

## Does Golden State Hold Trump Card on Auto Emissions?

### Snapshot

- EPA attempts to relax emissions standards for cars could be thwarted by California
- State has authority to set its own standards, which other states can adopt
- However, Trump administration could revoke this authority, setting up major legal clash

*By David Schultz and Carolyn Whetzel*



The state of California may have the power to thwart the Trump administration's attempts to roll back auto industry rules on greenhouse gas emissions from cars and trucks, according to environmental attorneys.

The administration on March 15 began the process of reviewing these emissions standards, with President Donald Trump telling a rally of auto workers in Detroit that this would allow them to "make cars in America again." But, if it does opt to give automakers the green light to produce less fuel-efficient vehicles, California could choose to defy the administration, setting up a major legal clash. "We're looking at a potential collision between Trump and California," said Michael Burger, a Columbia Law School professor and director of the school's Sabin Center for Climate Change Law.

While California may be able to resist the Trump administration's efforts here, attorneys say the administration could respond by taking an unprecedented step and rescind the state's ability to regulate its own vehicles.

### Mid-Term Review

A final decision from the Environmental Protection Agency on vehicle emissions may not come until early next year. As of now, the Trump administration is only reopening an EPA decision on emissions that had been finalized days before Trump took office.

In January, the Obama administration completed a midterm review of the current greenhouse gas emissions standards, which require automakers to achieve a companywide fuel economy average of 54.5 miles per gallon, or its equivalent, by 2025. The auto industry agreed to this number in 2012, on the condition that federal officials review it midway through this term to ensure this target is still achievable.

Though the EPA had until April of 2018 to complete this review, it surprised many in the industry by finalizing the review early this year and determining that these emissions standards did not need to be changed. Automakers had been telling the EPA that the current target is technologically unattainable and would inflate the prices of its vehicles.

At the Detroit rally, Trump called this an "11th-hour executive action" that he is now nullifying "to ensure any regulations we have ... are going to be fair."

### California Waiver

But, if the EPA goes through this midterm review once again and determines that the 54.5 target should be lowered, California might not have to comply. That's because, due to a quirk in environmental law, California has a waiver that allows it to set its own emissions standards.

When the Clean Air Act was being drafted in the 1960s, the state had already been regulating vehicle emissions, so Congress included a provision in the law that allowed it to continue doing so. Janet McCabe, the head of the EPA's air office under Obama, told Bloomberg BNA that it makes sense to let California act independently because its legendary air-pollution problems "have been so severe and so dominated by [cars]."

The last time the emissions regulations were set in 2012, California teamed up with the EPA and the U.S. Department of Transportation, which also has regulatory authority in this area, to harmonize fuel-economy standards and avoid giving automakers different targets to hit in different states.

## **Crazy Quilt**

But this crazy quilt of standards that regulators were trying to avoid may come to fruition if California and the Trump administration can't come to an agreement on what the emissions standards should be.

Furthermore, almost a dozen states—including New York, Massachusetts and Pennsylvania—have formally adopted California's standards as their own, which means these states could also choose to opt out of complying with a relaxed federal emissions target. This could create a scenario where automakers could only sell new cars with reduced fuel economy in certain states.

"My prediction is that there will be only small changes," Dan Sperling, director of the Institute of Transportation Studies at the University of California, Davis, and a member of California's air quality governing board, told Bloomberg BNA. "The auto industry doesn't want California going on its own."

Wade Newton, a spokesman with the industry trade group the Alliance of Automobile Manufacturers, told Bloomberg BNA it expects California to "engage and be part of the discussion in determining how we can improve mileage and reduce carbon emissions while preserving vehicle safety, auto jobs and affordable new cars and trucks."

## **Waiver Revoked?**

But what if the leaders of the Golden State decide they don't want to cooperate with the Trump administration? The state's governor, Jerry Brown (D), described Trump's March 15 move as "an unconscionable gift to polluters."

Environmental attorneys who spoke to Bloomberg BNA said it's possible the EPA could rescind the waiver that allows California to set its own standards, which currently goes through 2025. Since the federal government began granting waivers in 1967, California's waiver has never been revoked, although its application for a waiver was once denied during the George W. Bush administration. (That denial was later reversed under Obama.)

A senior White House official who briefed reporters on March 14 said it was too early to say whether the administration would take this unprecedented step. "We welcome California to the table," he said. "Let's keep talking. If California decides they want to go in a different direction, that's further down the road."

Burger, with the Sabin Center, said that if the EPA wants to revoke California's waiver, it would need to build a very strong case as to why the state shouldn't be allowed to regulate its own vehicles anymore.

"They're certainly going to wind up in court," Burger told Bloomberg BNA. "What EPA will have to show in this instance is that its decision is consistent, and not arbitrary and capricious. That's a problem that's going to confront EPA in this and every other climate deregulation it seeks to enact."

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