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BREAKING: Trump Admin. Strips Calif. Of Auto Emissions Authority

By **Juan Carlos Rodriguez**

Law360 (September 19, 2019, 8:45 AM EDT) -- The U.S. Environmental Protection Agency on Thursday morning released a final rule that eliminates California's right to create its own greenhouse gas emission standards for cars and other vehicles, part of a heated political battle between the state and Trump administration.

The administration released what it's calling the "One National Program" rule, under which it asserts that the Energy Policy and Conservation Act gives the U.S. Department of Transportation the right to set national fuel economy standards and preempts similar state programs. Because of that, the EPA is rescinding a Clean Air Act waiver that allows California to set its own, more stringent GHG standards and a zero emission vehicle program.

The action also finalizes one part of the Safer Affordable Fuel-Efficient, or SAFE rule, which was **issued** jointly by the EPA and National Highway Traffic Safety Administration last year. The rest of the rule, in which the EPA has proposed to **roll back** Obama-era GHG standards and NHTSA has proposed to set new corporate average fuel economy, or CAFE, standards, will come at some point in the future, DOT Secretary Elaine Chao said Thursday.

"The One National Program that we are announcing today will ensure that there is one, and only one, set of national fuel economy standards as Congress mandated and intended," Chao said. "No state has the authority to opt out of the nation's rules and no state has the right to impose its policies on everybody else in our whole country."

California political leaders **vowed this week** to fight the federal government's attempt to wipe out its authority to set its own emissions standards.

EPA Administrator Andrew Wheeler said one of his agency's reasons for withdrawing California's waiver is that under EPCA, the Transportation Department sets CAFE standards, not the states. He said that since there's a direct, scientific link between a car's greenhouse gas emissions and its fuel economy, EPCA preempts state GHG and zero emission vehicle programs.

A second reason the EPA is withdrawing the waiver for the Golden State's GHG and zero emission vehicle programs is because the state has not proved it has "compelling and extraordinary conditions" for the waiver. He said California's waiver authority exists because the state has "uniquely bad" problems with smog-forming pollutants, but not with GHGs.

"There's a direct and tight link between, one, California cars and their emissions of criteria pollutants, two, the local concentrations of those emissions, and three, the impacts they have on California due to the state's extraordinary perfect storm of features like population, traffic, temperature, wind, ocean currents and topography," Wheeler said. "But for greenhouse gases, the tight and direct link isn't there."

He said cars in California don't have a closer link to climate impacts than do cars anywhere else in the world, and he said California's climate impacts are not "extraordinarily distinct" from those felt in other states in the same way that its smog impacts are.

Wheeler said the waiver revocation will not impact other California programs including its low emission vehicle program designed to address harmful ozone and other forms of air pollution.

"It makes sense that Congress carved out waiver authority for California to address its unique, local problems. It does not make sense to use that authority to try to address national and global issues like greenhouse gas emissions. It's time to put California's waiver back in its box," Wheeler said.

Steven Bradbury, the DOT's general counsel and acting deputy secretary, said the agencies are splitting the preemption and waiver rescission from the rest of the SAFE rule in order to accelerate litigation.

"Once we get those final determinations in court on these focused legal issues, we'll get that certainty for the auto sector and for the entire nation," Bradbury said.

Several environmental groups have already joined California in saying they will challenge the rescission of the state's waiver.

--Editing by Rebecca Flanagan.

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