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From Climate Extra

NHTSA Proposes To Undo Trump-era Attack On State Auto GHG Rules

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The Transportation Department (DOT) is floating a proposed rule finding that the Trump administration likely exceeded its authority in issuing a regulation deeming state vehicle greenhouse gas standards as preempted by federal energy law, in a step toward EPA restoration of a federal preemption waiver for California’s vehicle rules.

Steven Cliff, acting administrator of DOT’s National Highway Traffic Safety Administration (NHTSA), signed [the April 22 proposed rule](#) that seeks to withdraw the department’s portion of the 2019 rule that argued such state programs are pre-empted by the Energy Policy and Conservation Act (EPCA).

The proposal will be subject to a 30-day comment period once published in the *Federal Register*.

The proposed rule marks the first step in the Biden administration’s efforts to reaffirm state authority for standards stricter than federal rules, with some sources suggesting EPA may soon move to restore a federal preemption waiver under the Clean Air Act for California’s vehicle climate rules that have been adopted by over a dozen other states.

The proposed rule is narrowly focused on reversing the Trump administration’s EPCA policy, while leaving open the possibility of broader action in the future that could explicitly interpret EPCA to be consistent with the states’ rules.

It also notes that the proposal is “being issued only by NHTSA. As such, to the extent EPA subsequently undertakes an action to reconsider the revocation of California’s [air act] Section 209 waiver, such action would occur through a separate, independent proceeding.”

NHTSA's proposal is the latest regulatory pendulum swing in a fight over the relationship between EPCA and states' auto GHG requirements, as well as the separate-but-related issue of EPA's Clean Air Act waivers for the Golden State.

California is unique among the states in that it can request a section 209 preemption waiver for its vehicle emissions standards, though other states can subsequently adopt California's rules under section 177 of the air law.

However, the Trump administration revoked a 2013 waiver EPA issued to California and also rescinded permission for other state programs -- arguing the state's auto GHG and zero emission vehicle (ZEV) rules did not meet the criteria for issuing such a waiver, and that the rules were separately preempted by EPCA's bar on state measures "related to" fuel economy.

The Biden NHTSA proposal has been expected in one form or another for months, after the administration in a January executive order cited the Trump preemption rule as one of numerous environmental policies under review.

"NHTSA tentatively believes that the NHTSA provisions of the [2019 rule] exceeded the agency's authority," the proposal states, referring to the joint EPA-NHTSA rule that scuttled permission for the states' programs.

The NHTSA part of the Trump rule codified in regulation the view that EPCA preempted the state rules because they were "related to" fuel economy.

The new proposal says the Trump policy represented the first time, in the nearly 50-year history of its fuel economy program, "that NHTSA had adopted regulations expressly defining the Agency's views" on the scope of EPCA's preemption provisions.

'Substantial Doubts'

But in the wake of the Biden administration's review, NHTSA now has "substantial doubts" that the codification was a "proper exercise of the agency's statutory authority with respect to [fuel economy] preemption, particularly as to whether NHTSA had authority to define the scope of EPCA preemption to legislative rules, carrying the force and effect of law."

The agency therefore proposes to withdraw the codified EPCA preemption measure and "any associated interpretations," and that its codified regulations "return to a state of silence" on EPCA preemption.

"If finalized, the Agency believes that this proposal would restore a clean slate for the Agency's position on EPCA preemption, which the Agency views as a necessary step to ensure that such prior statements do not overstate NHTSA's authority with respect to EPCA preemption issues," the proposal says.

This is narrower than some environmental advocates had urged, in that it does not seek to codify an interpretation that EPCA is consistent with state vehicle GHG rules, in a bid to preclude another regulatory reversal by a future administration.

But the proposal also appears to leave options open for the Biden administration to pursue such efforts in the future.

Specifically, it states that scrapping “overstated or legally tenuous” statements in the Trump preemption rule would ensure that NHTSA is not blocked from “carefully reassessing its substantive views on EPCA preemption and, if warranted, to subsequently announce those using a new setting.”

The Biden DOT in an April 22 press release says the department has “moved aggressively to respond” to Biden’s Jan. 20 climate executive order.

The proposed action would “establish a clean slate allowing the Department to further the Administration’s important fuel economy, equity, and climate change priorities -- which include reversing unnecessary and potentially unlawful efforts to prevent state action.”

Sen. Dianne Feinstein (D-CA) in an April 22 press release said the Trump administration “should never have challenged California’s legal authority to set our own vehicle emission standards. The Clean Air Act clearly gives us the right to protect the air Californians breathe, and I want to thank the Biden administration for dropping this frivolous challenge.”

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