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For the Auto Industry and Clean Cars, It’s Déjà vu All Over Again

State rights to regulate motor vehicle emissions – in place for over half a century – deliver important air quality and public health benefits.

By authorizing two sets of emissions standards, the federal Clean Air Act recognizes the important role states play in protecting their residents, natural resources, and economies from harmful air pollution emitted by cars and trucks. In 1967, Congress authorized two sets of standards to control emissions from motor vehicles – federal standards and California standards (because the California program predated any federal program). Since then, federal standards have historically lagged behind California’s standards.

In 1977, Congress amended the Clean Air Act to allow other states to adopt standards identical to California’s standards. In doing so, Congress elegantly balanced concerns about subjecting manufacturers to 50 different sets of standards and interfering with the legitimate police powers of states to protect public health. States that exercise their right to adopt California’s standards are often referred to as “Section 177 states” in reference to the Clean Air Act provision granting this important state right.

The entire nation has benefitted from this two-standard system, in place for nearly six decades, because the California standards, bolstered by Section 177 state adoption, have led to more effective federal programs and played a key role in maintaining U.S. leadership in clean vehicle technology.

Automakers are responsible for the regulatory “ping pong” they denounce.

Automakers are responsible for creating the very havoc they complain about. The unprecedented waiver revocation by the first Trump Administration was precipitated by a [letter](#) the automakers sent asking the incoming Trump administration for a reconsideration of vehicle emission standards. The resulting federal rollbacks and waiver revocation created disruptions in manufacturer compliance plans. Now, automakers are repeating history by seeking delays and rollbacks once again, while complaining such actions will likely be litigated and lead to further uncertainty.

Manufacturers have flexibility in meeting the Advanced Clean Cars (ACC) II Zero-Emission Vehicle (ZEV) requirements.

Automakers would have you believe that 35 out of 100 new vehicles sold by every automaker in California and each Section 177 state must be electric vehicles (EVs) in model year 2026. They fail to mention that a manufacturer could reduce this amount to 11 out of 100 vehicles in a state by utilizing a combination of flexibilities offered by the regulation. (By the way, 10 out of 100 vehicles sold in the U.S. in 2024 were EVs.) And on top of these flexibilities, automakers may purchase credits from other automakers.

The truth is the ACC II ZEV regulation includes a mix of compliance flexibilities – early compliance credits, historical credits from the ACC I program, transferring credits from other states, etc. – that allow manufacturers to ramp up their sales in California and each Section 177 state as needed. There are numerous pathways for complying with the ZEV regulation that can accommodate the differing needs of automakers and varying market conditions in California and the Section 177 states. At the same time, the flexibilities are appropriately limited and phased out to ensure ZEV market growth over time.

With that said, automakers can continue to sell vehicles with combustion engines in perpetuity. Even beyond 2035, the ACC II ZEV regulation allows up to 20% of new vehicles sold to be plug-in hybrids, which use combustion engines.

California and Section 177 states are subject to federal and state laws.

Contrary to automaker assertions that state ACC II programs are unaccountable, each state is subject to federal and state laws and, as such, is responsible for protecting public health and welfare in their state. When adopting new motor vehicle emissions standards, California and the Section 177 states must meet the requirements of sections 209 and 177 of the federal Clean Air Act, respectively. States must also comply with the notice and comment rulemaking procedures established by state law.

In addition, the Clean Air Act requires states to achieve and maintain national air quality standards to protect public health, and many states are also required by state laws to reduce greenhouse gas (GHG) emissions. State ZEV programs are critical to meeting these requirements. Without a ZEV program in place, states will need to regulate many other sources of in-state emissions, which are more difficult to regulate, to make up for lost transportation emission reductions. This would put additional burdens on local businesses to compensate for the automakers' failure to take responsibility for their major share of in-state pollution.

Cars are a huge source of pollution with grave health impacts.

The transportation sector is the largest source of GHG emissions and an enormous contributor to other air quality problems. Within the transportation sector, cars and light-duty trucks account for 57% of GHG emissions, 42% of smog-forming nitrogen oxides (NO_x) emissions, and 48% of fine particulate matter (PM_{2.5}) emissions.

Reductions in NO_x and PM_{2.5} are needed to achieve and maintain air quality standards that are in place to protect public health. These pollutants exacerbate asthma and other cardio-respiratory illnesses, especially in children and older adults, leading to additional doctor and emergency room visits, missed days of school and work, and increased risk of premature death. Moreover, major reductions in GHG emissions are urgently needed to avert the worst effects of climate change.

Letting automakers off the hook would reward their inaction and shift responsibility for the harm created by auto emissions to others.

Automakers would prefer to avoid the innovation-driving and pollution-reducing benefits of California's standards and instead burden others with the cost of pollution from cars and trucks. That is why they are asking policymakers to prioritize legacy automaker near-term profits over the public benefits of the ACC II standards. Automakers complain that the transition to EVs is expensive, but delaying the transition will be more costly in ways that are far more serious.

The American Lung Association estimates that by 2050, the cumulative public health benefits of transitioning to 100% zero-emission vehicles could be [nearly \\$1 trillion](#). This is a benefit that would be realized by all Americans. Meanwhile, increases in GHG emissions result in [more frequent and severe weather-related disasters](#). In 2023, U.S. weather and climate disasters accounted for [nearly \\$100 billion in damages](#). These increasing costs are being borne by families and small businesses across the country.

Nevertheless, automakers are actively working to delay the public health benefits provided by EVs. Allowing the auto industry to dictate the timing of the transition to electrification is a recipe for disaster and will put the brakes on life-saving advancements in vehicle technology. Any delay is tantamount to rewarding automakers for dragging their feet.

We know that automakers are unlikely to pursue cleaner, better performing cars on their own without a push, even if it's to their long-term benefit. In 1995, a GM car designer frankly admitted that "We'd like to tell you we just up and did it, but it's the regs," when commenting on how federal motor vehicle pollution limits led to a trio of benefits – lower pollution, more power, and better fuel economy [USA Today, *Anti-Smog Push Sparks Revved-Up Engines*, August 17, 1995].

Automakers need to take responsibility for their business decisions.

Over the past decade, legacy automaker plans and support for electrification seem to change based on the prevailing political winds. Despite some automakers having announced ambitious ZEV targets, their [investments](#) are inadequate to meet their ambition. Now, they are complaining that paying for credits will divert their revenue from investing in electrification instead of owning up to their business decisions to delay meaningful investments in electrification.

Legacy automakers have had more than enough time to prepare for the transition. The ZEV regulation was first adopted 30 years ago by California, quickly followed by some Section 177 states and joined by others later. For years, legacy automakers dragged their feet, insisting it would

cost too much and consumers would never want to drive EVs. This tactic worked relatively well until Tesla proved otherwise.

Tesla's recipe for success wasn't surprising and should have been obvious to any automaker serious about transitioning to electric vehicles: 1) manufacture compelling electric vehicles that consumers want; (2) produce these vehicles at scale to make them more affordable; and (3) provide a seamless charging experience for consumers.

Instead of adopting this business model, many automakers decided to maximize their near-term profits by maintaining business as usual. To this day, they continue to advocate for policies that allow them to stay on that path for as long as possible. Yet, automakers face similar regulations in other jurisdictions such as the EU and China. The fact of the matter is that U.S. automakers that don't prioritize the transition to EVs will not remain globally competitive. The history of private enterprise is littered with once behemoth companies that exist no longer because they failed to change with the times.

Automakers have a long history of reacting to technology-forcing requirements with unfounded projections of dire consequences.

Whether it is requirements for seatbelts, air bags, or controlling emissions, automakers predictably and vehemently resist regulations that hurt their near-term bottom line regardless of the public benefits at stake. For example:

- In 1973, GM predicted that a requirement for catalytic converter systems could cause a "complete stoppage of the entire production."
- In the 1980s, the federal mandate to install air bags was met with vigorous opposition from the auto industry based on over-stated assertions about expense and impracticality.
- In the 1990s, new technology-forcing emissions standards in amendments to the Clean Air Act produced a similar industry outcry that the technology did not exist, could not be developed, and the OEMs' product lines would shrink to sub-compact vehicles.
- In the 2000s, automakers claimed that the first in the nation GHG standards adopted by California and the Section 177 states would be so costly as to be effectively impossible and predicted that at least three manufacturers (Ford, GM, and DaimlerChrysler) would no longer be able to sell passenger cars in the states that enacted the regulation.

[*Chrysler Plymouth Dodge Jeep v. Crombie*, 508 F.Supp.2d 295, 358 (D. Vt. 2007)].

None of these dire predictions proved to be true. In fact, all of these technologies have since been touted by automakers as selling points for their vehicles and become the norm.