

Summary

The Trump Administration, through a chain of rather twisted logic, has come up with fuel efficiency standards that are virtually meaningless. That's exactly what they wanted, of course. Gas guzzlers are great for the oil industry, if nobody else.

The Department of Transportation (DOT) recently issued CAFE standards — fuel efficiency standards for new cars. Rolling back more rigorous standards from Biden, DOT applied considerable ingenuity to ensure that fuel efficiency will stagnate for the foreseeable future. Like an [Escher drawing](#), you have to step back from all the intricate details to appreciate just how weird the overall design is. What's happening on each staircase in the drawing seems believable, until you suddenly realize you're back where you started or that up and down have switched directions along the way. That's basically this regulation.

To begin with, the regulation exudes disdain for the statute while proclaiming greater fidelity to the statute than any of its predecessors. The main purpose of the CAFE law was to reduce energy consumption by requiring greater fuel efficiency. Today's DOT doesn't really see the point. Why should we worry about conserving oil when we're a net exporter? Maybe they haven't been to a gas station lately. If they had, they would have noticed the price surge due to the Iran War. Millions of Americans can testify that, while disruptions in world energy markets no longer result in shortages, they still cause serious economic pain. Greater fuel efficiency would reduce the pocketbook impact of gas prices. If energy supply is a [national emergency](#), as Trump says, increasing energy efficiency should be a top priority to free up resources for other uses.

In addition to its blasé take on energy conservation, the Trump DOT is unhappy about limiting the options available to consumers or constrain carmakers' decisions regarding vehicle features. The basic premise of the statute, however, is that the government does need to do exactly that by imposing fuel efficiency standards. The statute calls for the maximum fuel efficiency the industry can feasibly achieve, not the fuel efficiency that consumers or the industry prefer or the amount the agency considers most reasonable.

When you read the rule-making document, you can almost hear the agency leadership sighing that they have to do so much work to avoid producing a meaningful regulation. They could have just done a moderate course correction by

saying that Biden's DOT assumed a surge in EV sales that no longer seems likely, at least not so quickly. But where would be the fun in that?

Then there are the DOT's weird legal interpretations. The statute (42 USC § 32902), directs DOT to set "the maximum feasible average fuel economy level that ... manufacturers can achieve in that model year." But today's DOT thinks that past rules, which companies already complied with, are more than the industry can feasibly achieve. It reminds me of the physicist who admitted that bumblebees can fly in practice but said it was impossible in theory. Since the rules manufacturers are complying with in practice are not feasible in theory, DOT is retroactively loosening past standards that apparently were impossibly strict (in theory).

The agency also thinks that "maximum feasible" in a particular year translates as "small, steady, incremental increases in fuel economy standards" — or in other words, that the car industry should only be expected to take baby steps. That's very strange: rather like translating "go the fastest you can" as "take a leisurely stroll."

On top of that, there's the treatment of electric vehicles. The legislation is a bit convoluted, but here's what matters for present purposes.

- **Subsection (f)** lists four factors DOT must consider in issuing regulations under subsection (a). The factors are technological feasibility, economic feasibility, other government regulations, and the need to conserve energy.
- **Subsection (h)** says that DOT can't consider the fuel economy of EVs "in carrying out" subsection (f) .

Subsection (h) is the key here. It says that DOT can't consider the *fuel economy* of EVs for certain purposes, not that it can't consider EVs at all. For instance, the statute clearly allows it to consider the lower maintenance costs of EVs, which are unrelated to fuel economy. Also, if a carmaker loses a gas car sale because the CAFE standard makes that car more expensive, the same customer might buy one of its EVs. That's relevant to economic feasibility.

Yet, Trump's DOT says that it can't recognize the existence of EVs in any way whatsoever. In fact, the database DOT is using for the regulation deletes EVs entirely, as if they weren't already in the market. In effect, DOT is writing regulations by modeling an imaginary world that never had EVs and never will.

Bold move!

I feel some grudging admiration for the lawyers who came up with these clever ways to pretend to follow a statute while undermining it completely. It takes real moxie to berate your predecessors for their lack of fidelity to a law while you're draining it of any real meaning. It's a shame those skills couldn't have been used for some higher purpose than enriching oil companies.