



Environmental Council of the States

50 F Street NW, Suite 350 | Washington, DC 20001
(202) 266-4920 | www.ecos.org

October 26, 2018

The Honorable Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW Washington, DC 20460

Via electronic submission to: www.regulations.gov

Re: *ECOS Comments on The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks; Docket ID Nos. EPA-HQ-OAR-2018-0283 & NHTSA-2018-0067 (“SAFE proposal”)*

Dear Acting Administrator Wheeler:

The Environmental Council of the States (ECOS) is the nonpartisan association of state environmental agency leaders. We are pleased to provide the following comment to the U.S. Environmental Protection Agency on the “Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks” (83 Fed. Reg. 42817, August 24, 2018).

The Clean Air Act (the Act) as enacted by the U.S. Congress specifically allows for the California preemption waiver. While the Act generally prevents states from enacting vehicle emissions standards that are more stringent than federal standards, Section 209(b), 42 U.S.C. § 7543(b), instructs U.S. EPA to waive that prohibition under certain circumstances for any state that had vehicle emissions regulations in place before March 1966—in other words, for California. Similarly, section 177 of the Act, 42 U.S.C. § 7507, allows other states to adopt California emissions standards under certain circumstances.

Beyond the specifics of the Act, cooperative federalism principles support the California waiver. In Cooperative Federalism 2.0, as part of the principle on flexibility, ECOS writes, “States should generally have the ability to set standards that are more stringent or that are broader in scope than federal standards.” This flexibility to set state standards that are broader or more stringent than federal standards allows states to effectively and efficiently achieve desired environmental outcomes.

Consistent with rule of law and cooperative federalism principles, ECOS members adopted a resolution formally supporting California’s authority to adopt or enforce vehicle emissions standards and other states’ abilities under section 177 of the Act to adopt California’s standards. ECOS Resolution 10-7, originally adopted in 2010 and most recently updated in September 2017, finds that:

Becky Keogh
Arkansas Department of
Environmental Quality
ECOS President

Jim Macy
Nebraska Department of
Environmental Quality
ECOS Vice President

Patrick McDonnell
Pennsylvania Department of
Environmental Protection
ECOS Secretary-Treasurer

Todd Parfitt
Wyoming Department of
Environmental Quality
ECOS Past President

Carolyn Hanson
ECOS Acting Executive
Director

Environmental Council of the States

“States must be allowed to exercise their discretion to regulate pollutants within their borders and develop standards at or more stringent than federal regulations, as long as these standards do not conflict with federal law.”

With regards to California’s preemption waiver, the resolution urges the federal government to:

“Retain and not limit: 1) any state’s authority to adopt or enforce pollutant standards that are more stringent than the federal standards; 2) California’s authority to adopt or enforce emissions standards for any air pollutant from any mobile source; and 3) any state’s ability under CAA section 177 to adopt California’s vehicle emissions standards.”

Given the language of the Clean Air Act, cooperative federalism principles, and ECOS’ resolution, we urge EPA to preserve the ability of states to adopt standards consistent with the flexibility afforded under the law.

We appreciate the opportunity to offer these comments. If you have any questions, please contact me at chanson@ecos.org or 202-266-4924.

Sincerely,

A handwritten signature in black ink, appearing to read "Carolyn Hanson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Carolyn Hanson
Acting Executive Director
Environmental Council of the States

Cc: ECOS Executive Committee