

June 17, 2019

Mr. Christopher Lieske
U.S. Environmental Protection Agency
EPA Docket Center (EPA/DC)
EPA West, Room B102
1301 Constitution Avenue NW
Washington, D.C. 20460

Mr. James Tamm
National Highway Traffic Safety Administration
U.S. Department of Transportation
West Building, Ground Floor, Room. W12-140
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Attention: NHTSA Docket ID Nos. NHTSA-2018-0067 and NHTSA-2017-0069
U.S. EPA Docket ID No. EPA-HQ-OAR-2018-0283

RE: Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years
2021-2026 Passenger Cars and Light Trucks – Transportation Conformity
Implications

Dear Mr. Lieske and Mr. Tamm:

I am writing to ensure that you are aware of the potentially serious consequences if the “Safer Affordable Fuel-Efficient” (SAFE) rule is finalized, including its provisions purporting to preempt California’s long-standing zero emission vehicle programs. The United States Environmental Protection Agency (U.S. EPA) and the National Highway Traffic Safety Administration (NHTSA) have indicated they may finalize the rule this summer. That would have serious implications for public health and for transportation infrastructure projects. The rule results in dirtier cars, for years to come; this means that transportation projects that increase use of these cars may often result in greater emissions – and so be in conflict with state and federal air quality goals. These conflicts (referred to as “conformity” issues) may disrupt transportation funding, with large negative consequences for jobs and local governments, as well as undermining California’s air quality plans.

Although the California Air Resources Board (CARB) identified many of these issues in its prior comments on the proposed rule,¹ the initial comment period was inadequately short, and many critical analyses were not provided to the public. From continued analysis after the close of the comment period, we have identified additional impacts of the rule and thus are submitting this supplemental comment that is “of central relevance to the rule making” (42 U.S.C. § 7607(d)(4)(B)(i)) to supplement the record. These issues relate to how SAFE finalization will destabilize key transportation and public health planning activities.

Transportation emissions are the lion’s share of air pollution in California. This means that transportation projects can have substantial effects on air pollution because they can change how much people drive. In general, the dirtier cars are, the more air pollution certain transportation projects can emit over time. Because these projects last for decades, estimating these project-related emissions is important to ensuring air quality plans stay on track.

Accordingly, the federal Clean Air Act links transportation planning and public health through the transportation conformity program, which is intended to ensure that federally funded transportation projects conform to state implementation plans to attain air quality standards. (See 42 U.S.C. § 7506). As you know, these determinations must be based upon “the latest emission estimation model available” (40 C.F.R. § 93.111(a)) and reflect the “most recent planning assumptions in force at the time the conformity analysis begins” (40 C.F.R. § 93.110(a)).

Transportation conformity and state implementation plan (SIP) development in California depend upon a growing share of zero emission vehicles (ZEVs) in the vehicle fleet. This is because, as CARB discussed in its initial comments at length, ZEVs provide meaningful reductions in criteria pollutants, beyond Low Emission Vehicle (LEV) standards, which should be accounted for in emissions and transportation planning. These benefits grow over time as the ZEV regulation (including likely future amendments to that regulation) supports greater ZEV penetration and commercialization in the California fleet; indeed, accelerating commercialization of ZEV technology in both light- and heavy-duty sectors is critical to meeting federal and state air quality mandates and climate goals.

Transportation conformity analyses also are rooted in the growing share of ZEVs within the fleet; without increased ZEV penetration, transportation projects may have greater

¹ See California Air Resources Board, Analysis in Support of Comments of the California Air Resources Board on the Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks, pp. 282-293, docket no. EPA-HQ-OAR-2018-0283-5054.

air pollution impacts than currently modeled. Therefore, the California Emissions FACTor (EMFAC) model reflects CARB's Advanced Clean Car (ACC) regulation including the Zero-Emission Vehicle (ZEV) mandate.

U.S. EPA and NHTSA's proposal to preempt CARB's GHG and ZEV regulations jeopardizes attainment of the SIP and conformity for critical transportation projects. This proposal would call into question whether projects and plans set to be implemented can remain in conformity going forward.² Certainly, SAFE finalization would call into question how projects may demonstrate conformity because conformity determinations may no longer reflect the latest planning assumptions with regard to ZEV vehicles.

Emissions from transportation dominate California's air pollution mix, so addressing these emissions without the current ZEV rules will raise long-lasting challenges to conformity and SIP planning. Because transportation projects can last decades, marked changes in ZEV penetration rates resulting from SAFE may result in very different emissions impacts from these projects than forecasted earlier in the planning process, especially in later years when ZEV penetration was projected to further increase. Put simply, a highway project that increases vehicle use might be consistent with air quality needs if cars are getting commensurately cleaner; but if cars are no longer moving towards zero emissions, the project will be substantially dirtier, and potentially inconsistent with the air quality plan.

Necessary model updates and SIP revisions alone are complex, and may take years to complete, and transportation projects and air quality planning will be disrupted in the interim. In the longer term, the substantive challenge of addressing increased emissions will be hard to meet. These major consequences threaten to imperil critical infrastructure planning and air quality planning efforts.

This problem will potentially undermine transportation planning as well, including many billions of dollars of projects now in the pipeline, because they may not be able to demonstrate conformity. Projects intended to move freight, improve connectivity, and get people to work may well be disrupted if they can no longer demonstrate they

² We note that the conformity model used elsewhere in the country, MOVES, may face similar issues. Unlike EMFAC, which models emissions based on aggregated emissions over drive cycles, MOVES uses Vehicle Specific Power (power per unit mass, or vehicle specific power - VSP) to model criteria emissions where VSP is a function of vehicle aerodynamics, road grade and road load. For example, under MOVES assumptions, higher VSP results in higher emissions. The SAFE rule, which would eliminate the gradual increase in fuel efficiency requirements, will result in vehicles requiring more power to operate which in turn will contribute to higher GHG and possibly criteria emissions. As a result, it might be necessary for U.S. EPA to revisit the MOVES model if the SAFE rule is adopted.

Mr. Christopher Lieske and Mr. James Tamm

June 17, 2019

Page 4

are consistent with air quality needs. This rule will therefore also put substantial pressure on attainment of air quality standards, and likely require revisions to the California SIP, including new measures, if ZEV-related reductions are not assured.³

Placing this burden upon the states is in conflict with the Clean Air Act's cooperative federalism framework (see 42 U.S.C. § 7401) and further demonstrates the irrationality of the SAFE proposal. The Regulatory Impact Analysis for SAFE did not consider these impacts; nor did the National Environmental Policy Act (NEPA) documents despite the environmental impacts of changes to major transportation projects; and the agencies did not conduct a federalism consultation with the states per Executive Order 13132 to consider the impacts of affecting critical state/federal transportation projects. All these matters were required to be addressed; instead, the agencies failed to incorporate these issues into their proposal or to seek comment upon them.

SAFE should, therefore, not be finalized. It is arbitrary and inappropriate for the federal agencies to, on the one hand, mandate that the states work hard to attain air quality goals, and to model transportation impacts on those goals based on the latest planning assumptions and, with the other hand, undermine the tools necessary to make progress towards those goals by weakening critical public health protections.⁴ You may contact Mr. Kurt Karperos, Deputy Executive Officer, California Air Resources Board, at (916) 322-2739 or kurt.karperos@arb.ca.gov to discuss any of these issues.

Sincerely,


Richard W. Corey
Executive Officer
California Air Resources Board

³ Accurate modelling is critical to the adequacy of Clean Air Act plans and conformity determinations (See, e.g., *Association of Irrigated Residents v. U.S. E.P.A.* (9th Cir. 2012) 686 F.3d 668, 677).

⁴ U.S. EPA is proposing many rulemakings which are collectively undermining air quality planning and attainment. CARB has opposed these ill-founded efforts, but their collective impacts, if finalized, will further amplify the damage done by SAFE to the conformity and SIP processes. See, e.g., Comments of the California Air Resources Board on the Advance Notice of Proposed Rulemaking, "Increasing Consistency and Transparency in Considering Costs and Benefits in the Rulemaking Process"; Docket No. EPA—HQ—OA-2018-0107; Comments of the California Air Resources Board Responding to The United States Environmental Protection Agency Request for Comment on Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces: Proposed Amendments, Docket No. EPA-HQ-OAR-2018-0195.