

Rulemaking (ANPRM) in the **Federal Register** outlining NHTSA's intention to set standards for some, or all, of MYs 1998–2006. 59 FR 16324 (April 6, 1994).

On November 15, 1995, the Department of Transportation and Related Agencies Appropriations Act for FY 1996 was enacted. Pub. L. 104–50. Section 330 of that Act provided:

None of the funds in this Act shall be available to prepare, propose, or promulgate any regulations * * * prescribing corporate average fuel economy standards for automobiles * * * in any model year that differs from standards promulgated for such automobiles prior to enactment of this section.

Pursuant to that Act, we then issued an NPRM limited to MY 1998, proposing to set the light truck CAFE standard for that year at 20.7 mpg, the same level as the standard we had set for MY 1997. 61 FR 145 (January 3, 1996). We adopted this 20.7 mpg-standard in a final rule issued on March 29, 1996. 61 FR 14680 (April 3, 1996).

On September 30, 1996, the Department of Transportation and Related Agencies Appropriations Act for FY 1997 was enacted. Pub. L. 104–205. Section 323 of that Act included the same limitation on appropriations regarding the CAFE standards contained in Section 330 of the FY 1996 Appropriations Act. The agency followed the same process as the prior year and established a MY 1999 light truck CAFE standard of 20.7 mpg, the same level as the standard that had been set for MYs 1997 and 1998.

Because the same limitation on the setting of CAFE standards was included in the Appropriations Acts for each of FYs 1998–2001, the agency followed that same procedure during those fiscal years and did not issue any NPRMs in the series of rulemakings we conducted to establish the light truck fuel economy standards for MYs 2000–2003. The agency concluded in those rulemakings, as it had when setting the MY 1999 standard, that the restrictions contained in the appropriations acts prevented the issuance of any standards other than the standard set for the prior model year. The agency also determined that issuing an NPRM was unnecessary and contrary to the public interest because there was no other course of action available to it.

The Department of Transportation and Related Agencies Appropriations Act for FY 2001 was enacted on October 23, 2000. Pub. L. 106–346. That is the appropriations act under which we issued the light truck CAFE standard for MY 2003. While Section 320 of that Act contained a restriction on CAFE rulemaking identical to that contained in prior appropriation acts, the

conference committee report for that Act directed that NHTSA fund a study by NAS to evaluate the effectiveness and impacts of CAFE standards (H.R. Conf. Rep. No. 106–940, at 117–118).

NAS submitted its report to the Department of Transportation on July 30, 2001. The final report was released in January 2002. The report concludes that technologies exist that could significantly increase passenger car and light truck fuel economy within 15 years. However, their development cycles as well as future economic, regulatory, safety and consumer preferences will influence the extent to which these technologies appear in the U.S. market.

All but two members of the NAS committee that authored the report said, “to the extent that the size and weight of the fleet have been constrained by CAFE requirements * * * those requirements have caused more injuries and fatalities on the road than would otherwise have occurred.” (NAS, p. 29). Specifically, they noted: “the downweighting and downsizing that occurred in the late 1970s and early 1980s, some of which was due to CAFE standards, probably resulted in an additional 1300 to 2600 traffic fatalities in 1993.” (NAS, pp. 3 and 111.)

The NAS found that, to minimize financial impacts on manufacturers, and on their suppliers, employees, and consumers, sufficient lead-time (consistent with normal product life cycles) should be given when considering increases in CAFE standards. The report stated that there are advanced technologies that could be employed, without negatively affecting the automobile industry, if sufficient lead-time were provided to the manufacturers. In the NAS' view, the selection of future fuel economy standards will require uncertain and difficult trade-offs among environmental benefits, vehicle safety, cost, energy independence, and consumer preferences. It also suggests that consideration be given to changing the CAFE regulatory program to one based on vehicle attributes, such as weight, and that allowing “credit trading” could eliminate the current CAFE program's encouragement of downweighting or the production and sale of more small cars, and also reduce costs. (NAS, pp. 5, 113) Recognizing the many trade-offs that must be considered in setting fuel economy standards, the NAS committee took no position on what CAFE standards would be appropriate for future years.

In a letter dated July 10, 2001, Secretary of Transportation Mineta asked the House and Senate

Appropriations Committees to lift the restriction on the agency's spending funds for the purposes of improving CAFE standards. The Department of Transportation and Related Agencies Appropriations Act for FY 2002 (Pub. L. 107–87), which was enacted on December 18, 2001, did not contain a provision restricting the Secretary's authority to prescribe fuel economy standards.

When issuing our January 2002 proposal to establish the MY 2004 standard at 20.7 mpg (67 FR 3470), we noted that our newly regained ability to spend funds did not immediately enable us to conduct the level of analysis needed to set different fuel economy standards.² Although a number of commenters reacted to this proposal by advocating a higher MY 2004 standard, the agency determined, based on the limited information available to the agency for analyzing the manufacturers' product plans and on the lack of lead time to change those plans significantly, to set the MY 2004 standard at 20.7 mpg (67 FR 16052, April 4, 2002).

On February 7, 2002, we issued a Request for Comments (RFC) (67 FR 5767) seeking data on which we could base our analysis of appropriate CAFE standards for light trucks for upcoming model years, beginning with MY 2005. We also sought comments on possible reforms to the CAFE program, as it applies to both passenger cars and light trucks, to protect passenger safety, advance fuel-efficient technologies, and obtain the benefits of market-based approaches. In the same month, Secretary Mineta asked Congress “to provide the Department of Transportation with the necessary authority to reform the CAFE program, guided by the NAS report's suggestions.”

While we are limited today in setting CAFE standards for the relative short term and within the constraints of the current CAFE statute, we will continue to support and encourage the development of advanced vehicle technologies capable of substantial fuel economy improvements and a market

² To prepare to establish any fuel economy standard, the agency must collect information relating to prospective CAFE levels, analyze and weigh the information in light of the statutory criteria for determining the “maximum feasible” average fuel economy level, and incorporate this information and analysis into a rulemaking action to set the standard, with opportunity for notice and comment. As NHTSA was unable to spend any funds by virtue of Section 320 of the FY 2001 Appropriations Act and the predecessor restrictions in earlier Appropriations Acts, it was not able to prepare the factual or analytical foundation necessary for rulemaking to establish CAFE standards at new levels from September 1995 to December 2001.