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This morning I [blogged](#) about some wonky reactions to the Trump/NHTSA rollback of the CAFE standards. Now I want to step back and highlight just how truly bad the new set of standards is, based on incredibly aggressive legal interpretations.

As my first post highlights, the standards are set for ten years despite statutory language directing NHTSA to issue standards for not more than five years. And the standards are supposed to be adopted at least 18 months prior to a new model year beginning, with an exception for amendments to standards that do not increase stringency. But even an amendment that doesn't increase stringency- - according to NHTSA's own interpretations going back to the Reagan Administration — is supposed to be adopted prior to the beginning of the model year, not long after the model year has passed. Yet NHTSA is attempting to retroactively amend standards back to Model Year 2022.

Finally, NHTSA is monkeying with how NHTSA has previously determined what is included in what is called the "baseline." The baseline is NHTSA's best estimate of the current and near future state of the automobile market and includes all vehicles, gasoline powered, electric and otherwise. From that baseline, NHTSA then determines what automakers could achieve in future fuel economy standards, though does not use electric vehicles in making that determination as required by statute. In other words, NHTSA sets standards that can be achieved with internal combustion engines. Trump's first NHTSA used this methodology and so did the

Biden Administration. But Trump II's new proposal refuses to follow the methodology because, by excluding electric vehicles from a real world projection of the market, it can make a mockery of the CAFE program by setting standards so low as to be essentially meaningless. Retroactively.

The result of all of these interpretive shenanigans is a rollback of standards that are much lower even than the standards Trump I adopted. My successor as NHTSA Chief Counsel during the Biden Administration, now Sidley and Austin partner Adam Raviv, [describes](#) the change as follows:

[The] 2020 final [Trump] rule (which was largely superseded by the subsequent Biden rulemakings) would have set CAFE requirements for model years 2021-26 that ended in a 40.4 mpg requirement for model year 2026. The new proposal, by contrast, would set a fleetwide CAFE requirement of 30.4 mpg for model year 2026, and even by model year 2031 would still be well below the previous Trump requirement for model year 2026.

The Biden standards would, have been much stronger than Trump 1, of course, achieving 54.5 MPG by 2030. But when Trump's second term NHTSA guts the standards set by the first Trump NHTSA, you know the proposal is crazy.