Recently, a coalition of Democratic Attorneys General (AGs) from 13 states sent a letter to Environmental Protection Agency (EPA) Administrator Scott Pruitt, notifying him of their intent to sue if the EPA eases the current greenhouse gas (GHG) emissions standards set to take effect for cars and light-duty trucks for model years 2022-25. The AGs are threatening legal action *regardless* of the results of a midterm evaluation of the feasibility of achieving these standards. In 2012, EPA and the National Highway Traffic Safety Administration (NHTSA) jointly established stringent emission standards for cars and light-duty trucks for model years 2017-25. Each agency set separate standards—the EPA set GHG emissions standards and NHTSA set Corporate Average Fuel Economy (CAFE) standards. At the time these standards were set, they were ambitious and unachievable. Therefore, both EPA and NHTSA committed to a "midterm review" of these rules, which was expected to conclude in April 2018. Following the 2016 election, EPA accelerated the midterm review, published its proposed determination and provided the public only 24 days to evaluate nearly 1,000 pages of information and provide comments regarding the feasibility of EPA's proposal. A typical review period for this type of evaluation is between 60 and 90 days. Just 14 days after this comment period closed—and approximately a week before President Trump's inauguration—outgoing EPA Administrator Gina McCarthy signed a final determination to maintain the current GHG emissions standards for model years 2022-2025 vehicles without coordinating with NHTSA. In March, Administrator Pruitt announced that EPA, this time, in coordination with NHTSA, would reconsider the final determination of the midterm evaluation, ensuring a national harmonized program by placing the midterm review back in line with its original design. Despite the arguments raised in the AGs' letter, EPA has both the authority and obligation – under the Administrative Procedure Act and recent case law – to reconsider past agency decisions and fix serious procedural deficiencies. The Obama EPA's expeditious process, in conjunction with its failure to adequately consider stakeholder comments and coordinate with NHTSA in issuing the final determination, is an example of ideology overruling due diligence. This coalition's threat is both patently political and premature. Instead of allowing the process to play out, this group of AGs has decided that the data from a rigorous evaluation, or the actual feasibility of these standards is irrelevant, if it does not align with their politics. Lawyers have the unique responsibility, and honor, of preserving the American public's faith in the blind and unbiased rule of law. When lawyers, especially those serving in elected positions, use their status to advance their political beliefs, without legal basis (such as threatening suit regardless of the factual findings of the evaluation), America's faith in a fair and nonpartisan justice system slowly crumbles. While AGs are elected, in part, based on political beliefs, they must act responsibly and, first and foremost, uphold the rule of law. It is clear these 13 AGs have failed that most important responsibility in pursuit of politics, ahead of the interests of the American people.

Print as PDF:

Topics

Fuel Policy

Fuel Efficiency Standards (CAFE)

Tags

Environment

Greenhouse Gases (GHG)

Environmental Protection Agency (EPA)

Emissions

Mid-term Review

Administrative Procedure Act

Environmental Protection Agency (EPA)

National Highway Traffic Safety Administration