

Consumer Group Says Data Back Clean Car Standards

By **Michael Phillis**

Law360 (February 14, 2019, 11:02 PM EST) -- A consumer association told the D.C. Circuit on Thursday that the U.S. Environmental Protection Agency was hurting — not helping — consumers when it moved to reexamine an analysis that supported Obama-era vehicle greenhouse gas emission standards.

The Consumer Federation of America backed a group of states led by California and said in an amicus brief that the EPA's decision in April to reject an Obama-era analysis would cost consumers money, adding that the agency misrepresented consumers' strong preference for fuel-efficient vehicles.

The EPA's initial analysis was issued in the final days of the Obama administration and confirmed that GHG standards for model year 2022 to 2025 vehicles shouldn't be changed. The Trump administration rejected that analysis, arguing it was wrong and the standards were too strict. After the revised determination, EPA proposed rolling back the standards.

That proposal, however, was not a benefit for those who bought cars, according to the CFA.

"EPA's [revised final determination] would rob consumers of billions of dollars in net benefits by freezing GHG emission standards at 2021 levels, with the lost savings reaching \$1,650 per vehicle," the CFA brief said. "Despite the prevalence of this evidence in the prior [final determination] and the administrative record as a whole, the revised final determination does not acknowledge it, much less justify jettisoning this consumer benefit."

In addition, on Thursday, a coalition of local governments filed an amicus brief saying the EPA's action "is not a valid exercise of EPA's authority and should be vacated" and that the Obama-era analysis should be put back in place. The local governments' brief also said the EPA did not do a proper technical analysis.

The CFA said that the Trump administration has asserted that consumer preference for fuel-efficient vehicles has ebbed in part because of lower gas prices. The CFA argued this misstated the case.

"Over the course of more than a decade, CFA has sampled public opinion about fuel economy standards and shared its results with both the EPA and the [National Highway Traffic Safety Administration]," the brief said. "Data consistently show that large majorities of American consumers support heightened fuel economy standards."

And these preferences are still in place when fuel costs are low, as consumers know they will likely be higher later on, according to the CFA.

Nor were the Obama-era standards a disadvantage for low-income people, the CFA said. Low-income consumers are usually not in the new car market and largely would not be impacted by the added technology costs associated with the heightened standards, the brief said. Instead, those who are low income "spent 7.3 times as much on gasoline as on new car payments in one year," the brief said.

"Higher fuel economy standards would thus help rather than hurt low income Americans," the brief said.

California said earlier this month that in the 2012 rule establishing the GHG standards for model year 2017 to 2025 cars and light trucks, the EPA promised to conduct a midterm evaluation to confirm that the standards for 2022 to 2025 were still reasonable. The evaluation was supposed to be based on a technical analysis and public input and be a "high hurdle" to clear before changing the standards.

California agreed to abide by the national standards even though it has unique authority under the Clean Air Act to create its own standards. It said these provisions were key to its buy-in, and that it only agreed to harmonize its standards with the federal government's after assurances of such a rigorous evaluation process. More than a dozen other states also use California's standards; many of those states also signed the brief filed earlier this month.

The midterm evaluation itself was based on a technical assessment report, or TAR, that was to be prepared jointly by the EPA, the NHTSA and the California Air Resources Board. When the Trump administration said the original midterm evaluation was too strict and needed to be withdrawn, that contradicted the TAR's findings and violated the underlying agreement between the federal government and the state, according to the states.

Representatives with the CFA and EPA did not immediately return requests for comment.

The CFA is represented by Michael J. Steel, Justin G. Fisch, Elissa A. Walter, Joseph R. Palmore and Dustin C. Elliott of Morrison & Foerster LLP.

The local governments are represented by Michael Burger of Columbia Environmental Law Clinic Morningside Heights Legal Services and Jessica Wentz of Sabin Center for Climate Change Law Columbia Law School.

California, Connecticut, Delaware, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia and Washington and the District of Columbia are represented by their attorney general offices.

The EPA is represented by Eric G. Hostetler of the U.S. Department of Justice's Environment and Natural Resources Division.

The lead case is State of California et al. v. EPA et al., number 18-1114, in the U.S. Court of Appeals for the District of Columbia Circuit.

--Additional reporting by Juan Carlos Rodriguez and Keith Goldberg. Editing by Jay Jackson Jr.

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