

June 11, 2021

Dr. Steven S. Cliff, Acting Administrator  
National Highway Traffic Safety Administration  
U.S. Department of Transportation  
1200 New Jersey Avenue SE  
Washington, D.C. 20590

Re: *Proposed Rule on Corporate Average Fuel Economy (CAFE) Preemption,  
Docket No. NHTSA-2021-0030*

Dear Acting Administrator Cliff:

The Northeast States for Coordinated Air Use Management (NESCAUM) writes to express its strong support for the proposed rule on Corporate Average Fuel Economy (CAFE) Preemption (Proposed Rule) issued by the National Highway Traffic Safety Administration (NHTSA) in its Notice of Proposed Rulemaking published on May 12, 2021, 86 Fed. Reg. 25,980. The Proposed Rule would fully repeal the regulatory text and appendices promulgated in “The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program,” published on September 27, 2019, 84 Fed. Reg. 51,310 (SAFE I Rule), and withdraw the interpretative statements made by NHTSA in the preamble.

NESCAUM is the regional association of the state air pollution control agencies in the six New England states, New Jersey, and New York. NESCAUM serves as a technical and policy advisor to our member states on a wide range of air quality and climate issues and facilitates multi-state initiatives to improve air quality and mitigate climate change. A fundamental component of our work is to assist our member states in implementing national environmental programs required under the Clean Air Act. For more than three decades, NESCAUM and its member states have closely collaborated with California and other states outside the Northeast, the U.S. Environmental Protection Agency (EPA), and the automobile industry to promote low and zero emission vehicles.

In the SAFE I Rule, NHTSA improperly codified legislative rules and made various interpretive pronouncements that purported, among other things, to radically expand the scope of the self-executing provision in Section 509(a) of the Energy Policy and Conservation Act of 1975 (EPCA) to preempt the states’ Clean Air Act and inherent authority to set greenhouse gas (GHG) emissions and zero emission vehicle (ZEV) standards. Specifically, NHTSA erroneously asserted that California’s and other states’ GHG and ZEV standards are preempted by Section 509(a), which prohibits a state or political subdivision from adopting or enforcing a law or regulation “related to fuel economy standards” for automobiles covered by an average fuel economy standard, on the basis that carbon dioxide (CO<sub>2</sub>) emissions standards have an impact on fuel consumption.

As detailed in NESCAUM's comments submitted on October 25, 2018 to Docket Nos. NHTSA-2018-0067 and EPA-HQ-OAR-2018-0283, this interpretation is unreasonably expansive and deeply flawed. California's GHG emissions standards are not "related to" and do not otherwise conflict with federal fuel economy standards simply because CO<sub>2</sub> emissions often correlate with fuel consumption. If NHTSA were correct, then any number of tailpipe standards implemented by California and other states to protect public health and welfare could be subject to the same preemption argument. The text, legislative history, and nearly 50 years of administrative and judicial interpretation and application of EPCA and the Clean Air Act foreclose the novel reading of Section 509(a) proffered in the SAFE I Rule.

NESCAUM agrees with NHTSA's analysis in the Proposed Rule that the agency lacks statutory authority to define the scope of EPCA preemption through legislative or interpretive rules and to prohibit certain state GHG and ZEV standards by proclaiming them preempted. Nothing in EPCA provides NHTSA with express or implied authority to define and implement Section 509(a), or otherwise to interfere with the long-standing authority of California and other states to adopt vehicle emission standards that are more stringent than federal standards under Sections 209(b) and 177 of the Clean Air Act. Because NHTSA exceeded its authority in promulgating the SAFE I Rule, NESCAUM also agrees that the agency should repeal the SAFE I Rule in its entirety, including all codified text and all interpretations and applications of EPCA preemption, as promptly as possible.

As you know, climate change is the great challenge of our time. The transportation sector is the largest source of climate-warming GHG emissions in the nation and a major source of harmful air pollution. NESCAUM's member states have long been at the vanguard of national efforts to combat climate change and have made ambitious commitments to substantially reduce GHG emissions in the near term. California's and other states' ability to set GHG and ZEV standards under the Clean Air Act is the single most important tool the states have to mitigate GHG emissions from transportation and a critical component of their air quality and climate action strategies.

For all of these reasons, NESCAUM strongly supports and urges NHTSA to adopt the Proposed Rule to repeal the regulations and associated interpretations on EPCA preemption contained in the SAFE I Rule.

Sincerely,



Paul J. Miller  
Executive Director

cc: NESCAUM Directors  
Lynne Hamjian, Cynthia Greene, EPA R1  
Richard Ruvo, EPA R2