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Via <http://www.regulations.gov>

Thank you for the opportunity to comment¹ on the Environmental Protection Agency's (EPA) reconsideration of its Final Mid-Term Evaluation of greenhouse gas emission standards for model year 2022-2025 light duty vehicles.²

This comment letter addresses four topics on which EPA and the National Highway Traffic Safety Administration (NHTSA) have requested public comment:³

- The impact of the greenhouse gas emission standards on the Corporate Average Fuel Economy standards and a national harmonized program.
- The impact of the standards on reduction of emissions, oil conservation, energy security, and fuel savings by consumers.
- The extent to which consumers value fuel savings from greater efficiency of vehicles.
- The impacts of the standards on automobile safety.

Summary

The Obama EPA's final Mid-Term Evaluation (MTE) is arbitrary, capricious, and an abuse of discretion. Reconsideration is necessary to restore regular order and repair the damage to what should be a harmonized, national program. However, a more fundamental fix is required for the underlying malady—automakers are subject to three sets of fuel economy standards by three agencies operating under three statutes. The solution is to return to the statutory scheme Congress enacted. Congress provided no authority for EPA to regulate fuel economy and

¹ Note to readers: This version of the comment letter corrects some typos the authors did not catch before submitting it to EPA.

² National Highway Traffic Safety Administration (NHTSA) and Environmental Protection Agency (EPA) Request for Comment on Reconsideration of the Final Determination of the Mid-Term Evaluation of Greenhouse Gas Emissions Standards for Model Year 2022–2025 Light-Duty Vehicles and Model Year 2021 Greenhouse Gas Emissions Standards, 82 FR 39551, August 21, 2017, <https://www.gpo.gov/fdsys/pkg/FR-2017-08-21/pdf/FR-2017-08-21.pdf>

³ 82 FR 39553

specifically preempted states, such as California, from adopting laws or regulations “related to” fuel economy. Moreover, fuel economy standards are a costly and inefficient means of reducing greenhouse gas emissions and oil consumption even if one assumes such goals are desirable. The claim that fuel economy standards are necessary because consumers fail to grasp or refuse to pursue their best interests is bureaucratic pretension. Worst of all, it is clear that fuel economy standards have impaired and continue to limit vehicle safety by constraining vehicle size and weight. Before the agencies impose any new standards whatsoever, they should first do a full accounting of the adverse impacts of previous standards on traffic deaths.

MTE’s Detrimental Impacts on National Harmonized Program

EPA’s reconsideration of the final Mid-Term Evaluation (MTE) is necessary to restore regular order to the agency’s rulemaking process and repair the so-called harmonized national program.

The final MTE adopted in the Obama administration’s rush of midnight regulations is arbitrary, capricious, and an abuse of discretion. The following history makes that clear.

In October 2012, EPA and NHTSA finalized a joint rule establishing greenhouse gas (GHG) and Corporate Average Fuel Economy (CAFE) standards for MY 2017 and later motor vehicles.⁴ Due to the rule’s long timeframe, the joint rule committed the agencies to undertake a Mid-Term Evaluation (MTE), allowing them to adjust the MY 2022-2025 standards in light of new information regarding technology, compliance costs, fuel prices, consumer acceptance, job impacts, and other relevant factors.

In addition, NHTSA lacks authority to establish fuel economy standards for more than five consecutive years. Accordingly, NHTSA acknowledged that it has a “statutory obligation to conduct a de novo rulemaking in order to establish final standards for MYs 2022–2025.”⁵

When EPA, NHTSA, and the California Air Resources Board (CARB) issued their Draft Technical Assessment Report for the MTE in July 2016,⁶ EPA officials told automakers that it would issue a draft MTE in mid-summer 2017 and finalize the evaluation by April 1, 2018.⁷ That tallied with the official explanation and accompanying chart posted on NHTSA’s Web site in July 2016.⁸

⁴ EPA and NHTSA, 2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards; Final Rule, October 15, 2012, 77 FR 62624, <https://www.gpo.gov/fdsys/pkg/FR-2012-10-15/pdf/2012-21972.pdf>

⁵ 77 FR 62628

⁶ EPA, California Air Resources Board, NHTSA, Draft Technical Assessment Report: Midterm Evaluation of Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards for Model Years 2022-2025, July 2016, <https://nepis.epa.gov/Exe/ZyPDF.cgi/P100OXEO.PDF?Dockkey=P100OXEO.PDF>

⁷ Mitch Bainwol, President and CEO, Alliance of Automobile Manufacturers, Letter to EPA Administrator Gina McCarthy, December 8, 2016, <http://www.autonews.com/assets/PDF/CA108224128.PDF>

⁸ NHTSA, Light-Duty CAFE Midterm Evaluation, Model Years 2022-2025, <https://www.nhtsa.gov/corporate-average-fuel-economy/light-duty-cafe-midterm-evaluation>



Ditching those plans without warning, EPA instead proposed its final MTE on November 30, 2016.⁹ The agency allowed the public only 30 days to comment on the 268-page proposal and 719-page technical support document (TSD).¹⁰ Despite receiving more than 100,000 comments, EPA finalized the MTE only two weeks after the comment period closed.¹¹ There was no statutory justification for the agency’s rush to judgment, since the final determination was not due until April 1, 2018.¹² This was clearly a case of political rulemaking undertaken to confront the incoming Trump administration with a regulatory fait accompli.

Abandoning regular order in this manner was arbitrary, capricious, and an abuse of discretion. Stakeholders did not have adequate time to prepare detailed technical comments on the proposal and TSD, and the agency did not have adequate time to review all significant comments. Changing plans at the last minute constituted a lack of transparency at best and misrepresentation at worst.

More importantly, EPA’s solo MTE determination made a mockery of the so-called harmonized national vehicle program. In the October 2012 rulemaking, EPA and NHTSA committed to coordinate their respective MTEs and finalize them “concurrently”:

⁹ EPA, Proposed Determination on the Appropriateness of the Model Year 2022-2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation, November 2016, <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100Q3DO.pdf>

¹⁰ EPA, Proposed Determination on the Appropriateness of the Model Year 2022-2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation: Technical Support Document, November 2016, <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100Q3L4.pdf>

¹¹ EPA, Final Determination on the Appropriateness of the Model Year 2022-2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation, January 2017, p. 1, <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100QQ91.pdf>

¹² 77 FR 62787

In order to align the agencies proceedings for MYs 2022–2025 and to maintain a joint national program, EPA and NHTSA will finalize their actions related to MYs 2022–2025 standards concurrently.¹³

As the Alliance of Automobile Manufacturers observed in a December 8, 2016 letter to former EPA Administrator Gina McCarthy:

Clearly, EPA and NHTSA now are on different tracks. As the Alliance has stated publicly, and reiterate here, the two pillars of the joint 2012 GHG and Fuel Economy Rule, since the beginning, has been the concept of One National Program and the equally important commitment to a rigorous, fact-based MTE. EPA's early action has compromised both pillars: there is now neither a harmonized, single national program, nor the appearance of a credible midterm review.¹⁴

As the Alliance further explained, EPA's "early action" compelled NHTSA to choose between two unacceptable options: (1) produce an independent evaluation that "may be substantially different and not at all harmonized with EPA's determination," or (2) "align itself with EPA's determination regardless of the existence of facts and analyses that would suggest the need for a different outcome." Bottom line: "Either way, the process now bears no resemblance to the coordinated effort that was envisioned in the midterm evaluation."

Corrective action such as the current reconsideration is clearly warranted to fix the mess created by the previous administration.

However, restoring regular order is not a long-term solution to the deeper malady, namely, automakers' subjection to three sets of standards administered by three agencies under three different statutes. We urge the administration to explore options to restore the statutory scheme Congress created when it enacted the Energy Policy and Conservation Act of 1975, the nation's original fuel economy law.

Motor Vehicle GHG Standards Are De Facto Fuel Economy Standards

Motor vehicle greenhouse gas standards implicitly and substantially regulate fuel economy. As EPA and NHTSA stated in their first joint rule, carbon dioxide (CO₂) constitutes 94.9 percent of vehicular GHG emissions, and "there is a single pool of technologies ... that reduce fuel consumption and thereby CO₂ emissions as well."¹⁵ Greenhouse gas and mileage standards are

¹³ 77 FR 62784

¹⁴ Bainwol, *Ibid.*

¹⁵ EPA, NHTSA, Light Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule, 75 FR 25372, May 7, 2010, <http://www.globalwarming.org/wp-content/uploads/2011/08/Final-Tailpipe-Rule.pdf>

so intimately related that EPA, NHTSA, and CARB use vehicular CO₂ emissions to calculate fuel economy standards.¹⁶

Another telling piece of evidence is CARB's 2004 Staff Report presenting the agency's plan to implement AB 1493, the state's GHG motor vehicle emissions statute.¹⁷ All of CARB's recommended technologies for reducing vehicular GHG emissions are fuel-saving technologies.

Even the text of AB 1493 implies that CARB is to regulate fuel economy.¹⁸ CARB's GHG standards are to be "cost-effective," defined as "Economical to an owner or operator of a vehicle, taking into account the full life-cycle costs of the vehicle." CARB reasonably interprets that to mean the standards must reduce lifetime vehicle "operating costs" more than they increase showroom sticker prices.¹⁹ The overwhelming lion's share of "operating expenses" are expenditures for fuel. CARB cannot regulate motor vehicle GHGs in a cost-effective manner unless it regulates fuel economy.

The triune regulation of fuel economy makes for an inherently unstable scheme. Although EPA has no statutory authority to regulate fuel economy and (as explained below) federal law actually prohibits CARB from regulating fuel economy, those agencies effectively control the stringency of fuel economy standards via their regulation of vehicular CO₂ emissions.

Moreover, given their institutional biases and ideological constituencies, EPA and CARB have strong incentives to defy the requirements of "coordination" and "harmony" when those formalities thwart their regulatory agendas. Indeed, the Obama administration deputized CARB to regulate fuel economy precisely because its regulatory ambitions exceed those of NHTSA, the only agency authorized by Congress to prescribe fuel economy standards. Worse, by authorizing California and allied states to adopt their own quasi-fuel economy standards, the Obama EPA empowered CARB to bully and intimidate the auto industry.²⁰

The Patchwork Threat

In July 2009, EPA granted California a waiver authorizing the state to establish its own motor vehicle GHG standards program.²¹ The waiver confronted the financially distressed auto industry

¹⁶ EPA, NHTSA, CARB, Interim Joint Technical Assessment Report, Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards for Model Years 2017-2025, September 2010, https://www.arb.ca.gov/msprog/clean_cars/lDV-ghg-tar.pdf

¹⁷ California Air Resources Board, Staff Report: Initial Statement of Reasons for Proposed Rulemaking, Public Hearing to Consider Adoption of Regulations to Control Greenhouse Gas Emissions from Motor Vehicles, August 6, 2004, <https://www.arb.ca.gov/regact/grnhsGas/isor.pdf>

¹⁸ The text is available at https://en.wikisource.org/wiki/California_AB_1493

¹⁹ CARB, Staff Report, p. 148

²⁰ Marlo Lewis, "EPA Regulation of Fuel Economy: Congressional Intent or Climate Coup?" *Engage*, Volume 12, Issue 3, November 2011, <http://cei.org/sites/default/files/Marlo%20Lewis%20-%20EPA%20Regulation%20of%20Fuel%20Economy%20-%20Congressional%20Intent%20or%20Climate%20Coup.pdf>

²¹ EPA, California State Motor Vehicle Pollution Control Standards; Notice of Decision Granting a Waiver of Clean Air Act Preemption for California's 2009 and Subsequent Model Year Greenhouse Gas Emission Standards for New

with the existential threat of a market-balkanizing fuel economy “patchwork.” That might seem strange. Wouldn’t there be only two sets of standards, California and federal, as is the case for other motor vehicle emission standards? On paper yes, but in practice, there could be as many different fuel economy regimes as there are states adopting the California standards.²²

Unlike other motor vehicle emission standards—but exactly like the fuel economy standards they mimic—motor vehicle GHG standards apply not to each vehicle but to entire fleets or segments of fleets *on average*. Under Section 177 of the Clean Air Act, whenever EPA grants California a waiver to adopt separate vehicle emission standards, it simultaneously enables other states to opt into the California program. The 2009 waiver thus deputized those states, too, to implicitly regulate fuel economy.

Automakers sell different mixes of vehicles in each state because consumer preferences differ from state to state. Consequently, if all 50 states opted into the California program, automakers would have to reshuffle the mix of vehicles delivered for sale in each state to achieve the same average grams CO₂ per mile—the same de-facto fuel economy—as required in California. Manufacturers would have to manage 50 separate fleets. The result would be market chaos and the death of the U.S. auto industry.

Having thus imperiled the auto industry, the Obama administration then made auto companies an offer they could not refuse. In closed-door negotiations run by Obama climate czar Carol Browner, auto companies agreed to support EPA’s GHG motor vehicle emission standards and CARB’s newfound role as fuel economy regulator in return for the assurance that California and other states would accept compliance with EPA’s standards as compliance with their own.²³ Circumstantial evidence also suggests the Obama administration conditioned the availability of bailout money on automakers’ support for a new “National Vehicle Program” jointly administered by EPA, NHTSA, and CARB.²⁴

The Preemption Solution

Restoring regular order to the standard-setting process is the immediate necessity. However, as a long-term objective, EPA should seek to liberate the auto industry from fear of the fuel economy “patchwork” that empowers CARB to push NHTSA (and EPA) to continually ratchet up fuel economy standards regardless of vehicle affordability and consumer acceptance. Whenever CARB deems NHTSA’s standards insufficiently ambitious, it threatens to walk away from the

Motor Vehicles; Notice, 74 FR 32744, July 8, 2009, <https://www.gpo.gov/fdsys/pkg/FR-2009-07-08/pdf/E9-15943.pdf>

²² National Automobile Dealers Association, “Patchwork Proven,” January 2009, <https://www.nada.org/WorkArea/DownloadAsset.aspx?id=21474838588>

²³ Colin Sullivan, “Vow of silence key to White House-Calif. fuel economy talks,” New York Times, May 20, 2009, <http://www.nytimes.com/gwire/2009/05/20/20greenwire-vow-of-silence-key-to-white-house-calif-fuel-e-12208.html>

²⁴ U.S. House of Representatives Committee on Oversight and Government Reform, Staff Report, A Dismissal of Safety, Choice, and Cost: The Obama Administration’s New Auto Regulations, August 12, 2012, <http://oversight.house.gov/wp-content/uploads/2012/08/CAFE-Report-8-10-12-FINAL.pdf>

“harmonized, national program,” leaving the auto industry vulnerable once again to the fuel-economy patchwork.

The nation’s original fuel economy statute holds the key to restoring a genuinely national program. The Environmental Policy and Conservation Act (EPCA) specifies that states “may not adopt or enforce a law or regulation related to fuel economy standards.”²⁵ That is a very broad statement of federal preemption. EPCA prohibits states not only from adopting or enforcing overt fuel economy standards but also from adopting such standards under other labels or packaged with other measures.

Unsurprisingly, when grilled about the matter at a House oversight hearing, three Obama administration officials—EPA Administrator Gina McCarthy, EPA transportation and air quality director Margo Oge, and NHTSA Administrator David Strickland—denied under oath that motor vehicle GHG standards and fuel economy standards are “related.”²⁶ They surely knew better, but could not acknowledge the obvious without admitting that CARB’s GHG standards are unlawful under EPCA.

However, facts are stubborn things, and in a recent letter to NHTSA fuel-economy chief James Tamm, CARB chair Mary Nichols acknowledged the close functional relationship between the two types of standards:

Indeed, although NHTSA’s CAFE standards do not constitute motor vehicle emission standards, they are closely related to EPA’s corresponding greenhouse gas emission standards for MY 2022 through 2025 passenger cars and light trucks.²⁷

Revoking the California waiver is no easy task but then neither is overturning the Clean Power Plan (CPP). The CPP and California waiver are two sides of the same coin—cornerstones of the Obama administration’s climate policy overreach, the one dealing with stationary sources, the other with mobile sources. To make America great again, the Trump administration should pursue rollback on both fronts. Indeed, it is the President’s duty, and that of every executive officer, to see that the laws be faithfully executed. The California waiver directly conflicts with the letter and intent of EPCA.

MTE’s Costly and Inefficient Reductions in Emissions and Oil Consumption

Here we call attention to a recent study by Julian Morris and Arthur Wardle of the Reason Foundation.²⁸ Using what they argue are more realistic compliance cost estimates than those of

²⁵ 49 U.S.C. 32919

²⁶ Marlo Lewis, “Why Obama Officials Had to Lie to Congress about Fuel Economy Standards,” November 8, 2011, <http://www.breitbart.com/big-government/2011/11/08/why-obama-officials-had-to-lie-to-congress-about-fuel-economy-standards/>

²⁷ CARB Chair Mary Nichols, Letter to NHTSA Fuel Economy Division chief James Tamm, September 17, 2017, <https://www.regulations.gov/contentStreamer?documentId=NHTSA-2017-0069-0140&attachmentNumber=1&contentType=pdf>

²⁸ Julian Morris and Arthur Wardle, CAFE and ZEV Standards: Environmental Effects and Alternatives, Reason Foundation, Policy Brief No. 144, August 2017, http://reason.org/files/cale_zev_standards_environment_alternatives.pdf

the Obama administration, the researchers conclude that federal CAFE standards are a woefully inefficient means of reducing either GHG emissions or oil consumption.

Regarding emission reductions, Morris and Wardle write:

Using NHTSA's lowest estimate for the annual cost of implementing the 2017–2025 standards, \$5.4 billion, and NHTSA's maximum estimate for reductions in carbon dioxide emissions over the period 2016–2028, 62 million metric tons/year, CAFE represents an implicit cost of \$87 per ton of carbon reduced. That is higher than most estimates of the “social cost of carbon” (SCC) and more than twice the SCC developed by the EPA for the federal government (but since rescinded by President Trump). It is also more than 100 times the average price of a ton of carbon dioxide traded on the Chicago Climate Exchange (CCX). Using a higher—and more realistic—estimate of annual cost of \$50 billion/year, and lower—but more realistic—estimate of emissions reduction of 50 million metric tons/year, CAFE represents an implicit cost of \$1,000/ton. At the highest cost (\$186.1 billion/year) and lowest reduction (31.2 million metric tons/year), the implicit cost is about \$6,000/ton.

Regarding oil consumption reductions, they write:

Likewise, if we take the EPA's estimates, CAFE would reduce oil consumption by an annual average of 133 million barrels at a cost of \$5.4 billion—equivalent to \$40.5/barrel. But if we take the more realistic estimate of oil savings of 100 million barrels/year and a more realistic cost of even \$50 billion/year, the cost per barrel of oil saved rises to \$500/barrel. That's more than ten times the current price, five times the prevailing price in 2012, and more than three times the highest price oil has ever reached (\$156.34 in June 2008).

We do not think CAFE was ever warranted as an “energy security” policy.²⁹ The policy makes even less sense in an era when the United States is poised to be the world's largest energy exporter.³⁰

Agencies Are Not Qualified to Determine Whether Consumers Correctly Value Fuel Economy

EPA and NHTSA have long held that consumers “undervalue” fuel economy. Typically, they argue that the reduction in fuel savings more than offsets the higher cost of vehicles equipped with new fuel saving technology. But consumers base their purchasing decisions on several vehicle attributes, such as safety, amenities, utility, and style, not just the balance sheet comparison between purchase price and fuel expenditures. More importantly, consumers

²⁹ Jerry Taylor and Peter Van Doren, “The Energy Security Obsession,” Cato Institute, 6 Georgetown Journal of Law & Public Policy 475, 2008, <https://object.cato.org/sites/cato.org/files/articles/energy-security.pdf>

³⁰ Tom DiChristopher, “U.S. oil exports will keep booming after hitting record 2 million barrels a day, analysts say,” CNBC, October 5, 2017, <https://www.cnbc.com/2017/10/05/us-oil-exports-will-keep-booming-after-hitting-record-analysts-say.html>

consider the tradeoff between the purchase price and everything else on which they might spend or invest their money.

For example, paying a few thousand dollars more for a more fuel-efficient vehicle might preclude plans this year to take a family vacation, buy new business equipment for a home office, or start music lessons for the kids. So when agencies claim consumers undervalue fuel economy, they implicitly claim to know that consumers overvalue vacations, business success, and music lessons.

The agencies' ideological blinders are evident in their GHG and fuel economy rules for heavy trucks. As the agencies acknowledge, fuel is the single biggest operating expense for people in the long-haul freight business, the market is highly competitive, and there is an abundance of private and public information on the purported benefits of new fuel saving technologies. Yet EPA, CARB and NHTSA still insist on imposing fuel economy mandates, contriving various dubious rationales to explain why truckers either fail to grasp or refuse to pursue their own best interests.³¹ We doubt President Trump has much sympathy for such pretension.

Note, too, that when agencies set fuel economy standards, all the business risk falls on the manufacturers and automobile dealers. The agencies have no skin in the game. They lose not a penny if the market reveals consumers don't want vehicles built to the agencies' specifications. The Alliance spotlights several defects in the MTE's economic analysis.

- EPA estimated that these standards will cost industry at least \$200 billion. But EPA underestimated the burden. Contrary to EPA's assumptions, manufacturers will have to rely on much more expensive electrified technologies (i.e., hybrids and plug-ins), driving up vehicle prices and depressing auto sales.
- EPA refused to conduct an analysis of consumer acceptance and technology affordability needed for compliance, claiming this was too difficult.
- EPA refused to analyze substantively the economic impact of the MY 2022-2025 standards, instead making cursory assumptions that downplayed the impact of its mandate on auto sales and employment.

Inadequate Consideration of the Standards' Impact on Vehicle Safety

In 1992 a federal appeals court ruled that NHTSA had illegally evaded the fact that CAFE reduces auto safety. This came in a case that we brought, CEI and Consumer Alert v. NHTSA, 956 F.2d 321 (1992)³². The model year (MY) was 1990; the passenger car standard was 27.5 mpg. The court found that "the 27.5 mpg standard kills people."

³¹ Marlo Lewis, Competitive Enterprise Institute, et al., Comment Letter, Greenhouse Gas Emissions and Fuel Efficiency Standard for Medium- and Heavy-Duty Trucks, Docket ID No. EPA-HQ-OAR-2014-0827 and NHTSA-2014-0132, October 1, 2015, <https://cei.org/content/comment-letter-phase-2-epa-nhsta-greenhouse-gas-economy-rule>

³² <https://openjurist.org/956/f2d/321/competitive-enterprise-institute-v-national-highway-traffic-safety-administration>

By comparison, the standards now scheduled through MY 2025 are far more stringent than 27.5 mpg. In fact, the estimated small-car standard for MY 2023 will be more than twice as high as that 27.5 number. So where are we today on the issue of CAFE and safety?

Since that 1992 court ruling, the government's recognition that CAFE carries safety risks has improved, but only slightly. Neither NHTSA nor EPA has ever attempted to quantify how many lives have been lost due to past CAFE standards. This is despite the fact that the lethal toll of the early CAFE standards have been repeatedly analyzed. A 1989 Brookings-Harvard study estimated that CAFE caused a 14 to 27 percent increase in occupant fatalities--an annual toll of 2,200 to 3,900 deaths.³³ A 1999 *USA Today* analysis concluded that, as of that year, CAFE had resulted in 46,000 additional fatalities.³⁴ A 2002 National Academy of Sciences study concluded that CAFE's downsizing effect contributed to between 1,300 and 2,600 deaths in a single representative year, and to 10 times that many serious injuries.³⁵

But when it comes to the lives lost due to more recent standards, or to the risk posed by future standards, the agencies' recent discussions are complex, murky, and frankly not very credible.

For example, when the footprint-based CAFE system was introduced, NHTSA argued that this would reduce the dangerous down-weighting incentive posed by prior CAFE standards. However, as noted above, the lethal impacts of these prior standards had never been publicly acknowledged by NHTSA. Moreover, even footprint-based standards restrict the addition of weight to vehicle models. Regardless of whether that weight comes from structural components or from new safety or other features, carmakers' ability to add weight, or even to keep weight constant, is limited by these standards.

The EPA-NHTSA Draft Technical Assessment Report (July, 2016)³⁶ admits the "relationship between vehicle mass and safety" and the fact that "mass reduction continues to be an important technology option ... in meeting future ... standards" (8-44). These were the two primary facts underlying the D.C. Circuit's finding that CAFE kills, and those facts remain unchanged to this day. In the face of these facts, NHTSA and EPA cross their fingers and hope for the best. They hope that mass reductions will "be concentrated in the heaviest vehicles" (8-43), or that "careful changes in design and/or materials used might mitigate some of the potential increased risk from mass reduction" (8-44). Note the key fudge words here: "*careful* changes ... *might* mitigate *some*" of the risk. This is wishful thinking. Even worse is EPA's Jan. 2017 pronouncement on this issue, in which it claims that its MY 2022-25 standards "will have no adverse impact on automobile safety." EPA, Final Determination, p. 27.³⁷

³³ Crandall & Graham, *The Effect of Fuel Economy Standards on Automobile Safety*, 32 J. Law & Economics 97, 118 (1989), https://www.jstor.org/stable/725381?seq=1#page_scan_tab_contents

³⁴ Healey, *Death by the Gallon*, *USA Today* (July 2, 1999), https://web.archive.org/web/20110711134012/http://www.stretching-it.com/bromleyisms/2006/entries_autos/Deathbythegallon_USAToday.htm

³⁵ National Research Council, *Effectiveness and Impact of Corporate Average Fuel Economy (CAFE) Standards*, Executive Summary Finding 2, p.3 (2002), <http://books.nap.edu/openbook.php?isbn=0309076013&page=3>

³⁶ <https://nepis.epa.gov/Exe/ZyPDF.cgi/P100QXEO.PDF?Dockey=P100QXEO.PDF>

³⁷ <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100QQ91.pdf>

In comparison, consider what the Insurance Institute for Highway Safety (IIHS) recommends to car buyers. Its message is the same, whether you're choosing a car for yourself or your teenaged children: bigger, heavier vehicles are safer.³⁸

NHTSA and EPA pin much of their no-safety-effect argument on the notion that vehicle size is more important than weight. But an IIHS study compared hybrid cars with their conventional, nonhybrid twins and found that the 10% increased weight of the hybrids was associated with a 25% lower risk of occupant injury.³⁹ The issue may not be fully resolved, but this is one strong indicator that, to the extent one can differentiate, weight is more important.

Moreover, the safety impacts of lightweight materials are far from fully understood. A March 2017 study by analysts at the Indiana University School of Public and Environmental Affairs points out that "new concerns regarding [the] occupant safety and repair costs" of lightweight materials such as aluminum and lightweight steel "were not considered adequately" in EPA's prior analysis.⁴⁰

The agencies optimistically claim that, by one estimate, all of the CAFE-induced deaths in passenger cars will be more than offset by a reduction in deaths caused by light trucks as those trucks are down-weighted. (Draft Technical Assessment, p. 8-60). But according to IIHS, the light-truck/passenger car mismatch "has faded as a problem in recent years."⁴¹

Finally, in a world of lower gas prices, the constraining effects of the scheduled CAFE increases will be much greater than previously estimated, because consumer purchasing preferences will be significantly different---more people will want the larger, heavier cars that IIHS recommends. And as the Indiana University study points out, strict fuel economy mandates restrict the expanded use of new safety features that would likely take place in a world of low gas prices: "improvements in performance and safety, if foregone by the stricter 2017-2025 standards, represent an 'opportunity cost' of the stricter standards that should be analyzed"⁴²

The court in *CEI & Consumer Alert v. NHTSA* concluded as follows:

When the government regulates in a way that prices many of its citizens out of access to large-car safety, it owes them reasonable candor. If it provides that, the affected citizens at least know that the government has faced up to the meaning of its choice. The requirement of reasoned decisionmaking ensures this result and prevents officials from cowering behind bureaucratic mumbo-jumbo. 956 F.2d at 327.

³⁸ <http://www.iihs.org/iihs/sr/statusreport/article/52/2/1>

³⁹ IIHS/HLDI, *Hybrid models have lower injury odds than their conventional counterparts* (Nov. 17, 2011), <http://www.iihs.org/iihs/news/desktopnews/hybrid-models-have-lower-injury-odds-than-their-conventional-counterparts>; see also *HLDI Bulletin: Injury Odds and Vehicle Weight; Comparison of Hybrids and Conventional Counterparts* (Sept. 2011), http://www.iihs.org/media/3cc40de3-76ab-4843-8638-9f2269328a55/yclnvA/HLDI%20Research/Bulletins/hldi_bulletin_28.10.pdf

⁴⁰ Carley et al., *A Macroeconomic Study of Federal and State Automotive Regulations with Recommendations for analysts, Regulators, and Legislators* (March, 2017), p.34, <https://spea.indiana.edu/doc/research/working-groups/auto-report-032017.pdf>. See also p.145.

⁴¹ <http://www.iihs.org/iihs/topics/t/vehicle-size-and-weight/qanda>, Question 4.

⁴² Carley, *supra* n.39 at p.154.

We submit that, in terms of government candor, the situation has not changed very much since then. We question the need for any CAFE program at all. And regardless of what the agencies may decide regarding CAFE, before they impose any new standards whatsoever, we submit that they first do a full accounting of this program's past impact on traffic deaths.

Respectfully submitted,

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