February 4, 2026

Jonathan Morrison
Administrator
National Highway Traffic Safety Administration
1200 New Jersey Avenue SE
Washington, DC 20590

Re: The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule III for Model Years 2022 to 2031 Passenger Cars and Light Trucks, Docket No. NHTSA-2025-0491

Dear Secretary Duffy and Administrator Morrison:

The Prime Mover Institute is a public interest organization dedicated to advancing energy dominance in America. We work with coalition partners to engage in rulemaking processes with technical information and legal arguments, calling attention to the effects regulation has on citizens, the grid, personal transport and mobility, and the rule of law.

The United States is now a dominant producer of petroleum. Because there is no need to conserve petroleum, and because fuel economy standards harm Americans by distorting the automobile market, fuel economy standards are obsolete and should be kept as lax as legally possible to make cars affordable again.

The Biden Administration sought to end the internal-combustion engine in America and the prosperity it enables. That would be disastrous to individual freedom, self-government, and American industry, and it is not authorized by law. We applaud the Trump Administration for reversing course.

Thank you for the opportunity to comment.

Respectfully submitted,

/Russell Greene/
Russell Greene
Managing Director
Prime Mover Institute

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INTRODUCTION

> *The average selling price for new cars and light trucks rose nearly 50 percent between 2012 and 2024 and now approaches $50,000, while U.S. households' average income increased only about half as much over that same period.*[1] – NHTSA.

The Prime Mover Institute ("PMI") commends the National Highway Traffic and Safety Administration ("NHTSA"). The proposed rule correctly returns to the statutory text and rejects the previous administration's "whole-of-government" strategy, which sought to use every available regulatory lever to force the electrification of automobiles, regardless of congressional intent.

Congress enacted the Energy Policy and Conservation Act if 1975 ("EPCA") to protect the United States from foreign oil supply shocks. The statute mandates maximum feasible fuel economy for automobiles powered by *fuel*—gasoline and diesel—while explicitly prohibiting the agency from considering dedicated alternative-fuel automobiles, such as electric vehicles, when setting standards. In short, EPCA is a petroleum conservation statute enacted to protect national security during an era of perceived oil scarcity and high oil prices. It is not, and never was, a carte blanche to restructure the American automotive market or eliminate the internal-combustion engine. Far from it: Congress expressly prohibited that outcome by instructing NHTSA to ignore electric vehicles when setting the standards.

The current fuel economy standards for model years 2022 through 2031 ignored U.S. Environmental Protection Agency's ("EPA's") prohibition and considered electric vehicles. By unlawfully incorporating electric vehicles into the analytical baseline used by NHTSA to set the standards, the previous administration inflated the "maximum feasible" standard beyond what internal-combustion automobiles could achieve, creating a de facto mandate for electrification.

The current standards would be an economic disaster for Americans. By tethering compliance to the sale of electric vehicles, automakers are forced to cross-subsidize their electric units and the electric-vehicle-only competitors. This massive cross-subsidy distorted the market, contributing to increasing the average price of a new vehicle to nearly $50,000—a 50 percent increase since 2012—while also constraining customer choice and the quality of the gasoline automobiles that

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[1] *The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule III for Model Years 2022 to 2031 Passenger Cars and Light Trucks*, Notice of Proposed Rulemaking, 90 Fed. Reg. 56,438, 56,504 (Dec. 5, 2025) ("SAFE III NPRM").

the vast majority of Americans rely upon.[2] Automakers were encouraged to purchase credits rather than invest in efficiency improvements, effectively taxing every American car buyer to underwrite luxury electric vehicles sold in only a few regions of the country. NHTSA is right to start from scratch.

PMI supports NHTSA's proposed rule. By excluding electric vehicles from the standard-setting baseline, and correcting many other errors in the previous rules, the proposed rule effectively dismantles the unlawful arbitrage that defined the previous regime. PMI commends the agency for rejecting the extralegal "whole-of-government" electrification agenda and returning to EPCA's specific mandate: requiring gradual increases in the efficiency of automobiles powered by gasoline and diesel when doing so is consistent with economic practicability and justified by the need to conserve energy.

NHTSA should go further. Domestic energy abundance has fundamentally altered the statutory "need of the United States to conserve energy," but the agency proposes continued stringency increases that are neither economically practicable nor necessary to protect the Nation from oil prices. Furthermore, the agency's modeling improperly incorporates plug-in hybrids, which the agency acknowledges are primarily electric vehicles, into its regulatory baseline, repeating in miniature the error of the previous administration's consideration of electric vehicles. To best protect the interests of American citizens, the final rule must eliminate these residual arbitrary stringency increases.

[2] *Id.*

BACKGROUND

1. STATUTORY AND REGULATORY BACKGROUND

1.1. The Motor Vehicle Act

In the wake of the 1973–74 Arab oil embargo, Congress and President Ford enacted EPCA to, among other things, "provide for improved energy efficiency of motor vehicles."[3]

To that end, the law amended the Motor Vehicle Information and Cost Savings Act (the "Motor Vehicle Act") to add Title V.[4] Title V of the Motor Vehicle Act promotes energy efficiency by requiring gradual increases in the "fuel economy" of new automobiles,[5] where "fuel economy" is defined as "the average number of miles traveled by an automobile for each gallon of gasoline" or diesel used to propel an automobile.[6] The Secretary of Transportation has delegated his duty to administer this program to the Administrator of NHTSA.[7]

1.2. The Fuel Economy Standards

"At least 18 months before the beginning of each model year," NHTSA must "prescribe by regulation average fuel economy standards for automobiles manufactured by a manufacturer in that model year."[8] A "standard" must "be the maximum feasible average fuel economy level that … manufacturers can achieve in that model year."[9] NHTSA must set separate standards for "passenger automobiles" (e.g., usually sedans, coupes, hatchbacks) and "non-passenger automobiles," also known as "light trucks" (e.g., light pickups, minivans, and sport-utility vehicles).[10] There is an additional minimum standard for domestic passenger cars.[11]

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[3] 42 U.S.C. § 6201(5).

[4] Pub L. No. 94-163, § 301, 89 Stat. 901 (1975), *codified at* 49 U.S.C. Ch. 329. Before 1994, Title V of the Motor Vehicle Act was codified at 15 U.S.C. § 2001 *et seq.*

[5] 49 U.S.C. § 32902(a)–(b).

[6] *Id.* § 32901(a)(10)–(11).

[7] 49 C.F.R. § 1.95(a).

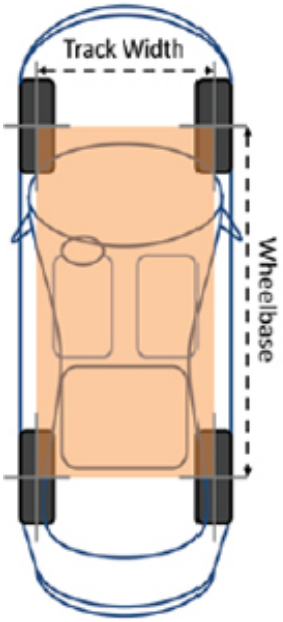
[8] 49 U.S.C. § 32902(a).

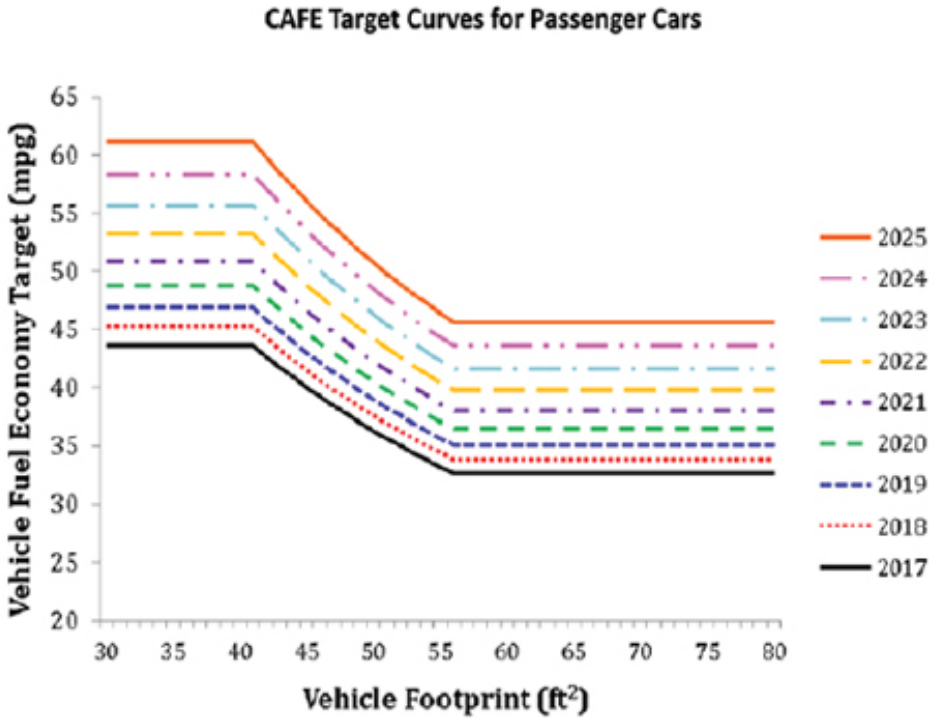
[9] *Id.*

[10] *Id.* § 32902(b); 49 C.F.R §§ 523.4, 523.5, 531.5, 533. As discussed further below, a highly convoluted classification scheme determines whether a vehicle can qualify as a light truck, and therefore less stringent standards.

[11] *Id.* § 32902(b)(4).

In the 1970s, 1980s, and 1990s, Congress or NHTSA simply set miles per gallon (mpg) targets for automaker fleets.[12] But that encouraged automakers to downsize, rather than improve fuel efficiency.[13] In 2007, Congress therefore amended the Act to require that fuel economy standards be "based on 1 or more vehicle attributes related to fuel economy and express each standard in the form of a mathematical function."[14] Starting in 2011, NHTSA implemented this requirement by setting fuel economy targets that are inversely related to an automobile's size, as measured by its footprint (roughly, the area between the wheels).[15] Here is an illustration of an automobile footprint and a footprint-based fuel economy target for the 2017 through 2022 standards set in 2012:[16]





[12] *See* 49 C.F.R. §§ 531.5(a), 533.5(a).

[13] *Competitive Enter. Inst. v. NHTSA*, 956 F.2d 321, 324 (D.C. Cir. 1992); *see also* Robert W. Crandall & John D. Graham, *The Effect of Fuel Economy Standards on Automobile Safety*, 32 J.L. & Econ. 97 (Apr. 1989).

[14] 49 U.S.C. § 32902(b)(3)(A).

[15] NHTSA, SAFE III Draft Technical Support Document 1-4 to 1-6 (Dec. 2025) ("SAFE III DTSD").

[16] Nat'l Acads., *Cost, Effectiveness, and Deployment of Fuel Economy Technologies for Light-Duty Vehicles* 16, Figure 1.1 (2015), https://doi.org/10.17226/21744. The 2023 through 2025 standards in the 2012 rule were only "augural" (i.e., not binding).

To determine an automaker's actual standard, the automaker's footprint-based targets must be weighed by the number of automobiles produced and then averaged across the relevant fleet.[17] Thus, the actual required production-weighted fuel economy standard for an automaker's fleet cannot be precisely known in advance of a model year, only guessed. When NHTSA says that the fuel economy standards will require an average of X mpg for the passenger car fleet in future model year 20XX, that is a guess based on NHTSA's predictions of the future sales mix. It is not the standard.

1.3. "Maximum Feasible" Standards

NHTSA's "maximum feasible" standards are an exercise of delegating policymaking authority. Paragraph (f) of section 32902 tells NHTSA what it "shall consider" when setting a "maximum feasible" standard: "technological feasibility, economic practicability, the effect of other motor vehicle standards of the Government on fuel economy, and the need of the United States to conserve energy."[18]

Paragraph (h), which is crucial to this proposed rulemaking, tells NHTSA what it "may *not* consider" when determining what is "maximum feasible": the efficiency of "dedicated" or "dual fueled" automobiles operating on "alternative fuel," such as automobiles powered by external electricity (plug-in electric vehicles operating on electricity from an external source), or credits earned by manufacturers for exceeding the standards.[19]

This entirely prohibits NHTSA from considering battery-electric vehicles (such as a Tesla) when setting standards, and requires NHTSA to assume that plug-in hybrids are operated only in "charge-sustaining mode" (meaning they are not operating on a charge from an external source). NHTSA, however, may consider strong hybrids, such as the Toyota Prius, since they do not receive a charge from an external source. Because strong hybrids are the most efficient automobiles that consume only fuel (gasoline and diesel), NHTSA is absolutely prohibited from setting standards that a strong hybrid could not meet.

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[17] 49 C.F.R. § 531.6. For an example, see 49 C.F.R. pt. 531, App'x A, Fig. 1; 90 Fed. Reg. at 56,647.

[18] 49 U.S.C. § 32902(f).

[19] *See id.* §§ 32901(a)(1)–(2), (8)–(9), 32902(h) (emphasis added). The earliest version of §32902(h)(1) was enacted as part of the Alternative Motor Fuels Act of 1988 and prohibited NHTSA from considering the fuel economy of alcohol- or natural-gas-powered vehicles. Pub. L. No. 100-494, sec. 6(a), §513(g)(2)(B), 102 Stat. 2441, 2450 (1988). In the Energy Policy Act of 1992, Congress expanded the provision to cover electric vehicles. Pub. L. No. 102-486, §403(5)(G)(ii)(II), (H)(ii) 106 Stat. 2776, 2878.

As discussed next, however, electric vehicles are included when calculating an automakers' fleet performance. In this way, electric vehicles are an optional compliance flexibility, not a mandate.

1.4. Average Fuel Economy Performance

Although NHTSA prescribes the standards, EPA must "calculate the average fuel economy of [each] manufacturer," in other words, the automaker's performance.[20] To do so, EPA promulgates test procedures to measure an automobile's fuel economy.[21] Since the program's inception, EPA has tested gasoline automobiles using two drive cycles intended to emulate city and highway driving.[22] Once the results are in, EPA determines the "average fuel economy" of each automaker's fleet compared to the applicable fleet targets and reports its "measurements and calculations" to NHTSA.[23]

Although NHTSA may not consider vehicles powered by alternative fuel (including electric vehicles) when setting standards, when calculating average fuel economy performance for a fleet, EPA "shall" include electric vehicles.[24]

Electric vehicles, however, don't burn "fuel" when they are using stored electricity, so they don't have a "fuel economy" as that term is defined in the statute. Instead, electric vehicles use electrical energy stored in a portable battery.[25] Amounts of electrical energy are measured in watt-hours ("Wh"), not gallons.

To include electric automobiles when calculating automaker performance, Congress directed the Secretary of Energy to "determine" "equivalent petroleum based fuel economy values … for various classes of electric vehicles."[26] The Secretary of Energy must review those values each year and determine and propose necessary revisions based on four factors meant to account for

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[20] 49 U.S.C. § 32904(a).

[21] *Id.* § 32904(c).

[22] *See* 40 C.F.R. § 600.101(a)(1). These tests significantly overestimate fuel economy. Fuel economy determined under a more realistic five-cycle test procedure is approximately 20 to 30% lower.

[23] 49 U.S.C. § 32904(a), (e); *see, e.g.*, 49 C.F.R. pt. 531, App'x A, Fig. 2 (example).

[24] 49 U.S.C. § 32904(a)(2)(B).

[25] *Id.* § 32904(a)(2)(A) (defining "electric vehicle").

[26] *Id.* § 32904(a)(2)(B) (emphasis added)

the relative difference in wells-to-wheels efficiency, cost of electricity, and the consumer use of the electric vehicle.[27]

Since the end of the Clinton Administration, the Department of Energy has set the petroleum-equivalency factor for electric vehicles at "82,049 Watt-hours per gallon."[28] This number vastly inflates the relative efficiency of electric vehicles: "For example, one [electric vehicle] manufacturer had a fuel economy performance of 739.9 and 751.9 miles per gallon for its MY 2020 domestic passenger and light truck fleets as compared to the 43.4 and 30.2 miles per gallon overall performance of the same fleets for all manufacturers."[29] The number is wildly inflated because DOE multiplies the relative wells-to-wheels efficiency of electric vehicles by a baseless "fuel-content factor" of 1/0.15 (or 666%). The U.S. Court of Appeals for the Eighth Circuit has held that the fuel-content factor "is unlawful" and that the Secretary of Energy "lacks statutory authority" to promulgate this number.[30] The Department of Energy must therefore revise the petroleum-equivalency factor to come into compliance with the law and the court's opinion.

1.5. Compliance Mechanisms

An automaker that exceeds the average fuel economy standard "earns credits" that can be banked and carried forward five years or backwards three years.[31] An automaker that falls short of the standard, after considering available credits, in the past had to pay "civil penalties."[32] The fuel economy standards thus seek to coerce automakers into improving their fuel economy.[33] Traditionally, some manufacturers (e.g., GM and Stellantis) have sometimes paid fines rather than comply with fuel economy standards.[34] However, the One Big Beautiful Bill ("OB3") sets the civil penalties at zero starting in model year 2024.[35]

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[27] *Id.*

[28] 91 Fed. Reg. 553 (Jan. 8, 2026); 10 C.F.R. § 474.3(b)(1).

[29] SAFE III NPRM, 90 Fed. Reg. at 56,592.

[30] *Iowa v. Wright*, 154 F.4th 918, 946 (8th Cir. 2025).

[31] 49 U.S.C. § 32903(a), (c).

[32] *Id.* §§ 32911(b), 32912(b); 49 C.F.R. § 578.6(h)(2), *see also Nat. Res. Def. Council v. NHTSA*, 894 F.3d 95, 101 (2d Cir. 2018).

[33] *Ctr. for Auto Safety v. NHTSA*, 793 F.2d 1322, 1324, 1332–33 (D.C. Cir. 1986).

[34] NHTSA, CAFE Public Info. Ctr., Civil Penalties Report, *available via* https://www.nhtsa.gov/corporate-average-fuel-economy/cafe-public-information-center.

[35] Pub. L. 119–21, § 4006, 139 Stat. 72 (July 4, 2025) ("OB3"); 49 U.S.C. § 32912(b).

NHTSA "may" also "establish, by regulation, a fuel economy credit trading program" to allow automakers to trade credits among themselves.[36] NHTSA has established such a program.[37] Although automaker credit balances (as of model year 2021) are available on NHTSA's CAFE public information center, the trades and the price of trades are kept confidential by NHTSA and are typically undisclosed by automakers.[38]

2. THE CAFE MODEL

To predict automakers' response to changes in the fuel economy standards and societal effects of different alternatives, NHTSA uses "the CAFE Compliance and Effects Modeling System (the CAFE Model) developed and maintained by the Volpe National Transportation Systems Center (Volpe Center or Volpe)."[39]

The CAFE model's analysis starts with market data from a "baseline fleet"—"the fleet of vehicles used as the starting point for the CAFE model."[40] For SAFE III, this is "the fleet of vehicle models each manufacturer produced for sale in the Unites States for MY 2024."[41] The CAFE model's market data input file collects data for this fleet.

The CAFE model then predicts that automakers will adopt the most cost-effective paths to comply with the standards, with certain constraints.

One important feature of the model is the payback period. NHTSA acknowledges that even without regulation, automakers would adopt some cost-effective fuel-efficiency technologies on their own because buyers would be willing to pay for them. The CAFE model uses a "payback period" to determine what technologies automakers adopt on their own (i.e., without standards): if a technology pays for itself within a certain period, NHTSA assumes that automakers adopt it without standards. In the past, NHTSA has set this payback period to 30 months, or 2.5 years. In

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[36] 49 U.S.C. § 32903(f)(1).

[37] 49 C.F.R. § 536.5.

[38] Indeed, until calendar year 2022, NHTSA didn't even require automakers to confidentially report the price of transactions. Now it does. 49 C.F.R. § 536.5(c)(5).

[39] SAFE III, 90 Fed. Reg. at 56,449, 56,454.

[40] *Id.* at 56,454, 56,462.

[41] *Id.* at 56,464.

this proposed rule, NHTSA sets this payback period at 36 months, or 3 years.[42] NHTSA assumes that technologies with longer payback periods are only adopted in response to tighter standards.

To determine the cost of complying with the standards, the CAFE model then uses the following inputs to predict automaker decisions:

- "Technology effectiveness values" for different efficiency technologies using Argonne's "autonomie model"—a value that represents "the relative difference between the fuel economy for one" vehicle with and without the technology;[43]
- Estimates of direct manufacturing costs;[44]
- A markup of 1.5—"the retail price equivalent," or "RPE"—to account for automakers' indirect costs, such as warranties, R&D costs, overhead, and dealer expenses.[45]
- A simulation of tax credits;[46]
- In the past, CAFE fines, as NHTSA assumed that at least some automakers would pay fines when doing so was more cost-effective than complying.[47]

The CAFE model then simulates the adoption of fuel-efficiency technologies in response to the standards. The model is constrained to avoid simulating unrealistic technology adoption. For instance, the model restricts the application of high-compression-ratio engines to pickup trucks unless they are hybridized because these engines lack the low-end torque required for towing and hauling, meaning a "blind" application of this technology to pickups would degrade utility.[48] Similarly, the model includes logic to prevent "branch hopping"—forcing an automaker to abandon a recent investment in one transmission type to switch to another—thereby accounting

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[42] *Id.* at 56,466.

[43] *Id.* at 56,472.

[44] *Id.* at 56,474.

[45] *Id.* at 56,476.

[46] *Id.* at 56,477.

[47] *Id.* at 56,466. OB3 means that automakers don't have to pay fines, but NHTSA now assumes that automakers will comply with the law even though the fines are zero.

[48] *Id.* at 56,486.

for "stranded capital."[49] These modeling constraints ensure that the "maximum feasible" standard is based on engineering reality rather than theoretical maximums.

The CAFE model then predicts car buyer responses and other downstream societal effects. This includes predicting buyer behavior, including effects on sales, as well as other tradeoffs and "externalities." NHTSA uses these predictions to perform the cost-benefit analysis that informs its balancing of the statutory factors.

3. THE BIDEN ADMINISTRATION'S ELECTRIC VEHICLE "BASELINE"

In August 2021, President Biden issued an Executive Order declaring that "America must lead the world on clean and efficient cars and trucks."[50] "That means," President Biden said, the country's "goal" should be "that 50 percent of all new passenger cars and light trucks sold in 2030 be zero-emission vehicles, including battery electric, plug-in hybrid electric, or fuel cell electric vehicles."[51] To make that goal a reality, President Biden directed NHTSA to set new fuel economy standards.[52]

On May 2, 2022, in response to this executive order, NHTSA published amended fuel economy standards. NHTSA's amended standards increased the stringency of the 2020 standards by 8 percent per year for model years 2024 and 2025 and by 10 percent for model year 2026.[53]

Then, in 2024, NHTSA promulgated an even more aggressive final rule. For passenger cars, NHTSA's final rule increased the stringency of the model year 2026 standards by 2% per year in model years 2027-2031.[54] For light trucks, NHTSA required no increase in model years 2027–28, but the standards then increase by 2% per year in model years 2029-2031.[55] As a result, NHTSA

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[49] *Id.*

[50] Exec. Order No. 14,037, §1, 86 Fed. Reg. 43,583 (Aug. 10, 2021).

[51] *Id.*

[52] The Biden administration was not the first. In the 2020 SAFE Rule, NHTSA also ignored this prohibition when setting standards for model year 2021 through 2026, although the small number of electric vehicles then in the baseline fleet meant that this had a relatively smaller effect (albeit not a trivial one) on the analysis.

[53] 87 Fed. Reg. at 25,720.

[54] 89 Fed. Reg. at 52,547.

[55] *Id.*

predicted that the standards will require an industry-average for model year 2031 of 65.1 miles per gallon for passenger cars and 45.2 miles per gallon for light trucks.[56]

These standards are impossible to meet for a fleet of gasoline-only automobiles. To justify these standards, NHTSA *had to* ignore the prohibition on considering electric vehicles when setting standards, which have a vastly higher imputed fuel economy based upon the inflated petroleum-equivalency factor.[57]

Here is how NHTSA did it.[58] NHTSA began by modeling a projected "baseline" scenario in which NHTSA made no change to the standards set in the prior rule.[59] NHTSA started with information from automakers about the vehicles they predicted they would produce in model year 2022.[60] NHTSA included estimates for how many electric vehicles and plug-in hybrids automakers would produce in 2022 in the baseline, even as it recognized there was "a high probability" that "actual production volumes" would differ from the estimates.[61] NHTSA also compiled a list of technologies (including electrification) that could improve fuel economy.[62] Using this data, NHTSA projected how the fleet would change in later model years as automakers added fuel-saving technologies in response to economic factors and other regulatory requirements that NHTSA assumed would exist even if it did not change the current standards.[63]

To project how automakers would respond to economic factors, NHTSA's model added technology that "pays for itself" in fuel savings within 30 months.[64] The model also considered ways automakers could lower the cost of electric vehicles by taking advantage of "tax credits for

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[56] 89 Fed. Reg. at 52,549, Table 1-4.

[57] In the 2020 SAFE Rule, NHTSA also ignored this prohibition when setting standards for model year 2021 through 2026, although the smaller number of electric vehicles then in the baseline fleet meant that this had a far smaller effect. *See* 90 Fed. Reg. at 56,592.

[58] For simplicity, we use an example from the latest 2024 rule. In the earlier rule, NHTSA used the same trick, although there even the Biden NHTSA acknowledged that it unlawfully considered plug-in hybrids.

[59] 89 Fed. Reg. at 52,698.

[60] Technical Support Document 2-20 (June 2024), https://www.nhtsa.gov/sites/nhtsa.gov/files/2024-07/NHTSA-final-technical-support-document-cafe.pdf.2024 ("2024 TSD"); 80 Fed. Reg. at 52,599.

[61] *See* 2024 RIA at 8-10, 8-11 (Figures 8-7 & 8-8); 2024 TSD 2-20 at n.103.

[62] 2024 TSD at 3-1.

[63] 89 Fed. Reg. at 52,635; 2024 TSD at 1-27.

[64] 89 Fed. Reg. at 52,598.

battery-based vehicle technologies."[65] And to project how manufacturers would respond to other regulatory requirements, the model assumed that automakers would add technology to their 2022 fleets in response to four factors.[66]

- First, the model assumed automakers would add technology to comply with NHTSA's prior fuel-economy standards.[67]
- Second, the model assumed that automakers would add technology to comply with the greenhouse gas standards set by EPA in 2021 and that EPA's model year 2026 standards would continue in perpetuity.[68]
- Third, the model assumed that automakers who had made voluntary commitments to California would fulfill their "contractual obligations" to produce more electric vehicles in model year 2022 than required by EPA's greenhouse gas standards.[69]
- Fourth, the model assumed automakers would produce electric vehicles in response to the mandates adopted by California and other states.[70]

Based on these (and many other) assumptions, NHTSA then projected that the percentage of electric vehicles in the baseline (i.e., "no action") passenger-car fleet will increase from 12.4% in 2022 to 31.4% in model year 2027 and 39.4% in model year 2031.[71] For light trucks, NHTSA projected an increase from 1.3% in model year 2022 to 14.8% in model year 2027 and 22.5% in model year 2031.[72]

Having generated these projected baseline fleets, NHTSA then modeled five alternative regulatory scenarios to estimate whether and how automakers could comply with stricter fuel-economy standards.

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[65] *Id.* at 52,614–16, 52,707.

[66] 89 Fed. Reg. 52,698; 2024 TSD at 1-27.

[67] 89 Fed. Reg. 52,698; 2024 TSD at 1-27.

[68] 89 Fed. Reg. at 52,698.

[69] *Id.*

[70] *Id.* at 52,610-14.

[71] *Id.* at 52,731, Table V-9.

[72] *Id.*

To feign compliance with the prohibition against considering electric vehicles, NHTSA adopted what it calls a "narrow interpretation" of the prohibition.[73] "This narrow interpretation permitted dedicated alternative and dual-fueled vehicles [including electric vehicles] to be added to the fleet of vehicles in response to reasons other than NHTSA's CAFE standards, and outside the years for which NHTSA was setting standards."[74]

To apply this narrow interpretation, NHTSA prohibited the CAFE model from adding electric vehicles in response to the new fuel-economy standards *only* during the model years for which NHTSA was setting standards (2024-2026 and later 2027-2031).[75] But NHTSA did not remove the electric vehicles it had already included in its baseline "no-action" fleet. So those electric vehicles and their high imputed fuel economy were included in the compliance fleet that NHTSA modeled for each of the alternatives, including the one it selected as the final standards.[76]

Although NHTSA was setting standards only for model years 2027-2031, it considered the effect of the standards until 2050 to determine whether they are maximum feasible. The model then introduced additional electric vehicles (beyond those in the baseline) that automakers may produce in later years "as an indirect effect of more stringent standards" or in response to other factors.[77] The model also allowed plug-in hybrids to receive their enhanced fuel economy when operated on electricity, and considered that automakers could comply using credits in years outside the standard-setting years.[78] These compliance flexibilities were included in the cost-benefit analysis that NHTSA considered in assessing economic practicability.[79]

In other words, even though the statute forbids NHTSA from considering electric vehicles, as the chart below shows, NHTSA considered electric vehicles before, during, and after the model years when assessing feasibility and economic practicability (and it also considered credits).[80]

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[73] 90 Fed. Reg. at 56,592.

[74] *Id.* at 56,592.

[75] 89 Fed. Reg. at 52,832.

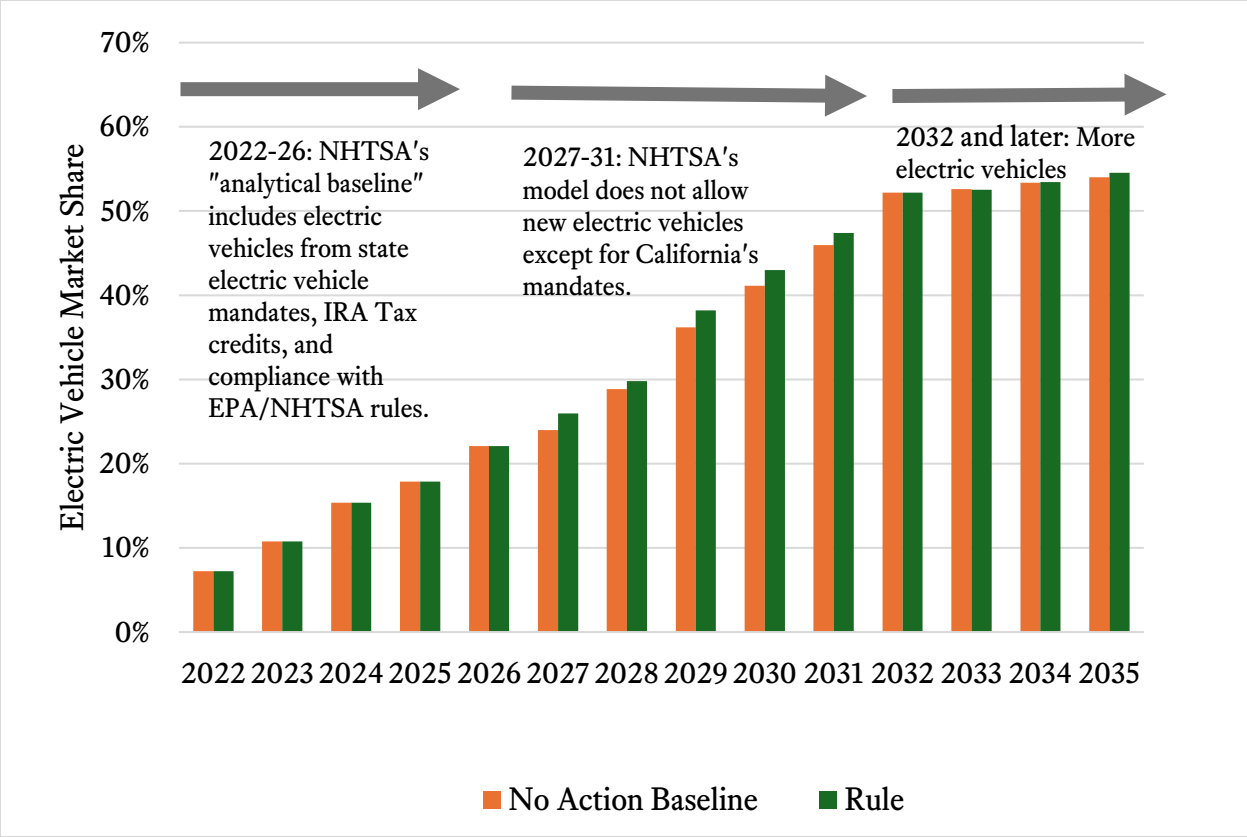
[76] *Id.* at 52,731 (Table V-9); *see also id.* at 52,799.

[77] *Id.* at 52,828; *see also id.* at 52,635, 52,835.

[78] *Id.* 52,731, 52,833; 2024 RIA 6-4, 6-12, 9-65.

[79] 89 Fed. Reg. at 52,553, 52,815, 52,887.

[80] Developed using the 2024 CAFE model used for the model year 2027-31 standards. The numbers are different than those in Table V-9 above because they include plug-in hybrids and are numbers for a combined for the fleet.



4. THE PROPOSED RULE

NHTSA now proposes a fundamental reset of the fuel economy program, consistent with the Secretary's memorandum "Fixing the CAFE Program." We discuss the proposed rule next.

4.1. Resetting the Baseline

The proposed rule aims to ensure NHTSA's full compliance with 49 U.S.C. § 32902(h). As NHTSA explains, NHTSA may not consider vehicles operating on alternative fuel when setting standards.[81] NHTSA rejects its prior claim that it may consider electric vehicles in the baseline or analysis fleet.

Under the proposed rule, the "analysis fleet"—the baseline used to decide what is technologically feasible and economically practicable for automakers—excludes all battery-electric vehicles and fuel cell electric vehicles. For plug-in hybrid electric vehicles, the agency

[81] 90 Fed. Reg. at 56,438.

considers *only* these vehicles operating on gasoline or diesel fuel, ignoring the electric drive mode entirely.[82]

When the "imputed fuel-economy performance of [electric vehicles]" is removed, the baseline reflects the thermodynamic reality of internal-combustion engines.[83] NHTSA now acknowledges that it set previous standards "improperly above the maximum feasible level because NHTSA considered statutorily prohibited factors."[84] By constraining the analysis to gasoline and diesel vehicles, NHTSA ensures that the standards encourage improvements in efficiency, rather than mandating fuel switching.

Because it considered electric vehicles in the 2020, 2022, and 2024 rules, NHTSA must reset the baseline standards starting in 2022 so that they are maximum feasible for conventional automobiles without electric vehicles and credits.[85] As NHTSA concludes, model year 2022 data shows that "manufacturers were unable to achieve the model year 2022 standards with their gasoline and diesel-powered fleets."[86] NHTSA therefore proposes to reset the model year 2022 targets to a level that "75 percent of passenger cars and 70 percent of light trucks" powered by fuel (i.e., gasoline and diesel) met.[87] This is a very significant change, as under the current model year 2022 standards (set by the SAFE II rule) only "around half" of gasoline and diesel vehicles met their footprint-based targets.[88]

4.2. Proposing New Stringency Rates

Stripped of electric vehicles, the proposed standards reflect modest, achievable improvements for gasoline powertrains. NHTSA proposes "Alternative 2" as the Preferred Alternative. The proposed stringency increases are as follows:

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[82] *Id.* at 56,454.

[83] *Id.* at 56,438.

[84] *Id.* at 56,438.

[85] *Id.* at 56,592.

[86] *Id.* at 56,524.

[87] *Id.* at 56,522.

[88] *Id.* at 56,521 n.315; *see also id.* at 56,550–51 (comparison).

- **Model years 2022–2026:** Although production for these model years is (mostly) over,[89] NHTSA proposes to amend the standards to propose increases of **0.5 percent per year** from the newly calculated model year 2022 baseline footprint-based target.[90]

- **Model year 2027:** A bridge year with stringency adjusted to smooth the transition to new regulatory classifications for light trucks (0.35 percent for cars; 0.7 percent for trucks).

- **Model years 2028–2031:** An increase of **0.25 percent per year**.[91]

This is a significant change from the "No-Action Alternative" (the current standards), which required increases of 8 percent to 10 percent per year for model year 2024–2026 alone. NHTSA projects that under the new proposal, the fleetwide average requirement will be approximately **34.5 mpg** in model year 2031.[92] By comparison, the current rules projected averages approaching 50 mpg or higher—figures only achievable through widespread electrification.[93]

NHTSA justifies these amended standards by weighing the "economic practicability" factor. The agency argues that squeezing additional efficiency from mature gasoline engines is increasingly expensive and yields smaller fuel savings.[94] The agency explains that standards forcing expensive technology that consumers do not value are not economically practicable.

NHTSA also proposes to reset the Minimum Domestic Passenger Car Standard ("MDPCS") to reflect the new standards. Under federal law, a manufacturer's domestic passenger car fleet must meet an average fuel economy of at least 27.5 miles per gallon or 92 percent of the average fuel economy projected for the entire industry's passenger car fleet for that model year, whichever is higher.[95] This requirement serves as a backstop to ensure that domestic manufacturing maintains a minimal baseline level of efficiency independent of a manufacturer's global operations.

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[89] Model year 2026 ends this calendar year, and model year 2022 to 2025 are over. EPA and NHTSA, however, have not yet finalized average fuel economy compliance calculations for model year 2022.

[90] *Id.* at 56,534.

[91] *Id.* at 56,446 (Table I-1).

[92] *Id.* at 56,448.

[93] *See id.* at 56,560.

[94] *Id.* at 56,446.

[95] 49 U.S.C. § 32902(b)(4).

Because the prior standards unlawfully included electric vehicles in the total fleet projection, the resulting 92-percent minimum was artificially inflated, penalizing domestic cars.[96] NHTSA proposes to recalculate the MDPCS using a projection of the gasoline- and diesel-powered fleet only.[97] Additionally, for model years 2027–2031, the agency proposes to apply a 0.7 percent "offset" to this calculation to account for NHTSA's prior projection errors, further ensuring the standard remains feasible.[98]

4.3. Eliminating Credit Trading and Non-Statutory Credits

NHTSA also proposes to eliminate the inter-manufacturer credit trading program beginning in model year 2028.[99] NHTSA explains that the statute *authorizes* NHTSA to allow credit trading, but does not *require* to do so. The agency has determined that the trading system has "resulted in a windfall for EV-exclusive manufacturers" and encouraged automakers to rely upon purchasing credits rather than improving their fleets.[100]

This proposal would dismantle the cross-subsidy mechanism and force each manufacturer to stand on its own engineering merits. Automakers would still be permitted to transfer credits internally between their own passenger car and light truck fleets and apply credits to past and future compliance years, but they could no longer buy their way out of non-compliance using a competitor's credits.

Additionally, NHTSA proposes to remove unlawful "off-cycle" and air conditioning efficiency credits starting in model year 2028.[101] These credits allowed manufacturers to claim fuel economy bumps for technologies not captured on standard test cycles (e.g., solar reflective paint, efficient lights, stop-start systems). NHTSA explains that these "menu" credits have "uncertain real-world benefits" and have been used to inflate compliance numbers artificially. Removing them simplifies the program and returns the program's focus to engine and transmission efficiency measured over the test cycle.

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[96] 90 Fed. Reg. at 56,524.

[97] *Id.*

[98] *Id.* at 56,525.

[99] *Id.* at 56,438.

[100] *Id.* at 56,443.

[101] *Id.* at 56,444.

4.4. Ending the Light-Truck "Loophole"

The proposed rule also addresses a long-standing abuse of the vehicle classification system. Under CAFE, "passenger cars" and "non-passenger automobiles" (also called "light trucks") have different, separate fuel-economy targets. The light-truck targets are less stringent. Over the last decade, automakers have increasingly designed "crossover" utility vehicles that are functionally passenger cars but meet the loose technical criteria for "light trucks" to access the less stringent standards. The agency notes that "68 percent of the light-duty fleet meets the current light truck regulatory definition," yet many of these vehicles "cannot realistically operate off road."[102]

NHTSA proposes to amend the definition for non-passenger automobile in 49 CFR part 523, starting in model year 2028. The goal is ensure that vehicles that are primarily designed—and primarily used—to transport people are part of the passenger car fleet.[103] To that end, NHTSA proposes to tighten the "functional performance" criteria—such as approach angles and axle clearance—required for a vehicle to qualify as a light truck.

This reclassification will have a two-fold effect. First, many crossover vehicles will move to the passenger car fleet, where they will face more stringent targets. Second, the remaining light truck fleet will consist of true non-passenger vehicles (e.g., pickups, large off-road SUVs) that, due to their functional attributes, have lower fuel economies. As a result, the average fuel economy of light trucks and passenger cars will fall. NHTSA's proposed fuel economy standards for model years 2028 and later account for this reclassification.

NHTSA explains that the reclassification restores the "functionality intended by Congress" and stops automakers from trying to "fit square vehicle pegs in round classification holes."[104]

4.5. Civil Penalties

Finally, the proposed rule incorporates the recent statutory change to civil penalties. Following the enactment of OB3, the civil penalty rate for CAFE non-compliance is set to $0 for model year

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[102] *Id.*

[103] *Id.* at 56,444.

[104] *Id.* at 56,444–45.

2022 and beyond.[105] Although the proposed rule retains the structure of compliance—measuring fuel economy and determining deficits—automakers with deficits need not pay fines.

ARGUMENT

1. NHTSA Properly Excludes Electric Vehicles from the Analytical Fleet

NHTSA has correctly determined that it may not consider electric vehicles when establishing maximum feasible fuel economy standards. In recent rulemakings, the CAFE program has drifted from its statutory mooring, driven by a "whole-of-government" electrification agenda. By proposing to restore the exclusion of electric vehicles from the baseline, NHTSA aligns the program with the plain text of 49 U.S.C. § 32902(h) and protects the standard-setting process.

1.1. Section 32902(h) Deprives the Agency of Discretion to Consider Electric Vehicles

As NHTSA puts it, "[o]ne significant modification from previous standard-setting proceedings and previous applications of the CAFE Model is that NHTSA did not include [electric vehicles] in the base fleet for analysis purposes and did not consider or model the potential production of [electric vehicles] as a CAFE compliance strategy for automakers.[106] This change is mandated by the law. As NHTSA explains, the agency lacks statutory authority to consider electric vehicles.

The text of the statute is unambiguous. Section 32902(h)(1) provides that the Secretary "may not consider the fuel economy of dedicated automobiles," which includes electric vehicles, when prescribing maximum feasible average fuel economy standards.[107]

Congress forbade NHTSA to consider electric vehicles because it wanted them to remain a compliance *option*, not a regulatory *mandate*. As a result, NHTSA must set fuel-economy standards at a level that a conventional fleet can achieve—without a compliance boost from the forbidden factors.

Section 32902(h)'s language is unambiguous, so the "inquiry begins … and ends there as well."[108] Because the statute does not define *consider*, that word "should be interpreted as taking [its] ordinary meaning at the time Congress enacted the statute."[109] In 1988, as today, to *consider*

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[105] *Id.* at 56,451, Table I-6.

[106] 90 Fed. Reg. 56,449.

[107] 49 U.S.C. § 32902(h)(1); *see also id.* § 32901(a)(1)(J), (a)(8).

[108] *Nat'l Ass'n of Mfrs. v. Dep't of Def.*, 583 U.S. 109, 127 (2018).

[109] *New Prime Inc. v. Oliveira*, 586 U.S. 105, 113 (2019) (cleaned up).

meant to "take into account"[110] By its plain terms, then, § 32902(h) means that NHTSA's decisionmaking may not account for electric vehicles.

That prohibition includes no qualifications or carveouts. Instead, Congress used the "mandatory language" *may not*.[111] Such language "indicates a command that admits of no discretion on the part of the person instructed to carry out the directive."[112] So when §32902(h) applies, NHTSA has no discretion to consider the fuel economy of *any* electric vehicles, the fuel economy of *any* plug-in hybrids when operated on electricity, or the availability of *any* credits—no exceptions.[113]

Neighboring provisions contain express exceptions—strengthening the inference that Congress intentionally omitted any such exceptions in § 32902(h).[114] For example, the same legislation that created the first version of § 32902(h) required that the "maximum number practicable" of government-owned vehicles "shall be" powered by alternative fuels.[115] Congress then explained how to assess practicability, providing that the "initial cost" of those vehicles "shall not be considered"—"*unless* the initial cost … exceeds" a certain threshold.[116] There is no comparable exception in § 32902(h).

Likewise, Congress showed elsewhere in § 32902 that it knows how to distinguish among model years.[117] So if Congress had wanted NHTSA to consider the forbidden factors in certain model years but not others, it had ready examples at hand. But Congress did not limit NHTSA's obligation under § 32902(h) to the model years for which it is setting standards.

Section 32902(h) applies whenever NHTSA is "carrying out subsections (c), (f), and (g) of this section." Congress listed those specific provisions to ensure that no part of the agency's decisionmaking considers the forbidden factors.

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[110] *American Heritage Dictionary* 313 (2d ed. 1985).

[111] *United States v. Palomar-Santiago*, 593 U.S. 321, 326 (2021).

[112] *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 661 (2007).

[113] *See Hallstrom v. Tillamook Cnty.*, 493 U.S. 20, 27 (1989) ("[W]e are not at liberty to create an exception where Congress has declined to do so.").

[114] *See Russello v. United States*, 464 U.S. 16, 23 (1983).

[115] Pub. L. No. 100-494, 4(a), § 400AA(a)(2), 102 Stat. at 2442, *codified at* 42 U.S.C. § 6374(a)(2).

[116] *Id.* (emphasis added).

[117] *See id.* § 32902(b)(2) (different standards for "model years 2011 through 2020" versus "model years 2021 through 2030").

Start with subsection (f), which tells NHTSA how to determine "maximum feasible average fuel economy." NHTSA necessarily carries out subsection (f) when it sets new standards under subsections (a), (b), and (d). All three provisions require NHTSA to set standards at the "maximum feasible" level.[118] By prohibiting NHTSA from considering the forbidden factors when "carrying out" subsection (f), Congress stopped the agency from setting new standards based on those factors. Thus, when NHTSA is deciding whether a standard is "technological[ly] feasib[le]" and "economic[ally] practicab[le]," § 32902(f), it may not consider the forbidden factors.

Section 32902(h) also applies when NHTSA is "carrying out" subsections (c) and (g), which permit the agency to amend existing fuel economy standards. Whenever NHTSA sets amended standards under subsections (c) and (g) it necessarily carries out subsection (f), just as it does when it sets new standards under subsections (a), (b), and (d). That is because amended standards (like new standards) must be the "maximum feasible" and subsection (f) applies whenever the agency is "deciding maximum feasible average fuel economy under this section." § 32902(f). And Congress's decision to list subsections (c) and (g) in § 32902(h) also accomplished a further goal: it prohibited NHTSA from considering the forbidden factors even when making the discretionary decision whether to amend standards in the first place.

This makes sense in light of Congress's aims. Congress enacted the initial version of § 32902(h) in a bill to "facilitate the development and use of alternative fuels."[119] According to Chairman Dingell of the House Energy and Commerce Committee—one of the bill's managers—Congress worried that "the incentives provided by th[e] bill" would be "erased" if NHTSA "assume[d] a certain penetration of alternative fueled vehicles."[120] Congress understood that if automakers investing in alternative-fuel vehicles faced "commensurate increases in the [fuel-economy] standard," it would discourage them from making those investments—the opposite of what Congress set out to do.[121] Congress thus enacted § 32902(h) to ensure that fuel economy standards would be set "without regard to the penetration of alternative fuel vehicles in any manufacturer's fleet"—preventing NHTSA from "wip[ing] out" the bill's "benefits."[122] The

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[118] *Id.* § 32902(a), (b)(2)(b), (d)(1)(B).

[119] H.R. Rep. No. 100-929, at 15 (1988).

[120] 134 Cong. Rec. H8089, H8091 (1988).

[121] *Id.*

[122] *Id.*

upshot is that NHTSA must set standards that are within reach for a fleet of internal-combustion automobiles.

And that is precisely what NHTSA's proposal does. NHTSA's return to a textualist approach ensures that standards reflect the capabilities of the internal-combustion engine and prevents the use of prohibited data that corrupts the baseline to produce an unlawful standard.

1.1. The Major-Questions Doctrine Bars Considering Electric Vehicles

Even if the text of § 32902(h) were ambiguous, and it is not, the major-questions doctrine supports NHTSA's reading of the prohibition. The Supreme Court has firmly established that agencies cannot assert "highly consequential power beyond what Congress could reasonably be understood to have granted."[123]

Deciding to transition to alternative fuels such as electricity in the transportation sector is a decision of vast economic and political significance. It affects the nation's energy security, grid reliability, and the mobility of every American citizen. There is no evidence in the text or history of the Motor Vehicle Act that Congress intended to delegate this decision to NHTSA. The law was enacted to promote the efficiency of the gas and diesel automobile fleets, not to eliminate that fleet entirely.

If NHTSA were to use a modeling choice—the inclusion of electric vehicles in the analytical baseline—to force a transition that Congress has not authorized, it would be arrogating to itself the power to decide a major question.

Given the stakes, NHTSA must "point to 'clear congressional authorization.'"[124] Yet far from providing clear congressional authorization, the text, history, and purpose of § 32902(h) reveal clear congressional intent to *prohibit* NHTSA from forcing electrification. As shown above, the best reading of § 32902(h) is that it bars NHTSA from considering the fuel economy of *any* electric vehicles and the electric-drive operation of plug-in hybrids when setting fuel-economy standards. But even if there were a "colorable textual basis" to hold otherwise, the major-questions doctrine would still foreclose NHTSA's attempted power-grab.[125]

The Biden administration's "whole-of-government" approach relied on precisely this kind of interpretive overreach. It sought to use long-extant statutes to achieve novel, transformative

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[123] *West Virginia v. EPA*, 597 U.S. 697, 724 (2022).

[124] *Id.* at 732 (citation omitted).

[125] *West Virginia*, 597 U.S. at 722.

policy goals that Congress has repeatedly declined to enact via legislation. By interpreting § 32902(h) to strictly exclude electric vehicles, the proposed rule brings NHTSA's conduct back within constitutional guardrails. It ensures that EPA exercises only that power which has been clearly delegated: the power to improve the fuel economy of gasoline and diesel vehicles.

If Congress wishes to mandate electric vehicles, then it must pass a law doing so. Until then, NHTSA can only focus on improving the efficiency of conventional vehicles, not mandating transitions to different fuels.

1.2. NHTSA's Prior Counterarguments Fail

In previous rulemakings, NHTSA defended its reliance on the forbidden factors in three ways. First, it read exceptions into the phrase "may not consider"—claiming that NHTSA *may* consider the forbidden factors at some times or for some reasons. Second, it suggested that § 32902(h) does not govern its baseline. And finally, it invoked policy arguments. Each effort fails.

First, NHTSA previously argued that § 32902(h) merely bars the agency from "consider[ing] the possibility that manufacturers would create new [electric vehicles] *to comply* with [NHTSA's] standards *in any model year for which standards are being set*."[126] That interpretation leaves the agency free to consider electric vehicles produced "independent of NHTSA's standards,"[127] and to consider electric vehicles (and the other forbidden factors) "[o]utside of the standard-setting years."[128]

The problem, of course, is that § 32902(h) does not say any of those things—and NHTSA "may not narrow [the] provision's reach by inserting words Congress chose to omit."[129] Section 32902(h) does not say that NHTSA "may not consider" the forbidden factors "*unless*," or that "NHTSA *may* consider" the forbidden factors "*if*." It says NHTSA "may not consider" them, period. The statutory text is plain, and it leaves no room for the exceptions NHTSA has previously read into it.

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[126] 89 Fed. Reg. 52,832 (emphases added).

[127] *Id.* at 52,704 n.836

[128] 89 Fed. Reg.52,704 n.836; 89 Fed. Reg. 52,635.

[129] *Lomax v. Ortiz-Marquez*, 140 S. Ct. 1721, 1725 (2020).

Nor is NHTSA's prior reading "possible" simply because it "give[s] meaningful effect" to § 32902(h).[130] If an agency's interpretation is not the best, it is not permissible after *Loper Bright*. And the problem with NHTSA's interpretation is not that it gives § 32902(h) *no* effect, but that it gives it only *partial* effect—not the "full effect" demanded by Congress's categorical prohibition.[131]

Second, NHTSA also previously suggested that § 32902(h) does not prevent it from baking electric vehicles into the baseline because the baseline is "simply the backdrop against which [the maximum-feasible] determination is made."[132] But the baseline is not some historical artifact divorced from NHTSA's standard-setting. It is an integral part of NHTSA's maximum-feasible determination. Standards that are feasible using one baseline may not be feasible using a different baseline. NHTSA conceded that it used the baseline to "measure the costs and benefits of [its] standards,"[133] and to "determin[e] what further efficiency gains will be feasible."[134] Those are both subsection (f) questions. And when NHTSA used a baseline that included electric vehicles in "carrying out" subsection (f), it violated § 32902(h)'s instruction that it "may not consider" the forbidden factors.

NHTSA now knows better, but it also used to know better. In 2006, the agency recognized that its "baseline projections *cannot reflect*" the "improve[d] . . . fuel economy performance" of "alternative fuel vehicles" because "[§] 32902(h) prohibits us from taking such benefits into consideration."[135] NHTSA had it right before, and its later reading was "bad wine of recent vintage."[136] NHTSA is right to return to its earliest construction.

Finally, the Biden NHTSA eventually dropped all pretense to statutory interpretation and simply declared that it had good reasons for ignoring Congress's instructions. It insisted it cannot "pretend" that electric vehicles "built for non-CAFE-compliance reasons do not exist" because that "would be unrealistic" and produce "inaccurat[e]" results.[137] Instead, given the "reality"

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[130] 89 Fed. Reg. 52,705.

[131] *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 372 (2007).

[132] 89 Fed. Reg. at 52,704 & n.836.

[133] *Id.* at 52,659.

[134] *Id.* at 52,635.

[135] 71 Fed. Reg. 17,566, 17,582 (Apr. 6, 2006) (emphasis added)

[136] *Rotkiske v. Klemm*, 589 U.S. 8, 14 (2019) (cleaned up).

[137] 89 Fed. Reg. at 52,704 & n.836.

that "electric vehicles exist,"[138] NHTSA declined to "blind itself" to them without a "clear indication" to do so.[139]

But Congress *did* provide a clear indication, and as NHTSA now recognizes, the agency is bound by it. "[W]hen Congress directs an agency to consider only certain factors in reaching an administrative decision, the agency is not free to trespass beyond the bounds of its statutory authority by taking other factors into account."[140]

There is also nothing unusual about § 32902(h)'s instruction to ignore electric vehicles. Congress often determines that "real" factors are not *relevant* to the task at hand and orders decisionmakers to proceed accordingly.[141] It hardly defies "reality" for Congress to create incentives for alternative-fuel vehicles and then prevent those incentives from becoming mandates by requiring NHTSA to set fuel-economy standards based on what internal-combustion-engine vehicles can achieve. That some automakers have previously chosen to produce electric vehicles does not lock in that choice for all time.

If NHTSA previously thought that § 32902(h) was "bad policy" or was "working in unintended ways," the proper—and only lawful—course is for the agency to "ask Congress to change the law."[142] NHTSA now rightly recognizes that the agency may not "rewrite" the prohibition "to suit its own sense of how the statute should operate."[143]

2. THE "NO-ACTION" STANDARDS ARE NOT TECHNOLOGICALLY FEASIBLE AND ECONOMICALLY PRACTICABLE WITHOUT ELECTRIC VEHICLES

NHTSA already has data for model years 2022 through 2024, and soon it will have data for model year 2025. As NHTSA persuasively demonstrates, the performance of gas-powered fleets is already far below the standards promulgated in 2020 and 2022 for model years 2022 through 2026.[144] "The same faults apply to the existing standards for [model year] 2027 and beyond."[145]

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[138] *Id.* at 52,705

[139] *Id.* at 52,834.

[140] *Murray Energy Corp. v. EPA*, 936 F.3d 597, 623 (D.C. Cir. 2019) (citation omitted).

[141] *See*, *e.g.*,49 U.S.C. § 41734(h); 42 U.S.C. § 300gg-111(c)(5)(D).

[142] *Am. Hosp. Ass'n v. Becerra*, 596 U.S. 724, 738 (2022).

[143] *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 328 (2014).

[144] 90 Fed. Reg. at 56,593, Table V-2.

[145] *Id.*

"NHTSA estimates that 91 percent of the gasoline- and diesel-fueled light truck fleet will not be able to comply with the [MY] 2027 standards."[146]

NHTSA's own modeling shows that internal-combustion vehicles cannot meet the standards. Table 1, below, shows the number of light-duty vehicles (domestic passenger cars, imported passenger cars, and light trucks) sold for model years 2027 through 2031 that have non-electrified powertrains in NHTSA's modeling. "SHEV" represents strong-hybrid vehicles; "MHEV" represents mild-hybrid vehicles (i.e., internal-combustion-engine vehicles with minimal electric assist); and "conventional" represents traditional internal-combustion engine vehicles.[147] Table 1 also shows the percentage of those vehicles that meet NHTSA's fuel efficiency targets.

NHTSA's outputs show that by model year 2027, the first year of NHTSA's 2024 standards, only 2.1% of conventional and 3.9% of mild-hybrid light-duty vehicles meet NHTSA's fuel

LDV Final Standards	MY2027		MY2028		MY2029	
Vehicle Type	# vehicles sold	% meet FE Target	# vehicles sold	% meet FE Target	# vehicles sold	% meet FE Target
Conventional	2,090,381	2.1%	2,037,828	2.1%	1,739,623	1.5%
MHEV	5,316,688	3.9%	4,639,605	10.4%	4,278,764	7.7%
SHEV	4,401,759	49.8%	4,953,421	41.8%	5,324,539	32.9%
Total Conv, MHEV, SHEV	11,808,828	20.7%	11,630,854	20.7%	11,342,926	18.6%
Vehicle Type	MY2030 # vehicles sold	% meet FE Target	MY2031 # vehicles sold	% meet FE Target		
Conventional	1,716,113	30.0%	1,629,332	0.0%		
MHEV	3,963,576	1.4%	3,637,462	1.5%		
SHEV	5,499,812	30.0%	5,689,506	25.2%		
Total Conv, MHEV, SHEV	11,179,501	15.2%	10,956,300	13.6%		

Table 1. Percentage of conventional internal-combustion engine (Conventional), mild-hybrid (MHEV), and strong-hybrid (SHEV) LDVs sold in each model year that meet the target fuel efficiency under the no-action standards. *CAFE Compliance and Effects Modeling System: Downloads*, 2025 NPRM, Central & EIS Analysis, LD_EIS output, vehicles_report (downloaded Jan. 20, 2026).

economy targets. In model year 2027, less than 50% of strong-hybrids meet NHTSA's targets. The percentage of strong-hybrid automobiles meeting NHTSA's targets drops to 25.2% by model

[146] *Id.* at 56,594.

[147] *See* 89 Fed. Reg. at 52,635.

year 2031. Overall, by model year 2031, less than 14% of the non-electrified automobile fleet will meet NHTSA's new fuel economy targets.

To comply with the fleet-average standards, automakers must compensate for the vehicles sold that do not meet the fuel efficiency targets by selling vehicles with compliance fuel economies that far exceed the fuel efficiency targets. EPA assigns battery-electric vehicles very large compliance fuel economy values due to the Department of Energy's artificially inflated petroleum-equivalency factor.[148] As a result, some battery-electric vehicles in model year 2027 have compliance fuel economy values that exceed 500 mpg.[149] To continue selling the broad range of conventional automobiles that buyers demand—and which generate profit—automakers would be compelled to produce significant numbers of battery-electric vehicles or buy credits from those who do (if credit trading were allowed). This shows that the standards are not practicable for a fleet of gasoline and diesel vehicles.

3. NHTSA MAY AMEND THE STANDARDS THROUGH MODEL YEAR 2022

NHTSA correctly interprets the Motor Vehicle Act to authorize the amendment of fuel economy standards for past model years where the amendment reduces stringency. Although the agency has previously hesitated to exercise this authority, a close reading of the statutory text, the APA, and recent Supreme Court precedent confirms that NHTSA retains the power to correct unlawful or infeasible standards even after a model year has begun or concluded.

The text of the Motor Vehicle Act draws a sharp distinction between setting new standards and amending existing ones. When NHTSA prescribes a new standard, it must do so "at least 18 months before the beginning of the model year."[150] Similarly, when NHTSA amends a standard to make it *more* stringent, the same 18-month lead time applies.[151] However, subsection (c), which grants NHTSA general authority to amend standards to the "maximum feasible" level, contains no such temporal limitation.[152] Congress's decision to include a time limit in subsections (a) and (g) but omit it from subsection (c) implies that no such limit exists for amendments that do not increase stringency. Congress intended the 18-month lead time to protect automakers from

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[148] 10 C.F.R. § 474.3.

[149] *See, e.g.*, LD_EIS output, vehicles_report (2027 Rivian R1T, Vehicle Code 1602001, with a compliance fuel economy of 683.9 mpg; 2027 Nissan Versa, Vehicle Code 2221001, with a compliance fuel economy of 590.2 mpg).

[150] 49 U.S.C. § 32902(a).

[151] *Id.* § 32902(g)(2).

[152] *Id.* § 32902(c).

sudden regulatory tightening that would disrupt production planning; it did not intend to trap automakers in unlawful standards that exceed maximum feasibility simply because the clock ran out.

The presumption against retroactivity does not apply. To be sure, "retroactivity is not favored in the law."[153] But amending the rules here would not be retroactive "in the sense contemplated and circumscribed by precedent."[154] "Disfavored retroactivity turns conduct that was considered lawful at the time into unlawful conduct; for example, it reaches back in time to regulate conduct that was not formerly regulated. Not so here."[155] The proposed rule does nothing of the sort. It *relaxes* legal obligations. Nor does the proposed rule impair "vested rights" pre-existing the rules—"that is, legal rights that [anyone] already possessed."[156] Regulatory credit "anticipation alone does not create a vested right."[157]

General Motors Corp. v. NHTSA and *Mercedes-Benz of North America, Inc. v. NHTSA* do not support a contrary reading.[158] In those cases, the D.C. Circuit upheld NHTSA's refusal to retroactively lower standards after the model year ended after automakers who failed to meet standards due to unforeseen market shifts petitioned for relief. NHTSA denied the petitions, arguing that the statutory scheme of credits and penalties implied a deadline for compliance that precluded retroactive changes to the standards.

The D.C. Circuit upheld NHTSA's denial, but it did so by explicitly invoking *Chevron* deference and statutory ambiguity. The court found that the Motor Vehicle Act was silent on the specific issue of retroactivity and therefore deferred to NHTSA's "reasonable construction" of the statute.[159] The court did not hold that the statute *prohibited* a retroactive amendment; it merely held that NHTSA was permitted to adopt a policy against it.

Those decisions are no longer controlling. In *Loper Bright Enterprises v. Raimondo*, the Supreme Court overruled *Chevron*, stripping agencies of the deference they once enjoyed on questions of

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[153] *Bowen v. Georgetown Univ. Hospital*, 488 U.S. 204, 208 (1988).

[154] *Wille v. Lutnick*, 158 F.4th 539, 552 (4th Cir. 2025).

[155] *Id.* at 553.

[156] *Cox v. Kijakazi*, 77 F.4th 983, 991 (D.C. Cir. 2023).

[157] *Id.* at 992.

[158] 898 F.2d 165 (D.C. Cir. 1990); 938 F.2d 294 (D.C. Cir. 1991).

[159] *Gen. Motors*, 898 F.2d at 171 (citing *Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984))

statutory interpretation in cases of ambiguity, and preserving only prior Supreme Court "holdings … that specific agency actions are lawful."[160] Because this is a new specific agency action not previously upheld by the Supreme Court, circuit precedents based on step 2 of *Chevron* are no longer controlling.[161] Courts and agencies must now determine the single best reading of the statute, not merely a reasonable one.[162] Further, the D.C. Circuit's reasoning seems to have been significantly weakened by OB3, which sets the civil penalties at zero. By eliminating fines, and applying that change retroactively, OB3 has eliminated any need to protect the integrity of the mandatory fines required by Congress.

Freed from the distortion of *Chevron*, the single best reading of EPCA regarding retroactivity is clear: Congress imposed timing limits on tightening standards but left the agency free to loosen them if they proved too stringent. Section 32902(c) expressly authorizes amendments to the "maximum feasible average fuel economy level" without any temporal restriction. To read an unwritten deadline into this provision would force the agency to enforce standards that it has determined were not feasible—a result that contradicts the statute's core mandate. Under *Loper Bright*, the D.C. Circuit's prior deference to NHTSA's then policy preference is a relic of a discarded legal regime.

This presumption against retroactivity doesn't apply here. The anti-retroactivity principle primarily protects regulated parties from the unfair imposition of *new* duties or liabilities for past conduct.[163] A rule that relieves a burden—such as reducing a fuel economy standard that does not comply with statutory constraints—does not implicate the fairness concerns that animate the presumption against retroactivity. In this case, the proposed amendment does not impose new liabilities on manufacturers; rather, it relieves them of the liability associated with failing to meet an unlawful standard.

Further, although model year production for 2022 through 2025 is now over, EPA has not closed the regulatory books on its performance calculations for those model years, so there is no final

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[160] 603 U.S. 369, 412 (2024).

[161] *MCP No. 185*, 124 F.4th 993, 1002 (6th Cir. 2025).

[162] *Id.* at 1002.

[163] *See Landgraf v. USI Film Prods.*, 511 U.S. 244, 269 (1994) (quoting *Society for Propagation of the Gospel v. Wheeler*, 22 F. Cas. 756 (No. 13,156) (C.C.N.H. 1814) (Story, J.) ("every statute, which takes away or impairs vested rights acquired under existing laws, or creates a *new obligation*, imposes a *new duty*, or attaches a *new disability*, in respect to transactions or considerations already past, must be deemed retrospective") (emphases added).

compliance data. Given that there is no final average fuel compliance calculation for these model years, there can no vested rights, only anticipated regulatory expectations, and so a change would not be retroactive for this additional reason.

Further, the specific factual circumstances of this rulemaking compel an amendment. The current standards for model years 2022 through 2026 were promulgated based on a fundamental legal error: the inclusion of electric vehicles in the analytical baseline in violation of 49 U.S.C. § 32902(h). As a result, those standards were set unlawfully and are *void ab initio*. Leaving these standards in place would ratify an *ultra vires* agency action and penalize manufacturers for failing to meet a target that Congress forbade NHTSA from setting. Because the standards were legally defective to the extent they relied on prohibited factors, amending them is not a discretionary policy shift but a necessary legal correction to bring the regulatory books into compliance with the statute.

At a minimum, NHTSA may reset the standards for model years 2024 and later, as the model year 2024 and later standards are still being challenged in court. NHTSA may wish to finalize an alternative proposal that resets the baseline starting in model year 2024.

By resetting the standards for model years 2022 through 2026 to reflect the actual performance of the gasoline fleet, NHTSA fulfills its statutory duty to regulate the automobiles Congress authorized it to regulate, rather than the ones it wished existed. This correction is essential to re-anchoring the CAFE program in the rule of law and ensuring that future standards are built on a lawful and realistic foundation.

4. THE CURRENT NO-ACTION STANDARDS ARE UNJUSTIFIED EVEN IF NHTSA MAY CONSIDER ELECTRIC VEHICLES

Even if NHTSA could consider electric vehicles (and credits) added to the fleet outside of the standard-setting years, or for reasons other than NHTSA's tightening of the standards, the no-action standards still would not be "maximum feasible" and should be amended for that reason alone.

Although NHTSA claimed that its baseline fleet was necessary to reflect reality, it doesn't reflect reality. Unsurprisingly, given that NHTSA's prior modeling relied upon

(1) tax credits for electric vehicles that Congress has repealed in OB3,

(2) state gas car bans that were always illegal but have now been definitively disapproved by federal legislation,

(3) greenhouse gas standards that EPA is repealing, and

(4) unrealistically optimistic assumptions about electric-vehicle adoption based on a misunderstanding of their costs and car buyers,

NHTSA's "baseline" was wildly wrong. The market share of electric vehicles currently (at the start of model year 2027) hovers around 10%, far from the over 20% predicted by NHTSA, and has been declining.[164] There is no chance automakers will produce the share of electric vehicles NHTSA projected in its baseline "no-action scenario." Even the "sensitivity" scenario without electric vehicle mandates that NHTSA prepared as part of the 2024 rulemaking is way off, projecting 19% "[p]enetration [r]ate" for electric vehicles throughout model years 2027 through 2031, an almost assuredly unattainable level given current electric vehicle market share and market trends.[165]

NHTSA should make clear that even if it may consider electric vehicles, the no-action standards are *not* maximum feasible.

5. THE "NEED TO CONSERVE ENERGY" FACTOR WEIGHS AGAINST MORE STRINGENT STANDARDS

NHTSA also correctly concludes that the statutory factors identified in § 32902(f) for determining the maximum feasible average fuel economy—"technological feasibility, economic practicability, the effect of other motor vehicle standards of the Government on fuel economy, and the need of the United States to conserve energy"—weigh against increasing the stringency of the standards beyond those proposed. We agree with NHTSA's analysis of each of these factors. We expand below on the fourth factor: the need for energy conservation. That factor involves a focused inquiry into the current dependence of the United States on foreign energy sources, not a license to impose environmental or climate policy. Because America has become a net exporter of petroleum, it weighs significantly against more stringent standards and other factors, like economic practicability, weigh more heavily in determining the standards.

5.1. There Is No "Need to Conserve Energy"

NHTSA's proposal correctly recognizes that the statutory "need of the United States to conserve energy" is an evolving factual inquiry. The agency must assess the current "need" based on contemporary economic and geopolitical realities. As detailed below, the strategic

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[164] Alliance for Automotive Innovation, Get Connected Report Q2 3(2025) https://www.autosinnovate.org/posts/papers-reports/Get%20Connected%20EV%20Quarterly%20Report%202025%20Q2.pdf.

[165] 89 Fed. Reg. at 52,795, Table VI-4.

necessity of energy conservation has fundamentally shifted since 1975. America's emergence as a net petroleum exporter has mitigated the oil scarcity concerns that originally animated EPCA, transforming conservation from an urgent national imperative into at best, a marginal economic hedge with little or no upside.

5.1.1 The Need to Conserve Energy Functions as Insurance Against Supply Shocks

Under EPCA, "conservation" functions as a form of national economic insurance against the volatility of foreign energy markets. The statute was enacted "[i]n the wake of the 1973–1974 Arab oil embargo," a geopolitical shock that inflicted severe economic damage through supply interruptions and abrupt price hikes.[166] This vulnerability was compounded by the 1979 oil crisis following the Iranian Revolution, which precipitated further shortages and panicked markets. Congress designed EPCA's fuel-economy provisions to mitigate these specific risks by reducing the nation's exposure to "imported petroleum" and the attendant "foreign policy implications."[167]

Energy conservation, therefore, is not an end in itself but a means to secure energy independence; when domestic abundance insulates the economy from foreign supply shocks, the statutory "need" for conservation mandates recedes, and factors like economic practicability—which prioritizes affordability and consumer choice—weigh more heavily in determining the standards.

5.1.2 Domestic Oil Abundance Reduces the Value of Energy Conservation

NHTSA correctly concludes that the "need of the United States to conserve energy" has fundamentally shifted since EPCA's enactment in 1975.[168] At that time, the United States was heavily dependent on foreign crude oil, and conservation was a necessary response to acute scarcity and geopolitical vulnerability.[169] Today, the factual predicate for that mandate—energy scarcity—no longer exists.

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[166] *Ctr. for Auto Safety v. NHTSA*, 793 F.2d 1322, 1324 (D.C. Cir. 1986).

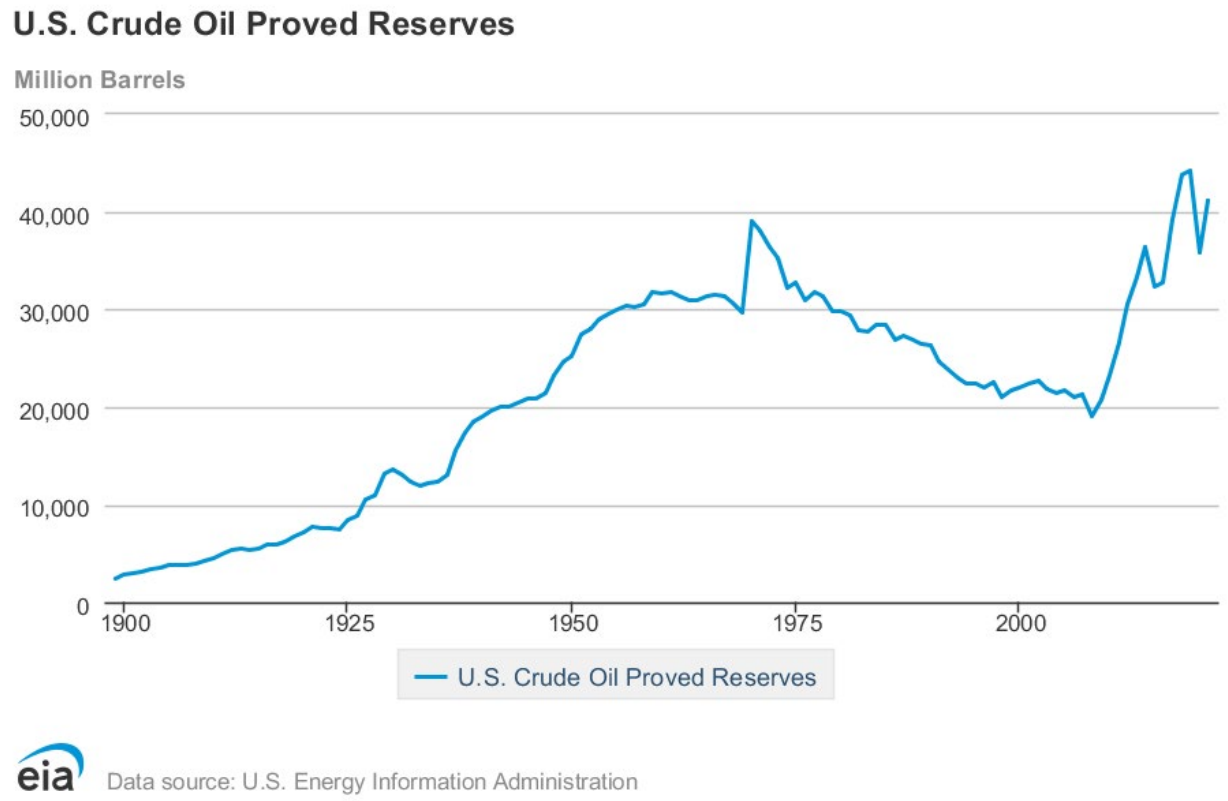
[167] *Id.* at 1325 n.12 (quoting 42 Fed. Reg. 63,184, 63,188 (Dec. 15, 1977)).

[168] *See* 90 Fed. Reg. at 56,608.

[169] *Id.*

"The U.S. energy landscape has undergone a dramatic transformation since 2005."[170] New hydraulic fracturing and horizontal drilling technology have "fundamentally changed America's energy outlook and upended global energy flows, enabling the country to achieve long-sought energy security goals."[171]

In the last two decades, U.S. proved crude oil reserves—the volume of crude oil that is recoverable under existing economic conditions—have grown rapidly.[172] As shown below, proved U.S. reserves have now more than doubled in that time, totaling 48.3 billion barrels in 2021.[173]



Data from the Energy Information Administration confirms NHTSA's finding that the United States is a net exporter of petroleum. The United States became a net annual petroleum exporter

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[170] Dep't of Energy, *Economic and National Security Impacts under a Hydraulic Fracturing Ban* 6 (Jan. 2021), https://tinyurl.com/3pjmxc6d.

[171] *Id.*

[172] EIA, *U.S. Crude Oil and Natural Gas Proved Reserves*, https://perma.cc/8W3P-NRGX (updated Apr. 29, 2024).

[173] *Id.*, fig. 1.

in 2020 and has maintained that status through 2024.[174] In 2023 alone, the United States exported 1.64 million barrels of oil per day more than it imported.[175]

This trade surplus fundamentally alters the nature of the "need" for conserving oil. In 1975, oil price shocks caused a hemorrhage of American wealth to foreign adversaries, directly threatening national security. Today, because the U.S. is a net exporter, global price volatility results primarily in a redistribution of wealth *within* the American economy rather than a transfer of wealth to foreign powers. This domestic abundance insulates the nation from the geopolitical coercion EPCA was designed to prevent, rendering the statutory "need" for aggressive mandates obsolete.

Furthermore, the "need" to conserve energy must be evaluated against the law of diminishing returns. As NHTSA acknowledges, the relationship between fuel economy and fuel consumption is non-linear; the fuel saved by moving from 40 to 50 mpg is significantly less than the savings achieved by earlier improvements in the fuel economy of the fleet.[176] Because the marginal utility of each additional mile per gallon plummets at higher stringency levels, while the cost increases, any small remaining "need" to protect the U.S. from oil supply shocks cannot justify the exponential costs required to squeeze nominal efficiency gains from a mature technology curve.

Finally, forcing electrification to reduce oil demand merely would trade at best a minor national security and economic concern for a far more serious one. EPCA's conservation mandate was designed to reduce reliance on adversarial foreign nations. As NHTSA acknowledges, aggressive standards that encourage the electrification of the fleet move the United States toward "greater strategic dependence on foreign suppliers of critical automotive inputs."[177]

This dependence starts with raw materials. The United States remains 100 percent import-dependent for twelve critical minerals.[178] China dominates the processing capacity for key inputs like cobalt, graphite, and rare earth elements.[179] NHTSA admits that increasing demand for these

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[174] *See* 90 Fed. Reg. at 56,608.

[175] *See* U.S. Energy Info. Admin., *Frequently Asked Questions: How much petroleum does the United States import and export?* (last updated Mar. 29, 2024).

[176] *See* 90 Fed. Reg. at 56,446 n.14.

[177] 90 Fed. Reg. at 56,594.

[178] Council on Foreign Rels., *The U.S. Critical Minerals Dilemma: What to Know* (Dec. 2, 2025).

[179] *Id.*

minerals benefits the People's Republic of China.[180] The proposed rule exacerbates this vulnerability by artificially inflating demand for resources the United States does not control.The problem extends beyond raw materials to the battery technology itself. China produces over three-quarters of all batteries sold globally.[181] Chinese manufacturers control the market for lithium-iron phosphate ("LFP") batteries, which are essential for affordable electric vehicles.[182] American manufacturers do not produce these batteries at scale.[183] Consequently, Ford and General Motors have partnered with Chinese companies like CATL to source batteries for their lower-cost models.[184] This forces United States industry into reliance on a foreign adversary for essential technology.

Relatedly, interpreting the conservation factor to permit, and possibly require, forced automotive electrification—as NHTSA's prior standards did—exacerbates vulnerabilities in the Nation's infrastructure, namely its electricity grid. NHTSA acknowledges that electrification requires an enormous national buildout of electricity generation and transmission capacity, costs which fall on utility companies and ratepayers.[185] And indeed, the grid is already struggling. The North American Electric Reliability Corporation reports that the outlook for the bulk power system is worsening.[186] Thirteen of twenty-three assessment areas face resource adequacy challenges over the next ten years.[187] Rapid load growth is outpacing infrastructure development.[188] Increasing strain on the electric grid to reduce use of a plentiful domestic resource contradicts the energy security goals of EPCA and makes the United States even more vulnerable to foreign attacks on the electricity grid.

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[180] 90 Fed. Reg. at 56,594.

[181] Leonardo Paoli et al., *The Battery Industry Has Entered a New Phase*, IEA (Mar. 5, 2025).

[182] Kevin Brunelli, *American Automakers Need Chinese Batteries*, Foreign Pol'y (Nov. 14, 2025).

[183] *Id.*

[184] *Id.*

[185] *See* 90 Fed. Reg. at 56,594.

[186] N. Am. Elec. Reliability Corp., *2025 Long-Term Reliability Assessment* 6 (Jan. 2026).

[187] *Id.*

[188] *Id.*

5.2. The "Need to Conserve Energy" Does Not Include Environmental Effects or Global Climate change

EPCA is an energy security law, not an environmental statute. The "need to conserve energy" does not encompass environmental or climate considerations, which are addressed by other federal statutes such as the Clean Air Act. Even if NHTSA could consider climate impacts, however. using a highly subjective and uncertain *global* "Social Cost of Carbon" ("SCC") that attempts to monetize global climate impacts would be inappropriate, and thus arbitrary and capricious.

NHTSA's current reading of the statute as allowing it consider emissions from motor vehicles is precluded by *Massachusetts v. EPA*, which reasoned that EPA's obligation to regulate air pollution, including greenhouse gases is "wholly independent of [NHTSA's] mandate to promote energy efficiency."[189] If NHTSA is charged with regulating to protect the public from air pollution, then its mandate would not be "wholly independent."

This distinction is evident in EPCA's text. To respect this division of labor, Congress instructed NHTSA to consider "the effect of other motor vehicle standards of the Government on fuel economy" when determining maximum feasibility.[190] This provision is the statutory mechanism by which NHTSA accounts for environmental regulation. When EPA sets an emissions standard that requires catalytic converters or particulate filters, those components add mass and backpressure that affect fuel economy. NHTSA must account for those physical realities.

Even if NHTSA could consider environmental effects, EPCA restricts that consideration to domestic effects. The statute directs the agency to weigh "the need of the *United States* to conserve energy."[191] This geographic limitation is explicit. Congress authorized NHTSA to regulate fuel economy to protect the economic and energy security of this Nation, not to address environmental externalities experienced globally. Counting global "climate change" benefits accruing in other Nations against domestic costs distorts the statutory balancing test by allowing benefits reaped by foreign nations to justify imposing regulatory costs on American drivers. As NHTSA acknowledges, determining the "share of impacts . . . that affect citizens and residents

[189] 549 U.S. 497, 532 (2007).

[190] 49 U.S.C. § 32902(f).

[191] 49 U.S.C. § 32902(f) (emphasis added).

of the United States" involves significant uncertainty.[192] But the legal boundary is clear: NHTSA's authority to weigh energy conservation is limited to the needs of the United States.

NHTSA should therefore finalize a determination that environmental effects, or at least harms that occur outside the United States, are outside the scope of the "need to conserve energy." This interpretation respects the separation of powers and the specific statutory roles assigned to NHTSA and the EPA.

5.2.1 NHTSA Reasonably Rejects Using the Social Cost of Carbon

Because NHTSA lacks authority to consider environmental effects when setting fuel economy standards, metrics such as the Social Cost of Carbon ("SCC") are beyond the scope of NHTSA's analysis.

Even if EPCA allows NHTSA to consider climate effects (and it does not), NHTSA reasonably declines to quantify these putative effects in dollar terms in its central analysis, correctly recognizing that uncertainty prevents any non-speculative effort to quantify damages. These uncertainties include the magnitude of climate change caused by greenhouse gas emissions, the economic consequences of those changes, and future technological advancements or adaptations that could mitigate impacts.[193] Additionally, determining the appropriate monetary value to attribute to each ton of carbon emissions involves highly contested subjective judgments, including apportioning the share of global impacts affecting U.S. citizens and selecting the discount rate that applies in an intergenerational context over hundreds of years.[194] Relying upon these highly uncertain and subjective values could distort the balancing of statutory factors and lead to grossly inappropriate standards that ultimately undermine the agency's primary mandate under EPCA. NHTSA's decision to avoid quantifying the damages of conjectural climate effects ensures that its fuel economy standards are based on verifiable economic and technological realities rather than crystal ball models.

The technical infirmities of the SCC metric make it particularly unsuitable for use in determining national fuel economy standards.[195] The SCC is a speculative metric derived from Integrated

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[192] 90 Fed. Reg. at 56,515.

[193] *Id*. at 56,515.

[194] *Id*.

[195] A more fulsome explanation of the technical infirmities of the SCC can be found in the Prime Mover Institute's Supplemental Comment on EPA's Reconsideration of the 2009 Endangerment Finding, Docket No. EPA-HQ-OAR-2025-0194, which we have submitted to as an appendix to this comment.

Assessment Models that require agencies to make highly uncertain predictions about economic growth, emissions, and climate sensitivity centuries into the future, resulting in inputs that are inherently subjective. Moreover, the damage functions used to link temperature changes to economic losses often lack a robust empirical foundation, essentially disguising guesswork as rigorous analysis. Because the outputs of these models are highly sensitive to arbitrary choices made by the modeler, they create a false perception of precision that is illusory and misleading. [196]

The SCC metric is further destabilized by its extreme sensitivity to policy-driven inputs, particularly the discount rate, which is a policy variable rather than a scientific fact. Small changes in the discount rate—reflecting different ethical judgments about the value of future welfare—can alter the SCC by orders of magnitude. For example, shifting the discount rate from 3% to 2% can more than double the SCC estimate.[197] Recent high estimates of the SCC have also relied upon implausible high-emission scenarios, such as RCP 8.5.[198] Relying upon these extreme outliers and malleable discount rates allows the metric to be manipulated to justify predetermined regulatory outcomes rather than reflecting verifiable economic costs.

Because the SCC relies on inherently subjective and wildly uncertain inputs, basing federal fuel economy standards upon it would violate the APA's requirement for reasoned decision-making: if the inputs to a model can be adjusted to produce almost any desired output, the resulting standard is arbitrary. Electing not to base fuel economy standards on a manipulable SCC ensures that EPCA is not misappropriated to address global climate and environmental problems outside of NHTSA's bailiwick.[199]

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[196] Robert S. Pindyck, *Climate Change Policy: What Do the Models Tell Us?*, 51 J. Econ. Lit. 860, 867 (2013) (concluding that the damage functions in these models are "completely ad hoc, with no theoretical or empirical foundation" and the inputs essentially represent "guesswork").

[197] Kevin Rennert et al., *Comprehensive Evidence on the Social Cost of Carbon*, 610 Nature 687, 689 (2022).

[198] Leonie Wenz & Matthias Kalkuhl, *The Impact of Climate Change on Economic Growth and Development*, 127 World Dev. 104,749 (2020).

[199] NHTSA, however, reasonably includes a social cost of carbon in one sensitivity analysis to confirm it makes no difference and avoid any unnecessary legal risk. *See* 90 Fed. Reg. at 56,515 ("To confirm that NHTSA's exclusion of this value does not bias the cost-benefit analysis that informs NHTSA's determination of maximum feasible standards, and in accord with the decision in *Center for Biological Diversity v. NHTSA*, NHTSA has included a sensitivity case in PRIA Chapter 9 using the domestic-only monetization of the GHG estimate that was previously used in the 2020 final rule.").

6. THE DOMESTIC PASSENGER CAR STANDARD IS CORRECT

We also support NHTSA's proposal to recalculate the MDPCS by excluding electric vehicles from the baseline projection.

The MDPCS is a statutory backstop designed to protect domestic car manufacturing. Under 49 U.S.C. § 32902(b)(4), an automaker's domestic passenger car fleet must meet the higher of 27.5 mpg or 92 percent of the average fuel economy projected by NHTSA in its rulemakings for the combined domestic and non-domestic passenger car fleets for that model year. Because the MDPCS is not attribute-based—it is a single fleet-wide average—it does not adjust to changes in the fleet mix.[200] If the projected average for the total fleet is artificially inflated, the 92 percent minimum becomes a de facto penalty on manufacturers producing larger domestic sedans.

In previous rulemakings, NHTSA inflated the projected fleet average by including electric vehicles in the projections. Because electric vehicles were assigned arbitrarily high fuel economy values, the projected average for the total fleet increased substantially. This pulled the 92 percent minimum upward, forcing domestic automakers to chase a target set by electric vehicles they do not produce, and punishing domestic production of traditional passenger automobiles.

NHTSA now proposes to correct this by removing all dedicated alternative fuel vehicles from the files used to calculate the MDPCS.[201] This aligns the calculation with 49 U.S.C. § 32902(h), which prohibits considering the fuel economy of dedicated automobiles in standard setting. By removing these vehicles, the projected average reflects the capabilities of the internal combustion fleet, making the 92 percent benchmark a realistic metric for gasoline-powered domestic cars.

Additionally, NHTSA has updated the "offset" applied to this calculation. The offset accounts for the historical discrepancy between the agency's projections and the actual fleet performance.[202] By removing the distortion of electric vehicles from the historical data, NHTSA calculates that the necessary offset has dropped from 1.9 percent to 0.7 percent.[203]

This recalibration is essential. The MDPCS ensures that domestic manufacturing remains efficient, but it was never intended to force domestic factories to switch powertrains. By

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[200] *See* 90 Fed. Reg. at 56,584.

[201] *Id.* at 56,525.

[202] *Id.*

[203] *Id.*

grounding the standard in the performance of gasoline and diesel vehicles, NHTSA preserves the viability of the domestic passenger car fleet.

7. NHTSA's Proposed Regulatory Reforms Correct Longstanding Distortions

7.1. NHTSA's Proposed Functional Classification Rightly Prevents Regulatory Arbitrage Between Passenger Cars and Light Trucks

NHTSA's proposal to reform the regulatory definition of "non-passenger automobile" ends a long-standing legal fiction. EPCA distinguishes between "passenger automobiles" and "non-passenger automobiles" to protect the utility of vehicles designed for labor, agriculture, and off-road operation.[204] Non-passenger automobiles inherently require different fuel consumption profiles than those designed strictly for moving people. Over time, however, convoluted regulatory definitions allowed manufacturers to game this distinction, engaging in arbitrage that erodes the statutory scheme. We support NHTSA's proposal to align these definitions with the statute.

The statute defines the terms but delegates discretion to NHTSA. A passenger automobile means an automobile that NHTSA

> decides by regulation is manufactured primarily for transporting not more than 10 individuals, but does not include an automobile capable of off-highway operation that [NHTSA] decides by regulation—(A) has a significant feature (except 4-wheel drive) designed for off-highway operation; and (B) is a 4-wheel drive automobile or is rated at more than 6,000 pounds gross vehicle weight.[205]

The gap between the law and the actual on-road fleet is undeniable. As NHTSA observes, in 1975, non-passenger automobiles represented merely 19.3 percent of the market.[206] Today, they comprise 64.7 percent.[207] This inversion did not occur because American families suddenly required the utility of trucks capable of off-road operation. Rather, automakers responded to the incentive to access less stringent fuel economy targets by classifying vehicles as "light trucks."

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[204] *See* 49 U.S.C. § 32901(a)(16)–(18).

[205] *Id.* § 332901(a)(18).

[206] 90 Fed. Reg. at 56,615

[207] *Id.*

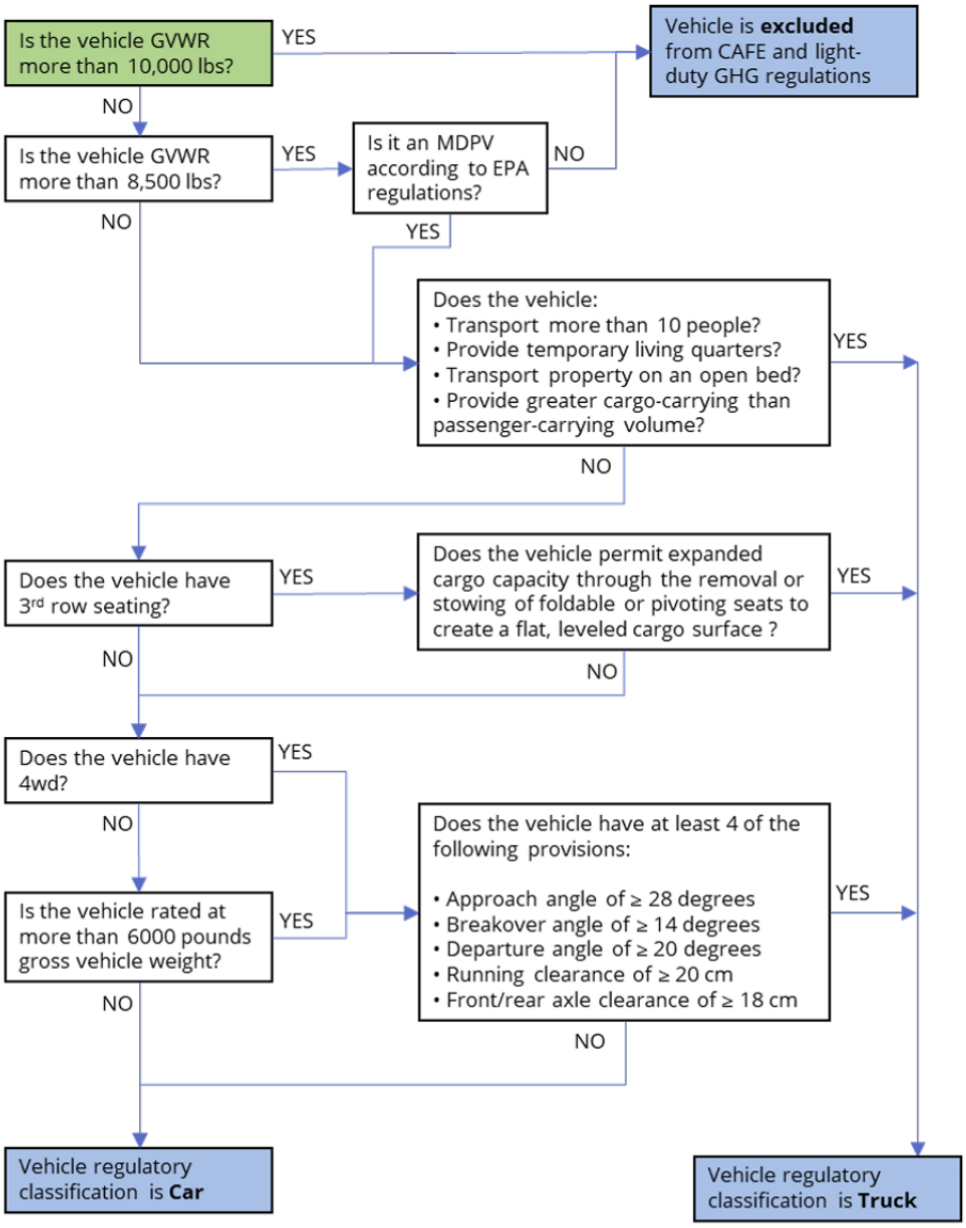
They achieved this not by engineering true utility, but by exploiting regulatory loopholes regarding seat configurations and geometric angles.

The existing classification scheme is a baroque bureaucratic maze. As illustrated by the regulatory flowchart describing the existing CAFE classification system, an automobile's legal status often turned on arbitrary geometric measurements rather than its actual function.[208] To qualify as a light truck under the "off-highway" provision, an automobile had to meet four out of five specific criteria: approach angle, breakover angle, departure angle, running clearance, and axle clearance.[209] This encourages engineers to design vehicles to satisfy a regulatory checklist—adding a millimeter of clearance here or shaving a bumper there—rather than designing for the driver's needs.

[208]EPA, *The 2024 EPA Automotive Trends Report* at F-2 fig.F.1 (2024) (EPA-420-R-24-022), available at https://climateprogramportal.org/wp-content/uploads/2025/02/The-2024-EPA-Automotive-Trends-Report.pdf.

[209] *See* 49 C.F.R. § 523.5(b)(2) (2024).

Figure F.1. Regulatory Car or Truck Flow Chart



The result is a fleet of "light trucks" that are technically compliant but functionally incapable of genuine off-road operation, as the statute requires. As the agency's analysis of the model year 2024 fleet reveals, "98.9 percent [of these vehicles] do not meet the approach angle minimum threshold of 28 degrees."[210] Automakers retained aerodynamic (low) approach angles while engineering just enough clearance elsewhere to tick the regulatory boxes to qualify as a light truck.

The "flat floor" classification provision is equally absurd and unlawful. It permits automobiles with three rows of seats to qualify as non-passenger automobiles simply because the seats fold flat to create a cargo surface. As NHTSA correctly observes, three rows of seats indicate that the automobile is manufactured *primarily* for transporting passengers, not property.[211] A minivan or crossover does not become a cargo van because the seats fold down. It remains an automobile designed primarily to move people, in other words, a passenger car. Eliminating this criterion restores the plain meaning of the statute.

NHTSA's proposal to replace these easily manipulated regulatory metrics with a Light-Duty Work Factor ("LDWF") based upon performance is sound. The LDWF assesses an automobile based on its towing and payload capacity—measurable, functional attributes that define the utility of a work vehicle meant to transport property.[212] By weighting towing capacity more heavily than payload, the LDWF distinguishes between vehicles engineered for structural work (which requires frame reinforcement, cooling capacity, and torque) and passenger vehicles that merely possess large interior volumes.[213]

The previous classification scheme allowed NHTSA to set unrealistically high fuel standards for passenger cars that sounded impressive in a press release, but in reality, applied to a shrinking fraction of the fleet. Automakers met these targets in part by designing automobiles to tick regulatory boxes rather than meet demand for genuine cargo transport or off-road operation. The better approach—and the one dictated by statute—is to set achievable fuel economy standards in the simplest way possible, which encourages automakers to achieve appropriate fuel efficiency while designing automobiles with attributes people want rather than devoting scarce resources to a complex game of regulatory arbitrage. NHTSA's proposed reclassification does just that.

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[210] 90 Fed. Reg. at 56,617.

[211] *See* 90 Fed. Reg. at 56,619.

[212] *Id.*

[213] *Id.* at 56,620.

7.2. Eliminating Credit Trading Restores the Statutory Focus on Fleet Efficiency

NHTSA's proposal to terminate the inter-manufacturer credit trading program beginning in model year 2028 eliminates a regulatory distortion and is a necessary step toward restoring the statutory purpose of CAFE.[214] Although the Motor Vehicle Act authorizes NHTSA to establish a credit trading program, it does not mandate one.[215] NHTSA has correctly determined that the current trading regime has mutated from a compliance flexibility into a distortive cross-subsidization scheme that undermines energy conservation, increases the cost of new vehicles, and limits consumer choice.

When NHTSA established credit trading in 2009, its stated goal was to improve cost-effectiveness by allowing manufacturers with lower marginal compliance costs to sell credits to those with higher costs.[216] In practice, however, this system has been captured and dominated by the artificial economics of the electric vehicle multiplier. Because the Department of Energy's petroleum-equivalency factor historically inflated fuel economy values of electric vehicles by applying a 666% boost in the form of a "fuel content factor," electric-only automakers have amassed surpluses of credits that did not represent real-world fuel savings.[217]

These inflated credits created a windfall for electric-vehicle manufacturers, who sold them to traditional automakers.[218] This arrangement perverted the incentives of the program. Instead of investing capital to improve the efficiency of their own gasoline and diesel fleets, traditional manufacturers found it cheaper to purchase regulatory indulgences from competitors who manufactured electric vehicles. As NHTSA notes, this effectively forced internal-combustion automakers to subsidize their electric-only rivals, diverting capital that could have been invested in genuine fuel-saving technologies for the vehicles most Americans drive.[219]

Eliminating this trading market refocuses the CAFE program on its statutory core: improving the fuel economy of the cars full-line automakers produce. By removing the option to buy

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[214] *See* 90 Fed. Reg. at 56,621.

[215] *See* 49 U.S.C. § 32903(f)(1).

[216] *See* 90 Fed. Reg. at 56,443.

[217] *Id.* at 56,620; *see also Iowa v. Wright*, 154 F.4th 918, 946 (8th Cir. 2025) (holding the 666% fuel content factor unlawful).

[218] *Id.* at 56,443; *see also* Abhirup Roy & Akash Sriram, *Tesla's Easy Money from Regulatory Credits Set to Dry Up amid Weakening Sales*, Reuters (July 22, 2025), https://www.reuters.com/business/autos-transportation/teslas-easy-money-regulatory-credits-set-dry-up-amid-weakening-sales-2025-07-22/.

[219] *Id.* at 56,443.

compliance, NHTSA ensures that every automaker must take responsibility for the efficiency of its fleet.[220] This does not leave automakers without flexibility; they retain the ability to average across their fleet, and to carry credits forward and backward and to transfer credits between their own internal fleets, as provided for in statute.[221] But NHTSA's proposal will end the era of purchasing compliance by subsidizing producers of electric vehicles, restoring CAFE to its statutory purpose.

8. NHTSA'S MODELING CHANGES ARE APPROPRIATE CORRECTIONS

NHTSA's updates to the economic assumptions underlying the CAFE Model represent long-overdue corrections, reflecting actual market dynamics far better than previous assumptions. For years, NHTSA's modeling ignored the negative externalities of fuel economy mandates by downplaying several fundamental economic behaviors: the rebound effect, the scrappage effect, and consumer payback. By adjusting these inputs to reflect empirical reality, the proposed rule provides a more honest accounting of the safety risks imposed by aggressive regulation.

Gasoline prices. Future gasoline prices are difficult to predict because they are tied to the geopolitics of oil, yet future gasoline prices are central to the predicted benefits. NHTSA's central predictions regarding oil and gasoline prices (which rely upon the Energy Information Administration's ("EIA's") predictions) have often been badly wrong. For example, NHTSA's 2012 rule (which covered model years 2017 through 2025) dramatically overestimated future gasoline prices because it failed to anticipate the fracking revolution.[222]

NHTSA continues to use EIA's price projections in this proposed rule, but uses EIA's more defensible "Alternative Transportation Case," which ignores the 2027 to 2032 model year EPA/NHTSA standards, and the recent state electric-vehicle mandates eliminated by federal legislation.[223]

Market failures. In a well-functioning new automobile market, car buyers would be willing to pay for fuel-efficiency technologies that pay for themselves: if the discounted fuel savings exceed the

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[220] *Id.* at 56,444.

[221] *See* 49 U.S.C. § 32903(g).

[222] SAFE II, 85 Fed. Reg. 24,174, 24,231, Fig. IV-2 (Apr. 30, 2020).

[223] SAFE III, 90 Fed. Reg. at 56,587; U.S. Energy Information Administration, *Annual Energy Outlook 2025: Case Descriptions* 9 (Apr. 2025), https://www.eia.gov/outlooks/aeo/assumptions/pdf/case_descriptions.pdf.

total lifetime costs of the technology, including opportunity costs, rational car buyers would pay for it.

NHTSA, however, historically assumed that car buyers aren't capable of paying for fuel-efficiency technologies that pay for themselves because of some unspecified market failure.[224] Previously, "NHTSA assumed in its rulemaking analyses that car buyers considered only 25 to 30 percent of the savings in fuel costs a more efficient car or light truck would achieve over its lifetime when they chose among competing models, but (together with any subsequent owners of the vehicles they purchased new) would ultimately receive the benefit of 100 percent of the discounted value of those savings."[225] If true, then this would be a very large market failure.

NHTSA now assumes a modest market failure. Although NHTSA assumes that car buyers are only willing to pay for fuel-efficiency technologies that have a payback of 36 months or less,[226] NHTSA more reasonable assumes they are mostly not willing to pay for technologies with longer payback periods not because of myopia, but because of tradeoffs: increasing fuel economy comes at the expense of other attributes that car buyers value, such as horsepower or payload capacity. The CAFE Model doesn't capture these tradeoffs because NHTSA lacks a discrete choice model capable of simulating car buyer behavior that accounts for these complexities.[227]

In its proposed rule, NHTSA now accounts for this "opportunity cost" by assuming that buyers "value about 75 percent of the appropriately discounted future fuel savings from purchasing a more fuel-efficient model, which would be realized over the first 10 years of its expected lifetime."[228] Only fuel savings beyond those ten years are attributable to the standards.

NHTSA's consideration of opportunity cost is a significant change in the CAFE Model with vast implications for NHTSA's cost-benefit balancing, as fuel savings have previously been the dominant benefit of the standards. If car buyers already adequately value fuel savings considering tradeoffs, then tighter standards likely do more harm than good

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[224] SAFE III PRIA at 2-3.

[225] *Id.* at 2-3.

[226] SAFE III, 90 Fed. Reg. at 56,504.

[227] 90 Fed. Reg. at 56,513–14; Draft TSD at 6-4 to 6-10 (explaining how NHTSA calculates these implicit opportunity costs). NHTSA has not been able to develop "a satisfactory and operational model" of car buyer behavior, despite investing "considerable resources in developing a discrete choice model of the new automobile market." 90 Fed. Reg. at 56,505.

[228] Draft TSD at 6-9.

PMI supports NHTSA's decision to stop assuming a market failure based on flimsy evidence. Car buyers place a high value on performance attributes such as acceleration, so failing to account for the trade-off between fuel economy and performance caused regulators to underestimate the costs of 2012–2016 standards by a factor of four.[229] By estimating the value of the fuel savings that car buyers *voluntarily forgo* (savings occurring between years 4 and 10 of a vehicle's life), NHTSA creates a reasonable proxy for the value of opportunity costs. This corrects a longstanding bias in the modeling and concedes that car buyer disinterest in more efficient vehicles is not a result of myopia, but a rational preference for other automobile characteristics.

The trade-off between fuel economy and performance is evident in the data.[230] During the 1990s, when the standards were constant, automakers used efficiency improvements to increase horsepower.[231] By contrast, most of the improvements in fuel economy since 2005, when the light truck standard tightened, has been achieved by foregoing gains in gasoline automobile horsepower.[232] The same pattern was evident when the standard for cars tightened in 2011.

This trend can be seen in other metrics too. Since 2005, for example, the share of cars and trucks with V-8 and V-6 engines has plummeted. In 2005, only a quarter of gasoline cars and light trucks had V-4 engines. By 2023, the number had grown to over 51%, displacing V-6 and V-8 engines.[233]

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[229] *See* Benjamin Leard et al., *How Much Do Consumers Value Fuel Economy and Performance? Evidence from Technology Adoption*, 105 Rev. Econ. & Stat. 158, 172 (2023).

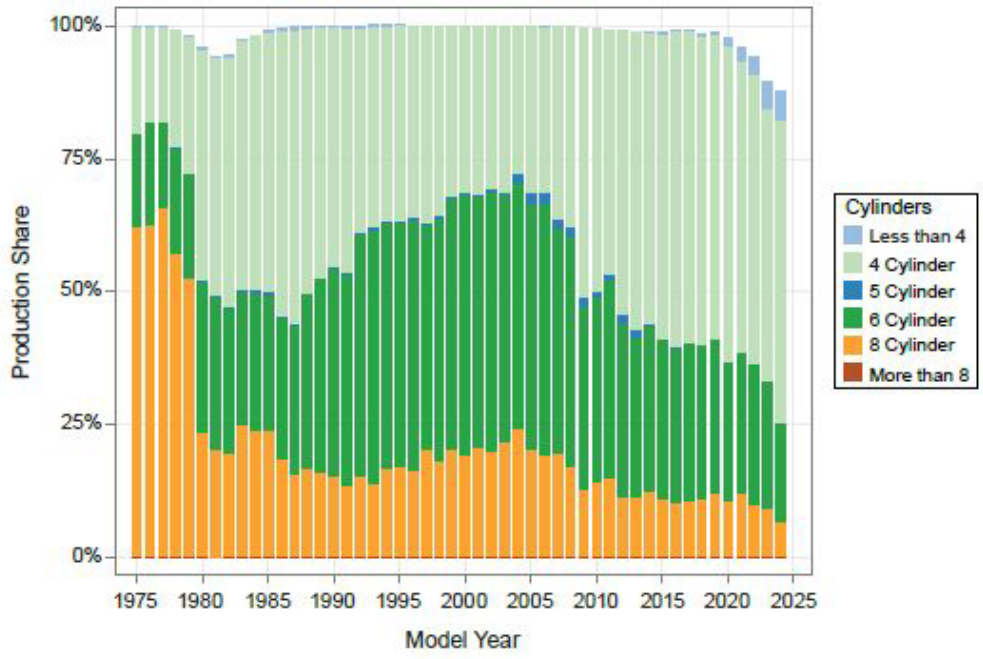
[230] *Id.* at 33. Because electric vehicles have ridiculous horsepower, however, this trend is obscured when they are included in the analysis. But of course, electric vehicles have many other, notorious tradeoffs.

[231] Leard et al., *supra*, at 158, 160, 161 Panel B & App'x Figures B.1 & B.2.

[232] *Id.* at 171 (trade-off is 0.88 out of every 1 percent increase)

[233] EPA, 2024 Fuel Economy Trends Report 53.

Figure 4.4. Gasoline Engine Production Share by Number of Cylinders



NHTSA has traditionally ignored the opportunity costs of foregone improvements in other attributes, committing the fallacy of the free lunch.[234] We applaud NHTSA for changing course.

Federal courts have grown increasingly skeptical of agency models that rely on weak assumptions of market failures to justify regulation. As the D.C. Circuit warned in a similar context, an agency cannot simply "assum[e] a purchaser's decisions will not align with its economic interests" without providing "actual evidence" of a market failure.[235] Relying upon a model that presumes widespread consumer irrationality "bespeaks a failure to consider an important aspect of the problem."[236] Or, as Judge Rao recently observed, models that assume buyers ignore costs and select products at random "def[y] both reality and basic economics."[237] By rejecting the "energy paradox" and acknowledging opportunity costs, NHTSA brings its analysis into alignment with judicial precedent, ensuring the rule is based on reasoned decision-making rather than paternalistic guesswork.\

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[234] *See* Harold Demsetz, *Information and Efficiency: Another Viewpoint*, 12 The Journal of Law & Economics 1 (1969).

[235] *Am. Pub. Gas Ass'n v. U.S. Dep't of Energy*, 22 F.4th 1018, 1027–28 (D.C. Cir. 2022).

[236] *Id.* at 1028 (internal quotation omitted).

[237] *Am. Gas Ass'n v. U.S. Dep't of Energy*, 157 F.4th 476, 508 (D.C. Cir. 2025) (Rao, J., dissenting).

NHTSA should go further however. Rather than developing speculative payback estimates and opportunity cost estimates, NHTSA could modify the attribute-bases standards to include not just size but also horsepower for passenger cars, and payload and towing capacity for light trucks. This would ensure that NHTSA's fuel-economy targets do not encourage automakers to alter features that come at the expense of important markers of utility.

Rebound effect. Tighter standards *encourage* car buyers to drive more. When a car is more fuel efficient, it is cheaper to drive an extra mile, so drivers drive more. This is the so-called the "rebound effect." As NHTSA explains:

> The fuel economy rebound effect—a specific example of the well-documented energy efficiency rebound effect for energy-consuming capital goods—refers to motorists who choose to increase vehicle use (as measured by [vehicle miles traveled]) when fuel economy is improved and, as a result, the cost per mile … of driving declines. If fuel economy increases, the cost to drive additional miles decreases, resulting in vehicles with better fuel efficiency being driven more.[238]

The magnitude of this rebound effect, however, is uncertain. British economist Stanley Jevons famously argued that more efficient coal-combustion in Britain paradoxically increased coal use.[239] This Jevons paradox is unlikely in a wealthy economy such as the United States—gasoline consumption will not increase overall as a result of more efficient automobiles. But at least some rebound effect is very likely, meaning the decrease in gasoline consumption will be muted.

NHTSA's review of the literature suggests "a range of approximately 10–45 percent" for the rebound effect, "with most of the estimates falling in the 15–30 percent range."[240] That means that for every ten gallons of gasoline saved by increased efficiency, some 1.5 to 4.5 gallons may be burned by increased miles traveled. More miles traveled increases the risk of traffic accidents, and thus of traffic fatalities. The rebound effect is thus a source of significant uncertainty in NHTSA's cost-benefit analysis.

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[238] 90 Fed. Reg. at 56,508.

[239] William Stanley Jevons, *The Coal Question: an Inquiry Concerning the Progress of the Nation, and the Probable Exhaustion of our Coalmines* (3rd ed. 1905).

[240] 90 Fed. Reg. at 56,508.

Under Biden, NHTSA assumed that the rebound effect was 10%, but NHTSA now assumes that it is 15%.[241] Although still conservative, this change is appropriate.

Scrappage effect. Tighter CAFE standards reduce the turnover rate of the fleet, or the "scrappage" rate.[242] Tighter standards predictably increase the price of new automobiles.[243] This price increase, in turn, reduces new automobile sales.[244] Reduced new automobile sales has secondary effects on used automobiles. Because used automobiles are substitutes for new ones, higher new automobile prices increase demand for the fixed quantity of used vehicles, raising their prices, too. Together, this encourages drivers to hold on to older, more unsafe and dirtier automobiles and to invest in maintenance and upkeep rather than scrapping them, reducing the turnover rate of the in-use fleet and increasing on-road fatalities and injuries.[245] This effect is known as the "Gruenspecht effect" or more simply, the scrappage effect.[246]

The scrappage rate of automobiles has fallen significantly since 2011, and the average age of automobiles on the road has correspondingly increased.[247] The magnitude of this effect, however, remains uncertain. Part of this trend likely reflects growing consumer preferences for more expensive light trucks, which are scrapped at lower rates than passenger cars. But this trend toward light trucks may itself be encouraged by the standards, as the light truck "loophole" makes it easier for light trucks to comply with the standards.

In this proposed rule, NHTSA used an econometric model based on historical data that incorporates the effects of disposable income and other economic variables to estimate

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[241] *Id.* at 56,508–09.

[242] *See* EPA, *The Effects of New-Vehicle Price Changes on New- and Used-Vehicle Markets and Scrappag*e, EPA-420-R-21-019 (Aug. 2021).

[243] The increase in price is determined by technology cost minus fuel savings over the first 36 months minus tax credits passed through to the buyer.

[244] The magnitude of this effect depends on the elasticity of demand for new automobiles, which is itself uncertain. NHTSA assumes a price elasticity of "-0.4" which implies, for example, that a 5-percent increase in new vehicles' average price causes a 2-percent decline in their total sales. 90 Fed. Reg. at 56,505; PRIA at 7-8.

[245] NHTSA, SAFE III PRIA at 7-4 to 7-5.

[246] *See* H.K. Gruenspecht, *Differentiated Regulation: The Case of Auto Emissions Standards*, 72 Am. Econ. Rev. 328 (1982).

[247] Nishant Parekh and Todd Campau, *Average Age of Vehicles Hits New Record in 2024* (May 22, 2024), https://www.spglobal.com/automotive-insights/en/blogs/2024/5/fuel-for-thought-average-age-vehicles-2024.

scrappage, assuming a price elasticity of -0.4 for new automobile sales (i.e., that a 10% increase in the average price of a new automobile results in a 4% decrease in total sales).[248]

We discuss PMI's views on some of these changes in the following sections.

9. NHTSA Arbitrarily Fails To Consider Less Stringent Standards

NHTSA's proposal marks a giant step forward in restoring CAFE to its statutory purposes and eliminating regulatory-induced market distortions that have hampered affordability and limited consumer choice. NHTSA's proposal, however, is arbitrary in at least two respects: it fails to consider the most natural result of its energy security, affordability, and technological feasibility findings—0% annual increases—and it includes high-range plug-in hybrid vehicles, which are in practice electric vehicles, in the baseline.

9.1. A 0% Stringency Increase Is Appropriate

NHTSA correctly identifies the controlling statutory factors under EPCA but fails to follow its own factual findings.[249] The agency's own data on technological saturation, economic stagnation, and energy independence demonstrate that the maximum feasible standard for the covered model years is a 0% increase, or even a decrease.

The internal-combustion engine is a mature technology, and efficiency gains have reached the point of diminishing returns. As NHTSA admits, "each additional fuel economy improvement becomes much more expensive as the easiest to achieve low-cost technological improvement options are exhausted."[250] NHTSA's data confirms that the penetration of key technologies—such as turbocharging and direct injection—is already advancing rapidly even without steeper mandates.[251] Because NHTSA must exclude dedicated alternative fuel vehicles from the baseline, NHTSA is left with an internal-combustion fleet in which further efficiency gains yield minimal fuel savings at exponential costs.[252] Consequently, a 0% increase is more appropriate considering the physical limits of the permissible technology suite, economic costs, and marginal benefits.

This is especially true considering "economic practicability." That factor requires that NHTSA's standards remain within the financial capability of the industry and affordable for

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[248] NHTSA, SAFE III PRIA at 7-8.

[249] 90 Fed Reg. at 56,581.

[250] *Id.* at 56,446.

[251] *See id.* at 56,597, Table V-3.

[252] *Id.* at 56,444

consumers.[253] NHTSA correctly diagnoses the current crisis: the average age of the U.S. fleet is approaching 13 years because new vehicles have become "unaffordable or unappealing."[254]

NHTSA concedes that reducing stringency lowers vehicle prices—estimating a $900 reduction in average vehicle costs under the proposed reset—which in turn accelerates fleet turnover and improves safety.[255] A 0% increase would maximize these benefits by minimizing regulatory costs, thereby allowing more consumers to replace older, unsafe vehicles with newer, cleaner models. Any mandated increase above 0% unnecessarily inflates prices and slows this vital fleet turnover.

The other statutory factors do not require a different result. As discussed above, NHTSA properly recognizes that the "need of the United States to conserve energy" has fundamentally shifted since 1975.[256] The United States is now the world's largest oil producer and a net exporter of petroleum.[257] Accordingly, the agency correctly characterizes conservation under EPCA as an "insurance policy against risk" rather than a mandate to secure indefinite supply by continually ratcheting standards.[258]

To the extent that other federal motor vehicle standards are relevant, they also weigh in favor of static fuel economy standards. Manufacturers face conflicting mandates from other government standards, particularly safety regulations that increase vehicle weight.[259] Increasing CAFE stringency forces lightweighting, which can conflict with these safety imperatives or require the use of expensive exotic materials that harm economic practicability.[260] A 0% increase resolves these tensions, allowing manufacturers to optimize for safety and emissions compliance without the distorting pressure of an arbitrary fuel economy target that offers no cognizable energy security benefit.

The suitability of a 0% increase is underscored by the diminishing returns of fuel savings at higher fuel economy levels, as acknowledged by NHTSA: moving a fleet from 30 to 31 mpg yields a

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[253] *Id.* at 56,585.

[254] *Id.* at 56,605.

[255] *Id.* at 56,449.

[256] *Id.* at 56,607.

[257] *Id.* at 56,608.

[258] *Id.* at 56,609.

[259] *Id.* at 56,586.

[260] *See id.* at 56,498.

fraction of the savings achieved by moving from 15 to 16 mpg.[261] Given American energy dominance and the current efficiency of the fleet, the marginal national energy security benefit of squeezing another 0.25% or 0.5% out of new vehicles is effectively zero.

Indeed, under NHTSA's proposed amended standards, automakers would have to hybridize a vast portion of the fleet, or else sell electric vehicles, in order to comply. That will significantly reduce consumer choice and reduce performance.

In sum, NHTSA has reasonably concluded that fuel-efficient technology is expensive, vehicle affordability is low, and American energy security is high.[262] These findings do not support a 0.5% or 0.25% increase; they demand a flatline or declining standards.

9.2. High-Range Plug-In Hybrids Function as Electric Vehicles and Must Be Excluded from the Baseline

Additionally, NHTSA's inclusion of high-range plug-in hybrids in the standard-setting baseline contravenes the statutory prohibition against considering dedicated alternative fuel vehicles when determining maximum feasible fuel economy.[263] Although the agency technically classifies these vehicles as dual-fueled automobiles, its own analysis identifies high-range platforms, such as the PHEV50, as "extended range electric vehicles" that are engineered to operate in all-electric mode even during high-load scenarios.[264] By the agency's own admission, the internal-combustion engine in these architectures is not a primary propulsion source, but a redundancy, blurring the functional distinction between these vehicles and the battery-electric vehicles that Congress explicitly excluded from the feasibility analysis.[265] For example, NHTSA's modeling assumes that the internal-combustion engine in the PHEV50 platform remains always off, even during the aggressive US06 drive cycle, and functions strictly as a backup generator, not a prime mover.[266]

Because the gasoline engine in these high-range hybrids remains dormant during standard operation, treating them as gasoline-powered vehicles for regulatory modeling is arbitrary and capricious. Incorporating these vehicles into the baseline fleet artificially inflates the calculated

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[261] *Id.* at 56,446.

[262] *Id.* at 56,581–609.

[263] 49 U.S.C. § 32902(h)(1).

[264] Draft Technical Support Document at 3-108.

[265] *Id.*

[266] *Id.* at 3-110.

feasibility of the standards by relying on an electric propulsion efficiency that the statute forbids the agency from considering, effectively bypassing the constraints of § 32902(h) through nominal classification rather than operational reality.

10. NHTSA Should Adopt a Severability Clause

NHTSA states its intent that the provisions of this proposed rule be severable, but we urge NHTSA to include an express severability provision in the regulatory text.[267] An express severability provision, coupled with explicit statements in the final preamble that NHTSA would adopt each portion of the rule independently, will ensure that its reforms are durable and minimize litigation risks.[268]

Severability is appropriate for several reasons. First, the correction of standards for model years 2022 through 2026 is logically and legally distinct from the prospective standards for model years 2027 through 2031. The former corrects a specific legal error—the inclusion of electric vehicles in the baseline—that rendered the prior standards void *ab initio*. The latter represents a forward-looking policy judgment about maximum feasibility. If a court were to hold that NHTSA lacks authority to amend the 2022–2026 standards because such as change is, for example, impermissibly retroactive, then that finding would have no bearing on the validity of the amended 2027–2031 standards, which are based on a fresh assessment of current market data. NHTSA should make clear it would adopt the amended 2022-2206 standards regardless of its changes to the future standards, and that the future standards are not dependent on the retroactive changes.

Second, the regulatory reclassification of light trucks functions independently of the numeric fuel economy targets. The proposal to define non-passenger automobiles based on functional utility (the Light-Duty Work Factor) rather than arbitrary geometric criteria serves the statutory purpose of preventing regulatory arbitrage.[269] Even if a court were to vacate the specific stringency levels set by the agency, the updated class definitions in 49 C.F.R. part 523 should remain in effect to ensure that future standards are applied to the correct vehicles. Conversely, if the reclassification is vacated, the relaxed stringency levels remain necessary to ensure economic practicability for the fleet as currently defined.

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[267] *See* 90 Fed. Reg. at 56,611.

[268] *See Am. Fuel & Petrochemical Manufacturers v. EPA*, 3 F.4th 373, 384 (D.C. Cir. 2021) ("Severability depends on the issuing agency's intent and severance is improper if there is substantial doubt that the agency would have adopted the severed portion on its own.") (cleaned up).

[269] *See* 49 U.S.C. § 32901(a)(16)–(18).

Third, the elimination of credit trading is a discrete policy choice authorized by the text of the statute. Although the Motor Vehicle Act permits NHTSA to establish a credit trading program, it does not require one.[270] NHTSA's determination that trading has become a distortive cross-subsidy stands on its own merits. This decision can and should survive even if other portions of the rule are challenged.

Finally, and most importantly, NHTSA should explicitly state that its selection of the preferred alternative does not rest solely on its interpretation of 49 U.S.C. § 32902(h). Although the agency correctly interprets that section to bar the consideration of electric vehicles, the proposed standards are also the "maximum feasible" standards under the balancing factors of § 32902(f). Specifically, the constraints of "economic practicability" (including consumer affordability and fleet turnover) and the "need of the United States to conserve energy" (viewed in light of domestic petroleum abundance) independently justify the proposed stringency levels. NHTSA should clarify that it would adopt these same standards as a matter of discretion even if a court later determines that it is permitted to consider electric vehicles in the baseline. NHTSA could justify this by including a sensitivity analysis with electric vehicles in the baseline and including the effects of other regulatory changes that have occurred or are likely to occur—e.g., changes to the petroleum equivalency factor, reduction in available tax credits, elimination of state electric vehicle mandates, and EPA's proposed repeal of its greenhouse gas standards. By establishing this alternative basis for the rule, NHTSA increases the likelihood its standards will survive legal challenge.

11. NHTSA Must Repeal the 2030 and Later Heavy-Duty Pickup and Van Standards

Finally, for the same reasons that NHTSA has proposed to repeal the existing light-duty standards, NHTSA must also repeal the current heavy-duty pickup and van ("HDPUV") standards for model years 2030 through 2035.[271]

In 2024, NHTSA finalized standards for model years 2030–2035 that increase at a rate of 10% per year for the first three years and 8% per year thereafter.[272] These aggressive targets act as a de

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[270] *See* 49 U.S.C. § 32903(f)(1).

[271] *See* Letter from Jonathan Morrison, Adm'r, Nat'l Highway Traffic Safety Admin., to Mfrs. (Jan. 30, 2026), https://www.nhtsa.gov/sites/nhtsa.gov/files/2026-01/letter-next-steps-resetting-HDPUV-standards-jan-2026.pdf (explaining that NHTSA plans to reconsider heavy-duty pickup and van standards).

[272] 89 Fed. Reg. at 52,540.

facto electric-vehicle mandate, forcing manufacturers to produce electric trucks to offset the compliance shortfalls of their internal-combustion fleets. Just as EPCA prohibits NHTSA from considering electric vehicles when setting light-duty standards, the Energy Independence and Security Act ("EISA") restricts NHTSA's authority over heavy-duty vehicles to the regulation of "fuel efficiency."[273] The statute defines "fuel" as gasoline and diesel oil—not electricity.[274] Because electric vehicles do not consume "fuel," NHTSA lacks statutory authority to mandate their production or to set standards that can only be met by shifting the fleet away from the very fuels Congress authorized the agency to regulate.

Furthermore, the 2024 Rule's treatment of electric heavy-duty vehicles as having "zero" fuel consumption is an arbitrary legal fiction that distorts the statutory scheme.[275] By assigning a value of 0 gallons per 100 miles to electric vehicles, the agency artificially lowers the calculated fuel consumption of the fleet, allowing manufacturers to mask the actual efficiency of their gasoline and diesel trucks. This arithmetic trick transforms the standard from a measure of engine efficiency into a production quota for alternative powertrains. The statute directs NHTSA to improve the fuel efficiency of work trucks, not to eliminate the use of fuel altogether. By effectively requiring electrification, the agency has arrogated to itself the power to reshape the heavy-duty truck market, a decision of vast economic and political significance that Congress did not clearly authorize. Under the major questions doctrine, such a transformative assertion of regulatory power is invalid absent a clear statement from Congress, which does not exist here.

Finally, the current HDPUV standards violate the statutory requirement for "regulatory stability." EISA demands that heavy-duty standards provide "not less than 3 full model years of regulatory stability."[276] The 2024 Rule, however, ratchets up stringency every single year from 2030 through 2035.[277] A standard that changes annually is the definition of unstable. Congress included the stability provision to accommodate the longer redesign cycles and functional imperatives of commercial vehicles, recognizing that work trucks cannot be redesigned as frequently as passenger cars without compromising their utility. NHTSA's refusal to provide the

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[273] 49 U.S.C. § 32902(k)(2).

[274] *Id.* § 32901(a)(10).

[275] *See* 89 Fed. Reg. at 52,906.

[276] 49 U.S.C. § 32902(k)(3)(B).

[277] 89 Fed. Reg. at 52,540.

requisite stability imposes unlawful burdens on manufacturers and threatens the availability of the affordable, capable work trucks that American businesses rely on.

To restore adherence to the statutory text and prevent further market distortion, NHTSA must take action to repeal these unlawful heavy-duty standards as well.

CONCLUSION

PMI commends NHTSA's proposed rule, and applauds the proposed reset of the CAFE program.