

Memorandum



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



Subject: EO 12866 Meeting with California and EOP

Date: December 28, 2021

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

To: Docket No. NHTSA-2021-0030

On December 7, 2021, representatives from NHTSA and the Department of Transportation (DOT) attended an Executive Order 12866 telephonic meeting with representatives of the State of California and the Executive Office of the President (EOP). NHTSA was represented by Hunter Oliver, Senior Trial Attorney, Office of Chief Counsel; DOT was represented by Tim Mullins, Senior Attorney, Office of General Counsel. The Office of Management and Budget was represented by Kim Wilson. Deputy Attorneys General Elaine Meckenstock and Jon Weiner attended on behalf of the California Office of the Attorney General and Pippin Brehler and Wesley Dyer attended on behalf of the California Air Resources Board (CARB). The meeting was requested by California as part of the Executive Order 12866 process.

In the meeting, California's representatives reviewed various points expanded upon in a written public comment submitted by California, along with other states and cities, in response to the Corporate Average Fuel Economy (CAFE) Preemption Notice of Proposed Rulemaking. 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 particular, California expressed support for a repeal of 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"). In doing so, California's representatives reiterated Sections I and III of its written comment, which, respectively, urged any final rule of NHTSA to reach a firm conclusion that NHTSA lacked the legal authority to promulgate the regulations finalized in the SAFE I Rule and also expressed that a repeal of the regulations suffices to fully repeal the SAFE I Rule without a separate formal repeal of any preambulatory statements. Finally, representatives for California urged that NHTSA finalize the rulemaking swiftly to repeal the preemption regulations promulgated in the SAFE I Rule.

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>.