

Trump Administration Can't Slash Fuel Efficiency Penalties (1)

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- Agency reconsideration untimely, unauthorized, court says
- Penalty rate decrease from \$14 to \$5.50 reversed

The Trump administration can't roll back a penalty imposed on car manufacturers that fail to meet Corporate Average Fuel Economy standards, the Second Circuit ruled Monday, in a win for several states and environmental groups.

Inflation-adjustment laws do apply to the penalty, according to the U.S. Court of Appeals for the Second Circuit, rejecting the National Highway Traffic Safety Administration's claims. And the agency's move was untimely and therefore unauthorized, the court said.

The Obama administration increased the CAFE penalty from \$5.50 to \$14 for every tenth of a mile per gallon below the standard multiplied by the number of cars in a fleet, in response to the 2015 Improvements Act. The act updated civil monetary policies to account for inflation. However, NHTSA delayed the increase starting in 2017, and reversed the increase in 2019.

The agency argued the CAFE penalty isn't a "civil monetary policy" under the act, and the negative economic impact that the increase would create justifies its reversal. But by the time the Improvements Act was passed, any question over whether the penalty was a "civil monetary policy" was already settled, the court said.

The phrase applies to any penalty that is for a specific monetary amount, is assessed or enforced by an agency, and is assessed or enforced "pursuant to an administrative proceeding or a civil action." Because the CAFE penalty is calculated by multiplying a dollar amount by another figure, it's specific enough to qualify, according to the ruling.

The Improvements Act did give NHTSA time to reconsider the increase to the penalty, but by 2019 it was too late, according to the ruling. The court declined to consider the agency's claims about the economic impact because the agency wasn't authorized to reconsider the penalty.

"This ruling ensures that NHTSA and the automakers it regulates are held accountable for actions that are harmful to the public," said Bethany Davis Noll, litigation director at the Institute for Policy Integrity, which submitted a brief in the case.

California Attorney General Xavier Becerra said Monday the Trump administration sought to make the penalties "meaningless."

"This wrong-headed maneuver ignored the facts: our nations' CAFE standards have proven their value and fuel efficient cars on our roads are not only good for the economy and our environment,

but our health," Becerra said in a statement.

Judge William J. Nardini issued the opinion, joined by Judges Richard J. Sullivan and Michael H. Park.

New York, California, Massachusetts, ten other states, and Washington, D.C. were represented by their respective attorneys general. The Natural Resources Defense Council represented itself, and Law Offices of Vera Pardee represented the Sierra Club.

The Sierra Club has received funding from Bloomberg Philanthropies, the charitable organization founded by Michael Bloomberg. Bloomberg Environment is operated by entities controlled by Michael Bloomberg.

The Department of Justice represented the federal government.

The case is [New York v. Nat'l Highway Traffic Safety Admin.](#) , 2d Cir., No. 19-02395, 8/31/20 .

(Adds comment from California Attorney General Xavier Becerra.)

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