

As part of its broader efforts to tackle climate change, California has set its sights on a new, and fast-growing, source of greenhouse gas (GHG) emissions: ride-hailing companies like Uber and Lyft. On September 13, Governor Brown signed SB 1014, making California the first U.S. jurisdiction to require that ride-hailing companies—also known as transportation network companies (TNCs)—reduce their greenhouse gas emissions. The bill is an exciting next step for tackling GHGs in California, as the novel approach offers a new way to regulate GHG emissions from transportation that is not likely to be federally preempted. And because the bill sidesteps preemption concerns, it also has broader, national import as a potential blueprint for jurisdictions across the country to reduce GHG emissions from passenger vehicles, without waiting for—or in spite of—the federal government.

Why Target Ride-hailing Companies?

Despite a statewide reduction in overall GHG emissions last year, emissions in California's transportation sector are [rising](#), attributable almost entirely to growth in emissions from passenger vehicles (which account for 70 percent of total emissions from the transportation sector). Even if California [retains its authority](#) to set emission standards for new motor vehicles under the Clean Air Act, incrementally cleaner vehicles in future model years will not be enough, alone, to deliver the emissions reduction the state needs, as vehicle miles travelled (VMT) in California [continue to increase annually](#).

TNCs' contribution to rising VMT, and by extension their impact on the state's GHG emissions, is not well understood. This is partly because these companies tightly guard data about their rides, and also because [it's not yet clear](#) whether, and how, rideshare miles travelled are displacing other modes of transportation, such as personal vehicle ownership or public transit. [Researchers are currently studying](#) the effect TNCs have on overall VMT, but the [emerging consensus](#) is that ride-hailing is a non-trivial, and growing, share of VMT, and therefore GHG emissions. As TNCs grow in popularity, it will be difficult for California to meet its GHG reduction goals without addressing emissions from TNCs.

SB 1014: California Clean Miles Standard and Incentive Program

The California Public Utilities Commission (CPUC) began regulating TNCs in [2013](#) by establishing requirements for TNCs related to insurance coverage, background checks, driver training, and other policies related primarily to ensuring passenger safety. This April, CPUC also released a [white paper](#) indicating it was contemplating regulating TNC emissions. The white paper discusses barriers to greater EV adoption among TNC drivers and outlines potential regulatory steps the Commission could take under [its existing authority](#) to reduce TNC emissions. But CPUC had not yet proposed any concrete regulatory

action.

The legislature beat CPUC to the punch. Rather than leaving the choice of whether and how to reduce TNC emissions to CPUC, California's first-in-the-nation [bill](#) (Senate Bill 1014) builds upon the state's existing efforts—and legal authority—to tackle TNC GHG emissions. The heart of SB 1014 is Section 4, which adds Section 5450 to the Public Utilities Code. Section 5450(b)(2) directs the Air Resources Board (ARB) to adopt, and CPUC to implement, “annual targets and goals” for TNCs to reduce their GHG emissions on a passenger-mile travelled basis below a 2018 baseline, as established by ARB. These “targets and goals” come into effect in 2023, and ARB must set them to be both “technically and economically feasible” and consistent with the goal of having 5 million zero-emission vehicles (ZEVs) on California roads by 2030.

The bill is not a vehicle purchase mandate; TNCs are not required to purchase ZEVs or deploy any particular kind of fleet to achieve these targets and goals. Instead, the bill requires TNCs to reduce their emissions on a passenger-mile basis. Understanding this metric—GHG emissions per passenger-mile—is essential to understanding why the bill is so innovative. The ultimate GHG emissions metric is not gross GHG emitted; instead, what matters is the amount of GHG emitted per passenger-mile travelled. ARB gets to this final number by adding up GHG emissions from the total VMT (including “deadhead” miles, the number of miles TNCs drive between drop-off of one passenger and pick-up of another) and dividing it by *total* passenger miles, including the number of miles traveled by each passenger per trip and “qualified” miles TNCs incentivize through walking, biking, and other modes of zero emission transit. “Qualified” miles are not entirely defined by the bill, leaving ARB some discretion to determine what modes qualify, potentially including some forms of public transit. In short, SB 1014 incentivizes TNCs to increase the amount of walking, biking, and other zero-emissions transit passengers take (providing a boon to [companies that offer multi-modal transit on their platforms](#)), increase the number of passengers per vehicle on each ride-hail trip, and reduce the number of deadhead miles travelled.

While ARB unquestionably must establish “targets and goals,” it is not entirely clear whether the “targets and goals” will themselves be legally enforceable. “Targets and goals” sounds aspirational, especially compared with statutory language directing ARB to establish legally enforceable regulations (see, for example, [AB 398](#), which states ARB “shall adopt greenhouse gas emissions limits and emissions reduction measures by regulation”). Indeed, “targets and goals” sounds strikingly like the language in SB 1014's preamble, which describes Governor Brown's executive order establishing a “goal” of 5 million zero emission vehicles (ZEVs) on the road by 2030.

But even if it is unclear whether SB 1014's directive to set "targets and goals" requires that they be legally enforceable, ARB arguably has the ability under its existing authority to make these "targets and goals" legally binding. ARB has [broad, existing statutory authority](#) to regulate air pollution from motor vehicles as well as specific statutory authority to implement "[in-use performance standards](#)." In-use standards encompass any measures controlling how vehicles may be operated, such as regulations that limit vehicle access to certain areas, at certain times of day, or require a certain number of passengers (HOV lanes are an example of in-use standards). Further, California's landmark climate change regulation, AB 32, charges ARB with [regulating sources of greenhouse gas emissions](#) to achieve the maximum technologically feasible and cost-effective greenhouse gas emission reductions from [categories of sources](#), including motor vehicles. Setting an enforceable target for GHG emissions per passenger-mile travelled falls within these existing authorities, as it could be characterized as either an in-use operational constraint or regulation for a category of motor vehicles.

Enforceable Targets Set Pursuant to SB 1014 Are Not Likely to be Preempted

Although ARB and/or CPUC likely has the authority under state law to make SB 1014's targets and goals enforceable, any enforceable standard also must comport with federal law, which broadly preempts states from regulating both fuel economy and new motor vehicles. The federal Clean Air Act (CAA) expressly [preempts states](#) from enforcing "any standard relating to the control of emissions from new motor vehicles." The CAA's preemption provision has also been interpreted to prohibit states from requiring private fleets operating in the state to [purchase lower-emitting vehicles](#). While California (and only California) is eligible for a waiver from this preemption clause if it meets certain requirements, its ability to obtain a waiver for GHG emissions in the future—and even its current waiver—is [threatened](#) by the Trump Administration. The Energy Policy and Conservation Act (EPCA), which directs the Department of Transportation to set [average fuel economy standards](#), contains an express [preemption clause](#) prohibiting states from adopting or enforcing any regulation "related to fuel economy standards." This provision has similarly been [interpreted expansively](#).

TNCs and others opposed to enforceable targets and goals may protest that even if California has the authority to regulate TNC emissions pursuant to state law, the State is preempted under federal law. In particular, if SB 1014's targets and goals are enforceable, TNCs or other opponents may argue that the bill is, in effect, a preempted standard related to the control of emissions from new motor vehicles (or fuel economy) because ARB's targets, TNCs might claim, are not achievable in any way other than through adding new, more efficient vehicles to the TNC platforms.

Although it is challenging to evaluate the merits of any preemption claim when the targets and goals have not yet been set, a court will likely find unpersuasive the argument that future targets are preempted. SB 1014 likely does not run afoul of EPCA or the CAA, *regardless of whether California has a CAA waiver*.

In this context, a court's preemption analysis generally begins with whether the state law contains an explicit reference to the preempted subject matter. If not, the primary question is whether the existence of the preempted subject matter is "essential to the law's operation." The challenged law will generally be struck down if it [relies exclusively on the preempted subject matter](#) for compliance. For example, a federal court struck down a taxi cab licensing fee structure that allowed hybrid vehicles to pay less as preempted under EPCA, because the only way to benefit from the lower fee was to lower emissions from each individual vehicle—in effect, a fuel economy standard. By contrast, where a challenged law allows parties to comply using [non-preempted methods](#), and the preempted subject matter is only [incidental](#), the regulation will be upheld. In *Central Valley Chrysler-Jeep*, for example, the court declined to find that EPCA preempted a California law that set GHG emission limits from vehicles, because the law allowed entities to comply using methods other than fuel economy, such as air conditioning offsets.

If California sets enforceable targets and goals, they are not likely "related to" emissions or fuel economy standards. And regardless of a determination on "related to," they are assuredly not a standard related to the control of emissions from *new* motor vehicles. SB 1014 does not "relate to" emission standards for new motor vehicles or fuel economy because the bill allows TNCs to meet any "targets and goals" with a variety of mechanisms, only some of which relate to fuel economy or tailpipe emissions. Compliance with the GHGs per passenger-mile travelled standard wouldn't even necessarily require a reduction in gross GHG emissions or any improvement in fuel economy. Instead, TNCs may be able meet their passenger VMT target largely via operational changes to their existing fleets; for example, by incentivizing passengers to congregate at central pick-up and drop-off points, encouraging passengers to take alternative modes (e.g., bicycles or walking) for last mile trips, increasing the number of passengers per trip, or incentivizing existing ZEV owners to join the TNC platform. Because the bill offers numerous avenues for compliance that do not involve or relate to fuel economy or new motor vehicles, it is unlikely to be preempted by either the CAA or EPCA.

Conclusion: A novel—and replicable—use of state authority to reduce GHG emissions

California's new approach to reducing TNC emissions is potentially revolutionary—and not only because of the emission reductions it may achieve in California. States have long been

hamstrung from using their authority to reduce vehicle emissions by a variety of barriers, including legal barriers (federal preemption) and political/administrative barriers. SB 1014 provides a template for other states to reduce GHG emissions from passenger vehicles—without the need for a Clean Air Act waiver. Other states (or even municipalities), long restricted from regulating vehicles, have no excuse not to follow suit.

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