

Memorandum



U.S. Department of Transportation
National Highway Traffic Safety
Administration



Subject: Meeting with the State of California

Date: September 7, 2021

From: Hunter B. Oliver, Senior Trial Attorney
Office of the Chief Counsel

To: Docket No. NHTSA-2021-0030

On August 26, 2021, representatives from NHTSA met with members of the California Office of the Attorney General, who were representing the State of California by and through the California Air Resources Board (CARB). NHTSA was represented by Ann Carlson, Chief Counsel; Kerry Kolodziej, Assistant Chief Counsel for Litigation and Enforcement; Hunter Oliver, Senior Trial Attorney, Office of Chief Counsel; and Rebecca Schade, Attorney-Advisor, Office of Chief Counsel. Deputy Attorneys General Elaine Meckenstock and Jon Weiner attended on behalf of the California Office of the Attorney General (referred to henceforth as “California”). The meeting was requested by California to describe aspects of a public comment submitted by California, along with other states and cities, in response to the Notice of Proposed Rulemaking entitled Corporate Average Fuel Economy Preemption, 86 FR 25,980 (May 12, 2021) (“NPRM or Proposal”). The comment in question is posted to the public docket for the rulemaking. *See* NHTSA-2021-0030-0403, Comments of States and Cities Supporting Repeal of NHTSA’s “SAFE” Part One Preemption Rule (Jun. 11, 2021).¹

In the meeting, California reviewed various points expanded upon in its comment. In particular, California reiterated the State’s support for the rulemaking action to fully repeal NHTSA’s portion of The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program, 84 Fed. Reg. 51,310 (Sept. 27, 2019) (“SAFE I Rule”). As expressed in Section I of its comment, California urged any final rule of the Agency to reach a firm conclusion that NHTSA lacked the legal authority to promulgate the regulations finalized in the SAFE I Rule.² Second, California reiterated the point expressed in Section II of its comment: that a repeal of SAFE I Rule is justifiable on discretionary grounds irrespective of NHTSA’s legal authority to promulgate the regulations in the SAFE I Rule. Finally, California reviewed Section III of its comment, which considers a repeal of the regulations sufficient to fully repeal the SAFE I Rule without a separate formal repeal of any preambulatory statements.

¹ This comment is publicly available on the online docket for the CAFE Preemption Rulemaking at the following location: <https://www.regulations.gov/comment/NHTSA-2021-0030-0403>.

² *See* NHTSA-2021-0030-0403, Comments of States And Cities Supporting Repeal Of NHTSA’s “SAFE” Part One Preemption Rule (Jun. 11, 2021), at 2 (“NHTSA thus proposes to repeal the Preemption Rule based on the “substantial doubts” the agency has about its authority. We strongly encourage NHTSA to go further and draw the conclusion that logically follows from the proposal’s analysis: The agency does lack authority to promulgate legislative rules defining the scope of EPCA preemption. And because the Preemption Rule was intended as such a rule, NHTSA must repeal it.”).