

CARB Chair Mary Nichols sits on a panel with industry representatives and others to discuss the Administration's proposed rollback of Obama-era fuel economy standards.

Today, the House Committee on Energy and Commerce's Subcommittee on Consumer Protection and Subcommittee on Environment and Climate Change held a joint hearing entitled "Driving in Reverse: The Administration's Rollback of Fuel Economy and Clean Car Standards." The hearing examined the proposed Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026, which would freeze federal fuel economy standards for MY 2021-2026 cars and light-duty trucks at 2020 levels and revoke California's previously-granted waiver for its Advanced Clean Cars Program, including its Zero-Emission Vehicles (ZEV) mandate. My colleagues and I have written here and here about the reasons why the SAFE Rule fails to live up to its name, and instead represents a legally indefensible misstep by the agencies. We aren't the only ones who think so, as today's hearing made clear.

Indeed, a number of states and representatives of the automobile and parts manufacturing industries have been questioning the wisdom of the rule's approach since the beginning, and continue to do so. A few weeks ago, the New York Times reported that 17 auto companies, including Ford, GM, Volvo, and Toyota, wrote to President Trump to stress that the SAFE Rule would jeopardize automaker profits and lead to "untenable" instability in their industry. The automakers asked the Administration to reopen negotiations with California—which the Administration unilaterally abandoned this past winter—rather than plowing ahead with this version of the rule.

That plea was raised again today, but already seems to have fallen on deaf ears. The hearing proceeded in two panels: the first consisted of only EPA Assistant

Administrator Wehrum and NHTSA Deputy Administrator King, as the two Administration appointees refused to sit on the same panel as California Air Resources Board Chair Mary Nichols; the second panel included Chair Nichols and a host of automotive industry representatives, as well as a representative from Consumer Reports, the Executive Director of Colorado's Department of Transportation, and Louisiana's Attorney General. Here are a few of the highlights:

- **Administration officials don't seem willing to come back to the table, despite calls to do so.** Representatives on both sides of the aisle stressed that the best solution would involve additional negotiations between the two agencies and California to arrive at a tweaked version of the existing—not proposed—CAFE standards that works for everyone. This suggestion was echoed by the Interim CEO of the Alliance of Automobile Manufacturers and the Legislative Director of the United Auto Workers, both of whom testified that the proposed rule would undercut already-dedicated industry investment in clean technologies and cede American leadership on technological advancement to other countries, like China. When asked about California's willingness to continue negotiations, CARB Chair Mary Nichols stressed that California has always, and continues to be, willing to negotiate in good faith, and pushed back against claims by EPA Administrator Wheeler that California had not negotiated seriously. But when asked earlier in the day by Michigan Rep. Debbie Dingell whether they would come back to the table if Chair Nichols indicated a willingness, both Assistant Administrator Wehrum and Deputy Administrator King said they didn't believe additional negotiations would be useful.

- **The automakers don't want to go as far as the SAFE Rule does.** Industry representatives spoke to concerns that market trends and assumptions that underpinned the existing CAFE standards have not borne out in recent years. Even Chair Nichols acknowledged that there are some differences today from market trends that were predicted when the CAFE standards were finalized. But neither Chair Nichols nor the industry seemed to see that as a reason to throw out the CAFE program entirely. The Alliance for Automobile Manufacturers' Interim CEO testified that the automobile industry expects continued improvement in fuel efficiency, and indeed, that automakers have invested heavily in such improvement. Consumer Reports' Vice President testified that data shows consumers want more fuel-efficient vehicles. And

several Congresspeople pointed out that in Canada, Europe, and Asia, movement towards improved fuel efficiency—in some cases more stringent than the existing CAFE standards—is the norm. In other words, the market is moving towards more fuel-efficient vehicles on its own, and nobody wants to stop that progress…except the Trump Administration, which is proposing to flatline standards through the SAFE Rule. Congressional representatives and industry spokespeople discussed the potential to think about extension of compliance deadlines and the role accumulated credits play in compliance under the existing standards, but the overwhelming message was that industry advocates for tweaks to existing standards, not a complete overhaul.

- **Everyone seems to want "one national program"—but we already have one.** Republican representatives and industry spokesmen consistently stressed the need for "one national program" that applies to all cars in the United States. That call, to me, was slightly ironic given that the existing law does provide a uniform set of standards that apply to cars nationwide, the result of a brokered compromise between EPA, NHTSA, California, and automakers back in 2012. It is true, though, that if the SAFE Rule were to be finalized, automakers would find themselves living in a world of bifurcated programs with major confusion about regulatory compliance. That's because California agreed to allow compliance with the federal CAFE standards to satisfy compliance with California's standards—automakers don't need to do anything different to their fleets to sell cars in California if they already meet the existing federal standards—but California still maintains its own regulatory program on the books thanks to 2009 and 2013 waivers under the Clean Air Act. If the SAFE Rule is finalized, California will challenge it, and automakers will be left attempting to determine which program to follow: the new federal frozen standards, or California's standards (which, through the application of another section of the Clean Air Act, now operate in 13 other states as well, collectively representing about a third of the U.S. auto market). The industry understandably wants to avoid the significant compliance costs associated with that kind of regulatory uncertainty.

- **Safety assumptions in the rule are questionable, and transportation funding and public health costs are ignored.** Even Administration officials

admitted this morning that the safety calculus is complex (although they didn't go so far as to acknowledge serious flaws others have identified in their safety analysis). Interestingly, NHTSA Deputy Administrator King acknowledged that, contrary to some prior claims by the Administration, vehicle lightweighting—making component parts of a car lighter, which helps improve fuel economy—is not a safety problem. When asked about causes of traffic fatalities, she pointed not to fuel efficiency upgrades but instead to an increased amount of driving under the influence of drugs like opiates and prescription medication. Her testimony did not give the impression that fuel economy standards are driving traffic fatalities, and indeed that contention was refuted by witnesses from Consumer Reports and the Colorado Department of Transportation. In addition, several Congresspeople, including a number of representatives from California—Reps. Matsui, Ruiz, and Barragan—exposed flaws in the agencies' cost assessments by pointing out that adoption of the rule stands to jeopardize billions of dollars in transportation funding and will lead to negative health consequences for low-income communities of color, already overburdened by air pollution that stands to get even worse if the rule is finalized.

So what's next? Today's testimony was compelling, particularly because even though Chair Nichols went to bat for the existing standards and the California waiver, she stood in clear alignment with industry representatives who were calling for a negotiated solution to the problem, articulating a willingness to reopen discussions at multiple points during the hearing. That, and calls from legislators on both sides of the aisle, should give the Administration serious pause about barreling forward with this version of the SAFE Rule. But Administration officials seemed entirely closed off to the idea of coming back to the table, and Assistant Administrator Wehrum said he was responding a directive from the President to get the rule done "as soon as possible." It's unclear whether today's testimony will delay finalization of the rule, but if it does not, a swift legal challenge is sure to follow.