



# Shifting Regulatory Winds

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# Presentation Overview

- The Biden Administration's Approach to Cooperative Federalism
  - Climate Change
  - Environmental Justice
- Legacy Regulatory Action Items
  - CAFE Standards
  - Reconsidering the PM & Ozone NAAQS
- Practicalities, Takeaways, Recommendations

# Cooperative Federalism

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# Presidential Directives

# CO<sub>2</sub>

- Look to Executive Orders for aspirational goals and breadth of vision.
  - One-government approach
  - "Go where the science takes us"
  - "All hands-on deck approach"
  - Clean energy/economy transition
  - 50-52% CO<sub>2</sub> reductions by 2030
    - Compared to 2005 levels

The Pillsbury logo is located in the bottom right corner of the slide. It consists of the word "pillsbury" in a lowercase, sans-serif font. The letters are a reddish-brown color. The 'i' has a small dot above it. The logo is positioned to the right of a horizontal line that spans across the bottom of the slide.

# One-Government Approach

E.O. 14008, Tackling the Climate Crisis at Home and Abroad:

- “It is the policy of my Administration to organize and deploy the full capacity of its agencies to combat the climate crisis to implement a Government-wide approach that reduces climate pollution in every sector of the economy.”
- “Successfully meeting these challenges will require the Federal Government to pursue such a coordinated approach from planning to implementation, coupled with substantive engagement by stakeholders, including State, local, and Tribal governments.”

# Environmental Justice

- President Biden directed EPA and DOJ to significantly elevate environmental justice enforcement efforts, including making it a top priority for EPA's enforcement office and renaming DOJ's environment division to highlight the equity focus.
- National Environmental Justice Advisory Council (EPA)
  - Provides independent advice and recommendations to the EPA Administrator about broad, cross-cutting issues related to environmental justice, from all stakeholders involved in the environmental justice dialogue.

# State & Federal Interactions

- April 30<sup>th</sup> Memo
  - “However, if there is a situation where a community’s health may be impacted by noncompliance, and our co-regulator is not taking timely or appropriate action, we should not hesitate to step in and take necessary action.”
- 2015 Ozone Designations
  - El Paso
    - April 2018 Designation: Full county attainment
    - Intended 2021 Designation: Full county non-attainment
    - 120-day letters sent to both TX and NM
    - Public comment period closed on July 14, 2021

# New EJ Approach to Targeting Violations

- Office of Enforcement and Compliance Assurance Memos
  - [Strengthening Enforcement in Communities with Environmental Justice Concerns](#), Apr 30, 2021
    - Signals anticipated increase volume of facility inspections in EJ communities.
    - Resolve past, current, and future noncompliance by seeking early and innovative relief by using all available legal and monitoring tools (i.e. fence line monitoring, SEPs, EJScreen, etc.)
    - Increase engagement with EJ communities that may be directly impacted.
  - [Strengthening Environmental Justice Through Criminal Enforcement](#), June 21, 2021
    - Outlines how EPA and DOJ will work together to actively identify and prosecute environmental crimes in EJ communities.
    - Orders greater communication between EPA's civil and criminal staff.
    - Early identification of and outreach to victims of environmental crimes.



# Legacy Regulatory Actions

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# CAFE Standards

- Safer Affordable Fuel Efficient Vehicles (SAFE) Rule Litigation
  - The SAFE rule rescinded the waiver EPA granted California to regulate vehicle GHG emissions and to implement a zero-emission vehicle program; and also finalized new standards for corporate average fuel economy (CAFE) and carbon dioxide emissions for passenger vehicles and light-duty trucks for model years 2021-2026.
  - Environmental groups challenged the rule in the D.C. Circuit.
  - DOJ requested that the court hold the consolidated cases in abeyance as the EPA looks a review of the rule; the court granted this request on February 8, 2021.
  - NHTSA proposed a rule on April 22<sup>nd</sup> stating it lacks authority to preempt California's waiver and that it disagrees with the legal analysis underpinning the One National Program rule (i.e. SAFE Part 1). If finalized, this rule will erase the legal justification of SAFE Part 2 and nullify it, according to NHTSA.
  - Going forward, it is highly likely that the CA and federal standards will be more closely aligned.



## On the Horizon

- Fuel economy and emissions
  - Proposal reportedly coming out early August 2021
    - 2022: Status quo
    - 2023-2024: 3.7% increase
    - 2025: 5% increase
    - 2026: 6-7% increase
    - 2027 onward: Aggressive enough to support goal that 40% of new-vehicle sales be EVs

# PM NAAQS

- EPA has [announced](#) intent to reconsider the Trump Administration's decision to retain the 2012 PM NAAQS.
  - “[A]vailable scientific evidence and technical information indicate that the current standards may not be adequate to protect health and welfare, as required by the Clean Air Act.”
- Final rule projected for Spring 2023.
  - EPA is planning streamlined process where Agency will develop a supplement to the 2019 integrated science assessment, rather than start from scratch.
  - EPA [sought nominations](#) for special PM panel to assist the Clean Air Scientific Advisory Committee (CASAC).
- In June, a coalition of 74 groups submitted a [letter](#) to EPA calling for expeditious reconsideration of the current ozone and PM NAAQS.

# Ozone NAAQS

- The Trump Administration ozone rule retained the 2015 Obama ozone NAAQS of 70 ppb.
- Environmental groups are advocating for expedited and streamlined reconsideration in line with EPA's announced plans for reconsideration of the PM NAAQS.
  - But some experts assert that PM should remain a higher priority as compared to ozone.
  - If EPA does not undertake expedited review, there is a chance the reconsideration would not be finalized by the end of Biden's current term.

# Practicalities & Takeaways

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# Practicalities

- Legacy-setting regulations are going to be big, bold, and highly controversial/politically divisive/complex.
  - Environmental and EJ groups do not always share the same priorities and goals.
  - The industries are often divided on how to approach the decarbonization and energy transition trend.
  - States have unique energy, environmental, and budget priorities.
- EPA's Resource Dilemma
  - Time
  - Staff
  - Vision & Direction



# Practicalities

- Rulemakings can take 1-3 years depending upon their complexity or how controversial they are.
  - The agency issues a proposal and invites the public to submit comments.
    - This is a stakeholder’s best chance to robustly “litigate” their position.
    - Kitchen Sink Approach: Bring all the data, science, and legal arguments you have and throw them in.
  - The agency then reviews and responds the comments before issuing the final rule.
- Controversial rulemakings most often result in litigation, which can add further year(s) to the process.
  - The litigation is often based on comments/arguments presented during the public comment period.
  - Seriously consider the long-term benefits of intervening.





## Practical Considerations

- Is it time to update risk assessments?
- Is it time to increase the scope and frequency of your audit programs to stay ahead of the changing regulatory and enforcement initiatives?
- Is it time to update company messaging and strategy in light of the new administration's emphasis on climate change and EJ?
- Is it time to reassess intervention strategies for future litigation?
- Is it time to (re)introduce the company to regulators and policy makers?



## Takeaways

- “Science” is the tiebreaker in policy decisions.
- Stakeholders should work to get their feet in the door at the outset of regulatory activity in an area of interest.
- Audiences could include state/federal regulators, members of Congress, or the White House.
  - With a change of the guard, introductions are in order.
- In the short-term, keep an eye out for shifts in federal agencies’ budgeting, permitting, and enforcement priorities.

# Thank you!



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