



The Truth about Cases Brought by the Competitive Enterprise Institute (CEI)

against the National Highway Traffic Safety Administration (NHTSA)
On Corporate Average Fuel Economy Standards (CAFE)

Summary

Note: On The Donahue Show on January, 15, 2003, Sam Kazman of CEI admitted to Phil Donahue that CEI receives funding from the auto industry, among other sources.

CEI ultimately lost the line of CAFE cases always touted by CEI in press venues. The one case that CEI did win had no impact on the standard set by NHTSA, as a second case on the same issue later held that NHTSA adequately considered safety impacts in setting the standard.

Below is a brief synopsis of three cases brought by CEI on CAFE.

Case One: CEI loses, NHTSA adequately considered safety in setting fuel economy standards

CEI v. NHTSA, 901 F.2d 107 (1990):

CEI challenged tougher fuel economy standards **for passenger cars for model years 1987-89**, claiming that the standards did not reflect safety considerations. The D.C. Circuit Court of Appeals held that NHTSA's standards were not arbitrary and capricious.

The Court stated: "Petitioners claim that NHTSA acted arbitrarily and capriciously in underestimating the significance of the effect of CAFE standards on vehicle size and safety. They claim that the size-safety relationship is so strong and direct that NHTSA should have lowered its standards to the levels manufacturers would have achieved without CAFE constraints. We disagree. The factual record before the agency on the size-safety CAFE question is sufficiently equivocal that it was not arbitrary or capricious for NHTSA to conclude that, on balance, the CAFE standards as set would not have adverse safety consequences."

**Cases Two and Three: CEI wins opinion by conservative judge on 1990 car standard,
NHTSA reconsiders record on safety and CEI appeals,
CEI loses second case on same 1990 standard:
Appeals Court ultimately holds 1990 fuel economy standards
had no negative impact on safety**

Below are two related cases involving 1990 passenger car standards. The second CEI petition for review of the 1990 standard was ultimately denied by the D.C. Court of Appeals.

Background

In August 1988, at the behest of the auto industry and CEI, NHTSA initiated a rulemaking proceeding on whether *to reduce* the CAFE standards for model years 1989 and 1990 (although the standards for passenger cars are set in the statute, under the same statute, NHTSA can temporarily lower standards by 1.5 mpg for passenger cars as an emergency measure). The agency subsequently lowered the standard for 1989 to 26.5 mpg, but left the question open as to model year 1990. In May 1989, NHTSA closed proceedings on the 1990 standard, leaving the requirement at 27.5 mpg.

CEI v. NHTSA, 956 F.2d 312 (1992):

CEI challenged the termination of reconsideration of the **1990 passenger car standard**, arguing that NHTSA had failed to consider safety impacts of maintaining the standard of 27.5 mpg. On a record with limited NHTSA analysis on the safety question, a conservative court blasted the agency on the grounds that NHTSA needed to better address the safety impacts in its rulemaking record and remanded the rulemaking to the agency for further consideration.

CEI v. NHTSA, 45 F.3d 481 (1995):

Following remand, NHTSA reopened the rulemaking in October 1992 to request comments on whether it should lower the **1990 standard** and about the potential safety effect of changing the rule. As the Court of Appeals characterized it, “No manufacturer suggested that lowering the MY 1990 CAFE Standard would affect its production or sale of cars, and no other commenter provided evidence that a standard of 27.5 mpg would cause any manufacturer to increase the price of larger, safer cars.” **Because there was no significant effect on safety that was demonstrated in the record submitted by auto manufacturers, the agency terminated the rulemaking without any further action.**

The Court held that, in terminating the rulemaking, NHTSA’s decision was rooted in the agency’s rulemaking record and not arbitrary or capricious: “The record adequately supports the NHTSA’s conclusion that maintaining the 27.5 mpg CAFE standard for MY 1990 would not significantly affect the safety of the motoring public. . . . NHTSA reasonably concluded from the evidence before it that the MY 1990 CAFE standard did not cause automobile manufacturers either to downsize or to refrain from upsizing their cars.”