



MEMORANDUM

TO: Martin Nohe, Chair, TPB
David Snyder, Chair, MWAQC
Daniel Sze, Chair, CEEPC

FROM: Kanti Srikanth, Director, Department of Transportation Planning
Steve Walz, Director, Department of Environmental Programs

SUBJECT: Preliminary assessment of key aspects of Federal “One National Program Rule”

DATE: October 10, 2019

On September 27, 2019, the U.S. Department of Transportation’s National Highway Traffic Safety Administration (NHTSA) and the U.S. Environmental Protection Agency (EPA) published in the Federal Register their final action entitled the “One National Program Rule” to enable the federal government to provide nationwide uniform fuel economy and greenhouse gas emissions standards for automobile and light duty trucks. The rule is scheduled to go into effect on November 26, 2019. This memo provides a preliminary staff assessment that the federal actions will negatively affect the region’s efforts to meet federal air quality standards and will reduce impact of region’s work towards the region’s greenhouse gas emissions targets.

SUMMARY FINDINGS

Two actions are finalized in the September 27, 2019 publication.

- (1) NHTSA is asserting its authority to set national fuel economy standards and preempting any other standards set at state or local levels, and
- (2) EPA is withdrawing the waiver previously granted to California to enact its tailpipe greenhouse gas (GHG) emissions standards and Zero Emissions Vehicle (ZEV) programs.

These actions will eliminate the ability of state and local governments to enact measures that are stricter than federal standards to reduce GHG emissions from automobiles and light duty trucks. Such a constraint will impede the progress this region could make in reducing the GHG emissions levels to work towards the regional targets adopted by COG and its member jurisdictions.

SUMMARY BACKGROUND

The federal agencies took action on September 27, 2019 to finalize the first two of the three proposals the agencies had previously notified in their August 2018 Notice of Proposed Rulemaking (NPRM). These are actions related to the waiver and preemption of state and local actions to address GHG emissions and fuel efficiency of light duty vehicles. EPA announced its decision to withdraw the waiver, and NHTSA finalized regulatory text related to preemption. The agencies anticipate issuing a final rule on the third item, the GHG and CAFE standards proposed in the NPRM, in the near future.

On August 24, 2018, EPA and NHTSA jointly published in the Federal Register a Notice of Proposed Rulemaking (NPRM) entitled, “The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks.” In the NPRM:

1. NHTSA proposed regulatory text implementing its statutory authority to set nationally applicable fuel economy standards that made explicit that state programs would be preempted under NHTSA’s authorities.
2. EPA proposed to withdraw the waiver it had previously provided to California for that state’s GHG and ZEV programs under Section 209 of the Clean Air Act (CAA).
3. The agencies proposed new and amended GHG and Corporate Average Fuel Economy (CAFE) standards for model year 2021 to 2026 light duty vehicles.

PRELIMINARY ASSESSMENT

The two actions finalized on September 27, 2019 will do away with the ability of state and local governments to enact measures that would reduce GHG emissions from automobiles and light duty trucks that are stricter than federal standards. Such a constraint will impede the progress this region could make in reducing the GHG levels to meet the regional targets adopted by COG and its member jurisdictions.

This set back to the region’s efforts to reduce GHG from passenger cars and light duty trucks, is not a theoretical possibility, but a more likely reality due to the following:

In October 2012, NHTSA and EPA issued a joint rule requiring manufacturers of passenger cars and light duty trucks to increase their fuel efficiency and reduce the tailpipe emissions of GHG in model years 2017-2025. In August 2018, the federal agencies proposed to scale back the previously enacted fuel efficiency and GHG emissions standards. The September 27, 2019 action withdraws the federal waiver granted to California that has allowed the state to set tougher GHG standards. Without this waiver, if the federal agencies finalize their proposed roll back of GHG emissions standards for passenger cars and light duty trucks, California and other states, including Maryland who have already adopted California’s Advanced Clean Car (ACC) program, would no longer have the ability to set tougher GHG emissions standards for passenger cars and light duty trucks. This would hinder the region’s ability to reduce GHG emissions and work towards attaining the region’s GHG reduction targets.

In an additional and related manner, the above action will, to a lesser extent, negatively affect the ozone related emissions reductions of VOC and NOx that this region will need to meet federal standards for ozone. The region is currently a maintenance area for federal 2008 ozone standards and a non-attainment area for federal 2015 ozone standards. The region’s plan to maintain the 2008 ozone standards had assumed the 2012 fuel efficiency and GHG reduction levels. If the current proposal to roll these controls back is finalized, and with states without the ability to set tougher standards, then there will be less reduction in VOC and NOx emissions. We are unable to determine how this would impact our ability to maintain the 2008 ozone standards or help attain the

2015 ozone standards as EPA's emissions estimation model is at this time unable to assess the change in VOC and NOx emissions from a roll back of CAFE and GHG standards.

PREVIOUS COMMITTEE ACTION

Given the impact of changes to the current GHG and fuel efficiency standards for passenger cars and light duty trucks on the region's ability to maintain attainment of the 2008 ozone standards and ability to attain the tougher 2015 ozone standards, MWAQC, TPB, and CEEPC have previously submitted comments to the EPA and NHTSA on their proposal to roll back these standards:

- A September 27, 2017 letter regarding a reconsideration of the final determination of the mid-term evaluation of greenhouse gas emissions standards for model years 2022-2025 light-duty vehicles opposed any rollback of the emission standards and requested the standards in the October 15, 2012 final rule be maintained; and
- An October 17, 2018 letter regarding the proposed SAFE Vehicle Rule and tailpipe CO₂ emissions standards for model years 2021-2026 light-duty vehicles supported the baseline/no action alternative that would have maintained the current fuel economy and tailpipe emission standards.

STATE LEGAL CHALLENGES

California's Attorney General is leading a coalition of state Attorneys General, including from the District of Columbia, Maryland, and Virginia, to challenge the September 27, 2019 One National Program rule.

The Attorneys General request that the U.S. District Court for the District of Columbia strike down the rule "because it exceeds NHTSA's authority, contravenes Congressional intent, and is arbitrary and capricious, and because NHTSA has failed to conduct the analysis required under the National Environmental Policy Act."¹

¹https://oag.ca.gov/system/files/attachments/press_releases/California%20v.%20Chao%20complaint%20%2800000002%29.pdf