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Clean Air Act

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Efforts to Regulate CO2 Emissions

1. New Motor Vehicles

Clean Air Act § 202(a)(1)

“The Administrator shall by regulation prescribe ... standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare.”

Predicates to Regulation Under Section 202(a)(1)

- *Mass. v. EPA* (U.S. 2007)
 - CO₂ is an “air pollutant”
- EPA “Endangerment Finding” 2009
 - Emissions of CO₂ from new motor vehicles cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare (based on climate change due to greenhouse effect)

2010 Rules

- Covered MY 2012-2016
- EPA Tailpipe Rule (phase I)
 - Limits CO₂ emissions to 250 grams/mile by MY 2016
- *DOT CAFÉ standard*
 - *34 mpg by MY 2016*

2012 Rules

- Covered MY 2017-2025
- EPA Tailpipe Rule (phase II)
 - Limits CO₂ emissions to 163 grams/mile by MY 2025
- *DOT CAFÉ standard*
 - *54 mpg by MY 2025*

2020 Rules

- Modified MY 2021-2026 standards
- EPA Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule
 - Limits CO₂ emissions to 202 grams/mile by MY 2026
- *DOT CAFÉ standard*
 - *40 mpg by MY 2026*

2021 Proposed Rules

- EPA Aug. 2021 proposed rule
 - Modifies MY 2023-2026 tailpipe standards
 - Limits CO2 emissions to 171 grams/mile by MY 2026
 - More than 1 million public comments
- *DOT Sept. 2021 proposed rule*
 - *Modifies MY 2024-2026 CAFÉ standards*
 - *48 mpg by MY 2026*

Efforts to Regulate CO2 Emissions

2. Existing Fossil-Fuel-Fired Power Plants

2015 Clean Power Plan Rule

- EPA Obama-era rule to regulate CO₂ emissions from existing fossil-fuel-fired power plants, based on CAA § 111(d)
- Called for 32% reduction of CO₂ emissions nationwide
- Building blocks for state plans included shifting from coal to natural gas, and from natural gas to renewables

2019 Trump-era Rule

- Rescinded 2015 Clean Power Plan rule
- New Affordable Clean Energy (ACE) rule
 - Also based on § 111(d)
 - State plans to rely on improved operation efficiency, no “beyond the fenceline” measures
 - Compared to Clean Power Plan, less costly for utilities to comply, less CO2 emission reduction

American Lung Assn. v. EPA 985 F.3d 914 (D.C. Cir. Jan. 2021)

- Vacated both new ACE rule and repeal of Clean Power Plan rule
- Section 111(d) does authorize EPA to regulate via “beyond the fenceline” measures
- 2-1 panel decision