



Correction Please!

While Driving Out of Town, Obama's EPA Rushes to Judgment Over Gas Mileage Mandates

Item: *The Associated Press reported on January 13, 2017, in an article entitled "Obama's EPA moves to preserve gas mileage requirements," that the Environmental Protection Agency had just moved "to preserve strict fuel-economy standards put in place by the Obama administration, making it difficult for the Trump administration to undo them.*

"The EPA said in late November that it completed a required midterm review of Corporate Average Fuel Economy standards and decided they should not be relaxed as requested by the auto industry. The move in the waning days of Obama's tenure brought protests from the industry. A trade group accused the EPA of playing politics and rushing its determination.

"Pollution reduction targets for the years 2022-2025 that were put in place in 2012 ... will remain. That means the fleet of new cars will have to average 51.4 miles per gallon by 2025, up from 33.2 in 2015, the latest year available."

Item: *The departing administrator of the EPA, Gina McCarthy, according to the New York Times on January 14, "said that the industry had proven it could consistently improve fuel economy and reduce greenhouse gases since the current rules were adopted five years ago." The paper quoted her saying, "At every step in the process, the analysis has shown that the greenhouse gas emissions standards for cars and light trucks remain affordable and effective through 2025."*

Item: *Reuters on January 13 said that McCarthy's move "finalized a determination that the landmark fuel efficiency rules instituted by President Barack Obama should be locked in through 2025, a bid to maintain a key part of his administration's climate legacy."*

The wire service went on to say that "legal experts" maintained that it "will be more difficult for the Trump administration and Congress to undo the determination than to unwind other regulatory actions issued by the Obama administration during its final months in office. The 2025 determination is not a new regulation, so the EPA, under Trump, would likely have to go through an extensive process before withdrawing the determination, and could face lawsuits from environmental groups if they took that step."

Correction: Not surprisingly, the "experts" who say that EPA's midnight moves — actions that broke its own deadlines — are somehow enduring are being fed their lines by the regulators. The assertions come from the Environmental Protection Agency and their lawyers — the same people who call a 98-page single-spaced document a "brief."

Some "rules" are apparently more equal than others, if you want to believe those handing out and adjudicating the regulations.

Other experts, who are generally deemed unsuitable to cite by the mainstream media, know otherwise.

Keep in mind the history of the Obama administration in general, and the EPA specifically. Over the years, the administration piled on regulations and increased the CAFE (Corporate Average Fuel Economy) standards, at the predicted cost of thousands of dollars per vehicle. Then even more strict



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regulations were mandated. (As of early 2017, according to the EPA, the fleet-wide average for cars and light trucks is about 26 miles per gallon. The agency's standards are purposefully unrealistic.)

By way of background, let's take a look at CAFE. The federal diktats were first said to be necessary to reduce the nation's dependence on foreign oil. But intrusive bureaucrats can't go a day without doing someone good. Now, or so we are told, the tighter regulations are needed to keep down the temperature of the planet.

(Really. There are even statistics to "prove" this. Here is what the EPA boasted would ensue if it got the full standards it wanted for vehicles for 2017-2022: The results of the analysis demonstrated, among others, that "global mean temperature is estimated to be reduced by 0.0076 to 0.0184" degrees C. Wow! If you want to believe that estimate, the benefit would not even reach two-hundredths of a degree centigrade. You can take that to the bank. On the other hand, the compliance costs have been estimated at \$200 billion by automakers. You can take that out of your bank.)

The cost of imposing fuel-economy standards has been studied by many. And there are built-in difficulties in measuring how much vehicles might cost if carmakers and consumers did not have the EPA and other federal agencies interfering with their decision-making processes. Nonetheless, with that caveat, below are some key conclusions of Heritage Foundation scientific models, as summarized last year by Salim Furth, Ph.D., a research fellow in macroeconomics in the Center for Data Analysis, of the Institute for Economic Freedom and Opportunity, and David Kreutzer, Ph.D., a senior research fellow for energy economics and climate change in the Center for Data Analysis:

- Economists and engineers accurately predicted that the MY (model year) 2016 standards would hurt consumers by at least \$3,800 per car;
- Since the Obama-era standards took effect, average new car prices have risen to \$6,200 above trend;
- CAFE standards will continue to tighten, reaching 49.6 mpg in 2025;
- The higher prices will force millions of lower-income households out of the new-car market;
- CAFE standards have a trivial impact on global warming — hundredths of a degree at most; and
- Regulation limits consumers' choices regarding safety, comfort, and affordability.

Since the latest EPA standards were possible technologically, but not feasible at a price point consumers wanted, a key safety valve of the 2012 regulation was required. The feds were to make a midterm evaluation by next year. At that point, says William Yeatman, a senior fellow at the Competitive Enterprise Institute, the "regulators would decide whether the 2025 goal was achievable."

However, on November 30, recounted Yeatman, the EPA "unexpectedly announced that it had conducted a midterm review, and was proposing to adjust the 2025 standard to 51.4 mpg, and thus largely maintain the existing rules." Short weeks later, the EPA issued a "final determination" upholding the November proposal.

The midterm evaluation for the 2025 fuel-efficiency standards was not due until April 2018. The political climate changed, however; and the radicals at the top of the EPA decided they should barrel through the evaluation at the conclusion of Obama's lame-duck period.

In so doing, observed Peter Welch, the president and CEO of the National Automobile Dealers Association, the Obama administration



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just made new cars and trucks thousands of dollars more expensive for America's working men and women. Expensive and unaffordable new cars will drive Americans into less efficient, less clean and less safe used cars — undermining the very goals of this policy. We urge the incoming Trump Administration to withdraw today's action.

Meanwhile, many in Congress are not taking the word of those who make up the rules, however so described, who claim that their edicts have been "finalized." Republicans on Capitol Hill, reported the *Detroit News*, blasted the Obama administration for "short-circuiting the evaluation process for emission rules and sticking it to consumers and auto companies."

As three GOP congressmen said, by the EPA's "own estimates, these rules have already boosted sticker prices by nearly \$1,000 and may add another \$1,000 by 2025." In a joint statement, Representatives Fred Upton (R-Mich.), John Shimkus (R-Ill.), and Bob Latta (R-Ohio) went on:

Some analysts believe the impact will be considerably higher. For the sake of vehicle affordability and safety, as well as the health of the automotive sector, we need to make sure that the standards have been set at achievable levels, but EPA's rushed analysis falls far short. If the EPA won't do its job and take a careful look at these regulations, then Congress will.

Looking for common sense within the Environmental Protection Agency is going to be a hard task. A goodly number can't tell the difference between working up steam and generating a fog. To be fair, they are accomplished at the latter.

Propaganda to the contrary, edicts from the EPA are not holy writ. Nor are their proclamations eternal. There actually are ways to escape their snares.

As has been explained by Marlo Lewis, a senior fellow at the Competitive Enterprise Institute with a Ph.D. from Harvard University, the EPA's action is

either a rule or it is not. If it is a rule, then it is vulnerable to quick repeal via the Congressional Review Act (CRA), which enables Congress to veto regulations adopted within the previous 60 legislative days. CRA resolutions of disapproval cannot be filibustered, as they require only simple majorities to pass. If both chambers of Congress pass the resolution and the President signs it, the targeted rule is overturned.

The EPA and its allies, predictably, claim the MTE [midterm evaluation] is not a rule, only the evaluation of a rule. However, the CRA definition of rule includes any agency statement of particular or general applicability and future effect that interprets, implements, or prescribes policy or law. The MTE easily fits within that capacious definition.

One must admit that these statisticians are polished folks — in a slippery sort of way. And they want it their way. The regulators and their media echo chamber just keep insisting that the midterm evaluation is not a "rule." Yet, as Dr. Lewis has observed,

The EPA and its allies also claim President Trump cannot legally withdraw it. Why? Because it has gone through the public notice and comment process. But isn't that tantamount to saying it is a rule?

But let's assume it is not a rule. How then does it legally bind anyone to do or forbear from doing anything?

Also, how does the EPA's premature finalization of the MTE excuse the agency from fulfilling its



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regulatory commitment under the 2012 joint rulemaking to coordinate its final MTE with NHTSA's? [The National Highway Transportation Safety Administration is also a party to the fuel-standard power grab.] Either the EPA's action is simply unlawful, or the Trump administration would have an opportunity to modify the EPA's MTE in the process of coordinating it with NHTSA's.

Perhaps the new Trump administration will deep-six the evaluation. And it is possible that the GOP-led Congress will require a less-restrictive path. That's a low bar. It wouldn't take much to do better than the Obama administration. In recent years, as has been noted by Mike Nasi of Balanced Energy for Texas, this nation has been hit by "a major onslaught of overreaching federal regulations, with the imposition of 229 major regulations since 2009 at a cost of \$108 billion annually. Under President Obama, the EPA accounted for nine of the 43 new major rules in 2015, increasing annual regulatory costs by \$11.1 billion."

Numerous researchers have demonstrated the inefficiencies, if not detriments, of the mandatory CAFE standards. "Economists have estimated that per gallon of gasoline saved, the old CAFE standards cost three to six times as much as a gasoline tax," wrote Lucas Davis last year. Davis is an economist at the University of California, Berkeley.

You and I are paying for it. And it is costly. The current regulations alone call for the price tag to rise considerably down the road.

If Congress were to repeal the standards, it would be huge boon for those buying cars in 2025, as has been demonstrated by Drs. Furth and Kreutzer of the Heritage Foundation (cited above) — saving at least \$7,200 per vehicle. Short of that, the new administration could ease the rule for future model years. If the CAFE were to be set at 27.5 miles per gallon, say these experts, it "would save 2025 car buyers at least \$5,900 per vehicle." Or freezing the standards at model year 2016 level "would save future buyers at least \$3,400 per vehicle."

When it comes to the EPA and its role in driving up the cost of vehicles, more education is need. At this point, there seems to be no groundswell demanding that the decisions about fuel-efficient vehicles be stripped from federal regulators and the responsibilities given back to automakers and car buyers.

Meanwhile, even many pro-regulation advocates acknowledge that increasing the gasoline tax would be the more "efficient" course to pushing demand for high-mileage cars, if it is government efficiency that drives your boat. Yet, taking that route would be politically risky. And the average standard level of courage on Capitol Hill is generally on the low side.

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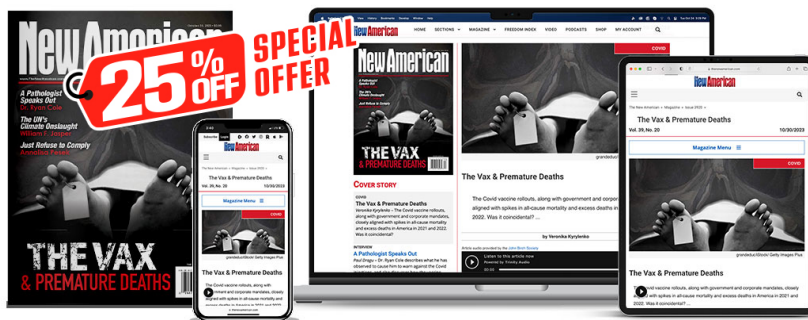
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