U.S. DEPARTMENT OF TRANSPORTATION & U.S. ENVIRONMENTAL PROTECTION AGENCY

FACT SHEET

EPCA PREEMPTION

We will have a single set of national fuel economy standards because Federal law preempts any different standards that a State may try to impose.

- The Energy Policy and Conservation Act of 1975 (EPCA) requires NHTSA to set national fuel economy standards for new motor vehicles and includes an express preemption provision:

> "When an average fuel economy standard prescribed under this chapter is in effect, a State or a political subdivision of a State may not adopt or enforce a law or regulation **related to** fuel economy standards or average fuel economy standards for automobiles covered by an average fuel economy standard under this chapter."[1]

- The tailpipe carbon dioxide (CO_2) limits and zero emission vehicle (ZEV) mandate imposed by California and other States "relate to" fuel economy standards because CO_2 is the primary byproduct of gasoline fuel combustion and compliance with the California rules and the Federal CAFE standards is assessed on the same basis: by measuring carbon emissions.

    - In the 2012 rulemaking, EPA and NHTSA stated that "the relationship between improving fuel economy and reducing CO_2 tailpipe emissions is a very direct and close one" because "[t]he amount of those CO_2 emissions is essentially constant per gallon combusted of a given type of fuel."

The CAA waiver previously granted to California does not affect EPCA preemption.

- The Clean Air Act (CAA) also preempts States from enforcing vehicle emissions standards, but it provides that the EPA Administrator may "waive application of *this section*" [the CAA preemption provision] to California.[2] EPA granted California a preemption waiver for its tailpipe CO_2 emissions standards in 2009.

- Since the CAA waiver only applies to a specific preemption section of the CAA, it has no effect on EPCA preemption, which has no such waiver provision. No Administration has formally interpreted EPCA's preemption provision otherwise.

No Federal appellate court has yet addressed this preemption question, and the stronger legal arguments favor preemption.

- When the automakers and dealers previously challenged California's tailpipe CO_2 limits on preemption grounds, two district courts held that the California rules would *not* be preempted

---

[1] Now codified at 42 U.S.C §32919 (emphasis added).
[2] 42 U.S.C. § 7543.

if California was granted a CAA waiver. *Green Mountain Chrysler* and *Central Valley Chrysler-Jeep*.[3] The automakers appealed; both cases were fully briefed in the 2d and 9th Circuits; and the U.S. filed an amicus brief supporting preemption and joined the automakers in oral argument.

- Before any decision by the Courts of Appeals, the Obama administration, the California Air Resources Board, and the automakers reached agreement on a joint set of standards, and the automakers dismissed their appeals as a condition of the national agreement.

[3] *Green Mountain Chrysler v. Crombie*, 508 F. Supp. 2d 295 (D. Vt. 2007); *Central Valley Chrysler-Jeep, Inc. v. Goldstene*, 529 F. Supp. 2d 1151 (E.D. Cal. 2007), *as corrected* (Mar. 26, 2008).