

## **Policy Brief:**

### ***The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule***

*Revoking California's Waiver and Impacts on Electric Vehicle (EV)  
Deployment*



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### Introduction

In August, the U.S. Environmental Protection Agency (EPA) and the U.S. Department of Transportation's National Highway Traffic Safety Administration (NHTSA) unveiled joint proposed rule-making to revise tailpipe emission standards and average fuel economy standards for cars and light-duty trucks manufactured for model years 2021-2026. This announcement created a confrontation with California and raised questions about whether EPA has the authority to revoke California's waiver – which they did in the proposed rule – under the circumstances, and whether it's better to forge a compromise both governments can live with.

Back in 2012, EPA and the NHTSA finalized standards requiring automobile manufacturers to average 54.5 miles per gallon-equivalent across new vehicle fleets by 2025. This standard is roughly equivalent to 36 miles per gallon in real-world driving. Following its review of these standards, EPA had determined they are unwarranted and in conjunction with NHTSA, proposed to lower them consistent with 2020 levels and lock them in place until 2026 given concerns by automobile manufacturers that the standards were infeasible, even with rosy assumptions about

hybrid, plug-in electric, and fuel cell vehicle market penetration.

EPA, as discussed more fully below, faced a significant opposition from California, which historically enjoyed the authority to set its own fuel efficiency standards for vehicles, and from environmental groups fiercely opposed to any move by the Trump Administration to modify Obama-era regulations. California and other states made it well known they planned to sue to block EPA and NHTSA's rule in the instance of finalization.

### EPA Review is Legally Required

Despite certain press coverage, this was not a simple case of regulatory rollback. As part of the standards finalized in 2012, EPA was required to conduct a “mid-term” review of the standards for model years 2022-2025 given that those standards were set more than a decade in advance.

Back then, automakers were concerned over the lack of reliable projections for the cost and the availability of technologies needed to meet these standards. The Alliance of Automobile Manufacturers had said no conventional vehicle today can meet the standards as written. Some

hybrids, plug-in electric, and fuel cell vehicles can, but they comprise fewer than 3.5 percent of new vehicles.

In other words: this review was long-planned and was legally required, and many believed the Obama Administration rushed to complete its version of the review in its final days without coordinating properly across agencies and considering the voluminous technical record it had compiled.

Indeed, prior to the 2016 presidential election, in July, EPA, NHTSA, and the California Air Resources Board (CARB) jointly prepared a draft technical assessment examining the feasibility of the standards. The assessment found automakers could meet the standards at a reasonable cost (automakers generally disagreed and have since objected).

EPA then indicated it would complete its mid-term review and issue its determination on whether the standards should be modified by the middle of 2017 – a process that would involve NHTSA and CARB.

But on November 30, 2016, a few weeks after Donald Trump was elected president, EPA changed course and, unilaterally, released a draft determination saying the standards for 2022-2025 should remain as they are. The agency sped through an abbreviated period for public comment and then finalized

its determination, unchanged from its proposal, on January 13, 2017.

Notably, NHTSA and CARB did not take part in this review. In March 2017, the Trump Administration performed the legally required review, which ultimately led to the SAFE Vehicles Rule proposal, including revocation of California's waiver.

## Impacts on EV Deployment

Legal prognosticators are all over the board on how EPA/NHTSA's proposal to revoke California's waiver will play out in the courts. However, assuming the rule stood, there were widely divergent views on how that would impact EV deployment in the United States. As a legal matter, it would block some of California's most stringent vehicle emissions goals, but as a practical matter, some say you can't put the toothpaste back in the tube, so to speak.

The SAFE Vehicles Rule would in effect pre-empt California's Zero Emissions Vehicle (ZEV) mandate. This mandate is credited with much of the EV growth in California and other states who've chosen to adopt the California standard. More specifically, the ZEV program requires automakers to sell [electric cars and trucks](#) in California and nine other states (Connecticut, Maine, Maryland, Massachusetts, New Jersey, New York, Oregon, Rhode Island, and Vermont).

The exact number of vehicles is linked to the automaker's overall sales within the state.

The program's initial objective was to ensure that automakers research, develop, and market EVs, which generate fewer emissions than vehicles powered with internal combustion engines. By directly requiring that automakers invest in clean technology, the ZEV program was considered a driving force behind an expanding market with a current offer of over 30 zero emission models available to the U.S. public.

Program compliance is highly technical, but the program is one of the primary reasons California is set to exceed its goal of 1.5 million EVs on the road by 2025 and is considered within striking distance of the state's more ambitious goal of 5 million EVs on the road by 2030. If the program were pre-empted along with similar programs in nine other states, it's easy to see why EV advocates were concerned about how the SAFE Vehicles Rule would stifle EV deployment progress.

On the other hand, free market proponents have pointed out that if EVs are a better option, they won't require a mandate to improve their popularity. And, the Trump Administration has pointed out that an entire country of drivers shouldn't be forced to subsidize a specific state's policy preference. As with all things, the full truth is probably somewhere in between.

But, many EV advocates and technical analysts have begun to believe that EVs will catch and deploy more quickly regardless of mandates.

For example, an ICF report released in 2018 argued that other policy levers and international trends may make CAFE standards a moot point. The report explicitly states, "The [EPA's] about-face is not likely to have an appreciable impact on the long-term transformation that is already underway." ICF technical director Phil Sheehy went as far as saying, "The cat is out of the bag on electrification. There's just not a lot that you can do to undo what's already been done there."

To be sure, automakers have been investing heavily in EV battery R&D and utilities are working with EV service providers to expand EV charging infrastructure availability.

***The Alliance for Innovation and Infrastructure (Aii)*** consists of two non-profit organizations, The National Infrastructure Safety Foundation (NISF) a 501(c)(4), and the Public Institute for Facility Safety (PIFS) a 501(c)(3). The Foundation and the Institute focus on non-partisan policy issues and are governed by separate volunteer boards working in conjunction with the Alliance's own volunteer Advisory Council.