FREQUENTLY ASKED QUESTIONS SAFE VEHICLES RULE EFFECTS ON REGIONAL TRANSPORTATION PLANS, PROGRAMS, AND PROJECT DELIVERY
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On September 27, 2019, the United States Environmental Protection Agency (U.S. EPA) and the National Highway Traffic Safety Administration (NHTSA) published the “Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program.” This Rule revokes California’s authority to set its own greenhouse gas emissions standards and set zero-emission vehicle mandates in California. This Rule results in increased emissions that make it harder for California to attain federal ambient air quality standards and achieve the State’s climate goals. These emissions impacts also have implications for the conformity of transportation plans, programs, and projects. This FAQ responds to common questions received regarding the emissions impacts of the SAFE Rule Part One and the potential implications for transportation conformity. As this issue evolves, this document may be updated as appropriate and applicable.

What is the federal SAFE Vehicles Rule Part One?

- On September 27, 2019, the United States Environmental Protection Agency (U.S. EPA) and the National Highway Traffic Safety Administration (NHTSA) published the “Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program.” (84 Fed. Reg. 51,310 (Sept. 27, 2019.) The Part One Rule revokes California’s authority to set its own greenhouse gas emissions standards and set zero-emission vehicle mandates in California. The SAFE Vehicles Rule Part Two is anticipated to be finalized in 2020. The full impact of these rules remains unknown until the Final SAFE Vehicles Rule Part Two is published in the federal register.

How is California responding to the SAFE Rule Part One?

- California and twenty-two other states, the District of Columbia, the cities of New York, Los Angeles, and the City and County of San Francisco have filed suit challenging the SAFE Rule Part One in the U.S. District Court in the District of Columbia. California anticipates there will be additional challenges by California and other interested parties in other courts. California expects to prevail, but litigation may take several years to finally resolve. In the meantime, the California Air Resources Board (CARB), California State Transportation Agency (CalSTA), and Caltrans are working with regional...
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transportation agencies and local governments to solve potential problems caused by the SAFE Rule Part One while the litigation continues.

What are applicable federal agencies saying about the impacts of the SAFE Rule Part One on EMFAC and transportation conformity in California?

- NHTSA and U.S. EPA have not taken a formal position on whether California projects and plans have any transportation conformity issues. The final rule states, “Since SIPs are binding on States, the agencies recognize that certain States may need to work with EPA to revise their SIPs in light of this final action. As stated in the proposal, EPA may subsequently consider whether to employ the appropriate provisions of the Clean Air Act to identify provisions of States’ SIPs that may need review because they include preempted ZEV mandates or greenhouse gas emissions standards.”

- The Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) have not published guidance describing how the agency will administer procedural changes triggered by the SAFE Vehicles Rule Part One.

- However, at the December 4, 2019 California Transportation Commission meeting, FHWA stated the agencies would NOT approve transportation conformity determinations until U.S. EPA provides direction.

What potential near-term impacts are California agencies expecting that the SAFE Rule Part One?

- Generally, now that the SAFE Rule Part One became effective on November 26, 2019, EMFAC2014 and EMFAC2017 do not accurately estimate future transportation emissions.

- As CARB has previously stated¹, both the GHG emission standards and the ZEV sales standards reduce criteria pollutants. As a result of the loss of the ZEV sales requirements, there may be fewer ZEVs sold and thus additional gasoline-fueled vehicles sold in future years, which would increase criteria pollutant emissions².

¹ CARBS Comments on SAFE Proposal
² More details can be found in CARB’s letter submitted to US EPA and NHTSA on November 6, 2019 available at: The California Air Resources Board[comments]
What does this mean for transportation planning, programming, and project delivery in California?

- Until FHWA and FTA resume issuing transportation conformity determinations, updates to Metropolitan Planning Organization’s Regional Transportation Plan (RTP) and/or Federal Transportation Improvement Programs (FTIP) submitted after November 26, 2019 will not receive federal approval. Under federal law, FHWA and FTA are required to issue a transportation conformity determination as part of the agencies’ approval action. Regional Transportation Plans (RTP) or Federal Transportation Improvement Programs (FTIP) that come up for the required 4-year update that are unable to receive a transportation conformity determination from FHWA/FTA will enter into a 12-month conformity lapse grace period (40 CFR §93.104(b)(3)(f)) followed by a full conformity lapse.

  o During the 12-month lapse grace period, only transportation projects in an MPO’s most recent conforming RTP and FTIP may be funded or approved. At the expiration of the 12-month conformity lapse grace period, if no new transportation conformity determination is issued by FHWA and FTA, the region enters a full lapse (40 CFR §93.104(b)(3)).

  o During a conformity lapse, the only projects that can receive further approvals are projects exempt from transportation conformity and transportation control measures (TCMs) from an approved SIP. Project phases, including, final design, right-of-way acquisition, or construction may proceed during a conformity lapse if FHWA and/or FTA has made funding commitments or an equivalent approval or authorization prior to the conformity lapse. Additional information can be found on FHWA. It is important to note; state law provides no such grace period.

- Until FHWA and FTA resume issuing transportation conformity determinations, RTP and FTIP amendments subject to transportation conformity will not receive federal approval after November 26, 2019. Under federal law, FHWA and FTA are required to issue a transportation conformity determination as part of the agencies’ approval action.

- Until FHWA and FTA resume issuing transportation conformity determinations, projects requiring FHWA and/or FTA to issue a new/revised project level conformity determination will not receive federal approval after November 26, 2019.

- In addition, the approval of transportation plans, programs, and projects may also be hindered as a result of SIP disapprovals. If U.S. EPA disapproves a
nonattainment area’s SIP without a protective finding, the RTP and FTIP enter what is called a conformity freeze. (40 CFR §93.120(a)(3)). The impacts of a freeze on transportation plans, TIPs, and projects are similar to the impacts of a conformity lapse grace period except if the SIP disapproval is not resolved within two years, highway sanctions begin to apply, and the conformity freeze becomes a lapse. In this case, the lapse grace period does not apply.

What actions require FHWA and/or FTA to issue a transportation conformity determination?
- Adoption of a new RTP in an MPO region if the area is non-attainment/maintenance for any criteria pollutants
- Adoption of a new FTIP/FSTIP (Next statewide FSTIP update due October 2020. Under state law, the FSTIP must be updated every two years. Federal law requires the FSTIP be updated every four years)
- Adding NEW regionally significant or non-exempt projects in a current approved RTP/FTIP, or changing the design or scope of currently approved projects that has changed significantly from what was analyzed in the regional emissions analysis
- Completion of Environmental Assessment (EA) or Environmental Impact Statement (EIS) as part of the National Environmental Policy Act (NEPA) for projects not listed in Electronic Code of Federal Regulations
- Transportation conformity reevaluations which require a project-level conformity determination from FHWA as required under NEPA Assignment under the 23 USC 327 for projects not listed in 40 CFR 93.126.

When will customary planning, programming, and project delivery processes resume?
- At the December 4, 2019 California Transportation Commission meeting FHWA stated the agency would not approve transportation conformity determinations until U.S. EPA provides direction. When asked, “When will FHWA begin issuing transportation conformity determinations again?” FHWA responded the agency requires direction from U.S. EPA before it can proceed. Per FHWA, the timeframe for that direction, is currently unknown.

What’s Next?
- Ultimately, California needs to (1) protect its authority, (2) promote ZEVs, (3) continue improving and maintaining transportation safety, access, and mobility for Californians and (4) work together to ensure we are managing the public health issues in ways that support clean, sustainable transportation.
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• To these ends, CalSTA, Caltrans, and CARB have established a coordinating group amongst the three agencies and will partner with MPOs and all stakeholders to identify near-term and long-term solutions, including developing adjustments to EMFAC. This includes one-on-one consultations with agencies that may have the largest impacts, as well as larger stakeholder meetings for interested parties.

• On November 20, 2019, CARB released off-model adjustment factors for both the EMFAC2014 and EMFAC2017 models to account for the impact of the SAFE Rule Part One. These adjustments provided in the form of multipliers can be applied to emissions outputs from the EMFAC model to account for the impact of the SAFE Vehicles Rule Part One. These off-model adjustment can be found at: EMFAC Adjustment Factors

CARB has provided U.S. EPA with all requested information regarding the adjustment factors. Meanwhile, U.S. EPA is directly working with FHWA and FTA regarding the use of CARB’s EMFAC adjustment factors for transportation conformity determinations. U.S. EPA must determine and communicate next steps in the process to resume customary transportation planning, programming, and project delivery approval processes.

• The recently published EMFAC off-model adjustment factors are only reflective of the impact of SAFE Vehicle Rule Part One, which revokes California’s authority to set its own greenhouse gas emissions standards and set zero-emission vehicle mandates in California. California expects Part Two of these regulations to be adopted in 2020. It is anticipated, the federal government in Part Two of the SAFE rule may adopt revised GHG emission standards and fuel efficiency standards, which could further impact criteria and GHG emissions in the EMFAC model. Therefore, these adjustment factors may be revised once the Final Part Two of the SAFE Rule is published in the federal register.

• The litigation against the SAFE Vehicles Rule Part One is proceeding and could result in restoration of California’s authority. The federal government could alternatively voluntarily withdraw the SAFE Rule or propose restoring California’s authority through a new rulemaking. But these outcomes are not likely to be reached in the next 24 months.

• CARB, CalSTA, and Caltrans are working together to respond to these issues with actions within our state statutory authorities and in compliance with federal law requirements. The agencies will coordinate with US EPA and FHWA, seeking approvals to the degree required or appropriate.
• In addition, to better understand the potential implications of the SAFE Rule Part One, CARB and MPOs need to determine the criteria emissions impact on specific transportation plans, programs, and non-exempt projects, and the potential for impacts on both federal, state, and local funds. Note that once the SAFE Rule Part Two is released, CARB and the MPOs will need to reassess the emissions impacts.

• Depending on the magnitude of the impact, state, regional and local governments will need to work together to mitigate the impacts.