



EPA's Shifting Focus on Enforcement and the Future of Fuel Economy Standards

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The U.S. Environmental Protection Agency (EPA) has been under increasing scrutiny for both its shifting focus from environmental enforcement to environmental compliance and its efforts to dramatically slow down improvements in fuel efficiency standards for cars and light-duty trucks.

EPA Continues Its Programmatic Shift from Enforcement to Compliance

EPA began 2019 under increased public and media pressure due to a statistical drop in inspections, enforcement activity, and civil penalties collected in 2017 and 2018 under the Trump Administration. As its philosophical shift from enforcement to compliance continues to evolve, in February, the agency announced and sought public

comment on its proposed National Compliance Initiatives (NCI) for fiscal years 2020–2023. Previously known as National Enforcement Initiatives (NEI), the NCI lay out EPA's broad focus areas for enforcement/compliance-related efforts, which include building state-level enforcement capabilities and supporting state enforcement actions in the spirit of "cooperative federalism".

With respect to air pollution, the current NEI for fiscal years 2017–2019 focus on reducing hazardous air pollutants (HAPs); toxic air emissions from hazardous waste facilities; the risk of accidental releases at facilities; and air pollution from the country's largest sources of air contaminants. The proposed NCI seek to extend focus on reducing HAPs, toxic air emissions from hazardous waste-related operations, and risks of accidental releases from facilities. With respect to its oversight of large sources (specifically, sources that are considered "major" for New Source Review), EPA is proposing a return of these sources to its "core" enforcement program—which will be perceived by many to constitute a de-emphasis of major source air compliance and enforcement. EPA's NEI emphasis on enforcement of New Source Review—especially with respect to coal-fired electric generating utilities—led to some of the biggest air pollution enforcement actions of the early 2000s. The agency's large source NEI also led (albeit somewhat indirectly) to the U.S. Supreme Court's seminal decision in *Environmental Defense v. Duke Energy* (2007), pertaining to how the term "modification" is defined for New Source Review.

EPA's work to define its compliance/enforcement focus comes in the face of increased scrutiny of enforcement statistics from the Trump Administration's first two years at the helm of the agency. Critics point to an approximate 50-percent decline in inspections since 2010. The decline, however, began in 2012 under the Obama Administration due, in large part, to cuts to the agency's budget. The Trump Administration also argues that simply looking at trends in federal inspections cannot account for a shift in primary inspection responsibility (in some instances) from EPA to their state regulatory counterparts.

EPA's emphasis on "cooperative federalism" (i.e., empowering states to exercise environmental authority with limited agency oversight) began shortly after President Trump took office in January 2017. Although some of the reduction in enforcement action by EPA may have been made-up at the state level, state-by-state differences in the application of enforcement discretion may well lead to an increasingly unlevel regulatory playing field across the country. What remains to be seen is how much disparity might develop between various states if EPA fails to backstop lax state level enforcement.

The Looming Battle over EPA's CAFE Standards

On March 6, EPA released its annual "Automotive Trends Report" summarizing fuel economy and greenhouse gas (GHG) emission information for new cars and light-duty trucks. Although the report shows that automotive manufacturers continue to increase fuel economy, the agency simultaneously raised concerns about whether this trend is sustainable while remaining "cost-effective" from a consumer standpoint. These concerns will be used by EPA in its ongoing support of its "Safer Affordable Fuel-Efficient Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks" (SAFE Rule) proposed in 2018. The SAFE Rule seeks to freeze fuel economy standards at model-year 2020 levels through model-year 2026 and would undo a mandated increase in Corporate Average Fuel Economy (CAFE) standards of more than 25 percent from model-year 2020 to model-year 2026 set during the Obama Administration.

The SAFE Rule also seeks to strip the State of California of its ability to establish more stringent emission standards for vehicles offered for sale within the state. California has been allowed to adopt its own, more stringent emission standards under Section 209 of U.S. Clean Air Act, owing to "compelling and extraordinary conditions" in the state. California's authority to establish tighter emission standards for new vehicles often drives automobile manufacturers to bypass less stringent federal standards in favor of producing lower emitting vehicles for sale nationwide. Over time, 12 other states and the District of Columbia have adopted California's more stringent standards.

Some automakers view compliance with California's more stringent emission standards as unduly burdensome and overly costly for manufacturers and consumers. Other automakers fear protracted litigation over EPA's rescission of California's Section 209 waiver could lead to market chaos and increased prices for new vehicles—all ultimately to the detriment of consumers. In the meantime, the California Air Resources Board (CARB) and EPA engaged in a brief, public Twitter war in early March as EPA took credit for record high light-duty vehicle fuel economy while CARB responded by chiding the agency for taking CAFE standards backward. With both California and EPA unlikely to back down from their positions, the most likely outcome is the SAFE Rule facing multiple legal challenges upon its promulgation. **em**

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