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DOT RELEASES ONE NATIONAL PROGRAM RULE; EPA REVOKES CALIFORNIA'S CAA WAIVER FOR VEHICLE EMISSIONS

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The Clean Air Act allows California to impose its own greenhouse gas standards and zero emission vehicle program. This changed this week when the Trump Administration announced its "One National Program" Rule. The One National Program Rule (also known as the Preemption Rule) gives the US Department of Transportation (DOT) and US Environmental Protection Agency (EPA) the right to set national fuel economy standards. These standards preempt any similar state standards such as those promulgated by California. As a result of the One National Program Rule, EPA is revoking the Clean Air Act waiver that has allowed California to impose its own greenhouse gas standards. (See "The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program," RIN 2127-AM20 (Sept. 19, 2019)).

In announcing the final rule, DOT Secretary Elaine Chao stated, "Two and a half years ago, President Trump spoke with auto workers in Michigan and said that we would review and revise the last administration's reckless and unattainable fuel economy regulations. Those rules are making cars more expensive and impeding traffic safety because consumers are priced out of newer, safer vehicles."

The Secretary highlighted that "The One National Program rule we are announcing today will ensure that there is one – one and only one – set of national fuel economy standards, as Congress intended. No State has the authority to opt out of the Nation's rules, and no State has the right to impose its policies on everything else. To do otherwise harms consumers. And damages the U.S. economy." In the One National Program rule, DOT states that California's GHG and ZEV standards are preempted because they are "related to fuel economy standards" and conflict with the federal fuel economy standards. Similarly, the EPA also relies on the One National Program rule to withdraw a waiver of preemption for the California standards that EPA previously granted under Section 209(b) of the Clean Air Act.

California and 22 other states wasted no time in challenging the One National Program Rule by filing today a Complaint for Declaratory and Injunctive Relief in the United States District Court for the District of Columbia. The Complaint sues Secretary Chao, Acting Administrator of the National Highway Traffic Safety Administration (NHTSA) James Owens, the DOT and the NHTSA and requests that the One National Program Rule – which the States call "the Preemption Regulation" – be declared "unlawful and set aside because it exceeds DOT's authority, contravenes Congressional intent, and is arbitrary and capricious and because the DOT failed to conduct the analysis required under NEPA." In addition to the State of California, the following entities joined the complaint against DOT: Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Rhode Island, Vermont, Washington, Wisconsin, and the Commonwealths of Massachusetts, Pennsylvania, Virginia, and the District of Columbia, the City of Los Angeles, and the City of New York.

California has had emissions standards for light-duty vehicles for 60 years, since 1959. The federal government repeatedly approved the California standards and granted waivers of preemption under section 209(b) of the Clean Air Act for both the greenhouse gas (GHG) standards and the zero- emission vehicle (ZEV) standards. In other words, California's authority to regulate vehicle emissions has been repeatedly recognized, reaffirmed, and even expanded by Congress.

Other states followed California, pursuant to Section 177 of the Clean Air Act, which states that "any State which has plan provisions approved under this part may adopt and enforce for any model year standards relating to control of emissions from new motor vehicles or new motor vehicle engines and take such other actions … if—
(1) such standards are identical to the California standards for which a waiver has been granted for such model year, and
(2) California and such State adopt such standards at least two years before commencement of such model year (as determined by regulations of the Administrator)." 42 U.S.C. § 7507.

The environmental lawyers at Bick Law will continue to follow the lawsuit filed against DOT. A copy of Secretary's Chao's remarks on the One National Program Rule is attached below, as well as the Final Rule and California et al.'s Complaint against the DOT:

https://www.transportation.gov/briefing-room/one-national-program-rule-press-conference

https://www.epa.gov/regulations-emissions-vehicles-and-engines/final-rule-one-national-program-federal-preemption-state

http://dig.abclocal.go.com/kgo/PDF/CA_auto_emissions_complaint.pdf