

# California State Motor Vehicle Pollution Control Standards; Advanced Clean Car Program; Reconsideration of a Previous Withdrawal of a Waiver of Preemption; Notice of Decision

On April 28, 2021, the U.S. Environmental Protection Agency (EPA) issued a Federal Register notice soliciting public input on the reconsideration of EPA's action 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)*, issued in September 2019. EPA's reconsideration of SAFE-1 responds to petitions for reconsideration filed by states and other stakeholders, and is consistent with President Biden's Executive Order 13990 on *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*.

The result of EPA's reconsideration is to rescind the SAFE-1 action. This means that the Clean Air Act (CAA) waiver granted to California to implement its Advanced Clean Car (ACC) program in 2013 is back in force. The ACC program is a package of state regulations that set emissions standards for criteria pollutants and greenhouse gas (GHG) emissions for light-duty vehicles and a zero-emission vehicle (ZEV) sales mandate. In this action, EPA is also withdrawing the SAFE-1 interpretation of the Clean Air Act that would prohibit other states from adopting the California GHG emission standards.

## Summary of SAFE-1

In SAFE-1, NHTSA issued an action declaring that state regulations of carbon dioxide emissions from new motor vehicles (including California's GHG emission standards and ZEV sales mandate) are related to fuel economy and preempted under the Energy Policy and Conservation Act (EPCA). EPA withdrew California's waiver based on

NHTSA'S EPCA preemption action as well as a new interpretation and application of a waiver criterion within the CAA that resulted in EPA determining that California does not need its GHG emission standards and ZEV sales mandate to meet compelling and extraordinary conditions in the state. SAFE-1 also included a new interpretive view of CAA section 177 which would preclude states from adopting California's GHG emissions standards.

## **Summary of EPA's Final Decision Regarding Its Reconsideration of SAFE-1**

EPA's Notice of Reconsideration of SAFE-1, issued on April 28, 2021, sought 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. EPA has determined that SAFE-1 was an inappropriate exercise of the agency's authority and rescinds that action in this final determination.

The final decision is based on the following:

- EPA's finding that the limited authority to reconsider a prior CAA waiver was not properly exercised in the SAFE-1 action. EPA believes it may only reconsider a previously granted waiver to address a clerical or factual error or mistake, or where information shows that factual circumstances or conditions related to the waiver criteria evaluated when the waiver was granted have changed so significantly that the propriety of the waiver grant is called into doubt. EPA has determined that there were no factual errors in the ACC program waiver granted in 2013, and thus the SAFE-1 action was not properly based on findings of factual error.
- A determination that the Agency's action to withdraw California's waiver on the basis of NHTSA's preemption regulation under EPCA was inappropriate and in conflict with EPA's longstanding waiver practice. In addition, EPA has determined that NHTSA's subsequent repeal of its regulation and other pronouncements in SAFE-1 regarding EPCA preemption effectively removes the underpinning for SAFE-1 on this basis, and thus it is appropriate to rescind the waiver withdrawal that was based on NHTSA's finding of preemption.
- EPA's finding that it was inappropriate to withdraw California's waiver under a new interpretation of CAA section 209(b)(1)(B) that was inconsistent with Congressional intent, and which discounts the interrelated nature of CARB's motor vehicle emission standards and California's air quality problem. EPA has determined that the record from both the ACC program waiver action and the SAFE-1 proceedings demonstrated that California has a need for its GHG standards and ZEV sales mandate under both the traditional interpretation (assessing the need for the "motor vehicle emission program") and the SAFE-1 interpretation of section 209(b)(1)(B) (assessing the need for the specific emission standards in the waiver request). EPA has confirmed that the traditional interpretation of section 209(b)(1)(B) was appropriate and continues to be the proper interpretation in the wake of the rescission of the SAFE-1.
- A determination that it was inappropriate, within a waiver proceeding, to provide an interpretive view of section 177 in SAFE-1. States may adopt California's new motor vehicle emission standards that have received a waiver. Section 177 does not describe a direct approval role for EPA. States may choose to submit these adopted standards to EPA as part of a SIP request but are not obligated to do so. If a State makes a SIP submission that includes

standards adopted under section 177, EPA's role is to review them the same way that EPA reviews all SIP revisions a state submits, via a notice and comment process, to ensure that the submission meets all statutory and regulatory requirements.

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

- CAA section 209(a) preempts states and political subdivisions from adopting and enforcing standards related to the control of emissions from new motor vehicles and new motor vehicle engines.
- CAA section 209(b) allows California to enforce emission standards for new motor vehicles and engines if EPA grants a waiver from the preemption contained in CAA section 209(a).
- CAA Section 209(b) requires that EPA 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
  - such standards that are not consistent with Section 202(a) of the Clean Air Act.
- Section 177 of the CAA allows other States to adopt California's new motor vehicle emission standards for which EPA has granted a waiver if other specified criteria in section 177 are met.

## Key Milestones

- In 2012, the 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 weaken the 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 sales 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 sales mandate. In the same action, NHTSA codified text and provided pronouncements finding that state or local regulations of tailpipe carbon dioxide emissions (including

California’s ACC program standards) are “related to fuel economy standards” and are therefore preempted under EPCA.

- 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.
- On **April 28, 2021**, EPA issued a Federal Register notice that sought 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.
- On **June 2, 2021**, EPA held a virtual, public hearing on the 2021 Notice of Reconsideration. The transcript for that hearing and associated written comments can be found at [www.regulations.gov](http://www.regulations.gov).
- On **December 29, 2021**, NHTSA issued a Federal Register notice that repealed its regulatory text as well as other pronouncements made in SAFE-1 regarding preemption under EPCA.

## 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).