No Reverse Gear

The automobile industry has more than doubled fuel efficiency under the Corporate Average Fuel Economy program and is set to double it again by 2025. That is, until President Trump attacked the most successful ever greenhouse gas reduction program.

On a sweltering day in the summer of 2011, President Obama unveiled auto mileage and emissions standards that, if properly enforced, will deliver a new car fleet in 2025 averaging 54.5 miles per gallon. Combined with his earlier clean-car rules, they are already making America more secure by shrinking its reliance on imported oil. The standards are protecting the economy by saving consumers billions at the gas pump and deeply cutting the petrodollars that flood the coffers of off-shore oil producers. And the Obama plan remains the biggest single step any nation has taken to fight global warming.

Fueled by anti-regulatory fervor, the Trump administration—barely seven weeks in office—opened the door to weaker standards, with automakers lobbying for new and expanded loopholes. The industry is pushing for initial changes to lop 147 million barrels a year, or 10 percent, off the amount of oil the program would save. And it has launched an aggressive campaign to undercut the standards even further, threatening to use a rulemaking to unwind them. What’s more, it is eyeing the prospects of legislation to weaken the Clean Air Act and eliminate California’s Section 209 exception from preemption that has driven standards for emissions ever since the statute was enacted.

Never mind that the manufacturers’ reliance on gas-guzzling trucks bought the industry a near-death experience in the Great Recession, with General Motors and Fiat-Chrysler receiving $85 billion in taxpayer bailouts to overcome bankruptcies. Today, the domestic auto industry remains unrepentant in its focus on selling the same sort of road hogs that brought it to the brink. Automakers (domestic and foreign) continue devoting a large chunk of their $15 billion annual advertising budgets to persuading consumers to buy SUVs, pickups, and minivans — on which the companies generally charge the greatest markup. But with the Obama administration in the rear view mirror, the mileage-and-emissions rules — the centerpiece of the nation’s critical mission to contain global warming — are in the hands of a new president who has proclaimed climate change a hoax. Over the life of the program, the rules will save the United States 12 billion — yes, billion — barrels of oil and slash carbon dioxide emissions by 6 billion tons, while saving consumers nearly $1 trillion at the pump. To attack and weaken them can only bring the gravest risk to the nation’s long-term energy, economic, and climate security — and to the health and wealth of people and the planet.

Forty-three years ago, the nation woke up to its reliance on imported oil and the national security implications of that reliance — if not to the then-little-considered threat of a warming planet — when the Organization of Petroleum Exporting Countries jacked up oil prices 70 percent, cut production, and embargoed petroleum shipments to the United States in response to the nation’s support of Israel in the 1973 Middle East war. Lines snaked out of gas stations as motorists waited for limited supplies. But the domestic auto industry, defending its gas guzzlers, fought Congress’s proposal to provide relief: The awkwardly named Cor-

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porate Average Fuel Economy standards, or CAFE law. In testimony delivered before Congress in 1974, Ford Motor Co. said: “This proposal would require a Ford product line consisting of either all sub-Pinto-sized vehicles or some mix of vehicles ranging from a sub-compact to perhaps a Maverick.”

As they have when faced with other environmental or safety improvements sought by government regulators — seat belts, catalytic converters, and air bags, to name just three that are now standard equipment in every new vehicle — the auto chiefs came up with alternative facts, whining that they were being asked to take a step too big, either because they lacked the technology; the costs would be too great, or consumers would reject them.

Brushing aside industry objections, Gerald R. Ford signed the legislation in 1975. That it was President Ford who signed the bill is significant: He was a Republican who had led his minority party in the House of Representatives while serving a Rust Belt district in auto-centric Michigan. Bipartisan majorities of Americans supported the legislation and over the years continued to support improvements in the measure. Its congressional champions have included Republicans across the political spectrum, such as John McCain of Arizona and some of the most conservative members of the Senate, among them Slade Gorton of Washington, who co-sponsored legislation in the 1990s that would have raised fuel economy for cars and light trucks 40 percent over a decade.

Intended to improve gas mileage, and thus reduce demand for imported oil, the rules performed exactly as designed: Before the rules took effect, gas mileage had actually decreased 10 percent since 1950, while the number of passenger cars grew by 170 percent. But with the new rules, average fuel efficiency for cars doubled, going from 13.8 mpg in 1975 to 27.5 mpg in 1989, saving approximately 3 million barrels of oil a day. But then Congress and successive administrations, bowing to auto industry lobbying, put on the brakes, preventing any meaningful improvements in the rules for two decades.

As they have for 40-plus years, rules have applied weaker gas mileage requirements to SUVs, pickups, and minivans than to conventional passenger cars, so the manufacturers can sell these “light-duty trucks” with cheaper, outdated engines, transmissions, and other technology compared with cars’ equipment. By the time Obama took office, the industry had been riding the less-taxing truck loopholes for 20 years and gas guzzlers had become entrenched as the mainstay of the industry.

Even today, the more stringent rules brought in by Obama notwithstanding, Ford’s biggest seller is its F-series pickup truck, as it has been for years. So much for the sub-Pinto-sized fleet.

When the initial standards were written in the 1970s, trucks were thought to be largely irrelevant in the gas-mileage equation. The pickups, work vans, and rough-hewn SUVs had been only a small part of Detroit’s lineup for decades. Passenger cars carried people; pickups hauled lumber, vans served plumbers and electricians, and the four-wheel-drive Jeeps and similar vehicles that morphed into today’s SUVs were used for off-road work, not recreation or transportation. But by the 1990s, the industry had shifted the vehicle mix. Where trucks had made up 16.4 percent of the fleet on American roads in 1980, they reached 38.1 percent in 1994 and 44.9 percent 10 years later. Vehicles that were designed to carry cargo were now hauling nothing heavier than a Gucci briefcase and a Frappuccino. And the proliferation of trucks has only grown: Their share of the U.S. fleet has topped 50 percent in several recent years.

What drove the change? Simply put, money. Automakers make bigger profits on thirsty SUVs and other light trucks than on cars. Because the trucks were allowed at the time to meet weaker rules for safety, Clean Air Act criteria pollutant emissions, and fuel economy, Detroit gloomed onto them as an easy way to boost per-vehicle profit, charging premium prices for antiquated technology but lots of cup holders. Automakers drove an increasing share of their production through the light-truck loophole, cutting costs and driving up short-term profits. Opening the window of opportunity written into law, the industry spent billions in advertising to persuade American drivers that nothing would get the kids to soccer practice or the lawyer to the office with the panache of an over-powered, under-engineered, DVD-playing, gas-guzzling truck.

Against that background — and facing a Washington political scene dominated by auto industry lobbyists, a recalcitrant Congress, and three successive presidents who had refused to increase the standards — the environmental community still won toughened mileage-and-emissions rules. Greens relied on a triad of elements: Choose a tough, but achievable goal and stick to it; fight where you can win — in this case, Cali—

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Detroit’s Push for Rollback a Return to Form

Courts have extended constitutional protections including First Amendment rights to business firms using the legal fiction of corporate personhood. So why shouldn’t corporate persons also be judged for matters of veracity by the same criteria we use when judging actual people?

To a journalist who follows the automobile industry, the question of credibility seems especially apposite as automakers seek to open up, delay, and undo Corporate Average Fuel Economy rules agreed to in 2011 that mandated automakers achieve fleet-wide fuel economy of 54.5 miles per gallon by 2025. Once again, the industry is dissembling in pursuit of what it sees as its own advantage.

In the afterglow of GM and Chrysler having received federal bailout money, carmakers said they couldn’t wait to start building greener vehicles, though they managed to insert a mid-term review provision. Yet despite the fact that they were ahead of schedule to meet the standards, at a cost lower than originally predicted, they took the occasion of the election to launch a campaign against CAFE.

Relaxing the standards would allow them to build more of the less efficient but highly profitable SUVs they love to sell. In this fundamental dishonesty and short-sightedness, it reminds this veteran industry-watcher of nothing so much as all the other untruths the industry has told during a century fighting against innovation in auto safety, fuel economy, and emissions controls.

In January, Ford Motor Co. CEO Mark Fields said that because of changed market conditions, 1 million jobs were suddenly at risk owing to the standard agreed to six years ago. He offered the most meager of evidence: a slapdash industry-sponsored study quickly condemned by independent analysts and many automotive suppliers as resting on grossly inflated cost estimates and unduly negative assumptions.

But absurd as Fields’s claim was, it is worth remembering that it fell squarely in the ludicrous tradition of former Ford Motor Co. chief executive Henry Ford II, who predicted even more ominously in 1969 that the company would be forced to shut down within the year if the Clean Air Act of 1970 passed. That legislation — which we can thank for the avoidance of millions of premature deaths from air pollution — had no such deleterious effect. Nor did it necessitate, as General Motors’ Ed Cole had also predicted, layoffs of half a million employees.

Those were hardly the first or only times the automobile industry’s biggest players stood on the wrong side both of history and veracity.

In the 1920s, GM — in partnership with DuPont and Standard Oil of New Jersey (today’s ExxonMobil) — introduced for sale a new invention, leaded gasoline. They wildly overstated its virtues while denying the obvious hazard of a deadly neurotoxic heavy metal that never biodegrades. In the 1930s, GM chairman Alfred Sloan refused as an unnecessary cost installing a new discovery, safety glass. During World War II, Ford and GM maintained industrial relations with Nazi Germany.

In the 1950s, with the discovery of smog as a public health concern, automakers fought the very notion that cars were a meaningful source of air pollution, when the truth was well known to them. Then, they delayed for years the adoption of a simple and long-known technology, the PCV valve — which returns crankcase blow-by emissions to the engine for combustion — until 1963, before spending the rest of the 1960s fighting California air regulators and Congress over what became the CAA. In the process, they repeatedly denied any ability to meet its provisions, but only by curiously forgetting to reveal the existence of the catalytic converter, a device they’d known of for years.

Also, in the 1960s, carmakers fought the adoption of laws mandating the use of seatbelts, testifying in New York state and elsewhere that the very cost of installing seatmooring was too onerous (overstating the cost by a factor of ten) and that people were better off being thrown from cars in accidents, when their own research told them otherwise. Losing the seatbelt fight, they continued in the 1970s and 1980s fighting laws requiring airbags, again citing unbearable cost to consumers and massive job losses in the industry, neither of which came to pass. In the 1990s, they denied the existence of global warming and pooh-poohed electric cars.

This latest retrograde effort marks an unfortunate return to form. Automakers have never met a regulation they didn’t care to eliminate or water down. In service of this bias, they will swear the sky is falling. But knowing what kind of corporate persons they are, we should be used to this by now and needn’t believe their words.

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ultimately been approved. Because California’s power
fully four dozen requests for auto pollution waivers have
waiver from preemption. Over the years, all of its near
auto emissions rules and standards if EPA gives it a
sions standards. But California may establish its own
states are preempted from setting their own auto emis
stantially worse than that of any other state, required
ognized that California’s extensive air pollution, sub
Court had ruled on global warming.

Step by step, the environmentalists’ strategy paid
off: The Section 177 clean-car states adopted Califor
Pavley rules over a five-year period beginning in
2002, which forced automakers to reduce fleet-wide
carbon emissions by 25 percent by 2016. The corpo
accountability campaign helped lower the reputa
tions of laggard companies. Nissan broke ranks, sup
supporting improved rules. Congress passed legislation in
2007 that set CAFE standards at 35.5 mpg for the
2020 fleet of new vehicles. President George W. Bush
signed it.

As the Obama administration arrived, the auto in
industry was in a precarious position. The recession posed
existential challenges for some companies. Across the
industry, companies had spent years building a market
for trucks, rather than developing an efficient fleet. So,
when the economy tumbled, the gas guzzlers they were
trying to unload had little appeal to the Americans
who could afford new cars. EPA determined that car
bon dioxide did indeed pose a danger. The administra
tion granted California a waiver, allowing the state to

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Consumers Are in the Driver’s Seat

In 2007, the Supreme Court decided in Massachusetts v. EPA that greenhouse gases are a pollutant under the Clean Air Act. In late 2009, EPA made a finding that greenhouse gases threaten public health and welfare and that emissions from motor vehicles contribute to that threat. These two events triggered a process that has come under increased scrutiny in the past few months, as the automakers endeavor to develop technology to meet regulatory goals while producing vehicles that consumers will buy.

A year after the endangerment finding, President Obama asked EPA and the National Highway Traffic and Safety Administration to develop “a coordinated national program” under the CAA and the Energy Independence and Security Act of 2007. The coordinated program was intended to address NHTSA’s requirement to set Corporate Average Fuel Economy standards, EPA’s desire to regulate greenhouse gases, and California’s auto emission regulations set by the California Air Resources Board. The goal of the One National Program was to improve fuel efficiency and reduce greenhouse gas emissions of passenger cars and light-duty trucks starting with model years 2012–16.

Subsequently, EPA and NHTSA jointly issued a final rule in late 2012 that laid the groundwork for very stringent auto standards in model years 2017–25. By 2025, average fuel economy was estimated to roughly double to just below 55 miles per gallon. The ONP had the support of California and 13 major auto manufacturers, the United Auto Workers, and environmental groups.

Why was there support by major auto manufacturers for the ONP? It allowed them to build a single fleet of vehicles that could be sold throughout the United States and satisfy not just federal standards but also California’s requirements, which other states can adopt.

At its inception, the success of the ONP was contingent on California’s “deeming” the federal standards as compliance with the state’s regulations and inclusion of a transparent and robust mid-term evaluation that would assess the appropriateness (and achievability) of the later-year standards.

During the evaluation, it was envisioned that EPA, NHTSA, and CARB would consider several factors, including powertrain technology advancement, vehicle electrification, light-weighting and vehicle safety impacts, fuel-efficient-technology penetration in the marketplace, consumer acceptance of advanced technologies, fuel price trends, and vehicle fleet and employment impacts.

As part of the evaluation, the federal agencies and California jointly published a Technical Assessment Report in July. What became apparent during review of the TAR was the degree to which the Alliance of Automobile Manufacturer’s technical assessments were not in agreement with those of the federal agencies. To make matters worse, EPA’s and NHTSA’s technical assessments were at odds with each other.

After the election, EPA rushed to issue a proposed determination on GHG standards that stated the 2022–25 standards remain appropriate so no changes were warranted. The alliance asked for an extension or a withdrawal of the proposed determination; both were denied. With no other options, the alliance submitted comments on the proposal in December.

In January, EPA announced its final determination, stating no change in stringency was appropriate for the 2022–25 GHG standards. The announcement occurred more than a year in advance of the deadline and was out-of-sync with NHTSA’s de novo rulemaking to set CAFE standards for the same model years. Under administrative law and procedures, the process was fundamentally flawed.

The alliance sent a letter to EPA the next month, asking Administrator Scott Pruitt to withdraw the final determination, get the mid-term evaluation back on track, and coordinate with NHTSA. On March 22, EPA issued a Federal Register notice stating its intent to reconsider the final determination.

Nonetheless, CARB held its own mid-term evaluation hearing at which staff recommended and the board unanimously approved supporting EPA’s final determination, with no change in the stringency of GHG standards. The board instructed CARB staff to advise it if there were any subsequent changes in the federal GHG standards for the same model years.

As of press time, we simply do not know if the mid-term evaluation will turn out to be the collaborative, data-driven, and transparent process the auto manufacturers expected when they signed onto the One National Program. However, auto manufacturers continue to reiterate their willingness to support stringent standards that fully account for consumer trends and technological costs based on the most recent data.

Susan Conti is assistant general counsel for the Alliance of Automobile Manufacturers.

Sidebar

Susan Conti

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proceed with its own CO₂ emissions rules that were tougher than the federal CAFE standards.

And down the road, automakers feared the possibility that California would repeatedly tighten the rules and bring New York and the other Section 177 states along. The industry found itself facing the costs of its decades of bad decisions; its years of opposition to strong gas-saving standards crumbled, and it agreed to bargain. His hand strengthened by the bailout he delivered, President Obama, practicing the art of the deal, advanced the deadline for the 35.5 mpg standard from 2020 to 2016, and, ultimately, established the emissions rules that would deliver a new car fleet in 2025 averaging 54.5 mpg. That is roughly a doubled doubling of the fleet average before the first CAFE rules took effect.

The program drew applause from auto industry CEOs who sat behind President Obama as he announced it that day in 2011. Leading environmentalists also praised it. Ray LaHood, a former Republican member of Congress who had represented a Rust Belt district in Illinois before becoming Obama’s transportation secretary, set the tone in 2010 when he declared of a tougher standard: “This will be win, win, win. It will reduce reliance on oil, strengthen energy security, and mitigate climate change.” Thirteen major automakers, including General Motors, Ford, and Chrysler, took part in the negotiations that produced the rules. “Customers want higher fuel efficiency in their cars and trucks, and GM is going to give it to them,” Greg Martin, a senior GM spokesman, was quoted in the Washington Post when the rules were finalized in 2012.

The automakers’ top officials signed individual letters of commitment to the heads of EPA and the Department of Transportation stating that each company “fully supports proposal and adoption” of the Obama program. In contrast to their public support of the rules, however, industry lobbyists demanded and won a review, beginning in 2016, that would examine the program’s progress and the feasibility of its goals.

Tellingly, they privately referred to the mid-term evaluation as the “off-ramp.” In their letters to the two agencies, they held out the right to “contest” the rules but only “as part of or in response to” the review. Under the agreement the auto industry reached with the president’s negotiators, EPA and NHTSA would have until mid-2018 to complete the review. After months of exhaustive engineering and cost analyses, the agencies finished the most critical step, which was known as the “technical assessment report,” by the summer of 2016. That evaluation determined that the companies possess ample, cost-effective technology to meet the standards. The agencies spent the next six months reviewing the industry’s and others’ critiques of the assessment and finalized the mid-term evaluation one week before Obama left office. They determined that no change — either strengthening or weakening — should be made. In the words of Janet McCabe, EPA’s senior air pollution official at the time, “Automakers are developing more technologies to improve fuel economy and reduce greenhouse gas emissions than we thought possible a few years ago.”

But on March 15, Trump’s EPA opened the door to weakening the standards. Egged on by automakers’ false claims that the rules would cost the whole industry 1 million jobs — the Detroit 3 employ only 900,000 among them — it ordered a reconsideration of the rules. The carmakers regularly claim they can’t build vehicles that are both safe and efficient. They’re wrong. Efficiency comes from available technology — improved engines, transmissions, tires, and aerodynamics. Safety comes from such existing technology as airbags and from automotive architecture that absorbs crash forces and protects the occupants. Despite popular assumptions, vehicle weight does not inherently protect occupants. Indeed, masses of metal and stiff pickup construction increase damage to other vehicles.

Similarly, the industry, which spends billions of dollars on advertising telling consumers what to buy, cynically whines that its production of light-duty trucks reflects the pressure of customer choice. The industry also cites studies it funded that claim the rules could add far more than the agencies estimate to new-car sticker prices, putting its products out of some buyers’ reach. But its inflated estimates are dwarfed by the $4,000 each car owner will save, on average, by needing less fuel. Although it also argues that the rules will cost huge numbers of jobs, in fact the industry has added nearly 700,000 jobs since 2009, when Obama began implementing his initial phase of clean-car standards. So, the rules — to which the industry agreed — provide the right balance: Jobs, affordability, oil savings, and cleaner air, all in an increasingly safe package.
The industry may not have been overjoyed all along by the upgraded rules it accepted under the Obama administration, its statements of endorsement notwithstanding. But the car companies held off proposing steps that would weaken the rules beyond a pre-election list of loopholes they sought to expand.

The mileage-and-emissions improvements that the Obama administration’s standards generated gave carmakers a kick start in a direction they needed to go for their own preservation. The tougher rules enable the companies to compete with foreign manufacturers who had built market share with cars that offered a real advantage in fuel-economy improvements. They gave domestic automakers certainty about the mileage-and-emissions standards they would be required to meet over the coming decade and beyond — a critical element in planning models and production schedules. And because they already had to make clean cars for the European Union, China, Japan, and South Korea, making clean vehicles for the U.S. market helped improve economies of scale. Their protests notwithstanding, today, nearly a decade after their near-death experience, the auto companies are making huge profits and selling record numbers of vehicles.

Whatever his thoughts on global warming, does President Trump — if he takes the long view — want to undo the far-reaching benefits of the gas-saving rules? That course would increase Americans’ costs at the pump and our reliance on oil from unreliable suppliers around the world, while leaving the domestic auto industry in a weaker position to compete with foreign manufacturers.

Eliminating the CAFE program entirely would unfetter the states from preemption, leaving the auto companies facing a range of requirements around the country. That would pose an impossible situation for an industry building a product for a national market. It would also leave the question of future rules — written either by the states or a future administration — up in the air. No business dependent on accurate long-range planning wants to live with that regulatory uncertainty, and the auto companies are no exception.

Besides, Michelle Krebs, senior analyst at Autotrader, said, abandoning CAFE “wouldn’t stop them from having to develop fuel-efficient, clean vehicles for the rest of the world,” where they would still have to meet strict environment standards. “They’re so far down the road” in developing cleaner cars, she said, according to the Los Angeles Times, “that they would have little to gain if Congress and Trump kill CAFE. ‘Are they going to rip up their entire product plans? No, because these are global companies.’

A joint effort by the Trump administration and industry to write new rules would come up against multiple obstacles, beginning with the time new rule-making would take: Perhaps two years to complete, with lawsuits almost certain to follow. All this could quite possibly drag out the start date beyond the end of the current presidential term. Seeking legislation to amend the CAA and revoke California’s Section 209 exception from preemption or bar other states’ Section 177 option to adopt California’s standards would likely provoke a Senate filibuster.

When it comes to the government rules under which the auto industry operates, the importance of certainty cannot be overestimated. Carmakers are now completing plans for 2019 — and 2020 models are on the drawing boards. Do companies want to gamble that the rules for those years — or even for the early 2020s, on which some designers are already at work — will change? And what happens if a new administration is elected in 2020 that decides to return to the Obama rules, or make them tougher to make up for lost ground as global warming grows worse?

In 2008 the industry was hit with a double whammy: The recession forced potential buyers out of the market, and high gasoline prices led many who were still able to shop for cars to search for the most economical models. Where did they find them? In the showrooms of foreign carmakers who had put a premium on designing and producing efficient cars. The thirsty SUVs and other light trucks on which the domestic industry had staked its fortune sat unwanted week after week on dealers’ lots.

For all those reasons, American automakers may want to be careful what they wish for as they consider cutting a deal with President Trump to block the road to a cleaner automotive future. And the long-range threat each obstacle could pose to the economic health of the domestic auto industry should give the administration pause before it takes a big step backwards. Nonetheless, the Trump administration appears ready to shift into reverse. TEF

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