program* (SAFE-1). EPA is taking this action as directed in President Biden's Executive Order 13990 on *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*, and in response to requests by states and other stakeholders.

In SAFE-1, EPA withdrew the 2013 Clean Air Act (CAA) waiver that had allowed California to enforce its greenhouse gas (GHG) standards for cars and light trucks and zero-emission vehicle (ZEV) sales mandate adopted as a part of the state's Advanced Clean Car (ACC) program. SAFE-1 also interpreted the CAA as not allowing other States to adopt California's GHG standards. EPA is now reconsidering SAFE-1 for the purpose of determining whether the waiver withdrawal was a valid and appropriate exercise of the Agency's authority consistent with judicial precedent, and whether SAFE-1 should now be rescinded.

### Clean Air Act Legal Framework Regarding State Emissions Standards for New Motor Vehicles

- CAA section 209(a) generally preempts states from regulating emissions from new motor vehicles and new motor vehicle engines.

- CAA section 209(b) allows California to enforce emission standards for motor vehicles and engines if EPA grants a waiver from the general preemption contained in CAA section 209(a).
- CAA Section 209(b) states that EPA shall grant a waiver unless it finds that California:
  - was arbitrary and capricious in its finding that its standards are, in the aggregate, at least as protective of public health and welfare as applicable federal standards;
  - does not need such standards to meet compelling and extraordinary conditions; or
  - has standards that are not consistent with Section 202(a) of the Clean Air Act.
- Once California files a waiver request, EPA publishes a notice for public hearing and written comment in the Federal Register.
- Section 177 allows other States to adopt California’s motor vehicle emission standards for which EPA has granted a waiver if other specified criteria are met.

## Summary of SAFE-1

- SAFE-1 included EPA’s determination that the Agency had the authority to reconsider the 2013 waiver issued to California for the GHG emission standards and ZEV mandate portions of California’s ACC program.
- NHTSA took a separate action within SAFE-1 that interpreted fuel economy preemption under the Energy Policy and Conservation Act (EPCA) to include state GHG emission standards and ZEV mandates.
- EPA withdrew California’s waiver based on NHTSA’S EPCA preemption action as well as a new interpretation of a waiver criterion within the CAA.
- EPA asserted that California’s waiver should be withdrawn under a waiver criterion that EPA believed required a demonstration that California must “need” its GHG emission standards “to meet compelling and extraordinary conditions,” as required by the CAA. Historically, EPA has interpreted this waiver provision as only requiring a demonstration that California needs its own motor vehicle emission program to meet serious air quality conditions in California. However, in SAFE-1 EPA also asserted that, even if California does have compelling and extraordinary conditions, California does not “need” the GHG standards under section 209(b)(1)(B) because they will not meaningfully address global air pollution problems of the sort associated with GHG emissions.
- Finally, SAFE-1 included EPA’s non-regulatory interpretation of CAA section 177. This section allows states to opt-into California motor vehicle emission standards if certain criteria are met. SAFE-1 interpreted section 177 as precluding states from adopting California’s GHG emissions standards.

## Summary of the Notice to Reconsider SAFE-1

- EPA's Notice of Reconsideration of SAFE-1 seeks public comment on whether the decision to withdraw portions of California's 2013 ACC program waiver was a valid and appropriate exercise of the Agency's authority. This Notice of Reconsideration seeks comment on several issues in SAFE-1 including:
- Whether it was proper for EPA to reconsider a previously issued CAA waiver;
- Whether EPA's action to withdraw California's waiver in consideration of EPCA preemption was appropriate;
- Whether the interpretation of CAA section 209(b)(1)(B) presented in SAFE-1 as another reason for withdrawing California's waiver was appropriate; and
- Whether EPA's interpretation in SAFE-1 of section 177 of the CAA that allows States to adopt California motor vehicle emission standards, but not California's GHG standards, was appropriate.
- If EPA determines that SAFE-1 was inappropriate and rescinds that action in a final determination, then the ZEV mandate and GHG emission standards within the ACC program would become effective.

## Key Milestones

- In **2012**, the California Air Resources Board (CARB) finalized the ACC program. The program combined control of smog and soot-causing pollutants and greenhouse gas emissions into a single coordinated package of requirements for passenger cars, light-duty trucks, and medium-duty passenger vehicles, and set requirements for sales of ZEVs in the state.
- In **2013**, EPA granted a waiver of CAA section 209 preemption for California's ACC regulations.
- In **2018**, EPA and NHTSA issued a joint proposal titled *The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks*. In this action, EPA proposed to relax Federal greenhouse gas emissions standards for light duty vehicles for model years 2021-2026 and withdraw the waiver for the ACC program GHG emission standards and ZEV mandate.
- In **September 2019**, NHTSA and EPA issued the SAFE-1 final action. In SAFE-1, EPA withdrew the ACC waiver issued in 2013 as it relates to GHG emission standards and the ZEV mandate.
- In **October 2019** California submitted a petition for clarification/reconsideration asking EPA to clarify the scope of SAFE-1.

- In **November 2019**, California, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Rhode Island, Vermont, Washington, and Wisconsin, the People of the State of Michigan, the Commonwealths of Massachusetts, Pennsylvania, and Virginia, the District of Columbia, and the Cities of Los Angeles, New York, San Francisco, and San Jose filed a petition for EPA to reconsider SAFE-1.
- In **November 2019**, a petition for reconsideration was filed with EPA by several environmental groups, including the Center for Biological Diversity, Chesapeake Bay Foundation, Environment America, Environmental Defense Fund, Environmental Law & Policy Center, Natural Resources Defense Council, Public Citizen, Inc., Sierra Club, and the Union of Concerned Scientists.
- On **January 20, 2021**, President Biden issued Executive Order 13990 on *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*. The President directed the Federal Agencies to “immediately review” SAFE-1, among other actions, and to consider “suspending, revising, or rescinding” the action by April 2021.

## Public Participation Opportunities

EPA welcomes your comments on this Notice. The written comment period closes July 6, 2021. All comments should be identified by Docket ID No. EPA-HQ-OAR-2021-0257 and submitted at [www.regulations.gov](http://www.regulations.gov). For additional submission methods, please visit [www.epa.gov/dockets/commenting-epa-dockets](http://www.epa.gov/dockets/commenting-epa-dockets). A virtual, public hearing will be held on June 2, 2021. You may register for the public hearing by emailing; [SAFE1Hearing@epa.gov](mailto:SAFE1Hearing@epa.gov). Additional information about the hearing can be found at [www.epa.gov/regulations-emissions-vehicles-and-engines/public-hearing-information-epas-notice-reconsideration](http://www.epa.gov/regulations-emissions-vehicles-and-engines/public-hearing-information-epas-notice-reconsideration) and in the *Federal Register* notice announcing EPA’s reconsideration of SAFE-1.

## For More Information

You can access the Notice and related documents on EPA’s Office of Transportation and Air Quality (OTAQ) website at:

[www.epa.gov/regulations-emissions-vehicles-and-engines/notice-reconsideration-previous-withdrawal-waiver](http://www.epa.gov/regulations-emissions-vehicles-and-engines/notice-reconsideration-previous-withdrawal-waiver).