



SAFE VEHICLES RULE UPDATE

SEPTEMBER 2019

Final Rule (Part 1) is Here – Effective November 26th.

On September 19, 2019, the U.S. Environmental Protection Agency (EPA) and National Highway Traffic Safety Administration (NHTSA) issued a final action entitled One National Program Rule. This action finalizes parts of the proposed SAFE Vehicles Rule by withdrawing the 2013 California Clean Air Act Waiver, invalidating EMFAC and making clear that federal law preempts state and local tailpipe Greenhouse Gas (GHG) emissions standards as well as Zero Emissions Vehicle Mandates. EPA and NHTSA continue work to finalize the remaining portions of the Proposed SAFE Vehicles Rule (Part 2) - proposed revisions to CAFE standards and GHG vehicle emissions standards. Part 2 of the rule is anticipated to be finalized before the end of the calendar year. A three-page fact sheet for the final rule can be found [here](#).

The [final rule](#) **does not** contain a grace period for transportation conformity.

California Sues (with 22 States, the District of Columbia and 2 Cities).

On September 20, 2019, California in coordination with 22 states, the District of Columbia, and two cities filed suit 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. The suit does not address the withdrawal of the 2013 California Clean Air Act Waiver. The brief **does not request temporary injunctive relief**. The rule **will be implemented during litigation**. Litigation is anticipated to reach the Supreme Court.

California's suit against NHTSA and U.S. EPA can be found [here](#).

What Does This Mean for Transportation?

Once the rule is effective (November 26, 2019), the rule will be implemented. Projects exempt from conformity requirements will **not be** impacted. Projects subject to transportation conformity, that are consistent with the RTP/FTIP, can move forward unless an MPO region lapses (Please see the [FHWA website](#) for lapse information). **Please, contact your MPO, County Transportation Commission, or Caltrans for project specific questions.**



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The following planning, programming, and project delivery impacts may occur (impacts will vary by region due to varied RTP/SCS update schedules):

- Non-attainment MPO regions will be unable to adopt new RTP/SCSs
- Non-attainment MPO regions will be unable to adopt new FTIPs
- Non-attainment MPO regions will be unable to adopt RTP/FTIP amendments that are not exempt from transportation conformity (see [40 CFR 93.126 and 93.127](#) for a list of projects exempt from transportation conformity)
- Projects in non-attainment regions requiring EMFAC modeling will be impacted
 - Projects in non-attainment regions in NEPA that require project level conformity determinations using the EMFAC model will be unable to complete the NEPA process until U.S. EPA approves an EMFAC model update reflective of the SAFE rule (Part 1, and if finalized Part 2) or CARB wins its litigation.
 - Caltrans will be unable to sign NEPA reevaluations in non-attainment regions that require the use of the EMFAC model until U.S. EPA approves an EMFAC model update reflective of the SAFE (Part 1, and if finalized Part 2) rule or CARB wins its litigation.
- Some non-attainment regions may be unable to compete for SB 1 TCEP and SCCP
 - These programs require an RTP/SCS that CARB has determined meets the target.
- The STIP requires project consistency with the RTP. Projects that require RTP/TIP amendments that are not exempt from conformity will be delayed.

When Can Transportation Planning, Programming, and Project Delivery Return to Normal?

Impacted regions will return to normalcy when one of the following three things occurs (whichever occurs first).

1. California wins its litigation. Initial estimates indicate it may take up to six months, or more, for an initial ruling. It is anticipated this case will reach the Supreme Court. Updates will be provided as additional information becomes available.
2. EPA approves an updated EMFAC model that incorporates the SAFE Rule (Part 1, and if finalized Part 2) - If you can demonstrate transportation conformity with the updated model. If you cannot demonstrate conformity, you will need EPA approved SIP updates before returning to normal planning, programming, and project delivery.
3. Approval of federal legislation that stops the SAFE Rule's implementation or grants a transportation conformity grace period – current likelihood, slim.



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Gov Newsom Calls for Alignment of Transportation Funding and Climate Goals.

Finalization of the rule increases criteria pollutant emissions as well as GHG emissions. On September 20, 2019, in the face of inaction on climate change from the federal government, Governor Newsom, through Executive Order [N-19-19](#) calls for CalSTA to leverage \$5 billion in annual transportation spending to:

1. Align the state's climate goals with transportation spending on planning, programming, and mitigation to achieve the objectives of the State's Climate Change Scoping Plan, where feasible.
2. Reduce VMT by strategically directing discretionary transportation investments in support of housing production near available jobs, and in accordance with the state's smart growth principles.
3. Reduce congestion through innovative strategies designed to encourage people to shift from cars to other modes of transportation.
4. Fund transportation options that contribute to the overall health of Californians and reduce GHG emissions, such as transit, biking, and other active modes, and
5. Mitigate increases in transportation costs to lower income Californians.

The Executive Order also calls for CARB to:

1. Develop new criteria for clean vehicle incentive programs to encourage manufacturers to produce clean, affordable cars.
2. Propose new strategies to increase demand in the primary and secondary markets for zero emissions vehicles, and
3. Consider strengthening existing or adopting new regulations to achieve the necessary greenhouse gas reductions from within the transportation sector.

U.S. EPA Threatens Highway Sanctions.

On September 23, 2019 Trump administration officials threatened to withhold federal highway funds from California, arguing that California failed to show what steps it is taking to improve its air quality. The [letter](#) suggests the state "has failed to carry out its most basic tasks under the Clean Air Act," and needs to either update its plans [SIPs] to tackle air pollution or risk losing federal highway funds.



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In response CARB issued the following statement:

“The letter from the EPA contains multiple inaccuracies, omissions and misstatements. EPA has unclean hands: It sat on these documents for years and is now pounding the table about paperwork issues of its own creation.

We will continue to do work with EPA on its [SIP] backlog, but EPA also needs to do its job and protect air quality. California and other states had to go to court, repeatedly, to get the EPA to implement the strict smog standards it claims to be worried about.

California has met federal standards in the past and we are working hard to meet the current ones. But we cannot get there until the federal government addresses emissions of federally regulated mobile sources, including heavy-duty trucks, locomotives, planes and ships. This letter appeared only days after EPA attacked our state authority on cars, increasing air pollution while at the same time limiting our ability to reduce it. If the Trump administration is serious about air pollution it will reconsider revoking our waiver, and while they’re at it, why not also fund the EPA to review submitted documents in less than a decade.”

What Does This Mean for Transportation?

The letter requests CARB withdraw un-approvable SIPs by October 10, 2019, if CARB does not, U.S. EPA will begin the SIP disapproval process. The disapproval process would trigger statutory clocks for sanctions, including highway sanctions after 24 months. Additional information on highway sanctions can be found [here](#). Additional information on the status of this issue will be provided in CALCOG’s next update.

Feinstein Calls for Investigation into U.S. EPA Highway Sanctions Threat.

On September 27, 2019, Senator Feinstein sent a [letter](#) to U.S. EPA Inspector General requesting an investigation into whether there was inappropriate political interference in the September 23, 2019 threat from U.S. EPA to withhold transportation funding from California.

In the letter, Senator Feinstein expresses concern that California is being unfairly treated, and that the threat of highway sanctions is nothing more than a pretext to attack California, rather than a good faith effort to help improve California’s air quality. She also requests that the Inspector General determine whether there are other states that also have open reports but have not been similarly threatened with sanctions, while highlighting the known answer – U.S. EPA has identified three dozen counties in other states that do not meet air standards as of August 31.

What’s Next?

The California Transportation Commission and California Air Resources Board will discuss the SAFE Vehicles Rule at their regularly scheduled October 10th Joint Meeting. The agenda for the meeting can be found [here](#).

CALCOG Website Provides Continuing Updates.

Please visit the CALCOG Policy Tracker (www.calcog.org/policytracker) for up to date information regarding the status of the SAFE Vehicles Rule (Part 1 and Part 2).